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Yakov Ostrovsky
Pavel Dolenc

Registrar: Adama Dieng

Judgement of: 25 February 2004

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THE PROSECUTOR
v.
ANDRÉ NTAGERURA
EMMANUEL BAGAMBIKI
SAMUEL IMANISHIMWE
Case No. ICTR-99-46-T

JUDGEMENT AND SENTENCE

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I. INTRODUCTION

A. The Tribunal and its Jurisdiction

1. This Judgement in the case of *The Prosecutor v. André Ntagerura, Emmanuel Bagambiki, and Samuel Imanishimwe* is rendered by Trial Chamber III of the International Criminal Tribunal for Rwanda ("Tribunal"), composed of Judge Lloyd G. Williams, QC, presiding, Judge Yakov Ostrovsky, and Judge Pavel Dolenc.

2. The Tribunal was established by United Nations Security Council Resolution 955 of 8 November 1994.[1] The Security Council acted under Chapter VII of the United Nations Charter, after having considered official United Nations reports indicating that genocide and widespread, systematic, and flagrant violations of international humanitarian law had been committed in Rwanda.[2] The Security Council determined that this situation constituted a threat to international peace and security and expressed the conviction that the prosecution of persons responsible for serious violations of international humanitarian law would contribute to the process of national reconciliation and to the restoration and maintenance of peace in Rwanda and in the region.

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

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

B. Procedural Background

1. André Ntagerura

5. André Ntagerura was born on 2 January 1950 in Cyangugu prefecture, Rwanda.[4] From March 1981 through July 1994 Ntagerura served as a minister in the Rwandan

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[1] UN Document S/RES/955 of 8 November 1994.
[2] Preliminary Report of the Commission of Experts established pursuant to Security Council Resolution 935(1994), Final Report of the Commission of Experts established pursuant to Security Council Resolution 935 (1994) (Document S/1994/1157)(Annexes I and II).
[3] The Rules were adopted on 5 July 1995 and were successively amended on 12 January 1996, 15 May 1996, 4 July 1996, 5 June 1997, 8 June 1998, 4 June 1999, 1 July 1999, 21 February 2000, 26 June 2000, 31 May 2001, 5 and 6 July 2002, and 26 and 27 May 2003.
[4] T. 20 February 1997 p. 5; T. 17 July 2002 pp. 62, 132.

government, his last appointment being Minister of Transport and Communications in the interim government.[5]

6. Ntagerura was arrested in Cameroon on 27 March 1996 pursuant to an international arrest warrant issued by the authorities of Rwanda.

7. On 17 May 1996, the Tribunal issued an Order of Provisional Detention and of Transfer, requesting the authorities of Cameroon to detain Ntagerura and to transfer him to the Tribunal, pursuant to Rule 40*bis*.[6] On 18 June 1996 and 15 July 1996, the Tribunal ordered the continued detention of Ntagerura pursuant to Rule 40*bis*(D).[7]

8. The Prosecutor of the Tribunal submitted an indictment against Ntagerura on 9 August 1996. On 10 August 1996, this indictment was confirmed, and the Tribunal issued a Warrant of Arrest against Ntagerura.[8]

9. Ntagerura was transferred to the Tribunal on 23 January 1997. During his initial appearance before the Tribunal on 20 February 1997, he pleaded not guilty to the charges against him.[9]

10. Upon Ntagerura's motion, on 28 November 1997, the Tribunal ordered the Prosecutor to amend certain parts of the indictment.[10] The Prosecutor filed the amended indictment on 29 January 1998, and the Tribunal confirmed that the amendments complied with the order of 28 November 1997.[11] The amended indictment contains the final version of the Prosecutor's charges against Ntagerura ("Ntagerura Indictment").[12] The text of the Ntagerura Indictment is set out in Annex I.A to this Judgement.

11. On 11 October 1999, the Tribunal granted the Prosecutor's motion for joinder of Ntagerura with Emmanuel Bagambiki, Samuel Imanishimwe, and another accused.[13]

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[5] T. 17 July 2002 pp. 67-68.

[6] *Prosecutor v. Ntagerura*, Case No. ICTR-96-10-DP, Order of Provisional Detention and of Transfer (TC), 17 May 1996.

[7] *Prosecutor v. Ntagerura*, Case No. ICTR-96-10-DP, Decision: Continued Detention on Remand of André Ntagerura (TC), 18 June 1996; *Procureur contre Ntagerura*, Affaire No. ICTR-96-10-DP, Décision: Prolongation de la Détention Provisoire de André Ntagerura (TC), 15 juillet 1996.

[8] *Prosecutor v. Ntagerura*, Case No. ICTR-96-10-I, Decision: Confirmation of the Indictment (TC) 10 August 1996; *Prosecutor v. Ntagerura*, Case No. ICTR-96-10-DP, Warrant of Arrest (TC), 10 August 1996.

[9] T. 20 February 1997 pp. 19-24.

[10] *See Prosecutor v. Ntagerura*, Case No. ICTR-96-10-I, Decision on the Preliminary Motion Filed by the Defence Based on Defects in the Form of the Indictment (TC), 28 November 1997. This Decision was corrected by Decision on the Prosecution Motion for Interpretation of a Decision by the Trial Chamber (TC), 30 June 1998.

[11] *See Prosecutor v. Ntagerura*, Case No. ICTR-96-10A-I, Decision on the Defence Motion for a Ruling that the Amended Indictment Filed on 29 January 1998 Does Not Comply with the Trial Chamber's Decision of 28 November 1997 (TC), 19 May 1999.

[12] On 2 December 1999, the Prosecutor filed a request for leave to file an amended indictment. However, before the matter was considered, on 14 February 2000, the Prosecutor filed a notice to withdraw the request for leave to amend the indictment.

[13] *Prosecutor v. Ntagerura*, Case No. ICTR-96-10-I, *Prosecutor v. Bagambiki, Imanishimwe, and Munyakazi*, Case No. ICTR-97-36-I, Decision on the Prosecutor's Motion for Joinder (TC), 11 October 1999. Appeal of this decision was rejected. *See Bagambiki v. Prosecutor*, Case No. ICTR-96-10-A and

2. Emmanuel Bagambiki and Samuel Imanishimwe

12. Emmanuel Bagambiki was born on 8 March 1948 in Cyangugu prefecture, Rwanda.[14] From 4 July 1992 to 17 July 1994, Bagambiki served as the prefect of Cyangugu.[15]

13. Samuel Imanishimwe was born on 25 October 1961 in Gisenyi prefecture, Rwanda.[16] Imanishimwe, a lieutenant in the Rwandan armed forces, served as the acting commander of the Cyangugu military camp, which is also referred to as the Karambo military camp, from October 1993 until he left Rwanda in July 1994.[17]

14. On 22 July 1997, the Tribunal issued an Order for Transfer and Provisional Detention requesting the authorities of Kenya to arrest Imanishimwe and to transfer him to the Tribunal, pursuant to Rule 40*bis*.[18] On 11 August 1997, Kenyan authorities arrested Imanishimwe and transferred him to the Tribunal.[19] On 8 September 1997, the Tribunal ordered Imanishimwe's continued detention.[20]

15. On 9 October 1997, the Prosecutor submitted an indictment against Bagambiki, Imanishimwe, and another accused. On 10 October 1997, this indictment was confirmed, and the Tribunal issued a Warrant of Arrest against Bagambiki.[21] On 24 September 1998, upon a motion by the Defence, the Tribunal ordered the Prosecution to clarify paragraph 3.14 of the indictment.[22] On 30 September 1998, the Tribunal denied a Defence request to hold a separate trial of Imanishimwe and again ordered the Prosecution to clarify paragraph 3.14 of the indictment.[23] The Prosecutor filed the amended paragraph 3.14 on 10 August 1999. The confirmed indictment, together with the amended paragraph 3.14, contains the final version of the charges against Bagambiki and Imanishimwe ("Bagambiki/Imanishimwe Indictment"). The text of the Bagambiki/Imanishimwe Indictment is set out in Annex I.B to this Judgement.

16. Imanishimwe made his initial appearance before the Tribunal on 27 November 1997, pleading not guilty to the charges against him.[24]

ICTR-97-36-A, Decision (AC), 13 April 2000; *Bagambiki v. Prosecutor*, Case No. ICTR-96-10-A and ICTR-97-36-A, Decision (AC), 7 September 2000. Yussuf Munyakazi, the other accused, remains at large.

[14] T. 26 March 2003 p. 61.

[15] T. 26 March 2003 p. 62; T. 27 March 2003 p. 3.

[16] T. 20 January 2003 pp. 5-6.

[17] T. 20 January 2003 pp. 11, 42; T. 21 January 2003 p. 49.

[18] *Prosecutor v. Imanishimwe*, Case No. ICTR-97-36-DP, Order for Transfer and Provisional Detention (TC), 22 July 1997.

[19] T. 8 September 1997 p. 22.

[20] T. 8 September 1997 p. 35.

[21] *Prosecutor v. Bagambiki, Imanishimwe, and Munyakazi*, Case No. ICTR-97-36-I, Decision to Confirm the Indictment (TC), 10 October 1997; *Prosecutor v. Bagambiki, Imanishimwe, and Munyakazi*, Case No. ICTR-97-36-I, Warrant of Arrest and Order for Surrender (TC), 10 October 1997.

[22] *Prosecutor v. Bagambiki, Imanishimwe, and Munyakazi*, Case No. ICTR-97-36-I, Decision on the Defence Motion on Defects in the Form of the Indictment (TC), 24 September 1998.

[23] *Prosecutor v. Bagambiki, Imanishimwe, and Munyakazi*, Case No. ICTR-97-36-I, Decision on the Defence Motion for the Separation of Crimes and Trials (TC), 30 September 1998.

[24] T. 27 November 1997 pp. 44-51.

17. Bagambiki was arrested in Togo on 5 June 1998 and was transferred to the Tribunal on 10 July 1998. At a hearing held on 5 November 1998 for Bagambiki's initial appearance, Bagambiki refused to enter a plea on the ground that he was not represented by counsel of his choice.[25] The initial appearance was subsequently held on 19 April 1999 at which time Bagambiki pleaded not guilty to the charges against him.[26]

18. As noted above, the Tribunal granted the Prosecutor's motion for joinder of Bagambiki and Imanishimwe with Ntagerura on 11 October 1999.[27] On 26 May 2000, the Trial Chamber granted the Prosecutor's request to sever Yussuf Munyakazi from the Bagambiki/Imanishimwe Indictment.[28]

3. The Trial against Ntagerura, Bagambiki, and Imanishimwe

19. The trial against Ntagerura, Bagambiki, and Imanishimwe started on 18 September 2000 with the opening of the Prosecution case. During seventy-three days of trial proceedings the Prosecution called forty-one witnesses.

20. Upon a motion by the Defence, on 6 March 2002, the Chamber acquitted Imanishimwe of the charge of conspiracy to commit genocide pursuant to Rule 98*bis*.[29]

21. Presentation of Ntagerura's defence commenced on 6 March 2002 and spanned thirty-seven trial days during which the Chamber heard thirty-three witnesses, including the accused Ntagerura. Additionally, the testimony of one witness, K1H, was taken by deposition.

22. Presentation of Imanishimwe's defence commenced on 2 October 2002. Over the course of twenty-six trial days, Imanishimwe's defence presented twenty-three witnesses, including the accused Imanishimwe.

23. Bagambiki's defence commenced on 3 February 2003, and, over the course of twenty-five trial days, his defence presented twenty-six witnesses, including the accused Bagambiki.

24. The parties presented their closing arguments from 11 through 15 August 2003. On 15 August 2003, the Presiding Judge declared the trial hearing closed pursuant to Rule 87(A).

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[25] T. 5 November 1998 pp. 7, 8.
[26] T. 19 April 1999 pp. 57-60.
[27] *Prosecutor v. Ntagerura*, Case No. ICTR-96-10-I, *Prosecutor v. Bagambiki, Imanishimwe, and Munyakazi*, Case No. ICTR-97-36-I, Decision on the Prosecutor's Motion for Joinder (TC), 11 October 1999. Appeal of this decision was rejected. *See Bagambiki v. Prosecutor*, Case No. ICTR-96-10-A and ICTR-97-36-A, Decision (AC), 13 April 2000; *Bagambiki v. Prosecutor*, Case No. ICTR-96-10-A and ICTR-97-36-A, Decision (AC), 7 September 2000.
[28] T. 26 May 2000 p. 12.
[29] T. 6 March 2002 pp. 54, 68.

C. Evidentiary Matters

25. Rule 89 sets out the general provisions of the Tribunal's rules of evidence. In accordance with Rule 89, a Chamber may admit any relevant evidence which it deems to have probative value. Furthermore, in circumstances not otherwise provided for under the Tribunal's rules of evidence, the Chamber is bound to apply rules of evidence which best favour a fair determination of the matter before it and which are consonant with the spirit of the Statute and the general principles of law. The Chamber is not bound by national rules of evidence.

26. The Chamber observes that in this case prior written statements of witnesses were not systematically tendered into evidence in their entirety. When the parties used such statements during trial, they read the relevant portions of the statements into the record. When inconsistencies were raised between the content of a prior statement and the testimony during trial, the Chamber's point of departure was the account given by a witness in his in-court testimony. The Chamber notes that differences between prior statements and testimony in court may be due to various factors, such as the lapse of time, the language used, the questions put to the witness, the accuracy of interpretation and transcription, and the impact of trauma on the witness. However, when the inconsistencies cannot be explained to the satisfaction of the Chamber, the probative value of the testimony may be questioned.

D. Witness Protection Issues

27. Part of the evidence adduced by the parties was given in closed sessions due to witness protection concerns. In analysing evidence received during closed sessions in this Judgement, the Chamber has been mindful of the need to avoid unveiling identifying particulars of protected witnesses so as to prevent disclosure of their identities to the public. At the same time, the Chamber has wished to provide in the Judgement as much detail as possible to make it easy to follow its reasoning. In view of these concerns, when referring to evidence received in closed sessions in this Judgement, the Chamber has used language designed not to reveal protected information yet specific enough to convey the basis for its reasoning.

E. Preliminary Matters Relating to the Indictments

28. Ntagerura, Bagambiki, and Imanishimwe have challenged their respective indictments on grounds of vagueness, asserting that the indictments did not provide adequate notice of the charges.[30] The Chamber will review the indictments in light of applicable pleading principles because of the paramount importance of fair notice to the integrity of the proceedings and because of the Chamber's duty to ensure the fundamental fairness of the trial.[31]

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[30] *See* Ntagerura Closing Brief, pp. 78-178 (*in passim*); Bagambiki Closing Brief, pp. 171-181, 197-204, 223-227, 235-239, 288-294; Imanishimwe Closing Brief, pp. 27-51.

[31] *See Semanza*, Judgement (TC), para. 42.

1. Applicable Principles

29. In accordance with Article 20(4)(a) of the Statute, an accused has a fundamental right "to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her."[32] This provision is based on Article 14(3)(a) of the International Covenant on Civil and Political Rights and is substantially similar to the guarantee in Article 6(3)(a) of the European Convention on Human Rights. While neither this Tribunal nor the International Criminal Tribunal for the Former Yugoslavia has previously defined or made a distinction between the nature and the cause of the charges, the Chamber understands that the *nature of the charge* refers to the precise legal qualification of the offence, and the *cause of the charge* refers to the facts underlying it.[33] Although Article 20(4)(a) of the Statute does not require that the nature and the cause of the charge be communicated to the accused in any particular format, it is clear from the Statute and the Rules that this information should be included in the indictment, which is the only accusatory instrument provided for therein.[34]

30. Accordingly, the Prosecutor has an obligation to plead all material facts underpinning the charges against an accused in the indictment with sufficient detail so that the accused can prepare his defence.[35] In assessing an indictment, the Chamber is mindful that each paragraph should not be read in isolation but rather should be considered in the context of the other paragraphs in the indictment.[36] Moreover, when assessing an indictment at the post-trial phase, the Chamber is primarily concerned with defects in the indictment that prejudice the rights of the accused.[37]

31. The mode and extent of an accused's participation in an alleged crime are always material facts that must be clearly set forth in the indictment.[38] The materiality of

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[32] *See also* Article 19(2); *Semanza*, Judgement (TC), para. 42; *Kupreskic*, Judgement (AC), para. 114.

[33] KAREN REID, A PRACTITIONER'S GUIDE TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS 95 (1998); MANFRED NOVAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 255 (1993).

[34] Articles 17(4), 19(2), 20(4); Rule 47. *See also Semanza*, Judgement (TC), para. 42; *Kupreskic*, Judgement (AC), para. 88; *Hadzihasanovic et al*, Case No. IT-01-47-PT, Decision on the Form of the Indictment (TC), 7 December 2001, para. 8.

[35] *Semanza*, Judgement (TC), para. 44; *Krnojelac*, Judgement (AC), paras. 130, 131; *Kupreskic*, Judgement (AC), paras. 88, 92.

[36] *Rutaganda*, Judgement (AC), para. 304.

[37] *See Semanza*, Judgement (TC), para. 43; *Rutaganda*, Judgement (AC), para. 303 ("Before holding that an event charged is immaterial or that there are minor discrepancies between the indictment and the evidence presented at trial, a Chamber must normally satisfy itself that no prejudice shall, as a result, be caused to the accused. An example of such prejudice is the existence of inaccuracies likely to mislead the accused as to the nature of the charges against him."); *Kupreskic*, Judgement (AC), paras. 115-125 (undertaking prejudice analysis for vagueness allegation raised in post-trial stage).

[38] The Chamber recognises that the Prosecutor may allege more than one form of participation for each crime, but emphasises that it is vague for the Prosecutor to simply refer broadly to Article 6(1) without further particularising the alleged acts of the accused that give rise to each form of participation charged. *Semanza*, Judgement (TC), para. 59. *See also Krnojelac*, Judgement (AC), para. 138 ("Since Article 7(1) allows for several forms of direct criminal responsibility, a failure to specify in the indictment which form or forms of liability the Prosecution is pleading gives rise to ambiguity. The Appeals Chamber considers that such ambiguity should be avoided and holds therefore that, where it arises, the Prosecution must identify precisely the form or forms of liability alleged for each count as soon as possible and, in any event, before the start of the trial."); *Celebici*, Judgement (AC) para. 350.

other facts and the specificity with which the Prosecutor must plead these facts depend on the form of participation alleged in the indictment and the proximity of the accused to the underlying crime.[39]

32. In cases where the Prosecutor alleges that an accused personally "committed" criminal acts within the meaning of Article 6(1), an indictment generally must plead with particularity the identity of the victims, the time and place of the events, and the means by which the acts were committed.[40] The Chamber, however, does not expect the Prosecutor to perform an impossible task and recognises that the nature or scale of the crimes, the fallibility of witnesses' recollections, or witness protection concerns may prevent the Prosecution from fulfilling its legal obligations to provide prompt and detailed notice to the accused.[41] If a precise date cannot be specified, a reasonable range of dates should be provided.[42] If victims cannot be individually identified, then the indictment should refer to their category or position as a group.[43] Where the Prosecution cannot provide greater detail, then the indictment must clearly indicate that it provides the best information available to the Prosecutor.[44]

33. Where an accused is charged with a form of accomplice liability, the Prosecutor must plead with specificity the acts by which the accused allegedly planned, instigated, ordered, or aided and abetted in the crime.[45] Where superior responsibility

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[39] *Kupreskic*, Judgement (AC), para. 89; *Prosecutor v. Galic*, Case No. IT-98-29-AR72, Decision on Application by Defence for Leave to Appeal (AC), 30 November 2002, para 15.

[40] *Semanza*, Judgement (TC), para. 45; *Kupreskic*, Judgement (AC), para. 89.

[41] *Semanza*, Judgement (TC), paras. 55, 57-58; *Kupreskic*, Judgement (AC), para. 89. Of course, witness protection cannot be used as a pre-text to frustrate the proper preparation of a defence. *See Prosecutor v. Gacumbitsi*, Case No. ICTR-2001-64-I, Decision on Prosecution Motion for Protective Measures for Victims and Witnesses (TC), 20 May 2003, para. 11("The protection of witnesses should not . . . serve to frustrate or hinder an effective defence."); *Prosecutor v. Krnojelac*, Case No. 97-25-PT, Decision on the DEfence Preliminary Motion on the Form of the Indictment (TC), 24 February 1999, para. 40 ("It may be, of course, that the prosecution is simply unable to be more specific because the witness statement or statements in its possession do not provide the information in order for it to do so. It cannot be obliged to perform the impossible, but in some cases there will then arise the question as to whether it is fair to the accused to permit such an imprecise charge to proceed. The inability of the prosecution to provide proper particulars may itself demonstrate sufficient prejudice to an accused person as to make a trial upon the relevant charge necessarily unfair. The fact that the witnesses are unable to provide the needed information will inevitably reduce the value of their evidence. The absence of such information effectively reduces the defence of the accused to a mere blanket denial; he will be unable, for example, to set up any meaningful alibi, or to cross-examine the witnesses by reference to surrounding circumstances such as would exist if the acts charged had been identified by reference to some more precise time or other event or surrounding circumstance.")

[42] *See, e.g., Prosecutor v. Brdjanin*, Case No. IT-99-36-PT, Decision on Objections by Momir Talic to the Form of Amended Indictment (TC), 20 February 2001, para. 22.

[43] *See, e.g., Prosecutor v. Brdjanin*, Case No. IT-99-36-PT, Decision on Objections by Momir Talic to the Form of Amended Indictment (TC), 20 February 2001, para. 22; *Prosecutor v. Krnojelac*, Case No.97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment (TC), 24 February 1999, para. 40 paras. 55, 58 ("The prosecution must provide some identification of who died (at least by reference to their category or position as a group), and it is directed to amend the indictment accordingly").

[44] *See, e.g., Prosecutor v. Brdjanin*, Case No. IT-99-36-PT, Decision on Objections by Momir Talic to the Form of Amended Indictment (TC), 20 February 2001, para. 22; *Prosecutor v. Krnojelac*, ICTY Case No. 97-25-PT. Decision on Preliminary Motion on Form of Amended Indictment, 11 February 2000 paras. 33-34, 43.

[45] *Prosecutor v. Brdjanin*, Case No. IT-99-36-PT, Decision on Objections by Momir Talic to the Form of Amended Indictment (TC), 20 February 2001, para. 20.

is alleged, the relationship of the accused to his subordinates is most material, as are his knowledge of the crimes and the necessary and reasonable measures that he failed to take to prevent the crimes or to punish his subordinates.[46]

34. If the Prosecutor intends to rely on the theory of joint criminal enterprise to hold the accused criminally responsible as a principal perpetrator of the underlying crimes rather than as an accomplice, the indictment should plead this in an unambiguous manner and specify upon which form of joint criminal enterprise the Prosecutor will rely.[47] In addition to alleging that the accused participated in a joint criminal enterprise, the Prosecutor must also plead the purpose of the enterprise, the identity of the co-participants, and the nature of the accused's participation in the enterprise.[48] For these reasons, the Chamber will not consider the Prosecutor's arguments, which were advanced for the first time during the presentation of closing arguments, to hold the accused criminally responsible based on this theory.

35. The specificity required to plead the identity of the victims, the time and place of the events, and the means by which the acts were committed is not as high where criminal responsibility is predicated on accomplice liability or superior responsibility.[49] The Chamber emphasises, however, that the accused must be informed not only of his own alleged conduct giving rise to criminal responsibility but also of the acts and crimes of his alleged subordinates or accomplices.[50] Thus, pleading accomplice or superior responsibility does not obviate the Prosecution's obligation to particularise the underlying criminal events for which it seeks to hold the accused responsible, particularly where the accused was allegedly in close proximity to the events.[51]

36. Although no rule specifies the content of the "count", it is evident from the context of Rule 47 that this term refers to the legal characterisation or qualification of the crime alleged in the concise statement of facts of the crime.[52] This legal

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[46] *Prosecutor v. Mejakic*, ICTY Case No. IT-02-65-PT, Decision on Zeljko Mejakic Preliminary Motion on the Form of the Indictment (TC), 14 November 2003, p. 3; *Prosecutor v. Deronjic*, Case No. IT-02-61-PT, Decision on Form of the Indictment (TC), 25 October 2002, para. 7.

[47] *Krnojelac*, Judgement (AC), para. 138; *Prosecutor v. Mejakic*, ICTY Case No. IT-02-65-PT, Decision on Zeljko Mejakic Preliminary Motion on the Form of the Indictment, 14 November 2003, p. 3. *See also Tadic*, Judgement (AC), paras. 185-226 (discussing the forms of joint criminal enterprise).

[48] *See, e.g., Prosecutor v. Stansic*, Case No. IT-03-69-PT, Decision on Defence Preliminary Motions (TC), 14 November 2003, p. 5; Prosecutor *v. Mejakic*, Case No. IT-02-65-PT, Decision on Dusko Knezevic's Preliminary Motion on the Form of the Indictment (TC), 4 April 2003.

[49] *Semanza*, Judgement (TC), para. 45; *Prosecutor v. Galic*, Case No. IT-98-29-AR72, Decision on Application by Defence for Leave to Appeal (AC), 30 November 2002, para 15 ("As the proximity of the accsed person to those events becomes more distant, less precision is required in relation to those particular details, and greater emphasis is placed upon the conduct of the accused person himself upon which the prosecution relies to establish his responsibility as an accessory or as a superior to the persons who personally committed the acts giving rise to the charges against him.").

[50] *Prosecutor v. Strugar*, Case No. IT-01-42-PT, Decision on Defence Preliminary Motion Concerning the Form of the Indictment (TC), 28 June 2002.

[51] *Prosecutor v. Strugar*, Case No. IT-01-42-PT, Decision on Defence Preliminary Motion Concerning the Form of the Indictment (TC), 28 June 2002. *See also Brdjanin and Talic*, Case No. IT-99-36, Decision on Objections by Momir Talic to the Form of the Amended Indictment (TC), 20 February 2001, paras. 19-20.

[52] This is particularly evident in Rule 47(I) (". . . indictment based on *the acts underlying* the count . . .") (emphasis added).

qualification must include both the crime alleged and the mode of the accused's alleged participation. Thus, a "count" defines the *nature of the charge* referred to in Article 20(4)(a) of the Statute.

37. Accordingly, each count in the indictment should indicate the precise legal qualification of the crime charged which should be based on the material facts alleged in the indictment. The count must also clearly identify the mode of the accused's alleged participation in the crime; mere reference to Article 6(1) of the Statute, which lists multiple forms of individual criminal responsibility, is insufficient.[53]

38. The count must also indicate which paragraphs of the concise statement of the facts of the crime support the charge. When a count charges the accused with accomplice liability, then it must refer to the paragraphs describing the relevant conduct of the accused and of the principal perpetrator. When a count charges superior responsibility pursuant to Article 6(3), then it is essential for the count to refer to the paragraphs describing the relationship between the accused and the alleged subordinates, the basis for the alleged knowledge of the accused, and the alleged failure to prevent the crime or to punish the subordinate. Nevertheless, in principle, defects in legal qualification may not be fatal because the Chamber can apply the correct material law to the factual findings regardless of the qualification indicated by the Prosecution, provided that the concise statement of facts of the crime adequately describes the accused's role in the crime.[54]

39. A failure to properly plead the material facts in an indictment will constitute a material defect.[55] In order to ensure the fundamental fairness of the proceedings, the Chamber will take this deficiency into account in making factual and legal findings.[56]

2. Ntagerura Indictment

40. The Prosecution conceded that it did not submit any evidence in support of paragraphs 12.2, 14.2, 15.1, and 15.2 of the Ntagerura Indictment.[57] The Chamber will consequently not consider them. Additionally, the Chamber will not assess paragraph 10 for vagueness because it considers it to be a general allegation. Mindful of the applicable principles set forth above, the Chamber will analyse the remaining paragraphs, from 9.1 through 19, which according to the Prosecutor support each of the six counts in the indictment.

> 9.1 From 1 January to 31 July 1994, and even as early as 1991, **ANDRÉ NTAGERURA** had strong political and community ties in Cyangugu *préfecture*, in Rwanda. **ANDRÉ NTAGERURA** frequently traveled to Cyangugu *préfecture*, particularly to Karengera, Gatare and other *communes* and conducted MRND party meetings as well as meetings of *conseillers* and *bourgmestres* of the *préfecture*.

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[53] *Semanza*, Judgement (TC), para. 59; *Krnojelac*, Judgement (AC), para. 138; *Celebici*, Judgement (AC) para. 350.
[54] *Semanza*, Judgement (TC), para. 59.
[55] *Semanza*, Judgement (TC), para. 42; *Kupreskic*, Judgement (AC), paras. 114, 122.
[56] *Semanza*, Judgement (TC), para. 42; *Kupreskic*, Judgement (AC), paras. 114, 122.
[57] Prosecutor's Closing Brief, pp. 43-44, 51, 52.

> 9.2 Consequently, on 11 April 1994, after the death of President Habyarimana when the plane in which he was travelling crashed, André Ntagerura conducted a meeting in Cyangugu.
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> 9.3 From 1 January to 31 July 1994 and even before this period,
>
> - **André NTAGERURA**, Minister of Transport and Communications,
> - Emmanuel BAGAMBIKI, *Préfet* of Cyangugu,
> - Yussuf MUNYAKAZI, *Interahamwe* leader,
> - Christophe NYANDWI, civil servant at the Ministry of Planning,
> - Michel BUSUNYU, Chairman of the MRND in Karengera *commune*,
>
> all prominent MRND figures in Cyangugu, held a meeting among themselves as well as with others to organize, prepare and encourage the genocide, particularly of the Tutsi population.[58]

41. The Chamber finds that paragraphs 9.1, 9.2, and 9.3 are problematic because the exceedingly broad and open-ended date ranges and vague identification of locations fail to specify with any particularity the meetings in which Ntagerura allegedly participated. Additionally, these allegations are problematic because they fail to specify the nature of Ntagerura's participation in the meetings. The Chamber further notes that paragraphs 9.1 and 9.2 do not allege a criminal purpose for any of the possible meetings. Unless these paragraphs are read together with paragraph 9.3, it is not clear whether the allegations in paragraphs 9.1 and 9.2 provide only background information or whether they are intended to constitute material facts for crimes alleged in Counts 1 through 6.[59]

> 11. From 1 January to 31 July 1994 and particularly in February, March and April 1994, **ANDRE NTAGERURA** allowed and/or authorized the use of government vehicles, specifically buses for the transport of militiamen, armed *Interahamwe* militiamen and civilians, including Tutsis, as well as for the transport of weapons and ammunition to and throughout Cyangugu *préfecture*, particularly through Karengera, Bugarama, Nyakabuye and other *communes* as well as in Butare, Ruhengeri and Kibuye *préfectures* and elsewhere.

42. The Chamber finds that paragraph 11 fails to particularise any instance when Ntagerura allowed or authorized the use of government vehicles or any circumstance in which the people or items named in paragraph 11 were actually transported by government vehicles. The Chamber also notes that this broad paragraph does not appear to allege elements of a criminal act because it lacks any details concerning both the purpose for which the people or items were transported and Ntagerura's knowledge of such a purpose. The Prosecutor particularly seeks to use this paragraph

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[58] The Chamber notes that in paragraph 9.3, the plural term "*réunions*" was improperly translated from the French version of the Ntagerura Indictment, the original language of drafting, into the singular "meeting" in the English version of the Indictment.

[59] The Chamber notes however that each paragraph uses a different formulation to specify the meetings' dates, venues, purposes, and participants.

to support an allegation of superior responsibility in Count 6. The Chamber notes that this paragraph, as well as the indictment as a whole, fails to adequately identify Ntagerura's subordinates who actually approved the use of the buses. In addition, it fails to specify a superior-subordinate relationship between the alleged principal perpetrators and Ntagerura, Ntagerura's knowledge of a criminal use of the buses, and his failure to take necessary and reasonable measures to prevent such use or to punish the alleged subordinates.[60]

> 12.1. From 1 January to 31 July 1994 as early as 1991, **ANDRÉ NTAGERURA** encouraged and participated in the training of *Interahamwe* militiamen in Karengera *commune* and in other *communes* in Cyangugu *préfecture*.

43. The Chamber finds that paragraph 12.1 fails to identify with any particularity even a single incidence of Ntagerura's encouragement or participation as a result of its broad date range and vague reference to venue. The paragraph also fails to specify the nature of Ntagerura's participation in the training. Moreover, the Chamber notes that this paragraph does not allege that the training was for a criminal purpose or that it was related to any criminal activity.

> 13. From 1 January to 31 July 1994 and as early as January 1993, weapons, ammunition and uniforms were frequently distributed in Cyangugu *préfecture*. These weapons were sometimes stored in Yussuf MUNYAKAZI's house in Bugarama *commune* and elsewhere. They were later distributed to the *Interahamwe* in Cyangugu *préfecture*.

44. The Chamber finds that paragraph 13 fails to mention any act or role of Ntagerura in the alleged distributions.

> 14.1. From 1 January to 31 July 1994, **ANDRÉ NTAGERURA** was often seen in the company of, and publicly expressed his support for, Yussuf MUNYAKAZI and the *Interahamwe* in Cyangugu *préfecture*, specifically in Bugarama *commune*.

> 14.3 From 1 January to 31 July 1994, **ANDRÉ NTAGERURA** travelled throughout Cyangugu *préfecture,* often accompanied by *Préfet* Emmanuel BAGAMBIKI and Yussuf MUNYAKAZI, to monitor the activities of the *Interahamwe* and verify that the orders to kill the Tutsis and all political opponents had been carried out.

45. The Chamber finds that paragraphs 14.1 and 14.3 fail to particularise a single incident by date, location, or circumstance during the broad seven month date range alleged when Ntagerura was in the company of Munyakazi or Bagambiki, expressing support for the *Interahamwe* or monitoring them and the killings in Cyangugu. Given

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[60] The Chamber is mindful that the Prosecutor presented evidence of only one instance within the date range specified in the paragraph and the Tribunal's temporal jurisdiction where an ONATRACOM bus was allegedly used to further a crime. The Chamber notes that this event is based on the testimony of a Prosecution Witness LAI whom the Chamter has determined lacks credibility and reliability.

the proximity in which these paragraphs place Ntagerura to the killings in Cyangugu and their alleged principal perpetrators, the vague references to expressions of public support, monitoring, and verifying, without more, do not sufficiently describe the nature of Ntagerura's criminal participation.

> 16. From 1 January to 31 July 1994, Yussuf MUNYAKAZI was an influential member and one of the leaders of the *Interahamwe* in Cyangugu *préfecture*. He was one of the people in charge of implementing MRND orders. Many of the orders came from **ANDRÉ NTAGERURA**.

46. The Chamber finds that paragraph 16 contains no detail about the nature of the orders allegedly coming from Ntagerura, when these orders were issued during the broad seven month period, or the connection of these orders to the commission of any underlying crime.

> 17. The murder of civilians in Cyangugu started in the course of the month of February 1994, and was led and perpetrated by the *Interahamwe* and other groups.
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> 18. From early April through July 1994, attacks on Tutsi civilians occurred in Cyangugu *préfecture* and resulted in the death of an estimated one hundred thousand or more people and countless injured.
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> 19. During the period of these attacks, **ANDRÉ NTAGERURA** continued to remain active in Cyangugu *préfecture* and acted as a supervisor. On one occasion after April 1994, he attended a meeting chaired by the Interim President of the Republic of Rwanda, Théodore SINDIKUBWABO, who congratulated the community on killing the Tutsis.

47. The Chamber finds that paragraphs 17, 18, and 19 fail to particularise with any specificity the underlying criminal events, the principal perpetrators of the killings and attacks, and the manner in which these attacks and killings were executed. Moreover, the allegations that Ntagerura remained active or acted as a "supervisor" do not adequately plead the nature of Ntagerura's participation in the attacks or killings, nor do they particularise the nature of his superior relationship to any identifiable subordinates, his knowledge of their activities, or his failure to take necessary and reasonable measures to prevent the crimes and to punish the subordinate perpetrators. This is true even when considering the vague allegations of expressing support, monitoring, and verifying made in paragraphs 14.1 and 14.3. Moreover, the Chamber notes that paragraph 19 fails to adequately explain the connection between the meeting involving Sindikubwabo and Ntagerura's alleged role as a "supervisor".

48. The Chamber further emphasises that the formulation of the counts in the Ntagerura Indictment is incomprehensible.[61] The phrase "as a result of the acts

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[61] As an illustration, Count 6 of the Ntagerura Indictment states that the accused committed complicity in genocide under Article 2(3)(e) for which he is individually responsible pursuant to Article 6(3) "... in relation to the events described particularly in paragraph 11..." because "...he knew or had reason to

committed ... in relation to the events described in paragraphs 9-19", which is contained in each count, refers to the "results" and to "the events" and not to the criminal conduct of Ntagerura. Moreover, the counts do not clearly specify whether Ntagerura is being charged as a principal or as an accomplice, or what particular form of complicity is alleged.

3. Bagambiki/Imanishimwe Indictment

49. The Chamber will now consider paragraphs 3.12 through 3.31 of the Bagambiki/Imanishimwe Indictment, which the Prosecutor asserts support the counts in the Indictment. The Chamber will do so in light of the applicable principles set forth above.

> 3.12 During the events referred to in this indictment, *Préfet* **Emmanuel BAGAMBIKI** chaired many of the meetings of the 'restricted security committee' of the *préfecture* of Cyangugu, the body responsible for the safety of the civilian population of the *préfecture*, meetings in which **Samuel IMANISHIMWE** participated, in his capacity as the Commander of the Cyangugu Barracks, as well as the Commander of the *Gendarmerie*, the *sous-préfets* and others. One of these meetings was held on or about 9 April 1994.
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> 3.13 Furthermore, on at least two occasions, on or about 11 April 1994 and on or about 18 April 1994, *Préfet* **Emmanuel BAGAMBIKI** chaired meetings of the 'prefectural committee' of Cyangugu p*réfecture*, where problems relating to the safety of the civilian population of the *préfecture* were discussed. Members of the 'restricted security committee', particularly *Préfet* **Emmanuel BAGAMBIKI** and Lieutenant **Samuel IMANISHIMWE**, as well as all the *bourgmestres*, representatives of political parties and different churches, attended these meetings.

50. The Chamber finds that paragraphs 3.12 and 3.13 fail to allege facts that would constitute material elements of the crime of conspiracy, which, according to the Prosecutor, is the only charge that these paragraphs support. The Chamber further emphasises that paragraphs 3.12 and 3.13 fail to identify any criminal purpose for the meetings or any connection to an underlying crime, and thus do not allege any act of criminal participation on the part of Bagambiki or Imanishimwe. Indeed, the stated

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know that his subordinates were preparing to commit or had committed acts referred to in Articles 2 – 4 of the Statute ... consisting of placing Government or Parastatal company vehicles at the disposal of the *Interahamwe* ... and failed to take necessary and reasonable steps to prevent the said acts ... of punishing the perpetrators." This count contains a mixture of factual allegations, recitations of statutory provisions, and a reference to several articles and legal qualifications that are contradictory. Complicity in genocide under Article 2(3)(e) may not be equated with superior responsibility under Article 6(3) of the Statute. Allegations that the accused's subordinates were preparing or committed the crimes referred to in Articles 2 through 4 include responsibility under Article 6(3), not only for genocide, but also for crimes against humanity and war crimes despite the fact that Counts 4 and 5 charge the accused only under Article 6(1). Moreover, the factual allegations in Count 6 not only blur the distinction between the concise statement of facts of the crime and its legal qualification, but also contradict factual allegations in paragraph 11 on which this Count particularly relies. Namely, paragraph 11 specifically states that the accused himself "allowed and/or authorised the use of government vehicles" for unlawful purposes.

purpose for the meetings, discussion of problems relating to the safety of the civilian population of the prefecture, appears to run counter to the charge of conspiracy to commit genocide, which these paragraphs are intended to support. Moreover, the time frames for the alleged meetings are vague, save for the enumerated dates of 9, 11, and 18 April 1994.[62]

> 3.14 Before and during the events referred to in this indictment,
> **Emmanuel BAGAMBIKI,** *Préfet* of Cyangugu;
> **André NTAGERURA**, Minister of Transportation and Communications;
> **Yussuf MUNYAKAZI**, *Interahamwe* leader;
> Christophe NYANDWI, an official in the Ministry of Planning;
> Michel BUSUNYU, MRND Chairman for Karengera *commune*; and
> Édouard BANDESTE, *Interahamwe* leader;
> all of whom were prominent figures within the MRND in Cyangugu, held a large number of meetings among themselves, or with others, to incite, prepare, organise and commit genocide.
>
> These meetings took place in diverse locations throughout Cyangugu *préfecture*, in the *sous-préfectures* and in the *communes*, including public gathering places such as Kamarampaka stadium, and also in restricted locations, such as bars and private residences, notably:
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> (a) towards late 1993, in Kirambo *commune*, with members of the MRND;
> (b) towards late 1993 and early 1994, in Augustin MIRUHO's drinking place in Karangiro, with the participation of Félicien BALIGIRA, a former parliamentarian, Simeon NTEZIRYAYO, the Manager of SONARWA, KAYIJAMAHE, the Manager of STIR, and others;
> (c) February 1994, in **André NTAGERURA**'s house, Karengera *commune*, with the participation of **Yussuf MUNYAKAZI**, an *Interahamwe* leader, Christophe NYANDWI, a civil servant in the Ministry of Planning, Edouard BANDETSE, an *Interahamwe* leader, and other members of the MRND;
> (d) on 7 February 1994, at Bushenge market, with he (sic) participation of **André NTAGERURA**, Daniel MBANGURA, Michel BUSUNYU, Callixte NSABIMANA, Félicien BALIGIRA and other members of the MRND and CDR;
> (e) during June 1994 at the MRND headquarters, in Cyangugu, organised by President Théodore SINDIKUBWABO with the participation of **André NTAGERURA,** Daniel MBANGURA, a Minister, together with civilians and religious figures;
> (f) from 1993 to early 1994, in Gatare *commune*, with the participation of **André NTAGERURA**, **Yussuf MUNYAKAZI**, and **Emmanuel BAGAMBIKI**;
> (g) on or about 28 January 1994, in Bugarama, with the participation of **André NTAGERURA** and **Yussuf MUNYAKAZI**; and
> (h) in late June 1994, in Gisuma, with the participation of **Emmanuel BAGAMBIKI** and **Samuel IMANISHIMWE.**

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[62] *Prosecutor v. Hadzihasanovic et al*, Case No. IT-01-47-PT, Decision on the Form of the Indictment (TC), 7 December 2001, para. 43 ("the accused are entitled to proceed upon the basis that the details pleaded *are* the only case which they have to meet in relation to the offences charged")(emphasis in original).

51. The Chamber finds that paragraph 3.14 fails to allege facts that would constitute material elements of the crime of conspiracy, which, according to the Prosecutor, is the only charge that this paragraph supports. This paragraph also does not particularise the nature of Bagambiki's and Imanishimwe's participation in the meetings.

> 3.15 Also, during this same period, André NTAGERURA, Yussuf MUNYANKAZI, and **Emmanuel BAGAMBIKI** publicly expressed anti-Tutsi sentiments.

52. The Chamber finds that paragraph 3.15 is devoid of any particularity concerning when and where the alleged sentiments were expressed, the specific nature and approximate content of what was said, and the connection of these statements to an underlying crime.

> 3.16 Before and during the events referred to in this indictment, Minister André NTAGERURA, *Préfet* **Emmanuel BAGAMBIKI**, Yussuf MUNYANKAZI, Christophe NYANDWI, all of whom were influential figures in the MRND in Cyangugu, participated, directly or indirectly, in the training and instructing of, and distributing of weapons to, the MRND militiamen, the *Interahamwe*, who later committed massacres of the civilian Tutsi population.

53. The Chamber finds that paragraph 3.16 fails to provide any particularity concerning the dates, the venues, the purpose, or Bagambiki's specific role in the alleged training of and distribution of weapons to *Interahamwe*. Moreover, the paragraph fails to identify any massacre in which those allegedly trained participated.

> 3.17 During the events referred to in this indictment, **Lieutenant Samuel IMANISHIMWE**, in his capacity as Commander of the Cyangugu Barracks, participated, with *Préfet* **Emmanuel BAGAMBIKI** and other persons, in preparing lists of people to eliminate, mostly Tutsis and some Hutus in the opposition.
>
> 3.18 These lists were given to the soldiers and militiamen with orders to arrest and kill the persons whose names were listed. The soldiers and the *Interahamwe* then carried out the orders.

54. Paragraphs 3.17 and 3.18 fail to allege with particularity a single incident, let alone provide a narrow date range or venue, when Bagambiki and Imanishimwe prepared the said lists, when orders were issued to arrest and kill the individuals listed thereon, and when such orders were executed. Moreover, these paragraphs also fail to identify any individuals who were on the lists, especially given the alleged proximity of Bagambiki and Imanishimwe to the underlying crime. The paragraphs also do not indicate the role or knowledge of Bagambiki or Imanishimwe in the issuing or execution of the alleged orders.

> 3.19 In early April 1994, many Tutsis sought refuge at Cyangugu Cathedral to protect themselves from the attacks against them. On or about 11 April 1994, the attacks on the refugees at the cathedral began. The acts were carried out by

groups of *Interahamwe* militiamen, including a group led by **Yussuf MUNYANKAZI**.

3.20 Following the first attack on or about 11 April 1994, some refugees were arrested and taken to the Cyangugu Barracks before Lieutenant **Samuel IMANISHIMWE**, who gave the order to execute them.

55. The Chamber notes that paragraph 3.19 does not identify any act of criminal participation on the part of Bagambiki or Imanishimwe, particularly because it fails to mention any knowledge of the accused concerning these attacks and the connection of the accused to the alleged perpetrators. Paragraph 3.20 also does not identify the principal perpetrators of the arrests or their connection with Imanishimwe, and, as such, it is unclear from the Indictment whether these perpetrators can be considered accomplices or subordinates of Imanishimwe. Moreover, given the alleged proximity of Imanishimwe to the arrested individuals, greater detail is required concerning the identity of the victims. It is also unclear from the indictment whether Imanishimwe's alleged order was executed, which is necessary under Article 6(1) for it to constitute a crime, unless this paragraph is read together with paragraphs 3.24 and 3.25.

3.21 On or about 15 April 1994, *Préfet* **Emmanuel BAGAMBIKI** and Lieutenant **Samuel IMANISHIMWE** ordered that the refugees at the Cathedral be moved to Cyangugu Stadium. The refugees who refused to obey were threatened with death.

3.22 The refugees from the cathedral were escorted to Kamarampaka Stadium in Cyangugu by the civilian and military authorities, including *Préfet* **Emmanuel BAGAMBIKI** and Lieutenant **Samuel IMANISHIMWE**. At the stadium, many other refugees were already there, and later, others came in to join them. They remained there for several weeks.

During this period, the refugees could not leave the stadium, which was guarded by *gendarmes*. Those who attempted to leave the stadium were either forced back inside by the *gendarmes*, or executed by the *Interahamwe* and the *gendarmes* who were outside the stadium. Also, during this period, *Interahamwe* would enter the stadium to abduct refugees and execute them.

3.23 On several occasions between April and June 1994, the authorities in Cyangugu, notably *Préfet* **Emmanuel BAGAMBIKI**, Lieutenant **Samuel IMANISHIMWE** and Minister André NTAGERURA, selected names from pre-established lists of the refugees who were inside the stadium, mostly Tutsis and some Hutus in the opposition. These refugees were then arrested and later executed in a place called Gatandara.

56. The Chamber finds that paragraph 3.21 fails to specify who threatened the refugees with death and whether either Bagambiki or Imanishimwe were aware of these threats. Though paragraph 3.22 identifies the alleged principal perpetrators, the Chamber finds that it fails to allege a connection between the events mentioned therein and any act of criminal participation on the part of Bagambiki or

Imanishimwe. In addition, the paragraph and the Indictment do not specify Bagambiki's or Imanishimwe's superior-subordinate relationship with the principal perpetrators, their knowledge of the commission of a crime, or their failure to take necessary and reasonable measures to prevent the crime or to punish the perpetrators. Given the alleged proximity of the accused to the selection and execution of the refugees from the stadium, the Chamber finds that paragraph 3.23 fails to adequately particularise the victims or times when the events occurred. Moreover, no mention is made of the principal perpetrators of the alleged executions or the accused's role or knowledge in the executions beyond "select[ing] names from pre-established lists."

> 3.24 Between April and July 1994, Lieutenant **Samuel IMANISHIMWE** participated with his soldiers in the selection and arrest of Tutsis, some of whom were later executed at the Cyangugu Barracks.
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> Also, Lieutenant **Samuel IMANISHIMWE** ordered soldiers to execute certain people suspected of being Tutsis.

57. The Chamber finds that paragraph 3.24 fails to adequately specify the dates, locations, and victims of any alleged incident when Imanishimwe participated in the selection, arrest, or execution of Tutsis, or when he ordered the execution of people suspected of being Tutsis. This is a particularly serious omission because the paragraph alleges personal participation.

> 3.25 Between April and July 1994, Tutsis and moderate Hutus were arrested and taken to the Cyangugu Barracks to be tortured and executed. Also, during this period, soldiers, participated on several occasions with MRND militiamen and the *Interahamwe* in massacres of the civilian Tutsi population.

58. The Chamber finds that the first sentence of paragraph 3.25 does not adequately identify the principal perpetrators of the arrests, Imanishimwe's role in the arrests, the perpetrators' connection with Imanishimwe, his knowledge of the acts, or his failure to take necessary and reasonable measures to prevent the crimes or punish the perpetrators. Moreover, the sentence does not indicate whether the tortures and executions were eventually carried out. The paragraph also fails to identify any incident with particularity where soldiers participated in massacres with militiamen and *Interahamwe* against the Tutsi civilian population or any other material fact that would demonstrate Imanishimwe's responsibility for the crimes.

> 3.26 On at least two occasions in April 1994, *Préfet* **Emmanuel BAGAMBIKI** ordered soldiers and MRND militiamen, *i.e.* the *Interahamwe*, to kill members of the civilian Tutsi population and certain Hutus in the opposition.

59. The Chamber finds that paragraph 3.26 fails to identify any specific incident by date, location, or circumstances when Bagambiki issued orders to soldiers or militiamen or any particular event where these orders were carried out, which is required under Article 6(1) to establish a crime.

> 3.27 Between April and July 1994, subordinates of *Préfet* **Emmanuel BAGAMBIKI**, notably *sous-préfets, bourgmestres,* government employees and *gendarmes*, participated in the massacres of the civilian Tutsi population and of certain Hutus in the opposition.

60. The Chamber finds that paragraph 3.27 fails to identify any specific instance when Bagambiki's alleged subordinates participated in a massacre. It also fails to specify Bagambiki's knowledge of their participation and his failure to take necessary and reasonable measures to prevent it or to punish them.

> 3.28 During the events referred to in this Indictment, *Préfet* **Emmanuel BAGAMBIKI** had the duty of ensuring the protection and safety of the civilian population within his *préfecture*. On several occasions in April 1994, *Préfet* **BAGAMBIKI** failed or refused to assist those whose lives were in danger who asked for his help, particularly in Gatare *commune*, where those Tutsis were massacred.

61. The Chamber finds that paragraph 3.28 fails to indicate any occasion by date and specific location, as well as any instance when Bagambiki failed or refused to assist persons whose lives were in danger. This is a serious omission given that the paragraph, *inter alia*, alleges the affirmative act of refusal.

> 3.30 During the events referred to in this indictment, the militiamen, *i.e.* the *Interahamwe*, with the help of the soldiers, participated in the massacres of the civilian Tutsi population and of Hutu political opponents in Cyangugu *préfecture*.

> 3.31 During the events referred to in this indictment, there were several tens of thousands of victims, mostly Tutsis, in Cyangugu *prefecture*.

62. The Chamber finds that paragraphs 3.30 and 3.31 fail to particularise with any specificity the underlying criminal events or the specific role that the accused allegedly played in the massacres.

63. The Chamber further emphasises that the formulation of the counts in the Bagambiki/Imanishimwe Indictment is problematic because the counts do not clearly identify whether Bagambiki and Imanishimwe are being charged as principals or as accomplices nor do they specify what particular form of complicity is charged.

4. Conclusion

64. For the foregoing reasons, the Chamber finds that the operative paragraphs underpinning the charges against Ntagerura, Bagambiki, and Imanishimwe, as well as the charges themselves, are unacceptably vague. Moreover, the Chamber finds no

justifiable reason for the Prosecutor to have pleaded the allegations or charges in such a generic manner.[63]

65. In *Kupreskic,* the Appeals Chamber acknowledged the possibility that a defective indictment could be cured if the Prosecution provided the accused with "timely, clear and consistent information detailing the factual basis underpinning the charges".[64] The Appeals Chamber, however, emphasised that "in light of the factual and legal complexities normally associated with the crimes within the jurisdiction of this Tribunal, there can only be a limited number of cases that fall within that category."[65]

66. The Chamber notes that the supporting materials to the Ntagerura and to the Bagambiki/Imanishimwe Indictments, other pre-trial disclosure, and the pre-trial brief provide additional information concerning the possible evidence to be introduced at trial and the theory of the Prosecution's case. However, pre-trial submissions and disclosure are not adequate substitutes for a properly pleaded indictment, which is the only accusatory instrument mentioned in the Statute and Rules.[66] The indictment must plead all material facts.[67] The Trial Chamber and the accused should not be required to sift through voluminous disclosures, witness statements, and written or oral submissions in order to determine what facts may form the basis of the accused's alleged crimes, in particular, because some of this material is not made available until the eve of trial.

67. When the Chamber is confronted with defective paragraphs in an indictment at the post-trial phase, it may address an accused's lack of notice by disregarding the defective paragraphs in making its factual and legal findings.[68] Nonetheless, the Chamber emphasises that in certain circumstances it has discretion to consider

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[63] *Kupreskic*, Judgement (AC), para. 92 ("[T]he Prosecution is expected to know its case before it goes to trial. It is not acceptable for the Prosecution to omit the material aspects of its main allegations in the indictment with the aim of moulding the case against the accused in the course of the trial depending on how the evidence unfolds.")(internal footnotes omitted).

[64] *Kupreskic*, Judgement (AC), para. 114. *See also Krnojelac*, Judgement (AC), para. 138.

[65] *Kupreskic*, Judgement (AC), para. 114. *See also Krnojelac*, Judgement (AC), paras. 125-145 (The Trial Chamber is entitled not to consider allegations advanced by the Prosecutor in the pre-trial brief which are different than the allegations in the indictment).

[66] *Krnojelac*, Judgement (AC), para. 139 ("The Appeals Chamber points out that the Prosecution's obligation to draw up a sufficiently precise indictment must be interpreted in the light of the provisions of Articles 21(2), 21(4)(a) and 21(4)(b) of the Statute, which state that, in the determination of charges against him, the accused shall be entitled to a fair hearing and, more specifically, to be informed of the nature and cause of the charge against him and to have adequate time and facilities for the preparation of his defence"). *See also Prosecutor v. Mrksic*, Case No. IT-95-13/1-PT, Decision on Form of the Indictment (TC), 19 June 2003 para. 17; *Prosecutor v. Hadzihasanovic*, Case No. IT-01-47-PT, Decision on the Form of Indictment (TC), 7 December 2001, para. 12.

[67] *Krnojelac,* Judgement (AC), para. 139.

[68] *Krnojelac*, Judgement (AC), para. 144 ("the Appeals Chamber holds that, in view of the persistent ambiguity surrounding the issue of what exactly the Prosecution argument was, the Trial Chamber had good grounds for refusing, in all fairness, to consider an extended form of liability with respect to Krnojelac."); *Kupreskic*, Judgement (AC), para. 92 ("It is not acceptable for the Prosecution to omit the material aspects of its main allegations in the indictment with the aim of moulding the case against the accused in the course of the trial depending on how the evidence unfolds. There are, of course, instances in criminal trials where the evidence turns out differently than expected. Such a situation may require the indictment to be amended, an adjournment to be granted, *or certain evidence to be excluded as not being within the scope of the indictment.*")(emphasis added). *See also Semanza*, Judgement (TC), para. 61; *Krnojelac*, Judgement (TC), para. 86.

evidence supporting a paragraph, even if the paragraph is defective.[69] The Chamber further notes that disregarding a portion of the indictment is most appropriate where an allegation is grossly deficient or where to disregard it would not dispose of the central allegations in the case.

68. The Chamber recalls that in *Kupreskic* the Appeals Chamber intimated that it "might understandably be reluctant to allow a defect in the form of the indictment to determine finally the outcome of a case in which there is strong evidence pointing towards the guilt of the accused."[70] The Chamber will thus consider the Prosecutor's evidence against Ntagerura, Bagambiki, and Imanishimwe to see if such strong evidence exists. The Chamber emphasises that it will consider evidence that falls only within the contours of the existing indictment. If strong evidence of guilt is found to exist, the Chamber will take into consideration to what extent the lack of notice and the ambiguity influenced the evidence and will adjust its findings if necessary.

69. The Chamber will thus make factual findings with respect to paragraphs 9.1, 9.2, 9.3, 14.1, 14.3, 17, 18, and 19 of the Ntagerura Indictment and paragraphs 3.16 through 3.31 of the Bagambiki/Imanishimwe Indictment. The Chamber will not make factual findings on paragraphs 12.2, 14.2, 15.1, and 15.2 of the Ntagerura Indictment because the Prosecution conceded that it has offered no proof in respect of them. Finally, the Chamber will not make factual findings in respect of paragraphs 11, 12.1, 13, and 16 of the Ntagerura Indictment or paragraphs 3.12, 3.13, 3.14, and 3.15 of the Bagambiki/Imanishimwe Indictment because, in addition to being vague, these paragraphs fail to plead any identifiable criminal conduct on the part of the accused.

70. The Chamber further notes that it must dismiss Count 2 of the Ntagerura Indictment and Count 19 of the Bagambiki/Imanishimwe Indictment, which charge conspiracy to commit genocide, because the allegations supporting these counts, even if proven, could not constitute the material elements of the crime of conspiracy. In particular, the concise statements of the facts of these crimes fail to allege the *actus reus* of conspiracy, namely that two or more persons agreed to commit the crime of genocide.[71]

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[69] *Kupreskic*, Judgement (AC), para. 114.
[70] *Kupreskic*, Judgement (AC), para. 125.
[71] *Musema*, Judgement (TC), paras. 191-192 (defining material elements of conspiracy). *See also Niyitegeka*, Judgement (TC), para. 423; *Ntakirutimana*, Judgement (TC), para. 798; *Tadic*, Judgement (AC), para. 211.

II. FACTUAL FINDINGS

A. Ntagerura Indictment

1. General Allegations

71. Paragraphs 1, 2, and 3 of the Ntagerura Indictment read:

> 1. During the events referred to in this indictment, Rwanda was divided into eleven *préfectures,* one of which was Cyangugu *préfecture.*
>
> 2. During the events referred to in this indictment, the Tutsi were identified as a racial or ethnic group.
>
> 3. During the entire period referred to in this indictment, there were in Rwanda widespread and/or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

72. The Chamber notes that the Ntagerura Defence does not dispute the allegations in paragraphs 1 through 3 of the indictment.[72]

73. Paragraph 4 of the Ntagerura Indictment reads:

> 4. During the events referred to in this indictment, a state of non-international armed conflict existed in Rwanda. The victims referred to in this indictment were protected persons and did not take an active part in the hostilities.

74. The Chamber previously took judicial notice that "[b]etween 1st January 1994 and 17th July 1994, in Rwanda, there was an armed conflict not of international character."[73] The Chamber will consider whether the victims were protected persons in its findings, where necessary. The Chamber also emphasises that there is ample precedent in this Tribunal to support the view that the conflict in Rwanda met the criteria of a non-international armed conflict.[74]

75. Paragraph 5 of the Ntagerura Indictment reads:

> 5. On 6 April 1994, the plane carrying President Juvénal Habyarimana of Rwanda crashed on its approach to Kigali airport, Rwanda, killing all on board. Soon thereafter, attacks on and the killing of civilians began throughout Rwanda.

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[72] Ntagerura's Closing Brief paras. 128-130.

[73] *Prosecutor v. Ntagerura, Bagambiki, and Imanishimwe*, ICTR 99-46-T, Oral Decision on the Proposed Expert Reports and Evidence of Antoine Nyetera, Uwe Friesecke, and Wayne Madsen (TC), T. 4 July 2002 p. 9.

[74] *See, e.g., Semanza* Judgement (TC), paras. 280-282; *Musema,* Judgement (TC), para. 971; *Rutaganda* Judgement (TC), para. 436, 514; *Kayishema and Ruzindana* Judgement (TC), para. 172.

76. The Chamber notes that the Ntagerura Defence does not dispute this allegation.[75]

77. Paragraphs 6 and 7 of the Ntagerura Indictment read:

> 6. During the period referred to in this indictment, **ANDRÉ NTAGERURA** was a senior cabinet Minister, and a prominent member of the ruling party, the *Mouvement républican national pour la démocratie et le devéloppement* (MRND), formerly the *Mouvement révolutionnaire national pour le devéloppement*, in southwestern Rwanda.
>
> 7. As a member of the MRND, **ANDRÉ NTAGERURA** was involved in defining the political orientation of the MRND.

78. The Chamber notes that the Defence does not dispute that Ntagerura was a government minister from 1991 until 1994 or that he was a member of the MRND party.[76] The Ntagerura Defence however contests that Ntagerura was a "prominent member" of the MRND and that he was involved in defining the political orientation of the party.[77]

79. The only evidence that Ntagerura held any prominent position within the MRND party, in which he might have been in a position to define the political orientation of the MRND, emanates from a facsimile copy of an undated document from the Ministry of the Interior, indicating, in Prosecution Expert Witness Guichaoua's opinion, the *de facto* party leadership from mid-1992 up to 1994.[78]

80. The Chamber finds that the evidence on the record does not reliably establish that Ntagerura was a prominent member of the MRND party or that he was involved in defining its political orientation.

81. Paragraph 8 of the indictment reads:

> 8. **ANDRÉ NTAGERURA** was the Minister of Transport and Communications of the Republic of Rwanda. As Minister of Transport and Communications, he was responsible for, among other things, assigning all government vehicles.

82. The Chamber notes that the Ntagerura Defence does not dispute that Ntagerura was the Minister of Transport and Communications.[79] The Ntagerura Defence, however, contests that Ntagerura was responsible for assigning all government vehicles.[80] Because the Chamber has decided not to make findings in respect of paragraph 11 of the Ntagerura Indictment, it need not find whether Ntagerura was responsible for assigning all government vehicles.

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[75] Ntagerura's Closing Brief, paras. 134-135.
[76] Ntagerura's Closing Brief para. 136. *See also* T. 17 July 2002 pp. 67-68; T. 24 July 2002 pp. 97-98.
[77] Ntagerura's Closing Brief paras. 137, 144-146.
[78] T. 20 September 2001 pp. 77, 79-80, 92-93. *See also* The Republic of Rwanda: Approved Political Parties, Ntagerura Defence Exhibit 3.
[79] Ntagerura's Closing Brief para. 136. *See also* T. 17 July 2002 pp. 67-68.
[80] Ntagerura's Closing Brief para. 147.

83. Paragraph 10 of the Ntagerura Indictment reads:

> 10. From 1 January to 31 July 1994, the *Interahamwe* militia ("*Interahamwe*") was a wing of the MRND party.

84. The evidence of both Prosecution and Defence witnesses reflects that the youth movement of the MRND party was called the *Interahamwe*.[81] The testimonies of Guichaoua and Ntagerura, however, indicate that the *Interahamwe* was never formally incorporated into the MRND party.[82] As Guichaoua noted, the *Interahamwe* generally remained at the disposal of those individuals who financed them.[83] From this evidence, the Chamber finds that the *Interahamwe* was a youth movement associated with, but not necessarily formally incorporated into, the MRND party. The Chamber will reserve its finding on whether the *Interahamwe* was the MRND party's militia and will rule upon this matter only to the extent that it may relate to a specific count in the indictment.

2. *Paragraphs 9.1, 9.2, and 9.3 of the Ntagerura Indictment*

85. Paragraphs 9.1, 9.2, and 9.3 of the Ntagerura Indictment read:

> 9.1 From 1 January to 31 July 1994, and even as early as 1991, **ANDRÉ NTAGERURA** had strong political and community ties in Cyangugu *préfecture*, in Rwanda. ANDRÉ NTAGERURA frequently traveled [sic] to Cyangugu *préfecture*, particularly to Karengera, Gatare and other *communes* and conducted MRND party meetings as well as meetings of *conseillers* and *bourgmestres* of the *préfecture*.
>
> 9.2 Consequently, on 11 April 1994, after the death of President Habyarimana when the plane in which he was travelling crashed, André Ntagerura conducted a meeting in Cyangugu.
>
> 9.3 From 1 January to 31 July 1994 and even before this period,
> - **André NTAGERURA**, Minister of Transport and Communications,
> - Emmauel [sic] BAGAMBIKI, *Préfet* of Cyangugu,
> - Yussuf MUNYAKAZI, *Interahamwe* leader,
> - Christophe NYANDWI, civil servant at the Ministry of Planning,
> - Michel BUSUNYU, Chairman of the MRND in Karengera *commune*,

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[81] *See, e.g.*, Testimony of Prosecution Witness Guichaoua, T. 19 September 2001 p. 44; Testimony of Prosecution Witness MM, T. 12 October 2000 p. 88; Testimony of Ntagerura, T. 1 October 2002 p. 83; Testimony of Defence Witness T16H, T. 13 March 2002 pp. 29, 42-43; Testimony of Defence Witness HOPE, T. 19 March 2002 pp. 42-43; Testimony of Defence Witness Nyetera, T. 11 July 2002 pp. 54, 87-88; Testimony of Defence Witness MOH, T. 10 March 2003 pp. 24-25. Prosecution Witness LAI, a member of the Bugarama *Interahamwe*, noted that the *Interahamwe* had the support of MRND governmental authorities, but did not testify about whether it was a part of the MRND. T. 17 September 2001 pp. 18, 49-50; T. 18 September 2001 p. 91

[82] Testimony of Prosecution Witness Guichaoua, T. 20 September 2001 pp. 14-15. *See also* Prosecution Exhibit 64(B), document 2, annex 8, p. 59, para. 3; Testimony of Ntagerura, T. 18 July 2002 p. 149; T. 1 October 2002 p. 83.

[83] T. 20 September 2001 pp. 6-10, 14-15. *See also* Prosecution Exhibit 64(B), document 2, annex 8, p. 59, para. 3.

> all prominent MRND figures in Cyangugu, held a meeting among themselves as well as with others to organize, prepare and encourage the genocide, particularly of the Tutsi population.[84]

86. In addition to a series of alleged meetings in 1994, Prosecution witnesses also testified about six meetings allegedly attended by Ntagerura prior to 1994. Although these meetings do not fall within the temporal jurisdiction of the Tribunal, the Chamber will nevertheless consider the evidence in case the allegations are relevant to an offence alleged in the indictment and falling within the Tribunal's temporal jurisdiction.

a. Kamarampaka Stadium, October 1992

(i) Allegations

87. Prosecution Witness LAP testified that he saw Ntagerura, Bagambiki, and Imanishimwe participating in an MRND meeting at Kamarampaka Stadium in Cyangugu in October 1992.[85] According to the witness, both Bagambiki and Ntagerura addressed the assembly.[86]

88. Prosecution Witness LAI also mentioned an MRND meeting at Kamarampaka Stadium attended by Ntagerura and Imanishimwe in 1992.[87] He recalled that at the meeting Imanishimwe was introduced as commander of the military camp in Cyangugu.[88]

89. Ntagerura denied participating in an MRND meeting at Kamarampaka Stadium in mid-October 1992.[89]

90. Imanishimwe denied the assertion of Witnesses LAP that he was at an MRND rally in Cyangugu in October 1992, because at that time he was stationed in Kigali at the staff headquarters and because Rwandan soldiers did not participate in political rallies.[90]

91. Bagambiki testified that he was a member of the MRND party but did not attend meetings or hold any leadership roles within the national party or the MRND party in Cyangugu.[91] He stated that he never held meetings with Ntagerura.[92]

(ii) Findings

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[84] The French text of the Indictment specifies the plural term "*reunions*", which has been incorrectly translated as "a meeting".
[85] T. 11 September 2001 p. 3.
[86] T. 11 September 2001 pp. 4-5, 52-53, 56; T. 12 September 2001 pp. 116-117; T. 13 September 2001 p. 31.
[87] T. 25 September 2001 pp. 95-96.
[88] T. 25 September 2001 p. 99.
[89] T. 18 July 2002 p. 26.
[90] T. 20 January 2003 pp. 47, 49-51; Imanishimwe Defence Exhibit 9, Rule 17.
[91] T. 27 March 2003 pp. 3, 4.
[92] T. 27 March 2003 pp. 16, 17.

92. The Chamber notes that Witnesses LAP and LAI are alleged accomplices of the accused and, as such, views their testimonies with caution. Witnesses LAP and LAI testified about meetings at Kamarampaka Stadium during 1992. Witness LAP testified about an MRND meeting held at the stadium in October 1992, while Witness LAI did not provide any date. It is therefore unclear whether the two witnesses described the same event. The credibility of both of these witnesses is drawn into serious question in relation to other events.[93] Moreover, the Chamber is doubtful that Imanishimwe, who was stationed in Kigali in October 1992, would then have participated in an MRND rally in Cyangugu as commander of the military camp because there is no evidence that he had any link with the Cyangugu region prior to 1993. Accordingly, the Chamber is not satisfied beyond a reasonable doubt that Ntagerura took part in this meeting.

b. Kamarampaka Stadium, 1993

(i) Allegations

93. Prosecution Witness LAJ testified that at an MRND rally at Cyangugu Stadium in 1993 he heard Ntagerura urge party members to be vigilant in order to prevent enemy infiltration into their area and tell them that he had brought uniforms for the *Interahamwe*.[94] The witness acknowledged that he did not participate in the meeting, but was told by a gendarme outside the stadium that Ntagerura convened the meeting and that it was "the minister" who was speaking.[95]

94. Ntagerura denied participating in an MRND meeting at Kamarampaka Stadium in Cyangugu in 1993 or offering uniforms to the *Interahamwe*, contrary to the allegations of Witness LAJ.[96]

(ii) Findings

95. The Chamber notes that Witness LAJ is an alleged accomplice of the accused and, as such, views his testimony with caution. Witness LAJ is the only witness who testified about this alleged event. The Chamber notes that Witness LAJ was not an eyewitness to the event and did not personally see Ntagerura take part in or address the meeting. His identification of Ntagerura speaking at the meeting is based on a statement made by an unidentified gendarme stationed outside the stadium. The Chamber finds that Witness LAJ's identification of Ntagerura is not reliable. Accordingly, the Chamber is not satisfied beyond a reasonable doubt that Ntagerura attended this event at Kamarampaka Stadium in 1993.

c. Bushenge Market, 7 February 1993

(i) Allegations

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[93] Cross Reference Bugarama Weapons Distribution
[94] T. 24 October 2000 pp. 115-117, 119-121.
[95] T. 24 October 2000 pp. 115, 117.
[96] T. 18 July 2002 pp. 19-20.

96. Prosecution Witness LAD testified that from 2:00 to 4:00 p.m. on 7 February 1993 there was an MRND meeting in a field near the market in Bushenge.[97] According to the witness, the multi-party meeting of 4,000 to 5,000 people ostensibly concerned the construction of a sub-prefecture, but was in reality a rally designed to unite the members of different political parties against their common Tutsi enemy.[98] The witness testified that he saw Bagambiki address the crowd, followed by Ntagerura, Busunyu, and Ngirumpatse, but that he could not hear what was said because he was 100 meters away.[99] The witness also stated that Emmanuel Nsabimana, a journalist with Radio Rwanda, was in attendance.[100]

97. Prosecution Witness LAN, a Tutsi, also testified that at approximately 1:00 p.m. on 7 February 1993, he attended a political meeting at the Bushenge market called to discuss the creation of a sub-prefecture.[101] He recalled seeing *Interahamwe* singing anti-Tutsi songs and carrying weapons at the meeting.[102] He testified that Ntagerura addressed the crowd and stated that the Rwandan government did not favour the Arusha Peace Accords and asked the people at the meeting if they could accept "*Inyenzis*" or "*Inkotanyis*" running the country.[103] The witness added that Ntagerura urged the crowd to follow the MRND, mobilise itself, and take up arms to return the Inyenzis and Inkotanyis to the place from where they came.[104] The witness explained that "*Inyenzi*" and "*Inkotanyi*" were terms that had been used to describe the entire Tutsi ethnic group, and he interpreted Ntagerura's speech to be saying that the Hutu were going to avenge the deaths of fellow Hutus by killing Tutsis.[105] Following Ntagerura's speech, the witness recalled, Michel Busunyu, Martin Mahirane, Ntezilyayo, Yussuf Munyakazi, and Mathieu Ngirumpatse also addressed the crowd.[106]

98. Prosecution Witness NG-1 testified that one afternoon in February or March 1993 he passed by an MRND meeting in Bushenge.[107] During his brief observation, the witness testified, he noticed that Ntagerura and Bagambiki were in attendance and heard Busunyu call on the population to join the MRND party and say that the Tutsi were the enemy.[108]

99. Ntagerura testified that he was not aware of and did not participate in an MRND meeting at the Bushenge market on 7 February 1993.[109] Moreover, he testified that he was not aware that government personalities of the MRND from Kigali participated in any meeting held in the Bushenge market during the multiparty period.[110]

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[97] T. 21 November 2000 pp. 82-88, 102; T. 22 November 2000 pp. 33, 37, 41-45, 113-114, 118, 121.
[98] T. 22 November 2000 pp. 24-25, 32, 64-65, 105, 123.
[99] T. 21 November 2000 pp. 100-101.
[100] T. 21 November 2000 pp. 87-92; T. 22 November 2000 pp. 52-53, 60, 69-70.
[101] T. 17 January 2001 pp. 8-10, 13-14, 24, 71-74, 78-79, 82, 112; T. 18 January 2001 pp. 41-42, 46.
[102] T. 17 January 2001 pp. 12-13, 15-17, 26, 105, 107-111.
[103] T. 17 January 2001 pp. 31-32.
[104] T. 17 January 2001 pp. 33, 60.
[105] T. 17 January 2001 pp. 33-35, 59-64.
[106] T. 17 January 2001 pp. 40-45.
[107] T. 27 November 2000 p. 128; T. 28 November 2000 pp. 39, 64-66.
[108] T. 27 November 2000 pp. 129-132; T. 28 November 2000 pp. 39-40, 62, 66-67, 86.
[109] T. 18 July 2002 pp. 84, 100.
[110] T. 18 July 2002 pp. 84-85.

100. Bagambiki testified that, on 6 April 1994, he was a member of the MRND party but did not attend meetings or hold any leadership role within the national party or the MRND party in Cyangugu.[111] He stated that he never held meetings with Ntagerura or Busunyu.[112]

101. Defence Witness HOPE testified that he recalled hearing from an unidentified source about several MRND members, including Ntagerura, attending a political rally in the Bushenge market on 7 February 1993.[113] He stated that he had never heard that Ntagerura said that the Tutsis should be killed.[114]

(ii) Findings

102. The Chamber has carefully assessed the evidence of Witnesses LAN, LAD, and NG-1, who gave largely consistent accounts of this event. The Chamber observes that these three Prosecution witnesses lived in the same locality and knew each other. The witnesses denied discussing their evidence with each other.[115] The Chamber notes the differences between their accounts and is satisfied that such discrepancies are explained by the witnesses' different vantage points and by the timing of their observations. Ntagerura's presence at the meeting is also supported by the evidence of Defence Witness HOPE. On this basis, the Chamber finds that, on 7 February 1993, Ntagerura attended a public meeting held near the Bushenge market in Cyangugu.

103. The Chamber also finds, on the basis of the detailed evidence provided by Witness LAN, that Ntagerura addressed the gathering and made statements about repulsing the "*Inkotanyi*" and "*Inyenzi*". However, the Chamber does not subscribe to the unsubstantiated interpretation proffered by Witness LAN, namely, that Ntagerura's words suggested a general and indiscriminate attack on Tutsi civilians.

d. Hotel Ituze, June 1993

(i) Allegations

104. Prosecution Witness LAI, a member of the *Interahamwe*, testified that he attended a meeting at Hotel Ituze in June 1993.[116] He recalled that there were many *Interahamwe* at the meeting, which was attended by Ntagerura, Bagambiki, Munyakazi, Michel Busunyu, Edouard Bandetse, Christopher Nyandwi, and others.[117] According to the witness, the meeting was organized for the *Interahamwe* from the communes of Cyangugu to find ways to reinforce the party and to destroy opposition parties, such as the MDR.[118]

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[111] T. 27 March 2003 pp. 3, 4.
[112] T. 27 March 2003 p. 16, 17.
[113] T. 19 March 2002 pp. 14, 17.
[114] T. 19 March 2002 pp. 14-16.
[115] T. 28 November 2000 pp. 88-91; T. 18 January 2001 pp. 4-16.
[116] T. 17 September 2001 pp. 59, 81-82; T. 18 September 2001 p. 31; T. 26 September 2001 p. 73.
[117] T. 17 September 2001 pp. 61-62; T. 18 September 2001 p. 34.
[118] T. 17 September 2001 p. 60; T. 18 September 2001 pp. 9-10, 31-34; T. 25 September 2001 p. 61.

105. Witness LAI stated that Bagambiki and Ntagerura chaired the meeting.[119] He explained that Ntagerura talked about a decision taken by the MRND National Committee to recruit people back into the MRND party and to tell the population that the "new" MRND was the MRND PARMEHUTU.[120] According to the witness, Ntagerura ordered that all employees of companies located in Cyangugu who were not MRND members should be dismissed from their jobs.[121] The witness admitted that subsequently some employees, who were not members of the MRND, were not dismissed from their jobs.[122]

106. Ntagerura denied meeting with Bagambiki, Munyakazi, and others at Hotel Ituze in June 1993, and specifically denied the allegation that he had delivered a decision of the national committee of the MRND to dismiss all employees who were not members of the MRND.[123] He noted that in June 1993 he was not a member of the national committee of the MRND.[124]

107. Bagambiki denied attending an MRND meeting in June 1993 at Hotel Ituze, and denied hearing that Ntagerura said that employees who were not MRND members should be dismissed from their jobs.[125] Bagambiki also noted that he would not have organised a meeting at Hotel Ituze, which is a private resort, because he had space to hold meetings at the prefecture.[126]

(ii) Findings

108. The Chamber notes that Witness LAI is an alleged accomplice of the accused and, as such, views his testimony with caution. Witness LAI was the sole witness to testify about this event. The Chamber has considered the totality of the evidence provided by Witness LAI and has found that he lacks credibility in relation to other allegations.[127] In the absence of any other evidence to support Witness LAI's account of these events, the Chamber is not satisfied that the Prosecution proved beyond a reasonable doubt that Ntagerura attended such a meeting. Furthermore, the Chamber is not satisfied on the evidence before it that opposition party members were systematically dismissed from their jobs, thus calling into question whether such an order was ever given.

e. Gatare and Cyangugu Prefecture Office, October 1993

(i) Allegations

109. Prosecution Witness LAI testified that he was present at a public rally to encourage MRND membership in October 1993 at Hanika centre in Gatare commune,

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[119] T. 17 September 2001 p. 61; T. 25 September 2001 p. 61.
[120] T. 17 September 2001 pp. 64, 67.
[121] T. 17 September 2001 p. 69; T. 25 September 2001 p. 35.
[122] T. 17 September 2001 p. 75; T. 25 September 2001 pp. 35-36.
[123] T. 18 July 2002 p. 51.
[124] T. 18 July 2002 p. 52.
[125] T. 1 April 2003 p. 49; T. 1 April 2003 p. 58 (French).
[126] T. 1 April 2003 p. 50.
[127] *See supra* paras. 129-132.

Cyangugu.[128] He testified that during the meeting Ntagerura made a speech that "triggered the war."[129] The witness explained that *bourgmestres*, *conseillers*, and other authorities who were MRND members had been fired and replaced with members of opposition parties and that therefore the MRND sought to replace them with MRND members.[130] According to the witness, Ntagerura told the people that they had to be *Interahamwe* and that they had to fight against the parties that did not share the same views as the MRND because such parties were collaborating with the Tutsis.[131]

110. Witness LAI testified that the meeting resulted in violent clashes on nearby bridges between *Interahamwe* and the youth of other parties, during which the witness was injured.[132] He recalled that the person who injured him was killed in the presence of Ntagerura and other officials by an *Interahamwe* who was never prosecuted for the killing.[133] The witness testified that Ntagerura was the first to leave the scene of the violence and that Ntagerura then requested the gendarmerie from Kirambo to come to the support of the *Interahamwe*.[134]

111. Witness LAI testified that, later the same day in October 1993, following the Gatare meeting, he was also present at a meeting at the Cyangugu prefecture office with Bagambiki, Ntagerura, and other community leaders.[135] He testified that during the meeting Ntagerura said, "Anybody, even if it is your child, who is not a member of the MRND, must be sent away," and promised to provide weapons to *Interahamwe*.[136]

112. Ntagerura denied attending either an MRND meeting at the Hanika Centre in Gatare commune or a meeting later the same day at the office of the prefecture in Cyangugu during October 1993.[137] He admitted attending an MRND meeting in Kirambo commune in May 1992.[138] Ntagerura recalled that on the way to the meeting they passed through Kagano, where they were attacked by members of the MDR party, who were fended off by gendarmes.[139] He testified that they were attacked by a larger crowd on their return and that they sustained injuries, but were freed thanks to the intervention of the gendarmes.[140] He explained that the government took steps to restore peace in the area by arresting and prosecuting some of the attackers.[141] He

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[128] T. 17 September 2001 pp. 54-55, 57; T. 18 September 2001 pp. 44-45, 47.
[129] T. 17 September 2001 p. 55; T. 18 September 2001 pp. 44-45, 48.
[130] T. 17 September 2001 p. 57.
[131] T. 17 September 2001 p. 55.
[132] T. 17 September 2001 pp. 57-58; T. 18 September 2001 pp. 46, 50-52, 54; T. 26 September 2001 p. 11.
[133] T. 17 September 2001 pp. 58-59.
[134] T. 18 September 2001 pp. 52-54.
[135] T. 17 September 2001 pp. 51-53.
[136] T. 17 September 2001 p. 52.
[137] T. 18 July 2002 pp. 42-44, 47; T. 18 July 2002 p. 53 (French).
[138] T. 18 July 2002 p. 44.
[139] T. 18 July 2002 p. 45.
[140] T. 18 July 2002 p. 45.
[141] T. 18 July 2002 p. 46.

testified that the friction continued and so he visited Kirambo in August 1992 with Prime Minister Nsengiyaremye to put an end to the violence.[142]

(ii) Findings

113. The Chamber notes that Witness LAI is an alleged accomplice of the accused and, as such, views his testimony with caution. Witness LAI was the sole witness to testify about these events. The Chamber has considered the totality of the evidence provided by Witness LAI and has found that he lacks credibility in relation to other allegations.[143] The Chamber also harbours doubts about his credibility in relation to these events. In particular, the Chamber notes the inconsistencies between his testimony and his prior statement, which were raised during cross-examination.[144] Moreover, Witness LAI's evidence concerning these events is linked to his account of the meeting allegedly held at Hotel Ituze in June 1993, during which the Gatare meeting was allegedly planned. The Chamber has not found that Ntagerura's presence at the Hotel Ituze meeting was proven beyond a reasonable doubt. The Chamber is not satisfied beyond a reasonable doubt that Ntagerura attended either the alleged meeting in Gatare commune or the second meeting at the Cyangugu prefecture office later that day.

f. Bushenge, November 1993

(i) Allegations

114. Prosecution Witness LAH testified that he participated in a public meeting in November 1993 at the Bushenge market, during which, according to him, Ntagerura said, "[I]n a short while President Ikinani will no longer be there, and at that time the fate of the Tutsi will be sealed."[145] The witness stated that the word "*Ikinani*" was President Habyarimana's nickname.[146]

115. Prosecution Witness NL stated that in late 1993 or early 1994 on his way to Butare, he saw Ntagerura in Ntendezi.[147] The witness stated that Ntagerura and others, who were wearing MRND colours and carrying flags, were travelling from Kigali to a meeting in Bushenge.[148]

116. Ntagerura denied participating in an MRND meeting at the Bushenge market, located at the border of the communes of Gafunzo and Gisuma, in November 1993.[149] Ntagerura specifically denied that he had made the statement alleged by Witness LAH.[150] Ntagerura explained that such words could not be said by a member of the government because they would have been published by the free press in Rwanda,

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[142] T. 18 July 2002 p. 46.
[143] *See supra* paras. 129-132.
[144] T. 18 September 2001 pp. 56-58.
[145] T. 10 October 2000 pp. 63, 104, 109-110; T. 11 October 2000 pp. 25, 26.
[146] T. 10 October 2000 pp. 63, 106.
[147] T. 21 February 2001 pp. 22-25, 37, 43-44.
[148] T. 21 February 2001 pp. 22-25, 43-44.
[149] T. 17 July 2002 pp. 70, 79-80; T. 18 July 2002 pp. 85-86.
[150] T. 17 July 2002 pp. 69, 92.

and neither the multiparty and multiethnic government nor the judicial system would have tolerated such a statement in 1993.[151]

117. Bagambiki stated that he authorised, but did not attend, an MRND party meeting in Gafunzo commune toward the end of 1993 involving both Gafunzo and Gisuma communes.[152]

(ii) Findings

118. The Chamber recalls that Witness LAH is an alleged accomplice of the accused and, as such, views his testimony with caution. The Trial Chamber has considered the evidence of Witness LAH in light of the evidence of Defence Witness BLB, who testified that Witness LAH made and then recanted false accusations against him in relation to serious charges before the Rwandan courts.[153] The Chamber is of the view that this evidence calls Witness LAH's credibility into serious question. The testimony of Witness NL does not provide adequate corroboration for the allegations of Witness LAH. The Chamber notes that Witness NL did not see Ntagerura in Bushenge and did not indicate how he knew that Ntagerura was going to a meeting there. The Chamber therefore finds that his conclusion that Ntagerura attended a meeting in Bushenge is unreliable. The Trial Chamber is of the view that the accounts of Witnesses LAH and NL are insufficient to satisfy the Chamber beyond a reasonable doubt that Ntagerura took part in such a meeting.

g. Bugarama, 28 January 1994

(i) Allegations

119. Prosecution Witness LAI testified that, on 5 January 1994, at around 5:00 p.m., he was present when Bagambiki and Commander Bavugamenshi met at Munyakazi's home, where they discussed an upcoming visit by Ntagerura planned for Democracy Day on 28 January 1994.[154]

120. Witness LAI testified that, on the morning of 28 January 1994, Ntagerura, Bagambiki, Bavugamenshi, Kabiligi, and another soldier arrived at the Bugarama football field in a helicopter to deliver weapons to Munyakazi.[155] The witness testified that Bagambiki then chaired a meeting during which Bagambiki, Ntagerura, and Kabiligi spoke to the assembly, which consisted of *Interahamwe* and others.[156] According to the witness, Ntagerura stated that he was fulfilling a promise that he had made to the *Interahamwe* in October 1993 to provide weapons for "civilian defence" and protection of MRND members.[157] The witness testified that Ntagerura then told

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[151] T. 17 July 2002 p. 82.
[152] T. 27 March 2003 p. 18.
[153] T. 19 February 2003 pp. 29-33, 40-42; T. 20 February 2003 p. 2; Bagambiki Defence Exhibits 8, 9.
[154] T. 17 September 2001 p. 33; T. 18 September 2001 pp. 82-83, 85; T. 25 September 2001 p. 80; T. 26 September 2001 p. 57.
[155] T. 17 September 2001 pp. 30-32; T. 18 September 2001 pp. 85-85, 88-89; T. 25 September 2001 pp. 72, 79-80.
[156] T. 17 September 2001 pp. 35-36; T. 18 September 2001 pp. 87-90.
[157] T. 17 September 2001 pp. 36-37.

the assembled group that Tutsis were the enemy, that he did not want to hear of another Hutu being killed, and that anyone who was not a member of the MRND would be considered a Tutsi.[158] The witness stated that by these comments he understood Ntagerura to mean that anyone who was not a member of the MRND was to die.[159]

121. Witness LAI stated that he and four others moved the weapons from the helicopter to a vehicle under the supervision of Kabiligi and Munyakazi.[160] He testified that the weapons, including guns, grenades, and ammunition, were in boxes, which they opened at Munyakazi's home.[161] He testified that the weapons were for training and for killing people.[162] The witness testified that, in addition to firearms, uniforms, and other items of clothing, he also saw Ntagerura give Munyakazi money on 28 January 1994 for the purchase of weapons in the Congo and in Burundi.[163]

122. Prosecution Witness LAJ testified that, on 28 January 1994, Ntagerura, two unknown men wearing plain clothes, and a pilot wearing a military uniform arrived by helicopter at the football field at the primary school in Bugarama sector.[164] According to the witness, Munyakazi brought together all the *Interahamwe* and reservists to meet the helicopter.[165] The witness stated that Ntagerura told those assembled that the situation had become increasingly serious and that they had to be extremely vigilant at all times because the enemy, the Tutsis who were killing the Hutus, could attack at any time, and that if the enemy did come, nobody would survive.[166] The witness, who acknowledged having read, signed, corrected, and understood his statements, stated that he did not mention Ntagerura's statements to the Prosecution investigators because he was not asked about the issue.[167]

123. Prosecution Witness LAJ testified that at the meeting, Ntagerura told Munyakazi that he had a parcel for the *Interahamwe* and that four big and four small cartons of weapons and other materials were unloaded from the helicopter.[168] The witness stated that in one of the large cartons there were 300 bayonets.[169] The witness testified that he did not see what was in the four small boxes.[170]

124. Prosecution Witness LAP testified that Ntagerura, Kabiligi, and two pilots visited the Bigogwe military camp in a helicopter before 9:30 a.m. on 28 January 1994.[171] The witness testified that *Interahamwe* came to greet the helicopter and that

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[158] T. 17 September 2001 pp. 36-37; T. 17 September 2001 p. 43 (French) ("*Il nous a fait comprendre que l'ennemi était le Tutsi, et il a déclaré qu'il ne voulait plus entendre parler d'un Hutu quelconque qui été tué.*").
[159] T. 17 September 2001 p. 37.
[160] T. 17 September 2001 pp. 38, 40-42, 44-47; T. 25 September 2001 p. 73.
[161] T. 17 September 2001 pp. 43-44, 47; T. 18 September 2001 pp. 91-94.
[162] T. 17 September 2001 p. 48.
[163] T. 17 September 2001 p. 50; T. 18 September 2001 p. 94.
[164] T. 23 October 2000 p. 32; T. 24 October 2000 pp. 20, 21, 25.
[165] T. 23 October 2000 p. 32; T. 24 October 2000 p. 26.
[166] T. 23 October 2000 pp. 33-34.
[167] T. 24 October 2000 pp. 34-35, 37-39, 63; T. 25 October 2000 p. 42.
[168] T. 23 October 2000 p. 35.
[169] T. 23 October 2000 p. 37.
[170] T. 23 October 2000 p. 36.
[171] T. 11 September 2001 pp. 5-6, 67-68, 99, 103-104; T. 12 September 2001 pp. 24-25.

Ntagerura informed them that he had brought equipment, including uniforms, firearms, grenades, and ammunition.[172] The witness participated in unloading the cartons of weapons and equipment, which were later distributed to the *Interahamwe*.[173] Witness LAP testified that he heard both Ntagerura and Kabiligi say that they were heading to Cyangugu.[174]

125. Ntagerura denied the allegations of Witnesses LAP, LAI, and LAJ that, on 28 January 1994, he was at the Bigogwe camp in Mutara commune of Gisenyi prefecture or in Bugarama with Kabiligi.[175] He denied that he ever went to the Bigogwe camp.[176] Ntagerura explained that 28 January 1994 was a holiday and that he was then in Kigali.[177] He testified that, in January 1994 during the implementation of the broad-based transitional government, it would have been unacceptable to the Tutsi members of the MRND if an MRND government minister said the words "the enemy is the Tutsi" and that this would have been reported in the press, resulting in administrative and criminal sanctions initiated by the opposition parties and the head of the government.[178] He also recalled that, on 18 March 1994, Twagiramungu, who was also from Cyangugu, announced that Ntagerura would be a minister in the transitional government, which would not have happened if he had said the words attributed to him by the Prosecution witnesses.[179]

126. Ntagerura Defence Witness Kabiligi testified that, on 28 January 1994, he did not visit the Bigogwe camp or Bugarama in a helicopter with Ntagerura to supply arms to the *Interahamwe*.[180] Kabiligi testified that, between 27 January and 8 February 1994, he was in Cairo, Egypt, on a government mission concerning officer training which was approved by an order signed by the President on 19 January 1994.[181] On his return to Kigali, on 10 February 1994, he submitted a report addressed to the President of Rwanda concerning the mission.[182] Kabiligi testified that he travelled to Egypt on a diplomatic passport, which he returned to the Ministry of Foreign Affairs in Rwanda.[183] Kabiligi admitted that after leaving Rwanda he obtained false passports and travel documents because he was a refugee and the Rwandan government was seeking to arrest him.[184]

127. Defence Witnesses DBH, T12H, T5H, and ZJH testified that they did not see or hear of the arrival of Ntagerura in Bugarama by helicopter on 28 January 1994.[185] Witnesses T12H and T5H testified that Ntagerura had once come to Bugarama in a

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[172] T. 11 September 2001 pp. 7, 78, 82, 98; T. 12 September 2001 pp. 31-32.
[173] T. 11 September 2001 pp. 76, 78-80, 84-86, 90-93, 96.
[174] T. 11 September 2001 p. 23; T. 12 September 2001 pp. 26-27.
[175] T. 18 July 2002 pp. 8, 27.
[176] T. 18 July 2002 p. 27.
[177] T. 18 July 2002 pp. 11-12.
[178] T. 18 July 2002 pp. 12-13.
[179] T. 18 July 2002 pp. 13-14.
[180] T. 25 March 2002 pp. 20-21.
[181] T. 25 March 2002 pp. 9-11, 34.
[182] T. 25 March 2002 pp. 12-19; Ntagerura Defence Exhibit 5.
[183] T. 25 March 2002 pp. 34-36.
[184] T. 25 March 2002 pp. 114-127, 133-135, 138-146.
[185] T. 7 March 2002 pp. 32, 35-36; T. 11 March 2002 pp. 84-85, 128; T. 12 March 2002 pp. 3-4, 18, 89-90, 110.

helicopter for a ceremony inaugurating the second furnace at the Cimerwa cement factory.[186]

128. Bagambiki denied having a relationship with Munyakazi and stated that he did not attend a meeting at Munyakazi's home on 5 January 1994 to announce a visit by Ntagerura.[187] Bagambiki also stated that he did not bring weapons to Munyakazi in Bugarama, Cyangugu, on 28 January 1994 by helicopter with Ntagerura, Kabiligi, and Bavugamenshi.[188]

(ii) Findings

129. The Chamber has carefully considered the evidence of Witnesses LAI, LAJ, and LAP concerning the alleged events of 28 January 1994. The Chamber accepts the corroborated testimony of Witness Kabiligi that he was in Egypt on that date. Therefore, the Chamber finds that these events did not occur in the manner alleged by Witnesses LAI and LAP, who both gave well-developed explanations for their ability to observe and identify Kabiligi as one of the people who on that day had arrived in a helicopter in Bugarama and Bigogwe, respectively. The Chamber finds that this inconsistency draws the credibility and reliability of their evidence into question.

130. Witness LAJ's signed statement to Prosecution investigators, which was read into evidence, indicates that from January to 7 April 1994 he stayed at home because he had been wounded. He made no mention in his prior statement of the alleged 28 January 1994 distribution of weapons.[189] During his testimony, the witness denied that his injury prevented him from leaving his house between January and April 1994, explaining that he was unable only to work.[190] The Chamber is not convinced by this explanation.

131. The Chamber recalls that Witnesses LAI, LAJ, and LAP are alleged accomplices of the accused and, as such, views their testimonies with caution. The Chamber further observes that Witnesses LAI, LAJ, and LAP know each other and that they were detained together in Rwanda.[191] Given the finding that Kabiligi was not present at the alleged distribution of weapons in Bugarama on 28 January 1994 and the inconsistency between Witness LAJ's prior statement and his testimony, the Chamber acknowledges the possibility that the testimonies of Witnesses LAI, LAJ, and LAP about this event may have been fabricated.

132. For the foregoing reasons, the Chamber finds that Witnesses LAI, LAJ, and LAP are not credible in relation to the allegations of meetings and arms distributions on 28 January 1994, and, accordingly, finds that the Prosecution failed to prove Ntagerura's participation in these events beyond a reasonable doubt.

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[186] T. 12 March 2002 pp. 5, 91.
[187] T. 1 April 2003 pp. 47, 48.
[188] T. 1 April 2003 p. 48.
[189] T. 24 October 2000 pp. 34-35, 37-39.
[190] T. 24 October 2000 pp. 29-37.
[191] T. 12 September 2001 pp. 49, 51-52; T. 25 September 2001 pp. 37, 41-49, 51, 54, 56; T. 26 September 2001 pp. 6-7.

h. Hotel Ituze, 18 March 1994

(i) Allegations

133. Prosecution Witness LAJ testified that he saw Ntagerura at a meeting at Hotel Ituze around 18 March 1994.[192] According to the witness, after being welcomed by Bagambiki, Ntagerura took the floor and stated that the Hutus had almost all been exterminated and that those gathered had to be vigilant so that the situation would be brought under control.[193] The witness recalled that Ntagerura said that if ever another Hutu in authority were to be killed in the commune, then all Tutsis should be looked for and killed.[194] The witness failed to mention Ntagerura's alleged utterances in his 24 June and 10 July 1999 statements to Prosecution investigators, explaining that the investigators did not ask about this issue.[195]

134. Ntagerura denied going to the Hotel Ituze, on 18 March 1994, and testified that he was in Kigali the entire day preparing documents related to the hand-over of the ministry.[196] He denied that he had ever, at any time or place, said anything similar to "the Hutu are practically exterminated...so you must remain vigilant", as alleged by Witness LAJ.[197] He explained that there would have been serious consequences for an MRND minister who said such things at a public meeting at that time.[198] Moreover, he noted that UNAMIR civil police, CIVILPOL, who were deployed in Cyangugu from mid-February 1994, were living in the Ituze Hotel and that their mission was to ensure the implementation of the broad-based transitional institutions.[199]

(ii) Findings

135. The Chamber recalls that Witness LAJ is an alleged accomplice of the accused and, as such, views his testimony with caution. Witness LAJ was the only witness to testify about this event. The Chamber notes that Witness LAJ's credibility has been called into question in relation to other allegations.[200] The Chamber recalls that his witness statement to the Prosecution investigators indicates that he did not leave his home because of an injury between January and April 1994. The Chamber also notes that the witness did not mention Ntagerura's participation in a meeting at Hotel Ituze in his witness statement. The Chamber is not willing to rely on this uncorroborated testimony and, accordingly, finds that it has not been proven beyond a reasonable doubt that Ntagerura participated in the meeting.

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[192] T. 23 October 2000 pp. 38-41; T. 24 October 2000 pp. 9, 11.
[193] T. 23 October 2000 pp. 40-41; T. 25 October 2000 p. 12.
[194] T. 23 October 2000 p. 43.
[195] T. 24 October 2000 pp. 34-35, 37-39, 63.
[196] T. 18 July 2002 pp. 14, 15; T. 1 October 2002 pp. 96-101.
[197] T. 18 July 2002 pp. 16-17.
[198] T. 18 July 2002 p. 17.
[199] T. 18 July 2002 pp. 18-19.
[200] *See supra* paras 129-132.

i. Kanyamuhanda's House, 10 April 1994

(i) Allegations

136. Witness LAH testified that, on 10 April 1994, at Kanyamuhanda's house, Ntagerura promised the *Interahamwe* that they would be paid 1,000 Rwandese Francs in exchange for identity cards of Tutsis whom they had killed.[201]

137. Ntagerura testified that the only occasion on which he ever visited Kanyamuhanda's home was after an MRND meeting in November 1993.[202] He specifically denied visiting the house after 6 April 1994 and ever telling people to give identity cards to Kanyamuhanda.[203]

138. Ntagerura testified that from 10 to 12 April 1994 he was on an official government mission to accompany the remains of the President of Burundi and of the two Burundian ministers who were killed in the plane crash with Rwandan President Habyarimana on 6 April 1994.[204] Ntagerura testified that his passport, Ntagerura Defence Exhibit 27, bears a Rwandan exit stamp dated 10 April 1994, which was placed in his passport at the Rwanda/Burundi border.[205] He explained that his passport does not bear an entry stamp of the Burundian authorities because of the agreement between Great Lakes countries to permit entry on a single country's stamp when the traveller remains within the region.[206] Ntagerura testified that he stayed at the Rwandan ambassador's residence in Bujumbura during the night of 10 April 1994.[207] Ntagerura testified that he returned to Rwanda on 11 April 1994, arriving in Butare at 11:00 p.m., and that he rejoined the government in Gitarama at around 5:00 p.m. on 12 April 1994.[208]

139. Ntagerura's wife, Defence Witness Leoncie Bongwa, testified that her husband was sworn in as a member of the interim government on 9 April 1994 and that he left Kigali on 10 April 1994 to accompany the remains of the Burundian president to Bujumbura, Burundi.[209] She testified that, on 12 April 1994, she and her family were flown by a French military plane to Bujumbura, where they stayed from 12 to 14 April 1994.[210] Witness Bongwa stated that while she was in Bujumbura she met the Rwandan ambassador to Burundi, who told her that her husband Ntagerura had left Bujumbura the previous day.[211]

140. Defence Witness BSH testified that he met Ntagerura in Burundi when the Minister was leading a delegation accompanying the body of Burundi's President to

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[201] T. 10 October 2000 pp. 70-71; T. 11 October 2000 pp. 28-29, 34.
[202] T. 17 July 2002 pp. 86-87.
[203] T. 17 July 2002 p. 91.
[204] T. 17 July 2002 pp. 93-98, 102; T. 24 July 2002 pp. 39-41; T. 30 September 2002 pp. 5, 7-8; T. 2 October 2002 p. 50; DAN 27, excerpted as DAN 28, p. 6.
[205] T. 17 July 2002 p. 97.
[206] T. 17 July 2002 p. 98; T. 30 September 2002 pp. 18, 43, 52; T. 2 October 2002 pp. 24-26, 44-49; DAN 86.
[207] T. 22 July 2002 p. 36; T. 24 July 2002 p. 44; T. 30 September 2002 pp. 13, 15.
[208] T. 24 July 2002 pp. 41, 44-45.
[209] T. 20 May 2002 pp. 20-21, 41.
[210] T. 20 May 2002 pp. 23-25.
[211] T. 20 May 2002 pp. 25-26.

Bujumbura.[212] He stated that he did not remember the exact date but estimated that the delegation arrived in Burundi on 10 April 1994 and left in the evening of the following day.[213]

(ii) Findings

141. The Chamber recalls that Witness LAH is an alleged accomplice of the accused and, as such, views his testimony with caution. Witness LAH is the only witness to testify about this alleged meeting. The Trial Chamber has considered Witness LAH's testimony in light of the evidence provided by Defence Witness BLB, who testified that Witness LAH made and then recanted false accusations against him in relation to serious charges before the Rwandan courts.[214] The Chamber is of the view that this evidence calls Witness LAH's credibility into question. The Chamber has also considered the evidence proffered by the Defence in support of Ntagerura's alibi for this date. Taking the totality of the evidence into account, the Chamber is not satisfied beyond a reasonable doubt that Ntagerura participated in a meeting at Kanyamuhanda's home on 10 April 1994.

j. Cyangugu, 11 April 1994

(i) Allegations

142. Prosecution Witness LC testified that, on 11 or 12 April 1994 at approximately 11:00 a.m., he saw Ntagerura enter the Cyangugu prefecture office and leave fifteen to twenty minutes later.[215] In cross-examination the witness stated that he was not certain about the date of this meeting, and then explained that Ntagerura's visit could have occurred between April and June 1994.[216] When asked to explain his reference point for the time frame of 11 or 12 April 1994, the witness stated that he knew it was around the first week of April because that was when Ntagerura came back from Bukavu, and it was a few days after the witness started a new work assignment.[217]

143. Ntagerura explained that, on 10 April 1994, he accompanied the remains of the Burundian President and ministers to Bujumbura, which is supported and corroborated by his passport and the testimonies of Defence Witnesses Bongwa and BSH.[218]

(ii) Findings

144. The Chamber finds that the evidence of Witness LC is vague and inconclusive. Witness LC testified that he observed Ntagerura entering and exiting the prefectural office. He did not testify that Ntagerura met with any person in the office and offered no evidence about the substance of any meeting in which Ntagerura might have taken

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[212] T. 28 March 2002 pp. 34-35, 50.
[213] T. 28 March 2002 pp. 35-36, 41, 44, 51.
[214] T. 19 February 2003 pp. 29-33, 40-42; T. 20 February 2003 p. 2; Bagambiki Defence Exhibits 8, 9.
[215] T. 9 May 2001 pp. 63, 102, 104.
[216] T. 9 May 2001 pp. 102, 106.
[217] T. 9 May 2001 pp. 107-108; T. 10 May 2001 p. 33.
[218] *See supra paras.* 137-141

part. Witness LC was unsure of the date of this alleged event, placing it somewhere between April and June 1994. Moreover, the evidence of Witness LC is further undermined by the reliable and corroborated evidence of Ntagerura's presence in Bujumbura from 10 to 11 April 1994. The Chamber accordingly finds that the evidence is insufficient to prove beyond a reasonable doubt that Ntagerura attended a meeting at the prefectural office in Cyangugu on 11 April 1994.

k. Findings in Respect of Paragraphs 9.1, 9.2, and 9.3 of the Ntagerura Indictment

145. Upon reviewing the evidence related to paragraphs 9.1, 9.2, and 9.3 of the Ntagerura Indictment, the Chamber has found beyond a reasonable doubt that Ntagerura attended and addressed a meeting at the Bushenge market on 7 February 1993. During his address, Ntagerura made statements about repulsing the *Inkotanyi* and *Inyenzi*. The Prosecutor did not, however, establish beyond a reasonable doubt that Ntagerura *conducted* this meeting as alleged in paragraph 9.1 of the Ntagerura Indictment. The 7 February 1993 meeting in Bushenge has no relevance to the allegations in 9.2 of the Indictment. The Prosecutor also failed to prove that the purpose of the meeting was to organize, prepare, and encourage the genocide as alleged in paragraph 9.3. Consequently, the Chamber finds that the Prosecutor did not prove the allegations made in paragraphs 9.1, 9.2, and 9.3 of the Ntagerura Indictment beyond a reasonable doubt.

3. Paragraphs 14.1, 14.3, 17, 18, and 19 of the Ntagerura Indictment

146. The Chamber will consider the evidence tendered to support paragraphs 14.1, 14.3, 17, 18, and 19 together.

147. Paragraphs 14.1, 14.3, 17, 18, and 19 read:

> 14.1. From 1 January to 31 July 1994, **ANDRÉ NTAGERURA** was often seen in the company of, and publicly expressed his support for, Yussuf MUNYAKAZI and the *Interahamwe* in Cyangugu *préfecture*, specifically in Bugarama *commune*.
>
> 14.3. From 1 January to 31 July 1994, **ANDRÉ NTAGERURA** travelled throughout Cyangugu *préfecture,* often accompanied by *Préfet* Emmanuel BAGAMBIKI and Yussuf MUNYAKAZI, to monitor the activities of the *Interahamwe* and verify that the orders to kill the Tutsis and all political opponents had been carried out.
>
> 17. The murder of civilians in Cyangugu started in the course of the month of February 1994, and was led and perpetrated by the *Interahamwe* and other groups.
>
> 18. From early April through July 1994, attacks on Tutsi civilians occurred in Cyangugu *préfecture* and resulted in the death of an estimated one hundred thousand or more people and countless injured.

> 19. During the period of these attacks, **ANDRÉ NTAGERURA** continued to remain active in Cyangugu *préfecture* and acted as a supervisor. On one occasion after April 1994, he attended a meeting chaired by the Interim President of the Republic of Rwanda, Théodore SINDIKUBWABO, who congratulated the community on killing the Tutsis.

148. Paragraphs 17 and 18 broadly refer to the murder of and attacks on civilians in Cyangugu perpetrated from February through July 1994. The Chamber will describe evidence relating to those events in greater detail in section II.B.5. and focuses here only on the evidence closely related to Ntagerura's alleged activities in Cyangugu during 1994.

149. The Chamber is mindful that the Prosecution asserts that several alleged events support paragraphs 14.1, 14.3, 17, 18, and 19, including the February 1993 meeting in Bushenge market, the June 1993 meeting at Hotel Ituze, the October 1993 meeting in Gatare, a visit by Ntagerura to the Cimerwa factory in Bugarama in December 1993, and a visit by Ntagerura to Bugarama on 28 January 1994.[219] All but the last of these alleged events fall outside the temporal scope of paragraphs 14.1, 14.3, 17, 18, and 19.[220] The Chamber has previously considered the evidence concerning Ntagerura's alleged visit to Bugarama in January 1994 and has found that his participation in that event was not proven beyond a reasonable doubt.[221] Thus, the Chamber will not consider the evidence of these events here.

a. Allegations

150. Prosecution Witness LC, a former driver for the Cyangugu prefecture, testified that Ntagerura met with Bagambiki in Cyangugu on at least five occasions between April and June 1994, which often corresponded with Ntagerura's family visits.[222] The witness stated that Ntagerura briefly visited the prefecture office on 11 or 12 April 1994, on another occasion two to three weeks later, and on about three other occasions in May 1994.[223] The witness testified that he could neither recall the exact date of each meeting, nor did he know what Ntagerura and Bagambiki discussed.[224]

151. Prosecution Witness LAI testified that, on 7 April 1994, he drove with Yussuf Munyakazi to Elias Bakundukize's petrol station after Munyakazi was informed that he had an urgent telephone message there.[225] The witness stated that Munyakazi spoke to someone on Bakundukize's phone.[226] According to the witness, after the call, Munyakazi organized a meeting with the *Interahamwe* where he told them that

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[219] Prosecutor's Closing Brief pp. 49-64.
[220] The Chamber notes that all but one of these events, Ntagerura's alleged visit to the Cimerwa factory in Bugarama in December 1993, were previously considered in connection with paragraphs 9.1 through 9.3 of the Ntagerura Indictment. *See supra* paras. 96-113, 119-132. The Chamber has considered the alleged visit to the Cimerwa factory in connection with its assessment of the credibility and reliability of Prosecution Witness LAK. *See infra* para. 484.
[221] *See supra* paras 129-132.
[222] T. 9 May 2001 pp. 13, 62-63, 66, 67; T. 10 May 2001 p. 22.
[223] T. 9 May 2001 pp. 62-63, 66, 90, 94, 104; T. 10 May 2001 pp. 12-13, 23, 27, 28-29.
[224] T. 9 May 2001 pp. 63, 66, 90, 93; T. 10 May 2001 pp. 12-13, 24.
[225] T. 17 September 2001 pp. 26, 89; T. 18 September 2001 pp. 95, 96.
[226] T. 17 September 2001 p. 26; T. 18 September 2001 p. 96.

Ntagerura had authorised the killing of all Tutsis, beginning with the most educated.[227]

152. Witness LAI stated that Ntagerura functioned like a boss for Munyakazi.[228] As an example of this assertion, the witness testified that Munyakazi waged political campaigns for Ntagerura while Ntagerura was a member of parliament.[229] Moreover, Witness LAI testified that he attended night meetings convened by Ntagerura in Karengera at the home of Nvuningoma at which Ntagerura gave orders to Munyakazi to kill Faustin Twagirimungu.[230] The witness recalled seeing photographs of President Habyarimana, Munyakazi, Ntagerura, and others in a November 1992 issue of the government publication *Imvaho* with the caption "we are *Interahamwe*" from which the witness concluded that Ntagerura was a member of the *Interahamwe*.[231]

153. Prosecution Witness MZ testified that he sought refuge behind a latrine in the tea plantation near the home and bar of Francois Habimana, also known as Rojigo, in Kimpundu cellule, Nyamuhunga sector, Karengera commune from 13 through 18 April 1994.[232] The witness stated that, on 14 April 1994, he heard Joseph Kabatsi, the commune's agricultural officer, speaking through a megaphone and telling people to leave their hiding places because security had been restored.[233] The witness stated that someone told him that several people left their hiding places and were killed on 17 or 18 April 1994.[234]

154. Witness MZ explained that, on 17 April 1994, while he was in his hiding place he heard a noise, and he thought that two vehicles had arrived at Habimana's bar.[235] The witness stated that he heard Kabatsi say that André Ntagerura, the Minister for Transport and Communications, had just arrived.[236] According to the witness, he then heard Ntagerura address the crowd and say:

> You know that we have tried to negotiate with the *Inkotanyi*, but in vain, and you know that they are the people who killed the head of state. From today, henceforth, you have to hunt down the enemy who are the Tutsi, wherever they are, and even a baby who was born the day before should be killed. I no longer want to hear of any Tutsis still living on this hill.[237]

The witness testified that Ntagerura next introduced Jean Ndemeye, a native of the cellule, who was the deputy director of the airport.[238]

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[227] T. 17 September 2001 p. 26; T. 18 September 2001 pp. 97, 100.
[228] T. 26 September 2001 p. 27.
[229] T. 26 September 2001 pp. 38-39.
[230] T. 26 September 2001 pp. 70-71, 73-74.
[231] T. 17 September 2001 p. 20; T. 18 September 2001 p. 33.
[232] T. 23 January 2001 pp. 27-29, 34, 38, 39, 45, 65, 70, 78-79, 92. The Chamber considers Rojigo to be the same person referred to by Prosecution Witness LAB as Rujigo.
[233] T. 23 January 2001 pp. 23, 30-31, 72-73.
[234] T. 23 January 2001 pp. 31-32, 34.
[235] T. 23 January 2001 p. 32.
[236] T. 23 January 2001 pp. 32, 85-86.
[237] T. 23 January 2001 p. 32.
[238] T. 23 January 2001 p. 33.

155. Witness MZ testified that he did not see what happened during this meeting because he was hiding and if he had stood up, he would have been killed.[239] The witness stated that the speakers did not use a megaphone and that they were half way to the bar, which he estimated was ten meters away from his hiding place.[240] According to the witness, after Ntagerura spoke, the crowd committed criminal acts and killings.[241] The witness stated that he did not see anyone being killed or mistreated but noted that he saw corpses when he left his hiding place on 18 April 1994.[242]

156. Prosecution Witness LAB testified that a man named Rujigo, who purportedly led a group of killers in Nyamuhunga sector of Karengera commune, prevented Eugene Karekezi from killing a number of Tutsi women and children by hiding them in drinking places in the area.[243] According to Witness LAB, after being repulsed by Rujigo, Karekezi went to Kigali and returned by helicopter with Ntagerura at the "end of April just before the beginning of May", which the witness agreed in cross-examination was in the last days of April.[244] The witness testified that Karekezi went into the Shagasha tea factory and told the workers that they had to take care of the "*Inyenzis*" in Nyamuhunga.[245] The witness stated that Karekezi then went outside where he joined Ntagerura and Callixte Nsabimana, the factory manager.[246] Karekezi subsequently returned to the factory to inform the workers that Nsabimana had told them to stop working and to kill the "*Inyenzis*".[247]

157. Witness LAB stated that all of the factory workers, armed with guns, machetes, and clubs, ran to Nyamuhunga and began killing the women and children hidden there.[248] The witness stated that later, when Ntagerura and Nsabimana arrived at Nyamuhunga, the workers and local inhabitants were convened and asked how their "work" was progressing.[249] According to the witness, those gathered answered that the men had been killed and that only the women protected by Rujigo remained.[250] The witness stated that Ntagerura then told the crowd to kill them immediately.[251] The witness testified that Ntagerura and Nsabimana were still present when the killings began.[252]

158. Witness LAB testified that, on a later date at the end of April 1994, he saw Ntagerura come again to the Shagasha tea factory in a white Suzuki.[253] According to the witness, Nsabimana had spared and protected four Tutsis at the factory, namely

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[239] T. 23 January 2001 pp. 33-34, 78-79.
[240] T. 23 January 2001 pp. 33, 83-85.
[241] T. 23 January 2001 p. 34.
[242] T. 23 January 2001 pp. 34, 38, 79.
[243] T. 24 January 2001 pp. 22-24. The Chamber considers Rujigo to be the same person referred to by Prosecution Witness MZ as Rojigo.
[244] T. 24 January 2001 p. 22; T. 25 January 2001 p. 55.
[245] T. 24 January 2001 pp. 23-24.
[246] T. 24 January 2001 p. 24.
[247] T. 24 January 2001 p. 24.
[248] T. 24 January 2001 pp. 24-25.
[249] T. 24 January 2001 p. 26.
[250] T. 24 January 2001 pp. 26-27.
[251] T. 24 January 2001 p. 27.
[252] T. 24 January 2001 p. 27.
[253] T. 24 January 2001 p. 30; T. 25 January 2001 pp. 53, 55.

Mukakalisa, Majyembere, Bizuru, as well as the factory accountant, and hidden them in a house near the Mabanda road block.[254] The witness stated that Nsabimana asked Ntagerura how to prevent an attack on the factory because of the four Tutsis under Nsabimana's protection.[255] According to the witness, Ntagerura told Nsabimana that "those who were attacking the country were people who had managed to escape in 1959 and it was, therefore, possible that those people who are the people who were being protected, and they could launch attacks later so they had to be killed."[256] The witness testified that Nsabimana then came down to the Mabanda road block with Ntagerura and told the workers manning it to kill the four Tutsis at the tea factory.[257] The witness acknowledged not being present when Ntagerura told Nsabimana that the four Tutsis should be killed, and explained that Nsabimana told the workers that "someone more important than him" had ordered the killing.[258] The witness testified that the four were then killed.[259]

159. Prosecution Witness Guichaoua testified that Ntagerura wielded a "monopoly" on political power in Cyangugu, explaining that Ntagerura represented the government authority in Cyangugu and spoke on behalf of the interim government.[260] Referring to his report on the political structures in Cyangugu, the witness stated that, as a minister, Ntagerura had responsibility for coordinating matters in his prefecture and that Ntagerura was the only figure with such responsibility in Cyangugu.[261] The witness noted that though Ntagerura went abroad to negotiate for the government, Ntagerura was in Rwanda during the two periods when "the work had to be done".[262] Guichaoua also testified that the interim President Sindikubwabo conducted a meeting in June 1994 at the "house of MRND" in Cyangugu.[263] The witness stated that at this meeting Sindikubwabo spoke out against people who had killed Hutus in the opposition.[264]

160. Ntagerura acknowledged knowing Eugene Karekezi, Joseph Kabatsi, and Jean Ndemeye but testified that he did not go to, or order killings at, Nyamuhunga sector or the Shagasha tea factory on 18 April or at any other time at the end of April or beginning of May 1994.[265] Ntagerura explained that, on 17 and 18 April 1994, he was in Gitarama attending a cabinet meeting and preparing for a mission to negotiate a cease-fire with the RPF.[266] He stated that he left Gitarama for Gisenyi on 22 April 1994 to wait for UNAMIR to arrange a flight for his mission.[267] Ntagerura attested to

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[254] T. 24 January 2001 pp. 29-30; T. 25 January 2001 pp. 52-53.
[255] T. 24 January 2001 p. 30.
[256] T. 24 January 2001 p. 30.
[257] T. 24 January 2001 p. 30; T. 25 January 2001 p. 54.
[258] T. 24 January 2001 p. 31; T. 25 January 2001 p. 54.
[259] T. 24 January 2001 pp. 31-32; T. 25 January 2001 pp. 54-55.
[260] T. 19 September 2001 pp. 66, 77.
[261] T. 19 September 2001 pp. 66-67. *See also* Prosecution Exhibit 66. The witness supported this assertion by pointing to a Ministry of the Interior document listing Ntagerura as the member of the *de facto* MRND party leadership in Cyangugu. T. 20 September 2001 pp. 77, 79-80, 92-93. *See also* The Republic of Rwanda: Approved Political Parties, Ntagerura Defence Exhibit 3.
[262] T. 19 September 2001 pp. 69-71, 83-84, 92.
[263] T. 21 September 2001 p. 84.
[264] T. 21 September 2001 pp. 84-85.
[265] T. 17 July 2002 p. 117; T. 18 July 2002 pp. 5-7.
[266] T. 25 July 2002 p. 6.
[267] T. 17 July 2002 p. 135; T. 24 July 2002 pp. 45-46.

leaving Gisenyi on 23 April 1994 for his mission first to Goma, Zaire, and then via Kenya to Dar es Salaam and Arusha, Tanzania, returning to Rwanda on 12 May 1994.[268]

161. Ntagerura testified that he attended a pacification meeting with the president on 17 May 1994 in Cyangugu.[269] He stated that Bagambiki was at the meeting, representing the Minister of Interior, as were the Minister of Industry and Trade and various bourgmestres including those of Kamembe and Karengera communes.[270] He stated that Bagambiki referred to killings but was gratified that the situation had normalised.[271] Ntagerura testified that during his visit Bagambiki stated that he had made efforts to stop the killings, but acknowledged that he and Bagambiki did not have time to talk about the details.[272]

162. Ntagerura Defence Witness Nkurunziza, the secretary general of the government as of 6 April 1994, testified that Ntagerura was present at cabinet meetings held on 16 and 17 April 1994 at Murambi Hill in Gitarama.[273] He explained that Ntagerura was abroad on mission during the other cabinet meetings held on 27 and 28 April 1994.[274] Nkurunziza testified that Ntagerura left Rwanda on 22 April 1994 for the Congo and that Daniel Mbangura visited Cyangugu in place of Ntagerura.[275] The witness stated that Ntagerura did not travel to Cyangugu before going to Zaire.[276] Nkurunziza testified that, on 15 May 1994, the president, prime minister, Ntagerura, and Murego, who was the secretary general of the MDR, all visited Cyangugu to speak to the people about the peace process.[277] The witness testified that the interim president called people killing others "criminals" and said that they deserved to be punished, although the government did not have the resources to deal with such punishment.[278]

163. Ntagerura Defence Witness Kanyarushoki, the former Rwandan Ambassador to Uganda, testified that between 2 and 5 May 1994, he participated in a ceasefire negotiation along with Ntagerura in Arusha, Tanzania.[279]

164. Ntagerura Defence Witness BZFH, who lived near the Shagasha tea factory,[280] testified that he had to pass through a roadblock manned by two gendarmes and former soldiers to buy provisions at the shops at Mabanda.[281] He stated that he did not see anyone at the roadblock with firearms but heard that the two gendarmes carried

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[268] T. 17 July 2002 pp. 123-128, 131.
[269] T. 1 October 2002 p. 50.
[270] T. 1 October 2002 pp. 51-52.
[271] T. 1 October 2002 p. 52.
[272] T. 1 October 2002 pp. 52-58.
[273] T. 28 May 2002 pp. 30-31, 48, 51.
[274] T. 28 May 2002 pp. 50-51; T. 29 May 2002 p. 31.
[275] T. 29 May 2002 pp. 31-32.
[276] T. 29 May 2002 p. 32.
[277] T. 29 May 2002 pp. 67-68.
[278] T. 29 May 2002 p. 111.
[279] T. 21 March 2002 pp. 24-25, 28, 57-59, 64, 96, 102, 110, 111.
[280] T. 14 March 2002 p. 21.
[281] T. 14 March 2002 p. 29.

weapons.[282] He testified that he never heard of anyone killed at the roadblock and did not hear a scream or a gunshot at the roadblock.[283]

165. Witness BZFH stated that he had heard, but did not see, that Tutsis hid in the tea plantations near the factory between March and July 1994.[284] Witness BZFH stated that he did not see or hear about a visit by Ntagerura to Gisuma commune between March and 17 July 1994.[285] The witness, who stated that he had visited the Shagasha tea factory several times and was familiar with both the factory's premises and its director, testified that in late April 1994 he did not see or hear that work had stopped at the factory and that factory employees accompanied Ntagerura to the Nyamuhunga sector.[286] The witness testified that if such a work stoppage had occurred, the factory employees who are the witness's neighbours would have told him about it.[287]

166. Witness BZFH stated that during late April 1994 he did not see or hear about the landing of a helicopter in the area or that Ntagerura, accompanied by Nsabimana, led an attack against Tutsis.[288] He stated that he was certain a helicopter had not landed during this period at the factory which was near his home because he undoubtedly would have heard the noise.[289]

167. Ntagerura Defence Witness BZJH testified that he did not see or hear about a meeting in Kimpundu held by Ntagerura, Kabatsi, and Demié and that he probably would have attended such a meeting if it had occurred given the importance of the alleged convenors.[290] The witness stated that he never heard of Ntagerura going to Nyamuhunga sector with Karekezi and the director of the Shagasha tea factory to order the killing of Tutsis.[291]

168. Bagambiki stated that he convened a prefectural conference on 17 May 1994 at the former MRND Palace on Mount Cyangugu when President Theodore Sindikubwabo visited Cyangugu to deliver a pacification message, emphasising peace and reconciliation and the prosecution of those responsible for the "unfortunate" "troubles".[292] Bagambiki noted that the prefectural conference included hundreds of people, including all conseillers, heads of cooperatives and production units, commune and prefectural party representatives, representatives of religious groups, and representatives from the national level.[293] Bagambiki stated that at the meeting he explained the security situation and the various initiatives that had been adopted in the prefecture to restore peace and tranquillity.[294] Bagambiki testified that he further

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[282] T. 14 March 2002 p. 28.
[283] T. 14 March 2002 p. 29.
[284] T. 13 March 2002 p. 120; T. 14 March 2002 pp. 29-30.
[285] T. 13 March 2002 pp. 116-117.
[286] T. 13 March 2002 pp. 114-118; T. 14 March 2002 pp. 15, 22.
[287] T. 13 March 2002 p. 117; T. 14 March 2002 p. 23.
[288] T. 13 March 2002 pp. 116-117; T. 14 March 2002 pp. 16, 21.
[289] T. 14 March 2002 pp. 22-23, 60.
[290] T. 13 March 2002 p. 73.
[291] T. 13 March 2002 pp. 74, 75.
[292] T. 27 March 2003 pp. 33, 34; T. 2 April 2003 p. 19.
[293] T. 27 March 2003 p. 34.
[294] T. 27 March 2003 p. 34.

noted at the meeting that as of 17 May 1994 the massacres had ceased and that the trouble was limited to a few scattered "problems".[295] Bagambiki noted that Ntagerura and Daniel Mbangura accompanied the president to the meeting.[296]

169. Ntagerura Defence Witness DBH recalled that he attended a "pacification meeting" chaired by President Sindikubwabo at the MRND Palace in Cyangugu.[297] He testified that Ntagerura, and all the Cyangugu sub-prefects, bourgmestres, and department heads were in attendance at the meeting, as was the public.[298]

170. Ntagerura Defence Witness ZFH, who knew Ntagerura and his wife well, stated that he did not personally see or meet with Ntagerura between 6 April and mid-July 1994, but that he heard that Ntagerura visited Cyangugu twice during the period, first around mid-May and then second at the end of June 1994.[299]

171. Ntagerura Defence Witness BAH testified that she saw Ntagerura in May 1994 in Cyangugu, noting that for two days and two nights Ntagerura stayed at the Home Saint François to visit members of his family, including his spouse, his three children, and his Tutsi mother-in-law, who were staying there.[300] She testified that she remembered the month, but not the date, of this visit because it coincided with Sindikubwabo's visit.[301]

172. Ntagerura Defence Witness Leonard Brochu, a defence investigator and a veteran of the police force in Montreal, Canada,[302] testified that, on 25 June 2002, he traveled to Kimpundu cellule in Nyamuhunga sector, Karengera commune, to measure the distance between Prosecution Witness MZ's approximate hiding place in the tea plantation and the place where Ntagerura allegedly spoke on 17 April 1994.[303] According to Brochu, the distance from an electric pylon, which represented the area where Witness MZ placed the speakers to the back of the house of Francois Habimana, behind whose latrine Witness MZ hid, equalled fifty-four metres.[304] Brochu estimated a margin of error of two to three meters but agreed that it could be eight to ten metres.[305]

b. Findings

173. The Chamber finds that Prosecution Witness LC did not reliably establish when Ntagerura visited Cyangugu because the witness repeatedly conceded his lack of certainty about specific dates. The Chamber emphasises that Witness LC was not

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[295] T. 27 March 2003 p. 34.
[296] T. 27 March 2003 p. 34; T. 2 April 2003 p. 19.
[297] T. 7 March 2002 pp. 37, 143.
[298] T. 7 March 2002 pp. 143-144.
[299] T. 11 March 2002 pp. 11, 12, 16, 18, 30.
[300] T. 26 March 2002 pp. 49-53.
[301] T. 26 March 2002 p. 55.
[302] T. 2 July 2002 pp. 107, 132-134.
[303] T. 2 July 2002 pp. 108, 109, 126-127; Ntagerura's Closing Brief, para. 500; Ntagerura Defence Exhibits 9-11; Prosecution Exhibit 45 (images at 11.00, 11.20, 11.30).
[304] T. 2 July 2002 p. 126.
[305] T. 2 July 2002 pp. 126-127, 138-140.

present during any of the alleged brief meetings between Bagambiki and Ntagerura and thus cannot confirm whether they in fact met and, if so, what they discussed.

174. The Chamber recalls that Witness LAI is an alleged accomplice of the accused and, as such, views his testimony with caution. The Chamber does not accept Witness LAI's testimony that Ntagerura issued an order to Munyakazi by telephone on 7 April 1994 to begin the killings in Cyangugu. The Chamber recalls that Witness LAI did not participate in the alleged telephone conversation on 7 April 1994 and only heard Munyakazi state at a meeting after the telephone call that Ntagerura had issued such an order. Therefore, Witness LAI was not in a position to confirm that such an order emanated from Ntagerura. The Chamber also does not accept Witness LAI's assertions of Ntagerura's public support for Munyakazi and the *Interahamwe* in Cyangugu, which the witness based on Munyakazi's alleged support for Ntagerura in parliamentary elections and Ntagerura's alleged appearance in the *Imvaho* publication with the caption "we are *Interahamwe*". Witness LAI did not adequately substantiate these assertions. Moreover, the Chamber is not convinced, based on the limited detail provided by Witness LAI, that these claims, even if true, would sufficiently establish that Ntagerura would have supported Munyakazi or the *Interahamwe* during the events in Cyangugu in 1994. The Chamber also does not accept as reliable Witness LAI's testimony that he attended night meetings convened by Ntagerura in Karengera at Nvuningoma's home. The Chamber notes that this assertion lacks sufficient detail to be reliable and appears to be outside the temporal scope of these paragraphs. Moreover, the evidence arose spontaneously during cross-examination in connection with evidence concerning the alleged ambush against Faustin Twagiramungu, which the Prosecution conceded was not relevant to its case.[306] The Chamber is further mindful of its previous finding that Witness LAI lacks credibility.[307]

175. The Chamber does not accept the testimony of Prosecution Witness MZ that Ntagerura was in Nyamuhunga sector around 17 April 1994 because the witness's identification of Ntagerura is not reliable. Witness MZ did not see the meeting and only heard what transpired there from his hiding place in the tea plantation. Though Witness MZ claimed that he was ten meters from the speakers, the Chamber finds it likely that he was approximately forty to fifty meters away based on the measurements of Defence Witness Brochu and the witness's description of the location of his hiding place and the alleged position of Ntagerura. Given the witness's vantage point and the circumstances of the identification, the Chamber doubts that the witness could have accurately followed what transpired at the meeting or that he could have positively identified Ntagerura as the speaker. Moreover, the Chamber finds that the likelihood that Ntagerura remained in Gitarama on 17 April 1994 to attend a government cabinet meeting and to prepare for an official mission abroad raises further doubt about his presence in Nyamuhunga sector during that period.

176. The Chamber recalls that Prosecution Witness LAB is an alleged accomplice of the accused and, as such, views his testimony with caution. The Chamber does not accept Witness LAB's testimony about Ntagerura's presence at the Shagasha tea

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[306] *See Prosecutor v. Ntagerura*, Case No. ICTR-96-46-T, Decision on the Defence Motion for Leave to Present Evidence in the Form of a Written Statement under Rule 92 *Bis* (TC), 13 March 2003, paras. 7, 15.

[307] *See supra* paras. 131-132.

factory and in Nyamuhunga sector in the last days of April 1994. The Chamber finds improbable Witness LAB's account of Karekezi arriving in a helicopter at Shagasha tea factory with Ntagerura. The Chamber also notes that, although he was not present, the witness gave a detailed description of an alleged exchange between Ntagerura and Nsabimana, during which Ntagerura allegedly ordered the killing of four Tutsis hidden at the factory. The Chamber is not satisfied that the witness adequately explained how he came to know the contents of the alleged conversation in such detail, which leaves the impression that the witness's testimony is exaggerated, fabricated, or unreliable hearsay. The Chamber also finds that the evidence that Ntagerura was not in Rwanda from 23 April until 12 May 1994 raises considerable doubt about Witness LAB's account. The Chamber notes that Ntagerura's claim that he was out of the country during this period is adequately corroborated by the stamps in his passport.[308]

177. The Chamber finds that the testimony of Prosecution Witness Guichaoua does not reliably establish the nature or extent of Ntagerura's role in Cyangugu in 1994. The Chamber notes that Ntagerura and Bagambiki, as well as other Defence witnesses, testified about attending a meeting with President Sindikubwabo but provided a substantially different account of what had transpired there from Guichaoua.[309] The Chamber emphasises that Guichaoua appeared as an expert in sociology, not as a factual witness, and that he received information about the meeting from unidentified sources. His testimony thus cannot reliably establish the content of the meeting.

178. In light of the evidence discussed in section II.B.5, the Chamber finds that the Prosecutor proved beyond a reasonable doubt that *Interahamwe* and other groups attacked and killed massive numbers of mostly Tutsi civilians in Cyangugu between April and July 1994, as alleged in paragraphs 17 and 18 of the Ntagerura Indictment. The Chamber notes that there is evidence that Ntagerura travelled on a few occasions to Cyangugu between April and July 1994 and that he met with Bagambiki. However, the Chamber finds that there is no reliable or credible evidence on the record to establish beyond a reasonable doubt that Ntagerura expressed public support for Munyakazi or the *Interahamwe* in Cyangugu or that during the killings he was often seen in the company of Munyakazi or Bagambiki, verifying the execution of orders to kill Tutsis, as alleged in paragraphs 14.1 and 14.3 of the Ntagerura Indictment. The Chamber also finds that there is no reliable or credible evidence that Ntagerura "continued to remain active in Cyangugu *préfecture* and acted as a supervisor" during 1994 or that he attended a meeting where President Sindikubwabo congratulated the community on killing the Tutsis, as alleged in paragraph 19 of the Ntagerura Indictment.

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[308] *See* Ntagerura Defence Exhibits 29, 30.

[309] The Chamber notes that Prosecution Witness LY testified about a meeting with Sindikubwabo in May 1994 but did not mention Ntagerura's presence. T. 26 February 2001 pp. 6-10.

B. Bagambiki/Imanishimwe Indictment

1. General Allegations

179. Paragraph 2.1 of the Bagambiki/Imanishimwe Indictment reads:

> **Emmanuel Bagambiki** was born in Cyangugu *préfecture*. Throughout the events referred to in this indictment, until he left Rwanda, the accused held the office of *Préfet* of Cyangugu *préfecture*. Before that, he held the office of *Préfet* of Kigali-Rural *préfecture*. He was a member of the MRND.

180. The Chamber notes that Bagambiki confirmed the facts alleged in paragraph 2.1.[310]

181. Paragraph 2.2 of the Bagambiki/Imanishimwe Indictment reads:

> **Samuel IMANISHIMWE** was born in Nyamitaba, Masisi region, in the Democratic Republic of Congo. His parents were from Nkuli *commune*, Ruhengeri *préfecture*. On 6 April 1994, he held the position of Commander of the Cyangugu barracks and had the rank of Lieutenant. In 1993, he held the position of officer of the staff of the G-3, attached to the General Staff of the Rwandan Army in Kigali.

182. The Chamber accepts Imanishimwe's testimony that he was born in Gisenyi prefecture, Rwanda, on 25 October 1961.[311] The Chamber also notes and accepts Imanishimwe's testimony that he was a Lieutenant in the Rwandan Armed Forces and acting commander of the Cyangugu military camp from October 1993.[312]

183. Paragraph 3.2 of the Bagambiki/Imanishimwe Indictment reads:

> During the events referred to in this indictment, the Tutsis, Hutus and Twas were identified as ethnic or racial groups.

184. The Chamber notes that the allegations in paragraph 3.2 are not disputed by the Bagambiki or Imanishimwe Defence.[313]

185. Paragraph 3.3 of the Bagambiki/Imanishimwe Indictment reads:

> During the events referred to in this indictment, there were in Rwanda widespread or systematic attacks against a civilian population based on political, ethnic or racial grounds.

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[310] T. 26 March 2003 pp. 6-62; T. 27 March 2003 p. 3.
[311] T. 20 January 2003 pp. 5-6.
[312] T. 20 January 2003 pp. 11, 42; T. 21 January 2003 p. 49.
[313] Bagambiki's Closing Brief p. 45; Imanishimwe's Closing Brief p. 30.

186. The Bagambiki Defence does not dispute that there were widespread attacks against the civilian population in Cyangugu during the events referred to in the indictment.[314] The Chamber further notes Imanishimwe's acknowledgement that there was "inter-ethnic killing" throughout Rwanda in April and May 1994.[315] The Chamber is also mindful of Prosecution Expert Witness Guichaoa's testimony that subsequent to 6 April 1994 there were widespread attacks against the Tutsi population across Rwanda.[316] The Chamber will address in its legal findings whether the attacks were against a civilian population and were systematic and based on political, ethnic, or racial grounds.

187. Paragraph 3.4 of the Bagambiki/Imanishimwe Indictment reads:

> During the time of the events referred to in this indictment, there was an armed [non] international conflict in the territory of Rwanda. The victims mentioned in this indictment were protected persons, according to the meaning of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto, and did not actively participate in the conflict.

188. The Chamber previously took judicial notice that "[b]etween 1st January 1994 and 17 July 1994, in Rwanda, there was an armed conflict not of an international character."[317] The Chamber will consider whether the victims were protected persons in its findings, where necessary. The Chamber also emphasises that there is ample precedent in this Tribunal to support the view that the conflict in Rwanda met the criteria of a non-international armed conflict.[318]

189. Paragraph 3.5 of the Bagambiki/Imanishimwe Indictment reads:

> During the events referred to in this indictment, the MRND (*Mouvement Républicain National pour le Developpment et la Démocratie*) was one of the political parties. The members of its youth wing were called *"Interahamwe"*. Most of them subsequently became part of a para-militia group.

190. The Chamber notes that Witness Guichaoua testified that the MRND was one of the political parties in Rwanda during the events referred to in the indictment.[319] The Bagambiki Defence does not contest this fact.[320] The Chamber finds that the MRND was one of the political parties, as alleged in the indictment. The Chamber recalls its finding that the *Interahamwe* was a youth movement associated with the MRND party.[321] The Chamber reserves its finding on whether most members of the

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[314] Bagambiki's Closing Brief pp. 46-47.
[315] T. 23 January 2003 pp. 4-5.
[316] T. 19 September 2001 pp. 53, 56-59.
[317] *Prosecutor v. Ntagerura, Bagambiki, and Imanishimwe*, ICTR 99-46-T, Oral Decision on the Proposed Expert Repiorts and Evidence of Antoine Nyetera, Uwe Friesecke, and Wayne Madsen (TC), T. 4 July 2002 p. 9.
[318] *See, e.g., Semanza* Judgement (TC), paras. 280-282; *Musema*, Judgement (TC), para. 971; *Rutaganda* Judgement (TC), para. 436, 514; *Kayishema and Ruzindana* Judgement (TC), para. 172.
[319] T. 19 September 2001 pp. 42-43.
[320] Bagambiki's Closing Brief p. 48.
[321] *See supra* para. 84.

Interahamwe became part of a para-military group and will rule on this point only if necessary for other findings.

191. Paragraph 3.6 of the Bagambiki/Imanishimwe Indictment reads:

> At prefectural level, the *Préfet* is the most senior government representative and possessor of the State's authority at the local level. The *Préfet* carries out his duties under the hierarchical authority of the Minister holding the portfolio of the Interior. The *Préfet's* authority covers the entire *préfecture*.
>
> In his capacity as *Préfet* of Cyangugu, **Emmanuel BAGAMBIKI** had to carry out the duties attached to his office, notably:
>
> *-Run the* préfecture *in conformity with the laws and regulations in force and ensure their implementation and observance.*
>
> *-Ensure peace, public order and the safety of people and property*
>
> *-Assist and supervise the communal authorities*
>
> *-Inform the central body of the situation in the* préfecture *and of any event of interest.*

192. The Chamber notes that the Bagambiki Defence does not dispute that the prefect is the delegate and possessor of the State's authority at the prefectural level.[322] The Chamber finds that the role and authority of a prefect was prescribed in Articles 3, 8, and 15 of the Rwandan Law on the Organization and Functioning of Prefectures (*Décret-Loi organisation et fonctionnement de la prefecture*) of 11 March 1975.[323]

193. Paragraph 3.7 of the Bagambiki/Imanishimwe Indictment reads:

> In the *préfecture,* the *Préfet* is in charge of ensuring peace, public order and the safety of people and property. The *Préfet* may, in the discharge of his duties, request the intervention of the army and of the *Gendarmerie Nationale.*
>
> The *Gendarmerie Nationale* is an armed body set up to maintain public order and the observance of laws. It falls under the Ministry of National Defense but can carry out its duties of ensuring public order at the request of the national authority having jurisdiction, namely the *Préfet.* In cases of emergency, this request can be made verbally, notably by telephone. The request must be carried out immediately.

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[322] Bagambiki's Closing Brief pp. 48-49.
[323] Bagambiki Defence Exhibit 3(i).

> In addition, the *Gendarmerie Nationale* is obliged to transmit to the *Préfet* all information relating to public order and has the duty to assist anyone in danger who requests its help.

194. Bagambiki testified that under the law, the prefect had the authority to requisition gendarmerie forces to maintain law and order or to establish security.[324] Bagambiki Defence Witness Ndindiliyimana confirmed that the prefect had the legal authority to requisition the gendarmerie and that Bagambiki had used this power.[325] Ndindiliyimana also testified that where there were no gendarmes or where their number was insufficient, the gendarmerie commander could have requested reinforcements from the army and that in this way the prefect could have accessed the assistance of the army.[326] The Chamber finds that the following Rwandan legal instruments specify the authority of the prefect *vis-à-vis* the gendarmerie and the army: Law on the Organization and Functioning of Prefectures (*Décret-Loi Organisation et fonctionnement de la préfecture*) of 11 March 1975; Ministerial Instruction 01/02 on Establishment and Maintenance of Order (*Instruction Ministérielle no. 01/02 Maintien et rétablissement de l'órdre*) of 15 September 1978; and Law on the Creation of the Gendarmerie (*Décret-Loi Création de la Gendarmerie*) of 23 January 1974.[327] The Chamber will consider each of these instruments in its legal findings on criminal responsibility.

195. Paragraph 3.8 of the Bagambiki/Imanishimwe Indictment reads:

> As Préfet, **Emmanuel BAGAMBIKI** exercised *de jure* authority over his subordinates, notably:
>
> - *All the* sous-préfets;
>
> - *All the* bourgmestres *of the* communes *and all public administration staff in the* communes;
>
> - *All heads of public administration departments, who are ex-officio members of the* prefectural *committee chaired by the* Préfet;
>
> - *All the administrative staff of the* préfecture;
>
> - *All staff under contract with the* prefectural *administration;*
>
> - *All government employees in the* préfecture.

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[324] T. 1 April 2003 p. 51.
[325] T. 18 February 2003 pp. 17-18.
[326] T. 18 February 2003 p. 17.
[327] Bagambiki Defence Exhibits 3(i), 3(ii), and 3(iii).

196. The Chamber will make a finding on Bagambiki's *de jure* authority in its legal findings.

197. Paragraph 3.9 of the Bagambiki/Imanishimwe Indictment reads:

> Furthermore, **Emmanuel BAGAMBIKI**, by virtue of his office, exercised *de facto* authority over his subordinates and over others, notably army units.

198. The Chamber will make a finding on Bagambiki's *de facto* authority in its legal findings.

199. Paragraph 3.10 of the Bagambiki/Imanishiwme Indictment reads:

> During the events referred to in this indictment, Lieutenant **Samuel IMANISHIMWE**, in his capacity as Commander of the Cyangugu Barracks, exercised *de facto* and *de jure* authority over army units in Cyangugu *préfecture*.

200. The Chamber will make findings on Imanishimwe's *de facto* and *de jure* authority in its legal findings.

2. Paragraph 3.16 of the Bagambiki/Imanishiwme Indictment

201. Paragraph 3.16 of the Bagambiki/Imanishimwe Indictment reads:

> 3.16 Before and during the events referred to in this indictment, Minister André NTAGERURA, *Préfet* **Emmanuel BAGAMBIKI, Yussuf MUNYAKAZI**, Christophe NYANDWI, all of whom were influential figures in the MRND in Cyangugu, participated, directly or indirectly, in the training and instructing of, and distributing of weapons to, the MRND militiamen, the *Interahamwe*, who later committed massacres of the civilian Tutsi population.

202. The Chamber is mindful of the Prosecution's assertion that several alleged events support paragraph 3.16 of the Bagambiki/Imanishimwe Indictment, including evidence of distribution of weapons in connection with attacks against refugees[328] at the Gashirabwoba football field, Shangi parish, Mibilizi parish, and Nyamasheke parish, as well as evidence of training and weapons distribution activities involving Ntagerura and Imanishimwe. The Chamber will consider the evidence of weapons distributions that are closely related to attacks in the section dealing with those events.[329] The Chamber will consider the evidence related to the alleged activities of Imanishimwe only to the extent that it impacts on the credibility or reliability of Prosecution witnesses because Imanishimwe is not mentioned in paragraph 3.16 of the indictment. The Chamber will not consider evidence related to allegations made against Ntagerura in this paragraph because he is not charged in the Bagambiki/Imanishimwe Indictment.

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[328] The Chamber uses the term "refugee" to describe Tutsis or other civilians who fled the attacks in their local communities, given the use of the term in this sense throughout the proceedings in this case.
[329] *See infra* Section II.B.5.

a. Allegations

203. Prosecution Witness LAB, an employee at the Shagasha tea factory, testified that in January 1994, Bagambiki and Imanishimwe held a meeting at the factory with the manager Nsabimana and the workers.[330] According to the witness, at this meeting Bagambiki said, "[T]he Tutsis have attacked the country. So some among you have to learn to handle the firearms so that at the right time we can defend ourselves."[331] The witness testified that Imanishimwe instructed Nsabimana to recruit thirty workers for training in the use of firearms and that Bagambiki selected four people and two gendarmes to be the instructors.[332] Witness LAB testified that he was among those selected for the training, which initially took place on the factory's playing field and later in Nyungwe forest.[333] The witness stated that the training lasted from January to March 1994 and that Imanishimwe, Bagambiki, and Nsabimana came to the training sessions about twice a week.[334] Witness LAB testified that in March 1994 Imanishimwe brought guns for the trainees, which were kept at the factory.[335] At the conclusion of the training, in March 1994, the trainees were taken to Kamembe for selection into the army, but, according to the witness, up until the President's death in April, none of the trainees was selected for army service.[336]

204. Witness LAB testified that, on 7 April 1994, he went to the roadblock near the tea factory, where the brigadier of the commune told the population to hunt down the Tutsi because they were enemies of the nation, since they had just killed the President.[337] Following this announcement, the witness testified, he and others collected their guns from the Shagasha tea factory and returned to the roadblock.[338] The witness explained that Bagambiki then arrived at the roadblock, at around 9 a.m., and distributed machetes and clubs which he had brought.[339] The witness testified that he and others with weapons then killed one Tutsi and destroyed the houses of those who had fled.[340]

205. Prosecution Witness LAH testified that in March 1994 Bagambiki brought and distributed 200 machetes at the Shagasha tea factory.[341] The witness testified that in the same month, after the distribution of the machetes, Bagambiki also brought and distributed "modern" clubs at the tea factory.[342] The witness stated that he was among the recipients of the weapons.[343] Witness LAH testified that some weapons remained

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[330] T. 24 January 2001 pp. 12-13.
[331] T. 24 January 2001 p. 16.
[332] T. 24 January 2001 pp. 13, 108.
[333] T. 24 January 2001 pp. 13-14.
[334] T. 24 January 2001 pp. 13-14, 15, 63, 104-107.
[335] T. 24 January 2001 pp. 4-5; T. 29 January 2001 pp. 3-5.
[336] T. 24 January 2001 p. 63.
[337] T. 24 January 2001 pp. 2, 3.
[338] T. 24 January 2001 pp. 4-5; T. 29 January 2001 p. 3.
[339] T. 24 January 2001 pp. 4-5; T. 25 January 2001 p. 7.
[340] T. 24 January 2001 pp. 5-6.
[341] T. 10 October 2000 p. 54.
[342] T. 10 October 2000 p. 52; T. 11 October 2000 pp. 76, 78.
[343] T. 10 October 2000 p. 55.

at the factory for use by the employees, and that, on the instructions of the factory director, he delivered the other weapons to a certain house.[344]

206. Prosecution Witness LAC, an employee at the Shagasha tea factory, testified that Nsabimana, the factory director, recruited forty-three people from Bumazi sector to work at the factory "just before the war and the killings".[345] According to the witness, these workers were *Interahamwe* because he saw them during the attacks and they had received training "to kill" at a football field near the factory.[346] The witness testified, however, that he never saw the training because he was not authorised to go near the place where the training was conducted.[347]

207. Bagambiki stated that no weapons were distributed in Cyangugu because it was not close to the active front and that UNAMIR monitored the situation to prevent distributions of weapons.[348] Bagambiki testified that he did not go to the Shagasha tea factory in January 1994 to ask how many people were familiar with firing weapons and further denied going twice a week, between January and March 1994, to see young people training at the factory in handling weapons.[349] Bagambiki also stated that he was not aware that *Interahamwe* were being trained in Gikongoro forest.[350]

208. Bagambiki stated that he did not distribute weapons at the Shagasha tea factory on 7 April 1994 and that on this day he remained in his office.[351] He testified that, on 7 April 1994, he went to his office at 7:00 a.m. to make telephone calls in order to convene a security council meeting which lasted from 10:30 a.m. until around 1:00 p.m.[352]

209. Imanishimwe stated that he did not hear of or participate in the training of young people at the Shagasha tea factory or in Nyungwe forest beginning in January 1994.[353] Imanishimwe further stated that he never trained *Interahamwe* in Cyangugu and noted that he was not aware of the training or the presence of *Interahamwe* in Cyangugu.[354] Imanishimwe stated that he did not deliver weapons to the Shagasha tea factory or anywhere else in March 1994, emphasising that the Karambo camp did not have a surplus of weapons.[355] Imanishimwe stated that the camp had no support weapons such as sub-machine guns, mortars, or grenades, and that each soldier had only one magazine, which in a combat situation would not last longer than ten minutes.[356]

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[344] T. 11 October 2000 pp. 81-82.
[345] T. 9 October 2000 pp. 3, 46; T. 10 October 2000 p. 41.
[346] T. 9 October 2000 pp. 46-47.
[347] T. 9 October 2000 p. 82.
[348] T. 31 March 2003 pp. 23-24.
[349] T. 31 March 2003 pp. 24-25, 26.
[350] T. 31 March 2003 p. 21.
[351] T. 27 March 2003 pp. 35, 37, 38; T. 31 March 2003 p. 23.
[352] T. 27 March 2003 pp. 35, 37, 38; T. 31 March 2003 p. 23.
[353] T. 22 January 2003 p. 24.
[354] T. 22 January 2003 p. 26.
[355] T. 22 January 2003 pp. 24, 25.
[356] T. 21 January 2003 pp. 44, 45, 48.

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210. Bagambiki Defence Witness BLB testified that he was not aware of, and did not observe, the distribution of weapons at the Shagasha tea factory, and that weapons were never stored in his house in March 1994.[357]

211. Bagambiki's wife, Defence Witness Bernadette Mukandekezi, testified that, on 7 April 1994, her husband went to the prefecture for a meeting with his colleagues.[358]

212. Bagambiki Defence Witness GNV, who lived near and frequently visited the Shagasha tea factory, testified that he had "close contact" with a number of workers there and did not hear that Bagambiki came to the factory, that the workers of the factory received any training in weapons handling, or that weapons were stored there.[359]

213. Imanishimwe Defence Witness PBB indicated that he was a member of the prefectural security council.[360] Witness PBB stated that, on 7 April 1994, he attended a meeting of the council with the commander of the military camp and Bagambiki.[361] The witness stated that the meetings usually ran from 9:00 or 9:30 a.m. until 2:00 to 3:00 p.m.[362]

214. Imanishimwe Defence Witness PLA testified that soldiers from Cyangugu trained in Nyungwe forest.[363] The witness stated that he received the last report of military training in the forest between October and November 1993.[364] Witness PLA testified that he never received a report that civilians were training in the forest.[365]

215. Imanishimwe Defence Witness PNE, a soldier at Karambo camp, testified that it was impossible for Imanishimwe to have distributed munitions to civilians because soldiers at the Karambo camp did not have enough munitions and there was none in the store.[366]

b. Findings

216. The Chamber recalls that Prosecution Witnesses LAB and LAH are alleged accomplices of the accused and, as such, views their testimonies with caution. The Chamber recalls that it has found the testimonies of Witnesses LAB and LAH not credible and unreliable with respect to other events, and thus cannot accept their testimonies without further corroboration.[367] Although Prosecution Witness LAC testified about the training of forty-three workers at the factory, the Chamber cannot rely on this evidence because the witness did not see the training. Moreover, the

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[357] T. 19 February 2003 pp. 24-25.
[358] T. 10 March 2003 p. 35.
[359] T. 24 February 2003 pp. 30, 37, 38.
[360] T. 4 November 2002 p. 10.
[361] T. 4 November 2002 pp. 16-17.
[362] T. 4 November 2002 p. 18.
[363] T. 3 February 2003 pp. 6-7.
[364] T. 3 February 2003 p. 8.
[365] T. 3 February 2003 p. 8.
[366] T. 10 October 2002 pp. 5-6.
[367] *See supra* paras.118, 141, 176.

Chamber notes that Witness LAC implicated the factory director Nsabimana in this training without mentioning Bagambiki or Imanishimwe or without noting distribution or storage of weapons at the factory. The Chamber has also considered evidence proffered by Prosecution Witnesses NG-1, MG, and LAM concerning other training activities and finds that none of this evidence implicates Bagambiki in those activities.[368] The Chamber also takes into account that the evidence of Defence Witness BLB, at whose house some of the weapons were allegedly stored, Defence Witness GNV, who was familiar with the factory and its workers, and Defence Witness PLA, who was familiar with training activities in Nyungwe forest, raises further doubt about the alleged training and distribution activities. Moreover, even if the Chamber were to accept the evidence of Witnesses LAB, LAH, and LAC, the Chamber observes that the Prosecution did not establish that the alleged training and arming were for the purpose of killing Tutsi civilians.

217. The Chamber finds that the evidence of Bagambiki's involvement in activities related to the prefectural security council meeting on 7 April 1994 raises doubt about his presence at the road block near the Shagasha tea factory on that date.

218. The Chamber recalls its finding that the testimonies of Prosecution Witnesses LAI, LAJ, and LAP are not credible with respect to the alleged weapons distribution in Bugarama on 28 January 1994.[369] In view of this finding, the Chamber notes that there is no credible or reliable evidence on record that Bagambiki took part in that alleged event.

219. Finally, the Chamber notes its findings, made in section II.B.5, that the testimonies of Prosecution Witnesses LAB, LAK, LAJ, and LAM concerning alleged weapons distributions related to the attacks at the Gashirabwoba football field, Shangi parish, Mibilizi parish, and Nyamasheke parish are not credible and thus do not establish Bagambiki's participation in such distributions. Accordingly, the Chamber holds that Bagambiki's alleged role in training and arming the *Interahamwe* was not proven beyond a reasonable doubt.

3. *Paragraphs 3.19, 3.20, 3.21, 3.22, and 3.23 of the Bagambiki/Imanishimwe Indictment*

220. Paragraphs 3.19, 3.20, 3.21, 3.22, and 3.23 of the Bagambiki/Imanishimwe Indictment read:

> 3.19 In early April 1994, many Tutsis sought refuge at Cyangugu Cathedral to protect themselves from the attacks against them. On or about 11 April 1994, the attacks on the refugees at the cathedral began. The attacks were carried out by groups of *Interahamwe* militiamen, including a group led by **Yussuf MUNYAKAZI**.

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[368] Testimony of Witness NG-1, T. 23 November 2000 pp. 103, 118. Testimony of Witness MG, T. 12 February 2001 pp. 10-11, 70, 77-78. Testimony of Witness LAM, T. 21 November 2000 pp. 47, 55-57.
[369] *See supra* paras. 129-132.

3.20 Following the first attack on or about 11 April 1994, some refugees were arrested and taken to the Cyangugu Barracks before Lieutenant **Samuel IMANISHIMWE**, who gave the order to execute them.

3.21 On or about 15 April 1994, *Préfet* **Emmanuel BAGAMBIKI** and Lieutenant **Samuel IMANISHIMWE** ordered that the refugees at the Cathedral be moved to Cyangugu Stadium. The refugees who refused to obey were threatened with death.

3.22 The refugees from the cathedral were escorted to Kamarampaka Stadium in Cyangugu by the civilian and military authorities, including Préfet **Emmanuel BAGAMBIKI** and Lieutenant **Samuel IMANISHIMWE**. At the stadium, many other refugees were already there, and later, others came in to join them. They remained there for several weeks.

During this period, the refugees could not leave the stadium, which was guarded by gendarmes. Those who attempted to leave the stadium were either forced back inside by the gendarmes, or executed by the Interahamwe and the gendarmes who were outside the stadium. Also, during this period, Interahamwe would enter the stadium to abduct refugees and execute them.

3.23 On several occasions between April and June 1994, the authorities in Cyangugu, notably Préfet **Emmanuel BAGAMBIKI**, Lieutenant **Samuel IMANISHIMWE**, and Minister André NTAGERURA, selected names from pre-established lists of the refugees who were inside the stadium, mostly Tutsis and some Hutus in the opposition. These refugees were then arrested and later executed in a place called Gatandara.

a. Allegations

221. Prosecution Witness LY testified that, beginning on 8 April 1994, people seeking refuge from the violence following the death of the president started arriving at Cyangugu Cathedral, eventually numbering approximately 5,000.[370] The witness stated that the husband of Bagambiki's niece, George Nkusi, also sought refuge at the cathedral and that Bagambiki spoke with Nkusi on the telephone and brought him medicine there.[371] Witness LY also stated that Nkusi told him that Bagambiki bore a grudge against him because Nkusi sentenced Munyakazi to one day in prison, whereas when Nkusi went to investigate the matter, Bagambiki told Nkusi, "Be very careful; you should be very careful with that trial."[372]

222. In Witness LY's opinion, the cathedral was not a secure location for the refugees; consequently, church authorities requested assistance and received the protection of two to four gendarmes.[373] The witness testified that at 10:30 or 11:00

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[370] T. 22 February 2001 pp. 70-72; T. 28 February 2001 pp. 8-9.
[371] T. 22 February 2001 p. 108.
[372] T. 22 February 2001 pp. 118-119.
[373] T. 22 February 2001 pp. 70-73; T. 26 February 2001 pp. 114, 115; T. 28 February 2001 pp. 8-9.

a.m., on 11 April 1994, a pickup truck carrying *Interahamwe* stopped at the cathedral and that the *Interahamwe* shot in the air, creating disorder and panic, and took away Munyakazi's son-in-law from among the refugees.[374] The witness was told that it was Munyakazi who drove the *Interahamwe* during this incident.[375]

223. Witness LY recalled that shortly after this incident Brother Rugema called him and asked for his assistance in securing the release of refugees who were taken by soldiers to the Karambo military camp.[376] According to the witness, he went to the military camp, but soldiers denied him entry, even though he had just made an appointment to see Imanishimwe at the bishop's request.[377]

224. Witness LY testified that he then went to the prefecture office and told those attending a meeting there about the attack at the cathedral.[378] He stated that upon being informed, Bagambiki and others visited the cathedral for approximately twenty minutes.[379]

225. Witness LY also stated that he discovered soldiers forcing several refugees to lie on the ground near the prefecture office.[380] These refugees returned to the cathedral, after the witness asked Bagambiki to intervene.[381]

226. Witness LY testified that the cathedral was attacked two more times on 11 April 1994, but that the three gendarmes stationed there were able to dissuade the attackers, and no one was killed.[382] The witness testified that, on 13 or 14 April 1994, he saw Bagambiki stop a crowd of attackers armed with machetes and spears who were coming to attack the cathedral.[383]

227. Witness LY testified that, in light of the attacks at the cathedral and elsewhere in the region, the church authorities felt that they could not ensure the refugees' safety at the cathedral without the assistance of the civilian or military authorities.[384] He recalled that the bishop and the church authorities organized a meeting on 14 April 1994 at the Cyangugu Bishopric with Bagambiki, Imanishimwe, and the Commander of the gendarmerie Munyarugerero to ask them to provide security for the refugees.[385] Witness LY recalled that Imanishimwe, who arrived late, said the refugees would die unless the church authorities asked the RPF to stop the fighting and that Bagambiki then concluded the meeting, stating that they would study the matter.[386]

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[374] T. 22 February 2001 pp. 72-83, 79-80; T. 28 February 2001 p. 10.
[375] T. 22 February 2001 p. 80.
[376] T. 22 February 2001 p. 83; T. 26 February 2001 p. 94.
[377] T. 22 February 2001 p. 84; T. 26 February 2001 pp. 94, 103-107.
[378] T. 22 February 2001 pp. 84-88.
[379] T. 22 February 2001 pp. 84-88.
[380] T. 22 February 2001 p. 85; T. 26 February 2001 p. 58.
[381] T. 22 February 2001 p. 85; T. 26 February 2001 p. 58.
[382] T. 22 February 2001 pp. 88-89; T. 26 February 2001 pp. 115-116, 119; T. 28 February 2001 pp. 10-12.
[383] T. 26 February 2001 pp. 35-36.
[384] T. 22 February 2001 pp. 90, 91; T. 26 February 2001 pp. 133, 143; T. 28 February 2001 pp. 13, 15, 31, 35.
[385] T. 22 February 2001 pp. 90, 91; T. 26 February 2001 pp. 133-135, 143; T. 28 February 2001 pp. 13, 15, 31, 35.
[386] T. 22 February 2001 pp. 91-92; T. 26 February 2001 pp. 142, 143.

228. Witness LY testified that, on the following day, 15 April 1994, Bagambiki telephoned the bishop's house at around 2:00 p.m. and later visited the bishopric between 3:00 and 3:30 p.m. with Imanishimwe and Munyarugerero to inform the bishop of the decision to transfer the refugees from the cathedral to Kamarampaka Stadium.[387] The witness testified that the church officials then gathered the refugees to hear Bagambiki's proposal about the move.[388] The witness stated that the refugees were reluctant to agree to the transfer until the bishop and the other church officials encouraged them to move for their safety, at which point the refugees accepted to go to the stadium.[389]

229. Prosecution Witness LY testified that, on 15 April 1994, Bishop Thadée led the procession of approximately 5,000 refugees to Kamarampaka Stadium, while the witness drove alongside the procession with Bagambiki, "reassuring" the refugees of their security.[390] The witness stated that he and Bagambiki told a group of prisoners to stay away because they were frightening the refugees.[391] The witness also noted that the gendarmes stationed at the cathedral accompanied the procession of refugees to the stadium.[392] Witness LY thought, though he was not entirely certain, that Imanishimwe accompanied the procession.[393] The witness stated nonetheless that he met Imanishimwe inside the stadium, after most of the refugees had arrived and that Imanishimwe asked him the whereabouts of Jean-Marie Vianney Habimana.[394]

230. Witness LY testified that sick refugees, priests, parish workers, and at least four others, who distrusted the authorities, remained at the cathedral after the transfer.[395] Witness LY recalled that at around 3:00 or 4:00 p.m. on 16 April 1994, Bagambiki, Imanishimwe, Munyarugerero, Prosecutor Ndolimana, and some soldiers came to the cathedral to take the remaining refugees.[396] The witness testified that while he was talking with Bagambiki and the other authorities, the soldiers searched for and found the remaining refugees.[397] He testified that the soldiers took Jean-Marie Habimana, Vital, Felicien, and Ananias Gatake in Bagambiki's pickup truck for questioning regarding their possible financial contributions to the RPF.[398] The witness stated that the church authorities did not try to prevent the removal of the refugees because they thought the request to question them was genuine and that it would not be harmful.[399] The witness testified that during the search for the refugees, Imanishimwe hit a church secretary in the face with a gun.[400]

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[387] T. 22 February 2001 pp. 96-98; T. 26 February 2001 p. 147; T. 28 February 2001 pp. 31, 32.
[388] T. 22 February 2001 p. 102-103; T. 28 February 2001 p. 22.
[389] T. 22 February 2001 pp. 100-102; T. 28 February 2001 pp. 22-23.
[390] T. 22 February 2001 pp. 103-104, 118-120; T. 26 February 2001 pp. 148, 150, 161; T. 27 February 2001 pp. 127-129; T. 28 February 2001 pp. 9, 23; Prosecution Exhibit 43 (1.32, 3.15, 3.24, 1021, 5.15).
[391] T. 22 February 2001 pp. 103-104.
[392] T. 28 February 2001 p. 24.
[393] T. 22 February 2001 pp. 106-107; T. 26 February 2001 pp. 149-150, 151.
[394] T. 22 February 2001 pp. 106-107; T. 26 February 2001 pp. 149-150, 151.
[395] T. 22 February 2001 pp. 102-103, 106-108, 118-119; T. 28 February 2001 p. 5.
[396] T. 22 February 2001 pp. 109, 110; T. 26 February 2001 pp. 163-164, 166-167.
[397] T. 22 February 2001 p. 112; T. 26 February 2001 pp. 163-164, 166-167.
[398] T. 22 February 2001 pp. 111-113; T. 26 February 2001 pp. 164-170.
[399] T. 26 February 2001 pp. 165-166, 174.
[400] T. 22 February 2001 pp. 109-113; T. 26 February 2001 pp. 167-168.

231. Witness LY testified that he followed Bagambiki's pickup truck to Kamarampaka Stadium and parked near the officials' vehicles, which were just outside the stadium.[401] Witness LY stated that he spoke briefly with Bagambiki inside the stadium and observed refugees being lined up and Bagambiki, Imanishimwe, Ndolimana, and Munyarugerero pointing at a black diary held by Munyarugerero.[402] The witness recounted that he later learned from the refugees at the stadium that the authorities selected thirteen people to be taken for questioning.[403] The witness attested to hearing gunshots after he returned to the parish; so he asked the bishop to telephone Bagambiki to find out if the four people taken from the cathedral had been shot.[404] According to the witness, Bagambiki told the bishop that *Interahamwe* had taken the four refugees, and that they were probably the ones who had been shot.[405] Witness LY received confirmation of this information from refugees who telephoned from the stadium to say that thirteen refugees from the stadium and the four refugees from the cathedral were removed and killed, with the exception of Marianne.[406] The witness later stated that he was sure that the sixteen people who were killed were those whose names had been called from the list in the diary.[407]

232. Witness LY stated that the conditions at the stadium were inadequate and that there was insufficient sanitation, water, food, and shelter to meet the refugees' needs and that, in his view, the prefectural authorities did not do anything to meet these concerns.[408] The witness stated that prefectural authorities were aware that the church authorities provided food and tended to the refugees at the stadium and that they never prevented this.[409] According to the witness, the refugees maintained regular telephone contact with the cathedral.[410] The witness noted that CARITAS, the diocese's relief organisation, prepared what little food it had and took it to the refugees daily.[411] In addition, after 22 April 1994, the Red Cross also began to make regular visits to the stadium and assist the refugees.[412] The witness stated that after repeated requests from church and Red Cross authorities to remedy the deteriorating hygienic conditions at the stadium, the prefectural authorities gradually transferred the refugees to a camp at Nyarushishi, which was "well designed" and had toilets, plenty of water, and small tents to shelter the refugees.[413]

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[401] T. 22 February 2001 p. 113; T. 26 February 2001 pp. 170-171.
[402] T. 22 February 2001 pp. 113-114; T. 26 February 2001 pp. 172-177; T. 27 February 2001 pp. 5-6, 14-15; T. 28 February 2001 p. 60.
[403] T. 22 February 2001 pp. 111, 112, 113. The Chamber notes that the witness in his statement indicated that he actually saw the thirteen people being removed.
[404] T. 22 February 2001 p. 114; T. 27 February 2001 pp. 3, 21-22. The Chamber notes that the witness initially states that he heard the shots only a few minutes after returning to the parish and in cross-examination noted that he heard the shots "a good time" after returning to the parish.
[405] T. 22 February 2001 p. 114; T. 28 February 2001 pp. 51-52, 65.
[406] T. 22 February 2001 p. 114; T. 26 February 2001 pp. 172, 175-177; T. 27 February 2001 pp. 4, 10; T. 28 February 2001 p. 58.
[407] T. 28 February 2001 p. 57.
[408] T. 26 February 2001 pp. 10-13.
[409] T. 27 February 2001 p. 31; T. 28 February 2001 p. 39.
[410] T. 22 February 2001 p. 115; T. 27 February 2001 pp. 44-45.
[411] T. 28 February 2001 p. 38.
[412] T. 28 February 2001 p. 41.
[413] T. 26 February 2001 pp. 10-11

233. Prosecution Witness LI testified that he went to Cyangugu Cathedral on 8 April 1994 to flee the massacres in his commune and that, between 8 and 11 April 1994, the number of refugees at the cathedral increased dramatically.[414] The witness stated that all the refugees he knew at the cathedral were Tutsis.[415] He testified that, on the morning of 11 April 1994, *Interahamwe* came to the cathedral and began shooting at the refugees.[416] The witness testified that when the shooting began he was in the middle of the courtyard between the cathedral and the priests' residence, and that he ran in the direction of the residence, where he found other refugees hiding.[417] Witness LI testified that shortly after his arrival in the area, at least five soldiers, identifiable by their uniforms and firearms, came out of the surrounding bushes, encircling the refugees.[418] According to the witness, some of the refugees managed to escape, but the soldiers captured seven of them, including the witness.[419] The witness testified that the soldiers kicked the refugees and hit them with the butts of their guns.[420] He stated that the soldiers then took the refugees on foot to the Karambo military camp, beating them along the way.[421]

234. Witness LI testified that when they reached the military camp in the afternoon, Imanishimwe told the soldiers that he would like to take the refugees to the gendarmerie.[422] The witness stated that the soldiers then explained to Imanishimwe that the refugees were "*Inyenzi-Inkotanyi*", whom they had caught in the bush.[423] The witness stated that the refugees who knew Imanishimwe begged him to let them go, telling him that they were not soldiers, "*Inkotayis*", or "*Inyenzis*", but Imanishimwe refused.[424] Witness LI testified that Imanishimwe instructed the soldiers to "take care of them" and then left.[425] Witness LI testified that the refugees were then locked up in a cell in the camp.[426] The witness stated that this was the first and only time that he saw Imanishimwe.[427] Witness LI explained that other refugees with him at the military camp knew Imanishimwe, but that he did not learn that the commander's name was Imanishimwe, until he arrived in the Congo.[428] The witness identified Imanishimwe in court.[429]

235. Witness LI testified that while Imanishimwe was talking to the refugees, at a distance of barely two metres, they were made to sit on the ground and were kicked and beaten by the soldiers with pieces of wood and rifle butts.[430] The witness testified that Imanishimwe observed this mistreatment but did nothing to stop the soldiers from

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[414] T. 30 January 2001 pp. 10-11, 66-67, 72-75, 81
[415] T. 30 January 2001 p. 13.
[416] T. 30 January 2001 pp. 11-13, 64.
[417] T. 30 January 2001 pp. 13, 64, 65, 97-99.
[418] T. 30 January 2001 pp. 13, 17, 65.
[419] T. 30 January 2001 pp. 14-15, 98, 100.
[420] T. 30 January 2001 pp. 14-15.
[421] T. 30 January 2001 p. 15.
[422] T. 30 January 2001 p. 19.
[423] T. 30 January 2001 pp. 17-18, 100-101; T. 31 January 2001 pp. 2-3, 13-14.
[424] T. 30 January 2001 pp. 19, 101; T. 31 January 2001 p. 13.
[425] T. 30 January 2001 pp. 19-20; T. 31 January 2001 p. 8.
[426] T. 30 January 2001 pp. 19-20; T. 31 January 2001 p. 10.
[427] T. 30 January 2001 pp. 18-19, 36-38; T. 31 January 2001 pp. 14-15.
[428] T. 30 January 2001 pp. 18-19, 36-38; T. 31 January 2001 p. 14.
[429] T. 30 January 2001 pp. 37-38.
[430] T. 30 January 2001 pp. 20-21, 22, 101.

beating the refugees.[431] The witness also testified that he did not hear Imanishimwe reprimand the soldiers for beating them.[432]

236. Prosecution Witness NL testified that after fleeing from an attack, he arrived at Cyangugu Cathedral on 8 April 1994 and found about 400 refugees already there.[433] He testified that Munyakazi came to the cathedral to take away a relative, but the witness was not sure of the date of this event.[434] He recalled that, around 3:00 p.m. on the same day, *Interahamwe* attacked the cathedral but were warded off by gendarmes stationed there.[435] Witness NL testified that, on 15 April 1994, different officials addressed the refugees at the cathedral and that Bishop Thadée said that the authorities had decided that the cathedral was not safe and that the refugees would be moved to Kamarampaka Stadium.[436] The witness testified that the refugees were moved against their will to the stadium, which lacked adequate water, sanitation, and communication facilities.[437]

237. Witness NL testified that, on 15 April 1994, Bagambiki and Bishop Thadée led the refugees, who were followed by soldiers, from the cathedral to Kamarampaka Stadium.[438] He also testified that gendarmes prevented refugees from escaping on the way to the stadium and that there were no problems during the transfer.[439] The witness recalled that the approximately 4,000 refugees from the cathedral were the first group to arrive at the stadium and that he learned that refugees were also transferred to the stadium from another place of refuge.[440] The witness stated that the refugees' movement was curtailed after they arrived at the stadium because Bagambiki locked the stadium and stationed soldiers to prevent the refugees from leaving.[441] He testified that there were also gendarmes inside the stadium and that during the day *Interahamwe* waited outside the stadium to kill refugees who attempted to escape.[442] He testified that, on the night of 17 April 1994, he paid 30,000 francs to a gendarme, who allowed him and three other refugees to flee the stadium.[443]

238. Witness NL testified that, on 16 April 1994, Bagambiki visited the stadium along with Imanishimwe, Prosecutor Ndolimana, Deputy Prosecutor Decimero, other civilian authorities, and approximately ten armed soldiers.[444] He testified that Bagambiki assured the refugees that he was working on improving the facilities in the stadium.[445] The witness recalled that Bagambiki told the assembled refugees that the Prefectural Security Committee had determined that those refugees who had been communicating with RPF soldiers by radio and those who had weapons should be

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[431] T. 30 January 2001 p. 21.
[432] T. 30 January 2001 pp. 20, 21; T. 31 January 2001 p. 9.
[433] T. 20 February 2001 p. 97; T. 21 February 2001 pp. 56, 74-75.
[434] T. 21 February 2001 pp. 59-60.
[435] T. 21 February 2001 p. 60.
[436] T. 20 February 2001 pp. 98-99; T. 21 February 2001 pp. 61- 65.
[437] T. 20 February 2001 pp. 98-99; T. 21 February 2001 pp. 64-66.
[438] T. 20 February 2001 pp. 99-100; T. 21 February 2001 pp. 37-38, 61-64, 71, 75, 77.
[439] T. 20 February 2001 p. 100; T. 21 February 2001 pp. 63-64.
[440] T. 21 February 2001 p. 75-77, 78-79.
[441] T. 20 February 2001 pp. 100-101; T. 21 February 2001 pp. 72-73, 77.
[442] T. 21 February 2001 pp. 68, 72-73.
[443] T. 21 February 2001 pp. 4-5, 78.
[444] T. 20 February 2001 pp. 101-104; T. 21 February 2001 pp. 41, 68-69, 78.
[445] T. 20 February 2001 p. 104.

taken away for questioning.[446] He testified that Bagambiki called out the names of approximately twenty five refugees, including the witness, and that all were Tutsis but one.[447] The witness stated that he and others did not respond but that thirteen refugees answered, including Tojan Nzisabira, Benoit Sibomana, Bernard Nkata, Perani Nxorimana, Fidel Murekezi, Albert Mugabo, Levit Nsegiyumva, Ibambasi, Albert Twagiramungu, Gaperi, Remy Mihigo, and Marianne Baziruwiha, who was a Hutu member of the PSD party.[448] Witness NL recounted that he saw Imanishimwe and some soldiers lead the thirteen refugees from the stadium to a pickup truck which contained Jean-Marie Habimana, Ananie Gatake, Vital, and Felician.[449] The witness stated that two minutes later he saw the pickup truck loaded with refugees depart just as Bagambiki walked out of the stadium.[450] The witness noted that Marianne climbed into a gendarmerie vehicle.[451]

239. Witness NL testified that, on the evening of 16 April 1994, a gendarme at the stadium told him that *Interahamwe* had killed the thirteen refugees at the gendarmerie brigade near the Rusizi River with machetes and clubs and that one of the refugees was shot while trying to escape.[452] According to the witness, the gendarme told him that the bodies were taken to Mururu sector.[453] The witness stated that Marianne, the only Hutu amongst them, was not killed.[454] The witness also testified that, in August 1994, he spoke to someone who had been conscripted to assist in burying the bodies of the refugees who were killed after being taken from the stadium that day.[455] He testified that, in April 2000, the bodies of the sixteen refugees were exhumed and that he was present when the victims' relatives identified the bodies.[456]

240. Witness NL recalled that he regularly conversed at the cathedral and at the stadium with George Nkusi, a deputy prosecutor, who was married to Bagambiki's niece.[457] According to the witness, Nkusi told him that, on the morning of 7 April 1994, Bagambiki came to Nkusi's home and took Nkusi's wife and children, leaving Nkusi there.[458] The witness testified that Nkusi's wife told Nkusi to hide from Bagambiki to avoid being killed.[459] The witness explained that when he bribed a gendarme in order to flee the stadium with three others, Nkusi remained and that he later learned that Nkusi had been killed.[460]

241. Prosecution Witness LCJ testified that she and her family sought refuge at Cyangugu Cathedral after the death of CDR Chairman Bucyana in February 1994.[461]

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[446] T. 20 February 2001 pp. 104; T. 21 February 2001 p. 69.
[447] T. 20 February 2001 pp. 105-106, 107-108; T. 21 February 2001 pp. 88-89.
[448] T. 20 February 2001 pp. 12-13, 97, 108-109, 112-114; T. 21 February 2001 pp. 69-70.
[449] T. 20 February 2001 pp. 110, 114-115.
[450] T. 20 February 2001 pp. 110, 112, 116.
[451] T. 20 February 2001 pp. 111-112..
[452] T. 20 February 2001 pp. 116-117; T. 21 February 2001 pp. 2-3, 70, 101, 103-104, 107.
[453] T. 21 February 2001 pp. 58, 70.
[454] T. 21 February 2001 pp. 76, 77.
[455] T. 20 February 2001 pp. 116-118; T. 21 February 2001 pp. 106-110.
[456] T. 21 February 2001 pp. 3-4, 11, 112-115.
[457] T. 21 February 2001 pp. 13-14.
[458] T. 21 February 2001 pp. 13-14, 56-57.
[459] T. 21 February 2001 p. 14.
[460] T. 21 February 2001 p. 15.
[461] T. 22 May 2001 pp. 2-3.

Witness LCJ stated that they were still at the parish at the time of President Habyarimana's death and that during the following week many people sought refuge there because they feared that Hutus wanted to kill them.[462] The witness noted that several attacks were launched against the parish.[463] She testified that, on 15 April 1994, Bagambiki, accompanied by Imanishimwe, Bishop Thadée, and other church and civilian officials, informed the refugees that they had to move to Kamarampaka Stadium where their security would be ensured.[464]

242. Witness LCJ testified that, on 15 April 1994, she and the other refugees at the cathedral were escorted by soldiers to Kamarampaka Stadium.[465] The witness recounted that Jean-Marie Vianney Habimana remained at the cathedral while the other refugees were transferred to the stadium on 15 April 1994.[466] She testified that, after the refugees arrived at the stadium, the stadium was locked and that three gendarmes remained with the refugees.[467] Witness LCJ recalled remaining at the stadium with her mother and siblings for three days.[468]

243. Witness LCJ also stated that Bishop Thadée and Father Ndorimana came to the stadium on 16 April 1994 but that Father Ndorimana left before Bagambiki arrived.[469] The witness testified that Bagambiki, Imanishimwe, and other soldiers entered the stadium.[470] She recalled that Bagambiki read out the names of Tutsis from a list including Bernard Nkata, Benoit Sibomana, Apian Ndolimana, Trojan Nzisabira, Fidel Murekezi, Mhigo, Albert Mugabo, Albert Twagiramungu, Dominique Mugabo who was also called Gaperi, and Ibambasi.[471] According to the witness, Bagambiki explained that the people whose names he read aloud were disrupting the security of the Hutu population, had weapons and military uniforms, and were thus being taken away for questioning and to have "their fate decided."[472] The witness noted that at the end of Bagambiki's speech the refugees applauded.[473] The witness recalled that some of those whose names had been read aloud were frightened but that others stepped forward.[474] The witness stated that as Sibomana walked past Bagambiki he took out his rosary and said that he would go to heaven whereas Bagambiki would remain on earth for his deeds.[475] The witness also recalled hearing Sibomana ask those remaining at the stadium to recite litanies and to pray for him.[476] The witness testified that the people who stepped forward were lined up and escorted by soldiers out of the stadium.[477] The witness noted that those taken from the stadium were civilians.[478] The

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[462] T. 22 May 2001 pp. 3-4; T. 23 May 2001 p. 90.
[463] T. 23 May 2001 p. 92.
[464] T. 22 May 2001 pp. 4-6; T. 23 May 2001 p. 92.
[465] T. 22 May 2001 p. 6.
[466] T. 22 May 2001 pp. 7-8, 12.
[467] T. 22 May 2001 p. 6.
[468] T. 22 May 2001 p. 16; T. 24 May 2001 p. 6.
[469] T. 23 May 2001 pp. 92-93.
[470] T. 22 May 2001 pp. 8-9.
[471] T. 22 May 2001 pp. 8-10; T. 23 May 2001 p. 94.
[472] T. 22 May 2001 pp. 10-11; T. 23 May 2001 p. 94.
[473] T. 23 May 2001 p. 95.
[474] T. 22 May 2001 p. 11.
[475] T. 22 May 2001 p. 11-12.
[476] T. 22 May 2001 p. 12.
[477] T. 22 May 2001 p. 12.
[478] T. 22 May 2001 p. 57.

witness testified that Bagambiki promised to supply water and to dig latrines for the remaining refugees and reassured them that they would be able to return to their homes in the near future.[479]

244. Witness LCJ testified that she later learned from a gendarme, named Jean Baptiste Habakurama, that the people on the list, as well as Jean-Marie Vianney Habimana, had been taken away by Bagambiki and handed over to *Interahamwe* who killed them on 16 April 1994.[480] While in Zaire, the witness stated, an *Interahamwe* named Ignace Rubyogo informed her that *Interahamwe* had killed Jean-Marie Vianney Habimana, removed his heart, and threw his body into his latrine.[481]

245. Witness LCJ testified that she was present when seventeen bodies were exhumed from the latrine of Jean-Marie Vianney Habimana's home on 28 April 2000.[482] She recognized the body of Jean-Marie Vianney Habimana because of his build and his clothes.[483] According to the witness, the left side of the deceased's body had been opened, there were wounds on his limbs, and his skull was fractured.[484] Witness LCJ testified that while examining the deceased she put her hand inside the corpse and observed that his heart was missing.[485] The witness also noted that the other bodies were missing hearts and genitals.[486]

246. Witness LCJ testified that she met with someone who told her the names of people who were taken from the stadium.[487] According to the witness, that person also informed her that the people were killed in Gatandara near the gendarmerie and that their hearts were removed and their bodies thrown into a pit.[488]

247. Prosecution Witness LCA testified that he arrived at Cyangugu Cathedral around 12 April 1994 and that he found many people, mostly Tutsis, already there.[489] The witness stated that, on 15 April 1994, Bagambiki called a meeting at the cathedral.[490] With the bishop of Cyangugu and the army commander present, Bagambiki told the refugees that they had to go to the stadium to ensure their security.[491] The witness testified that the refugees initially refused to obey the order but that Bagambiki told them that they had no choice but to go to the stadium.[492] According to the witness, at first the bishop advised the refugees not to leave the cathedral, but then he said that they should go to the stadium because Bagambiki had informed him that their security could not be assured at the cathedral.[493] Witness LCA

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[479] T. 22 May 2001 p. 12; T. 24 May 2001 p. 5.
[480] T. 22 May 2001 pp. 13-15; T. 23 May 2001 p. 95; T. 24 May 2001 pp. 5-6.
[481] T. 22 May 2001 pp. 17-18.
[482] T. 22 May 2001 pp. 19-20, 25, 43-47; T. 23 May 2001 p. 10; T. 24 May 2001 pp. 7-9; Prosecution Exhibit 53, photos 2, 4-7; Prosecution Exhibit 58.
[483] T. 22 May 2001 pp. 25-26, 29-32; 55; T. 23 May 2001 pp. 58-59, 68-69, 92; Prosecution Exhibit 51.
[484] T. 22 May 2001 p. 55; T. 24 May 2001 p. 12; Prosecution Exhibit 62.
[485] T. 22 May 2001 p. 42; T. 24 May 2001 pp. 12-13, 56, 62, 64-65; Prosecution Exhibit 61.
[486] T. 22 May 2001 p. 42.
[487] T. 23 May 2001 pp. 21, 22, 23-24, 25, 27, 37; T. 24 May 2001 p. 49; Prosecution Exhibit 59.
[488] T. 23 May 2001 p. 24.
[489] T. 14 May 2001 p. 68.
[490] T. 14 May 2001 pp. 70-71, 121-122.
[491] T. 14 May 2001 pp. 70-71, 121-122.
[492] T. 14 May 2001 p. 70.
[493] T. 14 May 2001 pp. 122-123.

testified that he and other refugees were thus forced to go to the stadium and that they left the cathedral between 2:00 and 3:00 p.m. on 15 April 1994.[494]

248. Witness LCA testified that, on 15 April 1994 at approximately 4:00 p.m., the bishop, accompanied by soldiers, led the refugees to the stadium.[495] According to the witness, when he and the other refugees from the cathedral entered the stadium, it was empty, but other refugees arrived subsequently.[496] Witness LCA stated that soldiers were stationed at the stadium to guard the refugees.[497]

249. Witness LCA testified that, at approximately 4:00 p.m. on 16 April 1994, Bagambiki, Imanishiwme, the gendarmerie commander, two sub-prefects, and the president of the Court of Appeals held a meeting at the stadium.[498] The witness stated that he heard Bagambiki read aloud from a list of "people being sought to ensure the protection of other refugees who were at the stadium".[499] The witness recalled that he heard Bagambiki read the names of sixteen people.[500] He stated that a soldier then approached his father and took him away to join the others whose names had been called and that the group was taken out of the stadium.[501]

250. Witness LCA stated that he next saw his father's body on 28 April 2000 when it was exhumed from a latrine in Jean-Marie Vianney Habimana's compound in Mururu sector, Cyimbogo commune.[502] The witness stated that he observed the retrieval of the bodies of the sixteen persons who had been taken away from the stadium from that same pit.[503] The witness stated that the bodies had not completely decomposed and that he recognized his father's body immediately from his personal characteristics and clothing.[504] The witness stated that both feet had been cut off his father's body.[505]

251. Prosecution Witness LCH testified that, on 15 April 1994, she and her husband were at the cathedral when Bagambiki came and took them to Kamarampaka Stadium where they spent the night.[506] The witness testified that, around 4:30 p.m. on 16 April 1994, Bagambiki returned to the stadium with soldiers and stated that he was going to remove those who posed a threat to the others.[507] The witness then heard Bagambiki read out the names of fifteen people at the stadium, including that of her

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[494] T. 14 May 2001 pp. 70, 120-122.
[495] T. 14 May 2001 pp. 71, 123-124.
[496] T. 14 May 2001 pp. 71, 123-124.
[497] T. 14 May 2001 p. 71.
[498] T. 14 May 2001 pp. 71, 124.
[499] T. 14 May 2001 pp. 71-72, 107.
[500] T. 14 May 2001 pp. 77, 90.
[501] T. 14 May 2001 pp. 89-90.
[502] T. 14 May 2001 pp. 90-91, 95-96; Prosecution Exhibit 51, picture 1; Prosecution Exhibit 53, pictures 2 and 5.
[503] T. 14 May 2001 p. 93.
[504] T. 14 May 2001 pp. 91-92, 97, 126-127, 134.
[505] T. 14 May 2001 p. 92.
[506] T. 21 May 2001 p. 60.
[507] T. 21 May 2001 pp. 59-60.

husband, a Tutsi trader.[508] In addition, she noted that two people were brought from the parish.[509]

252. Witness LCH testified that she identified her husband's body amongst those exhumed at Jean-Marie Vianney Habimana's property on 28 April 2000.[510] Witness LCH noted that her deceased husband's left side along his ribs had been ripped open.[511] The witness attested to learning that assailants removed hearts in order to eat them.[512] The witness testified that, although she did not personally verify that the deceased's heart had been removed, a person accompanying the witness put his hand into the deceased's body to confirm that the heart was missing.[513]

253. Prosecution Witness NI testified that she fled with her family and neighbours to Kamarampaka Stadium because of insecurity.[514] After being reminded of her witness statement, the witness acknowledged that she first spent a few days at Cyangugu Cathedral prior to moving to the stadium when directed by Bagambiki and the bishop to do so.[515] Later, the witness testified that she left her home on 15 April 1994, passing through the cathedral and arriving at the stadium in the afternoon of the same day.[516] Witness NI also testified that she arrived at Cyangugu Cathedral on 7 April 1994 and left for the stadium on 15 April 1994.[517]

254. Witness NI stated that she could not estimate the number of people at the stadium because it was full of mainly Tutsi refugees from the cathedral.[518] She stated that gendarmes protected the stadium and that church authorities brought food while she was there.[519] The witness testified that, on 16 April 1994, Bagambiki visited the stadium, accompanied by soldiers and others.[520] The witness, who did not personally know Bagambiki and could not identify him in court, explained that she was told by people at the stadium that Bagambiki had come.[521] The witness testified that Bagambiki, who was standing in the middle of the stadium, told the refugees that the people responsible for the insecurity had to be removed from the stadium and that he then read aloud a list of seventeen names, including the names of Bernard Nkata, Benoit Sibomana, Ananias Gatake, Apiani, Trojean, Remy Mihigo, and Gilbert.[522] She recalled that all of the named people answered except for one.[523] The witness stated that she and other children left the stadium unharmed on 17 April 1994 accompanied by *Interahamwe*, who had been sent by the children's parents.[524] The

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[508] T. 21 May 2001 pp. 60, 62.
[509] T. 21 May 2002 p. 60.
[510] T. 21 May 2001 pp. 63-69, 78-81, 91-92, 96-97.
[511] T. 21 May 2001 pp. 67, 93-94.
[512] T. 21 May 2001 p. 67.
[513] T. 21 May 2001 pp. 67-68, 94-96.
[514] T. 20 February 2001 pp. 8-9.
[515] T. 20 February 2001 p. 29.
[516] T. 20 February 2001 p. 44.
[517] T. 20 February 2001 pp. 36, 44-47.
[518] T. 20 February 2001 pp. 34-36, 49, 64-67
[519] T. 20 February 2001 pp. 34, 36.
[520] T. 20 February 2001 pp. 8-11, 24, 38.
[521] T. 20 February 2001 p. 10.
[522] T. 20 February 2001 pp. 12, 15-16, 38-39, 49, 87.
[523] T. 20 February 2001 p. 39.
[524] T. 20 February 2001 pp. 52-53.

witness stated that while in the Congo she met her father's driver who told her that the people taken from the stadium had been killed and that the driver had buried them in a latrine in Cyimbogo.[525] She stated that her mother confirmed this information, because she told the witness that she heard the noise made by the killers from her hiding place.[526] She testified that in April 2000 she was present when the bodies were exhumed from the latrine.[527]

255. Prosecution Witness LAP testified that, on 13, 14, and 23 April 1994, Imanishimwe, accompanied on 13 and 23 April 1994 by Bagambiki, brought groups of ten to fifteen Tutsi civilians to a roadblock at Gatandara and that the two were present while Witness LAP and others killed the civilians.[528] When reminded of his first statement to Tribunal investigators, the witness recalled that similar events occurred on 8 and 16 April 1994.[529] Additionally, the witness recalled that, on 14 April 1994, Imanishimwe started a ritual of eating human flesh by roasting and eating the heart and liver of one of the ten victims and instructing the assailants to eat the hearts of the Tutsis because the "Tutsis are wicked people."[530]

256. Witness LAP testified that, on 16 April 1994, he and about 100 armed assailants, led by Bagambiki, Imanishimwe, Sub-Prefect Munyangabe, Bourgmestre Napolean Mubiligi, and Deputy Prosecutor Simeion Nshamihigo, participated in the removal and execution of sixteen refugees from Kamarampaka Stadium and one person, Jean-Marie Vianney Habimana, from the Bishop's residence.[531] The witness stated that Bagambiki was armed with an R4 rifle and that Munyangabe carried an Uzi-type weapon.[532] The witness stated that Bagambiki read the names of sixteen people, including Bernard Ntaka, Benoit, and Apiani, from a pre-established list.[533] The witness explained that Bagambiki and Imanishimwe had previously ordered Conseiller Mangara to prepare a list of names, which was then written by Mathias Semageni.[534]

257. According to Witness LAP, Bagambiki, Imanishimwe, Mubiligi, and Nshamihigo removed the sixteen refugees from the stadium, and Bagambiki told the witness and other assailants, who were waiting outside the stadium's main gate, to meet them at the gendarmerie camp at Rusizi I.[535] The witness stated that, shortly after more than 100 armed assailants arrived at the gendarmerie, Bagambiki, Imanishimwe, Mubiligi, and Nshamihigo arrived with the seventeen people.[536] The witness testified that Imanishimwe shot and killed Emilie, who tried to escape.[537] The

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[525] T. 20 February 2001 p. 18.
[526] T. 20 February 2001 pp. 19, 89, 91.
[527] T. 20 February 2001 pp. 19, 20.
[528] T. 10 September 2001 pp. 22-26, 30-34; Prosecution Exhibit 40.
[529] T. 12 September 2001 p. 92.
[530] T. 10 September 2001 p. 28; T. 12 September 2001 pp. 104-105; T. 13 September 2001 p. 70.
[531] T. 10 September 2001 pp. 38-39, 40, 41; T. 12 September 2001 p. 106. The witness identified the date as "the Saturday of the week after President Habyarimana's death", which the Chamber notes was 16 April 1994.
[532] T. 12 September 2001 p. 109.
[533] T. 10 September 2001 pp. 39, 41.
[534] T. 12 September 2001 pp. 107, 123; T. 13 September 2001 p. 74.
[535] T. 10 September 2001 pp. 41-42.
[536] T. 10 September 2001 pp. 42-43.
[537] T. 10 September 2001 p. 43.

witness recalled that Bagambiki handed Jean-Marie Habimana over to the assailants and stated, "What are you waiting for, these people are still around. Act quickly."[538] According to the witness, Bagambiki meant for the assailants to kill the detainees.[539] The witness stated that the assailants then attacked the victims, killing them within approximately thirty minutes.[540] The witness recalled that after the killing, the assailants were rewarded with a little money.[541] Witness LAP noted that the bodies of the seventeen people who were killed in the evening were then loaded onto a vehicle.[542]

258. Witness LAP testified that the bodies were unloaded when they reached the Gatandara roadblock and that the assailants removed the hearts from all except one of the bodies.[543] The witness recalled that, after removing the hearts, they threw the corpses into the latrine of Jean-Marie Vianney Habimana's house, except for the one whose heart had not been removed, which remained at the roadblock.[544]

259. Prosecution Witnesses LCC, LCD, LCE, LCF, and LCG testified that they were present during the April 2000 exhumation of sixteen or seventeen bodies from a pit latrine on Jean-Marie Vianney Habimana's property in Cyimbogo commune.[545] Each witness testified that he or she identified one of the bodies removed from the grave and gave reasons for the identification.[546] Witnesses LCG, LCE, and LCD also testified that the hearts and in some cases other organs, limbs, or genitals were missing from the bodies that they identified.[547]

260. Prosecution Exhibit 37 provides the medical examiner's observations on the condition of the sixteen bodies exhumed from the pit latrine. The medical examiner's report recounts the common characteristics and injuries of all sixteen bodies and further indicates the individual characteristics and injuries of the bodies of the following people who were identified by family members and neighbours: Trojan Nzisabira, Dominique Mugabo, Bernard Nkata, Ananias Gatake, Eliphase, Albert Twagiramungu, Remy Muhigo, Albert Mugabo, Felicien Musabimana Benoit Sibomana, Jean-Marie Vianney Habimana, Fidèle Murekezi, Ibambasi, Leonard Nsengiyumba, and Apian Ndolimana. The report indicates that several of the bodies had injuries but that the sexual organs of the bodies were not mutilated.

261. Prosecution Witness NG-1 testified that he arrived at Kamarampaka Stadium on 26 April 1994 and remained there for about one to two weeks.[548] The witness

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[538] T. 10 September 2001 p. 44.
[539] T. 10 September 2001 p. 44.
[540] T. 10 September 2001 pp. 44-45; T. 13 September 2001 p. 44.
[541] T. 10 September 2001 p. 45.
[542] T. 10 September 2001 p. 45.
[543] T. 10 September 2001 p. 45.
[544] T. 10 September 2001 pp. 45-46; T. 13 September 2001 pp. 44-45.
[545] T. 15 May 2001 pp. 17-20, 95; T. 16 May 2001 pp. 17, 19-22, 108; T. 17 May 2001 pp. 48-49; T. 21 May 2001 pp. 5-7, 27-28; T. 4 June 2001 pp. 60-62, 63-64, 108-111.
[546] T. 15 May 2001 pp. 20-24, 26-27, 38, 42, 49-50, 57, 60-62, 65, 67-70, 73, 81, 84, 100, 103; T. 16 May 2001 pp. 23-24, 65-66; T. 21 May 2001 pp. 8, 31, 37-39; T. 4 June 2001 pp. 56-58, 60-62, 63-64, 96-106, 108-109.
[547] T. 16 May 2001 p. 25; T. 17 May 2001 pp. 15, 45, 47-48, 90; T. 21 May 2001 pp. 8, 38-39; T. 4 June 2001 pp. 60-62, 110.
[548] T. 23 November 2000 pp. 53-55, 58-59.

stated that while there, he saw priests give mass and on one occasion he saw food delivered from the bishopric.[549] The witness stated that the stadium guards were everywhere, but were primarily concentrated at the front entrance.[550] The witness stated that *Interahamwe* surrounded the stadium and that they sometimes came into the stadium in groups of two to five and walked around, but did not harm anyone inside.[551] The witness testified that, from the second day he arrived at the stadium, there was a selection of refugees by gendarmes or soldiers.[552] According to the witness, the soldiers or gendarmes selected refugees, including George Nkusi, from the stadium and handed them over to *Interahamwe* who took them to Gatandara to be killed.[553] The witness also testified that, on one occasion around midnight, two grenades were thrown into the stadium, wounding a woman.[554] The witness stated that he left the stadium with church authorities who took the injured woman to receive care.[555]

262. Prosecution Witness LH testified that Bagambiki, whom he was unable to identify in court, visited the Gihundwe school and told the refugees there that they were to be moved to join other refugees at Kamarampaka Stadium.[556] He testified that, when he arrived at the stadium, he found approximately 3,000 to 4,000 Tutsi refugees already there.[557] The witness testified that, on 20 April 1994, Bagambiki came to the stadium with four soldiers and that he called out names from a list.[558] The witness stated that approximately thirty people were taken away and that they never returned.[559]

263. Witness LH testified that four more people were taken on 22 April 1994, among whom the witness recognized George Nkusi who worked at the public prosecutor's office.[560] The witness testified that the refugees telephoned Bishop Thadée who came to the stadium and asked Bagambiki where they were taking the selected refugees and that Bagambiki told the bishop that the people were being taken away for questioning and that they would return.[561]

264. Witness LH testified that, after the four people had been returned to the stadium, Bagambiki returned to the stadium and one of his soldiers cut the telephone line.[562] He recounted that names were again read from a list but that the refugees were too afraid to respond, so the soldiers lined people up in rows and selected thirty people, including the witness.[563] The witness stated that those who could not fit into a double-cabin vehicle were taken on foot to Gatandara where there was a roadblock

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[549] T. 28 November 2000 pp. 33, 36.
[550] T. 28 November 2000 pp. 114-115.
[551] T. 28 November 2000 p. 115.
[552] T. 23 November 2000 pp. 53-54; T. 28 November 2000 pp. 115-116.
[553] T. 23 November 2000 pp. 53-54; T. 28 November 2000 pp. 115-116.
[554] T. 23 November 2000 p. 55; T. 28 November 2000 pp. 33-34.
[555] T. 28 November 2000 pp. 33-35.
[556] T. 31 January 2001 pp. 26-29, 49-51.
[557] T. 31 January 2001 p. 29.
[558] T. 31 January 2001 pp. 30-31.
[559] T. 31 January 2001 pp. 30-31.
[560] T. 31 January 2001 p. 31.
[561] T. 31 January 2001 pp. 31-32.
[562] T. 31 January 2001 pp. 32-33.
[563] T. 31 January 2001 p. 33-34.

manned by *Interahamwe*.[564] The witness stated that the soldiers first looted the refugees' belongings before authorizing the *Interahamwe* to kill them.[565] He recounted that the *Interahamwe* began with the first row of people and that they hit the first man with a machete until he died, before attacking the next person in line.[566] The witness testified that he was fourth in the line, and that he escaped by jumping into Gatandara River, where he stayed until 1:00 a.m., when he returned to the stadium as he had nowhere else to go.[567]

265. Witness LH testified that in the days following his return to the stadium, Bagambiki and accompanying soldiers took away approximately thirty more refugees.[568] The witness stated that he then left the stadium and hid at the homes of friends and in the Gihundwe forest before eventually returning to the stadium out of hunger, thirst, and fear.[569] He testified that, when he returned to the stadium, the practice of Bagambiki and his soldiers coming to select people had ended.[570]

266. Prosecution Witness LBH testified that approximately one week after he sought refuge at the Gihundwe school, Bagambiki visited the school with Imanishimwe, a gendarme major, and Nshamihigo, and ordered that the refugees be transferred to Kamarampaka Stadium to ensure their security.[571] The witness stated that the refugees went to the stadium the following day where they joined people who had been transferred there from Cyangugu Cathedral to ensure their security.[572] He testified that he stayed at Kamarampaka Stadium for approximately one month.[573] He explained that most of the refugees at the stadium were Tutsis, but that some were Hutu members of the opposition parties.[574] The witness testified that outside the stadium were soldiers and *Interahamwe* who were waiting to kill the refugees rather than to protect them.[575]

267. Witness LBH stated that Bagambiki came to the stadium on several occasions to look for people whose names were on a list to be killed and testified that he was selected three times.[576] The witness recalled that, on the first occasion, Imanishimwe was with Bagambiki.[577] The witness was unable to remember the date but admitted that he told prosecution investigators that the first selection took place on 24 April 1994, explaining that the date was only approximate.[578] He testified that, on the first occasion, Bagambiki did not read his name from a list; he was simply taken in a small white pickup along with thirty to thirty-five others, including Darividon, Ncogoza,

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[564] T. 31 January 2001 pp. 33-34, 36.
[565] T. 31 January 2001 pp. 36-37.
[566] T. 31 January 2001 p. 37.
[567] T. 31 January 2001 pp. 37-40, 56-59
[568] T. 31 January 2001 pp. 39-41.
[569] T. 31 January 2001 pp. 41-47.
[570] T. 31 January 2001 p. 47.
[571] T. 13 February 2001 pp. 76-79.
[572] T. 13 February 2001 p. 80.
[573] T. 13 February 2001 p. 80; Prosecution Exhibit 40, picture 8.
[574] T. 19 February 2001 p. 78.
[575] T. 20 February 2001 pp. 3-4.
[576] T. 13 February 2001 p. 81, 83; T. 19 February 2001 p. 69.
[577] T. 19 February 2001 pp. 68-69.
[578] T. 15 February 2001 p. 11.

and Dieudonne Harerimana, to the Gatandara River bridge.[579] The witness stated that Bagambiki, Imanishimwe, and Nshamihigo were all present when he arrived at Gatandara but that they left immediately after the refugees were handed over to the *Interahamwe*.[580] The witness explained that, when the shooting began, there were also people attacking the refugees with machetes and that on this occasion he avoided being killed by running through the river back to Kamarampaka Stadium, because there was no other place of refuge.[581]

268. Witness LBH testified that he was selected at the stadium for the second time one or two days later and that he was again taken to Gatandara but that he again escaped from more than fifteen *Interahamwe*.[582] The witness stated that he escaped with the same people on each occasion, including Dieudonne Harerimana and Ncogoza, who was a Hutu.[583] The witness stated that he returned to the stadium after each escape from Gatandara because there was nowhere else for him to go.[584] Defence counsel read from the witness's prior statement that "on the 24th of April I was taken to Gatandara bridge along with three women to be killed", and the witness explained that this happened on the second occasion.[585] The witness further explained that they were taken out of the stadium but that the women did not accompany them to the bridge, but rather stayed with the soldiers.[586]

269. Witness LBH could not recall how many days after the second occasion he was taken to the bridge for the third time.[587] Witness LBH stated that, after two rounds of selections, the refugees would not answer when called and as a result all the men, including children, were taken away to be killed.[588] The witness stated that at the third selection, rather than being singled out, people were taken away in groups and then ordered onto the vehicle by Bagambiki.[589] The witness stated he was in a group of about thirty to thirty-five persons who were taken to the Gatandara bridge and that only three people from this group survived by escaping to the stadium.[590]

270. Witness LBH testified that he saw many other people being selected to be killed, including Professor Karemera, Georges Nkusi, Darividon, Ncogoza, Dieudonne Harerimana.[591] He also heard of the selection of Ananiase Gatake, Gaperi, and Gapfumu, a trader.[592] The witness stated that Nkusi was taken away by a soldier in the presence of Bagambiki and was later killed.[593] The witness testified that

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[579] T. 13 February 2001 pp. 83-84; T. 15 February 2001 pp. 10-11; T. 19 February 2001 pp. 72.
[580] T. 13 February 2001 p. 84.
[581] T. 13 February 2001 pp. 84-85; T. 15 February 2001 pp. 13-16, 25.
[582] T. 15 February 2001 pp. 19-20.
[583] T. 15 February 2001 p. 20; T. 19 February 2001 p. 79.
[584] T. 15 February 2001 pp. 14-15, 25.
[585] T. 15 February 2001 pp. 12, 22-23
[586] T. 15 February 2001 p. 24.
[587] T. 15 February 2001 p. 25.
[588] T. 13 February 2001 p. 86.
[589] T. 13 February 2001 p. 86; T. 15 February 2001 p. 21.
[590] T. 13 February 2001 p. 87; T. 15 February 2001 p. 21; T. 19 February 2001 p. 76.
[591] T. 13 February 2001 p. 102; T. 14 February 2001 p. 91; T. 15 February 2001 pp. 9-10, 15; T. 19 February 2001 pp. 15-16.
[592] T. 13 February 2001 pp. 81-82; T. 15 February 2001 pp. 7-9.
[593] T. 13 February 2001 p. 103; T. 15 February 2001 pp. 16-17.

Nkusi's wife and children were at the stadium with him and that people who knew Nkusi's wife said that she was Bagambiki's niece.[594]

271. Witness LBH stated that, on 28 April 1994, there were approximately 5,000 refugees at the stadium, who were guarded by one gendarme.[595] The witness testified that at 5:00 a.m. all of the refugees attempted to escape by forcing their way out of the stadium in order to seek refuge in Zaire.[596] The witness testified that the refugees took the road going below the prison and up to the prefecture, with the intention of going to Zaire on foot.[597] When confronted with his prior statement that they intended to cross the border by swimming across the Rusizi River, the witness explained that they intended to use the bridge and to appeal to the people guarding the border.[598] The witness stated that, when they left, the stadium the gendarme guarding them fired a shot into the air, as did the gendarmes in the camp 250 metres from the stadium and the supervisors of the prison, and then he heard shots from the Karambo military camp.[599] The witness testified that the refugees did not succeed in reaching Zaire, as approximately half an hour later they were stopped by Bagambiki, Imanishimwe, and Deputy Prosecutor Nshamihigo at the office of the prefecture.[600] The witness stated that Bagambiki asked the refugees where they were going, and that when, they explained that they were seeking refuge in Zaire because of the killings at the Gatandara bridge, Imanishimwe told them to go back and said that no more people would be taken.[601]

272. Witness LBH testified that, as soon as the refugees turned around to return to the stadium, soldiers started shooting and throwing grenades at them and that, when they tried to run to the stadium, *Interahamwe* attacked them with grenades, clubs, and machetes to the extent that fewer than 1,000 people managed to return to the stadium.[602] The witness stated that Bagambiki and Imanishimwe were present throughout the attack and that the attack did not begin until Bagambiki and Imanishimwe ordered the refugees to return to the stadium.[603] The witness confirmed that about 4,000 people, mainly women, children, and the elderly who could not run as fast, were killed on the road from the prefecture to the stadium, between 5:00 a.m. and 8:00 a.m.[604] The witness stated that he had no knowledge of any burial of the bodies and that he heard that the bodies were thrown into the river which flows into Lake Kivu.[605] The witness testified that between 28 April and 11 May 1994 no more people were taken from the stadium, nor were there any further attacks.[606]

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[594] T. 13 February 2001 p. 102; T. 15 February 2001 p. 16; T. 19 February 2001 pp. 16-17.
[595] T. 13 February 2001 p. 109; T. 19 February pp. 80-81, 87, 89.
[596] T. 13 February 2001 pp. 104-105, 109; T. 15 February 2001 pp. 25-27; T. 19 February 2001 pp. 80-82.
[597] T. 15 February 2001 pp. 28-29.
[598] T. 15 February 2001 pp. 29-31.
[599] T. 19 February 2001 pp. 5, 87-88; T. 19 February 2001 p. 43.
[600] T. 13 February 2001 p. 106; T. 15 February 2001 pp. 28, 33; T. 19 February 2001 pp. 5-6.
[601] T. 13 February 2001 p. 106; T. 19 February 2001 pp. 88-89.
[602] T. 13 February 2001 p. 110; T. 19 February 2001 pp. 89-90.
[603] T. 13 February 2001 p. 110; T. 15 February 2001 p. 33.
[604] T. 19 February 2001 pp. 7-8, 82, 90-93.
[605] T. 19 February 2001 pp. 96-97.
[606] T. 19 February 2001 p. 100.

273. Bagambiki testified that in April 1994 more than 3,000 refugees gathered at Cyangugu Cathedral and that the prefectural authorities asked the gendarmes to ensure their safety.[607] He recalled that, from 7 April 1994, the commander of the gendarmerie posted four gendarmes at the cathedral.[608] Bagambiki testified that the cathedral was not large enough to house the refugees, that it lacked sufficient water and toilets, and that it was difficult to ensure security there because the area was not fenced.[609] He testified that, beginning on 11 April 1994, there were attempted attacks on the refugees gathered at the cathedral and that the commander of the gendarmerie reinforced his team at the cathedral by adding five to seven gendarmes.[610]

274. Bagambiki explained that he convened a security council meeting on 11 April 1994 in the auditorium of the court of first instance next to the prefectural administration buildings, which meeting was enlarged to involve all the sub-prefects and bourgmestres, as well as Bishop Thadée.[611] Bagambiki stated that the agenda of the meeting was to receive precise details on the prevailing security situation in each commune, including where refugees had gathered, and to adopt appropriate measures to restore calm as soon as possible.[612] Bagambiki testified that the participants at the meeting decided to dispatch gendarmes to protect refugees who were beginning to gather at various places in the prefecture.[613] Bagambiki recalled that just as the meeting was starting, around 10:30 or 11:00 a.m., they received a telephone call about an attack at the cathedral.[614] Bagambiki testified that he, the commander of the gendarmerie, and the bishop immediately went outside where they heard gunfire and saw refugees running in all directions.[615] He testified that they proceeded to the cathedral where the vicar told them that a vehicle belonging to Munyakazi came and took away Munyakazi's son-in-law, one of the refugees.[616] He testified that the gendarmerie commander made enquiries and was told that the gendarmes had fired their guns to push back the attackers.[617] Bagambiki testified that he explained the situation to the refugees.[618] Bagambiki recalled that there were further attacks on 11 April 1994, all of which were foiled by the gendarmes, sometimes with the assistance of the bishop.[619]

275. Bagambiki testified that it was difficult to protect the refugees at the cathedral because of its unfenced location at the bottom of a slope, near a wooded area.[620] Bagambiki recalled that, on 14 April 1994, Bishop Thadée called to ask him to find a better place for the refugees.[621] He testified that a meeting was held with the bishop

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[607] T. 1 April 2003 p. 15.
[608] T. 1 April 2003 p. 16.
[609] T. 1 April 2003 p. 15.
[610] T. 1 April 2003 p. 16-17.
[611] T. 27 March 2003 pp. 27, 38; T. 1 April 2003 p. 16.
[612] T. 27 March 2003 p. 38; T. 31 March 2003 p. 17.
[613] T. 27 March 2003 p. 38.
[614] T. 1 April 2003 pp. 16, 17.
[615] T. 1 April 2003 pp. 16-17.
[616] T. 1 April 2003 p. 16.
[617] T. 1 April 2003 p. 17.
[618] T. 1 April 2003 p. 17.
[619] T. 1 April 2003 p. 17.
[620] T. 1 April 2003 pp. 17-18.
[621] T. 1 April 2003 p. 18.

and other ecclesiastical authorities during which Bagambiki told them that he would consult with his colleagues to determine where the refugees should be moved.[622] Bagambiki testified that he then met with the sub-prefects and called the commander of the gendarmerie, other members of the security council, and the head of the urban affairs department.[623] He testified that they examined all of the possible sites near the prefecture and determined that Kamarampaka Stadium was suitable for the refugees.[624] He explained that the stadium was bigger than the cathedral and had a high wall, electricity, a telephone, many water taps, toilets, changing rooms, and a covered area.[625] He testified that he requested the urban affairs official to ensure that these facilities were in good working order and, with the assistance of the Rwandan Red Cross, dug a pit latrine to increase the toilet capacity.[626] He testified that the stadium was also preferable because it could be seen from the gendarmerie camp, allowing better security.[627]

276. Bagambiki testified that he telephoned the bishop around 2:00 p.m. on 15 April 1994 to inform him of the decision to transfer the refugees to the stadium and that they agreed to meet at the cathedral one hour later.[628] Bagambiki stated that he and some of the members of the security council went to the cathedral around 3:00 p.m., where they gathered the refugees to inform them of the decision to move them to the stadium.[629] Bagambiki testified that he explained to the refugees that the transfer was in order to ensure their security.[630] Bagambiki testified that the refugees seemed hesitant about the transfer but agreed to it after the bishop, the vicar, and the commander of the gendarmerie explained the reasons for the move.[631] He testified that the bishop reassured the refugees that the church would continue to work with the authorities to provide for their needs at the stadium.[632]

277. Bagambiki denied the allegation that he threatened the refugees who were not willing to go to the stadium with death.[633] Bagambiki recalled that it was agreed that certain people would remain at the cathedral, including members of religious orders, the church staff, certain seminarians, and those who were ill.[634]

278. Bagambiki testified that, on 15 April 1994, approximately 3,000 to 3,500 refugees, the majority of whom were Tutsi, were transferred from the cathedral to the stadium without incident.[635] He recalled that, on 16 April 1994, the commander of the gendarmerie informed him of an imminent attack on the stadium by a crowd of assailants.[636] He recounted that he and the gendarmes successfully repulsed the attack

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[622] T. 1 April 2003 p. 18.
[623] T. 1 April 2003 p. 18.
[624] T. 1 April 2003 p. 20.
[625] T. 1 April 2003 p. 20.
[626] T. 1 April 2003 p. 20, 21.
[627] T. 1 April 2003 p. 20.
[628] T. 1 April 2003 p. 21.
[629] T. 1 April 2003 p. 21.
[630] T. 1 April 2003 p. 21.
[631] T. 1 April 2003 p. 21.
[632] T. 1 April 2003 p. 22.
[633] T. 1 April 2003 p. 22.
[634] T. 1 April 2003 p. 22.
[635] T. 1 April 2003 pp. 22-23.
[636] T. 1 April 2003 pp. 23-24.

at around 11:00 a.m. or 12:00 a.m.[637] He recalled that the gendarmes defended the stadium against further attacks in the afternoon of 16 April and on 17 April 1994.[638]

279. Bagambiki testified that he was informed by the commander of the gendarmerie that the attackers gave a list of persons within the stadium who were rumoured to be armed, to be communicating by radio with the RPF and the RPA, and to be preparing to attack their neighbours.[639] He recalled that he recognized some of the names on this list, including Marianne Baziruwiha, the head of the PSD party, and Jean-Marie Vianney Habimana.[640] Bagambiki testified that he consulted with the commander of the gendarmerie who explained that with only forty gendarmes available he could not assure effective protection of the refugees against a crowd of attackers.[641] Bagambiki then consulted with members of the security council, who wanted to protect the refugees within the stadium without handing over to the assailants the persons on the assailants' list.[642] He explained that the best solution was for the prosecutor, under the protection of the gendarmes, to commit to questioning the listed persons in order to establish that they did not have weapons or radios.[643] Bagambiki admitted that, in hindsight, the decision was risky but that at the time they thought it was the only way to protect the refugees in the stadium and the persons on the list.[644] He explained that it was up to the commander of the gendarmerie to decide whether to call for the assistance of the military but that, in light of his experience on 15 April 1995 at Nyamasheke, he believed that if the listed people were removed the assailants would not attack.[645]

280. Bagambiki testified that he first went to the cathedral in order to pick up the four listed persons who remained there.[646] He explained the situation to the priests at the cathedral, who, themselves familiar with the events in Nyamasheke, were not opposed.[647] He testified that the religious authorities called the people together to explain the situation and that the four listed persons got into the car without being forced.[648]

281. Bagambiki testified that he then went to the stadium and explained the situation to the refugees, who applauded the decision to remove the sixteen or seventeen listed persons in order to ensure the safety of the stadium.[649] He stated that the commander of the gendarmerie took the floor and read the list of names from a sheet of paper.[650] He testified that the listed people were transported in the prosecutor's truck, which was escorted by gendarmes to ensure their safety.[651]

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[637] T. 1 April 2003 p. 24.
[638] T. 1 April 2003 p. 24.
[639] T. 1 April 2003 pp. 24-25.
[640] T. 1 April 2003 p. 24.
[641] T. 1 April 2003 p. 25.
[642] T. 1 April 2003 p. 25.
[643] T. 1 April 2003 p. 25.
[644] T. 1 April 2003 pp. 25-26.
[645] T. 1 April 2003 p. 26.
[646] T. 1 April 2003 p. 26.
[647] T. 1 April 2003 p. 26.
[648] T. 1 April 2003 pp. 26-27.
[649] T. 1 April 2003 p. 27.
[650] T. 1 April 2003 pp. 27-28.
[651] T. 1 April 2003 p. 28.

Bagambiki testified that he then returned home and did not accompany the refugees to the prosecutor's office.[652] According to Bagambiki, the prosecutor informed him that, after arriving at the prosecutor's office, the commander of the gendarmerie agreed to keep the refugees in the judicial brigade at Rusizi I and to conduct the interviews the following day.[653] He recalled that, because of a lack of available cells, Marianne Baziruwiha was taken to the home of the commander.[654] Bagambiki testified that he learned the following morning, 17 April 1994, that a crowd of assailants attacked the cells, which were protected only by a few gendarmes, and killed the detainees.[655] He testified that he was informed by the Red Cross that the bodies were collected on 18 April 1994 to be buried in Mururu.[656] He testified that after 17 April 1994 the security situation at the stadium was stable.[657]

282. Bagambiki testified that after the transfer of the refugees from the cathedral on 15 April 1994, refugees continued to arrive at the stadium from other places.[658] He explained that he often provided transportation and gendarmes to aid such transfers.[659]

283. Bagambiki testified that, on 29 April 1994, a small group of refugees sought to convince the others that they should leave the stadium by force but that the others refused.[660] He recalled that when the group tried to leave, the gendarmes told them it was too dangerous and shot in the air to dissuade them.[661] He stated that there were no deaths or massacres at the stadium and admitted that it was possible that he may have sent a communiqué to Radio Bukavu to deny fabricated RPF claims of massacres.[662] He explained that the stadium was not a prison and that refugees could leave it to shop.[663]

284. Bagambiki also testified that he had a good relationship with Georges Nkusi, who was married to one of his nieces.[664] He testified that, on 7 April 1994, when Nkusi took refuge without contacting his family, he collected his wife and children and took them into his home.[665] He recalled that on this occasion it took him thirty minutes to negotiate his way through a roadblock because those manning the roadblock alleged that Nkusi's family members were *Inkotanyi* accomplices.[666] Bagambiki explained that this was an example of the deterioration of the prefect's administrative authority.[667] He later learned that Nkusi first hid in the home of an expatriate and then sought refuge at the vicar's home at the cathedral.[668] Bagambiki

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[652] T. 1 April 2003 p. 28.
[653] T. 1 April 2003 p. 28.
[654] T. 1 April 2003 p. 28.
[655] T. 1 April 2003 p. 28.
[656] T. 1 April 2003 p. 29.
[657] T. 1 April 2003 p. 31.
[658] T. 1 April 2003 p. 30.
[659] T. 1 April 2003 p. 30.
[660] T. 1 April 2003 p. 31.
[661] T. 1 April 2003 p. 31.
[662] T. 3 April 2003 pp. 6-8, 12-13.
[663] T. 1 April 2003 p. 31.
[664] T. 1 April 2003 p. 40.
[665] T. 1 April 2003 pp. 40-41.
[666] T. 1 April 2003 p. 41.
[667] T. 1 April 2003 p. 41.
[668] T. 1 April 2003 p. 42.

testified that Nkusi's family remained in touch with Nkusi and that Bagambiki, Nkusi and Nkusi's family decided that Nkusi would be safer at the priest's residence than at Bagambiki's home.[669] Bagambiki testified that, after returning from a pacification meeting in Mibilizi on the evening of 28 April 1994, he learned that Nkusi had been "intercepted" at the stadium and killed and that the Red Cross found his body on the road near Mururu.[670]

285. Bagambiki testified that he was aware that there was a roadblock near the Gatandara bridge manned by the local population, including criminals.[671] He explained that he had demanded the removal of the roadblock which occurred sometime before June 1994.[672] Bagambiki stated that he was never in Gatandara while people were being killed.[673]

286. Imanishimwe testified that he was aware that refugees were at Cyangugu Cathedral since the death of Bucyana in February 1994 and that more joined them after 6 April 1994.[674] Imanishimwe denied participating in a meeting at the cathedral on 14 April 1994, where he was alleged to have stated that the refugees would die if the church authorities did not tell the RPF to stop the combat.[675] He stated that the ecclesiastical authorities asked the prefectural authorities to find another place for the refugees at the cathedral because there had been a number of attacks on them there and the infrastructure of the cathedral was not sufficient to hold a large number of refugees.[676] Imanishimwe stated that Kamarampaka Stadium was selected because it was fenced, covered on one side, and had health facilities, water, toilets, and telephone lines.[677] He recalled that the refugees were moved from the cathedral to the stadium around 15 April 1994.[678]

287. Imanishimwe testified that he did not come to the cathedral on 16 April 1994 or on any other date, accompanied by Munyarugerero, Ndolimana, and soldiers, to search for and arrest four individuals and take them away, as alleged by Witness LY.[679] Imanishimwe testified that the stadium was guarded by gendarmes, not by soldiers as alleged by Witness NL.[680] Imanishimwe stated that he went to the stadium on the day when the refugees were moved but that he never returned there after that because the mission was entrusted to the gendarmes and he no longer had a role in it.[681]

288. Imanishimwe testified that, on 11 April 1994, his soldiers did not arrest civilians at the Jesuit Novitiate and did not take them to the Karambo camp.[682]

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[669] T. 1 April 2003 p. 42.
[670] T. 1 April 2003 p. 42.
[671] T. 1 April 2003 p. 44.
[672] T. 1 April 2003 pp. 44-45.
[673] T. 1 April 2003 p. 45.
[674] T. 22 January 2003 p. 41.
[675] T. 22 January 2003 p. 39.
[676] T. 22 January 2003 p. 41.
[677] T. 22 January 2003 p. 41.
[678] T. 22 January 2003 p. 41.
[679] T. 22 January 2003 p. 42; T. 22 January 2003 p. 48 (French).
[680] T. 22 January 2003 pp. 41-47.
[681] T. 22 January 2003 pp. 41-42.
[682] T. 22 January 2003 p. 18.

Imanishimwe testified that he met Witness LY on one occasion but that he never spoke with him on the telephone to set up an appointment.[683] Imanishimwe noted that, on 11 April 1994, he attended the prefectural security meeting, which gathered bourgmestres and was expanded to include church leaders, from before 10:00 a.m. until around 3:00 p.m.[684] Imanishimwe stated that he did not see Witness LY at the meeting and that he did not see anyone fetch the bishop during the meeting.[685] According to Imanishimwe, at the end of the meeting he returned to the camp, and his soldiers did not tell him that Witness LY had come there looking for him.[686]

289. Imanishimwe denied that Witness LI could have seen him at the Karambo camp on 11 April 1994, because he was at the prefectural security meeting.[687] He recalled that on that day he arrived at the prefecture office before 10:00 a.m. and that the meeting concluded around 3:00 p.m., at which time he returned to the military camp.[688] Imanishimwe stated that no civilians were brought to the camp and, as such, none could have been detained or tortured there, as claimed by Witness LI.[689] He testified that no civilian was ever detained in the military jail at the camp, which was reserved for disciplining military personnel.[690] Imanishimwe denied ordering his soldiers to kill civilians at the camp or being informed that civilians were killed there.[691]

290. Imanishimwe testified that he went to Kamarampaka Stadium on the day the refugees were moved there from the cathedral.[692] Imanishimwe testified that he was aware that the gendarmes and the prosecutor arrested individuals at Kamarampaka Stadium and removed them for questioning at the prosecutor's office.[693] He explained that the prosecutor and commander of the gendarmerie were trying to verify rumours that certain refugees in the stadium were in contact with the RPF, because elements of the local population had threatened to attack the stadium on that ground.[694] He learned that the detainees were moved to Rusizi I gendarmerie brigade for the night and that the population, who were following the developments, attacked the brigade, which was insufficiently protected by perhaps two or three gendarmes, and killed the refugees there.[695] Imanishimwe noted that he was told that the bodies were transported to the Mururu cemetery.[696] Imanishimwe noted that one woman, who was arrested with the refugees, was taken to the gendarmerie camp and was thereby saved from being killed.[697] Imanishimwe stated that he deplored the killing of the refugees.[698]

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[683] T. 22 January 2003 p. 18.
[684] T. 22 January 2003 pp. 18-19.
[685] T. 22 January 2003 p. 19.
[686] T. 22 January 2003 p. 19.
[687] T. 22 January 2003 p. 19.
[688] T. 22 January 2003 p. 19.
[689] T. 22 January 2003 p. 20.
[690] T. 22 January 2003 p. 20.
[691] T. 22 January 2003 p. 20.
[692] T. 22 January 2002 pp. 41-42.
[693] T. 22 January 2003 p. 42.
[694] T. 22 January 2003 p. 42.
[695] T. 22 January 2003 pp. 42, 43.
[696] T. 22 January 2003 p. 43; T. 23 January 2003 p. 61.
[697] T. 22 January 2003 p. 42-43.
[698] T. 22 January 2003 p. 43; T. 23 January 2003 p. 61.

291. Imanishimwe stated that he did not meet with 5,000 refugees attempting to escape from the stadium on the morning of 28 April 1994 and that his soldiers did not kill these refugees.[699] Imanishimwe explained that to kill thousands of refugees would require massive weapons and that with individual weapons one hundred people could not kill that many people in such a short time.[700] Imanishimwe stated that he did hear about refugees trying to flee the stadium and that they were turned back by gendarmes shooting in the air.[701]

292. Imanishimwe acknowledged that there was a roadblock at Gatandara in April 1994 but stated that he never took anyone there to be killed.[702] Imanishimwe explained that the roadblock was manned by the local population and that he never assigned any soldiers to it.[703] He testified that Witness LAP was not one of his soldiers.[704] He noted that the roadblock was removed after the people manning it killed three individuals from Kigali in an attempt to steal their vehicle.[705]

293. Bagambiki Defence Witness Theodore Munyangabe, a sub-prefect in Cyangugu in 1994, testified that, on 9 April 1994, there were between fifty and one hundred refugees at Kamarampaka Stadium and that the refugee population at the stadium grew to several thousand by 20 April 1994.[706] According to what the witness had heard, people in the stadium were killed by *Interahamwe* when they left the stadium by choice, but Imanishimwe and Bagambiki did not remove people from the stadium to kill them.[707]

294. Imanishimwe Defence Witness PBB testified that, on 11 April 1994, he attended a prefectural security meeting, which included the commander of the military camp and the Bishop of Cyangugu.[708] He testified that during the meeting the bishop proposed that the refugees at his parish be transferred to Kamarampaka Stadium.[709] The witness testified that the refugees were transferred to the stadium because the cathedral lacked sufficient sanitary facilities.[710] The witness stated that he thought that at the stadium the refugees were protected by the gendarmerie.[711]

295. Witness PBB testified that during the prefectural security council meeting, around 20 April 1994, the commander of the gendarmerie explained that it was believed that certain people at the stadium were RPF infiltrators and that, therefore, people wanted to attack the stadium.[712] He recalled that the gendarmerie commander explained that, in order to protect the security of the other people and to verify the information, he and the prosecutor summoned approximately fifteen refugees to the

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[699] T. 22 January 2003 p. 44.
[700] T. 22 January 2003 pp. 44-45.
[701] T. 22 January 2003 p. 46.
[702] T. 22 January 2003 pp. 26, 27, 28.
[703] T. 22 January 2003 pp. 26, 27.
[704] T. 22 January 2003 p. 27.
[705] T. 22 January 2003 p. 28.
[706] T. 24 March 2003 pp. 3-4, 19, 34.
[707] T. 25 March 2003 pp. 35-36.
[708] T. 4 November 2002 pp. 18-19; T. 5 November 2002 p. 38.
[709] T. 4 November 2002 p. 29.
[710] T. 4 November 2002 p. 28.
[711] T. 4 November 2002 p. 29.
[712] T. 4 November 2002 pp. 29-30.

prosecutor's office for hearings.[713] He testified that he was informed that because the hearings could not start on the same day, the detainees were taken to the gendarmerie brigade at Rusizi I, except for the female detainee who was taken to the commander's home.[714] He testified that the gendarmerie commander informed the security council that during the night the brigade was attacked and the detainees were killed. [715] The witness stated that the security council received this information but did not take action in response.[716] Witness PBB testified that, in the course of his intelligence gathering, he did not find that RPF operatives were communicating with the enemy from Kamarampaka Stadium.[717]

296. Witness PBB testified that he did not hear of the flight of great numbers of refugees from Kamarampaka Stadium in April 1994.[718] The witness explained that Bukavu regional radio broadcast false information about 4,000 people having been killed at the stadium in April 1994.[719] The witness testified that, on the following morning, he personally transported a press release written by the Bagambiki denying the information concerning the deaths at the stadium.[720] The witness testified that, to the best of his knowledge, there were no deaths at Kamarampaka Stadium.[721]

297. Bagambiki Defence Witness Bernadette Mukandekezi, Bagambiki's wife, recalled that, on 7 April 1994, her niece called around 6:00 p.m. to seek advice about the safety of her husband Nkusi.[722] According to the witness, Bagambiki went to collect his niece and others with her.[723] Mukandekezi testified that Nkusi's wife and others stayed at her house until she and Bagambiki were exiled in July 1994.[724] Also, the witness stated that she, Nkusi, and Bagambiki believed it better for George Nkusi to remain anonymous with Abbey Ndolimana instead of coming to Bagambiki's house, where he risked being identified and jeopardizing the rest of his family.[725]

298. Bagambiki Defence Witness FLZ testified that his house was near the Rusizi I brigade.[726] The witness testified that in April 1994 he heard that some of the refugees at Kamarampaka Stadium had been moved to the gendarmerie brigade and that unidentified people invaded the brigade, armed with rifles, machetes, and spears, and massacred the refugees.[727] The witness noted that he did not personally witness those events because after 6 April 1994 he was in hiding but that he heard gunshots at the brigade.[728] The witness stated that he later learned that Bagambiki came to the

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[713] T. 4 November 2002 p. 30.
[714] T. 4 November 2002 p. 30.
[715] T. 4 November 2002 p. 30.
[716] T. 5 November 2002 p. 41.
[717] T. 5 November 2002 p. 14.
[718] T. 4 November 2002 p. 31.
[719] T. 4 November 2002 pp. 31-32.
[720] T. 4 November 2002 p. 32.
[721] T. 5 November 2002 pp. 68, 70.
[722] T. 10 March 2003 p. 35.
[723] T. 10 March 2003 p. 35.
[724] T. 10 March 2003 p. 37.
[725] T. 10 March 2003 p. 37.
[726] T. 11 March 2003 p. 13.
[727] T. 11 March 2003 pp. 14, 19-20.
[728] T. 11 March 2003 p. 14.

stadium with a list of seventeen people suspected of being RPF infiltrators.[729] According to what the witness learned, Bagambiki told the refugees at the stadium that people were preparing to attack the stadium and kill the seventeen people suspected of being RPF infiltrators and that, in order to protect themselves, the seventeen people should leave the stadium for questioning at the prosecutor's office.[730] The witness stated that he learned from refugees at Nyarushishi camp that his friend Sibomana was amongst those killed.[731]

299. Witness FLZ stated that the people from the stadium who were killed were buried at Jean-Marie Habimana's house in Mutongo, in Cyimbogo commune.[732] The witness noted that in November 1994 he and representatives of the RPA were present when concrete was poured over the surface of the mass grave at Jean-Marie Vianney Habimana's house.[733] The witness noted that he was also present at the exhumation of the bodies.[734]

300. Bagambiki Defence Witness TSF stated that he requested Bagambiki to transfer the refugees from the *Groupe Scolaire* in Gihundwe to Kamarampaka Stadium to provide them with food and better security.[735] The witness noted that Bagambiki accepted his proposal but stated that they would have to wait a "short while" until a bus became available to transfer all the refugees from the school.[736] The witness stated that he called and asked Bagambiki for an escort for the convoy and that Bagambiki sent two gendarmes.[737] The witness stated that there were no problems transferring the refugees to the stadium and that all of the 4,500 refugees from the *Groupe Scolaire* were safely transferred.[738]

301. Witness TSF stated that he went to the stadium on one occasion to discuss the food shortage and found three people in a car outside, including a woman, whom the witness identified as Marianne Baziruwiha.[739] The witness recalled that he entered the stadium and spoke with Bagambiki who told him that there was not enough food and that the prosecution was conducting investigations at the stadium.[740] The witness stated that the next morning he spoke with Bagambiki's wife and learned that the seventeen male Tutsi who had been taken from the stadium had been murdered.[741]

302. Bagambiki Defence Witness WTJ testified that, during the last week of April 1994, he was assigned to Kamarampaka Stadium, along with five or six other gendarmes, whose duties were to ensure security at the stadium, to monitor relations and illnesses among the refugees, and to bring in new refugees.[742] The witness noted

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[729] T. 11 March 2003 pp. 14-15.
[730] T. 11 March 2003 pp. 14-15.
[731] T. 11 March 2003 p. 14.
[732] T. 11 March 2003 p. 18.
[733] T. 11 March 2003 pp. 18-19.
[734] T. 11 March 2003 pp. 18-19.
[735] T. 11 March 2003 p. 37.
[736] T. 11 March 2003 p. 37.
[737] T. 11 March 2003 p. 37.
[738] T. 11 March 2003 p. 38.
[739] T. 11 March 2003 pp. 45-46.
[740] T. 11 March 2003 pp. 45, 47, 48.
[741] T. 11 March 2003 p. 48.
[742] T. 13 February 2003 pp. 23, 32.

that the stadium was guarded by day and by night, due to fear that the refugees might be attacked.[743] The witness stated that even though only six or seven gendarmes were stationed there, no assailants would dare to attack the stadium because of all the other gendarmes positioned near the stadium.[744] The witness also stated that in his opinion the gendarmerie brigade was well protected between 10 and 18 April 1994.[745] The witness testified that he heard people say that Munyarugerero and other prefectural authorities removed Tutsis from the stadium who were later killed at Gatandara bridge and the gendarmerie brigade.[746] The witness testified that he never heard that people were killed within the stadium.[747]

303. Bagambiki Defence Witness GLB testified that he met Witness LAP in the central prison of Cyangugu, where they were both incarcerated.[748] The witness attested to knowing that Witness LAP had received money from unidentified persons outside prison in order assist in bringing charges against certain people.[749] The witness explained that he learned this information from other, now-released prisoners, who were victims of false accusations, many of them brought by Witness LAP.[750]

304. Bagambiki Defence Witness JNQ, a representative of the human rights organisation LIPRODHOR, testified that he knew Witness LAP and provided information about his character, past criminal acts, and reasons to doubt his credibility.[751] Witness JNQ also read from a letter in which Witness LAP recanted certain elements of his confession in which he falsely denounced three persons who did not participate in the genocide.[752]

305. Bagambiki Defence Witness FOZ stated that, on 7 April 1994, many people, including the wife and children of Georges Nkusi, sought refuge at Bagambiki's home.[753] She recalled that unidentified people outside threatened the safety of those in Bagambiki's house.[754]

306. Bagambiki Defence Witness HNV, a Rwandan Tutsi, stated that the Nkusi family and the Bagambiki family were close.[755] The witness explained that Bagambiki rescued her and Nkusi's wife from armed attackers and protected them at his home.[756] The witness also stated that, after rescuing Nkusi's family, Bagambiki was stopped at a roadblock and was forced to plead to get through because the people manning the roadblock referred to the Nkusi and his wife as "*Inkotanyi*".[757] The witness stated that

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[743] T. 13 February 2003 p. 24.
[744] T. 13 February 2003 p. 34.
[745] T. 13 February 2003 p. 30.
[746] T. 13 February 2003 pp. 32-33.
[747] T. 13 February 2003 p. 26.
[748] T. 20 February 2003 p. 28.
[749] T. 20 February 2003 p. 28.
[750] T. 20 February 2003 pp. 28-29.
[751] T. 11 March 2003 pp. 50-51, 56, 57.
[752] T. 12 March 2003 pp. 7-8; Bagambiki Defence Exhibits 10-14.
[753] T. 17 March 2003 pp. 7-8, 12-13.
[754] T. 17 March 2003 pp. 8-9.
[755] T. 17 March 2003 p. 18.
[756] T. 17 March 2003 pp. 18, 20-21, 23.
[757] T. 17 March 2003 p. 21.

Bagambiki saved her life and that she does not believe that he had any responsibility for Nkusi's death.[758]

307. Bagambiki Defence Witness Graff took photos of Cyangugu Cathedral in 2003 which were introduced as part of Bagambiki Defence Exhibit 16.[759] The witness testified that he believed 2,500 to 3,000 people would be able to remain in the cathedral for one night but that there were no toilets or water facilities inside the cathedral.[760] Graff also testified that, based on his measurements, it took six minutes and ten seconds to walk at a "normal" and steady pace the 600 metres from the cathedral to the stadium but that he was unsure how long it would take a large group to cover this distance.[761] Graff also stated that it took thirteen minutes and fifty-eight seconds to walk the 600 metres from the main south entrance of the stadium to the Gatandara bridge, using the pedestrian shortcut across a very steep slope.[762]

b. Findings

308. Prosecution Witnesses LY, LI, NL, LCJ, LCA, LCH, and NI provided largely consistent first-hand accounts of the chronology of events at Cyangugu Cathedral and Kamarampaka Stadium and, in particular, concerning the role of the accused in the transfer of the refugees from the cathedral on 15 April 1994 and the selection of the four refugees from the cathedral and the thirteen refugees from the stadium on 16 April 1994.[763] The Chamber is mindful of several minor differences between these witnesses' accounts but considers that these differences are explained by the passage of time and the witnesses' varying vantage points and familiarity with the overall situation and actions of the authorities. The Chamber finds that these Prosecution witnesses are generally credible and reliable. The Chamber does not, however, find their accounts reliable where the witnesses lacked an adequate basis of knowledge for a particular point. In assessing the evidence surrounding the transfer of the refugees from the cathedral to the stadium as well as the conditions at the stadium, the Chamber particularly relies on the testimony of Witness LY because he provided a convincing and detailed account of his personal interactions during the events with prefectural and military authorities as well as church and Red Cross officials who were involved in relief activities. The Chamber notes that the chronology of the events at the cathedral and the stadium is corroborated to a large extent by Bagambiki and Imanishimwe.

309. From the evidence provided by Prosecution Witnesses LY, LI, NL, LCJ, LCA, LCH, and NI, the Chamber finds that, beginning on 8 April 1994, predominantly Tutsi civilian refugees fleeing the violence in their neighbourhoods ensuing after the death of President Habyarimana began gathering at Cyangugu Cathedral and eventually numbered around 5,000. The prefectural authorities provided at least two to four gendarmes to protect the refugees at the cathedral because the location was not secure. Between 10:00 and 11:00 a.m. on 11 April 1994, Munyakazi came to the cathedral

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[758] T. 17 March 2003 p. 23.
[759] T. 26 March 2003 p. 13.
[760] T. 26 March 2003 p. 11.
[761] T. 25 March 2003 pp. 51-52; T. 26 March 2003 pp. 13-14.
[762] T. 26 March 2003 pp. 20-21.
[763] Witness LI's account concerns only the events at the cathedral.

with a group of *Interahamwe* and removed his son-in-law while the *Interahamwe* shot into the air, creating disorder and panic among the refugees. Bagambiki and other authorities came to the cathedral after this attack to speak briefly to the refugees and to assess the situation.

310. Based on the evidence of Witness LI, the Chamber finds that during the disorder created by Munyakazi's attack, soldiers arrested seven refugees at the Jesuit Novitiate located behind the cathedral and took them to the Karambo military camp. The Chamber notes that the evidence of this arrest is corroborated by the evidence of Witness LY who received a telephone call informing him that refugees had been arrested by soldiers at the novitiate. The soldiers repeatedly kicked and beat Witness LI and the refugees with him with rifle butts from the time of their arrest and during their incarceration at the military camp. Based on the testimony of Witness LI and his in-court identification of Imanishimwe, the Chamber finds that the soldiers presented the refugees to Imanishimwe at the military camp as *"Inyenzi-Inkotanyi"* whom they had found in the bush.[764] The Chamber further finds that Imanishimwe was present during a part of the beating of the refugees at the military camp and that he did not attempt to stop it. In the view of the Chamber, Imanishimwe's participation in the prefectural security council meeting on 11 April 1994 does not cast doubt on his presence at the camp when soldiers brought the refugees from the novitiate, given the proximity of the camp to the prefectural office and the fact that the security meeting broke at lunch time.

311. From the evidence presented by Witness LY, the Chamber finds that, on 11 April 1994, soldiers arrested additional refugees at the cathedral and forced them to lie on the ground near the prefecture office. These refugees were returned to the cathedral after Witness LY asked Bagambiki to intervene.

312. The Chamber notes that Imanishimwe and a number of his witnesses deny that soldiers ever arrested civilians and brought them to the Karambo military camp.[765] As fully explained in section II,B.4, the Chamber does not find their testimonies on this point to be credible or reliable.[766]

313. Based on the testimonies of Witnesses LY and NL as well as of Bagambiki, the Chamber finds that gendarmes deterred two subsequent attacks on the refugees at the cathedral on 11 April 1994. From the evidence provided by Witness LY, the Chamber finds that, on 13 or 14 April 1994, Bagambiki prevented a fourth attack against the refugees when he personally stopped an armed crowd of assailants heading to the cathedral.

314. On 14 April 1994, the bishop and church authorities convened a meeting with Bagambiki, Imanishimwe, and Munyarugerero because the church authorities did not feel that they could ensure the refugees' safety without the assistance of civilian or military authorities. After consulting members of the security council and others, Bagambiki determined that the refugees should be transferred to Kamarampaka Stadium. In the afternoon of 15 April 1994, Bagambiki, Imanishimwe, and

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[764] T. 30 January 2001 pp. 37-38.
[765] *See infra* paras. 359, 367, 372, 372, 376, 382, 399.
[766] *See infra* para. 399.

Munyarugerero first informed the church authorities and then the refugees of Bagambiki's decision to transfer the refugees from the cathedral to Kamarampaka Stadium. The refugees did not want to leave the cathedral but reluctantly agreed to do so when the bishop and other church officials encouraged them to move for their safety. In reaching this conclusion, the Chamber principally relies on Witness LY because he was involved in making the decision to transfer the refugees, discussed the decision with them, and accompanied them to the stadium.

315. The Chamber is not satisfied that the record contains sufficiently reliable evidence to establish that the prefectural or military authorities forced the refugees to move to the stadium or that refugees who refused to move to the stadium were threatened with death. The Chamber does not accept Witness LCA's statement that the bishop initially told the refugees not to go to the stadium because this account is inconsistent with the testimony of Witness LY that the church authorities supported the transfer when they met with the refugees.

316. Later, on the afternoon of 15 April 1994, Bishop Thadée led the procession of refugees to Kamarampaka Stadium, accompanied by gendarmes. From the evidence presented by Witness LY, the Chamber finds that Bagambiki drove alongside the procession to protect the refugees and that he told a group of prisoner workers to stay away from the procession because the refugees feared an attack. The Chamber does not accept Witness NL's assertion that the gendarmes accompanied the procession to prevent the refugees from escaping because the witness did not substantiate his conclusion.[767] The Chamber further notes that Witness NL's conclusion on this point is inconsistent with Witness LY's convincing testimony that the gendarmes, church authorities, and Bagambiki accompanied the refugees to protect them.

317. Based on the testimonies of Munyangabe and Bagambiki, the Chamber finds that the refugees arriving at the stadium from the cathedral joined between fifty and one hundred refugees who had been at the stadium since 9 April 1994. Sick refugees and a few others who were distrustful of the authorities remained at the cathedral with the priests and parish workers. On 15 April 1994, once the refugees were inside the stadium, Imanishimwe arrived and asked Witness LY about the whereabouts of Jean-Marie Vianney Habimana.

318. Around 3:00 or 4:00 p.m. on 16 April 1994, Bagambiki, Imanishimwe, Munyarugerero, Ndolimana, and some soldiers came to the cathedral, searched for, and took away Jean-Marie Vianney Habimana, Vital, Felicien, and Ananias Gatake, purportedly for questioning regarding their possible financial contributions to the RPF. Based on the evidence of Witness LY, the church officials did not try to prevent the removal of these refugees because they believed that the request to question them was genuine and that they would not be harmed. During the search of the cathedral for the refugees, Imanishimwe hit a church secretary in the face with a gun. The officials took the four refugees to Kamarampaka Stadium, where the refugees were left outside the main gate in a pickup truck under the guard of a soldier. Inside the stadium,

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[767] The Chamber is not satisfied that the statement "you want to create incidents unnecessarily" made by a gendarme to Witness NL substantiates the witness's conclusion that this meant "whether you stayed at the stadium or went to the cathedral you were going to be killed." T. 21 February 2001 pp. 51-52.

Bagambiki, Imanishimwe, Ndolimana, and Munyarugerero pointed to the contents of a diary held by Munyarugerero. Bagambiki addressed the refugees, stating his intention to improve the sanitary conditions at the stadium. Bagambiki also stated that the authorities were going to remove and to question a number of refugees believed to be linked with the RPF to ensure the safety of the other refugees at the stadium. Based on the evidence provided by Witness LCJ and by Bagambiki, the Chamber finds that at the end of Bagambiki's speech some of the refugees applauded. Bagambiki called out between thirteen and twenty-five names from a pre-established list. The Chamber finds that the list was pre-established given the eye-witness testimony that Bagambiki read from a list and Bagambiki's admission to previously discussing the situation of the people on the list with members of the security council.

319. The Chamber finds that the authorities selected the following thirteen refugees: Trojan Nzisabira, Dominique Mugabo, Bernard Nkata, Eliphase, Albert Twagiramungu, Remy Muhigo, Albert Mugabo, Felicien Musabimana, Benoit Sibomana, Fidèle Murekezi, Ibambasi, Leonard Nsengiyumba, Apian Ndolimana, and Marianne Baziruwiha.

320. Based on the eye-witness account of Witness NL, the Chamber finds that Imanishimwe and soldiers left the stadium with the thirteen people and placed twelve of them in the vehicle with the four refugees from the church. Marianne Baziruwiha, who was the head of the PSD party and a Hutu, was placed in the car of the gendarmerie commander. Bagambiki left the stadium a few minutes later. The Chamber finds that these refugees, excluding Marianne, were killed and buried in a pit latrine on Jean-Marie Vianney Habimana's property in Mururu sector, Cyimbogo commune. From the evidence of when witnesses heard of the death of these refugees, the Chamber finds that their deaths occurred in the evening or during the night of 16 April 1994.

321. The Chamber recalls that Witness LAP is an alleged accomplice of the accused and, as such, views his testimony with caution. The Chamber does not accept Witness LAP's testimony concerning his activities at the gendarmerie brigade and the Gatandara roadblock because it is inconsistent with other reliable evidence and because he is not a credible or reliable witness. The Chamber recalls that Witness LAP stated that Bagambiki, Imanishimwe, Mubiligi, Nshamihigo, and Munyangabe participated in the selection of the refugees in the stadium and that Witness LAP and others killed all seventeen of them, later removing and eating the hearts of all but one victim. Witness LAP's assertion that Mubligi, Nshamihigo, Munyangabe were amongst the authorities conflicts with the reliable evidence that only Bagambiki, Imanishimwe, Ndolimana, and Munyagerero participated in the selection. Witness LAP's assertion that authorities removed sixteen refugees from the stadium and only one from the cathedral conflicts with the evidence that thirteen refugees were removed from the stadium and four came from the cathedral. Witness LAP's assertion that the assailants killed all seventeen refugees conflicts with the evidence that only sixteen refugees were killed. Though the autopsy report notes injuries that could indicate that the hearts or other organs of some of the refugees may have been

removed, it contradicts Witness LAP's claim that the hearts of all but one of the refugees were removed.[768]

322. In addition, the Chamber recalls its earlier finding that the testimony of Witness LAP is not credible or reliable with respect to another event.[769] The Chamber also notes that Witness LAP's testimony is inconsistent with his prior written statement presented to him in cross-examination. For example, the witness made no mention of Bagambiki's presence at the Gatandara roadblock in his statement to Tribunal investigators, with which he was confronted during cross-examination.[770] The Chamber finds unconvincing the witness's explanation that he did not mention Bagambiki because he knew that he was going to mention his name before the Tribunal, which leaves the impression of fabrication. Moreover, in the Chamber's opinion, Witness LAP's request for money in exchange for providing evidence leaves the impression that his testimony is for sale, which is further supported by Bagambiki Defence Witnesses GLB and JNQ who testified about Witness LAP's reputation for making false accusations for personal gain.[771] The Chamber further notes that Witness JNQ testified about a series of letters bearing the seal of the Cyangugu Prison in which Witness LAP admitted to falsifying evidence related to other cases. The Prosecution has asserted that these letters are not reliable because they are of questionable provenance. Given the numerous indicia that Witness LAP lacks credibility and is not reliable, the Chamber need not examine this issue further.

323. The Chamber also does not rely on the explanations for the death of the refugees provided by Prosecution Witnesses LY, NL, and LCJ, as well as by Bagambiki, Imanishimwe, Imanishimwe Defence Witness PBB, and Bagambiki Defence Witness FLZ because the Chamber lacks an adequate basis from their evidence to assess the credibility and reliability of the second-hand sources upon which their testimonies on this point were based.

324. The Chamber further does not accept Imanishimwe's denial of his presence at the cathedral and the stadium on 16 April 1994 given the reliable eye-witness testimony of Witness LY which is corroborated by Witnesses NL, LCJ, and LCA.

325. The Chamber lacks sufficient reliable and credible evidence to determine whether prefectural authorities participated in any further selection of refugees from Kamarampaka Stadium after 16 April 1994. The Chamber, however, accepts the first-hand account of Prosecution Witness NG-1 concerning the selection and removal of a number of refugees, including George Nkusi, by either soldiers or gendarmes around 27 April 1994.[772] The Chamber, however, lacks sufficient reliable evidence to

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[768] *See* Prosecution Exhibit 37.
[769] *See supra* paras. 129-132.
[770] T. 12 September 2001 pp. 92-94, 102-103.
[771] T. 12 September 2001 p. 65 ("To join the camp of those who pleaded guilty they need money to buy wood that they would use as beds, because there are no beds. Each prisoner buys the wood from his pocket at 500 francs a piece of wood and the bed needs three pieces of wood or planks for it to be made. This is why I'm asking you to bring to me, as soon as possible, or immediately the amount of 20,000 francs to solve this bed problem for you (sic). In this way we will be many to confess to the same crimes and we will, therefore, receive more support for your case.")
[772] The Chamber cannot make a definitive finding because Witness NG-1 testified that he could not readily distinguish between the two groups. *See* T. 28 November 2000 pp. 8-9.

determine what happened to these refugees after their removal, except in the case of Nkusi whose death is not disputed.

326. The Chamber lacks sufficient reliable evidence to determine whether Bagambiki had any involvement in the death of Nkusi. The Chamber is not satisfied that the evidence of Witnesses LY and NL sufficiently demonstrates that Bagambiki bore a grudge against Nkusi. In reaching this conclusion, the Chamber considered that Bagambiki spoke with Nkusi at the cathedral and personally brought him medicine. The Chamber also finds it reasonable that it would have been dangerous for Bagambiki to bring Nkusi to his home, given the harassment he faced from soldiers for bringing Nkusi's family there, as recounted by Defence Witnesses Mukandekezi, HNV, FOZ, and Bagambiki. The Chamber also does not accept as reliable Witness NL's testimony about his conversations with Nkusi at the stadium because the Chamber finds that his account about the transfer of Nkusi's family to Bagambiki's home is inconsistent with the testimony of Witnesses Mukandekezi, HNV, as well as of Bagambiki who had first hand knowledge of the transfer.

327. The Chamber notes that Prosecution Witnesses LH and LBH testified about a number of instances after 20 April 1994 where Bagambiki allegedly selected refugees from the stadium to be killed by *Interahamwe* at the Gatandara roadblock, including the two witnesses and George Nkusi. Witness LBH also testified about prefectural and military authorities selecting all male refugees from the stadium and, on another occasion, killing all but fewer than a thousand refugees, when, according to him, they fled the stadium around 27 or 28 April 1994. The Chamber is not convinced that these witnesses' accounts are sufficiently credible and reliable because their testimonies appear to be exaggerated and inconsistent with other reliable evidence on the record.[773] In reaching this conclusion, the Chamber has considered that Witness NG-1, who was at the stadium on 27 and 28 April 1994, made no mention of the escape and murder of a large number of the refugees from the stadium. Witness NG-1 also witnessed the removal of Nkusi and others from the stadium but did not mention the presence of authorities. Witness NG-1 mentioned no other selections of refugees from the stadium. In addition, Witness LY, who closely followed the conditions of the refugees, also did not mention other selections involving prefectural authorities or the escape and murder of almost all the refugees from the stadium. The Chamber cannot accept that Witnesses NG-1 and LY would have failed to mention such significant events and details, had they indeed occurred. The testimony of Witness WTJ, a gendarme stationed at the stadium during that period, raises further doubt about the allegations of Witnesses LBH and LH. The Chamber notes the inconsistency between Witness LBH's testimony that in his second abduction he was with fifteen refugees and his prior written statement, which was read into evidence, stating that he was with three women.[774] Moreover, Witness LBH's assertion that Nkusi's wife and children were at the stadium conflicts with the evidence that Nkusi's family was at Bagambiki's home from 7 April 1994.

328. Given Witness LY's role in and knowledge of relief activities, the Chamber also accepts his assessment that the refugees at the stadium lacked sufficient

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[773] The Chamber also doubts Witness LH's ability to identify Bagambiki given his misidentification of him in court. *See* T. 31 January 2001 pp. 48-51.

[774] T. 15 February 2001 pp. 12, 20, 22-23.

sanitation, water, food, and shelter to meet all the refugees' basic needs. The Chamber, however, finds that church authorities, and later the Red Cross, had regular access to the refugees and tried to provide them with food, medical care, and improved sanitary conditions. The Chamber also accepts Witness LY's assessment that food and other relief supplies were in extremely short supply and that it was nearly impossible to receive international aid in the midst of the on-going conflict. The Chamber finds that prefectural authorities were aware of these efforts and, as far as the evidence shows, did not inhibit church and Red Cross officials from assisting the refugees at the stadium.

329. The Chamber finds that gendarmes guarded the refugees at the stadium. The Chamber is not satisfied, however, that there is sufficient reliable or credible evidence proving that gendarmes or *Interahamwe* killed refugees who left the stadium. Though Witnesses NL and NG-1 testified that *Interahamwe* were outside the stadium, which the Chamber accepts, there is no credible or reliable evidence that *Interahamwe* killed the refugees who left the stadium.

330. The Chamber also lacks sufficient reliable evidence to determine if *Interahamwe* entered the stadium to abduct and kill refugees. Though the Chamber accepts Witness NG-1's testimony that small groups of *Interahamwe* entered the stadium, the witness noted that these *Interahamwe* did not do anything to the refugees inside.

331. After considering the evidence, the Chamber finds that the gendarmes and the prefectural authorities curtailed the movement of the refugees at the stadium. In reaching this conclusion, the Chamber considered that the stadium had limited access points, which were guarded by gendarmes. The Chamber also notes the evidence of Witness NL that he bribed a gendarme to leave the stadium and also the evidence of Bagambiki that gendarmes fired in the air to discourage a small group of refugees from leaving. The Chamber, however, lacks sufficient reliable evidence to determine whether the gendarmes and the prefectural authorities curtailed the refugees' movements for a malicious purpose or whether it was for their security. In contrast to other sites in Cyangugu, a large scale attack was never carried out against the refugees at the stadium. The Chamber also notes that other refugees, such as Witness LCJ and her family and Witness NG-1, left the stadium and did not testify about encountering any difficulty when doing so.

c. Conclusion

(i) Paragraph 3.19

332. The Chamber finds that approximately 5,000 Tutsis sought refuge at Cyangugu Cathedral to escape the violence in their neighbourhoods ensuing after the death of President Habyarimana. On 11 April 1994, there were three attacks on the refugees at the cathedral, including one by Yussuf Munyakazi and his *Interahamwe.*

(ii) Paragraph 3.20

333. The Chamber finds beyond a reasonable doubt that, following the first attack on Cyangugu Cathedral on 11 April 1994, soldiers arrested at least seven refugees

near the cathedral, including Prosecution Witness LI, and took them to the Karambo military camp in Cyangugu where they were presented to Imanishimwe. The Chamber will consider whether Imanishimwe issued orders to execute refugees who were taken to the military camp in section II.B.4.[775]

(iii)Paragraph 3.21

334. The Chamber finds that, on 15 April 1994, Bagambiki and Imanishimwe ordered the refugees at Cyangugu Cathedral to move to Kamarampaka Stadium in Cyangugu after discussions with church authorities who indicated that they could not adequately protect the refugees at the cathedral without greater assistance from prefectural and military authorities. The Chamber finds that it was not proven beyond a reasonable doubt that the refugees who refused to obey were threatened with death.

(iv)Paragraph 3.22

335. The Chamber finds that the church authorities, Bagambiki, and gendarmes escorted the refugees to Kamarampaka Stadium. The Chamber lacks sufficient reliable evidence to determine whether Imanishimwe escorted the refugees, though the Chamber finds that he was at the cathedral prior to the transfer and at the stadium immediately after it. The Chamber also finds that there were some refugees already at the stadium and that a number of other refugees arrived later, including refugees from the Gihundwe *Groupe Scolaire* and refugees from Shangi parish. The Chamber finds that the refugees remained at the stadium until 11 May 1994 when they were transferred to the Nyarushishi camp.

336. The Chamber finds that, during this period, gendarmes guarded the stadium and that the movement of the refugees was curtailed, though some were apparently able to leave without difficulty. The Chamber, however, lacks sufficient reliable evidence to determine whether the restriction on the refugees' movement was principally to keep them incarcerated or to ensure their protection. The Chamber also finds that it has not been proven beyond a reasonable doubt that those refugees who attempted to leave the stadium were executed by the *Interahamwe* and the gendarmes who were outside. The Chamber finds that *Interahamwe* entered the stadium but lacks sufficient reliable evidence to find that they abducted refugees and later executed them.

(v) Paragraph 3.23

337. The Chamber finds that, on 16 April 1994, Bagambiki, Imanishimwe, and others selected twelve Tutsis and one Hutu from the stadium using a pre-established list. The Chamber finds that the twelve Tutsi refugees were executed along with four other Tutsis who had been selected and removed from Cyangugu Cathedral by the same authorities a short while earlier. The Chamber lacks sufficient reliable evidence to determine if the execution of the sixteen Tutsis occurred at Gatandara. A majority of the Chamber, Judge Williams dissenting, lacks sufficient reliable evidence to determine whether Bagambiki or Imanishimwe participated in the execution of these

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[775] *See infra* para. 410.

sixteen refugees by either personally killing them, ordering soldiers to kill them, or giving them to *Interahamwe* to be killed. Judge Williams is of the view that given the circumstances surrounding the selection and removal of the refugees from the cathedral and the stadium, and their resultant death, Bagambiki by his actions must have intended or have been fully aware and consented to the killing of the refugees.

338. The Chamber also finds that, around 27 April 1994 gendarmes or soldiers participated in a selection, in which George Nkusi and other refugees, were removed from the stadium. The Chamber lacks sufficient reliable evidence to determine if Bagambiki and Imanishimwe were present during or participated in that or in any other selection after 16 April 1994.

4. Paragraphs 3.24 and 3.25 of the Bagambiki/Imanishimwe Indictment

339. Paragraphs 3.24 and 3.25 of the Bagambiki/Imanishimwe Indictment read:

> 3.24 Between April and July 1994, Lieutenant **Samuel IMANISHIMWE** participated with his soldiers in the selection and arrest of Tutsis, some of whom were later executed at the Cyangugu Barracks.
>
> Also, Lieutenant **Samuel IMANISHIMWE** ordered soldiers to execute certain people suspected of being Tutsis.
>
> 3.25 Between April and July 1994, Tutsis and moderate Hutus were arrested and taken to the Cyangugu Barracks to be tortured and executed. Also, during this period, soldiers, participated on several occasions with MRND militiamen and the *Interahamwe* in massacres of the civilian Tutsi population.

340. The Chamber will consider the evidence of soldiers' participation in massacres, as alleged in paragraph 3.25, in connection with its findings in section II.B.5.

a. Torture and Murder of Civilians and Soldiers at Cyangugu Camp

(i) Allegations

341. Prosecution Witness AQ, a soldier at Karambo camp, testified that during two assemblies at 4:00 a.m. and 6:00 a.m. on 7 April 1994, Imanishimwe informed the soldiers about the death of the President and told them to be vigilant, explaining that they were in the final stages of the war.[776] The witness stated that Imanishimwe also reorganized the camp's three platoons and ordered a platoon under Chief Warrant Officer Mirembano to guard the camp, a platoon under Chief Warrant Officer Seberagwera to patrol Lake Kivu, and a platoon under First Sergeant Ndayishimiye to

[776] T. 2 May 2001 pp. 96, 99-100, 103-109; T. 3 May 2001 pp. 100-102.

patrol Cyangugu prefecture to look for "*Inkotanyis* and their accomplices".[777] The witness stated that, after the 6:00 a.m. assembly, he took his position at the guard post.[778] The witness testified that from this vantage point he saw Imanishimwe meet briefly after the assembly with several other soldiers at his residence before the platoons left the camp on their missions.[779]

342. Witness AQ estimated that between 8:00 and 8:30 a.m. on 7 April 1994, a group of soldiers returned to the camp passing by the guard post with civilians, primarily young people, who were noticeably wounded and bleeding.[780] The witness stated that, after the civilians' arrival, Imanishimwe, who was coming from his home, met them inside the camp.[781] According to the witness, Imanishimwe insulted the civilians stating, *inter alia*, that "these *Inyenzis* want to take over the country; it will be difficult for them" and then fired a bullet from a Kalashnikov gun hitting the foot of one of the civilians, who fell to the ground.[782] The witness stated that Imanishimwe and the other soldiers then kicked the civilians and beat them with the butts of their rifles before taking them to the camp's jail cells, where the soldiers continued to beat them.[783] Witness AQ testified that other groups of soldiers returned during the day with visibly injured civilians who were also imprisoned at the camp.[784] The witness stated that soldiers took these civilians away at night to be killed.[785] The witness stated that he heard shots emanating from Gatandara as well as soldiers boasting about killing the civilians at the Gatandara roadblock with the assistance of *Interahamwe*.[786]

343. Witness AQ testified that, on the morning of 8 April 1994, he was transferred from the guard post to the roadblock near the prefecture office which guarded one of the two entrances to the camp, where he stayed for five days monitoring who entered and exited the camp.[787] Witness AQ testified that, from this post from 8 until 12 April 1994, he observed "ill-treated" civilians being brought into the camp several times a day where they continued to be "mistreated" by soldiers.[788]

344. Witness AQ stated that, on 9 April 1994, he left his post to go to the camp where he saw Imanishimwe and others arrest about ten to thirteen soldiers, who were suspected of being *Inkotanyi* accomplices rumoured to be planning to kill Imanishimwe, and one soldier, who had mistakenly shot a Hutu.[789] The witness stated

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[777] T. 2 May 2001 pp. 110-114; T. 3 May 2001 p. 81. The witness later stated that Ndayishimiye shared command of his platoon with Ruberanziza and noted in cross-examination that only Ruberanziza was in command. T. 2 May 2001 pp. 111, 113; T. 3 May 2001 p. 103.
[778] T. 2 May 2001 pp. 113-114; T. 3 May 2001 pp. 41-42.
[779] T. 2 May 2001 pp. 115-116, 119; T. 4 May 2001 pp. 2-3.
[780] T. 2 May 2001 pp. 122-127, 134-135.
[781] T. 2 May 2001 pp. 127-128; T. 4 May 2001 pp. 5-6.
[782] T. 2 May 2001 pp. 128-131.
[783] T. 2 May 2001 pp. 124, 132-134; T. 4 May 2001 p. 11.
[784] T. 2 May 2001 pp. 135-136; T. 4 May 2001 p. 7.
[785] T. 2 May 2001 pp. 134, 136.
[786] T. 2 May 2001 pp. 136-137; T. 4 May 2001 pp. 13-14.
[787] T. 3 May 2001 pp. 2-3.
[788] T. 3 May 2001 pp. 3, 10-11.
[789] T. 3 May 2001 pp. 4-8, 9; T. 4 May 2001 pp. 22-23.

that he saw the arrested soldiers being taken from the camp to the Cyangugu central prison on the day of their arrests.[790]

345. Witness AQ testified that, on 10, 11, and 12 April 1994, he saw the arrested soldiers being taken to the Prosecutor's office and then back to the central prison, accompanied by First Sergeant Ndayishimiye.[791] The witness stated that, on 12 April 1994, he heard screams and gunshots as the arrested soldiers reached the forest on the way from the Prosecutor's office to the central prison.[792] According to the witness, a few minutes later two of the arrested soldiers, Corporals Murangwa and Ignace, came to the witness's roadblock and told the soldiers there that *Interahamwe*, armed with clubs, axes, and machetes, and soldiers attacked them in the forest.[793] The witness stated that Corporals Murangwa and Ignace begged the soldiers at the roadblock, to no avail, to shoot them and spare them an atrocious death at the hands of the *Interahamwe*, before seeking the intervention of Bagambiki, who was then outside the prefecture office.[794] The witness testified that he did not know what Bagambiki said to the arrested soldiers but that Bagambiki did not intervene.[795] According to the witness, First Sergeant Ndayishimiye then returned and took away Corporals Murangwa and Ignace in his vehicle, after explaining that what the two corporals had said was untrue.[796] The witness stated that Ndayishimiye's vehicle returned to the camp a few moments later carrying only the soldiers who had guarded the arrestees and *Interahamwe,* one of whom was wearing Corporal Murangwa's jacket.[797]

346. Prosecution Witness LI testified that, on 11 April 1994, soldiers arrested and beat him and six other refugees at the Jesuit Novitiate near Cyangugu Cathedral and then took them to the Karambo military camp where the soldiers mistreated them upon arrival.[798] The witness testified that the soldiers locked him and the others in a room and kicked and beat them again with sticks of wood and rifle butts while saying, "we are going to beat you to death."[799] The witness stated that no one tried to stop the beating.[800] The witness stated that, during this beating, soldiers took some of the refugees away and that, when the refugees did not return, he and the sole other remaining detainee forced their way past the two guards, who were beating them, and fled the camp while it was still daylight.[801] The witness stated that he ran behind the office of the prefecture and continued to the bank of Lake Kivu where he rested for a short while and then swam to Bukavu, while being fired upon.[802] The witness stated that he was the only survivor of the seven people arrested because he knew that two of

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[790] T. 3 May 2001 p. 11; T. 4 May 2001 p. 21.
[791] T. 3 May 2001 pp. 11-14; T. 4 May 2001 p. 23.
[792] T. 3 May 2001 p. 14.
[793] T. 3 May 2001 pp. 15, 16.
[794] T. 3 May 2001 pp. 19-20; T. 4 May 2001 p. 17.
[795] T. 3 May 2001 p. 20.
[796] T. 3 May 2001 pp. 20-21.
[797] T. 3 May 2001 p. 22.
[798] *See supra* paras. 233-235.
[799] T. 30 January 2001 pp. 22, 23, 101-102.
[800] T. 30 January 2001 p. 27.
[801] T. 30 January 2001 pp. 24-25, 101-103; T. 31 January 2001 p. 4.
[802] T. 30 January 2001 pp. 25-26, 101; T. 31 January 2001 p. 4.

those arrested, his brother and a classmate, had died, and he did not hear that the others ever rejoined the refugees at the cathedral.[803]

347. Prosecution Witness MG, a Tutsi resident of Kamembe city, testified that he remained at home with his family from April until June 1994 due to the increased insecurity for the Tutsi population.[804] The witness stated that at the end of April 1994, ten soldiers came to his house looking for his father because it was said that an RPF soldier was guarding him.[805] The witness stated that the soldiers did not arrest anyone at that time because they found no RPF soldiers at the house and did not recognise his father who was sick.[806] The witness also noted that on this occasion soldiers prevented the *Interahamwe* from looting the his house.[807]

348. Witness MG testified that soldiers from the Karambo camp returned to his home accompanied by *Interahamwe* at the beginning of June 1994 as part of a search of Kamembe city, which in the witness' opinion, was aimed at identifying Tutsis.[808] The witness stated that when the soldiers came, he fled to the bourgmestre's residence but that three soldiers arrested him there and took him to the Kamembe market where the witness joined his father, two sisters, and about 300 other arrested people suspected of having ties with the RPF.[809] The witness knew that he was arrested by soldiers because they wore black berets, whereas gendarmes wore red berets.[810] The witness stated that Bagambiki, Imanishimwe, Colonel Bavugamenshi of the gendarmerie, Bourgmestre Napoleon Mubiligi, and the conseiller of Kamembe sector came to the market shortly after the witness arrived there.[811] According to the witness, Mubiligi dismissed a number of those arrested whom he recognised.[812] The witness testified that soldiers lined up the arrested people, who included Tutsis, about one hundred Hutus, and Zaireans, with the Tutsis in the first row, suspected accomplices in the second row, and "people in whose homes people had been found hiding" in the third.[813]

349. Witness MG stated that Bagambiki, Imanishimwe, and Bavugamenshi asked Mubiligi whether each of those arrested was a resident of Kamembe commune.[814] The witness testified that a soldier informed the authorities that an RPF cassette tape had been found on one of the members of the witness's family.[815] The witness recounted that Imanishimwe, Bagambiki, and Bavugamenshi each asked Mubiligi whether the witness and his family were people of integrity.[816] According to the witness, Mubiligi stated that he had nothing against the witness and his family because they were his

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[803] T. 30 January 2001 p. 26-27.
[804] T. 12 February 2001 pp. 4-5, 6, 59-60.
[805] T. 12 February 2001 pp. 7-8, 68-69.
[806] T. 12 February 2001 pp. 8, 68, 69.
[807] T. 12 February 2001 p. 71.
[808] T. 12 February 2001 pp. 8-9, 69-70, 102-103.
[809] T. 12 February 2001 pp. 11-14, 80-81, 104-108, 112; T. 13 February 2001 p. 4.
[810] T. 12 February 2001 p. 12.
[811] T. 12 February 2001 pp. 14-15, 110.
[812] T. 13 February 2001 pp. 22-23, 27.
[813] T. 12 February 2001 pp. 16-18, 81-82; T. 13 February 2001 pp. 10-11.
[814] T. 12 February 2001 p. 18; T. 13 February 2001 p. 19.
[815] T. 12 February 2001 pp. 20-21, 61-62; T. 13 February 2001 p. 17, 19.
[816] T. 12 February 2001 pp. 21, 97; T. 13 February 2001 p. 18.

neighbours.[817] The witness stated that the soldiers protested and asserted that Mubiligi was simply trying to protect the witness and his family who were "*Inyenzis*".[818] The witness testified that Bavugamenshi stated that he knew the witness's family and that they should be taken to his barracks to ensure their safety.[819]

350. Witness MG stated that four gendarmes with red berets and three soldiers with black berets escorted him and the family members detained with him to the gendarmerie brigade in a van belonging to the commune.[820] He stated that before they arrived at the brigade, the soldiers wearing black berets, purporting to act on Imanishimwe's orders, diverted the vehicle to Gatandara by threatening the driver, where the soldiers summoned *Interahamwe*, telling them that they had brought people to be killed, and then attempted to steal the personal possessions of the witness and his family.[821] The witness stated that the gendarmes fought the soldiers and prevented the *Interahamwe* from killing the witness and his family.[822]

351. Witness MG testified that after his arrival at the gendarmerie brigade, he was joined by seventy other people who were brought from the market and that he was informed by the people arriving that most of those arrested had been released because they were Hutus, and the bourgmestre had recognized them.[823] The witness stated that the next night soldiers came to the gendarmerie brigade and demanded, purportedly on Imanishimwe's orders, that the arrested individuals be transferred to Karambo military camp.[824]

352. Witness MG testified that he, his father, and two sisters were taken in the first group to the military camp and that an unknown number of other people arrested in the market and detained at the gendarmerie brigade were also later transferred to the camp.[825] The witness stated that he and his father were placed in a cell with two badly beaten Tutsi soldiers and that his two sisters were placed in another cell.[826] The witness stated that the next morning, soldiers took his father, him, and three other Tutsi civilians to the camp's field for questioning.[827] The witness testified that, in the presence of Imanishimwe, soldiers beat him and another detainee with a stick to such an extent that the witness could not stand up for several days.[828] Witness MG also testified that the soldiers hammered a fifteen centimetre nail into the feet of the other two Tutsi prisoners while asking them if they were members of the RPF and while telling them that they were collaborating with the enemy.[829] The witness stated that Imanishimwe was present throughout the incident and that he did not restrain the

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[817] T. 12 February 2001 pp. 21-22, 97; T. 13 February 2001 p. 13.
[818] T. 12 February 2001 pp. 22-23, 98.
[819] T. 12 February 2001 pp. 23, 98; T. 13 February 2001 p. 8.
[820] T. 12 February 2001 pp. 24, 31-32; T. 13 February 2001 pp. 26-28.
[821] T. 12 February 2001 pp. 25-26, 33; T. 13 February 2001 pp. 32-33.
[822] T. 12 February 2001 pp. 26, 29, 33-34.
[823] T. 12 February 2001 pp. 24-25; T. 13 February 2001 pp. 25-26, 41.
[824] T. 12 February 2001 p. 35; T. 13 February 2001 pp. 34-35.
[825] T. 12 February 2001 pp. 35, 37; T. 13 February 2001 pp. 41-42.
[826] T. 12 February 2001 p. 37; T. 13 February 2001 pp. 44-45.
[827] T. 12 February 2001 p. 38; T. 13 February 2001 pp. 51-53, 57-59.
[828] T. 12 February 2001 pp. 38-42, 44, 82-83; T. 13 February 2001 pp. 53-55.
[829] T. 12 February 2001 pp. 38-42, 44, 82-83; T. 13 February 2001 pp. 53-55.

soldiers.[830] The witness stated that, thirty minutes later, they were returned to their cell and that, subsequently, the two Tutsis, who had been mistreated with the nail and who were screaming in pain, were removed for questioning, never to return.[831]

353. Witness MG stated that while he was incarcerated in the camp for five days, soldiers called out names and took prisoners for questioning around 1:00 a.m. and that some did not return.[832]

354. Witness MG stated that, during his incarceration, Imanishimwe came to ask the witness's father if he knew a certain trader and a particular MRND official.[833] According to the witness, a few days later Second Lieutenant Hakizimana called out the names of the witness, his father, and two sisters, one of whom had disappeared during their incarceration, and drove the three of them home.[834] He stated that earlier the name of his sister, who had disappeared, had been called out at night along with one of her cellmates, a woman called Mbembe, that they were taken from their cell, and that Mbembe was later found dead at Kadasomwa.[835] The witness stated that his sister has not been found.[836]

355. Prosecution Witness MA, a Hutu, testified that, in late June 1994, he was arrested at the prefecture office in Cyangugu by a man in plain clothes who, after inspecting his identity papers, told him that he was an accomplice and took him to the military camp.[837] The witness speculated that he was suspected of being an RPF accomplice because he had worked in a ministry that was not under the control of the MRND and because many Tutsis lived in his sector of origin.[838] The witness stated that he was taken to the command office and presented to the camp commander, whom he identified as Imanishimwe and described as wearing a camouflage uniform lacking any indicia of rank.[839] According to the witness, the camp commander examined his identity card, said that he was an accomplice, tore the identity card, and then ordered soldiers to take the witness to jail.[840] The witness stated that he was imprisoned for more than a week in a cell located in the guard post at the camp, which had about twelve cells, where more than ten people were detained, each in his own cell.[841]

356. Witness MA stated that, during his detention, detainees were brought in and removed but that, other than the Tutsi detainee in the adjacent cell, he did not know who was detained there.[842] The witness noted that he heard regularly, but not daily, gunshots emanating from inside the camp near Lake Kivu about an hour or two after

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[830] T. 12 February 2001 pp. 41-42.
[831] T. 12 February 2001 pp. 42, 44-45; T. 13 February 2001 pp. 44, 49, 55, 60.
[832] T. 12 February 2001 pp. 46, 49, 94; T. 13 February 2001 pp. 62-63, 64-65.
[833] T. 12 February 2001 pp. 46-47.
[834] T. 12 February 2001 pp. 47-48.
[835] T. 13 February 2001 pp. 69, 70.
[836] T. 12 February 2001 pp. 47, 48; 13 February 2001 p. 70.
[837] T. 31 January 2001 pp. 72-74; T. 1 February 2001 pp. 60, 64, 66.
[838] T. 1 February 2001 pp. 88-89.
[839] T. 31 January 2001 pp. 74, 81-82; 1 February 2001 pp. 69, 72.
[840] T. 31 January 2001 pp. 73-74; T. 1 February 2001 p. 74.
[841] T. 31 January 2001 pp. 74-75, 77; T. 1 February 2001 p. 75.
[842] T. 31 January 2001 pp. 77-78; T. 1 February 2001 pp. 78-79.

detainees were taken out of their cells between 2:00 and 4:00 a.m.[843] The witness stated that he thought, but had no way to confirm, that the people taken out were being shot.[844] The witness stated that he next saw the camp commander during his release sometime in the first ten days of July after French soldiers arrived at the camp.[845] The witness stated that, upon his release, Imanishimwe gave him a document certifying that the witness lost his identity papers.[846] The witness stated that he identified the commander as Imanishimwe from this document on which Imanishimwe's name was written next to his signature.[847]

357. Imanishimwe testified that, on 21 October 1993, he assumed the acting command of the Karambo military camp in Cyangugu.[848] Imanishimwe stated that he commanded the military camp's three platoons, which totaled around ninety to ninety-five soldiers.[849] Imanishimwe stated that soldiers wore black berets while gendarmes had red berets.[850]

358. Imanishimwe testified that, on 6 April 1994 around 9:00 p.m., he informed the soldiers at the Karambo camp of the president's death and that he asked them to remain calm and alert.[851] He stated that he did not hold an assembly on 7 April 1994, nor did he reorganise and dispatch the camp's three platoons as alleged by Prosecution Witness AQ.[852] Rather, Imanishimwe stated that, on 7 April 1994, he attended a meeting at the gendarmerie squad around 7:00 a.m. to discuss deploying soldiers at Rusizi I and II and at the airport and then returned to the camp around 8:30 a.m. to prepare for the prefectural security council meeting.[853] Imanishimwe testified that he attended the meeting until around 1:00 to 2:00 p.m.[854] He stated that, after the meeting, he returned to the camp to check on the deployment of his soldiers.[855]

359. Imanishimwe stated that soldiers never brought civilians to the camp, placed them in the military jail, tortured them, or executed them at the Gatandara road block.[856]

360. Imanishimwe stated that when he learned of a plot by a group of soldiers to kill him, he then sent a FLASH message to the staff headquarters which responded that he had to refer the matter to the prosecutor's office.[857] Imanishimwe stated that, after receiving this response, he ordered the arrest of six soldiers, who were both Hutus and Tutsis. He stated that of the six, four were arrested, turned over to the prosecutor's office, and then sent to the Cyangugu prison, while two had escaped

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[843] T. 31 January 2001 pp. 78, 79-80; T. 1 February 2001 pp. 78-79.
[844] T. 31 January 2001 p. 79.
[845] T. 31 January 2001 pp. 79, 80-82.
[846] T. 31 January 2001 pp. 81-82.
[847] T. 31 January 2001 p. 82.
[848] T. 20 January 2003 p. 11.
[849] T. 21 January 2003 pp. 13, 15, 33.
[850] T. 21 January 2003 p. 31-32.
[851] T. 21 January 2003 pp. 37, 38.
[852] T. 21 January 2003 pp. 38, 39, 40.
[853] T. 21 January 2003 pp. 40, 41.
[854] T. 21 January 2003 pp. 41, 42.
[855] T. 21 January 2003 pp. 42.
[856] T. 22 January 2003 pp. 15-16, 20.
[857] T. 22 January 2003 pp. 16-17.

arrest.[858] Imanishimwe stated that he learned that one of the four who were arrested fled from custody in the Prosecutor's office and that the other three remained incarcerated in the Cyangugu central prison.[859]

361. Imanishimwe testified that he was aware of a search in Kamembe in June 1994, which was organised by commune authorities and executed with the assistance of the gendarmes under Bavugamenshi and a section of soldiers from the Karambo camp, which he provided at Bavugamenshi's request.[860] Imanishimwe stated that he heard that during the operation people were arrested and eventually released upon the verification of their identities.[861]

362. Imanishimwe Defence Witness PBA, who stayed at Imanishimwe's residence in the Karambo camp from April to July 1994, testified that, on 6 April 1994, Imanishimwe went to the camp around 9:00 p.m. for about an hour.[862] According to the witness, on 7 April 1994, Imanishimwe left his house around 7:30 a.m. and went to see the commander of the Cyangugu gendarmerie, returning around 8:30 a.m and leaving again shortly thereafter.[863] Witness PBA testified that he heard no gunshots coming either from within or outside the camp during his stay at Karambo.[864]

363. Imanishimwe Defence Witness PKA, who was stationed at the Cyangugu gendarmerie squad on 6 April 1994, stated that he saw the commander of the military camp come to a meeting on the morning of 7 April 1994 at about 7:00 or 7:30 a.m. and that at the meeting the gendarmerie commander Munyarugerero ordered soldiers to replace the gendarmes at Rusizi I and II and the airport.[865]

364. Imanishimwe Defence Witness PCC, a soldier at the Karambo camp, testified that he arrived at his new post at the Cyangugu airport in Kamembe at about 2:00 p.m. on 7 April 1994, where he and his commander Sergeant Major Ndayishimiye remained until July 1994 without returning to the camp.[866]

365. Imanishimwe Defence Witness PCD, a soldier at the Karambo camp, stated that beginning on 5 April 1994, he guarded the camp at the roadblock near the prefecture where he could see everyone who entered the military camp.[867] The witness stated that, though other soldiers were periodically replaced, he worked twenty-four hour shifts for fourteen days with no relief, leaving only two to three times a week for about fifteen minutes to take a shower in the camp and sleeping only an hour at a time.[868] The witness explained that he commanded ten soldiers posted at the

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[858] T. 22 January 2003 pp. 16-17.
[859] T. 22 January 2003 p. 17.
[860] T. 22 January 2003 pp. 36-37.
[861] T. 22 January 2003 pp. 37, 38.
[862] T. 5 November 2002 p. 77.
[863] T. 5 November 2002 p. 84.
[864] T. 5 November 2002 p. 85; T. 6 November 2002 p. 20.
[865] T. 14 October 2002 pp. 77-79.
[866] T. 29 October 2002 pp. 7-8, 11.
[867] T. 29 October 2002 pp. 21-22, 24.
[868] T. 29 October 2002 pp. 27, 47-48, 49.

roadblocks leading to the camp and on Lake Kivu and that these soldiers reported to him about who entered and exited the camp.[869]

366. Witness PCD stated that from his post he saw Imanishimwe enter the camp on the evening of 6 April 1994.[870] The witness stated that, on 7 April 1994 around 8:00 a.m., a platoon under the command of Second Lieutenant Irankunda departed the camp to take up positions at Rusizi I and II and that, sometime in the afternoon, the third platoon under Second Lieutenant Hakizimana left for the Kamembe airport.[871] The witness noted that the first platoon remained at the camp.[872]

367. According to Witness PCD, during the fourteen days at his post, he did not see or hear about soldiers escorting civilians into the camp or about a civilian escaping the military camp while being fired upon.[873]

368. Witness PCD testified that from his post he saw four soldiers, including Corporals Murangwa, Rucakibungo, and Gisagara, who were not in uniform, being escorted to the prosecutor's office as a result of their plans to kill Imanishimwe.[874] The witness stated that he later met Corporal Gisagara in Congo, and that Gisagara told him that he had escaped while the arrested soldiers were being transferred from the prosecutor's office to the prison.[875]

369. Witness PCD indicated that no soldier in the first platoon, which guarded the camp, deserted.[876]

370. Imanishimwe Defence Witness PCE, a soldier at Karambo camp, testified that, on the evening of 6 April 1994, Imanishimwe informed the soldiers of the death of the president and that Imanishimwe did not call any further assemblies on 7 April 1994.[877] The witness stated that, on 7 April 1994, a platoon led by Sergeant Major Ndayishimiye was stationed at the airport, a platoon under Second Lieutenant Irankunda was stationed at Rusizi I and II, and a platoon headed by Second Lieutenant Chantal Ujeneza guarded the camp.[878] The witness noted that Second Lieutenant Hakizimana headed Ndayishimiye's platoon but that Hakizimana remained at the camp because he held the position of S-3.[879]

371. Witness PCE testified that he saw the arrest of four soldiers, including Rucakibungo, Murangwa, and Karangwa, who were suspected of trying to kill Imanishimwe.[880] The witness stated that he could not recall the exact date of the arrest or the exact ranks of the arresting officers but noted that Imanishimwe was not

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[869] T. 29 October 2002 pp. 21-22, 24.
[870] T. 29 October 2002 pp. 50-51, 53.
[871] T. 29 October 2002 pp. 38-39, 41, 46.
[872] T. 29 October 2002 p. 63.
[873] T. 29 October 2002 pp. 25, 26-27, 30-31, 49-50.
[874] T. 29 October 2002 p. 29.
[875] T. 29 October 2002 p. 30.
[876] T. 29 October 2002 pp. 6, 64.
[877] T. 30 October 2002 pp. 13-14.
[878] T. 30 October 2002 pp. 26-27.
[879] T. 30 October 2002 pp. 49-50.
[880] T. 30 October 2002 pp. 17-18, 34-35.

present.[881] The witness stated that, when the four soldiers were arrested, their clothes and weapons were removed, and they were transferred to the court.[882] The witness stated the general staff, rather than Imanishimwe, gave the order to arrest these soldiers, which he had heard from a radio operator who had received a cable to that effect.[883] The witness also indicated that there were two additional soldiers, who were associated with the same plan to assassinate Imanishimwe, but who were not arrested because they were at posts located away from the camp.[884]

372. Witness PCE explained that the camp's four jail cells were located to the right of the guard post upon entry into the camp.[885] The witness stated that opposite the four cells there was a wall and not another row of cells.[886] According to the witness, civilians were neither detained in the cells during his time at the Karambo camp nor were they killed at the camp.[887] The witness also testified that, on 11 April 1994, a civilian was not chased or shot by soldiers at the camp.[888] The witness also stated that he did not hear gunshots during the night between April and July 1994.[889]

373. Imanishimwe Defence Witness PKB testified that he was stationed at the guard post from 4:00 p.m. on 6 April 1994 until 4:00 p.m. on 7 April 1994 and that he was responsible for monitoring entry into the camp.[890] Witness PKB testified that, at about 9:00 p.m. on 6 April 1994, Imanishimwe came to the camp and told the soldiers gathered on the tarmac that the president had been killed and that they must remain vigilant because the "enemy", which the witness understood to mean RPF-*Inkotanyi*, could enter the country from any point.[891] The witness stated that there was no other meeting held during that night or on 7 April 1994.[892] Witness PKB stated that after duty at the guard post, he went to the roadblock at the prefecture at 4:00 p.m. on 7 April 1994 where he remained until 4:00 p.m. on 8 April 1994.[893] The witness also testified that a soldier could not pass five consecutive days and nights in a single location because of the rotation system then in effect.[894] The witness explained that his platoon of twenty-six soldiers guarded the camp, while two other platoons were deployed at the Kamembe airport and at Rusizi I and II, respectively.[895]

374. Witness PKB testified that the guard post contained four jail cells, each of which could fit two people.[896] Witness PKB testified that he did not see or hear about any civilians being detained, tortured, or killed at the Karambo camp between April

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[881] T. 30 October 2002 pp. 40, 41-42.
[882] T. 30 October 2002 p. 17.
[883] T. 30 October 2002 pp. 37-38.
[884] T. 30 October 2002 pp. 17-18.
[885] T. 30 October 2002 pp. 15-16.
[886] T. 30 October 2002 p. 16.
[887] T. 30 October 2002 pp. 18-19.
[888] T. 30 October 2002 pp. 20, 50-51.
[889] T. 30 October 2002 pp. 20-21.
[890] T. 16 October 2002 pp. 18-20, 40-41.
[891] T. 16 October 2002 pp. 30-31, 32-33, .
[892] T. 16 October 2002 p. 33-34.
[893] T. 16 October 2002 pp. 22-23.
[894] T. 16 October 2002 p. 24.
[895] T. 17 October 2002 pp. 4-5.
[896] T. 16 October 2002 pp. 35-36, 56-57.

and July 1994.[897] Witness PKB testified that he was not aware that any soldiers were taken away from the Karambo camp on 9 April 1994 and killed.[898]

375. Imanishimwe Defence Witness PNC, a soldier at the Karambo camp, testified that, on 6 April 1994, Imanishimwe informed the soldiers of the President's death around 9:00 p.m. and placed the camp on a state of alert.[899] The witness stated that no additional assembly was held on 7 April 1994.[900]

376. Witness PNC testified that, beginning on 7 April 1994, the camp's soldiers were positioned at the airport under Sergeant Major Ndayishimiye, at Rusizi I and II under Lieutenant Irankunda, and at the camp under Lieutenant Chantal Ujeneza.[901] The witness stated that he was not aware that civilians were detained, tortured, or imprisoned at the Karambo camp from April to July 1994.[902]

377. Witness PNC testified about an exchange of messages between the Karambo camp and the military headquarters concerning the punishment of six soldiers suspected of plotting to kill Imanishimwe.[903] The witness testified that the message from headquarters stated that the soldiers should be arrested, disarmed, and sent to the prosecutor's office.[904] The witness testified that he heard that four soldiers, including Murangwa and Rucakibungo, were arrested on 9 April 1994 on the orders of Imanishimwe and that they were taken to the Prosecutor's office, but that two soldiers, Kawamo Karangwa and Lambert Kabalisa, fled.[905]

378. Witness PNC also stated that there were four jail cells manned by two persons at the guard post at the camp.[906]

379. Imanishimwe Defence Witness PNE testified that at 9:00 p.m. on 6 April 1994, Imanishimwe informed the soldiers at the camp of the death of the president and asked them to be "vigilant" because Karambo was located at the border of Zaire and Burundi and the enemy could enter Rwanda through Cyangugu.[907] The witness stated that there were no other assemblies that night or on the morning of 7 April 1994.[908]

380. Witness PNE testified that, beginning on 7 April 1994, soldiers occupied positions at Rusizi I and II under Second Lieutenant Irankunda, at the Kamembe airport under First Sergeant Ndayishimiye and Second Lieutenant Hakizimana, and at the camp under Second Lieutenant Chantal Ujeneza.[909] Witness PNE testified that the soldiers left for Rusizi I and II at 8:00 a.m. on 7 April 1994 and that he took his

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[897] T. 16 October 2002 p. 36.
[898] T. 17 October 2002 p. 6.
[899] T. 3 October 2002 pp. 43, 44-45.
[900] T. 3 October 2002 p. 46.
[901] T. 3 October 2002 p. 55.
[902] T. 3 October 2002 pp. 53-54; T. 7 October 2002 p. 49.
[903] T. 3 October 2002 pp. 19-22; T. 7 October 2002 pp. 53-62, 67, 68.
[904] T. 3 October 2002 pp. 20-23; T. 7 October 2002 p. 67.
[905] T. 3 October 2002 pp. 23-24, 25; T. 7 October 2002 p. 34.
[906] T. 7 October 2002 p. 16.
[907] T. 10 October 2002 pp. 3-4, 15-16.
[908] T. 10 October 2002 p. 4-5.
[909] T. 9 October 2002 p. 69; T. 10 October 2002 pp. 5, 9, 11-12.

position at the Kamembe airport on 7 April 1994 around 4:00 p.m. where he remained constantly until 17 July 1994.[910]

381. Witness PNE testified that the Karambo camp's four cells could each fit two persons.[911]

382. Imanishimwe Defence Witness PNF, who stayed at the Cyangugu military camp from April until July 1994, testified that he supplied food from the camp to the soldiers positioned at Rusizi I and II and at the airport.[912] The witness testified that, while at the Karambo camp, he heard no gunshots during the night and never saw or heard about civilians being detained in the camp's jail cells.[913]

383. Imanishimwe Defence Witness Essono testified that within the guard post at Karambo camp was a jailhouse with four cells measuring one metre in width and two metres in length, each with a small opening for ventilation.[914] He stated that the measurement of the jailhouse itself was three metres in width and six metres in length with three walls of sixty centimetres each separating the cells.[915] He stated that the distance from the guard post to the bank of Lake Kivu is 578 metres.[916] The witness explained that the estimated distance from the Rwandan bank of Lake Kivu to the Congo bank of the lake is approximately 1,000 metres.[917]

384. Imanishimwe Defence Witness PNB testified that until she fled Rwanda, she was a resident of *Cinq Julliet* cellule in Kamembe commune.[918] She testified that, around 9:00 a.m. at some point in June 1994, ten cell leaders along with young men and three or four gendarmes came to her house as part of a "raid" in Kamembe commune and told the witness to remain at home and that all "able-bodied men" should assemble in the market place.[919] The witness stated that her brothers, who were present in the market place, informed her that, during the meeting, the bourgmestre told those gathered to return home and not to worry about the "search" which was conducted only to ensure that everything was safe in the area.[920] The witness stated that the next day she was told that members of a certain family allegedly affected by the raid had returned home unharmed.[921]

385. Bagambiki stated that Mubiligi, the bourgmestre of Kamemebe city, submitted a request to the prefectural security council for a search of Kamemebe because of the increasing insecurity in the region due to the influx of approximately 70,000 war refugees, including war deserters and people released from prison.[922] Bagambiki noted that the gendarmerie commander concurred with the idea of a search, and the

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[910] T. 9 October 2002 pp. 68-69; T. 10 October 2002 pp. 11-12, 15-16, 17.
[911] T. 10 October 2002 pp. 6-8.
[912] T. 8 October 2002 pp. 20-21.
[913] T. 8 October 2002 pp. 17, 20, 23.
[914] T. 10 October 2002 pp. 63-64, 66.
[915] T. 10 October 2002 pp. 66, 70.
[916] T. 10 October 2002 p. 78; T. 14 October 2002 p. 52.
[917] T. 10 October 2002 pp. 78-79.
[918] T. 9 October 2002 pp. 3-4, 18.
[919] T. 9 October 2002 pp. 9-10, 48.
[920] T. 9 October 2002 p. 11.
[921] T. 9 October 2002 pp. 12, 16.
[922] T. 1 April 2003 p. 3.

gendarmerie conducted a search under Bavugamenshi's supervision, beginning at 6:00 a.m on 6 June 1994, with the assistance of a few soldiers and cellule officials.[923] Bagambiki noted that he was called to observe when the search of the houses was complete at 10:00 a.m.[924] Bagambiki stated that he did not see people separated by ethnicity.[925] Bagambiki noted that, after the search, Bavugamenshi made a report and told him that any "irregulars" found after brief questioning in the market were taken to the gendarmerie brigade at Rusizi I.[926]

(ii) Findings

386. The Chamber accepts that Prosecution Witness AQ was a soldier assigned to the Karambo military camp in Cyangugu, which is corroborated by several Imanishimwe Defence Witnesses. Witness AQ's testimony, however, contains inconsistencies and lacks a number of basic details which, in the Chamber's opinion, the witness should have been able to provide. For example, the witness could not state the approximate number of civilians brought into the camp or the number and names of the soldiers escorting them. The Chamber finds that the witness's explanation for not providing greater detail is unpersuasive and evasive, particularly considering the size of the camp and his duty to monitor who entered and exited the camp.[927] Moreover, the Chamber finds it problematic that Witness AQ could not state the number of soldiers in his platoon or name his section leader.[928]

387. Given Witness AQ's assertion that he was stationed at the roadblock nearest the prefectural office on 11 April 1994, the witness should have been able to observe that Bagambiki, the gendarmerie commander, and the Bishop left the prefectural office for Cyangugu Cathedral in response to the attack at the cathedral, which was audible and visible from the prefecture office. Moreover, the Chamber would also expect that Witness AQ would have seen or heard about Witness LI's escape from the Karambo military camp while being fired upon by soldiers. The failure of the witness to mention these matters casts doubt on his testimony.

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[923] T. 1 April 2003 pp. 2-5.
[924] T. 1 April 2003 p. 5.
[925] T. 1 April 2003 p. 5.
[926] T. 1 April 2003 p. 6.
[927] T. 4 May 2001 pp. 6-10 ("Q. How many soldiers escorted the civilians? A. I do not know their number. Q. Can you give us some of the names of the soldiers who were escorting the civilians? A. You see, asking me names of soldiers under such circumstances is something I cannot answer precisely because there was the group of civilians which arrived and a few minutes later another group arrived, and so on and so forth. So, I do not want to take the risk of giving you names, because I might give you names of soldiers who came in the second group and then you might say, 'No, those came in the first group,' so I cannot venture into that field. Q. Witness, can you now tell us that on the 7th of April several groups of civilians arrived at the camp successively? A. I'm not saying that the arrival of the groups was successive, or in a given rhythm. What I know is that groups of civilians were brought to the camp on that date, on several occasions. Groups of civilians were brought to the camp several times on the same day, on the same date, in such a manner that you cannot ask me the names of soldiers who came with the first group or the second group, and so on and so forth. I cannot venture giving you the names of those soldiers. Q. But, Witness, they were your colleagues and you knew each other, right? A. Even if we knew each other -- that is, between soldiers -- we did not take the trouble of knowing what specific person was assigned to a task, as a duty. One could see people coming with a group, but I did not take the trouble of noting who came with the first group, or who came with the second group, and so on and so forth, particularly since my duties were different from their duties.").
[928] T. 3 May 2001 p. 109.

388. The Chamber recalls that Witness AQ testified that he was amongst those suspected of plotting to kill the camp commander, which was confirmed by Imanishimwe Defence Witness PNC. As such, the Chamber doubts that Witness AQ, if he were present at the camp, would have escaped arrest or that he would have remained at the camp, in particular as a guard, after 9 April 1994.

389. In addition, based on accounts of Imanishimwe Defence Witnesses PCD, PKB, PNC, and PNE, as well as of Imanishimwe, the Chamber accepts that, following the President's death, Imanishimwe addressed the camp only once, on the night of 6 April 1994. In this respect the Chamber notes the reasonableness of a commander immediately placing his camp on alert in the wake of the death of the head of state, especially given the state of affairs between the government and the RPF forces. Witness AQ's account of two pre-dawn assemblies with Imanishimwe on 7 April 1994 is inconsistent with other evidence on the record.

390. The Chamber also notes that Witness AQ's account that Imanishimwe reorganised the platoons, dispatching one platoon to search the prefecture for *Inkotanyis* and their accomplices, one to patrol Lake Kivu, and one to remain at the camp is at odds with his later testimony that he contacted a fellow Tutsi soldier who was stationed at the airport, which would be consistent with the testimony of Imanishimwe Defence Witnesses PKA, PCC, PCD, PCE, PNE, and PNF, as well as with the testimony of Imanishimwe who stated that a platoon of soldiers was posted at the airport. Furthermore, the Chamber notes that the witness's credibility is further undermined by his assertion that he was a member of Sergeant Mirembano's platoon, which was assigned to guard the camp, and his later assertion that he was not a member of Mirembano's platoon.[929]

391. Based on the above inconsistencies and omissions in Witness AQ's testimony, the Chamber has doubt that he was stationed at the guard post on 7 April 1994 and in front of the roadblock at the prefecture from 8 until 12 April 1994. As such, the Chamber cannot rely on his account of what he claimed to have seen from those posts because the basis of his knowledge for these events is suspect.

392. The Chamber finds the first-hand and detailed evidence of Prosecution Witness LI to be credible and reliable. From his testimony, the Chamber finds that soldiers at the Karambo camp severely beat Witness LI and those detained with him and threatened them with death. The Chamber also accepts Witness LI's testimony that his brother and his classmate with whom he was arrested and incarcerated at the camp are dead, which the witness would reasonably know because of his relationship with them. However, the Chamber cannot determine beyond a reasonable doubt the fate of the other individuals detained at the camp with Witness LI. The witness only speculated that they were killed because he did not hear that they had returned to the cathedral.

393. From the testimonies of Prosecution Witness MG, Bagambiki, and Imanishimwe, the Chamber finds that a search occurred in Kamembe city on 6 June

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[929] *Cf.* T. 2 May 2001 p. 114 ("I was assigned to the first platoon, and I think that I said that the first corps was led by Chief Warrant Officer Mirembano") *with* T. 3 May 2001 p. 13 ("It was obvious that that soldier was part of my platoon, but not part -- did not belong to Mirembano's platoon.").

1994. The Chamber finds that Witness MG's detailed first-hand account of his arrest during the search and his subsequent detention at the Karambo military camp is credible and reliable. In the Chamber's opinion, Bagambiki's failure to remember that Witness MG was among 300 people in the Kamembe city market on 6 June 1994 does not raise any doubt about his arrest. The Chamber has also considered Witness MG's testimony in connection with Imanishimwe Defence Witness PNB's statement that Witness MG and his family were not affected by the search. The Chamber cannot accept Witness PNB's account as credible given the detailed and convincing evidence provided by Witness MG.

394. Based on the evidence of Witness MG, the Chamber finds that, on 6 June 1994 in Kamembe city, soldiers arrested approximately 300 people, including the witness, his father, and two sisters. Bagambiki, Imanishimwe, and Bavugamenshi then questioned Mubiligi about whether each of the arrested people was from Kamembe. During the questioning, a dispute arose between the soldiers and Mubiligi about whether the witness and his family were people of integrity, as claimed by Mubiligi, or whether they had ties to the RPF, as claimed by the soldiers, one of whom had said that a member of the witness's family was found in possession of an RPF cassette tape. Bavugamenshi, who knew the witness's family, intervened and ordered that the witness and his family be taken to the gendarmerie brigade to ensure their safety. On the way to the gendarmerie brigade, soldiers forced the driver of the communal vehicle to change course to Gatandara. The Chamber finds that Imanishimwe ordered the soldiers to have Witness MG and his family killed at Gatandara because the soldiers said that they were acting on the orders of their "chief" and had just left Imanishimwe at the Kamembe market.

395. The Chamber finds that upon arrival at Gatandara, the soldiers summoned *Interahamwe*, telling them that they had brought people to be killed. The gendarmes protected the witness and his family from the soldiers and the *Interahamwe* and brought them safely to the gendarmerie brigade. The next day, soldiers purporting to act on Imanishimwe's instructions took the witness and his family from the gendarmerie brigade and incarcerated them at the Karambo military camp for about one week. While at the Karambo camp, soldiers severely beat the witness and three other Tutsi civilians in the presence of Imanishimwe and drove a fifteen centimetre nail into the feet of two of these detainees, while asking them about their connections to the RPF. At night, soldiers brought new prisoners to the cells and took away some prisoners for questioning. Some of the prisoners who had been removed for questioning did not return while others did, indicating that they had been questioned. At one point, soldiers called out the names of one of the witness's sisters and her cellmate Mbembe and removed them from their cell. Since then, the witness's sister has not been found, while Mbembe's dead body was found later. During the witness's incarceration, Imanishimwe came to ask the witness's father if he knew a certain trader and an MRND official, whom his father did know. A few days later, Second Lieutenant Hakizimana called out the names of the witness and the other family members detained with him and drove them home.

396. The Chamber accepts Witness MG's assertion that his sister was killed, given the time that has passed since she was removed from her cell, the fact that if she had been alive at the camp, she would have been released with the other family members, and the circumstances of being taken from her cell by soldiers at night with another

woman, Mbembe, who was subsequently found dead. The Chamber finds that she was killed between 7 June 1994 and 11 or 12 June 1994, considering the date of the Kamembe city search, the date on which Witness MG and his family were transferred to the camp, and the period of time they were incarcerated at the military camp there.

397. The Chamber also finds the first-hand and detailed evidence of Prosecution Witness MA to be credible and reliable. As such, the Chamber accepts that the witness was arrested and, on the orders of Imanishimwe, imprisoned at the Karambo military camp for more than one week at the end of June 1994 and that during that period unidentified prisoners were taken in and out of the camp's cells at night, followed by the sounds of gunfire between 2:00 and 4:00 a.m.

398. The Chamber notes that Prosecution Witnesses LI, MA, and MG attest that soldiers imprisoned civilians at the Karambo military camp at various points from April through June 1994. Though these witnesses were not incarcerated at the same time, the Chamber finds that their accounts provide a measure of mutual corroboration. All provide similar first-hand and detailed accounts of soldiers incarcerating civilians in cells in the guard post, calling them for questioning, and, in the case of Witnesses LI and MG, mistreating them while accusing them of having connections with the RPF.

399. In assessing the credibility and reliability of the accounts of Witnesses LI, MA, and MG, the Chamber has considered the assertions of Imanishimwe and his witnesses that soldiers were never brought to or mistreated at the camp. The Chamber, however, does not find Imanishimwe or his witnesses to be credible or reliable on this point. The Chamber is mindful that the Imanishimwe Defence witnesses are biased and self-interested because they previously served as soldiers under Imanishimwe's command and because acknowledging that civilians were brought to the camp would implicate them or their colleagues in the mistreatment. Consequently, the Chamber does not find that this evidence of Imanishimwe and his witnesses casts doubt on the persuasive and detailed first-hand accounts of Witnesses LI, MA, and MG.

400. The Chamber accepts the testimonies of Imanishimwe Defence Witnesses PCE, PKB, PNC, PNE, and Essono that the Karambo camp had four cells in the guard post, each measuring one metre by two meters. This finding does not undermine Witness MA's account of his imprisonment at the camp because, in the Chamber's opinion, Witness MA's statement that there were twelve cells was based on an observation made under difficult circumstances. In addition, the Chamber finds that Witness MG's account of several people being placed in a single cell is not undermined by the small size of each cell, given the other mistreatment that soldiers then inflicted on detainees at the Karambo camp.

b. Other Events

401. The Prosecution also submitted that Imanishimwe participated in a number of killings, as recounted by Prosecution Witnesses LAI, LAJ, LC, and LAK.[930] Witness LAI testified that Imanishimwe personally killed a Tutsi soldier at 11:00 a.m. on 7

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[930] *See* Prosecutor's Closing Brief, pp. 155, 156, 163.

April 1994 at a meeting in Bugarama and that Imanishimwe also personally killed Second Lieutenant Mbakaniye of the gendarmerie a week later at Gatandara.[931] Witness LAJ testified about Imanishimwe and Munyakazi killing a Tutsi second lieutenant in Bugarama around 10:00 a.m. on 10 April 1994.[932] Witness LC attested to hearing that Imanishimwe had ordered *Interahamwe* to kill three Hutu boys at Gatandara.[933] Witness LAK testified about Imanishimwe personally killing a soldier in July 1994 in Kamembe city.[934]

402. The Chamber emphasises that the Bagambiki/Imanishimwe Indictment does not mention these specific events and that they do not fall within the contours of paragraphs 3.24 and 3.25 or any other paragraph of the indictment. Indeed, no paragraph in the indictment alleges that Imanishimwe personally killed or ordered *Interahamwe* or other civilians to engage in killings. In addition, the Chamber observes that notice of these specific events is not in the supporting materials to the indictment, in the pre-trial brief, or in other pre-trial disclosure.[935]

403. Further, the Chamber recalls that Witnesses LAI, LAJ, and LAK are alleged accomplices of the accused and, as such, views their testimonies with caution. In addition, the Chamber has found the testimonies of Witnesses LAI, LAJ, and LAK not to be credible or reliable with respect to other events and thus does not accept their testimonies about these events without corroboration.[936] The Chamber emphasises that Witness LC's account of Imanishimwe's participation in the murder of the three Hutu boys is uncorroborated hearsay. In addition to his testimony being uncorroborated, Witness LAI did not specify the basis of knowledge for his account of Imanishimwe's participation in the killing of Second Lieutenant Mbakaniye. Moreover, the Chamber finds that the testimonies of Bagambiki and Imanishimwe that they participated in a prefectural security council meeting on 7 April 1994, which is corroborated by Bagambiki Defence Witness Mukandekezi and Imanishimwe Defence Witness PBB, raises doubt about their alleged participation in the meeting in Bugarama on that day.[937]

404. Consequently, the Chamber will not take into account the evidence of these witnesses on these matters in making its findings because such evidence is unreliable and outside the scope of the indictment.

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[931] T. 17 September 2001 pp. 27, 89-92; T. 25 September 2001 pp. 83-85, 102-103, 107-108, 110-114, 116-118.

[932] T. 23 October 2000 pp. 49, 51-53; T. 23 October p. 57 (French); T. 24 October 2000 pp. 109-111; T. 25 October 2000 p. 12.

[933] T. 9 May 2001 pp. 25-26, 70-71; T. 10 May 2001 pp. 111-112, 114, 117, 123-124, 131, 137, 138, 140.

[934] T. 18 January 2001 pp. 109-110; T. 22 January 2001 pp. 83, 84, 86, 93, 104-105; T. 23 January 2001 pp. 8-9, 10-14.

[935] *See, e.g.*, Testimony of LAI, T. 25 September 2001 p. 110; Testimony of LAJ, T. 24 October 2001 p. 42.

[936] *See* paras. 129-132, 484, 540.

[937] Testimony of Bagambiki, T. 27 March 2003 p. 35, 37, 38; T. 2 April 2003 p. 29; Testimony of Imanishimwe, T. 22 January 2003 p. 25; Testimony of Mukandekezi, T. 10 March 2003 p. 35; Testimony of PBB, T. 4 November 2002 pp. 10, 11, 16-17, 18; T. 5 November 2002 pp. 14, 38. The Chamber also has previously found that Bagambiki's participation in the security council meeting raised reasonable doubt about his participation in another event that morning. *See supra* para. 217.

c. Findings on Paragraphs 3.24 and 3.25

405. Based on the evidence of Prosecution Witnesses LI, MG, and MA, the Chamber finds beyond a reasonable doubt that an unknown number of Tutsi and Hutu civilians were arrested under suspicion of being RPF accomplices and taken to the Karambo military camp where soldiers mistreated them. Based on the evidence of Witness MG, the Chamber finds that Imanishimwe participated with his soldiers in the selection and the arrest of mainly Tutsi civilians on 6 June 1994 at Kamembe city.

406. The Chamber also finds that Imanishimwe ordered the arrest at the Karambo military camp of at least six soldiers who were suspected of plotting to kill him. However, the Chamber lacks reliable evidence to determine beyond a reasonable doubt what happened to the soldiers after their arrest and transfer to the prosecutor's office and the Cyangugu prison.

407. Based on the evidence of Witness MG, the Chamber finds that Imanishimwe instructed soldiers to have Witness MG, his father, and two sisters killed at Gatandara, which was ultimately prevented by gendarmes.

408. The Chamber finds that soldiers from the Karambo military camp killed or facilitated the killing of Witness LI's brother and his former classmate on 11 April 1994 and Witness MG's sister and her cellmate Mbembe between 7 and 12 June 1994, given the circumstances surrounding their detention and removal from the camp's cells.

409. The Chamber lacks sufficient reliable evidence to determine beyond a reasonable doubt whether soldiers killed or participated in the killings of the other unidentified persons detained at the Karambo military camp who were mentioned by Witnesses LI, MA, and MG.

410. Based on the evidence, the Chamber infers that Imanishimwe issued orders authorizing the arrest, detention, mistreatment, and execution of civilians with suspected ties to the RPF. In reaching this conclusion, the Chamber has considered the pattern and frequency of civilians being arrested and brought to the camp. Imanishimwe was present during the detention and mistreatment of some of these civilians. Given the nature of a military command structure and hierarchy, the relatively small size of the camp, Imanishimwe's presence at the camp, Imanishimwe's testimony that he had control over the Karambo camp soldiers, the absence of any evidence suggesting that he lacked control over the soldiers, and the absence of any evidence of Imanishimwe preventing soldiers from mistreating civilians or punishing them for their abuse, the Chamber cannot accept that soldiers at the Karambo camp would have undertaken these activities, particularly on such a large scale, without orders from Imanishimwe, the commander of the camp. The Chamber also notes that the soldiers who unsuccessfully attempted to have Witness MG and his family killed at Gatandara stated that they were acting on the orders from their commander. In addition, the soldiers stated that they were acting on orders of Imanishimwe when they brought Witness MG and his family to the military camp from the gendarmerie camp. The Chamber also recalls Imanishimwe's total denial that civilians were ever brought into the Karambo camp, which was not found to be credible.

411. As such, the Chamber finds that soldiers killed or facilitated the killing of Witness LI's brother and classmate and Witness MG's sister and her cellmate Mbembe, acting on the orders issued by Imanishimwe. The Chamber will determine in its legal findings whether the soldiers' mistreatment of civilians at the Karambo camp constituted torture. The Chamber will also consider in its legal findings whether soldiers arrested Tutsis, as such, and moderate Hutus to bring them to the camp to be tortured and executed.

5. Paragraphs 3.17, 3.18, 3.26, 3.27, 3.28, 3.30, and 3.31 of the Bagambiki/Imanishimwe Indictment

412. Paragraphs 3.17, 3.18, 3.26, 3.27, 3.28, 3.30, and 3.31 of the Bagambiki/Imanishimwe Indictment read:

> 3.17 During the events referred to in this indictment, **Lieutenant Samuel IMANISHIMWE**, in his capacity as Commander of the Cyangugu Barracks, participated, with *Préfet* **Emmanuel BAGAMBIKI** and other persons, in preparing lists of people, mostly Tutsis and some Hutus in the opposition to eliminate.
>
> 3.18 These lists were given to the soldiers and militiamen with order to arrest and kill the persons whose names were listed. The soldiers and the *Interahamwe* then carried out the orders.
>
> 3.26 On at least two occasions in April 1994, *Préfet* **Emmanuel BAGAMBIKI** ordered soldiers and MRND militiamen, *i.e.* the *Interahamwe*, to kill members of the civilian Tutsi population and certain Hutus in the opposition.
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> 3.27 Between April and July 1994, subordinates of *Préfet* **Emmanuel BAGAMBIKI**, notably *sous-préfets, bourgmestres,* government employees and *gendarmes*, participated in the massacres of the civilian Tutsi population and of certain Hutus in the opposition.
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> 3.28 During the events referred to in this Indictment, *Préfet* **Emmanuel BAGAMBIKI** had the duty of ensuring the protection and safety of the civilian population within his *préfecture*. On several occasions in April 1994, *Préfet* **BAGAMBIKI** failed or refused to assist those whose lives were in danger who asked for his help, particularly in Gatare *commune*, where those Tutsis were massacred.
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> 3.30 During the events referred to in this indictment, the militiamen, *i.e.* the *Interahamwe*, with the help of the soldiers, participated in the massacres of the civilian Tutsi population and of Hutu political opponents in Cyangugu *préfecture*.
>
> 3.31 During the events referred to in this indictment, there were several tens of thousands of victims, mostly Tutsis, in Cyangugu *prefecture*.

413. The Chamber will also consider in this section whether Bagambiki participated in the distribution of weapons as alleged in paragraph 3.16 and whether soldiers participated in massacres as alleged in paragraph 3.25.

a. Gashirabwoba

(i) Allegations

414. Prosecution Witness LAC testified that, between 8 and 11 April 1994, he and other Tutsis fought off Hutu assailants, armed with spears, machetes, clubs, and grenades who were attacking Tutsi homes in Gisuma commune.[938]

415. Witness LAC testified that, on 11 April 1994, Tutsi refugees went to the Gashirabwoba football field where they found their families fighting against attackers from Bumazi, Nyamuhunga, and Gashirabwoba sectors.[939] The witness testified that, between 1:00 and 2:00 p.m., the 300 refugees at the football field pushed back the attackers to the other side of the river.[940] The witness stated that after the attack, Bagambiki, Imanishimwe, and soldiers arrived at the field in three pickup trucks and that Bagambiki asked the refugees what they were doing there and why they were being attacked.[941] According to the witness, the refugees replied that people from Bumazi and Gashirabwoba sectors had attacked them and had burned their homes.[942] The witness stated that Bagambiki then asked why they were not burning the houses of the attackers, to which the refugees responded that they did not have the means to do so.[943] The witness testified that Bagambiki then called out from a list the names of Côme Simugomwa, a trader, who was with the refugees, and Ephrem, a trader, who was not there.[944] The witness said that Bagambiki told the refugees that Michel Busunyu, who was an MRND member in Karengera, asked them to bring Côme, a member of the liberal party, to him so that they could talk about party affairs.[945] The witness testified that after spending approximately twenty minutes at the field, Bagambiki, Imanishimwe, and the soldiers left with Côme at about 3:00 p.m.[946] Witness LAC testified that he never saw Côme alive again and that, after security had been restored, survivors, including the witness, found Côme's body by a river in Karengera commune; they recognized Côme's body from his clothes: a red cap, white shirt, a red waistcoat, and black trousers.[947]

416. Witness LAC stated that the soldiers returned in a vehicle to the field on 11 April 1994 at about 7:00 p.m. and, when asked, told the refugees that they had left Côme with Busunyu and that the two were talking with one another.[948] The witness said that the soldiers then asked the refugees at the field, of whom there were then

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[938] T. 9 October 2000 pp. 11-20, 89, 94, 96-97; T. 10 October 2000 pp. 24, 25.
[939] T. 9 October 2000 pp. 20, 21, 22.
[940] T. 9 October 2000 pp. 21, 22.
[941] T. 9 October 2000 pp. 23, 25, 26, 97-98.
[942] T. 9 October 2000 p. 26.
[943] T. 9 October 2000 p. 26.
[944] T. 9 October 2000 pp. 23, 25, 98-99.
[945] T. 9 October 2000 pp. 26-27.
[946] T. 9 October 2000 p. 27.
[947] T. 9 October 2000 pp. 41, 42, 43, 76, 78.
[948] T. 9 October 2000 pp. 28, 29.

approximately 500, if they were all Tutsis and that the refugees told them that some were Hutus.[949] According to the witness, the soldiers suggested killing the refugees, but someone near the driver of the vehicle said no and suggested examining the refugees' problems.[950] The witness stated that the soldiers then left in their vehicles.[951] The witness stated that refugees continued to arrive and that, on 12 April 1994, approximately 3,000 refugees had gathered at the field.[952]

417. According to Witness LAC, on the morning of 12 April 1994, 2,000 people including inhabitants from the various hills and *Interahamwe* and workers from the Shagasha tea factory, began attacking the refugees.[953] The witness stated that during the attacks, Bagambiki and Nsabimana, the director of the tea factory, stopped by the field for about thirty minutes and asked the refugees to explain the situation.[954] The witness stated that the refugees told Bagambiki that they had not eaten or drunk anything in four days and that Bagambiki then promised to send soldiers to protect them.[955]

418. Witness LAC stated that after waiting for an hour, the refugees saw armed soldiers and factory guards climbing to the summit over the football field.[956] The witness stated that the soldiers surrounded the refugees and that ten to fifteen soldiers fired on them, while other soldiers remained in the bushes.[957] The witness stated that the refugees told the soldiers that they wanted peace but that the soldiers told the refugees to raise their hands and threw grenades at them while shooting in all directions.[958] Witness LAC explained that he was not wounded during this attack because when they first started shooting he hid on a high hill and noted that a number of wounded people fell on him.[959] The witness said that the soldiers' attack lasted about thirty minutes, following which the soldiers looted the refugees' property, and then they sent in the *Interahamwe* to finish off the survivors.[960] The witness said that after the killings, the soldiers moved towards the tarred road and left the field free for the *Interahamwe* to loot.[961] He testified that when the *Interahamwe* started fighting amongst themselves for the looted property, he escaped and hid in a banana plantation, later crossing into the Congo on 18 April 1994.[962]

419. Witness LAC stated that Callixte Nsabimana had previously recruited the *Interahamwe* who participated in the attack to work at the Shagasha tea factory and that there they had been trained to kill by reserve soldiers who also worked at the factory.[963] The witness stated that he recognized these *Interahamwe*, who covered

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[949] T. 9 October 2000 pp. 29, 32, 69.
[950] T. 9 October 2000 pp. 30, 69-70.
[951] T. 9 October 2000 p. 32; T. 10 October 2000 p. 34.
[952] T. 9 October 2000 pp. 32, 34.
[953] T. 9 October 2000 pp. 33, 34-35, 70.
[954] T. 9 October 2000 pp. 35, 36.
[955] T. 9 October 2000 pp. 35, 36.
[956] T. 9 October 2000 pp. 37, 38-39.
[957] T. 9 October 2000 pp. 38-39.
[958] T. 9 October 2000 pp. 37-38.
[959] T. 9 October 2000 pp. 40, 73-74.
[960] T. 9 October 2000 pp. 39, 40, 74.
[961] T. 9 October 2000 p. 40.
[962] T. 9 October 2000 pp. 40, 50, 74-75, 82.
[963] T. 9 October 2000 pp. 45-47, 81.

their faces with banana leaves to hide their identities, because they came along with factory guards and because he knew them as factory employees.[964]

420. Prosecution Witness LAH testified that the day after the death of the President, he went to Kanyamuhanda's house, where he received spears, swords, and clubs, and then began killing Tutsis because of their ethnic group.[965] The witness stated that, on 8 April 1994, Bagambiki and Imanishimwe distributed grenades to Felix and Bernard, near Bagambiki's house in Bumazi sector and that Imanishimwe told the *Interahamwe* to be patient because he was going to bring soldiers to help them overcome the enemy.[966]

421. Witness LAH testified that *Interahamwe* gathered and surrounded the Tutsis at an unidentified place and that then they threw grenades at the refugees, killing three of them.[967] The witness stated that the other refugees, who scattered in the forest, said that they were going to the football field the following day.[968] According to the witness, Bagambiki told Kanyamuhanda that the group which had received military training had to be ready for the next day's attacks.[969]

422. Witness LAH testified that, on 8 April 1994 at the Gashirabwoba football field, Côme Simugomwa, who was wearing a red hat, asked Bagambiki for assistance, explaining that the *Interahamwe* were burning down their houses and attacking them.[970] The witness said that Bagambiki then put Côme Simugomwa in his vehicle and took him to a place called Kamafende where "they" killed him.[971]

423. Witness LAH testified that, on 9 April 1994 between 11:00 a.m. and 1:00 p.m, *Interahamwe* and soldiers brought by Imanishimwe from the Karambo camp attacked and killed most of the approximately 2,000 refugees at the Gashirabwoba football field.[972] The witness testified that Bagambiki, who was wearing a red coat and trousers, told the attackers to separate into two groups, each with soldiers and people who had received training.[973] The witness said that the group led by Bagambiki, of which he was a part, attacked from the goal area and that the group led by Imanishimwe was near the forest to ensure that the refugees could not escape from the field.[974] The witness stated that a soldier fired a machine gun at the refugees to force back anybody who tried to escape.[975]

424. According to Witness LAH, during the attack Imanishimwe stated that the attackers had to kill all the refugees so that no survivor would be left to recount what had happened, and Bagambiki encouraged the attackers by saying that all the Tutsis

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[964] T. 9 October 2000 p. 81.
[965] T. 10 October 2000 p. 76; T. 11 October 2000 p. 128.
[966] T. 10 October 2000 pp. 80, 81, 84; T. 11 October 2000 pp. 129-130, 135, 148, 152.
[967] T. 10 October 2000 p. 81.
[968] T. 10 October 2000 p. 81.
[969] T. 10 October 2000 p. 82.
[970] T. 10 October 2000 p. 82; T. 11 October 2000 pp. 92, 94.
[971] T. 10 October 2000 p. 82; T. 11 October 2000 p. 94.
[972] T. 10 October 2000 pp. 81, 82, 84, 85, 89, 90; T. 11 October 2000 pp. 88, 95.
[973] T. 10 October 2000 pp. 83-84; T. 11 October 2000 pp. 88-89, 91.
[974] T. 11 October 2000 p. 96.
[975] T. 10 October 2000 p. 83; T. 11 October 2000 pp. 146-147.

had been killed in other localities.[976] The witness testified that Bagambiki also encouraged them to search for and kill survivors among the victims.[977] The witness testified that after the attack Bagambiki told Kanyamuhanda that *Interahamwe* could loot the bodies.[978]

425. Witness LAH testified that Bagambiki told the assailants to look for and kill Tutsis in Bushenge hospital where they subsequently killed three Tutsis.[979] The witness testified that he killed others on the orders of Kanyamuhanda.[980] The witness noted, however, that their overall leader was Bagambiki, who met twice a week at Kanyamuhanda's house, where the *Interahamwe* received their orders, with the following individuals: Callixte Gakawaya, Bagambiki's secretary; Callixte Nsabimana, the director of the Shagasha tea factory; and Conseillers Karamdizi Cician and Habimana Ageesa.[981] The witness testified that he was present on 10 April 1994, when Bagambiki delivered petrol to Kanyamuhanda which the *Interahamwe* then used to burn down houses, including two in Gashwate cellule, killing fifty-four Tutsis.[982] The witness noted that the *Interahamwe* killed other Tutsis that day in banana plantations and in the bush.[983]

426. Prosecution Witness LAB testified that, on 9 April 1994, *Interahamwe*, led by Tariq Assiz and Mugonda, went to Gashirabwoba stadium in Gisuma commune and attacked Tutsis who had sought refugee there.[984] The witness explained that the attack was unsuccessful, and so Tariq Assiz went to Cyangugu for reinforcements.[985] The witness stated that Tariq Assiz returned to the roadblock near the Shagasha tea factory with Imanishimwe and a vehicle full of soldiers and that Imanishimwe then took the witness and others who had been trained to use weapons to Gashirabwoba.[986] According to the witness, when they arrived at Gashirabwoba, Imanishimwe told them to surround the field to prevent the Tutsi refugees from escaping.[987] The witness stated that Imanishimwe and Bagambiki told the refugees to gather in the middle of the field and not move and that the soldiers had been brought to ensure their security.[988] The witness stated that Imanishimwe then gave a soldier a coded message, which the witness understood as an order to shoot the refugees, which the soldier did.[989] The witness stated that the attack began around 11:00 a.m. and lasted for about fifteen minutes and that the attackers killed all of the refugees.[990]

427. Bagambiki stated that he did not deploy gendarmes to Gashirabwoba on 7 April 1994 because he was not informed that displaced persons had gathered there,

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[976] T. 10 October 2000 pp. 85-86; T. 11 October 2000 pp. 88, 89.
[977] T. 10 October 2000 p. 88.
[978] T. 10 October 2000 pp. 89-90; T. 11 October 2000 p. 86.
[979] T. 10 October 2000 pp. 90, 91.
[980] T. 11 October 2000 p. 35.
[981] T. 10 October 2000 pp. 91, 92; T. 11 October 2000 pp. 100-101.
[982] T. 10 October 2000 pp. 77, 78, 79-80, 82; T. 11 October 2000 pp. 83-84, 113.
[983] T. 10 October 2000 pp. 70, 76, 117.
[984] T. 24 January 2001 pp. 7-8; T. 25 January 2001 p. 7; T. 29 January 2001 p. 32.
[985] T. 24 January 2001 p. 8; T. 25 January 2001 p. 8; T. 29 January 2001 pp. 33-34.
[986] T. 24 January 2001 p. 8; T. 25 January 2001 p. 8; T. 29 January 2001 pp. 34, 36-37, 38.
[987] T. 24 January 2001 p. 10; T. 29 January 2001 p. 55.
[988] T. 24 January 2001 pp. 10-12; T. 25 January 2001 p. 8; T. 29 January 2001 pp. 57-58.
[989] T. 24 January 2001 p. 11; T. 29 January 2001 pp. 54, 64-66.
[990] T. 24 January 2001 p. 11; T. 29 January 2001 pp. 29, 68-69.

which he did not think possible because of the lack of facilities.[991] Bagambiki noted that he did not go to Gashirabwoba on 11 April 1994 with Imanishimwe because he was chairing a prefectural security council meeting until around 4:00 p.m.[992] Bagambiki stated that if it had been known that refugees were at Gashirabwoba on 11 April 1994, someone attending the meeting, such as the bourgmestres of Gisuma, Gafunzo, Kagano, Kirambo, Gatare, and Karengera who had to drive past Gashirabwoba on their way to the prefecture, would have informed him of that, as the topic of the meeting was the refugee issue.[993] Bagambiki noted that he passed the field on 13 April 1994 on his way to Nyamasheke when he stopped at the commune office in Gisuma and learned that the bourgmestre had gone to bury the dead and conduct investigations.[994] Bagambiki stated that he also learned at this time that the refugees had been hiding in the bush around the field and that the bourgmestre had not been aware of their presence.[995]

428. Bagambiki noted that he knew Côme Simugomwa very well and that Côme lived close to the Gashirabwoba football field on the Cyangugu-Butare road.[996] Bagambiki stated that he also knew Ephrem because he used to watch him play football.[997] Bagambiki stated that he learned that Côme and Ephrem were killed, which saddened him, because he had known Côme for a long time and they were friends and neighbours.[998] Bagambiki testified that he did not go to Gashirabobwa on 11 April 1994 and that he did not call Ephrem's or Côme's names off a list because he was at a prefectural security council meeting.[999] Bagambiki also stated that he did not kill Côme.[1000]

429. Bagambiki testified that, on 12 April 1994, he went immediately to Mibilizi parish, with the commander of the gendarmerie and Bishop Thadée in response to a call he received at about 10:00 or 11:00 a.m. and that he returned around 6:00 p.m.[1001] Bagambiki stated that he heard from people fleeing Kigali through Butare on 12 April 1994 that they had just seen people being massacred on the Gashirabwoba football field.[1002] Bagambiki recounted that he then telephoned the Gisuma commune office and that a commune policeman confirmed that refugees had been massacred there.[1003]

430. Bagambiki stated that he knew Ananias Kanyamuhanda and acknowledged meeting him at his official residence when he was appointed as prefect.[1004] Bagambiki stated that he never brought grenades to Bumazi or gasoline to Kanyamuhanda during the events.[1005] Bagambiki testified that he did not give orders to search the Bushenge

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[991] T. 31 March 2003 pp. 16, 17.
[992] T. 2 April 2003 p. 30.
[993] T. 31 March 2003 pp. 17, 18.
[994] T. 31 March 2003 pp. 18, 38-39.
[995] T. 31 March 2003 p. 18.
[996] T. 31 March 2003 pp. 19-20.
[997] T. 31 March 2003 p. 20.
[998] T. 31 March 2003 p. 20.
[999] T. 31 March 2003 p. 20.
[1000] T. 31 March 2003 p. 20.
[1001] T. 31 March 2003 pp. 18-19.
[1002] T. 31 March 2003 pp. 16-17.
[1003] T. 31 March 2003 pp. 16-17.
[1004] T. 31 March 2003 pp. 15-16.
[1005] T. 31 March 2003 p. 22.

hospital and to kill Tutsis hidden there.[1006] Bagambiki also noted that he did not own any red clothing because it was not his taste.[1007] Bagambiki stated that Callixte Gakwaya, the former bourgmestre of Gisuma commune, was not his secretary, but rather a person dealing with requests from the community.[1008]

431. Imanishimwe testified that he did not bring soldiers to the Gashirabwoba football field on 9 April 1994 and that he did not distribute grenades to *Interahamwe*.[1009] Imanishimwe further noted that he did not have a machine-gun or any stream grenades at his camp.[1010] Imanishimwe also stated that the combat situation described by Witness LAB, where soldiers were firing on one side and *Interahamwe* were firing on the other, could not have happened because then the two assailants would in reality be killing each other.[1011] Imanishimwe testified that he did not bring soldiers to the Gashirabwoba football field on 11 April 1994 with Bagambiki to look for Côme Simugomwa as alleged by Witness LAC.[1012] Imanishimwe also stated that he did not attack the refugees at Gashirabwoba on 12 April 1994 because he left Rwanda between 9:00 and 9:30 a.m. and spent the day in Bukavu attending a military meeting, returning to Cyangugu around 5:00 p.m.[1013]

432. Bagambiki Defence Witness BLB testified that he was not in Gashirabwoba between 7 and 13 April 1994 and that the Gashirabwoba football field was approximately one kilometre from his house.[1014] The witness stated that he heard gunshots coming from the Gashirabwoba football field on 12 April 1994 and that on that day he heard from an unidentified source that massacres had taken place there.[1015] The witness, however, noted that he did not see any killings while he was in hiding.[1016] The witness testified that Bagambiki never brought him petrol in order to burn Tutsis during April 1994, although the distribution of petrol was one of the charges levied against the witness in his trial in Rwanda.[1017] Witness BLB further stated that a Rwandan court dismissed this charge.[1018]

433. Witness BLB testified that Nzachayo and others looted his property in April 1994.[1019] The witness stated that Nzachayo had written a letter to the prosecutor in Rwanda in 1998 indicating that his accusations against the witness were unfounded.[1020] The witness noted that Nzachayo gave a copy of the letter to the witness's family, which in addition to Nzachayo's testimony, was used as exculpatory

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[1006] T. 31 March 2003 p. 22.
[1007] T. 31 March 2003 p. 21.
[1008] T. 31 March 2003 p. 21.
[1009] T. 22 January 2003 pp. 28-29; T. 23. January 2003 p. 14.
[1010] T. 22 January 2003 p. 29.
[1011] T. 22 January 2003 pp. 29-30.
[1012] T. 22 January 2003 pp. 30-31; T. 23 January 2003 p. 14.
[1013] T. 22 January 2003 p. 31; T. 23 January 2003 p. 58.
[1014] T. 19 February 2003 p. 24.
[1015] T. 19 February 2003 p. 24; T. 20 February 2003 pp. 5-6.
[1016] T. 20 February 2003 pp. 5-6.
[1017] T. 19 February 2003 p. 28.
[1018] T. 19 February 2003 p. 28.
[1019] T. 19 February 2003 p. 23.
[1020] T. 19 February 2003 pp. 29-30, 33, 40.

evidence during the witness's trial.[1021] The witness affirmed that there was a seal on the letter and explained that, before a letter is sent from a prison, the director of the prison must stamp it with a seal.[1022]

434. Bagambiki Defence Witness GNV testified that, on 9 April 1994, he heard from an unspecified person that a Tutsi, Côme Simugomwa, who was the chairman of the PL party in Gisuma commune, had been kidnapped by unidentified persons.[1023] The witness stated that, on 11 April 1994, he saw many refugees gathered at the Gashirabwoba football field.[1024] The witness further stated that, on 12 April 1994, from his home, he heard gunshots coming from the football field at approximately 11:00 a.m.[1025] The witness stated that he later learned that people had shot at the refugees at the football field.[1026] The witness testified that various members of the family of his mother, who was a Tutsi, were killed at the Gashirabwoba field and that there were two survivors, whom he later met at an unspecified date after the killings.[1027] The witness further testified that he never heard either that Bagambiki was at the Gashirabwoba football field on 12 April 1994 or that Bagambiki was responsible for or participated in the events at Gashirabwoba on that day.[1028]

(ii) Findings

435. Prosecution Witness LAC provided a convincing first-hand account of what occurred at the Gashirabwoba football field, and the Chamber finds his testimony to be credible and reliable. From his testimony the Chamber finds that, on 8 April 1994, Hutu assailants began attacking Tutsi homes in Gisuma commune and that, after several days of clashes, a number of refugees gathered at the Gashirabwoba football field. By 11 April 1994, about 500 refugees had gathered at the football field. A majority of the Chamber, Judge Ostrovsky dissenting, finds that on 11 April 1994 after the refugees had repulsed an attack, Bagambiki, Imanishimwe, and soldiers came to the field between 2:30 and 3:00 p.m., and the refugees told Bagambiki that they were being attacked by assailants from Bumazi and Gashirabwoba sectors. The majority further finds that Bagambiki called out the names of Côme Simugomwa and Ephrem and took away Côme Simugomwa, the local head of the PL party, saying that Michel Busunyu wanted to talk to him about political party affairs. Ephrem was not at the field at that time. At about 7:00 p.m. that evening, soldiers returned to the field and asked the refugees if they were all Tutsis. The soldiers also told the refugees that they had taken Côme Simugomwa to see Busunyu and that they had left him there. After the genocide, survivors found Côme Simugomwa's body by a river in Karengera commune in the same clothes they had last seen him wearing when he was taken from Gashirabwoba.

[1021] T. 19 February 2003 pp. 30, 33, 40-41, 42, 44; 20 February 2003 p. 2; Bagambiki Defence Exhibit 8.
[1022] T. 19 February 2003 p. 30.
[1023] T. 24 February 2003 pp. 32, 50.
[1024] T. 24 February 2003 pp. 36-37.
[1025] T. 24 February 2003 pp. 37, 48.
[1026] T. 24 February 2003 p. 48.
[1027] T. 24 February 2003 p. 39.
[1028] T. 24 February 2003 pp. 39-40, 51.

436. A majority of the Chamber, Judge Ostrovsky dissenting, does not accept as reliable Bagambiki Defence Witness GNV's testimony that Côme Simugomwa was kidnapped on 9 April 1994 in light of the reliable and convincing first-hand account of Witness LAC that he was removed on 12 April 1994. The Chamber further finds that Witness GNV's account is not reliable because it is based on an unidentified second-hand source whose reliability cannot be tested.

437. From Witness LAC's testimony, the Chamber further finds that, on 12 April 1994, the refugee population at the field had swelled to nearly 3,000. That morning, thousands of assailants from the surrounding area and the Shagasha tea factory began attacking the refugees at the football field. A majority of the Chamber, Judge Ostrovsky dissenting, finds that Bagambiki and Nsabimana, the director of the Shagasha tea factory, came to the field for about thirty minutes. From Witness LAC's evidence, the majority accepts that Bagambiki promised to send soldiers to protect the refugees. An hour later, armed factory guards and at least fifteen soldiers surrounded the refugees and, after the refugees had raised their hands and asked for peace, fired and threw grenades at them for thirty minutes. The *Interahamwe* then killed the survivors and looted their personal possessions.

438. The Chamber recalls that Witness LAH is an alleged accomplice of the accused and, as such, views his testimony with caution. The Chamber does not accept the evidence of Witness LAH about these events because he is not a credible or reliable witness. In reaching this conclusion, the Chamber has considered the testimony of Bagambiki Defence Witness BLB who explained that Witness LAH made and then recanted false accusations against him for related crimes. The Chamber also recalls that it has found Witness LAH's testimony not to be credible or reliable in connection with other events.[1029] Consequently, the Chamber views the testimony of Witness LAH as suspect and will not accept his evidence implicating the accused without adequate corroboration. The Chamber finds that Witness LAH's version of the events surrounding the attacks against the Tutsi population in Gisuma commune, in particular at Gashirabwoba, is not adequately corroborated.

439. The Chamber also does not accept the evidence of Prosecution Witness LAB about the attack on the refugees at Gashirabwoba because it is not credible or reliable and because it materially conflicts with other evidence on the record. The Chamber also recalls that it has found Witness LAB's testimony not to be credible or reliable in connection with other events and, therefore, views his testimony with suspicion.[1030] Witness LAB stated that Bagambiki and Imanishimwe assembled the refugees in the middle of the field and tried to reassure them before soldiers opened fire. This evidence, however, materially conflicts with the testimony of Witness LAC that, following waves of attacks in the morning, fifteen soldiers and armed factory guards surrounded the refugees and then after the refugees asked for peace fired and threw grenades at them. The Chamber notes that Witness LAC, whose testimony the Chamber accepted, did not see Bagambiki or Imanishimwe on the football field immediately prior to the soldiers' attack.

[1029] *See supra* paras. 141, 118.
[1030] *See supra* para. 176.

440. The Chamber notes that Witnesses LAH and LAB provided some measure of corroboration for their assertions that Bagambiki and Imanishimwe participated in the attack against the refugees. However, the Chamber is reluctant to use the testimony of one suspect witness to corroborate another, particularly where their own accounts of Bagambiki's and Imanishimwe's participation in the attack are not consistent. The Chamber also notes that the evidence of Witnesses LAH and LAB that the assault occurred on 9 April 1994 conflicts with Witness LAC's convincing testimony that it occurred on 12 April 1994, which is corroborated by Bagambiki Defence Witnesses GNV and BLB, who both heard gunshots coming from the field on that date.[1031] Moreover, Witness LAH's testimony that Bagambiki took Côme Simugomwa away from the field on 8 April 1994 conflicts with Witness LAC's testimony that this occurred on 11 April 1994. These discrepancies further undermine the probative value of the testimonies of Witnesses LAH and LAB.

441. A majority of the Chamber, Judge Ostrovsky dissenting, does not accept Bagambiki's and Imanishimwe's testimonies that they could not have been present at the Gashirabwoba football field on 11 April 1994 because they were participating in the prefectural security council meeting. According to the accounts of various defence witnesses, the majority notes that the security council meeting ended sometime between 2:00 p.m. and 4:00 p.m. In the majority's view, Witness LAC gave only an estimated time when Bagambiki and Imanishimwe arrived at the field on 11 April 1994. Given that the field was only 15.9 kilometres from the prefecture office where the meeting was held, the majority does not find that Bagambiki's and Imanishimwe's presence at the prefectural security council meeting raises any doubt that they came to the field after the meeting on 11 April 1994. The majority also does not accept Bagambiki's claim that he was at Mibilizi parish on 12 April 1994 and that he therefore could not have come to the field on that date. In reaching this conclusion, the majority has considered its finding that Bagambiki's visit to Mibilizi parish occurred on 14 April 1994.[1032]

442. The Chamber lacks sufficient reliable evidence to determine what role, if any, Bagambiki or Imanishimwe played in the death of Côme Simugomwa.

b. Shangi Parish

(i) Allegations

443. Prosecution Witness LAK testified that from 8 April 1994, he worked every day for about three weeks at a small shop in Bonaventure Harerimana's home near a roadblock set up on the orders of Bourgmestre Karero of Gafunzo and Conseiller Rutaburingoga of Shangi.[1033] According to the witness, those manning the roadblock killed anyone identified as Tutsi who tried to pass through the roadblock.[1034]

[1031] In light of the Chamber's finding that the massacre occurred on 12 April 1994, the Chamber does not need to assess Imanishimwe's evidence that he was in Bukavu on 9 April 1994.
[1032] *See supra* para. 530, 531.
[1033] T. 18 January 2001 pp. 81, 95; T. 19 January 2001 pp. 21-22; T. 22 January 2001 pp. 14-15, 41, 58, 59, 66-67, 100.
[1034] T. 18 January 2001 pp. 86, 94.

444. Witness LAK testified that Bagambiki and Imanishimwe came to the roadblock around 7:00 p.m. on 9 April 1994.[1035] The witness stated that he heard Bagambiki tell Bonaventure that refugees at Shangi parish were a security problem and that they brought "tools" for defence.[1036] According to the witness, Bagambiki then instructed Bonaventure to find people who could handle weapons.[1037] The witness testified that he saw Bagambiki and Imanishimwe give Bonaventure six Kalashnikov guns, some cartridges, and about forty machetes, which were taken to Bonaventure's home.[1038] The witness stated that the next morning he also saw grenades in Bonaventure's home and assumed that Bagambiki and Imanishimwe had delivered these as well.[1039]

445. Witness LAK testified that assailants, such as Pima, Gahutu, and Ntakirutimana used these weapons on several occasions to kill refugees at Shangi parish, in particular on 13 April 1994, and at the health centre in Bunyenga, returning them to Bonaventure's house after each attack.[1040] The witness noted that when the assailants ran out of ammunition, Bourgmestre Karero gave them three guns belonging to the commune, which they used in the attacks at Shangi parish.[1041]

446. Witness LAK testified that he could see Shangi parish very well from the roadblock, which was 400 meters away.[1042] According to the witness, from the roadblock he saw attacks against the refugees gathered at Shangi parish on 13, 15, 19, 23, 25 or 26, and 29 April 1994.[1043] According to the witness, the assailants gathered at the roadblock before each attack and were armed with the guns brought by Bagambiki and Imanishimwe and swords, lances, clubs, and machetes.[1044]

447. Witness LAK testified that, on 27 or 28 April 1994, the bourgmestre and several conseillers wanted to meet Bagambiki, but that Sub-Prefect Munyangabe came to the roadblock instead, accompanied by Mategeko, and some other people.[1045] The witness testified that he attended a meeting held by Munyangabe and his delegation with the local population near the Shangi Secondary School.[1046] According to the witness, Conseiller Rutaburingoga opened the meeting saying that that some of the refugees at the parish were disturbing security.[1047] The witness stated that, at the request of Munyangabe, the population had prepared a list of thirty six "suspected" refugees, all male Tutsis seeking refuge at Shangi parish, in whose homes they had found weapons.[1048]

[1035] T. 18 January 2001 pp. 88-91; T. 22 January 2001 pp. 27-28, 69, 70; T. 23 January 2001 p. 15.
[1036] T. 18 January 2001 pp. 88, 91; T. 22 January 2001 pp. 73-74.
[1037] T. 18 January 2001 pp. 88, 91.
[1038] T. 18 January 2001 pp. 88, 90-91; T. 22 January 2001 pp. 28, 29, 72, 70-73; T. 23 January 2001 pp. 19-20.
[1039] T. 23 January 2001 pp. 14-15.
[1040] T. 18 January 2001 pp. 92-93, 96-97; T. 22 January 2001 pp. 29-30.
[1041] T. 22 January 2001 pp. 30-34, 40.
[1042] T. 18 January 2001 p. 95; T. 22 January 2001 pp. 75-77.
[1043] T. 18 January 2001 pp. 96-97; T. 22 January 2001 pp. 29, 80-81.
[1044] T. 18 January 2001 pp. 96-97.
[1045] T. 18 January 2001 pp. 98-99; T. 22 January 2001 pp. 42-44.
[1046] T. 18 January 2001 p. 98; T. 22 January 2001 pp. 77-79.
[1047] T. 18 January 2001 p. 99.
[1048] T. 18 January 2001 pp. 99-100; T. 19 January 2001 p. 3; T. 22 January 2001 p. 45.

448. Witness LAK testified that, around 4:00 p.m. on 29 April 1994, Munyakazi came to the roadblock, with two pickups and about one hundred *Interahamwe* armed with guns, bayonets, and clubs.[1049] According to the witness, the *Interahamwe* mobilized more than two hundred people from the roadblock and from Nyamateke to join an attack against Shangi parish.[1050] According to the witness, on 30 April 1994, he went to the parish and participated in the burial of the dead. The witness estimated that he saw 4,500 to 5,000 corpses scattered everywhere around the parish.[1051] The witness said that the refugees who had survived the massacre were taken to the Nyarushishi camp.[1052]

449. Prosecution Witness NG-1 testified that he sought refuge at Shangi parish on 11 April 1994.[1053] The witness testified that the bourgmestre gave instructions to the local police to direct people to the parish if they came to seek refuge at the commune office.[1054] The witness stated that Bagambiki and the military authorities sent three gendarmes to the parish.[1055]

450. Witness NG-1 testified that, on 12 or 13 April 1994, he heard that soldiers took some refugees from the parish for questioning and that these refugees were killed on the way from the parish.[1056] According to the witness, at about 11:00 a.m. on 13 or 14 April 1994, an ex-solider named Pima led an attack against the refugees at the parish, and the assailants used three guns and grenades during the attack in which many people died.[1057] The witness stated that he later learned from one of the assailants, Viateur Gahutu, that two of the guns used in the attack belonged to Gafunzo Commune and were supplied by the brigadier named Sekanyambo on the instructions of the Bourgmestre Karorero.[1058] The witness stated that he saw one of the gendarmes at the parish give the assailants the third gun.[1059] The witness stated that on the next day the local population continued to attack the refugees at the parish by throwing stones at them.[1060] The witness also noted that there was no water or food inside the parish premises but that the nuns from the convent brought food.[1061]

451. Witness NG-1 attested to hearing that, on 26 April 1994, Sub-Prefect Munyangabe organized a meeting at the commune office with commune and prefectural authorities.[1062] The witness stated that after the meeting a delegation, including Munyangabe, Father Mategeko, and others, came to Shangi parish and held a meeting with the refugees.[1063] According to the witness, the delegation told the refugees that they would assure their security and promised to send the Red Cross to

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[1049] T. 18 January 2001 pp. 101, 103.
[1050] T. 18 January 2001 pp. 102-104.
[1051] T. 18 January 2001 pp. 97, 106-107; T. 22 January 2001 pp. 58, 82.
[1052] T. 18 January 2001 p. 107.
[1053] T. 23 November 2000 pp. 39-40; T. 28 November 2000 pp. 3-4.
[1054] T. 23 November 2000 p. 46.
[1055] T. 28 November 2000 pp. 6-7.
[1056] T. 28 November 2000 p. 6.
[1057] T. 23 November 2000 pp. 41, 42, 43; T. 28 November 2000 pp. 10, 12.
[1058] T. 23 November 2000 pp. 43-46; T. 28 November 2000 pp. 12-13.
[1059] T. 28 November 2000 pp. 6-7, 13, 15.
[1060] T. 23 November 2000 p. 42.
[1061] T. 23 November 2000 p. 42; T. 28 November 2000 p. 10.
[1062] T. 23 November 2000 p. 47; T. 28 November 2000 pp. 26-28, 105.
[1063] T. 23 November 2000 pp. 47-48; T. 28 November 2000 pp. 21-23.

the parish.[1064] The witness stated that, from a list drawn up at the meeting at the commune office, the delegation called out the names of thirty-nine Tutsi refugees to be removed.[1065] The witness explained that two gendarmes escorted the selected refugees, including the witness, in a pickup truck belonging to the commune.[1066] The witness stated that the gendarmes told the refugees that they were going to the prosecutor's office for questioning.[1067] The witness testified that in Bushenge the local population attacked them as they drove through and took one refugee out of the vehicle, later killing him.[1068] The witness stated that the gendarmes first took the refugees to the prefecture, where nothing happened to them, and then to the gendarmerie, where the gendarmes beat them.[1069] The witness stated that later the gendarmes took the refugees to Kamarampaka Stadium.[1070]

452. Witness NG-1 testified that he heard from Father Mategeko at Kamarampaka Stadium that, on 27 or 28 April 1994, Yussuf Munyakazi led an attack on the refugees at Shangi parish, killing almost everybody.[1071]

453. Prosecution Witness LAD testified that, on 10 April 1994, he sought refuge at Shangi parish.[1072] The witness stated that gendarmes took away one priest to an undisclosed location and that sometime before 28 April 1994 a vehicle came to the parish around 5:00 p.m. and removed other priests from the parish.[1073] The witness stated that nuns brought some food for the refugees but that many refugees went hungry because there was not enough food for all of them.[1074]

454. Witness LAD testified that *Interahamwe* attacked Shangi parish every day from 10 until 29 April 1994.[1075] The witness testified that the *Interahamwe* never entered the convent, which was guarded by gendarmes and housed the nuns and a few refugees.[1076] The witness testified that, on 13 or 14 April 1994, Pima, a former soldier, led an attack against Shangi parish.[1077] The witness said that the attackers, who were armed with guns and grenades, encircled the gendarmes guarding the parish.[1078] The gendarmes gave up their weapons to the attackers who then began attacking the parish by throwing grenades through the parish windows.[1079] The witness estimated that the attackers outnumbered the refugees and killed about 800 of the 4,000 or so refugees.[1080]

[1064] T. 23 November 2000 p. 48; T. 28 November 2000 p. 24.
[1065] T. 23 November 2000 p. 48, 49-50; T. 28 November 2000 pp. 25-27, 29, 103.
[1066] T. 23 November 2000 pp. 50, 51.
[1067] T. 23 November 2000 p. 51.
[1068] T. 23 November 2000 p. 51.
[1069] T. 23 November 2000 pp. 51-52; T. 28 November 2000 pp. 31-32.
[1070] T. 23 November 2000 p. 52.
[1071] T. 23 November 2000 pp. 55, 56, 57; T. 28 November 2000 p. 30.
[1072] T. 21 November 2000 p. 107; T. 22 November 2000 p. 108; T. 23 November 2000 p. 8.
[1073] T. 22 November 2000 p. 108; T. 23 November 2000 pp. 14-15.
[1074] T. 22 November 2000 pp. 108-109; T. 23 November 2000 pp. 13-14.
[1075] T. 23 November 2000 pp. 8-9.
[1076] T. 22 November 2000 p. 109.
[1077] T. 21 November 2000 pp. 107-108, 109, 110.
[1078] T. 21 November 2000 p. 108.
[1079] T. 21 November 2000 p. 108.
[1080] T. 21 November 2000 pp. 109-110.

455. Witness LAD testified that, on 27 April 1994, Sub-Prefect Munyangabe came to Shangi parish with a list of people who were then removed from the parish and taken to Cyangugu where he heard that the gendarmes beat them.[1081] The witness stated that the refugees taken from Shangi parish by Munyangabe were later evacuated to Nyarushishi camp.[1082]

456. Witness LAD testified that Munyakazi led another attack against the parish on 28 April 1994, at about 3:00 p.m.[1083] The witness stated that the attackers were armed with guns, clubs, machetes, and grenades, and that they wore masks and caps of the CDR and MRND parties.[1084] The witness stated that he was in the priests' residence when the attackers began throwing grenades into the church.[1085] The witness stated that, when the assailants broke down the back gate of the parish courtyard, he hid in the cypress forest behind the convent, where he stayed until the attackers left the parish around 10:00 p.m.[1086] The witness stated that the cypress forest was roughly 300 metres from the parish and that he could hear shouting coming from the parish as people were attacked by the *Interahamwe*.[1087] The witness said that, after the attackers left, he and others went back to the parish to look for survivors and to bury the dead and that all but about seventy Tutsi refugees were killed.[1088]

457. Prosecution Witness Z testified that, on 7 May 1994, she participated in a "security" meeting at the Gafunzo commune office presided over by Bagambiki.[1089] Though the witness stated that she had never seen Bagambiki before the meeting, she stated that she knew him because the invitees were announced on their arrival.[1090] In court, the witness mis-identified Ntagerura as Bagambiki.[1091]

458. Witness Z recalled several points on the meeting's agenda, including strengthening of roadblocks, searching for the enemy, division or sharing of land, distribution of guns at roadblocks, and the Arusha Accords.[1092] The witness stated that, during the meeting, Bagambiki specified that the enemy were Tutsis.[1093] The witness indicated that she had taken contemporaneous notes during the meeting.[1094]

459. Witness Z stated that, less than an hour after adjournment of the meeting on 7 May 1994, the local population rushed to Shangi parish and killed a quarter of the refugees there and that the following day Munyakazi and his *Interahamwe* came to the parish, killing many more refugees.[1095] According to the witness, Munyakazi arrived after a visit by Father Mategeko and Bagambiki, who promised to bring the refugees

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[1081] T. 22 November 2000 pp. 110-111; T. 23 November 2000 pp. 12, 13.
[1082] T. 22 November 2000 p. 111.
[1083] T. 21 November 2000 pp. 109, 112.
[1084] T. 21 November 2000 pp. 9, 110-112.
[1085] T. 23 November 2000 p. 9.
[1086] T. 21 November 2000 pp. 112-113; T. 23 November 2000 pp. 9-10.
[1087] T. 23 November 2000 p. 10.
[1088] T. 21 November 2000 pp. 112-114; T. 22 November 2000 p. 12; T. 23 November 2000 p. 10.
[1089] T. 2 May 2001 pp. 6-7, 8, 46-47, 77.
[1090] T. 2 May 2001 pp. 24, 66, 78-79.
[1091] T. 2 May 2001 p. 26.
[1092] T. 2 May 2001 p. 10.
[1093] T. 2 May 2001 p. 22.
[1094] T. 2 May 2001 pp. 8-9, 23, 74; Prosecution Exhibit 56.
[1095] T. 2 May 2001 pp. 71, 72, 73.

food.[1096] The witness confirmed that she was not personally present when these attacks took place and that she had heard about them only from others.[1097]

460. Imanishimwe stated that he did not go to Shangi on 9 April 1994 with Bagambiki to distribute weapons, as alleged by Prosecution Witness LAK, or at any time during his stay in Cyangugu.[1098]

461. Bagambiki testified that, on 8 April 1994, he received a telephone call from priest at Shangi parish who informed him that refugees had begun gathering there, eventually totalling 3,000.[1099] Bagambiki stated that he informed the gendarmerie commander who sent gendarmes on 8 April 1994 for the safety of the refugees and that nuns at the convent confirmed the arrival of the gendarmes.[1100] Bagambiki noted that, on 10 April 1994, Sub-Prefect Munyangabe went to Shangi to assess the refugees' needs.[1101] Bagambiki also stated that he asked CARITAS to send food to Shangi and that he requisitioned a vehicle to transport the food to the parish under gendarmerie escort.[1102] Bagambiki stated that the nuns informed him of an attempted attack at Shangi which the gendarmes repulsed sometime before 20 April 1994.[1103] Bagambiki noted that another attack was launched on 20 April 1994 but that he sent Sub-Prefect Munyangabe and Father Mategeko to prevent it.[1104] According to Bagambiki, Munyangabe reported that, upon his arrival, a large crowd armed with traditional weapons had gathered and was threatening to attack.[1105] Bagambiki stated that the parish was not attacked on 20 April 1994 after Munyangabe's intervention.[1106] Bagambiki noted that assailants next attacked, without notice, on 29 April 1994 at 6:00 p.m. for thirty minutes and that the prefectural authorities did not intervene because they were not contacted in time.[1107] According to Bagambiki, the gendarmerie commander told him that the gendarmes could not repulse the attack because the assailants had firearms.[1108] Bagambiki noted that some refugees remained at the parish until mid-May 1994 before they were transferred to Nyarushishi camp on ONATRACOM buses which he requisitioned.[1109]

462. Bagambiki stated that he did not hold a meeting with the local population at the commune office of Gafunzo on 7 May 1994.[1110] Bagambiki noted that, on 7 May 1994, he met with ICRC delegates from Bukavu at the prefecture to discuss the Nyarushishi refugee camp.[1111]

[1096] T. 2 May 2001 pp. 71-72.
[1097] T. 2 May 2001 pp. 75-76.
[1098] T. 22 January 2003 p. 36; T. 23 January 2003 p. 60.
[1099] T. 31 March 2003 p. 45.
[1100] T. 31 March 2003 pp. 45-46.
[1101] T. 31 March 2003 p. 46.
[1102] T. 31 March 2003 p. 46.
[1103] T. 31 March 2003 p. 47.
[1104] T. 31 March 2003 p. 47.
[1105] T. 31 March 2003 p. 47.
[1106] T. 31 March 2003 p. 49.
[1107] T. 31 March 2003 p. 49.
[1108] T. 31 March 2003 pp. 49, 50.
[1109] T. 31 March 2003 p. 50.
[1110] T. 31 March 2003 p. 51.
[1111] T. 31 March 2003 p. 51.

463. Bagambiki stated that he knew Bonaventure Harelimana but that he had never been at his house with or without Imanishimwe.[1112]

464. Bagambiki Defence Witness Munyangabe testified that, on 10 April 1994, he spoke with the refugees, who said that their homes had been destroyed and burned and that some people were wounded.[1113] Munyangabe testified that the refugees perceived him as someone who could help them and that they explained that there was a lack of medical supplies and food.[1114] The witness stated that he would relay the information to a "competent person" and return with an answer.[1115]

465. Munyangabe stated that he immediately told CARITAS and the Rusizi health centre about the situation in Shangi.[1116] The witness stated that, on 12 April 1994, he personally delivered to Shangi parish a stock of medicine provided by the Rusizi health centre.[1117] The witness stated that, on 13 April 1994, the prefecture made a truck available to transport to Shangi parish three tons of food provided by Father Oscar.[1118]

466. Munyangabe testified that, on 20 April 1994, he received a phone call from Sister Madeleine at Shangi about a large attack being prepared to exterminate a thousand refugees in the Shangi parish buildings.[1119] The witness, when confronted with an earlier written statement read into the record that he received this call on 27 April 1994, conceded that he remembered the chronology of events better than the dates.[1120] According to the witness, he initially refused when Bagambiki asked him to go and save the refugees because he did not feel capable of executing the mission.[1121] The witness testified that Bagambiki insisted that he go because the witness would do the best that "one could."[1122] According to the witness, although Bagambiki promised to send the bishop, the bishop was not available, and Bagambiki sent Father Mategeko instead.[1123]

467. Munyangabe stated that, on 20 April 1994, he saw thousands of assailants, armed with machetes, clubs, and spears, at Shangi, passing the Bushenge market.[1124] The witness stated that he and Father Mategeko met with the attackers for practically the entire day at the Shangi secondary school.[1125] According to the witness, the assailants complained that the some of those seeking refuge in Shangi parish had "caused insecurity" by throwing stones at houses and stealing food.[1126] The witness stated that, at about 3:00 p.m., he reached a compromise with the assailants whereby

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[1112] T. 31 March 2003 p. 48.
[1113] T. 24 March 2003 p. 25.
[1114] T. 24 March 2003 p. 26.
[1115] T. 24 March 2003 p. 26.
[1116] T. 24 March 2003 p. 26.
[1117] T. 24 March 2003 p. 27.
[1118] T. 24 March 2003 p. 27.
[1119] T. 24 March 2003 pp. 34, 47.
[1120] T. 25 March 2003 pp. 11-14.
[1121] T. 24 March 2003 p. 34; T. 25 March 2003 pp. 3-4.
[1122] T. 24 March 2003 p. 34.
[1123] T. 24 March 2003 p. 34.
[1124] T. 24 March 2003 p. 35.
[1125] T. 24 March 2003 p. 35.
[1126] T. 24 March 2003 p. 35.

he and Father Mategeko would remove the people who had "caused insecurity" from the parish and that, in return, the assailants would let the rest of the refugees "have peace."[1127] The witness stated that the assailants gave him a list with the names of approximately sixty people.[1128] The witness stated that after discussing the list with the assailants, the list was reduced to forty-two people, who the assailants hoped would be taken to army officials in Cyangugu and would never return to Shangi.[1129] The witness testified that in order to protect the refugees he did not take them to army officials but rather to Kamarampaka Stadium via the prefecture.[1130]

468. Munyangabe testified that he hid two of the forty-two listed refugees under the cushions in his jeep rather than in the pickup carrying the remaining refugees because he heard that the presence of these two refugees in the truck would jeopardise the other listed refugees.[1131] The witness stated that Samuel Rwigera, one of the refugees in the pickup truck, did not arrive at the prefecture because he jumped off the truck and fled to his nearby house, where assailants later found him and killed him.[1132]

469. Munyangabe testified that, on 29 April 1994, Munyakazi came to Shangi parish to exterminate the refugees.[1133] According to what the witness had heard, while "refreshing" himself at Shangawi, Munyakazi learned that there were thousands of Tutsis at the parish and then went there with his militiamen to kill the refugees.[1134]

470. Bagambiki Defence Witness GLB testified that, on 7 April 1994, he sought refuge at the convent at Shangi parish.[1135] The witness indicated that the nuns at the convent telephoned the authorities in Gafunzo commune to request protection but that the authorities did not grant this request, stating that the bourgmestre was ill and absent from the commune office.[1136] The witness stated that the nuns telephoned the prefecture to make the same request around 5:00 p.m. on 8 April 1994.[1137] The witness noted that the nuns informed him and the other refugees that Bagambiki had agreed to send gendarmes, who arrived at the convent on 8 April 1994 between 7:00 and 8:00 p.m. to ensure security.[1138]

471. Witness GLB testified that he could not see Shangi parish from the convent because buildings blocked his view.[1139] The witness stated that most of the refugees at the convent were Tutsis, and that he remained at the convent until 21 April 1994, when he returned home because gendarmes had informed the refugees that security was ensured.[1140] The witness stated that he was present during a period when attacks occurred at Shangi parish but that the last, large-scale attack took place after 21 April

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[1127] T. 24 March 2003 pp. 35-36.
[1128] T. 24 March 2003 p. 36.
[1129] T. 24 March 2003 p. 36; T. 25 March 2003 p. 15.
[1130] T. 25 March 2003 pp. 15-17.
[1131] T. 24 March 2003 pp. 36, 37.
[1132] T. 24 March 2003 pp. 36, 37.
[1133] T. 24 March 2003 p. 38.
[1134] T. 24 March 2003 p. 38; T. 25 March 2003 p. 11.
[1135] T. 20 February 2003 pp. 23, 38.
[1136] T. 20 February 2003 p. 23.
[1137] T. 20 February 2003 pp. 23, 38.
[1138] T. 20 February 2003 pp. 23-24.
[1139] T. 20 February 2003 pp. 24, 47.
[1140] T. 20 February 2003 pp. 24-25, 45.

1994.[1141] The witness further stated that he heard gunfire and grenades throughout the time when he was hiding at the convent and recalled that the first attack at Shangi parish took place on 11 April 1994.[1142] According to the witness, those refugees who had been with him at the convent all survived and were taken to Nyarushishi camp on 4 May 1994.[1143] The witness attributed the survival of the refugees to the gendarmes.[1144]

472. Witness GLB testified that he returned to the convent on 30 April 1994, after hearing gunfire and grenade explosions emanating from Shangi the day before.[1145] The witness stated that when he arrived at the convent, the nuns informed him that the attack in Shangi was executed by a man named "Yusuf", an *Interahamwe* leader from Bugarama.[1146] The witness stated that the nuns informed him that there had been many armed assailants at the parish and that many of the refugees died.[1147]

473. Witness GLB testified that he was present at the convent on 4 May 1994, when Sub-Prefect Munyangabe, accompanied by gendarmes, escorted the refugees from Shangi parish to Nyarushishi camp.[1148]

474. Bagambiki Defence Witness Graff stated that it took fifty-five minutes, twenty-seven seconds to reach Shangi parish from the prefecture.[1149] The witness stated that Bagambiki Defence Exhibit, tab 6, photograph 12, taken with a focal distance camera that had a minimal distance of thirty-five centimetres, shows a view of the parish, with the house of Bonaventure to the right.[1150] The witness stated that, based on the focal distance photograph, it was not possible to see any movement of figures at the parish from the road with the naked eye.[1151] The witness stated that in 2003 the vegetation to the left of the parish and between the bell and the end of the parish made it very difficult to see the area around the parish.[1152] The witness noted that, without the vegetation, it would be possible to see the movement of people at the parish from the road but that it would not be possible to recognise individual people or to determine if they were wearing military uniforms.[1153] The witness stated that Bagambiki Defence Exhibit 16, tab 6, photograph 13, a close-up also taken from the road, depicts how difficult it would be to recognise someone.[1154] The witness noted that Bagambiki Defence Exhibit 16, tab 6, photograph no. 14, with a magnification of four times, shows that with magnification it would be possible to recognise a silhouette at the foot of the parish bell.[1155] The witness stated that in 2003 he did not observe any natural protection at the parish site and that the parish was on the summit

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[1141] T. 20 February 2003 pp. 42-43.
[1142] T. 20 February 2003 p. 43.
[1143] T. 20 February 2003 p. 25.
[1144] T. 20 February 2003 p. 25.
[1145] T. 20 February 2003 pp. 25.
[1146] T. 20 February 2003 pp. 25, 43, 44, 47-48.
[1147] T. 20 February 2003 p. 25.
[1148] T. 20 February 2003 pp. 25-26.
[1149] T. 26 March 2003 p. 32.
[1150] T. 26 March 2003 pp. 34-35.
[1151] T. 26 March 2003 p. 35.
[1152] T. 26 March 2003 p. 35.
[1153] T. 26 March 2003 p. 35.
[1154] T. 26 March 2003 p. 35.
[1155] T. 26 March 2003 p. 35.

of a hill.[1156] The witness noted that he did not observe any traces of fences or constructed barriers.[1157] The witness stated that he did observe wooden roadblocks which separated fields, or plots, but that these would not serve as any sort of a defence.[1158]

475. Imanishimwe Defence Witness PCG testified that the roadblock near Shangi parish was not in front of Bonaventure Harerimana's house but one kilometre away on the road leading from the market towards the commune, at an intersection of two roads, one going to the commune and the other going to the parish.[1159] According to the witness, he and others at the roadblock did not receive guns, ammunition, or machetes on 9 April 1994, nor did they receive a visit from any official, apart from the ten-cell leader.[1160] The witness stated that, between 8 and 12 April 1994, no soldier passed by the roadblock, apart from the gendarme who came to "chase" them from the roadblock on 12 April 1994.[1161] The witness also testified about an incident on 9 April 1994 in which Daniel Kamatali, a Tutsi, killed a Hutu named Nsabimana, which resulted in clashes between Nsabimana's family and the refugees at Shangi parish.[1162] The witness stated that these clashes culminated in a large attack on 13 April 1994, which the gendarmes repulsed, and that the gendarmes removed Kamatali from the parish and took him to Kamembe.[1163]

476. Imanishimwe Defence Witness PCF testified that there was not a roadblock in front of Bonaventure Harerimana's house but that there was a roadblock approximately 1,050 metres away.[1164] The witness stated that he drank beer at Harerimana's house on 9 April 1994 from around 5:00 p.m. until 9:00 or 10:00 p.m.[1165] The witness testified that he did not see Harerimana receive any other visitors and stated that he would have noticed if Harerimana had left the house for some time.[1166] The witness also stated that he never heard that guns, cartridges, or machetes were delivered to the roadblock on the evening of 9 April 1994.[1167]

477. Witness PCF testified also that the killings at Shangi parish occurred following the killing at the parish of a Hutu named Nsabimana by Daniel Kamatali, a Tutsi.[1168] The witness stated that, on 10 and 13 April 1994, Nsabimana's family attacked the refugees at the parish and that the gendarmes eventually stopped the second and larger attack.[1169] The witness testified that, after the 13 April 1994 attack, the gendarmes

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[1156] T. 26 March 2003 pp. 35-36.
[1157] T. 26 March 2003 p. 36.
[1158] T. 26 March 2003 p. 36.
[1159] T. 23 October 2002 pp. 2-3, 27, 29-30, 33.
[1160] T. 23 October 2002 pp. 7-8.
[1161] T. 23 October 2002 p. 9.
[1162] T. 23 October 2002 pp. 9-14.
[1163] T. 23 October 2002 p. 14.
[1164] T. 21 October 2002 pp. 52-53.
[1165] T. 21 October 2002 pp. 56-57; T. 22 October 2002 pp. 26, 39.
[1166] T. 21 October 2002 pp. 58-59; T. 22 October 2002 p. 39.
[1167] T. 21 October 2002 p. 59.
[1168] T. 21 October 2002 pp. 60, 61, 62.
[1169] T. 22 October 2002 pp. 5-6, 7, 62.

determined that Kamatali initiated the attack by killing Nsabimana and sent him to Kamembe.[1170]

(ii) Findings

478. Prosecution Witnesses NG-1 and LAD and Bagambiki Defence Witnesses Munyangabe and GLB provided largely consistent first-hand accounts of the events at Shangi parish, which the Chamber finds generally credible and reliable. The Chamber is mindful of several minor differences between their accounts but is satisfied that these differences are explained by the passage of time and by the witnesses' varying vantage points and familiarity with the overall situation and actions of the authorities. From the evidence of these witnesses, the Chamber finds that refugees began arriving at Shangi parish on 7 April 1994, eventually totalling between 3,000 and 4,000. From the evidence of Bagambiki, which is corroborated by Witness GLB, Bagambiki sent gendarmes to guard the parish at the request of parish authorities on 8 April 1994. Witnesses LAD and NG-1 corroborated the presence of gendarmes at the parish.

479. From the evidence provided by Munyangabe, the Chamber finds that, on 10 April 1994, Munyangabe came to the parish to check on his family and to investigate the situation there. Munyangabe informed the prefectural and church authorities of the needs of the parish for food and medicine. On 12 April 1994, Munyangabe delivered medicine to the parish from the Rusizi health centre. On 13 April 1994, the prefecture made available gendarmes and a vehicle to take to the parish a shipment of food provided by CARITAS. The Chamber notes that this account is corroborated by Witnesses LAD and NG-1 who stated that the nuns from the Shangi convent provided some food to the refugees.

480. From the evidence of Witnesses NG-1, LAD, and GLB, the Chamber finds that the parish suffered daily attacks, beginning on 10 April 1994. From the evidence of Witnesses NG-1 and LAD, the Chamber finds that there was a massive assault on 13 or 14 April 1994, which by one estimate resulted in the death of 800 refugees. During this attack, the assailants, who were armed with guns and grenades, surrounded the gendarmes, and at least one gendarme gave the attackers his weapon. From the evidence on the record, the Chamber lacks sufficient evidence to determine if the gendarme voluntarily relinquished his weapon to the attackers or if he was forced to do so.

481. From the evidence, the Chamber further finds that the nuns at the Shangi convent contacted Munyangabe on 26 April 1994 and told him about an imminent massive attack against the refugees.[1171] At Bagambiki's insistence, Munyangabe went to the parish along with Father Mategeko to try to prevent the attack. Munyangabe negotiated with the attackers away from the parish and agreed that he would remove a number of refugees from the parish if the assailants agreed not to attack the remaining

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[1170] T. 22 October 2002 pp. 7, 30.

[1171] The Chamber notes that Witnesses NG-1, LAD, and Munyangabe provided different dates for his arrival. The Chamber relies on Witness NG-1 for the date because it is consistent with events that occurred at the stadium, specifically the removal of Nkusi two days after the witness arrived and Nkusi's death on 28 April 1994. The Chamber also notes that Munyangabe stated that he was not as certain about the dates as about the chronology of events.

refugees there. From the evidence of Witnesses LAD, NG-1, and Munyangabe, the Chamber finds that Munyangabe selected between thirty-nine and forty-two people at the parish. The gendarmes drove the selected refugees in a pickup truck to the prefecture. From the evidence of Witness NG-1, the Chamber finds that along the way the refugees were attacked by members of the local population and that one of them was taken from the truck and killed. From the prefecture, the gendarmes drove the refugees to a gendarmerie camp where gendarmes mistreated some of the refugees before taking them to Kamarampaka Stadium.

482. From the evidence of Witness LAD, which is corroborated by Witnesses NG-1, GLB, and Munyangabe, the Chamber finds that, on 28 or 29 April 1994, Munyakazi launched a massive attack on Shangi parish, killing most of the refugees there. From the evidence of Witness GLB, the Chamber finds that Munyangabe facilitated the transfer of the remaining refugees to Nyarushishi camp on 4 May 1994.

483. The Chamber does not accept as reliable Witness NG-1's testimony that soldiers removed people from the parish for questioning and that they killed them on the way to Cyangugu because at that time the witness was in hiding and heard about the event only from an unidentified source. The Chamber also does not accept that Bourgmestre Karero supplied the attackers with guns and ammunition belonging to the commune because Witness NG-1 heard this from an attacker after the events and because the Chamber lacks an adequate basis for assessing the reliability of this evidence.

484. The Chamber recalls that Witness LAK is an alleged accomplice of the accused and, as such, views his testimony with caution. In addition, the Chamber views Prosecution Witness LAK's evidence with suspicion because he testified that he saw Ntagerura deliver weapons and speak to a crowd at the Cimerwa factory between 20 and 25 December 1994 which the Chamber finds could not have happened given that Ntagerura was on an official mission in Cameroon at that time.[1172] Consequently, the Chamber will not accept Witness LAK's testimony without adequate corroboration. The Chamber notes that no other witness mentioned Bagambiki or Imanishimwe distributing weapons at the Shangi road block. Therefore, the Chamber will not accept Witness LAK's evidence on this point. In addition, no other witness adequately corroborated Witness LAK's testimony that commune authorities set up a roadblock near Shangi parish and supplied the attackers with weapons.

485. The Chamber does not find the testimony of Prosecution Witness Z to be credible or reliable. Though Witness Z claimed familiarity with Bagambiki, she was unable to identify him in court. The Chamber also notes that her testimony about the chronology of events, in particular, the timing of the last massacre at the parish, is inconsistent with the accounts of Witnesses LAD, NG-1, GLB, and Munyangabe who place the final assault against the refugees at the end of April 1994. The witness also timed Munyakazi's attack after a visit by Bagambiki and Father Mategeko. The Chamber notes that there is no evidence from witnesses at the parish that Bagambiki

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[1172] *Cf.* Testimony of LAK, T. 18 January 2001 pp. 110-11; T. 19 January 2001 pp. 42, 46, 47, 48-53 *with* Testimony of Ntagerura, T. 18 July 2002 p. 102-105, 107, 108, 113; T. 30 September 2002 p. 86-89; Testimony of Bongwa, T. 20 May 2002 p. 16; Ntagerura Defence Exhibit 33 (passport).

visited the parish. Moreover, in the Chamber's opinion, Witness Z's testimony was not persuasive when she was cross-examined about whether she took her notes during the meeting.[1173]

486. The Chamber does not find the accounts of Imanishimwe Defence Witnesses PCG and PCF credible or reliable because their testimonies about the reason behind the attacks at Shangi parish are not believable.

c. Mibilizi Parish

(i) Allegations

487. Prosecution Witness MM testified that, on the evening of 7 April 1994, Tutsi refugees began arriving at Mibilizi parish.[1174] He explained that, by the evening of 8 April 1994, 300 refugees had come to the parish with their cattle and luggage and that by 10 April 1994, he counted 2,000 people.[1175] The witness testified that, on 10 April 1994, about eight gendarmes visited the parish on a patrol to "verify" the situation and that, on 11 April 1994, four gendarmes returned "to set up quarters permanently at the parish".[1176] He explained that, when he was evacuated on 15 June 1994, there were still two gendarmes at the parish.[1177] The witness attested to hearing that during one attack the gendarmes were seen shooting at refugees trying to escape over the parish wall.[1178] He testified that, using a second telephone extension, he listened in on a telephone call from an unidentified soldier in Cyangugu to the gendarmes at the parish and that he heard the soldier say, "There at Mibilizi there are many *Inkotanyi*, if the attack is stronger, allow the attackers to kill the *Inkotanyis*."[1179]

488. Witness MM testified that the first attack on the parish came on 11 April 1994 from *Interahamwe* of the area armed with traditional weapons such as spears, machetes, clubs, cudgels, and at least one grenade, which exploded and killed a refugee.[1180] The witness stated that there were fewer assailants than refugees who resisted, using stones.[1181] He explained that, on 12 April 1994, there was another attack that was repelled by the refugees using stones and a few machetes and that a lull in the attacks followed for the next two days during which refugees continued to flow into the parish.[1182]

[1173] For example, the witness stated that she was standing up at the meeting, but when asked how she wrote on loose leaf sheets standing up, she then said that she was sitting down. T. 2 May 2001 p. 75. The witness confirmed that she had made her notes while the meeting was going on but also admitted that she had written on page 2 that "Then the meeting took place in the multipurpose hall of Gafunzo commune. It started about 11.30...and ended in the afternoon", insisting that she had written this in the morning when the meeting began not after it had ended. T. 2 May 2001 pp. 64-65.
[1174] T. 12 October 2000 pp. 39-40.
[1175] T. 12 October 2000 p. 40.
[1176] T. 12 October 2000 pp. 41, 103; T. 12 October 2000 p. 120 (French).
[1177] T. 12 October 2000 p. 103.
[1178] T. 12 October 2000 p. 104.
[1179] T. 12 October 2000 pp. 104-105, 117.
[1180] T. 12 October 2000 pp. 41-42.
[1181] T. 12 October 2000 pp. 41-42.
[1182] T. 12 October 2000 p. 43.

489. Witness MM testified that, on 14 April 1994, Bagambiki visited the parish with Imanishimwe, Munyarugerero, the bishop, and Celestin Somayire to take stock of the security situation at the parish and in the Mibilizi area in general.[1183] The witness testified that he knew Bagambiki before the events and had met him during ceremonies and celebrations.[1184] He explained that he knew Imanishimwe from his two visits to the parish on 14 and 20 April 1994.[1185] According to the witness, the authorities were also accompanied by a delegation from the local militia.[1186] The witness stated that Bagambiki listened to the complaints of the refugees as well as of the local militia who said that the refugees were attacking them in the hills.[1187] The witness stated that, after Bagambiki listened to both parties, he said that he was going to do everything he could to restore security to the area, particularly for the refugees.[1188] The witness recalled that Imanishimwe left the meeting in anger when a priest stated that the meeting, like the Arusha negotiations, was "not leading anywhere."[1189] He testified that, in response, Imanishimwe stated that he personally shot people he found celebrating the death of the president.[1190]

490. Witness MM testified that, on 15 April 1994, assailants attacked the parish for a third time and confronted the refugees on the primary school's football field near the parish.[1191] The witness testified that, on 17 April 1994, he saw people coming for Sunday service and for visits with refugees at the camp and explained that Hutus came to take their family members from the camp, including young children of mixed parentage and other members of their families who were married to Tutsis.[1192] The witness stated that the refugees believed that this signalled an imminent major assault.[1193] The witness stated that the militia launched the first attack at 11:00 a.m., wounding refugees and then retreating.[1194] According to the witness, the militia returned at 2:00 p.m. for twenty minutes and attacked the refugees with eight grenades, stones, and other traditional weapons, killing and seriously wounding many refugees who tried to defend themselves with traditional weapons.[1195] The witness testified that towards 3:00 p.m., Sub-Prefect Munyangabe came to meet the parish priest and proposed to the refugees that they should return within the parish gates so as not to attract the militia's anger.[1196] The witness testified that he also promised to negotiate with the militia so that the militia would return to their homes.[1197] He testified that the refugees withdrew inside the parish gates, whereupon the militia surrounded them and later attacked them with firearms, grenades, and traditional weapons such as machetes, swords and clubs.[1198] He explained that the refugees could

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[1183] T. 12 October 2000 pp. 43, 46.
[1184] T. 12 October 2000 pp. 72-73.
[1185] T. 12 October 2000 pp. 74-75.
[1186] T. 12 October 2000 p. 46.
[1187] T. 12 October 2000 pp. 46-47.
[1188] T. 12 October 2000 p. 47.
[1189] T. 12 October 2000 p. 119.
[1190] T. 12 October 2000 p. 119.
[1191] T. 12 October 2000 p. 52.
[1192] T. 12 October 2000 p. 53.
[1193] T. 12 October 2000 pp. 53-54.
[1194] T. 12 October 2000 p. 55.
[1195] T. 12 October 2000 p. 55.
[1196] T. 12 October 2000 pp. 56, 101-102.
[1197] T. 12 October 2000 p. 56.
[1198] T. 12 October 2000 pp. 56-57, 102.

not defend themselves as there was no space to do so.[1199] He stated that as a result of the attack, which lasted over one hour, many refugees were killed, including men, women, children, and the elderly.[1200] He stated that he believed that the militia retreated because they ran out of ammunition.[1201] He explained that, as they retreated, the militia looted the refugees' possessions and the contents of the convent and the students' halls.[1202]

491. Witness MM explained that, on 20 April 1994, the refugees buried the dead from the attack on 18 April 1994 in a mass grave.[1203] The witness estimated that his group buried about one hundred corpses.[1204] According to the witness, on the way back to the parish from the burial, the refugees learned of another imminent attack by the *Interahamwe* intended to exterminate them.[1205] He stated that at a meeting convened by the parish priest, some young people suggested that instead of fighting back, it would be better to let the attackers choose whom they wanted to kill.[1206] He testified that when the *Interahamwe* arrived at the parish, two of the *Interahamwe* provided the priest with a list of sixty persons whom they wanted to take away, including the parish priest.[1207] The witness testified that, when the attackers came, they separated the women from the men in the courtyard and that after they found the people on the list, they selected other people they wanted to kill, especially healthy and well-dressed young people.[1208] The witness estimated that the attackers took away and killed about one hundred refugees.[1209] The witness stated that the gendarmes prevented only the parish priest from being killed and did not protect anybody else.[1210] The witness stated that the priest was eventually killed by *Interahamwe* when he left the parish on 19 May 1994.[1211]

492. Witness MM testified that Bagambiki, Imanishimwe, Bavugamenshi, the bishop, and other authorities held a meeting with the refugees on 25 April 1994 concerning their security situation at the parish and asked the refugees not to leave the parish.[1212] The witness stated that, on 26 April 1994, Kwitonda Pierre and Gatabazi, both members of parliament, Somayire, and Father Mategeko spoke to the refugees and asked whether there was food, wood for heating, water, medication, and other necessary facilities.[1213] According to the witness, the refugees did not have these necessities, and the authorities promised to forward their complaints to senior prefectural authorities.[1214] In the witness's opinion, the authorities showed no interest in the number of dead and wounded at the parish and were concerned only with the

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[1199] T. 12 October 2000 p. 57.
[1200] T. 12 October 2000 pp. 57-58.
[1201] T. 12 October 2000 p. 58.
[1202] T. 12 October 2000 p. 58.
[1203] T. 12 October 2000 p. 59.
[1204] T. 12 October 2000 p. 59.
[1205] T. 12 October 2000 pp. 59-60.
[1206] T. 12 October 2000 pp. 59-60.
[1207] T. 12 October 2000 pp. 60-61.
[1208] T. 12 October 2000 p. 61.
[1209] T. 12 October 2000 pp. 61-62.
[1210] T. 12 October 2000 pp. 62-69.
[1211] T. 12 October 2000 pp. 62-63.
[1212] T. 12 October 2000 pp. 50-51.
[1213] T. 12 October 2000 pp. 47-48.
[1214] T. 12 October 2000 p. 50.

number of survivors and their current needs.[1215] The witness noted that parish authorities did not attend the 28 April 1994 meeting.[1216]

493. Witness MM stated that, on 30 April 1994, Munyakazi with about one hundred *Interahamwe* attacked the parish.[1217] He testified that the militia separated the male and female refugees, undressing the men and then killing them in the courtyard.[1218]

494. Witness MM stated that, on 1 May 1994, at the request of the parish priest, the bishop visited the parish, comforted the refugees, and evacuated Abbey Simon and Abbey Antoine.[1219] The witness testified that, on 14 and 15 June 1994, prefectural authorities sent several ONATRACOM buses to transport from the parish the remaining refugees, totalling about 1,000, to the Nyarushishi camp where the witness agreed that these refugees were safe.[1220]

495. Prosecution Witness MP stated that, on 8 April 1994, he was amongst the first to seek refuge at Mibilizi parish.[1221] The witness estimated that, from 8 to 12 April 1994, 2,000-3,000 refugees gathered at the parish, including people who had been wounded with machetes and clubs.[1222]

496. Witness MP testified that assailants attacked the parish several times beginning on 12 April 1994 and continuing on 18, 20, and 30 April 1994.[1223] The witness recounted that during the first attack on 12 April 1994, which lasted twenty minutes, the assailants used grenades, killing two, and injuring the other refugees who tried to resist.[1224]

497. Witness MP testified that while he stayed at the parish, the prefectural and parish authorities held three or four meetings or peace negotiations and that Bagambiki accompanied the bishop on visits to the parish.[1225] The witness testified that the refugees phoned the bishop from the parish, and then the bishop phoned the authorities of the prefecture, whereupon the prefect convened the meetings.[1226] The witness testified that the bishop attended two meetings, while the witness and the other priests from the parish attended three.[1227]

498. Witness MP stated that Bagambiki, Imanishimwe, the commander of the gendarmerie, and Father Sindarihora attended the first meeting on 14 April 1994 along with a delegation of attackers and a delegation from the parish, which included

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[1215] T. 12 October 2000 pp. 67-68.
[1216] T. 12 October 2000 p. 111.
[1217] T. 12 October 2000 pp. 63-65.
[1218] T. 12 October 2000 pp. 64, 68.
[1219] T. 12 October 2000 p. 69.
[1220] T. 12 October 2000 pp. 69, 108-109.
[1221] T. 12 October 2000 pp. 131-132, 134.
[1222] T. 12 October 2000 pp. 134-135.
[1223] T. 12 October 2000 pp. 135, 137.
[1224] T. 12 October 2000 pp. 24, 136-137.
[1225] T. 12 October 2000 pp. 162-163; T. 13 October 2000 pp. 33, 44.
[1226] T. 13 October 2000 p. 37.
[1227] T. 13 October 2000 p. 34.

the witness.[1228] According to the witness, the aim of the meeting was to restore peace, because it was said that the refugees at the parish were attacking people on the hills.[1229] The witness stated that Bagambiki said that in order to restore good relations, the refugees should not leave the parish because the people on the hills were tired of being attacked.[1230] The witness said that the assailants were asked not to attack the parish again.[1231] Witness MP testified that during these meetings Imanishimwe said, "[W]e can shoot you down as we shot down a group of people who were drinking in Kamembe as if they were celebrating the death of the President".[1232]

499. Witness MP estimated that thousands of assailants attacked the refugees at the parish on 18 April 1994.[1233] According to the witness, before the attack, the parish priest, Joseph Boneza, asked him to go to the Ngoro centre where the attacks were organized in order to find out what was being planned.[1234] The witness stated that he went to the centre, accompanied by one of the gendarmes responsible for guarding the refugees at the parish, and saw a group of people carrying several types of weapons, coming to attack him.[1235] Witness MP testified that the gendarme who had accompanied him joined the assailants and started to distribute grenades which he had carried with him.[1236] The witness said that at this point, his friend, an ex-soldier called Mugarura, approached him and told him about a meeting that was taking place.[1237] He told the witness that it had been decided at that meeting that the attackers would take some refugees from the parish.[1238] Witness MP testified that Celestin Somayire also approached him.[1239] Witness MP stated that Magarura and Somayire told him that they would give him a list of certain refugees at the parish to be handed over to the assailants.[1240] The witness said that Mugarura and Somayire told the witness to return to the parish to set up a small delegation that would meet with the attackers at the hospital between the Ngoro center and the parish.[1241] The witness said that he returned to the parish with the gendarme and that the parish priest decided that a delegation comprised of the priest, two gendarmes, and the witness should meet the attackers at Mibilizi hospital.[1242] According to the witness, at the hospital, some of the assailants gave the delegation a list of refugees to be taken from the parish.[1243] The witness testified that there were about sixty names on the list, but later noted that he never

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[1228] T. 12 October 2000 pp. 163-164; T. 13 October 2000 pp. 35, 56.
[1229] T. 12 October 2000 p. 164.
[1230] T. 12 October 2000 p. 165.
[1231] T. 12 October 2000 p. 164.
[1232] T. 12 October 2000 pp. 166-167; T. 13 October 2000 p. 57.
[1233] T. 12 October 2000 pp. 137-138; T. 13 October 2000 pp. 24-25.
[1234] T. 12 October 2000 pp. 3, 137, 139, 149.
[1235] T. 12 October 2000 p. 138.
[1236] T. 12 October 2000 pp. 139, 142.
[1237] T. 12 October 2000 p. 138.
[1238] T. 12 October 2000 p. 138.
[1239] T. 12 October 2000 p. 138.
[1240] T. 12 October 2000 p. 143.
[1241] T. 12 October 2000 p. 143.
[1242] T. 12 October 2000 pp. 143-144.
[1243] T. 12 October 2000 pp. 144-145.

personally saw the list.[1244] The witness stated that the parish delegation was told that fifteen of the assailants would go to the parish to remove the selected refugees.[1245]

500. Witness MP stated that the parish delegation did not accept the proposal because none of them had the authority to do so.[1246] According to the witness, the attackers said that the parish delegation was wasting their time and that the delegation would have to act directly; otherwise they would be attacked.[1247] The witness stated that the parish delegation returned to the parish and put the proposal to the refugees, who rejected it.[1248] The witness noted that some refugees wanted to hand over the requested individuals, in particular the intellectuals, to save their own lives.[1249] The witness testified that the group of fifteen attackers, later joined by others, approached the parish and launched grenades, fired gunshots, and stole property while the refugees resisted by throwing stones.[1250] Witness MP testified that some of the attackers were dressed like soldiers while others wore banana leaves.[1251] The witness testified that the assailants killed about forty people and wounded many more in the twenty minute attack.[1252] The witness testified that the assailants returned later that day and again used grenades, killing between forty and fifty people.[1253] The witness said that, after the second attack, the refugees phoned to request assistance from the authorities of the prefecture and that, in response, Kwitonda Pierre, a member of Parliament, and Sub-Prefect Munyangabe were sent to the parish.[1254]

501. Witness MP testified that the prefectural representatives arrived during the third attack, while the witness and a group of refugees tried to defend the parish.[1255] According to the witness, the representatives told the refugees that they were inciting the attacks and that the refugees should return to the parish and let the prefectural representatives repulse the attack.[1256] The witness stated that the refugees returned to the area inside the parish fence and that Kwitonda and Munyangabe disappeared into the crowd of assailants.[1257] The witness testified that, when he returned to the parish, he saw a red vehicle belonging to Edouard Bandetse come close to the parish "as if to give a signal to attack."[1258] Witness MP testified that after this, the attack intensified and over the course of an hour the assailants killed up to 2,000 mostly Tutsi men.[1259] The witness stated that the attackers also stole property, including cows, motorcycles

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[1244] T. 12 October 2000 p. 145; T. 13 October 2000 p. 38.
[1245] T. 12 October 2000 p. 145.
[1246] T. 12 October 2000 p. 145.
[1247] T. 12 October 2000 pp. 145-146.
[1248] T. 12 October 2000 p. 146.
[1249] T. 13 October 2000 pp. 39-41.
[1250] T. 12 October 2000 pp. 146-147.
[1251] T. 12 October 2000 p. 148.
[1252] T. 12 October 2000 pp. 148-149.
[1253] T. 12 October 2000 pp. 149-150.
[1254] T. 12 October 2000 p. 150; T. 13 October 2000 p. 46.
[1255] T. 12 October 2000 pp. 150-151.
[1256] T. 12 October 2000 p. 151.
[1257] T. 12 October 2000 pp. 151, 153.
[1258] T. 12 October 2000 p. 152.
[1259] T. 12 October 2000 pp. 152, 153.

and vehicles from the parish, and Mibilizi hospital, which was about one kilometre away.[1260]

502. Witness MP stated that the following day the surviving refugees attempted to bury the dead but that they were unable to bury all of them due to new attacks.[1261] The witness stated that, on 19 April 1994, some refugees went to the hills to look for food because there was not enough at the parish and that many returned wounded.[1262] He stated that CARITAS and the Red Cross arrived late and that the food which they distributed was not enough.[1263]

503. Witness MP testified that, on 20 April 1994, about one hundred assailants attacked the parish, told the refugees to sit down, and took about sixty of them away.[1264] According to the witness, the assailants selected only Tutsi men, beginning with the intellectuals and businessmen, except for one woman with her baby, who was selected because the assailants failed to find her husband and also because she was an intellectual.[1265] Witness MP stated that they later heard that the woman had been killed but that the baby had been taken to an orphanage.[1266]

504. Witness MP testified that, on 30 April 1994 around 5:00 p.m., Munyakazi and his *Interahamwe* attacked Mibilizi parish.[1267] Witness MP testified that when the militia reached the parish, he overheard the gendarmes who were protecting the refugees telling them not to attack because there had already been several attacks on the parish, and nearly all the men had been killed.[1268] The gendarmes negotiated with the militia, but the militia said that they would not leave "empty-handed".[1269] The militia entered the parish through all the doors and killed refugees with machetes.[1270] The witness stated that he also heard gunshots that were fired to terrify people.[1271] According to the witness, the assailants attacked for thirty minutes and killed between sixty and eighty refugees.[1272]

505. Witness MP stated that the French evacuated him from the parish at the end of May 1994.[1273]

506. Witness MP testified that the priest of Mibilizi parish, a Tutsi called Joseph Boneza, was killed on 17 May 1994 in Kamembe when he left the parish.[1274]

[1260] T. 12 October 2000 pp. 153, 154.
[1261] T. 12 October 2000 p. 155; T. 13 October 2000 p. 74.
[1262] T. 13 October 2000 pp. 9, 18.
[1263] T. 13 October 2000 p. 10-11.
[1264] T. 12 October 2000 pp. 155, 156; T. 13 October 2000 p. 25.
[1265] T. 12 October 2000 pp. 70, 156.
[1266] T. 12 October 2000 pp. 156-157.
[1267] T. 12 October 2000 pp. 157-160; T. 13 October 2000 p. 23.
[1268] T. 12 October 2000 p. 157.
[1269] T. 12 October 2000 p. 158.
[1270] T. 12 October 2000 p. 161-162.
[1271] T. 12 October 2000 p. 162.
[1272] T. 12 October 2000 p. 162.
[1273] T. 13 October 2000 p. 19.
[1274] T. 12 October 2000 pp. 167-168.

507. Witness MP testified that there were four gendarmes at the parish, which was not a sufficient number to help.[1275] The witness agreed that gendarmes escorted the CARITAS vehicle that brought food to the parish.[1276]

508. Prosecution Witness LAJ testified that, on 17 April 1994, Celestin Somayire told him to go to Mibilizi parish and kill the Tutsi refugees there so that they would not scatter throughout the surrounding sectors.[1277] The witness stated that Tariq Assiz then gave the witness three grenades.[1278] The witness stated that he set off for Mibilizi parish early on 18 April 1994 and met with Bourgmestre Somayire, Edouard Bandetse, and a local *Interahamwe* leader at Bandetse's bar near Mibilizi parish.[1279] The witness testified that Somayire gave him a list of people who were being sought at the parish, which, according to the witness, had been prepared by a doctor called Gagema Majera.[1280]

509. Witness LAJ testified that he led the attacks at the Mibilizi parish on 18 April 1994 with the assistance of Mugarura, a gendarme, who had a gun which he had received from Somayire.[1281] The witness stated that about 1,600 assailants, armed with spears, clubs, and guns participated in the three hour attack against the Tutsis who threw sharp stones, wounding some of the attackers.[1282] The witness stated that many Tutsis were killed inside and that he personally used all the grenades and the bullets he had, until he had only two bullets remaining.[1283] The witness testified that when the assailants ran out of ammunition, they informed Bandetse and Somayire that they had decided to withdraw because many of the attackers had been wounded.[1284] According to the witness, Bandetse said that they needed to ask the "commander" and the "préfet" for ammunition.[1285]

510. Witness LAJ stated that, on 18 April 1994, he accompanied Bandetse to Hotel Ituze where they met Bagambiki.[1286] According to the witness, Bandetse stated that he needed bullets to deal with the Tutsis at Mibilizi and that he was afraid the Tutsi would launch a counter attack and scatter throughout the different sectors.[1287] The witness stated that he saw Bagambiki call somebody and that about five minutes later Imanishimwe arrived with his two escorts.[1288] The witness stated that Bagambiki asked Imanishimwe for bullets but that Imanishimwe said that there were no bullets for the Kalashnikovs and that he had brought ten M-26 type grenades instead.[1289] The witness testified that Imanishimwe gave him the grenades and told him that with each

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[1275] T. 13 October 2000 pp. 25-26, 85.
[1276] T. 13 October 2000 pp. 44, 45.
[1277] T. 23 October 2000 pp. 84, 85.
[1278] T. 23 October 2000 pp. 85, 86.
[1279] T. 23 October 2000 p. 85-87, 107.
[1280] T. 23 October 2000 p. 89.
[1281] T. 23 October 2000 p. 90; T. 25 October 2000 p. 28.
[1282] T. 23 October 2000 pp. 90-91.
[1283] T. 23 October 2000 pp. 91, 92.
[1284] T. 23 October 2000 p. 92.
[1285] T. 23 October 2000 pp. 92-93.
[1286] T. 23 October 2000 p. 93; T. 24 October 2000 pp. 9, 71.
[1287] T. 23 October 2000 p. 94.
[1288] T. 23 October 2000 p. 95; T. 24 October 2000 p. 72.
[1289] T. 23 October 2000 p. 95.

of the grenades he had to kill at least five people.[1290] The witness testified that Bagambiki told him that if he worked well, he would receive 300,000 Francs and that Bagambiki gave him a 50,000 Franc advance.[1291] The witness testified that he and 500 other assailants attacked Mibilizi parish again that evening, using two of the grenades that he had been given, having left the other eight with Bandetse.[1292]

511. Prosecution Witness LAJ stated that, on 19 April 1994, he returned to Mibilizi at about 10:00 a.m. and went to Bandetse's bar to drink with the many *Interahamwe* who were there.[1293] The witness testified that he saw Bagambiki in his vehicle returning from the parish with Bandetse and the bourgmestre.[1294]

512. Prosecution Witness LAJ stated that, on 20 April 1994, 3,000 young people armed with traditional weapons arrived from Nyakabuye, Gishoma, Bugarama, and Cyimbogo communes and participated in a "massive, large-scale attack" killing many people.[1295] The witness was given a list from Bourgmestre Somayire and a medical assistant Ngangura containing seventy names of important Tutsi refugees whom they had to kill first.[1296] The witness later said that Bandetse gave him the list which was prepared by Dr. Ndagijimana of Mibilizi hospital.[1297] The witness stated that he was told to bring back alive a priest named Joseph and another person.[1298] The witness testified that they found about thirty of the seventy people on the list by giving it to a gendarme at the parish who called out each name, reassuring the refugees before handing them over to *Interahamwe* to be killed.[1299] The witness stated that after killing the people on the list Munyakazi's *Interahamwe* launched an attack on the parish in which the witness did not participate.[1300] The witness later stated that he did participate in a massive attack on 20 April 1994 where 1,500 people were killed.[1301] The witness also stated that Bavugamenshi gave the order to eliminate all the Tutsi refugees that day.[1302]

513. Bagambiki stated that, on 8 April 1994, Abbey Joseph Boneza informed the prefecture by telephone that refugees were gathering at Mibilizi parish.[1303] According to Bagambiki, when refugees arrived they were recorded so that they could be counted in order to obtain supplies from CARITAS and the ICRC.[1304] Bagambiki stated that he informed the gendarmerie commander of this and that four gendarmes were sent as early as 8 April 1994 to ensure the refugees' safety.[1305] Bagambiki stated

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[1290] T. 23 October 2000 p. 96.
[1291] T. 23 October 2000 pp. 96, 97, 98.
[1292] T. 23 October 2000 pp. 99, 100, 101.
[1293] T. 23 October 2000 pp. 101-102.
[1294] T. 23 October 2000 pp. 102, 103.
[1295] T. 23 October 2000 p. 105.
[1296] T. 23 October 2000 pp. 106, 108.
[1297] T. 23 October 2000 p. 107.
[1298] T. 23 October 2000 pp. 107, 108.
[1299] T. 23 October 2000 pp. 108-109.
[1300] T. 23 October 2000 p. 110.
[1301] T. 23 October 2000 pp. 110-111.
[1302] T. 24 October 2000 p. 48.
[1303] T. 31 March 2003 p. 28.
[1304] T. 31 March 2003 p. 28.
[1305] T. 31 March 2003 p. 28.

that the gendarmes repulsed attacks on or about 10 April 1994.[1306] Bagambiki said that he was not informed of any attack on 11 April 1994 but that he received a call from Joseph Boneza at about 10:00 or 11:00 a.m. on 12 April 1994 stating that assailants who had gathered at Kungoro were beginning to attack the refugees.[1307] Bagamiki stated that, on 12 April 1994, in response to the call, he, the gendarmerie commander, and the bishop immediately went to Mibilizi parish.[1308] Bagambiki stated that, upon their arrival, they found a hundred or so people armed with traditional weapons waiting to attack the refugees.[1309] Bagambiki stated that they moved the crowd away from the parish and that he told the crowd that the prefecture would protect the refugees by any means necessary and that it did not help the war between the FAR and RPF to kill one another instead of fighting against the RPF.[1310] Bagambiki stated that Bishop Thadée spoke similarily, underscoring the more religious aspects of the situation.[1311] Bagambiki stated that the intervention was successful and that the crowd returned home.[1312] Bagambiki stated that the gendarmes remained and sealed the parish to protect the refugees.[1313] Bagambiki testified that he was not able to return to Mibilizi when the assailants returned on 14 April 1994, so he sent Sub-Prefect Munyangabe.[1314] Bagambiki stated that there were no further attacks until 18 April 1994.[1315]

514. Bagambiki stated that during the 18 April 1994 meeting of the enlarged prefectural conference, he was notified by telephone that many assailants were preparing to attack the refugees at Mibilizi parish and that the conference discussed this impending attack and decided to send a commission to prevent the attack.[1316] Bagambiki stated that he appointed Sub-Prefect Munyangabe to go to the parish because he had been placed in charge of Cyimbogo commune which was without a bourgmestre.[1317] According to Bagambiki, the conference believed that the political parties should be represented and appointed Pierre Kwitonda of the MDR and Edouard Bandetse of the MRND to the commission.[1318] Bagambiki explained that Munyangabe later reported that he tried to negotiate with the assailants but that someone named Nkadgi shot in the air, starting the attack, which he and the gendarmes were unable to stop.[1319] Bagambiki testified that Munyangabe stated that he believed that Edouard Bandetse, who left before the other members of the commission, was responsible for the attack.[1320] Bagambiki testified that he did not go to or telephone Imanishimwe from the Hotel Ituze on 18 April 1994 to ask for grenades or other weapons for the attack at Mibilizi parish.[1321] Bagambiki stated that

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[1306] T. 31 March 2003 p. 28.
[1307] T. 31 March 2003 p. 28.
[1308] T. 31 March 2003 pp. 18, 28.
[1309] T. 31 March 2003 p. 29.
[1310] T. 31 March 2003 p. 29.
[1311] T. 31 March 2003 p. 29.
[1312] T. 31 March 2003 p. 29.
[1313] T. 31 March 2003 p. 29.
[1314] T. 31 March 2003 p. 29.
[1315] T. 31 March 2003 p. 29.
[1316] T. 31 March 2003 p. 30.
[1317] T. 31 March 2003 pp. 30-31.
[1318] T. 31 March 2003 p. 30.
[1319] T. 31 March 2003 p. 31.
[1320] T. 31 March 2003 p. 31.
[1321] T. 31 March 2003 pp. 35-37.

he did not go to Mibilizi parish on 19 April 1994 because he was finalizing the working document for the pacification missions to begin on 20 April 1994.[1322]

515. Bagambiki stated that a commission composed of Pierre Kwitonda from the MDR, Gatabazi, a member of parliament, Sub-Prefect Munyangabe, and Father Mategeko was sent to Mibilizi on 24 April 1994 to meet with the refugees and to determine their needs.[1323] Bagambiki noted that CARITAS and the ICRC supplied food and blankets.[1324] Bagambiki stated that he visited Mibilizi again on 28 April 1994 with Bishop Thadée and Colonel Bavugamenshi and met with refugees all day to listen to their concerns and tour the facilities, returning around 7:00 p.m.[1325]

516. Bagambiki stated that, rather than waiting for an escort from Bavugamenshi on 19 May 1994, Joseph Boneza took a parish vehicle and attempted to drive it to the bishopric.[1326] Bagambiki noted that the car was intercepted by gangs of criminals and that Boneza was killed.[1327]

517. Imanishimwe stated that he did not hear about or participate in a meeting at Mibilizi parish on 14 April 1994 but that he did participate in a meeting that took place there on 21 or 22 April 1994.[1328] Imanishimwe stated that he never said that he personally shot people who were celebrating the death of President Habyarimana.[1329]

518. Imanishimwe also stated that Bagambiki did not call him on 18 April 1994 and that he did not bring ten M-26 grenades to distribute at Hotel Ituze.[1330] Imanishimwe noted that during the time he was alleged to be at Hotel Ituze he was with Bagambiki at the prefectural security council from 10:00 a.m. until 3:00 p.m.[1331]

519. Bagambiki Defence Witness Munyangabe stated that Bagambiki called him around 3:00 p.m. on 9 April 1994 and asked that he go to Mibilizi parish; this was in response to a request from the Mibilizi parish priest, Joseph Boneza, for the prefecture to intervene in the deteriorating security situation there and to prevent massacres.[1332] The witness stated that he went to Mibilizi later that afternoon, accompanied by three gendarmes, sent by Bagambiki.[1333]

520. Munyangabe stated that, on his way to the parish, he encountered groups of panicking refugees as well as armed people from a neighbouring hill who, the refugees claimed, had attacked them the previous night.[1334] The witness stated that the gendarmes chased the armed group away but were unable to catch any of them,

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[1322] T. 31 March 2003 p. 33.
[1323] T. 31 March 2003 p. 33-34.
[1324] T. 31 March 2003 p. 34.
[1325] T. 31 March 2003 p. 34.
[1326] T. 31 March 2003 p. 35.
[1327] T. 31 March 2003 p. 35.
[1328] T. 22 January 2003 p. 39; T. 23 January 2003 pp. 10-11.
[1329] T. 22 January 2003 p. 40.
[1330] T. 22 January 2003 p. 36; T. 23 January 2003 p. 60.
[1331] T. 22 January 2003 p. 38.
[1332] T. 24 March 2003 p. 22.
[1333] T. 24 March 2003 pp. 22-23.
[1334] T. 24 March 2003 p. 23.

fearing a trap.[1335] Munyangabe stated that, after speaking with the priest at Mibilizi, he called Bagambiki at about 6:00 p.m. to explain how serious the situation was and how it would likely worsen at night.[1336] According to Munyangabe, he advised Bagambiki to send soldiers to Mibilizi immediately to position themselves in the region and to prevent "things from happening."[1337] The witness stated that Bagambiki agreed to proceed quickly.[1338] The witness stated that he and the three gendarmes who accompanied him remained at the parish and patrolled the area until the gendarmes who were requisitioned by Bagambiki arrived around 7:00 p.m.[1339]

521. Munyangabe testified that an enlarged prefectural conference was held on 18 April 1994, with approximately sixty to eighty people, including sub-prefects, bourgmestres, other administrative authorities, representatives of religious congregations, chairmen of political parties, and directors of private and public enterprises.[1340] The witness stated that Bagambiki opened the meeting stating how saddened he was by the situation and the disturbances which continued despite efforts to stop the hostilities and that Bagambiki asked all present to voice their opinions on restoring order in the prefecture.[1341] Munyangabe stated that about one hour after the meeting began the prefectural secretary entered with a message for the bishop.[1342] According to the witness, the message from the priest of Mibilizi parish, Joseph Boneza, was that small groups of armed men had been attacking the parish all morning and were planning a large-scale attack to exterminate all refugees at the parish.[1343] The witness stated that everyone present at the meeting heard the news, discussed it, and decided to send the witness to Mibilizi to assess the situation.[1344] According to the witness, the participants also decided to send gendarmes to the parish to try to stop the attack.[1345]

522. Munyangabe stated that he voiced concern at the meeting that the attackers would not listen to him because he was not a member of the MRND or MDR party and that it was decided that he be accompanied to the parish by Pierre Kwitonda, a representative from the MDR party and a native of Mibilizi, and Edouard Bandetse, an important MRND official from Mibilizi.[1346] The witness stated that leaving for Mibilizi was difficult because there was no vehicle and no petrol.[1347] However, the witness noted Edouard Bandetse, who had come to the meeting with his own vehicle, set out on his own.[1348] The witness stated that because he and Pierre Kwitonda could not leave immediately and had to find a vehicle and petrol, Edouard Bandetse gained

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[1335] T. 24 March 2003 pp. 23, 24.
[1336] T. 24 March 2003 p. 24.
[1337] T. 24 March 2003 p. 24.
[1338] T. 24 March 2003 p. 24.
[1339] T. 24 March 2003 p. 24.
[1340] T. 24 March 2003 pp. 28, 29; T. 25 March 2003 p. 46.
[1341] T. 24 March 2003 p. 29.
[1342] T. 24 March 2003 p. 30.
[1343] T. 24 March 2003 p. 30.
[1344] T. 24 March 2003 p. 31; T. 25 March 2003 pp. 3-4.
[1345] T. 24 March 2003 p. 31.
[1346] T. 24 March 2003 p. 31; T. 25 March 2003 pp. 8, 11.
[1347] T. 24 March 2003 p. 31-32.
[1348] T. 24 March 2003 p. 31-32.

a "great deal of headway."[1349] The witness estimated that he received orders from the meeting to depart for Mibilizi around 11:00 a.m. or 12:00 p.m.[1350] The witness estimated that, after looking for petrol and a vehicle, he left for Mibilizi at about 2:00 p.m.[1351]

523. Munyangabe stated that, around 3:00 p.m., when he was approximately one kilometre from Mibilizi, he realised the scale of the attack when he saw thousands of people armed with spears, clubs, machetes and other weapons including firearms such as grenades and rifles moving forward in a "determined manner."[1352] The witness stated that the civilian authorities tried to move in front of the crowd and prevent it from reaching the refugees.[1353]

524. Munyangabe testified that he and the parish priest decided that the refugees and the armed crowd could not confront each other and sent the refugees into the parish compound; the witness spoke with the crowd to dissuade it from attacking.[1354] The witness noted that he was surprised that the gendarmes who had been scheduled to leave the meeting for the parish before the civilian authorities still had not arrived.[1355] The witness stated that he and Pierre Kwitonda spoke at length with the angry crowd, who suspected that RPF accomplices were amongst the refugees, and tried to dissuade the crowd of 4,000-5,000 people from attacking.[1356] Munyangabe stated that after an hour he reached an agreement with the crowd for ten of them to speak with a delegation of refugees in order to find a peaceful solution.[1357] According to the witness, at approximately 4:00 p.m., when the crowd had chosen the seventh or eighth representative, the witness saw Edouard Bandetse's jeep approach.[1358] Munyangabe stated that he thought Edouard Bandetse was coming to assist him; when Bandetse stopped his vehicle, a customs agent named Ngagi, exited carrying an automatic firearm and started shooting at the door of the parish compound which housed the refugees.[1359] The witness stated that once Ngagi fired his gun, the assailants, following his lead, began shooting and throwing grenades at the parish compound.[1360] Munyangabe testified that he hid nearby in a small building until the shooting stopped; he later found Kwitonda and his driver drinking in front of Bandetse's bar.[1361] The witness stated that he refused their offer of a drink and insisted that they return immediately to the prefecture.[1362]

525. Munyangabe stated that he reached the prefecture between 5:00 and 6:00 p.m. and phoned Bagambiki, the bishop, and the nuns who ran the Mibilizi hospital,

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[1349] T. 24 March 2003 pp. 31-32.
[1350] T. 25 March 2003 p. 6.
[1351] T. 25 March 2003 p. 7.
[1352] T. 24 March 2003 p. 32.
[1353] T. 24 March 2003 pp. 31-32.
[1354] T. 24 March 2003 p. 32.
[1355] T. 24 March 2003 p. 32.
[1356] T. 24 March 2003 p. 32.
[1357] T. 24 March 2003 p. 33.
[1358] T. 24 March 2003 p. 33; T. 25 March 2003 p. 7.
[1359] T. 24 March 2003 p. 33; T. 25 March 2003 p. 9.
[1360] T. 24 March 2003 p. 33.
[1361] T. 24 March 2003 p. 33; T. 25 March 2003 pp. 9-10.
[1362] T. 25 March 2003 pp. 9-10

informing them that the mission had failed.[1363] The witness testified that he never saw Bandetse again.[1364] The witness stated that he did not see Celestin Somayire at Mibilizi parish.[1365]

526. Bagambiki Defence Witness KOT testified that during one prefectural committee meeting, which he attended, Bagambiki received an appeal to assist the refugees at Mibilizi who were under threat of attack and that the committee decided to dispatch a sub-prefect named "Theodore", as well as gendarmes, soldiers, and representatives of the political parties.[1366]

527. Bagambiki Defence Witness EOT testified that members of the local population, including some members of his family, had fled to Mibilizi parish.[1367] The witness stated that one of his family members called Bagambiki who approved a request to take those at the parish across the border to Congo.[1368] The witness indicated that the next day, on 18 April 1994, he went to the prefecture office, but that the prefect was absent, so the witness instead went to see the Sub-Prefect Kamonyo who granted the witness travel authorisation and cautioned that "criminals" could reject the travel authorizations issued by the prefect.[1369] The witness added that Kamonyo told him that if he had problems in Mibilizi that he should contact Sub-Prefect Munyangabe, who had gone to Mibilizi to hold a meeting.[1370] The witness testified that he travelled to Mibilizi to take his aunt to Congo.[1371] Witness EOT stated that along the way to Mibilizi he met people at Kucyato who said that there was fighting at the parish.[1372] The witness further stated that when he was three kilometres from Mibilizi he heard gunshots and saw many people fleeing.[1373] The witness testified that when he finally arrived at Mibilizi parish, he learned that his aunt had been killed, along with all the other refugees at the parish.[1374]

(ii) Findings

528. Prosecution Witnesses MM and MP provided a largely consistent and convincing first-hand narrative of what transpired at Mibilizi parish, which the Chamber generally accepts as credible and reliable. The Chamber also notes that Bagambiki Defence Witness Munyangabe provided detailed and convincing testimony about his efforts during the attack against the refugees on 18 April 1994.

529. From the evidence of Witnesses MM and MP, the Chamber finds that Tutsis began seeking refuge at Mibilizi parish on 7 April 1994, and that they eventually

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[1363] T. 24 March 2003 p. 33.
[1364] T. 24 March 2003 p. 34.
[1365] T. 25 March 2003 p. 10-11.
[1366] T. 4 February 2003 p. 18.
[1367] T. 11 February 2003 pp. 35-36.
[1368] T. 11 February 2003 p. 37.
[1369] T. 11 February 2003 pp. 37-38.
[1370] T. 11 February 2003 p. 38.
[1371] T. 11 February 2003 p. 38.
[1372] T. 11 February 2003 p. 38.
[1373] T. 11 February 2003 p. 38.
[1374] T. 11 February 2003 p. 39.

totalled between 2,000 and 3,000. From the evidence, the Chamber finds that four gendarmes were posted at the parish at some point between 9 and 11 April 1994.

530. From the evidence of Witnesses MM and MP, the Chamber finds that, on 11 and 12 April 1994, local *Interahamwe* attacked the parish and that the refugees warded off the attacks with stones. On 14 April 1994, Bagambiki, Imanishimwe, Munyarugerero, and Celestin Somayire visited the parish to take stock of the security situation. The authorities brought a delegation from the local *Interahamwe* and met with a delegation of the refugees. Bagambiki listened to each party's concerns and told both parties that he would work to restore security in the area. During the meeting, Imanishimwe became angry when a priest made a reference to the Arusha Accords and said that he personally killed people celebrating the death or President Habyarimana in Kamembe. Given the eye-witness accounts of Witnesses MM and MP regarding this incident, the Chamber does not accept Imanishimwe's simple denial of making such a statement or participating in this meeting. Based on the testimony of Witness MM, the Chamber finds that there was another clash between the refugees and the local attackers on 15 April 1994.

531. Given the eye-witness accounts of Witnesses MM and MP, the Chamber does not accept Bagambiki's testimony that he visited the parish on 12 April 1994 instead of 14 April 1994. The Chamber also notes that nothing in the record indicates that the meeting at Mibilizi would have conflicted with the meeting on the afternoon of 14 April 1994 between Bagambiki, the gendarmerie commander, Imanishimwe, the bishop, and Prosecution Witness LY held at the Cyangugu Bishopric.

532. From the evidence of Witnesses MM and MP, the Chamber finds that, on 18 April 1994, the refugees at the parish learned of plans for a large scale attack against them. The Chamber accepts that Witness MP and a gendarme went to investigate the situation. When Witness MP and the gendarme encountered the attackers, the gendarme gave his grenades to the assailants. Somayire and other assailants later asked Witness MP and parish authorities to hand over to the assailants sixty refugees from the parish, but the refugees and parish authorities refused, stating that they did not have authorisation.

533. The Chamber is mindful that Witnesses MM, MP, and LAJ referred to Somayire as a bourgmestre. The Chamber is not convinced, however, that Somayire was in fact bourgmestre in April 1994. The Chamber recalls Bagambiki's testimony that he sent Munyangabe to Mibilizi parish because at the time there was no bourgmestre in Cyimbogo commune. The Chamber further notes that Munyangabe believed that Somayire was a bourgmestre but did not recall when he was appointed.[1375] In addition, the Chamber lacks sufficient reliable evidence to determine if Somayire acted as a *de facto* bourgmestre in April 1994.

[1375] T. 25 March 2003 p. 11 ("Q. And it is true, isn't it, that at that time as of 18th April 1994, he was acting as a *bourgmestre* for Cyimbogo? A. I believe so. I really don't recall when he was appointed, but I believe he was a *bourgmestre*. Q. Witness, he was appointed or confirmed as *bourgmestre* in May 1994, but I am talking of April, 1994, when you went to Mibirizi you found him at Mibirizi parish, didn't you? A. No, he wasn't there.")

534. From the evidence of Witnesses MM and MP, the assailants attacked the parish with traditional weapons and grenades at about 11:00 a.m. and again at about 2:00 p.m. on 18 April 1994. The refugees tried to defend themselves with traditional weapons, but the attackers succeeded in wounding many refugees and killing between forty and fifty of them. From the evidence of Bagambiki, Munyangabe, and Defence Witness KOT, the parish tried to contact the bishop who was participating in the enlarged prefectural security council meeting. When the bishop received the message, the security council meeting discussed the problem at Mibilizi parish and decided to send Sub-Prefect Munyangabe, Pierre Kwitonda, and Edouard Bandetse, as well as gendarmes. From the evidence of Munyangabe, the Chamber finds that Munyangabe and Kwitonda left for Mibilizi together and that Bandetse left ahead of them on his own. When Munyangabe and Kwitonda arrived, they found thousands of angry attackers. From the evidence of Witnesses MM, MP, and Munyangabe, Munyangabe asked the refugees to go inside the parish and told them that he would talk to the attackers. The refugees went into the parish, while the attackers surrounded it. Munyangabe and Kwitonda tried to negotiate with the attackers. However, during the negotiation efforts, Bandetse's vehicle arrived at the parish, and someone got out of his vehicle and fired a shot at the parish gate, which signalled to the assailants to attack. The parish then suffered a massive assault, and the assailants killed many refugees and looted their belongings as well as many of the buildings in the parish complex.

535. The Chamber cannot accept Witness MM's testimony that a gendarme killed a refugee who tried to escape during the attack because the witness heard this only from an unidentified source, and the Chamber is therefore unable to asses the reliability of this evidence.

536. From the evidence of Witnesses MM and MP, the Chamber finds that, on 20 April 1994, the assailants returned to the parish with a list of names and demanded to take away sixty refugees, including the parish priest. Although, the gendarmes prevented the *Interahamwe* from taking the parish priest, the assailants removed between sixty and one hundred refugees and killed them.

537. From the evidence of Witness MM, the Chamber finds that, on 25 April 1994, Bagambiki, Imanishimwe, Bavugamenshi, and the bishop visited the parish to assess the situation. On 26 April 1994, Kwitonda, Gatabazi, Somayire, and Father Mategeko visited the parish and also inquired about the refugees' situation.

538. From the evidence of Witnesses MM and MP, the Chamber finds that, on 30 April 1994, Munyakazi and about one hundred *Interahamwe* attacked the parish. The gendarmes guarding the parish tried to dissuade the attackers. After the *Interahamwe* insisted that they would not leave "empty handed", they entered the parish and killed between sixty and eighty refugees.

539. From the evidence of Witness MM, the Chamber finds that, on 14 and 15 June 1994, the authorities sent ONATRACOM buses and transferred the remaining refugees, totalling about 1,000, to the Nyarushishi camp.

540. The Chamber recalls that Witness LAJ is an alleged accomplice of the accused and as such views his testimony with caution. The Chamber recalls that it has previously found the testimony of Witness LAJ not to be not credible or reliable with

respect to other events.[1376] The Chamber views his evidence with suspicion and, as such, it will not accept his account of the events at Mibilizi parish without corroboration. The Chamber notes that no witness corroborated Witness LAJ's account of prefectural and commune authorities supplying weapons to the attackers or giving other incentives to them for killing Tutsis. The Chamber also notes that Bagambiki's and Imanishimwe's participation in the prefectural security council meeting on 18 April 1994 further undermines the witness's claim that they distributed weapons to him at Hotel Ituze. The Chamber further notes that Witness LAJ's account of the attack at Mibilizi is often internally inconsistent and conflicts with other reliable and credible evidence on the record, which further undermines its credibility and reliability. For example, Witness LAJ testified that he participated in a major assault on Mibilizi parish on 20 April 1994, which involved 3,000 attackers, and that Munyakazi and his *Interahamwe* attacked the refugees later that day. The witness later said that he did not participate in a major assault on 20 April 1994. The evidence also indicates that Munyakazi attacked the parish only on 30 April 1994.

d. Nyamasheke Parish

(i) Allegations

541. Prosecution Witness LAY testified that, on 8 April 1994, a sub-prefect travelled around in a vehicle announcing over a microphone that "the enemy was one and that he was known and that orders had been given".[1377] The witness stated that, on 9 April 1994, he and his family fled his home when armed assailants, including the cellule and sector leaders as well as those of political parties, attacked shouting "let us exterminate them" and "the only enemy is the Tutsi".[1378] The witness said that from his hiding place he heard but could not see the sub-prefect pass by his hill with a loud-speaker stating that "the trees had to be pulled out of the ground together with their roots".[1379] The witness said that he knew the individual using the loud-speaker was the sub-prefect because his child saw him and identified him, though in the witness's prior statement, which was read onto the record, he indicated that he saw the sub-prefect.[1380]

542. Witness LAY stated that, on 10 April 1994, he saw communal vehicles with Red Cross banners advising Tutsis to come out of their hiding places and go to Nyamasheke parish where their safety could be guaranteed.[1381] The witness stated that he arrived at Nyamasheke parish at 5.30 a.m. on 11 April 1994, where he found around 2,500 people.[1382] Witness LAY testified that the vehicles with Red Cross banners brought people to the parish from Sunday until about Wednesday and that some refugees arrived on their own.[1383] The witness testified that, on 11 April 1994,

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[1376] *See supra* paras. 129-132.
[1377] T. 26 October 2000 p. 98.
[1378] T. 26 October 2000 pp. 98-101; T. 30 October 2000 pp. 84-88; T. 31 October 2000 pp. 5-15, 17-18.
[1379] T. 26 October 2000 pp. 101, 103; T. 31 October 2000 pp. 22-24.
[1380] T. 26 October 2000 p. 102; T. 30 October 2000 pp. 81-82; T. 31 October 2000 pp. 22-24.
[1381] T. 26 October 2000 pp. 105-106; T. 30 October 2000 pp. 29-30.
[1382] T. 26 October 2000 p. 108.
[1383] T. 26 October 2000 pp. 108-109; T. 30 October 2000 pp. 76-77.

the sub-prefect came to the parish along with party officials, the bourgmestre, and others to determine how many refugees had arrived.[1384]

543. Witness LAY testified that, on 13 April 1994 around 1:00 p.m., political party officials, reservists, the local population, and *Interahamwe* launched their first armed attack against the parish while singing songs such as "let us exterminate them" and "the enemy is the Tutsi."[1385]

544. Witness LAY explained that an *Interahamwe* wounded one of the two gendarmes guarding the refugees at the parish, who then shot in the air and fired at the *Interahamwe,* killing three.[1386] The witness testified that after this incident the bishop arrived at the parish with Bagambiki, a judge, the army commander, the sub-prefect, the bourgmestre of Kagano commune, and other public servants of the commune, including the conseillers of all the sectors.[1387] According to the witness, the assailants retreated when Bagambiki and his delegation arrived.[1388] The witness stated that Bagambiki met the assailants outside the parish premises and that the leaders of the assailants then entered the parish with Bagambiki and his delegation.[1389] In the witness's opinion, Bagambiki was not concerned about the many refugees who were wounded during the attack but instead "bullied" the gendarmes, asking them why they had killed Hutus.[1390]

545. Witness LAY testified that some of the assailants told Bagambiki that the parish priest had killed the three *Interahamwe.*[1391] The witness stated that, after holding a meeting which excluded the refugees, Bagambiki ordered a search for weapons throughout the parish which produced nothing.[1392] According to the witness, Bagambiki then announced that the Tutsi parish priest should leave the parish.[1393] The witness stated that Bagambiki made this announcement to the few surviving refugees at the parish who had not been killed in the attack.[1394] The witness testified that, while Bagambiki was present, the convent was destroyed and looted and one woman was killed.[1395] The witness stated that Bagambiki and the two gendarmes left the parish but that the bishop stayed.[1396] According to the witness, on 13 April 1994, a crowd of people surrounded the parish so that the refugees could not leave, and soldiers also arrived to prevent the refugees from leaving.[1397]

546. Witness LAY testified that, on 14 April 1994, the bishop celebrated a mass in the parish, and then he left with four religious brothers.[1398] The witness later heard

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[1384] T. 26 October 2000 p. 109.
[1385] T. 26 October 2000 pp. 111-113; T. 30 October 2000 pp. 5, 91-92.
[1386] T. 26 October 2000 pp. 111-112, 113-114.
[1387] T. 26 October 2000 pp. 115-118; T. 30 October 2000 pp. 3-4, 93-98, 101-103.
[1388] T. 26 October 2000 p. 117; T. 30 October 2000 p. 94.
[1389] T. 30 October 2000 p. 93.
[1390] T. 26 October 2000 p. 118.
[1391] T. 26 October 2000 p. 119; T. 30 October 2000 p. 93.
[1392] T. 26 October 2000 p. 119; T. 30 October 2000 pp. 92-93.
[1393] T. 26 October 2000 p. 119; T. 30 October 2000 p. 5.
[1394] T. 26 October 2000 pp. 119-120.
[1395] T. 30 October 2000 pp. 104-105.
[1396] T. 26 October 2000 pp. 120-121; T. 30 October 2000 p. 104.
[1397] T. 26 October 2000 pp. 121-122; T. 30 October 2000 p. 104.
[1398] T. 26 October 2000 pp. 122-123.

from new refugees arriving at the parish that the brothers had been killed.[1399] The witness testified that, on the morning of 15 April 1994, armed assailants again attacked the parish, joined by the soldiers posted there and the sub-prefect, throwing grenades and spraying petrol, burning some of the refugees alive.[1400] The witness testified that petrol was brought to the parish in commune vehicles.[1401] The witness could not give the number of refugees who died on 15 April 1994, but he said that more people died than survived.[1402]

547. Witness LAY stated that, on 16 April 1994, the assailants reinforced by Munyakazi and his *Interahamwe* and Pima attacked the survivors who had locked themselves in the parish.[1403] According to the witness, the attackers killed the women and children who came out of the parish, having promised that nothing would happen to them.[1404] The witness testified that the attackers broke the windows of the parish and threw grenades and petrol through the openings into the building.[1405]

548. Prosecution Witness LBI testified that, on 10 April 1994, she and her family sought refuge at Nyamasheke parish, arriving in a commune vehicle.[1406] The witness stated that, when they arrived, they found gendarmes guarding the parish and people registering the stream of arriving Tutsi refugees.[1407]

549. Witness LBI testified that, on 12 April 1994, Hutus attacked the parish, singing "let's exterminate them".[1408] The witness stated that the assailants and the refugees threw stones at each other but that no one died as a result.[1409] The witness stated that other refugees continued to arrive at the parish.[1410]

550. Witness LBI testified that, at about 10:00 a.m. on 13 April 1994, the parish was attacked by the refugees' former Hutu neighbours and policemen from Kagano commune, who were armed with machetes, spears, clubs, firearms, grenades and bayonets.[1411] The witness stated that the number of attackers made it difficult to recognize them individually, except for those in uniform, but that she later learned that the bourgmestre had participated in the attack.[1412] The witness explained that the refugees used stones to defend themselves, and that the gendarmes ended the attack when they shot and killed three of the attackers.[1413] The witness stated that during the

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[1399] T. 26 October 2000 p. 123.
[1400] T. 30 October 2000 pp. 7, 8-11; T. 31 October 2000 pp. 34-35.
[1401] T. 30 October 2000 pp. 55, 56, 69-70, 73-74.
[1402] T. 30 October 2000 p. 11.
[1403] T. 30 October 2000 pp. 11, 12.
[1404] T. 30 October 2000 pp. 12-13.
[1405] T. 30 October 2000 p. 14.
[1406] T. 25 October 2000 pp. 55-57.
[1407] T. 25 October 2000 pp. 56-57
[1408] T. 25 October 2000 pp. 58, 59.
[1409] T. 25 October 2000 pp. 58, 59.
[1410] T. 25 October 2000 pp. 58, 59, 60.
[1411] T. 25 October 2000 pp. 61-62.
[1412] T. 25 October 2000 p. 62.
[1413] T. 25 October 2000 p. 61.

attack she was in the rear courtyard of the parish and that none of the refugees was injured or killed in this attack.[1414]

551. Witness LBI testified that, at about 2:00 p.m. on 13 April 1994, Bagambiki arrived at the parish.[1415] The witness stated that Bagambiki was accompanied by the bishop, Sub-Prefect Sewabeza, Sub-Prefect Gérard Terebura, Bourgmestre Kamana, Kamana's older brother Antoine Hitimana, a commander of either the gendarmerie or the army, and the conseillers of several sectors in Kagano commune.[1416]

552. Witness LBI testified that after the authorities arrived, the homes of all the priests, including Father Ubald, were searched because Father Ubald was believed to have been responsible for the deaths of the three attackers shot by the gendarme.[1417] The witness stated that after the search Bagambiki and the authorities met briefly with representatives of each sector and then met with all of the refugees for about an hour before leaving.[1418] The witness stated that Bagambiki told the refugees that the gendarmes at the parish had become "useless" and that these gendarmes were going to be transferred to Cyangugu because they had killed Hutu, which they had no right to do.[1419] The witness testified that Bagambiki told the refugees that "it was hoped that the people remaining behind would be safe, maybe some gendarmes would be left, but that the gendarmes would receive the punishment they deserved."[1420] According to the witness, Bagambiki further stated that there were no problems, that the refugees could stay at the parish, and that the refugees were "safe".[1421] The witness noted that Bagambiki also told the gendarmes that they should not have killed a Hutu and that they would be transferred.[1422] The witness also stated that Bagambiki told the refugees that the Tutsi had started everything by killing the father of the nation and that this was a plot they had hatched.[1423]

553. Witness LBI noted that the bishop remained with the refugees until 14 April 1994 and that during his stay at the parish he performed baptisms and other religious ceremonies.[1424] The witness noted that Father Ubald fled alone in the bishop's vehicle out of fear because people believed that he had killed the Hutu assailants.[1425] The witness testified that, after the bishop finished performing sacraments, he left the parish with several religious brothers and that the brothers were killed along the way to the prefecture.[1426] The witness testified that the gendarmes were replaced by three others and that the new gendarmes were among the first to shoot at them during the attack of 15 April 1994.[1427]

[1414] T. 25 October 2000 pp. 61-62, 67-68.
[1415] T. 25 October 2000 pp. 62-63; T. 26 October 2000 p. 25.
[1416] T. 25 October 2000 pp. 63-65; T. 26 October 2000 p. 25.
[1417] T. 25 October 2000 pp. 63, 64; T. 26 October 2000 pp. 27-28.
[1418] T. 25 October 2000 pp. 64-65, 67, 68; T. 26 October 2000 p. 25.
[1419] T. 25 October 2000 p. 65-66; T. 26 October 2000 pp. 28-29.
[1420] T. 25 October 2000 p. 65
[1421] T. 25 October 2000 p. 66.
[1422] T. 26 October 2000 pp. 28-29, 30.
[1423] T. 25 October 2000 pp. 66-67.
[1424] T. 25 October 2000 p. 68.
[1425] T. 25 October 2000 p. 68; T. 25 October 2000 pp. 74-75 (French); T. 26 October 2000 p. 30-31.
[1426] T. 25 October 2000 p. 68.
[1427] T. 26 October 2000 p. 31.

554. Witness LBI testified that, at about 2:00 p.m. on 15 April 1994, armed assailants, including Hutus from the area, policemen, Bourgmestre Kamana, and several conseillers from Kagano commune, attacked the parish.[1428] The witness stated that when the attackers arrived the witness hid in an old house that was used as a residence for student monks.[1429] The witness testified that the attackers began to kill people using grenades, machetes, and spears and that they torched the house where she was hiding with petrol.[1430] The witness stated that she was hit with a machete or a hammer and that she was stabbed three times in the back, wounded with a machete on her leg and hit on the chest with a club.[1431] The witness stated that the attackers continuously sang "let us exterminate them, let us exterminate them."[1432] The witness stated that she saw Bourgmestre Kamana armed with a machete but that she did not see him use it because she then escaped.[1433] Witness LBI estimated that, of the 25,000 refugees at the parish, approximately three quarters were killed during this attack which lasted until midnight.[1434]

555. Witness LBI testified that the following day, 16 April 1994, the attackers returned and began throwing people, alive, into the latrines located close to the parish and that the remaining refugees were killed and cut up into small pieces.[1435] The witness stated that the attackers asked Hutus to identify themselves so that their lives would be spared.[1436]

556. Witness LBI testified that, while the attackers killed people, she heard them shout that Munyakazi had arrived.[1437] According to the witness, who was in the bushes hidden from view, Munyakazi said that Bagambiki had sent them to reinforce the people in Kagano because they were not effective enough and that he would continue to Kibuye because Kibuye also needed reinforcements.[1438] The witness stated that Munyakazi and his *Interahamwe* assisted the attackers by removing and killing women hidden in the parish.[1439] The witness testified that, after Munyakazi and his *Interahamwe* left, the remaining attackers continued to look for people to kill.[1440]

557. Prosecution Witness LAM testified that he learned of a plan to invite Bagambiki and Imanishimwe to Kagano to show them that the Tutsis were threatening security.[1441] According to the witness, the plan was to excite the population by attacking the Tutsis before the arrival of Bagambiki and Imanishimwe.[1442] The witness explained that, after learning from the *Interahamwe* of

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[1428] T. 25 October 2000 pp. 68-72; T. 26 October 2000 p. 61.
[1429] T. 25 October 2000 p. 69-70.
[1430] T. 25 October 2000 pp. 70, 73.
[1431] T. 25 October 2000 p. 73; T. 26 October 2000 pp. 63-64
[1432] T. 25 October 2000 p. 73.
[1433] T. 25 October 2000 p. 75
[1434] T. 25 October 2000 p. 71.
[1435] T. 25 October 2000 pp. 76, 77, 79.
[1436] T. 25 October 2000 p. 77.
[1437] T. 25 October 2000 p. 78; T. 26 October 2000 pp. 32-33.
[1438] T. 25 October 2000 p. 78.
[1439] T. 25 October 2000 p. 80.
[1440] T. 25 October 2000 p. 81.
[1441] T. 2 November 2000 pp. 17, 30-31; T. 20 November 2000 p. 87.
[1442] T. 20 November 2000 pp. 88-89.

Gisuma that Bagambiki and Imanishimwe gave authorization to kill people in Gashirabwoba, the attackers there hoped to get the same authorization.[1443]

558. According to the witness, on 13 April 1994, 2,000 assailants attacked the Tutsis at Nyamasheke parish, and, during the attack, one of the gendarmes guarding the Tutsis at the parish shot and killed three *Interahamwe*.[1444] The witness stated that the attackers took the three dead *Interahamwe* and another who had been injured to Kabeza to wait for Imanishimwe and Bagambiki.[1445] The witness also stated that the gendarmes at the parish also took the gendarme who had killed the three *Interahamwe* to Kabeza.[1446]

559. Witness LAM testified that when Imanishimwe, Bagambiki, and the bishop arrived at the commune office, the assailants told them that the Tutsis were armed and that they threatened their security.[1447] The witness testified that the attackers insisted on searching the parish to determine if the Tutsis were armed, which the bishop opposed.[1448] According to the witness, Imanishimwe loudly berated the bishop for hampering the search and then left the meeting angry, taking with him the gendarme who had killed the three *Interahamwe*.[1449] The witness testified that once Imanishimwe left, Bagambiki told the bishop, "I cannot contain these people. I have to fulfil their desire."[1450] The witness stated that Bagambiki authorized a search of the parish and asked the heads of the political parties and the commune officials to select civilians to go with the gendarmes.[1451]

560. Witness LAM testified that, on 15 April 1994, he participated in an attack at Nyamasheke parish which resulted in the death of many Tutsis.[1452] The witness stated the that assailants worked in concert with the gendarmes, whom Imanishimwe and Bagambiki had asked to assist in the attack.[1453] The witness stated that the attackers went to Kabeza between 1:30 and 2:00 p.m. where they saw Bagambiki and Imanishimwe.[1454] The witness stated that Imanishimwe and Bagambiki brought weapons and distributed them to ex-soldiers.[1455] The witness testified that the attack began at 2:00 p.m. and ended at 6:00 p.m.[1456] Witness LAM testified that there were approximately 2,000 or more assailants involved in the attack on Nyamasheke parish, including Sub-Prefect Terebura who was armed with a gun, and Bourgmestre

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[1443] T. 20 November 2000 p. 88.
[1444] T. 2 November 2000 p. 20; T. 20 November 2000 p. 89.
[1445] T. 2 November 2000 p. 20.
[1446] T. 2 November 2000 p. 20.
[1447] T. 2 November 2000 pp. 21-22; T. 20 November 2000 pp. 90-91.
[1448] T. 2 November 2000 pp. 23-24.
[1449] T. 2 November 2000 pp. 23, 24; T. 20 November 2000 p. 107.
[1450] T. 2 November 2000 p. 24.
[1451] T. 2 November 2000 p. 24-25; T. 20 November 2000 p. 93.
[1452] T. 2 November 2000 pp. 25, 26.
[1453] T. 20 November 2000 pp. 100, 101.
[1454] T. 2 November 2000 pp. 26; T. 20 November 2000 pp. 47-48, 49, 90.
[1455] T. 2 November 2000 pp. 27-28; T. 20 November 2000 pp. 33-34, 50-51, 54, 55-56.
[1456] T. 2 November 2000 p. 37; T. 20 November 2000 p. 54.

Kamana.[1457] The witness stated that Imanishimwe coordinated the attack from Kabeza.[1458]

561. Witness LAM testified that they entered the parish gates and used clubs and machetes against the refugees who did not counterattack.[1459] The witness stated that the assailants told Imanishimwe that the refugees were running towards the parish but that the attackers could not go in without bullets.[1460] The witness stated that he heard Imanishimwe ask Sergeant Kamanayo to get more bullets for the attack.[1461] The witness estimated that only 300 refugees of the more than 6,000 Tutsis at the parish survived.[1462]

562. Witness LAM testified that, on 16 April 1994, he and others looted the schools behind the parish.[1463] The witness stated that when the attackers returned from the school, they saw Munyakazi's *Interahamwe* and those of other regions ask the remaining women and children in the parish to come out.[1464] The witness stated that the *Interahamwe* killed the women and young girls who refused to go with them and threw some, alive, into the latrines.[1465]

563. Bagambiki stated that Nyamasheke parish is located in Kagano commune in the north of Cyangugu, approximately fifty kilometres from the seat of the prefecture.[1466] Bagambiki stated that in April 1994 the bourgmestre of Kagano was Aloys Kamana.[1467]

564. Bagambiki testified that, on 8 April 1994, a priest at Nyamasheke parish informed him that refugees began gathering there and that he immediately contacted the gendarmerie commander who sent gendarmes to Nyamasheke with Sub-Prefect Terebura.[1468] According to Bagambiki, on 12 April 1994, the priest informed him that approximately 2,600 refugees had registered at Nyamasheke.[1469]

565. Bagambiki stated that he went to Nyamasheke parish on 13 April 1994, with Bishop Thadée and the commander of the gendarmerie because Sub-Prefect Terebura and the parish had informed him that people were gathering outside the parish at a place called Kabeza, threatening to attack the refugees at the parish.[1470] Bagambiki noted that Sub-Prefect Terebura and Bourgmestre Kamana also joined his delegation.[1471]

[1457] T. 2 November 2000 pp. 36, 38, 39.
[1458] T. 20 Novmenber 2000 p. 118.
[1459] T. 2 November 2000 p. 28.
[1460] T. 2 November 2000 p. 29.
[1461] T. 20 November 2000 pp. 105-106.
[1462] T. 2 November 2000 p. 39.
[1463] T. 2 November 2000 pp. 42-44.
[1464] T. 2 November 2000 pp. 43, 44; T. 20 November 2000 pp. 125, 126.
[1465] T. 2 November 2000 p. 44; T. 20 November 2000 pp. 126, 127.
[1466] T. 31 March 2003 p. 37.
[1467] T. 31 March 2003 p. 37.
[1468] T. 31 March 2003 pp. 37, 38.
[1469] T. 31 March 2003 p. 37.
[1470] T. 31 March 2003 pp. 18, 37-38.
[1471] T. 31 March 2003 p. 38.

566. Bagambiki stated that he arrived at Nyamasheke between 1:00 and 1:30 p.m. and found an excited crowd armed with traditional weapons and saw a dead body.[1472] Bagambiki stated that he spoke to members of the crowd, who said that Father Ubald had shot at them and that they believed that the refugees were armed.[1473] Bagambiki stated that he moved the crowd to the commune office 500 to 600 metres from the parish to speak to them and that, during the exchange, he learned that the gendarmes had actually fired at the crowd.[1474] Bagambiki stated that he explained to the crowd that the priest did not have weapons, that the refugees were under the prefecture's protection, and that the prefecture would not tolerate an attack on the refugees.[1475] Bagambiki further noted that the gendarmes did their duty and would use all means necessary to prevent an attack and that he assured the crowd that the refugees would not attack them because they were under the control of the gendarmes.[1476] Bagambiki stated that the assailants were convinced and abandoned their plans of attack but nonetheless demanded a search of the priest's residence.[1477] Bagambiki stated that Bishop Thadée did not object to the search and that they returned to the parish with ten representatives of the crowd.[1478] Bagambiki stated that the search produced an old hunting rifle that no longer worked, which was shown to the crowd who were then convinced that Father Ubald was not the culprit.[1479] Bagambiki stated that the crowd still demanded the removal of Father Ubald along with the gendarme who fired into the crowd.[1480] Bagambiki testified that the bishop agreed that Father Ubald could be removed and that the gendarmes asked to be replaced.[1481] Bagambiki stated that the gendarmerie commander made the necessary arrangements to replace the gendarme contingent and further stated that the gendarme who fired at the crowd was not arrested or reproached because he did his duty.[1482]

567. Bagambiki stated that Bishop Thadée stayed at Nyamasheke parish that night, and that the authorities returned in a convoy to the prefecture with Father Ubald and Abbey Augustin Rushita.[1483] Bagambiki stated that Bishop Thadée was attacked at a roadblock at Mutusa on his way back to the prefecture on 14 April 1994 and that three priests with him were killed.[1484]

568. Bagambiki stated that, on 15 April 1994, Bourgmestre Kamana informed him at about 3:00 to 3:30 p.m. about an attack at Nyamasheke parish involving the same crowd.[1485] Bagambiki stated that he was not able to intervene because he was informed after the attack was completed.[1486] Bagambiki stated that he suspended

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[1472] T. 31 March 2003 pp. 18, 38, 39.
[1473] T. 31 March 2003 p. 39
[1474] T. 31 March 2003 p. 39
[1475] T. 31 March 2003 pp. 39-40.
[1476] T. 31 March 2003 p. 40.
[1477] T. 31 March 2003 p. 40.
[1478] T. 31 March 2003 p. 40.
[1479] T. 31 March 2003 pp. 40-41.
[1480] T. 31 March 2003 p. 41.
[1481] T. 31 March 2003 p. 41.
[1482] T. 31 March 2003 pp. 41, 42.
[1483] T. 31 March 2003 pp. 42, 43.
[1484] T. 31 March 2003 p. 43.
[1485] T. 31 March 2003 p. 43.
[1486] T. 31 March 2003 pp. 43-44.

Aloys Kamana immediately because Kamana did not provide a convincing explanation for why he did not inform Bagambiki earlier about the attack and because Kamana was in possession of looted property from Nyamasheke.[1487]

569. Bagambiki testified that he did not distribute weapons on 15 April 1994 at Nyamasheke parish because at that time he was transferring refugees from Cyangugu Cathedral to Kamarampaka Stadium.[1488]

570. Imanishimwe stated that he has never been to Nyamasheke parish and that he did not participate in any killings or meetings there.[1489]

571. Imanishimwe Defence Witness PCI stated that, on 13 April 1994 between 1:00 and 2:00 p.m., he was visiting his aunt at a dispensary near Nyamasheke parish.[1490] He stated that, while at the dispensary, he heard a gunshot coming from Nyamasheke parish and a few minutes later saw the vehicles of Bagambiki, the gendarmerie commander, and the bishop, which he followed to the parish.[1491] The witness stated that he saw a man wearing a red beret and a khaki uniform with red shoulder tags and clear white stars, who other people told him was the commander of the gendarmerie.[1492] The witness stated that Bagambiki and the gendarmerie commander left the parish between 4:00 and 4:30 p.m. but that the bishop remained.[1493] The witness stated that he learned that, on 15 April 1994, there had been confrontations between members of the Hutu population and the Tutsi refugees at the parish.[1494]

572. Imanishimwe Defence Witness PCH testified that, on 13 April 1994, he went to Nyamasheke parish out of curiosity when he heard gunfire coming from there.[1495] The witness testified that he saw the bishop's vehicle, a gendarmerie vehicle, and a civilian vehicle head towards the parish.[1496] The witness stated that at the parish, he saw the gendarmerie commander arrest a gendarme who had shot into the population.[1497] The witness attested to hearing that the gendarme had killed three people.[1498] The witness stated that the gendarmes who accompanied the commander came to reinforce the gendarmes already stationed at the parish.[1499]

573. Bagambiki Defence Witness KOE testified that, on 13 April 1994, he was bringing food to one of the refugees at Nyamasheke parish when he heard gunshots.[1500] The witness stated that he stopped for a short time at Kabeza before following three vehicles carrying Bagambiki, the bishop, and gendarmes to the parish

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[1487] T. 27 March 2003 p. 22; T. 31 March 2003 p. 44.
[1488] T. 31 March 2003 p. 44.
[1489] T. 22 January 2003 pp. 46-47; T. 23 January 2003 pp. 14, 60.
[1490] T. 24 October 2002 pp. 30, 43.
[1491] T. 24 October 2002 pp. 30-31, 41-42.
[1492] T. 24 October 2002 pp. 30-32.
[1493] T. 24 October 2002 pp. 32-33.
[1494] T. 24 October 2002 pp. 33-34.
[1495] T. 23 October 2002 pp. 43, 47; T. 24 October 2002 pp. 11, 15, 25.
[1496] T. 23 October 2002 p. 43.
[1497] T. 23 October 2002 p. 43.
[1498] T. 23 October 2002 p. 43.
[1499] T. 23 October 2002 p. 45; T. 24 October 2002 p. 14.
[1500] T. 25 February 2003 pp. 8, 21.

between 1:00 and 2:00 p.m.[1501] The witness stated that he saw two corpses and observed people armed with clubs, machetes, and sticks in front of the parish shouting.[1502] The witness noted that the parish was guarded by gendarmes.[1503] The witness stated that he did not see Bourgmestre Kamana or Kalisa, the commune's driver, amongst the attackers.[1504]

574. Witness KOE testified that, when he arrived, Bagambiki, the bishop, and gendarmes were standing in front of the parish.[1505] The witness stated that he heard Bagambiki tell those attacking the parish to go home but that the attackers responded that the refugees were enemies.[1506] According to the witness, Bagambiki tried to calm down the local population and convince them to move aside.[1507] The witness recalled that the bishop told the assailants that as Christians they could not attack and kill the children of God.[1508] The witness stated that the attackers and the gendarmes moved from the parish to Kabeza.[1509] The witness stated that, at Kabeza, Bagambiki asked the attackers who their enemy was, and they responded that a gendarme had killed one of them and that Father Ubald was also shooting.[1510] The witness stated that a gun was later found in Father Ubald's office.[1511] The witness testified that, when the gun was found, the attackers began shouting about the gendarme who killed one of the assailants.[1512] The witness stated that Bagambiki informed the assailants that the gendarme in question had to be transferred.[1513] The witness noted that Bagambiki also informed the attackers that the bishop would remain to take charge of the parish and that, if there were another attack against the parish, the gendarmes would defend the parish, and the attackers would suffer the consequences.[1514] According to the witness, after the discussions, the convoy including Bagambiki, Father Ubald, and the gendarmes departed.[1515]

575. Witness KOE attested to hearing that the parish was attacked on 15 April 1994 by the local population who were reinforced by people from Gafunzo commune.[1516]

576. Bagambiki Defence Witness BHB testified that, on 10, 11, and 12 April 1994, he saw Tutsis fleeing to the hilltops and walking to Nyamasheke parish for refuge.[1517] The witness stated that he observed Father Ubald, along with a parish employee and a member of the Red Cross, moving through the commune to inform Tutsis to go to the

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[1501] T. 25 February 2003 pp. 8, 11, 12, 20-21.
[1502] T. 25 February 2003 p. 9.
[1503] T. 25 February 2003 p. 9.
[1504] T. 25 February 2003 p. 10.
[1505] T. 25 February 2003 p. 12.
[1506] T. 25 February 2003 p. 12.
[1507] T. 25 February 2003 p. 12.
[1508] T. 25 February 2003 p. 12.
[1509] T. 25 February 2003 p. 12.
[1510] T. 25 February 2003 p. 12.
[1511] T. 25 February 2003 p. 13.
[1512] T. 25 February 2003 p. 13.
[1513] T. 25 February 2003 p. 13.
[1514] T. 25 February 2003 pp. 13.
[1515] T. 25 February 2003 p. 15.
[1516] T. 25 February 2003 pp. 15.
[1517] T. 24 February 2003 p. 13.

parish.[1518] The witness testified that he saw gendarmes patrolling Nyamasheke parish.[1519] The witness testified that he saw Bagambiki leave the commune office with Sub-Prefect Terebura along with the bishop and gendarmes on the afternoon of 13 April 1994.[1520]

(ii) Findings

577. Prosecution Witnesses LAY and LBI provided a largely consistent chronology of the events that transpired at Nyamasheke parish. From their evidence, the Chamber finds that attacks in the local areas of Kagano commune forced a number of Tutsis to seek refuge at Nyamasheke parish. Vehicles belonging to the commune transported many refugees to the parish, and people at the parish registered the refugees on their arrival.

578. The Chamber does not accept Witness LAY's testimony that Sub-Prefect Terebura was involved in inciting the local population to violence on 8 and 9 April 1994 because the witness did not see Terebura but rather heard of his alleged participation from his son whose credibility and reliability the Chamber is not in a position to assess.

579. From the evidence of Witness LAY, the Chamber finds that Sub-Prefect Terebura, Bourgmestre Kamana, and others visited the parish on 11 April 1994 to assess the situation.

580. From the evidence of Witness LBI, the Chamber finds that local *Interahamwe* attacked the parish on 12 April 1994 by throwing stones while chanting "let's exterminate them." No one was killed during that attack. From the evidence of Witnesses LBI and LAY, the Chamber finds that the assailants returned on 13 April 1994 and engaged in a similar attack. During the attack, a gendarme fired and killed three *Interahamwe*, ending the attack. The Chamber cannot accept Witness LAY's assertion that the attack of 13 April 1994 left many of the refugees wounded and his later assertion that most of the refugees at the parish that day were dead. Indeed, the Chamber notes that Witness LBI testified that none of the refugees was wounded or killed during the attack on 13 April 1994. In the Chamber's view, such a discrepancy cannot be reconciled and leaves the impression that Witness LAY's testimony on this point is exaggerated.

581. The Chamber accepts the evidence of Bagambiki that he received information about an attack at Nyamasheke on 13 April 1994 and that he went there to intervene with the bishop, the commander of the gendarmerie, Terebura, and Kamana. From the evidence of Witnesses LBI, LAY, and Bagambiki, the Chamber finds that when Bagambiki arrived at the parish between 1:00 and 2:00 p.m., he moved the attackers away from the parish to speak with them. The Chamber also finds that the assailants were angry that a gendarme had killed three *Interahamwe* and that they believed that Father Ubald had a gun. The Chamber finds that Bagambiki authorized a search of the parish for weapons, which yielded an old gun that was not serviceable, and that he

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[1518] T. 24 February 2003 pp. 13.
[1519] T. 24 February 2003 p. 15.
[1520] T. 24 February 2003 p. 16.

removed Father Ubald from the parish. The gendarmes at the parish were also replaced.

582. The Chamber lacks sufficient reliable evidence to determine whether Bagambiki chastised the gendarmes for killing Hutus, given the varying accounts of Bagambiki's actions at the parish provided by Witnesses LAY, LBI, Bagambiki, KOE. The Chamber also lacks sufficient reliable evidence to determine whether Bagambiki removed the gendarmes from the parish given the presence of the gendarmerie commander there, who would have had this authority.

583. From the evidence of Prosecution Witnesses LBI and LAY as well as Bagambiki, the Chamber finds that the bishop remained with the refugees during the night of 13 April 1994. The Chamber also notes that it is not disputed that three or four parish priests accompanying the bishop were killed when the bishop's vehicle was stopped at a roadblock on 14 April 1994.

584. From the evidence of Witnesses LBI and LAY, the Chamber finds that, on 15 April 1994, assailants launched a massive assault against the parish, killing most of the refugees there. From the evidence of Witness LBI, the Chamber accepts that Bourgmestre Kamana, who was carrying a machete, commune police, and the several conseillers from Kagano commune were present during the attack. The Chamber has doubt about Witness LAY's assertion that the gendarmes at the parish participated in the attack, having considered its previous finding about the exaggeration of his testimony on another point.

585. From the evidence of Witnesses LBI and LAY, the Chamber finds that, on 16 April 1994, Munyakazi and his *Interahamwe* participated in an attack against the survivors at the parish, brutally killing many of those who remained alive. Witness LBI's assertion that Munyakazi said that Bagambiki sent him to the parish is not evidence on which the Chamber can conclude that Bagambiki in fact had sent Munyakazi.

586. The Chamber accepts Bagambiki's uncontested testimony that he suspended Bourgmestre Kamana after the attacks at the parish.

587. The Chamber recalls that Witness LAM is an alleged accomplice of the accused and, as such, views his testimony with caution. The Chamber does not accept the testimony of Witness LAM concerning the events which transpired at Nyamasheke parish because it contradicts other evidence on the record and is not credible or reliable. The Chamber notes that Witness LAM's account of Bagambiki's arrival is materially different from that of Witnesses LAY and LBI. For example, Witness LAM stated that, as soon as the gendarme shot the three *Interahamwe*, the attackers removed their dead and retreated to Kabeza and that the gendarmes also went there. In contrast, the evidence of Witnesses LAY and LBI, which the Chamber accepted, reflects that Bagambiki found the attackers, the dead *Interahamwe,* and the gendarmes at the parish, before he moved them away.

588. In particular, the Chamber does not accept Witness LAM's account of Bagambiki's and Imanishimwe's participation in an alleged distribution of weapons on the afternoon of 15 April 1994 because the Chamber has found that at that time they were involved with church authorities in transferring the refugees from

Cyangugu Cathedral to Kamarampaka Stadium.[1521] Given the distance and travel time between Nyamasheke and the prefecture, the Chamber finds it highly doubtful that Bagambiki and Imanishimwe would then have been in Nyamasheke. This is so, particularly, because Witness LAM's testimony leaves the impression that Imanishimwe was allegedly present at Nyamasheke parish during a significant portion of the attack.

589. The Chamber lacks sufficient reliable evidence to determine that Imanishimwe was present at Nyamasheke on 13 April 1994. The Chamber notes that, during the visit of the authorities to the parish on 13 April 1994, Witness LAY identified Imanishimwe only as the commander of the army and did not provide any further detail. Witness LBI was not sure if she saw the commander of the gendarmerie or the commander of the army. The Chamber has already expressed its doubts concerning the credibility and reliability of Witness LAM's testimony. Moreover, Imanishimwe's testimony concerning his absence from Nyamasheke on 13 April 1994 is corroborated by Bagambiki, and Imanishimwe Defence Witnesses PCH and PCI.

e. Kadasomwa

(i) Allegations

590. Prosecution Witness LAW stated that after the death of President Habyarimana, her neighbours in Gisuma commune began looting and chasing Tutsis from their homes with machetes and spears.[1522] The witness stated that she and other Tutsis took refuge in the forest.[1523] According to the witness, on 14 April 1994 when the Tutsi refugees in the forest realised that *Interahamwe* were becoming more active, they decided to head for the stadium in Kamembe because they had heard that everyone was seeking refuge there.[1524]

591. Witness LAW stated that *Interahamwe* pursued her and about 400 or 500 other refugees as they tried to flee to the stadium.[1525] The witness stated that the refugees encountered four soldiers with black berets and green military uniforms in a vehicle near Kamembe at the Kadasomwa River bridge which led to the stadium.[1526] The witness stated that two armed soldiers alighted from the vehicle and told the refugees to sit down near the road.[1527] The witness stated that the other two soldiers drove off but that those who remained guarded the refugees and asked two young people to count the refugees.[1528] The witness stated that after approximately thirty minutes, around 11:30 a.m., the two soldiers returned with Bagambiki.[1529]

[1521] *See* para. 314.
[1522] T. 28 February 2001 pp. 81-83, 129, 130.
[1523] T. 28 February 2001 pp. 83, 97, 130, 131.
[1524] T. 28 February 2001 pp. 86-88, 97-98, 116; T. 1 March 2001 p. 19.
[1525] T. 28 February 2001 pp. 87, 88, 91, 95, 135, 138; T. 1 March 2001 pp. 11-12.
[1526] T. 28 February 2001 pp. 88, 94, 96; T. 1 March 2001 pp. 4-5.
[1527] T. 28 February 2001 pp. 88, 98-99.
[1528] T. 28 February 2001 pp. 89, 90-91, 100; T. 1 March 2001 p. 11.
[1529] T. 28 February 2001 pp. 91, 94, 100; T. 1 March 2001 pp. 12, 16.

592. According to the witness, Bagambiki asked the refugees where they were going and why they did not go to Lake Kivu.[1530] The witness recalled that Bagambiki asked, "Don't you know what your parents did? Where is Habyarimana now?"[1531] The witness stated that Bagambiki told the refugees to go to their priest, and got back in his vehicle.[1532] The witness stated that, a short while after Bagambiki drove away with all four of the soldiers, the soldiers shot into the air.[1533] The witness testified that after the soldiers shot into the air, the *Interahamwe* came out from the bushes and attacked the refugees with machetes and spears.[1534] The witness stated that the *Interahamwe* killed her husband, her three year old child, and some others during the attack but that she and other refugees were able to escape.[1535]

593. The witness stated that she had not seen Bagambiki before this event but that she knew that it was he because other people said that they were happy because the prefect had arrived.[1536] The witness stated that she did not recognise Bagambiki at Kadasomwa because she "had lost" her "mind."[1537] The witness stated that she would not be able to recognise Bagambiki if she saw him again.[1538]

(ii) Findings

594. The Chamber accepts that, after the death of President Habyarimana, Prosecution Witness LAW and her Tutsi neighbours were chased from their homes by *Interahamwe* and that they found refuge in the forest. The Chamber also accepts that, on 14 April 1994, Witness LAW and a large group of refugees, who were being pursued by the *Interahamwe*, left the forest and tried to seek refuge at Kamarampaka Stadium. The Chamber also accepts that, just before the refugees reached Kamembe, they were stopped by four soldiers and that two soldiers then left and returned with Bagambiki while the other two guarded the refugees. Though the witness was not familiar with Bagambiki and could not identify him in court, the Chamber accepts that other refugees at the time said that they were happy because the prefect had arrived. The Chamber also finds that, after Bagambiki briefly addressed the refugees, he and the soldiers left and a short while later the soldiers shot into the air. The Chamber finds that after the soldiers left the refugees, the *Interahamwe* who had been following the refugees emerged from the bush and killed some of them while others fled.

595. The Chamber, however, lacks sufficient reliable evidence to determine whether Bagambiki played any role in the attack on the refugees. In reaching this conclusion, the Chamber notes that the *Interahamwe* who attacked the refugees had been pursuing them since they left the forest. There is also no indication that Bagambiki was aware of the presence of the *Interahamwe*, who were hiding while he spoke with the refugees.

[1530] T. 28 February 2001 pp. 91-92.
[1531] T. 28 February 2001 p. 92.
[1532] T. 28 February 2001 p. 101.
[1533] T. 28 February 2001 pp. 92-93, 105; T. 1 March 2001 p. 16.
[1534] T. 28 February 2001 pp. 92-93, 95, 113.
[1535] T. 28 February 2001 pp. 92-93, 95, 96; T. 1 March 2001 p. 19, 21.
[1536] T. 28 February 2001 p. 93.
[1537] T. 28 February 2001 p. 105.
[1538] T. 28 February 2001 pp. 93-94, 105-106.

f. Nyarushishi Camp

(i) Allegations

596. Prosecution Witness LAB testified that, on 23 June 1994, Bagambiki, Imanishimwe, Eugene Karekezi, Edouard Bandetse, Callixte Nsabimana, and Fulgence Nsengumuremye met with members of the general public at Bamenyayundi's house.[1539] According to the witness, at the meeting Bagambiki stated that the people should kill the Tutsis at Nyarushishi and then pretend to be Tutsis when the French arrived.[1540] The witness stated that, on the morning of 24 April 1994, attackers from several communes, including the Bugarama *Interahamwe,* surrounded Nyarushishi while Bagambiki and Imanishimwe were at a nearby school.[1541] The witness stated, that after a few minutes when five people had already been killed, a Gisuma commune vehicle arrived, and the attackers were informed that the French had already arrived and that they should leave through the bushes and avoid using the roads.[1542]

597. Prosecution Witness LAJ testified that he and 3,000 other attackers surrounded the Nyarushishi refugee camp in order to launch an attack against the Tutsi refugees there.[1543] The witness stated that they did not attack because Bavugamenshi of the gendarmerie told them to stop the attack and leave because the French were already in Kigoma.[1544] The witness stated that he did not see Bagambiki on that day, although he had heard that Bagambiki was in the company of Bavugamenshi.[1545]

598. Prosecution Witness LBH testified that he was one of the first refugees to arrive at Nyarushishi on 11 May 1994 when he and others were transferred there from Kamarampaka Stadium and that he remained at Nyarushishi until the end of July 1994.[1546] The witness explained that his bus was accompanied by soldiers "under Imanishimwe" and by members of the presidential guard and that, as soon as they got off the buses, the soldiers killed some of the refugees.[1547] The witness stated that people from Shangi parish, Miblilizi parish, and students from Ntendezi later arrived at the camp.[1548]

599. Witness LBH testified that soldiers, gendarmes, presidential guards, and *Interahamwe* removed refugees from the Nyarushishi camp.[1549] The witness stated that, prior to the arrival of the French, the *Interahamwe* and CDR, recognisable by their uniforms, attacked the camp frequently.[1550] He testified that, on 23 June 1994 at 4:00 a.m., the camp was surrounded by *Interahamwe* and CDR members armed with

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[1539] T. 24 January 2001 pp. 34-35.
[1540] T. 24 January 2001 pp. 35, 36.
[1541] T. 24 January 2001 pp. 36, 38.
[1542] T. 24 January 2001 pp. 36-37.
[1543] T. 23 October 2000 pp. 113, 114.
[1544] T. 23 October 2000 p. 115.
[1545] T. 23 October 2000 p. 116.
[1546] T. 14 February 2001 p. 72; T. 19 February 2001 p. 8.
[1547] T. 19 February 2001 p. 21.
[1548] T. 14 February 2001 p. 73.
[1549] T. 13 February 2001 pp. 112-113; T. 19 February 2001 pp. 101-102.
[1550] T. 14 February 2001 p. 75.

machetes and clubs.[1551] The witness stated that, at about 5:00 a.m., three ONATRACOM buses full of gendarmes sent by Bavugamenshi arrived at the camp and took up positions to ensure the refugees' security and prevent the attack.[1552] The witness stated that at 5:00 p.m. the French troops arrived with Bagambiki.[1553] The witness testified that prior to this there was only one gendarme at the camp and that he did nothing to prevent the soldiers and *Interahamwe* from selecting and killing the refugees.[1554]

600. Witness LBH testified that the Red Cross provided the refugees at the camp with food, utensils, and drinking water and that there were always some representatives of the Red Cross at the camp.[1555] The witness stated that they were also provided with medical facilities.[1556] The witness estimated that after people arrived from Kibuye and Kigali, there were 22,000 people in the camp, which was approximately one kilometre in length.[1557]

601. Prosecution Witness LY stated that after repeated requests from church and Red Cross authorities to remedy the deteriorating hygienic conditions at the stadium, the prefectural authorities gradually transferred the refugees to a camp at Nyarushishi, which was "well designed" and had toilets, plenty of water, and small tents to shelter the refugees.[1558]

602. Bagambiki testified that, on 11 May 1994, he transferred the refugees from Kamarampaka Stadium to Nyarushishi after consultations with the gendarmerie, church authorities, and the ICRC.[1559] Bagambiki stated that Bavugamenshi provided a contingent of gendarmes to escort the buses transporting the refugees.[1560] Bagambiki stated that the conditions at Nyarushishi were far better than the conditions at Kamarampaka Stadium because there was plenty of water, each family had a personal shelter, and organisations such as CARITAS, the ICRC, and Doctors Without Borders provided medical care, food, and blankets.[1561] Bagambiki stated that Bavugamenshi stationed between fifty and sixty gendarmes at the camp day and night to protect the refugees and that no one was mistreated or killed at the camp.[1562] Bagambiki stated that *Operation Turquoise* arrived in Cyangugu on 23 June 1994 and that, at this time, there were about 10,000 refugees at the camp.[1563] Bagambiki also stated that he did not order an attack on the refugees at the camp.[1564]

603. Imanishimwe stated that the gendarmes and local authorities transferred the refugees from Kamarampaka Stadium to Nyarushishi over a two day period in May

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[1551] T. 14 February 2001 pp. 76-77; 19 February 2001 pp. 28-29
[1552] T. 14 February 2001 p. 76; T. 19 February 2001 pp. 11, 21, 22, 28.
[1553] T. 14 February 2001 p. 77; T. 19 February 2001 pp. 28-30, 103.
[1554] T. 19 February 2001 p. 23.
[1555] T. 14 February 2001 pp. 74-75; T. 19 February 2001 pp. 9-11.
[1556] T. 19 February 2001 p. 11.
[1557] T. 14 February 2001 p. 75.
[1558] T. 26 February 2001 pp. 11-12
[1559] T. 1 April 2003 pp. 32, 34.
[1560] T. 1 April 2003 p. 34.
[1561] T. 1 April 2003 p. 34-35.
[1562] T. 1 April 2003 pp. 35, 36.
[1563] T. 1 April 2003 pp. 35-36.
[1564] T. 1 April 2003 p. 35.

1994 but that he did not participate in the transfer.[1565] Imanishimwe stated that he was not aware that soldiers, gendarmes, and presidential guards would periodically come to Nyarushishi and take refugees away.[1566]

604. Bagambiki Defence Exhibits 25A-C contain excerpts of a discussion between the French Minister of Defence and a Tutsi refugee at the Nyarushishi camp on 29 June 1994.[1567] Bagambiki identified the Tutsi refugee as Daniel Kamatali.[1568] In the excerpt, Kamatali indicates that he was among the first to arrive at the Nyarushishi camp on 11 May 1994.[1569] Kamatali also stated that the refugees were well guarded by the gendarmerie.[1570] Kamatali further stated that attackers came on only one occasion at the beginning but that the gendarmes pushed them back.[1571]

605. Bagambiki Defence Witness FOE testified that he saw Red Cross personnel at Nyarushishi on 15 or 16 June 1994 when he visited the camp.[1572] The witness stated that he heard from a friend that Bagambiki and Bavugamenshi visited the camp regularly.[1573]

606. Bagambiki Defence Witness JNQ testified that he went to the Nyarushishi camp and that the situation there was "good", as refugees were being guarded by gendarmes from the Cyangugu squadron and there was water and supplies.[1574] The witness stated that he did not observe killings at the Nyarushishi camp.[1575] The witness noted that the Red Cross was present at the camp.[1576] The witness testified that, at the end of June 1994, he heard about an attack that was organised to kill the refugees at the Nyarushishi camp.[1577] The witness stated that he could only recall seeing militia men with clubs return from Nyarushishi but that he did not know who incited or organised the attack.[1578]

607. Bagambiki Defence Witness Munyangabe stated that the Red Cross organised the transfer of the refugees from Kamarampaka Stadium to the Nyarushishi camp in cooperation with the prefectural authorities.[1579] According to what the witness heard from the French Turquoise mission, Cyangugu was able to save more Tutsis who were being pursued than any other prefecture.[1580]

[1565] T. 22 January 2003 pp. 34-35.
[1566] T. 22 January 2003 p. 35.
[1567] T. 1 April 2003 pp. 36-37.
[1568] T. 1 April 2003 p. 37.
[1569] T. 2 April 2003 p. 2.
[1570] T. 2 April 2003 pp. 3-4.
[1571] T. 2 April 2003 p. 4.
[1572] T. 11 February 2003 p. 15.
[1573] T. 11 February 2003 p. 15.
[1574] T. 11 March 2003 p. 55; T. 12 March 2003 p. 25.
[1575] T. 11 March 2003 p. 55.
[1576] T. 11 March 2003 p. 55.
[1577] T. 12 March 2003 p. 25.
[1578] T. 12 March 2003 p. 25.
[1579] T. 24 March 2003 pp. 39-40.
[1580] T. 24 March 2003 p. 40.

608. Bagambiki Defence Witness Graff testified that Nyarushishi was a few kilometres away from the Shagasha tea factory.[1581] The witness noted that this area has many steep slopes and valleys.[1582] The witness also testified about the existence of a water system at Nyarushishi, which, according to people he met in 2003, existed in 1994.[1583] The witness stated that the camp had no natural or artificial defence of any kind but noted that compared to the other sites, including the parishes, this site might be easier to defend because it was in a valley and there was only one access road, which could be defended from the top of the hill without having to use built-up defences.[1584]

(ii) Findings

609. The Chamber finds that prefectural authorities transferred the refugees from Kamarampaka Stadium to Nyarushishi on 11 and 12 May 1994. The refugees were transferred by ONATRACOM buses and were protected by gendarmes. Other refugees were also transferred to Nyarushishi around that time from other places such as Shangi and Mibilizi parishes.

610. The Chamber finds that at Nyarushishi the refugees had better conditions and received assistance, including personal shelters, water, food, and medical care.

611. The Chamber finds that gendarmes guarded the camp and pushed back at least one attempted attack between 11 May 1994 and the arrival of the French *Operation Turquoise* forces on 23 June 1994.

612. The Chamber lacks sufficient reliable evidence to determine if soldiers, gendarmes, or *Interahamwe* removed refugees from the camp. The Chamber notes that Prosecution Witness LBH testified about soldiers killing refugees on their arrival at Nyarushishi and about soldiers, presidential guards, and *Interahamwe* removing and killing refugees. The Chamber, however, recalls that it did not find credible or reliable Witness LBH's account of those practices at Kamarampaka Stadium and thus cannot accept his testimony about such practices at Nyarushishi without corroboration.

613. The Chamber lacks sufficient reliable evidence to find that Bagambiki and Imanishimwe ordered the killing of refugees at the Nyarushishi camp because the evidence of Prosecution Witnesses LAB and LAJ is not adequately corroborated. The Chamber has previously determined that the testimony of these witnesses lacks credibility and reliability and, as such, views this evidence with suspicion.

g. Conclusion

(i) Findings on paragraphs 3.17 and 3.18

[1581] T. 26 March 2003 p. 50.
[1582] T. 26 March 2003 p. 50.
[1583] T. 26 March 2003 pp. 50, 51.
[1584] T. 26 March 2003 p. 51.

614. The Chamber finds that Bagambiki and Imanishimwe received names of people with suspected ties to the RPF from assailants who were threatening to attack Kamarampaka Stadium. The Chamber finds that Bagambiki and Imanishimwe discussed these names with other members of the prefectural security council and then removed sixteen Tutsis and one Hutu, who was a local leader of a political opposition party, from the stadium as well as from Cyangugu Cathedral on 16 April 1994, as discussed in section _._._. A majority of the Chamber, Judge Ostrovsky dissenting, finds that Bagambiki and Imanishimwe came to the Gashirabwoba football field on 11 April 1994 looking for Ephrem and Côme Simugomwa and removed Côme Simugomwa, who was a local leader of a political opposition party. Côme Simugomwa was later found dead.

615. The Chamber lacks sufficient evidence to determine whether Bagambiki or Imanishimwe participated in the preparation of lists for the purpose of eliminating these individuals. The Chamber lacks sufficient reliable evidence to determine whether Bagambiki or Imanishimwe gave these lists to *Interahamwe*. The Chamber finds that soldiers participated in the execution of the arrests of the listed individuals at Cyangugu Cathedral, Kamarampaka Stadium, and at the Gashirabwoba football field.

616. The Chamber notes that there is evidence that lists were used during the events at Mibilizi parish on 20 April 1994 and at Shangi parish on 26 April 1994. The Chamber lacks sufficient reliable evidence to determine whether Bagambiki or Imanishimwe played any role in the creation of these lists.

(ii) Findings on paragraph 3.26

617. A majority of the Chamber, Judge Williams dissenting, lacks sufficient reliable evidence to determine whether Bagambiki ordered soldiers or *Interahamwe* to kill members of the Tutsi population or certain Hutus in the opposition. Judge Williams is of the view that the only reasonable inference to be drawn from the evidence surrounding the Gashirabwoba massacre is that Bagambiki intentionally sent soldiers and factory guards to the field with full knowledge and consent that the soldiers and factory guards would participate in the attack.

(iii)Findings on paragraph 3.27

618. The Chamber finds that, on 15 April 1994, Bourgmestre Kamana, commune police, and several conseillers from Kagano commune participated in the attack at Nyamasheke parish. The Chamber finds that, on 18 April 1994, one of the gendarmes guarding Mibilizi parish distributed his grenades to the attackers. The Chamber also finds that gendarmes mistreated the refugees taken from Shangi parish on 26 April 1994 at a gendarmerie camp.

619. The Chamber will determine whether Bagambiki had a superior-subordinate relationship with these individuals in its legal findings.

(iv)Findings on paragraph 3.28

620. The Chamber finds that Bagambiki, as prefect, had the duty of ensuring the protection and safety of the civilian population within the prefecture of Cyangugu.[1585] The Chamber will determine in its legal findings to what extent a failure by Bagambiki to fulfil his duty under the Rwandan Law on the Organisation and Function of the Prefecture to ensure the protection and safety of these refugees may give rise to criminal responsibility under Article 6(1) of the Statute.

(v) Findings on paragraphs 3.30 and 3.31

621. The Chamber finds that *Interahamwe* and members of the local population participated in the massacres of the civilian Tutsi population and of Hutu political opponents in Cyangugu. The Chamber finds beyond a reasonable doubt that soldiers assisted these groups during the massacre at Gashirabwoba on 12 April 1994. The Chamber finds that these massacres and other killings resulted in the deaths of massive numbers of mostly Tutsi victims.

[1585] Bagmabiki Defence Exhibit 3(i), Law on the Organization and Function of the Prefectures, art. 8.

III. LEGAL FINDINGS

A. Criminal Responsibility

622. In the *Semanza* Judgement, this Chamber articulated the elements of the forms of criminal participation and responsibility under Article 2(3) and Articles 6(1) and 6(3) of the Statute.[1586] Those elements are adopted for the purposes of this case.

623. If an accused may be held criminally responsible for a crime under either Article 6(1) or Article 6(3), the Chamber will enter a conviction on the form of responsibility that best characterises the accused's role in the crime.[1587] In such an event, the Chamber will consider the other form of responsibility in sentencing in order to reflect the totality of the accused's culpable conduct.[1588]

624. In this section, the Chamber will determine whether Bagambiki and Imanishimwe bear individual criminal responsibility as a superior under Article 6(3) or for "ordering", under Article 6(1), which also requires a superior-subordinate relationship.[1589] The Chamber need not consider whether Ntagerura bears criminal responsibility as a superior over civil servants and officials of the Ministry of Transport and Communications given its decision not to consider paragraph 11 of the Ntagerura Indictment in making factual and legal findings.[1590]

625. The Chamber will also consider the nature of Bagambiki's duty under Rwandan law to ensure the protection and safety of the civilian population within Cyangugu prefecture and whether he bears any criminal responsibility for a failure to meet that duty.

626. The Chamber will assess the nature and form of criminal responsibility and participation under Articles 2(3) and 6(1) for each of the accused in its subsequent legal findings.

1. Superior Responsibility

627. The following three elements must be proven to hold a civilian or a military superior criminally responsible pursuant to Article 6(3) for crimes committed by subordinates: (a) the existence of a superior-subordinate relationship; (b) the superior's knowledge or reason to know that the criminal acts were about to be or had been committed by his subordinates; and (c) the superior's failure to take necessary and reasonable measures to prevent such criminal acts or to punish the perpetrator.[1591]

[1586] *See Semanza*, Judgement (TC), paras. 375-407.
[1587] *See Naletilic and Martinovic*, Judgement (TC), paras. 78-81. *See also Krnojelac*, Judgement (TC), para. 173.
[1588] *Naletilic and Martinovic*, Judgement (TC), para. 81. *See also Celebici*, Judgement (AC), para. 745; *Aleksovski*, Judgement (AC), para. 183.
[1589] *See Semanza*, Judgement (TC), para. 382.
[1590] *See supra* para. 42, 69.
[1591] *Semanza*, Judgement (TC), para. 400.

628. The Chamber stated in the *Semanza* Judgement that a superior-subordinate relationship is established by showing a formal or informal hierarchical relationship.[1592] The superior must have possessed the power or the authority, *de jure* or *de facto*, to prevent or punish an offence committed by his subordinates.[1593] The superior must have had effective control over the subordinates at the time the offence was committed.[1594] Effective control means the material ability to prevent the commission of the offence or to punish the principal offenders.[1595] This requirement is not satisfied by a showing of general influence on the part of the accused.[1596]

629. A superior will be found to have possessed or will be imputed with the requisite *mens rea* sufficient to incur criminal responsibility provided that: (i) the superior had actual knowledge, established through direct or circumstantial evidence, that his subordinates were about to commit, were committing, or had committed, a crime under the statute; or (ii) the superior possessed information providing notice of the risk of such offences by indicating the need for additional investigations in order to ascertain whether such offences were about to be committed, were being committed, or had been committed by subordinates.[1597]

630. A superior may incur responsibility only for having failed to take "necessary and reasonable measures" to prevent or punish a crime under the Statute committed by subordinates.[1598] The degree of the superior's effective control guides the assessment of whether the individual took reasonable measures to prevent, stop, or punish a subordinates' crime.[1599]

a. Bagambiki

631. The indictment alleges that Bagambiki had *de jure* and/or *de facto* authority over sub-prefects, bourgmestres, all government employees in the prefecture, gendarmes, and soldiers.[1600] Bagambiki is also alleged to have been a superior to *Interahamwe,* given that paragraph 3.26 of the indictment against him states that he ordered *Interahamwe* to commit crimes, which could be found only upon proof of a superior-subordinate relationship.

632. In its factual findings, the Chamber has found that several gendarmes, soldiers, and officials from Kagano commune, including Bourgmestre Kamana, Kagano commune policemen, and conseillers of several sectors in Kagano commune, were present during or participated in the killing or mistreatment of civilian, mostly Tutsi, refugees. The Chamber will assess Bagambiki's superior responsibility for the acts of each of these perpetrators. However, the Chamber need not assess whether Bagambiki was a superior to sub-prefects or to *Interahamwe.* The Chamber lacks sufficient reliable or credible evidence to determine what role, if any, sub-prefects played in the

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[1592] *Semanza,* Judgement (TC), para. 415.
[1593] *Semanza,* Judgement (TC), para. 402.
[1594] *Semanza,* Judgement (TC), para. 402.
[1595] *Semanza,* Judgement (TC), para. 402.
[1596] *Semanza,* Judgement (TC), para. 402.
[1597] *Semanza,* Judgement (TC), para. 405.
[1598] *Semanza,* Judgement (TC), para. 406.
[1599] *Semanza,* Judgement (TC), para. 406.
[1600] Bagambiki/Imanishimwe Indictment, paras. 3.8, 3.9, 3.26, 3.27.

underlying crimes. The Chamber also lacks sufficient reliable or credible evidence to find that Bagambiki ordered *Interahamwe* to participate in the killings as alleged in paragraph 3.26 of the indictment against him.

(i) Gendarmes

633. The Chamber has found that, on 18 April 1994, one of the gendarmes guarding Mibilizi parish distributed his grenades to attackers. The Chamber has also found that, on 26 April 1994, gendarmes mistreated refugees from Shangi parish at a gendarmerie camp.

634. Under Rwandan law, Bagambiki, as prefect, had the ability to requisition gendarmes to participate in operations for the maintenance and the re-establishment of order in the prefecture.[1601]

635. The Chamber notes that Article 2 of the Rwandan law on the Creation of the Gendarmerie provides that the gendarmerie falls under the Ministry of Defence and that its members are subject to military decisions, disciplinary measures, and jurisdiction.[1602] Article 35 of the Rwandan law on the gendarmerie provides that the head of the gendarmerie leads the operations necessary to execute a request and determines the importance and the nature of the means necessary to execute a request.[1603] Article 28 of the Rwandan law on the gendarmerie states that members of the gendarmerie are under the exclusive authority of their ranking superiors during the execution of missions.[1604] Article 39 of the Rwandan law on the gendarmerie states that, during the execution of a request, the gendarmerie must maintain contact with the requesting administrative authority and inform him of the means employed to execute the request and that the administrative authority must transmit to the gendarmerie all useful information to accomplish the mission.[1605] The Chamber further notes that Article 10 of the Rwandan Ministerial Instruction on the Maintenance and Re-establishment of Order states that a civilian authority cannot

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[1601] *See* Bagambiki Defence Exhibit 3(ii), Ministerial Instruction No. 01/02, Maintenance and Re-establishment of Order, arts. 15, 16; Bagambiki Defence Exhibit 3(iii), Decree-Law, Creation of the Gendarmerie, Articles 24, 29-36.

[1602] Bagambiki Defence Exhibit 3(iii), Decree-Law, Creation of the Gendarmerie, art. 2 ("*Le Corps de la Gendarmerie Nationale relève du Ministère de la Défense Nationale. Les membres de la Gendarmerie Nationale sont soumis aux arrêtés, aux règlements de discipline et aux juridictions militaires.*").

[1603] Bagambiki Defence Exhibit 3(iii), Decree-Law, Creation of the Gendarmerie, art. 35 ("*Les opérations nécessaire à l'exécution des réquisitions sont menées par les Chefs de la Gendarmerie Nationale qui, sous leur responsabilité, déterminent l'importance et la nature des moyens à mettre en oeuvre.*").

[1604] Bagambiki Defence Exhibit 3(iii), Decree-Law, Creation of the Gendarmerie, Art. 28 ("*Les membres de la Gendarmerie Nationale sont placés pour l'exécution de leur mission, sous l'autorité exclusive de leurs supérieurs hiérarchiques.*").

[1605] Bagambiki Defence Exhibit 3(iii), Decree-Law, Creation of the Gendarmerie, art. 39 ("*Au cours de l'exécution d'une réquisition, l'autorité de Gendarmerie doit se maintenir en liaison avec l'autorité administrative requérante et l'informer, à moins de force majeure, des moyens d'action qu'elle se propose de mettre en œuvre. De son côté, l'autorité administrative doit transmettre à l'autorité de Gendarmerie toutes les informations utiles à l'accomplissement de sa mission.*").

interfere in the command of the unit which that authority has requested.[1606] Article 11 of this ministerial instruction further states that the head of the forces which have been requested to provide order is responsible for the execution of the request and is the sole judge of the means necessary to execute the mission, pursuant to the general instructions of the civilian authority.[1607]

636. After reviewing the relevant provisions of Rwandan law, the Chamber is not convinced that Bagambiki's ability to requisition gendarmes gave him *de jure* authority to give orders to them during the execution of an operation. The law indicates that, once a request is made, the prefect is required to co-operate with the officer in charge of the mission rather than to act as his superior.[1608] The law contains no provision indicating that a prefect had the legal authority as a superior to prevent a gendarme from committing a crime by giving an order during the execution of an operation or to punish a gendarme who had committed a crime during the execution of an operation.

637. The Chamber is also not satisfied that there is sufficient reliable evidence to indicate that Bagambiki had *de facto* authority over the gendarmes. While there is ample evidence that Bagambiki requisitioned gendarmes to provide security at a number of sites, there is insufficient evidence that he maintained any control over how these gendarmes carried out their mission upon deployment.

638. As the Prosecutor did not establish the existence of a superior-subordinate relationship between Bagambiki and the gendarmes in Cyangugu, it is unnecessary under Article 6(3) of the Statute to consider whether he knew or had reason to know about the criminal acts of these principal perpetrators or whether he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

639. The Chamber further notes that the absence of a superior-subordinate relationship between a civilian authority and the gendarmes would not absolve the civilian authority of criminal liability if he requisitioned gendarmes with full knowledge and intention that this requisition would result in the commission of a crime. This form of criminal participation, however, would be better characterized as aiding and abetting under Article 6(1). In the present case, the Chamber lacks sufficient evidence to find that Bagambiki requested gendarmes to go to Mibilizi parish with his knowledge, consent, or intention that one of them would distribute grenades to attackers. The Chamber also lacks sufficient evidence to find that Bagambiki or Sub-Prefect Munyangabe requested gendarmes to go to Shangi parish with the intention that they mistreat refugees.

(ii) Soldiers

[1606] Bagambiki Defence Exhibit 3(ii), Ministerial Instruction No. 01/02, Maintenance and Re-establishment of Order, art. 10 ([*L'autorité civile*] *ne peut en aucun cas s'immiscer dans le commandement des Unités dont elle a sollicité le concours ou qu'elle a requises.*").

[1607] Bagambiki Defence Exhibit 3(ii), Ministerial Instruction No. 01/02, Maintenance and Re-establishment of Order, art. 11 (*"Les responsables des Forces de l'ordre sont responsables de l'exécution des réquisitions. Le but à atteindre ayant été fixé sans ambiguïté, ils sont seuls juges des moyens à mettre en œuvre, tout en se conformant aux instructions générales de l'autorité civile.*").

[1608] *See Bagilishema*, Judgement (TC), para. 182.

640. The Chamber has found that, on 12 April 1994, soldiers participated in the attack against the refugees at the Gashirabwoba football field and that, between April and June 1994, they participated in the arrest, detention, mistreatment, and execution of civilians at the Karambo military camp.

641. Under Rwandan law, Bagambiki, as prefect, had a measure of authority to requisition soldiers to participate in operations for the maintenance and re-establishment of order in the prefecture.[1609] However, the Chamber is not convinced that Bagambiki's ability to requisition soldiers gave him *de jure* authority over them.

642. The Chamber is also not satisfied that there is sufficient evidence that Bagambiki exercised *de facto* authority over the soldiers from the Karambo camp. The Chamber recalls that Imanishimwe stated that there was no relationship of subordination between Karambo camp and the prefecture.[1610] There is no reliable evidence reflecting that Bagambiki issued orders to or commanded soldiers. In situations where Bagambiki was seen in the company of soldiers, Imanishimwe was also generally present.

643. As the Prosecutor did not establish the existence of a superior-subordinate relationship under Article 6(3) between Bagambiki and the soldiers of the Karambo camp, it is unnecessary to consider whether Bagambiki knew or had reason to know about their criminal acts or whether he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

(iii) Kagano Commune Officials

644. On 15 April 1994, Bourgmestre Kamana, Kagano commune policemen, and several conseillers from Kagano commune participated in the attack on refugees at Nyamasheke parish.

645. The Chamber recalls that Bagambiki testified that as prefect he was the direct supervisor of the bourgmestres, that he assessed them on an annual basis, and that he could sanction them, which is confirmed by the laws on the organisation and function of the prefecture and the commune.[1611] The Chamber notes that Bagambiki's effective control over Kamana is demonstrated by his suspension of Kamana in the aftermath of

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[1609] Bagambiki Defence Exhibit 3(ii), Ministerial Instruction No. 01/02, Maintenance and Re-establishment of Order, arts. 15, 16. The Chamber notes that Bagambiki Defence Witness Ndindiliyimana, the former chief of the general staff of the Rwandan gendarmerie, stated that a prefect cannot requisition the army when gendarmes are available, noting further that where gendarmes are insufficient, the commander of the gendarmerie, rather than the prefect, requisitions the army for soldiers. T. 18 February 2003 p. 17. *See also* Bagambiki Defence Exhibit 3(ii), Ministerial Instruction No. 01/02, Maintenance and Re-establishment of Order, art. 14 ("*Le maintien de l'ordre est assuré essentiellement par la Gendarmerie Nationale. L'Armée Rwandaise intervient dans le cas prévu à l'article 7 du décret-loi portant création de la Gendarmerie.*"); Bagambiki Defence Exhibit 3(ii), Decree-Law, Creation of the Gendarmerie, art. 7 ("*Tout Commandant d'unité on de détachement de Gendarmerie peut, lorsque ses moyens se révèlent insuffisants, requérir l'assistance de détachements de l'Armée Rwandaise.*").

[1610] T. 22 January 2003 p.15.

[1611] T. 27 March 2003 p. 22. *See also* Bagambiki Defence Exhibit 3(i), Law on the Organisation and Function of the Prefecture, art. 8(4); Bagambiki Defence Exhibit 18, Law on the Organisation of the Commune, arts. 46, 47, 57, 80, 83, 86, 94.

the attacks against the refugees at Nyamasheke. The law on the organisation of the commune provides that commune police are subordinate to the bourgmestre and that the prefect has the authority to requisition the commune police and place them under his direct authority.[1612] The Chamber notes that Bagambiki made no attempt to refute that he had effective control over Kagano commune police. The Chamber therefore finds that Bagambiki was a superior with effective control over Bourgmestre Kamana and the Kagano commune police.

646. The Chamber is not convinced, however, that Bagambiki had *de jure* authority over the conseillers in Kagano commune. In *Bagilishema*, the Trial Chamber described conseillers as members of an elected advisory body of sectoral representatives.[1613] The Trial Chamber in *Bagilishema* stated that conseillers were clearly not *de jure* subordinates of the bourgmestre in the sense of Article 6(3) because the applicable legislation indicated that "the bourgmestre is responsible, generally, for executing the decisions of the Communal Council."[1614] The Chamber further notes that the Prosecutor has tendered no evidence indicating a superior-subordinate relationship between a prefect and conseillers and thus agrees with the conclusion reached on this point in *Bagilishema.* The Chamber notes that no provision in the laws on the organisation of the commune or the prefecture indicates that a different conclusion could be reached concerning the relationship between a prefect and conseillers. Moreover, pursuant to Rwandan law, neither a bourgmestre nor a prefect had the authority in 1994 to terminate the mandate of a conseiller or to autonomously take disciplinary measures against him.[1615] These officials possessed the authority only to consider whether his mandate should be terminated in a series of committee meetings provided for by statute and to forward the committees' recommendations to the Minister of the Interior.[1616] The Chamber also has no reliable evidence that Bagambiki exercised effective control over the conseillers in Kagano commune.

647. The Chamber must now determine whether Bagambiki had knowledge or reason to know that Bourgmestre Kamana and the Kagano commune police were about to or had committed a criminal act.

648. In determining whether a superior, despite his pleas to the contrary, must have possessed the requisite knowledge of the offences, the following indicia are relevant: (a) the number of illegal acts; (b) the type of illegal acts; (c) the scope of illegal acts; (d) the time during which the illegal acts occurred; (e) the number and type of troops involved; (f) the logistics involved; (g) the geographical location of the acts; (h) the widespread occurrence of the acts; (i) the tactical tempo of the operations; (j) the *modus operandi* of similar illegal acts; (k) the officers and staff involved; and (l) the location of the commander at the time.[1617]

[1612] Bagambiki Defence Exhibit 18, Law on the Organisation of the Commune, arts. 104, 108.
[1613] *Bagilishema,* Judgement (TC), para. 166.
[1614] *Bagilishema,* Judgement (TC), para. 166, *quoting* Law on the Organisation of the Commune, art. 58. The Chamber notes that the legal provision cited in *Bagilishema* is also Bagambiki Defence Exhibit 18.
[1615] Bagambiki Defence Exhibit 18, Law on the Organisation of the Commune, art. 10*bis.*
[1616] Bagambiki Defence Exhibit 18, Law on the Organisation of the Commune, art. 10*bis.*
[1617] *Bagilishema,* Judgement (TC), para. 968; *Celebici,* Judgement (TC), para. 386.

649. The Chamber recalls that Kagano commune police participated in an attack against the refugees at Nyamasheke parish on 13 April 1994, which did not result in casualties. The Chamber also recalls that, on 15 April 1994, Bourgmestre Kamana and Kagano commune police participated in a large-scale attack against the parish, which resulted in the massacre of a large number of refugees. During the attack, Bagambiki was fifty kilometres away, participating in the transfer of refugees from Cyangugu Cathedral to Kamarampaka Stadium. The Chamber has no evidence that Bagambiki was informed while Bagambiki visiting Nyamasheke parish with Kamana and others on 13 April 1994 that Kagano commune police participated in the attack on that date. There is also no indication in the evidence that Bagambiki was informed of the 15 April 1994 attack at Nyamasheke until after it was completed, which is supported by the evidence of his involvement in the transfer of refugees from the cathedral to the stadium. Given that Bourgmestre Kamana and the Kagano commune police did not participate in a large number of attacks and that there is no other reliable indication that Bagambiki was informed or aware that they were inclined to participate in such attacks, the Chamber accepts that Bagambiki did not have advance knowledge of their involvement in the 15 April 1994 attack, such that he could have prevented it. The Chamber, however, finds that Bagambiki should have known that Bourgmestre Kamana participated in this attack, given that items looted from Nyamasheke were found in Kamana's possession. The Chamber lacks sufficient reliable evidence to determine whether Bagambiki should have known about the involvement of Kagano commune police in the 15 April 1994 attack, given the limited testimony about their involvement in the attacks against Nyamasheke parish, the limited number of attacks in which they participated, and the fact that they did not report directly to the prefect unless specially requisitioned by him.

650. The Chamber finds that the Prosecutor did not prove beyond a reasonable doubt that Bagambiki failed to take necessary and reasonable measures to punish Kamana for his role in the massacre. The Chamber notes that Bagambiki suspended Kamana, which was the extent of the disciplinary measures available to a prefect under the law on the organisation of the commune.[1618] A bourgmestre's suspension involves a disciplinary proceeding allowing the bourgmestre to explain his actions and appeal to higher authorities.[1619] As such, a suspension is one component of a larger process involving authorities in addition to and beyond the prefect. The Chamber has no evidence about what followed the suspension or if Bagambiki took other actions as well. The Prosecutor submitted no evidence indicating what other possible forms of punishment were available to Bagambiki, as prefect, and indicating that Bagambiki failed to take these measures.

b. Imanishimwe

651. The indictment alleges that Imanishimwe's subordinates included all army units in Cyangugu.[1620]

652. The Chamber finds that Imanishimwe had both *de jure* authority and effective control over the soldiers of the Karambo military camp in Cyangugu. The Chamber

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[1618] Bagambiki Defence Exhibit 18, Law on the Organisation of the Commune, art. 50.
[1619] Bagambiki Defence Exhibit 18, Law on the Organisation of the Commune, arts. 47-50.
[1620] *See* Bagambiki/Imanishimwe Indictment, para. 3.10

recalls that Imanishimwe stated that he was commander of the Karmabo military camp and that he gave a detailed description of his command structure. He also testified about numerous instances of issuing orders to and of deploying his soldiers. The Chamber is also satisfied that he had effective control over his soldiers and the material ability to prevent or punish offences. Indeed, Imanishimwe attested to disciplining one of his officers for failing to pay for drinks and also testified about arresting a number of soldiers suspected of plotting to kill him. The Chamber notes that there is no evidence indicating that Imanishimwe lacked effective control over soldiers from the Karambo military camp.

653. The Chamber has found that, on 12 April 1994, soldiers participated in the attack on the refugees at the Gashirabwoba football field. The Chamber lacks sufficient reliable evidence to find that Imanishimwe ordered his soldiers to participate in the attack within the meaning of Article 6(1).

654. The Chamber however finds that Imanishimwe knew or should have known about the participation of his soldiers in the attack at the Gashirabwoba football field. In reaching this conclusion, the Chamber recalls that Imanishimwe was present at the Gashirabwoba football field on 11 April 1994 and thus was fully aware of the presence of refugees and of their plight. His soldiers returned later that evening to determine whether the refugees were entirely Tutsi. On 12 April 1994, at least fifteen soldiers surrounded the refugees and killed them after the refugees asked for peace. Given the relatively small size of the camp, Imanishimwe's control over his soldiers, and the fact that he remained in regular contact with his soldiers stationed away from the camp, the Chamber cannot accept that fifteen or more soldiers would have participated in such a systematic, large-scale attack without the knowledge of their commander. The Chamber notes that there is no evidence that Imanishimwe took any steps to prevent the attack or to punish any soldier at Karambo camp for participating in the massacre. Thus, the Chamber finds that Imanishimwe can be held criminally responsible under Article 6(3) for the actions of his subordinates at the Gashirabwoba football field.

655. The Chamber has also found that, on 11 April 1994, soldiers participated in the arrest, detention, and mistreatment of seven civilians, including Prosecution Witness LI, as well as in the execution of Witness LI's brother and his classmate. Given the Chamber's inference that Imanishimwe issued an order authorizing the arrest, detention, mistreatment, and execution of individuals having suspected connections with the RPF, the Chamber finds that Imanishimwe can be held criminally responsible under Article 6(1) for ordering his subordinates to commit these acts.[1621] In its factual findings, the Chamber has found that Imanishimwe was present during a part of this mistreatment, which occurred at the Karambo camp, and that he did nothing to prevent it. The Chamber notes that Imanishimwe's presence during the mistreatment of Witness LI and the six other refugees reflects that he had full knowledge that his subordinates arrested, detained, and mistreated the seven civilians. The Chamber has already determined that, given the circumstances prevailing at the camp, Imanishimwe's soldiers would not have participated in the killing of Witness LI's brother or classmate without Imanishimwe's knowledge and

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[1621] *See supra* para. 410.

consent or orders.[1622] The Chamber notes that there is no evidence that Imanishimwe took any steps to prevent these acts or to punish any soldier at the Karambo camp for committing them. Thus, the Chamber finds that Imanishimwe can be held criminally responsible under Article 6(3) for the actions of his subordinates in arresting, detaining, and mistreating the seven refugees, as well as for executing Witness LI's brother and his classmate. The Chamber will determine in its subsequent legal findings which form of criminal responsibility best characterises Imanishimwe's role in these crimes.

656. The Chamber has found that, in June 1994, soldiers participated in the arrest and the detention of Witness MG, his father, and two sisters. The Chamber has found that soldiers, acting on Imanishimwe's orders, unsuccessfully attempted to have Witness MG and his family members killed by *Interahamwe* at Gatandara. The Chamber has found that Imanishimwe ordered that these individuals be transferred from the gendarmerie camp and be incarcerated at the Karambo military camp. At the military camp, soldiers severely beat Witness MG and another prisoner. Soldiers also drove a nail into the foot of a detainee, removed the nail, and drove it into the foot of another detainee. The Chamber has found that Imanishimwe was present during this mistreatment and did nothing to stop it. The Chamber has also found that soldiers participated in the killing of Witness MG's sister and her cellmate Mbembe. Given the Chamber's inference that Imanishimwe issued an order authorizing the arrest, detention, mistreatment, and execution of individuals with suspected connections to the RPF, the Chamber finds that Imanishimwe can be held criminally responsible under Article 6(1) for ordering his subordinates to commit these acts. The Chamber also notes that Imanishimwe's presence during the mistreatment of Witness MG and the other refugees reflects that he had full knowledge that his subordinates arrested, detained, and mistreated civilians. The Chamber has already determined that, given the circumstances prevailing at the camp, Imanishimwe's soldiers would not have participated in the killing of Witness MG's sister and Mbembe without Imanishimwe's knowledge and consent or orders.[1623] There is no evidence that Imanishimwe took any steps to prevent the arrest, detention, or mistreatment or to punish any soldier at Karambo camp for these acts. Thus, the Chamber finds that Imanishimwe can be held criminally responsible under Article 6(3) for the actions of his subordinates in arresting, detaining, mistreating, and executing these refugees. The Chamber will determine in its subsequent legal findings which form of criminal responsibility best characterises Imanishimwe's role in the crimes.

657. The Chamber has found that, at the end of June 1994, Imanishimwe ordered the detention of Witness MA at Karambo camp. The Chamber finds that Imanishimwe can be held criminally responsible under Article 6(1) for ordering his subordinates to commit this act. The Chamber further notes that Imanishimwe's personal order to detain Witness MA reflects that he had full knowledge that his subordinates detained this civilian at the camp. The Chamber notes that there is no evidence that Imanishimwe took any steps to prevent the detention of Witness MA or to punish any soldier at Karambo camp for it. Thus, the Chamber finds that Imanishimwe can be held criminally responsible under Article 6(3) for the actions of his subordinates in

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[1622] *See* para. 410
[1623] *See* para. 410

detaining Witness MA. The Chamber will determine in its subsequent legal findings which form of criminal responsibility best characterises Imanishimwe's role in this crime.

2. Duty to Ensure Protection

658. Paragraph 3.28 of the Bagambiki/Imanishimwe Indictment asserts that Bagambiki had the duty to ensure the protection and safety of the civilian population within his prefecture and that on several occasions he failed or refused to assist those whose lives were in danger and who requested his help. This paragraph supports a charge that Bagambiki bears criminal responsibility on the basis of an omission to act.

659. The Chamber finds that, in order to hold an accused criminally responsible for an omission as a principal perpetrator, the following elements must be established: (a) the accused must have had a duty to act mandated by a rule of criminal law; (b) the accused must have had the ability to act; (c) the accused failed to act intending the criminally sanctioned consequences or with awareness and consent that the consequences would occur; and (d) the failure to act resulted in the commission of the crime.[1624]

660. The Chamber finds that Bagambiki had a legal duty under Rwandan domestic law to ensure the protection of individuals within his prefecture. Article 8 of the Law on the Organisation and Function of the Prefecture provides that a prefect has the obligation to ensure the tranquillity, public order, and security of people and property.[1625] In determining whether Bagambiki had the ability to act, the Chamber notes that Article 11 of this law provides that a prefect can request the intervention of the armed forces in accordance with the procedure prescribed in the Law on the Creation of the Gendarmerie.[1626] The Chamber recalls that the law does not give a prefect the authority to determine or to control how the armed forces execute an operation. The Chamber notes that the evidence does not indicate what other specific means were available to a prefect. However, the Chamber observes that this legal duty was not mandated by a rule of criminal law. Thus, any omission of this legal duty under Rwandan law, even if proven, does not result in criminal liability under Article 6(1) of the Statute.

[1624] *Tadic*, Judgement (AC), para. 188: ("This provision [Article 7(1) of ICTY Statute, which is identical to Article 6(1) of the ICTR Statute] covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law."). For the proposition that international criminal liability must be on the basis of intentional conduct. *See Semanza*, Judgement (TC), para. 341; *Stakic*, Judgement (TC), para. 642; Statute of the International Criminal Court, 17 July 1998, art. 30, U.N. Doc. A/Conf. 183/9; ILC 1996 Draft Code of Offences Against the Peace and Security of Mankind, *Report of the International Law Commission on the work of its 48th session May 6-July 26, 1996*, UNGAOR 51st sess., supp. no. 10 (A/51/10), Commentary to Article 2(3)(a).

[1625] Bagambiki Defence Exhibit 3(i), Law on the Organisation and Function of the Prefecture, art. 8(2)("*En tant que principal responsable de l'administration et du développement de la préfecture, le préfet a, notamment, pour mission de: . . . 4) assurer la tranquilité, l'ordre public et la sécurité des personnes et des biens*").

[1626] Bagambiki Defence Exhibit 3(i), Law on the Organisation and Function of the Prefecture, art. 11. (discussing this procedure).

B. Genocide

661. The Prosecutor charged Ntagerura, Bagambiki, and Imanishimwe with genocide under Article 2 of the Statute.

662. The Chamber explained in the *Semanza* Judgement that, in order to find an accused guilty of the crime of genocide, it must be established that the alleged perpetrator committed any of the enumerated acts in Article 2(2) with the intent to destroy, in whole or in part, a group, as such, that is defined by one of the protected categories of nationality, race, ethnicity, or religion.[1627]

663. A perpetrator's *mens rea* may be inferred from his actions or, in the absence of a confession or other admission, from other factors such as the scale of the atrocities committed, their general nature, in a region or a country, or the deliberate and systematic targeting of victims on account of their membership in a particular group, while excluding the members of other groups.[1628]

664. The indictments charge each of the accused with killing or causing serious bodily or mental harm to members of the Tutsi group. Killing members of the group requires a showing that the principal perpetrator intentionally killed one or more members of the group, without the necessity of premeditation.[1629] The term causing serious bodily harm refers to serious acts of physical violence falling short of killing that seriously injure the health, cause disfigurement, or cause any serious injury to the external or internal organs or senses.[1630] Serious mental harm refers to more than minor or temporary impairment of mental faculties.[1631] The serious bodily or mental harm, however, need not be an injury that is permanent or irremediable.[1632]

1. Ntagerura Indictment

665. The Prosecutor charged Ntagerura with genocide in Counts 1, 3, and 6 of the indictment against him for killing and causing serious bodily or mental harm to members of the Tutsi population as stipulated in Article 2(2)(a) and (b) of the Statue. In alleging that Ntagerura is individually responsible for these crimes, pursuant to Articles 2(3)(a), 2(3)(e), 6(1), and 6(3) of the Statute, the Prosecutor relied on paragraphs 9 to 19, and particularly on paragraphs 9, 11, 12.1, 12.2, 14.2, 14.3, 16, 17, and 18, of the indictment. The Prosecutor also charged Ntagerura with conspiracy to commit genocide in Count 2 of the indictment against him. However, the Chamber in its findings on the Ntagerura Indictment has dismissed this count because the supporting allegations, even if proven, could not constitute the material elements of the crime of conspiracy.[1633] The Prosecutor also alleged in its closing brief that Ntagerura should be held criminally responsible for deliberately inflicting on members of the Tutsi ethnic group conditions of life calculated to bring about their

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[1627] *Semanza*, Judgment (TC), para. 311.
[1628] *Semanza*, Judgment (TC), para. 313.
[1629] *Semanza*, Judgment (TC), para. 319.
[1630] *Semanza*, Judgment (TC), para. 320.
[1631] *Semanza*, Judgement (TC), paras. 321, 322.
[1632] *Semanza*, Jugement (TC), para. 320, 322.
[1633] *See supra para.* 70.

destruction, which is a crime under Article 2(2)(c) of the Statute.[1634] The Chamber will not consider this allegation however because it was not charged in the Ntagerura Indictment.

666. As discussed in section I.E of this Judgement, the Chamber has decided not to make factual findings in respect of paragraphs 11, 12.1, 13, and 16 of the Ntagerura Indictment because those paragraphs are impermissibly vague and fail to plead any identifiable criminal conduct on the part of the accused. The Chamber has decided to consider paragraph 10 as a general allegation because it refers to background material and does not mention Ntagerura. The Chamber has also decided not to make findings on paragraphs 12.2, 14.2, 15.1, and 15.2 of the indictment because the Prosecution conceded that it had offered no proof in respect of them. Consequently, the Chamber will not consider the allegations in these paragraphs in reaching its findings on Counts 1, 3, and 6 of the Ntagerura Indictment.

667. Upon considering the evidence related to paragraphs 9.1, 9.2, 9.3, 14.1, 14.3, and 19 of the Ntagerura Indictment, the Chamber has found that the allegations made against the accused in those paragraphs were not proven beyond a reasonable doubt. In connection with paragraph 9.1 of the indictment, the Chamber has found that Ntagerura attended and addressed a meeting at the Bushenge market on 7 February 1993. The Chamber notes that this meeting occurred outside the temporal scope of the Tribunal's jurisdiction and that the Prosecutor did not prove any link between Ntagerura's participation in the meeting and any subsequent act giving rise to his criminal responsibility. While the Chamber has found that the Prosecutor proved the allegations made in paragraphs 17 and 18 of the indictment, those paragraphs do not allege any criminal conduct on the part of Ntagerura. Consequently, the Chamber finds Ntagerura not guilty on Counts 1, 3, and 6 of the indictment against him for genocide and complicity in genocide.

2. *Bagambiki/Imanishimwe Indictment*

a. Bagambiki

668. The Prosecutor charged Bagambiki on the basis of the same facts with genocide in Count 1 and with complicity in genocide in Count 2 for killing and for causing serious bodily or mental injuries to members of the Tutsi group. In alleging that Bagambiki is individually responsible for these crimes, pursuant to Articles 2(3)(a), 2(3)(e), 6(1), and 6(3) of the Statute, the Prosecutor relied on paragraphs 3.16, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.26, 3.27, and 3.28 of the indictment against him. The Prosecutor also charged Bagambiki with conspiracy to commit genocide in Count 19 of the indictment against him. However, the Chamber in its findings on the Bagambiki/Imanishimwe Indictment has dismissed this count because the supporting allegations, even if proven, can not constitute the material elements of the crime of conspiracy.[1635] The Prosecutor asserted in its closing brief that Bagambiki should be held criminally responsible for deliberately inflicting on members of the Tutsi ethnic group conditions of life calculated to bring about their destruction, which is a crime

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[1634] Prosecutor's Closing Brief, para. 1214.
[1635] *See supra para.* 70.

under Article 2(2)(c) of the Statute.[1636] The Chamber will not consider this allegation, however, because it was not charged in the Bagambiki/Imanishimwe Indictment.

669. The Chamber has found that the allegations made against Bagambiki in paragraph 3.16 of the indictment were not proven beyond a reasonable doubt.

670. Upon considering the evidence related to paragraphs 3.17 and 3.18 of the Bagambiki/Imanishimwe Indictment, the Chamber has found that Bagambiki and Imanishimwe received names of people with suspected ties to the RPF from assailants who were threatening to attack Kamarampaka Stadium. The Chamber has found that Bagambiki and Imanishimwe discussed these names with other members of the prefectural security council and then removed sixteen Tutsis and one Hutu, who was a local leader of a political opposition party, from Kamarampaka Stadium and Cyangugu Cathedral on 16 April 1994. A majority of the Chamber, Judge Ostrovsky dissenting, has found further that Bagambiki and Imanishimwe came to the Gashirabwoba football field on 11 April 1994 looking for Ephrem and Côme Simugomwa and that they removed Côme Simugomwa, who was a local leader of a political opposition party. Côme Simugomwa was found dead after the genocide. The Chamber lacks sufficient evidence to determine whether Bagambiki participated in the preparation of lists of names for the purpose of eliminating the identified individuals or whether he gave such lists to *Interahamwe*. The majority of the Chamber, Judge Williams dissenting, lacks sufficient reliable evidence to determine if Bagambiki can bear any criminal responsibility for the deaths of these refugees.

671. Paragraphs 3.19 and 3.20 of the indictment do not mention Bagambiki and, in this section, the Chamber will discuss its findings in respect of these paragraphs only if necessary.

672. Upon considering the evidence related to paragraph 3.21 of the Bagambiki/Imanishimwe Indictment, the Chamber has found beyond a reasonable doubt that, on 15 April 1994, Bagambiki told refugees at Cyangugu Cathedral that they were to be moved to Kamarampaka Stadium. However, there is no reliable evidence on the record that the refugees who refused to move to the stadium were threatened with death.

673. As concerns the allegations made against Bagambiki in paragraph 3.22 of the indictment, the Chamber has found beyond a reasonable doubt that Bagambiki escorted the refugees from the cathedral to the stadium and that, once the refugees were in the stadium, their movement was curtailed. The Chamber has found that it has not been proven beyond a reasonable doubt that refugees who attempted to leave the stadium were forced back by gendarmes or that gendarmes or *Interahamwe* executed refugees at the stadium.

674. In respect of the allegations made against Bagambiki in paragraph 3.23 of the indictment, the Chamber has found that, on 16 April 1994, Bagambiki came to the cathedral, accompanied by Imanishimwe and soldiers, and that they took away four refugees for questioning regarding their possible financial contributions to the RPF. Subsequently, Bagambiki, accompanied by Imanishimwe, civilian and military

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[1636] Prosecutor's Closing Brief, para. 1311.

authorities, and soldiers, came to the stadium where he selected twelve Tutsi refugees and one Hutu to be taken from the stadium for questioning because of their suspected connections with the RPF. In Bagambiki's presence, soldiers arrested the selected refugees and removed them from the stadium. These refugees joined the four other Tutsi refugees who had just been removed from Cyangugu Cathedral. Sixteen of these refugees were then killed during the evening or the night of 16 April 1994. A majority of the Chamber, Judge Williams dissenting, has concluded in its factual findings that it lacks sufficient reliable evidence to determine if Bagambiki can bear any criminal responsibility for the deaths of the sixteen refugees removed from the stadium and the cathedral on 16 April 1994. The Chamber finds that it has not been proven that Bagambiki was involved in any other selection at the stadium.

675. A majority of the Chamber, Judge Williams dissenting, has found that the allegations made against Bagambiki in paragraph 3.26 of the indictment were not proven beyond a reasonable doubt.

676. Concerning the allegations made in paragraph 3.27 of the indictment, the Chamber has found that, on 15 April 1994, Bourgmestre Kamana, commune police, and conseillers of several sectors in Kagano commune participated in an attack on refugees at Nyamasheke parish. The Chamber has further found that, on 18 April 1994, one of the gendarmes guarding Mibilizi parish distributed his grenades to the attackers and that, on 26 April 1994, gendarmes mistreated the refugees taken from Shangi parish at a gendarmerie camp.

677. The Chamber has determined in its legal findings on criminal responsibility that Bagambiki can not be held criminally responsible as a superior under Article 6(3) of the Statute for the acts of soldiers, gendarmes, or conseillers from Kagano commune because the Prosecutor did not establish the existence of a superior-subordinate relationship. In its legal findings on criminal responsibility, the Chamber has also concluded that Bagambiki can not be held criminally responsible for the acts of Kamana because it lacks sufficient reliable evidence to determine whether Bagambiki knew or should have known that Kamana would participate in the attack. In addition, the Chamber lacks sufficient reliable evidence to determine whether Bagambiki failed to take reasonable measures to punish Kamana for his role in the massacre. The Chamber has further found that Bagambiki can not be held criminally responsible for the acts of the Kagano commune police because the Prosecutor failed to establish that Bagambiki knew or should have known about their participation in the massacre.

678. In respect of paragraph 3.28 of the indictment, the Chamber concluded in its legal findings on criminal responsibility that Bagambiki could not be held responsible under Article 6(1) of the Statute for an omission of his duty to act under the Rwandan Law on the Organisation and Function of the Prefecture.

(i) Finding: Counts 1 and 2 of the Bagambiki/Imanishimwe Indictment – Killing and Causing Serious Bodily and Mental Harm

679. Upon considering the evidence related to paragraphs 3.16, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.26, 3.27, and 3.28 of the Bagambiki/Imanishimwe Indictment, a majority of the Chamber, Judge Williams dissenting, finds that it has not been proven beyond a reasonable doubt that Bagambiki is criminally responsible for

the crimes of killing and causing serious bodily or mental harm to members of the Tutsi ethnic group. The Prosecutor either failed to prove the allegations set forth in these paragraphs with respect to the material facts of the crimes or failed to adequately demonstrate that Bagambiki could be held criminally responsible for the crimes as a principal perpetrator, an accomplice, or a superior.

680. Consequently, a majority of the Chamber, Judge Williams dissenting, finds Bagambiki not guilty on Count 1 for genocide. The Chamber finds Bagambiki not guilty on Count 2 of the indictment against him for complicity in genocide.

b. Imanishimwe

681. The Prosecutor charged Imanishimwe on the basis of the same facts with genocide in Count 7 and with complicity in genocide in Count 8 for killing and causing serious bodily or mental injuries to members of the Tutsi group. In alleging that Imanishimwe is individually responsible for these crimes, pursuant to Articles 2(3)(a), 2(3)(e), 6(1), and 6(3) of the Statute, the Prosecutor relied on paragraphs 3.17, 3.18, 3.20, 3.21, 3.22, 3.23, 3.24, 3.25, and 3.30 of the indictment against him. The Prosecutor also charged Imanishimwe with conspiracy to commit genocide in Count 19 of the indictment against him. Upon a motion by the Defence on 6 March 2002 at the close of the Prosecution's case, the Chamber acquitted Imanishimwe of the charge of conspiracy to commit genocide pursuant to Rule 98*bis*.[1637] The Prosecutor also asserted in its closing brief that Imanishimwe should be held criminally responsible for deliberately inflicting on members of the Tutsi ethnic group conditions of life calculated to bring about their destruction, which is a crime under Article 2(2)(c) of the Statute.[1638] The Chamber will not consider this allegation because it was not charged in the Bagambiki/Imanishimwe Indictment.

682. Upon considering the evidence related to paragraphs 3.17 and 3.18 of the Bagambiki/Imanishimwe Indictment, the Chamber has found that Bagambiki and Imanishimwe received names of people with suspected ties to the RPF from assailants who were threatening to attack Kamarampaka Stadium. The Chamber has found that Bagambiki and Imanishimwe discussed these names with other members of the prefectural security council and then removed sixteen Tutsis and one Hutu, who was a local leader of a political opposition party, from Kamarampaka Stadium and Cyangugu Cathedral on 16 April 1994. A majority of the Chamber, Judge Ostrovsky dissenting, has found further that Bagambiki and Imanishimwe came to the Gashirabwoba football field on 11 April 1994 looking for Ephrem and Côme Simugomwa and that they removed Côme Simugomwa, who was a local leader of a political opposition party. Côme Simugomwa was found dead after the genocide. However, the Chamber lacks sufficient evidence to determine whether Imanishimwe participated in the preparation of lists of names for the purpose of eliminating the identified individuals or whether he gave such lists to *Interahamwe*. The Chamber has concluded in its factual findings that it lacks sufficient reliable evidence to determine if Imanishimwe can bear any criminal responsibility for the deaths of these refugees.

[1637] T. 6 March 2002 pp. 54, 68.
[1638] Prosecutor's Closing Brief, para. 1311.

683. The Chamber has found that, on 11 April 1994, soldiers arrested at least seven refugees, including Witness LI, near Cyangugu Cathedral and took them to the Karambo military camp in Cyangugu, as alleged in paragraph 3.20 of the indictment. Upon arrival at the camp, the soldiers presented the refugees to Imanishimwe as "*Inyenzi-Inkotanyi*" whom they had caught in the bush. The soldiers repeatedly kicked and beat the refugees, including with the butts of their rifles, from the time of their arrest and through their incarceration at the camp. Imanishimwe was present during a part of the beatings, but he did not attempt to stop them. During their incarceration at the camp, soldiers beat the detainees again with wooden sticks and rifle butts while threatening to beat them to death.

684. In respect of allegations made against Imanishimwe in paragraph 3.21 of the indictment, the Chamber has found that he participated in making the decision to move the refugees from Cyangugu Cathedral to Kamarampaka Stadium. However, the Chamber has not found that Imanishimwe escorted the refugees from the cathedral to the stadium, as alleged in paragraph 3.22.

685. In connection with paragraph 3.23, the Chamber has found beyond a reasonable doubt that Imanishimwe was present at the cathedral and the stadium on 16 April 1994 when Bagambiki selected seventeen refugees for arrest and questioning about their alleged ties to the RPF. Moreover, in respect of paragraph 3.18, the Chamber has found beyond a reasonable doubt that soldiers participated in the arrest of the selected refugees at the cathedral and at the stadium on 16 April 1994. The Chamber has found that Imanishimwe was present during these arrests. Imanishimwe and his soldiers took the arrested refugees away for questioning concerning their ties to the RPF. Later that evening or during the night sixteen of the refugees were killed. The Chamber has concluded in its factual findings that it lacks sufficient reliable evidence to determine whether Imanishimwe can bear any criminal responsibility for the death of these sixteen refugees.

686. In connection with the allegations made in paragraphs 3.24 and 3.25 of the indictment, the Chamber has found that an unknown number of Tutsi and Hutu civilians were arrested on suspicion of being RPF accomplices and were taken to Karambo military camp where soldiers mistreated them. In particular, the Chamber has found beyond a reasonable doubt that, on 6 June 1994, Imanishimwe participated with his soldiers in the arrest of civilians at Kamembe city market and that he instructed soldiers to have Witness MG and his family killed at Gatandara, which was prevented by gendarmes. The gendarmes took Witness MG and his family to the gendarmerie camp. Subsequently, soldiers, acting on orders from Imanishimwe, removed Witness MG, his father, and two sisters from the gendarmerie camp and incarcerated them at Karambo military camp, where in the presence of Imanishimwe, the soldiers severely beat Witness MG and another detainee and where they hammered a nail into the foot of one detainee, removed the nail, and then hammered it into the foot of another detainee. During this mistreatment, the soldiers questioned the detainees, all of whom were Tutsi civilians, as to whether they were members of the RPF and accused them of collaborating with the enemy. Imanishimwe did nothing to stop or restrain the soldiers during their mistreatment of the detainees. As a result of this mistreatment, Witness MG could not stand up for several days, and the two detainees who were mistreated with the nail screamed in pain in their cell. Soldiers later removed the two detainees who were never seen or heard from again.

687. The Chamber has also found that soldiers from Karambo military camp killed or facilitated the killing of Witness LI's brother and a former classmate, as well as Witness MG's sister and her cellmate Mbembe, all of whom the soldiers had first incarcerated at the camp. The Chamber has inferred that Imanishimwe, as the commander of the camp, issued orders to soldiers authorizing the arrest, detention, mistreatment, and execution of civilians with suspected ties to the RPF.[1639] As such, the Chamber has found that soldiers killed or facilitated the killing of Witness LI's brother and his classmate and Witness MG's sister and her cellmate Mbembe on the orders of Imanishimwe. In addition, the Chamber has found that, at the end of June 1994, Imanishimwe ordered the detention of Witness MA.

688. Finally, in connection with paragraphs 3.25 and 3.30, the Chamber has found beyond a reasonable doubt that soldiers participated in the massacre of mainly Tutsi civilian refugees at the Gashirabwoba football field on 12 April 1994.

(i) Finding: Counts 7 and 8 of the Bagambiki/Imanishimwe Indictment – Killing and Causing Serious Bodily and Mental Harm

689. In connection with paragraphs 3.25 and 3.30, the Chamber has found beyond a reasonable doubt that soldiers participated in the massacre of mainly Tutsi civilian refugees at the Gashirabwoba football field on 12 April 1994. The Chamber has found that at least fifteen soldiers arrived at the field, surrounded the mainly Tutsi refugees, opened fire with their guns, and threw grenades at them for thirty minutes after the refugees asked for peace. The scale of these killings of the Tutsi refugees and the length of time required to kill such a large number of victims prove that these killings were intentional.

690. The Chamber also finds that the soldiers at the Gashirabwoba football field possessed the requisite genocidal intent during the killings on 12 April 1994, that is, to destroy, in whole or in part, members of the Tutsi ethnic group. It has not been disputed that the Tutsi were considered an ethnic group during the events in 1994. The soldiers' intention to destroy the Tutsi group, in whole or in part, can be inferred from the context of the massacre at the Gashirabwoba football field and from the other events occurring in Cyangugu at that time. The Chamber recalls that soldiers came to the football field the evening before the massacre and asked the refugees whether they were all Tutsis. The refugees informed the soldiers that there were some Hutus amongst them. Thus, the soldiers were aware that the primary ethnic composition of the refugees at the Gashirabwoba football field was Tutsi. In the Chamber's view, the manner in which the soldiers killed the refugees and the resulting large number of victims reflect the soldiers' intention to destroy members of the Tutsi ethnic group, in whole or in part. In reaching this conclusion, the Chamber has also considered the overwhelming evidence in this case that, at the time of the massacre at the Gashirabwoba football field, thousands of Tutsis in Cyangugu were being forced to seek refuge at parishes and schools or to hide in the bush because their Hutu neighbours and *Interahamwe* attacked them in their homes.

[1639] *See supra* para. 410.

691. The Chamber recalls that it has not been established that Imanishimwe was present during the attack at the Gashirabwoba football field on 12 April 1994. The Chamber, however, has found in its legal findings on criminal responsibility that the principal perpetrators of this large-scale attack were soldiers under Imanishimwe's effective control and that Imanishimwe knew or should have known that they would or did participate in the attack. Thus, the Chamber finds that Imanishimwe is criminally responsible for the acts of his subordinates at the Gashirabwoba football field pursuant to Article 6(3) of the Statute because he failed to prevent the crime. The Chamber also recalls that Imanishimwe did not punish any soldier for this attack, which additionally shows that he acquiesced in the soldiers' participation in the massacre.

692. Upon considering the evidence in connection with paragraphs 3.24 and 3.25, the Chamber finds that soldiers intentionally killed or facilitated the killing of Witness LI's brother and former classmate and Witness MG's sister and her cellmate Mbembe. The Chamber also finds that soldiers intentionally caused serious bodily injury to Witness MG and the three other detainees mistreated with him, given that Witness MG could not stand up for three days after the beating and that the detainees mistreated with the nail screamed in pain after being returned to their cell. The Chamber does not find that soldiers caused serious bodily injury to Witness LI and the six refugees arrested with him. Considering the evidence on the record, including the fact that following their mistreatment two of the victims were in a position to forcibly escape from detention, the Chamber concludes that the mistreatment was not such as to cause severe suffering or pain sufficient for a finding of causing serious bodily injury under Article 2(2)(b) of the Statute.

693. The Chamber lacks sufficient reliable evidence to determine that soldiers killed and/or caused serious bodily or mental harm to these civilians with the requisite genocidal intent. The Chamber recalls its finding that Imanishimwe issued an order authorizing the arrest, detention, mistreatment, and execution of civilians who were suspected of having ties to the RPF. The Chamber lacks sufficient evidence to determine whether this order was aimed only at Tutsis, particularly given the arrest of Witness MA, a Hutu, and the fact that Witnesses MA and MG could not state the ethnicity of the other detainees who were brought in and out of the cells during their respective periods of incarceration at the camp. Moreover, Imanishimwe initially ordered his soldiers to take Witness LI and the six others arrested with him to the gendarmerie before the soldiers stated that they were "*Inyenzi-Inkotanyi*" whom they had found in the bush, a reference to those associated with the RPF. The Chamber further recalls that soldiers demanded the arrest and detention of Witness MG, his father, and two sisters because they allegedly were found in possession of RPF material. The Chamber has also considered that, during the mistreatment of Witness MG and the other three detainees, soldiers questioned them only about their suspected connections to the RPF.

694. The Chamber finds beyond a reasonable doubt that Imanishimwe is criminally responsible under Article 6(3) of the Statute for genocide because he failed to prevent the killing of members of the Tutsi ethnic group by his subordinates in relation to the events at the Gashirabwoba football field on 12 April 1994. For the reasons expressed in his separate opinion, Judge Dolenc is of the opinion that it is impermissible to convict Imanishimwe on Count 7 because the massacre at Gashirabwoba football field

is not contained in the indictment. Therefore, the majority finds Imanishimwe guilty on Count 7 of the indictment against him.

695. As the majority has determined that Imanishimwe is criminally responsible for genocide as a superior under Article 6(3), the Chamber finds that Imanishimwe is not guilty on Count 8 of the indictment against him for complicity in genocide, which is based on the same facts as Count 7 and does not charge Imanishimwe with criminal responsibility under Article 6(3).

C. Crimes Against Humanity

696. The Prosecutor charged Ntagerura, Bagambiki, and Imanishimwe with crimes against humanity under Article 3 of the Statute.

697. Pursuant to Article 3 of the Statute, the Tribunal has the power to prosecute persons responsible for the crimes listed in sub-articles 3(a) to (i), when they are committed as part of a widespread or systematic attack on discriminatory grounds against any civilian population.[1640]

698. The Chamber explained in the *Semanza* Judgement that in connection with crimes against humanity, the Prosecutor must prove: (1) that there was an attack; (2) that the attack was widespread or systematic; (3) that the attack was directed against any civilian population; (4) that the attack was committed on national, political, ethnical, racial or religious grounds; and (5) that the accused acted with knowledge of the broader context of the attack and with knowledge that his act(s) formed part of the attack.[1641]

699. The indictments charge the three accused with the following crimes against humanity: murder, extermination, imprisonment, and torture.

700. In the *Semanza* Judgement, the Chamber found that premeditated murder constitutes a crime against humanity under Article 3(a) of the Statute.[1642] The Chamber explained that premeditation requires that the accused held the intention to murder prior to committing the act causing death.[1643] The Chamber emphasises that the accused need not have premeditated the murder of a particular individual; it is sufficient that the accused had a premeditated intention to murder civilians as part of the widespread or systematic attack on discriminatory grounds.[1644]

701. Extermination is mass or large scale killing; it may be differentiated from murder in that it is directed against a population rather than against individuals.[1645] Responsibility for a single or limited number of killings is insufficient to form the

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[1640] *Semanza*, Judgement (TC), paras. 326-332.
[1641] *Semanza*, Judgement (TC), paras. 327-332.
[1642] *Semanza*, Judgement (TC), para. 339. The Chamber notes that Article 3(a) of the French version of the statute uses the term "*assassinat*," which only refers to pre-meditated murder.
[1643] *Semanza*, Judgement (TC), paras. 334-339.
[1644] *Semanza*, Judgement (TC), para. 339.
[1645] *Semanza*, Judgement (TC), para. 340.

material element of extermination.[1646] The mental element for extermination is the intent to perpetrate or to participate in mass killing.[1647]

702. Imprisonment as a crime against humanity refers to arbitrary or otherwise unlawful detention or deprivation of liberty. It is not every minor infringement of liberty that forms the material element of imprisonment as a crime against humanity; the deprivation of liberty must be of similar gravity and seriousness as the other crimes enumerated as crimes against humanity enumerated in Article 3 (a) to (i). In assessing whether the imprisonment constitutes a crime against humanity, the Chamber may take into account whether the initial arrest was lawful, by considering, for example, whether it was based on a valid warrant of arrest, whether the detainees were informed of the reasons for their detention, whether the detainees were ever formally charged, and whether they were informed of any procedural rights.[1648] The Chamber may also consider whether the continued detention was lawful. When a national law is relied upon to justify a deprivation of liberty, this national law must not violate international law.[1649]

703. Torture as a crime against humanity is the intentional infliction of severe physical or mental pain or suffering for prohibited purposes including: obtaining information or a confession; punishing, intimidating, or coercing the victim or a third person; or discriminating against the victim or a third person.[1650]

1. Ntagerura Indictment

704. The Prosecutor charged Ntagerura with extermination as a crime against humanity under Article 3(b) of the Statute in Count 4 of the indictment against him. In alleging that Ntagerura is individually responsible for this crime, pursuant to Article 6(1) of the Statute, the Prosecutor relied on paragraphs 9 to 19, and particularly on paragraphs 17 and 18, of the indictment.

705. As discussed in section I.E of this Judgement, the Chamber has decided not to make factual findings in respect of paragraphs 11, 12.1, 13, and 16 of the Ntagerura Indictment because those paragraphs are impermissibly vague and fail to plead any identifiable criminal conduct on the part of the accused. The Chamber has decided to consider paragraph 10 as a general allegation because it refers to background material and does not mention Ntagerura. The Chamber has also decided not to make findings on paragraphs 12.2, 14.2, 15.1, and 15.2 of the indictment because the Prosecution conceded that it had offered no proof in respect of them. Consequently, the Chamber will not consider allegations made in these paragraphs in making a finding on Count 4 of the Ntagerura Indictment.

706. Upon considering the evidence related to paragraphs 9.1, 9.2, 9.3, 14.1, 14.3, and 19 of the Ntagerura Indictment, the Chamber has found that the allegations made against the accused in those paragraphs were not proven beyond a reasonable doubt.

[1646] *Semanza*, Judgement (TC), para. 340.
[1647] *Semanza*, Judgement (TC), para. 341.
[1648] *Krnojelac*, Judgement (TC), para. 119-122; *Kordic and Cerkez* Judgement (TC), paras. 302-303.
[1649] *Krnojelac*, Judgement (TC), para. 114.
[1650] *See Semanza*, Judgement (TC), para 343.

In connection with paragraph 9.1 of the indictment, the Chamber has found that Ntagerura attended and addressed a meeting at the Bushenge market on 7 February 1993. The Chamber notes that this event occurred outside the temporal scope of the Tribunal's jurisdiction and that the Prosecutor did not prove any link between Ntagerura's participation in the meeting and any subsequent act giving rise to his criminal responsibility. While the Chamber has found that the Prosecutor proved the allegations made in paragraphs 17 and 18 of the indictment, those paragraphs do not allege any criminal conduct on the part of Ntagerura. Consequently, the Chamber finds Ntagerura not guilty on Count 4 of the indictment against him for extermination as a crime against humanity under Article 3(b) of the Statute.

2. *Bagambiki/Imanishimwe Indictment*

a. General Elements

707. Prosecution Expert Witness Guichaoua testified that, subsequent to 6 April 1994, there were widespread attacks against the Tutsi population across Rwanda.[1651] This opinion was amply supported by the evidence presented in this case, particularly with respect to the various massacre sites. Imanishimwe acknowledged that there was "inter-ethnic killing" throughout Rwanda in April and May 1994.[1652] Moreover, Bagambiki does not dispute that there were widespread attacks against the civilian population in Cyangugu during the events referred to in the indictment.[1653] Having considered the totality of the evidence, and in particular the evidence concerning the ethnic composition of the individuals who sought refuge at the various sites in Cyangugu, the Chamber finds that from April to June 1994 there was a widespread attack against the civilian Tutsi population of Cyangugu.

708. The Chamber further finds that the evidence reflects that there was a related systematic attack on political grounds against civilians with suspected ties to the RPF. For example, the Chamber recalls that assailants demanded the removal of seventeen people from Kamarampaka Stadium and Cyangugu Cathedral because they were suspected of financially contributing to or communicating with the RPF. Sixteen of these refugees were later killed. The Chamber further notes that the assailants threatening to attack Shangi parish demanded the removal of a number of refugees whom the assailants thought to be armed and connected with the RPF. Furthermore, the Chamber's findings concerning the events at the Karambo military camp indicate that a number of civilians were arrested, detained, mistreated, and executed because of suspected ties to the RPF.

709. Given the respective positions of authority of Bagambiki and Imanishimwe during the relevant period, and considering, in particular, the evidence concerning the various prefectural security council meetings in which they discussed the ongoing events, it is inconceivable that Bagambiki or Imanishimwe could have been unaware of these attacks at the time of the events.

[1651] T. 19 September 2001 pp. 53, 56-59.
[1652] T. 23 January 2003 pp. 4-5.
[1653] Bagambiki's Closing Brief pp. 46-47.

710. The Chamber will assess in relation to particular criminal allegations whether Bagambiki, Imanishimwe, or the principal perpetrators of the particular crimes had knowledge that their acts formed part of these widespread and systematic attacks.

b. Bagambiki

711. The Prosecutor charged Bagambiki with three counts of crimes against humanity: murder under Article 3(a) of the Statute in Count 3; extermination under Article 3(b) in Count 4; and imprisonment under Article 3(e) in Count 5. In alleging that Bagambiki is individually responsible for these crimes, pursuant to Articles 6(1) and 6(3) of the Statute, the Prosecutor relied on paragraphs 3.16, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.26, 3.27, and 3.28 of the indictment against him.

712. The Chamber has found that the allegations made against Bagambiki in paragraph 3.16 of the indictment were not proven beyond a reasonable doubt.

713. Upon considering the evidence related to paragraphs 3.17 and 3.18 of the Bagambiki/Imanishimwe Indictment, the Chamber has found that Bagambiki and Imanishimwe received names of people with suspected ties to the RPF from assailants who were threatening to attack Kamarampaka Stadium. The Chamber has found that Bagambiki and Imanishimwe discussed these names with other members of the prefectural security council and then removed sixteen Tutsis and one Hutu, who was a local leader of a political opposition party, from Kamarampaka stadium and Cyangugu Cathedral on 16 April 1994. A majority of the Chamber, Judge Ostrovsky dissenting, has found further that Bagambiki and Imanishimwe came to the Gashirabwoba football field on 11 April 1994 looking for Ephrem and Côme Simugomwa and that they removed Côme Simugomwa, who was a local leader of a political opposition party. Côme Simugomwa was found dead after the genocide. The Chamber lacks sufficient evidence to determine whether Bagambiki participated in the preparation of lists of names for the purpose of eliminating the identified individuals or whether he gave such lists to *Interahamwe*. The majority of the Chamber, Judge Williams dissenting, lacks sufficient reliable evidence to determine if Bagambiki can bear any criminal responsibility for the deaths of these refugees.

714. Paragraphs 3.19 and 3.20 of the indictment do not mention Bagambiki and, in this section, the Chamber will discuss its findings in respect of these paragraphs only if necessary.

715. Upon considering the evidence related to paragraph 3.21 of the Bagambiki/Imanishimwe Indictment, the Chamber has found beyond a reasonable doubt that, on 15 April 1994, Bagambiki told refugees at Cyangugu Cathedral that they were to be moved to Kamarampaka Stadium. However, there is no reliable evidence on the record that the refugees who refused to move to the stadium were threatened with death.

716. As concerns the allegations made against Bagambiki in paragraph 3.22 of the indictment, the Chamber has found beyond a reasonable doubt that Bagambiki escorted the refugees from the cathedral to the stadium and that, once the refugees were in the stadium, their movement was curtailed. The Chamber has found that it has not been proven beyond a reasonable doubt that refugees who attempted to leave the

stadium were forced back by gendarmes or that gendarmes or *Interahamwe* executed refugees at the stadium.

717. In respect of the allegations made against Bagambiki in paragraph 3.23 of the indictment, the Chamber has found that, on 16 April 1994, Bagambiki came to the cathedral, accompanied by Imanishimwe and soldiers, and that they took away four refugees for questioning regarding their possible financial contributions to the RPF. Subsequently, Bagambiki, accompanied by Imanishimwe, civilian and military authorities, and soldiers, came to the stadium where he selected twelve Tutsi refugees and one Hutu to be taken from the stadium for questioning because of their suspected connections with the RPF. In Bagambiki's presence, soldiers arrested the selected refugees and removed them from the stadium. These refugees joined the four other Tutsi refugees who had just been removed from Cyangugu Cathedral. Sixteen of these refugees were then killed during the evening or the night of 16 April 1994. A majority of the Chamber, Judge Williams dissenting, has concluded in its factual findings that it lacks sufficient reliable evidence to determine if Bagambiki can bear any criminal responsibility for the deaths of the sixteen refugees removed from the stadium and the cathedral on 16 April 1994. The Chamber finds that it has not been proven that Bagambiki was involved in any other selection at the stadium.

718. A majority of the Chamber, Judge Williams dissenting, has found that the allegations made against Bagambiki in paragraph 3.26 of the indictment were not proven beyond a reasonable doubt.

719. Concerning the allegations made in paragraph 3.27 of the indictment, the Chamber has found that, on 15 April 1994, Bourgmestre Kamana, commune police, and conseillers of several sectors in Kagano commune participated in an attack on refugees at Nyamasheke parish. The Chamber has further found that, on 18 April 1994, one of the gendarmes guarding Mibilizi parish distributed his grenades to the attackers and that, on 26 April 1994, gendarmes mistreated the refugees taken from Shangi parish at a gendarmerie camp.

720. The Chamber has determined in its legal findings on criminal responsibility that Bagambiki can not be held criminally responsible as a superior under Article 6(3) of the Statute for the acts of soldiers, gendarmes, or conseillers from Kagano commune because the Prosecutor did not establish the existence of a superior-subordinate relationship. In its legal findings on criminal responsibility, the Chamber has also concluded that Bagambiki can not be held criminally responsible for the acts of Kamana because it lacks sufficient reliable evidence to determine whether Bagambiki knew or should have known that Kamana would participate in the attack. In addition, the Chamber lacks sufficient reliable evidence to determine whether Bagambiki failed to take reasonable measures to punish Kamana for his role in the massacre. The Chamber has further found that Bagambiki can not be held criminally responsible for the acts of the Kagano commune police because the Prosecutor failed to establish that Bagambiki knew or should have known about their participation in the massacre.

721. In respect of paragraph 3.28 of the indictment, the Chamber has concluded in its legal findings on criminal responsibility that Bagambiki cannot be held responsible under Article 6(1) of the Statute for an omission of his duty to act under the Rwandan Law on the Organisation and Function of the Prefecture.

(i) Finding: Count 3 of the Bagambiki/Imanishimwe Indictment - Murder

722. Upon considering the evidence related to paragraphs 3.16, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.26, 3.27, and 3.28 of the Bagambiki/Imanishimwe Indictment, a majority of the Chamber, Judge Williams dissenting, finds that it has not been proven beyond a reasonable doubt that Bagambiki is criminally responsible for the crime of murder. The Prosecutor either failed to prove the allegations set forth in these paragraphs with respect to the material facts of the crime or failed to adequately demonstrate that Bagambiki can be held criminally responsible for the crimes as a principal perpetrator, accomplice, or superior.

723. Consequently, a majority of the Chamber, Judge Williams dissenting, finds Bagambiki not guilty on Count 3 of the indictment against him for murder as a crime against humanity under Article 3(a) of the Statute.

(ii) Finding: Count 4 of the Bagambiki/Imanishimwe Indictment - Extermination

724. Upon considering the evidence related to paragraphs 3.16, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.26, 3.27, and 3.28 of the Bagambiki/Imanishimwe Indictment, a majority of the Chamber, Judge Williams dissenting, finds that it has not been proven beyond a reasonable doubt that Bagambiki is criminally responsible for the crime of extermination. The Prosecutor either failed to prove the allegations set forth in these paragraphs with respect to the material facts of the crime or failed to adequately demonstrate that Bagambiki could be held criminally responsible for the crimes as a principal perpetrator, accomplice, or superior.

725. Consequently, a majority of the Chamber, Judge Williams dissenting, finds Bagambiki not guilty on Count 4 of the indictment against him for extermination as a crime against humanity under Article 3(b) of the Statute.

(iii)Finding: Count 5 of the Bagambiki/Imanishimwe Indictment - Imprisonment

726. In alleging in Count 5 of the indictment that Bagambiki is individually responsible for imprisonment as a crime against humanity, pursuant to Articles 6(1) and 6(3) of the Statute, the Prosecutor relied on paragraphs 3.21 and 3.22 of the indictment.

727. The Chamber recalls that Tutsis sought refuge at the cathedral without the insistence of the authorities. After the church authorities requested assistance to ensure the refugees' security, Bagambiki discussed the matter with members of the prefectural security council and then, with the assistance of church authorities, escorted the refugees to the stadium. The Chamber also recalls the testimony of Prosecution Witness LY, which it accepted, that at first the refugees were reluctant to move from the cathedral to the stadium, but agreed to the transfer after church authorities discussed the matter with them. It was not proven beyond a reasonable doubt that the refugees were forced to move to the stadium or that they were threatened with death if they did not obey.

728. Once at the stadium, the refugees were guarded and their movement was curtailed. However, the Chamber lacks sufficient reliable evidence to determine whether the refugees were held at the stadium against their will. Moreover, the

evidence was insufficient to determine whether the refugees' movement at the stadium was curtailed to incarcerate them or to ensure their protection. Therefore, the Chamber is not satisfied that the Prosecutor proved beyond a reasonable doubt that Bagambiki committed the crime of imprisonment as a crime against humanity.

729. Consequently, the Chamber finds Bagambiki not guilty on Count 5 of the indictment against him for imprisonment as a crime against humanity under Article 3(e) of the Statute.

c. Imanishimwe

730. The Prosecutor charged Imanishimwe with four counts of crimes against humanity: murder under Article 3(a) of the Statute in Count 9; extermination under Article 3(b) in Count 10, imprisonment under Article 3(e) in Count 11; and torture under Article 3(f) in Count 12. In alleging that Imanishimwe is individually responsible for these crimes, pursuant to Articles 6(1) and 6(3) of the Statute, the Prosecutor relied on paragraphs 3.17, 3.18, 3.20, 3.21, 3.22, 3.23, 3.24, 3.25, and 3.30 of the indictment against him.

731. Upon considering the evidence related to paragraphs 3.17 and 3.18 of the Bagambiki/Imanishimwe Indictment, the Chamber has found that Bagambiki and Imanishimwe received names of people with suspected ties to the RPF from assailants who were threatening to attack Kamarampaka Stadium. The Chamber has found that Bagambiki and Imanishimwe discussed these names with other members of the prefectural security council and then removed sixteen Tutsis and one Hutu, who was a local leader of a political opposition party, from Kamarampaka Stadium and Cyangugu Cathedral on 16 April 1994. A majority of the Chamber, Judge Ostrovsky dissenting, has found further that Bagambiki and Imanishimwe came to the Gashirabwoba football field on 11 April 1994 looking for Ephrem and Côme Simugomwa and that they removed Côme Simugomwa, who was a local leader of a political opposition party. Côme Simugomwa was found dead after the genocide. However, the Chamber lacks sufficient evidence to determine whether Imanishimwe participated in the preparation of lists of names for the purpose of eliminating the identified individuals or whether he gave such lists to *Interahamwe*. The Chamber has concluded in its factual findings that it lacks sufficient reliable evidence to determine if Imanishimwe can bear any criminal responsibility for the deaths of these refugees.

732. The Chamber has found that, on 11 April 1994, soldiers arrested at least seven refugees, including Witness LI, near Cyangugu Cathedral and took them to the Karambo military camp in Cyangugu, as alleged in paragraph 3.20 of the indictment. Upon arrival at the camp, the soldiers presented the refugees to Imanishimwe as "*Inyenzi-Inkotanyi*" whom they had caught in the bush. The soldiers repeatedly kicked and beat the refugees, including with the butts of their rifles, from the time of their arrest and through their incarceration at the camp. Imanishimwe was present during a part of the beatings, but he did not attempt to stop them. During their incarceration at the camp, soldiers beat the detainees again with wooden sticks and rifle butts while threatening to beat them to death.

733. In respect of allegations made against Imanishimwe in paragraph 3.21 of the indictment, the Chamber has found that he participated in making the decision to move the refugees from Cyangugu Cathedral to Kamarampaka Stadium. However, the

Chamber has not found that Imanishimwe escorted the refugees from the cathedral to the stadium, as alleged in paragraph 3.22.

734. In connection with paragraph 3.23, the Chamber has found beyond a reasonable doubt that Imanishimwe was present at the cathedral and the stadium on 16 April 1994 when Bagambiki selected seventeen refugees for arrest and questioning about their alleged ties to the RPF. Moreover, in respect of paragraph 3.18, the Chamber has found beyond a reasonable doubt that soldiers participated in the arrest of selected refugees at the cathedral and at the stadium on 16 April 1994. The Chamber has found that Imanishimwe was present during these arrests. Imanishimwe and his soldiers took the arrested refugees away for questioning concerning their ties to the RPF. Later that evening or during the night sixteen of the refugees were killed. The Chamber has concluded in its factual findings that it lacks sufficient reliable evidence to determine whether Imanishimwe can bear any criminal responsibility for the death of these sixteen refugees.

735. In connection with the allegations made in paragraphs 3.24 and 3.25 of the indictment, the Chamber has found that an unknown number of Tutsi and Hutu civilians were arrested on suspicion of being RPF accomplices and were taken to Karambo military camp where soldiers mistreated them. In particular, the Chamber has found beyond a reasonable doubt that, on 6 June 1994, Imanishimwe participated with his soldiers in the arrest of civilians at Kamembe city market and that he instructed soldiers to have Witness MG and his family killed at Gatandara, which was prevented by gendarmes. The gendarmes took Witness MG and his family to the gendarmerie camp. Subsequently, soldiers, acting on orders of Imanishimwe, removed Witness MG, his father, and two sisters from the gendarmerie camp and incarcerated them at Karambo military camp, where in the presence of Imanishimwe, the soldiers severely beat Witness MG and another detainee and where they hammered a nail into the foot of one detainee, removed the nail, and then hammered it into the foot of another detainee. During this mistreatment, the soldiers questioned the detainees, all of whom were Tutsi civilians, as to whether they were members of the RPF and accused them of collaborating with the enemy. Imanishimwe did nothing to stop or restrain the soldiers during their mistreatment of the detainees. As a result of this mistreatment, Witness MG could not stand up for several days, and the two detainees who were mistreated with the nail screamed in pain in their cell. Soldiers later removed the two detainees who were never seen or heard from again.

736. The Chamber has also found that soldiers from Karambo military camp killed or facilitated the killing of Witness LI's brother and a former classmate, as well as Witness MG's sister and her cellmate Mbembe, all of whom the soldiers had first incarcerated at the camp. The Chamber has inferred that Imanishimwe, as the commander of the camp, issued orders to soldiers authorizing the arrest, detention, mistreatment, and execution of civilians with suspected ties to the RPF.[1654] As such, the Chamber has found that soldiers killed or facilitated the killing of Witness LI's brother and his classmate and Witness MG's sister and her cellmate Mbembe on the orders of Imanishimwe. In addition, the Chamber has found that, at the end of June 1994, Imanishimwe ordered the detention of Witness MA.

[1654] *See supra* para. 410.

737. Finally, in connection with paragraphs 3.25 and 3.30, the Chamber has found beyond a reasonable doubt that soldiers participated in the massacre of mainly Tutsi civilian refugees at the Gashirabwoba football field on 12 April 1994.

(i) Finding: Count 9 of the Bagambiki/Imanishimwe Indictment - Murder

738. In alleging in Count 9 of the indictment that Imanishimwe is individually responsible for murder as a crime against humanity, pursuant to Articles 6(1) and 6(3) of the Statute, the Prosecutor relied on paragraphs 3.17, 3.18, 3.20, 3.21, 3.22, 3.23, 3.24, 3.25 and 3.30 of the indictment.

739. In connection with paragraphs 3.24 and 3.25, the Chamber has found that soldiers killed or facilitated the killing of Witness LI's brother and former classmate and Witness MG's sister and her cellmate Mbembe. The Chamber has inferred that Imanishimwe, as the commander of the camp, issued orders to soldiers authorizing the arrest, detention, mistreatment, and execution of civilians with suspected ties to the RPF. In its findings on criminal responsibility, the Chamber has also found that Imanishimwe can be held criminally responsible for the acts of the soldiers who were the principal perpetrators of these killings under Article 6(3) because he knew or should have known that his soldiers would participate in the killing of these refugees and because he failed to prevent the crimes. The Chamber also recalls that Imanishimwe did not punish any soldier in the camp for these killings.

740. In following the orders of Imanishimwe to kill civilians, the principal perpetrators had the intention to kill prior to the act of killing. The murders can therefore be described as premeditated. In light of the serious mistreatment and killings of civilians by soldiers and given the orders issued by Imanishimwe to arrest, detain, mistreat, and execute civilians with suspected ties to the RPF, the Chamber finds that the soldiers who acted on Imanishimwe's orders were aware that their actions formed part of the systematic attack on political grounds against the civilian population in Cyangugu. Therefore, the Chamber finds that the soldiers, who were subordinates of Imanishimwe, acted under Imanishimwe's orders to commit murder as a crime against humanity in killing Witness LI's brother and his classmate and Witness MG's sister and her cellmate Mbembe.

741. The Chamber finds that Imanishimwe's order to kill the detainees substantially supported the principal perpetrators in their acts of premeditated murder, given his authority and role as the camp commander.

742. From the totality of the evidence of what occurred at the military camp and in the region, the only reasonable inference that may be drawn is that Imanishimwe acted intentionally in ordering civilians to be killed and with an awareness that he was ordering the principal perpetrators to commit murder as part of the widespread attack against the civilian population against the civilian population in Cyangugu.

743. Consequently, the Chamber finds that Imanishimwe is criminally responsible pursuant to Article 6(1) for ordering murder as a crime against humanity in relation to the deaths of Witness LI's brother and his classmate and Witness MG's sister and her cellmate Mbembe.

744. In connection with paragraphs 3.25 and 3.30, the Chamber has found beyond a reasonable doubt that soldiers participated in the massacre of mainly Tutsi civilian refugees at the Gashirabwoba football field on 12 April 1994. The Chamber has found that at least fifteen soldiers arrived at the field, surrounded the refugees, opened fire, and threw grenades at them for thirty minutes after the refugees asked for peace. The scale of the killings and the length of time required to kill such large numbers of victims prove that these murders were premeditated. The Chamber further finds that the soldiers were aware of the widespread attack on the civilian population and that their acts formed part of this attack. Accordingly, the Chamber finds that these soldiers committed murder as a crime against humanity. The Chamber recalls that it was not established that Imanishimwe was present during the attack at the Gashirabwoba football field on 12 April 1994. However, the Chamber has found in its legal findings on criminal responsibility that the principal perpetrators were soldiers under Imanishimwe's effective control and that he knew or should have known that they would participate in the attack. Thus, the Chamber finds that Imanishimwe is criminally responsible for the acts of his subordinates at the Gashirabwoba football field pursuant to Article 6(3) of the Statute because he failed to prevent the crime. The Chamber also recalls that Imanishimwe did not punish any soldier at the camp for this attack, which further indicates his acquiescence in the attack.

745. The murders committed by soldiers under Imanishimwe's effective control at the Gashirabwoba football field are also charged in Count 10 of the indictment as extermination pursuant to Article 3(b) of the Statute. As the Chamber explained in the *Semanza* Judgement, where murder and extermination constitute the same core offence, and where convicting for both counts would not provide a better or more complete description of the entire criminal conduct of the accused, a conviction for both offences on the basis of ideal concurrence of crimes is not justified.[1655] Accordingly, the Chamber will refrain from entering a conviction for murder as a crime against humanity in relation to the Gashirabwoba massacre because of its finding, explained below, that Imanishimwe is guilty of extermination in relation to these events.

746. The Chamber finds beyond a reasonable doubt that Imanishimwe is criminally responsible under Article 6(1) of the Statute for murder as a crime against humanity for ordering the killing of civilians by soldiers under his effective control. The Chamber need not rely on Article 6(3) for its finding of guilt because ordering under Article 6(1) is a more direct form of responsibility and better characterises Imanishimwe's role in the crime. Therefore, the Chamber finds Imanishimwe guilty on Count 9 of the indictment against him.

(ii) Finding: Count 10 of the Bagambiki/Imanishimwe Indictment - Extermination

747. In alleging in Count 10 of the indictment that Imanishimwe is responsible for extermination as a crime against humanity, pursuant to Articles 6(1) and 6(3) of the Statute, the Prosecutor relied on paragraphs 3.17, 3.18, 3.20, 3.21, 3.22, 3.23, 3.24, 3.25, and 3.30 of the indictment.

[1655] *See Semanza*, Judgment (TC), paras. 500-505.

748. Imanishimwe's responsibility for the allegations in these paragraphs has been reviewed in the Chamber's findings on murder as a crime against humanity. The Chamber has found that Imanishimwe is responsible for ordering the murders of four civilians. These four murders are distinct individual murders which do not rise to the scale necessary for a finding of extermination.

749. The Chamber has also found that Imanishimwe bears superior responsibility for the acts of subordinate soldiers under his effective control for the murders of civilians at the Gashirabwoba football field on 12 April 1994. The Chamber has found that there were approximately 3,000 refugees at the site prior to the attack by soldiers and other assailants and that the majority of these refugees were killed. Although the Chamber is not in a position to make a specific finding on the number of deaths at Gashirabwoba during the attack, the Chamber has found that it was proven beyond a reasonable doubt that a substantial number of refugees were killed. On the basis of the reliable and credible evidence in relation to this event, the Chamber finds that the element of mass killing was proven beyond a reasonable doubt. The Chamber has found that the soldiers acted intentionally with knowledge that their acts formed part of a widespread attack against the civilian population. The majority recalls that it has found in its legal findings on criminal responsibility that Imanishimwe can be held criminally responsible under Article 6(3) of the Statute for the acts of his soldiers during the attack at Gashirabwoba football field because he failed to prevent the crime.

750. Consequently, the Chamber finds that Imanishimwe is criminally responsible under Article 6(3) of the Statute for extermination as a crime against humanity under Article 3(b) for failing to prevent his soldiers' attack on the refugees at the Gashirabwoba football field on 12 April 1994. For the reasons expressed in his separate opinion, Judge Dolenc is of the opinion that it is impermissible to convict on Count 10 because the massacre at Gashirabwoba football field is not contained in the indictment. Therefore, a majority of the Chamber, Judge Dolenc dissenting, finds Imanishimwe guilty on Count 10 of the indictment against him.

(iii)Finding: Count 11 of the Bagambiki/Imanishimwe Indictment - Imprisonment

751. In alleging in Count 11 of the indictment that Imanishimwe is responsible for imprisonment as a crime against humanity, pursuant to Articles 6(1) and 6(3) of the Statute, the Prosecutor relied on paragraphs 3.17, 3.18, 3.21, 3.22, 3.24 and 3.25 of the indictment.

752. Upon considering the evidence in paragraphs 3.17 and 3.18, the Chamber finds that there is insufficient evidence to conclude that Côme Simugomwa and the seventeen refugees removed from Kamarampaka Stadium and Cyangugu Cathedral were imprisoned.

753. Upon considering the evidence related to paragraph 3.21, the Chamber finds that there is insufficient evidence to determine that the refugees at Kamarampaka Stadium were imprisoned, as discussed in greater detail in connection with the charge against Bagambiki in Count 5.

754. In connection with the allegations made in paragraphs 3.24 and 3.25, the Chamber has found that an unknown number of Tutsi and Hutu civilians were arrested

under suspicion of being RPF accomplices and were taken to Karambo military camp where soldiers mistreated them. The Chamber has found that the only reasonable inference to be drawn from the totality of the evidence is that Imanishimwe issued orders authorizing the arrest and detention of civilians with suspected ties to the RPF. In particular, the Chamber has found that, on 11 April 1994, soldiers arrested and detained Witness LI and six other refugees at Karambo camp. The Chamber has also found that after 6 June 1994 soldiers incarcerated Witness MG, his father, and two sisters at Karambo military camp. In addition, the Chamber has found that soldiers incarcerated Witness MA at the end of June 1994. These arrests were not based on valid warrants, nor were these civilians ever formally charged and informed of their procedural rights. The Chamber finds that the soldiers acted intentionally in the execution of Imanishimwe's orders to incarcerate civilians at Karambo military camp. The Chamber finds that the principal perpetrators, soldiers who were also involved in the mistreatment and questioning of these detainees about suspected ties to the RPF, were aware that their acts formed part of a systematic attack on political grounds against the civilian population in Cyangugu.

755. The Chamber finds that by issuing orders authorizing the arrest and detention of civilians with suspected ties to the RPF and by having knowledge that these acts were carried out, Imanishimwe acted intentionally and with awareness that he was encouraging his subordinates to commit crimes against humanity. These orders substantially contributed to the imprisonment of civilians at the Karambo military camp, given Imanishimwe's authority as the camp commander.

756. Consequently, the Chamber finds beyond a reasonable doubt that Imanishimwe is criminally responsible under Article 6(1) of the Statute for imprisonment as a crime against humanity under Article 3(e) for ordering the incarceration of Witness LI and the six refugees arrested with him, Witness MG, his father, and two sisters, and Witness MA. The Chamber need not rely on Article 6(3) of the Statute for its finding of guilt because ordering under Article 6(1) is a more direct form of responsibility and better characterises Imanishimwe's role in the crime. The Chamber, therefore, finds Imanishimwe guilty on Count 11 of the indictment against him.

(iv)Finding: Count 12 of the Bagambiki/Imanishimwe Indictment - Torture

757. In alleging in Count 12 of the indictment that Imanishimwe is responsible for torture as a crime against humanity, pursuant to Articles 6(1) and 6(3) of the Statute, the Prosecutor relied on paragraphs 3.24 and 3.25 of the indictment.

758. In relation to paragraphs 3.24 and 3.25, the Chamber has found that soldiers under Imanishimwe's effective control and partly in his presence mistreated seven refugees in their custody upon arresting them near Cyangugu Cathedral on 11 April 1994. The mistreatment included the soldiers kicking the detainees and beating them with the butts of their rifles. Considering the evidence on the record, including the fact that following their mistreatment, two of the victims were in a position to forcibly escape from detention, the Chamber concludes that the mistreatment was not such as to cause severe suffering or pain sufficient for a finding of torture.

759. The Chamber has also found that soldiers under Imanishimwe's effective control and in his presence severely beat Witness MG and another detainee and

hammered a long nail into the foot of one of the other detainees, removed the nail, and then hammered it into the foot of another detainee while questioning them about their suspected affiliation with the RPF and accusing them of collaborating with the enemy. As a result of this treatment, Witness MG could not stand up for several days. In addition, the two detainees who were injured with the nail screamed in pain in their cell. Solders later removed the two detainees who were never seen or heard from again.

760. On the basis of the foregoing, the Chamber finds that, in mistreating Witness MG and the other three detainees at the Karambo camp, the soldiers were acting intentionally and with the prohibited purpose of obtaining information or confessions from the detainees or of punishing them. Additionally, the Chamber finds that the severe beating as well as the mistreatment with the long nail amounted to infliction of severe physical pain. The Chamber has found that the soldiers at the camp had knowledge that their actions formed part of a systematic attack on political grounds. Thus, the Chamber finds that the soldiers committed torture as a crime against humanity.

761. The Chamber has found that the only reasonable inference to be drawn from the totality of the evidence of the mistreatment and killing of civilians at the Karambo military camp and elsewhere in the region is that Imanishimwe issued orders authorizing the arrest, detention, mistreatment, and execution of civilians with suspected ties to the RPF. The Chamber finds that it was proven beyond a reasonable doubt that by issuing such orders, Imanishimwe acted intentionally and with the awareness that he was encouraging his subordinates to commit crimes against humanity. This order substantially contributed to the torture of Witness MG and the other three detainees with him during the torture, given Imanishimwe's authority as camp commander.

762. The Chamber also finds that Imanishimwe aided and abetted in the torture of Witness MG and the other three detainees with him under Article 6(1) of the Statute, given Imanishimwe's presence in the immediate vicinity during the mistreatment.[1656] The Chamber finds that the principal perpetrators would have perceived Imanishimwe's presence during the torture as approval of their specific conduct and methods of torture and that it would have had a substantial effect on their continued criminal acts, in light of Imanishimwe's role as camp commander, his failure to stop the torture, the nature and frequency of unlawful acts occurring at the camp between April and July 1994, his presence during prior mistreatment, and the Chamber's inference that Imanishimwe issued orders authorizing the mistreatment of civilians with suspected connections to the RPF.

763. Consequently, the Chamber finds beyond a reasonable doubt that Imanishimwe is criminally responsible under Article 6(1) of the Statute for torture as a crime against humanity under Article 3(f) for ordering and aiding and abetting in the torture of civilians. In its findings on criminally responsibility, the Chamber has also found that Imanishimwe can be held criminal responsible for the actions of his soldiers for these acts of torture under Article 6(3) of the Statute. The Chamber need

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[1656] *See Semanza*, Judgement (TC), paras. 385-386.

not rely on Article 6(3) for its finding of guilt because ordering and aiding and abetting under Article 6(1) are more direct forms of responsibility and better characterise Imanishimwe's role in the crime. Therefore, the Chamber finds Imanishimwe guilty on Count 12 of the indictment against him.

D. Article 3 Common to the Geneva Conventions and Additional Protocol II Thereto

764. The Prosecutor charged Ntagerura, Bagambiki, and Imanishimwe, respectively, with serious violations of Common Article 3 and Additional Protocol II under Article 4(a) of the Statute.

765. Article 4(a) of the Statute prescribes that the Tribunal has the power to prosecute persons who committed or ordered serious violations of Common Article 3 or Additional Protocol II amounting to: "Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment." The specific violation of murder requires the intentional killing of another which need not be accompanied by a showing of premeditation.[1657] Torture under Article 4 has the same essential elements as those set forth for torture as a crime against humanity.[1658] Cruel treatment has been defined as an intentional act or omission causing serious mental or physical suffering or injury or constituting a serious attack on human dignity.[1659] The Chamber adopts this definition. The Chamber notes and accepts that cruel treatment is treatment causing serious mental or physical suffering, including that which may be short of the severe suffering required for a finding of torture.[1660]

766. The Chamber explained in the *Semanza* Judgement that in connection with crimes within the scope of Article 4 of the Statute, the Prosecutor must prove, at the threshold, the following elements: (1) the existence of a non-international armed conflict on the territory of the concerned state; (2) the existence of a nexus between the alleged violation and the armed conflict; and (3) the victims were not directly taking part in the hostilities at the time of the alleged violation. If these elements are proven beyond a reasonable doubt, the Chamber will proceed to assess whether the accused is responsible for a specific violation of Common Article 3 or Additional Protocol II.[1661]

767. In the present case, the Chamber has taken judicial notice that "[b]etween 1st January 1994 and 17th July 1994, in Rwanda, there was an armed conflict not of an

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[1657] *Semanza*, Judgement (TC), para. 373.
[1658] *See supra* para. 703. *See also Semanza*, Judgement (TC), paras. 374.
[1659] *See Celebici*, Judgement (AC), para. 424. *See also Naletilic and Martinovic*, Judgement (TC), para. 246; *Blaskic*, Judgement (TC), para. 186; *Jelisic*, Judgement (TC), para. 41; *Celebici* Judgement (TC), para. 552; *Tadic*, Judgement (TC), paras. 723-726. Cruel treatment as a violation of Common Article 3 is equivalent to inhuman treatment as a grave breach under the 1949 Geneva Conventions. *See Celebici*, Judgement (TC), para. 551.
[1660] *Naletilic and Martinovic*, Judgement (TC), para. 246; *Celebici*, Judgement (TC), paras. 542, 551.
[1661] *Semanza*, Judgement (TC), paras. 354-371, 512.

international character."[1662] Accordingly, the first contextual element is established. The Chamber will consider below, as necessary, whether the other elements have been established in connection with the alleged violations.

1. Ntagerura Indictment

768. The Prosecutor charged Ntagerura with serious violations of Common Article 3 and Additional Protocol II under Article 4(a) of the Statute in Count 5 of the indictment against him. In alleging that Ntagerura is individually responsible for this crime, pursuant to Article 6(1) of the Statute, the Prosecutor relied on paragraphs 9 to 19, and particularly paragraphs 14.2, 16, and 18, of the indictment.

769. As discussed in section I.E of this Judgement, the Chamber has decided not to make factual findings in respect of paragraphs 11, 12.1, 13, and 16 of the Ntagerura Indictment because those paragraphs are impermissibly vague and fail to plead any identifiable criminal conduct on the part of the accused. The Chamber has decided to consider paragraph 10 as a general allegation because it refers to background material and does not mention Ntagerura. The Chamber has also decided not to make findings on paragraphs 12.2, 14.2, 15.1, and 15.2 of the indictment because the Prosecution conceded that it had offered no proof in respect of them. Consequently, the Chamber will not consider allegations made in these paragraphs in making a finding on Count 5 of the Ntagerura Indictment.

770. Upon considering the evidence related to paragraphs 9.1, 9.2, 9.3, 14.1, 14.3, and 19 of the Ntagerura Indictment, the Chamber has found that the allegations made against the accused in those paragraphs were not proven beyond a reasonable doubt. In connection with paragraph 9.1 of the indictment, the Chamber has found that Ntagerura attended and addressed a meeting at the Bushenge market on 7 February 1993. The Chamber notes that this meeting occurred outside the temporal scope of the Tribunal's jurisdiction and that the Prosecutor did not prove any link between Ntagerura's participation in the meeting and any subsequent act giving rise to his criminal responsibility. While the Chamber has found that the Prosecutor proved the allegations made in paragraphs 17 and 18 of the indictment, those paragraphs do not allege any criminal conduct on the part of Ntagerura. Consequently, the Chamber finds Ntagerura not guilty on Count 5 of the indictment against him for serious violations of Common Article 3 and Additional Protocol II under Article 4(a) of the Statute.

2. Bagambiki/Imanishimwe Indictment

a. Bagambiki

771. The Prosecutor charged Bagambiki with serious violations of Common Article 3 and Additional Protocol II under Article 4(a) of the Statute in Count 6 of the Bagambiki/Imanishimwe Indictment. In alleging that Bagambiki is individually

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[1662] *Prosecutor v. Ntagerura, Bagambiki, and Imanishimwe*, ICTR 99-46-T, Oral Decision on the Proposed Expert Reports and Evidence of Antoine Nyetera, Uwe Friesecke, and Wayne Madsen (TC), T. 4 July 2002 p. 9.

responsible for this crime, pursuant to Articles 6(1) and 6(3) of the Statute, the Prosecutor relied on paragraphs 3.16, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.26, 3.27, and 3.28 of the indictment.

772. The Chamber has found that the allegations made against Bagambiki in paragraph 3.16 of the indictment were not proven beyond a reasonable doubt.

773. Upon considering the evidence related to paragraphs 3.17 and 3.18 of the Bagambiki/Imanishimwe Indictment, the Chamber has found that Bagambiki and Imanishimwe received names of people with suspected ties to the RPF from assailants who were threatening to attack Kamarampaka Stadium. The Chamber has found that Bagambiki and Imanishimwe discussed these names with other members of the prefectural security council and then removed sixteen Tutsis and one Hutu, who was a local leader of a political opposition party, from Kamarampaka Stadium and Cyangugu Cathedral on 16 April 1994. A majority of the Chamber, Judge Ostrovsky dissenting, has found further that Bagambiki and Imanishimwe came to the Gashirabwoba football field on 11 April 1994 looking for Ephrem and Côme Simugomwa and that they removed Côme Simugomwa, who was a local leader of a political opposition party. Côme Simugomwa was found dead after the genocide. The Chamber lacks sufficient evidence to determine whether Bagambiki participated in the preparation of lists of names for the purpose of eliminating the identified individuals or whether he gave such lists to *Interahamwe*. The majority of the Chamber, Judge Williams dissenting, lacks sufficient reliable evidence to determine if Bagambiki can bear any criminal responsibility for the deaths of these refugees.

774. Paragraphs 3.19 and 3.20 of the indictment do not mention Bagambiki and, in this section, the Chamber will discuss its findings in respect of these paragraphs only if necessary.

775. Upon considering the evidence related to paragraph 3.21 of the Bagambiki/Imanishimwe Indictment, the Chamber has found beyond a reasonable doubt that, on 15 April 1994, Bagambiki told refugees at Cyangugu Cathedral that they were to be moved to Kamarampaka Stadium. However, there is no reliable evidence on the record that the refugees who refused to move to the stadium were threatened with death.

776. As concerns the allegations made against Bagambiki in paragraph 3.22 of the indictment, the Chamber has found beyond a reasonable doubt that Bagambiki escorted the refugees from the cathedral to the stadium and that, once the refugees were in the stadium, their movement was curtailed. The Chamber has found that was not proven beyond a reasonable doubt that refugees who attempted to leave the stadium were forced back by gendarmes or that gendarmes or *Interahamwe* executed refugees at the stadium.

777. In respect of the allegations made against Bagambiki in paragraph 3.23 of the indictment, the Chamber has found that, on 16 April 1994, Bagambiki came to the cathedral accompanied by Imanishimwe and soldiers and that they took away four refugees for questioning regarding their possible financial contributions to the RPF. Subsequently, Bagambiki, accompanied by Imanishimwe, civilian and military authorities, and soldiers, came to the stadium where he selected twelve Tutsi refugees and one Hutu to be taken from the stadium for questioning because of their suspected

connections with the RPF. In Bagambiki's presence, soldiers arrested the selected refugees and removed them from the stadium. These refugees joined the four other Tutsi refugees who had just been removed from Cyangugu Cathedral. Sixteen of these refugees were then killed during the evening or the night of 16 April 1994. A majority of the Chamber, Judge Williams dissenting, has concluded in its factual findings that it lacks sufficient reliable evidence to determine if Bagambiki can bear any criminal responsibility for the deaths of the sixteen refugees removed from the stadium and the cathedral on 16 April 1994. The Chamber finds that it has not been proven that Bagambiki was involved in any other selection at the stadium.

778. A majority of the Chamber, Judge Williams dissenting, has found that the allegations made against Bagambiki in paragraph 3.26 of the indictment were not proven beyond a reasonable doubt.

779. Concerning the allegations made in paragraph 3.27 of the indictment, the Chamber has found that, on 15 April 1994, Bourgmestre Kamana, commune police, and conseillers of several sectors in Kagano commune participated in an attack on refugees at Nyamasheke parish. The Chamber has further found that, on 18 April 1994, one of the gendarmes guarding Mibilizi parish distributed his grenades to the attackers and that, on 26 April 1994, gendarmes mistreated the refugees taken from Shangi parish at a gendarmerie camp.

780. The Chamber has determined in its legal findings on criminal responsibility that Bagambiki can not be held criminally responsible as a superior under Article 6(3) of the Statute for the acts of soldiers, gendarmes, or conseillers from Kagano commune because the Prosecutor did not establish the existence of a superior-subordinate relationship. In its legal findings on criminal responsibility, the Chamber has also concluded that Bagambiki can not be held criminally responsible for the acts of Kamana because it lacks sufficient reliable evidence to determine whether Bagambiki knew or should have known that Kamana would participate in the attack. In addition, the Chamber lacks sufficient reliable evidence to determine whether Bagambiki failed to take reasonable measures to punish Kamana for his role in the massacre. The Chamber has further found that Bagambiki can not be held criminally responsible for the acts of the Kagano commune police because the Prosecutor failed to establish that Bagambiki knew or should have known about their participation in the massacre.

781. In respect of paragraph 3.28 of the indictment, the Chamber has concluded in its legal findings on criminal responsibility that Bagambiki cannot be held responsible under Article 6(1) of the Statute for an omission of his duty to act under the Rwandan Law on the Organisation and Function of the Prefecture.

(i) Finding: Count 6 of the Bagambiki/Imanishimwe Indictment

782. Upon considering the evidence related to paragraphs 3.16, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.26, 3.27, and 3.28 of the Bagambiki/Imanishimwe Indictment, a majority of the Chamber, Judge Williams dissenting, finds that it was not proven beyond a reasonable doubt that Bagambiki is criminally responsible for the serious violations of Common Article 3 and Additional Protocol II set forth under Article 4(a) of the Statute. The Prosecutor either failed to prove the allegations set forth in these paragraphs with respect to the material facts of the crime or failed to

adequately demonstrate that Bagambiki could be held criminally responsible as a principal perpetrator, accomplice, or superior.

783. Consequently, a majority of the Chamber, Judge Williams dissenting, finds Bagambiki not guilty on Count 6 of the indictment against him for the serious violations of Common Article 3 and Additional Protocol II set forth under Article 4(a) of the Statute.

b. Imanishimwe

784. The Prosecutor charged Imanishimwe with serious violations of Common Article 3 and Additional Protocol II under Article 4(a) of the Statute in Count 13 of the Bagambiki/Imanishimwe Indictment. In alleging that Imanishimwe is individually responsible for this crime, pursuant to Articles 6(1) and 6(3) of the Statute, the Prosecutor relied on paragraphs 3.17, 3.18, 3.20, 3.21, 3.22, 3.23, 3.24, 3.25, and 3.30 of the indictment.

785. Upon considering the evidence related to paragraphs 3.17 and 3.18 of the Bagambiki/Imanishimwe Indictment, the Chamber has found that Bagambiki and Imanishimwe received names of people with suspected ties to the RPF from assailants who were threatening to attack Kamarampaka Stadium. The Chamber has found that Bagambiki and Imanishimwe discussed these names with other members of the prefectural security council and then removed sixteen Tutsis and one Hutu, who was a local leader of a political opposition party, from Kamarampaka Stadium and Cyangugu Cathedral on 16 April 1994. A majority of the Chamber, Judge Ostrovsky dissenting, has found further that Bagambiki and Imanishimwe came to the Gashirabwoba football field on 11 April 1994 looking for Ephrem and Côme Simugomwa and that they removed Côme Simugomwa, who was a local leader of a political opposition party. Côme Simugomwa was found dead after the genocide. However, the Chamber lacks sufficient evidence to determine whether Imanishimwe participated in the preparation of lists of names for the purpose of eliminating the identified individuals or whether he gave such lists to *Interahamwe*. The Chamber has concluded in its factual findings that it lacks sufficient reliable evidence to determine if Imanishimwe can bear any criminal responsibility for the deaths of these refugees.

786. The Chamber has found that, on 11 April 1994, soldiers arrested at least seven refugees, including Witness LI, near Cyangugu Cathedral and took them to the Karambo military camp in Cyangugu, as alleged in paragraph 3.20 of the indictment. Upon arrival at the camp, the soldiers presented the refugees to Imanishimwe as "*Inyenzi-Inkotanyi*" whom they had caught in the bush. The soldiers repeatedly kicked and beat the refugees, including with the butts of their rifles, from the time of their arrest and through their incarceration at the camp. Imanishimwe was present during a part of the beatings, but he did not attempt to stop them. During their incarceration at the camp, soldiers beat the detainees again with wooden sticks and rifle butts while threatening to beat them to death.

787. In respect of allegations made against Imanishimwe in paragraph 3.21 of the indictment, the Chamber has found that he participated in making the decision to move the refugees from Cyangugu Cathedral to Kamarampaka Stadium. However, the Chamber has not found that Imanishimwe escorted the refugees from the cathedral to the stadium, as alleged in paragraph 3.22.

788. In connection with paragraph 3.23, the Chamber has found beyond a reasonable doubt that Imanishimwe was present at the cathedral and the stadium on 16 April 1994 when Bagambiki selected seventeen refugees for arrest and questioning about their alleged ties to the RPF. Moreover, in respect of paragraph 3.18, the Chamber has found beyond a reasonable doubt that soldiers participated in the arrest of the selected refugees at the cathedral and at the stadium on 16 April 1994. The Chamber has found that Imanishimwe was present during these arrests. Imanishimwe and his soldiers took the arrested refugees away for questioning concerning their ties to the RPF. Later that evening or during the night sixteen of the refugees were killed. The Chamber has concluded in its factual findings that it lacks sufficient reliable evidence to determine whether Imanishimwe can bear any criminal responsibility for the death of these sixteen refugees.

789. In connection with the allegations made in paragraphs 3.24 and 3.25 of the indictment, the Chamber has found that unknown numbers of Tutsi and Hutu civilians were arrested on suspicion of being RPF accomplices and were taken to Karambo military camp where soldiers mistreated them. In particular, the Chamber has found beyond a reasonable doubt that, on 6 June 1994, Imanishimwe participated with his soldiers in the arrest of civilians at Kamembe city market and that he instructed soldiers to have Witness MG and his family killed at Gatandara, which was prevented by gendarmes. The gendarmes took Witness MG and his family to the gendarmerie camp. Subsequently, soldiers, acting on orders of Imanishimwe, removed Witness MG, his father, and two sisters from the gendarmerie camp and incarcerated them at Karambo military camp, where in the presence of Imanishimwe, the soldiers severely beat Witness MG and another detainee and hammered a nail into the foot of one detainee, removed the nail, and then hammered it into the foot of another detainee. During this mistreatment, the soldiers questioned the detainees, all of whom were Tutsi civilians, as to whether they were members of the RPF and accused them of collaborating with the enemy. Imanishimwe did nothing to stop or restrain the soldiers during their mistreatment of the detainees. As a result of this mistreatment, Witness MG could not stand up for several days, and the two detainees who were mistreated with the nail screamed in pain in their cell. Soldiers later removed the two detainees who were never seen or heard from again.

790. The Chamber has also found that soldiers from Karambo military camp killed or facilitated the killing of Witness LI's brother and a former classmate, as well as Witness MG's sister and her cellmate Mbembe, all of whom the soldiers had first incarcerated at the camp. The Chamber has inferred that Imanishimwe, as the commander of the camp, issued orders to soldiers authorizing the arrest, detention, mistreatment, and execution of civilians with suspected ties to the RPF.[1663] As such, the Chamber has found that soldiers killed or facilitated the killing of Witness LI's brother and his classmate and Witness MG's sister and her cellmate Mbembe on the orders of Imanishimwe. In addition, the Chamber has found that, at the end of June 1994, Imanishimwe ordered the detention of Witness MA.

[1663] *See supra* para. 410.

791. Finally, in connection with paragraphs 3.25 and 3.30, the Chamber has found beyond a reasonable doubt that soldiers participated in the massacre of mainly Tutsi civilian refugees at the Gashirabwoba football field on 12 April 1994.

(i) Finding: Count 13 of the Bagambiki/Imanishimwe Indictment

Victims

792. Upon considering the evidence relevant to Count 13 of the indictment against Imanishimwe, the Chamber finds beyond a reasonable doubt that the victims, mainly Tutsi refugees gathered at various sites in Cyangugu and other Tutsi civilians in the prefecture, were not taking a direct part in the non-international armed conflict in Rwanda at the time they suffered the alleged violations of Article 4(a) of the Statute.

Nexus

793. Recalling its discussion in the *Semanza* Judgement on determining the existence of a nexus between the alleged offence and the underlying armed conflict,[1664] the Chamber finds beyond a reasonable doubt that the said violations had the requisite nexus with the armed conflict between the Rwandan government forces and the RPF. The evidence shows that, on 6 June 1994, soldiers arrested Witness MG and three other members of his family because of their suspected ties to the RPF. Moreover, when soldiers subsequently beat and otherwise mistreated Witness MG and his co-detainees at the military camp, they questioned them concerning whether they were members of the RPF and accused them of collaborating with the enemy. Similarly, on 11 April 1994, soldiers presented Witness LI and the other refugees brought to the camp with him to Imanishimwe as "*Inyenzi-Inkotanyi*", a reference to those associated with the RPF. The Chamber finds that the soldiers' actions were motivated by their search for enemy combatants and those associated with them or, at least, that their actions were carried out under the pretext of such a search. As such, the Chamber considers that the soldiers were acting in furtherance of the armed conflict or under its guise. Likewise, the Chamber considers that when soldiers took part in the massacre of refugees at the Gashirabwoba football field on 12 April 1994, they did so under the guise of the underlying armed conflict. This is sufficient to establish that the alleged violations of Article 4(a) had the requisite nexus to the armed conflict.[1665] The Chamber, therefore, finds that the element of nexus between the crimes and the armed conflict has been satisfied.

Murder

794. The Chamber has found that soldiers under Imanishimwe's effective control participated in the killing of refugees at the Gashirabwoba football field. A group of at least fifteen armed soldiers surrounded the refugees and, after the refugees had raised their hands and asked for peace, the soldiers fired and threw grenades at them for about thirty minutes, killing many of the refugees. The Chamber consequently finds that in doing so the soldiers engaged in intentional killing of the refugees within the

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[1664] *Semanza*, Judgement (TC), para. 517.
[1665] *Semanza*, Judgement (TC), para. 517. *See also Rutaganda*, Judgement (AC), paras. 569, 570, 577-579; *Kunarac*, Judgement (AC), para. 58.

scope of Article 4(a) of the Statute. Though it was not established that Imanishimwe was present during the attack, the Chamber has found that he knew or should have known that his subordinates would have participated in the attack. Thus, the Chamber finds that Imanishimwe is criminally responsible for the acts of his subordinates at the Gashirabwoba football field pursuant to Article 6(3) of the Statute because he failed to prevent the crime. The Chamber also recalls that Imanishimwe did not punish any soldier at the camp for this attack.

795. The Chamber has also found that soldiers under Imanishimwe's effective control and acting on Imanishimwe's orders killed or facilitated the killing of Witness LI's brother and his classmate and Witness MG's sister and her cellmate Mbembe. The Chamber has no doubt that the soldiers acted with the intention to kill these four individuals and, consequently, finds that the soldiers' participation in the murder constitutes a crime within Article 4(a) of the Statute. The Chamber has inferred that Imanishimwe as the commander of the camp issued orders to soldiers authorizing the arrest, detention, mistreatment, and execution of civilians with suspected ties to the RPF. In its findings on criminal responsibility, the Chamber has also found that Imanishimwe can be held criminally responsible under Article 6(3) for the acts of the soldiers who were the principal perpetrators of these killings because he knew or should have known that his soldiers would participate in the killing of these refugees and because he failed to prevent the crimes. The Chamber also recalls that Imanishimwe did not punish any soldier in the camp for these killings, which further indicates his acquiescence in the attack.

Torture

796. The Chamber has found that soldiers under Imanishimwe's effective control and in his presence severely beat Witness MG and another detainee and hammered a long nail into the foot of one detainee, removed the nail, and hammered it into the foot of another detainee while questioning them whether they were members of the RPF and accusing them of collaborating with the enemy. As a result of this mistreatment, Witness MG could not stand up for several days, and the two detainees who had been mistreated with the nail screamed in pain in their cell. Later, soldiers removed those two detainees from the cell, and they were never seen or heard from again.

797. On the basis of the foregoing, the Chamber finds that, in mistreating Witness MG and the other three detainees, the soldiers were acting intentionally and with the aim of obtaining information or confessions from the detainees or punishing them. Additionally, the Chamber finds that the severe beating and mistreatment with the long nail amounted to infliction of severe physical pain. Consequently, the Chamber finds beyond a reasonable doubt that this mistreatment constituted torture within the scope of Article 4(a) of the Statute.

798. The Chamber has inferred that Imanishimwe, as the commander of the camp, issued orders to soldiers authorizing the arrest, detention, mistreatment, and execution of civilians with suspected ties to the RPF. The Chamber also finds that Imanishimwe aided and abetted in the torture of Witness MG and the other three detainees within the meaning of Article 6(1) of the Statute given Imanishimwe's presence in the

immediate vicinity during the mistreatment.[1666] The Chamber finds that the principal perpetrators would have perceived Imanishimwe's presence during the torture as approval of their conduct. The Chamber finds that this presence would have had a substantial effect on their criminal acts, in light of Imanishimwe's role as camp commander, his failure to stop the torture, the nature and frequency of unlawful acts occurring at the camp between April and July 1994, his presence during prior mistreatment, and the Chamber's inference that Imanishimwe issued orders authorizing the mistreatment of civilians with suspected connections to the RPF. In its findings on criminal responsibility, the Chamber has also found that Imanishimwe can be held criminally responsible under Article 6(3) for the acts of the soldiers who were the principal perpetrators of these acts because he knew or should have known that his soldiers would participate in the mistreatment of these refugees and because he failed to prevent the crimes. The Chamber also recalls that Imanishimwe did not punish any soldier in the camp for these acts.

Cruel Treatment

799. The Chamber has found that soldiers under Imanishimwe's effective control and partly in his presence mistreated seven refugees in their custody upon arresting them near Cyangugu Cathedral on 11 April 1994. The mistreatment included the soldiers kicking the detainees and beating them, including with the butts of their rifles. This mistreatment started upon arrest and continued for approximately half a day. During part of the mistreatment at Karambo military camp, the soldiers told the detainees that they were going to beat them to death. Eventually, after soldiers took the other detainees away, Witness LI and another detainee forced their way from their cell, and Witness LI ran and swam to safety in Zaire.

800. Considering the evidence on the record, including the fact that following their mistreatment, two of the victims were in a position to forcibly escape from detention, the Chamber concludes that the mistreatment was not such as to cause severe suffering or pain sufficient for a finding of torture. The Chamber has no doubt, however, that the soldiers' mistreatment of the detained refugees was intentional and that, because of its long duration and the way it was carried out, it caused serious physical suffering to the victims. Consequently, the Chamber finds that this mistreatment constituted cruel treatment within the scope of Article 4(a) of the Statute.

801. The Chamber has inferred that Imanishimwe, as the commander of the camp, issued orders to soldiers authorizing the arrest, detention, mistreatment, and execution of civilians with suspected ties to the RPF. The Chamber also finds that Imanishimwe aided and abetted in the cruel treatment of Witness LI and the other six refugees with him under Article 6(1) of the Statute, given Imanishimwe's presence in the immediate vicinity during part of the mistreatment.[1667] The Chamber finds that the principal perpetrators would have perceived Imanishimwe's presence during the cruel treatment as approval of their specific conduct. The Chamber also finds that his presence would have had a substantial effect on their continued criminal acts, in light of Imanishimwe's role as camp commander, his failure to stop the cruel treatment, the

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[1666] *Semanza*, Judgement (TC), paras. 385-386.
[1667] *Semanza*, Judgement (TC), paras. 385-386.

nature and frequency of unlawful acts occurring at the camp between April and July 1994, and the Chamber's inference that Imanishimwe must have issued orders authorizing the mistreatment of civilians with suspected connections to the RPF. In its findings on criminal responsibility, the Chamber has also found that Imanishimwe can be held criminally responsible under Article 6(3) for the acts of the soldiers who were the principal perpetrators of these acts.

Conclusion

802. Consequently, the Chamber finds beyond a reasonable doubt that Imanishimwe is criminally responsible under Article 6(1) of the Statute for serious violations of Common Article 3 pursuant to Article 4(a) of the Statute for ordering the murder of Witness LI's brother and his former classmate and Witness MG's sister and her cellmate Mbembe. The Chamber also finds that Imanishimwe is criminally responsible under Article 6(1) of the Statute for ordering and aiding and abetting in the torture of Witness MG and three other detainees mistreated with him and the cruel treatment of Witness LI and six other detainees with him. The Chamber need not rely on Article 6(3) of the Statute for these crimes because ordering and aiding and abetting under Article 6(1) are more direct forms of responsibility which better characterise Imanishimwe's role in these crimes. The Chamber further finds beyond a reasonable doubt that Imanishimwe is criminally responsible under Article 6(3) of the Statute for serious violations of Common Article 3 pursuant to Article 4(a) of the Statute for failing to prevent the crimes of his subordinates in relation to the events at Gashirabwoba football field on 12 April 1994.

803. For the reasons expressed in his separate opinion, Judge Dolenc considers that it would be impermissible to convict on Count 13 of the Bagambiki/Imanishimwe Indictment because the Gashirabobwa massacre is not contained in the indictment and because of the apparent ideal concurrence of the crimes charged therein with murder, extermination, and torture as crimes against humanity charged in Counts 9, 10, and 12. Therefore, a majority of the Chamber, Judge Dolenc dissenting, finds Imanishimwe guilty on Count 13 of the indictment against him.

IV. THE VERDICT

804. For the reasons set out in this Judgement, having considered all the evidence and arguments, the Trial Chamber finds in respect of Ntagerura as follows:

Unanimously:

Count 1: NOT GUILTY of Genocide

Count 2: NOT GUILTY of Conspiracy to Commit Genocide

Count 3: NOT GUILTY of Complicity in Genocide

Count 4: NOT GUILTY of Crimes Against Humanity (Extermination)

Count 5: NOT GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions (Article 4(a) of the Statute)

Count 6: NOT GUILTY of Complicity in Genocide

805. For the reasons set out in this Judgement, having considered all the evidence and arguments, the Trial Chamber finds in respect of Bagambiki as follows:

Unanimously:

Count 2: NOT GUILTY of Complicity in Genocide

Count 5: NOT GUILTY of Crimes Against Humanity (Imprisonment)

Count 19: NOT GUILTY of Conspiracy to Commit Genocide

By a majority:

Count 1: NOT GUILTY of Genocide (Judge Williams dissenting)

Count 3: NOT GUILTY of Crimes Against Humanity (Murder) (Judge Williams dissenting)

Count 4: NOT GUILTY of Crimes Against Humanity (Extermination)(Judge Williams dissenting)

Count 6: NOT GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions (Article 4(a) of the Statute)(Judge Williams dissenting)

806. For the reasons set out in this Judgement, having considered all the evidence and arguments, the Trial Chamber finds in respect of Imanishimwe as follows:

Unanimously

Count 8: NOT GUILTY of Complicity in Genocide

Count 9: GUILTY of Crimes Against Humanity (Murder)

Count 11: GUILTY of Crimes Against Humanity (Imprisonment)

Count 12: GUILTY of Crimes Against Humanity (Torture)

By a majority:

Count 7: GUILTY of Genocide (Judge Dolenc dissenting)

Count 10: GUILTY of Crimes Against Humanity (Extermination)(Judge Dolenc dissenting)

Count 13: GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions (Article 4(a) of the Statute)(Judge Dolenc dissenting)

807. The Chamber recalls that it has previously found Imanishimwe not guilty on Count 19 for conspiracy to commit genocide.[1668]

[1668] T. 6 March 2002 pp. 54, 68.

V. SENTENCING

808. The Chamber has found Imanishimwe guilty on Counts 7, 9, 10, 11, 12, and 13 of the indictment against him for genocide, crimes against humanity, and serious violations of Common Article 3. Accordingly, the Chamber now addresses the issue of sentencing Imanishimwe pursuant to Article 22 of the Statute.

809. In accordance with Article 23 of the Statute and Rule 101 of the Rules, the Chamber will consider the general sentencing practice in Rwanda, the gravity of the offences, and the individual circumstances of the accused, as well as any other aggravating or mitigating circumstances.

A. Sentencing Principles and Practices

810. The Chamber has also taken into consideration the sentencing practice in the Rwandan courts, as evidenced by the penalties for similar crimes prescribed in the Rwandan Penal Code and the Organic Law,[1669] as well as the sentencing practices of this Tribunal and of the International Criminal Tribunal for the Former Yugoslavia. In doing so, the Chamber has not lost sight of its overarching obligation to tailor the sentence to the gravity of the crime and to the individual circumstances of the offender.[1670]

811. The Rwandan Penal Code provides for fixed term sentences of up to a maximum of twenty years' imprisonment or, exceptionally, up to thirty years' imprisonment in cases of concurrent offences.[1671] The most serious crimes, such as murder, may be punished by life imprisonment or death.[1672] The Code specifically provides that accomplices may be subject to the same penalties as the principal authors of the crime.[1673] The Rwandan Organic Law indicates that, even for genocide and crimes against humanity, the ordinary Penal Code sentences shall apply with certain modifications, which include heightened penalties of death and life imprisonment, respectively, for Categories 1 and 2 perpetrators.[1674]

812. The Chamber has also examined the sentencing practice of this Tribunal and of the International Criminal Tribunal for the Former Yugoslavia. The Chamber notes

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[1669] Loi Organique n° 08/96 du 30/08/96 Sur L'organisation des poursuites des infractions constitutives du crime de génocide ou de crimes contre l'humanité, commises a partir du 1er Octobre 1990, Journal Officiel n° 17 du 1/9/1996 (Rwanda).

[1670] *Semanza*, Judgement (TC), para. 560; *Celebici*, Judgement (AC), paras. 717, 719 ("[T]he Appeals Chamber notes that as a general principle such comparison is often of limited assistance. While it does not disagree with a contention that it is to be expected that two accused convicted of similar crimes in similar circumstances should not in practice receive very different sentences, often the differences are more significant than the similarities, and the mitigating and aggravating factors dictate different results. They are therefore not reliable as the *sole* basis for sentencing an individual.").

[1671] C. Pén. arts. 35, 93 (Rwanda).

[1672] *See, e.g.*, C. Pén. arts. 311-317 (Rwanda).

[1673] C. Pén. art. 89 (Rwanda).

[1674] Loi Organique n° 08/96 du 30/08/96 Sur L'organisation des poursuites des infractions constitutives du crime de génocide ou de crimes contre l'humanité, commises a partir du 1er Octobre 1990, Journal Officiel n° 17 du 1/9/1996, art. 14 (Rwanda).

that the practice of awarding a single sentence for the totality of an accused's conduct makes it difficult to determine the range of sentences for each specific crime.[1675] Notwithstanding this difficulty, it is possible to ascertain general ranges of sentences which may provide useful guidance to the Chamber in determining the appropriate sentence in this case.

813. Principal perpetrators convicted of either genocide or extermination as a crime against humanity, or both, have been punished with sentences ranging from fifteen years' imprisonment[1676] to life imprisonment.[1677] Secondary or indirect forms of participation have generally resulted in a lower sentence. For example, Georges Ruggiu received a twelve year sentence for incitement to commit genocide after a plea of guilty,[1678] and Elizaphan Ntakirutimana received a ten year sentence for aiding and abetting genocide, with a special emphasis on his advanced age.[1679]

814. While the Chamber has considered the sentencing ranges, it has not lost sight of its overarching obligation to tailor the sentence to the gravity of the crime and to the individual circumstances of the offender.[1680]

815. The Prosecution has recommended life imprisonment for each count on which the accused is convicted.[1681] According to Rule 101, an accused, upon conviction, may be sentenced to imprisonment for a fixed term or for the remainder of his life. The Chamber considers that life imprisonment, which is the highest penalty permissible under the ICTR Statute, should be reserved for the most serious offenders, such as individuals who planned, led, or ordered a particular criminal act, or individuals who committed crimes with particular cruelty, and underscores the significance of the principle of gradation in sentencing, which allows the Chamber to distinguish among crimes, based on their gravity.[1682]

816. The Chamber acknowledges that Article 23 of the Statute and Rule 101(A) endorse the principle of gradated sentencing, insofar as they provide for flexibility in determining the sentence to be imposed. Accordingly, convictions for genocide, crimes against humanity, or serious violations of Common Article 3 and Additional Protocol II, pursuant to Articles 2, 3, and 4 of the Statute, may each engender the highest sentence if the circumstances of the case, after assessment of any mitigating and individual factors, are deemed to so require. However, not all individuals who are

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[1675] *See, e.g., Semanza*, Judgement (TC), para. 564.
[1676] *Semanza*, Judgement (TC), para. 585; *Serushago*, Sentence (TC), p. 15.
[1677] *Musema*, Judgement (TC), para. 1008; *Rutaganda*, Judgement (TC), para. 473; *Kayishema and Ruzindana*, Sentence (TC), para. 27; *Akayesu*, Sentence (TC), p. 13; *Kambanda*, Judgement (TC), p. 28.
[1678] *Ruggiu*, Judgement (TC), p. 19.
[1679] *Ntakirutimana*, Judgement (TC), paras. 898, 906, 921.
[1680] *Celebici*, Judgement (AC), paras. 717, 719 ("[T]he Appeals Chamber notes that as a general principle such comparison is often of limited assistance. While it does not disagree with a contention that it is to be expected that two accused convicted of similar crimes in similar circumstances should not in practice receive very different sentences, often the differences are more significant than the similarities, and the mitigating and aggravating factors dictate different results. They are therefore not reliable as the *sole* basis for sentencing an individual.").
[1681] T. 11 August 2003 p. 53.
[1682] *See Semanza*, Judgement (TC), para. 560; *Ntakirutima*, Judgement (TC), para. 884 ; *Musema*, Judgement (AC), paras. 381-382; *Delalic*, Judgement (AC), para. 849.

convicted of one or more of the three enumerated crimes in Articles 2, 3, and 4 will necessarily be sentenced to serve the most severe punishment.[1683]

B. Aggravating Factors

817. The Prosecutor alleged several aggravating factors to be considered in the Chamber's determination of an appropriate sentence. The Chamber acknowledges, however, that only those allegations that were proven beyond a reasonable doubt may be considered in aggravation of Imanishimwe's sentence.[1684]

818. Imanishimwe, as commander of the Karambo military camp in Cyangugu, abused his position as a trained military officer responsible for the command of his soldiers. Indeed the Chamber has found that Imanishimwe had or should have had knowledge of the criminal offences committed by the soldiers under his effective control but that he failed to prevent or to punish such offences. It has also been determined that these soldiers would have perceived Imanishimwe's failure to prevent or to punish their crimes to signify his approbation. Similarly, the Chamber has found that Imanishimwe's presence during the commission of some of the soldiers' offences, including the torture and mistreatment of victims at the Karambo military camp, to represent approval of their criminal conduct. It is particularly egregious that, as a military officer with the mandate to provide national security, Imanishimwe was responsible for his subordinates' attacks on and mistreatment of numerous individuals, primarily of Tutsi ethnicity, as well as for promoting insecurity in the Cyangugu prefecture.

819. Although Imanishimwe may not have had a significant role in the context of the wider conflict in Rwanda, his criminal conduct and the nature of the crimes for which he bears criminal responsibility are of grave significance. He was the commander of a military camp and responsible for the conduct of all soldiers in the entire Cyangugu prefecture. As such, he would have been respected by his subordinates and would have set an example by his behaviour. The Chamber finds that Imanishimwe was in a position to exert effective control over the soldiers under his command and that he could have played a significant role in the prevention of crimes. However, instead of doing so, Imanishimwe ordered, aided and abetted in, or sanctioned the commission of the crimes in Cyangugu prefecture. Accordingly, the Chamber finds that the command role played by Imanishimwe in Cyangugu prefecture to constitute an aggravating factor in sentencing.

C. Mitigating Factors

820. The Imanishimwe Defence made no sentencing submissions. However, it presented a detailed description of Imanishimwe's professional background prior to the conflict in Rwanda in 1994. The Chamber notes that Imanishimwe's background

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[1683] *See Nitakirutima*, Judgement (TC), para. 886.

[1684] *Semanza*, Judgement (TC), para. 565; *Ntakirutimana*, Judgement (TC), para. 893; *Delalic*, Judgement (AC), para. 763; *Vasiljevic*, Judgement (TC), para. 272.

prior to the 1994 conflict in Rwanda, as submitted by the Defence,[1685] includes work with several religious and benevolent associations, as well as a university degree in social sciences and military studies, followed by five years of military command experience. The Chamber does not consider Imanishimwe's background, as submitted by the Defence, to be a factor to mitigate his sentence. The Chamber notes that the Imanishimwe Defence made no submissions concerning any significant personal, medical, or other relevant circumstances that could influence sentencing considerations.

D. Conclusion

1. Genocide and Extermination (Counts 7 and 10)

821. Imanishimwe has been convicted pursuant to Article 6(3) of the Statute for the killings perpetrated by soldiers under his authority and effective control at the Gashirabwoba football field on 12 April 1994. For this massacre, the Chamber entered convictions against Imanishimwe for genocide (Count 7) and extermination as a crime against humanity (Count 10).

822. Having considered the relevant sentencing practices, Rwandan law, as well as Imanishimwe's individual circumstances, the Chamber finds that the appropriate sentence for the accused for the crime of genocide (Count 7) and crimes against humanity (Count 10) is two terms of fifteen years' imprisonment.

823. As these crimes are based on an identical set of facts, the massacre of Tutsi refugees at the Gashirabwoba football field on 12 April 1994, the sentences for these two crimes will run concurrently.

2. Murder, Imprisonment, and Torture as Crimes Against Humanity (Counts 9, 11, and 12) and Murder, Torture, and Cruel Treatment as Serious Violations of Common Article 3and Additional Protocol II (Count 13)

824. Imanishimwe has been convicted pursuant to Article 6(1) for ordering the murder of Witness LI's brother and his former classmate and for the murder of Witness MG's sister and her cellmate Mbembe. Imanishimwe has also been convicted pursuant to Article 6(1) for ordering the imprisonment of civilians at the Karambo military camp in Cyangugu including Witness LI and the six refugees arrested with him, Witness MG, his father, his two sisters, and Witness MA. In addition, Imanishimwe has also been convicted pursuant to Article 6(1) for ordering and aiding and abetting in the torture of Witness MG and the three detainees tortured with him as well as the cruel treatment of Witness LI and the six refugees arrested with him. Imanishimwe has been convicted pursuant to Article 6(3) for failing to prevent his soldiers participation in the massacre at the Gashirabwoba football field. For the ordering, aiding and abetting in, or failing to prevent these crimes, the Chamber has entered convictions against Imanishimwe for murder (Count 9), imprisonment (Count

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[1685] Imanishimwe Defence Closing Brief, paras. 31, 33.

11), and torture (Count 12) as crimes against humanity and for serious violations of Common Article 3 (Count 13).

825. Having considered the relevant sentencing practices, Rwandan law, as well as Imanishimwe's individual circumstances, the Chamber finds that the appropriate sentence for the accused for murder as a crime against humanity (Count 9) is ten years' imprisonment. The Chamber finds that the appropriate sentence for the accused for the crime of imprisonment as a crime against humanity (Count 11) is three years' imprisonment. The Chamber finds that the appropriate sentence for the accused for torture (Count 12) as a crime against humanity is ten years' imprisonment. The Chamber considers that the convictions for crimes against humanity should run concurrently because they are based on connected events at the military camp and are based in part on the same orders issued by Imanishimwe authorizing the arrest, detention, mistreatment, and execution of individuals with suspected ties to the RPF.

826. The conviction for serious violations of Common Article 3 is based, in part, on the same facts as those for the conviction for crimes against humanity, specifically murder and torture. With this in mind, the Chamber finds that the conviction on Count 13 should mirror the concurrent sentence accorded for those crimes as well as take into consideration Imanishimwe's criminal responsibility for cruel treatment. Therefore, the Chamber finds that the appropriate sentence for serious violations of Common Article 3 (Count 13) is twelve years' imprisonment. The Chamber also considers that this sentence should run concurrently with the convictions for crimes against humanity.

3. Conclusion

827. The Chamber finds that the concurrent sentences for Counts 9, 11, 12, and 13 shall be served consecutively to the concurrent sentences for Counts 7 and 10. Accordingly, Imanishimwe's total sentence shall be twenty-seven years' imprisonment.

828. Imanishimwe is entitled to credit for time served to be calculated from the date of his initial arrest in Kenya on 11 August 1997. Credit for time served has been calculated as six years, six months, and fourteen days. Therefore, as of 25 February 2004, there will remain twenty years, five months, and sixteen days in Imanishimwe's sentence.

VI. CONSEQUENTIAL ORDERS

829. André Ntagerura and Emmanuel Bagambiki are acquitted on all counts in the indictments against them. Pursuant to Rule 99 (A), the Trial Chamber orders the immediate release of André Ntagerura and Emmanuel Bagambiki from the Tribunal's detention facilities and directs the Registrar to make the necessary arrangements.

830. This order is without prejudice to any such further order that may be made by the Trial Chamber pursuant to Rule 99 (B) of the Rules of Procedure and Evidence.

831. In accordance with Rules 102(A) and 103, Samuel Imanishimwe shall remain in the custody of the Tribunal pending transfer to the State where he will serve his sentence.

832. Judge Williams, Judge Ostrovsky, and Judge Dolenc append their separate and/or dissenting opinions to this Judgement.

833. Done in English and French, the English text being authoritative.

Arusha, 25 February 2004

Lloyd G. Williams, QC	Yakov Ostrovsky	Pavel Dolenc
Presiding Judge	Judge	Judge

[Seal of the Tribunal]

ICTR-99-46-T
25-2-2004
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UNITED NATIONS

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International Criminal Tribunal for Rwanda

Tribunal Pénal International pour le Rwanda

TRIAL CHAMBER III

Original: English

Before Judges: Lloyd G. Williams, QC, Presiding
Yakov Ostrovsky
Pavel Dolenc

Registrar: Adama Dieng

Judgement of: 25 February 2004

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THE PROSECUTOR
v.
ANDRÉ NTAGERURA
EMMANUEL BAGAMBIKI
SAMUEL IMANISHIMWE
Case No. ICTR-99-46-T

DISSENTING OPINION OF JUDGE WILLIAMS

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Tribunal pénal international pour le Rwanda
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SIGNATURE: DATE: 25-02-2004

DISSENTING OPINION OF JUDGE WILLIAMS

A. Introduction

1. The findings on facts and on law in this case have been reached largely on unanimous agreement, save in some instances where a majority decision had to be made. However, based on those very same factual findings it has become necessary for me to hand down a separate, and dissenting, opinion highlighting inferences, which I feel must be drawn in the context of the overall circumstances presented in the evidence, the resultant effects of which stand to have a significant impact on the verdict in the case as a whole.

2. It is established law that circumstantial evidence, that is, indirect evidence from a witness who saw or heard something, can be used to draw a reasonable inference on another fact. The inferences being drawn in this opinion are based on facts which the Chamber has found to have been proven. Many convictions for various crimes have rested largely on circumstantial evidence, where the circumstances of the case, coupled with proven facts, when taken as a whole and in the context of the situation, provide strong evidence pointing towards the guilt of the accused. In these circumstances, the Chamber can, in the interest of justice, draw reasonable inferences so that the final outcome of the case is not determined simply by technicalities and the lack of direct evidence.

3. The opinion expressed herein concerns only Bagambiki's involvement in two events: the situation at the football field in Gashirabwoba on 11 and 12 April 1994, and his role in the removal of the refugees from Cyangugu Cathedral and Kamarampaka Stadium on 16 April 1994.

B. Gashirabwoba

4. The Chamber's findings, show that Bagambiki's testimony with regard to the removal of Côme Simugomwe and the massacre at the Gashirabwoba football field was discredited.[1] He claimed not to have known that Côme Simugomwe had been removed from the football field, or that refugees had gathered there at all, until after the massacre. On the evidence presented, however, and contrary to Bagambiki's assertions, he must have known that refugees were gathered at the field given the Chamber's finding that he was there the day before the attack, on 11 April 1994, when he removed Côme, purportedly for questioning. Côme Simugomwa was later found dead.[2]

5. As stated in paragraph 435 of the Judgement, "Prosecution Witness LAC provided a convincing fist hand account of what occurred at the Gashirabwoba football field."

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[1] *Cyangugu*, Judgement (TC), paras. 435, 437, 441.
[2] *See, Cyangugu*, Judgement (TC), para. 437.

The Chamber accordingly found this witness's testimony to be both "credible and reliable."[3]

6. Witness LAC stated that during the attacks at the Gashirabwoba football field on 12 April 1994, Bagambiki and Nsabimana, the director of the Shagasha tea factory, came to the field for about thirty minutes and asked the refugees to explain the situation.[4] After the refugees explained the situation to Bagambiki, he promised to send soldiers to protect them and then left with Nsabimana.[5] An hour later, the refugees at the field saw armed soldiers, accompanied by factory guards, climbing to the summit over the football field.[6] Having surrounded the refugees, ten to fifteen soldiers fired on them.[7] The refugees asked for peace, but the soldiers told them to raise their hands and then began to throw grenades while shooting in all directions.[8] This attack went on for about thirty minutes, and was followed by looting of the refugees' property, after which the *Interahamwe* were sent in to finish off the remaining survivors.[9]

7. From this evidence, which was accepted by the Chamber, I am inclined to draw the only logical inference that can possible be drawn: that is that true to his promise, Bagambiki did indeed send soldiers to the field. Nsabimana's presence at the field with Bagambiki at the time the promise was made explains how the soldiers came to be accompanied by tea factory guards. It is reasonable to conclude that soldiers would have been unlikely to engage in such a large scale massacre without the tacit approval of their commander, for which the Chamber found Imanishimwe criminally responsible under Article 6(3).[10] Further, the evidence also shows that these soldiers came heavily armed. Instead of offering the protection that was promised by Bagambiki and expected by the refugees, a savage attack commenced resulting in the deaths of many. This evidence, coupled with Bagambiki's testimony with regard to his knowledge of the event which has been found to be false by the Chamber, leads me to conclude that the attack was the result of instructions, either directly or indirectly given to the soldiers and factory guards by, or with the tacit approval of, Bagambiki and Nsabimana with the cooperation of Imanishimwe.

8. In its legal findings, the Chamber described the actions of the soldiers during the massacre at Gashirabwoba as genocide, extermination as a crime against humanity, and murder as a serious violation of Article 3 Common to the Geneva Conventions. By giving instructions to soldiers and factory guards to participate in the massacre, Bagambiki aided and abetted in these crimes and, in my view, is criminally responsible under Article 6(1) of the Statute. In my opinion, the only reasonable inference to be drawn from the evidence is that Bagambiki acted intentionally with full knowledge and consent that the soldiers and factory guards would participate in the attack. In addition, given Bagambiki's role as prefect, his instructions would have

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[3] *Cyangugu*, Judgement (TC), para. 435.
[4] T. 9 October 2000 pp. 33, 35, 69; T. 9 October 2000 pp. 35, 36.
[5] T. 9 October 2000 pp. 35, 36.
[6] T. 9 October 2000 pp. 37, 39.
[7] T. 9 October 2000 p. 39.
[8] T. 9 October 2000 p. 38.
[9] T. 9 October 2000 pp. 39, 40.
[10] *See* Cyangugu, Judgement (TC), paras. 654, 691.

substantially contributed to the principal perpetrator's commission of the crime. I therefore would find Bagambiki guilty on Count 1 for aiding and abetting in genocide, Count 4 for aiding and abetting in extermination as a crime against humanity, and Count 6 for aiding and abetting in murder as a serious violation of Article 3 Common to the Geneva Conventions.

C. Kamarampaka

9. Mindful of several minor differences, the Chamber has found that Prosecution Witnesses LY, LI, NL, LCJ, LCA, LCH, and NI provided largely consistent, credible and reliable, first-hand accounts of the chronology of the events at the Cyangugu Cathedral and Kamarampaka Stadium.[11] The Chamber has found that between 3:00 and 4:00 p.m. on 16 April 1994, Bagambiki, Imanishimwe, Munyarugerero, Ndolimana, and some soldiers came to the cathedral, searched for, and took away Jean-Marie Vianney Habimana, Vital, Felicien, and Ananias Gatake, purportedly for questioning regarding their possible financial contributions to the RPF.[12] These four people were taken to Kamarampaka Stadium and made to wait outside, under guard, while Bagambiki, Imanishimwe, and others selected thirteen refugees, twelve Tutsi and one Hutu, from the stadium using a pre-established list.[13] The Chamber further found that the twelve Tutsi refugees were executed along with the four other Tutsis selected and removed from the Cyangugu Cathedral by the same authorities a short while earlier.[14]

10. In light of the Chamber's finding on the selection and subsequent execution of the refugees, it is necessary, I believe, to draw attention to the testimony of Witness LCJ. According to the witness, Bagambiki explained that the people whose names he read out were disrupting the security of the Hutu population, had weapons and military uniforms, and were thus being taken away for questioning and to have "their fate decided."[15] The witness noted that at the end of Bagambiki's speech some of the refugees applauded.[16] The witness recalled that some of those whose names had been read were frightened, but others stepped forward.[17] The witness stated that as Benoît Sibomana walked past Bagambiki he took out his rosary and said that he would go to heaven whereas Bagambiki would remain on earth for his deeds.[18] The witness also recalled hearing Sibomana ask those remaining at the stadium to recite litanies and to pray for him.[19] The witness testified that the people who stepped forward were lined up and escorted by soldiers out of the stadium.[20] Witness LCJ testified that she later learned from a gendarme, named Jean Baptiste Habakurama, that the people on the list, as well as Jean-Marie Vianney Habimana who had been removed a short while

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[11] *See* Cyangugu, Judgement (TC), para. 308.
[12] T. 22 February 2001 pp. 111-113; T. 26 February 2001 pp. 164-170.
[13] *See Cyangugu*, Judgement (TC), para. 318.
[14] *See Cyangugu*, Judgement (TC), para. 337.
[15] T. 22 May 2001 pp. 10-11; T. 23 May 2001 p. 94.
[16] T. 23 May 2001 p. 95.
[17] T. 22 May 2001 p. 11.
[18] T. 22 May 2001 p. 12.
[19] T. 22 May 2001 p. 12.
[20] T. 22 May 2001 p. 11.

earlier from the Cathedral, had been taken away by Bagambiki and handed over to *Interahamwe* who killed them on 16 April 1994.[21]

11. In this regard, I would also draw attention to the testimony of Witness LY. The Witness testified that he followed Bagambiki's pick-up truck from the cathedral to Kamarampaka Stadium and parked near the officials' vehicles which were just outside the stadium.[22] Witness LY stated that he spoke briefly with Bagambiki inside the stadium and observed refugees being lined up and Bagambiki, Imanishimwe, Ndolimana, and Munyarugerero pointing at a black diary held by Munyarugerero.[23] The witness stated that he later learned from the refugees at the stadium that the authorities selected thirteen people to be taken for questioning.[24] According to the witness, he heard gunshots after he returned to the parish, so he asked the bishop to phone Bagambiki to find out if the four people taken from the cathedral had been shot.[25] The witness recounted that the bishop told him that Bagambiki said that the *Interahamwe* had taken the four refugees, and that they were probably the ones who had been shot.[26] Witness LY received confirmation of this information from refugees who telephoned from the stadium to say that thirteen refugees from the stadium and the four refugees from the cathedral were removed and killed, with the exception of Marianne.[27]

12. There is on the record testimony from witnesses accepted as credible and reliable, that these refugees who were taken away were apparently required for questioning by the authorities on their suspected links with the RPF. Based on the eye-witness account of Witness NL, the Chamber found that Imanishimwe, who was with Bagambiki at the time, and soldiers left the stadium with the thirteen people and placed twelve of them in the vehicle with the four refugees from the cathedral. Marianne Baziruwiha, who was the head of the PSD party and a Hutu, was placed in the car of the gendarmerie commander. Bagambiki left the stadium a few minutes later.[28] It is significant that the one Hutu in the group of selected refugees did not suffer the same fate as the Tutsis, having been taken away and kept in safe custody. One may well ask why was she separated from the Tutsi refugees? Why were not the Tutsi refugees also sent to a safe place?

13. That Bagambiki was present at the time of this selection, and indeed part of the exercise, was accepted by the Chamber. He denounced the selected refugees as being a threat to the Hutu population, and as conspirators with the RPF, in front of soldiers who were anti-Tutsi and within earshot of *Interahamwe*. Amidst the political climate

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[21] T. 22 May 2001 pp. 13-15; T. 23 May 2001 p. 95; T. 24 May 2001 p. 6.
[22] T. 22 February 2001 p. 113; T. 26 February 2001 pp. 170-171.
[23] T. 22 February 2001 pp. 113-114; T. 26 February 2001 pp. 172-177; T. 27 February 2001 pp. 6, 14-15; T. 28 February 2001 p. 60.
[24] T. 22 February 2001 pp. 111, 112. The Chamber noted that the witness in his statement indicated that he actually saw the thirteen people being removed.
[25] T. 22 February 2001 p. 114; T. 27 February 2001 pp. 3, 22. The Chamber noted that the witness initially stated that he heard the shots only a few minutes after returning to the parish and in cross-examination noted that it was "a good time" after returning to the parish.
[26] T. 22 February 2001 p. 115; T. 28 February 2001 pp. 51-52, 65.
[27] T. 22 February 2001 p. 114; T. 26 February 2001 pp. 172, 175-177; T. 27 February 2001 pp. 4, 10; T. 28 February 2001 p. 58.
[28] *See Cyangugu*, Judgement (TC), para. 320.

at the time, with the pervasive killing of Tutsis in the prefecture, it stands to reason that such a denouncement by a public figure of such standing put the selected refugees at greater risk.

14. Further, I find what he said at the time of the selection of these refugees, as stated in the testimony of Witness LCJ, to be telling. To tell someone that they are being taken away to have their "fate decided", is significant in that it connotes a life and death situation. This is particularly significant when drawing a conclusion with regard to the accused's intention, who when removing these refugees knew full well, or ought to have known, what the consequences of such removal might be. Indeed, the Chamber found that these refugees, excluding Marianne, were killed and buried in a pit latrine on Jean-Marie Vianney Habimana's property in Mururu sector, Cyimbogo commune. The Chamber further found that their death occurred in the evening or during the night of 16 April 1994.[29]

15. In my opinion, Bagambiki aided and abetted in the murder of the sixteen refugees who were killed after being removed from Kamarampaka Stadium and Cyangugu Cathedral. Although the evidence is not sufficient to suggest that Bagambiki ordered or otherwise personally participated in the actual killing of the refugees, Bagambiki came to the stadium, read aloud the names of these refugees, and then handed them over to soldiers who only a few days before had massacred Tutsis at the Gashrabwoba football field. In my opinion, Bagambiki's acts substantially contributed to the death of these sixteen refugees. Bagambiki could have easily avoided these murders by either not removing the refugees from the stadium and the cathedral or by ensuring that the refugees, once removed, were properly protected and secured, which, in my opinion, was well within the powers of the prefect and only selectively utilized by Bagambiki. Bagambiki had full knowledge that assailants, who were threatening to attack and kill the Tutsi refugees at the stadium, were greatly interested in these particular refugees. Moreover, Bagambiki was fully aware that the refugees, who were suspected of having ties to the RPF, left in the company of Imanishimwe and soldiers, who viewed the RPF as a military enemy and who just a few days before participated in the Gashirabwoba massacre. Given the circumstances surrounding the selection and removal of the refugees from the cathedral and the stadium, and their resultant death shortly afterwards on the same day, Bagambiki must have intended or have been fully aware and consented to the killing of the refugees. I would therefore find Bagambiki criminally responsible under Article 6(1) of the Statute for aiding and abetting in the murder of these sixteen refugees. Given that the refugees were removed primarily because of their suspected ties to the RPF, I would enter a conviction against Bagambiki on Count 3 for murder as a crime against humanity and Count 6 for murder as a serious violation of Article 3 Common to the Geneva Conventions.

D. Conclusion

16. It is on these grounds that I am dissenting from the majority view as expressed in the judgement, which absolves Bagambiki from criminal responsibility with respect to matters arising from the two events I have raised herein. I am not suggesting that the

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[29] *Cyangugu*, Judgement (TC), para. 320.

Chamber has evidence with regard to the "circumstances surrounding" the death of the refugees, indeed I would concede that there is no reliable, direct evidence on what those circumstances which led to their deaths might have been. However, the evidence relating to the selection and removal of Côme Simugomwe from the football field, and the other refugees from the cathedral and stadium, the words that were spoken at the stadium, Bagambiki's outright denial of any knowledge with regard to the goings-on at the Gashirabwoba football field, leads me to hold that he cannot be absolved of responsibility for his actions, nor for his responsibility as the highest ranking civil authority in Cyangugu prefecture.

Arusha, 25 February 2003

Lloyd G. Williams, Q.C.

Presiding Judge

[Seal of the Tribunal]

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25-2-2004
(4921 - 4916)

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TRIAL CHAMBER III

Original: English

Before Judges: Lloyd G. Williams, QC, Presiding
Yakov Ostrovsky
Pavel Dolenc

Registrar: Adama Dieng

Judgement of: 25 February 2004

2004 FEB 25 P 3:35

THE PROSECUTOR
v.
ANDRÉ NTAGERURA
EMMANUEL BAGAMBIKI
SAMUEL IMANISHIMWE
Case No. ICTR-99-46-T

SEPARATE OPINION OF JUDGE OSTROVSKY

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SEPARATE OPINION OF JUDGE OSTROVSKY

1. A majority of the Chamber has acquitted Bagambiki on all counts. I fully agree with that disposition. However, I write separately to clearly articulate the basis for my doubt that Bagambiki had any role in the massacre of the civilians at the Gashirabwoba football field on 12 April 1994 or the murder of the sixteen refugees removed from Kamarampaka Stadium and Cyangugu Cathedral on 16 April 1994 because I do not feel that the majority's position is adequately explained in the Judgement.

2. At the outset, I disagree with the majority's factual findings about Bagambiki's presence at the Gashirabwoba football field.[1] Based solely on the testimony of Prosecution Witness LAC, the majority has found that, on 11 April 1994, Bagambiki and Imanishimwe came to the Gashirabwoba football field between 2:30 and 3:00 p.m. and removed Côme Simugomwa. In addition, the majority has found that, on 12 April 1994, Bagambiki came to the football field with Callixte Nsabimana, the director of the Shagasha tea factory and that Bagambiki promised to send soldiers to protect the refugees.

3. I accept Bagambiki's testimony that he did not go to Gashirabwoba football field, where the refugees were amassed, on 11 April 1994, because he was chairing a prefectural security council meeting. I also accept his testimony that he did not go to the football field, on 12 April 1994, because he went to Mibilizi parish to assess the refugee situation. In my opinion, Bagambiki provided a detailed and candid account of his schedule during the relevant events, an account which is largely corroborated by Prosecution witnesses. In assessing Bagambiki's alibi for these two dates, I am mindful that only the Prosecutor has the obligation to prove facts beyond a reasonable doubt. In light of the presumption of innocence, the accused need only raise doubt.

4. The Chamber has accepted that Bagambiki chaired a prefectural security council meeting on 11 April 1994. In my opinion, this meeting raises reasonable doubt about whether Bagambiki went to the football field between 2:30 and 3:00 p.m. on the same date. I would accept as reasonable that, on 11 April 1994, the prefectural security council meeting extended until 4:00 p.m., given that it was interrupted twice for significant periods of time. I, therefore, also have doubt that Imanishimwe was present at the Gashirabwoba football field on 11 April 1994, particularly given the inadequate basis of the pertinent witness's knowledge to identify Imanishimwe at that time.[2]

5. I also accept that, on 12 April 1994, Bagambiki did not go to the Gashirabwoba football field because on that date he visited Mibilizi parish to assess the refugee situation and to prevent an attack on the refugees. The majority has rejected Bagambiki's testimony, on the basis of evidence presented by Prosecution Witnesses MM and MP, who testified that Bagambiki visited Mibilizi parish on 14 April 1994. However, in my opinion, Witnesses MM and MP do not definitively establish that

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[1] Though Judge Dolenc and I form the majority on the verdict of acquittal for Bagambiki, Judge Dolenc joined Judge Williams to form a majority on the finding of Bagambiki's presence at Gashirabwoba football field.

[2] My position in no way alters my view on the Chamber's findings on Gashirabwoba with respect to Imanishimwe' criminal responsibility under Article 6(3) of the Statute.

Bagambiki visited Mibilizi parish on 14 April 1994 rather than on 12 April 1994. In reaching this conclusion, I recall that the Chamber also has found that, on 14 April 1994, Bagambiki was in Kadasomwa around 11:30 a.m. and that on this date he also attended another meeting with the bishop at Cyangugu Cathedral in the afternoon. The Chamber has also found that, on 13 or 14 April 1994, Bagambiki turned back assailants heading for the cathedral, an incident which likely occurred on 14 April 1994, given Bagambiki's visit to Nyamasheke on 13 April 1994. The nearly one hour journey between the prefecture office and Mibilizi parish leaves me with further doubt that Bagambiki made each of these visits in one day.[3] In consideration of these events and of the lack of detail in the testimonies of Witnesses MM and MP concerning when and for how long Bagambiki visited the parish, I have doubt about the Prosecutor's evidence that Bagambiki was at the Mibilizi parish on 14 April 1994 rather than on 12 April 1994.

6. I am not persuaded by the majority's justification for not accepting Bagambiki's testimony. The majority simply relies on the possibility that, on 11 April 1994, Bagambiki could have attended a prefectural security council meeting and also gone to the Gashirabwoba football field as well as the possibility that, on 14 April 1994, Bagambiki could have stopped an attack at Mibilizi parish, visited Kadasomwa, and met with the bishop. In my opinion, the majority's reliance on possibility simply shifts the burden of proof to the accused.

7. I find that it is particularly unacceptable to rely on possibility where the Prosecutor's case is based solely on the evidence of a single eye-witness of questionable credibility. Indeed, I am mindful of numerous inconsistencies and implausibilities in Witness LAC's testimony. For example, Witness LAC first testified that he saw Bagambiki on 11 and 12 April 1994 but later attested before the Chamber that he did not see him during the course of the massacres.[4] The witness stated that soldiers, who visited the Gashirabwoba football field on the evening of 11 April 1994, threatened to kill the refugees but later testified that he was pleased at the prospect of the soldiers' arrival to protect the refugees.[5] In addition, the witness gave conflicting testimony about his departure from Rwanda.[6]

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[3] T. 25 March 2003 pp. 51-52; T. 26 March 2003 pp. 41-42.

[4] T. 9 October 2000 pp. 65-66("Q. Did you see among the attackers three persons, in other words, Mr. Ntagerura, Mr. Bagambiki and Mr. Imanishimwe? A. No, I did not see them in the course of those attacks. . . . I do not have a lot of details concerning their involvement in the massacres").

[5] *Cf.* T. 9 October 2000 pp. 36-37("We were pleased to stay because we thought soldiers would be sent to ensure our security"); T. 9 October 2000 p. 66("when I saw soldiers arrive, I thought that they were at the service of the country, that they were there to protect the citizens and that they had not come to kill us. I was therefore not expecting that the soldiers would come and, instead of protecting us, kill us."); T. 9 October 2000 p. 70 ("In fact, they said they were going to consider our problem in the morning of the following day, and we thought they would be coming to protect us, so we stayed there waiting for their reply or answer, but when they returned, they killed us. Q. Did they not threaten you from the evening of the 11th? They did not threaten to kill you from the evening of the 11th? A. They did not threaten to kill us in the evening of 11th April. And even if they had done so, if we had been afraid, we did not have any other place to take refuge, and we stayed there because we thought they were coming back to protect us.") *with* T. 9 October 2000 p. 73 ("On the 11th around 8:00 the same pickup trucks returned with soldiers who asked us whether we were all Tutsi. We told them that amongst us there were also Hutus. They told us that they would return in the morning the following day to kill us.")(quoting witness statement).

[6] T. 9 October 2000 pp. 85-87.

8. Moreover, even if Bagambiki had been at Gashirabwoba football field on 12 April 1994, as the majority has found, in my opinion, there is insufficient reliable evidence to indicate that he played any role in the deaths of the refugees. The evidence reflects that the arrival of soldiers and armed factory guards was the decisive factor leading to the slaughter of the refugees. With this in mind, Bagambiki's criminal liability would primarily lie in his awareness that soldiers and factory guards would come to the field and kill the refugees and his acceptance of this likelihood.

9. I would place minimal weight on Witness LAC's statement that Bagambiki promised to send soldiers to protect the refugees gathered at Gashirabwoba football field.. Throughout the evidence, witnesses often referred to soldiers and gendarmes interchangeably, with little regard for the differences in the forces. Thus, LAC's reference to "soldiers", in and of itself, does not demonstrate that Bagambiki explicitly referred to or meant that he would send soldiers from Karambo military camp to ensure the refugees' protection. I recall that, on the evening of 11 April 1994, soldiers who visited the football field inquired about the refugees' ethnic identity and threatened to kill them. According to Witness LAC, however, the refugees were pleased to hear Bagambiki say that he would send soldiers. If, indeed, Bagambiki's reference had been to soldiers from the Karambo camp, I find it difficult to accept that the refugees would have been pleased by this statement or that they would not have expressed to Bagambiki serious concern and recounted the threats issued by soldiers who visited the football field the previous night. In my view, this account undermines Witness LAC's credibility, as do the inconsistencies in the witness's prior written statement

10. I also recall that the Rwandan Law on the Creation of the Gendarmerie indicates that a prefect first requests assistance from the gendarmerie and that the gendarmerie commander, if he deems it necessary, may seek the assistance of the army.[7] Though Bagambiki certainly could have circumvented the procedure set forth in Rwandan law, the evidence of his actions with respect to Shangi parish, Mibilizi parish, Nyamasheke parish, Cyangugu Cathedral, Kamarampaka Stadium, and Nyarushishi camp clearly indicates that Bagambiki continued to follow legal procedure, established in the Rwandan Law, in requisitioning gendarmes for the protection of refugees. As such, in this instance, though it is possible that Bagambiki could have requisitioned soldiers, this is not the most reasonable inference based on the totality of the evidence and Bagambiki's conduct during the events under consideration.

11. Second, even if Bagambiki had made a request for soldiers to come to the Gashirabwoba football field, I am not satisfied that he would have done so with the intention or the awareness and consent that the soldiers would kill, rather than protect, the refugees amassed there. The record reveals little reliable or credible evidence that Bagambiki would have been aware, prior to 12 April 1994, that soldiers from Karambo camp would participate in mass killings. Though the Chamber found that, on 11 April 1994, Bagambiki intervened on behalf of refugees, forced by soldiers to lie on the ground near the office of the prefecture, in my view, one event, involving the arrest of some refugees, would not sufficiently indicate Bagambiki's awareness

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[7] *See* Judgement, paras 634, 635, 641.

that soldiers would also engage in the wholesale slaughter of hundreds or thousands of civilians.

12. I am also not satisfied that testimony of Bagambiki's being seen at the Gahirabwobwa football field with Nsabimana, the director of the Shagasha tea factory, proves that Bagambiki was aware that factory guards would participate in the killing of the refugees at this site. Though Nsabimana reputedly recruited and trained *Interahamwe* at the tea factory, there is no reliable evidence that Bagambiki was aware of this alleged training. Nor is there any reliable and credible evidence concerning Bagambiki's prior or subsequent association with Nsabimana or explanation relating to his being seen at the football field with Nsabimana. In my opinion, this lack of reliable evidence also raises further doubt about Bagambiki's presence, on 12 April 1994, during the massacre of the refugees.

13. With respect to the selection and removal of refugees from Cyangugu Cathedral and Kamarampaka Stadium, on 16 April 1994, I am not satisfied that the evidence adequately demonstrates that Bagambiki intended or was aware that sixteen of the seventeen refugees would be killed. I recall that there is no reliable or credible evidence of the circumstances surrounding the deaths of the refugees. Thus, this lack of evidence allows me only to speculate whether the soldiers killed or facilitated the killing of the refugees or whether armed assailants overran the forces guarding the refugees. Given the lack of evidence provided, I am not satisfied that Bagambiki intended or was aware that soldiers would kill or facilitate the killings of the refugees or that he intended or was aware that assailants would overtake the security forces guarding them.

14. As discussed in connection with the massacre at the Gashirabwoba football field, there is little credible or reliable evidence that, at this time, Bagambiki was aware of the soldiers' propensity to commit murderous acts. Accordingly, I have doubt whether Bagambiki was aware that soldiers participated in killing the refugees who were selected for questioning from Cyangugu Cathedral or Kamarampaka Stadium. Moreover, even though Bagambiki was aware that members of the local population were interested in these refugees, I am not satisfied that he should have been aware in the ordinary course of events that the refugees would be killed by local assailants, particularly if the refugees were under armed protection. I further recall that the church authorities, who were aware of the local population's interest in the refugees, did not protest the removal of the four refugees from the cathedral because they did not believe that interrogations about political affiliation would be inherently harmful.

15. I acknowledge that the factual findings concerning Bagambiki's presence at the Gashirabwoba football field on 12 April 1994 and his role in the selection and removal of seventeen refugees from the Cyangugu Cathedral and Kamarampaka Stadium, on 16 April 1994, raise a number of questions about his possible involvement in, tacit approval of, or indifference to the deaths of these refugees, particularly when the evidence is viewed in isolation. A lingering suspicion, however, can never substitute for proof beyond a reasonable doubt which is based on reliable and credible evidence.

16. In resolving this suspicion, I have considered the totality of Bagambiki's conduct during the relevant events. I recall the testimony of Prosecution Witness LY, whom the Chamber found to be credible and reliable, that in the wake of the violence against

Tutsis following the death of Martin Bucyana in February 1994, Bagambiki and the prefecture administration took the lead in organizing pacification meetings in the affected areas, along with religious leaders, and even donated a portion of the prefecture's budget to rebuild homes that were destroyed.[8] I also recall the significant evidence that demonstrates Bakambiki's efforts to provide food and security for the refugees and to restore public order in Cyangugu prefecture during the 1994 events. The evidence shows that Bagambiki requested the dispatch of gendarmes to protect the parishes and to escort relief supplies; it further shows that Bagambiki personally visited a number of parishes to dissuade attacks, to discuss security concerns, and to assess the refugees' needs. He also dispatched Sub-Prefect Munyangabe on a number of occasions to do the same. The majority recalls the testimony of Prosecution Witness MM that, when Bagambiki spoke to a delegation of refugees and members of the population at Mibilizi parish, he expressed his intention to restore the security situation in the area.. I also note that when church authorities were concerned about the refugees' security at the cathedral, they turned to Bagambiki and that he transferred the refugees from Cyangugu Cathedral to the Kamarampaka Stadium, which provided better sanitation and security, as evidenced by the lack of attacks there. Bagambiki later authorized the transfer of the refugees under armed guard from the stadium and several of the parishes to Nyarushishi camp, where the living conditions and security situation were much improved.. This and other evidence reflect a concern on the part of Bagambiki for the welfare of the refugees and leave me with reasonable doubt that Bagambiki intended or that he was aware and consented to the deaths of refugees in Cyangugu prefecture.

17. I am aware of the deplorable conditions at Cyangugu Cathedral and Kamarampaka Stadium. I am also aware that Prefect Bagambiki, sub-Prefect Munyangabe, and the gendarmes provided, at times, only minimal protection for the refugees. However, I bear in mind the chaotic situation prevailing in the prefecture and throughout the country. I note Witness LY's testimony that it was nearly impossible to obtain relief supplies from abroad. I am also mindful of Bagambiki's uncontested testimony of the limited number of available gendarmes, who were spread throughout the Cyangugu prefecture. In my view, the Prosecutor simply failed to introduce sufficient evidence concerning what additional resources were available to the prefecture to stem the tide of violence and to provide greater protection to the refugees. On the basis of the totality of the reliable and credible evidence presented in this case, I am not convinced that Bagambiki, with the resources available to him, could do more for the protection of refugees in Cyangugu prefecture.

Arusha, 25 February 2004

Yakov Ostrovsky

Judge

[Seal of the Tribunal]

[8] T. 22 February 2001 pp. 60-64; T. 26 February 2001 pp. 42-46; T. 27 February 2001 p. 156; T. 28 February 2001 p. 2, 5-6.

ICTR-99-46-T
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TRIAL CHAMBER III

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THE PROSECUTOR
v.
ANDRÉ NTAGERURA
EMMANUEL BAGAMBIKI
SAMUEL IMANISHIMWE
Case No. ICTR-99-46-T

SEPARATE AND DISSENTING OPINION OF JUDGE DOLENC

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SEPARATE OPINION OF JUDGE PAVEL DOLENC

I. DEFECTS OF INDICTIMENTS

A. Introduction

1. The Judgement has set out the applicable principles for the pleading of criminal charges in the section entitled Preliminary Matters Relating to the Indictments.[1] The Trial Chamber accepts that, as a matter of principle, material facts of an offence must be pleaded with precision in order to ensure that an accused is informed promptly and in detail of the nature and cause of the charges against him. The Trial Chamber explains that specificity is required in order to enable the accused to prepare his Defence pursuant to Article 20(2), 20(4)(a), and 20(4)(b) of the Statute. Applying this principle, the Trial Chamber has found that paragraphs 11, 12.1, 13, and 16 of the Ntagerura Indictment and paragraphs 3.12, 3.13, 3.14, and 3.15 of the Bagambiki/Imanishimwe Indictment are so defective that the Trial Chamber will not make any factual or legal findings in relation to them.

2. I agree with the statements of principle set out in paragraphs 29 to 39 of the Judgement, but would have taken this inquiry further. In my view, the Trial Chamber's explanation of why precision is required when pleading the material facts of a crime is insufficient and should be supplemented. As explained below, I am of the view that the principle of specificity should be applied more rigorously than it is in this Judgement. In particular, I believe that the scope of vague language in the Indictments should, for reasons of logic and fairness, be limited to the material facts submitted during the confirmation process. Therefore, I can not wholly agree with the view expressed in paragraph 68 of the Judgement that evidence may be considered and an Accused may be found responsible beyond reasonable doubt for any acts that could fall within the contours of vague allegations in the Indictment. This approach allows for a trial based on material facts not known to the Prosecutor at the time of the confirmation of the Indictment solely on the basis that these allegations could fall within the linguistic contours of unnecessarily vague and generic allegations.

3. In taking this position, I am aware that the practical result of my opinion is that many of the charges in the Ntagerura and Bagambiki/Imanishimwe Indictments are so materially defective that they should be dismissed without any further consideration of the evidence. One may consider that this result runs contrary to the interests of international justice. However, I strongly believe that the ultimate interest of international justice, the universal application of the rule of law, may be achieved only by respecting the basic rights of an accused to a fair trial and due process. Even when trying cases involving the most serious crimes, the Tribunal is responsible for ensuring a fair trial.

4. Even if the Prosecution's evidence shows that an accused may be guilty of the most despicable crimes, he must be acquitted if the accused was not given fair and detailed notice in the indictment of the material facts and of the charges against him.

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[1] Judgement, paras. 28-70.

Without such notice in the indictment, the charging instrument which forms the basis of a trial, an accused is not sufficiently informed of the charges against him and therefore is prevented from or hindered in preparing his defence. This renders the trial unfair because we cannot be certain that the accused has been given an opportunity to investigate and to challenge the evidence presented by the Prosecution. In such circumstances, a court cannot rely on the evidence presented by the Prosecution to find that the accused is guilty beyond a reasonable doubt because the accused has not been given a fair opportunity to raise that doubt. The Chamber thus cannot be confident of the credibility or reliability of the evidence presented by the Prosecution. In my view, where there has not been fair notice to the accused, a Chamber should not consider the evidence of the Prosecution, because this evidence has not necessarily been tested and challenged by the adversarial methods of well-prepared cross-examination or defence evidence presented in the defence case.

5. In my opinion, the legitimacy and legacy of this Tribunal rests as much on the fairness of the proceedings as on the substance of the Judgements that we deliver. It is only through fair and equitable proceedings that international justice is achieved. Moreover, we cannot lose sight of the effect of the Tribunal's jurisprudence on international and national guarantees to a fair trial. If the international tribunals fail to provide a model of fairness, we send the wrong message to other courts.

6. I understand that the importance of a fair trial may appear pale in comparison to the gravity of the massive human rights abuses which occurred in Rwanda in 1994. However, it is only through a fair trial that we can achieve any lasting justice. Through justice this Tribunal seeks to contribute to reconciliation. As Justice Murphy of the United States Supreme Court explained nearly sixty years ago:

> If we are ever to develop an orderly international community based upon a recognition of human dignity it is of the utmost importance that the necessary punishment of those guilty of atrocities be as free as possible from the ugly stigma of revenge and vindictiveness. Justice must be tempered by compassion rather than by vengeance. In this, the first case involving this momentous problem ever to reach this Court, our responsibility is both lofty and difficult. We must insist, within the confines of our proper jurisdiction, that the highest standards of justice be applied in this trial of an enemy commander conducted under the authority of the United States. Otherwise stark retribution will be free to masquerade in a cloak of false legalism. And the hatred and cynicism engendered by that retribution will supplant the great ideals to which this nation is dedicated.[2]

B. Additional Ground Defining the Scope of an Indictment

7. According to Article 17(4) of the Statute and Rule 47(B) of the Rules, the Prosecution shall file an indictment when, on the basis of investigations, the Prosecution determines that a *prima facie* case exist showing that a suspect committed a crime within the jurisdiction of the Tribunal. Pursuant to Rule 47(D) and (E), the

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[2] *Application of Yamashita v. Styler*, 327 U.S. 1, 29 (U.S. S.Ct. 1946) (*per* Murphy J. , dissenting).

indictment shall be accompanied by materials supporting the allegations in it. These provisions obviously demand that the Prosecution, when submitting an indictment, is constrained by the results of its investigation to that date and may only include in the indictment those material facts of crimes for which the Prosecution has already found sufficiently detailed information and evidence.[3]

8. Logically, an indictment can only contain those allegations of criminal activity known to the Prosecution at the time of the filing of the indictment. Of course, the Prosecution may continue to investigate the crimes charged in the confirmed indictment and may later discover and produce at trial further evidence to support these crimes.[4] However, if new crimes are discovered, the Prosecution must seek leave to amend the indictment pursuant to Rule 50. Further allegations, not known to the Prosecution at the time of confirmation, cannot later be included in an indictment without the Prosecution being granted leave to amend.

9. Thus, the "contours of the existing indictment" are not merely linguistic. The limits of an indictment are defined by the crimes for which the Prosecution submitted a *prima facie* case to the confirming judge. I would not permit the Prosecution to include criminal activities discovered after confirmation within the scope of an indictment by relying on the vagueness and imprecision of the language in the confirmed indictment. To do so would allow the Prosecution to profit from its own failure to charge the accused specifically with the crimes it knew about at the time of confirmation. By using impermissibly generic or vague language in defining material facts, the Prosecution would thereby gain a margin of flexibility in case new crimes are discovered that would then fit within the linguistic contours of the already confirmed indictment. The Prosecution would effectively be amending the indictment without any judicial oversight.

10. In my opinion, when faced with overly broad language in an indictment, the Trial Chamber should analyse the supporting materials submitted by the Prosecution during the confirmation process in order to determine the reason for the vagueness and the proper interpretation of the charges. Where an indictment uses general language to describe an event or allegation for which the Prosecution had, at the time of confirmation, specific and unambiguous information, the Indictment should be interpreted in light of the supporting material and should be limited to the information in the hands of the Prosecution at the time of confirmation. The Judgement should consider evidence only on the particular allegation contained in the supporting material, in spite of the Prosecution's use of generic or vague language in the Indictment.[5] Where the supporting materials do not reveal any further particulars which would permit the chamber to understand an allegation with sufficient

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[3] *Kupreskic*, Judgement (AC), para. 92.
[4] *See* Rule 66(C) of the Rules.
[5] *See Stakic*, Judgment (TC), para. 772 ("For this reason, the Trial Chamber will not consider any other denial of fundamental rights not expressly mentioned by the Prosecution in the Indictment. The Accused is not sufficiently informed of, and therefore unable to defend himself against, any charges other than those explicitly stated in the Indictment."); *Prosecutor v. Brdanin*, ICTY Case No. IT-99-36-T, Decision on Motion for Acquittal (TC), 28 November 2003, para. 88 (" an accused is entitled to know the case against him and is entitled to assume that any list of alleged acts contained in an Indictment is exhaustive, regardless of the inclusion of words such as 'including', which may imply that other unidentified acts are being charged as well.").

particularly, then the evidence relating to a vague charge should not be considered, because the fairness of the trial would be compromised.

11. This approach focuses on the supporting materials to the indictment, rather than on the pre-trial brief or other extraneous documents, which may contain allegations of material facts that were not included in the indictment or the supporting materials. An accused is entitled to defend only against accusations in the indictment and not against Prosecution submissions in any other document. In *Kupreskic*, the Appeals Chamber held that, in a limited number of circumstances, "a defective indictment can be cured if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charges against him or her."[6] In the *Ntakirutimana* Judgement, Trial Chamber I analysed the pre-trial disclosure of witness statements to the Defence, the Prosecution's pre-trial brief, and the evidence adduced at trial in order to determine whether the accused had been given fair notice of the charges against them.[7] In my opinion this approach is too wide because the additional information used to interpret the meaning of the indictment was not limited to the material facts known to the Prosecution at the time of confirmation. This approach permits the Prosecution to expand the allegations confirmed by a Judge without seeking formal leave to amend the indictment.

C. Additional Reasons for Precision of Indictments

12. The Judgement states that the indictment must plead all material facts underpinning the charges with sufficient detail so that the accused can prepare his defence.[8] I wish to emphasise that a properly drafted indictment serves the interests of justice not only by providing the accused with fair notice of the charges, but also by focussing the Trial Chamber's attention on the relevant issues. As the Appeals Chamber has recently observed, detailed factual allegations simplify and expedite proceedings "by narrowing the scope of allegations, by improving the Accused's and the Tribunal's understanding of the Prosecution's case, or by averting possible challenges to the indictment or the evidence presented at trial."[9] By improving the Chamber's understanding of the case, a particularised indictment containing precise, detailed, and unambiguous charging facilitates predictable, efficient, economical, and expeditious proceedings. In contrast, a vaguely drafted indictment subverts the express provisions of the Statute and Rules and causes problems for the proper administration of justice.

13. At the confirmation stage, a precisely pleaded indictment also enables the confirming judge to establish the jurisdiction of the Tribunal and to assess whether a *prima facie* case exists. An indictment which unambiguously identifies a particular criminal act and the accused's role in it permits the reviewing judge to compare allegations in the indictment with the information in the supporting materials. Where

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[6] *Kupreskic*, Judgement (AC), para. 114.
[7] *Ntakirutimana*, Judgement (TC), paras. 58-63.
[8] Judgement, para. 30.
[9] *Prosecutor v. Karemera*, Case no. ICTR-98-44-AR73, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to file an Amended Indictment (AC), 19 December 2003, para. 15.

the indictment is pleaded in a vague or overly broad manner, the confirming judge is faced with the difficult and often confusing task of trying to correlate the charges in the indictment with the underlying supporting materials.

14. During the pre-trial phase of the proceedings, a precise description of the crimes in the indictment enables the Accused to enter an informed and unequivocal plea in accordance with Rule 62(B). A precise description of crimes in the indictment is crucial at this early phase of the proceedings because, prior to the disclosure of the supporting materials pursuant to Rule 66, the indictment is the only document in the accused's possession.

15. General or vague statements of material facts also interfere with the efficient pre-trial preparation of the parties and the Chamber. For example, without a clear and precise indictment, it is difficult to effectively apply Rule 73*bis*, which concerns the admission of facts not in dispute, the indication of facts on which each witness will testify, and the reduction of witness duplication. A precise description of the crime in the indictment is also necessary before a Chamber can properly determine whether there is a common transaction, a precondition for joint trials pursuant to Rules 2, 48, 48*bis*, and 49. A precise indictment also permits the Chamber to analyse the possible effects of a proposed amended indictment pursuant to Rule 50, by making it possible to draw a clear distinction between already pleaded material facts and new facts introduced by the proposed amendments.

16. During the trial, the Chamber requires a precise indictment in order to determine whether evidence is relevant, and therefore admissible, pursuant to Rule 89(C). Vague or broadly worded indictments lead to lengthy proceedings by inhibiting the Trial Chamber's ability to restrict the scope of evidence to the crimes pleaded in the indictment.

17. In reaching judgment, only precisely pleaded indictments permit the chamber to determine objective identity between the indictment and the judgment. Objective identity is a fundamental principle of international and domestic criminal law which requires that the Judgement does not exceed the indictment.[10] An application of the principle *non bis in idem* in Article 9 of the Statute depends on the precise and specific particulars which clearly and unambiguously identify the crime and the accused's participation in it. Similarly, a precise indictment is also essential to establishing responsibility for crimes included in a joint criminal enterprise.

1. Details of Material Facts

18. The Judgement states that the Prosecution has an obligation to plead all material facts underpinning the charges against an accused in the indictment with sufficient detail so that the accused can prepare his defence.[11] The Judgement then explains that

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[10] *See* (Rome) Statute of the International Criminal Court, 17 July 1998, UN Doc. A/CONF.183/9, art. 74(2); *Kupreskic*, Judgement (AC), para. 88.

[11] Judgement, para. 30.

the materiality of facts depends on the mode and extent of an accused's participation. I wish to supplement this analysis.

19. Rule 47(C) provides that "the indictment shall set forth the name and particulars of the suspect and a concise statement of the facts of the case and of the crime with which the suspect is charged". The phrase "a concise statement of the facts of the crime" relates to the material facts constituting elements of a crime within the subject matter jurisdiction of the Tribunal. As explained in the Judgement at paragraph 29, this corresponds with the requirement in Article 20(4)(a) of the Statute to promptly inform the accused of the "cause of the charge" against him.

20. The phrase "a concise statement of facts of the case" refers to other important information that offers a more complete picture of the surrounding circumstances of the crime including: historical, contextual, or background facts; or facts relating to sentencing. Because "facts of the case" do not directly constitute any elements of a crime, they do not need to be described with the same degree of specificity as the "facts of a crime".[12] However, it must be stressed that the Ntagerura and Bagambiki/Imanishimwe Indictments do not distinguish between the facts of the case and the facts of the crime. In pleading the counts in the Indictments, the Prosecution also refers to paragraphs which do not relate directly to the alleged criminal conduct of the Accused.

21. In practical terms, the material facts of the crime answer the following seven questions, which guide any criminal investigation, prosecution, and judgment: Who (is alleged perpetrator); Where; When; What (was committed or omitted); Whom to (victim); What means; and Why (motive).[13] Answers to these seven questions are necessary in order to individualize the accused, the alleged crime, the mode of the Accused's participation, and the form of his criminal responsibility. Although each case must be considered on its merits, it is possible to generalize that an indictment which does not provide sufficient and precise information to answer each of these questions is more likely to be defective.[14]

22. These seven questions are applicable regardless of the form (conspiracy, planning, preparation, attempt), mode (act or omission), or type (principal perpetrator, accomplice, joint criminal enterprise, superior responsibility) of participation. When a crime is allegedly committed by omission then the answer to the question 'What' shall set forth a description of the omitted act and a specific indication of the legal basis for a duty to act. The concise statement of facts of a charge for superior responsibility pursuant to Article 6(3) of the Statute should clearly and precisely allege, in case of failure to prevent a crime: (i) sufficient particulars of the underlying crime so that it may be identified without any ambiguity; (ii) particulars of the subordinate perpetrator(s); (iii) the legal or factual basis for establishing a superior-subordinate

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[12] *See, e.g., Prosecutor v. Mrksic et al.*, ICTY Case No. IT-95-13/1-PT, Decision on Form of Consolidated Amended Indictment and on Prosecution Application to Amend (TC), 23 January 2004, paras. 27-28; *Prosecutor v. Krnojelac*, ICTY Case No. IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999, para. 24.

[13] Generally, motive is not a constituent element of criminal responsibility for the crimes within the jurisdiction of the Tribunal, but motive may overlap with the motivated intent (*dolus coloratus*) required for genocide and some other crimes.

[14] *Kupreskic*, Judgement (AC), para 92.

relationship between the accused and the principal perpetrators; (iv) a description of the necessary and reasonable measures, within the accused's authority, duty, and disposal which the accused failed to take; (v) a statement that the accused had knowledge, or sufficient information to conclude, that his subordinates were about to commit a crime; and (vi) an allegation that these measures, if applied, may have prevented the subordinate from committing the crime.[15] In case of failure to punish a subordinate perpetrator, an indictment charging Article 6(3) liability should also set forth the necessary, reasonable, and available measures within the accused's authority that it is alleged he failed to take.[16]

23. The application of the principle of precision should not be unreasonably rigid. The Prosecution may charge the accused with a crime even when it can not precisely determine all of the particulars necessary to answer the seven questions. The jurisprudence of this Tribunal and of the International Criminal Tribunal for the Former Yugoslavia recognizes that, given the nature of the crimes under our jurisdiction, it will sometimes be impossible or unreasonably difficult for the Prosecution to give precise details of every material fact. Where, for example, the nature or scale of the crimes, fallibility of witness recollections, witness protection concerns, or other reasons for confidentiality prevent the Prosecution from giving exact details, then the Prosecution should give the best information available and should specify that this information is the most complete available at the time.[17] In a case of mass killings committed by a group of attackers, it may be impracticable to require a high degree of specificity regarding the identities of individual victims or the exact time and location of each specific murder.[18] If the victims can not be individually identified, then the indictment should describe the category of victims as a group.[19] In other instances it may be reasonably to plead a range of dates where a precise date can not be specified because of the nature of a recurring event or because of vagueness in the recollection of a key witness.[20] Although a degree of imprecision may be justified, the indictment must always clearly and unambiguously identify the charged crime, the accused's participation in it, and the form of his responsibility.

24. These exceptions to the general principle requiring precise charges should not be interpreted as an invitation for the Prosecution to plead the material facts in a vague manner. The Prosecution is not permitted to dress specific evidence in generic or vague language with the purpose of moulding the case depending on what new facts and evidence it may discover during the post-indictment investigation or on how the evidence unfolds during the trial.[21] Where the Prosecution has specific information in its possession at the time of submission of the indictment, then those particulars

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[15] *See, e.g., Prosecutor v. Deronjic*, ICTY Case No. IT-02-61-PT, Decision on Form of the Indictment, 25 October 2002, para. 7.

[16] *See, e.g., Prosecutor v. Mejakic et al.*, ICTY Case No. IT-02-65-PT, Decision on Dusan Fustar's Preliminary Motion on the Form of the Indictment (TC), 4 April 2003, p. 4; *Prosecutor v. Hadzihasanovic*, ICTY Case No. IT-01-47-PT, Decision on the Form of the Indictment, 7 December 2001, para. 11.

[17] *Semanza*, Judgement (TC), paras. 55, 57-58; *Kupreskic*, Judgement (AC), para 89.

[18] *Kupreskic*, Judgement (AC), paras. 89-90.

[19] *Id.*

[20] *Prosecutor v. Brdanin*, ICTY Case no. IT-99-36-PT, Decision on Objections of Momir Talic to the Form of the Amended Indictment (TC), 20 February 2001, para 22.

[21] *Kupreskic*, Judgement (AC), para. 92.

should be specifically pleaded.[22] Where the indictment is vague about essential details then "doubt must arise as to whether it is fair to the accused for the trial to proceed".[23] In such a case the Prosecution should either complete its investigations before seeking confirmation of the indictment or drop the charge. Moreover, this degree of flexibility in pleading may not be manipulated by the Prosecution in order to gain tactical advantages or to inhibit the preparation of the defence.[24] Unjustifiably vague charging cannot be used as a mechanism for avoiding the formal process of amending the indictment.

D. Reasons for Defects of the Indictment and Remedies

25. In my view, many of the allegations in the concise statements of the facts of the crimes in both the Ntagerura and Bagambiki/Imanishimwe Indictments violate the principle that an indictment shall provide a detailed and precise description of the material facts of the crimes on the basis of information known to the Prosecution at the time of the confirmation of the indictment (or any amendment). Most of the material facts in the two Indictments are described in general and vague language and do not sufficiently individualise the crimes, the role of each of the Accused in the alleged crimes, or the circumstances necessary to establish a specific form of responsibility for each of the Accused. The reasons for such defects may be twofold: either the Prosecution was not in possession of better information at the time of confirmation, or the Prosecution chose to set forth unacceptably generalised and vague allegations despite having more precise and detailed information available. I attempt to define the scope of both of the Indictments on the basis of the material facts in the possession of the Prosecution at the time when the Indictments were submitted for confirmation. For this analysis, I have used the supporting materials accompanying the Indictments and the redacted statements of the informants,[25] the potential witnesses who gave statements to the Prosecution during its investigation, whose statements were excerpted in the supporting materials.

26. Of course, this analysis is not intended to be a re-examination of the validity of the Indictments, which are the final charging instruments and which have already been confirmed by a judge and upheld by a Trial Chamber after preliminary motions. The only objective is to define, to the extent possible, the correct scope of the Indictments on the basis of the information in the supporting materials.[26]

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[22] *Id.*

[23] *Id.*

[24] *See Prosecutor v. Brdanin*, ICTY Case no. IT-99-36-PT, Decision on Objections of Momir Talic to the Form of the Amended Indictment (TC), 20 February 2001, para 26 ("...despite the impression conveyed by some sections of the Office of the Prosecution that it is the prosecution policy to avoid disclosing what the real nature of its case is until as late as a stage as possible...") (emphasis added).

[25] Informants are identified by the pseudonyms used by the Prosecution for the protection of their identities.

[26] *See, e.g. Ntakirutimana*, Judgement (TC), paras. 58-63 referring to the view of the ICTY Appeal Chamber in *Kupreskic* Judgement (AC) at para. 114 that "in some instances, a defective indictment can be cured if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charges against him or her", analysed disclosed witnesses statements, the Prosecution's pre-trial brief, and the evidence adduced at Trial in order to determine whether the accused were on notice of the charges against them. In my opinion this approach is too wide because it

27. Depending on the reasons for vagueness three situations may be distinguished:

(a) Where the Indictments generalise a specific event (i.e. an event that is individualised in the supporting materials with sufficient details, providing *prima facie* evidence of the criminal event, the accused's participation in it, or grounds for his superior responsibility) the Judgement should narrow its analysis of the evidence to the particular material facts of the specific event only. Exceptionally, a certain degree of generalisation may be justified where the necessary reasons for generalisation are clearly demonstrated.

(b) Where the Indictments generalises an event but the supporting materials do not provide additional particulars of material facts which could serve to supplement the charges (including vague allegations concerning the accused's personal participation as a principal, (co)perpetrator, or an accomplice, so that the precise legal qualification of his participation is not possible) the charge should be dismissed due to this material defect. Such a defective charge does not allow the defence to adequately prepare for the trial.[27] A defective indictment that cannot be made more specific through reference to the supporting materials also impairs the application of the principles of objective identity between the indictment and judgement and of *non bis in idem*. Such allegations may, however, be considered as background circumstances, if they are relevant to the case.

(c) Where supporting materials fail to provide additional detailed information to supplement generic or vague charges of superior responsibility (which impair a clear identification of the criminal event, perpetrators, superior–subordinate relationship, knowledge of the accused of the commission or imminent commission of a crime by his subordinates, or the necessary and reasonable measures available to the accused to prevent the crime or to punish the perpetrators), the charge should be dismissed due to the material defect without consideration of evidence for the reasons advanced in the previous paragraph.

28. In light of this approach I will first analyse the description of material facts in the Ntagerura Indictment and then the Bagambiki/Imanishimwe Indictment.

29. My analysis does not include the allegations in paragraphs 11, 12.1, 13, and 16 of the Ntagerura Indictment, or in paragraphs 3.12 to 3.15 of the Bagambiki/Imanishimwe Indictment, which the Trial Chamber has found so materially defective that it does not make further factual or legal findings.[28] The analysis also does not discuss paragraphs 3.29 of the Bagambiki/Imanishimwe Indictment or paragraphs 12.2, 14.2, 15.1 and 15.2 of the Ntagerura Indictment because the Prosecution conceded that it has not submitted any evidence in support of them.[29] Finally, I note that paragraph 3.31 of the Bagambiki/Imanishimwe Indictment

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facilitates the consideration of allegations based on information obtained after the indictment was filed without following the procedure for amendment of an indictment.

[27] An accused defends against the accusations in the indictment and not against the submissions or statements in any other document, e.g. pre-trial brief or any appendices. An accused challenges Prosecutorial evidence in order to disprove the related accusations in the indictment and not to disprove the "accusations" in a witness's testimony or other type evidence itself.

[28] Judgement, para. 69.

[29] Judgement, para. 69.

is not included in any count and thus the allegations provide background information only.

30. Neither Indictment alleges the material facts which, as discussed above at paragraph 22 of this Separate Opinion, are required to substantiate the superior responsibility of any of the Accused pursuant Article 6(3) of the Statute. In my view, the charges against all three Accused based on superior responsibility should be dismissed without any further discussion or assessment of the evidence presented at trial.

31. I also note that the Bagambiki/Imanishimwe Indictment generalises the same event in more than one paragraph.[30] In my view, this type of multiplication of allegations is not permissible because it inflates the Prosecution's charges without the support of further underlying facts.

1. Ntagerura Indictment

32. As already noted above, I will not analyse paragraphs 11, 12.1, 12.2, 13, 14.2, 15.1, 15.2, and 16 of the Ntagerura Indictment.[31] Additionally, I will not examine paragraph 10 of the Ntagerura Indictment, which only alleges background information concerning the *Interahamwe*. I also reemphasise that I would dismiss the charges against Ntagerura based on superior responsibility without any further assessment of the evidence adduced at trial because the Ntagerura Indictment fails to allege the material facts which are necessary to substantiate an allegation of superior responsibility pursuant to Article 6(3) of the Statute.[32]

33. At confirmation, the Ntagerura Indictment was supported by excerpts of statements of seven Prosecution informants, the Report on the Situation of Human Rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur, under paragraph 20 of resolution S-3/1 of 25 May 1994, U.N. Doc. E/CN.4/1996/7 (1994); Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935, U.N. Doc. S/1994/1405 (1994), and United Nations Peacekeeping Notes, United Nations Assistance Mission in Rwanda, December 1994.

34. At trial, however, only one of the informants (T848/K96) testified for the Prosecution and neither of the two reports was tendered into evidence.

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[30] The selection of refugees from a list in the Cyangugu stadium on 16 April 1994 is used for paragraph 3.17 and 3.23; the attempted arrest of informant T13's husband is generalised in paragraphs 3.17 and 3.18; the transfer of the refugees from the Cathedral to the stadium on 15 April 1994, the refugees' imprisonment at the stadium, and the refugees attempt to escape in late April 1994 are generalised in paragraphs 3.21 and 3.22; the selection and killing of refugees from Cyangugu stadium is generalised in paragraphs 3.17, 3.18, and 3.23; the arrest of a group of refugees at the Jesuits' home on 18 April 1994 is generalised in paragraphs 3.20 and 3.24; the raid in Kanombe and the detention and killing of certain people at the military camp is generalised in paragraphs 3.24 and 3.25; the massacres at the football field in Gisuma on 14 April 1994 and at Kadasomwa are generalised in paragraphs 3.26 and 3.27.

[31] *See supra* para. 29.

[32] *See supra* para. 30.

a. Paragraphs 9.1, 9.2 and 9.3

35. The Judgement characterised paragraphs 9.1, 9.2, and 9.3 of the Ntagerura Indictment, which may be summarised as alleging that prior to and from 1 January to 31 July 1994 Ntagerura attended or conducted meetings in Cyangugu, as "problematic" because of the broad date ranges, the lack of particulars about the alleged meetings or Ntagerura's participation, and the failure to allege a criminal purpose.[33] Nevertheless, the Chamber decided to consider all Prosecution evidence concerning meetings attended by Ntagerura, including meetings that fall outside of the temporal jurisdiction of the Tribunal.

36. An examination of the supporting materials submitted at confirmation reveals that the allegations in paragraphs 9.1, 9.2, and 9.3 were drawn from the statements of informants T836/K96, T197/96, and 863/K96. The only specifically identifiable event is alleged by informant T836/K96, who stated that Ntagerura chaired a meeting in Cyangugu on 11 April 1994. However, the informant does not indicate that the meeting had a criminal purpose, nor does he provide a list of other participants or any other relevant material fact. The other two informants provided only general statements that Ntagerura was the principal leader of events in Cyangugu, that most of the communal meetings were held at Ntagerura's residence, and that Ntagerura visited Michele Busunyu, who led killings in Karengera commune. On the basis of these statements, the Prosecution has formulated three broad paragraphs concerning Ntagerura's participation in meetings in Cyangugu, which the Prosecution alleges in support of six counts in the Indictment.

37. In my opinion, the supporting materials demonstrate that the Prosecution did not have sufficiently specific information at the time of confirmation about any particular meeting attended by Ntagerura. I would therefore have considered evidence of meetings only as background information or "facts of the case" and not as material facts directly supporting any of the counts of the Indictment.

b. Paragraphs 14.1 and 14.3

38. In the Judgement, the Trial Chamber has found that paragraphs 14.1 and 14.3 fail to identify the nature of Ntagerura's alleged criminal participation and fail to particularise any incident by date, location, or other circumstances during a seven month period.[34] An examination of the supporting materials provides no further details which would enable the Chamber to more precisely define the scope of these allegations. Paragraphs 14.1 and 14.3 of the Ntagerura Indictment are purportedly supported by the statements of informants T197/96, T838/K96, and T863/K96. However, none of these statements alleges any specific activities of the Accused which could be considered as monitoring the *Interahamwe* or verifying that the orders to kill the Tutsi and political opponents had been carried out. Where the Indictment is vague and the supporting materials provide no further insight, then these allegations should not be considered as directly supporting any crime.

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[33] Judgement, para 41.
[34] Judgement, para 45.

c. Paragraphs 17, 18, and 19

39. The Trial Chamber has found that the generic allegations in paragraphs 17 and 18 do not sufficiently particularise any of the underlying alleged criminal events.[35] These allegations were supported at confirmation by the statement of T197/96 that massacres started in Cyangugu in February 1994. Informant T838/K96 provides the only identifiable instance of particular killings: that on 16 April 1994 Bagambiki and others removed several refugees from Cyangugu stadium, among whom only one survived. However, this allegation does not involve any link with Ntagerura and cannot support any charge against him. In my view, the general allegations in paragraphs 17 and 18, even if proven, could only serve as background information of the case.

40. Paragraph 19 is supported by T838/K96 who stated that the Accused was in Cyangugu prefecture as a supervisor of massacres. However, neither the allegation in the Indictment nor the informant's statement gives any information concerning a specific event of supervision or any description of the supervisory activities of the Accused. The allegation that Ntagerura attended a meeting chaired by Sindikubwabo on an unspecified date after April 1994 is supported by the same informant in the same general way, so that it gives no additional information concerning the relevance or importance of the meeting or of the Accused's presence at it.

d. Conclusion

41. The supporting materials to the Ntagerura Indictment provide no additional information which would permit the Chamber to distinguish any specific criminal event. Moreover, the supporting materials fail to describe either the participation of the Accused in the alleged events or the other circumstances which are necessary to establish a specific form of his responsibility. Although counts 1 to 5 charge Ntagerura as a principal perpetrator or an accomplice, the supporting materials describe no specific acts or omissions of the Accused which could be considered as falling within the scope of Article 6(1) of the Statute. Nor do the supporting materials provide any more specific information to define Ntagerura's alleged superior responsibility.

42. In my opinion, the Ntagerura Indictment should be dismissed for incurable material defects in addition to the concession of the Prosecution that it has not adduced evidence for certain allegations.

2. Bagambiki /Imanishimwe Indictment

43. For reasons set out above, I will not analyse paragraphs 3.12, 3.13, 3.14, 3.15, 3.29, or 3.31.[36]

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[35] Judgement, para. 47.
[36] *See supra* para. 29.

44. The Bagambiki/Imanishimwe Indictment was supported at confirmation by excerpts from the statements of thirty-eight informants, ten of whom testified at trial. The Indictment was further supported by reference to André Guichaoua's *Les crises politiques au Burundi et au Rwanda (1993 – 1994)*, several reports of the general staff of the Rwandan Armed Forces, a report of Special Rapporteur of Commission for Human Rights, and several provisions of Rwandan law.

a. Paragraph 3.16

45. Paragraph 3.16 of the Bagambiki/Imanishimwe Indictment alleges that Bagambiki participated in training, instructing, and distributing weapons to the *Interahamwe*, who later committed massacres of the Tutsi population. The Trial Chamber has found that the allegations contained therein are imprecise and fail to provide material facts.[37] None of the statements of the eight informants (T18, T36, T1, T37, T11, T6, T32 and T10) included in the Prosecution's supporting materials implicates Bagambiki in such activities or provide any further details which could serve to add precision to these broad allegations. Of these informants, only T32 (and perhaps T37[38]) testified at trial. The precise scope of the allegation in paragraph 3.16 is impossible to define and I would not consider this paragraph as alleging the material facts of any crime.

b. Paragraphs 3.17 and 3.18

46. The Trial Chamber has found that paragraph 3.17 fails to particularise any incident or to provide other relevant material facts.[39] However, an examination of the supporting material demonstrates that the Prosecution was contemplating two distinct events. Paragraph 3.17 is supported by the statements of informants T13 and T15:

(a) Informant T13 stated that on an unknown day in late April 1994 at 5:00 a.m., four soldiers came to her residence to arrest her husband, whose name was amongst those contained on a list of persons to be eliminated. According to T13, the list was formulated by Bagambiki, Imanishimwe, the Commander of the Gendarmerie, and others. The statement sufficiently identifies a particular event during which a list of victims, allegedly prepared by both Accused, was employed.

(b) Informant T15 describes the selection of seventeen persons, eleven of whom he identified, on 16 April 1994 from amongst the refugees at the Cyangugu stadium. The statement clearly defines the date, the location, the event, the role of Bagambiki, and the identity of many of the victims.

47. Based on the supporting materials, the meaning of paragraph 3.17 can be narrowed to these two specific incidents. The Prosecution should have pleaded these two incidents with precision in the Indictment. Other incidents involving lists should not be considered by the Chamber, as this would be beyond the scope of the Bagambiki/Imanishimwe Indictment as confirmed.

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[37] Judgement, para. 53.
[38] It was not possible to establish the altered pseudonym of this informant.
[39] Judgement, para. 54.

48. Paragraph 3.18 does not allege that either Bagambiki or Imanishimwe participated in giving lists to soldiers or *Interahamwe*.[40] The vague allegations were supported at confirmation by informants T13 and T36. However, neither informant implicates Bagambiki or Imanishimwe or gives any additional particulars which could serve to identify a particular event. Moreover, neither of these two informants testified at trial. In my view these allegations should not be used to support any charge. The only instances of the use of lists of victims allegedly prepared by Bagambiki and Imanishimwe are included in paragraphs 3.17 and 3.23. Accordingly, I would not consider the evidence in support of this paragraph.

c. Paragraph 3.19 and 3.20

49. Paragrah 3.19 does not allege that Bagambiki or Imanishimwe participated in any attack by *Interahamwe* against refugees at Cyangugu Cathedral.[41] These allegations were supported at confirmation by informants T25, T9, T15, T13, and T21. None of them implicates Bagambiki or Imanishimwe in any attack at the Cathedral; rather, they describe other events beyond the scope of this paragraph which might support some other allegations. In my view the allegations contained in this paragraph can only serve as background information of the case.

50. Paragraph 3.20 was supported at confirmation by informant T25, who stated that on 11 April 1994, immediately after the first attack on the refugees at the Cathedral, six refugees were arrested by soldiers and taken to the military camp where five were killed. Informant T8 gave a similar version of the same event. Some of the victims were identified. The statements of these informants provide additional details which clearly identify a particular event. These material facts should have been included in the Indictment at the time of confirmation and the Indictment should therefore be limited to these allegations.

d. Paragraphs 3.21 to 3.23

51. In the Judgement, the Trial Chamber has found that paragraph 3.21 fails to specify who threatened the refugees with death if they refused to obey the order to be transferred to the stadium, or whether the Accused knew of such threats.[42] The supporting materials, namely T13's statement, indicate that Imanishimwe ordered the soldiers to shoot every person who attempted to leave the group. The supporting materials therefore provide specific details about this event, which the Prosecution omitted to include in the Indictment. This allegation therefore may be considered in the Judgement.

52. Paragraph 3.22 does not allege any involvement of Bagambiki or Imanishimwe in either the acts of the gendarmes in forcing back the refugees to the stadium or the acts of the gendarmes or *Interahamwe* in executing refugees. The paragraph is supported by informant T28, who stated that in April 1994, when refugees escaped from the stadium with the intention of fleeing to Zaire, they were stopped at Rusizi by soldiers

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[40] Judgement, para. 54.
[41] Judgement, para. 55.
[42] Judgement, para. 56.

and forced back to the stadium. According to the informant, approximately 600 of the refugees were killed by *Interahamwe*. More specific details of this particularised event should have been included in the Indictment. I am of the view that this event, known to the Prosecution at the time of confirmation, may be considered in the factual and legal findings, but that other events should not be considered even if they might fall within the language of the Indictment.

53. The Trial Chamber has found that paragraph 3.22 fails to allege a connection between the allegations and any act of criminal participation of either of the Accused.[43] The allegation in paragraph 3.22 that *Interahamwe* entered the stadium, abducted refugees, and executed them is not particularised by any informant. No statement describes the role of Bagambiki or Imanishimwe in the alleged killings of refugees in the stadium. These allegations should be dismissed as impermissibly vague and no factual findings should be made on evidence relating to them.

54. The Chamber has found that paragraph 3.23 fails to adequately particularise the victims or times when the alleged events occurred.[44] This paragraph was supported at confirmation by the statements of eight informants (T13, T15, T9, T25, T21, T20, T2 and T28) who describe the selection of victims from the stadium on 16 April 1994 in detail. The informants also mention selections of victims on other dates. For example:

(a) Informant T9 stated that a few days after 16 April 1994, soldiers took approximately thirty refugees from the stadium to Gatandara, where all but two were killed.

(b) Informant T2 described two selections of approximately forty refugees by Bagambiki, Ntagerura, and sous-prefet Kamonyo in April 1994 at 9 and 11 a.m. According to the informant, the refugees were taken to Gatandara and killed.

(c) Informant T28 stated that the day after the transfer of the refugees from the Cathedral to the stadium, 16 April 1994, Bagambiki read seventy names from a list but nobody responded. The next day Bagambiki returned with soldiers, separated men from women, and took away around forty men for interrogation. According to the informant, these refugees were taken to Gatandara and killed, save one who escaped. The account of informant T28 differs from the other informant's statements, but probably relates to the 16 April 1994 selection.

55. The statements of T2 and T28 are vague concerning selections of refugees after 16 April 1994 and it is therefore impossible to establish whether they refer to the same or different events. The statement of informant T21, which purportedly also supports this paragraph, cannot be considered because it only describes Ntagerura's acts. In light of what was known to the Prosecution at the time of confirmation, the Indictment should have been pleaded more specifically. Nevertheless, it is possible to narrow the scope of the broad language of the Indictment by reference to the supporting materials. In assessing the evidence in relation to this paragraph, I would only consider evidence relating to the specific events set out in the supporting materials.

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[43] Judgement, para. 56.
[44] Judgement, para 56.

56. Paragraph 3.24, which fails to adequately set out material facts, was supported at confirmation by informants T7, T8, and T14:[45]

(a) Informant T7 described the selection and arrest of approximately eight persons, some of whom are named, on 6 June 1994 at Kamembe market. According to the informant, they were taken by bus to the Gendarmerie camp near the Hotel Des Chutes and later to the military camp where the informant and other detainees stayed for several days. Every night, the soldiers selected three or four persons from lists of those to be killed. The informant identifies six persons, among them a woman called Mbembe, who were taken from the cells and presumably killed because they were not seen alive again. The raid on 6 June 1994 in Kamembe, and the selection, arrest, detention, ill treatment, and disappearance of certain identified persons are sufficiently detailed.

(b) Informant T8 stated that on 11 April 1994, at around 1:00 p.m., a group of soldiers arrested him and six others at the Jesuits' house near Cyangugu Cathedral. They were taken to the military camp, where they were badly beaten and detained on the order of Imanishimwe. The informant provides the names of other members of his group, all of whom were killed in the camp. The event and Imanishimwe's role in it are sufficiently individualised in the supporting materials.

(c) Informant T14 stated that two named soldiers were detained in the military camp because they were perceived to be Tutsi. Further, the informant stated that two identified soldiers were killed on the orders of Imanishimwe and that the accused beat up an unidentified lieutenant after the guard refused to obey his order to shoot at the victim.

57. Although paragraph 3.24 omitted to plead certain material facts, the supporting materials reveal that this information was in the hands of the Prosecution at the time of confirmation. The locations of the events, particulars of victims, and some other material facts should have been included in the Indictment and the scope of the allegations in the paragraph should therefore be restricted to these events.

e. Paragraph 3.25

58. Paragraph 3.25 contains two allegations, namely that Tutsi and moderate Hutu were arrested and taken to the military camp where they were tortured and executed and, secondly, that soldiers participated in the massacres of the Tutsi population. The Trial Chamber has found that the first sentence failed to plead material facts.[46] At confirmation, these allegations were based on informants T7, T30 and T33, who referred to the arrests of 6 June 1994 in Kamembe market and to people being tortured and killed at the military camp. Informant T33 provided sufficient details of the torture of three men and of the killing of his sister who were suspected of being accomplices of the RPA. Informant T27 also mentioned arrests and killings in the military camp, but failed to provide any further details. This allegation should be

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[45] Judgement, para. 57.
[46] Judgement, para. 58.

limited to those incidents mentioned in the supporting materials. The allegation that soldiers participated in massacres should not have been considered at all because the allegation does not contain any of the necessary material facts and no informant supported this allegation at confirmation

f. Paragraph 3.26

59. The Trial Chamber has found that paragraph 3.26 fails to plead necessary material facts.[47] Paragraph 3.26 was supported at confirmation by the statement of informant T2, who said that on 14 April 1994 Bagambiki ordered a group of thirty-eight to fifty-two soldiers to attack and kill a few hundred refugees gathered at the hill near the football field in Gisuma. Soldiers using big automatic weapons and *Interahamwe* using grenades killed all but approximately ten refugees. This event and Bagambiki's role in it is sufficiently individualised. Informant T28 stated that on 9 April 1994 at Kadasomwa, Bagambiki ordered a group of forty soldiers to shoot into a crowd of about 10,000 refugees. The informant stated that soldiers shot in the air, dispersing the refugees. The *Interahamwe* killed about 2,000 refugees while others escaped to Cyangugu parish. This event could therefore have been pleaded with precision on the basis of the material available to the Prosecution at the time of confirmation. The evidence should be limited to these two events found in the supporting materials.

g. Paragraph 3.27

60. The Trial Chamber has found that Paragraph 3.27, which alleges that Bagambiki's subordinates participated in massacres of Tutsi civilians, fails to plead material facts.[48] I note that the allegations implicitly refer to the superior responsibility of Bagambiki pursuant to Article 6(3) of the Statute for the massacres in which his subordinates participated. However, this paragraph is included in counts 1, 3, 4, 6, and 19, which also charge Bagambiki under Article 6(1) of the Statute. This contradiction raises a measure of confusion regarding the relationship between the allegations in this paragraph and Bagambiki's alleged superior responsibility for massacres in other paragraphs of the Indictment. Paragraph 3.27 was supported at confirmation by the statements of informants T17, T22-H-D, T1, T2, T36 and T16:

(a) Informant T36's statement does not assist in defining the scope of these allegations. He stated that he saw sous prefet Nsengimana and bourgmestre Kamanzi of Bugarama among the *Interahamwe*, but it is not clear when this occurred or whether the Interahamwe participated in any crime related to this meeting.

(b) Informants T16 and T17 stated that on 16 April 1994 the bourgmestre of Gatare commune distributed rifles to former soldiers and then led the *Interahamwe* from bugarama in the attack against Tutsi refugees at Bizinga, Kibuye prefecture. The particulars concerning the location, the time, the identification of the subordinate bourgmestre, and the description of his participation in the attack permit the event to be

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[47] Judgment, para. 59.
[48] Judgement, para. 60.

identified with precision. However, the identification of victims and other details of the massacre are not pleaded, nor are the facts necessary to establish superior responsibility In addition, the alleged massacre was carried out in Kibuye Prefecture, but the Indictment charges responsibility for massacres in Cyangugu Prefecture.

(c) Informant T22-H-D stated that Bandeste, Kwitonda, and Ngagi participated in the attack against about 800 refugees on 18 April 1994 at Mibilizi Parish. The statement is sufficiently detailed and identifies the massacre. However, it gives no information with which to establish Bagambiki's superior-subordinate relationship, knowledge of an imminent massacre, or available measures to prevent the attack or to punish the subordinates.

(d) Informant T2 stated that on 14 April 1994, sous prefet Kamonyo and bourgmestre Gakwaya along with thirty-eight to fifty-two soldiers and *Interahamwe* attacked a few hundred refugees at the football field in Gisuma, and that only ten refugees survived the massacre. This event is sufficiently individualised by location, time, identity of subordinates, and their activities in the attack. However, no further information alleges the facts necessary to establish the mode of superior responsibility.

(e) Informant T1 stated that on 10 April 1994 sous prefet Terebura along with the brigadier of Kagano commune and two gendarmes arrived in Karengera commune and started killing opposition leaders. The statement lacks any information about the victims, location, or time of these killings. It is impossible to identify any particular instance of killing. This statement gives no useful additional information which could add precision to the Indictment.

61. The Prosecution had evidence at the time of confirmation which could have been used to plead the material facts of crimes committed by subordinates in the Indictment. The vague language employed in paragraph 3.27 of the Indictment should therefore be interpreted in light of the specific information available in the supporting materials. However, the supporting materials do not provide the information necessary to establish superior responsibility, such as the Accused's knowledge, the available measures of preventing the crimes of subordinates, or the available measures of punishment. Allegations in this paragraph therefore cannot support a charge of superior responsibility.

h. Paragraph 3.28

62. The Chamber has found that paragraph 3.28 fails to plead material facts, and that this is a serious omission because it alleges an affirmative act of refusal to provide assistance to those in need.[49] This paragraph was supported at confirmation by the statements of informants T17, T31, and T22-H-D.

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[49] Judgement, para. 61.

(a) Informant T17 stated that in Gatare commune, during the night of 7 April 1994, one person was killed and a house of the president of the Liberal Party was set on fire. People requested the bourgmestre to assure their security and nocturnal patrols were organised in Hanika region. At midday on 11 April 1994, the informant told Bagambiki that refugees were in danger and requested gendarmes for protection. Bagambiki responded that he could not help. During attacks on the same day and the following day, approximately 2,000 refugees were killed. The request of T17 for assistance, the refusal of Bagambiki to protect the refugees, and the consequences of his refusal are sufficiently particularised to enable an identification of the alleged events.

(b) Informant T31 provided a detailed account of the events of 7 April 1994 in Gatare commune starting at 6:00 a.m. when he was informed that a Tutsi had been killed and that two houses had been burned. The informant met with the local population, organised patrols consisting of both Hutu and Tutsi, and informed Bagambiki and sous prefet Terebura about the situation. On the following day, another person was killed in Gatare commune and the informant asked Bagambiki and the sous prefet for gendarmes, but was denied. According to the informant, Tutsi refugees at Hanika Parish were attacked and some were killed. At midday on 11 April 1994, during the prefectural Security Council meeting, the informant told Bagambiki that refugees at Hanika Parish were under attack.

(c) Informant T22-H-D, who testified at trial as a defence witness, stated that on 18 April 1994 during the prefectural conference, Bagambiki and others were informed that approximately 8,000 refugees at Mibilizi Parish were under attack by the *Interahamwe*. After Bagambiki stated that he was not in a position to repulse the attack, the participants of the meeting decided to send an envoy to negotiate with the attackers and the refugees.

63. In conclusion, the instances of Bagambiki's refusal to secure the protection of the Tutsi population in Gatare commune and of the refugees at Mibilizi parish are sufficiently identified and may be considered as part of paragraph 3.28 of the Indictment.

i. Paragraph 3.30

64. The allegations against Imanishimwe in paragraph 3.30 of the Bagambiki/Imanishimwe Indictment are supported by Informants T21, T36, and T23:

(a) Informant T36 stated that on 16 April 1994 soldiers, *Interahamwe*, and Hutu refugees from Burundi encircled the houses of selected Tutsi and Hutu in Bugarama and started killing, pillaging, and destroying property. The locality, identity of victims and perpetrators, number of victims, and other details of the material facts are not very precise, but it is possible to particularise the event.

(b) Informant T21 stated that on 13 April 1994 many people in his neighbourhood, including his father, were killed by the *Interahamwe*. The description of the murder of his father is detailed by location, date, mode of execution, and the identity of some of the attackers including the murderer. Nevertheless, the statement does not mention that soldiers participated in this event.

(c) Informant T23's statement does not support the allegation that *Interahamwe* and soldiers participated in massacres of the Tutsi population and Hutu political opponents in Cyangugu.

65. Consequently, the events described by T36 and T23 should be considered as part of the Indictment.

3. Conclusion

66. In conclusion, it is my considered opinion that the Judgement should focus only on the specific and detailed allegations in the Indictment. Where allegations are broadly framed, I would consult the supporting materials in order to determine whether the supporting material can narrow the charges by providing the material facts underpinning them. A few of the broad allegations in the Bagambiki/Imanishimwe Indictment are substantiated by identifiable events contained in the supporting materials, namely:

(i) Bagambiki's and Imanishimwe's participation in the preparation of a list of a dozen victims which was used in late April 1994 during the attempted arrest of T13's husband, as generalised in paragraphs 3.17 and 3.18;

(ii) Bagambiki's and Imanishimwe's respective roles in the transfer of the refugees from the Cathedral to the Cyangugu stadium on 15 April 1994, the imprisonment of the refugees at the Cyangugu stadium, and the attempt of the refugees to leave the stadium later in April 1994, when about 600 of them were killed, as generalised in paragraphs 3.21 and 3.22;

(iii) Bagambiki's and Imanishimwe's respective roles in the selection and killing of a group of refugees from the Cyangugu stadium on 16 April 1994 and some other instances of selections and killings of refugees from the stadium, as generalised in paragraphs 3.17, 3.18, and 3.23;

(iv) The arrest of six refugees, including informant T25, at the Jesuits' house on 11 April 1994 and the subsequent detention, mistreatment, and killing of all but one of the refugees at the military camp, as generalised in paragraphs 3.20 and 3.24;

(v) The raid in Kanombe on 6 June 1994, and the subsequent selection, detention, torture of three men and killing of Mbembe at the Cyangugu military camp, as generalised in paragraph 3.24 and the first sentence of paragraph 3.25;

(vi) Massacres on the order of Bagambiki at the hill near the football field in Gisuma on 14 April 1994 and at Kadasomwa on unknown day in April 1994, as generalised in paragraphs 3.26 and 3.27; and

(vii) Bagambiki's refusal to protect the Tutsi population in Gatare commune between 7 and 11 April 1994 as well as refugees at Hanika Parish and Mibilizi Parish, as generalised in paragraph 3.28.

67. The Judgement acquitted Ntagerura and Bagambiki of all the charges against them. I agree with the verdict although the grounds for acquittal for a number of the allegations in the Indictments would differ if my approach were followed. The Prosecution produced no evidence at trial to prove the allegations summarised in paragraph 65(i) and (vii) above. Also, no evidence was adduced relating to the allegation that Bagambiki ordered a massacre at a football field in Gisuma on 14 April 1994, as is mentioned in paragraph 70(vi) above. For these crimes the Judgement has no findings at all.

68. In the Judgement, a majority of the Trial Chamber found that there was insufficient evidence to establish that Bagambiki participated in a massacre at Gashirabwoba football field. In my opinion the Trial Chamber should have disregarded this allegations and the evidence adduced during the trial concerning this massacre because the Indictment does not charge Bagambiki for this event.

69. The Judgement found Imanishimwe responsible for ordering his subordinate soldiers to participate in a massacre on 12 April 1994 at Gashirabwoba football field. The Prosecution had no information about this massacre at the time of filing the Indictment. Witnesses LAC, LAB, and LAH, who testified about this event, were first interviewed on 9 July 1999, 24 June 1999, and 22 June 1999 respectively: all three statements were taken after 9 October 1997 when the Indictment was filed. Thus, the Judgement in this instance exceeds the Indictment. In my opinion, these allegations should be disregarded and should not be used to support any count because they were not contained in the Indictment.

II. CUMULATIVE CONVICTIONS

70. The Judgement found Imanishimwe guilty of genocide under count 1, extermination as crime against humanity under count 10, and murder as violation of Article 3 common to the Geneva Conventions under count 13 for the massacre at the Gashirabwoba football field. Imanishimwe was also found guilty of the murder of four identified persons at the Karambo Military camp as a crime against humanity under count 9 and as violation of Article 3 common to the Geneva Conventions under count 13. He was also convicted of the torture of three persons at Karambo military camp as crime against humanity under count 12 and a violation of Article 3 common to the Geneva Conventions under count 13. Finally, the Judgment found Imanishimwe guilty of the cruel treatment of witness LI and those arrested with him on 11 April 1994 at Cyangugu Cathedral as violation of Article 3 common to the Geneva Conventions under count 13.[50]

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[50] The Prosecution charged Imanishimwe for this event with torture as crime against humanity under Article 3(f) of the Statute and as violation of Article 3 common to the Geneva Conventions under Article 4(a) of the Statute. The Judgment acquitted Imanishimwe for torture as crime against humanity because the mistreatment was not shown to have caused the severe pain or suffering required for torture, but found him guilty of cruel treatment as a violation of common Article 3 to the Geneva

71. For the reasons which are explained in my separate opinion in the *Semanza* Judgement,[51] in a case of inter-article ideal concurrence of crimes, genocide consumes extermination as a crime against humanity and murder as a violation of Article 3 common to the Geneva Conventions. In ideal concurrence of crimes based on the same facts, crimes against humanity consume violations of Article 3 common to the Geneva Conventions. Therefore, leaving aside my concerns about the Gashirabwoba massacre being outside the scope of the Indictment as explained above,[52] I would find Imanishimwe guilty only of genocide for the massacre at Gashirabwoba football field[53] on 12 April 1994, and for murder, imprisonment, and torture at the Karambo military camp as crimes against humanity under counts 9, 11, and 12.

Arusha, 25 February 2004

Pavel Dolenc

Judge

[Seal of the Tribunal]

Conventions pursuant to Article 4 of the Statute. In my view this verdict appears inconsistent because such mistreatment could be characterized as an inhumane act as a crime against humanity pursuant to Article 3(i) of the Statute. The fact that Article 4(a) of the Statute enumerates crimes against life and wellbeing of persons, such as murder, torture, mutilation, and other forms of cruel treatment in one subsection while in Article 3 of the Statute they are enumerated in several subsections does not justify such a different verdict.

[51] *Semanza*, Judgement (TC) (Separate and Dissenting Opinion of Judge Pavel Dolenc).

[52] *Supra* para. 68.

[53] This is provided that the indictment indeed properly charged the accused for this event, which was not the case.

96-10A-0224 024 ICTR-96-10-I (239-233) 29.1.1998 (4892-4886) (9) 4892239

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-96-10-I

ICTR
RECEIVED
29 JAN 1998
ACTION: REGISTRAR
COPY: :

THE PROSECUTOR

AGAINST

ANDRÉ NTAGERURA

2004 FEB 25 P 4:35

AMENDED INDICTMENT

1. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to the authority stipulated in Article 17 of the Statute of the International Criminal Tribunal for Rwanda ("the Statute of the Tribunal") charges:

ANDRÉ NTAGERURA

with **GENOCIDE, CONSPIRACY TO COMMIT GENOCIDE, COMPLICITY IN GENOCIDE, CRIMES AGAINST HUMANITY, AND SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF THE ADDITIONAL PROTOCOL II, as set forth below:**

THE ACCUSED

ANDRÉ NTAGERURA is believed to have been born in 1950, in Karengera *commune*, Cyangugu *préfecture*, in the Republic of Rwanda. He is the son of Innocent NSABUWINYE and Angéline NSABUWINYE. At the time of the events referred to in this indictment, he was the Minister of Transport and Communications of the Republic of Rwanda. The accused is currently detained in the Republic of Cameroon.

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: CONSTANT K. HOMETOWU
SIGNATURE: DATE: 19 JAN. 2004

CONCISE STATEMENT OF FACTS

General

1. During the events referred to in this indictment, Rwanda was divided into eleven *préfectures*, one of which was Cyangugu *préfecture*.

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

3. During the entire period referred to in this indictment, there were in Rwanda widespread and/or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

4. During the events referred to in this indictment, a state of non-international armed conflict existed in Rwanda. The victims referred to in this indictment were protected persons and did not take an active part in the hostilities.

5. On 6 April 1994, the plane carrying President Juvénal Habyarimana of Rwanda crashed on its approach to Kigali airport, Rwanda, killing all on board. Soon thereafter, attacks on and the killing of civilians began throughout Rwanda.

Control and Exercise of Authority

6. During the period referred to in this indictment, **ANDRÉ NTAGERURA** was a senior cabinet Minister, and a prominent member of the ruling party, the *Mouvement républican national pour la démocratie et le devéloppement* (MRND), formerly the *Mouvement révolutionnaire national pour le devéloppement,* in southwestern Rwanda.

7. As a member of the MRND, **ANDRÉ NTAGERURA** was involved in defining the political orientation of the MRND.

8. **ANDRÉ NTAGERURA** was the Minister of Transport and Communications of the Republic of Rwanda. As Minister of Transport and Communications, he was responsible for, among other things, assigning all government vehicles.

Other Relevant Material Facts

9.1 From 1 January to 31 July 1994, and even as early as 1991, **ANDRÉ NTAGERURA** had strong political and community ties in Cyangugu *préfecture*, in Rwanda. **ANDRÉ NTAGERURA** frequently traveled to Cyangugu *préfecture*, particularly to Karengera, Gatare and other *communes* and conducted MRND party meetings as well as meetings of *conseillers* and *bourgmestres* of the *préfecture*.

9.2 Consequently, on 11 April 1994, after the death of President Habyarimana when the plane in which he was travelling crashed, André Ntagerura conducted a meeting in Cyangugu.

9.3 From 1 January to 31 July 1994 and even before this period,
- **André NTAGERURA,** Minister of Transport and Communications,
- Emmauel BAGAMBIKI, *Préfet* of Cyangugu,
- Yussuf MUNYAKAZI, *Interahamwe* leader,
- Christophe NYANDWI, civil servant at the Ministry of Planning,
- Michel BUSUNYU, Chairman of the MRND in Karengera *commune*,

all prominent MRND figures in Cyangugu, held a meeting among themselves as well as with others to organize, prepare and encourage the genocide, particularly of the Tutsi population.

10. From 1 January to 31 July 1994, the *Interahamwe* militia (*"Interahamwe"*) was a wing of the MRND party.

11. From 1 January to 31 July 1994 and particularly in February, March and April 1994, **ANDRE NTAGERURA** allowed and/or authorized the use of government vehicles, specifically buses for the transport of militiamen, armed *Interahamwe* militiamen and civilians, including Tutsis, as well as for the transport of weapons and ammunition to and throughout Cyangugu *préfecture*, particularly through Karengera, Bugarama, Nyakabuye and other *communes* as well as in Butare, Ruhengeri and Kibuye *préfectures* and elsewhere.

12.1 From 1 January to 31 July 1994 as early as 1991, **ANDRÉ NTAGERURA** encouraged and participated in the training of *Interahamwe* militiamen in Karengera *commune* and in other *communes* in Cyangugu *préfecture*.

12.2 In January 1994, **ANDRÉ NTAGERURA** stated that the Hutus were not acting without thinking, that he was training their *Interahamwe* and that the Tutsi would thus be paid back one day.

13. From 1 January to 31 July 1994 and as early as January 1993, weapons, ammunition and uniforms were frequently distributed in Cyangugu *préfecture*. These weapons were sometimes stored in Yussuf MUNYAKAZI's house in Bugarama *commune* and elsewhere. They were later distributed to the *Interahamwe* in Cyangugu *préfecture*.

14.1 From 1 January to 31 July 1994, **ANDRÉ NTAGERURA** was often seen in the company of, and publicly expressed his support for, Yussuf MUNYAKAZI and the *Interahamwe* in Cyangugu *préfecture*, specifically in Bugarama *commune*.

14.2 Thus, in February 1994, **ANDRÉ NTAGERURA** was seen with a group of *Interahamwe* militiamen and their leader, Yussuf MUNYAKAZI, who were dressed in the multicoloured uniform of the militia and were armed with grenades, swords and machetes and were chanting war songs.

14.3 From 1 January to 31 July 1994, **ANDRÉ NTAGERURA** travelled throughout Cyangugu *préfecture*, often accompanied by *Préfet* Emmanuel BAGAMBIKI and Yussuf MUNYAKAZI, to monitor the activities of the *Interahamwe* and verify that the orders to kill the Tutsis and all political opponents had been carried out.

15.1 From 1 January to 31 July 1994, **ANDRÉ NTAGERURA** was seen with Yussuf MUNYAKAZI, while the latter expressed anti-Tutsi sentiments, and he did not condemn these publicly expressed sentiments.

15.2 In February 1994, notably, **ANDRÉ NTAGERURA** approved a public statement made by Yussuf MUNYAKAZI in which the latter affirmed that they (the Hutus) were going to eliminate the Tutsis.

16. From 1 January to 31 July 1994, Yussuf MUNYAKAZI was an influential member and one of the leaders of the *Interahamwe* in Cyangugu *préfecture*. He was one of the people in charge of implementing MRND orders. Many of the orders came from **ANDRÉ NTAGERURA**.

17. The murder of civilians in Cyangugu started in the course of the month of

February 1994, and was led and perpetrated by the *Interahamwe* and other groups.

18 From early April through July 1994, attacks on Tutsi civilians occurred in Cyangugu *préfecture* and resulted in the death of an estimated one hundred thousand or more people and countless injured.

19. During the period of these attacks, **ANDRÉ NTAGERURA** continued to remain active in Cyangugu *préfecture* and acted as a supervisor. On one occasion after April 1994, he attended a meeting chaired by the Interim President of the Republic of Rwanda, Théodore SINDIKUBWABO, who congratulated the community on killing the Tutsis.

CHARGES

COUNT 1

As a result of the acts committed between February 1994 and 31 July 1994, in Cyangugu *préfecture*, in relation to the events described in paragraphs 9 to 19 and particularly paragraphs 9, 11, 14.2, 14.3, 16, 17 and 18, **ANDRÉ NTAGERURA** is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population, with the intent to destroy, in whole or in part, an ethnic or racial group as such, and has thereby committed **GENOCIDE**, a crime stipulated in Article 2(2) (a),(b), for which he is individually responsible pursuant to Article 6(1) and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

COUNT 2

As a result of the acts committed between January and 31 July 1994 on the territory of the Republic of Rwanda, in relation to the events described in paragraphs 9 to 19 and particularly paragraphs 9, 13, 14.3, 16 and 19, **ANDRÉ NTAGERURA** conspired with Emmanuel BAGAMBIKI, Samuel IMANISHIMWE, Yussuf MUNYAKAZI and others to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and thereby committed **CONSPIRACY TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(b), for which he is responsible pursuant to Article 6(1) and

which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 3

As a result of the acts committed between February and 31 July 1994, in Cyangugu *préfecture*, Republic of Rwanda, in relation to the events described in paragraphs 9 to 19, particularly paragraphs 12.1 and 12.2, **ANDRÉ NTAGERURA** was complicit in killing or causing serious bodily and mental harm to members of the Tutsi population, with the intent to destroy, in whole or in part, an ethnic or racial group as such, and thereby committed **COMPLICITY IN GENOCIDE,** a crime stipulated in Article 2(3)(e), for which he is responsible pursuant to Article 6(1), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 4

As a result of the acts committed between February 1994 and 31 July 1994 in Cyangugu *préfecture*, Republic of Rwanda, in relation to the events described in paragraphs 9 to 19, particularly paragraphs 17 and 18, **ANDRÉ NTAGERURA** is responsible for the extermination of civilians as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds and has thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(b), for which he is individually responsible pursuant to Article 6(1) and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 5

As a result of the acts committed between 6 April and 31 July 1994, in Cyangugu *préfecture*, Republic of Rwanda, in relation to the events described in paragraphs 9 to 19, particularly paragraphs 14.2, 16 and 18, **ANDRÉ NTAGERURA** is responsible for causing violence to life, health and physical or mental well-being of persons, in particular murder, as well as cruel treatment, and has thereby committed **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II,** a crime stipulated in Article 4 (a), for which he is individually responsible pursuant to Article 6(1) and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 6

As a result of the acts committed between 1 January and 31 July 1994 on the territory of the Republic of Rwanda, in relation to the events described in paragraphs 9 to 19 and particularly paragraph 11, **ANDRÉ NTAGERURA**, as Minister of Transport and Communications, being a senior official or recognized as such, knew or had reason to know that his subordinates, in this case the civil servants and officials within his Ministry or reporting to it, were preparing to commit or had committed acts referred to in Articles 2 to 4 of the Statute of the Tribunal, specifically acts of complicity consisting of placing Government or parastatal company vehicles at the disposal of the *Interahamwe* militia or other armed groups perpetrating the crime of genocide, and failed to take the necessary and reasonable steps to prevent the said acts from occurring or punishing the perpetrators, and thereby committed **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e), for which he is individually responsible pursuant to Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of Tribunal.

For the Prosecutor,
The Deputy Prosector

Bernard MUNA

26 – 01 – 1998

Kigali, Rwanda

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CASE NO.: ICTR

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THE PROSECUTOR

AGAINST

Emmanuel BAGAMBIKI
Samuel IMANISHIMWE
Yussuf MUNYAKAZI

INDICTMENT

1. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to the authority stipulated in Article 17 of the Statute of the Tribunal of the International Criminal Tribunal for Rwanda (the Statute of the Tribunal) charges:

Emmanuel BAGAMBIKI
Samuel IMANISHIMWE
Yussuf MUNYAKAZI

with **GENOCIDE, COMPLICITY IN GENOCIDE, CONSPIRACY TO COMMIT GENOCIDE, CRIMES AGAINST HUMANITY** and **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS and of ADDITIONAL PROTOCOL II thereto,** all offences stipulated in Articles 2, 3 and 4 of the Statute of the Tribunal.

2. THE ACCUSED

2.1 **Emmanuel Bagambiki** was born in Cyangugu *préfecture*. Throughout the events referred to in this indictment, until he left Rwanda, the accused held the office of *Préfet* of Cyangugu *préfecture*. Before that, he held the office of *Préfet* of Kigali-Rural *préfecture*. He was a member of the MRND.

2.2 **Samuel IMANISHIMWE** was born in Nyamitaba, Masisi region, in the Democratic Republic of Congo. His parents were from Nkuli *commune*, Ruhengeri *préfecture*. On 6 April 1994, he held the position of Commander of the Cyangugu

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Tribunal pénal international pour le Rwanda
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SIGNATURE: DATE: 19 JAN 2004

barracks and had the rank of Lieutenant. In 1993, he held the position of officer of the staff of the G-3, attached to the General Staff of the Rwandan Army in Kigali.

2.3 **Yussuf MUNYAKAZI** was born in Rwamatamu *commune*, Kibuye *préfecture*, Rwanda. Throughout the period referred to in this indictment, until he left Rwanda, the accused was a businessman in Bugarama *commune*, Cyangugu *préfecture*, and led a group of militiamen of the MRND, the *Interahamwe*.

3. CONCISE STATEMENT OF FACTS.

3.1 Unless otherwise stated, the violations of international humanitarian law referred to in this indictment took place in Rwanda between 1 January and 31 July 1994.

3.2 During the events referred to in this indictment, the Tutsis, Hutus and Twas were identified as ethnic or racial groups.

3.3 During the events referred to in this indictment, there were in Rwanda widespread or systematic attacks against a civilian population based on political, ethnic or racial grounds.

3.4 During the time of the events referred to in this indictment, there was an armed international conflict in the territory of Rwanda. The victims mentioned in this indictment were protected persons, according to the meaning of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto, and did not actively participate in the conflict.

3.5 During the events referred to in this indictment, the MRND *(Mouvement Républicain National pour le Développment et la Démocratie)* was one of the political parties. The members of its youth wing were called the "*Interahamwe*". Most of them subsequently became part of a para-military militia group.

3.6 At prefectural level, the *Préfet* is the most senior government representative and possessor of the State's authority at the local level. The *Préfet* carries out his duties under the hierarchical authority of the Minister holding the portfolio of the Interior. The *Préfet*'s authority covers the entire *préfecture*.

In his capacity as *Préfet* of Cyangugu, **Emmanuel BAGAMBIKI** had to carry out the duties attached to his office, notably:

-Run the préfecture *in conformity with the laws and regulations in force and*

ensure their implementation and observance.
-Ensure peace, public order and the safety of people and property
-Assist and supervise the communal authorities
-Inform the central body of the situation in the préfecture *and of any event of interest.*

3.7 In the *préfecture*, the *Préfet* is in charge of ensuring peace, public order and the safety of people and property. The *Préfet* may, in the discharge of his duties, request the intervention of the army and of the *Gendarmerie Nationale*.

The *Gendarmerie Nationale* is an armed body set up to maintain public order and the observance of laws. It falls under the Ministry of National Defense but can carry out its duties of ensuring pubic order at the request of the national authority having jurisdiction, namely the *Préfet*. In cases of emergency, this request can be made verbally, notably by telephone. The request must be carried out immediately.

In addition, the *Gendarmerie Nationale* is obliged to transmit to the *Préfet* all information relating to public order and has the duty to assist anyone in danger who requests its help.

3.8 As *Préfet*, **Emmanuel BAGAMBIKI** exercised *de jure* authority over his subordinates, notably:

- *All the* sous-préfets;
- *All the* bourgmestres *of the* communes *and all public administration staff in the* communes;
- *All heads of public administration departments, who are ex-officio members of the prefectural committee chaired by the* Préfet;
- *All the administrative staff of the* préfecture;
- *All staff under contract with the prefectural administration;*
- *All government employees in the* préfecture.

3.9 Furthermore, **Emmanuel BAGAMBIKI**, by virtue of his office, exercised *de facto* authority over his subordinates and over others, notably army units.

3.10 During the events referred to in this indictment, Lieutenant **Samuel IMANISHIMWE**, in his capacity as Commander of the Cyangugu Barracks, exercised *de facto* and *de jure* authority over army units in Cyangugu *préfecture*.

3.11 During the events referred to in this indictment, **Yussuf MUNYAKAZI** was the leader of a group of MRND militiamen, the *Interahamwe*. Due to the influence he had and the functions he carried out, **Yussuf MUNYAKAZI** exercised *de facto*

authority over the *Interahamwe* militiamen in Cyangugu who perpetrated massacres of the civilian Tutsi population.

3.12 During the events referred to in this indictment, *Préfet* **Emmanuel BAGAMBIKI** chaired many of the meetings of the 'restricted security committee' of the *préfecture* of Cyangugu, the body responsible for the safety of the civilian population of the *préfecture,* meetings in which **Samuel IMANISHIMWE** participated, in his capacity as the Commander of the Cyangugu Barracks, as well as the Commander of the *Gendarmerie*, the *sous-préfets* and others. One of these meetings was held on or about 9 April 1994.

3.13 Furthermore, on at least two occasions, on or about 11 April 1994 and on or about 18 April 1994, *Préfet* **Emmanuel BAGAMBIKI** chaired meetings of the 'prefectural committee' of Cyangugu *préfecture,* where problems relating to the safety of the civilian population of the *préfecture* were discussed. Members of the 'restricted security committee', particularly *Préfet* **Emmanuel BAGAMBIKI** and Lieutenant **Samuel IMANISHIMWE**, as well as all the *bourgmestres,* representatives of political parties and different churches, attended these meetings.

3.14 Before and during the events referred to in this indictment,
Emmanuel BAGAMBIKI, *Préfet* of Cyangugu
André NTAGERURA, Minister of Transport and Communications
Yussuf MUNYAKAZI, *Interahamwe* leader
Christophe NYANDWI, an official in the Ministry of Planning
Michel BUSUNYU, MRND Chairman for Karengera *commune*, and
Édouard BANDESTE, *Interahamwe* leader
all of whom were prominent figures within the MRND in Cyangugu, held a large number of meetings among themselves, or with others, to instigate, prepare, and organize the genocide.

3.15 Also, during this same period, André NTAGERURA, **Yussuf MUNYAKAZI** and **Emmanuel BAGAMBIKI** publicly expressed anti-Tutsi sentiments.

3.16 Before and during the events referred to in this indictment, Minister André NTAGERURA, *Préfet* **Emmanuel BAGAMBIKI**, **Yussuf MUNYAKAZI**, Christophe NYANDWI, all of whom were influential figures in the MRND in Cyangugu, participated, directly or indirectly, in the training and instructing of, and distributing of weapons to, the MRND militiamen, the *Interahamwe*, who later committed massacres of the civilian Tutsi population.

3.17 During the events referred to in this indictment, **Lieutenant Samuel IMANISHIMWE**, in his capacity as Commander of the Cyangugu Barracks, participated, with *Préfet* **Emmanuel BAGAMBIKI** and other persons, in preparing lists of people to eliminate, mostly Tutsis and some Hutus in the opposition.

3.18 These lists were given to the soldiers and militiamen with orders to arrest and kill the persons whose names were listed. The soldiers and the *Interahamwe* then carried out the orders.

3.19 In early April 1994, many Tutsis sought refuge at Cyangugu Cathedral to protect themselves from the attacks against them. On or about 11 April 1994, the attacks on the refugees at the cathedral began. The attacks were carried out by groups of *Interahamwe* militiamen, including a group led by **Yussuf MUNYAKAZI**.

3.20 Following the first attack on or about 11 April 1994, some refugees were arrested and taken to the Cyangugu Barracks before Lieutenant **Samuel IMANISHIMWE,** who gave the order to execute them.

3.21 On or about 15 April 1994, *Préfet* **Emmanuel BAGAMBIKI** and Lieutenant **Samuel IMANISHIMWE** ordered that the refugees at the Cathedral be moved to Cyangugu Stadium. The refugees who refused to obey were threatened with death.

3.22 The refugees from the cathedral were escorted to Kamarampaka Stadium in Cyangugu by the civilian and military authorities, including *Préfet* **Emmanuel BAGAMBIKI** and Lieutenant **Samuel IMANISHIMWE**. At the stadium, many other refugees were already there, and later, others came in to join them. They remained there for several weeks.

During this period, the refugees could not leave the stadium, which was guarded by *gendarmes*. Those who attempted to leave the stadium were either forced back inside by the *gendarmes*, or executed by the *Interahamwe* and the *gendarmes* who were outside the stadium. Also, during this period, *Interahamwe* would enter the stadium to abduct refugees and execute them.

3.23 On several occasions between April and June 1994, the authorities in Cyangugu, notably *Préfet* **Emmanuel BAGAMBIKI**, Lieutenant **Samuel IMANISHIMWE** and Minister André NTAGERURA, selected names from pre-established lists of the refugees who were inside the stadium, mostly Tutsis and some Hutus in the opposition. These refugees were then arrested and later executed in a place called Gatandara.

3.24 Between April and July 1994, Lieutenant **Samuel IMANISHIMWE** participated with his soldiers in the selection and arrest of Tutsis, some of whom were later executed at the Cyangugu Barracks.
Also, Lieutenant **Samuel IMANISHIMWE** ordered soldiers to execute certain people suspected of being Tutsis.

3.25 Between April and July 1994, Tutsis and moderate Hutus were arrested and taken to the Cyangugu Barracks to be tortured and executed. Also, during this period, soldiers, participated on several occasions with MRND militiamen and the *Interahamwe* in massacres of the civilian Tutsi population.

3.26 On at least two occasions in April 1994, *Préfet* **Emmanuel BAGAMBIKI** ordered soldiers and MRND militiamen, *i.e.* the *Interahamwe*, to kill members of the civilian Tutsi population and certain Hutus in the opposition.

3.27 Between April and July 1994, subordinates of *Préfet* **Emmanuel BAGAMBIKI**, notably *sous-préfets*, *bourgmestres*, government employees and *gendarmes*, participated in the massacres of the civilian Tutsi population and of certain Hutus in the opposition.

3.28 During the events referred to in this indictment, *Préfet* **Emmanuel BAGAMBIKI** had the duty of ensuring the protection and safety of the civilian population within his *préfecture*. On several occasions in April 1994, *Préfet* **BAGAMBIKI** failed or refused to assist those whose lives were in danger who asked for his help, particularly in Gatare *commune*, where those Tutsis were massacred.

3.29 Between April and July 1994, **Yussuf MUNYAKAZI** led militiamen of the MRND, the *Interahamwe*, who participated in massacres of the civilian Tutsi population and Hutu political opponents in Cyangugu *préfecture* and elsewhere, notably Kibuye *préfecture*.

3.30 During the events referred to in this indictment, the militiamen, *i.e.* the *Interahamwe*, with the help of the soldiers, participated in the massacres of the civilian Tutsi population and of Hutu political opponents in Cyangugu *préfecture*.

3.31 During the events referred to in this indictment, there were several tens of thousands of victims, mostly Tutsis, in Cyangugu *préfecture*.

4. CHARGES

The violations of international humanitarian law referred to in the following charges were committed between 1 January and 31 December 1994 in the territory of the Republic of Rwanda and refer to the events described in paragraphs 2.1 to 3.31 above.

For all of the acts describe in the paragraphs specified in each of the counts,

the accused either planned, incited to commit, ordered, committed, or in some other way aided and abetted the planning , preparation or execution of the said acts,

and/or alternatively,

the accused knew, or had reason to know, that their subordinates were preparing to commit or had committed one or more of the acts referred to in Articles 2 to 4 of the Statute of the Tribunal and failed to take the necessary and reasonable measures to prevent the said acts from being committed or to punish those responsible.

Emmanuel BAGAMBIKI

COUNT 1: By his acts or omissions described in paragraphs 3.16 to 3.23 and 3.26 to 3.28, **Emmanuel BAGAMBIKI** is responsible for killing and causing serious bodily and mental harm to members of the Tutsi population, with the intent to destroy, in whole or in part, an ethnic or racial group as such, and thereby committed **GENOCIDE**, stipulated in Article 2(3)(a) as a crime, for which he is individually responsible pursuant to Article 6 (1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 2: By his acts or omissions described in paragraphs 3.16 to 3.18, 3.23 and 3.26, **Emmanuel BAGAMBIKI** is responsible for killing and/or causing serious bodily or mental harm to members of the Tutsi population, and thereby committed **COMPLICITY IN GENOCIDE**, stipulated in Article 2(3)(e) as a crime, for which he is individually responsible pursuant to Article 6(1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 3: By his acts or omissions described in paragraphs 3.16 to 3.23 and 3.26 to 3.28, **Emmanuel BAGAMBIKI** is responsible for murdering civilians as part of

a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY,** stipulated in Article 3(a) as a crime, for which he is individually responsible pursuant to Article 6(1) and/or 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 4: By his acts or omissions described in paragraphs 3.16 to 3.23 and 3.26 to 3.28, **Emmanuel BAGAMBIKI** is responsible for exterminating civilians as part of a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY,** stipulated in Article 3(b) as a crime, for which he is individually responsible pursuant to Article 6(1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 5: By his acts or omissions described in paragraphs 3.21 and 3.22, **Emmanuel BAGAMBIKI** is responsible for imprisoning civilians as part of a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY,** stipulated in Article 3(e) as a crime, for which he is individually responsible pursuant to Article 6(1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 6: By his acts or omissions described in paragraphs 3.16 to 3.23 and 3.26 to 3.28, during a non-international armed conflict, **Emmanuel BAGAMBIKI** is responsible for causing violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment, and thereby committed **serious violations of Article 3 common to the GENEVA CONVENTIONS of 12 August 1949** for the protection of victims in times of war, **and of Additional Protocol II thereto** of 8 June 1977, stipulated in Article 4 (a) as a crime, for which he is individually responsible pursuant to Article 6 (1) and/or 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Samuel IMANISHIMWE

COUNT 7: By his acts or omissions described in paragraphs 3.17, 3.18, 3.20 to 3.25, and 3.30, **Samuel IMANISHIMWE** is responsible for killing and causing serious bodily and mental harm to members of the Tutsi population, with the intent to destroy, in whole or in part, an ethnic or racial group as such, and thereby committed **GENOCIDE,** stipulated in Article 2(3)(a) as a crime, for which he is

individually responsible pursuant to Article 6 (1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 8: By his acts or omissions described in paragraphs 3.17, 3.18, 3.20 to 3.25, and 3.30, **Samuel IMANISHIMWE** is responsible for killing and/or causing serious bodily or mental harm to members of the Tutsi population, and thereby committed **COMPLICITY IN GENOCIDE**, stipulated in Article 2(3)(e) as a crime, for which he is individually responsible pursuant to Article 6(1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 9: By his acts or omissions described in paragraphs 3.17, 3.18, 3.20 to 3.25, and 3.30, **Samuel IMANISHIMWE** is responsible for murdering civilians as part of a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY,** stipulated in Article 3(a) as a crime, for which he is individually responsible pursuant to Article 6(1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 10: By his acts or omissions described in paragraphs 3.17, 3.18, 3.20 to 3.25, and 3.30, **Samuel IMANISHIMWE** is responsible for exterminating civilians as part of a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY,** stipulated in Article 3(b) as a crime, for which he is individually responsible pursuant to Article 6(1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 11: By his acts or omissions described in paragraphs 3.17, 3.18, 3.21, 3.22, 3.24 and 3.25, **Samuel IMANISHIMWE** is responsible for imprisoning civilians as part of a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY,** stipulated in Article 3(e) as a crime, for which he is individually responsible pursuant to Article 6(1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 12: By his acts or omissions described in paragraphs 3.24 and 3.25, **Samuel IMANISHIMWE** is responsible for torturing civilians as part of a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY,** stipulated in Article 3(f) as a crime, for which he is individually responsible pursuant

to Article 6(1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 13: By his acts or omissions described in paragraphs 3.17, 3.18, 3.20 to 3.25, and 3.30, during a non-international armed conflict, **Samuel IMANISHIMWE** is responsible for causing violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment, and thereby committed **serious violations of Article 3 common to the GENEVA CONVENTIONS of 12 August 1949** for the protection of victims in times of war, **and of Additional Protocol II thereto** of 8 June 1977, stipulated in Article 4 (a) as a crime, for which he is individually responsible pursuant to Article 6 (1) and/or 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Yussuf MUNYAKAZI

COUNT 14: By his acts or omissions described in paragraphs 3.16, 3.19, 3.22, 3.25, 3.29 and 3.30, **Yussuf MUNYAKAZI** is responsible for killing and causing serious bodily and mental harm to members of the Tutsi population, with the intent to destroy, in whole or in part, an ethnic or racial group as such, and thereby committed **GENOCIDE**, stipulated in Article 2(3)(a) as a crime, for which he is individually responsible pursuant to Article 6 (1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 15: By his acts or omissions described in paragraphs 3.14 to 3.16, 3.19, 3.22, 3.25, 3.29 and 3.30, **Yussuf MUNYAKAZI** is responsible for killing and/or causing serious bodily or mental harm to members of the Tutsi population, and thereby committed **COMPLICITY IN GENOCIDE**, stipulated in Article 2(3)(e) as a crime, for which he is individually responsible pursuant to Article 6(1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 16: By his acts or omissions described in paragraphs 3.14 to 3.16, 3.19, 3.22, 3.25, 3.29 and 3.30, **Yussuf MUNYAKAZI** is responsible for murdering civilians as part of a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY,** stipulated in Article 3(a) as a crime, for which he is individually responsible pursuant to Article 6(1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 17: By his acts or omissions described in paragraphs 3.14 to 3.16, 3.19, 3.22, 3.25, 3.29 and 3.30, **Yussuf MUNYAKAZI** is responsible for exterminating civilians as part of a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY,** stipulated in Article 3(b) as a crime, for which he is individually responsible pursuant to Article 6(1) and/or Article 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 18: By his acts or omissions described in paragraphs 3.14 to 3.16, 3.19, 3.22, 3.25, 3.29 and 3.30, during a non-international armed conflict, **Yussuf MUNYAKAZI** is responsible for causing violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment, and thereby committed **serious violations of Article 3 common to the GENEVA CONVENTIONS of 12 August 1949** for the protection of victims in times of war, **and of Additional Protocol II thereto** of 8 June 1977, stipulated in Article 4 (a) as a crime, for which he is individually responsible pursuant to Article 6 (1) and/or 6(3), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Emmanuel BAGAMBIKI and
Samuel IMANISHIMWE and
Yussuf MUNYAKAZI

COUNT 19: As described in paragraphs 3.12 to 3.30, **Emmanuel BAGAMBIKI, Samuel IMANISHIMWE and Yussuf MUNYAKAZI** did conspire among themselves and together with others, including notably André NTAGERURA, Christophe NYANDWI, Michel BUSUNYU and Edouard BANDESTE, to commit genocide and thereby committed **CONSPIRACY TO COMMIT GENOCIDE**, stipulated in Article 2 (3) (b), as a crime, for which they are individually responsible pursuant to Article 6 (1), and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Kigali, 9 October 1997

The Prosecutor

Louise Arbour

ANNEX II: LIST OF CITED JUDGEMENTS AND SENTENCES

Akayesu (ICTR)

The Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Sentence, ICTR TC, 2 October 1998.

Aleksovski (ICTY)

The Prosecutor v. Aleksovski, Case No. IT-95-14/1-A, Judgement, ICTY AC, 24 March 2000.

Bagilishema (ICTR)

The Prosecutor v. Bagilishema, Case No. ICTR-95-1A-T, Judgement, ICTR TC, 7 June 2001.

Blaskic (ICTY)

The Prosecutor v. Blaskic, Case No. IT-95-14-T, Judgement, ICTY TC, 3 March 2000.

Celebici (ICTY)

The Prosecutor v. Delalic et al. (Celebici Case), Case No. IT-96-21-T, Judgement, ICTY TC, 16 November 1998.

The Prosecutor v. Delalic et al. (Celebici Case), Case No. IT-96-21-A, Judgement, ICTY AC, 20 February 2001.

Jelisic (ICTY)

The Prosecutor v. Jelisic, Case No. IT-95-10-T, Judgement, ICTY TC, 14 December 1999.

Kambanda (ICTR)

The Prosecutor v. Kambanda, Case No. ICTR-97-23-S, Judgement and Sentence, ICTR TC, 4 September 1998.

Kayishema and Ruzindana (ICTR)

The Prosecutor v. Kayishema and Ruzindana, Case No. ICTR-95-1-T, Judgement, ICTR TC, 21 May 1999.

The Prosecutor v. Kayishema and Ruzindana, Case No. ICTR-95-1-T, Sentence, ICTR TC, 21 May 1999.

Kordic and Cerkez (ICTY)

The Prosecutor v. Kordic and Cerkez, Case No. IT-95-14/2-T, Judgement, ICTY TC, 26 February 2001.

Krnojelac (ICTY)

The Prosecutor v. Krnojelac, Case No. IT-97-25-T, Judgement, ICTY TC, 15 March 2002.

The Prosecutor v. Krnojelac, Case No. IT-97-25-A, Judgement, ICTY AC, 17 September 2003.

Kunarac (ICTY)

The Prosecutor v. Kunarac et al., Case No. IT-96-23-T & IT-96-23/1-T, Judgement, ICTY AC, 12 Juen 2002.

Kupreskic (ICTY)

The Prosecutor v. Kupreskic et al., Case No. IT-95-16-A, Judgement, ICTY AC, 23 October 2001.

Musema (ICTR)

The Prosecutor v. Musema, Case No. ICTR-96-13-T, Judgement and Sentence, ICTR TC, 27 January 2000.

Musema v. The Prosecutor, Case No. ICTR-96-13-A, Judgement, ICTR AC, 16 November 2001.

Naletilic and Martinovic

The Prosecutor v. Naletilic and Martinovic, Case No. ICTY-98-34-T, Judgement, ICTY TC, 31 March 2003.

Ntakirutimana (ICTR)

The Prosecutor v. Elizaphan and Gerard Ntakirutimana, Case No. ICTR-96-10-T & ICTR-96-17-T, Judgement and Sentence, ICTR TC, 21 February 2003.

Niyitegeka

The Prosecutor v. Niyitegeka, Case No. ICTR-96-14-T, Judgement and Sentence, ICTR TC, 16 May 2003.

Ruggiu (ICTR)

The Prosecutor v. Ruggiu, Case No. ICTR-97-32-I, Judgement and Sentence, ICTR TC, 1 June 2000.

Rutaganda (ICTR)

The Prosecutor v. Rutaganda, Case No. ICTR-96-3-T, Judgement and Sentence, ICTR TC, 6 December 1999.

The Prosecutor v. Rutaganda, Case No. ICTR-96-3-A, Judgement, ICTR TC, 26 May 2003.

Semanza (ICTR)

The Prosecutor v. Semanza, Case No. ICTR-97-20-T, Judgement and Sentence, ICTR TC, 15 May 2003.

Serushago (ICTR)

The Prosecutor v. Serushago, Case No. ICTR-98-39-S, Sentence, ICTR TC, 5 February 1999.

Sikirica (ICTY)

The Prosecutor v. Sikirica et al., Case No. IT-95-8-S, Sentencing Judgement, ICTY TC, 13 November 2001.

Stakic (ICTY)

The Prosecutor v. Stakic, Case No. IT-97-24-T, Judgement, ICTY TC, 31 July 2003.

Tadic (ICTY)

The Prosecutor v. Tadic, Case No. IT-94-1-T, Opinion and Judgement, ICTY TC, 7 May 1997.

The Prosecutor v. Tadic, Case No. IT-94-1-A, Judgement, ICTY AC, 15 July 1999.

Vasiljevic (ICTY)

The Prosecutor v. Vasiljevic, Case No. IT-98-32-T, Judgement, ICTY TC, 29 November 2002.

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Case Name:	The Prosecutor vs. Ntagerura, Bagambiki, Imanishimwe		**Case Number:** ICTR- 99-46-T	
Dates:	Transmitted: 25 Febru 2004		Document's date: 25 Febru 2004	
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