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TRIAL CHAMBER III

ICTR-98-44D-T
25-06-2012
(9992 – 9569)

Before: Judge Solomy Balungi Bossa, Presiding
Judge Bakhtiyar Tuzmukhamedov
Judge Mparany Rajohnson

Registrar: Adama Dieng

Date: 31 May 2012

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D-T

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CHAPTER I: INTRODUCTION

1.1 Overview of the Case[1]

1. Callixte Nzabonimana is charged with the crimes of Genocide, Conspiracy to Commit Genocide, Direct and Public Incitement to Commit Genocide, and Extermination and Murder as Crimes Against Humanity in Gitarama *préfecture* during the events of April to July 1994 in Rwanda. The Prosecution alleges that he planned, instigated, ordered or committed these crimes, or he otherwise aided and abetted in the planning, preparation and execution of these crimes through his acts and omissions.[2] Nzabonimana pled not guilty to the charges against him.[3]

2. The Prosecution also alleges that Nzabonimana held positions of authority within the Interim Government and in Gitarama *préfecture* during 1994, and consequently wielded considerable influence in the *préfecture*.[4] From 7 April 1994 to early July 1994, Nzabonimana is alleged to have abused this high position and influence by: instructing, prompting and encouraging the local population to kill Tutsi neighbours; planning, facilitating and supervising the mass slaughter of Tutsi civilians; and arming the population for the purpose of murdering Tutsi civilians.[5]

3. The Defence disputes the charges by generally challenging the credibility of Prosecution evidence, claiming purported contradictions, omissions and lies in witness testimony, alleging defects in the Indictment and pointing to several disclosure violations on the part of the Prosecution. The Defence raises an alibi in relation to certain allegations and submits that Prosecution witnesses fabricated their evidence.[6] The Defence also disputes the Prosecution theory that Nzabonimana was influential in Gitarama *préfecture*.[7] Furthermore, the Defence asserts that Nzabonimana harboured no ill-will towards Tutsis, that members of his family were Tutsis and that he saved Tutsis who were the subject of attacks.[8]

1.2 The Accused

4. Nzabonimana was born in 1953 in Kavumu *secteur*, Nyabikenke *commune*, Gitarama *préfecture*.[9] After his secondary education in Rwanda, he went to Dijon, France to pursue his studies in 1972. Subsequently, he went to Nancy and remained in France until 1983.[10]

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[1] This Judgement is rendered pursuant to Rule 88(C) of the Rules. An oral summary was pronounced on 31 May 2012. The written version was filed on 25 June 2012 after the completion of the editorial process.
[2] Para. 13 of the Indictment.
[3] T. 20 February 2008 pp. 10-11 (Initial Appearance).
[4] Paras. 7-12 of the Indictment; Prosecution Closing Brief, paras. 9-12.
[5] T. 20 October 2011 pp. 4-5 (Prosecution Closing Argument).
[6] Defence Closing Brief, paras. 8-89; T. 20 October 2011 pp. 46-49, 65-79; T. 21 October 2011 pp. 2-3 (Defence Closing Argument).
[7] Defence Closing Brief, paras. 2-3; T. 20 October 2011 pp. 49-51 (Defence Closing Argument).
[8] Defence Closing Brief, paras. 6-7.
[9] Para. 6 of the Indictment; Prosecution Pre-Trial Brief, para. 18.
[10] T. 21 October 2011 p. 21 (Defence Closing Argument).

5. Nzabonimana was the Rwandan Minister of Youth and Associative Movements ("Minister of Youth") from 8 April 1994 to mid-July 1994, and previously served as the Minister of Planning from 15 January 1989 to 4 February 1991. He remained within the Interim Government until July 1994, when the Interim Government went into exile.[11] Nzabonimana also served as the Chairman of the MRND party in Gitarama *préfecture* during the events.[12]

6. The Prosecution submitted an initial Indictment against Nzabonimana on 21 November 2001, jointly charging him with Augustin Bizimana, Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, Felicien Kabuga and Juvénal Kajelijeli.[13] On 8 October 2003, Trial Chamber III ordered that the case of Nzabonimana be severed from the initial Indictment.[14]

7. On 18 February 2008, Nzabonimana was arrested in Kigoma, Tanzania.[15] At his initial appearance on 20 February 2008, Nzabonimana pled not guilty to all 11 counts against him.[16]

8. On 21 July 2009, Trial Chamber III granted the Prosecution motion to amend the Indictment.[17] The Prosecution filed an Amended Indictment on 24 July 2009, dropping six previously charged counts.[18] The Amended Indictment did not contain any additional counts. Nzabonimana did not make a further appearance and was therefore deemed to have pled not guilty to all five counts against him.

1.3 Summary of the Procedural History

9. A complete procedural history is found in Annex A of this Judgement. For present purposes, it is useful to recount the following summary.

10. The trial commenced on 9 November 2009 before Trial Chamber III, composed of Judge Solomy Balungi Bossa, presiding, Judge Bakhtiyar Tuzmukhamedov and Judge Mparany Mamy Richard Rajohnson.[19]

11. The Prosecution closed its case on 13 April 2010, having called 19 witnesses.[20]

12. The Defence called 40 witnesses during the presentation of its case, from 14 April 2010 to 7 April 2011.[21] The Accused did not testify in his defence.

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[11] Para. 7 of the Indictment; Prosecution Pre-Trial Brief, para. 20.
[12] Para. 8 of the Indictment; Prosecution Closing Brief, paras. 11-12; Defence Closing Brief, para. 1; T. 20 October 2011 p. 6 (Prosecution Closing Argument); T. 20 October 2011 p. 45 (Defence Closing Argument).
[13] *The Prosecutor v. Augustin Bizimana et al.*, Case No. ICTR-98-44-I, Prosecutor's Amended Indictment Pursuant to the Decision of Trial Chamber II on the Defence Motion, Pursuant to Rule 72 of the Rules of Procedure and Evidence, Pertaining to, *Inter Alia*, Lack of Jurisdiction and Defects in the Form of the Indictment, 21 November 2001.
[14] *Bizimana et al.*, Decision on the Prosecutor's Motion for Separate Trials and for Leave to File an Amended Indictment (TC), 8 October 2003.
[15] Prosecution Pre-Trial Brief, para. 5.
[16] T. 20 February 2008 pp. 10-11 (Initial Appearance).
[17] Decision on Prosecutor's Motion for Amendment of Indictment (TC), 21 July 2009.
[18] Indictment, signed 23 July 2009, but filed on 24 July 2009.
[19] T. 9 November 2009 pp. 1-2.
[20] T. 13 April 2010 p. 74 (ICS) (Oral Ruling).

13. The Prosecution called one witness in rebuttal on 5 to 6 May 2011.

14. On 12 September 2011, the Chamber allowed the Prosecution to cross-examine Defence Witness T2, after his statement was admitted into evidence pursuant to Rule 92*bis* on 10 May 2011.[22]

15. The trial closed on 12 September 2011, after 87 trial days. The Prosecution filed its Closing Brief on 5 July 2011 and the Defence filed its Abridged Closing Brief on 13 July 2011.[23]

16. Between 5 and 9 September 2011, a delegation, composed of the Nzabonimana Bench from Trial Chamber III and representatives of the Registry and the Parties, conducted a site visit in Rwanda.[24]

17. On 23 September 2011, the Defence filed an Additional Brief pursuant to the Site Visit,[25] and on 26 September 2011, the Prosecution and Defence filed Briefs pursuant to the cross-examination of Defence Witness T2.[26]

18. The Chamber heard Closing Arguments on 20 and 21 October 2011.

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[21] T. 14 April 2010 p. 1; T. 7 April 2011 p. 3 (Oral Decision). The Defence case was closed with the exception of two Defence witnesses, who testified on 3 to 5 May 2011 (T. 7 April 2011 p. 11 (Oral Decision)).
[22] *See* Decision on Nzabonimana's Motion for the Admission of Written Witness Statements (TC), 10 May 2011; Defence Exhibit 146 (Statement of Witness T2, 8 April 2010).
[23] Prosecution Closing Brief; Defence Closing Brief.
[24] *See* Decision on Site Visit (TC), 10 May 2011; Chamber Exhibit 1 (Site Visit Report).
[25] Defence Additional Brief.
[26] Defence Complementary Brief; Prosecution Addenda to Closing Brief.

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CHAPTER II: PRELIMINARY ISSUES

2.1 Indictment

2.1.1 Defence Submission of Inflated Indictment

19. Pursuant to the Chamber's *proprio motu* Order of 8 April 2011, the Prosecution informed the Chamber and the Defence that it withdrew the following paragraphs of the Indictment: 18, 22, 27, 29, 31, 32, 34, 36, 39, 42, 43, 50, 53, 55, 56 and 57.[27]

20. In its Closing Brief, the Defence submits that the Indictment against Nzabonimana was inflated, and that the Prosecution's subsequent dropping of the above paragraphs "is a clear admission that these paragraphs are unsupported by evidence, a fact that should have been obvious before trial."[28] The Defence alleges that it was prejudiced because "the Prosecutor [...] squandered the Tribunal's resources by causing the Defence to pursue lines of investigations and advance arguments on allegations that the Prosecutor should have reasonably known were unsupported by evidence."[29]

21. The Appeals Chamber has stated that, "[t]he Prosecution has the discretion to forgo presentation of material facts, even if they are specifically alleged in the indictment." Nonetheless, "[t]he Prosecution should make every effort to ensure not only that the indictment specifically pleads the material facts that the Prosecution intends to prove but also that any facts that it does not intend to prove are removed."[30]

22. The Chamber notes that in its submissions on this point, the Defence does not claim that it had insufficient time and resources to investigate the Prosecution case, only that the Tribunal's resources were "squandered." The Chamber does not consider that this amounts to prejudice against the Defence.

23. The Chamber further notes that pursuant to Rule 98*bis* of the Rules, an accused may file a motion for acquittal at the close of the Prosecution case-in-chief where "evidence is insufficient to sustain a conviction on one or more counts charged in the indictment."[31] Under this Rule, the Trial Chamber reviews whether there is sufficient evidence upon which a reasonable trier of fact could, if the evidence is believed, find the accused guilty of the crime charged.[32] In this case, the Defence chose not to file a 98*bis* motion.[33] The Chamber considers that the Defence decision not to file such a motion indicates that the Defence did not suffer any material prejudice as a result of

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[27] Order for Prosecution to Review Indictment and to File Public Version (TC), 8 April 2011; Prosecutor's Request to Drop Certain Paragraphs of the Indictment, 10 May 2011; Prosecutor's Notice to the Defence that He Will Not Be Requesting for Convictions under Paragraphs 18, 22, 27, 31, 32, 36, 43, 53 and 55 of the Indictment, 30 June 2011. *See also* Prosecution Closing Brief, para. 2.
[28] Defence Closing Brief, paras. 606-607. *See also* T. 20 October 2011 p. 67 (Defence Closing Argument).
[29] Defence Closing Brief, para. 608.
[30] *Ntakirutimana & Ntakirutimana*, Judgement (AC), paras. 42-43.
[31] Rule 98*bis* of the Rules.
[32] *Jelisić*, Judgement (AC), paras. 36-37.
[33] *See* T. 14 December 2009 p. 5 (Defence Counsel indicated his preference to commence the Defence case immediately after the close of the Prosecution case, and that the Defence "would not be filing any acquittal brief between the end of the Prosecution case and the beginning of the Defence case").

the Prosecution's actions. Had such prejudice been suffered, the Defence would have formally raised the issue prior to the Chamber's *proprio motu* Order to the Prosecution, which was issued near the end of the evidence phase of the trial.[34]

24. Consequently, although the Chamber will not make any rulings on the paragraphs withdrawn by the Prosecution, it does not find that the rights of the Accused were violated by the Prosecution's decision to withdraw these paragraphs of the Indictment at that stage of the proceedings.

2.1.2 General and Overlapping Allegations in the Indictment

25. Paragraph 15 of the Indictment states:

> On or around 10 to 15 April 1994 Nzabonimana encouraged the killers and participated in the massacre of hundreds of Tutsi at the Nyabikenke commune office and Ntarabana parish in Gitovu secteur. Between 10 and 15 April 1994, in Kavumu secteur, Nyabikenke commune, Nzabonimana told the bourgmestre of Nyabikenke, gendarmes, Hutu civilians, Interahamwe and commune policemen to kill the Tutsi civilians seeking refuge in the commune, particularly at the Nyabikenke commune office and the Ntarabana parish in Gitovu secteur. On this occasion, weapons were also distributed. Following these orders, many Tutsi were massacred at these locations. The killers included the Interahamwe, Hutu civilians, gendarmes and communal policemen.

26. The Chamber notes that Paragraph 15 overlaps with the allegations contained in Paragraphs 16, 17, 19, 20 and 35 of the Indictment.[35] The Chamber further notes that in its closing submissions the Prosecution does not treat Paragraph 15 as a stand-alone allegation, but instead addresses Paragraph 15 in conjunction with Paragraphs 16 and 20 of the Indictment.[36] The Chamber observes that the first clause of Paragraph 15 alleges that Nzabonimana "participated in the massacre of hundreds of Tutsi at the Nyabikenke commune office and Ntarabana parish in Gitovu secteur." However, the Prosecution has acknowledged that Nzabonimana is not charged with being present during the attacks on Ntarabana Parish or the Nyabikenke *commune* office.[37]

27. The Chamber recalls that "an indictment must be considered as a whole,"[38] and that "[i]n assessing an indictment [...] each paragraph should not be read in isolation but rather should be considered in the context of the other paragraphs in the indictment."[39] Consequently, as

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[34] *See* fn. 27, *supra*.
[35] *See e.g. Ntawukulilyayo*, Judgement (AC), para. 199; *Gacumbitsi*, Judgement (AC), para. 123; *Semanza*, Judgement (AC), para. 90. The Chamber notes that the Prosecution links the allegations in Paragraphs 16 and 35 (3.4.5.1).
[36] Prosecution Closing Brief, paras. 113-131; T. 20 October 2011 pp. 20-21 (Prosecution Closing Argument).
[37] Response to Nzabonimana's Motion for Appropriate Relief in Light of the Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence (TC), 14 March 2012.
[38] *Seromba*, Judgement (AC), para. 27.
[39] *Ntagerura et al.*, Judgement (TC), para. 30. *See also Semanza*, Judgement (AC), para. 90 ("The Trial Chamber did not fundamentally alter or amend the Indictment as the Appellant contends. The Trial Chamber simply considered the factual allegations relevant to separate charges together on the basis of their overlapping and related circumstances. Far from effecting an amendment of the Indictment, this aggregation of facts is a valid, indeed common, method of legal analysis. The Appeals Chamber recalls that indictments must be read as a whole.").

Paragraph 15 does not contain any specific allegations against Nzabonimana over and above those contained elsewhere in the Indictment, the Chamber will not make any independent findings as to Paragraph 15.

28. Paragraph 25 of the Indictment states:

> On 12 April 1994, the Interim Government fled from Kigali to Gitarama and established its headquarters at Murambi. While in Gitarama, the Interim Government held several public meetings with MRND officials and local authorities to encourage the public to kill the Tutsi, and also supervised the massacres.

29. The Chamber considers that Paragraph 25 of the Indictment is general in nature and serves as an introductory paragraph to Paragraph 26. Paragraph 25 does not contain any specific allegations against Nzabonimana over and above those contained in Paragraph 26. Furthermore, the Chamber notes that in its closing submissions the Prosecution addresses Paragraphs 25 and 26 together, under the rubric of the "Murambi meeting," which is the subject of the allegation contained in Paragraph 26.[40] For these reasons, the Chamber will not make any findings as to potential criminal culpability based on Paragraph 25 standing alone. However, the Chamber again recalls that an indictment must be considered as a whole.[41] To the extent that the Prosecution proves any assertion in Paragraph 25 that is relevant to allegations contained in Paragraph 26, the Chamber may rely on such established facts to determine whether the Prosecution has proved the content of Paragraph 26.

30. Paragraph 38 of the Indictment states:

> On more than one occasion, between April and July 1994, in Gitarama prefecture, Callixte Nzabonimana encouraged the population to first kill the Tutsi and then take their belongings.

31. The Chamber considers that Paragraph 38 is also general in nature and serves as an introductory paragraph to Paragraphs 40 and 41. Paragraph 38 does not contain any specific allegations against Nzabonimana over and above those contained elsewhere in the Indictment. Furthermore, in its closing submissions the Prosecution addresses Paragraph 38 together with Paragraphs 40 and 41.[42] Consequently, the Chamber will not make any independent findings as to Paragraph 38 of the Indictment.

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[40] Prosecution Closing Brief, paras. 155-162, 336, 339, 352; T. 20 October 2011 pp. 27-28 (Prosecution Closing Argument).
[41] *Seromba*, Judgement (AC), para. 27; *Semanza*, Judgement (AC), para. 90; *Ntagerura et al.*, Judgement (TC), para. 30.
[42] Prosecution Closing Brief, para. 211.

2.1.3 Notice

32. The Defence submits that Paragraphs 23, 28, 46, 47, 48 and 51 of the Indictment are defective, as "[t]he time frames provided are impermissibly vague and there is no notice of who the perpetrators or victims were."[43] The Defence also submits that Paragraph 54 is defective.[44]

33. The charges against an accused and the material facts supporting those charges must be pled in an indictment with sufficient precision to provide notice to the accused. The Prosecution is expected to know its case before proceeding to trial and cannot mould the case against the accused in the course of the trial depending on how the evidence unfolds. Defects in an indictment may come to light during the proceedings because the evidence unfolds differently than expected. This calls for the Trial Chamber to consider whether a fair trial requires an amendment of the indictment, an adjournment of proceedings or the exclusion of evidence outside the scope of the indictment. In reaching its judgement, a Trial Chamber can only convict the accused of crimes that are charged in the indictment.[45]

34. The nature of the Prosecution's case and the proximity between the accused and the crime charged are decisive factors in determining the degree of specificity with which the Prosecution must plead the material facts in the indictment.[46] While it may be impracticable to require a high degree of specificity due to the sheer scale of the alleged crimes, the indictment must specify the material facts in such a way that the accused can prepare his defence.[47] Criminal acts which are alleged to be physically committed by an accused must be set forth in the indictment specifically, including where feasible, the identity of the victim, the time and place of the events and the means by which the acts were committed.[48] Where it is alleged that the accused planned, instigated, ordered or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused which forms the basis for the charges in question.[49]

35. An indictment lacking such precision is defective, for example when the times mentioned refer to broad date ranges, the places are only vaguely indicated, and the victims are only generally identified.[50] The defect may be cured if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charge.[51] A defective indictment may be cured, thereby putting an accused on notice, through information provided in the Prosecution Pre-Trial Brief together with its annexes or the Prosecution Opening Statement.[52] The list of witnesses the Prosecution intends to call at trial, containing a summary of anticipated evidence, including specific references to counts and relevant paragraphs in the

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[43] Defence Closing Brief, para. 555. The Defence also challenges Paragraph 55 of the Indictment, which was dropped by the Prosecution. *See* para. 19, *supra*.
[44] Defence Closing Brief, paras. 582-583.
[45] *Renzaho*, Judgement (AC), para. 53; *Muvunyi II*, Judgement (AC), para. 19; *Muvunyi I*, Judgement (AC), para. 18.
[46] *Nahimana et al.*, Judgement (AC), para. 324; *Ntagerura et al.*, Judgement (AC), para. 23.
[47] *Kupreškić et al.*, Judgement (AC), paras. 88-89; *Ntagerura et al.*, Judgement (AC), para. 22.
[48] *Muvunyi I*, Judgement (AC), para. 120.
[49] *Nchamihigo*, Judgement (AC), para. 338; *Ntagerura et al.*, Judgement (AC), para. 25.
[50] *Ntagerura et al.*, Judgement (AC), paras. 23, 27.
[51] *Muvunyi I*, Judgement (AC), para. 120.
[52] *Naletilić & Martinović*, Judgement (AC), para. 27; *Nyiramasuhuko et al.*, Judgement (TC), para. 108.

indictment, may also in some cases serve to put the accused on notice.[53] In addition, while mere service of witness statements is insufficient to inform the Defence of material facts, the accused may be put on notice of allegations when information in the Prosecution Pre-Trial Brief is read in conjunction with information contained in witness statements disclosed to the Defence.[54] However, the principle that a defect in the indictment may be cured is not without limits. The Chamber should always take into account the risk that the expansion of charges by the addition of new material facts may lead to unfairness and prejudice to the accused.[55]

36. Although the Defence does not specifically raise this claim in its closing submissions, the Chamber has considered whether the cumulative effect of any defects prejudiced the Accused.[56] In this regard, the Chamber notes that the scant submissions by the Defence do not appear to allege an overall inability to prepare itself, but instead allege only that notice is lacking.[57] Furthermore, the Defence did not file any motion prior to its Closing Brief that alleged defects in the Indictment. The Chamber considers this omission by the Defence to indicate that it was not unfairly prejudiced by any defects in the Indictment in such a way as to be unable to prepare its case.

37. The Chamber will consider, in the relevant section pertaining to each paragraph, whether Nzabonimana received sufficient notice of the charges against him.

2.2 Notice of Alibi

38. The Chamber recalls that Rule 67(A)(ii) provides that any Notice of Alibi should be tendered in a timely manner, and in any event before the commencement of trial. This helps to ensure good administration of justice and efficient judicial proceedings.[58]

39. The Chamber has found that the information provided by the Defence in respect to Nzabonimana's alibi did not comply with the requirements of Rule 67(A)(ii). As a result the Chamber permitted the Prosecution to call Witness CNR1 to testify as a rebuttal witness.[59]

40. Nevertheless, the Chamber also recalls that pursuant to Rule 67(B), the Defence's failure to provide the requisite Notice of Alibi does not limit the right of Nzabonimana to rely on an alibi defence. The Chamber, however, is allowed to consider the failure of an accused to file his Notice of Alibi within the prescribed time-limit when assessing the credibility of the alibi.[60] The

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[53] *Muhimana*, Judgement (AC), para. 82; *Gacumbitsi*, Judgement (AC), paras. 57-58; *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 48; *Naletilić & Martinović*, Judgement (AC), para. 45; *Nyiramasuhuko et al.*, Judgement (TC), para. 108.
[54] *Bagosora & Nsengiyumva*, Judgement (AC), para. 162.
[55] *Muvunyi I*, Judgement (AC), para. 20, quoting *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 30.
[56] *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 30.
[57] *See* Defence Closing Brief, para. 555.
[58] *Rutaganda*, Judgement (AC), para. 243.
[59] *See* Decision on Prosecution Motion to Call Rebuttal Evidence (TC), 8 March 2011, paras. 43, 45.
[60] *Munyakazi*, Judgement (AC), paras. 18-19; *Kanyarukiga*, Judgement (AC), para. 99.

Chamber has addressed the alibi, including any impact of the circumstances surrounding the notice provided for this alibi, elsewhere in the Judgement (3.4.1).

2.3 Disclosure Violations

2.3.1 Rule 66 and 67 Disclosure Violations

41. In its Closing Brief, the Defence highlights what it considers to be "a series of late disclosures, which creates prejudice to the Defence by significantly reducing the time to analyse and make proper use of this massive amount of material." Specifically, it alleges violations of Rule 66(A)(ii), Rule 66(B), Rule 67(A)(i) and Rule 67(D). The Defence alleges disclosure violations with regard to Witnesses CNAA, CNAC, CNR1, CNAL, CNAE and CNAJ.[61]

2.3.1.1 Applicable Law

42. Rule 66 concerns disclosures by the Prosecution. Rule 66(A)(ii) requires the Prosecutor to disclose to the Defence, no later than 60 days before the date set for trial, "copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial."[62] Rule 66(B) requires the Prosecution, at the request of the Defence, to "permit the Defence to inspect any books, documents, photographs and tangible objects in his custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused."[63] Rule 67(A)(i) requires the Prosecutor to disclose, as early as reasonably practicable, and prior to the commencement of the trial, "the names of the witnesses that he intends to call to establish the guilt of the accused and in rebuttal of any defence plea of which the Prosecution has received notice [...]."[64]

43. Rule 67(D) makes it clear that the disclosure of evidence is a continuing obligation of both parties, stating: "If either party discovers additional evidence or information or materials which should have been produced earlier pursuant to the Rules, that party shall promptly notify the other party and the Trial Chamber of the existence of the additional evidence or information or materials."[65]

44. The Appeals Chamber has confirmed that "the Trial Chamber is best placed to determine both the modalities for disclosure of material intended for use in cross-examination and also the amount of time that is sufficient for an accused to prepare his defence based on the specifics of such disclosure."[66]

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[61] Defence Closing Brief, paras. 609-613.
[62] Rule 66(A)(ii) of the Rules.
[63] Rule 66(B) of the Rules.
[64] Rule 67(A)(i) of the Rules.
[65] Rule 67(D) of the Rules.
[66] *Kalimanzira*, Judgement (AC), para. 40; *Bagosora et al.*, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence (AC), 25 September 2006, para. 12.

2.3.1.2 Disclosure of Gacaca Records: Witnesses CNAA and CNAC

45. The Defence submits that, on more than one occasion, it received large disclosures of un-translated judicial histories regarding Witnesses CNAA and CNAC. Specifically, it points to the disclosure of 170 pages of un-translated *Gacaca* records relating to Witness CNAA on 13 October 2009 in conjunction with the 15 October 2009 announcement that the Prosecution would be calling Witness CNAA to testify during the week of 9 to 13 November 2009. In regard to Witness CNAC, the Chamber notes the 23 October 2009 disclosure by the Prosecution of "a huge volume of non-translated material relating to the judicial history of CNAC before Rwandan courts." Witness CNAC was scheduled to testify between 23 and 27 November 2009.[67]

46. The Chamber recalls that these disclosure issues were raised by the Defence numerous times during the first few months of trial. In relation to Witness CNAA, the Chamber notes that, during the 15 October 2009 status conference, prior to the commencement of trial, it ordered the Prosecution to reschedule Witness CNAA's testimony in order to allow the Defence time to properly prepare for its cross-examination of the witness.[68] The late disclosure of Witness CNAC's *Gacaca* records was addressed in depth by this Chamber on 13 November 2009.[69] Finding that the Prosecution had violated its disclosure obligations under Rule 66(A)(ii), the Chamber postponed Witness CNAC's testimony until the week of 9 to 14 December 2009, to remedy any prejudice to the Accused that may have resulted from this violation.[70]

2.3.1.3 Disclosure of Witness Statements: Witness CNR1

47. The Defence submits that Witness CNR1 "met OTP representatives on [4 April 2011] and changed certain portions of his statement. Yet, the will-say was disclosed only on [28 April 2011]."[71] The Defence alleges that this late disclosure of Witness CNR1's will-say statement violated Rules 67(A)(i) and 67(D).[72]

48. The Chamber recalls that it heard oral submissions on this matter on 4 May 2011, and ruled in an Oral Decision issued on 5 May 2011 "that the Prosecution was not sufficiently diligent in the exercise of its disclosure obligations" and did not allow the Defence enough time to adequately prepare for its cross-examination of the witness. In light of this fact, and to remedy any prejudice suffered by the Accused, the Chamber excluded the 28 April 2011 will-say

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[67] Defence Closing Brief, para. 612.
[68] *See* T. 15 October 2009 pp. 27-28 (Pre-Trial Status Conference). *See also* T. 7 December 2009 p. 1.
[69] Decision on Nzabonimana's Motion For Stay of Proceedings; Reconsideration and/or Certification of Decision Rendered on 29 October 2009; and Reconsideration and/or Certification of the Decision Rendered on 30 October 2009 (TC), 13 November 2009, paras. 41-51.
[70] Decision on Nzabonimana's Motion For Stay of Proceedings; Reconsideration and/or Certification of Decision Rendered on 29 October 2009; and Reconsideration and/or Certification of the Decision Rendered on 30 October 2009 (TC), 13 November 2009, para. 50.
[71] Defence Closing Brief, para. 611.
[72] The Defence Closing Brief states that this was a violation of Rule 67(a)(ii). However, in light of the fact that Rule 67(a)(ii) concerns the disclosure obligations of the Defence, and not the Prosecutor, and after considering previous Defence submissions on this subject, the Chamber presumes that the Defence alleges a violation of Rule 67(A)(i).

statement, and "preclude[d] the Prosecution from examining the witness with respect to its contents."[73]

2.3.1.4 Notice of the Testimony of Witnesses CNAA, CNAC, CNAL, CNAE and CNAJ

49. The Defence alleges that both Witnesses CNAA and CNAC "added the slapping of Mporanzi to their testimony, regarding which the Defence did not receive notice."[74]

50. The Chamber notes that the Defence raised this issue during Witness CNAA's testimony, and to avoid prejudice to the Accused, the Chamber limited the extent to which Witness CNAA could testify on the matter.[75]

51. The Defence objected to the lack of notice of the slapping of Mporanzi near the beginning of Witness CNAC's testimony on 16 December 2009. The Chamber sustained the objection in part, ruling that the record would not be altered for the two questions and answers to which the Defence did not timely object, but that the witness would not be permitted to answer the third question.[76] The Chamber recalls that the Defence commenced its cross-examination the following day of 17 December 2009, and continued it almost four months later on 12 and 13 April 2010.

52. Similarly, the Defence submits that it did not receive notice of Witnesses CNAL's and CNAE's testimony regarding a meeting at Nzabonimana's house.[77] The Chamber notes that in its Closing Argument, the Prosecution conceded that "the meeting at Callixte Nzabonimana's house, testified to by CNAL and CNAE, are not in the statement nor are they in the indictment."[78] The Chamber also notes that at no time during Witness CNAL's testimony did the Defence raise this issue of notice. Additionally, the Chamber recalls that while the Defence requested that Witness CNAL be recalled to give further testimony, this issue of notice was not listed as a reason for this request.[79] In addition, the Defence did not object when Witness CNAE testified as to the meeting at Nzabonimana's house and also cross-examined Witness CNAE on this issue.[80]

53. The Defence also asserts that it did not receive notice that Witness CNAJ had "changed his statement in a manner that conformed to the evidence of CNAK [...] the morning just before CNAJ began his testimony."[81] The Chamber notes that during Witness CNAJ's testimony, the

[73] T. 4 May 2011 pp. 34-56; T. 5 May 2011 p. 17.
[74] Defence Closing Brief, para. 613.
[75] *See* T. 14 December 2009 p. 71 (ICS).
[76] *See* T. 16 December 2009 pp. 59-65.
[77] Defence Closing Brief, para. 613.
[78] T. 20 October 2011 p. 8 (Prosecution Closing Argument).
[79] Nzabonimana's Motion for the Recall of Witness CNAL, 7 December 2009.
[80] *See* T. 7 December 2009 p. 24.
[81] Defence Closing Brief, para. 613.

Defence implied that it had only just received the corrections to the witness's statement,[82] but did not seek any remedy from the Chamber at the time of Witness CNAJ's testimony.[83]

2.3.1.5 Conclusion Regarding Rule 66 and 67 Disclosure Violations

54. Prosecution disclosure obligations go to the heart of the Accused's fair trial rights, as enshrined in Articles 19 and 20 of the Statute,[84] and therefore the Chamber will consider seriously any alleged violations of these obligations.

55. The Chamber notes that in its Closing Brief, the Defence simply recalls incidents in which the Prosecution did not disclose information in a timely manner.[85] In this regard, the Defence appears to argue that the cumulative effect of these disclosure violations prejudices Nzabonimana.[86]

56. The Chamber recalls that the issue of late disclosure of witnesses' *Gacaca* records and will-say statements, was previously raised by the Defence, and the Chamber has already exercised its discretion, where necessary, to ensure that the Defence had sufficient time to prepare itself. Where the Accused was prejudiced by any of these late disclosures, the Chamber addressed the Defence's concern and applied an appropriate remedy in order to protect the rights of the Accused. Given that the Defence has neither raised any new allegations, nor substantiated its claims as to prejudice,[87] the Chamber does not consider it necessary to review its previous decisions.

2.3.2 Admission of Transcripts as Remedy for Rule 68 Disclosure Violations

57. Rule 68(A) states that:

> [t]he Prosecutor shall, as soon as practicable, disclose to the Defence any material, which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence.[88]

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[82] T. 13 April 2010 p. 52 (ICS).
[83] *See generally Renzaho*, Judgement (AC), para. 169 (finding, in the context of an alleged violation for disclosure of exculpatory material, "that [the Accused's] failure to seek a remedy at trial undermines his claim of prejudice").
[84] Specifically, Article 19(1): right to a fair and expeditious trial in accordance with the Rules of the Tribunal; Article 20(4)(b): the right to have adequate time and facilities to prepare a defence; and Article 20(4)(e): the right to call witnesses and to cross-examine Prosecution witnesses.
[85] Defence Closing Brief, paras. 609 (Witness CNAC), 611 (Witness CNR1), 612 (Witnesses CNAA and CNAC), 613 (Witnesses CNAL, CNAE, CNAJ and CNAK).
[86] Defence Closing Brief, para. 610. To the extent that the Defence intends to allege that it was materially prejudiced in relation to any particular charge, allegation or evidence, the Chamber finds that the Defence submissions inadequately support such a position. *See Bagosora & Nsengiyumva*, Judgement (AC), para. 86 (finding the general assertion by the Defence, that a specific disclosure regime prejudiced the Accused's investigations and ability to understand the case against him, "fails to show specifically how [this] materially prejudiced him in his ability to prepare his defence in relation to any particular charge, allegation, or evidence").
[87] *See* Defence Closing Brief, para. 610 (claiming, without explanation or further detail on the supposed prejudice, that the alleged violations "create[d] prejudice to the Defence by significantly reducing the time to analyse and make proper use of this massive amount of material").
[88] Rule 68(A) of the Rules.

58. Approximately four months after Closing Arguments, the Prosecution disclosed to the Defence transcripts of testimony from three previous Tribunal trials, which the Defence deemed exculpatory.[89] The Defence made submissions moving the Chamber to find that the Prosecution had violated its disclosure obligations pursuant to Rule 68 of the Rules.[90] The Chamber ordered the Defence to identify the material it assessed as exculpatory, and the Prosecution to make submissions.[91] The Defence made further submissions moving the Chamber to find a violation of Rule 68 and requested the Chamber to issue a temporary stay of proceedings, to re-open the case or draw a reasonable inference in favour of Nzabonimana, to exclude relevant portions of the Prosecution evidence or to order a stay of proceedings and dismiss the charges against Nzabonimana.[92] The Chamber again ordered the Defence to identify the material it assessed as exculpatory, and ordered the Prosecution to make submissions.[93]

59. After considering the Parties' filings, the Chamber concluded that the Prosecution violated its obligation to disclose exculpatory material in a timely manner pursuant to Rule 68(A). As relief, the Chamber admitted transcripts into evidence and indicated that it would assess them in conjunction with evidence already adduced.[94] Specifically, the Chamber admitted into evidence, with regard to Paragraph 26 of the Indictment, the *Karemera et al.* transcripts containing the evidence of Witness PR and with regard to Paragraphs 20 and 45 of the Indictment, the *Rukundo* transcripts containing the evidence of Witness BCB.[95] The transcripts were admitted as Defence Exhibits 147 and 148 respectively,[96] and the Chamber reiterates that it will consider this evidence together with the other evidence adduced at trial.

60. The Chamber notes that the statements of non-testifying individuals, which have been admitted into the record but have not been tested by the Chamber, such as Defence Exhibits 147 and 148, can only be given very little probative value.[97] Such statements cannot be used as the sole basis, or in a decisive manner, for a conviction.[98] The Chamber has borne these principles in

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[89] Response to Defence Request Dated 14 February 2012, 17 February 2012.
[90] Nzabonimana's Motion for Appropriate Relief in Light of the Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence, 12 March 2012.
[91] *Proprio Motu* Order to the Parties Concerning Nzabonimana's Motion for Appropriate Relief in Light of the Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence (TC), 15 March 2012.
[92] Nzabonimana's Motion in Light of the Trial Chamber's *Proprio Motu* Order of 15 March 2012, 19 March 2012.
[93] Order to the Parties Concerning Submissions on Potentially Exculpatory Material Contained on the CD-ROM Disclosed by the Prosecution on 17 February 2012 (TC), 4 April 2012.
[94] Consolidated Decision on Defence Motion for Appropriate Relief in Light of Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence, Defence Motion in Light of the Trial Chamber's *Proprio Motu* Order of 15 March 2012, and Defence Motion Pursuant to the Trial Chamber's Order of 4 April 2012 (TC), 30 April 2012.
[95] Consolidated Decision on Defence Motion for Appropriate Relief in Light of Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence, Defence Motion in Light of the Trial Chamber's *Proprio Motu* Order of 15 March 2012, and Defence Motion Pursuant to the Trial Chamber's Order of 4 April 2012 (TC), 30 April 2012, paras. 125, 131. *See also* Defence Exhibit 147 (Witness PR's *Karemera et al.* Testimony, 16-24 November 2010); Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, 18 and 19 September 2007).
[96] *See* Defence Exhibit 147 (Witness PR's *Karemera et al.* Testimony, 16-24 November 2010); Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, 18 and 19 September 2007).
[97] *See Bagosora & Nsengiyumva*, Judgement (AC), para. 484 ("This piece of evidence [portions of testimony before another court] was admitted for the purpose of [cross-examination], and was not tested by the Trial Chamber as [the maker of the testimonial statements] was not called to testify. As such, the contents of [the exhibit] could only be given very little probative value").
[98] *Prlić*, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence (AC), 23 November 2007, para. 53 ("Unacceptable infringements of the rights of the defence, in this sense, occur

mind when assessing the probative value of the transcripts admitted into evidence at the Defence's request.

2.4 Conduct of the Prosecutor

61. Regarding the Defence submissions that the Prosecution violated witness protection orders, the Chamber notes that this issue has already been investigated by an *Amicus Curiae*.[99] The Defence supports its submissions by citing to witness statements taken by the *Amicus Curiae*.[100] The Chamber recalls, however, that the *Amicus Curiae* found no basis for initiating contempt proceedings against either Witness CNAI or Prosecution investigators.[101] The Chamber recalls that it accepted the conclusions contained in the *Amicus Curiae* Report and that the Parties did not appeal this ruling.[102]

62. As to the concern raised by the Defence regarding the disbursement of Tribunal funds to Prosecution witnesses, the Chamber recalls that this issue has been extensively litigated.[103] The Defence's general repetition of this submission does not suffice to establish that Nzabonimana has not received a fair trial. The Chamber therefore concludes that the Defence has not been unfairly prejudiced by the conduct of the Prosecution in the present case.

2.5 Burden of Proof

63. Article 20(3) of the Statute guarantees the presumption of innocence of an accused person. Rule 87(A) requires that guilt be proven beyond a reasonable doubt. The burden of proving each and every element of the offences charged against the accused beyond a reasonable doubt rests solely on the Prosecution and never shifts to the Defence. The Chamber must be

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when a conviction is based solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial"). *See also Haradinaj et al.*, Judgement (AC), para. 101 (the evidence of a witness who testified in examination-in-chief, but who was unavailable for cross-examination, "must be corroborated in order for it to support a conviction"); *Martić*, Judgement (AC), fn. 486 (indicating that when the Chamber admits a written statement pursuant to Rule 92*bis* that would be pivotal to the accused's responsibility, and when there is no corroboration and no opportunity for cross-examination, the Chamber cannot rely on a written statement alone in entering a conviction).

[99] *Amicus Curiae* Report.

[100] *See* Defence Closing Brief, para. 614, fn. 1105, citing *Amicus Curiae* Report, Annex G.

[101] *Amicus Curiae* Report, paras. 78-79.

[102] Decision Following *Amicus Curiae* Report Pertaining to Allegations of Contempt of the Tribunal by Prosecution Witness CNAI and/or a Member of the Prosecution Office (TC), 21 October 2011, para. 27.

[103] *See* Decision on Callixte Nzabonimana's Appeal Against the Trial Chamber's Decision on Motion for Rule 91 Proceedings Against Prosecution Investigators (AC), 27 April 2012; Decision on Nzabonimana's *Pro Se* Motion to Draw Inferences in Relation to the 245 000 Rwandan Francs Disbursed for Treatment of Witnesses in the Nzabonimana Case (TC), 30 May 2012; Decision on Defence Motion for Proceedings Against OTP Investigators (TC), 25 November 2011; Decision on Motion for Contempt Proceedings Against OTP Investigator Djibo Moumouni (TC), 18 November 2011; Decision on "Callixte Nzabonimana's Motion for Summon of OTP Investigators Adamou Allagouma and Almahamoud Sidibe, *Sous-préfet* Ms. Immaculée Mukamasabo" (TC), 7 April 2011; Decision on Prosecutor's Motion for the Recall of Defence Witness Jean-Marie Vianney Mporanzi (TC), 21 January 2011; Decision on Nzabonimana's Renewed and Confidential Motion for Appointment of *Amicus Curiae* to Investigate Allegations of Contempt of the Tribunal Against Prosecution Witness CNAI (TC), 8 December 2010; Decision on Nzabonimana's Urgent Motion for Appointment of *Amicus Curiae* to Investigate Contempt by Witness CNAI and for Supplementary Protective Measures for Witness T36 (TC), 9 July 2010.

satisfied beyond reasonable doubt that the accused is guilty before a verdict may be entered against him or her.[104]

64. While the Defence is not obliged to adduce evidence controverting the Prosecution case, the Prosecution will fail to discharge its burden of proof if the Defence presents evidence that raises a reasonable doubt regarding the Prosecution case.[105] An accused must be acquitted if there is any reasonable explanation for the evidence other than his or her guilt.[106] Refusal to believe or rely upon Defence evidence does not automatically amount to a guilty verdict. The Chamber must still determine whether the evidence it does accept establishes the accused's guilt beyond a reasonable doubt.[107] Since the accused has no burden to prove anything at a criminal trial, the Chamber need not further resolve factual disputes once it has concluded that the Prosecution has not proven a fact beyond a reasonable doubt.[108]

2.6 Witness Protection

65. The Chamber, in rendering its Judgement, has a duty to provide a reasoned opinion in writing.[109] The Chamber also has a duty, where appropriate, to protect the identity of witnesses.[110]

66. Many witnesses testified in closed session or with other procedures designed to protect their identities. The Chamber is mindful of the need for the continued protection of these witnesses while still providing a reasoned opinion. The Chamber has therefore made sure to provide as much information as possible while being careful not to reveal the identities of protected witnesses.[111]

2.7 Assessment of Evidence

2.7.1 Witness Credibility

67. The Chamber enjoys broad discretion in choosing which witness testimony to prefer, and in assessing the impact on witness credibility of inconsistencies within or between witnesses' testimonies and any prior statements. Minor inconsistencies commonly occur in witness testimony without rendering the testimony unreliable, and it is within the Chamber's discretion to evaluate such inconsistencies and to consider whether the evidence as a whole is credible. It is not unreasonable for the Chamber to accept some, but reject other parts of a witness's testimony.[112]

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[104] *See Renzaho*, Judgement (AC), para. 474; *Martić*, Judgement (AC), paras. 55-56, 61, 325; *Nyiramasuhuko et al.*, Judgement (TC), para. 162.
[105] *Kayishema & Ruzindana*, Judgement (AC), para. 117; *Niyitegeka*, Judgement (AC), paras. 60-61.
[106] *Delalić et al.*, Judgement (AC), para. 458.
[107] *Nchamihigo*, Judgement (TC), para. 13.
[108] *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 140; *Nyiramasuhuko et al.*, Judgement (TC), para. 163.
[109] *See* Article 22(2) of the Statute.
[110] *See* Article 21 of the Statute.
[111] *See* Rule 88(C) of the Rules; *Nyiramasuhuko et al.*, Judgement (TC), paras. 167, 170; *Ntagerura et al.*, Judgement (TC), para. 27; *Rwamakuba*, Judgement (TC), para. 41.
[112] *Muvunyi II*, Judgement (AC), para. 44.

2.7.2 Hearsay Evidence

68. Evidence of facts outside the testifying witness's own knowledge constitutes hearsay evidence. The Chamber must closely scrutinise and cautiously consider any hearsay evidence before relying upon it,[113] as hearsay evidence may be affected by a compounding of errors of perception, memory, narration, sincerity and recall, and thus should be subjected to careful scrutiny before being relied upon.[114]

69. The Chamber has the discretion to cautiously consider hearsay evidence and to rely on it. While the weight and probative value to be afforded to hearsay evidence will usually be less than that accorded to the evidence of a witness who has given it under oath and who has been cross-examined, it will depend upon the infinitely variable circumstances which surround hearsay evidence.[115]

2.7.3 Identification of the Accused

70. In assessing a witness's identification evidence, the Chamber must proceed with caution and carefully scrutinise factors in support of the identification, factors that may impact negatively on the reliability of the identification, and any corroborating testimony.[116] The Chamber will take into account the following factors: prior knowledge of the accused, the existence of adequate opportunity in which to observe the accused, reliability of witness's testimony, the possible influence of third parties, the existence of stressful conditions at the time the event took place, the passage of time between the events and the witness's testimony and the general credibility of the witness.[117]

71. The Chamber must always, in the interests of justice, proceed with extreme caution when assessing a witness's identification of the accused made under difficult circumstances. While the Chamber is not obliged to refer to every piece of evidence on the trial record in its judgement, where a finding of guilt is made on the basis of identification evidence given by a witness under difficult circumstances, the Chamber must rigorously implement its duty to provide a "reasoned opinion." In particular, a reasoned opinion must carefully articulate the factors relied upon in support of the identification of the accused and adequately address any significant factors impacting negatively on the reliability of the identification evidence.[118] In-court identification evidence will be assigned little or no credence.[119]

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[113] *Rukundo*, Judgement (AC), para. 188.
[114] *Akayesu*, Judgement (AC), paras. 284-309; *Nyiramasuhuko et al.*, Judgement (TC), paras. 168-169; *Simić et al.*, Judgement (TC), para. 22.
[115] *Kalimanzira*, Judgement (AC), para. 96; *Karera*, Judgement (AC), para. 39.
[116] *Kalimanzira*, Judgement (AC), para. 96; *Bagilishema*, Judgement (AC), paras. 75-81; *Kupreškić et al.*, Judgement (AC), paras. 39, 135.
[117] *Niyitegeka*, Judgement (AC), paras. 100-101.
[118] *Kupreškić et al.*, Judgement (AC), para. 39; *Nyiramasuhuko et al.*, Judgement (TC), paras. 171-172.
[119] *Kalimanzira*, Judgement (AC), para. 96; *Kamuhanda*, Judgement (AC), para. 243.

2.7.4 Corroboration

72. There is no requirement that convictions be made only on evidence of two or more witnesses. The Chamber may rule on the basis of a single testimony if, in its opinion, that testimony is relevant and credible.[120] Corroboration is simply one of many potential factors in the Chamber's assessment of a witness's credibility. If the Chamber finds a witness credible, that witness's testimony may be accepted even if not corroborated. Similarly, even if the Chamber finds that a witness's testimony is inconsistent or otherwise problematic enough to warrant its rejection, it might choose to accept the evidence nonetheless because it is corroborated by other evidence.[121]

73. 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. 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 not establish absolutely the credibility of those testimonies.[122]

74. When evidence of only one witness is available in relation to a certain material fact, the Chamber may rely on such evidence even in the absence of corroboration, but should carefully scrutinise all uncorroborated evidence before making any findings on the basis of such evidence.[123]

2.7.5 Circumstantial Evidence

75. The Chamber may infer the existence of a particular fact upon which the guilt of the accused depends on circumstantial evidence, but only if it is the only reasonable conclusion that could be drawn from the evidence presented. If there is another conclusion which is also reasonably open from the evidence, and which is consistent with the non-existence of that fact, the conclusion of guilt beyond reasonable doubt cannot be drawn.[124]

2.7.6 Prior Statements

76. Rule 90(A) of the Rules provides that witnesses shall be heard by the Chamber, and there is a general, though not absolute, preference for live testimony before the Tribunal.[125] Prior out-of-court witness statements are normally relevant only as necessary for the Chamber to assess credibility. While there is no absolute prohibition on accepting prior statements for the truth of

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[120] *Renzaho*, Judgement (AC), para. 556; *Musema*, Judgement (AC), para. 37.
[121] *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 132.
[122] *Musema*, Judgement (AC), para. 37.
[123] *Kayishema & Ruzindana*, Judgement (AC), para. 320; *Musema*, Judgement (AC), para. 36; *Rutaganda*, Judgement (AC), paras. 28-29; *Nyiramasuhuko et al.*, Judgement (TC), paras. 174-176.
[124] *Bagosora & Nsengiyumva*, Judgement (AC), paras. 515, 562; *Nchamihigo*, Judgement (AC), para. 80; *Karera*, Judgement (AC), para. 34; *Ntagerura et al.*, Judgement (AC), para. 306.
[125] *See Nyiramasuhuko et al.*, Decision in the Matter of Proceedings Under Rule 15*bis*(D) (AC), 24 September 2003, para. 25.

their contents, the Appeals Chamber has stated that Tribunal jurisprudence discourages this practice.[126]

77. Moreover, the Chamber has discretion to determine whether alleged inconsistencies between prior statements and later testimony render the testimony unreliable,[127] as the Chamber may accept parts of a witness's testimony while rejecting other parts.[128]

78. Prior consistent statements, however, cannot be used to bolster a witness's credibility, except to rebut a charge of recent fabrication of testimony. The fact that a witness testifies in a manner consistent with an earlier statement does not establish that the witness was truthful on either occasion; after all, an unlikely or untrustworthy story is not made more likely or more trustworthy simply by rote repetition.[129]

79. The Chamber has the responsibility to resolve any inconsistencies which may arise within and/or among witnesses' testimonies, and it is within the discretion of the 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.[130]

2.7.7 Detained and Accomplice Witness Testimony

80. A number of witnesses who testified during trial were detained at the time of their testimony. In this regard, the Chamber recalls that "a witness who faces criminal charges that have not yet come to trial 'may have real or perceived gains to be made by incriminating accused persons' and may be tempted or encouraged to do so falsely."[131] Nevertheless, the fact that a detained witness may have an incentive to perjure himself to gain leniency from the Rwandan authorities "is not sufficient, by itself, to establish that the suspect did in fact lie."[132] The Chamber recalls that a witness's motives or incentives to implicate the accused are much stronger when the witness is charged with the same criminal acts as the accused, and the Chamber remains mindful of the need to consider employing a critical approach to such witnesses.[133]

81. An accomplice is "an association in guilt, a partner in crime,"[134] and the Chamber is mindful that accomplices may be motivated to shift blame by implicating others. An accomplice may have incentives to craft his testimony to affect his own case or to ensure a lighter sentence, or even falsely implicate another accused to gain an advantage.[135] The caution associated with

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[126] *Kalimanzira*, Judgement (AC), para. 180; *Nchamihigo*, Judgement (AC), para. 311.
[127] *Seromba*, Judgement (AC), para. 116; *Rutaganda*, Judgement (AC), paras. 443-447.
[128] *Seromba*, Judgement (AC), para. 110; *Simba*, Judgement (AC), para. 212; *Kupreškić et al.*, Judgement (AC), para. 333.
[129] *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 147; *Nyiramasuhuko et al.*, Judgement (TC), para. 180.
[130] *Kupreškić et al.*, Judgement (AC), para. 31.
[131] *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 129.
[132] *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 181.
[133] *See Ntagerura et al.*, Judgement (AC), para. 234. *See also Munyakazi*, Judgement (AC), para. 93; *Setako*, Judgement (AC), para. 40 ("In assessing the credibility of a witness, various factors should be considered, including the timing and circumstances of any confessions as well as the possible vulnerability of a witness to undue influence.").
[134] *Munyakazi*, Judgement (AC), para. 93.
[135] *Niyitegeka*, Judgement (AC), para. 98.

accomplice testimony is most appropriate where a witness is charged with the same criminal acts as the accused.[136] Such evidence has been treated with appropriate caution, considering the "totality of the circumstances" of the testimony.[137]

82. Nothing prohibits the Chamber from relying on evidence given by a detained or convicted person, including evidence of a partner in crime of the accused. With regard to accomplice testimony, while the Chamber is mindful that such testimony should be treated with additional caution, the Chamber may rely upon uncorroborated accomplice testimony if it is convinced the witness is truthful and reliable. Other evidence which supports accomplice testimony will be relevant to bolster that testimony.[138] Thus, the Chamber is mindful of its obligation to explain why it accepts the evidence of witnesses who may have had motives or incentives to implicate Nzabonimana.[139]

[136] *Munyakazi*, Judgement (AC), para. 93.
[137] *Ntagerura et al.*, Judgement (AC), paras. 204-205, 233-234; *Niyitegeka*, Judgement (AC), para. 98.
[138] *Muvunyi II*, Judgement (AC), para. 38; *Renzaho*, Judgement (AC), para. 263; *Ntagerura et al.*, Judgement (AC), paras. 204-206; *Nyiramasuhuko et al.*, Judgement (TC), paras. 182-183.
[139] *Muvunyi II*, Judgement (AC), para. 37.

CHAPTER III: FACTUAL FINDINGS

3.1 Nzabonimana's Influence in Gitarama *Préfecture*

3.1.1 Introduction

83. The Indictment alleges that Nzabonimana was a member of the ruling MRND party at both national and *préfecture* levels, and held the positions of Minister of Planning and later, Minister of Youth and Associative Movements within the Government of Rwanda. It further alleges that as Chairman of the MRND party in Gitarama *préfecture* and as a serving Minister, Nzabonimana was a person of great prominence and, consequently, was able to wield considerable influence within his local community in Gitarama *préfecture*. As such, at the times alleged in the Indictment, civilians, law enforcement agents and members of the *Interahamwe* militia in Gitarama *préfecture* were more likely to follow his orders. Nzabonimana's presence before and during attacks on Tutsi civilians in Gitarama *préfecture* between April and July 1994, including at roadblocks, had an encouraging effect on the perpetrators. It also conveyed the impression that the Interim Government, which was mostly headquartered within the *préfecture*, endorsed the killings of Tutsis in Gitarama *préfecture*. Based on this belief and an understanding that such encouragement guaranteed immunity to kill Tutsis and loot their property, the mostly Hutu peasant population massacred Tutsi civilians in Gitarama *préfecture*.[140]

84. The Prosecution submits that Nzabonimana was a person of great prominence, which the Defence downplays by ignoring that the MDR party split into two factions in 1993, after which the MDR "power" faction aligned itself with the MRND. The Prosecution further asserts that Nzabonimana had influence on local authorities and that he was generally respected because of his development initiatives. Furthermore, it submits that Nzabonimana was often associated with powerful national, civic and business leaders.[141]

85. The Defence submits that Nzabonimana had little influence in Gitarama because the MRND representation was smaller than that of the MDR and the population of Gitarama strongly disliked the MRND. The MDR forcibly recruited MRND members in a process called *Kubohoza*. Furthermore, Nzabonimana was not highly regarded, but was publicly insulted by his family and the population and his development projects were sabotaged. In addition, the Defence argues that Nzabonimana did not recruit, arm, train or incite youth to join the *Interahamwe* or lead the *Interahamwe* in Gitarama, as there were no *Interahamwe* or organised militia in Gitarama.[142]

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[140] Paras. 7-11 of the Indictment.
[141] Prosecution Closing Brief, paras. 9-14.
[142] Defence Closing Brief, paras. 2-5; Defence Complementary Brief, paras. 4, 6-8.

3.1.2 Evidence

86. Prosecution and Defence witnesses testified that Nzabonimana was a member of the MRND party,[143] and that he was the Chairman of the MRND in Gitarama *préfecture*,[144] as well as a Minister in 1994.[145]

87. Prosecution and Defence witnesses testified that prior to the death of President Habyarimana, the MDR party was more widely represented than the MRND in Gitarama *préfecture* and that the process of *Kubohoza*, which compelled people to join the MDR party, was prevalent in the *préfecture*.[146] Prosecution and Defence witnesses also testified that after the death of President Habyarimana, the MDR was losing prominence in Gitarama *préfecture*, and that the political parties split into factions. The power factions of the parties aligned with the

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[143] T. 11 November 2009 p. 36 (Witness CNBU) (Nzabonimana was a member of the MRND party); T. 24 November 2009 p. 2 (ICS) (Witness CNAX) (member of the MRND party and met Nzabonimana at rallies); T. 24 November 2009 pp. 44-45 (ICS) (Witness CNAY); T. 25 November 2009 p. 39 (Witness CNAK); T. 3 December 2009 p. 31 (ICS) (Witness CNBH); T. 15 April 2010 p. 5 (ICS) (Witness T5); T. 18 May 2010 pp. 3-4 (Witness T57); T. 24 May 2010 p. 23 (ICS) (Witness T71); T. 2 June 2010 p. 65 (ICS) (Witness T109); T. 13 October 2010 pp. 33-35 (Witness T110); T. 9 March 2011 pp. 11-12 (ICS) (Witness T193); T. 22 March 2011 p. 49 (ICS) (Witness T303).

[144] T. 16 November 2009 p. 42 (ICS) (Witness CNAF); T. 26 November 2009 p. 60 (Witness CNAI); T. 1 December 2009 p. 28 (ICS) (Witness CNAL); T. 14 December 2009 pp. 63-64; T. 15 December 2009 p. 69 (ICS) (Witness CNAA); T. 16 December 2009 p. 54 (Witness CNAC); T. 10 December 2009 p. 17 (Sibomana); T. 27 April 2010 p. 24 (Witness T24); T. 3 May 2010 pp. 43-44 (ICS) (Witness T31); T. 13 May 2010 p. 17 (Witness T133); T. 18 May 2010 p. 4 (Witness T57) (attended a meeting in 1991, chaired by Nzabonimana); T. 19 May 2010 p. 12 (Witness T92); T. 1 June 2010 p. 59 (ICS) (Witness T34).

[145] T. 10 November 2009 p. 6 (Witness CNAP); T. 11 November 2009 p. 35 (Witness CNBU); T. 12 November 2009 pp. 31-32 (ICS) (Witness CNAZ); T. 12 November 2009 p. 58 (Witness CNAM); T. 16 November 2009 p. 42 (ICS) (Witness CNAF); T. 23 November 2009 p. 53 (Witness CNAX); T. 24 November 2009 pp. 44-45 (ICS) (Witness CNAY); T. 25 November 2009 p. 39 (Witness CNAK); T. 26 November 2009 p. 69 (Witness CNAI) (knew Nzabonimana as the only Minister from Nyabikenke *commune*); T. 1 December 2009 p. 22 (ICS) (Witness CNAL); T. 2 December 2009 p. 55 (Witness CNBT); T. 3 December 2009 p. 20 (ICS) (Witness CNBH); T. 7 December 2009 p. 8 (ICS) (Witness CNAE); T. 14 December 2009 pp. 10, 16 (ICS) (Witness CNBA); T. 14 December 2009 pp. 63-64 (Witness CNAA); T. 16 December 2009 p. 54 (Witness CNAC); T. 14 April 2010 p. 14 (ICS) (Witness T5); T. 24 May 2010 p. 23 (ICS) (Witness T71); T. 2 June 2010 p. 65 (ICS) (Witness T109); T. 12 October 2010 pp. 13-14 (ICS) (Witness T110); T. 7 March 2011 p. 71 (ICS) (Witness T114); T. 22 March 2011 p. 48 (ICS) (Witness T303); T. 23 March 2011 p. 66 (ICS) (Witness T95).

[146] T. 10 November 2009 pp. 45-46 (ICS) (Witness CNAP) (*Kubohoza* entailed protests against political domination by the MRND at the time of multipartyism. MRND members were attacked and forced to join the MDR.); T. 11 November 2009 pp. 52, 56-58; T. 11 November 2009 p. 65 (HC) (Witness CNBU) (French); T. 17 November 2009 pp. 9-10, 54 (ICS) (Witness CNAF) (the *Kubohoza* phenomenon in Nyabikenke *commune*, whereby members of the MRND were beaten and forced to join the MDR, was violent during the 1990s); T. 24 November 2009 pp. 2-3 (ICS) (Witness CNAX); T. 27 November 2009 pp. 5-6, 8 (ICS) (Witness CNAI); T. 1 December 2009 pp. 8-9, 13, 33-35, 46-52 (ICS) (Witness CNAL); T. 7 December 2009 p. 32 (ICS) (Witness CNAE); T. 15 December 2009 pp. 39-43 (ICS); T. 16 December 2009 p. 20 (ICS) (Witness CNAA) (before the death of Habyarimana, the MDR was predominant in Gitarama.); T. 12 April 2010 pp. 6-7 (ICS); T. 13 April 2010 pp. 10-11 (ICS) (Witness CNAC); T. 9 December 2009 pp. 27-29; T. 10 December 2009 p. 27 (Sibomana); T. 22 April 2010 pp. 64-65 (ICS) (Witness T33); T. 26 April 2010 pp. 33-35 (ICS) (Witness T24); T. 3 May 2010 pp. 43-47 (ICS) (Witness T31); T. 12 May 2010 pp. 16-19, 21, 44 (ICS); T. 13 May 2010 pp. 17-18; T. 13 May 2010 pp. 34-36 (ICS) (Witness T133); T. 19 May 2010 pp. 7-10 (ICS) (Witness T92); T. 25 May 2010 pp. 39-41 (Mporanzi); T. 6 July 2010 pp. 20-21, 57 (ICS) (Witness T134); T. 12 July 2010 pp. 16-17 (ICS) (Witness T117); T. 13 July 2010 p. 62; T. 14 July 2010 p. 50 (ICS) (Witness T98); T. 7 March 2011 pp. 32-34 (ICS) (Witness T114); T. 9 March 2011 pp. 11-12 (ICS) (Witness T193); T. 24 March 2011 pp. 6-7 (ICS) (Witness T95); Defence Exhibit 146 (Statement of Witness T2, 8 April 2010).

MRND party. The MRND placed importance on recruiting members and Nzabonimana encouraged members of the population to abandon the idea of party divisions and called upon the Hutus to unite against the Tutsi enemy.[147]

88. Prosecution and Defence witnesses acknowledged that Nzabonimana was publicly insulted by his family and the population and that his development projects were sabotaged with the advent of multiparty politics and before the death of the President in April 1994.[148] Nevertheless, they testified that Nzabonimana was influential regardless of the MDR-MRND party dynamic in Gitarama *préfecture* both before and after the death of the President. Because of his positions of authority, the population greatly respected him and found it a point of pride that he hailed from their region and he was recognised as having taken part in many development projects.[149]

3.1.3 Deliberations

89. The Chamber has considered the extensive evidence of both Prosecution and Defence witnesses with regard to Nzabonimana's influence in Gitarama *préfecture*. It is undisputed that Nzabonimana originated from Nyabikenke *commune* in Gitarama *préfecture*, and that at various times between 1989 and 1994, he held the positions of Minister of Planning and Minister of Youth and Associative Movements in the Government of Rwanda. The Parties further agree that, in 1994, Nzabonimana was both the Chairman of the MRND party in Gitarama *préfecture* and the Minister of Youth and Associative Movements, a position he held until the Interim Government went into exile in July 1994.[150] In this regard, the Chamber notes that Nzabonimana

[147] T. 11 November 2009 pp. 56, 58 (ICS) (Witness CNBU) (The MDR party did not have authority over the *commune* because the leaders of the *commune* were not among its members); T. 17 November 2009 pp. 12, 37, 49, 50 (ICS) (Witness CNAF) (after the death of the President, the MRND became very important and influential in Gitarama *préfecture*); T. 27 November 2009 p. 8 (ICS) (Witness CNAI) (Nzabonimana united the disparate factions with the common goal of inciting hatred against the Tutsis); T. 1 December 2009 pp. 9-10, 13, 22-23, 50-52 (ICS) (Witness CNAL); T. 7 December 2009 p. 38 (ICS) (Witness CNAE); T. 16 December 2009 p. 7 (ICS) (Witness CNAA); T. 13 April 2010 pp. 16, 19-20 (ICS) (Witness CNAC); T. 27 April 2010 p. 30 (Witness T24); T. 18 May 2010 pp. 3-4 (Witness T57); T. 2 June 2010 pp. 62, 65 (ICS) (Witness T109); T. 6 July 2010 pp. 20-21 (ICS) (Witness T134); T. 9 March 2011 pp. 11-12 (ICS) (Witness T193); T. 22 March 2011 p. 49 (ICS) (Witness T303); T. 12 September 2011 pp. 20, 25, 28-32, 34 (Witness T2).

[148] T. 17 November 2009 pp. 8-10, 47 (ICS) (Witness CNAF) (Nzabonimana was called "*Ikigoryicyacu*" and "*Ibyaye Ikiboze Irakirigata*," meaning idiot or imbecile); T. 10 December 2009 p. 16 (Sibomana); T. 3 May 2010 pp. 45, 48-49 (ICS); T. 4 May 2010 pp. 36, 38-40, 52 (ICS) (Witness T31) (Prior to the introduction of the multiparty system, Nzabonimana was admired and loved by the locals of Nyabikenke *commune*. However, the multiparty system made people afraid to go near him.); T. 12 May 2010 pp. 40-42 (ICS) (Witness T133).

[149] T. 16 November 2009 p. 42 (ICS) (Witness CNAF) (the population of Kavumu *secteur* respected and liked Nzabonimana a great deal; it was "like a miracle" to have a Minister who hailed from their area); T. 23 November 2009 p. 57 (Witness CNAX) (Nzabonimana was seen as a figure of distinction because he promoted agricultural activities in the area which created jobs for the inhabitants); T. 1 December 2009 pp. 27-28 (ICS) (Witness CNAL) (after the death of the President in April 1994, Nzabonimana was considered by the population to be someone who "had to be responsible or concerned about the development of his native region."); T. 2 December 2009 p. 55; T. 3 December 2009 pp. 20-21, 31 (ICS) (Witness CNBH); T. 14 December 2009 pp. 10, 16-17 (ICS) (Witness CNBA); T. 16 December 2009 p. 54; T. 13 April 2010 p. 6 (ICS) (Witness CNAC); T. 15 April 2010 p. 5 (Witness T5); T. 12 May 2010 p. 22 (ICS) (Witness T133); T. 19 May 2010 pp. 49-50 (ICS) (Witness T92).

[150] *See* T. 29 June 2009 p. 11 (Status Conference) (stating the facts agreed to by the Parties). *See also* Prosecution Closing Brief, para. 8; Defence Closing Brief, para. 1.

was the only Minister from Nyabikenke *commune*,[151] and recalls that the Interim Government, of which Nzabonimana was a member, established its headquarters at Murambi in Gitarama *préfecture* on 12 April 1994.[152]

90. The Chamber notes that the evidence established that prior to the death of President Habyarimana, the MDR was more widely represented than the MRND in Gitarama *préfecture*. However, the evidence also established that when the genocide began, the MDR was losing prominence in Gitarama *préfecture* and the delineations of the political party system broke down, when the power factions of the political parties aligned with the MRND. The MRND recruited members and Nzabonimana spear-headed the process of Hutu party unity, expounding the ideals of a common struggle against the Tutsi enemy.

91. Furthermore, the Chamber observes that the evidence established that Nzabonimana had the power to exert his influence in his native region of Gitarama *préfecture* as exemplified by his participation and speeches at Butare trading centre (3.5.1.3), Cyayi centre (3.5.2.3), the Murambi meeting (3.5.7.3) and the reinstallation ceremony of the Musambira *bourgmestre* (3.5.8.4). The Chamber notes that Nzabonimana's influence clearly increased after the death of the President and he was able to have an impact on the population of Gitarama *préfecture*.[153]

92. Based on the foregoing, the Chamber concludes that there is overwhelming evidence from both the Prosecution and Defence that because of his position as a Minister in the Interim Government, his previous tenure as Minister of Planning, his Chairmanship of the MRND party in Gitarama *préfecture*, his association with and roots in the region and the settlement of the Interim Government in Gitarama *préfecture*, Nzabonimana was an influential political personality in Gitarama *préfecture* during the events of April to July 1994.

3.2 Fabrication of Evidence

3.2.1 Introduction

93. The Defence asserts that Prosecution witnesses fabricated evidence against Nzabonimana. Evidence led by the Defence in this regard was aimed at discrediting the testimony of the Prosecution witnesses. In general, the Defence submits that: (1) Rwandan Authorities and Witness CNAI recruited witnesses to testify falsely against Nzabonimana; (2) prisoners fabricated evidence against Nzabonimana; and (3) there was systematic "activism against Nzabonimana" in Rwanda, which exemplified a general hostile environment towards those who decided to testify for the Defence. The Chamber will address each of these assertions in turn. The Chamber recalls that the Prosecution bears the burden of establishing the guilt of the Accused beyond a reasonable doubt, and that the Defence need only raise reasonable doubt.[154]

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[151] T. 26 November 2009 p. 69 (Witness CNAI).
[152] *See* T. 29 June 2009, p. 11 (Status Conference) (stating the facts agreed to by the Parties).
[153] The Chamber notes the Defence argument that Nzabonimana did not recruit, arm, train or incite youth to join the *Interahamwe* or lead the *Interahamwe* in Gitarama or indeed that there were no *Interahamwe* or organised militia in Gitarama. In this regard, the Chamber notes that the Prosecution has not proven beyond a reasonable doubt the allegation that Nzabonimana trained and armed the *Interahamwe* (3.3.1.2). The Chamber does not consider that Nzabonimana's purported role *vis-à-vis* the *Interahamwe* impacts the credible and consistent testimony that Nzabonimana was an influential individual within Gitarama *préfecture*.
[154] *See Zigiranyirazo*, Judgement (AC), paras. 38, 42.

Furthermore, the Trial Chamber has the discretion to evaluate whether the evidence taken as a whole is reliable and credible and to accept or reject the fundamental features of the evidence.[155]

3.2.2 Recruitment of Prosecution Witnesses by Rwandan Authorities and Witness CNAI

94. The Defence submits that in Nyabikenke and Rutobwe *communes*, Rwandan Government authorities engaged in a campaign to "enlist and indemnify" witnesses. The Defence asserts that this "proves there was deliberate fabrication against Nzabonimana." Every witness approached by the Prosecution in 1998 in Nyabikenke and Rutobwe *communes* listed a Rwandan authority as a contact person. The Defence also claims that Witnesses CNAI, CNAF, CNAQ, CNBH, CNAH and CNBG all had contact with Rwandan authorities. Rwandan authorities also received money in 1998 for the "treatment" of witnesses testifying against Nzabonimana. The Defence asserts that Prosecution investigators lied to the Chamber about this money.[156]

95. The Defence also submits that Witness CNAI was the "epicentre" of the fabrication of Prosecution evidence in Nyabikenke *commune*, asserting that he recruited witnesses in Nyabikenke *commune* to testify falsely for the Prosecution. The Defence points to evidence that Witnesses CNAY, CNAX, CNAQ and CNBU listed Witness CNAI as their contact person to Prosecution investigators, and also that Witness CNAI travelled with Witnesses CNAY, CNAX and CNAQ to give statements to the Prosecution. Witnesses CNAI, CNAY and CNAQ also travelled together to Arusha and stayed in the same safe house for two weeks. The Defence points to Witness CNAI's testimony in Rwandan trials where the people he accused were acquitted, as evidence that he fabricated his testimony. The Defence also claims that Witness CNAI was provided with the identities of protected Defence witnesses.[157]

96. The Prosecution responds that the Defence allegation of fabrication of evidence is unsubstantiated, and that Prosecution witnesses stated that they were not induced to testify against Nzabonimana. The witnesses explained their contact with Rwandan authorities and nothing suggested that their association with the Rwandan authorities was anything more than a way to establish contact with the Tribunal. The Prosecution denies that it paid 245,000 Rwandan Francs for the "treatment" of witnesses to testify. The Prosecution submits that Defence Witness Jean-Marie Vianney Mporanzi testified that he was reimbursed for his travel expenses by the *sous-préfet* of Gitarama after providing his statement to Prosecution investigators and denied that it was an inducement to fabricate evidence.[158]

97. The Prosecution also submits that Witness CNAI denied coaching and intimidating witnesses, and asserts that the Defence claims of fabrication are disproved by the *Amicus Curiae* Report (2.4). Witness CNAI assisted Prosecution investigators by contacting people in Nyabikenke *commune* because he was the only person in the locality with a mobile phone. The

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[155] *Munyakazi*, Judgement (AC), para. 51. *See also Simba*, Judgement (AC), para. 103; *Renzaho*, Judgement (AC), para. 269; *Rukundo*, Judgement (AC), para. 207.
[156] Defence Closing Brief, paras. 8-13, 24-25, 44-46; T. 20 October 2011 pp. 60, 65, 68-69; T. 21 October 2011 pp. 2, 5 (Defence Closing Argument).
[157] Defence Closing Brief, paras. 8, 14-20, 383-384; T. 20 October 2011 pp. 55-56; T. 21 October 2011 pp. 5, 20-21 (Defence Closing Argument).
[158] Prosecution Closing Brief, paras. 45, 49, 62; T. 20 October 2011 pp. 11, 13-14; T. 21 October 2011 pp. 10-11, 14 (Prosecution Closing Argument).

Prosecution further asserts that the fact that witnesses travelled to Arusha together and stayed in the same safe house does not establish that they fabricated evidence.[159]

3.2.2.1 Evidence

Prosecution Witness CNAI

98. Witness CNAI, a Tutsi native of Nyabikenke *commune*,[160] testified that *Sous-préfet* Justin Zimulinda put him in touch with Prosecution investigators. The investigators, not Zimulinda, asked the witness to testify concerning Nzabonimana. The witness met with investigators to provide information on what happened in Rwanda in 1994.[161]

99. Witness CNAI first met the investigators in 1998 and provided a statement on 24 September 1998. He could not remember how many times he met with investigators. Whenever the investigators needed to meet with him, Witness CNAI made himself available. Witness CNAI met with the investigators in Kigali and at the Nyabikenke *commune* office.[162]

100. Prior to coming to Arusha to testify, Witnesses CNAI, CNAQ, CNAX, CNAY and an unidentified person met investigators at the Elégance Motel in Gitarama *préfecture*. Witness CNAI knew Witnesses CNAY and CNAX because they came from neighbouring *secteurs* in the same *commune*, and because they sought refuge together in 1994. Witness CNAI and the others came from the same locality and agreed to meet the investigators. Witness CNAI could not remember the date of the meeting. Witness CNAI served as the contact person for the investigators because he was the only one with a telephone. When the investigators wanted to meet with the witnesses, they would contact Witness CNAI and he would inform the other witnesses.[163]

101. Witness CNAI denied that he and the other witnesses met together prior to meeting the investigators, saying "we ran the risk of lying if we did that." The witness stated that he did not accompany the other witnesses when they went to meet with the investigators; rather, he was meeting the investigators of his own accord to provide information. He further testified that he did not recruit witnesses to testify.[164]

102. Witness CNAI travelled to Arusha with Witnesses CNAQ, CNAX and CNAY. When he arrived from Rwanda, Witness CNAI was in the same safe house as Witnesses CNAQ, CNAX, CNAY and CNAA. At the time of his testimony, Witness CNAI stayed alone in a safe house.

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[159] Prosecution Closing Brief, paras. 103-104; T. 20 October 2011 pp. 14-15, 30-31 (Prosecution Closing Argument).
[160] For additional introductory information on Witness CNAI, *see* paras. 746-748, *infra*.
[161] T. 27 November 2009 p. 15 (ICS) (Witness CNAI); T. 27 November 2009 p. 16 (HC) (Witness CNAI) (French) (for the spelling of "Zimulinda").
[162] T. 27 November 2009 pp. 15-16 (ICS) (Witness CNAI); Defence Exhibit 73A (Statement of Witness CNAI, 24 September 1998) (French).
[163] T. 27 November 2009 pp. 17-19 (ICS) (Witness CNAI).
[164] T. 27 November 2009 pp. 18, 20 (ICS) (Witness CNAI).

Witness CNAI testified that he had no contact with the other witnesses while in Arusha, and denied that they discussed their testimony at the safe house.[165]

Prosecution Witness CNAF

103. Witness CNAF, a Hutu farmer who lived in Nyabikenke *commune* in April 1994,[166] met with Prosecution investigators on several occasions. He could not recall the date of the first meeting nor could he provide details regarding who put him in contact with the investigators. Someone who said he was an employee of the Tribunal came to where the witness lived to tell Witness CNAF he was going to interview him. The witness did not meet any *commune* authority before going to Kigali to give evidence. He did not know whether the Kigali staff met with the *commune* authorities.[167]

104. Witness CNAF gave the name and address of his neighbour to investigators when he gave his first statement in 1998. Witness CNAF's neighbour did not occupy a position of authority at the time. Witness CNAF gave his neighbour's name because his neighbour could easily show investigators where the witness lived. After the war, Witness CNAF's neighbour served as *bourgmestre* for less than one year, but Witness CNAF could not recall the exact dates. The neighbour was a survivor of the genocide, but Witness CNAF did not know if he was a member of *Ibuka*.[168]

Prosecution Witness CNAQ

105. Witness CNAQ, a Hutu farmer who lived in Nyabikenke *commune* in 1994,[169] testified that the *sous-préfet* of Kiyumba *sous-préfecture* put her and Witnesses CNAX, CNAI, CNAY and CNAP in touch with Prosecution investigators.[170] The *sous-préfet* told them that Nzabonimana was under investigation. At the *sous-préfecture* office, each person talked about their attackers and the killers of their loved ones. In her 1998 statement, the witness listed the deputy *bourgmestre*, Augustin Sebwaduri, as her contact person. Witness CNAQ denied that she was a member of *Ibuka*.[171]

106. In 2008, Witness CNAQ met investigators at the Elégance Motel in Gitarama. She went to Gitarama with Witnesses CNAI, CNAP, CNAX and CNAY. Witness CNAQ was also accompanied by the person who was with her when her children were killed. They travelled together to Gitarama. Witness CNAI went to Gitarama to accuse the people who killed his family members. Witness CNAQ did not know if Witness CNAI was also interviewed by the investigators on that day.[172]

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[165] T. 27 November 2009 pp. 16-18 (ICS) (Witness CNAI).
[166] For additional introductory information on Witness CNAF, *see* para. 510, *infra*.
[167] T. 17 November 2009 p. 13 (ICS) (Witness CNAF).
[168] T. 17 November 2009 pp. 13-14 (ICS) (Witness CNAF); Defence Exhibit 54 (Statement of Witness CNAF, 24 September 1998).
[169] For additional introductory information on Witness CNAQ, *see* para. 1603, *infra*.
[170] T. 23 November 2009 p. 5 (ICS) (Witness CNAQ) (identifying the first name of Witness CNAX).
[171] T. 23 November 2009 pp. 5-7 (ICS) (Witness CNAQ); Defence Exhibit 58 (Statement of Witness CNAQ, 24 September 1998).
[172] T. 23 November 2009 pp. 6-8 (ICS) (Witness CNAQ).

107. In her 2008 statement, Witness CNAQ indicated Witness CNAI as her acquaintance. Witness CNAQ lived far from the *commune* office and Witness CNAI was able to contact her. The only relationship Witness CNAI had with the others was that they were all victims of the genocide and had lost members of their families.[173]

Prosecution Witness CNBH

108. Witness CNBH, a Tutsi shopkeeper from Rutobwe *commune* in 1994,[174] testified that in his 1998 statement to Prosecution investigators, he listed his uncle, who was also a local government official, as a contact person. After the genocide, the *bourgmestre* of Rutobwe *commune*, Gahunde, came to see the witness because witnesses were needed to provide information about the activities of people during the war. Gahunde put the witness in touch with investigators.[175]

109. Witness CNBH travelled 13 kilometres to Gitarama with Witnesses CNAH and CNBG and Gahunde on 25 August 1998 to provide his statement. They travelled in Gahunde's vehicle and did not discuss their statements on the way. At Gitarama, there were people from other *communes* as well. The people present were interviewed separately. They then returned to Rutobwe in Gahunde's vehicle. On the return journey, they talked about having just given evidence. Neither Gahunde nor anyone else told Witness CNBH what to say in his statement.[176]

110. On a later date, Witness CNBH returned with the same group to Gitarama on the direction of administrative authorities. When they arrived they were interviewed again.[177]

Prosecution Witness CNAY

111. Witness CNAY, a Tutsi farmer who lived in Nyabikenke *commune* in 1994,[178] did not know who put Prosecution investigators in contact with him.[179] Witness CNAI did not recruit him as a witness; the Tribunal summoned him. The investigators said they wanted him and another individual to give statements on 4 October 2008. Witness CNAY travelled on his own to Gitarama and used his own resources. He and the other individual spoke to investigators separately.[180]

112. Witness CNAI was present on the day that Witness CNAY gave his statement to investigators. Witness CNAY did not discuss the content of his statement with Witness CNAI and did not tell Witness CNAI he was coming to testify. Witness CNAY travelled with

[173] T. 23 November 2009 pp. 7-8 (ICS) (Witness CNAQ); Defence Exhibit 59 (Statement of Witness CNAQ, 4 October 2008).
[174] For additional introductory information on Witness CNBH, *see* para. 666, *infra*.
[175] T. 3 December 2009 pp. 27-29 (ICS) (Witness CNBH).
[176] T. 3 December 2009 pp. 29-30, 47 (ICS) (Witness CNBH).
[177] T. 3 December 2009 p. 31 (ICS) (Witness CNBH).
[178] For additional introductory information on Witness CNAY, *see* para. 580, *infra*.
[179] T. 25 November 2009 p. 29 (ICS) (Witness CNAY).
[180] T. 25 November 2009 pp. 29-30 (ICS); T. 25 November 2009 p. 31 (HC) (Witness CNAY) (French) (indicating that the witness said Witness CNAI did not recruit him).

Witnesses CNAI, CNAX and CNAQ to Arusha and they lived in the same safe house for 14 days. On the day of their testimony, Witnesses CNAY and CNAI each stayed alone.[181]

113. In his 4 October 2008 statement, Witness CNAY listed Witness CNAI as a contact person. Witness CNAI was the only person in the area with a phone and would send messengers when he needed to find Witness CNAY. Once Witness CNAY got his own telephone, the investigators could contact him directly.[182]

Prosecution Witness CNAX

114. Witness CNAX, a Tutsi who lived in Nyabikenke *commune* in 1994,[183] knew Witness CNAI. Witness CNAX denied that Witness CNAI put him in touch with Prosecution investigators. Witness CNAX gave Witness CNAI's name as a contact person to investigators because Witness CNAI had a telephone. Investigators contacted Witness CNAX through Witness CNAI. Witness CNAX provided a statement to investigators on 4 October 2008 at the Elégance Motel, but did not see Witness CNAI that day. Witness CNAI knew that Witness CNAX was testifying before the Tribunal. Witness CNAX testified that his evidence before the Tribunal was his own. According to Witness CNAX, he did not discuss his testimony with anyone and Witness CNAI did not influence his testimony.[184]

Prosecution Witness CNBU

115. Witness CNBU, a Hutu farmer who lived in Nyabikenke *commune* in 1994,[185] believed that his name "entered the system" because Witness CNAQ provided his name to investigators in 1998. In October 2008, Witness CNBU travelled to the Elégance Motel in Gitarama with Witness CNAI and others from Nyabikenke. Everyone travelled in the same public transport vehicle. Witness CNBU never discussed the content of his statement to investigators with Witness CNAI. Witness CNAI did not know that Witness CNBU came to testify in Arusha.[186]

116. In his 2008 statement to Prosecution investigators, Witness CNBU gave the name and phone number of Witness CNAI as a contact person. The witness also included his own phone number on the statement. Witness CNAI helped the investigators contact the witness because the witness did not "own a phone number." Witness CNAI did not seek out Witness CNBU in order to facilitate meetings with investigators.[187]

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[181] T. 25 November 2009 pp. 29-32 (ICS); T. 25 November 2009 p. 32 (HC) (Witness CNAY) (French) (for the spelling of the witnesses' names).
[182] T. 25 November 2009 pp. 29-30 (ICS) (Witness CNAY); Defence Exhibit 66 (Statement of Witness CNAY, 4 October 2008).
[183] For additional introductory information on Witness CNAX, *see* paras. 273-275, *infra*.
[184] Prosecution Exhibit 7 (Protected Information Sheet); T. 24 November 2009 pp. 39-40 (ICS) (Witness CNAX).
[185] For additional introductory information on Witness CNBU, *see* para. 1619, *infra*.
[186] T. 11 November 2009 pp. 49-50 (ICS) (Witness CNBU).
[187] T. 11 November 2009 pp. 46-48 (ICS) (Witness CNBU); Defence Exhibit 50 (Statement of Witness CNBU, 4 October 2008).

Prosecution Witness CNAP

117. Witness CNAP, a Hutu farmer who lived in Gitarama *préfecture* in 1994,[188] testified that he met Prosecution investigators in Kigali and provided a signed statement in 1998. The witness asked the Nyabikenke authorities how to contact investigators and the authorities then guided her. The witness sought out information about the investigators because she learned that trials were taking place. She testified that "at that time we were all grieving, and we wanted to find ways and means of contacting the investigators. And anyone who wanted to help us helped us."[189]

118. The *bourgmestre* of Nyabikenke *commune* established contact between Witness CNAP and Prosecution investigators. The witness believed that the *bourgmestre* had been an "*Inkotanyi*." The *bourgmestre* told Witness CNAP that she would be interviewed about Nzabonimana and asked her questions about how events unfolded. He said that there would be a vehicle to take her and others to Kigali. The witness travelled to Kigali in the same vehicle as others from Nyabikenke. They took public transport and a guide showed them where to go. The *bourgmestre* accompanied them to Kigali.[190]

Defence Witness Jean-Marie Vianney Mporanzi

119. Mporanzi, the *bourgmestre* of Rutobwe *commune*, Gitarama *préfecture* in April 1994,[191] was in grave health and taking a lot of medication at the time of his testimony. He testified that he was therefore prone to forget details. Mporanzi fled Rwanda for Zaire in July 1994 as the RPF advanced. He returned in January 1997. Mporanzi went back into exile in 2008.[192]

120. When Mporanzi returned from exile in 1997, he went back to Rutobwe *commune*. The office of *bourgmestre* was then occupied by Charles Gahunde. Gahunde invited Mporanzi to see him in January 1998. During this meeting, Gahunde congratulated Mporanzi for the work he did during the genocide and said there were no accusations against Mporanzi. Gahunde then asked Mporanzi if he supported the RPF. Mporanzi answered yes, because it was dangerous to say no. Gahunde asked if Mporanzi would assist the RPF in punishing those who played a major role during the genocide and Mporanzi agreed to help. Gahunde said that senior officials had asked him to prepare case files against people involved in the genocide in Rutobwe *commune*, and asked for Mporanzi's assistance. Gahunde told Mporanzi that Nzabonimana was being accused and pulled out of a drawer a list of allegations against Nzabonimana. The allegations included claims that Nzabonimana had sensitised people to commit genocide at Butare *cellule*, had threatened and slapped Mporanzi and had freed prisoners from the *commune* jailhouse. Gahunde asked Mporanzi to help him understand the allegations so that he could finalise the case file. Gahunde then asked Mporanzi to be a witness and to recruit other witnesses. Mporanzi promised to be a witness. Mporanzi recruited Hutu witnesses, including the *conseillers* of Rutongo *secteur*

[188] For additional introductory information on Witness CNAP, *see* para. 463, *infra*.
[189] T. 10 November 2009 pp. 31-33 (Witness CNAP).
[190] T. 10 November 2009 pp. 32-35; T. 11 November 2009 p. 27 (ICS) (Witness CNAP).
[191] For additional introductory information on Mporanzi, *see* para. 697, *infra*.
[192] T. 26 May 2010 pp. 18-19, 21, 55 (Mporanzi).

and Cyubi *secteur*. Mporanzi testified that Gahunde spoke to him gently but placed him in a situation where he had no choice.[193]

121. Gahunde told Mporanzi that he would be informed when investigators came. The investigators came in August 1998 and Mporanzi met them in Gitarama town, at the *Maison des Femmes*. Others from Nyabikenke were also present. Mporanzi recognised one person from Nyabikenke and two persons from Rutobwe. Gahunde brought the witnesses from Rutobwe in his truck. The witnesses were not together during the interviews.[194]

122. Mporanzi spoke to investigators and repeated the allegations he had been asked to confirm by Gahunde. He omitted the slapping incident because it did not appear to be truthful. He told the investigators about Nzabonimana's sensitisation to commit genocide, Nzabonimana's threats and the release of prisoners. Mporanzi signed his statement one month later.[195]

123. The investigators told Mporanzi to go to the *sous-préfet*, Marguerite, to collect his travel allowance. Marguerite's office was located in the *préfecture* building, 60 to 70 metres from the *Maison des Femmes*. At this first meeting with investigators, Mporanzi received his travel allowance from the administrative authority. At subsequent meetings, investigators gave him transport and food allowances.[196]

124. Mporanzi believed that the person who interviewed him told him to get the money from Marguerite, but was not sure. He was told to go to Marguerite and tell her he was questioned by investigators and would then be given his travel allowance. He received a note to take to Marguerite's office. The names of two other interviewees were also on the note. Mporanzi did not remember if the note indicated the amount he was to receive.[197]

125. Mporanzi and the two others went to Marguerite's office. Marguerite asked them questions and decided upon an amount to give them. The process took approximately 45 minutes. The amount was based upon the kilometres travelled and the amount spent for taxis and for meals, because they had been there for a long time. Mporanzi received 2,000 Rwandan Francs from Marguerite. Mporanzi testified that he was surprised by the generosity as he was not expecting any money. Mporanzi believed that the money had been given to Marguerite by the ICTR. Mporanzi signed a document and left.[198]

126. When the witness returned to his *secteur* he did not see or report back to Gahunde. He saw Gahunde regularly after 1998 but did not discuss his statement with Gahunde.[199]

127. Between his 1998 statement and 2003, a group of investigators came to see Mporanzi. Mporanzi got angry and the investigators left. A few days later, intelligence officers came to Mporanzi's home and questioned why he did not talk to the investigators. The intelligence officers accepted Mporanzi's explanation but told him, "you must also understand that every

[193] T. 26 May 2010 pp. 20-23 (Mporanzi).
[194] T. 26 May 2010 pp. 22-25 (Mporanzi); Defence Exhibit 34 (List of Names Written by Mporanzi).
[195] T. 26 May 2010 pp. 25, 29-30, 35; T. 31 May 2010 p. 53 (Mporanzi).
[196] T. 26 May 2010 pp. 32-33, 52; T. 27 May 2010 pp. 5-6 (Mporanzi).
[197] T. 26 May 2010 p. 55; T. 26 May 2010 p. i (Extract); T. 26 May 2010 p. 58 (ICS) (Mporanzi).
[198] T. 26 May 2010 pp. 55; T. 26 May 2010 pp. 58-59 (ICS); T. 27 May 2010 pp. 9-11 (Mporanzi).
[199] T. 27 May 2010 pp. 14-15 (Mporanzi).

Rwandan is bound to testify to what he saw and what he knew when they were visited by investigators."[200]

128. Mporanzi again met with investigators in August 2003. Mporanzi testified that if he refused to collaborate, he risked being thrown in prison. Anyone who was not of the same opinion as the authorities was threatened or thrown into prison. At this interview, Mporanzi added a new allegation against Nzabonimana. Mporanzi signed the statement on that occasion. However, at trial, Mporanzi testified that both his 1998 and 2003 statements were fabricated.[201]

129. In his 2003 statement, Mporanzi stated that he would only agree to testify before the Tribunal if he received better treatment from the *Ibuka* association and the ICTR. At trial, Mporanzi explained that after 2001, Gahunde resigned and went to work in Mutara. Prior to leaving, Gahunde left the "good notes" he had made on Mporanzi with *Ibuka*, but *Ibuka* never contacted Mporanzi. Mporanzi explained that he did not know what the *Ibuka* association was going to do; considering the trials in which he had testified, the association could be both pleasant and unpleasant. If the *Ibuka* association was to falsely accuse Mporanzi and he would go to prison, his collaboration with the Rwandan Government would have to stop.[202]

130. Don Webster, an attorney for the Prosecution, visited Mporanzi at his house in June 2007. Webster arrived with a summons from the State Prosecutor of Kigali. Webster told Mporanzi that the summons was simply a precautionary measure in case Webster could not find him. Webster asked Mporanzi questions about the Murambi meeting. Mporanzi interpreted the summons as a form of pressure, although he acknowledged that Webster's explanation of the summons could have been plausible. Mporanzi recalled that Webster did not threaten him and was courteous. Additionally, the summons did not include a threat as to what would happen to Mporanzi if he did not appear.[203]

131. In July 2008, Mporanzi met with investigators for the last time. He was asked questions based on his earlier statements and asked whether he would testify. Since he was under a great deal of pressure, he stated that he would testify and signed a statement to this effect. The investigators gave him transport money. Mporanzi did not tell the investigators that he felt threatened.[204]

132. Mporanzi went into exile on 12 August 2008. He testified that he agreed to collaborate and fabricate testimony against Nzabonimana because if he did not, he would have been placed in prison, which, given his frail health, was the equivalent of death. He also agreed to lie because he thought it would be difficult for authorities to arrest Nzabonimana, who was hiding in the Congo. When Mporanzi learned there was a $5,000,000 reward for Nzabonimana, his conscience troubled him for imperiling Nzabonimana. In order to make reparations for what he did, he had to leave Rwanda. He also left because of the pressure and intimidation which investigators placed upon him. After he left Rwanda, he heard that soldiers from his *commune* searched for

[200] T. 27 May 2010 p. 15; T. 31 May 2010 p. 48 (Mporanzi).
[201] T. 26 May 2010 pp. 35-36 (Mporanzi).
[202] T. 31 May 2010 pp. 48-49 (Mporanzi); T. 31 May 2010 p. 55 (Mporanzi) (French) (for the spelling of "Mutara").
[203] T. 26 May 2010 pp. 37-39; T. 27 May 2010 pp. 15-16, 19-20 (Mporanzi).
[204] T. 26 May 2010 p. 39; T. 31 May 2010 p. 14 (Mporanzi).

him in exile. Mporanzi stated that he was a Christian. He was testifying in part so that he could seek forgiveness and leave the world "with a peaceful heart."[205]

133. Thereafter, Mporanzi wrote a letter to the Nzabonimana Defence. Through an intermediary, the Defence asked Mporanzi to draft a letter to present to the Tribunal explaining why he insisted on becoming a Defence witness. In the letter, Mporanzi said he fled the country in 2007 because of his meeting with Don Webster. In his testimony, Mporanzi reiterated that he left in 2008. At the time he wrote the letter, Mporanzi had already met with the Defence in December 2008.[206]

134. Mporanzi testified that he lied in many parts of his 1998 and 2003 statements to Prosecution investigators, but recognised that other parts of the statements were based on fact. Coercion from the regime compelled him to collaborate in confirming the false testimony, but the investigators did not coerce him. Mporanzi volunteered information in these statements that was not told to him by Gahunde.[207]

135. Mporanzi testified in numerous *Gacaca* courts for the Defence. In one case, the defendant was acquitted. Mporanzi was never reprimanded by authorities after this testimony. *Bourgmestre* Gahunde did not cause any problems for him.[208]

3.2.2.2 Deliberations

3.2.2.2.1 Recruitment of Prosecution Witnesses by Rwandan Authorities

136. Prosecution Witnesses CNAI, CNAF, CNAQ, CNBH and CNAP each acknowledged that a local government authority facilitated their contact with ICTR Prosecution investigators or acted as their contact person.[209] The Chamber notes that evidence of a witness's mere contact with Rwandan authorities does not lead to a conclusion that these witnesses fabricated their testimony against Nzabonimana. None of these witnesses provided any evidence that they were coerced to testify falsely against Nzabonimana or were influenced to do so by authorities. Each witness testified that their testimony was their own and that they were simply reciting what they had witnessed during the genocide.

137. Defence Witness Mporanzi testified that after he returned from exile, *Bourgmestre* Gahunde contacted him to testify against Nzabonimana and facilitated his contact with investigators.[210] Mporanzi subsequently gave two signed statements to Prosecution investigators,

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[205] T. 26 May 2010 pp. 21, 40-42; T. 27 May 2010 p. 46 (Mporanzi).
[206] T. 27 May 2010 pp. 20-23 (Mporanzi).
[207] T. 27 May 2010 pp. 44, 53-55; T. 31 May 2010 pp. 8-9, 13-14, 16-18, 23-24, 30 (Mporanzi).
[208] T. 27 May 2010 pp. 47-50 (Mporanzi).
[209] T. 27 November 2009 p. 15 (ICS) (Witness CNAI) (*Sous-préfet* Justin Zimulinda); T. 17 November 2009 pp. 13-14 (ICS) (Witness CNAF) (neighbour was acting *bourgmestre* for less than one year after the war); T. 23 November 2009 pp. 5-6 (ICS) (Witness CNAQ) (*Sous-préfet* Zimulinda of Kiyumba *sous-préfecture*. Many others were also put in touch with the investigators in this way, including Prosecution Witnesses CNAX, CNAI, CNAY and CNAP. Augustin Sebwaduri, assistant of the *bourgmestre* who worked at the *commune* office, was her contact person because of his position.); T. 3 December 2009 pp. 27-29 (ICS) (Witness CNBH) (uncle was a local government official and *Bourgmestre* Gahunde established contact between herself and the investigators); T. 10 November 2009 p. 32 (Witness CNAP) (*bourgmestre* of Nyabikenke *commune*).
[210] T. 26 May 2010 pp. 20-23 (Mporanzi).

in 1998 and 2003. The Chamber notes that in the 1998 statement, Mporanzi attested that the statement was given voluntarily and not under pressure or threat. During his testimony, Mporanzi stated that the 1998 and 2003 statements implicating Nzabonimana were lies and that he risked imprisonment in Rwanda if he did not give the statements.[211]

138. Mporanzi confirmed that he lied on a number of occasions in the 1998 statement, including when he stated that: Nzabonimana told those present at Cyubi *secteur* of the new policy to get rid of the Tutsis; Nzabonimana intensified his campaign against the Tutsis between 10 and 12 April 1994 in Rutobwe because he knew it was calm; Nzabonimana relied on arguments rooted in the past, and especially on the revolution of 1959, to persuade people to kill the Tutsis; Nzabonimana reassured people there would be no negative consequences for killing Tutsis; Nzabonimana was always escorted by soldiers and frequently wearing a military uniform; it was "open war" between Nzabonimana and himself; Nzabonimana assumed that he was working for the RPF; Nzabonimana criticised him for having Tutsis in his police force; and Nzabonimana freed detained prisoners from the *commune* jailhouse.[212]

139. Mporanzi also confirmed that he added several new, untrue allegations against Nzabonimana in his 2003 statement. The first new allegation concerned Nzabonimana's visit to the *commune* office between 7 April 1994 and the 18 April 1994 Murambi meeting. Mporanzi stated that he lied when he said that he avoided Nzabonimana, pretending he was at a meeting convened by the *préfet* at the *préfecture* office. The second new allegation concerned questions Mporanzi was asked about two specific individuals. Mporanzi admitted that he lied when he said he had information regarding Isaac Kamali. Finally, Mporanzi confirmed the falsity of his statement that Nzabonimana was aware of the killings and other massacres of the population in Nyabikenke after the death of the President.[213]

140. The Chamber notes that nothing in Mporanzi's account of his interaction with Gahunde suggests that Gahunde encouraged Mporanzi to testify falsely. According to Mporanzi, Gahunde asked him to testify and informed him about the allegations against Nzabonimana. Mporanzi testified that he did not have any choice but to testify against Nzabonimana. Mporanzi admitted that Gahunde spoke to him gently. He provided no evidence other than vague perceptions and fears that he would be imprisoned if he did not testify.

141. Mporanzi acknowledged that when he spoke to Prosecution investigators, he freely made additional allegations against Nzabonimana beyond those told to him by Gahunde. Mporanzi also acknowledged that he did not tell Prosecution investigators that Nzabonimana slapped him, even though Gahunde had told Mporanzi that this was one of the allegations against Nzabonimana. Mporanzi's testimony that he could freely add and omit allegations against Nzabonimana undermines his supposed belief that he was under threat to testify falsely.

142. The Chamber notes as well that Mporanzi ultimately decided not to testify for the Prosecution and instead testified for the Defence. By his own admission, Mporanzi was not arrested and suffered no undue consequences as the result of his testimony on behalf of Nzabonimana.

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[211] T. 26 May 2010 pp. 35-36; T. 27 May 2010 pp. 44, 46, 53; T. 31 May 2010 pp. 13, 27 (Mporanzi).
[212] T. 26 May 2010 p. 36; T. 27 May 2010 pp. 53-55; T. 31 May 2010 pp. 8-10 (Mporanzi).
[213] T. 26 May 2010 pp. 35-36; T. 31 May 2012 pp. 16-17 (Mporanzi).

143. The Chamber does not consider that Mporanzi's vague claims support the conclusion that Rwandan Government officials coerced him to make his 1998 and 2003 statements to Prosecution investigators. Furthermore, the Chamber considers that if indeed the 1998 and 2003 statements were fabricated, Mporanzi's admission that he provided false statements to Prosecution investigators seriously undermines his credibility as a witness.

144. The Defence asserts that Rwandan authorities received money in 1998 for the "treatment" of witnesses testifying against Nzabonimana and that this encouraged the fabrication of evidence.[214] The Defence points to Defence Exhibit 125, which contains receipts for the payment of 245,000 Rwandan Francs from the Prosecution to the *sous-préfet*.[215] The Defence also points to the testimony of Mporanzi, who said that when he gave his 1998 statement to investigators, he was told to collect his travel allowance from the *sous-préfet*, who in turn gave him the transport allowance. He received 2,000 Rwandan Francs.[216]

145. Defence Exhibit 125 shows that the Prosecution gave the *sous-préfet* 245,000 Rwandan Francs on 25 August 1998. The receipts state that the money was to be used for the "treatment of witnesses." The Chamber notes that the Prosecution receipts indicate that the money was to be used to pay for the transportation and other associated costs of witnesses.

146. The Chamber further notes that Mporanzi testified that the money he received was for travel and food expenses, which he received only after the interview had taken place and that he was not expecting to receive money. Neither he, nor any other witness for either the Defence or the Prosecution, testified that they were motivated to testify because they received money in return. The Defence claim that witnesses fabricated evidence in exchange for financial incentives amounts to pure speculation and was not borne out by the evidence.

147. The Chamber notes as well that the Appeals Chamber has recently upheld the Trial Chamber's decision not to initiate contempt proceedings against the Prosecution investigators in this regard.[217]

148. Having considered the totality of the evidence, the Chamber finds the Defence claim of alleged fabrication as a result of the involvement of Rwandan authorities to be based upon mere speculation. The evidence does not support the conclusion that the Prosecution witnesses fabricated their evidence against Nzabonimana.

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[214] Defence Closing Brief, para. 13.
[215] Defence Exhibit 125 (Receipts for Money Paid).
[216] T. 26 May 2010 pp. 33, 58 (ICS) (Mporanzi).
[217] Decision on Callixte Nzabonimana's Appeal Against the Trial Chamber's Decision on Motion for Rule 91 Proceedings Against Prosecution Investigators (AC), 27 April 2012. *See* Decision on Defence Motion for Proceedings Against OTP Investigators (TC), 25 November 2011; Nzabonimana's Notice to Appeal the Trial Chamber's Decision on the Defence Motion for Proceedings Against OTP Investigators, Rendered on 25 November 2011, 12 December 2011; Nzabonimana's Appeal of the Trial Chamber's "Decision on the Defence Motion for Proceedings Against OTP Investigators," Rendered on 25 November 2011," 27 December 2011; Nzabonimana's Corrigendum to the Notice to Appeal the Trial Chamber's "Decision on the Defence Motion for Proceedings Against OTP Investigators," Rendered on 25 November 2011," 27 December 2011.

3.2.2.2.2 Recruitment of Prosecution Witnesses by Witness CNAI

149. The Defence submits that Witness CNAI recruited witnesses to testify falsely for the Prosecution.[218] Witnesses CNAQ, CNAY, CNAX and CNBU all named Witness CNAI as a contact person to investigators and Witness CNAI confirmed that he was a contact person. The Prosecution witnesses explained that they named Witness CNAI as a contact because he had a phone, was from the same locality and could facilitate contact with investigators.[219]

150. Witnesses CNAY, CNAQ and CNBU testified that they travelled with Witness CNAI to the Elégance Motel in Gitarama *préfecture* on 4 October 2008 and gave statements to investigators.[220] Witnesses CNAI and CNAY testified that when they travelled to Arusha to testify, they travelled together with Witnesses CNAQ and CNAX and stayed in the same safe house.[221]

151. Witness CNAI denied that he recruited Prosecution witnesses.[222] The Chamber notes that Witnesses CNAI, CNAY and CNAX each stated that they did not discuss their testimony with other Prosecution witnesses.[223] Witness CNAI stated that they each testified to different events that they personally witnessed during the genocide, and that they knew each other because they all suffered together during the 1994 events.[224] Witness CNAQ also testified that the only relationship between the witnesses who went to the Elégance Motel was that they were all victims of genocide and had lost members of their families.[225] Witness CNBU stated that Witness CNAI was not present when he met with the investigators and did not know what he told them.[226]

152. The Chamber notes that in its Closing Brief, the Defence points to the *Amicus Curiae* Report regarding Witnesses CNAI and T36 as evidence that Witness CNAI recruited and intimidated witnesses. The Chamber recalls that the *Amicus Curiae* concluded that Witness T36's allegations that he was threatened, intimidated and bribed by Prosecution Witness CNAI were unfounded. The *Amicus Curiae* further found no evidence implicating Witness CNAI in the

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[218] Defence Closing Brief, paras. 8, 14-15, 17-20, 383-384.
[219] T. 27 November 2009 p. 17 (ICS) (Witness CNAI) (When the investigators wanted to meet the witness, they would inform him and he would in turn inform the concerned persons); T. 23 November 2009 p. 8 (ICS) (Witness CNAQ); T. 25 November 2009 p. 29 (ICS) (Witness CNAY); T. 24 November 2009 p. 39 (ICS) (Witness CNAX); T. 11 November 2009 pp. 47-48 (ICS) (Witness CNBU).
[220] T. 27 November 2009 p. 17 (ICS) (Witness CNAI); T. 23 November 2009 pp. 7-8 (ICS) (Witness CNAQ) (travelled with Prosecution Witnesses CNBU, CNAX, CNAI and CNAY); T. 25 November 2009 pp. 29-31 (ICS) (Witness CNAY) (travelled with other persons to give his statement); T. 11 November 2009 p. 49 (ICS) (Witness CNBU) (travelled with Witnesses CNAQ and CNAI in the same vehicle). The Chamber notes that Witness CNAX was the only witness who stated that Witness CNAI was not present when he was at the Élégance Motel on 4 October 2008 (T. 24 November 2009 p. 39 (ICS) (Witness CNAX)).
[221] T. 27 November 2009 pp. 16-17, 19 (ICS) (Witness CNAI) (The Chamber received confirmation from the Registry that all witnesses travelling from the same locality in Rwanda were accommodated separately. The witness indicated that he knew Witnesses CNAY and CNAA because they all came from the same *commune* and neighbouring *secteurs*. The witness was with Prosecution Witnesses CNAQ, CNAX, CNAA and CNAY); T. 25 November 2009 pp. 29-31 (ICS) (Witness CNAY) (stayed with Prosecution Witnesses CNAI, CNAX and CNAQ).
[222] T. 27 November 2009 pp. 18, 20 (ICS) (Witness CNAI).
[223] T. 27 November 2009 p. 18 (ICS) (Witness CNAI); T. 25 November 2009 pp. 29-31 (ICS) (Witness CNAY); T. 24 November 2009 p. 40 (ICS) (Witness CNAX).
[224] T. 27 November 2009 pp. 18-19 (ICS) (Witness CNAI).
[225] T. 23 November 2009 pp. 6-8 (ICS) (Witness CNAQ).
[226] T. 11 November 2009 p. 49 (ICS) (Witness CNBU).

disclosure of protected witness information.[227] The Chamber recalls that it accepted the conclusions contained in the Report and that the Parties did not appeal this ruling.[228]

153. The Chamber considers that the mere fact that witnesses had contact, travelled together to be interviewed and temporarily stayed together in the same safe house does not lead to the conclusion that they colluded to fabricate their evidence. The Chamber does not exclude the possibility that they jointly discussed the events of 1994, but there is an insufficient basis to conclude that they fabricated their evidence to implicate Nzabonimana. The Defence submissions in this regard amount to mere speculation, and the Chamber considers this an insufficient basis to conclude that the witnesses fabricated their testimony or colluded against Nzabonimana.[229]

154. In reaching this conclusion, the Chamber notes the contradictory nature of the Defence submissions regarding witnesses who allegedly colluded and fabricated their testimony against Nzabonimana. While asserting that Witnesses CNAI, CNAQ, CNAY, CNAX, CNAF, CNAP and CNBU all fabricated their testimony, the Defence also provides detailed submissions as to the contradictory and irreconcilable nature of these witnesses' testimony.[230] The Chamber has evaluated the substantive testimony of these witnesses elsewhere in the Judgement but considers that the differences in their testimony undermine the Defence claims of fabrication of evidence.

155. The Defence also contends that Witness CNAI was provided the identities of protected Defence witnesses. The Chamber recalls that an *Amicus Curiae* investigated this matter and found that neither Witness CNAI nor any members of the Prosecution disclosed protected information pertaining to Defence Witness T36.[231] The Chamber reiterates that it has accepted the conclusions of the *Amicus Curiae*.[232]

156. Having considered the totality of the evidence, the Chamber finds that the Defence claim of alleged fabrication is based upon mere speculation. The evidence does not support the

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[227] *Amicus Curiae* Report, paras. 35-36, 42-46, 52. *See also* Decision Following *Amicus Curiae* Report Pertaining to Allegations of Contempt of the Tribunal by Prosecution Witness CNAI and/or a Member of the Prosecution Office (TC), 21 October 2011.

[228] Decision Following *Amicus Curiae* Report Pertaining to Allegations of Contempt of the Tribunal by Prosecution Witness CNAI and/or a Member of the Prosecution Office (TC), 21 October 2011, para. 27.

[229] *See e.g. Setako*, Judgement (AC), para. 138 ; *Karera*, Judgement (AC), para. 234 (no error in Trial Chamber's finding of no basis in claims of collusion when four witnesses lived in the same area, travelled together, and had meals together in the safe house, due in part to the difference in their testimonies). *See also Renzaho*, Judgement, (AC), para. 275 (defining collusion as "an agreement, usually secret, between two or more persons for a fraudulent, unlawful, or deceitful purpose").

[230] Defence Closing Brief, paras. 100-101, 117 (in relation to Witnesses CNAF and CNAP, Paragraphs 35 and 37 of the Indictment); paras. 217, 222-227 (in relation to Witnesses CNAI and CNAX, Paragraph 19 of the Indictment); paras. 238-246 (in relation to Witnesses CNAF and CNBH, Paragraph 45 of the Indictment); para. 253 (in relation to Witnesses CNAY and CNAX, Paragraph 20 of the Indictment); paras. 265-266 (in relation to Witnesses CNAI, CNAY and CNAF, Paragraph 20 of the Indictment); paras. 269, 271-272 (in relation to Witnesses CNAF, CNAY, CNAX and CNAI, Paragraph 20 of the Indictment); paras. 310-316 (in relation to Witnesses CNBA and CNBT, Paragraph 41 of the Indictment); paras. 381-392 (in relation to Witnesses CNAQ and CNBU, Paragraph 30 of the Indictment).

[231] *Amicus Curiae* Report, paras. 21-25, 63-66, 68-69, 71; Annex G : Affidavit of Djibo Moumouni of 8 March 2011, paras. 19-25; Annex H : Affidavit of Paul Ng'arua of 30 March 2011, paras. 2-3, 8-11, 13.

[232] Decision Following *Amicus Curiae* Report Pertaining to Allegations of Contempt of the Tribunal by Prosecution Witness CNAI and/or a Member of the Prosecution Office (TC), 21 October 2011, para. 27.

conclusion that Witness CNAI recruited witnesses to testify falsely against Nzabonimana or that the witnesses in question in fact fabricated their evidence against Nzabonimana.

3.2.3 The Prison System

157. The Defence submits that a systematic campaign of "semi-mandatory confession" and false accusation existed in Rwandan prisons. Prisoners testified against Nzabonimana out of fear of being labelled as "revisionists" by the Rwandan Government. Detained witnesses received advantages in prison in exchange for their testimony on behalf of the Prosecution and gave evidence for the Prosecution after attending re-education camps.[233]

158. Specifically, the Defence submits that Prosecution Witnesses CNAA and CNAC, both inmates in Gitarama prison at the time of their testimony, fabricated their evidence and implicated former government officials in order to receive leniency and benefits in prison. In exchange for their testimony against Nzabonimana, Witnesses CNAA and CNAC were "allowed to run Gitarama prison like their own private business." Witness CNAA became the *capita général* of Gitarama prison, a position which allowed him advantages and privileges. Through their fabricated testimony, Witnesses CNAA and CNAC shifted blame for the genocide to higher authorities and absolved themselves of wrongdoing. The Defence submits that the "atrocious conditions" of Gitarama prison induced these false allegations.[234]

159. The Prosecution submits that detainees were not coerced or induced to testify for the Prosecution and could refuse to testify without consequence. The Prosecution also submits that there was no evidence that the purpose of going to the re-education camps was to fabricate evidence.[235]

3.2.3.1 Evidence

Prosecution Witness CNAA

160. Witness CNAA, a Hutu,[236] was a local government official in Nyamabuye *commune*, Gitarama *préfecture*, in April 1994. At the time of his testimony, he was imprisoned in Gitarama prison for his role in the events of 1994, and testified that he had 12 years left to serve in prison.[237] Witness CNAA testified that he had not yet filed an appeal against his longest sentence of 25 years' imprisonment but had for two other sentences imposed by two *Gacaca* courts. He appeared on appeal before the *Gacaca* appeal court of Nyamabuye *secteur* on 4 November 2008, in order to seek a reduction in his sentence. He had previously testified in three other trials before the Tribunal.[238]

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[233] Defence Closing Brief, paras. 26-35; T. 20 October 2011 pp. 65-67; T. 21 October 2011 p. 2 (Defence Closing Argument).
[234] Defence Closing Brief, paras. 29, 454, 462-485; T. 20 October 2011 pp. 74-75; T. 21 October 2011 p. 3 (Defence Closing Argument); Defence Exhibit 145 (Excerpts from *Le Château*, Carina Tertsakia).
[235] Prosecution Closing Brief, paras. 47-58; T. 21 October 2011 pp. 12, 15 (Prosecution Closing Argument).
[236] For additional introductory information on Witness CNAA, *see* para. 1045, *infra*.
[237] T. 15 December 2009 p. 23 (ICS); T. 16 December 2009 p. 41 (ICS) (Witness CNAA); Prosecution Exhibit 20 (Protected Information Sheet).
[238] T. 15 December 2009 pp. 19-20, 32 (ICS); T. 16 December 2009 p. 42 (ICS) (Witness CNAA).

161. Witness CNAA was arrested on 14 March 1997. He went to solidarity camps on two occasions, in 2003 for three months and in 2005 for two days. At the camps, the attendees were taught the truth about the history of Rwanda, to love the fatherland and to help people have a new understanding of Rwandan problems. Witness CNAA denied that he came to the Tribunal to teach the truth about Rwandan history, and testified to the events he witnessed.[239]

162. Witness CNAA acknowledged that in a 2001 document, he wrote: "I went to Arusha, Tanzania, in early 1997 in order to testify for the Abatabazi Government." In the document, Witness CNAA indicated that he supported the Rwandan Government, even though he was put in prison after his testimony, and that he hoped truth would prevail in the trials of the detainees. Witness CNAA denied that the document showed his allegiance to the Government. He testified that when he came to testify he was not following the instructions of the Government.[240]

163. Witness CNAA also acknowledged that in a 2005 letter to the Prosecutor General of Rwanda, he wrote: "I was sent by the Government of Rwanda to the [ICTR] located in Arusha, Tanzania to testify against the so-called *Abatabazi* Government [...]. I demand justice and temporary release, since I have moreover completed my training at the solidarity camp. I am determined to testify in order to reveal the truth, either before *Gacaca* courts or international tribunal[s]."[241] Witness CNAA acknowledged that in a 2008 *Gacaca* document he wrote: "When I was detained in 1997, I accepted to testify on the side of the Rwandan Government, sensitising my co-detainees to follow the right path."[242] He acknowledged before another *Gacaca* court: "Since 1996, I have been testifying for Rwanda before the [ICTR]," and stated that he spoke the truth about the events in question.[243] In his testimony, the witness denied that the Rwandan Government forced him to testify and stated that the Government merely authorised him to leave the country and testify.[244]

164. Witness CNAA pled guilty on 14 July 2005 before the Nyamabuye c*ellule Gacaca* court for "non-assistance to persons in danger" in Gitarama *préfecture*. He acknowledged that his prison sentence was reduced because of his confessions and cooperation with the courts, but stated that he came to speak the truth and was not testifying for any personal interest.[245]

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[239] T. 15 December 2009 pp. 23-24 (ICS) (Witness CNAA).
[240] T. 15 December 2009 pp. 24-25 (ICS) (Witness CNAA); Defence Exhibit 88 (Letter to Rwandan Authorities by Witness CNAA, 20 August 2001).
[241] Defence Exhibit 92 (Letter to the Prosecutor General of Rwanda from Witness CNAA, 16 August 2005); T. 15 December 2009 pp. 25-27 (ICS) (Witness CNAA).
[242] T. 15 December 2009 pp. 28-30 (ICS) (Witness CNAA). The Chamber notes that the Defence did not enter this document as an exhibit.
[243] T. 15 December 2009 pp. 30-33 (ICS) (Witness CNAA); Defence Exhibit 95A and B (Appeal of Witness CNAA before *Gacaca* court of Nyamabuye *secteur*). The Chamber notes that Witness CNAA also stated that as of 1996 he was not yet imprisoned but the Public Prosecutor's office asked him to speak the truth about the events that occurred in Nyamabuye *commune* and that is how he came to be testifying since 1996, prior to his arrest.
[244] T. 15 December 2009 pp. 25-27, 33 (ICS) (Witness CNAA).
[245] Defence Exhibit 96 (Guilty Plea of Witness CNAA at Nyamabuye *Cellule Gacaca* Proceedings, 15 April 2007); T. 15 December 2009 p. 34 (ICS); T. 16 December 2009 pp. 40-41 (ICS) (Witness CNAA).

165. Witness CNAA acknowledged that in prison he "raised the awareness of [his] colleagues [...] to have them resort to the confession and guilty plea procedure." He worked for the prison administration and "tried to sensitise [his] co-detainees to the policies of the government."[246]

166. Witness CNAA was *capita général* of Gitarama prison for less than a year after his 2003 visit to the solidarity camp. The term "*capita général*" was no longer used at the time of Witness CNAA's testimony. Witness CNAA denied that the *capita général* had the power to authorise which prisoners could work outside the prison or the power to authorise detainees to build small houses inside the prison yard. The *capita général* did have some disciplinary powers over other detainees. Witness CNAA denied that he enriched himself through his position as *capita général*. Prisoners were not allowed to have money in prison. Rather, money was kept by social welfare services. Witness CNAA denied that he received special treatment in prison because of his testimony.[247]

167. Witness CNAA testified that during his imprisonment he held various positions inside the prison. At the time of his testimony, he was the coordinator of male prisoners. The prison management appointed him to that position because of his former work experience. He had also earlier been elected executive secretary. In his position as coordinator, he helped new prisoners plead guilty, and taught them the love of their country, unity and reconciliation. He also helped them reintegrate into Rwandan society and into their families.[248]

Prosecution Witness CNAC

168. Witness CNAC, a Hutu,[249] was a local government official in Masango *commune*, Gitarama *préfecture*, in April 1994. At the time of his testimony, he had served 15 years and 6 months of a 30-year prison sentence. He was convicted of participating in meetings that incited the population to commit genocide, failure to punish subordinates, transporting people who were never seen again and issuing orders for the establishment of roadblocks. His appeal of his sentence was pending at the time of his testimony. He had been in prison since 24 October 1994, and in Gitarama prison since August 1998.[250]

169. Witness CNAC acknowledged that in October 1994, he was held for between one and two weeks, but denied that he was detained or tortured. On 24 October 1994, officers of the DMI took him to their office in Kigali for three days, and then later to Rilima prison. Monseigneur Sibomana, founding member of the human rights league in Rwanda, traced him to the prison, where no one else knew he was. His wife was able to visit him at the prison in 1995.[251]

170. Between 1999 and 2001 Witness CNAC was questioned by Alphonse Sebazungu, the first Advocate General of the Supreme Court in Rwanda. At the time, Witness CNAC said that

[246] T. 15 December 2009 p. 34 (ICS) (Witness CNAA).
[247] T. 15 December 2009 pp. 34-36 (ICS); T. 16 December 2009 p. 41 (ICS) (Witness CNAA).
[248] T. 16 December 2009 pp. 39-40 (ICS) (Witness CNAA).
[249] For additional introductory information on Witness CNAC, *see* paras. 1050-1054, *infra*.
[250] Prosecution Exhibit 21 (Protected Information Sheet); T. 12 April 2010 pp. 5, 9, 13 (ICS); T. 13 April 2010 pp. 25-27, 32 (ICS) (Witness CNAC).
[251] T. 12 April 2010 pp. 11-12 (ICS) (Witness CNAC).

his detention was not justified. Witness CNAC never went to a solidarity camp nor was he taught any lessons on Rwandan history in prison.[252]

171. Witness CNAC described the role of a *capita général* as the individual "who heads the administration within the prison and [...] who networks between the detainees and the prison administration." The *capita général* also coordinated the activities of the health services, security activities and other services. The *capita général* was a detainee who may have been appointed by the prison administration or selected by other co-detainees who have the status of *capitas*, depending upon the administration. The *capita général* was higher in authority than the other *capitas*.[253]

172. The *capita général* had the authority to punish detainees. He was not able to designate which detainees could work outside the prison, but appointed those who led the teams that left the prison. He had no role in distributing food to the detainees; however, he ensured that everyone was fed and supervised others who managed the stock of food. According to the witness, prisoners did not need permission to build small structures covered with tarpaulin inside the prison yard. Anyone with the means could do so.[254]

173. At the time of Witness CNAC's testimony, Witness CNAA was the *capita général* of Gitarama prison, and had been for approximately three years. Witness CNAC also indicated that the one previously called "*capita général*" was now called the "executive secretary." The executive secretary chaired a committee of seven members who assisted him in managing the prison, such as through carrying out secretarial and sanitation duties. Witness CNAC was the *capita* of a block in the prison and was in charge of equipment. Witness CNAC denied that the *capita général* played a role in facilitating the confessions of inmates. Rather, the head of *Gacaca* advised people about guilty pleas.[255]

174. When Witness CNAC came to Arusha in December 2009, he and Witness CNAA stayed at the UNDF. They could be together when they watched television or ate meals. Together, they discussed the case, but not their testimony. Instead, since Witness CNAA was *capita général* at that time, they discussed how the prison was operating during Witness CNAA's absence. They returned to Gitarama prison together in December 2009 and then returned to Arusha four months later. Witnesses CNAA and CNAC were fellow inmates and were always together. When they returned to Gitarama, they no longer discussed the case. Witness CNAA only asked Witness CNAC why he had to return to Arusha. Witness CNAC did not give reports to prison authorities when he returned from Arusha, and nobody questioned him about his visit.[256]

175. Witness CNAC pled guilty in January 2009. The confession and guilty plea process started in the prisons in 2003. Because *Gacaca* trials had begun, people understood the need to plead guilty in order to receive reduced sentences. Witness CNAC stated that anything he admitted to in 2009, he had already admitted to when he was questioned by the Prosecutor General of Rwanda, Alphonse Sebazungu. He did not plead guilty until 2009 because Rwandan

[252] T. 12 April 2010 pp. 12-13 (ICS) (Witness CNAC).
[253] T. 12 April 2010 pp. 13-14 (ICS) (Witness CNAC).
[254] T. 12 April 2010 pp. 14-15 (ICS) (Witness CNAC).
[255] T. 12 April 2010 pp. 15-16, 19 (ICS) (Witness CNAC).
[256] T. 12 April 2010 pp. 16-17, 27 (ICS) (Witness CNAC).

law had changed. He had already admitted certain facts which he did not believe were criminal offences. After the law changed, facts to which he had already admitted became crimes under Rwandan law.[257]

Prosecution Witness CNAM

176. Witness CNAM, a Hutu farmer, who lived in Gitarama *préfecture* in April 1994,[258] was arrested in 1996 for his involvement in the 1994 events and remained in prison until 2003. He was detained at Gitarama prison, then transferred to Gikondo prison and later returned to Gitarama prison. The prison was overcrowded when he returned.[259]

177. Witness CNAM met with Prosecution investigators in 2002, while in Gitarama prison. He could not recall who placed him in contact with the investigators, but recalled that a "white person" came to fetch him. Investigators sought him out because Witness CNAM had made confessions relating to facts of interest to them. Witness CNAM told the investigators what had happened in his *cellule* and signed a statement. He met the investigators again after his release in 2003.[260]

178. In 2005, Witness CNAM surrendered to authorities. He was eventually returned to Gitarama prison where he made his confessions. Witness CNAM testified that when he arrived in prison, "we were told of the benefits of confessing and that is why I entered my confession." Witness CNAM stated that people who denied Nzabonimana's involvement in the Fina petrol station killing (3.5.10) were "revisionists who would never admit that a genocide took place."[261]

179. The witness testified that he was a Catholic. He testified that those who committed crimes were taught and advised to enter guilty pleas. The prisoners were explained the benefits of confessing their crimes. After receiving this information, Witness CNAM decided to plead guilty and confess. The decision to confess was his. After confessing, he "found inner peace and [his] conscience was at peace."[262]

Defence Witness T24

180. Witness T24, a local government official in Nyabikenke *commune* in April 1994,[263] was detained in Mpanga prison at the time of his testimony.[264]

181. In 2007, people came to see Witness T24 at Gitarama prison and asked for information about Nyabikenke *commune*. Witness T24 gave information about the 1994 events and told them that he had not seen Nzabonimana. The same people visited Witness T24 in prison four or five times in 2007, but he did not see them after 2007. According to Witness T24, this was because

[257] T. 13 April 2010 pp. 25-28 (ICS) (Witness CNAC).
[258] For additional introductory information on Witness CNAM, *see* para. 1338, *infra*.
[259] T. 16 November 2009 pp. 4-5 (ICS) (Witness CNAM).
[260] T. 16 November 2009 pp. 5-6 (ICS) (Witness CNAM).
[261] T. 16 November 2009 pp. 13-14, 19-20 (ICS) (Witness CNAM).
[262] T. 16 November 2009 p. 21 (ICS) (Witness CNAM).
[263] For additional introductory information on Witness T24, *see* para. 284, *infra*.
[264] Defence Exhibit 11 (Protected Information Sheet); T. 26 April 2010 pp. 32-33 (ICS) (Witness T24).

he was not providing any information which would implicate Nzabonimana in the 1994 events. Toward the end of 2008, Prosecution Investigator Djibo Moumouni visited Witness T24.[265]

182. Witness T24 testified that Moumouni went to see the director of the prison. The director then asked Witness T24 whether he had refused to give testimony and said that people from Arusha had indicated to him that Witness T24 refused to testify against Nzabonimana. The witness responded that he gave the information he remembered but that he never saw Nzabonimana and therefore could not testify against him as an eyewitness. Witness T24 stated that the director of the prison placed pressure upon him. Witness T24 met Moumouni that same day, and after a brief conversation, they agreed to meet again later.[266]

183. When Witness T24 next met Moumouni, Witness T24 reiterated what he had told other investigators. Moumouni told Witness T24 that hearsay evidence would suffice. Witness T24 testified that he then talked with Moumouni because he did not want to suffer any negative consequences from the prison administration. He explained that those who refused to testify were considered to be "revisionists" or negators of the genocide. One could be prosecuted for refusing to testify for the Prosecution. Witness T24 testified that he possibly ran a risk by testifying for the Defence, but he did not know if he would face prosecution or be mistreated.[267]

184. Witness T24 then looked for a fellow inmate named Bihogere, who had lived 20 minutes from Nzabonimana in 1994. Witness T24 wanted information regarding the activities of Nzabonimana which he could give to the Prosecution. Bihogere gave Witness T24 information implicating Nzabonimana. Witness T24 then gave this information to Moumouni. Witness T24 did not know if the information concerning Nzabonimana was true. Witness T24 gave a signed statement to Moumouni on 2 October 2008. He testified that Moumouni wanted him to give testimony on allegations he had not witnessed. Witness T24 made his statement under direction from Moumouni, who then asked Witness T24 to prepare to testify in Arusha, but Witness T24 was never retained as a Prosecution witness. Witness T24 testified that he gave the statement of his own free will and did not act under any duress from anyone, including prison authorities.[268]

185. Witness T24 also testified that he was threatened with consequences if he refused to testify against Nzabonimana. He was told that Nzabonimana might accuse him in turn and the Prosecution went to the prison authorities and complained about his failure to cooperate. Witness T24 testified that the Prosecution exerted pressure upon him and forced him to testify to facts to which he was not a witness.[269]

186. Witness T24 stated that he did not have a personal interest in the *Nzabonimana* case. He came to the Tribunal to tell the truth.[270]

187. Defence Investigator Fernand Batard visited Witness T24 on 23 November 2009, at which time Witness T24 gave Batard information about Nyabikenke *commune*. Following this

[265] T. 26 April 2010 p. 29 (ICS) (Witness T24).
[266] T. 26 April 2010 pp. 29-30 (ICS); T. 3 May 2010 p. 16 (ICS) (Witness T24).
[267] T. 26 April 2010 pp. 30, 32 (ICS) (Witness T24).
[268] T. 26 April 2010 pp. 30, 32 (ICS); T. 27 April 2010 pp. 50, 52-53, 60 (ICS); T. 3 May 2010 pp. 14, 16 (ICS) (Witness T24); Prosecution Exhibit 33 (Statement of Witness T24, 2 October 2008).
[269] T. 27 April 2010 p. 60 (ICS); T. 28 April 2010 p. 38 (ICS) (Witness T24).
[270] T. 27 April 2010 p. 44; T. 27 April 2010 p. 60 (ICS) (Witness T24).

meeting, a man and a woman from Kigali visited Witness T24 and said they were from witness protection. They asked Witness T24 why he spoke to the Defence. They told him he was not authorised to speak to the Defence and had Witness T24 sign a document affirming he would no longer do so. Witness T24 claimed to have felt threatened by the man and woman.[271]

188. Batard returned on 25 November 2009 and asked Witness T24 to testify for the Defence. The witness explained to Batard that he could not meet with him. Batard told the witness that he was not on the Prosecution's list of witnesses and Batard also told the witness he had been authorised to speak to him by the Prosecutor General of Rwanda. Witness T24 then decided to be a Defence witness, and gave a signed statement.[272]

189. Witness T24 confirmed that he was under no pressure during his testimony before the Tribunal. He confirmed that since the time he decided to testify for the Defence he had not suffered any constraint, duress or pressure in prison.[273]

190. Witness T24 stated that when the guilty plea and confession procedure was initiated in the prisons, inmates who refused to confess would no longer receive visits or be assigned tasks that came with favours. When *Gacaca* sessions began in the prisons, inmates who wanted to testify in favour of accused persons would be placed in cells or sanctioned. He confirmed that he could face sanctions for testifying on behalf of Nzabonimana.[274]

191. Witness T24 appeared before five *Gacaca* courts at Mugunga, Kiyumba, Rungi, Kabacyuzi and Kabgayi. At the Kiyumba *Gacaca* court, he acknowledged his role during the genocide and was sentenced to 25 years' imprisonment. In Mugunga he was sentenced to 26 years' imprisonment and in Rungi he was sentenced to 25 years' imprisonment.[275]

192. In Kabacyuzi, Witness T24's guilty plea was rejected. He was sentenced to life imprisonment in isolation in relation to the events at Kabgayi. He could not confirm whether, had he appeared before the Tribunal as a Prosecution witness, he would have received a less severe sentence. Witness T24 testified that the worst period that he had spent in prison was the 10 month period during which he was placed in solitary confinement and beaten.[276]

Defence Witness T71

193. Witness T71, a Hutu and a local government official in Nyamabuye *commune* in April 1994,[277] was arrested on 5 September 1994 and placed in Gitarama prison. Witness T71 was one of the earliest inmates in the prison. This number eventually grew to between 12,000 and 13,000 inmates. The prison was overcrowded and many prisoners died of disease. The witness was

[271] T. 26 April 2010 pp. 30-31 (ICS) (Witness T24).
[272] T. 26 April 2010 pp. 30-31 (ICS) (Witness T24).
[273] T. 28 April 2010 p. 37 (ICS) (Witness T24).
[274] T. 3 May 2010 p. 19 (ICS) (Witness T24).
[275] T. 27 April 2010 p. 15 (ICS) (Witness T24).
[276] T. 27 April 2010 pp. 8, 15-16, 18-19 (ICS); T. 3 May 2010 pp. 22-23 (ICS) (Witness T24).
[277] For additional introductory information on Witness T71, *see* paras. 1133-1134, *infra*.

released for 10 days in 2000 and then rearrested. Witness T71 was acquitted by a *Gacaca* court in his *secteur* and was released from prison on 24 May 2007.[278]

194. Witness CNAA arrived at the prison in 1995. Witness T71 previously knew Witness CNAA as a colleague. They met and spoke on a regular basis while in prison and Witness T71 testified that he had no problem with Witness CNAA.[279]

195. According to Witness T71, the inmates at Gitarama prison organised themselves. There were inmates in charge of hygiene, health, the kitchen and security. Witness CNAA was the *capita général*, the person above all the *capitas*. This position was the equivalent of the position of a *bourgmestre* in the *commune*.[280]

196. Witness CNAA was appointed *capita général* when he returned from Arusha. It was said that Witness CNAA received the post as a reward for his testimony. The director of the prison appointed the *capita général*, and Witness T71 testified that Witness CNAA would not have received the post if he had testified for the Defence. If an inmate testified for the Defence he ran the risk of staying in prison for his entire life, having fabricated charges brought against him or death. On one occasion, Witness CNAA talked to the witness about testifying for the Prosecution in Arusha. Witness CNAA said that if Witness T71 testified for the Prosecution, authorities could review his case file. Witness T71 told Witness CNAA he had no information and they never talked about this issue again. Witness T71 did not suffer any consequences in prison for refusing to testify for the Prosecution.[281]

197. Witness CNAA came to Arusha at least twice while Witness T71 was in detention. On one occasion a young man named Habyarimana accompanied Witness CNAA to Arusha and upon returning to prison, Habyarimana was appointed to be in charge of security in the prison.[282]

198. As *capita général*, Witness CNAA had many benefits and everyone envied the post. He could come and go at will without a guard accompanying him and appointed the *capitas* in charge of services such as security, the kitchen and the prison wings. To occupy a position of *capita*, one would have to offer something to the *capita général*. If an inmate wanted adequate living space, he would promise the *capita* of the wing something in return. In turn, the *capita* would offer something to the *capita général*. In 1999, the witness paid 40,000 Rwandan Francs for a space to put a bed which was approximately one metre by 1.5 metres. Only those with money could occupy a small room of this nature. When a space became available, one would pay the *capita* of the relevant wing of the prison. The *capita* would give part of the money to the *capita général*. The *capita général* could not be easily approached so one needed to work through the *capita*. This transaction would be done in secrecy. Inmates were not authorised to have money in prison. However, inmates brought in money with the help of police, the *capitas* or

[278] Defence Exhibit 31 (Protected Information Sheet); T. 24 May 2010 pp. 27-29, 34-37, 66-67 (ICS); T. 25 May 2010 p. 4 (ICS) (Witness T71).
[279] T. 24 May 2010 pp. 28-29 (ICS); T. 25 May 2010 p. 12 (ICS) (Witness T71).
[280] T. 24 May 2010 p. 30 (ICS) (Witness T71).
[281] T. 24 May 2010 pp. 32-34, 70 (ICS); T. 25 May 2010 p. 5 (ICS) (Witness T71).
[282] T. 24 May 2010 p. 34 (ICS) (Witness T71).

the prison management. Witness T71 bought his small space with money brought to him by a guard.[283]

199. When the witness was released from prison, he left his accommodation to a friend and no payment occurred. Living spaces could sometimes be transferred without a monetary exchange, such as during a mass release of prisoners. Witness T71 never paid Witness CNAA while in Gitarama prison.[284]

200. Witness T71 met Witness T109 in Arusha. They stayed in the same safe house, but in separate rooms. Witness T71 knew that Witness T109 came to testify, but they did not discuss his testimony because it was forbidden.[285]

Defence Witness T133

201. Witness T133, who lived in Masango *commune* in 1994,[286] testified that *Préfet* Fidèle Uwizeye of Gitarama *préfecture* was imprisoned and tortured because he testified for the Defence in the *Akayesu* trial. The Prosecution confronted Witness T133 with Uwizeye's testimony in the *Bizimungu et al.* trial, in which Uwizeye denied that anything happened to him as a result of his testimony. Witness T133 stated that Uwizeye was lying when he said this. Witness T133 was not surprised that Uwizeye later came to Arusha to testify for the Prosecution after having been imprisoned and tortured.[287]

202. Since 2007, Witness T133 had spoken with Witness CNAC by telephone while Witness CNAC was in prison. Witness CNAC told Witness T133 that a case had been fabricated against him. Witness T133 learned that Witness CNAC pled guilty to a number of crimes. Witness T133 believed that Witness CNAC pled guilty to save his life and in exchange for his testimony against Nzabonimana.[288]

Defence Witness T109

203. Witness T109, a resident of Rutobwe *commune* in 1994,[289] was arrested in 1994 and released in 2007 after being charged with failing to aid others.[290] At the time of his testimony, he was living in exile and faced a 30-year prison sentence upon his return to Rwanda.[291]

204. Witness T109 testified that Witnesses CNAH and CNBH and others contacted him after he was released from prison and asked him to testify falsely against Nzabonimana regarding the

[283] T. 24 May 2010 pp. 30-32, 71 (ICS); T. 25 May 2010 pp. 3, 13 (ICS) (Witness T71).
[284] T. 24 May 2010 p. 71 (ICS); T. 25 May 2010 pp. 3-4 (ICS) (Witness T71).
[285] T. 25 May 2010 pp. 4, 6 (ICS) (Witness T71).
[286] For additional introductory information on Witness T133, *see* para. 1127, *infra*.
[287] T. 12 May 2010 p. 20 (ICS); T. 13 May 2010 pp. 43-44, 46, 74 (ICS) (Witness T133); Prosecution Exhibit 44 (Excerpt of Uwizeye's *Bizimungu et al.*, Testimony, 13 April 2005).
[288] T. 12 May 2010 pp. 62-63 (ICS); T. 13 May 2010 pp. 62-65 (ICS) (Witness T133).
[289] For additional introductory information on Witness T109, *see* para. 683, *infra*.
[290] T. 2 June 2010 p. 74 (ICS); T. 3 June 2010 pp. 47-48 (ICS) (Witness T109).
[291] T. 3 June 2010 pp. 51-54, 59-62 (ICS) (Witness T109).

events at the Butare trading centre. Witness T109 refused. The people who asked Witness T109 to testify falsely were Tutsis and members of *Ibuka*.[292]

205. Witness T109 was arrested on 5 December 1994 in Nyabikenke and arrived at Gitarama prison on 26 December 1994. He stayed at Gitarama prison until his release on 19 March 2007.[293]

206. In Gitarama prison there was a *capita général* who was appointed by the prison director. The prisoners did not choose their leaders. There were two *capita générals*. One was in charge of the kitchen and the other supervised all the prisoners, including the *capita général* in charge of the kitchen. The *capita général* controlled the movements of the prisoners within the prison itself. The *capita général* supervised the inmates and reported to the prison director. He appointed other inmates to other posts within the prison structure, except for the *capita général* in charge of the kitchen.[294]

207. The prison director could issue orders to the prisoners, but most of the time the *capita général* issued orders on behalf of the director. The *capita général* could also give orders of his own accord. If a prisoner made a mistake, the *capita général* could send him to solitary confinement. The *capita général* could go to the director when there was a shortage of food, and he could authorise prisoners to exit the prison. The *capita général* did not earn a salary but he could sell items both inside and outside the prison. People outside the prison could pay the *capita général* to have prisoners help build a house.[295]

208. When the witness entered Gitarama prison, prisoners had to pay money to obtain a bed. Prisoners also had to pay for security, to have access to the kitchen and to work on projects outside the prison. Prisoners slept on the floor and in the open air. Some built plastic sheds. One needed to pay in order to obtain permission to build a shed. Part of these payments went to the *capita général*. To obtain a cell a prisoner had to pay 40,000 Rwandan Francs. The person selling the cell would receive about 10,000 Rwandan Francs and the rest was given to the *capita général*. Witness T109 did not personally witness the *capita général* receiving this money. Prisoners could meet the *capita général* without going through an intermediary.[296]

209. A prisoner could pay the *capita général* for authorisation to meet a visitor outside the prison. Otherwise, visitors could come to the prison on Friday. Prisoners were allowed to meet visitors for five minutes. Both the prisoner and the visitor were beaten if they spoke for a longer period.[297]

210. The *capita général* could ask an inmate to plead guilty and confess. Witness CNAA assembled the prisoners inside the compound and told them they would not leave if they refused to plead guilty. He told them they could plead guilty to crimes they did not commit in order to leave prison. Many people, including the witness, pled guilty to crimes they did not commit.

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[292] T. 2 June 2010 pp. 72-73 (ICS); T. 3 June 2010 pp. 43-45 (ICS) (Witness T109). The Chamber notes that Witness CNAH did not testify at trial. The Chamber assesses Witness T109's claim in the section of the Judgement pertaining to the Butare trading centre (3.5.1.3.2).
[293] T. 2 June 2010 p. 74 (ICS) (Witness T109).
[294] T. 3 June 2010 pp. 4-5, 42 (ICS) (Witness T109).
[295] T. 3 June 2010 p. 5 (ICS) (Witness T109).
[296] T. 3 June 2010 pp. 5-6, 55-57 (ICS) (Witness T109).
[297] T. 3 June 2010 pp. 9, 56 (ICS) (Witness T109).

Those who pled guilty and confessed received benefits in prison. Those who pled guilty received cells and those who refused lost their cells. The *capita général* was someone who was feared because he had the power to put people into prison cells.[298]

211. Witness CNAA was made *capita général* and a few days later he left. The rumour in prison was that Witness CNAA went to testify somewhere. Witness CNAA later returned to the prison. Prisoners said that Witness CNAA was made *capita général* as a reward for testifying for the Prosecution.[299]

212. Witness T109 knew a man from Kibuye who went to testify for the Prosecution. He changed his testimony when he came to Arusha because he did not want to lie. Witness T109 stated that nothing happened to this man in prison, but he could not leave to work outside the prison.[300]

213. Upon his release, the witness was told that he would be arrested and imprisoned again. He fled the country to save himself. He denied that he was a fugitive from justice; he fled because he realised that he could die while performing community labour and he had already served his prison sentence.[301]

Defence Witness T110

214. Witness T110, a business owner in Rutobwe *commune* in 1994,[302] testified that from 1995 to 2005, he was imprisoned in Gitarama prison.[303] Witness T110 confessed to failing to assist people who were killed. Witness T110 testified that the confession was a fabrication and was done to secure his release from prison. He appeared before a *Gacaca* court and confirmed the confession even though he admitted that it was fabricated. Following his release, Witness T110 left Rwanda for Uganda for security reasons. The *conseiller de secteur* of Rutongo said during the information-gathering process that if Witness T110 was not mentioned as a criminal, he would not approve what the *Gacaca* court was doing. Witness T110's wife told him that after he left for Uganda, the *Gacaca* court sentenced him to an 11-year term of imprisonment.[304]

215. At the time Witness T110 confessed, the law in force at the prison provided that a prisoner needed to confess to be released. No one was considered innocent. The superintendent of the prison established the law and the *capita général* oversaw its enforcement. The *capita général* gave instructions to the *capita* of each wing of the prison, who were appointed by the *capita général*. The *capitas* then gave instructions to the inmates. Those who did not plead guilty

[298] T. 3 June 2010 pp. 6-7 (ICS); T. 3 June p. 7 (HC) (Witness T109) (French) ("*Le capita général ... quelqu'un qui est « redouté », parce que si vous commettez une faute ou, alors, quelque chose qui est contraire à son vouloir, vous avez ... il y a des conséquences : il peut vous mettre au cachot.*").
[299] T. 3 June 2010 pp. 6-7 (ICS) (Witness T109).
[300] T. 3 June 2010 p. 8 (ICS) (Witness T109).
[301] T. 3 June 2010 p. 49 (ICS) (Witness T109).
[302] For additional introductory information on Witness T110, *see* para. 690, *infra*.
[303] T. 12 October 2010 p. 30 (Witness T110).
[304] T. 12 October 2010 pp. 30-31; T. 12 October 2010 pp. 50-51 (ICS); T. 13 October 2010 pp. 28, 30-32, 42 (Witness T110).

were banned from receiving visits, lost their accommodation and were denied food. The inmates were instructed to implicate members of the former Government in their guilty pleas.[305]

216. The *capita général* was an inmate who by law was supposed to be elected. However, often the prison director appointed the *capita général* to his post. The *capitas* were chosen from among the detainees. One had to plead guilty in order to be *capita général*. The *capita général* could sell space where inmates slept and sell food supplies.[306]

217. Witness CNAA was appointed *capita général* of the prison after his predecessors did not convince enough inmates to plead guilty. Witness CNAA was appointed *capita général* while the witness was still in prison. Witness CNAA was also appointed *capita général* so he could accuse authorities of having been involved in the 1994 events. The witness did not speak to Witness CNAA or prison officials regarding the reason why Witness CNAA was appointed. It was said that Witness CNAA went to Arusha to testify. During Witness CNAA's tenure, many people pled guilty, as punishments for not doing so were reinforced.[307]

218. After his release from prison, Witness T110 went to a rehabilitation camp for one month. At the camp, the attendees learned about politics and history. They were taught that they should become members of the RPF.[308]

Defence Witness Fernand Batard

219. Batard, an investigator for the Defence,[309] testified that a group of people in Nyabikenke, working under the umbrella of a survivors' association, were professional witnesses for the Tribunal and were feared by the population.[310]

220. Batard interviewed former and current inmates in Gitarama prison, who said they needed money to live well. Those with no resources slept in the open air. Prisoners with little resources had access to accommodation in dormitories, each under the responsibility of a *capita*. Those with a lot of money could purchase a building permit and build a house within the prison compound. Those without resources could obtain advantages by rendering services to officials. Inmates could also buy food brought in from outside the prison. This system was organised and supervised by *capitas*.[311]

221. The general boss of the system in Gitarama prison was Witness CNAA. He had deputies who worked under him, including Witness CNAC. Witnesses T109, T110, T71 and T136 gave Batard this information. Prisoners sought to work outside the prison and Witness T136 organised this work for the *capita général*. Witness T136 was promoted *capita* of a block in the prison and stated that he received 2,000 Rwandan Francs to grant a detainee the right to sleep inside his block. Witness T136 stated that one *capita* was able to own a taxi company from the profits he made in prison. In 2004, Witness T136 testified that the *capita général* told people to set an

[305] T. 12 October 2010 pp. 31, 36-37 (Witness T110).
[306] T. 12 October 2010 pp. 36, 40 (Witness T110).
[307] T. 12 October 2010 pp. 37-39; T. 13 October 2010 pp. 25-26 (ICS) (Witness T110).
[308] T. 12 October 2010 pp. 40, 45 (Witness T110).
[309] For additional introductory information on Batard, *see* para. 1026, *infra*.
[310] T. 22 March 2011 p. 15; T. 22 March 2011 p. 18 (Batard) (French).
[311] T. 22 March 2011 pp. 15-16 (Batard).

example and plead guilty. Witness T136 refused to plead guilty and immediately lost his responsibilities inside the prison. The *capita* system worked with the approval of the prison administration.[312]

Defence Witness T31

222. Witness T31, a local government official who lived in Nyabikenke *commune* in 1994,[313] was serving a sentence of life imprisonment at the time of his testimony and had an appeal of his conviction pending.[314]

223. Witness T31 met with Defence investigators on approximately five occasions, including on three occasions while he was in prison. The witness denied that after the Defence investigators met with him at the prison he was no longer subjected to hardship or torture in prison; he stated that he had never been subjected to any hardship prior to the interview. He was never coerced or pressured to falsely testify against Nzabonimana. He was simply asked in Mpanga prison whether he was to testify for the Defence, which he confirmed. He stated that he was not aware of any torture of detainees because they chose to testify in favour of Nzabonimana, especially not while he was in prison.[315]

3.2.3.2 Deliberations

3.2.3.2.1 Prosecution Witnesses CNAA and CNAC

224. The Defence asserts that Witnesses CNAA and CNAC fabricated their testimony against Nzabonimana and were subsequently rewarded for their testimony with leniency and benefits, including a leadership position in Gitarama prison.[316] The Chamber notes that by his own admission, Witness CNAA was in prison during his testimony. He testified that he had not yet appealed his longest sentence of 25 years, but that he had filed an appeal for other sentences imposed by two other *Gacaca* courts, including the Nyamabuye *Gacaca* court in November 2008, in order to seek a reduction in his sentence.[317] He also testified that he still had 12 years to serve in prison.[318]

225. The Chamber further notes that Witness CNAC had been in prison since 24 October 1994 and had served 15 years and 6 months of his 30-year sentence by the time he testified before the Tribunal.[319]

226. Recalling the principles of the treatment of detained and accomplice witness testimony, as articulated previously in this Judgement (2.7.7), the Chamber does not doubt that detained or accomplice witnesses may be motivated to testify falsely for a number of reasons. Witnesses

[312] T. 22 March 2011 p. 19 (ICS); T. 22 March 2011 pp. ii-iii (Extract); T. 22 March 2011 p. ii (Extrait) (Batard) (French). Witness T136 did not testify at trial.
[313] For additional introductory information on Witness T31, *see* para. 281, *infra*.
[314] T. 4 May 2010 pp. 7-8, 10 (ICS) (Witness T31).
[315] T. 4 May 2010 pp. 8, 11-14 (ICS) (Witness T31).
[316] Defence Closing Brief, paras. 29, 452-485; Defence Exhibit 145 (Excerpts from *Le Château*, Carina Tertsakia).
[317] T. 15 December 2009 p. 32 (ICS); T. 16 December 2009 p. 42 (ICS) (Witness CNAA).
[318] T. 15 December 2009 p. 23 (ICS); T. 16 December 2009 p. 41 (ICS) (Witness CNAA); Prosecution Exhibit 20 (Protected Information Sheet).
[319] T. 12 April 2010 p. 9 (ICS); T. 13 April 2010 pp. 26-27 (ICS) (Witness CNAC).

CNAA and CNAC are no exception and accordingly, as detained witnesses, the Chamber has treated their testimony throughout this Judgement with appropriate caution.

227. The Defence raises specific allegations that Witnesses CNAA and CNAC testified in order to receive certain benefits in prison.

228. The evidence adduced at trial unquestionably established that Witnesses CNAA and CNAC held positions of authority in the prison system.[320] Both witnesses acknowledged holding these positions and their influence within the prison structure and over fellow inmates. The Chamber notes that Witness CNAA testified that he was *capita général* for less than one year, beginning in 2003, and that he was coordinator of the prisoners at the time of his testimony. He was also executive secretary of the prison.[321] Witness CNAC testified that Witness CNAA had been *capita général* for three years at the time of his testimony. The Chamber also notes that both Witnesses CNAA and CNAC testified that at the time of their testimony, the title "*capita général*" was no longer used and that instead the position was referred to as the "executive secretary" of the prison. Witness CNAC corroborated Witness CNAA's testimony that he occupied the position of executive secretary in the prison.[322] Witness CNAC affirmed that he was in charge of equipment in Gitarama prison.[323]

229. Defence Witnesses T71, T109 and T110 all testified that Witness CNAA earned the leadership position in prison because he testified for the Prosecution before the Tribunal.[324] The Chamber notes however, that Witness CNAA testified for the Prosecution in the *Bizimungu et al.*, and *Karemera et al.*, trials in 2005 and 2007 respectively, after he initially became *capita général* in 2003.[325] Furthermore, the Chamber notes that the testimony of the Defence witnesses in this regard was hearsay and vague in nature. The Defence presented no direct evidence that Witnesses CNAA or CNAC achieved leadership positions in prison in exchange for their testimony. Furthermore, Witness CNAA denied that he received special treatment in prison as a result of his testimony.[326] The Chamber considers that given this evidence, the Defence claim that Witnesses CNAA and CNAC received their leadership positions in exchange for their testimony to be mere speculation.

230. In this regard, the Chamber notes that Witness CNAC testified that he never saw Nzabonimana in Masango *commune* during the events.[327] The Chamber considers that this evidence displays the witness's objectivity and indicates that he was not fabricating his evidence against Nzabonimana.

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[320] T. 15 December 2009 p. 34 (ICS) (Witness CNAA); T. 12 April 2010 p. 15 (ICS) (Witness CNAC); T. 24 May 2010 pp. 30, 32-33 (ICS) (Witness T71); T. 3 June 2010 pp. 5-7 (ICS) (Witness T109); T. 12 October 2010 p. 37 (Witness T110); T. 22 March 2011 p. iii (Extract) (Batard) (Witnesses T109, T110, T71 and T136 told Batard this information).
[321] T. 15 December 2009 pp. 35-36 (ICS); T. 16 December 2009 pp. 39-40 (ICS) (Witness CNAA).
[322] T. 16 December 2009 pp. 39-40 (ICS) (Witness CNAA); T. 12 April 2010 pp. 15-16, 19 (ICS) (Witness CNAC).
[323] T. 15 December 2009 p. 34 (ICS) (Witness CNAA); T. 12 April 2010 pp. 15-16 (ICS) (Witness CNAC).
[324] T. 24 May 2010 p. 33 (ICS) (Witness T71); T. 3 June 2010 p. 6 (ICS) (Witness T109); T. 12 October 2010 pp. 38-40 (Witness T110).
[325] *See e.g.* Defence Exhibit 91 (Excerpts of Witness CNAA's *Bizimungu et al.* Testimony, 25 May 2005); Defence Exhibit 93 (Excerpts of Witness CNAA's *Karemera et al.* Testimony, 12 and 18 July 2007).
[326] T. 15 December 2009 pp. 34-36 (ICS) (Witness CNAA).
[327] T. 13 April 2010 p. 9 (ICS) (Witness CNAC).

231. The Chamber has heard extensive evidence as to the role of the *capita général* and the resultant authority of that position in prison.[328] Having considered the totality of the evidence, however, the Chamber finds that the evidence does not substantiate the claim that Witnesses CNAA and CNAC fabricated their testimony against Nzabonimana. Nevertheless, the Chamber will consider their testimony with appropriate caution based on individual factors relevant to each witness which are considered in other sections of this Judgement (3.5.6; 3.5.7; 3.5.8; 3.6.1; 3.6.2).

3.2.3.2.2 Pressure in Prisons to Testify

232. Citing Witness T24, the Defence submits that a systematic campaign of "semi-mandatory confession" and false accusation existed in Rwandan prisons. Prisoners testified against Nzabonimana out of fear of being labelled a "revisionist" by the Rwandan Government.[329]

233. Witness T24 testified that he lied to Prosecution investigators when he gave his statement of 2 October 2008, in which he implicated Nzabonimana. Witness T24 testified that he agreed to speak with Prosecution investigators after being approached by the director of Gitarama prison where he was incarcerated. According to Witness T24, even though he did not see Nzabonimana during the 1994 events, he provided evidence implicating Nzabonimana because he feared repercussions from prison authorities if he refused to testify.[330] His subsequent statement to Prosecution investigators was based on lies and hearsay. He testified that the statement was a direct result of pressure from the director of the prison, as well as being motivated by fear of being accused himself.[331]

234. Taking Witness T24 at his word that he lied to Prosecution investigators, the Chamber considers that his admission as to having provided a false statement seriously undermines his credibility as a witness.

235. Furthermore, the Chamber notes that Witness T24 confirmed that nobody forced him to give a statement to Prosecution investigators. Regarding his 2008 statement to Prosecution investigators, Witness T24 testified: "As far as the declaration – the statement is concerned, I did it of my own free will. I did not act under any duress from anyone whatsoever."[332] Witness T24 therefore provided contradictory accounts of whether he gave the statement under pressure.

236. The Chamber heard additional evidence of a Government strategy which encouraged inmates to plead guilty or confess their crimes in exchange for benefits, including a reduction in sentence.[333] Those who did not confess were discriminated against.[334] Evidence was presented

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[328] T. 12 April 2010 pp. 12-14 (ICS) (Witness CNAC); T. 24 May 2010 pp. 30-33, 71 (ICS) (Witness T71); T. 3 June 2010 pp. 4-6, 42 (ICS) (Witness T109); T. 12 October 2010 pp. 36-37 (Witness T110); T. 22 March 2011 pp. 15-16; T. 22 March 2011 p. 19 (ICS); T. 22 March 2011 pp. ii-iii (Extract) (Batard); Defence Exhibit 145 (Excerpts from *Le Château*, Carina Tertsakia), pp. 61-65, 68-70, 82-88, 90-99.
[329] Defence Closing Brief, paras. 26-35; T. 20 October 2011 pp. 65-67; T. 21 October 2011 p. 2 (Defence Closing Argument).
[330] T. 26 April 2010 pp. 29-30 (ICS) (Witness T24).
[331] T. 27 April 2010 p. 60 (ICS): T. 28 April 2010 p. 38 (ICS) (Witness T24).
[332] T. 27 April 2010 pp. 50, 61 (ICS) (Witness T24).
[333] T. 15 December 2009 pp. 33-34 (ICS); T. 16 December 2009 p. 41 (ICS) (Witness CNAA); T. 12 April 2010 pp. 27-28 (ICS) (Witness CNAC); T. 16 November 2009 pp. 6-7, 21 (ICS) (Witness CNAM); T. 24 May 2010 pp. 34,

that the Rwandan Government instituted this strategy to reduce the burden on the justice system and that some inmates fabricated confessions to qualify for release.[335]

237. Witness CNAA admitted that he encouraged inmates to plead guilty, and others also testified to the role played by Witness CNAA in this regard.[336] Witness CNAA acknowledged that cooperating with the justice system could be considered a mitigating circumstance.[337] He stated that upon his arrest in March 1997, he "decided to testify on the side of the Rwandan government [...] help[ing] the other co-detainees to follow the right path by accepting the policies of the Rwandan government."[338] Witness T109 testified that he pled guilty to a crime he did not commit in order to be released.[339] Witness T110 stated that he appeared before a *Gacaca* court and confirmed the confession even though he admitted that it was fabricated.[340]

238. The Chamber also notes that both Witnesses T24 and Mporanzi ultimately abandoned the Prosecution and testified on behalf of the Defence. By his own admission, Witness T24 suffered no adverse consequences for defecting to the Defence, despite his previous assertions regarding his fears of being branded a revisionist. Witness T71 declined to implicate former members of the Interim Government as requested by Witness CNAA and suffered no undue hardship for not cooperating.[341] Witness T31 denied that he was ever pressured to testify against Nzabonimana.[342] The Chamber considers that this evidence shows that witnesses were free to decide whether or not to implicate members of the Interim Government.

239. The Chamber recalls that in line with established jurisprudence, it treats the testimony of detained witnesses with appropriate caution and treats with appropriate caution the testimony of witnesses who may have motives or incentives to implicate the accused.[343] The Chamber treats such witnesses on a case-by-case basis throughout this Judgement. The Chamber considers that the application of this well-established standard protects the Accused against potential false allegations by detainees.

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70 (ICS) (Witness T71); T. 13 May 2010 p. 66 (ICS) (Witness T133); T. 3 June 2010 pp. 6-7 (ICS) (Witness T109); T. 12 October 2010 p. 38 (Witness T110); T. 22 March 2011 p. 19 (ICS) (Batard); Defence Exhibit 95A and B (Appeal of Witness CNAA before *Gacaca* court of Nyamabuye *secteur*); Defence Exhibit 145 (Excerpts from *Le Château*, Carina Tertsakia), pp. 399-400, 402-404, 412-418; *Amicus Curiae* Report, para. 13; Annex B: Affidavit of Witness T36 of 18 March 2011, paras. 9-11, 42, 45.

[334] T. 3 May 2010 p. 19 (ICS) (Witness T24); Defence Exhibit 145 (Excerpts from *Le Château*, Carina Tertsakia), pp. 403-404, 418.

[335] Defence Exhibit 145 (Excerpts from *Le Château*, Carina Tertsakia), pp. 396-397, 399, 402-403.

[336] T. 15 December 2009 pp. 30, 34 (ICS) (Witness CNAA); T. 3 June 2010 pp. 6-7 (ICS) (Witness T109); T. 12 October 2010 pp. 37-39 (Witness T110); T. 22 March 2011 p. 19 (ICS) (Batard); Defence Exhibit 145 (Excerpts from *Le Château*, Carina Tertsakia), pp. 399-400.

[337] T. 15 December 2009 p. 28 (ICS) (Witness CNAA).

[338] T. 15 December 2009 p. 30 (ICS) (Witness CNAA).

[339] T. 3 June 2010 p. 7 (ICS) (Witness T109).

[340] T. 13 October 2010 pp. 28, 30-32 (Witness T110). *See also* Defence Exhibit 145 (Excerpts from *Le Château*, Carina Tertsakia), p. 418.

[341] T. 24 May 2010 pp. 34, 70 (ICS) (Witness T71).

[342] T. 4 May 2010 p. 12 (ICS) (Witness T31).

[343] *Nahimana et al.*, Judgement (AC), para. 439.

3.2.4 "Activism Against Nzabonimana"

240. The Defence submits that Rwandan authorities and Prosecution witnesses obstructed Defence investigations. Defence witnesses were identified in their localities and harassed.[344]

241. The Defence also asserts that the *Gacaca* system was used to target Nzabonimana. This "judicial campaign" led no less than 12 Defence witnesses to defect. According to the Defence, the "terror" spread by the Prosecution witnesses in Nyabikenke, the judicial activism targeting Nzabonimana, the hostility towards the Defence and the general climate of fear maintained by the Rwandan system all demonstrate the credibility of Defence Witnesses Mporanzi and T24, who stated that they were coerced to testify against Nzabonimana.[345]

242. The Prosecution submits that there was no campaign to obstruct the Defence investigators in Rwanda, and that *Gacaca* sessions were not used to intimidate Defence witnesses.[346]

3.2.4.1 Evidence

Defence Witness Fernand Batard

243. Batard, an investigator for the Defence,[347] testified that in order to conduct interviews with inmates, he had access to prisons without difficulty. He encountered more difficulty interviewing non-detained witnesses. Investigators of Rwandan origin assisted Batard in interviewing these people. Witnesses did not want Batard to visit them in their homes or neighbourhoods. Batard therefore hired locations to meet witnesses and preserve their confidentiality. In 2009, Rwandans were reluctant to testify for someone accused of genocide for fear of reprisal, and did not want to meet with the Defence. Batard met Witness T22 at the witness's home. Within 15 minutes, district officers came to the home trying to ascertain who the investigators were. The witness declined to testify for the Defence as a result.[348]

244. Every witness Batard met expressed fear, and many ultimately refused to testify. Witnesses who lived outside of Rwanda were also scared. They feared that testifying could impact their immigration status in their host countries. Others feared reprisals on their family members living in Rwanda.[349]

245. Batard ran into difficulties during his investigations. In July 2008, the Defence team arrived at the Kigali airport to carry out its first field visit. They were detained and questioned by authorities at the airport for 19 hours and sent back. The authorities said they did not have a visa. Batard testified that they had requested a visa online weeks before, and had a receipt to that effect. He expected to pick up the visa at the airport, as there was no Rwandan Embassy in France at the time. Batard admitted that he had no visa at the time of his arrival in Kigali.[350]

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[344] Defence Closing Brief, paras. 36-39, 41; T. 21 October 2011 pp. 5, 20-21 (Defence Closing Argument).
[345] Defence Closing Brief, paras. 40, 42-43; T. 21 October 2011 p. 4 (Defence Closing Argument).
[346] T. 21 October 2011 p. 15 (Prosecution Closing Argument); Prosecution Closing Brief, para. 61.
[347] For additional introductory information on Batard, *see* para. 1026, *infra*.
[348] T. 21 March 2011 pp. 15-17, 28 (Batard).
[349] T. 21 March 2011 pp. 17, 28 (Batard).
[350] T. 21 March 2011 p. 20 (ICS); T. 29 March 2011 pp. 18-19 (Batard).

246. In July 2009, they returned to Rwanda to investigate the scene at the former Fina roadblock. One of the Defence investigators of Rwandan origin was recognised by someone there. They returned two or three times between July and October 2009 to investigate and did not have problems. In November 2009, when Nzabonimana's trial began, *Gacaca* courts resumed in Kiyumba and Nyabikenke *secteurs*. Batard noticed that his investigation team was being monitored and spied upon and this was confirmed by informants. One of his investigators left the Defence team because he was frightened.[351]

247. In December 2009, Batard arrived in Rwanda and stayed at the Kabgayi nunnery where he was going to interview witnesses. During breakfast, an informant showed him a document being circulated which indicated the room in which Batard was staying. Batard had sent an email 48 hours earlier to his assistant asking for this particular room. After being shown the document by his informant, Batard cancelled his appointments scheduled for the nunnery. He determined never to go back to the nunnery because "[t]hey" knew he was there. Batard also indicated that he and his team were followed and watched while in Rwanda in 2009. They began to meet witnesses in Kigali rather than Gitarama.[352]

248. In February 2010, Batard was travelling to Gitarama prison. The investigator with Batard received a phone call from Sister Consolée who said she had been visited by a policeman who said she was hosting people who were defending perpetrators of the genocide and negating the genocide. Sister Consolée was told to identify the people who Batard was going to meet. She asked Batard to leave the guest house.[353]

249. Rwandan Security Services identified witnesses met by Batard. Witness T160 told Batard that Prosecution Witness CNAX told Witness T160 that he knew he was to be a Defence witness. Witness T160 told Batard that he attended a meeting in Gitarama with many Prosecution witnesses. They were shown pictures and documents indicating a list of Defence witnesses. Witness T160 provided Batard with a list of the Prosecution witnesses.[354]

250. Immediately after the resumption of the *Gacaca* courts in 2009, 12 witnesses decided not to testify for the Defence. Two of these witnesses, including Witness T31, eventually testified. Batard testified that the witnesses defected because of the *Gacaca* courts. An informant who was a member of the RPF told Batard that the resumption of the *Gacaca* courts created fear in the population. The informant confirmed that *Gacaca* courts set out to target Nzabonimana. Witness T160 told Batard that in each session of *Gacaca*, at least one question was posed concerning the presence of Nzabonimana. Batard testified that *Gacaca* resumed in other parts of Rwanda but he did not investigate them.[355]

251. During his investigations, Batard's team contacted approximately 500 people and interviewed approximately 320 people. Batard took approximately 2000 photographs during

[351] T. 21 March 2011 pp. 20-21 (ICS); T. 29 March 2011 p. 21 (Batard).
[352] T. 21 March 2011 p. 21 (ICS) (Batard).
[353] T. 21 March 2011 p. 22 (ICS) (Batard).
[354] T. 21 March 2011 pp. 22-23 (ICS) (Batard).
[355] T. 21 March 2011 pp. 23-25 (ICS); T. 29 March 2011 p. 55 (Batard).

visits to Gitarama. Batard did not encounter problems taking the photographs and collected thousands of pages of documents, including *Gacaca* records.[356]

252. Batard testified that Defence witnesses would be reimbursed for their transportation costs. None of the witnesses who came from Rwanda to testify on behalf of Nzabonimana in Arusha had any problems.[357]

3.2.4.2 Deliberations

253. The Defence submits that its investigations were hindered by the Rwandan authorities and the general hostile environment towards those who decided to testify for the Defence.

254. The Chamber notes that Defence Investigator Batard testified that he interviewed approximately 300 people during his investigations and contacted approximately 500 people. He was able to take 2000 photographs of sites in Rwanda, which he culled down to an album of 500 photographs. Furthermore, he was able to gather approximately 600 *Gacaca* documents and shoot videos without any hindrance.[358] The Chamber therefore considers that he was free to investigate in Rwanda.

255. The Chamber considers that throughout the trial, Nzabonimana's Defence team defended the rights of the Accused, utilising the fruits of investigator Batard's labour. The Defence called 40 witnesses and vigorously cross-examined Prosecution witnesses, using documentary evidence, including photographic evidence, maps and *Gacaca* records. Furthermore, the submission that the Defence team was hindered by the start of the *Gacaca* procedure when Nzabonimana's trial began in November 2009 amounts to mere speculation. In this regard, the Chamber notes that the *Gacaca* procedure was ongoing throughout Rwanda and had been proceeding for some time prior to the start of this trial. The Chamber considers that although the Defence team may have encountered some logistical problems, it was able to adequately defend the interests of Nzabonimana.

3.2.5 Conclusion

256. Taking into account the Chamber's assessment of the credibility of the relevant Defence and Prosecution witnesses and the evidence as a whole, the Chamber finds that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the Prosecution witnesses' testimony. The Chamber again recalls that the Defence does not bear a burden to prove fabrication of evidence and that it need only raise a reasonable doubt in the Prosecution case.

257. Having considered the preliminary evidentiary matters of Nzabonimana's influence and the Defence claim of evidence fabrication, the Chamber will now address in chronological order the specific factual allegations brought by the Prosecution against Nzabonimana.

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[356] T. 29 March 2011 pp. 23-25, 29 (Batard).
[357] T. 29 March 2011 pp. 41-42, 67 (Batard).
[358] T. 29 March 2011 pp. 23-26 (Batard).

3.3 Pre-April 1994 Events

3.3.1 Training of *Interahamwe*

3.3.1.1 Introduction

258. Paragraph 51 of the Indictment alleges that as a component and in furtherance of the objective to kill the Tutsis, in 1991, the MRND started recruiting youths. These youths were trained militarily and later called *Interahamwe.* Callixte Nzabonimana as Minister of Youth and Chairman of the MRND in Gitarama *préfecture,* actively participated in the recruitment, training, arming and anti-Tutsi indoctrination in Gitarama *préfecture* and the whole country of the *Interahamwe,* other Hutu militias and selected members of the civilian Hutu population, before and during the genocide. Further, Nzabonimana ordered these persons to commit various crimes. These youths committed the massacres in Rwanda during the period of April to July 1994.[359]

259. The Prosecution asserts that Nzabonimana attended a meeting of approximately 60, mostly Hutu, individuals at Ndiza. Straton Sibomana told the attendees that they were there to help Nzabonimana with the management of cooperatives and the *Interahamwe* movement. Nzabonimana promised to provide the youths with uniforms, hats, MRND flags and anything else they needed. Members of the MDR joined the MRND and some received military training and became *Interahamwe*. The Prosecution relies upon Witnesses CNAE and CNAL. The Prosecution also asserts that *Interahamwe* were present in Gitarama *préfecture*, citing Prosecution Witnesses CNAK, CNBT, CNAC and CNAA and Defence Witnesses T28, T71 and Straton Sibomana.[360]

260. In addition to challenging the sufficiency of the Indictment, the Defence denies that Nzabonimana recruited youths to join the *Interahamwe* or led the *Interahamwe* in Gitarama *préfecture*. The Defence submits that the Prosecution evidence does not support the present allegation regarding the meeting at Ndiza. The Defence also asserts that no *Interahamwe* were armed, trained or incited in Gitarama *préfecture* before the genocide, and that no *Interahamwe* existed in the *préfecture*.[361]

3.3.1.2 Notice

261. The wording of Paragraph 51 is general and there is no reference to any specific event identified by a date, place or named victims. The Chamber notes that in its Closing Argument, the Prosecution submitted that it was introducing pre-1994 evidence pursuant to Paragraph 51 of the Indictment only to show Nzabonimana's intent. The Prosecution indicated that the other paragraphs of the Indictment were to be "mirrored through the lens of [P]aragraph 51."[362]

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[359] Para. 51 of the Indictment.
[360] Prosecution Closing Brief, paras. 303-310. The Prosecution also indicated in its Closing Brief that Witnesses CNAF and CNAP testified in support of Paragraph 51. However, the Prosecution did not make any specific submissions with regard to their evidence, either in their Closing Brief or their Closing Argument.
[361] Defence Closing Brief, paras. 4-5, 550-554, 577.
[362] T. 20 October 2011 p. 11 (Prosecution Closing Argument). The Chamber notes that the Prosecution conceded that Paragraph 51 is "a bit more general" than other paragraphs challenged by the Defence. *See* T. 20 October 2011 p. 9 (Prosecution Closing Argument).

262. The last two sentences of Paragraph 51 point to events committed during the temporal jurisdiction of the Tribunal. This clause is also general in nature. It cannot be interpreted in a way as to include allegations other than those specifically pled elsewhere in the Indictment.

263. The Indictment contains no express reference to the Ndiza meeting relied upon by the Prosecution to prove Paragraph 51 of the Indictment, where Nzabonimana allegedly recruited youths into the *Interahamwe*. Recalling the principles of notice set out in the Preliminary Issues section of this Judgement (2.1.3), the Chamber finds the Indictment materially deficient in this regard. The Chamber will proceed to determine whether this defect was cured through the provision of timely, clear and consistent information to the Defence.

264. In its Pre-Trial Brief, the Prosecution listed that Witnesses CNAC and CNAL would testify to Paragraph 51 of the Indictment. The summary of Witness CNAC's anticipated testimony attached to the Pre-Trial Brief stated that before the genocide, Nzabonimana used his position as Minister of Youth to recruit militants into the MRND by creating and financing cooperatives. The summary further indicated that Nzabonimana began recruiting *Interahamwe* among MRND militants and that part of the *Interahamwe* was militarily trained.[363] Witness CNAC's 2008 statement, disclosed to the Defence on 12 February 2009, mirrored the information contained in the summary as to the recruitment and training of *Interahamwe* by Nzabonimana.

265. The summary of Witness CNAL's testimony attached to the Pre-Trial Brief indicated that Witness CNAL would testify that Nzabonimana recruited youths to join the MRND. Witness CNAL attended a meeting in Kigina *secteur*, Nyabikenke *commune* where Nzabonimana promised sewing machines, woodworking tools and other assistance to youths who joined the MRND. Nzabonimana gave the youths *Interahamwe* uniforms, 23,000 Rwandan Francs and MRND flags. Some of the MDR youths at the meeting joined the MRND and received military training in Ndiza. Some of those who received training became killers during the genocide.[364]

266. The Chamber notes that the summary did not provide a date for the alleged meeting in Kigina *secteur*. In his 1998 statement, disclosed to the Defence on 12 February 2009, Witness CNAL indicated that he had known Callixte Nzabonimana since 1993, and that the meeting occurred "one day."[365] In his 2008 statement, also disclosed on 12 February 2009, the witness stated that the meeting occurred in 1992.[366] The statements therefore gave contradictory information as to when the Kigina meeting occurred.

267. The Chamber notes that during trial, Witness CNAE also testified about the Kigina meeting. However, in its Pre-Trial Brief, the Prosecution did not list Witness CNAE as a witness to this allegation.[367]

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[363] Prosecution Pre-Trial Brief - Annex A, Witness CNAC.
[364] Prosecution Pre-Trial Brief - Annex A, Witness CNAL.
[365] Defence Exhibit 77 (Statement of Witness CNAL, 8 October 1998).
[366] Defence Exhibit 78 (Statement of Witness CNAL, 12 November 2008).
[367] Prosecution Pre-Trial Brief - Annex A, Witness CNAE (listing Witness CNAE in support of Paragraph 32 of the Indictment).

268. The Chamber further notes that during its opening statement, the Prosecution only made general allegations regarding the training and recruiting of *Interahamwe* and militias, and did not mention any pre-1994 events.[368]

269. Having considered the foregoing, the Chamber concludes that the Prosecution did not provide clear or consistent notice to the Defence as to when the alleged meeting at Kigina occurred. Accordingly, the Chamber will not consider this meeting as a basis for conviction against Nzabonimana. In any case, the Chamber notes that the evidence was insufficient to prove beyond a reasonable doubt that any criminal conduct occurred at the Kigina meeting.

3.3.2 Meeting at Nzabonimana's House

3.3.2.1 Introduction

270. Paragraph 33 of the Indictment alleges that in March 1994, Nzabonimana held a meeting for dancers from Kavumu and Mahembe *secteurs*, in Nyabikenke *commune* at his residence in Kavumu *secteur*. Nzabonimana told them to kill Tutsis, saying that the *Inkotanyi* were the Tutsis who attacked Rwanda and for the *Inkotanyi* to fail, the Tutsis should be killed.[369]

271. The Prosecution submits that during the meeting at his residence, Nzabonimana told the fifteen people present that they should join the *Interahamwe* to fight the *Inkotanyi* who had attacked Rwanda. The Prosecution also asserts that Nzabonimana told the meeting that the *Inyenzi* within the country should not be allowed to join the *Inyenzi* outside of the country and that they therefore had to be killed. The Prosecution relies upon Witness CNAX.[370]

272. The Defence claims that Witness CNAX fabricated evidence (3.2.2). The Defence also asserts that the Prosecution evidence in relation to this allegation was inconsistent and was not credible, and submits that the meeting never took place. Lastly, the Defence submits that numerous witnesses never heard Nzabonimana utter anti-Tutsi remarks. The Defence relies upon Witnesses T33, T24 and T31.[371]

3.3.2.2 Evidence

Prosecution Witness CNAX

273. Witness CNAX was a Tutsi builder who lived in Nyabikenke *commune* in 1994.[372] The witness was a youth leader at the *secteur* level. The witness also worked in a public revenue

[368] T. 9 November 2009 p. 13 (Prosecution Opening Statement) ("[Nzabonimana] exercised *de jure* and *de facto* authority and as such wielded a substantial power and influence over [the] local population in Gitarama *préfecture* and all over Rwanda generally [...]. He had power over civil defence milita including the notorious *Interahamwe* militia. He had the power to order such groups and persons to commit or refrain from committing unlawful acts. And he could discipline them or rebuke them for unlawful acts.").
[369] Para. 33 of the Indictment.
[370] Prosecution Closing Brief, paras. 192-198.
[371] Defence Closing Brief, paras. 90-98.
[372] Prosecution Exhibit 7 (Protected Information Sheet).

position from 2001 to 2005. In 2006, the witness was imprisoned for embezzlement of public funds, and was released in October 2007, after serving 22 months in prison.[373]

274. Since 1988, Witness CNAX was a member of a Mahembe *secteur* traditional dance group. Following a competition, he was asked to join the *commune*-level dance group. The witness knew some members of the Mahembe *secteur* dance group, but only knew the main performers of groups from other *secteurs*.[374]

275. Witness CNAX knew Nzabonimana before 1994 as the Minister of Youth. The witness was a member of the MRND party and would meet Nzabonimana at rallies. There were many Tutsi members of the MRND before the death of President Habyarimana. Witness CNAX met Nzabonimana at a rally in 1991. The witness was a member of a dance group which was part of the delegation that welcomed Nzabonimana to the meeting. The group danced, after which Nzabonimana took the floor. The witness testified that he owed Nzabonimana respect because Nzabonimana was an important and influential personality, and it was their duty to respect him and comply with his orders.[375]

276. Witness CNAX next saw Nzabonimana at a meeting in March 1994 at Nzabonimana's home in Kavumu *secteur*. The witness was invited as a member of the dance group and in his capacity as a *secteur* youth leader. The leader of the Mahembe dance group invited him to the meeting, and told him to go to Gasagara where he would meet others with whom he would go to the meeting. Witness CNAX met those people, and recognised a man named Inkayosa.[376]

277. Witness CNAX testified that this was the first time he visited Nzabonimana's home. A total of fifteen people were selected to attend the meeting. The witness acknowledged that the March 1994 meeting brought together dance groups from Kavumu and Mahembe *secteurs*. He knew this because at the beginning of the meeting, the person chairing the meeting referred to the audience as "[y]ou, the dancers from Kavumu and Mahembe." The witness also testified that he usually met these people whenever various groups met in the *secteur*. Of the fifteen people attending the meeting, Witness CNAX recognised only Inkayosa, who was a member of the Kavumu dance group. He explained that he did not know the members of other dance groups. The witness never saw Inkayosa again after the 1994 events.[377]

278. Witness CNAX testified that at the meeting, Nzabonimana sensitised the attendees and asked them to join hands with *Interahamwe* in order to fight the *Inkotanyi*, who had attacked the country and sought to forcibly take leadership of the country. Nzabonimana further stated that the *Inyenzi* who were within the country should not be allowed to link up with the *Inyenzi Inkotanyi* who were outside the country. He instructed the attendees to kill the *Inyenzi Inkotanyi* who were within the country. The witness later ascertained from his parents that the term *Inyenzi* referred to Tutsis and other persons who were in the opposition who did not agree with President Habyarimana. The witness indicated that after the meeting, he did not talk with others about

[373] T. 24 November 2009 pp. 6, 12, 38-39 (ICS) (Witness CNAX).
[374] T. 24 November 2009 pp. 4-5 (ICS) (Witness CNAX).
[375] T. 23 November 2009 pp. 53-57; T. 23 November 2009 p. 68 (ICS); T. 24 November 2009 p. 41 (ICS) (Witness CNAX).
[376] T. 23 November 2009 p. 55; T. 24 November 2009 p. 6 (ICS) (Witness CNAX).
[377] T. 23 November 2009 p. 56; T. 24 November 2009 pp. 6-7 (ICS) (Witness CNAX).

what Nzabonimana said. He first talked about the meeting when he met Prosecution investigators in 2008.[378]

Defence Witness T33

279. Witness T33 worked in a close capacity with Nzabonimana in 1994. As part of his employment, the witness had knowledge of Nzabonimana's home but the witness would not be at the home in the evenings. Witness T33 lived close to Nzabonimana's homestead.[379]

280. Defence Witness T33 testified that from the end of 1993 until 6 April 1994, there were no receptions held at Nzabonimana's house. Witness T33 did not see any meeting at Nzabonimana's house in March 1994, and testified that he did not believe meetings were held at the house at night during that month.[380]

Defence Witness T31

281. Witness T31, a local government official who lived in Nyabikenke *commune* in 1994, was a member of the MRND party. In his position, he oversaw what occurred in his area. His subordinates sent him reports which he forwarded to his superiors. The witness was imprisoned at the time of his testimony. The witness was convicted by a *Gacaca* court in Kavumu *secteur* because he was present and did nothing at the time of a kidnapping. A Kiyumba *Gacaca* court summoned the witness in November 2009 in connection with accusations of looting. The witness was awaiting a judgement at the time of his testimony. A Gahogo *Gacaca* court also summoned the witness in November 2009 on accusations of attacking the Nyabikenke *commune* office and participating in looting and killings. The court convicted the witness and sentenced him to a term of life imprisonment. Witness T31 filed for a review of the proceedings, which was pending at the time of his testimony.[381]

282. Witness T31 testified that prior to the genocide, there were small dance groups which were later stopped because the dancers were preoccupied with other activities. The *commune* ballet group was formed and was headed by a man named Abizeye. The ballet group disbanded in 1992 after the political uproars began and they never performed again.[382]

283. The witness denied knowing that a meeting of the ballet dancers of Kavumu and Mahembe *secteurs* was held in the house of Nzabonimana in Kavumu, in March 1994. The witness stated that he would have been informed if such a meeting took place. Witness T31 also denied being told or being aware that such a meeting took place in order to organise the genocide

[378] T. 23 November 2009 pp. 55-56; T. 24 November 2009 pp. 10-11 (ICS) (Witness CNAX).
[379] Defence Exhibit 10 (Protected Information Sheet); T. 22 April 2010 pp. 58, 67-68 (ICS); T. 26 April 2010 p. 6 (ICS) (Witness T33).
[380] Defence Exhibit 10 (Protected Information Sheet); T. 22 April 2010 pp. 58-59, 67-68 (ICS); T. 26 April 2010 p. 6 (ICS) (Witness T33).
[381] Defence Exhibit 12 (Protected Information Sheet); T. 3 May 2010 pp. 42, 50 (ICS); T. 4 May 2010 pp. 25, 27-28; T. 4 May 2010 pp. 6-8 (ICS) (Witness T31).
[382] T. 3 May 2010 p. 51 (ICS) (Witness T31).

in the *commune*. The witness last saw Nzabonimana at a party at Nzabonimana's home, sometime in 1993.[383]

Defence Witness T24

284. Witness T24, a local government official in Nyabikenke *commune* and a member of the MDR party in April 1994, testified that Nzabonimana was President of the MRND in Gitarama *préfecture* and a Government Minister in 1994.[384] The witness described Nzabonimana as an important personality in Gitarama. Nzabonimana supported development activities for the benefit of the people in his native *commune*. At the time of his testimony, Witness T24 was serving a term of life imprisonment in Mpanga prison in Gitarama for his role in the events of 1994. The witness testified that it was difficult for him to give specific references to timelines and dates during his testimony.[385]

285. Witness T24 testified that by virtue of his position, he received reports of what was taking place in his *commune*. The witness denied that he received information in March 1994 about meetings being organised to prepare for the genocide within his *commune*. The witness also denied being aware of a March 1994 meeting organised with dancers from Mahembe and Kavumu *secteurs* at Nzabonimana's residence.[386]

3.3.2.3 Deliberations

286. The Prosecution relies exclusively upon the testimony of Witness CNAX in support of this allegation. The Chamber notes that by his own admission, Witness CNAX served 22 months in prison for embezzlement of public funds, a crime unrelated to the genocide. The Chamber observes that a criminal conviction for an incident unrelated to the facts of the present case does not *per se* indicate that Witness CNAX lacks credibility. However, the Chamber may take into account this conviction in determining whether the witness is credible.[387]

287. The Chamber recalls that it has considered the Defence submission that Witness CNAX fabricated his evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witness CNAX (3.2.5).

288. Witness CNAX provided testimony that he, along with fourteen other dance group members, attended a meeting at Nzabonimana's house in March 1994. Witness CNAX recounted that at this meeting, Nzabonimana asked the attendees to join hands with *Interahamwe* in order to fight the *Inkotanyi* who had attacked the country and sought to forcibly take leadership of the country. Nzabonimana further stated that the *Inyenzi* within the country should not be allowed to link up with the *Inyenzi Inkotanyi* outside the country. He instructed the attendees to kill the *Inyenzi Inkotanyi* inside the country. The witness later ascertained from his parents that the term

[383] T. 3 May 2010 pp. 51-52 (ICS); T. 4 May 2010 p. 55 (ICS) (Witness T31).
[384] Defence Exhibit 11 (Protected Information Sheet); T. 26 April 2010 pp. 32-33 (ICS); T. 27 April 2010 p. 24 (Witness T24).
[385] T. 26 April 2010 pp. 48-49 (ICS); T. 27 April 2010 pp. 24-25; T. 27 April 2010 pp. 8, 15-16, 18-19 (ICS); T. 3 May 2010 pp. 22-23 (ICS) (Witness T24); Defence Exhibit 11 (Protected Information Sheet).
[386] T. 26 April 2010 pp. 35-36 (ICS) (Witness T24).
[387] *Kamuhanda*, Judgement (AC), para. 142.

Inyenzi referred to Tutsis and other persons who were in the opposition and did not agree with President Habyarimana.[388] The Chamber notes that Witness CNAX largely provided an internally consistent account of the March 1994 meeting.

289. The Chamber notes that the witness was only able to provide the name of one other person who attended the meeting, a fact which the Defence asserts undermines the witness's credibility.[389] The Chamber notes, however, that the meeting brought together dance groups from Kavumu and Mahembe *secteurs*. Witness CNAX testified that he knew some of the members of the Mahembe group and that he did not know the members of the groups from other *secteurs*, aside from the main performers.[390] Given this explanation, the Chamber does not find that the witness's credibility is undermined by his inability to name additional attendees of the meeting.

290. The Chamber notes, however, that Witness CNAX, a Tutsi, acknowledged that he was publicly known as a Tutsi in 1994. Further, he stated that when he went to Nzabonimana's house in March 1994, he had "no fear" that he was going to the home of someone espousing anti-Tutsi ideas because he and Nzabonimana were members of the MRND party, which included many Tutsi members at that time. The witness further stated that it was not until after the death of the President that Tutsis were threatened in the party.[391] The Prosecution evidence fails to provide a sufficient explanation as to why Nzabonimana would invite a Tutsi to a meeting where he called upon the attendees to kill Tutsis, at a time when Tutsis were not yet threatened.

291. In contrast to the Prosecution evidence, Defence witnesses testified that the meeting at issue never occurred. Witness T33, who worked at Nzabonimana's home in 1994, testified that no reception was held at Nzabonimana's house in March 1994. Witness T33 did not see any meeting at Nzabonimana's house in March 1994, and testified that he did not believe meetings were held at the house at night in March 1994. However, the witness also testified that he was not present at Nzabonimana's house in the evenings.[392] Similarly, Witnesses T33 and T24 both testified that because of their positions as government officials, they would have been made aware if a meeting was held to prepare the genocide at Nzabonimana's house in March 1994.[393] The Chamber finds the testimony of these witnesses to be of limited probative value, given that they could not provide first-hand testimony as to whether a meeting occurred in March 1994.

292. The Chamber observes that the Prosecution relied solely upon the testimony of Witness CNAX in support of this allegation. While the Chamber may find allegations proven beyond a reasonable doubt on the basis of a single witness's testimony (2.7.4), given the aspects of the Prosecution evidence outlined above and the lack of corroborating evidence, the Chamber does not find Witness CNAX's testimony sufficient to support this allegation. Having considered the totality of the evidence, the Chamber concludes that the Prosecution has failed to prove beyond a reasonable doubt the allegation contained in Paragraph 33 of the Indictment.

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[388] T. 23 November 2009 pp. 55-56 (Witness CNAX).
[389] Defence Closing Brief, para. 92.
[390] T. 24 November 2009 pp. 5, 7 (ICS) (Witness CNAX).
[391] T. 24 November 2009 pp. 8, 40-41 (ICS) (Witness CNAX).
[392] T. 22 April 2010 pp. 58-59 (ICS); T. 26 April 2010 p. 6 (ICS) (Witness T33).
[393] T. 3 May 2010 pp. 51-52 (Witness T33); T. 26 April 2010 pp. 35-36 (ICS) (Witness T24).

3.4 Events from 6 to 11 April 1994

3.4.1 Alibi

3.4.1.1 Introduction

293. As set out in the Indictment, the Prosecution alleges that between 8 and 12 April 1994, Nzabonimana participated in meetings and distributed weapons in Nyabikenke *commune*, Gitarama *préfecture*.[394]

294. The Defence submits that Nzabonimana could not have committed the crimes alleged in Paragraphs 16, 17, 35, 37 and 52 of the Indictment because he was in Kigali from 6 to 12 April 1994. The Defence claims that on the evening of 6 April 1994, Nzabonimana was at his house in Kigali and then accompanied his family to the Presidential Guard camp, also located in Kigali. On 7 and 8 April 1994, Nzabonimana was at the French Embassy in Kigali (the "Embassy") and stayed there overnight with his wife. On 9 April 1994, Nzabonimana was at the Embassy in the morning and then attended a swearing-in ceremony for Ministers of the Interim Government at the Diplomat Hotel in Kigali. He returned to the Embassy that afternoon and spent the night there. On 10 April 1994, Nzabonimana went to the Diplomat Hotel in the morning, and returned to the Embassy later that day, where he spent the night. On 11 April 1994, Nzabonimana was at the Embassy in the morning and left for a meeting. He later returned, but spent the night at the Diplomat Hotel. Early in the morning on 12 April 1994, Nzabonimana went to the Embassy. The Defence asserts that the Prosecution admits that Nzabonimana was at the Embassy from 8 April 1994 and states that the Prosecution rebuttal witness was not credible. The Defence relies upon Defence Witnesses T5, T9, T11, T400, Léoncie Bongwa and Mechtilde Mugiraneza, as well as Defence Exhibits 15 and 57.[395]

295. The Prosecution submits that the alibi evidence was not credible and did not show that Nzabonimana was not actually present during the crimes alleged. The Prosecution asserts that people staying at the Embassy could leave at will. Furthermore, the Prosecution submits that the evidence established that Nzabonimana left the Embassy on 8, 9 and 10 April 1994. In support of its submissions, the Prosecution relies upon Prosecution Witnesses CNR1 and the evidence adduced in support of the relevant Indictment paragraphs.[396]

296. The Chamber has considered the alibi evidence in conjunction with the Prosecution evidence during its deliberations in order to make findings with respect to Paragraphs 16, 17, 35, 37 and 52 of the Indictment.

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[394] Paras. 16, 17, 35, 37 and 52 of the Indictment.
[395] Defence Closing Brief, paras. 54, 59-82; T. 20 October 2011 p. 47; T. 21 October 2011 pp. 6-7 (Defence Closing Argument); Defence Additional Brief, paras. 17-24.
[396] Prosecution Closing Brief, paras. 17, 19-43; T. 20 October 2011 pp. 41-43 (Prosecution Closing Argument).

3.4.1.2 Evidence

Defence Witness T11

297. Witness T11 worked for the Ministry of Youth in 1994, and in that capacity worked closely with Nzabonimana and his family.[397] The witness came from the same *commune* as Nzabonimana's wife, Béata, where their families were neighbours. Béata helped recruit Witness T11 and her brother into the Ministry of Youth. Witness T11 testified that the Nzabonimana family was very good to her, but she believed that she was not indebted to them because although they offered her a job, she was paid for her work.[398]

298. On 6 April 1994, the witness was in Nzabonimana's house, with Nzabonimana's wife, Béata, André Hakizimana, Witness T9, Emmanuel Uwamungu, a woman named Stéphanie and three of Béata's younger brothers, named Jean-Paul, Eric and Safari. Jean-Paul was between 9 and 11 years old, Eric was in primary school and Safari was in secondary school. Nzabonimana was not at home. The witness did not recall if a girl named Charlotte was also present. Additionally, she did not see Nzabonimana's driver. She did not know if a youth named Mahoro was in the house.[399]

299. On 6 April 1994, Nzabonimana's house was guarded by two men. These two men were often with Nzabonimana as part of their jobs. One of the men was named Habyarimana.[400]

300. That evening, while the witness was sitting with Béata, she heard a loud crash. Béata informed the witness that the President's plane had been shot down. Béata told those at the house to be ready to leave.[401]

301. Twenty to thirty minutes after the attack, Nzabonimana arrived and told everyone present to board a vehicle. They left for the Presidential Guard camp between 9.30 and 10.00 p.m. The witness said she did not know where they were going until they arrived there. Everyone who was at Nzabonimana's house went to the camp.[402]

302. They left in two vehicles. The witness was in a yellow pickup vehicle driven by Hakizimana. The witness could not remember if she and Béata were in the same vehicle, but recalled that she also shared a vehicle with Emmanuel Uwamungu. Nzabonimana rode in his official vehicle, along with the *gendarmes* who were guarding the house.[403]

303. When they arrived at the camp, they entered a house which had a large room. The witness entered with the three children. Witness T11 saw Prosper Mugiraneza with his wife, Mechtilde,

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[397] Defence Exhibit 142 (Protected Information Sheet); T. 3 May 2011 p. 18 (ICS) (Witness T11).
[398] T. 3 May 2011 pp. 38-39 (ICS) (Witness T11).
[399] T. 3 May 2011 pp. 18-19, 36, 38, 40, 42 (ICS) (Witness T11).
[400] T. 3 May 2011 pp. 33, 44-45 (ICS) (Witness T11).
[401] T. 3 May 2011 pp. 19, 34-35 (ICS) (Witness T11).
[402] T. 3 May 2011 pp. 19-20 (ICS) (Witness T11).
[403] T. 3 May 2011 pp. 4, 20-21, 43-44 (ICS) (Witness T11).

and their children. The witness spent the night of 6 April 1994 at the Presidential Guard camp. Nzabonimana also spent the night at the camp.[404]

304. The witness testified that on 7 April 1994, she saw Béata at 6.00 a.m., and saw Nzabonimana at 7.00 a.m. In the morning, the witness went to fetch water with Witness T9 and Emmanuel. She described the camp as very large. Sporadic gunfire began around noon and as a result she did not pay attention to where the children were. At 1.00 or 1.30 p.m., the gunfire caused the witness and some of the others to take cover in a small wood nearby. Mechtilde and Witness T9 were also in the woods but she did not see Nzabonimana or any other Minister. The witness said that she would find it "surprising" to learn that some people were given rooms at the camp, but admitted that it was possible that Béata was given a room while she was sleeping.[405]

305. On the afternoon of 7 April 1994, the witness and "all the people who were with [her] at the time when [they] left Callixte Nzabonimana's residence" went to the French Embassy in a minibus. People boarded the minibus at different times, between 3.00 and 4.00 p.m., because they were avoiding gunfire. A single minibus with an 18 person capacity took people to the Embassy. She saw Béata in the minibus, along with Mechtilde Mugiraneza and her children. They met Nzabonimana inside the Embassy when they arrived, between 3.30 and 5.00 p.m. The bus did not stop at the Ministry of Defence headquarters on the way.[406]

306. When they arrived at the Embassy, vehicles were parked outside the fence and the passengers entered on foot through the back courtyard. The witness testified that persons entering the Embassy "were maybe registered," but that because Nzabonimana and Béata were her superiors, they would have registered her name on her behalf. She did not personally register. The witness saw Prosper Mugiraneza, but did not see Charlotte at the Embassy.[407]

307. The witness spent the night of 7 April 1994 in a corridor within the Embassy along with Nzabonimana, his wife and Witness T9. The witness could not remember if Hakizimana was also there. Nzabonimana and his wife were not in a separate room. Prosper Mugiraneza and his family slept nearby in the same corridor.[408]

308. The witness remained with the others at the Embassy on the morning of 8 April 1994. The witness left the Embassy at some point for roughly 40 and 60 minutes and went to Prosper Mugiraneza's house to look for mattresses. She left on another occasion but could not remember the date. She did not leave the Embassy again on 8 April 1994, and spent the night there.[409]

309. The witness saw Nzabonimana at the Embassy on 8 April 1994. She testified that Nzabonimana spent the entire day there and she did not see him leave the premises. The witness and Nzabonimana spent the night in the same room.[410]

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[404] T. 3 May 2011 pp. 12, 21-22 (ICS); T. 4 May 2011 pp. 4, 6, 9-11 (ICS) (Witness T11).
[405] T. 4 May 2011 pp. 3, 6, 11-18 (ICS) (Witness T11).
[406] T. 3 May 2011 pp. 24-25 (ICS); T. 4 May 2011 pp. 3, 13-14, 18, 32 (ICS) (Witness T11).
[407] T. 3 May 2011 pp. 25, 41 (ICS) (Witness T11).
[408] T. 3 May 2011 p. 25 (ICS); T. 4 May 2011 p. 21 (ICS) (Witness T11).
[409] T. 3 May 2011 p. 26 (ICS) (Witness T11).
[410] T. 3 May 2011 p. 26 (ICS); T. 4 May 2011 p. 21 (ICS) (Witness T11).

310. On 9 April 1994, the witness saw Nzabonimana in the morning, and recalled that he left the Embassy to take an oath of office. The witness saw him again at the Embassy in the afternoon, between 2.00 p.m. and dusk, but could not recall the precise time. That night, she again slept in the same room, with Witness T9, Nzabonimana, Béata and Hakizimana.[411]

311. On the morning of 10 April 1994, the witness saw Nzabonimana at the Embassy. Nzabonimana left, and said he was going to a meeting at the Diplomat Hotel. The witness saw Nzabonimana again between 4.00 and 5.00 p.m. Nzabonimana was having a conversation with his wife, discussing how to evacuate their family members to their native village. The family members were eventually evacuated, but Nzabonimana did not go with them. Jean-Paul, Eric, Safari and Emmanuel Uwamungu left the Embassy to go to Mushubati, Béata's native *commune*. That night, the witness slept in the same place, along with Nzabonimana, Béata, Witness T9 and Hakizimana.[412]

312. On the morning of 11 April 1994, Witness T11 saw Nzabonimana at the Embassy. At some point, he and his wife left to attend a meeting. The witness presumed the meeting was held at the Diplomat Hotel. Nzabonimana and his wife came back to the Embassy together that afternoon. After returning, Nzabonimana's wife remained on the Embassy premises. Nzabonimana left again in the evening and did not return to the Embassy.[413]

313. The witness slept at the Embassy that night. At around 4.00 a.m., she, Béata, Witness T9 and Hakizimana were evacuated to Bujumbura. The witness did not see Nzabonimana in the early hours of 12 April 1994. They arrived in Bujumbura at between 9.00 and 10.00 a.m., and on 14 April 1994 they flew to Bukavu. The witness acknowledged that the Nzabonimana family did her a favour in allowing her to be evacuated from the Embassy with the family on 12 April 1994.[414]

Defence Witness T9

314. Witness T9, a Tutsi, was a student in 1994 and knew Nzabonimana because she was related to his wife.[415] She knew Nzabonimana and his wife since 1989. Witness T9 testified that she loved and respected Nzabonimana's wife as a mother figure and considered Nzabonimana as an uncle or father figure. She always felt secure in Nzabonimana's presence and knew he was a good man. She knew nothing of his political activities, but knew he was in charge of the Ministry of Youth. She never heard him make derogatory statements against Tutsis. During the genocide, the home of the witness's parents was attacked and they sought refuge in Kabgayi. She had friends who died during the genocide and others who sought refuge in Kabgayi.[416]

315. The witness testified that she arrived at Nzabonimana's house in Kimihurura, Kigali on 5 April 1994. On 6 April 1994, she remained at Nzabonimana's home. That evening, they heard on the radio that the President's plane had been shot down. Those present at the house included:

[411] T. 3 May 2011 p. 27 (ICS) (Witness T11).
[412] T. 3 May 2011 pp. 27-28 (ICS); T. 4 May 2011 p. 22 (ICS) (Witness T11).
[413] T. 3 May 2011 pp. 28-29 (ICS) (Witness T11).
[414] T. 3 May 2011 p. 29 (ICS); T. 4 May 2011 pp. 22-23 (ICS) (Witness T11).
[415] Defence Exhibit 7 (Protected Information Sheet); T. 19 April 2010 p. 28 (ICS); T. 20 April 2010 pp. 41, 61 (ICS) (Witness T9).
[416] T. 20 April 2010 pp. 41-43, 62 (ICS) (Witness T9).

Nzabonimana's wife, Béata Mukagatare; a woman named Charlotte; a school-aged girl named Mahoro; Béata's brother, André Hakizimana; Witness T11; and the gardener, Emmanuel Uwamungu.[417]

316. In the evening, Nzabonimana arrived home and said that they had to go to the Presidential Guard camp for security reasons. They arrived at the camp at night and spent the night there. They remained there the next day, on 7 April 1994.[418]

317. On 7 April 1994, Witness T9, Béata, Witness T11 and Hakizimana left the Presidential Guard camp and went to the Embassy, because people were shooting at the camp. No children were part of the group who went to the Embassy. They left the camp in a minibus and arrived at the Embassy towards the evening of 7 April 1994, where they spent the night. The witness saw Nzabonimana that evening and he slept at the Embassy that night. The witness testified that she slept in the corridor that night, while Nzabonimana and his wife slept in an office in the same house. Nzabonimana and his wife did not sleep in a corridor while at the Embassy. Hakizimana also spent nights in the corridor while at the Embassy.[419]

318. Witness T9 saw Nzabonimana "before noon" on 8 April 1994. In the afternoon, she saw Nzabonimana and other men enter an Embassy room. Béata told the witness that a ministerial meeting was going to take place. Witness T9 next saw Nzabonimana at night on 8 April 1994, as they were going to sleep.[420]

319. Witness T9 saw Nzabonimana on the morning of 9 April 1994 before he left the Embassy at 9.00 a.m. Béata told the witness that he was going to a swearing-in ceremony for the Ministers. Witness T9 saw Nzabonimana again that same day at 4.00 p.m. To her knowledge, Nzabonimana did not leave the Embassy after 4.00 p.m. She saw him again that evening. Witness T9 spent the night of 9 April 1994 at the Embassy, and stated that Nzabonimana also spent the night there.[421]

320. Witness T9 next saw Nzabonimana speaking to his wife at approximately 9.00 a.m. on 10 April 1994. Nzabonimana told Béata that he was going to attend a "service meeting" at the Diplomat Hotel. The witness did not know if Nzabonimana attended the meeting, but she saw him leave the Embassy, and did not see him again until approximately 4.00 p.m. The witness, who spent the night of 10 April 1994 at the Embassy, testified that Nzabonimana did not leave the Embassy again that evening, and spent the night there.[422]

321. On the morning of 11 April 1994, Nzabonimana left the Embassy. Nzabonimana did not tell the witness where he was going and the witness assumed he was going to work as usual and

[417] T. 19 April 2010 pp. 28-29 (ICS); T. 19 April 2010 p. 30 (HC) (Witness T9) (French) (The English transcript erroneously states that Charlotte was an infant. The French transcript correctly states: "*Ce n'était pas une enfant, c'était une [...] fille adulte.*").
[418] T. 19 April 2010 pp. 28-29 (ICS) (Witness T9).
[419] T. 19 April 2010 pp. 29-30, 36, 38 (ICS); T. 20 April 2010 pp. 57, 59 (Witness T9).
[420] T. 19 April 2010 pp. 29-30 (ICS) (Witness T9).
[421] T. 19 April 2010 pp. 29-31 (ICS) (Witness T9).
[422] T. 19 April 2010 p. 31 (ICS) (Witness T9).

did not see Nzabonimana for the rest of the day. Béata said that Nzabonimana was going to spend the night at the Diplomat Hotel.[423]

322. Later that night, the witness, Béata, Witness T11, Hakizimana and others boarded a lorry which took those who were being evacuated to an aircraft. During the days she spent at the Embassy she did not see Mahoro, Charlotte or Emmanuel Uwamungu. She never left the Embassy from 7 to 11 April 1994.[424]

323. They landed in Bujumbura on the morning of 12 April 1994. On 14 April 1994, they boarded an aircraft to Bukavu, Zaire, where they stayed from 14 to 20 April 1994. The witness did not know if everyone who was evacuated by air from Rwanda continued to Bukavu. In Bukavu, the witness stayed with Béata, Witness T11 and Hakizimana. The witness did not meet Mechtilde Mugiraneza there.[425]

324. The witness, Béata, Witness T11 and Hakizimana went to Cyangugu on 20 April 1994 where they stayed at the *Hôtel du Lac*. The witness did not see Mechtilde Mugiraneza at the hotel. The witness left for Zaire in early July 1994.[426]

Defence Witness T400

325. Witness T400 lived in Kigali in 1994. Witness T400 knew Nzabonimana well. She had known him since 1968, and had a close relationship with him in 1994. The witness indicated that at the time of her testimony, she loved Nzabonimana.[427]

326. On 6 April 1994, when the President's plane was attacked, Witness T400 was at her home with her two children, Nzabonimana's sister Madeleine and her child, a housemaid and a watchman. The witness remained in her house until 9 April 1994. On 9 April 1994, a vehicle sent by Nzabonimana arrived between 10.00 and 11.00 a.m. to evacuate them. The vehicle was occupied by a driver, Witness CNR1 and a man named Habyarimana. They took Witness T400, her two children, Madeleine, her daughter and Witness T400's housemaid to the French Embassy. They reached the Embassy around 1.00 p.m. They dropped the children off at the Embassy and Witness T400 and her housemaid returned to her home to get mattresses, clothing and blankets.[428]

327. Upon their return, they entered the Embassy premises. The witness testified that she did not enter the building, but went to the garden where she saw Nzabonimana's sister, Stéphanie, and the wives of Nzabonimana and Ngirabatware. She did not see Nzabonimana during the day of 9 April 1994, but saw him before she went to sleep. She was told by a driver that Nzabonimana had gone to take the oath of office. Witness T400 spent the night in the garden.[429]

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[423] T. 19 April 2010 p. 32 (ICS) (Witness T9).
[424] T. 19 April 2010 pp. 32, 37 (ICS); T. 20 April 2010 p. 57; T. 20 April 2010 pp. 39, 55 (ICS) (Witness T9).
[425] T. 19 April 2010 pp. 32, 38 (ICS); T. 20 April 2010 pp. 48, 54; T. 20 April 2010 pp. 39-40 (ICS) (Witness T9).
[426] T. 20 April 2010 pp. 50, 54; T. 20 April 2010 p. 40 (ICS) (Witness T9).
[427] Defence Exhibit 143 (Protected Information Sheet); T. 4 May 2011 p. 63 (ICS) (Witness T400).
[428] T. 4 May 2011 pp. 64-67, 74 (ICS) (Witness T400).
[429] T. 4 May 2011 p. 67 (ICS) (Witness T400).

328. Between 8.00 and 9.00 a.m. on 10 April 1994, Nzabonimana came to say good morning to the witness. The witness told him that she needed a vehicle to go visit her ill sister who lived in Karuma. Nzabonimana told her that once a vehicle became available it would take her there. She was ultimately unable to get to Karuma because she was told that Karuma had fallen to the *Inkotanyi*, but was able to visit a friend who lived in Gatsata.[430]

329. They returned to the Embassy between 4.00 and 5.00 p.m. Nzabonimana told the witness he was going to send her, her children and Nzabonimana's two sisters to his home in Nyabikenke. A minibus came at around 5.30 or 6.00 p.m. to take them to Nyabikenke. There were a number of people in the minibus, including Béata's family. Nzabonimana stayed at the Embassy. Witness CNR1 and a *gendarme* named Habyarimana accompanied them on the bus to Nzabonimana's house.[431]

330. The minibus did not go directly to Nyabikenke. There were more than 10 roadblocks between the Embassy and Nyabikenke. First, the minibus dropped off a soldier's Tutsi fiancée in Ntongwe *commune*. They next stopped at Kabgayi, where the witness and others exited the minibus and waited while the vehicle took some of Béata's family to Mushubati. Four young persons were taken to Mushubati, and it was said that they were Béata's brothers. They waited in Kabgayi for two hours. On its return from Mushubati, the minibus took them to Nzabonimana's house in Nyabikenke. The witness estimated the distance between Kigali and Nyabikenke to be approximately 100 kilometres.[432]

331. They arrived in Nyabikenke between 1.00 and 2.00 a.m., where they were greeted by relatives of Nzabonimana. The minibus returned to Kigali the next morning, between 8.00 and 9.00 a.m., with the driver, two *gendarmes* and the soldier whose fiancée had been dropped off earlier. According to the witness, Nzabonimana remained in Kigali and was not in Nyabikenke the night of 10 April 1994. She did not see Nzabonimana until one week later, when he came to visit his parents.[433]

Defence Witness T5

332. Witness T5 worked in the Ministry of Finance and lived in Kigali in 1994. He was a native of Nyabikenke *commune*.[434] He knew Nzabonimana as Minister of Planning and later as Minister of Youth. The witness described Nzabonimana as an intellectual who was sociable and respected. The witness knew Nzabonimana well since 1992 or 1993, but considered himself and Nzabonimana to be acquaintances rather than friends.[435]

333. On 6 April 1994, the witness received a call from a friend, who told him that the President's plane had been shot down. On the morning of 7 April 1994, the witness heard gunshots, and decided to stay home instead of going to work. At 8.30 a.m. soldiers came to his home. The witness did not open the door because from his window he could see soldiers firing

[430] T. 4 May 2011 p. 68 (ICS) (Witness T400).
[431] T. 4 May 2011 pp. 68-69 (ICS); T. 5 May 2011 p. 7 (ICS) (Witness T400).
[432] T. 4 May 2011 pp. 69-71 (ICS); T. 5 May 2011 pp. 10-11 (ICS) (Witness T400).
[433] T. 4 May 2011 p. 71 (ICS); T. 5 May 2011 p. 9 (ICS) (Witness T400).
[434] Defence Exhibit 5 (Protected Information Sheet); T. 14 April 2010 pp. 11, 13-14 (ICS) (Witness T5).
[435] T. 14 April 2010 p. 14 (ICS); T. 15 April 2010 p. 6 (ICS); T. 19 April 2010 p. 59 (ICS) (Witness T5).

into houses. The soldiers fired at the front and back doors, but they would not open. The soldiers left and the witness heard them say they would return. In the afternoon, some other soldiers came and asked for fuel as they had seen the witness had a vehicle. The witness tried to siphon some fuel from the vehicle for the soldiers, but the tank was almost empty. On 8 April 1994, the witness discovered that his neighbour had been killed. On the radio that night, he learned that Nzabonimana had been appointed Minister.[436]

334. On 9 April 1994, the witness awoke and discovered there was no electricity. The witness saw *gendarmes* pass by the house and the witness wanted to ask if they could help him procure charcoal. He spoke to the *gendarmes* and they learned the witness was from Nyabikenke, and asked: "Do you know Callixte?" They asked for the name of Callixte's wife and brother and were satisfied that the witness was from Nyabikenke. The *gendarmes* left, but said they would return.[437]

335. Between 15 and 20 minutes later, six soldiers came to the house asking for beer and demanded money, among other threats. The *gendarmes* returned and found the soldiers in the house, so pretended to leave to avoid confrontation. After the soldiers left, the *gendarmes* returned and told the witness he was a good person and that they would take him to a safe place, Nzabonimana's house.[438] They also helped him find fuel because the witness's car was almost empty. They then drove to Nzabonimana's house. The Embassy was six kilometres from the witness's home.[439]

336. The *gendarmes* were guarding the house so it would not be vandalised. The house was empty when they arrived. Later, some members of Nzabonimana's family came with a military escort to take things from the house. The escort said to the *gendarmes* that they were evacuating the house since there was no security and asked if the witness was a member of Nzabonimana's family. The brother of Béata, André Hakizimana, said that they were members of Nzabonimana's family, and told the escort to take them to the others. The witness testified that this was how he found himself at the Embassy.[440]

337. The witness and his family arrived at the Embassy on 9 April 1994 between 3.00 and 4.00 p.m. The witness initially was not able to get into the Embassy and stayed on the road outside in a vehicle, at the gate. Nzabonimana's brother, Evariste Segikwiye, and others were also outside. The witness saw Nzabonimana's wife, Béata, and said she would "come in and go back outside as she wanted." Others would leave and go back inside as well, as there was not enough room inside. The witness testified that "there was no difficulty going in or out" of the Embassy. Béata came out and talked to the witness, after André Hakizimana told her that the witness was there. The witness did not see Béata with any children.[441]

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[436] T. 15 April 2010 pp. 6-7, 11 (ICS); T. 19 April 2010 pp. 53, 63-64 (ICS) (Witness T5).
[437] T. 15 April 2010 p. 8 (ICS) (Witness T5).
[438] T. 15 April 2010 p. 8 (ICS); T. 19 April 2010 p. 56 (ICS); T. 15 April 2010 p. 10 (HC) (Witness T5) (French) (the English transcripts erroneously state that the *gendarmes* took Witness T5 to the home of Callixte Kalimanzira).
[439] T. 15 April 2010 pp. 8-9 (ICS); T. 19 April 2010 p. 53 (ICS) (Witness T5).
[440] T. 15 April 2010 pp. 8-9 (ICS); T. 15 April 2010 pp. 10-11 (HC) (French); T. 19 April 2010 pp. 56, 58 (ICS) (Witness T5).
[441] T. 15 April 2010 pp. 9-10 (ICS); T. 19 April 2010 pp. 60, 63 (ICS); T. 20 April 2010 p. 25 (ICS) (Witness T5).

338. Upon arrival, the witness was labelled as a member of Nzabonimana's family. This occurred because the Ambassador needed to authorise people to go inside the Embassy. Béata and Nzabonimana's brother-in-law told the witness to wait for Nzabonimana outside, as Nzabonimana could possibly speak with the Ambassador. Witness T5 was told he could not enter the Embassy without authorisation.[442]

339. Nzabonimana arrived around 6.30 or 7.00 p.m. The witness testified that "[i]t would appear that he had been attending meetings at the [Diplomat Hotel]." The witness and Nzabonimana's brother greeted Nzabonimana, who told them that the situation was difficult inside the Embassy. Nzabonimana said he could not guarantee that he could get them inside, but would try.[443]

340. The witness and Nzabonimana's brother spent the night outside in vehicles. People inside the Embassy came to sleep in vehicles because the conditions inside made it impossible to sleep. Around midday on 10 April 1994, the witness was informed that the Embassy would be evacuated.[444]

341. The witness greeted Nzabonimana and talked to him on the morning of 10 April 1994. Nzabonimana said he was tired because of meetings and that he was going to another meeting. Nzabonimana also said he did not know where some of his family was. Nzabonimana left for his meeting around 10.00 a.m. and returned at approximately midday. Nzabonimana's family was making arrangements to collect members of his family and to go to the *commune*. Nzabonimana told the witness that he should leave the Embassy and Kigali.[445]

342. The witness recounted that it was difficult to leave Kigali because there were many roadblocks and one needed a *laissez-passer* to leave. Nzabonimana played an important role in finding *laissez-passer* and having them signed. He also helped to authorise vehicles to leave and arranged that they be accompanied by soldiers so they would not be stopped at the roadblocks.[446]

343. The vehicles with *laissez-passer* left after 4.00 p.m. Four vehicles departed, including a pickup truck, a minibus, the vehicle of Evariste, Nzabonimana's brother, and the witness's vehicle. Two vehicles left before the witness left. These vehicles carried relatives of Nzabonimana and his wife. One of these vehicles went to Nyabikenke and the other went to Mushubati. The witness left the Embassy about 30 to 45 minutes after these two vehicles.[447]

344. The witness and Nzabonimana's brother drove to Gitarama and spent the night in Kabgayi. It normally took 40 minutes to drive from Kigali to Gitarama, but on the day in question it took approximately an hour and a half due to roadblocks. That Monday, the witness left Kabgayi at 7.00 p.m. to go to his home in Nyabikenke. He arrived in Nyabikenke at 10.00

[442] T. 15 April 2010 p. 11 (ICS); T. 19 April 2010 p. 63 (ICS) (Witness T5).
[443] T. 15 April 2010 pp. 11-12 (ICS) (Witness T5).
[444] T. 15 April 2010 pp. 11-12 (ICS) (Witness T5).
[445] T. 15 April 2010 p. 12 (ICS) (Witness T5).
[446] T. 15 April 2010 pp. 12, 18 (ICS) (Witness T5).
[447] T. 15 April 2010 pp. 12, 18-19 (ICS) (Witness T5).

p.m. It normally took two hours to go from Kigali to Remera in Nyabikenke *commune*, and two and a half hours in the rainy season. It took 30 minutes to travel from Remera to Mbuye.[448]

345. The distance between Kigali and Gitarama was 40 kilometres, which was the same as the distance between Gitarama and Nyabikenke. Therefore, it was between 85 and 100 kilometres from his residence in Kigali to his residence in Ngoma, Nyabikenke *commune*.[449]

Defence Witness Mechtilde Mugiraneza

346. Mechtilde Mugiraneza owned a grocery shop in Kigali in 1994.[450] Her husband was Prosper Mugiraneza, the Minister of Public Administration in 1994. Prosper Mugiraneza was in detention at the ICTR at the time of her testimony. Nzabonimana was her husband's colleague and she and Nzabonimana were more like acquaintances than close friends. Mugiraneza did not know how many children Béata had, or their names.[451]

347. On 6 April 1994, the witness was at home with her family, including her fifteen month old baby. After dinner, the witness heard an explosion. A neighbour telephoned and told them the President's plane had been shot down. A convoy came to take them to the Presidential Guard camp that night.[452]

348. At the camp the witness saw, among others, the families of André Ntagerura and Ferdinand Nahimana. The witness also saw Nzabonimana, his wife Béata and their children. They spent the night at the camp, along with Nzabonimana's wife and children.[453]

349. The next morning, the witness heard gunshots. A soldier came to tell Béata that he had been sent by Nzabonimana, who was at the Ministry of Defence, to evacuate her. Béata said she was afraid and would not leave without others. Béata then asked the witness and others to leave with them.[454]

350. Mugiraneza left the camp on a minibus with her husband and family, along with Béata and her children. She did not know if Béata's housekeeper was present. She stated that it was possible that others were on the bus, but she was preoccupied with having to leave her son, Robert, behind. Nzabonimana was not on the bus or at the camp when they left. The witness did not ask Béata when Nzabonimana had left. The driver was instructed to go to the Ministry of Defence first. Nzabonimana was no longer there when they arrived, but had left instructions for them to go to the Embassy. They arrived at the Embassy at approximately 4.00 or 5.00 p.m.[455]

351. People from the Embassy registered those who were entering, including the witness. Béata registered herself and her children. The witness did not know if Béata was accompanied by one of her servants. Nzabonimana, the wife of Justin Mugenzi and others were already at the

[448] T. 15 April 2010 pp. 19-20 (ICS) (Witness T5).
[449] T. 20 April 2010 pp. 23-24 (ICS) (Witness T5).
[450] Defence Exhibit 6 (Personal Information Sheet); T. 15 April 2010 p. 30 (Mugiraneza).
[451] T. 15 April 2010 pp. 31-32, 41; T. 19 April 2010 pp. 14, 17-18 (Mugiraneza).
[452] T. 15 April 2010 pp. 32-33, 40 (Mugiraneza).
[453] T. 15 April 2010 pp. 33, 41 (Mugiraneza).
[454] T. 15 April 2010 p. 34 (Mugiraneza).
[455] T. 15 April 2010 pp. 34-35, 43, 46, 48-49 (Mugiraneza).

Embassy when they arrived. The witness did not believe anyone called the Ambassador from the Embassy while they were registering.[456]

352. They entered the Embassy and settled in one of the corridors with Nzabonimana's family. The witness estimated that there were approximately 10 people in the corridor. Nzabonimana slept at the Embassy that night. The witness and Nzabonimana were not far from each other, and the witness was barely sleeping, so she could see him with his family.[457]

353. On 8 April 1994, the witness saw Nzabonimana in the morning. The witness did not go out and could see Nzabonimana in the Embassy premises. She also saw him "at some point" in the evening.[458]

354. On the morning of 9 April 1994, the witness saw Nzabonimana at the Embassy before he left to go to a meeting, where the witness's husband and Nzabonimana were appointed to serve in the Interim Government. Her husband returned to the Embassy around 4.00 or 5.00 p.m. on 9 April 1994 and told her that they had been installed. The witness stated that Nzabonimana slept at the Embassy that night, and remembered seeing him there that evening, but could not recall the exact time.[459]

355. According to Mugiraneza, during her time at the Embassy, she could freely move around inside and outside of its buildings. She testified that she occasionally went into the garden within the Embassy compound and therefore was not always in the same place. When she went outside, she could not stay long because she had her baby. She would go out when they distributed food and immediately come back inside.[460]

356. Mugiraneza saw Nzabonimana at the Embassy on the morning of 10 April 1994. On this day, the witness and her husband discussed leaving the Embassy. While the witness and her baby remained at the Embassy that day, her husband went to the Diplomat Hotel to sleep while waiting for a room for the family.[461]

357. On 11 April 1994, during the day, the witness left the Embassy to go sleep at the Diplomat Hotel with her husband. She estimated the distance from the French Embassy to the Diplomat Hotel to be less than half a kilometre. She said she was checked as she left, and believed the same procedure was used for re-entering, as there were people waiting outside to enter. The witness later testified that when entering the Embassy they were checked in, but nothing was written down. She was not made to sign anything upon leaving the Embassy. She saw Nzabonimana in the evening at the Diplomat Hotel, around 7.00 or 8.00 p.m.[462]

358. She also saw Nzabonimana on the morning of 12 April 1994. They returned to the Embassy together when they learned the Embassy would be evacuated. Nzabonimana went to the Embassy to say goodbye to his wife. They left for the Embassy around 5.30 a.m. because they

[456] T. 15 April 2010 pp. 35, 55-56 (Mugiraneza).
[457] T. 15 April 2010 pp. 36, 55; T. 19 April 2010 p. 2 (Mugiraneza).
[458] T. 15 April 2010 p. 36 (Mugiraneza).
[459] T. 15 April 2010 pp. 36-37 (Mugiraneza).
[460] T. 19 April 2010 pp. 2-3, 15 (Mugiraneza).
[461] T. 15 April 2010 p. 36; T. 19 April 2010 pp. 3, 8 (Mugiraneza).
[462] T. 15 April 2010 pp. 36-38, 57; T. 19 April 2010 pp. 3, 8, 16 (Mugiraneza).

had heard that the evacuation would commence early in the morning. When the witness arrived at the Embassy, she learned that Béata had already left with the first group.[463]

359. The witness was evacuated to Bujumbura and then to Bukavu. She saw Nzabonimana's family in Bukavu, since they stayed in nearby hotels and ate at the same location. Approximately two weeks later, they, along with Nzabonimana's family, left for Cyangugu, where they stayed for two and a half months. During this time, the witness stayed in the same hotel as Nzabonimana's family, the *Hotel dû Lac*, though in different rooms. Nzabonimana was not with them in Cyangugu.[464]

Defence Witness Léoncie Bongwa

360. Léoncie Bongwa lived in Kigali *préfecture* in 1994.[465] She and her husband did not have any special ties or relationship with Nzabonimana and his family. The witness did not know how many children Nzabonimana had and did not know their names.[466]

361. On 6 April 1994, the witness was at her home in Kimihurura with her husband, André Ntagerura, who was Minister of Transport and Communications, their children, her mother and some nephews. After hearing of the President's death on the evening of 6 April 1994, the family went to the Presidential Guard camp.[467]

362. The witness saw Nzabonimana, Béata and their family at the camp. She saw other Government Ministers and their families, including Prosper Mugiraneza, Augustin Ngirabatware, Daniel Mbangura, Casimir Bizimungu and the family of Augustin Bizimana. Everyone spent the night inside a large hall.[468]

363. The witness only saw Nzabonimana on the morning of 7 April 1994. The witness remained at the camp until the afternoon of 8 April 1994.[469]

364. On 8 April 1994, they were taken to the French Embassy in a minibus. Along the way, soldiers enquired as to who was in the minibus. The driver responded and the soldiers allowed the minibus to proceed. They did not stop again along the way.[470]

365. The witness arrived at the Embassy in the early afternoon of 8 April 1994. A large gate enclosed the Embassy. She was accompanied by her husband, her children, her mother and a child of Prosper Mugiraneza, named Robert. No one else was in the minibus. When they arrived, the Embassy appeared full so they waited outside. A French man came and allowed them to enter. They were taken first to a courtyard and then to a large room inside the Embassy. There was also a balcony and a lawn where people could sit. Many people were both in the room and outside. The witness estimated that there were more than ten families in the room. During her

[463] T. 15 April 2010 pp. 36, 38 (Mugiraneza).
[464] T. 19 April 2010 pp. 11-12, 18 (Mugiraneza).
[465] Defence Exhibit 46 (Personal Information Sheet).
[466] T. 11 October 2010 p. 22 (Bongwa).
[467] T. 11 October 2010 pp. 9-10, 28 (Bongwa).
[468] T. 11 October 2010 pp. 11-13, 30-31 (Bongwa).
[469] T. 11 October 2010 pp. 13-14, 16 (Bongwa).
[470] T. 11 October 2010 pp. 14, 70 (Bongwa).

stay at the Embassy, the witness did not know where Béata was settled. She did not know where Nzabonimana and Béata slept and saw them only during the day.[471]

366. The witness saw Nzabonimana and other Ministers with their families, including Casimir Bizimungu, Mbangura, Mugiraneza and Ngirabatware. The witness also saw Justin Mugenzi and his family. Other notable figures who the witness saw included: the Prosecutor General of the Republic, Alphonse Nkubito; the former Prime Minister, Sylvestre Nsanzimana; Ferdinand Nahimana; Télesphore Bizimungu; the General Manager of SONARWA, Siméon Nteziryayo; the General Manager of the National Bank, named Augustin Ruzindana; and a former Minister named Callixte Habamenshi. The witness also saw Mechtilde Mugiraneza. The witness did not see whether Nzabonimana and his wife slept in a small office while at the Embassy, but testified that it was possible. The witness saw Béata outside on the lawn.[472]

367. During the night of 8 April 1994, the witness and her family stayed in a large room in the Embassy. On the morning of 9 April 1994, the witness was informed that all of the Ministers went to the Diplomat Hotel for a swearing-in ceremony. They returned to the Embassy after the ceremony. The witness saw Nzabonimana at the Embassy after the ceremony, towards the end of the afternoon, conversing with Casimir Bizimungu, Ngirabatware, Ntagerura, and Mbangura.[473]

368. That night, the witness spoke with her husband, who told her about the swearing-in ceremony. He had been assigned to a mission in Bujumbura, and would leave on 10 April 1994. They agreed that the witness should leave Kigali with the children and her mother, and go to their home in Cyangugu. They stayed at the Embassy the night of 9 April 1994. Ntagerura left the next day for Bujumbura.[474]

369. The witness testified that she saw the Ministers on 10 April 1994. However, she also stated that she was "preoccupied with other matters" and "was no longer interested in what was going on," but knew that some of the Ministers were there. The witness spent the night of 10 April 1994 at the Embassy.[475]

370. On 11 April 1994, the witness left the Embassy by car to arrange for the trip to Cyangugu. She saw people, but could not recall if there were also vehicles outside the Embassy. A driver from her husband's Ministry took her to Rwandatel and the Ministry of Defence. She then returned to the Embassy, where she saw some of the Ministers. The witness testified that she did not need to ask permission or authorisation to re-enter the Embassy, and she did not inform anyone that she left the Embassy premises that day.[476]

371. The witness spent the night of 11 April 1994 at the Embassy. After she was in exile, she learned that some of the Ministers' families were moved to the Diplomat Hotel on 11 April 1994.[477]

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[471] T. 11 October 2010 pp. 14-15, 33-37 (Bongwa).
[472] T. 11 October 2010 pp. 15-17, 35-36, 70 (Bongwa).
[473] T. 11 October 2010 p. 18 (Bongwa).
[474] T. 11 October 2010 p. 19 (Bongwa).
[475] T. 11 October 2010 pp. 18-19 (Bongwa).
[476] T. 11 October 2010 pp. 20, 40-41, 51, 66-67, 71 (Bongwa).
[477] T. 11 October 2010 pp. 21, 52-53 (Bongwa).

372. On 12 April 1994, those at the Embassy were evacuated by French soldiers, who drove them to the airport. From there, they were flown to Bujumbura on a French military plane. The witness stated that she saw Nzabonimana's wife, Béata, during the evacuation. Béata was with some children, but the witness could not recall how many. Nzabonimana was not present.[478]

373. They spent two days and two nights in Bujumbura. The witness saw Béata and her children there. On 14 April 1994, the evacuees were flown to Bukavu, where they stayed in different hotels for no more than two weeks. The witness, her children and her mother then went to Cyangugu by bus, arriving between 20 April 1994 and 24 April 1994. The witness and her family stayed at the premises of the Franciscan Sisters in Cyangugu, while others stayed at the *Hôtel du Lac*. The witness saw Béata, but not Nzabonimana, in Cyangugu.[479]

Prosecution Rebuttal Witness CNR1

374. Witness CNR1, a Hutu, worked closely with Nzabonimana in 1994. He had a very good relationship with Nzabonimana and had no reason to accuse him of any crimes.[480]

375. On 6 April 1994, the witness accompanied Nzabonimana from Kigali to Remera, where Nzabonimana was visiting a friend. Between 7.00 and 8.00 p.m., the witness heard an alarm from the Presidential Guard barracks. He and Nzabonimana went back immediately, but encountered roadblocks along the way. As they neared Nzabonimana's house, members of the Presidential Guard informed them that the President had been assassinated. They therefore drove to the Presidential Guard camp.[481]

376. When they arrived, Nzabonimana called his wife and told her to pack, because he had arranged for her to be escorted to the camp. The witness arrived at Nzabonimana's house around 8.00 p.m. At the house, he found Nzabonimana's wife, two young people and Witness T11. The witness accompanied all four of them to the Presidential Guard camp, where he found Nzabonimana. The Ministers and their wives spent the night in a large hall.[482]

377. The witness was with Nzabonimana on the morning of 7 April 1994. Later that day, around 12.00 or 1.00 p.m., the camp came under attack, and people entered the camp buildings. There were orders to evacuate the Ministers' wives to the Embassy. Between 2.00 and 3.00 p.m., the witness and his colleagues went with the Ministers' wives, including Nzabonimana's, from the camp to the Embassy in a convoy of roughly five vehicles. Witness T11 and the two young people were not part of the convoy and came to the Embassy later. The witness then went back to Nzabonimana's house to fetch clothes for Nzabonimana and to look for Nzabonimana's brother, Segikwiye.[483]

378. After dropping off Nzabonimana's wife at the Embassy, the witness returned to the camp. Only soldiers remained at the camp; the witness had no knowledge of what happened to the

[478] T. 11 October 2010 pp. 21-22 (Bongwa).
[479] T. 11 October 2010 pp. 22-24 (Bongwa).
[480] Prosecution Exhibit 94 (Protected Information Sheet); T. 5 May 2011 pp. 24, 29 (ICS); T. 6 May 2011 p. 32 (ICS) (Witness CNR1).
[481] T. 5 May 2011 p. 29 (ICS); T. 6 May 2011 p. 31 (ICS) (Witness CNR1).
[482] T. 5 May 2011 pp. 29-31 (ICS); T. 6 May 2011 p. 38 (ICS) (Witness CNR1).
[483] T. 5 May 2011 pp. 31, 35-36 (ICS); T. 6 May 2011 pp. 31, 35-37, 42 (ICS) (Witness CNR1).

civilians who had also been there. The witness found Nzabonimana, who was still at the camp with the other Ministers. The witness did not accompany Nzabonimana anywhere that day, and spent the night of 7 April 1994 with Nzabonimana at the camp.[484]

379. On 8 April 1994, around lunch time, the witness escorted Nzabonimana from the camp to the Embassy in Nzabonimana's yellow pickup truck. All the Ministers left the camp for the Embassy on this day, and arrived at the French Embassy at between 1.00 and 2.00 p.m.[485]

380. At approximately 4.00 p.m. that day, the witness left the Embassy with Nzabonimana and accompanied him to Nyabikenke. Nzabonimana drove, and the witness was his sole escort. Although there were roadblocks, they were not stopped. Once in Nyabikenke, Nzabonimana visited his father's house, which neighboured Nzabonimana's own house. The visit did not last long and the witness and Nzabonimana left Nyabikenke at approximately 6.00 p.m. The trip between Kigali and Nyabikenke took between one and a half and two hours. They returned to the Embassy from Nyabikenke in the evening around 7.00 p.m.[486]

381. At the Embassy, Nzabonimana asked the witness to accompany him to the Kiyovu Hotel. They went on foot. The witness returned to the Embassy alone and did not see Nzabonimana again that night. The witness spent the night at the Embassy.[487]

382. The witness saw Nzabonimana on the morning of 9 April 1994. He escorted Nzabonimana to the Diplomat Hotel to be sworn in. After the ceremony, around 10.00 a.m., the Ministers met President Sindikubwabo in his house. The witness remained at the President's house because he had been requested to guard it. Therefore, the witness was not with Nzabonimana after the ceremony and could not confirm whether or not he left Kigali on 9 April 1994. The witness spent the night at the Embassy.[488]

383. On 10 April 1994, the witness went with Nzabonimana to Nyabikenke, where they spent the night, before returning to the Embassy the next day. They left Kigali at approximately 9.00 a.m. and first went to the RTLM radio station. Then they stopped at Kivumu centre, where Nzabonimana spoke to a *bourgmestre*. They arrived in Nyabikenke between 12.00 and 1.00 p.m. The trip from Kigali to Nyabikenke lasted between one and a half to two hours.[489]

384. On 11 April 1994, Nzabonimana went to Gitarama to attend a meeting held within the premises of Electrogaz. After the meeting, around 3.00 p.m., they left for Kigali.[490]

3.4.1.3 Deliberations

385. There is no dispute that Nzabonimana was in Kigali during certain intervals between 6 and 12 April 1994.[491] The Prosecution submits, however, that Nzabonimana was intermittently in

[484] T. 5 May 2011 pp. 38-40 (ICS); T. 6 May 2011 pp. 9, 37-38 (ICS) (Witness CNR1).
[485] T. 5 May 2011 p. 40 (ICS); T. 6 May 2011 pp. 8, 15, 35 (ICS) (Witness CNR1).
[486] T. 5 May 2011 pp. 42, 44 (ICS); T. 6 May 2011 pp. 15, 29, 42-44, 47 (ICS) (Witness CNR1).
[487] T. 5 May 2011 p. 44 (ICS); T. 6 May 2011 p. 32 (ICS) (Witness CNR1).
[488] T. 5 May 2011 p. 44 (ICS); T. 6 May 2011 pp. 32, 44-46 (ICS) (Witness CNR1).
[489] T. 6 May 2011 p. 44 (ICS) (Witness CNR1).
[490] T. 6 May 2011 pp. 32, 44-46 (ICS) (Witness CNR1).
[491] Prosecution Closing Brief, paras. 20-31.

Gitarama *préfecture* during this time period, committing crimes. The Defence presents evidence in support of Nzabonimana's alibi that he did not leave Kigali during this time.

386. Before coming to a conclusion as to whether this alibi is reasonably possibly true, the Chamber will first recall some aspects of the applicable law pertaining to an alibi, the assessment of alibi evidence and the notice of alibi. The Chamber will then assess Defence Exhibit 15 and draw some general observations on the credibility of the Defence witnesses. Finally, the Chamber will examine Nzabonimana's alibi on a day-by-day basis, in conjunction with the credibility and reliability of the alibi witnesses and the Chamber's findings on the distance and travel times between Kigali and the various locations at issue, in order to determine whether the evidence tends to show that Nzabonimana was not present at the time and location of the alleged crimes.

3.4.1.3.1 Applicable Law

387. The basic principles concerning the assessment of alibi evidence are well-established in the Tribunal's case law. The Appeals Chamber has repeatedly reaffirmed that "by raising an alibi, an accused is simply denying that he was in a position to commit the crime with which he was charged."[492] Accordingly, the Appeals Chamber has held:

> An accused does not bear the burden of proving his alibi beyond reasonable doubt. Rather "[h]e must simply produce the evidence tending to show that he was not present at the time of the alleged crime" or, otherwise stated, present evidence "likely to raise a reasonable doubt in the Prosecution case." If the alibi is reasonably possibly true, it must be accepted.[493]

388. Nor does the existence of alibi evidence alter the standard of proof to which the Prosecution is held:

> Where an alibi is properly raised, the Prosecution must establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true. The Prosecution may do so, for instance, by demonstrating that the alibi does not in fact reasonably account for the period when the accused is alleged to have committed the crime. Where the alibi evidence does *prima facie* account for the accused's activities at the relevant time of the commission of the crime, the Prosecution must "eliminate the reasonable possibility that the alibi is true," for example, by demonstrating that the alibi evidence is not credible.[494]

389. If the Chamber finds, beyond a reasonable doubt, that the alibi witnesses were not credible, it is not required to make findings beyond a reasonable doubt regarding the reasons why witnesses might offer incredible and inconsistent accounts of events.[495]

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[492] *Zigiranyirazo*, Judgement (AC), para. 17, citing *Nahimana et al.*, Judgement (AC), para. 414; *Ndindabahizi*, Judgement (AC), para. 66; *Kajelijeli*, Judgement (AC), paras. 41-42; *Niyitegeka*, Judgement (AC), para. 60; *Musema*, Judgement (AC), paras. 205-206; *Kayishema & Ruzindana*, Judgement (AC), para. 106; *Delalić et al.*, Judgement (AC), para. 581.

[493] *Zigiranyirazo*, Judgement (AC), para. 17 (internal citation omitted).

[494] *Zigiranyirazo*, Judgement (AC), para. 18 (internal citation omitted).

[495] *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 161.

3.4.1.3.2 Late Filing of Notice of Alibi and Witness List

390. Pursuant to Rule 67(A)(ii)(a) of the Rules, the Defence must notify the Prosecution of its intention to rely upon an alibi before the commencement of trial, and "as early as reasonably practicable."[496] Nonetheless, late notice of an alibi does not prevent an accused from presenting alibi evidence at trial, or from having such evidence considered by the Trial Chamber.[497] Submission of an alibi at a very late stage of the proceedings may have an impact on the extent to which the alibi is believed.[498] Late disclosure may suggest that the alibi is fabricated and tailored to respond to the Prosecution's case.[499]

391. In the present case, the Defence filed its Notice of Alibi on 23 February 2010, less than two months prior to the close of the Prosecution's case-in-chief, which concluded on 13 April 2010. Testimony had already been given by 17 Prosecution witnesses, including every Prosecution witness who testified regarding the incidents alleged to have occurred between 6 and 12 April 1994.[500] The Chamber notes that Witness T400 was not listed as an alibi witness in the Notice of Alibi, and was not revealed as a potential alibi witness until April 2011. This raises the issue of whether, after having heard the Prosecution witnesses, the Defence moulded its alibi evidence to fit the Prosecution case.[501] Moreover, the fact that the Defence did not finalise its alibi witness list until April 2011 leads the Chamber to suspect, particularly with regard to Witness T400, that the Defence sought out witnesses to accord with Nzabonimana's alibi.[502]

392. Bearing in mind the above, and despite the late Notice of Alibi and finalisation of the Defence witness list, the Chamber will still consider the evidence proffered by the Defence in support of its alibi, bearing in mind that the burden of proof never shifts to the Defence.[503]

3.4.1.3.3 General Observations

393. The Chamber has no doubt that Nzabonimana was in Kigali during certain intervals between 6 and 12 April 1994, a fact which the Prosecution concedes,[504] and which was

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[496] Rule 67(A)(ii)(a) of the Rules; *Rutaganda*, Judgement (AC), para. 243 (quoted). *See also Kanyarukiga*, Judgement (AC), para. 97; *Kalimanzira*, Judgement (AC), para. 54.

[497] *Rutaganda*, Judgement (AC), para. 243 ("where the Defence fails to comply with Rule 67, it may still rely on the alibi defence at trial"); Rule 67(B) of the Rules ("Failure of the Defence to provide such notice [of alibi] under this Rule shall not limit the right of the accused to rely on the above defences.").

[498] *Ndindabahizi*, Judgement (AC), para. 68; *Semanza*, Judgement (AC), para. 93; *Kalimanzira*, Judgement (AC), para. 56.

[499] *Kalimanzira*, Judgement (AC), para. 56; *Semanza*, Judgement (AC), para. 93; *Nchamihigo*, Judgement (AC), para. 97.

[500] This does not include Prosecution Witness CNR1, who the Prosecution called as a rebuttal witness.

[501] *See Kanyarukiga*, Judgement (AC), para. 97 (Appeals Chambers have "upheld [T]rial Chambers' inferences that the failure to raise an alibi in a timely manner suggested that the alibi was invented to respond to the Prosecution case." (internal citations omitted)).

[502] *See Kalimanzira*, Judgement (AC), para. 56 ("the manner in which an alibi is presented may impact its credibility"). *See also Kanyarukiga*, Judgement (AC), paras. 100 ("the fact that the Rules allow for the variation of a witness list does not mean that a [T]rial [C]hamber does not have the discretion to take such variations into account"), 102 ("The Appeals Chamber considers that it was reasonable for the Trial Chamber to question the circumstances surrounding the late filing of the Notice of Alibi and the changes to the witness list.").

[503] *Rutaganda*, Judgement (AC), para. 243.

[504] Prosecution Closing Brief, paras. 20-31.

substantiated by evidence introduced by the Defence.[505] However, upon closer examination, the Chamber has doubts as to the credibility of key parts of Nzabonimana's alibi concerning some of the periods during which the Prosecution alleges Nzabonimana was in Gitarama *préfecture*.

394. From mid-afternoon on 7 April 1994 to the evening of 11 April 1994, much of Nzabonimana's alibi rests upon his claim that he was present at the Embassy. In support of this assertion, the Defence introduced Defence Exhibit 15, which were diplomatic telegrams sent from the French Embassy in Kigali.[506] The telegrams contain lists of those who sought refuge at the Embassy. Nzabonimana, his wife and their five children are among those on the lists.

395. The telegram of 7 April 1994 at 7.32 p.m. lists Nzabonimana, his wife and five children among those taking refuge at the Embassy. The subsequent telegrams of 8 April 1994 at 11.58 a.m., 9 April 1994 at 10.18 p.m. and 11 April 1994 at 9.57 a.m. also contain lists of those at the Embassy, and include Nzabonimana, his wife and five children. The telegram of 12 April 1994 states that the Embassy was closed that morning, and Nzabonimana's wife and family were evacuated to Bujumbura.

396. The Chamber notes, however, that the cover letter to the telegrams, authored by the French Embassy in Tanzania and sent to the ICTR Registry, specifically states that registration at the Embassy was not systematic during the time period concerned, and that there was no registry of people entering and leaving the Embassy, allowing those taking refuge to come and go freely. This fact was corroborated by several Defence witnesses. Mechtilde Mugiraneza, whose name also appears on the list of those present at the Embassy, testified that those entering the Embassy were registered, but nothing was written down. Additionally, she testified that upon leaving the Embassy on 11 April 1994, she was not made to sign anything to show that she was leaving.[507] Witness Bongwa testified that when she left the Embassy she did not need to ask permission or authorisation to re-enter the premises and did not inform anyone when she left on 11 April 1994.[508] Witness T5 provided evidence that he saw Nzabonimana's wife, Béata, and she would "come in and go back outside as she wanted." Others left and re-entered the Embassy as well without difficulty.[509] Witness T11 testified that they "were maybe registered" when they entered the Embassy, but Nzabonimana and Béata would have registered her name, and so she did not personally register herself.[510]

397. Therefore, while the telegrams establish that Nzabonimana was present at the Embassy at various points between 7 and 12 April 1994, they do not establish his constant presence at the Embassy or in Kigali on these days. In assessing Nzabonimana's alibi, the Chamber will consider the evidence of the telegrams along with witness testimony and observations from the site visit, in order to determine whether it is reasonably possibly true that he remained at the Embassy or in Kigali during this period.

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[505] *See e.g.* Defence Exhibit 15 (French Embassy Telegrams).
[506] Defence Exhibit 15 (French Embassy Telegrams).
[507] T. 19 April 2010 p. 16 (Mugiraneza).
[508] T. 11 October 2010 p. 20 (Bongwa).
[509] T. 19 April 2010 pp. 60, 63 (ICS) (Witness T5).
[510] T. 3 May 2011 p. 25 (ICS) (Witness T11).

3.4.1.3.4 General Witness Credibility

398. The Chamber notes that three of the six Defence alibi witnesses were either related to Nzabonimana or had close personal ties to him. Witness T11 had worked closely with Nzabonimana since 1989. She acknowledged that Béata helped her and her brother obtain positions in the Ministry of Youth, and that the Nzabonimana family was good to her.[511] Witness T11 also testified that Nzabonimana did her a favour by having her evacuated.[512] Witness T9, a Tutsi, was related to Nzabonimana's wife and acknowledged that she considered Nzabonimana to be a father figure.[513] Witness T400 and Nzabonimana had a close personal relationship and she considered Nzabonimana as family.[514] The Chamber notes that the proximity and nature of Nzabonimana's relationship with these three witnesses does not in and of itself call into question the credibility of their testimony. However, the Chamber considers that, because of these close relationships, the witnesses may have had an interest in a positive outcome for Nzabonimana in his trial. The Chamber will therefore consider this factor in assessing the testimony of Witnesses T11, T9 and T400.[515]

399. The Chamber also notes that although Witness T5 was not related to Nzabonimana, the witness testified that Nzabonimana attempted to help him obtain a place at the French Embassy, and that he was thus labelled as a member of Nzabonimana's family.[516] Furthermore, the Chamber considers that even though both Mechtilde Mugiraneza and Bongwa endeavoured to distance themselves from Nzabonimana, they may nevertheless have had a motive to exculpate Nzabonimana, given that their husbands were Ministers in the Interim Government and so could qualify as alleged co-conspirators of Nzabonimana.[517] The Chamber also recalls that Mugiraneza's husband is explicitly implicated in Paragraph 26 of the Indictment against Nzabonimana. The Chamber will therefore consider these factors in assessing the testimony of Witnesses Mugiraneza, Bongwa and T5.[518]

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[511] T. 19 April 2010 p. 28 (ICS); T. 20 April 2010 p. 61 (ICS) (Witness T9); T. 3 May 2011 pp. 18, 38-39 (ICS) (Witness T11).
[512] T. 3 May 2011 p. 39 (ICS) (Witness T11).
[513] T. 20 April 2010 pp. 41-43 (ICS) (Witness T9).
[514] T. 4 May 2011 pp. 61-63, 73 (ICS) (Witness T400).
[515] *See Kanyarukiga*, Judgement (AC), para. 121 ("a witness's close personal relationship to an accused is one of the factors which a trial chamber may consider in assessing his or her evidence"); *Semanza*, Judgement (AC), paras. 119-120 ("the Trial Chamber rightly considered the relationship between a witness and the [accused] as a relevant element in the assessment of the witness's credibility").
[516] T. 15 April 2010 p. 11 (ICS); T. 19 April 2010 p. 63 (ICS) (Witness T5).
[517] *See* Para. 59 of the Indictment (charging Nzabonimana with Conspiracy to Commit Genocide, and alleging that he conspired with persons "not limited to Ministers, including those of the Interim Government of 9 April 1994").
[518] *See Kanyarukiga*, Judgement (AC), para. 121 ("a witness's close personal relationship to an accused is one of the factors which a trial chamber may consider in assessing his or her evidence"); *Semanza*, Judgement (AC), paras. 119-120 ("the Trial Chamber rightly considered the relationship between a witness and the [accused] as a relevant element in the assessment of the witness's credibility"). The Chamber is mindful of the fact that although Mechtilde Mugiraneza and Léoncie Bongwa have family relationships to persons who have been accused before this Tribunal, these relationships do not necessarily indicate that they would have distorted their testimony for the benefit of Nzabonimana. *See Setako*, Judgement (AC), para. 189.

3.4.1.3.5 Site Visit

400. The Chamber recalls that it conducted a site visit in Rwanda from 5 to 9 September 2011. During this visit, the delegation visited the sites listed in paragraph 12 of the Site Visit Report,[519] and the Registry measured the distance and time between relevant sites.[520]

401. The Chamber notes that "evidence concerning specific travel details taken after several years can only be of limited assistance in establishing the time and exact itinerary of a trip taken in April 1994."[521] While "observations from a site visit taken several years after an event may only be of limited assistance, their relevance will depend on the circumstances of each case." In this regard, the Appeals Chamber has confirmed that it can be reasonable to compare observations made during a site visit with the evidence of alibi witnesses.[522] The Chamber will make such comparisons where appropriate.

3.4.1.3.6 Assessment of Alibi Evidence

402. The Chamber will now assess the alibi evidence in relation to the relevant Indictment paragraphs, analysing on a day-by-day basis whether Nzabonimana's alibi is reasonably possibly true.

3.4.1.3.6.1 8 April 1994

403. The Prosecution submits that on the evening of 8 April 1994, Nzabonimana distributed weapons at his house in Nyabikenke *commune* and military training began the following day (3.4.3). The Prosecution also submits that between 3.00 and 5.00 p.m. on 8 or 9 April 1994, Nzabonimana addressed a meeting at Gasenyi *cellule*, Kigina *secteur*, Nyabikenke *commune*, Gitarama *préfecture* and encouraged the population to kill Tutsis (3.4.2). Defence Witnesses T11, Mugiraneza, Bongwa and T9 testified that they saw Nzabonimana in Kigali on this date.

404. The Chamber notes that Witness T11 was in a position to know what occurred in Nzabonimana's home and knew the Nzabonimana family well.[523] Witness T11 claimed to have been present at Nzabonimana's home on 6 April 1994 and to have accompanied Nzabonimana and his wife to the Presidential Guard camp and the Embassy. The Chamber notes that Witness T11's name does not appear on any of the Embassy telegrams. However, Prosecution Witness CNR1 corroborated Witness T11's presence at both locations.[524]

405. Witness T11 testified that on the morning of 8 April 1994, she left the Embassy for between 40 and 60 minutes and went to Prosper Mugiraneza's house to look for mattresses. She

[519] Decision on Site Visit (TC), 10 May 2011.
[520] Chamber Exhibit 1 (Site Visit Report); Chamber Exhibit 2 (Addendum 1 to Site Visit Report); Chamber Exhibit 3 (Addendum 2 to Site Visit Report).
[521] *Kanyarukiga*, Judgement (AC), para. 150; *Zigiranyirazo*, Judgement (AC), para. 69. *See also Kanyarukiga*, Judgement (AC), fn. 342.
[522] *Kanyarukiga*, Judgement (AC), para. 150. The Appeals Chamber also found it reasonable to consider that site visit observations of an approximately three-hour journey could call into question the credibility of alibi evidence that the journey took around six hours on 15 April 1994. *See also Kanyarukiga*, Judgement (AC), paras. 142-143, 153.
[523] T. 3 May 2011 p. 39 (ICS) (Witness T11).
[524] T. 5 May 2011 pp. 31, 35 (ICS); T. 6 May 2011 p. 31 (ICS) (Witness CNR1).

left on another occasion but could not remember the date, though she knew it was not on 8 April 1994. Aside from this, she testified that on 8 April 1994, Nzabonimana spent the entire day at the Embassy and that she did not see him leave.[525]

406. The Chamber notes that Witness T11 did not provide any specific details regarding Nzabonimana's presence at the Embassy on this date, and provided broad and imprecise time frames. Additionally, her testimony presupposes that she was with Nzabonimana the entire day, except for her brief sojourn to collect mattresses. The Chamber considers such a fact unreasonable in light of the context; namely, the instability and unrest that prevailed during the days following the President's plane crash, and Nzabonimana's active involvement in matters of government as a Minister in the Habyarimana Government and a soon-to-be Minister in the Interim Government.

407. Recalling that it is not unreasonable for the Trial Chamber to accept some parts of a witness's testimony while rejecting others,[526] the Chamber concludes that Witness T11 was present at the Presidential Guard camp and the Embassy. However, the Chamber does not consider her vague time frames, coupled with her inadequate detail as to Nzabonimana's presence at the Embassy on 8 April 1994, to be a reliable narrative as to the whereabouts of Nzabonimana on this day.

408. Mechtilde Mugiraneza testified that when she arrived at the French Embassy on 7 April 1994, Nzabonimana was already inside.[527] The Embassy telegrams corroborate her testimony that she arrived at the Embassy on 7 April 1994 and left in the early morning of 12 April 1994.

409. The Chamber notes that Mugiraneza testified that on 8 April 1994 she saw Nzabonimana in the morning and "at some point" in the evening.[528] The Chamber recalls that by her own admission, Mugiraneza moved around the Embassy during her stay, and therefore was not always in the same place. She also had her baby with her.[529] Her attention was therefore focused on matters other than Nzabonimana's whereabouts.

410. The Chamber also notes that Mugiraneza acknowledged that for the two weeks she was in Bukavu after the evacuation, she stayed in a hotel near where Nzabonimana's family stayed and that she would eat at the same location as Nzabonimana's family. She then stayed in the same hotel as Nzabonimana's family in Cyangugu for two and a half months. However, Mugiraneza could not identify the number or names of Béata's children.[530] The Chamber considers that the vagueness of Mugiraneza's testimony in this regard reveals that she was not a reliable witness.

411. Recalling that it is not unreasonable for the Trial Chamber to accept some parts of a witness's testimony while rejecting others,[531] the Chamber concludes that although Mugiraneza was present at the Presidential Guard camp and the Embassy, given the lack of detail with regard

[525] T. 3 May 2011 p. 26 (ICS) (Witness T11).
[526] *Karera*, Judgement (AC), paras. 229-230.
[527] T. 15 April 2010 pp. 35, 55 (Mugiraneza).
[528] T. 15 April 2010 p. 36 (Mugiraneza).
[529] T. 19 April 2010 pp. 2-3, 15 (Mugiraneza).
[530] T. 19 April 2010 pp. 11-14, 18 (Mugiraneza).
[531] *Karera*, Judgement (AC), paras. 229-230.

to exactly when she saw Nzabonimana on 8 April 1994, and her admission that she was distracted during her stay at the Embassy, the Chamber considers her testimony to be of little probative value with regard to Nzabonimana's whereabouts on this day.

412. Bongwa testified that she remained at the Presidential Guard camp until the afternoon of 8 April 1994.[532] The Embassy telegrams corroborated Bongwa's testimony that she was present at the Embassy beginning on 8 April 1994.[533] Bongwa testified that she saw Nzabonimana at the Embassy after she entered,[534] but did not provide any specific time frame for when she saw him. The Chamber considers this vague testimony to be of little probative value in assessing Nzabonimana's whereabouts on 8 April 1994.

413. Witness T9 claimed to have been present at Nzabonimana's home on 6 April 1994 and to have accompanied Nzabonimana and his wife to the Presidential Guard camp and the Embassy. The Chamber notes that Witness T9's name does not appear on any of the Embassy telegrams listing those who sought refuge at the Embassy.

414. In her statement to Defence investigators, Witness T9 indicated that she arrived at Nzabonimana's home on 5 April 1994 and that she "had to leave the following day."[535] During her testimony, the witness stated that she intended to leave on 6 April 1994, but that she stayed because Béata asked her on the morning of 6 April 1994 "to wait a little bit" as she wanted the witness to give something to Béata's mother in Mushubati *commune*, where Witness T9 also lived.[536] However, the witness then testified that she remained in the house the entire day, until the President's plane was shot down that evening. Given these circumstances, the Chamber does not find it plausible that Witness T9 would stay in the house the entire day and into the night, when Mushubati was an hour away by foot.[537]

415. The Chamber notes that Witness T9's testimony differed greatly from that of the other alibi witnesses. Witness T9 was the only witness who testified that a woman named Charlotte and a school-aged girl named Mahoro were at Nzabonimana's home on 6 April 1994.[538] She also testified that among those gathered at Nzabonimana's home on 6 April 1994, only she, Béata, André Hakizimana and Witness T11 were ultimately transported to the Presidential Guard camp and the Embassy. She further stated that no children were part of the group that went to the Embassy.[539]

416. The Chamber notes that the Embassy telegrams directly contradict Witness T9's testimony, listing Nzabonimana, his wife and five children as among those taking refuge.[540] Defence Witness T11 contradicted Witness T9, stating that Béata, André Hakizimana, Witness T9, Emmanuel Uwamungu, a woman named Stéphanie and three children were all evacuated to

[532] T. 11 October 2010 p. 14 (Bongwa).
[533] Defence Exhibit 15 (French Embassy Telegrams).
[534] T. 11 October 2010 p. 15 (Bongwa).
[535] T. 20 April 2010 p. 51 (Witness T9). The Chamber notes that the Prosecution used this statement during its cross-examination of the witness and did not tender the statement into evidence.
[536] T. 20 April 2010 pp. 62-63 (ICS) (Witness T9); Defence Exhibit 7 (Protected Information Sheet).
[537] T. 20 April 2010 pp. 62-63 (ICS) (Witness T9).
[538] T. 19 April 2010 p. 29 (ICS); T. 19 April 2010 p. 30 (HC) (Witness T9) (French).
[539] T. 19 April 2010 pp. 29, 36 (ICS) (Witness T9).
[540] Defence Exhibit 15 (French Embassy Telegrams).

the Embassy.[541] Mechtilde Mugiraneza testified that she left the Presidential Guard camp on a minibus with her husband and family, along with Béata and her children.[542] The Chamber considers that Witness T9's testimony that no children accompanied Béata seriously impacts Witness T9's credibility as a witness.

417. Defence Witness T9 was also the only witness who testified that Nzabonimana and his wife slept in a separate room while at the Embassy.[543] Witness T11 stated that she slept in the same room as Nzabonimana, Béata and Witness T9, and that Nzabonimana and his wife were not in a separate room.[544] Mugiraneza testified that she slept close to Nzabonimana, and could see Nzabonimana next to her with his family.[545]

418. Considering the divergences between the testimony of Witness T9 and the other alibi witnesses, and recalling that Witness T9 was related to Nzabonimana's wife and considered Nzabonimana to be a father figure, the Chamber concludes that Witness T9 was not a reliable witness regarding Nzabonimana's whereabouts during this period. The Chamber concludes that Witness T9 was not present at Nzabonimana's house on 6 April 1994, and did not accompany Nzabonimana and his wife to the Presidential Guard camp or the Embassy. The Chamber notes that Witness T11 placed Witness T9 at these locations, but the Chamber does not consider Witness T11 credible in this regard, considering the vast discrepancies between the account of Witness T9 and other, more credible evidence. As the Chamber does not consider Witness T9 to have been a credible or reliable witness, the Chamber will not rely on any of her testimony in assessing when Nzabonimana may reasonably have been present in Kigali during the alibi period.

419. Prosecution Witness CNR1 testified that on 6 April 1994, he collected Nzabonimana's wife and others from their residence in Kigali and took them to the Presidential Guard camp. The following day, he drove Nzabonimana's family to the French Embassy, but did not drive Nzabonimana there until 8 April 1994. The Chamber notes that Prosecution Witness CNR1's testimony is contradicted by the Embassy telegrams which indicate that Nzabonimana and his family registered at the Embassy on 7 April 1994.[546] As a result of this discrepancy, the Chamber concludes that Witness CNR1 is not a reliable witness with respect to when Nzabonimana arrived at the Embassy.

420. However, the Chamber observes that the witness testified that he drove Nzabonimana to his father's home in Nyabikenke on 8 April 1994, and then returned almost immediately.[547] Witness CNR1 stated that upon their return to Kigali, he accompanied Nzabonimana to the Kiyovu Hotel on foot and that he returned to the Embassy alone and did not see Nzabonimana again that night.[548]

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[541] T. 3 May 2011 pp. 20, 24 (ICS) (Witness T11).
[542] T. 15 April 2010 pp. 34, 48 (Mugiraneza).
[543] T. 19 April 2010 p. 30 (ICS) (Witness T9).
[544] T. 3 May 2011 p. 25 (ICS); T. 4 May 2011 p. 21 (ICS) (Witness T11).
[545] T. 15 April 2010 p. 36 (Mugiraneza).
[546] Defence Exhibit 15 (French Embassy Telegrams).
[547] T. 6 May 2011 p. 44 (ICS) (Witness CNR1).
[548] T. 5 May 2011 p. 44 (ICS) (Witness CNR1).

421. The Chamber notes that Witness CNR1 testified that in April 1994, it took between one and a half to two hours to travel from Kigali to Nyabikenke, stating that although there were roadblocks, they were not stopped along the way.[549] Witness CNAC testified that travelling from Nyabikenke to Kigali took approximately two and a half hours.[550] Witness T400 estimated the distance between Kigali and Nyabikenke to be 100 kilometres, and Witness T5 stated that it normally took two hours to go from Kigali to Remera in Nyabikenke *commune*, but that during the rainy season it took two and a half hours.[551] Witness T150 testified that in 1994, it took four hours in the dry season and five hours in the rainy season to drive from Kigali to Gasenyi centre in Nyabikenke *commune*.[552] Defence Witness Batard testified that the route from the Embassy to Gasenyi, via Nzabonimana's house, was 101.3 kilometres, and took 3 hours and 18 minutes during the dry season.[553]

422. Furthermore, Witness CNAF stated that to travel from Kigali to Kavumu *secteur*, where Nzabonimana's house was located, took less than two hours and 45 minutes by car, but in the rainy season, one's speed would depend on the vehicle and the driver.[554] Batard testified that the distance from the Embassy to Kavumu *secteur* could be covered in two hours and 19 minutes or two hours and 44 minutes, depending on the route. Batard proposed that the approximate travel time in 1994 would have been three hours and 20 minutes.[555]

423. The Chamber recalls that during the site visit, the delegation departed the French Embassy at 9.27 a.m., and arrived at Nzabonimana's house in Nyabikenke *commune* at 12.27 p.m., after having stopped for approximately 50 minutes on the way. The distance between the Embassy and Nzabonimana's residence in Kavumu was 90 kilometres. The delegation then travelled in one half hour from Nzabonimana's house to Gasenyi centre. The distance between the Embassy and Gasenyi centre in Nyabikenke *commune* was recorded as 100.7 kilometres.[556]

424. Based upon the above evidence, and taking into account the observations made during the site visit, the Chamber concludes that in April 1994, it took approximately two hours and 45 minutes to travel from the French Embassy in Kigali to Nyabikenke *commune*, where Nzabonimana's house and Gasenyi centre were located.

425. The Chamber notes that the alibi evidence presented by the Defence only covers portions of 8 April 1994. As noted, Nzabonimana's name appears on the Embassy telegram of 8 April 1994, indicating his presence at the Embassy at some point that day. However, none of the Defence alibi witnesses provided even an approximate time when they purportedly saw Nzabonimana. Given the vagueness and gaps in the Defence alibi evidence, and Witness T9's lack of credibility, the Chamber considers that the evidence reasonably places Nzabonimana in Nyabikenke on 8 April 1994. The Chamber recalls that it can accept some parts of a witness's

[549] T. 5 May 2011 p. 42 (ICS); T. 6 May 2011 pp. 15, 29, 42-44, 47 (ICS) (Witness CNR1).
[550] T. 13 April 2010 pp. 31-32 (ICS) (Witness CNAC).
[551] T. 15 April 2010 pp. 19-20 (ICS); T. 20 April 2010 pp. 23-34 (ICS) (Witness T5).
[552] T. 19 October 2010 pp. 16-17 (ICS) (Witness T150).
[553] T. 21 March 2011 p. 50 (Batard).
[554] T. 17 November 2009 pp. 15, 26-27, 53 (ICS) (Witness CNAF).
[555] T. 21 March 2011 pp. 49, 52 (Batard); Defence Exhibit 131H (Itineraries and Times of Travel), slides 7-8, 18.
[556] Chamber Exhibit 1 (Site Visit Report), p. 4; Chamber Exhibit 2 (Addendum 1 to Site Visit Report), p. 2.

testimony while rejecting others,[557] and accepts that Witness CNR1 drove Nzabonimana to Nyabikenke on 8 April 1994.

426. The Chamber notes that the Site Visit Report indicates that the travel time between Gasenyi centre and Nzabonimana's house was approximately 30 minutes.[558] Taking into account the alibi witness testimony, in addition to other Prosecution evidence regarding another meeting that same day, the Chamber concludes that the alibi evidence is not inconsistent with the Prosecution evidence that Nzabonimana was at Gasenyi centre between 3.00 and 5.00 p.m. on 8 April 1994.[559]

427. When viewed as a whole, the Chamber does not find that the evidence adduced in support of Nzabonimana's alibi raises a reasonable doubt in the Prosecution evidence placing him at the scene of alleged crimes in Nyabikenke *commune* on 8 April 1994.

3.4.1.3.6.2 9 April 1994

428. The Prosecution submits that between 3.00 and 5.00 p.m. on 8 or 9 April 1994, Nzabonimana addressed a meeting at Gasenyi *cellule*, Kigina *secteur*, Nyabikenke *commune*, Gitarama *préfecture* and encouraged the population to kill Tutsis (3.4.2). In addition, the Prosecution submits that on 9 April 1994, Nzabonimana held a meeting in Kigali *cellule*, Kavumu *secteur*, Nyabikenke *commune* between 5.00 and 6.00 p.m. (3.4.4). Defence Witnesses T11, Mugiraneza, Bongwa, T9, T5 and T400 testified that they saw Nzabonimana in Kigali on this date.

429. Defence and Prosecution witnesses provided consistent evidence that the Interim Government was sworn in at the Diplomat Hotel on the morning of 9 April 1994, and that Nzabonimana, as part of the Interim Government, was present at the ceremony.[560] Defence Exhibit 57 contains a video showing the Ministers, including Nzabonimana, being sworn into office.[561] The video does not indicate the date, time or length of the ceremony. However, given the consistent evidence presented at trial, the Chamber concludes that Nzabonimana attended a swearing-in ceremony for the Ministers at the Diplomat Hotel in Kigali on the morning of 9 April 1994.

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[557] *Karera*, Judgement (AC), paras. 229-230.
[558] During the site visit, the delegation arrived at Kavumu *secteur* near Nzabonimana's home at 12.27 p.m. The delegation left his home at 12.32 p.m. for Gasenyi centre, arriving at 1.03 p.m.
[559] The Chamber notes that Witness CNR1 testified that he and Nzabonimana left Kigali at 4.00 p.m. on 8 April 1994 and only went to Kavumu *secteur*. The Chamber has assessed the Prosecution evidence in the section pertaining to the Gasenyi *cellule* meeting (3.4.2.3).
[560] T. 19 April 2010 p. 30 (ICS) (Witness T9); T. 11 October 2010 p. 18 (Bongwa); T. 3 May 2011 p. 27 (ICS) (Witness T11); T. 15 April 2010 p. 37 (Mugiraneza); T. 15 April 2010 p. 11 (ICS) (Witness T5); T. 4 May 2011 p. 67 (ICS) (Witness T400); T. 5 May 2011 p. 44 (ICS) (Witness CNR1); T. 17 November 2009 pp. 27-28, 31 (ICS) (Witness CNAF).
[561] T. 17 November 2009 pp. 31-32 (ICS) (Witness CNAF); Defence Exhibit 57 (Video Clip of Swearing-in Ceremony). The Chamber notes that neither party challenged the authenticity of this clip.

430. Witness T11 testified that on 9 April 1994, she saw Nzabonimana between 2.00 p.m. and dusk, but could not recall a precise time.[562] The Chamber does not consider this vague testimony to be a reliable narrative as to the whereabouts of Nzabonimana on this day.

431. Mechtilde Mugiraneza testified that on 9 April 1994, she saw Nzabonimana in the evening at the Embassy, but could not recall the time.[563] The Chamber recalls, that although Mugiraneza may have been present at the Embassy, she was distracted during her stay. This, combined with the vagueness of her testimony as to when she saw Nzabonimana, leads the Chamber to conclude that she was not a reliable witness as to Nzabonimana's whereabouts after the swearing-in ceremony on 9 April 1994.

432. Bongwa testified that she saw Nzabonimana at the Embassy after the Ministers returned from the swearing-in ceremony on 9 April 1994. She did not provide a specific time when she purportedly saw him. The Chamber considers this vague testimony to be of little probative value in assessing Nzabonimana's whereabouts on 9 April 1994.

433. The Chamber recalls that although Witness T9 testified that she saw Nzabonimana on 9 April 1994, the Chamber does not accept her testimony as credible or reliable.

434. Witness T5 testified that on 9 April 1994, he saw Nzabonimana outside the Embassy around 6.30 or 7.00 p.m.[564] However, the Chamber does not consider Witness T5 to have been a credible witness. The Chamber notes that Witness T5 testified that the process of entering and leaving the Embassy was simple and people could generally come and go as they pleased.[565] However, Witness T5 also testified that everyone who entered the Embassy needed to be authorised, and despite the fact that he was labelled as a member of Nzabonimana's family, he could not gain access to the Embassy, so he spent the night outside in his vehicle.[566] The Chamber considers this internal contradiction to undermine the witness's credibility that he was present outside the Embassy on 9 and 10 April 1994. As the Chamber does not find Witness T5 to be credible, it will not rely upon his testimony regarding Nzabonimana's alibi.

435. Witness T400 testified that she saw Nzabonimana before she went to sleep on the night of 9 April 1994.[567] The Chamber notes that although Witness T400 testified that she entered the Embassy premises, her name does not appear on the Embassy telegrams contained in Defence Exhibit 15. Witness T400 testified that after entering the Embassy premises, she did not go into the building, but instead to the garden, where she spent the night. The Chamber recalls that Bongwa, who was present at the Embassy, testified that she could access the courtyard of the Embassy only after being allowed to enter the Embassy premises.[568] The Chamber considers the absence of Witness T400's name from the Embassy telegrams to seriously undermine her claim that she was present at the Embassy on the dates in question particularly given that her testimony as to her presence at the Embassy was uncorroborated.

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[562] T. 3 May 2011 p. 27 (ICS) (Witness T11).
[563] T. 15 April 2010 pp. 36-37 (Mugiraneza).
[564] T. 15 April 2010 pp. 11-12 (ICS) (Witness T5).
[565] T. 19 April 2010 pp. 60, 63 (ICS) (Witness T5).
[566] T. 15 April 2010 pp. 11-12 (ICS); T. 19 April 2010 p. 63 (ICS) (Witness T5).
[567] T. 4 May 2011 p. 67 (ICS) (Witness T400).
[568] T. 11 October 2010 pp. 14-15 (Bongwa).

436. Furthermore, the Chamber notes Witness T400's testimony that Nzabonimana sent Prosecution Witness CNR1 to take her to the Embassy on the morning of 9 April 1994 around 10.00 or 11.00 a.m. was contradicted by other evidence presented at trial.[569] Witness CNR1 testified that he took Nzabonimana to the swearing-in ceremony at the Diplomat Hotel that morning. All the Defence alibi witnesses testified that on the morning of 9 April 1994, the Ministers of the Interim Government, including Nzabonimana, were sworn in.[570] Witness CNR1 stated that around 10.00 a.m., he went from the ceremony to the house of President Sindikubwabo where the Ministers later congregated, and remained there to guard the premises.[571] Considering this evidence and the absence of Witness T400's name from the Embassy telegrams, the Chamber does not believe that Witness CNR1 escorted her to the Embassy on 9 April 1994.

437. Considering the foregoing, and recalling Witness T400's close relationship with, and profession of love for, Nzabonimana, the Chamber concludes that Witness T400 was not present at the Embassy on 9 and 10 April 1994. The Chamber considers her testimony to be incredible and unreliable. The Chamber will therefore not rely upon her evidence when assessing the alibi presented by the Defence. Furthermore, the Chamber considers that the belated introduction of Witness T400's testimony reinforces the conclusion that Witness T400's evidence was rehearsed and tailored to fit the Prosecution case. The Chamber notes that the failure to disclose this evidence in a timely manner supports the inference that the evidence was fabricated in order to exonerate Nzabonimana.[572]

438. Witness CNR1 admitted that after he accompanied Nzabonimana to the Diplomat Hotel on the morning of 9 April 1994, he was not with Nzabonimana for the rest of the day.[573] Witness CNR1's testimony is therefore not probative regarding where Nzabonimana was after the swearing-in ceremony on 9 April 1994.

439. The Chamber recalls its finding that it took approximately two hours and 45 minutes to travel from Kigali to Nzabonimana's house in Kavumu *secteur*, Nyabikenke *commune*. The Chamber notes that Kigali *cellule*, where Nzabonimana allegedly held a meeting on 9 April 1994, was also located in Kavumu *secteur*, Nyabikenke *commune*. The Chamber also recalls the relatively close proximity between Kavumu *secteur* and Gasenyi centre.[574]

440. Nzabonimana's alibi evidence covers only portions of 9 April 1994. Taking into account the alibi witness testimony and the travel time set out above, as well as the Prosecution evidence with regard to the meeting at Kigali *cellule*, the Chamber concludes that the alibi evidence is not inconsistent with the Prosecution evidence that Nzabonimana was at Gasenyi centre between 3.00 and 5.00 p.m. Furthermore, the alibi evidence is not inconsistent with the Prosecution evidence regarding the Kigali *cellule* meeting on the same day at approximately 5.00 p.m. Given

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[569] T. 4 May 2011 pp. 66, 74 (ICS) (Witness T400).
[570] T. 19 April 2010 p. 30 (ICS) (Witness T9); T. 11 October 2010 p. 18 (Bongwa); T. 3 May 2011 p. 27 (ICS) (Witness T11); T. 15 April 2010 p. 37 (Mugiraneza); T. 4 May 2011 p. 67 (ICS) (Witness T400); T. 5 May 2011 p. 44 (ICS) (Witness CNR1).
[571] T. 6 May 2011 p. 46 (ICS) (Witness CNR1).
[572] *Kalimanzira*, Judgement (AC), para. 54.
[573] T. 6 May 2011 pp. 44-46 (ICS) (Witness CNR1).
[574] Prosecution Exhibit 30 (Administrative Map of Rwanda).

that the times were approximate and the proximity between both locations in Nyabikenke *commune*, Nzabonimana would have been able to attend both meetings and return to the Embassy that same evening.

441. Given the foregoing, the Chamber does not find that the evidence adduced in support of Nzabonimana's alibi raises a reasonable doubt in the Prosecution evidence placing him at the Gasenyi trading centre and Kigali *cellule* on 9 April 1994. Therefore, the Chamber does not consider Nzabonimana's alibi for 9 April 1994 to be reasonably possibly true.

3.4.1.3.6.3 10 April 1994

442. The Prosecution presented evidence that on 10 April 1994, Nzabonimana was at Kivumu centre, Gitovu *secteur*, Nyabikenke *commune* between 9.00 and 10.00 a.m. and that Nzabonimana was at Gasenyi centre, Kigina *secteur*, Nyabikenke *commune* from approximately 5.00 to 6.00 p.m. (3.4.5). Furthermore, Witness CNAF testified that Nzabonimana was present at his house in Nyabikenke *commune* at an unidentified time on 10 April 1994 (3.4.3). Defence Witnesses T11, Mugiraneza, Bongwa, T9, T5 and T400 testified that they saw Nzabonimana in Kigali on this date.

443. Witness T11 testified that she saw Nzabonimana in the Embassy on the morning of 10 April 1994, and saw him again between 4.00 and 5.00 p.m. She further testified that Nzabonimana slept at the Embassy.[575] Mechtilde Mugiraneza testified that she saw Nzabonimana at some point in the morning on 10 April 1994, but did not attest to seeing him after that.[576] Bongwa admitted that on 10 April 1994, while she knew that some of the Ministers were there, she was "preoccupied with other matters" and "was no longer interested in what was going on."[577] Given this testimony, the Chamber will not rely on her testimony in assessing whether Nzabonimana's alibi is reasonably possibly true for 10 April 1994.

444. The Chamber recalls that it does not find Witnesses T9, T5 and T400 to be credible or reliable witnesses regarding Nzabonimana's alibi.

445. Witness CNR1 testified that he escorted Nzabonimana to Nyabikenke *commune* on 10 April 1994, where they both spent the night before returning to the Embassy on 11 April 1994. The witness testified that on 10 April 1994, they left Kigali at approximately 9.00 a.m. Their first stop on this journey was the RTLM radio station. They then stopped at the Kivumu commercial centre where Nzabonimana spoke to a *bourgmestre*, and arrived in Nyabikenke between noon and 1.00 p.m.[578] The Chamber notes that the telegrams do not provide that Nzabonimana was at the Embassy on 10 April 1994, but that as of 9.57 a.m. on 11 April 1994, Nzabonimana, his wife and five children were recorded to be at the Embassy. The Chamber notes, however, that Witness CNR1 omitted reference to this trip in his previous statement of 12 June 2002.[579]

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[575] T. 3 May 2011 pp. 27-28 (ICS); T. 4 May 2011 p. 22 (ICS) (Witness T11).
[576] T. 15 April 2010 p. 36 (Mugiraneza).
[577] T. 11 October 2010 p. 19 (Bongwa).
[578] T. 6 May 2011 pp. 32, 44-46 (ICS) (Witness CNR1).
[579] Defence Exhibit 144 (Statement of Witness CNR1, 12 June 2002).

446. The Chamber recalls its finding that in April 1994, it took approximately two hours and 45 minutes to travel from the Embassy to Nyabikenke *commune*, where Kivumu centre, Gasenyi centre and Nzabonimana's home were located.

447. Bearing the travel time in mind, the Chamber notes that on the morning of 10 April 1994, Mugiraneza and Witness T11 testified that they saw Nzabonimana at the Embassy, but did not provide a precise timeframe. Given the general nature of this testimony, Nzabonimana could have gone to Kivumu centre and his home in the morning and driven back to the Embassy, where Witness T11 saw him between 4.00 and 5.00 p.m. Furthermore, Nzabonimana could have left the French Embassy around 4.00 p.m. and driven to Gasenyi centre to arrive around 6.00 p.m. where Witness CNAY saw him distributing weapons. He also could have gone to his home in Kavumu *secteur* and returned to the Embassy in Kigali that same evening.

448. Nevertheless, the Chamber notes that Witness CNR1 testified that he escorted Nzabonimana to Nyabikenke *commune* on 10 April 1994, spent the night there and that they both returned to the French Embassy on 11 April 1994.[580] The Chamber notes that this testimony conflicts with that of Witness T11, who stated that she slept in the same corridor as Nzabonimana on the night of 10 April 1994. The Chamber recalls its finding that Witness T11 had close personal ties to Nzabonimana, and a possible interest in a positive outcome for him in this trial. Bearing this in mind, the Chamber does not consider Witness T11 to be credible or reliable as to whether Nzabonimana slept at the Embassy on the night of 10 April 1994. Furthermore, recalling that it is not unreasonable for the Trial Chamber to accept some parts of a witness's testimony while rejecting others,[581] the Chamber believes that, despite Witness CNR1's omission of the trip in his prior statement, Nzabonimana spent the night of 10 to 11 April 1994 at his home in Nyabikenke as put forth by Witness CNR1. The Defence witnesses' testimony does not raise a reasonable doubt regarding this finding.

449. Consequently, the Chamber does not find that the evidence adduced in support of Nzabonimana's alibi that he was in Kigali raises a reasonable doubt in the Prosecution evidence placing him at the scene of the alleged crimes on 10 April 1994. Given the foregoing, the Chamber does not consider Nzabonimana's alibi for 10 April 1994 at the Embassy and Diplomat Hotel to be reasonably possibly true in relation to his presence at Kivumu centre, Gasenyi centre and his home in Nyabikenke *commune* on 10 April 1994.

3.4.1.3.6.4 11 April 1994

450. The Chamber notes that Witness CNAX testified that Nzabonimana was seen attending a meeting at Kabimbura centre in Nyabikenke *commune* on 11 April 1994, around 5.00 p.m. (3.4.6). Defence Witnesses T11, Mugiraneza, T9 and T400 testified that they saw Nzabonimana in Kigali on this date.

451. On 11 April 1994, Witness T11 saw Nzabonimana leave for a meeting "at some point" in the morning and return to the Embassy "[i]n the course of the afternoon."[582] Mechtilde Mugiraneza did not see Nzabonimana at the Embassy when she left on 11 April 1994, but

[580] T. 6 May 2011 pp. 32, 44 (ICS) (Witness CNR1).
[581] *Karera*, Judgement (AC), paras. 229-230.
[582] T. 3 May 2011 pp. 28-29 (ICS) (Witness T11).

testified that she saw him that evening at the Diplomat Hotel.[583] The Chamber considers this vague evidence to be of little probative value in assessing Nzabonimana's whereabouts on 11 April 1994.

452. The Chamber recalls that it does not find Witnesses T9 and T400 to be credible or reliable witnesses regarding Nzabonimana's alibi.

453. Witness CNR1 testified that he and Nzabonimana spent the night in Nyabikenke *commune* on 10 April 1994 and that on 11 April 1994, Nzabonimana attended a meeting at the premises of Electrogaz in Gitarama. Around 3.00 p.m., they left Gitarama to return to Kigali.[584] The Chamber recalls that it has accepted that Witness CNR1 accompanied Nzabonimana to Nyabikenke *commune* and spent the night there from 10 to 11 April 1994.[585]

454. The Chamber recalls its finding that it took two hours and forty five minutes to travel from the French Embassy in Kigali to Nyabikenke *commune*, where the Kabimbura business centre was located. The Chamber also notes that Witness T24 testified that Kabimbura was located approximately five minutes from the Nyabikenke *commune* office by car.[586]

455. Bearing the travel time in mind, the Chamber notes that the alibi evidence presented by the Defence only covers parts of 11 April 1994. Mugiraneza testified that she saw Nzabonimana at 7.00 or 8.00 p.m. on 11 April 1994. Assuming this to be true, Nzabonimana would have been able to leave the meeting in Nyabikenke *commune* around 5.00 p.m. and drive to the Diplomat Hotel where Mugiraneza saw him.

456. Witness T11 testified that she saw Nzabonimana at the Embassy "in the course of the afternoon" of 11 April 1994 and that Nzabonimana left in the evening. Notably, however, Witness T11 did not provide an approximate time in the afternoon when she saw Nzabonimana. Even if Witness T11 saw Nzabonimana in the afternoon, Nzabonimana still would have had time to travel to Nyabikenke for a meeting and return to the Embassy by late afternoon or early evening.

457. Consequently, the Chamber does not find that the evidence adduced in support of Nzabonimana's alibi for the meeting in Nyabikenke *commune* raises a reasonable doubt in the Prosecution evidence placing him at the scene of the alleged crime on 11 April 1994. Given the foregoing, the Chamber does not consider Nzabonimana's alibi for 11 April 1994 at the French Embassy and Diplomat Hotel to be reasonably possibly true.

3.4.1.4 Conclusion

458. In assessing Nzabonimana's alibi, the Chamber considers the totality of the circumstances and evidence, including: (1) the untimely filing of the Defence's Notice of Alibi; (2) the close relationship between Nzabonimana and many of the alibi witnesses; (3) the credibility or reliability issues surrounding each of the witnesses; and (4) the conclusions on

[583] T. 15 April 2010 pp. 36-38, 57; T. 19 April 2010 pp. 3, 8, 16 (Mugiraneza).
[584] T. 6 May 2011 pp. 32, 44-46 (ICS) (Witness CNR1).
[585] The Chamber has assessed any contradictions in the Prosecution evidence in the section pertaining to the Kabimbura centre meeting (3.4.6.3).
[586] T. 26 April 2010 p. 47 (ICS) (Witness T24).

travel times derived from the evidence with limited assistance from the site visit observations. The Chamber notes that it does not reject the alibi in its entirety. The Chamber accepts that Nzabonimana was at the French Embassy in Kigali during this time as well as intermittently at the Diplomat Hotel in his ministerial capacity. Recalling that an accused need only produce evidence likely to raise a reasonable doubt in the Prosecution's case and that the alibi does not carry a separate burden,[587] the Chamber concludes that the alibi evidence is not sufficiently credible to raise a reasonable doubt in the Prosecution's case.[588] Therefore the Chamber finds that the alibi was not reasonably possibly true in relation to the relevant paragraphs of the Indictment.

459. Despite this finding that Nzabonimana's alibi cannot be reasonably possibly true, the Chamber recalls that the burden of proof remains on the Prosecution to establish the events alleged in the Indictment beyond reasonable doubt. Therefore, the Chamber will proceed to assess the factual findings of each Indictment paragraph.

3.4.2 Gasenyi *Cellule* Meeting

3.4.2.1 Introduction

460. Paragraph 35 of the Indictment alleges that on or about 8 April 1994, at Gasenyi *cellule*, Kigina *secteur*, Nyabikenke *commune*, Gitarama *préfecture*, Nzabonimana told the population to kill Tutsis in Gasenyi and Nyamiyaga *cellules*. The population included *Interahamwe*, *gendarmes* and Hutu civilians. Nzabonimana accused Tutsis of being the enemies of Rwanda and told the population to kill them first before eating their cows. Following the meeting, Nzabonimana ordered and supervised the distribution of weapons. As a result of the incitement and the distribution of weapons, the killing of Tutsis began in Gasenyi *cellule* in the night of the same day. Killings spread to Nyamiyaga *cellule* and neighbouring *cellules*. Many Tutsis were killed by persons including *Interahamwe* and Hutu civilians.[589]

461. The Prosecution submits that on 8 or 9 April 1994, between 3.00 and 4.00 p.m., Nzabonimana addressed an impromptu gathering of about 100 people at Gasenyi centre. He arrived in a vehicle carrying machetes. A local businessman and MRND member, Mathias Barajiginywa, introduced Nzabonimana. Other prominent individuals were present, including Celestin Ndahogoye, an MDR leader, and Witness T25, a member of the CDR party. Nzabonimana said to the audience, "the enemy is the Tutsi and we don't want to have any more to do with the Tutsi." Nzabonimana gave orders that the Tutsis must be eliminated and ordered those present to eat the cows of the Tutsis. Nzabonimana promised to return in a few days to see if his orders were carried out. The Prosecution cites Prosecution Witness CNAP.[590]

462. The Defence presents an alibi for the period of 6 April to 12 April 1994.[591] The Defence also asserts that Witness CNAP fabricated her testimony (3.2.2). The Defence submits that the Prosecution presented contradictory evidence with regard to Paragraph 35 of the Indictment. It

[587] *Kalimanzira*, Judgement (AC), para. 67.
[588] *Kanyarukiga*, Judgement (AC), para. 169; *Kalimanzira*, Judgement (AC), para. 67.
[589] Para. 35 of the Indictment.
[590] Prosecution Closing Brief, paras. 76-78, 353; T. 20 October 2011 pp. 17-18 (Prosecution Closing Argument).
[591] The Chamber recalls that it has considered the Defence alibi evidence and has found that the alibi is not reasonably possibly true in relation to this paragraph of the Indictment (3.4.1.3).

argues that the Prosecution failed to produce evidence that Nzabonimana ordered the distribution of weapons, and that the physical layout of Gasenyi centre supports the testimony of Defence Witness T27 that the meeting did not occur. The Defence relies on the testimony of Witnesses T24, T25 and T27.[592]

3.4.2.2 Evidence

Prosecution Witness CNAP

463. Witness CNAP, a Hutu farmer who lived in Gitarama *préfecture* in 1994, knew Nzabonimana well through personal connections. The witness also knew Nzabonimana as a Government Minister. She testified that the population regarded Nzabonimana as good until the war started.[593]

464. Witness CNAP saw Nzabonimana on 8 or 9 April 1994 in Gasenyi. The witness had gone to Gasenyi to buy provisions and arrived in the early afternoon. Nzabonimana held a small meeting for people from Ndusu *commune*. Approximately 100 people from Ndusu *commune* and Nyabikenke *commune* were present. A trader named Mathias Barajiginywa invited the people from Ndusu *commune* to come listen to Nzabonimana. The witness saw people crossing the Nyabarongo River from Ndusu *commune*. Witness CNAP knew only some of the people assembled. She named several specific people who were part of the crowd.[594]

465. Between 3.00 and 5.00 p.m., Nzabonimana arrived in a white vehicle accompanied by five or more *gendarmes*. The *gendarmes* carried grenades and the back of the vehicle contained machetes. Nzabonimana asked people to unload the machetes and store them at the business of Barajiginywa, located on the lower side of the market. The car was parked approximately 16 metres from Barajiginywa's house.[595]

466. Prominent authorities attended the meeting, including leaders of the MRND, CDR and MDR parties. A relative of the witness through marriage, who was an MDR leader, attended. Witness T25, who was a member of the CDR, also attended. Barajiginywa was a member of the MRND.[596]

467. Barajiginywa took the floor and said a guest had just arrived to speak to those gathered. Nzabonimana rose and greeted the crowd. Nzabonimana asked the crowd: "Do you know the enemy?" He then answered his own question, saying: "The enemy is the Tutsi, and we don't want to have any more to do with the Tutsis." He also said that people should not hasten to eat the cows, but that the first thing to do was to eliminate the owners of the cows. He then said he would return in a few days to check whether they had done the job. The witness understood

[592] Defence Closing Brief, paras. 99-115, 413-414; Defence Additional Brief, para. 27; T. 20 October 2011 pp. 51-52 (Defence Closing Argument).
[593] Prosecution Exhibit 1 (Protected Information Sheet); T. 10 November 2009 p. 6 (Witness CNAP).
[594] T. 10 November 2009 pp. 6-7, 12; T. 10 November 2009 pp. 38-40, 42-43, 49, 51 (ICS) (Witness CNAP).
[595] T. 10 November 2009 pp. 7, 9; T. 10 November 2009 p. 69 (ICS) (Witness CNAP).
[596] T. 10 November 2009 p. 17 (ICS) (Witness CNAP).

Nzabonimana's words to mean that the enemy was the Tutsis and that they had to be eliminated. She understood the meaning of Nzabonimana's speech because her husband was a Tutsi.[597]

468. Barajiginywa told the audience that young people should unload the vehicle containing the weapons. Nzabonimana was present at the time. Witness T25 was one of those who unloaded the weapons. The machetes were unloaded quickly from the vehicle. *Gendarmes* bearing grenades accompanied those who carried the machetes to Barajiginywa's business. Nzabonimana and Barajiginywa went inside the house.[598]

469. Before the crowd dispersed, young men began to gather jerry cans of banana beer at Barajiginywa's business. Witness CNAP left Gasenyi "as soon as possible" after Nzabonimana's speech, at around 5.30 p.m. She left prior to Nzabonimana's departure. When she returned home, the witness told her husband that "things were getting critical" and they had to go sleep in the bushes. The witness went into hiding and was not able to sleep during the night. That night, youths began to disturb members of the population. They made a lot of noise and told people "[w]e are going to kill you." Some people were tracked down, while others hid in the bushes or sought refuge in various parishes or the *commune* office. The witness did not see Nzabonimana after the Gasenyi meeting.[599]

470. That same night, Tutsis began seeking refuge at Ntarabana Parish. The witness and her children sought refuge at the parish. The assailants came to the parish to attack them, breaking down the parish doors. The witness estimated that the attack occurred on 10 or 11 April 1994. The attack occurred before 12 April 1994, the date when the refugees went to the *commune* office.[600] The attackers took away the witness's six children and their paternal aunt. Her children were taken to the Nyabarongo River and killed. A few days later, the attackers were at a drinking spot, bragging about what they had done. They also said that they would kill the survivors. The people who killed her children were the same people who attended the meeting at Gasenyi.[601]

471. The witness also testified that she and her children did not seek refuge at the parish. Following the meeting, the witness was at home with her sister-in-law and her children. Attackers came to the witness's home and told the witness that she had to carry her infant child on her back to the Nyabarongo River. Upon seeing the attackers, one of Witness CNAP's children hid under the bed. The attackers severely beat Witness CNAP and told her that she had to show them where her child was hiding. Three young men then entered the home, found the child and took the child away. The three men confessed to this crime before a *Gacaca* court, but there were also many other attackers. The attackers took away the witness's sister-in-law at the

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[597] T. 10 November 2009 pp. 10-11; T. 10 November 2009 p. 11 (Witness CNAP) (French) (clarifying that Nzabonimana told the audience not to eat the cows).
[598] T. 10 November 2009 pp. 9-10; T. 10 November 2009 pp. 17-18, 55 (ICS) (Witness CNAP).
[599] T. 10 November 2009 pp. 6-7, 11, 13, 18; T. 10 November 2009 p. 52 (ICS) (Witness CNAP).
[600] The Chamber notes that the Indictment refers to Tutsi civilians who sought refuge at Ntarabana Parish and the Nyabikenke *commune* office as "refugees." Prosecution and Defence witnesses also used the term "refugees" to describe the Tutsis who sought refuge. Given that the Tutsis in question were displaced within their country of nationality, the term "refugees" does not accurately convey the status of these persons under international law in April 1994. *See e.g. Kanyarukiga*, Judgement (TC), fn. 6. Recognising this, the Chamber has adopted the use of the word "refugee" to more accurately capture the relevant witness testimony and for consistency throughout the Judgement.
[601] T. 10 November 2009 pp. 11-13 (Witness CNAP).

same time. The witness estimated that her children were taken approximately two days after the attack on the parish. Those who confessed to the crime said the attack occurred on 14 or 15 April 1994. All six of the witness's children were killed, as was her sister-in-law. The witness confirmed the names of her six children who were killed.[602]

472. The attackers continued to pursue the witness because her husband was a Tutsi and she was blamed for having Tutsi children. She could not flee because roadblocks had been erected. One day after the witness's children had been taken away, people stopped her at a roadblock and said to her: "Look. We have to slit open your stomach so that we make sure that you don't have Tutsi children in your belly." Others said to leave her alone as they had already killed her children. The attacker insisted that they needed to split open her stomach. The attackers mocked the witness and said: "We shouldn't leave these filthy women alone." Members of the population arrived and convinced the attackers to spare her life. The attackers said that "in any case, if she is not killed today, she'll be killed after Habyarimana's funeral." On 20 May 1994, the witness went to Nyabugogo in Shurongi *commune* to be with her mother's relatives.[603]

473. The father of Witness CNAP's children hid at the parish. The father went from the parish to the *commune* office and then to Kabgayi, where he survived.[604]

Defence Witness T24

474. Witness T24, a local government official in Nyabikenke *commune* in 1994,[605] testified that he knew of no incidents in his *commune* on 7 or 8 April 1994. He did not receive any information regarding the distribution of weapons by Nzabonimana to the inhabitants of Gasenyi. He also had never heard of this incident during *Gacaca* proceedings.[606]

475. No one informed the witness that Nzabonimana held meetings in *secteurs* of the witness's *commune* between 7 and 10 April 1994. Witness T24 did not see Nzabonimana during the events of 1994.[607]

Defence Witness T25

476. Witness T25, a farmer who lived in Gitarama *préfecture* in 1994,[608] was a member of the MDR party in 1994. He denied that he was a member of the CDR party, since that party was not established in his *commune*. The witness lived approximately three kilometres from the Gasenyi trading centre. He knew Mathias Barajiginywa. Barajiginywa's business was located on the right side of the road that passes through the Gasenyi market square.[609]

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[602] T. 10 November 2009 pp. 18, 20, 22, 25 (ICS) (Witness CNAP).
[603] T. 10 November 2009 p. 13; T. 10 November 2009 pp. 20-21 (ICS) (Witness CNAP).
[604] T. 10 November 2009 pp. 18-20 (ICS); T. 10 November 2009 p. 20 (HC) (Witness CNAP) (French) (for the spelling of "Kabgayi").
[605] For additional introductory information on Witness T24, *see* para. 284, *supra*.
[606] T. 26 April 2010 pp. 35-36, 38-39 (ICS) (Witness T24).
[607] T. 26 April 2010 pp. 29, 41 (ICS) (Witness T24).
[608] Defence Exhibit 35 (Protected Information Sheet); T. 31 May 2010 p. 67 (ICS) (Witness T25).
[609] T. 31 May 2010 pp. 68-69 (ICS) (Witness T25).

477. A football field was located close to the Gasenyi trading centre. From the field, one could see the river as well as the Gasenyi marketplace and the surrounding buildings. Between the football field and the river was a vast field where people grazed their cattle. The marketplace shops on the upper part of the road were visible from the football field, along with Barajiginywa's building. Another building in an elevated location was also visible, in addition to the roofs of buildings located in a valley.[610]

478. The witness denied that he went to the Gasenyi market on 8, 9 or 10 April 1994. He denied that he was present at the meeting at Gasenyi about which Witness CNAP testified. If the meeting had occurred, the witness would have heard of it from others. He denied receiving weapons from Nzabonimana during the events of 1994. The witness first saw Nzabonimana during the 1994 events, towards the end of April or early May 1994 at the Magarure trading centre.[611]

479. The witness was arrested in 1996 and imprisoned until 2007. The Prosecutor's office could not find anyone to testify that the witness had committed a crime before a *Gacaca* court and he was released. Witness CNAP was present at the *Gacaca* proceedings and did not say anything against Witness T25. No one accused him of distributing weapons at Barajiginywa's in the presence of Nzabonimana.[612]

Defence Witness T27

480. Witness T27, a farmer and shepherd who lived in Gitarama *préfecture* in 1994, had heard about Nzabonimana but did not know him in 1994. The witness lived 15 minutes away from Gasenyi centre.[613]

481. On 8 April 1994, the witness took his cows to pasture in the Muracyeru valley. The witness went to the valley before sunrise. When driving cattle, it took 40 minutes to go from the witness's home to the valley. The valley and Gasenyi centre were separated only by a football field, which was two minutes from Gasenyi centre. The witness estimated that there were 30 buildings in the Gasenyi centre. The witness could see the Gasenyi centre from where he grazed his cattle.[614]

482. On 8 April 1994, the witness arrived at the valley at 7.00 a.m., and remained there until 11:30 a.m. or noon. He again drove his cattle to the valley around 3.00 p.m. The witness stayed there until 7.30 or 8.00 p.m. The witness was accompanied by others at both times. The witness went home after grazing his cattle on 8 April 1994. The witness acknowledged that these times were all estimates.[615]

483. The witness knew Mathias Barajiginywa and indicated that his house was located at the Gasenyi trading centre, below and to the right of the road when coming from the direction of Birehe. Barajiginywa's building had two entrances. A tree blocked the view of the house from

[610] T. 1 June 2010 pp. 2-3, 5-6 (Witness T25).
[611] T. 31 May 2010 p. 69 (ICS); T. 1 June 2010 pp. 6-7, 9 (ICS) (Witness T25).
[612] T. 1 June 2010 p. 7; T. 1 June 2010 p. 9 (ICS) (Witness T25).
[613] Defence Exhibit 13 (Protected Information Sheet); T. 5 May 2010 pp. 42-44, 46 (ICS) (Witness T27).
[614] T. 5 May 2010 pp. 46-47; T. 10 May 2010 pp. 9, 24-25 (ICS) (Witness T27).
[615] T. 5 May 2010 pp. 47-48; T. 10 May 2010 p. 9 (ICS) (Witness T27).

the valley, but if something was happening at Barajiginywa's house, the witness would have known. A group of 100 persons at Barajiginywa's house would have been visible.[616]

484. On 9 April 1994, the witness again took his cattle to the same valley before sunrise. The witness was at the valley in the morning and again between approximately 3.00 and 7.00 p.m. The witness did not see anything special happening at Barajiginywa's house on that day.[617]

485. The witness did not see Nzabonimana at Gasenyi centre on 8, 9 or 10 April 1994. The witness would have known if Nzabonimana had been there, but no one mentioned it to him. He acknowledged that on 8 and 9 April 1994 while the cattle were grazing, he was playing football and did not keep a lookout on Barajiginywa's house. The witness played football for several hours on 8 April 1994. He started playing at 4.00 p.m., and took breaks. Even though he was playing football, he could see what was happening at Gasenyi.[618]

486. On 10 April 1994, the witness went to a celebration between 10.00 a.m. and noon. At 12.30 p.m., he went for a walk in Gasenyi centre and stayed there until 4.30 or 5.00 p.m. At 1.00 p.m., the witness saw two women and a man in a vehicle coming from Vunga. A man named Michel stopped the vehicle and asked the passengers where they were going. They said they were fleeing and Michel asked them to go back to their home. Michel warned them that if they did not return home, they would face danger. Attackers then attacked the vehicle and looted the property. The passengers then returned to Vunga. Around 4.00 p.m. another vehicle carrying four soldiers arrived. A soldier bearing a firearm exited the vehicle. The witness fled because he thought the soldier was going to shoot at them. From that point on the situation in Gasenyi centre worsened. The witness testified that people were not thrown into the Nyabarongo River on 10 April 1994, and no one was thrown into the river at Gasenyi centre on 10 April 1994.[619]

487. During the genocide, two girls related to an individual named Munyanshongore sought refuge at the witness's residence on a Sunday evening. In addition, on 17 April 1994, members of Charles Karekezi's family sought refuge at the witness's residence. Karekezi's children came to the witness's house at 11.00 p.m. They met a neighbour of the witness on the way. The next day, Witness T27 went to graze cattle with the neighbour, who asked about the children. The witness told his neighbour that he had to keep the presence of the children secret.[620]

488. When the witness drove his cattle back home around 1.00 p.m., he saw a group of assailants coming, who told the witness to hand over the children. The witness's father said no children were hiding there, but the neighbour informed them that the children were in the house. The assailants found the children and abducted them. The witness saw the abduction occur. The witness was arrested in 1996 and prosecuted in 2007 before a *Gacaca* court for the abduction. The witness was tried for other offences as well. The witness pled guilty and was convicted and sentenced to eight years' imprisonment. He was released from prison in 2007.[621]

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[616] T. 5 May 2010 pp. 47-48 (Witness T27).
[617] T. 5 May 2010 pp. 48-49; T. 10 May 2010 p. 9 (ICS) (Witness T27).
[618] T. 5 May 2010 p. 52 (ICS); T. 10 May 2010 pp. 13-14 (ICS) (Witness T27).
[619] T. 5 May 2010 p. 49; T. 5 May 2010 pp. 51-52, 56 (ICS) (Witness T27).
[620] T. 5 May 2010 pp. 52-53 (ICS) (Witness T27).
[621] T. 5 May 2010 pp. 53-55 (ICS); T. 10 May 2010 p. 8 (ICS) (Witness T27).

489. The witness knew Witness T25, and stated that Witness T25 was acquitted by a *Gacaca* court. During the information-gathering phase of Witness T25's *Gacaca* proceedings, no one mentioned Nzabonimana or that Witness T25 participated in the distribution of weapons. The witness knew Witness CNAP, who was in attendance during the *Gacaca* hearing when Witness T25 was presented to the public.[622]

490. While he was in prison, the witness discussed the events in Gasenyi with another detainee, named Celestine Ndahogoye. The witness told Ndahogoye that Nzabonimana was not involved in the genocide or the distribution of weapons. They discussed Nzabonimana because he was the only Minister from Nyabikenke *commune*. The witness denied having seen Nzabonimana on prior occasions.[623]

491. The witness acknowledged that he had a close relationship with Ndahogoye in prison, but denied that Ndahogoye influenced his testimony. The witness stated that Ndahogoye put him in touch with Defence investigators, but later denied this fact. The witness denied that he was convicted of participating in attacks by a *Gacaca* court. The witness's *Gacaca* judgement indicated that he was in fact convicted of participating in an attack.[624]

3.4.2.3 Deliberations

492. Relying upon the eyewitness testimony of Witness CNAP, the Prosecution alleges that Nzabonimana held a meeting and distributed weapons at the Gasenyi trading centre on 8 or 9 April 1994. The Defence disputes that the meeting and weapons distribution occurred and asserts that discrepancies between Witness CNAP's testimony and her 1998 statement undermine her credibility as a witness.

493. The Chamber recalls that it has considered the Defence submission that Witness CNAP fabricated her evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witness CNAP (3.2.5).

494. The Chamber notes that Witness CNAP provided clear testimony identifying Nzabonimana. Her personal connection to Nzabonimana was well-explained and she identified him as a Government Minister. She also stated that the population regarded Nzabonimana as good until the war started.[625] The Chamber considers that this testimony demonstrates the witness's objectivity.

495. The Chamber notes that in her testimony, Witness CNAP provided the names of others who attended the meeting.[626] She did not provide the names of any attendees in her 1998

[622] T. 5 May 2010 pp. 55-56 (ICS) (Witness T27).
[623] T. 6 May 2010 pp. 4-5 (ICS) (Witness T27).
[624] T. 6 May 2010 pp. 3, 6-7 (ICS); T. 10 May 2010 p. 4 (ICS) (Witness T27); Prosecution Exhibit 40A (*Gacaca* Record of Witness T27's Trial).
[625] T. 10 November 2009 p. 6 (Witness CNAP).
[626] T. 10 November 2009 pp. 38-40 (ICS) (Witness CNAP).

statement. The witness explained that the investigators who took her statement had not asked questions about the attendees.[627] The Chamber finds the witness's explanation reasonable.

496. Furthermore, in her 1998 statement, Witness CNAP indicated that Nzabonimana came to Gasenyi at 2.00 p.m.[628] At trial, the witness explained that Nzabonimana arrived late in the afternoon, and that she arrived a few hours before him. She acknowledged that when she met with the Prosecution on 7 November 2011, just prior to her testimony, she requested that her 1998 statement be modified, to indicate that she arrived at Gasenyi centre at 2.00 p.m. and that the meeting did not start until Nzabonimana arrived later in the afternoon. She estimated in her testimony that Nzabonimana arrived "at around 3, 4 or 5 p.m." She further explained that she could not be specific regarding the times to which she testified, because she was a farmer and was not wearing a watch. She did not recall the exact date of the meeting.[629] Given the lapse of time since the events at hand and her acknowledgement that the times she gave were estimates, the Chamber accepts the witness's explanation as reasonable.

497. The Chamber notes the existence of more significant discrepancies between Witness CNAP's 1998 statement and her trial testimony, particularly with regard to the alleged weapons distribution. In direct examination, the witness specified that only machetes were unloaded and that the weapons were taken into Barajiginywa's house. In cross-examination, she indicated that she was not present when the machetes were being distributed.[630] In her 1998 statement, the witness recounted that she "personally watched" the distribution of grenades and machetes to the *Interahamwe* and the local population, and that Nzabonimana did not leave until the distribution was finished.[631] The witness explained that she told the investigators to correct the mistakes in her statement, and attributed the mistakes to the fact that she was speaking to investigators in Kinyarwanda, a language they did not understand.[632] In the Chamber's view, the witness failed to provide a satisfactory explanation for her contradictory statements regarding whether she in fact witnessed the weapons distribution.

498. Witness CNAP also provided contradictory accounts of the aftermath of the alleged meeting at Gasenyi. During direct examination, Witness CNAP said she sought refuge at Ntarabana Parish. She stated that during the attack, the assailants took away her six children and their paternal aunt to the Nyabarongo River, where they were killed. This account is also contained in her 1998 statement. However, at a later point during Witness CNAP's direct examination, Witness CNAP stated that she and her children did not seek refuge at the parish and that her testimony was misunderstood. She testified that she was at home with her six children and her sister-in-law and that all seven of them were taken from the home and killed, approximately two days after the attack on the parish.[633] The Chamber finds this to be a significant discrepancy, particularly given that Witness CNAP stated that the people who killed her family had attended the Gasenyi meeting.

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[627] T. 10 November 2009 p. 42 (ICS) (Witness CNAP); Defence Exhibit 48 (Statement of Witness CNAP, 9 September 1998).
[628] Defence Exhibit 48 (Statement of Witness CNAP, 9 September 1998).
[629] T. 10 November 2009 pp. 43-44, 49-50, 52 (ICS) (Witness CNAP).
[630] T. 10 November 2009 p. 52 (ICS) (Witness CNAP).
[631] Defence Exhibit 48 (Statement of Witness CNAP, 9 September 1998).
[632] T. 10 November 2009 p. 52 (ICS) (Witness CNAP).
[633] T. 10 November 2009 pp. 18, 22 (ICS); T. 11 November 2009 p. 25 (ICS) (Witness CNAP).

499. The Chamber further observes that Witness CNAP denied having testified before the Rongi *secteur Gacaca* court, even after acknowledging that she had appended her signature on a document certifying that she did indeed testify before that court. Still in direct examination, she acknowledged that she did in fact testify in *Gacaca* proceedings in Rongi and Kigina *secteurs*. Those on trial confessed to their crimes, pled guilty and were imprisoned. While this has no bearing on her evidence in terms of the Gasenyi centre meeting, the Chamber will take this internal inconsistency, highlighted during direct examination, into account in determining the overall credibility of Witness CNAP.

500. Each of the Defence witnesses denied that Nzabonimana was present, spoke and distributed weapons at Gasenyi trading centre. Witness T24 testified that given his employment, he would have been informed of events taking place in that area. The Chamber notes that Witness T24 was serving a life sentence in prison for his role in the genocide at the time of his testimony.[634] Although Witness T24 was not implicated in the allegation at issue, the Chamber will apply appropriate caution in assessing his testimony. The Chamber also recalls Witness T24's admission that he provided a false statement to Prosecution investigators (3.2.3.2.2). The Chamber reiterates that this admission seriously undermines his credibility as a witness.

501. Regarding the present allegation, Witness T24 testified that there were no incidents in his *commune* on 7 or 8 April 1994 and that he received no information regarding the distribution of weapons by Nzabonimana to the inhabitants of Gasenyi. He also stated that he never heard of this incident during *Gacaca* proceedings. However, by his own admission, it was difficult for him to give precise answers regarding dates or timelines and information-gathering was difficult during the period in question, since communication was difficult at the time. He agreed that one could not rely on what one heard at the time.[635] Given these circumstances, the Chamber concludes that the testimony of Witnesses T24 was of limited probative value.

502. Witness T25 denied that he went to the Gasenyi market on 8, 9 or 10 April 1994 and denied that he was present at the meeting at Gasenyi or that he received weapons from Nzabonimana in 1994. He further stated that if the meeting had occurred, he would have heard about it from others.[636] The Chamber notes that Witness CNAP directly implicated Witness T25 in the present allegation. The Chamber considers that Witness T25 may therefore have had a motive to distance himself from the allegation. The Chamber considers the witness's general denial that the meeting occurred to be of little probative value.

503. Witness T27 stated that he was in the vicinity of the Gasenyi trading centre on 8 April 1994 between approximately 3.00 and 8.00 p.m., and on 9 April 1994 between approximately 3.00 and 7.00 p.m. On neither day did he see a meeting attended by approximately 100 people at the trading centre.

504. The Chamber notes that Witness T27 pled guilty to crimes committed during the genocide, was sentenced to eight years' in prison and released in 2007.[637] The witness denied that he was convicted of participating in attacks by a *Gacaca* court, yet his *Gacaca* judgment

[634] T. 27 April 2010 pp. 18-19 (ICS) (Witness T24).
[635] T. 27 April 2010 pp. 32-33 (Witness T24).
[636] T. 1 June 2010 p. 7 (Witness T25).
[637] T. 5 May 2010 pp. 53-55 (ICS) (Witness T27).

indicates that he was in fact convicted of participating in an attack.[638] Witness T27 acknowledged that he spent time in prison with Witness T25 and another man who was implicated in the weapons distribution at Gasenyi trading centre. Witness T27 had a close relationship with the other man, but denied that the man influenced his testimony.[639] Under these circumstances, the Chamber considers that Witness T27 may have been motivated to testify in a manner favourable to his co-detainees and treats his testimony with appropriate caution.

505. Witness T27 stated that on both days, he was grazing his cattle in a valley and playing football in an adjacent field which separated the valley from the trading centre. The Chamber recalls that the Site Visit Report indicates that the distance between the football field and the trading centre was approximately 150 metres.[640] Witness T27 testified that in 1994, a tree blocked the view of Barajiginywa's house from the valley. The Site Visit Report notes that some of the buildings located in Gasenyi centre could not be seen from the football field because vegetation obscured many of the buildings.[641] Witness T27 acknowledged that on 8 and 9 April 1994 while the cattle were grazing, he was playing football and did not keep a lookout on Barajiginywa's house. The witness said he could see what was happening at the trading centre even though he was playing football.[642] However, given that he would have been constantly moving and focusing his concentration elsewhere, and given that portions of the trading centre were obscured from view, the Chamber considers that the testimony of Witness T27 was of limited probative value with regard to whether the meeting and weapons distribution occurred.

506. Nevertheless, the Chamber observes that the Prosecution relied exclusively upon the eyewitness testimony of Witness CNAP in support of this allegation against Nzabonimana. The Chamber notes that it may find allegations proven beyond a reasonable doubt on the basis of a single witness's testimony (2.7.4). However, because of the internal inconsistencies in Witness CNAP's testimony and the discrepancies between her testimony and 1998 statement, the Chamber concludes that Witness CNAP's testimony was insufficient to prove beyond a reasonable doubt the allegation contained in Paragraph 35 of the Indictment.

3.4.3 Military Training at Nzabonimana's House

3.4.3.1 Introduction

507. Paragraph 52 of the Indictment alleges that on or about 12 April 1994, in Nyabikenke *commune*, Callixte Nzabonimana planned and ordered youth to undergo military training. He ordered a *gendarme* from Musasa to give the youth military training at his home. Many youths, mainly from Nyabikenke *commune*, were trained. The intention was to use them to kill Tutsis. Consequently, between April and 31 July 1994, the *Interahamwe* and Hutu militia committed widespread killings of Tutsis.[643]

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[638] Prosecution Exhibit 40A (*Gacaca* Document on Witness T27's Trial).
[639] T. 6 May 2010 pp. 6-7 (ICS) (Witness T27).
[640] Chamber Exhibit 1 (Site Visit Report), p. 5.
[641] Chamber Exhibit 1 (Site Visit Report), p. 5.
[642] T. 10 May 2010 pp. 13-14 (ICS) (Witness T27).
[643] Para. 52 of the Indictment.

508. The Prosecution submits that after a distribution of weapons on 8 April 1994, Nzabonimana designated a *gendarme* to conduct military training at his house. On 9 April 1994 the *gendarme* began training youths to use firearms. The Prosecution relies on Witness CNAF.[644]

509. The Defence presents an alibi.[645] The Defence also submits that Witness CNAF fabricated his evidence (3.2.2). Furthermore, the Defence asserts that the Prosecution evidence was uncorroborated, vague and did not reflect the allegation contained in the Indictment. Moreover, Defence evidence established that the training did not occur. The Defence relies on Defence Witnesses T19, T24, T28, T31 and T33.[646]

3.4.3.2 Evidence

Prosecution Witness CNAF

510. Witness CNAF, a Hutu farmer, lived in Nyabikenke *commune*, Gitarama *préfecture* in April 1994.[647] The witness knew Nzabonimana in a personal capacity prior to 1994. The witness and Nzabonimana came from the same area and lived near each other. A relative of Nzabonimana's was married to one of Witness CNAF's relatives. The witness also knew Nzabonimana's siblings.[648]

511. Witness CNAF saw Nzabonimana on the evening of 8 April 1994, at Nzabonimana's house. The witness lived near Nzabonimana, and when he and others saw Nzabonimana's white vehicle they went to Nzabonimana's house to greet him. A pickup truck containing approximately ten soldiers followed Nzabonimana's vehicle.[649]

512. Nzabonimana greeted the approximately 50 people present, most of whom were men. Nzabonimana asked those assembled about security in the region since the President's death. The people responded that they did not feel safe. Nzabonimana reassured them and said: "Listen, even if the [P]resident of the Republic has died, we are here. And we must pull our efforts together to avenge the death of the [P]resident and we shall conquer the enemy. We have the material and human resources. We are ready to confront the enemy." Nzabonimana told them to be brave and to prepare to defend themselves. He stated that he had brought material to be used in resisting the enemy. The witness understood that the term "enemy" referred to Tutsis.[650]

513. The soldiers who accompanied Nzabonimana gave him three firearms. Nzabonimana then handed the firearms to Witness T31, and said: "Take these guns. You shall learn how to handle them in order to fight the enemy that has attacked the country. For those who do not know how to use rifles, there are traditional weapons which I brought with me and you are going to distribute them to the persons who cannot use firearms." Traditional weapons such as clubs

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[644] Prosecution Closing Brief, para. 311.
[645] The Chamber recalls that it has considered the Defence alibi evidence and has found that the alibi is not reasonably possibly true in relation to this paragraph of the Indictment (3.4.1.3).
[646] Defence Closing Brief, paras. 193-199; T. 20 October 2011 p. 54 (Defence Closing Argument).
[647] Prosecution Exhibit 5 (Protected Information Sheet); T. 16 November 2009 p. 39 (ICS) (Witness CNAF).
[648] T. 16 November 2009 pp. 36-37; T. 16 November 2009 p. i (Extract); T. 16 November 2009 p. 57 (ICS); T. 17 November 2009 pp. 7-8 (ICS) (Witness CNAF).
[649] T. 16 November 2009 pp. 44-46 (ICS); T. 17 November 2009 pp. 17-18 (ICS) (Witness CNAF).
[650] T. 16 November 2009 pp. 45-46 (ICS) (Witness CNAF).

and machetes were also brought. Nzabonimana said he would return the next day with a "sufficient number of weapons and equipment."[651]

514. Nzabonimana told Witness T31 that he would leave behind a soldier to teach him how to use the firearms. At Nzabonimana's request, one of the soldiers introduced himself, identified his locality and said he was going to teach them how to use firearms.[652]

515. After the weapons distribution, one of Nzabonimana's brothers brought a crate of beer and they drank with some of the administrative officials in the locality, who remained in the house after the witness left between 6.30 and 7.00 p.m. The next day, the soldier began to teach members of the population to use firearms at a location approximately 50 metres above Nzabonimana's house. Members of the population began military training a few metres behind the house, in full view of the public.[653]

516. From 10 to 12 April 1994, the firearms training at Nzabonimana's house could be heard across the *secteur*. Anyone could attend. People were taught to dig holes and to operate guns, and banana stems were used as targets. The objective of the training was to defeat the enemy that had attacked the country, namely the Tutsis. The Tutsis were responsible for the death of the President and therefore they were the enemy of the country.[654]

517. Witness CNAF estimated that by car, it took less than two hours and 45 minutes to travel from Kavumu to Kigali. During the rainy season, the time it took to cover the same distance depended on the vehicle and the driver.[655]

Defence Witness T24

518. Witness T24, a local government official in Nyabikenke *commune* in April 1994,[656] was not aware that Nzabonimana held meetings in the *commune* between 7 and 10 April 1994. No one reported to him that Nzabonimana had organised meetings during that period. If Nzabonimana had organised any meetings, Witness T24 would have learned about them.[657]

519. Witness T24 was not aware of any military training sessions involving the use of firearms organised by Nzabonimana in Kavumu *secteur* after 7 April 1994. Witness T31 did not inform him of any military training. Members of the local population would have heard any gunshots.[658]

Defence Witness T28

520. Witness T28, a civil servant in 1994, knew Nzabonimana as a Minister from hearing others speak about him. He was able to recognise Nzabonimana in 1994 because he had seen him on an earlier occasion. He did not see Nzabonimana nor hear of his presence in Nyabikenke

[651] T. 16 November 2009 pp. 45-46 (ICS); T. 17 November 2009 p. 17 (ICS) (Witness CNAF).
[652] T. 16 November 2009 p. 46 (ICS) (Witness CNAF).
[653] T. 16 November 2009 p. 47 (ICS); T. 17 November 2009 pp. 22-24 (ICS) (Witness CNAF).
[654] T. 16 November 2009 pp. 45-46 (ICS); T. 17 November 2009 pp. 22-24 (ICS) (Witness CNAF).
[655] T. 17 November 2009 pp. 15, 53 (ICS) (Witness CNAF).
[656] For additional introductory information on Witness T24, *see* para. 284, *supra*.
[657] T. 26 April 2010 p. 41 (ICS) (Witness T24).
[658] T. 26 April 2010 pp. 41-42 (ICS) (Witness T24).

commune during April 1994. The witness fled to Zaire in 1994 and returned to Rwanda in 1997 where he was arrested and detained. He remained in detention for three years. Subsequently, Tutsi survivors acted on his behalf and he was released in 2000. He was acquitted by a *Gacaca* court in 2008.[659]

521. On 14 April 1994, the *commune* office was attacked with grenades by assailants. The witness agreed that weapons like grenades were normally found in the possession of military personnel. Ordinary civilians only could have obtained such weapons from important personalities. The witness did not hear that members of the population obtained firearms and could not confirm whether firearms had been distributed. It was possible that the civilians with grenades and firearms may have received training or instruction in how to use them.[660]

522. Prior to 6 April 1994, weapons such as grenades and firearms were not freely circulated in the *commune*. Only *commune* policemen had firearms. The witness agreed that in 1994, former soldiers who were relieved from service returned to the *commune*. It was not part of the witness's duties to verify if former soldiers relinquished their weapons.[661]

523. Witness T28 did not see members of the population receive any military training or use of rifles and grenades in Nyabikenke *commune* in April 1994. He never received any reports of military training from *cellule responsables* or the population. He never learned of any distribution of weapons by soldiers or *gendarmes* in April 1994.[662]

Defence Witness T31

524. Witness T31, a local government official in Nyabikenke *commune* in 1994,[663] testified that nothing noteworthy occurred on 8 April 1994; the witness denied that he saw Nzabonimana at Nzabonimana's home in Kavumu *secteur*. He denied that Nzabonimana gave him three guns and that Nzabonimana asked him to distribute traditional weapons to the local community. If he had received weapons for distribution from Nzabonimana, he would have faced relevant charges in Rwandan courts. However, he was not tried for distributing weapons and providing weapons training to the population. The witness did not know of any military training which took place around Nzabonimana's house or of any shooting in Kavumu *secteur* on 8 April 1994.[664]

Defence Witness T33

525. Witness T33, who worked in a close capacity with Nzabonimana in 1994,[665] denied that any meeting involving Nzabonimana and members of the population was convened during the first two weeks of April 1994. After the death of the President, Nzabonimana visited but the witness did not see him distribute or stockpile weapons. Nzabonimana came to the house a week after the death of the President in the company of two *gendarmes*. The only arms the witness saw were those carried by the *gendarmes* who guarded Nzabonimana. In April 1994, Witness T33

[659] Defence Exhibit 37 (Protected Information Sheet); T. 2 June 2010 pp. 39, 46 (ICS) (Witness T28).
[660] T. 2 June 2010 p. 48 (ICS) (Witness T28).
[661] T. 2 June 2010 pp. 50-51 (ICS) (Witness T28).
[662] T. 2 June 2010 p. 51 (ICS) (Witness T28).
[663] For additional introductory information on Witness T31, *see* para. 281, *supra*.
[664] T. 3 May 2010 pp. 56, 61-62; T. 3 May 2010 p. 56 (ICS) (Witness T31).
[665] For additional introductory information on Witness T33, *see* para. 280, *supra*.

was often in Nzabonimana's house and never saw weapons being distributed or locals being trained to use firearms.[666]

526. Outside Nzabonimana's house was a plot of empty land where Nzabonimana had intended to build. The witness denied that the construction work had started and did not know whether military training occurred in the uncompleted building on that location.[667]

Defence Witness T19

527. Witness T19, a student with a Tutsi mother, lived in Gisenyi *préfecture* with his mother and siblings in 1994. Witness T19 knew Nzabonimana and was a neighbour of Nzabonimana's sister, Spéciose. Spéciose and her family were Hutus.[668]

528. Witness T19 learned of the President's death from a neighbour on 7 April 1994. On 8 April 1994, a policeman sent his wife to the witness's family and asked them to flee the *commune*. They decided to flee to Nyakabanda *commune*, the home *commune* of Witness T19's father. Because Witness T19's father was a well-known Hutu in Nyakabanda, their security would have been guaranteed there. They fled because Witness T19's mother was Tutsi. The witness, his mother and his aunt first fled to a neighbour's house across the Mukungwa River and spent the night.[669]

529. On 9 April 1994, because of increasing violence, Witness T19, his mother and his aunt continued fleeing towards Nyakabanda. They continued along the Mukungwa River and went to Musenyi in order to fetch two sisters and two cousins of the witness in order to bring them to Nyakabanda.[670]

530. Before arriving at Musenyi, they came across Spéciose and her three children on a motorcycle. The motorcycle was driven by one of Witness T19's neighbours. Spéciose told them that the situation had gotten worse, and that she had decided to go to her native village, in Nyabikenke *commune*, to the home of Nzabonimana's parents. She told them to do everything possible to join her there. The witness, his mother and his aunt thus did not continue on their trip to fetch Witness T19's sisters and cousins. They proceeded to Nyabikenke *commune* via bicycle transport.[671]

531. On the way, they met Witness T19's neighbour who was returning from dropping Spéciose at her parents' home. The neighbour told them that he and Spéciose had met a roadblock and were threatened at Gasenyi. The witness then decided that they should go to the nearby home of someone he knew in Gasenyi, who had previously worked as a driver for Nzabonimana. The driver escorted them to Spéciose's house in Nyabikenke *commune*.[672]

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[666] T. 22 April 2010 p. 60 (ICS); T. 26 April 2010 p. 6 (ICS) (Witness T33).
[667] T. 26 April 2010 pp. 5-6 (ICS) (Witness T33).
[668] Defence Exhibit 8 (Protected Information Sheet); T. 20 April 2010 pp. 75-76 (ICS); T. 21 April 2010 pp. 27, 51 (ICS) (Witness T19).
[669] T. 20 April 2010 pp. 74-77 (ICS); T. 21 April 2010 p. 31 (ICS) (Witness T19).
[670] T. 20 April 2010 p. 77 (ICS); T. 21 April 2010 pp. 28, 31 (ICS) (Witness T19).
[671] T. 20 April 2010 pp. 77-79 (ICS); T. 21 April 2010 pp. 9, 29, 38, 49-51 (ICS) (Witness T19).
[672] T. 20 April 2010 pp. 79-80 (ICS); T. 21 April 2010 pp. 3, 8 (ICS) (Witness T19).

532. The witness and his family arrived at the house at around 9.00 p.m. on the Saturday after the death of the President. Spéciose, her children, her mother and the three domestic servants were also at the house. A man named Rugangura and his wife, Languida, owned the house. There was another house in the compound where Nzabonimana stayed when he visited the family. The house the witness slept in was five metres away from Nzabonimana's house. The houses were enclosed by a fence. During his stay at the house, the witness did go out of the compound, though he could see the neighbouring hills. He sometimes observed the killings which occurred.[673]

533. A few days after they arrived, Nzabonimana's younger sister Madeleine and her children came to the house from Kigali. Other members of Nzabonimana's family arrived a week later, including a younger brother and his Tutsi wife and other family members. Another woman also arrived, who was reputedly Nzabonimana's concubine.[674]

534. The witness and his family spent over two weeks at the compound. Nzabonimana visited the compound twice during the second week of the witness's stay. During his stay at the compound, the witness did not see any distribution of weapons. He also did not hear any gunfire and did not see anyone using firearms in the vicinity of the house. He did not see Nzabonimana hold any meetings in the compound.[675]

535. The witness spoke to Spéciose and her mother about leaving for his father's home in Nyakabanda *commune*. Around 17 April 1994, Nzabonimana drove the witness and his family to Nyakabanda *commune* at the request of Nzabonimana's mother and sister.[676]

3.4.3.3 Deliberations

536. The Prosecution relies upon the testimony of Witness CNAF to support the allegation contained in Paragraph 52 of the Indictment. The Defence asserts that Witness CNAF was not credible as to the training allegation and submits that the training did not occur.

537. The Chamber recalls that it has considered the Defence submission that Witness CNAF fabricated his evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witness CNAF (3.2.5).

538. The Chamber notes that in his testimony and statements to Prosecution investigators, Witness CNAF provided conflicting accounts regarding when and where the alleged military training occurred. In his testimony, Witness CNAF stated that during a meeting at Nzabonimana's house on 8 April 1994, Nzabonimana introduced to the population a soldier who would train them in using firearms, and that on 9 April 1994, members of the population

[673] T. 21 April 2010 pp. 8-9, 12 (ICS) (Witness T19).
[674] T. 21 April 2010 pp. 9-10 (ICS) (Witness T19).
[675] T. 21 April 2010 pp. 11-12 (ICS) (Witness T19).
[676] T. 21 April 2010 pp. 11-13 (ICS) (Witness T19).

commenced training at an area close to Nzabonimana's house. The firearms training continued from 10 to 12 April 1994 and could be heard across the *secteur*.[677]

539. In his 1998 statement, Witness CNAF recounted that meetings and weapons distribution took place at Nzabonimana's home on 9 and 10 April 1994, but did not mention that military training occurred at this time. Instead, Witness CNAF indicated that the military training began on 12 April 1994 "in Nyabikenke" when Nzabonimana asked a *gendarme* named Musasa to train the youth.[678] In this statement, Witness CNAF indicated that a Tutsi named Sehinda was killed two days prior to the commencement of military training.

540. Witness CNAF gave a statement in 2008 to correct certain details in his earlier statements. In this statement, Witness CNAF indicated that he attended a meeting on 9 April 1994 in Kigali *cellule*, Kavumu *secteur*, where Nzabonimana told youths to train in weapons handling.[679] The Chamber notes that Nzabonimana's home in Nyabikenke *commune* was not located in Kigali *cellule*. Therefore, in neither his 1998 statement nor his 2008 statement did Witness CNAF indicate where Nzabonimana announced the military training or where the training took place.

541. The Chamber notes another discrepancy between Witness CNAF's testimony and his statements. In his testimony, Witness CNAF stated that Nzabonimana assigned a soldier to train the population, whereas in his 1998 statement, Witness CNAF indicated that Nzabonimana assigned the task to a *gendarme* named Musasa. At trial, Witness CNAF explained that he was unable to tell the difference between a soldier and a *gendarme*, and that a peasant such as himself referred to both as "soldiers."[680] However, his 1998 statement describing the man as a *gendarme* belies this explanation.

542. In addition, the Chamber notes that Witness CNAF's testimony regarding the military training was vague. He did not provide details regarding the number of people who attended the training, the precise nature of the training or even the approximate time when the training occurred. Given that Witness CNAF testified that he participated in the training, the witness's lack of specificity undermines the credibility of his account.

543. Turning to the Defence evidence, the Chamber recalls that Witness T31 was serving a term of life imprisonment for participating in the attack upon the Nyabikenke *commune* office, and that his conviction was on appeal at the time of his testimony.[681] Consequently, the Chamber considers that Witness T31 may have had a motivation to deny other crimes which occurred in Nyabikenke *commune* in the same time period. Furthermore, given that the Prosecution evidence directly implicated Witness T31 in the distribution of weapons which allegedly occurred on 8 April 1994 at Nzabonimana's house, the witness may have been motivated to distance himself from similar allegations. The Chamber therefore treats the testimony of Witness T31 with appropriate caution. Regarding the substance of his testimony, Witness T31 denied that any

[677] T. 16 November 2009 pp. 46-47 (ICS); T. 17 November 2009 p. 23 (ICS) (Witness CNAF).
[678] Defence Exhibit 54 (Statement of Witness CNAF, 24 September 1998).
[679] Defence Exhibit 56 (Statement of Witness CNAF, 14 November 2008).
[680] T. 17 November 2009 pp. 21-22 (ICS) (Witness CNAF).
[681] T. 4 May 2010 pp. 7-8, 10, 48 (ICS) (Witness T31).

military training occurred at Nzabonimana's house. The Chamber considers Witness T31's general denial that the training occurred to carry little probative value.

544. The Chamber notes that Witness T24 was serving a life sentence in prison for his role in the genocide at the time of his testimony.[682] Although Witness T24 was not directly implicated in the allegation at issue, Witness CNAF claimed that Witness T24 was involved in organising the meeting at Mbuye centre where Nzabonimana allegedly distributed weapons to Witness T31. Witness T24 may therefore have had a motivation to generally deny the events at issue. Given these circumstances, the Chamber will utilise appropriate caution in assessing his testimony. Furthermore, the Chamber recalls that Witness T24 testified that he lied to Prosecution investigators in his 2008 statement. The Chamber considers this admission to seriously undermine his credibility as a witness.

545. Regarding the present allegation, Witness T24 admitted that during the period in question, information-gathering was difficult.[683] The Chamber considers the witness's general denial that the training occurred to be of little probative value.

546. Witness T33 denied that Nzabonimana distributed weapons and testified that he never saw members of the local population receive firearms training. The Chamber recalls, however, that Witness T33 left Nzabonimana's home in the evening.[684] The Chamber finds his second-hand testimony of whether training occurred to be of limited probative value.

547. Witness T19 stated that he took refuge at Nzabonimana's compound beginning on 9 April 1994 and denied that any distribution of weapons or military training occurred in the vicinity.[685] The Chamber notes serious credibility problems in Witness T19's testimony. The witness testified that he and his Tutsi mother were fleeing to Nyakabanda *commune*, where his father was a well-known Hutu and where their security would be guaranteed. However, the witness testified that after running into Spéciose, who was also fleeing, they instead decided to go to the home of Nzabonimana's parents in Kavumu *secteur*, Nyabikenke *commune*. The Chamber does not find it plausible that Spéciose and her children would have been fleeing in the manner described by Witness T19. The Chamber notes that Spéciose and her children were all Hutus.[686] Furthermore, at the point where Witness T19 and his relatives encountered Spéciose, they were actually closer to Nyakabanda *commune* than Nyabikenke *commune*.[687] It does not stand to reason that the witness and his Tutsi mother would have travelled a further distance to Nyabikenke *commune*, when their security would have been guaranteed in Nyakabanda *commune*. Given these factors, the Chamber does not believe Witness T19's account of how he came to stay at the Nzabonimana compound in Nyabikenke *commune* or that he was present at the compound as he testified.

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[682] T. 27 April 2010 p. 8 (ICS) (Witness T24).
[683] T. 27 April 2010 pp. 32-33 (Witness T24).
[684] T. 22 April 2010 p. 60 (ICS); T. 26 April 2010 p. 6 (ICS) (Witness T33).
[685] T. 21 April 2010 p. 12 (ICS) (Witness T19).
[686] T. 20 April 2010 pp. 76-79 (ICS); T. 21 April 2010 pp. 27-28, 31, 51 (ICS) (Witness T19).
[687] T. 21 April 2010 pp. 31, 39 (ICS) (Witness T19); Prosecution Exhibit 30 (Administrative Map of Rwanda).

548. Even assuming the veracity of Witness T19's story, the Chamber notes that Witness T19 testified that he did not leave the compound during his two week stay. The Chamber therefore finds his testimony as to what occurred outside the compound to be of little probative value.[688]

549. Witness T28 stated that he did not see anyone receiving military training or using rifles and grenades in Nyabikenke *commune* in April 1994. He also did not receive any reports about military training. The Chamber notes, however, that Witness T28 acknowledged that grenades were used in the Nyabikenke *commune* attack, even though he did not know how the people obtained them. He further acknowledged that they "must have obtained those weapons from some important people" and that it was possible that those who used the grenades may have received training.[689] This demonstrates that the distribution of armaments was occurring in the area outside the knowledge of Witness T28. Witness T28's testimony reveals that he had limited knowledge of what was occurring in the area during the 1994 events.

550. The Chamber observes that the Prosecution relied exclusively upon the testimony of Witness CNAF in support of the allegation contained in Paragraph 52 of the Indictment. The Chamber may find an allegation proven beyond a reasonable doubt on the basis of a single witness's testimony (2.7.4). However, given the significant discrepancies between Witness CNAF's testimony and his previous statements, and the shifting timeline provided by the witness, the Chamber is not prepared to rely on his evidence absent corroboration. Having considered the totality of the evidence, the Chamber concludes that the Prosecution has failed to prove beyond a reasonable doubt the allegation contained in Paragraph 52 of the Indictment.

3.4.4 Kigali *Cellule* Meeting

3.4.4.1 Introduction

551. Paragraph 37 of the Indictment alleges that on or about 9 April 1994, in Kigali *cellule*, Kavumu *secteur*, Nyabikenke *commune,* Gitarama *préfecture*, Nzabonimana told the Hutu population to kill Tutsis in Gitovu and Kavumu *secteurs*, Gitarama *préfecture*. He told the people that elsewhere the population had begun the "work," meaning the killing of Tutsis, and asked them what they had done in their area. He stated that Tutsis were the enemies of Rwanda. Following that meeting, Nzabonimana ordered and supervised the distribution of weapons to the population. During the night of the same day, many Tutsis were killed in Gitovu and Kavumu by persons including *Interahamwe* and Hutu civilians. The killings intensified the following day, claiming many Tutsi lives including Jacqueline Akizanye and her two children, Epimaque Sehinda and his family and Sehirahiga and his family.[690]

552. The Prosecution submits that on 8 April 1994, Nzabonimana held a meeting at his house where he told those present to avenge the President's death, distributed weapons and gave three firearms to Defence Witness T31 (3.4.3). On 9 April 1994, announcements informed the public that the *bourgmestre* would preside over an urgent meeting at Mbuye centre, a marketplace in Kavumu *secteur*. At 5.00 p.m., Nzabonimana arrived in a vehicle and inquired about security. Nzabonimana was told that people were fleeing and that violence had erupted between members

[688] T. 21 April 2010 pp. 9, 12 (ICS) (Witness T19).
[689] T. 2 June 2010 pp. 48, 51 (ICS) (Witness T28).
[690] Para. 37 of the Indictment.

of the population. Nzabonimana told the gathering that they should use the firearms he distributed on 8 April 1994 to kill Tutsis before eating their livestock. He said that he would provide more weapons and told those who needed traditional weapons to go to his house. He said that he would take the weapons away if the people did not use them. Nzabonimana then got into his vehicle and ordered the soldier inside to give firearms to Witness T31. After the Mbuye centre meeting, Tutsis, including Epimaque Sehinda, Gatabazi and the family of Fidèle, were killed during the night in Kavumu. Those who committed the killings said that they did so in order to be congratulated by Nzabonimana. The Prosecution relies upon Witness CNAF.[691]

553. The Defence presents an alibi.[692] The Defence also submits that Witness CNAF fabricated his evidence (3.2.2). The Defence denies that the meeting took place and submits that the Prosecution evidence was inconsistent, contradictory and not credible.[693] The Defence specifies that the allegation concerns events in Kigali *cellule* where Mbuye centre is located, not Kavumu *cellule* where Nzabonimana's house was located. The Defence relies on the testimony of Witnesses T19, T24, T31, T33 and T34.[694]

3.4.4.2 Evidence

Prosecution Witness CNAF

554. Witness CNAF, a Hutu farmer who lived in Nyabikenke *commune* in April 1994,[695] testified that on or about 9 April 1994, he saw Nzabonimana at Mbuye centre, in Kigali *cellule*, Kavumu *secteur*. Mbuye centre was the location of a large market; however, the market was not being held that day. Around midday, announcements informed members of the population of an urgent meeting convened by Witness T24 at the centre. All members of the population were obliged to attend. By 3.00 or 4.00 p.m., Witness T24 had yet to arrive. The people were told to stay because the meeting would proceed without Witness T24.[696]

555. Around 5.00 p.m., Nzabonimana arrived and parked his vehicle at Mbuye centre. Nzabonimana exited the vehicle, apologised and said that he was late because he had been attending another meeting. Nzabonimana greeted the crowd and inquired about the security situation in the locality. The crowd told Nzabonimana that people were fleeing and there were disturbances among members of the population. Nzabonimana told the crowd that they had to take charge of their own security. He said that he had left firearms and traditional weapons with them the day before. He said that they were eating cows and destroying houses without taking into account the owners of those cows and houses. In saying this, Nzabonimana was referring to Tutsis, meaning that Tutsis had to be killed to avenge the death of the President.[697]

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[691] Prosecution Closing Brief, paras. 200-203, 333, 358, 363, 370, 376-377; T. 20 October 2011 pp. 32-33 (Prosecution Closing Argument).
[692] The Chamber recalls that it has considered the Defence alibi evidence and has found that the alibi is not reasonably possibly true in relation to this paragraph of the Indictment (3.4.1.3).
[693] Defence Closing Brief, paras. 118-134.
[694] Defence Closing Brief, para. 116.
[695] For additional introductory information on Witness CNAF, *see* para. 510, *supra*.
[696] T. 16 November 2009 pp. 47-48 (ICS); T. 17 November 2009 pp. 24-25 (ICS) (Witness CNAF).
[697] T. 16 November 2009 pp. 47-48 (ICS); T. 17 November 2009 p. 33 (ICS); T. 17 November 2009 p. 34 (HC) (Witness CNAF) (French) (clarifying that they waited until "*17 heures*," namely 5.00 p.m.).

556. Nzabonimana said that wherever he passed, particularly in Gitarama, people were being killed. He branded the attendees as useless because they were not "working." He asked: "What do you need? What don't you have? Material? The strength?" Nzabonimana said that he had left "material" in his house. He said that everyone who needed traditional weapons should go to his house to take them and that those who wanted to learn how to use firearms could do so. He was not happy with the crowd and was going to leave them with other weapons. He said that if, upon his return, they had not used the weapons, he would take them back. He then said that he was going to Kigina to see if the situation was the same and boarded his vehicle. He called a soldier who was inside the vehicle and the soldier gave firearms to Witness T31. Nzabonimana said that those firearms were being added to the other firearms that he had given previously, and that they were to be used at Gayira at Nyamirunga Bridge. Nzabonimana left towards Kigina and the crowd dispersed. The meeting lasted 15 minutes, ending between 5.30 and 6.00 p.m.[698]

557. On approximately 10 April 1994, the witness saw Nzabonimana again at Nzabonimana's house. The witness and more than 100 other people were sitting on a hill behind the fence of the house. Nzabonimana came out and asked the witness and others how things were proceeding. He said he hoped that they had used the equipment he had left for them and that they had obeyed his instructions. A man named Pascal said that they had done whatever they could and that they had killed Sehinda and others. Nzabonimana replied that what Pascal was saying was untrue. Nzabonimana said the people killed were old and that it served no purpose to kill old people. He said that they should have killed strong, young people. Pascal informed Nzabonimana that young people had fled to the *commune* office and other places. Nzabonimana responded that the *commune* office was not far away and that they had to go there to kill the young people. Nzabonimana then got in a vehicle and left.[699]

558. During the night after the Mbuye centre meeting, the first Tutsis were killed, including Sehinda, Gatabazi and the family of Fidèle, as well as many others. The killers said that Nzabonimana accused them of doing nothing, so they had to kill Tutsis in order to be congratulated by Nzabonimana.[700]

Defence Witness T19

559. Witness T19, a student with a Tutsi mother, testified that he and his family sought refuge at the compound of Nzabonimana's family in Nyabikenke *commune* arriving on the Saturday after the death of the President.[701]

560. During his stay at the compound, Witness T19 did not see any distribution of weapons. He also did not hear any gunfire in the vicinity of the house and did not see anyone using firearms around the house. He did not see Nzabonimana hold any meetings in the compound. On

[698] T. 16 November 2009 p. 48 (ICS); T. 17 November 2009 p. 33 (ICS) (Witness CNAF).
[699] T. 16 November 2009 p. 50 (ICS) (Witness CNAF).
[700] T. 16 November 2009 p. 49 (ICS) (Witness CNAF).
[701] Defence Exhibit 8 (Protected Information Sheet); T. 20 April 2010 p. 76 (ICS) (Witness T19). *See* paras. 527-535, *supra* for Witness T19's account of how he arrived at the compound.

approximately 17 April 1994, Nzabonimana drove the witness and his family to Nyakabanda *commune* at the request of Nzabonimana's mother and sister.[702]

Defence Witness T24

561. Witness T24, a local government official in Nyabikenke *commune* in April 1994,[703] testified that Mbuye was a small trading centre with a market square located between Gitovu and Kavumu *secteurs*. On the market day, Witness T24 saw people at the market square. He told the people that the market was not going to be held that day because of security problems in the region. The witness asked the people to return to their homes. The witness denied that he held a meeting at Mbuye centre between 8 and 10 April 1994.[704]

562. Witness T24 denied that he had been informed of meetings held by Nzabonimana in *secteurs* within his *commune* between 7 and 10 April 1994. He never learned that Nzabonimana organised military training in Kavumu *secteur*. Witness T31 did not inform him of any trainings or weapons distributions.[705]

Defence Witness T31

563. Witness T31, a local government official in Nyabikenke *commune* in 1994,[706] testified that Nzabonimana would often pass through a business centre, see a group of people and give them money to buy beer. He would also buy drinks for members of the population before the war. He was a generous man who was generally liked.[707]

564. Nothing noteworthy occurred on 8 April 1994. The witness denied that he saw Nzabonimana at his home in Kavumu *secteur*. He denied that Nzabonimana gave him three guns and denied that Nzabonimana asked him to distribute traditional weapons to the local community. If he had received weapons for distribution from Nzabonimana, he would have faced relevant charges in Rwandan courts. He was never tried for distributing weapons. The witness did not know of military training which took place around Nzabonimana's house or of any shooting in Kavumu *secteur* on 8 April 1994. The witness also denied that he attended a meeting at Mbuye centre with Nzabonimana on 9 April 1994, and denied hearing of such a meeting.[708]

Defence Witness T33

565. Witness T33, who worked in a close capacity with Nzabonimana in 1994,[709] testified that the day after the death of the President, he saw numerous people at Nzabonimana's compound,

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[702] T. 21 April 2010 pp. 11-13 (ICS) (Witness T19).
[703] For additional introductory information on Witness T24, *see* para. 284, *supra*.
[704] T. 26 April 2010 pp. 42-43 (ICS); T. 26 April 2010 p. 48 (HC) (Witness T24) (French) ("*Je me suis adressé à ces gens pour leur dire que le marché n'allait pas se tenir ce jour-là, puisqu'il y avait des problèmes de sécurité dans la région.*").
[705] T. 26 April 2010 pp. 41-42 (ICS) (Witness T24).
[706] For additional introductory information on Witness T31, *see* para. 281, *supra*.
[707] T. 4 May 2010 p. 28 (Witness T31).
[708] T. 22 April 2010 pp. 61-62; T. 3 May 2010 p. 56 (ICS) (Witness T31).
[709] For additional introductory information on Witness T33, *see* para. 280, *supra*.

including: Nzabonimana's wife; a driver named Philippe; a domestic servant named Alphonse Twagirayezu; Nzabonimana's sister, Spéciose Nyirabagishuri; and Nzabonimana's mother. Others came to the compound after the killings started, including a woman, a young man and Nzabonimana's younger brother and his wife.[710]

566. Witness T33 saw Nzabonimana about a week after the death of the President, accompanied by two *gendarmes*. In the first two weeks of April 1994, the witness did not see any meetings involving members of the population within Nzabonimana's compound. The witness did not see Nzabonimana distributing weapons to the local inhabitants nor did he see any other arms apart from those carried by Nzabonimana's escort. He did not see local inhabitants training to use firearms in the vicinity of Nzabonimana's house. Witness T33 was not present at Nzabonimana's house during the evenings.[711]

3.4.4.3 Deliberations

567. As a preliminary matter, the Chamber notes that in support of its submissions on Paragraph 37 of the Indictment, the Prosecution points to evidence of Nzabonimana's alleged distribution of weapons on 8 April 1994 at his home in Kavumu *secteur*, Nyabikenke *commune*. The Chamber has assessed these allegations in the section of the Judgement pertaining to Paragraph 52 and has found that they were not proven beyond a reasonable doubt (3.4.3.3).

568. The Prosecution relies upon the eyewitness testimony of Witness CNAF to support the allegations contained in Paragraph 37 of the Indictment. The Defence denies that the Kigali *cellule* meeting and weapons distribution occurred and challenges the credibility of Witness CNAF.

569. The Chamber recalls that it has considered the Defence submission that Witness CNAF fabricated his evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witness CNAF (3.2.5).

570. The Chamber notes that Witness CNAF has presented conflicting accounts as to whether he in fact witnessed the meeting and weapons distribution at Mbuye centre. During his testimony, Witness CNAF stated that he personally witnessed the Mbuye centre meeting and weapons distribution. However, in his 1998 statement, Witness CNAF indicated that he learned of the Mbuye meeting from his younger brother and from some peasants, suggesting that he did not personally attend the meeting.[712] Witness CNAF gave a second statement to investigators in 2008. In this statement, Witness CNAF acknowledged that he had given a prior statement to investigators concerning Nzabonimana and that he "would like to correct certain details in the statement on Callixte Nzabonimana." The statement includes information on the Mbuye meeting, but it does not clarify whether he was an eyewitness to the meeting.[713] When presented with this discrepancy, Witness CNAF reiterated that he attended the meeting and that he did not merely

[710] Defence Exhibit 10 (Protected Information Sheet); T. 22 April 2010 pp. 58-60, 67-68, 70 (ICS) (Witness T33).
[711] T. 22 April 2010 p. 60 (ICS); T. 26 April 2010 p. 6 (ICS) (Witness T33).
[712] T. 17 November 2009 pp. 16, 18 (ICS) (Witness CNAF); Defence Exhibit 54 (Statement of Witness CNAF, 24 September 1998).
[713] Defence Exhibit 56 (Statement of Witness CNAF, 14 November 2008).

learn of the meeting from others.[714] Given this discrepancy, the Chamber has doubts as to whether Witness CNAF personally attended the Mbuye centre meeting.

571. Turning to the Defence evidence, Witness T24 denied that he had been informed of meetings held by Nzabonimana in his *commune* between 7 and 10 April 1994.[715] The Chamber recalls that Witness T24 was imprisoned at the time of his testimony and had been convicted by *Gacaca* courts and sentenced to life imprisonment for his role in the 1994 events. The Chamber therefore treats his testimony with appropriate caution (2.7.7). The Chamber considers that by Witness T24's own admission, information-gathering and communication during the genocide were difficult and it was difficult to move about.[716] Consequently, he may not have known whether certain meetings in fact occurred and his testimony carries little probative value as to whether the meeting occurred.

572. Witness T31 testified that nothing noteworthy occurred on 8 April 1994. He denied that he saw Nzabonimana at his home in Kavumu on that date and that Nzabonimana gave him three guns and asked that he distribute traditional weapons to the local community. He also denied attending the 9 April 1994 Mbuye centre meeting.[717] The Chamber notes, however, that Witness T31 was imprisoned at the time of his testimony. He was sentenced to a term of life imprisonment and his conviction was pending review at the time of his testimony.[718] Given that the Prosecution evidence directly implicated Witness T31, Witness T31 may have been motivated to distance himself from the allegation. The Chamber therefore treats his denial that the meeting occurred with appropriate caution (2.7.7).

573. Witness T33 testified that no meetings took place within Nzabonimana's compound during the first two weeks of April 1994. He also denied that he saw Nzabonimana distribute weapons at his house during this time.[719] The Chamber notes that Witness T33 also testified that he was not present at Nzabonimana's house in the evenings.[720] The Chamber considers that given the second-hand nature of Witness T33's testimony, it carries little probative value as to whether the meeting occurred.

574. Witness T19 denied that Nzabonimana held a meeting or distributed weapons at his home.[721] The Chamber recalls that it does not believe Witness T19's account of how he came to stay at the Nzabonimana compound in Nyabikenke *commune*, or that Witness T19 was present at the compound as he testified (3.4.3.3). Even assuming the veracity of Witness T19's story, the Chamber notes that Witness T19 testified that he did not leave the compound during his two week stay.[722] The Chamber therefore finds his testimony as to what occurred outside the compound to be of little probative value.

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[714] T. 17 November 2009 pp. 25-26 (ICS) (Witness CNAF).
[715] T. 26 April 2010 p. 41 (ICS) (Witness T24).
[716] T. 27 April 2010 pp. 32-33 (Witness T24).
[717] T. 3 May 2010 p. 56 (ICS); T. 3 May 2010 pp. 61-62 (Witness T31).
[718] T. 4 May 2010 pp. 5-8 (ICS) (Witness T31).
[719] T. 22 April 2010 p. 60 (ICS) (Witness T33).
[720] T. 26 April 2010 p. 6 (ICS) (Witness T33).
[721] T. 21 April 2010 p. 12 (ICS) (Witness T19).
[722] T. 21 April 2010 pp. 9-12 (ICS) (Witness T19).

575. Nevertheless, given the Chamber's doubts as to whether Witness CNAF provided an eyewitness account of the Mbuye centre meeting, the Chamber cannot conclude that the Prosecution has proven this allegation beyond a reasonable doubt. While the Chamber may find an allegation proven beyond a reasonable doubt on the basis of a single witness's testimony (2.7.4), in this instance, the uncorroborated testimony of Witness CNAF was insufficient to prove beyond a reasonable doubt the allegation contained in Paragraph 37 of the Indictment.

3.4.5 Ntarabana Parish Attack

3.4.5.1 Introduction

576. Paragraph 16 of the Indictment alleges that on or about 11 April 1994, the Tutsi refugees at Ntarabana Parish were taken out of the parish by *Interahamwe* and Hutu civilians and taken to the Nyabarongo River and killed on Nzabonimana's orders. Nzabonimana saw a group of Tutsi refugees being taken to the river to be killed while he was distributing weapons to killers at Kigina *secteur*. As the Tutsi refugees were being taken to be killed on his orders, Nzabonimana continued with the weapons distribution. Some of the Tutsi refugees were able to escape to Kabgayi Parish, Gitarama *préfecture*.[723]

577. The Prosecution submits that Nzabonimana was seen at Kivumu centre in the morning of 10 April 1994 with *gendarmes*, where he questioned why Prosecution Witness CNAY should not be killed. Witness CNAY and others subsequently ran away. Nzabonimana ordered Witness T24 to report on Tutsi refugees at Ntarabana Parish and Witness CNAY ran to the parish to warn his Tutsi relatives of imminent attacks, but they were not able to escape. The Prosecution further submits that on or about 11 April 1994, the attackers divided the refugees into groups and marched them via Gasenyi to the Nyabarongo River to be killed. At Gasenyi, Nzabonimana was distributing weapons, including machetes, firearms, grenades and traditional weapons to *Interahamwe* and Hutu civilians. The attackers stopped to receive payment from Nzabonimana for their "work." They beat the Tutsi refugees and then drowned them in the river. Approximately 100 Tutsis from Ntarabana Parish were killed.[724] The Prosecution also reiterates its submissions regarding Paragraph 35 of the Indictment (3.4.2.1). The Prosecution relies on the testimony of Prosecution Witnesses CNAY and CNAP.[725]

578. The Defence presents an alibi.[726] The Defence does not dispute that attacks took place at Ntarabana Parish but denies that Nzabonimana was present or played a role in these attacks. It also submits that the Prosecution evidence was based on hearsay and was contradictory, inconsistent, implausible and fabricated (3.2.2). The Defence contends that refugees did not arrive at Ntarabana Parish until the end of the day on 10 April 1994 and that the first attack at the parish occurred on the afternoon of 11 April 1994, without casualties. A second attack occurred

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[723] Para. 16 of the Indictment.
[724] Prosecution Closing Brief, paras. 114-117; T. 20 October 2011 pp. 4, 20-21 (Prosecution Closing Argument).
[725] A summary of Witness CNAP's relevant testimony is contained in the section of the Judgement pertaining to Paragraph 35 of the Indictment (3.4.2.2).
[726] The Chamber recalls that it has considered the Defence alibi evidence and has found that the alibi is not reasonably possibly true in relation to this paragraph of the Indictment (3.4.1.3).

on 12 April 1994, following which Father Dussart evacuated injured refugees to the Nyabikenke *commune* office.[727]

579. Furthermore, the Defence submits that the Prosecution did not present evidence setting out when or to whom Nzabonimana gave orders to kill Tutsis at the parish and also did not present evidence linking Nzabonimana with any deaths at the parish.[728] The Defence relies on Defence Witnesses T24, T25, T27, T28 and T150. Defence Witness Straton Sibomana also provided relevant evidence.

3.4.5.2 Evidence

Prosecution Witness CNAY

580. Witness CNAY, a Tutsi farmer who lived in Nyabikenke *commune* in 1994, testified that he had known Nzabonimana since 1991. Nzabonimana was the Minister of Youth and organised MRND meetings at locations in Gitovu and Kamirazogera. Nzabonimana's *secteur* was adjacent to the witness's own. People in Nyabikenke considered Nzabonimana "like the President of the [R]epublic."[729]

581. Following the death of the President, Witness CNAY saw Nzabonimana at Kivumu centre on 10 April 1994. The previous day, Witness CNAY's relative, a Tutsi, was killed by a Hutu named Mudakikwa and his son. No one had arrested the killers. The witness had come with his family members to collect his relative's body, and arrived on the scene prior to Nzabonimana. The body was in a house at the business centre.[730]

582. Between 9.00 and 10.00 a.m., Nzabonimana arrived at Kivumu centre in a double cabin vehicle, in the company of eight *gendarmes*. Nzabonimana said: "You are coming to look at a corpse. Well, all of you should have been killed." The witness and those in his company became afraid when Nzabonimana spoke. Nzabonimana ordered people present at the scene to arrest the witness and his family members. Mudakikwa and his son started hurling stones at them and the witness and his family members fled.[731]

583. As they fled, the witness and the others came across Witness T24 at Kavure, located between Kivumu and Mbuye. From Kivumu centre to Kavure took approximately 10 to 15 minutes by foot. However, Witness T24 was in a *commune* vehicle and therefore arrived at Kivumu centre before the witness, who returned on foot. The witness returned with Witness T24 under the assumption that Witness T24 would help them to retrieve the body of his relative. Upon arrival at the scene, Nzabonimana spat in the face of Witness T24 and told him to search for Tutsis to be killed at Ntarabana.[732]

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[727] Defence Closing Brief, paras. 135, 139-176; T. 20 October 2011 p. 53 (Defence Closing Argument).
[728] Defence Closing Brief, paras. 417-418.
[729] Prosecution Exhibit 8 (Protected Information Sheet); T. 24 November 2009 pp. 44-45, 59 (ICS) (Witness CNAY).
[730] T. 24 November 2009 pp. 45-47, 62 (ICS); T. 25 November 2009 pp. 2-6 (ICS) (Witness CNAY).
[731] T. 24 November 2009 pp. 45-48 (ICS); T. 25 November 2009 p. 8 (ICS) (Witness CNAY).
[732] T. 24 November 2009 pp. 45-46 (ICS); T. 25 November 2009 pp. 4, 8-10 (ICS) (Witness CNAY).

584. Witness CNAY immediately went to Ntarabana Parish, also located in Gitovu *secteur*, and arrived there at between 3.00 and 3.30 p.m. He found approximately 300 refugees at the parish, including members of his family. Only Tutsis were gathered at the parish as they were the only people who had been threatened. Witness CNAY warned those gathered of the impending attack and told them to flee.[733]

585. After the witness's arrival at the parish, Hutu *Interahamwe* armed with spears, machetes and clubs came to kill those seeking refuge. The refugees were inside the church when the assailants launched the attack. The refugees came out to fight the assailants. During the 20 minutes that the witness was present, the assailants and the refugees threw stones at one another. The assailants destroyed the church, using axes to destroy the church doors.[734]

586. Between 3.30 and 4.30 p.m. that same day, the assailants captured Witness CNAY and others. Many refugees were captured and the assailants divided them into groups. Witness CNAY was in a group of 15 people. The assailants took them to be killed in the Nyabarongo River. Some were killed along the road. After the witness was taken away, the attack on the parish continued. The witness did not know how long the attack lasted. He learned that the refugees who remained behind were killed. All those who the witness had met at Ntarabana Parish on that day died, except for Nteziraremye, Ndayisaba, Gatete and a young man nicknamed Petit Mwanayija.[735]

587. On the way to the river, the refugees and their captors stopped at Gasenyi centre, located in Kigina *secteur*, Nyabikenke *commune*, Gitarama *préfecture*. The distance between Ntarabana and Gasenyi could be covered on foot in 60 to 90 minutes. They took the road which runs along the river. His captors had told Witness CNAY that they were going to see Nzabonimana in order to get compensation for killing refugees.[736]

588. Once at Gasenyi, the witness was made to sit down where Nzabonimana was distributing weapons, including firearms, machetes and grenades, to *Interahamwe* and other Hutus. Many people were present, including two lorry loads of *gendarmes*. Nzabonimana and the *gendarmes* took the weapons out of the vehicles and distributed them to those present. The witness was approximately 10 metres away from Nzabonimana during this incident.[737]

589. Witness CNAY's abductors did not talk to Nzabonimana at Gasenyi. They then led Witness CNAY and his group to the river, beating them as they walked. When they arrived at the river, the assailants threw them in the water. Some had already been wounded prior to being thrown into the river and others were already dead. After they threw Witness CNAY in the river, "the river threw [him] outside and [he] did not die." The witness then proceeded towards the Nyabikenke *commune* office.[738]

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[733] T. 24 November 2009 pp. 46, 49, 53 (ICS); T. 25 November 2009 p. 13 (ICS) (Witness CNAY).
[734] T. 24 November 2009 p. 49 (ICS); T. 25 November 2009 pp. 14-15 (ICS) (Witness CNAY).
[735] T. 24 November 2009 pp. 46, 49-51 (ICS); T. 25 November 2009 pp. 13-15 (ICS) (Witness CNAY).
[736] T. 24 November 2009 p. 53 (ICS); T. 25 November 2009 p. 15 (ICS) (Witness CNAY).
[737] T. 24 November 2009 pp. 46, 51-52 (ICS); T. 25 November 2009 pp. 16-17 (ICS) (Witness CNAY).
[738] T. 24 November 2009 pp. 46, 51, 53, 59 (ICS) (Witness CNAY).

Defence Witness T24

590. Witness T24, a local government official in Nyabikenke *commune* in April 1994,[739] denied that he had been informed of meetings held by Nzabonimana in *secteurs* within his *commune* between 7 and 10 April 1994. On 9 April 1994, the situation in the *commune* changed, as the first killing occurred in Kivumu. A man was killed in a bar. In his capacity as a person of authority within the *commune*, Witness T24 went to Kivumu on 10 April 1994, accompanied by the judicial police inspector. They investigated and discovered that the man was killed by a man named Mudakikwa. Mudakikwa had sought revenge because he believed that the deceased's wife poisoned his own wife. The population would not let Witness T24 take the man's body to the hospital for an autopsy.[740]

591. Witness T24 denied that he saw Nzabonimana in Kivumu at this time and denied that Nzabonimana ever spat in his face. The witness was not aware of any other event taking place on 10 April 1994 at Kivumu or in the vicinity. Another event occurred in an area close by but the witness could not recall where.[741]

592. On 11 April 1994 the witness went to Mugwato in Gitovu *secteur* to investigate killings which had occurred there the previous day. He also went to Mbuye, which was close to Mugwato. The witness told people not to go to the market that day because of security problems. That same day Witness T24 went to Ntarabana Parish, passing through Kivumu without stopping.[742]

593. On 11 April 1994, the witness was informed that refugees had arrived at Ntarabana Parish. Witness T24 then went to the parish, arriving between 9.00 and 10.00 a.m. At the parish, Witness T24 met Father Dussart of Ntarabana Parish, Father Bourguet of Kibungo Parish and Straton Sibomana, the former *bourgmestre* of Nyakabanda *commune*. He spoke to those seeking refuge and promised them that he would assist in feeding them. The refugees told him that they had fled because there was insecurity in Kigina *secteur* which shared a border with Ruhengeri *préfecture*. The parish had not yet been attacked when the witness visited on 11 April 1994.[743]

594. That night, Ntarabana Parish was attacked. The next day, Witness T24 was informed that the refugees had been attacked during the night. The witness, *commune* policemen and the *sous-préfet* went to the parish on the morning of 12 April 1994. They observed many people on the hills. The hill had been attacked by assailants and while a small group of refugees remained, others had fled. The witness saw Father Dussart and Father Bourguet. Father Dussart was weeping and his handkerchief was wet with tears. The witness did not stay for long, but he entered the church. Dussart explained to them what had occurred at the parish. No shooting was heard at the parish nor were there any grenade explosions. Neither Father Dussart nor anyone else informed the witness of any gunfire or grenade attacks on the parish.[744]

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[739] For additional introductory information on Witness T24, *see* para. 284, *supra*.
[740] T. 26 April 2010 pp. 39-41 (ICS); T. 27 April 2010 p. 55 (ICS) (Witness T24). The Chamber notes that the name of the man who was killed corresponds with the name of Witness CNAY's uncle.
[741] T. 26 April 2010 pp. 41-42 (ICS); T. 28 April 2010 pp. 9-10 (ICS) (Witness T24).
[742] T. 26 April 2010 pp. 42-43 (ICS) (Witness T24).
[743] T. 26 April 2010 pp. 44-46 (ICS) (Witness T24).
[744] T. 26 April 2010 pp. 45-46, 49, 51 (ICS) (Witness T24).

595. While at the parish, someone came and told the witness and others that they had to escape because people were saying that they were assisting the Tutsi accomplices. They were told that the assailants were about to demolish the roads and the bridges in order to prevent vehicles from passing. They were frightened, so they fled from the parish.[745]

596. The witness left with the priest and the *sous-préfet*. They took three refugees with them to the *commune* office. On the way back from the parish, they observed assailants chasing victims on the hills and saw that some victims were thrown in the Nyabarongo River. The assailants were armed with clubs and machetes and used whistles to call out to their colleagues. Those killing the Tutsis in the hills were Hutu members of the local population. During *Gacaca* proceedings, the witness learned that they received support from the inhabitants of Ruhengeri.[746]

597. One of the policemen with Witness T24 fired his gun but the population resisted. All members of the population were enraged and were attacking the victims. The people had become savages and were spilling the blood of victims all over the hills. The events left a deep imprint on the witness and he stopped eating meat for the entire war period after what he witnessed. The witness did not hear anyone implicate Nzabonimana in the attacks on 12 April 1994.[747]

598. The witness recalled similar events in 1973 which were stopped by the arrival of soldiers, and therefore he went to Gitarama to inform *Préfet* Fidèle Uwizeye that the situation was serious and to ask for soldiers to assist. At Gitarama, the witness managed to procure four *gendarmes* and left with them. When the group arrived at Gasenyi, they noticed that the situation was still bad and the killings continued. From their position, they could also see assailants chasing the victims on the hills in Rushashi *commune* in Kigali. The *gendarmes* were powerless and unable to do anything. However, during this incident, they managed to save a Tutsi girl who they took to Kabgayi.[748]

Defence Witness T25

599. Witness T25, a farmer who lived in Gitarama *préfecture*,[749] saw Nzabonimana during the 1994 events, towards the end of April or early May 1994, at Magarure trading centre. He acknowledged that he did not know Nzabonimana and that others identified Nzabonimana to him. Witness T25 denied that he went to the Gasenyi market on 8, 9 or 10 April 1994.[750]

600. On the morning of Sunday, 10 April 1994, Witness T25 attended mass at Ntarabana Parish. No Tutsi refugees were at the parish. After mass, the witness returned home. He did not know if anyone arrived at the parish immediately after his departure.[751]

601. On 12 April 1994, the witness saw approximately 100 people going towards Ntarabana Parish, after his neighbour had just been abducted. He recognised some of the people going towards the parish but did not recognise others because they were natives of Mataba *secteur*,

[745] T. 26 April 2010 p. 49 (ICS); T. 3 May 2010 p. 27 (ICS) (Witness T24).
[746] T. 26 April 2010 pp. 49-51 (ICS) (Witness T24).
[747] T. 26 April 2010 pp. 49-51 (ICS) (Witness T24).
[748] T. 26 April 2010 p. 50 (ICS) (Witness T24).
[749] For additional introductory information on Witness T25, *see* para. 476, *supra*.
[750] T. 31 May 2010 p. 69 (ICS); T. 1 June 2010 pp. 6, 19; T. 1 June 2010 pp. 9, 14, 16 (ICS) (Witness T25).
[751] T. 1 June 2010 pp. 15-16 (ICS) (Witness T25).

Ndusu *commune*. He recognised two people who had come from a locality not far from Gasenyi and two others who were natives of Rushashi.[752]

Defence Witness T27

602. Witness T27, a farmer and shepherd who lived in Gitarama *préfecture*,[753] testified that it took one hour to walk from Witness T27's home to Ntarabana Parish. Ntarabana was far from his home and there was a hill between the two locations which obscured his vision of Ntarabana.[754] The witness acknowledged that the times he provided were estimates.[755]

603. On 10 April 1994, the witness went to a celebration between 10.00 a.m. and 12.00 noon. At 12.30 p.m., he went for a walk in Gasenyi centre and stayed there until 4.30 or 5.00 p.m. At 1.00 p.m., the witness saw two women and a man in a vehicle coming from Vunga. A man stopped the vehicle and asked the passengers where they were going. They said they were fleeing and the man warned them that if they did not return home they would face danger. People then attacked the vehicle and looted the property. The passengers then returned to Vunga. Around 4.00 p.m., another vehicle carrying four soldiers arrived. A soldier bearing a firearm exited the vehicle. The witness fled because he thought the soldier was going to shoot at them. From that point on the situation in Gasenyi centre worsened.[756]

604. On 10 April 1994, there were no refugees at Ntarabana Parish and no one was brought to Gasenyi. People were not thrown into the Nyabarongo River on that day. The witness was not present at Ntarabana Parish on 10 April 1994, but he would have known if Tutsi refugees had assembled at the parish.[757]

605. Refugees began to arrive at Ntarabana Parish the morning of Monday, 11 April 1994. The witness learned that attackers had come from Kivumu and attacked the refugees throughout the day on 11 April 1994.[758]

Defence Witness T28

606. Witness T28, a civil servant in 1994,[759] knew of nothing exceptional which happened on 10 April 1994 in Kivumu. On 11 April 1994, the witness learned of the murder of Witness CNAY's relative. The judicial police inspector and a few police officers intervened but were unable to conduct an investigation. Insecurity prevailed in the *commune* on 11 April 1994, and the witness was unable to go to the scene of the murder. The Mbuye market was closed to avoid the spread of violence.[760]

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[752] T. 1 June 2010 pp. 22-23 (ICS) (Witness T25).
[753] For additional introductory information on Witness T27, *see* para. 480, *supra*.
[754] T. 10 May 2010 p. 17 (ICS) (Witness T27).
[755] T. 10 May 2010 p. 9 (ICS) (Witness T27).
[756] T. 5 May 2010 p. 49; T. 5 May 2010 p. 51 (ICS) (Witness T27).
[757] T. 5 May 2010 pp. 52, 56 (ICS); T. 10 May 2010 p. 22 (ICS) (Witness T27).
[758] T. 10 May 2010 p. 22 (ICS) (Witness T27).
[759] For additional introductory information on Witness T28, *see* para. 520, *supra*.
[760] T. 2 June 2010 pp. 23-24, 27-28 (ICS) (Witness T28). The Chamber notes that the name of the man who was killed corresponds with the name of Witness CNAY's relative.

607. On 12 April 1994, refugees moved towards Ntarabana Parish. The witness was at the Nyabikenke *commune* office, and was called by Father Dussart. He left in the *sous-préfet*'s vehicle with Witness T24 and four *commune* police officers. Upon arriving at the parish, Witness T28 observed that the refugees had been attacked the day before. The assailants were armed with machetes, clubs and sticks and were wearing dried banana leaves to conceal their identity. The witness denied that the attackers were *Interahamwe,* as there were no *Interahamwe* in Nyabikenke *commune.*[761]

608. Refugees who had been fleeing the killings had sought refuge at the parish. The door of the parish had been forced open, but the refugees were able to flee. The *sous-préfet* had held a meeting with some of the assailants telling them that they had attacked members of the population who had not caused the war. The witness and those he was with evacuated Father Dussart, Father Bourguet, Father Lerusse and three young girls who had sought refuge at the presbytery.[762]

609. On their return from Ntarabana, they saw killings occurring on the other side of the Nyabarongo River, in Musasa *commune*. They tried to fire their weapons in that direction to frighten the killers, but this was ineffectual. Other killers intended to fell trees in order to block their way, and the witness and his group were in a rush in order to avoid this situation. They returned to the Nyabikenke *commune* office and found approximately 100 refugees from Kigina, Kavumu and Mahembe assembled there.[763]

Defence Witness T150

610. Witness T150 was an employee of Nyabikenke *commune* in 1994. The witness was related to Nzabonimana by marriage. In July 1994, the witness sought refuge in Congo. Upon his return to Rwanda in 1997, he was arrested and detained. He spent six and a half years in Kyumba jail and two and a half years in Mpanga prison. He was released in 2005. The witness testified that he was never convicted of any crime.[764]

611. During working hours, the witness stayed at the *commune* office and waited for instructions to go wherever he was sent. On the Monday following the President's death, or 11 April 1994, he was at the *commune* office and Witness T24 told him that he needed to go to Ntarabana. They drove in a Suzuki Samurai jeep. They went to Mbuye centre because it was a market day and met a policeman named Haguma. Witness T24 asked Haguma to ask people to leave the marketplace and to tell them that the market would be held on another day.[765]

612. They proceeded to Ntarabana Parish and parked the vehicle in front of the entrance to Father Dussart's house. When they arrived at the parish there were no signs of an attack. Witness T24 went inside the house and spoke with Father Dussart and then came out of the house and

[761] T. 2 June 2010 pp. 28, 34-35, 47-48 (ICS) (Witness T28).
[762] T. 2 June 2010 p. 34 (ICS) (Witness T28).
[763] T. 2 June 2010 pp. 34-36 (ICS) (Witness T28).
[764] Defence Exhibit 105 (Protected Information Sheet); T. 19 October 2010 pp. 7-9, 18, 29 (ICS) (Witness T150).
[765] T. 19 October 2010 pp. 19, 39, 43 (ICS) (Witness T150).

they returned to the *commune* office. It took one hour and 45 minutes to get from the Nyabikenke *commune* office to Ntarabana Parish that day, including the 10 minute stopover in Mbuye.[766]

613. On Tuesday, 12 April 1994, they left the *commune* office in the morning and went back to Ntarabana. The witness drove a vehicle belonging to the Kiyumba *sous-préfecture*, and was accompanied by Witness T24 and two or three *commune* policemen. The witness could not recall whether the *sous-préfet* was present. One kilometre away from the parish, they saw attackers on a hill and could see more coming down from the opposite hill. Witness T24 asked the witness to stop the vehicle and requested one of the policemen to fire into the air in order to push back the attackers. The attackers then dispersed. The policeman came back on board the vehicle and they drove to the parish.[767]

614. Upon arrival, the witness parked the vehicle in front of the church and realised that the door of the church had been forced open. There were refugees inside the church. Witness T24 talked to Father Dussart, Father André Lerusse and Father Twaza. Witness T24 met with the refugees and asked them to join the other refugees at the *commune* office as he was worried for their safety. The refugees went to the *commune* office on foot. A few injured young men were taken on board the vehicle and driven to the *commune* office.[768]

615. Witness T150 testified that in 1994, it took one hour to drive between the Nyabikenke *commune* office and Gitarama *préfecture* office in the dry season and between 90 minutes and two hours in the rainy season. In the dry season, it took two hours to drive between the Nyabikenke *commune* office and Kigali centre, and it took three or four hours in the rainy season, depending on road conditions. Normally, the rainy season occurred in April and May. In 1994, it took four hours in the dry season and five hours in the rainy season to drive from Kigali centre to the Gasenyi trading centre in Kigina *secteur*, Nyabikenke *commune*. From the *commune* office to Gasenyi, Kigina *secteur*, the distance was more than 30 kilometres. In 1994 the state of the road was very bad so the trip could have taken two hours.[769]

Defence Witness Straton Sibomana

616. Sibomana, a Hutu, worked at COFORWA, a company providing clean water to the population and promoting development activities in 1994, and was imprisoned at the time of his testimony. He was appointed *bourgmestre* of Nyakabanda *commune* in 1963 and served until 1992.[770]

617. Sibomana testified that on 11 or 12 April 1994, he accompanied Father Bourguet to Ntarabana around 9.00 a.m. They stayed at Ntarabana for less than 10 minutes and met Father Dussart. They talked to Father Dussart, who offered the witness a bottle of soda. Father Dussart did not tell them what happened in Ntarabana.[771]

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[766] T. 19 October 2010 pp. 19-20 (ICS) (Witness T150).
[767] T. 19 October 2010 pp. 19-20, 39-41 (ICS) (Witness T150).
[768] T. 19 October 2010 p. 20 (ICS) (Witness T150).
[769] T. 19 October 2010 pp. 11-12, 16-17; T. 19 October 2010 p. 31 (ICS) (Witness T150).
[770] Defence Exhibit 3 (Personal Information Sheet); T. 9 December 2009 pp. 5, 20-22, 55 (Sibomana).
[771] T. 9 December 2009 p. 35; T. 9 December 2009 p. 44 (Sibomana) (French) (for the spelling of "Dussart").

3.4.5.3 Deliberations

618. As part of its submissions pertaining to Paragraph 16 of the Indictment, the Prosecution reiterates its submissions with regard to Paragraph 35 of the Indictment. The Chamber recalls its finding that the Prosecution failed to prove the allegations contained in Paragraph 35 of the Indictment beyond a reasonable doubt (3.4.2.3). For the same reasons contained in the section of this Judgement pertaining to Paragraph 35, the Chamber considers that the Prosecution has failed to establish that Nzabonimana ordered the killing of Tutsis at Gasenyi centre for the purpose of establishing liability under Paragraph 16 of the Indictment.

3.4.5.3.1 Nzabonimana Ordered Tutsi Refugees from Ntarabana Parish to Be Killed

619. The Prosecution relies upon the testimony of Witness CNAY to support the allegation that on or about 11 April 1994 refugees were taken from Ntarabana Parish to the Nyabarongo River and killed on Nzabonimana's orders. Witness CNAY testified that on 10 April 1994, as he was trying to retrieve the body of his murdered relative, he saw Nzabonimana spit in the face of Witness T24 and tell him to search for Tutsis to be killed at Ntarabana. Witness CNAY then went to the parish, arriving between 3.00 and 3.30 p.m., and warned the approximately 300 Tutsi refugees assembled there. The parish came under attack by *Interahamwe* at between 3.30 and 4.00 p.m. and the assailants abducted Witness CNAY.

620. The Chamber recalls that it has considered the Defence submission that Witness CNAY fabricated his evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witness CNAY (3.2.5).

621. The Chamber notes an inconsistency between Witness CNAY's testimony and his 2008 statement regarding the order given to Witness T24 by Nzabonimana. In his 2008 statement, the witness stated that Nzabonimana told Witness T24 to go to the parish to see if there were refugees there, and asked Witness T24 to report back so the refugees could be killed. Witness T24 then went to the parish, found the refugees and came back to inform Nzabonimana. At this point, Witness CNAY said: "Having followed what was going on, I headed straight for the parish" to warn the refugees.[772] This account differs from the witness's testimony, in which Witness CNAY stated that he left for the parish after Nzabonimana spat in the face of Witness T24.[773] On cross-examination, Witness CNAY insisted that he did not see Witness T24 return and report back to Nzabonimana after having gone to the parish. He denied that he told investigators that he was present upon Witness T24's return.[774] The Chamber considers that this discrepancy calls into question whether Witness CNAY in fact observed Nzabonimana order Witness T24 to search for Tutsis to be killed.

622. The Defence asserts that Witness CNAY's testimony was not credible because refugees did not start arriving at the parish until later in the day on 10 April 1994 and the first attack did

[772] T. 25 November 2009 p. 12 (ICS) (Witness CNAY); Defence Exhibit 66 (Statement of Witness CNAY, 4 October 2008).
[773] T. 24 November 2009 pp. 45-46, 49, 53 (ICS) (Witness CNAY).
[774] T. 25 November 2009 p. 12 (ICS) (Witness CNAY); Defence Exhibit 66 (Statement of Witness CNAY, 4 October 2008).

not occur until the following day, 11 April 1994.[775] During cross-examination, the Defence confronted Witness CNAY with the testimony of Father Dussart, the parish priest of Ntarabana, from the *Rukundo* trial.[776] Father Dussart testified that a local teacher came to the parish at 5.00 p.m. on 10 April 1994 and asked to stay in the church. Thereafter, many people "flocked into the church premises." That night, approximately 100 people stayed in the church.[777] When confronted with this testimony, Witness CNAY insisted that the refugees had already been attacked at the parish by 5.00 p.m., and opined that the man who came to the parish at 5.00 p.m. was someone who went to the priest in private asking for accommodation.[778]

623. The Chamber notes that Witness CNAP also testified that refugees could have been present in the afternoon of 10 April 1994. She testified that Tutsis began seeking refuge at the parish on either 8 or 9 April 1994.[779] The Chamber recalls, however, that Witness CNAP provided contradictory accounts regarding whether she went to Ntarabana Parish (3.4.2.3). The Chamber thus does not consider Witness CNAP to be a reliable witness with regard to the events at Ntarabana Parish, particularly where uncorroborated by other, credible evidence.

624. Defence witnesses asserted that the refugees did not arrive before 11 April 1994. Witness T24 testified that on 11 April 1994 he learned that some refugees had just arrived at Ntarabana Parish, and that he subsequently went to the parish, arriving there between 9.00 and 10.00 a.m.[780] The Chamber notes that Witness T24 was directly implicated in the 10 April 1994 allegation by Witness CNAY, and thus may have had a motivation to testify that the refugees were not present at the parish on the afternoon of 10 April 1994.

625. Witness T25 testified that on 10 April 1994, he attended mass in the morning at Ntarabana Parish and that there were no Tutsi refugees there at that time. However, he left immediately after mass, and could not confirm if any refugees arrived after his departure.[781] Witness T27 testified that refugees began to arrive at Ntarabana Parish on the morning of

[775] Defence Closing Brief, paras. 169-174; T. 20 October 2011 pp. 52-53 (Defence Closing Argument).
[776] Defence Exhibit 64 (Excerpts of Father Dussart's *Rukundo* Testimony, 10 September 2007). The Chamber notes that in its Closing Brief, the Defence cites to Defence Exhibit 64 as substantive evidence. The Chamber recalls that the exhibit was not introduced into evidence under Rule 92*bis* of the Rules and the Prosecution was not afforded the opportunity to cross-examine Father Dussart. Rather the Defence introduced this exhibit for the purposes of cross-examining Witness CNAY. As such, the exhibit has "very little probative value." *See Bagosora & Nsengiyumva*, Judgement (AC), para. 484, citing *Simba*, Judgement (AC), para. 20 ("The Appeals Chamber [...] agrees with the Trial Chamber's reasoning that, as a matter of law, statements of non-testifying individuals used during cross-examination may be admitted into evidence, even if they do not conform to the requirements of Rules 90(A) and 92*bis* of the Rules, provided the statements are necessary to the Trial Chamber's assessment of the witness's credibility and are not used to prove the truth of their contents."). Thus, the Chamber will consider this evidence for the limited purpose of evaluating the credibility of Witness CNAY.
[777] T. 25 November 2009 p. 18 (ICS) (Witness CNAY); Defence Exhibit 64 (Excerpts of Father Dussart's *Rukundo* Testimony, 10 September 2007).
[778] T. 25 November 2009 p. 18 (ICS) (Witness CNAY); Defence Exhibit 64 (Excerpts of Father Dussart's *Rukundo* Testimony, 10 September 2007).
[779] T. 10 November 2009 pp. 11-13 (Witness CNAP).
[780] T. 26 April 2010 pp. 42, 45-46 (ICS) (Witness T24).
[781] T. 1 June 2010 pp. 15-16 (ICS) (Witness T25).

Monday, 11 April 1994. However, the witness acknowledged that he was not present at the parish on 10 April 1994.[782]

626. The parties do not dispute that those seeking refuge at Ntarabana Parish came under attack, though they do dispute the date of the attack and Nzabonimana's involvement. Prosecution and Defence witnesses provided consistent evidence that the Hutu assailants who attacked the parish were armed with clubs, machetes and sticks. Witness CNAY was certain that the assailants were *Interahamwe*, whereas Witnesses T24 and T28 was certain they were not.[783] Prosecution witnesses testified that the attackers threw stones at the refugees.[784] Witnesses CNAY, CNAP, T28 and T150 all testified that the church door was forced open and destroyed during the attack.[785] Furthermore, Witnesses CNAY, CNAP, T24 and T28 provided consistent evidence that people were thrown into the Nyabarongo River.[786] Witness CNAY testified that no one was killed at Ntarabana Parish during the attack and that they were all thrown into the river.[787] Only Witness CNAY testified that refugees from Ntarabana Parish were killed in the river.[788] Witnesses CNAY, T24 and T150 testified that some of the surviving refugees proceeded to the Nyabikenke *commune* office after the attack on the parish.[789]

627. Witness CNAY testified that the attack occurred just after his arrival at the parish on 10 April 1994.[790] The Defence confronted the witness with Father Dussart's testimony in *Rukundo*, in which Dussart stated that the first attack on the parish occurred on 11 April 1994 at approximately 1.30 p.m. Witness CNAY insisted that the attack he witnessed occurred on 10 April 1994 and that he was not aware of what occurred on 11 April 1994, as he had already left the parish.[791] Witness CNAP estimated that the attack occurred sometime before 12 April 1994 because that was the date those seeking refuge at the parish moved to the *commune* office.[792]

628. The Defence presented evidence that attacks on the parish occurred on 11 and 12 April 1994, and that there were no signs of an attack on the morning of 11 April 1994.[793] Witnesses T24 and T28 testified that the attack occurred on the night of 11 to 12 April 1994, and that they learned of the attack when they went to the parish on 12 April 1994. Witness T27 learned that an attack occurred during the day of 11 April 1994.

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[782] T. 10 May 2010 pp. 22-23 (ICS) (Witness T27).
[783] T. 24 November 2009 pp. 46, 49 (ICS) (Witness CNAY); T. 26 April 2010 p. 51 (ICS) (Witness T24); T. 2 June 2010 pp. 35, 45-48 (ICS) (Witness T28).
[784] T. 25 November 2009 p. 14 (ICS) (Witness CNAY); T. 10 November 2009 pp. 11-13 (Witness CNAP).
[785] T. 24 November 2009 p. 49 (ICS) (Witness CNAY); T. 10 November 2009 pp. 11-13 (Witness CNAP); T. 2 June 2010 p. 34 (ICS) (Witness T28); T. 19 October 2010 p. 20 (ICS) (Witness T150).
[786] T. 24 November 2009 pp. 46, 51, 53, 59 (ICS) (Witness CNAY); T. 10 November 2009 pp. 11, 13 (Witness CNAP); T. 26 April 2010 pp. 49-51 (ICS) (Witness T24); T. 2 June 2010 pp. 34-36 (ICS) (Witness T28).
[787] T. 25 November 2009 p. 19 (ICS) (Witness CNAY).
[788] T. 24 November 2009 p. 59 (ICS) (Witness CNAY).
[789] T. 24 November 2009 pp. 46, 51, 53 (ICS) (Witness CNAY); T. 26 April 2010 p. 50 (ICS) (Witness T24); T. 19 October 2010 p. 20 (ICS) (Witness T150).
[790] T. 24 November 2009 pp. 46, 49, 53 (ICS) (Witness CNAY).
[791] T. 25 November 2009 p. 18 (ICS) (Witness CNAY).
[792] T. 10 November 2009 pp. 11-13 (Witness CNAP).
[793] T. 26 April 2010 pp. 45-46, 49 (ICS) (Witness T24); T. 10 May 2010 p. 22 (ICS) (Witness T27); T. 2 June 2010 pp. 28, 34-35 (ICS) (Witness T28); T. 19 October 2010 pp. 19-20, 41 (ICS) (Witness T150).

629. Based on the foregoing, the Chamber concludes that the evidence established that between 10 and 12 April 1994, Tutsi refugees arrived at Ntarabana Parish and subsequently came under attack by assailants armed with traditional weapons. Following the attack, some of the surviving refugees went to the Nyabikenke *commune* office. However, after reviewing the evidence presented, the Chamber cannot conclude beyond a reasonable doubt that Nzabonimana ordered the attack. Although the Chamber may rely on the testimony of a single witness to prove an allegation beyond a reasonable doubt, the evidence of Witness CNAY, absent corroboration, failed to establish Nzabonimana's involvement in the attack. For this reason, the Chamber concludes that the Prosecution has failed to prove beyond a reasonable doubt that the Tutsi refugees at Ntarabana Parish were taken out of the parish by *Interahamwe* and Hutu civilians to the Nyabarongo River and killed on Nzabonimana's orders, as alleged in Paragraph 16 of the Indictment.

3.4.5.3.2 Nzabonimana Distributed Weapons to Killers at Kigina Secteur

630. The Prosecution relies on Witness CNAY to support the allegation that Nzabonimana distributed weapons to killers at Kigina *secteur*. Witness CNAY testified that he witnessed the distribution at Gasenyi centre as he was being taken by his abductors from Ntarabana Parish to the Nyabarongo River.

631. The Chamber notes logical inconsistencies in the witness's narrative with regard to this allegation. The witness testified that his abductors took him to Gasenyi centre because they wanted to claim compensation from Nzabonimana for killing the refugees. However, according to Witness CNAY, his abductors never spoke to Nzabonimana at Gasenyi centre.[794] The witness failed to explain why his captors did not to speak to Nzabonimana regarding their expected reward, after having walked for between one and one and a half hours just to see him.

632. The Chamber further notes a significant discrepancy between Witness CNAY's testimony and his 2008 statement with regard to the attempt on the witness's life. In his testimony, the witness stated that the assailants threw him in the Nyabarongo River and that the river "threw [him] outside."[795] However, in his 2008 statement, the witness did not mention being thrown into the river and instead stated that he took "advantage of the confusion" and "managed to escape."[796] The Chamber notes that Witness CNAY's statement was taken only 13 months prior to his testimony. The Chamber considers that if the witness was indeed thrown into the river, he would have also mentioned this fact in his 2008 statement.

633. Turning to the Defence evidence, Witnesses T25 and T27 denied that Nzabonimana was present at Gasenyi centre on 10 April 1994. The Chamber notes that Witness T25 denied that he himself went to the Gasenyi market on 8, 9 or 10 April 1994.[797] His testimony would therefore have little probative value as to whether Nzabonimana was present at that location, on that date. Furthermore, Witness T25 acknowledged that on the one occasion when he saw Nzabonimana at the end of April or early May 1994, he did not know Nzabonimana and others identified

[794] T. 24 November 2009 p. 53 (ICS) (Witness CNAY).
[795] T. 24 November 2009 p. 53 (ICS) (Witness CNAY).
[796] T. 25 November 2009 p. 17 (ICS) (Witness CNAY); Defence Exhibit 66 (Statement of Witness CNAY, 4 October 2008).
[797] T. 31 May 2010 p. 69 (ICS); T. 1 June 2010 p. 6; T. 1 June 2010 pp. 14, 16 (ICS) (Witness T25).

Nzabonimana to him.[798] The Chamber therefore considers that Witness T25 would not have been able to reliably identify Nzabonimana even if he saw him around 10 April 1994.

634. Similarly, Witness T27 stated that he did not know Nzabonimana in 1994, but nonetheless stated that he did not see Nzabonimana at Gasenyi centre on 8, 9 or 10 April 1994. He stated that if Nzabonimana had been there, he would have known, but no one ever mentioned it. The Chamber notes that Witness T27 stated that he was at Gasenyi centre on 10 April 1994, but that he fled at around 4.00 p.m. that day after seeing a soldier bearing a firearm.[799] Given that Witness CNAY testified that he was captured at Ntarabana Parish at 3.30 or 4.30 p.m. and that it took between 60 and 90 minutes to walk to Gasenyi,[800] the Chamber considers that Witness T27's testimony contains little probative value as to whether Nzabonimana was present at Gasenyi on 10 April 1994.

635. The Chamber observes that the Prosecution relied exclusively upon the eyewitness testimony of Witness CNAY in support of this portion of the allegation against Nzabonimana. The Chamber recalls that it may find allegations proven beyond a reasonable doubt on the basis of a single witness's testimony (2.7.4). However, in this instance, given the inconsistent and implausible aspects of Witness CNAY's testimony outlined above, as well as the lack of corroborating evidence, the Prosecution has failed to prove beyond a reasonable doubt the allegation that Nzabonimana was at Gasenyi centre on 10 April 1994, and that he distributed weapons and ordered the killing of Tutsis on this occasion.

3.4.5.3.3 Tutsi Refugees from Ntarabana Parish Escaped to Kabgayi Parish

636. Both Prosecution witnesses testified that the refugees went to the Nyabikenke *commune* office and then to Kabgayi Parish. Only Witness T24 testified that they saved a Tutsi girl and took her to Kabgayi Parish.[801] None of the other witnesses testified to the refugees escaping the Ntarabana Parish attack and going to Kabgayi. The Chamber therefore concludes that the Prosecution has not provided sufficient evidence to establish that Tutsi refugees from Ntarabana Parish were able to escape the Nyabarongo River and flee to Kabgayi Parish, as set out in Paragraph 16 of the Indictment.

3.4.6 Kabimbura Centre Meeting

3.4.6.1 Introduction

637. Paragraph 17 of the Indictment alleges that on or about 11 April 1994, Nzabonimana, acting in concert with Witness T49 and Munana, held a meeting at Kiyumba *secteur*, Nyabikenke *commune*. Nzabonimana told those gathered there that the killings at Ntarabana Parish were completed and there remained Tutsis at the Nyabikenke *commune* office. Nzabonimana said they should solve this problem before sharing of the property.[802]

[798] T. 1 June 2010 p. 19 (Witness T25).
[799] T. 5 May 2010 pp. 42, 44; T. 5 May 2010 pp. 51-52 (ICS) (Witness T27).
[800] T. 25 November 2009 p. 15 (ICS) (Witness CNAY).
[801] T. 26 April 2010 p. 50 (ICS) (Witness T24).
[802] Para. 17 of the Indictment. The Chamber notes that Witness T49 did not testify at trial.

638. The Prosecution submits that on 11 April 1994, Nzabonimana was seen in the company of Witness T49 and Munana at a meeting held at Kamana's shop in Kabimbura centre, Kiyumba *secteur*. Munana said that Nzabonimana told those at the meeting that a solution had been found to the threat posed by Tutsi refugees at Ntarabana Parish, but that the Tutsis at the Nyabikenke *commune* office remained a problem. Nzabonimana ordered those present at the meeting to attack the Tutsis and then take their property. The Prosecution relies on the testimony of Prosecution Witness CNAX.[803]

639. The Defence presents an alibi.[804] The Defence also submits that Witness CNAX was involved in the fabrication of evidence (3.2.2). Furthermore, the Defence denies that the meeting took place and submits that the Prosecution evidence was contradictory, implausible and based upon hearsay. The Defence relies on the testimony of Witnesses T24 and T28.[805]

3.4.6.2 Evidence

Prosecution Witness CNAX

640. Witness CNAX, a Tutsi who lived in Nyabikenke *commune* in 1994,[806] sought refuge at the Nyabikenke *commune* office at 9.00 a.m. on 11 April 1994. When Witness CNAX arrived at the *commune* office, a small number of refugees were present and others continued to arrive. Policemen guarded the office that day because of insecurity in the area. The brigadier of the *commune* police spent the night near the *commune* office. On the evening of 11 April 1994, the witness left alone on foot for Kabimbura to search for food. Nothing dangerous had yet taken place and nobody had been beaten as of that time. Kabimbura centre, located in Kiyumba *secteur*, Nyabikenke *commune*, was between 30 minutes and one hour away from the *commune* office by foot. Witness CNAX was not afraid because other Tutsis were fleeing the localities around the centre to come to the *commune* office and there had been no major incident by that point.[807] The witness went in search of food at other times while he sought refuge at the *commune* office, including to the Nyabikenke Health Centre and at Cyayi centre.[808]

641. When Witness CNAX arrived at Kabimbura centre he saw a group of people standing around the shop of a man named Kamana. Witness CNAX wanted to buy food from the shop. The people told him that Kamana was in a meeting in the internal courtyard and he would have to wait for the meeting to end.[809]

642. Around 5.00 p.m. on 11 April 1994, Witness CNAX was in front of Kamana's compound because he was not allowed to enter. He saw Nzabonimana and Witness T49 come out of the backyard of the compound. Witness CNAX knew Witness T49 because they lived near each

[803] Prosecution Closing Brief, paras. 89, 337, 354; T. 20 October 2011 pp. 18-19 (Prosecution Closing Argument).
[804] The Chamber recalls that it has considered the Defence alibi evidence and has found that the alibi is not reasonably possibly true in relation to this paragraph of the Indictment (3.4.1.3).
[805] Defence Closing Brief, paras. 177-190.
[806] For additional introductory information on Witness CNAX, *see* paras. 273-275, *supra*.
[807] T. 23 November 2009 pp. 57-59; T. 24 November 2009 pp. 15-16 (ICS) (Witness CNAX).
[808] T. 24 November 2009 pp. 29-30, 32 (ICS); T. 24 November 2009 p. 31 (HC) (Witness CNAX) (French) (whereas the English transcript states the witness went to "Kansi" to search for food, the French transcript states "*je cherchais de la nourriture, et qu'ainsi, je ratais sa réunion*").
[809] T. 24 November 2009 p. 16 (ICS) (Witness CNAX).

other. Behind Nzabonimana and Witness T49, another man named Munana came out of the meeting. Witness CNAX knew Munana as an *Interahamwe* who pled guilty for his role in the genocide. He was the brother-in-law of a *bourgmestre*. Though he knew Witness T49 and Munana, they did not know him. Witness CNAX learned that the *bourgmestre* had attended the meeting, but did not personally see him.[810]

643. Munana repeated to Witness CNAX and the others assembled what was said during the meeting. Munana stated that Nzabonimana told them that the problem of the Tutsis who had sought refuge at the Ntarabana Parish had been solved. Nzabonimana then said that the problem of Tutsis who had sought refuge at the Nyabikenke *commune* office remained. Nzabonimana requested those Tutsis be attacked before their properties were taken in order to avoid claims from any surviving Tutsis.[811]

644. Witness CNAX then went to find something to eat at Kalisa's restaurant, located not far from the site of the meeting. He then returned to the *commune* office. Witness CNAX did not mention what transpired at the meeting to anyone at the *commune* office or that Nzabonimana had told people to deal with the problem of those seeking refuge at the *commune* office. He did not tell anyone because they were all frightened. The information would have created insecurity at the *commune* office and those seeking refuge there would have dispersed.[812]

645. During the night of 14 April 1994 to 15 April 1994, between 3.00 and 4.00 a.m., the instructions from the meeting were carried out as those seeking refuge at the Nyabikenke *commune* office, including the witness, were attacked by assailants armed with grenades and firearms.[813]

Defence Witness T24

646. Witness T24, a local government official in Nyabikenke *commune* in 1994,[814] testified that Kabimbura was located close to the Mubuga centre, Kiyumba *secteur*, where the *commune* office was located. Kabimbura was a small trading centre where one could buy essential items. It would take less than five minutes to travel from the *commune* office to Kabimbura by car.[815]

647. The witness knew the Kabimbura centre well and if a meeting took place there he would have been informed of it. Witness T24 denied that a meeting took place involving Witness T49 and Nzabonimana in Kamana's bar. The witness averred that during the genocide, it was difficult to move about and obtain information. He may not have known about certain meetings that were held.[816]

648. The witness knew Witness T49 well and explained that Witness T49 was a teacher before he went to work for the Rwandan Red Cross in Kigali. He was subsequently recruited by the

[810] T. 23 November 2009 pp. 57-59; T. 24 November 2009 pp. 24-26 (ICS) (Witness CNAX).
[811] T. 23 November 2009 pp. 58-59; T. 24 November 2009 pp. 26-27 (ICS) (Witness CNAX).
[812] T. 24 November 2009 pp. 26, 28, 30 (ICS) (Witness CNAX).
[813] T. 23 November 2009 p. 59 (Witness CNAX).
[814] For additional introductory information on Witness T24, *see* para. 284, *supra*.
[815] T. 26 April 2010 pp. 46-47 (ICS); T. 26 April 2010 p. 52 (HC) (Witness T24) (French) (for the spelling of "Kabimbura").
[816] T. 26 April 2010 p. 47 (ICS); T. 27 April 2010 pp. 32-33 (Witness T24).

Ministry of Youth, and later worked in the Ministry of Public Works and Equipment during the genocide. He denied meeting Witness T49 during the 15 days following the death of the President.[817]

649. Witness T24 further testified that Kamana's bar would not have been a proper venue for a meeting. In Rwandan culture, it was not suitable for a person with the stature of a Minister or a *bourgmestre* to visit such a place.[818]

Defence Witness T28

650. Witness T28, a civil servant in 1994,[819] testified that insecurity prevailed in the *commune* on 11 April 1994. Acts of violence had been committed at Kivumu and consequently he had to disperse people assembled at the Mbuye market square. Kabimbura was between one and a half to two kilometres away from the *commune* office, on the road to Nyakabanda *commune*.[820]

651. Witness T28 identified Kabimbura centre in a photograph.[821] Witness T28 confirmed that he knew the houses contained in the photograph and identified Kamana's house in the picture. During the entire period of the genocide, nothing particular happened in Kabimbura, with the exception of an attack on 13 April 1994, which was launched on the *commune* office against those who sought refuge there.[822]

652. Witness T28 knew Witness T49, even though Witness T49 lived in Kigali because he was a civil servant who worked for the State. The witness saw Witness T49 in June 1994, when Witness T49 sought refuge in his area because Kigali had been captured by the RPF.[823]

3.4.6.3 Deliberations

653. The Prosecution relies exclusively upon the testimony of Witness CNAX in support of this allegation. The Chamber notes that by his own admission, Witness CNAX served 22 months in prison for the embezzlement of public funds, a crime unrelated to the genocide. A criminal conviction for an incident unrelated to the facts of the present case does not *per se* indicate that Witness CNAX lacks credibility. However, the Chamber may take into account this conviction in determining whether the witness is credible.[824]

654. The Chamber recalls that it has considered the Defence submission that Witness CNAX fabricated his evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witness CNAX (3.2.5).

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[817] T. 26 April 2010 p. 47 (ICS) (Witness T24).
[818] T. 26 April 2010 p. 48 (ICS) (Witness T24).
[819] For additional introductory information on Witness T28, *see* para. 520, *supra*.
[820] T. 2 June 2010 pp. 27-29 (ICS) (Witness T28).
[821] Defence Exhibit 39 (Photograph of Kabimbura Centre).
[822] T. 2 June 2010 pp. 29-30, 33-34 (ICS) (Witness T28).
[823] T. 2 June 2010 p. 39 (ICS) (Witness T28).
[824] *Kamuhanda*, Judgement (AC), para. 142.

655. Witness CNAX saw Nzabonimana exit Kamana's compound in Kabimbura centre at around 5.00 p.m. on 11 April 1994.[825] Witness CNAX provided hearsay testimony of what Nzabonimana allegedly stated during the preceding meeting at Kamana's.[826]

656. The Chamber notes discrepancies between Witness CNAX's testimony and his previous statement.[827] In his testimony, Witness CNAX stated that the meeting ended around 5.00 p.m., whereas in his statement, he indicated that the meeting ended at 6.00 p.m. Furthermore, Witness CNAX testified that he saw Nzabonimana's vehicle parked in front of the shop and that he knew the vehicle belonged to Nzabonimana once he saw Nzabonimana coming out of the meeting.[828] In his statement, Witness CNAX indicated that the vehicle was parked in the courtyard, not in front of the shop, and that he recognised the vehicle as Nzabonimana's while he was waiting for the meeting to end. The Chamber acknowledges these discrepancies, but considers that given the time elapsed, they are minor in nature and do not, in and of themselves, impact the overall credibility of the witness.

657. The Defence suggests that it is not believable that Witness CNAX left the *commune* office to search for food.[829] The Chamber, however, accepts as plausible Witness CNAX's testimony that he left the *commune* office alone and on foot in search of food.[830] The Chamber notes the testimony of Witness T24, who stated that Kabimbura centre was less than five minutes away from the *commune* office by car.[831] Witness CNAX would therefore not have had to travel a great distance between the two locations. Although there was insecurity in the area, it is not implausible that Tutsis such as Witness CNAX would have taken risks to search for food, because they were deprived and hungry. Indeed Witness CNAX testified that he left the *commune* office in search of food on other occasions as well.[832]

658. The Chamber notes, however, that Witness CNAX's testimony regarding Nzabonimana's speech at the Kabimbura meeting was hearsay. The Prosecution did not lead any direct evidence from any of the attendees regarding what Nzabonimana had said at the meeting.

659. The Chamber also observes that the evidence presented by the Prosecution is contradictory with regard to the actions of Nzabonimana on 11 April 1994. In contrast to the evidence of Witness CNAX, Witness CNR1 testified that he travelled from Nyabikenke *commune* with Nzabonimana back to Kigali around 3.00 p.m. on 11 April 1994.

660. The Defence witnesses testified that the Kabimbura meeting never occurred.[833] The Chamber notes that Witnesses T24 and T28 provided generalised, second-hand accounts as to why the allegation is implausible. Witness T24 testified that given his position in the community, he would have heard about any meeting of this calibre. Furthermore, he averred that according to the dictates of Rwandan culture, it would not have been suitable for a Minister to visit a place

[825] T. 23 November 2009 pp. 58-59; T. 24 November 2009 p. 24 (ICS) (Witness CNAX).
[826] T. 23 November 2009 p. 59; T. 24 November 2009 pp. 26-27 (ICS) (Witness CNAX).
[827] Defence Exhibit 63 (Statement of Witness CNAX, 4 October 2008).
[828] T. 23 November 2009 p. 59; T. 24 November 2009 pp. 17, 23 (ICS) (Witness CNAX).
[829] Defence Closing Brief, para. 179.
[830] T. 23 November 2009 p. 59; T. 24 November 2009 pp. 15-16 (ICS) (Witness CNAX).
[831] T. 26 April 2010 p. 47 (ICS) (Witness T24).
[832] T. 24 November 2009 pp. 29-30, 32 (ICS) (Witness CNAX).
[833] T. 26 April 2010 p. 47 (ICS) (Witness T24); T. 2 June 2010 pp. 33-34, 40, 46 (ICS) (Witness T28).

such as Kamana's bar.[834] Witness T28 testified that he did not hear of or see Nzabonimana in Nyabikenke *commune* during April 1994.[835]

661. The Chamber notes, however, that by Witness T24's own admission, information-gathering and communication during the genocide were difficult. It was difficult to move about and consequently he may not have known that certain meetings occurred.[836] The Chamber observes that this could equally apply to Witness T28. The Chamber concludes that the testimony of Witnesses T24 and T28 was of limited probative value, given that they could not provide first-hand testimony as to whether the meeting at Kabimbura centre occurred on 11 April 1994.

662. In conclusion, the Chamber believes that Witness CNAX went to Kabimbura centre on 11 April 1994 in search of food. However, Witness CNAX was the only Prosecution witness who implicated Nzabonimana in the events at Kabimbura. While the Chamber may find an allegation proven beyond a reasonable doubt on the basis of the testimony of a single witness, in this instance the Chamber notes the hearsay nature of Witness CNAX's evidence, the lack of corroborating evidence and the existence of contradictory Prosecution evidence. Having considered the totality of the evidence, the Chamber finds that the Prosecution failed to prove beyond a reasonable doubt the allegation contained in Paragraph 17 of the Indictment relating to the Kabimbura meeting.

3.5 Events from 12 to 30 April 1994

3.5.1 Butare Trading Centre Meeting

3.5.1.1 Introduction

663. Paragraph 40 of the Indictment alleges that on or about 15 April 1994, Nzabonimana addressed a gathering at the Butare trading centre in Rutongo *secteur*, Rutobwe *commune*, Gitarama *préfecture*. Nzabonimana told the Hutu population to kill all *Inyenzi* and their accomplices, the Tutsis, and to take their jobs and belongings. He stated that even among the gathering there were Tutsis who must not be spared. Witness CNAZ and other Tutsis tried to flee and Nzabonimana told soldiers and the population to pursue them. Many Tutsis were killed following the meeting by persons including *Interahamwe,* Hutu civilians and soldiers.[837]

664. The Prosecution asserts that between April and July 1994, Nzabonimana gave orders to the population to kill Tutsis and take their belongings whenever he found a group of people gathered. On or about 12 April 1994, Nzabonimana held an impromptu meeting at Butare centre and told the crowd that "everyone knows that the country's enemy is the Tutsi." Nzabonimana bought the crowd banana beer and asked them to capture and kill any Tutsis among them. Vincent Karegyeya pointed out Prosecution Witness CNAZ as a Tutsi, but Witness CNAZ escaped. Witness CNAZ heard Nzabonimana order four *gendarmes* to pursue and kill him. The

[834] T. 26 April 2010 pp. 47-48 (ICS) (Witness T24).
[835] T. 2 June 2010 pp. 40, 46 (ICS) (Witness T28).
[836] T. 27 April 2010 pp. 32-33 (Witness T24).
[837] Para. 40 of the Indictment.

situation deteriorated after the meeting. The Prosecution relies on Prosecution Witnesses CNAZ and CNBH.[838] Witness CNAY also provided relevant evidence.

665. The Defence asserts that Witness CNBH fabricated his evidence (3.2.2). The Defence also submits that the Prosecution evidence was contradictory. Furthermore, Defence witnesses denied that Nzabonimana made the speech as alleged by the Prosecution. The Defence relies upon Defence Witnesses T109, T110 and Jean-Marie Vianney Mporanzi.[839]

3.5.1.2 Evidence

Prosecution Witness CNBH

666. Witness CNBH, a Tutsi shopkeeper from Rutobwe *commune*, worked at the Butare trading centre in 1994.[840] He knew Callixte Nzabonimana before 1994 as Minister of Youth and as a member of the MRND. Nzabonimana was respected by the entire population. He was well known in Gitarama *préfecture* and everyone in Rutobwe *commune* knew him. Nzabonimana would come to Rutobwe *commune* on his way to Nyabikenke *commune*. As Minister of Youth, Nzabonimana was very influential and commanded great respect from youths. Nzabonimana provided them with footballs and volleyballs.[841]

667. Witness CNBH saw Nzabonimana at Butare trading centre on 12 April 1994 at around 2.00 p.m. Nzabonimana stopped on his way from Gitarama. Nzabonimana arrived driving a white Hilux, in the company of two armed *gendarmes*. With a gesture to those sitting along the road, Nzabonimana called on the population in the centre to come towards him. Nzabonimana also sent Joseph Ruhanga to gather people inside area bars.[842]

668. Approximately 20 people were present at the trading centre, including Ruhanga, Prosper Hategekimana, Bernard Nyirimbibi, Budoni, Witness CNAZ, Jérôme Musabyimana, Cyprien Habarurema, Emile Munyemana and Masabo, among others. Nzabonimana did not need to introduce himself and offered drinks to those assembled, ordering 30 bottles of banana beer for the crowd and a Primus for himself. The *gendarmes* were armed and sat on the veranda of the drinking spot drinking Primus beer. Many Tutsis were present.[843]

669. Before the drinks were finished, Nzabonimana told those assembled that the fighting was intense at the front because the *Inkotanyi* had attacked and were getting "the upper hand." He asked the crowd how Rwanda would win the war. Nzabonimana told the crowd that the way to bring an end to the war with the Tutsis was by eliminating all the Tutsis, and that they should use

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[838] Prosecution Closing Brief, paras. 211-223; T. 20 October 2011 pp. 33-34 (Prosecution Closing Argument).
[839] Defence Closing Brief, para. 443; T. 20 October 2011 pp. 68-69 (Defence Closing Argument). The Chamber notes that in its closing submissions, the Defence does not assert that the alibi applies to Paragraph 40 of the Indictment.
[840] Prosecution Exhibit 13 (Protected Information Sheet); T. 3 December 2009 pp. 20-21 (ICS) (Witness CNBH).
[841] T. 3 December 2009 pp. 20-21, 31-32 (ICS) (Witness CNBH).
[842] T. 3 December 2009 pp. 21-22, 24, 32, 35, 48 (ICS) (Witness CNBH).
[843] T. 3 December 2009 pp. 21-22, 32-33, 35-36, 38, 48 (ICS); T. 3 December 2009 p. 37 (HC) (Witness CNBH) (French) (for the spelling of "Habarurema").

their traditional weapons to kill Tutsis because afterwards, they would be in a position to possess their property.[844]

670. The crowd was shocked after hearing Nzabonimana's message and Witness CNAZ and Jérôme Musabyimana, who were both Tutsis, ran in opposite directions away from the trading centre. Nzabonimana asked the population to chase the two men. He then asked whether there was any other Tutsis around to be used as an example of what should be done to the Tutsis. The audience members did not agree with what Nzabonimana said, so they stayed silent and did not point out, betray or denounce any Tutsi members of the crowd.[845]

671. Musabyimana ran off on the road towards Nyamabuye and *gendarmes* in a vehicle chased him. When Musabyimana saw the vehicle he went on a footpath and ran up a hill. Witness CNAZ ran towards the banana plantation in the direction of Nyabikenke and was chased by a small group, including Emile Munyemana. The group did not intend to kill him and they later returned to the trading centre and told the assembled crowd they were unable to catch him.[846]

672. After the *gendarmes* abandoned their pursuit of Musabyimana, they returned to the trading centre and left for Nyabikenke *commune* with Nzabonimana immediately thereafter. Witness CNBH testified that the speech lasted no more than one hour, and that he then went home as nothing further happened that day.[847]

673. There were no immediate attacks against Tutsis or their houses until the attacks began in Nyabikenke many days later. Four days after the meeting at Butare centre, survivors of the Nyabikenke *commune* office attack passed by Butare on their way to Kabgayi. They were attacked at night and arrived in Butare in the morning. The survivors talked of meetings that Nzabonimana had held at Peru and Mubuga. Witness CNBH learned from the survivors that those seeking refuge at the Nyabikenke *commune* office were attacked by assailants with grenades.[848]

674. Witness CNBH fled to Kabgayi on 17 April 1994 after attackers crossed the river and brought the war to Rutobwe. When attackers from Nyabikenke *commune* had begun to kill in Rutobwe *commune*, *Bourgmestre* Mporanzi kept the *commune* secure by assigning policemen to patrol the river separating Rutobwe and Nyabikenke *communes*. Mporanzi did the best he could to protect the *commune*. Witness CNBH met Witness CNAZ at Kabgayi after they sought refuge there.[849]

Prosecution Witness CNAZ

675. Witness CNAZ, a Tutsi farmer, lived near the Butare trading centre in 1994.[850] Sometime between 6 and 12 April 1994, after working his farm, Witness CNAZ walked to the Butare

[844] T. 3 December 2009 p. 22 (ICS) (Witness CNBH).
[845] T. 3 December 2009 pp. 22-23, 35-37 (ICS) (Witness CNBH).
[846] T. 3 December 2009 pp. 23, 36-37, 43 (ICS) (Witness CNBH).
[847] T. 3 December 2009 pp. 25, 39, 43 (ICS) (Witness CNBH).
[848] T. 3 December 2009 pp. 40, 43-44 (ICS) (Witness CNBH).
[849] T. 3 December 2009 pp. 24-25, 37, 41, 45-46 (ICS) (Witness CNBH).
[850] Prosecution Exhibit 3 (Protected Information Sheet); T. 12 November 2009 p. 15 (ICS) (Witness CNAZ).

trading centre. He arrived in the afternoon. The witness saw Nzabonimana when Nzabonimana unexpectedly stopped on his way from Nyabikenke *commune*. Witness CNAZ only got to know Nzabonimana when he introduced himself at the trading centre.[851]

676. Nzabonimana arrived in the company of four *gendarmes* and the *sous-préfet* of Ruhango, Jean-Baptiste Ndagijimana. The convoy consisted of two or three vehicles, including a Pajero that Nzabonimana drove with three passengers and a white pickup carrying the *gendarmes*. Ndagijimana's vehicle was present and Ndagijimana met with Nzabonimana at the Butare trading centre. The witness could not recall when Ndagijimana's vehicle arrived at the centre.[852]

677. When the cars stopped, those gathered rushed towards them and a meeting was held outside. The meeting began at approximately 3.00 p.m.[853] About 20 people were gathered, including Vincent Karegeya, Ruhunga, Cyprien, Jérôme Mushimungunga, Munyurabatware, Sebagande, Emile Munyemana, Prosper Hategekimana, Witness CNBH and others.[854] Nzabonimana wore a suit and boots. Nzabonimana told those assembled that he was the Minister of Associative Activities and had just launched killings of Tutsis, which Nzabonimana referred to as "the work," in Nyabikenke *commune*. Nzabonimana then pointed to his boots which were covered with mud and told the crowd that this was to show them that the killings should also begin in Rutobwe *commune*.[855]

678. Nzabonimana asked whether all members of the population were armed and what kind of weapons they possessed. He then told the crowd that everyone knew that the country's enemy was the Tutsis. Nzabonimana told the population that if anyone needed weapons, he had a cargo of weapons that could be distributed. The witness left the venue prior to the end of the meeting, but people later told him that weapons were distributed by Nzabonimana.[856]

679. Nzabonimana bought banana beer for the local inhabitants. Those in authority sat aside and Nzabonimana bought them Mutzig and Primus beer. After the beer was purchased, the witness heard Nzabonimana repeat that the country's enemy was the Tutsis. Nzabonimana then asked if there were any Tutsis in the crowd. Vincent Karegeya pointed at the witness, calling him by name and saying that he was a Tutsi. As the crowd continued to drink Nzabonimana asked the crowd to kill the witness to serve as an example that the killings were to begin.[857]

680. The witness ran from the trading centre. Nzabonimana asked the four *gendarmes* in his company to chase after the witness and kill him. Because the *gendarmes* did not know the area and because they travelled by road the witness was able to escape through a small path behind a house and through a coffee farm before he fell into a hole and sustained a fracture. The witness did not know how many people were chasing him as he fled from the trading centre but he understood that many people chased him. The witness was able to hear the sound of their feet as they ran after him, but he was in a ditch so he could not see how many there were. Later, the

[851] T. 12 November 2009 pp. 4, 6; T. 12 November 2009 pp. 21-23, 32 (ICS) (Witness CNAZ).
[852] T. 12 November 2009 p. 6; T. 12 November 2009 pp. 19, 33-35 (ICS) (Witness CNAZ).
[853] T. 12 November 2009 p. 7; T. 12 November 2009 p. 41 (ICS) (Witness CNAZ).
[854] T. 12 November 2009 p. 6; T. 12 November 2009 p. 8 (French) (for the spelling of "Ruhunga" and "Mushimungunga"); T. 12 November 2009 p. 30 (ICS).
[855] T. 12 November 2009 pp. 4, 6-7; T. 12 November 2009 pp. 32-33 (ICS) (Witness CNAZ).
[856] T. 12 November 2009 p. 4; T. 12 November 2009 p. 45 (ICS) (Witness CNAZ).
[857] T. 12 November 2009 pp. 4-6; T. 12 November 2009 p. 43 (ICS) (Witness CNAZ).

witness was told that civilians continued to search for him. At around 2.00 a.m. Witness CNAZ went to his house to warn his family before fleeing the area. The witness sought refuge at Kabgayi and did not know what happened in Rutobwe *commune* after his departure.[858]

Prosecution Witness CNAY

681. Witness CNAY, a Tutsi farmer who lived in Nyabikenke *commune* in 1994,[859] was in the company of other Tutsis who fled after attacks on the Nyabikenke *commune* office.[860] Witness CNAY arrived at Butare trading centre on 12 April 1994 at approximately 9.30 or 10.00 a.m. where he saw Nzabonimana address the population. The witness disguised himself as a Hutu and joined the gathering. He was not more than five metres away from Nzabonimana as he spoke.[861]

682. Nzabonimana told the crowd that they were "idiots" and that instead of killing people they were spending their time destroying banana plantations and killing cows. There were many people in the crowd. The witness understood Nzabonimana's speech to mean that it was necessary to first kill people and then to eat their cows rather than wasting their time attacking property while the owners of that property, the Tutsis, were alive. The population then flushed people out from Tutsi homes, attacked the house of Tutsis who lived not far from the trading centre, started stealing cows and destroyed banana plantations.[862]

Defence Witness T109

683. Witness T109 was an MDR party member, a resident of Rutobwe *commune*, and a shop manager in 1994.[863] Prior to the 1994 events, the witness saw Nzabonimana speak at an MRND rally. Nzabonimana asked people to live peacefully together regardless of political affiliation. Nzabonimana would also pass in front of the witness's shop once a week and stop and address the local population. He often bought drinks for the people.[864]

684. The witness saw Nzabonimana stop at Butare after 6 April 1994, at least one week after the death of the President and on a day towards the middle of the week. Nzabonimana arrived at the trading centre between 2.00 and 3.00 p.m. in a Pajero saloon car. Two soldiers and a driver were also in the vehicle. The vehicle was travelling from Kavumu in the direction of Gitarama. At the time Nzabonimana came to the trading centre, all the members of the population in the area of Butare lived on good terms.[865]

685. Many people were present at the time the vehicle stopped. There were people both inside and outside of the buildings, but most were in front of Claver Habiyambere's bar. The witness knew everyone present, including: Ruhunga and his wife; Witness CNAZ; Cyprien Habarurema; Witness CNBH; Jérôme Musabyeyezu; a man named Masabo; Claver Habiyambere and his wife; Witness T110; Gabriel; Onesphore Karisimbi; Faustin Ngerageze; Xavier Bigirimana; Théogène

[858] T. 12 November 2009 pp. 5, 7; T. 12 November 2009 pp. 37, 48-49, 51 (ICS) (Witness CNAZ).
[859] For additional introductory information on Witness CNAY, *see* para. 580, *supra*.
[860] Prosecution Exhibit 8 (Protected Information Sheet); T. 25 November 2009 p. 24 (ICS) (Witness CNAY).
[861] T. 24 November 2009 p. 54 (ICS) (Witness CNAY).
[862] T. 24 November 2009 pp. 54-55 (ICS); T. 25 November 2009 p. 27 (ICS) (Witness CNAY).
[863] Defence Exhibit 38 (Protected Information Sheet); T. 2 June 2010 pp. 58, 60 (ICS) (Witness T109).
[864] T. 2 June 2010 pp. 60-61 (ICS); T. 3 June 2010 p. 11 (ICS) (Witness T109).
[865] T. 2 June 2010 pp. 62-63 (ICS); T. 3 June 2010 pp. 10, 31 (ICS) (Witness T109).

Dushimiyimana; Bernard Nyirimbibi; Pancraz Kambanda; and Juvénal Munyabarinda. Among those gathered, Ruhunga and his wife, Witness CNAZ, Cyprien Habarurema, Jérôme Musabyeyezu, Witness CNBH and Masabo, were all Tutsis. *Sous-préfet* Jean-Baptiste Ndagijimana was not present.[866]

686. When the vehicle stopped the soldiers remained inside, the driver went to the toilet and Nzabonimana walked to a banana plantation beside Claver Habiyambere's bar to relieve himself. The witness walked towards the car to greet Nzabonimana when he returned. Approximately 15 people gathered around the vehicle. Nzabonimana greeted the local inhabitants and Joseph Ruhunga, who knew Nzabonimana, asked Nzabonimana to buy them something to drink. Ruhunga told Nzabonimana that because some of the people present were members of the MRND party Nzabonimana should buy them drinks. Nzabonimana gave Ruhunga 5,000 Rwandan Francs to buy banana beer for those assembled. The Tutsis present were MRND members. Ruhunga went to buy a jerry can of banana beer. Ruhunga brought the beer in a jerry can, poured the beer into bottles and offered the bottles to people.[867]

687. Nzabonimana then spoke with those assembled. He told them to enjoy the drinks and to keep calm, remain united and avoid anything which would sabotage their unity. Nzabonimana did not threaten anyone. The witness did not know if Vincent Karegeya was present and denied that Karegeya pointed out Witness CNAZ. Nzabonimana did not have anything to drink nor did his driver because they were in a hurry to leave. No one left the crowd while Nzabonimana was there. Witness CNAZ and other Tutsis remained there throughout Nzabonimana's speech. Nzabonimana stayed at the trading centre no longer than 15 minutes.[868]

688. Assailants from Nyabikenke *commune* launched attacks in Rutobwe *commune* two weeks after Nzabonimana came to Butare trading centre. *Bourgmestre* Mporanzi came to Butare trading centre on a later date for a security meeting. The witness denied that Mporanzi stationed people between Rutobwe and Nyabikenke *communes* to ward off attacks.[869]

689. Witness T109 was imprisoned from December 1994 until March 2007. Witness T109 pled guilty and received an 18-year sentence for failing to aid people who were murdered. He also pled guilty and received a 14-year sentence for failing to assist someone in danger. The witness left Rwanda for Uganda because he received a summons from a *Gacaca* court and he wanted to avoid going back to prison. He was tried *in abstentia* on 12 September 2009 and sentenced to 30 years' imprisonment. The witness testified that the trial involved the same facts upon which he was previously convicted.[870]

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[866] T. 2 June 2010 pp. 63-64 (ICS); T. 2 June 2010 p. 69 (HC) (French) (for the spelling of "Pancraz" and "Munyabarinda"); T. 3 June 2010 p. 3 (ICS) (Witness T109).
[867] T. 2 June 2010 pp. 65, 70 (ICS); T. 3 June 2010 pp. 13-14, 19, 23-24, 26, 29 (ICS) (Witness T109).
[868] T. 2 June 2010 pp. 65-66, 70-72 (ICS); T. 3 June 2010 pp. 24, 30, 33, 41 (ICS) (Witness T109).
[869] T. 2 June 2010 p. 72 (ICS); T. 3 June 2010 p. 31 (ICS) (Witness T109).
[870] T. 2 June 2010 p. 74 (ICS); T. 3 June 2010 pp. 3, 46-49, 60-63 (ICS) (Witness T109).

Defence Witness T110

690. Witness T110 was a business owner in Rutobwe *commune* in 1994 and knew Butare trading centre well. He lived in Uganda at the time of his testimony.[871] The witness knew Nzabonimana very well. Nzabonimana was the Minister of Youth and often drove on the road through Butare trading centre. There were banana plantations located on both sides of the trading centre. Witness T110 saw Nzabonimana twice on the road after 6 April 1994.[872]

691. The witness saw Nzabonimana at the Butare trading centre approximately one week after the death of President Habyarimana at around 3.00 p.m. Nzabonimana was coming from Nyabikenke *commune* and was travelling to Gitarama in a small, khaki-brown coloured car. The vehicle arrived alone and there were no other cars parked in the trading centre at that time. Two soldiers and a driver accompanied Nzabonimana in the car.[873]

692. When Nzabonimana arrived at the trading centre, the witness was seated with others drinking banana beer. Approximately 20 people were present at the time including, among others: Joseph Ruhunga and his wife; Isaie Ndagijimana; Cyprien Habarurema; Alfred Masabo; Witness CNAZ; François Mugunga; Witness CNBH; Jérôme Musabyeyezu; Munyaneza; Witness T109; Claver Habiyambere and his wife, Laurence Mukamusana; Onesphore Karisimbi; Pankraz Kambanda; Bernard Nyirimbibi; and Gabriel Hategekimana. Many of those present were Tutsis, including Witnesses CNBH and CNAZ. Everyone present was from the same locality.[874]

693. Nzabonimana alighted from his vehicle and those at the centre greeted him. Joseph Ruhunga asked Nzabonimana to buy the crowd a drink. Nzabonimana gave 5,000 Rwandan Francs to Ruhunga who went to buy drinks from Claver Habiyambere's bar. Ruhunga bought 30 bottles of banana beer, the equivalent of a jerry can, and the crowd shared it. When Nzabonimana greeted the crowd, he told them he was delighted that they had ensured security and he encouraged those assembled to continue to ensure security in the locality. Nzabonimana stood by his car the whole time and he did not stay long. No threats were made while Nzabonimana was present and nobody felt threatened. The *gendarmes* did not leave the vehicle.[875]

694. Witness CNAZ left the area shortly before or at the same time as Nzabonimana. Witness CNAZ was likely the first person to leave but the witness did not know why Witness CNAZ departed. Witness CNAZ was not running when he left the trading centre. After the meeting, the witness and the others returned to their homes without incident.[876]

695. Two or three days after the meeting, *Bourgmestre* Mporanzi came to Butare as part of his tour of the *commune*. He enquired about the security situation and thanked the population for

[871] Defence Exhibit 47 (Protected Information Sheet); T. 12 October 2010 pp. 8, 10, 50 (ICS) (Witness T110).
[872] T. 12 October 2010 p. 60; T. 12 October 2010 pp. 13-16 (ICS) (Witness T110).
[873] T. 12 October 2010 pp. 15-16 (ICS) (Witness T110).
[874] T. 12 October 2010 pp. 16-19 (ICS); T. 13 October 2010 pp. 3-4 (ICS) (Witness T110).
[875] T. 12 October 2010 pp. 24-25, 65; T. 12 October 2010 pp. 20-21 (ICS); T. 13 October 2010 p. 7 (Witness T110).
[876] T. 12 October 2010 p. 25; T. 13 October 2010 pp. 11, 14 (ICS) (Witness T110).

ensuring security. Both Hutus and Tutsis attended the meeting. No one complained to Mporanzi about Nzabonimana's earlier visit to Butare.[877]

696. From 1995 to 2005, Witness T110 was imprisoned in Gitarama prison. Witness T110 confessed that he failed to assist people who were killed in the *commune*. Witness T110 testified that the confession was a fabrication and was done to secure his release from prison. Following his release from prison, Witness T110 left Rwanda for Uganda for security reasons. The *conseiller de secteur* of Rutongo said, during the information-gathering process, that if Witness T110 was not named as a criminal, he would not approve what the *Gacaca* court was doing. Witness T110's wife told him that after he left for Uganda, the *Gacaca* court sentenced him to an 11-year term of imprisonment.[878]

Defence Witness Jean-Marie Vianney Mporanzi

697. Mporanzi was *bourgmestre* of Rutobwe *commune*, Gitarama *préfecture* in April 1994, and a member of the MDR political party.[879] Prior to being elected *bourgmestre*, Mporanzi worked as a teacher in Kabgayi and in Nyabikenke *commune*. At the time of his testimony, Mporanzi was in grave health and taking a lot of medication. He testified that he was therefore prone to forget details. Mporanzi fled Rwanda for Zaire in June 1994 as the RPF advanced. He returned in January 1997. Mporanzi went back into exile in 2008.[880]

698. The genocide began in bordering Nyabikenke *commune* before it began in Rutobwe *commune*. On 9 April 1994 Tutsi refugees from Nyabikenke began to arrive in Rutobwe. Mporanzi recognised some of the refugees because he had previously lived and taught in Nyabikenke *commune*. Mporanzi saw a former student and asked him what was happening in Nyabikenke. The former student told him that Tutsis were in danger and their houses were being destroyed, so they were fleeing to Kabgayi. Mporanzi described the situation as "a bit disturbing and worrisome" for the Tutsis in Rutobwe *commune* between 9 and 11 April 1994.[881]

699. On 9 and 10 April 1994 Mporanzi patrolled the road from Nyabikenke *commune* to the Bakokwe River, near the Butare area, to investigate the situation of refugees fleeing from Nyabikenke. A bridge spanned the river between Nyabikenke and Rutobwe. Official duties called the witness to other parts of the *commune* after that time, but nobody reported any meetings taking place at the Butare trading centre from 10 to 12 April 1994.[882]

700. Problems started to occur in Rutobwe *commune* on 11 April 1994 when the person who was in charge of the Rutobwe Health Centre, and who was Tutsi, died. On 12 April 1994, friends told Mporanzi that small groups were organising themselves. They also told Mporanzi that it was being said that he was an accomplice of the RPF. On the night of 13 April 1994, two Tutsi families were attacked in Rubimba *cellule*, Gatovu *secteur*. Mporanzi was informed of the attacks on the morning of 14 April 1994 and went to Rubimba to investigate. Mporanzi found

[877] T. 12 October 2010 p. 26; T. 12 October 2010 p. 28 (ICS) (Witness T110).
[878] T. 12 October 2010 pp. 30-31; T. 12 October 2010 pp. 50-51 (ICS); T. 13 October 2010 pp. 28, 42 (Witness T110).
[879] Defence Exhibit 33 (Personal Information Sheet); T. 25 May 2010 pp. 37, 39-41 (Mporanzi).
[880] T. 25 May 2010 pp. 38-41; T. 26 May 2010 pp. 18-19, 21, 55 (Mporanzi).
[881] T. 25 May 2010 pp. 41-44; T. 31 May 2010 p. 59 (Mporanzi).
[882] T. 25 May 2010 pp. 48-52 (Mporanzi).

that a man had been bludgeoned to death and another severely injured. Mporanzi detained the suspects.[883]

701. During April 1994 there were no meetings held by Nzabonimana or other personalities which would have incited the population to kill Tutsis. Mporanzi acknowledged that centres were meeting points in Rwanda where people drank banana beer. He denied that Nzabonimana stopped at Butare trading centre in April 1994 and bought beer and incited the population.[884]

3.5.1.3 Deliberations

702. The Prosecution and Defence dispute whether Nzabonimana made inflammatory statements about Tutsis at the Butare trading centre on or about 15 April 1994 and whether as a result of Nzabonimana's remarks, Tutsis, including Witness CNAZ, fled the trading centre and were chased upon Nzabonimana's urging.

3.5.1.3.1 Nzabonimana's Presence at Butare Trading Centre

703. Prosecution and Defence witnesses provided consistent testimony that Nzabonimana came to the Butare trading centre approximately a week after the death of the President, bought banana beer and spoke to an audience of approximately 20 members of the local population. Witnesses CNBH and CNAZ both placed the incident as occurring on or about 12 April 1994 in the afternoon.[885] Defence Witnesses T109 and T110 acknowledged that Nzabonimana drove to the Butare trading centre one afternoon, approximately a week after the death of the President on 6 April 1994.[886]

704. Witnesses CNBH, T109, and T110 described the arrival of a single vehicle at the centre, in which Nzabonimana drove himself and either two *gendarmes* or two soldiers.[887] Witness CNAZ also saw Nzabonimana driving the vehicle in which he arrived.[888] The people present at the trading centre assembled around Nzabonimana upon his arrival.[889]

705. The witnesses provided generally consistent testimony as to the number and identity of the people present at the trading centre. Witnesses CNBH and CNAZ both testified that approximately 20 people were present and corroborated each other's presence.[890] Witnesses T109 and T110 testified that approximately 20 people were present, and also corroborated each other's

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[883] T. 25 May 2010 pp. 50-51 (Mporanzi).
[884] T. 25 May 2010 pp. 52, 56-57; T. 31 May 2010 pp. 26-27 (Mporanzi).
[885] T. 3 December 2009 pp. 21, 32 (ICS) (Witness CNBH) (incident occurred on 12 April 1994 at 2.00 p.m.); T. 12 November 2009 pp. 4, 6; T. 12 November 2009 pp. 22-23 (ICS) (Witness CNAZ) (incident occurred between 6 and 12 April 1994, at around 3.00 p.m.).
[886] T. 2 June 2010 pp. 62-63 (ICS) (Witness T109); T. 12 October 2010 pp. 15-16 (ICS) (Witness T110).
[887] T. 3 December 2009 pp. 22, 24, 35 (ICS) (Witness CNBH) (Nzabonimana was accompanied by two *gendarmes*); T. 2 June 2010 pp. 62-63 (ICS) (Witness T109) (Nzabonimana was accompanied by two soldiers); T. 12 October 2010 pp. 15-16 (ICS) (Witness T110) (Nzabonimana was accompanied by two soldiers).
[888] T. 12 November 2009 pp. 33-35 (ICS) (Witness CNAZ).
[889] T. 3 December 2009 pp. 22, 32 (ICS) (Witness CNBH); T. 12 November 2009 p. 41 (ICS) (Witness CNAZ); T. 2 June 2010 p. 65 (ICS) (Witness T109); T. 12 October 2010 pp. 16-21 (ICS) (Witness T110).
[890] T. 3 December 2009 pp. 21-22, 32-33 (ICS) (Witness CNBH); T. 12 November 2009 p. 6; T. 12 November 2009 p. 30 (ICS) (Witness CNAZ).

presence and the presence of Witnesses CNBH and CNAZ.[891] All the witnesses testified that Cyprien Habarurema and Joseph Ruhunga were present and Witnesses CNBH, T109 and T110 described Bernard Nyirimbibi and Alfred Masabo as being among the crowd.[892] Witnesses CNBH and CNAZ testified that Prosper Hategekimana and Emile Munyemana were present.[893] Each witness testified that Tutsis were among those present.[894] Witnesses CNBH, CNAZ, T109 and T110 all stated that Nzabonimana bought banana beer for the crowd,[895] and that Nzabonimana addressed the people gathered.[896]

706. Based upon this consistent evidence, the Chamber concludes that the Prosecution and Defence witnesses were all testifying as to the same event when Nzabonimana arrived at the Butare trading centre in Rutobwe *commune* on the same day in mid-April 1994.

707. Furthermore, the Chamber considers that the evidence reliably identifies Nzabonimana as being present at the trading centre. The Chamber notes that Witness CNBH previously knew Nzabonimana as an influential Minister.[897] Witnesses CNBH, CNAZ, T109 and T110 all testified that the audience was in close proximity to Nzabonimana while he was at the trading centre.[898] Witness CNBH also indicated that prior to 1994, Nzabonimana would pass through Rutobwe *commune* on his way home to Nyabikenke.[899] Witnesses T109 and T110 testified that Nzabonimana often passed through Butare trading centre, providing corroborating evidence that Nzabonimana passed through Rutobwe.[900] Considering these factors, the Chamber concludes that the witnesses reliably identified Nzabonimana at the trading centre (2.7.3).

3.5.1.3.2 Nzabonimana Told the Population to Kill Tutsis

708. Turning to the words spoken by Nzabonimana and the aftermath of his visit, Witnesses CNBH and CNAZ provided consistent evidence that Nzabonimana made inflammatory comments about Tutsis after he stopped at the trading centre.[901] The Prosecution witnesses both testified that Nzabonimana asked whether there were any Tutsis in the crowd.[902] Witnesses

[891] T. 2 June 2010 pp. 63-64 (ICS); T. 3 June 2010 pp. 23-24 (ICS) (Witness T109); T. 12 October 2010 pp. 16-19 (ICS) (Witness T110).
[892] T. 3 December 2009 pp. 21-22, 32-33 (ICS) (Witness CNBH); T. 12 November 2009 p. 6 (Witness CNAZ); T. 2 June 2010 pp. 63-64 (ICS) (Witness T109); T. 12 October 2010 pp. 16-19 (ICS) (Witness T110).
[893] T. 3 December 2009 pp. 21-22, 32-33 (ICS) (Witness CNBH); T. 12 November 2009 p. 30 (ICS) (Witness CNAZ).
[894] T. 3 December 2009 p. 35 (ICS) (Witness CNBH); T. 12 November 2009 p. 32 (ICS) (Witness CNAZ); T. 2 June 2010 pp. 63-64 (ICS) (Witness T109); T. 12 October 2010 pp. 16-19 (ICS) (Witness T110).
[895] T. 3 December 2009 pp. 22, 35, 38, 48 (ICS) (Witness CNBH); T. 12 November 2009 p. 43 (ICS) (Witness CNAZ); T. 2 June 2010 p. 65 (ICS) (Witness T109); T. 12 October 2010 p. 21 (ICS) (Witness T110).
[896] T. 3 December 2009 p. 22 (ICS) (Witness CNBH); T. 12 November 2009 pp. 4-5 (Witness CNAZ) (testifying that Nzabonimana also spoke before buying beer); T. 2 June 2010 pp. 65-66 (ICS) (Witness T109); T. 12 October 2010 p. 21 (ICS) (Witness T110).
[897] T. 3 December 2009 pp. 20, 31 (ICS) (Witness CNBH).
[898] T. 3 December 2009 pp. 22, 24, 35, 48 (ICS) (Witness CNBH); T. 12 November 2009 p. 41 (ICS) (Witness CNAZ); T. 3 June 2010 pp. 23-24 (ICS) (Witness T109); T. 12 October 2010 p. 21 (ICS) (Witness T110).
[899] T. 3 December 2009 p. 20 (ICS) (Witness CNBH).
[900] T. 2 June 2010 pp. 60-61 (ICS) (Witness T109); T. 12 October 2010 p. 15 (ICS) (Witness T110).
[901] T. 3 December 2009 p. 22 (ICS) (Witness CNBH) (Nzabonimana said the way to bring an end to the war with the Tutsis was by eliminating the Tutsis); T. 12 November 2009 pp. 4-5 (Witness CNAZ) (Nzabonimana said the country's enemy was the Tutsis).
[902] T. 3 December 2009 p. 23 (ICS) (Witness CNBH); T. 12 November 2009 pp. 4-5 (Witness CNAZ).

CNBH and CNAZ corroborated each other's testimony that Witness CNAZ fled the trading centre as a result of Nzabonimana's speech and that Nzabonimana instructed others to pursue him.[903] Witness CNAZ testified that he was chased by *gendarmes*.[904] Witness CNBH corroborated Witness CNAZ's testimony that *gendarmes* chased one of the men who fled.[905] The Chamber notes that Defence Witness T110 corroborated the testimony of the Prosecution witnesses that Witness CNAZ was one of the first to leave the gathering.[906]

709. Witnesses CNBH and CNAZ both stated that they subsequently sought refuge at Kabgayi. Witness CNBH corroborated Witness CNAZ's presence at Kabgayi.[907]

710. The Chamber notes that Witnesses CNBH and CNAZ described the size and the type of car driven by Nzabonimana differently.[908] Furthermore, while Witness CNBH testified that Nzabonimana spoke while people were drinking, Witness CNAZ testified that Nzabonimana also spoke to the audience before buying banana beer.[909] The specific words attributed to Nzabonimana by the two witnesses also differed.[910] Witness CNBH also described that the *gendarmes* chased Jérôme Musabyimana and not Witness CNAZ.[911] The Chamber notes these inconsistencies but considers them to be minor and that they may be attributed to the significant passage of time since the incident occurred.

711. The Chamber notes that Witness CNAZ provided additional details to his account of the meeting which were not included in the accounts of the other witnesses. Witness CNAZ described a convoy of two or three vehicles arriving at the trading centre.[912] Witness CNAZ was the only witness who indicated that *Sous-préfet* Ndagijimana was present.[913] Witness CNAZ was also the only witness to testify that Vincent Karegeya denounced him as a Tutsi, which caused him to flee.[914] The Chamber does not find Witness CNAZ credible as to the presence of the convoy of vehicles, the presence of the *sous-préfet* or his denunciation by Karegeya.

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[903] T. 3 December 2009 pp. 23, 36-37 (ICS) (Witness CNBH); T. 12 November 2009 p. 5; T. 12 November 2009 p. 48 (ICS) (Witness CNAZ).
[904] T. 12 November 2009 p. 5; T. 12 November 2009 pp. 48-49 (ICS) (Witness CNAZ).
[905] T. 3 December 2009 pp. 23, 36 (ICS) (Witness CNBH).
[906] T. 13 October 2010 pp. 11, 14 (ICS) (Witness T110).
[907] T. 3 December 2009 pp. 25, 37, 41 (ICS) (Witness CNBH); T. 12 November 2009 p. 37 (ICS) (Witness CNAZ).
[908] T. 3 December 2009 p. 35 (ICS) (Witness CNBH) (Nzabonimana drove a white Hilux); T. 12 November 2009 p. 6 (Witness CNAZ); T. 12 November 2009 pp. 33-35 (ICS) (Witness CNAZ) (Nzabonimana drove a Pajero).
[909] T. 3 December 2009 p. 22 (ICS) (Witness CNBH); T. 12 November 2009 p. 4 (Witness CNAZ).
[910] T. 3 December 2009 p. 22 (ICS) (Witness CNBH) (Nzabonimana told the assembled crowd that "fighting was intense at the front because the *Inkotanyi* has attacked, although there was no fighting in our area," that "as you can see for yourselves, the *Inkotanyi* are getting the upper hand," and that "the way to bring an end to the war with the Tutsis was by eliminating all the Tutsis and that [they] should use [their] traditional weapons to kill the Tutsis, and that after killing all the Tutsis, [they] would be in a position to possess their property but that [they] needed to kill them first before taking over their property"); T. 12 November 2009 p. 4 (Witness CNAZ) (Nzabonimana told the assembled crowd that "he had just launched the killings, the work in Nyabikenke *commune*" and that "since the killings have already begun in Nyabikenke, they should also begin in Rutobwe *commune*" before asking the crowd if they were armed. He also testified that Nzabonimana repeated "the statement that the country's enemy was the Tutsi, and then he asked if there was any Tutsi in the crowd" after the banana beer was purchased.).
[911] T. 3 December 2009 pp. 23, 36 (ICS) (Witness CNBH).
[912] T. 12 November 2009 pp. 33-35 (ICS) (Witness CNAZ).
[913] T. 12 November 2009 p. 6 (Witness CNAZ).
[914] T. 12 November 2009 pp. 4-5; T. 12 November 2009 p. 45 (ICS) (Witness CNAZ).

712. However, the Chamber recalls that it is entitled to believe part of a witness's testimony and reject others.[915] In this regard, the Chamber notes that the other witnesses do not dispute Witness CNAZ's presence during Nzabonimana's visit to the Butare trading centre and Witness CNBH corroborated Witness CNAZ's testimony that he was present and fled during the speech. The fact that Witness CNAZ exaggerated the details of the incident does not lead the Chamber to conclude that it must discount his testimony in its entirety. The Chamber considers that the overall consistency in the testimony of Witnesses CNAZ and CNBH outweighs the differences.

713. Turning to the individual credibility of the Prosecution witnesses, the Chamber notes minor discrepancies between Witness CNAZ's testimony and his 2008 statement, particularly with regard to the date of the incident and the number of cars which arrived at the trading centre.[916] The Chamber notes that Witness CNAZ also acknowledged in cross-examination that the 2008 statement was the first time he accused Nzabonimana, the *gendarmes*, the *sous-préfet* and Vincent Karegeya of any wrongdoing. The Defence confronted Witness CNAZ with Rwandan law which provides for punishment of those who do not provide information to *Gacaca* courts. The witness explained that 2008 was the first time he spoke to Prosecution investigators about Karegeya and stated that he was never prosecuted for not appearing before a *Gacaca* court.[917] The Chamber accepts the witness's explanation and does not find that his previous silence impacts his credibility. Bearing in mind the foregoing analysis, the Chamber concludes that Witness CNAZ was credible where corroborated by other credible evidence.

714. The Defence asserts that the testimony of Witness CNBH contradicted his previous statement to Prosecution investigators.[918] The Chamber has examined the witness's testimony in comparison with his 1998 statement and does not find there to be any material inconsistencies which impact the credibility of Witness CNBH.

715. The Chamber concludes that Witness CNBH provided credible testimony about the incident at the Butare trading centre. The Chamber notes that Witness CNBH gave objective testimony about Nzabonimana, reciting the good things that Nzabonimana did in the *commune* as Minister of Youth. Witness CNBH also testified that former *Bourgmestre* Mporanzi protected Tutsis.[919] The Chamber considers that Witness CNBH provided credible and balanced testimony regarding what he witnessed during the genocide in Rutobwe *commune*.

716. The Chamber notes that Witness T109 testified that Witness CNBH attempted to recruit him to testify falsely against Nzabonimana with regard to the Butare trading centre incident.[920] The Chamber recalls that Witness T109 made this allegation after Witness CNBH testified and that the Defence never cross-examined him on this issue. The Chamber thus considers that this allegation of fabrication is not credible.

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[915] *Karera*, Judgement (AC), paras. 229-230.
[916] Defence Exhibit 51 (Statement of Witness CNAZ, 9 October 2008).
[917] T. 12 November 2009 pp. 19-21 (ICS) (Witness CNAZ).
[918] Defence Closing Brief, para. 443, fn. 821; Defence Exhibit 80 (Statement of Witness CNBH, 24 September 1998).
[919] T. 3 December 2009 pp. 24-25 (ICS) (Witness CNBH).
[920] T. 2 June 2010 p. 72 (ICS); T. 3 June 2010 pp. 43-45 (ICS) (Witness T109).

717. The Chamber recalls that it has considered the Defence submission that Witness CNBH fabricated his evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witness CNBH (3.2.5).

718. The Chamber notes that Witness CNAY gave an account of these events that varies widely from the other witnesses who testified, both in the time of the meeting, the words spoken by Nzabonimana and the actions of the crowd after the speech. The Chamber concludes that it is unlikely that a group of Tutsis fleeing a violent attack at their place of refuge at the Nyabikenke *commune* office would choose to disguise themselves as Hutus and join a group of people gathered in a trading centre for a brief time before continuing on their journey to Kabgayi. The Chamber notes as well that the other witnesses who testified to this allegation stated that no strangers were present at the time of Nzabonimana's speech. The Chamber does not find the testimony of Witness CNAY to be credible as to this allegation and notes that the Prosecution does not cite Witness CNAY in its submissions regarding this allegation.

719. Turning to the Defence evidence, Witnesses T109 and T110 acknowledged that Nzabonimana came to Butare trading centre, but denied that he made any inflammatory remarks about Tutsis or that any Tutsis fled the trading centre during Nzabonimana's address.

720. The Chamber recalls that Witness T109 was arrested in 1994 and released in 2007 after pleading guilty to failing to assist people under attack.[921] Witness T109 also lived in exile at the time of his testimony, after being tried *in abstentia* in Rwanda. He faced a 30-year prison sentence upon his return to Rwanda.[922] The Chamber notes that Witness T109 is not directly implicated in any criminal activity with regard to the present allegation. The Chamber will however treat his testimony with appropriate caution, because of his participation in crimes committed in Gitarama *préfecture* for which he was convicted *in abstentia* (2.7.7).

721. Witness T110 confessed to failing to assist people during the genocide. He stated that he fabricated his confession in order to secure his release from prison.[923] The Chamber observes that the witness's retraction of his sworn confession is a serious matter and raises questions regarding his credibility as a witness.

722. The Chamber also notes that Witness T110 left Rwanda in June 2006 and subsequently learned that he had been sentenced to an 11-year prison term in Rwanda.[924] Like Witness T109, Witness T110 is not directly implicated in any criminal activity with regard to the present allegation. However because of his conviction and sentence, the Chamber will also treat his testimony with appropriate caution (2.7.7).

723. As for the substance of the Defence evidence, the Chamber notes inconsistencies in the accounts of Witnesses T109 and T110. Witness T109 testified that he was outside when Nzabonimana gave Ruhunga the money to purchase beer, while his 13 January 2010 statement

[921] T. 2 June 2010 p. 74 (ICS); T. 3 June 2010 p. 3 (ICS) (Witness T109).
[922] T. 3 June 2010 pp. 48-49, 51-54, 59-63 (ICS) (Witness T109).
[923] T. 12 October 2010 pp. 30-31 (Witness T110).
[924] T. 12 October 2010 pp. 50-51 (ICS) (Witness T110).

indicates that he was inside the bar when he made this observation.[925] Witness T109 testified that Nzabonimana drove a Peugeot, while in his 13 January 2010 statement he could not recall the make of the car.[926] In his 13 January 2010 statement, Witness T109 could not recall whether the soldiers escorting Nzabonimana remained in the vehicle, but during his testimony he was certain that the soldiers stayed in the vehicle.[927] Witness T109's 2010 statement omitted mention of Nzabonimana giving Ruhunga 5,000 Rwandan Francs to purchase beer.[928] Witness T109 also gave different statements regarding Witness CNBH's presence at the Butare trading centre.[929] The Chamber considers these discrepancies to be minor and may be explained by the significant passage of time since the meeting occurred.

724. However, the Chamber notes a more significant discrepancy between Witness T109's testimony and his previous statements regarding Witness CNAZ. During his testimony, Witness T109 stated that no one departed while Nzabonimana was there. Witness CNAZ and other Tutsis remained there throughout Nzabonimana's speech.[930] However, in his 13 January 2010 statement, Witness T109 indicated that at a certain moment Witness CNAZ left the trading centre without explanation and that his departure did not provoke a reaction or response from anyone, including Nzabonimana or his escorts.[931] In his 23 May 2010 statement, Witness T109 retracted this portion of his statement, and indicated that Witness CNAZ did not leave the trading centre before Nzabonimana.[932] During his testimony, Witness T109 acknowledged that this was a radical change in his account, but indicated that he made a mistake in his initial statement.[933] The Chamber considers that this discrepancy undermines Witness T109's credibility as to what happened to Witness CNAZ on the date of Nzabonimana's address at the Butare trading centre.

725. The Chamber notes that Witness T110 also provided contradictory accounts of Witness CNAZ's actions after Nzabonimana's speech. In his January 2010 statement, Witness T110 indicated that Witness CNAZ left a few minutes before Nzabonimana and that no one pursued him.[934] At trial, he testified that Witness CNAZ left at the same time or shortly before Nzabonimana.[935] Furthermore, the Chamber observes that Witness T110 hesitated when answering why Witness CNAZ left the meeting, which could indicate that he was being less than forthcoming about the events he was recounting.

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[925] T. 3 June 2010 p. 16 (ICS) (Witness T109); Prosecution Exhibit 58 (Statement of Witness T109, 13 January 2010) (explaining the inconsistency as relating to the impromtu nature of the interview with the Defence investigators).
[926] T. 3 June 2010 p. 20 (ICS) (Witness T109); Prosecution Exhibit 58 (Statement of Witness T109, 13 January 2010), para. 9.
[927] T. 3 June 2010 pp. 25-26 (ICS) (Witness T109) (explaining he reflected after his statement was taken and could confirm they did not leave the vehicle).
[928] T. 3 June 2010 pp. 25-27 (ICS) (Witness T109) (stating that the investigators neglected to include this information in his statement).
[929] T. 3 June 2010 pp. 38-41 (ICS) (Witness T109); Prosecution Exhibit 58 (Statement of Witness T109, 13 January 2010) (French), para. 22 (stating that Witness CNBH was not present); Prosecution Exhibit 59 (Statement of Witness T109, 23 May 2010), para 4 (stating that Witness CNBH was present at Butare trading centre).
[930] T. 2 June 2010 pp. 70-72 (ICS) (Witness T109).
[931] Prosecution Exhibit 58 (Statement of Witness T109, 13 January 2010), para. 17.
[932] Prosecution Exhibit 59 (Statement of Witness T109, 23 May 2010).
[933] T. 3 June 2010 p. 36 (ICS) (Witness T109).
[934] Prosecution Exhibit 69 (Statement of Witness T110, 12 January 2010), para. 16.
[935] T. 13 October 2010 pp. 11, 14 (ICS) (Witness T110).

726. Moreover, the Chamber doubts Witness T110's testimony regarding what happened to Witness CNAZ after he left the meeting. Witness T110 admitted that he was not in a position to know what happened to Witness CNAZ after he left the trading centre. However, when asked whether he knew that Witness CNAZ fell into a ditch after leaving the trading centre and remained there until 2.00 a.m., Witness T110 responded: "Certainly that never took place."[936] The Chamber considers that Witness T110's willingness to deny material facts of which he admittedly had no knowledge undermines his credibility as a witness.

727. The Chamber also notes that Witnesses T109 and T110 provided contradictory accounts as to why Nzabonimana's vehicle stopped at the trading centre. Witness T109 testified that Nzabonimana went to a banana plantation to relieve himself after exiting his vehicle and that this was the reason the vehicle stopped at the trading centre.[937] Witness T110 testified that Nzabonimana stood by his car the whole time that he was at the trading centre.[938]

728. The Chamber notes that in their previous statements, Witnesses T109 and T110 provided contradictory accounts as to the reason Nzabonimana's vehicle stopped at the trading centre. In his 13 January 2010 statement, Witness T109 said that Nzabonimana stood beside his vehicle while he was at the trading centre and did not mention that Nzabonimana went to the banana plantation.[939] Witness T109 did not correct this omission in his subsequent statement, taken on 23 May 2010.[940] Witness T109 explained that he informed the Defence investigators of this fact, but they did not record it.[941] In his 12 January 2010 statement to Defence investigators, Witness T110 stated that Nzabonimana's vehicle stopped because Ruhunga had called for him. Had Ruhunga not done so, Nzabonimana "would perhaps have merely greeted us from his car and would have continued on his way."[942] Witness T110 did not provide this detail in his testimony.

729. The Chamber considers these discrepancies to be significant. The Prosecution presented evidence during trial that Nzabonimana deliberately drove to population centres in Gitarama *préfecture*, stopped his vehicle and encouraged Hutus to kill Tutsis (3.5.2.2). Here, the Defence witnesses attempted to portray Nzabonimana's stop at the Butare trading centre as impromptu and attempted to establish that Nzabonimana stopped his vehicle at the trading centre for reasons other than to give an inflammatory address. However, the Defence witnesses provided contradictory reasons for why Nzabonimana stopped at the trading centre. The Chamber considers that the contradictory accounts provided by the Defence witnesses in this regard undermine the credibility of their counter-narrative regarding the reason Nzabonimana stopped at the Butare trading centre.

730. The Chamber also does not find plausible the testimony of Witnesses T109 and T110 that Nzabonimana's security detail stayed in the car when Nzabonimana exited the vehicle. Charged with the protection of Nzabonimana, the Chamber does not believe that his security would allow

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[936] T. 13 October 2010 p. 12 (ICS) (Witness T110).
[937] T. 2 June 2010 p. 65 (ICS); T. 3 June 2010 pp. 19, 24, 26 (ICS) (Witness T109).
[938] T. 12 October 2010 p. 21 (ICS) (Witness T110).
[939] Prosecution Exhibit 58 (Statement of Witness T109, 13 January 2010); T. 3 June 2010 p. 26 (ICS) (Witness T109).
[940] Prosecution Exhibit 59 (Statement of Witness T109, 23 May 2010).
[941] T. 3 June 2010 p. 27 (ICS) (Witness T109).
[942] Prosecution Exhibit 69 (Statement of Witness T110, 12 January 2010).

a Government Minister to walk among a crowd of people unescorted, particularly given that the President had been killed less than a week earlier.

731. Defence Witness Mporanzi provided general evidence that the meeting did not occur and that no meeting occurred at Butare centre where Nzabonimana incited the population. The Chamber notes Mporanzi's testimony that after 9 April 1994, he was concerned with refugees coming into the *commune* from Nyabikenke and other security matters. The Chamber considers that an impromptu meeting could have occurred at Butare centre without his knowledge. The Chamber therefore considers Mporanzi's testimony as to whether the meeting occurred to be of limited probative value.

732. The Chamber also notes contradictions between Mporanzi's 1998 and 2003 statements and his trial testimony. In 1998, Mporanzi told Prosecution investigators that between 10 and 12 April 1994 Nzabonimana undertook a "sensitisation campaign" in the various centres of Rutobwe *commune*. As part of this campaign, Nzabonimana made reference to the 1959 revolution and tried to persuade people to finish off the Tutsis.[943] In his 2003 statement, Mporanzi indicated that Nzabonimana stopped at the Butare trading centre and addressed a crowd of 50 people, telling them: "You seem to be asleep – You don't realise the enormity of the current events in Rwanda. I think you have forgotten the 1959 revolution and do not yet realise the danger facing you." Mporanzi went on to state that after that, on 17 and 18 April 1994, the people of Rutobwe organised themselves and seized the cows of Tutsis.[944]

733. Mporanzi testified that the 1998 and 2003 statements were lies.[945] He testified that if he did not give the statements, he risked imprisonment in Rwanda.[946] The Chamber does not consider that Mporanzi's vague claims that the Rwandan Government coerced him to make the 1998 and 2003 statements to justify his assertion that the statements were fabricated. Furthermore, the Chamber considers that if indeed the 1998 and 2003 statements were fabricated, Mporanzi's admission to having provided false statements seriously undermines his credibility as a witness (3.2.2.2.1).

734. Based upon a consideration of the totality of the evidence, the Chamber finds that the Prosecution has proven beyond a reasonable doubt that on or about 12 April 1994, in the afternoon, Callixte Nzabonimana addressed a gathering at the Butare trading centre in Rutobwe *commune*. Nzabonimana told those gathered to kill Tutsis and take their belongings. Nzabonimana asked if there were any Tutsis in the crowd. Witness CNAZ and another Tutsi fled. Nzabonimana told *gendarmes* and the population to pursue them.[947] The Chamber has

[943] Prosecution Exhibit 55 (Statement of Mporanzi, 25 August 1998).
[944] Prosecution Exhibit 56 (Statement of Mporanzi, 13 August 2003).
[945] T. 26 May 2010 p. 36; T. 27 May 2010 p. 53; T. 31 May 2010 p. 27 (Mporanzi).
[946] T. 26 May 2010 p. 35; T. 27 May 2010 p. 44; T. 31 May 2010 p. 13 (Mporanzi).
[947] The Chamber notes that the Indictment states that: "Nzabonimana told soldiers and the population to pursue them" and does not specifically reference "*gendarmes*." However, Prosecution and Defence witnesses agreed that Nzabonimana had a uniformed escort, with the Prosecution witnesses identifying the individuals as *gendarmes* and the Defence witnesses identifying them as soldiers. The witnesses who testified to this allegation were local residents, farmers and small business owners who would not necessarily be able to identify the difference between a *gendarme* and a soldier. The Chamber also notes that the summary of the anticipated testimony of both Witnesses CNBH and CNAZ, contained in the Annex to the Prosecution Pre-Trial Brief, indicated that both Prosecution witnesses would testify that Nzabonimana was accompanied by *gendarmes* who chased the men who fled. The

considered the Defence evidence in conjunction with the Defence claims that the Prosecution witnesses fabricated their evidence and concludes that the Defence has not raised a reasonable doubt in the Prosecution case (3.2.5).

735. The Chamber also concludes that, contrary to specific allegations made in the Indictment, the Prosecution has not proven beyond a reasonable doubt that Nzabonimana used the term "*Inyenzi*" during his address or that he told the population to take the Tutsis' jobs.

3.5.1.3.3 Subsequent Attacks

736. Regarding subsequent attacks that occurred after Nzabonimana's speech, Witness CNBH testified that after Nzabonimana's address there were no immediate attacks on the Tutsis and the crowd dispersed to their homes. It was not until the Nyabikenke attacks days later that attacks against Tutsis and their possessions began. Witness CNBH indicated that attacks began in Rutobwe *commune* on 17 April 1994, when attackers crossed the Bakokwe River from Nyabikenke.[948] Witness CNAZ did not provide evidence as to when attacks occurred after the address in the Butare trading centre.[949] Witness T110 testified that after the meeting, he and the others returned to their homes without incident.[950]

737. Witness T109 also testified that the situation was calm until the arrival of the attackers from Nyabikenke. However, Witness T109 testified that the attackers from Nyabikenke *commune* came two weeks after Nzabonimana's address at Butare centre.[951] The Chamber notes that Mporanzi testified that the attacks began in earnest in Rutobwe *commune* on or about 20 April 1994 corroborating Witness CNBH's testimony as to the approximate date for the beginning of the attacks.[952] Given this evidence, the Chamber does not find Witness T109 to be credible as to when the attacks began in Rutobwe *commune*.

738. Nevertheless, based upon the foregoing evidence, the Chamber cannot conclude that there is an evidentiary link between the attacks in Rutobwe *commune* and Nzabonimana's speech at Butare centre. Thus, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt that following this speech Tutsis were killed by *Interahamwe,* Hutu civilians and soldiers.

Chamber considers that given these circumstances, any divergence in the classification of the individuals as *gendarmes* or soldiers was minor and that the evidence was sufficient to prove the allegation contained in the Indictment.

[948] T. 3 December 2009 pp. 25, 40-41 (ICS) (Witness CNBH).
[949] T. 12 November 2009 p. 37 (ICS) (Witness CNAZ).
[950] T. 12 October 2010 p. 25 (Witness T110).
[951] T. 3 June 2010 p. 31 (ICS) (Witness T109).
[952] T. 26 May 2010 pp. 10-11 (Mporanzi).

3.5.2 Cyayi Centre Meeting and Nyabikenke *Commune* Office Attacks

3.5.2.1 Introduction

739. Paragraph 19 of the Indictment alleges that on or about 14 April 1994, Nzabonimana held a meeting at Cyayi *cellule,* Kiyumba *secteur*, Nyabikenke *commune*, Gitarama *préfecture*. He asked the population to prioritise the massacre of Tutsis before taking their properties. As a result of this meeting, Tutsis were killed at the Nyabikenke *commune* office by *Interahamwe*, Hutu civilians and *commune* policemen.[953]

740. Paragraph 20 of the Indictment alleges that on or about 15 April 1994, following the orders of Nzabonimana, Tutsi refugees at the Nyabikenke *commune* office were attacked by *Interahamwe*, Hutu civilians, soldiers and *commune* policemen. Many Tutsis were killed including Spéciose Karuhongo, Jeanne Ujeneza and Gabriel Kanimba. On or about 15 April 1994, after the attack at the Nyabikenke *commune* office, Nzabonimana served beer to the attackers at his home in Kavumu *secteur*, Nyabikenke *commune*.[954]

741. The Prosecution asserts that on 13 or 14 April 1994, between 4.00 and 5.00 p.m., Nzabonimana came to Cyayi centre accompanied by *gendarmes*. Nzabonimana had a gun in his possession and urged the members of the population to prioritise the killing of Tutsis before taking their property. Nzabonimana addressed between 30 and 40 members of the public and said: "I know that Hutus do not heed instructions. Do not continue to eat the cows of Tutsi who have sought refuge at the *communal* office. What really matters is not the cows; it is rather the owners of the cows that matters [*sic*]." A Tutsi man challenged Nzabonimana and was almost accosted by a *gendarme* escorting Nzabonimana. Nzabonimana stopped the *gendarme* and said: "their [...] time had not yet come" and that "it would come soon."[955]

742. The Prosecution submits that on 15 April 1994, around 3.00 or 4.00 a.m. and less than 24 hours after meetings at which Nzabonimana incited attendees to kill Tutsis, the Tutsis at the Nyabikenke *commune* office were attacked by assailants armed with grenades and firearms. Many Tutsis were killed and wounded. At least 45 to 60 dead bodies were seen, including those of individuals named Léocadie, Cansilde, Bayibayi and Nyirabahima. The Prosecution further submits that Defence witnesses were among the attackers, that they used machetes as part of the attacks and that Nzabonimana distributed the weapons used in the attack. The Prosecution contends that on 15 April 1994 at around 10.00 a.m., a group of people on a hill prepared and launched a further attack on the *commune* office. The Prosecution relies on the testimony of Prosecution Witnesses CNAI, CNAX and CNAY.[956] Prosecution Witness CNAF also provided relevant evidence.

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[953] Para. 19 of the Indictment.
[954] Para. 20 of the Indictment.
[955] Prosecution Closing Brief, paras. 95-101, 355; T. 20 October 2011 pp. 19-20 (Prosecution Closing Argument).
[956] Prosecution Closing Brief, paras. 122-125, 370, 376; T. 20 October 2011 p. 21 (Prosecution Closing Argument).

743. The Defence asserts that the Prosecution witnesses fabricated their evidence (3.2). The Defence also denies that the meeting at Cyayi centre took place and submits that the Prosecution evidence was inconsistent, contradictory, implausible and based upon hearsay.[957]

744. The Defence does not deny that the attacks took place at the Nyabikenke *commune* office, but submits that the Prosecution evidence of Nzabonimana's involvement was based on hearsay, and was contradictory, inconsistent and uncorroborated. It submits that none of the witnesses agreed on the date of the attack, the number of attacks, the identity of the attackers, whether Nzabonimana was present or whether the victims listed in Paragraph 20 of the Indictment were killed at the *commune* office. The Defence submits that from 11 to 14 April 1994, the refugees at the Nyabikenke *commune* office were safe. Furthermore, the Defence submits that the Prosecution led no evidence in support of its assertion that Nzabonimana served beer to the attackers.[958]

745. The Defence also asserts that Nzabonimana did not order the attacks on the *commune* office. *Commune* policemen repelled an attack upon the *commune* office by the local population on 13 April 1994, killing an assailant named Gahinda. An attack on the *commune* office occurred during the night of 14 to 15 April 1994. A larger attack occurred in the afternoon on 15 April 1994. The attacks were spontaneously launched by the local population and took the refugees and policemen by surprise. Nzabonimana was not near the office at this time. Furthermore, there were no *Interahamwe* in Nyabikenke *commune* at this time, and *commune* policemen were not among the attackers. The Defence relies on the testimony of Defence Witnesses T24, T28, T31, T193, T150 and Bernard Ndayisaba.[959] The Defence also relies on the testimony of Witness BCB from the *Rukundo* trial.[960]

3.5.2.2 Evidence

Prosecution Witness CNAI

746. Witness CNAI, a Tutsi, knew Nzabonimana prior to 1994 as they were both from the same region of Nyabikenke *commune*.[961] The witness also knew that Nzabonimana was the only Minister from this area. The witness was a member of the MRND party, and knew Nzabonimana as the head of the party in the *commune*.[962]

747. The population considered Nzabonimana to be an influential and respected person. Nzabonimana would sometimes come to the *commune* to participate in celebrations and inaugurate public projects. The witness believed that Nzabonimana was married to a Tutsi. Prior to the 1994 genocide, Witness CNAI did not have a bad opinion of Nzabonimana. He only perceived Nzabonimana's "bad actions" after the death of the President. Nzabonimana only

[957] Defence Closing Brief, paras. 201-237, 425-426; T. 20 October 2011 pp. 55-56 (Defence Closing Argument).
[958] Defence Closing Brief, paras. 136, 140, 252-253, 256-263, 265-264, 287; T. 20 October 2011 pp. 53-54 (Defence Closing Argument).
[959] Defence Closing Brief, paras. 275-287; T. 20 October 2011 pp. 53-54 (Defence Closing Argument).
[960] The Chamber recalls that this evidence was admitted after Closing Arguments as Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, 18 and 19 September 2007) (2.3.2).
[961] Prosecution Exhibit 10 (Protected Information Sheet); T. 26 November 2009 pp. 59-60 (Witness CNAI).
[962] T. 26 November 2009 pp. 60, 69 (Witness CNAI).

started to make racist statements against Tutsis after the power factions of the political parties appeared.[963]

748. During the unrest in 1959, the witness was issued a Hutu identity card in order to avoid being killed or having his house destroyed. Only elderly persons and his close neighbours knew his real ethnicity.[964]

749. Witness CNAI testified that from 12 to 13 April 1994, Tutsis in his region came under attack. During the attack the witness's house was destroyed. The Tutsis began to flee their homes to seek refuge at the Nyabikenke *commune* office. On 13 April 1994 Witness CNAI fled his house alone and sought refuge at the *commune* office, while his wife and brothers hid in the bushes. His brothers and mother were killed. Upon his arrival at the *commune* office at 7.00 a.m. on 13 April 1994, he found approximately between 100 and 150 Tutsi refugees. The refugees originated from the witness's region and also from Gitovu, Mugunga, Kavumu, Kiyumba and Rukaragata *secteurs*. The witness spent the day and night of 13 April 1994 at the *commune* office.[965]

750. On 14 April 1994 at 11.00 a.m., assailants attacked the house of a Tutsi named Jean Munyabarenzi, who had sought refuge at the *commune* office. Attackers from Kavumu *secteur* used the purported destruction of a Hutu's house as a pretext for the attack. The assailants wanted to go to the *commune* office, however, they went to Munyabarenzi's house instead. Witness T24 and *commune* police repelled the attack.[966]

751. On 14 April 1994, around 4.00 or 5.00 p.m., Witness CNAI saw Nzabonimana on the Gitarama-Nyabikenke road in Cyayi *cellule* near the Nyabikenke *commune* office. Witness CNAI had been inside the bar owned by Germain Karangwa in Cyayi. Witness CNAI was in front of the bar when he saw Nzabonimana, who was in his vehicle, accompanied by a driver and two *gendarmes* bearing the ranks of lieutenant and corporal. Nzabonimana wore a khaki uniform and carried a gun on his lap.[967]

752. Witness CNAI saw Nzabonimana talking with Isaac Kamali near Nzabonimana's car, approximately 200 or 300 metres from the *commune* office. While Kamali and Nzabonimana conversed, Kamali called for Witness CNAI. Once the witness approached, Kamali asked him to listen attentively to what Nzabonimana had to say. Nzabonimana said: "I know that Hutus do not heed instructions. Do not continue to eat the cows of Tutsi who have sought refuge at the *communal* office. What really matters is not the cows; it is, rather, the owners of the cows that matter."[968]

753. Witness T193 arrived in a car and stopped behind Nzabonimana's vehicle. Witness T193 alighted from his vehicle and walked towards Witness CNAI, who was standing next to Kamali.

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[963] T. 26 November 2009 p. 69; T. 27 November 2009 pp. 6, 8 (ICS) (Witness CNAI).
[964] T. 27 November 2009 p. 35 (ICS) (Witness CNAI).
[965] T. 26 November 2009 pp. 61-63; T. 27 November 2009 pp. 10-11 (ICS) (Witness CNAI).
[966] T. 27 November 2009 pp. 13-14 (ICS) (Witness CNAI).
[967] T. 26 November 2009 pp. 61, 64-65; T. 27 November 2009 p. 31 (ICS) (Witness CNAI).
[968] T. 26 November 2009 pp. 60-61, 64-65; T. 27 November 2009 pp. 31, 46 (ICS) (Witness CNAI).

Nzabonimana then repeated that "we should not eat the cows because what really mattered was for us to kill the Tutsi who were [the] owners of the cows."[969]

754. A Tutsi named Evariste Munyagatare heard Nzabonimana's statement and said to Nzabonimana: "You are asking people to go and kill Tutsis. But you should each not shoot at us because I see that you are armed with a gun." Munyagatare further said to Nzabonimana: "You have a firearm. Why don't you just go on and shoot at us."[970]

755. The lieutenant accompanying Nzabonimana almost exited the vehicle, threatening to shoot Munyagatare. Witness CNAI and Witness T193 pushed Munyagatare down a slope away from the road. Witness CNAI held Munyagatare's hand and forced him into Karangwa's bar.[971]

756. Nzabonimana then called Witness T193 and told him that they must go to Remera, where the shops were located, to finish what they had started. The vehicles of Nzabonimana and Kamali left Cyayi in the direction of Remera. Witness T193 and Kamali drove in the same car in front and Nzabonimana followed in the company of his escorts, the *gendarmes*. Witness T193 gave his vehicle to Witness T150, who had also been in Witness T193's car.[972]

757. Witness CNAI remained at Karangwa's bar. Karangwa was standing nearby, looking at the witness. Karangwa said to him: "Now that the [M]inister has brought us weapons, we are going to attack you at night." Karangwa was the leader of the *Interahamwe* in Cyayi *cellule*. Witness CNAI then asked Karangwa to host him in his home, but Karangwa declined.[973]

758. The witness went to the *commune* office and relayed to the other Tutsis, particularly those who slept on the veranda, that Karangwa had said the Tutsis were going to be attacked and killed. Witness CNAI urged them to look for hiding places because their safety and security was no longer guaranteed.[974]

759. Witness CNAI returned to Karangwa's bar, located approximately 20 metres from the *commune* office, at around 8.00 p.m. It had been calm in Cyayi up to that point and no houses had been destroyed. The bar was filled with many people. The witness asked Karangwa if he sold cigarettes. Before Karangwa answered the question, people attempted to attack the witness, pushing him to the back of the bar. The witness ran back to the *commune* office and never returned to the bar.[975]

760. On 15 April 1994 at 3.00 a.m., Hutu assailants attacked the Nyabikenke *commune* office.[976] There were many attackers. During the attack, the witness hid among the planks of a

[969] T. 26 November 2009 pp. 61, 65; T. 27 November 2009 p. 28 (ICS) (Witness CNAI).
[970] T. 26 November 2009 pp. 61, 64-65; T. 27 November 2009 pp. 28-30 (ICS); T. 26 November 2009 p. 73 (Witness CNAI) (French) (for the spelling of "Évariste").
[971] T. 26 November 2009 p. 65; T. 27 November 2009 pp. 28, 33 (ICS) (Witness CNAI).
[972] T. 26 November 2009 p. 65; T. 27 November 2009 pp. 36-37 (ICS) (Witness CNAI) (indicating that Remera was a large trading centre in Nyabikenke *commune*, located in Remera *cellule*).
[973] T. 26 November 2009 pp. 65-66; T. 26 November 2009 pp. 70-71 (ICS) (Witness CNAI).
[974] T. 26 November 2009 p. 66 (Witness CNAI).
[975] T. 26 November 2009 p. 66; T. 27 November 2009 pp. 45-46 (ICS) (Witness CNAI).
[976] T. 26 November 2009 pp. 66-67, 69; T. 26 November 2009 p. 71 (ICS) (Witness CNAI) (The witness testified that the attack occurred on 14 April 1994 at 3.00 a.m. However, the witness testified that Nzabonimana "is the one who ordered the attackers to kill the Tutsis who had sought refuge at the *communal* office. If the [M]inister had

carpentry workshop. The bright moonlight allowed the witness to recognise some attackers from a distance. The attackers included: Claver Kanyamibwa; Witness T31; Médal Ndakaza; Mathieu, a.k.a. Ndabarasa; Alexi Ndayisaba; Witness T193, who was armed with a machete; Cyprien Zihuramye; Thomas Habiyambere; and Kizito. When the witness saw Witness T193, he recalled that Nzabonimana had instructed people to kill Tutsis.[977]

761. The attackers used grenades and machetes. *Commune* policemen used guns. The witness did not know where the attackers got the weapons. The witness could hear the sounds of grenade explosions and gunfire from his hiding place. He left his hideout because he felt that the assailants were approaching and he did not want to be found.[978]

762. Based on what Germain Karangwa had said to him earlier, the witness concluded that Nzabonimana distributed the weapons used in the attack, particularly the firearms. The witness also concluded that Nzabonimana ordered the attackers to kill the Tutsis who had sought refuge at the *commune* office. If Nzabonimana had wanted to save the refugees, he would not have made the statements he made in public in full daylight.[979]

763. The assailants killed some refugees and wounded others. Bodies were scattered in the inner courtyard of the *commune* office. Some were killed as they attempted to flee through the banana plantation located behind the *commune* office and as they went through the back of the *commune* office. Among the victims he recognised an elderly woman named Léocadie, a man named Bayibayi and a woman named Nyirabahima. The witness was not present when Evariste Munyagatare died. The witness fled and hid in a cassava farm.[980]

764. In the morning, Witness CNAI returned to the *commune* office when Defence Witness T24 arrived. The witness saw an ambulance take the wounded to the Kiyombe Health Centre. At 10.00 a.m., the witness saw people on a hill preparing to launch another attack on the *commune* office. The witness then sought refuge in Kabuye *secteur*. The same morning, Witness CNAI saw Father Dussart, who was in charge of Ntarabana Parish, and Father Lerusse of Kanyanza Parish. Fathers Dussart and Lerusse had come to the *commune* office because they heard gunfire and grenade explosions. They noticed the wounded, left the *commune* office and returned with soap to clean the wounded prior to taking them to the hospital.[981]

765. Witness CNAI later learned that an attack was launched upon the *commune* office at 2.00 p.m. Prior to the attacks on the *commune* office that he described in his testimony, there had not been other attacks on the office.[982]

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wanted to save the refugees, he would not have made the type of statements he made in public. He made those statements in full daylight."). Read in context, it is clear that the witness testified that the attack occurred on the night of 14 to 15 April 1994. Additional analysis appears in the Deliberations section, *infra*.

[977] T. 26 November 2009 pp. 66-67; T. 27 November 2009 pp. 11, 44-45 (ICS) (Witness CNAI).

[978] T. 26 November 2009 pp. 68-69; T. 27 November 2009 p. 44 (ICS) (Witness CNAI).

[979] T. 26 November 2009 p. 69 (Witness CNAI).

[980] T. 26 November 2009 pp. 66, 68; T. 27 November 2009 pp. 37, 45 (ICS); T. 26 November 2009 p. 77 (Witness CNAI) (French) (for the spelling of "Léocadie").

[981] T. 26 November 2009 p. 67; T. 26 November 2009 p. 72 (ICS); T. 27 November 2009 pp. 12-13 (ICS) (Witness CNAI).

[982] T. 26 November 2009 p. 72 (ICS); T. 27 November 2009 p. 12 (ICS) (Witness CNAI).

766. The witness sought refuge in Kabgayi at the minor seminary on 16 April 1994. He remained at Kabgayi until 2 June 1994.[983]

Prosecution Witness CNAX

767. Witness CNAX, a Tutsi who lived in Nyabikenke *commune* in 1994,[984] fled to the Nyabikenke *commune* office on 11 April 1994. Witness CNAX was in charge of the refugees at the office. He saw policemen guarding the *commune* office because of insecurity in the area. The brigadier of the *commune* police spent the night near the *commune* office. There were a small number of refugees there at that time but others continued to arrive. The Nyabikenke authorities let the refugees stay in the buildings in the inner court of the *commune* office but as the numbers increased, the refugees spread to the veranda.[985]

768. Assailants from Nzabonimana's home *secteur* launched an attack on 13 April 1994. The *commune* police and the refugees fought back the attack at the Nyarukombe forest. A man named Gahinda, who was a neighbour of Witness CNAX, was shot and killed.[986]

769. On the afternoon of 14 April 1994, Witness CNAX saw Nzabonimana at Cyayi *cellule*, close to the Nyabikenke *commune* office. The witness had gone to Cyayi in order to find food for himself and his family. The area had a number of drinking spots. Three uniformed *gendarmes* carrying firearms accompanied Nzabonimana. Nzabonimana was in a vehicle addressing a group of approximately 30 people, telling them that the Tutsis were to be killed before their property was taken, and that anyone who acted in a contrary manner was mistaken. The witness did not see any other vehicles.[987]

770. While Nzabonimana addressed the group, a Tutsi man named Munyagatare, who had also sought refuge at the *commune* office, answered: "Mr. Minister, we thought that you had come to save us, but now you have just abandoned us." When Munyagatare spoke, a *gendarme* escorting Nzabonimana sought to grab Munyagatare but Nzabonimana stopped the *gendarme*, saying that their time had not yet come but that it would come soon. The witness came to fully understand this statement when Munyagatare was killed at the *commune* office. The witness did not see any other Tutsis at Cyayi.[988]

771. When Witness CNAX heard what Nzabonimana said, he immediately went back to the *commune* office. The witness did not report to anyone what he had heard at Cyayi because he did not want to frighten the Tutsis who were awaiting death.[989]

772. During the night of Thursday 14 April to Friday 15 April 1994, between 3.00 and 4.00 a.m., assailants armed with grenades and firearms carried out the instructions they received at the Kabimbura centre meeting (3.4.6) and attacked the refugees. The attackers threw stones at the refugees and in response the refugees threw stones at the attackers. The attackers then used

[983] T. 26 November 2009 p. 72 (ICS) (Witness CNAI).
[984] For additional introductory information on Witness CNAX, *see* para. 273-275, *supra*.
[985] T. 23 November 2009 p. 59; T. 24 November 2009 pp. 11, 15, 29 (ICS) (Witness CNAX).
[986] T. 24 November 2009 pp. 31, 32 (ICS) (Witness CNAX).
[987] T. 23 November 2009 pp. 60-63; T. 24 November 2009 p. 32 (ICS) (Witness CNAX).
[988] T. 23 November 2009 pp. 60-61; T. 24 November 2009 pp. 32-33, 35-36 (ICS) (Witness CNAX).
[989] T. 23 November 2009 p. 60; T. 24 November 2009 p. 33 (ICS) (Witness CNAX).

grenades and firearms. When the attack began the policemen guarding the compound joined the attackers. One policeman threw a grenade at the refugees. The assailants threw more than three grenades at the refugees.[990]

773. As the witness bent down to pick up stones to throw at the assailants, he saw people who had been killed. A number of Tutsis were killed during the attack and their bodies were inside the *commune* office. There were also wounded people and old women who were still alive but could not fight. Others managed to escape. The property of Tutsis was looted. Survivors ran away while the witness and others remained at the office.[991]

774. The attacks continued into the day on 15 April 1994. At around 10.00 a.m., there was another, larger-scale attack as "killers" joined the *Interahamwe* to attack the refugees. This group used grenades, firearms, machetes and clubs.[992]

775. At around 2.00 p.m., those refugees who were still alive tried to defend themselves.[993] At some point in the afternoon, Father Lerusse, the parish priest of Kanyanza Parish came to the *commune* office and advised the refugees to flee as large-scale attacks were imminent.[994] The witness saw policemen in a firing position to confront the vehicle of the military chaplain named Rukundo. The witness saw one of the policemen, named Gérard Munyabarenzi, pick up a stone and throw it at a man named Mazuru, who had been in charge of the Mahembe ballet. The policeman aimed for Mazuru's chest and killed him.[995]

776. At the time the witness fled, he saw approximately 45 to 60 dead bodies. As he was running away, he passed near dead bodies and had to jump over some of them. He identified one of the bodies as that of Evariste Munyagatare.[996]

Prosecution Witness CNAY

777. Witness CNAY, a Tutsi farmer who lived in Nyabikenke *commune* in 1994,[997] arrived at the Nyabikenke *commune* office at between 9.00 and 10.00 a.m. on the morning of 11 April 1994. Other Tutsis had already taken refuge there. Some of the refugees were in a hall and others were on the veranda. There was a crowd of refugees, but the witness could not approximate the

[990] T. 23 November 2009 pp. 57-60; T. 24 November 2009 pp. 28, 30 (ICS) (Witness CNAX).
[991] T. 23 November 2009 p. 59; T. 24 November 2009 pp. 29, 35 (ICS) (Witness CNAX).
[992] T. 23 November 2009 p. 59 (Witness CNAX).
[993] T. 23 November 2009 p. 59; T. 23 November 2009 p. 67 (Witness CNAX) (French) ("*Vers 2 heures de l'après-midi, ceux qui étaient encore en vie essayaient de se défendre toujours, et, à un moment donné, nous... le prêtre qui était curé à la paroisse de Kanyanza nous a donné un conseil — je parle de moi-même et de quelques autres qui étaient encore en vie — nous avons donc pris la décision de nous enfuir. J'étais l'une des personnes qui faisaient face aux assaillants.*").
[994] T. 23 November 2009 p. 59 (incorrectly indicating the name of the parish as "Kayenzi"); T. 24 November 2009 pp. 29-30, 36 (ICS) (Witness CNAX).
[995] T. 24 November 2009 pp. 30-31, 35 (ICS); T. 24 November 2009 p. 33 (Witness CNAX) (French) (for the spelling of "Gérard").
[996] T. 23 November 2009 pp. 59-60; T. 24 November 2009 pp. 28-29, 35-36 (ICS) (Witness CNAX).
[997] For additional introductory information on Witness CNAY, *see* para. 580, *supra*.

number. The witness saw no administrative authorities or *commune* policemen at the *commune* office before the arrival of Nzabonimana.[998]

778. On that same day, an attack was launched upon the *commune* office. At approximately 3.30 p.m., Nzabonimana, Brigadier Laurent and a group of *Interahamwe* and other Hutus, arrived at the *commune* office. They were armed with spears, clubs and machetes. The witness did not see any other *commune* policemen. Nzabonimana was at the front gate of the *commune* office. The witness could not estimate the number of attackers. The attackers threw stones at the refugees and ate the cows the Tutsis had brought with them to the *commune* office.[999]

779. When the attack began, the witness escaped, leaving the Nyabikenke *commune* office for Kabgayi at approximately 4.00 p.m. on 11 April 1994. Other refugees left at the same time as Witness CNAY. Witness CNAY did not see anyone being killed at the *commune* office. People were killed during several attacks on the *commune* office which occurred after 11 April 1994.[1000]

Prosecution Witness CNAF

780. Witness CNAF, a Hutu farmer who lived in Nyabikenke *commune* in April 1994,[1001] saw Nzabonimana at Nzabonimana's home on the evening of 10 April 1994. More than 100 members of the local population sat on a hill behind the fence of Nzabonimana's home. Nzabonimana came out and asked the assembled people how things were going. He said he hoped that they had used the equipment he left for them and that they had obeyed his instructions. A man named Pascal said that they had done whatever they could and that they had killed Sehinda and others. Nzabonimana said that Pascal was not telling the truth, that the people who were killed were old and it served no purpose to kill old people. He said they should have killed strong, young people. Pascal informed Nzabonimana that young people had fled to the *commune* office and other places. Nzabonimana responded that the *commune* office was not far away and that they had to go there to kill the young people. Nzabonimana then got in a vehicle and left.[1002]

781. According to Witness CNAF, the people addressed by Nzabonimana followed his instructions. Very early on the morning of 11 April 1994, people from Kavumu *secteur* attacked the Nyabikenke *commune* office. The witness was not an eyewitness to the attacks but heard that the *commune* office was attacked several times. Every day people could be seen going to the *commune* office, and in the evening people would return boasting about having killed the civilians, mostly Tutsi, who had sought refuge at the *commune* office. Assailants continued attacking the *commune* office until they were able to "dislodge" the refugees. Some of the refugees were killed at the *commune* office while others were able to flee.[1003]

[998] T. 24 November 2009 p. 53 (ICS); T. 25 November 2009 pp. 21-22 (ICS) (Witness CNAY).
[999] T. 24 November 2009 pp. 53-54 (ICS); T. 25 November 2009 pp. 22-23 (ICS) (Witness CNAY).
[1000] T. 24 November 2009 pp. 54, 56 (ICS); T. 25 November 2009 pp. 22-24 (ICS) (Witness CNAY).
[1001] For additional introductory information on Witness CNAF, *see* para. 510, *supra*.
[1002] T. 16 November 2009 p. 50 (ICS) (Witness CNAF).
[1003] T. 16 November 2009 pp. 50-51 (ICS); T. 17 November 2009 p. 39 (ICS) (Witness CNAF).

Defence Witness T24

782. Witness T24 a local government official in Nyabikenke *commune* in 1994,[1004] testified that until 11 April 1994 there were no problems at the Nyabikenke *commune* office. People fled there because it was a safe place in the region. The first refugees arrived on the morning of 11 April 1994. The first to arrive was Modeste Kamanzi and his family. Witness T24 denied that an attack on the *commune* office occurred on 11 April 1994.[1005]

783. On Wednesday, 13 April 1994 no incident occurred at the *commune* office.[1006] On this date Witness T24 and *commune* policemen repelled an attack which was about to be launched on the *commune* office from a location about four to five kilometres away at the Nyagahondo forest.[1007] The witness asked the policemen to shoot into the air. They then shot at the assailants. Two people were killed, others were wounded and the rest dispersed. There were many assailants armed with clubs and other traditional weapons, but not firearms. If the assailants had firearms they would have used them to retaliate.[1008]

784. Witness T24 estimated that Cyayi was located approximately 100 metres from the *commune* office. Cyayi contained some shops and drinking establishments. Witness T24 denied that he, Nzabonimana, Witness T193 and Isaac Kamali met in Cyayi and incited the population to attack the *commune* office. The witness passed by Cyayi on 14 April 1994 as part of his duties but did not notice any parked vehicles, and did not see Nzabonimana or Kamali. The witness knew Evariste Munyagatare but had never heard of an incident where Munyagatare challenged Nzabonimana at Cyayi.[1009]

785. An attack on the *commune* office occurred during the night of 14 April 1994. Witness T24 estimated that there were 1200 refugees at the *commune* office. Three people died in the attack. Witness T24 was at home at the time of the attack, approximately 30 minutes by foot from the *commune* office. At dawn, policemen informed him of the attack. The attackers had already been repelled by this time.[1010]

786. The refugees and policemen at the *commune* office were surprised by the attack. In the morning, the refugees who survived the night time attack prepared for another attack. If the night time attack on the *commune* office had been planned at a location close to the office, the refugees would have been aware of it and prepared for it, as many had friends among the local inhabitants.[1011]

787. On the morning of 15 April 1994, Witness T24 went to the *commune* office and tried to take the wounded to the health centre. He learned that two grenades had been thrown during the

[1004] For additional introductory information on Witness T24, *see* para. 284, *supra*.
[1005] T. 26 April 2010 pp. 48-49 (ICS) (Witness T24).
[1006] T. 26 April 2010 p. 52 (ICS); T. 26 April 2010 p. 58 (HC) (Witness T24) (French) (indicating the correct date as 13 April 1994).
[1007] The Chamber notes that the name of the forest was spelled "Nyagahongo" and "Nyagahondo" in the transcripts. The Chamber adopts "Nyagahondo" for purposes of consistency.
[1008] T. 26 April 2010 p. 52 (ICS); T. 27 April 2010 p. 41 (ICS) (Witness T24).
[1009] T. 26 April 2010 pp. 52-53 (ICS); T. 28 April 2010 p. 44 (Witness T24).
[1010] T. 26 April 2010 pp. 52-55 (ICS) (Witness T24).
[1011] T. 26 April 2010 pp. 53, 55 (ICS) (Witness T24).

attack and the assailants were also carrying traditional weapons. The assailants also took away the livestock which was at the *commune* office.[1012]

788. After leaving the health centre, Witness T24 went immediately to Gitarama in order to contact the *préfet* and have soldiers sent for assistance. Witness T24 went to the Nyakabanda *commune* office to use the telephone. The telephone lines were not working, so he proceeded to Gitarama. The *préfet* could not help and suggested that the witness go to the nearby military camp to explain what he needed. At the camp, the commander laughed at the witness and told him there were no soldiers available.[1013]

789. The witness returned to the *commune* office around 4.00 p.m. He learned that Father Lerusse from Kanyanza Parish had come to assist the refugees. The witness knew Father Lerusse, who had helped the refugees when they arrived at the *commune* office. Father Lerusse, the brigadiers and *commune* policemen evacuated those still at the *commune* office during another wave of attacks with stones. Witness T24 learned that a military chaplain named Emmanuel Rukundo, who worked at Kanyanza Parish, also came and repelled the assailants, enabling the refugees to flee. The witness learned that Father Lerusse had barely escaped a grenade attack. The refugees left at the prompting of Father Lerusse and continued on to Kabgayi Parish.[1014]

790. The witness was informed that the assailants at the *commune* office used traditional weapons and stones. The refugees defended themselves with stones. Witness T24 did not learn that firearms were used in the attack.[1015]

791. People were killed during the attacks on 15 April 1994 both at the *commune* office and on their way to Kanyanza Parish. In total, between 17 and 20 people were killed at the *commune* office and on their way to the parish.[1016] Witness T24 knew Evariste Munyagatare well. He did not see the body of Munyagatare at the *commune* office, and did not know how Munyagatare died.[1017]

Defence Witness T28

792. Witness T28, a civil servant in 1994,[1018] did not see Nzabonimana nor hear of his presence in Nyabikenke *commune* during April 1994, and did not receive any information concerning his role in the Nyabikenke *commune* office attacks.[1019]

793. On 11 April 1994, insecurity prevailed in the *commune*. Acts of violence had been committed at Kivumu. On 12 April 1994, the witness went to the Nyabikenke *commune* office and found approximately 100 Tutsis seeking refuge. They had fled to the *commune* office from

[1012] T. 26 April 2010 pp. 53-54 (ICS) (Witness T24).
[1013] T. 26 April 2010 p. 54 (ICS) (Witness T24).
[1014] T. 26 April 2010 pp. 51-52, 54-55 (ICS) (Witness T24).
[1015] T. 26 April 2010 p. 55 (ICS) (Witness T24).
[1016] T. 26 April 2010 p. 54 (ICS); T. 3 May 2010 p. 26 (ICS); T. 3 May 2010 p. 26 (HC) (Witness T24) (French) (for the spelling of "Kanyanza").
[1017] T. 3 May 2010 p. 18 (ICS) (Witness T24).
[1018] For additional introductory information on Witness T28, *see* para. 520, *supra*.
[1019] T. 2 June 2010 pp. 39, 46 (ICS) (Witness T28).

Kavumu, Kigina, Mahembe and Kiyumba due to killings in Musasa *commune*. They were being housed in the premises of the *commune*. Some of the refugees came from near the *commune* office. They were able to go to their houses and bring back food, which they shared with other refugees. The priests of Kanyanza Parish, Fathers Lerusse and Dussart, also provided the refugees with maize flour. The witness remained at the *commune* office on 12 April 1994.[1020]

794. On 13 April 1994, Witness T28 learned of an impending attack on the *commune* office from a member of the *cellule* committee. The witness went to the Nyagahondo woods with the *bourgmestre*, his driver and three policemen. The *bourgmestre* authorised them to fire their weapons if the assailants did not retreat or started throwing stones.[1021]

795. The attackers, who were armed with clubs, spears and machetes, started whistling and throwing stones. The policemen fired. One assailant, named Célestin Gahinda, died and others were wounded. They succeeded in repelling the attack.[1022]

796. Witness T28 knew Cyayi centre, which was between 500 and 600 metres from the *commune* office. Witness T28 did not go to Cyayi centre on 14 April 1994. He did not receive any information about an impending attack on the *commune* office on 14 April 1994. If he and the *commune* policemen had known about an impending attack, they would have prevented it. The witness did not hear of a meeting which was convened at Cyayi centre on 14 April 1994 or that Nzabonimana was present at the centre. He did not see Nzabonimana that day.[1023]

797. Witness T28 returned to the *commune* office at 5.00 p.m. on 14 April 1994. There was no immediate attack on the office at that time. The situation was calm, though some refugees needed food.[1024]

798. At 3.00 a.m. on 15 April 1994, assailants launched an attack on the *commune* office. It was raining heavily during the attack and the night was very dark because it was the rainy season. They were not able to recognise or identify the assailants. The attackers went around the building and came to the building known as "CCDFP." They threw three grenades, which killed one refugee and seriously injured others. The witness did not know where the assailants got the grenades, but said that they "must have obtained those weapons from some important people." It was possible that those who threw the grenades had received training in their use.[1025]

799. The witness heard the explosion of a grenade and heard many attackers shouting "*Inyenzi, Inkotanyi*," which referred to the Tutsi refugees. He heard the refugees yelling and calling out for help. Because it was night, it was difficult to know where to shoot. The witness and his colleagues were afraid and they did everything they could to ask people to leave the area and seek refuge in the banana plantations, the woods and in neighbours' homes.[1026]

[1020] T. 2 June 2010 pp. 27-28, 34-37, 47 (ICS) (Witness T28).
[1021] T. 2 June 2010 pp. 37-38 (ICS) (Witness T28).
[1022] T. 2 June 2010 p. 38 (ICS) (Witness T28).
[1023] T. 2 June 2010 pp. 39-40 (ICS) (Witness T28).
[1024] T. 2 June 2010 pp. 38-39 (ICS) (Witness T28).
[1025] T. 2 June 2010 pp. 39-40, 48, 51-52 (ICS) (Witness T28).
[1026] T. 2 June 2010 pp. 40, 47 (ICS) (Witness T28).

800. The following day, the witness learned that a grenade had been thrown through a window and killed someone immediately. Two others had been trampled in the backyard of the *commune* office. The witness reported this information to Witness T24 around 6.00 a.m. Witness T28 and Witness T24 returned to the *commune* office and began moving the injured to the hospital. The witness also realised that women and children had died trying to leave the *commune* office compound. They had been attacked with bladed weapons.[1027]

801. Witness T28 knew Evariste Munyagatare. Munyagatare was not at the *commune* office during the attack on the night of 14 to 15 April 1994. The witness did not see Munyagatare after the attack. Munyagatare died in the home of his parents-in-law in Mahembe *secteur*, approximately two and a half kilometres from the *commune* office.[1028]

802. At around 8.00 a.m. the witness learned that criminals had attacked the home of someone named Gihana. A woman asked the witness to intervene because she feared her husband might be killed. The witness and his colleagues went in the direction of Nyakabanda. Upon arrival at Miko, they came upon the criminals driving off several cattle. The witness and his colleagues exited the vehicle and opened fire. The criminals fled, leaving behind the cows. The witness proceeded to the home of Gihana and was told he was alive.[1029]

803. The witness and Witness T24 then went to Nyakabanda in order to get fuel from Father Bourguet. After they received the fuel, they went to Gitarama *préfecture*. Witness T24 met with the *préfet*, while the witness remained in the vehicle.[1030]

804. At around 2.00 p.m., the witness saw Father Lerusse on a motorcycle. He informed them that the situation in Nyabikenke was critical; people were being stoned and were close to being killed. Witness T24 asked for reinforcements in the form of *gendarmes* and Father Lerusse also went to see the *préfet*. Witness T24 came out of the *préfet*'s office and reported that the *préfet* had said that the *communes* had to do their best to ensure the security of the population. He did not have enough *gendarmes* to deploy all over the *communes*.[1031]

805. The witness then went to the Kanyanza Parish and saw that the refugees had come out of their hiding places and were going to seek refuge at Kabgayi. The witness followed Father Lerusse and when they arrived, they observed that the refugees had been evacuated and the criminals dispersed. Father Rukundo and Father Lerusse had guided the refugees away from the *commune* office.[1032]

806. The witness denied that the *commune* office attackers were *Interahamwe*, since there had not been any *Interahamwe* in Nyabikenke *commune*. He did not know if there were *Interahamwe* in other *communes* of Gitarama *préfecture*.[1033]

[1027] T. 2 June 2010 pp. 40-41 (ICS) (Witness T28).
[1028] T. 2 June 2010 pp. 40, 43-45 (ICS) (Witness T28).
[1029] T. 2 June 2010 p. 41 (ICS) (Witness T28).
[1030] T. 2 June 2010 p. 41 (ICS) (Witness T28).
[1031] T. 2 June 2010 pp. 41-42 (ICS) (Witness T28).
[1032] T. 2 June 2010 p. 42 (ICS) (Witness T28).
[1033] T. 2 June 2010 pp. 47-48 (ICS) (Witness T28).

Defence Witness T31

807. Witness T31, a local government official in Nyabikenke *commune* in 1994,[1034] testified that the killings began in his *secteur* on 10 April 1994. On 11 April 1994, a teacher ran to the witness for help because his home had been attacked. The witness informed the *bourgmestre*. Since there had been killings the previous day, Witness T31 warned the teacher's family and other local inhabitants and asked them to flee. Those who fled went to the Nyabikenke *commune* office. After they fled, assailants looted their houses and property.[1035]

808. On 12 April 1994, Witness T31 informed the *bourgmestre* that the refugees were unable to reach the *commune* office because assailants had driven them to the river. The assailants had guns and were pursuing the refugees.[1036]

809. On 13 April 1994, the assailants continued chasing the refugees. The *bourgmestre* intercepted the assailants. One of the assailants was shot and another, known as Hagabimana, was wounded in the hand. The other assailants then became afraid and did not attack the *commune* office. At night, the attackers falsely announced that the *bourgmestre* had been killed by the refugees in order to rally and attack the *commune* office. The following morning the witness learned that there had been waves of attacks on the *commune* office and that refugees had been killed and their property looted. The most notorious assailants, Habimana, Silas Mulinda and Neretse, confessed their crimes in court.[1037]

810. In November 2009, Witness T31 underwent trial in the Kiyumba *Gacaca* court on charges of looting the *commune* office. The witness was awaiting the disposition of that case at the time of his testimony. He also faced trial before the Gahogo *Gacaca* court, accused of holding meetings to prepare for, and participating in, the *commune* office attack. The Gahogo court convicted Witness T31 and sentenced him to life imprisonment. At the time of his testimony, Witness T31's request for the proceedings to be reviewed was still pending.[1038]

Defence Witness T193

811. Witness T193 was a trader based in Nyabikenke *commune* in 1994.[1039] Witness T193 knew Nzabonimana very well in 1994 and knew members of Nzabonimana's family. He was a member of the MDR party, and Nzabonimana once came to his house to ask him to join the MRND. The witness owned three vehicles, a truck, a pickup and a Suzuki Samurai.[1040]

812. Witness T193 testified that on the morning of 13 April 1994, attacks were launched on the hill where he resided, and one person was killed. Towards 9.00 a.m., the *bourgmestre* came

[1034] For additional introductory information on Witness T31, *see* para. 281, *supra*.
[1035] T. 3 May 2010 p. 64 (ICS); T. 4 May 2010 p. 45 (ICS) (Witness T31).
[1036] T. 3 May 2010 pp. 64-65 (ICS) (Witness T31).
[1037] T. 3 May 2010 p. 65 (ICS); T. 3 May 2010 p. 74 (HC) (Witness T31) (French) (for the spelling of "Neretse").
[1038] T. 4 May 2010 pp. 6-8, 10, 48 (ICS) (Witness T31).
[1039] Defence Exhibit 119 (Protected Information Sheet); T. 9 March 2011 pp. 10-11 (ICS) (Witness T193).
[1040] T. 9 March 2011 pp. 11-12, 26, 30 (ICS) (Witness T193).

to collect a vehicle from the witness in order to fend off the attacks. Witness T193 gave his vehicle to the *bourgmestre* that day and it was returned on 15 April 1994.[1041]

813. After the *bourgmestre*'s departure at 10.00 or 11.00 a.m., assailants launched an attack on the witness's hill. Members of the population who were at the peak of the hill managed to repel the assailants who were situated at the bottom of the hill by rolling stones at them. The witness and other members of the population captured six assailants who were later detained by *commune* authorities. At around 2.00 p.m., about 1,000 assailants converged and prepared a wide-scale attack.[1042]

814. Witness T193 testified that Cyayi centre contained two or three small shops and was located near the Nyabikenke *commune* office. Cyayi centre was located just next to the *commune* office. As from 12 April 1994, the witness passed through Cyayi centre virtually every evening to check on his business. The witness never met Nzabonimana at Cyayi centre.[1043]

815. At approximately 2.00 p.m. on 13 April 1994, the witness and two *commune* policemen travelled through Cyayi centre to the *commune* office to warn the authorities and refugees of an impending attack on the *commune* office. He did not have prior knowledge of a planned attack on the *commune* office. The refugees repelled the assailants before they reached the *commune* office and some assailants were killed.[1044]

816. On 14 April 1994, the witness stayed home and at about 2.00 p.m. he passed through Cyayi centre on his way to Remera. He did not stop at Cyayi centre or pass through the *commune* office. The witness denied being present at a meeting held at Cyayi centre on 14 April 1994 with Nzabonimana, Isaac Kamali, Witness CNAI and Evariste Munyagatare, and denied seeing Nzabonimana. According to the witness, the refugees left the *commune* office by 15 April 1994.[1045]

817. Witness T193 knew Witness CNAX and his parents. Witness CNAX knew Witnesses T193 and T150. Witness T193 never entrusted his vehicle to Witness T150.[1046]

818. Witness T193 knew Evariste Munyagatare and was related to him by marriage. Munyagatare was not killed during the attacks on the *commune* office on 14 and 15 April 1994. On 16 April 1994, the witness saw Munyagatare, who had been hiding in the house of Germain Karangwa. Karangwa had a bar at Cyayi centre and his home was located 800 metres away. The witness took Munyagatare to spend the night at his house. Because the assailants were searching for Munyagatare, at around 4.00 a.m. the witness led Munyagatare to another house located on the hill opposite the witness's house.[1047]

819. Witness T193 learned of Munyagatare's fate from Munyagatare's wife, who testified at a trial on 20 March 2000. Munyagatare spent a month moving from one hiding place to another.

[1041] T. 9 March 2011 pp. 35-36, 52 (ICS) (Witness T193).
[1042] T. 9 March 2011 p. 36 (ICS) (Witness T193).
[1043] T. 9 March 2011 pp. 30, 34 (ICS) (Witness T193).
[1044] T. 9 March 2011 pp. 35-37, 39, 41-42, (ICS) (Witness T193).
[1045] T. 9 March 2011 pp. 15-16, 36-37, 51 (ICS) (Witness T193).
[1046] T. 9 March 2011 pp. 25, 37 (ICS) (Witness T193).
[1047] T. 9 March 2011 pp. 22-23, 32, 34-35 (ICS) (Witness T193).

Munyagatare came to the witness's home because he learned that members of his family were hidden there. Witness T193 persuaded them to hide elsewhere because members of the population knew they were there. Munyagatare went to the home of his mother-in-law to hide. When he learned that his in-laws were not willing to hide him, Munyagatare decided to drown himself in the Nyabarongo River in May 1994. Two of Munyagatare's children were drowned with him. The remaining members of Munyagatare's family were arrested and killed in the same river. Munyagatare's wife never told the witness that Nzabonimana threatened Munyagatare in Cyayi. Witness T193 acknowledged that one of his relatives was imprisoned in Rwanda and was accused of killing Munyagatare.[1048]

820. When Witness T193 returned from exile, he was arrested and released. In 2003, Witness CNAI testified against Witness T193 during a trial before the Gitarama court of first instance. Witness CNAI alleged that Witness T193 participated in the attack on the *commune* office. Witness T193 was accused of having acted together with Nzabonimana. Witness T193 testified that the court acquitted him of the allegations made by Witness CNAI. The court convicted him of "criminal association" and sentenced him to nine years' imprisonment. Witness CNAI also testified against Witness T193 before a Kigali-rural *Gacaca* court in 2008. The court convicted Witness T193 and sentenced him to 19 years' imprisonment. The conviction was overturned on appeal. Witness T193 asserted that Witness CNAI and "his colleagues" testified against him in these proceedings in order to take over his property. Witness T193 confirmed, however, that Witness CNAI did not possess any of Witness T193's property.[1049]

Defence Witness Bernard Ndayisaba

821. Bernard Ndayisaba lived in Cyayi *cellule*, Kiyumba *secteur*, Nyabikenke *commune* in 1994, in a house 150 metres away from the *commune* office, and was in charge of agricultural services in Nyabikenke *commune*.[1050] From his house, the witness could see the back entrance of the *commune* office. Ndayisaba knew Nzabonimana as the Minister of Youth. After the death of the President, members of the population were instructed to remain in their houses and the witness did not go to work. Ndayisaba did not leave his house from 6 April 1994 until 15 April 1994. He was able to see everything that was happening at the *commune* office because he lived on a hill opposite the office.[1051]

822. On the Monday and Tuesday following the death of the President, Tutsis began to flee their houses in order to seek refuge at the *commune* office.[1052] Some of the Tutsis went to Cyayi, a small trading centre where there were two or three drinking spots. People bought drinks for the refugees and brought them food. Ndayisaba knew some of the refugees, but was unable to recall their names. At night, assailants looted the cows of the refugees.[1053]

[1048] T. 9 March 2011 pp. 22-24, 31-32 (ICS) (Witness T193).
[1049] T. 9 March 2011 pp. 12-13, 16-21, 42, 46, 62 (ICS) (Witness T193); Defence Exhibit 76B (Decision of the Gitarama First Instance Tribunal, 20 March 2003).
[1050] Defence Exhibit 123 (Personal Information Sheet); T. 28 March 2011 pp. 6-7 (Ndayisaba).
[1051] T. 28 March 2011 pp. 7, 9-10, 21-22, 32 (Ndayisaba).
[1052] T. 28 March 2011 pp. 7, 22; T. 28 March 2011 p. 8 (Ndayisaba) (French) ("*En fait, le lundi ou le mardi qui a suivi le décès du Président Habyarimana, les gens ont commencé à trouver refuge au bureau communal.*").
[1053] T. 28 March 2011 pp. 7, 18 (Ndayisaba).

823. On the Wednesday following the death of the President, Ndayisaba and other members of the population learned that a group of assailants had come to Nyagahondo Hill and were preparing to attack the *commune* office. Nyagahondo Hill was approximately five kilometres from his residence. Witness T24 tried to stop the assailants and asked a policeman to fire a shot. The policeman shot one person, and someone else was wounded in the hand. The assailants then retreated. Ndayisaba did not see Witness T24 on the day of the attack. He did not hear that Witness T24 assembled the population to incite people to attack the *commune* office. Aside from the Nyagahondo Hill incident, Ndayisaba did not know of any other incident which occurred around the *commune* office at that time.[1054]

824. After the attempted attack at Nyagahondo Hill, the Tutsi refugees realised that some people tried to attack them. Therefore, they did not talk anymore with members of the local population and locked themselves inside the *commune* office. Ndayisaba did not see the refugees after they locked themselves in the office, and did not know how they fed themselves. Ndayisaba could not estimate how many refugees were at the *commune* office on 13 April 1994 since he did not actually go into the *commune* office.[1055]

825. Ndayisaba testified that Cyayi was not a large business centre; it had approximately ten houses. Cyayi centre was not far from the witness's house, so he was able to know what occurred there. The witness could not see Cyayi centre from his house. The witness knew Germain Karangwa, who had a business in Cyayi centre. Those seeking refuge at the *commune* office went to Cyayi centre, and people who wanted to comfort the refugees bought them banana beer from Karangwa's shop.[1056]

826. Ndayisaba did not see Nzabonimana on the Wednesday, Thursday or Friday of the week following the death of the President. Ndayisaba had no knowledge of a meeting held by Nzabonimana at Cyayi following the President's death. He never heard anyone speak of the meeting and did not attend such a meeting. The witness did not see Nzabonimana pass through Cyayi centre on 14 April 1994 between 2.00 and 5.00 p.m. A personality like Nzabonimana could not pass through Cyayi centre without being noticed; therefore Ndayisaba would have known if Nzabonimana had passed through Cyayi centre.[1057]

827. Ndayisaba heard explosions on the night of 14 to 15 April 1994. He later learned that the explosions came from grenades. The following day the witness spoke to the *responsable de cellule*, who told Ndayisaba that the noise came from the *commune* office. Others told Ndayisaba that there had been an attack.[1058]

828. The next day, Friday, "terrible things" happened. The witness heard a noise at 9.00 or 10.00 a.m. From his house he could see the *commune* office. He saw people who were carrying machetes and clubs throw stones at the refugees in the *commune* office. In retaliation, the refugees threw stones at the attackers. The exchange lasted "quite some time." Ndayisaba saw a

[1054] T. 28 March 2011 pp. 7-8, 19 (Ndayisaba).
[1055] T. 28 March 2011 pp. 8, 19, 22-24 (Ndayisaba).
[1056] T. 28 March 2011 pp. 7, 9, 22, 26-27, 31 (Ndayisaba).
[1057] T. 28 March 2011 pp. 9, 26, 29 (Ndayisaba).
[1058] T. 28 March 2011 pp. 9, 25 (Ndayisaba).

Mazda truck carrying Father Rukundo driving towards the *commune* office. In the evening, Ndayisaba learned that Father Rukundo had disarmed some assailants.[1059]

829. Ndayisaba saw civilians attacking the *commune* office. He did not see civilians carrying firearms, and did not hear any gunshots. Weapons such as grenades could only be legally possessed by military personnel, not civilians.[1060]

830. In the afternoon, Ndayisaba heard another explosion. This caused confusion among the population and the refugees headed towards Kanyanza. After some time, Ndayisaba lost sight of the refugees. Ndayisaba also saw Father Lerusse. Some refugees succeeded in escaping to Kanyanza.[1061]

831. The assailants killed a total of 10 to 15 refugees. In the evening, there were few attackers in the vicinity of the *commune* office. They were not strong because the inhabitants of Kiyumba did not support the attackers of the office. [1062]

Defence Witness T150

832. Witness T150 was an employee of Nyabikenke *commune* in 1994. During working hours, he stayed at the *commune* office, waiting for instructions for his work.[1063]

833. Witness T150 testified that on the Monday following the President's death, or 11 April 1994, he was at the *commune* office and the *bourgmestre* told him that he needed to go to Ntarabana. They drove in a Suzuki Samurai jeep. They went to Mbuye centre and met a policeman named Haguma. The *bourgmestre* asked Haguma to request that people leave the marketplace and tell them that the market would be held on another day.[1064]

834. They proceeded to Ntarabana Parish and parked the vehicle in front of Father Dussart's house. When they arrived, there were no signs of an attack. The *bourgmestre* went inside the house and spoke with Father Dussart, then came out and they went back to the *commune* office. It took one hour and 45 minutes to get from the Nyabikenke *commune* office to Ntarabana Parish that day, including the 10 minute stopover in Mbuye.[1065]

835. On Tuesday, 12 April 1994, they left the *commune* office in the morning and headed back to Ntarabana. The witness drove a vehicle belonging to the Kiyumba *sous-préfecture*, and was accompanied by the *bourgmestre* and two or three *commune* policemen. The witness could not recall whether the *sous-préfet* was present. One kilometre away from the parish, they saw attackers on a hill and could see attackers coming down from the opposite hill. The *bourgmestre* asked the witness to stop the vehicle and requested one of the policemen to fire in the air to repel

[1059] T. 28 March 2011 pp. 10-11, 26 (Ndayisaba).
[1060] T. 28 March 2011 pp. 11, 26 (Ndayisaba).
[1061] T. 28 March 2011 pp. 10-11 (Ndayisaba).
[1062] T. 28 March 2011 p. 10 (Ndayisaba).
[1063] T. 19 October 2010 p. 43 (ICS) (Witness T150). For additional introductory information on Witness T150, *see* para. 610, *supra*.
[1064] T. 19 October 2010 pp. 19, 39 (ICS) (Witness T150).
[1065] T. 19 October 2010 pp. 19-20 (ICS) (Witness T150).

the attackers. The attackers then dispersed. The policeman came back on board the vehicle and they drove to the parish.[1066]

836. Upon arrival at the parish, the witness parked in front of the church and realised that the door of the church had been forced open. There were refugees inside the church. The *bourgmestre* talked to Father Dussart, Father André Lerusse and Father Twaza. The *bourgmestre* met with the refugees and asked them to join the other refugees at the *commune* office since he was worried for their safety. The refugees walked to the *commune* office, but a few injured young men were driven to the office.[1067]

837. The witness was not aware of an attempted attack launched against Tutsi refugees at the *commune* office, which was repelled at Nyagahondo before 15 April 1994. It was possible that Witness T24 visited Nyagahondo on this occasion since Nyagahondo was near Witness T24's residence. Nyagahondo was about one or two kilometres from Witness T24's residence, making it possible for Witness T24 to walk there.[1068]

838. The witness knew Cyayi centre, which was approximately 500 to 600 metres from the Nyabikenke *commune* office. Witness T150 never saw or heard of a meeting held by Nzabonimana at Cyayi on 14 April 1994. The witness attended *Gacaca* sessions which took place in Cyayi in 2006. During these sessions no one mentioned a meeting held by Nzabonimana at Cyayi to incite the Hutus to massacre Tutsis at the *commune* office.[1069]

839. The witness knew Witness T193 and saw him regularly in Remera. In April 1994, Witness T150 never worked as a driver for Witness T193. Witness T193 never gave Witness T150 his vehicle and did not give his vehicle to Witness T150 in Cyayi on 14 April 1994. He denied driving Witness T193's vehicle in April 1994 at Cyayi centre, while Witness T193 rode in Isaac Kamali's vehicle to Remera. The witness did not meet Witness T193 in Cyayi centre between April and June 1994.[1070]

840. The witness knew Germain Karangwa, Isaac Kamali, Witness CNAI and Evariste Munyagatare. Witness T150 saw Witness CNAI and Munyagatare taking refuge at the *commune* office.[1071]

[1066] T. 19 October 2010 pp. 19-20, 39-41 (ICS) (Witness T150).
[1067] T. 19 October 2010 p. 20 (ICS) (Witness T150).
[1068] T. 19 October 2010 p. 37 (ICS) (Witness T150).
[1069] T. 19 October 2010 pp. 18, 23-24, 41 (ICS) (Witness T150).
[1070] T. 19 October 2010 pp. 18-19, 41-44 (ICS) (Witness T150).
[1071] T. 19 October 2010 pp. 41-44 (ICS) (Witness T150).

Rukundo Defence Witness BCB from the *Rukundo* Trial[1072]

841. Witness BCB, a civil servant in Nyabikenke *commune* in 1994, testified that he was detained for about seven years, on charges relating to events at the *commune* office. His trial was in progress at the time of his testimony.[1073]

842. Witness BCB testified that Tutsi refugees arrived at the Nyabikenke *commune* office on Monday, 11 April 1994, and stayed there for "some days." Their numbers increased day by day. They were received by the *bourgmestre*, who was present on 11 April 1994, but who subsequently left to visit the various *secteurs* to ensure security. Nothing particular happened that day apart from the influx of refugees. The situation was still secure on 12 April 1994.[1074]

843. Refugees continued arriving on Wednesday. The *bourgmestre* arrived at the office that day and around 10.00 a.m. they received the bad news that attackers were coming to the *commune* office. The *bourgmestre* left with three policemen and, with the help of the population from Nyabikenke *cellule* and Bugabiganza *cellule*, they fended off the attackers at Rugabano. Two of the attackers died and two were wounded. Nothing particular occurred at the *commune* office on Wednesday and no attackers came to the location.[1075]

844. On Thursday morning there was "nothing to report." At around 3.00 a.m. an attack was launched. Assailants came through the back door and attacked the refugees with bladed weapons. It was night time and the witness and his colleagues fired into the air, causing the assailants to leave through the side where the livestock was located. Some of the livestock was taken away.[1076]

845. Two people died that night, an elderly woman and a man. There were wounded persons in the field close to the livestock. The attackers threw two grenades, which did not reach the refugees.[1077]

846. On 15 April 1994, Witness BCB was working at the *commune* office and had been there since 12 April 1994. He spent his days and nights there. Among the policemen present at the *commune* office were Janvier Habinshuti, Fidèle Sekaziza, Karonkano and Munyabarenzi. A total of five policemen were present at the office. Witness BCB knew some of the refugees, including Modeste Kamanzi and those who were wounded, including Jean Sebazungu, Stanislas Mbuguje and Samuel Hajabakiga.[1078]

[1072] The Chamber recalls that this evidence was admitted after Closing Arguments as Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, 18 and 19 September 2007). During the cross-examination of Witness BCB, he was questioned about two statements he made to the Judicial Police Inspector of the *Gacaca* system in Rwanda. The Chamber was not provided with these documents as part of the disclosures and therefore will not assess any testimony provided in relation to these documents.
[1073] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 4, 21 (ICS)).
[1074] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 5-7).
[1075] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 7-8).
[1076] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 p. 8; T. 19 September 2007 pp. 19-20 (ICS)).
[1077] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 p. 9; T. 19 September 2007 pp. 19-20 (ICS)).
[1078] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 4, 10-11 (ICS)).

847. Father Lerusse arrived at the *commune* office on Friday around 12.00 noon and said that he wanted to take Kamanzi to the *préfet*. A policeman told him that in the absence of the *bourgmestre* they could not authorise a refugee to be brought to the *préfet's* office. The *conseiller* of Kiyumba arrived and Father Lerusse asked the *conseiller* to come with Kamanzi. In the meantime, attackers arrived with clubs and machetes. The refugees tried to convince Father Lerusse that he would not be able to leave through the attackers and so Father Lerusse returned to Kanyanza.[1079]

848. The assailants stood nearby and began to arrive at around 10.00 a.m. They understood that they could not go to the back of the building where the refugees were located. Policemen had surrounded the area where the women and children were located. The assailants threw stones over the building and the refugees threw them back. Some people were wounded.[1080]

849. The policemen tried to ward off the approximately 2,000 to 3,000 attackers. The attackers included persons from neighbouring Musasa, Rushashi, Nyakabanda and Ndusu *communes*. The policemen were in a difficult position because they did not have other resources. The *bourgmestre* unsuccessfully went to look for reinforcements.[1081]

850. The policemen tried to convince the attackers that bloodshed was unnecessary and attempted to protect the women and children. The mothers and children had gathered in the meeting hall of the *commune* office and the policemen were positioned in front of the office. Some of the attackers were slightly above the *commune* office, others were on the field in front of the office and some were in the woods above the office.[1082]

851. Shots were fired into the air, which helped repel the attackers. The policemen, unable to stop the attacks by themselves, unsuccessfully requested reinforcements. The attackers came from behind the policemen, killed refugees and immediately left the premises. Refugees were also wounded and the attackers stole cattle before they fled.[1083]

852. At around 2.00 p.m., a person named Kamali, who used to live in Kigali, asked a policeman to meet him on the road. The policeman told Kamali that the situation was serious. Kamali gave the policeman a grenade which the policeman subsequently lobbed into the crowd of refugees. Some were wounded and one person died. Aside from the policeman who threw the grenade, none of the policemen turned against the refugees.[1084]

[1079] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 11-12 (ICS)).
[1080] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 p. 12 (ICS)).
[1081] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 12-13 (ICS); T. 19 September 2007 p. 3).
[1082] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 p. 13 (ICS)).
[1083] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 13-14 (ICS); T. 19 September 2007 p. 19 (ICS)).
[1084] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 p. 18; T. 18 September 2007 pp. 13-14 (ICS)).

853. Witness BCB acknowledged that Modeste Kamanzi accused him at *Gacaca* of locking up the refugees. The witness explained that if it was his intention to lock up the refugees, then he would not have saved some of them.[1085]

854. Father Lerusse returned to the *commune* office around 4.00 p.m. Father Lerusse said he wanted to take the refugees to a secure location and the policemen assisted him. Shortly thereafter, a vehicle of soldiers arrived, including Father Rukundo from Kanyanza, who was wearing a military uniform. He arrived with no more than five people in a Hilux vehicle. The witness later stated that they were *gendarmes*. Two hundred metres away, Father Rukundo asked the attackers to gather all their traditional weapons and put them in the vehicle. Father Rukundo threw them into the vehicle and pushed them back on their way toward Ruhengeri. When Father Rukundo's vehicle arrived, the assailants retreated. The situation changed significantly. Father Rukundo subsequently left the location and did not return. Once Fathers Lerusse and Rukundo arrived, no one shot at the refugees.[1086]

855. No more than 50 refugees remained at the *commune* office. At least five people were wounded. The *bourgmestre* arrived in the evening and said he was going to look for a vehicle to take the wounded to the clinic, as he had also done in the morning.[1087]

3.5.2.3 Deliberations

856. The Chamber recalls that it has considered the Defence submission that Witnesses CNAI, CNAX, CNAY and CNAF fabricated their evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of these witnesses' testimony (3.2.5).

3.5.2.3.1 Attack on 11 April 1994

857. Prosecution Witnesses CNAY and CNAF testified that an attack on the Nyabikenke *commune* office occurred on 11 April 1994. Witness CNAY was the only eyewitness to this attack and the only witness to testify as to Nzabonimana's presence and participation in the attack.

858. The Chamber notes that the Prosecution presented contradictory evidence regarding Nzabonimana's whereabouts on the afternoon of 11 April 1994. Whereas Witness CNAY placed Nzabonimana at the *commune* office at approximately 3.30 p.m. on this date, Witness CNR1 testified that on 11 April 1994, Nzabonimana went to Gitarama to attend a meeting held at Electrogaz, and that he and Nzabonimana left for Kigali at around 3.00 p.m.[1088] The two narratives presented by Witnesses CNAY and CNR1 are irreconcilable. The Chamber further notes that in its Closing Brief, the Prosecution does not submit that an attack on the *commune* office occurred on 11 April 1994.

[1085] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 19 September 2007 p. 27 (ICS)).
[1086] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 17-18; T. 18 September 2007 pp. 14-16 (ICS); T. 19 September 2007 pp. 8, 11 (ICS)).
[1087] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 17-19).
[1088] T. 24 November 2009 pp. 53-54 (ICS) (Witness CNAY); T. 6 May 2011 p. 45 (ICS) (Witness CNR1).

859. Other Prosecution witnesses testified that no attacks on the *commune* office occurred on 11 April 1994. Witness CNAX fled to the office on 11 April 1994.[1089] On that day, policemen guarded the office and refugees continued to arrive after Witness CNAX.[1090] Witness CNAX remained at the office and stated that as of 14 April 1994, the *commune* office had yet to be attacked.[1091] Although Witness CNAI did not arrive at the office until 13 April 1994, he confirmed that no attacks on the *commune* office occurred prior to the attacks on the night of 14 to 15 April 1994.[1092] The Chamber considers that had an attack occurred on 11 April 1994, Witnesses CNAX and CNAI would have known about it. The Chamber also notes that of the four Prosecution witnesses who testified as to the attacks, only Witness CNAY placed Nzabonimana at the scene of the attack.

860. Defence witnesses also testified that no attacks occurred on 11 April 1994. Witness T24 testified that people began arriving at the *commune* office on the morning of 11 April 1994. He denied that there was an attack on this day.[1093] Witness T28 testified that insecurity prevailed in the *commune* on 11 April 1994 but did not mention attacks at the *commune* office on this date.[1094] Witness T31 testified that he learned of killings in the *commune* on 11 April 1994, and that people sought refuge at the Nyabikenke *commune* office. He did not testify to an attack on 11 April 1994 at the *commune* office. He testified that killings began on 10 April 1994 in Kigali *cellule*. He also did not testify to killings on this date at the Nyabikenke *commune* office.[1095] Neither Witness T193 nor Ndayisaba referred to any attacks on the *commune* office on this date. Witness BCB stated that nothing in particular occurred on that day except the influx of refugees.[1096]

861. Considering the totality of the evidence, and in particular the contradictory nature of the Prosecution evidence regarding the whereabouts of Nzabonimana and the events at the *commune* office on 11 April 1994, the Chamber concludes that the Prosecution has not proven beyond a reasonable doubt that an attack on the *commune* office occurred on 11 April 1994 or that Nzabonimana was present at such an attack.

3.5.2.3.2 Attempted Attack on 13 April 1994

862. Prosecution and Defence witnesses agreed that an attempted attack upon the Nyabikenke *commune* office occurred on 13 or 14 April 1994, and that *commune* authorities successfully repelled the attack before it reached the office.

863. Witness CNAX testified that assailants from Nzabonimana's *secteur* planned to attack the *commune* office on 13 April 1994. *Commune* police and refugees fought back at Nyarukombe forest. Witness CNAX's neighbour, Gahinda, was shot and killed.[1097] Witness CNAI provided hearsay evidence of an attempted attack on the *commune* office that occurred on

[1089] T. 23 November 2009 p. 59; T. 24 November 2009 pp. 11, 15 (ICS) (Witness CNAX).
[1090] T. 24 November 2009 p. 15 (ICS) (Witness CNAX).
[1091] T. 24 November 2009 p. 33 (ICS) (Witness CNAX).
[1092] T. 26 November 2009 pp. 61-63; T. 27 November 2009 p. 12 (ICS) (Witness CNAI).
[1093] T. 26 April 2010 pp. 48-49 (ICS) (Witness T24).
[1094] T. 2 June 2010 pp. 27-28 (ICS) (Witness T28).
[1095] T. 3 May 2010 p. 64 (ICS); T. 4 May 2010 p. 45 (ICS) (Witness T31).
[1096] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 p. 6).
[1097] T. 24 November 2009 pp. 31-32 (ICS) (Witness CNAX).

14 April 1994. Like Witness CNAX, Witness CNAI testified that the assailants who attempted the attack were from Kavumu *secteur*. *Commune* policemen and Witness T24 repelled the attack at Rubanga.[1098] Witnesses CNAY and CNAF provided hearsay evidence that there were several attacks on the *commune* office after 11 April 1994.[1099]

864. Defence witnesses also testified as to an attempted attack on the *commune* office. Witness T24 stated that on 13 April 1994, he and *commune* policemen repelled an attack at the Nyagahondo forest by assailants armed with clubs and other traditional weapons. Two people were killed, and others wounded.[1100] Witness T28 stated that he, along with Witness T24 and *commune* policemen, repelled assailants who were armed with clubs, spears and machetes at Nyagahondo forest. Those countering the assailants fired their weapons, killing an assailant named Célestin Gahinda.[1101] Witness T193 testified that one person was killed on the morning of 13 April 1994 when attacks were launched on the witness's hill. Along with Witness T24, Witness T193 and other members of the population fought back the attackers.[1102] Ndayisaba provided hearsay evidence that on the Wednesday after the death of the President, assailants were preparing an attack on the *commune* office from Nyagahondo Hill. He also testified that Witness T24 asked a policeman to fire a shot in order to stop the assailants. The policeman shot one person and wounded another in the hand.[1103] Witness T31 testified that on 13 April 1994, Witness T24 intercepted assailants headed for the *commune* office to attack the refugees. One of the assailants was shot dead and another was injured in the hand.[1104] Witness BCB confirmed that on 13 April 1994, the *bourgmestre*, three policemen and members of the population repelled attackers at Rubanga. Two attackers died and two were wounded.[1105]

865. The Chamber notes minor variations in the witnesses' testimony regarding the precise date, location and participants in the attempted attack on the *commune* office. However, based on the overwhelmingly consistent accounts of the Prosecution and Defence witnesses, the Chamber concludes that the above witnesses testified to the same attempted attack on the *commune* office. The Chamber considers that the inconsistencies are minor and may be explained by the significant passage of time since the events.

866. The Chamber recalls that a Trial Chamber may choose to accept some parts of a witness's testimony while rejecting others (2.7.1). Bearing this in mind, the Chamber notes that Witnesses CNAX, T24, T28, T193 and Ndayisaba all placed the attempted attack on 13 April 1994. As for the location where the attack was repelled, the Chamber accepts Witness T24's account of the location, given the role he played in repelling the attack and which was corroborated by both Prosecution and Defence witnesses. The Chamber therefore concludes that

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[1098] T. 27 November 2009 pp. 13-14 (ICS) (Witness CNAI). The Chamber notes the transcripts spell the location as "Rugabana" and "Rugabano." Both the French and English transcripts provide the same divergence. For the purposes of this Judgement, the Chamber considers the two to be one and the same place and that the definitive spelling to be "Rugabana."

[1099] T. 24 November 2009 pp. 54, 56 (ICS); T. 25 November 2009 pp. 22-24 (ICS) (Witness CNAY); T. 16 November 2009 pp. 50-51 (ICS) (Witness CNAF).

[1100] T. 26 April 2010 p. 52 (ICS); T. 27 April 2010 p. 41 (ICS) (Witness T24).

[1101] T. 2 June 2010 pp. 37-38 (ICS) (Witness T28).

[1102] T. 9 March 2011 pp. 35-36 (ICS) (Witness T193).

[1103] T. 28 March 2011 pp. 7-8 (Ndayisaba).

[1104] T. 3 May 2010 p. 65 (ICS) (Witness T31).

[1105] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 7-8).

an attack was attempted upon the Tutsis seeking refuge at the Nyabikenke *commune* office on 13 April 1994. Witness T24 and *commune* policemen repelled the attack at Nyagahondo forest before it reached the *commune* office. As a result of the counter-attack one of the assailants, Gahinda, was killed and others were injured. The refugees were unharmed.

3.5.2.3.3 Cyayi Centre Meeting

867. Witnesses CNAI and CNAX both sought refuge at the Nyabikenke *commune* office. The Chamber notes that Defence Witness T150 saw Witness CNAI taking refuge at the *commune* office.[1106] Witnesses CNAI and CNAX each testified that they were present at Cyayi centre on the afternoon of 14 April 1994.[1107] Witness CNAI estimated that 200 to 300 metres separated the *commune* office from Cyayi centre.[1108] The Chamber notes that the Site Visit Report indicates that the approximate distance between Cyayi centre and the *commune* office was 250 to 300 metres.[1109]

868. Witness CNAI recounted that he was in the bar of Germain Karangwa at Cyayi centre prior to seeing Nzabonimana, and Witness CNAX stated that he had gone to Cyayi centre in search of food for his family.[1110] The Chamber notes that Defence Witness Ndayisaba corroborated the testimony of Witnesses CNAI and CNAX in this regard, stating that Germain Karangwa owned a business in Cyayi centre, and that people who wanted to comfort the refugees bought them banana beer from Karangwa's shop. Ndayisaba also testified that Tutsis seeking refuge at the *commune* office went to Cyayi.[1111]

869. Witnesses CNAI and CNAX each testified that on the afternoon of 14 April 1994, they saw Nzabonimana in the company of *gendarmes* at Cyayi centre, located near the *commune* office.[1112] Both witnesses testified that Nzabonimana encouraged the people present to prioritise killing Tutsis before taking their property.[1113] Witness CNAI stated that Isaac Kamali, Witness T193 and a Tutsi named Evariste Munyagatare were all present, in addition to Nzabonimana and the *gendarmes*.[1114] Witness CNAX stated that approximately 30 people were present, including Munyagatare.[1115]

870. Witness CNAI recounted that Nzabonimana specifically referred to the refugees at the *commune* office, saying: "I know that Hutus do not heed instructions. Do not continue to eat the cows of Tutsi who have sought refuge at the *communal* office. What really matters is not the cows; it is, rather, the owners of the cows that matter."[1116] Witness CNAX corroborated this

[1106] T. 19 October 2010 pp. 43-44 (ICS) (Witness T150).
[1107] T. 26 November 2009 p. 61 (Witness CNAI); T. 24 November 2009 p. 32 (ICS) (Witness CNAX).
[1108] T. 26 November 2009 pp. 61, 64; T. 27 November 2009 p. 46 (ICS) (Witness CNAI).
[1109] Chamber Exhibit 1 (Site Visit Report), p. 4.
[1110] T. 26 November 2009 p. 61 (Witness CNAI); T. 24 November 2009 p. 32 (ICS) (Witness CNAX).
[1111] T. 28 March 2011 pp. 7, 27, 31 (Ndayisaba).
[1112] T. 26 November 2009 pp. 60-61, 64-65 (Witness CNAI); T. 23 November 2009 pp. 60-61 (Witness CNAX).
[1113] T. 26 November 2009 p. 61 (Witness CNAI); T. 23 November 2009 pp. 60-63 (Witness CNAX).
[1114] T. 26 November 2009 pp. 61-62 (Witness CNAI).
[1115] T. 23 November 2009 pp. 60-61 (Witness CNAX).
[1116] T. 26 November 2009 p. 61 (Witness CNAI).

message, stating that Nzabonimana had told the people that Tutsis were to be killed before their property was taken.[1117]

871. Both witnesses also testified that Munyagatare then challenged Nzabonimana after he spoke.[1118] A *gendarme* then moved to confront Munyagatare.[1119] Witness CNAX recounted that Nzabonimana stopped the *gendarme*, saying that the Tutsis' time had not yet come, but that it would come soon.[1120]

872. The Chamber notes minor differences between the accounts of Witnesses CNAI and CNAX with regard to the events at Cyayi centre. However, the Chamber does not consider these differences to be material or to detract from the credibility of their accounts. The Chamber recalls that both witnesses were seeking refuge from the killings at the time they saw Nzabonimana. Given this context and the considerable passage of time since the events, it would be unreasonable to expect the witnesses to provide matching verbatim accounts of such details as to the number of people present and the exact words spoken by Nzabonimana and Munyagatare. The Chamber considers that Witnesses CNAI and CNAX provided internally credible and consistent accounts of the Cyayi meeting.

873. The Defence submits that Witness CNAI was not credible because his testimony differed from his previous statements.[1121] In his 24 September 1998 statement, Witness CNAI indicated that Nzabonimana arrived after Witness CNAI had already met Kamali. Furthermore, the number of *gendarmes* differed, Witness CNAI did not mention that Nzabonimana carried a gun and did not indicate that Nzabonimana explicitly referenced Hutus or Tutsis. His statement also indicated that after Evariste spoke, the *gendarme* accompanying Nzabonimana exited the vehicle in order to kill Evariste.[1122] In his 8 December 1998 statement, Witness CNAI indicated that Nzabonimana, Kamali and Witness T193 were engaged in conversation before Kamali asked Witness CNAI to approach. Nzabonimana then told Witness T193 to tell the population not only to eat the stolen cows but also to take care of the owners.[1123] In his 21 March 2002 statement, Witness CNAI said that two armed *gendarmes* were present and mentioned that Nzabonimana carried a long gun and spoke directly to Witness CNAI. Witness CNAI did not indicate that Munyagatare was present at Cyayi. Witness CNAI also recounted that Karangwa warned him of the impending attack on the *commune* office following a meeting of *Interahamwe* leaders at Remera centre.[1124] Witness CNAI explained that the differences between his statements and his testimony existed because the people who recorded his statements had made mistakes.[1125]

874. Having considered the statements of Witness CNAI in comparison with his testimony, the Chamber considers the discrepancies to be minor and that they do not impact Witness

[1117] T. 23 November 2009 p. 60 (Witness CNAX).
[1118] T. 26 November 2009 pp. 61, 64-65; T. 27 November 2009 pp. 28-30 (ICS) (Witness CNAI); T. 23 November 2009 pp. 60-61; T. 24 November 2009 pp. 32-33 (ICS) (Witness CNAX).
[1119] T. 26 November 2009 p. 65; T. 27. November 2009 pp. 28, 33 (ICS) (Witness CNAI); T. 23 November 2009 pp. 60-61; T. 24 November 2009 pp. 32-33 (ICS) (Witness CNAX).
[1120] T. 23 November 2009 pp. 60-61; T. 24 November 2009 pp. 32-33 (ICS) (Witness CNAX).
[1121] Defence Closing Brief, paras. 202-212.
[1122] Defence Exhibit 73A (Statement of Witness CNAI, 24 September 1998) (French).
[1123] Defence Exhibit 75A (Report of the Judicial Police, 8 December 1998) (French).
[1124] Defence Exhibit 74 (Statement of Witness CNAI, 21 March 2002).
[1125] T. 27 November 2009 pp. 21, 24, 28, 30-31 (ICS) (Witness CNAI).

CNAI's credibility as to the material facts of the allegation. In reaching this conclusion, the Chamber also notes that Witness CNAI was 70 years old when he testified before this Tribunal. Given the minor nature of the discrepancies, the witness's advanced age and the considerable passage of time between the 1994 events and his trial testimony, the Chamber considers that the discrepancies do not undermine the witness's credibility.

875. However, the Chamber notes one implausible aspect of Witness CNAI's testimony. Witness CNAI testified that he was related to Isaac Kamali and that they knew each other well.[1126] The Defence asserts that Kamali would have known that Witness CNAI was a Tutsi and therefore would not have called him over to listen to Nzabonimana's speech. At trial, Witness CNAI testified that Kamali did not know he was a Tutsi.[1127] While the Chamber does not believe Witness CNAI with regard to this aspect of his testimony, this does not undermine his credibility as a whole. The Chamber recalls that the evidence established the presence of other Tutsis at Cyayi, including Evariste Munyagatare and Witness CNAX. Even if Kamali knew Witness CNAI was a Tutsi, this does not lead to the conclusion that Witness CNAI was not present at Cyayi to witness Nzabonimana's speech and its aftermath.

876. The Defence submits that Witness CNAI was not credible when he testified that he sought refuge at the house of Germain Karangwa, and that he brought Munyagatare to Karangwa's bar, given that Karangwa was an *Interahamwe* who had threatened to attack him and the other refugees at the *commune* office.[1128] The Chamber notes, however, that Ndayisaba testified that those seeking refuge at the *commune* office went to Cyayi centre, and people who wanted to comfort the refugees bought them banana beer from Karangwa's shop.[1129] Given this evidence, the Chamber does not find Witness CNAI's testimony implausible in this regard.

877. Turning to Witness CNAX, the Chamber notes that the witness served 22 months in prison for the embezzlement of public funds, a crime unrelated to the genocide.[1130] The Defence raises purported inconsistencies between Witness CNAX's testimony and his 2008 statement.[1131] In his 2008 statement, the witness mentioned that on 14 April 1994 he saw Nzabonimana in the company of three *gendarmes* at Cyayi and did not indicate that Nzabonimana was in a car while he spoke. Witness CNAX also indicated that a *gendarme* jumped from the vehicle and grabbed Munyagatare for asking Nzabonimana if his utterances implied that he was delivering the Tutsis to the killers.[1132] Having reviewed Witness CNAX's statement in comparison with his trial testimony, the Chamber considers the discrepancies to be minor and not to impact Witness CNAX's credibility regarding the material facts of the allegation at hand, particularly given the considerable passage of time between the 1994 events and the witness's testimony.

[1126] T. 27 November 2009 pp. 33-34 (ICS) (Witness CNAI).
[1127] T. 27 November 2009 pp. 34-35 (ICS) (Witness CNAI).
[1128] Defence Closing Brief, paras. 212, 215.
[1129] T. 28 March 2011 pp. 7, 9, 22, 26-27, 31 (Ndayisaba).
[1130] T. 24 November 2009 pp. 38-39 (ICS) (Witness CNAX). *Kamuhanda*, Judgement (AC), para. 142 (a criminal conviction for an incident unrelated to the facts of the present case does not *per se* indicate that a witness lacks credibility but the Trial Chamber may take into account such a conviction in determining whether the witness is credible).
[1131] Defence Closing Brief, paras. 217-220.
[1132] Defence Exhibit 63 (Statement of Witness CNAX, 4 October 2008).

878. The Chamber notes that Witness CNAX claimed to be responsible for refugees at the *commune* office yet failed to warn them of an impending attack on the *commune* office following the meeting at Cyayi centre on 14 April 1994.[1133] Witness CNAX explained that he did not inform the refugees of the impending attack because they were frightened and he did not want to cause further insecurity among the refugees.[1134] The Chamber accepts this explanation as plausible.

879. Turning to the Defence evidence, the Chamber notes that all the Defence witnesses denied that the Cyayi meeting occurred.

880. Witness T24 testified that he passed through Cyayi centre on 14 April 1994 but did not notice any vehicles, and neither Nzabonimana nor Kamali were present.[1135] The Chamber recalls that the credibility of Witness T24's testimony was seriously undermined by his assertion that he lied to Prosecution investigators when giving his 2008 statement (3.2.3.2.2).

881. Furthermore, the Chamber notes that Witness T24 never specified at what time he passed by Cyayi centre on 14 April 1994 and also averred that he was "moving from one place to another" on that day.[1136] Witness T24 also admitted that information-gathering was difficult during the period in question.[1137] Given these factors, the Chamber considers the testimony of Witness T24 regarding what occurred at Cyayi centre on 14 April 1994 to be of limited probative value.

882. The Chamber recalls that Witness CNAI testified that both Witnesses T150 and T193 were present at Cyayi centre during the meeting on 14 April 1994. Witness T193 was convicted by a Rwandan court for his role in the genocide and was sentenced to nine years' imprisonment.[1138] The Chamber considers that given that both witnesses are implicated as being affiliated with Nzabonimana at Cyayi centre, they may have reason to distance themselves from this allegation.

883. Witness T150 testified that he neither saw nor heard of a meeting held at Cyayi *cellule* by Nzabonimana, and that no one mentioned the Cyayi meeting or Nzabonimana's words during the Cyayi *Gacaca* sessions.[1139] Witness T193 testified that on 14 April 1994, he passed through Cyayi centre at 2.00 p.m. but never saw Nzabonimana.[1140] Neither witness provided first hand testimony regarding what occurred at Cyayi centre at approximately 4.00 p.m. on 14 April 1994. The Chamber thus considers that the testimony of Witnesses T150 and T193 are of limited probative value.

884. Ndayisaba also testified that he had no knowledge of a meeting that Nzabonimana allegedly held at Cyayi centre, and that he never heard anyone speak of such a meeting.[1141]

[1133] T. 24 November 2009 pp. 29-30, 33 (ICS) (Witness CNAX).
[1134] T. 24 November 2009 p. 30 (ICS) (Witness CNAX).
[1135] T. 26 April 2010 p. 53 (ICS) (Witness T24).
[1136] T. 26 April 2010 p. 53 (ICS) (Witness T24).
[1137] T. 27 April 2010 pp. 32-33 (Witness T24).
[1138] Defence Exhibit 76B (Decision of the Gitarama First Instance Tribunal, 20 March 2003).
[1139] T. 19 October 2010 pp. 23-24 (ICS) (Witness T150).
[1140] T. 9 March 2011 pp. 15-16, 37 (ICS) (Witness T193).
[1141] T. 28 March 2011 p. 9 (Ndayisaba).

Ndayisaba further testified that a personality like Nzabonimana could not have passed through Cyayi centre without being noticed. If Nzabonimana had passed through Cyayi centre, he would have known about it because it was not far from his house.[1142] The Chamber notes, however, that by Ndayisaba's own admission, he remained in his house from 6 to 15 April 1994. His testimony therefore has limited probative value.

885. Witness T28 testified that he did not hear of a meeting at Cyayi centre on 14 April 1994 nor that Nzabonimana was present at the centre. The Chamber notes that Witness T28 acknowledged that he did not go to Cyayi centre on 14 April 1994.[1143] The Chamber therefore considers Witness T28's testimony to have little probative value regarding what occurred at Cyayi centre on the afternoon of 14 April 1994.

886. Witness BCB testified that there was "nothing to report" on the morning of 14 April 1994.[1144] The Chamber notes that the Prosecution evidence establishes that the meeting took place in the afternoon of 14 April 1994, and therefore does not find Witness BCB's evidence to be probative as to whether the meeting occurred.

887. Having considered the totality of the evidence, the Chamber concludes that the Prosecution has proven beyond a reasonable doubt that on the afternoon of 14 April 1994, Nzabonimana held a meeting at Cyayi *cellule,* Kiyumba *secteur*, Nyabikenke *commune*, Gitarama *préfecture*, located approximately 250 to 300 metres from the *commune* office. Approximately 30 people were present at Cyayi centre, including Witness CNAI, Witness CNAX, Witness T193, Isaac Kamali and a Tutsi named Evariste Munyagatare. At this meeting, Nzabonimana said to those gathered: "I know that Hutus do not heed instructions. Do not continue to eat the cows of Tutsi who have sought refuge at the *communal* office. What really matters is not the cows; it is, rather, the owners of the cows that matter." Evariste Munyagatare challenged Nzabonimana after he spoke, and Nzabonimana said that their time had not yet come, but that it would come soon.

3.5.2.3.4 Attack on the Night of 14 to 15 April 1994

888. Prosecution and Defence witnesses provided evidence that a successful attack upon the Nyabikenke *commune* office occurred on the night of 14 to 15 April 1994.

889. The Chamber recalls that Witnesses CNAI and CNAX both sought refuge at the *commune* office. Both witnesses provided eyewitness testimony of an attack on the office during the night of 14 to 15 April 1994. Witness CNAI testified that the attackers included Hutu assailants and *commune* policemen. Witness CNAX gave corroborating evidence that *commune* police participated in the attack. Witnesses CNAI and CNAX recounted that the assailants used grenades, firearms and traditional weapons in the attack.

890. Furthermore, Witnesses CNAI and CNAX provided consistent evidence that the assailants killed and wounded refugees during the course of the attack. Witness CNAI saw bodies scattered in the inner courtyard of the *commune* office. Others were killed as they

[1142] T. 28 March 2011 pp. 26-27 (Ndayisaba).
[1143] T. 2 June 2010 p. 40 (ICS) (Witness T28).
[1144] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 p. 8).

attempted to flee. He provided the names of four of those killed: Léocadie, Cansilde, Bayibayi and Nyirabahima.[1145] Witness CNAX testified that a number of Tutsis were killed during the attack and others were wounded. He spoke of seeing bodies inside the *commune* office.[1146]

891. In addition to the evidence of Witnesses CNAI and CNAX, Witnesses CNAY and CNAF provided general hearsay testimony that attacks on the *commune* office occurred after 11 April 1994.[1147]

892. The Chamber notes that during his examination-in-chief, Witness CNAI testified that the attack occurred "on the 14th of April at 3 a.m." The Chamber recalls that Witness CNAI stated that he witnessed the meeting at Cyayi centre on the afternoon of 14 April 1994 and that he returned to Cyayi centre at 8.00 p.m. that evening to buy cigarettes. Witness CNAI explained that "on that day it had been a calm day" in Cyayi and that while violence had begun in other areas, "Cyayi continued to be calm." According to Witness CNAI it was "only on the 14th and the 15th that the Cyayi *cellule* went up with an uprising." Witness CNAI recounted that while in Cyayi that evening he saw people were preparing an attack, "and it didn't take long to be launched."[1148] Reading his testimony as a whole, it is clear that Witness CNAI's testimony describes the attack on the night of 14 to 15 April 1994.[1149]

893. The Defence submits that Witness CNAI provided different dates for the attack in his statements and his testimony.[1150] Having reviewed Witness CNAI's 1998 and 2002 statements, and considering the Chamber's conclusion regarding his testimony as to the date of the attack, the Chamber concludes that Witness CNAI's testimony and statements are not inconsistent.[1151]

894. The Defence asserts that Witness CNAX omitted reference to the early morning attack in his 2008 statement.[1152] The Chamber notes, however, that the Defence did not confront Witness CNAX with this alleged omission during cross-examination. Furthermore, the Chamber notes that Witness CNAX testified that the 3.00 a.m. attack on the *commune* office continued into the day and that there was a large-scale attack at 10.00 a.m.[1153] The Chamber finds his testimony on this point to be internally consistent and credible.

895. Defence witnesses confirmed that an attack occurred on the *commune* office on the night of 14 to 15 April 1994 and that refugees were killed in the attack. Witness T28 was present at the scene and testified that the attack took place at 3.00 a.m. He corroborated the testimony of both

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[1145] T. 26 November 2009 p. 68 (Witness CNAI).
[1146] T. 24 November 2009 p. 35 (ICS) (Witness CNAX).
[1147] T. 25 November 2009 pp. 22-23 (ICS) (Witness CNAY); T. 16 November 2009 pp. 50-51 (ICS); T. 17 November 2009 p. 39 (ICS) (Witness CNAF).
[1148] T. 27 November 2009 pp. 45-46 (ICS) (Witness CNAI).
[1149] In reaching this conclusion, the Chamber also notes that Witness CNAI testified that Nzabonimana "is the one who ordered the attackers to kill the Tutsis who had sought refuge at the *communal* office. If the [M]inister had wanted to save the refugees, he would not have made the type of statements he made in public. He made those statements in full daylight." (T. 26 November 2009 p. 69 (Witness CNAI)).
[1150] Defence Closing Brief, para. 265.
[1151] Defence Exhibit 73A (Statement of Witness CNAI, 24 September 1998) (French) (attack occurred the night of 14 April 1994); Defence Exhibit 74 (Statement of Witness CNAI, 21 March 2002) (attack occurred at 3.00 a.m. the morning following 14 April 1994).
[1152] Defence Closing Brief, para. 258; Defence Exhibit 63 (Statement of Witness CNAX, 4 October 2008).
[1153] T. 23 November 2009 p. 59 (Witness CNAX).

Witnesses CNAI and CNAX that *commune* policemen were present during the attack. Witness T28 heard the attackers shouting "*Inyenzi, Inkotanyi*" which referred to the Tutsi refugees. While Witness T28 did not identify the assailants, he testified that three grenades were thrown in the attack, including one thrown through a window of the *commune* office.[1154]

896. Witness T24 was not present on the scene, but was told the following morning that an attack occurred during the night. He learned that two grenades were thrown and that the assailants also used traditional weapons.[1155] Ndayisaba heard explosions in the night from his home, located near the *commune* office. He later learned that the explosions emanated from grenades and that there had been an attack on the *commune* office.[1156] Witness T193 also confirmed that attacks occurred on 14 and 15 April 1994. Witness T31 testified that there were waves of attacks upon the office and acknowledged that he was convicted by a *Gacaca* court of having participated in them.[1157] Witnesses T28 and T24 confirmed that refugees were killed and wounded during the overnight attack.[1158]

897. Witness BCB confirmed that an attack was launched at 3.00 a.m. during the night of 14 to 15 April 1994. He confirmed that the attackers used bladed weapons and that *commune* policemen fired shots into the air and the assailants dispersed. He affirmed that two people died that night, an elderly woman and a man, and there were wounded persons on the field close to where the livestock were. The attackers threw two grenades.[1159] He also corroborated Witnesses CNAI and CNAX's testimony that *commune* policemen were present during the attack and that grenades were used.

898. Defence Witnesses T24 and T28 stated that the attack on the *commune* office came as a surprise. Witness T24 stated that following the 3.00 a.m. attack on 15 April 1994, the surviving refugees prepared themselves for subsequent attacks. He posited that the refugees would have learned if an attack on the *commune* office was ordered at Cyayi centre and they would have prepared in a similar manner for the preceding, night time attack.[1160]

899. Evidence presented at trial contradicted the Defence claim that the attacks on the *commune* office would have come as a surprise. The Chamber recalls that there had already been an attempted attack on the *commune* office on 13 or 14 April 1994, which Witness T24 and *commune* policemen repelled before it reached the *commune* office. Witness T31 testified that the night after the failed attack the attackers falsely announced that the *bourgmestre* had been killed in order to rally and attack the *commune* office.[1161] Witness T193 stated that on 13 April 1994, he along with two *commune* policemen, travelled through Cyayi centre to the *commune* office in order to warn the authorities and refugees of an impending attack on the *commune* office.[1162] This evidence confirms that those at the *commune* office and in the surrounding

[1154] T. 2 June 2010 pp. 39-41, 47-48, 51-52 (ICS) (Witness CNAX).
[1155] T. 26 April 2010 pp. 52-55 (ICS) (Witness T24).
[1156] T. 28 March 2011 pp. 9, 25 (Ndayisaba).
[1157] T. 9 March 2011 pp. 22-23 (Witness T193); T. 3 May 2010 p. 65 (ICS) (Witness T31).
[1158] T. 26 April 2010 pp. 52-55 (ICS) (Witness T24); T. 2 June 2010 pp. 40-41 (ICS) (Witness T28).
[1159] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 8-9; T. 19 September 2007 pp. 19-20).
[1160] T. 26 April 2010 p. 53 (ICS) (Witness T24).
[1161] T. 3 May 2010 p. 65 (ICS) (Witness T31).
[1162] T. 9 March 2011 pp. 35-36, 39, 41 (ICS) (Witness T193).

community were aware that the *commune* office was a target. The Chamber thus does not find plausible the Defence contention that the 15 April 1994 attack upon the *commune* office at 3.00 a.m. would have come as a surprise to the refugees.

3.5.2.3.4.1 Perpetrators

900. The parties contest the involvement of *commune* policemen in the 3.00 a.m. attack on the *commune* office. Prosecution Witnesses CNAI and CNAX both testified that they saw *commune* policemen take part in the attack.[1163] Defence Witness T28, also an eyewitness, denied that *commune* policemen were involved. However, the Chamber notes that Witnesses T28 and BCB corroborated the Prosecution witnesses' testimony that *commune* policemen were present at the scene of the attack.[1164] The Chamber notes that while Witness T28 was not personally implicated in the attack, he was indirectly implicated. The Chamber considers that, consequently, Witness T28 may have had a motive to distance himself from the allegation.

901. Witness T28 stated that he could not identify the assailants because it was raining heavily on the night of the attack.[1165] The Chamber notes that this testimony was uncorroborated. No other witnesses testified that it was raining heavily on the night of the attack. Witness CNAI testified that he was able to identify the attackers because of the bright moonlight.[1166] Based on the foregoing, the Chamber does not find Witness T28 to be a reliable witness as to the identity of the assailants involved in the attack on the night of 14 to 15 April 1994.

902. Considering the foregoing, the Chamber finds that Witnesses CNAI and CNAX provided consistent, credible and reliable evidence that *commune* policemen took part in the night time attack on the *commune* office.

903. The parties also contest whether Witness T193 was present during the attacks. The Chamber recalls that Witness T193 was also present at the Cyayi meeting on 14 April 1994. Witness CNAI testified that he saw Witness T193 armed with a machete, and was the sole witness to testify as to Witness T193's presence during the attack.[1167] Witness T193 denied that he was present. As he is directly implicated in the attack, the Chamber considers that Witness T193 may have had a motive to distance himself from the allegation.

904. The Chamber notes that Witness CNAI also testified at Witness T193's trial before the Gitarama First Instance Tribunal. In that trial, Witness CNAI testified that he saw Witness T193 carrying a machete during the attack but that he did not attack anyone with the machete. Witness CNAI also testified that Witness T193 threw grenades at the *commune* office, but that he was not an eyewitness to this occurrence. The First Instance Tribunal acquitted Witness T193 of having played a role in the attack on the *commune* office.[1168]

[1163] T. 26 November 2009 p. 69; T. 27 November 2009 p. 44 (ICS) (Witness CNAI); T. 24 November 2009 pp. 28, 30 (ICS) (Witness CNAX).
[1164] T. 2 June 2010 pp. 40, 47 (ICS) (Witness T28); Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 12-13 (ICS); T. 19 September 2007 p. 3).
[1165] T. 2 June 2010 pp. 39-40, 48, 51-52 (ICS) (Witness T28).
[1166] T. 26 November 2009 pp. 66-67 (Witness CNAI).
[1167] T. 27 November 2009 p. 45 (Witness CNAI).
[1168] Defence Exhibit 76B (Decision of the Gitarama First Instance Tribunal, 20 March 2003), paras. 45-46, 103-104.

905. The Chamber notes that Witness CNAI provided uncorroborated testimony as to the presence of Witness T193. The Chamber considers that the conflicting accounts between Witness CNAI's testimony at Witness T193's trial in Gitarama and his testimony before this Tribunal raise a doubt as to his allegation that Witness T193 participated in the attack.

906. Before the First Instance Tribunal, Witness CNAI specified that he saw Witness T193 with a machete but that he did not attack anyone with the machete. Instead, Witness T193 threw grenades at the *commune* office.[1169] In his testimony before this Tribunal, Witness CNAI identified Witness T193 as one of the attackers and said he was armed with a machete. Witness CNAI did not mention that Witness T193 threw grenades. In cross-examination, Witness CNAI questioned the authenticity of the Gitarama court judgement and denied that he said that Witness T193 threw grenades.[1170] The Chamber does not find this explanation of the discrepancy to be sufficient.

907. Furthermore, the Chamber observes that the conditions at the time of the attack would have rendered the identification of particular assailants difficult. Even if the attack occurred in bright moonlight, as testified to by Witness CNAI, the Chamber considers the identification of individual assailants would have been difficult.

908. Given the contradictions in Witness CNAI's accounts as to the participation of Witness T193 in the attack, and the difficult conditions for identification, the Chamber does not find that the evidence proves that Witness T193 carried a machete and participated in the attack.

909. Witness CNAI and Witness T31 named other attackers.[1171] The Chamber cannot verify the exact identity of these assailants due to the lack of evidence provided in this regard, and therefore cannot make a ruling as to their participation in this attack. Other Defence witnesses implicated unidentified assailants in the attack.[1172]

910. Based on the foregoing, the Chamber concludes that the evidence established beyond a reasonable doubt that the perpetrators of the 3.00 a.m. attack were comprised of *commune* policemen and Hutu civilians.

3.5.2.3.4.2 Weapons

911. The Prosecution and Defence witnesses provided consistent evidence that the attackers used grenades and traditional weapons. Prosecution Witnesses CNAI and CNAX both agreed that the assailants were armed with grenades and firearms. Witness CNAX stated that the assailants and refugees threw stones at each other.[1173] Defence Witnesses T24, T28, Ndayisaba and BCB all agreed that grenades were used during the attacks. Witness T24 affirmed that the

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[1169] Defence Exhibit 76B (Decision of the Gitarama First Instance Tribunal, 20 March 2003), paras. 45-46.
[1170] T. 26 November 2009 pp. 66-67; T. 27 November 2009 pp. 43-45 (ICS) (Witness CNAI).
[1171] T. 26 November 2009 pp. 66-67 (Witness CNAI) (naming Claver Kanyamibwa; Witness T31; Médal Ndakaza; Mathieu, a.k.a. Ndabarasa; Alexi Ndayisaba; Cyprien Zihuramye; Thomas Habiyambere; and Kizito); T. 3 May 2010 p. 65 (Witness T31) (the most notorious assailants, Habimana, Silas Mulinda and Neretse, confessed to the crimes they committed at the *commune* office).
[1172] T. 26 April 2010 p. 55 (ICS) (Witness T24); T. 2 June 2010 pp. 51-52 (ICS) (Witness T28).
[1173] T. 26 November 2009 p. 66; T. 27 November 2009 p. 45 (Witness CNAI); T. 23 November 2009 p. 60 (Witness CNAX).

assailants carried traditional weapons and Witness BCB affirmed that they used bladed weapons.[1174]

912. The Chamber observes that of the Defence witnesses, only Witnesses T28 and BCB were present during the attack. Their testimony corroborated the testimony of the Prosecution witnesses as to the use of grenades. Therefore, the Chamber concludes that the assailants were armed with firearms, grenades and traditional weapons, namely machetes and stones.

3.5.2.3.4.3 Conclusion

913. Having considered the foregoing, the Chamber finds that the Prosecution proved beyond a reasonable doubt that an attack was perpetrated on the *commune* office on the night of 14 to 15 April 1994, between 3.00 and 4.00 a.m., by Hutu civilians and *commune* policemen, armed with firearms, grenades and traditional weapons.

3.5.2.3.5 15 April 1994 Attacks

914. Prosecution and Defence witnesses provided consistent evidence that attacks on the *commune* office took place during the day on 15 April 1994.

915. Witness CNAX testified that at around 10.00 a.m. a large-scale attack occurred, where assailants and *Interahamwe* attacked the refugees with grenades, firearms and traditional weapons. At around 2.00 p.m., the refugees tried to defend themselves.[1175] At some point in the afternoon, Father Lerusse came to the *commune* office and advised the refugees to flee as large-scale attacks were imminent.[1176] Witness CNAX saw a policeman throw a stone at a man named Mazuru and kill him.[1177] Witness CNAX saw approximately 45 to 60 dead bodies as he fled the *commune* office.[1178] Witness CNAI was not an eyewitness but stated that at 10.00 a.m. he saw people on a hill preparing to launch another assault on the office. He later learned that an attack was launched at 2.00 p.m.

916. From his house, Ndayisaba heard a noise at 9.00 or 10.00 a.m. He then saw civilians armed with traditional weapons attacking the *commune* office with stones. He denied that firearms or grenades were used in this attack.[1179] Witnesses T24 and T28 testified that they were both present at the *commune* office in the morning. However, both witnesses left the *commune* office in the morning to take wounded refugees to the health centre. Although Witness T28 did not provide first-hand testimony of a morning attack, he testified that around 2.00 p.m., Father

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[1174] T. 26 April 2010 pp. 53-54 (ICS) (Witness T24); T. 2 June 2010 pp. 39-40, 48 (ICS) (Witness T28); T. 28 March 2011 p. 25 (Ndayisaba); Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 8-9; T. 19 September 2007 pp. 19-20).

[1175] T. 23 November 2009 p. 59; T. 23 November 2009 p. 67 (Witness CNAX) (French) ("*Vers 2 heures de l'après-midi, ceux qui étaient encore en vie essayaient de se défendre toujours, et, à un moment donné, nous... le prêtre qui était curé à la paroisse de Kanyanza nous a donné un conseil — je parle de moi-même et de quelques autres qui étaient encore en vie — nous avons donc pris la décision de nous enfuir. J'étais l'une des personnes qui faisaient face aux assaillants.*").

[1176] T. 23 November 2009 p. 59; T. 24 November 2009 pp. 29-30, 36 (ICS) (Witness CNAX).

[1177] T. 24 November 2009 pp. 30-31, 35 (ICS) (Witness CNAX).

[1178] T. 23 November 2009 pp. 59-60; T. 24 November 2009 pp. 28-29, 36 (ICS) (Witness CNAX).

[1179] T. 28 March 2011 pp. 10-11, 26 (Ndayisaba).

Lerusse informed him that people at the *commune* office were being stoned and were close to being killed.[1180]

917. The Defence asserts that it is implausible for Witness CNAI to have experienced the 3.00 a.m. attack and then to have returned to the *commune* office the next morning.[1181] However, the Chamber recalls that Witness CNAI testified that he saw Witness T24 at the office in the morning, a fact which Witnesses T24 and T28 corroborate. Witness CNAI also testified that he saw an ambulance take the wounded to the health centre. Again, Witnesses T24, T28 and BCB all provided corroborating evidence that they took the wounded from the *commune* office to the hospital.[1182] Given these facts, the Chamber concludes that Witness CNAI was credible when he testified that he returned to the *commune* office after the night time attacks.

918. The Defence challenges the credibility of Witness CNAX's testimony on the basis that he testified that he only saw Father Lerusse at the *commune* office on 15 April 1994, whereas Father Lerusse went there on a "daily basis." In support of this proposition, the Defence cites Defence Exhibit 62, which contains excerpts of Father Lerusse's testimony from the *Rukundo* trial.[1183]

919. The Chamber notes that the Defence, in its Closing Brief, treats Defence Exhibit 62 as substantive evidence.[1184] The Chamber recalls that the exhibit was not introduced into evidence under Rule 92*bis* of the Rules and the Prosecution was not afforded the opportunity to cross-examine Father Lerusse. Rather the Defence introduced this exhibit for the purposes of cross-examining and challenging the credibility of Witness CNAX. As such, the exhibit has "very little probative value" (2.3.2). However, in the interests of justice, the Chamber will consider the substantive aspects of Father Lerusse's testimony as contained in Defence Exhibit 62, and insofar as the Exhibit impacts the credibility of Witness CNAX.[1185]

920. The Chamber notes that Father Lerusse never testified that he went to the *commune* office on a daily basis, and provided only a vague picture of when he went there. He testified that he dropped a few people off at the *commune* office on "Tuesday" without indicating the date. He further testified that he could not remember the precise dates he went to the *commune* office and that he went there "a number of times" to assist the refugees and give them food.[1186] When confronted with Father Lerusse's testimony, Witness CNAX explained that he may have been out looking for food when Father Lerusse came to the *commune* office on days other than 15

[1180] T. 26 April 2010 pp. 53-54 (ICS) (Witness T24); T. 2 June 2010 pp. 40-42 (ICS) (Witness T28).
[1181] Defence Closing Brief, para. 267.
[1182] T. 26 November 2006 pp. 67, 72 (Witness CNAI); T. 26 April 2010 pp. 53-54 (ICS) (Witness T24); T. 2 June 2010 pp. 40-41 (ICS) (Witness T28); Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 pp. 17-19).
[1183] Defence Exhibit 62 (Excerpts of Father Lerusse's Testimony in *Rukundo* I, 12 and 13 September 2007).
[1184] Defence Exhibit 62 (Excerpts of Father Lerusse's Testimony in *Rukundo* I, 12 and 13 September 2007); Defence Closing Brief, paras. 280-281.
[1185] *Bagosora & Nsengiyumva*, Judgement (AC), para. 484, citing *Simba*, Judgement (AC), para. 20 ("The Appeals Chamber [...] agrees with the Trial Chamber's reasoning that, as a matter of law, statements of non-testifying individuals used during cross-examination may be admitted into evidence, even if they do not conform to the requirements of Rules 90(A) and 92*bis* of the Rules, provided the statements are necessary to the Trial Chamber's assessment of the witness's credibility and are not used to prove the truth of their contents.").
[1186] Defence Exhibit 62 (Excerpts of Father Lerusse's Testimony in *Rukundo* I, 12 and 13 September 2007).

April 1994.[1187] The Chamber finds this to be a reasonable explanation, particularly given the vagueness of Father Lerusse's testimony as to when exactly he went to the *commune* office.

921. The Defence also cites Father Lerusse's *Rukundo* testimony to challenge the Prosecution evidence that *commune* police participated in the 15 April 1994 daytime attacks and that firearms and grenades were used in the attacks.[1188]

922. The Chamber notes that the excerpts of Father Lerusse's *Rukundo* testimony indicate that he was not present at the *commune* office for most of the day on 15 April 1994. He stated that he went to the *commune* office after mass, around 8.00 or 9.00 a.m. He then left at an undisclosed time and only returned to the scene between 4.30 and 5.00 p.m.[1189] Father Lerusse therefore was not necessarily present during the attacks witnessed by Witnesses CNAX and Ndayisaba and was not in a position to know who participated in those attacks.

923. The Defence submits that Father Lerusse was "adamant" that two *commune* policemen defended the *commune* office when he returned in the afternoon. Witness CNAX testified that he saw *commune* policemen aiming their guns at the approaching vehicle of Father Rukundo. Furthermore, Witness CNAX testified that he saw a policeman take his rifle, hang it across his shoulder and throw a stone at Mazuru's chest and kill him.[1190] Father Lerusse saw two *commune* policemen aim their guns and prevent an attack. However, he also stated that he lost sight of the *commune* policemen.[1191] Given Father Lerusse's admission that he lost sight of the *commune* policemen, the Chamber does not consider that he was able to provide a reliable account of the *commune* policemen's activities that day. The Chamber recalls its finding that *commune* policemen participated in the attack on the night of 14 to 15 April 1994 (3.5.2.3.4.1).

924. Father Lerusse further testified that he did not hear a single gunshot or grenade explosion during the afternoon. However, the Chamber notes that Father Lerusse also testified that the attackers had thrown grenades in the morning and that "they didn't just come from the skies." This corroborates Witness CNAX's account that grenades were thrown during the daytime attacks. Father Lerusse also admitted that when he was present in the afternoon he was focused on getting people out of the building, but he could not recall any firing.[1192] Furthermore, Witness T24 learned that Father Lerusse had barely escaped a grenade attack. In addition, Ndayisaba testified that in the afternoon he heard an explosion.[1193] The Chamber considers that Witness T24 and Ndayisaba also corroborated Witness CNAX's testimony that the assailants employed firearms and grenades during this attack.

925. Furthermore, the Chamber notes that in his testimony in *Rukundo*, Witness BCB testified that at around 2.00 p.m., a policeman threw a grenade into a crowd of refugees.[1194] The Chamber

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[1187] T. 24 November 2009 p. 29 (ICS) (Witness CNAX).
[1188] Defence Exhibit 62 (Excerpts of Father Lerusse's Testimony in *Rukundo* I, 12 and 13 September 2007); Defence Closing Brief, paras. 259, 262, 280.
[1189] Defence Exhibit 65 (Excerpts of Father Lerusse's Testimony in *Rukundo* II, 12 and 13 September 2007).
[1190] T. 24 November 2009 pp. 30-31, 35 (ICS) (Witness CNAX).
[1191] Defence Exhibit 62 (Excerpts of Father Lerusse's Testimony in *Rukundo* I, 12 and 13 September 2007).
[1192] Defence Exhibit 62 (Excerpts of Father Lerusse's Testimony in *Rukundo* I, 12 and 13 September 2007).
[1193] T. 26 April 2010 pp. 51-52, 54-55 (ICS) (Witness T24); T. 28 March 2011 pp. 10-11 (Ndayisaba).
[1194] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 p. 13 (ICS)).

considers that Witness BCB corroborated Witness CNAX's testimony that *commune* policemen were involved in the attack as perpetrators.

926. The Chamber notes that only Witness CNAX testified that *Interahamwe* were present during the daytime attack. Defence Witnesses T24 and T28 testified specifically that the attackers were not *Interahamwe*.[1195] The Chamber recalls however that neither Witnesses T24 nor T28 were present during the daytime attacks. Furthermore, the Chamber notes that in his 2008 statement to Prosecution investigators, Witness T24 stated that *Interahamwe* were indeed involved in the attack. At trial, Witness T24 testified that his mention of *Interahamwe* in his 2008 statement was untrue since the *Interahamwe* did not exist in Nyabikenke *commune*.[1196] The Chamber finds that this contradiction undermines the credibility of Witness T24's testimony that *Interahamwe* were not involved in the attack. Although Witness BCB was present during the entire attack, he did not mention the presence of *Interahamwe* at the scene.

927. Based on the foregoing, the Chamber concludes that the perpetrators used traditional weapons, namely machetes, clubs and stones, as well as firearms and grenades during this attack. The Chamber further concludes that the perpetrators of this attack were composed of *commune* policemen, *Interahamwe* and civilians.

3.5.2.3.6 Killings During the Nyabikenke Commune Office Attacks

928. Prosecution and Defence witnesses provided consistent testimony that the assailants killed Tutsi refugees during the attacks and wounded others. During the night time attack, Witness CNAI saw bodies scattered in the courtyard of the office and identified an elderly woman named Léocadie, a man named Bayibayi and a woman named Nyirabahima.[1197] Witness CNAX similarly saw a number of Tutsis killed and stated that their bodies were inside the *commune* office.[1198] Witness T28 stated that the grenades killed one refugee and seriously injured others. He also stated that two other refugees had been trampled in the backyard of the office. He later realised that women and children had died trying to leave the *commune* office compound.[1199] Witness T24 was not present at the attack and only arrived at the office the next morning, but he confirmed that there were wounded people, who he tried to take to the health centre.[1200] Similarly, Witness T31 learned the following morning that refugees had been killed in waves of attacks on the *commune* office.[1201]

929. Witness CNAX stated that as he was getting ready to flee during the daytime attacks, he passed the dead bodies and had to jump over some of them. He further stated that when he left the *commune* office he saw approximately 45 to 60 dead bodies.[1202]

[1195] T. 23 November 2009 p. 59 (Witness CNAX); T. 27 April 2010 p. 59 (ICS) (Witness T24); T. 2 June 2010 pp. 47-48 (ICS) (Witness T28).
[1196] T. 27 April 2010 p. 59 (ICS) (Witness T24); Prosecution Exhibit 33 (Statement of Witness T24, 2 October 2008).
[1197] T. 26 November 2009 p. 68 (Witness CNAI).
[1198] T. 24 November 2009 p. 35 (ICS) (Witness CNAX).
[1199] T. 2 June 2010 pp. 40-41 (ICS) (Witness T28).
[1200] T. 26 April 2010 pp. 53-54 (ICS) (Witness T24).
[1201] T. 3 May 2010 p. 65 (ICS) (Witness T31).
[1202] T. 24 November 2009 p. 36 (ICS) (Witness CNAX).

930. Witness T24 estimated that between 17 and 20 people in total were killed.[1203] Witness T28 testified that people were killed, including children and women who were apparently trying to flee the *commune* office compound. Ndayisaba estimated that the assailants killed a total of 10 to 15 refugees.[1204] Witness BCB also testified that refugees died during the attacks.[1205]

931. Based upon this evidence, the Chamber concludes that between 15 and 60 refugees were killed during the attacks on the *commune* office.

932. Prosecution and Defence witnesses disagreed as to whether the Tutsi refugee named Evariste Munyagatare was killed at the *commune* office. The Chamber notes that Defence Witness T150 corroborated the Prosecution evidence that Munyagatare sought refuge at the Nyabikenke *commune* office.[1206] Only Prosecution Witness CNAX testified that Munyagatare was killed during the attacks.[1207] He was able to identify Munyagatare's body as he felt a responsibility to do so, given his position in charge of the refugees.[1208] In this regard, the Chamber observes that Witness CNAX saw Munyagatare the previous day at Cyayi centre.[1209] The Chamber considers that Witness CNAX therefore knew Munyagatare and would have been able to reliably identify him.

933. Witness CNAI testified that he was not present when Munyagatare died.[1210] The Chamber recalls that Witness CNAI fled in the morning, and therefore would not have known if Munyagatare died during the daytime attacks on the *commune* office. The Chamber notes that in his 2002 statement, Witness CNAI indicated that Munyagatare and his family were killed during the genocide and thrown into the Nyabarongo River.[1211] However, the statement does not indicate exactly where Munyagatare was killed. Furthermore, the Chamber considers that Witness CNAI was not present at the scene in order to confirm whether Munyagatare was in fact thrown into the river.

934. Defence Witnesses T28 and T193 both knew Munyagatare and both testified that he was not killed during the *commune* office attack. Witness T28 testified that Munyagatare died in the home of his parents-in-law in Mahembe *secteur*.[1212] Witness T193 testified that he learned from Munyagatare's wife that Munyagatare decided to drown himself in the Nyabarongo River in May 1994, after he learned that his in-laws were not willing to hide him.[1213] Two of Munyagatare's children were drowned with him.[1214] Witness T193 acknowledged that his relative

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[1203] T. 26 April 2010 p. 54 (ICS); T. 3 May 2010 p. 26 (ICS) (Witness T24).
[1204] T. 28 March 2011 p. 10 (Ndayisaba).
[1205] Defence Exhibit 148 (Witness BCB's *Rukundo* Testimony, T. 18 September 2007 p. 13 (ICS); T. 19 September 2007 p. 19).
[1206] T. 19 October 2010 pp. 43-44 (Witness T150).
[1207] T. 23 November 2009 pp. 60-61; T. 24 November 2009 pp. 32-33, 35-36 (ICS) (Witness CNAX).
[1208] T. 24 November 2009 p. 36 (ICS) (Witness CNAX).
[1209] T. 23 November 2009 pp. 60-61 (Witness CNAX).
[1210] T. 27 November 2009 p. 37 (ICS) (Witness CNAI).
[1211] Defence Exhibit 74 (Statement of Witness CNAI, 21 March 2002).
[1212] T. 2 June 2010 pp. 43-45 (ICS) (Witness T28).
[1213] T. 9 March 2011 pp. 24, 32 (ICS) (Witness T193).
[1214] T. 9 March 2011 p. 24 (ICS) (Witness T193).

was imprisoned and accused of killing Munyagatare.[1215] The Chamber considers Witness T193's testimony to be hearsay and does not find his account of Munyagatare's death to be plausible.

935. The Chamber observes that both Prosecution and Defence witnesses corroborated the account that Munyagatare sought refuge at the *commune* office.[1216] The Chamber considers that Witness CNAX provided credible and reliable testimony regarding the death of Munyagatare at the Nyabikenke *commune* office. Furthermore, Witness T193 was not credible when he testified that he sheltered Munyagatare on 16 April 1994. The Chamber recalls that Munyagatare was not named as a victim by the Prosecution in the Indictment, and that the Prosecution did not provide sufficient notice to the Defence of his death. As a result, the Chamber will not consider his killing as a basis for conviction on either Paragraphs 19 or 20 of the Indictment. Nevertheless, the Chamber considers that it may take this evidence into account as contextual background to further corroborate properly pled allegations in the Indictment.[1217]

936. Based on the foregoing, the Chamber concludes that there was an attack on the *commune* office which began at approximately 10.00 a.m. on 15 April 1994 and continued into the afternoon. The assailants included *commune* policemen, *Interahamwe* and civilians, armed with traditional weapons, firearms and grenades. The Chamber further finds that between approximately 15 and 60 Tutsi refugees were killed during the attack, including Evariste Munyagatare.

937. The Chamber finds, however, that the Prosecution has failed to prove beyond a reasonable doubt that the three named victims, Speciose Karuhongo, Jeanne Ujeneza and Gabriel Kanimba, were killed at the *commune* office, as no evidence was put forth in this regard. Furthermore, the Prosecution led no evidence with regard to Nzabonimana serving beers to the attackers of the Nyabikenke *commune* office at his home in Kavumu *secteur* on or about 15 April 1994.

3.5.2.4 Conclusion

938. Having examined and analysed the Prosecution and Defence evidence, the Chamber finds beyond a reasonable doubt that on 13 April 1994, an attempted attack was made upon the Tutsis seeking refuge at the Nyabikenke *commune* office. Witness T24 and *commune* policemen repelled the attack at the Nyagahondo forest, before it reached the *commune* office. As a result of the counter-attack one of the assailants was killed and others were injured, but the refugees were unharmed. On the afternoon of 14 April 1994, Nzabonimana held a meeting in Nyabikenke *commune* at Cyayi centre, located only 250 to 300 metres from the *commune* office. The evidence established beyond a reasonable doubt that approximately 30 people were present at the centre, including Prosecution Witnesses CNAI and CNAX, a Tutsi named Evariste Munyagatare, Isaac Kamali and Defence Witness T193. At this meeting, Nzabonimana asked those gathered to prioritise the massacre of Tutsis before taking their property. Nzabonimana stated: "I know that Hutus do not heed instructions. Do not continue to eat the cows of Tutsi who have sought refuge

[1215] T. 9 March 2011 p. 31 (ICS) (Witness T193).
[1216] T. 27 November 2009 p. 37 (ICS) (Witness CNAI); T. 24 November 2009 pp. 35-36 (ICS) (Witness CNAX); T. 19 October 2010 pp. 43-44 (ICS) (Witness T150).
[1217] *See Hategekimana*, Judgement (AC), para. 219; *Bagosora & Nsengiyumva*, Judgement (AC), para. 257; *Renzaho*, Judgement (AC), para. 90.

at the *communal* office. What really matters is not the cows; it is rather, the owners of the cows that matter." He also issued a threat to a Tutsi named Evariste Munyagatare, who was among those seeking refuge at the Nyabikenke *commune* office.

939. The Chamber has also found that the Prosecution has proven beyond a reasonable doubt that the first successful attack occurred the night immediately following Nzabonimana's afternoon address at Cyayi centre, a mere 250 to 300 metres away from the *commune* office. That night, at between 3.00 and 4.00 a.m., Hutu civilians and *commune* policemen launched an attack upon the Nyabikenke *commune* office, using firearms, grenades and traditional weapons. The attack against the *commune* office resumed during the day on 15 April 1994. *Commune* policemen, *Interahamwe* and civilians perpetrated this attack with firearms, grenades and traditional weapons, namely machetes, clubs and stones. The Chamber has found beyond a reasonable doubt that, during these attacks on the *commune* office, between 15 and 60 Tutsi refugees were killed, including Evariste Munyagatare.

940. In making its findings relating to Cyayi centre and the Nyabikenke *commune* office, the Chamber has considered the Defence evidence in conjunction with the Defence claims that the Prosecution witnesses fabricated their evidence and concludes that the Defence has not raised a reasonable doubt in the Prosecution case (3.2).

3.5.3 Meeting at Witness T34's House

3.5.3.1 Introduction

941. Paragraph 45 of the Indictment alleges that on or about 14 April 1994, at the home of Witness T34 in Kavumu *secteur*, Gitarama *préfecture*, together with other persons, including Witness T24 and Witness T49, Callixte Nzabonimana rewarded the perpetrators of the killing of Tutsis with money and told them to intensify the massacres. These killers included *Interahamwe* and Hutu civilians.[1218]

942. The Prosecution submits that on 12 or 13 April 1994 Nzabonimana, Witness T24 and Witness T49, among others, convened a meeting at Witness T34's compound. During the meeting, Nzabonimana inquired about the security situation and a man named Mulinda responded that someone named Anasthasie Nzizibera [*sic*] and others had been killed with the weapons provided by Nzabonimana. Nzabonimana reprimanded the killers for killing only old people and said "it serves no purpose to kill old people because they were insignificant" and ordered that young, strong Tutsis be killed. Nzabonimana then gave money to Witness T34 to buy beer for the killers.[1219] Nzabonimana urged the population to unite against the Tutsis and not be divided according to political affiliations. He reminded the population that he, Witness T49 and Witness T24 had united, even though they belonged to different political parties. The Prosecution relies upon Witness CNAF.[1220]

[1218] Para. 45 of the Indictment. The Chamber notes that Witness T49 did not testify at trial.
[1219] Prosecution Closing Brief, para. 261; T. 20 October 2011 pp. 36-38 (Prosecution Closing Argument). *See* T. 16 November 2009 p. 51 (ICS) (Witness CNAF) (for correct spelling of "Anastasie Sezibera").
[1220] Prosecution Closing Brief, paras. 261-270.

943. The Defence claims that Witness CNAF's evidence was fabricated (3.2.2). The Defence also submits that Witness CNAF's testimony contradicted his prior statements and was internally contradictory. The Defence relies upon Witnesses T24, T31 and T34.[1221]

3.5.3.2 Evidence

Prosecution Witness CNAF

944. Witness CNAF, a Hutu farmer who lived in Nyabikenke *commune* in April 1994,[1222] testified that on 12 or 13 April 1994 at between 3.00 and 4.00 p.m., Witness CNAF saw Nzabonimana at Gasagara centre, in Muhere *cellule*, Kavumu *secteur*. When Witness CNAF arrived at Gasagara centre, he saw Nzabonimana in the internal courtyard of a residential compound owned by Witness T34, who was a wealthy and influential businessman. Nzabonimana was conversing with other officials inside the compound. The officials present included Witness T49, who worked at MINITRAP and represented the PSD party, and Witness T24.[1223]

945. Nzabonimana and others came out of the compound where Witness CNAF and many other members of the population were assembled. Nzabonimana greeted the people. Nzabonimana introduced Witness T49 to the population and told them that Witness T49 was a member of the PSD party and a Government employee. Nzabonimana introduced Witness T24 as a member of the MDR party. Nzabonimana said that he was a member of the MRND party and that their different political affiliations were not important. What was important was to unite to fight the common enemy, the Tutsis, who had attacked the country. The attendees applauded Nzabonimana.[1224]

946. Nzabonimana also enquired about the security situation. Two men named Mulinda and Neretse took the floor and said that everything was fine. Mulinda told Nzabonimana that the weapons he had distributed were useful, and that the people who resisted had been overcome. Mulinda told Nzabonimana that many people had been killed, including someone named Anastasie Sezibera. Nzabonimana thanked them because they "did not behave like in the past," and requested that they continue. Nzabonimana further stated that he did not want any disturbances in the area and noted that the people had the means to defend themselves.[1225]

947. To thank the people, Nzabonimana gave Witness T34 an unknown quantity of money and stated that Witness T34 was going to buy drinks for the people. Nzabonimana told the people he had to leave because he did not have time to talk. Witness T34 summoned Mulinda and another person, and the three of them departed.[1226]

948. A man named Neretse later told the crowd that "anyone who did not participate in the killing of the Tutsis was not one of us." Neretse said that the reward given by Nzabonimana was

[1221] Defence Closing Brief, paras. 238-250.
[1222] For additional introductory information on Witness CNAF, *see* para. 510, *supra*.
[1223] T. 16 November 2009 pp. 51-55 (ICS); T. 17 November 2009 pp. 35, 39-40 (ICS) (Witness CNAF).
[1224] T. 16 November 2009 pp. 51-53 (ICS); T. 17 November 2009 pp. 36-38, 50 (ICS) (Witness CNAF).
[1225] T. 16 November 2009 pp. 51-52 (ICS) (Witness CNAF).
[1226] T. 16 November 2009 p. 52 (ICS) (Witness CNAF).

intended for those who had worked. Neretse then asked his own people to accompany him and share in the reward. Neretse said that those who did not accompany the assailants to kill Tutsis were accomplices and should not accompany them. Mulinda and Neretse then left with members of their group.[1227]

Defence Witness T34

949. Witness T34, a merchant in Nyabikenke *commune* in 1994, met Nzabonimana in 1990 at Nzabonimana's parents' home, and in 1991 at a meeting in Gasagara. They did not converse on either occasion. Witness T34 knew that Nzabonimana was the President of the MRND party in Gitarama and knew the position held by Witness T24.[1228]

950. Witness T34 testified that he was not a member of any political party during the years of multipartyism. He had to be neutral for business reasons. No meetings were hosted in his courtyard in 1993 or during the genocide. Witness T34 knew Siméon Mugabire, Witness T24 and Witness T31. He did not know Witness T49. Witness T34 knew Mathias Barajiginywa, who was a businessman at Gasenyi, and Mulinda and Elias Neretse from Kavumu *secteur*.[1229]

951. Witness T34 did not see Nzabonimana from 7 April 1994 to the end of July 1994. He denied hosting a meeting attended by Nzabonimana, Witness T49, Witness T24, Mugabire and Witness T31. He denied receiving money from Nzabonimana to give to Neretse and Mulinda. No such meeting could have been held in his absence without him knowing about it, since someone with such high standing as a Minister could not have gone unnoticed.[1230]

Defence Witness T31

952. Witness T31, a local government official in Nyabikenke *commune* in 1994,[1231] identified Witness T34 as a trader in Nyabikenke *commune*, and Witness T49 as a political activist of the MRND party. He testified that Siméon Mugabire lived in Kavumu *cellule*, Kavumu *secteur*, and during the war Mugabire worked as a youth leader and lived in Gitarama.[1232]

953. Witness T31 was unaware of a meeting which allegedly took place in Gasagara during the genocide which was attended by Witness T34, Mugabire, Witness T49 and Nzabonimana. Had such a meeting occurred, the witness would have been notified by the individuals of the locality.[1233]

Defence Witness T24

954. Witness T24, a local government official in Nyabikenke *commune* in 1994,[1234] denied taking part in a meeting with Nzabonimana, Witness T34, Siméon Mugabire, Bicamumpaka,

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[1227] T. 16 November 2009 p. 52 (ICS) (Witness CNAF).
[1228] Defence Exhibit 36 (Protected Information Sheet); T. 1 June 2010 pp. 40-41, 59, 62-63 (ICS) (Witness T34).
[1229] T. 1 June 2010 pp. 41-42, 56-57 (ICS) (Witness T34).
[1230] T. 1 June 2010 pp. 42-43, 69-70 (ICS) (Witness T34).
[1231] For additional introductory information on Witness T31, *see* para. 281, *supra*.
[1232] T. 3 May 2010 pp. 66-67 (ICS) (Witness T31).
[1233] T. 3 May 2010 pp. 66-67 (ICS) (Witness T31).
[1234] For additional introductory information on Witness T24, *see* para. 284, *supra*.

Neretse, Witness T49 and Witness T31 in which money was distributed to the members of the population as a reward for the attacks. He would not have attended such a meeting, because he had fought off the attacks upon the Nyabikenke *commune* office and he would not have met with those same attackers. The meeting also was not mentioned during the witness's *Gacaca* trials. Furthermore, Siméon Mugabire and Witness T49 were not implicated before *Gacaca* courts for the alleged meeting at Witness T34's home.[1235]

3.5.3.3 Deliberations

955. As a preliminary matter, the Chamber observes that in its Closing Brief, the Prosecution asserts that during the meeting at the home of Witness T34, Nzabonimana stated: "It serves no purpose to kill old people because they were insignificant." The Chamber notes that this was not Witness CNAF's testimony. Rather, Witness CNAF testified that Nzabonimana said these words during a meeting at Nzabonimana's home on 10 April 1994.[1236] The Chamber considers the inclusion of the errant quotation in its submissions to have been a mistake on the part of the Prosecution, and will proceed to evaluate the Prosecution evidence regarding the meeting at Witness T34's home.

956. The Chamber notes that Witnesses CNBH and CNAZ testified that they saw Nzabonimana on 12 April 1994 at approximately 2.00 or 3.00 p.m. at Butare trading centre, in Rutongo *secteur*, Rutobwe *commune* (3.5.1.2). The Defence asserts that this evidence conflicts with Witness CNAF's testimony regarding the meeting at Witness T34's house, and claims that Nzabonimana could not have been at both locations.[1237] The Chamber notes, however, that in his testimony, Witness CNAF did not definitively place the meeting at Witness T34's house as occurring on 12 April 1994. Rather, he stated that the meeting at Witness T34's house occurred on 12 or 13 April 1994. Furthermore, the Chamber recalls that Nyabikenke and Rutobwe were neighbouring *communes* in Gitarama *préfecture*, and that the evidence established that Nzabonimana was travelling by car on 12 April 1994 (3.5.1.3). Given these circumstances, the Chamber concludes that Nzabonimana would have been able to attend both meetings in the same afternoon.

957. The Prosecution relies upon the testimony of Witness CNAF to support the allegations contained in Paragraph 45 of the Indictment. Witness CNAF testified that at the meeting, Nzabonimana was informed that many people had been killed, including a man named Anastasie Sezibera, and that Nzabonimana left money at the meeting as a reward for those who had worked.[1238]

958. The Chamber recalls that it has considered the Defence submission that Witness CNAF fabricated his evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witness CNAF (3.2.5).

[1235] T. 26 April 2010 pp. 55-57 (ICS) (Witness T24).
[1236] T. 16 November 2009 p. 50 (ICS) (Witness CNAF).
[1237] Defence Closing Brief, para. 246.
[1238] T. 16 November 2009 pp. 51-52 (ICS) (Witness CNAF).

959. The Chamber notes that in his 1998 statement, Witness CNAF did not mention the presence of Mulinda and Neretse at the meeting which took place at Witness T34's house. Rather, the statement indicates that Nzabonimana distributed money to Neretse and other peasants who had killed Tutsis in Nyabikenke on a different occasion, on 12 April 1994.[1239]

960. Furthermore, the Chamber notes that in his 2002 statement, Witness CNAF indicated that the meeting at Witness T34's house occurred on 8 April 1994. In this statement, Witness CNAF did not mention that the money was a reward for killings which had already occurred. Rather, Witness CNAF indicated that Tutsis, including Sezibera, were killed the morning after the meeting at Witness T34's house.[1240] The Chamber recalls that during his testimony, Witness CNAF indicated that Nzabonimana was informed of the killing of Sezibera during the meeting at Witness T34's house.[1241] Witness CNAF gave a third statement in 2008, which was intended to correct details in his 2002 statement about Nzabonimana. In the 2008 statement, Witness CNAF stated that he saw Nzabonimana reward killers on both 12 and 14 April 1994 and that he was present when Nzabonimana rewarded killers by distributing money at Witness T34's home.[1242] The statement did not specify on which date the meeting at Witness T34's house occurred.

961. Confronted with the inconsistencies between his statements and his testimony, Witness CNAF reiterated the substance of his testimony and responded that there may have been errors made when his statements were translated and recorded.[1243]

962. Turning to the Defence evidence, Witness T24 denied participating in the meeting at issue.[1244] The Chamber recalls that Witness T24 was serving a life sentence in prison for his role in the genocide at the time of his testimony.[1245] The Chamber recalls as well Witness T24's admission that he provided a false statement to Prosecution investigators (3.2.3.2.2). The Chamber also notes that Witness CNAF implicated Witness T24 in the present allegation. Witness T24 may have had a motive to distance himself from the alleged incident, and the Chamber therefore treats his testimony with appropriate caution (2.7.7).

963. Witness T24 claimed that because he had fought off the attacks upon the Nyabikenke *commune* office on 13 April 1994, he would not have met with those same attackers.[1246] The Chamber notes that it has found that the evidence established beyond a reasonable doubt that Witness T24 was indeed among those who repelled the attack upon the *commune* office on 13 April 1994 (3.5.2.3.2). The Chamber therefore finds plausible Witness T24's testimony that he would not have attended a meeting rewarding attackers on the same day.

964. Witness T34 denied that the meeting was held in the courtyard of his home, and denied receiving money from Nzabonimana to give to Neretse and Mulinda.[1247] The Chamber notes that Witness CNAF directly implicated Witness T34 in the meeting. The Chamber considers that

[1239] Defence Exhibit 54 (Statement of Witness CNAF, 24 September 1998).
[1240] Defence Exhibit 55A (Statement of Witness CNAF, 20 March 2002).
[1241] T. 16 November 2009 pp. 51-52 (ICS) (Witness CNAF)
[1242] Defence Exhibit 56 (Statement of Witness CNAF, 14 November 2008).
[1243] T. 17 November 2009 pp. 16, 18, 36 (ICS) (Witness CNAF).
[1244] T. 26 April 2010 pp. 55-56 (ICS) (Witness T24).
[1245] T. 27 April 2010 pp. 18-19 (ICS) (Witness T24).
[1246] T. 26 April 2010 pp. 55-56 (ICS) (Witness T24).
[1247] T. 1 June 2010 p. 42 (ICS) (Witness T34).

Witness T34 may have had a motive to distance himself from the allegation, and therefore treats his testimony with appropriate caution (2.7.7).

965. Witness T31 testified that he had no knowledge of the alleged meeting, and that he would have been notified if such a meeting occurred.[1248] The Chamber recalls that Witness T31 was serving a term of life imprisonment for participating in the attack upon the Nyabikenke *commune* office, and that his appeal was pending at the time of his testimony.[1249] Therefore, the Chamber considers that Witness T31 may have had a motivation to deny other crimes which occurred in Nyabikenke *commune* in the same time period. Accordingly, the Chamber treats his testimony with appropriate caution as well (2.7.7).

966. Considering the substance of the evidence of Witnesses T34 and T31, the Chamber finds their second-hand testimony to be of limited probative value.

967. The Chamber has also considered the testimony of Witness BCB in relation to this allegation (3.5.2.2). The Chamber notes that the witness did not specifically testify to the events alleged in Paragraph 45 of the Indictment. However, his testimony supports the proposition that Witness T24 fought off an attack upon the Nyabikenke *commune* office on 13 April 1994.

968. Nevertheless, the Chamber observes that the Prosecution relied upon the testimony of Witness CNAF in support of this allegation against Nzabonimana. Given the discrepancies between the witness's statements and his testimony, the Chamber does not find the evidence of Witness CNAF sufficient to support this allegation, absent corroboration. Having considered the totality of the evidence, the Chamber concludes that the Prosecution has failed to prove beyond a reasonable doubt the allegation contained in Paragraph 45 of the Indictment.

3.5.4 Visit to Kabgayi Parish

3.5.4.1 Introduction

969. Paragraph 21 of the Indictment alleges that on or about 16 April 1994, Nzabonimana, in the company of Defence Witness T24, visited Tutsi refugees from Nyabikenke *commune* at Kabgayi Parish, Gitarama *préfecture*. Nzabonimana told them to return home under the pretext that there was peace so that they may be killed.[1250]

970. The Prosecution asserts that around 16 April 1994, Nzabonimana and Witness T24 were looking for Tutsis at Kabgayi. Nzabonimana told priests that he had come to look for Tutsi refugees from Nyabikenke because it was safe to return to the *commune*. However this was a plan to kill Tutsis. The Prosecution relies on the testimony of Prosecution Witness CNAY.[1251]

971. The Defence asserts that the Prosecution evidence was inconsistent and not credible, and also suggests that the evidence was fabricated (3.2.2). The Defence further submits that Witness T24 denied going to Kabgayi with Nzabonimana, and that *Gacaca* proceedings pertaining to the

[1248] T. 3 May 2010 pp. 66-67 (ICS) (Witness T31).
[1249] T. 4 May 2010 pp. 7-8, 10, 48 (ICS) (Witness T31).
[1250] Para. 21 of the Indictment.
[1251] Prosecution Closing Brief, paras. 132-135, 338; T. 20 October 2011 p. 22 (Prosecution Closing Argument).

Kabgayi events did not mention Nzabonimana or Witness T24. The Defence relies on Defence Witness T24.[1252]

3.5.4.2 Evidence

Prosecution Witness CNAY

972. Witness CNAY, a Tutsi farmer who lived in Nyabikenke *commune* in 1994,[1253] testified that on 11 April 1994, he left the Nyabikenke *commune* office to go to Kabgayi, in order to seek refuge because the *commune* office was being attacked. On the way, from a distance of five metres, he saw Nzabonimana addressing the population in Butare, at 9.30 or 10.00 a.m.[1254]

973. He arrived at Kabgayi at approximately midnight during the night of 13 April 1994, and sought refuge at the minor seminary with other people from Nyabikenke and Nyacyonga. One week after his arrival, Witness CNAY saw Nzabonimana at the entrance to the seminary in Kabgayi. Witness T24 accompanied Nzabonimana.[1255]

974. Witness CNAY could hear what Nzabonimana and Witness T24 were saying, as could the refugees from Nyacyonga. Nzabonimana did not address the witness but told the priests that he was looking for refugees who had come from Nyabikenke because security had been restored in the *commune*. A priest responded by asking whether there were still refugees at Ntarabana and whether there were still people who had taken refuge at the *commune* office. The witness could not provide the name of the priest. Witness CNAY did not return to Nyabikenke because he knew it was a trick in order to exterminate the refugees. The witness remained at Kabgayi until 2 June 1994.[1256]

Defence Witness T24

975. Witness T24, a local government official in Nyabikenke *commune* in April 1994,[1257] was unable to provide any information on events at Kabgayi because he never went there. He did not know of the conditions of the refugees. The witness denied accompanying Nzabonimana to Kabgayi and alleged that in his own trial relating to his role in the events at Kabgayi, survivors were "pressured" into testifying against him and that they confessed this fact.[1258]

3.5.4.3 Deliberations

976. The Prosecution relies on the testimony of a single eyewitness, Witness CNAY, as to Nzabonimana's and Witness T24's presence at Kabgayi and as to Nzabonimana's utterances during this time.

[1252] Defence Closing Brief, paras. 8, 14-16, 18, 288-293.
[1253] For additional introductory information on Witness CNAY, *see* para. 580, *supra*.
[1254] T. 24 November 2009 pp. 54-56 (ICS) (Witness CNAY).
[1255] T. 24 November 2009 pp. 54, 56-58 (ICS); T. 25 November 2009 pp. 28-29 (ICS) (Witness CNAY).
[1256] T. 24 November 2009 pp. 56, 58 (ICS); T. 25 November 2009 p. 29 (ICS) (Witness CNAY).
[1257] For additional introductory information on Witness T24, *see* para. 284, *supra*.
[1258] T. 27 April 2010 pp. 7-8, 18 (ICS) (Witness T24).

977. The Chamber recalls that it has considered the Defence submission that Witness CNAY fabricated his evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witness CNAY (3.2.5).

978. The Chamber notes that in his statement dated 4 October 2008, Witness CNAY indicated that, "[o]ne week after we arrived at Kabgayi, Callixte came with [Witness T24] to convince the refugees from Nyabikenke to go back home explaining to them that peace has been restored and the killings of the Tutsi had stopped." The statement goes on to indicate that "[w]e knew he was lying in order to get us. Nobody reacted."[1259] During his testimony, however, Witness CNAY stated that Nzabonimana spoke to the priests, not the refugees. He further specified in his testimony that "[h]e didn't say anything to us."[1260] The Chamber does not find the witness's explanation for this discrepancy to be satisfactory and considers this to be a major inconsistency between his statement and his oral testimony.

979. The Chamber notes as well the lack of detail in Witness CNAY's testimony regarding certain aspects of events at Kabgayi. The witness said he was able to hear what Nzabonimana said to the priest; however the witness never testified how far away he was from the conversation. Witness CNAY was also not able to provide any names of others who sought refuge with him at Kabgayi, stating that he could only speak on his own behalf, and was not able to provide the name of the priest with whom Nzabonimana spoke.[1261] The Chamber acknowledges the passage of time between the events in question and Witness CNAY's trial testimony and the impact this may have had on the witness's ability to recite details. However, the Chamber observes that Witness CNAY testified that he remained at the Kabgayi seminary from the date of his arrival, 13 April 1994, until 2 June 1994. Given the length of time Witness CNAY testified that he stayed at Kabgayi and the discrepancy with regard to who Nzabonimana allegedly addressed on this occasion, his inability to provide details regarding his stay at the seminary further undercuts the credibility of his testimony.

980. The Defence put forth the testimony of Witness T24 and the contents of Defence Exhibit 90B, a report compiled following the *Gacaca* information-gathering phase on Kabgayi events held at Gitarama prison on 28 February and 7 March 2005, in order to discredit the Prosecution submissions.[1262] For his part, Witness T24 denied that he accompanied Nzabonimana to Kabgayi, alleging that his own trial relating to his role in the events of Kabgayi before the *Gacaca* courts was a farce, as survivors who testified against him confessed to being pressured into fabricating evidence.[1263] The Chamber notes that Witness T24 was a detainee witness at the time of his testimony and was directly implicated in these events and may thereby have been motivated to distance himself and Nzabonimana from these allegations.[1264] The Chamber will therefore treat his testimony with appropriate caution. Based on the foregoing, the Chamber does not find his testimony credible as to this particular allegation.

[1259] Defence Exhibit 66 (Statement of Witness CNAY, 4 October 2008).
[1260] T. 24 November 2009 p. 58 (ICS) (Witness CNAY).
[1261] T. 24 November 2009 p. 56 (ICS); T. 25 November 2009 pp. 28-29 (ICS) (Witness CNAY).
[1262] Defence Exhibit 90B (Gitarama Prison *Gacaca* Report on Kabgayi, 28 February and 7 March 2005).
[1263] T. 27 April 2010 pp. 8, 18 (ICS) (Witness T24).
[1264] T. 27 April 2010 pp. 43-45 (Witness T24).

981. Regarding Defence Exhibit 90B, the Chamber observes that those who participated in this phase of proceedings included detainees from Gihuma *secteur*, people from other *secteurs* who lived and worked in Gihuma *secteur*, and those on trial for the crime of genocide perpetrated in Kabgayi.[1265]

982. The Chamber notes that Prosecution Exhibit 90B does not mention Nzabonimana or Witness T24 in general, and does not mention them in relation to the events at Kabgayi.[1266] However, the Chamber notes that the document contains only evidence gathered from the information-gathering process at Gitarama prison. Witness T24 acknowledged that he "appeared before a *Gacaca* court on the Kabgayi events."[1267] However, he is not mentioned in Defence Exhibit 90B. This indicates that other *Gacaca* proceedings concerning Kabgayi took place. These records therefore contain limited probative value with regard to the present allegation.

983. The Chamber observes that the Prosecution relied entirely upon the testimony of Witness CNAY in support of this allegation. The Chamber recalls that it may find allegations proven beyond a reasonable doubt on the basis of a single witness's testimony (2.7.4). However, given the lack of detail of Witness CNAY's testimony regarding other refugees at Kabgayi and the name of the priest with whom Nzabonimana spoke, as well as the major discrepancy with regard to who Nzabonimana addressed at Kabgayi Parish, the Chamber does not consider Witness CNAY's testimony to be sufficient to prove this particular allegation beyond a reasonable doubt. Accordingly, the Chamber concludes that the Prosecution has not proven beyond a reasonable doubt the allegation contained in Paragraph 21 of the Indictment.

3.5.5 Nyabikenke *Commune* Megaphone Announcement

3.5.5.1 Introduction

984. Paragraph 41 of the Indictment alleges that on or about 16 April 1994, Nzabonimana travelled around Nyabikenke *commune* speaking through a megaphone, telling Hutu civilians and *Interahamwe* to kill Tutsis first before taking their property.[1268]

985. The Prosecution asserts that between April and July 1994, Nzabonimana gave orders to the population to kill Tutsis and to take their belongings whenever he found a group of people gathered, including in Nyabikenke *commune*. The Prosecution submits that on or about 16 April 1994, Nzabonimana addressed the population through a megaphone, ordering the population to focus on the destruction of Tutsis before taking their houses and property. The Prosecution relies on Prosecution Witnesses CNBT and CNBA.[1269]

986. The Defence asserts that the evidence of Prosecution Witnesses CNBA and CNBT is fabricated because the evidence is not corroborated by other sources and both witnesses spoke about the event for the first time 14 years after it allegedly occurred. The Defence also claims the

[1265] Defence Exhibit 90B (Gitarama Prison *Gacaca* Report on Kabgayi, 28 February and 7 March 2005).
[1266] Defence Exhibit 90B (Gitarama Prison *Gacaca* Report on Kabgayi, 28 February and 7 March 2005).
[1267] T. 27 April 2010 pp. 8, 18 (ICS) (Witness T24).
[1268] Para. 41 of the Indictment. The Chamber notes that it will not identify the particular hill where the allegation occurred, in order to protect the identity of the witnesses. However, the testimony of both Prosecution and Defence witnesses all place the houses and coffee plantation on the same hill.
[1269] Prosecution Closing Brief, paras. 211, 225-227; T. 20 October 2011 p. 34 (Prosecution Closing Argument).

Prosecution witnesses are not credible, pointing to inconsistencies and contradictions in their testimony.[1270] The Defence asserts that the physical layout of the location in question shows that the Prosecution evidence was implausible.[1271] The Defence relies upon Defence Witnesses T5, T24, T56, T57 and Fernand Batard.[1272]

3.5.5.2 Evidence

Prosecution Witness CNBT

987. Witness CNBT, a Hutu farmer, lived with his parents on a hill in Nyabikenke *commune* in 1994.[1273] He knew Callixte Nzabonimana before 1994 as the Minister of Youth and a native of Nyabikenke. He also knew Nzabonimana because he would come to the witness's area and distribute balls for the people to play with.[1274]

988. No more than four days after the death of President Habyarimana, Witness CNBT visited his brother-in-law, Witness CNBA, a Tutsi. Witness CNBA told Witness CNBT that he was afraid and that people had started to loot the property of Tutsis. Witness CNBA asked Witness CNBT to hide him. Witness CNBT hid Witness CNBA in his family home for a few days.[1275]

989. When assailants came to look for Witness CNBA in the house, Witness CNBT hid Witness CNBA in a coffee plantation near the road. The plantation, which was owned by Witness CNBT's mother, was located on the same hill as the home of Witness CNBT's parents and contained about 300 trees. All of the houses located near the coffee plantation were inhabited in April 1994 and there was a footpath passing through the coffee plantation. At the time of the witness's testimony, the coffee trees had been uprooted and replaced with banana trees. Witness CNBT did not want to hide Witness CNBA near the footpath, since it was used to access the road. The witness hid Witness CNBA under two bundles of grass arranged to allow Witness CNBA to breathe. Had Witness CNBA not been hidden, he could have been seen from the main road.[1276]

990. Witness CNBT watched to make sure nobody came to attack Witness CNBA. He carried a large club, both to protect Witness CNBA and so that people would think he was one of the assailants. Witness CNBT provided Witness CNBA with food during the day but took precautions so that nobody would see him. Witness CNBT had to turn Witness CNBA over in his hiding place because Witness CNBA felt a lot of pain in his side and ribs; his blood was not circulating on one of his sides and Witness CNBA was almost gangrenous. This indicated that Witness CNBA spent a lot of time in his hiding place.[1277]

[1270] Defence Closing Brief, paras. 296-316.
[1271] Defence Additional Brief, paras. 29-30.
[1272] Defence Closing Brief, paras. 319-324.
[1273] Prosecution Exhibit 12 (Protected Information Sheet); T. 2 December 2009 p. 62 (ICS) (Witness CNBT).
[1274] T. 2 December 2009 p. 55 (Witness CNBT).
[1275] T. 2 December 2009 pp. 55-56 (Witness CNBT).
[1276] T. 2 December 2009 p. 56; T. 2 December 2009 pp. 66-68 (ICS); T. 3 December 2009 p. 5 (ICS) (Witness CNBT).
[1277] T. 2 December 2009 p. 56; T. 2 December 2009 pp. 67, 73 (ICS); T. 3 December 2009 pp. 2-5 (ICS) (Witness CNBT).

991. A short time after moving Witness CNBA to the coffee plantation, Witness CNBT heard the noise of a vehicle driving very slowly on the Gitarama-Nyabikenke road towards Nyabikenke, not far from Witness CNBA's hiding place. Witness CNBT was uphill from the road at the time, approximately 20 metres from the location where the footpath met the road. Approximately 60 to 70 metres separated Witness CNBT from Witness CNBA's hideout.[1278]

992. A small hill separated Witness CNBA's hideout from the vehicle. Witness CNBT saw the vehicle before it reached the bend in the road. The vehicle contained a driver and Nzabonimana. From his location, Witness CNBT could easily see the occupants of the vehicle because he was "opposite" to where Nzabonimana was located.[1279]

993. Nzabonimana held a black megaphone through the open window of the vehicle. When Nzabonimana saw Witness CNBT carrying a large club, Nzabonimana said through the megaphone: "Looting the Tutsi and eating their cows is not what is urgent. You must, first of all, kill the owners of the cows." Witness CNBT took this statement to mean kill the Tutsis. Nzabonimana spoke loudly and could be clearly heard, even by people not located near him.[1280]

994. After Nzabonimana's car passed, the witness went to Witness CNBA's hiding place and asked Witness CNBA: "Did you hear those words?" Witness CNBA responded: "I heard those words. And it is that fool Callixte who made that statement." Witness CNBA remained in his hideout immediately after the address. Witness CNBT spoke with an *Interahamwe* named Eugene three hours after seeing the vehicle. Eugene confirmed that he had also seen "Callixte" and that "Callixte" had made the statements at issue.[1281]

995. The day after Nzabonimana made his address, the uncle of Witness CNBT's brother-in-law was killed by Hutus, and a teacher was flushed out of a neighbour's house and killed by Hutus. As a result, Witness CNBT hid Witness CNBA in the home of another brother-in-law in Nyakabanda.[1282]

Prosecution Witness CNBA

996. Witness CNBA, a Tutsi farmer, lived in Nyabikenke *commune* in 1994.[1283] He had completed primary school and attended three years of vocational training. Witness CNBA was a *secteur conseiller* in 1996, and played a role in the ongoing local investigations into the genocide. The witness first met Nzabonimana when Nzabonimana chaired a meeting in Kiciro *cellule*. Nzabonimana spoke to the people for about one hour and introduced himself to the audience as the Minister of Youth. The witness was seated approximately six metres from

[1278] T. 2 December 2009 pp. 56-57, 66; T. 2 December 2009 p. 60 (ICS); T. 3 December 2009 pp. 8-10 (ICS) (Witness CNBT).
[1279] T. 3 December 2009 pp. 10-11, 57 (ICS) (Witness CNBT).
[1280] T. 2 December 2009 pp. 56-57, 66; T. 3 December 2009 p. 15 (ICS) (Witness CNBT).
[1281] T. 2 December 2009 pp. 57-58; T. 2 December 2009 p. 63 (HC) (French) ("*Je me suis entretenu avec lui le même jour, trois heures après le départ du véhicule.*"); T. 3 December 2009 p. 11 (ICS) (Witness CNBT).
[1282] T. 2 December 2009 p. 58; T. 2 December 2009 p. 74 (ICS); T. 3 December 2009 pp. 3-4 (ICS) (Witness CNBT).
[1283] Prosecution Exhibit 19 (Protected Information Sheet).

Nzabonimana during the speech. Nzabonimana was a political official from the witness's region who the people greatly respected.[1284]

997. A few days after the death of President Habyarimana, members of the population started to plunder cattle and Witness CNBA knew that he could not remain in his home. Witness CNBA's brother-in-law, Witness CNBT, came to see the witness at his home. Witness CNBA made arrangements for him and his wife to seek refuge at her mother's house. The distance between Witness CNBA's house and the house of his mother-in-law was not far and could be covered in ten minutes. His mother-in-law's neighbours knew that Witness CNBA was a Tutsi.[1285]

998. Witness CNBA originally sought refuge in the home of his mother-in-law and Witness CNBT. Very early one morning, Witness CNBT took Witness CNBA to a coffee plantation because houses on the hill were being systematically searched. The coffee plantation also belonged to the witness's mother-in-law, and was located two to three minutes away from her house. Two homes were located near the plantation. In 1994 no coffee had yet been harvested from the plantation. The witness placed the height of the coffee trees at about one metre and 50 centimetres. The trees were planted in rows, allowing for a space of two metres between the rows. No other grass or vegetation grew where Witness CNBA was hiding.[1286]

999. While hiding, the witness lay down on his side and was covered by the straw that was used to cover the coffee plantation.[1287] The witness was put inside the straw, and then a rope was tied around the straw. As it was difficult for the witness to change positions by himself, Witness CNBT would come to assist him. When Witness CNBT was unable to assist, Witness CNBA would remain in one position, hurting his ribs. The witness could "see outside" from his hideout.[1288]

1000. The attackers usually came during the day and would rest in the evening. Witness CNBA did not know the attackers, only that they came from various directions and locations. Witness CNBA hid in the coffee plantation during the day and Witness CNBT led him back to his mother-in-law's house in the evening. The witness did not spend the night in the plantation. The witness did not eat during the day because it was not possible to receive food and water in his hiding place.[1289]

1001. On around 15 or 16 April 1994, while hiding in the coffee plantation, the witness observed Nzabonimana in a slow-moving vehicle, speaking through a megaphone. The vehicle was travelling on the road from Gitarama towards Nyabikenke. The road was heavily used by vehicles, pedestrians and the attackers.[1290]

[1284] T. 14 December 2009 pp. 10-11, 17, 26, 56 (ICS) (Witness CNBA).
[1285] T. 14 December 2009 pp. 13, 18, 24 (ICS) (Witness CNBA).
[1286] T. 14 December 2009 pp. 14, 21-24, 29, 42-43 (ICS) (Witness CNBA).
[1287] T. 14 December 2009 pp. 16, 29, 30 (ICS) (Witness CNBA) (describing that he was covered by "cut, dried grass" and "straw").
[1288] T. 14 December 2009 pp. 14, 30, 42 (ICS) (Witness CNBA).
[1289] T. 14 December 2009 pp. 14, 24, 28-29 (ICS) (Witness CNBA).
[1290] T. 14 December 2009 pp. 14, 16-17, 30-31, 34-35 (ICS) (Witness CNBA).

1002. When he saw the vehicle, Witness CNBA was hiding in the plantation three to four metres above the road. The witness was able to see the road as he lay down. Witness CNBA described a bend in the road below his hiding place. Witness CNBA "could see [Nzabonimana's] vehicle from the time he was coming into the bend until he negotiated the bend." Nzabonimana's vehicle passed "just a few metres" from Witness CNBA's hideout.[1291]

1003. Witness CNBA saw Nzabonimana seated on the right side of the vehicle as it negotiated the bend, heading towards Nyabikenke. As the vehicle came towards the witness, the witness could clearly see Nzabonimana's face. The megaphone, which was approximately 30 centimetres in diameter, was outside the window glass and did not obstruct Nzabonimana's face. Also in the vehicle was an unidentified driver. Nzabonimana spoke through the megaphone so that all the people in the vicinity could hear him. After clearing the bend, the driver's side of the vehicle was closest to Witness CNBA.[1292]

1004. According to the witness, Nzabonimana said that "what mattered, what was urgent, was not the destruction of the houses and the property of the Tutsis, because in the end that property would return to them [...] what mattered was, first of all, to target the Tutsis." Witness CNBA recognised the voice of Nzabonimana and also saw him as he passed. He recognised Nzabonimana because he "knew he was a [M]inister from our region who had helped our *secteur* develop [...] and he had distributed balls to us."[1293]

1005. After the car passed the area, Witness CNBT went to the hiding place of the witness and asked him whether he heard Nzabonimana's statements. Witness CNBA confirmed that he heard the statements and remarked that Nzabonimana had become an animal. At the time of this discussion, Witness CNBT did not have a club with him. It was decided that the witness could not spend the night in the plantation and he was sent to Nyakabanda on 15 or 16 April 1994, where he stayed until the end of the war.[1294]

1006. Witness CNBA learned that Rosette Utamuriza and her two children had been killed "after Callixte had made statements inciting the members of the population." Witness CNBA learned about Utamuriza's death after he arrived in Nyakabanda. The entire local population was aware that Nzabonimana had passed by the locality and used a megaphone to talk to the people.[1295]

Defence Witness T56

1007. Witness T56 was a student and lived in Nyabikenke *commune* in 1994.[1296] The witness lived on the same hill as Witness CNBT and confirmed that Witness CNBT's sister was married to Witness CNBA, who was a Tutsi. A dozen other families also lived on the hill, including Witness T57. Witness T56 knew Nzabonimana as the Minister of Youth in April 1994 and knew that he had previously been the Minister of Planning. He knew Nzabonimana very well and

[1291] T. 14 December 2009 pp. 14-16, 35-36, 40 (ICS) (Witness CNBA).
[1292] T. 14 December 2009 pp. 14, 16-17, 31, 33-34, 36, 45-49 (ICS) (Witness CNBA).
[1293] T. 14 December 2009 pp. 14, 16, 45-46 (ICS) (Witness CNBA).
[1294] T. 14 December 2009 pp. 13, 14, 17, 53 (ICS) (Witness CNBA).
[1295] T. 14 December 2009 pp. 52-53 (ICS) (Witness CNBA).
[1296] Defence Exhibit 106 (Protected Information Sheet); T. 28 February 2011 pp. 57-58 (ICS) (Witness T56).

considered him a hero. Witness T56 was not happy to see someone that he considered to be a hero in prison.[1297]

1008. The witness saw Nzabonimana twice after 6 April 1994, once at the end of April 1994 and once in the beginning of May 1994. Both times Nzabonimana was in a vehicle and driving from Gitarama to Gasenyi with a driver and a protection detail, but never with a megaphone. From his house, the witness heard megaphone announcements made on the Gitarama-Nyabikenke road in 2010. If anyone had used a megaphone to call on people to attack Tutsis in 1994, Witness T56 would have heard it from his house, which was located between 30 and 50 metres from the road.[1298]

1009. In 1994, a coffee plantation was located 70 metres from, and also above, the road. The plantation was approximately 20 by 15 metres in size and contained approximately 50 trees. Witness T56 did not know that Witness CNBA hid in the coffee plantation in April 1994. The day after Witness CNBA fled to Nyakabanda, Witness T56 learned from the parents of Witness CNBA's wife that their house had been searched. The witness did not visit the plantation in April 1994.[1299]

1010. The witness estimated that the bend in the road located below the plantation was approximately 30 metres long. From the bend in the road, above the embankment, was a small pathway going in the direction of the home of Witness T57 and the coffee plantation. The distance from where the footpath started to the bend in the road was approximately 55 metres. The area had many more trees in 1994 than it did at the time of the witness's testimony. Depending upon the number of trees along the road, one would not have been able to see a vehicle travelling along the road from the coffee plantation.[1300]

1011. Around 17 April 1994, Tutsis who were being chased from other areas started appearing in the witness's locality on their way to Kabgayi. The witness saw houses burning and people fleeing as people torched Tutsis' houses in neighbouring *secteurs*. Two days later, the witness and others started eating the cows of victims. Three days later, the first human was killed. The attackers came from other regions and sensitised members of the witness's community to chase Tutsis. The attackers did not come every day but over a period of two weeks until the local residents started committing acts of violence. Witness T56 heard the attackers make threatening statements but he did not hear them say that they received instructions from anyone, and they never mentioned Nzabonimana. The witness identified the *Interahamwe* as a group of young people armed and trained to carry out violent acts under the instructions of the MRND. The attackers in his area were not *Interahamwe*.[1301]

[1297] T. 28 February 2011 pp. 58-59 (ICS); T. 1 March 2011 pp. 5, 10-11; T. 1 March 2011 p. 56 (ICS) (Witness T56).
[1298] T. 28 February 2011 p. 67 (ICS); T. 1 March 2011 pp. 5-8, 59-60, 62; T. 1 March 2011 pp. 26-27 (ICS) (Witness T56).
[1299] T. 1 March 2011 pp. 30, 50, 52, 54-56 (ICS) (Witness T56).
[1300] T. 1 March 2011 pp. 34, 38, 46-48 (ICS) (Witness T56); Prosecution Exhibit 72 (Photograph); Prosecution Exhibit 73 (Photograph).
[1301] T. 28 February 2011 pp. 68-70; T. 1 March 2011 pp. 4, 58-59 (Witness T56).

1012. The witness participated in *Gacaca* information-gathering sessions in his area. At those sessions, no one mentioned that Nzabonimana travelled around the *cellule* inciting people to kill with a megaphone.[1302]

Defence Witness T57

1013. Witness T57, a carpenter and an uncle of Witness CNBT, lived in the same area as the house where Witness CNBA, a Tutsi, sought refuge with his in-laws in 1994.[1303] The witness knew Nzabonimana as a member of the MRND party. From April to July 1994, the witness took part in night patrols to ensure security in his locality and "to prevent the enemy from infiltrating."[1304]

1014. Witnesses CNBT and CNBA were brothers-in-law. The witness did not see Witness CNBA between April and July 1994, but heard that Witness CNBA arrived in the area around 27 April 1994, staying less than two weeks. Less than three days after Witness CNBA arrived in the *cellule*, a group of people came to look for Witness CNBA in the house of his father-in-law, but did not find him. These people were not *Interahamwe*. The witness defined *Interahamwe* as "the youth wing of the MRND who had undergone military training." There were no *Interahamwe* in the witness's home *cellule*.[1305]

1015. Witness T57 knew that Witness CNBA hid in the coffee plantation owned by Witness CNBA's father-in-law. The witness became aware of Witness CNBA's hiding place because he saw Witness CNBA's mother-in-law bring him food.[1306]

1016. The coffee plantation was located above the road. A footpath provided access to and from the road to the plantation. An eight metre high embankment was on the side of the road. Approximately 140 to 150 metres separated the top of the embankment from the plantation. At the time of the witness's testimony there were fewer trees in the area than in 1994, and there were many tree stumps indicating that trees had been cut down. The entire area was covered in trees in 1994. Anyone wanting to access the coffee plantation in 1994 would have to use the footpath.[1307]

1017. The witness's house was located 30 metres from the coffee plantation and 150 metres from the edge of the road, and also above the road. The coffee plantation was situated below his house and closer to the road. The plantation was approximately 30 metres wide by 20 metres long and Witness CNBA hid in the centre, approximately 160 metres from the road. The coffee plantation contained approximately 50 trees, spaced one or two metres apart. Witness T57 confirmed the location of Witness T56's house and indicated the proximity of the road to the

[1302] T. 1 March 2011 pp. 8-9 (Witness T56).
[1303] Defence Exhibit 22 (Protected Information Sheet); T. 17 May 2010 pp. 66-67 (ICS); T. 18 May 2010 p. 27 (ICS) (Witness T57).
[1304] T. 20 May 2010 pp. 22, 27 (ICS) (Witness T57).
[1305] T. 17 May 2010 p. 67 (ICS); T. 18 May 2010 pp. 4, 7-8, 22 (ICS); T. 20 May 2010 pp. 14, 16 (ICS) (Witness T57).
[1306] T. 18 May 2010 pp. 8, 27 (ICS); T. 20 May 2010 pp. 24-25 (ICS) (Witness T57).
[1307] T. 18 May 2010 pp. 31-32 (ICS) (Witness T57); Defence Exhibit 26 (Photograph of Embankment and Hill); Defence Exhibit 28A (Video 2.3), 00.27; Defence Exhibit 29 (Video 2.4), 00.12.

house. The witness learned that Witness CNBA subsequently went to the home of his brother-in-law in Nyakabanda *commune*.[1308]

1018. Witness T57 identified the locations where a person in the coffee plantation would be able to see a vehicle travelling from Gitarama. Because of the trees and the embankment, a person in the plantation would lose sight of a vehicle as it reached the first corner of the bend. The witness estimated that 188 metres separated the coffee plantation and the point where one could see a vehicle on the road.[1309]

1019. Witness T57 saw Witness CNBT regularly while Witness CNBA was hiding but never saw Witness CNBT carrying a club. The witness did not see Witness CNBT acting like an assailant, but observed him carrying out security patrols like other members of the population. During night patrols, assailants came to search the houses on the hill for Tutsis.[1310]

1020. The witness lived near the road and saw Nzabonimana at least four times when Nzabonimana passed through the area. He saw Nzabonimana on the road travelling towards Nyabikenke on two occasions between 6 and 20 April 1994. Nzabonimana did not stop and did not get out of the car, and the witness did not hear Nzabonimana speak. The witness never saw Nzabonimana pass by the witness's *cellule* using a megaphone to address members of the population. No one else mentioned such an incident, including during *Gacaca* sessions. Witness T57 saw Witness CNBA at *Gacaca* sessions and Witness CNBA did not mention an incident where Nzabonimana used a megaphone to call on members of the population to kill Tutsis.[1311]

1021. On or about 20 April 1994, *Interahamwe* passed through the witness's *cellule*. Everyone knew that a person who was armed with a gun and not wearing a military uniform was an *Interahamwe*. As they passed, the *Interahamwe* shouted that the chaff should be separated from the grain. The witness understood the word "chaff" to refer to Tutsis. The *Interahamwe* did not stop in the witness's area. The witness saw Nzabonimana both before and after the *Interahamwe* passed by the road near his residence.[1312]

1022. Three days after the *Interahamwe* came, the witness and others saw houses burning on a nearby hill. The following day, Tutsis from the hill passed through the area on their way to Kabgayi. The next day, members of the population started slaughtering cows belonging to Tutsis and hunting down and killing Tutsis who were hiding. The victims included Augustin Ndayisaba, Silas and Rosette Utamuriza and her child. A man named Louis Gasana confessed to killing Ndayisaba. Rosette Utamuriza was abducted in the night and her body was thrown into a ditch in Rutobwe *commune*. Emile Tituni and Benoit Ntaganda killed Rosette Utamuriza. The killers were not *Interahamwe*. No one mentioned Nzabonimana as having played a role in the death of Utamuriza.[1313]

[1308] T. 18 May 2010 pp. 8, 28-29, 31 (ICS); T. 20 May 2010 pp. 29-31 (ICS) (Witness T57); Defence Exhibit 27 (Video 2.2), 01.01; Defence Exhibit 28A (Video 2.3), 00.12.
[1309] T. 18 May 2010 pp. 40-41, 43 (ICS) (Witness T57); Defence Exhibit 25 (Photograph of Road).
[1310] T. 18 May 2010 pp. 8-9 (ICS); T. 20 May 2010 pp. 22-23 (ICS) (Witness T57).
[1311] T. 18 May 2010 pp. 10-13, 45-46 (ICS); T. 20 May 2010 pp. 9-10 (Witness T57).
[1312] T. 18 May 2010 pp. 4-5 (ICS); T. 20 May 2010 p. 8; T. 20 May 2010 pp. 13, 53 (ICS) (Witness T57).
[1313] T. 18 May 2010 pp. 4-7, 45 (ICS); T. 20 May 2010 p. 8; T. 20 May 2010 pp. 12-13, 54 (ICS) (Witness T57).

Defence Witness T5

1023. Witness T5 was an official in the Ministry of Finance in 1994 and had a home in Nyabikenke *commune* which he travelled to in April 1994. The witness was aware that Nzabonimana was the Minister of Youth in 1994.[1314]

1024. The witness testified that when a Minister passed through or spoke in an area, the news spread very quickly. When Witness T5 visited Nyabikenke, he spoke with his aunt and his brother. Neither mentioned Nzabonimana nor any type of megaphone address. At the end of May 1994, the witness had lengthy conversations with an old man and others at Peru centre. No one mentioned a megaphone address. Witness T5 also went to Cyambali centre to buy petrol and drink banana beer. During conversations with those assembled, no one mentioned instructions given by Nzabonimana or spoke of Nzabonimana's megaphone. Other extended family members visited the witness in early June 1994 and made no mention of a megaphone address by Nzabonimana in the area.[1315]

Defence Witness T24

1025. Witness T24, a local government official in Nyabikenke *commune* in 1994,[1316] never heard that Nzabonimana moved around with a megaphone to incite people to kill Tutsis. If such an incident had occurred, it would have been mentioned during *Gacaca* proceedings. Someone with the stature of a Minister would not take a megaphone to call people in such a manner. If a Minister was associated with such an incident, he would have used a third person to deliver the message by megaphone.[1317]

Defence Witness Fernand Batard

1026. Batard, a former Lieutenant Colonel in the French Judicial Police, worked as an investigator for the Defence.[1318] Batard surveyed the area around the hill at issue and the former coffee plantation. Witness T57 directed Batard to the site of the former coffee plantation. Batard identified the location of the coffee plantation in 1994 in court.[1319]

1027. Batard identified the areas of the hill which were inhabited in 1994. At the time of his investigation, four houses were located on the hill. These houses were also present in 1994. Batard identified the house of Witness CNBT's father and the house of Witness T57. Batard testified that Witness T57's house was 28 metres from the coffee plantation. Witness T56's house was 38 metres from the Gitarama-Nyabikenke road.[1320]

1028. The slope of the hill began 8 metres above the road. The coffee plantation had been located on a flat surface above the slope of the hill, and not on the slope. Between the coffee

[1314] T. 14 April 2010 pp. 10, 11, 14 (ICS); T. 15 April 2010 p. 4 (ICS) (Witness T5).
[1315] T. 15 April 2010 pp. 22, 24-25 (ICS); T. 20 April 2010 pp. 11-12 (ICS) (Witness T5).
[1316] For additional introductory information on Witness T24, *see* para. 284, *supra*.
[1317] T. 27 April 2010 p. 12 (ICS) (Witness T24).
[1318] T. 21 March 2011 pp. 7-10 (Batard).
[1319] T. 21 March 2011 pp. 52-53; T. 21 March 2011 pp. 56-57 (ICS) (Batard); Defence Exhibit 131F (PowerPoint Presentation) (marking the location on slides 10-13).
[1320] T. 21 March 2011 pp. 54, 56-58 (ICS) (Batard).

plantation and the road was a slope of about 20 metres difference in height. Someone lying down on the ground would not have been able to see the road from the plantation because the slope would have hidden the road. Vegetation also would have blocked one's view of the road.[1321]

3.5.5.3 Deliberations

1029. The Prosecution relies on two eyewitnesses, a Hutu farmer and a Tutsi farmer related by marriage, to support the allegations contained in Paragraph 41 of the Indictment. The Defence challenges the credibility of the Prosecution witnesses and asserts that Witness CNBA would not have been able to observe the megaphone announcement from his position in the coffee plantation.

1030. Witnesses CNBT and CNBA testified that Witness CNBA sought refuge at the home of Witness CNBT and his family.[1322] Both testified that at some point Witness CNBA was moved to a nearby, family-owned coffee plantation to keep him safe during house-to-house searches.[1323] The fact that Witness CNBA hid in the coffee plantation is partially corroborated by Defence Witness T57, another family member of the Prosecution witnesses, who observed Witness CNBA's mother-in-law bringing food to Witness CNBA.[1324] Given this evidence, the Chamber concludes that Witness CNBA was indeed hiding in a coffee plantation on the hill in question during the events.

1031. Witnesses CNBT and CNBA also testified that they saw Nzabonimana making an announcement by megaphone on or about 16 April 1994, on the Gitarama-Nyabikenke road. According to the Prosecution evidence, Nzabonimana announced through the megaphone that people should prioritise killing Tutsis before taking their property.

1032. The Chamber notes that the Prosecution failed to establish the precise size or location of the coffee plantation where Witness CNBA hid, thus making it difficult to determine whether Witness CNBA would have been able to observe the megaphone announcement from his position. Witness CNBT testified that the coffee plantation contained 300 trees, but did not provide any additional information about the size of the plantation. Furthermore, Witness CNBT testified that when he saw Nzabonimana's vehicle, he was 20 metres uphill from the point where the footpath leading up the hill met the road and that Witness CNBA's hiding place was 60 to 70 metres away from where Witness CNBT stood.[1325] Witness CNBA also did not provide information regarding the size of the plantation and testified that there were not very many coffee trees located there.[1326] Furthermore, the Chamber notes that Witness CNBA testified Nzabonimana's vehicle passed just a "few metres" from his hiding place.[1327] The Chamber notes that the testimony of the two Prosecution witnesses regarding the location of the coffee

[1321] T. 21 March 2011 pp. 59, 61 (ICS) (Batard).
[1322] T. 2 December 2009 pp. 55-56 (Witness CNBT); T. 14 December 2009 p. 13 (ICS) (Witness CNBA).
[1323] T. 2 December 2009 p. 56; T. 2 December 2009 pp. 66-68 (ICS) (Witness CNBT); T. 14 December 2009 pp. 14, 24, 29 (ICS) (Witness CNBA).
[1324] T. 20 May 2010 pp. 24-25 (ICS) (Witness T57).
[1325] T. 3 December 2009 pp. 8-9 (ICS) (Witness CNBT).
[1326] T. 14 December 2009 p. 21 (ICS) (Witness CNBA).
[1327] T. 14 December 2009 p. 36 (ICS) (Witness CNBA).

plantation was not consistent.[1328] Having visited the location in question during its site visit, the Chamber notes that if indeed Witness CNBA's hiding place was 60 to 70 metres in any direction from where Witness CNBT said he was standing, Witness CNBA would have been much further from the road than he acknowledged and he would not have been able to see Nzabonimana's vehicle.

1033. The Chamber notes further inconsistencies in the testimony of Witnesses CNBT and CNBA. Witness CNBT testified that he hid Witness CNBA in the coffee plantation for his safety and that once hidden, Witness CNBA remained there until the decision was taken to move him to Nyakabanda.[1329] The witness testified that Witness CNBA became practically gangrenous because he did not move.[1330] However, Witness CNBA testified that he was taken to the coffee plantation very early each morning by Witness CNBT and that he spent every evening in the house of his mother-in-law.[1331]

1034. In addition, Witness CNBT testified that he brought Witness CNBA food but did so in a way that nobody could see him.[1332] However, Witness CNBA testified that he did not eat while in the coffee plantation because it was too dangerous to have people bring him food.[1333] Witness T57 testified as to yet another version of events, stating that Witness CNBT's mother brought food to Witness CNBA.[1334] Given that Witness CNBA was in hiding, the Chamber does not find Witnesses CNBT or T57 to have provided plausible testimony on this point, as the very act of bringing food to Witness CNBA would have risked exposing his hiding place.

1035. Witness CNBT also testified that he carried a large club to protect Witness CNBA and also as a cover to justify his continued presence in the coffee plantation.[1335] Witness CNBT testified that he stayed all day in the area near the hiding place with this club.[1336] However, both Witnesses CNBA and T57 testified that they did not see Witness CNBT carrying a club.[1337] The Chamber finds that Witness CNBT's testimony regarding the club was implausible, as again, such behaviour would have attracted attention and risked exposing Witness CNBA's hiding place.

1036. Witnesses CNBT and CNBA also provided inconsistent testimony as to the amount of time Witness CNBA stayed in the coffee plantation after the Prosecution witnesses heard Nzabonimana's address. Witness CNBT testified that he moved Witness CNBA not more than two days after they heard Nzabonimana's address.[1338] This contrasts with Witness CNBA, who

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[1328] The Chamber notes that the Defence disputed whether Witness CNBA could see Nzabonimana's vehicle from where he was hiding. *See* T. 1 March 2011 pp. 30, 38, 50, 52 (ICS) (Witness T56) (the coffee plantation was located 70 metres away from and above the road); T. 18 May 2010 p. 31 (ICS); T. 20 May 2010 pp. 30-31 (ICS) (Witness T57) (the plantation was approximately 160 metres from the road); T. 21 March 2011 pp. 58-59, 61 (ICS) (Batard).
[1329] T. 2 December 2009 pp. 56, 58 (Witness CNBT).
[1330] T. 3 December 2009 pp. 2-5 (ICS) (Witness CNBT).
[1331] T. 14 December 2009 pp. 14, 29 (ICS) (Witness CNBA).
[1332] T. 2 December 2009 p. 67 (ICS) (Witness CNBT).
[1333] T. 14 December 2009 p. 29 (ICS) (Witness CNBA).
[1334] T. 20 May 2010 pp. 24-25 (ICS) (Witness T57).
[1335] T. 2 December 2009 pp. 73, 74 (ICS) (Witness CNBT).
[1336] T. 2 December 2009 p. 56; T. 2 December 2009 p. 73 (ICS) (Witness CNBT).
[1337] T. 14 December 2009 p. 53 (ICS) (Witness CNBA); T. 18 May 2010 pp. 8-9 (ICS) (Witness T57).
[1338] T. 2 December 2009 p. 58 (Witness CNBT).

testified that immediately after the address, it was decided that he could not spend even that night on the hill and he immediately went to Nyakabanda.[1339]

1037. The Chamber notes as well that Witness CNBT was evasive in answering basic questions about geography and the names of his neighbours.[1340] The witness was similarly unwilling to answer questions regarding how many times his house was searched by the assailants.[1341] The Chamber considers that the witness's reluctance in his testimony and his demeanour diminished his overall credibility.

1038. The Chamber also notes that Witnesses CNBA and CNBT both spoke of this event to investigators for the first time in 2008. The Chamber heard evidence that this incident was not discussed or investigated during *Gacaca* proceedings.[1342] Neither Witness CNBT nor Witness CNBA mentioned the incident in *Gacaca* proceedings.[1343] The Chamber notes that Witness CNBA was a local official within his *secteur* beginning in 1996, and had a role in the ongoing investigations into the genocide.[1344] The Chamber considers that given his official position, Witness CNBA would have provided relevant information during *Gacaca* sessions, if he had any such information. The Chamber considers that the Prosecution witnesses' previous silence, particularly given Witness CNBA's position of authority, undermines the credibility of their testimony.

1039. Turning to the Defence evidence, Witnesses T5, T24 and T56 testified that they never heard Nzabonimana give an address through a megaphone and that they never heard other members of the community mention such announcements. The Chamber recalls that it treats Witness T24's testimony with appropriate caution and also recalls the serious credibility issues related to his general testimony (2.7.7; 3.2.3.2.2). Regarding Witness T56, the Chamber notes that this witness testified that he considered Nzabonimana to be a hero, and was not happy to see someone he considered to be a hero in prison.[1345] The Chamber therefore considers that Witness T56 may have been motivated to testify in favour of Nzabonimana. Moreover, the Chamber finds the general second-hand testimony of these witnesses regarding the announcement to be of limited probative value.

1040. Witness T57 also testified that the announcement did not occur. The Chamber notes that Witness T57 testified that the Tutsi wife of his brother came to stay with him during the genocide, but that she was not in hiding.[1346] Witness T57 also acknowledged that Tutsis were being hunted down in the *cellule* during that time.[1347] The Chamber considers that Witness T57's refusal to admit that he was hiding his brother's wife casts doubt upon the veracity of his testimony. Furthermore, the Chamber notes that Witness T57's testimony varied significantly from the other witnesses regarding when and how long Witness CNBA hid in the coffee

[1339] T. 14 December 2009 pp. 13, 14, 17 (ICS) (Witness CNBA).
[1340] T. 2 December 2009 pp. 63-66, 68-69, 73 (ICS) (Witness CNBT).
[1341] T. 3 December 2009 pp. 2-4 (ICS) (Witness CNBT).
[1342] T. 14 December 2009 pp. 27-28 (ICS) (Witness CNBA); T. 27 April 2010 p. 12 (ICS) (Witness T24); T. 1 March 2011 pp. 8-9 (Witness T56); T. 18 May 2010 pp. 13, 45-46 (ICS) (Witness T57).
[1343] T. 3 December 2009 p. 12 (ICS) (Witness CNBT); T. 18 May 2010 pp. 13, 45, 46 (Witness T57).
[1344] T. 14 December 2009 p. 26 (ICS) (Witness CNBA).
[1345] T. 1 March 2011 pp. 10-11 (Witness T56).
[1346] T. 18 May 2010 p. 61 (ICS) (Witness T57).
[1347] T. 20 May 2010 pp. 53-54 (ICS) (Witness T57).

plantation,[1348] and the distances between his house, the plantation and the road.[1349] Given the variances between Witness T57's testimony and the testimony of the other witnesses, the Chamber only relies on his testimony where corroborated by credible evidence.

1041. Nevertheless, for the reasons set forth above, the Chamber finds that the Prosecution has failed to prove beyond a reasonable doubt that on or about 16 April 1994, Nzabonimana travelled around Nyabikenke *commune* speaking through a megaphone, telling Hutu civilians and *Interahamwe* to kill Tutsis before taking their property.

3.5.6 Release of Killers in Rutobwe *Commune*

3.5.6.1 Introduction

1042. Paragraph 24 of the Indictment alleges that on or about 18 April 1994, in Rutobwe *commune*, Gitarama *préfecture*, Nzabonimana encouraged the killing of Tutsis and those protecting them. Nzabonimana caused the release of the perpetrators of the killings and told the public not to obey *Bourgmestre* Jean-Marie Vianney Mporanzi, who was against the killings. These actions paved the way for the eruption and intensification of massacres in Rutobwe *commune*.[1350]

1043. The Prosecution submits that Nzabonimana went to Rutobwe *commune* and forcibly released from jail people accused of killing Tutsis. These people subsequently attacked Tutsis and boasted that Nzabonimana gave them authority to kill. Defence Witness Mporanzi informed other *bourgmestres* of the release on 18 April 1994. Mporanzi told Prosecution Witness CNAA of the release at a meeting on 18 April 1994. The Prosecution relies on Prosecution Witnesses CNAA and CNAC.[1351]

1044. The Defence submits that Witnesses CNAA and CNAC fabricated their evidence against Nzabonimana (3.2.3). The Defence does not deny the prisoner release, but contests Nzabonimana's involvement. The Defence submits that the Prosecution evidence was hearsay and not credible. The Defence relies upon Defence Witness Mporanzi.[1352]

3.5.6.2 Evidence

Prosecution Witness CNAA

1045. Witness CNAA, a Hutu, was a local government official in Nyamabuye *commune*, Gitarama *préfecture*, in April 1994. At the time of his testimony, the witness was imprisoned in Gitarama prison for his role in the events of 1994. He was arrested on 14 March 1997.[1353]

[1348] T. 18 May 2010 pp. 7-8, 22 (ICS) (Witness T57) (testifying that Witness CNBA went to the coffee plantation around 27 April 1994 and that he stayed for less than two weeks).
[1349] T. 18 May 2010 pp. 7-8, 31 (ICS); T. 20 May 2010 p. 29 (ICS) (Witness T57) (testifying to the distance between the coffee plantation, the road and his house).
[1350] Para. 24 of the Indictment.
[1351] Prosecution Closing Brief, para. 150; T. 20 October 2011 pp. 24, 26 (Prosecution Closing Argument).
[1352] Defence Closing Brief, paras. 441-442, 452-459; T. 20 October 2011 pp. 60-61, 67-68 (Defence Closing Argument).
[1353] Prosecution Exhibit 20 (Protected Information Sheet); T. 15 December 2009 p. 23 (ICS) (Witness CNAA).

Witness CNAA knew of Nzabonimana before 1994, but was unsure whether Nzabonimana knew him in return. He knew Nzabonimana as the Chairman of the MRND party in Gitarama *préfecture* and as the Minister of Youth, and thus would see Nzabonimana at administrative meetings and political rallies. Both the witness and the general population viewed Nzabonimana "as an important figure of authority." The witness recalled a political rally organised by the MRND party that he attended at Gitarama stadium in 1993 where he saw Nzabonimana. Although the rally was organised by the MRND, militants of other political parties were allowed to attend.[1354]

1046. Witness CNAA testified that at a meeting held at the *préfecture* office prior to the Murambi meeting on 18 April 1994 (3.5.7), the *bourgmestre* of Rutobwe *commune*, Jean-Marie Mporanzi, informed the witness and others of the problems he encountered in his *commune*, including the prisoner release. The witness could not recall the date and time of the meeting.[1355]

1047. In Rutobwe *commune*, authorities had arrested people engaged in looting, killing Tutsis and seizing their cows. Mporanzi told the witness that Nzabonimana had forcibly released the perpetrators and that Nzabonimana had told those released that they could "do what he was doing." Witness CNAA testified that it was as if Nzabonimana had launched the genocide.[1356]

1048. Witness CNAA testified that Mporanzi spoke of the prisoner release again at the Murambi meeting on 18 April 1994. At the meeting, Nzabonimana told those present that anyone working for the administration who offered support to the Tutsis would be seen as an enemy. This scared the witness and the others present.[1357]

1049. Witness CNAA also learned of the prisoner release from the prisoners themselves. The released prisoners attacked the witness's *commune*, which bordered Rutobwe *commune*. The attackers said that the Government Ministers had authorised the killing of Tutsis. Most people in Gitarama knew of the incident, and people in detention still spoke of it.[1358]

Prosecution Witness CNAC

1050. Witness CNAC, a Hutu, was a local government official in Masango *commune*, Gitarama *préfecture*, in April 1994.[1359] At the time of his testimony, the witness was serving a 30-year sentence in Gitarama prison for his role in the 1994 events.[1360]

1051. Witness CNAC knew Nzabonimana very well for at least five years prior to 1994, as they both hailed from the same province and members of Nzabonimana's family were his neighbours. From July 1993 to July 1994, the general population considered Nzabonimana to be an

[1354] T. 14 December 2009 pp. 63-64 (Witness CNAA).
[1355] T. 15 December 2009 pp. 2, 50, 54 (ICS) (Witness CNAA).
[1356] T. 14 December 2009 pp. 64-65 (Witness CNAA).
[1357] T. 14 December 2009 p. 64; T. 15 December 2009 p. 51 (ICS) (Witness CNAA). *See also* paras. 1080-1089, *infra*.
[1358] T. 15 December 2009 pp. 2-3 (ICS); T. 15 December 2009 p. 2 (HC) (Witness CNAA) (French) ("*Après leur libération du cachot communal, ils racontaient partout que le gouvernement avait autorisé de tuer les Tutsis, car un des ministres le leur avait dit.*").
[1359] Prosecution Exhibit 21 (Protected Information Sheet).
[1360] T. 12 April 2010 p. 9 (ICS); T. 13 April 2010 pp. 25-27 (ICS) (Witness CNAC).

important, appreciated and well-respected personality as he helped the people of his region, without distinction, in development matters and other affairs. In addition to being a Minister during this period, Nzabonimana was also the Chairman of the MRND party for Gitarama *préfecture*.[1361]

1052. Nzabonimana had many responsibilities as Chairman of the MRND at the *préfecture* level, because since the advent of multiparty politics, *préfecture* authorities had to work with the other parties that formed the Government. By virtue of his position, he could approve or deny various projects within his community. As MRND Chairman for Gitarama, he was the hierarchical superior of all party members within that *préfecture*, from the *cellule* to the *préfecture* level, and he supervised campaigns being carried out by the party.[1362]

1053. Nzabonimana also had effective authority over the youth wing of the MRND party, known as the *Interahamwe*, since its actions arose from instructions that were given at the *préfecture* level. Between July 1993 and July 1994, the *Interahamwe* were regarded by members of the population as violent youths affiliated with the MRND party who engaged in targeted acts of violence against members of other parties who were influential in the region.[1363]

1054. After the death of the President on 6 April 1994, Witness CNAC saw Nzabonimana on two occasions. During this time Nzabonimana was a changed person. He led killings and massacres that were being perpetrated by the youth wing in the region, and when he was asked to stop those acts committed by the *Interahamwe*, he issued threats that anyone who did not support him would suffer the consequences. He was immune to the pleas of Witness CNAC and others who tried to convince him to stop the *Interahamwe* from perpetrating criminal acts.[1364]

1055. As a result of these massacres, the authorities in the region turned to the *préfecture* authorities to find ways of reassuring the population regarding security. *Préfecture* authorities met to brainstorm and seek advice on how to address the massacres. The *préfet* invited Witness CNAC and other leaders to a meeting at the *préfecture* office.[1365]

1056. On 18 April 1994, the witness arrived at the *préfecture* office at 8.00 a.m. and remained there until the meeting started. All the *bourgmestres* had been invited to the meeting. The *bourgmestres* of Murama, Rutobwe, Runda, Taba and Musambira were present.[1366]

1057. Prior to the meeting the *bourgmestres* gathered in the hallway. Jean-Marie Vianney Mporanzi, the *bourgmestre* of Rutobwe *commune*, spoke, and outlined the problems he faced in his *commune* and said he had detained people who had eaten the cows of Tutsis. Mporanzi said that Nzabonimana had passed through Rutobwe, threatened him and asked him to release the prisoners. Mporanzi also said that he had been struck by Nzabonimana. The witness was

[1361] T. 16 December 2009 pp. 53-54 (Witness CNAC).
[1362] T. 16 December 2009 p. 54 (Witness CNAC).
[1363] T. 16 December 2009 pp. 54-55 (Witness CNAC).
[1364] T. 16 December 2009 p. 55 (Witness CNAC).
[1365] T. 16 December 2009 pp. 57-59 (ICS) (Witness CNAC).
[1366] T. 16 December 2009 pp. 57-59 (ICS) (Witness CNAC).

surprised to hear of Mporanzi's experience, as a *bourgmestre* was considered to be a respectable person.[1367]

Defence Witness Jean-Marie Vianney Mporanzi

1058. Mporanzi, the *bourgmestre* of Rutobwe *commune* in 1994,[1368] testified that problems started to occur in his *commune* on 11 April 1994 when the Tutsi who was in charge of the Rutobwe health centre died. On 12 April 1994, friends told Mporanzi that small groups were organising themselves. They also told Mporanzi that it was being said that he was an accomplice of the RPF. On the night of 13 April 1994, two Tutsi families were attacked in Rubimba *cellule*, Gatovu *secteur*. Mporanzi was informed of the attacks on the morning of 14 April 1994 and went to Rubimba to investigate. Mporanzi found that a man had been bludgeoned to death and another severely injured. Mporanzi investigated the incident and arrested four or five suspects. Mporanzi placed the suspects in a detention cell while preparing their case files to send to the Prosecutor's office.[1369]

1059. After detaining the suspects, Mporanzi went to Cyeza Parish to see his friend Father Michel Gigi, a Belgian Catholic priest, in order to seek his advice on how to handle the situation. Pursuant to Father Gigi's advice, Mporanzi held a pacification meeting on 17 April 1994 in his *commune* with members of the population. On that same day, people had started eating the cows of Tutsis. He arrested people who had pieces of meat in their homes and took them to the jailhouse to join the suspects who had already been detained. Mporanzi detained a total of 12 or 13 suspects.[1370]

1060. Mporanzi received an invitation from *Préfet* Fidèle Uwizeye of Gitarama *préfecture* to attend a meeting on 18 April 1994 at 9.00 a.m. at the *préfecture* office. At the meeting Mporanzi hoped to discuss the situation in his *commune*. When Mporanzi arrived at the *préfecture* office, he went directly to the conference room where he found other *bourgmestres* talking informally while waiting for the meeting to start. He talked with some of them, particularly those whose *commune* shared a border with his own, including the *bourgmestres* of Nyabikenke, Nyamabuye and Ruhinga, on how to manage the prevailing situation. The witness did not discuss Nzabonimana with any of the others.[1371] He also did not raise the issue of the prisoners at the Murambi meeting later that day.[1372]

1061. After the meeting at Murambi on 18 April 1994, Mporanzi again went to see Father Gigi. Regarding the prisoners held in the *commune*, Father Gigi told him that he risked being attacked by organised gangs if he did not release the prisoners. Mporanzi then went to the *commune* office, called the policeman on duty and ordered him to release all the prisoners in the jailhouse. Mporanzi testified that he made the decision to release the prisoners with Father Gigi. In taking this decision, Mporanzi also took into account the advice which had been given by members of the Government to the *bourgmestres* at the Murambi meeting. In particular, at the Murambi

[1367] T. 16 December 2009 p. 59 (ICS); T. 12 April 2010 pp. 21-23 (ICS) (Witness CNAC).
[1368] For additional introductory information on Mporanzi, *see* para. 697, *supra*.
[1369] T. 25 May 2010 pp. 50-51; T. 31 May 2010 p. 56 (Mporanzi).
[1370] T. 25 May 2010 pp. 57-58; T. 31 May 2010 pp. 52, 56-57, 59 (Mporanzi).
[1371] T. 25 May 2010 pp. 59-60, 62 (Mporanzi).
[1372] T. 26 May 2010 p. 5 (Mporanzi).

meeting, Witness T82 had said that imprisoning people would place the *bourgmestres* in confrontation with the masses. Mporanzi denied that Nzabonimana ever struck him and denied that Nzabonimana played a role in freeing the prisoners.[1373]

1062. The prisoners interpreted their release as a victory over Mporanzi. After they had an opportunity to organise themselves, they began to "concretise" the violence in Rutobwe *commune*, to the point where after about 20 April 1994, "the perpetrators were doing whatever they wanted," including killing Tutsis. Mporanzi coordinated the evacuation of Tutsis at this time. The killers came from neighbouring *communes* to kill their neighbours. The perpetrators were not members of any particular political party, nor were they members of the *Interahamwe*.[1374]

3.5.6.3 Deliberations

1063. The Parties do not dispute that Mporanzi released prisoners in Rutobwe *commune* in April 1994.[1375] At issue is the role played by Nzabonimana in the prisoner release and the day when the release occurred.

1064. The Prosecution relies upon Witnesses CNAA and CNAC. The Chamber notes that at the time of their testimony, Witnesses CNAA and CNAC were both imprisoned for crimes committed during the genocide.[1376] The Chamber therefore treats the testimony of these witnesses with appropriate caution (2.7.7).

1065. The Chamber recalls that it has considered the Defence submission that Witnesses CNAA and CNAC fabricated their evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witnesses CNAA and CNAC (3.2.5).

1066. Witnesses CNAA and CNAC provided consistent evidence of a meeting held at the Gitarama *préfecture* office prior to the 18 April 1994 Murambi meeting, where Mporanzi addressed the situation of the prisoners in Rutobwe *commune*.[1377] Witness CNAC testified that the meeting occurred on the morning of 18 April 1994 and that *bourgmestres* attended the meeting.[1378] Witness CNAA could not recall the date or time of the meeting but testified that it occurred on a different day.[1379] The Chamber considers that Witness CNAA's inability to give a precise date for the meeting has minimal impact upon his credibility, given the considerable passage of time since the events. Furthermore, the Chamber notes that Mporanzi provided evidence consistent with Witness CNAC's testimony that the *préfet* convened a meeting of the

[1373] T. 25 May 2010 p. 61; T. 26 May 2010 pp. 7-9; T. 31 May 2010 p. 52 (Mporanzi).
[1374] T. 26 May 2010 pp. 10-12 (Mporanzi).
[1375] T. 15 December 2009 p. 2 (ICS) (Witness CNAA); T. 16 December 2009 p. 59 (ICS); T. 12 April 2010 pp. 21-22 (ICS) (Witness CNAC); T. 26 May 2010 p. 7 (Mporanzi).
[1376] T. 15 December 2009 p. 23 (ICS) (Witness CNAA); Prosecution Exhibit 20 (Protected Information Sheet); T. 12 April 2010 pp. 9, 11-13 (ICS); T. 13 April 2010 pp. 26-27 (ICS) (Witness CNAC).
[1377] T. 15 December 2009 p. 2 (ICS) (Witness CNAA); T. 16 December 2009 p. 59 (ICS); T. 12 April 2010 pp. 21-22 (ICS) (Witness CNAC).
[1378] T. 16 December 2009 pp. 57-59 (ICS) (Witness CNAC).
[1379] T. 15 December 2009 pp. 53-54 (ICS) (Witness CNAA).

bourgmestres on the morning of 18 April 1994 at the *préfecture* office. Mporanzi also testified that he discussed with other *bourgmestres* how to handle the prevailing situation in his *commune*.

1067. Witness CNAC testified that before the meeting started, Mporanzi said that he had detained people in his *commune*, and that Nzabonimana had passed through the *commune* and had threatened and struck Mporanzi, forcing him to release the prisoners.[1380] Witness CNAA corroborated the testimony of Witness CNAC that Mporanzi spoke of the prisoner release at this meeting.[1381] Witness CNAA also testified that Mporanzi told him that Nzabonimana had forcibly released the prisoners.[1382] Witness CNAA further recounted that the released prisoners attacked his *commune*, informed him about the release and said that Government Ministers had authorised the killing of Tutsis.[1383] Mporanzi corroborated Witness CNAA's testimony that the prisoners committed crimes after their release, testifying that after about 20 April 1994, "the perpetrators were doing whatever they wanted," including killing Tutsis.[1384]

1068. The Chamber observes that neither Witnesses CNAA nor CNAC testified to the precise date when Nzabonimana caused the release of the prisoners. However, the Chamber notes that both witnesses testified that the release occurred before the Murambi meeting on 18 April 1994.[1385]

1069. On cross-examination, the Defence confronted Witness CNAA with his 2007 testimony in the *Karemera et al.* trial. In that testimony, Witness CNAA stated that Mporanzi discussed the prisoner release at the 18 April 1994 Murambi meeting in the presence of Nzabonimana.[1386] Witness CNAA claimed that this testimony was not contradictory, because Mporanzi told him of the prisoner release both at the Murambi meeting and at a meeting at the *préfecture* office.[1387] The Chamber accepts this explanation and recalls that in both his direct and cross-examination, the witness testified that Mporanzi spoke of the prisoner release on different occasions.[1388] Furthermore, the Chamber notes that Mporanzi testified that at the Murambi meeting, Witness T82 said that imprisoning people would place the *bourgmestres* in confrontation with the masses.[1389] This corroborates the testimony of Witness CNAA that the issue of prisoners was raised at the Murambi meeting.

1070. The Defence asserts that Witness CNAA was not credible because, during his testimony, he mentioned that Mporanzi had told him that he was struck by Nzabonimana, whereas in his

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[1380] T. 16 December 2009 p. 59 (ICS); T. 12 April 2010 pp. 21-22 (ICS) (Witness CNAC).
[1381] T. 15 December 2009 pp. 2, 50 (ICS) (Witness CNAA).
[1382] T. 14 December 2009 pp. 64-65 (Witness CNAA). The Chamber notes that Witness CNAA does not specifically indicate that Mporanzi provided this information to him during the meeting at the *préfecture* office.
[1383] T. 15 December 2009 p. 2 (ICS); T. 15 December 2009 p. 2 (HC) (Witness CNAA) (French) ("*Après leur libération du cachot communal, ils racontaient partout que le gouvernement avait autorisé de tuer les Tutsis, car un des ministres le leur avait dit.*").
[1384] T. 26 May 2010 pp. 10-11 (Mporanzi).
[1385] T. 15 December 2009 p. 2 (ICS) (Witness CNAA); T. 16 December 2009 p. 59 (ICS); T. 12 April 2010 pp. 21-22 (ICS) (Witness CNAC).
[1386] T. 15 December 2009 p. 50 (ICS) (Witness CNAA); Defence Exhibit 93 (Excerpts of Witness CNAA's *Karemera et al.* Testimony, 12 and 18 July 2007).
[1387] T. 15 December 2009 pp. 50-51 (ICS) (Witness CNAA).
[1388] T. 15 December 2009 pp. 2, 50-51 (ICS) (Witness CNAA).
[1389] T. 31 May 2010 p. 52 (Mporanzi).

2007 testimony Witness CNAA acknowledged that this was a rumour.[1390] The Chamber notes, however, that the Prosecution did not elicit evidence of Nzabonimana striking Mporanzi during its direct examination of Witness CNAA. Rather, only the Defence raised the issue in its cross-examination of Witness CNAA.[1391]

1071. Regarding Witness CNAC, the Chamber notes that the witness did not mention either the release of prisoners or the assertion that Nzabonimana struck Mporanzi in his 2003 or 2008 statements.[1392] The Chamber notes that Witness CNAC's 2008 statement indicates that it was the first time he was being interviewed about Nzabonimana.[1393] Witness CNAC therefore had no reason to mention these matters in his 2003 statement. Regarding the omission from his 2008 statement, the witness explained that during the interview, he simply answered the general questions posed to him by investigators.[1394] The Chamber finds this explanation to be reasonable and recalls that Mporanzi corroborated Witness CNAC's testimony that the meeting at the *préfecture* office occurred on the morning of 18 April 1994.

1072. Turning to the Defence evidence, the Chamber notes that Mporanzi testified that he released the prisoners on his own accord on the evening of 18 April 1994, after the Murambi meeting and after consulting with Father Gigi. Mporanzi denied that Nzabonimana was involved in the release.[1395] Mporanzi also denied that he discussed Nzabonimana with the other *bourgmestres* on 18 April 1994.[1396]

1073. The Chamber notes that contrary to his testimony, in his 1998 statement to Prosecution investigators, Mporanzi stated that Nzabonimana came and personally released the detainees. Mporanzi did not mention that he released the prisoners on the advice of Father Gigi.[1397] The Chamber considers this discrepancy to undermine the credibility of Mporanzi's account of the prisoner release and his denial that Nzabonimana was involved.

1074. The Chamber recalls that Mporanzi stated that he lied to Prosecution investigators when he gave his 1998 and 2003 statements.[1398] The Chamber considers that Mporanzi's admission to having provided a false statement seriously undermines his credibility as a witness (3.2.2.2.1). Having considered the foregoing, the Chamber does not find Mporanzi's claims that the release occurred on the evening of 18 April 1994 and that he was acting upon the advice of Father Gigi and Witness T82 to be credible.

1075. The Chamber notes that Witnesses CNAA and CNAC provided consistent testimony regarding this allegation and that Mporanzi corroborated material elements of the Prosecution evidence. The Chamber notes that Witnesses CNAA and CNAC were both accomplice witnesses, who provided hearsay evidence that Nzabonimana caused the release of killers and

[1390] Defence Closing Brief, paras. 457-460.
[1391] T. 15 December 2009 p. 52 (ICS) (Witness CNAA).
[1392] T. 12 April 2010 pp. 23-25 (ICS) (Witness CNAC); Defence Exhibit 98 (Statement of Witness CNAC, 20 August 2003); Defence Exhibit 100 (Statement of Witness CNAC, 11 November 2008).
[1393] Defence Exhibit 100 (Statement of Witness CNAC, 11 November 2008).
[1394] T. 12 April 2010 pp. 23-26 (ICS) (Witness CNAC).
[1395] Para. 24 of the Indictment.
[1396] T. 25 May 2010 pp. 51, 59-62; T. 31 May 2010 p. 56 (Mporanzi).
[1397] Prosecution Exhibit 55 (Statement of Mporanzi, 25 August 1998).
[1398] T. 26 May 2010 p. 36 (Mporanzi).

threatened Mporanzi for arresting them. The Chamber notes, however, that the Prosecution witnesses learned of this incident from Mporanzi and the prisoners themselves. The Chamber recalls that it is not precluded from relying on hearsay evidence but it is required to treat such evidence with caution.[1399] Nonetheless, the Chamber concludes that Witnesses CNAA and CNAC provided credible and consistent accounts that Mporanzi told them that he had been threatened by Nzabonimana and forced to release prisoners in Rutobwe *commune*.

1076. Considering the foregoing, the Chamber concludes that the Prosecution proved beyond a reasonable doubt that in the days leading up to 18 April 1994, Nzabonimana encouraged the killing of Tutsis by causing the release of killers of Tutsis in Rutobwe *commune*, who had been imprisoned by Mporanzi. The Chamber also concludes that the Prosecution has proven beyond a reasonable doubt that killing in Rutobwe *commune* intensified after the release of prisoners. The Prosecution has not, however, proven beyond a reasonable doubt that Nzabonimana told the public not to obey Mporanzi, as alleged in Paragraph 24 of the Indictment. The Chamber has considered the Defence evidence in conjunction with the Defence claims that the Prosecution witnesses fabricated their evidence and concludes that the Defence has not raised a reasonable doubt in the Prosecution case (3.2.5).

3.5.7 Murambi Meeting

3.5.7.1 Introduction

1077. Paragraph 26 of the Indictment alleges that on or about 18 April 1994, Nzabonimana, together with the Prime Minister and other members of the Interim Government, including Prosper Mugiraneza, Witness T82 and Witness T83,[1400] held a meeting with the *bourgmestres* of the *communes* in Gitarama *préfecture*, where Nzabonimana ordered the killing of *bourgmestres* and other local officials who were opposed to the killing of Tutsis. Soon after the meeting, the *bourgmestre* of Mugina *commune*, Callixte Ndagijimana and two *conseillers* from Nyamabuye *commune*, Bernard Twagiramukiza of Ruli *secteur* and Martin Gasigwa of Musiba *secteur*, were killed by Hutu civilians and *Interahamwe*.[1401]

1078. The Prosecution submits that during the meeting in Murambi, Nzabonimana was one of many Ministers who took the floor to advocate the killings that were being perpetrated against Tutsis. The Prosecution also submits that Nzabonimana told those at the meeting that some *bourgmestres* were supporting the *Inkotanyi* and the Tutsis, and that those *bourgmestres* had to be removed from their posts. Finally, the Prosecution submits that three days after the meeting, the *bourgmestre* of Mugina *commune* and two *conseillers* were killed as a direct result of what Nzabonimana and other Ministers said at the meeting.[1402] The Prosecution relies upon Witnesses CNAA and CNAC.[1403]

[1399] *See Muvunyi I*, Judgement (AC), para. 70.
[1400] The Chamber notes that Defence Witnesses T82 and T83 were on the Defence witness list but did not ultimately testify at trial.
[1401] Para. 26 of the Indictment.
[1402] Prosecution Closing Brief, paras. 155-156; T. 20 October 2011 pp. 27-28 (Prosecution Closing Argument).
[1403] Prosecution Closing Brief, paras. 155, 157-158; T. 20 October 2011 pp. 27-28 (Prosecution Closing Argument).

1079. The Defence submits that Witnesses CNAA and CNAC fabricated their evidence against Nzabonimana (3.2.3). The Defence also asserts that the Prosecution evidence in relation to this allegation was inconsistent, not credible and does not establish that Nzabonimana ordered the killing of *bourgmestres* at the meeting.[1404] The Defence also argues that the Prosecution evidence was at odds with other evidence that suggests the meeting was in fact organised in order to restore peace and security.[1405] Furthermore, the Defence submits that the Prosecution failed to demonstrate any link between the meeting and the dismissal or killing of any Government authorities.[1406] The Defence relies upon Witnesses Jean-Marie Vianney Mporanzi, T24, T133, T71 and T2.[1407]

3.5.7.2 Evidence

Prosecution Witness CNAA

1080. Witness CNAA, a Hutu, was a local government official in Nyamabuye *commune*, Gitarama *préfecture*, in April 1994 and was imprisoned in Gitarama at the time of his testimony.[1408]

1081. Witness CNAA testified that after the death of the President on 6 April 1994, the first members of the Interim Government arrived at Murambi in Gitarama *préfecture* on 12 April 1994, with the remainder of the Interim Government settling there by 14 April 1994. Prior to this occasion, there had been very few *Interahamwe* in Gitarama, but with the arrival of the Government the number of *Interahamwe* in the area multiplied several fold. The *Interahamwe* were the youth wing of the MRND party and most of them settled near the seat of the Interim Government in the locality of Cyakabili. They hoisted an MRND flag near the headquarters of the MRND party. These *Interahamwe* possessed firearms, large sums of money and military uniforms, which they claimed they received from their leaders, including Nzabonimana, the MRND President in Gitarama. This group not only committed genocide, but led all of the groups perpetrating genocide.[1409]

1082. Witness CNAA saw Nzabonimana on 18 April 1994 at a meeting convened at the seat of the Interim Government in Murambi. The *préfet* of Gitarama invited to his office various officials who could play a role in restoring security in response to the massacres that were moving to Gitarama *préfecture*; these included leaders of political parties, representatives of religious organisations and service heads at the *préfecture* level. The witness and other invitees arrived at the *préfecture* office at approximately 9.00 a.m., but before the meeting commenced, a jeep arrived carrying soldiers who told the *préfet* that the Prime Minister had summoned

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[1404] Defence Closing Brief, paras. 487-488, 490-500; T. 20 October 2011 pp. 61-62, 74 (Defence Closing Argument).
[1405] Defence Closing Brief, paras. 489, 491, 508; Defence Complementary Brief, para. 9; T. 20 October 2011 pp. 61-62 (Defence Closing Argument).
[1406] Defence Closing Brief, paras. 501-503; T. 20 October 2011 p. 62 (Defence Closing Argument).
[1407] Defence Closing Brief, paras. 504-515; Defence Complementary Brief, para. 9; T. 20 October 2011 pp. 61-62 (Defence Closing Argument).
[1408] For additional introductory information on Witness CNAA, *see* para. 1045, *supra*.
[1409] T. 15 December 2009 pp. 4, 18 (ICS); T. 15 December 2009 p. 4 (HC) (Witness CNAA) (French) (for the spelling of "Cyakabili").

everyone to the seat of the Government in Murambi. Everyone then left the *préfecture* office and relocated to Murambi.[1410]

1083. Once everyone arrived at the seat of the Interim Government in Murambi, the rescheduled meeting commenced. This meeting was held in two parts. The first meeting, held before midday, was chaired by Prime Minister Kambanda in the presence of high-ranking soldiers and Ministers, including Nzabonimana, Witness T82, Witness PR and others the witness did not know.[1411]

1084. Although the primary problem facing the attendees was the insecurity in the region and ensuring the survival of the numerous refugees who had come to Gitarama, the Prime Minister delivered a speech that had nothing to do with those issues. Instead, he spoke about general government policy, specifically strategies that the Government had established or wanted to implement to fight the *Inkotanyi*, and how they were going to teach civil defence to members of the public.[1412]

1085. During this first meeting, none of the Ministers spoke. After Kambanda spoke, the *préfet* of Gitarama, Fidèle Uwizeye, took the floor. He outlined important problems facing local government officials as a result of the massacres, pressed the Government for solutions to those problems and spoke about the numerous refugees who had just come to Kabgayi Parish in Gitarama. The Prime Minister responded that he was very busy and left the meeting.[1413]

1086. Around midday, those in attendance were informed that the meeting had officially ended. However, certain Government officials were instructed to remain in order to receive an important message, while the rest of the attendees left Murambi with the *préfet*. During this second meeting, held in the afternoon, the Ministers took the floor. According to Witness CNAA, Nzabonimana and other Ministers who were present "imposed themselves on us" and stated that any person working for the administration who showed any support for the Tutsis would be seen as an enemy. It was the first time that he and the others in attendance had heard high-ranking officials in the country support the killings.[1414]

1087. Nzabonimana took the floor and stated that some *bourgmestres* no longer enjoyed the confidence of their people because they were supporting the accomplices of the *Inkotanyi*, who were the Tutsis. Therefore, those *bourgmestres* had to be removed from their posts. Witness CNAA believed that the Tutsis were innocent and that it was obvious that the Ministers, who all reiterated essentially the same sentiments, wanted to incite and encourage people to commit genocide. The witness also recalled that Witness PR stated that "the *Inkotanyis* had infiltrated us." According to the witness, "[t]hat meeting remained engraved in the annals of the history of Gitarama." The witness found it to be an extremely frightful event, and many attendees left out

[1410] T. 14 December 2009 p. 64; T. 15 December 2009 pp. 7-8 (ICS) (Witness CNAA).
[1411] T. 15 December 2009 pp. 8-9 (ICS) (Witness CNAA). The Chamber recalls that Witness PR's testimony from the *Karemera et al.* trial was admitted after Closing Arguments as Defence Exhibit 147 (Witness PR's *Karemera et al.* Testimony, 16-24 November 2010).
[1412] T. 15 December 2009 pp. 8-9 (ICS) (Witness CNAA).
[1413] T. 15 December 2009 pp. 9-10 (ICS) (Witness CNAA).
[1414] T. 14 December 2009 p. 64; T. 15 December 2009 pp. 9-10 (ICS) (Witness CNAA).

of fear before the official conclusion of the meeting, without saying goodbye. The meeting officially ended at 3.00 p.m.[1415]

1088. As a result of what Nzabonimana and the other Ministers said at the meeting on 18 April 1994, a number of people were massacred. On 21 April 1994, Callixte Ndagijimana, the *bourgmestre* of Mugina *commune*, was ambushed and killed in Ntongwe *commune* because he was rumoured to be an *Inkotanyi* accomplice. In response to a suggestion during cross-examination that Ndagijimana was killed on 19 April 1994, and buried on 20 April 1994, the witness responded that he did not have "full knowledge of the dates." A few days later, the *conseiller* of Ruli *secteur*, Bernard Twagiramukiza, and virtually his entire family were killed for not supporting the killing of Tutsis and because Twagiramukiza hid Tutsis in his home. The *conseiller* of Musamba, Wallace Gasigwa, and his entire family were also killed. The killings extended as far as the refugee camp at Kabgayi, and were a result of the lessons learned at the Murambi meeting on 18 April 1994, because normally "these people" would not have dared kill their own officials. These killings occurred as a way to discourage officials from assisting the Tutsis.[1416]

1089. Although the public was not present at the Murambi meeting, they were subsequently informed by those who had attended of what had transpired, which is how the message communicated at the meeting resulted in the subsequent killings. Through *Gacaca* proceedings, Witness CNAA came to learn that soldiers, assisted by the civilian population, killed the aforementioned officials. Witness CNAA also learned of the killings from other "various sources," including members of the public.[1417]

Prosecution Witness CNAC

1090. Witness CNAC, a Hutu, was a local government official in Masango *commune*, Gitarama *préfecture*, in April 1994 and was imprisoned in Gitarama for his role in the events of 1994 at the time of his testimony.[1418]

1091. Witness CNAC saw Nzabonimana at a meeting held at Murambi in Gitarama *préfecture*. The *préfet* of Gitarama had invited various prominent members of the community, including leaders of political parties, leaders of religious groups and "service heads" of the *préfecture* to examine security problems that had arisen as a result of massacres that had started after the death of the President, and which had begun to spread to Gitarama. The purpose of the meeting was to brainstorm and seek policies to reassure the population in response to this situation. The *bourgmestres* of Murama, Rutobwe, Runda, Taba and Musambira *communes* all attended the meeting.[1419]

1092. The invitees arrived at the *préfecture* office at 8.00 a.m. on 18 April 1994. At the outset the *préfet* advised them that the Government had left Kigali and installed itself in Gitarama, and hence the meeting would be chaired by Prime Minister Jean Kambanda. While waiting for the

[1415] T. 15 December 2009 pp. 10-11 (ICS) (Witness CNAA).
[1416] T. 15 December 2009 pp. 11-13 (ICS); T. 16 December 2009 pp. 2-3 (ICS) (Witness CNAA).
[1417] T. 15 December 2009 p. 13 (ICS); T. 16 December 2009 pp. 2-4 (ICS) (Witness CNAA).
[1418] For additional introductory information on Witness CNAC, *see* paras. 1050-1054, *supra*.
[1419] T. 16 December 2009 p. 55; T. 16 December 2009 pp. 57, 59 (ICS) (Witness CNAC).

Prime Minister to arrive the invitees were informed that the meeting had been relocated to the seat of the Interim Government in Murambi, so the participants moved to that venue.[1420]

1093. Everyone arrived at Murambi at 10.00 a.m. There were two meetings held at Murambi that day. The first was chaired by Prime Minister Kambanda and was attended by members of the Government and those who had been invited to the original meeting at the *préfecture* office. Ministers Nzabonimana, Agnés Ntamabyaliro, Jérôme Bicamumpaka, Eliezer Niyitigeka and Witness T82 were present. Witness T83, who at the time of the meeting was not yet a Minister, was also present. The witness confirmed that Defence Witness T2 was present during the morning session, but was unsure whether Witness T2 was present during the later, restricted meeting.[1421]

1094. The purpose of the meeting was to introduce the newly appointed members of the national Government, and to deal with security matters. Kambanda provided a broad picture of the security situation of the country, stating that the *Inkotanyi* had resumed hostilities and that the RPF battalion stationed at the CND building in Kigali had emerged from its confinement to begin fighting in Kigali city. Many *Inkotanyi* soldiers had gathered in Mutara and RPF *Inkotanyi* soldiers had already captured Butare *commune* in Ruhengeri. Kambanda also described problems faced by the Government, including that Belgium had declared an embargo on the accounts of the Rwandan Government that were situated in Belgium. Kambanda asked those in attendance to work hand-in-hand in order to maintain security where possible and to restore security in situations where it had deteriorated. He invited those present to support his Government because people were tarnishing the image of his Government abroad.[1422]

1095. During this first meeting, none of the *bourgmestres* who were present spoke, but *Préfet* Fidèle Uwizeye took the floor to talk about the security situation in Gitarama *préfecture*. He asked the Prime Minister to organise a meeting involving all *bourgmestres* so that the *bourgmestres* could explain the problems they were facing in their various *communes*. He also raised the problem of persons who had been displaced from Kigali and had sought refuge in Gitarama town, and of Tutsis who had been forced to abandon their property and seek refuge in churches or *commune* offices. Uwizeye asked those present at the meeting to make a decision concerning these refugees who were living in a state of insecurity without adequate food and who were not receiving any assistance.[1423]

1096. In response to Uwizeye's plea for assistance, a priest named Thaddée Nsengiyumva promised that the refugees could receive food and shelter in the homes of his diocese. The priest implored the Government to ensure the safety of those refugees, and the Prime Minister accepted the proposal.[1424]

1097. After a decision was made on the situation of the refugees, the meeting ended and everyone left except the *bourgmestres*, the national heads of political parties and the Ministers,

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[1420] T. 16 December 2009 pp. 57-59 (ICS); T. 13 April 2010 p. 31 (ICS) (Witness CNAC).
[1421] T. 16 December 2009 pp. 57, 66 (ICS); T. 16 December 2009 pp. 77-78 (HC) (French) (for the first name of Bicamumpaka); T. 12 April 2010 p. 45 (ICS) (Witness CNAC).
[1422] T. 16 December 2009 pp. 57, 67 (ICS); T. 13 April 2010 p. 26 (ICS) (Witness CNAC).
[1423] T. 16 December 2009 p. 68 (ICS) (Witness CNAC).
[1424] T. 16 December 2009 p. 68 (ICS) (Witness CNAC).

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who remained for a second meeting. During this second meeting the various *bourgmestres* took the floor. Each presented the problems he faced in his *commune* and asked questions of the national Government. The *bourgmestres* raised two recurring issues: the problem of firearms that had been distributed to the population and the problem of persons who had come to Gitarama with the Government and who no longer respected the authority of the *bourgmestres* and in some cases had even chased them from office. In response, Kambanda stated that the problems had to be studied in a later meeting that would bring together political leaders from across Gitarama.[1425]

1098. The Prime Minister then answered questions and requested that the Ministers and national officials in charge of political parties who were present find solutions to other unresolved problems. The Prime Minister left the meeting prior to its conclusion. Those who remained took turns answering the *bourgmestres'* questions. On the issue of weapons, all the Ministers stated that those who had weapons needed to use them to ensure the security of the population and to fight the enemy. Regarding the issue of people disrespecting the *bourgmestres*, the Ministers said that the problem had to be examined in a special meeting.[1426]

1099. Donat Murego, the Secretary-General of the MDR political party, was present at the second meeting. When the issues relating to security and hostilities were raised, Murego presented a man named Barayagwiza, who was the Chairman of the CDR party, stating: "If, in Rwanda, we have three people, like Mr. Barayagwiza, whom you see here, the problem of security and war would be solved once and for all." The witness understood this comment to mean that only members of the CDR party dared to say that the enemies of Rwanda were the Tutsis, and that those who were not Tutsis should adopt the same language as the CDR party.[1427]

1100. Witness T82 spoke at the meeting, asking if any of the *bourgmestres* were accomplices of the *Inkotanyi* and telling the audience that members of the population knew their enemy, and that they were in a position to ensure their security by "chasing out the enemy." Witness T83 spoke at the meeting but the witness did not recall what he said.[1428]

1101. Nzabonimana also spoke at the meeting. Nzabonimana took issue with those who claimed the *Interahamwe* were worsening the security situation. He claimed that the *Interahamwe* were responsible for preventing Kigali town from falling into the hands of the enemy. He asked the *bourgmestres* to collaborate with the *Interahamwe* so that security could be restored to their *communes*. He also warned the audience by stating: "If you do not collaborate with the *Interahamwe*, there will be no security in your *communes* and you will suffer the consequences." The witness understood this to mean that the *bourgmestres* ran the risk of being removed from office or even killed.[1429]

[1425] T. 16 December 2009 pp. 68-69 (ICS) (Witness CNAC).
[1426] T. 16 December 2009 p. 69 (ICS); T. 12 April 2010 pp. 38-39 (ICS) (Witness CNAC).
[1427] T. 16 December 2009 pp. 69-70 (ICS) (Witness CNAC).
[1428] T. 16 December 2009 pp. 70-71 (ICS) (Witness CNAC).
[1429] T. 16 December 2009 pp. 70-71 (ICS) (Witness CNAC).

1102. During the meeting with the *bourgmestres*, a journalist from Radio Rwanda by the name of Bamwanga was present. The witness did not hear Bamwanga's subsequent radio report about the meeting, as he had matters to attend to in his *commune*.[1430]

1103. The second meeting ended between 1.00 and 2.00 p.m. Witness CNAC had entered the meeting with the hope that he would receive reinforcement and resources from the Government in order to continue to prevent massacres from being committed in his *commune*. However, he had lost any hope of this when the meeting concluded, because none of the Ministers who took the floor condemned the massacres that were being committed. In fact, each Minister who spoke supported the killings.[1431]

1104. After the meeting, one of the *bourgmestres* who had attended, Callixte Ndagijimana of Mugina *commune*, was killed. Other *bourgmestres* received threats that if they did not support the *Interahamwe*, they would suffer the same fate as Ndagijimana. The witness acknowledged that Ndagijimana's *commune* was "very far away" from his own, approximately 80 kilometres, and that he was not personally present when Ndagijimana was killed. The witness did not know the exact circumstances surrounding Ndagijimana's death or the identities of his killers. He could not identify Ndagijimana's successor or the party to which he belonged.[1432]

1105. *Bourgmestres* were also threatened following the 18 April 1994 Murambi meeting. Witness CNAC was personally threatened by Esdras Mpamo, Vice Chairman of the MRND party at the *préfecture* level. People in Witness CNAC's *commune* undermined his authority, telling those who were manning roadblocks that they did not have to follow his instructions. Although the witness could not name who was instructing people manning roadblocks not to trust him, he was certain they were working for the Government because there was always a soldier, a *gendarme* or an *Interahamwe* aboard their vehicles. A number of other killings of Tutsis were reported to the witness after the meeting at Murambi.[1433]

Defence Witness Jean-Marie Vianney Mporanzi

1106. Jean-Marie Vianney Mporanzi, the *bourgmestre* of Rutobwe *commune* in April 1994,[1434] testified that his direct supervisor was Fidèle Uwizeye, the *préfet* of Gitarama *préfecture*. Uwizeye invited Mporanzi to a meeting at the conference room of the *préfecture* office at 9.00 a.m. on 18 April 1994, in order to discuss the prevailing situation in his *commune*. When Mporanzi arrived at the *commune* office, he found a majority of his *bourgmestre* colleagues in attendance. He discussed with some of them, particularly those sharing a border with his *commune*, how to manage the prevailing situation.[1435]

1107. While everyone was waiting for the meeting to start, a "dramatic scene" unfolded. The *préfet* arrived to inform everyone that the meeting had been postponed and that a new meeting was being organised by Prime Minister Jean Kambanda in Murambi, and that everyone had to go

[1430] T. 12 April 2010 p. 49 (ICS) (Witness CNAC).
[1431] T. 16 December 2009 pp. 71-72 (ICS); T. 12 April 2010 p. 47 (ICS) (Witness CNAC).
[1432] T. 16 December 2009 p. 71 (ICS); T. 12 April 2010 pp. 60-61 (ICS) (Witness CNAC).
[1433] T. 16 December 2009 p. 72 (ICS); T. 16 December 2009 p. 83 (HC) (French) (for the spelling of "Mpamo"); T. 17 December 2009 pp. 2-3 (ICS) (Witness CNAC).
[1434] For additional introductory information on Mporanzi, *see* para. 697, *supra*.
[1435] T. 25 May 2010 pp. 59-60, 62 (Mporanzi).

there immediately. Murambi was located about three kilometres away and everyone travelled in his own vehicle, arriving at approximately 10.00 a.m.[1436]

1108. Upon arrival at Murambi, the group was forced to wait in an internal courtyard while the conference room was being prepared. There was a minibus from Radio Rwanda in the courtyard with FM transmitters, and some journalists were inside. Everyone was allowed into the conference room around 12.30 p.m. After everyone was seated, the Prime Minister entered along with his entourage, which consisted of a military escort and some members of Government and other personalities. Everyone in attendance rose to acknowledge the arrival of the Prime Minister. After the senior officials took their seats, one official briefly introduced the Prime Minister before handing the floor over to him.[1437]

1109. Because Mporanzi had spent his career as a teacher prior to his appointment as *bourgmestre* in 1993, he did not recognise the faces of the Ministers who were present or even that of the Prime Minister. The only Minister he could identify was Nzabonimana, whom he knew very well from when Mporanzi used to work as a teacher at the Nyabikenke school complex. Nzabonimana had been the legal representative of the parent-teacher association that employed Mporanzi, and hence they had met on several occasions when Nzabonimana came to monitor how the school was operating. He also knew Nzabonimana as a Minister who hailed from his *sous-préfecture* in Gitarama as well as from Kanyanza Parish.[1438]

1110. When Prime Minister Kambanda spoke, he announced that he would address the insecurity that followed the attack on the President's plane. He explained that the Government had not taken any action so far because it had just been formed and was forced to move to Murambi. Kambanda specified that the top priority for the Government was to force the RPF soldiers out of the capital. Then, the Government would take care of security in the *communes* and *préfectures*. He explained the logistical difficulties faced by the Government; specifically that the resumption of the war had forced the Government to mobilise the *gendarmerie* in order to support the army, making it impossible for the Government to deploy *gendarmes* in all the *communes* throughout the country.[1439]

1111. Gitarama *Préfet* Uwizeye and a Protestant pastor also took the floor at the meeting. Mporanzi did not recall what any other speakers said, because their questions lacked any political importance.[1440]

1112. Uwizeye did not mince words in speaking about the prevailing situation in his *préfecture*, specifically with respect to managing the movement of internally displaced people, the destruction of houses and killings. He clearly demanded that the Government take measures, such as sending *gendarmes* to bolster the police forces within the *communes*, in order to stop those acts. After Uwizeye's intervention there was some whispering on the podium as the officials consorted among themselves. Eventually an official who the witness did not recognise, and who was not introduced, responded by paraphrasing the previous remarks of the Prime

[1436] T. 25 May 2010 pp. 60, 62 (Mporanzi).
[1437] T. 25 May 2010 pp. 62-63 (Mporanzi).
[1438] T. 25 May 2010 pp. 63-64 (Mporanzi).
[1439] T. 25 May 2010 pp. 64-65 (Mporanzi).
[1440] T. 25 May 2010 p. 65 (Mporanzi).

Minister in order to explain how the Government was not in a position to accommodate Uwizeye's demands. Uwizeye was angered by this response.[1441]

1113. The Protestant pastor asked a very delicate question. He wanted to know who the enemy was against whom the Government was fighting, because he received the impression that all Tutsis were considered the enemy. Kambanda responded that the enemy was the RPF who had brought down the plane of the President of the Republic and had started the war. He said that the criteria for becoming an enemy was not ethnicity but rather whether one supported the RPF or the Government.[1442]

1114. Other people then asked how they could assist the Government. Questions concerning the capacity of the army and what guarantees the Government could provide that it would win the war were deflected as State secrets. Mporanzi did not speak during the meeting.[1443]

1115. Nzabonimana never spoke during the meeting nor was he ever addressed or verbally attacked by anyone in the room. *Préfet* Uwizeye never directly mentioned Nzabonimana or Mporanzi.[1444]

1116. The meeting ended at approximately 3.30 p.m. As everyone was leaving, a colleague whispered to Mporanzi that he should not leave because a small meeting for *bourgmestres* was being convened. Mporanzi waited for about 30 minutes until the colleague returned and led him to a small classroom where the *bourgmestres* were assembling. Kambanda entered the classroom escorted by two soldiers and four members of the Government. He introduced the Ministers who were present as Witness T82, Nzabonimana, Pauline Nyiramasuhuko and Agnés Ntamabyariro. Although he would not have recognised any of them by sight, Mporanzi deduced that Witness T83, Witness PR, Donat Murego and Jean-Bosco Barayagwiza were not at the meeting because they were not introduced and no person ever told him that they were present.[1445]

1117. The Prime Minister stated that he knew most of the *bourgmestres* were new to politics and therefore he wanted to provide them with some advice. The *bourgmestres* then took turns explaining the problems that they were facing. *Préfet* Uwizeye entered the room at one point and sat for a few moments. He was still very angry with the answer he had received during the first meeting. After a few minutes, someone came to tell him something discreetly, and he left the room.[1446]

1118. The first *bourgmestre* to take the floor was Sixbert Ndayambaje of Ruhonda *commune*. He displayed documents seized by his criminal investigations office as proof that there were Tutsis who were collaborating with the RPF, such as lists and receipts of financial contributions. The Prime Minister stated that this was not surprising. Next, the *bourgmestre* from Buliga *commune* essentially reiterated the sentiments of *Préfet* Uwizeye regarding his limited capacity to manage his vast *commune* with a very limited staff, and that Tutsis were being threatened by

[1441] T. 25 May 2010 pp. 65, 69 (Mporanzi).
[1442] T. 25 May 2010 p. 65 (Mporanzi).
[1443] T. 25 May 2010 p. 66 (Mporanzi).
[1444] T. 25 May 2010 pp. 66, 70 (Mporanzi).
[1445] T. 25 May 2010 p. 70; T. 26 May 2010 pp. 3-4; T. 26 May 2010 pp. 3-4 (Mporanzi) (French) (for the first name of Barayagwiza).
[1446] T. 25 May 2010 p. 71; T. 26 May 2010 p. 3 (Mporanzi).

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organised gangs. Three or four *bourgmestres* spoke after that, reiterating the same themes about their inability to cope with the prevailing situation.[1447]

1119. The Prime Minister was in a hurry, so he stopped the discussion and noted that the problems facing the *bourgmestres* essentially revolved around two issues: inability to control the masses as a result of the insecurity and the fact that Tutsis were the victims of the insecurity. He advised everyone to avoid confrontation with the population as the RPF could take advantage of this, and further advised that because *gendarmes* could not be deployed to protect the Tutsis, the only thing that could be done was to take them to Kabgayi in order to seek refuge.[1448]

1120. After this, the Prime Minister left the *bourgmestres* in the company of the Ministers. Witness T82 spoke about scenarios that could cause trouble for the *bourgmestres*. He did not speak in a threatening tone, nor did any of the other Ministers in attendance. Nzabonimana sat quietly in a corner and did not speak during the meeting. The only time Nzabonimana was mentioned at all was when he was introduced. The *bourgmestres* were not asked to implement government policy with respect to the war effort during the meeting, but merely to do as much as possible to calm the population and to allow the Tutsis to flee to Kabgayi. The discussion of replacing *bourgmestres* during the meeting was not made in a threatening tone, but rather was mentioned in the context of being able to manage the situation. At one point, an unidentified person suggested that if a *bourgmestre* felt overwhelmed, the best thing would be for him to resign and be replaced. Mporanzi perceived no double-speak or double-meaning in these remarks and did not find the tone used by the Ministers to be implicitly threatening.[1449]

1121. No Minister asked the *bourgmestres* to cooperate with the *Interahamwe*; in fact, there were no *Interahamwe* in Mporanzi's *commune* at that time or in other *communes* directed by MDR *bourgmestres*. Mporanzi did not speak during the meeting and no person spoke on his behalf about the issues arising in his *commune*. Mporanzi was generally dissatisfied with the reaction of the Government, but later, upon the advice of his friend, a priest by the name of Father Michel Gigi, he concluded that the best course of action was to evacuate Tutsis to Kabgayi. The plan to evacuate Tutsis to Kabgayi was gradually accomplished.[1450]

1122. Also upon the advice of Father Gigi, Mporanzi decided to release prisoners from the *commune* jail. The prisoners interpreted this as a victory over Mporanzi. After they had an opportunity to organise, they began to "concretise" the violence in Rutobwe *commune*, to the point where after about 20 April 1994, "the perpetrators were doing whatever they wanted," including killing Tutsis. The killers came from neighbouring *communes* to kill their neighbours, and were not affiliated with any particular political party. Youth movements were not involved in the killings. There were few MRND supporters and no *Interahamwe* in Mporanzi's *commune* at the time, so they were not the perpetrators.[1451]

[1447] T. 25 May 2010 p. 71; T. 25 May 2010 p. 76 (Mporanzi) (French) (for the spelling of "Ndayambaje").
[1448] T. 25 May 2010 p. 71 (Mporanzi).
[1449] T. 25 May 2010 pp. 71-72; T. 26 May 2010 pp. 4-6 (Mporanzi).
[1450] T. 25 May 2010 p. 72; T. 26 May 2010 pp. 4-7, 9 (Mporanzi).
[1451] T. 26 May 2010 pp. 7, 10-12 (Mporanzi).

Defence Witness T24

1123. Witness T24, a local government official in Nyabikenke *commune* in April 1994,[1452] testified that "like all administrative authorities," he went to the office of *Préfet* Fidèle Uwizeye to attend a meeting. Upon his arrival at the *préfecture* office he was told that the meeting had been postponed and that they would instead be required to attend a meeting organised by the Prime Minister at a vocational centre in Murambi, Nyamabuye *commune*. Among the local officials at the *préfecture* office that morning were Mporanzi of Rutobwe *commune*, Prosecution Witness CNAA of Nyamabuye *commune*, the *bourgmestre* of Runda *commune*, Ugirashebuga of Kigoma *commune*, Martin of Bulinga *commune* and Mdarubukeye of Kayenzi *commune*. The witness spoke to these individuals about problems facing his *commune* while waiting for the arrival of the *préfet*.[1453]

1124. Upon arrival at Murambi, a meeting was held by Kambanda and attended by Nzabonimana as well as other members of the Prime Minister's cabinet, religious leaders, business leaders, *Préfet* Uwizeye, *bourgmestres* and other important figures. While Witness T24 was able to recognise a number of the Ministers by name, the only one he could recognise by sight was Nzabonimana. The witness could not recall anything specific that Nzabonimana did during that meeting. The Prime Minister gave a speech about the general security situation in Rwanda. He explained that the *Inkotanyi* had crossed the Nyabarongo River from Kigali and were heading into Gitarama, and how the new Government had been formed. The witness did not recall the Prime Minister speaking to any specific *bourgmestre* during the meeting.[1454]

1125. After the Prime Minister left, the *bourgmestres* discussed the security concerns in their various *communes* at another meeting. The *bourgmestres* of Runda and Taba presented reports regarding the situations in their respective *communes*. Witness T24 did not take the floor during the second meeting. The Prime Minister did not attend the second meeting, though some of his Ministers did, as well as *préfecture* authorities. Nzabonimana attended the meeting but did not take the floor. During the meeting, the need to collaborate with the *Interahamwe* was not mentioned. The witness speculated that if any *bourgmestres* were frightened during the meeting, it was because they learned that they could not count on the assistance of soldiers in their *communes*, since the army was fighting the *Inkotanyi* on the war front. Nzabonimana did not address the *bourgmestres*, and did not threaten them. Rather, the Minister of Interior addressed the *bourgmestres*.[1455]

1126. Upon leaving the meeting, Witness T24 was discouraged since he had not received the desired assistance for his *commune*. The witness speculated that perhaps the reason why he did not recall many details of what transpired during the meeting was because he did not hear much during the meeting. After the Murambi meeting, Witness T24 remained in his position for approximately one-and-a-half months, and was replaced during the first two weeks of June 1994. No reason was given for the dismissal, but he believed it was because he was "not on the same wavelength" as his superiors in terms of policies and ideas. His replacement appeared surprised

[1452] For additional introductory information on Witness T24, *see* para. 284, *supra*.
[1453] T. 26 April 2010 pp. 57-58 (ICS) (Witness T24).
[1454] T. 26 April 2010 p. 59 (ICS); T. 27 April 2010 pp. 2-3 (Witness T24).
[1455] T. 27 April 2010 p. 3; T. 27 April 2010 pp. 4-5 (ICS) (Witness T24).

by the appointment. Although his replacement was a member of the MRND party, Witness T24 was not aware of any racist or extremist attitudes on his replacement's part.[1456]

Defence Witness T133

1127. Witness T133 was a native of Masango *commune* in Gitarama *préfecture*, where he lived and worked in 1994.[1457] He was related to Nzabonimana by marriage. Witness T133 was a member and local leader of the MDR party. Witness T133 knew Nzabonimana. Nzabonimana was Minister of Planning and Minister of Youth and was the President of the MRND in Gitarama *préfecture*. Nzabonimana was greatly loved by the population. Nzabonimana believed in democracy and development and was deeply attached to the *préfecture*. The witness never heard Nzabonimana make any anti-Tutsi statements.[1458]

1128. Although he did not attend the meeting, Witness T133 was aware of a meeting for all the *bourgmestres* of the *préfecture* that was convened by the *préfet* of Gitarama on 18 April 1994, in order to discuss the security needs of Masango *commune*. The *bourgmestres* made various requests, including food for refugees, weapons and other means of controlling the situation. A specific proposal for assistance was made by the *bourgmestre* of Masango *commune*; however, the Ministry of Interior responded that this would require a disproportionate allocation of the national budget to focus on Masango *commune*. Instead it was decided that the most practical means of ensuring the refugees' safety would be to send them to the premises of the Kabgayi Diocese.[1459]

1129. The witness conceded that his sole source of information regarding the meeting was the *bourgmestre* of his *commune*. The *bourgmestre* told Witness T133 that he left for the meeting at Murambi on the evening of 18 April 1994. Although during examination-in-chief Witness T133 could not recall if the *bourgmestre* discussed with him the venue for the meeting on 18 April 1994, during cross-examination he accepted a suggestion that the meeting took place at Murambi.[1460]

1130. The *bourgmestre* recounted to Witness T133 that the meeting was opened by Prime Minister Kambanda. Kambanda gave a summary of the main outlines of the Government he led, specifically with respect to pacification measures, and then left. The meeting continued with the *bourgmestres*. The witness believed that the technical staff of the Ministry of Interior and members of associated political parties were also present at the meeting. The *bourgmestre* told Witness T133 that the sole purpose of the meeting was to discuss the refugees.[1461]

1131. The *bourgmestre* did not tell Witness T133 that he was threatened during the meeting, nor did he say whether anyone said anything that could be perceived as anti-Tutsi. The *bourgmestre* never told Witness T133 that at the meeting on 18 April 1994 members of the Government supported the acts of the *Interahamwe* or brought together the *bourgmestres* to call

[1456] T. 27 April 2010 pp. 4-7 (ICS) (Witness T24).
[1457] Defence Exhibit 16 (Protected Information Sheet); T. 12 May 2010 p. 6 (ICS) (Witness T133).
[1458] T. 12 May 2010 pp. 9-10, 15, 26, 29 (ICS); T. 13 May 2010 p. 17 (Witness T133).
[1459] T. 12 May 2010 pp. 50-51, 53-54 (ICS) (Witness T133).
[1460] T. 12 May 2010 p. 55 (ICS); T. 13 May 2010 p. 53 (ICS) (Witness T133).
[1461] T. 12 May 2010 p. 53 (ICS); T. 13 May 2010 p. 53 (ICS) (Witness T133).

for massacres. The witness further opined that such actions would be "schizophrenic" in light of the Government's appeal for peace over the radio. Nzabonimana was never mentioned during the discussion between Witness T133 and his *bourgmestre* regarding the meeting. However, the witness conceded that his *bourgmestre* did not tell him what every speaker said during the meeting.[1462]

1132. Witness T133 testified that after the meeting on 18 April 1994, Masango *commune* "went up in flames," but then qualified this remark by stating that the morning before the *bourgmestre* left for the meeting, the *secteur* that was adjacent to Kibuye *préfecture* "caught fire," and the ensuing conflagration in Masango was a continuation of this "crescendo." The witness further testified that the violence in Masango *commune* began before the *bourgmestre* returned from the meeting. Since the *bourgmestre* found the *commune* already aflame upon his return, the witness opined that it did not make any sense that there could be any link between the meeting and the violence. The witness denied a suggestion that some *bourgmestres* were chased away from their offices as a result of the meeting. Witness T133 knew Callixte Ndagijimana, the *bourgmestre* of Mugina *commune*, but did not know the circumstances of his death. The witness did not know *Conseiller* Bernard Twagiramukiza of Ruli *secteur* or Martin Gasigwa, *conseiller* of Musiba *secteur*, and thus could not comment as to whether they were killed after the 18 April 1994 meeting.[1463]

Defence Witness T71

1133. Witness T71, a Hutu, was a local government official in Nyamabuye *commune* and a member of the MDR party in Nyamabuye *commune* in April 1994.[1464] He was arrested on 5 September 1994 and placed in Gitarama prison. The witness was released for 10 days in 2000 and then rearrested. Witness T71 was acquitted by a *Gacaca* court in his *secteur*. Witness T71 was released from prison on 24 May 2007. At the time of his testimony, Witness T71 lived in exile in Uganda. He fled the country after receiving a summons. He was tried *in abstentia* and sentenced to 19 years' imprisonment for participating in a murder at the Nyamabuye *commune* office. He acknowledged that the Rwandan Government perceived him as a fugitive from justice.[1465]

1134. Witness T71 did not personally know Nzabonimana, and had only seen him on one prior occasion in late April 1994 as he was passing him on the paved road to Butare. According to the witness, there was nothing remarkable about this encounter. He had heard people say that Nzabonimana was the Minister of Youth, and he knew that Nzabonimana was a member of the MRND political party.[1466]

1135. Witness T71 knew Bernard Twagiramukiza very well. He was the *conseiller* of Ruli *secteur* and he died during the genocide. The witness did not recall exactly when he died but

[1462] T. 12 May 2010 p. 55 (ICS); T. 13 May 2010 pp. 4, 53, 55 (ICS) (Witness T133).
[1463] T. 12 May 2010 p. 55 (ICS); T. 13 May 2010 pp. 54-55 (ICS) (Witness T133).
[1464] Defence Exhibit 31 (Protected Information Sheet); T. 24 May 2010 pp. 18, 37 (ICS); T. 25 May 2010 p. 5 (ICS) (Witness T71).
[1465] Defence Exhibit 31 (Protected Information Sheet); T. 24 May 2010 pp. 27-28, 34-37, 66-67 (ICS); T. 25 May 2010 p. 4 (ICS) (Witness T71).
[1466] T. 24 May 2010 pp. 23-25, 46-47, 59 (ICS) (Witness T71).

knew that it was during the month of May 1994. According to information received by the witness on the evening of Twagirumukiza's death, *Interahamwe* from Ruli *secteur* killed Twagirumukiza. The witness learned of the killing from people from Twagirumukiza's locality who passed by his office in the afternoon. At that time all killers were described as *Interahamwe*. *Interahamwe* were no longer only members of the MRND, but included members of other political parties who joined in the killings during May 1994.[1467]

1136. According to Witness T71, Twagiramukiza had detained criminals who were looting and destroying the homes of Tutsis. Soldiers released those detainees and took them to a military camp where they were given firearms. They left the camp "even more encouraged and strengthened." After they were released, the detainees were "furious" and "vengeful." Accompanied by soldiers, they went to Twagirumukiza's house to look for accomplices and found Twagirumukiza's son-in-law, a Tutsi, in the house. The perpetrators took advantage of this situation to say that Twagiramukiza was hiding accomplices, and then killed Twagiramukiza, his wife and his son-in-law.[1468]

Defence Witness T2

1137. Witness T2, was part of the national political bureau of the MDR in Gitarama *préfecture* in 1994. He lived in Belgium as a refugee since 1994.[1469] Witness T2 knew Nzabonimana as they had met at political party meetings in Gitarama, convened by *Préfet* Uwizeye. He acknowledged that he had been accused of inciting the genocide but stated that as of the time of his testimony, he had not been charged with any crime.[1470]

1138. On 18 April 1994, *Préfet* Uwizeye invited approximately 100 people to a meeting at Murambi to welcome members of the Government setting up headquarters in Gitarama. The witness attended this meeting as "a noble citizen of the region." Dignitaries and officials of Gitarama, representatives of political parties, clergy and others also attended. During the meeting, the *préfet* announced that Gitarama was "a haven of peace" even though there had been killings nationwide. The meeting was convened in order to maintain security in Gitarama *préfecture* and to avoid the troubles experienced in Kigali. However, the same violence eventually hit Gitarama *préfecture*. The meeting also addressed a camp of displaced persons at Kabgayi, where the Government promised to ensure security.[1471]

Witness PR, *Karemera et al.* Trial[1472]

1139. Witness PR, a Hutu and government official in 1994, was arrested on 27 March 1996 and eventually acquitted of the charges. According to Witness PR, the Interim Government was

[1467] T. 24 May 2010 pp. 40-41, 68-69 (ICS) (Witness T71).
[1468] T. 24 May 2010 pp. 40-41 (ICS) (Witness T71).
[1469] T. 12 September 2011 p. 5; T. 12 September 2011 p. 37 (ICS) (Witness T2). The Chamber recalls that it admitted Witness T2's prior statement into evidence under Rule 92*bis*. The Chamber also allowed the Prosecution to cross-examine Witness T2. *See* Decision on Nzabonimana's Motion for the Admission of Written Witness Statements (TC), 10 May 2011; Defence Exhibit 146 (Statement of Witness T2, 8 April 2010).
[1470] Defence Exhibit 146 (Statement of Witness T2, 8 April 2010), para. 6; T. 12 September 2011 p. 7 (Witness T2).
[1471] T. 12 September 2011 pp. 14-15, 34-35 (Witness T2).
[1472] The Chamber recalls that this evidence was admitted after Closing Arguments as Defence Exhibit 147 (Witness PR's *Karemera et al.* Testimony, 16-24 November 2010).

formed three days after the death of the President. The Government left the capital and established its seat in Gitarama.[1473]

1140. Witness PR denied that he attended the 18 April 1994 Murambi meeting with Witness T83 and other important people. On the day of the meeting, he was in his room preparing a document for an upcoming mission. Someone told him that the Prime Minister wanted the Ministers to attend a meeting. The witness went to the location of the meeting and found about 30 people present. He recognised a *bourgmestre* from Gitarama and Ministers of the Interim Government, including the Ministers of Finance and Public Service. Members of the clergy and other *bourgmestres* were also present. They were all waiting in front of the premises and the witness spent about four or five minutes talking with them. Witness PR did not see Witness T83. No one from the MRND party was present.[1474]

1141. The Prime Minister arrived and Witness PR explained to him that he could not attend the meeting because he needed to prepare his document. The Prime Minister responded that the meeting was not important but that the *préfet* and the enlarged Security Council wanted to extend their greetings to the Government. Witness PR was allowed to miss the meeting.[1475]

3.5.7.3 Deliberations

1142. The Prosecution relies upon the testimony of Witnesses CNAA and CNAC in support of these allegations. The Chamber recalls that at the time of their testimony both Witnesses CNAA and CNAC were serving prison sentences for their culpability during the genocide.[1476] The Chamber will therefore treat the testimony of these witnesses with appropriate caution (2.7.7; 3.2.3.2.1).

1143. The Chamber recalls that it has considered the Defence submission that Witnesses CNAA and CNAC fabricated their evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witnesses CNAA and CNAC (3.2.5).

3.5.7.3.1 Meeting for Bourgmestres at Murambi on 18 April 1994

1144. Witness CNAA testified that he attended a meeting convened by the *préfet* of Gitarama, Fidèle Uwizeye, at 9.00 a.m. on 18 April 1994 at the *préfecture* office, only to be informed upon arrival that the invitees had been summoned by Prime Minister Jean Kambanda to a different meeting to be held at the seat of the Interim Government in Murambi. This rescheduled meeting was divided into two sessions: one in the morning and one in the afternoon. Kambanda chaired the morning meeting, in the presence of high-ranking soldiers and Ministers in the national Government, including Nzabonimana, Witness T82 and Witness PR. Kambanda spoke about government policies and strategies designed to fight the *Inkotanyi*. The first meeting ended

[1473] Defence Exhibit 147 (Witness PR's *Karemera et al.* Testimony, T. 19 November 2010 pp. 23-25 (ICS); T. 22 November 2010 pp. 25-26, 42-43 (ICS)).
[1474] Defence Exhibit 147 (Witness PR's *Karemera et al.* Testimony, T. 22 November 2010 pp. 38-39 (ICS); T. 24 November 2010 p. 5 (ICS)).
[1475] Defence Exhibit 147 (Witness PR's *Karemera et al.* Testimony, T. 22 November 2010 p. 39 (ICS)).
[1476] T. 15 December 2009 p. 23 (ICS) (Witness CNAA); Prosecution Exhibit 20 (Protected Information Sheet); T. 12 April 2010 p. 9 (ICS); T. 13 April 2010 pp. 26-27 (ICS) (Witness CNAC).

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around midday. *Préfet* Uwizeye made an impassioned plea for assistance within Gitarama *préfecture* that was peremptorily rebuffed by Kambanda. None of the Ministers spoke during this meeting. After the first meeting ended, *bourgmestres* were ordered to stay on at Murambi to attend a second meeting that afternoon, where Nzabonimana and other Ministers were present.

1145. Witness CNAC testified that he and other invitees arrived at the Gitarama *préfecture* office at 8.00 a.m. on 18 April 1994, in order to attend a meeting convened by the *préfet* to examine security problems throughout the *préfecture*. The *bourgmestres* from Murama, Rutobwe, Runda, Taba and Musambira *communes* were present. Before the meeting began, the *préfet* announced that a last minute change of plans had occurred and that a new meeting had been convened by the Prime Minister at the seat of the Interim Government in Murambi. Everyone arrived at Murambi at 10.00 a.m. Two meetings were held that day: the first was chaired by Kambanda and attended by Ministers of the Government. The witness named several of the Ministers in attendance, including Nzabonimana, Agnés Ntamabyaliro, Jérôme Bicamumpaka, Eliezer Niyitigeka, Witness T82 and Witness T83. During the first meeting, the Prime Minister provided a broad picture of the security situation in the country in view of the war with the RPF, or *Inkotanyi*. *Préfet* Uwizeye made a plea for assistance on behalf of Gitarama *préfecture* and the Bishop of Kabgayi Parish promised that refugees would be received at his diocese. The Prime Minister accepted this proposal. After the proposal to house refugees was accepted, the first meeting ended and everyone left except for certain designated Government officials, including *bourgmestres*, the national heads of political parties, Ministers and the Prime Minister. A journalist from Radio Rwanda was also present at the meeting. The second meeting ended between 1.00 and 2.00 p.m.

1146. Both Witnesses CNAA and CNAC provided largely consistent, corroborating accounts of the events of 18 April 1994, leading up to a meeting for the *bourgmestres* of Gitarama *préfecture* held at Murambi before various high-ranking officials of the national Government that afternoon. The consistencies between their respective testimonies included: the series of events beginning at the *préfecture* office and culminating in a meeting convened by the Prime Minister at the seat of the Interim Government in Murambi; their depiction of the Prime Minister's speech during the first meeting at Murambi as providing a broad overview of the Government's military approach to fighting the RPF; their description of the composition of the invitees to the first meeting; the presence of Ministers, including Nzabonimana and Witness T82, and other high-ranking national Government officials; the fact that no Minister took the floor during the meeting; *Préfet* Uwizeye's impassioned plea for assistance on behalf of his *préfecture*; and the fact that the *bourgmestres* were not informed of a second meeting convened specifically for them until after the first meeting at Murambi.

1147. The Chamber observes that there were few substantial differences between the testimonies of Witnesses CNAA and CNAC with respect to the events leading up to the second meeting at Murambi with the *bourgmestres* of Gitarama. The most significant difference involved the response received by *Préfet* Uwizeye to his plea for assistance during the first meeting. Whereas Witness CNAA testified that the Prime Minister summarily dismissed Uwizeye's concerns and then promptly left the meeting, according to Witness CNAC, the Bishop of Kabgayi stepped forward to offer refuge for the Tutsis at his diocese, a proposal that was met warmly by the Prime Minister. The Chamber considers the differences in the witnesses' accounts regarding the response to Uwizeye to be minor and outweighed by the overall consistency

between the two testimonies. Moreover, the Chamber considers that certain slight discrepancies between Witnesses CNAA and CNAC as to when the various meetings started and finished are minor and easily accounted for by the significant passage of time since the events in question.

1148. The Chamber also notes that Witnesses CNAA and CNAC both had an opportunity to reliably identify Nzabonimana at the Murambi meeting. Witnesses CNAA and CNAC both knew Nzabonimana in his high profile capacity as Government Minister and had seen him on previous occasions. The Chamber has no doubt that both Prosecution witnesses were able to reliably identify Nzabonimana (2.7.3).

1149. The Chamber notes that in his 1996 statement, Witness CNAA recounted a meeting at Murambi during which the Prime Minister, Witness T82 and Witness T83 spoke.[1477] The statement did not mention Nzabonimana's name with regard to this meeting. The witness explained this omission by noting that the statement referred to the morning meeting and that Nzabonimana only spoke in the afternoon. Witness CNAA further explained that his 1996 statement was given to provide information about *Bourgmestre* Akayesu.[1478] The Chamber finds the witness's explanations as to the omission to be reasonable.[1479]

1150. During cross-examination, the Defence confronted Witness CNAA with a radio interview he gave on 7 June 1994, wherein he supported the Interim Government and said that the *Inkotanyi* created "unrest among the population."[1480] The witness explained that at the time of the interview he was afraid that he was going to be killed because soldiers believed he was an *Inkotanyi* accomplice. As the witness was being taken to his death, the journalist asked that the witness be given an opportunity to state over the radio that he was not a traitor. Witness CNAA then made the statement over the radio.[1481] The Defence asserted that in his 2005 testimony in *Bizimungu et al.*, Witness CNAA provided a different explanation for the radio interview and did not say he was threatened.[1482] The Chamber notes however, that in his 2005 testimony, Witness CNAA stated that at the time of the interview he and Uwizeye "were being identified as accomplices of the *Inkotanyi*, and so we said those words to reduce that pressure."[1483] The Chamber does not consider there to be a material inconsistency between Witness CNAA's 2005 testimony and his testimony in the instant case.

1151. The Chamber concludes that Witness CNAA provided a credible and reliable eyewitness account of the 18 April 1994 meetings. While the witness omitted reference to Nzabonimana's presence in a previous statement, the Chamber considers this omission to be acceptable given that the statement was provided in the context of proceedings against Akayesu. In addition, the

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[1477] Defence Exhibit 87A (Statement of Witness CNAA, 22 May 1996).
[1478] Defence Exhibit 87A (Statement of Witness CNAA, 22 May 1996); T. 15 December 2009 pp. 46-48 (ICS) (Witness CNAA).
[1479] *See generally Munyakazi*, Judgement (AC), para. 85; *Kajelijeli*, Judgement (AC), para. 176 ("to suggest that if something were true a witness would have included it in a statement or a confession letter is obviously speculative and, in general, it cannot substantiate a claim that a Trial Chamber erred in assessing the witness's credibility").
[1480] T. 16 December 2009 pp. 9-10 (ICS) (Witness CNAA); Defence Exhibit 91 (Excerpts of Witness CNAA's *Bizimungu et al.* Testimony, 25 May 2005).
[1481] T. 16 December 2009 pp. 11-12 (ICS) (Witness CNAA); Defence Exhibit 91 (Excerpts of Witness CNAA's *Bizimungu et al.* Testimony, 25 May 2005).
[1482] T. 16 December 2009 p. 12 (ICS) (Witness CNAA).
[1483] Defence Exhibit 91 (Excerpts of Witness CNAA's *Bizimungu et al.* Testimony, 25 May 2005).

Chamber concludes that Defence Exhibits 86 and 91, as outlined above, do not impact the overall credibility of the witness.

1152. With regard to Witness CNAC, the Chamber notes that in his November 2001 confession, the witness did not mention Nzabonimana with regard to the 18 April 1994 meeting. The witness stated that "[d]uring the meeting, we discussed security issues, particularly the problems arising from the swelling number of refugees in our *communes*, as well as the provision of *gendarmes* to help us protect the people who were being killed."[1484] However, the Chamber notes that in his 2001 confession, Witness CNAC did not name any of the individuals who attended this meeting. The Chamber therefore does not consider this omission to be material.

1153. Turning to the Defence evidence, Mporanzi testified that he was invited to a meeting at the *préfecture* office at 9.00 a.m. on 18 April 1994 in order to discuss the prevailing situation in his *commune*, which was suddenly relocated to Murambi at the behest of the Prime Minister, who gave a speech about the security situation in Rwanda. There was a minibus from Radio Rwanda in the courtyard and some journalists were inside. Mporanzi testified that Nzabonimana was present during this first meeting. After the first meeting, the *bourgmestres* were required to attend a second meeting with the Prime Minister and several Ministers, including Nzabonimana. Mporanzi described the Prime Minister's speech in a manner consistent with the testimony of Witnesses CNAA and CNAC, and further confirmed *Préfet* Uwizeye's intervention before the Prime Minister.

1154. Witness T24 testified that he went to the office of *Préfet* Uwizeye to attend a meeting, but was informed upon arrival that the meeting was postponed and they would have to attend a new meeting in Murambi. The Murambi meeting was held by Kambanda and attended by Nzabonimana and other important figures. Kambanda addressed the security situation in Rwanda and Nzabonimana did not speak during the meeting. Witness T24 did not say that Uwizeye took the floor during the first meeting, but did confirm his presence. Witness T24 testified that at the second meeting *bourgmestres* were invited to discuss the security concerns enveloping their respective *communes*.

1155. Defence Witness T133 also confirmed that the *bourgmestre* of his *commune* attended a meeting at the Gitarama *préfecture* office that was suddenly reconvened by the Prime Minister at Murambi. While the details of Witness T133's version of events differed in certain details from other witnesses, the Chamber recalls that unlike the other witnesses who testified about the meeting, he was not in attendance and his knowledge of the Murambi meeting is entirely hearsay derived from a single source. The Chamber therefore affords limited weight to the evidence of this witness with respect to this issue.

1156. Defence Witness T2 testified that he attended a meeting at Murambi on 18 April 1994. The Chamber notes that the meeting described by Witness T2 accords with the testimony of the other Prosecution and Defence witnesses regarding the initial meeting at Murambi which preceded the meeting with the *bourgmestres*. However, Witness T2 did not provide evidence regarding the *bourgmestres*' meeting.

[1484] Defence Closing Brief, para. 496; Defence Exhibit 97 (*Pro-Justicia*, 29 November 2001).

1157. Witness PR denied that he attended the meetings, however he corroborated the testimony of Prosecution and Defence witnesses that *bourgmestres*, Ministers of the Interim Government and others gathered at Murambi for a meeting.[1485]

1158. The Chamber finds that the Defence evidence corroborates the Prosecution evidence with regard to the 18 April 1994 meeting. Witnesses CNAA, CNAC, Mporanzi and T24 all attest to the meeting with the *bourgmestres* and Nzabonimana's presence. Furthermore, the evidence established that a journalist from Radio Rwanda was present at the meeting with the *bourgmestres*. The Chamber notes that Witnesses T71, T133 and T2 were not present at the meeting and Witness PR denied being present as well. The testimony of these witnesses therefore has limited probative value when weighed against the first-hand testimony of witnesses who attended the meeting. Based on the totality of the evidence outlined above, the Trial Chamber is satisfied that the Prosecution has proven beyond a reasonable doubt that on 18 April 1994, at Murambi, the Prime Minister of Rwanda and other members of the Interim Government, including Nzabonimana, held a meeting for the *bourgmestres* of Gitarama *préfecture*. Among those who attended the meeting included Prosecution Witnesses CNAA and CNAC and Defence Witnesses Mporanzi and T24, as well as a journalist from Radio Rwanda.

3.5.7.3.2 Nzabonimana Ordered the Killing of Bourgmestres and Other Local Officials

1159. Witness CNAA testified that during the second meeting held at Murambi on 18 April 1994, Nzabonimana and other Ministers who were present "imposed themselves" on the *bourgmestres* in attendance and warned that any person working for the administration who showed any support for the Tutsis would be seen as an "enemy." While the witness could not recall precisely what each speaker said or the order in which they spoke, he testified that all Ministers, including Nzabonimana, reiterated the common theme that *bourgmestres* who supported the accomplices of the *Inkotanyis*, namely the Tutsis, would have to be removed from their posts, and that it was obvious that all the Ministers were encouraging or inciting the *bourgmestres* to commit genocide. According to the witness, when Nzabonimana took the floor, he stated that some *bourgmestres* no longer enjoyed the confidence of their people because they were supporting the accomplices of the *Inkotanyi*, who were the Tutsis, and therefore those *bourgmestres* had to be removed from their posts. According to Witness CNAA, the meeting was such a frightening experience that a number of *bourgmestres* abruptly left the meeting prior to its conclusion.[1486]

1160. Witness CNAC testified that during the second meeting at Murambi, various *bourgmestres* took the floor to express their concerns to the Prime Minister. A journalist from Radio Rwanda was also present during the meeting. The Prime Minister answered some of these questions before eventually deferring to the Ministers in attendance. After some time, the Prime Minister left the meeting. After his departure, each of the Ministers present took the floor to voice their support for the killings that were occurring. In addition to Nzabonimana, the witness named several other Ministers who spoke, including Witness T82 and Witness T83. When he took the floor, Nzabonimana defended the actions of the *Interahamwe*, stating that the *Interahamwe* were protecting the country against the enemy, and asked the *bourgmestres* to collaborate with them so that security could be restored in their *communes*. He also warned the

[1485] Defence Exhibit 147 (Witness PR's *Karemera et al.* Testimony, T. 22 November 2010 pp. 38-39 (ICS)).
[1486] T. 15 December 2009 pp. 10-11 (ICS) (Witness CNAA).

audience by stating: "If you do not collaborate with the *Interahamwe*, there will be no security in your *communes* and you will suffer the consequences." The witness understood this to mean that the *bourgmestres* ran the risk of being removed from office or even killed.[1487]

1161. The Chamber considers that Witnesses CNAA and CNAC corroborate each other's accounts regarding what occurred during the second Murambi meeting with the Gitarama *bourgmestres*. Both witnesses described a scenario where the *bourgmestres* were intimidated by various high-ranking Government officials, including Nzabonimana, who took turns making various threats toward the *bourgmestres*, including death or removal from office, if they did not participate in the Government agenda to eliminate the "enemy," which was understood to be the Tutsis. Both attributed similar menacing quotes to Nzabonimana, namely that if they did not collaborate with the *Interahamwe*, they would be deemed accomplices of the *Inkotanyi*, or Tutsis. As a result, there would be no security in their *communes* and they would suffer the consequences.[1488] The Trial Chamber considers that Witnesses CNAA and CNAC have provided internally credible and consistent accounts of a meeting in which Nzabonimana and other Government officials threatened the *bourgmestres* as a means of ensuring their participation in the genocide.

1162. The Chamber recalls that Witness CNAC indicated that during the first part of the meeting with the *bourgmestres*, Prime Minister Kambanda was present and listened to their problems and dispensed advice. However, Witness CNAA made no mention of this occurrence. While the Chamber acknowledges this discrepancy, it does not find that it significantly diminishes the credibility of the Prosecution evidence. It should be noted that Witness CNAC does not indicate that any threats or incitement to violence against the Tutsis occurred in the presence of the Prime Minister. To the contrary, Witness CNAC's evidence is clear that it was only after the Prime Minister had left the room that the remaining Government officials, including Nzabonimana, began describing the Tutsis as the "enemy" to the assembled *bourgmestres* while threatening them to collaborate with the *Interahamwe*. Taken together, the Chamber finds that the Prosecution evidence provides a consistent and credible account of a meeting in which the Gitarama *bourgmestres* were subjected to threats and encouraged to participate in the genocide against the Tutsis.

1163. The Chamber acknowledges that in his testimony, Witness CNAA recounted Nzabonimana's words at the meeting as follows: "He told us that all those working for – or, anyone working for the administration who shows some support for the Tutsis, will be considered as an enemy." In his prior statements however, Witness CNAA did not mention that Nzabonimana made explicit reference to "Tutsis" but rather that he used the words "enemy," and "accomplices."[1489] At trial, the witness explained that the common goal of the Ministers was to carry out the genocide and that he could not recount what was said word for word, given the time elapsed. He further explained that the enemy was the Tutsis during the genocide, and that the idea behind the words was the same.[1490] The Chamber considers the witness's explanations for

[1487] T. 16 December 2009 p. 71 (ICS) (Witness CNAC).
[1488] T. 15 December 2009 pp. 10-11 (ICS) (Witness CNAA); T. 16 December 2009 pp. 70-71 (ICS) (Witness CNAC).
[1489] T. 15 December 2009 pp. 55-56 (ICS) (Witness CNAA); Defence Exhibit 89 (Statement of Witness CNAA, 14 August 2003).
[1490] T. 15 December 2009 pp. 57-58 (ICS) (Witness CNAA).

this inconsistency to be satisfactory, especially considering the context of the targeted killings at the time and the fact that Tutsis were described as the enemy.

1164. The Defence also presented evidence of a Radio Rwanda report by a journalist named Gaspard Rwakana, which reported that the Murambi meetings were aimed at restoring peace. Witness CNAA explained that the radio report mentioned only part of what was said at the meeting, and that the Government was trying to deceive the members of the population with soft words, while in reality people were being killed.[1491] The Chamber accepts Witness CNAA's explanation and notes that the Radio Rwanda report contains a second-hand account of the proceedings.

1165. In his 2003 statement, Witness CNAC indicated that after Kambanda left the second meeting, Donat Murego, Eliezer Niyitegeka and Witness T82 spoke. While he mentioned that Nzabonimana was present, he did not indicate that Nzabonimana spoke.[1492] Witness CNAC also did not mention Witness T83 as having attended the 18 April 1994 meeting. The witness explained that the list of speakers and attendees that he gave in 2003 was not exhaustive and that many other people spoke.[1493] He reiterated in his testimony that Witness T83 was in fact present at the meeting.[1494] The Chamber accepts the witness's explanation in this regard.

1166. The Defence points to contradictions between Witness CNAC's testimony and the interviews he gave to Prosecution and Defence counsel in the *Karemera et al.* case on 22 February 2007 and 5 June 2008.[1495] Specifically, the Defence submits that in these interviews Witness CNAC did not mention Nzabonimana as being present or speaking at the 18 April 1994 meeting.[1496] The Defence also suggests that the words that Witness CNAC attributed to Nzabonimana at trial parallel the words he attributed to Karemera in the interviews he gave in 2007 and 2008.[1497]

1167. The Chamber notes, however, that the "Interview Note" containing what Witness CNAC purportedly said in 2007 and 2008 was not signed by Witness CNAC. Rather it is a summation of the interview written by the Prosecution. The document therefore constitutes hearsay. Furthermore, the substance of the "Interview Note," written on 5 June 2008, includes the interviewing Prosecutor's recollections of what Witness CNAC said in February 2007. Given these circumstances, the Chamber does not consider the Interview Note to be a reliable document with which to impeach the testimony of Witness CNAC.

1168. In any event, the Chamber does not find the discrepancies between Witness CNAC's testimony and the 2007 and 2008 interviews to be significant. Witness CNAC explained that he did not mention Nzabonimana in the interviews because the interviews were conducted in the context of the *Karemera et al.* case and the investigators' questions did not relate to

[1491] T. 15 December 2009 pp. 65-67 (ICS) (Witness CNAA); Defence Exhibit 86 (Transcript of Radio Rwanda Broadcast, 19 April 1994).
[1492] Defence Exhibit 98 (Statement of Witness CNAC, 20 August 2003).
[1493] T. 12 April 2010 pp. 42-43 (ICS) (Witness CNAC).
[1494] T. 12 April 2010 p. 44 (ICS) (Witness CNAC).
[1495] Defence Closing Brief, paras. 499-500.
[1496] Defence Exhibit 99A (Statement of Witness CNAC, 2 June 2008).
[1497] Defence Closing Brief, para. 500.

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Nzabonimana.[1498] Therefore, the witness had no reason to mention Nzabonimana's presence or utterances at this meeting. The report of the interview also specifically states that the list of Government Ministers present was not exhaustive. The Chamber therefore accepts the witness's explanation for the omission.[1499]

1169. Regarding the Defence assertion that Witness CNAC attributed the same words to Nzabonimana and Karemera, the Chamber notes that Witness CNAC testified that several Ministers spoke at the meeting. The Chamber recalls that Witness CNAA stated that the Ministers took the floor and reiterated the same message encouraging genocide. Given these circumstances, the Chamber does not consider that any similarity between the words attributed to Nzabonimana and Karemera is inconsistent with the consistent and corroborated testimony that important personalities delivered essentially the same message to the *bourgmestres*.

1170. The Defence witnesses did not dispute that a meeting with the Gitarama *bourgmestres* occurred at Murambi on 18 April 1994, but provided a different account of its tone, tenor and content.

1171. Mporanzi testified that Nzabonimana did not speak during the meeting, that none of the *bourgmestres* were threatened by any of the Ministers and they were not asked to cooperate with the *Interahamwe*; though it was suggested matter-of-factly that *bourgmestres* who were overwhelmed with their responsibilities may have to be replaced.

1172. The Chamber recalls that Mporanzi stated that he lied to Prosecution investigators when he gave his 1998 and 2003 statements.[1500] It considers that Mporanzi's admission to having provided a false statement to investigators seriously undermines his credibility as a witness (3.2.2.2.1). The Chamber considers that Mporanzi's testimony was questionable and of limited probative value, particularly where uncorroborated by other credible evidence.

1173. Witness T24 testified that to the best of his recollection, Nzabonimana did not take the floor during the meeting and that no *bourgmestre* was urged to collaborate with the *Interahamwe*.

1174. The Chamber notes that Witness T24's 2008 statement to Prosecution investigators contradicts his testimony. In his 2008 statement, Witness T24 specified that at the 18 April 1994 meeting, the *préfet* and the *bourgmestres* deplored the killing of Tutsis in Gitarama *préfecture* and asked for assistance in dealing with the problem. Witness T24 stated: "In response, the Interim Government, including Callixte Nzabonimana, in their speeches accused the local administrative authorities as well as the opponents of the MRND and or [*sic*] the CDR of being accomplices of the RPF. They continued that the Government could not provide any assistance since all the soldiers were engaged and that we had to fight the enemy, who is the Tutsi, rather

[1498] T. 12 April 2010 p. 45 (ICS) (Witness CNAC).
[1499] *See generally Munyakazi*, Judgement (AC), para. 85; *Kajelijeli*, Judgement (AC), para. 176 ("to suggest that if something were true a witness would have included it in a statement or a confession letter is obviously speculative and, in general, it cannot substantiate a claim that a Trial Chamber erred in assessing the witness's credibility").
[1500] T. 26 May 2010 p. 36 (Mporanzi).

than protect him [*sic*]." Witness T24 also stated that after the meeting, some of the authorities who were criticised were removed from their posts or killed and replaced by *Interahamwe*.[1501]

1175. The Chamber recalls that Witness T24 testified that he lied to Prosecution investigators when he gave his 2008 statement. Witness T24 testified that he agreed to speak with Prosecution investigators after being approached by the director of Gitarama prison where he was incarcerated. According to Witness T24, even though he did not see Nzabonimana during the 1994 events, he provided evidence implicating Nzabonimana because he feared repercussions from prison authorities if he refused to testify.[1502] His subsequent statement to Prosecution investigators was based on lies and hearsay. He testified that the statement was a direct result of pressure from the director of the prison, as well as being motivated by fear of being accused himself. Taking Witness T24 at his word that he lied to Prosecution investigators, the Chamber considers that his admission as to having provided a false statement seriously undermines his credibility as a witness (3.2.3.2.2).

1176. Furthermore, by his own admission, Witness T24 could not recall many of the details of what took place during the meeting, including the identities of the Ministers in attendance, apart from Nzabonimana, or the details of what was said during the meeting. The Chamber further notes that Witness T24 did not affirmatively deny that Nzabonimana took the floor or that any *bourgmestre* was urged to collaborate with the *Interahamwe*, but simply stated that he could not recall whether this occurred. Witness T24 also testified that he could provide few details of the meeting because he did not hear much of what was said. The Chamber therefore considers Witness T24's testimony as to how the Murambi meeting with the Gitarama *bourgmestres* unfolded to have little probative value.

1177. Turning to Witness T133, the Chamber recalls that his testimony regarding the 18 April 1994 meeting was entirely hearsay, and the Chamber thus treats it with appropriate caution. The Chamber further notes that Witness T133 acknowledged that his *bourgmestre* did not inform him of everything that occurred during the meeting. Given these factors, the Chamber considers Witness T133's testimony to have limited probative value.

1178. Witness PR denied attending the meeting at Murambi. The Chamber recalls that Witness CNAA testified that Witness PR was present at the meeting for the *bourgmestres*, and that Witness PR stated that "the *Inkotanyis* had infiltrated us" at the meeting.[1503] The Chamber recalls that Witness PR was a Minister in the Interim Government, and therefore would have had a motivation to distance himself from the meetings which occurred at Murambi. Nonetheless, even assuming that Witness PR did not attend the meeting,[1504] the Chamber finds that the evidence of Witness PR does not render the testimony of Witness CNAA unreliable.

1179. Considering the foregoing, the Chamber concludes that Witnesses CNAA and CNAC provided credible, reliable and corroborating eyewitness accounts of the 18 April 1994 meeting and Nzabonimana's role therein. For the reasons set out above, the Chamber finds that the

[1501] Prosecution Exhibit 33 (Statement of Witness T24, 2 October 2008).
[1502] T. 26 April 2010 p. 30 (ICS) (Witness T24).
[1503] T. 15 December 2009 pp. 8-11 (ICS) (Witness CNAA).
[1504] Defence Exhibit 147 (Witness PR's *Karemera et al.* Testimony, T. 22 November 2010 p. 39 (ICS) (Witness PR)).

Prosecution has established beyond a reasonable doubt that Nzabonimana ordered the killing of *bourgmestres* and other local officials opposed to the massacre of Tutsis during the meeting held at Murambi on 18 April 1994. Among those who attended the meeting included Prime Minister Kambanda, *bourgmestres*, national heads of political parties and Interim Government Ministers. The Chamber further finds that it has been proven that the Ministers present at the meeting, including Nzabonimana, used this meeting to threaten the *bourgmestres*.

1180. Lastly, the Chamber finds that a journalist from Radio Rwanda was present at the meeting with the *bourgmestres*. As established by Defence Exhibit 86, Radio Rwanda subsequently broadcast an account of the meeting.[1505]

1181. The Chamber has considered the Defence evidence in conjunction with the Defence claims that the Prosecution witnesses fabricated their evidence and concludes that the Defence has not raised a reasonable doubt in the Prosecution case (3.2.5).

3.5.7.3.3 Killing of Three Local Officials Following the Murambi Meeting

1182. Witness CNAA testified that as a result of the Murambi meeting, a number of people were massacred, including *Bourgmestre* Callixte Ndagijimana, *Conseiller* Bernard Twagiramukiza and *Conseiller* Wallace Gasigwa, and that the killings extended as far as the refugee camp at Kabgayi. However, the Chamber notes that the witness also said that he was not sure of the date that Ndagijimana was killed and that Twagiramukiza was killed because he had hidden Tutsis in his home.[1506] Moreover, Witness CNAA did not testify that he had first-hand knowledge of the killings. Rather, he said that he learned of the killings through "various sources" and members of the population.[1507]

1183. The Chamber notes that Witness CNAA testified that after the reinstatement ceremony of the *bourgmestre* of Musambira (3.5.8), some *bourgmestres* were publicly pressured and one *bourgmestre* was killed.[1508] On cross-examination however, he acknowledged that the *bourgmestre* was killed on 21 April 1994,[1509] placing it just after the Murambi meeting. Witness CNAA also stated that after the Musambira meeting, two *conseillers* in his *commune* were killed along with their families by soldiers and members of the population, but that behind those killings were the high officials, including Nzabonimana.[1510] He also stated that the two *conseillers* were killed a few days after the Murambi meeting which occurred on 18 April 1994.[1511]

1184. Witness CNAC testified that after the Murambi meeting, *Bourgmestre* Callixte Ndagijimana of Mugina *commune* was killed, and that other *bourgmestres* received threats that if they did not support the *Interahamwe*, they would suffer the same fate as Ndagijimana. However, the witness conceded that he was not present when Ndagijimana was killed, and that he did not know the exact circumstances surrounding his death or the identities of the killers.

[1505] Defence Exhibit 86 (Transcript of Radio Rwanda Broadcast, 19 April 1994).
[1506] T. 16 December 2009 p. 3 (ICS) (Witness CNAA).
[1507] T. 16 December 2009 pp. 3-4 (ICS) (Witness CNAA).
[1508] T. 15 December 2009 pp. 5-6 (ICS); T. 16 December 2009 p. 1 (ICS) (Witness CNAA).
[1509] T. 16 December 2009 p. 1 (ICS) (Witness CNAA).
[1510] T. 15 December 2009 pp. 5-6 (ICS) (Witness CNAA).
[1511] T. 15 December 2009 p. 12 (ICS) (Witness CNAA).

1185. By contrast, Defence witnesses denied that any killings resulted from the Murambi meeting. Defence Witness T71, who did not attend the Murambi meeting, testified that he knew Bernard Twagiramukiza, the *conseiller* of Ruli *secteur*, very well. He testified that Twagiramukiza died some time during the month of May 1994, and that he was killed in his home by "vengeful" detainees who had been released by soldiers and provided with firearms when they discovered that Twagiramukiza was sheltering his Tutsi son-in-law.

1186. Defence Witness T133 testified that while he knew Callixte Ndagijimana, *bourgmestre* of Mugina *commune*, he was unaware of the circumstances of his death. He further testified that he did not know *Conseiller* Bernard Twagiramukiza of Ruli *secteur* or *Conseiller* Martin Gasigwa of Musiba *secteur*, and thus could not comment as to whether they were killed after the 18 April 1994 meeting at Murambi. The Trial Chamber therefore places no reliance on the evidence of Witness T133 in determining whether these individuals were killed as a consequence of the Murambi meeting.

1187. The Chamber observes that the testimony of Witnesses CNAA and CNAC regarding the killings of local officials pursuant to the Murambi meeting of 18 April 1994 was inconsistent, vague and based entirely on hearsay. Moreover, only Witness CNAA testified as to the killings of *Conseillers* Twagiramukiza or Gasigwa. The Prosecution evidence also did not demonstrate any evidentiary nexus between the Murambi meeting and the deaths of the officials in question. The witnesses merely asserted in a conclusory manner that the deaths resulted from the meetings. For these reasons, the Chamber considers that the evidence of the Prosecution has not established beyond a reasonable doubt that the utterances of Nzabonimana during the Murambi meeting substantially contributed to the deaths of these individuals.

3.5.8 Reinstatement Ceremony of the *Bourgmestre* of Musambira *Commune*

3.5.8.1 Introduction

1188. Paragraph 48 of the Indictment alleges that in May 1994, Callixte Nzabonimana was present at the reinstatement ceremony of the *bourgmestre* of Musambira *commune*, Gitarama *préfecture*. During the ceremony, Nzabonimana accused the *bourgmestres* of not being supportive of the killings of Tutsis, and warned them that they could be replaced by *Interahamwe*. Nzabonimana refused to denounce the killings of Tutsis. Soon afterwards, the *bourgmestre* of Masango, the *préfet* and other local authorities were removed.[1512]

1189. The Prosecution submits that during the reinstatement of the *bourgmestre* of Musambira *commune*, the other *bourgmestres* present challenged Nzabonimana about the security situation in the region. They questioned Nzabonimana about whether he was responsible for the ongoing massacres because members of the population who had killed Tutsis said they were carrying out Nzabonimana's orders. Nzabonimana responded that if the *bourgmestres* could no longer carry out their work, they should resign and the *Interahamwe* would replace them. Furthermore, the *bourgmestres* requested Nzabonimana to condemn the acts of the *Interahamwe* on the radio but Nzabonimana refused. The Prosecution relies on Witnesses CNAA and CNAC.[1513]

[1512] Para. 48 of the Indictment.
[1513] Prosecution Closing Brief, paras. 287-288; T. 20 October 2011 p. 40 (Prosecution Closing Argument).

1190. The Defence submits that Witnesses CNAA and CNAC fabricated their evidence against Nzabonimana (3.2.3). The Defence also asserts that the Prosecution evidence in relation to this allegation was contradictory, incoherent and lacked credibility. It asserts that the evidence suggested that Nzabonimana was against the killings and that he hoped the *bourgmestres* would stop the killings. The Defence does not cite any Defence witnesses.[1514]

3.5.8.2 Notice

1191. The Defence submits that Paragraph 48 of the Indictment is impermissibly vague, as it does not sufficiently plead the date of the allegation and does not provide notice of the identities of the perpetrators or victims.[1515]

1192. The Chamber notes that Paragraph 48 contains a number of specifics regarding the allegation. It specifies Nzabonimana's alleged course of conduct, stating that Nzabonimana was present at the reinstatement ceremony of the *bourgmestre* of Musambira *commune*, Gitarama *préfecture*. During the ceremony, Nzabonimana accused the *bourgmestres* of not being supportive of the killings of Tutsis, and warned them that they could be replaced by *Interahamwe*. The Indictment thus sets out the specific location of the incident and the underlying criminal conduct at issue. The Indictment also sets out with specificity the individuals who were removed from office following the meeting, including the *bourgmestre* of Masango, the *préfet* and other local authorities.[1516]

1193. The Chamber observes that the Indictment indicates the alleged crime occurred in "May 1994." Given the specifics of the allegation set out in Paragraph 48, the Chamber does not find the date range provided in the Indictment to have been vague and therefore concludes that the Indictment was not defective in this regard. The Chamber recalls that "a broad date range, in and of itself, does not invalidate a paragraph of an indictment."[1517] Accordingly the Chamber finds that Nzabonimana was reasonably able to understand the nature of the charges against him and there was no prejudice in the preparation of his defence.[1518]

1194. In reaching this conclusion, the Chamber also notes that the Defence did not challenge the sufficiency of the Indictment prior to its Closing Brief. The Appeals Chamber has noted that "objections based on lack of notice should be specific and timely. [...] As to timeliness, the objection should be raised at the pre-trial stage (for instance in a motion challenging the indictment) or at the time the evidence of a new material fact is introduced."[1519]

1195. The Chamber notes that the Defence did not file a motion challenging the sufficiency of the Indictment. Furthermore, the Defence did not object when the Prosecution presented

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[1514] Defence Closing Brief, paras. 538-549; T. 20 October 2011 pp. 62-63 (Defence Closing Argument).
[1515] Defence Closing Brief, para. 555.
[1516] Para. 48 of the Indictment.
[1517] *See Rukundo*, Judgement (AC), para. 163; *Muvunyi I*, Judgement (AC), para. 58; *Nyiramasuhuko et al.*, Judgement (TC), para. 104.
[1518] *See Kupreškić et al.*, Judgement (AC), paras. 119-121; *Niyitegeka*, Judgement (AC), para. 197; *Bagosora et al.*, Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005, paras. 2-3.
[1519] *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 46 (internal citation omitted).

evidence regarding Paragraph 48 of the Indictment. The Defence failure to object to the sufficiency of Paragraph 48 before its Closing Brief reinforces the Chamber's conclusion that there was no prejudice to the Defence resulting from the pleading of Paragraph 48.

3.5.8.3 Evidence

Prosecution Witness CNAA

1196. Witness CNAA, a Hutu, was a local government official in Nyamabuye *commune*, Gitarama *préfecture*, in April 1994. At the time of his testimony, the witness was imprisoned in Gitarama prison for his role in the events of 1994.[1520]

1197. Witness CNAA testified that the *bourgmestre* of Musambira *commune* fled his *commune* because of the *Interahamwe*, and later returned to reclaim his position. When he returned, a reinstatement ceremony was organised in mid-May 1994. The *bourgmestres* of Gitarama, including those from Kayenzi, Musambira, Nyamabuye, Masango and Mushubati *communes*, were present. Others who attended included the *préfet* of Gitarama and Government Ministers, including Nzabonimana and other high-level civil servants. Witness CNAA also attended the meeting. No members of the public attended. The lowest-ranking authority who attended the meeting was a *conseiller*. During the reinstatement ceremony, the officials spoke about the security situation in Gitarama because massacres had escalated in the *préfecture*.[1521]

1198. Witness CNAA arrived at the reinstatement ceremony around 9.00 a.m. He could not recall when Nzabonimana arrived. At the ceremony, Nzabonimana took the floor and stated that the *bourgmestre* was reinstated in his position. All the *bourgmestres* then asked Nzabonimana whether he was behind the massacres, as the perpetrators had stated that they received their instructions to kill from Nzabonimana. Nzabonimana responded that the *bourgmestres*' allegations were groundless. The *bourgmestres* told Nzabonimana that he was stopping them from restoring security, and Nzabonimana said they did not have the wherewithal to do so. Nzabonimana told them: "You are responsible for security. Now, if you cannot do it, resign, and we're going to replace you with the members of my party." In referring to his party, Nzabonimana was referring to the MRND and the *Interahamwe*. The *bourgmestres* asked Nzabonimana to condemn the massacres on Radio Rwanda and to publicly dissociate himself from the criminals. Nzabonimana refused.[1522]

1199. After the reinstatement ceremony, the security situation further deteriorated. Some *bourgmestres* were publicly pressured and one was killed by soldiers and members of the population.[1523] The reinstated *bourgmestre* of Musambira was again removed from office three weeks later. Two *conseillers* in the witness's *commune* and their families were also killed by soldiers and members of the population. At the end of May 1994, the *préfet* of Gitarama was

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[1520] For additional introductory information on Witness CNAA, *see* para. 1045, *supra*.
[1521] T. 15 December 2009 pp. 4-7 (ICS); T. 16 December 2009 pp. 16-17 (ICS) (Witness CNAA).
[1522] T. 15 December 2009 pp. 5-7 (ICS); T. 16 December 2009 p. 20 (ICS) (Witness CNAA).
[1523] T. 15 December 2009 pp. 5-6 (ICS) (giving the example of the *bourgmestre* of Mugina *commune*; however in cross-examination, he indicated this *bourgmestre* was killed on 21 April 1994); T. 16 December 2009 p. 1 (ICS) (Witness CNAA).

removed. Those behind the killings "were high officials of the country, including Callixte Nzabonimana."[1524]

Prosecution Witness CNAC

1200. Witness CNAC, a Hutu, was a local political official in Masango *commune*, Gitarama *préfecture*, in April 1994 and was imprisoned in Gitarama for his role in the events of 1994 at the time of his testimony.[1525]

1201. Witness CNAC testified that sometime before the Murambi meeting on 18 April 1994, the *bourgmestre* of Musambira was chased from office by the local *Interahamwe* because they did not want him as *bourgmestre*. Attempts were made to kill him at home. The *bourgmestre* then fled from Musambira *commune*. The other *bourgmestres* raised his removal from office with members of the Government at the 18 April 1994 Murambi meeting and requested his reinstatement. Killings started in the witness's *commune* on 22 April 1994. Witness CNAC never saw Nzabonimana discussing or giving orders to killers acting in Masango *commune*.[1526]

1202. At the beginning of May 1994, the *préfet* of Gitarama summoned the *bourgmestres* and *conseillers* of the *communes* for a reinstatement ceremony of the *bourgmestre* of Musambira *commune*. Since the *bourgmestre* had been removed by the *Interahamwe*, who were members of Nzabonimana's MRND party, the presence of Nzabonimana at the reinstatement ceremony was greatly welcomed by the population.[1527]

1203. A meeting was held before the reinstatement ceremony. The meeting was restricted to local authorities, *bourgmestres* and *commune conseillers*. Some of the *bourgmestres* in attendance included: the previously-ousted *bourgmestre* of Musambira *commune*; Rutiganda of Murama *commune*; Basel Nsabimana of Mukingi *commune*; and Ugirashebuga of Kigoma *commune*. Nzabonimana, Witness CNAA and *Préfet* Uwizeye of Gitarama *préfecture* also attended.[1528]

1204. The *bourgmestres* appreciated that Nzabonimana approved reinstating the *bourgmestre*, and that Nzabonimana calmed down his party members. At the meeting, the attendees discussed security concerns and the *Interahamwe* who were armed and killing people. The *bourgmestres* said they were unable to perform their duties because the *Interahamwe* were sabotaging them. The *bourgmestres* asked those responsible for the *Interahamwe* to tell them that their actions were intolerable.[1529]

1205. Witness CNAC and others told Nzabonimana that the violence against the people of Gitarama had to be condemned. They told him that he had the authority to publicly denounce the acts of violence on the radio and dissociate himself from the *Interahamwe*. Nzabonimana

[1524] T. 15 December 2009 pp. 5-6, 68 (ICS); T. 16 December 2009 p. 18 (ICS) (Witness CNAA).
[1525] For additional introductory information on Witness CNAC, *see* paras. 1050-1054, *supra*.
[1526] T. 16 December 2009 p. 71 (ICS); T. 17 December 2009 p. 3 (ICS); T. 12 April 2010 pp. 56, 60 (ICS); T. 13 April 2010 p. 9 (ICS) (Witness CNAC).
[1527] T. 16 December 2009 p. 55; T. 17 December 2009 pp. 3-4 (ICS); T. 13 April 2010 pp. 4, 31 (ICS) (Witness CNAC).
[1528] T. 17 December 2009 pp. 3-4 (ICS); T. 13 April 2010 pp. 5, 12 (ICS) (Witness CNAC).
[1529] T. 13 April 2010 pp. 5-6 (ICS) (Witness CNAC).

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refused. It was important for Nzabonimana to give a radio address because he was a Minister from Gitarama *préfecture* who had authority over the *Interahamwe*, who were responsible for carrying out the killings.[1530] Nzabonimana got angry and accused the *bourgmestres* and MDR militants of "not fully assuming their responsibilities." Nzabonimana said that the *bourgmestres* were collaborating with the enemy, and told them that if they were tired they should resign and allow the *Interahamwe* to take over.[1531] The witness believed that Nzabonimana did not give a radio address in order to avoid negative consequences.[1532]

1206. The *bourgmestre* of Musambira *commune* was reinstated at the ceremony. Nzabonimana's presence contributed to the reinstatement. As the *bourgmestre* had been removed by members of Nzabonimana's party, the reinstatement ceremony would not have been properly conducted if Nzabonimana had been absent. Witness CNAC testified that Nzabonimana did not support the illegal removal of the *bourgmestre* from office. The *bourgmestre* was later deposed again and replaced by an *Interahamwe*.[1533]

1207. After the ceremony, sometime in May 1994, *Préfet* Uwizeye of Gitarama *préfecture* was dismissed from office. Also after the Musambira meeting, but before 16 June 1994, the Minister of Interior, Edouard Karemera invited Witness CNAC and others to Kirinda centre. The witness arrived late because he had been told a different time from the other invitees, and was reprimanded by Karemera. While being reprimanded, the witness was forcefully seized by Karemera's police escorts and put in a vehicle. The policemen took the witness away to an undisclosed location and he was informed by the officers that the *sous-préfet* of Ruhango *sous-préfecture,* Jean-Baptiste Ndagijimana, had issued orders that the witness should be "fired at." Witness CNAC ultimately escaped.[1534]

1208. On 16 June 1994, the Government publicly dismissed Witness CNAC from his political position. Witness CNAC learned of his dismissal through an announcement on Radio Rwanda. Along with the *Interahamwe*, Witness CNAC's successor had been involved in attacking members of the population during the genocide. His successor had changed his party affiliation to the MRND and worked for the Ministry of Youth, which was headed by Nzabonimana. Nzabonimana assisted Witness CNAC's successor to become *bourgmestre*.[1535]

3.5.8.4 Deliberations

1209. The Prosecution relies upon the testimony of Witnesses CNAA and CNAC in support of this allegation. The Defence asserts that the Prosecution evidence fails to prove the allegation beyond a reasonable doubt.

[1530] T. 17 December 2009 p. 3 (ICS); T. 13 April 2010 pp. 27, 29 (ICS) (Witness CNAC).
[1531] T. 17 December 2009 pp. 3-4 (ICS); T. 13 April 2010 p. 5 (ICS); T. 13 April 2010 p. 6 (HC) (Witness CNAC) (French). The Chamber notes that the English version of the transcripts erroneously state that Nzabonimana referred to the *bourgmestres* of the "MRND" party.
[1532] T. 13 April 2010 p. 29 (ICS) (Witness CNAC).
[1533] T. 12 April 2010 p. 60 (ICS); T. 13 April 2010 p. 4 (ICS) (Witness CNAC).
[1534] T. 17 December 2009 pp. 3-4, 12 (ICS) (Witness CNAC).
[1535] T. 17 December 2009 pp. 4-5, 11-12 (ICS) (Witness CNAC).

1210. The Chamber recalls that at the time of their testimony, both Witnesses CNAA and CNAC were imprisoned for crimes committed during the genocide.[1536] The Chamber will therefore treat their testimony with appropriate caution (2.7.7; 3.2.3.2.1).

1211. The Chamber recalls that it has considered the Defence submission that Witnesses CNAA and CNAC fabricated their evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witnesses CNAA and CNAC (3.2.3.2.1).

1212. As an initial matter, the Chamber notes that Witnesses CNAA and CNAC both had an opportunity to reliably identify Nzabonimana at the Musambira *commune* meeting. Witnesses CNAA and CNAC both knew Nzabonimana in his high profile capacity as Government Minister and had seen him on previous occasions, including at the 18 April 1994 Murambi meeting. The Chamber has no doubt that both Prosecution witnesses were able to reliably identify Nzabonimana (2.7.3).

1213. Witnesses CNAA and CNAC provided consistent accounts of the meeting at Musambira *commune*. Both testified that the ceremony occurred in May 1994 with the purpose of reinstating the *bourgmestre* of Musambira *commune*, who had been forced out by *Interahamwe*.[1537] Both testified that only Government officials attended, including Nzabonimana, numerous *bourgmestres* from Gitarama *préfecture* and the *préfet* of Gitarama. Witness CNAC and Witness CNAA also corroborated each other's presence at the meeting.[1538]

1214. Witnesses CNAA and CNAC also provided consistent evidence that the *bourgmestres* voiced their concerns to Nzabonimana about the killings and suggested that he was involved with the killers. The *bourgmestres* requested Nzabonimana to publicly denounce the killers,[1539] but Nzabonimana refused and told the *bourgmestres* that they could be replaced with *Interahamwe*.[1540]

1215. Witnesses CNAA and CNAC also consistently testified that the *préfet* of Gitarama was removed from office after the ceremony, towards the end of May 1994.[1541] They provided consistent evidence that the reinstated *bourgmestre* of Musambira *commune* was again removed from office after the meeting.[1542] Witness CNAA estimated that the *bourgmestre* of Musambira

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[1536] T. 15 December 2009 p. 23 (ICS) (Witness CNAA); Prosecution Exhibit 20 (Protected Information Sheet); T. 12 April 2010 p. 9 (ICS); T. 13 April 2010 pp. 26-27 (ICS) (Witness CNAC).
[1537] T. 15 December 2009 pp. 4-7 (ICS); T. 16 December 2009 pp. 16-17 (ICS) (Witness CNAA); T. 16 December 2009 p. 55; T. 17 December 2009 pp. 3-4 (ICS); T. 12 April 2010 p. 60 (ICS); T. 13 April 2010 p. 31 (ICS) (Witness CNAC).
[1538] T. 15 December 2009 pp. 4-7 (ICS); T. 16 December 2009 pp. 16-17 (ICS) (Witness CNAA); T. 17 December 2009 p. 4 (ICS); T. 12 April 2010 p. 5 (ICS); T. 13 April 2010 p. 12 (ICS) (Witness CNAC).
[1539] T. 15 December 2009 pp. 5-6 (ICS) (Witness CNAA); T. 17 December 2009 p. 3 (ICS); T. 13 April 2010 pp. 6, 27, 29 (ICS) (Witness CNAC).
[1540] T. 15 December 2009 pp. 5-7 (ICS); T. 16 December 2009 p. 20 (ICS) (Witness CNAA); T. 17 December 2009 pp. 3-4 (ICS) (Witness CNAC).
[1541] T. 15 December 2009 pp. 5-6, 68 (ICS) (Witness CNAA) (*préfet* removed at the end of May 1994); T. 17 December 2009 pp. 3-4 (ICS) (Witness CNAC).
[1542] T. 16 December 2009 p. 18 (ICS) (Witness CNAA); T. 12 April 2010 p. 60 (ICS) (Witness CNAC).

was removed three weeks after the reinstatement ceremony.[1543] Witness CNAC testified that he himself was dismissed from his position of authority on 16 June 1994.[1544]

1216. The Chamber notes that Witness CNAA provided internally inconsistent testimony regarding the dismissals of officials from their positions of authority after the Musambira meeting. Witness CNAA testified that after the reinstatement ceremony, some *bourgmestres* were publicly pressured and one *bourgmestre* was killed.[1545] On cross-examination however, he acknowledged that the *bourgmestre* was killed on 21 April 1994, prior to the Musambira meeting.[1546] Witness CNAA also stated that after the Musambira meeting, two *conseillers* in his *commune* were killed along with their families.[1547] However, he also stated that the two *conseillers* were killed a few days after the Murambi meeting which occurred on 18 April 1994.[1548] The Chamber therefore will not rely on his testimony as to the subsequent dismissals.

1217. The Defence asserts that Witness CNAA's testimony contradicts his testimony during the *Karemera et al.* trial.[1549] In *Karemera et al.*, Witness CNAA testified that the *bourgmestres* told Nzabonimana he was responsible for the insecurity in Gitarama *préfecture* and demanded that he publicly denounce the *Interahamwe*. In response, Nzabonimana accused Witness CNAA of lying and doing nothing to end the insecurity, since the witness was a member of the majority MDR party in Gitarama.[1550] In *Karemera et al.*, Witness CNAA did not testify that Nzabonimana threatened to replace the *bourgmestres*. Witness CNAA explained that the omission occurred because Nzabonimana was not on trial in the *Karemera et al.* case, and therefore he did not necessarily provide comprehensive information about Nzabonimana.[1551] The Chamber accepts this explanation.[1552] The Chamber notes as well that the two testimonies are not materially inconsistent. In both instances, Witness CNAA recounted that the *bourgmestres* accused Nzabonimana of being responsible for violence in Gitarama, and Nzabonimana dismissed their calls to denounce the violence.

1218. The Defence also asserts that Witness CNAA was not credible because he did not mention the Musambira *commune* meeting in his 1996 and 2003 statements, and only included it in his 2008 statement.[1553] The Chamber notes, however, that in his 2008 statement, Witness CNAA indicated that he testified in three previous cases and that he was "willing this time around to talk in more detail about Callixte Nzabonimana."[1554] The Chamber considers that this reasonably accounts for the previous omissions, as the 2008 statement was Witness CNAA's first to specifically concern Nzabonimana.

[1543] T. 16 December 2009 p. 18 (ICS) (Witness CNAA).
[1544] T. 17 December 2009 p. 4 (Witness CNAC).
[1545] T. 15 December 2009 pp. 5-6 (ICS) (Witness CNAA).
[1546] T. 16 December 2009 p. 1 (ICS) (Witness CNAA).
[1547] T. 15 December 2009 pp. 5-6 (ICS) (Witness CNAA).
[1548] T. 15 December 2009 p. 12 (ICS) (Witness CNAA).
[1549] Defence Closing Brief, paras. 538-539.
[1550] Defence Exhibit 93 (Excerpts of Witness CNAA's *Karemera et al.* Testimony, 12 and 18 July 2007).
[1551] T. 16 December 2009 p. 21 (ICS) (Witness CNAC).
[1552] *See Muhimana*, Judgement (AC), para. 58 ("the presence of inconsistencies within or amongst witnesses' testimonies does not per se require a reasonable Trial Chamber to reject the evidence as being unreasonable").
[1553] Defence Closing Brief, para. 542.
[1554] Defence Exhibit 94A (Statement of Witness CNAA, 2 October 2008).

1219. The Defence also asserts that Witness CNAA's 2008 statement contradicts his testimony in that his statement claims that Nzabonimana called the *bourgmestres* "useless and inefficient" and did not mention replacing the *bourgmestres*.[1555] Although the witness did not use these exact words during his trial testimony, the Chamber recalls that Witness CNAA testified that Nzabonimana said to the *bourgmestres*: "You are responsible for security. Now, if you cannot do it, resign, and we're going to replace you with the members of my party."[1556] The Chamber considers that the substance of the witness's testimony does not depart from his 2008 statement. The Chamber also recalls that it does not expect a witness to provide a verbatim recitation of his earlier statements during his testimony.

1220. The Defence asserts that Witness CNAC's evidence regarding Nzabonimana's participation in the reinstatement ceremony established that Nzabonimana was in fact working against the killings.[1557] Witness CNAC testified that the *bourgmestres* appreciated that Nzabonimana agreed that the *bourgmestre* should be reinstated. He further testified that because the *bourgmestre* had been removed by members of Nzabonimana's party, the reinstatement ceremony would not have been properly conducted if Nzabonimana had been absent, and that Nzabonimana did not support the illegal removal of the *bourgmestre* from office.[1558]

1221. However, consistent with the testimony of Witness CNAA, Witness CNAC also testified that the *bourgmestres* confronted Nzabonimana about the violence of the *Interahamwe* and asked him to publicly denounce the violence on Radio Rwanda. Nzabonimana told them that they were "not fully assuming their responsibilities," accused them of collaborating with the enemy and told them that if they were tired, they should resign and allow the *Interahamwe* to take over.[1559] Nzabonimana refused to denounce the violence. [1560]

1222. The Chamber considers that Nzabonimana's support for the reinstatement of the *bourgmestre* did not necessarily establish that Nzabonimana was against the killings. As Witness CNAC testified, the *bourgmestre* was "removed from office by *Interahamwe* in an abnormal way."[1561] The public reinstatement of the *bourgmestre* served as an assertion of legitimate public force by the Government in Musambira *commune*.[1562] In his capacity as Minister, Nzabonimana thus served as a representative of the Government at the ceremony. Nzabonimana could both support the supremacy of the national Government and support the killings.

1223. Having reviewed the totality of the evidence, the Chamber concludes that Witnesses CNAA and CNAC provided credible and consistent eyewitness accounts of the May 1994 meeting in Musambira *commune*. In reaching this conclusion, the Chamber notes that Witness CNAC testified to the good deeds done by Nzabonimana prior to 1994 and specified that he never saw Nzabonimana in his *commune* communicating with killers or giving them orders. The

[1555] Defence Closing Brief, para. 543.
[1556] T. 15 December 2009 pp. 6-7 (ICS) (Witness CNAA).
[1557] Defence Closing Brief, paras. 546-549.
[1558] T. 13 April 2010 pp. 4-5 (ICS) (Witness CNAC).
[1559] T. 17 December 2009 pp. 3-4 (ICS); T. 13 April 2010 p. 5 (ICS); T. 13 April 2010 p. 6 (HC) (Witness CNAC) (French).
[1560] T. 17 December 2009 p. 3 (ICS); T. 13 April 2010 pp. 4-6 (ICS) (Witness CNAC).
[1561] T. 13 April 2010 p. 3 (ICS) (Witness CNAC).
[1562] T. 13 April 2010 pp. 3-4 (ICS) (Witness CNAC).

Chamber considers this to demonstrate the measured and objective nature of Witness CNAC's testimony with regard to Nzabonimana.

1224. The Chamber thus finds that the Prosecution has proven beyond a reasonable doubt that in May 1994, Nzabonimana was present at the reinstatement ceremony of the *bourgmestre* of Musambira *commune* and during the ceremony, Nzabonimana accused the *bourgmestres* of not supporting the killings of Tutsis, warned them that they could be replaced by *Interahamwe* and refused to denounce the killings of Tutsis. The Chamber has considered the Defence evidence in conjunction with the Defence claims that the Prosecution witnesses fabricated their evidence and concludes that the Defence has not raised a reasonable doubt in the Prosecution case (3.2.5).

1225. The Chamber also concludes that after the Musambira meeting, the *préfet* of Gitarama, the *bourgmestre* of Musambira and Witness CNAC were dismissed from office. However given the general nature of the Prosecution evidence regarding the subsequent dismissals, and given that the dismissals occurred weeks and perhaps over a month after the reinstatement ceremony, the Chamber finds that the Prosecution has not established beyond a reasonable doubt that there exists a causal link between Nzabonimana's involvement in the Musambira meeting and the subsequent dismissal of officials.

3.5.9 Weapons Distribution in Nyakabanda *Commune*

3.5.9.1 Introduction

1226. Paragraph 54 of the Indictment alleges that in May 1994, Nzabonimana and Prime Minister Jean Kambanda launched the Ndiza battalion at Kibangu *secteur*, Nyakabanda *commune*, where they distributed weapons and told the gathering that the purpose of the weapons was to fight the enemy who was the Tutsi.[1563]

1227. The Prosecution submits that between April and May 1994, Nzabonimana and Kambanda distributed 25 guns to members of the Ndiza battalion at a meeting in a field in front of the Nyakabanda *commune* office. The Prime Minister ordered members of the population to learn how to employ the weapons in order to fight the Tutsi enemy. The Prosecution submits that recruits of the Ndiza battalion committed criminal acts such as killing Tutsi survivors and looting their property. The Prosecution also asserts that Nzabonimana failed to disassociate himself from Kambanda's orders. The Prosecution relies on the testimony of Witness CNAL.[1564]

1228. The Defence does not dispute that a meeting took place at which Kambanda distributed weapons, but asserts that Nzabonimana did not attend the meeting. The Defence submits that the Prosecution evidence was inconsistent and fabricated. The Defence further submits that the Prosecution evidence only establishes that Nzabonimana attended the meeting, not that he actively participated in it. Additionally, the Defence asserts that the Prosecution established no link between the Prime Minister's weapons distribution and Nzabonimana, and did not prove that the Ndiza battalion used the weapons to commit crimes. Furthermore, the Defence asserts that

[1563] Para. 54 of the Indictment.
[1564] Prosecution Closing Brief, paras. 14, 319, 345, 347; T. 20 October 2011 pp. 12-13 (Prosecution Closing Argument).

the Indictment does not contain this allegation. The Defence relies on Witnesses T114, T117, T303 and Straton Sibomana.[1565]

3.5.9.2 Notice

1229. The Defence submits that it did not receive adequate notice of the allegation and that the present allegation was not contained in the Indictment.[1566] The Chamber notes that contrary to the Defence submission, Paragraph 54 of the Indictment contains the allegation that Prime Minister Kambanda and Nzabonimana attended a meeting in May 1994 in Kibangu *secteur*, Nyakabanda *commune*, where they distributed weapons and told the attendees that the purpose of the weapons was to fight the Tutsi enemy.[1567]

1230. The Chamber notes that Paragraph 54 specifies Nzabonimana's alleged course of conduct, alleging that he distributed weapons and told those present that the purpose of the weapons was to fight the Tutsi enemy. The Indictment also sets out the specific location of the incident. Regarding the date of the incident, the Chamber observes that the Indictment indicates the alleged crime occurred in May 1994. The Chamber considers that given the details provided in Paragraph 54, this date range was sufficient to provide Nzabonimana with notice of the allegation.

1231. Furthermore, the Chamber notes that the Prosecution Pre-Trial Brief, the Annex thereto, and any relevant prior statements, are all consistent as to the date of this event, namely May 1994. Moreover, the Chamber observes that the Defence does not deny that the incident occurred and presented four witnesses denying Nzabonimana's presence at the event in question. Accordingly, the Chamber finds that Nzabonimana was reasonably able to understand the nature of the charges against him and there was no prejudice in the preparation of his defence (2.1.3).

3.5.9.3 Evidence

Prosecution Witness CNAL

1232. Witness CNAL, a Hutu vendor who lived in Nyakabanda *commune* in 1994, testified that he knew Nzabonimana from 1992 to 1994.[1568] Witness CNAL testified that Nzabonimana held the rank of Minister and was Chairman of the MRND in Gitarama *préfecture*.[1569]

1233. The witness saw Nzabonimana at the end of May 1992 in Kigina *secteur*, Nyabikenke *commune*, where Nzabonimana was raising cattle and had potato farms. Nyakabanda *Bourgmestre* Straton Sibomana took the witness to see Nzabonimana, in order that Nzabonimana could request that the witness join the MRND party. The witness stated that he knew Nzabonimana from previous occasions.[1570]

[1565] Defence Closing Brief, paras. 580, 582-587, 590-591, 594; T. 20 October 2011 pp. 71-72 (Defence Closing Argument).
[1566] Defence Closing Brief, paras. 582-583.
[1567] Para. 54 of the Indictment.
[1568] Prosecution Exhibit 11 (Protected Information Sheet); T. 1 December 2009 pp. 6-7 (ICS) (Witness CNAL).
[1569] T. 1 December 2009 pp. 27-28 (ICS) (Witness CNAL).
[1570] T. 1 December 2009 pp. 9-10 (ICS) (Witness CNAL).

1234. The Ndiza battalion was established after the Interim Government was set up in Murambi. Authorities recruited members of the population and taught them how to operate weapons. One day, a radio announcement stated that soldiers had deserted and refused to fight. The announcement said that the deserting soldiers were enemies of the country and that they should be arrested and have their weapons seized, and that the soldiers should be killed if necessary. The announcement also requested the population to prepare to go to the warfront. The military training involved all members of the population. Wooden firearms were used in the training sessions.[1571]

1235. After the death of President Habyarimana, the witness saw Nzabonimana several times in Kibangu *secteur*, Nyakabanda *commune*. On one occasion between April and May 1994, Witness CNAL saw Nzabonimana when Prime Minister Jean Kambanda came to a meeting in Nyakabanda *commune*. The witness could not recall the exact date. The authorities informed the members of the population that the Prime Minister was going to hold a meeting. The meeting took place between 11.00 a.m. and 1.00 p.m. in a small stadium in front of the Nyakabanda *commune* office, near where Witness CNAL lived.[1572]

1236. Many national authorities accompanied the Prime Minister, but the witness did not know all of them. The *bourgmestre* spoke first and then introduced a *préfet* whose name Witness CNAL could not recall. The *préfet* then introduced the Ministers and the Prime Minister. The witness saw Nzabonimana at the meeting. Nzabonimana was seated near the Prime Minister, but did not speak.[1573]

1237. Approximately 5,000 people attended the meeting. Kambanda thanked the population and the Ndiza battalion. He stated that the Government wanted everyone to learn how to handle firearms. He took out a pistol, showed it to the members of the population and said: "I also have a weapon, and you must always have your weapon with you, even in your bedroom, so that if the enemy were to attack you, wherever you are, you should be able to defend yourselves." The witness testified that Kambanda told the members of the population to fight against the enemy, that is, the Tutsis.[1574]

1238. The witness was in the middle of the crowd of people, 25 to 50 metres away from the ceremony. He testified that 25 guns were distributed. The weapons were held in a truck, but the witness did not know who owned the truck or who brought the weapons to the meeting. The weapons were handed over to members of the battalion who had been trained in the *commune*. Members of the battalion included Philippe Nyirindekwe, Gaspard Sebahima, Defence Witness T117 and Defence Witness T114.[1575]

[1571] T. 1 December 2009 pp. 26-27 (ICS) (Witness CNAL).
[1572] T. 1 December 2009 pp. 18, 20, 23-24 (ICS) (Witness CNAL).
[1573] T. 1 December 2009 pp. 24-25 (ICS); T. 2 December 2009 p. 13 (ICS) (Witness CNAL).
[1574] T. 1 December 2009 pp. 24-25, 27 (ICS) (Witness CNAL).
[1575] T. 1 December 2009 pp. 24-25 (ICS) (Witness CNAL).

1239. The witness left the meeting after Kambanda distributed the weapons, and therefore could not testify as to whether Nzabonimana did anything after that point. After learning how to operate the weapons, some members of the population killed Tutsis and looted their property.[1576]

1240. Witness CNAL was arrested five times and subsequently released. In August 1994 he was arrested and detained in Kibango. In 1995, after investigations, he was imprisoned for six days and then released. In Nyakabanda he was imprisoned on two occasions; in 1995 he was detained, investigations were carried out and some people who caused his arrest were imprisoned. In 1996 he was detained and released. In 2001, he was arrested by a senior police officer from Nzabonimana's family and was released after 12 days, accused of having tried to join the "king's army." The witness confirmed that he had been accused during *Gacaca* proceedings in Kibango in 2007, in Kibimba in 2007 and Kivumu in 2007.[1577]

Defence Witness T117

1241. Witness T117, a driver in 1994, identified Nzabonimana as the Minister of Youth, and knew Nzabonimana's physical appearance well.[1578] The witness also knew Nzabonimana's sister and brother. The witness saw Nzabonimana on one occasion between 6 April 1994 and July 1994. From a distance of approximately five metres, the witness saw his father greeting Nzabonimana on the road in front of his house.[1579]

1242. Witness T117 testified that he knew Straton Sibomana as he had been the *bourgmestre* for Nyakabanda *commune* for 30 years. The witness lived in between the *commune* office and Sibomana's residence. Sibomana passed the witness's house to get to the *commune* office.[1580]

1243. The witness stated that the Nyakabanda *commune* Crisis Committee created the Ndiza battalion towards the end of May 1994. The President of the Crisis Committee was Dominique Ndayambaje, who was also the President of the Nyakabanda court. Other members of the Crisis Committee included Innocent Twishime, Straton Sibomana, Jean-Marie Vianney Sehene and a man named Byuma.[1581]

1244. Witness T117 testified that he saw weapons distributed towards the end of June 1994, at the grandstand of the Nyakabanda *commune*. Prime Minister Kambanda organised the weapons distribution. Kambanda distributed Lee-Enfield rifles to instructors of the Ndiza battalion during the swearing-in ceremony of the new *bourgmestre* of Nyakabanda, Camille Nsabimana.[1582]

1245. The witness received a Lee-Enfield rifle at the meeting. In total, five Lee-Enfield rifles were distributed. Gad Namahoro and Witness T114 were among those who received weapons. A man named Gaspard Sebahima also received a Kalashnikov from Alexis Nsabimana, to be used

[1576] T. 1 December 2009 p. 27 (ICS) (Witness CNAL).
[1577] T. 2 December 2009 pp. 28-29 (ICS) (Witness CNAL). The Chamber notes that the correct name of the *secteur* is "Kibangu" and not "Kibango," as contained in both the English and French transcripts.
[1578] Defence Exhibit 43 (Protected Information Sheet); T. 12 July 2010 p. 22; T. 12 July 2010 p. 14 (ICS); T. 13 July 2010 p. 7 (ICS) (Witness T117).
[1579] T. 12 July 2010 pp. 15-16 (ICS); T. 13 July 2010 p. 7 (ICS) (Witness T117).
[1580] T. 12 July 2010 p. 11 (ICS) (Witness T117).
[1581] T. 12 July 2010 p. 30 (ICS) (Witness T117).
[1582] T. 12 July 2010 p. 25; T. 12 July 2010 pp. 38-39 (ICS) (Witness T117).

during training sessions. The entire Ndiza battalion had one Kalashnikov. The witness testified that the event was broadcast on Rwandan television. The weapons were employed to guarantee the safety of the members of the population and the *commune* and were used to ensure the security of the Tutsis. Witness T117 testified that Nzabonimana was not involved with the Ndiza battalion.[1583]

1246. Newly appointed authorities also attended the meeting. Jean-Damascene Ukirikyeyezu, who was in charge of training members of the Civil Defence in Gitarama *préfecture*, and members of the Crisis Committee also attended the meeting. The witness could not remember if Sibomana, as a member of this Committee, attended the meeting. The witness could not provide an estimate of how many people attended.[1584]

1247. Witness T117 testified that Nzabonimana was not in Nyakabanda *commune* at the time, as Nzabonimana did not appear in the television coverage. The witness's colleagues from the Ndiza battalion confirmed that Nzabonimana was not at that meeting, and the witness did not hear anyone else say that Nzabonimana was present at the meeting. If Nzabonimana was present, he would have stood next to the Prime Minister, and he would have been visible in pictures of the weapons distribution.[1585]

1248. During his speech at the meeting, Kambanda said: "You people of Nyakabanda *commune*, I want to assure you that on the 1st of July 1994, the date of national independence will be celebrated at [...] Amahoro national stadium [...] as a victory of the war." The witness denied that Kambanda gave instructions that the weapons were to be used to kill Tutsis. He further testified that Kambanda said: "The Hutus have always been ashamed. They cannot face anybody [...]. If there's any Tutsi among you let him look at me in the eyes. I will not hide my face from him." Copies of the speech were widely distributed.[1586]

1249. The witness testified that when the meeting occurred, widespread killings had ended, but some individuals were still killed to the north and south of the *commune*.[1587]

1250. The witness was summoned before a *Gacaca* court because he was accused of being in possession of firearms during the war. He testified that he was acquitted.[1588]

Defence Witness T114

1251. Witness T114 was a Tutsi plumber and mason in 1994 and a *secteur* level *Gacaca* judge after the genocide.[1589] He testified that Nzabonimana was Minister of Youth in 1994 and a member of the MRND, but the witness did not know Nzabonimana's position within the party. Ministers were held in high esteem by members of the population. The offices where the witness worked were located 600 metres from the Nyakabanda *commune* office. He testified that if a

[1583] T. 12 July 2010 pp. 38-40, 45, 56 (ICS); T. 13 July 2010 p. 42 (ICS) (Witness T117).
[1584] T. 12 July 2010 p. 39 (ICS); T. 13 July 2010 p. 25 (Witness T117).
[1585] T. 12 July 2010 pp. 39-40 (ICS); T. 13 July 2010 pp. 25, 29-31 (Witness T117).
[1586] T. 12 July 2010 p. 40 (ICS) (Witness T117).
[1587] T. 13 July 2010 p. 47 (ICS) (Witness T117).
[1588] T. 12 July 2010 p. 44 (ICS) (Witness T117).
[1589] Defence Exhibit 116 (Protected Information Sheet); T. 7 March 2011 pp. 23-24, 59-60 (ICS) (Witness T114).

Minister such as Nzabonimana arrived in the area, the members of the public would have known about it.[1590]

1252. In early May 1994, Nyakabanda *commune* did not have a *bourgmestre*, but instead had a Crisis Committee. The Crisis Committee was set up prior to 22 May 1994. The Committee, which consisted of ten members, brought reserve soldiers to the *commune* office to recruit young people for training. Those recruits were known as the Ndiza battalion. Witness T114 was called to enlist into the Ndiza battalion before 22 May 1994 and to train young people to ensure the security of the local population. Witness T114 testified that he was the only Tutsi member of the Ndiza battalion.[1591]

1253. Witness T114 testified that in June 1994, Prime Minister Kambanda came to Nyakabanda *commune* to introduce the new *bourgmestre*, Camille Nsabimana. The officer-in-charge of intelligence in the office of the Prime Minister, Alexis Nsabimana, was also present. Apart from Kambanda, no other Ministers came and Nzabonimana was not present. Straton Sibomana was not present on that date, but Dominique Ndayambaje of the Crisis Committee and Innocent Twishime were present. The officials came aboard a small vehicle, but the witness did not know the type of vehicle. Witness T114 confirmed that *Préfet* Ukulikiyeyezu came with Kambanda aboard the same vehicle; a pickup at the back of which were soldiers accompanying the dignitaries. Kambanda rode in the front with the *préfet*. The witness affirmed that no military truck was in the convoy of vehicles that accompanied Kambanda. The witness and other members of the Ndiza battalion stood on the road and saw the Prime Minister and his delegation walk past on their way to the speaker's platform. When the Prime Minister arrived, the battalion began to parade. At this time, the witness was primarily concerned with the parade.[1592]

1254. A meeting took place less than 100 metres from the *commune* office. Thousands of people were present, but less than 5,000 people. Less than 15 soldiers were present to provide security for the Prime Minister.[1593]

1255. On this occasion, Kambanda distributed five rifles to the Ndiza battalion to be used during training. The rifles were aboard an ordinary vehicle which had brought the dignitaries to the meeting, but were not in a crate. The distribution took place on the playground of the Nyakabanda *commune*, where the ceremony took place. Gaspard Sebahima distributed the weapons, which he received from Kambanda. A Kalashnikov was given to Gaspard Sebahima, and Lee-Enfield rifles were given to Philippe Nyilindekwe, Defence Witness T117, Gad Namahoro and Martin Bakundinkwano. The witness was present but did not receive a rifle because he was part of Gad Namahoro's team and there were not enough weapons for everyone. The rifles were already loaded with ammunition. The battalion did not use the weapons to fight; they were only used in training.[1594]

1256. The witness stood approximately 10 metres away from Kambanda at the ceremony. Kambanda wore military attire and carried a pistol. At one point he removed the pistol from the

[1590] T. 7 March 2011 pp. 24, 28, 34, 71 (ICS) (Witness T114).
[1591] T. 7 March 2011 pp. 38, 48 (ICS); T. 8 March 2011 pp. 14, 16 (ICS) (Witness T114).
[1592] T. 7 March 2011 pp. 47-48 (ICS); T. 8 March 2011 pp. 26-28, 30, 32-33, 36, 67-68 (ICS) (Witness T114).
[1593] T. 8 March 2011 pp. 26, 32-33, 60 (ICS) (Witness T114).
[1594] T. 7 March 2011 pp. 47, 53 (ICS); T. 8 March 2011 pp. 26, 30-32, 37-38, 40 (ICS) (Witness T114).

holster and pointed it upwards. Kambanda said: "Members of the public of Nyakabanda *commune*, when you go to your fields to farm and when you see an *Inyenzi* you will recognise them easily. You will see them with tails and very long ears, and as soon as you see an *Inyenzi* take your weapon and kill the *Inyenzi*." He raised his pistol and told the members of the population that wherever he went he carried a weapon. He then asked the people to meet on the first.[1595] The witness understood the term "*Inyenzi*" to refer to Tutsis. Kambanda asked the local inhabitants to use firearms. He further made a statement that the population should look around and "if there is any Tutsi who would show up and I am a Hutu, you see me." The witness did not think anyone could challenge the Prime Minister as he was the highest ranking authority present.[1596]

1257. When asked if the witness felt uneasy on account of his Tutsi ethnicity, he responded affirmatively, but testified that he thought Kambanda would not execute a person before his subordinates and in the presence of the local population. Witness T114 testified that other Tutsis were present who also felt concerned about the situation.[1597]

1258. Witness T114 testified that between 22 May 1994 and 14 July 1994 nobody was killed. Those who were killed in Nyakabanda *commune* were killed starting on 5 May 1994. Lieutenant Zimulinda started the killings and no other persons were killed in the *commune* after those killings.[1598]

1259. Witness T114 testified that in 2008, charges were brought against him in a *Gacaca* court because he was a member of the Ndiza battalion. He was accused along with Defence Witness T117 and Gad Namahoro. The *secteur*-level *Gacaca* court acquitted them. No one named Nzabonimana during Witness T114's *Gacaca* proceedings.[1599]

1260. Witness T114 also stated that before a *Gacaca* court, he testified as a Prosecution witness against Paul Nsengiyumva and Eulade Safari Nzigamasabo for the attacks launched against the home of a man named Juvénal. Paul Nsengiyumva falsely accused Witness T114 of accompanying him and carrying a firearm. Witness T114 was accused of giving false testimony in the trial of Nsengiyumva and was sentenced to three months in prison, but the *Gacaca* court acquitted him immediately and released him.[1600]

1261. The witness testified that he knew Prosecution Witness CNAL and described him as a "trickster…a fox among the sheep," as he participated in several attacks even though he testified against many others. He killed people in Nyakabanda including someone named Laurence Uwimana. Witness CNAL appeared before the *Gacaca* courts in Kivumu and Kibimba to defend himself. Witness CNAL was acquitted; however, he played a role in many killings that occurred during this period.[1601]

[1595] T. 8 March 2011 pp. 26-27 (ICS) (Witness T114). The Chamber understands this phrase to mean 1 July, the date of Rwandan independence.
[1596] T. 8 March 2011 pp. 27-28, 68 (ICS) (Witness T114).
[1597] T. 8 March 2011 pp. 29-30 (ICS) (Witness T114).
[1598] T. 8 March 2011 pp. 44-45 (ICS) (Witness T114).
[1599] T. 7 March 2011 pp. 48-49, 54, 58-59 (ICS) (Witness T114).
[1600] T. 8 March 2011 pp. 60, 66-67 (ICS) (Witness T114).
[1601] T. 7 March 2011 pp. 60-61 (ICS) (Witness T114).

Defence Witness Straton Sibomana

1262. Sibomana, a Hutu,[1602] worked at COFORWA, a company providing clean water to the population and promoting development activities, in 1994 and was imprisoned at the time of his testimony.[1603] He was appointed *bourgmestre* of Nyakabanda *commune* in 1963 and served until 1992.[1604]

1263. The witness knew Nzabonimana as the Minister of Planning in 1989. Between the time he was expelled from the office of *bourgmestre* in 1992 until 6 April 1994, Sibomana heard that Nzabonimana was Minister of Youth. During that period, Sibomana recalled seeing Nzabonimana in person "once clearly," at the Nyakabanda *commune* office. He had no special relationship with Nzabonimana and did not receive any money from him. He knew that Nzabonimana lived in Nyabikenke *commune*, but they never visited each other at home. Sibomana was never involved in any military training and never received any weapons from Nzabonimana.[1605]

1264. Sibomana did not see Nzabonimana after 6 April 1994, nor did he have any contact with him through third parties. Nzabonimana could not have given Sibomana any orders or instructions because Nzabonimana was not in a position of authority *vis-à-vis* Sibomana. Sibomana denied that he "remained very close to" and "spent a lot of time" with Nzabonimana during the genocide. The witness acknowledged that Nzabonimana's uncle was his neighbour.[1606]

1265. Toward the end of May 1994, Prime Minister Kambanda and other dignitaries came to install the replacement for *Bourgmestre* Jean-Pierre Rukiramacumu, who had left his post on 8 May 1994. The installation ceremony took place before a large crowd composed exclusively of Hutus, and the witness was situated in the middle of the crowd. He could see Kambanda above the crowd because Kambanda addressed the audience from an elevated podium.[1607]

1266. After the new *bourgmestre*, Camille Nsabimana, was installed, Kambanda distributed about 10 firearms to members of the Ndiza battalion. Gaspard Sebahima was in charge of the distribution, and a man named Nyirindekwe was also present. Kambanda informed the crowd that firearms were being distributed so that those in attendance could defend themselves "when the enemy attacked them." Kambanda did not define who "the enemy" was. Sibomana could not see whether Nzabonimana was present at the meeting.[1608]

1267. The killings in Nyakabanda began on 5 May 1994. They were organised by Second Lieutenant Jean Robert Zimurinda, and were perpetrated by "[t]he people who used to accompany him wherever he went out to kill," including someone named Uwimana, Eppemac

[1602] For additional introductory information on Sibomana, *see* para. 616, *supra*.
[1603] Defence Exhibit 3 (Personal Information Sheet); T. 9 December 2009 pp. 5, 20-22 (Sibomana).
[1604] T. 9 December 2009 pp. 5, 55 (Sibomana).
[1605] T. 9 December 2009 pp. 27-28, 31-32; T. 10 December 2009 pp. 16-17 (Sibomana).
[1606] T. 9 December 2009 p. 37; T. 10 December 2009 p. 25 (Sibomana).
[1607] T. 9 December 2009 pp. 33-34 (Sibomana).
[1608] T. 9 December 2009 pp. 33-34 (Sibomana).

Ndikubwimana and Hambudara Habyakare. Sibomana heard that when these people were committing massacres they "were behaving like they were insane."[1609]

1268. Sibomana left Rwanda in July 1994 in order to seek refuge in Goma. He returned to Rwanda on 29 January 1997. Sibomana was arrested and imprisoned on 2 February 1997, in relation to allegations that he "had participated in an attack where Ngoga and Ndidendereza were killed." Sibomana asserted that these murders were the only allegations levelled against him regarding activities that occurred in Nyakabanda *commune*.[1610]

1269. Sibomana was imprisoned in the *commune* jail for one and a half years and then transferred to Gitarama prison in 1998. In 2001, the Prosecutor's office had completed its investigations and concluded that it had insufficient evidence to warrant his continued detention. The former *bourgmestre*, Rukiramacumu, testified before the Prosecutor that Sibomana had not murdered Ngoga and Ndidendereza, and in fact "those who had attacked those two persons had themselves attempted to kill me" in 1992. Sibomana was therefore provisionally released and requested to appear before the Prosecutor once a month, and prohibited from travelling more than 60 kilometres from his home.[1611]

1270. Sibomana was arrested again in June 2007, having been named as the accused in *Gacaca* proceedings pertaining to the murders of Ngoga and Ndidendereza. Sibomana acknowledged being present at the scene of the crime but denied any role in the killings. Sibomana admitted that he pled guilty in relation to the murders, but claimed he was framed by others. Sibomana was sentenced to 30 years' imprisonment. In September 2007, an appeals court reduced his sentence to 14 years.[1612]

1271. Sibomana testified that at no point during *Gacaca* proceedings was he alleged to have committed genocide in Nyakabanda with Nzabonimana, to have received weapons from Nzabonimana, or to have been Nzabonimana's lieutenant.[1613]

1272. The witness testified that Prosecution Witness CNAL falsely accused him. Witness CNAL was perceived to be a bandit or a hoodlum in his area, a thief who Sibomana had to sanction because he felt that he was a criminal.[1614]

Defence Witness T303

1273. Witness T303, a civil servant in 1994,[1615] testified that he saw Nzabonimana between November and December 1993 when he came to attend an MRND rally. The witness was in charge of security at the rally.[1616]

[1609] T. 9 December 2009 pp. 35-36 (Sibomana).
[1610] T. 9 December 2009 pp. 37-38 (Sibomana).
[1611] T. 9 December 2009 pp. 37-39; T. 9 December 2009 p. 47 (Sibomana) (French) (for the spelling of "Rukiramacumu").
[1612] T. 9 December 2009 pp. 37-42; T. 9 December 2009 pp. 43-59 (ICS); T. 10 December 2009 pp. 9-10 (Sibomana).
[1613] T. 10 December 2009 pp. 52-54 (Sibomana).
[1614] T. 9 December 2009 pp. 45-59 (ICS) (Sibomana).
[1615] Defence Exhibit 121 (Protected Information Sheet); T. 22 March 2011 pp. 41-42, 61-62 (ICS) (Witness T303).

1274. Approximately two months after the death of President Habyarimana, Prime Minister Jean Kambanda came to Nyakabanda *commune*. Others told Witness T303 of the Prime Minister's visit. He was told that Kambanda came for a rally and that he distributed Lee-Enfield guns to members of the Ndiza battalion. The battalion used the weapons during their exercises. The witness was also told that Kambanda came to swear in the new *bourgmestre* of Nyakabanda *commune*, Camille Nsabimana. Prior to this, the *commune* did not have a *bourgmestre* in office. No one mentioned Nzabonimana in relation to that meeting.[1617]

3.5.9.4 Deliberations

1275. Both Prosecution and Defence witnesses provided evidence of a meeting held near the Nyakabanda *commune* office, where Prime Minister Kambanda distributed weapons to members of the Ndiza battalion.[1618] The issues for the Chamber to address are whether in May 1994, Nzabonimana and Prime Minister Jean Kambanda launched the Ndiza battalion at Kibangu *secteur*, Nyakabanda *commune*, where they distributed weapons and told the gathering that the purpose of the weapons was to fight the enemy who was the Tutsi.

1276. The Chamber notes that the Prosecution relies on a single witness, Witness CNAL, in support of this allegation. Although Witness CNAL has not been convicted of an offence, the witness affirmed that he has been arrested five times and subsequently released, and that he was accused during *Gacaca* proceedings in 2007.[1619] The Chamber notes that the witness may have an incentive to implicate Nzabonimana, and therefore treats his testimony with appropriate caution (2.7.7).

1277. Witness CNAL testified that he saw Nzabonimana at a meeting of approximately 5,000 people, held in a small stadium in front of the Nyakabanda *commune* office between April and May 1994. Prime Minister Kambanda spoke and distributed weapons at the meeting. According to Witness CNAL, during the meeting Kambanda said to the audience: "I also have a weapon, and you must always have your weapon with you, even in your bedroom, so that if the enemy were to attack you, wherever you are, you should be able to defend yourselves." Kambanda told the members of the population to fight against the enemy and that the enemy was the Tutsis. Twenty-five guns were then distributed to members of the Ndiza battalion, including Philippe Nyirindekwe, Gaspard Sebahima, Defence Witness T117 and Defence Witness T114. Witness CNAL testified that after learning how to operate the weapons, some members of the population went to kill Tutsi survivors and looted their property. Nzabonimana did not speak at the meeting.[1620]

1278. The Chamber notes that Defence witnesses provided evidence consistent with that of Prosecution Witness CNAL regarding the details and sequence of events at the meeting.

[1616] T. 22 March 2011 p. 49 (ICS) (Witness T303).
[1617] T. 22 March 2011 pp. 54-55 (ICS); T. 23 March 2011 p. 23; T. 23 March 2011 pp. 21, 34-35 (ICS) (Witness T303).
[1618] T. 1 December 2009 p. 23 (ICS); T. 2 December 2009 p. 12 (ICS) (Witness CNAL); T. 12 July 2010 p. 25; T. 12 July 2010 pp. 38-39 (ICS) (Witness T117); T. 7 March 2011 p. 47 (ICS); T. 8 March 2011 pp. 26, 30 (ICS) (Witness T114); T. 9 December 2009 pp. 33-34 (Sibomana); T. 22 March 2011 p. 55 (ICS); T. 23 March 2011 p. 23; T. 23 March 2011 pp. 21, 34-35 (ICS) (Witness T303).
[1619] T. 2 December 2009 pp. 28-29 (ICS) (Witness CNAL).
[1620] T. 1 December 2009 pp. 13, 23-25, 27 (ICS); T. 2 December 2009 pp. 8, 13 (ICS) (Witness CNAL).

Witnesses T114 and T117 testified that the meeting took place just outside the Nyakabanda *commune* office.[1621] Witnesses T114, T117 and Sibomana all corroborated Witness CNAL's testimony that a large crowd attended the event.[1622] Witnesses T117 and T114 each confirmed each other's presence at the meeting. [1623] The Defence witnesses all agreed that the meeting occurred on the occasion of the swearing-in of the new *bourgmestre* of Nyakabanda *commune*, Camille Nsabimana.[1624]

1279. Regarding Prime Minister Kambanda's speech, Witness T117 quoted Kambanda as saying: "You people of Nyakabanda *commune*, I want to assure you that on the 1st of July 1994, the date of national independence will be celebrated at the national – Amahoro national stadium in victory – as a victory of the war." Witness T117 denied that Kambanda gave specific instructions that the weapons were to be used to kill Tutsis, and claimed instead that he said: "The Hutus have always been ashamed. They cannot face anybody [...] If there's any Tutsi among you let him look at me in the eyes. I will not hide my face from him."[1625] Witness T114 quoted Kambanda as saying: "Members of the public of Nyakabanda *commune*, when you go to your fields to farm and when you see an *Inyenzi* you will recognise them easily. You will see them with tails and very long ears, and as soon as you see an *Inyenzi* take your weapon and kill the *Inyenzi*." He raised his pistol and told the members of the population that wherever he went he carried a weapon. He then asked the people to meet on 1 July 1994.[1626] The witness understood the term "*Inyenzi*" to refer to Tutsis.[1627] Kambanda asked the local inhabitants to use firearms and said that the population should look around and "if there is any Tutsi who would show up and I am a Hutu, you see me."[1628] According to Sibomana, Kambanda informed the crowd that firearms were being distributed so that those in attendance could defend themselves "when the enemy attacked them."[1629]

1280. Each of the Defence witnesses testified that Kambanda then distributed weapons to the Ndiza battalion. Witness T117 testified that Kambanda distributed 5 Lee-Enfield rifles, and Gaspard Sebahima received a Kalashnikov from Alexis Nsabimana. Gad Namahoro and Witness T114 received weapons and Witness T117 also received a Lee-Enfield rifle.[1630] Witness T114 testified that five rifles were distributed. A Kalashnikov was given to Gaspard Sebahima and Lee-Enfield rifles were given to Philippe Nyilindekwe, Witness T117, Gad Namahoro and Martin Bakundinkwano. He further stated that Gaspard Sebahima distributed the weapons, which

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[1621] T. 7 March 2011 p. 47 (ICS); T. 8 March 2011 pp. 30, 33 (ICS) (Witness T114); T. 12 July 2010 p. 39 (ICS) (Witness T117).
[1622] T. 13 July 2010 p. 25 (Witness T117) (there was a big gathering in attendance but the witness could not provide an exact figure); T. 8 March 2011 pp. 26, 60 (ICS) (Witness T114) (there were thousands of people present on that day, but not as many as 5,000 people as was suggested by the Prosecution); T. 9 December 2009 pp. 33-34 (Sibomana) (there was a large crowd composed exclusively of Hutus).
[1623] T. 8 March 2011 p. 30 (ICS) (Witness T114); T. 12 July 2010 p. 45 (ICS) (Witness T117).
[1624] T. 12 July 2010 p. 38 (ICS) (Witness T117); T. 7 March 2011 p. 47 (ICS); T. 8 March 2011 pp. 26, 30 (ICS) (Witness T114); T. 9 December 2009 pp. 33-34 (Sibomana); T. 22 March 2011 p. 55 (ICS); T. 23 March 2011 p. 23; T. 23 March 2011 pp. 21, 34-35 (ICS) (Witness T303).
[1625] T. 12 July 2010 p. 40 (ICS) (Witness T117).
[1626] T. 8 March 2011 pp. 26-27 (ICS) (Witness T114).
[1627] T. 8 March 2011 p. 68 (ICS) (Witness T114).
[1628] T. 8 March 2011 pp. 27-28 (ICS) (Witness T114).
[1629] T. 9 December 2009 pp. 33-34 (Sibomana).
[1630] T. 12 July 2010 pp. 38-39, 45 (ICS); T. 13 July 2010 p. 42 (ICS) (Witness T117).

he received from Kambanda.[1631] Sibomana stated that ten firearms were distributed and that Sebahima was in charge of the distribution.[1632]

1281. Based upon an evaluation of the entirety of the evidence, the Chamber concludes that the Prosecution and Defence witnesses testified about the same event. Each of the witnesses confirmed that Kambanda was present, that he spoke at the meeting and that weapons were distributed to the Ndiza battalion. The witnesses provided consistent testimony as to the size and location of the meeting and as to who received weapons. All the witnesses testified that Gaspard Sebahima was present, and Witnesses CNAL, T117 and T114 testified that he received a weapon. Witnesses CNAL, T117 and T114 all testified that Witnesses T114 and T117 received a weapon. The Chamber acknowledges that Witness CNAL testified that 25 guns were distributed whereas the Defence witnesses placed the number between five and 10. The Chamber considers this to be a minor discrepancy.

1282. The Chamber notes that Sibomana was the only witness who described the crowd as being made up exclusively of Hutus.[1633] However, this contradicts the testimony of Witness T114, a Tutsi, who indicated he was a member of the Ndiza battalion and was present at the meeting. Given that Witnesses CNAL and T117 confirmed the presence of Witness T114, a Tutsi, at the meeting, the Chamber concludes that the audience at the meeting was not made up exclusively of Hutus, as claimed by Sibomana.

1283. Regarding the content of Kambanda's speech, the Chamber notes that Witness CNAL testified that the weapons were to be used against the "enemy" who were the Tutsis. Witness T114 testified that Kambanda stated the weapons were to be used to kill the *Inyenzi*, who were the Tutsis. Sibomana stated that Kambanda said the weapons were to be used against the "enemy," but did not specify that Kambanda made reference to the Tutsis. Only Witness T117 averred that Kambanda made no mention that the weapons were to be used against the enemy or the Tutsis.

1284. The Chamber notes that the Prosecution and Defence witnesses differed regarding the date of the meeting. The Chamber observes that Witness CNAL stated that the meeting occurred in April or May 1994, but also indicated that he could not be sure as to the exact date. Defence Witnesses T117, T114 and T303 testified that Kambanda distributed weapons to the Ndiza battalion in June 1994.[1634] Sibomana testified that the meeting occurred at the end of May 1994.[1635] The Chamber notes that Sibomana corroborates Witness CNAL in stating that the meeting occurred before June 1994. Given Sibomana's senior position at the time of the events, and his corroboration of Witness CNAL, the Chamber concludes that the meeting occurred in May 1994.

[1631] T. 7 March 2011 p. 47 (ICS); T. 8 March 2011 pp. 26, 30-31 (ICS) (Witness T114).
[1632] T. 9 December 2009 pp. 33-34 (Sibomana).
[1633] T. 9 December 2009 pp. 33-34 (Sibomana).
[1634] T. 12 July 2010 p. 25 (Witness T117); T. 7 March 2011 p. 47 (ICS); T. 8 March 2011 pp. 26, 30 (ICS) (Witness T114); T. 22 March 2011 p. 55 (ICS); T. 23 March 2011 p. 23; T. 23 March 2011 pp. 21, 34-35 (ICS) (Witness T303).
[1635] T. 9 December 2009 pp. 33-34 (Sibomana).

1285. Considering the consistent testimony of both Prosecution and Defence witnesses as to these details, the Chamber concludes that the witnesses were testifying as to the same incident. Furthermore, the Chamber finds that weapons were distributed at the ceremony and that Kambanda told the attendees that the weapons were to be used to kill the "enemy," meaning the Tutsis.

1286. The Prosecution and Defence witnesses differed as to whether Nzabonimana was present at the meeting. Whereas Witness CNAL testified that Nzabonimana attended the meeting, all of the Defence witnesses denied Nzabonimana's presence.[1636]

1287. The Chamber notes that Witness CNAL knew Nzabonimana since 1992 as a Government Minister and political leader, and that he had met Nzabonimana on previous occasions.[1637] Furthermore, Witness CNAL testified that he saw Nzabonimana from a distance of 25 to 30 metres. Given the witness's previous knowledge of Nzabonimana and the distance from which he testified that he saw Nzabonimana, the Chamber considers that Witness CNAL had an adequate opportunity to reliably identify Nzabonimana at the meeting (2.7.3).

1288. Witness T117 testified that the meeting was covered on Rwandan television, and because Nzabonimana was not seen on the footage, he must not have been present.[1638] He was certain of this because after meeting with Counsel for the Defence, he scrutinised pictures in the records of the Rwandan Government and interviewed his colleagues from the Ndiza battalion, who all confirmed that Nzabonimana was not at that meeting.[1639] He stated that he had not heard anyone else say that Nzabonimana was present at a meeting presided over by Kambanda. Furthermore, Nzabonimana was an authority and since the Prime Minister went to Nzabonimana's *préfecture* of origin, if Nzabonimana was present he would have been visible in the pictures when guns were being distributed. He would have been standing next to the Prime Minister.[1640]

1289. The Chamber notes, however, that in his prior statement dated 2 September 2009, Defence Witness T117 stated that he could not remember whether Nzabonimana was present at the meeting.[1641] Witness T117 testified that he preferred not to modify the statement when he was given the opportunity, because he knew that he would have the opportunity to properly clarify the issue before the Chamber during his testimony.[1642] The Chamber considers that this discrepancy undermines the reliability of Witness T117's testimony as to whether Nzabonimana was present at the meeting.

1290. Sibomana testified that he could not see whether Nzabonimana was present at the meeting.[1643] The Chamber recalls that Sibomana was serving a 14-year prison sentence at the

[1636] T. 12 July 2010 pp. 39-40 (ICS); T. 13 July 2010 p. 25 (Witness T117); T. 7 March 2011 pp. 47-48 (ICS) (Witness T114); T. 9 December 2009 pp. 33-34 (Sibomana); T. 22 March 2011 p. 55 (ICS); T. 23 March 2011 p. 23; T. 23 March 2011 pp. 21, 34-35 (ICS) (Witness T303).
[1637] T. 1 December 2009 pp. 7, 10, 18, 27-28 (ICS) (Witness CNAL).
[1638] T. 12 July 2010 pp. 39-40 (ICS); T. 13 July 2010 p. 25 (Witness T117).
[1639] T. 13 July 2010 p. 25 (Witness T117).
[1640] T. 13 July 2010 pp. 29-31 (Witness T117).
[1641] Prosecution Exhibit 64 (Statement of Witness T117, 2 September 2009).
[1642] T. 13 July 2010 p. 29 (Witness T117).
[1643] T. 9 December 2009 pp. 33-34 (Sibomana).

time of his testimony stemming from his involvement in the genocide.[1644] The Chamber also notes that Sibomana was 82 years old at the time of his testimony and in failing health. The Chamber therefore treats his testimony with appropriate caution (2.7.7). Witness T114 testified that when the Prime Minister arrived at the meeting, the witness was part of a parade to welcome the delegation and was therefore more focused on the activity in which they were taking part rather than the convoy that arrived.[1645] Furthermore, Witness T303 provided hearsay evidence as to the meeting and Nzabonimana's absence from said meeting.[1646]

1291. The Chamber considers that the testimony of the Defence witnesses with regard to Nzabonimana's presence was unreliable, as they did not demonstrate first-hand knowledge of Nzabonimana's presence. Given the huge crowds gathered at the venue, the Chamber observes that it is possible that the Defence witnesses did not see everybody who attended. The differences in the testimony of Witness CNAL and the Defence witnesses as to the presence of Nzabonimana may also be attributed to their differing perspectives at the meeting.

1292. Based on the foregoing, the Chamber concludes that Witness CNAL provided credible testimony that Nzabonimana was present at the meeting. Witness CNAL also reliably identified Nzabonimana. The Chamber recalls that it may find allegations proven on the basis of a single witness's testimony (2.7.4). The Chamber concludes that the evidence established beyond a reasonable doubt that there was a meeting held at Kibangu *secteur,* Nyakabanda *commune* in May 1994, where both Kambanda and Nzabonimana were present, and at which Kambanda distributed weapons to the Ndiza battalion for the purpose of fighting the Tutsi enemy.

1293. Nevertheless, the Chamber notes that the Indictment alleges that in May 1994, Nzabonimana and Prime Minister Jean Kambanda launched the Ndiza battalion at Kibangu *secteur*, Nyakabanda *commune*, where they distributed weapons and told the gathering that the purpose of the weapons was to fight the enemy who was the Tutsi.[1647] The Indictment does not allege that he passively observed and failed to dissociate himself from Kambanda's speech and the weapons distribution. The Chamber considers that a plain reading of this Indictment paragraph indicates that the Prosecution alleged that Nzabonimana actively participated through speaking at the meeting and distributing weapons.[1648] However, the Prosecution has failed to prove beyond a reasonable doubt that Nzabonimana spoke at the meeting or actively participated in the weapons distribution. For the foregoing reasons, the Prosecution failed to prove beyond a reasonable doubt that Nzabonimana spoke at the meeting and distributed weapons as alleged in Paragraph 54 of the Indictment.

[1644] Defence Exhibit 3 (Personal Information Sheet); T. 9 December 2009 p. 5; T. 9 December 2009 pp. 45-59 (ICS) (Sibomana).
[1645] T. 8 March 2011 pp. 67-68 (ICS) (Witness T114).
[1646] T. 22 March 2011 p. 55 (ICS); T. 23 March 2011 p. 23; T. 23 March 2011 pp. 21, 34-35 (ICS) (Witness T303).
[1647] Para. 54 of the Indictment.
[1648] *See e.g. Rwamakuba*, Judgement (TC), paras. 26, 28 ("It would therefore be contrary to the fundamental right of the Accused to a fair trial, including his right to defend himself and to know the charges against him, if the Chamber were to accede to a Prosecution request to find the Accused criminally responsible for omissions which were neither set forth in the Indictment nor subsequently notified by timely, clear, and consistent information from the Prosecution.")

3.5.10 Fina Petrol Station Killing

3.5.10.1 Introduction

1294. Paragraph 28 of the Indictment alleges that in April 1994, at the Fina petrol station, Nyamabuye *commune*, Gitarama *préfecture*, a young Tutsi man was shot dead by a soldier in the presence and with the support of Callixte Nzabonimana.[1649]

1295. The Prosecution submits that at the Fina roadblock a young Tutsi man alighted from a military truck after having been arrested by soldiers and accused of being *Inyenzi*. Nzabonimana arrived on the scene and subsequently a soldier took the young man into a eucalyptus wood where he was shot. The soldier and Nzabonimana then left in a vehicle in the direction of Murambi. The Prosecution further submits that the Defence evidence refers to a different incident, and is fraught with inconsistencies and therefore should be dismissed. The Prosecution relies on the testimony of Prosecution Witness CNAV.[1650]

1296. The Defence asserts that it did not receive proper notice of this allegation. In addition, the Defence does not deny that the killing of the young Tutsi man occurred. However, it submits that the Prosecution evidence was insufficient to prove the allegation. The Defence asserts that the Prosecution evidence was internally inconsistent and inconsistent with previous *Gacaca* records. Furthermore, the Defence asserts that Paragraph 28 of the Indictment is impermissibly vague. The Defence relies on the testimony of Witnesses T64 and T300.[1651]

3.5.10.2 Evidence

Prosecution Witness CNAV

1297. Witness CNAV, a Hutu farmer in 1994, testified that he was posted at a roadblock named after the Fina petrol station.[1652] The petrol station was located in Nyamabuye *secteur*, Nyamabuye *commune*. The roadblock was located 20 metres away from the Fina station, and less than one kilometre from the *commune* office. While Witness CNAV knew that the roadblock was not far from Dominique Mbonyumutwa's house, he could not confirm if the house next to the roadblock was that of Mbonyumutwa.[1653]

1298. The roadblock was set up sometime in April 1994, two or three days after the Government arrived in Murambi. More than ten people manned the roadblock, including Wellars Uwinkindi, Claver, Balthazar, Mustafa, Rukimbira, Bertin Mugabonake, Félix and François Munyiga. They were obliged to work at the roadblock. Some of those manning the roadblock were armed but the witness did not receive a gun. The roadblock was established in order to search vehicles which could be transporting weapons and ammunition for *Inyenzis*. The identity

[1649] Para. 28 of the Indictment.
[1650] Prosecution Closing Brief, paras. 163-171, 376-377; T. 20 October 2011 pp. 28-29; T. 21 October 2011 p. 12 (Prosecution Closing Argument).
[1651] Defence Closing Brief, paras. 448-449, 555; Defence Additional Brief, para. 31; T. 20 October 2011 pp. 73-74; T. 21 October 2011 p. 18 (Defence Closing Argument).
[1652] Prosecution Exhibit 14 (Protected Information Sheet); T. 3 December 2009 p. 55 (Witness CNAV).
[1653] T. 3 December 2009 p. 55; T. 3 December 2009 pp. 59, 65 (ICS) (Witness CNAV).

cards of the Tutsis passing through and fleeing were verified. Their instructions were to kill anyone they arrested.[1654]

1299. One afternoon in April 1994, the witness saw two military vehicles arrive at the station to buy petrol. Before the vehicles departed, the soldiers onboard came to search for a young man, who they arrested. He was asked to show his identification papers but he could not find them. The identification papers of the Tutsi man were not requested at the roadblock and the man was not arrested or stopped at the roadblock.[1655]

1300. The soldiers asked the man if he was Tutsi and he claimed to be Hutu. He denied that he was a soldier of the *Inyenzi*. The man stated that Nzabonimana could defend him because he knew him, as he was a native of Nzabonimana's *commune* of Nyabikenke. The soldiers sent a message via radio to Murambi and less than 30 minutes after the young Tutsi man arrived, Nzabonimana came to the scene. The witness was present when the message was sent. Those manning the roadblock were told that "Callixte" was coming. During this time the Tutsi man was questioned. Witness CNAV confirmed that Nzabonimana worked in Murambi and came to the roadblock from Murambi.[1656]

1301. Nzabonimana arrived on board a military vehicle. Nzabonimana passed by the roadblock and went to the petrol station. Those manning the roadblock and the soldiers already on the scene knew Nzabonimana and the soldiers who accompanied him. They identified Nzabonimana to the witness, saying, "[t]his is Callixte."[1657]

1302. The soldiers informed Nzabonimana of the allegations against the young man. A young soldier who had arrived with Nzabonimana took the Tutsi man in a wood approximately 50 metres from the petrol station and shot him. The distance from the roadblock to the place where the Tutsi man was killed was also approximately 50 metres. The young man died. The witness confirmed that both he and Nzabonimana could see what was happening. Nzabonimana did not go into the wood, which was located below the road in a small valley. The soldier returned and boarded the vehicle with Nzabonimana and they drove towards Murambi.[1658]

1303. On that day, the witness was working with Claver and a man named Balthazar, who were both near him. Witness CNAV could not confirm whether a man named Innocent was there on that day, but confirmed that Innocent also manned that roadblock. He was the Deputy Prosecutor in Gitarama during the war. He stated that François Munyenga was not next to him during this incident, but later stated that he could not recall whether Munyenga was present at all.[1659]

[1654] T. 3 December 2009 pp. 57-59, 69-70 (ICS) (Witness CNAV).
[1655] T. 3 December 2009 p. 60 (ICS); T. 4 December 2009 pp. 12-14 (ICS) (Witness CNAV).
[1656] T. 3 December 2009 pp. 60-61 (ICS); T. 4 December 2009 pp. 12-14 (ICS) (Witness CNAV).
[1657] T. 3 December 2009 pp. 54-55; T. 3 December 2009 p. 61 (ICS); T. 4 December 2009 pp. 12-14 (ICS) (Witness CNAV).
[1658] T. 3 December 2009 p. 60 (ICS); T. 4 December 2009 pp. 10-14 (ICS) (Witness CNAV).
[1659] T. 4 December 2009 p. 14 (ICS); T. 4 December 2009 p. 16 (HC) (Witness CNAV) (French) (for the spelling of "Balthazar").

1304. The witness conceded that he may not be able to identify Nzabonimana in court because he had only seen him once during the genocide.[1660]

Defence Witness T64

1305. Witness T64, a Hutu bicycle taxi driver in 1994, testified that from April to June 1994, a roadblock was located near the Fina petrol station along the road from Gitarama to Kigali.[1661] The petrol station was located in Nyamabuye *cellule*, Nyamabuye *commune*. Two soldiers armed with guns were posted at the station to provide security. Witness T64 manned the roadblock. He worked at the roadblock every day and only returned home for meals. In 2007, before a *Gacaca* court, Witness T64 pled guilty to manning a roadblock where people were killed. He was sentenced to four years' imprisonment and two years' community labour. At the time of his testimony, the witness was performing community labour and would spend his nights in prison.[1662]

1306. Witness T64 and others manning the roadblock asked anyone passing for their identification cards and searched luggage and vehicles. Wellars Uwinkindi was their leader and instructed them to single out the Tutsis they found by checking identification cards. The witness identified others who worked at the roadblock, including Felix, Bertin Firmin, Ildebrand, Kabahizi, Martin Rubunda, Defence Witness T300, André, Moshuwa Minani, Maforo and Dugari.[1663]

1307. Those manning the roadblock were armed with sticks. A *gendarme* and police officer posted at Mbonyumutwa's house close to the roadblock were armed with guns. The distance between the roadblock and Mbonyumutwa's house was approximately 40 metres.[1664]

1308. People died at the roadblock. Witness T64 recalled the killings of four people while he was at the roadblock: two prisoners who he stated were beaten to death by Maforo; the young man at issue in the present allegation; and another young man who was asked to stop by the RPF soldiers and was fired on when he did not.[1665]

1309. Between 10.00 and 11.00 a.m. one morning in April 1994, a truck full of soldiers coming from the direction of Kigali came to the Fina roadblock and dropped off a young man at the roadblock. The young man was tall and about 20 years old. The soldiers told them that the young man was supposed to be dropped off at the Cyakabiri roadblock, but they dropped him off at the Fina roadblock by mistake. The distance between the two roadblocks was at least 500 metres.[1666]

[1660] T. 3 December 2009 p. 54 (Witness CNAV).
[1661] Defence Exhibit 40 (Protected Information Sheet); T. 5 July 2010 pp. 7-8, 42 (ICS) (Witness T64).
[1662] T. 5 July 2010 pp. 7, 12, 18, 25-26, 32 (ICS) (Witness T64).
[1663] T. 5 July 2010 pp. 7-8 (ICS) (Witness T64).
[1664] T. 5 July 2010 pp. 11, 59 (ICS) (Witness T64).
[1665] T. 5 July 2010 pp. 11, 19-20 (ICS) (Witness T64).
[1666] T. 5 July 2010 pp. 11-12, 30, 51-52, 55-57 (ICS) (Witness T64).

1310. Witness T64 denied that there were two vehicles, and denied that the young man got out of one vehicle at the Fina station and tried to get into another just behind it. The only vehicle present was the one that dropped off the young man at the roadblock.[1667]

1311. The young man told those manning the roadblock that he was waiting for Callixte Nzabonimana and therefore no additional investigations to check his story or his identification were carried out. The young man stayed at the roadblock all day, watching them do their work. The witness denied that the young man told them that he was from Nyabikenke. The young man did not tell them where he came from.[1668]

1312. At 7.00 p.m. that same day, everyone manning the roadblock went home, but the young man stayed there by himself in a kiosk in front of the Fina petrol station. No one manned the roadblock at night. The next day, the young man was still sitting in the same kiosk. At 10.00 a.m. the next morning, the *gendarme* who lived at Mbonyumutwa's house, named Rukimbira, came and asked the young man what he was doing at the roadblock. The young man was not asked to show his identity card until the second day when the *gendarme* asked to see it; however, he did not possess an identity card. The witness had not previously seen Rukimbira.[1669]

1313. When the young man explained himself, the *gendarme* said: "This is the kind of person who are *Inyenzis*, an accomplice." Immediately after saying this, the *gendarme* led the young man further down the road and shot him. The young man was killed downhill from the road on the side of the Fina station. From the roadblock, they could see the place where the man was killed, as it was approximately 30 metres downhill from the roadblock, in the middle of a little eucalyptus wood. The wood belonged to the State and was composed of different-sized trees; some young, others mature. The wood was quite large; it started from the Fina roadblock and extended to a place known as Cyakabiri. The trees were not very close together, and it was therefore possible to look through the wood. The wood was sloped and from the road one could see the *gendarme* and the young man downhill.[1670]

1314. Witness T64, Witness T300, Claude Mbarushimana, Manali and Ildebrand were the only people to witness the killing of the young man. No vehicles were present when the young man was shot. He saw no authority figure in the vicinity and did not hear of any being present from other people. He never heard that Nzabonimana was present when the young man was killed. The witness did not see the soldiers at the petrol station having any communication system. He denied that the person who killed the young man was a soldier.[1671]

1315. The witness knew Witness CNAV in 1994. Witness CNAV was a farmer and lived in a village neighbouring that of Witness T64. Witness CNAV worked at the roadblock with Witness T64, but Witness T64 did not see Witness CNAV on the day the young man was killed. Witness CNAV was usually beside Witness T64 but on that day, he was not, so he did not believe that Witness CNAV was present. The witness heard of a man named Innocent, also referred to as "Substitute," a migrant who was not a native of the area, who was sometimes present at the

[1667] T. 5 July 2010 p. 57 (ICS) (Witness T64).
[1668] T. 5 July 2010 pp. 12, 51, 58 (ICS) (Witness T64).
[1669] T. 5 July 2010 pp. 14-15, 52, 58-59 (ICS); T. 6 July 2010 p. 9 (ICS) (Witness T64).
[1670] T. 5 July 2010 pp. 15, 59 (ICS); T. 6 July 2010 pp. 3-7, 9-10 (ICS) (Witness T64).
[1671] T. 5 July 2010 pp. 17-18, 52, 58-59 (ICS) (Witness T64).

roadblock. He did not know this person and could not identify him. The witness also heard people say that François Munyega, also not a native of the area, manned the roadblock.[1672]

1316. Witness T64 did not personally know Nzabonimana. The first time he saw Nzabonimana in person was on the day of his testimony. The witness would have recognised Nzabonimana if he had stopped at the roadblock.[1673]

Defence Witness T300

1317. Witness T300 was a cook in 1994 and was imprisoned at the time of his testimony.[1674] Witness T300 was assigned to man the roadblock at Fina station a few days after 6 April 1994. Soldiers also manned the roadblock. Between April and July 1994, he and other members of the population went to the roadblock to search the luggage of people who were fleeing. A soldier led the soldiers who manned the roadblock and Wellars Uwinkindi was in charge of the civilians. The civilians manning the roadblock also received orders from *gendarmes*. The soldiers lived opposite the petrol station at the home of Dominique Mbonyumutwa. He did not recall the names of the soldiers, except for one *gendarme* named Rukimbira. The witness could not confirm whether Rukimbira was in charge of the *gendarmes*. Rukimbira also lived at Mbonyumutwa's house.[1675]

1318. One person was killed at the roadblock. Witness T300 was present when this killing occurred. Others present included Felix, Bertin, Minani Mushuwa, Martin Rubunda and Witness T64.[1676]

1319. A military vehicle arrived at the roadblock one day, between 10.00 and 11.00 a.m. It parked in front of the shop belonging to Wellars Uwinkindi, close to a nearby bar and close to the road. Uwinkindi was in the shop at the time. Rukimbira was drinking in Uwinkindi's shop. The distance between Uwinkindi's shop and the roadblock was approximately 30 to 35 metres. From the shop, one could see the roadblock and petrol station. The soldiers alighted from the vehicle and handed over a young man to Uwinkindi, who then handed the young man to Rukimbira. The young man did not enter Uwinkindi's shop. Some soldiers bought beer and then boarded the vehicle and left; they did not go to the Fina petrol station. The witness saw Uwinkindi talking with Rukimbira. Rukimbira instructed those in charge of the roadblock to stop any vehicle that passed through, and to convey a message to Nzabonimana in Murambi that "there was someone who would like to see him."[1677]

1320. Messages were sent for Nzabonimana to come in order to spare the life of the young man. Witness T300 was unable to confirm whether Nzabonimana came to the Fina petrol station as he did not know Nzabonimana and no one came to the roadblock and introduced himself as

[1672] T. 5 July 2010 pp. 24-25, 31-32 (ICS) (Witness T64).
[1673] T. 5 July 2010 pp. 13, 54 (ICS) (Witness T64).
[1674] Defence Exhibit 115 (Protected Information Sheet).
[1675] T. 2 March 2011 pp. 47-48, 50, 53-54, 58 (ICS); T. 3 March 2011 pp. 13, 27 (ICS) (Witness T300).
[1676] T. 2 March 2011 pp. 48-49 (ICS) (Witness T300).
[1677] T. 2 March 2011 pp. 49-50, 53 (ICS); T. 3 March 2011 pp. 7-12, 25-26, 28 (ICS) (Witness T300).

Nzabonimana. No one told him that Nzabonimana came to the location. On this day, no personality visited the roadblock, though vehicles did come to the station to refill fuel.[1678]

1321. The young man was with Rukimbira by the small shops on the road side. The young man stayed by the shops for a prolonged period of time and was not free to move around. Rukimbira then went into the shop of Uwinkindi to drink with others. Rukimbira later returned to pick up the young man. Rukimbira took the young man across the road and they walked down into a wooded area of eucalyptus trees and grass. Subsequently, gunfire was heard. The young man was shot by Rukimbira. The killing occurred in broad daylight between 2.00 and 4.00 p.m., on the same day the young man was dropped off at the Fina roadblock. Witness T300 did not see anyone give orders to Rukimbira. The young man was the only person killed at the roadblock.[1679]

1322. Witness T300 told Witness T64 that the young man had been killed. Witness T64 replied "well, there is nothing we can do." They were situated about 40 to 60 steps from the location of the killing, which was down the slope. When on the road, one could see the body of the young man on the lower side of the road. They approached the location of the killing and the young man was on the ground, dead. Although they noticed that the killing occurred, they did not discuss it.[1680]

1323. The witness described the victim as younger and taller than himself. The witness did not know the ethnicity of the victim; however, he stated that in 1994, Tutsis were targeted and therefore when the young man was killed, the witness assumed that he was a Tutsi.[1681]

3.5.10.3 Deliberations

1324. The Prosecution and Defence witnesses provided consistent evidence that a young Tutsi man was shot to death in April 1994, in a eucalyptus wood near the Fina petrol station and Fina roadblock.[1682] It was not disputed that the young man claimed to know Nzabonimana, and was only asked for his identity card much later after his arrival on the scene.[1683] Only Witness CNAV testified to Nzabonimana's presence during the incident.[1684] Witness CNAV testified that both Witnesses T64 and T300 were present that day.[1685]

1325. The Chamber notes significant discrepancies between Witness CNAV's testimony, his prior statements and his testimony during *Gacaca* proceedings. When asked why he only mentioned the murder of the young man in his 2008 statement, and not in his 2003 statement, the witness stated that in 2003 he was asked questions concerning Callixte Kalimanzira, not Callixte

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[1678] T. 2 March 2011 pp. 50-52 (ICS) (Witness T300).
[1679] T. 2 March 2011 pp. 51-52, 54 (ICS); T. 3 March 2011 pp. 12-16, 19-21, 25 (ICS); T. 7 March 2011 p. 8 (ICS) (Witness T300).
[1680] T. 2 March 2011 pp. 51-52, 54 (ICS) (Witness T300).
[1681] T. 2 March 2011 p. 51 (ICS) (Witness T300).
[1682] T. 3 December 2009 pp. 60, 70 (ICS); T. 4 December 2009 pp. 10-14 (ICS) (Witness CNAV); T. 5 July 2010 pp. 11-12, 15, 30, 59 (ICS); T. 6 July 2010 pp. 5-6, 9, 10 (ICS) (Witness T64); T. 2 March 2011 pp. 49-51, 53-54 (ICS); T. 3 March 2011 pp. 7, 11-12 (ICS) (Witness T300).
[1683] T. 3 December 2009 p. 60 (ICS); T. 4 December 2009 pp. 12-14 (ICS) (Witness CNAV); T. 5 July 2010 pp. 12, 51 (ICS) (Witness T64); T. 2 March 2011 pp. 50-51 (ICS); T. 3 March 2011 pp. 19-21, 25-26 (ICS) (Witness T300).
[1684] T. 3 December 2009 p. 69 (ICS); T. 4 December 2009 pp. 12-14 (ICS) (Witness CNAV).
[1685] T. 4 December 2009 p. 14 (ICS) (Witness CNAV).

Nzabonimana.[1686] Furthermore, the witness claimed that in 2008 the investigators directly questioned him about this incident.[1687] The Chamber finds this explanation unconvincing as in Witness CNAV's 2003 statement, the name of Kalimanzira was not mentioned and by the witness's own admission, he did not know of Kalimanzira at that time.[1688]

1326. During *Gacaca* proceedings Witness CNAV testified that Nzabonimana arrived on the scene after the young man's death.[1689] This contradicts Witness CNAV's 2008 statement and his testimony, where he testified that Nzabonimana was present and witnessed the killing of the young man.[1690] The witness attributed the inconsistency to deficiencies in the *Gacaca* record-keeping process. The Chamber expresses its concern with the inconsistencies in the witness's accounts.

1327. During the same *Gacaca* proceedings, François Munyenga testified that Witness CNAV was not present at the time of the murder of the young man. Witness CNAV stated that Munyenga's testimony referred to a different victim and a different incident. He averred that Munyenga was talking of the killing of a man at the Fina roadblock, while Witness CNAV was talking of a young man killed at the Fina petrol station.[1691] The Chamber considers that there may have been more than one incident of this calibre at the Fina roadblock, given the extent of killings in Rwanda at this time, and especially at roadblocks.

1328. Witness CNAV's testimony and prior statements also demonstrated inconsistencies as to the location of the shooting of the young man. In his 2008 statement, the witness stated that Nzabonimana was ten metres away from the killing.[1692] In his testimony, he affirmed that the young man was pushed ten metres away from Nzabonimana and killed. He averred that he was also ten metres away from the scene. However, almost immediately after saying this, the witness stated that the victim was led about 50 metres away from Nzabonimana where he was killed and stated numerous times that the victim was not killed in the presence of Nzabonimana, but maintained that Nzabonimana could see the killing.[1693]

1329. The Chamber observes that no evidence was led as to the exact location of Nzabonimana in relation to the wood where the young man was killed. Witness CNAV claimed that Nzabonimana was between 10 to 50 metres away from the location where the victim was killed, but he did not specify exactly where his location was. The Chamber recalls that during the site visit, the Chamber noted that from the road near the alleged roadblock, it was possible to see 40 metres into the wooded area. The Chamber further noted that if one was standing at the petrol station, it would have been more difficult to see the killing of the young man, given the gradual

[1686] T. 4 December 2009 pp. 9-10, 21 (ICS) (Witness CNAV); Defence Exhibit 81 (Statement of Witness CNAV, 26 June 2003); Defence Exhibit 83 (Statement of Witness CNAV, 3 October 2008).
[1687] T. 4 December 2009 p. 10 (ICS) (Witness CNAV); Defence Exhibit 83 (Statement of Witness CNAV, 3 October 2008).
[1688] T. 4 December 2009 pp. 9-10 (ICS) (Witness CNAV); Defence Exhibit 81 (Statement of Witness CNAV, 26 June 2003).
[1689] Defence Exhibit 82C (Minutes of Ruli *Secteur Gacaca* Proceedings, 12 June 2007); T. 4 December 2009 p. 18 (ICS) (Witness CNAV).
[1690] T. 4 December 2009 pp. 10-11 (ICS) (Witness CNAV).
[1691] T. 4 December 2009 pp. 16-17 (ICS) (Witness CNAV).
[1692] Defence Exhibit 83 (Statement of Witness CNAV, 3 October 2008).
[1693] T. 4 December 2009 pp. 10-11, 12-14 (ICS) (Witness CNAV).

to steeper slope into the wooded area.[1694] The Chamber observes that Prosecution evidence does not adequately specify the exact location of Witness CNAV and it is therefore impossible to conclude whether the witness would have been able to see the incident taking place.

1330. The Chamber further notes that Witness CNAV testified that he did not know Nzabonimana at the time of the alleged incident. In addition, the Chamber notes that Witness CNAV testified that Nzabonimana was identified to him at the scene by his colleagues and soldiers, who said "[t]his is Callixte." Witness CNAV conceded that he could not identify Nzabonimana in court because he had only seen him once during the genocide.[1695] Given Witness CNAV's lack of knowledge of Nzabonimana prior to the incident, the fact that he himself did not identify Nzabonimana at the scene and his inability to identify Nzabonimana in court, the Chamber does not find this identification testimony to be reliable.

1331. Regarding the Defence evidence, the Chamber notes that Witnesses T64 and T300 were both detainees at the time of their testimony.[1696] The Chamber therefore treats their testimony with appropriate caution (2.7.7). Defence Witnesses T64 and T300 confirmed that they were both present on the day of the killing, but neither placed Witness CNAV at the scene.[1697] The Defence witnesses provided different accounts regarding whether Nzabonimana was contacted with respect to the young man. Witness T64 testified that he did not see anyone make an attempt to contact Nzabonimana, whereas Witness T300 testified that attempts were made to contact Nzabonimana.[1698]

1332. Both Defence witnesses testified that Rukimbira killed the young man.[1699] Witness T64 testified that the young man was killed the morning after he arrived at the scene, whereas Witness T300 testified that the killing occurred later on the same day the young man was dropped off.[1700] The Chamber notes that Witness T300's testimony was consistent with that of Witness CNAV. Given this corroborating evidence, the Chamber concludes that the young man was killed the same day, and does not believe the testimony of Witness T64 in this regard.

1333. Neither of the Defence witnesses knew Nzabonimana nor had been told that Nzabonimana came to the location.[1701] In the Chamber's view, even if Nzabonimana had been present at the scene, the Defence witnesses would not have been able to positively identify him.

1334. Considering the foregoing evidence, the Chamber concludes that a young Tutsi man was shot and killed one afternoon in April 1994 in the eucalyptus wood close to the Fina petrol station and Fina roadblock. The Prosecution relied entirely upon the testimony of Witness CNAV in support of this allegation. However, Witness CNAV's testimony was inconsistent, lacked specificity with regard to Nzabonimana's exact location when the killing occurred and

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[1694] Chamber Exhibit 1 (Site Visit Report), pp. 6-7.
[1695] T. 3 December 2009 pp. 54, 61 (Witness CNAV).
[1696] T. 5 July 2010 pp. 25-26 (ICS) (Witness T64); T. 2 March 2011 pp. 47, 54-55 (ICS); T. 7 March 2011 p. 8 (ICS) (Witness T300).
[1697] T. 5 July 2010 pp. 13, 17, 24-25, 31-32 (ICS) (Witness T64); T. 2 March 2011 p. 57 (ICS) (Witness T300).
[1698] T. 5 July 2010 p. 58 (ICS) (Witness T64); T. 2 March 2011 pp. 50-51 (ICS); T. 3 March 2011 pp. 25-28 (ICS) (Witness T300).
[1699] T. 5 July 2010 pp. 15, 59 (ICS) (Witness T64); T. 3 March 2011 pp. 19-21 (ICS) (Witness T300).
[1700] T. 5 July 2010 pp. 15, 58-59 (ICS) (Witness T64); T. 3 March 2011 p. 21 (ICS) (Witness T300).
[1701] T. 5 July 2010 pp. 13, 54 (ICS) (Witness T64); T. 2 March 2011 pp. 50-51 (ICS) (Witness T300).

contradicted his prior statements and *Gacaca* testimony. The Chamber thus does not find his testimony to be credible or reliable. While the Chamber may find an allegation proven beyond a reasonable doubt on the basis of a single witness's testimony (2.7.4), in this case, Witness CNAV's uncorroborated testimony was insufficient to support this allegation. For these reasons, the Chamber finds that the Prosecution has failed to prove the allegation contained in Paragraph 28 of the Indictment. In light of the foregoing, the Chamber need not address whether sufficient notice was provided for this event.

3.5.11 Bwiza *Cellule* Killings

3.5.11.1 Introduction

1335. Paragraph 23 of the Indictment alleges that in April 1994 in Bwiza *cellule*, Takwe *secteur*, Nyamabuye *commune*, Gitarama *préfecture*, Nzabonimana came across some *Interahamwe* who were assaulting two Tutsis. He told the *Interahamwe* that they were doing a good job, gave them money and encouraged them to continue to "work" and further ordered them to find and kill a Tutsi soldier named Protogène. The two Tutsis were killed.[1702]

1336. In support of these allegations, the Prosecution asserts that after 12 April 1994, Nzabonimana approached a group of Hutus who had arrested two Tutsi refugees at Giculi-Cyungwe. Nzabonimana congratulated the group for "doing a good job." Nzabonimana then gave the group 300 Rwandan Francs. One of the soldiers with Nzabonimana asked one of the Hutus if he had seen Protogène, a soldier who had escaped. The Hutu replied that he needed firearms to search for Protogène. Nzabonimana said "don't worry about that. I'm going to give you guns." After Nzabonimana left, a Hutu continued to beat the two Tutsi men and abandoned them. Both Tutsis died as a result. The Prosecution relies upon the testimony of Prosecution Witness CNAM.[1703]

1337. The Defence asserts that it did not receive proper notice of this allegation. In addition, the Defence submits that Witness CNAM was an accomplice witness whose testimony was uncorroborated and inconsistent. In addition, Witness CNAM admitted before a *Gacaca* court that he accused Nzabonimana in order to be released early from prison. An eyewitness also confirmed that Nzabonimana was not present during the killings. The Defence relies on Defence Witnesses T59, T61 and T200.[1704]

3.5.11.2 Evidence

Prosecution Witness CNAM

1338. Witness CNAM, a Hutu farmer, lived in Takwe *secteur*, Gitarama *préfecture* in April 1994.[1705] Witness CNAM was arrested in 1996 for his involvement in the 1994 events and

[1702] Para. 23 of the Indictment.
[1703] Prosecution Closing Brief, paras. 137-138; T. 20 October 2011 pp. 10, 22-23 (Prosecution Closing Argument).
[1704] Defence Closing Brief, paras. 444-447, 555; T. 20 October 2011 p. 66 (Defence Closing Argument).
[1705] Prosecution Exhibit 4 (Protected Information Sheet).

remained in prison until 2003. In 1994, Witness CNAM knew of Nzabonimana. He would see Nzabonimana's vehicle pass by his house.[1706]

1339. Two days after the death of the President, Witness CNAM saw Nzabonimana in his vehicle at Giculi-Cyungwe. Witness CNAM was part of a group of about 20 *Interahamwe* from Bwiza *cellule* who captured two Tutsis and were cutting them up with machetes. Nzabonimana arrived at the scene in the company of soldiers, and said: "You're doing a good job." One of the group asked Nzabonimana to give them money, and Nzabonimana gave the man 300 Rwandan Francs. One of the soldiers told the group that a soldier known as Protogène had escaped and that he must be found at all costs. The group told the soldiers that they could not search for Protogène without guns, and Nzabonimana responded: "Don't worry about that, I'm going to give you guns." Nzabonimana stopped at the scene for not more than five minutes and did not get out of the vehicle.[1707]

1340. Witness CNAM and the group continued beating the Tutsi men. They then abandoned the men and left. The men died on the spot. Witness CNAM and other members of the group, including someone named Ndekezi, pled guilty to committing this crime.[1708]

Defence Witness T59

1341. Witness T59, a Tutsi from Gitarama *préfecture*, was involved in the Takwe *secteur Gacaca* court.[1709] During the information-gathering process for *Gacaca*, Witness CNAM was alleged to have killed Valere Rusakiza and Diogene Kabandana in Gisali *cellule*. Witness CNAM confessed to this crime. Also during the information-gathering stage of proceedings against Witness CNAM, Witness T200 testified that he saw Witness CNAM and someone named Karagizi leading someone on a road in Giculi-Cyungwe *cellule*. Witness T59 recounted that Witness T200 asserted that he saw Witness CNAM kill this person with a machete. Witness T59 testified that this same witness stated that Nzabonimana was not present. Witness T200 said that he immediately left the scene after the killing of the victim. Witness CNAM confessed to this killing during the information-gathering stage. In the confession, Witness CNAM implicated Nzabonimana. No case file was drawn up against Nzabonimana because the *Gacaca* court did not believe Witness CNAM's statements regarding Nzabonimana.[1710]

1342. Witness CNAM's *Gacaca* trial occurred in October 2006, and Witness T59 was involved in the trial. At the trial, Witness CNAM mentioned Nzabonimana, saying that Nzabonimana came after the murder and offered them 300 Rwandan Francs as a reward. No one else at the *Gacaca* trial mentioned Nzabonimana. The *Gacaca* court believed everything that Witness CNAM testified to at his trial, except for the accusation he made against Nzabonimana. The court found Witness CNAM guilty on all counts, including that he received 300 Rwandan

[1706] T. 12 November 2009 p. 58; T. 16 November 2009 p. 4 (ICS) (Witness CNAM).
[1707] T. 12 November 2009 pp. 58-59; T. 12 November 2009 pp. 61, 66-67 (ICS); T. 12 November 2009 p. 68 (Witness CNAM) (French) (for the spelling of "Protogène").
[1708] T. 12 November 2009 p. 59; T. 12 November 2009 p. 61 (ICS) (Witness CNAM).
[1709] Defence Exhibit 9 (Protected Information Sheet); T. 21 April 2010 p. 63 (ICS) (Witness T59).
[1710] T. 21 April 2010 pp. 71-72 (ICS); T. 22 April 2010 pp. 2-3, 8, 15-16, 26-27, 30-31 (ICS) (Witness T59).

Francs. Because Witness CNAM admitted to receiving money, the court found him guilty of this offence, even though the court had some doubt regarding this allegation.[1711]

Defence Witness T61

1343. Witness T61, a Tutsi farmer from Takwe *secteur*, was involved in the Bwiza *cellule Gacaca* proceedings.[1712] The *cellule* level court dealt with the information-gathering phase of cases and with cases involving property. In 2003, he saw Nzabonimana's name in Witness CNAM's guilty plea. In the confession, Witness CNAM gave a list of Tutsis he had flushed out of Bwiza *cellule* and pursued to the Arkide trading centre. The confession stated that he killed the Tutsis when they got to Giculi-Cyungwe *cellule*.[1713]

1344. In the written confession, Witness CNAM said that Nzabonimana arrived in his vehicle and gave 300 Rwandan Francs to people who were killing Tutsis at Giculi-Cyungwe *cellule*. In his oral testimony before the *Gacaca* court, Witness CNAM admitted to the killings at Giculi-Cyungwe *cellule*. Further, Witness CNAM told the *Gacaca* court that no money had been paid and that other people confirmed that they did not see Nzabonimana. Witness CNAM said he had implicated Nzabonimana in order to get out of prison. Witness T61 indicated that the *cellule* level *Gacaca* court prepared a document indicating that Witness CNAM lied to get out of prison, and that this document was forwarded to the *secteur* level court.[1714]

1345. None of the other witnesses consulted in the information-gathering phase of the *Gacaca* proceedings mentioned Nzabonimana. The *Gacaca* court did not prepare a case file against Callixte Nzabonimana.[1715]

Defence Witness T200

1346. Defense Witness T200 was a 16 year-old student in April 1994.[1716] The witness knew Witness CNAM and they lived in the same *cellule*. Sometime after the attack on the President's plane, Witness T200 was leading his cattle not far from the Arkide shopping centre and saw a crowd of people. Witness CNAM had just arrested two Tutsis and was leading them towards Giculi-Cyungwe *cellule*. Witness T200 was 21 metres away as they walked along the road. At Giculi-Cyungwe, the witness saw Witness CNAM hit the two Tutsis with a machete. One of the men died and the other managed to flee.[1717]

1347. Witness T200 did not see a car come to the scene when the men were being beaten. Approximately 40 minutes after the attack, a car stopped at the roadblock near the Arkide shopping centre. A businessman named Marc was inside the car. Marc got out of his car and gave money to the people manning the roadblock and the people who had just beaten the Tutsis at Giculi-Cyungwe. The witness testified that he did not know Nzabonimana, and that no vehicle

[1711] T. 22 April 2010 pp. 10-13, 45-46 (ICS) (Witness T59).
[1712] Defence Exhibit 104 (Protected Information Sheet); T. 18 October 2010 p. 26 (ICS) (Witness T61).
[1713] T. 18 October 2010 pp. 28-29, 32-33 (ICS) (Witness T61).
[1714] T. 18 October 2010 pp. 29, 32-33, 36, 41 (ICS); T. 28 February 2011 p. 20 (ICS) (Witness T61).
[1715] T. 18 October 2010 pp. 37-41 (ICS) (Witness T61).
[1716] Defence Exhibit 114 (Protected Information Sheet).
[1717] T. 2 March 2011 pp. 16, 27-28 (ICS) (Witness T200).

stopped at the scene where the two Tutsis were beaten. The witness did not see Nzabonimana at the time.[1718]

3.5.11.3 Deliberations

1348. The Prosecution relies upon the testimony of Witness CNAM in support of this allegation. The Chamber notes that Witness CNAM is an accomplice witness who may have been motivated to shift blame to Nzabonimana for the incident. The Chamber will therefore treat his testimony with appropriate caution (2.7.7).

1349. The Chamber notes the existence of several substantial discrepancies between Witness CNAM's testimony before this Tribunal and his prior statements and written confession before *Gacaca* courts. During his testimony, Witness CNAM indicated that Nzabonimana arrived on the scene while the group was assaulting the Tutsis. The group then paused their assault, spoke to Nzabonimana and received money from him. Witness CNAM testified that the group then continued assaulting the Tutsis who "died on the spot."[1719] However, Witness CNAM's confession during *Gacaca* proceedings does not indicate that the group continued the assault after receiving the money. Rather, the confession indicates that "when we left, those people were not dead," and that Witness CNAM later heard that the victims died.[1720]

1350. In addition, in his 2002 statement, Witness CNAM indicated that Nzabonimana stopped his car at the Arkide commercial centre.[1721] However, in his testimony, the witness denied that Nzabonimana stopped at Arkide, and instead indicated that Nzabonimana stopped his car at a location in Giculi-Cyungwe, near where the men were killed.[1722] Furthermore, in his testimony the witness stated that one of the soldiers accompanying Nzabonimana told them to find Protogène and that Nzabonimana then told them that he would give them guns.[1723] In his 2002 statement, however, the witness indicated that Nzabonimana told them to find Protogène and the witness made no mention of Nzabonimana offering to give them arms.[1724] In his statement and testimony, Witness CNAM also provided different dates for when the incident occurred.[1725] The Chamber considers that the above discrepancies call into question the credibility of Witness CNAM's testimony.

1351. Defence Witness T59 provided information with regard to Witness CNAM's 2006 *Gacaca* trial, challenging Witness CNAM's testimony. Witness T59 indicated that no other witnesses at the *Gacaca* trial mentioned Nzabonimana. Witness T59 testified that the *Gacaca* court believed everything that Witness CNAM testified to at his *Gacaca* trial, except for the accusation against Nzabonimana. The court found Witness CNAM guilty on all counts, including

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[1718] T. 2 March 2011 pp. 29-30, 35 (ICS) (Witness T200).
[1719] T. 12 November 2009 p. 59 (Witness CNAM).
[1720] T. 28 February 2011 p. 33 (ICS) (Witness CNAM).
[1721] Defence Exhibit 52 (Statement of Witness CNAM, 4 June 2002).
[1722] T. 16 November 2009 pp. 16-18 (ICS) (Witness CNAM).
[1723] T. 12 November 2009 pp. 58-59 (Witness CNAM).
[1724] Defence Exhibit 52 (Statement of Witness CNAM, 4 June 2002).
[1725] Defence Exhibit 52 (Statement of Witness CNAM, 4 June 2002) (incident occurred after the Interim Government arrived in Murambi); T. 12 November 2009 p. 58; T. 12 November 2009 pp. 61, 66-67 (ICS) (Witness CNAM) (incident occurred two days after the death of the President). The Chamber notes that the Interim Government moved to Murambi on 12 April 1994.

that he received 300 Rwandan Francs.[1726] Witness T59 stated that although the court had some doubt regarding the allegation of receiving money and did not believe his testimony regarding Nzabonimana, the *Gacaca* court found him guilty.[1727] Although the Chamber is not bound by *Gacaca* court rulings on witness credibility, it will take these records into account in its own assessment of a given witness's credibility in relation to a particular allegation.[1728]

1352. Witness T61 testified that during the information-gathering phase of *Gacaca* proceedings, Witness CNAM admitted that Nzabonimana was not present at the scene and that he implicated Nzabonimana in order to be released from prison. The Chamber notes however, that during his subsequent *Gacaca* trial, at which Witness T59 was present, Witness CNAM included his allegations against Nzabonimana. The Chamber thus accords limited weight to Witness T61's testimony regarding the recantation.

1353. Witness T200 testified that he witnessed Witness CNAM's assault on the two Tutsis in question. He further testified that 40 minutes after the attack, he saw a businessman named Marc give money to the people who had just beaten the Tutsis. The witness stated that he did not know Nzabonimana, and that no vehicle stopped at the scene where the two Tutsis were beaten. The witness did not see Nzabonimana.[1729] The Chamber notes, however, that according to Witness T59, Witness T200 testified during *Gacaca* that he left the scene immediately after the assault on the two Tutsis. Given that Witness T200 did not know Nzabonimana and his testimony that he left the scene immediately, the Chamber considers that the witness's testimony as to Nzabonimana's involvement carries little probative value.

1354. The Chamber observes that the Prosecution relied solely upon Witness CNAM in support of this allegation. The Chamber may find an allegation proven beyond a reasonable doubt on the basis of a single witness's testimony (2.7.4). However, in this case, given Witness CNAM's status as an accomplice, the inconsistencies between his testimony and his prior statements and the lack of corroborating evidence, the Chamber does not find his testimony sufficient to support this allegation. In light of the foregoing, the Chamber need not address whether sufficient notice was provided for this event.

3.5.12 Meeting at Marianne's House

3.5.12.1 Introduction

1355. Paragraph 44 of the Indictment alleges that in April 1994 Callixte Nzabonimana, together with Jérôme Bicamumpaka, addressed a meeting at the residence of Marianne, the MRND President for Ruhango *cellule* in Ruhango *cellule*, Nyamagana *secteur*, Tambwe *commune*, Gitarama *préfecture*. Nzabonimana referred to Tutsis and Hutus sympathetic to the Tutsis as being the enemy and told the population to kill them. Other speakers at the meeting repeated the same message. Soon after the meeting, security committees in Ruhango *cellule* were replaced and the killing of Tutsis began in Ruhango *cellule*. Many Tutsis and moderate Hutus were killed

[1726] T. 22 April 2010 pp. 11, 13, 45 (ICS) (Witness T59).
[1727] T. 22 April 2010 pp. 11-12 (ICS) (Witness T59).
[1728] *See e.g. Rwamakuba*, Judgement (TC), para. 110 (noting that a Trial Chamber is not bound by another Chamber's credibility assessment).
[1729] T. 2 March 2011 pp. 28-30, 35 (ICS) (Witness T61).

in Ruhango *cellule,* including a Hutu named Mutabazi, Chairman of the PSD, who was considered a bad Hutu. These killings were carried out by persons including *Interahamwe* and Hutu civilians.[1730]

1356. The Prosecution asserts that in May 1994, Nzabonimana attended a meeting at Marianne's house along with Bicamumpaka, other dignitaries and members of numerous political parties. Nzabonimana gave a speech, stating that the Tutsi enemy had started a war and launched attacks from Uganda. He explained that all Hutus should unite to fight the enemy, regardless of political affiliation. After the meeting, roadblocks were erected and Tutsis began to be arrested, attacked and killed in their homes. The Prosecution submits that a man named Mutabazi was killed at the ERP roadblock because he refused to collaborate with those who were killing Tutsis. The Prosecution cites Witnesses CNAK and CNAJ.[1731]

1357. The Defence asserts that the Prosecution evidence is contradictory and is not credible. Furthermore, the Defence denies that the meeting took place. The Defence also asserts that Witness CNAJ changed his testimony to conform to the evidence of CNAK and that this was brought to the attention of the Defence just before Witness CNAJ began his testimony. The Defence relies upon Defence Witnesses T92, T95, T97 and T98.[1732]

3.5.12.2 Evidence

Prosecution Witness CNAK

1358. Witness CNAK, a Hutu athlete, lived in Tambwe *commune* in 1994. He completed his primary education but did not attend secondary school.[1733] Witness CNAK knew Nzabonimana since 1993. Nzabonimana was the Minister of Youth and a member of the MRND.[1734]

1359. Approximately one week after the President's death, Witness CNAK saw Nzabonimana at Marianne's house, located in Ruhango *cellule*, Nyamagana *secteur*, Tambwe *commune*. The witness could not recall the exact date. The witness accompanied his friend to the meeting. His friend was influential and a member of the youth wing of the MDR party, called the JDR-*Inkuba*. The MDR youth wing and the *Interahamwe* had been put together under the name Hutu Power. Witness CNAK and his friend lived together and this friend told him about the meeting at Marianne's house the day before it was held. His friend was also a killer during the genocide.[1735]

1360. The meeting began at approximately 10.00 or 11.00 a.m. It took place in the living room of Marianne's house and approximately 15 people attended. There were also people at the door and around the window of the house, but the witness was unable to estimate the total number gathered.[1736] Jérôme Bicamumpaka, Witness T92 and Witness T95 accompanied Nzabonimana to

[1730] Para. 44 of the Indictment.
[1731] Prosecution Closing Brief, paras. 236-260 (erroneously referring to Mutabazi as a Tutsi); T. 20 October 2011 pp. 13, 35-36 (Prosecution Closing Argument).
[1732] Defence Closing Brief, paras. 596-603, 613; T. 20 October 2011 pp. 66-67, 75-79 (Defence Closing Argument).
[1733] Prosecution Exhibit 9 (Protected Information Sheet); T. 26 November 2009 pp. 54-55 (ICS) (Witness CNAK).
[1734] T. 25 November 2009 p. 39 (Witness CNAK).
[1735] T. 25 November 2009 pp. 40, 58-61; T. 25 November 2009 pp. 49-50 (ICS); T. 26 November 2009 p. 27; T. 26 November 2009 p. 40 (ICS) (Witness CNAK).
[1736] T. 25 November 2009 pp. 43, 61 (Witness CNAK).

the meeting. Other attendees included: *Bourgmestre* Nathan Mugaga of Tambwe *commune*; Marianne, who was the Ruhango *sous-préfecture* Chairperson of the MRND; Colonel Aloys Simba; the new *sous-préfet*; and the director of Electrogaz.[1737]

1361. Marianne convened the meeting, which brought together the power wings of various political parties, including the MDR, MRND, PSD, PL and PDI. Members of the *Interahamwe* youth wing and the power wings also attended. Bicamumpaka was a member of the MDR party. Mugaga was a member of the MDR-PARMEHUTU party and previously served as Chairman of the MDR in Tambwe *commune*.[1738]

1362. Marianne called the meeting to order and introduced the guests. She then turned the floor over to the speakers. Bicamumpaka spoke first. He said that he came to explain the war to the inhabitants and power wings of Ruhango. The enemy had launched the attack from Uganda. He called on all Hutus to rally together to fight the enemy and said that he had come in the company of others who were going to explain that all Hutus must fight the enemy. Bicamumpaka said that the enemy was the *Inyenzi*, who was the Tutsi. He also said that he had come to introduce the new *sous-préfet*, because the former *sous-préfet*, a man named Placide Koloni, was pro-Tutsi. The new *sous-préfet* was in agreement with the killers.[1739]

1363. Nzabonimana spoke after Bicamumpaka. He said that he had come from Kigali to explain to the inhabitants of Ruhango the details of the war which had been started by the enemy, meaning the Tutsis. The enemy had launched attacks from Uganda. Nzabonimana said that the war concerned all Hutus irrespective of political party and called on all Hutus to fight the enemy. Nzabonimana said that those who fought the Tutsis would wear dry banana leaves and grass. He was concerned that people would kill Tutsis while wearing their uniforms and political party attire.[1740]

1364. After Nzabonimana, Witness T92 spoke, stating that he was together with the people of Ruhango in their fight against the enemy. He said that he would be their spokesman to ensure that they had what they needed to engage in the war. After Witness T92, *Bourgmestre* Mugaga of Tambwe *commune* voiced his agreement with what had been said. He promised to tour the *secteurs* of his *commune* to disseminate the message of the meeting.[1741]

1365. Witness CNAK left the meeting in the afternoon to go pray while the next speaker, Colonel Aloys Simba, was speaking. The location where the witness went to pray was not far from Marianne's house.[1742]

1366. Before this meeting, there had been no killings of Tutsis. Night patrols had begun, but Tutsis were involved in the patrols. After the meeting, roadblocks were set up at Gatengezi, at Gataka, at the ERP filling station and at Trafipro. People arrested and killed Tutsis at the roadblocks and in their homes. Hutus were allowed to pass through the roadblocks. Witness

[1737] T. 25 November 2009 pp. 40-42; T. 25 November 2009 p. 43 (Witness CNAK) (French) (for the name "Jérôme Bicamumpaka").
[1738] T. 25 November 2009 pp. 42-43 (Witness CNAK).
[1739] T. 25 November 2009 pp. 44-45 (Witness CNAK).
[1740] T. 25 November 2009 pp. 45-46 (Witness CNAK).
[1741] T. 25 November 2009 p. 45 (Witness CNAK).
[1742] T. 25 November 2009 pp. 46, 62; T. 26 November 2009 p. 26 (Witness CNAK).

CNAK learned about what occurred at the roadblocks from the friend with whom he went to the meeting at Marianne's, and from other friends in the *Interahamwe* who manned the roadblocks. The witness also was well known because of his occupation and therefore people who worked at the roadblocks would give him details of what happened.[1743]

1367. A Hutu named Mutabazi, a PSD party member, was killed at the ERP roadblock because he did not want to kill Tutsis. Witness CNAK was not present when Mutabazi was killed. The witness learned of the death because he was a native of Ruhango and it was "easy to know about someone's death." The killers also talked about Mutabazi's death. The witness could not recall when he learned of Mutabazi's death.[1744]

Prosecution Witness CNAJ

1368. Witness CNAJ, a Tutsi from Tambwe *commune*, was a 17 year old student in 1994.[1745] The witness saw Callixte Nzabonimana for the first time at a public meeting in April 1994. The meeting occurred two or three weeks after the death of the President.[1746]

1369. Witness CNAJ went to Marianne's house in Ruhango to look for his friend. His friend's parents had earlier told Witness CNAJ that his friend was at Marianne's. When Witness CNAJ arrived at Marianne's house, he discovered the meeting taking place; he observed the meeting through the window. He had come to see his friend, and found that his friend, who was a member of the *Interahamwe*, was attending the meeting.[1747]

1370. Witness CNAJ arrived at approximately 5.00 p.m. and the meeting was already underway upon his arrival. He did not know when the meeting had begun. The meeting took place in the living room of Marianne's house. Marianne was an influential MRND party member. Witness CNAJ estimated that 20 to 25 people attended the meeting and ten people were outside. The people outside were *Interahamwe*.[1748]

1371. When Witness CNAJ arrived, Marianne was introducing the participants. Other dignitaries inside the house included Jérôme Bicamumpaka, Callixte Nzabonimana, *Bourgmestre* Nathan Mugaga, the director of the Electrogaz station in Kigoma, the manager of the OPROVIA shop and Colonel Simba. A policeman was also present, as was the *sous-préfet* of Ruhango *sous-préfecture* and Witness CNAK. People outside included the witness's friend and individuals named Rucekeri, Clement and Murenzi, among others.[1749]

1372. The witness saw and heard various speakers at the meeting, including Bicamumpaka, Colonel Simba, Nzabonimana, the *sous-préfet*, the Electrogaz director, Witness T92 and *Bourgmestre* Mugaga. The witness could not stipulate as to the order of the speakers.[1750]

[1743] T. 25 November 2009 pp. 46-47; T. 25 November 2009 p. 50 (ICS) (Witness CNAK).
[1744] T. 25 November 2009 p. 47; T. 25 November 2009 p. i (Extract); T. 26 November 2009 p. 27 (Witness CNAK).
[1745] Prosecution Exhibit 23 (Protected Information Sheet).
[1746] T. 13 April 2010 pp. 38-39 (ICS) (Witness CNAJ).
[1747] T. 13 April 2010 pp. 40-41, 51 (ICS) (Witness CNAJ).
[1748] T. 13 April 2010 pp. 39-41, 55, 67, 71 (ICS) (Witness CNAJ).
[1749] T. 13 April 2010 pp. 41-42, 59-60 (ICS) (Witness CNAJ).
[1750] T. 13 April 2010 p. 42 (ICS) (Witness CNAJ).

1373. Bicamumpaka asked the attendees whether they knew who had killed Habyarimana. He then said the *Inyenzi-Inkotanyi* killed Habyarimana. Bicamumpaka announced that he wanted Habyarimana's death avenged, and asked the participants if they agreed. The participants answered yes. He then said: "The war we are fighting is not a war that should be fought by the MDR and the CDR alone." The war had to be fought by all Hutus because they were concerned by the war. Bicamumpaka asked the attendees whether they agreed and whether they were ready to fight the war. All the participants agreed. Bicamumpaka also stated that the enemy was the *Inyenzi* and that "[t]he *Inyenzi* were the Tutsi as well as the Hutu who were collaborating with them." Everyone in the living room supported Bicamumpaka's speech, including Nzabonimana.[1751]

1374. Nzabonimana spoke as well, and asked members of the various political parties not to dissociate themselves from the MRND party. He said the war concerned every Hutu without exception. He urged that membership in different political parties should not separate the Hutus. They should consider themselves Hutus first. Nzabonimana then said he was ready to provide any support requested of him.[1752]

1375. Colonel Simba spoke and stated that as a soldier, he was ready to support the *Interahamwe* in Ruhango once they went into action and that he would provide them with anything they may need, including rifles and grenades. Witness CNAJ witnessed the entirety of Simba's speech but saw no one leave the meeting room. Witness T92 asked the inhabitants of Ruhango to avoid hiding and to support the *Interahamwe*. He added that he was a native of Ruhango, that he knew the people of Ruhango very well and that he was ready to provide his support. *Bourgmestre* Mugaga welcomed the participants to the meeting and expressed his satisfaction that authorities and dignitaries of the regime were among the attendees. He announced that he would collaborate with the *Interahamwe* in the fight against the enemy. The director of the Electrogaz station stated that he would provide a field where the *Interahamwe* could carry out their training.[1753]

1376. The witness left the meeting while Witness T95 was speaking. The witness did not know when the meeting ended. The witness left the meeting early because some people with him outside the house started signalling him out and saying he was an *Inyenzi*. He left for his safety. When he left, Witness CNAK was still in the room where the meeting was held.[1754]

1377. Prior to the meeting at Marianne's no one in Ruhango had been killed and the local population had not received any threats. Two or three days after the meeting, massive deaths of people occurred. Roadblocks were set up, manned by *Interahamwe* armed with rifles, grenades and clubs. *Interahamwe* asked every person who passed through the roadblocks to produce their identity cards. Those identified as Tutsis were killed.[1755]

1378. Witness CNAJ witnessed the identity checks and the killing of Tutsis at roadblocks. He acknowledged that he was in hiding at the time, but that he was able to make observations as he

[1751] T. 13 April 2010 p. 43 (Witness CNAJ).
[1752] T. 13 April 2010 pp. 43-44 (Witness CNAJ).
[1753] T. 13 April 2010 pp. 44-45; T. 13 April 2010 p. 63 (ICS) (Witness CNAJ).
[1754] T. 13 April 2010 p. 45; T. 13 April 2010 p. 63 (ICS) (Witness CNAJ).
[1755] T. 13 April 2010 pp. 45-46; T. 13 April 2010 p. 57 (ICS) (Witness CNAJ).

moved from one hiding place to another. Witness CNAK also testified that because he was among the wanted persons, he did not risk going close to roadblocks.[1756]

Defence Witness T92

1379. Witness T92, a Government official originally from Gitarama *préfecture*, lived in Kigali-ville and was a member of the MRND party in 1994.[1757] He lived in exile at the time of his testimony, having left Rwanda in 1994.[1758] He knew Nzabonimana from his work at the national project office, his work as an advisor to the President, and his position in the Ministry of Youth. In 1989, Nzabonimana was appointed Minister of Planning. At the time of the advent of multi-party politics, Nzabonimana was the Chairman of the MRND in Gitarama *préfecture*. The population considered Nzabonimana favourably because of the development projects he brought to the *préfecture*.[1759]

1380. Witness T92 left Kigali for Gitarama on 12 April 1994. The witness stayed in Gitarama because the Interim Government was there and it was therefore secure. The witness did not know that the Interim Government had moved there the same day. He also visited his native *commune* for commercial reasons. While in Gitarama, the witness assisted the Government in supervising the payment lists of state employees who had not been paid.[1760]

1381. The witness knew Jean-Baptiste Ndagijimana, who was appointed *sous-préfet* of Ruhango in May 1994. The witness also knew the following individuals: Witness T95; Aloys Simba; Marianne, the President of the MRND in Ruhango; *Bourgmestre* Nathan Mugaga of Tambwe *commune*; *Sous-préfet* Placide Koloni of Ruhango *sous-préfecture*; Gaspard Hategekimana and Minister Jean de Dieu Kamuhanda.[1761]

1382. Witness T92 denied that a meeting was held at Marianne's home involving Bicamumpaka, Witness T95, Ndagijimana, Colonel Simba and others. The witness denied seeing Nzabonimana during the 1994 events. The witness attended one meeting in Gitarama during the 1994 events. *Préfet* Uwizeye called a small, public, pacification meeting in Ruhango and invited Witness T92 to attend.[1762]

1383. In Gitarama, the witness observed roadblocks at the junction to Murambi, close to the Cyakabiri dispensary, at Fina Petrol Station, on the road towards the Nyamabuye *commune* office and at the Gitarama military camp, as one entered the town of Gitarama. The witness saw a number of roadblocks in Ruhango, including at the ERP filling station near Gataka, at the junction to Ntongwe *commune* and at Trafipro. The witness saw armed militiamen and policemen manning the roadblocks. He did not see *Interahamwe* dressed in uniform at the roadblocks. Those manning the roadblocks were armed with machetes, knives and spears. Soldiers and policemen had firearms. At the roadblocks, identity cards were checked to

[1756] T. 13 April 2010 pp. 64-65 (ICS) (Witness CNAJ).
[1757] Defence Exhibit 23 (Protected Information Sheet); T. 19 May 2010 pp. 7-8 (ICS) (Witness T92).
[1758] Defence Exhibit 23 (Protected Information Sheet); T. 19 May 2010 pp. 61-62 (ICS) (Witness T92).
[1759] T. 19 May 2010 p. 12; T. 19 May 2010 pp. 10, 49 (ICS) (Witness T92).
[1760] T. 19 May 2010 pp. 14-15; T. 19 May 2010 pp. 26-27, 32-33 (ICS) (Witness T92).
[1761] T. 19 May 2010 pp. 15-17; T. 19 May 2010 pp. 28-31 (ICS) (Witness T92).
[1762] T. 19 May 2010 p. 18; T. 19 May 2010 pp. 50, 53, 71 (ICS) (Witness T92).

determine if one was Hutu or Tutsi. The witness said he heard that Tutsis were killed at roadblocks, but he never saw anyone near him who was identified as a Tutsi and killed.[1763]

1384. Witness T92 knew a man named Michelin, from Ruhango. Michelin "sowed terror" during the genocide. The witness denied that Michelin was an *Interahamwe*, and said there were no *Interahamwe* in Gitarama. The witness also knew Gahini, who also "sowed terror." Gahini was a major militiaman. The witness heard Gahini saying that he was the head of the *Interahamwe*. The witness acknowledged that the JDR started calling themselves *Interahamwe*. Witness T92 denied that he was involved in the death of Mutabazi.[1764]

Defence Witness T97

1385. Witness T97 worked at a bar in 1994 and was a native of Tambwe *commune*.[1765] Following the 1994 events, Witness T97 was in charge of information-gathering for *Gacaca* proceedings at the *cellule* level. The witness never heard Callixte Nzabonimana's name during these proceedings. Nzabonimana was also not mentioned after the file of the proceedings was forwarded to the *secteur* level.[1766]

1386. The witness knew Marianne. The witness confirmed that there was a mosque in the same *cellule* as Marianne's house, about 100 to 150 metres away. During the *Gacaca* information-gathering process, no one mentioned Marianne's name and no accusations were brought against her. Also, no one mentioned Jérôme Bicamumpaka, Witness T95 or Witness T92.[1767]

1387. The genocide in Tambwe *commune* began two weeks after the death of the President. On a Friday evening a man named Nzaramba set up a roadblock. The roadblock was destroyed and Nzaramba and other killers started the killings at 10.00 p.m.[1768]

1388. When the killings began, Witness T97 and his neighbours came together to protect themselves and carry out night patrols. This was done to protect themselves from the killers, as some "courageous families" had hidden Tutsis. The killers were a danger to them because they wanted to carry out searches to identify the people being hidden. The population organised the patrols themselves, and armed themselves with clubs and sticks, but not firearms. The witness testified that he never witnessed a Hutu kill a Tutsi while he was on patrol.[1769]

1389. Four roadblocks were set up in Ruhango the second day after the beginning of the killings, at Gatengeri, Gataka, Nyarusange and on the road leading to Nyamagana. At the time, the witness could move about freely in the *commune*. Nzaramba supervised the roadblocks, assisted by others who acted with him to kill Tutsis. The people manning the roadblocks carried traditional weapons, such as clubs, sticks and machetes.[1770]

[1763] T. 19 May 2010 pp. 35-38 (ICS) (Witness T92).
[1764] T. 19 May 2010 pp. 38-39, 62 (ICS) (Witness T92).
[1765] Defence Exhibit 42 (Protected Information Sheet); T. 7 July 2010 p. 7 (ICS) (Witness T97).
[1766] T. 7 July 2010 pp. 8, 19, 21, 23-25 (ICS) (Witness T97).
[1767] T. 7 July 2010 pp. 20-22 (ICS); T. 8 July 2010 p. 41 (ICS) (Witness T97).
[1768] T. 7 July 2010 pp. 10-11 (Witness T97).
[1769] T. 7 July 2010 pp. 26-27 (ICS); T. 8 July 2010 pp. 39, 46-47 (ICS) (Witness T97).
[1770] T. 7 July 2010 pp. 12-13 (Witness T97).

1390. The witness saw Nzaramba and a man named Yezu kill people seeking refuge at the *sous-préfecture* office. Yezu had a firearm and the other attackers used clubs, sticks and traditional weapons. Yezu was a reservist and had a rifle at the beginning of the war. Nzaramba received a pistol later on. A man named Karemera and the brother of Rucekeri had grenades. The witness learned of the killing of a doctor named Gabriel at the *sous-préfecture* office which occurred in the beginning of May 1994.[1771]

1391. The witness knew a former army reservist named Michelin who had a gun during the killings. During the war, Michelin was a leader of a group of young people, but Witness T97 denied they were *Interahamwe*. He did not play any particular role; he "acted in collaboration with his colleagues during the killings." The witness acknowledged that Michelin was a member of the MRND. Michelin was armed with a firearm and involved in killing and looting. Victor Kanyaru was associated with Michelin and sold fuel.[1772]

1392. Witness T97 testified that Witness CNAK's roommate was not a member of the *Interahamwe*. He left the army and joined the *commune* police. He "did not conduct himself well" during the killings.[1773]

1393. The witness said the *Interahamwe* did not exist in Tambwe *commune*. There were killers but no *Interahamwe*. The *Interahamwe* was a characterisation of young people belonging to various political parties who were involved in killings. He denied that he saw *Interahamwe* in Ruhango. People from various political parties engaged in killings. The killers were ordinary people and were not members of a particular political party. Witness T97 did not know the motivation of the killers.[1774]

1394. Witness T97 knew a man named Mutabazi, who was the witness's superior in the youth wing of the PSD. In 1994, a policeman named Gaddafi shot Mutabazi because Mutabazi asked him why people were killing. The killing occurred in front of a shop belonging to Mutaganda, approximately 700 metres from the roadblocks. The witness heard about the death of Mutabazi from those who witnessed the killing and also during the information-gathering phase. Mutabazi was killed after 15 May 1994. The witness recounted that Mutabazi was standing in front of "Mr. Mutaganda's storey building" and Mutabazi asked out loud "[w]hy do these people want to kill others?" The policeman then immediately shot Mutabazi. The witness denied that Mutabazi's killing was instigated by the Crisis Committee, because he was killed before the Committee was established.[1775]

1395. At 11.00 p.m. one night in late May or early June 1994, while he was on patrol, Witness T97 saw the *bourgmestre* of Tambwe *commune*, Nathan Mugaga, in a Hilux pickup truck. A group of three killers were in the company of Mugaga, in a separate vehicle. Mugaga asked a

[1771] T. 7 July 2010 pp. 12-14, 27; T. 7 July 2010 p. 17 (ICS); T. 8 July 2010 p. 47 (ICS) (Witness T97).
[1772] T. 7 July 2010 pp. 27, 35 (ICS); T. 8 July 2010 pp. 19-20, 25 (ICS) (Witness T97).
[1773] T. 8 July 2010 p. 26 (ICS) (Witness T97). The witness provided the name of this individual and did not refer to him as "Witness CNAK's roommate." The Chamber refers to the individual in this manner for protective reasons.
[1774] T. 7 July 2010 p. 27 (ICS); T. 8 July 2010 pp. 29, 34, 38 (ICS) (Witness T97).
[1775] T. 7 July 2010 p. 16 (ICS); T. 8 July 2010 pp. 36-37 (ICS) (Witness T97).

companion of Witness T97 to show them the house of Simon Munyentwari. Witness T97's home was located approximately 700 metres from that of Munyentwari.[1776]

1396. One of the people on patrol with Witness T97 took Mugaga and the killers to Munyentwari's house. The witness stayed near the vehicles, approximately 600 metres from the house, at the time the abduction occurred. They abducted nine people from the house, including Munyentwari. Witness T97 "helped them to get on board the pickup" and they left. Munyentwari and his family were killed. Although the witness was on patrol to stop attackers from abducting people, that evening there was nothing they could do because the killers were armed. He denied that he assisted the abductors. Mugaga returned later with policemen and prevented the witness and his colleagues from looting the house.[1777]

1397. Witness T97 acknowledged that his name was mentioned in the context of committing genocide, killings and torture during the information-gathering stage of *Gacaca* proceedings. He denied that he was removed from his post in the information-gathering stage of *Gacaca* because of this allegation. The witness denied that he had ever been detained or arrested. He acknowledged that he had been summoned by a *Gacaca* court and acquitted.[1778]

Defence Witness T98

1398. Witness T98, a Hutu, lived in Tambwe *commune* in 1994, close to the Tambwe *commune* office and the Ruhango *sous-préfecture* office. The witness knew Callixte Nzabonimana, but only through seeing his photograph in newspapers. He knew Nzabonimana was the Minister of Youth. The witness left his locality at the end of May 1994.[1779]

1399. The Ruhango *sous-préfet*, Placide Koloni, remained in office until the first part of May 1994, when he was succeeded by Jean-Baptiste Ndagijimana. Ndagijimana was working in Kigali and it took him a week or two to take office. The witness saw Ndagijimana the first time he came to the office and played a role in the handing over ceremony from Koloni to Ndagijimana.[1780]

1400. Between 6 April 1994 and when he left at the end of May 1994, the witness did not see any Ministers of the Interim Government in his locality. He would have known if Ministers visited his locality, but he did not receive any such information. One public meeting occurred in the witness's locality between 6 April 1994 and the end of May 1994. At the meeting, which took place in the first two weeks of May 1994, the Gitarama *préfet* called on the people to restore peace and read a letter from the Government with the same message. No other persons of authority took the floor.[1781]

1401. The witness knew Marianne, who was a member of the MRND and who lived in his locality. He and Marianne lived close to each other. A mosque was located between 100 and 200

[1776] T. 8 July 2010 pp. 3-6; T. 8 July 2010 p. 12 (ICS) (Witness T97).
[1777] T. 8 July 2010 pp. 5-6; T. 8 July 2010 pp. 12-13 (ICS) (Witness T97).
[1778] T. 8 July 2010 pp. 34-35 (ICS) (Witness T97).
[1779] Defence Exhibit 45 (Protected Information Sheet); T. 13 July 2010 p. 64; T. 13 July 2010 pp. 57-58 (ICS); T. 15 July 2010 p. 40 (ICS) (Witness T98).
[1780] T. 13 July 2010 pp. 58-59 (ICS) (Witness T98).
[1781] T. 13 July 2010 pp. 61-63 (Witness T98).

metres from Marianne's house. The witness did not know of any meeting at Marianne's house. The witness knew Witness T92 because they came from the same *commune*. He also knew Jérôme Bicamumpaka, Nathan Mugaga, Witness T95, Colonel Simba, the director of Electrogaz and the *sous-préfet*, Ndagijimana. The witness denied that these individuals met at Marianne's house between 14 and 20 April 1994. He testified that it would have been impossible for them to meet, because *Sous-préfet* Ndagijimana had not yet been appointed. In addition, the witness would have heard if Government Ministers met at Marianne's home. Marianne's house was close to the road and people would have been able to see the Ministers' vehicles and escort. Witness T98 also testified that a meeting attended by two Ministers would not have been held in an ordinary home such as Marianne's. It would have been held in a more comfortable and luxurious location.[1782]

1402. Disturbances began in Witness T98's locality on a Friday, two or three weeks after 6 April 1994. Koloni was still the Ruhango *sous-préfet* at the time. Two elderly men were killed. The witness attributed the killings to Emmanuel Nzaramba, nicknamed Gahini, and two men named Michelin and Esron. Michelin and Esron were in charge of the disturbances in the region. Nzaramba was a member of the MDR and Michelin was a member of the MRND. Michelin was the leader of a roadblock located at Gatengezi. Esron worked for the judiciary. The witness could not remember to which political party Esron belonged.[1783]

1403. Before these disturbances there was no reference to the *Interahamwe* in the witness's locality. After the disturbances, the term *Interahamwe* referred to all killers and MRND members. The killers led by Nzaramba came from all political parties. Some wore banana leaves.[1784]

1404. The witness knew people named Prudence Habiyakare, Claver Mukarage and Bonaventure Ndayisaba. Ndayisaba was part of a group of killers led by Emmanuel Nzaramba. A soldier named Yezu also worked with Nzaramba. Yezu lived with Nzaramba. Yezu was armed with a firearm and was one of the killers. Before the disturbances, Witness T98 saw Nzaramba in a Suzuki jeep along with people dressed as soldiers. The witness inferred that Yezu was one of the soldiers.[1785]

1405. Very few people had firearms and the witness knew of no one on his hill with a firearm. The people in Ruhango who had firearms included Nzaramba, Michelin, Esron and someone named Karama. Witness T98 did not know how they obtained the firearms.[1786]

1406. The witness learned from his neighbours that when the killings began, Tutsis came to the *sous-préfecture* office to seek refuge. The witness stayed at home for security reasons, though he did go out to see neighbours and obtain information. The witness learned from his neighbours that Nzaramba killed a Tutsi businessman named Ignace Rulinda, a Tutsi named Mutaganda and

[1782] T. 13 July 2010 pp. 63-65; T. 14 July 2010 pp. 41-43 (Witness T98).
[1783] T. 13 July 2010 pp. 61-62; T. 14 July 2010 pp. 3-4, 9, 39-40, 42 (ICS) (Witness T98).
[1784] T. 13 July 2010 p. 62; T. 14 July 2010 pp. 42, 51 (ICS); T. 15 July 2010 p. 37 (ICS) (Witness T98).
[1785] T. 14 July 2010 pp. 3-5, 40 (ICS) (Witness T98).
[1786] T. 14 July 2010 pp. 6, 55 (ICS) (Witness T98).

a Tutsi named Nziragiseswa at the Tambwe *commune* office. The witness denied that he was involved in the killings.[1787]

1407. Witness T98 testified that Simon Munyentwari was killed during the night. He learned of the killing the following day, but did not know who killed Munyentwari. The witness knew Mutabazi, who was a Hutu and a member of the PSD. The witness learned from his neighbour that Mutabazi was killed after 15 May 1994 in Ruhango, at the *commune* office.[1788]

Defence Witness T95

1408. Witness T95, a Hutu journalist with Radio Rwanda in 1994, was a native of Tambwe *commune*, Gitarama *préfecture*.[1789] Witness T95 was tried by a *Gacaca* court and acquitted of charges stemming from the 1994 events. Before 1994, the witness knew Callixte Nzabonimana as the Minister of Planning and the Minister of Youth. In his role as a journalist, he interviewed Nzabonimana in 1992. Witness T95 acknowledged that he was well known in Rwanda in 1994. He was a member of the MDR party and attended one party meeting in Nyamirambo.[1790]

1409. On 17 April 1994, the witness and his family left Kigali for Gitarama, arriving there on 18 April 1994. Witness T95 left his family in Gitarama and returned to Kigali on 18 April 1994, where he stayed until 25 May 1994. The witness denied that he attended the meeting at Marianne's house. He denied ever meeting with Nzabonimana, Jérôme Bicamumpaka, Colonel Simba and Witness T92. Witness T95 denied that he was ever prosecuted in connection with meeting these individuals.[1791]

3.5.12.3 Deliberations

1410. Relying on Witnesses CNAK and CNAJ, the Prosecution alleges that Nzabonimana attended a meeting at Marianne's house along with Jérôme Bicamumpaka, other dignitaries and members of numerous political parties. Nzabonimana gave a speech, stating that the Tutsi enemy had started a war and launched attacks from Uganda. He explained that all Hutus should unite to fight the enemy, regardless of political affiliation.[1792] The Defence disputes that the meeting occurred and that Nzabonimana attended such a meeting. It further submits that Witnesses CNAK and CNAJ provided contradictory evidence, undermining the credibility of their testimony. It points to differences between the witnesses' testimony and their previous statements.[1793]

1411. The Chamber notes that Witnesses CNAK and CNAJ provided generally consistent testimony regarding the meeting at Marianne's. Both testified that the meeting occurred at

[1787] T. 14 July 2010 pp. 6-7, 10-11 (ICS) (Witness T98).
[1788] T. 14 July 2010 pp. 50-53 (ICS) (Witness T98).
[1789] Defence Exhibit 122 (Protected Information Sheet); T. 23 March 2011 p. 55 (ICS); T. 24 March 2011 pp. 4-5 (ICS) (Witness T95).
[1790] T. 23 March 2011 pp. 56, 66 (ICS); T. 24 March 2011 pp. 4-6 (ICS) (Witness T95).
[1791] T. 23 March 2011 pp. 61-62, 65-66 (ICS); T. 24 March 2011 p. 31 (ICS) (Witness T95).
[1792] Prosecution Closing Brief, paras. 236-260 (In its Closing Brief, the Prosecution erroneously refers to Mutabazi as a Tutsi); T. 20 October 2011 pp. 13, 35-36 (Prosecution Closing Argument).
[1793] Defence Closing Brief, paras. 596-603, 613; T. 20 October 2011 pp. 66-67, 75-79 (Defence Closing Argument).

Marianne's house, located in Ruhango *cellule*.[1794] Witness CNAK placed the meeting approximately one or two weeks after the President's death,[1795] while Witness CNAJ placed it approximately two to three weeks after the President's death.[1796] The Chamber considers this to be a minor divergence, particularly given the passage of time since the events.

1412. Both witnesses also described that the attendees were inside the house and people watched the meeting from around the perimeter of the house.[1797] Witnesses CNAK and CNAJ provided consistent testimony as to the participants of the meeting, including Marianne, Bicamumpaka, Nzabonimana, *Bourgmestre* Mugaga, Colonel Simba, *Sous-préfet* Jean-Baptiste Ndagijimana and the director of the Electrogaz station.[1798] In addition, Witness CNAJ corroborated the presence of Witness CNAK and his friend.[1799] Both Witnesses CNAK and CNAJ testified that Marianne introduced the participants, after which Bicamumpaka and Nzabonimana spoke.[1800]

1413. The Chamber notes, however, that the testimony of the two Prosecution witnesses diverged in key respects. Whereas Witness CNAK indicated that the meeting began in the morning, Witness CNAJ said that he arrived at the meeting at 5.00 p.m. and that when he arrived Marianne was making the introductions.[1801] In addition, Witness CNAJ indicated that he did not see Witness CNAK leave during Simba's speech. Witness CNAJ also said that when he left the meeting during Witness T95's speech, Witness CNAK was still present in Marianne's living room.[1802] This contrasts with the testimony of Witness CNAK, who stated that he left the meeting during Simba's speech.[1803]

1414. The Chamber notes that Witness CNAJ provided contradictory accounts of how long he remained at the meeting. Witness CNAJ testified that he arrived at the meeting at around 5.00 p.m.,[1804] and indicated on cross-examination that he left at between 6.30 and 7.00 p.m.[1805] Witness CNAJ's will-say statement indicated that he attended the meeting for between two and two and a half hours. His 2008 statement indicated that he was at the meeting for between 40 minutes and one hour. The witness explained these discrepancies by indicating that the times he gave were estimates and that he told investigators in 2000 and 2008 to correct the time of the meeting, but the statements were not corrected.[1806] The Chamber does not find that these explanations adequately account for the significant discrepancies in Witness CNAJ's accounts as to the length of time he remained at the meeting.

[1794] T. 25 November 2009 p. 40 (Witness CNAK); T. 13 April 2010 p. 40 (ICS) (Witness CNAJ).
[1795] T. 25 November 2009 p. 40 (Witness CNAK).
[1796] T. 13 April 2010 pp. 38-39 (ICS) (Witness CNAJ).
[1797] T. 25 November 2009 p. 43 (Witness CNAK); T. 13 April 2010 p. 41 (ICS) (Witness CNAJ).
[1798] T. 25 November 2009 pp. 40-42 (Witness CNAK); T. 13 April 2010 p. 41 (ICS) (Witness CNAJ).
[1799] T. 13 April 2010 p. 41 (ICS) (Witness CNAJ).
[1800] T. 25 November 2009 pp. 42-46 (Witness CNAK); T. 13 April 2010 p. 43 (Witness CNAJ); T. 13 April 2010 p. 41 (ICS) (Witness CNAJ).
[1801] T. 25 November 2009 pp. 43, 61 (Witness CNAK); T. 13 April 2010 p. 40 (ICS) (Witness CNAJ).
[1802] T. 13 April 2010 p. 63 (ICS) (Witness CNAJ).
[1803] T. 25 November 2009 pp. 46, 62 (Witness CNAK).
[1804] T. 13 April 2010 p. 40 (ICS) (Witness CNAJ).
[1805] T. 13 April 2010 pp. 40, 51 (ICS) (Witness CNAJ).
[1806] T. 13 April 2010 pp. 50-53 (ICS) (Witness CNAJ).

1415. The Chamber also notes that Witness CNAJ was a Tutsi. The witness testified that he ultimately left the meeting because he felt threatened. The Chamber does not find it plausible that Witness CNAJ stayed at the meeting for an extended period of time while numerous prominent officials made inflammatory remarks against Tutsis. Thus, the Chamber has doubts as to whether Witness CNAJ in fact attended the meeting.

1416. Turning to Witness CNAK, Witness CNAK testified that the meeting occurred approximately one week after the death of the President. In his 2000 statement, the witness indicated that the meeting occurred two weeks after the death of the President.[1807] When confronted with the discrepancy, the witness stated that the meeting occurred "between one or two weeks" after the President's death. He also explained that he was only able to give an approximate date for the meeting.[1808] The Chamber accepts this explanation and in any event finds this discrepancy to be minor.

1417. During trial, the Defence challenged Witness CNAK's account of how he came to attend the meeting. In his testimony, the witness stated that he accompanied his friend to the meeting,[1809] and that this friend, who was a JDR member, told him of the meeting the day before it was held.[1810] In his 2000 statement, Witness CNAK indicated that he went to the meeting "out of curiosity" and that "[a]lthough we were not invited, we managed to attend the meeting through the complicity of some JDR members." The Chamber does not find these two accounts to be materially distinct.

1418. The Defence also cross-examined the witness regarding his recitation of the aftermath of the meeting. During his testimony, the witness stated that he left at 3.30 p.m. in order to pray and that he later returned. When he returned the meeting was over and people were socialising and drinking. He further explained that he went home because he did not drink; that he arrived at home in the late afternoon, as it was "beginning to get dark" and that he then went to a restaurant to eat.[1811] In his testimony in the *Bizimungu et al.* trial, the witness testified that after he returned to the meeting place he did not socialise with the people there because he did not drink alcohol. He then "went to where [he] was supposed to go" where he waited for his friend with whom he attended the meeting. His friend told him no one else had spoken after Witness CNAK left the meeting. The witness then went home because "it was already night time and it was time to go to bed."[1812] The witness explained that the two versions were not inconsistent, as he saw his friend after having eaten.[1813]

1419. The witness did not specifically mention the presence of the director of Electrogaz at the meeting in his 2000 or 2004 statements. The Chamber notes that in his 2000 statement, Witness CNAK specified a list of officials who were present as "among others." This statement is therefore not inconsistent with his trial testimony. Furthermore, the Chamber notes that in his 2004 statement and his testimony at trial, Witness CNAK indicated that he left the meeting as

[1807] Defence Exhibit 67 (Statement of Witness CNAK, 18 January 2000).
[1808] T. 25 November 2009 pp. 59-61 (Witness CNAK).
[1809] T. 25 November 2009 pp. 49-50 (ICS) (Witness CNAK).
[1810] T. 25 November 2009 pp. 58-60 (Witness CNAK).
[1811] T. 25 November 2009 p. 65 (ICS) (Witness CNAK).
[1812] Defence Exhibit 69 (Excerpts of Witness CNAK's *Bizimungu et al.* Testimony, 5 March 2004).
[1813] T. 25 November 2009 p. 67 (Witness CNAK)

Colonel Simba was speaking. In his 2008 statement, Witness CNAK indicated that the director of Electrogaz spoke after Colonel Simba. The witness explained at trial that he added the director of Electrogaz as a speaker because someone told him the director spoke and "as concerns crimes of genocide, once you have information [...] you are compelled to give it."[1814] The Chamber notes however, that Witness CNAK's testimony that the director of Electrogaz spoke after Simba contradicts his testimony that his friend told him that there were no additional speakers after Witness CNAK left the meeting.

1420. The Chamber also notes that Witness CNAK provided differing accounts as to what time of day the meeting occurred. The witness testified that the meeting began in the morning and that he left at 3.30 p.m. He then returned after his prayers when the meeting was already adjourned. The Chamber notes that in his 2000 statement, the witness said the meeting began around 6.00 p.m. and ended around 10.00 p.m. Witness CNAK subsequently testified in the *Bizimungu et al.* trial, and indicated that the meeting began in the morning and lasted until around 3.30 p.m. In his 2004 statement, the witness stated that the meeting began around 11.00 a.m. and ended around 4.00 p.m. In his 2008 statement, Witness CNAK stated that he could not remember the time the meeting was held but that his "statement of 2004 states clearly what was said and what happened." The witness explained the discrepancy contained in his 2000 statement by saying that the person who took the statement made an error. He also explained that the times he gave were approximations.[1815] The Chamber considers that the witness's differing accounts as to when the meeting occurred, and his 2008 acknowledgement that he could not remember the time of the meeting call into question the accuracy of his recollection as to this event.

1421. Furthermore, the witness did not mention the meeting at Marianne's in his 2004 *Gacaca* testimony during the information-gathering proceedings against Witness T95.[1816] The witness explained that during the information-gathering proceedings, he gave information about Witness T95, Nzabonimana and Bicamumpaka. Regarding the meeting at Marianne's the witness testified that "that part of the information I had given had disappeared." The Chamber considers that this omission during *Gacaca* proceedings undercuts the credibility of the witness's testimony as to this meeting.

1422. The Chamber notes that Witness CNAK also presented conflicting accounts as to whether he in fact witnessed the killing of Mutabazi. In his testimony, Witness CNAK stated that Mutabazi was killed at the ERP roadblock because he did not want to kill Tutsis. The witness admitted he was not present when Mutabazi was killed. Witness CNAK learned of the death because he was a native of Ruhango and it was "easy to know about someone's death." The killers also talked about the Mutabazi's death. The witness could not recall when he learned of Mutabazi's death.[1817] However, during his testimony in the *Bizimungu et al.* trial, Witness CNAK stated that he was an eyewitness to the killing of Mutabazi and provided details of the killing.[1818]

[1814] T. 26 November 2009 pp. 11-12 (Witness CNAK).
[1815] T. 25 November 2009 pp. 62, 65; T. 26 November 2009 pp. 2-3 (ICS) (Witness CNAK).
[1816] Defence Exhibit 103 (Booklet of *Gacaca* Information-Gathering Phase of Ruhango, 1 June 2005 to 17 October 2006).
[1817] T. 25 November 2009 p. 47; T. 25 November 2009 p. i (Extract); T. 26 November 2009 p. 27 (Witness CNAK).
[1818] Defence Exhibit 69 (Excerpt of *Bizimungu et al.* Transcripts, 5 March 2004).

The witness explained the discrepancy between his two testimonies by stating: "I had forgotten that I have information on Mutabazi's death."[1819]

1423. Turning to the Defence evidence, Witness T92 denied attending the meeting at Marianne's house and denied that he saw Nzabonimana during the 1994 events. The Chamber notes that Witness CNAK and Witness CNAJ directly implicated Witness T92 in the allegation at issue, accusing him of being present and speaking at the meeting. The Chamber notes as well that Witness T92 had been a shareholder in the RTLM radio station, a station which the witness admitted "called for hatred" during the genocide.[1820] The Chamber considers that the witness may have had a motivation to distance himself from the meeting and the Chamber therefore views his testimony with appropriate caution.

1424. The Chamber notes that both Prosecution witnesses also implicated Witness T95 in the allegation. Witness T95 denied that he attended the meeting at Marianne's house, and denied ever meeting with Nzabonimana, Jérôme Bicamumpaka, Colonel Simba and Witness T92.[1821] The Chamber considers that Witness T95 may have had a motivation to distance himself from the meeting and the Chamber thus views his testimony with appropriate caution.

1425. The Chamber also notes a significant discrepancy between Witness T95's testimony and his previous statement of 2005. The witness testified that he left Kigali for Gitarama on 17 April 1994 and returned on 18 April 1994. However in 2005, the witness stated categorically that he did not leave Kigali between 6 April and 15 May 1994. The witness explained that in 2005 he was responding to the question, "[d]id you ever go to Ruhango to attend that meeting?"[1822] The Chamber does not find this explanation to be convincing. The inconsistent statement undermines the credibility of the witness.

1426. The Chamber notes that the Prosecution confronted Witness T98 with documents from a *Gacaca* court in Ruhango, indicating that the witness was found guilty of murder, of taking part in attacks and manning roadblocks in Tambwe *commune*, and he received a sentence of life imprisonment.[1823] Witness T98 denied the authenticity of the documents and asserted he had not previously heard of the conviction.[1824] The Chamber notes that both documents contain the stamped seal of the *Gacaca* court.[1825] The Chamber has examined the documents at issue and accepts their authenticity.

[1819] T. 26 November 2009 p. 31 (Witness CNAK).
[1820] T. 19 May 2010 p. 42 (ICS) (Witness T92).
[1821] T. 23 March 2011 pp. 61-62 (ICS) (Witness T95).
[1822] T. 24 March 2011 pp. 21-22 (ICS) (Witness T95).
[1823] T. 14 July 2010 pp. 31-33 (ICS) (Witness T98); Prosecution Exhibit 65A (*Gacaca* Record of Witness T98: "Judgement of Perpetrators: Category 2"); Prosecution Exhibit 66A (*Gacaca* Record of Witness T98: "Accused Case File No. 302").
[1824] T. 15 July 2010 pp. 5, 8, 12-13 (ICS) (Witness T98).
[1825] *See Bagosora et al.*, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (TC), 13 September 2004, para. 9 (listing "the nature of the document itself, such as signatures, stamps, or even the form of the handwriting" as a factor to be considered in determining the reliability of a document). The Chamber also notes that the Defence did not object when the Prosecution moved to have these exhibits tendered into evidence (*See* T. 15 July 2010 pp. 42-44 (ICS)).

1427. Witness T98 denied that he played a role in the crimes listed in the *Gacaca* documents.[1826] The Defence presented a booklet of the Ruhango *Gacaca* court, which did not list Witness T98 as having been involved in the crimes at issue.[1827] The Chamber notes that the witness left Rwanda to live in exile in 2005. He acknowledged that he left because the *Gacaca* system had begun and he was concerned about being falsely accused in relation to the 1994 events. The witness continued to live in exile as of the date of his testimony. By his own admission, Witness T98 was at risk of being tried by a *Gacaca* court if he remained in Rwanda.[1828] Given these circumstances, the Chamber treats Witness T98's testimony with appropriate caution (2.7.7).

1428. Regarding the substance of his testimony, Witness T98 testified that he lived near Marianne and stated that he would have known if Ministers visited his locality and conducted a meeting at her house, but he did not receive any such information.[1829] The Chamber notes however, that the witness testified that for security purposes, he stayed at home from 7 April 1994 until the second half of May 1994. By his own admission, he was limited in his ability to move and collect information during the period at issue, relying on his neighbours for information.[1830] Assuming this testimony to be true, the witness was not in a position to know everything which was happening in his area during the period in question. The meeting could have occurred without his knowledge.

1429. Witness T97 was in charge of information-gathering for *Gacaca* proceedings at the *cellule* level, and testified that Nzabonimana's name was not mentioned during *Gacaca* proceedings.[1831] Furthermore, during these proceedings no one mentioned Marianne, Jérôme Bicamumpaka, Witness T95 or Witness T92.[1832] Furthermore, the Chamber notes that the only information Witness T97 had regarding the meeting at Marianne's came second-hand, through his participation in the *Gacaca* process. The Chamber further notes that the *Gacaca* proceedings are distinct and different from the proceedings at hand and do not necessarily contain a comprehensive account of everything which occurred in Ruhango during the genocide.

1430. Furthermore, the Chamber notes that Witness T97's testimony was rife with inconsistencies and evasions and that he attempted to diminish his role in the genocide. The witness acknowledged that he took part in night patrols in 1994, testifying during examination-in-chief that the purpose of the patrols was for the population to protect itself from the killers and to protect those who had hidden Tutsis.[1833] However, on cross-examination, Witness T97 acknowledged that while on night patrol, a member of his patrol led *Bourgmestre* Mugaga and others to the home of Simon Munyentwari, a Tutsi.[1834] Munyentwari and nine others were then abducted and killed.[1835] Witness T97 was an eyewitness to this event. The witness further stated that after the abduction, Mugaga and his policemen came back to prevent the witness and his

[1826] T. 15 July 2010 p. 11 (ICS) (Witness T98).
[1827] T. 15 July 2010 p. 32 (ICS) (Witness T98); Defence Exhibit 103 (Booklet of *Gacaca* Information-Gathering Phase of Ruhango, 1 June 2005 to 17 October 2006).
[1828] T. 13 July 2010 pp. 34-35, 59 (ICS) (Witness T98); Defence Exhibit 45 (Protected Information Sheet).
[1829] T. 13 July 2010 pp. 63, 65 (Witness T98).
[1830] T. 14 July 2010 p. 7 (ICS) (Witness T98).
[1831] T. 7 July 2010 pp. 19, 21, 23-25 (ICS) (Witness T97).
[1832] T. 7 July 2010 pp. 21-22 (ICS) (Witness T97).
[1833] T. 7 July 2010 p. 27 (ICS) (Witness T97).
[1834] T. 8 July 2010 pp. 5-6; T. 8 July 2010 pp. 12-13 (ICS) (Witness T97).
[1835] T. 7 July 2010 p. 6 (ICS); T. 8 July 2010 p. 11 (ICS) (Witness T97).

patrol from looting Munyentwari's house.[1836] The Chamber finds it implausible that a patrol supposedly protecting the population would provide assistance in the abduction and killing of nine people and then attempt to loot the house of the abducted people.

1431. Witness T97 also provided contradictory testimony regarding whether he manned a roadblock. The witness testified that following the Crisis Committee meeting, "members of the committee went [...] made the round of roadblocks to announce to the members of the population the decisions taken by the crisis committee, that is, to stop – to put an end to looting and killings. And for our group, Mr. Grégoire Munyeshyaka met us at the roadblock and [...] he gave us the decisions that were taken at that committee."[1837] The witness later denied that he manned the roadblock and that he learned later from his colleagues that Munyeshyaka had come to the roadblock.[1838]

1432. Additional inconsistencies in Witness T97's testimony appeared as well. He asserted that *Bourgmestre* Mugaga was not a killer and then admitted that Mugaga was a killer.[1839] The witness said he did not know why Tutsis were being killed and also admitted that during the genocide, it was being said that Tutsis were the accomplices of the *Inyenzi*.[1840] Given the inconsistencies and implausibility of his testimony, the Chamber concludes that Witness T97 was not a credible witness as to the meeting at Marianne's.

1433. The Chamber recalls that the Prosecution has the burden of proving every element of the allegation beyond a reasonable doubt. Having considered the totality of the evidence, the Chamber doubts that Witness CNAJ attended the meeting. The Chamber recalls that it may find an allegation proven beyond a reasonable doubt on the basis of a single witness's testimony (2.7.4) and recalls that it is within the Chamber's discretion to accept some parts of a witness's testimony and not others (2.7.1). Due to the inconsistencies in Witness CNAK's testimony regarding the meeting at Marianne's house and the death of Mutabazi, the Chamber does not find his testimony alone to be sufficient to support the present allegation. The Chamber therefore finds that the Prosecution has not proven beyond a reasonable doubt the allegations contained in Paragraph 44 of the Indictment.

3.6 Events from May to June 1994

3.6.1 Destruction of Houses in Masango *Commune*

3.6.1.1 Introduction

1434. Paragraph 47 of the Indictment alleges that in May 1994, in Masango *commune*, Nzabonimana ordered persons who included MRND supporters of Masango *commune* to completely destroy the houses abandoned by Tutsis and to plant in their place crops in order to wipe out all signs of the massacre of Tutsis.[1841]

[1836] T. 8 July 2010 p. 13 (ICS) (Witness T97).
[1837] T. 8 July 2010 p. 18 (ICS) (Witness T97).
[1838] T. 8 July 2010 p. 40 (ICS) (Witness T97).
[1839] T. 8 July 2010 pp. 3, 6 (Witness T97).
[1840] T. 8 July 2010 p. 38 (ICS) (Witness T97).
[1841] Para. 47 of the Indictment.

1435. The Prosecution submits that at the end of May 1994, Witness CNAC was informed by an *Interahamwe* that Nzabonimana ordered that the houses belonging to all Tutsis who had been murdered or fled into exile be destroyed and that crops should be planted to cover up the evidence. Esdras Mpamo, the Vice Chairman of the MRND in the *commune*, convened the population and asked them to implement Nzabonimana's orders. Mpamo said an international commission had been set up to investigate crimes in Rwanda, which required the cover-up. The Prosecution submits that Defence Witnesses T133 and T134 confirmed that the houses were destroyed. The Prosecution relies on the evidence of Prosecution Witness CNAC.[1842]

1436. The Defence submits that Witness CNAC fabricated his evidence (3.2.3). The Defence also asserts that the Prosecution evidence was uncorroborated hearsay and that Witness CNAC's testimony contradicted his previous statement. The Defence asserts that Nzabonimana did not order the destruction of houses in Masango *commune* and that Mpamo did not convene the meeting at issue. The Defence relies on Defence Witnesses T133 and T134.[1843]

3.6.1.2 Evidence

Prosecution Witness CNAC

1437. Witness CNAC, a Hutu, was a local government official in Masango *commune*, Gitarama *préfecture*, in April 1994 and was imprisoned in Gitarama for his role in the events of 1994 at the time of his testimony.[1844]

1438. Witness CNAC testified that towards the end of May 1994, a friend who was an *Interahamwe* informed him that Nzabonimana had given orders to destroy the houses belonging to Tutsis in exile and murdered Tutsis. Nzabonimana gave these orders in Gitarama. In response to Nzabonimana's orders, the Vice Chairman of the MRND party in Masango *commune*, Esdras Mpamo, convened a meeting and informed the people that an international commission was going to investigate the criminal acts committed in Rwanda. Mpamo asked members of the population to carry out Nzabonimana's orders and plant crops on the land in order to cover up evidence of the destroyed houses. Non-concrete houses were subsequently destroyed, while houses built of more solid material were not entirely destroyed.[1845]

Defence Witness T133

1439. Witness T133, who lived in Masango *commune* in 1994,[1846] testified that Esdras Mpamo was the former *bourgmestre* of Masango *commune* and a member of the MRND party. Though Mpamo and Nzabonimana were members of the same party, Witness T133 did not know of any links between the two. Witness T133 denied that Mpamo held a meeting in Masango *commune* where Mpamo encouraged the population, upon the orders of Nzabonimana, to destroy Tutsi houses in order to erase any traces of the genocide. The witness acknowledged that the houses of Tutsis had been destroyed in Masango *commune*. The houses of Tutsis had already been

[1842] Prosecution Closing Brief, paras. 278-285.
[1843] Defence Closing Brief, paras. 528-537.
[1844] For additional introductory information on Witness CNAC, *see* paras. 1050-1054, *supra*.
[1845] T. 17 December 2009 pp. 6-7, 11 (ICS); T. 13 April 2010 p. 9 (ICS) (Witness CNAC).
[1846] For additional introductory information on Witness T133, *see* para. 1127, *supra*.

destroyed in April 1994, and therefore such an order would not have been given. As a member of the MRND's central committee, Mpamo held a higher position in the party than Nzabonimana, and he therefore would not have taken orders from Nzabonimana.[1847]

1440. Witness T133 knew Witness CNAC. Witness T133 considered Witness CNAC as a great friend. During the genocide Witness T133 and Witness CNAC contacted each other on a more or less daily basis. Witness CNAC never informed Witness T133 of the alleged meeting held by Mpamo in Masango *commune* where Mpamo conveyed Nzabonimana's orders to destroy Tutsi houses. If such a meeting had taken place, Witness CNAC would have informed him.[1848]

Defence Witness T134

1441. Witness T134 was a Tutsi farmer who lived in Masango *commune* in 1994.[1849] From 1995 to 2005, the witness served as a local government official. The witness was a member of the MRND party. Witness T134 knew Nzabonimana from seeing him at an MRND rally in Gitarama in 1992. Other people identified Nzabonimana to the witness. The witness also met Nzabonimana at the wedding of Esdras Mpamo's daughter.[1850]

1442. The witness knew Mpamo as the *bourgmestre* of Masango *commune*. Mpamo had good relations with Tutsis. Witness T134 had a good relationship with Mpamo, and occasionally assisted Mpamo in his fields. Mpamo did not threaten the security of the people. Between 6 April and 14 April 1994 no meetings were convened by the *commune* authorities in Masango *commune* and the atmosphere in the *commune* was calm.[1851]

1443. The witness, his son, his younger brother and others sought refuge in Mpamo's house when the killings had started and Tutsis were being sought. The witness remained at Mpamo's house from 20 April to 10 July 1994. On the day the witness sought refuge at Mpamo's residence, the attacks had commenced. Witness T134 saw assailants set houses on fire. While taking refuge at Mpamo's, Witness T134 sometimes left the residence at night. Members of the population would come to visit Mpamo, but no meeting was held at Mpamo's house. If meetings had been convened elsewhere by Mpamo, the witness would have been informed.[1852]

1444. While Witness T134 sought refuge at Mpamo's residence, his Hutu wife visited him and told him about the events in *commune*. She informed him about the destruction of Tutsi houses, and about the Tutsis who had been killed and those still alive. She also told Witness T134 that people were still searching for him.[1853]

1445. Houses were partially destroyed in Masango *commune*, but only those belonging to Tutsi families. Hutu members of the population destroyed the houses and did so without being ordered to do so. The houses of Tutsis married to Hutus were not destroyed. Witness T134 affirmed that

[1847] T. 12 May 2010 pp. 7, 26, 56-57 (ICS); T. 13 May 2010 pp. 4-5, 58, 62 (ICS) (Witness T133).
[1848] T. 12 May 2010 pp. 46, 56-62 (ICS) (Witness T133).
[1849] Defence Exhibit 41 (Protected Information Sheet); T. 6 July 2010 p. 18 (ICS) (Witness T134).
[1850] T. 6 July 2010 pp. 20, 42 (ICS) (Witness T134).
[1851] T. 6 July 2010 pp. 22, 24, 43, 46, 48-49 (ICS) (Witness T134).
[1852] T. 6 July 2010 pp. 30-31, 45, 49, 58 (ICS) (Witness T134).
[1853] T. 6 July 2010 pp. 46, 50-51, 57 (ICS) (Witness T134).

the houses belonging to Tutsis who had been killed or who sought refuge elsewhere were destroyed.[1854]

1446. The witness did not know of any orders given by Nzabonimana to destroy Tutsi houses in Masango *commune*. The witness was also not aware of any meeting where Mpamo told MRND supporters to destroy Tutsi houses and plant crops where the houses once stood in order to erase the traces of Tutsis in Masango *commune*. The witness was unaware of any crimes committed by Mpamo during the genocide. The witness attended *Gacaca* proceedings in his locality and neither Mpamo nor Nzabonimana were mentioned during the proceedings.[1855]

3.6.1.3 Deliberations

1447. The Prosecution relies upon the testimony of Witness CNAC in support of this allegation. He was a government official in Masango *commune* at the time of the alleged incident. The Chamber recalls that at the time of his testimony, Witness CNAC was imprisoned for his role in the events of 1994.[1856] The Chamber treats the witness's testimony with appropriate caution (2.7.7; 3.2.3.2.1).

1448. The Chamber recalls that it has considered the Defence submission that Witness CNAC fabricated his evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witness CNAC (3.2.5).

1449. The Chamber further observes that Witness CNAC's testimony regarding this allegation was hearsay. Witness CNAC learned of Nzabonimana's alleged orders from a friend who was an *Interahamwe*. At the subsequent meeting, Esdras Mpamo conveyed to the population Nzabonimana's orders to destroy Tutsi houses. The Chamber notes that while it may rely upon hearsay evidence, it is required to treat such evidence with caution.[1857]

1450. The Chamber notes that in his statement of 11 November 2008, Witness CNAC did not mention his attendance at the meeting convened by Mpamo. When confronted with this omission, the witness reiterated that his friend told him of Nzabonimana's orders and that he attended a meeting where Mpamo repeated these orders.[1858] The Chamber does not consider this omission to negatively impact the credibility of the witness. In the statement, the witness generally indicated that he learned of Nzabonimana's orders. This is not inconsistent with his trial testimony which indicated that he learned of the orders from his friend and from Mpamo.

1451. Turning to the Defence evidence, Witness T133 and T134 both testified that Nzabonimana did not give the orders at issue and both denied that Mpamo convened a meeting where he relayed to the population the orders from Nzabonimana that abandoned houses of Tutsis in Masango *commune* should be destroyed.

[1854] T. 6 July 2010 pp. 35-36, 49-50, 53 (ICS) (Witness T134).
[1855] T. 6 July 2010 pp. 31, 35-36, 39-40 (ICS) (Witness T134).
[1856] T. 12 April 2010 pp. 9, 13 (ICS); T. 13 April 2010 pp. 25-27 (ICS) (Witness CNAC).
[1857] *Muvunyi I*, Judgement (AC), para. 70.
[1858] T. 13 April 2010 pp. 9-10 (ICS) (Witness CNAC).

1452. Witness T133 asserted that he had no knowledge of the meeting held in Masango *commune* and that Witness CNAC did not inform him of the meeting.[1859] The Chamber observes, however, that the meeting at Masango *commune* could have been convened without Witness T133's knowledge. The Chamber further does not find as plausible Witness T133's evidence that because of his close friendship and daily contact with Witness CNAC, he would have necessarily been informed of the meeting. Moreover, the Chamber notes that Witness T133 had a family relationship with Nzabonimana, which in the Chamber's view may have motivated the witness to deny Nzabonimana's involvement in the events.

1453. Witness T134 did not know of any orders given by Nzabonimana to destroy Tutsi houses in Masango *commune* in May 1994, or that Mpamo held a meeting with MRND supporters urging them to implement Nzabonimana's orders.[1860] Again, however, the Chamber notes that the orders and the meeting could have occurred without the witness's knowledge. Furthermore, the Chamber finds that Witness T134 was not credible when he testified that he would go outside at night while he was hiding at Mpamo's, particularly as Witness T134's wife had informed him that he was being sought after. As Witness T134 was in hiding, he was therefore not necessarily aware of what was going on in the *commune* during the period in question.

1454. Nevertheless, the Chamber observes that the Prosecution relied on the uncorroborated hearsay evidence of a single witness to support this allegation. The Chamber recalls that it may find an allegation proven beyond a reasonable doubt on the basis of a single witness's testimony (2.7.4). However, in this instance, given the hearsay nature of the witness's evidence and the lack of corroborating evidence, the Chamber does not find this evidence sufficient to support this allegation. Having considered the totality of the evidence, the Chamber concludes that the Prosecution has failed to prove beyond a reasonable doubt the allegation contained in Paragraph 47 of the Indictment. In light of the foregoing, the Chamber need not address whether sufficient notice was provided for this event.

3.6.2 Destruction of Houses in Nyamabuye *Commune*

3.6.2.1 Introduction

1455. Paragraph 46 of the Indictment alleges that in April 1994, Callixte Nzabonimana visited the Nyamabuye *commune* office and told the Hutu civilians present to destroy the house of a dead Tutsi and to cover it up, so that in the event of an enquiry, the death of the Tutsi would not be known.[1861]

1456. The Prosecution submits that in May 1994, at the Nyamabuye *commune* office, Nzabonimana gave orders that Tutsi houses, including that of a man named Mpambara, should be destroyed and crops planted to cover any traces of the massacre of Tutsis. These orders were given to ensure that evidence of the massacre was destroyed in case a commission of enquiry carried out investigations. The Prosecution relies on Witness CNAA.[1862]

[1859] T. 12 May 2010 pp. 56-62 (ICS) (Witness T133).
[1860] T. 6 July 2010 pp. 35-36, 53 (ICS) (Witness T134).
[1861] Para. 46 of the Indictment.
[1862] Prosecution Closing Brief, paras. 271-272; T. 20 October 2011 p. 38 (Prosecution Closing Argument).

1457. The Defence submits that Witness CNAA fabricated evidence against Nzabonimana (3.2.3). The Defence also challenges the sufficiency of the Indictment and submits that whereas the Indictment alleges that the incident occurred in April 1994, the Prosecution evidence indicated that the incident occurred in May 1994. The Defence also asserts that the Prosecution evidence was uncorroborated and speculative. The Defence submits that Nzabonimana was not present at the Nyamabuye *commune* office during the time in question and that houses were destroyed during this period without any orders from an authority figure. The Defence relies on Witness T71.[1863]

3.6.2.2 Notice

1458. The Defence submits that Paragraph 46 of the Indictment is impermissibly vague, as it does not provide sufficient precision as to the date of the incident or the identity of the victims.[1864] The Defence also submits that the Indictment and Witness CNAA's 2008 statement indicate that the alleged incident occurred in April 1994, while Witness CNAA testified that it occurred in May 1994, thus raising doubt that Witness CNAA testified about the same incident as laid out in the Indictment.[1865]

1459. Recalling the principles of notice set out in the Preliminary Issues section of this Judgement (2.1.3), the Chamber notes that the Indictment specifies that the man whose house was to be destroyed was a Tutsi. However, the Chamber considers that because Paragraph 46 did not provide the name of the victim, the Indictment failed to put Nzabonimana on notice of the allegation, and was therefore defective. The Chamber must determine whether the Prosecution cured this defect through the provision of timely, clear and consistent information to the Defence.

1460. The Chamber observes that the summary of Witness CNAA's testimony, contained in the Annex to the Prosecution Pre-Trial Brief and identified as relevant to Paragraph 46 of the Indictment, states that "[s]ometime in April 1994 at the communal office, Accused [*sic*] told the *bourgmestre* to destroy the house of a Tutsi which was close to the communal office and plant vegetables so that even if there was a commission of inquiry no one will know that there was a house of a Tutsi."[1866] Furthermore, the Chamber notes that the witness's 17 May 1996 and 14 August 2003 statements, disclosed to the Defence on 12 February 2009 and 18 March 2008 respectively, did not refer to the incident at hand.[1867] Witness CNAA's statement of 2 October 2008, disclosed to the Defence on 12 February 2009, includes reference to this incident. This statement specifies that the house targeted by Nzabonimana was the house of Jean de Dieu Mpambara, a Tutsi who died before the genocide and whose family had been exterminated.[1868] This disclosure was made well in advance of the commencement of trial on 9 November 2009 and Witness CNAA's testimony on 14 December 2009.

[1863] Defence Closing Brief, paras. 518-525, 527.
[1864] Defence Closing Brief, para. 555.
[1865] Defence Closing Brief, para. 518; Prosecution Closing Brief, paras. 271-272.
[1866] Prosecution Pre-Trial Brief - Annex A, Witness CNAA.
[1867] 22 May 1996, Statement of Witness CNAA, disclosed 12 February 2009; 14 August 2003, Statement of Witness CNAA, disclosed 18 March 2008.
[1868] 2 October 2008, Statement of Witness CNAA, disclosed 12 February 2009.

1461. Reading together the Indictment, Prosecution Pre-Trial Brief and previous statements, the Chamber concludes that the Prosecution provided timely, clear and consistent information regarding the identity of the victim. In reaching this conclusion, the Chamber notes as well that Nzabonimana is charged with ordering the alleged crime rather than personally destroying the home.[1869] Consequently, the Prosecution cured the defect in the Indictment regarding the identity of the victim and there was no prejudice to the Defence in this regard.[1870]

1462. The Defence also asserts that the date range provided in the Indictment was vague.[1871] The Chamber notes that Paragraph 46 of the Indictment contains a number of specifics regarding the allegation including the location, Nzabonimana's alleged course of conduct and Nzabonimana's alleged motivation for having the house destroyed. Furthermore, as set out above, the Prosecution provided the Defence with notice of the identity of the victim. The Chamber recalls that "a broad date range, in and of itself, does not invalidate a paragraph of an indictment."[1872] Given the significant details provided to the Defence, the Chamber does not find the date range provided in the Indictment to have been unduly vague and the Indictment was not defective in this regard. Furthermore, the variance between the date provided by Witness CNAA at trial and the date range provided in the Indictment was not material or significant and did not prejudice the Defence.[1873]

1463. In reaching the above conclusion as to whether the Defence received sufficient notice of the allegation in Paragraph 46, the Chamber also notes that the Defence did not challenge the sufficiency of the Indictment before its Closing Brief. The Appeals Chamber has noted that "objections based on lack of notice should be specific and timely. [...] As to timeliness, the objection should be raised at the pre-trial stage (for instance in a motion challenging the indictment) or at the time the evidence of a new material fact is introduced."[1874]

1464. The Chamber notes that the Defence did not file a motion challenging the sufficiency of the Indictment. Furthermore, the Defence did not object during Witness CNAA's testimony regarding the incident at the Nyamabuye *commune* office. Nevertheless, the Defence did register an objection when Witness CNAA testified as to the destruction of houses in Rutobwe *commune*, asserting that the allegation was not pled in the Indictment.[1875] This signals to the Chamber that

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[1869] *See Bagosora et al.*, Judgement (TC), para. 111 ("Where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the 'particular acts' or the 'particular course of conduct' on the part of the accused which forms the basis for the charges in question.")

[1870] *See Kupreškić et al.*, Judgement (AC), paras. 119-121; *Niyitegeka*, Judgement (AC), para. 197.

[1871] Defence Closing Brief, para. 555.

[1872] *See Rukundo*, Judgement (AC), para. 163 (finding that the date range of April and May 1994 was not unreasonably broad); *Muvunyi I*, Judgement (AC), para. 58 (finding that a date range from mid-April through June 1994 had not been demonstrated to be defective); *Nyiramasuhuko et al.*, Judgement (TC), para. 104.

[1873] *Muvunyi II*, Judgement (AC), para. 29 ("[t]he Appeals Chamber is not convinced that the difference between the language of the Indictment and the evidence is material since the variance is not significant"); *Rutaganda*, Judgement (AC), para. 306 ("according to the evidence presented at trial, the weapons distributions occurred during a period that was reasonably close to the date referred to in the Indictment and that, therefore, the Appellant was not misled as to the charges brought against him").

[1874] *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 46 (internal citation omitted).

[1875] T. 15 December 2009 pp. 16-18 (ICS) (Witness CNAA).

the Defence was in a position to object if new material facts were introduced during the testimony of Witness CNAA. The Defence failure to object to the sufficiency of Paragraph 46 before its Closing Brief reinforces the Chamber's conclusion that there was no prejudice to the Defence resulting from the pleading of Paragraph 46.

3.6.2.3 Evidence

Prosecution Witness CNAA

1465. Witness CNAA, a Hutu, was a local government official in Nyamabuye *commune*, Gitarama *préfecture*, in April 1994. At the time of his testimony, the witness was imprisoned in Gitarama prison for his role in the events of 1994.[1876]

1466. Witness CNAA testified that he saw Nzabonimana at the Nyamabuye *commune* office. The witness could not recall the exact date, but believed it occurred in May 1994. *Sous-bourgmestre* Bosco Namahungu accompanied Witness CNAA. The witness attempted to greet Nzabonimana.[1877]

1467. When Witness CNAA arrived, Nzabonimana was talking about the war and inquired whether there were *Inkotanyi* accomplices in the area. In front of the *commune* office was a house built of adobe bricks and with a corrugated roof, belonging to a Tutsi named Jean de Dieu Mpambara. The house was empty as everyone had fled. Namahungu responded to Nzabonimana and said, pointing to Mpambara's house, that there were some Tutsis in front of the *commune* office.[1878]

1468. Nzabonimana responded that such houses had to be destroyed and that people had to plant crops there to cover the traces of the destroyed houses.[1879] Nzabonimana used Mpambara's house as an example because he wanted all the houses to be destroyed. The reason Nzabonimana said crops needed to be planted at the sites of the destroyed houses was in case a commission were to carry out an investigation. Mpambara's house was ultimately looted but not demolished.[1880]

1469. Nzabonimana was among those behind the perpetration of the genocide. Members of the population had destroyed other houses and grown crops in Nyamabuye, Rutobwe and elsewhere. These people told Witness CNAA that they were implementing instructions from Nzabonimana to destroy the houses of Tutsis who had been killed. Witness CNAA did not believe these stories at the time and thought that investigations were necessary.[1881]

[1876] For additional introductory information on Witness CNAA, *see* para. 1045, *supra*.
[1877] T. 15 December 2009 pp. 13-14 (ICS); T. 16 December 2009 p. 31 (ICS) (Witness CNAA).
[1878] T. 15 December 2009 pp. 13-14 (ICS); T. 15 December 2009 p. 15 (HC) (French) ("*Namuhungu a dit que même devant le bureau communal, il y avait encore des Tutsis, et il lui a montré la maison en face.*"); T. 16 December 2009 p. 31 (ICS) (Witness CNAA).
[1879] T. 15 December 2009 pp. 13-14 (ICS); T. 15 December 2009 p. 15 (HC) (Witness CNAA) (specifying "*Et l'autre a dit que...*" thus clarifying that Witness CNAA attributed the words to Nzabonimana).
[1880] T. 15 December 2009 p. 14 (ICS); T. 16 December 2009 pp. 30-31 (ICS) (Witness CNAA).
[1881] T. 15 December 2009 p. 14 (ICS); T. 16 December 2009 pp. 30-31 (ICS) (Witness CNAA).

Defence Witness T71

1470. Witness T71, a Hutu,[1882] lived in exile in Uganda at the time of his testimony. He was tried *in abstentia* and sentenced to 19 years' imprisonment for participating in a murder at the Nyamabuye *commune* office. He acknowledged that the Rwandan Government perceived him as a fugitive from justice.[1883]

1471. Witness T71 did not know Nzabonimana. He saw Nzabonimana on one prior occasion in late April 1994 when a companion pointed him out. Witness T71 heard people say that Nzabonimana was the Minister of Youth, and he knew that Nzabonimana was the Chairman of the MRND in Gitarama *préfecture*. Witness T71 testified that he would not recognise Nzabonimana if he saw him again.[1884]

1472. In 1994, the witness's office was in the complex of the Nyamabuye *commune* office, approximately 50 metres away from the *commune* office. A volleyball field separated his office from that of the *bourgmestre*. When seated in his office, he could see everything happening in the courtyard of the *commune* office. He could see cars parking in front of the office. Once people entered the *commune* office he could no longer see them.[1885]

1473. During the 1994 events, Witness T71 spent more time outside the office, where he could meet with people and discuss what was happening. People shared information and someone with the status of a Minister would not have been able to come to the *commune* office without the witness's knowledge. When Witness T71 returned to his office, he would be informed whether anything happened during his absence. Witness T71 returned to work at his office approximately two or three days after the death of the President. Between 6 April and 2 June 1994, the witness worked from Monday to Friday at his office but would sometimes leave the office premises as part of his work. Witness T71 fled when the RPF took over Kabgayi and Gitarama town on 2 June 1994.[1886]

1474. Witness T71 did not see Nzabonimana at the Nyamabuye *commune* office between 6 April and 2 June 1994, and no one informed him that Nzabonimana had been there during that time. No Minister came to the *commune* office during this time. Witness T71 acknowledged that if others present at the *commune* office did not know Nzabonimana, they would not have been able to inform him that Nzabonimana came to the *commune* office. Under normal circumstances, a Minister's arrival would be announced. However, in 1994 a Minister was able to pass by the *commune* to see the *bourgmestre* without an announcement.[1887]

1475. Witness T71 knew Jean-Bosco Namahungu as the assistant *bourgmestre* in Nyamabuye in April 1994. Namahungu came to work every day between 6 April and 2 June 1994.

[1882] For additional introductory information on Witness T71, *see* para. 1133, *supra*.
[1883] Defence Exhibit 31 (Protected Information Sheet); T. 24 May 2010 pp. 27-28, 34-37, 66-67 (ICS); T. 25 May 2010 p. 4 (ICS) (Witness T71).
[1884] T. 24 May 2010 pp. 23-25, 58 (ICS) (Witness T71).
[1885] T. 24 May 2010 pp. 19, 54-56 (ICS) (Witness T71).
[1886] T. 24 May 2010 pp. 19-20, 25, 27, 56-57 (ICS) (Witness T71).
[1887] T. 24 May 2010 p. 52; T. 24 May 2010 pp. 23, 25, 58 (ICS); T. 25 May 2010 pp. 8-10 (ICS) (Witness T71).

Namahungu had a firearm. Witness T71 realised that Namahungu's attitude had changed, and the witness feared him. The witness never heard Namahungu speak of Nzabonimana.[1888]

1476. The witness regularly met Prosecution Witness CNAA at the office between April and June 1994. Witness CNAA never spoke to the witness about Nzabonimana during this period, nor did Witness CNAA say that Nzabonimana had come to the *commune* office. The witness did not discuss Nzabonimana with anyone during this period, including Namahungu and Witness CNAA.[1889]

1477. Witness T71 knew Jean Mpambara, who had died around 1985. He was a mechanic who worked in Gitarama town and his house was located across the street from the *commune* office. Mpambara's children lived in the house between April and June 1994, but since they were Tutsis they fled to Kabgayi, and therefore the house was empty.[1890]

1478. Witness T71 saw Mpambara's house being destroyed in April 1994 when other houses were also being looted and destroyed. While the house was being attacked, the witness was in the office and others came to tell them to come see what was happening. The witness saw whole sections of the house being destroyed. The roofing sheets were removed from the house. The walls of the house were later destroyed but the entire structure of the house did not come down.[1891]

1479. Nzabonimana had no connection to the destruction of Mpambara's house. Other houses were destroyed without any order from an authority figure. No one needed orders to destroy Tutsi houses during this period. The witness denied that someone issued orders for Mpambara's house to be destroyed. Small groups of people destroyed houses; five houses on a hill were destroyed and it later became apparent that the same perpetrators destroyed each house.[1892]

3.6.2.4 Deliberations

1480. The Prosecution relies on the testimony of a single eyewitness in support of this allegation. At the time of his testimony, Witness CNAA was imprisoned in Gitarama for his role in the events of 1994. The Chamber notes that at the time of his testimony, Witness CNAA had yet to appeal his 25-year sentence of imprisonment. The witness explained that when he lodged previous appeals against different convictions, his sentence was reduced.[1893] The Chamber considers that the witness may have had an incentive to implicate Nzabonimana and treats his testimony with appropriate caution (2.7.7).

1481. The Chamber recalls that it has considered the Defence submission that Witness CNAA fabricated his evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witness CNAA (3.2.5).

[1888] T. 24 May 2010 pp. 22-23 (ICS) (Witness T71).
[1889] T. 24 May 2010 pp. 27, 46 (Witness T71).
[1890] T. 24 May 2010 p. 26 (ICS) (Witness T71).
[1891] T. 24 May 2010 pp. 49-50; T. 24 May 2010 pp. 26-27, 60 (ICS) (Witness T71).
[1892] T. 24 May 2010 pp. 27, 60-61 (ICS); T. 25 May 2010 pp. 9-10 (ICS) (Witness T71).
[1893] T. 16 December 2009 p. 42 (ICS) (Witness CNAA).

1482. The Chamber notes that Witness CNAA knew Nzabonimana before 1994 and had seen him on previous occasions at rallies and meetings, including at a political rally in 1993. Witness CNAA also knew Nzabonimana as an important figure of authority.[1894] In addition, Witness CNAA was close enough to Nzabonimana at the Nyamabuye *commune* office to hear Nzabonimana's words.[1895] Given these factors, the Chamber considers that Witness CNAA was able to reliably identify Nzabonimana (2.7.3).

1483. The Chamber notes that Witness CNAA testified before the Tribunal on four previous occasions: once in *Akayesu*, twice in *Bizimungu et al.* and once in *Karemera et al.*[1896] The witness also gave statements in 1996, 2003 and 2008.[1897] Witness CNAA only referred to this incident in his 2008 statement. In cross-examination, the witness explained that his previous testimony before this Tribunal involved different defendants. Witness CNAA remembered and provided additional details regarding Nzabonimana when he gave statements and testimony in the specific context of Nzabonimana's case.[1898] The Chamber accepts this explanation and finds it reasonable that Witness CNAA would not provide all the information he knew about Nzabonimana in cases not concerning Nzabonimana. The Chamber therefore finds that the previous omissions do not impact Witness CNAA's credibility as to this allegation.

1484. Turning to the Defence evidence, Witness T71 denied that Nzabonimana ever came to the Nyamabuye *commune* office and that he gave the order to destroy Mpambara's house. The Chamber notes that Witness T71 was tried *in abstentia* and sentenced to a lengthy term of imprisonment for his role in events at the Nyamabuye *commune* office during the genocide and is currently considered a fugitive of justice. The Chamber treats his testimony with appropriate caution (2.7.7).

1485. Witness T71 acknowledged that houses were looted and destroyed. In April 1994, he witnessed the attack upon Mpambara's house. The roofing sheets were removed from the house and the walls were destroyed. Mpambara died in 1985, but his children were still living in the house in 1994 and had fled to Kabgayi.

1486. While acknowledging the destruction of the house, Witness T71 denied that Nzabonimana ordered the destruction.[1899] Furthermore, Witness T71 testified that he did not see Nzabonimana at the Nyamabuye *commune* office between 6 April and 2 June 1994 and no one, including Namahungu and Witness CNAA, informed him that Nzabonimana had been present.[1900] He also testified that he would have been informed if Nzabonimana visited, as someone with the status of a Minister could not have visited without it being discussed.[1901]

1487. The Chamber notes, however, that Nzabonimana could have come to the *commune* office without Witness T71's knowledge. The witness admitted that he did not personally know

[1894] T. 14 December 2009 pp. 63-64 (Witness CNAA).
[1895] T. 15 December 2009 pp. 13-14 (ICS); T. 16 December 2009 p. 31 (ICS) (Witness CNAA).
[1896] T. 15 December 2009 pp. 19-20 (ICS) (Witness CNAA).
[1897] Defence Exhibit 87A (Statement of Witness CNAA, 22 May 1996) (French); Defence Exhibit 89 (Statement of Witness CNAA, 14 August 2003); Defence Exhibit 94A (Statement of Witness CNAA, 2 October 2008).
[1898] T. 16 December 2009 pp. 29-31 (ICS) (Witness CNAA).
[1899] T. 24 May 2010 p. 27 (ICS) (Witness T71).
[1900] T. 24 May 2010 pp. 46, 52; T. 24 May 2010 pp. 23, 27 (ICS); T. 25 May 2010 p. 8 (ICS) (Witness T71).
[1901] T. 24 May 2010 p. 52; T. 24 May 2010 p. 25 (ICS); T. 25 May 2010 pp. 8-10 (ICS) (Witness T71).

Nzabonimana and said he would not recognise Nzabonimana if he saw him.[1902] Witness T71 admitted that during the period in question he frequently left the office premises for work purposes. He also acknowledged that a Minister could have come to the office unannounced and that under some circumstances, he would not have necessarily learned if Nzabonimana visited the *commune* office.[1903] The Chamber concludes that Witness T71's testimony as to whether Nzabonimana came to the Nyamabuye *commune* office is of limited probative value.

1488. The Chamber concludes that Witness CNAA provided a credible and reliable eyewitness account of Nzabonimana's presence at the Nyamabuye *commune* office where he ordered the house of a dead Tutsi to be destroyed and that it be covered up. In reaching this conclusion, the Chamber notes that Witness T71 provided evidence corroborating the testimony of Witness CNAA that Mpambara's house was targeted for destruction.

1489. The Chamber notes that Witness CNAA testified that he did not know the exact date that he saw Nzabonimana at the *commune* office and estimated that the incident occurred in May 1994. The Chamber recalls that the Indictment alleges that the incident occurred in April 1994, and that in his 2008 statement, Witness CNAA stated that he saw Nzabonimana at the *commune* office in April 1994.[1904] The Chamber notes, however, that Witness CNAA testified that he was giving an estimate as to the date. Furthermore, Witness T71 testified that he witnessed the Mpambara house being destroyed in April 1994. The Chamber notes that the Appeals Chamber has held that "minor differences between the indictment and the evidence presented at trial are not such as to prevent the Trial Chamber from considering the indictment in the light of the evidence presented at trial."[1905] Considering the evidence at trial and the allegation contained in Paragraph 46 of the Indictment, the Chamber concludes that the difference in the dates was not material or significant.[1906]

1490. The Chamber also notes that the Indictment alleges that Nzabonimana told the "Hutu civilians" present at the Nyamabuye *commune* office to destroy the Mpambara house. Witness CNAA testified that he and *Sous-bourgmestre* Namahungu were present at the time. Therefore, the audience of this discourse consisted of two local administrative officials. The Chamber observes that both officials were Hutu and therefore fit into the category of the audience as set out in the Indictment.

1491. The Chamber notes that the Prosecution relied exclusively upon the testimony of Witness CNAA in support of this allegation. The Chamber may find an allegation proven beyond a reasonable doubt on the basis of a single accomplice witness's testimony (2.7.4). Having considered the totality of the evidence, the Chamber concludes that the Prosecution has proven

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[1902] T. 24 May 2010 p. 52; T. 24 May 2010 p. 23 (ICS); T. 25 May 2010 p. 8 (ICS) (Witness T71).
[1903] T. 24 May 2010 pp. 20, 58 (ICS) (Witness T71).
[1904] Para. 46 of the Indictment; Defence Exhibit 94A (Statement of Witness CNAA, 2 October 2008).
[1905] *Rutaganda*, Judgement (AC), para. 302.
[1906] *Rutaganda*, Judgement (AC), para. 306 (upholding conviction, where "according to the evidence presented at trial, the weapons distributions occurred during a period that was reasonably close to the date referred to in the Indictment and that, therefore, the Appellant was not misled as to the charges brought against him"); *Muvunyi II*, Judgement (AC), para. 29 (upholding conviction where the Indictment alleged the meeting in question occurred in early May 1994 and the evidence showed the meeting occurred in mid to late May 1994, and concluding that "[t]he Appeals Chamber is not convinced that the difference between the language of the Indictment and the evidence is material since the variance is not significant").

beyond a reasonable doubt the allegation contained in Paragraph 46 of the Indictment. The Chamber has considered the Defence evidence in conjunction with the Defence claims that the Prosecution witnesses fabricated their evidence and concludes that the Defence has not raised a reasonable doubt in the Prosecution case (3.2.5).

3.6.3 Weapons Distribution in Tambwe *Commune*

3.6.3.1 Introduction

1492. Paragraph 58 of the Indictment alleges that in May 1994, Callixte Nzabonimana acting in concert with Witness T92 and Jean-Damascene Ukirikyeyezu brought a lorry full of weapons to the Tambwe *commune* office. Nzabonimana ordered that the weapons be distributed to the population. The weapons were distributed and used to kill Tutsis in various attacks in Tambwe *commune*.[1907]

1493. The Prosecution asserts that between the end of April and the beginning of May 1994, Nzabonimana, Witness T92 and Ukirikyeyezu travelled to Ruhango in a convoy that included a lorry full of weapons. The *bourgmestre* of the *commune* and François Karara, the brigadier of the *commune* police, were present. Nzabonimana said that they brought the weapons so they could protect themselves and so the enemy would not take over. The Prosecution cites Witness CNAK in support of its submissions.[1908]

1494. The Defence submits that the Prosecution evidence was not credible. Defence witnesses denied that the alleged weapons distribution occurred. The Defence relies upon Witnesses T92, T97 and T98 in support of its submissions.[1909]

3.6.3.2 Evidence

Prosecution Witness CNAK

1495. Witness CNAK, a Hutu athlete who lived in Tambwe *commune* in 1994,[1910] saw Nzabonimana towards the end of April or early May 1994, when Nzabonimana came to Ruhango, accompanied by Witness T92 and a military officer who was responsible for Civil Defence. Witness CNAK did not remember the officer's name. The witness saw Nzabonimana in a vehicle with his driver. Witness T92 drove his own vehicle. Another vehicle accompanied them, full of firearms and grenades.[1911]

1496. The weapons were offloaded and placed on the veranda of the Tambwe *commune* office. Witness CNAK was at the *commune* office at the time. He had followed his roommate, who was a killer during the genocide, to the *commune* office. The *bourgmestre* of the *commune* and François Karara, the brigadier of the *commune* police, were also present, as were Hutu members

[1907] Para. 58 of the Indictment.
[1908] Prosecution Closing Brief, paras. 328, 346; T. 20 October 2011 p. 41 (Prosecution Closing Argument).
[1909] Defence Closing Brief, paras. 596, 600-603; T. 20 October 2011 p. 77 (Defence Closing Argument).
[1910] For additional introductory information on Witness CNAK, *see* para. 1358, *supra*.
[1911] T. 25 November 2009 p. 39; T. 25 November 2009 p. 51 (ICS) (Witness CNAK).

of the population who had undergone firearms training. The population was united under Hutu Power.[1912]

1497. Nzabonimana spoke and said they had brought the weapons so that they could take charge of their own protection and ensure the security of the country from the enemy. It was public knowledge that the enemy was the Tutsis.[1913]

1498. The witness then saw them distribute the weapons. Nzabonimana handed the weapons over to the *bourgmestre* and Karara. The *bourgmestre* and Karara then gave the weapons to those who had undergone training. Nzabonimana was present during the distribution. After receiving the weapons, the members of the population started carrying out attacks in Tambwe *commune*. The purpose of the weapons was to kill Tutsis.[1914]

1499. The witness recounted another occasion when Colonel Aloys Simba gave a firearm to Alphonse Muganga. Muganga committed suicide with the gun when he learned the *Inkotanyi* had captured the Ruhango region. Witness CNAK did not know of any crimes committed by Muganga during the genocide.[1915]

1500. In addition to Witness CNAK's roommate, those who participated in the killings in Ruhango included: Michelin, who was the leader of the *Interahamwe* in Ruhango; Michelin's older brother Kabiligi, who was a member of Michelin's gang; and Nzaramba, nicknamed "Gahini" who was an MDR member. A man named Clement was involved in the looting of Simon Munyentwari's house and was tried *in abstentia* by a *Gacaca* court. Victor Kanyaru was another member of Michelin's gang and sold fuel during the genocide. Kanyaru's roommate Kinyata was also involved in selling fuel.[1916]

1501. Witness CNAK testified that in Ruhango, roadblocks were set up at Gatengezi, at Gataka, at the ERP filling station and at Trafipro. People arrested and killed Tutsis at the roadblocks and also attacked and killed Tutsis in their homes. Hutus were allowed to pass through the roadblocks. Witness CNAK learned about what occurred at the roadblocks from his roommate and from other friends in the *Interahamwe* who manned the roadblocks. As Witness CNAK's occupation made him well known, people who worked at the roadblocks would give him details of what happened.[1917]

Prosecution Witness CNAJ

1502. Witness CNAJ, a Tutsi from Tambwe *commune*,[1918] testified that during the 1994 events in Tambwe *commune*, roadblocks were set up and manned by *Interahamwe* armed with rifles,

[1912] T. 25 November 2009 pp. 51-52 (ICS); T. 26 November 2009 pp. 27, 40 (ICS) (Witness CNAK).
[1913] T. 25 November 2009 pp. 51-52 (ICS) (Witness CNAK).
[1914] T. 25 November 2009 pp. 51, 53 (ICS) (Witness CNAK).
[1915] T. 26 November 2009 p. 34 (ICS) (Witness CNAK).
[1916] T. 26 November 2009 pp. 46-47 (ICS) (Witness CNAK).
[1917] T. 25 November 2009 pp. 46-47; T. 25 November 2009 p. 50 (ICS) (Witness CNAK).
[1918] For additional introductory information on Witness CNAJ, *see* para. 1368, *supra*.

grenades and clubs. *Interahamwe* asked every person who passed through the roadblocks to produce their identity cards. Those identified as Tutsis were killed.[1919]

Defence Witness T92

1503. Witness T92, a government official originally from Gitarama *préfecture*,[1920] knew Jean-Damascene Ukirikyeyezu, who was a Major, a Member of Parliament and President of Civil Defence in Gitarama. The witness denied seeing Nzabonimana and Ukirikyeyezu during the 1994 events. Witness T92 denied that he distributed arms in Ruhango with Nzabonimana and Ukirikyeyezu.[1921]

1504. Witness T92 denied that he knew François Karara. He had learned that in a *Gacaca* court, Karara admitted that he received weapons from him. The witness denied the confession of Karara.[1922]

1505. In Gitarama, the witness observed roadblocks at the junction to Murambi, close to the Cyakabiri dispensary, at Fina petrol station, on the road towards the Nyamabuye *commune* office and at the Gitarama military camp, as one entered the town of Gitarama. The witness saw a number of roadblocks in Ruhango, including at the ERP filling station near Gataka, at the junction to Ntongwe *commune* and at Trafipro. The witness saw armed militiamen and policemen manning the roadblocks. He did not see *Interahamwe* dressed in uniform at the roadblocks. Those manning the roadblocks were armed with machetes, knives and spears. Soldiers and policemen had firearms. At the roadblocks, identity cards were checked to determine if one was Hutu or Tutsi. The witness said he heard that Tutsis were killed at roadblocks, but he never saw anyone near him who was identified as a Tutsi and killed.[1923]

1506. Witness T92 knew a man named Michelin from Ruhango. Michelin "sowed terror" during the genocide. The witness denied that Michelin was an *Interahamwe*, and said there were no *Interahamwe* in Gitarama. The witness knew Gahini, who also "sowed terror." Gahini was a major militiaman. The witness heard Gahini saying that he was the head of the *Interahamwe*. The witness acknowledged that the JDR started calling themselves *Interahamwe*. Witness T92 denied that he was involved in the death of Mutabazi.[1924]

Defence Witness T97

1507. Witness T97, a native of Tambwe *commune*,[1925] did not have knowledge of weapons distribution by Nzabonimana and Witness T92. During his information-gathering for *Gacaca* proceedings, the witness did not receive information from people saying they received arms.

[1919] T. 13 April 2010 pp. 46, 65 (ICS) (Witness CNAJ).
[1920] For additional introductory information on Witness T92, *see* para. 1379, *supra*.
[1921] T. 19 May 2010 pp. 16, 18-19; T. 19 May 2010 pp. 53, 71 (ICS) (Witness T92).
[1922] T. 19 May 2010 pp. 29, 63 (ICS) (Witness T92).
[1923] T. 19 May 2010 pp. 35-38 (ICS) (Witness T92).
[1924] T. 19 May 2010 pp. 38-39, 62 (ICS) (Witness T92).
[1925] For additional introductory information on Witness T97, *see* para. 1385, *supra*.

Aside from Yezu, Nzaramba, Karemera, the brother of Rucekeri and policemen, no other members of the population had firearms.[1926]

1508. The genocide in Tambwe *commune* began two weeks after the death of the President. On a Friday evening a man named Gahini Nzaramba set up a roadblock. The roadblock was destroyed and Nzaramba and others started the killings at 10.00 p.m.[1927]

1509. When the killings began, Witness T97 and his neighbours came together to protect themselves and carry out night patrols. This was done to protect themselves from the killers, as some "courageous families" had hidden Tutsis. The killers were a danger to them because they wanted to carry out searches to identify the people being hidden. The population organised the patrols themselves. They armed themselves with clubs and sticks, but not firearms.[1928]

1510. Four roadblocks were set up in Ruhango the second day after the beginning of the killings; at Gatengeri, Gataka, Nyarusange and on the road leading to Nyamagana. At the time, the witness could move about freely in the *commune*. Nzaramba supervised the roadblocks, assisted by others who acted with him to kill Tutsis. The people manning the roadblocks carried traditional weapons such as clubs, sticks and machetes.[1929]

1511. The witness saw Nzaramba and a man named Yezu kill people seeking refuge at the *sous-préfecture* office. Yezu had a firearm and the other attackers used clubs, sticks and traditional weapons. Yezu was a reservist and had a rifle at the beginning of the war. Nzaramba received a pistol later on. A man named Karemera and the brother of Rucekeri possessed grenades. The witness learned of the killing of a doctor named Gabriel at the *sous-préfecture* office, which occurred in the beginning of May 1994.[1930]

1512. The witness knew a former army reservist named Michelin who had a gun during the killings. During the war, Michelin was a leader of a group of young people, but Witness T97 denied they were *Interahamwe*. Michelin did not play any particular role; he "acted in collaboration with his colleagues during the killings." The witness acknowledged that Michelin was a member of the MRND. Michelin was armed with a firearm and involved in killing and looting. Victor Kanyaru was associated with Michelin and sold fuel.[1931]

1513. Witness T97 testified that Witness CNAK's roommate was not a member of the *Interahamwe*. He left the army and joined the *commune* police. Witness CNAK's roommate "did not conduct himself well" during the killings.[1932]

1514. The witness said the *Interahamwe* did not exist in Tambwe *commune*. There were killers but no *Interahamwe*. The *Interahamwe* was a characterisation of young people belonging to various political parties who were involved in killings. He denied that he saw *Interahamwe* in

[1926] T. 7 July 2010 p. 13; T. 7 July 2010 pp. 8, 23 (ICS); T. 8 July 2010 p. 29 (ICS) (Witness T97).
[1927] T. 7 July 2010 pp. 10-11 (Witness T97).
[1928] T. 7 July 2010 pp. 26-27 (ICS); T. 8 July 2010 pp. 39, 46-47 (ICS) (Witness T97).
[1929] T. 7 July 2010 pp. 12-13 (Witness T97).
[1930] T. 7 July 2010 pp. 12-14; T. 7 July 2010 p. 17 (ICS); T. 8 July 2010 p. 47 (ICS) (Witness T97).
[1931] T. 7 July 2010 p. 27 (ICS); T. 8 July 2010 pp. 19-20, 25 (ICS) (Witness T97).
[1932] T. 8 July 2010 p. 26 (ICS) (Witness T97). The witness provided the name of this individual and did not refer to him as "Witness CNAK's roommate." The Chamber refers to the individual in this manner for protective reasons.

Ruhango. People from various political parties engaged in killings. The killers were ordinary people and were not members of a particular political party. Witness T97 did not know the motivation of the killers.[1933]

1515. Witness T97 knew a man named Mutabazi. Mutabazi was the witness's superior in the youth wing of the PSD. In 1994, a policeman named Gaddafi shot Mutabazi because Mutabazi asked him why people were killing. The killing occurred in front of a shop belonging to Mutaganda, approximately 700 metres from the roadblocks. The witness heard about the death of Mutabazi from those who witnessed the killing and also during the information-gathering phase. Mutabazi was killed after 15 May 1994. The witness recounted that Mutabazi was standing in front of Mutaganda's building and Mutabazi asked out loud "[w]hy do these people want to kill others?" The policeman then immediately shot Mutabazi. The witness denied that Mutabazi's killing was instigated by the Crisis Committee, because he was killed before the Committee was established.[1934]

1516. At 11.00 p.m. one night in late May or early June 1994, while he was on patrol, Witness T97 saw the *bourgmestre* of Tambwe *commune*, Nathan Mugaga, in a Hilux pickup truck. A group of three killers were in the company of Mugaga, in a separate vehicle. Mugaga asked a companion of Witness T97 to show them the house of Simon Munyentwari. Witness T97's home was located approximately 700 metres from that of Munyentwari.[1935]

1517. One of the people on patrol with Witness T97 took Mugaga and the killers to Munyentwari's house. The witness stayed near the vehicles, approximately 600 metres from the house, at the time the abduction occurred. They abducted nine people from the house, including Munyentwari. Witness T97 "helped them to get on board the pickup" and they left. Munyentwari and his family were killed. Although the witness was on patrol to stop attackers from abducting people, that evening there was nothing they could do because the killers were armed. He denied that he assisted the abductors. Aside from the incident involving Munyentwari, the witness never saw a Hutu kill a Tutsi while he was on patrol. Mugaga returned later with policemen and prevented the witness and his colleagues from looting the house.[1936]

1518. Witness T97 acknowledged that his name was mentioned in the context of committing genocide, killings and torture during the information-gathering stage of *Gacaca* proceedings. He denied that he was removed from his post in the information-gathering stage of *Gacaca* because of this allegation. The witness denied that he had ever been detained or arrested. He acknowledged that he had been summoned by a *Gacaca* court and acquitted.[1937]

Defence Witness T98

1519. Witness T98, a Hutu,[1938] could see the Tambwe *commune* office from his residence, but the view was obstructed. Witness T98 denied that Nzabonimana, Witness T92, *Bourgmestre*

[1933] T. 7 July 2010 pp. 27, 38 (ICS); T. 8 July 2010 pp. 29, 34, 38 (ICS) (Witness T97).
[1934] T. 7 July 2010 p. 16 (ICS); T. 8 July 2010 pp. 36-37 (ICS) (Witness T97).
[1935] T. 8 July 2010 pp. 3-6; T. 8 July 2010 p. 12 (ICS) (Witness T97).
[1936] T. 8 July 2010 pp. 5-6; T. 8 July 2010 pp. 12-13, 46-47 (ICS) (Witness T97).
[1937] T. 8 July 2010 pp. 34-35 (ICS) (Witness T97).
[1938] For additional introductory information on Witness T98, *see* para. 1398, *supra*.

Mugaga and a policeman named François Karara met at the *commune* office and distributed weapons. If a Minister had come to the region, he would have heard about it. The witness never saw Witness T92 in April 1994.[1939]

1520. Disturbances began in Witness T98's locality on a Friday, two or three weeks after 6 April 1994. Two elderly men were killed. The witness attributed the killings to Emmanuel Nzaramba, who was nicknamed Gahini, and two men named Michelin and Esron. Michelin and Esron were in charge of the disturbances in the region. Nzaramba was a member of the MDR and Michelin was a member of the MRND. Michelin was the leader of a roadblock located at Gatengezi. Esron worked for the judiciary. The witness could not remember to which political party Esron belonged.[1940]

1521. Before these disturbances there was no reference to the *Interahamwe* in the witness's locality. After the disturbances the term *Interahamwe* referred to all killers and MRND members. The killers led by Nzaramba came from all political parties. Some wore banana leaves.[1941]

1522. The witness knew people named Prudence Nabiyakare, Claver Mukarage and Bonaventure Ndayisaba. Ndayisaba was part of a group of killers led by Emmanuel Nzaramba. A soldier named Yezu also worked with Nzaramba. Yezu lived with Nzaramba. Yezu was armed with a firearm and was one of the killers. Before the disturbances, Witness T98 saw Nzaramba in a Suzuki jeep along with people dressed as soldiers. The witness inferred that Yezu was one of the soldiers.[1942]

1523. Very few people had firearms and the witness knew of no one on his hill with a firearm. The people in Ruhango who had firearms included Nzaramba, Michelin, Esron and someone named Karama. Witness T98 did not know how they obtained the firearms.[1943]

1524. The witness learned from his neighbours that when the killings began Tutsis came to the *sous-préfecture* office to seek refuge. The witness stayed at home for security reasons, though he did go out to see neighbours and obtain information. The witness learned from his neighbours that Nzaramba killed a Tutsi businessman named Ignace Rulinda and a Tutsi named Mutaganda at the Tambwe *commune* office. The witness denied that he was involved in the killing.[1944]

1525. Witness T98 testified that Simon Munyentwari was killed during the night. He learned of the killing the following day, but did not know who killed Munyentwari. The witness knew Mutabazi, who was a Hutu and a member of the PSD. The witness learned from his neighbour that Mutabazi was killed after 15 May 1994 in Ruhango, at the *commune* office.[1945]

[1939] T. 13 July 2010 pp. 66-67; T. 14 July 2010 pp. 7, 57 (ICS) (Witness T98).
[1940] T. 13 July 2010 pp. 61-62; T. 14 July 2010 pp. 3-4; T. 14 July 2010 pp. 9, 39-40, 42 (ICS) (Witness T98).
[1941] T. 13 July 2010 p. 62; T. 14 July 2010 pp. 42, 51 (ICS); T. 15 July 2010 p. 37 (ICS) (Witness T98).
[1942] T. 14 July 2010 pp. 3-5, 40 (ICS) (Witness T98).
[1943] T. 13 July 2010 p. 67; T. 14 July 2010 pp. 6, 55 (ICS) (Witness T98).
[1944] T. 14 July 2010 pp. 6-7, 10-11 (ICS) (Witness T98).
[1945] T. 14 July 2010 pp. 50-53 (ICS) (Witness T98).

3.6.3.3 Deliberations

3.6.3.3.1 Distribution of Weapons

1526. The Prosecution relies upon the eyewitness testimony of Witness CNAK to support the allegations contained in Paragraph 58 of the Indictment. The Defence denies that the weapons distribution occurred.

1527. The Chamber considers that Witness CNAK, a Hutu, provided clear and plausible testimony as to how he came to be an eyewitness at the weapons distribution which occurred at the Tambwe *commune* office. Witness CNAK testified that he accompanied his roommate, who was a killer during the genocide, to the *commune* office.[1946] The Chamber notes that Defence Witness T97 corroborated Witness CNAK's testimony that Witness CNAK's roommate "did not conduct himself well" during the killings.[1947] Furthermore, although Witness CNAK did not know the name of the individual who accompanied Nzabonimana and Witness T92, the witness described him as a military officer who was responsible for Civil Defence.[1948] Witness T92 gave corroborating evidence that Jean-Damascene Ukirikyeyezu was a Major and was President of Civil Defence in Gitarama.[1949]

1528. The Chamber also considers that Witness CNAK had the ability to positively identify Nzabonimana at the Tambwe *commune* office. Although Witness CNAK did not testify as to the distance from which he saw Nzabonimana, he was close enough to hear Nzabonimana's speech.[1950] The Chamber also recalls that Witness CNAK knew Nzabonimana since 1993 and also knew him in his high profile capacity as Government Minister.[1951] The Chamber considers that given his these factors, Witness CNAK had the ability to reliably identify Nzabonimana (2.7.3).

1529. The Chamber notes that with the exception of his 2008 statement, the witness omitted reference to Nzabonimana's role in weapons distribution. Witness CNAK's 2000 statement specified that he was giving information about Jérôme Bicamumpaka, who was not implicated in the weapons distribution.[1952] Similarly, his 2004 statement primarily concerned the activities of Aloys Simba, who also was not alleged to have been at the weapons distribution at the *commune* office.[1953] Therefore, the Chamber considers it reasonable that the witness did not mention the weapons distribution in these earlier statements.

1530. The Defence submits that Witness CNAK's testimony contradicted his previous testimony in the *Bizimungu et al.* trial, stating that Witness CNAK "was unable to explain why he testified in *Bizimungu et al.* that he attended no meetings after the alleged meeting at Marianne's."[1954] The Chamber notes, however, that in his *Bizimungu et al.* testimony, Witness

[1946] T. 26 November 2009 pp. 27, 40 (ICS) (Witness CNAK).
[1947] T. 8 July 2010 p. 26 (ICS) (Witness T97).
[1948] T. 25 November 2009 p. 51 (ICS) (Witness CNAK).
[1949] T. 19 May 2010 p. 16 (Witness T92).
[1950] T. 25 November 2009 p. 52 (ICS) (Witness CNAK).
[1951] T. 25 November 2009 p. 39 (Witness CNAK).
[1952] Defence Exhibit 67 (Statement of Witness CNAK, 18 January 2000).
[1953] Defence Exhibit 70 (Statement of Witness CNAK, 11 March 2004).
[1954] Defence Closing Brief, para. 600.

CNAK did not state that he attended no other meetings than that which occurred at Marianne's house. Rather, he specified that he "never attended any other meeting *at Marian[n]e's house.*"[1955] The Chamber considers that this testimony does not exclude the possibility that he may have attended additional meetings held in other locations.[1956] Furthermore, Witness CNAK explained that although he had additional information concerning Nzabonimana at the time of his *Bizimungu et al.* testimony, he did not provide it because he was only testifying about Bicamumpaka. As Bicamumpaka was not involved in the weapons distribution the witness did not mention it in his testimony.[1957] The Chamber accepts the witness's explanation as reasonable.

1531. The Chamber further observes that when Witness CNAK participated in *Gacaca* information-gathering proceedings in Ruhango in 2005, he did not mention the distribution of weapons.[1958] The witness explained the omission by stating that he asked to provide additional information during the *Gacaca* proceedings but that he was instead sentenced to a one-year prison term by the *Gacaca* court.[1959] The witness acknowledged that he had been convicted by the *Gacaca* court of lying to and intimidating the court, but averred that his conviction was overturned on appeal. The witness testified that he was going to provide additional information, including regarding the weapons distribution, but he refused to participate in further *Gacaca* proceedings for security reasons.[1960] The Chamber accepts the witness's explanation for the omission in his 2005 *Gacaca* testimony.

1532. In its Closing Brief, the Prosecution also points to the *Gacaca* confession of François Karara, entered into evidence as Prosecution Exhibit 62, as support for this allegation.[1961] In the confession, Karara stated: "Concerning the weapons that were stored at the communal office, [h]e states that they were brought by [Witness T92] who brought them in a lorry/truck." Karara also stated: "I, Karara was given 60 guns from the said consignment." The confession also states that Karara "mentioned the youth who received the training on the use of guns which were supplied by [Witness T92]."[1962]

1533. The Chamber recalls that Prosecution Exhibit 62 was not introduced into evidence under Rule 92*bis* and the Defence was not afforded the opportunity to cross-examine Karara. Rather, the Prosecution introduced this exhibit for the purpose of cross-examining and challenging the

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[1955] Defence Exhibit 68 (Excerpts of Witness CNAK's *Bizimungu et al.* Testimony, 4 March 2004) (emphasis added).
[1956] Defence Exhibit 68 (Excerpts of Witness CNAK's *Bizimungu et al.* Testimony, 4 March 2004). The Chamber notes that in his *Bizimungu et al.* testimony, Witness CNAK refers to the gathering at Marianne's as both a "meeting" and a "rally." Witness CNAK specified the distinction between a "meeting," which referred to a gathering of a small number of people, and a "rally," which was a gathering of "a large number of people." He specified that the only "rally" he attended in Ruhango was the "one that took place at Marian[n]e's house." The Chamber considers that when read as a whole, Witness CNAK's *Bizimungu et al.* testimony does not exclude his attendance at other meetings.
[1957] T. 26 November 2009 pp. 39-40 (ICS) (Witness CNAK).
[1958] T. 26 November 2009 p. 48 (ICS) (Witness CNAK).
[1959] T. 26 November 2009 pp. 49-50, 52 (ICS) (Witness CNAK). *See also* Defence Exhibit 71C (Report on the Arrest and Detention of Witness CNAK and Others, 25 October 2005).
[1960] T. 26 November 2009 pp. 50-53 (ICS) (Witness CNAK).
[1961] Prosecution Closing Brief, para. 330.
[1962] Prosecution Exhibit 62A and B (*Gacaca* Confession of François Karara).

credibility of Witness T97. As such, the confession has "very little probative value" and the Chamber will consider the exhibit only in its assessment of Witness T97's credibility.[1963]

1534. Turning to the Defence evidence, Witness T92 denied that he saw Nzabonimana and Jean-Damascene Ukirikyeyezu during the 1994 events, and denied that he distributed arms in Ruhango with Nzabonimana and Ukirikyeyezu.[1964]

1535. The Chamber notes Witness T92 had a motivation to distance himself from the incident. Witness CNAK directly implicated Witness T92 in the allegation at issue. Furthermore, Prosecution Exhibit 62 indicates that François Karara confessed that Witness T92 distributed weapons to him. Witness T92 referred to the *Gacaca* finding that he was involved in weapons distribution as being "delirious."[1965] The Chamber concludes that Witness T92 was not a credible witness as to this allegation.

1536. Witness T97 testified that he did not have knowledge of weapons distribution by Nzabonimana and Witness T92, and that during his information-gathering for *Gacaca* proceedings, the witness did not receive information from people saying they received arms.[1966] The Chamber considers that the weapons distribution could have occurred without Witness T97's knowledge and outside his presence. His testimony that he did not hear about any weapons distribution during his tenure at the *Gacaca* courts is therefore of little probative value. Prior to his testimony, Witness T97 was not aware of François Karara's *Gacaca* confession that he received weapons from Witness T92.[1967] This exhibit established that a weapons distribution could have occurred outside of Witness T97's knowledge. Furthermore, the Chamber recalls its previous assessment of the general credibility of Witness T97's testimony (3.5.12.3). For these reasons, the Chamber considers that Witness T97's testimony was not credible as to the weapons distribution.

1537. Turning to Witness T98, the Chamber recalls that it treats his testimony with appropriate caution (3.5.12.3). Witness T98 denied that Nzabonimana, Witness T92, a *bourgmestre* and François Karara met at the *commune* office and distributed weapons. He indicated that if a Minister came to the region, he would have heard about it and that he never saw Witness T92 in April 1994. The witness further testified that he did not know many people who had weapons in the *commune*.[1968] The Chamber finds Witness T98's testimony to be of little probative value. Witness T98 did not provide direct evidence as to the incident and instead speculated that the weapons distribution could not have occurred because he would have heard about it otherwise. On the contrary, particularly during the events of April 1994, the witness would not have been aware of everything happening throughout the *commune*. By his own admission, he often stayed

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[1963] *Bagosora et al.*, Judgement (AC), para. 484, citing *Simba*, Judgement (AC), para. 20 ("The Appeals Chamber [...] agrees with the Trial Chamber's reasoning that, as a matter of law, statements of non-testifying individuals used during cross-examination may be admitted into evidence, even if they do not conform to the requirements of Rules 90(A) and 92*bis* of the Rules, provided the statements are necessary to the Trial Chamber's assessment of the witness's credibility and are not used to prove the truth of their contents.").
[1964] T. 19 May 2010 pp. 18-19; T. 19 May 2010 pp. 53, 71 (ICS) (Witness T92).
[1965] T. 19 May 2010 p. 63 (ICS) (Witness T92).
[1966] T. 7 July 2010 p. 23 (ICS) (Witness T97).
[1967] T. 8 July 2010 p. 30 (ICS) (Witness T97).
[1968] T. 13 July 2010 pp. 66-67; T. 14 July 2010 pp. 57, 67 (ICS) (Witness T98).

at home after the killing began for security reasons and his view of the *commune* office from his home was obstructed.[1969]

1538. The Chamber concludes that Witness CNAK provided a credible, consistent and reliable first-hand account of the weapons distribution at the Tambwe *commune* office. The Chamber recalls that it may find an allegation proven beyond a reasonable doubt on the basis of a single, uncorroborated witness's testimony (2.7.4). Having considered the totality of the evidence, the Chamber concludes that the Prosecution has proven beyond a reasonable doubt that towards the end of April or early May 1994, Nzabonimana brought weapons to the Tambwe *commune* office which were subsequently distributed to the population. The Chamber also finds that the Prosecution has proven beyond a reasonable doubt that Nzabonimana spoke and he said they had brought the weapons so that they could take charge of their own protection and ensure the security of the country from the enemy; the enemy meaning Tutsis.

3.6.3.3.2 Use of Weapons in Subsequent Killings

1539. The remaining question for the Chamber is whether the weapons distributed by Nzabonimana were used to kill Tutsis in subsequent attacks in Tambwe *commune*. The Chamber recalls that Nzabonimana distributed firearms and grenades to members of the population who had undergone military training. Witness CNAK said that after the distribution, these people started carrying out attacks in Tambwe *commune*.

1540. The Chamber heard extensive evidence of people who possessed firearms in Tambwe *commune* and of those who participated in killings during the period in question. However, aside from presenting general evidence that the recipients of the weapons distributed at the Tambwe *commune* office were people who had undergone military training, the Prosecution provided no specific evidence as to who received the weapons. The Prosecution also did not present any evidence as to who received military training in the *commune* nor did it present any evidence as to what the recipients of the weapons at the *commune* office did with them after the distribution. The Prosecution has therefore failed to prove beyond a reasonable doubt that the weapons distributed were used to kill Tutsis in various attacks in Tambwe *commune* as alleged in Paragraph 58 of the Indictment.

3.6.4 Tambwe *Commune* Crisis Committee

3.6.4.1 Introduction

1541. Paragraph 49 of the Indictment alleges that on or about 15 May 1994, in collaboration with the Interim Government's policy of forming Crisis Committees throughout the country as a way of "disguising" the killings from the international community, Callixte Nzabonimana, in the company of Major Jean-Damascene Ukirikyeyezu, a member of the Civil Defence in Gitarama, presided over a meeting in Ruhango *cellule*, Nyamagana *secteur*, Tambwe *commune*, Gitarama *préfecture*, where the Crisis Committee of that *commune* was selected. The meeting was also convened to address the issue of Hutus fighting over the property of Tutsis. Many Tutsis caught

[1969] T. 13 July 2010 p. 57 (ICS); T. 14 July 2010 p. 7 (ICS) (Witness T98).

at roadblocks were killed on the orders of this Committee and they included Nyabugaju, Ruhezamibigo and Languida.[1970]

1542. The Prosecution asserts that in May 1994, Nzabonimana attended a meeting to set up a Crisis Committee, in order to ensure security among the Hutu population. When the Crisis Committee started working, people suspected of being Tutsis and Hutu accomplices were arrested and taken to the Tambwe *commune* office, where they were killed and had their bodies thrown in a ditch. The Prosecution relies on Prosecution Witness CNAK.[1971] Witness CNAJ also provided relevant evidence.

1543. The Defence submits that the Prosecution evidence is not credible, uncorroborated and inconsistent with evidence adduced during *Gacaca* proceedings. Defence witnesses also denied that the meeting took place. The Defence relies on Witnesses T95, T97 and T98. Witness T92 also provided relevant evidence.[1972]

3.6.4.2 Evidence

Prosecution Witness CNAK

1544. Witness CNAK, a Hutu athlete who lived in Tambwe *commune* in 1994,[1973] saw Nzabonimana one morning in May 1994 in the office of the Ruhango *sous-préfecture*. Nzabonimana was accompanied by Witness T92 and an officer of the army who was in charge of Civil Defence. The *bourgmestre*, the *sous-préfet* and Marianne were also present. Other attendees included the heads of religious groups and political parties, businessmen and the directors of public and private companies. The youth wings of political parties also attended, including the JDR and the MRND *Interahamwe*. The witness went to the meeting with his roommate, who was a killer during the genocide. His roommate was also an influential member of the youth wing of the MDR party, called the JDR-*Inkuba*.[1974]

1545. At the meeting, Nzabonimana said that he and the officer in charge of Civil Defence had come to set up a Crisis Committee. Nzabonimana said the purpose of the Crisis Committee was to ensure the security of the Hutu population, particularly since Hutus had begun to fight over the property of Tutsis who had been killed. The Committee would "closely supervise" Hutus who were accomplices of the Tutsis. Nzabonimana said that Tutsis and their accomplices should not be killed along the road, because the international community had started to refer to members of the Government as killers. Instead, Tutsis and their accomplices should be taken to the *commune* office. If the Committee decided someone had to be killed, the decision was final. Reference to

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[1970] Para. 49 of the Indictment. The Chamber notes that from the evidence presented at trial, the correct spelling of "Ruhezamibigo" is "Ruhezamihigo." *See* T. 25 November 2009 pp. 58-59 (HC) (Witness CNAK) (French) (for the spelling of "Ruhezamihigo").
[1971] Prosecution Closing Brief, paras. 293-295; T. 20 October 2011 pp. 40-41 (Prosecution Closing Argument).
[1972] Defence Closing Brief, paras. 596, 600-603; T. 20 October 2011 pp. 77-79 (Defence Closing Argument).
[1973] For additional introductory information on Witness CNAK, *see* para. 1358, *supra*.
[1974] T. 25 November 2009 pp. 50, 54-55 (ICS); T. 25 November 2009 pp. 58-60; T. 26 November 2009 p. 27; T. 26 November 2009 pp. 40, 42 (ICS) (Witness CNAK).

the Crisis Committee was the same thing as reference to the "security committee." The Crisis Committee worked alongside the local administration.[1975]

1546. The Committee was established that day. Seven members comprised the Committee. Grégoire, who was also the President of the Canton Tribunal of Tambwe *commune*, was the Chairman. Michelin, who was the head of the *Interahamwe* in Ruhango, was the Vice Chairman. Hilderbrand Karake was the secretary. Advisers included Pastor Emmanuel Gasana of the EER church, Gaspard Hategekimana, who was a businessman in Ruhango, and Augustin Karama, an influential member of the population.[1976]

1547. The Committee immediately started functioning and implementing its directives. People suspected of being Tutsis or Hutu accomplices were arrested and taken to the Tambwe *commune* office, where they were killed. Their bodies were thrown into a ditch. Those killed on the orders of the Crisis Committee included Nuru Nyabugaju, Simon Munyentwari and 14 members of his family, Sixbert Ruhezamihigo and a woman named Languida. Ruhezamihigo was killed at the *commune* office. Simon Munyentwari and his family were also executed on the orders of the Crisis Committee. They were abducted and no one knew where they were killed.[1977]

1548. Witness CNAK testified that in Ruhango, roadblocks were set up at Gatengezi, at Gataka, at the ERP filling station and at Trafipro. People arrested and killed Tutsis at the roadblocks and also attacked and killed Tutsis in their homes. Hutus were allowed to pass through the roadblocks. Witness CNAK learned about what occurred at the roadblocks from his roommate and from other friends in the *Interahamwe* who manned the roadblocks. As Witness CNAK's occupation made him well known, people who worked at the roadblocks would give him details of what happened.[1978]

Prosecution Witness CNAJ

1549. Witness CNAJ, a Tutsi from Tambwe *commune*,[1979] testified that two to three weeks after the death of the President, roadblocks were set up in Tambwe *commune*, manned by *Interahamwe* armed with rifles, grenades and clubs. *Interahamwe* asked every person who passed through the roadblocks to produce their identity cards. Those identified as Tutsis were killed.[1980] Witness CNAJ witnessed the identity checks and the killing of Tutsis at roadblocks. He acknowledged that he was in hiding at the time, but that he was able to make observations as he moved from one hiding place to another. Witness CNAJ also testified that because he was among the wanted persons, he did not risk going close to roadblocks.[1981]

[1975] T. 25 November 2009 p. 55 (ICS); T. 26 November 2009 p. 42 (ICS) (Witness CNAK).
[1976] T. 25 November 2009 p. 55 (ICS) (Witness CNAK).
[1977] T. 25 November 2009 p. 56 (ICS); T. 25 November 2009 pp. 58-59 (HC) (French) (for the spelling of "Languida" and "Ruhezamihigo"); T. 26 November 2009 pp. 44-45 (ICS) (Witness CNAK). The Chamber notes that the Indictment incorrectly spells the name of Sixbert Ruhezamihigo as "Ruhezamibigo."
[1978] T. 25 November 2009 pp. 46-47 (ICS) (Witness CNAK); T. 25 November 2009 p. 50 (ICS) (Witness CNAK).
[1979] For additional introductory information on Witness CNAJ, *see* para. 1368, *supra*.
[1980] T. 13 April 2010 pp. 45-46; T. 13 April 2010 p. 65 (ICS) (Witness CNAJ).
[1981] T. 13 April 2010 pp. 64-65 (ICS) (Witness CNAJ).

Defence Witness T97

1550. Witness T97, a native of Tambwe *commune*,[1982] testified that the genocide in Tambwe *commune* began two weeks after the death of the President. On a Friday evening a man named Nzaramba set up a roadblock. The roadblock was destroyed and Nzaramba and others started the killings at 10.00 p.m.[1983]

1551. Four roadblocks were set up in Ruhango the second day after the beginning of the killings, at Gatengeri, Gataka, Nyarusange and on the road leading to Nyamagana. At the time, the witness could move about freely in the *commune*. Nzaramba supervised the roadblocks, assisted by others who acted with him to kill Tutsis. The people manning the roadblocks carried traditional weapons such as clubs, sticks and machetes, but a man named Yezu had a firearm.[1984]

1552. Witness T97 knew of the Crisis Committee in Ruhango. Members of the Committee included *Bourgmestre* Nathan Mugaga, Gaspard Hategekimana, Augustin Karama, Pastor Emmanuel Gasana, a judicial police inspector named Esron Nzabahimana, Grégoire Munyeshyaka and Witness T95. Augustin Karama was a Tutsi. Nzabonimana's name was not mentioned in relation to the establishment of the Committee, nor was the name of Jean-Damascene Ukirikyeyezu. The witness denied that a man named Michelin was a member of the Committee. Michelin was armed with a firearm and involved in killing and looting.[1985]

1553. The Crisis Committee was established at a meeting at the *commune* office convened by *Bourgmestre* Mugaga. The Committee was established after 15 May 1994. The witness did not know the Chairman of the Committee. Following that meeting, members of the Committee went to roadblocks and requested those manning the roadblocks to stop the killings and the looting. The witness testified that Judge Grégoire Munyeshyaka came to the Nyarusange roadblock to give them this message. Members of the Crisis Committee were tried before the Court of First Instance in Gitarama and acquitted by the Nyanza Appeals Court.[1986]

1554. Witness T97 testified that Witness CNAK's roommate was not a member of the *Interahamwe*. He left the army and joined the *commune* police. Witness CNAK's roommate "did not conduct himself well during the killings."[1987]

1555. Witness T97 knew a woman named Languida. She was killed at the Tambwe *commune* office. He also knew Nuru Nyabagaju and Sixbert Ruhezamihigo, and knew that they had been killed.[1988]

1556. At 11.00 p.m. one night in late May or early June 1994, while he was on patrol, Witness T97 saw the *bourgmestre* of Tambwe *commune*, Nathan Mugaga, in a Hilux pickup truck. A group of three killers were in the company of Mugaga, in a separate vehicle. Mugaga asked a

[1982] For additional introductory information on Witness T97, *see* para. 1385, *supra*.
[1983] T. 7 July 2010 pp. 10-11 (Witness T97).
[1984] T. 7 July 2010 pp. 12-13 (Witness T97).
[1985] T. 7 July 2010 pp. 17, 19, 26 (ICS); T. 8 July 2010 pp. 19-24 (ICS) (Witness T97).
[1986] T. 7 July 2010 p. 18 (ICS); T. 8 July 2010 pp. 14, 37 (ICS) (Witness T97).
[1987] T. 8 July 2010 p. 26 (ICS) (Witness T97). The witness provided the name of this individual and did not refer to him as "Witness CNAK's roommate." The Chamber refers to the individual in this manner for protective reasons.
[1988] T. 8 July 2010 pp. 44-45 (ICS) (Witness T97).

companion of Witness T97 to show them the house of Simon Munyentwari. Witness T97's home was located approximately 700 metres from that of Munyentwari.[1989]

1557. One of the people on patrol with Witness T97 took Mugaga and the killers to Munyentwari's house. The witness stayed near the vehicles, approximately 600 metres from the house, at the time the abduction occurred. They abducted nine people from the house, including Munyentwari. Witness T97 "helped them to get on board the pickup" and they left. Munyentwari and his family were killed. Although the witness was on patrol to stop attackers from abducting people, that evening there was nothing they could do because the killers were armed. He denied that he assisted the abductors. Aside from the incident involving Munyentwari, the witness never saw a Hutu kill a Tutsi while he was on patrol. Mugaga returned later with policemen and prevented the witness and his colleagues from looting the house.[1990]

1558. Witness T97 was in charge of information-gathering for *Gacaca* proceedings in Nyarusange *cellule*. The witness testified that he never heard the name of Callixte Nzabonimana during the information-gathering process. Nzabonimana was not mentioned during the information-gathering period in Nyarusange *cellule*, and neither was he mentioned after the file was forwarded to Nyamagana *secteur*.[1991]

1559. Witness T97 acknowledged that his name was mentioned in the context of committing genocide, killings and torture during the information-gathering stage of *Gacaca* proceedings. He denied that he was removed from his post in the information-gathering stage of *Gacaca* because of this allegation. The witness denied that he had ever been detained or arrested. He acknowledged that he had been summoned by a *Gacaca* court and acquitted.[1992]

Defence Witness T98

1560. Witness T98, a Hutu,[1993] lived in Ruhango near the *sous-préfecture* office in Tambwe *commune* in 1994. Disturbances began in Witness T98's locality on a Friday, two or three weeks after 6 April 1994. Two elderly men were killed. The witness attributed the killings to Emmanuel Nzaramba, nicknamed Gahini, and two men named Michelin and Esron. Michelin and Esron were in charge of the disturbances in the region. Nzaramba was a member of the MDR and Michelin was a member of the MRND. Michelin was the leader of a roadblock located at Gatengezi.[1994]

1561. The witness denied that the Crisis Committee meeting was held at the *sous-préfecture* office in mid-May 1994. The witness never heard anyone say that Nzabonimana visited the region at that time. The witness acknowledged that a Crisis Committee had been put in place between the beginning of May and 15 May 1994, and that a meeting setting up the Crisis Committee could have taken place at the *commune* office. The Committee was put in place to restore order, install peace and to put an end to the killing and looting. The Committee was also

[1989] T. 8 July 2010 pp. 3-6; T. 8 July 2010 p. 12 (ICS) (Witness T97).
[1990] T. 8 July 2010 pp. 5-6; T. 8 July 2010 pp. 12-13, 46-47 (ICS) (Witness T97).
[1991] T. 7 July 2010 pp. 19, 21, 23-25 (ICS) (Witness T97).
[1992] T. 8 July 2010 pp. 34-35 (ICS) (Witness T97).
[1993] For additional introductory information on Witness T98, *see* para. 1398, *supra*.
[1994] T. 13 July 2010 pp. 61-62; T. 13 July 2010 p. 56 (ICS); T. 14 July 2010 pp. 3-4; T. 14 July 2010 pp. 9, 39-40, 42 (ICS) (Witness T98).

used to carry out revenge. Members of the Committee included Judge Grégoire Munyeshyaka, a mechanic named Augustin Karama, Gaspard Hategekimana and a pastor named Gasana. The witness did not know if the new *sous-préfet* was a member of the Committee.[1995]

1562. The killings were not stopped after the formation of the Committee. Witness T98 could not say whether the Committee authorised killings. The witness knew Nuru Nyabugaju and acknowledged that he had been killed. The witness learned from his neighbours that Nzaramba killed a Tutsi businessman named Ignace Rulinda and a Tutsi named Mutaganda at the Tambwe *commune* office. The witness denied that he was involved in the killing.[1996]

1563. Witness T98 testified that Simon Munyentwari was killed during the night. He learned of the killing the following day, but did not know who killed Munyentwari.[1997]

Defence Witness T92

1564. Witness T92, a government official originally from Gitarama *préfecture*,[1998] denied that he was a member of the Crisis Committee in Ruhango, along with Nzabonimana, Marianne and the *bourgmestre*. The witness denied seeing Nzabonimana and Ukirikyeyezu during the 1994 events. Witness T92 testified that he attended one meeting in Gitarama during the 1994 events. *Préfet* Uwizeye called a small, public pacification meeting in Ruhango and invited Witness T92 to attend. He denied that he was a member of the security committee of Ruhango, Birambo *sous-préfecture*, and denied that he attended a meeting in June 1994 in this capacity.[1999]

1565. In Gitarama, the witness observed roadblocks at the junction to Murambi, close to the Cyakabiri dispensary, at Fina petrol station, on the road towards the Nyamabuye *commune* office and at the Gitarama military camp, as one entered the town of Gitarama. The witness saw a number of roadblocks in Ruhango, including at the ERP filling station near Gataka, at the junction to Ntongwe *commune* and at Trafipro. The witness saw armed militiamen and policemen manning the roadblocks. He did not see *Interahamwe* dressed in the uniform at the roadblocks. Those manning the roadblocks were armed with machetes, knives and spears. Soldiers and policemen had firearms. At the roadblocks, identity cards were checked to determine if one was Hutu or Tutsi. The witness said he heard that Tutsis were killed at roadblocks, but he never saw anyone near him who was identified as a Tutsi and killed.[2000]

1566. Witness T92 knew a man named Michelin from Ruhango. Michelin "sowed terror" during the genocide. The witness denied that Michelin was an *Interahamwe*, and said there were no *Interahamwe* in Gitarama.[2001]

[1995] T. 13 July 2010 pp. 67-68, 70-71 (Witness T98).
[1996] T. 13 July 2010 p. 70; T. 14 July 2010 pp. 9-11, 55 (ICS) (Witness T98).
[1997] T. 14 July 2010 p. 50 (ICS) (Witness T98).
[1998] For additional introductory information on Witness T92, *see* para. 1379, *supra*.
[1999] T. 19 May 2010 pp. 50-52 (ICS) (Witness T92); Prosecution Exhibit 48 (Letter from Jean-Baptiste Ndagijimana to the Minister of Interior, 18 June 1994).
[2000] T. 19 May 2010 pp. 35-38 (ICS) (Witness T92).
[2001] T. 19 May 2010 pp. 38-39 (ICS) (Witness T92).

Defence Witness T95

1567. Witness T95 denied that he ever met Nzabonimana or Witness T92 from 6 April 1994 to July 1994. He denied that he went to any meetings in Ruhango.[2002]

3.6.4.3 Deliberations

1568. The Prosecution relies upon the testimony of Witness CNAK to support the allegations in Paragraph 49 of the Indictment. The parties disputed: (1) whether Nzabonimana was involved in the establishment of the Crisis Committee in Ruhango; (2) the purpose of the Crisis Committee; and (3) whether people were killed upon orders from the Crisis Committee.

3.6.4.3.1 Crisis Committee Meeting and Nzabonimana's Involvement

1569. The Chamber notes that Prosecution and Defence witnesses provided consistent evidence that the Crisis Committee was established in Ruhango in May 1994.[2003] Prosecution Witness CNAK and Defence Witnesses T97 and T98 also provided consistent evidence that Judge Grégoire Munyeshyaka, Augustin Karama, Gaspard Hategekimana and Pastor Emmanuel Gasana were members of the Crisis Committee.[2004] Witnesses CNAK and T97 also testified that "the *bourgmestre*" was present during the creation of the Crisis Committee. Furthermore, Witness T97 listed *Bourgmestre* Mugaga of Tambwe *commune* as among the members of the Crisis Committee and said that Mugaga convened the meeting to establish the Committee.[2005] The Chamber therefore considers that the evidence is undisputed that a Crisis Committee was established in Ruhango in May 1994 and that the above-named individuals were involved in the Committee.

1570. According to Witness CNAK, Nzabonimana spoke at the meeting and said that he and the officer in charge of Civil Defence had come to set up the Committee. Although Witness CNAK did not provide the name of the officer, the Chamber notes that Witness T92 testified that Jean-Damascene Ukirikyeyezu was a major and was President of Civil Defence in Gitarama.[2006] Witness CNAK also testified that once the Committee was established, the Vice Chairman of the Committee was a man named Michelin, who was the head of the *Interahamwe* in Ruhango. Witness CNAK indicated that Michelin had a gang and took part in the killings in Ruhango.[2007]

1571. The Chamber considers that Witness CNAK, a Hutu, provided clear and convincing testimony as to how he came to witness the Crisis Committee meeting in May 1994. Witness

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[2002] T. 23 March 2011 pp. 61-62 (ICS) (Witness T95). For additional introductory information on Witness T95, *see* para. 1408, *supra*.
[2003] T. 25 November 2009 pp. 54-55 (ICS); T. 26 November 2009 pp. 40, 42 (ICS) (Witness CNAK); T. 8 July 2010 p. 37 (ICS) (Witness T97); T. 13 July 2010 p. 68 (Witness T98).
[2004] T. 25 November 2009 p. 55 (ICS) (Witness CNAK); T. 7 July 2010 p. 17 (ICS) (Witness T97); T. 13 July 2010 pp. 70-71 (Witness T98).
[2005] T. 25 November 2009 p. 54 (ICS) (Witness CNAK); T. 7 July 2010 pp. 17-18 (ICS) (Witness T97).
[2006] T. 19 May 2010 p. 16 (Witness T92).
[2007] T. 25 November 2009 p. 55 (ICS); T. 26 November 2009 pp. 46-47 (ICS) (Witness CNAK).

CNAK testified that he accompanied his roommate, who he described as a killer during the genocide and a member of the MDR youth wing, to the meeting.[2008]

1572. Furthermore although Witness CNAK did not testify as to the distance from which he saw Nzabonimana at the meeting, he was able to hear what Nzabonimana said at the meeting.[2009] In this regard, the Chamber recalls that Witness CNAK knew Nzabonimana since 1993 and also knew him in his high profile capacity as Government Minister.[2010] The Chamber considers that given these elements, Witness CNAK had the ability to reliably identify Nzabonimana (2.7.3).

1573. The Chamber notes that with the exception of his 2008 statement, the witness did not mention that he observed the May 1994 Crisis Committee meeting. The witness's 2000 statement was given in the context of proceedings against Jérôme Bicamumpaka, who was not implicated in the Crisis Committee meeting.[2011] Similarly, his 2004 statement primarily concerned the activities of Aloys Simba, who also was not alleged to have been involved in the Crisis Committee meeting.[2012] The Chamber considers it reasonable that the witness did not mention the Crisis Committee meeting in these earlier statements since Bicamumpaka and Simba were not part of the Crisis Committee.

1574. The Chamber further notes that in his 2000 statement, Witness CNAK stated that "more dynamic security committees" were set up the day after the meeting at Marianne's house and that people were subsequently killed at the *commune* office.[2013] Although Witness CNAK did not give a date for the meeting at Marianne's house in his 2000 statement, in his testimony he said the meeting occurred approximately one week after the President's death.[2014] Witness CNAK's 2000 statement would therefore appear to contradict his testimony that Nzabonimana established the Crisis Committee at a meeting in May 1994. The Chamber recalls however that Witnesses T97 and T98 corroborated the establishment of the Crisis Committee in May 1994. Furthermore, Witness CNAK explained that there were numerous committees in existence in 1994 and that they had different objectives.[2015] He also specified that he provided approximate dates in his testimony.[2016] Given these considerations, the Chamber does not consider Witness CNAK's 2000 statement to undermine his credibility with respect to this allegation.

1575. The Defence submits that Witness CNAK's testimony contradicted his previous testimony in the *Bizimungu et al.* trial, stating that Witness CNAK "was unable to explain why he testified in *Bizimungu et al.* that he attended no meetings after the alleged meeting at Marianne's."[2017] The Chamber notes however that in his *Bizimungu et al.* testimony, Witness CNAK did not state that he attended no other meetings than the one at Marianne's house. Rather,

[2008] T. 25 November 2009 pp. 54-55 (ICS); T. 26 November 2009 pp. 40-42 (ICS) (Witness CNAK).
[2009] T. 25 November 2009 p. 55 (ICS) (Witness CNAK).
[2010] T. 25 November 2009 p. 39 (Witness CNAK).
[2011] Defence Exhibit 67 (Statement of Witness CNAK, 18 January 2000).
[2012] Defence Exhibit 70 (Statement of Witness CNAK, 11 March 2004).
[2013] Defence Exhibit 67 (Statement of Witness CNAK, 18 January 2000).
[2014] T. 25 November 2009 p. 40 (Witness CNAK).
[2015] T. 26 November 2009 p. 43 (ICS) (Witness CNAK).
[2016] T. 25 November 2009 p. 61 (Witness CNAK).
[2017] Defence Closing Brief, para. 600.

he specified that he "never attended any other meeting *at Marian[n]e's house.*"[2018] The Chamber considers that this testimony does not exclude the possibility that he may have attended additional meetings held in other locations.[2019] Furthermore, Witness CNAK explained that although he had additional information concerning Nzabonimana at the time of his *Bizimungu et al.* testimony, he did not provide it because he was only testifying about Bicamumpaka.[2020] The Chamber accepts this explanation and considers it reasonable that Witness CNAK did not mention the Crisis Committee meeting during his *Bizimungu et al.* testimony.

1576. The Defence also asserts that Witness CNAK's testimony contradicted the account he gave to a Ruhango *Gacaca* court in 2005.[2021] During *Gacaca* information-gathering proceedings in Ruhango in 2005, Witness CNAK provided information about the creation and membership of the Crisis Committee. However, he did not mention Nzabonimana's role in the creation of the Committee. Rather, he stated that the Committee was set up by "the commander who was in charge of Gitarama *préfecture*."[2022] The Chamber observes that in his testimony before the Tribunal in the present case, Witness CNAK stated that an officer of the army who was in charge of Civil Defence came to the meeting along with Nzabonimana. Nzabonimana said that he and the officer had come to set up the Crisis Committee.[2023] Therefore, while Witness CNAK's 2005 *Gacaca* evidence may have diverged from his trial testimony it was not necessarily inconsistent. The Chamber further recalls that *Gacaca* trials are separate and distinct legal proceedings which are not binding upon this Chamber.[2024]

1577. In addition, the Chamber notes that Witness CNAK explained that he asked to provide additional information during the *Gacaca* proceedings but that he was sentenced to a one-year prison term by the *Gacaca* court. The witness acknowledged that he had been convicted by the *Gacaca* court of lying to and intimidating the court, but averred that his conviction was overturned on appeal. The witness explained that he was placed in prison because members of the *Gacaca* court were connected to the influential people who committed the genocide. The witness testified that he thereafter abstained participating in further *Gacaca* trials in order to avoid bringing further harm upon himself for merely telling the truth.[2025] The Chamber accepts the witness's explanation for the omission in his 2005 *Gacaca* testimony as reasonable.

1578. Having considered the foregoing, the Chamber finds that Witness CNAK provided credible and reliable eyewitness testimony regarding the presence of Nzabonimana and the other individuals at the meeting establishing the Crisis Committee in Ruhango.

[2018] Defence Exhibit 68 (Excerpts of Witness CNAK's *Bizimungu et al.* Testimony, 4 March 2004) (emphasis added).
[2019] Defence Exhibit 68 (Excerpts of Witness CNAK's *Bizimungu et al.* Testimony, 4 March 2004). The Chamber considers that when read as a whole, Witness CNAK's *Bizimungu et al.* testimony does not exclude his attendance at other meetings. *See* fn. 1956, *supra*.
[2020] T. 26 November 2009 pp. 39-40 (ICS) (Witness CNAK).
[2021] Defence Closing Brief, para. 601.
[2022] T. 26 November 2009 p. 48 (ICS) (Witness CNAK); Defence Exhibit 103 (Booklet of *Gacaca* Information-Gathering Phase of Ruhango, 1 June 2005 to 17 October 2006).
[2023] T. 25 November 2009 pp. 54-55 (ICS) (Witness CNAK).
[2024] *Renzaho*, Judgement (AC), paras. 460, 469; *Bizimungu et al.*, Judgement (TC), para. 493 ("This Chamber is not bound by findings of another court adjudicating a separate record.").
[2025] T. 26 November 2009 pp. 48-53 (ICS) (Witness CNAK).

1579. Turning to the Defence evidence, Witness T92 denied that he attended the meeting during which the Crisis Committee was established and denied that he was a member of the Ruhango Crisis Committee or of any security committee. The Chamber notes that Witness CNAK directly implicated Witness T92 in this allegation, accusing him of involvement in the creation of the Crisis Committee. As a result, Witness T92 may have had a motivation to distance himself from the alleged incident. The Chamber will therefore treat his testimony with appropriate caution.

1580. The Chamber recalls that during his testimony, Witness T92 also denied that he was a member of the security committee of Ruhango, Birambo *sous-préfecture*.[2026] The Chamber notes that Prosecution Exhibit 48, a letter dated 18 June 1994 from the *sous-préfet* of Ruhango, directly contradicted Witness T92's testimony on this point.[2027] This exhibit lists Witness T92 as a member of the security committee of Ruhango-Birambo *sous-préfectures*, and indicates that he attended a meeting of this committee on 17 June 1994. Given this significant contradiction and the witness's possible motivation to distance himself from the allegation, the Chamber concludes that Witness T92 did not provide credible testimony as to this allegation.

1581. Witnesses T97 and T98 testified that neither Nzabonimana nor Ukirikyeyezu were involved in the establishment of the Crisis Committee, and asserted that the meeting setting up the Committee took place at the Tambwe *commune* office, not at the Ruhango *sous-préfecture* office.[2028] Witness T97 also denied that Michelin was a member of the Committee.[2029] The Chamber recalls its previous assessment of the general credibility of Witness T97's testimony (3.5.12.3). For the same reasons, the Chamber considers that Witness T97's testimony was not credible as to Nzabonimana's participation in the establishment of the Crisis Committee. The Chamber also recalls that it will consider Witness T98's testimony with appropriate caution. (3.5.12.3).

1582. Bearing the above considerations in mind, the Chamber recalls that neither Witness T97 nor Witness T98 testified that they attended the meeting establishing the Crisis Committee. Given the second-hand nature of the witnesses' testimony, the Chamber considers their evidence to have little probative value as to whether Nzabonimana participated in the formation of the Crisis Committee and to the content of the meeting, particularly where it was uncorroborated by other credible evidence.

1583. Having considered the totality of the evidence, the Chamber concludes that the Prosecution has proven beyond a reasonable doubt that Nzabonimana came to the Ruhango *sous-préfecture* office in May 1994 with Jean-Damascene Ukirikyeyezu and said that he and Ukirikyeyezu had come to set up the Committee. *Bourgmestre* Mugaga was also present at the meeting. Those who became members of the Crisis Committee included Michelin, Judge Grégoire Munyeshyaka, Augustin Karama, Gaspard Hategekimana and Pastor Emmanuel Gasana.

[2026] T. 19 May 2010 pp. 50-52 (ICS) (Witness T92).
[2027] Prosecution Exhibit 48 (Letter from Jean-Baptiste Ndagijimana to the Minister of Interior, 18 June 1994).
[2028] T. 7 July 2010 p. 26 (ICS) (Witness T97); T. 8 July 2010 p. 37 (ICS) (Witness T97); T. 13 July 2010 pp. 67-68, 70-71 (Witness T98).
[2029] T. 8 July 2010 p. 19 (ICS) (Witness T97).

3.6.4.3.2 Purpose of the Crisis Committee

1584. Witness CNAK testified that at the meeting, Nzabonimana said that the Committee's purpose was to ensure the security of the Hutu population particularly since Hutus had begun to fight over the property of Tutsis who had been killed. Prosecution and Defence witnesses did not dispute that killings were being committed at roadblocks in Ruhango, beginning in April 1994.[2030] According to Witness CNAK, during the Crisis Committee meeting in May 1994, Nzabonimana indicated that Tutsis should not be killed along the roadside because the international community had begun to refer to members of the Government as killers. Instead, the Tutsis were to be taken to the *commune* office to be killed.[2031] Following the meeting, the Committee implemented its directives. In addition, Witness CNAK indicated that Michelin, a man who Witness CNAK described as a killer during the genocide, was made Vice Chairman of the Crisis Committee.

1585. In contrast to Witness CNAK, Witnesses T97 and T98 asserted that the purpose of the Committee was to stop the killings and the looting rather than to kill Tutsis.[2032]

1586. The Chamber considers that Witnesses T97 and T98 were not credible in testifying to the benign purpose of the Crisis Committee. Rather, the testimony of Witnesses T97 and T98 corroborated Witness CNAK's testimony that the purpose of the Crisis Committee was not to promote peace but rather to facilitate the killing of Tutsis.

1587. Witness T97's testimony corroborated Witness CNAK's testimony that Simon Munyentwari and his family were killed. Witness T97 provided eyewitness testimony that in late May or early June 1994, *Bourgmestre* Mugaga led the group of assailants who abducted and killed Munyentwari and his family. The Chamber recalls that both Witness T97 and Witness CNAK testified that Mugaga attended the Crisis Committee meeting. In addition, the Chamber notes that Witnesses T92, T97 and T98 all testified that Michelin, who Witness CNAK identified as the Vice Chairman of the Crisis Committee, was a member of the MRND and was involved in the killings in Ruhango.[2033] The Chamber considers that the involvement of Mugaga and Michelin in the Crisis Committee belies the Defence witnesses' claims that the Committee sought to install peace in Ruhango.

1588. In addition, Witness T97 provided evidence which corroborated Witness CNAK's testimony that the Crisis Committee implemented its directives at roadblocks. Witness T97 testified that following the establishment of the Committee, its members went to speak with those manning roadblocks. Judge Grégoire Munyeshyaka, a Crisis Committee member, went to the Nyarusange roadblock.[2034]

[2030] T. 25 November 2009 pp. 46-47 (Witness CNAK); T. 13 April 2010 p. 46 (Witness CNAJ); T. 13 April 2010 p. 65 (ICS) (Witness CNAJ); T. 19 May 2010 pp. 35-38 (ICS) (Witness T92); T. 7 July 2010 pp. 10-13 (Witness T97); T. 13 July 2010 p. 61; T. 14 July 2010 p. 9 (ICS) (Witness T98).
[2031] T. 25 November 2009 p. 55 (ICS); T. 26 November 2009 p. 42 (ICS) (Witness CNAK).
[2032] T. 7 July 2010 p. 18 (ICS) (Witness T97); T. 13 July 2010 p. 68 (Witness T98).
[2033] T. 19 May 2010 p. 39 (ICS) (Witness T92); T. 8 July 2010 p. 20 (ICS) (Witness T97); T. 13 July 2010 pp. 61-62; T. 14 July 2010 pp. 3-4, 9, 42 (ICS) (Witness T98).
[2034] T. 7 July 2010 p. 18 (ICS) (Witness T97).

1589. In this regard, the Chamber notes that Witness T98 corroborated Witness CNAK's testimony that the Crisis Committee promoted violence, not peace. Witness T98 testified that the Committee was used to carry out revenge. Witness T98 also testified that the killings were not stopped after the formation of the Committee and he could not say whether the Committee authorised killings. The Chamber considers that this testimony undercuts the witness's credibility with regard to the purpose for which the Crisis Committee was established.

1590. The Chamber notes that Witness T97 testified that the directive passed on by Munyeshyaka at the roadblock was to stop the looting and the killings. However, the Chamber does not find Witness T97's testimony to be reasonable under the circumstances. The Chamber considers that Witness T97 may have had a motivation to insulate himself from any crimes committed at the roadblock he manned, and that the true content of these directives may be inferred from the conduct that followed them (3.5.12.3). The Chamber considers that the only reasonable inference to be drawn from the evidence is that Munyeshyaka came to the roadblock to relay the Crisis Committee's directive that Tutsis should not be killed at roadblocks but should be taken to the *commune* office to be killed.

1591. Recalling its previous assessment of Witness CNAK's credibility as to the Crisis Committee meeting, the Chamber considers that Witness CNAK provided a credible and reliable account of what Nzabonimana said at the meeting. Furthermore, Defence Witnesses T97 and T98 corroborated Witness CNAK's testimony as to the purpose of the Crisis Committee. The Chamber considers that the evidence presented at trial established that the Crisis Committee targeted the killings that were taking place at roadblocks. The Chamber therefore concludes that the Prosecution has proven beyond a reasonable doubt that purpose of the Crisis Committee was to conceal the killings from the international community and to address the issue of Hutus fighting over the property of Tutsis.

3.6.4.3.3 Subsequent Killings

1592. Witness CNAK testified that people suspected of being Tutsis or Hutu accomplices were arrested and taken to the Tambwe *commune* office, where they were killed. Those killed on the orders of the Crisis Committee included Nuru Nyabugaju, Simon Munyentwari and 14 members of his family, Sixbert Ruhezamihigo and a woman named Languida. Ruhezamihigo was killed at the *commune* office. Munyentwari and his family were abducted and no one knew where they were killed.[2035]

1593. The Chamber notes that Witness CNAK offered conflicting testimony regarding the death of Simon Munyentwari. In direct examination and in his 2008 statement, Witness CNAK indicated that Munyentwari and his family were killed at the *commune* office, on the orders of the Crisis Committee. In cross-examination, however, the witness testified that Munyentwari and his family "were abducted and no one knows where they were killed."[2036] While acknowledging this discrepancy, the Chamber considers it to be minor, particularly given that Witness T97

[2035] T. 25 November 2009 p. 56 (ICS); T. 25 November 2009 p. 58 (HC) (French) (for the spelling of "Languida"); T. 26 November 2009 pp. 44-45 (ICS) (Witness CNAK).
[2036] T. 25 November 2009 p. 56 (ICS); T. 26 November 2009 pp. 44-45 (ICS) (Witness CNAK); Defence Exhibit 72 (Statement of Witness CNAK, 12 November 2008).

provided corroborating evidence that *Bourgmestre* Mugaga and others abducted Munyentwari and his family from their house and subsequently killed them.[2037]

1594. The Chamber observes that in Paragraph 49 of the Indictment, the Prosecution did not include Munyentwari and his family among the victims ordered killed by the Crisis Committee. The Prosecution also does not reference Munyentwari and his family in its closing submissions with regard to Paragraph 49. As a result, the Chamber will not consider the killing of Munyentwari and his family as a basis for conviction under Paragraph 49 of the Indictment.[2038] Nevertheless, the Chamber considers that evidence of this killing may be relevant to the proof of, and may provide further corroboration for any findings on, the allegations provided in Paragraph 49.[2039]

1595. The Chamber notes that Witness CNAK did not testify that he witnessed the issuance of the orders to kill Nuru Nyabugaju, Sixbert Ruhezamihigo and Languida, and did not testify that he actually witnessed the killings.

1596. Although they did not testify that the Crisis Committee ordered the killings, Defence Witnesses T97 and T98 provided evidence which corroborated Witness CNAK's testimony that Nuru Nyabagaju, Sixbert Ruhezamihigo and Languida were killed. When he was in charge of information-gathering for *Gacaca* proceedings, Witness T97 learned that Languida was killed at the *commune* office. Witness T97 also corroborated Witness CNAK's testimony that Nuru Nyabagaju and Sixbert Ruhezamihigo were killed, though Witness T97 did not know when these individuals were killed, nor who killed them.[2040] Witness T98 acknowledged that Nuru Nyabugaju was killed.[2041]

1597. The Chamber notes that no witness testified to having been present during the issuance of orders to kill Nuru Nyabugaju, Sixbert Ruhezamihigo and Languida. In addition, the Parties presented no witnesses who claimed to have actually seen the killings of these individuals. Although Witness CNAK said that these persons were killed, and even though this was corroborated to varying degrees by Defence witnesses, the Chamber notes that these accounts were all based on hearsay and were lacking in detail. Moreover, even though Witness CNAK testified that he heard about the killings from his roommate and other friends who worked at roadblocks, it is unclear whether the accounts given to Witness CNAK were based on first-hand knowledge or on other, less reliable means. The Chamber thus recognises that Witness CNAK's evidence regarding the issuance of these orders and the killings may have constituted double hearsay.

[2037] T. 8 July 2010 pp. 5-6; T. 8 July 2010 p. 13 (ICS) (Witness T97).
[2038] *See Ntagerura et al.*, Judgement (AC), para. 164 (overturning a conviction due to notice concerns and to the Prosecution's non-pursuit of an allegation in its closing submissions). The Chamber notes that the Prosecution appears to pursue the killing of Simon Munyentwari in relation to Paragraph 44 of the Indictment. *See* Prosecution Closing Brief, paras. 246 (Paragraph 44), 340 (Count 2).
[2039] *See Renzaho*, Judgement (AC), paras. 71, 90.
[2040] T. 8 July 2010 pp. 44-45 (ICS) (Witness T97).
[2041] T. 14 July 2010 p. 55 (ICS) (Witness T98). The Chamber notes that Witness T98 also testified that individuals named Ignace Rulinda and Mutaganda were killed at the *commune* office. *See* T. 14 July 2010 pp. 9-10 (ICS) (Witness T98).

1598. Under these circumstances, and absent any direct evidence to support the Prosecution's allegations, the Chamber cannot conclude that the only reasonable inference is that these individuals were killed pursuant to orders of the Crisis Committee. The Prosecution has therefore failed to prove beyond a reasonable doubt that many Tutsis caught at roadblocks were killed on the orders of this Committee, including Nyabugaju, Ruhezamihigo and Languida.

1599. Having considered the totality of the evidence, the Chamber concludes that Witness CNAK provided a credible and reliable eyewitness account of the meeting establishing the Crisis Committee. The Chamber recalls that it found Witness CNAK's testimony insufficient to support the allegations in Paragraph 44 of the Indictment relating to the meeting at Marianne's house, given the inconsistencies between Witness CNAK's testimony and his previous statements with regard to that specific allegation (3.5.12.3). Recalling the principles set out in the Preliminary Issues section of this Judgement (2.7.1), the Chamber notes that it may accept some and reject other parts of a witness's testimony, and that it may rule on the basis of a single witness's testimony if, in its opinion, that testimony is relevant and credible (2.7.4). Furthermore, the Chamber notes that Defence Witnesses T97 and T98 provided evidence consistent with the testimony of Witness CNAK regarding the establishment, membership, purpose and *modus operandi* of the Crisis Committee. Thus, the Chamber concludes that the Prosecution has proven beyond a reasonable doubt that, as a way of concealing the killings from the international community, Nzabonimana, in the company of Major Jean-Damascene Ukirikyeyezu, a member of the Civil Defence in Gitarama, presided over a meeting in Ruhango *cellule*, Nyamagana *secteur*, Tambwe *commune*, Gitarama *préfecture*, where the Crisis Committee of Tambwe *commune* was selected. The meeting was convened to address the issue of Hutus fighting over the property of Tutsis. The Chamber also concludes that the Prosecution has not proven beyond a reasonable doubt that Tutsis caught at roadblocks, including Nuru Nyabugaju, Sixbert Ruhezamihigo and Languida, were killed on the orders of this Committee.

3.6.5 Killing of Witness CNAQ's Children

3.6.5.1 Introduction

1600. Paragraph 30 of the Indictment alleges that on or about 4 June 1994, Nzabonimana told the *Interahamwe*, *commune* policemen and Hutu civilians to kill the children of Witness CNAQ. Shortly after, her six children were killed in Nyabikenke *commune*. The children were killed by *Interahamwe* including Witness T39, Maniraho, Mporanyimigabo, Witness T45, a *commune* policeman named Munyabarenzi and Hutu civilians.[2042]

1601. The Prosecution submits that Witness CNAQ and her children sought refuge at her father's house.[2043] Nzabonimana came to the area and ordered that the children be killed. On 6 June 1994, *Interahamwe* from Kavumu *secteur*, *conseillers*, Witnesses T31 and T24 and two *commune* policemen abducted the children and killed them, informing Witness CNAQ that they could "no longer bear to live amongst the *Inyenzi*." One of the *Interahamwe* told Witness CNAQ that they had been ordered by Nzabonimana to kill the children. Witness CNAQ learned that

[2042] Para. 30 of the Indictment.
[2043] In order to protect witness identity, the location of the house has not been revealed in the Judgement.

some of her children were thrown into Nyabarongo River and others into a pit latrine. The Prosecution relies on the testimony of Witnesses CNAQ and CNBU.[2044]

1602. The Defence does not dispute that Witness CNAQ's children were abducted and killed. The Defence claims that Witness CNAQ fabricated her evidence against Nzabonimana (3.2.2). The Defence also denies that Nzabonimana played a role in the abduction and killing, and submits that the Prosecution evidence does not prove the allegation beyond a reasonable doubt. Furthermore, the Defence contends that the Prosecution evidence was fabricated and that the two Prosecution witnesses colluded to implicate Nzabonimana in the death of the children. The Defence relies upon Defence Witnesses T24, T31, T40, T150, T34 and Fernand Batard.[2045]

3.6.5.2 Evidence

Prosecution Witness CNAQ

1603. Witness CNAQ, a Hutu farmer who lived in Nyabikenke *commune*, had eight children in 1994.[2046] The witness's father was Hutu and her mother was Tutsi. She knew that Nzabonimana was a Minister.[2047]

1604. On 11 April 1994, Witness CNAQ and her children were chased out of their family home. It was being said that her children, who were Tutsis, were *Inyenzi Inkotanyi* and that they were snakes. They sought refuge at the house of Witness CNAQ's father.[2048]

1605. Four attacks occurred during Witness CNAQ's stay at her father's house. On the first occasion, attackers came and told Witness CNAQ that if she did not give them money, they would kill her children. The witness gave 30,000 Rwandan Francs to the assailants.[2049]

1606. On the second occasion, the witness was with her neighbour Emmanuel and her brother. Emmanuel was one of Nzabonimana's *Interahamwe* and on good terms with the *Interahamwe* from Kavumu. The assailants again asked for money. Witness T31 was involved in the attack. Emmanuel told the assailants that the witness's children were not to be killed and Witness CNAQ again gave money to the assailants. Emmanuel was also present during the third attack. Witness T31 was again one of the assailants. Emmanuel gave money to the assailants to buy beer, and they left.[2050]

1607. At the end of May 1994, Witness CNAQ was in her father's house with Emmanuel and Witness CNBU. During cross-examination, the witness estimated the date to be 4 June 1994. They heard the sound of a car engine and a horn, coming from the road located above the house. A wooded area lined both sides of the road. When they heard the vehicle, they were curious

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[2044] Prosecution Closing Brief, paras. 11, 174, 176-177; T. 20 October 2011 pp. 29-30; T. 21 October 2011 p. 8 (Prosecution Closing Argument).
[2045] Defence Closing Brief, paras. 339-392; Defence Additional Defence Brief, paras. 32-33, 35-36; T. 20 October 2011 pp. 57-58 (Defence Closing Argument).
[2046] Prosecution Exhibit 6 (Protected Information Sheet); T. 16 November 2009 pp. 62-63 (ICS) (Witness CNAQ).
[2047] T. 17 November 2009 pp. 56-57 (ICS) (Witness CNAQ).
[2048] T. 16 November 2009 pp. 63-64 (ICS); T. 17 November 2009 p. 56 (ICS) (Witness CNAQ).
[2049] T. 16 November 2009 p. 66 (ICS); T. 23 November 2009 p. 10 (ICS) (Witness CNAQ).
[2050] T. 16 November 2009 pp. 66-67 (ICS); T. 23 November 2009 p. 10 (ICS) (Witness CNAQ).

because *Interahamwe* assailants had earlier come in vehicles to hunt for people hiding in the wooded area.[2051]

1608. The witness left the house to see the vehicle. After exiting the house, the witness went "above the house" with Emmanuel. The surrounding area of her father's house remained essentially the same at the time of the witness's testimony as it had been in 1994, although some trees were no longer there.[2052]

1609. Witness CNAQ saw Nzabonimana. Nzabonimana called Emmanuel over and asked whether Witness CNAQ's children were still alive. Emmanuel answered affirmatively. Nzabonimana then told him that all the children needed to be killed, including the babies, because they were in the midst of the final phase of an important war. The witness was shocked by these words. When she heard Nzabonimana enquire about her children, Witness CNAQ was at a location near the road.[2053]

1610. Emmanuel approached Nzabonimana and Witness CNAQ stayed behind, hiding behind a bush. She could not hear what they said to each other but saw Nzabonimana touch his jacket. Nzabonimana removed his jacket and showed his shoulder to Emmanuel. She also testified that Nzabonimana pointed at his shoulder. Witness CNAQ left because she was afraid. Emmanuel returned to the house and said that Nzabonimana told him that all the children had to be found and killed, even the babies. The children had to be killed because the *Inyenzi* had fired a shot at Nzabonimana and handicapped him.[2054]

1611. In cross-examination, Witness CNAQ stated that they were at the entrance to the family compound, located just a few metres opposite her father's house, while Emmanuel was talking to Nzabonimana. She was not far from the road, but if someone standing near the vehicle spoke, they could hear that person from where they were standing.[2055]

1612. The witness's family members and the farmers in the neighbourhood knew of Nzabonimana's statements to Emmanuel. Everyone knew that the Minister had passed by the area.[2056]

1613. On 6 June 1994, during the day, *Interahamwe* from Nzabonimana's Kavumu *secteur*, came and found Witness CNAQ and her children inside her father's home. The *Interahamwe* took Witness CNAQ and her children outside and asked her to remove from her back the young child she was carrying. The *Interahamwe* said they could no longer bear the fact that *Inyenzi* were among them, and that it was not normal that Nzabonimana had to intervene for the children

[2051] T. 16 November 2009 pp. 63-64, 66 (ICS); T. 17 November 2009 p. 57 (ICS); T. 23 November 2009 pp. 11, 16-17, 34 (ICS) (Witness CNAQ).
[2052] T. 16 November 2009 pp. 63-64, 66 (ICS); T. 23 November 2009 pp. 20-21 (ICS) (Witness CNAQ).
[2053] T. 16 November 2009 pp. 63-64, 66 (ICS); T. 17 November 2009 p. 58 (ICS); T. 23 November 2009 pp. 16-17, 19, 33, 46-47 (ICS) (Witness CNAQ); Defence Exhibit 1g (Photograph 3.5.1.2.6).
[2054] T. 16 November 2009 pp. 63-64, 66 (ICS); T. 17 November 2009 p. 57 (ICS); T. 23 November 2009 pp. 16-17, 19-20 (ICS) (Witness CNAQ).
[2055] T. 23 November 2009 pp. 18-19 (ICS) (Witness CNAQ).
[2056] T. 23 November 2009 p. 35 (ICS) (Witness CNAQ).

to be killed. The witness's father told the *Interahamwe* to take his cows but to spare the children. The *Interahamwe* refused the offer. Many people from Kavumu were present.[2057]

1614. An *Interahamwe* named Neretse hit Witness CNAQ with a machete and cut the arm of one of her children. The attackers said they would not kill the witness immediately, and tied her arms behind her back. The *Interahamwe* beat and severely wounded Witness CNAQ's children. They took her children and the witness remained behind with her hands tied behind her back. They acted on Nzabonimana's instructions. Witness T24 arrived during the attack; he did not say anything and proceeded to attend a meeting.[2058]

1615. Witness CNAQ learned that the *Interahamwe* killed six of her children. She never saw her children again. Some of her children were thrown into the Nyabarongo River and others were thrown into a latrine. Witness CNBU saved her sixth child. Her brother saved her third child.[2059]

1616. The incident occurred after the refugees in Kabgayi had already been released. The war ended after her children were killed. It was in the third month of the war.[2060]

1617. Witness CNAQ testified at Witness T24's *Gacaca* trial on 3 April 2009. He was being tried for the death of Witness CNAQ's children. Witness CNAQ did not mention Nzabonimana at the trial because she testified exclusively about Witness T24. The trial addressed those who were present at the trial. Nzabonimana was outside the country, so she did not mention him. Her brother also testified and did not accuse Witness T24 of acting in complicity with Nzabonimana. Witness T24 was convicted for failing to assist her children, for hitting Witness CNAQ and for making undignified statements against Witness CNAQ. He was not convicted of organising, upon instructions from Nzabonimana or any other source, a search operation with the purpose of eliminating the witness's children.[2061]

1618. Witness CNAQ denied that she was a member of the *Ibuka* survivors association. However, she stated that every year on 4 April 1994, she was part of a group that organised a support march in memory of their loved ones who were killed because of their ethnicity.[2062]

Prosecution Witness CNBU

1619. Witness CNBU, a Hutu farmer who lived in Nyabikenke *commune* in 1994, knew Nzabonimana as a Minister who was a member of the MRND.[2063] The witness worked for Nzabonimana for six months in 1992 and therefore knew him by sight. Nzabonimana was respected in the community because he was both a Minister and influential. The local population

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[2057] T. 16 November 2009 pp. 65-66 (ICS); T. 16 November 2009 p. 74 (HC) (French) ("*Il y avait beaucoup de gens de Kavumu qui étaient là.*"); T. 17 November 2009 p. 56 (ICS) (Witness CNAQ).
[2058] T. 16 November 2009 pp. 64-66 (ICS); T. 17 November 2009 p. 56 (ICS) (Witness CNAQ). The Chamber notes that the English transcript provides an erroneous name. *See* T. 17 November 2009 p. 59 (HC) (Witness CNAQ) (French).
[2059] T. 16 November 2009 pp. 64, 66 (ICS); T. 17 November 2009 pp. 56-57 (ICS) (Witness CNAQ).
[2060] T. 17 November 2009 p. 58 (ICS) (Witness CNAQ).
[2061] T. 23 November 2009 pp. 37-40, 43 (ICS) (Witness CNAQ); Defence Exhibit 60A (*Gacaca* Transcripts for Witness T24, 3 April 2009).
[2062] T. 23 November 2009 pp. 6-7 (ICS) (Witness CNAQ).
[2063] Prosecution Exhibit 2 (Protected Information Sheet); T. 11 November 2009 pp. 35-36 (Witness CNBU).

and local officials listened to what he said. The witness knew Nzabonimana's family, who resided in Kavumu *secteur*, Nyabikenke *commune*.[2064]

1620. Around 29 May 1994, at between 2.00 and 3.00 p.m., Witness CNBU saw Nzabonimana. On this day, Witness CNBU left his house to see Witness CNAQ, who had sought refuge at her parents' home along with her eight children. The children had a Tutsi father.[2065]

1621. The houses of Witness CNBU, Witness CNAQ's father, a neighbour named Emmanuel and Emmanuel's brother and father were all in close proximity to one another. One kilometre separated Witness CNBU's house from the house of Witness CNAQ's father. Three hundred metres separated Emmanuel's house from that of Witness CNAQ's father. The house of Emmanuel's father was directly opposite the main entrance of Witness CNAQ's father's house, and Emmanuel lived approximately three hundred metres below that house. Witness CNBU identified the houses and the layout of the area in photographs and a video, and indicated that they accurately represented the location of the houses in 1994. Witness CNBU identified a path leading to the road, which ran between the houses of Witness CNAQ's father and Emmanuel. During the rainy season it was impossible for a vehicle to traverse the path. A vehicle travelling to Emmanuel's house would not pass Witness CNAQ's father's house. A different road, which led below the house of Witness CNAQ's father, allowed access to the house and could only be used by motorcycles.[2066]

1622. Witness CNBU arrived at the house and spoke to Witness CNAQ for about 25 minutes. Emmanuel was also present. Witness CNBU, Witness CNAQ and Emmanuel heard a car horn and went to the road near the house, located about one hundred metres above the house of Witness CNAQ's father. They exited at the front of the house. A small forest was located between the house and the road, slightly below the road. One hundred metres separated the road from the house.[2067]

1623. They realised that the black Pajero vehicle, which was parked on the road, belonged to Nzabonimana. Nzabonimana often travelled in that vehicle. The witness saw Nzabonimana and two soldiers.[2068]

1624. Emmanuel, who managed Nzabonimana's property, approached Nzabonimana. Witnesses CNBU and CNAQ followed Emmanuel, but stayed in the nearby eucalyptus forest because they were afraid. Big trees lined both sides of the road. Witness CNBU hid behind a

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[2064] T. 11 November 2009 pp. 35-36; T. 11 November 2009 p. 51 (ICS) (Witness CNBU).
[2065] T. 11 November 2009 p. 36; T. 11 November 2009 p. ii (Extract); T. 11 November 2009 pp. 38, 40-41, 58 (ICS) (Witness CNBU).
[2066] T. 11 November 2009 pp. 59-61, 66-71, 73-75 (ICS) (Witness CNBU); Defence Exhibit 1 (Photograph 3.5.1.3.11); Defence Exhibit 1A (Photograph 3.5.1.3.12); Defence Exhibit 1B (Photograph 3.5.1.3.13); Defence Exhibits 1C and 1D (Photograph 3.5.1.3.8); Defence Exhibit 1E (Photograph 3.5.1.3.7); Defence Exhibit 1F (Photograph 3.5.1.3.3); Defence Exhibit 1I (Photograph 3.5.1.1.1); Defence Exhibit 18A and B (Video 2.5).
[2067] T. 11 November 2009 pp. 38, 40, 60-61, 63, 70-71, 73-75 (ICS); T. 11 November 2009 p. ii (Extract) (Witness CNBU); Defence Exhibit 1g (Photograph 3.5.1.2.6); Defence Exhibit 18A and B (Video 2.5).
[2068] T. 11 November 2009 p. ii (Extract); T. 11 November 2009 pp. 38, 42, 63 (ICS) (Witness CNBU).

large eucalyptus tree lining the road. Witness CNAQ sat in the wooded area which belonged to her father.[2069]

1625. From a distance of ten metres away, Witness CNBU heard Nzabonimana ask Emmanuel if he had any news about the area. Witness CNAQ could also hear the conversation. Emmanuel answered that things were fine. Nzabonimana asked whether Witness CNAQ's children were still in the area. Emmanuel answered in the affirmative and Nzabonimana then asked him: "What have you done? Why are these children still there?" Emmanuel replied: "We couldn't do anything. They are our children. We need to protect them." Nzabonimana then told Emmanuel: "These children must not live. The directives are such that even little children or infants must be killed." Emmanuel objected, saying: "But I think that it was said that old women and children should not be killed." Nzabonimana responded: "You must do that job. The instructions [...] have been issued." Nzabonimana knew of the family because one of Witness CNAQ's in-laws had a child whose godfather was Nzabonimana.[2070]

1626. Nzabonimana left and continued in the direction of Kigina where he had a farm. Witness CNBU, Witness CNAQ and Emmanuel returned to the house and Emmanuel confirmed the conversation that he had with Nzabonimana. Witness CNBU was shocked to hear that a person in a position of authority had issued orders for people to be killed. Witness CNBU asked Witness CNAQ to give one of her children to him so that he could save the child. Witness CNBU then took one of the children to his home. That child survived the genocide.[2071]

1627. Between 3 and 6 June 1994, attackers from Nzabonimana's area came to Witness CNBU's home armed with grenades. At the house, the attackers met Witness T24, a *commune* policeman named Munyabarenzi and a second brigadier named Charles. After about an hour, the attackers came to the witness's place of business, located one kilometre from Witness CNAQ's father's house. The attackers had six of Witness CNAQ's children with them and also two young girls who they had captured and wounded. One of the children had been wounded by a machete. One of the children was carrying her younger brother and the others were walking. Witness T31 was present and Witness CNBU asked him why he was killing the children. Witness T31 answered that there was no choice because orders had been issued for the children to be killed. The attackers led the group towards the Nyabarongo River. Witness CNBU did not accompany them. None of the children returned and their bodies were never found.[2072]

1628. Witness CNBU testified before a *Gacaca* court in 2007 in the case of an individual charged with leading attacks against Witness CNAQ's father's house. Witness CNBU did not testify at the *Gacaca* trials of Witnesses T24 and T31, though Witness T31 asked for forgiveness from Witness CNAQ during his *Gacaca* trial. Both Witnesses T24 and T31 were convicted for their roles in the attack. During his trial, Witness T24 did not state that he received instructions from Nzabonimana.[2073]

[2069] T. 11 November 2009 pp. 38, 42, 62-63, 71, 73-75 (ICS); T. 11 November 2009 p. ii (Extract) (Witness CNBU); Defence Exhibit 18A and B (Video 2.5).
[2070] T. 11 November 2009 pp. 38-42, 62 (ICS) (Witness CNBU).
[2071] T. 11 November 2009 pp. 39-41, 62-63 (ICS) (Witness CNBU).
[2072] T. 11 November 2009 pp. 39, 42-43, 78 (ICS) (Witness CNBU).
[2073] T. 11 November 2009 pp. 78-81 (ICS) (Witness CNBU).

Defence Witness T24

1629. Witness T24, a local government official in Nyabikenke *commune* in 1994,[2074] denied that he met Nzabonimana in the *secteur* where the house of Witness CNAQ's father was located during the genocide.[2075]

1630. Witness T24 testified that between 22 and 25 May 1994, he participated in searches for *Inkotanyi* in the Ndiza forest. In the area, people began searching for anyone who could have any affiliation with Tutsis. The killers started fighting among themselves over looted property. The population had become like drug addicts and were killing each other.[2076]

1631. On 6 June 1994, Witness T24 went to the *secteur* where the house of Witness CNAQ's father was located to hold a meeting. Witness T31 was present. At the meeting Witness T24 called on the population to stop hostilities. The killers who were in the hills, led by Maniraho, took advantage of the meeting to go to Witness CNAQ's home. The children were hidden at the house. Those at the meeting were told that an attack had been launched at the house. Witness T24 denied that he led the attack.[2077]

1632. Witness T24 arrived as the attack was underway. The assailants were shouting and saying that Witness CNAQ's husband must have played a role in the war. Witness T24 admitted that he had made a statement which could have been understood as encouraging the killers because he was afraid of the attackers. He acknowledged that he asked Witness CNAQ where her husband was, and that he struck Witness CNAQ with the butt of a gun. He did so because he had sided with the Hutus in order to save himself. The witness could not confirm whether Witness T31 was present during the attack.[2078]

1633. The witness did not hear the attackers claim that they received instructions from Nzabonimana. The killers from Kavumu *secteur* acted on their own initiative. He did not try to protect the children, who were considered to be the children of an *Inyenzi*. Tutsis were referred to as "the *Inyenzi*." He took the side of the Hutus to save his life, and asked for forgiveness in *Gacaca* courts for doing so.[2079]

1634. Witness T24 admitted before a *secteur* level *Gacaca* court that he played an indirect role in the death of Witness CNAQ's children. He was sentenced to a term of 26 years' imprisonment.[2080]

1635. During Witness T24's *Gacaca* trial, Maniraho admitted that he killed the children. Maniraho stated that the killers did not need any officials to help them in the killings. No one, including Witness CNAQ, mentioned Nzabonimana's name during the *Gacaca* proceedings. The judges did not ask questions about Nzabonimana. The witness testified that *Gacaca* records did

[2074] For additional introductory information on Witness T24, *see* para. 284, *supra*.
[2075] T. 28 April 2010 pp. 16, 21 (ICS) (Witness T24).
[2076] T. 27 April 2010 p. 13 (ICS); T. 28 April 2010 pp. 14-15 (ICS) (Witness T24).
[2077] T. 28 April 2010 pp. 24-25 (ICS) (Witness T24).
[2078] T. 27 April 2010 p. 14 (ICS); T. 28 April 2010 pp. 25, 56 (ICS); T. 3 May 2010 p. 20 (ICS) (Witness T24).
[2079] T. 27 April 2010 p. 14 (ICS); T. 3 May 2010 pp. 20, 27 (ICS) (Witness T24).
[2080] T. 27 April 2010 pp. 13-15 (ICS); T. 28 April 2010 pp. 21, 51-54 (ICS) (Witness T24).

not contain the full truth of what happened in Rwanda in 1994 and that the entire truth of the events would never be known.[2081]

Defence Witness T31

1636. Witness T31, a local government official in Nyabikenke *commune* in 1994,[2082] testified that Witness CNAQ "was always being attacked." Assailants went to villages looking for money and property. Witness CNAQ's children were abducted on the same day that a security meeting was going to be held near the house of Witness CNAQ's father. Witness T24 organised the meeting. The purpose of the meeting was to renew the searches for *Inkotanyi* in the area. The meeting was never actually held.[2083]

1637. Witness T24 arrived in a vehicle which did not belong to the *commune*. He was carrying a weapon and asked the people to approach so the meeting could begin. Witness CNAQ was present and said to Witness T24: "Those people who have come to the meeting want to abduct my children." She begged for Witness T24 to intervene. Witness T24 said he was not there to solve the problems between the Hutus and Tutsis.[2084]

1638. The people assembled went to abduct Witness CNAQ's children instead of attending the meeting. The children were abducted from a house near the venue of the meeting. Witness T31 saw a man named Maniraho, who had been a participant in the meeting, with Witness CNAQ's children. Maniraho abducted and killed the children and was later convicted of the crime. Witness T31 knew that Witness CNAQ's children were drowned in the river.[2085]

1639. Witness T31, the *conseiller* of the *secteur* and Witness T24 were accused of having played a role in the death of the children. The *Gacaca* court acquitted the witness. Witness CNAQ submitted a document to the court which stated that Witness T31 did not play a role in the abduction of the children.[2086]

1640. The witness denied that he attacked Witness CNAQ's children and testified that he was never accused of doing so. The witness denied that Nzabonimana sent the assailants and said that Nzabonimana had no contact with Maniraho, who led the attacks. The assailants acted of their own volition.[2087]

1641. The witness testified during Witness T24's *Gacaca* trial in the *secteur* and did not hear any mention of Nzabonimana. Witness CNAQ was present and testified that Witness T24 organised a meeting and that participants of the meeting abducted her children in the presence of Witness T24. Family members of Witness CNAQ were also present at the trial. They mentioned

[2081] T. 27 April 2010 pp. 43; T. 27 April 2010 pp. 12-15 (ICS) (Witness T24).
[2082] For additional introductory information on Witness T31, *see* para. 281, *supra*.
[2083] T. 3 May 2010 pp. 68-69, 71 (ICS); T. 5 May 2010 pp. 17, 26 (ICS) (Witness T31).
[2084] T. 5 May 2010 pp. 6-7, 14-15 (ICS) (Witness T31).
[2085] T. 3 May 2010 pp. 67-69 (ICS); T. 5 May 2010 p. 16 (ICS) (Witness T31).
[2086] T. 3 May 2010 pp. 68-70 (ICS) (Witness T31).
[2087] T. 3 May 2010 pp. 70-71 (ICS) (Witness T31).

Maniraho in connection with the killings, but did not mention Nzabonimana. Witness T24 was convicted and sentenced to 26 years' imprisonment.[2088]

Defence Witness T40

1642. Witness T40, a farmer living in Nyabikenke *commune* in 1994, was related to Witness CNAQ.[2089] For one year and three months, ending in April 1994, Witness T40 worked for Nzabonimana. Following the death of the President, the witness manned roadblocks in his *secteur*. Those who manned the roadblocks armed themselves with sticks.[2090]

1643. Prior to April 1994, Witness CNAQ lived with her family in a different *secteur* than Witness T40. Her husband was a Tutsi. Witness T40 testified that Witness CNAQ had nine children, seven of whom were killed during the genocide.[2091]

1644. Witness T40 saw Witness CNAQ on 12 April 1994 at the home of her father, who lived close to Witness T40. She arrived at the house the previous night. Witness CNAQ told Witness T40 that she and her family had initially sought refuge at Ntarabana Parish, but following an attack on the parish, they sought refuge at her father's home. Witness CNAQ came to her father's home with her children and family members of her husband. Witness CNAQ and her children were not in hiding, since everyone knew that they were in the house. The family of Witness CNAQ's husband left for the *commune* office the day after their arrival.[2092]

1645. After the death of the President, people from Kavumu, Mahembe and Gitovu *secteurs* attacked the *secteur* where Witness CNAQ's father's house was located. They looted Tutsis' property and slaughtered their cows. On several occasions between April and May 1994, assailants regularly came to the house to ask for money from Witness CNAQ's father. He paid the assailants and they would then leave.[2093]

1646. Witness T40 witnessed attacks on Witness CNAQ's children. Assailants were paid four times to not kill Witness CNAQ's children. Each time the assailants came, the witness would go to see what was happening. The assailants said they had come to abduct the children and then left when they received money. On the first occasion, Witness CNAQ's father gave the assailants 3,000 Rwandan Francs. On the second occasion, Witness CNAQ's father gave them 2,000 Rwandan Francs. On the third occasion, Witness CNAQ's father gave the assailants 4,000 Rwandan Francs. The father borrowed 1,000 Rwandan Francs from Witness T40's younger brother.[2094]

1647. On the fourth occasion, the assailants received 1,000 Rwandan Francs. Witness CNAQ's father got the money from Emmanuel, a man who lived in the region. Emmanuel advised Witness CNAQ's father to give them money so they would leave. The witness never saw

[2088] T. 3 May 2010 pp. 68, 71-72 (ICS) (Witness T31).
[2089] Defence Exhibit 14 (Protected Information Sheet); T. 10 May 2011 p. 49 (ICS); T. 11 May 2010 p. 24 (ICS) (Witness T40).
[2090] T. 10 May 2010 p. 51 (ICS); T. 17 May 2010 pp. 30, 54 (ICS) (Witness T40).
[2091] T. 11 May 2010 p. 62 (ICS); T. 17 May 2010 p. 52 (ICS) (Witness T40).
[2092] T. 10 May 2010 pp. 54-56 (ICS) (Witness T40).
[2093] T. 10 May 2010 p. 56 (ICS); T. 11 May 2010 p. 65 (ICS) (Witness T40).
[2094] T. 11 May 2010 pp. 65-67 (ICS); T. 17 May 2010 p. 9 (ICS) (Witness T40).

Witness CNAQ's brother during the four attacks. The witness denied that Witness CNAQ's husband sold his cows in order to pay the assailants.[2095]

1648. At approximately 8.00 a.m., on a morning in the beginning of June 1994, the witness was "above the house" and saw a group of 120 to 150 assailants arrive from various *secteurs*. The assailants asked why the witness was still there, since Witness T24 had told the others to go hunt the *Inkotanyi* in the forest. The assailants had everyone come out of their houses. The witness climbed the hill with the assailants. When they arrived at the summit, they found between 400 and 700 other assailants in a wooded area. The distance between the wooded area and Witness CNAQ's father's house was about five hundred metres. They did not find any *Inyenzi* or *Inkotanyi*. The witness knew at the time that *Inyenzi* and *Inkotanyi* referred to Tutsis. He engaged in the search, knowing that if Tutsis were found they would be abducted. The witness became aware of the search that day. The people told him that they were given orders by *commune* authorities to conduct the search.[2096]

1649. Witness T24 arrived and the group followed his vehicle. The vehicle stopped above the residence of Witness CNAQ's father. Everyone joined Witness T24 there. *Commune* policemen were also present and people continued to arrive. Witness CNAQ was also present. Witness T24 was aboard a *commune* vehicle, driven by a *commune* driver. The witness used to see the vehicle, a Suzuki, at the *commune* office. A total of 300 to 700 people were present. Witness T40 identified the location where Witness T24 held the meeting.[2097]

1650. Witness T40 could see and hear Witness T24. Witness T24 was not armed. Many people surrounded Witness T24. Witness CNAQ did not say anything to Witness T24 and Witness T40 did not see Witness T24 hit Witness CNAQ with the butt of a gun. Witness T24 did not refer to Witness CNAQ's children as "*Inyenzi*."[2098]

1651. A man asked Witness T24 if he had given Hutu identity cards to Tutsis. Witness T24 responded that the people who received the cards were Hutus. Witness CNAQ's father then said to Witness T24: "I have children in my house. The assailants [...] are always coming to attack my home. I have given all my money to those assailants. Please, help me." Witness T24 responded: "Those people you are hiding are Tutsis. And their father, who was also a Tutsi, has been killed. Where are you going to keep those people later on?" Witness T24 did not mention Nzabonimana, and neither did anyone else.[2099]

1652. The assailants realised that Witness T24 had not done anything to save the lives of the children, and then took the children and led them towards the river. A small group of around 15 people abducted the children and others followed the abductors. The witness identified two of the abductors as men named Maniraho and Neretse. Witness CNAQ's children were thrown into the river.[2100]

[2095] T. 11 May 2010 p. 67 (ICS); T. 17 May 2010 pp. 7-8 (ICS) (Witness T40).
[2096] T. 10 May 2010 pp. 56-58 (ICS); T. 17 May 2010 p. 14 (ICS) (Witness T40).
[2097] T. 10 May 2010 pp. 56, 58, 67 (ICS); T. 17 May 2010 pp. 11-13 (ICS) (Witness T40); Defence Exhibit 20A and B (Video 2.8), 00.59.
[2098] T. 17 May 2010 pp. 13, 16-18 (ICS) (Witness T40).
[2099] T. 10 May 2010 pp. 56-58 (ICS); T. 11 May 2010 pp. 4-5 (ICS) (Witness T40).
[2100] T. 10 May 2010 pp. 56-58 (ICS); T. 11 May 2010 p. 67 (ICS) (Witness T40).

1653. The witness saw Witness CNAQ's brother during this last attack. One of Witness CNAQ's children stayed with Witness CNBU. The witness did not know exactly when or why the child went to live with Witness CNBU.[2101]

1654. Emmanuel did not tell Witness T40 that he met Nzabonimana at the location near Witness CNAQ's father's house several days before the abduction. Witness CNAQ did not mention the meeting either. The witness would have known if such a meeting took place. The RPF killed Emmanuel in July 1994.[2102]

1655. Between April and June 1994, the witness never saw Witness T31. Witness T40 did not see Witness T31 among the assailants who came to ask for money, nor did he see him at the meeting prior to the abduction of the children.[2103]

1656. In 1994, Witness T40 lived near the same road as Witnesses CNAQ and CNBU. He lived along a path branching off from the tree-lined road. The trees lined the side of the road closest to Witness CNAQ's father's house. The trees were planted in 1986, and in 1994 were separated by two metres. In 1994, each tree was between forty and sixty centimetres in diameter. The trees had grown considerably since 1994. From the road, one first passed the house of Witness CNAQ's father, followed in order by the house of the witness's father, the house of the witness's younger brother, the witness's house and then the house of Emmanuel. A footpath led from the house of Witness CNAQ's father to Emmanuel's house. In 1994, one could not drive a car from the road to Emmanuel's house. The witness estimated the distance between the road and his house to be approximately one hundred metres. Between seventy and ninety metres separated the road from the house of Witness CNAQ's father. From the road, one could see the roof of Witness CNAQ's father's house. Witness T40 identified the location of the houses. There was never a forest between the road and the house of Witness CNAQ's father.[2104]

1657. Witness T40 testified that someone inside the house of Witness CNAQ's father or standing in front of the house would not be able to hear a conversation taking place on the road. In addition, someone inside the house would not be able to hear a small vehicle on the road, though one would be able to hear a large lorry. In late May to early June 1994, it was not possible for someone to hide in the space between the house of Witness CNAQ's father and the road. It would have been impossible for someone to hide ten metres away from two people having a discussion on the road, because the area was open.[2105]

1658. Witness T40 testified that the land between the trees along the road and the house of Witness CNAQ's father was not cultivated in 1994. In the witness's *cellule*, trees did not grow naturally. If a patch of land was not weeded it would turn into a bush full of shrubs. The witness denied that there were bushes and shrubs between the house of Witness CNAQ's father and the

[2101] T. 11 May 2010 pp. 63, 65 (ICS); T. 17 May 2010 p. 7 (ICS) (Witness T40).
[2102] T. 10 May 2010 p. 59 (ICS); T. 11 May 2010 pp. 3, 5 (ICS) (Witness T40).
[2103] T. 11 May 2010 p. 4 (ICS) (Witness T40).
[2104] T. 10 May 2010 pp. 52-54, 57, 65-68 (ICS); T. 11 May 2010 pp. 5-11, 30, 38, 51 (ICS); T. 17 May 2010 pp. 37-38, 51 (ICS) (Witness T40); Defence Exhibit 18A and B (Video 2.5), 00.21, 00.41, 00.59, 01.32; Defence Exhibit 19A (Video 2.6), 00.00; Defence Exhibit 20A and B (Video 2.8), 00.00, 00.50, 00.59.
[2105] T. 10 May 2010 pp. 68, 71 (ICS); T. 11 May 2010 pp. 5-6 (ICS) (Witness T40).

road in 1994 where a person could hide. Bushes could grow naturally in the area and grew there after the war. Such bushes grew fast in cultivated areas, but not in uncultivated areas.[2106]

1659. The witness was detained from 1996 to 2007, accused of possessing a firearm given to him by Nzabonimana and also of attending meetings organised by Nzabonimana. He was not convicted. While in prison, the witness and other prisoners participated in information-gathering regarding what happened in his *secteur* during the genocide. The main incident they addressed was the killing of Witness CNAQ's children. Maniraho confessed to the crime. The witness learned that Neretse was also involved. Neither Maniraho nor anyone else mentioned Nzabonimana's name in connection with the killing. No one accused the witness of being involved in the abduction.[2107]

Defence Witness T150

1660. Witness T150 worked for Nyabikenke *commune* and drove a Samurai jeep four-by-four in 1994. The *commune* owned a Toyota Stout pickup truck but it was in disrepair. The witness was not aware of a security meeting which took place in May 1994 in the *secteur* where Witness CNAQ's children were killed.[2108]

Defence Witness T34

1661. Witness T34, a merchant who lived in Nyabikenke *commune* in 1994,[2109] faced trial before a *Gacaca* court in 2007.[2110] Witness CNAQ alleged that Witness T34's vehicle was used in the abduction of her children before they were killed. The witness testified that the court acquitted him. Multiple persons were acquitted of charges brought by Witness CNAQ, including Witness T31. Witness T34 asserted that no other charges had been brought against him.[2111]

1662. The witness acknowledged that after the death of the President, people from Nyabikenke *commune* searched for Tutsis in the forest near the home of Witness CNAQ's father. Most of those who went to the forest were *Interahamwe*. On one occasion a *conseiller de secteur* asked the witness to take him to the forest. The road was filled with people. They had forced Witness T34 to drive them to the forest to look for *Inkotanyi*. Witness T34 drove them to the forest and immediately returned home.[2112]

[2106] T. 11 May 2010 pp. 25-26, 31-32, 39, 42, 49, 54-56, 60 (ICS) (Witness T40); Prosecution Exhibit 41 (Diagram of Witness CNAQ's Father's House); Prosecution Exhibit 42 (Photograph 3.5.1.2.4); Prosecution Exhibit 45 (Video 2.7), 00.23.
[2107] T. 11 May 2010 pp. 15-18 (ICS); T. 17 May 2010 p. 34 (ICS) (Witness T40).
[2108] T. 19 October 2010 p. 11; T. 19 October 2010 pp. 18, 33 (ICS) (Witness T150). For introductory information on Witness T150, *see* para. 610, *supra*.
[2109] For additional introductory information on Witness T34, *see* para. 949, *supra*.
[2110] Defence Exhibit 36 (Protected Information Sheet); T. 1 June 2010 p. 40 (ICS) (Witness T34).
[2111] T. 1 June 2010 pp. 45-46 (ICS) (Witness T34).
[2112] T. 1 June 2010 pp. 67-68 (ICS); T. 2 June 2010 pp. 7-8 (ICS) (Witness T34).

Defence Witness Fernand Batard

1663. Batard, who worked as a Defence investigator,[2113] visited the location where Witness CNAQ's children were killed on several occasions. The house of Witness CNAQ's father, located just below the road, was the closest house to the road. The house of Emmanuel, a neighbour of Witness CNAQ's father, was located four houses down the slope from Witness CNAQ's father's house. Eucalyptus trees lined the road. Batard testified that Witness T40 told him that the eucalyptus trees were planted after the 1994 events.[2114]

1664. The house of Witness CNAQ's father was approximately sixty-two metres from the road and at least two hundred and eighty-eight metres from Emmanuel's house. Approximately three hundred and ten metres separated Witness CNAQ's parent's house from Emmanuel's house. One could not reach Emmanuel's house by vehicle in 1994.[2115]

1665. Batard identified the house of Witness CNAQ's father and its surroundings in a video exhibit and testified that there was no wooded area between the house and the road. People informed Batard that there was no wooded area between the house of Witness CNAQ's father and the road in 1994. This was an area where animals were brought to graze and there were no woods in that area at that time.[2116]

3.6.5.3 Deliberations

3.6.5.3.1 Killing of Witness CNAQ's Children

1666. Witnesses CNAQ, CNBU, T24, T31 and T40 provided consistent evidence that prior to the date when Witness CNAQ's children were killed, assailants came to Witness CNAQ's father's house several times in search of her children and were paid money to leave.[2117]

1667. In addition, Prosecution and Defence witnesses provided consistent evidence that Witness CNAQ's children were abducted from her father's house and killed on or about 6 June 1994.[2118] Witnesses CNAQ, CNBU, T24, T31 and T40 corroborated each other's testimony as to Witness T24's presence at the scene, and Witnesses CNAQ, T24, T31 and T40 testified that

[2113] For additional introductory information on Batard, *see* para. 1026, *supra*.
[2114] T. 21 March 2011 pp. 62-63, 67-68 (ICS) (Batard); Defence Exhibit 19A (Video 2.6); Defence Exhibit 20A and B (Video 2.8); Defence Exhibit 131E (PowerPoint Presentation), slide 8.
[2115] T. 21 March 2011 pp. 63-64 (ICS) (Batard); Defence Exhibit 131E (PowerPoint Presentation), slides 9 and 11.
[2116] T. 21 March 2011 pp. 65-66, 68 (ICS) (Batard); Defence Exhibit 18A and B (Video 2.5); Defence Exhibit 138A (Video 2.4); Prosecution Exhibit 45 (Video 2.7); Defence Exhibit 20A and B (Video 2.8).
[2117] T. 16 November 2009 pp. 66-67 (ICS); T. 23 November 2009 p. 10 (ICS) (Witness CNAQ); T. 11 November 2009 p. 79 (ICS) (Witness CNBU); T. 27 April 2010 p. 12 (ICS) (Witness T24); T. 3 May 2010 p. 71 (ICS) (Witness T31); T. 10 May 2010 pp. 56-57 (ICS); T. 11 May 2010 pp. 65-67 (ICS); T. 17 May 2010 pp. 7, 9 (ICS) (Witness T40).
[2118] T. 16 November 2009 pp. 64-65 (ICS); T. 17 November 2009 p. 56 (ICS) (Witness CNAQ); T. 11 November 2009 p. 39 (ICS) (Witness CNBU); T. 27 April 2010 pp. 12-13 (ICS); T. 28 April 2010 pp. 21-22 (ICS) (Witness T24); T. 3 May 2010 pp. 68-69 (ICS); T. 5 May 2010 p. 16 (ICS) (Witness T31); T. 10 May 2011 p. 56 (ICS) (Witness T40); T. 1 June 2010 p. 45 (ICS) (Witness T34).

Witness T24 was there to attend or organise a meeting near Witness CNAQ's father's residence.[2119]

1668. Witness CNAQ stated that the assailants were *Interahamwe* from Kavumu *secteur*, Nzabonimana's native *secteur*. Witness CNBU agreed that the attackers came from Kavumu *secteur*.[2120] Witnesses CNAQ and T40 identified someone named Neretse as involved in the incident, while Witnesses T24, T31 and T40 identified Maniraho as heavily involved or leading the attacks. Witness CNBU identified Migabo or Mporanyimigabo as one of the participants.[2121] The Chamber notes that Witness CNBU testified that a *commune* policeman named Munyabarenzi was present during the attack, but did not identify this policeman as an assailant.[2122]

1669. Prosecution and Defence witnesses testified that Witness CNAQ was assaulted on this occasion. Witness CNAQ stated that an *Interahamwe* named Neretse struck her with a machete, while Witness T24 stated that he assaulted Witness CNAQ.[2123] The Prosecution witnesses provided consistent testimony that one of Witness CNAQ's children was injured with a machete.[2124] Witnesses CNAQ, CNBU, T24, T31 and T40 all testified that the children were thrown into the Nyabarongo River, while Witness CNAQ added that some were thrown into a latrine.[2125] Witnesses CNAQ, CNBU and T40 agreed that all but two of Witness CNAQ's children were killed on this occasion.[2126]

1670. Based on the foregoing, the Chamber concludes that on 6 June 1994, six of Witness CNAQ's children were abducted from Witness CNAQ's father's house, one of whom was injured by a machete, and taken to the Nyabarongo River, where they were killed. The assailants were from Kavumu *secteur* and included a certain Maniraho, an *Interahamwe* named Neretse and Mporanyimigabo. Witness T24 also assaulted Witness CNAQ during this incident. However, the Chamber finds that the Prosecution has failed to prove beyond a reasonable doubt that the assailants included a *commune* policeman named Munyabarenzi. Accordingly, the Chamber finds that the Prosecution has proven beyond a reasonable doubt that Witness CNAQ's children were killed by *Interahamwe* and Hutu civilians as contained in Paragraph 30 of the Indictment.

[2119] T. 17 November 2009 p. 56 (ICS) (Witness CNAQ); T. 11 November 2009 p. 39 (ICS) (Witness CNBU); T. 27 April 2010 p. 13 (ICS); T. 28 April 2010 p. 21 (ICS) (Witness T24); T. 3 May 2010 pp. 68-69 (ICS); T. 5 May 2010 p. 17 (ICS) (Witness T31); T. 10 May 2011 p. 56 (ICS) (Witness T40).
[2120] T. 16 November 2009 pp. 64-65 (ICS) (Witness CNAQ); T. 11 November 2009 pp. 39 (ICS) (Witness CNBU).
[2121] T. 16 November 2009 p. 65 (ICS) (Witness CNAQ); T. 11 May 2010 p. 17 (ICS) (Witness T40); T. 27 April 2010 p. 13 (ICS); T. 28 April 2010 pp. 21, 25 (ICS) (Witness T24); T. 3 May 2010 p. 68 (ICS) (Witness T31); T. 10 May 2011 p. 57 (ICS) (Witness T40); T. 11 November 2009 p. 78 (ICS) (Witness CNBU).
[2122] T. 11 November 2009 p. 39 (ICS) (Witness CNBU).
[2123] T. 16 November 2009 p. 65 (ICS) (Witness CNAQ); T. 28 April 2010 pp. 21, 24-25 (ICS) (Witness T24); Defence Exhibit 60A (*Gacaca* Transcripts for Witness T24, 3 April 2009).
[2124] T. 16 November 2009 p. 65 (ICS) (Witness CNAQ); T. 11 November 2009 pp. 39, 42-43 (ICS); T. 11 November 2009 p. 78 (ICS) (Witness CNBU).
[2125] T. 16 November 2009 p. 66 (ICS) (Witness CNAQ); T. 11 November 2009 pp. 39, 42-43, 78 (ICS) (Witness CNBU); T. 27 April 2010 p. 13 (ICS) (Witness T24); T. 3 May 2010 pp. 67-68 (ICS) (Witness T31); T. 10 May 2011 p. 56 (ICS) (Witness T40).
[2126] T. 16 November 2009 p. 64 (ICS); T. 17 November 2009 pp. 56-57 (ICS) (Witness CNAQ); T. 11 November 2009 pp. 39, 42-43, 78 (ICS) (Witness CNBU); T. 11 May 2011 p. 62 (ICS) (Witness T40).

3.6.5.3.2 Nzabonimana's Involvement

1671. Having concluded that the evidence established beyond a reasonable doubt that Witness CNAQ's children were killed, the question remaining for the Chamber is whether Nzabonimana told the *Interahamwe*, *commune* policemen and Hutu civilians to kill the children.

1672. Witnesses CNAQ and CNBU provided eyewitness testimony that prior to the killing of Witness CNAQ's children, in late May or early June 1994, Nzabonimana stopped his vehicle along the road near the house of Witness CNAQ's father and told Emmanuel that Witness CNAQ's children had to be found and killed. Defence Witness T40 lived in the area and denied the plausibility of the Prosecution witnesses' accounts of witnessing Nzabonimana's orders.

1673. The Chamber recalls that it has considered the Defence submission that Witnesses CNAQ and CNBU fabricated their evidence against Nzabonimana. The Chamber has found that the evidence led by the Defence relating to the alleged fabrication of evidence does not undermine the credibility of the testimony of Witnesses CNAQ and CNBU (3.2.5).

1674. Witness CNBU had worked for Nzabonimana and also knew him as an influential official in the community. The witness was therefore in a position to reliably identify Nzabonimana (2.7.3). Witness CNAQ did not detail how she knew Nzabonimana but only stated that Nzabonimana was a Minister.[2127]

1675. Witnesses CNAQ and CNBU provided consistent evidence that they were at Witness CNAQ's father's house along with a neighbour named Emmanuel, when a vehicle stopped on the road located above the house and honked the horn. The three went outside and Nzabonimana asked Emmanuel whether Witness CNAQ's children were still alive. When Emmanuel answered in the affirmative, Nzabonimana said the children must be killed. Witnesses CNAQ and CNBU also provided consistent testimony that Emmanuel later told them the content of his conversation with Nzabonimana.

1676. The Prosecution witnesses both testified that they hid during the interaction between Emmanuel and Nzabonimana. Witness CNBU testified that he and Witness CNAQ hid in a eucalyptus forest near the road. Witness CNBU hid behind a large eucalyptus tree lining the road and Witness CNAQ sat in a nearby wooded area. Witness CNBU stated that he was ten metres from Emmanuel and Nzabonimana. Witness CNAQ stated that she was hiding behind a bush not far from the small forest.

1677. The Defence contests the plausibility of the Prosecution witnesses' account. Witnesses T40 and Batard testified that there was no wooded area or bushes where Witnesses CNBU and CNAQ could have hidden in 1994. The Chamber recalls that during the official Site Visit to the area, all parties agreed that a house was visible forty to fifty metres below the main road. A second house was visible approximately one hundred metres from the main road. The Chamber took note of a light wooded area approximately twenty metres from the road and the existence of stumps of older looking trees which had rejuvenated.[2128] Furthermore, Prosecution and Defence witnesses provided consistent evidence that the road was lined with trees in 1994. Furthermore,

[2127] T. 17 November 2009 p. 57 (ICS) (Witness CNAQ).
[2128] Report on Site Visit, 19 September 2011, p. 5.

Witness T40 acknowledged in cross-examination that bushes could grow in the area between the road and the house of Witness CNAQ's father.[2129] Given the foregoing, the Chamber finds that it is not implausible that Witnesses CNAQ and CNBU would have been able to hide behind trees and bushes near the road in 1994.

1678. However, the Chamber has doubts as to whether Witnesses CNAQ and CNBU would have been able to hear the conversation between Nzabonimana and Emmanuel from their purported position near the road. The Chamber recalls that during the Site Visit, the delegation walked slightly below the road in question, in a ditch located between the road and the closest house. Two members of the delegation were asked to stand on the road and have a conversation in a normal voice, as the remainder of the delegation listened from the ditch. The Chamber noted that only portions of the conversation could be discerned.[2130] This demonstration leads the Chamber to approach with scepticism the testimony of Witnesses CNAQ and CNBU that they were able to hear the conversation between Emmanuel and Nzabonimana.

1679. Furthermore, the Chamber notes that Witness CNAQ provided an inconsistent account regarding whether she in fact heard the conversation between Nzabonimana and Emmanuel. On direct examination, she testified that from her vantage point, she could not hear what was being said and further stated that Emmanuel later told her what Nzabonimana had said. However, in cross-examination she said that she could hear the full conversation between Emmanuel and Nzabonimana. This inconsistency is also reflected in Witness CNAQ's statements to investigators. In her 1998 statement, Witness CNAQ did not indicate that she actually witnessed the conversation.[2131] Instead, she recounted that Emmanuel went to Nzabonimana and begged him to spare her children. In her 2008 statement, Witness CNAQ stated that she was an eyewitness to the conversation with Nzabonimana and could hear the entire conversation from her position.[2132] The Chamber considers that these inconsistencies call into question the reliability of Witness CNAQ's testimony, specifically whether she heard the conversation between Emmanuel and Nzabonimana.

1680. The Chamber notes other inconsistencies in Witness CNAQ's account of the conversation. In her 2008 statement to Prosecution investigators, Witnesses CNAQ indicated that Nzabonimana's car stopped near the house of Emmanuel, rather than mentioning that the car stopped on the road above the house of Witness CNAQ's father.[2133] On direct examination, Witness CNAQ stated that the conversation occurred in late May 1994, whereas on cross-examination she said it occurred on 4 June 1994. Witness CNAQ also provided differing accounts of whether Nzabonimana actually showed the wound on his shoulder to Emmanuel.[2134] These inconsistencies further lead the Chamber to question whether Witness CNAQ personally witnessed the conversation.

[2129] T. 11 May 2010 pp. 25, 31-32 (ICS) (Witness T40).
[2130] Report on Site Visit, 19 September 2011, p. 5.
[2131] Defence Exhibit 58 (Statement of Witness CNAQ, 24 September 1998).
[2132] Defence Exhibit 59 (Statement of Witness CNAQ, 4 October 2008).
[2133] Defence Exhibit 59 (Statement of Witness CNAQ, 4 October 2008); T. 16 November 2009 pp. 63-64 (ICS); T. 17 November 2009 p. 57 (ICS); T. 23 November 2009 pp. 16-17 (ICS) (Witness CNAQ).
[2134] Defence Exhibit 50 (Statement of Witness CNBU, 4 October 2008) (heard Nzabonimana tell Emmanuel that the wound he carried was caused by Tutsis and saw him show the wound to Emmanuel); T. 23 November 2009 pp. 33-34 (ICS) (Witness CNAQ) (She saw Nzabonimana gesticulate and point to his shoulder but did not know what he was telling Emmanuel at the time. Emmanuel told her of the wound when they came back.).

1681. The Chamber also observes discrepancies in Witness CNBU's account. Like Witness CNAQ, in his 2008 statement, Witness CNBU indicated that Nzabonimana's car stopped near the house of Emmanuel and not on the road above the house of Witness CNAQ's father.[2135] In addition, Witness CNBU omitted any reference to Nzabonimana's injured shoulder, even though Witness CNAQ testified that Emmanuel had informed them that Nzabonimana had told him that the children should be killed because the *Inyenzi* had handicapped him. The Chamber considers that these inconsistencies call into question the credibility of Witness CNBU's account.

1682. Turning to the Defence evidence, each of the Defence witnesses denied that Nzabonimana ordered the killings. Witness T40 testified that he would have known if Nzabonimana came to the area and ordered the killing of the children. The Chamber notes, however, that Nzabonimana was Witness T40's employer, and therefore Witness T40 may have been motivated to provide testimony favourable to him. The Chamber also recalls that Witness T40 was detained from 1996 to 2007 and accused of possessing a firearm given to him by Nzabonimana and also of attending meetings organised by Nzabonimana. By Witness T40's own admission, he was not convicted of these charges because his accusers did not appear in court.[2136] The Chamber considers that Witness T40 thus may have been motivated to deny being involved in other criminal activity with Nzabonimana. The Chamber therefore treats his testimony with appropriate caution.

1683. In addition, the Chamber recalls that Witness T40 testified that Witness CNAQ and her children were not in hiding.[2137] The Chamber considers this testimony to be contrary to the evidence of three witnesses, including Defence Witness T24, who all testified that Witness CNAQ and her children were in hiding and were protected by people from the region.[2138] The Chamber considers this to reveal that Witness T40 sought to minimise the fact that Witness CNAQ's children were hunted down prior to being killed.

1684. Defence Witnesses T24 and T31 also denied that the assailants worked on the orders of Nzabonimana. The Chamber notes that neither Witness T24 nor Witness T31 was alleged to have been present when Emmanuel and Nzabonimana spoke. The Chamber therefore considers that the testimony of these witnesses contains little probative value as to the existence of this conversation.

1685. Furthermore, the Chamber notes that both Witnesses T24 and T31 were directly implicated in the killing of Witness CNAQ's children. Witness T24 was a detainee witness at the time of his testimony.[2139] He had been convicted and sentenced to 26 years' imprisonment for his

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[2135] Defence Exhibit 50 (Statement of Witness CNBU, 4 October 2008); T. 11 November 2009 p. ii (Extract); T. 11 November 2009 pp. 38, 40, 61, 63 (ICS) (Witness CNBU).
[2136] T. 17 May 2010 pp. 34-35 (ICS) (Witness T40). The Chamber notes that in its Closing Brief, the Prosecution states that Witness T40 pled guilty to these charges and was subsequently released from prison. The record does not support this submission.
[2137] T. 10 May 2010 pp. 54-56 (ICS) (Witness T40).
[2138] T. 16 November 2009 pp. 63-64, 66-67 (ICS); T. 23 November 2009 p. 10 (ICS) (Witness CNAQ); T. 11 November 2009 p. ii (Extract); T. 11 November 2009 pp. 38-39, 58, 63 (ICS) (Witness CNBU); T. 27 April 2010 pp. 13-15 (ICS); T. 28 April 2010 pp. 21, 51-54 (ICS) (Witness T24).
[2139] T. 27 April 2010 pp. 13-15 (ICS) (Witness T24).

role in the abduction and killing of Witness CNAQ's children.[2140] The Chamber further notes that at the time of his testimony Witness T31 had been convicted by a *Gacaca* court to a term of life imprisonment for his role in the Nyabikenke *commune* office attacks, and his appeal was pending.[2141] The Chamber will therefore treat the testimony of these witnesses with appropriate caution.

1686. The Defence asserts that Nzabonimana's name was not mentioned in connection with the killings during any *Gacaca* proceedings. Witness CNAQ testified at Witness T24's *Gacaca* trial and did not mention Nzabonimana. Her brother also did not mention Nzabonimana.[2142] However, the Chamber notes that *Gacaca* proceedings are separate and distinct legal proceedings which are not binding on this Chamber. The Chamber also notes that Witness T24 acknowledged that *Gacaca* records do not contain the full truth of what happened in Rwanda in 1994.[2143] Nevertheless, the Chamber considers the fact that Witness CNAQ omitted reference to Nzabonimana during *Gacaca* proceedings to negatively impact the credibility of her testimony.

1687. Having considered the totality of the evidence, the Chamber concludes that the testimony of Witnesses CNAQ and CNBU was insufficient to prove beyond a reasonable doubt that Nzabonimana told the assailants to kill Witness CNAQ's children. The Chamber reiterates that it has doubts as to whether Witness CNAQ heard the conversation between Nzabonimana and Emmanuel and recalls the numerous inconsistencies and omissions in the accounts provided by Witnesses CNAQ and CNBU.

1688. Furthermore, the Chamber notes that even if the Prosecution had proven that Nzabonimana told Emmanuel that the children were to be killed, this evidence would not suffice to establish a link between Nzabonimana and the subsequent killings. The Chamber recalls that although the evidence suggested that Emmanuel was an *Interahamwe*, the evidence also established that Emmanuel was protecting Witness CNAQ's children by giving money to the assailants.[2144] There was no evidence that Emmanuel was involved in any of the attacks. Furthermore, although Witness CNAQ testified that the *Interahamwe* present during the ensuing attack on her children told her that they were acting on Nzabonimana's instructions,[2145] the Chamber concludes that this hearsay evidence is insufficient to prove beyond a reasonable doubt that Nzabonimana indeed issued instructions to *Interahamwe* to kill Witness CNAQ's children.

1689. Given the foregoing, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt its allegation that Nzabonimana told *Interahamwe*, *commune* policemen and Hutu civilians to kill Witness CNAQ's children. Additionally, the Prosecution failed to establish that the killings occurred as a result of any orders, as alleged in Paragraph 30 of the Indictment.

[2140] T. 27 April 2010 pp. 12-13 (ICS); T. 28 April 2010 p. 21 (ICS) (Witness T24); Prosecution Exhibit 35 (Excerpts of Witness T24's *Gacaca* Trial, 3 April 2009).
[2141] T. 4 May 2010 pp. 4-8 (ICS) (Witness T31).
[2142] T. 23 November 2009 pp. 39-40 (ICS) (Witness CNAQ).
[2143] T. 27 April 2010 p. 43 (Witness T24).
[2144] T. 16 November 2009 pp. 66-67 (ICS); T. 23 November 2009 p. 10 (ICS) (Witness CNAQ); T. 11 November 2009 pp. 38-39 (ICS) (Witness CNBU).
[2145] T. 16 November 2009 pp. 64-65 (ICS) (Witness CNAQ).

CHAPTER IV: LEGAL FINDINGS

1690. Having completed its consideration and analysis of the factual allegations brought by the Prosecution against Nzabonimana, the Chamber will proceed to assess Nzabonimana's legal culpability.

1691. The Indictment alleges that Nzabonimana is criminally responsible, pursuant to Article 6(1) of the Statute, for the crimes of Genocide, Conspiracy to Commit Genocide, Direct and Public Incitement to Commit Genocide, Extermination as a Crime Against Humanity and Murder as a Crime Against Humanity.

4.1 Article 6(1) of the Statute

1692. Article 6(1) of the Statute provides for individual criminal responsibility for anyone who planned, instigated, ordered, committed, or aided and abetted a crime falling within the Tribunal's jurisdiction.

1693. "Planning" requires that one or more persons design the criminal conduct constituting a statutory crime that is later perpetrated. It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct. The *mens rea* entails the intent to plan the commission of a crime or, at a minimum, the awareness of the substantial likelihood that a crime will be committed in the execution of the acts or omissions planned.[2146]

1694. "Instigating" implies prompting another person to commit an offence. It is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused; it is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime. The *mens rea* is the intent to instigate another person to commit a crime or, at a minimum, the awareness of the substantial likelihood that a crime will be committed in the execution of the act or omission instigated.[2147]

1695. "Ordering" requires that a person in a position of authority instruct another person to commit an offence. A person in a position of authority may incur responsibility for ordering if the order has a direct and substantial effect on the commission of the illegal act. No formal superior-subordinate relationship between the accused and the perpetrator is required. The authority envisaged by ordering under Article 6(1) of the Statute may be informal or of a purely temporary nature. It is sufficient that there is proof of a position of authority on the part of the accused that would compel another person to commit a crime. Whether such authority exists is a question of fact.[2148]

1696. "Committing" consists of the physical perpetration of a crime with criminal intent or a culpable omission.[2149] Physical perpetration may include physical killing or other acts which may constitute direct participation in the *actus reus* of the crime.[2150] The question is whether an

[2146] *Dragomir Milošević*, Judgement (AC), para. 268; *Nahimana et al.*, Judgement (AC), para. 479.
[2147] *Karera*, Judgement (AC), para. 317; *Nahimana et al.*, Judgement (AC), para. 480.
[2148] *Setako*, Judgement (AC), para. 240.
[2149] *Munyakazi*, Judgement (AC), para. 135; *Nahimana et al.*, Judgement (AC), para. 478.
[2150] *Munyakazi*, Judgement (AC), para. 135.

accused's conduct was as much an integral part of the crimes as were the killings which it enabled.[2151] The leadership role played by an accused may constitute an integral part of the crimes.[2152]

1697. The *actus reus* of "aiding and abetting" is constituted by acts or omissions specifically aimed at assisting, encouraging or lending moral support to the perpetration of a certain specific crime, and which have a substantial effect on the perpetration of the crime. Whether a particular contribution qualifies as substantial is a fact based inquiry, and need not serve as condition precedent for the commission of the crime.[2153] The contribution may occur before, during or after the principal crime has been perpetrated, and the location where the *actus reus* takes place may be removed from the location of the principal crime.[2154]

1698. The *actus reus* of aiding and abetting may also be constituted through tacit approval and encouragement of a crime, which substantially contributes to the perpetration of the crime. The authority of the accused, combined with his presence at or very near the crime scene, especially if considered together with the prior conduct of the accused, may amount to an official sanction of the crime and thus substantially contribute to it.[2155] This form of aiding and abetting is not, strictly speaking, criminal responsibility for omission.[2156]

1699. The *mens rea* for aiding and abetting is knowledge that the acts performed by the aider and abettor assist the commission of the specific crime of the principal perpetrator. Specific intent crimes, such as genocide, do not require that the aider and abettor share the *mens rea* of the principal perpetrator, it suffices to prove that he or she knew of the principal perpetrator's specific intent.[2157]

1700. The Chamber will discuss these modes of liability, where applicable, in making its legal findings.

4.2 Genocide

4.2.1 Introduction

1701. In Count 1 of the Indictment, the Prosecution charged Nzabonimana with genocide under Articles 2 (2) (a) and (b) and Article 2 (3) (a) of the Statute.

4.2.2 Law

1702. A person commits the crime of genocide if he or she commits one of the acts enumerated in Article 2 (2) of the Statute with the specific intent to destroy, in whole or in part, a national,

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[2151] *Munyakazi*, Judgement (AC), para. 135, citing *Kalimanzira*, Judgement (AC), para. 219, quoting *Gacumbitsi*, Judgement (AC), para. 60. *See also Seromba*, Judgement (AC), para. 161.
[2152] *Munyakazi*, Judgement (AC), para. 135.
[2153] *Ntawukuliyayo*, Judgement (AC), para. 214.
[2154] *Kalimanzira*, Judgement (AC), para. 87, fn. 238.
[2155] *Kalimanzira*, Judgement (AC), para. 74.
[2156] *Brđanin*, Judgement (AC), para. 273; *Ntagerura et al.*, Judgement (AC), para. 338.
[2157] *Ntawukuliyayo*, Judgement (AC), para. 222.

ethnical, racial or religious group, as such. The existence of a personal motive does not preclude the perpetrator from also having the specific intent to commit genocide.[2158]

1703. The acts enumerated in Article 2 (2) include "[k]illing members of the group," and "[c]ausing serious bodily or mental harm to members of the group." For this latter category to support a conviction for genocide, the bodily or mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part.[2159] The Appeals Chamber has described rape as a "quintessential" example of serious bodily harm,[2160] and has stated that serious mental harm includes "more than a minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat." The Appeals Chamber has also noted that "nearly all convictions for the causing of serious bodily or mental harm involve rapes or killings."[2161]

1704. Genocidal intent may be proven by circumstantial evidence. Such intent may be inferred from a number of facts and circumstances, including overt statements by the accused,[2162] the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of the atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts.[2163] The specific intent need not be formed prior to the commission of the acts, but must be possessed at the moment of commission.[2164] Evidence of limited and selective assistance towards a few individuals does not generally preclude a reasonable finding of the requisite intent to commit genocide. When based on circumstantial evidence, any finding that the accused had genocidal intent must be the only reasonable inference from the totality of the evidence.[2165]

4.2.3 Deliberations

1705. The Prosecution has charged Nzabonimana with genocide pursuant to Article 6(1) of the Statute, for killing and causing serious bodily or mental harm to members of the Tutsi population with genocidal intent.

[2158] *Seromba*, Judgement (AC), para. 175; *Nahimana et al.*, Judgement (AC), para. 492; *Gacumbitsi*, Judgement (AC), para. 39; *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 304; *Niyitegeka*, Judgement (AC), paras. 52-53; *Krnojelac*, Judgement (AC), para. 102; *Jelisić*, Judgement (AC), para. 49; *Kayishema & Ruzindana*, Judgement (AC), para. 161.
[2159] *Seromba*, Judgement (AC), para. 46.
[2160] *Seromba*, Judgement (AC), para. 46. *See also Kunarac et al.*, Judgement (AC), para. 150; *Nyiramasuhuko et al.*, Judgement (TC), para. 5731; *Akayesu*, Judgement (TC), para. 731.
[2161] *Seromba*, Judgement (AC), para. 46.
[2162] *Munyakazi*, Judgement (AC), para. 142; *Rukundo*, Judgement (AC), para 61.
[2163] *Nchamihigo*, Judgement (AC), fn. 478, quoting *Jelisić*, Judgement (AC), para. 47; *Seromba*, Judgement (AC), para. 176; *Nahimana et al.*, Judgement (AC), para. 524; *Muhimana*, Judgement (AC), para. 32; *Gacumbitsi*, Judgement (AC), paras. 40-41; *Rutaganda*, Judgement (AC), para. 525.
[2164] *Munyakazi*, Judgement (AC), para. 142.
[2165] *Nchamihigo*, Judgement (AC), fn. 478, quoting *Jelisić*, Judgement (AC), para. 47; *Seromba*, Judgement (AC), para. 176; *Nahimana et al.*, Judgement (AC), para. 524; *Muhimana*, Judgement (AC), para. 32; *Gacumbitsi*, Judgement (AC), paras. 40-41; *Rutaganda*, Judgement (AC), para. 525.

4.2.3.1 Butare Trading Centre Meeting

1706. The Chamber has found beyond a reasonable doubt that on or about 12 April 1994, Nzabonimana addressed a gathering at the Butare trading centre in Rutobwe *commune*. Nzabonimana told those gathered to kill Tutsis and take their belongings. Nzabonimana asked if there were any Tutsis in the crowd. When Witness CNAZ and another Tutsi fled, Nzabonimana told *gendarmes* and the population to pursue them (3.5.1.3.2).

1707. Notwithstanding the general evidence of killings in Rutobwe *commune* on dates after Nzabonimana's speech at Butare centre, there is limited evidence of any specific acts committed by *Interahamwe,* Hutu civilians and soldiers following the speech as alleged in the Indictment. As there is insufficient evidence to establish that Nzabonimana's words at Butare centre substantially contributed to any subsequent crime,[2166] the Chamber finds that Nzabonimana is not criminally responsible for genocide with respect to this allegation. However, the Chamber finds that this evidence provides circumstantial evidence of his intent to destroy, in whole or in substantial part, the Tutsi ethnic group, as such.

4.2.3.2 Cyayi Centre Meeting and Nyabikenke Commune Office Attack

1708. It is not disputed that refugees assembled at the Nyabikenke *commune* office in Gitarama *préfecture*, where they were attacked by assailants.

1709. The Chamber has found beyond a reasonable doubt that on 13 April 1994, an attempted attack was made upon the Tutsis seeking refuge at the Nyabikenke *commune* office. Witness T24 and *commune* policemen repelled the attack at the Nyagahondo forest, before it reached the *commune* office. As a result of the counter-attack one of the assailants was killed and others were injured, but the refugees were unharmed (3.5.2.4).

1710. On the afternoon of 14 April 1994, Nzabonimana held a meeting in Nyabikenke *commune* at Cyayi centre. The evidence established beyond a reasonable doubt that approximately 30 people were present at the centre, including Prosecution Witnesses CNAI and CNAX, a Tutsi named Evariste Munyagatare, Isaac Kamali and Defence Witness T193. At this meeting, Nzabonimana asked those gathered to prioritise the massacre of Tutsis before taking their property. Nzabonimana stated: "I know that Hutus do not heed instructions. Do not continue to eat the cows of Tutsi who have sought refuge at the *communal* office. What really matters is not the cows; it is rather, the owners of the cows that matter." He also issued a threat to a Tutsi named Evariste Munyagatare, who was among those seeking refuge at the Nyabikenke *commune* office (3.5.2.4).

1711. The first successful attack occurred the night immediately following Nzabonimana's afternoon address at Cyayi centre, a mere 250 to 300 metres away from the *commune* office. That night, at between 3.00 and 4.00 a.m., Hutu civilians and *commune* policemen launched an attack upon the Nyabikenke *commune* office, using firearms, grenades and traditional weapons. The attack against the *commune* office resumed during the day on 15 April 1994. *Commune* policemen, *Interahamwe* and civilians perpetrated this attack with firearms, grenades and traditional weapons, namely machetes, clubs and stones. The Chamber has found beyond a

[2166] *See Kalimanzira*, Judgement (AC), paras. 76-77.

reasonable doubt that, during these attacks on the *commune* office, between 15 and 60 Tutsi refugees were killed, including Evariste Munyagatare (3.5.2.4).[2167]

1712. The Chamber considers that, particularly when viewed in context, Nzabonimana's remarks substantially contributed to the successful attack upon the *commune* office. The Chamber recalls its finding that Nzabonimana was an influential figure in Gitarama *préfecture* and that Nzabonimana originated from Nyabikenke *commune* (3.1.3).

1713. Prior to Nzabonimana's exhortations to the population at Cyayi centre to kill Tutsis at the *commune* office before taking their property, the attempted attack on the *commune* office had been unsuccessful. *Commune* policemen and members of the population assisted in repelling the attacks upon the *commune* office. Following Nzabonimana's address at Cyayi centre, *commune* policemen and members of the population successfully attacked the *commune* office with the only resistance coming from the refugees themselves.

1714. In addition, after Nzabonimana's speech at Cyayi centre, the attacks escalated in their intensity and character. Whereas during the attack upon Ntarabana Parish (3.4.5.3.1) and during the unsuccessful attack upon the *commune* office of 13 April 1994, the assailants used only traditional weapons (3.5.2.3.2), on 15 April 1994, the assailants used firearms and grenades.

1715. Having considered the totality of the evidence, the Chamber concludes that the only reasonable inference from this circumstantial evidence is that Nzabonimana substantially contributed to the continuance and ultimate success of the genocidal attack upon the *commune* office in which between 15 and 60 Tutsis were killed, including the individual who Nzabonimana threatened at Cyayi centre.

1716. In view of the widespread targeting of Tutsis in Gitarama *préfecture* prior to the meeting at Cyayi centre (3.4.5.3.1; 3.5.2.3.2) and Nzabonimana's own reproach to prioritise the massacre of Tutsis, the Chamber has no doubt that the assailants committed these attacks with the intent to destroy, in whole or in substantial part, the Tutsi ethnic group, as such. Acting with this genocidal intent, the assailants killed a number of Tutsis.

1717. The Chamber also finds that by threatening a Tutsi and saying that Tutsis should be massacred at Cyayi centre on 14 April 1994, Nzabonimana prompted others to act and to continue the genocidal attack upon the *commune* office, and that Nzabonimana intended to do so. There is no doubt that, at the time of Nzabonimana's prompting, he knew of the genocidal intent of his audience, particularly given the meeting's temporal and physical proximity to the recent attack on the *commune* office. Nzabonimana's knowledge of this specific intent is further demonstrated through his reminder to the attendees that their killing of Tutsis should take place before, rather than after, the taking of Tutsi property. The Chamber also notes the extensive circumstantial evidence of Nzabonimana's genocidal intent, set out below.

1718. The Chamber therefore finds Nzabonimana guilty of genocide for instigating the killings of Tutsis at the Nyabikenke *commune* office on 15 April 1994.

[2167] The Chamber recalls that it will not enter a conviction on the basis of the killing of Évariste Munyagatare. *See* para. 935, *supra*.

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4.2.3.3 Release of Killers in Rutobwe Commune

1719. The Chamber has found beyond a reasonable doubt that, in the days prior to 18 April 1994, Nzabonimana encouraged the killing of Tutsis and caused Jean-Marie Vianney Mporanzi to release killers in Rutobwe *commune*. The Chamber has also found that killings in Rutobwe *commune* intensified after the release of the prisoners (3.5.6.3).

1720. The Chamber considers that Nzabonimana was aware that he was orchestrating the release of people who had been imprisoned for killing Tutsis, and in light of the context, the Chamber concludes that Nzabonimana must have known of the genocidal intent of these killers.

1721. The Indictment alleges that the release of these people "paved the way for the eruption and intensification of massacres" in Rutobwe *commune*. In light of this allegation's focus on how Nzabonimana's actions aided future massacres, rather than on how they might have assisted any previous crimes, the Chamber will focus its assessment on the extent to which Nzabonimana's orchestration of their release may have substantially contributed to the later killings.

1722. The Chamber heard evidence that the released prisoners organised themselves after their release and then carried out various crimes against Tutsis in Rutobwe *commune* between 21 and 30 April 1994, including demolishing houses and killings. They also carried out attacks in Nyamabuye *commune*.

1723. However, the Prosecution has not provided specific evidence of the crimes these persons are alleged to have committed after their release. No detail has been provided concerning the alleged victims, dates or locations. The Chamber cannot conclude that Nzabonimana's forcible release of the prisoners substantially contributed to any of the ensuing killings or other crimes.[2168] The Chamber therefore does not find Nzabonimana guilty of genocide for causing Jean-Marie Vianney Mporanzi to release killers in Rutobwe *commune*, as there is insufficient evidence that the release substantially contributed to the commission of a specific crime.

1724. While the Chamber does not consider that the Prosecution has met its burden of establishing a connection between the release of prisoners and any specific genocidal crimes, the Chamber considers that Nzabonimana's actions provide circumstantial evidence of his intent to destroy, in whole or in substantial part, the Tutsi ethnic group, as such.

4.2.3.4 Murambi Meeting

1725. The Chamber has found beyond a reasonable doubt that Nzabonimana ordered the killing of *bourgmestres* and other local officials opposed to the massacre of Tutsis during the second meeting held at Murambi on 18 April 1994. The Chamber also found that the Ministers present at the meeting, including Nzabonimana, used this meeting to threaten the *bourgmestres* (3.5.7.3.2).

1726. Notwithstanding the evidence that the individuals named in the Indictment were killed after the Murambi meeting, the Chamber concluded that the evidence of the Prosecution failed to establish beyond reasonable doubt that the utterances of Nzabonimana during the Murambi

[2168] *See Kalimanzira*, Judgement (AC), paras. 77-79.

meeting made a substantial contribution to the deaths of these persons (3.5.7.3.3). As there is insufficient evidence to establish that Nzabonimana's conduct at the meeting substantially contributed to any subsequent crime,[2169] the Chamber finds that Nzabonimana is not criminally responsible for genocide with respect to this allegation. However, the Chamber finds that this evidence provides circumstantial evidence of his intent to destroy, in whole or in substantial part, the Tutsi ethnic group, as such.

4.2.3.5 Reinstatement Ceremony of the Bourgmestre of Musambira Commune

1727. The Chamber has found that the Prosecution has proven beyond a reasonable doubt that in May 1994, Nzabonimana was present at the reinstatement ceremony of the *bourgmestre* of Musambira *commune* and that during the ceremony, Nzabonimana accused the *bourgmestres* of not being supportive of the killings of Tutsis, warned them that they could be replaced by *Interahamwe* and refused to denounce the killings of Tutsis (3.5.8.4).

1728. The Chamber also concluded that subsequent to the Musambira meeting, the *préfet* of Gitarama, the *bourgmestre* of Musambira *commune* and Witness CNAC were dismissed from office. However, the Prosecution did not establish beyond a reasonable doubt a causal link between Nzabonimana's involvement in the Musambira meeting and the subsequent dismissal of officials (3.5.8.4). As there was insufficient evidence to establish that Nzabonimana's words at the meeting substantially contributed to any subsequent crime,[2170] the Chamber finds that Nzabonimana is not criminally responsible for genocide with respect to this allegation. However, the Chamber finds that this evidence provides circumstantial evidence of his intent to destroy, in whole or in substantial part, the Tutsi ethnic group, as such.

4.2.3.6 Weapons Distribution in Nyakabanda Commune

1729. The Chamber has found beyond a reasonable doubt that Nzabonimana attended a meeting at Kibangu *secteur,* Nyakabanda *commune* in May 1994, where Prime Minister Kambanda distributed weapons to the Ndiza battalion for the purpose of fighting the Tutsi enemy (3.5.9.4). However, as the Indictment explicitly alleged that Nzabonimana actively spoke and distributed weapons at the meeting, Nzabonimana can not be held liable for his mere presence at the meeting. The Chamber therefore does not find Nzabonimana guilty of genocide for attending the Kibangu *secteur* meeting.

4.2.3.7 Destruction of Houses in Nyamabuye Commune

1730. The Chamber has found that the Prosecution proved beyond a reasonable doubt that in April 1994, Nzabonimana visited the Nyamabuye *commune* office and told the Hutu civilians present to destroy the house of a dead Tutsi, Jean de Dieu Mpambara, and to cover it up, so that in the event of an enquiry, the death of the Tutsi would not be known (3.6.2.4).

1731. The Chamber notes that the Prosecution did not present any evidence as to when Mpambara died, while Defence evidence suggested that Mpambara died in 1985. Defence evidence indicated that Mpambara's children lived in the house in 1994 but that the house was

[2169] *See Kalimanzira*, Judgement (AC), paras. 76-77.
[2170] *See Kalimanzira*, Judgement (AC), paras. 76-77.

empty because they had fled to Kabgayi. No evidence was presented as to when Mpambara's children left the house in relation to its destruction, their ultimate fate or whether they attempted to return to the house. Given these circumstances, the Chamber considers that the Prosecution failed to establish that Nzabonimana's encouragement to destroy Mpambara's house substantially contributed to the commission of any crime for which Nzabonimana was charged.

1732. As a result, the Chamber does not find Nzabonimana guilty of genocide for his statement at the Nyamabuye *commune* office to destroy the house of a dead Tutsi or for the subsequent destruction of the house. The Chamber considers, however, that Nzabonimana's statement provides circumstantial evidence of his intent to destroy, in whole or in substantial part, the Tutsi ethnic group, as such. Moreover, the fact that his statement to destroy the house was ultimately obeyed provides further evidence of Nzabonimana's influence during this time period.

4.2.3.8 Weapons Distribution in Tambwe Commune

1733. The Chamber has found beyond a reasonable doubt that towards the end of April or early May 1994, Nzabonimana brought weapons to the Tambwe *commune* office, which were then distributed to the population. The Chamber also found that the Prosecution proved beyond a reasonable doubt that Nzabonimana spoke and said that they had brought the weapons so that they could take charge of their own protection and ensure the security of the country from the enemy; the enemy meaning Tutsis (3.6.3.3.1). However, the Prosecution failed to prove beyond a reasonable doubt that the weapons distributed were used to kill Tutsis in various attacks in Tambwe *commune* as alleged in Paragraph 58 of the Indictment (3.6.3.3.2).

1734. As there is insufficient evidence to establish that Nzabonimana's distribution of weapons substantially contributed to any subsequent crime,[2171] the Chamber finds that Nzabonimana is not criminally responsible for genocide with respect to this allegation. However, the Chamber finds that this evidence provides circumstantial evidence of his intent to destroy, in whole or in substantial part, the Tutsi ethnic group, as such.

4.2.3.9 Tambwe Commune Crisis Committee

1735. The Chamber has found beyond a reasonable doubt that Nzabonimana came to the Ruhango *sous-préfecture* office in May 1994 with Jean-Damascene Ukirikyeyezu and said that he and Ukirikyeyezu had come to set up the Crisis Committee (3.6.4.3.1). The Chamber has also found that the Prosecution has proven beyond a reasonable doubt that the purpose of the Crisis Committee was to conceal the killings from the international community and to address the issue of Hutus fighting over the property of Tutsis (3.6.4.3.2). However, the Chamber concluded that the Prosecution has not proven beyond a reasonable doubt that Tutsis caught at roadblocks, including Nuru Nyabugaju, Sixbert Ruhezamihigo and Languida, were killed on the orders of this Committee (3.6.4.3.3).

1736. As the evidence was insufficient to prove that the Crisis Committee ordered the killings, the Chamber lacks a basis to conclude that Nzabonimana's role in establishing the Committee substantially contributed to the commission of a crime for which Nzabonimana was charged. As a result, the Chamber does not find Nzabonimana guilty of genocide for his role in the

[2171] *See Kalimanzira*, Judgement (AC), paras. 76-77.

establishment of the Crisis Committee of Tambwe *commune*. The Chamber considers, however, that Nzabonimana's statement provides circumstantial evidence of his intent to destroy, in whole or in substantial part, the Tutsi ethnic group, as such.

4.2.4 Conclusion

1737. Nzabonimana instigated the killings of Tutsis taking refuge at the Nyabikenke *commune* office on 14 April 1994, with the requisite genocidal intent. The Chamber therefore finds Nzabonimana guilty of instigating genocide.

4.3 Conspiracy to Commit Genocide

4.3.1 Introduction

1738. In Count 2 of the Indictment, the Prosecution alleges that during the period between 1 January 1994 and 31 July 1994, Callixte Nzabonimana with other persons, including but not limited to Ministers, including those of the Interim Government of 9 April 1994, the leadership of the Rwandan Armed Forces ("FAR"), *Gendarmerie*, Presidential Guard, the political leaders of the MRND, the MDR-Hutu Power faction, the PL-Hutu Power faction, other Hutu-Power factions of opposition parties and various local administration officials, conspired to kill or cause serious bodily and mental harm to members of the Tutsi population, with the intent to destroy in whole or in part, a racial or ethnical group, as such.[2172]

4.3.2 Law

1739. Conspiracy to commit genocide requires an agreement between two or more persons to commit the crime of genocide. The agreement constitutes the *actus reus* of the crime.[2173] The *actus reus* of conspiracy to commit genocide may be proven by evidence of meetings to plan genocide.[2174] The agreement may also be inferred from other evidence, such as the conduct of the conspirators.[2175] Specifically, the concerted or coordinated action of a group of individuals may constitute evidence of an agreement.[2176] When the Prosecution seeks to prove the existence of an agreement on the basis of circumstantial evidence, the existence of a conspiracy to commit genocide must be the only reasonable inference based on the totality of the evidence.[2177]

1740. To prove the *mens rea* of conspiracy to commit genocide, the Prosecution must establish that the individuals involved in the agreement possessed the intent to destroy in whole or in part a national, ethnical, racial or religious group, as such.[2178]

[2172] Para. 59 of the Indictment.
[2173] *Seromba*, Judgement (AC), paras. 218, 221.
[2174] *Seromba*, Judgement (AC), para. 221; *Nahimana et al.*, Judgement (AC), para. 896.
[2175] *Seromba*, Judgement (AC), para. 221; *Nahimana et al.*, Judgement (AC), para. 896.
[2176] *Nahimana et al.*, Judgement (AC), para. 897.
[2177] *Nahimana et al.*, Judgement (AC), para. 896.
[2178] *Nahimana et al.*, Judgement (AC), para. 894; *Ntagerura et al.*, Judgement (AC), para. 92.

4.3.3 Deliberations

1741. The Prosecution submits that Nzabonimana and his co-conspirators held several meetings in various *communes* in Gitarama *préfecture* where they discussed and agreed upon a strategy to eliminate the Tutsis. The Prosecution further submits that Nzabonimana provided weapons to the population and militia at some of these meetings, in order to ensure that the agreement between Nzabonimana and his co-conspirators to eliminate the Tutsis was successful. Hundreds of Tutsis were killed as the result of this agreement.[2179]

1742. The Defence asserts that the Prosecution has failed to prove that Nzabonimana entered into an agreement to commit genocide, or that such an agreement can be inferred from concerted actions with others.[2180]

1743. As a preliminary matter, the Chamber notes that Paragraph 59 of the Indictment sets out the basic elements of conspiracy. Paragraph 59 provides the categories of people with whom Nzabonimana allegedly entered into an agreement to kill or cause serious bodily and mental harm to members of the Tutsi population, but does not in and of itself specify the individuals with whom Nzabonimana allegedly conspired. The Chamber notes however that each of the paragraphs pled in support of the count of conspiracy provides the names of these individuals.[2181] Reading the Indictment as a whole, the Chamber concludes that the Indictment adequately informed the Defence of the identity of his alleged co-conspirators.[2182]

4.3.3.1 Murambi Meeting

1744. Beginning on 18 April 1994 at the Murambi meeting, Nzabonimana agreed with other members of the Interim Government, specifically Prime Minister Kambanda, Prosper Mugiraneza, Witness T82 and Witness T83 to encourage the killing of members of the Tutsi population. At the Murambi meeting, the Ministers directed their threats at the assembled *bourgmestres* (3.5.7.3.2).

1745. The Chamber notes that the evidence presented at trial established that in the days prior to the Murambi meeting, some of the *bourgmestres* of Gitarama *préfecture* were actively protecting Tutsis. The *bourgmestre* of Nyabikenke *commune* staved off attacks upon the refugees at the *commune* office on 13 April 1994 (3.5.2.3.2). Furthermore, Mporanzi, the *bourgmestre* of

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[2179] Prosecution Closing Brief, para. 69. The Chamber notes that in its Closing Argument, the Prosecution did not make submissions specifically addressing the conspiracy allegation.
[2180] Defence Closing Brief, paras. 410, 570-572, 593. The Chamber notes that in its Closing Argument, the Defence did not make submissions specifically addressing the conspiracy allegation.
[2181] *See* Para. 17 of the Indictment (Witness T49 and Munana); Para. 21 of the Indictment (Witness T24); Para. 26 of the Indictment (Prosper Mugiraneza, Witness T82 and Witness T83); Para. 44 of the Indictment (Jérôme Bicamumpaka); Para. 45 of the Indictment (Witness T34, Witness T24 and Witness T49); Para. 49 of the Indictment (Major Jean-Damascene Ukirikyeyezu); Para. 54 of the Indictment (Prime Minister Jean Kambanda); Para. 58 of the Indictment (Witness T92 and Jean-Damascene Ukirikyeyezu
[2182] *See also* T. 19 November 2009 p. 11 (Prosecution Opening Statement) ("The Interim Government, which was comprised of ethnic Hutus, passionately joined in the conspiracy to kill Tutsis and moderate Hutus. They quickly facilitated the efficient, if not ruthless, implementation of a criminal enterprise to kill innocent Tutsis. To this end the Interim Government did not hesitate to use the state apparatus at its disposal.").

Rutobwe *commune*, placed killers in prison prior to 18 April 1994 (3.5.6.3).[2183] The members of the Interim Government therefore assembled the *bourgmestres* at the Murambi meeting, where they threatened to remove the *bourgmestres* from their posts if they did not stop supporting the Tutsi population.

1746. Thereafter, Nzabonimana was present when Prime Minister Kambanda distributed weapons (3.5.9.4) and encouraged the population to fight the Tutsis and also reinforced the message of the Murambi meeting to the *bourgmestres* at the Musambira *commune* reinstatement ceremony (3.5.8.4). The words spoken by Nzabonimana and Kambanda at these events establish that these activities were undertaken with the intent to encourage the *bourgmestres* and the population to kill Tutsis.

1747. Considering the concerted and coordinated actions of Nzabonimana and the Ministers of the Interim Government, the Chamber is convinced beyond a reasonable doubt that the only reasonable inference based on the totality of the evidence is that an agreement with the specific intent to destroy Rwanda's Tutsi population in whole or in part materialised on 18 April 1994. The Chamber considers that the conduct of Nzabonimana and Kambanda after the 18 April 1994 meeting reinforces the conclusion that Nzabonimana, other Ministers and the Prime Minister of the Interim Government entered into an agreement to encourage the destruction of the Tutsi population, as such in Gitarama *préfecture.*

4.3.3.2 Tambwe Commune and the Creation of the Crisis Committee

1748. The Chamber also considers that in May 1994, Nzabonimana entered into an agreement with Jean-Damascene Ukirikyeyezu to encourage the killing of members of the Tutsi population in Tambwe *commune*. Nzabonimana and Ukirikyeyezu entered into an agreement to establish the Crisis Committee together, the purpose of which was to disguise the killings from the international community (3.6.4.3.1; 3.6.4.3.2). Also, in late April to early May 1994, Nzabonimana and Ukirikyeyezu distributed weapons and encouraged that they be used against the Tutsis (3.6.3.3.1). Considering the concerted and coordinated actions of Nzabonimana and Ukirikyeyezu, the Chamber is convinced beyond a reasonable doubt that the only reasonable inference based on the totality of the evidence is that an agreement with the specific intent to destroy the Tutsi population in whole or in part, as such, materialised in May 1994 between Nzabonimana and Ukirikyeyezu.

4.3.4 Conclusion

1749. The Chamber thus finds Nzabonimana guilty of conspiracy to commit genocide under Article 2 (3) (b) of the Statute in relation to both of these agreements.[2184]

[2183] The Chamber notes that Nzabonimana has not been charged with conspiracy to commit genocide for the allegations contained in Paras. 20 and 24 of the Indictment. *See* Para. 60 of the Indictment.

[2184] The Chamber notes a split of authority regarding whether convictions may be entered simultaneously for conspiracy to commit genocide and for genocide. *See Gatete*, Judgement (TC), paras. 654-662; *Popović et al.*, Judgement (TC), paras. 2117-2127. The Chamber considers, however, that it does not need to address this issue because the conduct that serves as the basis for conspiracy to commit genocide (entering into agreements with members of the Interim Government and Jean-Damascene Ukirikyeyezu) is different from the conduct that serves as the basis for genocide (instigating genocide at Cyayi centre).

4.4 Direct and Public Incitement to Commit Genocide

4.4.1 Introduction

1750. In Count 3 of the Indictment, the Prosecution charged Nzabonimana with direct and public incitement to commit genocide under Article 2(3)(c) of the Statute.[2185]

4.4.2 Law

1751. The *actus reus* of direct and public incitement to commit genocide is that the accused must have directly and publicly incited the commission of genocide. The *mens rea* is that the accused had the intent to directly and publicly incite others to commit genocide. The *mens rea* required for the crime presupposes a genocidal intent.[2186]

1752. In order to satisfy the element that the indictment is "direct," the incitement must be a direct appeal to commit an act referred to in Article 2(2) of the Statute and must be more than a vague or indirect suggestion.[2187] Direct and public incitement to commit genocide is an inchoate crime and is punishable even if no act of genocide has resulted from the incitement.[2188] The crime is completed as soon as the discourse in question is uttered.[2189] The fact that a speech leads to acts of genocide may be an indication that in that particular context the speech was understood to be an incitement to commit genocide, and that this was indeed the intent of the speaker. However, the subsequent commission of genocide is insufficient, in and of itself, to conclude that the purpose of the speech was to incite the commission of genocide.[2190]

1753. In determining whether a speech constitutes "direct" incitement to commit genocide, the principal consideration is the meaning of the words used in the specific context. The culture, including the nuances of the Kinyarwanda language, should be considered. A Chamber may consider how a speech was understood by its intended audience in order to determine its true message.[2191]

1754. In discussing the "public" element of this crime, the Appeals Chamber has noted that "all convictions before the Tribunal for direct and public incitement to commit genocide involve speeches made to large, fully public assemblies, messages disseminated by the media, and communications made through a public address system over a broad public area."[2192] Moreover, the Appeals Chamber has taken into account the *travaux préparatoires* of the Genocide Convention, which confirm that "public" incitement to genocide pertains to mass communications. Conversely, the *travaux préparatoires* indicate that "private" incitement,

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[2185] Para. 61 of the Indictment.
[2186] *Kalimanzira*, Judgement (AC), para. 155.
[2187] *Nahimana et al.*, Judgement (AC), para. 692.
[2188] *Nahimana et al.*, Judgement (AC), paras. 678, 720.
[2189] *Nahimana et al.*, Judgement (AC), para. 723.
[2190] *Nahimana et al.*, Judgement (AC), para. 709.
[2191] *Nahimana et al.*, Judgement (AC), paras. 698-701.
[2192] *Kalimanzira*, Judgement (AC), paras. 155-156, citing *inter alia Bikindi*, Judgement (AC), paras. 50, 86; *Nahimana et al.*, Judgement (AC), paras. 758, 775, 862; *Kajelijeli*, Judgement (AC), paras. 105, 133; *Niyitegeka*, Judgement (AC), para. 270; *Akayesu*, Judgement (AC), para. 238 (upholding a finding that a speech in a public place to a crowd of over 100 people to eliminate the "enemy" constituted direct and public incitement).

understood as more subtle forms of communication such as conversations, private meetings, or messages, was specifically removed from the Convention.[2193]

1755. In order to determine whether incitement was "public" the Chamber may consider the surrounding circumstances, such as the place where the incitement occurred and whether the audience was selective or limited. Incitement is "public" when conducted through speeches, shouting or threats uttered in public places or at public gatherings.[2194]

4.4.3 Deliberations

1756. The Prosecution has charged Nzabonimana with direct and public incitement pursuant to Article 6(1) of the Statute.

4.4.3.1 Butare Trading Centre Meeting

1757. The Chamber has found that on or about the afternoon of 12 April 1994, Nzabonimana addressed a gathering at the Butare trading centre in Rutobwe *commune*. Nzabonimana told those gathered to kill Tutsis and take their belongings. Nzabonimana also asked if there were any Tutsis in the crowd. Witness CNAZ and another Tutsi fled. Nzabonimana told *gendarmes* and the population to pursue them (3.5.1.3.2). The Prosecution failed to prove beyond a reasonable doubt that following this speech Tutsis were killed by *Interahamwe*, Hutu civilians and soldiers (3.5.1.3.3).

1758. The Chamber recalls that it has found Nzabonimana's actions at this meeting failed to constitute the instigation of genocide (4.2.3.1). The Chamber also recalls that direct and public incitement is an inchoate crime; therefore, it is not necessary to prove that genocide was subsequently perpetrated, though evidence of the perpetration of genocide can assist in determining whether the accused possessed the requisite intent.

1759. The Chamber considers Nzabonimana's speech, which included explicit instructions to kill Tutsis, an incontestably direct call on those assembled to commit genocide.

1760. Nzabonimana's speech was given in an undeniably public location to twenty members of the general population, including Tutsis, who happened to be present in the area at the time of his arrival. Therefore, the Chamber has no doubt that it was public, and that Nzabonimana intended it to be so.

1761. Due to the unambiguous nature of Nzabonimana's words, and the overtly public nature of his instructions, the Chamber finds beyond a reasonable doubt that Nzabonimana directly and publicly incited those present at the Butare trading centre on 12 April 1994 to commit genocide, and that he had the requisite intent do so.

1762. Accordingly, the Chamber finds Nzabonimana guilty of direct and public incitement on the basis of this allegation under Article 6(1) of the Statute.

[2193] *Kalimanzira*, Judgement (AC), para. 158. *See also Nyiramasuhuko et al.*, Judgement (TC), para. 5987.
[2194] *Muvunyi II*, Judgement (AC), para. 27.

4.4.3.2 Cyayi Centre Meeting

1763. The Chamber has found that on 14 April 1994, Nzabonimana encouraged a crowd of persons at Cyayi centre near the Nyabikenke *commune* office to kill Tutsis. A Tutsi named Evariste Munyagatare spoke and challenged Nzabonimana. The following night the Nyabikenke *commune* office was attacked and Tutsis, including Munyagatare, were killed (3.5.2.4).

1764. The Chamber recalls that it has found Nzabonimana's actions at this event to constitute the instigation of genocide (4.2.3.2).

1765. The Chamber has no doubt that Nzabonimana's speech, which consisted of an explicit call to kill Tutsis, constituted a direct call to commit genocide.

1766. Nzabonimana made the speech in a public location near the Nyabikenke *commune* office. The witnesses did not indicate the specific audience to whom the speech was addressed; however, Witness CNAX described a crowd of approximately 30 people. The fact that Witness CNAI was summoned over, and that Evariste Munyagatare, a Tutsi, was also present, establishes beyond reasonable doubt that the words were intended to be heard by anyone in the area, rather than an exclusive and limited group. Therefore, the Chamber concludes that Nzabonimana's conduct satisfies the "public" element of the crime.

1767. The Chamber recalls that direct and public incitement is an inchoate crime; nevertheless, the subsequent killing of Tutsis at the Nyabikenke *commune* office provides circumstantial evidence that Nzabonimana's speech was understood as a direct call to commit genocide. This circumstantial evidence, combined with the unambiguous words used by Nzabonimana establishes beyond a reasonable doubt that Nzabonimana possessed the requisite intent to destroy, in whole or in part, the Tutsi ethnic group and to directly incite those present to commit genocide.

1768. Accordingly, the Chamber finds Nzabonimana guilty of direct and public incitement to commit genocide on the basis of this allegation under Article 6(1) of the Statute.

4.4.3.3 Murambi Meeting

1769. On 18 April 1994, the Prime Minister of Rwanda and other members of the Interim Government, including Nzabonimana, held a meeting for the *bourgmestres* of Gitarama *préfecture*. Nzabonimana ordered the killings of *bourgmestres* and other local officials opposed to the massacre of Tutsis during the meeting (3.5.7.3.2). The Prosecution failed to establish beyond reasonable doubt that Nzabonimana's actions substantially contributed to the subsequent killings of several local government officials (3.5.7.3.3).

1770. The Chamber recalls that it has not found that Nzabonimana's actions at this meeting substantially contributed to subsequent killings or other crimes under the Statute (4.2.3.4).

1771. The Chamber has no doubt that Nzabonimana's speech, which consisted of an explicit threat to kill persons opposing the massacre of Tutsis, constituted a direct call to commit genocide.

1772. The Chamber also concludes that Nzabonimana possessed the requisite *mens rea* to satisfy the "public" element of the crime of direct and public incitement to commit genocide. The Chamber recalls that present during this meeting were the Prime Minister, other members of the Interim Government, *bourgmestres* of Gitarama *préfecture* and other local political officials. In addition, a journalist from Radio Rwanda was present during the meeting with the *bourgmestres* (3.5.7.3.2). The journalist subsequently broadcast a report regarding the meeting.[2195] Given these circumstances, the Chamber considers that the evidence established that the message of the meeting was intended to be broadcast to the public at large and evinces that Nzabonimana had the requisite *mens rea* to incite genocide publicly.

1773. Accordingly, the Chamber finds Nzabonimana guilty of direct and public incitement on the basis of this allegation under Article 6(1) of the Statute.

4.4.3.4 Weapons Distribution in Nyakabanda Commune

1774. The Chamber has found beyond a reasonable doubt that Nzabonimana attended a meeting at Kibangu *secteur,* Nyakabanda *commune* in May 1994, where Prime Minister Kambanda distributed weapons to the Ndiza battalion for the purpose of fighting the Tutsi enemy (3.5.9.4). However, as the Indictment explicitly alleged that Nzabonimana actively spoke at the meeting, Nzabonimana can not be held liable for his mere presence at the meeting. The Chamber therefore does not find Nzabonimana guilty of direct and public incitement on the basis of this allegation.

4.4.4 Conclusion

1775. Nzabonimana directly called for the destruction of the Tutsi ethnic group, as such, with the requisite intent, in public gatherings at Butare trading centre on or about 12 April 1994, at Cyayi centre on 14 April 1994 and at Murambi training centre on 18 April 1994. The Chamber therefore finds Nzabonimana guilty of committing direct and public incitement to commit genocide.

4.5 Crimes Against Humanity

4.5.1 Introduction

1776. The Prosecution charged Nzabonimana with extermination and murder as crimes against humanity under Articles 3(a) and 3(b) of the Statute.

4.5.2 Widespread and Systematic Attack

1777. An enumerated crime under Article 3 of the Statute constitutes a crime against humanity if it is proven to have been committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds.[2196] The "attack" perpetrated against a civilian population refers to a series of acts of violence or of the kind of

[2195] Defence Exhibit 86 (Transcript of Radio Rwanda Broadcast, 19 April 1994). The Chamber notes that the report of the meeting did not include a summation of the threats issued by the Government. However, the Chamber does not consider that this detracts from the conclusion that Nzabonimana intended to publicly incite genocide.
[2196] *Bagosora & Nsengiyumva*, Judgement (AC), paras. 389-390.

mistreatment referred to in subsections (a) through (i) of Article 3.[2197] The term "widespread" refers to the large scale nature of the attack and the number of victims, whereas the term "systematic" refers to the organised nature of the acts of violence and the improbability of their random occurrence.[2198]

1778. Regarding the *mens rea*, the accused must have acted with knowledge of the broader context of the attack, and with knowledge that his or her act formed part of the widespread and systematic attack against the civilian population. The additional requirement that crimes against humanity have to be committed "on national, political, ethnic, racial or religious grounds" does not necessarily mean that the accused must have a discriminatory intent when committing the act.[2199]

1779. As a preliminary matter, the Chamber recalls that it has taken judicial notice that between 6 April 1994 and 17 July 1994, there were widespread or systematic attacks throughout Rwanda against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsis. As a result of the attacks, there were a large number of deaths of persons of the Tutsi ethnic identity.[2200] Nonetheless, the Prosecution still bears the burden of proving each element beyond a reasonable doubt.[2201]

1780. The Chamber has considered the totality of the evidence, particularly as it relates to the ethnic composition of the people who were targeted for attack and who sought refuge throughout Gitarama *préfecture*. The evidence established that Tutsis were singled out and targeted for attack at perceived safe havens such as the Nyabikenke *commune* office (3.5.2.4) and Ntarabana Parish (3.4.5.3.1). In addition, Tutsis were targeted at roadblocks in Tambwe *commune* (3.6.4.3.3) and underwent attack in Rutobwe *commune* (3.5.6.3). The Chamber is convinced beyond a reasonable doubt that after 6 April 1994, there was a widespread and systematic attack upon Tutsis in Gitarama *préfecture* on the basis of their ethnicity. Furthermore, the Chamber is satisfied beyond a reasonable doubt that the attack was directed against the civilian population. Taking into account the nature of the attack and the fact that the attack occurred in the confines of Gitarama *préfecture* the Chamber concludes that Nzabonimana and the principal perpetrators of this attack knew that their acts formed part of this attack.

[2197] *Nahimana et al.*, Judgement (AC), para. 918.
[2198] *Bagosora & Nsengiyumva*, Judgement (AC), para. 389, citing *Nahimana et al.*, Judgement (AC), para. 920, quoting *Kordić & Čerkez*, Judgement (AC), para. 94; *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 516; *Gacumbitsi*, Judgement (AC), para. 101
[2199] *Gacumbitsi*, Judgement (AC), paras. 86, 103, quoting *Gacumbitsi*, Judgement (TC), para. 302; *Semanza*, Judgement (AC), paras. 268-269, quoting *Akayesu*, Judgement (AC), para. 467; *Kordić & Čerkez*, Judgement (AC), paras. 99-100; *Blaškić*, Judgement (AC), paras. 124, 126; *Kunarac et al.*, Judgement (AC), paras. 102-103.
[2200] Decision on Prosecutor's Motion for Judicial Notice (TC), 29 April 2009, para. 5(iii), p. 6. *See also* Corrigendum to Decision on Prosecutor's Motion for Judicial Notice (TC), 6 May 2009.
[2201] *Semanza*, Judgement (AC), para. 192.

4.5.3 Extermination

4.5.3.1 Introduction

1781. In Count 4 of the Indictment, the Prosecution charged Nzabonimana with extermination as a crime against humanity under Article 3(b) of the Statute.[2202]

4.5.3.2 Law

1782. Extermination as a crime against humanity is the act of killing on a large scale, committed within the context of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.[2203] The expression "on a large scale" does not suggest a numerical minimum.[2204] The *actus reus* consists of any act, omission or combination thereof which contributes directly or indirectly to the killing of a large number of individuals. The accused may incur liability by participating directly or indirectly in causing death.[2205] The requisite *mens rea* is that the accused intended to kill a large number of people or subject a large number of people to conditions of living that would lead to their death.[2206]

4.5.3.3 Deliberations

4.5.3.3.1 Butare Trading Centre Meeting

1783. The Chamber has found that on or about 12 April 1994, Nzabonimana addressed a gathering at the Butare trading centre in Rutobwe *commune*. Nzabonimana told those gathered to kill Tutsis and take their belongings, and to pursue two Tutsis who were fleeing (3.5.1.3.2).

1784. The Chamber recalls that it has not found it established that Nzabonimana's actions at this meeting constituted genocide, as there was insufficient evidence to establish that Nzabonimana's words at Butare centre substantially contributed to any subsequent crime (4.2.3.1). For the same reasons, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt that Nzabonimana is responsible for extermination as a crime against humanity with regard to this allegation.

[2202] Para. 63 of the Indictment.
[2203] *Bagosora & Nsengiyumva*, Judgement (AC), para. 394.
[2204] *Bagosora & Nsengiyumva*, Judgement (AC), fn. 924 ; *Rukundo*, Judgement (AC), para. 185; *Stakić*, Judgement (AC), para. 260 ("The Appeals Chamber notes, however, that there is no support in customary international law for the requirement of intent to kill a certain threshold number of victims [...]. This is consistent with the fact that there is no numerical threshold established with respect to the *actus reus* of extermination"); *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 522.
[2205] *Seromba*, Judgement (AC), para. 189, citing *Ndindabahizi*, Judgement (AC), para. 135.
[2206] *Munyakazi*, Judgement (AC), para. 141.

4.5.3.3.2 Cyayi Centre Meeting and Nyabikenke Commune Office Attacks

1785. The Chamber has found that on or about 15 April 1994, following the orders of Nzabonimana at Cyayi centre, between 15 and 60 Tutsis were killed at the Nyabikenke *commune* office. The Chamber considers that these killings occurred on a large scale (3.5.2.4).[2207]

1786. The Chamber has also found Nzabonimana guilty of genocide for instigating the killing of Tutsis taking refuge at the Nyabikenke *commune* office (4.2.3.2). Based upon the same reasoning, the Chamber finds that the principal perpetrators possessed the intent to commit extermination, that Nzabonimana knew of this intent and that he intended for extermination to be committed.

1787. The Chamber therefore finds beyond a reasonable doubt that Nzabonimana is guilty of instigating extermination as a crime against humanity, pursuant to Article 3(b) and Article 6(1) of the Statute.

4.5.3.3.3 Weapons Distribution in Tambwe Commune

1788. The Chamber has found that in May 1994, Nzabonimana distributed weapons at the Tambwe *commune* office, where he said the weapons were for protection and to ensure the security of the country from the enemy, meaning the Tutsis. It has not been proven, however, that the weapons distributed were used to kill Tutsis, as alleged by the Prosecution

1789. The Chamber recalls that it has not found it established that Nzabonimana's actions at the Tambwe *commune* office constituted genocide (4.2.3.8). For the same reasons, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt that Nzabonimana is responsible for extermination as a crime against humanity with regard to this allegation.

4.5.3.4 Conclusion

1790. Nzabonimana instigated extermination, with the requisite intent, at the Nyabikenke *commune* office on or about 15 April 1994 and this extermination was part of a widespread or systematic attack against the Tutsi civilian population on the basis of its ethnicity. The Chamber therefore finds Nzabonimana guilty of instigating extermination as a crime against humanity.

4.5.4 Murder

4.5.4.1 Introduction

1791. In Count 5 of the Indictment, the Prosecution charged Nzabonimana with murder as a crime against humanity under Article 3 (a) of the Statute.[2208]

[2207] *See Bagosora & Nsengiyumva*, Judgement (AC), para. 398 (there were several groups of assailants, one of which killed at least nine individuals, and stating that "[i]n the Appeals Chamber's view, these killings are qualifiable as having occurred on a large scale" for the purposes of extermination as a crime against humanity), citing *Bagosora et al.*, Judgement (TC), paras. 1016, 1066, 2140.
[2208] Para. 65 of the Indictment.

4.5.4.2 Law

1792. For the crime of murder to be established, it must be shown that a victim died and that the victim's death was caused by an act or omission of the accused.[2209] To satisfy the *mens rea* for murder it is further required that there was an act or omission, with the intention to kill or to inflict grievous bodily harm, in the reasonable knowledge that it might lead to death.[2210]

4.5.4.3 Cumulative Convictions

1793. Cumulative 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 if it requires proof of a fact that is not required by the other.[2211]

1794. Cumulative convictions for extermination and murder as crimes against humanity based on the same set of facts are not permissible. Whereas extermination requires the materially distinct element that the killings occur on a mass scale, murder does not contain an element materially distinct from extermination. Accordingly, where the Chamber has entered a conviction for extermination as a crime against humanity, it will not consider the same underlying conduct as a basis for a conviction for murder as a crime against humanity.[2212]

4.5.4.4 Deliberations

4.5.4.4.1 Nyabikenke Commune Office Attacks

1795. The Chamber has found that on or about 15 April 1994, following the orders of Nzabonimana at Cyayi centre, between 15 and 60 Tutsis were killed at the Nyabikenke *commune* office (3.5.2.4). On the basis of these facts, the Chamber has found Nzabonimana guilty of genocide and of extermination as a crime against humanity (4.2.3.2; 4.5.3.3.2).

1796. The Prosecution also pled Paragraph 20 of the Indictment in support of murder as a crime against humanity. The Chamber considers that, for the same reasons that establish Nzabonimana's criminal culpability for genocide and for extermination as a crime against humanity, Nzabonimana would also be responsible for murder as a crime against humanity stemming from the attacks upon the Nyabikenke *commune* office. Recalling the law on cumulative convictions however, the Chamber will not enter a conviction for murder as a crime against humanity based upon Paragraph 20 of the Indictment.[2213] The Chamber therefore dismisses the charge of murder as a crime against humanity.

[2209] *Dragomir Milošević*, Judgement (AC), para. 108, quoting *Dragomir Milošević*, Judgement (TC), para. 931; *Kordić & Čerkez*, Judgement (AC), para. 113, citing *Kordić & Čerkez* Judgement (TC), para. 114.
[2210] *Dragomir Milošević*, Judgement (AC), para. 108, quoting *Dragomir Milošević*, Judgement (TC), para. 931.
[2211] *Bagosora & Nsengiyumva*, Judgement (AC), para. 413, citing *Krajišnik*, Judgement (AC), para. 386; *Nahimana et al.*, Judgement (AC), para. 1019, fn. 2329; *Ntagerura et al.*, Judgement (AC), para. 425; *Delalić*, Judgement (AC), para. 412.
[2212] *Bagosora & Nsengiyumva*, Judgement (AC), para. 416.
[2213] *Bagosora & Nsengiyumva*, Judgement (AC), para. 416.

4.5.4.4.2 Murambi Meeting

1797. The Chamber has found that Nzabonimana threatened the *bourgmestres* and ordered the killing of *bourgmestres* and other local officials opposed to the massacre of Tutsis during the second meeting held at Murambi on 18 April 1994 (3.5.7.3.2). The evidence, however, was insufficient to establish that Nzabonimana's conduct at the meeting substantially contributed to any subsequent crime (3.5.7.3.3).

1798. The Chamber recalls that it has not found it established that Nzabonimana's actions at this meeting constituted genocide (4.2.3.4). For the same reasons, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt that Nzabonimana is responsible for murder as a crime against humanity with regard to this allegation.

4.5.4.5 Conclusion

1799. Nzabonimana instigated murder, with the requisite intent, at the Nyabikenke *commune* office on or about 15 April 1994 and this murder was part of a widespread or systematic attack against the Tutsi civilian population on the basis of its ethnicity. The Chamber therefore considers that he would be responsible, in relation to this event, for instigating murder as a crime against humanity. Recalling the law on cumulative convictions and that Nzabonimana has been found guilty of extermination as a crime against humanity for this conduct, the Chamber dismisses the charge of murder as a crime against humanity.

CHAPTER V: VERDICT

1800. For the reasons set out in this Judgement, having considered all evidence and submissions of the Parties, the Trial Chamber finds unanimously in respect of

CALLIXTE NZABONIMANA as follows:

Count 1: GUILTY of Genocide

Count 2: GUILTY of Conspiracy to Commit Genocide

Count 3: GUILTY of Direct and Public Incitement to Commit Genocide

Count 4: GUILTY of Extermination as a Crime Against Humanity

Count 5: DISMISSED (Murder as a Crime Against Humanity)

CHAPTER VI: SENTENCING

6.1 Introduction

1801. Having found Nzabonimana guilty of crimes under the jurisdiction of the Tribunal, the Chamber must determine an appropriate sentence.

6.2 Law

1802. All crimes under the Tribunal's Statute are serious violations of international humanitarian law.[2214] When determining a sentence, a Trial Chamber has considerable, though not unlimited, discretion on account of its obligation to individualise penalties to fit the individual circumstances of an accused and to reflect the gravity of the crimes for which the accused has been convicted.[2215]

1803. The gravity of the offences committed is the deciding factor in the determination of the sentence.[2216] Gravity entails the particular circumstances of the case, the form and degree of the participation of the accused in the crimes, and the number of victims.[2217] It is not relevant, for the purpose of assessing gravity, that the crimes were committed in the accused's own *préfecture*, rather than at the national level.[2218]

1804. The Appeals Chamber has stated that "sentences of like individuals in like cases should be comparable."[2219] However, similar cases do not provide a legally binding benchmark for sentences. Although assistance can be drawn from previous decisions, such assistance is often limited, as each case contains a multitude of variables.[2220] In light of this, the Appeals Chamber has recognised that "[d]ifferences between cases are often more significant than similarities and different mitigating and aggravating circumstances might dictate different results."[2221]

1805. Pursuant to Article 23 of the Statute, and Rule 101 (B) of the Rules, the Chamber shall take into account the general practice regarding prison sentences in the courts of Rwanda, any aggravating circumstances, any mitigating circumstances and the extent to which the convicted person has already served any penalty imposed by a court of any State for the same act. These factors are not exhaustive.[2222]

[2214] *Kayishema & Ruzindana*, Judgement (AC), para. 367, quoting Article 1 of the Statute.
[2215] *Nahimana et al.*, Judgement (AC), para. 1037; *Kajelijeli*, Judgement (AC), para. 291.
[2216] *Nshogoza*, Judgement (AC), para. 98; *Nahimana et al.*, Judgement (AC), para. 1060.
[2217] *Rukundo*, Judgement (AC), para. 243.
[2218] *Kalimanzira*, Judgement (AC), para. 229.
[2219] *Dragomir Milošević*, Judgement (AC), para. 326; *Strugar*, Judgement (AC), para. 348; *Kvočka et al.*, Judgement (AC), para. 681.
[2220] *Dragomir Milošević*, Judgement (AC), para. 326; *Kvočka et al.*, Judgement (AC), para. 681.
[2221] *Dragomir Milošević*, Judgement (AC), para. 326, citing *Limaj et al.*, Judgement (AC), para. 135; *Dragan Nikolić*, Judgement (AC), para. 19.
[2222] *Seromba*, Judgement (AC), para. 228; *Nahimana et al.*, Judgement (AC), para. 1038; *Kajelijeli*, Judgement (AC), para. 290.

1806. Under Rwandan law, similar crimes as those at issue in the present case carry the possible penalty of life imprisonment, depending on the nature of the accused's participation.[2223] In this Tribunal, a sentence of life imprisonment is generally reserved for those who planned or ordered atrocities, as well as the most senior authorities.[2224]

1807. Aggravating circumstances must be proven beyond a reasonable doubt.[2225] The Chamber may only consider aggravating circumstances that are pled in the indictment.[2226] Any circumstance included as an element of the crime for which an individual is convicted will not be considered as an aggravating factor.[2227]

1808. The Appeals Chamber has listed various factors which, if proven beyond a reasonable doubt, may qualify as aggravating circumstances. These include the position of the accused, the length of time during which the crime continued, premeditation, the vulnerability of the victims, the status of the victims and the circumstances of the offences generally.[2228] The Appeals Chamber has also held that an abuse of influence by the accused may be considered as an aggravating factor.[2229]

1809. A particularly large number of victims may also be an aggravating circumstance. This is true even for extermination as a crime against humanity, which requires "killing on a large scale," so long as the extent of the killings exceeds that required for extermination.[2230]

1810. Mitigating circumstances need only be established by a balance of probabilities.[2231] Such circumstances include cooperation with the Prosecution, voluntary surrender, good character with no prior criminal convictions, comportment in detention, personal and family

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[2223] *Gatete*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008, paras. 22-25 (assessing Rwanda's penalty structure); *Kanyarukiga*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008, paras. 22-25 (same); *see also Semanza*, Judgement (AC), para. 377, quoting *Serushago*, Judgement (AC), para. 30 ("The command for Trial Chambers to 'have recourse to the general practice regarding prison sentences in the courts of Rwanda does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice.'"); *Dragan Nikolić*, Judgement (AC), para. 69.

[2224] *Bagosora et al.*, Judgement (TC), para. 2270, citing *Musema*, Judgement (AC), para. 383 (noting that the leaders and planners of a particular conflict should bear heavier responsibility, with the qualification that the gravity of the offence is the primary consideration in imposing a sentence). Life sentences have been imposed against senior Government and authorities in: *Ndindabahizi*, Judgement (TC), paras. 505, 508, 511 (Minister of Finance); *Niyitegeka*, Judgement (TC), paras. 499, 502 (Minister of Information); *Kambanda*, Judgement (TC), paras. 44, 61-62 (Prime Minister); *Kamuhanda*, Judgement (TC), paras. 6, 764, 770 (Minister of Higher Education and Scientific Research).

[2225] *Nahimana et al.*, Judgement (AC), para. 1038; *Kajelijeli*, Judgement (AC), paras. 82, 294.

[2226] *Renzaho*, Judgement (AC), para. 615; *Simba*, Judgement (AC), para. 82.

[2227] *Ndindabahizi*, Judgement (AC), para. 137.

[2228] *Blaškić*, Judgement (AC), para. 686.

[2229] *Simba*, Judgement (AC), paras. 284-285.

[2230] *Ndindabahizi*, Judgement (AC), para. 135.

[2231] *Nahimana et al.*, Judgement (AC), para. 1038; *Kajelijeli*, Judgement (AC), para. 294.

circumstances, indirect participation, age and assistance to detainees or victims.[2232] Selective assistance of Tutsis may be given only limited weight as a mitigating factor.[2233]

1811. An absence of mitigating factors does not require the maximum sentence,[2234] while the existence of mitigating factors does not preclude a life sentence where the gravity requires that the maximum sentence be imposed.[2235] There is no category of case where a life sentence is required, or a category where a life sentence is barred.[2236]

1812. Rule 86 (C) of the Rules states that "[t]he parties shall also address matters of sentencing in closing arguments," and it is therefore the accused's prerogative to identify any mitigating circumstances at the time. As a general rule, if an accused fails to put forward relevant information at the appropriate time, the Chamber is not under an obligation to seek out such information.[2237] The Defence did not to make submissions concerning sentencing. Nevertheless, the Chamber will consider any mitigating circumstances in the interests of justice.

6.3 Submissions

1813. The Prosecution submits that Nzabonimana should receive the maximum sentence of life imprisonment on each count of the Indictment. It asserts that Nzabonimana is guilty of the gravest crimes which he committed as a principal perpetrator and leader, and argues that there are no mitigating circumstances that would justify the imposition of a lesser sentence. It also submits that the charges against Nzabonimana are so heinous that they place him in the category of the most serious offenders, therefore deserving the highest penalty of life imprisonment.[2238]

1814. The Prosecution refers to various factors which it claims aggravate the culpability of Nzabonimana. It argues that Nzabonimana was an intellectual, who abused his position as the Minister of Youth and Associative Movements and Chairman of the MRND party in Gitarama *préfecture*, by recruiting Hutu youths into the *Interahamwe* in order to perpetrate large-scale killings of Tutsis. It asserts that Nzabonimana abused his power and wielded considerable influence within Gitarama *préfecture*. Furthermore, as a member of the Interim Government he gave orders which were heeded by civilians, law enforcement agents and the *Interahamwe* militia. Nzabonimana used his position of power to encourage and ensure the commission of atrocities by Hutu civilians against Tutsis. By his direct participation and omissions, Nzabonimana personally guaranteed the perpetrators immunity to kill and commit other crimes against the Tutsis and therefore promoted an environment of impunity for mass atrocity. The Prosecution also points to the large number of victims who lost their lives during the attack on the Nyabikenke *commune* office as an aggravating factor.[2239]

[2232] *Blaškić*, Judgement (AC), para. 696.
[2233] *Nchamihigo*, Judgement (AC), para. 389. *See also Rukundo*, Judgement (AC), para. 256; *Kajelijeli*, Judgement (AC), para. 311.
[2234] *Muvunyi II*, Judgement (AC), para. 70.
[2235] *Renzaho*, Judgement (AC), para. 612.
[2236] *Rukundo*, Judgement (AC), para. 260.
[2237] *Rukundo*, Judgement (AC), para. 255; *Bikindi*, Judgement (AC), para. 165; *Muhimana*, Judgement (AC), para. 231.
[2238] Prosecution Closing Brief, paras. 386, 389.
[2239] Prosecution Closing Brief, paras. 391-392, 396.

1815. The Prosecution submits that Nzabonimana has shown no remorse, and thus there are no mitigating circumstances. The Prosecution further notes that any mitigating factors alleged by the Defence are outweighed by the gravity of the crimes committed by Nzabonimana, and thus the Trial Chamber should impose a life sentence.[2240]

1816. In both its Closing Brief and oral arguments, the Defence made no sentencing submissions.

6.4 Deliberations

6.4.1 Gravity of the Offences

1817. The Chamber has found Nzabonimana guilty of instigating genocide and extermination as a crime against humanity, with respect to the killings of Tutsis at the Nyabikenke *commune* office (4.2.3.2). The Chamber also found Nzabonimana guilty of entering into two separate conspiracies to commit genocide in Gitarama *préfecture* (4.3.4). The Chamber further found Nzabonimana guilty of three separate incidents of direct and public incitement to commit genocide at public gatherings at Butare trading centre on or about 12 April 1994, at Cyayi centre on 14 April 1994 and at the Murambi Training Centre on 18 April 1994 (4.4.4). The Chamber considers Nzabonimana's crimes to be of the utmost gravity. His actions resulted in considerable loss of life, destruction of property and human suffering throughout Gitarama *préfecture*.

6.4.2 Individual, Aggravating and Mitigating Circumstances

1818. The Chamber recalls its finding that Nzabonimana was an influential personality in Gitarama *préfecture* during the events (3.1.3). Instead of using his position of authority and his influence to protect the vulnerable Tutsis within Gitarama *préfecture*, Nzabonimana instead encouraged the intensification of the massacres. In this regard, the Chamber notes that it has found that Nzabonimana also released killers from prison in Rutobwe *commune* (3.5.6.3) and ordered the destruction of a Tutsi's house in Nyamabuye *commune* (3.6.2.4). Although the Chamber concluded that Nzabonimana could not be held criminally liable for these actions, these incidents further display Nzabonimana's abuse of his position of influence to stoke the genocide in Gitarama *préfecture*. The Chamber considers that this abuse of influence is an aggravating factor.

1819. The Chamber considers the large number of victims at the Nyabikenke *commune* office, in excess of the threshold for extermination as a crime against humanity, to be an aggravating circumstance. The Chamber also considers as an aggravating factor the fact that the victims of the attack upon the Nyabikenke *commune* office were particularly vulnerable.

1820. The Chamber has considered Nzabonimana's background and individual circumstances. The Chamber recalls that several witnesses testified that prior to 6 April 1994, Nzabonimana was a respected person who cared for the advancement of his region and promoted agricultural development. He provided items such as roofing tiles, footballs and volleyballs to the people of his area and uniforms for the youth dancers in the region. Witnesses also testified that Nzabonimana did not discriminate against Tutsis prior to 6 April 1994. He helped the members

[2240] Prosecution Closing Brief, paras. 394, 397, 399.

of the community without distinction and did not express negative sentiments against Tutsis. While the Chamber is mindful of Nzabonimana's public service in Rwanda prior to the events of 1994, and particularly his contribution towards the development of Gitarama *préfecture*, the Chamber accords these mitigating circumstances very limited weight in view of the gravity of Nzabonimana's crimes and the nature of his involvement in them.[2241]

6.4.3 Conclusion

1821. The Chamber has the discretion to impose a single sentence and it chooses to do so. The Chamber notes that the actions of Nzabonimana, who was a Minister in the Interim Government during the events, warrant the highest sanction, comparable to other senior leaders tried before this Tribunal.

1822. Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Nzabonimana to:

Life Imprisonment

6.4.4 Consequential Orders

1823. This sentence shall be enforced immediately and shall be served in a State designated by the President of the Tribunal, in consultation with the Chamber. The Government of Rwanda and the designated State shall be notified of such designation by the Registrar.

1824. Until his transfer to his designated place of imprisonment, Callixte Nzabonimana shall be kept in detention under the present conditions.

1825. Pursuant to Rule 102(B) of the Rules, on notice of appeal, if any, enforcement of the above sentence shall be stayed until a decision has been rendered on the appeal, with the convicted person nevertheless remaining in detention.

Arusha, 31 May 2012, done in English.

Solomy Balungi Bossa	Bakhtiyar Tuzmukhamedov	Mparany Rajohnson
Presiding Judge	Judge	Judge

[Seal of the Tribunal]

[2241] The Chamber also recalls that the accused's previous good character is usually accorded little weight in the final determination of the sentence (*see Seromba*, Judgement (AC), para. 235; *Semanza*, Judgement (AC), paras. 334, 397, 398; *Gacumbitsi*, Judgement (AC), para. 195).

ANNEX A: PROCEDURAL HISTORY

1.1 Pre-Trial Proceedings

1826. The Prosecution submitted an initial Indictment against Nzabonimana, jointly charged with Augustin Bizimana, Édouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, Félicien Kabuga and Juvénal Kajelijeli, on 21 November 2001.[2242] On 8 October 2003, Trial Chamber III ordered that the case of Bizimana and Nzabonimana be severed from the initial Indictment.[2243]

1827. On 18 February 2008, Nzabonimana was arrested in Kigoma, Tanzania.[2244] He was transferred to Arusha, Tanzania on 19 February 2008.[2245]

1828. At his initial appearance, on 20 February 2008, Nzabonimana pled not guilty to all eleven counts against him: Conspiracy to Commit Genocide; Genocide; Complicity in Genocide; Direct and Public Incitement to Commit Genocide; Crime against Humanity (murder); Crime against Humanity (extermination); Crime against Humanity (rape); Crime against Humanity (persecution); Crime against Humanity (inhumane acts); Serious Violations of Article 3 common to the Geneva Conventions and Additional Protocol II (violence to life, health and physical or mental well-being of persons); and Serious Violations of Article 3 common to the Geneva Conventions and Additional Protocol II (outrages upon personal dignity).[2246]

1829. On 7 November 2008, the Chamber granted the Prosecution motion for severance of the case and amendment of the Indictment.[2247] On 12 November 2008, the Prosecution filed an Amended Indictment, charging Nzabonimana with five counts.[2248]

1830. On 12 February 2009, the Prosecution filed its Pre-Trial Brief.[2249]

1831. At a Status Conference on 12 February 2009, the Pre-Trial Chamber directed the Prosecution to reduce its witness list to 30 witnesses. The Chamber directed the Prosecution to refine its witness list, to disclose the documentary evidence intended to be used at trial and to

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[2242] *The Prosecutor v. Augustin Bizimana et al.*, Case No. ICTR-98-44-I, Prosecutor's Amended Indictment Pursuant to the Decision of Trial Chamber II on the Defence Motion, Pursuant to Rule 72 of the Rules of Procedure and Evidence, Pertaining to, *Inter Alia*, Lack of Jurisdiction and Defects in the Form of the Indictment (TC), 21 November 2001.
[2243] *The Prosecutor v. Augustin Bizimana et al.*, Case No. ICTR-98-44-I, Decision on the Prosecutor's Motion for Separate Trials and for Leave to File an Amended Indictment (TC), 8 October 2003.
[2244] Prosecutor's Revised Pre-Trial Brief, 1 October 2009, para. 5.
[2245] Press Release, Arrest and Transfer of Callixte Nzabonimana, Former Minister of Youth, 19 February 2008; *The Prosecutor v. Augustin Bizimana & Callixte Nzabonimana*, Case No. ICTR-98-44-I, Decision on Prosecution Motion for Severance and Amendment of the Indictment (TC), 7 November 2008.
[2246] T. 20 February 2008 pp. 10-11 (Initial Appearance – Pre-Trial).
[2247] *The Prosecutor v. Augustin Bizimana & Callixte Nzabonimana,* Case No. ICTR-98-44-I, Decision on Prosecution Motion for Severance and Amendment of Indictment (TC), 7 November 2008.
[2248] Amended Indictment, 12 November 2008.
[2249] Prosecutor's Pre-Trial Brief, 12 February 2009.

inform the Defence on the issue of admissions it expected the Defence to make in terms of judicial notice. The Chamber also directed the same to the Defence.[2250]

1832. On 13 February 2009, the Prosecution submitted a corrected and updated Pre-Trial Brief.[2251] Also on 13 February 2009, the Chamber ordered protective measures in respect of all Prosecution witnesses or potential Prosecution witnesses who have not affirmatively waived their right to protective measures.[2252]

1833. On 16 April 2009, the Chamber directed the Prosecution to provide information concerning, *inter alia*, the Prosecution witnesses, exhibits and length of the Prosecution case.[2253]

1834. On 29 April 2009, the Chamber granted in part a Prosecution motion for judicial notice on certain facts of common knowledge.[2254]

1835. On 11 June 2009, the Prosecution filed a revised list of 27 witnesses, as well as a proofing chart containing the names and pseudonyms of witnesses, the corresponding Indictment paragraph and Pre-Trial Brief paragraph on which the witnesses were expected to testify.[2255]

1836. At a Status Conference on 29 June 2009, the Chamber directed the Defence to contact the Registry to obtain public transcripts and exhibits from the *Akayesu* and *Rukundo* cases, and referred the Defence to Rule 75 to obtain any material under seal. The Chamber further ordered the Prosecution to provide to the Defence physical copies of disclosures on CD-ROM.[2256]

1837. On 23 June 2009, Prosecution informed the Chamber that it intended to abandon Paragraphs 25, 29, 32, 48, 55, 58 and 72 of the Indictment.[2257]

1838. On 29 June 2009, the Defence announced that it would be entering an alibi for the period of 6 to 11 April 1994. The Defence stated, however, that this was not a Notice of Alibi.[2258]

1839. On 2 July 2009, the Pre-Trial Chamber partially granted a Defence request to order France to cooperate. The Chamber requested the French government to provide all assistance necessary for the Defence: to obtain a list of all people seeking refuge at the French Embassy in Kigali between 7 and 11 April 1994, indicating the date they were registered there; to obtain a

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[2250] T. 12 February 2009 pp. 14, 20-21 (Status Conference).
[2251] Corrected Pre-Trial Brief, 13 February 2009.
[2252] Interim Order on Protective Measures for Prosecution Witnesses (TC), 13 February 2009.
[2253] *See* Prosecutor's Response to the Chamber's Directives Following the Informal Meeting on 16 April 2009, 11 June 2009.
[2254] Decision on Prosecutor's Motion for Judicial Notice (TC), 29 April 2009. *See also* Corrigendum to Decision on Prosecutor's Motion for Judicial Notice (TC), 6 May 2009.
[2255] Prosecutor's Response to the Chamber's Directives Following the Informal Meeting on 16 April 2009, 11 June 2009.
[2256] T. 29 June 2009 pp. 3-4 (Extract) (Status Conference).
[2257] T. 29 June 2009 p. 6 (ICS) (Status Conference).
[2258] T. 29 June 2009 pp. 13-14 (ICS) (Status Conference).

list of the personnel working at the French Embassy at that time; and to authorise these persons to meet with the Defence.[2259]

1840. On 13 July 2009, the Prosecution filed a revised Pre-Trial Brief.[2260]

1841. On 21 July 2009, Trial Chamber III granted the Prosecution motion to amend the Indictment.[2261] The Prosecution subsequently filed an Amended Indictment on 24 July 2009 ("Amended Indictment").[2262]

1842. On 24 August 2009, the Chamber granted the Defence request for a postponement of the trial.[2263] The Chamber also granted a Defence motion to interview 24 Prosecution witnesses in the presence of a representative of the Prosecution and 22 other Prosecution witnesses without the Prosecution being present.[2264]

1843. Also on 24 August 2009, the Chamber denied a Defence request to proceed *ex parte* to meet with Prosecution Witness CNAO, ordered the Prosecution to file any comments based on the Defence request within five days, and prohibited the Prosecution from contacting Witness CNAO until the Chamber ruled on the Defence motion.[2265] On 10 September 2009, the Chamber ordered the Prosecution to file submissions on the Defence's *ex parte* motion requesting an order from the Chamber to allow the Defence team to meet with Prosecution Witness CNAO, without the knowledge of the Prosecution.[2266]

1844. On 28 September 2009, the Chamber denied the Defence motion requesting a subpoena and cooperation from the Kingdom of Belgium.[2267]

1845. At the Status Conference on 1 October 2009, the Pre-Trial Bench informed the Parties that henceforth the case would be assigned to the Trial Bench.[2268] The Chamber informed the Parties that the trial was scheduled to commence on 9 November 2009.[2269] The Prosecution also filed a revised Pre-Trial Brief.[2270]

1846. On 2 October 2009, the Chamber denied the Defence motion seeking a private meeting with Witness CNAO and requested that WVSS arrange a meeting between the Defence and

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[2259] *Décision sur la Requête Urgente de Callixte Nzabonimana Demandant à la Chambre d'Ordonner à la France Coopération et Assistance* (TC), 2 July 2009.
[2260] Prosecutor's Revised Pre-Trial Brief, 13 July 2009.
[2261] Decision on Prosecutor's Motion for Amendment of Indictment (TC), 21 July 2009.
[2262] Indictment, signed 23 July 2009, filed 24 July 2009.
[2263] Decision on Prosecution Motion to Transfer of Witnesses and Other Issues Relating to the Preparation of the Trial (TC), 24 August 2009.
[2264] Decision on Motion to Interview Prosecution Witnesses (TC), 24 August 2009.
[2265] Confidential Interim Order on Nzabonimana's *Ex Parte* Motion Seeking Order Allowing Meeting With Prosecution Witness CNAO (TC), 24 August 2009.
[2266] Confidential Scheduling Order (TC), 10 September 2009.
[2267] Decision on Callixte Nzabonimana's Request for Subpoena to Professor Philip Verwimp and Cooperation From the Kingdom of Belgium (TC), 28 September 2009.
[2268] T. 1 October 2009 p. 2 (Status Conference).
[2269] T. 1 October 2009 pp. 29-30 (Status Conference).
[2270] Prosecutor's Revised Pre-Trial Brief, 1 October 2009.

Witness CNAO in the presence of a representative of WVSS and the Prosecution. The Chamber upheld its previous Order to the Prosecution not to contact the witness until such meeting.[2271]

1847. A Pre-Trial Conference was held on 15 October 2009.[2272]

1848. On 19 October 2009, the Chamber denied the Defence motion for a request to the President to report to the Security Council the matter of France's refusal to cooperate. However, the Chamber issued a new request to the French authorities.[2273] On 26 October 2009, the Chamber ordered the transfer of Witnesses CNAA and CNAC to the Tribunal.[2274]

1849. On 27 October 2009, the Chamber granted in part the Defence motion for protective measures and deposition of Witness RW-42. The Chamber also ordered that a deposition of Witness RW-42 be taken for use at trial, and that both an audio and visual recording of the deposition be made and placed under seal.[2275]

1850. On 29 October 2009, the Chamber granted in part a Defence motion for an order concerning disclosure of *Gacaca* and judicial material relating to Prosecution witnesses. The Chamber ordered the Prosecution to ensure that 10 Prosecution witnesses respond to the questionnaire proposed by the Defence and to transmit the responses as it receives them.[2276] Also on 29 October 2009, the Chamber rescheduled the deposition of Witness RW-42.[2277]

1851. On 30 October 2009, the Chamber denied the Defence motion for postponement of trial.[2278]

1.2 The Prosecution Case

1852. The Prosecution commenced its case on 9 November 2009,[2279] and concluded it on 13 April 2010.[2280] Over the course of 24 trial days, the Prosecution called 19 witnesses and tendered 96 exhibits.

1853. On 9 November 2009, the Chamber ruled that it would proceed with the trial in the absence of the Accused.[2281] On the same day, the Trial Chamber denied a Defence motion to stay proceedings until the French government cooperates with the Tribunal. The Chamber also

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[2271] Decision on Callixte Nzabonimana's Confidential *Ex Parte* Motion Seeking Order Allowing a Meeting with Witness CNAO (TC), 2 October 2009.
[2272] *See* T. 15 October 2009 (Pre-Trial Conference).
[2273] Decision on Nzabonimana's Motion Asking the Chamber to Request the President to Report the Matter of France's Refusal to Cooperate to the Security Council (TC), 19 October 2009.
[2274] Confidential Decision on Temporary Transfer of Detained Prosecution Witnesses CNAA and CNAC (TC), 26 October 2009.
[2275] Decision on Callixte Nzabonimana's Motion for Protection Measures and Deposition of Witness RW-42 (TC), 27 October 2009.
[2276] Decision on Callixte Nzabonimana's Motion for an Order Concerning Disclosure of *Gacaca* and Judicial Material Relating to Prosecution Witnesses (TC), 29 October 2009.
[2277] Order Re-Scheduling the Deposition of Defence Witness RW-42 (TC), 29 October 2009.
[2278] Decision on Defence Motion for the Postponement of the Start of Trial (TC), 30 October 2009.
[2279] T. 9 November 2009 pp. 10-17 (Prosecution Opening Statement).
[2280] T. 13 April 2010 p. 74 (ICS) (Oral Decision).
[2281] T. 9 November 2009 p. 7 (Oral Decision).

granted in part a Defence motion for reconsideration or certification for appeal of Decision on the postponement of the trial, insofar as it ordered the postponement of Prosecution Witness CNAC's testimony until the end of the Prosecution case. In addition, the Chamber rejected a Defence motion to reconsider or certify for appeal the Chamber's Decision regarding the prior judicial records of Prosecution witnesses.[2282]

1854. On 13 November 2009, the Chamber referred the matter of France's non-cooperation with the Tribunal to the President. The Chamber also granted the Defence motion to reconsider its Decision of 29 October 2009 with respect to the Prosecution's compliance with Rule 66(A)(ii) as it applied to Witness CNAC. The Chamber ordered the Prosecution to reschedule the testimony of Witness CNAC to the last week of the Prosecution case.[2283]

1855. On 24 November 2009, the Chamber ordered that Prosecution witnesses who were coming from the same locality of Rwanda be accommodated separately from each other.[2284] On 25 November 2009, the Chamber rejected a Defence motion seeking relief for alleged disclosure violations.[2285]

1856. On 27 November 2009, the Chamber granted the Prosecution request to contact its investigator in order to verify the photograph of Witness CNAO which was provided by WVSS.[2286] The Chamber also denied a Prosecution motion for reconsideration or certification to appeal the Chamber's 29 October 2009 Decision concerning disclosure of information obtained during *Gacaca* proceedings and judicial material relating to Prosecution witnesses.[2287]

1857. On 1 December 2009, the Chamber granted the Prosecution request to vary its witness list.[2288] On 2 December 2009, the Chamber denied the Defence motion requesting permission to present submissions to the President of the ICTR and the Security Council on the matter of France's refusal to cooperate with the ICTR.[2289] On 4 December 2009, the Chamber denied the Defence request for an extension of time to file a response to a Prosecution motion.[2290]

1858. On 7 December 2009, the Chamber denied a Defence motion to postpone the testimonies of Witnesses CNAA and CNAC. The Chamber also warned the Defence to desist from conduct obstructing the expeditious conduct of the proceedings.[2291] Also on 7 December 2009, the

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[2282] T. 9 November 2009 pp. 8-9 (Oral Decisions).
[2283] Decision on Nzabonimana's Motion for Stay of Proceedings; Reconsideration and/or Certification of Decision Rendered on 29 October 2009; and Reconsideration and/or Certification of the Decision Rendered on 30 October 2009 (TC), 13 November 2009.
[2284] T. 24 November 2009 pp. 63-64 (ICS) (Oral Order).
[2285] Decision on Nzabonimana's Motion Seeking Relief on the Ground of Non-Compliance with the Rules or Regulations of the Tribunal (TC), 25 November 2009.
[2286] T. 27 November 2009 pp. 2-3 (Oral Decision).
[2287] Decision on the Prosecutor's Motion for Reconsideration and/or Certification of the Decision Rendered on 29 October 2009 Concerning Disclosure of *Gacaca* and Judicial Material Relating to Prosecution Witnesses (TC), 27 November 2009.
[2288] T. 1 December 2009 p. 4 (ICS) (Oral Decision).
[2289] Decision on the Defence Motion Requesting the Chamber to Allow Nzabonimana to Present Submissions to the President of the ICTR and the Security Council on the Matter of France's Refusal to Cooperate with the ICTR and to Clarify the Decision of 13 November 2009 (TC), 2 December 2009.
[2290] T. 4 December 2009 pp. 27-28 (ICS) (Oral Decision).
[2291] T. 7 December 2009 pp. 1-3 (Oral Decision).

Chamber declared moot a Defence motion seeking reconsideration of protective measures for Witness CNAO, and ordered that these protective measures remain in place.[2292]

1859. On 9 December 2009, the Chamber authorised the protective measures of Defence Witness RW-42 to be waived and for Straton Sibomana to testify under his own name.[2293]

1860. On 15 December 2009, the Chamber directed the Registry to appoint an *Amicus Curiae* to investigate allegations that a Defence investigator revealed protected information pertaining to Witnesses CNAL and CNAE.[2294]

1861. On 17 December 2009, the Chamber denied the Defence motion to recall Witness CNAL.[2295] The Chamber further dismissed a Defence motion for disclosure of evidence, for renewed authorisation to interview certain Prosecution witnesses and for postponement of the testimony of Witnesses CNAA and CNAC. The Chamber also warned the Defence for raising matters that had been previously adjudicated. The Chamber also dismissed the Prosecution counter-motion requesting formal Notice of Alibi.[2296]

1862. On 3 February 2010, the Chamber ordered the Defence to file by close of business on 22 February 2010 the following: admissions by the parties and a statement of matters not in dispute; a statement of contested matters of fact and law; a list of witnesses the Defence intends to call with names or pseudonyms of each witness; a summary of facts on which each witness will testify and the corresponding Indictment paragraphs; the estimated length of time required for each witness; and a list of exhibits. It ordered the Defence to provide the Chamber and the Prosecution with copies of the written statements and identifying information of each Defence witness.[2297]

1863. Also on 3 February 2010, the President of the Tribunal issued a decision that without a formal request by the Trial Chamber under Rule *7bis*, he had no authority to refer the matter of cooperation with France to the Security Council or to take steps to address this matter.[2298]

1864. On 9 February 2010, the Appeals Chamber dismissed the Defence request for leave to appeal an alleged *ultra vires* referral to the President, and denied a Prosecution request to sanction the Defence Counsel.[2299]

[2292] Decision on the Status of Prosecution Witness CNAO and Associated Protective Measures (TC), 7 December 2009.
[2293] T. 9 December 2009 pp. 3-4 (ICS) (Oral Decision).
[2294] Decision on the Prosecution's Urgent Motion Alleging Contempt of the Tribunal (TC), 15 December 2009.
[2295] Decision on Defence Motion to Recall Witness CNAL (TC), 17 December 2009.
[2296] Decision on Nzabonimana's 2nd Motion for Disclosure of Evidence, for Renewed Authorization to Interview Certain Prosecution Witnesses and for Postponement of the Testimony of Witnesses CNAA and CNAC (TC), 17 December 2009.
[2297] Order on Defence Disclosure (TC), 3 February 2010. *See also* Corrigendum to Order for Disclosure Filed on 3 February 2010 (TC), 22 September 2010.
[2298] Decision on Referral by Trial Chamber of the Matter of French Cooperation with the Tribunal to the President Pursuant to Rule 54 (President), 3 February 2010.
[2299] *Callixte Nzabonimana v. The Prosecutor*, Case No. ICTR-98-44D-AR7*bis*, Decision on Callixte Nzabonimana's Motion for Leave to Appeal an Alleged *Ultra Vires* Referral to the President (AC), 9 February 2010. *See also*

1865. On 18 February 2010, the Chamber granted in part a Defence motion for protective measures for all potential Defence witnesses.[2300]

1866. On 22 February 2010, the Defence filed its Pre-Defence Brief.[2301] On 23 February 2010, the Defence filed its Notice of Alibi for a period covering 6 to 12 April 1994.[2302] The Defence also provided a list containing 153 witnesses.[2303]

1867. On 4 March 2010, the Chamber found that the Government of France did not comply with its obligations under Article 28 of the Statute, and requested that the President of the Tribunal report this matter to the Security Council.[2304]

1868. The Pre-Defence Conference was held on 5 March 2010. The Chamber ordered the Defence to disclose its witness list, witness statements and identifying information within seven days. The Chamber also ordered the Defence to reduce the number of witnesses and to provide a proofing chart, including both examination-in-chief and cross-examination, as well as an order of appearance.[2305]

1869. On 12 March 2010, the Defence filed its Amended Pre-Defence Brief.[2306] The Defence also disclosed to the Prosecution a proofing chart for the first 65 witnesses it intended to call and an increased list of 179 prospective witnesses.[2307]

1870. On 15 March 2010, the French government sent diplomatic cables relating to those persons registered at the French Embassy in Kigali during the period 7 to 12 April 1994.[2308]

1871. On 16 March 2010, the Chamber granted a Prosecution motion for the temporary transfer of Witness CNAC to the Tribunal.[2309]

1872. Also on 16 March 2010, the Registry received a *Note Verbale* from the French Embassy to which were appended several documents containing new information. This information included lists of persons who took refuge at the French Embassy in Kigali between 7 and 11 April 1994, copies of telegrams sent by the Embassy to Paris during this period, and a more

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Callixte Nzabonimana v. The Prosecutor, Case No. ICTR-98-44D-AR7*bis*, Order Assigning Judges to a Case Before the Appeals Chamber (AC), 17 December 2009.
[2300] Decision on Urgent Defence Motion for Protective Measures (TC), 18 February 2010.
[2301] Mémoire Préalable à la Défense, 22 February 2010.
[2302] *Avis d'Alibi*, dated 22 February 2010, filed on 23 February 2010.
[2303] *See* Nzabonimana's Extremely Urgent Motion for Reconsideration or Certification of the "Consolidated Decision on Prosecutor's Second and Third Motions to Compel the Defence to Comply with the Trial Chamber's Decision of 3 February 2010," Rendered on 26 March 2010, 6 April 2010.
[2304] Decision on Defence Motion to Reconsider Prior Trial Chamber Decisions on France's Cooperation with the Tribunal (TC), 4 March 2010.
[2305] T. 5 March 2010 pp. 10, 16-17 (Oral Decision).
[2306] Mémoire Préalable à la Défence Révisé et Amendé, 12 March 2010.
[2307] Filing of Defence Proofing Chart, 12 March 2010.
[2308] Letter from the French Embassy in Tanzania, REF: No 140/TPIR, 15 March 2010.
[2309] Order for the Temporary Transfer of Detained Prosecution Witness CNAC (TC), 16 March 2010.

complete list of personnel working at the French Embassy in Kigali between 7 and 11 April 1994 than had been provided in prior correspondence.[2310]

1873. On 19 March 2010, the Chamber denied as moot the Defence motion requesting cooperation and assistance from France.[2311]

1874. On 26 March 2010, the Chamber granted a Defence motion for the transfer of five detained witnesses from Rwanda. The Chamber additionally cautioned the Defence about the impropriety of interfering with documents in its possession that are relevant to the case.[2312]

1875. Also on 26 March 2010, the Chamber ordered that witnesses for whom no Personal Information Sheets had been provided be struck from the list of prospective Defence witnesses and that the Defence were to file, within five days, a revised and significantly reduced witness list that was proportionate and commensurate to that of the Prosecution and did not exceed 30 witnesses. It granted the Defence five days to file Personal Information Sheets in conformity with the criteria outlined in the Decision, for each witness the Defence intended to call at trial. The Chamber also struck off Witnesses T75, T152, T130, T23, Susan Thompson and Fernand Batard from the list of prospective Defence witnesses.[2313]

1876. On 30 March 2010, the *Amicus Curiae*, assigned by the Registry to investigate allegations that a Defence investigator Jean-Claude Misano disclosed protected information pertaining to Prosecution Witnesses CNAL and CNAE, filed a report on his findings.[2314]

1877. On 31 March 2010, the Defence filed another increased witness list of 184 witnesses, a proofing chart for most of those witnesses, as well as Personal Information Sheets for 154 witnesses.[2315] The Defence also filed a separate list of 30 witnesses that were intended to testify at trial, and disclosed the Personal Information Sheets for each one, which contained two witnesses that had been expressly struck from the Defence list by that Decision.[2316]

1878. On 8 April 2010, the Chamber denied the Defence motion for postponement of the commencement of the Defence phase. The Chamber also ordered the Defence to file a revised order of appearance of its witnesses by close of business on 9 April 2010.[2317]

1879. On 9 April 2010, the Defence filed a Revised Order of Appearance for Defence witnesses, which included 44 prospective witnesses, in excess of the limit of 30 imposed. Once

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[2310] *Note Verbale* from the French Embassy to the Registry received on 16 March 2010.
[2311] Decision on Nzabonimana's Second Urgent Motion Requesting Cooperation and Assistance from France (TC), 19 March 2010.
[2312] Decision on Nzabonimana's Urgent Motion for the Transfer of Detained Defence Witnesses from Rwanda (TC), 26 March 2010.
[2313] Consolidated Decision on Prosecutor's Second and Third Motions to Compel Defence to Comply With Trial Chamber Decision of 3 February 2010 (TC), 26 March 2010.
[2314] Report of *Amicus Curiae* on Investigations Related to the Disclosure of Prosecution Witnesses CNAL and CNAE Statements, 30 March 2010.
[2315] *See* Nzabonimana's Filing in Compliance with the 26 March 2010 Trial Chamber Decision, 31 March 2010, Annex I (*Témoins de la Défense*).
[2316] Nzabonimana's Filing in Compliance with the 26 March 2010 Trial Chamber Decision, 31 March 2010.
[2317] Decision on Nzabonimana's Extremely Urgent Motion for Postponement of the Commencement of the Defence (TC), 8 April 2010.

again, this document listed the same two witnesses who had been explicitly struck from the Defence list.[2318]

1.3 The Defence Case

1880. The Defence commenced its case on 14 April 2010 and closed on 7 April 2011,[2319] with the exception of three Defence witnesses, who testified from 3 to 6 May 2011.[2320] Over the course of 57 trial days, the Defence called 40 witnesses and tendered 146 exhibits.

1881. On 16 April 2010, the Chamber dismissed as moot a Defence motion for reconsideration of the Decision denying the postponement of the commencement of the Defence phase.[2321] On 19 April 2010, the Chamber granted a Defence motion to reinstate Fernand Batard and Suzanne Thomson to its witness list.[2322]

1882. On 23 April 2010, the Chamber rescinded its 4 March 2010 Decision asking the President of the Tribunal to report to the Security Council the failure of France to comply with its obligations pursuant to Article 28 of the Statute.[2323] On 27 April 2010, the Chamber denied the Prosecution motion to admit into evidence the written statements of Witnesses T58 and T41.[2324] On 5 May 2010, the Office of the President deemed moot the Defence motion for the implementation of the Chamber's Order of 4 March 2010.[2325]

1883. Also on 5 May 2010, the Chamber dismissed the Defence motion to allow a Defence Legal Assistant to conduct the examination-in-chief of Witness T27.[2326] On 6 May 2010, the Chamber denied the Prosecution motion for disclosure of an unsigned written record of an interview of Witness T27.[2327]

1884. On 7 May 2010, the Chamber reconsidered its Decision of 26 March 2010 and allowed the Defence to add to its existing list of 30 witnesses.[2328] Also on 7 May 2010, the Chamber granted the Defence motion for the admission of documents received from the Government of France on 16 March 2010.[2329]

[2318] Revised Order of Appearance of Witnesses as per Trial Chamber Order of 8 April 2010, 9 April 2010.
[2319] T. 14 April 2010 p. 1; T. 7 April 2011 p. 3 (Oral Decision)
[2320] T. 7 April 2011 p. 11 (Oral Decision)
[2321] Decision on Nzabonimana's Motion for the Reconsideration and/or Certification to Appeal the Decision of 8 April 2010 (TC), 16 April 2010.
[2322] T. 19 April 2010 p. 26 (Oral Decision).
[2323] Order Requesting the President of the Tribunal to Rescind the Decision of 4 March 2010 (TC), 23 April 2010.
[2324] T. 27 April 2010 pp. 22-23 (Oral Decision).
[2325] Decision on Nzabonimana's Motion for the Implementation of the Order of Trial Chamber III of 4 March 2010 and for Allowing the Defence to Make Submissions before the Security Council (President), 5 May 2010.
[2326] T. 5 May 2012 pp. 33-34 (Oral Decision).
[2327] T. 6 May 2010 pp. 23-25 (ICS) (Oral Decision).
[2328] Decision on Nzabonimana's Extremely Urgent Motion for Reconsideration and/or Certification to Appeal the "Consolidated Decision on Prosecutor's Second and Third Motions to Compel Defence to Comply With the Trial Chamber's Decision of 3 February 2010," Rendered on 26 March 2010 (TC), 7 May 2010.
[2329] Decision on Defence Motion for the Admission of Documentary Evidence (TC), 7 May 2010.

1885. On 19 May 2010, the Chamber denied the Defence motion for disclosure of evidence with regards to Prosecution Exhibits 16, 17 and 71.[2330] The Chamber also denied the Defence motion requesting that Witness T7 be permitted to testify via video-link.[2331]

1886. On 27 May 2010, the Chamber granted the Defence motion for certification to appeal the Decision of 23 April 2010, which had rescinded the request to the President to report France's non-cooperation to the Security Council.[2332]

1887. On 3 June 2010, the Chamber declined to reconsider its Decision concluding that a Defence motion was moot.[2333] On 4 June 2010, the Chamber denied a Defence motion seeking a cooperation order directed at France, and directed that fees be denied to the Defence in relation to its relitigation of adjudicated matters.[2334]

1888. Also on 4 June 2010, the Chamber granted in part a Defence motion for the variation of its witness list, and allowed the Defence to call Witnesses T60, T61, T76, T95, T97, T98, T110, T116, T129, T134, T138 and T150, and either Witness T116 or Witness T129, to testify with respect to certain paragraphs of the Indictment. The Chamber denied the Defence request to add Witness T56 and T161 to its list. The Defence was allowed to drop Witness T60, T93, T138 and T139 from its witness list.[2335]

1889. On 8 June 2010, the Appeals Chamber granted the Defence an extension of time to file its appeal concerning France's non-cooperation.[2336]

1890. On 25 June 2010, the Chamber denied the Defence motion requesting that Witness CNAI be recalled,[2337] and declared moot the Prosecution request for clarification of issues arising from the variation of the Defence witness list on 4 June 2010.[2338]

1891. On 6 July 2010, the Chamber sustained a Prosecution objection during the testimony of Witness T134 that a question in examination-in-chief was beyond the purview of Paragraph 47 of the Indictment.[2339]

1892. On 9 July 2010, the Chamber denied a Defence motion that sought supplementary protective measures for Witness T36 as well as the appointment of an *Amicus Curiae* to

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[2330] Decision on 3rd Motion of Defendant Nzabonimana for Disclosure of Evidence (TC), 19 May 2010. *See also* Corrigendum to Decision on 3rd Motion of Defendant Nzabonimana For Disclosure of Evidence (TC), 27 May 2010.
[2331] Decision on Defence Motion for Video-Link Testimony of Witness T7 (TC), 19 May 2010.
[2332] Decision on Defence Motion for Certification to Appeal the Decision of 23 April 2010 (TC), 27 May 2010.
[2333] Decision on Defence Motion for Reconsideration of the Trial Chamber's Decision of 16 April 2010 (TC), 3 June 2010.
[2334] Decision on Third Urgent Defence Motion Requesting an Order for Cooperation Directed at France (TC), 4 June 2010.
[2335] Decision on Nzabonimana's Motion for Variation of Its List of Witnesses (TC), 4 June 2010.
[2336] *Callixte Nzabonimana v. The Prosecutor*, Case No. ICTR-98-44D-AR7*bis*.2, Decision on Nzabonimana's Urgent Motion for an Extension of Time to File an Interlocutory Appeal (AC), 8 June 2010.
[2337] Decision on Defence Motion for the Recall of Witness CNAI (TC), 25 June 2010.
[2338] Decision on Prosecutor's Request for Clarification of Two Issues Arising from the 4 June 2010 Decision (TC), 25 June 2010.
[2339] T. 6 July 2010 pp. 27-28 (ICS) (Oral Decision).

investigate allegations of contempt.[2340] On 12 July 2010, the Chamber ordered the disclosure to the parties of the *Amicus Curiae* report on allegations that a Defence investigator revealed protected information pertaining to Prosecution Witnesses CNAL and CNAE. The Chamber also directed the parties to file any submissions on this report by 23 July 2010.[2341]

1893. On 14 July 2010, the Chamber denied the Defence motion for certification to appeal the Decision concerning a further cooperation order directed at France.[2342] The Chamber also declined to certify for appeal its Decision of 4 June 2010, but reconsidered this Decision in part and allowed the Defence to examine Witnesses T110 and T116 in relation to specific paragraphs of the Indictment.[2343]

1894. On 16 September 2010, the Chamber denied the Defence request for reconsideration of, or certification to appeal, the sustaining of a Prosecution objection about the scope of Witness T134's testimony.[2344] The Chamber also denied the Prosecution motion for the admission into evidence of certain affidavits,[2345] and granted the Prosecution request to vary the protective measures covering Witness CNAT for the purposes of disclosing documents to the French authorities.[2346]

1895. On 20 September 2010, the Appeals Chamber denied the Defence appeal concerning the Trial Chamber's rescission of the request to the President concerning France's non-cooperation. The Appeals Chamber also dismissed the separate Defence motion seeking leave to appeal the President's Order dismissing the matter as moot.[2347]

1896. Also on 20 September 2010, the Trial Chamber denied a Defence motion to replace one witness, as well as a Defence motion to suspend consideration of that motion.[2348]

1897. On 13 October 2010, the Chamber granted the Prosecution an extension of time to respond to a Defence motion concerning the list of Defence witnesses and the scope of their testimony.[2349] On 18 October 2010, the Chamber dismissed the Prosecution motion to strike

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[2340] Decision on Nzabonimana's Urgent Motion for Appointment of *Amicus Curiae* to Investigate Contempt by Witness CNAI and for Supplementary Protective Measures for Witness T36 (TC), 9 July 2010.
[2341] Order to Disclose *Amicus Curiae* Report to the Parties (TC), 12 July 2010.
[2342] Decision on Defence Motion for Certification to Appeal the "Decision on Third Urgent Defence Motion Requesting an Order Directed at France" (TC), 14 July 2010.
[2343] Decision on Nzabonimana's Motion for Reconsideration and/or Certification of the "Decision on Nzabonimana's Motion for the Variation of Its List of Witnesses," Rendered on 4 June 2010 (TC), 14 July 2010.
[2344] Decision on Motion for Reconsideration or Certification of the Trial Chamber's Oral Decision of 6 July 2010 on Witness T134's Testimony (TC), 16 September 2010.
[2345] Decision on Prosecutor's Motion for the Admission of Marguerite Mukansanga and Alfred Kwende's Affidavits Pertaining to the Testimony of Jean Vianney Mporanzi (TC), 16 September 2010.
[2346] Decision on Prosecutor's Urgent *Ex Parte* Motion to Vary Protective Measures for Prosecution Witness CNAT (TC), 16 September 2010.
[2347] *Callixte Nzabonimana v. The Prosecutor*, Case Nos. ICTR-98-44D-AR7*bis* & ICTR-98-44D-AR7*bis*.2, Decision on Callixte Nzabonimana's Interlocutory Appeal on the Order Rescinding the 4 March 2010 Decision and on the Motion for Leave to Appeal the President's Decision Dated 5 May 2010 (AC), 20 September 2010.
[2348] Consolidated Decision on Nzabonimana's Second Motion to Vary His List of Witnesses and Nzabonimana's Motion to Suspend "Second Motion to Vary His List of Witnesses" (TC), 20 September 2010.
[2349] Decision on Prosecutor's Request for Extension of Time to Respond to Nzabonimana's Motion for the Variation of Its Global List of Witnesses and for Reconsideration of Certain Decisions Pertaining to the Scope of Defence Witness Testimony under Rule 73 *ter* (E) of the Rules of Procedure and Evidence (TC), 13 October 2010.

Witness T61 from the Defence witness list, but allowed the Prosecution to recall Witness T61 for further cross-examination if necessary.[2350] On 19 October 2010, the Chamber denied the Defence motion for reconsideration of the scope of Witness T150's evidence.[2351]

1898. On 28 October 2010, the Appeals Chamber denied the Defence appeal seeking an order to the Trial Chamber to appoint an *Amicus Curiae* to investigate allegations of contempt in relation to Witness T36.[2352]

1899. On 9 November 2010, the Trial Chamber ordered the Parties to file, within five days, any supplemental submissions on the *Amicus Curiae* report pertaining to the alleged disclosure of protected information about Witnesses CNAL and CNAE.[2353]

1900. On 19 November 2010, the Trial Chamber issued a decision rejecting the *Amicus Curiae* Report pertaining to the allegations made against Misano by Witnesses CNAL and CNAE, and directing the Registry to appoint a new *Amicus Curiae* tasked with conducting another investigation into the allegations against Misano and preparing a report containing his or her conclusions as to such allegations. The Chamber ordered the new *Amicus Curiae* to file a report by 3 March 2011.[2354]

1901. On 30 November 2010, the Chamber granted in part a Defence motion concerning its witness list, and permitted the Defence to add Witnesses T56 and T200 in order to testify exclusively on specific Indictment paragraphs.[2355] On 2 December 2010, the Chamber denied the Defence motion for admission into evidence of a transcript concerning recantation of witness testimony in another case, and for appointment of an *Amicus Curiae* to investigate Witness CNAL.[2356]

1902. On 8 December 2010, the Trial Chamber granted in part a Defence motion requesting the appointment of an *Amicus Curiae* to investigate allegations that Prosecution Witness CNAI, or a member of the Prosecution team, disclosed protected witness information in violation of Rule 77(A)(ii) and/or (iv). The Chamber also concluded that the allegations made by Witness T37

[2350] T.18 October 2010 pp.19-20 (Oral Decision).
[2351] T.19 October 2010 pp.1-2 (Oral Decision).
[2352] *Callixte Nzabonimana v. The Prosecutor*, Case No. ICTR-98-44D-AR77, Decision on Callixte Nzabonimana's Interlocutory Appeal of the Trial Chamber's Decision Dated 9 July 2010 (AC), 28 October 2010. *See also Callixte Nzabonimana v. The Prosecutor*, Case No. ICTR-98-44D-AR77, Order Assigning Judges to a Case Before the Appeals Chamber (AC), 23 August 2010.
[2353] Order for Supplemental Submissions in Relation to Report of *Amicus Curiae* of Investigations Related to the Disclosure of Prosecution Witnesses CNAL and CNAE Statements (TC), 9 November 2010.
[2354] Decision on Report of *Amicus Curiae* on Investigations Related to the Disclosure of Prosecution Witnesses CNAL and CNAE Statements, 19 November 2010.
[2355] Decision on Nzabonimana's Motion for Variation of Its Global List of Witnesses and for Reconsideration of Certain Decisions Pertaining to the Scope of Defence Witnesses Testimony under Rule 73*ter* (E) of the Rules of Procedure and Evidence ("RPE") (TC), 30 November 2010.
[2356] Decision on Nzabonimana's Motion to Admit Exhibit DNZ-461 into Evidence and to Appoint an *Amicus Curiae* to Investigate Witness CNAL's False Testimony (TC), 2 December 2010.

were unduly vague and decided not to expand the terms of reference for the *Amicus Curiae* in this regard.[2357]

1903. On 19 January 2011, the Chamber granted a Defence motion for variation of its witness list. The Chamber allowed the addition of Witnesses T54, T114, T193, T300 and T303, ordered the removal of Witnesses T36, T39, T76, T116 and T129, and permitted the expansion of the scope of Witness T72's testimony.[2358] On 25 January 2011, the Chamber ordered the temporary transfer of detained Witness T300.[2359]

1904. On 26 January 2011, the Chamber granted the Defence additional time to respond to a Prosecution motion seeking an extension of the *Amicus Curiae*'s mandate to include additional members of the Defence team.[2360] On 10 February 2011, the Chamber granted this Prosecution motion in part, and directed the Registry to expand the scope of the *Amicus Curiae*'s investigation to encompass allegations that members of the Defence team revealed protected information concerning Witness CNAL to a Defence witness.[2361]

1905. Also on 10 February 2011, the Chamber denied a Prosecution motion seeking the filing of Personal Information Sheets for certain Defence witnesses. These Sheets had already been disclosed, and the Chamber warned the Prosecution to desist from filing frivolous motions.[2362]

1906. On 14 February 2011, the Chamber granted the Prosecution motion for the recall of Defence Witness Jean-Marie Vianney Mporanzi for further cross-examination on alleged disbursement of funds by Rwandan officials to Prosecution witnesses appearing before the Tribunal.[2363]

1907. On 8 March 2011, the Chamber granted the Prosecution request to call Witness CNR1 immediately after the close of the Defence case.[2364] On 9 March 2011, the Chamber denied the Defence motion to hear the testimony of Dr. Susan Thomson by video-link.[2365] On 10 March 2011, the Chamber granted two Prosecution motions seeking an extension of time to respond to Defence motions for disclosure and for admission of witness statements into evidence.[2366]

[2357] Decision on Nzabonimana's Renewed and Confidential Motion for Appointment of *Amicus Curiae* to Investigate Allegations of Contempt of the Tribunal Against Prosecution Witness CNAI, 8 December 2010.
[2358] Decision on "Nzabonimana's Motion for the Variation of Its Lists of Witnesses" (TC), 19 January 2011.
[2359] Order for the Temporary Transfer of Detained Defence Witness T300 (TC), 25 January 2011.
[2360] Decision on Defence Request for Extension of Time to Respond to "Prosecutor's Motion for Prohibition of Conduct Contary [*sic*] to Rule 77 (A) (ii) of the Rules of Procedure and Evidence" (TC), 26 January 2011.
[2361] Decision on Prosecutor's Motion for Prohibition of Conduct Contrary to Rule 77 (A) (II) of the Rules of Procedure and Evidence (TC), 10 February 2011.
[2362] Decision on Prosecutor's Motion for Disclosure of Defence Witness Information (TC), 10 February 2011.
[2363] Decision on Prosecutor's Motion for the Recall of Defence Witness Jean-Marie Vianney Mporanzi (TC), 14 February 2011.
[2364] Decision on Prosecution Motion to Call Rebuttal Evidence (TC), 8 March 2011.
[2365] Decision on Defence Urgent Motion to Hear Testimony of Expert Witness Dr. Susan Thomson via Video-Link (TC), 9 March 2011.
[2366] Decision on Prosecution Motions for Extension of Time (TC), 10 March 2011.

1908. On 21 March 2011, the Appeals Chamber noted that the Defence's Appeal Brief concerning allegations of contempt manifestly exceeded the word limit, and granted the Prosecution motion for an extension of time to respond to this Brief.[2367]

1909. On 24 March 2011, the Chamber warned the Prosecution to desist from conduct which obstructs the proceedings.[2368] On 29 March 2011, the Chamber denied the Defence motion to recall three Prosecution witnesses for further testimony,[2369] as well as the Prosecution request for appointment of an *Amicus Curiae* to investigate alleged breaches of protective measures [2370]

1910. On 30 March 2011, the Chamber denied a Defence motion for reconsideration or certification to appeal the Decision declining to hear the testimony of Dr. Susan Thomson by video-link.[2371] In addition, the Chamber denied her status as an expert in this case and rejected her report.[2372] Also on 30 March 2011, the Chamber ordered the parties to expedite their submissions on a Defence motion for reconsideration of the Decision ordering the recall of Witness Jean-Marie Vianney Mporanzi.[2373]

1911. On 31 March 2011, the Chamber declined to reconsider its Decision denying rebuttal witnesses and denied the Defence request to suspend the cross-examination of Witness CNR1.[2374] The Chamber also admitted into evidence a portion of the "Official Government of Rwanda's comments on the Draft UN Mapping Report on the DRC."[2375]

1912. On 1 April 2011, an *Amicus Curiae* Report was filed, in which the *Amicus Curiae* concluded that Witness T36's allegations that he was threatened, intimidated and bribed by Prosecution Witness CNAI were unfounded. It was further found that there was no evidence implicating Witness CNAI in the disclosure of protected witness information.[2376]

1913. On 4 April 2011, the Chamber declared moot the Prosecution motion to recall Jean-Marie Vianney Mporanzi and the Defence motion for reconsideration of the Decision permitting his recall.[2377] On 5 April 2011, the Chamber ordered the parties to announce the language in which

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[2367] *Callixte Nzabonimana v. The Prosecutor*, Case No. ICTR-98-44D-AR77, Decision on Prosecution's Motion for Extension of Time (AC), 21 March 2011.
[2368] Warning to the Prosecution Pursuant to Rule 46 (TC), 24 March 2011.
[2369] Decision on Defence Motion for the Recall of Witnesses CNAL, CNAQ and CNBU (TC), 29 March 2011.
[2370] Decision on Prosecution Motion for Appointment of *Amicus Curiae* to Investigate Breach of Protective Measures of Prosecution Witnesses CNBB, CNAD and CNR1 by the Defence (TC), 29 March 2011.
[2371] Decision on Defence Extremely Urgent Motion for Reconsideration or Certification of the 'Decision on Defence Urgent Motion to Hear Testimony of Dr. Susan Thomson via Video-Link' of 9 March 2011 (TC), 30 March 2011.
[2372] Decision on Prosecution's Rule 94*bis* (B) Notice Rejecting Dr. Susan Thomson's Qualifications as an Expert (TC), 30 March 2011.
[2373] Order for Expedited Filing (TC), 30 March 2011.
[2374] Decision on Defence Motion for Reconsideration of Decision on Prosecution Motion to Call Rebuttal Evidence (TC), 31 March 2011.
[2375] Decision on Defence Motion for the Admission of Documentary Evidence: "Official Government of Rwanda Comments on the Draft UN Mapping Report on the DRC" (TC), 31 March 2011.
[2376] Report of the *Amicus Curiae* on Allegations of Contempt of Tribunal by Witness CNAI and / or a Member the Prosecution Office Pertaining to Defence Witness T36, 1 April 2011; s*ee also* Decision Following *Amicus Curiae* Report Pertaining to Allegations of Contempt of the Tribunal by Prosecution Witness CNAI and/or a Member of the Prosecution Office (TC), 21 October 2011.
[2377] T. 4 April 2011 p. 1 (Oral Decision).

they would file their Closing Briefs, and whether translation of the Closing Briefs would be required.[2378]

1914. On 7 April 2011, the Chamber denied the Defence request to summon two Prosecution investigators and a *sous-préfet* to testify in these proceedings[2379] The Chamber also observed that the Defence had dropped Witnesses T65 and T72 from its witness list. The Chamber closed the Defence case, subject to the testimony of two alibi witnesses if any were to be identified.[2380]

1.4 Further Proceedings

1915. On 7 April 2011, the Chamber announced that Closing Briefs would be filed 60 days after the testimony of Prosecution Rebuttal Witness CNR1. The Chamber also reminded the parties that the Closing Briefs should address matters of sentencing.[2381]

1916. On 8 April 2011, the Chamber ordered the Prosecution to file a public version of the Indictment, and to indicate which paragraphs of the Indictment, if any, it seeks permission to withdraw for lack of evidence.[2382] On 12 April 2011, the Chamber ordered the resumption of the proceedings for the testimony of Prosecution Rebuttal Witness CNR1, to be followed immediately by no more than two further Defence witnesses in support of the alibi.[2383] On 27 April 2011, the Prosecution filed an updated and public version of the Indictment.[2384]

1917. On 3 May 2011, the Chamber denied a Prosecution motion to order that the Defence drop Witnesses T171 and T400, and allowed the Defence to call Witnesses T11 and T400 as additional alibi witnesses.[2385] On 4 May 2011, the Chamber granted additional time to the Prosecution to respond to a Defence motion seeking the admission into evidence of written statements.[2386] On 5 May 2011, the Chamber denied a Defence oral motion to postpone the cross-examination of Witness CNR1.[2387]

1918. Prosecution Rebuttal Witness CNR1 testified from 5-6 May 2011.[2388] The Trial Chamber declared proceedings to be adjourned *sine die* on 6 May 2011.[2389]

1919. On 10 May 2011, the Chamber denied the Defence motion for a subpoena in order to secure Witness T171's testimony, and found moot the corollary requests for protective measures

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[2378] T. 5 April 2011 p. 4 (Status Conference).
[2379] Decision on "Callixte Nzabonimana's Motion for Summon of OTP Investigators Adamou Allagouma and Almahamoud Sidibe, *Sous-Préfet* Ms. Immaculée Mukamasabo" (TC), 7 April 2011.
[2380] T. 7 April 2011, pp. 2-3 (Oral Decision).
[2381] T. 7 April 2011, pp. 3-4, 11 (Oral Decision).
[2382] Order for Prosecution to Review Indictment and to File Public Version (TC), 8 April 2011.
[2383] Scheduling Order (TC), 12 April 2011.
[2384] Indictment, 27 April 2011.
[2385] Decision on Prosecution Motion to Order the Defence to Drop Witnesses T171 and T400 (TC), 3 May 2011.
[2386] Decision on Prosecution Motion for Extension of Time to Respond to Second Defence Motion for Admission of Written Statements (TC), 4 May 2011.
[2387] T. 5 May 2011 pp. 51-52 (ICS) (Oral Decision).
[2388] T. 5 May 2011; T. 6 May 2011 (Witness CNR1).
[2389] T. 6 May 2011 p. 54 (Oral Order).

and for a cooperation order directed at France.[2390] The Chamber also admitted into evidence the written statements of Witnesses T2, T73 and T103, permitted the Prosecution to cross-examine Witnesses T2 and T73, and allowed the parties to address matters arising during the course of this cross-examination by filing an addendum to their closing briefs.[2391]

1920. Also on 10 May 2010, the Chamber declared that it would conduct a site visit from 5 to 9 September 2011, and allowed the parties to file addenda to their closing briefs to address matters arising during the course of the site visit.[2392] In addition, the Chamber denied the Defence motion for certification to appeal the Decision declining to summon two Prosecution investigators and a *sous-préfet* to testify.[2393] The Chamber also denied a Defence motion for the admission of transcripts from the *Karemera et al.* case, sanctioned the Defence for disclosing the name of a protected Prosecution witness by filing publicly its motion, and directed that fees be denied to the Defence for its work in preparing the motion.[2394]

1921. On 11 May 2011, the Appeals Chamber dismissed the Defence appeal concerning the mandate of the *Amicus Curiae*.[2395]

1922. On 13 May 2011, the Trial Chamber admitted into evidence specific pages of "*Le Château – The Lives of Prisoners of Rwanda*."[2396] Also on 13 May 2011, the Chamber ordered the disclosure of two *Amicus Curiae* reports to the parties and directed the parties to file any relevant submissions by 25 May 2011.[2397]

1923. On 15 June 2011, the Chamber denied a Defence motion for the admission of a book into evidence.[2398] The Chamber also withdrew its prior warning to the Prosecution from 24 March 2011, and directed that any communication between the parties and Chambers be filed through CMS in the future.[2399]

1924. On 30 June 2011, the Chamber denied a Defence motion for the admission into evidence of transcripts from the *Bizimungu et al.* case.[2400] Also on 30 June 2011, the Prosecution provided

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[2390] Decision on Nzabonimana's Motion for Subpoena, Protective Measures and the Cooperation of France in Respect of Prospective Witness T171 (TC), 10 May 2011.
[2391] Decision on Nzabonimana's Motion for the Admission of Written Witness Statements (TC), 10 May 2011.
[2392] Decision on Site Visit (TC), 10 May 2011.
[2393] Decision on Defence Motion for Leave to Appeal the Trial Chamber's Decision on the Defence Request to Call Prosecution Investigators (TC), 10 May 2011.
[2394] Decision on Motion to Admit Transcripts from the *Karemera et al.* Case (TC), 10 May 2011.
[2395] *Callixte Nzabonimana v. The Prosecutor*, Case No. ICTR-98-44D-AR77, Decision on Callixte Nzabonimana's Interlocutory Appeal of the Trial Chamber's Decision Dated 10 February 2011 (AC), 11 May 2011. *See also Callixte Nzabonimana v. The Prosecutor*, Case No. ICTR-98-44D-AR77, Order Assigning Judges to a Case Before the Appeals Chamber (AC), 1 March 2011.
[2396] Decision on Defence Motion for the Admission of Documentary Evidence: *"Le Château – The Lives of Prisoners in Rwanda" by Carina Tertsakian* (TC), 13 May 2011.
[2397] Order to Disclose to the Parties the *Amicus Curiae* Report on Allegations of Contempt of the Tribunal by Prosecution Witness CNAI Pertaining to Defence Witness T36 and for a Request for Submissions from the Parties on the Report (TC), 13 May 2011; Order to Disclose *Amicus Curiae* Report with Respect to Allegations Made by Witnesses CNAL and CNAE to the Parties and Request for Submissions (TC), 13 May 2011.
[2398] Decision on Defence Motion for the Admission of Documentary Evidence (TC), 15 June 2011.
[2399] Decision on Prosecution Motion for Reconsideration and/or Certification of the Trial Chamber's Warning to the Prosecution Pursuant to Rule 46 (TC), 15 June 2011.
[2400] Decision on Motion to Admit Transcripts from the *Bizimungu et al.* Case (TC), 30 June 2011.

notice to the Defence that it withdrew Paragraphs 18, 22, 27, 31, 32, 36, 43, 53 and 55 of the Indictment.[2401]

1925. On 4 July 2011, the Chamber announced the procedure to be adopted during the site visit.[2402] On 5 July 2011, in response to a Defence motion, the Chamber reaffirmed the filing deadline for Closing Briefs.[2403] The parties filed their Closing Briefs that day.[2404] On 11 July 2011, the Chamber denied the Defence motion for a variation on the word limit for the Closing Briefs, and ordered the Defence to re-file an abridged version of its Closing Brief complying with the word limit by close of business on 13 July 2011.[2405] The Defence filed its abridged Closing Brief on 13 July 2011.[2406]

1926. Also on 13 July 2011, the Chamber denied the Defence motion for admission into evidence of written statements,[2407] and ordered the Prosecution to provide further information about payments to Prosecution witnesses in this case.[2408] On 19 August 2011, the Chamber ordered expedited filing deadlines on whether leave should be granted for Witness T73 to testify by video-link.[2409]

1927. On 23 August 2011, the Chamber granted in part the Defence motion seeking disclosure and recall of witnesses, directed the Registry to permit the Defence to inspect any documents relating to the disbursement of 245,000 Rwandan Francs in relation to the treatment of Prosecution witnesses in this case, and directed that the Defence be provided with as detailed a breakdown as possible for any documents pertaining to the disbursement of the 245,000 Rwandan Francs.[2410]

1928. Also on 23 August 2011, the Chamber declined to reconsider its order concerning Closing Briefs based on the Defence argument that asking for sentencing submissions prejudiced the Accused.[2411] On 24 August 2011, the Chamber denied the Defence request for three additional locations to be added to the site visit.[2412] On 26 August 2011, the Chamber granted an extension to the Defence to file its Reply concerning the video-link request for Witness T73.[2413]

[2401] Prosecutor's Notice to the Defence That He Will Not Be Requesting for Convictions under Paragraphs 18, 22, 27, 31, 32, 36, 43, 53 and 55 of the Indictment, 30 June 2011.
[2402] Site Visit Order (TC), 4 July 2011.
[2403] Order to File Closing Briefs, as Directed on 6 May 2011, and Order for Expedited Filing (TC), 5 July 2011.
[2404] Prosecutor's Closing Brief, 5 July 2011; Nzabonimana's Final Brief, 5 July 2011.
[2405] Consolidated Decision on Defence Motion for Variance of Word Limit or Alternatively for an Extension of Time to File a Defence Closing Brief, and Prosecution Motion to Strike Defence Closing Brief (TC), 11 July 2011.
[2406] Nzabonimana's Abridged Final Brief, 13 July 2011.
[2407] Decision on Nzabonimana's Second Motion for the Admission of Written Witness Statements (TC), 13 July 2011.
[2408] Order to the Prosecution to Provide Additional Information (TC), 13 July 2011.
[2409] Order for Expedited Filing Deadlines in Relation to Defence Motion for Video-Link Testimony of Witness T73 (TC), 19 August 2011.
[2410] Decision on Defence Motion for Disclosure and Recall (TC), 23 August 2011.
[2411] Decision on Defence Motion for Reconsideration of 7 April 2011 Decision (TC), 23 August 2011.
[2412] Decision on Nzabonimana's Motion for Inspection of Additional Locations (TC), 24 August 2011.
[2413] Decision on Defence Request for an Extension of Time to File Its Reply in Relation to Defence Motion for Video-Link Testimony of Witness T73 (TC), 26 August 2011.

1929. On 29 August 2011, the Chamber denied the Defence motion to reconsider the word limit for the Closing Brief.[2414] The Chamber also rescinded its sanctioning of the Defence for a violation of protective measures, but cautioned the Defence against further such violations.[2415] On 2 September 2011, the Chamber allowed the removal of Witness T73's written statement from the record, and concluded that the Defence request for video-link had been rendered moot.[2416]

1930. From 5 to 9 September 2011, the Chamber conducted a site visit in Rwanda.[2417]

1931. On 12 September 2011, the Prosecution conducted a cross-examination of Defence Witness T2, pursuant to the Chamber's 10 May 2011 Decision admitting Witness T2's statement into evidence pursuant to Rule 92*bis*(A) (i)(a)-(b).[2418]

1932. On 14 September 2011, the Defence filed a corrigendum to its Closing Brief.[2419] On 15 September 2011, the Chamber ordered that Closing Arguments be heard on 20 and 21 October 2011.[2420] On 20 September 2011, the Defence filled an additional corrigendum to its Closing Brief.[2421]

1933. Also on 20 September 2011, the Chamber denied the Defence motion for reconsideration or certification to appeal the Decision denying the admission into evidence of written statements.[2422] On 23 September 2011, the parties filed addenda to their Closing Briefs addressing matters pertaining to the site visit.[2423] On 26 September 2011, they filed further addenda addressing Witness T2's cross-examination.[2424] On 3 October 2011, the Defence filed a corrigendum to its additional submissions concerning the site visit.[2425]

1934. On 19 October 2011, the Chamber denied a Defence motion seeking the admission of a written statement and six photographs.[2426]

1935. The Chamber heard Closing Arguments on 20 and 21 October 2011.

[2414] Decision on Nzabonimana's Motion for Reconsideration of the Consolidated Decision on Defence Motion for Variance of Word Limit or Alternatively for an Extension of Time to File a Defence Closing Brief, and Prosecution Motion to Strike Defence Closing Brief of 12 July 2011 (TC), 29 August 2011.
[2415] Decision on Motion for Reconsideration of Sanctions (TC), 29 August 2011.
[2416] Decision on Defence Motion for Video-Link Testimony of T73 (TC), 2 September 2011.
[2417] Chamber Exhibit 1 (Site Visit Report); Chamber Exhibit 2 (Addendum 1 to Site Visit Report); Chamber Exhibit 3 (Addendum 2 to Site Visit Report).
[2418] T. 12 September 2011 (Witness T2).
[2419] Corrigendum to "Nzabonimana's Abridged Final Brief," dated 13 September 2011, filed on 14 September 2011.
[2420] Scheduling Order for Closing Arguments (TC), 15 September 2011.
[2421] Additional Corrigendum to "Nzabonimana's Abridged Final Brief," dated 13 July 2011, 20 September 2011.
[2422] Decision on Defence Motion for Reconsideration or Certification of the Decision on Second Motion for the Admission of Written Witness Statements (TC), 20 September 2011.
[2423] Prosecutor's Addendum to His Closing Brief, 23 September 2011; Nzabonimana's Additional Brief Pursuant to Site Visit, 23 September 2011; *see also* Addendum 2 to the Site Visit Report, 26 September 2011.
[2424] Prosecutor's Addenda to Closing Brief, 26 September 2011; Nzabonimana's Complementary Brief Pursuant to T2's Cross-Examination, 26 September 2011.
[2425] Corrigendum to "Nzabonimana's Additional Brief Pursuant to Site Visit" dated 23 September 2011, 3 October 2011.
[2426] Decision on Third Defence Motion for the Admission of a Written Statement and Accompanying Documents (TC), 19 October 2011.

1936. On 21 October 2011, the Chamber declined to initiate contempt proceedings against any person based on the allegations concerning Defence Witness T36.[2427] The Chamber also granted in part a Defence motion seeking admission of documents, and admitted into evidence a statement of Witness CNAI.[2428]

1937. On 25 October 2011, the Defence filed a further corrigendum to its additional submissions concerning the site visit.[2429] On 28 October 2011, the Chamber directed the Registry to disclose a redacted version of the *Amicus Curiae* report to the Public Prosecution Service of Canada.[2430]

1938. On 15 November 2011, the Chamber granted a Defence motion in part and directed the Registry to file an addendum to its Site Visit Report.[2431] On 18 November 2011, the Chamber declined to appoint an *Amicus Curiae* to investigate allegations of contempt by a Prosecution investigator.[2432] On 25 November 2011, the Chamber denied the Defence motion seeking appointment of an *Amicus Curiae* to investigate allegations of false testimony by the Chief of Prosecution and by two Prosecution investigators.[2433]

1939. On 2 December 2011, the Chamber denied a Defence request to strike out sections of the Prosecution Closing Brief.[2434]

1940. On 15 March 2012, the Chamber ordered the Defence to file specific and comprehensive submissions concerning potentially exculpatory material, and ordered the Prosecution to file its submissions, if any, by 23 March 2012.[2435] On 22 March 2012, the Chamber invited submissions from the Registrar on the human and material resources available to the Defence in 2012.[2436] On 30 March 2012, the Chamber ordered that the parties make submissions on the Registrar's Submission by 2 April 2012, and invited the Registry to reply by 3 April 2012.[2437]

1941. On 4 April 2012, the Chamber ordered the Defence to file specific and comprehensive submissions on the potentially exculpatory material contained on the CD-ROM received on 17

[2427] Decision Following *Amicus Curiae* Report Pertaining to Allegations of Contempt of the Tribunal by Prosecution Witness CNAI and/or a Member of the Prosecution Office (TC), 21 October 2011.
[2428] Decision on Defence Motion for Admission of Documents (TC), 21 October 2011.
[2429] Further Corrigendum to "Nzabonimana's Additional Brief Pursuant to Site Visit" dated 23 September 2011, 25 October 2011.
[2430] Decision on PPSC Motion for Disclosure of the *Amicus Curiae* Report (TC), 28 October 2011.
[2431] Decision on Nzabonimana's Motion for Clarification on Site Locations (TC), 15 November 2011; *see also* Chamber Exhibit 3 (Addendum 2 to Site Visit Report).
[2432] Decision on Motion for Contempt Proceedings Against OTP Investigator Djibo Moumouni (TC), 18 November 2011.
[2433] Decision on Defence Motion for Proceedings Against OTP Investigators (TC), 25 November 2011
[2434] Decision on Defence Motion to Strike Out Offending Sections of the Prosecutor's Closing Brief (TC), 2 December 2011.
[2435] *Proprio Motu* Order to the Parties Concerning Nzabonimana's Motion for Appropriate Relief in Light of the Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence (TC), 15 March 2012.
[2436] Order to the Registry for Submissions Concerning Resources Available to the Defence in 2012 (TC), 22 March 2012.
[2437] Order on Defence Request for Leave to Respond to the Registrar's Submissions Dated 26 March 2012 (TC), 30 March 2012.

February 2012. The Chamber also ordered that any such submissions not received by a specific date would be deemed waived.[2438]

1942. On 27 April 2012, the Appeals Chamber denied the Defence appeal against the Decision not to initiate contempt proceedings against members of the Prosecution.[2439]

1943. On 30 April 2012, the Trial Chamber considered that the Prosecution violated its disclosure obligations pursuant to Rule 68(A) with regard to testimony in the *Bizimungu et al.*, *Karemera et al.*, and *Rukundo* cases, and admitted into evidence certain transcripts from the *Karemera et al.* and *Rukundo* cases.[2440] The Chamber also considered that the Prosecution violated its disclosure obligations under Rule 68(A) with regard to a statement of Witness T77 and to the testimony of Augustin Ngirabatware, but that these violations did not materially prejudice the Defence.[2441] In addition, the Chamber denied a Defence motion for reconsideration or certification to appeal an Order for submissions.[2442]

1944. Also on 30 April 2012, the Chamber scheduled the delivery of the Judgement for 31 May 2012.[2443]

1945. On 30 May 2012, the Chamber denied Nzabonimana's *Pro Se* motion to draw an adverse influence from the disbursement of funds to Prosecution witnesses.[2444]

1946. On 31 May 2012, the Chamber delivered an oral summary of the Judgement in open proceedings.[2445]

1947. The Chamber filed the written Judgement and Sentence on 25 June 2012, following completion of the editorial process.

[2438] Order to the Parties Concerning Submissions on Potentially Exculpatory Material Contained on the CD-ROM Disclosed by the Prosecution on 17 February 2012 (TC), 4 April 2012.
[2439] *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-AR91, Decision on Callixte Nzabonimana's Appeal Against the Trial Chamber's Decision on Motion for Rule 91 Proceedings Against Prosecution Investigators (AC), 27 April 2012. *See also Callixte Nzabonimana v. The Prosecutor*, Case No. ICTR-98-44D-R91, Order Assigning Judges to a Case Before the Appeals Chamber (AC), 16 December 2011.
[2440] Consolidated Decision on Defence Motion for Appropriate Relief in Light of Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence, Defence Motion in Light of the Trial Chamber's *Proprio Motu* Order of 15 March 2012, and Defence Motion Pursuant to the Trial Chamber's Order of 4 April 2012 (TC), 30 April 2012.
[2441] Decision on Defence Motion for Appropriate Relief in Light of Exculpatory Material Disclosed by the Prosecution on 23 February 2012 Relating to Witness T77 (TC), 30 April 2012; Decision on Defence Motion for Appropriate Relief in Light of Exculpatory Material Disclosed by the Prosecution on 15 November 2011 (TC), 30 April 2012.
[2442] Decision on Defence Motion for Reconsideration or Certification of the "Order to the Parties Concerning Submissions on Potentially Exculpatory Material Contained on the CD-ROM Disclosed by the Prosecution on 17 February 2012" of 4 April 2012 (TC), 30 April 2012.
[2443] Scheduling Order for Delivery of Judgement (TC), 30 April 2012.
[2444] Decision on Nzabonimana's *Pro Se* Motion to Draw Inferences in Relation to the 245 000 Rwandan Francs Disbursed for Treatment of Witnesses in the Nzabonimana Case (TC), 30 May 2012.
[2445] Summary of Judgement and Sentence, 31 May 2012; *see also* T. 31 May 2012 pp. 2-11.

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ANNEX B: CITED MATERIALS AND DEFINED TERMS

1.1 Cited Materials

1.1.1 Jurisprudence

1.1.1.1 ICTR

Akayesu

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998 ("*Akayesu*, Judgement (TC)")

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001 ("*Akayesu*, Judgement (AC)")

Bagilishema

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-A, Judgement (AC), 3 July 2002 ("*Bagilishema*, Judgement (AC)")

Bagosora et al.

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR 98-41-T, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (TC), 13 September 2004 ("*Bagosora et al.*, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (TC), 13 September 2004")

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR 98-41-T, Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005 ("*Bagosora et al.*, Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005")

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR 98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006 ("*Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006")

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR 98-41-AR73, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence (AC), 25 September 2006 ("*Bagosora et al.*, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence (AC), 25 September 2006")

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR 98-41-T, Judgement and Sentence (TC), 18 December 2008 ("*Bagosora et al.*, Judgement (TC)")

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Bagosora & Nsengiyumva

Théoneste Bagosora & Anatole Nsengiyumva v. The Prosecutor, Case No. ICTR 98-41-A, Judgement (AC), 14 December 2011 ("*Bagosora & Nsengiyumva*, Judgement (AC)")

Bikindi

Simon Bikindi v. The Prosecutor, Case No. ICTR-01-72-A, Judgement (AC), 18 March 2010 ("*Bikindi*, Judgement (AC)")

Bizimungu et al.

The Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-T, Judgement and Sentence (TC), 30 September 2011 ("*Bizimungu et al.*, Judgement (TC)")

Gacumbitsi

The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-T, Judgement (TC), 17 June 2004 ("*Gacumbitsi*, Judgement (TC)")

Sylvestre Gacumbitsi v. The Prosecutor, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006 ("*Gacumbitsi*, Judgement (AC)")

Gatete

The Prosecutor v. Jean-Baptiste Gatete, Case No. ICTR-2000-61-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008 ("*Gatete*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008")

The Prosecutor v. Jean-Baptiste Gatete, Case No. ICTR-2000-61-T, Judgement and Sentence (TC), 31 March 2011 ("*Gatete*, Judgement (TC)")

Hategekimana

Ildephonse Hategekimana v. The Prosecutor, Case No. ICTR-00-55B-A, Judgement (AC), 8 May 2012 ("*Hategekimana*, Judgement (AC)")

Kajelijeli

Juvénal Kajelijeli v. The Prosecutor, Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005 ("*Kajelijeli*, Judgement (AC)")

Kalimanzira

Callixte Kalimanzira v. The Prosecutor, Case No. ICTR-05-88-A, Judgement (AC), 20 October 2010 ("*Kalimanzira*, Judgement (AC)")

Kambanda

The Prosecutor v. Jean Kambanda, Case No. ICTR-97-23-S, Judgement and Sentence (TC), 4 September 1998 (*Kambanda*, Judgement (TC)")

Kamuhanda

The Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-95-54A-T, Judgement and Sentence (TC), 22 January 2004 ("*Kamuhanda*, Judgement (TC)")

Jean de Dieu Kamuhanda v. The Prosecutor, Case No. ICTR-99-54A-A, Judgement (AC), 19 September 2005 ("*Kamuhanda*, Judgement (AC)")

Kanyarukiga

The Prosecutor v. Gaspard Kanyarukiga, Case No. ICTR-2002-78-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008 ("*Kanyarukiga*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008")

The Prosecutor v. Gaspard Kanyarukiga, Case No. ICTR-2002-78-T, Judgement and Sentence (TC), 1 November 2010 ("*Kanyarukiga*, Judgement (TC)")

Gaspard Kanyarukiga v. The Prosecutor, Case No. ICTR-02-78-A, Judgement (AC), 8 May 2012 ("*Kanyarukiga*, Judgement (AC)")

Karera

François Karera v. The Prosecutor, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009 ("*Karera*, Judgement (AC)")

Kayishema & Ruzindana

The Prosecutor v. Clément Kayishema & Obed Ruzindana, Case No. ICTR-95-1-A, Judgement (AC), 1 June 2001 ("*Kayishema & Ruzindana*, Judgement (AC)")

Muhimana

Mikaeli Muhimana v. The Prosecutor, Case No. ICTR-95-1B-A, Judgement (AC), 21 May 2007 ("*Muhimana*, Judgement (AC)")

Munyakazi

The Prosecutor v. Yussuf Munyakazi, Case No. ICTR-97-36A-A, Judgement (AC), 28 September 2011 ("*Munyakazi*, Judgement (AC)")

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Musema

Alfred Musema v. The Prosecutor, Case No. ICTR-96-13-A, Judgement (AC), 16 November 2001 ("*Musema*, Judgement (AC)")

Muvunyi

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008 ("*Muvunyi I*, Judgement (AC)")

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-2000-55A-A, Judgement (AC), 1 April 2011 ("*Muvunyi II*, Judgement (AC)")

Nahimana et al.

The Prosecutor v. Ferdinand Nahimana et al., Case No. ICTR-99-52-T, Judgement and Sentence (TC), 3 December 2003 ("*Nahimana et al.*, Judgement (TC)")

Ferdinand Nahimana et al. v. The Prosecutor, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 ("*Nahimana et al.*, Judgement (AC)")

Nchamihigo

Siméon Nchamihigo v. The Prosecutor, Case No. ICTR-2001-63-A, Judgement (AC), 18 March 2010 ("*Nchamihigo*, Judgement (AC)")

Ndindabahizi

The Prosecutor v. Emmanuel Ndindabahizi, Case No. ICTR-2001-71-T, Judgement and Sentence (TC), 15 July 2004 ("*Ndindabahizi*, Judgement (TC)")

Emmanuel Ndindabahizi v. The Prosecutor, Case No. ICTR-01-71-A, Judgement (AC), 16 January 2007 ("*Ndindabahizi*, Judgement (AC)")

Niyitegeka

The Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-T, Judgement and Sentence (TC), 16 May 2003 ("*Niyitegeka*, Judgement (TC)")

Eliézer Niyitegeka v. The Prosecutor, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004 ("*Niyitegeka*, Judgement (AC)")

Nshogoza

Léonidas Nshogoza v. The Prosecutor, Case No. ICTR-2007-91-A, Judgement (AC), 15 March 2010 ("*Nshogoza*, Judgement (AC)")

Ntagerura et al.

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-T, Judgement and Sentence (TC), 25 February 2004 ("*Ntagerura et al.*, Judgement (TC)")

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 ("*Ntagerura et al.*, Judgement (AC)")

Ntakirutimana & Ntakirutimana

The Prosecutor v. Elizaphan Ntakirutimana & Gérard Ntakirutimana, Cases Nos. ICTR-96-10-A & ICTR-96-17-A, Judgement (AC), 13 December 2004 ("*Ntakirutimana & Ntakirutimana*, Judgement (AC)")

Ntawukulilyayo

Dominique Ntawukulilyayo v. The Prosecutor, Case No. ICTR-05-82-A, Judgement (AC), 14 December 2011 ("*Ntawukulilyayo*, Judgement (AC)")

Nyiramasuhuko et al.

The Prosecutor v. Pauline Nyiramasuhuko et al., Case No. ICTR-98-42-A15*bis*, Decision in the Matter of Proceedings Under Rule 15*bis*(D) (AC), 24 September 2003 ("*Nyiramasuhuko et al.*, Decision the Matter of Proceedings Under Rule 15*bis*(D) (AC), 24 September 2003")

The Prosecutor v. Pauline Nyiramasuhuko et al., Case No. ICTR-98-42-T, Judgement and Sentence (TC), 24 June 2011 ("*Nyiramasuhuko et al.*, Judgement (TC)")

Renzaho

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

Rukundo

Emmanuel Rukundo v. The Prosecutor, Case No. ICTR-2001-70-A, Judgement (AC), 20 October 2010 ("*Rukundo*, Judgement (AC)")

Rutaganda

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003 ("*Rutaganda*, Judgement (AC)")

Rwamakuba

The Prosecutor v. André Rwamakuba, Case No. ICTR-98-44C-T, Judgement (TC), 20 September 2006 ("*Rwamakuba*, Judgement (TC)")

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Semanza

Laurent Semanza v. The Prosecutor, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005 ("*Semanza*, Judgement (AC)")

Seromba

The Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-A, Judgement (AC), 12 March 2008 ("*Seromba*, Judgement (AC)")

Serushago

Omar Serushago v. The Prosecutor, Case No. ICTR-98-39-A, Reasons for Judgement (AC), 6 April 2000 ("*Serushago*, Judgement (AC)")

Setako

Ephrem Setako v. The Prosecutor, Case No. ICTR-04-81-A, Judgement (AC), 28 September 2011 ("*Setako*, Judgement (AC)")

Simba

Aloys Simba v. The Prosecutor, Case No. ICTR-01-76-A, Judgement (AC), 27 November 2007 ("*Simba*, Judgement (AC)")

Zigiranyirazo

Protais Zigiranyirazo v. The Prosecutor, Case No. ICTR-01-73-A, Judgement (AC), 16 November 2009 ("*Zigiranyirazo*, Judgement (AC)")

1.1.1.2 ICTY

Blaškić

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement (AC), 29 July 2004 ("*Blaškić*, Judgement (AC)")

Brđanin

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Judgement (AC), 3 April 2007 ("*Brđanin*, Judgement (AC)")

Delalić et al.

Prosecutor v. Zejnil Delalić et al., Case No. IT-96-21-A, Judgement (AC), 20 February 2001 ("*Delalić et al.*, Judgement (AC)")

Haradinaj et al.

Prosecutor v. Ramush Haradinaj et al., Case No. IT-04-84-A, Judgement (AC), 19 July 2010 ("*Haradinaj et al.*, Judgement (AC)")

Jelisić

Prosecutor v. Goran Jelisić, Case No. IT-95-10-A, Judgement (AC), 5 July 2001 ("*Jelisić*, Judgement (AC)")

Kordić & Čerkez

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-A, Judgement (AC), 17 December 2004 ("*Kordić & Čerkez*, Judgement (AC)")

Krajišnik

Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-A, Judgement (AC), 17 March 2009 ("*Krajišnik*, Judgement (AC)")

Krnojelac

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgement (AC), 17 September 2003 ("*Krnojelac*, Judgement (AC)")

Kunarac et al.

Prosecutor v. Dragoljub Kunarac et al., Case Nos. IT-96-23-A & IT-96-23/1-A, Judgement (AC), 12 June 2002 ("*Kunarac et al.*, Judgement (AC)")

Kupreškić et al.

Prosecutor v. Zoran Kupreškić et al., Case No. IT-95-16-A, Judgement (AC), 23 October 2001 ("*Kupreškić et al.*, Judgement (AC)")

Kvočka et al.

Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005 ("*Kvočka et al.*, Judgement (AC)")

Limaj et al.

Prosecutor v. Fatmir Limaj et al., Case No. IT-03-66-A, Judgement (AC), 27 September 2007 ("*Limaj et al.*, Judgement (AC)")

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Martić

Prosecutor v. Milan Martić, Case No. IT-95-11-A, Judgement (AC), 8 October 2008 ("*Martić*, Judgement (AC)")

Dragomir Milošević

Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-T, Judgement (TC), 12 December 2007 ("*Dragomir Milošević*, Judgement (TC)")

Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-A, Judgement (AC), 12 November 2009 ("*Dragomir Milošević*, Judgement (AC)")

Naletilić & Martinović

Prosecutor v. Mladen Naletilić, a.k.a. "Tuta" & Vinko Martinović, a.k.a. "Štela", Case No. IT-98-34-A, Judgement (AC), 3 May 2006 ("*Naletilić & Martinović*, Judgement (AC)")

Dragan Nikolić

Prosecutor v. Dragan Nikolić, Case No. IT-94-2-A, Judgement on Sentencing Appeal (AC), 4 February 2005 ("*Dragan Nikolić*, Judgement (AC)")

Popović et al.

Prosecutor v. Vujadin Popović et al., Case No. IT-05-88-T, Judgement (TC), 10 June 2010 ("*Popović et al.*, Judgement (TC)")

Prlić et al.

Prosecutor v. Jadranko Prlić et al., Case No. IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence (AC), 23 November 2007 ("*Prlić et al.*, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence (AC), 23 November 2007")

Simić et al.

Prosecutor v. Blagoje Simić et al., Case No. IT-95-9-T, Judgement (TC), 17 October 2003 ("*Simić et al.*, Judgement (TC)")

Stakić

Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Judgement (AC), 22 March 2006 ("*Stakić*, Judgement (AC)")

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Strugar

Prosecutor v. Pavle Strugar, Case No. IT-01-42-A, Judgement (AC), 17 July 2008 ("*Strugar*, Judgement (AC)")

1.1.2 From the *Nzabonimana* Case

1.1.2.1 Decisions and Orders

The Prosecutor v. Augustin Bizimana et al., Case No. ICTR-98-44-I, Decision on the Prosecutor's Motion for Separate Trials and for Leave to File an Amended Indictment (TC), 8 October 2003 ("*Bizimana et al.*, Decision on the Prosecutor's Motion for Separate Trials and for Leave to File an Amended Indictment (TC), 8 October 2003").

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D, Decision on Prosecutor's Motion for Judicial Notice (TC), 29 April 2009 ("Decision on Prosecutor's Motion for Judicial Notice (TC), 29 April 2009")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D, Corrigendum to Decision on Prosecutor's Motion for Judicial Notice(TC), 6 May 2009 ("Corrigendum to Decision on Prosecutor's Motion for Judicial Notice (TC), 6 May 2009")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-PT, Decision on Prosecutor's Motion for Amendment of Indictment (TC), 21 July 2009 ("Decision on Prosecutor's Motion for Amendment of Indictment (TC), 21 July 2009")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on Nzabonimana's Motion For Stay of Proceedings; Reconsideration and/or Certification of Decision Rendered on 29 October 2009; and Reconsideration and/or Certification of the Decision Rendered on 30 October 2009 (TC), 13 November 2009 ("Decision on Nzabonimana's Motion For Stay of Proceedings; Reconsideration and/or Certification of Decision Rendered on 29 October 2009; and Reconsideration and/or Certification of the Decision Rendered on 30 October 2009 (TC), 13 November 2009")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on Nzabonimana's Urgent Motion for Appointment of *Amicus Curiae* to Investigate Contempt by Witness CNAI and for Supplementary Protective Measures for Witness T36 (TC), 9 July 2010 ("Decision on Nzabonimana's Urgent Motion for Appointment of *Amicus Curiae* to Investigate Contempt by Witness CNAI and for Supplementary Protective Measures for Witness T36 (TC), 9 July 2010")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on Nzabonimana's Renewed and Confidential Motion for Appointment of *Amicus Curiae* to Investigate Allegations of Contempt of the Tribunal Against Prosecution Witness CNAI (TC), 8 December 2010 ("Decision on Nzabonimana's Renewed and Confidential Motion for Appointment of *Amicus Curiae* to Investigate Allegations of Contempt of the Tribunal Against Prosecution Witness CNAI (TC), 8 December 2010")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on Prosecutor's Motion for the Recall of Defence Witness Jean-Marie Vianney Mporanzi (TC), 14 February 2011 ("Decision on Prosecutor's Motion for the Recall of Defence Witness Jean-Marie Vianney Mporanzi (TC), 14 February 2011")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on Prosecution Motion to Call Rebuttal Evidence (TC), 8 March 2011 ("Decision on Prosecution Motion to Call Rebuttal Evidence (TC), 8 March 2011")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on "Callixte Nzabonimana's Motion for Summon of OTP Investigators Adamou Allagouma and Almahamoud Sidibe, *Sous-Préfet* Ms. Immaculée Mukamasabo" (TC), 7 April 2011 ("Decision on "Callixte Nzabonimana's Motion for Summon of OTP Investigators Adamou Allagouma and Almahamoud Sidibe, *Sous-Préfet* Ms. Immaculée Mukamasabo" (TC), 7 April 2011")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Order for Prosecution to Review Indictment and to File Public Version (TC), 8 April 2011 ("Order for Prosecution to Review Indictment and to File Public Version (TC), 8 April 2011")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on Site Visit (TC), 10 May 2011 ("Decision on Site Visit (TC), 10 May 2011").

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on Nzabonimana's Motion for the Admission of Written Witness Statements (TC), 10 May 2011 ("Decision on Nzabonimana's Motion for the Admission of Written Witness Statements (TC), 10 May 2011")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision Following *Amicus Curiae* Report Pertaining to Allegations of Contempt of the Tribunal by Prosecution Witness CNAI and/or a Member of the Prosecution Office (TC), 21 October 2011 ("Decision Following *Amicus Curiae* Report Pertaining to Allegations of Contempt of the Tribunal by Prosecution Witness CNAI and/or a Member of the Prosecution Office (TC), 21 October 2011")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on Motion for Contempt Proceedings Against OTP Investigator Djibo Moumouni (TC), 18 November 2011 ("Decision on Motion for Contempt Proceedings Against OTP Investigator Djibo Moumouni (TC), 18 November 2011")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on Defence Motion for Proceedings Against OTP Investigators (TC), 25 November 2011 ("Decision on Defence Motion for Proceedings Against OTP Investigators (TC), 25 November 2011")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, *Proprio Motu* Order to the Parties Concerning Nzabonimana's Motion for Appropriate Relief in Light of the Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence (TC), 15 March 2012 ("*Proprio*

Motu Order to the Parties Concerning Nzabonimana's Motion for Appropriate Relief in Light of the Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence (TC), 15 March 2012")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Order to the Parties Concerning Submissions on Potentially Exculpatory Material Contained on the CD-ROM Disclosed by the Prosecution on 17 February 2012 (TC), 4 April 2012 ("Order to the Parties Concerning Submissions on Potentially Exculpatory Material Contained on the CD-ROM Disclosed by the Prosecution on 17 February 2012 (TC), 4 April 2012")

Callixte Nzabonimana v. The Prosecutor, Case No. ICTR-98-44D-AR91, Decision on Callixte Nzabonimana's Appeal Against the Trial Chamber's Decision on Motion for Rule 91 Proceedings Against Prosecution Investigators (AC), 27 April 2012 ("Decision on Callixte Nzabonimana's Appeal Against the Trial Chamber's Decision on Motion for Rule 91 Proceedings Against Prosecution Investigators (AC), 27 April 2012")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Consolidated Decision on Defence Motion for Appropriate Relief in Light of Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence, Defence Motion in Light of the Trial Chamber's *Proprio Motu* Order of 15 March 2012, and Defence Motion Pursuant to the Trial Chamber's Order of 4 April 2012 (TC), 30 April 2012 ("Consolidated Decision on Defence Motion for Appropriate Relief in Light of Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence, Defence Motion in Light of the Trial Chamber's *Proprio Motu* Order of 15 March 2012, and Defence Motion Pursuant to the Trial Chamber's Order of 4 April 2012 (TC), 30 April 2012")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Decision on Nzabonimana's *Pro Se* Motion to Draw Inferences in Relation to the 245 000 Rwandan Francs Disbursed for Treatment of Witnesses in the Nzabonimana Case (TC), 30 May 2012 ("Decision on Nzabonimana's *Pro Se* Motion to Draw Inferences in Relation to the 245 000 Rwandan Francs Disbursed for Treatment of Witnesses in the Nzabonimana Case (TC), 30 May 2012")

1.1.2.2 Submissions

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44-D-T, Nzabonimana's Motion for the Recall of Witness CNAL, 7 December 2009 ("Nzabonimana's Motion for the Recall of Witness CNAL, 7 December 2009")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Prosecutor's Notice to the Defence that He Will Not Be Requesting for Convictions under Paragraphs 18, 22, 27, 31, 32, 36, 43, 53 and 55 of the Indictment, 30 June 2011 ("Prosecutor's Notice to the Defence that He Will Not Be Requesting for Convictions under Paragraphs 18, 22, 27, 31, 32, 36, 43, 53 and 55 of the Indictment, 30 June 2011")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Nzabonimana's Notice to Appeal the Trial Chamber's Decision on the Defence Motion for Proceedings Against OTP Investigators, Rendered on 25 November 2011, 12 December 2011 ("Nzabonimana's Notice to

Appeal the Trial Chamber's Decision on the Defence Motion for Proceedings Against OTP Investigators, Rendered on 25 November 2011, 12 December 2011")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Nzabonimana's Appeal of the Trial Chamber's "Decision on the Defence Motion for Proceedings Against OTP Investigators," Rendered on 25 November 2011, 27 December 2011 ("Nzabonimana's Appeal of the Trial Chamber's "Decision on the Defence Motion for Proceedings Against OTP Investigators," Rendered on 25 November 2011", 27 December 2011")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Nzabonimana's Corrigendum to the Notice to Appeal the Trial Chamber's "Decision on the Defence Motion for Proceedings Against OTP Investigators," Rendered on 25 November 2011, 27 December 2011 ("Nzabonimana's Corrigendum to the Notice to Appeal the Trial Chamber's "Decision on the Defence Motion for Proceedings Against OTP Investigators," Rendered on 25 November 2011", 27 December 2011")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Response to Defence Request Dated 14 February 2012, 17 February 2012 ("Response to Defence Request Dated 14 February 2012, 17 February 2012")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Nzabonimana's Motion for Appropriate Relief in Light of the Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence, 12 March 2012 ("Nzabonimana's Motion for Appropriate Relief in Light of the Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence, 12 March 2012")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Prosecutor's Response to Nzabonimana's Motion for Appropriate Relief in Light of the Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence, 14 March 2012 ("Prosecutor's Response to Nzabonimana's Motion for Appropriate Relief in Light of the Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence, 14 March 2012")

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Nzabonimana's Motion in Light of the Trial Chamber's *Proprio Motu* Order of 15 March 2012, 19 March 2012 ("Nzabonimana's Motion in Light of the Trial Chamber's *Proprio Motu* Order of 15 March 2012, 19 March 2012")

1.2 Defined Terms

Accused

Callixte Nzabonimana

***Amicus Curiae* Report**

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Report of the *Amicus Curiae* on Allegations of Contempt of Tribunal by Witness CNAI and/or a Member of the Prosecution Office Pertaining to Defence Witness T36, 1 April 2011

Bourgmestre

Mayor of a *commune*

CDR

Coalition pour la Défense de la République

Cellule

A political and administrative subdivision of a *secteur*

CND

Conseil National pour le Développement

Commune

A political and administrative subdivision of a *préfecture*

Conseiller

An individual responsible for the administration of a *secteur*

Defence Additional Brief

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Nzabonimana's Additional Brief Pursuant to Site Visit, 23 September 2011

Defence Closing Brief

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Nzabonimana's Abridged Final Brief, 13 July 2011

Defence Complementary Brief

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Nzabonimana's Complementary Brief Pursuant to T2's Cross-Examination, 26 September 2011

EER

École Évangéliste du Rwanda

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fn.

Footnote

Gacaca

Rwandan domestic tribunal

Gendarme

An officer of the *Gendarmerie*

HC

Reference to French transcripts heard in closed session

Ibuka

Association of genocide survivors

ICS

Reference to English transcripts heard in closed session

ICTR or Tribunal

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994

ICTY

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Interahamwe

The youth wing of the MRND party

Indictment

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-PT, Indictment, 24 July 2009

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-PT, Indictment, 27 April 2011 [refiled public version]

JDR

Jeunesse Démocratique Rwandaise, the youth wing of the MRD party

Judgement

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Judgement and Sentence (TC), 31 May 2012

MDR

Mouvement Démocratique Républicain

MDR-Power

A wing of the *Mouvement Démocratique Républicain* Party

MRND

Mouvement Révolutionnaire National pour la Démocratie et le Développement [before July 1991]

Mouvement Républicain National pour la Démocratie et le Développement [after July 1991]

Notice of Alibi

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, *Avis d'Alibi*, dated 22 February 2010, filed on 23 February 2010

p. (pp.)

page (pages)

para. (paras.)

paragraph (paragraphs)

PDI

Islamic Democrat Party

Protected Information Sheet and Personal Information Sheet

Personal particulars and identifying information of Prosecution and Defence witnesses

PL

Parti Libéral (Liberal Party)

Préfecture

A territorial and administrative unit in Rwanda

Préfet

An individual responsible for the administration of a *préfecture*

Presidential Guard

The Presidential Guard Battalion, a specialised unit of the Rwandan Armed Forces, was responsible for ensuring the security of the Rwandan President

Prosecution Additional Brief

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Prosecutor's Addendum to His Closing Brief, 23 September 2011

Prosecution Closing Brief

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Prosecutor's Closing Brief, 5 July 2011

Prosecution Complementary Brief

The Prosecutor v. Callixte Nzabonimana, Case No. ICTR-98-44D-T, Prosecutor's Addenda to Closing Brief, 26 September 2011

Prosecution Pre-Trial Brief

The Prosecutor v. Callixte Nzabonimana., Case No. ICTR-98-44D-PT, Prosecutor's Revised Pre-Trial Brief, 1 October 2009

PSD

Parti Social Démocrate

Responsable de cellule

An individual responsible for the administration of a *cellule*

RPF

Rwandan Patriotic Front

RTLM

Radio Télévision Libre des Mille Collines

Rwandan Francs

Monetary unit in Rwanda

Rules

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

Secteur

A political and administrative subdivision of a *commune*

Sous-préfecture

A territorial and administrative unit below the *préfecture* unit in Rwanda

Sous-préfet

An individual responsible for the administration of a *sous-préfecture*

Statute

Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955

T.

Transcript

UN

United Nations

UNDF

United Nations Detention Facility located in Arusha

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ANNEX C: INDICTMENT

ICTR-98-44AD-T
27-04-2011

ICTR-98-44D-1
24-07-2007
(1501 – 1489)

1501

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

(7403-7391)

7403

THE PROSECUTOR

v.

CALLIXTE NZABONIMANA

CASE No. ICTR-98-44D-PT

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INDICTMENT

The Prosecutor of the International Criminal Tribunal for Rwanda (the "Prosecutor"), in his authority set out in Article 17 of the Statute of the International Criminal Tribunal for Rwanda (the "Statute of the Tribunal"), charges

CALLIXTE NZABONIMANA

with:

COUNT 1 - **GENOCIDE as set out in Articles 2(3)(a) and 6(1) of the Statute of the Tribunal;**

COUNT 2 - **CONSPIRACY TO COMMIT GENOCIDE as set out in Articles 2 (3)(b) and 6(1) of the Statute of the Tribunal;**

COUNT 3 - **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE as set out in Articles 2(3)(c) and 6(1) of the Statute of the Tribunal;**

COUNT 4 - **EXTERMINATION as a CRIME AGAINST HUMANITY as set out in Articles 3(b) and 6(1) of the Statute of the Tribunal;**

COUNT 5 - **MURDER as a CRIME AGAINST HUMANITY as set out in Articles 3(a) and 6(1) of the Statute of the Tribunal.**

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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CONTEXT OF THE ACTS OF THE ACCUSED

1. Between 1 January 1994 and 17 July 1994, Rwanda was a State Party to the *Convention on the Prevention and Punishment of the Crime of Genocide* (1948), having acceded to it on 16 April 1975.

2. Between 1 January 1994 and 17 July 1994, Rwanda was a State 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 having acceded to Protocols Additional thereto of 1977 on 19 November 1984.

3. Between 6 April 1994 and 17 July 1994, citizens native to Rwanda were severally identified according to the following ethnic classifications: Hutu, Tutsi, and Twa, which were protected groups falling within the scope of the Genocide Convention of 1948.

4. Between 6 April 1994 and 17 July 1994, a genocide against the Tutsi ethnic group occurred in Rwanda.

5. The following state of affairs existed in Rwanda between 6 April 1994 and 17 July 1994: There were throughout Rwanda widespread or systematic attacks against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity.

THE ACCUSED

6. **Callixte NZABONIMANA** [hereinafter referred to by name or as the "Accused"] was born in 1953 in *Nyabikenke* Commune, *Gitarama* prefecture.

7. **Callixte NZABONIMANA** was a member of the ruling MRND party at both national and prefectural levels and at various times between 1989 and 1994, held the positions of Minister of Planning and later, Minister of Youth and Associative Movements within the Government of Rwanda. He remained in the cabinet until July 1994, when the Interim Government fled into exile.

8. In 1994, Rwanda was going through an internal conflict of which ethnicity was a factor. As Chairman of the MRND party in *Gitarama* prefecture and a serving Minister of Youth and Associative Movements, **Callixte NZABONIMANA** was a person of great prominence and consequently, was able to wield considerable influence within his local community in *Gitarama* prefecture. As such, at the times alleged in the indictment, civilians, law enforcement agents and members of the *Interahamwe* militia in *Gitarama* prefecture were more likely to follow his orders.

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9. Based on his prominence and personal and political influence in *Gitarama* prefecture and the ethnic conflict between Hutu and Tutsi in Rwanda at the time, **Callixte NZABONIMANA**'s mere presence, before and during attacks on Tutsi civilians at several roadblocks erected around *Gitarama* prefecture including, but not limited to *Fina, Biti, Gahogo* and opposite the *Cyakabiri* dispensary, between April and July 1994, would have had an encouraging effect on the perpetrators of such attacks and conveyed the impression that the killings of Tutsi within *Gitarama* prefecture was endorsed by the Interim Government, which was for the most part, headquartered within the said prefecture.

10. Similarly, based on his membership of the Interim Government in Rwanda, and his portfolio as the Minister for Youth and Associative Movements and the internal ethnic conflict between Hutu and Tutsi, **Callixte NZABONIMANA**'s mere presence, during attacks on Tutsi civilians in and around *Nyabikenke, Nyamabuye, Mugina, Tambwe, Rutobwe, Musambira, Mushubati* communes, *Gitarama* prefecture, between April and July 1994, would have had an encouraging effect on the perpetrators thereof and would have conveyed the impression that the killing of Tutsi civilians within the said prefecture was endorsed by Interim Government.

11. In that regard, the involvement of the mostly Hutu peasant population in the massacre of Tutsi civilians in *Gitarama* prefecture, based on the internal ethnic conflict in Rwanda at the time, was facilitated by their misplaced belief, confidence in their leadership and an understanding that the encouragement of authorities such as **Callixte NZABONIMANA** guaranteed them immunity to kill the Tutsi and loot their property.

12. The actions of **Callixte NZABONIMANA** between April and July 1994, namely: the distribution of weapons, the incitement of the civilian population to kill their Tutsi counterparts and his participation in the killing of Tutsi civilians in and around *Nyabikenke, Nyamabuye, Mugina, Tambwe, Rutobwe, Musambira, Mushubati* communes, *Gitarama* prefecture and his public statements in *Gitarama* and other parts of Rwanda as indicated in the indictment demonstrate his specific intent "to destroy, in whole or in part" the Tutsi as a group.

INDIVIDUAL CRIMINAL RESPONSIBILITY OF THE ACCUSED UNDER ARTICLE 6 (1)

13. **Callixte NZABONIMANA** is individually criminally responsible, pursuant to Article 6(1) of the Statute of the Tribunal, for the crimes of Genocide, Conspiracy, Direct and Public Incitement to commit Genocide, Crimes against Humanity – Murder and Extermination. The Accused planned, instigated, ordered, or committed these crimes, or he otherwise aided and abetted in the planning, preparation and execution of these crimes through his acts and omissions.

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CONCISE STATEMENT OF FACTS

Count 1: GENOCIDE

14. **GENOCIDE** as set out in Articles 2(3)(a) and 2(2)(a) and (b) and 6(1) of the Statute of the Tribunal in that between 1 January and 31 July 1994, on diverse dates and locations, **Callixte NZABONIMANA** was responsible for killing and causing serious bodily or mental harm to members of the Tutsi population, with the intent to destroy in whole or in part, the Tutsi population as such. **Callixte NZABONIMANA** planned, prepared, ordered, instigated, committed or otherwise aided and abetted the planning, preparation and execution of killings and other acts of violence directed against the Tutsi population as evidenced by the following paragraphs:

Killings

15. In or around 10 to 15 April 1994, **Callixte NZABONIMANA** encouraged the killers and participated in the massacre of hundreds of Tutsi at the *Nyabikenke* communal office and *Ntarabana* parish in *Gitovu* secteur. Between 10 and 15 April 1994, in *Kavumu* secteur, *Nyabikenke* commune, **Callixte NZABONIMANA** told the *Bourgemestre* of *Nyabikenke*, gendarmes, Hutu civilians, *Interahamwe* and communal policemen to kill the Tutsi civilians seeking refuge in the commune, particularly at the *Nyabikenke* communal office and *Ntarabana* parish in *Gitovu* secteur. On this occasion weapons were also distributed. Following these orders, many Tutsi were massacred at these locations. The killers included the *Interahamwe,* Hutu civilians, *gendarmes* and communal policemen.

16. On or about 11 April 1994, the Tutsi refugees at *Ntarabana* parish were taken out of the parish by the *Interahamwe* and Hutu civilians and taken to the *Nyabarongo* River and killed on **Callixte NZABONIMANA's** orders. **Callixte NZABONIMANA** saw a group of Tutsi refugees being taken to the river to be killed, while he was distributing weapons to killers at *Kigina* secteur. As the Tutsi refugees were being taken to be killed on his orders, the Accused continued with the weapons distribution. Some of the Tutsi refugees were able to escape to the *Kabgayi* parish, *Gitarama* prefecture.

17. On or about 11 April 1994, **Callixte NZABONIMANA** acting in concert with **T49** and MUNANA held a meeting at *Kiyumba* secteur, *Nyabikenke* commune. The Accused told the gathering that the killings at *Ntarabana* Parish were completed and now there remained the Tutsi at the *Nyabikenke* communal office. The Accused said they should solve this problem before the sharing of the property.

18. On or about 14 April 1994, **Callixte NZABONIMANA** held a meeting in the *Remera* centre, *Nyabikenke* commune, *Gitarama* prefecture, where he told the *Interahamwe*, Hutu civilians and communal policemen to kill Tutsi at the *Nyabikenke*

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communal office. As a result, Tutsi were killed at the *Nyabikenke* communal office by the *Interahamwe*, Hutu civilians and communal policemen.

19. On or about 14 April 1994, **Callixte NZABONIMANA** held a meeting at *Cyayi* cellule, *Kiyumba* secteur, *Nyabikenke* commune, *Gitarama* prefecture. He asked the population to prioritize the massacre of Tutsi before taking their properties. As a result of this meeting, Tutsi were killed at the *Nyabikenke* communal office by *Interahamwe,* Hutu civilians and communal policemen.

20. On or about 15 April 1994, following the orders of **Callixte NZABONIMANA,** Tutsi refugees at *Nyabikenke* communal office were attacked by *Interahamwe*, Hutu civilians, soldiers and communal policemen. Many Tutsi were killed including Speciose KARUHONGO, Jeanne UJENEZA and Gabriel KANIMBA. On or about 15 April 1994, after the attack at the *Nyabikenke* communal office, **Callixte NZABONIMANA** served beer to the attackers at his home in *Kavumu* secteur, *Nyabikenke* commune.

21. On or about 16 April 1994, **Callixte NZABONIMANA** in the company of **T24** visited the Tutsi refugees from *Nyabikenke* commune at *Kabgayi* parish, *Gitarama* prefecture. The Accused told them to return home in the pretext that there was peace so that they may be killed.

22. On or about 12 April 1994 in *Kavumu* secteur, *Nyabikenke* commune, after the killing of six Tutsi in *Nyabikenke* commune by one **T39** and his group, **Callixte NZABONIMANA** thanked the perpetrators of the killings by giving them money at his home.

23. In April 1994 in *Bwiza* cellule, *Takwe* secteur, *Nyamabuye* Commune, *Gitarama* prefecture, **Callixte NZABONIMANA** came across some *Interahamwe* who were assaulting two Tutsi. He told the *Interahamwe* that they were doing a good job and he gave them money and encouraged them to continue to "work" and further ordered them to find and kill a Tutsi soldier named PROTOGENE." The two Tutsi were killed.

24. On or about 18 April 1994, in *Rutobwe* commune, *Gitarama* prefecture, **Callixte NZABONIMANA** encouraged the killing of Tutsi and those protecting them. The Accused caused the release of the perpetrators of the killings and told the public not to obey the *Bourgmestre* Jean Marie Vianney MPORANZI, who was against the killings. These actions paved the way for the eruption and intensification of massacres in *Rutobwe* commune.

25. On 12 April 1994, the Interim Government fled from *Kigali* to *Gitarama* and established its headquarters at *Murambi*. While in *Gitarama*, the Interim Government held several public meetings with MRND officials and local authorities to encourage the public to kill the Tutsi, and also supervised the massacres.

26. On or about 18 April 1994, at *Murambi Training Centre*, **Callixte NZABONIMANA** together with the Prime Minister, and other members of the Interim Government, including Prosper MUGIRANEZA, **T82** , **T83** , held a meeting with the *Bourgmestres* of the communes in *Gitarama* prefecture. **Callixte NZABONIMANA** ordered the killing of *Bourgmestres* and other local officials opposed to the killings. Soon after the meeting, the *Bourgmestre* of *Mugina* commune, Callixte NDAGIJIMANA, and two *conseillers* from *Nyamabuye* commune namely Bernard TWAGIRAMUKIZA, *conseiller* of *Ruli* and Martin GASIGWA, *conseiller* of *Musiba*, were killed by persons including Hutu civilians and *Interahamwe*.

27. Between 20 and 25 April 1994, at *Kavumu* secteur, *Nyabikenke* commune, *Gitarama* prefecture, **Callixte NZABONIMANA** told the Hutu population to hunt down and kill Tutsi hiding in houses and bushes. As a result, many Tutsis were killed by persons including *Interahamwe* and Hutu civilians.

28. In April 1994, at *Fina* Petrol Station, *Nyamabuye* commune *Gitarama* prefecture, a young Tutsi man was shot dead by a soldier in the presence and with the support of **Callixte NZABONIMANA**.

29. In May 1994, at a roadblock opposite the *Cyakabiri* dispensary, *Gitarama* prefecture, **Callixte NZABONIMANA,** in the company of Casimir BIZIMUNGU, brought a Tutsi male youth in the boot of his car. He told *Interahamwe and* Hutu civilians to kill him. The Tutsi man was immediately killed.

30. On or about 4 June 1994, **Callixte NZABONIMANA** told the *Interahamwe* communal policemen and Hutu civilians to kill the children of **CNAQ** Shortly after, her six children were killed in *Nyabikenke* commune. The children were killed by Interahamwe including **T39** , MANIRAHO, MPORANYIMIGABO, **T45** and a communal policeman called MUNYABARENZI and some Hutu civilians.

Pre-6 April 1994 Meetings

31. In 1993, at an MRND rally in *Gasagara* cellule, *Kavumu* secteur, *Nyabikenke* commune, *Gitarama* prefecture, **Callixte NZABONIMANA** described the Tutsi as the enemy against whom the country had to be defended.

32. In early 1994, at *Nyakabanda* market, *Nyakabanda* commune, *Gitarama* prefecture, **Callixte NZABONIMANA** attended a meeting. In attendance were

several MRND supporters and *Interahamwe* from different prefectures. Dressed in a military outfit and armed with a gun, the Accused ordered the population to eliminate all Tutsi refugees from Gisenyi prefecture and those offering them protection. As a result, many Tutsi were killed by Interahamwe and Hutu civilians, particularly following the death of President Habyarimana.

33. In March 1994, **Callixte NZABONIMANA** held a meeting for dancers from the *Kavumu* and *Mahembe* secteurs, *Nyabikenke* commune at his residence in *Kavumu* secteur, *Nyabikenke* Commune. The Accused told them to kill Tutsi saying that the Inkontanyi were the Tutsi who attacked Rwanda and for the Inkontanyi to fail the Tutsi should be killed.

Meetings

34. On 7, 8 and 9 April 1994, at *Butare* trading centre, *Rutongo* secteur, *Rutobwe* commune, *Gitarama* prefecture, **Callixte NZABONIMANA** told the population to kill the Tutsi. The Accused made references to the 1959 revolution and reminded the population of the dangers they were facing. He urged the population to rise up to the challenge and eliminate the Tutsi, the "enemies" of Rwanda. Following this, many Tutsi were killed by persons including *Interahamwe* and Hutu civilians.

35. On or about 8 April 1994, at *Gasenyi* cellule, *Kigina* secteur, *Nyabikenke* commune, *Gitarama* prefecture, **Callixte NZABONIMANA** told the population to kill Tutsi in *Gasenyi* and *Nyamiyaga* cellules. The population included *Interhamwe*, gendarmes and Hutu civilians. He accused Tutsi of being the enemies of Rwanda and told the population to kill them first before eating their cows. Following the meeting, the Accused ordered and supervised the distribution of weapons. As a result of the incitement and the distribution of weapons, the killing of Tutsi began in *Gasenyi* cellule in the night of the same day. Killings spread to *Nyamiyaga* cellule and neighboring cellules. Many Tutsi were killed by persons including *Interahamwe* and Hutu civilians.

36. On or about 9 April 1994, at *Ndiza* hill, *Kiginga* cellule, *Kigina* secteur, *Gitarama* prefecture, **Callixte NZABONIMANA** told the civilian Hutu population to kill Tutsi. He accused the Tutsi of attacking Rwanda and told the Hutu population to eliminate them. Following this meeting, many Tutsi were killed by persons including *Interahamwe* and Hutu civilians.

37. On or about 9 April 1994, in *Kigali* cellule, *Kavumu* secteur, *Nyabikenke* commune, *Gitarama* prefecture, **Callixte NZABONIMANA** told the Hutu population to kill Tutsi in *Gitovu and Kavumu* secteurs, *Gitarama* prefecture. He told the people that elsewhere the population had begun the "work," meaning the killing of Tutsi, and asked them what they had done in their area. He stated that Tutsi were the enemies of Rwanda. Following that meeting, the Accused ordered and supervised the distribution of weapons to the population. During the night of the same day, many Tutsis were killed in *Gitovu* and *Kavumu* by persons including Interahamwe and Hutu

civilians. The killings intensified the following day, claiming many Tutsi lives including Jacqueline AKIZANYE and her two children, Epimaque SEHINDA and his family and SEHIRAHIGA and his family.

38. On more than one occasion, between April and July 1994, in *Gitarama* prefecture, **Callixte NZABONIMANA** encouraged the population to first kill the Tutsi and then take their belongings.

39. On or about 14 April 1994, at *Mugwato* business centre, *Kigali* cellule, *Kavumu* secteur, *Gitarama* prefecture **Callixte NZABONIMANA** told the Hutu population to kill the Tutsi. He asked them to prioritize the killing of Tutsi before taking their possessions. As a result of this, many Tutsi were killed by persons including *Interahamwe* and Hutu civilians.

40. On or about 15 April 1994, at *Butare* trading centre, *Rutongo* secteur, *Rutobwe* commune, *Gitarama* prefecture, **Callixte NZABONIMANA** addressed a gathering and told the Hutu population to kill all *Inyenzi* and their accomplices, the Tutsi, and take their jobs and belongings. He stated that even among the gathering, there were Tutsi who must not be spared. **CNAZ** and other Tutsi tried to flee and the Accused told soldiers and the population to pursue them. Many Tutsi were killed following this meeting by persons including *Interahamwe*, Hutu civilians and soldiers.

41. On or about 16 April 1994, **Callixte NZABONIMANA** went around *Nyabikenke* Commune speaking through a megaphone. He told the Hutu civilians and *Interahamwe* to kill Tutsi first before taking their property.

42. Between 10 and 12 April 1994, in *Rutobwe* commune, *Gakondokondo* centre, *Cyubi* secteur, **Callixte NZABONIMANA** told the Hutu population to eliminate the Tutsi. As a result, many Tutsi were killed in those areas by persons including Interahamwe and Hutu civilians.

43. On or about 11 April 1994 at *Kabimumbura Trading Centre*, *Nyabikenke* commune in the house of Callixte KAMANA, **Callixte NZABONIMANA** attended a meeting whereupon a list of Tutsi to be killed was drafted in his presence.

44. In April 1994, **Callixte NZABONIMANA** together with **T81** addressed a meeting at the residence of MARIANNE, the MRND President for *Ruhango* cellule, at *Ruhango* cellule, *Nyamagana* secteur, *Tambwe* commune, *Gitarama* prefecture. The Accused referred to the Tutsi and Hutu sympathetic to the Tutsi, as being the enemy and told the population to kill them. Other speakers at the meeting repeated the same message. Soon after the meeting, security committees in *Ruhango* cellule were replaced and the killing of the Tutsi began in *Ruhango* cellule. Many Tutsis and moderate Hutus were killed in *Ruhango*

cellule including a Hutu named MUTABAZI, Chairman of the PSD, who was considered a bad Hutu. These killings were carried out by persons including *Interahamwe* and Hutu civilians.

45. On or about 14 April 1994, at the home of T34 in *Kavumu* secteur, *Gitarama* prefecture, together with other persons, including T24 and T49, **Callixte NZABONIMANA** rewarded the perpetrators of the killing of Tutsi with money and told them to intensify the massacres. These killers included *Interahamwe* and Hutu civilians.

46. In April 1994, **Callixte NZABONIMANA** visited the *Nyamabuye* commune office, and told the Hutu civilians present to destroy the house of a dead Tutsi and cover it up, so that in the event of an enquiry, the death of the Tutsi would not be known.

47. In May 1994, in *Masango* commune, **Callixte NZABONIMANA** ordered persons who included MRND supporters of *Masango* commune to completely destroy the houses abandoned by Tutsi and to plant in their place crops in order to wipe out all signs of the massacre of Tutsi.

48. In May 1994, **Callixte NZABONIMANA** was present at the reinstatement ceremony of the *Bourgemestre* of *Musambira* in *Musambira* Commune, *Gitarama* prefecture. During the ceremony, **Callixte NZABONIMANA** accused the *Bourgemestres* of not being supportive of the killings of Tutsi, and warned them that they could be replaced by *Interahamwe*. The Accused refused to denounce the killings of Tutsi. Soon afterwards, the *bourgmestre* of *Masango*, the *prefet* and other local authorities were removed.

49. On or about 15 May 1994, in collaboration with the Interim Government's policy of forming Crisis Committees throughout the country as a way of disguising the killings from the international community, **Callixte NZABONIMANA**, in the company of Major Jean Damascene UKIRIKYEYEZU, a member of the Civil Defence in *Gitarama,* presided over a meeting in *Ruhango* cellule, *Nyamagana* secteur, *Tambwe* commune, *Gitarama* prefecture, where the Crisis Committee of that commune was selected. The meeting was also convened to address the issue of Hutu's fighting over the property of Tutsi. Many Tutsi caught on roadblocks were killed on the orders of this committee and they included NYABUGAJU, RUHEZAMIBIGO AND LANGUIDA.

50. In May or June 1994, **Callixte NZABONIMANA** addressed a meeting in *Gitovu* secteur, *Nyabikenke* commune where he told the population to kill the Tutsi by telling them to send the Tutsi back to Ethiopia through the *Nyabarongo* River.

Roadblocks and Distribution of Weapons

51. As a component and in furtherance of the objective to kill the Tutsi, in 1991, the MRND started recruiting youths. These youths were trained militarily and later called *Interahamwe*. **Callixte NZABONIMANA** as Minister of Youth and Associative Movement and Chairman of the MRND in *Gitarama* prefecture, actively participated in the recruitment, training, arming and anti-Tutsi indoctrination in *Gitarama* prefecture and the whole country of the *Interahamwe*, other Hutu militias and selected members of the civilian Hutu population, before and during the genocide. Further, the Accused ordered these persons to commit various crimes. These youth committed the massacres in the Rwanda during the period of April 1994 to July 1994.

52. On or about 12 April 1994, in *Nyabikenke* commune, **Callixte NZABONIMANA** planned and ordered youth to undergo military training. He ordered a gendarme from *Musasa* to give the youth military training at the Accused's home. Many youths, mainly from *Nyabikenke* commune, were trained. The intention was to use them to kill Tutsi. Consequently, between April and 31 July 1994, the *Interhamwe* and Hutu militia committed widespread killings of Tutsi.

53. On diverse dates, particularly during the course of April to July 1994, in *Nyabikenke* commune, *Gitarama* prefecture, **Callixte NZABONIMANA** facilitated the recruitment, training and anti-Tutsi incitement of a battalion known as *Ndiza*. The intention was to kill Tutsi. Between April and July 1994, members of the *Ndiza* battalion committed killings and other acts of violence against Tutsi, particularly in *Nyabikenke* commune and other parts of *Gitarama* prefecture.

54. In May 1994, **Callixte NZABONIMANA** and Prime Minister Jean KAMBANDA launched the *Ndiza* battalion at *Kibangu secteur*, *Nyakabanda* Commune, where they distributed weapons and told the gathering that the purpose of the weapons were to fight the enemy who was the Tutsi.

55. On diverse dates particularly during the course of April to July 1994, **Callixte NZABONIMANA** told the *Interahamwe* and Hutu civilians to set up roadblocks in *Gitarama* prefecture. He also visited and supervised the operation of several roadblocks in *Gitarama* prefecture, notably at *Fina, Biti, Gahogo* and *Cyakabiri* dispensary. The purpose of the roadblocks was to identify and kill Tutsi. The Accused gave the *Interahamwe* and the Hutu population manning the roadblocks weapons and food. He told them to kill any Tutsi passing there. Many Tutsi were killed at these roadblocks by persons including *Interahamwe* and Hutu civilians.

56. In April 1994, **Callixte NZABONIMANA** and **TI56** visited the roadblock opposite the *Cyakabiri* Dispensary. **TI56** in the presence of **Callixte NZABONIMANA** instructed the persons who included *Interahamwe* and

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Hutu civilians at the roadblock to ensure that no Tutsi were present at the roadblock, and that weapons and food would be provided to the persons manning the roadblock.

57. In April 1994, **Callixte NZABONIMANA** visited the roadblock opposite the *Cyakabiri* Dispensary, and provided the Interahamwe and Hutu civilians at the roadblock with weapons following which Tutsi were killed by the *Interahamwe* and Hutu civilians.

58. In May 1994, **Callixte NZABONIMANA,** acting in concert with **T92** and Jean Damascene UKIRIKYEYEZU brought a lorry full of weapons to the *Tambwe* communal office. The Accused ordered that the weapons be distributed to the population. The weapons were distributed and were used to kill Tutsi in various attacks in *Tambwe* Commune.

Count 2:

59. **CONSPIRACY TO COMMIT GENOCIDE** as set out in Articles 2(3)(b) and 2(2)(a) and (b) of the Statute of the Tribunal in that during the period between 1 January 1994 and 31 July 1994, **Callixte NZABONIMANA** with other persons, including but not limited to Ministers, including those of the Interim Government of 9 April 1994, the leadership of Rwandan Armed Forces (FAR), Gendarmerie, Presidential Guard, the political leaders of the MRND, the MRD-Hutu Power faction, the PL-Hutu Power faction, other Hutu-Power factions of opposition parties, and various local administration officials, conspired to kill or cause serious bodily and mental harm to members of the Tutsi population, with the intent to destroy in whole or in part, a racial or ethnical group.

60. The Prosecutor hereby reiterates and incorporates by reference to **PARAGRAPHS 17, 21, 25, 26, 29, 43-45, 48, 49, 51-58** as concise statements of facts to support the charges under this specific count.

Count 3:

61. **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, as set out in Articles 2(3)(c) and 6 (1) of the Statute of the Tribunal, in that between 1 January and 31 July 1994, on diverse dates and locations, **Callixte NZABONIMANA** directly and publicly incited other persons, including, but not limited to members of the Rwandan Armed Forces (FAR), members of the *Gendermerie Nationale* (GN), communal policemen, *Interahamwe*, *prefets, bourgmestres, conseillers de secteur*, members of the Presidential Guard, administrative personnel, militias, armed Hutu civilians and the Hutu population at large, 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 ethnical group as such.

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62. The Prosecutor hereby reiterates and incorporates by reference to **PARAGRAPHS 15, 17-19, 25-27, 32-42, 44, 45, 50, 54 and 56** as concise statements of facts to support the charge under this specific count.

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Count 4:

63. **EXTERMINATION AS CRIME AGAINST HUMANITY** as set out in Articles 3(b) and 6(1) of the Statute of the Tribunal, in that between 1 January and 31 July 1994, on diverse dates and locations, **Callixte NZABONIMANA** planned, prepared, ordered, instigated, committed or otherwise aided and abetted the planning, preparation and execution of the extermination of the Tutsi or Tutsi sympathizers, as a part of a widespread or systematic attack.

64. The Prosecutor hereby reiterates and incorporates by reference to **PARAGRAPHS 15-20, 35, 37, 40, 44 and 58** as concise statements of facts to support the charges under this specific count.

Count 5:

65. **MURDER AS CRIME AGAINST HUMANITY** as set out in Articles 3(a) and 6(1) of the Statute of the Tribunal, in that between 1 January and 31 July 1994, on diverse dates and locations, **Callixte NZABONIMANA** planned, prepared, ordered, instigated, committed or otherwise aided and abetted the planning, preparation and execution of murders of Tutsi or Tutsi sympathizers, as part of a widespread or systematic attack.

66. The Prosecutor hereby reiterates and incorporates by reference to **PARAGRAPHS 20, 23, 26, 28, 29, 30, 37 and 44** as concise statements of facts to support the charges under this specific count.

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All the above crimes are punishable pursuant to Articles 22 and 23 of the Statute of the Tribunal.

Dated and signed at Arusha this 23rd day of July 2009

BONGANI S. MAJOLA
FOR Hassan Bubacar JALLOW
Prosecutor

United Nations
Nations Unies

TRANSMISSION SHEET
FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	☐ Team I N. M. Diallo	☐ Team II C. K. Hometowu N. M. Diallo	☐ Team III C. K. Hometowu	
	☒ OIC, JLSD P. Besnier	☐ OIC, JPU C. K. Hometowu	☐ Appeals Chamber / The Hague R. Muzigo-Morrison	
From:	☒ Chamber **TC III** (names)	☐ Defence (names)	☐ Prosecutor's Office (names)	☐ Other: (names)
Case Name:	The Prosecutor vs. **Callixte Nzabonimana**		**Case Number:** ICTR-98-44D-T	
Dates:	Transmitted: **25 June 2012**		Document's date: **31 May 2012**	
No. of Pages:	**426 pages (including CMS cover pages**	**Original Language:** ☒ English	☐ French	☐ Kinyarwanda
Title of Document:	**Judgement and Sentence**			

Classification Level:
- ☐ Ex Parte
- ☐ Strictly Confidential / Under Seal
- ☐ Confidential
- ☒ Public

TRIM Document Type:

☐ Indictment	☐ Warrant	☐ Correspondence	☐ Submission from non-parties
☐ Decision	☐ Affidavit	☐ Notice of Appeal	☐ Submission from parties
☐ Disclosure	☐ Order	☐ Appeal Book	☐ Accused particulars
☒ Judgement	☐ Motion	☐ Book of Authorities	

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

☒ Filing Party hereby submits only the original, and **will not submit** any translated version.

☐ Reference material is provided in annex to facilitate translation.

Target Language(s):
☐ English ☐ French ☐ Kinyarwanda

CMS SHALL NOT take any action regarding translation.

☐ Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	☒ English	☐ French	☐ Kinyarwanda
Translation	in	☐ English	☐ French	☐ Kinyarwanda

CMS SHALL NOT take any action regarding translation.

☒ Filing Party **will be submitting the translated version(s)** in due course in the following language(s):
☐ English ☒ French ☐ Kinyarwanda

KINDLY FILL IN THE BOXES BELOW

☐ **The OTP** is overseeing translation.
The document is submitted for translation to:
☐ The Language Services Section of the ICTR / Arusha.
☐ The Language Services Section of the ICTR / The Hague.
☐ An accredited service for translation; see details below:
Name of contact person:
Name of service:
Address:
E-mail / Tel. / Fax:

☐ **DEFENCE** is overseeing translation.
The document is submitted to an accredited service for translation (fees will be submitted to DCDMS):
Name of contact person:
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

☐ Top priority	**COMMENTS**	☐ Required date:
☐ Urgent		☐ Hearing date:

NB: This form is available on: http://www.ictr.org/ENGLISH/cms/cms1.doc

CMS1 (Updated on 25 January 2012)