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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ORIGINAL: ENGLISH

TRIAL CHAMBER II

Before: Judge Khalida Rachid Khan, presiding
Judge Lee Gacuiga Muthoga
Judge Emile Francis Short

Registrar: Adama Dieng

Date: 30 September 2011

THE PROSECUTOR

v.

Casimir BIZIMUNGU
Justin MUGENZI
Jérôme-Clément BICAMUMPAKA
Prosper MUGIRANEZA

Case No. ICTR-99-50-T

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CHAPTER I: INTRODUCTION AND PRELIMINARY ISSUES

1. THE ACCUSED

(i) Casimir Bizimungu

1. Casimir Bizimungu was born in 1951 in Nyamugari commune, Ruhengeri prefecture. He is married and is the father of three children.[1]

2. After approximately 13 years of post-secondary schooling, Bizimungu had obtained a an MD degree from the National University of Rwanda in Butare, and a doctorate in public health from the University of Illinois in the United States. Upon receiving this latter degree in 1984, he returned to Rwanda and became a professor at the National University of Rwanda. In April 1987, Bizimungu was appointed Minister of Health, a position he held until a cabinet reshuffle in January 1989.[2]

3. In 1990, Bizimungu became a member of the central committee of the MRND party. When a multi-party government was put into place in April 1992, the MRND party received the Ministry of Health post, and Bizimungu returned to his previous position as Minister. He held this position through 7 April 1994.[3]

4. On 9 April 1994, Bizimungu was sworn in as Minister of Health in the Interim Government. He remained in this position until he left Rwanda on 5 July 1994.[4] He was arrested in Kenya on 11 February 1999.[5]

(ii) Justin Mugenzi

5. Justin Mugenzi was born in 1939 in Rukara commune, Kibungo prefecture. He is married and has eight children.[6]

6. Starting in 1961, Mugenzi held a variety of positions: he was in the army for a short period, then became a teacher and school administrator, before opening a small retail shop in Kigali and eventually starting an import business and a plastics factory.[7]

7. Mugenzi founded the PL on 14 July 1991, and he served as the party's Chairman.[8] In July 1993, Mugenzi became Minister of Commerce in the broad-based transitional government. He continued to hold this position in the Interim Government.[9]

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[1] Bizimungu, T. 22 May 2007 pp. 53, 56-58.
[2] Bizimungu, T. 22 May 2007 pp. 58-62, 64-65; T. 23 May 2007 p. 29; T. 31 May 2007 p. 64; T. 4 June 2007 pp. 58-59.
[3] Bizimungu, T. 22 May 2007 pp. 59-60; T. 23 May 2007 pp. 29-30, 35-37, 40-44; T. 24 May 2007 pp. 7, 20-22; T. 30 May 2007 pp. 5-6, 11, 13-14.
[4] Bizimungu, T. 22 May 2007 pp. 54-56, 60; T. 31 May 2007 pp. 31-32; T. 4 June 2007 pp. 12-13. *See also* II.7.2.
[5] *Bizimungu*, Order for Transfer and Provisional Detention (TC), 18 February 1999, p. 3.
[6] Mugenzi, T. 1 November 2005 p. 29.
[7] Mugenzi, T. 1 November 2005 pp. 29-30, 32-34; T. 16 November 2005 pp. 10-19, 44, 47; T. 17 November 2005 p. 9.
[8] Mugenzi, T. 1 November 2005 pp. 54-55, 57, 60-62, 65, 67-68; T. 16 November 2005 p. 17. *See also* Exhibit 2D22 (PL Party Manifesto).

8. Mugenzi fled Rwanda in July 1994 and subsequently took refuge in Cameroon. He was arrested there on 6 April 1999.[10]

(iii) Jérôme-Clément Bicamumpaka

9. Jérôme-Clément Bicamumpaka was born in 1957 in Ruhondo commune, Ruhengeri prefecture. He has a wife and children.[11]

10. After completing his secondary studies in 1977, Bicamumpaka took over his father's businesses while continuing to study business management. In 1984, Bicamumpaka went to Belgium to study economic sciences at the *Université Libre de Bruxelles*. Three years later, he began his studies at the Institute of Administration and Management of the Catholic University of Louvain.[12]

11. Bicamumpaka then returned to Rwanda and created, in early 1990, a management consultancy company, which put him in contact with businessmen, ministers of the Rwandan government and institutions such as the World Bank.[13]

12. In June 1991, Bicamumpaka joined the MDR party, which later received four portfolios in the multi-party government of April 1992, including the Ministry of Foreign Affairs. In January 1994, Bicamumpaka was elected as a member of parliament.[14]

13. On 9 April 1994, Bicamumpaka was sworn in to the Interim Government as the Minister of Foreign Affairs.[15] On 17 July 1994, he fled Rwanda with the Interim Government. Bicamumpaka was arrested on 6 April 1999 in Cameroon.[16]

(iv) Prosper Mugiraneza

14. Prosper Mugiraneza was born in 1957 in Kigarama commune, Kibungo prefecture.[17] He is married and has four children.[18]

15. In 1978, Mugiraneza went to study law at the National University of Rwanda. By 1982, he had obtained a degree in law and was appointed deputy prosecutor in Byumba. He was promoted to the position of prosecutor of Gisenyi in 1985 and, two years later, he was transferred to Kigali. After holding the position of secretary-general in the Ministry of

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[9] Mugenzi, T. 2 November 2005 pp. 58-66; T. 8 November 2005 pp. 78-79; T. 9 November 2005 pp. 4, 73. *See also* II.7.2.
[10] Mugenzi, T. 8 November 2005 p. 20; T. 30 November 2005 p. 53; *Mugenzi*, Order for Transfer and Provisional Detention (TC), 19 April 1999, p. 3; *Mugenzi et al.*, Decision on Mugenzi's Motion for Relief Under Rule 54 (TC), 18 October 2000.
[11] Bicamumpaka, T. 17 September 2007 p. 53; T. 8 October 2007 pp. 47, 50; T. 9 October 2007 p. 64.
[12] Bicamumpaka, T. 13 August 2007 pp. 27-29.
[13] Bicamumpaka, T. 13 August 2007 pp. 30-33.
[14] Bicamumpaka, T. 13 August 2007 pp. 53-59; T. 17 September 2007 pp. 5-8, 47; T. 24 September 2007 p. 29.
[15] Bicamumpaka, T. 24 September 2007 p. 35; T. 25 September 2007 p. 42; T. 2 October 2007 p. 61; T. 8 October 2007 pp. 26-27, 32; T. 11 October 2007 pp. 23-25. *See also* II.7.2.
[16] Bicamumpaka, T. 13 August 2007 p. 27; T. 25 September 2007 p. 40; T. 2 October 2007 pp. 58-61; T. 3 October 2007 p. 35; T. 4 October 2007 p. 65; T. 8 October 2007 pp. 27, 32; T. 9 October 2007 p. 30; T. 11 October 2007 p. 1; *Bicamumpaka,* Order for Transfer and Provisional Detention (TC), 16 April 1999, p. 2.
[17] Mugiraneza, T. 19 May 2008 pp. 40-41.
[18] Mugiraneza, T. 20 May 2008 pp. 26, 31; T. 21 May 2008 p. 8; T. 27 May 2008 p. 10.

Justice, Mugiraneza was appointed Minister of Labour and Social Affairs on 30 December 1991.[19]

16. Mugiraneza was subsequently appointed Minister of Public Service and Professional Training in the multi-party governments of March 1992 and July 1993. On 9 April 1994, he was appointed as the Minister of Civil Service in the Interim Government, a position that he held until the end of July 1994.[20]

17. After leaving Rwanda, Mugiraneza took refuge in Cameroon. He was arrested there on 6 April 1999.[21]

2. LEGALITY OF ARREST AND DETENTION

18. The Bizimungu Defence raises two issues concerning the legality of Bizimungu's arrest and provisional detention. First, the Defence contends that pursuant to the Statute, "a person may be arrested and placed in custody by the Tribunal only if there is a duly confirmed indictment against him or her", and that this procedure was not followed in Bizimungu's case.[22] Second, the Defence contends that the evidence providing the basis for Bizimungu's arrest and detention was insufficient.[23] The Chamber shall address these issues in turn.

(i) Arrest Prior to Indictment

19. The Bizimungu Defence argues that Article 19 (2) of the Statute supports its position that a person may only be arrested if he or she has formally been indicted. This Article reads: "Any person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the [Tribunal], be taken into custody, immediately informed of the charges against him or her and transferred to the [Tribunal]". However, the Rules of the Tribunal necessarily provide for arrest and detention of an individual *prior* to the confirmation of an indictment against him or her.

20. Preliminarily, Rule 2 of the Rules defines a "suspect" as a "person concerning whom the Prosecutor possesses reliable information which tends to show that he may have committed a crime over which the Tribunal has jurisdiction".[24] The Rule distinguishes this category of persons from an "accused", who is a "person against whom one or more counts in an indictment have been confirmed in accordance with Rule 47".

21. Rule 40 (A) allows for the Prosecutor to request that a state arrest a "suspect" and "place him in custody", and as set forth in Rule 40 (D), necessarily reflects that such detention is allowable in the absence of an indictment. Likewise, Rule 40 *bis* allows transfer to the Tribunal and provisional detention of a suspect in the absence of a confirmed

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[19] Mugiraneza, T. 19 May 2008 pp. 41-46.

[20] Mugiraneza, T. 19 May 2008 pp. 49-53; T. 21 May 2008 pp. 35-38; T. 22 May 2008 p. 35; T. 4 June 2008 p. 22. *See also* II.7.2.

[21] Mugiraneza, T. 22 May 2008 p. 9; T. 3 June 2008 pp. 7-8; T. 4 June 2008 pp. 66-67; *Mugiraneza*, Order for Transfer and Provisional Detention (TC), 19 April 1999, p. 3; *Mugiraneza et al.*, Decision on Mugiraneza's Motion for Relief under Rule 54 (TC), 18 October 2000.

[22] Bizimungu Closing Brief, paras. 188-191, 196.

[23] Bizimungu Closing Brief, paras. 191-192, 229-230.

[24] Any subsequent citation to a Rule is to the Tribunal's Rules of Procedure and Evidence unless stated otherwise.

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

22. The Rules referred to above reflect the need to allow for short, provisional detentions of persons under investigation by the Tribunal in order to, for example, preserve physical evidence, avoid escape of a suspect, and/or prevent injury to or intimidation of a victim or witness.[25] The Bizimungu Defence argument in this regard is dismissed.

(ii) Insufficiency of Information to Support Bizimungu's Provisional Detention

23. The Bizimungu Defence argues that his arrest and provisional detention were in error as the affidavit of Prosecution Investigator Maxwell Nkole failed to contain sufficient information incriminating Bizimungu. Furthermore it submits that the Prosecution's investigations continued after his arrest and the issuance of his indictment, apparently suggesting that such conduct demonstrates insufficient information existed at the time of his arrest.[26]

24. As noted above, Rule 2 defines a "suspect" as a "person concerning whom the Prosecutor possesses reliable information which tends to show that he may have committed a crime over which the Tribunal has jurisdiction". Furthermore, the Prosecutor may request a state to arrest a suspect pursuant to Rule 40. Furthermore, Rule 40 *bis* (B) requires that a Judge order the transfer and provisional detention of a suspect if, among other requirements, the Judge considers that there is a reliable and consistent body of material which tends to show that the suspect may have committed a crime over which the Tribunal has jurisdiction.[27]

25. The Chamber observes that the arrest and provisional detention of Bizimungu have been previously litigated. Specifically, on 17 February 1999, the Prosecution requested that the Tribunal order the transfer and provisional detention of Bizimungu from Kenya. On 18 February 1999, Judge William H. Sekule, having reviewed the Prosecution's submissions, as well as the affidavit of Maxwell Nkole, granted the request.[28]

26. After Bizimungu's transfer to the Tribunal, the Prosecution moved to extend Bizimungu's provisional detention for two additional 30-day periods.[29] The Chamber held

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[25] Rules 40 (A)(ii)-(iii) and 40 *bis* (B)(iii) of the Rules.

[26] Bizimungu Closing Brief, paras. 191-192, 229-230. The Bizimungu Defence further argues that Maxwell Nkole's affidavit in support of Bizimungu's detention was signed *after* his arrest. The Chamber observes that Bizimungu was arrested by Kenyan authorities on 11 February 1999. Notably, Nkole's affidavit was signed on 15 February 1999, the same date as the signed request by the Tribunal's Prosecutor to Kenyan authorities to detain Bizimungu pursuant to Rule 40.

[27] Rule 40 *bis* (B)(ii). *See also* Rule 40 *bis* (B)(i) and (B)(iii) for other requirements to allow provisional detention.

[28] Order for Transfer and Provisional Detention (TC), 18 February 1999.

[29] Request for an Order of Extension for a Provisional Detention Order Under Article 40 *bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda, filed 17 March 1999; Request for an Order of Extension for a Provisional Detention Order Under Article 40 *bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda, filed 19 April 1999.

inter partes hearings on both requests for extension, on 23 March and 20 April 1999. Bizimungu's Counsel presented opposing arguments at both.[30] The Tribunal subsequently granted the Prosecution requests.[31]

27. In light of the procedural history discussed above, the Chamber can only conclude that the Defence seeks reconsideration of these prior decisions. The Chamber recalls the Tribunal's jurisprudence on reconsideration:[32]

> The Chamber notes at the outset that the Rules do not provide for the reconsideration of decisions. The Tribunal has an interest in the certainty and finality of its decisions, in order that parties may rely on its decisions, without fear that they will be easily altered. The fact that the Rules are silent as to reconsideration, however, is not, in itself, determinative of the issue whether or not reconsideration is available in "particular circumstances", and a judicial body has inherent jurisdiction to reconsider its decision in "particular circumstances". Therefore, although the Rules do not explicitly provide for it, the Chamber has an inherent power to reconsider its own decisions. However, it is clear that reconsideration is an exceptional measure that is available only in particular circumstances.

28. Reconsideration is permissible when: (1) a new fact has been discovered that was not known to the Chamber at the time it made its original decision; (2) there has been a material change in circumstances since it made its original decision; or (3) there is reason to believe that its original decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice. The burden rests upon the party seeking reconsideration to demonstrate the existence of sufficiently special circumstances.[33]

29. The Chamber finds that the Bizimungu Defence team has presented no evidence of a special circumstance that would warrant the reconsideration of this issue. Indeed, the fact that the Prosecution continued to conduct investigations and accumulate information after Bizimungu was arrested and indicted is not a new fact or a material change in circumstances justifying reconsideration. As outlined in Article 15 of the Statute and Rule 39, the Prosecution has broad discretion in undertaking investigations of a suspect.[34] The Chamber dismisses Bizimungu's complaints that insufficient information existed to justify his arrest and detention.

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[30] T. 23 March 1999 pp. 17-23; T. 20 April 1999 pp. 11-20.

[31] Decision on the Extension of the Provisional Detention for a Maximum Period of Thirty Days (TC), 23 March 1999, p. 5; Extension of the Provisional Detention for a Maximum Period of Thirty Days (TC), 4 May 1999, p. 4.

[32] *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 *bis* (e)" (TC), 15 June 2004, para. 7.

[33] *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Decision on Defence Motion for Second Reconsideration of Witness Protective Measures (TC), 15 July 2010, para. 18; *The Prosecution v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion for Reconsideration of Decision on Joseph Nzirorera's Motion for Inspection: Michel Bagaragaza (TC), 29 September 2008, para. 4; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 *bis* (e)" (TC), 15 June 2004, para. 7.

[34] *See also Akayesu* Appeal Judgement, para. 94, *citing Delalić et al.* Appeal Judgement, para. 602; *The Prosecutor v. Augustin Ndindiliyimana*, Case No. ICTR-2000-56-I, Decision on Urgent Oral Motion for a Stay of the Indictment, or in the Alternative a Reference to the Security Council (TC), 26 March 2004, paras. 22-23.

3. NOTIFICATION OF CHARGES UPON ARREST

30. The Bizimungu and Bicamumpaka Defences contend that their clients were denied their right to be notified of the charges against them upon arrest.[35] The Appeals Chamber has held that a suspect arrested by the Tribunal has the right to be informed promptly of the reasons for his arrest, and this right comes into effect from the moment of arrest and detention.[36] There is no requirement, however, that a suspect be given a copy of the arrest warrant or indictment in order to inform him or her of the charges against him or her.[37] In fact, an accused may be considered informed of the charges at the moment he or she is provided with the Prosecutor's request for transfer and provisional detention pursuant to Rule 40 *bis*, or a Judge's order concerning this request.[38] Rule 40 *bis* (E) mandates that the order be served upon the accused and his or her counsel "as soon as possible", while Rule 40 *bis* (D) requires this order to state the provisional charges against him or her. The Chamber will consider Bizimungu's and Bicamumpaka's allegations in turn.

(i) Bizimungu

31. The Defence submits that the delay in informing Bizimungu of the charges against him from the time of his arrest on 11 February 1999 to the confirmation of the Indictment against him on 12 May 1999, approximately 90 days later, constitutes "an injustice". Furthermore, Bizimungu requested to be informed of the legal basis of his arrest "during the entire duration of his detention" but "to no avail".[39]

32. In this case, the Tribunal's obligation to inform Bizimungu of the nature of the charges against him came into effect on 15 February 1999, the apparent date the Prosecutor filed the first request for Bizimungu's provisional detention pursuant to Rule 40 with the governmental and judicial authorities of Kenya.[40] The request informed Kenyan authorities that the Prosecutor possessed reliable information that Bizimungu may have committed crimes such as genocide and crimes against humanity.[41] On 17 February 1999, the Prosecutor filed a request for provisional detention with the Tribunal.[42]

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[35] Bizimungu Closing Brief, para. 197; Bicamumpaka Closing Brief, paras. 15-16.
[36] *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision (AC), 31 May 2000, para. 78, *citing Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (AC), 3 November 1999, paras. 79-80.
[37] *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision (AC), 31 May 2000, para. 78, fn. 106; *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (AC), 3 November 1999, paras. 82-84.
[38] *See Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (AC), 3 November 1999, paras. 51, 78 (finding that the accused was informed of the charges against him on the date that he was shown a copy of the Rule 40 *bis* order); *Bagosora et al.* Trial Judgement, paras. 104-106.
[39] Bizimungu Closing Brief, para. 197.
[40] Request for Provisional Measures to the Government and Judicial Authorities of Kenya by the Prosecutor of the International Criminal Tribunal for Rwanda, 15 February 1999. The Chamber observes that this was first filed with the Tribunal on 17 February 1999.
[41] Request for Provisional Measures to the Government and Judicial Authorities of Kenya by the Prosecutor of the International Criminal Tribunal for Rwanda, dated 15 February 1999 and filed 17 February 1999, p. 3.
[42] Request for Transfer and Provisional Detention Under Article 40 *bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda, dated 15 February 1999 and filed 17 February 1999; Affidavit of Maxwell Nkole in Support of an Application by the Prosecutor Under Rule 40 *bis* to Detain Suspect, dated 15 February 1999 and filed 19 February 1999.

33. On 18 February 1999, the Tribunal granted the Order for Transfer and Provisional Detention of Bizimungu ("Bizimungu Transfer Order").[43] Notably, the Bizimungu Transfer Order set forth a factual basis supporting the conclusion that information before the Tribunal indicated that Bizimungu might have committed crimes of genocide, conspiracy to commit genocide and direct and public incitement to commit genocide.[44] On 19 February 1999, the Bizimungu Transfer Order, as well as the affidavit of Prosecution Investigator Maxwell Nkole in support of the Bizimungu Transfer Order, were communicated to Kenyan authorities. Furthermore, the transmission also included extracts of the Rules and the Statute of the Tribunal incorporating Article 20 (4)(a) of the Statute, which sets forth the obligation of an accused to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charges in a language against him or her.[45]

34. In the Chamber's view, the prompt actions of the Prosecution and Tribunal satisfied their obligations to ensure that Bizimungu was promptly informed of the nature and charges against him while in Kenya at least by 19 February 1999. Notably, the Prosecutor's request for provisional detention was directed to Kenyan judicial authorities.[46] The ensuing Bizimungu Transfer Order provided sufficient information so that Kenyan authorities could inform Bizimungu of the nature and charges against him as required by law.[47] The Prosecution's inclusion in the transmission of the excerpts of the Statute and the Rules of the Tribunal, setting forth the rights of suspects and accused, necessarily sought to ensure that Bizimungu be informed of such information promptly.[48] The *Bagosora et al.* Trial Chamber considered similar conduct as establishing that those accused had been promptly informed of the nature of the charges against them.[49]

35. Indeed, the Chamber observes that Bizimungu's submissions that he was not informed of the charges against him focus primarily on the delay between his arrest and the subsequent filing of the Indictment in May 1999.[50] Although citing pertinent case law related to a suspect's right to be promptly informed of charges,[51] the Defence makes no particularised submissions that during Bizimungu's provisional detention he was not generally informed of the allegations he was suspected of that fell within the jurisdiction of the Tribunal.[52] Indeed,

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[43] Order for Transfer and Provisional Detention (TC), filed 18 February 1999, pp. 2-5.
[44] Order for Transfer and Provisional Detention (TC), filed 18 February 1999, pp. 3-4.
[45] Facsimile Transmission from ICTR to Kenyan Attorney-General's office transmitting the Order for Transfer and Provisional Detention, filed 19 February 1999.
[46] *See generally Kajelijeli* Appeal Judgement, para. 222.
[47] *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision (AC), 31 May 2000, paras. 83-85 (concluding that a reference to the accused being provisionally detained "for serious violations of international humanitarian law and crimes within the jurisdiction of the Tribunal" adequately described the substance of the charges to satisfy the requirement of notice at that stage).
[48] *See Kajelijeli* Appeal Judgement, paras. 210, 231 (finding that the Prosecution's delay of over two months between the time of arrest and request for provisional detention and transfer was unreasonable as a transfer order would have included provisional charges, "which could have been served on the Appellant").
[49] *Bagosora et al.* Trial Judgement, paras. 104-107.
[50] Bizimungu Closing Brief, paras. 188, 197, 202.
[51] Bizimungu Closing Brief, paras. 193-194, 201.
[52] The Chamber observes that duty counsel, who was assigned on 3 March 1999 to represent Bizimungu, on 17 March 1999 urgently requested that *he* be personally served with the transfer order. Letter from E.N.K. Loomu-Ojare to the Registrar, 17 March 1999. The next day, 18 March 1999, duty counsel was informed by the Registry that the Court Management Section had been "actively trying to get in touch" with him for this express purpose. Facsimile from Jean-Pélé Fomété, Legal Adviser to the Registrar, to E.N.K. Loomu-Ojare, 18 March 1999.

during the 23 March 1999 hearing, duty counsel for Bizimungu objected to any further delays related to the filing of an indictment.[53] He did not, however, argue that Bizimungu had not promptly been informed of the general nature of the charges against him at the time of his arrest or shortly thereafter, as required by the Appeals Chamber.[54]

36. To the extent Bizimungu was not informed of the general nature of the charges against him in Kenya or upon his arrival at the Tribunal's detention facilities on 23 February 1999,[55] the Chamber considers that, at the very latest, he had constructive knowledge of them by 23 March 1999, when his Counsel opposed the motion for further provisional detention.[56] In light of the Tribunal's jurisprudence, this delay could constitute a violation of Bizimungu's right to be promptly informed of the charges against him.[57] Notwithstanding, for a remedy to be granted, when a violation such as this is raised at the post-trial phase, there must be evidence of material prejudice.[58] Bizimungu's general submissions regarding prejudice are unrelated to any purported delay in promptly informing him of the basis for his initial arrest and provisional detention as a suspect.[59] The Chamber finds that there has been no material prejudice that would warrant a remedy.

(ii) Bicamumpaka

37. The Bicamumpaka Defence contends that after his arrest on 6 April 1999 in Yaoundé, Cameroon, he did not receive timely notice of the charges he was facing before the Tribunal.[60]

38. This issue was raised in a preliminary motion concerning defects in the Indictment and was adjudicated by the Chamber. In its decision, the Chamber determined that the Order for Transfer and Provisional Detention of Bicamumpaka was sent to Cameroonian authorities on 16 April 1994, 10 days after his arrest. It held that the Prosecutor and the Registrar acted diligently and in accordance with the Rules, and could not be held responsible for any lateness.[61]

39. Consequently, Bicamumpaka's current arguments must be understood as a request for reconsideration of this decision. The Chamber recalls the law on reconsideration (I.2). The

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[53] T. 23 March 1999 pp. 19-23.
[54] *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision (AC), 31 May 2000, para. 78, fn. 104.
[55] T. 23 March 1999 p. 10.
[56] *See Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision (AC), 31 May 2000, para. 85 (given the principles governing the counsel-client relationship, counsel's knowledge of the charges provides a basis for inferring that the defendant was aware of them as well).
[57] Delays of 18 days, 45 days, or 11 months without informing the suspects of the charges against them have violated their right to be promptly informed of these charges. *See Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision (AC), 31 May 2000, para. 87 (18 days); *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (AC), 3 November 1999, paras. 83-85 (11 months), *citing* Human Rights Commission, *Glenford Campbell v. Jamaica*, Communication No. 248/1987, 30 March 1992, para. 6.4 (45 days); *Kajelijeli* Appeal Judgement, para. 231 (85 days).
[58] *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision (AC), 31 May 2000, paras. 122-125; *Semanza* Appeal Judgement, paras. 69-73; *Rutaganda* Appeal Judgement, para. 303; *Simba* Trial Judgement, para. 47; *Ntagerura et al.* Trial Judgement, para. 30; *see also* Rule 5 (B).
[59] Bizimungu Closing Brief, paras. 205-211.
[60] Bicamumpaka Closing Brief, paras. 15-16.
[61] Decision on Motion for Defects in the Form of the Indictment (Rules 47 (B) and (D) and 72 (B) (ii) of the Rules) and Lack of Jurisdiction (Rules 5 and 72 (B) (i) of the Rules) (TC), 8 May 2000, paras. 6.4-6.5.

Defence makes no submissions satisfying any of the relevant principles that would justify reconsideration. Furthermore, there are no particularised submissions regarding any prejudice suffered in relation to any delay between Bicamumpaka's arrest and being informed of the nature and charges against him. Under the circumstances, there are no grounds upon which a remedy is warranted.[62] These submissions are dismissed.

4. RIGHT TO COUNSEL

40. The Bicamumpaka Defence submits that "at no point" when Bicamumpaka was arrested or during his interrogation by Prosecution investigators on 8 and 13 April 1999 was "he informed of his right to free assistance to duty counsel" pursuant to Article 20 (4)(a) and (d) of the Statute and Article 21 (A) of the Directive on the Assignment of Defence Counsel.[63]

41. The Chamber observes that at the beginning of his interview with Prosecution investigators on 8 April 1999, Bicamumpaka was advised of his rights pursuant to Rule 42 of the Rules. As read to Bicamumpaka, Rule 42 states that a suspect who is questioned by the Prosecution has, *inter alia*, "the right to be assisted by counsel of his choice or to have legal assistance assigned to him without payment if he does not have sufficient means to pay for it", "the right to remain silent", and that "questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived his right to counsel".[64] After being advised of his rights, Bicamumpaka confirmed that he was prepared to answer the investigators' questions without the assistance of counsel and would advise if he found it necessary to have counsel.[65] During the 13 April 1999 meeting, Bicamumpaka again expressly agreed at the beginning of the interview to proceed without the assistance of counsel.[66] Consequently, the Chamber rejects the Defence claims that Bicamumpaka was not informed of his right to free duty counsel.[67]

42. The Bicamumpaka Defence raises a second issue with respect to the right to counsel. The Defence alleges that Francine Veilleux, his choice for counsel, was only assigned 10 months and 20 days after his arrest.[68] It is undisputed that Bicamumpaka was arrested on 6 April 1999 in Cameroon and, on 18 April, Bicamumpaka indicated to the Registry that he wanted to be represented by Veilleux.[69] Bicamumpaka argues that his choice of counsel was not appointed until 27 February 2000.[70]

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[62] *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision (AC), 31 May 2000, paras. 122-125; *Semanza* Appeal Judgement, paras. 69-73; *Rutaganda* Appeal Judgement, para. 303; *Simba* Trial Judgement, para. 47; *Ntagerura et al.* Trial Judgement, para. 30; *see also* Rule 5 (B).

[63] Bicamumpaka Closing Brief, para. 2. *See also* Bicamumpaka Closing Arguments, T. 3 December 2008 p. 40.

[64] Exhibit P2(27)(E & F) (Bicamumpaka's Interview with Tribunal Investigators, 8 April 1999) pp. 1-2.

[65] Exhibit P2(27)(E & F) (Bicamumpaka's Interview with Tribunal Investigators, 8 April 1999) p. 2.

[66] Exhibit P2(29)(E) (Bicamumpaka's Interview with Tribunal Investigators, 13 April 1999) pp. 1-2.

[67] In terms of the right to legal assistance without payment, Rule 42 addresses the applicable portions of Article 20 (4)(d) of the Statute. Article 21 (A) of the Directive on the Assignment of Defence Counsel refers to the appointment of counsel away from the seat of the Tribunal and does not address the issue of the right to free duty counsel.

[68] Bicamumpaka Closing Brief, para. 14.

[69] Bicamumpaka Closing Brief, paras. 2-3; Registrar's Submission on the Initial Assignment of Counsel to Jérôme-Clément Bicamumpaka, 16 February 2009, para. 4.

[70] Bicamumpaka Closing Brief, para. 14.

43. The Chamber recalls that following Bicamumpaka's communication to the Registry on 18 April 1999 indicating that he wished to be represented by Veilleux, the Registrar and the Detention Facilities Management Section sent Veilleux repeated correspondence concerning Bicamumpaka's right to counsel pursuant to the Statute and Rules of Procedure and Evidence. The Registrar made it clear that Veilleux could only be appointed duty counsel by the Registry following a formal request by Bicamumpaka and an investigation into his indigency. Bicamumpaka continuously refused to cooperate with the Tribunal by not submitting his request for indigent status, only repeatedly asserting his request for Veilleux to be his assigned counsel.[71]

44. Bicamumpaka was transferred to the custody of the Tribunal in Arusha on 31 July 1999 and duty counsel was assigned to him on 14 August 1999.[72] That same day, Bicamumpaka refused his assignment of duty counsel, again reiterating his request for the assignment of Veilleux and stating that it was unnecessary for any other counsel to meet him at the United Nations Detention Facility ("UNDF") or represent him at his initial appearance.[73]

45. During Bicamumpaka's initial appearance on 17 August 1999, his duty counsel, Raphaël Constant, raised the issue of the assignment of Veilleux and sought a postponement of Bicamumpaka's initial appearance.[74] The Chamber orally dismissed the preliminary motion and determined that responsibility for assignment of counsel lay with the Registry and the Chamber was available to address any issues arising from the decision of the Registry.[75] Further, the Chamber ruled that it was satisfied that the right of the Accused to counsel had been respected as required by Rule 62.[76]

46. In parallel, Bicamumpaka filed a motion dated 16 August 1999 requesting, *inter alia*, the assignment of Veilleux to represent him. Taking into account Article 20 (4)(d) of the Statute and submissions by Bicamumpaka to have the counsel of his choice assigned to him,

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[71] Letter from Francine Veilleux to Alessandro Caldarone, Chief of the Lawyers and Detention Facilities Management Section, 26 April 1999; Letter from Alessandro Caldarone to Francine Veilleux, 9 May 1999; Letter from Bicamumpaka to the President and Registrar, 20 May 1999; Letter from Francine Veilleux to Alessandro Caldarone, 25 May 1999; Letter from Antoine Mindua, Counsel in Chambers Support Section, to Francine Veilleux, 6 June 1999; Motion for Release on Grounds of Non-Compliance with Rules 19 and 20 of the Rules of Procedure and Evidence of the ICTR, 10 June 1999; Letter from Antoine Mindua to Francine Veilleux, 14 June 1999; Letter from Alessandro Caldarone to Francine Veilleux, 14 June 1999; Letter from Francine Veilleux to Registrar, 18 June 1999; Letter from Alessandro Caldarone to Francine Veilleux, 23 June 1999; Letter from Alessandro Caldarone to Francine Veilleux, 29 June 1999; Letter from Francine Veilleux to Alessandro Caldarone, 30 June 1999; Letter from Francine Veilleux to Registrar, 7 July 1999; Letter from Bicamumpaka to Alessandro Caldarone, 5 August 1999. *See also* Decision on Motion for Defects in the Form of the Indictment (Rules 47 (B) and (D) and 72 (B) (ii) of the Rules) and Lack of Jurisdiction (Rules 5 and 72 (B) (i) of the Rules) (TC), 8 May 2000, paras. 7.1-7.4 (dismissing his claims on the alleged violation of his right to counsel, stating that Bicamumpaka refused to comply with the rules and formalities governing Defence counsel).

[72] T. 17 August 1999 pp. 26-42, 44-52; Registrar's Submission on the Initial Assignment of Counsel to Jérôme-Clément Bicamumpaka, 16 February 2009, para. 5.

[73] Letter from Bicamumpaka to Didier Daniel Preira, Deputy Chief of OIC, 14 August 1999; Letter from Alessandro Caldarone to Bicamumpaka, 18 August 1999.

[74] T. 17 August 1999 pp. 26-39, 47-48. Duty counsel submitted that, even though Veilleux was not assigned by the Registry, she was acting as Bicamumpaka's counsel and had been working on the case for the previous four months. T. 17 August 1999 pp. 29-30, 35-36.

[75] T. 17 August 1999 pp. 44-48.

[76] T. 17 August 1999 pp. 46-47.

the Chamber dismissed the motion and held that, *inter alia*, the relevant organ to handle the issue of assignment of counsel remained the Registry.[77] The Chamber noted that the delay in the assignment of counsel was due to the ongoing investigation of the indigence of Bicamumpaka in order to determine if he could receive Tribunal funding for his counsel.[78] The Chamber also articulated, within the decision, the procedures for the assignment of counsel.[79] Bicamumpaka's appeal of the decision was rejected by the Appeals Chamber as not being under its competence, as the appeal was not from a conviction or an objection based on lack of jurisdiction.[80] By a letter dated 27 January 2000, the Registry assigned Veilleux as lead counsel for Bicamumpaka.[81]

47. Given the decision of the Chamber during Bicamumpaka's initial appearance and a second decision in response to Bicamumpaka's motion, the Defence submissions in effect seek reconsideration of these prior decisions. The Chamber recalls the Tribunal's jurisprudence on reconsideration (I.2).

48. The Defence has not provided any submissions that are applicable to the enumerated principles justifying reconsideration. Further, the Defence has not articulated any prejudice that has been suffered by Bicamumpaka. The Chamber observes that Bicamumpaka refused to cooperate with the Registry concerning the investigation into his indigency and the assignment of counsel, and he rejected the assistance of his assigned duty counsel. Further, at no time before his initial appearance did he raise an alleged violation of his right to counsel generally, but only his alleged right to have the Tribunal pay for the counsel of his choice, Veilleux. The right of an indigent defendant to effective representation does not entitle him or her to choose his or her own counsel.[82] Veilleux was assigned as counsel on 27 January 2000 and the trial commenced on 6 November 2003. Any prejudice that may have been suffered at that time could have been raised by the Defence prior to trial. Bicamumpaka was provided with duty counsel until such time as the assignment of Veilleux was resolved. Incidentally, Veilleux requested to withdraw as counsel for Bicamumpaka on 8 April 2002 and it was granted on 3 May 2002.[83]

49. Consequently, based on the above, the Chamber dismisses the claim that Bicamumpaka was not assigned counsel as required by Article 20 (4)(d) of the Statute and relevant Tribunal regulations.

5. INITIAL APPEARANCE WITHOUT DELAY

50. The Bizimungu Defence argues that Bizimungu was denied the right to an initial appearance without delay. It submits that, following his arrest on 11 February 1999, he was only brought before a Judge of the Tribunal after a period of seven months, on 3 September

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[77] Decision on the Motion Requesting the Assignment of Francine Veilleux as Defence Counsel for Jérôme-Clément Bicamumpaka (TC), 7 October 1999, paras. 1.4, 7-9.
[78] Decision on the Motion Requesting the Assignment of Francine Veilleux as Defence Counsel for Jérôme-Clément Bicamumpaka (TC), 7 October 1999, para. 7.
[79] Decision on the Motion Requesting the Assignment of Francine Veilleux as Defence Counsel for Jérôme-Clément Bicamumpaka (TC), 7 October 1999, paras. 4-7.
[80] Decision Rejecting Notice of Appeal (AC), 11 November 1999.
[81] Letter from Registry to Francine Veilleux, 27 January 2000.
[82] *Nahimana et al.* Appeal Judgement, paras. 128, 265; *Kambanda* Appeal Judgement, para. 33; *Akayesu* Appeal Judgement, paras. 60-62.
[83] Decision of Withdrawal of Ms. Francine Veilleux Lead Counsel of the Accused Jerome Bicamumpaka (Registry), 3 May 2002.

1999.[84] The Chamber understands Bizimungu's argument to be twofold. First, although not explicitly, he appears to allege that his right to be brought before a Judge without delay upon his transfer to the Tribunal pursuant to Rule 40 *bis* (J) was violated. Second, he alleges violations of his right, pursuant to Rule 62 (A), to be brought before a Trial Chamber or a Judge thereof without delay and formally charged. The Chamber shall address these violations in turn.

(i) Alleged Violation of Rule 40 bis *(J) of the Rules*

51. The Chamber recalls the law on provisional detention, set forth above (I.2). In the context of the Tribunal's ability to detain a suspect without having formally charged him or her, Rule 40 *bis* (J) requires that the suspect, assisted by his or her counsel, shall be brought, without delay, before the Judge who issued the initial order or another Judge of the same Trial Chamber, who shall ensure that the rights of the accused are respected. Inherent in Rule 40 *bis* (J) are considerations that the right to be brought promptly in front of a judicial authority serves additional purposes other than being informed of the nature and charges against him or her. Notably, it allows a Judge to ascertain the identity of the detainee, ensure that the rights of the suspect while in detention are being respected, as well as give an opportunity for the suspect to voice any complaints.[85]

52. The Chamber recalls that Bizimungu was transferred to the Tribunal on 23 February 1999[86] and appointed counsel as of 3 March 1999.[87] On 17 March 1999, the Prosecutor filed a request for the extension of Bizimungu's provisional detention and the hearing on the matter occurred on 23 March 1999.[88] Notably, prior to the hearing, the Registrar filed a written instruction to the commanding officer of the UNDF ordering him to transfer Bizimungu to the Tribunal for this hearing.[89] During the hearing, the Defence raised no objections concerning any prior or existing failure to bring Bizimungu before a Judge or Trial Chamber.[90] The extension for provisional detention was granted.[91]

53. On 16 April 1999, an additional hearing pertaining to a request for further provisional detention was scheduled to be held before the Trial Chamber on 20 April 1999.[92] On 19 April 1999, the Registrar again filed a written instruction to the UNDF commanding officer to transfer Bizimungu to the Tribunal for this hearing.[93] Like the previous hearing, the Defence

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[84] Bizimungu Closing Brief, paras. 197, 199-202, 205.
[85] *Cf. Kajelijeli* Appeal Judgement, para. 250 (considering the right of an accused to be brought before a Trial Chamber or Judge without delay after transfer to the Tribunal and confirmation of the indictment as prescribed by Rule 62).
[86] T. 23 March 1999 pp. 9-10.
[87] Letter from Alessandro Caldarone to Commanding Officer of UNDF, 3 March 1999.
[88] Request for an Order of Extension for a Provisional Detention Order Under Article 40 *bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda, filed 17 March 1999; Decision on the Extension of the Provisional Detention for a Maximum Period of Thirty Days (TC), 23 March 1999.
[89] Instruction for the Removal and Transportation of a Detainee, 23 March 1999.
[90] *See* T. 23 March 1999 pp. 17-23 (submissions of Defence Counsel).
[91] T. 23 March 1999 p. 26; Decision on the Extension of the Provisional Detention for a Maximum Period of Thirty Days (TC), 23 March 1999.
[92] Registrar's Letter to the Parties concerning Setting of a Date for the Hearing of the Request for an Order for Provisional Detention, 16 April 1999. *See also* Request for an Order of Extension for a Provisional Detention Order Under Article 40 *bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda, filed 19 April 1999.
[93] Instruction for the Removal and Transportation of a Detainee, 19 April 1999.

did not raise any objections pertaining to any prior or existing failure to bring Bizimungu before a Judge or Trial Chamber.[94] The extension for provisional detention was granted.[95] The Indictment against Bizimungu was confirmed on 12 May 1999, within the time frame allowed by Rule 40 *bis* for provisional detention.

54. The Chamber has some reservations that the initial appearances by Bizimungu after his transfer to the Tribunal comported with the requirement that he be brought, without delay, before a Judge as set forth in Rule 40 *bis* (J). Nonetheless, duty counsel raised no objections on this basis. Furthermore, the Bizimungu Defence, raising the issue after the close of the case, has not demonstrated any resulting material prejudice warranting a remedy.[96]

55. In the Chamber's view, the hearings on 23 March 1999 and 20 April 1999, while for the purposes of considering requests for extensions of provisional detention, afforded Bizimungu and his counsel the opportunity to raise issues concerning the circumstances and nature of his detention which Rule 40 *bis* (J) seeks to ensure.

56. Furthermore, the record reflects that during the initial period prior to the confirmation of his Indictment on 12 May 1999, issues pertaining to Bizimungu's detention in a separate wing of the UNDF were raised with the Registry.[97] The Registry promptly responded to these concerns, confirming that Bizimungu, while held separately due to his status as a suspect rather than an accused before the Tribunal, was detained under the same conditions as the other detainees.[98] A subsequent Defence motion on the issue was filed and a decision rendered.[99]

57. In the Chamber's view, the initial hearings and review of Bizimungu's detention conditions as a suspect sufficiently ensured the review and protection of his rights, which Rule 40 *bis* (J) also seeks to protect. In any event, even if any violation of Bizimungu's right to be brought before a Judge without delay pursuant to Rule 40 *bis* (J) had occurred, the

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[94] *See* T. 20 April 1999 pp. 11-20 (submissions of Defence Counsel).

[95] T. 20 April 1999 pp. 28-30; Extension of the Provisional Detention for a Maximum Period of Thirty Days (TC), 4 May 1999.

[96] *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision (AC), 31 May 2000, paras. 122-125; *Semanza* Appeal Judgement, paras. 69-73; *Rutaganda* Appeal Judgement, para. 303; *Simba* Trial Judgement, para. 47; *Ntagerura et al.* Trial Judgement, para. 30; *see also* Rule 5 (B).

[97] Letter from E.N.K. Loomu-Ojare to Registrar, 17 March 1999 (alleging that Bizimungu had been held in an isolation unit of the UNDF); Letter from E.N.K. Loomu-Ojare to Registrar, 26 March 1999 (noting that Rule 40 *bis* (L) does not provide for different detention conditions between a suspect and an accused and that Bizimungu's detention in a "special wing" violates that rule).

[98] Facsimile from Jean-Pélé Fomété, Legal Adviser to the Registrar, to E.N.K. Loomu-Ojare, 18 March 1999 (informing counsel that because Bizimungu was a suspect rather than an accused before the Tribunal, he was kept in a separate wing of the UNDF; this wing was composed of several cells and a courtyard); Letter from Commanding Officer of UNDF to Registrar, 10 April 1999 (addressing Mr. Loomu-Ojare's 29 March 1999 letter and indicating that Bizimungu was allowed telephone communication with his family and lawyer; two family visits had been requested and were honoured; Bizimungu had a laptop and printer in his cell; a Catholic priest visits Bizimungu every Sunday and the UNDF doctor regularly sees him; physical exercise with fitness equipment was arranged regularly).

[99] Extremely Urgent Application Pursuant to Rule 40 *bis* (K) for an Order to Apply the Provisions of Rule 40 *bis* (L) of the Rules of Procedure and Evidence to the Provisional Detention of Casimir Bizimungu, 13 April 1999; Decision on an Extremely Urgent Application Filed by the Defence Pursuant to Rule 40 *bis* (K) of the Rules for an Order to Apply the Provisions of Rule 40 *bis* (L) of the Rules (TC), 4 May 1999. Even after this issue was rendered moot when Bizimungu became an accused before the Tribunal with the confirmation of his Indictment in May 1999, the acting President requested a review of the policy of separating suspects from accused at UNDF. *See* Letter to Alessandro Caldarone from Acting President, 1 July 1999.

Chamber is not satisfied that Bizimungu has suffered any material prejudice that requires a remedy.

(ii) Alleged Violations of Rule 62 (A) of the Rules

58. As noted above, Bizimungu argues that his initial appearance on 3 September 1999, after the confirmation of his Indictment on 12 May 1999, violated his right to be brought before a Trial Chamber or Judge and formally charged pursuant to Rule 62.

59. Rule 62 provides that upon transfer to the Tribunal, the accused shall be brought before a Trial Chamber or Judge thereof without delay, and shall be formally charged. A plain reading of the rule, which refers to an "accused" (rather than a suspect) and requires that the Trial Chamber or Judge "[r]ead or have the indictment read to the accused" necessarily presumes that an indictment has been confirmed.[100]

60. At the outset, the Chamber has already considered the legality of Bizimungu's provisional detention and his right to appear before a Judge prior to the confirmation of his Indictment (I.2; I.5.i). Consequently, the Chamber must consider whether the period of delay between the confirmation of Bizimungu's Indictment on 12 May 1999 and his initial appearance on 3 September 1999 constitutes a violation of Rule 62.

61. In interpreting Rule 62 (A), the Appeals Chamber emphasises that this provision is "unequivocal that an initial appearance is to be scheduled without delay". It points to fundamental fairness considerations apart from entering a plea, such as:[101]

> reading out the official charges against an accused, ascertaining the identity of the detainee, allowing the Trial Chamber or Judge to ensure that the rights of the accused while in detention are being respected, giving an opportunity for the accused to voice any complaints and scheduling a trial date or date for sentencing hearing, in the case of a guilty plea, without delay.

In this regard, the Appeals Chamber has held delays of 96[102] and 211[103] days between transfer to the Tribunal and initial appearance were violations of Rule 62.

62. Bizimungu, who was transferred to the Tribunal on 23 February 1999, did not make his initial appearance as an accused before the Tribunal until 3 September 1999, approximately 192 days after his arrival to the Tribunal's detention facility. Notwithstanding, the Chamber has previously discussed the prompt and extensive review of Bizimungu's detention as a suspect through hearings concerning the extension of his provisional detention, as well as his duty counsel's communications with the Tribunal concerning the conditions of Bizimungu's custody (I.5.i). In this regard, some of the fundamental fairness considerations that Rule 62 (A) seeks to protect were ensured up to the confirmation of his Indictment in May 1999.[104]

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[100] *See* Rule 62 (A) and (A)(ii).
[101] *Kajelijeli* Appeal Judgement, para. 250.
[102] *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (AC), 3 November 1999, para. 71.
[103] *Kajelijeli* Appeal Judgement, para. 250.
[104] *Cf. Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (AC), 3 November 1999, para. 69 (in the absence of any evidence that the appellant was brought before a Judge of the Tribunal

63. However, the delays between the confirmation of his Indictment on 12 May 1999 and initial appearance on 3 September 1999 implicate different rights. Namely, the existence of the operative Indictment provides an accused with a material ability to prepare his or her defence and an initial appearance allows an accused to enter a plea so that proceedings may begin without delay.[105]

64. Delays from the confirmation of the Indictment in May 1999, in part, appear to have resulted from the Prosecution's efforts to join Bizimungu's case with those of Mugenzi, Bicamumpaka and Mugiraneza.[106] Once the Indictment was confirmed, Mugenzi, Mugiraneza and Bicamumpaka were not transferred to the Tribunal until 31 July 1999.[107] The initial hearing was not set until 17 August 1999, presumably so all four Accused could be present.

65. Mindful of the logistical difficulties of arranging a joint appearance of co-Accused, as well as the desire to avoid duplicative hearings, the Chamber is not convinced that these reasons justify a delay in Bizimungu's initial appearance pursuant to Rule 62 (A).[108] Notwithstanding, Bizimungu was served with the Indictment on 13 May 1999, while represented by duty counsel, thus allowing for the preparation of his defence.[109] Furthermore, on 23 July 1999, Ms. Judith L. Bourne was assigned as Bizimungu's counsel.[110] During the 17 August 1999 initial appearance, duty counsel for Bizimungu requested, on Bizimungu's behalf, that his initial appearance be postponed until his assigned counsel arrived.[111] In this regard, delays in Bizimungu's initial appearance as an accused do not appear to have been prejudicial, but were initiated by the Defence. Given all the considerations above, the Chamber does not consider that any violation of Rule 62 (A) resulted in material prejudice to Bizimungu that would warrant a remedy.[112]

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during his provisional detention, an initial appearance without delay is more important to ensure protection of his rights).

[105] *See Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (AC), 3 November 1999, para. 70 (the right of the accused to be promptly brought before a judicial authority ensures that the accused will have the opportunity to mount an effective defence).

[106] T. 23 March 1999 pp. 5-7, 16; T. 20 April 1999 pp. 7-10.

[107] Regarding Mugenzi, *see* T. 17 August 1999 p. 14 *and Mugenzi et al.*, Decision on Mugenzi's Motion for Relief under Rule 54 (TC), 18 October 2000 p. 2. Regarding Mugiraneza, *see Mugiraneza et al.*, Decision on Mugiraneza's Motion for Relief under Rule 54 (TC), 18 October 2000 p. 2. Regarding Bicamumpaka, *see Bizimungu et al.*, Registrar's Submission on the Initial Assignment of Counsel to Jérôme-Clément Bicamumpaka, 16 February 2009, para. 5.

[108] *See Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (AC), 3 November 1999, para. 70 (while international conventions have not established specific time limits for the initial appearance of a detainee, the UN Human Rights Committee has found that these delays must not exceed a few days).

[109] Transmission Sheet: Confirmation of the Indictment, 12 May 1999, sent by fax on 13 May 1999 (indicating that Bizimungu was served).

[110] Letter from Alessandro Caldarone to Judith Bourne (informing Ms. Judith Bourne of her Assignment as Counsel to Defend Bizimungu), filed 23 July 1999.

[111] T. 17 August 1999 pp. 19-24.

[112] *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision (AC), 31 May 2000, paras. 122-125; *Semanza* Appeal Judgement, paras. 69-73; *Rutaganda* Appeal Judgement, para. 303; *Simba* Trial Judgement, para. 47; *Ntagerura et al.* Trial Judgement, para. 30; *see also* Rule 5 (B).

6. UNDUE DELAY

66. The Bicamumpaka, Bizimungu and Mugenzi Defence teams claim that the right to trial without undue delay was violated.[113] Although the Chamber may consider matters related to undue delay at the judgement stage of the proceedings, it declines to assess issues that were already adjudicated without sufficient demonstration that reconsideration is appropriate.

67. The Bicamumpaka Defence team's motion seeking a permanent stay of the proceedings attached to its Closing Brief, based, among other things, on the alleged undue delay of the trial, was previously adjudicated by the Chamber. In this motion, Bicamumpaka's Defence argued that an undue delay in the proceedings was attributable to the Prosecution's proffering of unnecessary and irrelevant evidence during trial.[114]

68. In its decision issued 27 February 2009, this Chamber carefully considered the five criteria to be evaluated when determining whether the right to trial without undue delay was violated. The Chamber found, "in light of the totality of the criteria laid down by the Appeals Chamber," that the Bicamumpaka Defence failed to show a violation of his right to be tried without undue delay, and thus denied the stay on that basis.[115]

69. The Bizimungu and Mugenzi Defences, however, also contend in their Closing Briefs that the right of their clients to be tried without undue delay was violated. The Chamber takes this opportunity to address the alleged violations.

70. The Bizimungu Defence claims that Bizimungu's right to trial without undue delay was violated with respect to the time between his arrest, on 11 February 1999, and the start of trial, on 6 November 2003.[116] The Mugenzi Defence challenges both the four-year delay between Mugenzi's arrest in April 1999 and the start of trial in November 2003, as well as the more than 10 years Mugenzi had been in detention awaiting verdict. It contends that this delay can be attributed to the Tribunal's failure to prioritise this case, as well as numerous adjournments and scheduling failures that delayed the proceedings.[117]

71. With respect to the alleged pre-trial delay, the Chamber recalls that it previously rejected both Bizimungu's Motion for Provisional Release and Mugenzi's Motion to Stay the Proceedings or for Provisional Release based on alleged pre-trial delay.[118] Accordingly, the Defence submissions seek reconsideration of this prior decision. The Chamber recalls the Tribunal's jurisprudence on reconsideration (I.2). Their submissions fail to demonstrate the existence of a new fact or a material change in circumstances, or that the original decisions were erroneous or an abuse of power resulting in an injustice.

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[113] Bicamumpaka Closing Brief, paras. 1060-1065; Bizimungu Closing Brief, paras. 207-211; Mugenzi Closing Brief, paras. 1495-1496. *See also* Mugenzi Closing Arguments, T. 2 December 2008 pp. 2-4, 14-22.
[114] Bicamumpaka Closing Brief, paras. 1060-1065.
[115] Decision on Jérôme-Clément Bicamumpaka's Motion Seeking Permanent Stay of Proceedings (TC), 27 February 2009, paras. 8-19.
[116] Bizimungu Closing Brief, paras. 207-211.
[117] Mugenzi Closing Brief, paras. 1495-1496.
[118] Decision on Bizimungu's Motion for Provisional Release Pursuant to Rule 65 of the Rules (TC), filed 4 November 2002, paras. 31-32. The Appeals Chamber dismissed Bizimungu's subsequent appeal. Decision on the Application to Appeal Against the Provisional Release Decision of Trial Chamber II of 4 November 2002 (AC), 13 December 2002; Decision on Justin Mugenzi's Motion for Stay of Proceedings or in the Alternative Provisional Release (Rule 65) and in Addition Severance (Rule 82 (B)) (TC), 8 November 2002, para. 34.

72. The Chamber acknowledges that its decision on Bizimungu's Motion for Provisional Release was rendered on 4 November 2002, and its decision on Mugenzi's Motion to Stay the Proceedings or for Provisional Release was rendered on 8 November 2002, both approximately one year prior to the commencement of trial on 6 November 2003. The Chamber does not find, however, that because an additional year passed after the prior decisions' rendering that there has been a material change in circumstances that requires their reconsideration. Indeed, in a decision related to a claim by Mugiraneza of undue pre-trial delay, the Chamber held that his detention, starting on 6 April 1999 up to the commencement of trial, did not amount to undue delay.[119] The same considerations equally apply to Mugenzi and Bizimungu.

73. Turning to the question of whether there has been undue delay in the trial generally, the Chamber recalls that the right to be tried without undue delay is guaranteed by Article 20 (4)(c) of the Statute. The Appeals Chamber has pointed out that this right only protects the accused against *undue* delay, which has to be decided on a case-by-case basis.[120] The following factors are relevant: (a) the length of the delay; (b) the complexity of the proceedings (the number of counts, the number of accused, the number of witnesses, the quantity of evidence, the complexity of the facts and of the law); (c) the conduct of the parties; (d) the conduct of the authorities involved; and (e) the prejudice to the accused, if any.[121]

74. The proceedings in this case have been lengthy. The Chamber recognises concerns that the conduct of the Tribunal, and the increased workload of the presiding judges more specifically, has contributed to this delay.[122] The Chamber notes, however, that a delay of 12 years from arrest to judgement does not, *per se*, constitute undue delay for the purposes of the Statute, but that the delay must be evaluated having regard to the totality of those matters outlined by the Appeals Chamber.[123]

75. In considering some of the factors identified by the Appeals Chamber in order to determine the complexity of the proceedings such as the number of charges, number of accused, number of witnesses, volume of evidence and complexity of facts and law, the Chamber finds that this delay can be attributed primarily to the size and complexity of this case.

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[119] The Chamber notes that Mugenzi, Mugiraneza and Bicamumpaka were arrested in Cameroon on the same date, 6 April 1999. *See Mugenzi et al.*, Decision on Mugenzi's Motion for Relief under Rule 54 (TC), 18 October 2000, p. 2; *Mugiraneza et al.*, Decision on Mugiraneza's Motion for Relief under Rule 54 (TC), 18 October 2000, p. 2.; *Bizimungu et al.*, Registrar's Submission on the Initial Assignment of Counsel to Jérôme-Clément Bicamumpaka, 16 February 2009, para. 4. The Chamber rejected Mugiraneza's motion to dismiss the Indictment because of undue delay after evaluating the period from his arrest, on 6 April 1999, to the start of trial. Decision on Prosper Mugiraneza's Application for a Hearing or Other Relief on His Motion for Dismissal for Violation of His Right to a Trial Without Undue Delay (TC), 3 November 2004, paras. 33-34.

[120] *Nahimana et al.* Appeal Judgement, para. 1074.

[121] *Nahimana et al.* Appeal Judgement, para. 1074. *See also* Decision on Prosper Mugiraneza's Interlocutory Appeal from Trial Chamber II Decision of 2 October 2003 Denying the Motion to Dismiss the Indictment, Demand Speedy Trial and for Appropriate Relief (AC), 27 February 2004, p. 3.

[122] Decision on Prosper Mugiraneza's Fourth Motion to Dismiss Indictment for Violation of Right to Trial Without Undue Delay (TC), 23 June 2010, J. Short Dissent, paras. 1-6.

[123] *See* Decision on Prosper Mugiraneza's Fourth Motion to Dismiss Indictment for Violation of Right to Trial Without Undue Delay (TC), 23 June 2010, para. 11.

76. The Indictment against these Accused charges several modes of liability and 10 counts. The proceedings involved four Accused, 171 witnesses, 399 trial days and 975 documentary exhibits totalling more than 8,000 pages. Transcripts in this proceeding amount to more than 27,000 pages. The Chamber rendered a multitude of oral decisions during trial and has issued 391 written decisions outside the Judgement.

77. The Accused were four high-level government ministers, allegedly responsible for massacres throughout Rwanda from April to July 1994. The Prosecution has claimed both individual and superior responsibility for all four Accused. The Chamber has heard a multitude of witness testimonies and admitted vast amounts of documentary evidence concerning the workings of the Interim Government and each Accused's role and responsibility therein, as well as their purported involvement in more specific events at various locales across the country. The prominence of these Accused and its assessment required evidence covering nearly four years, from 1990 to 1994.

78. The Chamber further recalls that the Appeals Chamber held that a period of seven years and eight years between the arrest of the Accused and the rendering of the judgement in the *Nahimana et al.* case did not constitute undue delay. That proceeding involved 93 witnesses, called over the course of 241 trial days.[124] Similarly, the *Bagosora et al.* Trial Chamber concluded that a delay of approximately 11 years was not undue.[125] The Trial Chamber in the *Nyiramasuhuko et al.* case, which heard 189 witnesses over the course of 726 trial days, concluded that a case lasting 15 years did not amount to undue delay.[126]

79. In sum, the Mugenzi Defence team's blanket allegation that the Tribunal's "organizational failures" caused unnecessary delays in this trial ignores the common challenges of trial administration of a multi-accused case with a complicated procedural history. In view of the size and complexity of this trial, the Chamber, Judge Short dissenting in part, does not consider that there has been undue delay in these proceedings.

7. NOTICE

80. In their Closing Briefs and closing arguments, the Accused have raised general challenges to the form of the Indictment as well as specific challenges to the notice provided of several allegations arising from the Prosecution evidence.[127] In addition, Bizimungu, Mugenzi and Bicamumpaka submit that the Prosecution has ignored the denial of its

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[124] *Nahimana et al.* Trial Judgement, para. 50.
[125] *Bagosora et al.* Trial Judgement, paras. 73-84.
[126] *Nyiramasuhuko et al.* Trial Judgement, paras. 134-143.
[127] Bizimungu Closing Brief, paras. 79-187, 414, 492-495, 563-565, 583, 586-590, 692-699, 737-743, 776, 790-792, 806, 812-814, 827, 830, 834-837, 866, 874-879, 890-892, 895-898, 900-901, 904-905, 908-909, 912-914, 1300, 1450, 1459-1464, 1478-1479, 1542-1543, 1581-1583, 1620, 1631, 1653, 1656-1677, 1679-1706, 1712-1715, 1722, 1732-1733, 1739-1744, 1746-1748, 1785; Mugenzi Closing Brief, paras. 3-50, 52-88, 90, 92-106, 110-113, 240, 276, 1034, 1084, 1098, 1106, 1142, 1196, 1233, 1255, 1272, 1319, 1472, 1474; Bicamumpaka Closing Brief, paras. 1, 17, 28-46, 264-265, 277, 293, 309-311, 363-371, 391-393, 409-419, 481-484, 509-510, 760, 905-908, 917-936, 975-982, 1037, 1061, 1067-1068, 1085, 1101-1102; Mugiraneza Closing Brief, paras. 11-51, 92, 102, 112, 128, 152, 163-166, 179, 214, 219-220, 225, 232-233, 246, 254, 268-269, 279, 312-313, 325-326, 385-386, 396-397, 413-415, 437, 458-459, 468-469, 496-497, 550-552, 697; Addendum to Prosper Mugiraneza's Corrected Closing Brief, 1 December 2008, paras. 3, 12, 18, 21, 30; Bizimungu Closing Arguments, T. 1 December 2008 pp. 70-71, 75-85, T. 2 December 2008 pp. 2-4, 14-22; Mugenzi Closing Arguments, T. 2 December 2008 pp. 71-72; Bicamumpaka Closing Arguments, T. 3 December 2008 pp. 56, 60, 65, 71-73, T. 5 December 2008 pp. 30-32; Mugiraneza Closing Arguments, T. 4 December 2008 pp. 2-4, 16-17, T. 5 December 2008 p. 31.

application to amend the Indictment and adduced evidence of allegations that it unsuccessfully sought to add in that application.[128] Some of these notice challenges were previously considered by the Chamber during the course of the trial. The Chamber has not revisited its prior decisions concerning such challenges in the Judgement. Where the Prosecution did not prove its case with respect to a particular allegation, the Chamber has not found it necessary to address challenges based on notice.

(i) Law

81. The charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to an accused. The Prosecution is expected to know its case before proceeding to trial and cannot mould the case against the accused in the course of the trial depending on how the evidence unfolds. Defects in an indictment may come to light during the proceedings because the evidence turns out differently than expected; this calls for the Trial Chamber to consider whether a fair trial requires an amendment of the indictment, an adjournment of proceedings, or the exclusion of evidence outside the scope of the indictment. In reaching its judgement, a Trial Chamber can only convict the accused of crimes that are charged in the indictment.[129]

82. The Appeals Chamber has held that criminal acts that were physically committed by the accused personally must be set forth in the indictment specifically, including where feasible "the identity of the victim, the time and place of the events and the means by which the acts were committed".[130] Where it is alleged that the accused planned, instigated, ordered or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused which forms the basis for the charges in question.[131]

83. If the Prosecution intends to rely on the theory of superior responsibility to hold an accused criminally responsible for a crime under Article 6 (3) of the Statute, the Indictment should plead the following: (1) that the accused is the superior of subordinates sufficiently identified, over whom he or she had effective control – in the sense of a material ability to prevent or punish criminal conduct – and for whose acts he or she is alleged to be responsible; (2) the criminal conduct of those others for whom the accused is alleged to be responsible; (3) the conduct of the accused by which the accused may be found to have known or had reason to know that the crimes were about to be committed or had been committed by his or her subordinates; and (4) the conduct of the accused by which the

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[128] Bizimungu Closing Brief, paras. 91, 103-110, 115, 162-164, 169, 590, 696, 741-743, 792, 814, 837, 866, 1747-1748, 1785; Mugenzi Closing Brief, paras. 18, 312-313; Bicamumpaka Closing Brief, paras. 30-35, 41-42, 264, 369, 760, 905-906, 917, 920-921, 930, 932-935, 1037; Bizimungu Closing Arguments, T. 1 December 2008 pp. 78-83, T. 2 December 2008 pp. 18-20, 22. *See also* Mugiraneza Closing Brief, para. 44.

[129] *Muvunyi II* Appeal Judgement, para. 19; *Renzaho* Appeal Judgement, para. 53; *Muvunyi I* Appeal Judgement, para. 18.

[130] *Muhimana* Appeal Judgement, para. 76; *Gacumbitsi* Appeal Judgement, para. 49; *Kupreškić et al.* Appeal Judgement, para. 89.

[131] *Nchamihigo* Appeal Judgement, para. 338; *Ntagerura et al.* Appeal Judgement, para. 25; *Blaškić* Appeal Judgement, para. 213.

accused may be found to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.[132]

84. A superior need not necessarily know the exact identity of his or her subordinates who perpetrate crimes in order to incur liability under Article 6 (3) of the Statute. The Appeals Chamber has held that physical perpetrators of the crimes can be identified by category in relation to a particular crime site.[133]

85. The Appeals Chamber has previously stated that "the facts relevant to the acts of those others for whose acts the accused is alleged to be responsible as a superior, although the Prosecution remains obliged to give all the particulars which it is able to give, will usually be stated with less precision because the detail of those acts are often unknown, and because the acts themselves are often not very much in issue". Moreover, in certain circumstances, the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates of the commission of the crimes.[134]

86. An indictment lacking this precision is defective. The defect may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the factual basis underpinning the charge. However, the principle that a defect in an indictment may be cured is not without limits, and a clear distinction must be drawn between vagueness in an indictment and an indictment omitting certain charges altogether. Omitted charges can be incorporated into the indictment only by a formal amendment pursuant to Rule 50 of the Rules.[135]

87. A defect in the indictment not cured by timely, clear and consistent notice constitutes a prejudice to the accused. The defect may only be deemed harmless through a demonstration that the accused's ability to prepare his or her defence was not materially impaired. Where the failure to give sufficient notice of the legal and factual reasons for the charges against the accused violated the right to a fair trial, no conviction can result.[136]

(ii) Curing in the Pre-Trial Brief and Cumulative Curing

88. In their closing submissions, the Defence for Bizimungu, Mugenzi and Bicamumpaka observe that the Prosecution adduced evidence of allegations that it sought, unsuccessfully, to add in its application to amend the Indictment. These Defence teams submit that it would be prejudicial for the Chamber to rely on this evidence.[137] Before considering this issue, the Chamber makes some general observations with respect to the procedural history in this case.

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[132] *Muvunyi I* Appeal Judgement, para. 19; *Nahimana et al.* Appeal Judgement, para. 323; *Ntagerura et al.* Appeal Judgement, paras. 26, 152.
[133] *Renzaho* Appeal Judgement, para. 64; *Muvunyi I* Appeal Judgement, para. 55.
[134] *Muvunyi I* Appeal Judgement, para. 58; *Blaškić* Appeal Judgement, para. 218.
[135] *Renzaho* Appeal Judgement, para. 55; *Rukundo* Appeal Judgement, para. 29; *Muvunyi I* Appeal Judgement, para. 20.
[136] *Renzaho* Appeal Judgement, para. 125; *Nahimana et al.* Appeal Judgement, para. 326; *Ntagerura et al.* Appeal Judgement, para. 30.
[137] *See, e.g.*, Bizimungu Closing Brief, paras. 103-110; Mugenzi Closing Brief, para. 18; Bicamumpaka Closing Brief, para. 30; Bizimungu Closing Arguments, T. 1 December 2008 pp. 79-82.

89. The Prosecution's initial Indictment against the Accused was confirmed in May 1999.[138] In August 2003, the Prosecution sought leave to file an amended Indictment ("Proposed Amended Indictment").[139] The Accused, except for Mugenzi, opposed this request. Mugiraneza and Bicamumpaka responded jointly that the Prosecution should have acted sooner and that permitting the amendment would delay the start of trial.[140] Bizimungu raised various objections, including that the proposed amendment alleged new facts that could not be investigated in time.[141]

90. On 6 October 2003, a differently composed Trial Chamber denied the Prosecution leave to file the Proposed Amended Indictment after expressing its opinion that "the expansions, clarifications and specificity ... amount to substantial changes which would cause prejudice to the Accused". For example, the Chamber considered that the proposal to provide further details concerning the "names, places, dates and times" of the Accused's alleged involvement would necessitate giving additional time to the Defence. The Chamber also noted the impending trial date, and opined that allowing the Proposed Amended Indictment "will not only cause prejudice to the Accused but would also result in a delay for the commencement of the trial".[142]

91. The Prosecution sought certification to appeal the Chamber's decision denying the Proposed Amended Indictment on 13 October 2003.[143] While its motion for certification to appeal this decision remained pending, the Prosecution filed its Pre-Trial Brief on 20 October 2003. The Pre-Trial Brief plainly refers to the operative Indictment, and not to the Proposed Amended Indictment.[144] It also contains several allegations of material fact that were not expressly included in the Indictment, but were found in the Proposed Amended Indictment.[145] The Defence did not object or move to strike the Pre-Trial Brief.[146]

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[138] Confirmation of the Indictment (TC), 12 May 1999, p. 2. The initial Indictment was confirmed subject to an amendment specifying that Complicity in Genocide was pled as an alternative to Genocide. The Prosecution filed this amended Indictment the same day. The same Indictment was re-filed on 16 August 1999 with the Registry.

[139] Prosecutor's Request for Leave to File an Amended Indictment, 26 August 2003.

[140] Prosper Mugiraneza's and Jerome Bicamupaka's Brief in Opposition to the Prosecutor Request for Leave to File an Amended Indictment, filed 3 September 2003, paras. 2-4.

[141] *Réponse de la Défense de Casimir Bizimungu au* « Prosecutor's Request for Leave to File an Amended Indictment », 24 September 2003, paras. 24-47, 100-104.

[142] Decision on the Prosecutor's Request for Leave to File an Amended Indictment (TC), 6 October 2003, paras. 34-35.

[143] Prosecutor's Request Pursuant to Rule 73(B) for Certification to Appeal an Order Denying Leave to File an Amended Indictment, 13 October 2003; *see also* Decision on the Prosecutor's Request Pursuant to Rule 73(B) for Certification to Appeal an Order Denying Leave to File an Amended Indictment (TC), 29 October 2003.

[144] *Compare* Prosecution Pre-Trial Brief, paras. 5 (p. 5) (referring to "paragraphs 5.1 to 6.68 of the Indictment"), 8 (p. 6) (same) *and* Indictment, para. 5.1 to 6.68, *with* Prosecutor's Request for Leave to File an Amended Indictment, 26 August 2003, Annex A ("Proposed Amended Indictment"), paras. 5-173. *See also* Prosecution Pre-Trial Brief, fns. 60, 63-64, 66-68, 73-79, 82, 86-89, 91-94, 101, 107, 176-177, 368 (which refer to selected Indictment paragraphs rather than paragraphs from the Proposed Amended Indictment).

[145] These include allegations about the PL Split (II.3.5) (*compare* Prosecution Pre-Trial Brief, paras. 22 (p. 9), 180 (p. 40), 245-246 (p. 51), 253 (p. 52), *and* Proposed Amended Indictment, paras. 66, 140); meetings in Ndekwe *cellule*, Gasetsa sector (*compare* Prosecution Pre-Trial Brief, paras. 221 (p. 47), 292 (p. 57), *and* Proposed Amended Indictment, paras. 33(a), 86, 148); Kibungo Club (II.6.1) (*compare* Prosecution Pre-Trial Brief, paras. 217 (pp. 46-47), 294 (p. 58), *and* Proposed Amended Indictment, paras. 33(f), 88, 150); Nyamirambo Stadium on 16 January 1994 (II.5.1) (*compare* Prosecution Pre-Trial Brief, para. 264 (p. 54), *and* Proposed Amended Indictment, para. 69); meetings at Kibungo roundabout between 15 March and 10 April 1994 (*compare* Prosecution Pre-Trial Brief, para. 300 (p. 59), *and* Proposed Amended Indictment, para. 94);

92. The Chamber certified for appeal the decision denying the Proposed Amended Indictment on 29 October 2003.[147] The Prosecution filed its appeal on 3 November 2003.[148] Three days later, the Prosecution gave its Opening Statement and called its first witness.[149] On 15 December 2003, the Chamber adjourned the trial proceedings until 19 January 2004, when the Prosecution re-commenced its case.[150]

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meetings in Gasetsa sector between 30 March and 5 April 1994 (*compare* Prosecution Pre-Trial Brief, para. 295 (p. 58), *and* Proposed Amended Indictment, paras. 33(c), 89); Cyamuribwa Centre (II.6.2) (*compare* Prosecution Pre-Trial Brief, para. 287 (p. 57), *and* Proposed Amended Indictment, para. 96); Kigarama Commune (II.6.3) (*compare* Prosecution Pre-Trial Brief, paras. 138 (pp. 31-32), 208 (p. 45), 212-216 (p. 46), 296 (p. 58), 301 (p. 59) *and* Proposed Amended Indictment, paras. 33(e), 90, 95, 153, 155-158); Kabuga, 6 April 1994 (II.7.1) (*compare* Prosecution Pre-Trial Brief, para. 283 (p. 56), *and* Proposed Amended Indictment, paras. 31(b), 60); Kabuga, 7 April 1994 (II.7.1) (*compare* Prosecution Pre-Trial Brief, para. 197 (p. 43), *and* Proposed Amended Indictment, para. 131); the rescue of Vestine Ugiranyina from Rukara Parish on 9 April 1994 (II.6.4) (*compare* Prosecution Pre-Trial Brief, para. 189 (pp. 41-42), *and* Proposed Amended Indictment, para. 143); the distribution of weapons at Sebisogo's home in Kabuga-Ville *cellule* on 9 April 1994 (II.7.1) (*compare* Prosecution Pre-Trial Brief, para. 198 (p. 43), *and* Proposed Amended Indictment, para. 133); the meeting at the *Centre Hospitalier de Kigali* (II.7.4) (*compare* Prosecution Pre-Trial Brief, para. 167 (pp. 37-38), *and* Proposed Amended Indictment, paras. 43, 109-111); the meeting of the Interim Government at *Le Palais du MRND* in Cyangugu (II.11.2) (*compare* Prosecution Pre-Trial Brief, paras. 130 (p. 29), 281 (p. 56), *and* Proposed Amended Indictment, paras. 24, 65); the rally at Misizi football fields in Gitarama prefecture (II.8.4) (*compare* Prosecution Pre-Trial Brief, para. 280 (p. 56), *and* Proposed Amended Indictment, paras. 31(d), 61); the meeting at Marianne's house in Ruhango (II.8.3) (*compare* Prosecution Pre-Trial Brief, paras. 284-285 (p. 56), *and* Proposed Amended Indictment, paras. 31(f), 63-64); the installation of Basile Nsabumugisha as Ruhengeri prefect (II.9.4) (*compare* Prosecution Pre-Trial Brief, paras. 122 (p. 27), 196 (p. 43), *and* Proposed Amended Indictment, paras. 19, 31(e), 62); the installation of Charles Zilimwabagabo as prefect of Gisenyi and a subsequent meeting at the Palm Beach hotel (II.9.3) (*compare* Prosecution Pre-Trial Brief, paras. 184 (p. 41), 260 (p. 53), *and* Proposed Amended Indictment, paras. 18, 83); the killing of John Vuningoma (II.10.2) (*compare* Prosecution Pre-Trial Brief, paras. 131 (p. 29), 272 (p. 55), *and* Proposed Amended Indictment, para. 55); the killings at Bar Mimosas in Gitarama (II.10.1) (*compare* Prosecution Pre-Trial Brief, paras. 131 (p. 29), 156 (p. 35), 228-229 (pp. 48-49), *and* Proposed Amended Indictment, paras. 44-45); the *Interahamwe* training session at Umuganda Stadium in Gisenyi (II.11.3) (*compare* Prosecution Pre-Trial Brief, paras. 163 (pp. 36-37), 239 (p. 50), *and* Proposed Amended Indictment, paras. 52, 124); the RTLM interview of Mugenzi by Gaspard Gahigi in May 1994 (II.11.4) (*compare* Prosecution Pre-Trial Brief, para. 250 (p. 52), *and* Proposed Amended Indictment, para. 78); the meetings at Meridien Hotel in Gisenyi in May 1994 (II.11.3) (*compare* Prosecution Pre-Trial Brief, paras. 130 (p. 29), 240 (p. 50), *and* Proposed Amended Indictment, para. 53); the killing of John-Baptiste Muyango (II.10.3) (*compare* Prosecution Pre-Trial Brief, para. 187 (p. 41), *and* Proposed Amended Indictment, para. 73).

[146] Instead, the Defence would later moved for greater specificity in the Pre-Trial Brief, and for part of it to be made public. *See* Bicamumpaka and Mugenzi's Motion for Specificity in the Pre-Trial Brief, 22 September 2004; Prosper Mugiraneza's Motion to Remove Confidentiality from Portions of the Prosecutor's Pretrial Brief, 24 September 2004. *See also* Decision on Bicamumpaka and Mugenzi's Motion for Specificity in the Pre-Trial Brief (TC), 24 November 2004, p. 9 (granting the Defence Motion in part, and ordering the Prosecution to specify to which Indictment paragraphs its remaining witnesses would testify); Decision on Prosper Mugiraneza's Motion to Remove Confidentiality from Portions of the Prosecutor's Pre-Trial Brief (TC), 10 December 2004, p. 4 (dismissing the Defence Motion).

[147] Decision on the Prosecutor's Request Pursuant to Rule 73(B) for Certification to Appeal an Order Denying Leave to File an Amended Indictment (TC), 29 October 2003, p. 5.

[148] Prosecutor's Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment, 3 November 2003.

[149] *See* Prosecution Opening Statement, T. 6 November 2003 pp. 2-14.

[150] The Chamber held a Status Conference on 16 December 2003, where the Parties addressed the presentation of witnesses, the number of factual and expert witnesses, the issue of admitted facts, and the trial schedule. *See* T. 16 December 2003.

93. On 12 February 2004, the Appeals Chamber dismissed the Prosecution appeal. In doing so, however, the Appeals Chamber noted that the proposed amendments consisted of both expansions *and* clarifications of the charges against the Accused. Because such clarifications "can actually enhance [] overall fairness", the Appeals Chamber concluded that "[h]ad the Prosecution solely attempted to add particulars to its general allegations, [this] might well have been allowable because of their positive impact on the fairness of the trial". The Appeals Chamber also observed that while it was affirming the Trial Chamber's decision, the Prosecution was not precluded from submitting another proposed indictment "that would provide greater notice of the particulars of the Prosecution's case without causing prejudice in the conduct of trial".[151]

94. The Prosecution, in the midst of presenting its case against the Accused, did not seek leave to file a new amended indictment. At the close of trial proceedings, the Prosecution has argued that defects in the operative Indictment have been cured by the Pre-Trial Brief and other instruments.[152]

95. The Chamber recalls the notice principles set forth above (I.7). In particular, there are limitations to a pre-trial brief's ability to cure defects in an indictment. A defect may be cured if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charge. Although it is possible to remedy the vagueness of an indictment, omitted charges can be incorporated into the indictment only by a formal amendment.

96. The Prosecution, however, did not re-file a new proposed amended indictment. Instead, it has chosen to rely on, among other things, its Pre-Trial Brief to provide notice of the material facts underpinning several charges it argues are in the Indictment. Other cases that have procedural features common to this proceeding – namely, the denial of a proposed amended indictment coupled with the Prosecution's reliance on information in a pre-trial brief that formed part of the rejected proposed amended indictment – warn that the reliance on the pre-trial brief to cure material defects in the indictment might be impermissible.

97. For example, in the *Muvunyi I* case, the Appeals Chamber overturned a conviction for an attack that occurred outside the time period alleged in the indictment. Although the expanded date range was contained in supplementary materials, which the Prosecution argued had cured the defect, the Appeals Chamber observed that the Prosecution had already attempted to expand this range in a motion to amend the indictment, but that the request was denied on the ground of prejudice.[153] The Appeals Chamber concluded that this supplemental attempt at curing did not add specificity to a vague paragraph, but was instead an impermissible expansion of the charges in the indictment, which had already been rejected.[154]

98. Similarly, the *Setako* Trial Chamber refused to make findings on several allegations that, although contained in the pre-trial brief, were also within a proposed amended indictment that had been rejected. In doing so, the Trial Chamber recalled its prior decision

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[151] Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment (AC), 12 February 2004, paras. 19-20, 25.
[152] Prosecution Closing Brief, para. 20; Prosecution Closing Arguments, T. 1 December 2008 pp. 38-39, 42, 45-46, 48, 51, 54-55, 64-65; T. 5 December 2008 pp. 8-9.
[153] *Muvunyi I* Appeal Judgement, paras. 23-25, 29-30.
[154] *Muvunyi I* Appeal Judgement, para. 28.

that the proposals greatly expanded the case against the accused and would prejudice his ability to prepare a defence.[155]

99. Other cases also signify the importance of considering procedural histories pertaining to indictments in determining whether information contained in a curing instrument, such as a pre-trial brief, are capable of providing timely, clear and consistent notice to the accused. In *Krnojelac*, the Trial Chamber issued a decision that "expressly interpret[ed]" the indictment as only alleging joint criminal enterprise liability in the basic form. However, the Prosecution subsequently filed a pre-trial brief, which also alleged the extended form. At the conclusion of the case, the Trial Chamber held that the Prosecution could not rely on the extended form.[156]

100. The *Krnojelac* Appeals Chamber affirmed this position, observing that the Prosecution's failure "to amend the [i]ndictment after the Chamber had unambiguously interpreted [it] as not pleading an extended form of joint criminal enterprise" led to "persistent ambiguity surrounding the issue of what exactly the Prosecution argument was".[157] While this finding was confined to the circumstances of that case, the Appeals Chamber noted that even where the indictment failed to properly plead the theory of joint criminal enterprise, "this does not, in principle, prevent the Prosecution from pleading elsewhere than in the indictment – for instance in a pre-trial brief – the legal theory" on which it relies, so long as it remains "limited by the need to guarantee the accused a fair trial".[158]

101. The *Karera* Appeal Judgement provides another example of when procedural irregularities could preclude a pre-trial brief from providing timely, clear and consistent notice sufficient to cure defects in the indictment. In that case, the pre-trial brief, which was filed seven days before the amended indictment, was found to be incapable of curing a particular defect relating to whether evidence clearly pleaded for a murder charge could also support a genocide conviction because, among other things, it was unclear as to which version of the indictment the pre-trial brief was referring.[159]

102. It is clear from this jurisprudence that merely including material facts in a pre-trial brief does not necessarily provide adequate notice to an accused in a way that guarantees fairness. Indeed, this Chamber has excluded evidence supporting allegations of Bizimungu's criminal conduct in Ruhengeri prefecture, which are contained in the Prosecution Pre-Trial Brief, because they were not contained in the Indictment and they unfairly expanded the case against the Accused.[160] The Appeals Chamber upheld this position, noting that such evidence consisted of "what is essentially a newly identified geographical region". In doing so, the Appeals Chamber distinguished between "fresh allegations and [] new geographical regions"

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[155] *Setako* Trial Judgement, paras. 39-42, 52, 56.
[156] *See Krnojelac* Appeal Judgement, paras. 136-140.
[157] *Krnojelac* Appeal Judgement, paras. 141-144.
[158] *Krnojelac* Appeal Judgement, para. 138.
[159] *Karera* Appeal Judgement, paras. 367-369. *See also Renzaho* Appeal Judgement, para. 121.
[160] Decision on Motion from Casimir Bizimungu Opposing to the Admissibility of the Testimony of Witnesses GKB, GAP, GKC, GKD and GFA (TC), 23 January 2004, paras. 12-16, 18; Decision on Motion from Casimir Bizimungu Opposing to the Admissibility of the Testimony of Witnesses AEI, GKE, GKF and GKI (TC), 3 February 2004, paras. 1, 3-4. *See also* Prosecution Pre-Trial Brief, paras. 134 (p. 30), 138 (p. 31), 159-162 (p. 36), 231-233 (p. 49), 238 (p. 50), 242-244 (pp. 50-51).

whose inclusion "would cause prejudice to the Defence", and the addition of "greater specificity to some charges" that was sought in the Proposed Amended Indictment.[161]

103. Relatedly, the provision of notice through material facts in the Pre-Trial Brief does not necessarily prejudice the Accused just because they were also contained in the Proposed Amended Indictment that was rejected. As noted by the Appeals Chamber, some information in the Proposed Amended Indictment "narrowed the indictment" and would "thereby increase the fairness and efficiency of proceedings".[162] This determination by the Appeals Chamber distinguishes the present procedural posture from that in the *Muvunyi I*, *Setako* and *Krnojelac* cases.

104. Moreover, the Prosecution clearly linked the Pre-Trial Brief with the operative Indictment, instead of to the Proposed Amended Indictment. Because no subsequent amendments were made to the Indictment, there is no confusion that this Pre-Trial Brief sought to bring clarity to the operative Indictment rather than any other charging instrument.[163] Consequently, this case's present procedural posture is also distinguishable from the scenario in *Karera*.

105. The Chamber is reminded that the Appeals Chamber expressly indicated to the Prosecution that it was not precluded from filing a further proposal to amend the indictment.[164] The Prosecution did not do so. The circumstances allow for some ambiguity as to which material facts in the Pre-Trial Brief, that were also in the Proposed Amended Indictment, either "narrowed the indictment" and "thereby increase[d] the fairness and efficiency of proceedings", or "expanded its scope in a manner prejudicial to the Accused".[165] This ambiguity must be assessed on a case-by-case basis.

106. This Chamber has issued several rulings throughout the course of the proceeding about whether the Accused were presented sufficient notice of evidence the Prosecution intended to or did lead during its case.[166] The Chamber is satisfied that any Indictment defects

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[161] Decision on Prosecution's Interlocutory Appeals Against Decision of the Trial Chamber on Exclusion of Evidence (AC), 25 June 2004, paras. 19, 21.
[162] Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment (AC), 12 February 2004, paras. 19-20.
[163] *See Renzaho* Appeal Judgement, para. 122.
[164] Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment (AC), 12 February 2004, para. 20.
[165] Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment (AC), 12 February 2004, paras. 19-20.
[166] *See, e.g.*, Decision on Motion from Casimir Bizimungu Opposing to the Admissibility of the Testimony of Witnesses GKB, GAP, GKC, GKD and GFA (TC), 23 January 2004; Decision on Motion to Exclude Portions of the Evidence of Witness Prosper Higiro (TC), 30 January 2004; Decision on Motion from Casimir Bizimungu Opposing to the Admissibility of the Testimony of Witnesses AEI, GKE, GKF and GKI (TC), 3 February 2004; Decision on Prosper Mugiraneza's Motion to Exclude Testimony of Witnesses Whose Testimony Is Inadmissible in View of the Trial Chamber's Decision on 23 January 2004 and for Other Appropriate Relief (TC), 5 February 2004; Decision on Urgent and Confidential Motion from Casimir Bizimungu Opposing to the Admissibility of the Testimony of Witnesses GKF, GBN, ADT, GTD (TC), 1 July 2004; Decision on Prosecutor's Very Urgent Motion Pursuant to Rule 73*bis*(E) to Vary the Prosecutor's List of Witnesses Filed on 25 May 2004 (TC), 3 September 2004; Decision on Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004 (TC), 4 October 2004; Decision on Motion of Defendant Bicamumpaka Opposing the Admissibility of Witnesses GFA, GKB and GAP (TC), 6 October 2004; Decision on Bicamumpaka's Motions to Declare Parts of the Testimony of Witnesses GHT, GHY and GHS Inadmissible (TC), 21 October 2004; Decision on Bicamumpaka's Urgent Motion to Declare Parts of the Testimony of Witness GTA and DCH Inadmissible (TC), 24 November 2004.

found to have been cured throughout the proceeding have not rendered the trial unfair.[167] The conduct of the Parties, and in particular of the four Defence teams, reflects a nuanced and complete understanding of the cases brought by the Prosecution. The Accused have benefitted from vigorous advocacy and an effective trial strategy that belie any claim that they suffered material prejudice to the preparation of their defence as a whole.

107. In certain instances and where necessary, the Chamber will assess whether sufficient notice was given of material facts not pleaded in the Indictment.

8. WITNESS TAMPERING

108. The Defence teams for each of the Accused raise specific and general allegations about witness tampering. The arguments primarily focus on the allegations of persistent interference by Rwandan government officials in pressuring witnesses to testify against persons accused before the Tribunal as well as claims of harassment and intimidation of those who testified on behalf of the Accused.[168]

109. Throughout the Judgement, the Chamber has considered the context in which witnesses have testified, as well as alleged evidence fabrication. Such evaluations include a review of incarceration histories, as well as affiliations with the Rwandan government and genocide survivors' organisations. Where relevant, considerations of a witness's connections with the Tribunal's Office of the Prosecutor have also been reviewed. In this context, the Chamber has addressed many of the specific considerations set forth by the Accused on a case-by-case basis.[169]

110. Moreover, the Chamber observes that none of the Defence submissions argue that they have been denied access to witnesses as a result of witness intimidation or tampering. Viewing the specific allegations of witness tampering collectively along with general arguments pertaining to them, the Chamber does not consider that these submissions demonstrate that the trial as a whole has been unfair.[170]

9. WITNESS GFA

111. In its Closing Brief, the Prosecution relied on Witness GFA's testimony in relation to the installation ceremony of Basile Nsabumugisha as the prefect of Ruhengeri (II.9.4).[171]

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[167] *See generally The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 26.

[168] Mugenzi Closing Brief, paras. 140-169; Bicamumpaka Closing Brief, paras. 1081-1084; Bizimungu Closing Brief, paras. 227-307; Mugiraneza Closing Brief, paras. 70-73; Mugenzi Closing Arguments, T. 2 December 2008 pp. 59-63; T. 5 December 2008 p. 17; Bizimungu Closing Arguments, T. 2 December 2008 pp. 32-34. *See also* Prosecution Closing Arguments, T. 4 December 2008 pp. 82-84.

[169] The Chamber has previously ruled on a Mugiraneza Defence motion pertaining to allegations of contempt resulting from alleged Defence witness harassment. *See* Confidential Decision on Request to Initiate Contempt Proceedings (TC), 19 August 2011.

[170] *See also* Decision on Jérôme-Clément Bicamumpaka's Motion Seeking Permanent Stay of the Proceedings (TC), 27 February 2009, paras. 37-39

[171] Prosecution Closing Brief, paras. 101-102, 323-324, 872, 896; Prosecution 21 November 2008 Document, Item No. 70. The Chamber also observes that most of Witness GFA's evidence, which pertained to events in Ruhengeri involving Bizimungu, had been excluded previously. Decision on Motion from Casimir Bizimungu Opposing to the Admissibility of the Testimony of Witnesses GKB, GAP, GKC, GKD and GFA (TC), 23 January 2004, paras. 16, 18; Decision on Prosecution's Interlocutory Appeals Against Decisions of the Trial

However, in its subsequent oral closing submissions, the Prosecution submitted that it would not rely on the testimony of Witness GFA and asked the Chamber not to evaluate his testimony.[172]

112. To provide context to the Prosecution's request, the Chamber recalls that Witness GFA pleaded guilty to his participation in the genocide in 1994 and was imprisoned in Ruhengeri. Although he had been provisionally released by the time of his testimony in October 2004, events subsequent to his appearance before the Chamber raised concerns about his credibility.[173]

113. Specifically, on 5 December 2007, the Chamber granted a request of the Bicamumpaka Defence to meet with Witness GFA. In its motion, the Bicamumpaka Defence attached a letter purportedly sent by Witness GFA to the President of the Tribunal indicating that he wanted to meet with Bicamumpaka Defence Counsel and other attorneys representing Accused against whom he testified or provided information.[174]

114. On 21 April 2008, the Chamber granted a further Bicamumpaka Defence motion to recall Witness GFA. The motion, filed on 4 April 2008, annexed transcripts from an 8 February 2008 meeting with Witness GFA in the presence of a Prosecution representative. The transcripts reflect that the witness stated that he had "lied on so many instances" and that Bicamumpaka was an individual against whom he was compelled to testify to facilitate his release from solidarity camp.[175]

115. Notably, between 10 and 17 April 2008, Witness GFA (appearing as Witness BTH), testified in the *Karemera et al.* trial due to that Chamber's March 2008 decision to recall him based on alleged false testimony he provided against Joseph Nzirorera.[176] Appearing under oath in that proceeding, the witness explained that he had given false testimony against Bicamumpaka in his trial. He specifically stated that his testimony about the event at the

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Chamber on Exclusion of Evidence (AC), 25 June 2004. *See also* oral decisions of the Chamber. T. 26 January 2004 p. 1 (French); T. 12 October 2004 pp. 29-33.

[172] Prosecution Closing Arguments, T. 4 December 2008 p. 83 ("MR. NG'ARUA: … And, of course, we have GFA, which, we submit, My Lords, that at the time he testified here for the first time, we have no reasons to believe that he was not credible. However, when he came a second time, even we as the Prosecution entertained substantive doubts about his credibility, and we shall not be asking the Court, as such, to rely on his testimony, in abundance of caution. So I think the – the Defence can sleep easy with that in mind. However, that in itself is not an admission, or even proof enough that there was institutionalised tampering of witnesses. Indeed, we do not know whether he was acting on his own. And being an unreliable person, as he proved himself to be, it is difficult as well to accept when he implicates the institutionalisation of tampering of the government of Rwanda, prison warders, and other people who could not possibly defend themselves. So, we accept that GFA is a problem; we shall not rely on him. Although we have put him in our closing brief, we will ask the Court not to regard the weight of his testimony. But not to say that we do not believe that he did not tell the truth then. It is later that we say that he proved shaky.").

[173] Witness GFA, T. 13 October 2004 pp. 12, 15, 18-19, 34-41.

[174] Decision on Jérôme-Clément Bicamumpaka's Motions to Meet with Prosecution Witnesses GFA and GKB (TC), 5 December 2007, paras. 2, 7-8, p. 4 (orders).

[175] Decision on Jérôme-Clément Bicamumpaka's Motion Requesting Recall of Prosecution Witness GFA; Disclosure of Exculpatory Material; and to Meet with Witness GFA (TC), 21 April 2008, paras. 7-8, 12-13.

[176] *The Prosecutor v. Édouard Karemera et al.*, Case No ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Recall Prosecution Witness BTH, 12 March 2008, paras. 1, 6.

Gisesero football field where Basile Nsabumugisha, the newly installed prefect of Ruhengeri was introduced, was not true.[177]

116. Witness GFA appeared before this Chamber next on 30 April 2008 and was given an opportunity to testify on 5 May 2008. On 30 April 2008, Witness GFA's statement confirming that Rules 90 and 91 had been explained to him was read into the record.[178] However, during the 5 May 2008 trial session, he stated that he was not prepared to testify.[179] The Chamber requested that Witness GFA be brought before it again on 6 May 2008 only to learn from the Witnesses and Victims Support Section ("WVSS") that he had absconded from the Tribunal's custody.[180]

117. This Chamber has since issued a subpoena compelling Witness GFA's attendance before it.[181] Furthermore, on the orders of this Chamber and the *Karemera et al.* Trial Chamber, an *amicus curiae* investigated whether reasonable grounds existed to prosecute Witness GFA for perjury. The investigator found that he had knowingly and wilfully given false testimony "during all or at least some of the occasions on which he had testified before the Tribunal". Notwithstanding, this Chamber declined to order his prosecution as he had only appeared once before it and the *amicus curiae* was unable to establish if he lied while testifying in the *Bizimungu et al.* proceeding, or only during the *Karemera et al.* trial or both.[182] The *Karemera et al.* Trial Chamber, on the other hand, has ordered that this witness, who appeared during the Prosecution case and also on recall, be prosecuted for false testimony.[183] To date, Witness GFA remains at large.

118. Under the circumstances, the Chamber interprets the Prosecution's oral submissions as a request not to rely on Witness GFA when assessing any aspect of its case. Consequently, the Chamber will not.

10. RULE 68 DISCLOSURE VIOLATIONS

(i) Introduction

119. The proceedings in this case came to a close on 5 December 2008.[184] The following year, the trial proceedings in the *Nzabonimana* case commenced. The Prosecutor has been

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[177] Exhibit 2D116 (*The Prosecutor v. Édouard Karemera et al.,* Case No ICTR-98-44-T, T. 10 April 2008 pp. 47-48) pp. 50-51. He had previously denied this in an interview with Defence Counsel taken in the presence of a Prosecution representative. Exhibit 2D118 (Kampala Interview of Witness GFA, 8 February 2008) pp. 50-51.
[178] T. 30 April 2008 pp. 4-5.
[179] Witness GFA, T. 5 May 2008 pp. 52-53, 58, 64-67.
[180] Witness GFA, T. 6 May 2008 pp. 35, 37-40.
[181] T. 21 May 2008 pp. 28-30.
[182] Confidential Decision Following the Report of the Amicus Curiae on Whether There Are Sufficient Grounds to Proceed Against Witness GFA for Giving False Testimony (TC), 10 August 2009, paras. 17-19.
[183] The *Karemera et al.* Trial Chamber originally dismissed the request to institute contempt proceedings against Witness BTH. *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion to Prosecute BTH for Providing False Testimony (TC), 10 September 2009, paras. 1, 6. The Appeals Chamber overturned this decision based on an erroneous application of the law. *Édouard Karemera et al. v. The Prosecutor*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's and Prosecutor's Appeals of Decision Not to Prosecute Witness BTH for False Testimony (AC), 16 February 2010, paras. 19, 21. *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Remand Following Appeal Chamber's Decision of 16 February 2010, 18 May 2010, paras. 5-6, p. 7 (order).
[184] T. 5 December 2008 p. 33.

represented by the same Senior Trial Attorney in both the *Nzabonimana* and *Bizimungu et al.* proceedings. Additionally, and during relevant time periods, at least two other members of the Prosecution team have participated in both cases. As for the Defence, Co-Counsel for Nzabonimana had previously served as Bicamumpaka's Co-Counsel until his withdrawal by the Registrar on 24 February 2009.[185]

120. In both cases, the Prosecution has presented the same witness twice. Witnesses GHV and GKJ in the *Bizimungu et al.* case testified in the *Nzabonimana* case as Witnesses CNAK and CNAA, respectively. In the *Nzabonimana* case the Prosecution adduced evidence from Witness GHV/CNAK on 25 and 26 November 2009, and from Witness GKJ/CNAA on 14, 15, and 16 December 2009. These witnesses respectively offered extensive testimony in the *Nzabonimana* case about two alleged meetings: at Mariane's house in April 1994, and in Murambi, Gitarama, on 18 April 1994. However, contrary to his evidence in these proceedings, Witness GHV/CNAK initially claimed that he was not present when Mutabazi was killed the day after the meeting at Mariane's house.[186] As for Witness GKJ/CNAA, the Bicamumpaka Defence alleges that he testified in a way that impugns his credibility.[187]

121. The Prosecution also presented Witness CNAC in the *Nzabonimana* case, who testified on 16 and 17 December 2009, and on 12 and 13 April 2010. According to the Defence, his evidence materially impeaches the credibility of Witness GKJ in this case.[188]

122. Also in *Nzabonimana*, the Defence presented Witnesses T24 and Jean Marie Vianney Mporanzi for a total of eight trial days. Witness T24 testified on 26, 27 and 28 April, and 3 May 2010, whereas Mporanzi testified on 25, 26, 27 and 31 May 2010. In addition to the evidence adduced by the Defence in that case, the Prosecution cross-examined these witnesses over the course of six trial days combined. These witnesses generally testified that at the second Murambi meeting on 18 April 1994 – where Mugenzi admitted to addressing the *bourgmestres* – no one was told to support the *Interahamwe* and no local officials were threatened.[189] They also denied that Nzabonimana spoke during the second meeting in

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[185] Decision on the Withdrawal of the Assignment of Mr. Philippe Larochelle, Co-Counsel for the Accused Jérôme Bicamumpaka (Registrar), 24 February 2009, transmitted on 26 February 2009.

[186] *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T; Witness CNAK, T. 25 November 2009 p. 47; T. 26 November 2009 pp. 26-31. The Chamber notes that the material cited here and below was incorporated by reference in Annex A of Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011. The Bicamumpaka Defence also alleges that the Prosecution is in possession of other exculpatory material, but has yet to disclose it. *See* Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011, paras. 5, 41-53 (referencing apparent statements by Jean Marie Vianney Mporanzi in August 1998 and August 2003; statements by Witness GHV/CNAK in March 2005 and November 2008; *Gacaca* proceedings concerning Witness GHV/CNAK from June 2005 and October 2006; Witness GKJ/CNAA's letter from August 2005, his *Gacaca* appeal from November 2008, and a prior statement on an unidentified date; Witness CNAC's statements of August 2003, November 2007, June 2008, November 2008, and December 2009; Witness T24's statement of October 2008; and Witness CNAJ's testimony in the *Nzabonimana* case). The Chamber has not reviewed this purported material and is not in a position to determine whether it exists and, if so, whether it should have been disclosed.

[187] *See* Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011, paras. 28-38.

[188] *See* Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011, paras. 35-37.

[189] *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T; Witness T24, T. 27 April 2010 p. 5; Mporanzi, T. 25 May 2010 pp. 70-72, T. 26 May 2010 pp. 2, 4, T. 31 May 2010 pp. 36, 43-44, 51. The Chamber notes that this portion of Witness T24's evidence was adduced in closed session, and that Jean Marie Vianney Mporanzi identified Mugenzi by name as someone who attended and spoke at this meeting.

Murambi, thereby contradicting the evidence of Witness GKJ in this case,[190] and Mporanzi contradicted Uwizeye's testimony that Nzabonimana had slapped Mporanzi and released prisoners from the Rutobwe communal jail.[191]

123. Despite hearing the evidence of these four witnesses in 2009 and 2010, the Prosecution did not inform the Defence teams of this material until 23 March 2011.

124. On 21 March 2011, the Co-Counsel for Nzabonimana filed a formal document notifying the Prosecution of his view that various materials in the *Nzabonimana* case should be disclosed to the Defence teams in the *Bizimungu et al.*, *Karemera et al.* and *Akayesu* cases. He listed 28 paragraphs of examples, with 18 dedicated to Murambi and 10 focussing on Ruhango. He also referenced correspondence from 28 October 2009, in which he reminded the Prosecution Senior Trial Attorney of his obligation to divulge exculpatory material in the *Bizimungu et al.* case, including any pertaining to the credibility of Witness GKJ/CNAA. Finally, he referenced a response from the Prosecution Senior Trial Attorney on 6 November 2009, in which the latter claimed to be well aware of his disclosure obligations.[192]

125. In an email on the afternoon of 23 March 2011 to several counsel for the Accused in the *Bizimungu et al.* trial, the Prosecution expressed its view that this information "may interest" the Defence teams. The Prosecution stated that it had placed the material in its Electronic Disclosure Suite ("EDS"), and that if the Defence teams had trouble accessing it, they should inform the Prosecution.[193]

126. That same day, Lead Counsel for Bicamumpaka emailed the Prosecution twice. Lead Counsel informed the Prosecution that he could not access EDS from his location and requested the material be sent by email or fax.[194]

127. On 29 March 2011, Lead Counsel for Bicamumpaka again stated that he could not access EDS and requested that the information be relayed electronically via mail or fax.[195]

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[190] *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T; Witness T24, T. 27 April 2010 pp. 3-5, 25-26; Mporanzi, T. 26 May 2010 p. 4.

[191] *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T; Mporanzi, T. 25 May 2010 pp. 37, 61; T. 26 May 2010 pp. 3, 5, 7, 9, 25; T. 31 May 2010 pp. 10-11, 52-53.

[192] The Chamber has reviewed this filing which the Prosecution incorporated by reference in para. 3(e) of its Response.

[193] Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011, Annex B; *see also* Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011, Annex A, p. 3, Annex B, pp. 1-8. It appears that the first Lead Counsel for Bicamumpaka, different from the one referenced in the next paragraph, had received access to the Electronic Disclosure Suite in 2005. *See also* Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011, paras. 3(g), 6-7, Annex A, pp. 1-2; *Réponse et Argumentation du Dr Casimir Bizimungu à la Requête Intitulée « Bicamumpaka's Urgent Motion for Disclosure Violations »*, 16 September 2011, para. 1. The Appeals Chamber has previously described the Electronic Disclosure Suite as "contain[ing] public or redacted versions of more than thirty-four thousand documents potentially relevant to all accused before the Tribunal. The Prosecution has made this searchable database available to the defence in every case, in which counsel agree to its terms of use, so that it may be searched for exculpatory material." *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations (AC), 30 June 2006, para. 2.

[194] Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011, Annex A, p. 3, Annex B, p. 3.

[195] Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011, Annex B, p. 6.

128. The Prosecution states that, on 30 March 2011, it placed the testimony of *Nzabonimana* Witness CNAA on EDS and also emailed the transcripts of Witness T24's testimony to the Bicamumpaka Defence.[196] This appears to comport with the submission of the Bicamumpaka Defence that the Prosecution emailed only a small proportion of the testimony to it,[197] a claim which the Prosecution does not otherwise address.

129. On 19 April 2011, the Bicamumpaka Defence contacted the Prosecution once more. It observed that the Prosecution did not identify the dates of the transcripts, nor when they became available. The Defence also stated its position that placing the material on EDS was insufficient, and asked the Prosecution to effect disclosure of all exculpatory material.[198] That same day, the Prosecution responded and claimed that it had already sent the material.[199]

130. It appears that, on 27 April 2011, the Bicamumpaka Defence made a further request to the Prosecution in search of access to this material.[200]

131. On 9 May 2011, the Bicamumpaka Defence and the Prosecution spoke about EDS access via telephone.[201] The following day, the Bicamumpaka Defence emailed a reminder to the Prosecution Senior Trial Attorney, who in turn asked the head of another Prosecution organ for technical assistance so that the Bicamumpaka Defence could access EDS. About four hours later, the Bicamumpaka Defence was assigned usernames and passwords for EDS. The Senior Trial Attorney relayed this information to the Bicamumpaka Defence in the afternoon of 10 May 2011.[202]

132. Despite various correspondence over the next three months, the Bicamumpaka Defence did not receive complete access to EDS until 10 August 2011.[203] The Bicamumpaka Defence submits that it could not access the actual documents until 22 August 2011, a position which is not disputed by the Prosecution.[204]

(ii) Law

133. Rule 68 (A) states that: "The Prosecutor shall, as soon as practicable, disclose to the Defence any material, which in the actual knowledge of the Prosecutor may suggest the

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[196] *See* Prosecutor's Response to Casmir [sic] Bizimungu Motion in Support of Bicamumpaka's Urgent Motion for Disclosure for Violations and Annex "A", 21 September 2011, para. 1(b), Annex A.
[197] Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011, para. 14. The Chamber notes the Bicamumpaka Defence submissions that it sought both the reappointment of its Legal Assistant and his travel to Arusha on 8 and 14 April 2011, respectively, so that he could review the material. Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011, paras. 10, 12.
[198] Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011, Annex B.
[199] *See* Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011, para. 14. The Chamber notes that the Prosecution Response did not dispute this account.
[200] Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011, para. 3(k), Annex A, p. 5.
[201] Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011, para. 3(i), Annex A, p. 5.
[202] Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011, para. 3(k), Annex A, pp. 4-6.
[203] Bicamumpaka's Response to Confidential "Prosecutor's Reponse to Bicamumpaka's Urgent Motion for Disclosure for Violation", 19 September 2011, Annex D.
[204] Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011, para. 15. *See generally* Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011.

innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence."

134. The Appeals Chamber has stressed repeatedly, for over ten years and throughout numerous cases in the *ad hoc* Tribunals, that the Prosecution's obligation to disclose exculpatory material "is as important as the obligation to prosecute".[205]

135. The determination of which materials are subject to disclosure pursuant to Rule 68 is primarily a fact-based enquiry made by the Prosecution.[206] To establish a violation of the

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[205] *Kalimanzira* Appeal Judgement, para. 18 ("The Appeals Chamber recalls that the Prosecution's obligation to disclose exculpatory material is essential to a fair trial."); *Ndindabahizi* Appeal Judgement, para. 72 ("The Appeals Chamber reiterates ... that the onus on the Prosecution to comply with Rule 68 to the best of its ability is not a secondary obligation, and is as important as the obligation to prosecute."); *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations (AC), 30 June 2006, para. 9 ("The Prosecution's obligation to disclose exculpatory material is essential to a fair trial. ... The positive nature of this obligation and its significance stem from the Prosecution's duty to investigate, which the Appeals Chamber has explained runs coterminously with its duty to prosecute. In particular, the Appeals Chamber recalls that one of the purposes of the Prosecution's investigative function is 'to assist the Tribunal to arrive at the truth and to do justice for the international community, victims, and the accused.'"); *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.6, Decision on Joseph Nzirorera's Interlocutory Appeal (AC), 28 April 2006, para. 7 ("The Prosecution's obligation to disclose potentially exculpatory material is essential to a fair trial."); *The Prosecutor v. Théoneste Bagosora et al.*, Case Nos. ICTR-98-41-AR73 & ICTR-98-41-AR73(B), Decision on Interlocutory Appeals of Decision on Witness Protection Orders (AC), 6 October 2005, para. 44 ("The obligation to disclose stems from the recognition of the dual purposes of the Prosecutor: to investigate and to prosecute. This obligation ... is coterminous with and equally important to the function of the Prosecutor as the duty to prosecute. In this way, the Prosecutor acts on the one hand in the public interest – the interest of the international community, victims, and witnesses – and on the other as a distinct authority required to investigate, and then to disclose all exculpatory material to the defence out of respect for the fundamental rights of suspects and the accused."); *Kordić and Čerkez* Appeal Judgement, paras. 183 ("The significance of the fulfilment of the duty placed upon the Prosecution by virtue of Rule 68 has been stressed by the Appeals Chamber, and the obligation to disclose under Rule 68 has been considered as important as the obligation to prosecute."), 242 ("The Appeals Chamber has emphasised that the right of an accused to a fair trial is a fundamental right protected by the Statute and by the Rules. Rule 68, imposing disclosure obligations on the Prosecution, is an important shield in the accused's possession. ... The Appeals Chamber reiterates that the onus on the Prosecution to enforce the rules rigorously to the best of its ability is not a secondary obligation, and is as important as the obligation to prosecute."); *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Decision on Appellant's Motion for Disclosure Pursuant to Rule 68 and Motion for an Order to the Registrar to Disclose Certain Materials (AC), 7 December 2004, p. 3 ("[T]he disclosure to the Defence of evidence which in any way tends to suggest the innocence or mitigate the guilt of the accused is one of the most onerous responsibilities of the Prosecution and that therefore the Prosecution's obligation to disclose under Rule 68 has been considered as important as the obligation to prosecute itself."); *Blaškić* Appeal Judgement, para. 264 ("The significance of the fulfilment of the duty placed upon the Prosecution by virtue of Rule 68 has been stressed by the Appeals Chamber, and the obligation to disclose under Rule 68 has been considered as important as the obligation to prosecute."); *Krstić* Appeal Judgement, paras. 180 ("The disclosure of exculpatory material is fundamental to the fairness of proceedings before the Tribunal ... ."), 211 ("The right of an accused to a fair trial is a fundamental right, protected by the Statute, and Rule 68 is essential for the conduct of fair trials before the Tribunal."); *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2, Decision on Motions to Extend Time for Filing Appellant's Briefs (AC), 11 May 2001, para. 14 ("The Prosecution's obligation under Rule 68 is not a secondary one, to be complied with after everything else is done; it is as important as the obligation to prosecute.").

[206] *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.13, Decision on "Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion" (AC), 14 May 2008, para. 9; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence (AC), 8

Rule 68 disclosure obligation, the Defence must establish that additional material is in the possession of the Prosecution and present a *prima facie* case that the material is exculpatory.[207]

136. Regarding the latter prong, the Appeals Chamber has confirmed that the Prosecution's obligation to disclose exculpatory material is to be interpreted broadly.[208] Rule 68 imposes a categorical obligation to disclose any document that "contains" exculpatory material, even if the document as a whole might not be exculpatory.[209] Moreover, the Prosecution's obligation is not lessened where there exists other information of a generally similar nature.[210] Along these lines, when considering whether the requested material is exculpatory, a Trial Chamber must assess only whether it is "potentially", instead of actually, exculpatory.[211]

137. Rule 68 (A) also requires that the Prosecution disclose such material "as soon as practicable". The Appeals Chamber has recognised that disclosure might be delayed due to the voluminous nature of materials in the Prosecution's possession. In these instances, however, the Appeals Chamber has focussed on the Prosecution's inability to identify and assess exculpatory material quickly, and on whether there are any indications of the Prosecution acting in bad faith.[212] But even when taking these concerns into account, the Appeals Chamber has held that a delay of over three months was not as soon as practicable.[213]

December 2006, para. 34; *Kordić and Čerkez* Appeal Judgement, para. 183; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Decision on Appellant's Motion for Disclosure Pursuant to Rule 68 and Motion for an Order to the Registrar to Disclose Certain Materials (AC), 7 December 2004, p. 2; *Blaškić* Appeal Judgement, para. 264.

[207] *Kalimanzira* Appeal Judgement, para. 18; *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.6, Decision on Joseph Nzirorera's Interlocutory Appeal (AC), 28 April 2006, para. 13. For slightly different formulations of this test, *see Gaspard Kanyarukiga v. The Prosecutor*, Case No. ICTR-02-78-AR73, Decision on Kanyarukiga's Interlocutory Appeal of Decision on Disclosure and Return of Exculpatory Documents (AC), 19 February 2010, para. 16; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.13, Decision on "Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion" (AC), 14 May 2008, para. 9; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence (AC), 8 December 2006, para. 34; *Kajelijeli* Appeal Judgement, para. 262; *Kordić and Čerkez* Appeal Judgement, para. 179; *Blaškić* Appeal Judgement, para. 268.

[208] *Kalimanzira* Appeal Judgement, para. 18.

[209] *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.13, Decision on "Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion" (AC), 14 May 2008, paras. 12-14.

[210] *See Blaškić* Appeal Judgement, para. 266.

[211] *See Kalimanzira* Appeal Judgement, para. 20.

[212] *Kalimanzira* Appeal Judgement, para. 21; *Blaškić* Appeal Judgement, para. 300 ("[T]he voluminous nature of the materials in the possession of the Prosecution may result in delayed disclosure, since the material in question may be identified only after the trial proceedings have concluded."); *Krstić* Appeal Judgement, para. 197 ("The Appeals Chamber is sympathetic to the argument of the Prosecution that in most instances material requires processing, translation, analysis and identification as exculpatory material. The Prosecution cannot be expected to disclose material which – despite its best efforts – it has not been able to review and assess. Nevertheless, the Prosecution did take an inordinate amount of time before disclosing material in this case, and has failed to provide a satisfactory explanation for the delay."); *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2, Decision on Motions to Extend Time for Filing Appellant's Briefs (AC), 11 May 2001, para. 14 ("The considerable strain which the need to make such searches [for Rule 68 material] places upon the resources provided to the prosecution is accepted.").

[213] *Krstić* Appeal Judgement, paras. 196, 198. *But cf. Blaškić* Appeal Judgement, paras. 1, 270, 273-275, fn. 554 (a delay of nearly eight months, which occurred entirely after the Trial Chamber rendered its Judgement, was not an inordinate amount of time).

138. The Prosecution's disclosure obligation generally encompasses open session testimony of witnesses in other proceedings conducted before the Tribunal.[214] However, the Prosecution may be relieved of its Rule 68 obligation if the existence of the relevant exculpatory evidence is known to the Defence, and is reasonably accessible to the Defence through the exercise of due diligence.[215]

139. Where the Prosecution merely places the exculpatory material on EDS, this does not necessarily suffice to make the material reasonably accessible to the Defence. Instead, the Appeals Chamber has stated that it might be helpful if the Prosecution also draws the attention of the Defence to such material in writing.[216]

140. If the Defence satisfies the Trial Chamber that the Prosecution has failed to comply with its Rule 68 obligations, then the Trial Chamber must examine whether the Defence has been prejudiced by that failure before considering whether a remedy is appropriate.[217]

141. In determining whether the Defence was prejudiced by late or non-disclosure of Rule 68 material, relevant considerations include: the potentially low probative value of the evidence,[218] whether the Defence had sufficient time to analyse the material and the opportunity to challenge it during cross-examination,[219] whether the Defence could seek admission of the material as additional evidence,[220] and whether the Defence could call the

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[214] *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Third Request for Review (AC), 23 January 2008, para. 27; *Prosecutor v. Dario Kordić*, Case No. IT-95-14/2-A, Decision on Appellant's Notice and Supplemental Notice of Prosecution's Non-Compliance with Its Disclosure Obligation under Rule 68 of the Rules (AC), 11 February 2004, para. 20.

[215] *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence (AC), 8 December 2006, para. 33; *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations (AC), 30 June 2006, para. 15; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Decision on Appellant's Motion for Disclosure Pursuant to Rule 68 and Motion for an Order to the Registrar to Disclose Certain Materials (AC), 7 December 2004, p. 3; *Prosecutor v. Dario Kordić*, Case No. IT-95-14/2-A, Decision on Appellant's Notice and Supplemental Notice of Prosecution's Non-Compliance with Its Disclosure Obligation under Rule 68 of the Rules (AC), 11 February 2004, para. 20; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings (AC), 26 September 2000, para. 38. *See also Blaškić* Appeal Judgement, para. 296 ("Arguably, the Prosecution's duty to disclose does not encompass material of a public nature potentially falling under Rule 68 ... . However, a distinction should be drawn between material of a public character in the public domain, and material reasonably accessible to the Defence. The Appeals Chamber emphasizes that unless exculpatory material is reasonably accessible to the accused, namely, available to the Defence with the exercise of due diligence, the Prosecution has a duty to disclose the material itself.").

[216] *See Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations (AC), 30 June 2006, para. 15.

[217] *Kalimanzira* Appeal Judgement, para. 18; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence (AC), 8 December 2006, para. 34; *Kajelijeli* Appeal Judgement, para. 262; *Kordić and Čerkez* Appeal Judgement, paras. 179, 242; *Krstić* Appeal Judgement, para. 153; *Blaškić* Appeal Judgement, paras. 268, 295.

[218] *Kalimanzira* Appeal Judgement, para. 20. *Cf. Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Third Request for Review (AC), 23 January 2008, para. 28 (no material prejudice because the exculpatory evidence did not warrant review).

[219] *See Krstić* Appeal Judgement, paras. 192, 197.

[220] *See Krstić* Appeal Judgement, para. 187.

relevant witness to testify.[221] Also relevant is the extent to which the Defence knew about the exculpatory evidence and was able to access it.[222]

142. The Chamber takes particular note of the Appeals Chamber's statement that:

> [E]vidence disclosed after the close of hearings but before judgement may lead to the re-opening of a case at first instance. The situation could arise where, following the close of the presentation of evidence, but prior to the delivery of the judgement of the Trial Chamber, exculpatory evidence relating to the accused has come to the possession of the Prosecution. *A Trial Chamber is entitled to have the benefit of all relevant evidence put before it in order to reach an informed and well-balanced judgement*, and its ability to accept evidence late prior to judgement is in conformity with the requirement of a fair trial under the Statute and the Rules.[223]

143. Where the Prosecution has violated its Rule 68 obligation, and where this has caused material prejudice to the Accused, various remedial options are available to the Chamber. These include recalling relevant Prosecution witnesses for further cross-examination, allowing the Defence to call additional witnesses, drawing a reasonable inference in favour of the Accused from the exculpatory material, excluding relevant parts of the Prosecution evidence, ordering a stay of proceedings and dismissing charges against the Accused.[224]

(iii) Deliberations

144. It is not disputed that the Prosecution was in possession of the requested material. The Prosecution instead submits that the material is not *prima facie* exculpatory. Specific to the Bicamumpaka Defence, the Prosecution contends that its delay in disclosing the material was the fault of that Defence team and that, therefore, it could not have been prejudiced. In any event, it submits that this delay did not, in fact, materially prejudice the Defence.[225]

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[221] *See Blaškić* Appeal Judgement, para. 282.

[222] *See Blaškić* Appeal Judgement, paras. 295, 298; *Krstić* Appeal Judgement, paras. 153-154; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2, Decision on Motions to Extend Time for Filing Appellant's Briefs (AC), 11 May 2001, para. 9; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings (AC), 26 September 2000, para. 38. *See also Kordić and Čerkez* Appeal Judgement, paras. 200-201 (where the Registry gave the Accused access to open-session material, and where the Accused monitored its content, his decision not to seek access to closed-session material precludes a claim that he was prejudiced by the non-disclosure of the closed-session material).

[223] *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings (AC), 26 September 2000, para. 31 (emphasis added). *See also Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.6, Decision on Joseph Nzirorera's Interlocutory Appeal (AC), 28 April 2006, paras. 2, 7 (stating, in a trial in the initial stages of the Prosecution case, that "[i]f a Rule 68 disclosure is extensive, parties are entitled to request an adjournment in order to properly prepare themselves. The authority best placed to determine what time is sufficient for an accused to prepare his defence is the Trial Chamber conducting the case.").

[224] *The Prosecutor v. Augustin Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Defence Motions Alleging Violation of the Prosecutor's Disclosure Obligations Pursuant to Rule 68 (TC), 22 September 2008, paras. 61-62. *See also Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Decision on Ongoing Complaints about Prosecutorial Non-Compliance with Rule 68 of the Rules (TC), 13 December 2005, para. 35 (concerning the drawing of a reasonable inference in favour of the Accused).

[225] Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011, paras. 3(a), 4-7.

(a) Potentially Exculpatory Material

145. The Chamber has no doubt that the *Nzabonimana* testimony is potentially exculpatory in this case, as it may suggest the innocence or mitigate the guilt of the Accused, or may affect the credibility of Prosecution witnesses. Given the breadth of this testimony, the Chamber will only address the material that appears to be most clearly exculpatory on a *prima facie* basis.

146. As noted above, Witness GHV/CNAK initially claimed in *Nzabonimana* that he was not present when Mutabazi was killed the day after the meeting at Mariane's house. This contradicts his evidence in these proceedings that he witnessed a policeman named Rwangwe shoot Mutabazi. It is clear that his testimony in *Nzabonimana* may have affected the Chamber's assessment of his credibility in this case.

147. There is also material that may suggest the innocence of the Accused. In *Nzabonimana*, Witness T24 and Jean Marie Vianney Mporanzi generally testified that at the second Murambi meeting on 18 April 1994 – where Mugenzi admitted to addressing the *bourgmestres* – no one was told to support the *Interahamwe*, and no local officials were threatened. This is in direct conflict with the Prosecution's allegations in this case.

148. Moreover, Witness T24 and Mporanzi also denied that Nzabonimana spoke during the second meeting in Murambi. These two accounts contradict the evidence of Witness GKJ in this case. Additionally, Mporanzi contradicted Fidèle Uwizeye's testimony in this case that Nzabonimana had slapped Mporanzi and released prisoners from the Rutobwe communal jail. As a result of these contradictions, this material may have affected the credibility of Prosecution Witnesses GKJ and Uwizeye as it relates to the Murambi meeting.

149. Even from a topical review of this material, it is obvious that the late-disclosed material is both highly relevant to, and highly probative of, the allegations and evidence brought by the Prosecution in relation to two particular aspects of this case: the alleged meetings at Mariane's house and in Murambi. The Chamber considers that this material is clearly exculpatory within the ambit of Rule 68 of the Rules.

(b) As Soon As Practicable

150. The Prosecution's obligation to disclose exculpatory material pursuant to Rule 68 must be fulfilled "as soon as practicable". Although the Prosecution came into possession of the transcripts between November 2009 and June 2010,[226] it did not place them on EDS or inform the Defence teams about their existence until 23 March 2011. Even after the Prosecution took these minimal steps, it appears that the Bicamumpaka Defence did not have access to most of these documents until August 2011.

151. Thus, approximately 9 to 14 months passed between the Prosecution's receipt of this exculpatory material and its placement of the material on EDS. The Chamber considers this to be an inordinate amount of time, even presuming that all Defence teams could then access it immediately, which at least one could not.

[226] The Chamber considers it likely that the transcripts of 30 May 2010 may not have been circulated until sometime in the month of June.

152. The Prosecution suggests that its delay in meeting its disclosure obligations was the Defence's fault. According to the Prosecution, Bicamumpaka's former Co-Counsel should have informed Bicamumpaka about the information.[227] Moreover, the Bicamumpaka Defence should have ensured that it could access EDS, and should have applied for a new password at least in January 2009.

153. As to the Prosecution's first attempt to excuse its conduct, the Chamber notes that the protective measures in the *Nzabonimana* case may have prevented Defence Co-Counsel in that case from sharing, with the *Bizimungu et al.* Defence teams or with anyone else, information that would have led to the identification of the *Nzabonimana* witnesses.[228] The Chamber also observes that the Prosecution in *Nzabonimana* has requested that Trial Chamber, on at least two occasions, to have *amicus curiae* investigate allegations that Defence team members had disclosed protected information concerning Prosecution witnesses. Notably, the Prosecution specifically identified Nzabonimana's Co-Counsel as an individual who should be investigated.[229] It is obvious that the Prosecution Senior Trial Attorney serving on both cases would have known this and, in this Chamber's view, it is distressing that he would advance contradictory claims in front of two Trial Chambers on such a serious matter.

154. Turning to the Prosecution's second explanation, the Chamber agrees that placing exculpatory material on EDS, in conjunction with informing the Defence of its existence there, could suffice to discharge the obligation to disclose if it were reasonably accessible by

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[227] Initially, the Prosecution tied this argument to its claim that it was never notified that Bicamumpaka's Co-Counsel had been withdrawn from the Bicamumpaka Defence. *See* Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011, paras. 3(b), 16, 18, 25. After the Bicamumpaka Defence replied by annexing the Decision withdrawing Bicamumpaka's Co-Counsel, the Prosecution conceded that it had received this filing from February 2009, but that "due to the length of time this electronic message has been inadvertently deleted and therefore the Prosecutor missed it". The Prosecution maintained all other submissions in its Response. Prosecutor's Rejoinder to Bicamumpaka's Reply to Urgent Motion for Disclosure for Violations, 20 September 2011, paras. 3, 5-6.

[228] *See The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-I, Interim Order on Protective Measures for Prosecution Witnesses (TC), 13 February 2009, pp. 2-3 ("ACCORDINGLY ORDERS the following protective measures in respect of all Prosecution witnesses or potential Prosecution witnesses wherever they reside and who have not affirmatively waived their right to protective measures ... f. That the Defence and the accused is prohibited from sharing, revealing or discussing, directly or indirectly, any documents or any information contained in any documents, or any other information which could reveal or lead to the identification of any individuals so designated to any person or entity other than the accused, assigned counsel or other persons working on the immediate Defence team."). The Chamber notes similar language that appears to prohibit the *Nzabonimana* Prosecution team from disclosing information concerning Defence witnesses beyond the members of its immediate team. *See The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-I, Decision on Urgent Defence Motion for Protective Measures (TC), 18 February 2010, p. 8. This language, however, cannot be construed against the plain language of Rule 75 (F)(ii), that protective measures "shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules" in any other proceeding before the Tribunal. *See The Prosecutor v. Théoneste Bagosora et al.*, Case Nos. ICTR-98-41-AR73 & ICTR-98-41-AR73(B), Decision on Interlocutory Appeals of Decision on Witness Protection Orders (AC), 6 October 2005, paras. 40, 42-47.

[229] *See Callixte Nzabonimana v. The Prosecutor*, Case No. ICTR-98-44D-AR77, Decision on Callixte Nzabonimana's Interlocutory Appeal of the Trial Chamber's Decision Dated 10 February 2011 (AC), 11 May 2011, paras. 2-3, fns. 2-3, 6. The Chamber has opted to cite this Decision because it appears to have been filed publicly.

the Defence through the exercise of due diligence.[230] Here, however, it was evident that the Bicamumpaka Defence could not access this material on EDS, despite its efforts to do so. The Prosecution does not explain why, as even more months of delay piled up, it could not have emailed all of the exculpatory material to the Defence.[231] It does not offer any support for its cursory statement that disclosure via email "is otherwise discouraged". This position is also indefensible. Given the breaks in proceedings and that the Accused in this Tribunal are frequently defended by non-resident counsel, confidential information is regularly communicated to the parties via email. Indeed, the Prosecution's confidential response on this matter was emailed to both the Chamber and the Defence teams. In any event, the Prosecution fails to account for its lengthy delay in placing the material on EDS in the first place.

155. Finally, the Chamber recalls that the Office of the Prosecutor is treated as a single unit for the purpose of discharging its disclosure obligations,[232] and that some delays might be understandable when they are due to the Prosecution's inability to identify and assess exculpatory material quickly.[233] These are not the circumstances here. The Prosecution in the *Bizimungu et al.* and *Nzabonimana* cases is not just legally a single entity, but is also literally represented by the same person: the Prosecution Senior Trial Attorney. Indeed, a review of his cross-examination in *Nzabonimana* of defence witnesses who testified about the Murambi meeting shows that Prosecution Counsel and the witnesses frequently referred to the Accused in the *Bizimungu et al.* proceedings. He has provided no cogent excuse for his failure to ensure the timely disclosure of exculpatory material in this case.

156. Taking these circumstances into account, the Chamber finds that the Prosecution's inordinate delay in fulfilling its disclosure obligations was not "as soon as practicable", as required by Rule 68.

(c) Mugenzi and Mugiraneza

157. Neither the Mugenzi Defence, nor the Mugiraneza Defence, has addressed the Chamber on this matter. It is clear that they have known about this exculpatory material since at least 23 March 2011,[234] and that they learned on 12 September 2011 that at least one co-

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[230] *See Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision in Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations (AC), 30 June 2006, para. 15.

[231] *See generally Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings (AC), 26 September 2000, para. 41 ("[I]t does not make sense that the Prosecution can stop short of providing exculpatory evidence in its possession, having pointed out to the Defence that it possesses such evidence.").

[232] *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations (AC), 30 June 2006, fn. 33, *citing The Prosecutor v. Théoneste Bagosora et al.*, Case Nos. ICTR-98-41-AR73 & ICTR-98-41-AR73(B), Decision on Interlocutory Appeals of Decision on Witness Protection Orders (AC), 6 October 2005, paras. 42-46.

[233] *See Kalimanzira* Appeal Judgement, para. 21; *Blaškić* Appeal Judgement, para. 300; *Krstić* Appeal Judgement, para. 197; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2, Decision on Motions to Extend Time for Filing Appellant's Briefs (AC), 11 May 2001, para. 14.

[234] *See* Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011, Annex B, pp. 1-2 (providing the Prosecution email to all four Defence teams on 23 March 2011); Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011, Annex A, p. 3, Annex B, pp. 3-8 (same).

Accused was making submissions to the Chamber on the Prosecution's late disclosure. The Chamber is disturbed by the lack of submissions from Mugenzi and Mugiraneza, especially because they are implicated in the alleged meeting in Murambi, Gitarama, on 18 April 1994.

158. In other situations where fair trial rights are concerned, the Appeals Chamber has stated that the Defence must exhaust all available means to remedy the problem, including by raising the matter to the Trial Chamber.[235] The Mugenzi and Mugiraneza Defence have not fulfilled their burden in this regard.[236] Nonetheless, the *Renzaho* Appeals Judgement describes the parties' burden to raise this matter as a "parallel responsibility" that exists alongside the duty that "Trial Chambers must do their utmost to ensure that trials are fair".[237]

159. Article 19 (1) of the Tribunal's Statute also mandates that the Trial Chamber "shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused".

160. Indeed, the Appeals Chamber has recently confirmed that Trial Chambers must, when fulfilling its primary and necessary functions, "tak[e] all measures that are reasonably open to them, both at the request of the parties and *proprio motu*".[238] While this statement was made in the context of witness intimidation, the Chamber considers that it applies equally to other primary functions, such as ensuring the fairness of the proceedings through the disclosure of exculpatory material to the Accused.[239]

161. The circumstances in this case are unique. Preliminarily, the Chamber notes that in trials involving a single accused, his or her failure to raise a specific allegation would necessarily mean that there was no allegation to consider. By contrast, this case features four

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[235] *See Renzaho* Appeal Judgement, para. 216; *Simba* Appeal Judgement, para. 41; *Blaškić* Appeal Judgement, para. 285; *Delalić et al.* Appeal Judgement, para. 641; *Duško Tadić* Appeal Judgement, para. 55.

[236] This does not necessarily mean that these Defence teams have waived their right to seek a remedy for the non-disclosure. *See Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings (AC), 26 September 2000, paras. 1, 33, 37-38, 41, 53-54 (Allegedly exculpatory evidence had been provided by several witnesses in other trials in their open session testimony. Although Defence Counsel knew about this evidence for around four or five months before raising it, the Appeals Chamber was "not prepared to say that the [Accused] has effectively waived his right to complain about non-disclosure", in part because "[t]he delayed reaction by the Defence in this case cannot alter the duty of the Prosecution to comply with Rule 68.").

[237] *Renzaho* Appeal Judgement, para. 216 ("[A]n accused is not only expected to establish [alleged] witness interference, but also to exhaust all available measures to secure the taking of the witness's testimony. While the Appeals Chamber emphasizes that Trial Chambers must do their utmost to ensure that trials are fair, this does not relieve the parties of their parallel responsibility to seek assistance in securing the testimony of witnesses.").

[238] *Haradinaj et al.* Appeal Judgement, para. 35.

[239] *See generally Kalimanzira* Appeal Judgement, para. 18 ("The Appeals Chamber recalls that the Prosecution's obligation to disclose exculpatory material is essential to a fair trial."); *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations (AC), 30 June 2006, para. 9 ("The Prosecution's obligation to disclose exculpatory material is essential to a fair trial."); *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.6, Decision on Joseph Nzirorera's Interlocutory Appeal (AC), 28 April 2006, para. 7 ("The Prosecution's obligation to disclose potentially exculpatory material is essential to a fair trial."); *Kordić and Čerkez* Appeal Judgement, para. 242 ("The Appeals Chamber has emphasised that the right of an accused to a fair trial is a fundamental right protected by the Statute and by the Rules. Rule 68, imposing disclosure obligations on the Prosecution, is an important shield in the accused's possession."); *Krstić* Appeal Judgement, paras. 180 ("The disclosure of exculpatory material is fundamental to the fairness of proceedings before the Tribunal ... ."), 211 ("The right of an accused to a fair trial is a fundamental right, protected by the Statute, and Rule 68 is essential for the conduct of fair trials before the Tribunal.").

Accused, two of whom have moved the Chamber and have specifically alleged that Rule 68 was violated and that this has caused material prejudice. As such, this matter is already before the Chamber.

162. Moreover, the Chamber considers that the pleadings of the Bicamumpaka Defence, the Bizimungu Defence and the Prosecution are sufficient for a resolution of this issue as it concerns Mugenzi and Mugiraneza. In particular, the Chamber notes the Prosecution's position that it was "within [its] powers in applying [its] discretion in concluding that the material concerned did not meet any of the Rule 68 criteria/threshold, and was therefore not subject to disclosure".[240] Similarly, the Prosecution claims that the material "do[es] not affect the credibility of the Prosecution witnesses".[241] If this is the Prosecution's position vis-à-vis Bicamumpaka, it would also apply equally to the other three Accused. Indeed, the Prosecution responded tersely to Bizimungu's joining of the Bicamumpaka Motion by "adopt[ing] and incorporat[ing] [its] previous response and rejoinder to the [Bicamumpaka] motion".[242]

163. Finally, the Prosecution's email on 23 March 2011 – in which it first disclosed the existence of the exculpatory material – was addressed to all four Defence teams equally.[243] While the Mugenzi and Mugiraneza Defence teams have remained silent for just over 6 months, and the Bicamumpaka and Bizimungu Defence teams should likewise have brought this to the Chamber's attention sooner, the Prosecution itself sat on the same exculpatory evidence for between 9 to 14 months.

164. Under these specific circumstances, and recalling its duty to ensure that the trial is fair, the Chamber will consider the impact on all four Accused of the Prosecution's late disclosure of exculpatory information.

(d) Material Prejudice

165. Previously, the Chamber has found that the Accused suffered prejudice when the Prosecution failed to disclose certain transcripts from another case or inform the Defence of their existence. In so finding, the Chamber reasoned that, with access to the exculpatory material, the Accused may have elected to call and examine that individual as a witness, in accordance with the rights guaranteed under Article 20 (4)(e) of the Statute.[244]

166. The Chamber considers that this same reasoning applies here. The Prosecution's late disclosure of exculpatory material to the Defence has effectively precluded the Defence from electing to call (or recall) and examine numerous witnesses, in contravention of Article 20 (4)(e). The Defence was not able to put this material to Witness GHV or to Witness GKJ, even though the latter was recalled so that he could be questioned about other exculpatory

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[240] Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011, para. 11.
[241] Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011, para. 36.
[242] Prosecutor's Response to Casmir [sic] Bizimungu Motion in Support of Bicamumpaka's Urgent Motion for Disclosure for Violations, 21 September 2011, para. 1(e).
[243] Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011, Annex B; *see also* Prosecutor's Response to Bicamumpaka's Urgent Motion for Disclosure for Violations, 15 September 2011, Annex A, p. 3, Annex B, pp. 1-8.
[244] Decision on Justin Mugenzi's Motion to Admit Transcript Extracts of General Roméo Dallaire's Evidence in the *Ndindiliyimana* Proceedings (TC), 4 November 2008, para. 27.

material that the Prosecution failed to disclose in time.[245] Similarly, the Defence could not examine *Nzabonimana* witnesses Jean Marie Vianney Mporanzi or T24, both of whom the Chamber notes did not appear in any of the Defence's proposed witness lists.[246]

167. This prejudice is further enhanced because their testimonies may have been exculpatory with regard to two alleged events – the meeting at Mariane's house and the meetings in Murambi, Gitarama – for which the Prosecution seeks conviction.

168. Finally, the Chamber notes that the Prosecution's delay occurred during the judgement-drafting phase. Given the impending finality of the case, it was even more important for the Prosecution to disclose exculpatory information quickly, and its failure to do so has compounded the prejudice to the Accused.

169. The Chamber therefore finds that the Accused have been materially prejudiced by the Prosecution's violation of its Rule 68 obligation to disclose exculpatory material as soon as practicable.

(e) Remedy

170. The Prosecution disclosed highly relevant, highly probative and clearly exculpatory material to the Defence between 9 and 14 months after the Prosecution came into possession of this material. This late disclosure has materially prejudiced the Accused. The Chamber will now consider an appropriate remedy.

171. Preliminarily, the Chamber recalls that it has found the Prosecution has also violated its Rule 68 obligations on previous occasions, such that they warranted a remedy. In May 2005, the Chamber ordered the recall of Witness GKJ for further examination.[247] Again in October 2007, the Chamber ordered the recall of another Prosecution witness, this time Fidèle Uwizeye.[248] In November 2008, about one month before the proceedings were to close, the Chamber admitted into evidence the transcripts that were the subject of a Rule 68 violation.[249] Finally, in August 2009, the Chamber likewise admitted into evidence the

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[245] Decision on Prosper Mugiraneza's Motion to Order a Witness To Be Returned for Further Cross-Examination or in the Alternative to Strike His Testimony Based Upon Late Disclosure of Rule 68 Material (TC), 6 May 2005, paras. 4, 7, p. 3.

[246] Justin Mugenzi's Pre-Defence Brief, 2 August 2005; Prosper Mugiraneza's Proposed Witness List, 1 October 2005; Jérôme Bicamumpaka's Pre-Defence Brief, 3 October 2005; Prosper Mugiraneza's Pre-Defence Brief Pursuant to Rule 73 *ter*, 3 October 2005; Jérôme Bicamumpaka's Amended Witness List, 23 May 2007; Third Amended List of Jérôme Bicamumpaka Defence Witnesses, 31 January 2008; Prosper Mugiraneza's Motion to Vary His Witness List, 7 May 2008; Prosper Mugiraneza's Motion to Amend Witness List by Dropping One Witness and Moving Another From Rule 92 *bis* to Witness to Appear, 13 May 2008; Third Amended Pre-Defence Witness List and Summary of Anticipated Testimony of Prosper Mugiraneza's Defence Witness, 13 May 2008; Prosper Mugiraneza's Emergency Motion to Vary Witness List, 10 June 2008; Fourth Amended Pre-Defence Witness List and Summary of Anticipated Testimony of Prosper Mugiraneza's Defence Witnesses, 12 June 2008; Prosper Mugiraneza's Motion to Vary Witness List to Call Witnesses RWR and RDR to Testify Orally, 13 June 2008.

[247] Decision on Prosper Mugiraneza's Motion to Order a Witness To Be Returned for Further Cross-Examination or in the Alternative to Strike His Testimony Based Upon Late Disclosure of Rule 68 Material (TC), 6 May 2005, p. 3.

[248] Decision on Justin Mugenzi's Motion for the Recall of the Prosecution Witness Fidèle Uwizeye for Further Cross Examination (TC), 9 October 2007, p. 6.

[249] Decision on Justin Mugenzi's Motion to Admit Transcript Extracts of General Roméo Dallaire's Evidence in the *Ndindiliyimana* Proceedings (TC), 4 November 2008, para. 28, pp. 8-9.

potentially exculpatory transcripts that the Prosecution failed to disclose in a timely manner.[250] The Chamber notes with concern that, even after the imposition of these various remedies, the Prosecution has continued to lack the necessary diligence required to comply with its fundamental obligations to the Tribunal and to the interests of justice.

172. As to the remedy for the Prosecution's most recent violation, the Chamber considers that permitting the calling or recalling of the affected witnesses would not be an appropriate remedy at this stage of the proceedings. While the Chamber acknowledges that it would be preferable to hear these witnesses' evidence as it relates to the exculpatory material,[251] to permit this would unduly impact the rights of the Accused. This trial has already been lengthy and prolonging it further because of the Prosecution's further violation of its disclosure obligations would be unfair to the Accused.

173. Nor will the Chamber merely admit the exculpatory material into evidence, as it did in November 2008 and August 2009. The Accused have a right to be heard. When the Chamber admitted the transcripts into evidence in November 2008, none of the parties had yet filed their Closing Briefs or proffered closing arguments. Thus, the parties still enjoyed the opportunity to comment on the newly admitted evidence and, indeed, Mugenzi exercised his right in this regard.[252] Similarly, after the Chamber admitted the potentially exculpatory material into evidence in August 2009, the parties retained the option of challenging the propriety of this remedy.[253] The circumstances at the present moment, however, are different. Because the parties would not be able to address the Chamber on any evidence admitted at this late stage of the proceedings or on the propriety of this remedy, at least not in a comprehensive and timely manner, the Chamber concludes that it would be unfair to remedy the Prosecution's violation by merely admitting the exculpatory material into evidence.

174. The Chamber recalls that other remedial options include drawing a reasonable inference in favour of the Accused from the exculpatory material, excluding relevant parts of the Prosecution evidence, ordering a stay of proceedings and dismissing charges against the Accused.[254] Of these four options, the Chamber considers that the latter three are both

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[250] Decision on Prosper Mugiraneza's Request for Disclosure Pursuant to Rule 68 and Appropriate Relief (TC), 28 August 2009, p. 10. The Chamber also warned the Prosecution that sanctions may be imposed if its conduct remained obstructive to the proceedings or otherwise contrary to the interests of justice. *See also* Decision on Jérôme-Clément Bicamumpaka's Urgent Motion for Disclosure of Exculpatory Material (TC), 9 February 2009, paras. 11-12; Decision on Jérôme-Clément Bicamumpaka's Motion for the Recall of Prosecution Witness GAP (TC), 5 March 2009, paras. 32-33.

[251] *See generally Haradinaj et al.* Appeal Judgement, fn. 157 ("The Appeals Chamber underscores that the Trial Chamber should have pursued every reasonable opportunity, whether upon the request of a party or *proprio motu*, to obtain the evidence of [the two witnesses] in the context of this case. This approach should have included granting further extensions of time to assist the Prosecution in obtaining the testimony of key witnesses."). This statement was made in the context of alleged intimidation of key Prosecution witnesses, where the Appeals Chamber found that the Trial Chamber "inappropriately prioritised logistical considerations over the Prosecution's right to a fair trial". *Haradinaj et al.* Appeal Judgement, para. 46.

[252] *See* Mugenzi Closing Brief, para. 1; Mugenzi Closing Arguments, T. 2 December 2008 pp. 41-42.

[253] In this regard, the Chamber notes that three Defence teams sought either reconsideration or certification to appeal another decision rendered the same day in August 2009. The Chamber granted certification to appeal this decision. *See* Decision on Mugiraneza's Request for Certification to Appeal and Mugenzi's and Bizimungu's Requests for Reconsideration of the Decision on the Objections of Mugiraneza and Bicamumpaka to the Engagement of Mr. Everard O'Donnell as a Chambers Consultant Dated 28 August 2009 (TC), 23 September 2009, pp. 6-7.

[254] *The Prosecutor v. Augustin Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Defence Motions Alleging Violation of the Prosecutor's Disclosure Obligations Pursuant to Rule 68 (TC), 22 September 2008,

unnecessary and too extreme in the present case. Instead, the Chamber will draw a reasonable inference in favour of the Accused from the exculpatory material. In the Chamber's view, this will strike an appropriate balance between remedying the material prejudice caused to the Accused by the Prosecution's late disclosure of exculpatory material, and respecting the quality of the evidence adduced by all parties as it relates to the affected allegations.

(iv) Conclusion

175. The Prosecution's conduct in this matter is inexcusable. It failed to inform the Defence teams of exculpatory material, in some instances, for over a year. This material is clearly relevant, highly probative, and *prima facie* exculpatory of serious allegations upon which the Prosecution seeks conviction. The events, if proven, would also be highly relevant to the *mens rea* of certain Accused. When one of the Defence teams communicated its inability to access this material, the Prosecution failed to ensure access for a period of almost five *additional* months. This conduct stands in stark contrast to the Prosecution's fundamental obligations and to the interests of justice.

176. Regardless of the root cause for the Prosecution's repeated failure to discharge one of its primary duties, this has materially prejudiced the Accused in this case. While the Defence teams should have raised this matter earlier, the reality is that the Prosecution only informed them of the exculpatory material once the Chamber was at an advanced stage in the process of drafting its judgement. Given this situation, the Chamber considers that the most appropriate remedy is to draw a reasonable inference in favour of the Accused from the exculpatory material.

177. On a final note, the Chamber wishes to remind the Office of the Prosecutor that the Appeals Chamber has twice stated that "the Office of the Prosecutor has a duty to establish procedures designed to ensure that, particularly in instances where the same witnesses testify in different cases, the evidence provided by such witnesses is re-examined in light of Rule 68 to determine whether any material has to be disclosed."[255] It is an unfortunate truth that these procedures were inadequate in the present case since at least 2006.[256]

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paras. 61-62. *See also Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Decision on Ongoing Complaints about Prosecutorial Non-Compliance with Rule 68 of the Rules (TC), 13 December 2005, para. 35 (concerning the drawing of a reasonable inference in favour of the Accused).

[255] *The Prosecutor v. Théoneste Bagosora et al.*, Case Nos. ICTR-98-41-AR73 & ICTR-98-41-AR73(B), Decision on Interlocutory Appeals of Decision on Witness Protection Orders (AC), 6 October 2005, para. 44; *Blaškić* Appeal Judgement, para. 302 (making this statement, and "stress[ing] the duty of the Prosecution to disclose exculpatory material arising from other related cases").

[256] *See also* Decision on Justin Mugenzi's Motion for the Recall of the Prosecution Witness Fidèle Uwizeye for Further Cross Examination (TC), 9 October 2007, paras. 3, 17, p. 6 (finding that transcripts in the *Karemera et al.* case from July 2007 should have been disclosed by the Prosecution pursuant to Rule 68); Decision on Justin Mugenzi's Motion to Admit Transcript Extracts of General Roméo Dallaire's Evidence in the *Ndindiliyimana* Proceedings (TC), 4 November 2008, para. 27, p. 8 (finding that the Prosecution violated Rule 68 by not disclosing portions of General Roméo Dallaire's testimony from November 2006 in the *Ndindiliyimana et al.* case to the Accused); Decision on Jérôme-Clément Bicamumpaka's Urgent Motion for Disclosure of Exculpatory Material (TC), 9 February 2009, paras. 11-12 (finding that the Prosecution violated its disclosure obligations by failing to disclose Witness GTA's potentially exculpatory evidence in the *Nchamihigo* case from January 2007, reiterating the Chamber's concern about the Prosecution's apparent abuse of discretion, and reminding the Prosecution of its continuing obligation to disclose exculpatory material after the conclusion of the evidence phase); Decision on Prosper Mugiraneza's Request for Disclosure Pursuant to Rule 68 and Appropriate Relief (TC), 28 August 2009, paras. 1, 15, 17, 41, p. 10 (finding that the Prosecution breached its

CHAPTER II: FACTUAL FINDINGS

1. PRE-1994 VIOLENCE

178. The Indictment alleges that massacres of the Tutsi minority that took place in the early 1990s, including those in Kibilira (1990), in Bugesera (1992) and those of the Bagogwe (1991) were instigated, facilitated and organised by civilian and military authorities. On each occasion, a campaign of incitement to ethnic violence, conducted by local authorities, was followed by massacres of the Tutsi minority, perpetrated by groups of militiamen and civilians, armed and assisted by the same local authorities and by certain military personnel. In its closing submissions, the Prosecution has specifically alleged that the Interim Government encouraged and cultivated a culture of impunity, where criminal acts went unpunished. The Prosecution alleges that the Interim Government manipulated and exploited the Rwandan culture of respect for authority to impose their *de facto* authority on the killers, who obeyed orders due to fear of sanctions and intimidation by authorities.[257]

179. The Defence argues that the Prosecution failed to provide specific evidence regarding the roles of the Accused in the massacres that took place in Kibilira, Bugesera and those of the Bagogwe. Further, the Defence submits that these massacres were provoked by a context of war and were, therefore, not acts planned by a given member of the government. The Defence contends that the Rwandan government was always quick to react in a bid to put a stop to the killings and punish those responsible, including administrative officials who had been incriminated and found guilty.[258]

180. It is undisputed that attacks directed at Tutsis and members of the opposition party occurred between 1990 and 1994. Prosecution and Defence witnesses provided general evidence about attacks on the Tutsi minority between 1990 and 1994.[259] More specifically,

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Rule 68 obligations by not disclosing potentially exculpatory transcripts from the *Bagosora et al.* trial for a period of two-and-a-half years, and warning the Prosecution that sanctions may result if its conduct remained obstructive to the proceedings or otherwise contrary to the interests of justice).

[257] Indictment, para. 5.33; Prosecution Pre-Trial Brief, para. 225 (p. 48); Prosecution Closing Brief, paras. 115, 214, 627, 645.

[258] Bizimungu Closing Brief, paras. 1541-1562; Mugiraneza Closing Brief, paras. 162, 167; Mugenzi Closing Brief, paras. 278, 547.

[259] *See, e.g.*, Des Forges, T. 31 May 2005 p. 45 (the massacre at Kibilira was just the first of a series of 16 incidents that took place from October 1990 through March 1994); Exhibit P101(E) (Expert Report of Alison Des Forges) pp. 3-4, 12-13 (a massacre and killings by soldiers of the Tutsi-related *Hima* in Mutara occurred in October 1990, and was just the first of a series of attacks against Tutsis and Tutsi-related peoples before 1994; these attacks also occurred in Kibilira in March 1992, December 1992 and January 1993, in the Bugesera region in March 1992 and in several communes of Kibuye in August 1992); Sebera, T. 20 October 2004 p. 37, T. 25 October 2004 p. 34 (starting from 1959, when the *Inyenzi* attacked Rwanda, Tutsis were being killed because of allegations that they were hiding *Inyenzi*; when the RPF-*Inkotanyi* attacked in 1990, Tutsis were detained, called accomplices and many were killed); Witness GAT, T. 25 February 2004 pp. 1, 54-55 (after the RPF attack in October 1990 Tutsis and moderate Hutus considered accomplices were detained; the witness stated that they were mainly attacking areas where there were many Tutsis, and had killed people in Bugesera and in a region called Bigogwe in Gisenyi; the witness explained that militia members of the *Interahamwe* were being trained and were attacking different parts of the country; most of the Tutsis who were killed did not know about the RPF); Strizek, T. 5 February 2007 pp. 63-64 (RPF invasions intensified anti-Tutsi feelings and led to them being attacked); Flaten, T. 20 February 2008 p. 50, T. 21 February 2008 pp. 15-16, 29-31, 38-40, 47 (by 1992 the US Embassy had fears that an RPF invasion might lead to all Hutus attacking their Tutsi neighbours as evidenced by Hutus killing Tutsis in Kibilira and Bugesera; was unaware if *Interahamwe* were involved in those attacks) and Exhibit 1D267 (Cable from US Embassy in Rwanda to Washington, D.C., July 1992) p. 2 ("More recently,

Alison Des Forges's expert report makes reference to the massacres at Kibilira in 1990 and Bugesera in 1992, and argues that in all of these attacks persons of authority, sometimes members of the civil administration or sometimes political leaders, incited and directed the killings.[260] The Chamber will address the massacres in Kibilira (1990), in Bugesera (1992) and those of the Bagogwe (1991) in turn.

(i) Kibilira

181. Prosecution and Defence witnesses, coupled with the Accused, provided testimony regarding the Kibilira massacre that occurred at the end of 1990 or early 1991.[261] The Accused acknowledged that attacks occurred in Kibilira during this time period, but maintain that they were provoked by a context of war and that the Rwandan government took measures to stop these attacks from happening, to punish those responsible and to restore peace.[262]

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leaders from all sides have begun to realise the more terrifying implications of an RPF march to Kigali. No matter how many Hutus the RPF may have representing it, it's perceived in Rwanda as essentially a Tutsi organisation. Should this group break through to Kigali, all the fears of the Hutu majority, of again being subjected to slavery or feudal vassalage will be resurfaced. When threatened with the restoration of the feudal system, the Hutus on the *collines* will begin to eliminate their Tutsi neighbours. When this happened in October 1990 in Kibilira, Habyarimana sent an army unit in to stop it. When it happened in Bugesera in March 1992, the gendarmes eventually arrived to encourage the restoration of calm. This was done with an administration and communications in place. Neither of which would be the case should Kigali fall to the RPF".); Mugiraneza, T. 21 May 2008 pp. 26, 31-33 (political violence occurred after the massacres in Kibilira and Bugesera and particularly occurred in 1993 where disturbances occurred in Ruhengeri prefecture, in Kigali town and in Kibuye; houses were destroyed, development projects were disturbed and it is possible that there would have been victims); Mugenzi, T. 1 November 2005 pp. 66, 69, T. 2 November 2005 pp. 1-2 (a rally was held in March 1992 criticising the MRND regime while persons accused of "being accomplices of the *Inkotanyi*" were disappearing and were presumed to have been arbitrarily killed); Mugenzi, T. 7 November 2005 pp. 7-10 (translating his joint MDR, PSD and PL letter of 24 May 1993 to the President listing killings of thousands in attacks on the Bagogwe and in Bugesera, Kibuye, Gisenyi and Ruhengeri, and implicating MRND and CDR militia in particular in terrorising several sectors throughout Kigali); Exhibit 3D22(F) (Letter from Dismas Nsengiyaremye to the President, 22 September 1992) (reflecting the refusal of MRND members of government to investigate allegations regarding Bugesera; stating that since the *Interahamwe* is the only organisation that includes soldiers and is coordinated by police and politicians, this group should be called to order and should be asked to refrain from terrorising the population); Witness WZ10, T. 11 September 2006 p. 18 (heard that *Interahamwe* killed and harassed persons before the 1994 war).

[260] *See, e.g.*, Exhibit P101(E) (Expert Report of Alison Des Forges) pp. 3-4, 12-13.

[261] Des Forges, T. 31 May 2005 p. 45 (in October 1990 there was the first massacre of Tutsi civilians in the region called Kibilira; approximately 300 civilians were killed); Sebera, T. 19 October 2004 p. 41 (persons were being killed, especially the Tutsis who were killed in 1990 in Kibilira); Mbonyinkebe, T. 3 May 2005 p. 81 (some referred to the killings in Kibilira in 1990 as the "microgenocide" or the "experiment"); Mugiraneza, T. 21 May 2008 pp. 26, 31 (the first incident of inter-ethnic violence occurred in Kibilira at the end of 1990 or early 1991; there were Hutus who killed Tutsis; thought that there were around 150 to 200 victims of this attack); Ntagerura, T. 20 February 2007 pp. 11-12 (the victims of the Kibilira massacre were Tutsis and some Hutus, but they were the minority); Flaten, T. 20 February 2008 p. 50 (in 1990 in Kibilira Hutus started killing about 300 of their Tutsi neighbours); Bizimungu, T. 30 May 2007 p. 2 (the Kibilira massacres occurred between January and February 1991); Mugenzi, T. 17 November 2005 p. 16 (one of the massacres occurred in Kibilira in October 1990); Bicamumpaka, T. 17 September 2007 p. 49 (there was significant violence in Kibilira; some civilians were killed while others fled and sought refuge in churches).

[262] Des Forges, T. 31 May 2005 pp. 45-46 (recounting the 16 incidents that occurred between 1990 and 1994, Des Forges explains that RPF propaganda was used to create an atmosphere of fear throughout the population; in Kibilira it was said that the RPF was over the next hill and that there were two dead bodies there killed by RPF infiltrators); Des Forges, T. 13 June 2005 pp. 19, 21 (after the attack in Kibilira the sub-prefect and other

(ii) Bugesera

182. Prosecution and Defence witnesses, coupled with the Accused, provided testimony regarding the Bugesera massacre that occurred in 1992.[263] Indeed, the evidence suggests that Tutsis were killed by extremist branches of different political parties and other youth groups, and the *Interahamwe*.[264] The Chamber notes that the Accused acknowledged that attacks occurred in Bugesera during this time period, but they maintain that the Rwandan government took measures to stop these attacks from happening, to punish those responsible

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local officials were relieved of their posts and imprisoned); Sebera, T. 19 October 2004 p. 41 (Mugenzi made proposals to find solutions to these problems and spoke about negotiations with the persons who attacked the country, the RPF, to solve the war problem and stop the killing); Ntagerura, T. 15 February 2007 pp. 24-25, T. 20 February 2007 p. 12 (whenever the massacres occurred, the government took necessary steps to put an end to such killings and carried out arrests of those suspected to be involved; investigations as well as a commission were set up; the sub-prefect was arrested and detained, but died in prison); Mugiraneza, T. 21 May 2008 p. 26 (in certain regions of Rwanda, including Kibilira, inter-ethnic violence existed; those who perpetrated the killings used the attacks of the RPF *Inkotanyi* as an excuse; when the RPF attacked and killed Hutus they felt it was necessary to get revenge by killing; authorities, such as the Minister of the Interior and the prefect, visited Kibilira to appeal to members of the population to end the hostilities; the gendarmerie and judicial authorities also intervened to institute proceedings against the perpetrators; people were arrested and charged with criminal offences); Bizimungu, T. 30 May 2007 p. 3 (investigations were carried out after the killings in Kibilira occurred; the government sent ministers to Kibilira to find out what occurred; the person who was in charge at the time of the massacres, the sub-prefect of Ngororero was arrested; the *bourgmestre* of Kibilira commune was fired; some gendarmes were arrested).

[263] Des Forges, T. 16 June 2005 p. 54 (a substantial number of Tutsis and members of political opposition parties were killed in Bugesera in March 1992); Witness GJX, T. 21 June 2004 pp. 8-9, 11-13 (the *Interahamwe* descended and exterminated the Tutsis in Bugesera in 1992); Witness GAT, T. 26 February 2004 p. 20 (killings took place in Bugesera in 1992; Tutsis were targeted and killed during these attacks); Ngarambe, T. 4 October 2004 p. 40 (persons were killed in Bugesera in March 1992); Sebera, T. 19 October 2004 p. 41 (Tutsis were killed in Bugesera in 1992); Witness WZ10, T. 11 September 2006 pp. 17-18 (Tutsis in Bugesera were killed); Ntagerura, T. 20 February 2007 pp. 11-12 (the victims of the Bugesera massacre were Tutsis and some Hutus, but they were the minority); Strizek, T. 5 February 2007 p. 63 (the day after an anonymous fax was read over the radio Bugesera saw the beginning of a spate of massacres); Betabura, T. 5 December 2005 p. 4 (there were massacres in Bugesera for which the MRND youth wing was blamed; the persons who were in opposition parties were massacred); Nyetera, T. 26 September 2006 pp. 35-38 (the massacres of Bugesera in March 1992 are included among many other killings; the killings involved both ethnic groups but were predominately Tutsis); Ntamabyaliro, T. 22 August 2006 pp. 41, T. 23 August 2006 p. 52, T. 24 August 2006 p. 26 (in early March in Bugesera there was fighting and people were killed, the victims of the Bugesera massacre were Tutsis); Flaten, T. 20 February 2008 p. 50 (Hutus killed Tutsis in the Bugesera massacres); Bizimungu, T. 23 May 2007 pp. 59-60, T. 30 May 2007 pp. 3-4 (Bugesera killings took place at the beginning of March 1992); Mugenzi, T. 2 November 2005 p. 6 (in March 1992 there was widespread violence in Bugesera; PL members had their houses burned or destroyed; persons were beaten and even killed); Mugenzi, T. 15 November 2005 p. 23 (the only killings in Bugesera Mugenzi remembered occurred in March 1992); Mugenzi, T. 17 November 2005 pp. 13-14 (believed that Habyarimana and his regime were responsible for Bugesera massacres in March 1992); Mugiraneza, T. 21 May 2008 p. 33 (disturbances led to Tutsi victims during the month of March 1992 in the Bugesera region); Bicamumpaka, T. 17 September 2007 p. 49 (there was violence in Bugesera).

[264] Ntamabyaliro, T. 22 August 2006 p. 41, T. 24 August 2006 pp. 26-27 (investigations revealed that *Interahamwe* killed Tutsis in Bugesera in 1992); Witness D, T. 16 June 2004 p. 49 (heard reports that *Interahamwe* were involved in Bugesera killings but testified that other youth wings could have been involved and blamed the *Interahamwe*); Mugiraneza, T. 21 May 2008 p. 33, T. 27 May 2008 pp. 52-53, T. 3 June 2008 pp. 56-58 (Tutsis were killed in Bugesera in March 1992 by "extremists" although he was unable to identify them by political party); Mugenzi, T. 17 November 2005 p. 14 (the persons killed during the Bugesera massacres were Tutsis and they were targeted by extremist Hutus under the complete control of Habyarimana).

and to restore peace.[265] Moreover, the Accused argued that these attacks occurred in the context of war and in response to RPF hostilities.[266]

(iii) The Bagogwe

183. The Chamber also notes that a majority of the evidence regarding the killings of the Bagogwe (1991) was general and presented by Defence witnesses. While a few Prosecution witnesses refer to these killings, the evidence remains general and does not specifically

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[265] Des Forges, T. 13 June 2005 p. 23, T. 16 June 2005 p. 54 (after the attack in Bugesera the gendarmerie intervened and about 500 persons were arrested; those arrested were brought to trial but were released on a technicality); Sebera, T. 19 October 2004 p. 41 (Mugenzi made a lot of proposals to find solutions to these problems and spoke about negotiations with the persons who attacked the country, the RPF, to solve the war problem and stop the killing); Ntagerura, T. 15 February 2007 pp. 24-25, T. 20 February 2007 p. 12 (whenever the massacres occurred, the government took necessary steps to put an end to such killings and carried out arrests of those suspected to be involved; investigations as well as a commission was set up and in Bugesera there was a radio broadcast by the then Prime Minister who stated that suspects should be arrested and brought to justice); Gahizi, T. 6 April 2006 p. 16 (Mugenzi and the PL denounced the violence that was being committed against the Tutsis in Bugesera); Bizimungu, T. 30 May 2007 pp. 4-5 (the government was instrumental in making sure that those found guilty of participating in the killings were arrested; 400 persons were arrested, but were later released by the Kigali Court of First Instance), 6 (President Habyarimana and the Prime Minister were preoccupied by what occurred in Bugesera; they did all they could to put an end to the killings and made sure that those who were responsible for the killings were dealt with by the judicial system), 7 (those arrested after the massacres included MRND youths, MDR youths, PSD youths and members of other parties); Mugiraneza, T. 21 May 2008 p. 33 (the people involved in the killings were arrested, prosecuted and imprisoned by the Bugesera court); Mugenzi, T. 2 November 2005 p. 10 (when the violence started in Bugesera persons were arrested); Mugenzi, T. 17 November 2005 pp. 13-14 (as Minister and Chairmen of the PL Mugenzi made it clear that the government wanted all of those people brought to justice; Mugenzi protested against the events in Bugesera; he denounced the radio transmission which ignited the violence and the persons who participated in those massacres; the director of the radio was fired immediately and some 400 persons were arrested for killing and burning houses).

[266] Des Forges, T. 31 May 2005 pp. 45-46 (there was a series of 16 incidents that took place between October 1990 and March 1994 that occurred at a time when the regime was at risk either politically or militarily or threatened by a military advance by the RPF or internal political pressure); Sebera, T. 19 October 2004 p. 41 (many political problems existed in Rwanda before 1994, people were being killed, especially the Tutsis who were killed in Kibilira in 1990 and Bugesera in 1992; the witness attributed those political problems to the war starting and to the RPF who were "carrying out their work"); Flaten, T. 20 February 2008 p. 50 (in Bugesera Hutus killed Tutsis likely due to the belief that the Tutsis in Bugesera were sending their young to fight with the RPF); Strizek, T. 5 February 2007 p. 63 (the day after an anonymous fax stating that the RPF was going to attack was read over the radio Bugesera saw the beginning of a spate of massacres and this was another response to provocation on the part of the RPF); Witness WZ10, T. 11 September 2006 pp. 17-18 (learned that after the RPF attack in October 1990 Tutsis in Rwanda were being labelled as accomplices and recalled that the Bagogwe and Tutsis in Bugesera were killed); Bizimungu, T. 30 May 2007 pp. 4-5 (referencing the letter from the Minister of Justice to the Prime Minister of Rwanda, dated 20 February 1992, warning the government about the situation in Bugesera before the massacre occurred in March 1992), 5 (testified that tensions existed in Bugesera; grenade attacks had been noticed by the security services; there was a flurry of recruitments by the RPF from the Bugesera region as well as from some other regions in the country); Mugenzi, T. 17 November 2005 p. 12 (just to take the short period of 1993 there was a regime of terror which was spread throughout the country: bombs exploded in schools, marketplaces and public roads and were attributed to the RPF; they were on their war front, but still present in the country while the government tried to organise a peace deal with them); Mugiraneza, T. 21 May 2008 p. 26 (those who perpetrated the killings used the attacks of the RPF *Inkotanyi* as an excuse).

implicate any of the Accused. Moreover, the Accused maintain that these massacres occurred in a context of war and in response to RPF hostilities.[267]

(iv) Conclusions

184. The evidence provided by both Prosecution and Defence witnesses clearly illustrates that attacks directed at Tutsis, moderate Hutus and members of the opposition parties occurred between 1990 and 1994. They appeared to have been carried out by Hutu extremists, including *Interahamwe*. As a general matter, the evidence reflects that the attacks were in retaliation to overt incursions or perceived covert infiltration by the RPF into Rwanda. Indeed, observers within the government, as well as international observers, clearly viewed attacking Tutsis in Rwanda as a direct response to hostilities with the RPF. However, the Prosecution has not provided a direct link between those attacks and the Accused. More specifically, the Prosecution has failed to demonstrate that any of the Accused were involved in the execution of the massacres of the Tutsi minority that took place in the early 1990s, including those in Kibilira (1990), in Bugesera (1992) and those of the Bagogwe (1991).

2. PRE-1994 TRAINING AND ARMING OF MILITIA

2.1 General Evidence of Training and Arming of Militia

Introduction

185. The Indictment alleges that various political parties in Rwanda created youth wings, such as the MRND's *Interahamwe* and the CDR's *Impuzamugambi*, in order to sensitise and

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[267] Witness GAT, T. 26 February 2004 p. 20 (the killings took place in Ruhengeri where the Bagogwe were killed; Tutsis were targeted in these killings, as well as some Hutus); Ngarambe, T. 4 October 2004 p. 40 (the Bagogwe were killed in 1991); Uwizeye, T. 6 April 2005 pp. 23, 36 (in his capacity as prefect the witness wrote reports on security matters and presented those reports to Faustin Munyazesa, the Minister of Internal Affairs and Communal Development; one important security report that he wrote concerned the flight of the Bagogwe Tutsis who were being killed); Ntamabyaliro, T. 24 August 2006 pp. 22-23 (killings of the Bagogwe were carried out in 1991 and it is possible that those killings had an ethnic dimension to them; the people killed were the Bagogwe Tutsis; those who carried out the killings were prosecuted), 23-24 (it was said that those carrying out the killings were *Interahamwe*); Gahizi, T. 6 April 2006 p. 16 (Mugenzi and the PL denounced the discrimination and violence that was being committed against the Bagogwe); Kayinamura, T. 30 March 2006 pp. 25-26, 45-46 (Mugenzi played a big role in fighting for equality in Rwanda and publicly denounced the killing of the Bagogwe in 1991 because they were Tutsis); Mugiraneza, T. 21 May 2008 pp. 26, 32 (the "incidents" regarding the Bagogwe took place in early 1991 and involved people who lived along the Gisenyi-Ruhengeri border; did not know the precise number of victims, but a report he saw stated that were around 200 Tutsi victims from the Bagogwe incident and the Kibilira massacre who were killed by Hutus; the report referred to missions to calm the situation down; certain people had been arrested and proceedings instituted against them); Mugenzi, T. 1 November 2005 pp. 64-65 (after the RPF attack failed in 1990 the authorities reacted very harshly against the Bagogwe, who were accused of having facilitated the passage of the *Inkotanyi* and there were mass killings of them); Bicamumpaka, T. 17 September 2007 pp. 26-27, 49 (there was a climate of mistrust around the Bagogwe as they were accused of having sent their children to join the RPF; persons seeking revenge following RPF attacks killed the Bagogwe Tutsis in Kinyegi and Mukingo communes); Bizimungu, T. 29 May 2007 pp. 64-67 (the Bagogwe killings took place in January or February 1991; received a letter from the Minister of the Interior that stated that it was only after the *Inkotanyi* brought war to Ruhengeri prefecture and attempts to infiltrate Gisenyi prefecture that the conflict started), 70 (the government was concerned about the massacres which had occurred in the regions inhabited by the Bagogwe; investigations continued and other persons were fired and sanctioned).

mobilise youth into politics.[268] From the beginning of 1992 the youth wings of various political parties, including the *Interahamwe*-MRND, were gradually converted into militia groups. They allegedly received weapons and were financed and trained by prominent civilians and military figures.[269] Training was allegedly conducted in several prefectures, including Kigali, Cyangugu, Gisenyi and Butare, and in Mutara sector. It was carried out in public areas and at or near various military camps, including Gabiro, Gako, Mukamira and Bigogwe.[270]

186. The Indictment alleges that from late 1990 to July 1994 Bizimungu, Mugenzi, Bicamumpaka and Mugiraneza conspired with others to devise a plan to exterminate the civilian Tutsi population and members of the opposition. The training of and distribution of weapons to militiamen was one component of the genocidal plan during this period.[271] The Prosecution submits that the role of the Interim Government, including the Accused, in the training, arming and guiding of the militia between 9 April and 31 July 1994 evidences a joint criminal enterprise.[272]

187. The Mugenzi Defence submits that there is insufficient evidence to establish the existence of a joint criminal enterprise or pre-existing genocidal plan whereby *Interahamwe* were part of the MRND and received military training to kill Tutsis before and during 1994. It argues that, even accepting that various youth groups participated in massacres in 1994, there is no evidence that these groups were under the control of the Interim Government, or that the Interim Government approved any plan to train these groups or otherwise encouraged their activities.[273] The Mugenzi Defence also submits that while some members of government may have participated in sponsoring training or distributing weapons to *Interahamwe* before and during the genocide, such acts could not be attributed to the Interim Government as a whole.[274] The Bizimungu Defence submits that there was no link between the MRND national committee and the *Interahamwe* and that the MRND was not responsible for financing, organising and arming the *Interahamwe* across Rwanda.[275] The Bicamumpaka and Mugiraneza Defence did not make any submissions in this respect.

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[268] Indictment, paras. 3.10-3.11.

[269] Indictment, paras. 1.15, 1.17, 3.12, 5.15-5.22, 6.18, 6.32, 6.36. *See also* Indictment, paras. 1.19 (on weapons distribution to *Interahamwe* after 1991 in the cadre of civil defence), 6.16; Prosecution Pre-Trial Brief, paras. 114-116 (pp. 25-26); Prosecution Opening Statement, T. 6 November 2003 pp. 11-12; Prosecution Closing Brief, paras. 112-121, 127, 129-130, 135, 139-141, 151, 153, 165, 168, 206, 210-212, 254, 256, 275, 331, 337, 352, 357, 362-363, 376-377, 557, 587, 645, 692, 696, 746, 751, 810-812, 866-867, 1014-1015, 1095, 1099; Prosecution 21 November 2008 Document, Item Nos. 23-29, 32, 34-37, 39, 72, 76-77, 93.

[270] Indictment, para. 5.16. *See also* Prosecution Pre-Trial Brief, paras. 115-116 (p. 26); Prosecution 21 November 2008 Document, Item Nos. 24, 26, 32.

[271] Indictment, paras. 1.15, 5.1. *See also* Prosecution Pre-Trial Brief, paras. 39 (p. 11), 117 (p. 26); Prosecution Closing Brief, paras. 192, 206.

[272] Prosecution Opening Statement, T. 6 November 2003 pp. 8-9, 11; Prosecution Pre-Trial Brief, paras. 37 (p. 11), 39 (p. 11); Prosecution Closing Arguments, T. 1 December 2008 pp. 9-10, 26-28, 64-65; T. 5 December 2008 p. 6.

[273] Mugenzi Closing Brief, paras. 278, 370, 371-373, 375, 491-494.

[274] Mugenzi Closing Brief, paras. 573-576; Mugenzi Closing Arguments, T. 2 December 2008 pp. 78-79.

[275] Bizimungu Closing Brief, paras. 1100, 1434, 1498-1512; Bizimungu Closing Arguments, T. 5 December 2008 pp. 12-14; *see also* Prosecution Closing Brief, para. 692.

Evidence and Deliberations

188. There is considerable first-hand and hearsay evidence before the Chamber that indicates that the youth groups of various political parties received military training in the period from 1990 to 1994.[276] In particular, considerable evidence has been led that training

[276] Witness GAT, T. 25 February 2004 p. 55 (testified that after the RPF attack on 1 October 1990, the *Interahamwe* were being trained); Witness GJW, T. 22 March 2004 pp. 54 (testified that the *Interahamwe* underwent a lot of training in 1992-1993 in Kibungo commune), 55 (testified that training started in 1991, intensified during 1992 and 1993 and continued until 1994 when the war resumed); Witness GTC, T. 1 March 2005 pp. 38, 41, 61, T. 4 March 2005 pp. 3-5 (testified that *Interahamwe* members were trained in 1991 in Byumba prefecture); Witness GTC, T. 1 March 2005 pp. 41, 43 (testified that military training for the *Impuzamugambi* started in 1993 and continued until 1994); Bicamumpaka, T. 4 October 2007 p. 7, T. 8 October 2007 p. 64, T. 9 October 2007 pp. 47-48 (testified that in October 1991 they received information in Kigali that groups of *Interahamwe* were undergoing paramilitary training and that photographs were taken at the training showing soldiers and commandos in Rwandan army uniforms training the *Interahamwe* in various exercises); Bicamumpaka, T. 4 October 2007 p. 8 (further testified that in Ruhengeri commune in late 1991 or early 1992 commune youths who appeared to be MRND members were recruited and trained); Bicamumpaka, T. 20 September 2007 pp. 50-51 (testified about Exhibit 3D49 which noted that MRND and CDR youth wingers were known to be militarily trained) *and* Exhibit 3D49 (UNAMIR Inter-office Memorandum Concerning Militia, 25 November 1993); Bicamumpaka, T. 18 September 2007 p. 7; Exhibit 3D22 (Letter from the Rwandan Prime Minister Nsengiyaremye to President Habyarimana, subject matter: Report on the implementation of the programme of the Rwandan Interim Government and the obstacles encountered, 22 September 1992) pp. 4-5 (testified about Exhibit 3D22 which noted that "the *Interahamwe* ... is the only organisation that includes soldiers" and "these youth are coordinated more by policemen than by politicians [and] should be called to order and ... asked to refrain from terrorising members of the population"); Ntamabyaliro, T. 24 August 2006 pp. 36-37, 56 (recalled that the discussion of the arming and training of the *Interahamwe* arose on two occasions during Dr. Nsengiyaremye's government in 1992/1993); Witness GAP, T. 20 January 2004 pp. 5-6 (testified that between 1992 and 1993 training started at the commune offices); Witness GKB, T. 10 December 2003 pp. 31-32, 37 (testified that in 1992 or 1993, the MRND youth-wingers went to training camp at the military barracks in Ruhengeri, at a place called *Groupment*, where they received arms training); Witness DY, T. 23 February 2004 pp. 9-10 (testified that during 1993, military personnel trained *Interahamwe* in Gabero and he learned this from soldiers and military based at Mutara); Witness GJI, T. 15 March 2004 p. 31 (testified that towards the end of 1993, different parties provided military trainings to youth; he knew of this training because he heard Félicien Gatabazi talking about the training on the radio; he heard it from Radio Muhabura and he knew young men from his area who were taken to Gabiro for military training); Witness D, T. 15 June 2004 p. 18, T. 16 June 2004 pp. 23-24 (testified that after 1993-1994 military training was provided for the *Interahamwe*; Witness D knew this because two *Interahamwe* friends had told him they had received training); Ngarambe, T. 4 October 2004 p. 44 (testified that he knew there was preparation for killings; he had soldier friends who could confirm that there was *Interahamwe* training); Witness GKP, T. 8 December 2003 p. 40 (testified that after 7 April 1994 many *Interahamwe* were coming in from neighbouring sectors and that they had been trained); Uwizeye, T. 8 April 2005 pp. 2-3 (testified that on 7 April 1994, the *Interahamwe* woke up with guns and knew how to use them, which showed that they had undergone military training; they were also organised insofar as they also had their own uniform and drove vehicles); Witness GJQ, T. 17 March 2005 pp. 29-30 (testified that by the time he became involved with the *Interahamwe* in October 1992, most *Interahamwe* training had already been completed); Murashi, T. 9 June 2004 pp. 25, 27-29 (testified that in 1993 he heard rumours that the *Interahamwe* had gone to undertake a formal training programme; Murashi knew this from some of his neighbours who were *Interahamwe* and told him as much before they left; school children, a priest called Nzaramba and an elderly man called Samidibura would talk about it, as well as returning *Interahamwe* who claimed, "[w]e were at Gishwati"); Witness TJO, T. 27 March 2006 p. 17, T. 29 March 2006 pp. 62-64 (testified that he had heard there was *Interahamwe* training occurring elsewhere outside his commune from the end of 1993 but could not specify where); Witness RDO, T. 4 March 2008 p. 66 (testified that he used to hear opposition parties mention that the *Interahamwe* had received weapons or military training, but was not personally aware of anyone that had seen or undertaken such training); Des Forges, T. 31 May 2005 p. 53; Exhibit P101(F) (Expert Report of Alison Des Forges) p. 22 (according to Des Forges's report, the recruitment and training of militia, particularly, the *Interahamwe*, increased during 1993 and early 1994 as MRND leaders

between 1990 and 1994 occurred throughout Rwanda. Witnesses D, DCH, GKE and Uwizeye and Bicamumpaka testified about training at various locations in Kigali town and throughout Kigali prefecture, which was corroborated by Des Forges.[277] Bicamumpaka and Witness GKB testified about training at various locations throughout Ruhengeri prefecture, including military barracks and a house given to the *Interahamwe* by Nzirorera called *Isimbi rya Busogo*.[278] Witness GAP also testified about training programmes at both Mukingo commune office and Mukamira military camp in Nkuli commune.[279] Witness GTC testified that *Interahamwe* members were trained in 1991 in Byumba prefecture by French soldiers

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realised the value in attacking Tutsis instead of just partisan rivals); Des Forges, T. 31 May 2005 p. 54 (testified that during 1992, 1993 and early 1994, the *Interahamwe* benefitted from the support of soldiers in the form of firearms and military training which allowed the *Interahamwe* to reach a level of professionalism in the use of violence that was not attained by other militia). *But see* Witness D, T. 17 June 2004 pp. 18, 21 (testified that at the time of the signing the Arusha Accords in 1993, Karamira had refused to authorise that the MDR's youth wing, the *Inkuba*, be sent for military training); Nkezabera, T. 31 October 2007 p. 70 (denied that the MDR's JDR received military training and stated he would have known if this had occurred); Ntagerura, T. 19 February 2007 p. 59 (testified that to his knowledge, the *Interahamwe* was not armed by the MRND or trained in the use of weapons); Ntagerura, T. 20 February 2007 pp. 61-62 (testified that training of a few hundred youths in Akagera National Park was for the Rwandan board of tourism and national parks in order to replace and increase the number of park staff members in light of the war waged by the RPF; he believed that the *Interahamwe* never received any military training or arms); Witness WFP2, T. 23 January 2007 pp. 36-37 (testified that there was no military training of MRND *Interahamwe* in Gisenyi during January 1991 and July 1993 and he had not received any information on such training in any part of Rwanda); Murwanashyaka, T. 8 December 2005 pp. 18, 32 (denied being aware that the *Interahamwe* had been sent to Akagera National Park for training and testified that he was not aware that the *Interahamwe* underwent military training and that those from his area never did); Witness RWL, T. 5 March 2008 p. 50 (testified that before April 1994, *Interahamwe* in Kibungo were only trained in singing and dancing; there was no weapons training of civilians in his area and he never heard of such training); Witness RWQ, T. 2 June 2008 p. 10 (he knew of no military training for *Interahamwe*); Witness RWZ, T. 27 February 2008 p. 15 (testified that she never saw *Interahamwe* undergoing military training before April 1994); Witness RWZ, T. 28 February 2008 p. 16 (testified that her brother was among the top *Interahamwe* leadership, but she knew nothing about whether *Interahamwe* in Kibungo received military training); Witness RWA, T. 11 March 2008 pp. 37, 40-41 (testified that Grégoire Murwanashyaka was the *Interahamwe* leader in his sector and trained the *Interahamwe* in singing and dancing; h e never saw Murwanashyaka train the *Interahamwe* in weapons or military equipment and, apart from singing and dancing, Witness RWA was not aware of any training the *Interahamwe* in Gasetsa underwent).

[277] Witness D, T. 15 June 2004 p. 18, T. 16 June 2004 pp. 23-24 (testified about one friend who had told him he had attended training in town in Kigali prefecture); Witness DCH, T. 20 September 2004 pp. 6-7 (testified that some of his companions were given training at Kanombe barracks in Rusororo sector, Rubungo commune, Kigali-*Rurale* prefecture); Witness GKE, T. 9 February 2004 pp. 18-19 (testified he personally witnessed people training in Kigali-*Rurale* prefecture); Uwizeye, T. 8 April 2005 p. 3 (testified that youth from Gitarama were taken to Bugesera for training); Bicamumpaka, T. 4 October 2007 p. 7, T. 8 October 2007 p. 64, T. 9 October 2007 pp. 47-48 (testified about a small group of JDR youth wingers who infiltrated *Interahamwe* training in Remera neighbourhood in the north of Kigali); Des Forges, T. 31 May 2005 pp. 53-54; Exhibit P101(F) (Expert Report of Alison Des Forges) p. 22 (according to Des Forges's report, civilians were trained, *inter alia*, in Kigali at military camps).

[278] Bicamumpaka, T. 4 October 2007 p. 8 (testified that in Ruhengeri commune in late 1991 or early 1992 commune youths who appeared to be MRND members were recruited and trained); Witness GKB, T. 10 December 2003 pp. 31-32, 37 (testified that in 1992 or 1993, the MRND youth wingers went to training camp at the military barracks in Ruhengeri, at a place called *Groupment*); Witness GKB, T. 10 December 2003 pp. 32, 37 (testified about training at a house given to them by Nzirorera known as *Isimbi rya Busogo*).

[279] Witness GAP, T. 19 January 2004 p. 30, T. 21 January 2004 p. 35 (testified that training occurred at Mukingo commune office, although arms shooting practice would take place at Mukamira camp).

who came to Rwanda.[280] More specifically, Witnesses DY, GJI, GJQ and Ntamabyaliro testified about training at Gabiro in Mutara.[281]

189. In Kibungo prefecture, Witness GJW testified about training conducted at the houses of Melchiade Tahimana, Etienne Nzabonimana and Emmanuel Mugiraneza in Kigarama commune.[282] Witness GTF testified that the *Interahamwe* carried out their training activities in broad daylight in Birenga commune.[283] Witness GJU testified about training at Mpanga in Akagera National Park, while Sagahutu Murashi testified that in 1993 he heard rumours that the *Interahamwe* had gone to undertake a formal training programme in Gishwati forest, Gisenyi prefecture, both of which were corroborated by Des Forges's report.[284] Several other witnesses also gave general evidence about instances of training.[285] In contrast, the Defence presented witnesses that contradicted some of the evidence of the foregoing witnesses.[286]

190. In addition, the Chamber has heard considerable evidence that those responsible for administering the training between 1990 and 1994 were influential civilians, such as party leaders and policemen, as well as military personnel, both retired and serving.[287] As to the

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[280] Witness GTC, T. 1 March 2005 pp. 38, 41, 61; T. 4 March 2005 pp. 3-5.

[281] Witness DY, T. 23 February 2004 p. 9, T. 24 February 2004 p. 7 (testified that during 1993 military personnel trained *Interahamwe* in Gabero, Mutara); Witness GJI, T. 15 March 2004 pp. 31-33 (testified that he knew young men from his area who were taken to Gabiro for military training); Ntamabyaliro, T. 24 August 2006 p. 58 (testified that she heard that *Interahamwe* training occurred in a place called Gabiro); Witness GJQ, T. 17 March 2005 pp. 29-30 (testified that he was told that *Interahamwe* had been trained in Mutara).

[282] Witness GJW, T. 22 March 2004 p. 55; T. 24 March 2004 p. 16.

[283] Witness GTF, T. 14 October 2004 pp. 11-12, 49-50. *But see* Witness TJO, T. 27 March 2006 p. 17, T. 29 March 2006 pp. 62-64 (stated that he was not aware of any military training conducted from the end of 1993 for the youths of the PL, MDR, or the *Interahamwe* within Rukara commune, Kibungo prefecture).

[284] Witness GJU, T. 18 October 2004 pp. 11-12, T. 19 October 2004 pp. 14-17 (testified that one Ndahonga told her that Murwanashyaka was training a group known as *Abajekaro* at Mpanga in Kagera National Park); Murashi, T. 9 June 2004 p. 25; *see also* Des Forges, T. 31 May 2005 pp. 53-54; Exhibit P101(F) (Expert Report of Alison Des Forges) p. 22. *But see* Kayinamura, T. 31 March 2006 p. 2 (testified he lived near Mpanga and that there was no military training there before the president's death and if there had been, he would have heard of it); Murwanashyaka, T. 8 December 2005 p. 30 (denied being aware that the *Interahamwe* had been sent to Kagera National Park for training).

[285] *See, e.g.*, Witness D, T. 15 June 2004 p. 18, T. 16 June 2004 pp. 23-24 (testified that one friend told him he had been for training at a military camp); Witness GTD, T. 7 July 2004 pp. 11-12 (testified that he saw training carried out at "the Barracks"); Witness GKE, T. 9 February 2004 pp. 3, 18-19 (testified he knew training was going on throughout the country because he personally witnessed one training in Kigali-*Rurale* prefecture); Witness GTC, T. 1 March 2005 p. 41 (testified that *Impuzamugambi* training sessions took place at the MRND office, Hassan Ngeze's house and at Umuganda stadium).

[286] In addition to defence evidence that specifically contradicts the previous allegations, *see, e.g.*, Witness WFP2, T. 23 January 2007 pp. 36-37 (testified that there was no military training of MRND *Interahamwe* in Gisenyi during January 1991 and July 1993 and he had not received any information on such training in any part of Rwanda); Witness WFP2, T. 23 January 2007 pp. 37, 44, 53 (Witness WFP2 subsequently testified that he had heard of militia training taking place in some areas in Rwanda in 1994; however, he did not investigate the information because he did not believe it); Witness WFP2, T. 23 January 2007 pp. 52-54 (testified that while he had heard rumours on the radio regarding the training of militia, these rumours were verified by a military section in the field who made no mention of militia training in their military field reports).

[287] Witness GTC, T. 1 March 2005 pp. 38-40, 48 (an *Impuzamugambi* member, he stated that *Impuzamugambi* training was organised by senior leaders, including Colonel Nsengiyumva and Lieutenant Bizumuremyi, who were given soldiers to train them and that high-ranking CDR leaders, as well as the head of the *Interahamwe* at the prefectural level, Bernard Munyagishari, used to attend *Impuzamugambi* training sessions); Witness GKB, T. 10 December 2003 pp. 33 (testified that Nzirorera and Augustin Bizimungu used to come to *Isimbi rya Busogo* and tell them army officers would train them; the army officers came and provided military training for the *Interahamwe*), 37 (testified that Witness GKB's group was trained by Staff Sergeant Karorero from

substance of the training, Witnesses GKE, GTC, GKB and GJW gave first-hand evidence, and Witnesses D, DCH, GIB, GJU and Des Forges, as well as Bicamumpaka, gave hearsay evidence that training largely consisted of learning how to use and maintain firearms such as rifles and grenades.[288] Witness GKB testified that the *Interahamwe* trained with wooden guns

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Mukamira military barracks); Murashi, T. 9 June 2004 pp. 29, 43-44 (testified that *Interahamwe* training sessions in Gishwati Forest were organised by the military authorities and the commander of military operations in Gisenyi in December 1993 was Colonel Anatole Nsengiyumva, who coordinated *Interahamwe* activities); Witness GAP, T. 20 January 2004 pp. 1, 13-14 (testified that Colonel Setako was responsible for collecting and taking the recruits to Mukamira camp headed by Major Augustin Bizimungu); Witness GJW, T. 22 March 2004 p. 56; T. 24 March 2004 p. 25 (named several soldiers from Habyarimana's army who helped with training, including Cyasa Habimana, one Kabera, Deo Yagahanze, Celestin Mukiza, Twagirayezu, Kirura and one Karugarama); Witness GTF, T. 14 October 2004 pp. 9-11, 40, 42, 49 (testified that a former soldier, Cyasa Habimana, was the founder and leader of the *Interahamwe* in his Birenga commune, Kibungo prefecture and recruited and trained youth); Witness GKE, T. 9 February 2004 pp. 3, 18-19 (a member of the *Interahamwe* since 1991, he testified that they were trained by soldiers, some of whom came from outside Ruhengeri prefecture, namely from Tumba in Byumba prefecture and Tare commune in Kigali-*Rurale* prefecture, while the rest of the soldiers were from Nyamugali in Ruhengeri prefecture); Witness DY, T. 23 February 2004 p. 9 (testified that one Lieutenant Colonel Nkundiye was responsible for *Interahamwe* training carried out at Gabiro in Mutara during 1993); Witness GAP, T. 21 January 2004 pp. 12-13, 35, T. 23 January 2004 pp. 38, 48 (a policeman at the time of the training, he testified that he was in charge of training the *Interahamwe* in Mukingo commune and he and Warrant Officer Karorero carried out the training together); Witness GTD, T. 6 July 2004 pp. 76-77 (testified about "proper military training" given by three Nyamabuye commune policemen); Witness GTD, T. 7 July 2004 pp. 11-12 (testified that training carried out in "the Barracks" was taught by police and military staff); Witness GTE, T. 1 December 2003 pp. 11-12 (testified that she heard that a group of *Interahamwe* who had been trained by Rwagafilita were coming to attack around 8 April 1994); Uwizeye, T. 8 April 2005 pp. 2-3 (testified that it was the MRND party who had prepared the *Interahamwe* to fight the youth of other parties); Bicamumpaka, T. 4 October 2007 p. 7, T. 8 October 2007 p. 64, T. 9 October 2007 pp. 47-48 (testified about pictures taken of *Interahamwe* training in Remera neighbourhood in the north of Kigali that showed soldiers and commandos in Rwandan army uniforms training the *Interahamwe*); Ntamabyaliro, T. 24 August 2006 p. 58 (testified that only soldiers could give military training but she could not know which soldiers were training the *Interahamwe*); Witness GJQ, T. 17 March 2005 pp. 29-30 (testified that he was told that *Interahamwe* had been trained by Rwandan army soldiers); Des Forges, T. 31 May 2005 pp. 53-54; Exhibit P101(F) (Expert Report of Alison Des Forges) p. 22 (according to Des Forges's report, Rwandan army soldiers trained civilians); Des Forges, T. 31 May 2005 p. 54 (testified that from 1992 until early 1994, soldiers supported the *Interahamwe* which allowed the *Interahamwe* to reach a level of professionalism in the use of violence that was not attained by other militia). *But see* Witness WFP2, T. 23 January 2007 pp. 36-37 (testified that there was no training of *Interahamwe* militia by government soldiers and no weapons from the Rwandan armoury were distributed to those trained at this time).

[288] Witness GKE, T. 9 February 2004 pp. 3, 18-19 (an *Interahamwe* member since 1991, he testified that he and his colleagues received training on how to use guns); Witness GTC, T. 1 March 2005 pp. 30, 41-43 (an *Impuzamugambi* member, he stated that *Impuzamugambi* members were trained to fire weapons and throw grenades); Witness GKB, T. 10 December 2003 pp. 31-32, 37 (testified that at the military barracks in Ruhengeri they received arms training); Witness GJW, T. 22 March 2004 p. 55, T. 24 March 2004 pp. 16, 19 (witnessed two of 10 training sessions and testified that training involved shooting firearms, using grenades and learning how to use certain weapons with strings); Witness D, T. 15 June 2004 p. 18, T. 16 June 2004 pp. 23-24 (testified that two of his friends told him that they had received training on how to handle firearms); Witness DCH, T. 20 September 2004 pp. 6-7 (testified that some of his companions were given training in firearms at Kanombe barracks); Witness GIB, T. 16 September 2004 p. 14 (testified that as the war progressed the *Interahamwe* would go for training on, *inter alia*, how to handle fire weapons); Witness GJU, T. 18 October 2004 p. 12 (testified that one Ndahonga told her that at military training in Kagera National Park they were told how to use, *inter alia*, guns, grenades and bayonets); Bicamumpaka, T. 4 October 2007 p. 8 (testified that in Ruhengeri commune in late 1991 or early 1992 commune youths who appeared to be MRND members were recruited and trained to use firearms); Des Forges, T. 31 May 2005 pp. 53-54; Exhibit P101(F) (Expert Report of Alison Des Forges) p. 22 (according to Des Forges's report, the Rwandan army soldiers trained civilians to use firearms and other weapons).

brought to them by Augustin Bizimungu.[289] In addition to weapons training, Witness GTD testified that "proper military training" was given in "military matters" such as learning to camouflage, cover and conceal oneself in combat.[290] Witness GJU also testified that one Ndahonga told her that military training included training in how to dress in war.[291] In addition to weapons training, Witness GIB testified that as the war progressed the *Interahamwe* were trained in how to kill people, how to make clubs and how to set up roadblocks.[292] Witnesses D and GTF also testified that training consisted of running and marching exercises, as well as singing.[293] Witness GAP testified that, in addition to training at the Mukingo commune office on Fridays, *Interahamwe* would receive ideology courses at *Isimbi* house on other days. Witness GAP testified that Kajelijeli was in charge of ideology and taught the *Interahamwe* about the history of the Tutsis and how bad they were.[294]

191. Witness GJI testified about training that lasted one to two weeks, whereas Witnesses D, GAP and GKB testified about training that variously lasted between two, three and six months.[295] Witness GJW testified that training started in 1991, intensified during 1992 and 1993 and continued until 1994.[296]

192. As to the purpose of the training, Witnesses GKB, GJW, GJI, GAP, GTD and GTF testified that the purpose of the youth training was to prepare them to kill the enemy, generally regarded as Tutsis.[297] Witness D testified that the *Interahamwe* were trained and used by MRND officials as bodyguards and were later sent to the frontline alongside the government army as reinforcements after 6 April 1994.[298]

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[289] Witness GKB, T. 10 December 2003 pp. 8, 37-38.
[290] Witness GTD, T. 6 July 2004 pp. 76-77; T. 7 July 2004 pp. 10-12.
[291] Witness GJU, T. 18 October 2004 p. 12.
[292] Witness GIB, T. 16 September 2004 p. 14.
[293] Witness D, T. 15 June 2004 p. 18, T. 16 June 2004 pp. 23-24 (testified that in addition to weapons training, training included running and marching); Witness GTF, T. 14 October 2004 pp. 11-12, 49-50 (testified that he personally observed an *Interahamwe* military training exercise, which involved the *Interahamwe* running, blowing whistles and chanting songs saying "we shall exterminate them with their accomplices").
[294] Witness GAP, T. 19 January 2004 p. 31; T. 20 January 2004 pp. 6-7.
[295] Witness GJI, T. 15 March 2004 pp. 32-33 (testified that the training of those taken from his area to Gabiro lasted about a week after which the youths returned to their sector); Witness D, T. 15 June 2004 p. 18, T. 16 June 2004 pp. 23-24 (testified that one of Witness D's friends told him he had received two months of training); Witness GAP, T. 20 January 2004 pp. 1, 13-14 (testified that in October 1993 training at Mukamira camp lasted three months); Witness GKB, T. 10 December 2003 pp. 32, 37 (testified that approximately 70 *Interahamwe* trained at *Isimbi rya Busogo* for between three to six months).
[296] Witness GJW, T. 22 March 2004 p. 55.
[297] Witness GKB, T. 10 December 2003 p. 33 (testified that officials told them that the country had been invaded by the enemy, the Tutsis, and they should learn how to use guns so that they could fight the Tutsis of the interior while the army would fight the Tutsis coming from the outside); Witness GJW, T. 22 March 2004 p. 55 (testified that the objective of the training was to kill Tutsis and their descendants; he knew this because this was openly stated at MRND and CDR rallies); Witness GJI, T. 15 March 2004 p. 32 (testified that the aim of the military training was to kill the Tutsis and he heard this said over the radio); Witness GAP, T. 20 January 2004 pp. 1, 13-14 (testified that the purpose of the training was to fight the *Inkotanyi*); Witness GTD, T. 7 July 2004 pp. 11-12 (testified that those who passed the training went to the front to fight the *Inkotanyi* while those who failed did not); Witness GTF, T. 14 October 2004 pp. 11-12 (testified that the *Interahamwe* sought to exterminate the Tutsis because of their association with the *Inkotanyi* who had attacked in 1990 and that accomplices refer to Hutus opposed to the MRND).
[298] Witness D, T. 17 June 2004 p. 46.

193. The Chamber has also considered evidence that in parallel to the training carried out between 1990 and 1994, weapons were also distributed throughout Rwanda.[299] Witnesses D, GJW, GAP, GKB, Murashi and Nkuliyingoma, respectively, gave evidence of instances of weapons distribution in Kigali sector, Kibungo, Mukingo, Gisenyi, Kibuye, Byumba and Ruhengeri.[300]

194. The evidence generally shows that weapons such as guns, rifles and grenades were distributed.[301] The evidence of Witnesses D, GJW, GAP, GJQ, Murashi and Ntamabyaliro

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[299] Witness GAP, T. 21 January 2004 pp. 34-35 (the head of training of *Interahamwe* in Mukingo commune, he admitted before *Gacaca* courts that he had distributed guns to the *Interahamwe*); Murashi, T. 9 June 2004 pp. 15, 20 (testified that after 1990 some of his colleagues joined extremist groups such as the *Interahamwe* and the CDR party; from 1993, they started distributing weapons; t he witness testified that in 1993 most of his colleagues were also carrying weapons and had received weapons, rifles and grenades); Mugenzi, T. 7 November 2005 pp. 11-12 (testified that there had been a distribution of arms in 1993, especially in the north of the country, in the communes in direct contact with the war front); Ntamabyaliro, T. 24 August 2006 pp. 36-37, 42, 56 (testified that in 1993 members of opposition parties raised in the cabinet that the *Interahamwe* were receiving arms); Witness GKB, T. 8 December 2003 pp. 38-39 (testified that in between 1993 and 1994 in a meeting that took place at Nzirorera's house he heard authorities say that weapons were at the Ruhehe military position near Mukingo *commune* office and Nzirorera said that *Interahamwe* should have access to them). *But see* Witness WFP2, T. 23 January 2007 p. 37 (testified that no weapons from the Rwandan army armoury were distributed to those trained at this time, January 1991 and July 1993); Ntagerura, T. 20 February 2007 p. 62 (testified that at the time of his testimony he still believed that the *Interahamwe* never received any military training or arms; *Interahamwe* trained by retired soldiers under the cadre of civil defence had not yet been given weapons in light of the embargo placed on them and their difficulty procuring weapons); Witness RWA, T. 11 March 2008 p. 41 (testified that he never saw the *Interahamwe* with military weapons prior to 7 April 1994); Witness RDK, T. 17 April 2008 pp. 42, 61 (testified that he never saw the *Interahamwe* with weapons in Gasetsa before 6 April 1994; rifles became available towards 20 April 1994); Des Forges, T. 16 June 2005 p. 50 (referred to an instance of arms distribution that followed a public rally in January 1994 where anti-Tutsi sentiments were expressed); Mbonyinkebe, T. 4 May 2005 pp. 22, 24; Exhibit P95 (Expert Report of Déogratias Mbonyinkebe) p. 5 (Mbonyinkebe's report, citing Dallaire, stated that weapons used during the genocide, especially machetes, were distributed well before 6 April 1994).

[300] Witness D, T. 15 June 2004 pp. 18, 20, T. 16 June 2004 pp. 23-24 (testified that weapons were distributed in Kigali sector after 1993/1994 after the Arusha Accords); Witness GJW, T. 22 March 2004 pp. 55-56, T. 24 March 2004 p. 17 (testified about training conducted at the houses of Melchiade Tahimana, Etienne Nzabonimana and Emmanuel Mugiraneza, and testified that Rwagafilita brought arms from Kigali and stored them at Nzabonimana's house on the periphery of Kigarama town); Witness GAP, T. 21 January 2004 pp. 34-35 (testified about *Interahamwe* training at Mukingo commune office and admitted before *Gacaca* courts that he had distributed guns to the *Interahamwe* in his commune); Witness GKB, T. 8 December 2003 pp. 8-9, T. 10 December 2003 pp. 31-32 (testified that Kajelijeli distributed guns and magazines of bullets to the *Interahamwe* training at the military barracks in Ruhengeri); Murashi, T. 9 June 2004 pp. 15, 20 (Murashi, who came from Gisenyi, testified about weapons distribution in his area as of 1993; the witness testified that in 1993 most of his colleagues were also carrying weapons and had received weapons, rifles and grenades), 19 (also testified that one Mr. Kieze had a bar where grenades were also distributed), 21 (also testified that Monsignor Kalibushi, the bishop of Nyundo diocese, protested against the distribution of weapons in some of the communes of his diocese in Kibuye and Gisenyi); Nkuliyingoma, T. 7 July 2004 pp. 49-50 (testified that under the guise of the civil defence system, which was initiated after the January or February 1993 RPF attack, the government started distributing arms among the population, especially in Byumba and Ruhengeri).

[301] Witness D, T. 15 June 2004 pp. 19-20, T. 16 June 2004 p. 23 (testified that the Ministry of Defence gave the MRND about 800 guns and rifles, 400 of which were distributed to the *Interahamwe* of Kigali sector); Witness GJW, T. 22 March 2004 p. 56 (testified that Cyasa Habimana, who trained *Interahamwe*, supplied the *Interahamwe* with arms and grenades); Witness GAP, T. 21 January 2004 pp. 7, 34-35 (testified about *Interahamwe* training at Mukingo commune office and that in 1993, very few *Interahamwe* had arms whereas in 1994, 80 *Interahamwe* had guns; Witness GAP also admitted before *Gacaca* courts that he had distributed guns); Murashi, T. 9 June 2004 pp. 15, 19-20 (testified that in 1993 most of his colleagues had received weapons, rifles and grenades; also testified about grenades being distributed at the bar of one Mr. Kieze). *But*

shows that both civilian and military authorities distributed weapons to various sectors of the population, most notably MRND members and the *Interahamwe*.[302]

195. As to the purpose of the distributions, while Nkuliyingoma and Mugenzi testified that the weapons distribution took place under the auspices of the civil defence programme, Witness D claimed weapons were distributed to ensure the security of the MRND leaders. Regardless, Nkuliyingoma, Mugenzi and Witness D all testified that weapons fell into the wrong hands and Witnesses D and Nkuliyingoma testified that they were misused.[303]

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see Witness GTF, T. 14 October 2004 pp. 51-52 (testified that he never saw the *Interahamwe* during training armed with rifles, grenades, or pistols, only traditional weapons; Witness GTF added that he never heard the *Interahamwe* training or using modern weapons before the death of President Habyarimana); Witness GJV, T. 13 February 2004 pp. 21, 29 (testified that after Habyarimana's death when the *Interahamwe* went to kill Tutsis, they had traditional weapons such as machetes, clubs, and bows and arrows; at the beginning there were no firearms, which came later after Kibungo headquarters was captured by the RPF).

[302] Murashi, T. 9 June 2004 pp. 15-16 (testified that weapons distribution was organised by the political and administrative authorities, as well as military authorities such as the area commander in charge of operations in Gisenyi who was also the commander of the *Interahamwe* militia and the civil defence system; he received weapons from Kigali and would then distribute them to the militia group, to teachers, other public servants, as well as the grass roots, local authorities, *bourgmestres*, *conseillers* and the *nyumba kumi*), 22-23 (testified that his friend, one priest Nzaramba, told him that the administrative leader of Rubavu commune, Kabiligi, was working together with Sub-Prefect Bikumbi, the administrative and political authorities of Gisenyi, and distributed weapons from his house), 15, 22 (testified that weapons were distributed to all members of the militia who were considered able to kill, not only teachers; he was also told by one priest, Nzaramba, that weapons were being distributed to the *Interahamwe*); Witness D, T. 15 June 2004 pp. 19-20, T. 16 June 2004 p. 23 (testified that the Ministry of Defence gave weapons to the MRND Chairman, Ngirumpatse, who in turn gave them to one Turatsinze and another *Interahamwe* official, who subsequently distributed half of them to the *Interahamwe* of Kigali sector); Witness D, T. 15 June 2004 pp. 49, 66 (testified that in April 1994 his friends in Kigali told him they had received weapons via Nzirorera and Bagosora, after which weapons were distributed to the *Interahamwe*; after hearing this, Witness D tried to obtain a weapon but was unsuccessful); Witness GJW, T. 22 March 2004 p. 56 (testified that Cyasa Habimana, who trained *Interahamwe*, would supply the *Interahamwe* with arms and grenades); Witness GAP, T. 21 January 2004 pp. 11-13, 34-35 (the head of training of *Interahamwe* in Mukingo commune, he admitted before *Gacaca* courts that he had distributed guns to the *Interahamwe*); Witness GAP, T. 23 January 2004 p. 24 (testified that he could obtain weapons and bring them to Mukingo commune because he worked for the Ministry of Foreign Affairs); Ntamabyaliro, T. 28 August 2006 p. 19 (testified she did not know about the origin of the firearms supplied to the *Interahamwe* and the government did not commence any investigation to find out; however, only the Ministry of Defence could bring weapons inside the country).

[303] Nkuliyingoma, T. 7 July 2004 pp. 49-50 (testified that it was under the guise of the civil defence system, which was initiated after the January or February 1993 RPF attack, that the government started distributing arms among the population in the northern communes; however, the *Interahamwe* and these weapons were used against people who were not MRND or CDR members, or against Tutsis); Nkuliyingoma, T. 14 September 2004 p. 63 (testified that civil defence became a pretext to distribute firearms to the *Interahamwe* on a large scale and to arm certain factions to fight against the other parties); Mugenzi, T. 29 November 2005 p. 97 (testified that weapons distributed in 1993 to the northern communes were distributed by Bagosora and the Minister of Defence for the purpose of self-defence); Mugenzi, T. 7 November 2005 pp. 11-12 (testified that weapons were to be distributed to select people but it was later discovered that weapons were distributed indiscriminately and only to members of the MRND); Witness D, T. 15 June 2004 p. 22, T. 17 June 2004 pp. 74-75 (testified that the purpose of the weapons distributed by the Ministry of Defence to the MRND was to protect the MRND authorities since the RPF contingent was bringing 600 members to protect their leaders in Kigali; however, after 6 April 1994 it became apparent to the witness that the *Interahamwe* used the weapons to kill Tutsis or members of the opposition).

196. Witness GHU and Nkuliyingoma testified that weapons distributed before April 1994 were subsequently used during April to July 1994.[304] This was corroborated by Witnesses QU, GJU, GJT and RWV who testified that when attacks began on or after 6 April 1994 the *Interahamwe* had weapons such as guns or grenades.[305]

Conclusions

197. The Chamber has considered substantial evidence of military and civilian authorities providing training and arms to civilians from 1990 until April 1994. It is not necessary to set forth an assessment of this evidence in detail. The Chamber has raised questions about the credibility of several of the factual witnesses in other sections of the Judgement. Furthermore, some of the evidence is hearsay, lacking in detail or conflicts with other evidence. While the Chamber declines to accept as reliable all details of their accounts, it is nevertheless convinced by the totality of the evidence that Rwandan military and civilian authorities were arming and training civilians before April 1994. While the Chamber accepts that some instances of training and arms distribution were carried out under the legitimate auspices of the civil defence programme, there was also first-hand evidence that training was understood to be for the purpose of preparing trainees to kill the enemy, namely Tutsis.

198. Nevertheless, as a general matter, the Chamber considers that the foregoing evidence does not implicate any of the Accused.[306] Furthermore, there is undisputed evidence that opposition parties raised the issue of the training and arming of the *Interahamwe* on two occasions at Cabinet meetings in 1992 or 1993 and that from 1992 opposition parties, including Bicamumpaka's MDR and Mugenzi's PL, publicly protested the creation of an *Interahamwe* militia and their activities.[307]

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[304] Witness GHU, T. 4 March 2004 pp. 5-6, 8-9 (testified that six months later, in 1994, the *Interahamwe* set up roadblocks and were manning roadblocks with the rifles previously distributed to them at a place called Tourisme in Ruli sector); Nkuliyingoma, T. 7 July 2004 p. 52 (testified that most of those weapons distributed under the civil defence programme were used to kill members of the Tutsi population after 6 April 1994).

[305] Witness QU, T. 17 March 2004 pp. 4-6 (testified that in 1993, the *Interahamwe* had tools, including grenades, that they used in their activities); Witness GJU, T. 18 October 2004 pp. 29-30 (testified that when her house was attacked on 7 April 1994 by *Interahamwe*, they carried nail-studded clubs, grenades, machetes and swords); Witness GJT, 11 March 2004 pp. 24-25 (testified that when her home was attacked on 7 April 1994, the *Interahamwe* had grenades and rifles, as well as machetes, spears and clubs); Witness RWV, T. 9 June 2008 pp. 6, 28-29 (a driver from 6 April until the end of April 1994, he testified that he saw people manning roadblocks with modern and traditional weapons). *But see* Witness GJV, T. 13 February 2004 pp. 21, 29 (testified that after Habyarimana's death when the *Interahamwe* went to kill Tutsis, they had traditional weapons such as machetes, clubs, and bows and arrows; at the beginning there were no firearms; the firearms came later after Kibungo headquarters was captured by the RPF).

[306] To the extent that the Prosecution led evidence pertaining to an Accused's direct involvement in the training and arming of militias prior to 1994, the Chamber has assessed this evidence elsewhere. *See* II.2.2; II.2.3.

[307] Ntamabyaliro, T. 24 August 2006 pp. 42 (members of the opposition parties raised with the Cabinet that the *Interahamwe* were receiving arms), 35-36 (in February and March 1994 there were inquiries into *Interahamwe* behaviour, including questions as to why they were the only youth group given military training and arms; the cabinet requested that people responsible for them should try to control the *Interahamwe* and that the offenders among them should be brought to justice); Mugenzi, T. 1 November 2005 pp. 66, 69, T. 2 November 2005 pp. 1-2 (a rally was held in March 1992 criticising the MRND regime while persons accused of "being accomplices of the *Inkotanyi*" were disappearing and were presumed to have been arbitrarily killed); Mugenzi, T. 7 November 2005 pp. 7-10 (translating his joint MDR, PSD and PL letter to the President, dated 24 May 1993, listing killings of thousands in attacks on the Bagogwe and in Bugesera, Kibuye, Gisenyi and Ruhengeri and implicating MRND and CDR militia in particular in terrorising several sectors throughout Kigali); Exhibit

199. While this evidence is highly relevant to understanding the massive slaughter of Tutsi civilians and Hutu moderates that followed the killing of President Juvénal Habyarimana, it is less relevant with respect to understanding the Accused's involvement as a general matter in alleged preparations for the genocide. The Chamber considers this contextual evidence insufficient to demonstrate involvement in a genocidal plan. Direct allegations of training and weapons distribution will be individually considered, as follows.

2.2 Weapons Distribution to the *Interahamwe*, Kibungo, 1991

200. The Prosecution led evidence through Witness GJQ, a Hutu *Interahamwe* leader in Kibungo prefecture in 1992,[308] that Prosper Mugiraneza and Colonel Célestin Rwagafilita supplied grenades to the *Interahamwe* in 1991. They were subsequently used to kill Tutsis in 1994.[309] Witness GJW, who knew Prosper Mugiraneza and Colonel Rwagafilita, testified that he heard from *Interahamwe* that Colonel Rwagafilita supplied them with weapons.[310]

201. In contrast, Mugiraneza stated that he did not receive any information regarding the distribution of weapons and added he had no authority to follow up on information pertaining

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P2(174)(E & F) (Document Issued by the MDR party entitled: *Interahamwe za Muvoma* or The MDR [sic] Party Hardliners, Internal working document for the MDR Steering Committee, 14 May 1992); Exhibit P2(178)(E & F) (PL Press Release entitled: Report on the Prevailing Situation in Rwanda, by the PL Executive Committee, 14 March 1992) (condemning, *inter alia*, the arbitrary arrests and massacres of innocent people); Exhibit 2D12 (Joint *Communiqué* issued by the Democratic Forces For Change (MDR, PSD, PL) and the RPF, 3 June 1992) (calling for a ceasefire and condemning acts of violence and terrorism, especially those perpetrated by the MRND regime); Exhibit 2D20(E & F) (Letter from the heads of the MDR, PSD and PL parties entitled: Note to the President of the Republic Concerning the Security Problem, 24 May 1993) p. 7 (noting that "the moral and material support given by some elements of the Presidential Guard to the militia *Interahamwe* and CDR in their criminal expeditions has been out cried but never the Head of State has taken note of the claims from the political parties or from the population"); Exhibit 3D20 (Document Issued by the MDR Party entitled: *Le MRND et les violences au Rwanda*, June 1992) p. 3 (protesting the creation of an *Interahamwe* militia armed with clubs and knives); Exhibit 3D22(F) (Letter from Dismas Nsengiyaremye to the President, 22 September 1992) (reflecting the refusal of MRND members of government to investigate allegations regarding Bugesera and stating that since the *Interahamwe* is the only organisation that includes soldiers among it, and is coordinated by police and politicians, this group should be called to order and they should be asked to refrain from terrorising members of the population); Exhibit 3D41 (Letter to the Prime Minister Agathe Uwilingiyimana from the Chief Intelligence Service enclosing document entitled: Current Security Situation in Rwanda, undated) pp. 7 ("Most ... conflicts were instigated by youth movements often constituting real militia groups, which are at the service of their political leadership"), 10 ("With the arms proliferation, settling of scores has become easy, particularly through the youths of the political parties (militias)"). *See also* Exhibit 2D13 (Letter from the MRND *Interahamwe* to the Prime Minister, 27 May 1992) (acknowledging the PL's protests and protesting against acts of intimidation by the PL).

[308] Witness GJQ, T. 10 March 2005 pp. 24, 29, 34, 37; Exhibit P86 (Witness GJQ's Personal Information Sheet). Witness GJQ fled Rwanda to Congo in July 1994. Upon his return to Rwanda in April 1999, he surrendered himself to the authorities. He confessed to ordering the killing of one person and leading other attacks which killed other people. He first appeared in the Court of First Instance on 17 October 2000. Witness GJQ was tried and sentenced to death on 31 July 2001. At the time of his testimony, he was awaiting a decision regarding his appeal. Witness GJQ, T. 9 March 2005 pp. 39-40; T. 14 March 2005 pp. 21-23, 26-28; T. 15 March 2005 p. 3.

[309] Witness GJQ, T. 10 March 2005 p. 34, T. 14 March 2005 pp. 10-11, 24-25 (testified that when he joined the *Interahamwe* in 1992 he learned that in 1991 Prosper Mugiraneza and Colonel Célestin Rwagafilita trained *Interahamwe* and supplied *Interahamwe* with three types of grenades: those that looked like fatigues, from France; pineapple grenades; and Chinese stick grenades).

[310] Witness GJW, T. 22 March 2004 pp. 36, 52-56; T. 23 March 2004 p. 36; T. 24 March 2004 pp. 14-20, 26-27 (the weapons were kept at Etienne Nzabonimana's house and distributed by Witness GJQ to the *Interahamwe*).

to security.[311] Mugiraneza Defence Witness RWQ, an MRND and *Interahamwe* member who Witness GJQ testified had received grenades, denied ever possessing grenades, other than as part of his duties as a member of the Rwandan military.[312]

202. Prosecution Witness GJQ was the sole witness to accuse Mugiraneza of weapons distribution in 1991. His evidence was hearsay. He only learned of Mugiraneza's alleged role in 1992 when he joined the *Interahamwe*. Further, he offered no further testimony or details as to when in 1991 the distribution occurred. While Witness GJW corroborated Witness GJQ that Colonel Rwagafilita distributed weapons, Witness GJW did not implicate Mugiraneza in this activity and his evidence was hearsay as well.[313] Last, Witness GJQ's testimony that *Interahamwe* would walk around public places with grenades[314] was undermined by Prosecution Witness GTF. This witness owned a shop close to the Kibungo roundabout in 1994 and testified he did not see any *Interahamwe* armed with rifles, grenades or pistols before the President's death in Kibungo.[315]

203. The Chamber considers the Defence evidence denying the allegation is self-serving.[316] However, it is of the view that the uncorroborated hearsay testimony of Witness GJQ, whose evidence implicating the Accused has been treated with caution (*see* II.6.1), is not an adequate basis upon which to base findings beyond reasonable doubt. As such, the Prosecution has not proven beyond reasonable doubt that Mugiraneza distributed grenades in 1991 that were used in 1994 to kill Tutsis.

2.3 Weapons Distribution at *Hôtel Tourisme*, Gitarama, 1993

204. The Prosecution led evidence through Witness GHU of an alleged weapons distribution at a joint MRND/MDR-Power meeting in Gitarama at the *Hôtel Tourisme* between November and December 1993. Nzabonimana introduced Bicamumpaka to the audience of around 500 persons as a prominent MDR member. Nzabonimana told the crowd to know its enemy, "none other than the *Inyenzi*, and the *Inyenzi* are the Tutsis". Subsequently, Nzabonimana and Bicamumpaka distributed rifles and grenades to those present, including to several *Interahamwe*.[317] It was the second time Witness GHU had seen Bicamumpaka.[318]

205. In contrast, Witness VF-1, who Witness GHU testified was present and received weapons, denied ever having possessed weapons or meeting Bicamumpaka or Nzabonimana.[319] Bicamumpaka also denied having ever distributed weapons to *Interahamwe*

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[311] Mugiraneza, T. 22 May 2008 pp. 7-8.
[312] Witness RWQ, T. 2 June 2008 pp. 8-10, 21-22, 36-37.
[313] Witness GJW, T. 22 March 2004 pp. 52-56; T. 23 March 2004 p. 36; T. 24 March 2004 pp. 14-20, 26-27.
[314] Witness GJQ, T. 14 March 2005 pp. 10, 24-25.
[315] Witness GTF, T. 14 October 2004 pp. 14, 31, 41, 51-52, 57; Exhibit P79 (Witness GTF's Personal Information Sheet). Witness GTF testified to having been in detention three months for crimes not related to the genocide. He was found not guilty and released.
[316] The Chamber considers Mugiraneza's denial to be self-interested. Furthermore, although Witness RWQ expressly contradicted Witness GJQ's evidence, the Chamber is mindful of Witness RWQ's possible interest in distancing himself and the Accused from the alleged distribution of weapons.
[317] Witness GHU, T. 4 March 2004 pp. 5-9, 17-20, 22-23.
[318] Witness GHU, T. 4 March 2004 pp. 4-6, 11-12, 21. *See also* II.3.2.
[319] Witness VF-1, T. 18 October 2007 pp. 6-7, 18. Witness VF-1 was a Hutu and MRND member in 1994. Witness VF-1, T. 18 October 2007 pp. 6, 17-18; Exhibit 3D160 (Witness VF-1's Personal Information Sheet).

in Gitarama in November and December 1993, having ever been to *Hôtel Tourisme* or having met Nzabonimana.[320]

206. Witness GHU's identification is hearsay, although it corresponds with Bicamumpaka's role within the MDR and was the purported second occasion upon which he had been in the Accused's presence. The Chamber has elsewhere questioned the reliability of Witness GHU's identification of Bicamumpaka prior to this event (II.3.2). His evidence is uncorroborated. Inconsistencies emerge between Witness GHU's 24 January 2000 statement to Tribunal investigators and his testimony regarding, for instance, whether Bicamumpaka spoke and which political parties organised the rally.[321] His evidence was brief and unclear as to where the meeting was held, either inside or outside of the hotel.[322] Furthermore, his testimony shifted concerning how the distribution occurred and what Bicamumpaka's role in it was.[323] Finally, the Chamber has reservations as to Witness GHU's testimony that as a Twa he could attend this event where arms were subsequently distributed to attendees, whereas he admitted he was not an active member due to the change in party policy to discriminate towards Tutsis.[324]

207. While the Chamber views the Defence evidence with suspicion, the uncorroborated testimony of Witness GHU is insufficient to support findings beyond reasonable doubt.[325] The Prosecution has not proven beyond reasonable doubt that Bicamumpaka distributed weapons at *Hôtel Tourisme*, Gitarama, between November and December 1993.

2.4 Presence of the *Interahamwe* in the Ministry of Health

208. The Prosecution led evidence through Witnesses GAT, QU, GIB and GIE that before and during 1994, a group of *Interahamwe* within the Ministry of Health conducted criminal acts within and outside the ministry with the knowledge and consent of Bizimungu, the Minister of Health.[326] More specifically, these witnesses, former employees of the Ministry of Health, testified that Ministry of Health employees who were members of the *Interahamwe*

At the time of his testimony, Witness VF-1 had been incarcerated in Rwanda since April 1997 and was awaiting trial for genocide and murder charges. Witness VF-1, T. 18 October 2007 pp. 5, 15.

[320] Bicamumpaka, T. 2 October 2007 p. 62.

[321] Witness GHU's statement indicates that he did not remember if Bicamumpaka spoke at the meeting, whereas he testified he was quite certain Bicamumpaka did not speak. *Compare* Exhibit 3D3 (Witness GHU's Prior Statement, 24 January 2000) *and* Witness GHU, T. 4 March 2004 p. 7. The Chamber notes that in Closing Arguments the Prosecution conceded that Bicamumpaka did not speak at the meeting, despite a statement to the contrary in the Prosecution 21 November 2008 Document at para. 34. *See* Prosecution Closing Arguments, T. 4 December 2008 pp. 84-86. Second, in his statement the witness stated that the rally was organised by the CDR and MDR-Power parties, whereas he testified about a joint MRND/MDR-Power meeting. Witness GHU, T. 4 March 2004 p. 6.

[322] Witness GHU only testified he was on the veranda when Bicamumpaka's and Nzabonimana's vehicles arrived at *Hôtel Tourisme*. Witness GHU, T. 4 March 2004 pp. 17-18.

[323] While he initially testified that Nzabonimana and Bicamumpaka distributed the weapons, he later stated that he could not name who distributed the weapons, but Bicamumpaka and Nzabonimana were present and were responsible for their distribution. Witness GHU, T. 4 March 2004 pp. 8, 22-23.

[324] Witness GHU, T. 4 March 2004 pp. 3-4, 6, 10-11.

[325] The Chamber considers Bicamumpaka's evidence to be self-interested. Furthermore, although Witness VF-1 expressly contradicted Witness GHU's evidence, he was a detainee awaiting trial for crimes committed during the genocide at the time of his testimony. Witness VF-1, T. 18 October 2007 pp. 5, 15.

[326] Indictment, paras. 1.17, 4.2, 5.13-5.16; Prosecution Closing Brief, paras. 51, 124-126, 133, 570, 573, 575-576; Prosecution 21 November 2008 Document, Item Nos. 7, 31, 110.

threatened or harassed Tutsi workers at the ministry,[327] used ministry vehicles to carry out attacks against Tutsis[328] and kept weapons in the office of an employee named Sister Gaudelives Barushywanubusa.[329]

209. The Bizimungu Defence denies Bizimungu was aware of the alleged presence of *Interahamwe* in the ministry. He had weekly meetings with his staff and no one spoke of or complained about the presence of *Interahamwe*.[330] His testimony is corroborated by Defence Witnesses WBD, WAX, WAA, WCA-1 and WR-1, who also worked in the Ministry of Health in 1994, and never witnessed or heard about the presence of *Interahamwe*.[331] Finally, Jean François Ruppol, the head of the Belgian development cooperation with Rwanda in the field of medicine from 1991 until April 1994, never received any complaints regarding ethnic problems within the Ministry of Health.[332]

210. In assessing the general credibility of these Prosecution witnesses, the Chamber notes that it raised questions concerning the reliability of Witnesses QU and GAT in other sections of the Judgement. The Chamber recalls that when testifying Witness GAT referred to a diary she brought with her to the stand (II.7.4). In particular, the Chamber expressed some concerns that her evidence, which was second-hand, might also have been cumulative of evidence presented to the Chamber by other witnesses.

211. The Chamber also has concerns regarding the discrepancies between Witness GIB's prior statement to Tribunal investigators that she did not know whether Bizimungu participated in the MRND, and her testimony at trial that Bizimungu attended MRND rallies with the *Interahamwe*. Confronted with these discrepancies, she testified that this prior statement must have been a mistake of the investigator or translator present, and that she brought this to the attention of the Prosecution before trial but it was not resolved.[333] The discrepancy is material and the explanation does not eliminate reasonable concerns.

212. Similarly, Witness GIE initially testified that no one but Bizimungu had the authority to allow the use of ministry vehicles. In a prior statement, however, he contended that the authorisation to use ministry vehicles was issued by either Bizimungu or his Director of Cabinet. Upon cross-examination, Witness GIE conceded that several persons could give this authorisation.[334] Such discrepancies raise concerns as to Witness GIE's testimony.

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[327] Witness GAT, T. 25 February 2004 pp. 41, 47; T. 26 February 2004 pp. 3-6, 11, 15-18; T. 27 February 2004 pp. 2, 7, 9, 13; T. 1 March 2004 pp. 6, 9; Witness QU, T. 17 March 2004 pp. 2-10, 32-38; T. 18 March 2004 pp. 28, 33-34; Witness GIB, T. 16 September 2004 pp. 4, 7-10, 13-18; Witness GIE, T. 17 February 2004 pp. 13, 21-26, 28-29.

[328] Witness QU, T. 17 March 2004 pp. 5, 36-37; Witness GAT, T. 26 February 2004 pp. 6-7, 9-11; T. 2 March 2004 pp. 5-6, 8-9; Witness GIB, T. 16 September 2004 pp. 21-25, 58-59, 62-66; Witness GIE, T. 17 February 2004 pp. 26-28; T. 18 February 2004 pp. 4-7; Witness GLG, T. 27 October 2004 pp. 25-27; T. 28 October 2004 pp. 20-21.

[329] Witness QU, T. 17 March 2004 pp. 4, 6, 10-11, 35-37; T. 18 March 2004 pp. 36-37.

[330] Bizimungu, T. 24 May 2007 pp. 7-8, 18.

[331] Witness WBD, T. 16 January 2007 pp. 33-36, 53-54; Witness WAX, T. 29 January 2007 p. 62; Witness WAA, T. 31 January 2007 p. 31; Witness WCA-1, T. 29 September 2006 pp. 18, 27; Witness WR-1, T. 7 September 2006 pp. 36, 50-51.

[332] Ruppol, T. 2 October 2006 pp. 3-4, 6-17, 23-26; T. 3 October 2006 p. 19.

[333] Witness GIB, T. 16 September 2004 pp. 12, 21-24, 62-67; Exhibit 2D25(E) (Witness GIB's Statement, 18 and 20 May and 18 June 1999) p. 3.

[334] Witness GIE, T. 17 February 2004 pp. 26-28; T. 18 February 2004 pp. 4-7; Exhibit 1D18(E) (Witness GIE's Statement, 12 May 1999) p. 6.

213. Turning to the merits of the Prosecution evidence, the Chamber finds the presence of *Interahamwe* within the Ministry of Health plausible. The Prosecution witnesses provided significant evidence that they were harassed or threatened by *Interahamwe* within the ministry.[335] Furthermore, it is realistic that youths of the MRND party would be employed there. In the Chamber's view, the fact that Defence Witnesses WBD, WAA, WAX, WCA-1 and WR-1 were not aware of the presence of *Interahamwe* is not dispositive of the possibility that *Interahamwe* were present without their knowledge. Furthermore, because these Defence witnesses were accused of having knowledge of or being members of the *Interahamwe*, they may have an interest in denying the presence of *Interahamwe* within the ministry.[336] Crucially, however, the Prosecution led no specific evidence of Bizimungu's knowledge of or assent to harassment or threats by *Interahamwe* of Tutsi employees at the Ministry.

214. Concerning Bizimungu's knowledge of or assent to the use of ministry vehicles for *Interahamwe* attacks, the Chamber finds the Prosecution evidence vague or unreliable. For example, Witness QU testified that she knew that ministry workers used ministry vehicles to conduct attacks on Tutsis because they would go during work hours and would tell her and other employees what they were doing. However, when asked whether Bizimungu knew of these activities the witness responded only that she "believed" Bizimungu would have been aware of this, because it would have been reported in the hierarchy.[337]

215. Witness GAT also testified that she "believed" that Bizimungu knew of ministry vehicles being used in Tutsi attacks, and that "[h]e could not have not known it", because he was the only person who could give an exit permit to a vehicle that left Kigali. The witness conceded on cross-examination, however, that her testimony concerning an accident that occurred with a ministry vehicle returning from an attack on Tutsis was based on either her diary or outside information.[338]

216. Witness GIB's testimony was hearsay: she testified that it was ministry drivers and her supervisor who informed her that ministry vehicles and fuel were used for *Interahamwe* activities. In addition, while the witness stated that "everybody" would see the *Interahamwe* wear their uniform when going in ministry vehicles to rallies, she later conceded that she never saw these ministry employees in *Interahamwe* uniforms. Finally, the witness only testified to the vehicles being used by employees to attend political rallies, but did not identify any illegal activity conducted at the rallies or any attacks on Tutsis.[339]

217. After Witness GIE stated that ministry vehicles were used for attacks on Tutsis, he testified that "we never saw this", but that he knew this was done. Concerning Bizimungu's

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[335] Witness GAT, T. 25 February 2004 pp. 41, 47; T. 26 February 2004 pp. 3-6, 11, 15-18; T. 27 February 2004 pp. 2, 7, 9, 13; T. 1 March 2004 pp. 6, 9; Witness QU, T. 17 March 2004 pp. 2-10, 32-38; T. 18 March 2004 pp. 28, 33-34; Witness GIB, T. 16 September 2004 pp. 4, 8-10, 13-18; Witness GIE, T. 17 February 2004 pp. 13, 21-26, 28-29.

[336] *See* Witness GAT, T. 26 February 2004 pp. 5-6, Witness QU, T. 17 March 2004 pp. 6-7 (testifying to Witness WBD's knowledge of or involvement in the *Interahamwe*); Witness QU, T. 17 March 2004 p. 7, Witness GIB, T. 16 September 2004 pp. 22, 24-25, Witness GIE, T. 17 February 2004 pp. 21-22 (testifying to Witness WAA's involvement in the *Interahamwe*); Witness WAX, T. 29 January 2007 pp. 55-57, T. 30 January 2007 pp. 16-17 (testifying to his own involvement in the *Interahamwe*).

[337] Witness QU, T. 17 March 2004 pp. 5-7, 36-37.

[338] Witness GAT, T. 26 February 2004 pp. 6-7, 9-11; T. 2 March 2004 pp. 5-6, 8-9. Witness GAT first contended that the Minister, the Secretary-General or the Director of Cabinet authorised the use of ministry vehicles but then stated that it was only the Minister. Witness GAT, T. 26 February 2004 p. 9.

[339] Witness GIB, T. 16 September 2004 pp. 21-25, 63-64.

awareness, he stated that "[t]he minister would have known, he was aware ... because they were in the same political party, MRND. He knew them". When asked, however, whether he saw Bizimungu attend any rallies in ministry vehicles with *Interahamwe*, the witness answered that he had not.[340]

218. Finally, Witness GLG, who was responsible for monitoring the vehicles of the Ministry of Health, gave no basis for her assertion that vehicles were used for political activities. The witness testified that because there was a clear government directive that no vehicles should be taken to political rallies, a vehicle request would be for normal duties. Thus, it was difficult for her department to tell whether a vehicle was going to a rally. The witness "discovered later" that the vehicles went to rallies.[341]

219. Regarding the evidence concerning Sister Gaudelives Barushywanubusa, the Chamber notes that Witness QU is the sole witness to provide relevant testimony. The witness testified that she saw employees collecting *Interahamwe* uniforms and weapons from Sister Gaudelives's office, which was close to hers.[342] However, Prosecution Witness GLG and Defence Witnesses WBD and WCA-1, who also knew Sister Gaudelives, never heard anything about such allegations.[343] In the Chamber's view, this raises doubts as to Witness QU's uncorroborated evidence. Furthermore, the Prosecution did not raise specific evidence that Bizimungu was aware of this or should have been aware of it.

220. Considering the above, the Chamber does not find that the Prosecution evidence provides a sufficient basis for it to conclude beyond reasonable doubt that Bizimungu was aware of or consented to Ministry of Health workers, who were members of the *Interahamwe*, threatening or harassing employees at the ministry. The evidence fails to establish that *Interahamwe* used ministry vehicles to carry out attacks against Tutsis, or kept weapons in the office of Sister Gaudelives Barushywanubusa. Even if these events occurred, the Prosecution evidence fails to demonstrate that Bizimungu was aware of them or should have been aware of them. In light of the foregoing, the Chamber finds it unnecessary to consider the notice challenges raised with respect to these allegations.

3. PRE-1994 MEETINGS AND RALLIES

3.1 Meetings and Rallies in Kibungo

221. The Prosecution alleges that Mugiraneza's actions in Kibungo prefecture prior to 1994 demonstrate his role in the genocide that followed. Mugiraneza organised and attended rallies at which the crowds were incited to kill Tutsis, as well as meetings where the genocide

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[340] Witness GIE, T. 17 February 2004 pp. 26-29.

[341] Witness GLG, T. 27 October 2004 pp. 25-26. *See also* Exhibit P153 (Presidential Decision Number 2/01, 9 August 1974) (Article 3: It is prohibited to use State vehicles for private travel. Exceptions to this prohibition may be allowed only by the Minister) (unofficial translation). Witnesses WAA and WR-1 testified that they were not aware of Ministry of Health vehicles being used for *Interahamwe* activities. Witness WAA, T. 31 January 2007 p. 33; T. 1 February 2007 pp. 22-25; Witness WR-1, T. 7 September 2006 pp. 41, 66. The Chamber recalls that these witnesses may have an interest in denying the *Interahamwe*'s activities within the ministry.

[342] Prosecution Closing Brief, para. 576; Witness QU, T. 17 March 2004 pp. 4, 6, 10-11, 35-37; T. 18 March 2004 pp. 36-37.

[343] Witness GLG, T. 27 October 2004 p. 26; Witness WBD, T. 16 January 2007 pp. 13, 39, 44-46. *See also* Exhibit 1D126 (Sketch of Witness WBD's Office in the Ministry of Health); Witness WCA-1, T. 29 September 2006 p. 23.

was planned. Once the genocide began, the persons encouraged and organised by Mugiraneza committed massacres in Kibungo.

222. In particular, the Prosecution alleges that Mugiraneza played a role in four rallies and two meetings in Kibungo prefecture before 1994. The alleged rallies took place at Cyasemakamba stadium, in Kamugunda and Rukara communes and in Muhurire *cellule*. The meetings allegedly occurred in Gasetsa sector and Ndekwe *cellule*.

223. The Prosecution relies on Witnesses GJW, GTF, GJQ, GJY, GJT, GKR and GJV in support of these allegations. Witness GKP also provided relevant testimony. The Chamber recalls that these witnesses' evidence relating to events occurring in Kibungo prefecture was only admitted to be considered against Mugiraneza for the allegations of conspiracy to commit genocide and complicity in genocide.[344]

(i) Rally at Cyasemakamba Stadium

224. The Prosecution alleges that Mugiraneza attended an MRND rally at Cyasemakamba stadium. When Colonel Pierre Célestine Rwagafilita stated that the country was fighting a war against Tutsis, Mugiraneza said nothing to contradict this.[345] The Mugiraneza Defence submits that the Prosecution witnesses allege two different rallies and that both accounts are unreliable.[346]

225. Prosecution Witnesses GJW and GTF are both Hutus who lived in Kibungo prefecture in 1994.[347] Both testified to attending an MRND rally that took place on an unspecified date in the morning at Cyasemakamba stadium. While there, the witnesses heard at least two speakers make anti-Tutsi statements to the crowd, including that Tutsis should be killed. Both witnesses claimed to have seen Mugiraneza at the rally, along with other MRND leaders such as Emmanuel Mugiraneza and Rwagafilita.[348]

226. The witnesses' evidence diverges, however, on several key issues. Witness GJW testified that this rally took place in 1992, while Witness GTF contended it occurred in 1993. Witness GJW also stated that Mugiraneza presided over the meeting and introduced Rwagafilita, a fact to which Witness GTF did not attest. Their evidence was also inconsistent as to when and how the participants incited the audience to kill Tutsis. Witness GJW alleged that Rwagafilita and several others incited the crowd with their speeches, while Witness GTF stated that the *Interahamwe*, with Habimana as their leader, sang songs celebrating the extermination of Tutsis. While Witness GJW testified that Mugiraneza stayed silent, Witness GTF said that Mugiraneza looked happy and applauded.[349]

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[344] Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004 (TC), 4 October 2004, p. 14.
[345] Prosecution Closing Brief, paras. 106-107, 326; Prosecution 21 November 2008 Document, Item No. 19.
[346] Mugiraneza Closing Brief, paras. 148-159, 178-193.
[347] Exhibit P46 (Witness GJW's Personal Information Sheet); Exhibit P79 (Witness GTF's Personal Information Sheet).
[348] Witness GJW, T. 22 March 2004 pp. 46-47, 49-50; T. 23 March 2004 pp. 56, 61-63; T. 24 March 2004 pp. 3-11; Witness GTF, T. 14 October 2004 pp. 12-15, 40-41, 44-46, 54; T. 15 October 2004 pp. 9-10.
[349] Witness GJW, T. 22 March 2004 pp. 46-47, 49-50; T. 23 March 2004 pp. 56, 61-63; T. 24 March 2004 pp. 3-11; Witness GTF, T. 14 October 2004 pp. 12-15, 44-46, 54; T. 15 October 2004 pp. 9-10.

227. In the Chamber's view, these discrepancies cannot reasonably be explained by differing vantage points or by the passage of time. Instead, it appears to the Chamber that Witnesses GJW and GTF provided evidence concerning different rallies.

228. Turning to the Defence evidence, Mugiraneza testified that he did not attend this rally at Cyasemakamba stadium.[350] Defence Witnesses RWL and Paul Mujyambere, both Hutus living in Kibungo prefecture in 1994,[351] testified that they went to an MRND rally at the stadium in 1993. No participant incited violence against Tutsis and, in any event, neither saw Mugiraneza there.[352] The Defence also proffered numerous witnesses who contended that the MRND and the *Interahamwe* in Kibungo were multi-ethnic groups that never encouraged violence against Tutsis before 6 April 1994.[353]

229. Considering the evidence as a whole, the Chamber cannot conclude that the uncorroborated Prosecution testimonies establish Mugiraneza's alleged presence at any rally at Cyasemakamba stadium prior to 6 April 1994.

(ii) Rallies in Kamugunda and Rukara

230. The Prosecution led evidence that Mugiraneza attended rallies in 1992 and 1993 at Kamugunda and Rukara. At these gatherings, the speakers referred to Tutsis as *Inyenzi* and as accomplices.[354] In response, the Mugiraneza Defence challenges the reliability of Witness GJQ, the sole Prosecution witness.[355]

231. Prosecution Witness GJQ was a Hutu *Interahamwe* leader in Kibungo prefecture.[356] He testified that he was asked to speak at two rallies in 1992 and 1993 at Kamugunda and Rukara. On cross-examination, the witness said that Mugiraneza and other MRND officials attended the Rukara rally where, after hearing various songs denigrating other political parties and praising the *Interahamwe*, they told Witness GJQ that his group had sung well

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[350] Mugiraneza, T. 20 May 2008 pp. 43-45; T. 22 May 2008 pp. 8-9.
[351] Exhibit 4D81 (Witness RWL's Personal Information Sheet); Exhibit 4D125 (Mujyambere's Personal Information Sheet).
[352] Witness RWL, T. 5 March 2008 pp. 33-34, 38-39, 41, 48-49; T. 6 March 2008 pp. 20-23; Mujyambere, T. 6 May 2008 pp. 4-7. Defence Witness Jean Munyakayanza testified that he attended most of the MRND rallies that took place in Kigarama commune, but did not recall any such rally occurring at Cyasemakamba between 1992 and 1994. Munyakayanza, T. 10 March 2008 p. 8.
[353] Witness RDK, T. 17 April 2008 pp. 29-30; Witness RDF, T. 29 April 2008 p. 33; Witness RWZ, T. 27 February 2008 pp. 11-12, 14-15, 23-25; T. 28 February 2008 pp. 11-12, 16, 26-27; Witness RDO, T. 4 March 2008 pp. 65-66; Witness RWL, T. 5 March 2008 pp. 33-34, 41-42; T. 6 March 2008 pp. 45-46; Witness RWQ, T. 2 June 2008 pp. 8-10, 21-22, 36-37; Witness RWN, T. 11 March 2008 p. 86; Ntagerura, T. 19 February 2007 pp. 7-10; Munyakayanza, T. 10 March 2008 pp. 77-79.
[354] Prosecution Closing Brief, para. 327; Prosecution 21 November 2008 Document, Item No. 19.
[355] Mugiraneza Closing Brief, paras. 110-124.
[356] Witness GJQ, T. 9 March 2005 pp. 37-38; T. 10 March 2005 pp. 17-20, 24, 29, 34, 37-39; T. 14 March 2005 p. 27; T. 15 March 2005 pp. 5, 19-22, 27, 37-38; T. 17 March 2005 pp. 20-27, 29-31; Exhibit P86 (Witness GJQ's Personal Information Sheet). Witness GJQ fled Rwanda to Congo in July 1994. Upon his return to Rwanda in April 1999, he surrendered himself to the authorities. He confessed to ordering the killing of one person and leading other attacks which killed other people. He first appeared in the Court of First Instance on 17 October 2000. Witness GJQ was tried and sentenced to death on 31 July 2001. At the time of his testimony, he was awaiting a decision regarding his appeal. Witness GJQ, T. 9 March 2005 pp. 39-40; T. 14 March 2005 pp. 21-23, 26-28; T. 15 March 2005 p. 3.

and they pledged their support.[357] The witness did not testify that Mugiraneza attended the Kamugunda gathering.

232. As for the Defence evidence, Mugiraneza testified that he did not attend these rallies.[358] Jean Munyakayanza, a Hutu living in Kigarama commune in 1994,[359] said that he went to most of the MRND rallies occurring in Kibungo prefecture during this time period and only saw Mugiraneza at the Kabarando rally.[360] As noted earlier, the Defence also proffered numerous witnesses who contended that, before 6 April 1994, the MRND and the *Interahamwe* in Kibungo never encouraged violence against Tutsis.[361]

233. The Chamber accepts that Witness GJQ held an undisputed position within the *Interahamwe* that allowed him considerable access to its activities in Kibungo prefecture. However, the Chamber has elsewhere expressed concerns about Witness GJQ's evidence to the extent it implicates Mugiraneza. The witness is an alleged accomplice of the Accused, had pending criminal proceedings at the time of his testimony and the Chamber heard evidence that he sought to fabricate evidence in this and other criminal cases (II.6.1). His uncorroborated testimony, when viewed in light of the Defence evidence, fails to support findings that Mugiraneza attended the Kamugunda or Rukara rallies, or that he encouraged incitement against Tutsis, beyond reasonable doubt.

(iii) Rally at Muhurire

234. The Prosecution alleges that Mugiraneza and Colonel Pierre Célestine Rwagafilita attended a public rally in Kigarama commune where violence was incited against Tutsis.[362] In response, the Mugiraneza Defence contends that no one called for violence against Tutsis at this rally.[363]

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[357] Witness GJQ, T. 10 March 2005 pp. 34-36; T. 17 March 2005 pp. 29, 32.
[358] Mugiraneza, T. 20 May 2008 pp. 43-45; T. 22 May 2008 pp. 8-9.
[359] Munyakayanza, T. 6 March 2008 pp. 48-49; T. 10 March 2008 pp. 11-12; Exhibit 4D86 (Munyakayanza's Personal Information Sheet).
[360] Munyakayanza, T. 10 March 2008 pp. 8, 77-79; T. 11 March 2008 pp. 16-19.
[361] Witness RDK, T. 17 April 2008 pp. 29-30; Witness RDF, T. 29 April 2008 p. 33; Witness RWZ, T. 27 February 2008 pp. 11-12, 14-15, 23-25; T. 28 February 2008 pp. 11-12, 16, 26-27; Witness RDO, T. 4 March 2008 pp. 65-66; Witness RWL, T. 5 March 2008 pp. 33-34, 41-42, 48; T. 6 March 2008 pp. 45-46; Witness RWQ, T. 2 June 2008 pp. 8-10, 21-22, 36-37; Witness RWN, T. 11 March 2008 p. 86; Ntagerura, T. 19 February 2007 pp. 7-10; Munyakayanza, T. 10 March 2008 pp. 77-79; T. 11 March 2008 pp. 16-19.
[362] Prosecution Closing Brief, paras. 111, 330; Prosecution 21 November 2008 Document, Item No. 22. Neither the Prosecution Closing Brief nor the Prosecution 21 November 2008 Document refers to the rally in question as taking place in Rurenge sector, Muhurire commune. The Closing Brief does, however, refer to Witness GJT's testimony describing a rally that the witness later confirmed was in Rurenge sector, Muhurire *cellule*. Prosecution Closing Brief, paras. 111, 330 *citing* Witness GJT, T. 11 March 2004 pp. 6-7; T. 12 March 2004 p. 4. *See* Witness GJT, T. 12 March 2004 (confirming the location in Rurenge sector, Muhurire *cellule*). Witness GHY also testified to witnessing a rally occurring in Rurenge sector, Muhurire *cellule* (Witness GJY, T. 19 February 2004 pp. 1-2, 6, 8-10, 16-21, 27, 32-33, 41), and the Chamber will consider Witness GHY's evidence in conjunction with Witness GJT's. Although not referred to by the Prosecution, the Chamber has also taken into account the evidence of Witness GJX, who described a rally occurring in Remera sector at which Mugiraneza incited the audience to kill Tutsis by referring to a previous speech by President Habyarimana. Witness GJX, T. 21 June 2004 pp. 3-16, 43-44, 48-49, 67-69, 71-72; T. 22 June 2004 pp. 3-4, 9-10. *See* Exhibit 4D10 (Speech by President Habyarimana on 15 November 1992 in Ruhengeri).
[363] Mugiraneza Closing Brief, paras. 125-147.

235. It appears that two Prosecution witnesses described this rally. Witness GJY, a Hutu and an MRND party official in Kigarama commune from 1992 to 1994,[364] testified that he attended this gathering in Muhurire *cellule* in 1992. Witness GJT, a Tutsi living in Kigarama commune in 1994,[365] allegedly listened to the rally from outside Muhurire stadium. Both witnesses testified that Rwagafilita and Mugiraneza addressed the rally and that Mugiraneza urged the audience to join the MRND party.[366]

236. In the Chamber's view, the evidence of Witness GJT concerning this gathering is unreliable. She heard it being broadcast over the public address system. She was about one kilometre away when this took place and she was talking with her husband and friends. She claimed that she could hear each speaker introduce himself and that she had known Mugiraneza for 16 years at that point. However, the Chamber has reservations about the nature of her identification of Mugiraneza under these circumstances.[367]

237. Moreover, the accounts of the two witnesses differ in significant respects. Notably, Witness GJT said that Mugiraneza also spoke disparagingly about a Tutsi member of parliament who had quit the MRND party and joined the PSD party. Witness GJY, who attended the rally, testified that Rwagafilita warned the audience about the RPF *Inkotanyi* and their accomplices, while Mugiraneza urged support for the government in the war against the RPF. This witness drew a distinction between Rwagafilita's speech and Mugiraneza's, which focussed on the MRND's main objectives of unity, peace and progress.[368]

238. As for the Defence evidence, Mugiraneza denied attending this rally. His testimony was corroborated by that of Witness RDF, a Hutu MRND party member living in Kigarama commune in 1994,[369] who said that the only rally to take place in his commune was in Muhurire in 1993. No government ministers attended this rally. Witness RDK, a Hutu and government official who said he attended the rally,[370] confirmed Witness RDF's testimony that speakers tried to convince MRND members not to leave for other parties. Witness RDF was not questioned as to whether Mugiraneza was present.[371]

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[364] Witness GJY, T. 18 February 2004 pp. 52, 54; T. 19 February 2004 pp. 1-2, 6, 8-10; Exhibit P29 (Witness GJY's Personal Information Sheet); Exhibit P30 (Witness GJY's Work in 1994); Exhibit P31 (Witness GJY's Position Within the MRND Party between 1992 and 1994).

[365] Witness GJT, T. 12 March 2004 pp. 5-6; Exhibit P40 (Witness GJT's Personal Information Sheet).

[366] Witness GJY, T. 19 February 2004 pp. 9-10, 16-21, 32-33; Witness GJT, T. 11 March 2004 pp. 8, 12; T. 12 March 2004 pp. 4-8.

[367] Witness GJT, T. 11 March 2004 pp. 8, 12; T. 12 March 2004 pp. 4-8.

[368] Witness GJY, T. 19 February 2004 pp. 8-10, 16-21, 27, 32-33, 41; Exhibit 1D28 (Manifesto of the MRND Party); Witness GJT, T. 11 March 2004 pp. 8, 12; T. 12 March 2004 pp. 4-8.

[369] Witness RDF, T. 29 April 2008 p. 7; Exhibit 4D116 (Witness RDF's Personal Information Sheet). At the time of his testimony, Witness RDF had been tried in the Kigali Court of First Instance and sentenced to death. The Rwandan government commuted his sentence to life imprisonment and he was detained in Nsinda prison awaiting appeal. The witness contends that he is innocent of these crimes. Witness RDF, T. 29 April 2008 pp. 7-8, 33-35.

[370] Witness RDK, T. 16 April 2008 p. 46; Exhibit 4D99 (Witness RDK's Personal Information Sheet). Witness RDK testified that he spent six years in detention in Rwanda for charges related to the genocide, but was later acquitted. He also contends he was acquitted by the *Gacaca* court. Witness RDK, T. 16 April 2008 pp. 41-42; T. 17 April 2008 pp. 72-73.

[371] Mugiraneza, T. 20 May 2008 pp. 43-45; T. 22 May 2008 pp. 8-9; Witness RDF, T. 29 April 2008 pp. 13-14; Witness RDK, T. 17 April 2008 pp. 64-65 (identifying "Muhureyre" commune); T. 17 April 2008 p. 64 (French) ("Muhurire" commune). Defence Witness Jean Munyakayanza testified that he attended most of the MRND rallies in Kigarama commune, but did not recall any such rally occurring in Muhurire. Munyakayanza,

239. After reviewing the evidence as a whole, the Chamber considers that the testimonies of Witnesses GJT and GJY are insufficient to support findings beyond reasonable doubt that Mugiraneza attended a rally in Muhurire prior to 1994.

(iv) Meeting with the Minister of Youth in Gasetsa Sector

240. It is undisputed that in 1993, Mugiraneza and the Minister of Youth, Callixte Nzabonimana, arrived in Gasetsa sector by helicopter and went to Mugiraneza's home.

241. The Prosecution alleges that this gathering amounted to a political meeting, which was attended by about 50 Hutu youths. The Minister of Youth told them that if the *Inyenzi* became difficult they "would know what to do". Mugiraneza then gave 10,000 Rwandan francs to the *Interahamwe*.[372] The Mugiraneza Defence disputes that there was anything sinister about the Gasetsa visit and challenges the evidence relied on by the Prosecution.[373]

242. Prosecution Witness GKR, a Tutsi who lived in Gasetsa sector,[374] testified that after Mugiraneza arrived by helicopter, Mugiraneza went directly to his compound. The villagers walked there and approximately 50 people entered Mugiraneza's compound, all of whom were MRND members and most of whom were Hutus. The Minister of Youth spoke to them and said that the government would sign one final agreement with the "*Inyenzi–Inkotanyi*", but that if they became difficult, then "you must know what will happen". Mugiraneza thanked those who came and gave the *conseiller* 10,000 Rwandan francs to distribute to the *Interahamwe*, who had been playing music, singing and dancing.[375]

243. Witness GKR, however, was not inside Mugiraneza's compound. Instead, he stated that he watched from outside through a fence covered in shrubbery. According to the witness, he was only about five metres from those inside the compound.[376] The Chamber has concerns as to Witness GKR's ability to see and understand all that occurred in the alleged meeting from this vantage point.[377]

244. Prosecution Witness GJT testified briefly about an occasion in 1993 when Mugiraneza came in a helicopter and chose a number of Hutus to attend a meeting, after which they "waged war". However, Witness GJT placed this meeting in the local sector

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T. 10 March 2008 p. 8. He joined other Defence witnesses in describing the MRND and the *Interahamwe* in Kibungo as multi-ethnic groups that did not encourage violence against Tutsis before 6 April 1994. Witness RDK, T. 17 April 2008 pp. 29-30; Witness RDF, T. 29 April 2008 p. 33; Witness RWZ, T. 27 February 2008 pp. 11-12, 14-15, 23-25; T. 28 February pp. 11-12, 16, 26-27; Witness RDO, T. 4 March 2008 pp. 65-66; Witness RWL, T. 5 March 2008 pp. 33-34, 41-42, 48; T. 6 March 2008 pp. 45-46; Witness RWQ, T. 2 June 2008 pp. 8-10, 21-22, 36-37; Witness RWN, T. 11 March 2008 p. 86; Ntagerura, T. 19 February 2007 pp. 7-10; Munyakayanza, T. 10 March 2008 pp. 77-79; T. 11 March 2008 pp. 16-19.

[372] Prosecution Closing Brief, para. 328; Prosecution 21 November 2008 Document, Item No. 20. The Chamber notes that the Prosecution does not pursue the allegations levied by Witness GJW, who provided hearsay evidence that Mugiraneza organised meetings in Kibungo where the participants discussed the killing of Tutsis and MRND opponents. Witness GJW, T. 22 March 2004 pp. 42-46, 54, 58; T. 23 March 2004 p. 34; T. 24 March 2004 pp. 20-27.

[373] Mugiraneza Closing Brief, paras. 99-109.

[374] Exhibit P63 (Witness GKR's Personal Information Sheet).

[375] Witness GKR, T. 29 June 2004 pp. 60-69; T. 30 June 2004 pp. 6-8, 14.

[376] Witness GKR, T. 29 June 2004 pp. 60-66; T. 30 June 2004 pp. 6-8, 14.

[377] The Chamber has also considered Defence evidence concerning the credibility of Witness GKR, but does not summarise it here due to witness protection concerns. *See* Mugiraneza Closing Brief, paras. 103, 108.

office.[378] The Chamber therefore accords it very little weight in assessing what occurred inside Mugiraneza's compound.

245. Mugiraneza testified that he was touring the cooperatives in Rwanda with the Minister of Youth, Nzabonimana, when they stopped in Gasetsa sector to see Mugiraneza's home area. They visited with his neighbours on the veranda of his house and Mugiraneza asked his brother to prepare refreshments. The sector *conseiller* asked Nzabonimana for some footballs, after which Mugiraneza and Nzabonimana returned to Kigali. Mugiraneza never organised political meetings in Gasetsa sector and this visit was no different.[379]

246. In contrast to Witnesses GKR and GJT, two witnesses testified to attending the meeting inside Mugiraneza's compound. Prosecution Witness GKP and Defence Witness RDK were Hutus living in Gasetsa sector.[380] They described a social gathering that was devoid of divisive comments and identified the attendees as neighbours or as a mix of adults and young children, both Hutus and Tutsis.[381] Furthermore, Witnesses RWC and RWD testified that they saw Mugiraneza when he arrived in the helicopter and then as he was leaving his house a short time after his arrival. They did not see any other adults at Mugiraneza's house and both stated affirmatively that there was no gathering there on that day.[382]

247. The Defence also called numerous witnesses who testified that when Mugiraneza arrived in Gasetsa, his neighbours would come to greet him and would sometimes be served refreshments.[383] Some also testified that, despite living near Mugiraneza's home, they never saw or heard of political events occurring there during this time period.[384]

248. After considering the evidence, the Chamber concludes that it cannot rely on the uncorroborated account of Witness GKR to the extent it implicates Mugiraneza in a meeting inciting ethnic division, and therefore finds that the Prosecution has not proven this allegation beyond reasonable doubt.

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[378] Witness GJT, T. 11 March 2004 pp. 8-9; T. 12 March 2004 p. 8.
[379] Mugiraneza, T. 21 May 2008 pp. 15-16, 19-25; T. 22 May 2008 pp. 8-9, 17-18; T. 3 June 2008 pp. 35-43.
[380] Exhibit P19 (Witness GKP's Personal Information Sheet); Witness RDK, T. 16 April 2008 pp. 39-40, 46; Exhibit 4D99 (Witness RDK's Personal Information Sheet); Witness RDK testified that he spent six years in detention in Rwanda for charges related to the genocide, but was later acquitted. He also contends he was acquitted by the *Gacaca* court. Witness RDK, T. 16 April 2008 pp. 41-42; T. 17 April 2008 pp. 72-73; Exhibit 4D100 (Summons Ordering Witness RDK to Attend Trial in Kibungo Court of First Instance); Exhibit 4D102 (Judgement of the Kibungo Court of First Instance).
[381] Witness GKP, T. 8 December 2003 pp. 5-6, 12, 15; Witness RDK, T. 17 April 2008 pp. 37, 40, 54-55, 74-78.
[382] Witness RWC, T. 28 February 2008 pp. 52-55, 58-67; Witness RWD, T. 12 March 2008 pp. 7-8, 43, 64. *See also* Witness RWD, T. 12 March 2008 pp. 2-6; Exhibit 4D89 (Witness RWD's Personal Information Sheet).
[383] Witness RDK, T. 17 April 2008 pp. 36-38, 40-41, 54, 63, 73-74; T. 21 April 2008 p. 16; Witness RDY, T. 17 March 2008 pp. 57-58; Witness RWZ, T. 27 February 2008 pp. 11-12, 16; T. 28 February 2008 p. 11; Mukandagijimana, T. 1 May 2008 pp. 6-7; Witness RWD, T. 12 March 2008 pp. 7-8, 43, 64; Witness RWC, T. 28 February 2008 pp. 63-64.
[384] Witness RDK, T. 17 April 2008 pp. 36-38, 40-41, 63, 73-74; Witness RDY, T. 17 March 2008 pp. 57-58; Witness RWZ, T. 27 February 2008 pp. 11-12, 16; T. 28 February 2008 p. 11.

(v) Meetings in Nkenke Cellule

249. The Prosecution alleges that between 1 October 1993 and 31 July 1994 in Ndekwe *cellule*,[385] Gasetsa sector, Mugiraneza held meetings with Colonel Pierre Célestine Rwagafilita and others at which they agreed to kill Tutsis. Mugiraneza also incited the *Interahamwe* and the Hutu population to hatred and violence against Tutsis, describing them as the "enemy" and "accomplices".[386] In response, Mugiraneza testified that he only came to Gasetsa to visit his family and that his relationship with Rwagafilita was strictly social.[387]

250. Witness GJV, a Hutu living in Gasetsa sector,[388] testified that he saw Mugiraneza and Rwagafilita meet in Gasetsa sector on two occasions. The first time was at the home of *Conseiller* Munyaneza, where Mugiraneza, Rwagafilita and other MRND party members discussed recruiting new members. Witness GJV later saw them together at a similar MRND meeting focussed on recruitment.[389]

251. Witness GJV stated that the purpose of these meetings was recruitment and did not allege that any sinister activity took place there. Furthermore, Witness GJV never provided a specific time period for these alleged meetings. On examination-in-chief, he responded to the Prosecution's question about events "[b]etween 1990 and 1994" by describing these two meetings.[390] On cross-examination, he responded to Defence questions that identify these meetings as taking place in 1993. The witness, however, never provided further information about the time period when these meetings were alleged to have occurred.[391]

252. This evidence is both vague and uncorroborated. The Chamber cannot conclude that it could support findings beyond reasonable doubt that Mugiraneza and Rwagafilita met and agreed to kill Tutsis on the basis of this evidence.

3.2 MDR-MRND Flag Raising, Gitarama, 1992

253. The Prosecution alleges that in 1992 Bicamumpaka participated in a joint MDR-MRND flag raising ceremony in Gitarama.[392] Bicamumpaka denies the allegation, arguing

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[385] The Prosecution alleges that Mugiraneza attended meetings in Ndekwe *cellule*, Gasetsa sector. Prosecution Closing Brief, para. 266; Prosecution 21 November 2008 Document, Item No. 97. However, Witness GJV testified about meetings in Mugiraneza's home *cellule* of Nkenke. The Chamber has concluded that the Prosecution misspelled the name of Mugiraneza's home *cellule* in their supporting documents.

[386] Prosecution Closing Brief, para. 266; Prosecution 21 November 2008 Document, Item No. 97. In addition to the evidence relied on by the Prosecution, Witness GTE testified that Mugiraneza organised a meeting at Colonel Rwagafilita's home where he stated that every Hutu should join the CDR party and "work", while Witness GJQ described a series of meetings between Mugiraneza and Rwagafilita that took place in 1993. Witness GJQ, T. 10 March 2005 pp. 40-41; T. 14 March 2005 pp. 8-11, 14; T. 17 March 2005 pp. 30-33. None of these meetings were pursued as allegations in the Prosecution Closing Brief, or the Prosecution 21 November 2008 Document. In any event, the Chamber notes that the evidence of Witness GTE was hearsay and that Witness GJQ's evidence was vague and warrants special caution by the Chamber (II.6.1). The tenuousness of this evidence would preclude the Chamber from finding beyond reasonable doubt that Mugiraneza played any role in these alleged events.

[387] Mugiraneza, T. 19 May 2008 pp. 42-43; T. 21 May 2008 pp. 4-9; T. 22 May 2008 pp. 8-9. *See* II.6.1 for a discussion of the relationship between Mugiraneza and Rwagafilita.

[388] Witness GJV, T. 13 February 2004 pp. 2-3; Exhibit P26 (Witness GJV's Personal Information Sheet).

[389] Witness GJV, T. 13 February 2004 pp. 5-8, 27-28, 31.

[390] Witness GJV, T. 13 February 2004 p. 5.

[391] Witness GJV, T. 13 February 2004 pp. 27-28.

[392] Prosecution Closing Brief, paras. 669, 819-820, 868, 904.

that the Prosecution evidence is not credible or reliable, and that the evidence shows that the MDR was in opposition to the MRND and thus would not have participated in a joint ceremony.[393]

254. The Prosecution led evidence through Witness GHU about a joint MDR-MRND flag raising ceremony that Bicamumpaka allegedly attended in 1992 in Gatenzi sector, Gitarama prefecture. At the ceremony, Callixte Nzabonimana introduced Jérôme Bicamumpaka as a prominent party member but did not specify to which party Bicamumpaka belonged. Nzabonimana then told the crowd it must know the enemy that was "none other than the *Inyenzi*, and the *Inyenzi* is the Tutsi". Bicamumpaka did not address the audience.[394]

255. Bicamumpaka Defence Witness VF-1 heard about Nzabonimana coming to his sector in 1992 for a joint MDR-MRND flag raising ceremony. He could not provide details about the event because he did not attend.[395] Bicamumpaka denied participating in the flag raising ceremony, claiming that the MDR was in opposition to the MRND at this time, that there was animosity between the parties and, more specifically, that the MDR and MRND did not authorise any joint meetings.[396] This was corroborated by several Prosecution and Defence witnesses who testified that during the relevant time period the MDR was in opposition to Habyarimana's MRND.[397]

256. The Chamber notes Witness GHU was the sole witness to testify that Bicamumpaka attended a joint MDR-MRND flag raising ceremony in Gatenzi sector in 1992. This was the

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[393] Bicamumpaka Closing Brief, paras. 264-274; Bicamumpaka Closing Arguments, T. 3 December 2008 p. 35.
[394] Witness GHU, T. 4 March 2004 pp. 4-5, 7, 11-16.
[395] Witness VF-1, T. 18 October 2007 pp. 6, 19; Exhibit 3D160 (Witness VF-1's Personal Information Sheet). At the time of his testimony, he was detained pending trial for genocide charges. Witness VF-1, T. 18 October 2007 p. 5.
[396] Bicamumpaka, T. 18 September 2007 pp. 14-15; T. 2 October 2007 pp. 61-62. To support his claim that a joint ceremony as testified to by Witness GHU would not have taken place, Bicamumpaka provided examples of the animosity prevailing between the MDR and MRND parties from 1991 to 1994. *See, e.g.*, T. 17 September 2007 pp. 49-53; T. 4 October 2007 p. 5; Exhibit 3D20(F) (Document Issued by the MDR Party, Benelux Branch, entitled: *Le MRND et les violences au Rwanda*, June 1992) (alleges that 200 *Interahamwe* and Rwandan soldiers sabotaged an MDR rally held in Ruhengeri on 1 September 1991 by singing, shouting and throwing stones at the MDR participants); Bicamumpaka, T. 18 September 2007 pp. 13-15 (in his infamous 22 November 1992 speech, Leon Mugesera asked his audience to kill any MDR member who came to Gisenyi); Bicamumpaka, T. 8 October 2007 p. 66 (from 20 to 23 January 1993, members of the MRND *Interahamwe* attacked and destroyed the property of MDR members and the Bagogwe Tutsis in Ruhengeri) *and* Exhibit 3D23(F) (Document entitled "The MRND *Interahamwe* Militia Wreaks Havoc in Ruhengeri Prefecture", 26 January 1993).
[397] Prosecution Witness Isaie Sagahutu Murashi, a Tutsi former PL member, testified that the MDR was one of many opposition parties that allied themselves and seriously destabilised the Habyarimana regime. *See* Murashi, T. 9 June 2004 pp. 4, 23-24, 51-52; T. 10 June 2004 pp. 20-21. Prosecution Witness GLP, a Hutu MDR official at the commune level, testified that, at the time the transitional government was established on 16 April 1992, the MDR opposed the MRND. Moreover, on 19 January 1993, *Interahamwe* in Ruhengeri attacked opposition members, including MDR, following a 15 November 1992 speech by Habyarimana. *See* Witness GLP, T. 22 June 2004 pp. 21, 29; T. 24 June 2004 pp. 31-32; *see also* Exhibit P60 (Witness GLP's Personal Information Sheet). Mugenzi Defence Witness Pius Betabura, a Hutu MDR official, testified that Bicamumpaka was a strong critic of Habyarimana in 1991 and 1992 and that the MDR was the main opposition party at that time. *See* Betabura, T. 1 December 2005 pp. 22, 42, 51-52, 66, 78. Bicamumpaka Defence Witness Jean Marie Vianney Nkezebera, a founding member of the MDR, and MDR vice-president in Kigali in August 1992, testified that from April 1992 to April 1993, President Habyarimana feared the MDR party the most as it was the strongest party and he did his best to make their lives difficult. *See* Nkezabera, T. 31 October 2007 pp. 46, 51, 63; T. 1 November 2007 pp. 29, 31.

first time Witness GHU had seen Bicamumpaka, and the identification was hearsay.[398] He offered no further testimony as to when in 1992 the ceremony occurred. The Chamber observes that Witness GHU testified that the MDR party programme was "to kill people", to hunt down and persecute the Tutsis.[399] However, the trial record, including the Preliminary Draft MDR Manifesto relied on by Bicamumpaka, does not support Witness GHU's assertion that the MDR programme was to kill or otherwise persecute Tutsis in 1992.[400]

257. Of greater significance, evidence of Prosecution and Defence witnesses, as well as contemporaneous documents, shows that, at least in 1992, the MDR was in opposition to the MRND.[401] This raises considerable doubt as to whether the two parties would have held a joint flag-raising ceremony at that time. Indeed, in his 24 January 2000 statement to Tribunal investigators, Witness GHU described the MDR as an "opposition party" at the time of the flag raising.[402] The Chamber further notes that in describing an MDR flag-raising ceremony in his prior statement, Witness GHU made no mention of the MRND. When confronted with these inconsistencies, Witness GHU denied that the MDR was in opposition to the MRND in 1992 and denied saying this to Prosecution investigators. He offered no explanation for the discrepancy other than that there was "confusion at the end".[403] The Chamber does not consider this to be a convincing explanation.

258. Furthermore, the Chamber places little weight on the general corroboration Witness VF-1 offered to Witness GHU's evidence. All the details the witness supplied about the event were mere affirmations of leading questions posed by Prosecution Counsel. Many of the questions were compound.[404] Consequently, the witness's hearsay evidence, from an unidentified source, is of minimal probative value.

259. Given the foregoing concerns, the Chamber declines to rely on Witness GHU's uncorroborated and general testimony regarding this event. The Prosecution has not proven beyond reasonable doubt that Bicamumpaka attended a joint MDR-MRND flag raising ceremony at an unspecified point in 1992. In light of these findings, the Chamber need not consider Bicamumpaka's arguments regarding notice or revisit its decision denying admission of the statement of Faustin Nyagahima.[405]

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[398] Witness GHU, T. 4 March 2004 pp. 4-6, 11-12, 21.
[399] Witness GHU, T. 4 March 2004 pp. 3, 11.
[400] Exhibit 3D18 (Statute and Summary of the MDR's Political Agenda, 2 July 1991).
[401] Prosecution Witness GLP and Defence Witnesses Jean Marie Vianney Nkezabera and Pius Betabura gave clear and consistent evidence that the MDR was in opposition to the MRND in 1992. Prosecution Witness Isaie Sagahutu Murashi also gave evidence that the MDR opposed the MRND, but did not specify the timing. Moreover, Exhibit 3D20, a public letter issued in Belgium from the MDR Benelux Section dated June 1992, denouncing the intimidation and threats that the MDR and other political parties were facing from the MRND supports Bicamumpaka's position that there was significant animosity between the MDR and MRND, at least from June 1991 until June 1992. While Bicamumpaka has an incentive to downplay any cooperation between the MRND and MDR, the Chamber nevertheless notes that his testimony is consistent with this evidence.
[402] Witness GHU, T. 4 March 2004 p. 15; Exhibit 3D3 (Witness GHU's Statement, 24 January 2000). The statement reads, in relevant part: "I met Mr Jérôme BICAMUMPAKA for the first time in 1992 when he came to our *secteur* together with Mr Callixte NSABONIMANA to mount the flag of the Mouvement Démocratique Républicain (MDR), at that time an opposition party".
[403] Witness GHU, T. 4 March 2004 pp. 13-16.
[404] Witness VF-1, T. 18 October 2007 p. 5.
[405] *See* Bicamumpaka Closing Brief, paras. 264-266, 271, 274; *see also* Decision on Jérôme-Clément Bicamumpaka's Motion For the Statement of the Deceased Witness, Faustin Nyagahima, to be Accepted as Evidence (TC), 30 May 2007.

3.3 Rally at Nyamirambo Stadium, Kigali, 23 October 1993

260. The Prosecution alleges that, by late 1993, Hutus within parties initially established in opposition to the MRND, such as the MDR, were enticed by policies of ethnic division to form power factions and align with the MRND. These efforts were galvanised by the assassination of the Hutu Burundian president, Melchior Ndadaye.[406] Specifically, Froduald Karamira, the MDR's Second Vice-Chairman, gave a speech at a rally in Nyamirambo on 23 October 1993, after Ndadaye's death, in which he called for "Hutu Power" and for the people to "work", which was understood to mean killing Tutsis.[407] The Prosecution also alleges that Mugenzi attended the rally and that Bicamumpaka was involved in its preparation.[408]

261. The Bicamumpaka Defence submits that the Prosecution evidence is inconsistent and unreliable and does not amount to criminal conduct.[409] The Mugenzi Defence denies that Mugenzi or any other formal PL representative attended the rally on 23 October 1993.[410]

262. It is not disputed that, in the wake of the assassination of the Hutu Burundian President, Melchior Ndadaye, several Rwandan political parties, variously identified as the MRND, MDR and CDR, held a joint rally at Nyamirambo stadium on 23 October 1993.[411] Froduald Karamira, the MDR's Second Vice-Chairman, gave a speech during it.[412] Although only Nkezabera attended the rally, Uwizeye, Witness D, Higiro, Witness GMJ-G, Bicamumpaka, Turatsinze and Karuhije testified that they heard Karamira's speech on the radio or otherwise learned of it.[413]

263. Contemporaneous recordings reflect that Karamira claimed that verified reports implicated the RPF and Paul Kagame in the killing of the democratically elected Hutu leader.

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[406] Indictment, para. 1.14; Prosecution Closing Brief, paras. 43, 73-74, 819-820; Prosecution 21 November 2008 Document, Item Nos. 1, 12; Prosecution Closing Arguments, T. 4 December 2008 pp. 84-86; T. 5 December 2008 pp. 2-5, 24-25.

[407] Prosecution Closing Brief, paras. 76-77, 546-547, 915-916; Prosecution 21 November 2008 Document, Item No. 14.

[408] Prosecution Pre-Trial Brief, para. 247; Prosecution Closing Brief, paras. 472-473, 546, 666, 817-835, 914, 931.

[409] Bicamumpaka Closing Brief, paras. 617-636.

[410] Mugenzi Closing Brief, paras. 1142-1148; Mugenzi, T. 8 November 2005 pp. 12-13.

[411] Des Forges, T. 31 May 2005 pp. 42, 46-47; T. 1 June 2005 p. 60; Exhibit P101(E) (Expert Report of Alison Des Forges) p. 21; Uwizeye, T. 5 April 2005 pp. 15-19, 21; T. 7 April 2005 p. 19; T. 12 April 2005 pp. 12-13; T. 13 April 2005 pp. 17-19; Witness D, T. 15 June 2004 p. 12; T. 16 June 2004 pp. 62-63, 65; T. 17 June 2004 p. 15; Higiro, T. 26 January 2004 pp. 33-34; T. 29 January 2004 pp. 27-31; T. 30 January 2004 pp. 25-27; Bicamumpaka, T. 20 September 2007 pp. 10, 38-40; T. 9 October 2007 pp. 32-34; Nkezabera, T. 31 October 2007 pp. 64-66; T. 1 November 2007 pp. 25, 40-42, 50; Betabura, T. 1 December 2005 pp. 29-33, 43-45, 54, 62; T. 5 December 2005 pp. 8-9; Witness WFQ3, T. 25 January 2007 pp. 13-16; T. 29 January 2007 pp. 7, 10-14; Turatsinze, T. 12 April 2006 pp. 66-67, 69-70; T. 18 April 2006 pp. 4-5; T. 19 April 2006 pp. 29-33; Karuhije, T. 5 November 2007 pp. 14-17, 27-29, 43-44; T. 6 November 2007 pp. 2, 18, 22-25, 42-47; Mbonyinkebe, T. 3 May 2005 pp. 40-42; Exhibit P95 (Mbonyinkebe's Expert Report) pp. 12, 30 (referring to the assassination of Ndadaye by Tutsi soldiers).

[412] The Chamber notes that certain English transcripts erroneously refer to "Karemera" rather than "Karamira". *Compare* Higiro, T. 26 January 2004 pp. 33-34; T. 30 January 2004 p. 31, *and* T. 29 January 2004 pp. 27, 30.

[413] Uwizeye, T. 5 April 2005 pp. 16-17, 21-22; Witness D, T. 15 June 2004 p. 12; T. 16 June 2004 pp. 62-63, 65; T. 17 June 2004 p. 15; Higiro, T. 26 January 2004 pp. 33-34; T. 29 January 2004 pp. 27-31; T. 30 January 2004 pp. 25-27; Witness GMJ-G, T. 5 March 2004 pp. 28-30; T. 8 March 2004 pp. 23-30; Bicamumpaka, T. 20 September 2007 pp. 10, 38-40; T. 9 October 2007 pp. 32-34; Turatsinze, T. 12 April 2006 pp. 66-67, 69-70; T. 18 April 2006 pp. 4-5; T. 19 April 2006 pp. 29-33; Karuhije, T. 5 November 2007 pp. 14-17, 27-29, 43-44; T. 6 November 2007 pp. 2, 18, 22-25, 42-47.

Thus, Karamira charged that the RPF – the party that had demanded democratic inclusion in Rwanda – had undermined it in Burundi. Under the circumstances, Kagame's and the RPF's participation in the Arusha peace negotiations could not be genuine.[414]

264. Karamira spoke of several occasions when Faustin Twagiramungu, a former collaborator within the MDR, was referred to as an *Inyenzi*. He also stated that Gasana's wife had spent years with the *Inkotanyi* and that she vowed not to return to Rwanda until they were victorious. Similarly, he called fellow MDR party leader Agathe Uwilingiyimana's opposition to the rally "*Inyenzi* behaviour".[415]

265. Karamira called for every Hutu living in Rwanda to "rise up" and warned that his words were not to simply "stir people up" but to "unite" them, to have "training" started and that "work" should be done to know the "enemy … among us".[416] Karamira warned against just fighting Tutsis that are met in the street, but of *Inkotanyi* infiltration that would allow them to arrive on Rwandans' doorsteps without warning.[417] Karamira concluded that Hutus should avoid fighting each other and referred to a slogan within the MDR that could be used for every Hutu to demonstrate his or her power. He ended his address with chants of "MRND-power", "MDR-power", "CDR-power" and "Hutu-power".[418] Witness D was the

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[414] Exhibit P2(15)(E & F) (Froduald Karamira Speech in Nyamirambo, 23 October 1993) p. 1.
[415] Exhibit P2(15)(E & F) (Froduald Karamira Speech in Nyamirambo, 23 October 1993) pp. 2, 4.
[416] Exhibit P2(15)(E & F) (Froduald Karamira Speech in Nyamirambo, 23 October 1993) pp. 1, 3.
[417] Exhibit P2(15)(E & F) (Froduald Karamira Speech in Nyamirambo, 23 October 1993) p. 3.
[418] Exhibit P2(15)(E & F) (Froduald Karamira Speech in Nyamirambo, 23 October 1993); Nkezabera, T. 31 October 2007 pp. 65-66, T. 1 November 2007 pp. 13-14, 42-43 (Nkezabera, who attended the rally, testified that Karamira said he believed the Tutsi military had killed Ndadaye and ended his remarks with "MRND-power, MDR-power, CDR-power and Hutu-power"); Uwizeye, T. 5 April 2005 pp. 15-19, 21, T. 7 April 2005 p. 19, T. 12 April 2005 pp. 12-13, T. 13 April 2005 pp. 17-19 (testified that Karamira called on Hutus from various political parties to unite and fight the RPF and Tutsis generally and used phrases such as "Hutu-Power", "MDR-Power" and "CDR-Power"); Witness D, T. 15 June 2004 p. 12, T. 16 June 2004 pp. 62-63, 65, T. 17 June 2004 p. 15 (testified that Karamira stated "MDR-Power, PSD-Power, PL-Power"); Higiro, T. 26 January 2004 pp. 33-34, T. 29 January 2004 pp. 27-31, T. 30 January 2004 pp. 25-27 (testified Karamira's message was that Tutsis had killed the Burundian President and that Hutus in Rwanda must fight the enemy, and Karamira used references to "Hutu-power", "MRND-power", "MDR-power" and "*Interahamwe*-power"); Witness GMJ-G, T. 5 March 2004 pp. 28-30, T. 8 March 2004 pp. 23-30 (testified that Karamira referred to parties such as "MRND-Power" and "CDR-Power"); Bicamumpaka, T. 20 September 2007 pp. 41-42, 44-45, T. 24 September 2007 pp. 41-44, T. 4 October 2007 p. 21, T. 9 October 2007 pp. 33-34, 36-37, 41-50, 53 (testified that Karamira's improvised speech called for Rwandan Hutus to help Burundian Hutus and referred to PARMEHUTU blood); Mugiraneza, T. 21 May 2008 pp. 39-40, T. 3 June 2008 pp. 53-54 (testified that Karamira's speech called for an end to divisions among Hutus and that they stand apart from the Tutsis); Betabura, T. 1 December 2005 pp. 32-33, 43-45, 54, 62, T. 5 December 2005 pp. 8-9 (recalled Karamira's address where he stated "MDR-power" and the crowd responded "Power, Power"); Turatsinze, T. 12 April 2006 pp. 66-67, 69-70, T. 18 April 2006 pp. 4-5, T. 19 April 2006 pp. 29-33 (testified Karamira called for Hutu solidarity and used phrases like "MDR power", "CDR power" and "*Interahamwe* power", which supported the concept of "Hutu power"); Karuhije, T. 5 November 2007 pp. 14-17, 27-29, 43-44, T. 6 November 2007 pp. 2, 18, 22-25, 42-47 (testified he learned that Karamira gave a speech that used the expression "power", a term used by the MDR to reflect the party's strength and pride in the face of President Habyarimana's attempts to weaken it); Des Forges, T. 31 May 2005 pp. 42, 46-47 (testified that Karamira blamed the assassination of the Burundian President on the RPF and Kagame and urged Hutu to "work"); Exhibit P101(E) (Expert Report of Alison Des Forges) p. 21. *But see* Witness WFQ3, T. 25 January 2007 pp. 13-16, T. 29 January 2007 pp. 7, 10-14 (testified that he did not remember Karamira using the expression "Hutu-power").

sole witness to testify about hearing "PL-Power".[419] Des Forges and Witness GMJ-G testified there was no mention of the PL in Karamira's speech.[420]

266. Prosecution Witnesses Uwizeye, Higiro and GMJ-G, as well as Mugenzi and Betabura testified that Karamira's speech and use of "Hutu-power"/"MRND-power"/"MDR-power" was inflammatory and promoted ethnic discrimination of Tutsis.[421] In contrast, according to Bicamumpaka and Bizimungu Defence Witness WFQ3, while the MDR used the term "power", it referred to taking power peacefully through elections.[422] Notwithstanding, Bicamumpaka and Witness WFQ3 testified that Karamira's use of "Hutu-power" and similar combinations were not approved by the MDR.[423] Indeed, Defence evidence shows that Karamira was criticised for his speech on the very day of the rally.[424] Karamira was also subsequently called before the MDR's political bureau in Kigali where, according to Bicamumpaka, Karamira was given an internal reprimand for his remarks. Bicamumpaka and Nkezabera testified that Karamira acknowledged his mistake and asked for forgiveness.[425] According to Nkezabera, the MDR did not take any other remedial

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[419] Witness D, T. 15 June 2004 p. 12; T. 16 June 2004 pp. 62-63, 65; T. 17 June 2004 p. 15.
[420] Des Forges, T. 1 June 2005 pp. 60, 62-64; Witness GMJ-G, T. 5 March 2004 pp. 28-30; T. 8 March 2004 pp. 23-30. *See also* Exhibit P2(15)(E & F) (Speech made by Karamira in Nyamirambo, 23 October 1993) p. 4.
[421] Uwizeye, T. 5 April 2005 pp. 15-19, 21, T. 7 April 2005 p. 19, T. 12 April 2005 pp. 12-13, T. 13 April 2005 pp. 17-19 (testified that the speeches given provoked ethnic discrimination and incitement to hate Tutsis, using phrases such as "Hutu-Power", "MDR-Power" and "CDR-Power"); Higiro, T. 26 January 2004 pp. 33-34, T. 29 January 2004 pp. 27-31, T. 30 January 2004 pp. 25-27 (testified references to "Hutu-power", "MRND-power", "MDR-power" and "*Interahamwe*-power" stirred underlying animosity towards Tutsis); Witness GMJ-G, T. 5 March 2004 pp. 28-30, T. 8 March 2004 pp. 23-30 (testified Karamira's speech signalled splits among opposition parties and the formation of power factions supporting ethnic discrimination previously only practiced by the MRND and CDR parties); Mugenzi, T. 8 November 2005 pp. 12-15, 17 (characterised Karamira's speech as inciting and aggressive toward Tutsis); Betabura, T. 1 December 2005 pp. 32-33, 43-45, 54, 62, T. 5 December 2005 pp. 8-9 (testified that Karamira's words shocked him); Turatsinze, T. 12 April 2006 pp. 66-67, 69-70, T. 18 April 2006 pp. 4-5, T. 19 April 2006 pp. 29-33 (felt that Karamira's message promoted division and fighting based on ethnicity).
[422] Bicamumpaka, T. 20 September 2007 pp. 42-45, T. 24 September 2007 pp. 42-44, T. 9 October 2007 p. 47 (the term "power" related to the Xhosa word "*Amandla*" used by Nelson Mandela and the African National Congress during the anti-apartheid movement but the RPF imbued the word with a more sinister meaning); Witness WFQ3, T. 25 January 2007 pp. 13-16; T. 29 January 2007 pp. 7, 10-14.
[423] Bicamumpaka, T. 20 September 2007 pp. 42-45, T. 24 September 2007 pp. 42-44, T. 9 October 2007 p. 47 (the "Hutu-power" ideology did not hold sway with the MDR's leadership and was not discussed among the party's political bureau); Witness WFQ3, T. 25 January 2007 pp. 13-16, T. 29 January 2007 pp. 7, 10-14 (testified that if Karamira had used the expression "Hutu-power", this slogan was not approved or officially recognised by the MDR's political bureau).
[424] Bicamumpaka, T. 20 September 2007 pp. 41-42, 44-45, T. 24 September 2007 pp. 41-44, T. 4 October 2007 p. 21, T. 9 October 2007 pp. 33-34, 36-37, 41-50, 53 (testified that after the speech Karamira went to the nearby home of an MDR official where he was criticised for his speech); Nkezabera, T. 31 October 2007 pp. 67-69, T. 1 November 2007 pp. 42-43 (testified Karamira came to his home after the rally and Nkezabera told Karamira that his statements advocating "Hutu-power" and ethnic divisions diluted Nkezabera's remarks at the rally calling for democracy); Uwizeye, T. 5 April 2005 pp. 20-21, T. 7 April 2005 p. 19, T. 12 April 2005 pp. 12-13, T. 13 April 2005 pp. 17-19 (testified he telephoned Karamira afterward and expressed his disagreement stating that he would leave the MDR if this was the party's new trend to which Karamira responded Uwizeye was an "imbecile" and could be removed "as we put you in").
[425] Bicamumpaka, T. 20 September 2007 pp. 41-42, 44-45, T. 24 September 2007 pp. 41-44, T. 4 October 2007 p. 21, T. 9 October 2007 pp. 33-34, 36-37, 41-50, 53 (testified Karamira explained that he got carried away, blaming the crowd for joining his utterance of "Hutu" with their response of "power" to make "Hutu-power"); Nkezabera, T. 31 October 2007 pp. 67-69, T. 1 November 2007 pp. 42-43 (testified Karamira acknowledged that he had made a mistake).

measures against Karamira.[426] Betabura also testified he learned that Karamira was reprimanded for his speech but offered no further details.[427] The Chamber views this self-serving evidence as having questionable reliability.

267. Given the context in which Karamira's speech was given – namely following the assassination of the Hutu Burundian President by a Tutsi-led military and the analogous ethnic concerns in Rwanda – the Chamber considers Karamira's speech as menacing and inflaming ethnic divisions. It identified factions within the political parties, including the MDR, that ultimately aligned with "Hutu-power". Furthermore, it warned of infiltration and closely associated the RPF with Tutsis generally. The Chamber has elsewhere considered that, in the context of the genocide, "work" was interpreted in some instances as killing Tutsis (II.9.2).

268. As to the attendees, although Prosecution Witness D was not present, he testified that Mugenzi attended the gathering.[428] Although Higiro did not hear Mugenzi speak on the radio, he recalled that the broadcast reported Mugenzi had addressed the gathering.[429] In contrast, Mugenzi, Mugenzi Defence Witnesses Betabura and Turatsinze and Bicamumpaka Defence Witness Nkezabera testified that Mugenzi did not attend the rally.[430] Bizimungu Defence Witness WFQ3 did not recall any PL representatives being present.[431] Betabura testified that no one spoke on behalf of the PL.[432] The Prosecution evidence is hearsay and insufficient to support findings beyond reasonable doubt.

269. As to the Accused's individual involvement, there was no evidence that Bizimungu, Mugenzi or Mugiraneza were directly involved in preparing Karamira's speech. As for Bicamumpaka, the Chamber notes that Bicamumpaka distanced himself from Karamira after the speech, although he continued to work with Karamira within the MDR party as divisions within it were forming. While this could demonstrate that Bicamumpaka adhered to Karamira's view, this is not the only reasonable inference. The Bicamumpaka Defence has offered evidence that, notwithstanding his continued alliance with the MDR, breaks within the party were not driven by ethnic divisions but rather political infighting due to attempts by persons within the MDR to occupy posts in the transitional government without proper authority (II.4.1).

270. The Chamber considers that this event is critical in understanding the developing conflict within Rwanda prior to the genocide. This is but one instance reflecting considerable doubts within Rwanda about the RPF's desire to peacefully integrate. Here, Karamira sought

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[426] Nkezabera, T. 31 October 2007 pp. 67-69; T. 1 November 2007 pp. 42-43.
[427] Betabura, T. 1 December 2005 pp. 32-33, 43-45, 54, 62; T. 5 December 2005 pp. 8-9.
[428] Witness D, T. 15 June 2004 p. 12; T. 16 June 2004 pp. 62-63, 65; T. 17 June 2004 p. 15.
[429] Higiro, T. 26 January 2004 pp. 33-34; T. 29 January 2004 pp. 27-31; T. 30 January 2004 pp. 25-27.
[430] Mugenzi, T. 8 November 2005 pp. 12-15, 17 (testified that neither he nor other PL representatives were invited to the rally since the PL had been accused of supporting Twagiramungu's MDR faction, which Karamira opposed, and had Mugenzi or other formal PL representatives attended the rally, they would have been officially recognised); Betabura, T. 1 December 2005 pp. 32-33, 43-45, 54, 62, T. 5 December 2005 pp. 8-9 (testified Mugenzi and Bicamumpaka were not at the rally); Turatsinze, T. 12 April 2006 pp. 66-67, 69-70, T. 18 April 2006 pp. 4-5, T. 19 April 2006 pp. 29-33 (testified that Mugenzi told him Mugenzi did not attend the rally and that Mugenzi believed the speech was extremist and would create divisions); Nkezabera, T. 31 October 2007 pp. 65-66, T. 1 November 2007 pp. 13-14, 42-43 (Nkezabera, who attended the rally, testified that Mugenzi did not attend the rally and would not have come given his support for Twagiramungu).
[431] Witness WFQ3, T. 25 January 2007 pp. 13-16; T. 29 January 2007 pp. 7, 10-14.
[432] Betabura, T. 1 December 2005 pp. 32-33, 43-45; T. 5 December 2005 pp. 7-9.

to encourage protection of Rwandan sovereignty by promoting political ideology based on ethnic division. "Training" and "work" to prevent *Inkotanyi* infiltration were to be undergone. Suffice it to say, it would be reasonable to conclude that Karamira's words, read in their entirety, would allow listeners to broadly define the *Inkotanyi* threatening infiltration as Tutsis generally. The Chamber has elsewhere considered evidence pertaining to the arming and training of civilians in this context (II.2.1). Some of this evidence tends to corroborate the broad definitions ascribed to the enemy.

271. Notwithstanding, the Prosecution evidence linking any of the Accused with this speech is contested or circumstantial. The Prosecution has not proved beyond reasonable doubt that Mugenzi attended or that Bizimungu, Bicamumpaka or Mugiraneza were otherwise involved or associated with the joint rally at Nyamirambo on 23 October 1993. The Chamber cannot conclude that Bicamumpaka's continued role within the MDR party and coordination with Karamira necessarily reflect that he adopted Karamira's views.

272. Indeed, the Chamber recalls the considerable evidence on the record that indicates that both before and after the Nyamirambo rally in October 1993, numerous MDR leaders, including Bicamumpaka, Karamira and Murego, on behalf of the MDR respectively wished to reconcile the emerging factions within the party and endeavoured to advance and settle the Arusha negotiations.[433] The Chamber considers such evidence as raising doubts about Prosecution evidence that Bicamumpaka and others within the MDR leadership were creating lists of persons to be killed (II.4.1).

273. Based on the foregoing, the Chamber cannot conclude that this event in isolation, or considered in the context of the rest of the Prosecution case, reflects that any of the Accused

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[433] *See* Exhibit 3D29(E) (Decision of the MDR Political Bureau Following the Appointment of Agathe Uwilingiyimana as Prime Minister) p. 2 ("The MDR Political Bureau reaffirms its firm support for the peace process and the democratic process ... and states that the MDR will participate in the broad based transitional government responsible for the implementation of the Peace Accords."); Exhibit 3D33(E) (Minutes of the Kabusunzu Congress) pp. 6 ("The National Congress of the [MDR] ... reaffirms the MDR's commitment to ideals of peace and democracy ... urgently requests the President of the Republic to expedite the signing of the Peace Accord ... ."), 7 ("Affirms that the MDR will participate in the broad-based transitional government in accordance with the draft agreement on power-sharing signed in Arusha on 30 October 1992 and on 9 January 1993."); Exhibit 3D38(F) (MDR Telegram, signed by Karamira and Murego, 2 August 1993) p. 1 (an excerpt of which reads: "*Le parti MDR, l'une des pièces maitresses de l'accord de paix d'Arusha exprime sa pleine satisfaction quant a l'aboutissement heureux des négociations de paix entre gouvernement rwandais et FPR et exprime ses remerciements au facilitateur, pays et organismes observateurs.*"); Exhibit 3D39(F) (Approved Statement of the Meeting of the Ruhengeri Secretariat, 14 August 1993) (an excerpt of which reads: "*Le Secrétariat du partie M.D.R. condamne avec énergie, toute politique qui serait basée sur le régionalisme, sur l'ethnisme, ainsi que sur tout autre forme contraire aux principes fondamentaux de la démocratie, en particulier la politique fondée sur le népotisme quelle que soit son origine*"; the statement also reaffirmed the party's commitment to returning refugees to Rwanda and its aim of peaceful coexistence and unity among Rwandans); Exhibit 3D52(E) (Meeting of the Catholic and Protestant Churches of Rwanda and the Representatives of the MDR Party, 3 December 1993) (indicating that the MDR's leadership, including Bicamumpaka, attempted to mediate with Twagiramungu in order to resolve their issues in December that year); Exhibit 2D41(F) (MDR *Communiqué* Signed by Dismas Nsengiyaremye, Froduald Karamira and Donat Murego, 12 January 1994); T. 24 September 2007 pp. 30-32 (English translation); Exhibit 3D65(F) (Radio Rwanda Broadcast, 19 January 1994) pp. 6-7; Exhibit 3D62(F) (Radio Rwanda Broadcast, 5 January 1994) p. 20 (shows that Bicamumpaka attended the swearing-in ceremony of ministers of the transitional government despite requests to boycott it by leaders of the parties, including the MDR); Exhibit 3D74(E) (Radio Rwanda Broadcast, 20 February 1994) (statements made by Karamira, Murego or Nsengiyaremye on behalf of the MDR in early 1994 indicating the party's commitment to the peace process and occasional dissatisfaction with obstructions to its implementation).

possessed genocidal intent or were involved in plans to commit genocide that formed prior to 1994.

3.4 Meeting at Baobab Hotel, Nyamirambo, November 1993

274. The Prosecution alleges that Bicamumpaka attended a meeting at the Baobab hotel in Nyamirambo in November 1993 during which he stated that he was against peace with the Tutsis and insisted that the Hutus must fight the Tutsis.[434] The Bicamumpaka Defence argues that it did not receive adequate notice of this allegation, which is outside the temporal jurisdiction of the Tribunal. Moreover, the Prosecution evidence lacks credibility as Bicamumpaka supported the Arusha Peace Accords.[435]

275. The Prosecution led evidence through Witness GHR about a chance meeting with Bicamumpaka at the Baobab hotel in November 1993. Witness GHR testified that he was with Joseph Kayitare and Witness OG4, a good friend. Witness OG4 introduced the newcomer as Jérôme, whom Witness GHR did not previously know. Bicamumpaka joined them and over drinks they discussed the war and the agreement between the RPF and the Rwandan government. Bicamumpaka asked angrily, "[h]ow can you enter into an agreement with such people? ... Surely we should keep on fighting instead of abiding by the agreement," which frightened the witness causing him to leave. As he left the table, he heard Bicamumpaka say, "[n]o wonder you sit with them, since you can go to an agreement with such a person". Witness GHR understood "them" to refer to Tutsis. He also thought Bicamumpaka knew he was a Tutsi from the way he looked at him and from the fact that he talked about "signing an agreement with such people". The encounter lasted 15 minutes.[436]

276. In contrast, Bicamumpaka Defence Witness OG4 testified that he left Rwanda with his wife on 15 April 1993 and never returned. He denied ever having met Bicamumpaka or Witness GHR, or having met them at Baobab hotel in November 1993.[437] Bicamumpaka also denied knowing or having met either Witness GHR or Witness OG4.[438]

277. Witness GHR's evidence on this allegation is uncorroborated. His identification of Bicamumpaka is hearsay, identified merely as "Jérôme", and he had never met the Accused prior to this event. Furthermore, Witness GHR's statement to Tribunal investigators states the meeting took place in December 1993. When confronted by this discrepancy the witness repeated that the meeting took place in November 1993 but on further questioning said it was December 1993.[439]

278. Turning to the Defence evidence, the Chamber considers Bicamumpaka's blanket denial that the event occurred. Furthermore, Witness OG4 denied being in Rwanda in November 1993, although he accepted that people could cross these countries' borders at their own risk without any form of authorisation.[440] Given the self-interested nature of the Defence evidence, it is not dispositive. However, the Chamber is not convinced that Witness

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[434] Prosecution Closing Brief, paras. 72, 253; Prosecution 21 November 2008 Document, Item No. 11.
[435] Bicamumpaka Closing Brief, paras. 292-296; Bicamumpaka Closing Arguments, T. 3 December 2008 pp. 64-65.
[436] Witness GHR, T. 18 March 2004 pp. 40-44; T. 19 March 2004 pp. 25, 27-30.
[437] Witness OG4, T. 16 October 2007 pp. 39, 42-43, 57-58.
[438] Bicamumpaka, T. 2 October 2007 p. 62.
[439] Witness GHR, T. 18 March 2004 p. 41; T. 19 March 2004 pp. 25-27.
[440] Witness OG4, T. 16 October 2007 p. 54.

GHR's evidence pertaining to his meeting with Bicamumpaka is sufficiently reliable to support findings beyond reasonable doubt.

279. Moreover, even if the Chamber were to accept Witness GHR's evidence placing Bicamumpaka at Baobab hotel, contrary to the Prosecution case, Witness GHR did not give evidence that Bicamumpaka said that Hutus must fight Tutsis. Rather, he testified that "they" should keep fighting instead of abiding by the Arusha Accords, without defining who "they" were. The record before the Chamber demonstrates that since the recommencement of hostilities in 1990, references to the RPF-*Inkotanyi* often were meant and interpreted to indicate Tutsis generally. In the Chamber's view, Witness GHR's interpretation that "they" meant Tutsis in the context of ongoing Arusha Accords negotiations is reasonable. However, the timing and context of this alleged event allow for several other reasonable interpretations, including fighting to reject the RPF's role within the proposed broad-based transitional government. Consequently, the Chamber could not conclude that the only reasonable interpretation would be that Bicamumpaka intended to encourage attacks on Tutsi civilians. In light of the foregoing, the Chamber need not address whether sufficient notice was provided for this event.

3.5 The Split of the *Parti Libéral*

280. The Indictment alleges that in 1993 Mugenzi became anti-Tutsi and split the *Parti Libéral* ("PL") along ethnic lines, forming a "Hutu power" faction within the party. He began advocating against Tutsi membership in the PL and advocating against any power sharing with Tutsis under the Arusha Accords.[441]

281. Mugenzi acknowledges that there was a split in the PL, but submits that the split was about politics, not ethnicity, and that Tutsis continued to support his faction. He claims the split was caused by Landoald Ndasingwa's disappointment over not being appointed the PL candidate for Speaker of the Transitional National Assembly ("TNA"). Mugenzi further submits that he was concerned that some PL members were in reality RPF supporters, and that this contributed to the split. In addition, Mugenzi submits that the only reference to the PL in the Indictment is "to the effect that Justin Mugenzi led the Hutu Power faction of the PL".[442]

282. Much of the relevant background concerning the split of the PL is undisputed or supported by unchallenged Defence evidence, including contemporaneous documents.[443]

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[441] Indictment, para. 4.7; Prosecution Pre-Trial Brief, paras. 22-23 (p. 9), 180 (p. 40); Prosecution Closing Brief, paras. 43, 67, 79; Prosecution 21 November 2008 Document, Items Nos. 1, 8.
[442] Mugenzi Closing Brief, paras. 1011-1063.
[443] The Chamber admitted a number of contemporaneous documents introduced by Mugenzi that are relevant to the split in the PL. *See, e.g.*, Exhibits 2D3, 2D77 *and* 2D93(E & F) (*Liste des Congressistes qui ont Participé au Premier Congrès National du Parti Libéral du 11 au 12 Décembre 1993*); Exhibit 2D7 (Excerpt from *Isibo* magazine); Exhibit 2D10 (Mugenzi Cartoon); Exhibit 2D11 (*Kangura* No. 26); Exhibit 2D12 (Joint *communiqué* between the Democratic Forces for Change – MDR, PL, PSD – and the RPF, 3 June 1992); Exhibit 2D15 (Excerpt from *Imbaga* Magazine); Exhibit 2D16(E & F) (Decision of the PL Executive Committee, 21 November 1993); Exhibits 2D17 *and* 2D92(E & F) (PL Executive Committee meeting minutes, 7 September 1993); Exhibit 2D18(E & F) (Excerpts from Report by André Guichaoua); Exhibit 2D19(E & F) (Excerpt from *Isibo* magazine); Exhibit 2D20(E & F) (Note to the President of the Republic on the Problem of Security, 24 May 1993); Exhibit 2D21(E & F) (Letter to the President of the Republic, 27 March 1993); Exhibit 2D22(E & F) (PL Manifesto); Exhibit 2D36(E & F) (Mugenzi's Speech at PL Meeting, 29 July 1993); Exhibit 2D81(F & K) (Excerpt from PL manifesto); Exhibit 2D82(E & K) (Excerpt from *Isibo* magazine); Exhibit 2D83(E & F)

283. The PL was formed in 1991 with a platform dedicated to the promotion of freedom for all Rwandans and opposed to the discriminatory policies of the Habyarimana regime. Mugenzi was the PL Chairman and, along with Landoald Ndasingwa, Agnès Ntamabyaliro and Stanislas Mbonampeka, a member of the party's Executive Committee. In late 1991, the opposition parties were incorporated into the government and the PL was assigned three ministries. Under this arrangement, Ndasingwa became the Minister of Labour and Social Affairs, Ntamabyaliro became the Minister of Trade and Mbonampeka became the Minister of Justice. With respect to the war, the PL supported negotiations with the RPF, the right of return for Rwandans living outside the country and a ceasefire between the combatants. At least until mid-1993, Mugenzi was vocal in his opposition to the abuses of President Habyarimana's MRND, so much so, in fact, that many witnesses viewed his opposition as the cause for the killing of David Gatera, Mugenzi's brother.[444]

284. Mbonampeka resigned from his post as Minister of Justice on 30 November 1992. The PL proposed that Agnès Ntamabyaliro take over as Minister of Justice and that Mugenzi take up her post as Minister of Trade. President Habyarimana failed to act on these recommendations until June 1993, refusing to appoint Mugenzi as Minister of Trade and leaving the Minister of Justice post vacant during that time.[445]

285. In a speech delivered at a PL meeting held on 29 July 1993, Mugenzi celebrated the success of the peace negotiations between the Rwandan government and the RPF. He expressed hope that peace would mean the end of ethnic strife in Rwanda and the beginning of national reconciliation. He referred to abuses suffered by PL members and noted that Tutsis were targeted "with special emphasis". Mugenzi then addressed criticisms by PL members concerning party decisions regarding negotiations between the government and the RPF. Mugenzi stressed that persons who joined the PL "in the hope of finding an ethnic regrouping" were mistaken, as were those who thought that the size of their ethnic group within the party would give them special treatment. He suggested that those persons "adhere to the party ideology of liberation or find another organisation which could better serve their interests".[446]

(Letter from Stanislas Mbonampeka to Rwandan public prosecutor, 25 November 1992); Exhibit 2D84(E & F) (Mbonampeka's resignation letter, 30 November 1992); Exhibit 2D85(E & K) (Excerpt from *Imbaga* Magazine); Exhibit 2D86 (Mugenzi's Speech at PL Meeting, 29 July 1993); Exhibit 2D87(E & F) (Letter co-signed by Mugenzi Defence Witness Juvénal Turatsinze, among others); Exhibit 2D88(E & F) (Letter to Mugenzi from Landoald Ndasingwa, 31 August 1993); Exhibit 2D89(E & F) ("*Memorandum relatif aux candidatures du Parti Liberal aux Postes de Députés et Ministres*", 1 September 1993); Exhibit 2D90(F) (Letter to the President of PL Party, 3 September 1993); Exhibit 2D91(E & K) (Letter to Mugenzi by Eight Persons, 4 September 1993).

[444] Higiro, T. 26 January 2004 pp. 18-19; T. 27 January 2004 p. 52; Witness GMJ-G, T. 5 March 2004 pp. 24-26; Murashi, T. 10 June 2004 pp. 20, 31-32; Witness D, T. 15 June 2004 p. 12; Nkuliyingoma, T. 14 September 2004 p. 10; Sebera, T. 19 October 2004 pp. 37, 41-43; T. 20 October 2004 pp. 11-13; Des Forges, T. 31 May 2005 pp. 20-21; Mugenzi, T. 1 November 2005 pp. 67-68; Murwanashyaka, T. 7 December 2005 p. 7; T. 12 December 2005 p. 25; Niwemugeni, T. 21 March 2006 p. 8; Niabete, T. 6 December 2005 pp. 5, 8-9; Betabura, T. 1 December 2005 pp. 23-24, 26; Gahizi, T. 6 April 2006 p. 8; Kayinamura, T. 30 March 2006 p. 25. *See also* Exhibit 2D22(E & F) (PL Manifesto).

[445] Higiro, T. 26 January 2004 p. 20; Nkuliyingoma, T. 7 July 2004 pp. 80-81; Sebera, T. 20 October 2004 pp. 13-15; Mugenzi, T. 2 November 2005 pp. 55-56, 60; Turatsinze, T. 12 April 2006 p. 17; *see also* Exhibit 2D84(E & F) (Mbonampeka's resignation letter, 30 November 1992).

[446] Mugenzi, T. 7 November 2005 pp. 28-39; Exhibits 2D36 *and* 2D86 (Mugenzi's Speech at PL Meeting, 29 July 1993).

286. The Arusha Accords provided for a transitional national assembly to be composed of members from all the major political parties. The PL was to have 11 seats, as well as the opportunity to nominate a PL member to compete with a PSD member for the post of Speaker of the TNA.[447]

287. On 27 August 1993, the PL held a meeting to choose its candidate for Speaker of the TNA. The proposed PL candidates were Ndasingwa and Adalbert Bayigamba, a Hutu. Approximately 20 PL members attended the meeting, including the Executive Committee, representatives from the prefectures, the national council and the presidents of the party's commissions. Bayigamba received 13 votes and Ndasingwa received six. At this meeting, certain PL members were removed from the list of eligible candidates for the TNA.[448]

288. By letter dated 31 August 1993, Ndasingwa accused Mugenzi of running the PL as if it were his personal property and abusing the party constitution in an effort to ensure that he maintained authority and that PL members of his choosing were selected to positions of authority. In particular, he complained about the Executive Committee meeting of 27 August 1993, alleging, *inter alia*, that Bayigamba was chosen via an irregular procedure. He also alleged that the rights of PL members to choose their representatives to the TNA, particularly in Gitarama, had been violated. In addition, Ndasingwa claimed that Ntamabyaliro had said to him that she believed there was a plan to remove Hutus from the party leadership.[449] Other PL members submitted similar letters in support of Ndasingwa's position.[450]

289. By letter dated 4 September 1993, eight PL officials responded to Ndasingwa's allegations – as well as similar allegations by other PL members – and defended the PL practices under Mugenzi. Uncontested Defence evidence suggests that three of the eight signatories to this document were Tutsis.[451]

290. The PL held elections for its representatives to the TNA on 5 September 1993. On 7 September 1993, the PL Executive Committee, consisting of Mugenzi, Mbonampeka and Ntamabyaliro, with Ndasingwa absent, nullified the elections.[452]

291. A faction of the PL headed by Ndasingwa held a party congress on 13 and 14 November 1993. Mugenzi did not participate. The congress elected a new Executive Committee and ratified the elections that had taken place on 5 September 1993. Charles

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[447] Sebera, T. 19 October 2004 pp. 44-45.

[448] Sebera, T. 22 October 2004 pp. 32, 39-40, 44; Mugenzi, T. 7 November 2005 pp. 34, 43-45, 47, 59; Turatsinze, T. 12 April 2006 pp. 29-32, 41.

[449] Sebera, T. 22 October 2004 pp. 39-40, 44; Mugenzi, T. 7 November 2005 p. 59; Turatsinze, T. 12 April 2006 pp. 29-32, 34-41. Letters written by PL members voicing similar complaints were sent to the Prime Minister of Rwanda, *see* Exhibit 2D89(F) ("*Memorandum relatif aux candidatures du Parti Liberal aux Postes de Deputés et Ministres*", 1 September 1993); and to Mugenzi, *see* Exhibits 2D88(E & F) (Letter to Mugenzi from Landoald Ndasingwa, 31 August 1993), 2D90(F) (Letter to the President of PL Party, 3 September 1993) *and* 2D91(E & K) (Letter to Mugenzi by Eight Persons, 4 September 1993).

[450] Exhibit 2D89(F) ("*Memorandum relatif aux candidatures du Parti Liberal aux Postes de Deputés et Ministres*", 1 September 1993); Exhibit 2D90(F) (Letter to the President of the PL Party, 3 September 1993).

[451] Mugenzi, T. 7 November 2005 pp. 63-64; Turatsinze, T. 12 April 2006 pp. 51-59, 66. *See also* Exhibit 2D87(E & F) (Letter co-signed by Mugenzi Defence Witness Juvénal Turatsinze, among others).

[452] Higiro, T. 26 January 2004 p. 29; Murashi, T. 9 June 2004 pp. 52-54; Nkuliyingoma, T. 7 July 2004 p. 81; Sebera, T. 19 October 2004 p. 44; Mugenzi, T. 7 November 2005 pp. 62, 66-69; Turatsinze, T. 12 April 2006 p. 60. *See also* Exhibits 2D17 *and* 2D92(E & F) (PL Executive Committee meeting minutes, 7 September 1993).

Kayiranga, a Tutsi and director of the cabinet of the Ministry of Justice, was elected as Chairman of the PL, purportedly replacing Mugenzi.[453]

292. On 21 November 1993, the PL Executive Committee, represented by Mugenzi, Mbonampeka and Ntamabyaliro, excluded Ndasingwa and others from the PL for holding what they deemed to be an unconstitutional congress and for other decisions deemed to be in violation of the PL constitution.[454]

293. Mugenzi organised a separate PL congress in December 1993. The congress was held in the National Assembly building and resulted in a separate list of PL representatives to the TNA. Tutsis attended Mugenzi's PL congress.[455]

294. The main question for the Chamber is whether Mugenzi split the PL on ethnic lines, forming a "Hutu power" faction within the party. The evidence shows the split in the PL was not a single event, but rather the result of a series of events that took place between the founding of the party in 1991 until factions of the PL held separate congresses at the end of 1993. The dispute continued until the commencement of the genocide in April 1994.[456] In this context, the Prosecution's case is built around several events, including Mugenzi's appointment as Minister of Trade and supposed alignment with the MRND, his rejection of the elections of PL representatives to the TNA held on 5 September 1993 and alleged changes in his attitude regarding the Arusha Accords. These issues will be addressed in turn.

(i) Appointment as Minister of Trade

295. Witnesses Higiro, GMJ-G, Nkuliyingoma and Sebera suggested that Habyarimana used the post of Minister of Trade to convert Mugenzi to the MRND political line.[457] Prosecution Witness Murashi testified that Mugenzi's branch of the PL joined with the MRND.[458] Witness D testified that Mugenzi's candidacy was not accepted until after the split in the PL, when the Mugenzi wing joined the Hutu Power movement.[459] Des Forges testified that Mugenzi's faction of the PL aligned with the Hutu Power movement.[460]

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[453] Higiro, T. 26 January 2004 pp. 32, 34-35; Murashi, T. 9 June 2004 p. 55; Sebera, T. 20 October 2004 pp. 22, 29-31; Turatsinze, T. 12 April 2006 pp. 70-71.
[454] Exhibit 2D16(E & F) (Decision of the PL Executive Committee, 21 November 1993).
[455] Higiro, T. 26 January 2004 p. 35; T. 27 January 2004 pp. 4, 12; T. 30 January 2004 p. 3; Murashi, T. 9 June 2004 p. 55; Sebera, T. 20 October 2004 p. 28; Mugenzi, T. 8 November 2005 pp. 2-4, 25-26. *See also* Exhibits 2D3, 2D77, 2D93(E & F) (*Liste des Congressistes qui ont Participé au Premier Congrès National du Parti Libéral du 11 au 12 Décembre 1993*).
[456] *Cf.* II.5.1.
[457] Higiro, T. 26 January 2004 pp. 18-23, 26 (in June 1993, the PL held a press conference at the Meridien hotel at which Mugenzi explained that the President had refused to appoint him as Minister of Trade. After the press conference, Higiro and other PL members suggested proposing a new candidate so as not to paralyse the state; Ntamabyaliro and Mugenzi were offended and threatened him, expressing anti-Tutsi sentiments); Witness GMJ-G, T. 5 March 2004 pp. 29, 31 (Mugenzi's politics underwent a severe change after he became the Minister of Trade in 1993); Nkuliyingoma, T. 7 July 2004 p. 81, T. 13 September 2004 p. 55 (Nkuliyingoma stated that President Habyarimana used the post of Minister of Trade to convert Mugenzi to his side; he based this evidence on the fact that President Habyarimana eventually appointed Mugenzi as Minister of Trade and that Mugenzi then "took a different direction").
[458] Murashi, T. 9 June 2004 pp. 55-56.
[459] Witness D, T. 15 June 2004 pp. 11-12.
[460] Des Forges, T. 31 May 2005 pp. 47-48; T. 1 June 2005 p. 57. *See also* Exhibit P101(E) (Expert Report of Alison Des Forges) pp. 21-22 (as to the emergence of Hutu Power factions).

296. The Chamber notes that the Prosecution's evidence regarding Mugenzi's allegiance to the MRND political line tends to be general and, in some instances, hearsay. Higiro and Sebera identified Mugenzi's driver as a source of rumours that Mugenzi was secretly meeting with MRND leaders.[461] Witness GMJ-G did not elaborate as to why he believed Mugenzi's appointment as Minister of Trade may have precipitated his alleged change in attitude.[462] Murashi did not provide any details regarding how Mugenzi's branch of the PL acted together with the MRND and Witness D did not explain how Mugenzi's faction was the PL's Hutu Power wing. The Prosecution failed to request these witnesses to elaborate on their general statements.

297. Mugenzi offered several reasons why Habyarimana may have delayed in appointing him as Minister of Trade and Ntamabyaliro as Minister of Justice. He submitted that, in addition to disliking Mugenzi personally, Habyarimana may have purposefully delayed replacing Mbonampeka as Minister of Justice to thwart prosecution of his allies in Gisenyi, Ruhengeri and Kibuye for violence perpetrated against Tutsis in those prefectures.[463]

298. Several developments may have forced Habyarimana to eventually make the appointments. First, pursuant to the Rwandan Constitution, the Minister of Justice was charged with carrying the official seal of Rwanda, and thus his or her presence would have been necessary for the expected finalisation of the Arusha Accords in July 1993. Second, Habyarimana was being pressured by the Prime Minister and the President of the Constitutional Court to go forward with the appointments. Third, Habyarimana's power to resist the appointments was diminished; the PL was incontrovertibly entitled to the ministry posts and to nominate its own candidates.[464]

299. A close review of the evidence of Higiro, Nkuliyingoma and Sebera shows that they believed Mugenzi must have made a deal with Habyarimana because his behaviour changed after he was appointed Minister of Trade. The examples they offered in support of this allegation were his subsequent annulment of the 5 September 1993 PL elections and his supposed change in attitude towards the Arusha Accords.[465]

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[461] Higiro, T. 26 January 2004 p. 26; Sebera, T. 20 October 2004 p. 18.

[462] The Chamber notes that it is possible that Witness GMJ-G was simply referring to Mugenzi's appointment as Minister of Trade as the time when he believed Mugenzi's attitude changed. In addition, the Chamber notes that Witness GMJ-G offered a different explanation for what he believed to be the impetus of Mugenzi's joining the Hutu Power movement. Witness GMJ-G also stated that Mugenzi came to support the Hutu Power movement after attending a secret meeting at Froduald Karamira's house that took place sometime before the 23 October 1993 "Hutu Power" rally at Nyamirambo stadium. *See* II.3.3. The Chamber notes that Witness GMJ-G's testimony regarding this alleged meeting was based purely on the supposition that the "decisions" of the 23 October 1993 rally would not have been announced unless there had been a private meeting first. The Chamber rejects Witness GMJ-G's speculation regarding the supposed meeting at Karamira's house. Moreover, the Chamber notes that the inconsistent explanations offered by Witness GMJ-G, as well as his lack of any first-hand knowledge, suggest that Witness GMJ-G may be repeating rumours regarding Mugenzi's behaviour.

[463] Mugenzi, T. 2 November 2005 pp. 56-59.

[464] Mugenzi, T. 2 November 2005 pp. 59-63.

[465] Higiro, T. 26 January 2004 pp. 29-31; Nkuliyingoma, T. 7 July 2004 p. 81; T. 13 September 2004 pp. 40, 55; Sebera, T. 19 October 2004 pp. 44-52; T. 20 October 2004 p. 20.

(ii) Annulment of the 5 September 1993 Elections

300. It is undisputed that both Tutsis and Hutus were elected in the 5 September 1993 elections.[466] The evidence further suggests that the majority of those elected were Tutsis, but there is no definitive evidence on this issue before the Chamber.[467]

301. Pursuant to the minutes of a 7 September 1993 meeting of the PL Executive Committee held in the absence of Ndasingwa, the Executive Committee decided not to validate the elections of PL representatives to the TNA held on 5 September 1993. In reaching this decision, the Executive Committee considered, among other things, several letters complaining of the 27 August 1993 Executive Committee meeting, the blockade of the PL headquarters by PL youth, which prevented the finalisation of preparations related to the upcoming elections, the "rebellion mounted by Ndasingwa" and reported irregularities with the elections themselves.[468]

302. Higiro, Nkuliyingoma and Sebera testified that the real reason why Mugenzi rejected the result of the PL elections was because mostly Tutsis had been elected.[469] The Chamber considers Mugenzi and the PL Executive Committee may have had a political incentive to avoid mentioning ethnicity as a reason for annulling the elections.

303. In the Chamber's view, the context of the political power struggle between Landoald Ndasingwa's faction (to which the three Prosecution witnesses belonged) and Mugenzi's faction following the split of the PL reflects that these individuals were political opponents of Mugenzi. The Chamber shall consider this in evaluating their evidence as it relates to decisions taken in 1993. However, this opposition, in the Chamber's view, does not necessarily raise concerns about their general credibility.

304. Nkuliyingoma acknowledged that Mugenzi did not mention Tutsis when he nullified the PL elections of members of parliament in September 1993, but Nkuliyingoma believed that the reason for the annulment was that Tutsis were elected. This belief was born out by the subsequent election of Hutus by Mugenzi's faction.[470] The Chamber does not have before it any definitive evidence regarding the ethnic composition of the list of candidates for the TNA put forward by Mugenzi's PL faction. Moreover, significant evidence shows that there

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[466] Higiro, T. 26 January 2004 pp. 28-29; Nkuliyingoma, T. 7 July 2004 p. 81.
[467] Nkuliyingoma, T. 7 July 2004 p. 81 (mostly Tutsis had been elected).
[468] Exhibits 2D17 *and* 2D92(E & F) (PL Executive Committee meeting minutes, 7 September 1993).
[469] Higiro, T. 26 January 2004 pp. 27, 29 (heard on the radio that, at a rally in Kibuye, Mugenzi annulled the results of the elections for PL representatives to the TNA and dissolved all the organs of the PL, which confirmed that Mugenzi had changed; Higiro visited Mugenzi at the Ministry of Trade offices and asked him why he had dissolved all PL organs, and Mugenzi told him: "You, also, you, like those Tutsis who are fighting me. You are like those Tutsis who are struggling to fight against me." Ntamabyaliro then arrived and Mugenzi called to her saying, "Agnes, come in quickly, come in quickly, listen to what this Tutsi is trying to say"); Nkuliyingoma, T. 7 July 2004 p. 81 (heard on the radio that Mugenzi rejected the results of the PL elections because mostly Tutsis had been elected; this caused the split of the PL); T. 13 September 2004 pp. 27-29, 31-32 (the real reason that Mugenzi annulled the elections was because too many Tutsis were elected, and the other reasons offered were "just political reasons"); Sebera, T. 19 October 2004 pp. 43-45 (after the 5 September 1993 elections, she attended a meeting at the home of Jean-Baptiste Habyalimana in Butare to examine the outcome; 15 to 20 PL members, most of them prefecture representatives, attended the meeting; Mugenzi also attended and he was not happy with the outcome of the elections because too many Tutsi representatives had been elected; he stated that the PL should look for more Hutu members; it was the first time she heard mention of Hutu and Tutsi ethnicity at a PL meeting).
[470] Nkuliyingoma, T. 13 September 2004 pp. 26-29, 31-32.

were Tutsis in both factions.[471] In this context, the Chamber views Nkuliyingoma's belief as speculative.

305. Turning to Higiro and Sebera, the Chamber recalls that they were both members of the PL in 1994 and opponents of Mugenzi based on their perception that he had adopted an extremist position that strayed from the PL's founding objectives.[472] Higiro testified that his differences with Mugenzi culminated with Mugenzi threatening to have a gendarme shoot and kill him.[473] While the record reflects clear disagreement between these witnesses and Mugenzi about his conduct during the relevant period, this does not demonstrate a bias that would necessarily undermine the credibility of these witnesses. Nor does it call into question their adherence to the testimonial oath they took when testifying before this Chamber.[474]

306. However, the Chamber notes that Higiro's testimony regarding his alleged private conversation with Mugenzi is uncorroborated.[475] Similarly, no witness corroborated Sebera's testimony regarding Mugenzi's alleged statements during the meeting at the home of Jean-Baptiste Habyalimana in Butare to examine the outcome of the elections. Moreover, Sebera's evidence lacks specific details about what exactly was said at the meeting and by whom, and the Prosecution failed to ask follow-up questions to elicit this information. Without these

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[471] Mugenzi, T. 8 November 2005 pp. 3-4 (both Tutsis and Hutus attended the congress organised by his faction of the PL on 11 and 12 December 1993 and he named some Tutsis whom he knew to have attended); Betabura, T. 1 December 2005 p. 33 (the split in the PL was the result of disagreement over the designation of ministerial posts and was not ethnically based; there were Tutsis in both factions); Witness TJO, T. 27 March 2006 p. 19 (Mugenzi's solution was to hold elections which were open to Hutus and Tutsis); Kayinamura, T. 30 March 2006 pp. 36, 40-42 (Kayinamura never heard Mugenzi say anything anti-Tutsi; the PL never changed or became anti-Tutsi); Gahizi, T. 6 April 2006 pp. 24-27, 31 (Gahizi attended the December 1993 PL congress organised by Mugenzi held at the CND building and had heard rumours over the radio that Ndasingwa organised his own congress; he attended the Mugenzi PL congress along with two other representatives from his commune, Nkuranga, a Tutsi, and Ngaruye, a Hutu with a Tutsi mother, and testified that Tutsis were present at the Mugenzi PL congress, such as one François Gahima); Turatsinze, T. 10 April 2006 p. 78 (both Tutsis and Hutus were in the Mugenzi faction). *See also* Exhibit 2D77 (List of Delegates at December 1993 PL Congress); Ntamabyaliro, T. 22 August 2006 pp. 52, 55 (after the split, the Mugenzi faction of the PL remained mixed ethnically, for example, the head of the PL in Byumba prefecture was a Tutsi; with regard to the Arusha Accords, Ntamabyaliro believed that Mugenzi was impatiently waiting for their implementation).

[472] Higiro, T. 26 January 2004 pp. 20-33; Sebera, T. 19 October 2004 pp. 44-52; T. 20 October 2004 pp. 16-31. *See also* Nkuliyingoma, T. 7 July 2004 p. 81, T. 13 September 2004 pp. 40, 55-56 (corroborating Higiro and Sebera's testimony that Mugenzi adopted extremist positions that deviated from the PL's objectives); Kayinamura, T. 30 March 2006 pp. 36-39 (testifying that Higiro was a political rival of Mugenzi's, out to spoil Mugenzi's name).

[473] Notably, on cross-examination, Mugenzi's Counsel confronted Higiro with the proposition that his evidence about Mugenzi threatening to have his gendarme shoot him was a fabrication. Higiro denied this. Higiro, T. 29 January 2004 pp. 49-50.

[474] Concerning Sebera, Mugenzi contends that she displayed bias against him when she stated that she had come to the Tribunal to testify "against" him. Mugenzi Closing Brief, paras. 1021-1022; Sebera, T. 21 October 2004 p. 6. Considering this remark in the context of her entire testimony, which was provided under oath, the Chamber considers that it reflects her desire to testify to a matter within her knowledge. The statement does not demonstrate bias or that her evidence would be influenced by a third party.

[475] Higiro, T. 26 January 2004 pp. 18-23 (when he and other PL members suggested proposing a new candidate so as "not to paralyse the state", Mugenzi got offended and replied: "If you the Tutsi, – if you the Tutsi, what you are doing is not good. Do you know what you would become, if we, the Hutu, if we become radical?"; Mugenzi said: "You Tutsis, we put you in our party, and now you want to expel us from this party. You do not know us. We shall get you."; after saying this, Mugenzi rubbed his hands together and then blew into his palm; according to Higiro, this meant that the Tutsis would be mashed together and that the ash that would result would be thrown into the air).

details, the Chamber cannot make a finding that Mugenzi split the PL on ethnic lines and formed a "Hutu Power" faction in the party.

307. The Chamber has considered these isolated events in the context of all the relevant evidence. In this regard, the record remains equivocal as to Mugenzi's reasons for annulling the election. Moreover, to the extent the evidence reflects Mugenzi's apprehension regarding the election of a large number of Tutsis, this could be based on political concerns of losing power in the PL to Ndasingwa rather than other more sinister desires to single Tutsis out for violence.

308. Finally, the Chamber notes that the content of the minutes of the PL Executive Committee dated 7 September 1993 are corroborated by contemporaneous evidence and significant testimonies.[476] In the Chamber's view, this contemporaneous evidence casts doubt as to the Prosecution's case regarding the motives of Mugenzi and the PL Executive Committee when they annulled the elections.

(iii) Attitude Toward the Arusha Accords

309. Witnesses GJI, Murashi, Nkuliyingoma and Sebera testified that Mugenzi's evolution in attitude toward the Arusha Accords showed that he had changed. Specifically, they each referred to Mugenzi's comparison between the Arusha Accords and a dead, rotten dog or puppy.[477] The Prosecution's case with regard to this statement is unclear, but may be summarised by the evidence of Witness GJI, who stated that a protest against the Arusha Accords was a protest against Tutsis and that only Hutu extremists would oppose the Arusha Accords.[478]

310. Mugenzi submitted that he supported the Arusha Accords but believed they were flawed, particularly because they failed to address the issue of ethnicity. He did not deny making the "rotten dog" comment but submitted that he made the statement because he did not think there should be a winner and a loser in the negotiations between the Rwandan government and the RPF. He was also concerned that the government would not know what it was signing and his metaphorical comment reflected these concerns. He believed that he made the comment in June 1993 and reiterated that on 29 July 1993 he spoke publicly in

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[476] Sebera, T. 22 October 2004 pp. 39-40, 44; Mugenzi, T. 7 November 2005 p. 59; Turatsinze, T. 12 April 2006 pp. 29-32, 34-41. *See also* Exhibit 2D88(E & F) (Letter to Mugenzi from Landoald Ndasingwa, 31 August 1993); Exhibit 2D89(E & F) ("*Memorandum relatif aux candidatures du Parti Liberal aux Postes de Deputés et Ministres*", 1 September 1993); Exhibit 2D90(F) (Letter to the President of the PL Party, 3 September 1993); Exhibit 2D91(E & K) (Letter to Mugenzi by Eight Persons, 4 September 1993).

[477] Witness GJI, T. 15 March 2004 pp. 8, 30, T. 16 March 2004 p. 5 (after returning from Arusha in early 1994, Mugenzi said on Radio Rwanda that the Arusha agreement was like "an offer to a man to carry a wrapped up gift of a rotten dog"; this occurred at the time of the final signing of the peace agreement with the RPF; according to the witness, a protest against the Arusha Accords was a protest against RPF participation in the army, gendarmerie and in government, as well as a protest against Tutsis generally; only Hutu extremists would oppose the Arusha Accords); Murashi, T. 9 June 2004 p. 55 (Mugenzi subsequently said "that the Arusha Peace Accords were like a rotten dog"); Nkuliyingoma, T. 13 September 2004 p. 56 (Mugenzi movef from being in favour of negotiations between the Rwandan government and the RPF to his subsequent statement that the Arusha Accords were like a dead or rotten puppy); Sebera, T. 20 October 2004 p. 20 (referred to a public lecture where Mugenzi described the Arusha Accords as being "like a dead dog left in a carton").

[478] Witness GJI, T. 15 March 2004 pp. 8, 30, T. 16 March 2004 p. 5.

support of the Arusha Accords.[479] Turatsinze believed that Mugenzi intended the statement as a warning that Rwandans may be disappointed in the Arusha Accords.[480]

311. No contemporaneous record of the "rotten dog" comment is in evidence. Witness GJI stated that Mugenzi made the comment in early 1994, at the time of the final signing of the peace agreement with the RPF.[481] Turatsinze testified that Mugenzi made the comment at a press conference after the signing of the Arusha Accords, in February 1994.[482] Mugenzi stated that he believes he made the comment in June 1993.[483] The Arusha Accords were signed on 4 August 1993, so the dates offered by Witnesses GJI and Turatsinze conflict with their testimony that the statement was made around the time that the Arusha Accords were signed. Despite the confusion regarding the exact date, the Chamber considers that the evidence shows that Mugenzi made the comment around the time of the finalisation of the Arusha Accords.

312. The Prosecution has not suggested a possible interpretation to be attributed to the "rotten dog" comment. There is no evidence drawing a link between the statement and ethnicity. There was some evidence that Habyarimana had also criticised the Arusha Accords, with the seeming suggestion that Mugenzi's criticism of the Arusha Accords showed that he had aligned with Habyarimana's MRND. The Chamber does not accept that the only reasonable conclusion to be drawn from Mugenzi's criticism of the Arusha Accords is that he was anti-Tutsi. While the Chamber acknowledges that Mugenzi has an incentive to downplay any ethnic bias or alignment with the MRND, the Chamber considers that the explanation he offered – that he had specific concerns regarding aspects of the Arusha Accords, as well as the manner in which they were negotiated – is reasonable.[484]

(iv) Conclusions

313. The evidence does not show that Mugenzi engaged in private meetings with MRND members or that he reached an agreement with Habyarimana in exchange for the post of Minister of Trade. The evidence shows that Mugenzi and the PL Executive Committee, not including Ndasingwa, annulled the 5 September 1993 elections of PL representatives to the TNA for a number of reasons, many of which were expressed in the minutes of the 7 September 1993 PL Executive Committee meeting.[485] The Chamber accepts that, in addition to the other reasons expressed in that document, Mugenzi's concern regarding the number of Tutsis elected was one of those reasons. The evidence does not show that Mugenzi's reference to the Arusha Accords as a rotten dog or puppy was related to ethnicity or that it reflected alignment with anti-Tutsi extremism.

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[479] Mugenzi, T. 2 November 2005 p. 65; T. 7 November 2005 pp. 23-26, 33-39.
[480] Turatsinze, T. 12 April 2006 pp. 25-26.
[481] Witness GJI, T. 15 March 2004 pp. 8, 30; T. 16 March 2004 p. 5.
[482] Turatsinze, T. 12 April 2006 p. 26.
[483] Mugenzi, T. 7 November 2005 pp. 23-26.
[484] Nkuliyingoma suggested that the rotten dog statement showed that Mugenzi no longer supported negotiations. *See, e.g.*, Nkuliyingoma, T. 13 September 2004 p. 56 (equating support for negotiations with support for the outcome of such negotiations). The Chamber does not accept this position and notes that Nkuliyingoma himself accepted that opposition to the Arusha Accords was not the same as extremism. Nkuliyingoma, T. 13 September 2004 pp. 56-57.
[485] Exhibits 2D17 *and* 2D92(E & F) (Minutes of the Meeting of the Provisional Executive Committee of the Liberal Party, 7 September 1993).

314. The Chamber considers that the evidence regarding the following events supports the position that the split in the PL was the result of a political power struggle. Certainly, the record reflects that many persons interpreted the division to involve ethnic considerations, but it fails to demonstrate that it necessarily resulted from ethnic extremism on behalf of Mugenzi. Indeed, a careful analysis of Mugenzi's 29 July 1993 speech, the 31 August 1993 PL meeting, the subsequent letters complaining of and defending the decisions made at that meeting, the minutes of the 7 September 1993 PL Executive Committee meeting, the separate congresses of the Ndasingwa and Mugenzi factions of the PL, as well as the 21 November 1993 PL Executive Committee decision removing Ndasingwa show a clear political power struggle between the two factions. Moreover, evidence showing that Tutsis continued to support the Mugenzi faction after the split provides further support for this position.[486]

315. The Chamber notes there is also evidence supporting Mugenzi's position that members of the PL were in reality supporting the RPF.[487] For the Chamber's purposes, the truth of the matter regarding PL support for the RPF is less important than the fact that Mugenzi believed he had a reason to be concerned about this issue at the time of the split in the PL. In this regard, the Chamber has concerns regarding the credibility, reliability and probative value of some of the evidence linking the PL and the RPF, particularly that of

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[486] Exhibits 2D3, 2D77 *and* 2D93(E & F) (*Liste des Congressistes qui ont Participé au Premier Congrès National du Parti Libéral du 11 au 12 Décembre 1993*); Attendees of the Mugenzi-faction congress were identified as Tutsis and this evidence was not contested. *See* Mugenzi, T. 8 November 2005 pp. 2-4, 25-26; Gahizi, T. 6 April 2006 pp. 27, 31; Turatsinze, T. 12 April 2006 pp. 71-72. Moreover, several Prosecution witnesses did not dispute that Tutsis remained in the Mugenzi faction. *See* Higiro, T. 26 January 2004 p. 35; T. 27 January 2004 pp. 4, 12; T. 30 January 2004 p. 3; Murashi, T. 9 June 2004 p. 55; Sebera, T. 20 October 2004 p. 28. Other Mugenzi Defence witnesses confirmed that Tutsis remained in the Mugenzi faction of the PL. *See* Betabura, T. 1 December 2005 p. 33; Ntamabyaliro, T. 22 August 2006 p. 55. Also relevant to the Chamber's conclusion is uncontested Defence evidence which suggests that some Tutsis supported Mugenzi in the dispute over the decisions taken at the 31 August 1993 meeting. Mugenzi, T. 7 November 2005 pp. 63-64; Turatsinze, T. 12 April 2006 pp. 51-59, 66; Exhibit 2D87(E & F) (Letter co-signed by Mugenzi Defence Witness Juvénal Turatsinze, among others).

[487] The 17 to 24 July 1992 edition of a periodical entitled *Isibo* contained an article, written by a journalist named Sixbert Musangamfura, which contained a section under the sub-heading "The PL Washed its Hands", and described Mugenzi as having said that "any Tutsi whose motive to join the [PL] was just to wait for the Inkotanyi should leave while there is still time". Exhibit 2D7 (Excerpt from *Isibo* magazine); *see also* Exhibits 2D19 *and* 2D82 (Copies of the same excerpt from *Isibo* magazine). Several witnesses testified regarding this exhibit, as well as RPF support by PL members. *See* Higiro, T. 29 January 2004 p. 37 (agreeing with the statement that members of the PL who joined to await the *Inkotanyi* should quit); Witness GJI, T. 16 March 2004 p. 7 (acknowledging that he knew PL supporters who were also RPF supporters); Nkuliyingoma, T. 13 September 2004 pp. 37, 51 (testifying that Mugenzi's reported statement that Tutsis who joined the PL to await the arrival of the *Inkotanyi* should leave the party while there was still time, showed that Mugenzi was trying to remain opposed to the Habyarimana regime but not align with the RPF, that is, to remain an independent political party, and noting that many members of the PL "had one leg in PL and one leg in RPF"); Sebera, T. 19 October 2004 pp. 54-55, T. 20 October 2004 pp. 6-8, T. 21 October 2004 pp. 35-36 (testifying regarding the underlying incident at a 1992 rally that led to Mugenzi's reported statement, but stating that she was not familiar with Mugenzi's reaction or the magazine article); Mugenzi, T. 2 November 2005 pp. 19, 22-28, T. 21 November 2005 pp. 8-9 (discussing the incident at a July 1992 PL rally that led him to make the relevant statement and the magazine article itself, another incident involving PL youth, as well as support for the RPF among PL members in Kibuye); Kayinamura, T. 30 March 2006 p. 30 (testifying regarding secret meetings between PL members and the RPF in Mulindi); Gahizi, T. 6 April 2006 pp. 32-33, 35 (discussing support for the RPF among PL members in Gahizi); Turatsinze, T. 10 April 2006 pp. 70-71, 78 (discussing a 1992 incident involving support by PL youth for RPF); Turatsinze, T. 12 April 2006 p. 20 (stating that he believed Mugenzi's statement meant that persons who wanted to follow an ethnic ideology should leave the PL); Matabaro, T. 25 April 2006 pp. 17-20 (testifying regarding support for the RPF among PL members in Kibuye).

Matabaro and Gahizi. In addition, the Chamber notes that Mugenzi has a motive to emphasise this issue. Still, the Chamber considers that the evidence shows that there were incidents of PL members supporting the RPF and that the PL was associated with the RPF. Mugenzi was aware of these incidents and expressed concern with them.

316. Given that the majority of the Prosecution evidence concerning the split in the PL does not concern public anti-Tutsi statements, the testimonies of Defence Witnesses Nibatete, UERE, Ugiranyina and Kayinamura that they never heard Mugenzi make an anti-Tutsi remark are of little probative value.

317. Considering the evidence as a whole, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Mugenzi divided the PL along ethnic lines, or that he created a "Hutu Power" faction of the PL. Given this conclusion, the Chamber need not revisit Mugenzi's submissions concerning notice.

4. LISTS

Introduction

318. The Indictment alleges that, as part of the Accused's conspiracy to eliminate Tutsis and members of the opposition, civilian authorities, among others, established lists of people to be executed after identifying Tutsis as the enemy and the opposition as their accomplices. In addition to general evidence concerning the existence of lists, the Prosecution led evidence of several specific hit-lists, including: (1) a list prepared by the PL in Nyanza targeting non-members of the PL-Power faction; (2) a list maintained by the Ministry of Health targeting certain employees; and (3) a list prepared by the MDR party targeting Twagiramungu supporters. From 7 April to late July 1994, the military and *Interahamwe*-MRND allegedly used these pre-established lists to massacre Tutsis and moderate Hutus.[488]

319. The Defence teams challenge the pleading of these allegations. They also dispute the evidentiary basis for the Prosecution claims and their clients' involvement in, or awareness of, the preparation and use of any such lists.[489] While some of the evidence set forth below precedes the Tribunal's temporal jurisdiction of 1 January to 31 December 1994, the Chamber will consider it for context.[490]

Evidence and Deliberations

320. The Prosecution led first-hand evidence through Robert Flaten, as well as hearsay evidence through Witnesses D and Fidèle Uwizeye about the general existence of hit-lists, that was confirmed by Expert Witness Alison Des Forges and Mugiraneza Defence Witness

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[488] Indictment, paras. 5.1, 5.28, 5.32.
[489] Bizimungu Closing Brief, paras. 136, 894-898, 947-948, 962-973, 1040, 1678, 1679; Bizimungu Closing Arguments, T. 2 December 2008 pp. 14-15, 22-23; Mugenzi Closing Brief, paras. 57-58, 326-330, 409, 1131-1141; Mugenzi Closing Arguments, T. 2 December 2008 p. 76; Bicamumpaka Closing Brief, paras. 73-75, 596-616; Bicamumpaka, T. 19 September 2007 p. 33; Bicamumpaka Closing Arguments, T. 3 December 2008 pp. 61-63; Mugiraneza, T. 22 May 2008 p. 9.
[490] *See Nahimana et al.* Appeal Judgement, paras. 315-316 (evidence prior to 1994 may be relevant and probative by providing the context in which the crimes occurred, establishing by inference an Accused's criminal intent, or showing a deliberate pattern of conduct).

RDC.[491] Witness D gave first-hand testimony about a hit-list at the RTLM offices in Kigali, while Nkuliyingoma, corroborated by Des Forges, testified about a list found in the vehicle of the Rwandan army's Chief of Staff, Déogratias Nsabimana, after an accident in 1993.[492]

321. While the Chamber considers this contextual evidence may illustrate some planning in identifying enemies, who might have been killed during the genocide, it is insufficient to demonstrate a genocidal plan. Furthermore, there is no evidence linking the Accused to the preparation or compilation of the various lists about which these witnesses testified. Allegations directly implicating the Accused in the preparation and compilation of lists will be individually considered, as follows.

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[491] Flaten, T. 20 February 2008 pp. 46-47, 65-66 (testified he had seen lists of people to be eliminated and it was generally assumed that those listed were primarily Tutsis whom the hardliners wanted to "get rid of"; he could not be certain that Hutus were on such lists); Witness D, T. 15 June 2004 p. 23 (testified that in 1997 Kambanda had told him that during a meeting at *Hôtel des Diplomates* between 9 and 12 April 1994, Bagosora had shown him a list of Tutsi businessmen to be killed); Uwizeye, T. 7 April 2005 pp. 66-69, T. 8 April 2005 pp. 31, 49-50, T. 18 April 2005 pp. 20-26 (testified that in April 1994 he heard from several people, including the Minister of Finance, that he was on a list of approximately 597 persons, mostly *Inkotanyi*, to be killed; Uwizeye later saw this list printed in a Zairian newspaper in October or November 1994); Des Forges, T. 3 June 2005 p. 22, T. 7 June 2005 p. 63 (testified that people were selected on the basis of lists; lists of supposed RPF agents were used generally throughout Rwanda as a means of justifying attacks and killings of Tutsis); Des Forges, T. 7 June 2005 p. 28 (testified that the Prime Minister gave a pacification speech in Kibuye in which he referred to lists of Tutsis who were RPF members and the result was an immediate increase in killing in Kibuye prefecture); *see also* Exhibit P101(E) (Expert Report of Alison Des Forges) p. 25 (Des Forges wrote that local administrators in prefectures such as Butare, and presumably elsewhere, kept lists of Tutsis and dissident Hutus who had been arrested in October 1990 and Tutsi young people believed to have left to join the RPF; these lists offered a ready source of information for anyone who wanted to attack Habyarimana's Tutsi and Hutu opponents); Witness RDC, T. 3 March 2008 pp. 13, 18 (was warned that he was on a list of people to be killed during the genocide but did not know who made the list or how it was created). *But see* Mugiraneza, T. 22 May 2008 pp. 9-11; Exhibit P2(26)(E) (Mugiraneza's Statement, 1 September 1999) pp. 8-10 (denied having heard about any such hit-lists either before 6 April 1994 or throughout the period of the Interim Government, although he admitted that when he left Rwanda, Colonel Muvunyi told him that Chief of Staff Nsabimana had prepared a list of untrustworthy soldiers from the south of Rwanda to be murdered that included Muvunyi).

[492] Witness D, T. 15 June 2004 pp. 23, 25 (on 9 April 1994, Witness D saw Georges Ruggiu at the RTLM offices in Kigali with a blackboard containing a list of names of people to be killed, several of whom were members of the opposition; Ruggiu was ticking off the names of those who had been killed and there was a question mark against the names of those he was unsure had been killed); Nkuliyingoma, T. 8 July 2004 pp. 24-25 (was told by Jean Berkmans Birara that he was on a pre-1994 list of people to be massacred; he read his name from a list published in André Guichaoua's book, where he was number 192; the list Guichaoua published was found in Major General Nsabimana's vehicle after he had an accident, and was taken to the Ministry of Defence where it became public knowledge); Des Forges, T. 13 June 2005 pp. 47-55 (a document entitled "Memo for the Protection of Human Rights" was found in the Chief of Staff Nsabimana's vehicle after an accident in 1993; it included a "list of persons to contact", 331 persons thought to be RPF supporters). The list incorporated in Guichaoua's book was tendered by the Bizimungu Defence following its cross-examination of Alison Des Forges. *See* T. 23 June 2005 p. 50; Exhibit 1D82 (Document 9: List from André Guichaoua: *Les Crises Politiques au Burundi et au Rwanda* (1995)) pp. 75-77. *See also* Exhibit 1D82 (Document 27A: Letter from Augustin Ndindiliyimana to Des Forges, 13 October 1999) pp. 202-203 (in which Ndindiliyimana confirms he found the list of names in General Nsabimana's car on 6 March 1993 and stated the list had come from the RPF). *But see* Strizek, T. 6 February 2007 p. 44; Exhibit 1D143 (Expert Report of Dr. Helmut Stritzek) p. 24 (the list found in the vehicle of Chief of Staff Nsabimana originated from the RPF and not the Rwandan army).

4.1 MDR Lists

Introduction

322. The Indictment alleges that by late 1993, Hutus within parties initially established in opposition to the MRND were enticed by policies of ethnic division to form power factions and align with the MRND. These efforts were galvanised by the assassination of the Hutu Burundian president, Melchior Ndadaye.[493] The Indictment further alleges that, as part of the Accused's conspiracy to eliminate Tutsis and members of the opposition, civilian authorities, among others, established lists of people to be executed after identifying Tutsis as the enemy and the opposition as their accomplices.[494]

323. The Prosecution submits that the MDR was one such opposition party that was divided by a power faction and that Bicamumpaka adopted its Hutu extremism. In support of this theory, the Prosecution led evidence that supporters of the MDR President, Faustin Twagiramungu, were identified as *Inkotanyi* accomplices in meetings in 1993, and that Bicamumpaka, assisted by Donat Murego and Ignace Karuhije, prepared a hit-list of Twagiramungu supporters to be killed that was read out at an MDR meeting in Busengo in 1993. Basile Nsabumugisha subsequently killed many persons on this list in 1994. Prosecution Expert Witness Alison Des Forges and Witnesses GLP, GBR, Fidèle Uwizeye, AEI and GJW provided relevant evidence.[495]

324. The Bicamumpaka Defence denies the current allegation and argues that the Prosecution evidence is inconsistent and unreliable. Reference is made to Bicamumpaka, Ignace Karuhije, Jean Marie Vianney Nkezabera, Witness MG-1 and Mugenzi Defence Witnesses Pie Betabura, WFQ3 and WZ8.[496]

Evidence

Prosecution Witness GLP

325. Witness GLP, a Hutu, joined the MDR in 1991 and held an elected position within Ruhengeri starting in 1992.[497] He did not attend the MDR's Kabusunzu Congress in July 1993 but later learned that some party members, including Faustin Twagiramungu, Faustin Rucogoza and Anastase Gasana, were suspended. Agathe Uwilingiyimana resigned during this congress. Resolutions taken during the meeting were announced immediately over the

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[493] Indictment, paras. 1.14, 6.4, 6.14.
[494] Indictment, paras. 5.1, 5.28, 5.32.
[495] Prosecution Closing Brief, paras. 43, 45-46, 73-74, 255, 913, 915-916; Prosecution 21 November 2008 Document, Item Nos. 1, 3, 12; Prosecution Closing Arguments, T. 5 December 2008 pp. 2-4, 24-25.
[496] Bicamumpaka Closing Brief, paras. 73-75, 596-616; Bicamumpaka Closing Arguments, T. 3 December 2008 pp. 61-64; T. 5 December 2008 pp. 22-25. *See also* Mugenzi Closing Brief, paras. 326, 409 (the Prosecution evidence is insufficient to establish that Mugenzi was part of a joint criminal enterprise). The Chamber has also considered the relevant aspects of Basile Nsabumugisha's testimony but finds it unnecessary to summarise.
[497] Witness GLP, T. 22 June 2004 pp. 17, 21; T. 24 June 2004 pp. 30, 57; Exhibit P60 (Witness GLP's Personal Information Sheet). Witness GLP was alleged to have committed genocide in Rwanda and had been detained between 1997 and 2002, when he was acquitted. T. 23 June 2004 pp. 29-31. He was subsequently arrested for campaigning violations and incarcerated from August 2003 to March 2004. At the time of his testimony, he was on provisional release with charges pending. T. 23 June 2004 pp. 33-34; T. 24 June 2004 pp. 15-18, 64-67.

radio and about a week later, the witness received a copy of the MDR newspaper, *Urumuli Rwa Demokrasi*, which also published the gathering's decisions.[498]

326. In August 1993, Witness GLP went to a regional MDR conference at the multi-purpose hall in Ruhengeri, where decisions from the Kabusunzu Congress and, in particular, the expulsion of party members at the national level were explained. Regional MDR officials such as Bicamumpaka, André Sebatware, Jean-Damascène Munyarukiko and Donat Murego were present. During the meeting, Murego read a list of names of regional MDR party members who were also to be expelled. It included Member of Parliament Beatrice Nyirandikubwimana, Jean-Bosco Nubaha, Jean Ngirumpatse and Jean-Pierre Nkusi. Murego identified them as Twagiramungu supporters who no longer followed the party line, and thus implied that these persons were accomplices of the *Inkotanyi*. Persons present and listed were given the opportunity to respond. For example, Nkusi, a Hutu, said that he had never collaborated with the *Inkotanyi*, while Witness GLP gave reasons for not having attended the Kabusunzu Congress.[499]

327. In November 1993, Witness GLP and thousands of others attended an MDR meeting in Busengo sub-prefecture. National and regional MDR representatives including Bicamumpaka, Donat Murego, Froduald Karamira and Jean Kambanda were present. Other political parties did not attend. Karamira and Murego gave speeches while Bicamumpaka did not. The announcements were preceded by utterances, for the first time, of "MDR-Power" to which attendees had been informed to respond "Power". The talks concerned fighting the enemy in conjunction with other parties. Joseph Mpendwanzi, Antoine Biyegoro and Jean-Bosco Nubaha – Hutus active within the MDR but supporters of Twagiramungu – were identified as accomplices of the *Inkotanyi*, as were Tutsis.[500] The witness believed that the singling out of these persons was intended so the *Interahamwe* "would have no pity" for them.[501]

328. Many of those identified at the MDR's meetings in July, August and November 1993 were subsequently killed. The victims included national party representatives like Agathe Uwilingiyimana and Faustin Rucogoza. Persons active in the party on a regional level were also killed. For example, on 28 May 1994, the witness saw Ruhengeri Prefect Basile Nsabumugisha who had earlier arrested Mpendwanzi. Nsabumugisha gave Mpendwanzi to *Interahamwe*, who killed him. Similarly, a man called Hakurimari was detained and then drowned by a *conseiller* while a person called Backira was also killed.[502]

329. Witness GLP never saw an MDR hit-list. He believed that attacks during the genocide were orchestrated by communal leaders of the *Interahamwe*, who were equipped with vehicles and weapons. He heard that they used lists. After the RPF had taken control, the

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[498] Witness GLP, T. 22 June 2004 pp. 34-38, 63-64, 68-73; T. 23 June 2004 pp. 3-4; T. 24 June 2004 pp. 37-39 (concerning Twagiramungu's expulsion), 41-44, 58; Exhibit P61(E) (*Urumuli Rwa Demokarasi*). *See also* T. 24 June 2004 pp. 44-46, 50 (reviewing documents pertaining to Twagiramungu's court actions to revoke his suspension).

[499] Witness GLP, T. 22 June 2004 pp. 38-44, 59; T. 23 June 2004 pp. 19-20.

[500] Witness GLP later identifies "Kagenza" as one of the persons listed. Witness GLP, T. 23 June 2004 p. 20.

[501] Witness GLP, T. 22 June 2004 pp. 44-45, 49, 59-60, 62; T. 23 June 2004 pp. 19-20; T. 24 June 2004 pp. 55-56, 59. Witness GLP testified that three persons were identified at the Busengo meeting (T. 22 June 2004 p. 60) but he later refers to a person called "Bizigero" (T. 23 June 2004 p. 20). The spelling is phonetic and in light of his testimony, the reference to "Bizigero" is likely "Biyegoro".

[502] Witness GLP, T. 22 June 2004 pp. 60, 62; T. 23 June 2004 pp. 7-8.

witness observed a list in a commune office. He believed that it had been made by the CDR leadership at the commune level and that it might have been given to the "prefect" who would then identify the persons targeted at meetings. Members of the population, as well as the witness and other Hutu MDR party members, including Antoine Byigero, Anaclet Maniragaba, Grégoire Uzanywenimana, Hakurimari and Twagiramana, were identified and many were killed.[503]

Prosecution Witness GBR

330. Witness GBR, a Hutu, had been an active MDR party member since its inception in 1991.[504] In July 1993, members of the MDR political bureau organised the Kabusunzu Congress. The witness did not attend but heard that its purpose was to remove Faustin Twagiramungu and his supporters from the MDR in order to allow those who had joined the party's power faction to take positions held by its moderates. MDR officials also tried to force Agathe Uwilingiyimana to resign as Prime Minister. During the gathering, names of individuals who had purportedly collaborated with the *Inkotanyi* and were to be killed were read from a list. This aspect of the meeting was not reported publicly.[505]

331. In August 1993, the MDR's representatives for Ruhengeri prefecture, including the Prefectural Chairman Donat Murego, André Sebatware, Ignace Karuhije, Jean-Damascène Munyarukiko and Bicamumpaka held a party meeting at the prefecture office in Gatonde commune. Witness GBR did not attend but heard from MDR members that Bicamumpaka gave Murego a list. Murego then read the list of Twagiramungu supporters first identified at the Kabusunzu Congress. He stated that they had collaborated with the *Inkotanyi*, were expelled from the party and, if necessary, had to be killed.[506]

332. The witness learned about a subsequent MDR meeting at Busengo in November 1993. The directives given during the previous MDR Ruhengeri prefectural meeting were repeated. Ignace Karuhije, again in the presence of Bicamumpaka and Murego, read the list and specified that Witness GBR and other MDR moderates should be located and harmed.[507]

333. In April 1994, shortly before President Juvénal Habyarimana's plane was brought down, Witness GBR met a member of the MDR's secretariat near the Okapi hotel in Kigali. This person also informed the witness that he was one of several persons that would be killed and that he needed to be careful. Around the same time, Witness GBR was warned that persons who came to bury a CDR party member called Katumba in Ruhengeri were going to pass by Witness GBR's home to kill him, causing Witness GBR to leave his home and go into hiding in other communes in the prefecture.[508]

334. In the witness's view, these meetings facilitated the subsequent targeting of persons that were killed in 1994. Those that had been on the list and identified as accomplices of the *Inkotanyi* included MDR moderates like Witness GBR, Witness GLP, Mpendwanzi, Nkusi, Beatrice (a member of parliament) and Witness MG-1. Witness GBR survived as he went

[503] Witness GLP, T. 23 June 2004 pp. 7, 19, 24-26.
[504] Witness GBR, T. 7 June 2004 pp. 6-7, 46, 63, 65; Exhibit P48 (Witness GBR's Personal Information Sheet); Chambers Exhibit X2 (Handwritten Piece of Paper).
[505] Witness GBR, T. 7 June 2004 pp. 10-12, 15-16, 27, 38, 51, 57-59, 61, 65.
[506] Witness GBR, T. 7 June 2004 pp. 8, 12, 16-20, 26-28, 48, 62, 64-65.
[507] Witness GBR, T. 7 June 2004 pp. 10-12, 18-19, 25-28, 64-65.
[508] Witness GBR, T. 7 June 2004 pp. 26, 28-29, 47-49, 69-71.

into hiding in early April 1994 in communes other than his own in Ruhengeri and also in Kigali. Witness GLP also managed to survive, but his wife was killed. Mpendwanzi was arrested by the newly installed Ruhengeri Prefect Basile Nsabumugisha and killed in the end of May 1994. Nkusi fled to Kigali but was killed by "infiltrators". Beatrice, her husband and children fled to Kigali and the witness heard that she and her children were killed. Finally, a man called Dr. Rugina and Agathe Uwilingiyimana were also killed, as were many others.[509]

Prosecution Witness Fidèle Uwizeye

335. Fidèle Uwizeye, a Hutu, was a founding member of the MDR party and the prefect of Gitarama prefecture from 3 July 1992 until he was removed from that post during the genocide.[510] In the second half of 1993, members of the MDR political bureau and national committee in Kigali, such as Froduald Karamira, Donat Murego and Shingiro, started to form a power faction within the party aimed at creating a united Hutu identity to fight Tutsis. Divisions within the party were exacerbated in July 1993 when President Juvénal Habyarimana, without getting the MDR's approval, selected a Prime Minister for the transitional government provided for by the Arusha Accords. During the second half of 1993, the MDR held the Kabusunzu Congress at which some persons were voted out while other persons were selected to replace them. Uwizeye voted to maintain Agathe Uwilingiyimana as Prime Minister. Uwilingiyimana resigned, but politicians, including Mugenzi, approached her at her home during the Kabusunzu Congress and persuaded her not to.[511]

Prosecution Witness AEI

336. Witness AEI, a Hutu, worked for the regional health sector in Ruhengeri in 1994 and was not a member of a political party.[512] A moderate and opposing power faction of the MDR existed in 1993 around the time of a meeting in Kabusunzu. During that meeting, moderates like Faustin Twagiramungu and Agathe Uwilingiyimana left. Although Bicamumpaka never made statements promoting killings, he was part of the MDR's power faction, which opposed giving power to the RPF and promoted an ideology of massacres. The witness testified that he attended an MDR rally in Busengo, but did not specify when it was, who was present or what was said.[513]

Prosecution Expert Witness Alison Des Forges

337. Alison Des Forges was presented as an expert in history and human rights violations in Rwanda.[514] A number of MDR members were present at the Kabusunzu Congress. Des Forges spoke with a number of people who attended the Kabusunzu Congress, including a person who had been close with Agathe Uwilingiyimana. She said that the gathering involved a struggle within the party to choose appointments for important positions in the new

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[509] Witness GBR, T. 7 June 2004 pp. 18-21, 26, 40-42, 47-49, 69-71.
[510] Uwizeye, T. 5 April 2005 pp. 9, 13.
[511] Uwizeye, T. 5 April 2005 pp. 14-16, 25; T. 11 April 2005 pp. 11-17. The transcripts mistakenly refer to Karamira as "Karamera". *Compare* T. 5 April 2005 pp. 14-15, 24; T. 13 April 2005 pp. 17-18, *and* T. 7 April 2005 p. 19; T. 11 April 2005 pp. 11-12.
[512] Witness AEI, T. 3 February 2004 pp. 36, 39; T. 4 February 2004 pp. 6, 14, 54; Exhibit P23 (Witness AEI's Personal Information Sheet).
[513] Witness AEI, T. 3 February 2004 pp. 41-43; T. 4 February 2004 pp. 7-12, 14.
[514] Des Forges, T. 31 May 2005 p. 3.

government. In her view, divisions within the party became apparent through this struggle and those who voted to exclude Faustin Twagiramungu later became identified with Hutu power. She agreed that Twagiramungu had been eager to secure a position within the transitional government and President Juvénal Habyarimana thought appointing him might weaken the MDR, his largest political opponent.[515]

Prosecution Witness GJW

338. Witness GJW, a Hutu, joined the MDR party in 1992 and lived in Kibungo in 1994.[516] The MDR split and a power faction was formed, which adopted policies of ethnic discrimination that agreed with the killing of Tutsis and the MDR's MRND opponents.[517]

Bicamumpaka

339. The Kabusunzu Congress was held on 23 and 24 July 1993 in reaction to growing concern about MDR representatives taking action without the approval of the party's political bureau or its membership generally. Specifically, Faustin Twagiramungu had nominated himself as the MDR's recommended Prime Minister of the transitional government without authorisation. Furthermore, President Juvénal Habyarimana had appointed Agathe Uwilingiyimana, who had been recommended by Twagiramungu, as Prime Minister and an MDR representative in the existing government without the approval of the MDR's political bureau or the party generally. Likewise, Anastase Gasana, Faustin Rucogoza and Jean-Marie Vianney Mbonimpa had accepted ministerial positions within the Rwandan government without party approval. On 17 July 1993, Twagiramungu was suspended provisionally from his position within the party's national structure and Uwilingiyimana was also suspended from her Butare prefectural post. The Kabusunzu Congress was intended to resolve these issues and all persons under suspicion were invited.[518]

340. Bicamumpaka, along with Dismas Nsengiyaremye, Froduald Karamira, Donat Murego and Uwilingiyimana attended, while Twagiramungu did not come. A quorum of the MDR was present on 23 July 1993 and about 94 percent of voters decided to expel Twagiramungu for his acts, which were determined to be treason. Gasana, Rucogoza and Mbonimpa were also expelled that day. Uwilingiyimana addressed the gathering, stating that she would resign her Prime Minister post, and drafted a letter to that effect. However, the following day Radio Rwanda broadcast a statement from her indicating that she withdrew her resignation and would continue in her position. Considered to be one of many other acts of treachery, Uwilingiyimana was also voted out of the party on 24 July 1993. At no point during the Kabusunzu Congress were schisms within the party discussed.[519]

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[515] Des Forges, T. 14 June 2005 pp. 34-36, 38-42.
[516] Witness GJW, T. 22 March 2004 p. 33; T. 23 March 2004 p. 4; T. 24 March 2004 p. 9; Exhibit P46 (Witness GJW's Personal Information Sheet).
[517] Witness GJW, T. 22 March 2004 pp. 34-36.
[518] Bicamumpaka, T. 16 September 2007 pp. 58-60; T. 19 September 2007 pp. 2-12, 14; T. 24 September 2007 p. 21; T. 8 October 2007 pp. 7-13; T. 9 October 2007 pp. 35-36.
[519] Bicamumpaka, T. 19 September 2007 pp. 13-28; T. 20 September 2007 pp. 2, 8, 28-29, 37; T. 24 September 2007 pp. 5, 7-8; T. 8 October 2007 pp. 2-3, 7-12; T. 9 October 2007 pp. 25, 34-35, 49-50, 53. Bicamumpaka denied that Dismas Nsengiyaremye, Froduald Karamira and Donat Murego were Hutu extremists. Bicamumpaka, T. 9 October 2007 p. 32.

341. A meeting of the Ruhengeri prefecture's regional MDR party was held on 14 August 1993, which Bicamumpaka attended. The regional secretariat drafted a letter during it, which he and Donat Murego signed. In Bicamumpaka's view, the letter reflected the party's intent to reconcile with Twagiramungu, rather than isolate him. Bicamumpaka also emphasised that an excerpt, which read: "The MDR party secretariat strongly condemns any policy that would be based on regionalism ... ethnicism, ... as well as any other form contrary to the fundamental principles of democracy, particularly policy based on nepotism, whatever its origin", was inconsistent with the Prosecution case that he had participated in creating lists of persons to be killed at that time. Bicamumpaka was not questioned about the purported gathering in Busengo in November 1993.[520]

342. Uwilingiyimana and Rucogoza were killed during the genocide. Twagiramungu, Gasana and Mbonimpa were still alive at the time of Bicamumpaka's testimony.[521]

Bicamumpaka Defence Witness Ignace Karuhije

343. Ignace Karuhije, a Hutu member of the MDR's secretariat in Ruhengeri, lived in Kigali in 1994.[522] In June 1993, without the MDR's approval, Faustin Twagiramungu presented himself to President Juvénal Habyarimana as the party's selection for Prime Minister in the transitional government to be established through the Arusha Accords. Consequently, the MDR's political bureau, of which Karuhije was not part, met, suspended Twagiramungu and called a national congress to meet in Kabusunzu, Kigali, on 23 and 24 July 1993.[523]

344. Two hundred and fifteen out of the 298 members of the MDR's National Congress came to the Kabusunzu Congress. Attendees included Froduald Karamira, Donat Murego and Bicamumpaka. Two hundred and five members, including Karuhije, voted to expel Twagiramungu for his illegal self-nomination as the MDR's selection for Prime Minister. Karuhije denied that he or any other MDR member wanted to kill Twagiramungu for this betrayal. He also did not participate in a meeting in Gatonde commune or any other where Twagiramungu supporters were selected to be murdered. He added that a rally was held in Busengo, but it occurred one year prior to Twagiramungu's expulsion from the MDR.[524]

345. Karuhije denied that those who voted to expel Twagiramungu were extremists that were aimed at forming a coalition with the MRND for the purpose of eliminating Tutsis. After the Kabusunzu Congress, most MDR members continued to align themselves with the original party that had expelled Twagiramungu, although certain persons continued to support

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[520] Bicamumpaka, T. 19 September 2007 pp. 33-34, 36, 40-41; Exhibit 3D39 (MDR Ruhengeri Secretariat Letter, 14 August 1993). Bicamumpaka also pointed to an 18 August 1993 letter from the MDR political bureau issued from Kigali, which showed its commitment to the transitional institutions in light of those who were opposing them. T. 19 September 2007 pp. 37-40.
[521] Bicamumpaka, T. 8 October 2007 pp. 15-18.
[522] Karuhije, T. 5 November 2007 pp. 5-7, 18; T. 6 November 2007 pp. 1-2; Exhibit 3D171 (Karuhije's Personal Information Sheet). Karuhije was installed as prefect of Ruhengeri on 30 October 1994. In March 1997, he reviewed reports that implicated RPF soldiers in a number of killings within Ruhengeri in the preceding months. He publicly expressed concern over this on 3 March 1997. Consequently, he received threatening calls from military personnel and was dismissed from his position on 4 April 1997. He remained in Ruhengeri until November 1997 and then moved to Kigali. In July 1998, Karuhije left for Belgium, where he received political asylum. T. 5 November 2007 pp. 18, 22, 24, 30-35; T. 6 November 2007 pp. 36-38.
[523] Karuhije, T. 5 November 2007 pp. 10-11; T. 6 November 2007 p. 2.
[524] Karuhije, T. 5 November 2007 pp. 11, 13-14, 25, 27, 52, 55; T. 6 November 2007 pp. 41-42.

Twagiramungu. Among them were Agathe Uwilingiyimana, Faustin Rucogoza, Anastase Gasana, Boniface Ngulinzira and Jean-Marie Mbonimpa. Uwilingiyimana, Rucogoza and Ngulinzira, all Hutus, were killed by soldiers around 7 April 1994. Karuhije started participating less in party activities given the turmoil within it.[525]

Bicamumpaka Defence Witness Jean Marie Vianney Nkezabera

346. Jean Marie Vianney Nkezabera, a Hutu, was a member of the MDR's political bureau and vice-chair of the party in Kigali prefecture.[526] On 17 July 1993, the political bureau of the MDR decided that Faustin Twagiramungu would be expelled from the party for improperly nominating himself as its selection for the post of Prime Minister in the transitional government. Without party approval, he similarly proposed to President Juvénal Habyarimana that Agathe Uwilingiyimana was the MDR's selection for Prime Minister of the existing government. The bureau called a meeting of the National Congress to consider these issues.[527]

347. Nkezabera attended the Kabusunzu Congress, which met on 23 and 24 July 1993 and brought together about 220, or approximately 80 percent, of the 260 members of the National Congress. Representatives from Butare prefecture met with respect to Uwilingiyimana, the party chairperson for the region, and it was decided that she would resign from her position as Prime Minister. This decision was typed up and signed by Uwilingiyimana, who then went home. Nkezabera heard that later that night at her home, several persons, including Mugenzi, had convinced her not to leave her post. The National Congress decided to expel Twagiramungu and Uwilingiyimana. Additionally, it adopted the political bureau's recommendation to expel three others – Faustin Rucogoza, Anastase Gasana and Jean-Marie Mbonimpa – who had taken ministerial posts slotted for the MDR but were working "outside the party".[528]

348. Nkezabera attended several MDR meetings after the Kabusunzu Congress. He denied that any lists of persons close to Twagiramungu and who were to be chased were read out at these meetings. He further stated that there was no division within the party, as only a very small minority of MDR members disagreed with Twagiramungu's expulsion.[529]

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[525] Karuhije, T. 5 November 2007 pp. 52-56; T. 6 November 2007 pp. 17, 26-28, 41-42. The Prosecution mistakenly refers to Faustin Rucogoza as "Boniface".
[526] Nkezabera, T. 31 October 2007 p. 47; T. 1 November 2007 pp. 30-31; Exhibit 3D169 (Nkezabera's Personal Information Sheet). At the time of his testimony, Nkezabera had obtained Belgium citizenship. He had left Rwanda on 4 April 1994 and had not returned. T. 31 October 2007 p. 71; T. 1 November 2007 p. 33.
[527] Nkezabera, T. 31 October 2007 pp. 52-56; T. 1 November 2007 pp. 19-20, 35, 38-39.
[528] Nkezabera, T. 31 October 2007 pp. 49, 52, 56-58, 62, 68; T. 1 November 2007 pp. 11-12, 20, 27, 35-36, 38-39, 45, 51.
[529] Nkezabera, T. 31 October 2007 p. 61; T. 1 November 2007 p. 39. The Prosecution asked Nkezabera if he heard what happened to Uwilingiyimana, Rucogoza (spelled phonetically as "Cyagoza") and Boniface Ngulinzira, to which the witness responded that he had. T. 1 November 2007 p. 33. He later clarified that Uwilingiyimana was killed. T. 1 November 2007 p. 51. Anastase Gasana, Jean-Marie Vianny Mbonimpa, Bonaventure Ubalijoro and Jean Damascene "Ntakirutimana" survived the genocide. T. 1 November 2007 p. 51.

Bicamumpaka Defence Witness MG-1

349. Witness MG-1, a Hutu, was a member of the MDR from its inception in 1991 and lived in Kigali in 1994.[530] Shortly before the Kabusunzu Congress of 23 and 24 July 1993, Faustin Twagiramungu was suspended by the MDR's political bureau for having, in conjunction with President Juvénal Habyarimana, illegally designated himself as the MDR's selection for Prime Minister of the transitional government. He also improperly facilitated Agathe Uwilingiyimana's appointment as Prime Minister, as well as three others to ministerial posts in the existing government.[531]

350. At the Kabusunzu Congress, a majority of the members were represented. Witness MG-1 attended and was part of the majority that voted that Twagiramungu and three other ministers be expelled from the party. Uwilingiyimana attended on 23 July 1993 and resigned from the post of Prime Minister. This encouraged those gathered, but during a radio broadcast the following day, she stated that she had been coerced to resign and reneged on this decision. Consequently, she was voted out of the party the following day.[532]

351. The witness, disillusioned by what was happening within the MDR, stopped participating in gatherings, including any subsequent prefectural MDR meeting in Ruhengeri, if any occurred. In 2003, Jean-Bosco Nubaha told Witness MG-1 that he had been labelled a Twagiramungu supporter, but Witness MG-1 was unaware of any lists of persons to kill or that he was on a list created by Bicamumpaka, Donat Murego or Ignace Karuhije. He acknowledged that MDR personalities such as Agathe Uwilingiyimana and Rucogoza, who were aligned with Twagiramungu, were killed. However, in 1994, he was not afraid of extremists in his party but rather the *Interahamwe*, given his position in the opposition. As an example, he heard that an MDR member named Beatrice had been murdered, but that it was done by persons unrelated to the MDR.[533]

Mugenzi Defence Witness Pie Betabura

352. Pie Betabura, a Hutu, was a member of the MDR and had represented the Kibungo prefecture at party congresses. He knew Mugenzi and Bicamumpaka through his involvement in the Episcopal Church and the MDR party, respectively.[534] He, along with Bicamumpaka, attended the Kabusunzu Congress in 1993. It had been convened to resolve the conflict resulting from Faustin Twagiramungu's unauthorised selection of Agathe Uwilingiyimana as the Prime Minister designate. During the congress, Twagiramungu, Uwilingiyimana, Faustin Rucogoza, Anastase Gasana and Jean-Marie Vianney Mponimba were expelled from the MDR. Betabura had voted for this outcome. Each had an opportunity to come before the congress, but only Uwilingiyimana appeared. In Betabura's view, the expulsions did not

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[530] Witness MG-1, T. 2 November 2007 pp. 12, 14-15, 30; T. 7 November 2007 pp. 9-10, 15; Exhibit 3D170 (Witness MG-1's Personal Information Sheet). Around 13 August 2003, Witness MG-1 was arrested for activities related to campaigning on Faustin Twagiramungu's behalf. He was released around 27 August 2003 – about two days after the elections – and fled Rwanda in December that year. He continued to live in exile at the time of his testimony. T. 2 November 2007 pp. 32-33; T. 7 November 2007 pp. 15, 27-29, 32-33.
[531] Witness MG-1, T. 2 November 2007 pp. 20-21; T. 7 November 2007 pp. 12-13.
[532] Witness MG-1, T. 2 November 2007 pp. 21-22; T. 7 November 2007 p. 13.
[533] Witness MG-1, T. 2 November 2007 pp. 22-23, 25-28; T. 7 November 2007 pp. 12-18, 32-34.
[534] Betabura, T. 1 December 2005 pp. 22-23, 25, 42, 51-52, 66, 71-76, 78-79; T. 5 December 2005 p. 7. Betabura fled Rwanda around June or July 1994, arrived in Yaoundé, Cameroon, in 1995 and was living there at the time of his testimony. T. 1 December 2005 pp. 67-68.

establish a separate MDR faction, and those who were not expelled continued to operate on the objectives that the party had maintained since its formation in 1991.[535]

Bizimungu Defence Witness WFQ3

353. Witness WFQ3, a Hutu, was a member of the MDR political bureau in 1994.[536] A conflict arose between the MDR's President, Faustin Twagiramungu, and the party's political bureau, leading to Twagiramungu's suspension by it on 16 July 1993. The Kabusunzu Congress was held on 23 and 24 July 1993 to resolve the dispute. All members of the party's congress, including the President and his supporters, were invited and about 270 persons attended. About 90 percent of those present voted for the expulsion of four members of the MDR, including Twagiramungu and Agathe Uwilingiyimana. This did not create a split in the MDR, but rather the departure of a small number of dissidents. The witness did not discuss whether any lists of MDR members to be killed were created during the meeting.[537]

Bizimungu Defence Witness WZ8

354. In April 1994, Defence Witness WZ8, a Hutu, was an officer in the national gendarmerie in Gisenyi prefecture and worked primarily in and around Gisenyi town.[538] He testified that the MDR party split, but that he did not have the opportunity to "read" about "MDR-Power". Witness WZ8 disagreed that the "power" faction advocated uniting against the *Inkotanyi* and their accomplices. Up until the end of the genocide he did not know what "Hutu-Power" meant.[539]

Deliberations

355. Through Witnesses GLP, GBR, Fidèle Uwizeye, AEI, Alison Des Forges and GJW, the Prosecution presented evidence that a power faction promoting anti-Tutsi discrimination formed within the MDR. Witnesses GLP and GBR further testified that Faustin Twagiramungu and his supporters were identified as *Inkotanyi* accomplices at meetings such as the Kabusunzu Congress of July 1993, a subsequent MDR meeting of the Ruhengeri secretariat in August 1993 and during a rally in Busengo sub-prefecture in November 1993. Witness GBR, who did not attend any of the gatherings and only heard about them, testified that instructions were given to kill those listed, if necessary. In 1994, many of the persons identified were subsequently killed.

356. The Defence does not dispute that during the Kabusunzu Congress of 23 and 24 July 1993, MDR party members Faustin Twagiramungu, Agathe Uwilingiyimana, Anastase Gasana, Faustin Rucogoza and Jean Marie Vianney Mbonimpa were expelled. However, it disagrees that this marked the formation of a power faction within the MDR or that those expelled were identified as *Inkotanyi* accomplices. Rather, they were deposed from the MDR for taking government posts allotted to the party without having been properly nominated for

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[535] Betabura, T. 1 December 2005 pp. 56-61.
[536] Witness WFQ3, T. 24 January 2007 p. 6; T. 25 January 2007 p. 24; T. 29 January 2007 p. 16; Exhibit 1D132 (Witness WFQ3's Personal Information Sheet).
[537] Witness WFQ3, T. 25 January 2007 pp. 23-24; T. 29 January 2007 pp. 16-21.
[538] Witness WZ8, T. 18 September 2006 pp. 20-21, 37; T. 19 September 2006 pp. 2, 32-38; Exhibit 1D102 (Witness WZ8's Personal Information Sheet).
[539] Witness WZ8, T. 19 September 2006 pp. 43-46.

them. No lists of MDR members to be killed were made by Bicamumpaka or the party and no such instructions were given at party functions.

357. Before addressing the specific allegations pertaining to lists of MDR members to be killed, it is instructive to look at the fissures within the party starting in mid-1993. The record demonstrates that a rift emerged among the MDR's leaders at this time, which was formalised during the Kabusunzu Congress of 23 and 24 July 1993 with the expulsion of Faustin Twagiramungu, Agathe Uwilingiyimana, Anastase Gasana, Faustin Rucogoza and Jean Marie Vianney Mbonimpa. Prosecution Witnesses GLP, GBR, Des Forges and, to a lesser extent, Uwizeye have suggested that their expulsion stemmed from their moderate ideals that continued to support ethnic inclusion and democracy. National and regional MDR officials such as Bicamumpaka, Froduald Karamira, Donat Murego and Ignace Karuhije, on the other hand, aimed to seise control of the MDR and move it towards Hutu extremism and ethnic confrontation.[540]

358. The Defence has countered the Prosecution theory through the accounts of Bicamumpaka as well as Witnesses Karuhije, Nkezabera, MG-1 and WFQ3 who attended the Kabusunzu Congress. Read collectively, their testimonies confirm that Faustin Twagiramungu, Agathe Uwilingiyimana, Anastase Gasana, Faustin Rucogoza and Jean Marie Vianney Mbonimpa were removed from the MDR, but not because of their moderate political views. Rather, they betrayed the party, as Twagiramungu and then President Juvénal Habyarimana appointed Twagiramungu as the MDR's selection for Prime Minister of the transitional government. Uwilingiyimana, Gasana, Rucogoza and Mbonimpa were given ministerial posts in the existing government allotted to the MDR without having first been selected for them by the party as a whole. According to the Defence, the MDR was the MRND's – and consequently, Habyarimana's – most formidable opponent. Thus, through these actions, Habyarimana sought to divide Bicamumpaka's party and Twagiramungu was a political opportunist who sought to obtain power.[541]

359. The Defence also points to contemporaneous documentation of the struggles within the MDR as corroboration. They reflect that the controversy in mid-1993 arose out of political infighting over which MDR representatives should hold government posts. On 17 July 1993, the MDR's political bureau issued a *communiqué* noting its suspension of Twagiramungu for selecting Agathe Uwilingiyimana as Prime Minister designate of the existing government without party support. It also instructed all party members to desist from

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[540] Uwizeye did not list Bicamumpaka among those who formed the power faction of the MDR and disagreed that Dismas Nsengiyeremye was part of it. Uwizeye, T. 5 April 2005 p. 14; T. 12 April 2005 pp. 12-13. Furthermore, he mistakenly appears to believe that those among the MDR's purported power faction nominated Twagiramungu as Prime Minister. Uwizeye, T. 7 April 2005 p. 19.

[541] Prosecution Expert Witness Alison Des Forges also supported this theory, although maintained that divisions over ethnic discrimination also formed the basis for the division. *See* Des Forges, T. 14 June 2005 p. 40 ("Q. … Twagiramungu was excluded from the party because all of the members of the party thought he was a traitor to the party. He self proclaimed himself as leader in the Arusha Accords, and he was not a member of any organisation whatsoever. He was waiting to become prime minister of the broad based transitional government. The party manifested its authority by excluding him. … What do you think of that? A. I think that is a very likely interpretation. I spoke of the horse trading that went on behind the scenes, the kind of political deals that were made and clearly, Twagiramungu's intention was to ensure for himself the position he wanted in the future government. Apparently, Habyarimana was ready to co-operate with him in doing this in the hopes of splitting the MDR which, in fact, was what happened.").

taking posts in the current government.[542] On 20 July 1993, another statement was released, indicating that 32 of the 44 members of the MDR's political bureau had met and nominated Jean Kambanda as the party's selection for Prime Minister. It also called for a national congress to be held on 23 July 1993.[543] The next day Twagiramungu sent Habyarimana and the RPF a letter indicating that he had been selected by the MDR for the Prime Minister post. The letter also states that an informal group within the MDR had chosen Kambanda.[544] Twagiramungu was accepted by the President as the MDR's nomination for Prime Minister.[545]

360. The resolutions of the Kabusunzu Congress reveal that 215 of 298 members of the MDR's national congress attended. Twagiramungu, by a vote of 201 in favour, was dismissed as MDR chairman, in part, for signing the Additional Protocol of 16 July 1993 without approval from the MDR political bureau and appointing Uwilingiyimana as Prime Minister.[546] Likewise, Uwilingiyimana was expelled, with a vote of 195 in favour, for, in part, having accepted to establish a government during the Additional Protocol of 16 July 1993 without approval from the MDR political bureau and for statements on 24 July 1993, wherein she falsely alleged that she had been imprisoned and forced to resign by the national congress of the MDR.[547] Anastase Gasana, Faustin Rucogoza and Jean-Marie Vianney Mbonimpa were also expelled, with a vote of 203 in favour, for accepting positions in Uwilingiyimana's government after the 17 July 1993 order from the MDR's political bureau that members desist from doing so.[548]

361. Even if the Chamber were to accept that the evidence convincingly establishes the controversy upon which the Kabusunzu Congress centred, it does not necessarily explain why Twagiramungu, Uwilingiyimana, Gasana, Rucogoza and Mbonimpa (and their supporters) would have acted in defiance of the MDR's political bureau or the party generally. The possibility exists that the MDR's leadership, from which these supposed moderates were excised, was moving towards Hutu extremism and away from implementing the Arusha Accords. As discussed in greater detail elsewhere, MDR Vice-Chairman Froduald Karamira gave a speech on 23 October 1993 in Nyamirambo, Kigali, where opposition parties came together with the MRND in the wake of the assassination of the Hutu Burundian President (II.3.3). His speech has been viewed by many as a call for Hutu solidarity in opposition to the pending incorporation of the RPF into the Rwandan government and reconciliation with Tutsi refugees. Notably, Bicamumpaka and other Defence witnesses tried to distance themselves from this speech.

362. On the other hand, excerpts from documents written prior to and during the Kabusunzu Congress by leadership of the MDR that expelled Twagiramungu and the other so-called moderates reflect a stated commitment to peace and democracy, as well as the implementation of the Arusha Accords.[549] After the congress, on 2 August 1993, Karamira

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[542] Exhibit 3D29(E) (Decision of the MDR Political Bureau Following the Appointment of Agathe Uwilingiyimana as Prime Minister, 17 July 1993) pp. 1-2.
[543] Exhibit 3D30(E) (Decisions of MDR Political Bureau, 20 July 1993) pp. 1-2.
[544] Exhibit 3D31(E) (Letter from Faustin Twagiramungu to Habyarimana and the RPF, 21 July 1993).
[545] Exhibit 3D32(E) (Letter from Enoch Ruhigira to Anastase Gasana, 23 July 1993).
[546] Exhibit 3D33(E) (Minutes of the Kabusunzu Congress) pp. 1, 3-4.
[547] Exhibit 3D33(E) (Minutes of the Kabusunzu Congress) pp. 4-5.
[548] Exhibit 3D33(E) (Minutes of the Kabusunzu Congress) p. 5.
[549] Exhibit 3D29(E) (Decision of the MDR Political Bureau Following the Appointment of Agathe Uwilingiyimana as Prime Minister) p. 2 ("The MDR Political Bureau reaffirms its firm support for the peace

and Murego issued a statement on behalf of the MDR that congratulated those finalising the Arusha Accords on their success.[550] Over a week later, the Ruhengeri secretariat of the MDR issued a letter on 14 August 1993, signed by Bicamumpaka and Donat Murego, which called for an end to regionalism and ethnic discrimination.[551] The Defence has also introduced evidence that the MDR's leadership, including Bicamumpaka, was not hostile towards Twagiramungu but attempted to mediate with him in order to resolve their issues in December that year.[552] A report from the representatives of the Catholic and Protestant Churches who attended the mediation reflects the willingness of both sides to agree in order to facilitate the establishment of the transitional government.[553] Notwithstanding, the mediation appears to have failed.[554] Similarly, a Radio Rwanda broadcast of 5 January 1994 shows that Bicamumpaka attended the swearing-in ceremony of ministers of the transitional government despite requests to boycott it by leaders of the parties, including the MDR.[555]

363. Furthermore, statements made by Karamira, Murego or Nsengiyaremye on behalf of the MDR in early 1994 similarly express the party's commitment to the peace process and, at times, its dissatisfaction with obstructions to its implementation.[556] Other evidence that those who remained in the MDR were not all extremists bent on Tutsi elimination is that Ignace Karuhije was appointed as the Ruhengeri prefect by the RPF in October 1994.

364. Ultimately, evidence pertaining to the schism that emerged through the Kabusunzu Congress is complicated. No clear inferences arise about the reasons behind the fracture. The Defence has placed on record various exhibits that suggest the MDR leadership, of which Bicamumpaka remained a part, maintained moderate views that promoted peace and democracy after July 1993. The extent to which such political statements reflect the views held by Bicamumpaka and his colleagues is unknown. They are, on their face, however, inconsistent with the Prosecution evidence that they were Hutu extremists seeking to topple peace negotiations with the RPF and sow ethnic discord.

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process and the democratic process … and states that the MDR will participate in the broad based transitional government responsible for the implementation of the Peace Accords."); Exhibit 3D33(E) (Minutes of the Kabusunzu Congress) pp. 6 ("The National Congress of the [MDR] … reaffirms the MDR's commitment to ideals of peace and democracy … urgently requests the President of the Republic to expedite the signing of the Peace Accord … ."), 7 ("Affirms that the MDR will participate in the broad-based transitional government in accordance with the draft agreement on power-sharing signed in Arusha on 30 October 1992 and on 9 January 1993.").

[550] Exhibit 3D38(F) (MDR Telegram, 2 August 1993) p. 1 ("The MDR party ... expresses its complete satisfaction at the successful peace talks between the Government of Rwanda and the RPF and its gratitude to the facilitator, countries and observers.").

[551] Exhibit 3D39(F) (Approved Statement of the Meeting of the Ruhengeri Secretariat, 14 August 1993) p. 2 ("*Le Secrétariat du parti M.D.R. condamne avec énergie, toute politique qui serait basée sur le régionalisme, sur l'ethnisme, ainsi que sur tout autre forme contraire aux principes fondamentaux de la démocratie, en particulier la politique fondée sur le népotisme quelle que soit son origine.*").

[552] Exhibit 3D52(E) (Meeting of the Catholic and Protestant Churches of Rwanda and the Representatives of the MDR Party, 3 December 1993).

[553] Exhibit 3D54(F) (Statement of the Representatives of the Catholic and Protestant Churches of Rwanda Regarding the Mediation with the MDR Party).

[554] *See* Exhibit 3D57(F) (Report of the Meeting between MDR Party and Representatives of the Catholic Church and Protestant Churches of Rwanda, 22 December 1993).

[555] Exhibit 3D62(F) (Radio Rwanda Broadcast, 5 January 1994) p. 20.

[556] Exhibit 2D41(F) (MDR *Communiqué* Signed by Dismas Nsengiyaremye, Froduald Karamira and Donat Murego, 12 January 1994); T. 24 September 2007 pp. 30-32 (English translation); Exhibit 3D65(F) (Radio Rwanda Broadcast, 19 January 1994) pp. 6-7; Exhibit 3D74(E) (Radio Rwanda Broadcast, 20 February 1994).

365. With this in mind, the Chamber now turns to the theory that lists of Twagiramungu supporters that were intended to be killed evolved from the Kabusunzu Congress and subsequent meetings. Before turning to the merits of Witness GLP's and Witness GBR's evidence, the Chamber will generally review its reliability.

366. At the time of his testimony, Witness GLP had been provisionally released after several months of detention based on allegations of illegal campaigning. He expressed concern about Rwandan government reprisals for speaking out against it but affirmed that his testimony was not affected by this concern.[557] The Chamber considers that Witness GLP's circumstances warrant caution. The possibility that he might have tailored his evidence to obtain favourable treatment from the Rwandan government cannot be ignored.

367. Turning to Witness GBR, his evidence about lists is not only hearsay, but sources of some of his testimony regarding lists appeared before the Chamber.[558] Thus, while his testimony naturally complements the first-hand evidence led by the Prosecution, it does not provide independent corroboration of that account.

368. Turning to the Kabusunzu Congress of 23 and 24 July 1993, Prosecution Witnesses GLP and GBR did not attend. Rather, they heard that certain MDR members were excluded from the party. Witness GBR testified that the expulsions were made so that government positions held by the party's moderates could be given to its extremists. They also heard that lists of persons to be killed were announced.

369. As noted above, Witness GBR's testimony that persons were identified to be killed during this meeting is hearsay. Furthermore, it is uncorroborated by the other Prosecution evidence. Notably, the record reflects that Fidèle Uwizeye, unlike Witnesses GBR or GLP, attended the Kabusunzu Congress.[559] However, the Prosecution led no evidence through him to support this allegation. The Defence witnesses generally denied that lists of MDR members to be killed were made by the party or did not testify about the matter. None of the contemporary statements that document the activities and decisions of the Kabusunzu Congress support this contention.[560] This allegation is not proven.

370. Turning to the allegations as they pertain to an August 1993 meeting of the MDR's Ruhengeri secretariat, Witness GLP attended one such meeting with Bicamumpaka, André Sebatware, Jean-Damascène Munyarukiko and Donat Murego. Murego read a list of names of regional MDR party members who were identified as Twagiramungu supporters and consequently expelled. In his view, the clear implication was that these individuals were *Inkotanyi* accomplices.

371. Likewise, Witness GBR heard of an August 1993 meeting at the prefecture office in Gatonde commune attended by Donat Murego, André Sebatware, Ignace Karuhije, Jean-Damascène Munyarukiko and Bicamumpaka. Bicamumpaka allegedly gave Murego a list of names, which the latter read aloud. He stated that those on the list were Twagiramungu

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[557] Witness GLP, T. 24 June 2004 pp. 18, 64-67.
[558] For the purposes of witness protection, the Chamber is omitting citations to the record that demonstrate the cumulative nature of Witness GBR's evidence.
[559] *See* Uwizeye, T. 11 April 2005 p. 15 (discussing his vote during the Kabusunzu Congress to retain Agathe Uwilingiyimana as Prime Minister); Exhibit 3D33(E) (Minutes of the Kabusunzu Congress) p. 9 (identifying Fidèle Uwizeye as a representative from Gitarama present at the Kabusunzu Congress).
[560] *See* Exhibit P61(E) (*Urumuli Rwa Demokarasi*); Exhibit 3D33(E) (Minutes of the Kabusunzu Congress).

supporters who had collaborated with the *Inkotanyi*. Murego stated that these persons were expelled from the party and, if necessary, were to be killed.[561]

372. While Witnesses GLP and GBR each testified that this meeting involved Murego identifying and excluding MDR members who supported Twagiramungu, critical differences emerge. The former, who *attended* the meeting, made no mention that the persons identified were supposed to be killed. Indeed, Witness GLP disagreed that lists of MDR members to be killed were created in the party. He believed that the *Interahamwe* created and employed lists for subsequent killings.

373. As noted above, the Defence witnesses generally denied that lists of MDR members to be killed were made by the party. Bicamumpaka, in particular, pointed to a letter which he testified was made during the meeting of the MDR's Ruhengeri secretariat in August 1993. It reflects that the meeting's purpose was to execute the resolutions adopted by the Kabusunzu Congress. The letter outlines preconditions for Twagiramungu's re-acceptance into the MDR. Furthermore, it condemns politics based on regionalism and ethnic division. It also reaffirms the party's commitment to returning refugees to Rwanda and its aim of peaceful coexistence and unity among Rwandans.[562] The Prosecution has made no submissions that the authenticity of this document should be questioned.

374. Given the conflicting accounts of Witnesses GLP and GBR, as well as Defence evidence, including a contemporaneous summary of a meeting of the Ruhengeri secretariat of August 1993, the Prosecution has not proven that persons were identified as accomplices of the *Inkotanyi* and that instructions were issued to kill them.

375. Finally, Witness GLP testified that he attended a rally in Busengo in November 1993 with thousands of others and that specific persons were identified as accomplices of the *Inkotanyi* during the rally. In his view, the purpose of the rally was for the *Interahamwe* to show these individuals "no pity". Witness GBR heard about a meeting in that area and around that time where moderates were identified by Ignace Karuhije as persons to be harmed.

376. The limited Defence evidence led in response to this allegation suggests that no MDR meeting was held in November 1993 in Busengo. Rather, a rally occurred there in 1992, prior to Twagiramungu's expulsion.[563]

377. Given the concerns noted above, the Chamber is reluctant to rely on the first-hand account of Witness GLP alone, and questions the ability of Witness GBR's testimony to independently corroborate evidence in the record. Indeed, the Chamber limited his evidence to the extent it sought to directly link the existence of a list with Bicamumpaka, and the Prosecution conceded that the evidence did not.[564] Witness AEI testified that he had attended

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[561] Witness GBR, T. 7 June 2004 pp. 8, 12, 16-20, 26-28, 48, 62, 64-65.

[562] Exhibit 3D39(F) (Approved Statement of the Meeting of the Ruhengeri Secretariat, 14 August 1993).

[563] Karuhije, T. 5 November 2007 p. 27 (when confronted with an excerpt from a transcript that showed he had read a list of names at a Busengo rally, Karuhije responded: "Counsel, I must tell you that all that is confused, to say the least, unfortunately. Allow me a small digression. … [T]he Busengo rally … did take place, but it was at least a year before Twagiramungu was expelled from the party, so it's nothing to do with that. It was in Busengo rally, and I took part, but it was about a year before Twagiramungu. When I went with him to Bujumbura, the meeting had already been held and was over. So the Busengo meeting is out.").

[564] T. 23 June 2004 p. 19 ("MADAM PRESIDENT: We have deliberated, and we are inclined to rule that if there is the existence, a physical list, compiled by the MDR and the position of the Accused Bicamumpaka, then the MDR would ultimately link him with the (unintelligible) of the list. We would not allow that evidence."); T. 23 June 2004 p. 16 ("MR. NG'ARUA: Now, I do not know – I would not be able to say that – whether that is

an MDR rally in Busengo, yet the Prosecution did not obtain any details about when it occurred, who attended or what was said.[565] This evidence is far too ambiguous to corroborate Witness GLP's account.

378. The Chamber considers that themes of the purported November 1993 Busengo gathering have parallels with Froduald Karamira's speech in Nyamirambo stadium in the preceding month. For example, Witness GLP's description of Froduald Karamira stating "MDR Power" during the rally and persons responding by yelling "Power" mimics what occurred during the Nyamirambo stadium rally.[566] Similarly, Witness GLP testified that Ruhengeri residents were identified as accomplices of the *Inkotanyi*. During the Nyamirambo rally, Karamira spoke of several occasions when Twagiramungu was referred to as an *Inyenzi*. He also stated that Gasana's wife had spent years with the *Inkotanyi* and that she vowed not to return to Rwanda until they were victorious. Similarly, he called Uwilingiyimana's opposition to the rally "*Inyenzi* behaviour".[567] It is possible that during the Busengo rally the following month, MDR leaders, including Bicamumpaka, could have tailored their warnings about *Inyenzi* accomplices and identified Ruhengeri personalities whom the local attendees might have known.

379. However, the Chamber recalls the numerous documents from 1993 and early 1994 that reflect the MDR's stated position in support of the finalisation of the Arusha Accords and peace (discussed above). Furthermore, there is no evidence linking Bicamumpaka with Karamira's speech or establishing that he attended the October 1993 rally in Nyamirambo stadium. Several Defence witnesses testified that Karamira's speech there had not been approved by the MDR and that he was punished for it (II.3.3). While the Chamber views this evidence with some suspicion – Karamira's censure was not public – ambiguities in the Prosecution case leave questions about whether Bicamumpaka participated in a rally at Busengo in November 1993 where *Inyenzi* collaborators were allegedly identified to be harmed.

380. Finally, the Chamber notes that while there is little dispute that the MDR party members such as Agathe Uwilingiyimana and Faustin Rucogoza were killed in 1994, the Prosecution fails to establish a link between these killings and Bicamumpaka that would allow for any form of liability (II.7.2).

4.2 PL Lists

Introduction

381. The Indictment alleges that, as part of the Accused's conspiracy to eliminate Tutsis and members of the opposition, civilian authorities, among others, established lists of people to be executed after identifying Tutsis as the enemy and the opposition as their accomplices. In particular, the Prosecution alleges that Pierre Karake, the Chairman of the PL in Nyanza, prepared a list of non-power faction PL members to be killed. Copies were subsequently

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the same list that had been prepared by the secretary general of the MDR. Now that comes from another witness. There is another witness previously who talked about a list which had been prepared by the MDR, but this witness has not talked about Bicamumpaka being involved in anything with respect to a list. So what we are trying to elicit from him is the MDR means of identification of accomplices.").

[565] Witness AEI, T. 3 February 2004 p. 41.

[566] Exhibit P2(15)(E & F) (Froduald Karamira Speech in Nyamirambo, 23 October 1993) p. 4.

[567] Exhibit P2(15)(E & F) (Froduald Karamira Speech in Nyamirambo, 23 October 1993) pp. 2, 4.

given to the military and *Interahamwe*, who killed almost all identified on them during the genocide. Reference is made to Witness GMJ-G.[568]

382. The Mugenzi Defence questions the existence of the list and submits that even if accepted as true, there is no evidence that he was involved in creating it or aware of its existence. It generally denied that Mugenzi made lists of Tutsis or others to be killed and argues that he would have strongly disapproved of them.[569]

Evidence

Prosecution Witness GMJ-G

383. Witness GMJ-G, a Hutu trader and PL member since 1991, lived in Nyanza sector, Butare prefecture. He did not join the power faction of the PL after its split in 1993.[570] The power faction in Nyanza was led by Chairman Pierre Karake, who had a close relationship with Mugenzi. In his home, Karake started a list of PL members who had not joined his half of the PL, including the witness and other Hutus. Its purpose was to identify opposition for killing, and it was distributed to the military and *Interahamwe*.[571]

384. Between 15 and 20 April 1994, people shot at Witness GMJ-G's home in Nyanza causing him to flee to Gitarama. He hid for two days before being told by the person giving him refuge that he had to leave. On the third day, he was apprehended on the road by armed assailants. He showed them his Hutu identification card and they escorted him back to Nyanza. The following day, he contacted a Rwandan army commander called Birikunzira. Birikunzira informed him that, although the witness was a Hutu, he was on a list of persons to be killed. Birikunzira spoke to a soldier named François Munyurangabo and had the witness removed from the list.[572]

385. Witness GMJ-G believed that the list was distributed broadly, noting that Presidential Guards from Ruhengeri came to Nyanza with lists looking for specific residents and killed on this basis. Under the circumstances, being a Hutu did not protect one from being targeted for killing. With the exception of two persons, all PL members who had not joined its power faction in Nyanza were killed.[573]

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[568] Indictment, paras. 5.1, 5.28, 5.32; Prosecution Closing Brief, para. 44; Prosecution 21 November 2008 Document, Item No. 2.
[569] Mugenzi Closing Brief, paras. 1131-1141; Mugenzi Closing Arguments, T. 2 December 2008 pp. 75-76. *See also* Mugenzi Opening Statement, T. 1 November 2005 p. 11. The Mugenzi Defence points to the testimony of Witness UERE, who was close with Pierre Karake, to rebut Witness GMJ-G's evidence. Notably, Witness UERE was not questioned about Karake's role in creating a list of non-power faction PL members to kill. The Chamber has considered his evidence but finds it unnecessary to summarise here.
[570] Witness GMJ-G, T. 5 March 2004 pp. 24-26, 29; T. 8 March 2004 pp. 18, 20; Exhibit P37 (Witness GMJ-G's Personal Information Sheet).
[571] Witness GMJ-G, T. 5 March 2004 pp. 25, 30, 32-33; T. 8 March 2004 pp. 2, 8-10, 38-39.
[572] Witness GMJ-G, T. 5 March 2004 pp. 32-35; T. 8 March 2004 pp. 38-40, 43.
[573] Witness GMJ-G, T. 5 March 2004 pp. 30, 33; T. 8 March 2004 pp. 9-10.

Deliberations

386. Witness GMJ-G is the sole witness to testify to the existence of a list of persons to be killed in Nyanza.[574] The Chamber will review his general credibility before turning to the merits of his evidence.

387. Witness GMJ-G conceded that, at the time of his testimony, his wife was a Rwandan government official. He rejected that her role in politics had any relation to his testimony against the Accused.[575] The Chamber considers that his marriage to a Rwandan official does not necessarily render him impartial and his evidence unreliable.

388. The Defence also confronted the witness with the allegation that he had manned a roadblock during the genocide. He denied having done so.[576] In the Chamber's view, the record does not indicate that Witness GMJ-G is an accomplice of Mugenzi who should be treated with caution.

389. Turning to the merits of Witness GMJ-G's evidence, he confirmed that he never saw the purported list of PL members identified to be killed.[577] Rather, he heard that he was on a list of persons to be killed from a Nyanza military commander called Birikunzira. Moreover, he inferred that Pierre Karake, the PL chairman in Nyanza and close friend of Mugenzi, created a list of those who did not join the party's power faction.[578] In the Chamber's view, this indirect evidence concerning the list's creation and existence is of limited probative value.

390. Furthermore, Witness GMJ-G's evidence about the use of the list is vague. He only generally testified that Presidential Guards from Ruhengeri used lists. His evidence did not demonstrate how they received copies of the purported list created by Karake. His details about how these soldiers employed lists were brief and failed to establish his basis for knowledge.[579] Likewise, the witness's testimony that all but two non-power faction PL members were killed during the genocide is similarly vague. He did not provide any details of

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[574] The Prosecution Closing Brief submits that Prosper Higiro testified about a "hit list". Prosecution Closing Brief, para. 49. The citation within the paragraph, however, is to Witness GMJ-G's testimony. *See also* Prosecution 21 November 2008 Document, Item No. 6. The Chamber observes that Higiro, a PL member, testified that, after the killing of Félicien Gatabazi in February 1994, Tutsis were being attacked in Gikondo. Feeling threatened, he travelled to Kibungo prefecture in order to cross into Tanzania. However, he heard an RTLM broadcast announcing "spies" in Kibungo and his name was mentioned among others. He perceived this as a "death sentence". Higiro, T. 27 January 2004 pp. 4-6. This evidence does not expressly implicate Mugenzi or the PL. It is too remote to corroborate the details of Witness GMJ-G's account.

[575] Witness GMJ-G, T. 8 March 2004 pp. 19-20.

[576] Witness GMJ-G, T. 8 March 2004 pp. 21, 40.

[577] Witness GMJ-G, T. 8 March 2004 p. 39 ("Q. Did you … physically have a copy of this list? A. No, I could not have such a copy.").

[578] Witness GMJ-G, T. 8 March 2004 pp. 9, 39.

[579] Witness GMJ-G, T. 8 March 2004 p. 9 ("A. … people came to Nyanza to kill people – these military people were from Ruhengeri, and yet they had lists of people to be killed. These were people from the Presidential Guard, who original [sic] came from Ruhengeri. Yet they knew whom to kill, and they knew this because the lists had been prepared by local people in Nyanza, and the killings were carried out according to these lists. … The killers would come and say, 'Where does so-and-so live? Where is the house of so-and-so?' They would also ask about the homes of Hutu decedents [sic], and these would be killed because they were on these lists. There was no way they could have distinguished the decedent [sic] Hutus and kill them along the Tutsis unless such lists were there.").

who was killed, the nature of their deaths and whether lists were employed.[580] This type of evidence is far too ambiguous to support findings beyond reasonable doubt.[581]

391. To conclude, Witness GMJ-G's evidence does not implicate Mugenzi in the creation of a list of non-power PL members to kill. To the contrary, his testimony reflects a clear belief that Karake created this purported list.[582] The evidence similarly fails to show that Mugenzi had a role in the purported distribution of copies generally (and for the purpose of killing those identified on them) or that he was aware of them. Consequently, the Chamber finds that the Prosecution's allegation is not proved beyond reasonable doubt.

4.3 Ministry of Health Lists

Introduction

392. The Indictment alleges that, as part of the Accused's conspiracy to eliminate Tutsis and members of the opposition, civilian authorities, among others, established lists of people to be executed after identifying Tutsis as the enemy and the opposition as their accomplices. The Prosecution points to Witness GAT to support its allegation that a "hit list" of persons to be killed was maintained by the Ministry of Health.[583]

393. The Bizimungu Defence submits that the Indictment does not provide sufficient notice of this allegation. Moreover, Witness GAT's uncorroborated testimony lacks credibility and is contradicted by Defence Witness WCA1.[584] The Mugenzi Defence submits that this evidence fails to support any joint criminal enterprise involving Mugenzi.[585]

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[580] Witness GMJ-G, T. 5 March 2004 pp. 30 ("A. ... And, in fact, people did not join the Power faction of the liberal party. It died in large numbers, so about two people survived in our area. The others were exterminated."), 33 ("A. ... Those who refused to join that faction were removed from the register of the liberal party. They were then put on the list of people to be killed because people who did not join the Power faction, who were only two, myself and another person, others were all killed."); Witness GMJ-G, T. 8 March 2004 p. 9 ("A. ... The people who were in non-Power PL faction were killed, were followed and killed to the extent that getting to know someone, to see someone who is not in PL Power faction in the area where I lived, in Nyanza, where only two people survived, all the others were killed ... .").

[581] *See Kalimanzira* Appeal Judgement, paras. 72-80 (reversing an aiding and abetting conviction where the witness's basis of knowledge was unclear, no particular incident was referred to, no time frame of the killings was provided and no identifying information regarding the assailants or victims was provided).

[582] Witness GMJ-G, T. 8 March 2004 pp. 9, 39.

[583] Indictment, paras. 5.1, 5.28, 5.32; Prosecution Closing Brief, para. 51; Prosecution 21 November 2008 Document, Item No. 7. Within the same submissions, the Prosecution also generally alleges that *Interahamwe* harassed Tutsis within the Ministry of Health. The Chamber assesses this evidence, including that of Witness GIE who did not talk about a list of Tutsi Ministry of Health employees to kill, elsewhere. II.2.4.

[584] Bizimungu Closing Brief, paras. 136, 894-898, 947-948, 962-973, 1040, 1044-1045, 1665, 1679; Bizimungu Closing Arguments, T. 2 December 2008 pp. 14-15, 22-23. The Bizimungu Defence erroneously states at footnotes 1139 and 1141 of its Closing Brief that Witnesses WAA, WBD, WAX, Jean-François Ruppol and Bizimungu denied that the list described by Witness GAT existed. Notably, the brief contains no specific references within their testimonies. The Chamber has not found such evidence within them.

[585] Mugenzi Closing Brief, para. 330.

Evidence

Prosecution Witness GAT

394. Witness GAT, a Tutsi, worked in the Ministry of Health from 1986 until 1994.[586] A fellow ministry employee from Ruhengeri called Makiro had a list of Tutsi ministry workers to be killed. The witness testified that Makiro would "show the list". In 1994, unidentified persons went to the home of the witness, which at the time was occupied by another woman. According to Witness GAT, they killed that woman, having mistaken the victim for her.[587]

Bizimungu Defence Witness WCA1

395. Witness WCA1 had a Hutu father and a Tutsi mother. He worked in Kigali for the Ministry of Health from 1989 to July 1993, and subsequently in Butare for the ministry.[588] He was not aware of a list of people to be killed in the Ministry of Health and did not know of a ministry employee called "Makiro".[589]

Deliberations

396. Prosecution Witness GAT is the sole witness to testify to the existence of a list of Tutsi Ministry of Health employees to be killed and the subsequent killing of a woman mistaken for her (a former Tutsi ministry worker).

397. Witness GAT's evidence about the list and the killing was brief, totalling nine lines of transcript within five days of testimony. Furthermore, while she testified that Makiro would "show the list", it is not clear from her evidence that she saw it or if she was told about it. Likewise, it is not clear that she observed persons kill the woman who was supposedly mistaken for the witness because she lived in her house. Indeed, the witness testified that the assailants did not find her because she was not living there at the time.

398. The Chamber has previously questioned the reliability of Witness GAT's evidence about killings at the *Centre Hospitalier de Kigali* ("CHK") (II.7.4). Specifically, it noted that she initially gave the impression that she observed activities there first-hand and, only later, after further examination, was it clear that her evidence was second-hand. Indeed, she referred to a notebook while testifying about CHK. Given the brief and ambiguous nature of her evidence about the list and the subsequent killing at her home, the lack of further clarification only leaves questions about the evidentiary strength of her testimony in this instance.

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[586] Witness GAT, T. 25 February 2004 p. 41; T. 27 February 2004 pp. 2-3, 7-10; T. 1 March 2004 p. 9; Exhibit P33 (Witness GAT's Personal Information Sheet).
[587] Witness GAT, T. 26 February 2004 p. 12. The Chamber notes that the individual Witness GAT identified as possessing the list was referred to as "Kumaliro" (T. 26 February 2004 p. 15 (English) and p. 14 (French)), "Marcyu" (T. 26 February 2004 p. 12 (English)) and "Makiro" (T. 26 February 2004 p. 11 (French)). The Chamber shall use "Makiro", the name which formed the basis of further questioning by the Defence.
[588] Witness WCA1, T. 28 September 2006 pp. 36-40; T. 29 September 2006 pp. 9, 15-16, 28, 32; T. 17 January 2007 pp. 3-5; Exhibit 1D110 (Witness WCA1's Personal Information Sheet). He also took some time off to study in 1991. Witness WCA1, T. 29 September 2006 p. 5.
[589] Witness WCA1, T. 29 September 2006 p. 35.

399. Furthermore, other than the witness's general allegations that Bizimungu supported the MRND and *Interahamwe* while the head of the Ministry of Health (II.2.4), there is no express link between him and the alleged list of Tutsi employees to be killed or the purported killing that occurred at the witness's home. Her evidence fails to demonstrate any relationship between Bizimungu and the person who purportedly possessed the list, "Makiro", that would show Bizimungu supported its creation or would have known about it.

400. Finally, the Chamber notes that Witness WCA1 denied the existence of such a list. It is unclear, however, if he would have been in a position to have known about or observed one after his departure from Kigali in July 1993. His evidence, consequently, carries limited weight.

401. Having considered all the relevant evidence, Witness GAT's evidence is insufficient to support findings beyond reasonable doubt. Consequently, the Prosecution's case that a list of Tutsi employees of the Ministry of Health to be killed was kept by the ministry, and the subsequent killing of a woman mistaken for Witness GAT, are not proven. The Chamber need not address notice objections raised by the Defence.

5. PRE-APRIL 1994

5.1 Rally at Nyamirambo Stadium, Kigali, 16 January 1994

Introduction

402. The Indictment alleges that members of the government incited ethnic hatred and violence before and during the genocide. More specifically, the Prosecution contends that Mugenzi incited Hutus and *Interahamwe* in a speech at Nyamirambo stadium in Kigali on 16 January 1994. In this speech, Mugenzi's words were understood as a warning of severe punishment for people who were against the interests of the majority Hutu population and what they had gained from the 1959 revolution. He also called for the punishment of several people who were subsequently killed during the genocide. Prosecution Witnesses Prosper Higiro, Harriet Sebera and Jean-Baptiste Nkuliyingoma, as well as Expert Witness Alison Des Forges, provided relevant evidence.[590]

403. The Mugenzi Defence argues that it received insufficient notice of this allegation. However, it concedes that Mugenzi attended and spoke at this rally at Nyamirambo stadium, but submits that his speech was not a call for genocide. Mugenzi relies on Defence Witnesses Pius Betabura, Charles Murwanashyaka, Juvénal Turatsinze and Expert Witness Eugène Shimamungu.[591]

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[590] Indictment, para. 5.3; Prosecution Closing Brief, paras. 80-82, 216-218, 241, 302-304, 332-334; Prosecution 21 November 2008 Document, Item No. 61; Prosecution Closing Arguments, T. 1 December 2008 pp. 6, 37.
[591] Mugenzi Opening Statement, T. 1 November 2005 pp. 9-10; Mugenzi Closing Brief, paras. 1151, 1154; Mugenzi Closing Arguments, T. 2 December 2008 pp. 50, 67.

Evidence

Prosecution Witness Prosper Higiro

404. Prosper Higiro was a former teacher and civil servant in the Ministry of Industry and joined the PL in August 1991.[592] He was appointed the *directeur de cabinet* of the PL's Ministry of Commerce, Industry and Small-Scale Industries in 1992. At the time of his testimony, Higiro was a senator in the Rwandan parliament.[593]

405. Higiro was not present at the MRND rally at Nyamirambo stadium on 16 January 1994, but he heard Mugenzi's speech broadcast over RTLM. Higiro testified that in this speech, Mugenzi stated: "As written in the Bible, woe unto them" and "those who are against the interest of the majority of the people, who are the Hutus, those who are against the gains of the majority of the people, gains which accrued through the 1959 revolution, would receive the worst form of punishment".[594]

406. In Higiro's view, Mugenzi was targeting both the political leaders who were interfering in the affairs of the PL, and all Tutsis in the PL who opposed him. Mugenzi also stated that the *Inkotanyi* wanted to reinstall the Tutsi monarchy and put Hutus back in the position they had been in under it. Consequently, this reference to the *Inkotanyi* would have been understood as referring to all Tutsis.[595]

407. Higiro asserted that in Rwanda, the use of the word "woe" ("*Ishyano*") had a deeper meaning and threatened extreme punishment. In using this word and referring to the 1959 revolution at the same time, he was advocating extreme punishment for those who were against what the people gained from the revolution. Higiro considered that *Interahamwe* were present at the rally because the entire event was broadcast live. Moreover, prior to Mugenzi's speech, the head of the MRND in Kigali had addressed the *Interahamwe* directly, asking if they were present, to which the crowd responded "yes".[596]

408. Mugenzi's speech was broadcast on the day of the rally, and RTLM journalists became excited because it indicated a change in how Mugenzi saw the 1959 revolution. He previously believed that the revolution of 1959 was not actually a revolution but resulted in the violation of the human rights of Tutsis.[597] Excerpts of his speech, including the phrase "woe unto them", were repeatedly used by RTLM during the genocide to mobilise Hutus and militias to carry out the massacres. Higiro heard the speech on the radio in the early days of the genocide while at the *Conseil National du Développement* ("CND") building and once while in Byumba, but he could not recall the exact dates. According to Higiro, Mugenzi, as a member of the Interim Government, must have known what radio journalists were doing with his speech, and additionally had the power to stop them from doing so.[598]

409. Prior to this 1994 rally, and after Mugenzi annulled PL elections and dissolved the party organs, Higiro and others called a PL congress against Mugenzi's wishes. Mugenzi then dismissed Higiro from his post as *directeur de cabinet*. Mugenzi ordered him to leave the

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[592] Higiro, T. 26 January 2004 pp. 11-13.
[593] Higiro, T. 26 January 2004 pp. 16, 29; T. 27 January 2004 p. 13; T. 30 January 2004 p. 24.
[594] Higiro, T. 26 January 2004 pp. 35-36; T. 29 January 2004 pp. 28, 32.
[595] Higiro, T. 26 January 2004 p. 36; T. 29 January 2004 pp. 31-32.
[596] Higiro, T. 27 January 2004 p. 23; T. 29 January 2004 p. 32.
[597] Higiro, T. 26 January 2004 p. 36.
[598] Higiro, T. 26 January 2004 p. 36; T. 27 January 2004 pp. 24-25; T. 29 January 2004 pp. 34-35.

ministry offices immediately, and said that if Higiro did not leave, he would come and see him. They then met outside the offices, and Mugenzi ordered his bodyguard, a gendarme, to "shoot this little guy". The gendarme then put a gun to Higiro's head, Mugenzi ordered him to take the keys in Higiro's hand, and the gendarme took the keys and let Higiro go.[599]

Prosecution Witness Jean-Baptiste Nkuliyingoma

410. Jean-Baptiste Nkuliyingoma, a Hutu, was born in Nyabisindu sector, Murambi commune, Byumba prefecture.[600] During the relevant time period, he was the editor-in-chief of a newspaper called *Imbaga* and a member of the MDR party. He was also Minister of Information of the Rwandan government from September 1994 to August 1995.[601]

411. Nkuliyingoma heard Mugenzi's speech from the rally at Nyamirambo stadium on Radio Rwanda and believed elements of it were deceitful. For example, Mugenzi stated that he did not take part in "the agreements", but Mugenzi had previously supported the Arusha Accords. In addition, Mugenzi insisted that he and the PL were not responsible for impeding the establishment of government institutions following the Arusha Accords, but Nkuliyingoma believed that Mugenzi was responsible.[602]

412. Nkuliyingoma had known Mugenzi as an ally of the Tutsis, and, consequently, was upset that Mugenzi said "woe unto those" fighting against the interests of the majority and who had not accepted the 1959 revolution. In his view, Mugenzi intended to wish woe upon Tutsis in general, and the witness believed Mugenzi would never defend Tutsis again. Nkuliyingoma also called the speech "a turning point towards a catastrophe at [a] national level".[603]

413. Mugenzi used to state in interviews that the revolution of 1959 had been wrong because many people had been killed or fled. Mugenzi's mention of the revolution in the Nyamirambo speech was problematic, because he was referring to the violence against Tutsis that accompanied that revolution. Mugenzi's audience was familiar with this history and would understand the real meaning of his speech.[604]

414. Nkuliyingoma stated that Mugenzi's words were repeated on RTLM by a person named Kantano, who did not attribute them to Mugenzi. Still, the public remembered that Mugenzi had said the words.[605]

Prosecution Witness Harriet Mukamurangwa Sebera

415. Harriet Mukamurangwa Sebera, a Tutsi, was a PL member of the Rwandan parliament at the time of her testimony.[606] She joined the PL in 1991 and was elected the treasurer of the PL in Butare prefecture the same year. Sebera heard Mugenzi's speech from the rally at Nyamirambo stadium broadcast on Radio Rwanda. Mugenzi criticised those party

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[599] Higiro, T. 26 January 2004 pp. 30-33.
[600] Nkuliyingoma, T. 7 July 2004 p. 16.
[601] Nkuliyingoma, T. 7 July 2004 pp. 20-21, 23.
[602] Nkuliyingoma, T. 7 July 2004 pp. 81-83, 85; T. 13 September 2004 pp. 44-46, 70; T. 14 September 2004 pp. 5-6, 9-12.
[603] Nkuliyingoma, T. 7 July 2004 pp. 81-83, 85; T. 13 September 2004 pp. 44-46, 70, 74-78.
[604] Nkuliyingoma, T. 13 September 2004 pp. 71-73; T. 14 September 2004 pp. 13-14.
[605] Nkuliyingoma, T. 7 July 2004 p. 83.
[606] Sebera, T. 19 October 2004 pp. 35-36.

leaders who were not heads of "Power" factions. He also denounced a letter party leaders had written him, asking him to bring together the two PL factions, and to accept the candidates that had been chosen in the party elections.[607]

416. Mugenzi's warning of "woe" indicated that those who do not support the majority, or Hutus, would be in trouble. In her view, such words presented a serious impediment to the implementation of the Arusha Accords.[608]

Prosecution Expert Witness Alison Des Forges

417. Alison Des Forges was presented as an expert in history and human rights violations in Rwanda.[609] With respect to Mugenzi's speech at Nyamirambo stadium, Des Forges highlighted that it occurred at a point when President Juvénal Habyarimana was struggling to retain power in light of the pending implementation of the Arusha Accords. Specifically, Habyarimana needed a sufficient majority in the legislature to avoid his impeachment. Consequently, whether or not PL representatives in the new government were Habyarimana supporters became an important issue. If those named by PL representative Landoald Ndasingwa were appointed, the cabinet and parliament would have been more strongly anti-MRND and anti-Habyarimana. However, if persons associated with Mugenzi's Hutu Power faction of the PL were appointed, Habyarimana would receive greater support.[610] This dispute over which faction of the PL would have the right to name representatives paralysed the political process, and was one of the reasons the implementation of the Arusha Accords did not go forward.[611]

418. Des Forges also testified that after the Tutsi elite were driven out of Rwanda in the 1959 revolution, a pattern of Tutsi attacks from outside Rwanda followed by reprisal killings inside the country was well-established. The revolution brought the Hutus political power, and allowed them to appropriate Tutsi land. Thus, warnings about possibly losing the "gains of the revolution" became an important rallying cry for Hutu leaders prior to and during 1994. The idea was that if the Tutsis returned, the Hutus would lose political power and control over their lives, as well as their land.[612]

Mugenzi

419. Mugenzi conceded that he was present and spoke at the MRND rally at Nyamirambo stadium on 16 January 1994. However, he denied that his speech contained language that would incite the killing of Tutsis. Mugenzi did not attend because of an alliance with the MRND, but in order to foster cooperation with other parties. The PL had been accused of standing in the way of the installation of the transitional government, and he wanted to present his point of view to the public. He also knew that the rally would be broadcast on the radio.[613]

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[607] Sebera, T. 19 October 2004 p. 35; T. 20 October 2004 pp. 22-23, 28, 32.
[608] Sebera, T. 20 October 2004 pp. 23-24.
[609] Des Forges, T. 31 May 2005 p. 3.
[610] Des Forges, T. 31 May 2005 p. 48; T. 1 June 2005 pp. 57-59.
[611] Des Forges, T. 31 May 2005 p. 49.
[612] Des Forges, T. 31 May 2005 pp. 12-13.
[613] Mugenzi, T. 8 November 2005 pp. 35-37; T. 21 November 2005 pp. 20, 36-37, 42-44; T. 22 November 2005 pp. 5, 17, 94-95; T. 28 November 2005 pp. 39-41.

420. Mugenzi also testified about the historical context surrounding his speech. He explained that as a result of the separate PL meetings held by the Landoald Ndasingwa and Mugenzi factions, two lists of candidates for the Transitional National Assembly were submitted to Prime Minister Agathe Uwilingiyimana for approval, but Uwilingiyimana decided to transmit only Ndasingwa's list to the President of the Constitutional Court. Around the same time, Faustin Twagiramungu, an MDR representative, shifted his support to the RPF and, as far as the PL was concerned, to the Ndasingwa faction. Mugenzi believed that the Ndasingwa list was being pushed behind the scenes by the RPF, and that both Twagiramungu and Uwilingiyimana were under the influence of the RPF.[614]

421. In saying he had "never signed an agreement with those people", Mugenzi was emphasising that he was not a party to an agreement with Twagiramungu and Uwilingiyimana to share power in the new government. He refused alliances with both of the extreme groups, the RPF and the MRND, but wanted the PL to remain independent.[615]

422. In addition, his reference to "protect[ing] the sovereignty of the people acquired during the 1959 revolution" was meant to support the democratic electoral system that came about because of the revolution. It did not signify a change in his perception towards the revolution itself.[616]

423. Mugenzi's use of the word "woe" was a Biblical reference and was a warning to people who wanted to please the *Inkotanyi* and oppose the rights of the people. More specifically, he was warning party leaders who were entering into a coalition with the RPF in order to gain more power in the new government. He addressed this warning to three persons, Twagiramungu, Frédéric Nzamurambaho and Népomuscène Nayinzira, who had written him a letter asking him to accept the Ndasingwa list. He did not refer to Tutsis in the speech and there was nothing sinister in his speech.[617]

424. Mugenzi conceded that he was aware that excerpts of his speech were broadcast several times by RTLM after 6 April 1994. Mugenzi had, in 1992, previously objected to the broadcasts of one of his speeches. However, he testified that he had "no editorial control" over RTLM broadcasts, that he did not intend for only parts of his Nyamirambo speech to be broadcast and that he did not have the facilities to object to their broadcasts of it after 6 April 1994.[618]

425. Upon cross-examination, Mugenzi was confronted with RTLM journalist Kantano Habimana's 21 January 2004 statement that the Nyamirambo stadium speech demonstrated that Mugenzi had joined the Hutu Power majority. Mugenzi responded that he was not aware of this statement, and that this was simply Hutu Power propaganda with which he did not agree.[619]

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[614] Mugenzi, T. 8 November 2005 pp. 25-30; T. 22 November 2005 pp. 42-44.
[615] Mugenzi, T. 8 November 2005 p. 33; T. 22 November 2005 pp. 41-42.
[616] Mugenzi, T. 8 November 2005 pp. 34-35; T. 22 November 2005 pp. 45-46, 51.
[617] Mugenzi, T. 8 November 2005 pp. 35-37; T. 22 November 2005 pp. 72-76; T. 28 November 2005 pp. 39-41; T. 30 November 2005 pp. 58-59.
[618] Mugenzi, T. 22 November 2005 pp. 95-96; T. 28 November 2005 pp. 36-40; T. 30 November 2005 pp. 58-59.
[619] Mugenzi, T. 23 November 2005 pp. 28-34.

Mugenzi Defence Witness Pius Betabura

426. Pius Betabura, a Hutu, lived in Kanombe commune, Kigali prefecture and was a member of the MDR party in 1994.[620] Betabura recalled a rally organised by the MRND that occurred at Nyamirambo stadium in January of 1994 and heard Mugenzi's speech at the event on Radio Rwanda and RTLM. Mugenzi had been accused of blocking the installation of the government, and he took the occasion to demonstrate that he was not at fault. He first laid out all of the problems that existed within his party and the people who were contributing to this deadlock. Then he issued a warning to those who were interfering in the management of his party, including Agathe Uwilingiyimana, Népomuscène Nayinzira and Faustin Twagiramungu, saying, "woe unto them".[621]

427. Betabura testified that the full quote of this verse comes from the Biblical book of Isaiah, chapter 5, verse 20, which states: "Woe unto those who change the light into darkness and the darkness into light. Woe unto them that call good evil, and evil good". He believed that Mugenzi wanted to make clear that there would be consequences for the people who were interfering in the PL's affairs. However, it did not imply threats of violence to the persons mentioned in Mugenzi's speech or target Tutsis generally. He also did not think that by attending the rally or making the speech Mugenzi was aligning himself with the MRND.[622]

Mugenzi Defence Witness Juvénal Turatsinze

428. Juvénal Turatsinze, a Hutu, is the nephew of Mugenzi and a founder, along with Mugenzi, of the PL.[623] Turatsinze testified that he was not present at the MRND rally at Nyamirambo stadium in 1994, but heard Mugenzi's speech broadcast on RTLM the next day.[624] Mugenzi's talk focussed primarily on allegations that the PL, of which he was President, was delaying the establishment of the government. He argued that others were behind these delays and that if there was a further delay in the implementation of the Arusha Accords it would lead to a major crisis.[625]

429. Turatsinze further explained the context in which Mugenzi's speech was made. Specifically, the MRND and the RPF were the two most influential political parties, and were competing to attract other smaller parties in order to have the most power in the new government. The RPF was attempting to join with the PL. Mugenzi opposed this and wanted to maintain the party's independence. Mugenzi believed that some political parties wanted to have the power to change the constitution and the Arusha Accords as they wished. In this way, they would deny the people their right to have a say in the country's administration.[626]

430. In saying "woe unto them", Mugenzi was criticising those he believed were acting in their own self-interest, disregarding the people and denying them their representative rights in ruling the country. He mentioned Landoald Ndasingwa, Frédéric Nzamurambaho,

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[620] Betabura, T. 1 December 2005 pp. 22, 25, 27, 66.
[621] Betabura, T. 1 December 2005 pp. 34-37; T. 5 December 2005 pp. 16, 18-19.
[622] Betabura, T. 1 December 2005 pp. 34-36.
[623] Turatsinze, T. 10 April 2006 pp. 53-55; T. 18 April 2006 p. 11; Exhibit 2D80 (Turatsinze's Personal Information Sheet).
[624] Turatsinze, T. 12 April 2006 p. 72; T. 13 April 2006 pp. 2, 11.
[625] Turatsinze, T. 13 April 2006 p. 2.
[626] Turatsinze, T. 13 April 2006 pp. 6-8.

Népomuscène Nayinzira, Pasteur Bizimungu, Agathe Uwilingiyimana and Joseph Kavaruganda as the primary offenders. Mugenzi was not, however, targeting the individuals, but only their actions.[627] Furthermore, by referring to the gains of the 1959 revolution, Mugenzi was warning against a return to a dictatorship and saying that parties should remain independent so that no single party would decide the future of the country.[628]

431. While Mugenzi did not tell Turatsinze that he would be attending this rally, the words spoken by him reflect issues raised by PL leadership around this time. In this context, Turatsinze believed that Mugenzi went to the rally to show that although the MRND and PL parties had different ideologies, they needed to act together to resolve this crisis. The MRND had a big role in negotiating the Arusha Accords, and this was an opportunity for Mugenzi to explain his point of view to the MRND's constituency, as well as to a broader audience given the press coverage the rally would receive.[629]

432. Turatsinze did not believe there was anything in the speech that was hostile towards Tutsis. Later, during the war, RTLM broadcast portions of Mugenzi's speech, and distorted it to make it seem as if Mugenzi was attacking Tutsis, but this was false.[630]

Mugenzi Defence Witness Charles Murwanashyaka

433. Charles Murwanashyaka, a Hutu, was a member of the MRND in 1994.[631] Although unsure, he believed it was possible that Mugenzi attended an MRND rally in January 1994. It was not unusual for members of one political party to attend the rally of another. As an example, Murwanashyaka had attended a PL rally in Karumbamba.[632]

Bizimungu Defence Expert Witness Eugène Shimamungu

434. Eugène Shimamungu was admitted as an expert in linguistic sciences, grammar and the Kinyarwanda language, as well as political information and communication.[633] Shimamungu heard a cassette recording of Mugenzi's speech at Nyamirambo stadium in January 1994 two days after it was given. In his view, it concerned sharing power in the transitional government being established at this time.[634]

435. In saying "woe unto them", Mugenzi criticised politicians and, in particular, Faustin Twagiramungu and Landoald Ndasingwa, for attempting to take power by building a coalition government that would suppress any opposition to their decisions. In referring to

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[627] Turatsinze, T. 13 April 2006 pp. 3-4, 13-14; T. 19 April 2006 pp. 33-35, 44-45.
[628] Turatsinze, T. 13 April 2006 p. 12.
[629] Turatsinze, T. 13 April 2006 pp. 3, 6, 9-10; T. 19 April 2006 pp. 35-36.
[630] Turatsinze, T. 13 April 2006 pp. 4, 14; T. 19 April 2006 pp. 44-47, 51.
[631] Murwanashyaka, T. 7 December 2005 pp. 4, 39; T. 8 December 2005 p. 17. Murwanashyaka was tried and acquitted in 2001 in Rwanda for crimes related to the genocide. He was arrested again later in 2001 for the same offence and testified that he was set free after advocacy by a human rights organisation. Murwanashyaka, T. 7 December 2005 pp. 43-46; T. 12 December 2005 pp. 2-17.
[632] Murwanashyaka, T. 8 December 2005 pp. 20-22.
[633] Shimamungu, T. 10 May 2007 pp. 1-2. The Chamber did not accept Shimamungu as an expert in lexicography and terminography. T. 10 May 2007 p. 2.
[634] Shimamungu, T. 16 May 2007 pp. 16-17.

those people who were "pleasing the *Inkotanyi*" he was speaking of the RPF. There was no reference to ethnicity or Tutsis in the speech.[635]

Deliberations

436. Mugenzi does not dispute that he attended and spoke at an MRND rally at Nyamirambo stadium on 16 January 1994. The Prosecution alleges that the words he spoke incited Hutus and the *Interahamwe* to commit violence against Tutsis. The Defence, however, argues that this was a political speech, and its content focussed on political rivalries in the context of the Arusha Accords. Nothing sinister is behind the message nor did it contain any anti-Tutsi rhetoric or a call for violence against them. The Prosecution relies on several witnesses (Prosper Higiro, Harriet Sebera and Jean-Baptiste Nkuliyingoma) who heard the speech in 1994 on the radio, as well as expert testimony (Alison Des Forges) for interpretations of it.

437. At the outset, the Chamber observes that Higiro and Sebera, both members of the PL in 1994, admittedly viewed themselves as political opponents of Mugenzi based on their perception that he had adopted an extremist position that strayed from the PL's founding objectives.[636] Indeed, Higiro testified that his differences with Mugenzi culminated with Mugenzi threatening to have a gendarme shoot and kill him.[637] While the record reflects clear disagreement between these witnesses and Mugenzi about his conduct during the relevant period, this does not demonstrate a bias that would necessarily undermine the credibility of these witnesses. Nor does it call into question their adherence to the testimonial oath they took when testifying before this Chamber.[638]

438. In the same vein, the Mugenzi Defence highlights that Higiro, Sebera and Nkuliyingoma have been members of the RPF government after the events at issue in this proceeding.[639] The Chamber does not consider that their positions demonstrate a bias that necessarily undermines their credibility.

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[635] Shimamungu, T. 16 May 2007 pp. 16-17.

[636] Higiro, T. 26 January 2004 pp. 20-33; Sebera, T. 19 October 2004 pp. 44-52, T. 20 October 2004 pp. 16-31. *See also* Nkuliyingoma, T. 7 July 2004 p. 81, T. 13 September 2004 pp. 40, 55-56 (corroborating the testimonies of Higiro and Sebera that Mugenzi adopted extremist positions that deviated from the PL's objectives); Kayinamura, T. 30 March 2006 pp. 36-39 (testifying that Higiro was a political rival of Mugenzi's, out to spoil Mugenzi's name).

[637] Notably, in cross-examination, Mugenzi's Counsel confronted Higiro with the proposition that his evidence about Mugenzi threatening to have his gendarme shoot was a fabrication. Higiro denied this. Higiro, T. 29 January 2004 pp. 49-50.

[638] Concerning Sebera, Mugenzi contends that she displayed bias against him when she stated that she had come to the Tribunal to testify "against" him. Mugenzi Closing Brief, paras. 1021-1022; Sebera, T. 21 October 2004 p. 6. Considering this remark in the context of her entire testimony, which was provided under oath, the Chamber considers that it reflects her desire to testify to a matter within her knowledge. The statement does not demonstrate bias or that her evidence would be influenced by a third party.

[639] Mugenzi Closing Brief, paras. 168, 1022, 1046, 1388; Higiro, T. 29 January 2004 p. 50; T. 30 January 2004 pp. 24-25.

439. Turning to the Prosecution's allegation, the Chamber relies on Exhibits P2(46) and 2D94, written transcripts of Mugenzi's speech.[640] In Exhibit P2(46), the relevant portion was transcribed and translated as follows:

> The PL wants to protect the sovereignty of the people acquired during the 1959 revolution. (applause and comments). That should be clear, because it is written in the Bible: "Woe, woe, woe," woe betide whom? (applause and comments). Woe betide those who flout the rights of the people, those who want to please the *Inkotanyi* by flouting the rights for which the population suffered so much. Woe betide them. (applause and comments).

440. In Exhibit 2D94, the translation of the same portion of the speech reads:

> The PL is, therefore, concerned about the sovereignty of the democratic power born out of the 1959 revolution. Let it be understood one more time; it is written in the Bible "Woe to them, woe to them, woe to them"; to those who do what? (Applause). Woe to those who neglect the interests of the people, the interests for which Rwandans have fought so hard, reducing them to nothing to please the *Inkotanyi*. Woe to them (applause).[641]

In addition to these particular excerpts, the Chamber also examined Mugenzi's speech in its entirety.

441. Mugenzi mentioned several political personalities in his speech. He blamed Agathe Uwilingiyimana and Faustin Twagiramungu for delaying the establishment of the broad-based transitional government, stating that all that was being said about the PL and President Habyarimana was a "tissue of lies".[642] He then accused Agathe Uwilingiyimana of manipulating the political process so as to ensure that her list of candidates for the broad-based transitional government, rather than Mugenzi's, was approved by sending her nominees to the President of the Constitutional Court, Joseph Kavaruganda, whom Mugenzi referred to as a "sworn enemy of Habyarimana".[643] Mugenzi then criticised Twagiramungu, Nzamurambaho, Nayinzira, Ngulinzira, Nsengiyaremye and Ndasingwa for agreeing to a "balance of political power" in the Arusha Accords. Mugenzi stated that neither he nor the PL supported this, believing that a "political balance" means people rallying around the "*Inkotanyi*" in order to gain a majority of parliament so that they can later change the Arusha Accords for their own benefit.[644] Lastly, he labelled Ndasingwa, Nzamurambaho and Nayinzira as biased mediators in the negotiations.[645]

442. At the outset, neither the relevant aspects of the speech highlighted by the Prosecution witnesses nor any other portion of it contains an express call for violence. Moreover, a

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[640] The Parties have not argued that discrepancies between the translations of the relevant portions of Mugenzi's speech in Exhibits P2(46) and 2D94 are material. The Chamber does not consider reconciliation of the minor differences necessary to its consideration of the issues.
[641] Exhibit P2(46) (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) pp. 47-48; Exhibit 2D94 (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) pp. 12-13.
[642] Exhibit P2(46) (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) p. 43; Exhibit 2D94 (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) pp. 8-9.
[643] Exhibit P2(46) (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) pp. 43-45; Exhibit 2D94 (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) pp. 8-10.
[644] Exhibit P2(46) (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) pp. 46-47; Exhibit 2D94 (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) pp. 12-13.
[645] Exhibit P2(46) (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) p. 48; Exhibit 2D94 (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) p. 14.

comparison between the transcripts of the speeches with the testimonies of the Prosecution witnesses reflects that the broadcasts do not entirely align with the recollections of these witnesses.

443. For example, contrary to the testimonies of Witnesses Higiro and Sebera, Mugenzi did not issue a warning of "woe" to those who, in the witnesses' words, were against "the majority" and "the Hutus". Though Sebera testified that Mugenzi spoke the word "*Rubanda nyamwinshi*", which was used to describe the Hutus as the majority, she later acknowledged that she did not hear Mugenzi use this word when she listened to the speech in court.[646] In addition, contrary to Higiro's testimony, Mugenzi nowhere stated that the *Inkotanyi* wanted to restore the monarchy and return Hutus to the subordinate position they occupied before 1959. And finally, in Nkuliyingoma's 15 April 2000 statement to Tribunal investigators, he claimed that Mugenzi called for a repeat of the violence of the 1959 revolution; this, too, does not appear in the text of Mugenzi's speech.[647]

444. Notwithstanding, the Chamber considers whether the context in which the speech was given could support, as the only reasonable conclusion, an inference that it called for an incitement to commit genocide against Tutsis. As stated earlier, the Prosecution focusses on two paragraphs of Mugenzi's speech: his reference to the 1959 revolution and his use of the words "woe, woe, woe". Read collectively, the Prosecution evidence suggests that Mugenzi's statement reflected his growing alliance with Hutu extremism.

445. The Chamber considers that the revolution of 1959 reflected the violent end of the Tutsi-controlled monarchy that governed Rwanda.[648] The evidence allows for an inference that Mugenzi, when referring to those who opposed the outcomes of the revolution, meant Tutsis generally. In this regard, this group that seeks to appease the *Inkotanyi* – whose constituency was primarily Tutsi – could also be construed as a reference to Tutsis generally.

446. Notwithstanding, Mugenzi's precise words were that the PL wanted to protect the "sovereignty" that "the people" acquired from the revolution, which, as interpreted by several witnesses, meant the democracy that followed it. The text is ambiguous, but just as reasonably reflects Mugenzi's explanation: that he was criticising a coalition government that would make decisions contrary to the needs of the majority of Rwandans. For example, just prior to his reference to the 1959 revolution, Mugenzi stated that a small coalition government would occupy 15 ministerial posts and 45 seats of parliament, in order to make executive decisions and change the Arusha Accords.[649]

447. Mugenzi's use of the phrase "woe betide them" or "woe to them" carries an element of menace. Mugenzi acknowledged that his use of this Biblical reference was a warning of possible consequences to political opponents, namely Faustin Twagiramungu, Frédéric Nzamurambaho and Népomuscène Nayinzira, as well as persons who wanted to please the

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[646] Sebera, T. 22 October 2004 pp. 73-77.
[647] Nkuliyingoma, T. 13 September 2004 pp. 69-71; Exhibit 2D24 (Nkuliyingoma's Witness Statement, 15 April 2000). Nkuliyingoma later concedes that Mugenzi's speech could simply reflect the conflict between two rival politicians in the same party. Nkuliyingoma, T. 14 September 2004 pp. 7-8.
[648] Des Forges, T. 31 May 2005 pp. 12-13; T. 1 June 2005 p. 51; Exhibit P101 (Expert Report of Alison Des Forges) pp. 3-4.
[649] Exhibit P2(46) (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) pp. 47-48; Exhibit 2D94 (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) pp. 12-13.

Inkotanyi and who opposed the rights of the people.[650] Upon cross-examination, Mugenzi acknowledged that Ndasingwa, Ngurinzira and Nzamurambaho were murdered during the genocide, while Twagiramungu narrowly escaped death.[651] Furthermore, the Chamber observes that the speech was made in the presence of approximately 300 *Interahamwe* shouting in unison at the rally.[652]

448. Notwithstanding, the Prosecution has led no clear evidence of Mugenzi's responsibility in these subsequent deaths. Nor does the evidence in this proceeding reflect that Mugenzi was involved in or could be held responsible for the subsequent killing of anyone mentioned in his speech.[653]

449. While the Chamber does not accept Higiro's uncorroborated testimony that the use of the Kinyarwanda word "*Ishyano*" denoted extreme punishment, the warning issued in the political context at the time is troubling. Nonetheless, the statement was made in the context of ongoing peace negotiations, rather than outright war. Mugenzi's references to particular political opponents focussed on his distaste for their political manipulations to gain power in the broad-based transitional government. While his words suggested their allegiance to the "*Inkotanyi*", this is further evidence that he was referring to a political organisation that was to be a part of the broad-based transitional government. Under the circumstances, the Chamber cannot conclude that the only reasonable inference when speaking such words was that Mugenzi intended them to be interpreted as a direct call for violence, or that violence should be directed at Tutsis in general.

450. Notably, Mugenzi never explicitly referred to Tutsis, but only to *Inkotanyi*, in this speech. The Chamber takes note of evidence presented by the Prosecution outlining the conflation between terms used to refer to the RPF and Tutsis generally.[654] There is, however, considerable evidence that this term, adopted by the RPF, was used to designate it.[655] Notably, Mugenzi later emphasised in the speech peace negotiations with "the *Inkotanyi*" in Brussels, raising the reasonable possibility, in this particular context, that he intended to refer to the RPF as a political organisation and not to Tutsis generally.[656]

451. Turning to the Defence evidence, Mugenzi offered an explanation for his words based on the context in which the speech was made – the split in the PL, and resulting conflict over the nomination of PL representatives to the transitional government. The context provided by Mugenzi was corroborated by Prosecution and Defence witnesses alike, including Expert

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[650] Mugenzi also acknowledged that his use of the phrase "woe" referred to the Biblical prophet Isaiah. Mugenzi, T. 8 November 2005 pp. 35-36; T. 22 November 2005 pp. 74-76; T. 28 November 2005 p. 40.

[651] Mugenzi, T. 22 November 2005 pp. 88-89; Witness GLP, T. 22 June 2004 p. 60, T. 23 June 2004 pp. 8-9, 19-21, 24-26; Witness GBR, T. 7 June 2004 pp. 17-21, 25-27, 37-39, 64-65.

[652] Mugenzi, T. 21 November 2005 pp. 22-25; Higiro, T. 29 January 2004 p. 32.

[653] Mugenzi denied any connection between the murder and harassment of those mentioned in his speech at Nyamirambo stadium. Mugenzi, T. 22 November 2005 pp. 89-90. *See also* II.7.2.

[654] Des Forges, T. 31 May 2005 pp. 41-43, 48, 68-69, 83; T. 1 June 2005 p. 46; T. 2 June 2005 p. 33; T. 6 June 2005 pp. 8-9, 15-17, 69; T. 7 June 2005 pp. 56-57, 63-64; Uwizeye, T. 7 April 2005 p. 67; Sebera, T. 20 October 2004 p. 37; T. 25 October 2004 pp. 32, 34; Witness GTD, T. 1 July 2004 pp. 14-17, 19-20; Witness GTE, T. 1 December 2003 pp. 8-10; Witness FW, T. 4 December 2003 pp. 3, 37; Witness GKE, T. 9 February 2004 pp. 13, 18; Witness GIE, T. 17 February 2004 pp. 14-15. *See also* II.9.2

[655] II.9.2.

[656] Exhibit P2(46) (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) pp. 47-48; Exhibit 2D94 (Mugenzi's Speech at Nyamirambo Stadium, 16 January 1994) pp. 12-13. *See also* Mugenzi, T. 8 November 2005 p. 37; T. 22 November 2005 pp. 47-49.

Witnesses Des Forges and Shimamungu, as well as Defence Witnesses Betabura and Turatsinze.

452. As stated previously, the speech, when examined in light of this historical context, does create a reasonable possibility that in referring to the 1959 revolution Mugenzi was speaking of the possible loss of democratic rights, and that his warning was aimed at political opponents whom he believed were interfering with his party's affairs.

453. The Defence also points to the PL manifesto, written by Mugenzi prior to the Nyamirambo speech, as evidence that Mugenzi previously wrote approvingly of the revolution and thus his view on the event had not changed as the Prosecution alleges.[657] The manifesto reads that "the work of the 1959 revolution remains unfinished" and that it "led to the entrenchment of a republican monarchy".[658]

454. Notably, in his speech at Nyamirambo stadium, organised by the MRND party, Mugenzi did speak more glowingly of the "sovereignty" gained by the revolution, without mentioning the event's accompanying violence against Tutsis or the imposition of a Hutu-dominated ruling party. Mugenzi's Nyamirambo speech appears to reflect a shift in his perspective on the revolution, and greater alignment with the MRND party that he had previously referred to as the "republican monarchy". However, this shift does not necessarily reflect a desire to incite the killing of Tutsis. Indeed, it may reasonably reflect a political decision to align with a party that might have significant power in making appointments within the broad-based transitional government.

455. Finally, the Chamber considers the Prosecution evidence that an excerpt of Mugenzi's speech was broadcast on RTLM subsequent to the rally in order to incite listeners to kill Tutsis. The Prosecution has led no direct evidence that Mugenzi authorised or condoned the broadcast of these excerpts. As discussed above, the evidence fails to demonstrate that at the time of the broadcast, Mugenzi had intended this speech to incite violence against Tutsis. Mugenzi was aware that excerpts of his speech were used on RTLM but claimed that they did not incite the killing of Tutsis.[659] He further argued that he had no editorial control over RTLM or radio stations generally.[660] Other evidence confirms that Mugenzi did not have authority to censor its content.[661]

456. There is evidence in the record that the Minister of Defence requested radio stations, including RTLM, to stop broadcasting inciting content around 18 April 1994.[662] The Chamber has heard evidence from some of the Accused, as well as former Interim

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[657] Mugenzi Closing Brief, paras. 1017-1019, 1168-1169, 1177-1178.
[658] Exhibit P2(116) (PL Party Manifesto) pp. 1-2; Exhibit 2D81 (Relevant Excerpts of PL Party Manifesto) p. 1.
[659] Mugenzi, T. 28 November 2005 pp. 38-41; T. 30 November 2005 pp. 57-59.
[660] Mugenzi, T. 22 November 2005 pp. 95-96; T. 23 November 2005 pp. 43-54. T. 28 November 2005 pp. 36-41; T. 30 November 2005 pp. 58-59.
[661] Ntagerura, T. 20 February 2007 pp. 1-3, 48-51, 69-70; Mugiraneza, T. 22 May 2008 pp. 12-14.
[662] Exhibit 2D4 (Radio Rwanda Broadcast, 17 and 18 April 1994) p. 1 (Minister of Defence Augustin Bizimana, urging the radio stations to stop using inciting language); Exhibit 3D89(E) (Radio Broadcast, 16 April 1994) p. 13 (Augustin Bizimana, Minister of Defence asked "the written press [and] all radio stations, [notably] Radio Rwanda, Radio RTLM and Radio Muhabura, to refrain from language which pits Rwandans against one another because much blood has already been spilled. We cannot continue in this direction. I ask the written press to help us inculcate in Rwandans the culture of mutual tolerance, and the general public to stop killing one another so that our country can have peace."). *See also* Mugenzi, T. 23 November 2005 pp. 43-45, 48-49, 52; Bizimungu, T. 12 June 2007 pp. 28-30.

Government ministers, that discussions were held and attempts were made by the Interim Government to prevent inciting broadcasts made by RTLM.[663] The Chamber doubts that any clear decisions or actions were taken by the Interim Government towards stopping RTLM broadcasts. Indeed, Prime Minister Jean Kambanda, in June 1994, praised RTLM for its efforts in educating persons about the truth of the war.[664]

457. Notwithstanding, the Prosecution has not presented evidence of Mugenzi's control or influence over RTLM or his participation in the re-broadcasting of his speech. To the extent that his words, in the midst of the genocide, incited the violence against Tutsis or Hutu opposition members, the evidence is insufficient to support his, or any of the Accused's, liability for it. Based on the foregoing, the Chamber need not consider whether sufficient notice was provided for this allegation.

6. KIBUNGO PREFECTURE, FROM 7 APRIL 1994

6.1 Kibungo Club and Weapons Distribution, Early April 1994

Introduction

458. The Indictment alleges that, from late 1990 to July 1994, all four Accused conspired among themselves and others to exterminate Tutsi civilians and eliminate members of the opposition. They supported and took steps to execute this plan, in part, by inciting the people to eliminate the enemy and distributing weapons. Specifically, in early 1994, Mugiraneza and others supported the creation of the "Kibungo Club" in order to recruit youth and reservists to the *Interahamwe*, carry out anti-Tutsi propaganda, and spy on Tutsis with the intent to kill them. The Prosecution refers to evidence of a "Kibungo Club" meeting on 1 April 1994 in Gasetsa, where Jean-Baptiste Rwatoro chaired and took notes of the meeting. At a subsequent meeting on 3 April at Murilo's bar in Gasetsa, a plan to kill Tutsis was placed in a sealed envelope and provided to Mugiraneza. After 6 April, weapons promised at the 1 April meeting were distributed at Huye barracks in Birenga commune to *Interahamwe* and reservists. Witnesses GJQ and GKR provided relevant evidence.[665]

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[663] Several of the Accused testified that during the 9 April 1994 cabinet meeting, President Théodore Sindikubwabo told the Minister of Information, Eliézer Niyitegeka, to control the messages broadcast by RTLM. *See* Mugenzi, T. 23 November 2005 pp. 45, 48-49, 52, 59-63; Bizimungu, T. 5 June 2007 pp. 35-36; T. 11 June 2007 p. 23; T. 12 June 2007 pp. 28-30; Mugiraneza, T. 26 May 2008 pp. 28, 32; T. 2 June 2008 pp. 40-42; Bicamumpaka, T. 26 September 2007 p. 42. In addition, Mugiraneza testified that at a 17 April 1994 meeting, Prime Minister Jean Kambanda asked the Minister of Information what steps had been taken to confront RTLM (Mugiraneza, T. 26 May 2008 pp. 31-32; T. 4 June 2008 pp. 65-66) and at a 23 April 1994 meeting the cabinet requested that the Minister of Defence send soldiers to stop RTLM from broadcasting inciting messages (Mugiraneza, T. 26 May 2008 pp. 15-16, 18, 28, 32; T. 2 June 2008 pp. 41-42). Finally, Bicamumpaka testified to a proposal made by the Interim Government to the RPF, stating that RTLM had "already been contacted" and promised to use pacifying language in their broadcasts. Bicamumpaka, T. 27 September p. 43; T. 3 October 2007 pp. 29-30.

[664] Exhibit P2(35)(F) (RTLM, 21 June 1994) p. 26.

[665] Indictment, paras. 5.1, 5.15-5.16, 5.19, 5.22, 5.28, 5.32, 6.14, 6.16, 6.35-6.36; Prosecution Pre-Trial Brief, paras. 217 (pp. 46-47) and 293-294 (p. 58); Prosecution Opening Statement, T. 6 November 2003 pp. 5-6; Prosecution Closing Brief, paras. 105, 113, 141-142, 153, 156, 260, 268, 271, 1015, 1019, 1021, 1026-1027, 1031-1034, 1042-1043, 1090-1096, 1113-1116, 1122-1140, 1158-1168; Prosecution 21 November 2008 Document, Item Nos. 17, 39, 99-100, 104; Prosecution Closing Arguments, T. 1 December 2008 pp. 55-56. The Prosecution Closing Brief and 21 November 2008 Document indicate that the meeting took place at Murilo's

459. The Mugiraneza Defence submits that it has received insufficient notice of these allegations. More specifically, Mugiraneza denies any knowledge of the Kibungo Club and denies participating in any meeting on 3 April 1994. Further, the Defence contends that Witness GJQ is not credible. The allegation regarding the provision of weapons and training at Huye barracks has not been linked to any of the Accused. Mugiraneza and Witnesses RWW, Mechtilde Mukandagijimana, RDM, RWI, Jean Munyakayanza, RRD, RWL, RDK, RWB, RDZ, RDF and BGE provided relevant evidence.[666]

Evidence

Prosecution Witness GJQ

460. Witness GJQ, a Hutu, lived in Kibungo sector, Birenga commune, Kibungo prefecture.[667] As an *Interahamwe* leader, Witness GJQ saw Mugiraneza in the area about every two weeks and met with him and others at Rwagasore's bar and a few times at Murilo's bar in Remera sector. During these meetings, Witness GJQ would present new *Interahamwe* recruits to Mugiraneza, retired Colonel Pierre Célestine Rwagafilita and Ferdinand Kabagema. Mugiraneza informed Witness GJQ that the *Interahamwe* would assist the MRND party during elections and confront the RPF, whom Mugiraneza and the others did not want obtaining government posts. During these meetings, *Interahamwe* provided security.[668]

461. Witness GJQ first heard and attended a meeting of the Kibungo Club, which was founded by Mugiraneza, Rwagafilita and Kabagema, on 1 April 1994 at the multi-purpose hall in Birenga commune, around 10.00 a.m. Jean-Baptiste Rwatoro chaired the gathering with Jean de Dieu Munyangabe and Melchiade Tahimana, who was the *bourgmestre* of Birenga commune. Mugiraneza, Rwagafilita and Kabagema were expected to attend, but did not. Witness GJQ testified that the war along with other attacks in the area were discussed. Rwatoro called upon the attendees to unite and fight the war to develop Kibungo economically.[669]

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bar on 4 April 1994 (Prosecution Closing Brief, para. 105; Prosecution 21 November 2008 Document, Item No. 17). However, Witness GJQ testified, and confirmed, that the meeting took place on Easter Sunday, 3 April 1994 (Witness GJQ, T. 10 March 2005 p. 46; T. 14 March 2005 pp. 12, 14; T. 16 March 2005 p. 50). This correction is reflected in the summary above.

[666] Mugiraneza Closing Brief, paras. 114-124, 252-265; Mugenzi Closing Arguments, T. 2 December 2008 pp. 80-81; T. 4 December 2008 pp. 39-45, 62-64.

[667] Witness GJQ, T. 9 March 2005 pp. 37-38; T. 10 March 2005 pp. 24, 34, 37; Exhibit P86 (Witness GJQ's Personal Information Sheet). Witness GJQ fled Kibungo town on 22 April 1994 and left Rwanda for Zaire in July 1994. Upon his return to Rwanda in April 1999, he surrendered himself to the authorities. He pleaded guilty on 15 August 1999. He confessed to ordering the killing of one person and leading other attacks which led to the death of other people. He first appeared in the Court of First Instance of Kibungo in 2000. Witness GJQ was tried and sentenced to death in 2001. He appealed his sentence and, at the time of his testimony, was awaiting a decision regarding his appeal. Witness GJQ, T. 9 March 2005 pp. 39-40; T. 14 March 2005 pp. 20-21, 26-28; T. 15 March 2005 pp. 3-4, 7-10, 37-41; T. 16 March 2005 p. 20; Exhibit P213 (Judgement of the Kibungo Court of First Instance).

[668] Witness GJQ, T. 10 March 2005 pp. 40-41; T. 17 March 2005 pp. 31-33.

[669] Witness GJQ, T. 10 March 2005 pp. 42-46; T. 14 March 2005 pp. 11-14; T. 17 March 2005 pp. 34-37. A March 1994 Radio Rwanda broadcast announced the meeting, calling on Birenga businessmen, power faction party members and *Interahamwe* to attend. More than 1000 people, all Hutu, were at the meeting. The few Tutsis who came were told to leave. Witness GJQ, T. 10 March 2005 pp. 42, 46, 55.

462. After Rwatoro's speech, Sylvain Mutabaruka, a member of parliament, spoke about how the war should be fought, and encouraged the attendees to avenge the killing of Hutus by killing all the Tutsis in the area. Mutabaruka told attendees to prevent Tutsis from going into bars or talking to each other because Tutsis were plotting to kill Hutus. Mutabaruka promised that people would have guns in a few days.[670]

463. Elections were held for the Kibungo Club. Rwatoro was selected as President, Sudi Nkunzurwanda became Vice-President, Gaudence Mukaremera was chosen as Secretary and Tahimana was Treasurer. Afterwards, a representative from each commune was elected to be in charge of security for that area. Witness GJQ was appointed as the security representative for Kibungo town. The meeting concluded in the late afternoon.[671]

464. After the meeting that day, Witness GJQ, along with Tahimana, Rwatoro and others, including members of the *Interahamwe*, decided to have drinks at Rwagasore's bar. As per the directives at the meeting, Tahimana and Rwatoro instructed *Interahamwe* to disturb Tutsis at a bar in the priests' quarters, known as *Economat* or Saint Joseph. Over the next few days, Tutsis were beaten up. According to Witness GJQ, the security of the commune had been disturbed due to directives at the Kibungo Club meeting.[672]

465. In the evening of 3 April 1994, Witness GJQ attended a meeting with Mugiraneza, Rwagafilita, Kabagema, Rwatoro and Munyangabe at Murilo's bar in Remera in Kibungo prefecture. Witness GJQ reported about the security situation in the area and the need for him to recruit more *Interahamwe*. Subsequently, Rwatoro provided the group with the minutes and a report (in a sealed envelope) of the meeting held on 1 April. Mugiraneza expressed his satisfaction that the 1 April gathering was widely attended, and that *Interahamwe* were recruited on a large scale. He also agreed that the security of Tutsis should be disturbed. After the meeting, Mugiraneza left and that was the last time that Witness GJQ saw him.[673]

466. On unspecified dates after 6 April 1994, people received the guns promised by Mutabaruka during the 1 April meeting. Witness GJQ saw Lieutenant Colonel Nkuriyekubona, the commanding officer of Camp Huye military barracks, and Rwagafilita distribute more than 500 Kalashnikov rifles at the barracks. The weapons were distributed about 100 at a time and primarily given to the *Interahamwe*, who had received training at Camp Huye. Others were distributed elsewhere in Birenga commune and given to reservists.[674]

467. Witness GJQ testified that, on 11 April 1994, Tahimana and his police officer, Jean Christophe Senyabutembe, took weapons from Camp Huye claiming they were for the protection of displaced persons, but the firearms were used to massacre people at Birenga commune headquarters. Other distributed guns were used to kill opponents of the MRND and Tutsis, who had taken refuge in communal premises and at the *Economat*. Some of the guns

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[670] Witness GJQ, T. 10 March 2005 pp. 24, 29, 43-44, 56; T. 14 March 2005 p. 12; T. 17 March 2005 p. 40.
[671] Witness GJQ, T. 10 March 2005 pp. 44, 46-47; T. 17 March 2005 p. 37.
[672] Witness GJQ, T. 10 March 2005 pp. 45-46; T. 17 March 2005 pp. 40-41.
[673] Witness GJQ, T. 10 March 2005 pp. 46-48; T. 14 March 2005 pp. 11-14; T. 16 March 2005 p. 50; T. 17 March 2005 p. 32.
[674] Witness GJQ, T. 10 March 2005 pp. 56-60; T. 14 March 2005 p. 5. Witness GJQ received a rifle and ammunition on 9 April 1994 because he was an *Interahamwe* leader. Witness GJQ, T. 10 March 2005 p. 58.

that were distributed at Camp Huye were brought from Murambi commune by Jean-Baptiste Gatete, and from Rukara commune by *Interahamwe* and policemen.[675]

Prosecution Witness GKR

468. Witness GKR, a Tutsi, lived in Gasetsa sector, Kigarama commune, Kibungo prefecture in 1994.[676] Around 8.00 a.m. on 2 April 1994, he spoke with Mugiraneza's bodyguards, Nkurunziza and Nyeshyaka, who told him that Mugiraneza was in the area. The witness did not see him. One bodyguard explained that they had come the previous evening around 9.00 p.m. and spent the night in the village. They would be leaving the area at 9.00 a.m. that day and ultimately would travel to Kigali the following day.[677]

Mugiraneza

469. Mugiraneza was born in Gasetsa sector, Kigarama commune, Kibungo prefecture and lived there until 1982. He had never heard of the Kibungo Club and denied Witness GJQ's evidence about persons Mugiraneza allegedly met with. Mugiraneza also denied meeting with Colonel Rwagafilita during Easter weekend of 1994. Specifically, on 1 April 1994, Mugiraneza did not leave Kigali. The next day, Mugiraneza, his family and bodyguards left Kigali in an official service car and minibus for his home in Gasetsa sector. They arrived between 5.00 and 5.30 p.m. and remained until 8.00 p.m., after which Mugiraneza and his family went to bed.[678]

470. Around 10.00 a.m. on 3 April 1994 (Easter Sunday), Mugiraneza and his family left their home in Gasetsa sector and went to visit his father-in-law in Kibungo prefecture. Later that afternoon, they went to the home of Aloys Shyirambere, Mugiraneza's brother-in-law, for a christening celebration of one of Shyirambere's children. They stayed from about 2.00 to 8.00 p.m., before returning and spending the night at Mugiraneza's father-in-law's home.[679]

471. Around 10.00 a.m. the following day, Mugiraneza and his family went to visit his wife's elder brother before returning to Mugiraneza's father-in-law's house and then Kigali. After Mugiraneza left his father-in-law's house on Easter Monday, he never went back to Kibungo prefecture.[680]

Mugiraneza Defence Witness RWW

472. Witness RWW, a Hutu, was a gendarme in 1994.[681] On the afternoon of 1 April 1994 (Good Friday, which was not a public holiday), Mugiraneza went to the ministry office in Kigali, and returned to his Kigali home by 3.00 or 3.30 p.m. That day, Mugiraneza advised

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[675] Witness GJQ, T. 14 March 2005 pp. 3-5.
[676] Witness GKR, T. 29 June 2004 pp. 40-41; Exhibit P63 (Witness GKR's Personal Information Sheet).
[677] Witness GKR, T. 29 June 2004 pp. 69-71.
[678] Mugiraneza, T. 19 May 2008 pp. 40-41; T. 21 May 2008 p. 13; T. 27 May 2008 pp. 11-12.
[679] Mugiraneza, T. 27 May 2008 pp. 11-12.
[680] Mugiraneza, T. 27 May 2008 pp. 12-13; T. 3 June 2008 pp. 10-11.
[681] Witness RWW, T. 13 March 2008 pp. 2, 4-8, 16, 50-51; Exhibit 4D90 (Witness RWW's Personal Information Sheet). Witness RWW fled Rwanda on 17 July 1994. After his return to Rwanda in 1997, he was in detention at an unspecified time. Witness RWW, T. 17 March 2008 pp. 8-12.

Witness RWW that he would be going to Gasetsa sector on 2 April for a few days. Three gendarmes were assigned to go with the Minister.[682]

473. Mugiraneza, his family and the gendarmes left Kigali on Saturday 2 April 1994, around 4.00 p.m. Mugiraneza travelled in his official car along with his wife and two children, while his two elder children, a nanny, the gendarmes and a driver travelled in a separate minibus. They arrived at Mugiraneza's home in Gasetsa sector at 5.30 p.m., where they remained for the night. On the morning of 3 April (Easter Sunday), the group left around 10.00 a.m. for Mugiraneza's father-in-law's home in Kibaya sector, about 60 kilometres away. They stopped briefly so Mugiraneza could observe the progress at a building site of a secondary school before arriving in Kibaya around 10.30 a.m.[683]

474. Mugiraneza and the others stayed at his father-in-law's house until about 3.00 p.m. The group left on foot, walking for about 15 minutes before arriving at the home of his brother-in-law, Aloys. Mugiraneza stayed at Aloys's house until 8.00 p.m. and left to spend the night at his father-in-law's home. On 4 April 1994, Easter Monday and a public holiday, Mugiraneza remained at his father-in-law's home until they left for Kigali around 4.00 p.m. They arrived at 5.30 p.m. Further, Witness RWW did not attend any political meetings or rallies with Mugiraneza while providing security for him.[684]

Mugiraneza Defence Witness Mechtilde Mukandagijimana

475. Mechtilde Mukandagijimana, a Hutu, is the wife of Mugiraneza.[685] In the afternoon of 2 April 1994, Mukandagijimana, Mugiraneza and their family along with three bodyguards, including Antoine Nkurunziza, left Kigali and travelled by car and van to Gasetsa sector, Kibungo prefecture. Mukandagijimana and Mugiraneza arrived in Gasetsa around 5.30 p.m. and spent the night in their house in that area.[686]

476. On Easter Sunday, the family travelled about 45 minutes to Kibaya sector in Birenga commune, Kibungo prefecture to Mukandagijimana's parents' home. They arrived around 10.30 a.m. Later, around 2.00 p.m., they went to the home of Mukandagijimana's brother, Aloys Shyirambere for the baptism of his daughter, Harriet Uwamariya. They remained there until about 8.00 p.m. and then returned to the home of Mukandagijimana's parents, where they stayed the night. The next day, Mukandagijimana and her family visited her sister who lived in Kibaya-3 sector. They arrived shortly before midday and stayed till the afternoon. After the visit, they went back to Kigali and arrived at 6.00 p.m.[687]

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[682] Witness RWW, T. 13 March 2008 pp. 8-10, 53, 55; T. 17 March 2008 pp. 7-8, 14-20.
[683] Witness RWW, T. 13 March 2008 pp. 9-12, 55-56, 59.
[684] Witness RWW, T. 13 March 2008 pp. 12-13, 56-59, 61-62. The baptism ceremony, which Mugiraneza did not attend, took place at a church beforehand. Witness RWW, T. 13 March 2008 p. 58.
[685] Mukandagijimana, T. 1 May 2008 pp. 2-3, 5, 25-26; Exhibit 4D123 (Mukandagijimana's Personal Information Sheet).
[686] Mukandagijimana, T. 1 May 2008 pp. 7-8.
[687] Mukandagijimana, T. 1 May 2008 pp. 8-10.

Mugiraneza Defence Witnesses RDM and RWI

477. Witness RDM, a Tutsi, lived in Kibaya sector, Birenga commune, Kibungo prefecture in 1994.[688] Witness RWI, a Hutu, was a clerk in 1994.[689] On 4 April 1994, which RDM believed was Easter Sunday, both witnesses attended the baptism of Harriet Uwamariya at the home of Aloys Shyirambere in Kibaya sector.[690]

478. Witnesses RDM and RWI saw Mugiraneza, members of his family and gendarmes arrive at Shyirambere's home around 1.15 or between 12.00 and 1.00 p.m., respectively. Witness RDM testified that they had driven there. She left Shyirambere's home between 6.30 and 7.00 p.m., while Mugiraneza was still there. Witness RWI believed Mugiraneza departed between 7.30 and 8.00 p.m., returning to the nearby home of Mugiraneza's parents-in-law.[691]

Mugiraneza Defence Witness Jean Munyakayanza

479. Jean Munyakayanza, a Hutu, was a shopkeeper and lived in Kigarama commune in 1994. The witness was also the chairman of the PL in the commune and the Second Vice-President for the prefecture.[692] As a shopkeeper, Munyakayanza's store was situated on the road from Kigali to Kibungo, and in front of Murilo's bar. On 3 April 1994 (Easter Sunday), the witness was in his shop from approximately 8.00 a.m. to 5.30 p.m. Although he did not go to Murilo's bar, he observed few vehicles there and denied that there was a meeting at the bar. Further, Murilo's son, who worked at the bar, did not mention any unusual clients going there or that a meeting occurred. Munyakayanza testified that normally in Rwanda, at that time, bars operated between noon and 2.00 p.m., and 5.00 and 9.00 p.m.[693]

480. Munyakayanza had known Mugiraneza for over 25 years. On Easter in 1994 the witness estimated that around 3.00 p.m., he saw Mugiraneza's official vehicle followed by a minibus carrying gendarmes pass by from about 16 metres away. The witness stated that since he grew up with the Accused there was no way that he could not identify him. They were coming from Kibungo town and going towards Gasetsa sector, where Mugiraneza lived. However, he could not remember the date.[694]

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[688] Witness RDM, T. 19 March 2008 pp. 2-4; Exhibit 4D95 (Witness RDM's Personal Information Sheet); Exhibit 4D96 (Handwritten Information Regarding the Distance from Witness RDM's Home and Aloys's House, and Witness RDM's Current Occupation).
[689] Witness RWI, T. 18 March 2008 pp. 48-49; Exhibit 4D94 (Witness RWI's Personal Information Sheet).
[690] Witness RDM, T. 19 March 2008 pp. 3-6, 12, 14-21, 23-24. *See* Mugiraneza Closing Brief, para. 264(c) with respect to Witness RWI. The Chamber has reviewed the relevant evidence of Witness RWI, including pages not identified in the Mugiraneza Closing Brief. However, based on concerns of witness identification, the Chamber refers only to the confidential closing brief.
[691] Witness RDM, T. 19 March 2008 pp. 3-7, 11-21, 24. *See* Mugiraneza Closing Brief, para. 264(c) with respect to Witness RWI.
[692] Munyakayanza, T. 6 March 2008 pp. 48-49; Exhibit 4D86 (Jean Munyakayanza's Personal Information Sheet).
[693] Munyakayanza, T. 6 March 2008 pp. 49, 54-57; T. 10 March 2008 pp. 36-40, 42-43.
[694] Munyakayanza, T. 6 March 2008 pp. 50-52; T. 10 March 2008 pp. 56-62. Mugiraneza's vehicle was blue and he headed in the direction towards his home in Gasetsa. Munyakayanza, T. 10 March 2008 pp. 57-59.

Mugiraneza Defence Witness RRD

481. Witness RRD, a Hutu, was a trader.[695] He testified that the Kibungo Club was an association with about 400 co-founders, and the objective of the club was to develop the Kibungo prefecture. It had no affiliation with the *Interahamwe* and held only one meeting, on Monday 4 April 1994 starting around 8.00 a.m., at the prefecture office in Cyasemakamba. The date was selected because it was a public holiday. Prominent local officials such as Sub-Prefect Habimana, Birenga commune *Bourgmestre* Melchiad Tahimana and members of his staff were present. Similarly, Sylvain Mutabaruka, a member of parliament, Judge Jean-Baptiste Rwatoro, court officers David Niyitegeka and Nsanzumuhire, and the Registrar of the court attended. Several Tutsis were also at the gathering.[696]

482. At the meeting, which was chaired by Rwatoro, Tahimana and Nsanzumuhire, no one was told to fight the war in order to improve the area and Mutabaruka did not address the crowd. Elections for the club were held and Rwatoro was selected as President, Mutabaruka and Sudi Nkunzurwanda as Vice-Presidents, Gaudance Mukaremera was selected as a Secretary and Nsanzumuhire was chosen as Treasurer. Witness RRD was unaware of any other meetings of the Kibungo Club which were held before or after 4 April 1994.[697]

483. Witness RRD had been arrested in 1996 and tried before the Kibungo Court of First Instance for crimes related to events in Kibungo in 1994. During the trial, evidence was led that Witness RRD had attended a meeting of the Kibungo Club, which prepared for massacres committed in Kibungo in 1994. However, the public prosecutor, after investigations, determined that the purpose of the meeting was not to prepare for massacres. Consequently, Witness RRD was not convicted for participating in that meeting. Witness GJQ also testified at the trial that the Kibungo Club meeting was held between 13 and 18 March 1994.[698]

Mugiraneza Defence Witness RWL

484. Witness RWL, a Hutu, was a founding member of the *Interahamwe* in 1991, the first Vice-President of the Kibungo sector *Interahamwe* until 1993, and remained a regular member in 1994.[699] The witness knew Prosper Mugiraneza from 1988 to 1989, and did not see the Accused at any time during the founding of the *Interahamwe*. He met Witness GJQ in

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[695] Witness RRD, T. 10 June 2008 pp. 1-2; T. 11 June 2008 p. 7; Exhibit 4D138 (Witness RRD's Personal Information Sheet). On 20 December 1996, Witness RRD was arrested in Rwanda. He initially confessed to being forced to drive *Interahamwe* who committed genocide. His initial confession was rejected and he was ultimately convicted by the Court of First Instance of Kibungo of genocide for having transported in his vehicle members of the *Interahamwe*, who killed people, and being complicit in those murders. He was sentenced to 20 years of imprisonment and his appeal was pending at the time of his testimony. Witness RRD, T. 10 June 2008 pp. 9, 48-50, 56-58; T. 11 June 2008 p. 39; Exhibit P213 (Judgement of the Kibungo Court of First Instance).

[696] Witness RRD, T. 10 June 2008 pp. 11-15, 18-20, 22-23; T. 11 June 2008 pp. 14-19. Tutsis that attended the meeting included Gérard Habiyumva, a teacher, Ignace Gatera, a trader, Charles Kamanda, a prefectural officer, Emmanuel Muhima, a school headmaster, Ibrahim Habimana, a peasant farmer and *responsable de cellule* in his sector of origin, Augustin Bakareke and Athanase. Witness RRD, T. 10 June 2008 pp. 14-15.

[697] Witness RRD, T. 10 June 2008 pp. 19-20, 23-25, 28; T. 11 June 2008 pp. 17-18; Exhibit 4D139 (Position of Witness RRD in Kibungo Club).

[698] Witness RRD, T. 10 June 2008 pp. 9-10, 15-18, 22, 25-33, 38, 56-58; T. 11 June 2008 pp. 18-21, 25-26, 39; Exhibit P213 (Judgement of the Kibungo Court of First Instance).

[699] Witness RWL, T. 5 March 2008 pp. 32-34, 36, 49-50, 52; T. 6 March 2008 pp. 23, 26-28; Exhibit 4D81 (Witness RWL's Personal Information Sheet).

the beginning of 1993 and again in prison in May 1998. Witness RWL was imprisoned in 1997 for his purported role in the killings of persons at the Kigarama commune office in 1994 and his participation in the Kibungo Club, but was acquitted on appeal. While imprisoned together, Witness GJQ asked Witness RWL for a bribe (also referred to as "sugar") and, in return, Witness GJQ offered to testify on Witness RWL's behalf. Witness RWL refused the offer and, consequently, Witness GJQ provided false testimony against Witness RWL in his trial, and threatened to testify against others if not compensated.[700]

485. In particular, Witness GJQ testified that Witness RWL was a member of the Kibungo Club. According to Witness GJQ, it held a meeting on the second or third day of an unspecified month in order to prepare for the genocide. Others who testified in the trial, including Sudi Nkunzurwanda, observed that the club existed and that it had held a meeting. However, the club's purpose was for economic development and killings were not on the agenda. The Rwandan Appeals Court found that Witness RWL had not attended the alleged club meeting in Kibungo.[701]

Mugiraneza Defence Witnesses RDK, RWB, RDZ and RDF

486. Witnesses RDK and RWB, both Hutus, were local government officials who lived in Gasetsa sector in 1994.[702] Witnesses RDZ and RDF, both Hutus, lived in Kabare sector and Remera sector, respectively, in 1994.[703] At various times, each witness was detained with Witness GJQ in Rwanda.[704]

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[700] Witness RWL, T. 5 March 2008 pp. 37, 43, 53, 58, 60-61, 63-72, 75-77, 79-80; T. 6 March 2008 pp. 2, 6, 16, 29-30, 39; Exhibit 4D83(K) (Appeals Court Judgement). Witness GJQ threatened to testify against Innocent Rutayisire, Gaspard Ahobamuteze and Alex Mzayimana if not compensated and ultimately did testify against Rutayisire. Witness RWL, T. 5 March 2008 pp. 75-77, 79-80.

[701] Witness RWL, T. 5 March 2008 pp. 66-71; Exhibit 4D83(K) (Appeals Court Judgement).

[702] Witness RDK, T. 16 April 2008 pp. 39-40, 46; Exhibit 4D99 (Witness RDK's Personal Information Sheet). Witness RDK had been arrested and charged with planning and inciting persons to commit killings and leading attacks in 1994. After five years of detention, he was acquitted of these charges and released in 2001. Witness RDK, T. 16 April 2008 pp. 41-42; T. 17 April 2008 pp. 22, 72-73. At the time of his testimony, he was detained and faced charges of assault against his 27-year-old son and was awaiting trial. Witness RDK, T. 16 April 2008 pp. 41-43; T. 17 April 2008 p. 72; Exhibit 4D100 (Summons for Trial). Witness RWB, T. 6 May 2008 pp. 33-34, 57; Exhibit 4D126 (Witness RWB's Personal Information Sheet). At the time of his testimony, Witness RWB was detained and awaiting appeal of his conviction. He had originally been sentenced to death, but it had been reduced to life imprisonment. Witness RWB had been charged with supervising killings in his area, taking part in attacks on Tutsi civilians, conspiracy to murder and guarding roadblocks. Witness RWB, T. 6 May 2008 pp. 56-57.

[703] Witness RDZ, T. 30 April 2008 pp. 26-27, 43; Exhibit 4D121 (Witness RDZ's Personal Information Sheet). At the time of his testimony, Witness RDZ was an inmate in Kibungo prison. He was tried and convicted of genocide and war crimes in 1997 and was awaiting his appeal. He was sentenced to death, but after Rwanda abolished the death penalty he was reclassified to imprisonment for life. Witness RDZ, T. 30 April 2008 pp. 27-29, 65; Exhibit 4D5(E, F & K) (Judgement of the Kibungo Court of First Instance). Witness RDF, T. 29 April 2008 pp. 7, 14; Exhibit 4D116 (Witness RDF's Personal Information Sheet). At the time of his testimony, Witness RDF was detained and awaiting appeal of his conviction for genocide. He had been accused of crimes committed in the Kigarama commune office. He was sentenced to death. The death penalty was later abolished in Rwanda and his sentence was commuted to life imprisonment. Witness RDF, T. 29 April 2008 pp. 7-9, 33-34; Exhibit 4D5 (Judgement).

[704] Witness RDK, T. 17 April 2008 pp. 66-67; Witness RWB, T. 6 May 2008 pp. 47-48, 53, 62; Exhibit 4D127 (Name of a Person Written Down by Witness RDK); Witness RDZ, T. 30 April 2008 pp. 29-31, 34-35, 38, 53; T. 1 May 2008 pp. 48-49; Witness RDF, T. 29 April 2008 pp. 10, 16.

487. Witnesses RDK, RWB, RDZ and RDF testified that Witness GJQ threatened to make false accusations against fellow prisoners if they did not give him a bribe (or what was referred to as "sugar"). Further, Witness GJQ asked Witnesses RWB, RDZ and RDF for information concerning Mugiraneza. Witness RWB also testified that Witness GJQ told him that if they both testified against Mugiraneza, they would receive "compensation". In 2003 or 2004, Witness GJQ asked Witness RWB to gather information that would incriminate Mugiraneza. If he did not have such information, then Witness GJQ told him to say that Mugiraneza had come to organise a meeting in Gasetsa sector, and that the two of them could tender evidence against Mugiraneza together. Witness GJQ told Witness RWB that he had to confirm that Mugiraneza acted in concert with him, organised attacks in Gasetsa or that Mugiraneza had told him to hold a meeting. Further, Witness GJQ told Witness RDZ that he should have mentioned Mugiraneza's name during his trial in order to receive a lighter sentence. However, these allegations were not reported to the Rwandan authorities because Witness GJQ allegedly had influence with them.[705]

Mugiraneza Defence Witness BGE

488. Witness BGE, who had a close relationship with Rwagafilita, testified that Rwagafilita lived in Remera in Kigali city in 1994 and did not go to Kibungo during Easter of that year.[706]

Deliberations

489. The Prosecution relied exclusively on the evidence of Witness GJQ in support of the allegations pertaining to: (i) the Kibungo Club meetings of 1 and 3 April 1994, and (ii) the distribution of weapons and training at Huye barracks after 6 April. The Chamber shall review each allegation in turn.[707]

(i) Kibungo Club Meetings, 1 and 3 April 1994

490. Witness GJQ provided evidence regarding Mugiraneza's alleged involvement in the Kibungo Club, which was formed for the purpose of carrying out anti-Tutsi propaganda, spying on Tutsis and recruiting youth militia. Specifically, he alleged that the club was formed on 1 April 1994. The participants were encouraged to avenge the killing of Hutus by killing all the Tutsis in the area and informed that guns would be distributed. While Mugiraneza did not attend this meeting, its contents and instructions were later transmitted to

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[705] Witness RWB, T. 6 May 2008 pp. 47-49, 53-57, 62; Witness RDZ, T. 30 April 2008 pp. 29-30, 53-54, 63, 65, T. 1 May 2008 pp. 48-49, T. 5 May 2008 pp. 43-45; Witness RDF, T. 29 April 2008 pp. 14-19. The Chamber omits reference to the relevant citations in Witness RDK's evidence due to witness identification concerns.

[706] Witness BGE's evidence was admitted pursuant to Rule 92 *bis* of the Rules. Exhibit 4D150 (Witness BGE's Rule 92 *bis* Statement) p. 2.

[707] Witness GJQ testified that the 3 April 1994 meeting took place at the home and public bar of "Muriro", but the respective closing briefs and other witness transcripts refer to either "Murilo" or "Muliro". Since both the Prosecution and Mugiraneza Defence use "Murilo" and "Muliro" interchangeably in their written submissions and use those names in regards to the testimony of Witness GJQ when he refers to "Muriro", the Chamber accepts that this is a typographical error and that they are the misspelled names of the same person. For ease of reference, the Chamber has adopted the spelling "Murilo", which is accepted by both the Prosecution and Defence. Prosecution Closing Brief, para. 105; Mugiraneza Closing Brief, paras. 263, 265.

him in the evening of 3 April at Murilo's bar in Remera sector. Mugiraneza denied any knowledge of the Kibungo Club or having participated in any meeting on 3 April.

491. In assessing the credibility of Witness GJQ, the Chamber recalls that he was incarcerated at the time of his testimony while the appeal of his death sentence for involvement in the killings of Tutsis was pending.[708] He is an admitted accomplice of Prosper Mugiraneza and has blamed Mugiraneza for his actions. Specifically, while the witness confirmed that he pleaded guilty to the crimes he committed, he testified that he did not voluntarily take part in massacres. Consequently, he requested that the Chamber make Mugiraneza assume all of the responsibility for the crimes that Witness GJQ committed.[709]

492. The Chamber is troubled by Witness GJQ's statement, which imputes responsibility for *all* his crimes to Mugiraneza. The witness's evidence also appears to function as an attempt to minimise his role, or at least his culpability, in the crimes for which he has confessed. Given his pending appeal, the Chamber is reasonably concerned that the witness's testimony may be motivated by a desire to positively influence his proceedings.

493. Furthermore, the Defence challenged Witness GJQ's credibility based on the Judgement of the Kibungo Court of First Instance, which convicted him and sentenced him to death.[710] In its judgement, the Court noted the rejection of Witness GJQ's guilty plea by the Rwandan Office of the Prosecutor.[711] The Court also determined at several points that Witness GJQ lied, denying his responsibility for crimes, as well as falsely accusing his co-accused.[712] The Court did not accept the uncorroborated testimony of Witness GJQ regarding allegations related to the Kibungo Club (also called "Rwatoro Club").[713] This Chamber is not bound by findings of another court adjudicating a separate record, much of which is incomplete in this proceeding. Nonetheless, judicial determination of falsification by a witness raises concerns about his general credibility.[714]

494. Indeed, this Chamber has heard testimony that Witness GJQ threatened to falsely accuse other people and specifically targeted Mugiraneza. Witnesses RWL, RDK, RWB, RDZ and RDF testified that Witness GJQ told them that he would make false accusations against them unless they gave him bribes.[715] Witness RWB also testified that Witness GJQ told him that if they both testified against Mugiraneza, they would receive "compensation".

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[708] Witness GJQ, T. 9 March 2005 pp. 39-40; T. 14 March 2005 pp. 20-21, 26-28; T. 15 March 2005 pp. 3, 37-41; T. 16 March 2005 p. 20.
[709] Witness GJQ, T. 14 March 2005 pp. 19-20.
[710] Mugiraneza Closing Brief, paras. 119-120, 258- 259; Exhibit P213(F) (Judgement of the Kibungo Court of First Instance) p. 238. Exhibit P213 is in Kinyarwanda. The Kinyarawanda version was entered as an exhibit on 10 June 2008 during the testimony of Witness RRD. When it was admitted, translations were requested, but the translated versions (in either French or English) were not admitted as exhibits. Witness RRD, T. 10 June 2008 pp. 53-54. However, a French translation was disclosed on 17 March 2005. Interoffice Memorandum of O. De Schutter, Case Manager Government II Team to Félicité Talon, Coordinator, 17 March 2005. Despite references to "Exhibit P213(E)" in the Mugiraneza Closing Brief, the Chamber was not provided with an English translation of the exhibit.
[711] Exhibit P213(F) (Judgement of the Kibungo Court of First Instance) p. 11.
[712] Exhibit P213(F) (Judgement of the Kibungo Court of First Instance) pp. 192-193, 211-212.
[713] Exhibit P213(F) (Judgement of the Kibungo Court of First Instance) pp. 25-28, 211; *see also* Witness RRD, T. 10 June 2008 pp. 30-33.
[714] *Nchamihigo* Appeal Judgement, paras. 305, 309, 312-314 (overturning factual findings of the Trial Chamber, in part, because insufficient caution was used when assessing the evidence of an accomplice witness who admitted to misleading judicial officials in his own criminal case).
[715] Several witnesses explained that Witness GJQ asked for "sugar", which meant a bribe.

Similarly, Witness GJQ told Witness RDZ that he should have mentioned Mugiraneza's name during his trial in order to receive a lighter sentence. According to those questioned, these allegations were not reported to the Rwandan authorities because Witness GJQ allegedly had influence with them. In the Chamber's view, the testimonies of the five witnesses, while not conclusive, is further evidence that he may be inclined to ignore his testimonial oath and that his evidence should be viewed with considerable suspicion.[716]

495. Turning to the merits of his evidence, the Chamber observes that Witness GJQ provided statements to Tribunal investigators on 20 October 1999, 20 July 2001, 14 November 2002, 28 May 2003 and 21 July 2003.[717] The Defence confronted the witness with the fact that his prior accounts vary as to when he joined the MRND, ranging from September 1992 to August or September 1993.[718] Witness GJQ explained that it was possible that the person taking notes for his statements was mistaken or that he made a mistake concerning dates.[719] However, the witness maintained that attempts to lure him into the MRND party began in July 1992 when he met with Mugiraneza, Rwagafilita and Kabagema at Rwagasore's place, and continued into August.[720] He then testified that he was recruited into the MRND around September or October 1992.[721] The Chamber considers the explanation reasonable.

496. Turning to the Defence evidence, Witness RRD confirmed the existence of the Kibungo Club, that radio broadcasts were used to announce the general meeting in April 1994, and that Rwatoro and Tahimana (as identified by Witness GJQ) were leaders of the club. Like Witness GJQ, he confirmed that elections were held and that Prosper Mugiraneza was not present.[722]

497. However, Defence witness evidence veers dramatically from Witness GJQ's with respect to the topics of discussion and attendees. While Witness GJQ testified that the war was discussed and one of the speakers encouraged the attendees to kill Tutsis, Witnesses

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[716] Witness RWB, T. 6 May 2008 pp. 47-49, 53-57, 60, 62; Witness RDZ, T. 30 April 2008 pp. 29-31, 53-54, 63, 65; T. 1 May 2008 pp. 48-49; T. 5 May 2008 pp. 43-45; Witness RDF, T. 29 April 2008 pp. 14-19. The Chamber omits citation to Witness RDK's evidence due to witness identification concerns. The Defence also challenges Witness GJQ's credibility submitting that his "pattern of lying is consistent with GJQ's history of putting himself and his interests above all else". As an example, the Defence points to Witness GJQ's motivation for joining the MRND, which the Defence alleges was out of self-interest and the immediate benefit of tires for his lorry (Mugiraneza Closing Brief, para. 123). The Defence cites the evidence of Witnesses RWL and RDZ. Witness RWL, T. 5 March 2008 pp. 34, 43-45; Witness RDZ, T. 30 April 2008 pp. 28-30, 34, 59; T. 1 May 2008 pp. 57-58; Exhibit 4D82 (Names of the Individuals that Gave Tires to Witness GJQ). Witness GJQ admitted that he received tires from Rwagafilita. Witness GJQ, T. 10 March 2005 pp. 29-30.

[717] Witness GJQ, T. 9 March 2005 pp. 38-39; T. 16 March 2005 p. 12; Exhibit 1D59(E) (Witness GJQ's Statement, 20 October 1999). Aside from the statement dated 20 October 1999, the other four statements of Witness GJQ were not entered as exhibits despite inquiry from the Chamber. Consequently, the Chamber must rely on the excerpts or summaries of the other statements, which were read into the record. Witness GJQ, T. 17 March 2005 pp. 46-47.

[718] *See* Witness GJQ, T. 17 March 2005 pp. 24-25 (Witness GJQ's Statements, July 2001 and November 2002). *See also* Exhibit 1D59(E) (Witness GJQ's Statement, 20 October 1999) p. 2.

[719] Witness GJQ, T. 17 March 2005 p. 25.

[720] Witness GJQ, T. 17 March 2005 pp. 24-25. According to the October 1999 statement, Witness GJQ met with Mugiraneza, Rwagafilita, Kabagema, Emmanuel Mugiraneza and other persons at Rwagasore's bar in August or September 1993. Exhibit 1D59(E) (Witness GJQ's Statement, 20 October 1999) p. 2.

[721] Witness GJQ, T. 15 March 2005 pp. 21, 36; T. 17 March 2005 p. 25.

[722] Witness RRD, T. 10 June 2008 pp. 12-14, 18-20, 22-24, T. 11 June 2008 pp. 15-18; *see also* Witness GJQ, T. 10 March 2005 pp. 42-44, T. 14 March 2005 pp. 12-13, T. 17 March 2005 p. 34.

RRD and RWL testified that the sole purpose was to discuss economic development for the prefecture.[723] They denied that the attendees of the Kibungo Club were told to fight in the war in order to improve the prefecture, and Witness RRD stated that Mutabaruka did not speak at the meeting.[724] While Witness GJQ testified that Tutsis were excluded, Witness RRD stated that Tutsis attended and identified several individually.[725]

498. Furthermore, Witness GJQ testified that the meeting occurred on 1 April 1994 (Good Friday) with over 1,000 people and Witness RRD testified that it took place on 4 April (Easter Monday) with about 400 co-founders.[726] The Chamber observes that Witness GJQ, in his October 1999 statement to Tribunal investigators, had indicated that the radio announcement of the meeting had taken place in January or February 1994.[727] Furthermore, Witness GJQ also acknowledged that he had previously stated that the date of the Kibungo Club meeting was 17 or 18 March 1994, but maintained that the meeting occurred on 1 April 1994.[728] Indeed, Witness RRD read an excerpt from the judgement of the Kibungo Court of First Instance, which reflects that Witness GJQ had testified that the event occurred on 13 March 1994.[729]

499. While it is reasonable that Witness GJQ's prior statements and testimony reflect uncertainty about the date of the Kibungo Club meeting, the timing of it is critical as it relates to Prosper Mugiraneza. Indeed, if the date of 4 April 1994 provided by Witness RDD is correct, then it would cast doubt on Witness GJQ's testimony that Mugiraneza attended a subsequent meeting on 3 April (Easter Sunday) where he received the illegal plans devised during the 1 April meeting.[730]

500. Witness RRD's admitted association with the Kibungo Club and position as a potential accomplice may provide a motivation to deny Witness GJQ's allegations about the club's purpose. Indeed, the Prosecution submits that the judgement of the Kibungo Court of First Instance, which convicted Witness RRD, demonstrated that the Kibungo Club discussed issues about the ongoing war and the steps that should be taken by Hutus to protect themselves.[731] However, Witness RRD testified that the portion of the judgement referred to by the Prosecution consisted of allegations presented by a co-accused in the trial and nobody was found guilty of having attended a Kibungo Club meeting in order to prepare for genocide.[732] His evidence is confirmed by a reading of the judgement.[733] He testified that he

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[723] Witness GJQ, T. 10 March 2005 pp. 42-44, T. 14 March 2005 pp. 12-13, T. 17 March 2005 pp. 40-41; Witness RRD, T. 10 June 2008 pp. 11-12, 18; Witness RWL, T. 5 March 2008 pp. 67-69.
[724] Witness RRD, T. 10 June 2008 p. 19; T. 11 June 2008 pp. 17, 21.
[725] Witness GJQ, T. 10 March 2005 pp. 46, 55; Witness RRD, T. 10 June 2008 pp. 14-15.
[726] Witness GJQ, T. 10 March 2005 pp. 42, 44, 46, T. 14 March 2005 pp. 12-13, T. 17 March 2005 pp. 34, 36-40; Witness RRD, T. 10 June 2008 pp. 11, 22-23.
[727] Exhibit 1D59(E) (Witness GJQ's Statement, 20 October 1999) p. 4.
[728] Witness GJQ, T. 17 March 2005 pp. 35-36.
[729] Witness RRD, T. 10 June 2008 pp. 30-33, 36; Exhibit P213 (Judgement of the Kibungo Court of First Instance).
[730] Witness GJQ also testified that the meeting took place in the multi-purpose hall of the province where he lived. Witness RRD stated the meeting occurred at Cyasemakamba in the building which housed the prefecture office. The Chamber is uncertain whether the two offices are the same. Witness GJQ, T. 10 March 2005 p. 42; T. 14 March 2005 pp. 13-14; Witness RRD, T. 10 June 2008 p. 12.
[731] Prosecution Closing Brief, para. 1134.
[732] Witness RRD, T. 11 June 2008 pp. 25-26.
[733] Exhibit P213 (Judgement of the Kibungo Court of First Instance).

was not convicted in Rwanda for crimes relating to the Kibungo Club (despite such charges against him).[734]

501. In any event, Mugiraneza denied that he knew about the Kibungo Club or attended the alleged meeting on the evening of 3 April 1994. Mugiraneza testified that he was in Kigali on 1 April, went to his home in Gasetsa on 2 April, attended a baptism on 3 April in Kibungo prefecture, and on 4 April left Kibungo for Kigali.[735] In terms of Mugiraneza's alibi for 3 April, his testimony is corroborated by Witnesses RDM, RWI, RWW and Mukandagijimana, who place him at the baptism celebrations for Henriette Uwamariya.[736] All four witnesses testified that he was at Shyirambere's house starting between 1.15 and 3.15 p.m., and three of them had him leaving around 8.00 p.m.[737] Witness GKR, who spoke to one of Mugiraneza's bodyguards, provided circumstantial evidence that Mugiraneza was in the Gasetsa area during the relevant time period.[738]

502. Witness RWW and Mukandagijimana, who were with Mugiraneza during the day, did not mention Mugiraneza travelling to Remera for a meeting. Witnesses RWI, RWW and Mukandagijimana testified that, after the party, Mugiraneza went back to the house of his parents-in-law and stayed there that night.[739]

503. The Chamber notes that testimonies corroborating Mugiraneza's alibi come from other Accused in the case and members of their family or witnesses closely associated with him. The Chamber is mindful of the possible interest of these witnesses in providing exculpatory evidence for Mugiraneza. Nonetheless, Mugiraneza's presence at Shyirambere's house is corroborated by Witness RDM, who has no apparent connection to Mugiraneza or ostensible interest in providing evidence favourable to him. Although there are minor differences in the evidence of the alibi witnesses, their evidence is generally consistent and the differences are reasonable given the passage of time.[740]

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[734] Witness RRD, T. 10 June 2008 pp. 9-10, 15-18, 36, 38, 56-58; T. 11 June 2008 pp. 18-21, 25-26, 39; Exhibit P213 (Judgement of the Kibungo Court of First Instance).

[735] Mugiraneza, T. 21 May 2008 p. 13; T. 22 May 2008 pp. 11-12; T. 27 May 2008 pp. 10-13; T. 3 June 2008 pp. 10-11.

[736] In addition to the evidence summarised, the Chamber considered the evidence of Witness RWM. Pursuant to Rule 92 *bis*, Witness RWM testified that he had knowledge of the baptismal records for Rukira Parish in Kibungo Diocese. He certified that he conducted a search in the baptism books of the parish and found that a daughter of Aloys Shyirambere named Henriette Uwamariya was baptised in the Rukira Parish on Sunday 3 April 1994, and received the first communion that same day. Filing of Additional Statements Under Rule 92 *bis* for Witnesses RWM, RDS, BGM, 23 April 2008, pp. 4, 7. The Rule 92 *bis* statement of Witness RWM, which was disclosed on 23 April 2008, was admitted on 13 June 2008. T. 13 June 2008 pp. 7-8. *See also* Exhibit 4D156 (Baptism Card of Henriette Uwamariya) (entered as an exhibit pursuant to the Decision on Defence Motion to Reconsider Order of 2 June 2008 Denying Admission of Church and School Records (TC), 23 July 2008, paras. 19-20, 22-23). Witness RDM testified that Uwamariya was baptised at an older age (16 years) because Shyirambere conceived her with another woman outside his marital home, but later brought her to his home and forced her to convert to Catholicism. Witness RDM, T. 19 March 2008 p. 5.

[737] Witness RDM, T. 19 March 2008 pp. 4-6, 11-17, 24; Witness RWW, T. 13 March 2008 pp. 12, 56-59; Mukandagijimana, T. 1 May 2008 pp. 8-9. *See also* Mugiraneza Closing Brief, para. 264(c) for Witness RWI's evidence.

[738] Witness GKR, T. 29 June 2004 pp. 69-71.

[739] Witness RWW, T. 13 March 2008 pp. 11-12, 56-59; Mukandagijimana, T. 1 May 2008 pp. 8-9. *See also* Mugiraneza Closing Brief, para. 264(c) for Witness RWI's evidence.

[740] Despite Witnesses RDM and RWW differing as to how Mugiraneza arrived at Shyirambere's house, their evidence corroborates each other and Mugiraneza's testimony. The Prosecution notes this discrepancy and "urges the Chamber to disbelieve the testimony of RWW and believe the version of RDM". Prosecution Closing

504. The Chamber notes that the distance from Remera shopping centre (where Murilo's bar, the alleged meeting spot on 3 April 1994, is located) to Gasetsa sector, where Mugiraneza's home is located, is between four and seven kilometres by road.[741] The distance from Gasetsa to Kibaya sector, where the homes of Shyirambere and Mugiraneza's in-laws are situated is approximately 60 kilometres. The record reflects that it took about 30 to 45 minutes to drive between the locations.[742]

505. Even if Mugiraneza attended the baptism celebrations at Shyirambere's house in Kibaya, it is not impossible that he later attended a meeting at Murilo's bar that same evening. However, given the abundant and largely consistent alibi evidence, it is also reasonable that Mugiraneza returned to the home of his in-laws after the baptismal parties, as opposed to leaving his family and attending an evening meeting approximately 45 minutes away.

506. Further, Witness BGE testified that Rwagafilita lived in Remera in Kigali city in 1994 and did not go to Kibungo during Easter of that year.[743] Jean Munyakayanza, who owned a shop across from Murilo's bar, testified that he did not see a meeting at Murilo's bar on Easter Sunday from 8.00 a.m. to 5.30 p.m., but he admitted that he did not go into the bar and had to handle customers in his own shop.[744] While this general evidence is of limited probative value, it offers further corroboration that Mugiraneza was not at a meeting with Rwagafilita and others at Murilo's bar on the evening of 3 April.[745]

507. The concerns regarding Witness GJQ's credibility and the alibi evidence presented by the Defence raise significant doubt regarding the allegation that Mugiraneza participated in the Kibungo Club and the meeting on 3 April 1994. Consequently, the Chamber concludes that the Prosecution has not proven beyond reasonable doubt that Mugiraneza participated in

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Brief, para. 1034. Even in that case, the evidence of Witness RDM provides Mugiraneza with an alibi from approximately 1.15 to 6.00 or 7.00 p.m. on 3 April 1994.

[741] Munyakayanza, T. 10 March 2008 p. 61.

[742] Witness RWW, T. 13 March 2008 pp. 11-12, 59; Mukandagijimana, T. 1 May 2008 pp. 8-9.

[743] Witness BGE testified via Rule 92 *bis* statement. Exhibit 4D150 (Witness BGE's Rule 92 *bis* Statement) p. 2.

[744] Munyakayanza testified that Murilo belonged to the PL and therefore MRND members would not feel at ease holding a meeting at Murilo's bar. Munyakayanza, T. 6 March 2008 p. 57. Later, he testified that MRND members would not be at ease holding a meeting at the bar because the normal clients would be disturbing them. Munyakayanza, T. 10 March 2008 pp. 37-39.

[745] In addition to the evidence summarised, the Chamber considered the evidence of Mugiraneza Defence Witnesses RWC, RDY and RWG, however their evidence is not conclusive. Witness RWC, a Tutsi, lived in Gasetsa sector, Kigarama commune, Kibungo prefecture in 1994. Witness RWC, T. 28 February 2008 pp. 43-46; Exhibit 4D74 (Witness RWC's Personal Information Sheet). Witness RWC testified that she did not see Mugiraneza at his house between 1 and 4 April 1994. She stated that if he came, she would have seen him. Witness RWC, T. 28 February 2008 p. 68. Witness RDY, a Hutu, lived in Gasetsa sector, Kigarama commune, Kibungo prefecture in 1994. Witness RDY, T. 17 March 2008 pp. 29-30; Exhibit 4D91 (Witness RDY's Personal Information Sheet). Witness RDY testified that Mugiraneza came to Gasetsa during Easter of 1994, but he was not sure about the specific dates. The witness visited Mugiraneza at his home in Gasetsa on Easter day, but he was not sure if he saw Mugiraneza on 2 April. Witness RDY testified that he saw Mugiraneza in the evening on 3 April. The last time that he saw Mugiraneza was on Easter Sunday (which the witness testified was 4 April) around 10.00 a.m. before Mugiraneza left for Kigali. Witness RDY, T. 17 March 2008 pp. 60-62, 65-68. The Chamber notes the confusion in dates by Witness RDY regarding Easter Sunday, which was 3 April. Witness RWG, a Hutu, lived in Gasetsa sector, Kigarama commune, Kibungo prefecture in 1994. Witness RWG testified that she saw Mugiraneza in Gasetsa during Easter 1994, but she did not remember the exact date. She saw him leave Gasetsa around 10.00 a.m. He was with his wife and children. Witness RWG, T. 18 March 2008 pp. 31-34; Exhibit 4D93 (Witness RWG's Personal Information Sheet).

the Kibungo Club or attended a meeting on 3 April to collect the minutes of a Kibungo Club meeting. Given the Chamber's findings, it need not address the Defence arguments concerning insufficient notice.[746]

(ii) Training and Distribution of Weapons at Huye Barracks, After 6 April 1994

508. The Prosecution alleges that, after 6 April 1994, weapons were distributed at Huye barracks in Birenga commune to *Interahamwe* and reservists by Rwagafilita and Colonel Nkuriyekubona. Further, the *Interahamwe* and reservists were given military training at the barracks.[747] The Defence submits that this allegation has never been linked to any of the four Accused. The Defence argues that this event has been linked to local authorities and if anything merely shows how the *Interahamwe* followed local orders.[748]

509. The Prosecution relied solely on the evidence of Witness GJQ in alleging that weapons and training were provided at the Huye barracks.[749] However, the Prosecution has failed to provide evidence linking this specific event to any of the four Accused. The Chamber notes that Witness GJQ testified regarding communications between Rwagafilita and Mugiraneza after 6 April 1994, but the evidence was not conclusive (II.6.5). Further, the Chamber recalls the concerns regarding Witness GJQ's credibility and views his evidence with caution.

510. Consequently, the Prosecution has not proven beyond reasonable doubt that weapons or training were provided at the Huye barracks after 6 April 1994 with the knowledge or involvement of any of the four Accused. Given the Chamber's findings, it need not address the Defence arguments concerning insufficient notice.

6.2 Killings at Cyamuribwa Centre, 7 April 1994

Introduction

511. The Indictment alleges that from 7 April 1994, massacres of the Tutsi population were perpetrated throughout the territory of Rwanda. These crimes, which had been planned and prepared for by prominent civilian and military figures who shared the extremist Hutu ideology, were carried out by militiamen, military personnel and gendarmes on the orders and directives or to the knowledge of some of these authorities, including Prosper Mugiraneza. More specifically, the Prosecution argues that on 7 April 1994, Prosper Mugiraneza ordered *Interahamwe* to kill Tutsis at the Cyamuribwa Centre. The Prosecution relies on Witness GJR.[750]

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[746] The Chamber recalls that evidence relating to events occurring in Kibungo prefecture was only admitted to be considered against Mugiraneza for the allegations of conspiracy to commit genocide and complicity in genocide. Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004 (TC), 4 October 2004, p. 14.

[747] Prosecution Closing Brief, para. 141; Prosecution 21 November 2008 Document, Item No. 39.

[748] Mugenzi Closing Arguments, T. 2 December 2008 pp. 80-81.

[749] Witness GJQ, T. 10 March 2005 pp. 56-60; T. 14 March 2005 pp. 3-5.

[750] Indictment, paras. 5.1, 5.36, 6.14, 6.31, 6.35-6.37, 6.62-6.64, 6.66-6.68; Prosecution Pre-Trial Brief, para. 287 (p. 57); Prosecution Closing Brief, paras. 155, 277-279, 365-366, 373, 383-384, 1046; Prosecution 21 November 2008 Document, Item Nos. 51, 78; Prosecution Closing Arguments, T. 1 December 2008 pp. 66-67. The Prosecution also relies on the testimony of Witness GKS in relation to this event. Notably, Witness GKS testified about an attack that occurred at the Kigarama commune office, not in the area of Cyamuribwa Centre.

512. The Mugiraneza Defence submits that it has received insufficient notice of this allegation. Furthermore, it contends that the Prosecution evidence is unreliable. Specifically, Witness GJR was not at the Cyamuribwa Centre on 7 April 1994 and no killings happened there on this date. Mugiraneza, Bizimungu, Mugenzi and Defence Witnesses RDK, RDL, RDX, RDU, RDC, André Ntagerura, Mechtilde Mukandagijimana, Jeannette Uzamukunda, Léoncie Bongwa, RWW, WFQ1 and Antoine Nyetera provided relevant evidence.[751]

Evidence

Prosecution Witness GJR

513. Witness GJR lived in Ndekwe *cellule*, Gasetsa sector in Kigarama commune in 1994.[752] On 7 April 1994, after President Juvénal Habyarimana's death, the leader of the *Interahamwe*, Murwanashyaka, sent *Interahamwe* to gather everyone at the Cyamuribwa Centre. Witness GJR was at home with her mother and four brothers when a neighbour named Byabahama, an *Interahamwe*, told them to go to the centre, so they all went around 9.00 a.m. The centre was a 10 minute walk from her house. By around 9.30 a.m., at least 100 Hutu and Tutsi individuals had gathered there.[753]

514. Before 10.00 a.m., a black double-cabin pick-up arrived with Prosper Mugiraneza, whom she had known for about five years, and four soldiers whom the witness recognised but did not know their names. Mugiraneza stopped and had a conversation with Murwanashyaka, telling him that massacres of Tutsis had occurred elsewhere but that nothing had been done there. Mugiraneza said that all Tutsis must be killed, along with their children, and that other *Interahamwe* who had also undergone training should be informed of this. Mugiraneza stayed at the centre for about 30 minutes, and then visited the Kurutare Centre before leaving town.[754]

515. After Prosper Mugiraneza left, the male Hutus told their wives and children to go home, and told the Tutsis to stay. They immediately started killing male Tutsis with machetes, clubs and guns but decided to leave the women and girls in order to rape them. At approximately 11.00 a.m., Witness GJR ran away and hid in a small bush by the road, where she watched killings, including that of two of her brothers, at the centre continue until 6.00 p.m. The bodies were thrown into pit latrines. Her older brother and her mother were taken to the Kibungo Economat where they were killed. Her last brother was killed in Ndekwe *cellule*.[755]

516. In the evening, she went towards her house and watched as her house and the one behind it were looted and destroyed by *Interahamwe*. That night she hid in a bush next to her house. *Interahamwe* named Célestin and Komanda found her and asked where her family was before leaving. On an unidentified later date Célestin and Komanda found her again in the bush and Komanda raped her. Later, Célestin and Komanda heard shooting from the RPF soldiers and fled. Witness GJR then returned to her hiding place with a Hutu woman named

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Further review of her evidence in the context of the entire record reflects that she was referring to an event on 9 April 1994, rather than 7 April. Accordingly, her evidence is not set forth in this section.

[751] Mugiraneza Closing Brief, paras. 383-394, 733, 738.

[752] Exhibit P62 (Witness GJR's Personal Information Sheet).

[753] Witness GJR, T. 28 June 2004 pp. 3-6, 75-87; T. 29 June 2004 p. 2.

[754] Witness GJR, T. 28 June 2004 pp. 6-9, 72-73; T. 29 June 2004 pp. 4-5.

[755] Witness GJR, T. 28 June 2004 pp. 9-11, 20, 42- 43, 79, 86; T. 29 June 2004 pp. 4-5, 7-10, 37.

Odette Kankundiye. After nightfall the two went to Odette's house, staying with Odette's mother, Mukarwego, for about one month, until the end of the killings in June 1994.[756]

517. At an unidentified time before being raped by Komanda and subsequently hiding at Odette's house, Witness GJR hid in Karangwa's house. There, a Hutu named Ntamishombero took her by force and brought her to the primary school building on a hill where he raped her. He subsequently brought her to the house of Ignatius Mugiraneza, where she spent one night. Then she went to the home of Cecilia.[757]

Prosper Mugiraneza

518. Mugiraneza was at home on the evening of 6 April 1994. Upon hearing that President Juvénal Habyarimana's plane had been shot down, he spoke to the gendarmes guarding his house to alert them of the situation, including Karenzo and Antoine Nkurunziza. Around 11.00 p.m., soldiers took Mugiraneza and his family to the Presidential Guard Camp, where they remained for the night. Around 4.00 p.m. on 7 April, Mugiraneza and his family relocated to the French Embassy. Mugiraneza did not leave Kigali that day, and spent the nights of 7 and 8 April in the French Embassy. The gendarmes stayed at Mugiraneza's home until 7 April, when Mugiraneza called Nkurunziza to come to the French Embassy. The last day Mugiraneza had gone to Gasetsa sector was 3 April.[758]

Mugiraneza Defence Witness RDK

519. Witness RDK, a Hutu, was a local government official in Gasetsa sector in 1994.[759] On the morning of 7 April 1994, the witness went to all of the trading centres in the sector. He walked from his home to the Nkenke Trading Centre in Ndekwe *cellule*, a distance of about 800 metres, arriving around 8.00 a.m. He then walked to the Cyamuribwa Centre, a distance of about 800 to 900 metres, arriving around 8.40 a.m., and testified that he passed by the Cyamuribwa Centre again around 10.35 a.m. He next walked another 800 to 900 metres to the Kamboje Trading Centre, then to Rukore, and finally to a small trading centre in Rutare, where he finished his journey.[760]

520. He later returned from Rutare to the Kamboje Trading Centre, arriving around 10.30 a.m. There he met the *bourgmestre* of Kigarama commune, Emmanuel Mugiraneza, around 11.00 a.m. and informed him of the security situation. Emmanuel Mugiraneza went away and Witness RDK returned to the Nkenke Trading Centre, arriving around 11.00 a.m. Emmanuel Mugiraneza later arrived at Nkenke Trading Centre and told Witness RDK that he would ensure the security in the sector and that Witness RDK should go home and manage security in his own home. Emmanuel Mugiraneza was in a white Hilux vehicle along with a

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[756] Witness GJR, T. 28 June 2004 pp. 11-16; T. 29 June 2004 pp. 13, 16-23.
[757] Witness GJR, T. 28 June 2004 pp. 17-30, T. 29 June 2004 pp. 18-19.
[758] Mugiraneza, T. 22 May 2008 pp. 20-33; T. 27 May 2008 pp. 12-13; T. 3 June 2008 pp. 58-62.
[759] Witness RDK, T. 16 April 2008 p. 46; Exhibit 4D99 (Witness RDK's Personal Information Sheet). At the time of his testimony, he was detained and awaiting trial for alleged assault against his 27-year-old son. He previously spent over five years in detention for seven charges including planning and inciting people to commit killings and leading attacks. He was acquitted and released in 2001. He was also acquitted before the *Gacaca* courts. Witness RDK, T. 16 April 2008 pp. 41-43, 46-47; T. 17 April 2008 pp. 22, 72-73; Exhibit 4D100 (Summons for Trial).
[760] Witness RDK, T. 16 April 2008 pp. 49, 51-54; T. 17 April 2008 p. 9; T. 21 April 2008 pp. 4-8; Exhibit 4D101 (Handwritten map of Witness RDK's movement around the sector).

policeman named Kamana and two gendarmes. A communal accountant named Ndahonga was on a motorcycle. Ndahonga's son, Karekezi, later joined Emmanuel Mugiraneza's vehicle. Witness RDK did not see Prosper Mugiraneza, whom he knew because they had been neighbours in Gasetsa sector, during his walks between the centres. The last time he saw Prosper Mugiraneza was at his home in 1993. The witness also did not mention seeing Witness GJR during his walks.[761]

521. Witness RDK had close personal relations with Witness GJR and testified that in 2007 she told him that she had received money for falsely testifying against Prosper Mugiraneza. Witness RDK also testified that Witness GJR did not have any relationship with Prosper Mugiraneza and that they were not neighbours.[762]

Mugiraneza Defence Witness RDL

522. Witness RDL lived in Gasetsa sector, Kigarama commune, in 1994 near the Cyamuribwa Centre.[763] He learned about President Juvénal Habyarimana's death the morning of 7 April 1994. Hutus were coming from an unidentified centre, gathering Hutus and Tutsis, taking them to Kamboje Centre, on to Rutare *cellule* and then up the hill. Some killings occurred in Cyamuribwa *cellule* on 7 April, but the witness testified that there were no killings at Cyamuribwa Centre. However, on 8 April, one individual might have been killed there, but no massacres took place.[764]

523. On 7 April 1994, Witness RDL only saw one vehicle on the road. Around 3.00 p.m. he saw a white pick-up truck belonging to the commune. Inside was the Kigarama commune *bourgmestre*, Emmanuel Mugiraneza, along with the accountant and one of his employees named Karekezi.[765]

524. Witness RDL knew Witness GJR as she stayed at his home from 14 or 15 April 1994 until around the end of May or early June 1994. He did not see Witness GJR in Cyamuribwa *cellule* on 7 April.[766]

525. Witness RDL knew Prosper Mugiraneza as he was a national leader and lived near the witness. He had met Mugiraneza twice, once at Mugiraneza's house for a celebration and the last time in 1993, when Witness RDL went to Mugiraneza's home to ask for some footballs for the youth.[767]

Mugiraneza Defence Witness RDX

526. Witness RDX, a Hutu, lived in Gasetsa sector in 1994, about 30 minutes on foot from the Cyamuribwa Centre. On the morning of 7 April 1994, Witness GJR and her mother came to Witness RDX's home between 6.00 and 7.00 a.m. On unspecified occasions, *Interahamwe* came looking for Witness GJR. Witness RDX's family took her outside and hid her. When

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[761] Witness RDK, T. 16 April 2008 pp. 45-46, 49, 51-54; T. 17 April 2008 pp. 25, 28, 36-40, 73-74, 79; T. 21 April 2008 pp. 8-9, 15-16; Exhibit 4D101 (Handwritten map of Witness RDK's movement around the sector).
[762] Witness RDK, T. 17 April 2008 pp. 11-19; T. 21 April 2008 pp. 16-18.
[763] Witness RDL, T. 19 February 2008 p. 5; Exhibit 4D59 (Witness RDL's Personal Information Sheet).
[764] Witness RDL, T. 19 February 2008 pp. 7-9.
[765] Witness RDL, T. 19 February 2008 pp. 10-15.
[766] Witness RDL, T. 19 February 2008 pp. 15-16.
[767] Witness RDL, T. 19 February 2008 pp. 9-11.

the *Interahamwe* left then she would come back into the house. On 12 April, a man called Karangwa came and took Witness GJR to his house, which was about one hour away. Witness RDX believed that Witness GJR's brothers were taken from Witness GJR's home. Witness RDX was not aware of any orders telling people to gather at the Cyamuribwa Centre.[768]

Mugiraneza Defence Witness RDU

527. Witness RDU, a Tutsi, lived near the Cyamuribwa Centre in Gasetsa sector.[769] Witness RDU met Prosper Mugiraneza twice briefly, in 1991 and 1992, at which time they discussed the situation in the village. On 7 April 1994, her house was destroyed and she and her husband went to a neighbour's home. There were no killings on that day. Also on that day, she only saw one vehicle pass, at an unidentified time, with Emmanuel Mugiraneza and some gendarmes inside. She did not see Prosper Mugiraneza that day.[770]

Mugiraneza Defence Witness RDC

528. Witness RDC, a Tutsi, lived in Remera sector, Kigarama commune, in 1994.[771] He testified that around 10.00 a.m. on 7 April 1994, a friend informed him that Tutsis were being killed in Gasetsa sector. Around 4.00 p.m. he left his home to go to the trading centre and was stopped by Hutus with a list of Tutsis on which he was number one. Witness RDC then fled from Hutus trying to kill him. Witness RDC had not seen Prosper Mugiraneza in Gasetsa sector on 7 April 1994 and the last time he had seen him was more than two months before the genocide, during the funeral of Prosper Mugiraneza's grandmother.[772] Furthermore, Witness RDC saw *Bourgmestre* Emmanuel Mugiraneza with the accountant of the commune and soldiers arriving in a pick-up at the commune office on 9 April 1994.[773]

Mugiraneza Defence Witness Mechtilde Mukandagijimana

529. Mechtilde Mukandagijimana, a Hutu, was at home with her husband Prosper Mugiraneza and their four children on 6 April 1994 when President Juvénal Habyarimana's plane was shot down.[774] That evening André Ntagerura called and asked Mugiraneza to stay at home until vehicles came to escort Mugiraneza and his family to the Presidential Guard Camp. Shortly after, a military vehicle retrieved Mugiraneza's family and drove them to the Presidential Guard Camp.[775]

530. At the Presidential Guard Camp, Mechtilde Mukandagijimana and Prosper Mugiraneza stayed together while the children went to play with the neighbours. The next morning, between 9.00 and 11.00 a.m., Mugiraneza and his family were moved into a different room of the camp. In the afternoon, the camp was attacked with sustained gunshots

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[768] Witness RDX, T. 18 February 2008 pp. 59-68; Exhibit 4D56 (Witness RDX's Personal Information Sheet).
[769] Witness RDU, T. 18 February 2008 p. 15; Exhibit 4D53 (Witness RDU's Personal Information Sheet).
[770] Witness RDU, T. 18 February 2008 pp. 16-18, 27, 40-41.
[771] Witness RDC, T. 3 March 2008 pp. 8, 12; Exhibit 4D75 (Witness RDC's Personal Information Sheet).
[772] Witness RDC, T. 3 March 2008 pp. 12-19, 36, 43-46.
[773] Witness RDC, T. 3 March 2008 pp. 20-22.
[774] Mukandagijimana, T. 1 May 2008 pp. 5, 10; Exhibit 4D123 (Mukandagijimana's Personal Information Sheet).
[775] Mukandagijimana, T. 1 May 2008 pp. 10-11.

from all directions and people rushed into their rooms. Around 3.00 p.m. soldiers evacuated Mugiraneza, his wife and three children, without their son Robert. The soldiers drove them to the Ministry of Defence, where they received instructions to go to the French Embassy. Mugiraneza, his wife and the three children immediately went to the French Embassy, arriving around 5.00 p.m. The family was together the entire time and spent the night of 7 April 1994 at the Embassy.[776] On the morning of 8 April, Ntagerura and his family arrived together with Mugiraneza's son, Robert. Mugiraneza and his family spent the entire day at the Embassy.[777]

Bizimungu

531. Bizimungu heard about the death of Habyarimana in the evening of 6 April 1994 around 8.45 p.m. while he was with his family at home. During the night, Bizimungu and his family moved to the Presidential Guard Camp where he found several ministers, including Mugiraneza and Ntagerura. Mugiraneza was there with his family.[778]

532. On 7 April 1994, around 9.00 a.m., Bizimungu and his family took refuge at the French Embassy where they stayed until 9 April. Bizimungu did not know when Mugiraneza arrived at the Embassy, but he saw him in the afternoon of 7 April around 4.00 p.m.[779]

Bizimungu Defence Witnesses André Ntagerura and Léoncie Bongwa

533. André Ntagerura, a Hutu, was re-appointed Minister of Transport and Communication in the Interim Government on 9 April 1994 and Léoncie Bongwa is his wife.[780] Ntagerura and Bongwa were at home with their family when they heard that the President's plane had been shot down on 6 April 1994. Around 10.00 p.m. that evening, they decided to follow people fleeing toward the Presidential Guard Camp in Kimihurura. Many others took refuge at the Presidential Guard Camp, and Ntagerura and Bongwa saw Mugiraneza, Bizimungu and their families there around 11.30 p.m. that night.[781] On the morning of 7 April, Ntagerura saw Prosper Mugiraneza and his family once again at the Presidential Guard Camp but did not see them later in the day. Robert, Mugiraneza's second son, remained with Ntagerura, Bongwa and their family. Ntagerura and Bongwa next saw Mugiraneza when they moved to the French Embassy on 8 April.[782]

Mugenzi and Jeannette Uzamukunda

534. Mugenzi and his wife Jeannette Uzamukunda testified that, on 7 April 1994, they stayed at home with their family until 5.00 or 6.00 p.m. Around 6.00 p.m., Mugenzi and his family were transferred by the gendarmerie from his house to the French Embassy with two cars driven by gendarmes. Mugenzi, Juvénal Turatsinze and a friend of Turatsinze's were in

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[776] Mukandagijimana, T. 1 May 2008 pp. 10-14.
[777] Mukandagijimana, T. 1 May 2008 pp. 14-15.
[778] Bizimungu, T. 24 May 2007 pp. 24-27; T. 4 June 2007 pp. 4-5, 64-66; T. 5 June 2007 pp. 5-18, 19-40, 55; T. 11 June 2007 pp. 11-26.
[779] Bizimungu, T. 24 May 2007 pp. 28-31, 34; T. 4 June 2007 pp. 5-11, 66-70; T. 5 June 2007 pp. 5-8.
[780] Ntagerura, T. 14 February 2007 pp. 65-68; Exhibit 1D152 (Ntagerura's Personal Information Sheet); Bongwa, T. 12 May 2008 p. 4; Exhibit 4D128 (Bongwa's Personal Information Sheet).
[781] Ntagerura, T. 19 February 2007 pp. 12-14; Bongwa, T. 12 May 2008 pp. 4-7.
[782] Ntagerura, T. 19 February 2007 p. 14; Bongwa, T. 12 May 2008 pp. 7-9.

one car while Uzamukunda and her children were in another. They arrived there about 12 or 13 minutes later. There, Mugenzi and Uzamukunda saw several ministers, including Prosper Mugiraneza and his family. Mugenzi and his family spent the night there.[783]

Mugiraneza Defence Witness RWW

535. Witness RWW, a Hutu, was a gendarme in 1994.[784] At 9.30 p.m. on 6 April 1994, the witness and other gendarmes outside Mugiraneza's home were informed by Mugiraneza that the President's plane had been shot down. Around 11.00 p.m., Presidential Guards came to Mugiraneza's home and left with him and his family around 11.20 p.m. for the French Embassy. The gendarmes stayed at the home.[785]

536. Around 4.00 p.m. on 7 April 1994, Witness RWW received a phone call from Mugiraneza, instructing him to go to the French Embassy. There, Mugiraneza gave the witness instructions to retrieve his car and son, Robert, from the Presidential Guard Camp. Witness RWW did not enter the Embassy but spoke with Mugiraneza through a barbed wire fence. Witness RWW went to the Presidential Guard Camp and brought back Mugiraneza's vehicle but could not find Robert. Witness RWW spent the night of 7 April in the vehicle outside the French Embassy.[786]

Bizimungu Defence Witness WFQ1

537. Witness WFQ1, a Hutu member of the Rwandan government in 1994, worked as a full-time advisor to the ICRC in Rwanda once the killings began in April.[787] He testified that, between 7 and 12 April 1994, the roads to the east of Rwanda could not be used by vehicles. According to the witness, the Kibungo area had been captured by the RPF and someone who did not belong to the rebel movement could not access the area.[788]

Bizimungu Defence Witness Antoine Nyetera

538. Antoine Nyetera, a Tutsi, testified that a battalion of 600 soldiers of the RPF army was being accommodated on the east side of Kigali at the *Conseil National du Développement* ("CND"), the Rwandan parliament. By the morning of 7 April 1994, the Kigali-Kibungo road, exiting Kigali to the east, was in a combat area controlled by the RPF. Accordingly, the route was impassable and anyone who wanted to travel from Kigali to Kibungo between 7 and 12 April would have taken a great risk.[789]

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[783] Mugenzi, T. 8 November 2005 pp. 50-59; T. 15 November 2005 pp. 18-19; Uzamukunda, T. 20 April 2006 pp. 50-53, 69; T. 21 April 2006 pp. 18-21, 32-35.
[784] Witness RWW, T. 13 March 2008 pp. 2, 4-8, 16, 51; Exhibit 4D90 (Witness RWW's Personal Information Sheet). Witness RWW fled Rwanda on 17 July 1994. After his return to Rwanda in 1997, he was detained at an unspecified time. Witness RWW, 17 March 2008 pp. 8-10, 12.
[785] Witness RWW, T. 13 March 2008 pp. 13-16.
[786] Witness RWW, T. 13 March 2008 pp. 16-18.
[787] Witness WFQ1, T. 3 October 2006 pp. 58-61; Exhibit 1D119 (Witness WFQ1's Personal Information Sheet).
[788] Witness WFQ1, T. 4 October 2006 pp. 48-49.
[789] Nyetera, T. 26 September 2006 pp. 10-13; Exhibit 1D105 (Nyetera's Personal Information Sheet).

Deliberations

539. The Prosecution alleges that on 7 April 1994, Prosper Mugiraneza ordered *Interahamwe* to kill Tutsis at the Cyamuribwa Centre.[790] The Mugiraneza Defence disputes that Witness GJR was present at the Cyamuribwa Centre on 7 April and argues that no killings occurred on that date. Furthermore, Mugiraneza remained in Kigali the entire day.[791]

540. Prosecution Witness GJR is the sole witness to testify that she saw Prosper Mugiraneza before 10.00 a.m. at Cyamuribwa Centre on 7 April 1994. Likewise, she is alone in alleging that killings occurred at Cyamuribwa Centre on that date. Before assessing the merits of her testimony, the Chamber considers it instructive to review her evidence in light of her prior statements to Tribunal investigators, given on 11 November 1998 and 16 March 2000.

541. Witness GJR's November 1998 statement contains no reference to Prosper Mugiraneza or any massacres at Cyamuribwa Centre. Rather, the statement details her activities on 7 April 1994, asserting that the witness stayed at home with her family until later in the day when an attack came on her village from Nkenke Centre. The witness and her mother then went into hiding in the home of an elderly female neighbour. Ten minutes later, the attackers arrived and her brothers were killed.[792]

542. When confronted with her November 1998 statement, Witness GJR confirmed that it was correct.[793] When asked why she did not mention Prosper Mugiraneza or any events at the Cyamuribwa Centre, she stated that the investigators had not asked her.[794] The Chamber considers this omission significant, particularly given the precision and considerable detail provided in the statement about what happened to her on 7 April 1994. The failure to discuss the events that unfolded at Cyamuribwa Centre, even if she had not been specifically asked about Prosper Mugiraneza, is surprising and raises questions about her later testimony.

543. Turning to her March 2000 statement to Tribunal investigators, it also provides details about Witness GJR's activities during the morning of 7 April 1994. Specifically, Witness GJR was told to remain at home but instead went to an unidentified marketplace where she saw Prosper Mugiraneza inciting killings at 10.00 a.m. Subsequently, she hid in a bush near the road and watched as her two brothers were killed.[795] The Chamber observes that this first mention of Prosper Mugiraneza in Witness GJR's statement was made soon after his arrest.[796] While the details of this statement share the fundamental features of her evidence before the Chamber, the evolving nature of her evidence and the fact that Mugiraneza appeared for the first time in Witness GJR's statement shortly after he was arrested is troubling.

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[790] Prosecution Closing Brief, paras. 277-279, 365-366, 373, 383-384, 1046; Prosecution Closing Arguments, T. 1 December 2008 pp. 66-67; *see also* Prosecution 21 November 2008 Document, Item No. 78.
[791] Mugiraneza Closing Brief, paras. 383-394.
[792] Exhibit 4D12(E) (Witness GJR's statement, 11 November 1998) pp. 2-3.
[793] Witness GJR, T. 28 June 2004 pp. 82-84; T. 29 June 2004 pp. 6-12.
[794] Witness GJR, T. 29 June 2004 pp. 26-27, 31-34.
[795] Exhibit 4D11(E) (Witness GJR's Statement, 16 March 2000) pp. 3-6. In her statement, Witness GJR later hid in the bush with a woman named Mukansanga; however, during her testimony Witness GJR denied knowing Mukansanga. Witness GJR, T. 29 June 2004 pp. 13-21; Exhibit 4D11(E) (Witness GJR's Statement, 16 March 2000) p. 5.
[796] Prosper Mugiraneza was arrested on 6 April 1999. Prosper Mugiraneza's name appears for the first time in Witness GJR's statement dated 16 March 2000.

544. Indeed, Witness GJR's trial testimony regarding the morning of 7 April 1994 was confusing. A number of times during her testimony she accepted her previous statements as correct and true.[797] However, fundamental details about where she was and what she experienced on the morning of 7 April shifted throughout her testimony and contrasted with her prior statements to Tribunal investigators. When read together, her evidence is unclear as to where she was or what she was doing prior to her alleged departure for the Cyamuribwa Centre.[798] Furthermore, the details about the conditions of her departure for the centre, where and when her brothers were killed and where she went afterwards also evolved throughout her examination, and in some regards, varied with her prior statements to Tribunal investigators.[799] Finally, her testimony as to what happened after 7 April was equally confusing.[800] When confronted with these differences, Witness GJR provided confusing answers, explaining that she may have been mistaken.[801] The Chamber is mindful that the traumatic nature of the events she purports to have survived could explain some of her confusion. However, the general incoherence of her evidence makes it difficult for the Chamber to reach conclusions beyond reasonable doubt based on her uncorroborated testimony alone.

545. Turning to Witness GJR's identification of the Accused, the Chamber also observes that she and Prosper Mugiraneza are both from Gasetsa sector and that the witness claimed to know Prosper Mugiraneza for around five years prior to the events at Cyamuribwa Centre.

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[797] *See, e.g.*, Witness GJR, T. 28 June 2004 pp. 82-84; T. 29 June 2004 pp. 6-12.

[798] During examination-in-chief, Witness GJR testified that she was at home with her mother and four brothers when they heard of the President's death, and then an *Interahamwe* neighbour told them to go to the Cyamuribwa Centre. Witness GJR, T. 28 June 2004 pp. 3-5. During cross-examination, Witness GJR testified that she found out about the President's death while gathering bananas with her mother and four brothers, then they immediately abandoned their search and went to the centre. Witness GJR, T. 28 June 2004 pp. 76-82. They did not go into hiding at a neighbour's house before going to the centre or wait at home for instructions, contradicting her two previous statements. Indeed, in her 1998 statement, Witness GJR did not mention Cyamuribwa Centre at all but stated that upon hearing of the President's death she stayed at home all day and then later went into hiding with her mother in the home of an elderly female neighbour. Exhibit 4D12(E) (Witness GJR's Statement, 11 November 1998) p. 2. Finally, in her 2000 statement, Witness GJR and her family were at home when they heard that the President had been killed. They stayed there a while waiting for instructions and then decided to gather at the marketplace. Exhibit 4D11(E) (Witness GJR's Statement, 16 March 2000) p. 3.

[799] Witness GJR testified that on the morning of 7 April 1994, she, her mother and her four brothers went to the Cyamuribwa Centre immediately after they learned of the President's death. Witness GJR, T. 28 June 2004 pp. 3-7, 79-81. This contrasts with her 1998 statement, which reads that after having heard about the President's death, Witness GJR and her mother hid in the house of an old woman who was their neighbour and saw her brothers being killed in the village. Exhibit 4D12(E) (Witness GJR's Statement, 11 November 1998) p. 2. Confronted with this statement, Witness GJR said that her brothers were arrested in the village and brought to the Cyamuribwa Centre by a mob. Witness GJR, T. 28 June 2004 p. 86. They were subsequently killed at different places: she saw two of her brothers being killed at Cyamuribwa Centre, another one was killed in Ndekwe and her older brother and her mother were taken to the Kibungo Economat where they were also killed. Witness GJR, T. 28 June 2004 pp. 86-87; T. 29 June 2004 pp. 4-5, 7-10, 37.

[800] For example, while testifying, Witness GJR explained that she went to hide at Karangwa's house and then to Odette's house, where she stayed until the RPF arrived in June. Witness GJR, T. 28 June 2004 pp. 11-30; T. 29 June 2004 pp. 13, 16-23. Her 1998 statement reads that she first took refuge at Odette's and then at Karangwa's. Exhibit 4D12(E) (Witness GJR's Statement, 11 November 1998) pp. 2-3. Also, her 2000 statement reads that, on 10 April 1994, she was discovered together with Mukansanga in the bush by Komanda who raped her. Exhibit 4D11(E) (Witness GJR's Statement, 16 March 2000) pp. 4-5. In cross-examination, Witness GJR denied knowing any person named Mukansanga. Witness GJR, T. 29 June 2004 pp. 13-21.

[801] Witness GJR, T. 28 June 2004 pp. 82-85, 87; T. 29 June 2004 pp. 3-8, 10-11, 14-15, 18, 20.

However, the Prosecution failed to elicit any direct evidence regarding how and to what extent she knew him.[802] Moreover, Witness RDK testified that Witness GJR did not have any relationship with Prosper Mugiraneza and that they were not neighbours. Given the evidentiary void, the Chamber also has some concerns that she could have confused the *Bourgmestre* Emmanuel Mugiraneza with the Minister Prosper Mugiraneza. Indeed, her March 2000 statement reflects that, after having incited the soldiers to kill all the Tutsis, Prosper Mugiraneza took the Tutsi accountant Zachariah and his son in his car in the direction of the commune.[803] In her trial testimony, Witness GJR stated that Prosper Mugiraneza came to the Cyamuribwa Centre in a pick-up truck with soldiers and incited the killing of Tutsis but that it was the *Bourgmestre* Emmanuel Mugiraneza, not Prosper Mugiraneza, who took Zachariah and his son in a pick-up to the commune office.[804]

546. Confronted with the discrepancy, Witness GJR explained that this was a recording error by the Tribunal investigators.[805] However, the Chamber observes that Witnesses RDK, RDC, RDL and RDU testified that Emmanuel Mugiraneza, the *bourgmestre* of Kigarama commune, was driving around on the morning of 7 April 1994 in a white pick-up truck with soldiers and, further, that Emmanuel Mugiraneza's truck was the only vehicle seen on 7 April. Moreover, Witnesses RDK and RDL explained that the communal accountant was accompanying Emmanuel Mugiraneza that day.[806] In fact, these descriptions are substantially similar to the testimony of Witness GJR, who described a black pick-up truck with soldiers carrying Prosper Mugiraneza. Such evidence raises concerns about Witness GJR's uncorroborated identification of Prosper Mugiraneza.

547. The Defence presented evidence tending to cast doubt upon the general credibility of Witness GJR. First, Witness RDK, a relative of Witness GJR, testified that she told him that she was compensated for giving false testimony against Prosper Mugiraneza at the Tribunal.[807] This evidence is hearsay and not dispositive. However, combined with the general confusion within Witness GJR's testimony about the events of 7 April 1994, it raises concerns about her reliability.

548. Furthermore, Witness RDX testified that Witness GJR and her mother came to Witness RDX's home early on 7 April 1994 and stayed until 12 April. This evidence is in direct contradiction with Witness GJR's evidence that she was at the Cyamuribwa Centre the morning of 7 April.[808] The strength of Witness RDX's evidence is bolstered by the fact that it closely corresponds with Witness GJR's 11 November 1998 statement to Tribunal investigators, given before Mugiraneza's arrest.[809]

549. Additionally, the Defence has presented evidence that, while there was some violence in Cyamuribwa on 7 April 1994, no one was killed at the centre that day. Specifically,

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[802] Witness GJR was not asked to identify the Accused in court.
[803] Exhibit 4D11(E) (Witness GJR's Statement, 16 March 2000) p. 4.
[804] Witness GJR, T. 28 June 2004 pp. 7-8, 39-40, 72-73; T. 29 June 2004 pp. 4-5; Witness RDK, T. 17 April 2008 pp. 12, 14-15.
[805] Witness GJR, T. 28 June 2004 pp. 69-74.
[806] Witness RDK, T. 16 April 2008 pp. 49, 51-54; Witness RDC, T. 3 March 2008 pp. 20-22; Witness RDL, T. 19 February 2008 pp. 10-15; Witness RDU, T. 18 February 2008 pp. 40-42.
[807] Witness RDK, T. 17 April 2008 pp. 11-19; T. 21 April 2008 pp. 17-18.
[808] Witness RDX, T. 18 February 2008 pp. 59-68.
[809] Exhibit 4D12(E) (Witness GJR's Statement, 11 November 1998) p. 2. Witness GJR and her mother went into hiding at the home of an old woman neighbour as soon as they heard the news of the President's death.

Witness RDK, a local official, walked to Cyamuribwa Centre at the relevant time and did not report any violence or killing on 7 April.[810] Defence Witness RDL, who lived near the centre, testified that there were some killings in Cyamuribwa *cellule*, but none at the centre.[811] Witness RDU also lived near the centre and testified there were no killings on 7 April.[812] Witness RDC lived in a nearby *cellule* in Kigarama commune. He testified about being chased by groups of Hutus but did not mention any killing or violence in Cyamuribwa Centre or in that area generally.[813] In the Chamber's view, these testimonies raise additional concerns about Witness GJR's uncorroborated testimony that killings occurred on 7 April at the Cyamuribwa Centre.

550. In any event, the Defence has presented evidence that Prosper Mugiraneza was not present in the area of Cyamuribwa Centre on the morning of 7 April 1994. Defence Witnesses RDC, RDU and RDK lived close to Prosper Mugiraneza in Gasetsa sector, and all testified that they did not see him on 7 April.[814] Witness RDK, who passed the Cyamuribwa Centre twice in the morning of 7 April, testified that he did not see Mugiraneza during his walks around the trading centres in Gasetsa. Similarly, Defence Witnesses RDK, RDU and RDL gave testimony regarding 7 April events in Gasetsa, but did not mention having seen Prosper Mugiraneza on that day.[815]

551. Mugiraneza testified that the last time he was in Kibungo prefecture was 3 April 1994.[816] On 6 April, following Ntagerura's advice, he and his family took refuge at the Presidential Guard Camp, where he stayed until the next day. On 7 April, around 3.00 p.m., Mugiraneza, his family, and Callixte Nzabonimana's wife left the Presidential Guard Camp and took refuge at the French Embassy, arriving around 4.00 p.m. Mugiraneza and his family slept at the Embassy.[817]

552. Mugiraneza's arrival and presence at the Presidential Guard Camp on 6 April 1994 are corroborated by Bizimungu and Defence Witnesses André Ntagerura, Mechtilde Mukandagijimana and Léoncie Bongwa.[818] His presence there the following morning is also corroborated by Mukandagijimana and Ntagerura. Indeed, Mukandagijimana specified that between 9.00 and 11.00 a.m. – the approximate time period Witness GJR allegedly saw Mugiraneza at the Cyamuribwa Centre – she and Mugiraneza were moved into a room for soldiers and stayed there until afternoon.[819] His arrival around 4.00 p.m. and his stay at the French Embassy on 7 April are also reflected in the testimonies of Bizimungu, Mugenzi, and

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[810] Witness RDK, T. 16 April 2008 pp. 31, 45-46, 49, 51-54; T. 17 April 2008 pp. 9, 25, 28, 36-40, 73-74, 79; T. 21 April 2008 pp. 4-9, 15-16.
[811] Witness RDL, T. 19 February 2008 p. 9.
[812] Witness RDU, T. 18 February 2008 pp. 16-18, 27.
[813] Witness RDC, T. 3 March 2008 pp. 12-19, 36.
[814] Witness RDC, T. 3 March 2008 pp. 36, 43-46; Witness RDU, T. 18 February 2008 p. 27; Witness RDK, T. 17 April 2008 p. 28.
[815] Witness RDK, T. 17 April 2008 p. 28; T. 21 April 2008 pp. 8-9; Witness RDL, T. 19 February 2008 pp. 10-15; Witness RDU, T. 18 February 2008 pp. 40-41.
[816] Mugiraneza, T. 27 May 2008 pp. 12-13.
[817] Mugiraneza, T. 22 May 2008 pp. 20-33; T. 3 June 2008 pp. 58-62.
[818] Bizimungu, T. 24 May 2007 pp. 24-27; T. 4 June 2007 pp. 4-5, 64-66; T. 5 June 2007 pp. 5-18, 19-40, 55; T. 11 June 2007 pp. 11-26; Mukandagijimana, T. 1 May 2008 pp. 5, 10; Ntagerura, T. 19 February 2007 pp. 12-14; Bongwa, T. 12 May 2008 pp. 4-9. *See also* Witness RWW, T. 13 March 2008 pp. 13-16.
[819] Mukandagijimana, T. 1 May 2008 pp. 11-12; Ntagerura, T. 19 February 2007 p. 14.

Defence Witnesses Mechtilde Mukandagijimana, Jeannette Uzamukunda and RWW.[820] The Chamber has also been presented with a letter from the French authorities dated 13 March 2008 and a telegram from the French Embassy in Kigali dated 7 April 1994. They also confirm Mugiraneza's presence with his wife and his four children at the French Embassy of Kigali on 7 April.[821]

553. The Chamber notes that the testimonies corroborating Mugiraneza's alibi rely largely on evidence from co-Accused in this proceeding, members of their families, or witnesses closely associated with Mugiraneza. The Chamber is mindful of the interest these witnesses might have in corroborating Mugiraneza's activities, especially when they are linked with the activities of other Accused. Furthermore, the general content of the correspondences from the French government and the absence of details of Mugiraneza's schedule while at the French Embassy on 7 April 1994 also limit the probative value of this evidence.

554. Notwithstanding, this evidence, when viewed with other accounts about the difficulties of travelling between Kigali and Kibungo, raises doubts about his ability to reach Kibungo on the morning of 7 April 1994. The Prosecution presented no evidence indicating the feasibility of travelling between Kigali and Kibungo on the morning of 7 April, despite the prevailing conditions, which included roadblocks and combat between the Rwandan army and the RPF in the east of Kigali.[822] On the contrary, Defence Witnesses WFQ1 and Nyitera testified that the Kigali-Kibungo road was impassable because of its location in a zone of combat controlled by the RPF.[823] Furthermore, Ntagerura testified that, under normal conditions, a round trip from Kigali to Kigarama commune in Kibungo would take between two and three hours.[824]

555. Considering the Chamber's reservations with Witness GJR's evidence and her presence at the Cyamuribwa Centre, her uncorroborated identification of Prosper Mugiraneza, which lacks critical details, the Defence evidence directly rebutting the charges and Mugiraneza's alibi evidence for 7 April 1994, the Chamber does not find it proven beyond reasonable doubt that Mugiraneza was present at the Cyamuribwa Centre inciting the killing of Tutsis on the morning of 7 April. Based on the foregoing, the Chamber need not address arguments pertaining to insufficient notice.[825]

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[820] Bizimungu, T. 24 May 2007 pp. 28-31, 34; T. 4 June 2007 pp. 5-11, 66-70; T. 5 June 2007 pp. 5-8; Mugenzi, T. 8 November 2005 pp. 50-59; T. 15 November 2005 pp. 18-19; Mukandagijimana, T. 1 May 2008 pp. 11-14; Uzamukunda, T. 20 April 2006 pp. 50-53, 69; T. 21 April 2006 pp. 18-21, 32-35; Witness RWW, T. 13 March 2008 pp. 16-18. *See also* Bongwa, T. 12 May 2008 pp. 7-9 (seeing Mugiraneza at the French Embassy on 8 April 1994).

[821] Decision on Confidential Defence Motion to Admit Documents from the Government of France, Rule 89 (C) of the Rules of Procedure and Evidence (TC), 2 June 2008. *See also* Mugiraneza's Motion to Admit Documents from the Government of France, 12 April 2008.

[822] *See, e.g.*, Witness RDA, T. 25 February 2008 p. 71.

[823] Witness WFQ1, T. 4 October 2006 pp. 48-49; Nyetera, T. 26 September 2006 p. 13.

[824] Ntagerura, T. 19 February 2007 p. 20; *see also* Exhibit 1D24 (Administrative and Roads Map of Rwanda).

[825] The Chamber recalls that evidence relating to events occurring in Kibungo prefecture was only admitted to be considered against Mugiraneza for the allegations of conspiracy to commit genocide and complicity in genocide. Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004 (TC), 4 October 2004, p. 14.

6.3 Events in Kigarama Commune, From 7 April 1994

Introduction

556. The Indictment alleges that, from 7 April 1994, massacres of the Tutsi population were perpetrated throughout the territory of Rwanda. These crimes, planned and prepared for by prominent civilian and military figures who shared an extremist Hutu ideology, were carried out by militiamen, military personnel and gendarmes on the orders or with the knowledge of these authorities, including Prosper Mugiraneza. Specifically, the Prosecution alleges that, from 7 April, Tutsis were hunted and killed in Kigarama commune by *Interahamwe* and soldiers. Prosper Mugiraneza, who was an MRND leader in the prefecture, came on several days between 7 and 12 April, and supported these killings. Prosecution Witnesses GKS, GKM, GTE, GJQ, GJY, GJT, GTF, GJV and GKR provided relevant information.[826]

557. The Mugiraneza Defence submits that it has received insufficient notice of these allegations. Moreover, it presented alibi evidence that Mugiraneza was in Kigali during the relevant period. In any event, the Prosecution evidence implicating him in the crimes is unreliable. Mugiraneza's Defence relies on the evidence of Witnesses RDA, RDH, RDC, RDI, RWF, RDG, RDF, RDZ, RDL, RDK, RDE, Jean Munyakayanza and Jean Mukwaya Rusatira.[827]

Evidence

Prosecution Witness GKS

558. Witness GKS, a Tutsi, was living in Remera sector, Kigarama commune, Kibungo prefecture in 1994.[828] She testified that her husband returned home around 10.00 p.m. on 6 April 1994, and informed her that Tutsis had been killed in Gahima sector. The next day, Witness GKS and her family took refuge at the Kigarama commune office between 7.00 and 8.00 a.m. There, they found many other refugees living in very difficult conditions. Around 3.00 p.m., the *bourgmestre* of Kigarama commune, Emmanuel Mugiraneza, together with Colonel Célestin Rwagafilita and Interim Government Minister Prosper Mugiraneza, and *Interahamwe* spoke with the refugees who had requested help. Witness GKS did not know Prosper Mugiraneza, but people from Gasetsa sector identified him. Approximately one hour after the authorities left, an *Interahamwe* named Muhinda threw a grenade at the refugees and

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[826] Indictment, paras. 5.1, 5.19, 5.22, 5.36, 6.14, 6.16, 6.26, 6.35-6.37, 6.64, 6.66-6.68; Prosecution Pre-Trial Brief, paras. 138 (p. 31), 206, 208 (p. 45), 212-216 (pp. 45-46), 296 (p. 58), 301 (p. 58); Prosecution Closing Brief, paras. 151-153, 155, 274-276, 310, 325, 367, 385, 1221; Prosecution 21 November 2008 Document, Item Nos. 49, 51, 65, 72, 79-80; Prosecution Closing Arguments, T. 1 December 2008 pp. 53-54. In its Closing Brief and written submissions dated 21 November 2008, the Prosecution relies on Witness GJR in support of this allegation. The Chamber notes, however, that the testimony of Witness GJR does not support the allegation. Indeed, Witness GJR heard that killings took place at the commune office, but did not mention Mugiraneza's presence. Witness GJR, T. 28 June 2004 pp. 39-41; T. 29 June 2004 p. 32. For this reason, the Chamber will not consider Witness GJR's testimony.

[827] Mugiraneza Closing Brief, paras. 336-382, 395-475; Mugiraneza Closing Arguments, T. 4 December 2008 pp. 46-50. *See also* II.14.1.

[828] Witness GKS, T. 24 March 2004 p. 52 (regarding her marital status); Exhibit P47 (Witness GKS's Personal Information Sheet).

killed eight people. After this attack, Emmanuel Mugiraneza brought the injured persons to the Kibungo hospital. However, the attackers found them and killed them at the hospital.[829]

559. Over the next few days, *Interahamwe* continued to attack the Tutsi refugees at the commune office. Brigadier Musonera, the head of the communal police, was armed with a rifle and managed to fend off the attacks. On 11 April 1994, Musonera shot an attacker in the shoulder. Later that day, Emmanuel Mugiraneza came to the commune office with two soldiers and said publicly that Prosper Mugiraneza had requested the disarming of Musonera because he was protecting his relatives and had killed a Hutu. During the night, Witness GKS saw Musonera's deputy, Kalisa Ntakaziraho, take Musonera away to shoot and kill him.[830]

560. Moreover, on 15 April 1994, *Interahamwe* returned and exterminated most of the Tutsi refugees who were still at the commune office. During the attack, Witness GKS was hit with a machete and lost consciousness. She regained consciousness later when the RPF soldiers took her to the hospital.[831]

Prosecution Witness GKM

561. Witness GKM, a Hutu, was married to a Tutsi and living in Remera sector, Kigarama commune, Kibungo prefecture in 1994.[832] On 7 April 1994, her neighbour, an *Interahamwe* called Mutsinzi, suggested that she and her family take refuge at the Kigarama commune office in order to avoid being killed. That day, Witness GKM, her family and around 20 neighbours fled their sector for the Kigarama commune office, arriving in the evening. When they arrived, the only refugees there were a Tutsi named Zachariah Ndahonga and his son. However, later in the night many other persons, some bearing machete cuts and spear injuries, took shelter there as well. Refugees were attacked, but they resisted and Musonera, a Tutsi communal policeman, used his rifle to scare the attackers away.[833]

562. On 8 or 9 April 1994, around 3.00 p.m., Witness GKM left the commune office compound to search for water. *Interahamwe* had surrounded the compound, but allowed her, a Hutu, to exit. She went to a neighbouring home about 200 metres from the commune office and close to the home of Jean-Baptiste Rwatoro. There, Witness GKM saw a meeting taking place in Rwatoro's backyard conducted by Prosper Mugiraneza, who the witness knew because he used to visit his grandmother in the commune. Other attendees included Colonel Célestin Rwagafilita, Rwatoro and around 100 *Interahamwe*. During the gathering Rwatoro, Rwagafilita and Prosper Mugiraneza took guns and grenades from military vehicles and distributed them to the *Interahamwe*. During the distribution, the *Interahamwe* were dancing and chanting that they would exterminate the Tutsis and their accomplices, the *Inkotanyi*. Subsequently, the *Interahamwe* leaders and Prosper Mugiraneza left the meeting in two military vehicles in the direction of Gasetsa sector. Witness GKM returned to the commune office, arriving there around 4.30 p.m.[834]

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[829] Witness GKS, T. 24 March 2004 pp. 58-61; T. 25 March 2004 pp. 1-6, 19-25.
[830] Witness GKS, T. 24 March 2004 pp. 60-61; T. 25 March 2004 pp. 3-4, 22, 24, 26-27.
[831] Witness GKS, T. 25 March 2004 pp. 5-9, 15-17.
[832] Witness GKM, T. 25 October 2004 p. 57; Exhibit P81 (Witness GKM's Personal Information Sheet).
[833] Witness GKM, T. 25 October 2004 pp. 60-65; T. 26 October 2004 pp. 17-18, 35.
[834] Witness GKM, T. 25 October 2004 pp. 62, 65-72, 74; T. 26 October 2004 pp. 1-4, 18-20, 36-38, 48-50. The Chamber notes that the English version of the Transcript indicates that "Prosper Mugiraneza was coming before, but even after that, he came back". T. 25 October 2004 p. 72. The French version states « *Il est revenu après*

563. The same day, around 5.00 p.m., Emmanuel Mugiraneza came back to the commune office and told the refugees to put down their weapons in front of the commune's door. Every refugee was searched. Brigadier Musonera, who had been guarding the commune office, was also disarmed of his rifle. Between 7.00 and 8.00 p.m., *Interahamwe* attacked, throwing grenades at the refugees in the commune office and killing several of them, including one of Witness GKM's children. The next day, Emmanuel Mugiraneza took the injured refugees to the Kibungo hospital where, the witness later learned, an *Interahamwe* named Cyasa killed them.[835]

564. Witness GKM remained at the commune office for a few days after the attack. The conditions were poor and there was no access to food or water. On the fifth day after her arrival, Witness GKM and her children left the compound with the assistance of a police officer named Runanyire. Witness GKM heard that refugees had been attacked, and that many were killed the day after she left the compound.[836]

Prosecution Witness GTE

565. Witness GTE, a Tutsi, hid in the bushes with her family between 6 and 8 April 1994. In the morning of 8 April, she returned to her home in Remera sector, Kigarama commune, and observed Hutu neighbours and *Interahamwe* belonging to Colonel Célestin Rwagafilita's group attacking homes. Witness GTE knew that Rwagafilita and Prosper Mugiraneza were *Interahamwe* leaders because she heard that they organised a meeting with *Interahamwe* planning the killings before 1994. Consequently, she and her extended family fled to the Kigarama commune office. There, other refugees from various sectors of Kigarama commune had gathered and were being protected by a Tutsi communal policeman named Musonera. Witness GTE, her family and the refugees spent the night there.[837]

566. The following evening, on Saturday 9 April 1994, Kigarama *Bourgmestre* Emmanuel Mugiraneza arrived at the commune office in the company of Prosper Mugiraneza, Ngenzi, the *bourgmestre* of Kaborando, Rwagafilita, Rwatoro, the head of the *Interahamwe* at the communal level, and the Judge of the Kibungo Court. The witness had last seen Prosper Mugiraneza when he was a child.[838]

567. Refugees told the visitors that their property had been destroyed, but Prosper Mugiraneza and the other authorities said nothing in reaction. Emmanuel Mugiraneza then stated that the refugees were hiding weapons and had provoked the attackers, but promised that no more harm would be done to them. He also asked his accountant to draft a list of each family at the commune office. Subsequently, Witness GTE observed soldiers from Prosper Mugiraneza's escort taking grenades to Rwatoro's house and distributing them to *Interahamwe*. Shortly after, the *Interahamwe* used the grenades, attacking the commune

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cela, il était venu voir ceux qui étaient morts et ceux qui étaient blessés ». T. 25 Octobre 2004 p. 77. However, the question asked by the Prosecution was whether the witness had seen "Emmanuel Mugiraneza" before or after the incidents at Rwatoro's home, and Witness GKM repeatedly stated that she did not see Prosper Mugiraneza again after the meeting at Rwatoro's house. *See* T. 25 October 2004 pp. 69-71, T. 26 October 2004 pp. 19-20, 50. Consequently, the Chamber relies on the French version.

[835] Witness GKM, T. 25 October 2004 pp. 65, 72-74; T. 26 October 2004 pp. 8, 12, 18-20, 50.

[836] Witness GKM, T. 26 October 2004 pp. 7-10.

[837] Witness GTE, T. 1 December 2003 pp. 4-7, 11-13, 47-49; Exhibit P15 (Witness GTE's Personal Information Sheet).

[838] Witness GTE, T. 1 December 2003 pp. 5, 13, 49.

office and killing Tutsis. The communal policeman, Musonera, shot his gun into the air, frightening the attackers. Afterwards, the group left towards Gasetsa sector.[839]

568. On the following day, 10 April 1994, several women met at Rwatoro's house. There, weapons were distributed, which were used at roadblocks established shortly thereafter.[840] The following day, Emmanuel Mugiraneza came with a soldier and ordered him to kill Musonera. After Musonera's death the *Interahamwe* came back and killed the remaining Tutsis at the commune office.[841]

Prosecution Witness GJQ

569. Witness GJQ, a Hutu, living in Kibungo sector, Birenga commune, Kibungo prefecture, was an active member of the MDR from 1991 until 1992 and became an *Interahamwe* leader in Kibungo prefecture after 1992.[842] After 6 April 1994, Witness GJQ participated in meetings in which killings were planned, and led several attacks against Tutsis in Kibungo prefecture in 1994.[843]

570. On 15 April 1994, Lieutenant Muhigo told Witness GJQ that on 12 April, Colonel Célestin Rwagafilita sent Lieutenant Nkuriyekubona, soldiers, and *Interahamwe* to attack refugees at the Kigarama commune office. During the assault, Musonera, a Tutsi communal police officer who defended the refugees, was killed, and many others were injured. On 15 April, Rwagafilita sent Nkuriyekubona and his *Interahamwe* back to kill the people who took refuge at the Kigarama commune office. Witness GJQ did not participate in the attacks at the Kigarama commune office.[844]

571. According to Witness GJQ, he had last seen Prosper Mugiraneza, whom the witness met several times during MRND meetings in Kibungo prefecture before 1994, in Kibungo prefecture on 3 April 1994. Furthermore, Witness GJQ contended that Mugiraneza did not visit the prefecture at all subsequent to that date. He stated that he would have known, due to his position as an *Interahamwe* leader and his involvement in the activities of that prefecture, had Mugiraneza visited. Moreover, on 11 April, Witness GJQ asked Colonel Célestin Rwagafilita if Mugiraneza had been in the prefecture, to which Rwagafilita responded that Mugiraneza had been sent elsewhere. However, Rwagafilita also told the witness that he informed the minister of killings in Kibungo prefecture through daily phone calls.[845]

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[839] Witness GTE, T. 1 December 2003 pp. 13-16, 31, 49.
[840] Witness GTE, T. 1 December 2003 pp. 14.
[841] Witness GTE, T. 1 December 2003 pp. 14-15, 17-18, 30-33.
[842] Witness GJQ, T. 9 March 2005 pp. 37-38; T. 10 March 2005 pp. 29, 32-34, 37, 58; T. 14 March 2005 p. 22; T. 15 March 2005 p. 37; T. 17 March 2005 p. 29; Exhibit P86 (Witness GJQ's Personal Information Sheet). Witness GJQ fled Kibungo town on 22 April 1994 and left Rwanda for Zaire in July. Upon his return to Rwanda in April 1999, he surrendered himself to the authorities. He pleaded guilty on 15 August 1999. He confessed to ordering the killing of one person and leading other attacks which led to the death of other people. He first appeared in the Court of First Instance of Kibungo in 2000. Witness GJQ was tried and sentenced to death in 2001. He appealed his sentence and, at the time of his testimony, he was awaiting a decision regarding his appeal. Witness GJQ, T. 14 March 2005 pp. 21-23, 26-28; T. 15 March 2005 pp. 3-4, 7-9, 37-41; T. 16 March 2005 pp. 19-20, 23-27; Exhibit P213 (Judgement of the Kibungo Court of First Instance).
[843] Witness GJQ, T. 10 March 2005 pp. 60-61, 63-65; T. 14 March 2005 pp. 3-8, 19-23; T. 15 March 2005 pp. 35, 37; T. 17 March 2005 p. 40.
[844] Witness GJQ, T. 10 March 2005 pp. 64-66.
[845] Witness GJQ, T. 14 March 2005 pp. 10-12, 17-18; T. 16 March 2005 pp. 49-50.

Prosecution Witness GJY

572. Witness GJY, a Hutu, lived in Kabare two sector, Kigarama commune, Kibungo prefecture in 1994.[846] Between 1997 and 1998, Jean de Dieu Munyangabe told Witness GJY about the massacres that occurred in Kigarama commune after 6 April 1994. Munyangabe had been summoned by the Kibungo Tribunal for having participated in a meeting at Jean-Baptiste Rwatoro's home with Rwatoro, *Bourgmestre* Emmanuel Mugiraneza, and persons from various regions, during which they discussed the killings in Kigarama. However, Munyangabe did not mention Prosper Mugiraneza's name among the attendees. Witness GJY saw Prosper Mugiraneza in Kigarama commune for the last time in January 1994 and did not hear that Prosper Mugiraneza came to Kigarama commune after the death of the President on 6 April 1994.[847]

Prosecution Witness GJT

573. Witness GJT, a Tutsi, lived in Gasetsa sector, Kigarama commune, Kibungo prefecture in 1994.[848] On the morning of 7 April 1994, after the President's death, she saw Hutus, including her neighbours, carrying weapons while dressed in dried banana leaves and grass. She and other Tutsis were accused of having killed the President, and three men named Mbanyimtwari, Ntambabazi and Nshimyimtwari attacked her house. Witness GJT's husband, a Tutsi, was taken away with their eldest son to another *cellule*. Her neighbours later informed her that her husband and child were taken to the Kigarama commune office and killed along with other Tutsis.[849]

574. Witness GJT could not complain to the authorities because those in charge were the killers. Indeed, she heard that persons such as Prosper Mugiraneza and Colonel Célestin Rwagafilita brought weapons to the village. However, she testified that Prosper Mugiraneza never came back to Kibungo prefecture after 6 April 1994, and she did not believe that any Interim Government ministers came to Kibungo during the genocide.[850]

Prosecution Witness GTF

575. Witness GTF, a Hutu, lived in Rubona sector, Kigarama commune, Kibungo prefecture in 1994.[851] The witness stated that killings in Kigarama commune commenced on 10 April with the attack on the commune office. Witness GTF believed that Colonel Célestin Rwagafilita was responsible for triggering the massacres in the commune, but he also saw Emmanuel Mugiraneza mobilising the *Interahamwe*. The witness further testified that Emmanuel Mugiraneza took refugees to the Kibungo hospital and that those refugees were killed.[852]

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[846] Witness GJY, T. 18 February 2004 pp. 50-51; Exhibit P29 (Witness GJY's Personal Information Sheet); Exhibit P31 (Witness GJY Position within the MRND between 1992 and 1994). For Witness GJY's work, *see* T. 19 February 2004 pp. 1-2, 6, 8-10, 22 *and* Exhibit P30 (Witness GJY's Work in 1994).
[847] Witness GJY, T. 19 February 2004 pp. 23-25, 39-40.
[848] Exhibit P40 (Witness GJT's Personal Information Sheet).
[849] Witness GJT, T. 11 March 2004 pp. 24-34; T. 12 March 2004 p. 3.
[850] Witness GJT, T. 11 March 2004 pp. 25, 33, 40-41; T. 12 March 2004 p. 3.
[851] Exhibit P79 (Witness GTF's Personal Information Sheet).
[852] Witness GTF, T. 14 October 2004 pp. 23-24, 36; 15 October 2004 pp. 10-11.

Prosecution Witness GJV

576. Witness GJV, a Hutu, lived in Gasetsa sector, Kigarama commune in 1994. According to Witness GJV, Prosper Mugiraneza never came to the area after 6 April 1994. However, the witness explained that Mugiraneza must have been aware of these killings, but did nothing to stop them.[853]

Prosecution Witness GKR

577. Witness GKR, a Tutsi, lived in Gasetsa sector, Kigarama commune, Kibungo prefecture in 1994.[854] After President Juvénal Habyarimana's plane crash on 6 April 1994, *Interahamwe* rallied in the roads. They proclaimed that Habyarimana had been killed by the *Inkotanyi* and that their accomplices should not escape. The next day around 6.00 a.m., Witness GKR saw people wearing banana leaves and carrying clubs and spears arrest and kill Tutsis in Kigarama commune. Witness GKR decided to hide in the bush and stayed there until around 15 to 20 April, when the RPF took control of the commune.[855]

Prosper Mugiraneza

578. Prosper Mugiraneza last went to Kigarama commune on 4 April 1994. He remained in Kigali from 4 to 12 April.[856] He further testified that he had no contact or communication with Colonel Célestin Rwagafilita or Witness GJQ after President Juvénal Habyarimana's death on 6 April.[857]

Mugiraneza Defence Witness RDA

579. Witness RDA, a Tutsi, went to school with Prosper Mugiraneza in Remera sector, Kigarama commune. He saw the Accused for the last time in 1988 when Mugiraneza visited his grandmother. Witness RDA testified that on the morning of 7 April 1994, people started to attack and kill Tutsis in his area. His home was looted and destroyed, prompting him to flee. The next day, around 7.30 a.m., Witness RDA arrived at the Kigarama commune office, where he found around 1,500 to 2,000 other refugees. They were not attacked on 8 April, but on 9 April attackers threw a grenade at the refugees gathered inside the IGA building, killing a man called Rudasingwa and injuring several others. Kigarama commune *Bourgmestre* Emmanuel Mugiraneza took the injured to Kibungo hospital.[858]

580. Around 11 or 12 April 1994, Emmanuel Mugiraneza came back with 10 gendarmes while Witness RDA was inside the Kigarama commune office building. He asked the refugees to surrender firearms to the gendarmes, and put their traditional weapons near the flag in front of the commune office. He also ordered the gendarme to disarm the head of the

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[853] Witness GJV, T. 13 February 2004 pp. 18, 28, 30; Exhibit P26 (Witness GJV's Personal Information Sheet).
[854] Exhibit P63 (Witness GKR's Personal Information Sheet).
[855] Witness GKR, T. 29 June 2004 pp. 74-76; T. 30 June 2004 pp. 9-11.
[856] Mugiraneza, T. 22 May 2008 pp. 20-37, 41-43, 45-50; T. 26 May 2008 pp. 14, 21, 53; T. 3 June 2008 pp. 58-61; T. 4 June 2008 p. 8. For a more detailed summary of Mugiraneza's activities between 6 and 12 April 1994, *see* II.14.1.
[857] Mugiraneza, T. 21 May 2008 p. 14.
[858] Witness RDA, T. 26 February 2008 pp. 50-52, 58, 65-67; Exhibit 4D69 (Witness RDA's Personal Information Sheet).

Kigarama communal police, a Tutsi called Musonera, promising him that the gendarmes would ensure the security of the refugees. However, during the night, Witness RDA heard a gunshot and learned that Musonera had been killed.[859]

581. Witness RDA fled the commune office on 14 April 1994, and heard that several refugees were killed on 15 April. He had lost his entire family during the attacks at the Kigarama commune office. The witness never saw or heard Prosper Mugiraneza's name linked with these killings and testified that he would have known if Prosper Mugiraneza had come to Kigarama during this period.[860] While he was at the Kigarama commune office, Witness RDA heard from two Hutu women that Mutabazi, Karara, Rwagafilita and others were meeting at Rwatoro's house to prepare for killings. This was confirmed during *Gacaca* trials. However, no one mentioned Prosper Mugiraneza during these proceedings.[861]

Mugiraneza Defence Witness RDH

582. Witness RDH, a Tutsi, sought refuge at the Kigarama commune office around 9.30 a.m. on 8 April 1994, after learning that Tutsis had been attacked elsewhere in the commune the previous day. At the commune office, she found about 200 persons being protected by a single police officer named Musonera. She did not see any signs of violence.[862]

583. On the morning of 9 April 1994, *Interahamwe* dressed in banana leaves attacked the refugees at the commune office, but Musonera shot his rifle and scared them away. Witness RDH next sought refuge at the home of Jean-Baptiste Rwatoro, with whom she was close. His home was situated in a trading centre and surrounded by a tall reed fence that blocked vision from the outside. She arrived around 1.30 p.m. and found two other Tutsis and their families hidden there. Around 3.30 p.m., Witness RDH observed from the window a meeting attended by less than 25 people and chaired by Emmanuel Mugiraneza inside the living room of Rwatoro's house. Weapons were distributed to the people attending the meeting. Prosper Mugiraneza, whom she knew because she attended school with him, was not among them.[863]

584. Around 10 April 1994, Witness RDH left Rwatoro's house with her children in order to seek refuge in Kabera. However, she returned to Rwatoro's home on 12 April and people who had stayed there explained that nothing occurred during her absence. Around 3.30 p.m. that day, another meeting was held inside Rwatoro's house and weapons were distributed to *Interahamwe*. Another weapons distribution happened at Rwatoro's home the following day.[864]

585. On 15 April 1994, a Tutsi named Ndahonga and his son, as well as a Tutsi woman named Angelique, were brought to Rwatoro's house in order to be killed. Angelique managed to escape and Ndahonga and his son were released. However, Witness RDH heard that on their way back to the commune office, Ndahonga and his son were shot and killed. Fearing

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[859] Witness RDA, T. 26 February 2008 pp. 52-56.
[860] Witness RDA, T. 26 February 2008 pp. 56-57, 60-61, 66-67.
[861] Witness RDA, T. 26 February 2008 pp. 56, 58-63; Exhibit P193 (Names of who told Witness RDA about the Meeting at Rwatoro's Home).
[862] Witness RDH, T. 26 February 2008 pp. 6-7, 9-10, 44-45; Exhibit 4D66 (Witness RDH's Personal Information Sheet).
[863] Witness RDH, T. 26 February 2008 pp. 10-25, 29-30, 41, 44-45; Exhibit 4D67 (Where Witness RDH Sought Refuge after 9 April 1994 Attacks); Exhibit 4D68 (Names of two Tutsis who stayed at Rwatoro's Home with Witness RDH).
[864] Witness RDH, T. 26 February 2008 pp. 29-30, 34-37.

that her security could no longer be maintained at Rwatoro's home, Witness RDH left on 17 April and hid in a forest around two kilometres from Rwatoro's house.[865] Witness RDH believed that Prosper Mugiraneza never came to Kibungo during the genocide as she never saw him, and she did not hear about him in the *Gacaca* proceedings she attended.[866]

Mugiraneza Defence Witness RDC

586. Witness RDC, a Tutsi, testified that after the President's death on 7 April 1994, he fled from Hutus trying to kill him. Around 6.00 a.m. on 8 April, he sought refuge at the Kigarama commune office. There, he found other Tutsis and three communal policemen, Musonera, Runanye and Prosper Mugiraneza's brother, Mugaragu. No violence occurred there that day.[867]

587. On the morning of 9 April 1994, refugees were attacked by a group of *Interahamwe* led by Francois Mutabazi. Musonera used his gun to scare away the attackers and injured one in the leg. Around 5.00 p.m., Emmanuel Mugiraneza, the Kigarama commune *bourgmestre*, arrived at the commune office with gendarmes and asked his accountant, Ndahonga, to make a list of the refugees. He also requested that the refugees and Musonera put their weapons by the flagpole. Immediately afterwards, Emmanuel Mugiraneza called Jean-Baptiste Rwatoro, an *Interahamwe* leader, and Mutabazi and Mushumba, who were reserve army members, and gave them instructions to attack the refugees. Between 7.00 and 7.45 p.m., the attackers, led by these four men wearing new army uniforms, threw approximately five grenades at the refugees. Witness RDC and about 20 other persons were injured. Three persons, including Rudasingwa and his daughter, were killed. The gendarmes brought by the *bourgmestre* did nothing to protect the refugees.[868]

588. Witness RDC remained at the commune office until the morning of 10 April 1994. There, he observed two meetings at Rwatoro's home attended by Murwanashyaka, the *Interahamwe* leader, Karara, Munyengabe, Mushumba, Mutabazi, Muhinda, and another man from Gasetsa sector named Murwanashyaka. He believed that the purpose of the gatherings was to organise killings.[869]

589. On the morning of 10 April 1994, Emmanuel Mugiraneza came with four vehicles and took Witness RDC and 10 other injured Tutsis to the hospital. Witness RDC later heard that Musonera had been killed, and that another large-scale attack occurred on 15 April at the commune office, killing several refugees.[870] Witness RDC saw Prosper Mugiraneza for the last time when he came to attend his grandmother's funeral, some time before February 1994. According to the witness, Prosper Mugiraneza was not in Kigarama commune during the genocide.[871]

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[865] Witness RDH, T. 26 February 2008 pp. 26-27, 31-34, 36.
[866] Witness RDH, T. 26 February 2008 pp. 22, 24.
[867] Witness RDC, T. 3 March 2008 pp. 12-19, 30; Exhibit 4D75 (Witness RDC's Personal Information Sheet).
[868] Witness RDC, T. 3 March 2008 pp. 19-23, 32-33.
[869] Witness RDC, T. 3 March 2008 pp. 35-36, 43-44.
[870] Witness RDC, T. 3 March 2008 pp. 23, 25-27, 31-32, 41.
[871] Witness RDC, T. 3 March 2008 pp. 22, 35, 43-46.

Mugiraneza Defence Witness RDI

590. On the morning of 7 April 1994, Witness RDI, a Tutsi, was at home with her family in Kabarondo commune, Kibungo prefecture, when *Interahamwe* attacked them. The witness and her husband fled and hid in the bush. Around 8.00 or 9.00 p.m., they travelled to the Kigarama commune office, and found approximately 70 to 100 people taking refuge, including Prosecution Witness GTE. The next day attacks were launched against the commune office, but Musonera, the Tutsi police chief, provided protection by using his gun to repel the attackers.[872]

591. On 9 April 1994, around 2.00 p.m., Emmanuel Mugiraneza came to the commune office with Jean-Baptiste Rwatoro, Munyengabe, Karera and Mutabazi and held a meeting with the refugees. Prosper Mugiraneza, whom the witness knew because he used to pass by her husband's shop before the war, was not present. During the meeting, Emmanuel Mugiraneza refused to give protection to the refugees. Shortly afterwards, Emmanuel Mugiraneza and the others departed for Rwatoro's house. The witness learned from Rwabagonbwa and Gisagara, two Tutsi men, that a meeting did take place at Rwatoro's house. They said that many people attended, including Emmanuel Mugiraneza, Mutabazi and Karara, but they did not mention Prosper Mugiraneza's name. Around 8.00 p.m. on that same day, refugees were attacked again. Indeed, an *Interahamwe* named Muhinda threw a grenade at them, killing four refugees and injuring seven others, including Witness RDI's husband, a person named Basilia and the daughter of Perus Kangina.[873]

592. The next day, the morning of Sunday 10 April 1994, Emmanuel Mugiraneza transported the wounded to the Kibungo hospital in his vehicle. Among those taken were Witness RDI and her husband along with Witness GTE and her daughter. Witness RDI and her husband spent one week at the Kibungo hospital until the RPF took control over the region. While staying at the hospital, Witness RDI heard that Musonera had been killed.[874]

Mugiraneza Defence Witness RWF

593. Witness RWF, a Hutu, was a Kigarama communal policeman in April 1994, who was close with Prosper Mugiraneza.[875] Witness RWF was stationed at the commune office from 6 to 9 April and on 11 April 1994. Around 5.00 p.m. on 7 April, the commune accountant, his son, and a man called Karekezi took refuge at the commune office. That evening and the next day, many others moved to the commune office, which was not attacked on 7 and 8 April.[876]

594. On 9 April 1994, Witness RWF departed the commune office and went to defend his home along with his nephew, nieces and Tutsis who were hiding in his house. Witness RWF heard that, while he was absent from the commune office, a man called Muhinda threw a

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[872] Witness RDI, T. 25 February 2008 pp. 6-7, 10, 12-13, 34, 40; Exhibit 4D61 (Witness RDI's Personal Information Sheet); Exhibit 4D62 (Photograph of the Kigarama Commune Office); Exhibit 4D63 (Video of the Kigarama Commune Office); Exhibit 4D64 (Name of Prosecution Witness GTE).
[873] Witness RDI, T. 25 February 2008 pp. 13-18, 27-30, 32-44, 47. Rwabagonbwa and Gisagara were taken by the *Interahamwe* to Rwatoro's home, but were subsequently sent back to the IGA building of the commune office. T. 25 February 2008 pp. 28-29.
[874] Witness RDI, T. 25 February 2008 pp. 17-20; 33-35, 39-40, 43-44, 47-48.
[875] Witness RWF, T. 25 February 2008 pp. 53-55, 57, 59, 64-66; Exhibit 4D65 (Witness RWF's Personal Information Sheet).
[876] Witness RWF, T. 25 February 2008 pp. 57, 59-60, 73-75, 78, 81.

grenade and killed a Tutsi called Rudasingwa and injured other refugees, including Prosecution Witness GTE. He also learned that the Kigarama commune *bourgmestre*, Emmanuel Mugiraneza, took injured people to the Kibungo hospital.[877]

595. On 11 April 1994, around 7.30 a.m., Witness RWF returned to the commune office, where around 50 people attacked the refugees staying at the commune office. Runanye, Witness RWF, and their chief, Brigadier Musonera, dispatched the attackers by shooting at them. Around 4.00 p.m., Witness RWF again returned to his home to protect his nephew and niece. He never went back to the commune office. However, he heard on 12 April that Musonera had been killed the previous day, around 6.00 p.m., by soldiers accompanying Emmanuel Mugiraneza. Witness RWF also heard that on 15 April several Tutsis were killed in an additional attack.[878]

596. According to Witness RWF, it was impossible to see Rwatoro's house or the road to Gasetsa sector from the commune office. Witness RWF heard that Jean-Baptiste Rwatoro led *Interahamwe* during the attacks, but did not know if weapons were distributed to attackers at Rwatoro's home. The last time Witness RWF saw Prosper Mugiraneza was on 2 April 1994.[879]

Mugiraneza Defence Witness RDG

597. Witness RDG, a Tutsi businessman, testified that he knew Prosper Mugiraneza as a minister, and that he would occasionally stop at the witness's shop located on the main road to Gasetsa in Kigarama commune. On 7 April 1994, after hearing about the President's death, Witness RDG and his wife took refuge at the Kigarama commune office in Remera sector around 7.00 p.m. He described the commune office complex as a compound composed of four buildings including the commune office itself, the tribunal, the IGA and the prison. When they arrived there, Witness RDG saw around 50 other refugees guarded by a Tutsi communal policeman named Brigadier Musonera.[880]

598. On 9 April 1994, Kigarama commune *Bourgmestre* Emmanuel Mugiraneza conducted a meeting between Jean-Baptiste Rwatoro, Munyangabe, members of the population and refugees in front of the commune office. Witness RDG stated that he could not hear what Emmanuel Mugiraneza said during the meeting, and that Jean-Baptiste Rwatoro did not address the crowd. However, Witness RDG knew from their body language that they were both bad people. To the contrary, Munyangabe asked *Bourgmestre* Mugiraneza to provide the refugees with food and water. Prosper Mugiraneza did not attend this meeting. After the meeting, Witness RDG heard that Emmanuel Mugiraneza and other members of the population went to Rwatoro's house. However, it was impossible to see Rwatoro's home from the commune office.[881]

599. Later, around 6.30 p.m. that day, Witness RDG, who was standing behind the IGA building, was injured by a grenade thrown by Muhinda during an attack on the commune

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[877] Witness RWF, T. 25 February 2008 pp. 59-61, 73-76, 78, 80, 82.
[878] Witness RWF, T. 25 February 2008 pp. 62-63, 73-78, 82-83, 85-86.
[879] Witness RWF, T. 25 February 2008 pp. 62-63, 81-82.
[880] Witness RDG, Deposition 31 January 2008 pp. 4-8, 10-11, 14-16, 22, 24; Deposition 1 February 2008 pp. 12, 35-37.
[881] Witness RDG, Deposition 31 January 2008 pp. 9-10, 14, 16-19, 24-25; Deposition 1 February 2008 pp. 7, 12, 24-29, 43-44.

office by civilians from various sectors of Kigarama commune.[882] The following day, on Sunday 10 April 1994, around 8.00 a.m., Emmanuel Mugiraneza brought the injured to the Kibungo hospital. Witness RDG was among those taken there, along with Emmanuel, Teteri, Mukakabare, Bazirisa, Mukatwihonge, Mugabo and Prosecution Witness GTE. At no point did the witness see Prosper Mugiraneza in the Kigarama commune office or when he went to the hospital.[883]

Mugiraneza Defence Witness Jean Munyakayanza

600. Jean Munyakayanza, a Hutu businessman in Kigarama commune in 1994, ran a shop in a building owned by Jean-Baptiste Rwatoro and attached to Rwatoro's home. On 9 April 1994, Munyakayanza saw between 15 to 25 people entering and exiting Rwatoro's home. Among them, a man called Kibwa told the witness that Rwatoro and other important people were preparing the killings at the Kigarama commune office. Munyakayanza, who knew Prosper Mugiraneza for over 25 years, did not see him or any government ministers that day. According to Munyakayanza, it was impossible to see through the fence, which was made of reeds and surrounded Rwatoro's house.[884]

Mugiraneza Defence Witness RDF

601. Witness RDF, a Hutu, lived in Remera sector, Kigarama commune, Kibungo prefecture in 1994.[885] He visited Rwatoro's house frequently before the war and stated that the compound around the home was surrounded by a fence of reeds and rose plants, which was impossible to see through.[886]

Mugiraneza Defence Witness RDZ

602. Witness RDZ, a Hutu, testified that his co-accused, Jean de Dieu Munyangabe, confessed to the charges against him and admitted that he attended meetings at Rwatoro's home. He added that Jean-Baptiste Rwatoro and Emmanuel Mugiraneza led those meetings. Munyangabe never mentioned Prosper Mugiraneza's name and the witness never heard anything about Prosper Mugiraneza attending these gatherings.[887] Moreover, Rwatoro's home was surrounded by a reed fence and hedges, which were impossible to see through.[888]

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[882] Witness RDG, Deposition 31 January 2008 pp. 14, 17, 19, 24-29, 44, 46-47.
[883] Witness RDG, Deposition 31 January 2008 pp. 14, 17, 24-26, 31-33; Deposition 1 February 2008 pp. 2-4, 7, 12, 30-31, 45, 47.
[884] Munyakayanza, T. 6 March 2008 pp. 48-50, 64-66; T. 10 March 2008 pp. 51-52, 63, 65-68, 73-75; Exhibit 4D86 (Munyakayanza's Personal Information Sheet).
[885] Witness RDF, T. 29 April 2008 pp. 7, 14; Exhibit 4D116 (Witness RDF's Personal Information Sheet). At the time of his testimony, Witness RDF was in prison and awaiting appeal of his conviction for genocide. He had been accused of crimes committed in the Kigarama commune office. He was sentenced to death. The death penalty was later abolished in Rwanda and his sentence was commuted to life imprisonment. Witness RDF, T. 29 April 2008 pp. 7-9, 33-35.
[886] Witness RDF, T. 29 April 2008 pp. 24-30.
[887] Witness RDZ, T. 30 April 2008 p. 26; T. 1 May 2008 p. 62; T. 5 May 2008 pp. 2-3; Exhibit 4D121 (Witness RDZ's Personal Information Sheet). At the time of his testimony, Witness RDZ was an inmate in Kibungo prison. He was tried and convicted in 1997 of genocide and war crimes. He was awaiting his appeal. He was sentenced to death, but after Rwanda abolished the death sentence he was reclassified to life imprisonment. Witness RDZ, T. 30 April 2008 pp. 27-29, 65.
[888] Witness RDZ, T. 30 April 2008 pp. 51-52.

Mugiraneza Defence Witness Jean Mukwaya Rusatira

603. Jean Mukwaya Rusatira, a Tutsi, was a Judge in the Specialised Chamber of the Kibungo Lower Court from September 1996 until July 2004.[889] The witness was a member of the Trial Chamber, which delivered the 7 November 1997 judgement. This judgement, also referred to as the "Commune Judgment", dealt with the killings at the commune office. Rusatira testified that Prosper Mugiraneza's name was not mentioned in the evidence and never appeared in the judgement. He never met Prosper Mugiraneza before testifying at the Tribunal.[890]

Mugiraneza Defence Witness RDE

604. Witness RDE, a Hutu, participated in *Gacaca* proceedings in Remera sector and heard around 160 testimonies about crimes in Kigarama. Specifically, Witness RDE heard evidence concerning the events at the Kigarama commune office coupled with the activities of Emmanuel Mugiraneza, Rwagafilita, Rwatoro and Rwamashoka. However, no one mentioned Prosper Mugiraneza's involvement in the crimes in Kigarama commune. At the time of Witness RDE's testimony, the evidence collection process had been completed for Remera sector and Prosper Mugiraneza's name had not appeared.[891]

605. During the *Gacaca* trials, Witness RDE also heard evidence from a man named Jean-Eric Karamage, a man convicted for his participation in the meetings at Rwatoro's house. Karamage did not identify Prosper Mugiraneza as one of the people who attended meetings at Rwatoro's house. Indeed, she stated that she did not know anything else about alleged meetings at Rwatoro's house during the genocide. According to Witness RDE, only the roof of Rwatoro's home could be seen from the Kigarama commune office.[892]

606. According to Witness RDE, Witnesses GTE, GKS and GKM are known in Remera sector for having falsely accused persons in the genocide. Moreover, none of them mentioned Prosper Mugiraneza when testifying before the *Gacaca* courts.[893]

Mugiraneza Defence Witness RDK

607. Witness RDK, a Hutu, was a local government official in the Kigarama commune in 1994, who knew Prosper Mugiraneza because they were neighbours in Gasetsa sector. He spent over five years in detention, but was acquitted and released in 2001.[894]

608. Witness RDK did not see Prosper Mugiraneza in his area at any point after 7 April 1994. Although he remained home from 7 to 10 April, Witness RDK received reports of

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[889] Rusatira, T. 21 April 2008 pp. 57, 61, 63; Exhibit 4D106 (Rusatira's Personal Information Sheet).
[890] Rusatira, T. 21 April 2008 pp. 63-64, 66-68; T. 22 April 2008 pp. 2-3, 16, 38, 46.
[891] Witness RDE, T. 4 March 2008 pp. 7-8, 12-18; Exhibit 4D76 (Witness RDE's Personal Information Sheet).
[892] Witness RDE, T. 4 March 2008 pp. 18-19, 45-47.
[893] Witness RDE, T. 4 March 2008 pp. 21-28, 40-42, 44.
[894] Witness RDK, T. 16 April 2008 pp. 39, 41-42, 44-46; T. 17 April 2008 pp. 22, 72-74; Exhibit 4D99 (Witness RDK's Personal Information Sheet). At the time of his testimony, Witness RDK was detained and awaiting trial for assaulting his 27-year-old son. Witness RDK, T. 16 April 2008 pp. 41-43; T. 17 April 2008 p. 72; Exhibit 4D100(K) (Summons for Trial of Witness RDK).

massacres and did not believe that Prosper Mugiraneza could have come to the Kigarama area because he would have heard about his arrival.[895]

Mugiraneza Defence Witness RDL

609. Witness RDL, a Hutu, lived in Gasetsa sector, Kigarama commune, Kibungo prefecture in 1994. He knew Prosper Mugiraneza as a national leader from the area and met him twice. He saw him for the last time in 1993. Around 3.00 p.m. on 7 April 1994, Witness RDL was on the side of the main road that led to Cyirwa. He saw Emmanuel Mugiraneza together with the accountant of the commune, and an employee of the accountant called Karekezi, pass in a communal vehicle. He did not see Witness GJR in his *cellule* on 7 April. He testified that Witness GJR arrived at his home around 14 or 15 April, and left at the end of May or the beginning of June. Although there was violence in Witness RDL's *cellule* on 7 April, no killings occurred.[896]

Deliberations

610. The evidence unequivocally demonstrates that starting as early as 7 April 1994 and continuing for days, several Tutsis and their families fled attacks in the Kibungo prefecture and sought refuge at the Kigarama commune office.[897] There, a Tutsi communal policeman, Brigadier Musonera, watched over the commune office and initially interceded to prevent attacks.[898]

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[895] Witness RDK, T. 21 April 2008 pp. 12-13, 15-16.

[896] Witness RDL, T. 19 February 2008 pp. 5, 9-12, 15; Exhibit 4D59 (Witness RDL's Personal Information Sheet).

[897] Witness GKS, T. 24 March 2004 pp. 58-59 (Witness GKS and her family took refuge at the Kigarama commune office between 7.00 and 8.00 a.m. on 7 April 1994, finding many other refugees living in difficult conditions; the refugees were Tutsis or Hutu women married to Tutsi men); Witness GKM, T. 25 October 2004 pp. 60-65, T. 26 October 2004 pp. 17-18, 35 (Witness GKM, her family and around 20 Tutsi neighbours joined about two other persons at the Kigarama commune office on the evening of 7 April 1994 and were followed by many other persons, some bearing machete cuts and spear injuries, that evening); Witness GTE, T. 1 December 2003 pp. 11-13 (Witness GTE and her extended family arrived at the Kigarama commune office in the morning on Friday 8 April 1994, finding other displaced persons from different sectors in the commune); Witness RDA, T. 26 February 2008 pp. 50-51, 58 (Witness RDA arrived at the Kigarama commune office on the morning of 8 April 1994, testifying that between 1,500 and 2,000 persons from different areas were there); Witness RDH, T. 26 February 2008 pp. 9-10, 28-29 (Witness RDH arrived at the Kigarama commune office on 8 April 1994 around 9.30 a.m., observing around 200 other refugees there); Witness RDC, T. 3 March 2008 pp. 16-19 (Witness RDC arrived at the Kigarama commune office on 8 April 1994 around 6.00 a.m. and many other people came from different sectors to take refuge at the office); Witness RDI, T. 25 February 2008 pp. 7, 12-13 (Witness RDI arrived at the Kigarama commune office around 8.00 or 9.00 p.m. on 7 April 1994 and found approximately 70 to 100 people there, including Prosecution Witness GTE); Witness RWF, T. 25 February 2008 pp. 59, 73 (persons continued to arrive at the commune office in the evening of 7 April 1994 and more arrived the following day); Witness RDG, Deposition 31 January 2008 pp. 7, 10-11, 16, 24, Deposition 1 February 2008 p. 12 (Witness RDG and his wife arrived at the Kigarama commune office around 7.00 p.m. on 7 April 1994, finding around 50 Tutsi refugees and with more than 800 arriving the next day).

[898] Witness GKS, T. 24 March 2004 pp. 58, 60 (Musonera had a gun and tried to help the Tutsis who had fled to the commune office); Witness GTE, T. 1 December 2003 pp. 13-14 (Musonera scared away the attackers by shooting his gun in the air); Witness GKM, T. 25 October 2004 p. 73, T. 26 October 2004 p. 19 (Musonera scared away the attackers by shooting in the air); Witness RDA, T. 26 February 2008 pp. 52-53 (Musonera shot in the air with his rifle to scare away the attackers); Witness RDH, T. 26 February 2008 p. 10 (the brigadier of the Kigarama commune office was there with a rifle and shot at the attackers); Witness RDC, T. 3 March 2008

611. The evidence further establishes that in early April 1994, Kigarama commune *Bourgmestre* Emmanuel Mugiraneza and other local authorities held a meeting at the Kigarama commune office with the refugees.[899] When they left this meeting Emmanuel Mugiraneza and other members of the population went to Jean-Baptiste Rwatoro's house where weapons were distributed to members of the population.[900]

612. It is also undisputed that, in the evening on the same day, *Interahamwe* and other civilian militias armed with weapons and grenades returned and attacked the commune office. Some witnesses identified an *Interahamwe* called Muhinda as throwing the grenade at the refugees, killing several of them, including a Tutsi named Rudasingwa, and injuring many others.[901]

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pp. 30, 32 (Brigadier Musonera protected the refugees at the Kigarama commune office); Witness RDI, T. 25 February 2008 p. 13 (Musonera, the head of the communal police, provided protection to the refugees); Witness RWF, T. 25 February 2008 p. 59 (Brigadier Musonera was among the policemen who protected the refugees); Witness RDG, Deposition 31 January 2008 pp. 8, 11, 21 (when the witness first arrived at the Kigarama commune office, Brigadier Musonera was guarding the refugees, but he did not see the brigadier again until he left the commune office).

[899] Witness GKS, T. 24 March 2004 pp. 59-60, T. 25 March 2004 pp. 1-2, 19-21 (around 3.00 p.m. on 7 April 1994, Emmanuel Mugiraneza, Rwagafilita and Prosper Mugiraneza held a meeting at the Kigarama commune office); Witness GTE, T. 1 December 2003 pp. 13-14, 49 (on Saturday 9 April 1994, Prosper Mugiraneza came with *Bourgmestre* Emmanuel Mugiraneza, Rwagafilita, Kaborando's *bourgmestre* called Ngenzi and Judge Rwatoro at the commune office); Witness RDA, T. 26 February 2008 pp. 66-67 (Emmanuel Mugiraneza came to the commune office, whereupon the refugees asked him for some food and water); Witness RDC, T. 3 March 2008 pp. 19-20 (on 9 April 1994, around 5.00 p.m., Emmanuel Mugiraneza came to the commune office and requested Ntahonga, the former accountant of the commune, to draft a list of the people who had taken refuge at the Kigarama commune office); Witness RDI, T. 25 February 2008 pp. 13-16 (on 9 April 1994, Emmanuel Mugiraneza came and talked to the refugees, but refused to protect them); Witness RDG, Deposition 31 January 2008 pp. 15-18 (on 9 April 1994, Witness RDG saw Emmanuel Mugiraneza together with Rwatoro, Munyangabe and many others holding a meeting at the commune office, but did not hear what he said).

[900] Witness GTE, T. 1 December 2003 pp. 13-14 (several *Interahamwe* were waiting around the corner on the road to Gasetsa that was below the commune offices, where they received weapons and took them to Rwatoro's house; after a short period, grenades were distributed to the *Interahamwe*); Witness GKM, T. 25 October 2004 pp. 62, 65-67, T. 26 October 2004 pp. 2, 18, 35-37, 42-43 (around 3.00 p.m. on 8 or 9 April 1994, Witness GKM saw a meeting at Rwatoro's house during which weapons were distributed to *Interahamwe*); Witness RDA, T. 26 February 2008 p. 56 (meetings were held at Rwatoro's house); Witness RDH, T. 26 February 2008 pp. 11-12, 16-23, 29-30, 35-36 (meetings were held at Rwatoro's home on 9, 12 and 13 April 1994, during which weapons were distributed); Exhibit 4D67 (Where Witness RDH Sought Refuge after 9 April 1994 Attacks); Witness RDC, T. 3 March 2008 pp. 35, 44 (Witness RDC could see vehicles going to Rwatoro's house where meetings were held); Witness RDZ, T. 1 May 2008 p. 62; T. 5 May 2008 pp. 2-3 (Witness RDZ's co-accused, Jean de Dieu Munyangabe, confessed to the charges against him and admitted that he attended meetings at Rwatoro's home); *see also* Exhibit 4D5(E, F & K) (Judgement of the Kibungo Court of First Instance) (mentioning the meetings at Rwatoro's house).

[901] Witness GKS, T. 24 March 2004 pp. 60-61, T. 25 March 2004 pp. 2-3, 24-25 (around 4.00 p.m. on approximately 7 April 1994, Muhinda threw a grenade and killed eight refugees, including Rudasingwa); Witness GTE, T. 1 December 2003 pp. 13-14 (on 9 April 1994, in the evening, *Interahamwe* attacked the commune office and threw grenades, killing and injuring displaced persons there); Witness GKM, T. 25 October 2004 pp. 65, 73-74 (around 7.00 or 8.00 p.m., *Interahamwe* started to attack the refugees at the commune office with grenades); Witness RDA, T. 26 February 2008 pp. 51-52, 65 (on 9 April 1994, in the evening, some attackers threw a grenade at those in the commune office, killing Rudasingwa, a Tutsi, immediately); Witness RDC, T. 3 March 2008 pp. 21-23 (on 9 April 1994, between 6.00 and 7.00 p.m., Emmanuel Mugiraneza called Jean-Baptiste Rwatoro, the head of the *Interahamwe*, and other *Interahamwe* and members of the reserve army, and gave them instructions, but Witness RDC could not hear what was said; five grenades were thrown and three refugees died, including Rudasingwa); Witness RDI, T. 25 February 2008 pp. 16-18, 32, 38-39, 44, 47 (on 9 April 1994, around 8.00 p.m., an *Interahamwe* named Muhinda threw a grenade at the refugees in the

613. In the following days, Emmanuel Mugiraneza brought several injured Tutsis to the Kibungo hospital.[902] He also returned to the commune office and asked the refugees to put down their traditional weapons and requested the disarming of Brigadier Musonera.[903] Additional attacks were launched against the now defenceless refugees and Brigadier Musonera was killed.[904] On 15 April 1994, another large-scale attack occurred at the commune office, during which several Tutsis were killed.[905] The commune was captured by the RPF troops some days later, putting an end to the killings.[906]

614. With much of the evidence undisputed, the Chamber is left to determine whether Prosper Mugiraneza was involved in these killings. The Prosecution contends that he participated in these events through his presence at the commune office with Emmanuel

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Kigarama commune office, killing four refugees and injuring seven others, including Witness RDI's husband); Witness RWF, T. 25 February 2008 pp. 59-60, 82 (on 9 April 1994, an *Interahamwe* called Muhinda threw a grenade at the refugees and killed a Tutsi called Rudasingwa); Witness RDG, Deposition 31 January 2008 pp. 14, 25-30 (on 9 April 1994, around 6.30 p.m., Muhinda threw three grenades at the refugees and Rudasingwa and Emmanuel were killed); Exhibit 4D5(E, F & K) (Judgement of the Kibungo Court of First Instance); P213(F) (Judgement of the Kibungo Court of First Instance) p. 131.

[902] Witness GKS, T. 25 March 2004 p. 23 (people who were injured were taken to the hospital around 9 April 1994); Witness GKM, T. 25 October 2004 pp. 65, 73-74 (Emmanuel Mugiraneza took the injured and it was said that they were brought to the hospital for treatment; however, he was taking them to an *Interahamwe* called Cyasa to kill them); Witness RDC, T. 3 March 2008 pp. 23, 25, 27 (on 10 April 1994, in the morning, Emmanuel Mugiraneza brought Witness RDC and other injured persons to the hospital); Witness RDI, T. 25 February 2008 pp. 18-20; 33-34, 39, 43-44, 47-48 (on the morning of Sunday 10 April 1994, Emmanuel Mugiraneza transported the wounded to the Kibungo hospital in his vehicle); Witness RWF, T. 25 February 2008 p. 60 (Witness RWF learned that, sometime after 9 April 1994, Emmanuel Mugiraneza brought the injured, including Witness GTE, to the Kibungo hospital); Witness RDG, Deposition 31 January 2008 pp. 31-33, Deposition 1 February 2008 pp. 4-5 (on 10 April 1994 around 8.00 a.m., Emmanuel Mugiraneza took Witness RDG and other injured refugees to the Kibungo hospital).

[903] Witness GKS, T. 24 March 2004 pp. 60-61, T. 25 March 2004 pp. 3-5, 22, 24, 26-27 (on 11 April 1994, Musonera's firearm was taken from him and he was killed that day); Witness GKM, T. 25 October 2004 pp. 61-66, 71-74, T. 26 October 2004 pp. 17-20, 35-36, 50 (Musonera was disarmed around 5.00 p.m., after the meeting at Rwatoro's home on 8 or 9 April 1994); Witness GJQ, T. 10 March 2005 pp. 65-66 (the head of the police Musonera resisted the attackers and was killed in the process); Witness RDA, T. 26 February 2008 pp. 53-56, 66-67 (around 11 or 12 April 1994, Musonera was disarmed by gendarmes and killed the same night); Witness RDC, T. 3 March 2008 p. 33 (Brigadier Musonera was disarmed on the orders of the *bourgmestre*); Witness GTE, T. 1 December 2003 p. 15 (on a day the witness could not recall, the *bourgmestre* returned and disarmed Musonera and those in the commune were searched).

[904] Witness GKS, T. 24 March 2004 pp. 60-61, T. 25 March 2004 pp. 3-5, 22, 24, 26-27 (on 11 April 1994, Musonera's firearm was taken from him and he was killed that day); Witness GTE, T. 1 December 2003 pp. 15, 30-32 (the *bourgmestre* came with a soldier or a policeman and shot and killed Musonera); Witness RDA, T. 26 February 2008 pp. 54-56 (around 11 or 12 April 1994, Musonera was disarmed by gendarmes and killed the same night); Witness RDC, T. 3 March 2008 p. 32 (Brigadier Musonera was killed); Witness RDI, T. 25 February 2008 pp. 34-35 (the witness heard that Musonera was killed); Witness RWF, T. 25 February 2008 pp. 62, 76-77 (Musonera was killed after 6.00 p.m. on 11 April 1994).

[905] Witness GKS, T. 25 March 2004 pp. 5-8, 15 (on 15 April 1994, attackers returned to the commune office to "exterminate" the remaining refugees); Witness GJQ, T. 10 March 2005 pp. 64-66 (on 15 April 1994, Rwagafilita and reserve army members attacked the commune office); Witness RDA, T. 26 February 2008 pp. 60, 66 (people were killed during an attack on 15 April 1994); Witness RDH, T. 26 February 2008 pp. 31-34 (Tutsis were killed close to the commune office on 15 April 1994); Witness RDC, T. 3 March 2008 p. 31 (the final killings at the commune office took place on 15 April 1994). *See also* Exhibit 4D5(E, F & K) (Judgement of the Kibungo Court of First Instance).

[906] Witness GKR, T. 30 June 2004 p. 10; Witness GKS, T. 25 March 2004 p. 9; Witness RWF, T. 25 February 2008 pp. 84-85; *see also* Witness RDI, T. 25 February 2008 p. 20; Witness RWC, T. 28 February 2008 p. 49.

Mugiraneza and other assailants, and through distributing weapons to the *Interahamwe* at Rwatoro's house prior to the grenade attack launched on the commune office later that day.

615. The Defence challenges the credibility of the Prosecution witnesses. It also denies that Mugiraneza travelled to Kibungo prefecture after 4 April 1994. In particular, it points to alibi evidence that he was in Kigali during the relevant period (II.14.1).

616. The Chamber will consider the allegations concerning Mugiraneza's presence at the Kigarama commune office and at the distribution of weapons at Rwatoro's house. The Chamber will also review the allegation that Mugiraneza was involved in the killings of Tutsis at the Kibungo hospital, and the disarming and killing of Brigadier Musonera.

(i) Meeting at Kigarama Commune Office Prior to Grenade Attack, 9 April 1994

617. The Prosecution alleges that on 7 April 1994 Prosper Mugiraneza, in the company of *Interahamwe*, soldiers and civil authorities, held a meeting at the Kigarama commune office. Approximately one hour after the authorities left, an *Interahamwe* named Muhinda threw a grenade at the refugees and killed eight persons.[907]

618. In its Closing Brief and written submissions dated 21 November 2008, the Prosecution relies on Witnesses GKS, GJQ and GJR.[908] The testimonies of Witnesses GJQ and GJR, however, do not support the Prosecution's allegation. Witness GJQ testified that he did not see Prosper Mugiraneza in Kibungo prefecture after 3 April 1994, and would have known had Mugiraneza visited after that date.[909] Witness GJR heard that killings took place at the commune office, but did not mention Mugiraneza's presence. Thus, they will not be considered as part of the Prosecution's evidence. Conversely, though the Prosecution makes no reference in its Closing Brief or 21 November 2008 submission to the evidence of Witnesses GTE and GKM concerning this event, their evidence is relevant to the allegation and will be considered.

619. Before evaluating the merits of these witnesses' testimonies, the Chamber will consider their general credibility. Turning first to Witness GKS, her refusal to answer questions concerning a Rwandan trial judgement in which she testified and prior statements to Tribunal investigators gives the Chamber cause for concern. Specifically, the Defence cross-examined Witness GKS with a judgement of the Kibungo Court from a proceeding in which she testified. The Defence presented the Kibungo Court's findings that Witness GKS had misrepresented herself in her testimony before the court.[910] The witness initially testified that she did not know why the Court had made this determination, but then subsequently provided an explanation for this misrepresentation. When asked further about this, she stated

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[907] Prosecution Closing Brief, paras. 155, 278, 367, 385; Prosecution 21 November 2008 Document, Item Nos. 51, 65, 79.
[908] The Chamber notes that the Prosecution relies on only Witnesses GKS and GJR in the Prosecution Closing Brief. *See* Prosecution Closing Brief, paras. 155, 278, 367, 385. However, it relies on Witnesses GKS, GJR and GJQ in the Prosecution 21 November 2008 Document. *See* Prosecution 21 November 2008 Document, Item No. 65.
[909] Witness GJQ, T. 16 March 2005 p. 50.
[910] Witness GKS, T. 25 March 2004 pp. 36-51; Exhibit 4D5(E, F & K) (Judgement of the Kibungo Court of First Instance) p. 40.

that she did not wish to respond to questions regarding the judgement and did not clarify her contradictory testimony.[911]

620. The Chamber recognises that cross-examination may be uncomfortable for a witness and lead to a conflict with opposing counsel. In addition, the Chamber is not bound by the findings of another court adjudicating a record not before this Chamber. However, Witness GKS's repeated refusals to clarify these issues are troubling. These concerns are compounded by the evidence of Witness RDE, a member of the *Gacaca* court, who testified that Witness GKS was found to have made false allegations in the *Gacaca* court.[912]

621. The Chamber further notes that Witness GKS's testimony has evolved from the information she provided in her 25 July 2000 statement to Tribunal investigators. In particular, her prior statement described Prosper Mugiraneza visiting the refugees of the Kigarama commune office on 7 April 1994 but that the grenade attack and the first killings occurred two days later on 9 April.[913] In this proceeding, however, Witness GKS testified that the grenade attack happened on the day of Mugiraneza's visit, which was approximately 7 April, about one hour after Mugiraneza left.[914] Confronted with these discrepancies, Witness GKS again was reluctant to clarify them.[915] She testified that she received blows to her head on 15 April, and she is "no longer able" to recall past events due to her injuries.[916] Having considered the difficulties of recalling the precise timing of events several years later and the trauma the witness suffered, her admitted diminished ability to recall past events also raises concerns about her reliability. This concern is compounded by the fact that her evidence before the Chamber has evolved to become far more inculpatory than her initial statement. Specifically, her evidence more closely links Mugiraneza's presence in time to the subsequent attack on the commune office.

622. The Chamber further observes that Witness GKS's identification of Prosper Mugiraneza was based on hearsay. She did not know him, but explained that Zakary Ndahonga, who knew Mugiraneza well, and other unidentified people who lived in Mugiraneza's neighbourhood in Gasetsa sector identified Mugiraneza when he purportedly arrived at the commune office.[917] The Chamber has the discretion to cautiously consider and rely on hearsay evidence, but the weight and probative value of it will usually be less than

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[911] Witness GKS, T. 25 March 2004 pp. 44-45 ("I did not appeal. It's my right in my country. I don't want to be asked questions like that."), 45 ("I don't think that case concerns me any more."), 46-47 ("I think I will answer that question in Rwanda; it's not for you to ask me such questions."), 47 ("That is why that truth we are talking about should be answered in the jurisdiction in Rwanda. I don't think I can answer that question here.").
[912] Witness RDE, T. 4 March 2008 pp. 23-24, 26-27, 40-41.
[913] Exhibit 4D8(E) (Witness GKS's Statement, 25 July 2000) pp. 2, 4.
[914] Witness GKS, T. 24 March 2004 pp. 59-60; T. 25 March 2004 pp. 1-2, 19-22, 24-25.
[915] Witness GKS, T. 25 March 2004 pp. 22-26; *see also* Witness GKS, T. 25 March 2004 p. 23 ("Depending on the time they were asking me, if I talked about Emmanuel Mugiraneza, it depends, but if I am given an opportunity to talk even more about Prosper Mugiraneza, I could. I don't think this is a reason why you are asking me why I didn't say this on that and that date. You would be like those people who asked us 'Why are you saying this now instead of having said it earlier?' You wouldn't be different from such people. … I really think that you are complicating my life. Things happened and anybody can come and say even more. If you want, I can even say more right now, but if I have to talk about what happened, there were so many meetings, asking me how many times he went there, where was he in Kibungo, I wouldn't.").
[916] Witness GKS, T. 25 March 2004 pp. 8, 25, 32-33.
[917] Witness GKS, T. 24 March 2004 pp. 59-60; T. 25 March pp. 19-20.

that accorded to sworn testimony, subject to cross-examination.[918] Notably, she was not asked to identify Mugiraneza while testifying.

623. Turning to Witness GTE, the Chamber observes that she denied having given any evidence to other courts.[919] Mugiraneza's Defence attempted to confront Witness GTE with a judgement of the Kibungo Court, in which a name identical to hers was listed as a witness.[920] Witness GTE consistently refused to answer any questions about this judgement, arguing that she was not concerned by what happened in Rwandan courts and that in any event she did not know how to read.[921] The Chamber is troubled by this demeanour.

624. Witness GTE also testified that she had no relationship to Witness RDF, an *Interahamwe* leader in Kibungo prefecture accused of multiple crimes at the Kigarama commune office.[922] Witness RDF, however, testified that he and Witness GTE had three children together.[923] Witnesses RDI and RDG confirmed that Witnesses GTE and RDF had a child together.[924]

625. The Chamber is also cautious of Witness GTE's identification of Prosper Mugiraneza at the meeting in the Kigarama commune office. Specifically, she testified that before the alleged meeting she had only seen Prosper Mugiraneza once when he was a child in Gasetsa sector.[925] She later heard that Prosper Mugiraneza organised meetings in Kigarama commune.[926] During cross-examination, she conceded that she never met Prosper Mugiraneza and that she did not remember him.[927] Finally, Witness GTE testified that Prosper Mugiraneza did not talk during the meeting at Kigarama commune, and that it was night, and so dark that it was difficult for the refugees to see enough to make a list of all the people in the commune office.[928] Under the circumstances, her identification of Mugiraneza is insufficiently reliable. The Chamber evaluates Witness GKM's credibility below.

626. The Chamber now considers the merits of these Prosecution witnesses' testimonies. The Chamber has no doubt that Witnesses GKS, GTE and GKM took refuge at the Kigarama commune office with the other refugees. They and other witnesses confirmed that they were

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[918] *See Kalimanzira* Appeal Judgement, para. 96.
[919] Witness GTE, T. 1 December 2003 p. 51; T. 2 December 2003 p. 8.
[920] Witness GTE, T. 2 December 2003 pp. 8-10, 13-16.
[921] Witness GTE, T. 2 December 2003 pp. 10-16; *see also* Witness GTE, T. 2 December 2003 pp. 10 ("I'm refusing this, and I'm not concerned with these documents. ... I refuse to look at it. I don't want to understand it. Let the Court records say that I have refused."), 14 ("I'm not concerned either what has happened in Rwanda courts. ... There are too many long questions. Any questions that you are going to ask me now, I will not answer."), 16 ("I've said that I'm not concerned with this document from Kibungo."), 18 ("I don't know how to read nor to write."). Notably, Witness GTE earlier testified that she could read. *See* Witness GTE, T. 1 December 2003 p. 2 ("I know how to read, but I can only read Kinyarwanda.").
[922] Witness GTE, T. 1 December 2003 pp. 10-12, 49-50; Witness RDF, T. 29 April 2008 pp. 34-37; Witness RDA, T. 26 February 2008 p. 56; Witness RDC, T. 3 March 2008 p. 35; Witness RDI, T. 25 February 2008 pp. 28-30; Exhibit 4D64 (Name Shown to Witness RDI).
[923] Witness RDF, T. 29 April 2008 p. 10.
[924] Witness RDI, T. 25 February 2008 p. 30; Witness RDG, Deposition 1 February 2008 p. 5; Exhibit 4D64 (Name Shown to Witness RDI).
[925] Witness GTE, T. 1 December 2003 p. 5.
[926] Witness GTE, T. 1 December 2003 pp. 5-6.
[927] Witness GTE, T. 2 December 2003 p. 10.
[928] Witness GTE, T. 1 December 2003 pp. 13-15, 49.

among the displaced persons gathered.[929] The testimonies of Witnesses GKS and GTE corroborate each other on the fact that a meeting including Prosper Mugiraneza, Emmanuel Mugiraneza, Rwagafilita and *Interahamwe* took place in front of the commune office shortly before a grenade attack occurred. Moreover, their general account of the events is consistent with other evidence in the case.

627. Their testimonies differ, however, as to the date that the alleged incidents occurred. In its closing submissions, the Prosecution contends that the meeting with Prosper Mugiraneza and subsequent grenade attack at the Kigarama commune office occurred on 7 April 1994. Witness GKS, however, is the only witness who testified that the incidents occurred on that date, stating several times in her testimony and in her prior statement to investigators that she saw Mugiraneza organise this meeting on the day she arrived at the commune office, 7 April.[930] Witness GTE said the meeting and grenade attack occurred on 9 April.[931]

628. For her part, Witness GKM did not testify about a meeting at the Kigarama commune office. However, she saw a weapons distribution at Rwatoro's home and then a grenade attack on the commune office that same day. Her evidence about the timing of these incidents varied. She repeatedly stated that she arrived at the commune office on 7 April 1994. Upon both direct and cross-examination, she testified that the meeting at Rwatoro's home occurred one night after she arrived, which would place it on 8 April.[932] Upon further cross-examination, however, she stated that it occurred *two* nights after she arrived, on 9 April or on the "third day".[933]

629. Notably, four Defence witnesses confirmed that either a meeting occurred at the commune office on 9 April 1994, a grenade attack occurred on that day or both. Witnesses RDC and RDI testified that both the meeting and the grenade attack occurred on 9 April. Witness RDA stated that the grenade attack occurred on 9 April. Witness RWF, who was present at the commune office on the morning of 9 April, heard that the grenade attack occurred the afternoon of 9 April.[934]

630. Though the Prosecution's evidence is inconsistent as to the date this meeting occurred, a majority of the witnesses place it on 9 April 1994. Furthermore, the Chamber considers that compelling evidence establishes that the meeting at the commune office preceded the grenade attack, which occurred on the same day. In light of this overwhelming evidence, the Chamber concludes that these incidents occurred on 9 April. Thus, the sole question that remains before the Chamber is whether Prosper Mugiraneza was present at the Kigarama commune office prior to the attack with the assailants.

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[929] Witness GKS, T. 25 March 2004 pp. 8, 15-18; Witness GTE, T. 1 December 2003 p. 50; Witness GKM, T. 26 October 2004 p. 32; Witness RWF, T. 25 February 2008 p. 60; Witness RDG, Deposition 1 February 2008 pp. 4-5; Exhibit 4D7 (Name of Witness GTE); Exhibit 4D17A (Name of Witness GKS); Exhibit 4D64 (Name of Witness GTE).
[930] Witness GKS, T. 24 March 2004 pp. 58-61; T. 25 March 2004 pp. 1-2, 19-25; Exhibit 4D8(E) (Witness GKS's Statement, 25 July 2000) pp. 2, 4.
[931] Witness GTE, T. 1 December 2003 pp. 13-16, 31, 49.
[932] Witness GKM, T. 25 October 2004 pp. 61-66, 71-74; T. 26 October 2004 pp. 17-20.
[933] Witness GKM, T. 26 October 2004 pp. 35-36.
[934] Witness RDA, T. 26 February 2008 pp. 51-52, 65; Witness RDH, T. 26 February 2008 pp. 9-25, 29-30; Witness RDC, T. 3 March 2008 pp. 19-22, 31-32; Witness RDI, T. 25 February 2008 pp. 13-17, 35-39, 47; Witness RWF, T. 25 February 2008 pp. 59-60, 74, 82.

631. With regards to whether Mugiraneza was present at the commune office, the Chamber first notes that Witness GKM did not place the Accused at the commune office at any point. She testified that Emmanuel Mugiraneza addressed the refugees there in the afternoon before attackers returned later that evening and launched an assault. While the witness testified that she saw Prosper Mugiraneza at Rwatoro's home, which is relatively close to the commune office, later that same day, the witness did not testify that he came to the commune office. In this regard, Witness GKM's evidence fails to corroborate the testimonies of Witnesses GKS and GTE.

632. Turning to the Defence evidence, Witnesses RDA, RDC, RDI and RDG, Tutsis who were refugees at the Kigarama commune office, also attended the meeting there on 9 April 1994 with Emmanuel Mugiraneza and other local authorities. However, contrary to Witnesses GKS and GTE, they did not see Prosper Mugiraneza.[935]

633. There is also substantial evidence from both Prosecution and Defence witnesses that Mugiraneza was not in Kigarama commune at all on 9 April 1994. Witness RDA, a Tutsi refugee at the Kigarama commune office, did not see or hear of Prosper Mugiraneza's presence in the commune at the material time.[936] More crucially, Prosecution Witnesses GJQ, GJT and GJV respectively testified that they did not see Prosper Mugiraneza in Kibungo prefecture after 6 April.[937] Witness GJQ, in particular, was an admitted *Interahamwe* who allegedly had close ties with Rwagafilita and Emmanuel Mugiraneza. These Prosecution witnesses' testimonies were general in nature and none of them were involved in attacks on Kigarama commune. Nonetheless, this raises doubt with respect to the testimonies of Witnesses GKS and GTE.

634. The Mugiraneza Defence also presented evidence that because Mugiraneza was not mentioned in *Gacaca* and Rwandan Court judgements or testimony, he could not have been involved in this incident. For example, Witness RDE, a member of the *Gacaca* court, testified that she participated in the adjudication of approximately 160 cases concerning the events in Kigarama during the genocide. She confirmed that Witnesses GKS and GKM did not mention Prosper Mugiraneza's name when testifying about the events occurring at the Kigarama commune office.[938]

635. Concerning the judgement of the Kibungo Court in which both Witnesses GKS and GTE gave testimony and which concerned events at the Kigarama commune office, the Defence highlights that Mugiraneza's name was not mentioned in the judgement. This was confirmed by Jean Mukwaya Rusatira, one of the presiding judges.[939] The trial record was not entered into evidence in this trial. Consequently, the Chamber is not in a position to determine the breadth of the evidence proffered at the Kibungo trial, and particularly whether evidence about the involvement of persons other than those being tried was pursued by the parties in that proceeding. The absence of any reference to Prosper Mugiraneza in the judgement of the Kibungo Court does not necessarily mean that the testimonies in this

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[935] Witness RDA, T. 26 February 2008 pp. 55-56, 66-68; Witness RDC, T. 3 March 2008 pp. 20-22; Witness RDI, T. 25 February 2008 pp. 13-16; Witness RDG, Deposition 31 January 2008 pp. 15-18.
[936] Witness RDA, T. 26 February 2008 p. 56.
[937] Witness GJQ, T. 16 March 2005 p. 50; Witness GJV, T. 13 February 2004 pp. 18, 28; Witness GJT, T. 12 March 2004 p. 3.
[938] Witness RDE, T. 4 March 2008 pp. 23-25, 40-41.
[939] Rusatira, T. 21 April 2008 pp. 67-68; T. 22 April 2008 pp. 2, 16, 38, 46.

proceeding about the meeting at the Kigarama commune office are false or necessarily inconsistent.

636. For his part, Mugiraneza denied that he was present in Kibungo prefecture after 4 April 1994, or that he knew anything about what occurred in Kigarama commune during the genocide. Specifically, Mugiraneza testified that on 9 April he participated in the swearing-in ceremony of the Interim Government. His presence at the ceremony is corroborated through a contemporaneous radio broadcast, which reflects him taking the oath of office.[940] He testified that he attended a cabinet meeting from 11.00 a.m. to 5.00 p.m., and after the meeting, went back to the French Embassy and spent the night there with his family.[941]

637. Mugiraneza's evidence about his whereabouts on 9 April 1994 is corroborated in varying degrees by a considerable amount of direct and circumstantial evidence. Indeed, the Chamber has elsewhere considered that Mugiraneza's alibi, when viewed in the context of the specific Prosecution allegations, allows for the reasonable possibility that he remained in Kigali for all of 9 April (II.14.1).

638. Consequently, given the Chamber's concerns regarding the credibility of Witnesses GKS and GTE, Defence evidence directly rebutting the Prosecution evidence that Mugiraneza was at the Kigarama commune office before the grenade attack occurred, and Mugiraneza's alibi for the period, the Chamber has reservations about this allegation. The Prosecution has not proven beyond reasonable doubt that, on 9 April 1994, Prosper Mugiraneza attended a meeting at the Kigarama commune office that preceded a subsequent attack there, resulting in the killing of Tutsis. The evidence also fails to establish that Mugiraneza had effective control over assailants or sufficient knowledge of the attack to establish his liability as a superior. In light of this finding, the Chamber need not consider objections related to insufficient notice.[942]

(ii) Distribution of Weapons at Rwatoro's House, 9 April 1994

639. The Prosecution, relying on Witness GKM, alleges that on 9 April 1994, at a meeting held at Jean-Baptiste Rwatoro's home, Prosper Mugiraneza and Rwatoro distributed weapons to the *Interahamwe*. Those who received the weapons attacked the refugees at the Kigarama commune office, and killed and injured many of them. The injured were taken by Emmanuel Mugiraneza and were subsequently killed.[943] Witness GTE also provided relevant testimony.

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[940] Exhibit P2(11) (RTLM Broadcast, 9 April 1994) p. 11.

[941] Mugiraneza, T. 22 May 2008 pp. 35-46.

[942] The Chamber recalls that evidence relating to events occurring in Kibungo prefecture was only admitted to be considered against Mugiraneza for the allegations of conspiracy to commit genocide and complicity in genocide. Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004 (TC), 4 October 2004, p. 14.

[943] The Prosecution, relying on Witness GKM, alleges that the meeting at Rwatoro's place took place on 7 April 1994 (Prosecution Closing Brief, paras. 151, 275) or on 8 or 9 April 1994 (Prosecution Closing Brief, paras. 168, 331). Finally, in its 21 November 2008 Document and in its closing arguments, the Prosecution indicates that the meeting took place between 7 and 9 April 1994 (T. 1 December 2008 p. 54; *see also* Prosecution 21 November 2008 Document, Item No. 72). However, the Chamber notes that Witness GKM places the meeting on the same day as the grenade attack. As stated above, the record demonstrates that the grenade attack happened on 9 April 1994. Therefore, the Chamber considers that Rwatoro's meeting as described by Witness GKM would have taken place on 9 April 1994. This correction is reflected in the paragraph above.

640. The Mugiraneza Defence submits that Witness GKM's uncorroborated testimony is vague and unreliable. It points to alibi evidence that Mugiraneza was in Kigali between 7 and 9 April 1994, the period in which Witness GKM places him at Rwatoro's house in Kigarama commune.[944]

641. At the outset, the Chamber has no doubt that Witnesses GKM and GTE were among the refugees at the Kigarama commune office. Their presence there was confirmed by other witnesses, and their account of the events there is largely consistent with other evidence in the record.[945] Similarly, their testimony that a weapons distribution occurred followed by a grenade attack on the Kigarama commune office is corroborated by several Prosecution and Defence witnesses.[946] Therefore, the sole issue before the Chamber is whether Prosper Mugiraneza was present during the weapons distribution that was followed by a grenade attack on the Kigarama commune office on 9 April 1994.

642. In considering this allegation, the Chamber first turns to the general credibility of Prosecution Witnesses GKM and GTE. The Mugiraneza Defence asserts that Witness GKM's testimony was conflicting and vague, and thus she is not credible.[947] Specifically, during her testimony she could not recall several important facts, including the name of the President in 1994, the date his plane was shot down, or the name of the Tutsi in whose house she took refuge during the genocide.[948] Witness GKM was also inconsistent on the date of the alleged meeting at Rwatoro's house.[949]

643. The Chamber notes that a careful reading of Witness GKM's testimony illustrates that she consistently explained that both the meeting and grenade attack occurred on the same day. In the Chamber's view, the vagueness of Witness GKM's testimony regarding the date of the alleged meeting may be explained by the passage of time and the traumatic nature of the events, which the witness explained contributed to her inability to remember. Thus, her struggle to identify dates and names does not raise concerns as to her credibility.

644. Further, the Chamber is satisfied by Witness GKM's ability to identify the Accused. Witness GKM explained that she saw Mugiraneza before the genocide when he visited his grandmother in Kigarama commune.[950] It is not disputed that Mugiraneza's family lived in

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[944] Mugiraneza Closing Brief, paras. 342-356, 395-456.
[945] Witness GKS, T. 25 March 2004 pp. 8, 15, 18 (Witness GKM was one of the survivors of the Kigarama commune office); Witness RWF, T. 25 February 2008 p. 60 (Witness RWF did not see Witness GTE but heard she was present at the Kigarama commune office); Witness RDG, Deposition 31 January 2008 pp. 31-33, Deposition 1 February 2008 pp. 4-5 (Witness GTE was among the refugees taken by Emmanuel Mugiraneza from the Kigarama commune office to the Kibungo hospital).
[946] Witness GTE, T. 1 December 2003 p. 14; Witness GKM, T. 25 October 2004 pp. 62, 65-72, 74; T. 26 October 2004 pp. 2, 4, 18-20, 36, 47-50; Witness GJY, T. 19 February 2004 pp. 23-24; Witness RDA, T. 26 February 2008 pp. 56, 58-63; Witness RDH, T. 26 February 2008 pp. 29-30; Exhibit 4D67 (Where Witness RDH Sought Refuge after 9 April 1994 Attacks); Witness RDE, T. 4 March 2008 pp. 18-19, 45-46; Witness RDC, T. 3 March 2008 pp. 35-36, 43-44; Witness RDI, T. 25 February 2008 pp. 13-17, 27-30, 32, 37-39, 41-44, 47.
[947] Mugiraneza Closing Brief, paras. 441-456.
[948] Witness GKM, T. 25 October 2004 pp. 59-60; T. 26 October 2004 p. 48.
[949] Witness GKM, T. 25 October 2004 pp. 65-66; T. 26 October 2004 pp. 18-19, 36. Mugiraneza's Defence also contends that Witness GKM's credibility is affected by the fact that she did not mention the meeting at Rwatoro's house in her statement of 21 May 1999. However, the Chamber notes that the witness was not confronted with this statement during her testimony and that it was not entered into the record as an exhibit.
[950] Witness GKM, T. 25 October 2004 p. 66.

the commune, and that he visited them frequently prior to the genocide.[951] Therefore, the Chamber considers it reasonable that Witness GKM would have identified the Accused when she allegedly saw him in April 1994. As for Witness GTE, the Chamber has previously discussed its concerns with her general credibility, and views her testimony, including her ability to identify Mugiraneza, with caution.

645. Turning to the merits of the Prosecution's allegation, the Defence argues that Witness GKM's account of the event is incredible. For her testimony to be true, Witness GKM had to leave a commune office, besieged by *Interahamwe*, and then look through Rwatoro's fence and see the alleged meeting attended by Prosper Mugiraneza. Two witnesses testified that the commune office was surrounded by *Interahamwe*, and Witness GKM herself stated that any person entering or exiting the compound would be killed or injured.[952] Defence Witnesses RDH, RDC and RDI also testified that on the morning of 9 April 1994, attacks against the refugees started.[953] Witness GKM testified, however, that because she was a Hutu she was able to leave the compound unharmed. The Chamber views Witness GKM's explanation as credible, but notes that her testimony is not corroborated.

646. Witness GTE also testified to Mugiraneza's involvement in the distribution of weapons, but her testimony is substantially different from the evidence provided by Witness GKM. Witness GTE testified that Prosper Mugiraneza was at the Kigarama commune office on the evening of 9 April 1994.[954] Later, on the corner of the road leading to Gasetsa sector, she saw soldiers protecting Mugiraneza giving the *Interahamwe* weapons, and taking those weapons to Rwatoro's house.[955] The witness did not see weapons being distributed at Rwatoro's house, as Witness GKM and the Prosecution contend.

647. The Defence also questioned whether Witness GTE could have seen the weapons distribution from her position at the Kigarama commune office. Defence Witnesses RWF, RDI and RDG testified that from the commune office it was impossible to see the road at which Witness GTE contends the weapons were distributed.[956] Further, Visu Kambaku Pendo Mtegha, a professional surveyor commissioned to do a survey of the Kigarama commune office, testified that the intersection mentioned by Witness GTE is approximately 153 metres from the office. He explained that it was impossible to see the junction from the office because the view is obstructed by homes.[957] Witness GTE testified that the incidents occurred at night, when the darkness made it impossible for the refugees in the commune office to identify all of the families present.[958] This evidence calls into question Witness GTE's

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[951] Mugiraneza, T. 22 May 2008 p. 8; Mukandagijimana, T. 1 May 2008 pp. 6-7; Witness RDK, T. 17 April 2008 pp. 37, 40, 54, 79; T. 21 April 2008 p. 16; Witness RDY, T. 17 March 2008 pp. 36-37; Witness RDN, T. 18 February 2008 pp. 85-86; Witness RWZ, T. 27 February 2008 pp. 16, 20-21; T. 28 February p. 19; Witness GKR, T. 29 June 2004 p. 60.

[952] Witness GKM, T. 25 October 2004 p. 74; T. 26 October 2004 pp. 37-38; Witness RDI, T. 25 February 2008 pp. 35, 37.

[953] Witness RDH, T. 26 February 2008 pp. 10-11, 29; Witness RDC, T. 3 March 2008 p. 19; Witness RDI, T. 25 February 2008 pp. 13-14.

[954] Witness GTE, T. 1 December 2003 pp. 13-15, 31, 49.

[955] Witness GTE, T. 1 December 2003 p. 14.

[956] Witness RWF, T. 25 February 2008 p. 62; Witness RDI, T. 25 February 2008 pp. 24-25; Witness RDG, Deposition 31 January 2008 p. 8.

[957] Pendo Mtegha, T. 22 April 2008 p. 65; Exhibit 4D109 (Visu Kambaku Pendo Mtegha's curriculum vitae); Exhibit 4D110 (Map of the Kigarama Commune Office and Surroundings); Exhibit 4D111 (CD and Electronic Map).

[958] Witness GTE, T. 1 December 2003 p. 15.

credibility. Under the circumstances, the Chamber finds that Witness GTE's evidence is unreliable and it fails to corroborate Witness GKM's testimony.

648. Turning to the Defence evidence, Witness RDH's testimony raises doubts as to Mugiraneza's presence at this incident. Witness RDH took refuge at Rwatoro's home on 9 April 1994, and saw, from the window, a meeting attended by Emmanuel Mugiraneza at which weapons were distributed. However, the witness testified that Prosper Mugiraneza was not among those attending.[959]

649. In its Closing Brief, the Prosecution submits that Witness RDH is biased in favour of Mugiraneza.[960] To the extent that she has an alleged "friendly" relationship with Mugiraneza, she has an admittedly closer relationship with Rwatoro, who she incriminates.[961] Consequently, the Prosecution submission is without merit. The Prosecution also invited the Chamber to "observe that the witness was hiding in a room when the weapons were distributed", but the Prosecution does not challenge her ability to see the relevant events or individuals.[962] Further, the Chamber observes that Witness RDH left the house on 10 April 1994 and returned on 12 April, but failed to state this during her examination-in-chief.[963] Regardless, this omission does not affect her testimony regarding 9 April. The Prosecution does not dispute the fact that the witness was at Rwatoro's house on 9 April and relies on her evidence to corroborate Prosecution Witness GTE.[964] In addition, Witness RDH's description of Rwatoro's compound is consistent with the physical evidence of the same.[965]

650. For their part, Witnesses RDZ, RDF, RDH and Munyakayanza testified that it was not possible to see through the fence at Rwatoro's house as Witness GKM alleged.[966] Munyakayanza added that on 9 April 1994 he saw many people leaving Rwatoro's house, but did not see any government ministers.[967]

651. Witness RDE, a *Gacaca* Judge in Remera sector, heard evidence concerning the events in Kigarama commune from Jean-Éric Karamage. He testified to participating in meetings at Rwatoro's house, and listed the participants at these meeting. However, he did not mention Mugiraneza as attending.[968] The Chamber does not find this evidence conclusive, as the witness did not say whether Karamage specifically mentioned the 9 April 1994 meeting. Moreover, the testimony from Witness RDE is hearsay.

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[959] Witness RDH, T. 26 February 2008 pp. 10-25, 29; Exhibit 4D67 (Where Witness RDH Sought Refuge after 9 April 1994 Attacks); Exhibit 4D68 (Names of two Tutsis who stayed at Rwatoro's Home with Witness RDH).
[960] Prosecution Closing Brief, para. 1087.
[961] Prosecution Closing Brief, para. 1087.
[962] Prosecution Closing Brief, para. 1086; *see also* Witness RDH, T. 26 February 2008 pp. 14, 16, 19-27, 29 (describing where she was located and what she could see).
[963] Witness RDH, T. 26 February 2008 pp. 34-35.
[964] Prosecution Closing Brief, para. 1086 ("Furthermore she corroborated the testimony of Prosecution witness GTE with respect to the event, save that she did not see Prosper Mugiraneza.").
[965] Witness RDH, T. 26 February 2008 pp. 12-14; Exhibit 4D120 (Survey Map of Kigarama Commune Marked by Witness RDF).
[966] Witness RDZ, T. 30 April 2008 pp. 51-52; Witness RDF, T. 29 April 2008 pp. 28-30; Witness RDH, T. 26 February 2008 p. 13; Munyakayanza, T. 6 March 2008 p. 61; Exhibit 4D120 (Survey Map of Kigarama Commune Marked by Witness RDF).
[967] Munyakayanza, T. 6 March 2008 pp. 64-66; T. 10 March 2008 pp. 65-68.
[968] Witness RDE, T. 4 March 2008 pp. 18-19.

652. Witness RDE also stated that Witness GKM testified before her *Gacaca* court, but never mentioned Prosper Mugiraneza's name.[969] The Chamber does not find this dispositive, and notes that the witness might not have been questioned about meetings at Rwatoro's home when she testified.

653. Finally, the Mugiraneza Defence again points to the judgement of the Kibungo Court dated 7 November 1997. It notes that despite significant testimony at trial concerning meetings at Rwatoro's home in April 1994, Mugiraneza's name was not mentioned in the judgement. [970] The Defence also argues that one of the presiding judges, Jean Mukwaya Rusatira, and an accused in the Kibungo trial, Witness RDZ, confirmed that Mugiraneza's name was not in the judgement.[971] Finally, Prosecution Witness GJY, another accused in the same trial, testified that Mugiraneza's name was not mentioned during trial.[972]

654. The Chamber notes that the trial record was not entered into evidence in this case. Consequently, the judgement cannot be used to determine the breadth of the evidence concerning meetings at Rwatoro's home proffered at the Kibungo trial. Further, the Chamber observes that the judgement does not provide a summary of the prosecution witness testimony in the case, let alone specific details of the meetings at Rwatoro's home or a comprehensive list of accomplices. Thus, the Chamber finds that the absence of any reference to Prosper Mugiraneza in the Kibungo Judgement of 7 November 1997 does not necessarily mean that the account of the meeting at Rwatoro's house around 9 April 1994 by Witness GKM is false.

655. Nevertheless, several other witnesses, Witnesses RDA, Jean Munyakayanza, RDZ and RDK, confirmed that while they heard about meetings at Rwatoro's house, they did not hear the name of the Accused.[973] Witness RDA, a survivor, said that he participated in the *Gacaca* proceedings in his area. He never heard the name of Prosper Mugiraneza mentioned among all the evidence presented about Rwatoro's house meetings.[974]

656. In the Chamber's view, these testimonies, in conjunction with the absence of any testimony corroborating Witness GKM's evidence, create doubts regarding Mugiraneza's presence at the meeting on 9 April 1994.

657. Finally, the Chamber considers Mugiraneza's alibi evidence. Given the frailties of the Prosecution evidence, the alibi, supported by several witness testimonies, allows for the reasonable possibility that he stayed in Kigali on 9 April 1994 (II.14.1).

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[969] Witness RDE, T. 4 March 2008 p. 25.

[970] Mugiraneza Closing Brief, paras. 439-440. *See also* Exhibit 4D5(E, F & K) (Judgement of the Kibungo Court of First Instance).

[971] Rusatira, T. 21 April 2008 pp. 67-68; T. 22 April 2008 pp. 2-3, 16, 38, 46; Witness RDZ, T. 1 May 2008 pp. 61, 66; T. 5 May 2008 pp. 2-3.

[972] Witness GJY, T. 19 February 2004 pp. 23-24.

[973] Witness RDA, T. 26 February 2008 p. 56; Munyakayanza, T. 6 March 2008 pp. 64-65; T. 10 March 2008 pp. 65-68; Witness RDZ, T. 5 May 2008 p. 2; Witness RDK, T. 17 April 2008 pp. 25-26. Witnesses GJY and RDZ both testified that Jean de Dieu Munyangabe, who was convicted by the Kibungo Court for his participation in the genocide in Kigarama commune, told them that he participated in a meeting at Rwatoro's house after 6 April 1994. However, he did not mention Mugiraneza's name. Witness GJY, T. 19 February 2004 pp. 23-24; Witness RDZ, T. 5 May 2008 p. 3. Though it is significant that a Prosecution witness conceded this fact, it remains hearsay and of limited probative value.

[974] Witness RDA, T. 26 February 2008 p. 56.

658. Considering the uncorroborated nature of Witness GKM's testimony, the Defence evidence directly rebutting that Mugiraneza was at Rwatoro's home and Mugiraneza's alibi for the period, the Chamber is not satisfied beyond reasonable doubt that, on 9 April 1994, Prosper Mugiraneza attended a meeting at Rwatoro's house during which weapons were distributed. The evidence also fails to establish Mugiraneza had effective control over attackers or sufficient knowledge of attacks to establish his liability as a superior. In light of this finding, the Chamber need not consider objections related to insufficient notice.[975]

(iii) Killings at Kibungo Hospital after the 9 April 1994 Attack

659. The evidence establishes that the day after the attacks at the Kigarama commune office on 9 April 1994, several injured were taken by Emmanuel Mugiraneza to the Kibungo hospital. Prosecution and Defence witnesses testified about subsequent attacks at the hospital. The Prosecution, relying on Witness GKM, alleges that Emmanuel Mugiraneza claimed to be taking the injured for treatment, but they were subsequently killed.[976] Prosecution Witnesses GKS and GTF also provided relevant testimony. The Mugiraneza Defence contends that Witness GKM is unreliable, and her testimony is contradicted by Defence witnesses who were taken by Emmanuel Mugiraneza to the hospital to be treated.[977]

660. At the outset, the Chamber has no doubt that refugees were transported to Kibungo hospital by Emmanuel Mugiraneza, and that subsequent attacks occurred at the hospital. The presence of the refugees at the hospital and the attacks are confirmed by both Prosecution and Defence witnesses. However, there is no mention of Prosper Mugiraneza's involvement in the transportation of the refugees or presence at the hospital. The sole issue before the Chamber is whether Prosper Mugiraneza was indirectly linked with the killings at the hospital after the 9 April 1994 attack at the Kigarama commune office.

661. Witness GKM's evidence that Emmanuel Mugiraneza took the injured refugees to Kibungo hospital to be killed by an *Interahamwe* named Cyasa is brief, non-descript and hearsay.[978] She was told by unidentified survivors from the hospital about Cyasa's killings.[979] Although the evidence of Witnesses GKS and GTF corroborates Witness GKM's testimony that Emmanuel Mugiraneza took refugees to Kibungo hospital, who were later killed, their evidence lacked specific detail.[980] Witness GKS did not provide a basis for her evidence and Witness GTF obtained his information from an unidentified survivor of the hospital attack.[981]

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[975] The Chamber recalls that evidence relating to events occurring in Kibungo prefecture was only admitted to be considered against Mugiraneza for the allegations of conspiracy to commit genocide and complicity in genocide. Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004 (TC), 4 October 2004, p. 14.

[976] Prosecution Closing Brief, paras. 152, 275; Prosecution 21 November 2008 Document, Item Nos. 49, 72. The Chamber notes that in the Prosecution Closing Brief and Prosecution 21 November 2008 Document, it indicates that this event took place on 8 April 1994. Prosecution Closing Brief, paras. 152, 275; Prosecution 21 November 2008 Document, Item No. 49. However, Witness GKM testified that this incident took place the day after the grenade attack on the refugees. The Chamber has already found that this attack took place on 9 April 1994. II.6.3.ii. All the other evidence in the case shows that this event happened on 10 April 1994. This correction is reflected in the summary above.

[977] Mugiraneza Closing Brief, paras. 451-452.

[978] Witness GKM, T. 25 October 2004 pp. 65, 73-74; T. 26 October 2004 p. 12.

[979] Witness GKM, T. 26 October 2004 p. 12.

[980] Witness GKS, T. 25 March 2004 pp. 5-6, 23; Witness GTF, T. 14 October 2004 pp. 23-24.

[981] Witness GKS, T. 25 March 2004 p. 5; Witness GTF, T. 14 October 2004 pp. 23-24.

It is also unclear if the refugees described by Witness GTF came from the Kigarama commune office. Neither witness mentioned Cyasa.

662. The Defence witnesses corroborated the Prosecution evidence that Emmanuel Mugiraneza transported refugees to the hospital and that further attacks occurred there, but their testimony lacked sufficient detail of the attack or the role of Emmanuel Mugiraneza in the attacks.[982] Witness RDC, who was taken to the hospital, testified that Emmanuel Mugiraneza "sent his *Interahamwe*" to kill Tutsis there.[983] This evidence was brief and failed to provide a basis for knowledge. Interestingly, Witness RDC believed that Emmanuel Mugiraneza would not take orders from Prosper Mugiraneza because the *bourgmestre* was "a master in his own commune" and the witness did not see the two of them together.[984] Witness RDG, who was taken to the hospital by Emmanuel Mugiraneza purportedly on the orders of an unidentified military colonel, testified that Cyasa killed people who had taken refuge in the hospital, but he did not know why Cyasa committed such crimes.[985]

663. Notably, Prosecution Witness GJQ, who had a close association with Cyasa and would have been able to observe Cyasa's alleged actions with respect to the hospital, did not provide evidence regarding killings there. However, the Chamber notes that Witness GJQ may not have provided evidence in order to avoid incriminating himself.

664. The record about ensuing violence at Kibungo hospital lacks sufficient clarity and precision to allow the Chamber to make findings beyond reasonable doubt. Witness GJQ was in a unique position to corroborate other Prosecution evidence on this point, but did not do so. Furthermore, there is no evidence directly linking Prosper Mugiraneza to such killings or demonstrating knowledge of them sufficient to establish liability as a superior. Evidence linking him through the involvement of Emmanuel Mugiraneza or Cyasa is weak, particularly in light of the Chamber's findings related to Mugiraneza's involvement in preceding attacks on the Kigarama commune office. In light of this finding, the Chamber need not consider objections related to insufficient notice.[986]

(iv) Disarming and Killing of Brigadier Musonera on 11 April 1994

665. The Prosecution Closing Brief and Prosecution 21 November 2008 Document rely on Witness GKM, who contends that Brigadier Musonera was disarmed by the "communal

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[982] Witness RDI, T. 25 February 2008 pp. 18-20, 34, 39-40, 47-48 (Witness RDI and her husband were taken by Emmanuel Mugiraneza to the hospital, where attacks occurred; Witness RDI agreed with the suggestion that Emmanuel Mugiraneza did so knowing that they would be killed but did not explain why); Witness RWF, T. 25 February 2008 pp. 60-61, 80 (Witness RWF was not present, but learned that Emmanuel Mugiraneza took people to the hospital on 10 April 1994 after a grenade attack at the commune office); Witness RDA, T. 26 February 2008 p. 52 (Emmanuel Mugiraneza took injured people to the hospital on 10 April 1994 after a grenade attack on the commune office the previous evening).

[983] Witness RDC, T. 3 March 2008 p. 41; *see also* Witness RDC, T. 3 March 2008 pp. 23, 25-27.

[984] Witness RDC, T. 3 March 2008 p. 34.

[985] Witness RDG, Deposition 31 January 2008 pp. 31-33; Deposition 1 February 2008 pp. 2-4, 30-31, 45-46.

[986] The Chamber recalls that evidence relating to events occurring in Kibungo prefecture was only admitted to be considered against Mugiraneza for the allegations of conspiracy to commit genocide and complicity in genocide. Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004 (TC), 4 October 2004, p. 14.

authorities" at some point during 7 April 1994.[987] Nowhere in Witness GKM's testimony, however, did she mention Prosper Mugiraneza's role in this disarming of Musonera.

666. Prosecution Witness GKS, though not relied upon in the Prosecution's submissions, testified that at an unspecified time on 11 April 1994, Emmanuel Mugiraneza publicly stated that Prosper Mugiraneza had requested him to disarm Musonera.[988] In its Closing Brief, Mugiraneza's Defence challenges Witness GKS's testimony, saying it is uncorroborated and unreliable hearsay.[989]

667. Significantly, the Prosecution witnesses' evidence on the date of the disarming and killing of Musonera, a Tutsi communal policeman protecting the refugees at the Kigarama commune office, varies. While Witness GKS testified that this incident occurred on 11 April 1994, Witness GJQ testified it occurred on 12 April. Witness GKM contended it happened at some point after the alleged meeting at Rwatoro's house on 8 April, and Witness GTE stated it occurred on an unspecified date after 9 April. Not one of these Prosecution witnesses besides Witness GKS testified that Mugiraneza ordered the disarming or killing.[990] The parties do not, however, dispute that Prosper Mugiraneza was not present when Musonera was disarmed.[991]

668. Witness GKS's evidence was hearsay. More specifically, the witness testified that Emmanuel Mugiraneza announced that Prosper Mugiraneza ordered him to disarm Musonera. She provided no other basis for this knowledge.[992] Witness GKM's testimony did not corroborate this. Indeed, this witness stated that Emmanuel Mugiraneza did not explain the motives behind the disarming of Musonera.[993]

669. Turning to the Defence evidence, Witnesses RDA and RDC testified that Emmanuel Mugiraneza ordered the disarming of Musonera, but that Prosper Mugiraneza's name was never mentioned by Emmanuel Mugiraneza. Witness RDA further testified that he did not see Prosper Mugiraneza during the entirety of his stay at the commune office.[994]

670. Witness GKS's testimony implicating Prosper Mugiraneza is hearsay. It finds no support despite considerable Prosecution and Defence evidence concerning the event. Considering the above, the Prosecution evidence does not provide a sufficient basis for it to conclude beyond reasonable doubt that Prosper Mugiraneza ordered or was aware of the disarming and subsequent killing of Brigadier Musonera. In light of this finding, the Chamber need not consider objections related to insufficient notice.[995]

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[987] Prosecution Closing Brief, para. 152; Prosecution 21 November 2008 Document, Item No. 48.
[988] Witness GKS, T. 24 March 2004 pp. 60-61; T. 25 March 2004 pp. 3-4, 22, 26-28.
[989] Mugiraneza Closing Brief, paras. 457-466.
[990] Witness GKS, T. 24 March 2004 pp. 60-61; Witness GJQ, T. 10 March 2005 pp. 65-66; Witness GKM, T. 26 October 2004 pp. 19-20; Witness GTE, T. 1 December 2003 pp. 13-15.
[991] Although Witness GKM testified that she saw Prosper Mugiraneza on the same day Musonera was disarmed, she stated that Prosper Mugiraneza was not present for this event. Witness GKM, T. 26 October 2004 p. 19.
[992] Witness GKS, T. 24 March 2004 pp. 60-61; T. 25 March 2004 pp. 3-5, 22, 26-27.
[993] Witness GKM, T. 26 October 2004 pp. 19-20.
[994] Witness RDA, T. 26 February 2008 pp. 54-56; Witness RDC, T. 3 March 2008 pp. 32-33.
[995] The Chamber recalls that evidence relating to events occurring in Kibungo prefecture was only admitted to be considered against Mugiraneza for the allegations of conspiracy to commit genocide and complicity in genocide. Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004 (TC), 4 October 2004, p. 14.

6.4 Rescue of Vestine Ugiranyina from Rukara Parish, 9 April 1994

Introduction

671. The Indictment alleges that although the Accused were aware that from 7 April 1994 their subordinates were committing massacres of civilians, they took no measures to prevent these crimes or to punish the perpetrators. Specifically, in April 1994 about 3,000 Tutsis, including Mugenzi's sister-in-law Vestine Ugiranyina, were hiding at Rukara Parish in Kibungo. Around 9 April, Mugenzi sent soldiers to rescue only his sister-in-law, leaving the rest of the Tutsis hiding in the church to be massacred. This selective assistance is an example of Mugenzi's capacity to prevent massacres, yet his failure to do so. Prosecution Witness LEL provided relevant evidence.[996]

672. The Mugenzi Defence submits that insufficient notice was provided for this allegation and questions its criminal characterisation. Notwithstanding, the Defence does not dispute that Vestine Ugiranyina was rescued from Rukara Parish by gendarmes associated with Mugenzi but denies that they were sent by him. Indeed, Prosecution Witness LEL's uncorroborated and hearsay evidence about Mugenzi's involvement should not be relied upon. Relevant evidence was provided by Mugenzi, Vestine Ugiranyina, Edrada Mukagakwavu and Jeannette Uzamukunda.[997]

Evidence

Prosecution Witness LEL

673. Witness LEL, a Tutsi, lived in Rukara commune in 1994.[998] For two unspecified weeks in April 1994 she sought refuge with many other Tutsis in Rukara Parish, Karumbamba sector. While there, the church was attacked by *Interahamwe,* and refugees inside the church were killed. On an unspecified date, a soldier entered the church asking for Vestine. The "soldier" said: "[A]ll of you will be exterminated", causing Witness LEL to move away from him and hide deeper inside the church. She was subsequently told by other unidentified refugees that the soldier had left the church with Ugiranyina and another woman. Witness LEL did not see them leave. The soldier did not mention Mugenzi's name, but when he had left the church, the other refugees said that he had been sent by Mugenzi of the PL to get the woman. After the soldier left the church, unidentified individuals who were outside continued to attack with grenades and gunfire.[999] Witness LEL was eventually rescued by the RPF and taken to Gahini hill.[1000]

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[996] Indictment, paras. 6.14, 6.30-6.31, 6.35, 6.67-6.68; Prosecution Pre-Trial Brief, para. 189 (pp. 41-42), Annex, p. 99; Prosecution Closing Brief, paras. 186, 411-415, 433-435; Prosecution 21 November 2008 Document, Item No. 55; Prosecution Closing Arguments, T. 1 December 2008 p. 65.
[997] Mugenzi Closing Brief, paras. 275, 404, 1254-1287; Mugenzi Closing Arguments, T. 2 December 2008 p. 84.
[998] Exhibit P27 (Witness LEL's Personal Information Sheet).
[999] Witness LEL, T. 16 February 2004 pp. 12-13, 20-33, 39, 43-45, 48-49, 53-56.
[1000] Witness LEL, T. 16 February 2004 pp. 35-36.

Mugenzi

674. Mugenzi denied any involvement in the rescue of Vestine Ugiranyina from the church at Rukara Parish, or having had any knowledge about it at the time. On 7 April 1994, after hearing that Habyarimana had been killed, Mugenzi sent his driver and one of his guards to collect his mother from his sister's house in Kanombe, Kigali, and bring her to his home in Kigali. Mugenzi later learned that when his driver arrived there, she instructed him to take her immediately to her husband in Rukara commune, Kibungo. The driver did not inform Mugenzi of the change in plan. On arrival in Rukara, Mugenzi's father expressed concern about Mugenzi's mother-in-law and requested the driver to go and pick her up. When Mugenzi's mother-in-law and two children returned to Mugenzi's mother's home, his mother-in-law asked the driver to go and get Vestine Ugiranyina, the children's mother. Consequently, Mugenzi's mother-in-law, his driver, and a gendarme drove first to Ugiranyina's house, where they learned that she had gone to Rukara Parish. They drove to the church and retrieved Ugiranyina and her niece. They were then driven to Mugenzi's father's home.[1001]

675. In Gitarama, around 20 April 1994, Mugenzi arranged for Ugiranyina, her mother, her children, and her niece to have a place to stay, and left them under the protection of the Gitarama prefect. Mugenzi did not leave them any guards.[1002]

Mugenzi Defence Witness Vestine Ugiranyina

676. Vestine Ugiranyina, a Tutsi, is Mugenzi's sister-in-law and was living in Rukara commune, Kibungo prefecture, in 1994.[1003] Around 4.00 or 5.00 p.m. on 7 April 1994, after earlier hearing of President Habyarimana's death, she left her home to seek shelter at the church in Rukara Parish. When she arrived, there were more than 1,000 Tutsi refugees in the church and surrounding halls and fields. She hid in rooms behind the church with others, including Claudine, her husband's niece. Outside she could hear "people" saying "we are about to be killed" and Hutu militias saying "we will be killing you". During the night of 8 April she heard gunfire and grenade explosions and people were screaming. The next morning she saw dead bodies near the church and in the compound.[1004]

677. Around 3.00 p.m. on 9 April 1994, an unidentified person came to the window of the room in which she was hiding and told her that there were gendarmes outside who were asking for her. Frightened that they might kill her, she nonetheless decided to go outside, as she thought it better to die alone than to get everyone in the room killed. Claudine followed her and they went towards a gate near the main road. There, they met two armed gendarmes whom she recognised from Mugenzi's home. They greeted Ugiranyina and informed her that her mother, who was outside in a vehicle, had sent them to collect her. The gendarmes looked frightened and told Ugiranyina to hurry, as they were worried about being attacked.[1005]

[1001] Mugenzi, T. 9 November 2005 pp. 83-85.
[1002] Mugenzi, T. 9 November 2005 pp. 82, 85.
[1003] Ugiranyina, T. 19 April 2006 p. 64; Exhibit 2D95 (Vestine Ugiranyina's Personal Information Sheet).
[1004] Ugiranyina, T. 19 April 2006 pp. 68-71; T. 20 April 2006 pp. 22-23, 37-38.
[1005] Ugiranyina, T. 20 April 2006 pp. 2-6, 23-24, 36; Exhibit 2D96 (Map Showing Location of Rukara Parish Church, Vestine's House and Route Walked to Front Gate).

678. Ugiranyina and Claudine were taken to a white Mitsubishi pick-up truck in which Ugiranyina's mother and two additional gendarmes were waiting. The gendarmes said "[y]our mother who sent us to fetch you, so you enter and join her". All four of the gendarmes were familiar to her, and she to them, as they had seen each other whenever she went to Mugenzi's house. Ugiranyina's mother informed her that Mugenzi's mother had sent for them to all go to her home, along with Vestine's children, as the situation was very bad in Gahini and people were being killed. As a result, her mother had requested the gendarmes to rescue her from the church. They obeyed in part because they knew that her mother was Mugenzi's mother-in-law, but also out of their kindness. She denied that Mugenzi requested the gendarmes to rescue her, but rather said it was her mother.[1006]

679. The gendarmes then drove them to Mugenzi's mother's home where they found Mugenzi's parents, his sister Jeaninne and her children, as well as Ugiranyina's children. They all stayed for three days before departing for Kibungo town on 12 April 1994 in transport arranged by Jeaninne.[1007]

680. On 15 April 1994 they departed Kibungo for Gitarama prefecture, first staying in Shyogwe at the home of Mugenzi's friend, Baptista Kamugisha. After staying there "some days", Mugenzi arrived and arranged for Vestine, her mother and children to move elsewhere. At an unknown later date, Mugenzi's sister Christine arrived with some gendarmes to take them to a house behind the Democracy stadium, in Gitarama town. Mugenzi had also arranged for them to receive some travel documents from Fidèle Uwizeye, the Gitarama prefect.[1008]

Mugenzi Defence Witness Edreda Mukagakwavu

681. Edreda Mukagakwavu, a Hutu, is Mugenzi's mother and was living in Rukara commune, Kibungo prefecture in 1994.[1009] On 9 April 1994, Mukagakwavu requested Mugenzi's driver to take her, her daughter Jeannine, and Jeannine's children from her daughter's house in Kanombe, Kigali to Rukara. He accepted, stating that he would go to his home in Kabuga first and then take her to Rukara. He left and returned some time later with three "soldiers" and a vehicle. On the way they passed the home of Mugenzi's mother-in-law and Mukagakwavu requested that the driver stop as she knew that the mother-in-law had children. After conversing with her, Mukagakwavu then asked the driver to go back and pick up Mugenzi's mother-in-law and her children. The driver subsequently brought Mugenzi's mother-in-law and the children to Mukagakwavu's home. Mugenzi's mother-in-law then requested that the driver go to Rukara Parish to pick up Vestine Ugiranyina, the children's mother. After about one hour, Mugenzi's mother-in-law returned to Mukagakwavu's house along with Ugiranyina and Claudine. They all stayed at Mukagakwavu's house in Rukara commune for three days until they left for Kibungo town for three days, in a vehicle hired by her daughter.[1010]

[1006] Ugiranyina, T. 20 April 2006 pp. 6-9, 27-29, 36, 43.
[1007] Ugiranyina, T. 20 April 2006 pp. 8-10.
[1008] Ugiranyina, T. 20 April 2006 pp. 10-19, 23-29, 36.
[1009] Mukagakwavu, T. 24 April 2006 pp. 5, 7.
[1010] Mukagakwavu, T. 24 April 2006 pp. 9-11.

Mugenzi Defence Witness Jeannette Uzamukunda

682. Jeannette Uzamukunda, a Tutsi, is Mugenzi's wife and Vestine Ugiranyina's older sister.[1011] Uzamukunda testified that the gendarmes who were assigned to Mugenzi were not under his control and he could not order them to do things. Rather, they were under the control of the gendarmerie.[1012]

Deliberations

683. There is no dispute that Vestine Ugiranyina, along with possibly more than 1,000 other primarily Tutsi refugees took refuge at Rukara Parish around 7 April 1994. During Ugiranyina's stay, attackers, described by Witness LEL as *Interahamwe*, launched an assault as early as 8 April. According to Ugiranyina, firearms and grenades were employed in the attack. Prosecution Witness LEL and Ugiranyina confirmed that many persons who sought refuge there had been killed.

684. The Mugenzi Defence also agrees that Ugiranyina was rescued from the church at Rukara Parish by gendarmes in Mugenzi's security detail or persons cooperating with them. The Prosecution has presented this event as evidence of Mugenzi's ability to prevent massacres and knowledge that Tutsis were being killed at Rukara Parish. The Mugenzi Defence, however, contends that he was unaware both of the involvement of his security detail in this operation and that killings were occurring at Rukara Parish.[1013]

685. The Prosecution did not lead any direct evidence that Mugenzi knew that the Tutsi refugees in Rukara Parish were going to be massacred. Rather, it invites the Chamber to infer this knowledge based on Witness LEL's evidence that Mugenzi sent "soldiers" to rescue Ugiranyina. Witness LEL was the only witness to testify that Ugiranyina was rescued by soldiers on Mugenzi's orders.[1014]

686. At the outset, the Chamber accepts that Witness LEL sought refuge in the church at Rukara Parish in April 1994. The fundamental features of Witness LEL's evidence about attacks there and the rescue of Ugiranyina are corroborated by Defence evidence. The Chamber has considered that the Defence attempts to undermine her credibility, by pointing out how her testimony has evolved from prior statements to Tribunal investigators or the Prosecution, does little to undermine the central, undisputed aspects of her evidence.[1015]

[1011] Uzamukunda, T. 20 April 2006 pp. 47-48; Exhibit 2D98 (Witness Uzamukunda's Personal Information Sheet).
[1012] Uzamukunda, T. 20 April 2006 pp. 47-48; T. 21 April 2006 p. 20.
[1013] Mugenzi Closing Brief, paras. 1256, 1265; Mugenzi Closing Arguments, T. 2 December 2008 p. 84.
[1014] The Mugenzi Defence mistakenly notes at para. 1256 of its Closing Brief that Witness LEL did not give any evidence about who had ordered the gendarmes to go to Rukara Parish.
[1015] For example, the Mugenzi Defence noted that in a prior statement to Tribunal investigators in 2001, Witness LEL could not recall the name of who was rescued but identified Ugiranyina by name while testifying. *Compare* T. 16 February 2004 p. 43 (reading of Witness LEL's prior statement, indicating "I no longer recall her name") *and* T. 16 February 2004 p. 39 (testifying that once she heard Vestine's name in the church, she remembered it "from that date on"). Witness LEL explained that given the traumatic nature of the events, it was difficult to recall events but that she had known Vestine's name for "quite a while". Witness LEL, T. 16 February 2004 pp. 42-43, 54. *Compare* T. 16 February 2004 pp. 43-44, 48 (reading of her will-say statement, which states: "[t]his Vestine was the only refugee this witness knew of to have been saved from the Rukara church massacre by the intervention of a person in authority") *and* T. 16 February 2004 p. 33 (testifying that a second woman was rescued with Vestine). Witness LEL clarified that she had not seen the other woman leave with Vestine but had

687. Nonetheless, Witness LEL's testimony does not implicate Mugenzi in the attack on Rukara Parish. Specifically, she did not describe Mugenzi as being present during the assault, or the attackers, which she referred to as *Interahamwe*, as following Mugenzi's orders. Likewise, she gave no evidence to suggest that the security personnel who saved Ugiranyina, whom she called soldiers, participated in the attacks at Rukara Parish. Her evidence that Mugenzi had sent these soldiers to save Ugiranyina is second-hand, and thus of limited probative value.[1016]

688. The Prosecution's assertions that Mugenzi must have known and that the gendarmes would not have acted without his approval are not supported by the evidence.[1017] Mugenzi and Defence Witnesses Ugiranyina and Mukagakwavu have testified that although a driver and security personnel that were assigned to protect Mugenzi did extract Ugiranyina and her husband's niece, Claudine, they did so without Mugenzi's knowledge. Their evidence tends to suggest that Mugenzi was likewise unaware of what was occurring at Rukara Parish at that time.[1018] The Defence has also presented evidence that Mugenzi was not in control of the gendarmes assigned to him, but rather they were under the control of the gendarmerie.[1019]

689. The Chamber views the testimony of Mugenzi and the Defence witnesses with suspicion. Mugenzi has an interest in denying his ability to control soldiers and gendarmes, who, in the Indictment, are part of a category of assailants for which the Prosecution seeks to hold him responsible.[1020] Likewise, Defence Witnesses Ugiranyina, Mukagakwavu and Uzamukunda are close personal relations and received protection from him during the events of 1994.[1021]

690. Nevertheless, the Chamber also observes that there is undisputed evidence that on 9 April 1994, the day Ugiranyina and Mukagakwavu testified Ugiranyina's extraction from Rukara Parish occurred, Mugenzi was sworn in as a member of the Interim Government, involved in meetings and conveying instructions to MRND and *Interahamwe* leaders to stop killings throughout Kigali (II.7.2; II.7.3).

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heard about it and that at the time of her interview it was difficult to recall all the details about the event. Witness LEL, T. 16 February 2004 pp. 52-53.

[1016] Witness LEL, T. 16 February 2004 pp. 33 ("They [refugees] only said that it was Mugenzi who had sent these soldiers to come and take that woman."), 52 ("Q: I think you have made it plain in your evidence today that the soldiers did not mention Mugenzi's name; is that right? A: That's correct; he never mentioned his name."), 53 ("The soldiers did not say that [Mugenzi ordered them to get Vestine] while I was – it was in my earshot; it was stated by the refugees who were with me."), 56 ("Q: And he, or they [soldiers], never mentioned the name of Mugenzi, that's clear. A: The name was mentioned by the refugees.").

[1017] Prosecution Closing Brief, para. 413.

[1018] Mugenzi explains that on the day of the rescue he had sent his driver out to get his mother, Edreda Mukagakwavu, to bring her back to his home in Kigali. After the driver left he had no other contact with him, and was thus unaware that the driver agreed with Mukagakwavu to some detours, including picking up Ugiranyina. Mugenzi, T. 9 November 2005 p. 82. Defence Witnesses Vestine Ugiranyina and Edreda Mukagakwavu corroborate his testimony. Mukagakwavu, T. 24 April 2006 p. 9; Ugiranyina, T. 20 April 2006 pp. 7-8, 27-29, 43.

[1019] Uzamukunda, T. 21 April 2006 p. 20.

[1020] *See* Indictment, paras. 5.36-5.37, 6.14, 6.35, 6.37, 6.61, 6.63, 6.65.

[1021] In Gitarama Mugenzi arranged housing for Ugiranyina and her family, and protection by the Gitarama prefect. Mugenzi, T. 9 November 2005 p. 82. On 15 April 1994, Ugiranyina and her family stayed with Mugenzi's friend, Baptista Kamugisha, in Shyogwe, Gitarama. He later arranged for them to move to a house behind Democracy stadium in Gitarama town and for them to receive travel documents from Fidèle Uwizeye, the Gitarama prefect. Ugiranyina, T. 20 April 2006 pp. 13-14, 25-29. Mugenzi sent a driver and a guard to get his mother in Kigali and bring her to him. Mukagakwavu, T. 24 April 2006 pp. 9-10.

691. The Chamber has also considered evidence from Mugenzi, Bizimungu and former Minister André Ntagerura that telephone communication in Kigali had been disrupted.[1022] There is other evidence that travel between the two prefectures was also difficult. Specifically, the driving distance between Kigali and Rukara commune was significant.[1023] Additionally, there is evidence tending to suggest that roadblocks could have impeded travel and that some of the area was under RPF control.[1024] In the Chamber's view, this evidence raises further questions about whether Mugenzi was aware of what was occurring at Rukara Parish when he sent his car and driver to pick up his mother in Kigali on 7 April 1994.

692. It is also reasonable to conclude that, once in the company of Mugenzi's family, Mugenzi's security detail would have acted on their orders alone. Given all of the above, it is not unlikely that Mugenzi lacked knowledge about attacks on Rukara Parish or the details of what his security personnel were doing once having gone to assist his family.

693. Finally, the Chamber does not consider that Witness LEL's uncorroborated hearsay evidence provides a sufficient basis for it to conclude beyond reasonable doubt that Mugenzi sent security personnel, whether they be soldiers or gendarmes, to rescue Vestine Ugiranyina and her husband's niece, Claudine, knowing that attacks on Tutsis had occurred or were going to occur at Rukara Parish. Furthermore, the evidence fails to establish that Mugenzi gave orders to any category of assailants participating in the attack, or that any were his subordinates. Based on the foregoing, the Chamber need not address notice challenges.

6.5 Killings at the Saint Joseph Economat, 15 April 1994

Introduction

694. The Indictment alleges that, from 7 April 1994, massacres of the Tutsi population were perpetrated by militiamen, military personnel and gendarmes on the directives or to the knowledge of authorities, including the four Accused. Specifically, the Prosecution alleges that Colonels Rwagafilita and Nkuriyekubona, who were in charge of the massacres in Kibungo, ordered Witness GJQ to kill people who were hiding at the Economat on 15 April. It submits that government officials, including Prosper Mugiraneza, were aware of this

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[1022] For example, Mugenzi testified that there were no mobile phones in Rwanda in 1994. He also testified that telephones outside Kigali were broken down as the central system of Rwandan telephones had been blown up in the first week of the war and were only restored after the war. Mugenzi, T. 9 November 2005 pp. 53-54. Bizimungu testified that on 8 April 1994 most lines of communication from Kigali were cut and a couple of days later all lines of communication were out because the RPF had bombed telecommunication systems in Kigali. Bizimungu, T. 4 June 2007 pp. 44-45. Former Minister André Ntagerura testified that from 6 to 7 April 1994 the RPF destroyed the central telecommunications system in Kigali, cutting off all communication with other prefectures and the outside world. Ntagerura, T. 19 February 2007 p. 22. *But see* Makeli, T. 30 October 2007 p. 25 (agreed that by 23 April 1994, phone lines in Kacyiru and Remera were not working but those close to Radio Rwanda in Kigali were).

[1023] Former Minister André Ntagerura testified that, under normal conditions, travel from Kigali to Kigarama would take about 1 hour and 20 minutes. Ntagerura, T. 19 February 2007 p. 20. Paul Mujyambere testified that the drive from Kigarama to Rukara is about 30 kilometres. Mujyambere, T. 6 May 2008 p. 7; *see also* Exhibit 1D24 (Administrative and Roads Map of Rwanda); Exhibit 1D39(A) (Administrative and Roads Map of Rwanda).

[1024] Defence Witnesses WFQ1 and Antoine Nyetera testified that the Kigali-Kibungo road was impassable because of its location in a zone of combat controlled by the RPF. Witness WFQ1, T. 4 October 2006 pp. 48-49; Nyetera, T. 26 September 2006 p. 13.

massacre. The Prosecution relies on the evidence of Witness GJQ.[1025] The Mugiraneza Defence contends that Witness GJQ's testimony lacks credibility. Mugiraneza and Witness RWU provided relevant evidence.[1026]

Evidence

Prosecution Witness GJQ

695. Witness GJQ, a Hutu, lived in Kibungo sector, Birenga commune, Kibungo prefecture.[1027] On 14 April 1994, he met with Colonels Rwagafilita and Nkuriyekubona, as well as Lieutenant Mihigo, at Camp Huye military barracks, where they planned the attack and the massacre of Tutsis at the priests' quarters in the Economat. The Bishop of Kibungo diocese, who also attended the meeting, pleaded for mercy, but they told him he would also be killed if he did not stop.[1028]

696. On 15 April 1994, around 3.30 p.m., Colonels Rwagafilita and Nkuriyekubona told Witness GJQ to begin the attack. Witness GJQ, together with soldiers and more than 100 *Interahamwe*, met up with a company of soldiers from Kahuye and civilians gathered by Lieutenant Mihigo. The soldiers and Mihigo led the attack and Witness GJQ arrived later with *Interahamwe*. Five hundred people were killed and the Economat was looted.[1029]

697. On 16 April 1994, Colonels Rwagafilita and Nkuriyekubona sent Witness GJQ back to the Economat to see if there were any injured survivors. Witness GJQ, with the assistance of the Bishop, tried to hide the fact that there were injured persons. However, on 18 April, Colonel Nkuriyekubona learned of the survivors when the Bishop sought treatment for them. Subsequently, Nkuriyekubona ordered Witness GJQ to kill them. Witness GJQ together with soldiers and *Interahamwe* transported the injured people and Father Michel to an unidentified location where they were killed by guns and clubs.[1030]

698. According to Witness GJQ, although he did not see Prosper Mugiraneza in Kibungo after 3 April 1994, he believed that Mugiraneza was aware of every killing occurring in the prefecture. Specifically, the killing of Tutsis was discussed at a 1 April meeting and even

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[1025] Indictment, paras. 5.1, 5.36, 6.14, 6.36; Prosecution Closing Brief, paras. 143, 178, 380; Prosecution 21 November 2008 Document, Item Nos. 41-42; Prosecution Closing Arguments, T. 1 December 2008 p. 12. The Chamber notes that the Economat and Saint Joseph's are the same complex and that the parties have used both terms interchangeably. Witness GJQ, T. 10 March 2005 p. 45; Witness RWU, T. 5 June 2008 pp. 27-28. In order to avoid confusion, the Chamber will use "Economat" when referring to that dual location.

[1026] Mugiraneza Closing Brief, paras. 114-124, 194-206, 467-475; Mugenzi Closing Brief, para. 390 (arguing that the evidence fails to show the Accused's liability).

[1027] Witness GJQ, T. 9 March 2005 pp. 37-38; T. 10 March 2005 pp. 24, 34, 37; Exhibit P86 (Witness GJQ's Personal Information Sheet). Witness GJQ fled Kibungo town on 22 April 1994 and left Rwanda for Zaire in July 1994. Upon his return to Rwanda in April 1999, he surrendered himself to the authorities. He pleaded guilty on 15 August 1999. He confessed to ordering the killing of one person and leading attacks which killed others. He first appeared in the Court of First Instance of Kibungo in 2000. Witness GJQ was tried and sentenced to death in 2001. He appealed his sentence and, at the time of his testimony, he was awaiting a decision regarding his appeal. Witness GJQ, T. 9 March 2005 pp. 39-40; T. 14 March 2005 pp. 21-23, 26-28; T. 15 March 2005 pp. 3, 7-9, 37-41; T. 16 March 2005 p. 20; Exhibit P213 (Judgement of the Kibungo Court of First Instance).

[1028] Witness GJQ, T. 10 March 2005 pp. 45, 58, 63-65; T. 14 March 2005 pp. 7-8; T. 16 March 2005 pp. 28-33.

[1029] Witness GJQ, T. 10 March 2005 pp. 60, 63-65; T. 14 March 2005 pp. 7, 19-23.

[1030] Witness GJQ, T. 14 March 2005 p. 8; T. 16 March 2005 pp. 34-35, 37-49.

though Mugiraneza was not present, he received a sealed report about the meeting on 3 April at a meeting attended by Witness GJQ (II.6.1).[1031]

699. Further, Witness GJQ described the relationship between Prosper Mugiraneza and Rwagafilita as "extremely close" and said that "they thought the same way". Whenever Witness GJQ saw Mugiraneza, he was always with Rwagafilita. Although Mugiraneza was in a different location than Witness GJQ at the material time, Witness GJQ testified that information was passed to Mugiraneza daily by Colonel Rwagafilita in April 1994 via telephone and military radio. Witness GJQ knew this because he was with Rwagafilita every day and was aware of the activities of the colonels. In addition, Witness GJQ met Ferdinand Kabagema in July 1994 in Cyangugu and Kabagema told him that the leaders, including Mugiraneza, were aware of everything happening in the country. However, Witness GJQ was not aware of telephone communications being cut around 8 April; he only knew that the military radio network was functional in Camp Huye.[1032]

Mugiraneza

700. Mugiraneza denied his involvement in and knowledge of the Kibungo killings. Specifically, he rejected Witness GJQ's evidence that he had received plans related to killings on 3 April 1994 (II.6.1). Furthermore, on 12 April, he left Kigali and went to the Murambi Centre in Gitarama prefecture with the rest of the Interim Government. On 13, 16, 17 and 18 April, Mugiraneza attended cabinet meetings at the Murambi Centre. Mugiraneza testified that the Murambi Centre in Gitarama had one operational telephone line, but he did not know if it was an international or domestic line as he never used the telephone. There were also computers but he was not sure how many.[1033]

701. Mugiraneza's relationship with Rwagafilita, a former Chief of Staff of the gendarmerie and cabinet member under President Juvénal Habyarimana, was strictly social. Mugiraneza had no information regarding Rwagafilita's alleged role in the killing of Tutsis and after 6 April 1994 received no communications from Rwagafilita.[1034]

Mugiraneza Defence Witness RWU

702. Witness RWU, a Tutsi, lived in Birenga commune, Kibungo prefecture, in 1994 and had knowledge of the relevant activities of the Bishop of Kibungo, Fréderic Rubwejanga.[1035] Around 7 April 1994, refugees started arriving at the Economat, which were offices and a guest house managed by the Kibungo diocese. By 10 April, there were approximately 3,000 Tutsis and moderate Hutus staying there. On 14 April, the Bishop attempted to negotiate with Colonel Anselme Nkuriyekubona, the commander of the Kibungo military barracks, for more

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[1031] Witness GJQ, T. 10 March 2005 pp. 46-48; T. 14 March 2005 pp. 11-14; T. 16 March 2005 p. 50.
[1032] Witness GJQ, T. 14 March 2005 pp. 8-18, 26; T. 16 March 2005 pp. 49-50, 53-54; T. 17 March 2005 pp. 42-45.
[1033] Mugiraneza, T. 22 May 2008 pp. 48-52; T. 2 June 2008 pp. 44-45; T. 3 June 2008 pp. 11, 20; T. 5 June 2008 p. 12.
[1034] Mugiraneza, T. 21 May 2008 pp. 4-14; T. 27 May 2008 pp. 6-7; T. 2 June 2008 pp. 67-71; T. 3 June 2008 pp. 3-6, 26-27, 55; T. 5 June 2008 pp. 8-10.
[1035] Witness RWU, T. 5 June 2008 pp. 24-25; Exhibit 4D136 (Witness RWU's Personal Information Sheet).

protection for the refugees, who were being threatened by militiamen. The Bishop was unsuccessful.[1036]

703. On 15 April 1994, starting around 3.00 p.m., a policeman called Mihigo led attackers, including *Interahamwe*, who used guns, machetes and grenades and killed about 3,000 refugees over the course of two hours. On 16 April, the Bishop and surviving priests tried to assist the injured refugees. That day, Witness GJQ returned with two trucks and people to dispose of the bodies.[1037]

704. On 17 April 1994, Witness GJQ brought about 20 children and a woman to the Bishop and asked him to take care of them. There were also around 50 injured people inside the Economat. The next day at the military camp, the Bishop met with Colonels Nkuriyekubona and Rwagafilita to ask for their assistance with the survivors. However, upon returning to the Economat, he found that all of the survivors had been taken away. The Bishop returned to the military barracks and was advised by Witness GJQ that the survivors had been killed by him and unidentified others.[1038]

Deliberations

705. The Prosecution alleges that government officials, including Prosper Mugiraneza, were aware of the massacre at the Economat on 15 April 1994. The Mugiraneza Defence does not specifically address the massacre at the Economat in its closing submissions, but generally submits that Witness GJQ is not credible.

706. Prosecution Witness GJQ is the sole person to give evidence that Mugiraneza was aware of the killings at the Economat in April 1994. At the outset, the Chamber accepts that Witness GJQ was present at and involved in the attacks there, as corroborated by Defence evidence. However, a confessed accomplice in the Economat massacre, Witness GJQ's death sentence was on appeal at the time of his testimony.[1039] He expressly asked that the Chamber assist in removing his responsibility for crimes he committed in Kibungo and place the responsibility on Mugiraneza.[1040] Under the circumstances, the Chamber is concerned that his testimony in this trial may be motivated by a desire to positively influence his appeal proceedings. Furthermore, the Chamber has elsewhere expressed its reservations about Witness GJQ's testimony as it relates to other purported events implicating Mugiraneza in crimes in Kibungo (II.6.1). Consequently, his evidence is viewed with appropriate caution.

707. The Defence challenged Witness GJQ's credibility by submitting that he falsely alleged that the Bishop and a priest were involved in the massacre at the Economat.[1041] When confronted with this submission, Witness GJQ was consistent in his explanation that the Bishop had betrayed the survivors by contacting the colonels (in order to seek assistance) even though Witness GJQ warned the Bishop against it.[1042] The Chamber also reviewed the evidence of Witness RWU, who testified that Witness GJQ gave testimony in the *Gacaca*

[1036] Witness RWU, T. 5 June 2008 pp. 27-32, 46-48.
[1037] Witness RWU, T. 5 June 2008 pp. 33-35, 44-45.
[1038] Witness RWU, T. 5 June 2008 pp. 35-41.
[1039] Witness GJQ, T. 9 March 2005 pp. 39-40; T. 10 March 2005 pp. 63-65; T. 14 March 2005 pp. 19-23, 27-28; T. 15 March 2005 pp. 3, 37-41; T. 16 March 2005 p. 20.
[1040] Witness GJQ, T. 14 March 2005 pp. 19-20.
[1041] Mugiraneza Closing Brief, paras. 115, 124; *see also* Witness RWU, T. 5 June 2008 pp. 41-42.
[1042] Witness GJQ, T. 16 March 2005 pp. 37-38, 40-41, 44-45.

court against Charles Mudahinyuka, a priest. The *Gacaca* court did not take Witness GJQ's evidence into consideration and the priest was acquitted.[1043] Although this evidence raises questions regarding Witness GJQ's credibility, it alone is not dispositive.

708. The Defence also challenged Witness GJQ's credibility with respect to his October 1999 statement. In it, the witness described his involvement in the execution of survivors at the Economat, which occurred on 23 and 24 April 1994.[1044] However, Witness GJQ testified that the event happened on 18 April and he fled Kibungo on 22 April.[1045] When confronted with his prior statement, Witness GJQ explained that at the time of his statement he had just returned from exile, so he was not yet at ease and did not remember exact dates.[1046] He maintained that the statement was correct, but this explanation does not clarify which date the survivors were killed.[1047] The Chamber also notes that in his October 1999 statement, Witness GJQ stated the massacre at the Economat occurred on 17 April 1994, whereas he testified that the attack happened on 15 April.[1048] Although the witness was not confronted with this inconsistency, it raises questions regarding his reliability. Regardless, given the circumstances of his interview and the minor discrepancy of dates, the witness's explanation regarding these specific inaccurate dates is reasonable.

709. Turning to the merits of the allegation, the Chamber notes that it is not alleged that Mugiraneza was physically present in Kibungo prefecture on 14 April 1994 for the planning meeting at Camp Huye, on 15 April when the first attack on the Economat occurred or on 18 April when the survivors were killed. Indeed, the record before the Chamber indicates that Mugiraneza left Kigali for Gitarama with the Interim Government on 12 April (II.8.1; II.14.1) and participated in meetings there around or on these dates (II.8.5; II.9.1). Nonetheless, Witness GJQ testified that Mugiraneza was in communication with Colonel Rwagafilita during the relevant time period and was aware of the killings in Kibungo prefecture.[1049]

710. Specifically, Witness GJQ testified that Colonel Rwagafilita told him that he kept Mugiraneza informed of activities in Kibungo by telephone and radio contact.[1050] However, his evidence, which is not corroborated, does not reflect that he observed these conversations. Witness GJQ also testified that, in July 1994, Kabagema told him that the Ministers of the Interim Government were aware of all massacres throughout Rwanda.[1051] The information received from Kabagema is hearsay, uncorroborated and extremely general, failing to directly implicate Mugiraneza. Furthermore, the Chamber elsewhere considered evidence that communication was disabled both in Kigali starting on 7 April and in Gitarama when the Government arrived there on 12 April.[1052]

711. The Chamber has elsewhere rejected Witness GJQ's evidence that Mugiraneza was involved in the planning of the genocide prior to 6 April 1994 (II.6.1). Indeed, Mugiraneza

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[1043] Witness RWU, T. 5 June 2008 pp. 42-43.
[1044] Exhibit 1D59(E) (Witness GJQ's Statement, 20 October 1999) p. 5.
[1045] Witness GJQ, T. 14 March 2005 pp. 26-28; T. 15 March 2005 pp. 7-10; T. 16 March 2005 pp. 40-43.
[1046] Witness GJQ, T. 15 March 2005 p. 12.
[1047] Witness GJQ, T. 15 March 2005 p. 12.
[1048] Witness GJQ, T. 10 March 2005 p. 63; Exhibit 1D59(E) (Witness GJQ's Statement, 20 October 1999) p. 5.
[1049] Prosecution Closing Arguments, T. 1 December 2008 p. 12.
[1050] Witness GJQ, T. 14 March 2005 pp. 14, 17-18.
[1051] Witness GJQ, T. 14 March 2005 pp. 14-17.
[1052] *See* Ntamabyaliro, T. 22 August 2006 p. 3 (telephone lines were cut when the government arrived in Murambi on 12 April 1994). *See also* II.6.4.

testified that the last time he was in Kibungo was 3 April, which is corroborated by Witness GJQ's evidence.[1053]

712. Considering the uncorroborated hearsay evidence provided by Witness GJQ, as well as the Chamber's reservations about the witness generally, there is reasonable doubt that Mugiraneza was in contact with Rwagafilita during the planning and execution of the Economat massacre. Consequently, the Prosecution has failed to establish beyond reasonable doubt that Mugiraneza was involved in, or had knowledge of, the massacres occurring at the Economat in Kibungo on 15 April 1994 or the killing of injured persons on 18 April. In light of this finding, the Chamber need not consider objections related to insufficient notice.[1054]

7. KIGALI PREFECTURE, 6 – 12 APRIL 1994

7.1 Meeting and Distribution of Weapons in Kabuga, 6, 7 and 9 April 1994

Introduction

713. The Indictment alleges that from late 1990 to July 1994, all four Accused conspired amongst themselves and others to exterminate Tutsi civilians and eliminate members of the opposition. A component of this plan included the distribution of weapons to militiamen and certain civilians with the intent to exterminate the Tutsi population and its accomplices. More specifically, the Prosecution alleges that, on 6 April 1994, Bicamumpaka and others met at Joseph Sebisogo's house in Kabuga and Bicamumpaka ordered the *Interahamwe* to hunt down and kill Tutsis. Bicamumpaka returned to Kabuga on 9 April with weapons, which he gave to *Interahamwe* leaders to distribute. Following this, the massacres of Tutsis in Kabuga intensified once more. The Prosecution relies on the testimony of Witness GHY. The Prosecution, relying on the testimony of Witness GHT, further alleges that, on 7 April, Bicamumpaka brought weapons to Kabuga, distributed them to the *Interahamwe* after which massacres of Tutsis in Kabuga intensified.[1055]

714. Bicamumpaka's Defence argues that there was no notice for these allegations. Furthermore, it contends that Witnesses GHY and GHT are unreliable. Bicamumpaka was at home with his family in Kigali on 6 and 7 April 1994 and on 9 April he was present at the swearing-in ceremony of the Interim Government, held meetings with the diplomatic core in Kigali, and attended two cabinet meetings. He denies travelling to Kabuga at any point between 6 and 9 April. Bicamumpaka's Defence relies on the testimonies of Bicamumpaka, Witnesses Abubakar Nduwayezu, Jean Rwagatera, OK-3, TK-1, OG-3, TF-2 and LD-1, and Prosecution Witness DCH.[1056]

[1053] Mugiraneza, T. 27 May 2008 pp. 12-13; Witness GJQ, T. 16 March 2005 p. 50.
[1054] The Chamber recalls that evidence relating to events occurring in Kibungo prefecture was only admitted to be considered against Mugiraneza for the allegations of conspiracy to commit genocide and complicity in genocide. Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004 (TC), 4 October 2004, p. 14.
[1055] Indictment, paras. 5.1, 5.19, 5.22, 6.10, 6.16, 6.18, 6.35-6.36; Prosecution Pre-Trial Brief, paras. 136 (p. 30), 197-198 (p. 43), 283 (p. 56); Prosecution Closing Brief, paras. 123, 148, 251, 254, 362-364, 376-378, 846, 870, 889-890, 934-941, 957-1004; Prosecution 21 November 2008 Document, Item Nos. 76-77; Prosecution Closing Arguments, T. 1 December 2008 pp. 4, 12, 61-62.
[1056] Bicamumpaka Opening Statement, T. 13 August 2007 pp. 12, 17; Bicamumpaka Closing Brief, paras. 22, 65, 67, 239, 261, 305-362, 394, 401, 692-697, 798; Bicamumpaka Closing Arguments, T. 3 December 2008 pp. 65-66; T. 5 December 2008 pp. 28-31.

Evidence

Prosecution Witness GHY

715. Witness GHY, a Tutsi, was living in Kabuga in April 1994.[1057] On 6 April 1994, around 8.30 p.m., after hearing an explosion and witnessing a red ball of fire attacking an aircraft, she went outside her home where she found many of her neighbours. As they were talking about the explosion, she saw three people in a vehicle come from the direction of Kigali, all of whom were dressed in the uniform of the *Interahamwe*.[1058]

716. As she and the others present were afraid of the *Interahamwe*, a neighbour told them to hide in his backyard while he went to ask the *Interahamwe* what had happened. Those in the vehicle told him that the *Inyenzi* had brought down the President's aircraft, and instructed him and another man to follow them to Kabuga Trading Centre, which they did.[1059]

717. When the two men returned they told Witness GHY and the others that "Jérôme Bicamumpaka", whom the witness did not know, had been in the vehicle that had come from Kigali and that he, along with others, went to the house of Joseph Sebisogo, the treasurer of the *Interahamwe*, where a meeting was held. The President of the *Interahamwe* in the area, the *conseiller* of the sector and *Interahamwe* militia were called to attend the meeting concerning the killing of President Juvénal Habyarimana.[1060]

718. On 8 April 1994, following a brutal attack on her home on 7 April, three *Interahamwe*, Rashid Hakizimana and Abubakar Nduwayezu took Witness GHY and her children to the local mosque, via the police station, for safety. Witness GHY remained at the mosque for two weeks. The mosque was less than 10 metres from Sebisogo's house. On 9 April at approximately 3.30 p.m., she saw two vehicles arrive at Sebisogo's house. One was a white pick-up truck with yellow licence plates meant for government vehicles, and the other was red. Nearby were people dressed in camouflage and banana leaves. She heard people saying that Bicamumpaka had returned. She looked for him, and saw someone in khaki clothes come out of the white vehicle and enter Sebisogo's house. Unnamed persons with her said that this person was Bicamumpaka, with whom they had had a meeting on the night of 6 April.[1061]

719. In a short while, Witness GHY saw *Interahamwe* off-load firearms such as grenades, guns, small axes, clubs and long screwdrivers in sacks from the vehicle into Sebisogo's backyard. All those present, including some who were with her at the mosque, were given

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[1057] Exhibit P75 (Witness GHY's Personal Information Sheet).
[1058] Witness GHY, T. 28 September 2004 pp. 41-44.
[1059] Witness GHY, T. 28 September 2004 pp. 44-45; T. 29 September 2004 p. 3.
[1060] Witness GHY, T. 28 September 2004 p. 45; T. 29 September 2004 pp. 3-4. ("Q: When your neighbour returned from Sebisogo's residence, did he tell you anything concerning the identity of those people in the motor vehicle when it arrived from Kigali direction? A: The men came back from Kabuga centre, from Sebisogo's home. They mentioned that the vehicle was carrying some people, including Jérôme Bicamumpaka. I did not know that person.").
[1061] Witness GHY, T. 29 September 2004 pp. 4-8, 29-35; T. 30 September 2004 pp. 15-16 ("Two vehicles came. ... There were people who were dressed in camouflage and banana leaves. Because of the people I was with, I heard people saying Bicamumpaka is back. It was nearby. We raised our heads to check him out. We saw someone who was dressed in khaki clothes who went into Sebisogo's house."). Witness GHY's statement to Tribunal investigators dated 7 February 2000 was not admitted but the relevant part was read into the record at T. 29 September 2004 pp. 29-30.

firearms. People were very happy and started to shoot in the air. She could not personally see who was distributing the weapons as the distribution took place in the backyard. However, unidentified persons from the mosque said that Bicamumpaka had just arrived to organise a meeting and he was distributing the weapons. Bicamumpaka then left in his vehicle. On 10 April 1994, the massacres intensified. A church nearby was attacked and people were killed in Ruhanga.[1062]

720. Witness GHY had known Witness GHT for a long time as the latter used to be her customer. Witness GHT came to seek refuge at the mosque after Witness GHY had arrived there although Witness GHY could not remember the date Witness GHT arrived there.[1063]

Prosecution Witness GHT

721. Witness GHT, a Tutsi, lived in Kabuga in April 1994.[1064] She first met Bicamumpaka at the end of March 1994 at the house of Jean-Paul Ntyiamira, the Kanombe commune *bourgmestre*. She was there as she had close personal ties to Ntyiamira's elder brother, Marcel Uhigumugabo and Witness LD-1. Marcel Uhigumugabo introduced her to Bicamumpaka. However, she did not speak to him and was in his presence briefly before Witness LD-1 took her outside. Abubakar Nduwayezu was also present.[1065]

722. On the evening of 6 April 1994, Witness GHT's husband, a Hutu and member of the MRND, left the family home and he did not come back. Earlier that evening she had seen and heard an explosion and been told by a neighbour that President Juvénal Habyalimana's plane had crashed. She did not discuss this news with her husband. At midnight that evening, she left her home for her father-in-law's house where she stayed until 8 April. She did not take her children with her but they "found her" at her in-laws later on 7 April. Witness GHT was hiding from her brother-in-law, who had persecuted her since 1993.[1066]

723. Around 12.00 p.m. on 7 April 1994, Witness GHT was looking through a frosted window in the sitting room of her father-in-law's home, which allowed her to look out while others could not look in. At that moment, she saw a white pick-up truck park in front of the house, about one-and-a-half metres away. Weapons, including small axes, nail-studded clubs and rifles, were in the rear of the vehicle. Five people were in the rear of the vehicle and Bicamumpaka, who was the driver, was in the front. Nduwayezu greeted Bicamumpaka by name. Bicamumpaka told Nduwayezu to advise Witness GHT's in-laws to stay at home and to assist in the distribution of weapons as the massacre of Tutsis was about to start. Nduwayezu then gave the weapons to the five *Interahamwe*, including Mukurge, Maga and Kasongo, that were there, and they took them away to distribute. After the distribution, which took less than 10 minutes, Bicamumpaka drove the white pick-up away.[1067]

[1062] Witness GHY, T. 29 September 2004 pp. 5-8, 30-33, 36.
[1063] Witness GHY, T. 30 September 2004 pp. 15-16.
[1064] Witness GHT, T. 30 September p. 26; T. 1 October 2004 p. 2; Exhibit P76 (Witness GHT's Personal Information Sheet).
[1065] Witness GHT, T. 30 September 2004 pp. 24, 28; T. 1 October 2004 p. 8; Exhibit 3D11 (Witness GHT's Family Tree).
[1066] Witness GHT, T. 30 September 2004 pp. 29-33, 37; T. 1 October 2004 pp. 3, 7-8, 24; Exhibit P77 (List of Names of Individuals).
[1067] Witness GHT, T. 30 September 2004 pp. 33-37; T. 1 October 2004 pp. 3-6, 9-14, 19-21.

724. On 8 April 1994, a Tanzanian man named Mohamed, whom the witness knew from the area, took her away from her father-in-law's house. He told her that Nduwayezu and Marcel Uhigumugabo had ordered Witness GHT's husband to kill her. Her husband refused, so they decided to kill her themselves. Mohamed told Nduwayezu and Uhigumugabo that he would kill Witness GHT, but instead Mohamed took her away from her father-in-law's home between 3.00 and 6.00 p.m. to keep her safe.[1068]

725. Mohamed initially hid Witness GHT in a sorghum field close to her father-in-law's home, and then took her to the local mosque arriving around 6.00 p.m. on 8 April 1994. On the way to the mosque Witness GHT passed through a roadblock that was on the upper side of the tarmac road from Kigali to Kibungo, where there were people in the MRND *kitenge* uniform. She was not stopped or asked for her identity papers as she was dressed as a Muslim to look like Mohamed's wife. She stayed at the mosque for two weeks before leaving for an unspecified destination. Around 10 April Witness GHT saw Witness GHY for the first time at the mosque. Witness GHT had known Witness GHY for a long time as they had been neighbours in the same *cellule*.[1069] Once inside the mosque she was not able to see outside and did not see anyone distributing weapons except for the *Interahamwe* that were guarding the mosque.[1070]

Prosecution Witness DCH

726. Witness DCH, a Hutu, lived in Kabuga and was a government driver in 1994.[1071] He set up and manned what was called the "tarmac road roadblock", between the road to Rwamanga near the mosque and the petrol station. He, along with *Interahamwe* such as Joseph Sebisogo, the first advisor to the *Interahamwe*, gendarmes, soldiers and *Impuzamugambi*, manned the roadblock where they killed Tutsis.[1072]

727. Witness DCH had known Sebisogo, who was his neighbour and a businessman, since the 1970s. One of Sebisogo's two homes was at the Kabuga Trading Centre, about five steps from the witness's roadblock and around 10 steps from the mosque, from where one could see Sebisogo's house and vice versa. Inside Sebisogo's home the *Interahamwe* had an office, where meetings were held. In the backyard, they detained and killed persons. Witness OK-3 ran a canteen for the *Interahamwe* out of Sebisogo's house.[1073]

728. Witness DCH did not see Bicamumpaka in Kabuga in 1994.[1074] Witness DCH testified that he saw Bicamumpaka and Sebisogo together many times from 1982 onwards. The first time he saw them together was at a shop called *Haute Plateau*. He also saw them

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[1068] Witness GHT, T. 30 September 2004 pp. 37-42; T. 1 October 2004 pp. 3, 16, 22-24.
[1069] Witness GHT, T. 30 September 2004 pp. 41-45; T. 1 October 2004 pp. 3, 15-17, 37; Exhibit 3D12 (Handwritten Name).
[1070] Witness GHT, T. 1 October 2004 p. 18.
[1071] Witness DCH, T. 16 September 2004 p. 71; T. 20 September 2004 pp. 14-15, 18; Exhibit P72 (Witness DCH's Personal Information Sheet). Witness DCH was arrested in Rwanda in 1995 and was charged with genocide, massacres, looting and related crimes. He pleaded guilty and received a sentence of seven years on 8 December 2001. In light of his pre-trial detention, Witness DCH completed his sentence and was released on 1 February 2002. Witness DCH, T. 16 September 2004 pp. 71-74; T. 20 September 2004 p. 2; T. 22 September 2004 pp. 8-9, 14-17.
[1072] Witness DCH, T. 20 September 2004 pp. 4-9; T. 21 September 2004 pp. 17, 46-47; T. 22 September 2004 p. 26.
[1073] Witness DCH, T. 20 September 2004 pp. 9-12; T. 21 September 2004 p. 42.
[1074] Witness DCH, T. 21 September 2004 p. 48.

together in Kabuga in approximately 1992-1993 and at Bicamumpaka's younger brother's wedding. They were both businessmen and had what Witness DCH called "good relations".[1075]

Bicamumpaka

729. Bicamumpaka denied organising meetings or distributing weapons to *Interahamwe* at Kanombe and Kabuga from 6 to 9 April 1994, as he was never at those locations during that period. Rather, he was at his home in Kigali, which he never left during that time. In any event, he could not have distributed weapons to *Interahamwe* as there were no common interests between that organisation, the MRND and the MDR, to which he belonged. Indeed, the MDR members were even targets of groups like the *Interahamwe* and the MRND. Moreover, the fighting around Kigali's airport at that time meant that it would have been impossible for him to go from his house in downtown Kigali, past the RPF defence position, to reach Kanombe and beyond, in particular to Kabuga, which was 25 kilometres from central Kigali. He denied that there were other roads apart from the tarred road that passed through Kanombe that he could have taken to reach Kabuga, or that he took these roads. He further denied knowing or having met a man named Marcel, Joseph Sebisogo, Witness GHY or Witness GHT.[1076]

730. Providing a specific accounting for his days on 6 and 9 April 1994, Bicamumpaka testified that at 2.00 p.m. on 6 April, he developed a headache and around 4.00 p.m. left his office to rest at home. Around 5.00 p.m. he went to lie down in his bed. At approximately 9.00 p.m., Bicamumpaka's wife came to tell him President Juvénal Habyarimana's airplane had been shot down, and that their servants heard the news on RTLM. Bicamumpaka telephoned friends to discuss the news, and went to bed very late that night. The following morning, on 7 April, Bicamumpaka heard a *communiqué* from Colonel Théoneste Bagosora on Radio Rwanda, advising people to remain at home due to the security situation and he stayed at home until 9 April.[1077]

731. At approximately 1.00 a.m. on 9 April 1994, Donat Murego, Executive Secretary of the MDR party, called Bicamumpaka and informed him that he would be Minister of Foreign Affairs. Bicamumpaka told Murego that he was scared that "criminal groups" would target his family, and Murego came to his home at approximately 2.00 a.m. accompanied by soldiers, and escorted Bicamumpaka and his family to the *Hôtel des Diplomates*.[1078]

732. Bicamumpaka was sworn in as Minister of Foreign Affairs between 10.30 a.m. and noon on 9 April 1994 in a ceremony that lasted approximately 40 minutes. Immediately following the ceremony, President Théodore Sindikubwabo chaired a cabinet meeting at

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[1075] Witness DCH, T. 20 September 2004 pp. 24-25; T. 21 September 2004 pp. 49-51.
[1076] Bicamumpaka, T. 25 September 2007 pp. 40-42, 44; T. 26 September 2007 pp. 7, 24-25, 27-30; T. 27 September 2007 p. 26; T. 2 October 2007 pp. 62-63; T. 8 October 2007 pp. 30-31; T. 10 October 2007 pp. 16-17, 19-20; Exhibit 3D85 (Outgoing Cable from Booh-Booh to Annan, Goulding and Hansen, 9 April 1994) p. 1; Exhibit 3D87 (Outgoing Cable from Annan to Booh-Booh, 11 April 1994) para. 4; Exhibit 3D97 (Outgoing Fax from Booh-Booh to Annan, 15 April 1994).
[1077] Bicamumpaka, T. 25 September 2007 pp. 40-42, 44; T. 26 September 2007 pp. 7, 24; T. 8 October 2007 p. 30; T. 10 October 2007 pp. 16-17, 19-20; Exhibit P2(27)(E & F) (Bicamumpaka's Interview with Tribunal Investigators, 8 April 1999) pp. 3-4.
[1078] Bicamumpaka, T. 25 September 2007 p. 43; T. 9 October 2007 pp. 54-55, 57, 61; Exhibit P2(27)(E & F) (Bicamumpaka's Interview with Tribunal Investigators, 8 April 1999) p. 4.

Hôtel des Diplomates, which Bicamumpaka attended. The meeting ended at approximately 12.15 p.m. Between 12.30 and 1.00 p.m., Bicamumpaka contacted the ambassadors of France, Belgium and the Vatican, as well as UN Special Representative Jacques-Roger Booh-Booh, by telephone. Around 2.15 p.m. Bicamumpaka, and Ministers Bizimungu and Ngirabatware left the hotel and went to Belgian Ambassador Johan Swinnen's residence close to the hotel in the lower eastern sector of Kigali town. Around 3.30 p.m. they left and met with the French Ambassador, Jean Marlaud, until approximately 4.30 p.m. They then went to meet the Vatican representative at his residence until approximately 5.45 p.m. when they returned to *Hôtel des Diplomates*. When they returned to *Hôtel des Diplomates*, the ministerial council meeting was underway. Bicamumpaka reported on his meetings with the ambassadors. The ministerial meeting ended a few minutes past 8.00 p.m. He did not leave the hotel that evening.[1079]

Bicamumpaka Defence Witness Jean Rwagatera

733. Jean Rwagatera, a Hutu, had close personal ties to Witness GHT and lived in Kabuga in 1994.[1080] Rwagatera testified that on the night of 6 April 1994, he and Witness GHT were watching a football match on television and thus did not learn of President Juvénal Habyarimana's death until the following morning. On 7 April, a *communiqué* was transmitted stating that people should stay home, and so he and Witness GHT remained at his home that day. However, Witness GHT, a Tutsi, feared for her safety and moved to the home of Rwagatera's parents on the evening of 7 April. He stayed at his home that evening with his four children.[1081]

734. On 8 April 1994, Rwagatera, fearing for Witness GHT's safety, moved her, with the assistance of a Tanzanian man named Mohamed, to the house of his sister, Christine Kantengwa, and his brother-in-law, Marcel Uhigumugabo. His sister and brother-in-law hid his wife in the house, and he went back home to take care of his children. Later that day, he, with Mohamed, brought her back to his home again.[1082]

735. That same day, 8 April 1994, Rwagatera waited until the evening Muslim prayers, so that he could take Witness GHT to the mosque for safety. Mohamed dressed her like a Muslim, and pretended that they were a couple going to prayer. Rwagatera followed close behind. While Witness GHT stayed in the mosque, Rwagatera sent supplies to her and asked for information about her through his half-brother, Abubakar Nduwayezu, who was a Muslim.[1083]

[1079] Bicamumpaka, T. 25 September 2007 pp. 44, 55, 57; T. 26 September 2007 pp. 32, 36-43, 51; T. 27 September 2007 p. 52; T. 9 October 2007 pp. 54-55, 57, 61; T. 10 October 2007 pp. 34-35, 38-39; Exhibit P2(27)(E & F) (Bicamumpaka's Interview with Tribunal Investigators, 8 April 1999) pp. 5-6; Exhibit 3D91 (Letter from Rwanda's Permanent Representative to the UN to the President of the UN Security Council, 13 April 1994).

[1080] Rwagatera, T. 4 February 2008 pp. 48-49, 64; Exhibit 3D177 (Jean Rwagatera's Personal Information Sheet). Rwagatera was detained in 1996 and accused of genocide. He was released by President's decree in 2007. Two months later he was tried by a *Gacaca* court and acquitted of all charges. Rwagatera, T. 4 February 2008 pp. 61-63; T. 5 February 2008 p. 13; Exhibit 3D178 (Handwritten Document Recording *Gacaca* Court Judgement of Jean Rwagatera, 20 June 2007). The relevant part was read into the record at T. 4 February 2008 p. 63.

[1081] Rwagatera, T. 4 February 2008 p. 50; T. 5 February 2008 p. 4.

[1082] Rwagatera, T. 4 February 2008 pp. 50-51; T. 5 February 2008 p. 5.

[1083] Rwagatera, T. 4 February 2008 pp. 52-53; T. 5 February 2008 pp. 5-6, 11-12.

736. The next time Rwagatera saw his wife was at the end of April 1994, when they met at roadblock Point 19 and then travelled to Ndera. He stayed with her and his children from that point until he was detained in 1996.[1084]

737. At no point when she was with Rwagatera, either in Kabuga or on the journey to Ndera, did Witness GHT mention seeing Bicamumpaka or his brother Nduwayezu distributing weapons at his parents' house. Indeed, he claimed that no one in his family knew Bicamumpaka.[1085] Had there been such a distribution, he would not have fled with Witness GHT but would have been able to defend himself and his family. He also denied that he and his brother conspired with another man to kill Witness GHT.[1086]

Bicamumpaka Defence Witness TK-1

738. Witness TK-1, a Hutu, was a businessman in Kabuga where he lived in 1994.[1087] His home was close to a tarred road leading to Kigali, and the local mosque was approximately 20 metres behind and to the left of his house. It was not possible to see the front or inside of his house from the mosque, because the house faced the main tarmac road and the mosque was behind it. There was parking for taxis next to his home and he would often sit on his veranda and watch what was going on.[1088]

739. Witness TK-1 was not a member of the *Interahamwe*, and he did not know if persons in Kabuga were members of the organisation. He denied that on 7 April 1994 a roadblock was set up in front of his house. He also denied knowing Bicamumpaka, or having seen or heard that he visited Kabuga in April.[1089]

740. Witness TK-1 was found guilty in the Kigali Court of First Instance of multiple crimes, in part based on the evidence of Selemani Rwamuhamba, including the murder of a man named Gatuku and the murder of all persons killed at the roadblock in front of his house. They also found that his residence served as the command post for the *Interahamwe* in Kabuga.[1090] Bicamumpaka was not mentioned in these proceedings.[1091] The evidence against him was fabricated by Selemani Rwamuhamba and the vice-president of the Kigali Court encouraged people to fabricate evidence against him so that "they" could take over his property.[1092]

[1084] Rwagatera, T. 4 February 2008 pp. 52-53, 59-61, 65; T. 5 February 2008 pp. 6-8.
[1085] Rwagatera, T. 4 February 2008 pp. 52, 60, 67; T. 5 February 2008 p. 12.
[1086] Rwagatera, T. 4 February 2008 pp. 60-61.
[1087] Witness TK-1, T. 16 October 2007 pp. 63, 65, 67-68, 90; Exhibit 3D153 (Witness TK-1's Personal Information Sheet). At the time of his testimony, Witness TK-1 was detained in Kigali Central Prison pending appeal. He was found guilty of genocide and sentenced to death in 2000. Witness TK-1, T. 16 October 2007 pp. 65, 75-76, 77-81; Exhibit 3D8(F) (Judgement of the Kigali Court of First Instance) pp. 23-26. Witness TK-1 also testified that the *Gacaca* court conducted an investigation and on 13 July 2007 found that he was not guilty of genocide for which he was being prosecuted by the Public Prosecutor's Office. Witness TK-1, T. 16 October 2007 pp. 80-86; T. 17 October 2007 pp. 7-8; Exhibit 3D157(E, F & K) (*Gacaca* Ruling, 13 July 2007) read into the record at T. 16 October 2007 pp. 84-85.
[1088] Witness TK-1, T. 16 October 2007 pp. 68-69, 72-73, 75; T. 17 October 2007 pp. 3-4, 6.
[1089] Witness TK-1, T. 16 October 2007 pp. 74-75, 81; T. 17 October 2007 pp. 6, 8-9, 13.
[1090] Witness TK-1, T. 16 October 2007 pp. 77-82; T. 17 October 2007 pp. 9-12; Exhibit 3D156 (Judgement of the Kigali Court of First Instance) pp. 3-4, 12, 33-36.
[1091] Witness TK-1, T. 16 October 2007 p. 81; Exhibit 3D156 (Judgement of the Kigali Court of First Instance).
[1092] Witness TK-1, T. 16 October 2007 pp. 16, 85, 90; T. 17 October 2007 pp. 6, 10-12.

Bicamumpaka Defence Witness OK-3

741. Witness OK-3, a Hutu, operated a bar and restaurant in which he lived in Kabuga in April 1994.[1093] Witness OK-3 testified that the bar and restaurant were set about 15 to 20 metres from the main tarmac Kigali-Kibungo road. People at the bar could see what was happening on the tarmac road. The local mosque was located to the back right on the upper side of a hill behind his bar, but there was a wall adjacent to the bar. One could not see the front part of the house from where the bar was, or the main road from the mosque. However, a person looking out of the window from the mosque could see a vehicle driving along the main road in front of the bar.[1094]

742. On 6 April 1994, Witness OK-3 was at his bar. That night there was an announcement on the radio that everyone should stay at home, and so he remained there until the morning of 7 April. On 8 or 9 April, Witness OK-3 went to the village where his family lived approximately 30 kilometres away, stayed there until the war reached the village on 24 April, and then fled through Bugesera.[1095]

743. Witness OK-3 was never a member of the *Interahamwe* and did not know if the organisation held meetings at the place where he lived in 1994 as he had nothing to do with the organisation.[1096] He also stated that there were no roadblocks erected on 7 April, but on 8 April the gendarmerie placed a roadblock approximately 80 metres from his house.[1097]

744. Witness OK-3 was tried for crimes related to the genocide in the Kigali Court of First Instance. The Kigali Court found him guilty of killing persons removed from the Kabuga police station.[1098] He never once heard Bicamumpaka's name mentioned in the proceedings.[1099] Witness OK-3 did not know Bicamumpaka, and had not seen him in April 1994.[1100]

Bicamumpaka Defence Witness Abubakar Nduwayezu

745. Abubakar Nduwayezu is of mixed Tutsi-Hutu parentage, lived in Kabuga and was a moto-taxi driver in April 1994.[1101] Nduwayezu's brother, Jean Rwagatera, had close personal ties to Witness GHT. He also knew Witness LD-1 and Marcel Uhigumugabo. Uhigumugabo is the elder brother of Jean-Paul Ntyiamira, who was *bourgmestre* of Kanombe commune.[1102]

[1093] Witness OK-3, T. 17 October 2007 pp. 19-20, 51-53, 57-59; Exhibit 3D158 (Witness OK-3's Personal Information Sheet); Exhibit P180 (Statement Given to Bicamumpaka's Defence Lawyers, 2 June 2004); Exhibit P179 (Name Written by Witness OK-3). Witness OK-3 was detained at Kigali prison at the time of his testimony pending appeal. He was found guilty of genocide in 2000. Witness OK-3, T. 17 October 2007 pp. 37-43, 57; Exhibit 3D156 (Judgement of the Kigali Court of First Instance) pp. 16-20, 42.
[1094] Witness OK-3, T. 17 October 2007 pp. 20, 26-27, 51-52, 60-69, 77-78.
[1095] Witness OK-3, T. 17 October 2007 pp. 29-30, 71-75.
[1096] Witness OK-3, T. 17 October 2007 pp. 27-28.
[1097] Witness OK-3, T. 17 October 2007 pp. 69-70.
[1098] Witness OK-3, T. 17 October 2007 pp. 37-43; Exhibit 3D156 (Judgement of the Kigali Court of First Instance) pp. 4, 13, 16-20, 42.
[1099] Witness OK-3, T. 17 October 2007 pp. 39-40.
[1100] Witness OK-3, T. 17 October 2007 pp. 30-33, 72-73.
[1101] Nduwayezu, T. 4 February 2008 pp. 5, 27, 37; Exhibit 3D175 (Nduwayezu's Personal Information Sheet).
[1102] Nduwayezu, T. 4 February 2008 pp. 7-9, 39.

In March and April 1994, Witness LD-1 and Marcel Uhigumugabo lived in an annex behind Ntyiamira's main residence.[1103]

746. On 7 April 1994 at 5.00 a.m., as usual, he went to pray at the only mosque in Kabuga. The mosque neighboured Joseph Sebisogo's house on the upper side of the hill on the main Kigali-Kibungo road. At 7.00 a.m. he went with his friend to Witness GHY's house, to check on her as she was Tutsi and her husband was not with her. When they reached her home they found it had been looted so they took her and the children to the mosque. He stayed at the mosque from 7 April until he fled Rwanda between 18 and 25 April to assist those who had sought refuge there. However, he did not spend much time inside the mosque and would go out.[1104]

747. Nduwayezu saw Witness GHT at the mosque on 8 April 1994 but did not talk to her. Rwagatera and a man named Mohammed had transported Witness GHT to the mosque for her safety. She later fled with Nduwayezu to Zaire after the mosque was attacked by soldiers.[1105]

748. Nduwayezu did not know Bicamumpaka, who was not a friend of his family. While at the mosque, Nduwayezu did not see or hear that Bicamumpaka distributed weapons at Joseph Sebisogo's house between 6 and 10 April 1994. Nduwayezu denied distributing weapons in Kabuga or going to Witness GHT's in-law's home at any point between 6 and 10 April and denied conspiring to kill Witness GHT. He further denied he was an *Interahamwe*.[1106]

Bicamumpaka Defence Witness TF-2

749. Witness TF-2, a Hutu, lived in Kabuga in 1994.[1107] He did not know Bicamumpaka, and had never heard of him going to Kabuga in March or April 1994.[1108]

Bicamumpaka Defence Witness LD-1

750. Witness LD-1, a Hutu, had close personal ties to Jean Rwagatera and Marcel Uhigumugabo.[1109] Witness LD-1 testified that on 8 April 1994, Rwagatera came to her house and told her that Witness GHT had stayed the previous night at her parents' home. He asked her to take Witness GHT and her children into her house for safety. Witness LD-1 went directly to her parents' home and discussed this with Witness GHT, but did not stay long and returned home.[1110]

751. A short time later, on 8 April 1994, her brother came to her house with Witness GHT and a Tanzanian man. Witness LD-1 told them that there was no security at her house and searches were being conducted to ascertain whether anyone was hiding people. Thus, her

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[1103] Nduwayezu, T. 4 February 2008 p. 9.
[1104] Nduwayezu, T. 4 February 2008 pp. 9-14, 16-18, 20, 29-30, 32, 34-35, 40-41.
[1105] Nduwayezu, T. 4 February 2008 pp. 15-16, 20, 29, 34.
[1106] Nduwayezu, T. 4 February 2008 pp. 9, 18-21, 28, 31, 39, 41.
[1107] Witness TF-2, T. 7 November 2007 p. 38; Exhibit 3D172 (Witness TF-2's Personal Information Sheet).
[1108] Witness TF-2, T. 7 November 2007 pp. 38-39.
[1109] Witness LD-1, T. 28 April 2008 pp. 4, 6; Exhibit 3D184 (Document Entitled "Confidential List of Names"); Exhibit 3D183 (Witness LD-1's Personal Information Sheet). At the time of trial Witness LD-1 was in detention in Kigali Central Prison awaiting adjudication for common law crimes that she poisoned a child. The charge was not related to the Rwandan genocide. Witness LD-1, T. 28 April 2008 pp. 23, 25-26.
[1110] Witness LD-1, T. 28 April 2008 pp. 8-9, 16-17, 20.

brother and the Tanzanian took Witness GHT away. On the next day, 9 April, Witness LD-1's brother told her that he and the Tanzanian had disguised Witness GHT as a Muslim so that she could pass through a roadblock, and had taken her to the mosque to hide her there. Witness LD-1 testified that Abubakar Nduwayezu was at the mosque between 8 and 12 April but she did not see him there or anywhere else during those dates.[1111]

752. Witness LD-1 did not see or meet Bicamumpaka at any time in March or April 1994. She also stated that she did not know Bicamumpaka during this time. She denied that Witness GHT was introduced to Bicamumpaka at her parents' home at any time in late March or early April as her parents did not know Bicamumpaka. She was sure that Bicamumpaka did not go to her father's home as he was "a drunkard," talkative and would have mentioned it.[1112]

Bicamumpaka Defence Witness OG-3

753. Witness OG-3, a Hutu, took care of Bicamumpaka's children and lived in his home in Kigali in 1994.[1113] On 6 April 1994, Bicamumpaka left the family house during the day, but had returned by the time President Habyarimana's plane was shot down. When he came back home he did not go to his bedroom but watched television in the sitting room as usual. Later that evening, following the news about the President's plane crash, a *communiqué* was issued over Radio Rwanda telling people to stay at home for their safety. Consequently, she and Bicamumpaka's family, including Bicamumpaka, stayed at home from that moment until around 10.00 p.m. on 8 April when he left with his family, accompanied by soldiers and Donat Murego, to an unknown location.[1114]

Deliberations

754. Relying on Witness GHY, the Prosecution alleges that on 6 April 1994, Bicamumpaka met others at Joseph Sebisogo's house and ordered the *Interahamwe* to kill Tutsis. Bicamumpaka returned to Kabuga on 9 April to distribute weapons to *Interahamwe*. Following this distribution, the massacre of Tutsis in Kabuga intensified. Further, relying on Witness GHT, the Prosecution alleges that on 7 April, Bicamumpaka brought weapons to Kabuga to distribute to the *Interahamwe* and thereafter massacres against Tutsis intensified.

755. Bicamumpaka denied travelling to Kabuga at any point between 6 and 9 April 1994 contending that he was at his home in Kigali with his family on 6, 7 and 8 April, and participating in Interim Government affairs in Kigali on 9 April. The Chamber shall address these allegations in turn.

(i) Meeting at Joseph Sebisogo's House, 6 April 1994

756. Witness GHY is the only Prosecution witness to provide evidence of Bicamumpaka's presence at a meeting in Kabuga on 6 April 1994. Specifically, Witness GHY testified that in the evening of 6 April she saw three men dressed in *Interahamwe* uniform drive into Kabuga from the direction of Kigali. She was subsequently told by one of her neighbours that

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[1111] Witness LD-1, T. 28 April 2008 pp. 9, 13-15, 22.
[1112] Witness LD-1, T. 28 April 2008 pp. 4, 10, 18-20.
[1113] Witness OG-3, T. 5 February 2008 pp. 18-19, 27; Exhibit 3D179 (Witness OG-3's Personal Information Sheet).
[1114] Witness OG-3, T. 5 February 2008 pp. 19-22, 27-28, 30-31, 33, 35, 37.

Bicamumpaka had been in the vehicle and that he had held a meeting later that evening with *Interahamwe* and others at *Interahamwe* treasurer Joseph Sebisogo's house.

757. Before turning to the merits of Witness GHY's testimony, the Chamber will consider her general credibility. Witness GHY testified at trial that she did not know who Bicamumpaka was on 6 April 1994 when she first saw him, but was told of his identity by her neighbour.[1115] However, in a 3 February 2000 statement to Tribunal investigators, Witness GHY contended that on 6 April she already knew Bicamumpaka, as he would often visit trader Sebisogo, who was also her neighbour.[1116] When confronted with this discrepancy at trial, Witness GHY denied that she had ever told the investigators that she had previously known Bicamumpaka and that when her statement had been read back to her in 2000 it did not contain that statement. Moreover, she queried whether the signature on the statement was hers, reiterating that she did not know Bicamumpaka at this time.[1117]

758. The Chamber considers that Witness GHY's insistence that she did not know who Bicamumpaka was in 1994 creates real concerns about her ability to identify him. By her own admission, she did not recognise him in the vehicle that passed her on 6 April as she did not know who he was. Rather, she only saw three unknown individuals wearing the uniform of the *Interahamwe* in the vehicle. She was subsequently told that Bicamumpaka had been in that vehicle by her neighbour, who had followed the vehicle to Sebisogo's house. The Chamber considers that in the absence of corroboration, Witness GHY's hearsay identification evidence is weak. The Chamber has similar concerns about the witness's ability to identify Bicamumpaka on 9 April (discussed below).

759. In an effort to impeach Witness GHY's testimony, the Bicamumpaka Defence proffered the judgement from a genocide trial of 32 accused before the Kigali Court of First Instance.[1118] As a general matter, the observations of judges reviewing an entirely separate record are of little probative value in this proceeding.[1119] However, judicial findings that a witness lied in a separate proceeding – rather than just general credibility concerns – could be a basis for considering his or her evidence before this Tribunal with caution.[1120] While, contrary to the Bicamumpaka Defence submission, the Kigali Court of First Instance did not find that Witness GHY lied on numerous occasions before it, it did question Witness GHY's sincerity.[1121] This gives the Chamber pause.

[1115] Witness GHY, T. 29 September 2004 pp. 3, 5-8, 19, 34-35.
[1116] Witness GHY's 7 February 2000 Statement was not admitted into evidence at trial. However, the relevant excerpt was read into the record at T. 29 September 2004 pp. 19-20.
[1117] Witness GHY, T. 29 September 2004 pp. 20-24.
[1118] Exhibit 3D8(F) (Judgement of the Kigali Court of First Instance) pp. 3, 7, 9, 27, 30-31, 33-34; Exhibit 3D156 (Judgement of the Kigali Court of First Instance) pp. 4-5, 8-9, 13, 22, 39.
[1119] *Cf. The Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification (AC), 8 December 2006, paras. 15, 20 (alleged findings in a Rwandan proceeding that Tribunal witnesses generally lacked credibility were insufficient to justify review proceedings).
[1120] *Cf. Nchamihigo* Appeal Judgement, paras. 68, 77, 83 (overturning factual findings of the Trial Chamber, in part, because it relied on the uncorroborated evidence of a witness convicted for forgery without having exercised appropriate caution), 305, 309, 312-314 (overturning factual findings of the Trial Chamber, in part, because insufficient caution was used when assessing the evidence of an accomplice witness who admitted to misleading judicial officials in his own criminal case).
[1121] Bicamumpaka Closing Brief, paras. 312-313; Exhibit 3D8(F) (Judgement of the Kigali Court of First Instance) p. 37.

760. Turning to the merits of Witness GHY's testimony about this allegation, the Chamber first recalls that in contrast to what the Prosecution alleges, Witness GHY only testified to Bicamumpaka's presence at a meeting attended by *Interahamwe*. She did not give any evidence that Bicamumpaka ordered Tutsis to be killed at this meeting. Moreover, her testimony that Bicamumpaka was at the meeting is based entirely on her neighbour's out-of-court statements, which are second-hand and thus of limited probative value.

761. Turning to the Defence evidence, Bicamumpaka denied having attended the meeting at Sebisogo's house on 6 April 1994 testifying that he remained at home in Kigali with his family from late afternoon on 6 April to 2.00 a.m. on 9 April. Bicamumpaka's testimony is generally corroborated by Witness OG-3 who was working at his residence. Moreover, Witnesses DCH, TK-1, OK-3 and TF-2, who lived in Kabuga in April 1994, did not see or hear that Bicamumpaka was in Kabuga in April.

762. This evidence is far from dispositive. Bicamumpaka has an interest in denying that he was in Kabuga on 6 April 1994. Likewise, Defence Witness OG-3 was a former employee of the Accused and consequently may have a motive to testify in a manner favourable to him. Witnesses TK-1, TF-2 and OK-3's general evidence that they did not see or alternatively hear that Bicamumpaka was in Kabuga in April is not dispositive. Notably, they also denied knowing him. Moreover, Witness TK-1 is an alleged accomplice of Bicamumpaka and, therefore, has a clear motive to deny Bicamumpaka's presence at Sebisogo's home where he was staying from 6 April for three to four weeks.[1122] Witness DCH's evidence is likewise of limited probative value in light of his testimony that he went home when he heard the shots that brought the President's plane down.[1123]

763. Bicamumpaka also introduced UNAMIR cables, which he claims demonstrate that it was impossible for him to have travelled from Kigali to Kabuga from 6 to 9 April 1994. The UNAMIR communications indicate that the RPF had taken control over some parts of eastern Kigali, the most likely route to Kabuga.[1124] Witness TK-1 testified, however, that several roads besides the paved road between Kigali and Kabuga would allow one to travel between the two locations.

764. Notwithstanding the frailties in the Defence evidence, Witness GHY's uncorroborated hearsay evidence fails to provide a sufficient basis for the Chamber to make findings beyond reasonable doubt. The Prosecution has not proven that Bicamumpaka attended a meeting with *Interahamwe* at Joseph Sebisogo's house on 6 April 1994 at which he ordered that Tutsis be killed.

(iii) Distribution of Weapons, 7 April 1994

765. Witness GHT is the only Prosecution witness to provide evidence of Bicamumpaka's role in weapons distribution in Kabuga on 7 April 1994. Specifically, Witness GHT testified that around 12.00 p.m., she saw, through the window of her father-in-law's house, a white

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[1122] Witness TK-1, T. 16 October 2007 pp. 74-75, 90-92; T. 17 October 2007 p. 3. The Chamber notes that Witness TF-2 was not asked, nor did he testify, specifically about his whereabouts on 6 April 1994.
[1123] Witness DCH, T. 21 September 2004 pp. 31-32.
[1124] Witness TK-1, T. 17 October 2007 p. 2; Exhibit 3D85 (Outgoing Cable from Booh-Booh to Annan, Goulding and Hansen, 9 April 1994) p. 1; Exhibit 3D87 (Outgoing Cable from Annan to Booh-Booh, 11 April 1994); Exhibit 3D97 (Outgoing Facsimile from Booh-Booh to Annan, 15 April 1994); *see also* Report on Site Visit (5 to 10 October 2008), 22 October 2008, p. 2 (distance from Kigali to Kabuga is 13 kilometres).

pick-up truck filled with weapons parked in front of the house. Bicamumpaka was sitting in the front of the vehicle. Bicamumpaka told Nduwayezu, who was present, to assist in distributing the weapons because the extermination of Tutsis was going to start. Nduwayezu gave weapons to *Interahamwe* who were at the house, and took the remainder away to distribute further. Bicamumpaka then drove away. Witness GHT recognised Bicamumpaka because Nduwayezu had introduced Bicamumpaka to her during an event in March 1994.

766. Before turning to the merits of Witness GHT's testimony, the Chamber will consider her general credibility. The Defence sought to challenge her evidence based on alleged inconsistencies between her testimony and prior statement to Tribunal investigators. It also challenged her reliability based on purported findings in a Rwandan trial judgement that, in its view, should raise concerns about her reliability. The Chamber shall review these in turn.

767. The Defence challenged Witness GHT's testimony, pointing to elements of her February 2000 statement to Tribunal investigators, which it argued were inconsistent with her testimony. Specifically, it noted that her statement reflects that she did not know who sat in the front cabin when the vehicle carrying weapons arrived on 7 April 1994, and that when it left a man she did not know was in the front cabin.[1125] In her trial testimony, however, she testified that Bicamumpaka was in the front cabin when it arrived and left.

768. Furthermore, the Defence argued that Witness GHT's February 2000 statement reflects that Mohamed came to move her from where she was staying on 7 April 1994 (rather than 8 April).[1126] Witness GHT affirmed her testimony that Mohamed retrieved her on 8 April rather than 7 April.[1127] The Chamber observes that while the witness statement clearly indicates that persons had plotted to kill the witness on 7 April, it is ambiguous as to whether Mohamed came to retrieve her that same day.[1128]

769. In considering these discrepancies, the Chamber notes that the witness affirmed the contents of her February 2000 statement, without providing further clarifying details.[1129] Reviewing the statement in its entirety, the Chamber also observes that it is generally consistent with the witness's testimony about the 7 April 1994 event.[1130] Any discrepancies are minor and could reasonably have been the result of a recording error, lack of further questioning or a lapse in recollection. Furthermore, other aspects of Witness GHT's testimony – such as the fact that she was attacked one evening and then taken to the mosque the following day – were corroborated by Witness GHY.[1131]

770. However, of greater significance, Witness GHT's testimony of meeting Bicamumpaka in March 1994 differs from her February 2000 statement. The statement reflects that she saw a man "she did not know" at Marcel's house, and that Marcel told her that this was Bicamumpaka, a friend of the family. She also said in the 2000 statement that she was not sure she would recognise him if she saw him that day. In her testimony, however, Witness GHT contended that Marcel introduced her directly to Bicamumpaka. The discrepancy is not insignificant. The identification in the prior statement is hearsay, while her

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[1125] Exhibit 3D13(F) (Witness GHT's Statement, 3 February 2000) p. 3.
[1126] Exhibit 3D13(F) (Witness GHT's Statement, 3 February 2000) p. 3.
[1127] Witness GHT, T. 1 October 2004 pp. 22-23.
[1128] Exhibit 3D13(F) (Witness GHT's Statement, 3 February 2000) p. 3.
[1129] Witness GHT, T. 1 October 2004 pp. 22-23.
[1130] Exhibit 3D13(F) (Witness GHT's Statement, 3 February 2000) p. 3.
[1131] Witness GHY, T. 29 September 2004 pp. 4-5, 7, 28-30.

evidence of the March 1994 introduction to Bicamumpaka is more direct, suggesting Bicamumpaka's tacit confirmation of the identification. This gives the Chamber pause.

771. The Defence also cross-examined the witness extensively about a Rwandan trial judgement from the Kigali Court of First Instance, which, in its view, reflects that that court refused to rely on her first-hand evidence related to several criminal incidents.[1132] The judgement of the Kigali Court indicates that Witness GHT accused Hitamungu of killing a man named "Laurent" and accused Witness TF-2 of committing killings at "Roadblock 19". The Kigali Court rejected this testimony, however, because she was contradicted by other witnesses who were present with her during these incidents.[1133] The Kigali Court also refused to rely on the testimony of Witness GHT, who accused Isaac Niragire of participating in the killing of three persons.[1134]

772. The observations of judges reviewing a separate record are of limited probative value in the assessment of evidence in this proceeding.[1135] Notwithstanding, the repeated dismissal of her alleged direct evidence relating to several crimes raises some concerns, if not about her credibility, but the general reliability of her observations. Notably, Witness LD-1 followed the Kigali Court of First Instance trial of Ignace Hitamungu, whom she knew from her neighbourhood. Witness LD-1 contended that Witness GHT falsely accused Hitamungu of killing a man named "Tito" at her husband's house. Witness LD-1 knew that this was not true because she never saw Hitamungu at her husband's house during that period.[1136]

773. The Defence also presented evidence directly rebutting Witness GHT's testimony about how she first got to know Bicamumpaka in March 1994. Specifically, Witness LD-1 denied that the March event, which she and Bicamumpaka had allegedly attended, ever occurred or that she knew Bicamumpaka.[1137] Nduwayezu, who also was purportedly at the gathering, testified that he did not know Bicamumpaka either.[1138]

774. Turning to the alleged weapons distribution, Bicamumpaka denied having given weapons to *Interahamwe* in Kabuga on 7 April 1994, testifying that due to a government *communiqué* ordering citizens to stay inside, he remained at home in Kigali with his family from late afternoon on 6 April to 2.00 a.m. on 9 April and did not leave his house during this time. Bicamumpaka's testimony is corroborated by Witness OG-3, who was working at his residence.

[1132] *See* Witness GHT, T. 1 October 2004 pp. 25-34.
[1133] Witness TF-2, T. 7 November 2007 pp. 40, 43; Exhibit 3D8(F) (Judgement of the Kigali Court of First Instance) p. 21; Exhibit 3D156 (Judgement of the Kigali Court of First Instance) p. 39. Witness TF-2 testified that he was acquitted of this charge because Witness GHT did not appear at trial. Witness TF-2, T. 7 November 2007 pp. 40, 43. This is not reflected in the judgement of the Kigali Court.
[1134] Exhibit 3D8(F) (Judgement of the Kigali Court of First Instance) p. 27.
[1135] *Cf. The Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification (AC), 8 December 2006, paras. 15, 20 (alleged findings in a Rwandan proceeding that Tribunal witnesses generally lacked credibility were insufficient to justify review proceedings).
[1136] Witness LD-1, T. 28 April 2008 pp. 10-12, 21-22. The exhibited excerpts of the relevant Rwandan trial judgement reflect that Witness GHT did provide evidence against Ignace Hitamungu, but do not include the Court's finding on this matter. *See generally* Exhibits 3D8(F) *and* 3D156 (Judgement of the Kigali Court of First Instance).
[1137] Witness LD-1, T. 28 April 2008 pp. 4, 10, 18-20.
[1138] Nduwayezu, T. 4 February 2008 p. 9. Rwagatera also denied that he knew Bicamumpaka. Rwagatera, T. 4 February 2008 pp. 52, 67.

775. Furthermore, Rwagatera denied that Witness GHT went to her in-laws' home on the evening of 6 to 7 April 1994, but rather that she arrived there on the evening of 7 April. Consequently, she could not have seen Bicamumpaka at the house around noon on 7 April. He further denied that Witness GHT, with whom he was close, ever mentioned seeing Bicamumpaka or his brother, Nduwayezu, distribute weapons at that location. Nduwayezu also denied that he went to this location at any point between 6 and 10 April or that he had ever met Bicamumpaka there or on any other occasion.[1139]

776. The Chamber views the testimony of Bicamumpaka and Witness OG-3 with suspicion. Bicamumpaka has an interest in denying that he was in Kabuga on 7 April 1994. Likewise, Defence Witness OG-3, a former employee of the Accused, may have a motive to testify in a manner favourable to Bicamumpaka.

777. Moreover, several of the witnesses proffered to impeach Witness GHT's testimony have close personal ties with her that appear to have soured. Notably, Witness GHT implicated Nduwayezu in the weapons distribution and, later, in a plot to assassinate her. Consequently, Nduwayezu has a clear interest in denying his involvement in this event.[1140] Similarly, Witness LD-1 has close personal ties with Nduwayezu, as well as Marcel Uhigumugabo, which may impact her partiality. Rwagatera, who is Nduwayezu's brother, might also be motivated to refute Witness GHT's account for personal reasons.

778. In respect of the more general evidence from Witnesses DCH, TK-1, TF-2 and OK-3 that they did not see or alternatively hear that Bicamumpaka was in Kabuga in April 1994, the Chamber considers that this evidence is not dispositive. As discussed above, evidence pertaining to the difficulties of getting to Kabuga due to RPF positions in eastern Kigali is a relevant consideration. However, the Chamber observes that Witness TK-1 testified that several roads besides the paved road allowed one to reach Kabuga from Kigali.

779. In reviewing the relevant evidence as a whole, the Chamber considers that it casts sufficient doubt on Witness GHT's uncorroborated evidence about Bicamumpaka's involvement in weapons distribution in Kabuga on 7 April 1994. The basis of her identification is contested. Her general credibility is also uncertain. This allegation is dismissed.

(ii) Distribution of Weapons at Joseph Sebisogo's Residence, 9 April 1994

780. Witness GHY is the sole Prosecution witness to testify that Bicamumpaka came to Kabuga on 9 April 1994 and distributed weapons to *Interahamwe*. Specifically, she testified that on 9 April, while seeking refuge at the mosque, she saw a government truck arrive at Joseph Sebisogo's residence at approximately 3.30 p.m. She observed a person in khaki clothes leave a white vehicle and enter Sebisogo's house and heard unidentified individuals say that it was Bicamumpaka. Witness GHY then saw *Interahamwe* off-load firearms from the truck into Sebisogo's backyard, and heard from unidentified individuals that

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[1139] Nduwayezu, T. 4 February 2008 pp. 9, 18-21, 28, 39.

[1140] Nduwayezu was charged with having participated in killings carried out by *Interahamwe*. However, he was found not guilty by the *Gacaca* courts and was released in 2007. Witness GHY testified on his behalf in the *Gacaca* court, stating that she and Nduwayezu were both present in the mosque from 7 April 1994 onwards, and that he never participated in the killings in the area. Witness GHY never mentioned Bicamumpaka in her testimony before the *Gacaca* court. Nduwayezu, T. 4 February 2008 pp. 21-25; Exhibit 3D176 (*Gacaca* Court Judgement of Witness Abubakar Nduwayezu).

Bicamumpaka distributed the weapons to those gathered. Bicamumpaka denied the allegation and provided an alibi that he was meeting with Ambassador Swinnen at this time.

781. At the outset, the Chamber recalls its general concerns regarding Witness GHY's credibility and her ability to identify Bicamumpaka (detailed above). Turning to the specifics of this allegation, the Chamber notes that Witness GHY still did not know who Bicamumpaka was on 9 April 1994 and her identification of him entering Sebisogo's residence is hearsay evidence from unidentified sources. Moreover, her evidence that Bicamumpaka distributed weapons that had been unloaded from the vehicle in which he had arrived is also second-hand and from unidentified sources as the witness admitted that she could not see into the backyard of Sebisogo's house.[1141]

782. The Defence challenges Witness GHY's ability to see what was happening in or around Sebisogo's house from the mosque where she had sought refuge.[1142] While Witness GHY accepted that there was a fence or wall around Sebisogo's property, she denied that it covered the front part of his house.[1143] The Chamber recalls that Witness DCH corroborated Witness GHY's testimony that one could see Sebisogo's house from the mosque where Witness GHY was hiding.[1144] Prosecution Witness GHT, who had also sought refuge at the mosque, testified that she could not see outside. Defence Witnesses TK-1 and OK-3 testified that the mosque was behind Sebisogo's house to the left and right respectively. Both denied that you could see the front of Sebisogo's house from the mosque, but Witness OK-3 conceded that one could see a vehicle on the main road in front of the house from there.

783. The Chamber considers that Witness TK-1's testimony was rather confused. Defence Counsel showed him several pictures of the mosque which he resolutely identified as being Sebisogo's house. They later showed him the same picture and he recognised it as the mosque. His testimony, therefore, is less than reliable. Moreover, as an alleged accomplice of Bicamumpaka, the Chamber views his testimony with suspicion.[1145] The Chamber also views Nduwayezu's evidence denying that Bicamumpaka distributed weapons at Sebisogo's residence with caution. Nduwayezu is also an alleged accomplice of Bicamumpaka in respect of an arms distribution in Kabuga on 7 April 1994 and may have a motive to testify in favour of the Accused.

784. While the Chamber recalls its finding above that the Defence evidence that Bicamumpaka was not in Kabuga in April 1994 is not dispositive, it notes that Bicamumpaka presented an alibi for this event. He contended that at 3.30 p.m. on 9 April, the time that Witness GHY repeatedly confirmed that she saw Bicamumpaka, he was meeting with Ambassador Swinnen at his residence in Kigali. This evidence was corroborated by Bizimungu and by Ambassador Swinnen (II.14.3.1). Bizimungu provided further corroboration that after this meeting, the two met with the French Ambassador.

[1141] Witness GHY, T. 29 September 2004 pp. 5 ("Two vehicles came. ... Because of the people I was with, I heard people saying Bicamumpaka is back. We raised our heads to check him out. We saw someone who was dressed in khaki clothes who went into Sebisogo's house."), 7 ("Q: Did [the people at the mosque who received weapons] say the name of the man who had just arrived there? A: They were saying that that person was Jerome Bicamumpaka. Q: Okay. You yourself, had you known Jerome Bicamumpaka? A: I did not know him then.").
[1142] Bicamumpaka Closing Brief, para. 321.
[1143] Witness GHY, T. 30 September 2004 pp. 10-11; Exhibit 3D9 (Photographs of Kabuga Mosque and Sebisogo House 1-8).
[1144] Witness DCH, T. 20 September 2004 pp. 10-11.
[1145] Witness TK-1, T. 16 October 2007 pp. 68-69, 71-73.

785. Given the Chamber's concerns about Witness GHY's ability to identify Bicamumpaka, combined with the alibi evidence, the Chamber has reservations about this allegation. For these reasons, the Prosecution has failed to prove that Bicamumpaka participated in the distribution of weapons at Sebisogo's house on 9 April 1994 beyond reasonable doubt.

786. Based on the foregoing findings, the Chamber need not revisit whether Bicamumpaka was provided sufficient notice of these events.[1146]

7.2 Formation of the Interim Government, 6 – 9 April 1994

Introduction

787. The Indictment alleges that following the failure of the attempt at a military takeover, the leaders of the MRND, other political parties and military officers, including Colonel Théoneste Bagosora, put in place an Interim Government to "aid and abet the continuation of the massacres". According to the Prosecution, on the night of 6 to 7 April 1994 the Presidential Guard moved MRND ministers and members of the "Power" wings of other political parties, including Bizimungu and Mugenzi. Some were taken to military camps and then to *Hôtel des Diplomates*. It is alleged that around 7.00 a.m. on 7 April, Bagosora called a meeting of the MRND Executive Committee to appoint a new president and that on 8 April, he met with political officials to form a new government. Almost all the members of the new government, which was officially sworn in on 9 April, were from the MRND and "Power" wings of other political parties. No one of Tutsi descent was included either in the talks or in the new government. Jean Kambanda was appointed Prime Minister and Mugenzi, Bicamumpaka, Bizimungu and Mugiraneza were appointed ministers. It is alleged that as soon as the Interim Government was formed, cabinet members supported the plan of extermination in place and took the necessary steps to execute it. Relevant Prosecution evidence comes from Expert Witness Alison Des Forges.[1147]

788. It is not disputed that the Interim Government was sworn in on 9 April 1994 and that each of the Accused was appointed as a cabinet minister. However, the Defence disputes that it was put in place under the auspices of the military after the failed attempt at a military takeover. While they accept that Bagosora arranged the transportation of the leaders of the political parties to the meeting on 8 April when the government was formed, they dispute that he had any influence over its establishment. Rather, they submit that it was created legally by the political leaders themselves pursuant to the 1991 Rwandan Constitution and the 1992 Agreement.[1148] Moreover, the Defence submits that insufficient notice was provided regarding the allegation that as soon as the Interim Government was formed, cabinet

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[1146] *See* Decision on Bicamumpaka's Motions to Declare Parts of the Testimony of Witnesses GHT, GHY and GHS Inadmissable (TC), 21 October 2004.

[1147] Indictment, paras. 6.5-6.10; Prosecution Pre-Trial Brief, paras. 23 (p. 9), 47 (p. 12), 114 (p. 25); Prosecution Opening Statement, T. 6 November 2003 pp. 4-8; Prosecution Closing Brief, paras. 552-553, 556, 558, 564, 580, 693-694, 707, 719, 838-845, 857-858, 875, 1008, 1028; Prosecution Closing Arguments, T. 1 December 2008 pp. 3-4.

[1148] Exhibit P2(1)(E) *and* Exhibit 2D102B (Constitution of the Republic of Rwanda, adopted 30 May 1991); Exhibit 3D19 (Political Agreement Signed by the Rwandan Political Parties on their Participation in the Transitional Government, 7 April 1992); Exhibit 1D195(E) (Additional Protocol to the Protocol of Understanding Between Political Parties Invited to Participate in the Transitional Government Signed on 7 April 1992 Between the MRND, MDR, PSD, PDC and PL Political Parties, 8 April 1994).

members supported the plan of extermination in place and took the necessary steps to execute it. Further, the Defence argues that the allegation that the appointments of the Accused as ministers were due to either their participation in a prior conspiracy or an extremist ideology is without merit. Relevant evidence was provided by the Accused, as well as Defence Witnesses Agnès Ntamabyaliro, Emmanuel Ndindabahizi and André Ntagerura.[1149]

Evidence and Deliberations

789. The Prosecution, through Expert Witness Alison Des Forges, has alleged that military leaders, including Bagosora, in concert with the leaders of the political parties, put in place the Interim Government to aid and abet the continuation of the Tutsi massacres throughout Rwanda. It submits that this is supported by the fact that the military evacuated MRND ministers and those loyal to Hutu Power on the evening of 6 to 7 April 1994, leaving others to be killed. Moreover, the Interim Government's three-point plan did not include immediate action to stop the killings in Kigali, of which the Accused were, or should have been, aware.[1150]

790. The Defence does not dispute that Prime Minister Agathe Uwilingiyimana was killed on 7 April 1994. Other leaders killed after President Habyarimana's plane was shot down included Joseph Kavaruganda (President of the Constitutional Court), Landoald Ndasingwa (Vice-Chairman of the PL and Minister of Labour and Community Affairs), Faustin Rucogoza (Minister of Information), and Frédéric Nzamurambaho (PSD President).[1151] This created a power vacuum in Rwanda at a crucial point. The Chamber observes that there is no evidence directly linking the Accused to the murders of these political leaders. Evidence pertaining to the killings tends to suggest that they were carried out by members of the Rwandan army.[1152] Their deaths were discussed and condemned during the 9 April cabinet

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[1149] Mugenzi Closing Brief, paras. 60-63, 209, 443-447, 449-450; Mugenzi Closing Arguments, T. 2 December 2008 pp. 52-53; Bicamumpaka Closing Brief, paras. 654, 657, 665-667, 675-683, 787-795; Bicamumpaka Closing Arguments, T. 3 December 2008 p. 57; Bizimungu Closing Brief, paras. 1141-1170, 1397, 1681-1684; Mugiraneza Closing Brief, paras. 336-356.

[1150] Indictment, paras. 6.5-6.10; Prosecution Pre-Trial Brief, paras. 23 (p. 9), 47 (p. 12), 114 (p. 25); Prosecution Opening Statement, T. 6 November 2003 pp. 4-7; Prosecution Closing Brief, paras. 552-553, 556, 558, 564, 580, 693-694, 707, 719, 838-845, 857-858, 875, 1008, 1028; Prosecution Closing Arguments, T. 1 December 2008 pp. 3-4.

[1151] Des Forges, T. 8 June 2005 pp. 26-27; T. 15 June 2005 pp. 16-21; Bicamumpaka, T. 25 September 2007 pp. 45-46, 59; T. 8 October 2007 pp. 16-17; T. 9 October 2007 pp. 53-54, 56-58; Bizimungu, T. 24 May 2007 p. 29; T. 11 June 2007 pp. 31-37; T. 12 June 2007 pp. 39-40; Ndindabahizi, T. 1 May 2007 pp. 53-56; Ntagerura, T. 21 February 2007 p. 18; Mugenzi, T. 8 November 2005 pp. 51-52; T. 22 November 2005 pp. 89-90; Muhirwa, T. 5 April 2006 pp. 71-72; Mugiraneza, T. 3 June 2008 pp. 58-61; Karuhije, T. 6 November 2007 p. 27; Kayinamura, T. 4 April 2006 p. 37; Exhibit 3D81 (Outgoing Cable from Annan to the UN Secretary-General, 7 April 1994). The Chamber observes that Boniface Ngulinzira, former Minister of Foreign Affairs, was rumoured to have been killed shortly after President Habyarimana's plane was shot down, but it is believed he was killed on 11 April 1994. Bicamumpaka, T. 25 September 2007 p. 43; T. 9 October 2007 pp. 55, 57, 64-67.

[1152] Bicamumpaka, T. 25 September 2007 p. 59; T. 8 October 2007 pp. 16-17; T. 10 October 2007 pp. 36-37; Bizimungu, T. 24 May 2007 p. 29; T. 5 June 2007 pp. 7-9, 23-25; T. 11 June 2007 pp. 31-36; T. 12 June 2007 pp. 39-42; Mugiraneza, T. 3 June 2008 pp. 58-61; Uwizeye, T. 11 April 2005 pp. 21-23; Des Forges, T. 15 June 2005 pp. 17-21; Kayinamura, T. 4 April 2006 p. 37; Muhirwa, T. 5 April 2006 pp. 71-72; Karuhije, T. 6 November 2007 p. 27; Exhibit 2D60 (Radio Rwanda Broadcasts) p. 33; Exhibit 3D81 (Outgoing Cable from Annan to the UN Secretary-General, 7 April 1994); Exhibit 4D45 (Report from Booh-Booh to UN in New York, 8 April 1994); *see also* Ntamabyaliro, T. 21 August 2006 pp. 43-44.

meeting.[1153] The Prosecution has not demonstrated that any of the Accused could be held responsible for these killings.

791. For the sole purpose of context and background material, the Prosecution relies on Witness DY to allege that ten Belgian UNAMIR soldiers were killed at Camp Kigali on 7 April 1994 while Bizimungu, Mugenzi, Agnès Ntamabyaliro and Pauline Nyiramasuhuko held a meeting at the camp.[1154] The murders of the soldiers are not in dispute. However, the Chamber has reservations regarding Witness DY's identification of Bizimungu and Mugenzi at the camp. In addition, he did not see the ministers and the soldiers present at the camp at the same time.[1155] Finally, there is evidence indicating that Bizimungu and Mugenzi were not at the camp on 7 April.[1156] The evidence fails to link any of the Accused to the killings.

792. The Defence does not dispute that at 7.00 a.m. on 7 April 1994, Bagosora convened a meeting of the MRND Executive Committee to discuss potential candidates for the position of President. Moreover, the Defence does not dispute that the military, including Bagosora, provided logistical support for the formation of the government. For example, on the night of 6 to 7 April, the Presidential Guard moved some MRND ministers, including Mugiraneza, to the Presidential Guard Camp and on 8 April, Bagosora arranged the transportation of the leaders of the political parties to the meeting held at the military headquarters when the Government was formed and Bagosora briefly attended that meeting. However, the Defence disputes that the establishment of the Interim Government was guided by an alleged Rwandan military bent on perpetrating the genocide. Rather, they submit that it was formed by the leaders of the political parties, who participated in the previous government. The process of replacing the President, Prime Minister and cabinet members was dictated by the 1991 Constitution and the 1992 Agreement. Furthermore, the Defence argues that its purpose was threefold; to regain control of the country, negotiate a peaceful settlement with the RPF and provide relief to refugees and internally displaced persons affected by the war.[1157]

[1153] Bizimungu, T. 5 June 2007 pp. 23-26, 52; T. 7 June 2007 pp. 19-22; T. 12 June 2007 pp. 39-42; *see also* Ntamabyaliro, T. 21 August 2006 pp. 43-44.

[1154] Indictment, paras. 6.6, 6.11-6.13; Prosecution Pre-Trial Brief, p. 101; Prosecution Closing Brief, paras. 144-145, 174; Prosecution 21 November 2008 Document, Item No. 43.

[1155] Witness DY, T. 20 February 2004 p. 16; T. 23 February 2004 pp. 9, 19-21; T. 24 February 2004 pp. 8-10; T. 25 February 2004 pp. 12-13.

[1156] Bizimungu, T. 24 May 2007 pp. 24-31; T. 4 June 2007 pp. 4-5; Mugenzi, T. 8 November 2005 pp. 50-51, 53, 55-56; T. 15 November 2005 pp. 18-19; Ntamabyaliro, T. 21 August 2006 pp. 33-36; Turatsinze, T. 13 April 2006 pp. 15-27, 29; T. 18 April 2006 pp. 2-3, 5; T. 19 April 2006 pp. 36-43; Uzamukunda, T. 20 April 2006 pp. 49-52, 70; T. 21 April 2006 pp. 4, 16-19, 21, 26-29, 35; Mugiraneza, T. 22 May 2008 pp. 22-27; Ntagerura, T. 19 February 2007 pp. 13-15, 38; Swinnen, T. 8 May 2008 pp. 4-5; Exhibit 1D217 (Map of Kigali with Bizimungu's House, Presidential Guard Camp and Kigali Barracks). Contemporaneous reports of the incident, including a detailed report by an eyewitness to the massacre, make no mention of Bizimungu or Mugenzi being present. *See* Exhibit 3D198 (UNAMIR Report on the Killing of Belgian Troops, 7 April 1994) pp. 1-2; Exhibit P2(83)(E) (Outgoing Cable from Baril to Dallaire, 7 April 1994) pp. 5-6; Exhibit 3D82 (Outgoing Cable from Annan to UN Secretary-General, 7 April 1994) p. 1; Exhibit 4D45 (Outgoing Cable from Booh-Booh to Annan, 8 April 1994) p. 3.

[1157] Exhibit 1D195(E) (Additional Protocol to the Protocol of Understanding Between Political Parties Invited to Participate in the Transitional Government Signed on 7 April 1992 Between the MRND, MDR, PSD, PDC and PL Political Parties, 8 April 1994) Art. 4; *see also* Exhibit 3D91(E) (Letter from the Permanent Representative of Rwanda to the UN to the President of the UN Security Council, 13 April 1994) p. 4; Exhibit 3D98(E) (*Note Verbale* by Jérôme Bicamumpaka to Rwandan Diplomatic Missions and Consulars, 15 April 1994) para. 15.

Night of 6 April 1994

793. It is undisputed that on 6 April 1994, the plane carrying President Juvénal Habyarimana and other passengers was shot down on its approach to Kigali airport. That night, each of the Accused learned of the plane crash through different means. They initially remained at their respective homes, but eventually each one moved to different locations in Kigali over the next three days due to security concerns. After Mugenzi returned home that night, American Ambassador David Rawson and Prime Minister Agathe Uwilingiyimana confirmed through separate telephone conversations before 10.00 p.m. that the presidential plane had been destroyed.[1158]

7 April 1994

794. Early in the morning of 7 April 1994, Prime Minister Uwilingiyimana called Mugenzi at his home to advise him to stand by for a cabinet meeting later that day. She wanted to provide a public radio announcement, but the army had prevented her from reaching the radio station. Mugenzi stayed at his house until later that same evening. Bizimungu also spoke with the Prime Minister at approximately 5.00 a.m. The Prime Minister told him about the death of President Habyarimana and her intention to address the nation. Eventually, certain government officials took refuge at the French Embassy in Kigali. There, Bizimungu, Mugiraneza, André Ntagerura, Daniel Mbangura and Augustin Ngirabatware discussed what to do following the deaths of the President and Prime Minister, but did not reach any conclusions. Between 7 April and the swearing in of the Interim Government on 9 April, the country was governed by the Military Crisis Committee.[1159]

795. Bicamumpaka was informed by unidentified sources that on the evening of 6 to 7 April 1994, negotiations occurred between the general staff of the Rwandan army and UNAMIR, specifically Jacques-Roger Booh-Booh, the Special Representative of the UN Secretary-General in Rwanda, and General Roméo Dallaire, Commander of UNAMIR. It was determined that the political void had to be filled by finding a replacement for President

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[1158] Mugenzi, T. 8 November 2005 pp. 47-51 (Mugenzi remained at his home until the evening of 7 April 1994); Bicamumpaka, T. 25 September 2007 pp. 39-42, 44; T. 26 September 2007 p. 7 (Bicamumpaka stayed at home until 9 April 1994 because he heard a *communiqué* from Colonel Théoneste Bagosora, *Directeur de Cabinet* of the Ministry of Defence on Radio Rwanda, which advised people to remain at home due to insecurity caused by the President's death); Bizimungu, T. 24 May 2007 pp. 24-26 (during the evening of 6 April 1994, Bizimungu was at home and heard from neighbours and RTLM that the President's plane had been shot down); Mugiraneza, T. 22 May 2008 pp. 20-24 (at 11.00 p.m. on 6 April 1994, soldiers from the Presidential Guard Camp, sent by André Ntagerura, arrived at Mugiraneza's residence to collect him and his family, and they arrived at the Presidential Guard Camp around midnight); Prosecutor's Request to Defence to Admit Facts, 13 November 2003, para. 17 (Admissions of Fact Made by Justin Mugenzi); Prosper Mugiraneza's Admissions of Facts Pursuant to the Request of the Prosecutor, 26 January 2004, para. 8.

[1159] Bizimungu, T. 24 May 2007 p. 30; T. 4 June 2007 pp. 5-10; T. 11 June 2007 p. 24 (around 2.00 a.m. on 7 April 1994, Bizimungu went to the nearby Presidential Guard Camp, where he saw Mugiraneza and Ntagerura; however, at about 4.30 a.m. he and his family went back home and, at 9.00 a.m., Bizimungu took his family to the French Embassy, where they remained until 9 April 1994); Mugiraneza, T. 22 May 2008 pp. 24-27 (around 3.00 p.m. on 7 April 1994, due to attacks on the Presidential Guard Camp, Mugiraneza, his family and others left the camp, initially going to the Defence Ministry building, but subsequently arriving at the French Embassy at approximately 4.00 p.m. where other ministers had arrived); Mugenzi, T. 8 November 2005 pp. 50-53, 55-56; T. 15 November 2005 p. 19 (around 6.00 p.m. on 7 April 1994, Mugenzi and his family were transferred by the gendarmerie from his house to the French Embassy, where he saw Mugiraneza, Bizimungu, Ntagerura, Daniel Mbangura, Augustin Ngirabatware and Callixte Nzabonimana).

Habyarimana. Booh-Booh recommended that the leaders of the MRND provide a nominee since the Arusha Accords designated that the president come from that party. At approximately 7.00 a.m. on 7 April at a different meeting, Bagosora conveyed Booh-Booh's advice to the MRND leadership, which then had an internal discussion to see which candidate they could put forward.[1160]

8 April 1994

796. On 8 April 1994, at approximately 10.00 a.m., an army convoy took Mugenzi from the French Embassy to the Ministry of Defence where political party leaders were meeting. Attendees included Agnès Ntamabyaliro, Mathieu Ngirumpatse, Édouard Karemera, Joseph Nzirorera, Froduald Karamira, Donat Murego, Célestin Kabanda, Francois Ndungutse and Emmanuel Ndindabahizi.[1161] Ntamabyaliro arrived when the meeting had just started since she had been picked up soldiers between 1.00 and 2.00 p.m.[1162]

797. Colonel Bagosora opened the meeting, informing those gathered about the deaths of the President and Prime Minister. He was speaking as the "man in charge of security" on behalf of the Crisis Committee. He invited them to discuss ways and means to provide the country with a new government which could get Rwanda "out of the chaos into which it was plunging". After addressing the meeting for a couple of minutes, Bagosora left, leaving the President of the MRND, Ngirumpatse, as the chairman.[1163]

798. Contrary to Mugenzi's testimony, Ndindabahizi denied that soldiers were a part of the meeting and Ntamabyaliro specifically denied that Bagosora was present.[1164] Although he arrived after the meeting had started, Ndindabahizi was escorted to the military camp by Bagosora, so it would be unlikely that Ndindabahizi would not be aware of comments that Bagosora made during the meeting.[1165] This inconsistency between the three witnesses who attended the meeting raises concerns regarding their respective credibility. However, given the criminal case against Bagosora by this Tribunal, it is doubtful that Mugenzi would unnecessarily associate himself with Bagosora unless he actually met with him.

799. At the meeting, the method to be used to form the next government was determined. According to the 1991 Constitution, upon the death of the President, the existing government was automatically dissolved. However, the process of political succession was complicated as the government had in effect been functioning under two constitutions. The cabinet had been operating under the old constitution, whereas the deceased President had taken an oath under the Arusha Accords. In the end, the party leaders decided to resort to the 1991 Constitution,

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[1160] Bicamumpaka, T. 25 September 2007 pp. 46-47, 59-61; T. 26 September 2007 pp. 2-7; Exhibit 3D80(E) (Minutes of the Meeting of the *Directeur de Cabinet*, 6-7 April 1994) para. 5; Exhibit 3D81 (Outgoing Cable from Annan to UN Secretary-General, 7 April 1994); Exhibit 3D82 (Outgoing Cable from Annan to UN Secretary-General, 7 April 1994); *see also* Exhibit 3D91 (Letter from the Permanent Representative of Rwanda to the UN to the President of the UN Security Council, 13 April 1994) p. 3; Exhibit 3D98 (*Note verbale* to Rwandan Diplomatic Missions and Consulars, 15 April 1994) p. 3.

[1161] Mugenzi, T. 8 November 2005 pp. 51, 59-60, T. 15 November 2005 pp. 19-20, T. 29 November 2005 p. 81 (Mugenzi did not include Ndindabahizi as one of the attendees); Ndindabahizi, T. 1 May 2007 pp. 79-80; T. 2 May 2007 pp. 2-3.

[1162] Ntamabyaliro, T. 21 August 2006 pp. 37-38, 41; T. 28 August 2006 pp. 39-41, 58-61.

[1163] Mugenzi, T. 8 November 2005 pp. 60-66, 68.

[1164] Ntamabyaliro, T. 21 August 2006 pp. 40-41; T. 28 August 2006 pp. 39-40, 54-57; Ndindabahizi, T. 3 May 2007 pp. 44-45.

[1165] Ndindabahizi, T. 1 May 2007 p. 79.

which stipulated that in the case of the death of the president, the President of the National Assembly would take over for an interim period. Although Théodore Sindikubwabo, President of the Assembly at this time, was not present, the attendees did not challenge the authority under which the meeting was convened. This was because they were informed that Sindikubwabo was on his way to Kigali from his home in Butare and their concern was to establish a new cabinet as quickly as possible to stop the chaos.[1166]

800. Further, it was decided that a government would be established based upon the power-sharing agreement signed in April 1992. Ntamabyaliro testified that, in appointing Sindikubwabo as President, they applied the provisions of the Arusha Accords which specified that the President should be from the MRND. According to the Constitution, upon the death of a President all ministers had to resign. So every party had to appoint new ministers and while ministers retained their posts from the previous government, those who had died had to be replaced. The attendees also suggested a three-point government programme to be followed by the new cabinet: first, to restore peace and security in the country; second, to continue negotiations with RPF, so that the Arusha Accords may be implemented; and, third, to fight famine in the country.[1167]

801. Based on UNAMIR *communiqués* that they were given, the political leaders understood that the UN was prepared to back them in their efforts to restore peace and security. It was on this basis that they accepted to enter the Interim Government. The party leaders decided that the political parties with vacant seats on the cabinet resulting from the death or unavailability of an incumbent should be filled immediately. The MDR, who were to pick the Prime Minister, chose Jean Kambanda. It was agreed that the new cabinet would take its oath of office and start working the next morning.[1168]

802. After the meeting concluded at approximately 6.00 or 7.00 p.m., the text of the new draft agreement for the establishment of the Interim Government was given to unidentified individuals to be "polished" and prepared for signature. Meanwhile, Mugenzi and all the other party leaders met with the Military Crisis Committee at the military academy in Kigali to advise them of the decisions they had taken. The Crisis Committee was a group of approximately 20 high-ranking officers of the army and the gendarmerie. It had taken control on 6 April 1994 from the moment that they heard that the President and the Military Chief of Staff had died. Although authority lay with the military until the Interim Government was installed, Mugenzi was not aware of any attempt by the military to enact a *coup d'état* and

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[1166] Mugenzi, T. 8 November 2005 pp. 63-68; T. 24 November 2005 pp. 57-62. *See also* Exhibits P2(1)(E) *and* 2D102B (Constitution of the Republic of Rwanda, adopted 30 May 1991) Art. 42; Bicamumpaka, T. 25 September 2007 pp. 46-49, T. 26 September 2007 p. 17; Exhibit 3D19 (Political Agreement Signed by the Rwandan Political Parties on their Participation in the Transitional Government, 8 April 1992); Des Forges, T. 8 June 2005 pp. 33-36, 71-72; Exhibit P100 (Des Forges, *Leave None To Tell The Story*) pp. 113-114.

[1167] Ntamabyaliro, T. 21 August 2006 pp. 39-40; T. 23 August 2006 pp. 36-38; Ntagerura, T. 14 February 2007 p. 68; T. 15 February 2007 p. 26; T. 19 February 2007 p. 20; T. 20 February 2007 pp. 23-24; Bizimungu, T. 24 May 2007 p. 31; Mugiraneza, T. 22 May 2008 pp. 28-29; Bicamumpaka, T. 25 September 2007 pp. 46-50; Des Forges, T. 8 June 2005 pp. 71-72; Exhibits P2(1)(E) *and* 2D102B(E, F & K) (Constitution of the Republic of Rwanda, adopted 30 May 1991); Exhibit 3D19 (Political Agreement Signed by the Rwandan Political Parties on their Participation in the Transitional Government, 7 April 1992); Exhibit P100 (Des Forges, *Leave None To Tell The Story*) pp. 113-114.

[1168] Mugenzi, T. 8 November 2005 pp. 68-74; T. 9 November 2005 p. 39; Bicamumpaka, T. 25 September 2007 pp. 46-50; *see also* Exhibit 1D195(E) (Additional Protocol to the Protocol of Understanding Between Political Parties Invited to Participate in the Transitional Government Signed on 7 April 1992 Between the MRND, MDR, PSD, PDC and PL Political Parties, 8 April 1994).

institute a military government. After the meeting with the Crisis Committee, at about 8.00 p.m., Mugenzi retrieved his family from the French Embassy and took them to *Hôtel des Diplomates*.[1169]

803. Alison Des Forges, an expert in Rwanda history, testified that there were contradictory assessments by high-ranking Rwandan officials regarding when the Crisis Committee ceased operating. Bagosora's position was that the Committee ended when the Interim Government was sworn in. Conversely, Marcel Gatsinzi, the Military Chief of Staff appointed on 8 April 1994, stated that the Crisis Committee continued to exist throughout the week of 12 April and Prime Minister Kambanda stated that the Committee basically lost its major significance with the return of Defence Minister Bizimana. An assessment by Jacques-Roger Booh-Booh, the Special Representative of the UN Secretary-General in Rwanda, appears to suggest that the Crisis Committee maintained a certain degree of control as late as 18 April, but Des Forges believed this was a misinformed analysis.[1170]

9 April 1994

804. Between 1.00 and 1.15 a.m. on 9 April 1994, Bicamumpaka received a telephone call from Donat Murego, the Executive Secretary of the MDR. Murego spoke about the negotiations on 8 April and Bicamumpaka's appointment to the government. The MDR leadership had been unable to reach Boniface Ngulinzira or Dismas Nsengiyaremye who were intended to be part of the transitional government. So instead, Murego and Froduald Karamira had suggested his name, relying on the list of MDR ministerial candidates submitted in February 1994 to Faustin Twagiramungu, the Prime Minister designate at the time. Bicamumpaka had not been consulted given the urgency of the situation. Due to Bicamumpaka's security concerns, Murego went to his home between 2.00 and 2.45 a.m. accompanied by soldiers and escorted Bicamumpaka and his family to the *Hôtel des Diplomates*.[1171]

805. Between 9.00 a.m. and noon that day, the Interim Government, including all four Accused, was sworn in at the *Hôtel des Diplomates*.[1172] After the swearing-in ceremony, the President and Prime Minister held a meeting with the cabinet.[1173] The cabinet identified rebellious soldiers and the *Interahamwe* as responsible for the massacres and agreed that

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[1169] Mugenzi, T. 8 November 2005 pp. 74-78; T. 15 November 2005 pp. 20, 37-38, 65; T. 29 November 2005 p. 81; Ndindabahizi, T. 2 May 2007 pp. 5, 7; T. 3 May 2007 pp. 46-47; Mugiraneza, T. 22 May 2008 pp. 32-33; Exhibit 4D45 (Report from Booh-Booh to United Nations in New York, 8 April 1994).

[1170] Des Forges, T. 15 June 2005 pp. 40-45; Exhibit P100 (Des Forges, *Leave None To Tell The Story*) pp. 113-114; Exhibit 4D31 (Outgoing Cable from Booh-Booh to Annan/Goulding, 18 April 1994).

[1171] Bicamumpaka, T. 25 September 2007 pp. 43-44, 46-47, 50; T. 9 October 2007 pp. 54-55, 57, 60-61.

[1172] Mugenzi, T. 8 November 2005 pp. 78-79; T. 9 November 2005 p. 4; T. 15 November 2005 p. 20; Bicamumpaka, T. 25 September 2007 p. 44; T. 26 September 2007 pp. 34-35; Bizimungu, T. 24 May 2007 p. 31; T. 4 June 2007 pp. 12-13; Mugiraneza, T. 22 May 2008 pp. 35, 45; Ntamabyaliro, T. 21 August 2006 p. 42; Ntagerura, T. 19 February 2007 pp. 15, 19.

[1173] Mugenzi, T. 8 November 2005 pp. 78-79; T. 15 November 2005 p. 20; Bizimungu, T. 24 May 2007 pp. 31-32; T. 4 June 2007 p. 13; T. 5 June 2007 p. 27; Mugiraneza, T. 22 May 2008 pp. 35, 45; Ndindabahizi, T. 2 May 2007 p. 8; Ntagerura, T. 19 February 2007 pp. 15, 20; Bicamumpaka, T. 26 September 2007 pp. 34-36 (Bicamumpaka testified it was not a ministerial council meeting, but "a discussion amongst the members of government, including the head of state"; the ministerial council meeting was to take place later that afternoon).

these two groups should be stopped immediately.[1174] It was said that everything had to be done to stop the massacres and denounce the killings, including issuing public *communiqués*.[1175] The youth wing members of the political parties were identified as killing Tutsis.[1176] Since the Minister of Defence was not present, the cabinet decided that the Prime Minister should assume the responsibility of meeting the military leaders to tell them to stop the killings by soldiers.[1177] Restoring security was a priority for the cabinet.[1178]

806. The cabinet discussed the three-point programme of the Interim Government. First, it aimed to conduct routine governmental matters while focussing on the restoration of peace and order in the country and the protection of persons and property. Second, it aimed to resume the political dialogue with the RPF with a view to setting up the new transitional institutions within six weeks. Third, it aimed to make efforts to provide assistance to the victims of the conflict, such as internally displaced persons and refugees.[1179]

807. Further, the cabinet discussed the shooting down of President Habyarimana's plane.[1180] Discussions involved the killings of Prime Minister Agathe Uwilingiyimana, other members of government and high officials in Rwanda, which had occurred from 6 to 9 April 1994.[1181] Investigations were ordered into the killing of the Prime Minister.[1182]

808. Other steps taken to restore peace and security included the selection of Mugenzi to meet with the MRND and *Interahamwe* leaders to tell them to order the *Interahamwe* to stop the killings (II.7.3).[1183] A meeting with the prefects was also planned (II.7.5).[1184] André Ntagerura was designated to repatriate the body of the Burundian President, who had died in the 6 April 1994 plane crash.[1185]

809. The Interim Government was briefed by the Prime Minister about the ten Belgian soldiers who were killed at Camp Kigali by a group of Rwandan soldiers on 7 April 1994. However, that information was already "widely known" by the ministers. The cabinet was told that the Belgians had been taken from late Prime Minister Uwilingiyimana's residence, but the ministers were not advised about the specific detachment of Rwandan soldiers that was involved. During the cabinet meeting, the Interim Government condemned the killings and insisted upon having investigations conducted. Bizimungu testified that the Rwandan army had set up a commission of inquiry into the killings, which included Colonels Nubaha and Murasampongo.[1186]

[1174] Mugenzi, T. 8 November 2005 pp. 78-79; T. 15 November 2005 pp. 20-21; Bizimungu, T. 5 June 2007 pp. 27-29; Mugiraneza, T. 22 May 2008 p. 36; Ntamabyaliro, T. 21 August 2006 pp. 43-44; Ndindabahizi, T. 2 May 2007 pp. 9-12.
[1175] Bicamumpaka, T. 26 September 2007 pp. 34-35; Mugiraneza, T. 22 May 2008 pp. 36-37, 40.
[1176] Mugiraneza, T. 4 June 2008 p. 15.
[1177] Mugenzi, T. 8 November 2005 pp. 78-79; Mugiraneza, T. 22 May 2008 pp. 36-37, 40.
[1178] Bizimungu, T. 24 May 2007 pp. 31-32; T. 5 June 2007 pp. 27-28; Ntamabyaliro, T. 21 August 2006 p. 43.
[1179] Bicamumpaka, T. 26 September 2007 pp. 34-35; Ntagerura, T. 15 February 2007 p. 27.
[1180] Bicamumpaka, T. 26 September 2007 pp. 34-35; Mugiraneza, T. 22 May 2008 p. 36.
[1181] Bicamumpaka, T. 26 September 2007 pp. 34-35; Bizimungu, T. 5 June 2007 p. 29; Mugiraneza, T. 22 May 2008 p. 36.
[1182] Bizimungu, T. 5 June 2007 pp. 27-29.
[1183] Mugenzi, T. 8 November 2005 pp. 78-79; Bizimungu, T. 5 June 2007 pp. 27-28.
[1184] Ndindabahizi, T. 2 May 2007 pp. 13-14.
[1185] Bicamumpaka, T. 26 September 2007 pp. 34-35.
[1186] Bizimungu, T. 24 May 2007 pp. 32-33; T. 5 June 2007 pp. 42-54; Mugenzi, T. 9 November 2005 pp. 4, 39; Mugiraneza, T. 22 May 2008 p. 36.

810. There is a significant discrepancy between the relevant witnesses as to when the cabinet meeting ended.[1187] Mugenzi testified that the meeting ended at approximately noon or 1.00 p.m. with another formal cabinet meeting to be held on the morning of 10 April 1994.[1188] Bizimungu provided similar testimony indicating that the cabinet meeting lasted between one and one-and-a-half hours, which was followed by a lunch that ended at 2.00 or 2.30 p.m.[1189] Mugiraneza stated that the cabinet meeting ended at about 5.00 p.m.[1190] The Chamber is troubled by this inconsistency with regards to Mugiraneza's testimony, as it appears somewhat self-serving in relation to allegations being pursued against him (II.6.3). However, Bicamumpaka testified that there were two meetings, one after the swearing-in ceremony and another one that started later that afternoon. In terms of the second meeting, he reported to the cabinet in the evening after his meetings with the ambassadors ended at approximately 5.30 or 5.45 p.m.[1191] Although Bizimungu testified that the cabinet was not meeting when he returned to the hotel between 4.00 and 5.00 p.m. after his meetings with the ambassadors (along with Bicamumpaka), he admitted that his priority was to collect his family from the French Embassy and he left the hotel again soon after he arrived.[1192] It is possible that Bizimungu may not have noticed the meeting due to plans to find his family. Further, Mugiraneza may have been confused as to which meeting he was describing.[1193] This evidence is dealt with in detail elsewhere (II.14.1).

Conclusions

811. The Prosecution has not presented a coherent theory and supporting evidence to conclusively demonstrate that the individuals of the Interim Government, including the Accused, were put in place to aid and abet the continuation of the massacres as pleaded in the Indictment. The Chamber notes that Des Forges's evidence is intended to present the theory that the Accused were selected due to their alleged Hutu extremism and their willingness to commit genocide.[1194] She testified that the Interim Government was created through consultation between the heads of political parties and military leaders, including Colonel Théoneste Bagosora and those closely allied with him. Initially, Bagosora sought power in a military leadership, but other military officers doubted his competence and opposed the position due to international pressure against it. Instead, a civilian government was installed, which nominally met the criteria of the Rwandan Constitution of 1991 and subsequent

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[1187] Ntamabyaliro testified there were no other meetings on 9 April 1994 after the Interim Government was sworn in, which is contrary to the evidence of the Accused, Ndindabahizi and Ntagerura. Instead, she stated that the first full cabinet meeting of the Interim Government was held on 10 April. Ntamabyaliro, T. 21 August 2006 p. 42; T. 28 August 2006 p. 55. Given the similar agenda items of the meeting described by the Accused, Ndindabahizi and Ntagerura compared to that mentioned by Ntamabyaliro, the Chamber concludes that the witnesses are referring to the same meeting. Although the discrepancy in dates raises questions, the passage of time may have contributed to the inconsistent testimony.
[1188] Mugenzi, T. 8 November 2005 p. 79; T. 15 November 2005 pp. 20-21.
[1189] Bizimungu, T. 4 June 2007 p. 13.
[1190] Mugiraneza, T. 22 May 2008 pp. 45-46.
[1191] Bicamumpaka, T. 26 September 2007 pp. 34-36, 41-43.
[1192] Bizimungu, T. 24 May 2007 p. 31; T. 4 June 2007 pp. 13-14.
[1193] Ntagerura did not attend the subsequent cabinet meeting as he was preparing for his mission to Burundi to escort the remains of the Burundian officials who had died on the presidential plane. Ntagerura, T. 19 February 2007 pp. 16-20.
[1194] The Chamber recalls the limitations on the use of expert testimony. *See Nahimana et al.* Appeal Judgement, para. 212.

political agreements. According to Des Forges, members of the Interim Government were all ostensibly Hutu and adopted the ideology of Hutu Power.[1195]

812. The Chamber observes that Bizimungu and Mugiraneza, members of the MRND party with experience working for the Rwandan government, might be viewed as natural selections for a purported Hutu extremist government established to fight the RPF. Furthermore, the Chamber notes that although members of opposition parties, Mugenzi and Bicamumpaka also engaged in conduct or aligned themselves with persons who were viewed as hardliners. In particular, the Chamber recalls Mugenzi's statements during the January 1994 rally in Nyamirambo stadium where he issued a warning to several opposition politicians, who were killed immediately after the President's death. Many interpreted his statements as reflecting a growing alliance with Hutu extremism and the MRND (II.5.1). Likewise, as fissures formed within the MDR party, Bicamumpaka continued to align with figures such as Froduald Karamira (II.4.1). Notably, Karamira espoused Hutu Power after the killing of the Burundian President and Hutu Melchior Ndadaye in October 1993 in a Tutsi-led military coup (II.3.3).

813. In terms of the inclusion of Tutsis in the Interim Government, the Defence evidence suggests that it was not discussed during the 9 April 1994 cabinet meeting. Mugiraneza was not aware of any Tutsi in the government and acknowledged that it was a problem. However, he did not have the power to appoint Tutsi ministers, and, in any case, the Interim Government was to function for only six weeks.[1196] Bicamumpaka testified that the issue of ethnic representation did not arise during the 9 April meeting.[1197] Ndindabahizi acknowledged that there were no Tutsis in the cabinet, because each political party designated their representative and it just so happened that there were no Tutsi nominees even though there were Tutsis in all political parties.[1198] Given the ethnic violence known to the Accused at the time, the Chamber finds it remarkable that the Interim Government would not attempt to include representatives of the Tutsi minority group. Further, the Accused all testified that one of the three goals of the Interim Government was to restore peace and order. The lack of Tutsi representation in the highest form of government raises questions as to the Interim Government's genuine intent to resolve the ethnic tensions.

814. Notwithstanding, the Chamber has concluded that these acts alone have not sufficiently demonstrated preparation or agreement by any of the Accused in this proceeding in a genocidal plan. Indeed, none of the Prosecution evidence, which it suggests demonstrates support for ethnic violence or preparations for a genocide prior to April 1994, has been proven (*see* II.1-II.5.1). Moreover, the Chamber recalls that Des Forges herself indicated that by the time of the establishment of the Interim Government, it was not clear that a genocidal plan existed, or was necessarily complete.[1199] Ultimately, the record fails to establish that the Interim Government was formed for the purpose of committing genocide. To the extent it later adopted this purpose, it must be determined by other acts pleaded in the Indictment and pursued by the Prosecution.

[1195] Des Forges, T. 31 May 2005 pp. 76-77; Exhibit P101 (Expert Report of Alison Des Forges) pp. 26-27.
[1196] Mugiraneza, T. 22 May 2008 p. 39; T. 4 June 2008 pp. 13-15.
[1197] Bicamumpaka, T. 25 September 2007 pp. 53-56.
[1198] Ndindabahizi, T. 1 May 2007 pp. 58-59; T. 3 May 2007 pp. 15, 47-48.
[1199] Des Forges, T. 2 June 2005 pp. 43-44.

7.3 Pacification Tour, 9 April 1994

Introduction

815. The Indictment alleges that, fearing the opinion of the international community, certain leaders attempted to conceal the massacres in Kigali. Specifically, on 9 April 1994, Joseph Nzirorera ordered the *Interahamwe* to stop the massacres. When the *Interahamwe* reported the success of their mission, Mugenzi openly expressed his satisfaction that many Tutsis had already been killed. Prosecution Witness D testified about this event.[1200]

816. The Mugenzi Defence challenges the credibility of Witness D and submits that Mugenzi was pleased because the mission to stop the killings in Kigali had been a success. Moreover, it submits that the Interim Government wanted to bury the bodies for reasons of public health rather than to conceal killings from the international community. Mugenzi, Mugiraneza, Bicamumpaka, Bizimungu, Emmanuel Ndindabahizi and Agnès Ntamabyaliro provided relevant evidence.[1201]

Evidence

Prosecution Witness D

817. Witness D, a Hutu and a member of the *Interahamwe*, was invited by politicians to a pacification meeting at *Hôtel des Diplomates* on 10 April 1994. Mugenzi, Joseph Nzirorera and Édouard Karemera were present. At the meeting, Nzirorera requested Witness D and the other *Interahamwe* present to ask the people of Kigali to stop the killings and to gather the dead bodies along the roads as the following day the government would send trucks to collect the corpses and bury them. The reason for this mission was because the international community was beginning to arrive in Kigali and they were afraid that they may see all the killings that had occurred. They were not asked to disarm the killers or dismantle the roadblocks. The government had entrusted this task to Nzirorera personally.[1202]

818. A military escort accompanied Witness D and his fellow *Interahamwe* throughout the pacification tour. They visited almost all the sectors of Kigali and saw thousands of bodies. The people to whom they relayed the instructions agreed to stop the killings, and that evening Witness D and the other *Interahamwe* returned to the hotel to report that their mission had been a success. Nzirorera was indifferent, but Mugenzi and Karemera were very happy to hear that a large number of Tutsis had been killed in Kigali. The higher the number of bodies, the more they expressed their joy. Later that evening, the RPF bombed Kigali and burnt people alive in Cyivugiza, so the population resumed the attack against the Tutsis who remained in Kigali.[1203]

[1200] Indictment, para. 6.17; Prosecution Pre-Trial Brief, paras. 181 (p. 40), 267 (p. 54); Prosecution Closing Brief, paras. 146, 173, 175, 240; Prosecution 21 November 2008 Document, Item No. 52.
[1201] Mugenzi Closing Brief, paras. 1227-1245.
[1202] Witness D, T. 15 June 2004 pp. 2, 25-28, 61-62; T. 16 June 2005 p. 3; T. 17 June 2004 pp. 4, 24-25, 35, 63-64; Exhibit P53 (*Comité national provisoire des Interahamwe*).
[1203] Witness D, T. 15 June 2004 pp. 29-31; T. 16 June 2004 pp. 54, 61-62.

Mugenzi

819. Mugenzi testified that after taking the oath of office on the morning of 9 April 1994, the ministers of the Interim Government held their first meeting at *Hôtel des Diplomates*. After the new ministers were introduced to the new Prime Minister and President, they discussed security. Recognising that soldiers and the militia were responsible for the killings, the Interim Government agreed that they should be stopped. Mugenzi was selected to meet the MRND leaders to request that they "tell their young men to stop the killings immediately".[1204]

820. Directly after the meeting, Mugenzi found Mathieu Ngirumpatse, the MRND president, and conveyed the message to him. Ngirumpatse then conveyed Mugenzi's message to Nzirorera. About an hour later, Mugenzi met with Nzirorera and four *Interahamwe*, including Witness D. Nzirorera conveyed the government's message and instructed the four *Interahamwe* to tell those who were leading the killings in Kigali to stop and to report back later that evening. Mugenzi was called to receive the report when they returned. The four *Interahamwe* reported that their mission had been successful. Mugenzi was satisfied that the mission had been successful and the killings had been stopped and he reported the success of the mission to the Prime Minister. He denied expressing pleasure at the large number of people who had been killed.[1205]

Mugiraneza

821. During the cabinet meeting on 9 April 1994, Mugiraneza testified that the Prime Minister was tasked with contacting leaders of political parties in order for them to tell their respective members to stop the killings. According to information received by the cabinet that day, those engaged in the killings included the youth wings of political parties and the biggest group involved in the killings was the *Interahamwe*. The cabinet was advised of "targeted killings of Tutsis" in Kigali, but was unaware of the extent of the killings. They were told that people were being "slaughtered in the neighbourhoods". The cabinet observed that the public heeded the directives of political parties, but did not respect the decisions of the government. The cabinet believed that the leadership of the political parties would be in a position to restore law and order in Kigali.[1206]

822. The Prime Minister became busy contacting the senior officers of the Rwandan armed forces and members of his own party, the MDR, so he sent Mugenzi, a leader of the PL, in his place. Opposition ministers had stated that it was not desirable that a MRND minister be sent because they believed that the message would not be forcefully conveyed to the MRND by a minister of the same party. MRND ministers concurred with this suggestion. The cabinet agreed that another party leader should meet with the MRND leadership. Consequently, Mugenzi was chosen to meet with the leadership of the MRND and *Interahamwe*.[1207]

[1204] Mugenzi, T. 8 November 2005 pp. 78-79.
[1205] Mugenzi, T. 8 November 2005 pp. 80-84; T. 30 November 2005 p. 78.
[1206] Mugiraneza, T. 22 May 2008 pp. 4-5, 36-37, 39-40; T. 3 June 2008 p. 62; T. 4 June 2008 p. 15.
[1207] Mugiraneza, T. 22 May 2008 pp. 4-6; T. 3 June 2008 pp. 61-64.

823. Prior to Mugenzi's meeting with the leadership of the political parties, the authorities had not succeeded in putting an end to the killings. During a cabinet meeting on 10 April 1994, the Prime Minister advised that the killings had been stopped in Kigali.[1208]

Bicamumpaka

824. After the swearing-in ceremony for the Interim Government on 9 April 1994, Bicamumpaka, Bizimungu and Augustin Ngirabatware were tasked with contacting the ambassadors of France, Belgium and the Vatican. Since he was meeting with the ambassadors, Bicamumpaka was not present during the meeting when Mugenzi was tasked to meet with the MRND. However, Bicamumpaka testified that Mugenzi was delegated by the Interim Government to meet with the MRND leadership and convey the government's message to stop the killings. Around 10 April, he noticed that the killings had stopped in Kigali.[1209]

Bizimungu

825. After the swearing-in ceremony on 9 April 1994, Bizimungu, along with Bicamumpaka and Augustin Ngirabatware, were given the directive to meet with the ambassadors of France, Belgium, and the Vatican. During the meeting on 9 April, the cabinet took measures to stop the killings by enlisting the assistance of the political parties. The Interim Government recognised that, among others, the *Interahamwe* were committing the killings. The Prime Minister took responsibility to immediately address the issue as soon as the meeting ended. Bizimungu was not present at the meeting when Mugenzi was tasked with contacting the political parties and did not believe any discussions were held concerning roadblocks. However, he testified that between 9 and 12 April, the government received reports that the killings had stopped.[1210]

Bizimungu Defence Witness Emmanuel Ndindabahizi

826. Ndindabahizi, a Hutu, was appointed Minister of Finance of the Interim Government on 9 April 1994.[1211] He acknowledged that Rwandans believed that an ethnic problem existed in the country with respect to the war between the government, composed of Hutus, and the RPF, who were Tutsis. During the 9 April meeting, the cabinet discussed the killings by soldiers and *Interahamwe*, who were the youth of the MRND, and problems caused by roadblocks.[1212]

827. Ndindabahizi did not recall whether Mugenzi was assigned to speak with the MRND leadership or if Mugenzi met with Nzirorera in order to stop the killings by the *Interahamwe*. Ndindabahizi testified that at the 9 April 1994 meeting it was decided that political parties would be asked to assist in restoring peace, including disciplining their youth wings and

[1208] Mugiraneza, T. 22 May 2008 pp. 6-7; T. 3 June 2008 p. 64.
[1209] Bicamumpaka, T. 26 September 2007 pp. 34-36; T. 27 September 2007 pp. 17-19.
[1210] Bizimungu, T. 24 May 2007 pp. 31-32; T. 4 June 2007 pp. 12-13; T. 5 June 2007 pp. 26-29, 32-35.
[1211] Ndindabahizi, T. 30 April 2007 pp. 4-5; Exhibit 1D158 (Ndindabahizi's Personal Information Sheet).
[1212] Ndindabahizi, T. 2 May 2007 pp. 8-13.

advising them not to take part in the massacres. Ndindabahizi was not aware of the cessation of killings by the *Interahamwe* after 9 April.[1213]

Mugenzi Defence Witness Agnès Ntamabyaliro

828. Agnès Ntamabyaliro, a Hutu, was appointed Minister of Trade and Industry in April 1992 and Minister of Justice in July 1993, a post which she retained in the Interim Government.[1214] After the swearing-in ceremony on 9 April 1994, Ntamabyaliro did not recall any other meetings that day. The first cabinet meeting took place on 10 April and she could not recall who was present, including whether Mugenzi attended. The cabinet was informed of the killings in Kigali, but not about other killings in the prefectures. The killings were committed by unruly soldiers and *Interahamwe*, which were denounced by the Interim Government. At the time, the ethnicity of the victims was unclear as people from all ethnic groups were being killed.[1215]

Deliberations

829. The parties do not dispute that there was a meeting among Mugenzi, Nzirorera, and *Interahamwe*, including Witness D, at which Witness D and the other *Interahamwe* were tasked with instructing the killers throughout Kigali to stop killing. Although Witness D places the meeting on 10 April 1994, the Chamber is satisfied that the meeting took place on 9 April, as Mugenzi testified.[1216] Further, the Interim Government, at the 9 April cabinet meeting, was advised that civilians were being killed by the *Interahamwe*. The only issues before the Chamber are the reasons for the pacification mission and whether Mugenzi expressed satisfaction that many Tutsis had been killed.

830. Witness D was the sole witness to testify for the Prosecution in relation to this event. Before turning to the merits of the Prosecution evidence, the Chamber looks at the general credibility of Witness D. His relationship with the Prosecution is extensive. He has provided information to the Prosecution and evidence on its behalf concerning the events of 1994 and assisted in the location of fugitives.[1217] Furthermore, he has received direct or indirect payments from the Prosecution between 1996 and May 2007 for his assistance and has been placed in a witness protection program. Many payments appear to be reasonable expenditures to cover travel, communication and other hardships related to assisting investigations or testifying before the Tribunal.[1218] Notwithstanding, the payments are significant.[1219]

[1213] Ndindabahizi, T. 2 May 2007 pp. 8-11, 15-16.
[1214] Ntamabyaliro, T. 21 August 2006 pp. 3-7; Exhibit 2D102A (Ntamabyaliro's Personal Information Sheet). At the time of her testimony, Agnès Ntamabyaliro was charged with genocide and a detainee in Kigali prison. Her trial had commenced but was postponed so that she could testify before the Tribunal. T. 23 August 2006 pp. 18-19.
[1215] Ntamabyaliro, T. 21 August 2006 pp. 42-44; T. 28 August 2006 pp. 55-56.
[1216] During his testimony, Witness D stated that he believed that the Interim Government had been sworn in on the day of the meeting. The Chamber accepts that the Interim Government was sworn in on 9 April 1994 (II.7.2), and, thus, accepts that the meeting where Witness D and others were instructed to undertake the pacification tour took place on 9 April. The Chamber notes that the Indictment places the meeting on 9 April.
[1217] *See* Witness D, T. 15 June 2004 pp. 67-68; T. 17 June 2004 pp. 13-14, 67-70.
[1218] *See, e.g.*, Witness D, T. 15 June 2004 pp. 68-69; T. 16 June 2004 pp. 8-9, 71; Exhibit P56 (Statement of Payments to Witness D, 15 February 2002).

831. Furthermore, in February 2002, the Prosecutor issued a statement that the Prosecution had decided not to open an investigation against Witness D given that the "evidence assessed" did not provide sufficient grounds to prosecute him. It further described his willingness to cooperate with the Office of the Prosecutor.[1220] Notably, this agreement was made in order to secure his testimony in the *Nahimana et al.* trial. While Witness D testified that this was done to allay suspicions about his involvement in the genocide and affirm his general credibility, it can also be seen as a concession made to obtain testimony.[1221] The record does not reflect that the Prosecution has acted improperly or sought to influence Witness D's testimony. Nonetheless, the possibility that Witness D is motivated to provide evidence favourable to the Prosecution in order to ensure continued benefits cannot be ignored.

832. In addition, aspects of Witness D's testimony regarding his position within the *Interahamwe* raise questions about his credibility. He testified that, by 1992, his position within the *Interahamwe* was by title only and that he held little influence within the organisation.[1222] However, he was a signatory to a January 1994 letter from the *Interahamwe* to UNAMIR that complained about the impartiality of its peacekeepers.[1223] After the formation of the Interim Government, Witness D was called upon to pacify *Interahamwe* killing Tutsis throughout Kigali and, during his tour, was able to move freely throughout Kigali. In the last week of April, he was part of a contingent of *Interahamwe* officials who met with General Roméo Dallaire to address the fact that *Interahamwe* were preventing UNAMIR-escorted refugees from the *Hôtel des Mille Collines* from reaching Kanombe airport.[1224] Finally, while in Butare, he was approached by Colonel Muvunyi to discourage *Interahamwe* arriving from Kigali to participate in looting.[1225]

833. Given his own admissions that *Interahamwe* participated in killings in 1994, his attempts to distance himself from the organisation, while understandable, are inconsistent with the contemporaneous recognition of his status by those in power in 1994 and his acts on the organisation's behalf.[1226] Under these circumstances, the Chamber does not consider Witness D to be an accomplice witness. However, the Chamber has some concerns that his evidence might be incomplete, particularly to the extent that it implicates him in criminal

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[1219] *See* Exhibit 4D163 (Payments to Witness D). In so finding, the Chamber has considered the Prosecution submissions about the nature of the compensation received by Witness D. *See* T. 16 June 2004 p. 15. Indeed, Witness D's estimates of the payments he has received are significantly lower than what records reveal. *See* Witness D, T. 16 June 2004 p. 71.

[1220] *See* Witness D, T. 15 June 2004 pp. 69-70; Exhibit P57 (Letter of Non-Prosecution of Witness D, 5 February 2002).

[1221] Witness D, T. 15 June 2004 p. 70; T. 16 June 2004 pp. 16, 71-72.

[1222] Witness D, T. 15 June 2004 pp. 61-65; T. 16 June 2004 pp. 44-45, 58-59; T. 17 June 2004 pp. 48-50, 58-59.

[1223] Witness D, T. 16 June 2004 pp. 51-52; Exhibit 2D14 (Letter from *Interahamwe* to UNAMIR, 19 January 1994).

[1224] Witness D, T. 15 June 2004 pp. 48, 50-54; T. 16 June 2004 pp. 29-32, 57-59.

[1225] Witness D, T. 17 June 2004 p. 65.

[1226] *See* Witness D, T. 17 June 2004 p. 51 ("Q. ... Some people have said that the *Interahamwe* is a criminal, genocidal organisation. Would you say it is fair or unfair to characterise the *Interahamwe* in general that way? A. It would be dishonest, in my view, to call this organisation as genocidaire, because as I explained to you, it is not only the *Interahamwe* who perpetrated the killings in Rwanda.").

conduct. Under these circumstances, his evidence should be assessed on a case-by-case basis and approached with the appropriate caution.[1227]

834. Turning to the question whether the true purpose of the pacification tour was to hide victims' bodies from the international community, the Chamber recalls Witness D's testimony that, at the time of the tour, some members of the expatriate community remained in Kigali, including UNAMIR troops. Indeed, Witness D encountered the Bengali faction of UNAMIR troops during the tour.[1228] Witness D acknowledged that the ICRC was trying to collect bodies around the time of the pacification tour.[1229] In this regard, the Chamber recalls Bizimungu's evidence that on 11 April 1994, Philippe Gaillard, an ICRC representative, told him that it was urgent that bodies in Kigali be collected to avoid an epidemic.[1230] Finally, the Chamber notes that contemporaneous UNAMIR cables and reports show that UNAMIR representatives were aware of killings and reported that they were ongoing in Kigali to their superiors at UN headquarters.[1231]

835. The Chamber considers that the presence of members of the international community, particularly UNAMIR, in Kigali at the time, the ICRC efforts related to the burial of bodies and the UNAMIR reports of mass killings in Kigali prior to the pacification tour raise doubt with respect to the plausibility of Witness D's evidence that the purpose of the pacification tour was to conceal killings from the international community. Moreover, the Chamber observes that while the removal of bodies from the streets of Kigali may have had the effect of improving the international community's impression of the situation, it would also have the effect of alleviating a clear public health risk. Under these circumstances, the Chamber does not accept Witness D's evidence with respect to the purpose of the pacification tour.

836. Nor does the Chamber accept Witness D's evidence that Mugenzi was pleased that many Tutsis had been killed in Kigali. Though he insisted that Mugenzi was pleased at the high number of people killed, his evidence on this point is highly subjective. Notably, Witness D did not claim that Mugenzi made any statement to the effect that he was pleased to hear about the killings.[1232] Rather, Witness D's conclusion with respect to Mugenzi's state of mind is based solely on Mugenzi's physical reaction to the report that the pacification tour had been a success. Under the circumstances, the Chamber considers that it can only accept Witness D's evidence if his were the only reasonable interpretation of Mugenzi's reaction.

[1227] The Chamber has also considered the evidence of Witness ALL-42 regarding Witness D's relationship with the RPF. *See* Exhibit 4D164 (*Bagosora et al.* Transcript of 8 November 2006) pp. 33-34. This evidence, which is general, does not raise questions about Witness D's reliability.
[1228] Witness D, T. 16 June 2004 pp. 54-55.
[1229] Witness D, T. 16 June 2004 p. 55.
[1230] Bizimungu, T. 24 May 2007 p. 35; *see also* II.7.4.
[1231] *See, e.g.*, Exhibit 2D59 (Various Documents) pp. 183-184 (*Communiqué de Presse* from SRSG Jacques-Roger Booh-Booh, 8 April 1994: refers to UNAMIR, representatives of the international community and the population of Kigali as powerless witnesses to horrible and senseless massacres), 187-189 (Redacted Outgoing Cable from Annan to UN Secretary-General, 9 April 1994: describes a "highly unstable" security situation in Kigali with "continued killings" and an "endangered civilian population"); Exhibit 4D45 (Outgoing Cable from Booh-Booh to Annan and Goulding, 8 April 1994) (refers, *inter alia*, to the massacre of Tutsis in Remera section of Kigali); Exhibit 3D85 (Outgoing Cable from Booh-Booh to Annan, Goulding and Hansen, 9 April 1994) (refers, *inter alia*, to ongoing killings by RGF, Presidential Guard and *Interahamwe* in Kigali, a campaign of "ethnic and general violence" conducted by "*Interahamwe* and other mobs", and though noting the difficulty of estimating the number of dead in Kigali, speculating that "as many as thousands have lost their lives"; identifying the victims as "mostly Tutsis and Hutus from the south or from non-MRND/CDR political parties").
[1232] Witness D, T. 16 June 2004 pp. 61-62.

Mugenzi has suggested that he was pleased at the success of the pacification tour, although the Chamber views his evidence with considerable suspicion. Notwithstanding, the Prosecution evidence is insufficiently reliable to support findings beyond reasonable doubt.

837. Accordingly, the Chamber finds that the Prosecution has not proved beyond reasonable doubt its allegations regarding the purpose of the pacification tour and Mugenzi's reaction to its successful conclusion.

7.4 Killings at the CHK and Clearing of Bodies, From 10 April 1994

Introduction

838. The Indictment alleges that the *Centre Hospitalier de Kigali* ("CHK") received wounded Tutsis, who, on several occasions, were killed by soldiers supposed to be guarding the hospital. These massacres were reported to the Minister of Health, Casimir Bizimungu, who did not take any steps to prevent this. However, fearing the opinion of the international community, the Accused attempted to conceal the massacres in Kigali. During a meeting on 11 April 1994, Bizimungu told workers to get rid of the corpses before the white people took photographs of them. Furthermore, the Prosecution also points to evidence that during a visit to the CHK around 12 April, Bizimungu encouraged the killings there. Relevant evidence was led through Prosecution Witnesses QU, GIE, GAT, UL and DCH.[1233]

839. The Bizimungu Defence submits that it has received insufficient notice of these allegations. Moreover, the Prosecution evidence implicating him in the crimes is unreliable. Bizimungu and Mugenzi provided relevant evidence. Reference is made to Witnesses WZ4, WKA, WZ10, WFQ1, Jean François Ruppol, WAA and Emmanuel Ndindabahizi.[1234]

Evidence

Prosecution Witness QU

840. Witness QU, a Tutsi, worked for the Ministry of Health from January 1993 until April 1994.[1235] Between 11.00 a.m. and 12.00 p.m. on 7 April 1994, soldiers attacked her and other Tutsis hiding in a compound in Muhima. She survived by lying still under dead bodies. Around 5.00 p.m. communal police arrived. She overheard a man ask them to take him to the hospital and she also requested assistance. She was driven by the police to the CHK. Once there, an officer among those that transported her pushed her to the ground, injuring her back. The police then left.[1236]

841. She entered the hospital's emergency area and met Dr. Augustin Cyimana, with whom she previously had worked. He said that soldiers would be hunting Tutsis there and admitted her into the maternity ward, where he believed she would be safe. She stayed for

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[1233] Indictment, paras. 6.17, 6.40-6.41; Prosecution Pre-Trial Brief, paras. 167-170 (pp. 37-38), 235 (p. 49); Prosecution Closing Brief, paras. 181, 231-233, 360-361, 374; Prosecution 21 November 2008 Document, Item Nos. 54, 75, 108, 111; Prosecution Closing Arguments, T. 1 December 2008 pp. 32, 47-49.
[1234] Bizimungu Closing Brief, paras. 587-689, 829-838; Bizimungu Closing Arguments, T. 2 December 2008 p. 17.
[1235] Witness QU, T. 17 March 2004 pp. 2, 4, 32-34; T. 18 March 2004 p. 34; Exhibit P44 (Witness QU's Personal Information Sheet).
[1236] Witness QU, T. 17 March 2004 pp. 11-17; T. 18 March 2004 pp. 2-13.

approximately two-and-one-half weeks. During her stay, she heard a radio broadcast by a man called Munyamasoko requesting members of the Ministry of Health's sanitation department to report for duty and to remove bodies from the streets. Consequently, trucks within the CHK were taking away corpses from the morgue. Additionally, uniformed soldiers searched the maternity ward for Tutsis, reviewing identification cards and patients' physical appearances. Those identified as Tutsis were taken away and killed. Such assaults occurred on an hourly basis.[1237]

842. During the second week of her stay, Witness QU saw Bizimungu at the CHK one morning with the hospital's director, Dr. Kanyangabo, and another doctor called Cyridien Ukurikiyimfura near the maternity ward moving in the direction of the pediatrics area. She believed that the killings would cease because of the Minister's visit. However, the killings continued there. She believed that Bizimungu knew that killings were taking place at the CHK as staff and trucks from the Ministry of Health were removing corpses, but she was unaware of whether any killings occurred in his presence.[1238]

843. Witness QU testified that while in the maternity ward, soldiers also checked her identity card, which indicated Tutsi. However, they did not remove all Tutsis at once, and after the soldiers left, she fled the maternity ward before they returned. Doctor Cyimana had also instructed her to flee from there. She next hid in a private clinic within the hospital where she remained for another two-and-one-half weeks. During her stay, she heard shelling at the hospital, but did not know what the source was. When she left, she went to Saint Paul's church.[1239]

Prosecution Witness GIE

844. Witness GIE, a Tutsi, worked at the Ministry of Health.[1240] The Ministry, which included Bizimungu's office, was located about 200 metres from the CHK. From 11 April to 26 May 1994, the witness, his wife and his child took refuge in the CHK after receiving assurances from a friend who worked there that they would be protected. He stayed in the hospital's operating theatre where inpatients were being received while his wife remained in other locations.[1241]

845. On 12 April 1994, around 9.30 a.m., he observed Bizimungu near the laboratory and emergency room telling between 10 and 20 medical staff that they had finished the war in Kimihurura and that Ministers Nzamurambaho and Rucogoza were dead. The witness understood this to mean that the *Inyenzi* had been killed. Bizimungu then asked what the situation was at the hospital and what was lacking. Jean De Dieu Mgerageze told Bizimungu that the numerous corpses at the CHK presented a problem. The Minister replied that he would find trucks and other equipment, as well as request the assistance of prisoners in order to remove them. Witness GIE, terrified by Bizimungu's encouragement of the massacres, returned to where he was hiding.[1242]

[1237] Witness QU, T. 17 March 2004 pp. 17-21, 25-28; T. 18 March 2004 pp. 13, 24, 29-30.
[1238] Witness QU, T. 17 March 2004 pp. 20, 24-27; T. 18 March 2004 pp. 13-15, 18-24; Exhibit 1D34 (Names of Hospital Director and Doctor that Witness QU saw with Bizimungu at the CHK).
[1239] Witness QU, T. 17 March 2004 pp. 19-24, 30; T. 18 March 2004 pp. 24-25.
[1240] Witness GIE, T. 17 February 2004 pp. 13-14; Exhibit P28 (Witness GIE's Personal Information Sheet).
[1241] Witness GIE, T. 17 February 2004 pp. 37, 41, 44; T. 18 February 2004 pp. 8-11, 16, 19-20, 23.
[1242] Witness GIE, T. 17 February 2004 pp. 37-39; T. 18 February 2004 pp. 17-19.

846. Witness GIE observed bodies at the CHK, some of which were brought there by *Interahamwe* and the Red Cross. Corpses were deposited in a location referred to as "Zaire" or the "CND". On 25 April 1994, he saw bodies being loaded onto several trucks by tippers. While hiding at the CHK, the operating theatre where he was staying was bombed. Other shelling occurred at the hospital but the witness could not recall the dates.[1243]

Prosecution Witness GAT

847. Witness GAT, a Tutsi, worked for various divisions within the Ministry of Health.[1244] Bizimungu's office in the Ministry looked onto the road leading to the CHK. During the genocide, Jean Damascène Munyamasoko, the former chief of personnel in the Ministry of Health, was appointed CHK's administrator. She had heard that Damascène had said that *Inyenzi* and their relatives had to be exterminated.[1245]

848. The witness learned that soldiers, including Presidential Guards and *Interahamwe*, attacked Tutsi patients at the CHK, resulting in an estimated 6,000 deaths. Specifically, around 8 or 9 April 1994, Lieutenant Jean-Pierre Hategekimana supervised soldiers who mounted an assault on the hospital. Witness GAT learned from persons accepting patients there that Bizimungu visited after the attack and had heard about the killings but did nothing to stop them. Some died at the CHK due to RPF bombing as well.[1246]

849. Around 10 or 11 April 1994, a statement signed by Bizimungu was read over the radio. It requested that persons from the sanitation and epidemiology departments of the Ministry of Health, persons with lorries in the Ministry of Public Works and members of the city council work in conjunction with the Red Cross to remove "the dirt" in order to avoid epidemics. Corpses were disposed of behind the hospital, and were placed in open pits and latrines.[1247]

Prosecution Witness UL

850. Witness UL, a Hutu, worked as a driver in the Ministry of Public Works in 1994.[1248] About four days after the President's death, the witness heard a statement from Kigali-Ville Prefect Tharcisse Renzaho broadcast on the radio requesting persons from the witness's ministry to return to work. On 11 April 1994, around 9.00 a.m., he attended a meeting at the prefecture of Kigali-Ville with 80 to 100 other persons, including Renzaho, Minister of Public Health Bizimungu, Minister of Public Works Hyacinthe Rafiki Nsengiyumva, and an

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[1243] Witness GIE, T. 17 February 2004 pp. 41-42; T. 18 February 2004 pp. 19-21.
[1244] Witness GAT, T. 25 February 2004 p. 41; T. 27 February 2004 pp. 2-3, 7-10, 13; T. 1 March 2004 pp. 6, 9; Exhibit P33 (Witness GAT's Personal Information Sheet).
[1245] Witness GAT, T. 25 February 2004 p. 42; T. 26 February 2004 pp. 17-18; T. 27 February 2004 pp. 10, 24-25.
[1246] Witness GAT, T. 25 February 2004 p. 42; T. 26 February 2004 pp. 17-18; T. 27 February 2004 pp. 10, 25; T. 1 March 2004 pp. 7-8, 27-29; T. 2 March 2004 pp. 9-13.
[1247] Witness GAT, T. 26 February 2004 pp. 18, 26-27; T. 1 March 2004 pp. 6-7.
[1248] Witness UL, T. 1 March 2004 p. 44; T. 2 March 2004 pp. 18, 31; T. 3 March 2004 p. 49; Exhibit P34 (Witness UL's Personal Information Sheet). Witness UL had been charged with committing genocide in Rwanda. He was detained for nearly five years before being acquitted in 2002. He provided statements to Tribunal investigators in 1998, while detained, and participated in investigations in September 2002 shortly after his release. Witness UL, T. 1 March 2004 p. 44; T. 3 March 2004 pp. 18-22.

ICRC representative, who the witness subsequently learned was Philippe Gaillard. The witness was unaware of whether Gaillard was accompanied by a member of his staff.[1249]

851. Renzaho opened the meeting around 9.30 a.m. by introducing Bizimungu, Nsengiyumva and Gaillard. The prefect stated that there was "a lot of dirt in the town" and ordered that it be removed. He provided instructions for clearing and burial. Bizimungu urged that "things" first be removed from the CHK, and said that it would be shameful if foreigners took pictures of them. The word "corpse" was not uttered and the references to "dirt" or "things" were used to refer to the dead instead. Moreover, Bizimungu's instructions were in Kinyarwanda so that Philippe Gaillard, who only spoke French and whom the witness believed was unaccompanied by an interpreter, would not understand. In the witness's view, it was clear that Bizimungu did not want the killings to be known. Gaillard said in French that trucks and vehicles used to bury the corpses should get fuel from the Red Cross in Gikondo. The meeting lasted about 35 minutes.[1250]

852. From 11 to 22 April 1994, Witness UL worked under the supervision of Jean de Dieu Mgerageze, using equipment under the control of Kigali-Ville prefecture. While he initially drove a mini-bus for two days, on 14 and 15 April, he used a tractor to remove several corpses from the mortuary at the CHK. He observed lorries filled with bodies there and retrieved numerous corpses – which increased due to continued killings – that soldiers and *Interahamwe* brought from the centre of the CHK compound. While he was not present during any killings at the CHK, the witness heard screaming and sounds of struggles from within the hospital. Furthermore, the corpses brought to him, many cut in pieces, were often still warm.[1251]

853. The witness dug graves, and bodies from the CHK were buried close to the hospital, as well as in Nyamirambo. Once filled, prisoners from Kigali Central Prison and the Ministry of Health's sanitation department employees, who also participated in burying, began placing bodies in pit latrines near the hospital. On one occasion, Mgerageze informed him that the Minister of Defence had ordered that the body of Frédéric Nzamurambaho be removed from a grave site. The witness, who knew Nzamurambaho, uncovered a mass grave and returned the body to the CHK mortuary.[1252]

Prosecution Witness DCH

854. Witness DCH, a Hutu, was a government driver and member of the MRND in 1994.[1253] He recalled that, around 25 April 1994, a radio announcer repeated instructions from Kigali-Ville Prefect Tharcisse Renzaho indicating that the town had become "dirty" and that employees from the Ministries of Public Works and Sanitation were to clear the town of corpses. The words "dirt" and "filth" were used to refer to bodies of those who had been

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[1249] Witness UL, T. 1 March 2004 pp. 49-51; T. 2 March 2004 pp. 18-19; T. 3 March 2004 pp. 28-30, 33-34, 40.
[1250] Witness UL, T. 2 March 2004 pp. 20-26, 30; T. 3 March 2004 pp. 10-11, 28-31, 34-35.
[1251] Witness UL, T. 2 March 2004 pp. 24-31; T. 3 March 2004 pp. 35-36, 44, 53.
[1252] Witness UL, T. 2 March 2004 pp. 29-30; T. 3 March 2004 p. 36.
[1253] Witness DCH, T. 16 September 2004 pp. 71, 75-76; T. 20 September 2004 pp. 14-15, 18; Exhibit P72 (Witness DCH's Personal Information Sheet). Witness DCH was arrested in Rwanda in 1995 and was charged with genocide, massacres, looting and related crimes. He pleaded guilty and received a sentence of 7 years on 8 December 2001. In light of his pre-trial detention, Witness DCH completed his sentence and was released on 1 February 2002. Witness DCH, T. 16 September 2004 pp. 71-73; T. 20 September 2004 p. 2; T. 22 September 2004 pp. 8-9, 14-17.

killed, which were presenting a health risk. Lorries were used by persons from the Ministry of Public Health to collect bodies while employees from the Ministry of Public Works dug graves.[1254]

Bizimungu

855. Bizimungu testified that on 10 April 1994, the ICRC representative in Rwanda, Philippe Gaillard, met him in the lobby of the *Hôtel des Diplomates*, where Bizimungu was staying with his family. Gaillard stated that there were many corpses in CHK's mortuary and in Kigali generally, which needed to be buried to avoid an epidemic. The two left immediately for CHK's mortuary, travelling on foot as it was a short distance away. The mortuary was small, and filled with bodies, and some corpses were left outside of it. They remained there for 15 to 20 minutes before returning to the *Hôtel des Diplomates*, where they composed a report to the Prime Minister.[1255]

856. During a meeting with the Prime Minister later that day, Gaillard recommended that the bodies be collected and buried immediately to ensure hygiene in Kigali. The Prime Minister agreed, and instructed that Bizimungu and the Minister of Public Works, Rafiki Nsengiyumva, work with the Kigali-Ville Prefect Tharcisse Renzaho in order to respond to the situation. The ministers and Renzaho decided to make a radio announcement convening the relevant persons at the Kigali-Ville prefecture office the following day.[1256]

857. On 11 April 1994, around 10.00 a.m., between 50 and 80 persons, including personnel from the Ministries of Public Works and Public Health, the ICRC and Kigali-Ville prefecture met at the prefecture office. Renzaho, Nsengiyumva, Gaillard and Bizimungu spoke during the gathering. Bizimungu informed those present that he supported Gaillard's proposal to collect and bury the corpses throughout Kigali and invited staff from his ministry to assist. Gaillard stated that vehicles and bulldozers would be supplied with fuel from the ICRC petrol station the next day. Bizimungu denied that the word "dirt" was used by anyone during the meeting, which was conducted in French and Kinyarwanda and lasted for about 45 minutes.[1257]

858. On 12 April 1994, around 7.00 a.m., Bizimungu brought his family to the French Embassy in Kigali to be evacuated. Upon his return to the *Hôtel des Diplomates*, he saw that people were panicking, and he learned that General Augustin Ndindiliyimana had ordered people to leave Kigali because the city would fall to the RPF at any moment. Bizimungu left Kigali for Gitarama immediately, between 8.00 and 8.30 a.m. on 12 April, and continued onto Kinshasa, Zaire the same day. Except on 10 April, Bizimungu never went to the CHK between April and July. He never received any information in April or May of what was occurring at the CHK, and he did not follow efforts related to removal of corpses.[1258]

[1254] Witness DCH, T. 20 September 2004 pp. 17-18; T. 21 September 2004 pp. 38-39.
[1255] Bizimungu, T. 24 May 2007 pp. 35, 38; T. 28 May 2007 p. 24; T. 11 June 2007 p. 12.
[1256] Bizimungu, T. 28 May 2007 pp. 24-25. *See also* Exhibit 1D197 (Radio Rwanda Broadcast, 10 April 1994) pp. 1 (English K0266161), 2 (French K0140446) (*communiqué* indicating that Bizimungu requests staff from the public health division go to the Kigali-Ville prefecture office on Monday 11 April 1994 at 9.00 a.m.).
[1257] Bizimungu, T. 28 May 2007 pp. 28-31; T. 11 June 2007 p. 13.
[1258] Bizimungu, T. 24 May 2007 pp. 38 (English), 44 (French); T. 28 May 2007 pp. 15-23, 31-33, 40-42, 51; T. 29 May 2007 p. 64; T. 11 June 2007 p. 16. The Chamber refers to the French transcript at T. 24 May 2007 p. 44 in addition to the English reference (at p. 38), as the English mistakenly indicates that Bizimungu left Kigali in

Mugenzi

859. During a cabinet meeting on the morning of 10 April 1994, Bizimungu stated that he was meeting with a representative from the ICRC to discuss the collection of bodies throughout Kigali for disposal. The Interim Government was aware that killings had been going on for days, and that there were corpses throughout Kigali, including on the streets and at roadblocks, which posed a health risk. The following day, 11 April, Bizimungu did not attend a meeting with Interim Government ministers and prefects as he was meeting with Philippe Gaillard of the ICRC. Mugenzi had no prior knowledge of bodies being removed from the streets and being brought to a mortuary, as this would normally be reserved for those who died at the hospital. He believed the morgue at the Kigali hospital could only service about 10 to 15 bodies.[1259]

Bizimungu Defence Witness WZ4

860. Witness WZ4, a Hutu, was a doctor in the maternity department of the CHK.[1260] He testified about the layout of the hospital, explaining that passing through its main entrance one would encounter the laboratory and the administrative offices, which were in the same building. Behind this building was the surgical building, followed by the hospitalisation wards. The maternity ward was about 10 metres to the right of the laboratory and the administrative building. A second maternity ward, reserved for patients who could pay and called the "clinic" was about 100 metres from the laboratory and administrative building. A few metres across from the laboratory and administrative building – and to the left of the entrance – was the emergency services centre. The morgue was on the opposite end of the hospital, near the dispensary, chapel and blood transfusion centres. Between 7 April and 25 May 1994, the ICRC had set up approximately eight tents that could accommodate approximately 150 patients in the area between the emergency services unit and the laboratory and administrative building.[1261]

861. On the morning of 7 April 1994, the witness heard gunshots east of the hospital, in the direction of the nearby Camp Kigali military base and the CND building. Due to the significant influx of patients, many who sustained bullet wounds, he remained at the CHK until the morning of 9 April, when he managed to travel home. He stayed there and returned to the hospital around 9.00 a.m. on 12 April, first going to the maternity ward for about one hour. He was unaware of any meeting occurring near the laboratory that day, although he would not have been in a position to see one while in the maternity ward. He next went to the emergency ward, and spent most of the afternoon in the operating theatre. That day, the witness had heard that Bizimungu and an ICRC official named Philippe came to the CHK on 10 April in order to bring calm. He was unaware of Bizimungu returning at any other time

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the early morning of 10 (instead of 12) April 1994; Exhibit 1D196 (List of Rwandan Officials Evacuated from the French Embassy on 12 April 1994).

[1259] Mugenzi, T. 9 November 2005 pp. 32-33; T. 14 November 2005 pp. 10-12.

[1260] Witness WZ4, T. 5 September 2006 p. 43; Exhibit 1D93 (Witness WZ4's Personal Information Sheet).

[1261] Witness WZ4, T. 5 September 2006 pp. 59-60, 62; T. 6 September 2006 p. 3; T. 7 September 2006 p. 18; Exhibit 1D96 (Diagram of CHK).

after the killings commenced and he never saw Dr. Benoit Ntezayabo at the hospital during that period.[1262]

862. The witness, who went to the hospital every day between 12 April and 24 May 1994, was unaware of soldiers or *Interahamwe* killing any patients at the CHK. Furthermore, the hospital's director, Mr. Cyridien, worked alongside the witness and did not discriminate with respect to any patients. Rather, Hutus and Tutsis were treated the same and everyone's safety within the hospital was guaranteed. The hospital was staffed by Tutsis and Hutus and the ethnic composition remained the same after 7 April. Nonetheless, the witness admitted five Tutsis, who were not sick, but who feared for their safety.[1263]

863. Many injured patients and corpses were brought to the CHK by the ICRC and others. The mortuary, which could only accommodate between 10 and 15 bodies, lacked a cooling mechanism and decomposition of the corpses presented a serious health risk. Although he did not go to the mortuary, which was some distance from where he worked, he was aware that because of the number of dead, bodies were piled outside it. He was not aware of any specific meetings, but the witness believed that the CHK authorities under Bizimungu's responsibility and the ICRC organised the digging of mass graves in order to dispose the bodies and avoid infections and diseases.[1264]

864. Nearly 200 persons died at the CHK between 7 April and 24 May 1994. While some passed away due to the severity of injuries and lack of medical resources, the main cause of death resulted from bombing. Shelling occurred as early as 12 April, hitting the hospital or surrounding areas about three times a day. In particular, bombs struck hospitalisation rooms 1, 2 and 7, killing patients inside. Another destroyed the surgical ward theatre. On 18 May, a bomb wiped out the ICRC tents and hit the nearby administrative building, killing nearly 100 persons. The bombing, which resulted in the deaths of about 150 persons, forced the closure of the hospital around 24 May, and the witness fled Kigali the following day.[1265]

Bizimungu Defence Witness WKA

865. Witness WKA, a Hutu, was a medical assistant at the CHK and an MRND member in 1994.[1266] The hospital was big and had several departments. The emergency ward was about two metres to the left after entering the hospital's main gate. It faced the laboratory building, which was about six to eight metres away, and separated by a road. The maternity ward was to the right of the entrance. It also faced the laboratory and a space of about six to ten metres separated the two. The mortuary was a significant distance from the emergency room and could not be seen from it.[1267]

866. From 7 April to the end of May 1994, the witness worked between 7.00 a.m. and 5.00 p.m. daily in the CHK's emergency ward. No one was killed there and Hutu and Tutsi patients were treated without discrimination. No one was asked to present identification

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[1262] Witness WZ4, T. 5 September 2006 pp. 43-45, 48, 63-70; T. 6 September 2006 pp. 2, 13, 18, 23, 26-32, 50, 52, 56-58, 60; T. 7 September 2006 pp. 6, 16-17.
[1263] Witness WZ4, T. 6 September 2006 pp. 3-10, 14, 18-19, 24, 34-38, 40, 46-50, 58-59 61; T. 7 September 2006 pp. 9, 19; Exhibits 1D94 and 1D95 (Names Written by Witness WZ4).
[1264] Witness WZ4, T. 6 September 2006 pp. 2, 4, 16-18, 20, 63-65; T. 7 September 2006 pp. 2-5.
[1265] Witness WZ4, T. 6 September 2006 pp. 13-16, 18, 20, 59-63; T. 7 September 2006 pp. 2-3.
[1266] Witness WKA, T. 3 May 2007 pp. 52-53, 63; Exhibit 1D161 (Witness WKA's Personal Information Sheet).
[1267] Witness WKA, T. 3 May 200, pp. 52-53, 59-60, 70-72, 85.

cards. Tutsi employees continued to work, although they remained at the hospital without leaving due to safety concerns outside the hospital. Soldiers were regularly near the hospital's entrance. Many escorted wounded colleagues for treatment. The witness was unaware of whether they were posted there as guards.[1268]

867. Other than a visit by General Roméo Dallaire to the hospital's superintendent, no meeting took place there. The witness never saw Bizimungu at the hospital, and testified that had he come, he would have been in a position to see him. The CHK was evacuated in late May 1994 as bombing, which had begun as early as 7 April and was frequent, made it too dangerous to continue providing medical services there.[1269]

Bizimungu Defence Witness WZ10

868. Witness WZ10, a Tutsi, lived in Nyakabanda sector in 1994.[1270] On the afternoon of 7 April 1994, she sought refuge at the CHK because she was scared and not feeling well due to her pregnancy. When she arrived at the hospital, she saw several soldiers guarding CHK's main gate. She went to the reception, where her identity card bearing her ethnicity was checked. She observed several wounded persons there.[1271]

869. The witness was admitted to Maternity Ward 1, which included about 10 beds and was close to the hospital's entrance. Several other rooms were in the same building. She remained at the maternity ward for one month with 10 others, including three Tutsis. She hid under a blanket the entire time, only leaving to eat. She believed that if she had been discovered there she would have been killed. She did not observe Bizimungu at the CHK and would not have known if any killings occurred in other maternity wards in the hospital. The witness left when bombs hit the hospital, although she was unaware of specific locations being damaged. Soldiers were still at the main gate when she departed, heading for Sainte Famille church.[1272]

Bizimungu Defence Witness WFQ1

870. Witness WFQ1, a Hutu member of the Rwandan government in 1994 worked full time as an advisor for the ICRC in Rwanda once the killings began in April.[1273] He visited the CHK on two occasions once killings began, and otherwise learned of what was happening there during briefings of the High Command of the Red Cross. According to him, the CHK was a modern hospital, at which the Red Cross was permanently present, and a location where everyone's safety was assured. However, lack of medical treatment and medication, RPF bombings nearby and militia incursions caused deaths there. The CHK was located near

[1268] Witness WKA, T. 3 May 2007 pp. 53-57, 66-67, 70.
[1269] Witness WKA, T. 3 May 2007 pp. 53-54, 60-62, 72-73, 85.
[1270] Witness WZ10, T. 11 September 2006 pp. 5-6, 8, 13-14; Exhibit 1D99 (Witness WZ10's Personal Information Sheet).
[1271] Witness WZ10, T. 11 September 2006 pp. 6-8, 13, 15, 28-29, 33.
[1272] Witness WZ10, T. 11 September 2006 pp. 7-9, 19, 28-35, 38, 41, 43-44. *See also* Exhibit 1D100 (Witness WZ10's Sketch of CHK's Maternity Ward).
[1273] Witness WFQ1, T. 3 October 2006 pp. 58-61; Exhibit 1D119 (Witness WFQ1's Personal Information Sheet).

a military camp of the Rwandan army. As a result, the CHK was targeted by the opposite camp which bombed it several times.[1274]

871. ICRC representative Philippe Gaillard and Rwandan authorities in Kigali met on several occasions to deal with the ongoing humanitarian crises. One of the first meetings resulted from the ICRC urging Kigali-Ville Prefect Tharcisse Renzaho to mobilise public services to dispose of decomposing corpses in Kigali. The combination of dogs tearing at the bodies and the seasonal rains presented a high risk of water contamination and the spreading of epidemics. The Ministry of Public Works was put in charge of removing corpses and it used prisoners to assist in this task. However, between 10 and 23 May 1994, the Red Cross, including Witness WFQ1, also removed and buried bodies in mass graves as prisoners stopped assisting.[1275]

872. According to Witness WFQ1, meetings involving the authorities and the ICRC were normally conducted in French, although Kinyarwanda was also used at times. Gaillard, who spoke French, was normally accompanied at meetings by a Rwandan who worked for the local Red Cross and who would translate Kinyarwanda into French.[1276]

Bizimungu Defence Witness Jean François Ruppol

873. Jean François Ruppol worked in Rwanda from 1991 to 7 April 1994 as the head of a Belgian agency that cooperated with the Rwandan Ministry of Health.[1277] After leaving Rwanda, he heard that the CHK patients were killed there due to RPF bombing. Ruppol explained that an elementary tenet of public health, recognised in all countries, is to collect the dead bodies to avoid the spreading of disease.[1278]

Bizimungu Defence Witness WAA

874. Witness WAA, a Hutu, was in the Ministry of Health during the genocide.[1279] He was unaware of Bizimungu visiting the CHK on 12 April 1994.[1280]

Bizimungu Defence Witness Emmanuel Ndindabahizi

875. Emmanuel Ndindabahizi was appointed Minister of Finance in the Interim Government on 9 April 1994.[1281] He fled to Gitarama on 12 April 1994 with the Interim

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[1274] Witness WFQ1, T. 4 October 2006 pp. 7, 13, 17-30; T. 5 October 2006 pp. 12, 14.
[1275] Witness WFQ1, T. 3 October 2006 pp. 69-71, 73-74, 76; T. 4 October 2006 pp. 49-50. The witness initially referred to the ICRC delegate as "Robert" Gaillard. It was later clarified that his name was "Philippe". T. 4 October 2006 p. 23.
[1276] Witness WFQ1, T. 3 October 2006 pp. 71-72.
[1277] Ruppol, T. 3 October 2006 pp. 3-4, 33-34.
[1278] Ruppol, T. 2 October 2006 pp. 55-56; T. 3 October 2006 p. 35.
[1279] Witness WAA, T. 30 January 2007 pp. 63, 68; Exhibit 1D136 (Witness WAA's Personal Information Sheet).
[1280] Witness WAA, T. 1 February 2007 p. 33.
[1281] Ndindabahizi, T. 30 April 2007 pp. 4-5; Exhibit 1D158 (Ndindabahizi's Personal Information Sheet). Ndindabahizi is presently serving a life sentence for his role in the events in Rwanda in 1994. Ndindabahizi, T. 30 April 2007 pp. 5, 45-49. Notably, Ndindabahizi was not tried for crimes in Rwanda based on his position as Minister of Finance of the Interim Government. Ndindabahizi, T. 30 April 2007 p. 35. At the time of his testimony, he resided in the United Nations Detention Facility with the Accused. Ndindabahizi, T. 1 May 2007 pp. 49-50.

Government, including Casimir Bizimungu, around 8.00 a.m. The security of hospitals within Rwanda was never raised in Interim Government meetings. However, he heard that the CHK had been bombed by the RPF.[1282]

Deliberations

876. The Prosecution contends that from 7 April 1994, Tutsis were hunted down and killed at the CHK. Bizimungu, who was the superior of those committing the killings, also went to the hospital around 12 April and encouraged further attacks. The Defence, however, denies that soldiers and *Interahamwe* selectively slaughtered Tutsis there. In its view, any killings occurring at the hospital were the result of RPF bombing. Otherwise, patients were dying from prior injuries coupled with insufficient medical resources. The significant presence of corpses at the CHK was also attributable to the fact that bodies were brought from elsewhere.

877. Furthermore, while the Defence concedes that Bizimungu went to the CHK on 10 (rather than 12) April 1994, the purpose was not to provoke further killings but to assess the health risks associated with the significant number of corpses decomposing at the hospital. It also disputes the Prosecution contention that Bizimungu's involvement in the 11 April meeting at the Kigali-Ville prefecture office that organised the removal of corpses throughout Kigali was done to hide the killings from the international community. Rather, the threat of epidemic was the sole motivation. The Chamber will address each of the issues in turn.

(i) Killings at the CHK

878. Prosecution Witnesses QU, UL and GAT each testified that Tutsis were identified and slaughtered by soldiers and, in some cases, militia within the CHK.[1283] Notably, Witnesses QU and UL testified that they had gone to the CHK in April 1994. Specifically, Witness QU hid in the CHK, starting on 7 April, for about five weeks; Witness UL went to CHK's mortuary on 14 and 15 April. Witness GAT never went to the CHK during the relevant period, but heard of what occurred there.

879. At the outset, the Chamber has no doubt that Witnesses QU and UL went to the CHK as they testified. Bizimungu Defence Witness WZ4 stated that five Tutsi women were admitted into CHK's maternity ward on 7 April 1994 based on their safety concerns, offering strong support for Witness QU's testimony on this point. Furthermore, there is no dispute that persons were employed to remove bodies from the streets of Kigali and, in particular, the CHK around the time that Witness UL was there. Furthermore, Witness DCH offered circumstantial corroboration for the fact that persons from the Ministry of Public Works were called upon to dig graves in late April.

880. Turning to the individual merits of each witness's evidence, the Chamber considers that aspects of Witness QU's testimony could be viewed as confusing. For example, she testified that communal police in one instance agreed to assist her by driving her to the hospital, but then assaulted her once they arrived.[1284] However, not knowing the intention of the communal police, the Chamber considers that it is possible the officers were not bringing

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[1282] Ndindabahizi, T. 30 April 2007 pp. 8-13, 44-45; T. 1 May 2007 p. 16.
[1283] Witness GIE testified that he witnessed killings at the CHK, but this evidence was excluded by the Chamber. T. 17 February 2004 pp. 39-42.
[1284] Witness QU, T. 17 March 2004 pp. 11-14, 16.

her to the hospital to receive medical assistance. Indeed, if it was known that Tutsis were being killed at the CHK, it is possible that they took her there for that purpose.

881. At times, Witness QU also appeared to exaggerate. Notably, she stated that soldiers conducted searches for Tutsis on an hourly basis.[1285] However, she was able to remain in the maternity ward for about two-and-a-half weeks, and in the hospital for five weeks while these searches were occurring.[1286] She explained that she managed to survive because soldiers did not take away all the Tutsis at once and that she managed to escape before they returned.[1287] In the Chamber's view, this explanation is not unreasonable. However, it reflects that although searches may have been frequent, the number of Tutsis actually removed may have been limited.

882. The Defence also sought to discredit her based on her membership in genocide survivors groups.[1288] However, none of her evidence necessarily reflects bias or witness tampering as a result of her participation in them. The Chamber does not find that the witness's affiliations necessarily render her unreliable or partial. Nonetheless, her evidence alone is not entirely convincing.

883. Turning to Witness UL, the Chamber notes that he first cooperated with Tribunal investigators while in detention in Rwanda. His incarceration at the time was, in part, related to his involvement in the burial of bodies at the CHK, and thus he could be considered as an accomplice of Bizimungu in this proceeding. However, at the time of his testimony, the witness had been released and he had no ostensible incentive to, for example, deflect culpability for crimes alleged against him to others.[1289] The Chamber considers that the circumstances surrounding his testimony warrant a case-by-case evaluation.

884. Turning to Witness GAT, the Chamber notes that her testimony evolved considerably. Her initial testimony about the events at the CHK gave the impression that she observed activities at the hospital first-hand.[1290] Only later, through further examination, did it become clear that she learned of what happened there from others. Indeed, it was discovered that while testifying about the CHK she was referring to a notebook in her lap.[1291] The witness explained that this diary was kept by her as she gathered information about the genocide.[1292] Pages of it include the names of Witnesses QU and GIE. Notably, Witness GIE's name follows an entry about killings at the CHK.[1293] Thus, not only is her evidence second-hand, but it is possible that it is based on information from witnesses who have already testified in this Tribunal. Consequently, her evidence may be cumulative, rather than corroborative.

[1285] Witness QU, T. 17 March 2004 pp. 25-26.
[1286] Witness QU, T. 17 March 2004 pp. 20-21; T. 18 March 2004 pp. 24-25.
[1287] Witness QU, T. 17 March 2004 p. 20.
[1288] Witness QU, T. 18 March 2004 pp. 35-36.
[1289] Witness UL, T. 1 March 2004 p. 44; T. 3 March 2004 pp. 18-19; Exhibit 1D32(E & F) (Witness UL's Statements, 13, 14 and 27 October 1998) pp. 10-11, 18-20, 29.
[1290] Witness GAT, T. 26 February 2004 pp. 17-18; T. 1 March 2004 pp. 7-8.
[1291] Witness GAT, T. 1 March 2004 pp. 27-29; T. 2 March 2004 pp. 9-13. The Defence was allowed another day of cross-examination in light of this discovery. Witness GAT, T. 2 March 2004 pp. 6-17.
[1292] Witness GAT, T. 2 March 2004 pp. 6, 9 (diary reflects notes that may be used to write a book about the genocide).
[1293] *See* Chambers Exhibit 1 (Diary of Witness GAT) pp. 20 (Witness QU's Name), 33-34 (Entries about CHK and Witness GIE's Name).

885. Having considered the general credibility of the Prosecution witnesses, the Chamber turns to the strength of the evidence regarding killings. A close review of the testimonies about soldiers or *Interahamwe* killing Tutsis within the CHK shows it is largely indirect. While Witness QU said soldiers selected Tutsi patients from the maternity ward and subsequently killed them, her evidence lacked sufficient clarity to establish that she observed murders.[1294]

886. Witness UL, on the other hand, was not physically present for any killing. Rather he heard screaming and sounds of struggle and observed soldiers and *Interahamwe* bringing corpses, some of which were warm, to the mortuary.

887. In the context of the general targeted killing of Tutsis in Kigali immediately after the President's death, it would be reasonable to conclude that Witness QU observed conduct leading up the slaughter of Tutsi patients within the CHK and that Witness UL heard such killings as they occurred and saw the immediate disposal of the victims by their attackers. Notably, Bizimungu Defence Witness WFQ1, an advisor for the ICRC, appears to have heard that militia had abducted and killed patients.[1295] Given that the ICRC set up tents at the CHK from 19 April (and possibly earlier) to 25 May 1994, his evidence, while hearsay, offers credible corroboration of evidence of targeted killings occurring there.[1296] He worked for an institution that was actively involved in the hospital's operations and had regular reporting mechanisms in place to relay information it observed.

888. Nonetheless, the absence of direct evidence pertaining to killings raises concerns about the Prosecution case.[1297] Notably, Witnesses GIE and WZ4 explained that corpses were brought to the CHK from elsewhere, offering a reasonable explanation for the number of dead (and even warm corpses) there. Furthermore, it is not unreasonable to think that

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[1294] Witness QU, T. 17 March 2004 pp. 19 ("Q. And when they found out that one was a Tutsi, what did they do to those people? A. The soldiers would take away such a person and kill the person."), 25 ("A. I believe I have said several times that there were soldiers, there was a battalion of soldiers that was hunting down the enemy inside the hospital, and that included the injured, the ones who were completely safe. They were not taking people at the same time. Sometimes they would come and take your ID. It's like they wanted to spare some for later killing. What I can say is that when the minister came, the work continued, the operations continued every hour everyday. And I believe as the external radio said, he himself knew what was happening."), 26-27 ("THE WITNESS: I explained that people were being killed by day by day, hour by hour, and Minister Casimir Bizimungu ... I saw where he pass with the doctor who was the director of the hospital, and another doctor. In any case, he knew that killings were taking place, because although we were in problems, we could hear the radios talk about it, and I believe a high position leader and who is a doctor must have known what was taking place there. But asking me whether I saw that – I saw him – I witness his seeing – where killings were taking place, I was not his policeman. I could not follow him. I could not know if he was supervising this. ... I've told you that killings were taking place all the time. Whenever the enemy was there in the hospital, he would be hunted down and killed. ... ").

[1295] Witness WFQ1, T. 4 October 2006 p. 30 ("A. Yes, the deaths resulting from direct attacks, I believe that bombing caused dozens of deaths immediately. That is a fact. And then there were attacks, incursions by militias, I think that they caused some of the deaths and disappearances, people who disappeared, who were most likely murdered following their disappearance.").

[1296] Witnesses WZ4 and WKA testified that the ICRC established tents at the CHK and were permanently present there. This evidence was corroborated by Witness WFQ1, as well as ICRC transmissions on 19 April and 25 May 1994. *See* Exhibits 1D121 and 1D122 (ICRC Broadcasts, 19 April and 25 May 1994, respectively).

[1297] The Chamber has also considered circumstantial corroboration that soldiers and *Interahamwe* were involved in killings given other evidence suggesting their presence there. *See* Witness WZ10, T. 11 September 2006 pp. 11, 29, 33 (soldiers at the CHK entrance); Witness WKA, T. 3 May 2007 p. 70 (soldiers escorting wounded colleagues and positioned near the CHK entrance); Witness GIE, T. 17 February 2004 pp. 41-42 (*Interahmawe* brought bodies to the CHK).

screaming heard by Witness UL could have been patients being treated for traumatic injuries suffered in the violence that engulfed the city.

889. Indeed, the Defence contests that persons killed at the CHK died from indiscriminate RPF bombing, not targeted killings of Tutsi patients. The Chamber has doubts, however, that the bombing explains deaths at the hospital in April and early May 1994, as indicated by Witnesses QU and UL. The first-hand accounts of Witnesses GIE, WZ4, WKA and WZ10 and a 25 May 1994 transmission by the ICRC firmly establishes that bombs hit and killed persons at the hospital.[1298] While Witnesses WKA and WZ4 indicated that bombing occurred as early as 7 or 12 April (respectively), the ICRC did not report this in its 19 April transmission, which described its work there.[1299] Rather, its contemporaneous transmissions indicate that deaths from shelling began on 19 May.[1300] Indeed, it appears that the Interim Government's first public expression of outrage about RPF bombing the CHK came on 19 May as well.[1301] Thus, this evidence fails to explain purported killings earlier in May, as well as the preceding month.

890. Defence Witnesses WZ4, WKA and WZ10 were present at the CHK and offered additional evidence to counter the proposition that Tutsis were singled out and killed there. Witnesses WZ4 and WKA worked at the hospital on a daily basis from 7 April 1994 until it closed in late May. Notably, Witness WZ4 worked in the maternity ward where Witness QU testified she saw Tutsis being identified and taken away by soldiers. Moreover, Witness WZ10 hid in a room within the maternity ward from 7 April until bombing forced her to leave.

891. The Chamber generally views the evidence of Witnesses WZ4 and WKA with suspicion. Their positions as staff members who were present during the relevant period may provide an incentive to deny killings occurred there. Furthermore, while Witness WZ4 acknowledged admitting Tutsis into the CHK for safety concerns, his repeated attempts to discredit assertions that Tutsis were being targeted based on their ethnicity raise the prospect that he turned a blind eye towards ethnic killings at that time.[1302] Similarly, Witness WKA's

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[1298] The ICRC reported that, on 19 May 1994, a mortar killed 30 patients at the CHK,and that an unknown number of victims were killed due to bombing there on 23 May. Exhibit 1D122 (ICRC Broadcast, 25 May 1994). *See also* the evidence of Dr. Jean François Ruppol, summarised above, who heard that the CHK was hit by bombs.

[1299] Exhibit 1D121 (ICRC Broadcast, 19 April 1994).

[1300] Exhibit 1D122 (ICRC Broadcast, 25 May 1994).

[1301] Exhibit 3D164 (Radio Rwanda Broadcast, 19 May 1994) pp. 215-216 (interview with André Rwamakuba concerning the bombings of the CHK). *See also* Makeli, T. 24 October 2007 pp. 28-29 (confirming the radio report and, without specifying a date, recalling that the CHK was being shelled).

[1302] *See, e.g.*, Witness WZ4, T. 7 September 2006 pp. 14 ("Q. You know it also as a fact that Tutsis were the target for killing in Rwanda in 1994, and that thousands of them were killed; you know it? A. I'm just learning it now."). The witness's subsequent admission that the majority of persons killed in 1994 were Tutsi could be characterised as begrudging. Witness WZ4, T. 7 September 2006 pp. 14-15. *See also* Witness WZ4, T. 6 September 2006 pp. 34-38 (while only Tutsi patients sought refuge at the CHK for safety concerns, the witness denied that they were generally in danger between April and July 1994), 39-40 (the witness was generally unaware that Tutsis had limited freedom of movement, pointing to the ability of Tutsi colleagues to leave the hospital), 40-45 *and* T. 7 September 2006 p. 14 (roadblocks manned by civilians were established, and identification cards were checked; however, he was unaware that Tutsis were being segregated and killed).

close ties with RTLM and his blanket denials that it provoked violence against Tutsis raise doubts about his impartiality.[1303]

892. Turning to the merits of the Defence evidence, the Chamber considers it to be of varying value. Witnesses WZ4 and WKA worked at, and WZ10 hid in, the CHK during the relevant periods. Witness WKA worked from 7.00 a.m. to 5.00 p.m. and exclusively in the emergency area. Witness WZ4 worked primarily in the maternity ward, emergency services area and in ICRC tents installed at the hospital. Witness WZ10 remained in a single room, hiding under her covers unless getting food.

893. While it is not clear that these witnesses could provide a significant accounting of what was occurring throughout the hospital, they were in the immediate proximity of the maternity ward, where, according to Witness QU, Tutsis were identified by soldiers and taken away.[1304] Their consistent denials raise doubt about her evidence, particularly given her assertions that this was occurring on an hourly basis.

894. The Defence evidence as it relates to Witness UL's allegations is less probative. The descriptions of the hospital reflect that it is large. Indeed, the area where Witnesses WZ4 and WKA worked – near the hospital's entrance – is far from the mortuary, where Witness UL heard screaming and sounds of struggle.[1305] Thus, it seems highly probable that Witnesses WZ4 and WKA, as well as WZ10 who was primarily hiding in the maternity ward, would not have observed what Witness UL had. Nonetheless, Witness UL did not directly observe any killings.

895. The Chamber cannot rule out the possibility that Tutsis were identified at the CHK and selected for killings there. The Defence evidence in some circumstances is of limited probative value. Nonetheless, the Prosecution evidence is indirect and insufficiently convincing beyond reasonable doubt. This allegation is not proven.

(ii) Removal of Bodies, 11 April 1994

896. Through Witness UL, the Prosecution argues that Bizimungu ordered the removal of corpses in Kigali, and particularly at the CHK, in order to hide the killings from the international community. Witness DCH further testified that, around 25 April 1994, he heard a radio broadcast conveying orders originating from Kigali-Ville Prefect Tharcisse Renzaho that employees of the Ministries of Public Works and Sanitation needed clear corpses. He indicated that the terms "dirty", "dirt" or "filth" were used to refer to the bodies of those

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[1303] Witness WKA had the death of his father broadcast on RTLM in April 1994 shortly before the President's plane was shot down. Witness WKA, T. 3 May 2007 pp. 74, 76. While he listened to RTLM after 7 April, he denied that its broadcasts were derisive of Tutsis or praised the work of the *Interahamwe*. Witness WKA, T. 3 May 2007 pp. 83-84. His position about RTLM is considerably contested by other evidence that it provoked ethnic violence and division. *See, e.g.*, Muhirwa, T. 5 April 2006 pp. 8-9; Witness CC-1, T. 31 October 2007 pp. 19-23; Mugenzi, T. 23 November 2005 pp. 43-45, T. 24 November 2005 pp. 48-49, 51-52, 57-58; Mugiraneza, T. 26 May 2008 pp. 15-16, 28; Witness LF-1, T. 12 June 2008 p. 42; Ntagerura, T. 20 February 2007 pp. 52-54, 56-57, T. 21 February 2007 pp. 6-7; Ndindabahizi, T. 1 May 2007 pp. 67-69, 71; Witness WFQ1, T. 4 October 2006 p. 2.

[1304] *See* Witness WKA, T. 3 May 2007 p. 59 (the laboratory was about six to 10 metres from maternity ward; about six to eight metres between the laboratory and emergency areas); Witness WZ4, T. 5 September 2006 p. 62 (the maternity ward was five to eight metres from the emergency services ward). *See also* Exhibit 1D96 (Diagram of CHK).

[1305] Witness WKA, T. 3 May 2007 p. 85; Exhibit 1D96 (Diagram of CHK).

killed. The Defence, through Witness WFQ1 and Bizimungu, suggests that the purpose was to avert a health crisis.

897. On 10 April 1994, a *communiqué* from Bizimungu was read on Radio Rwanda requesting that the staff of the Ministry of Health's Public Health Division go to the Kigali-Ville prefecture office on 11 April. The next day, Kigali-Ville Prefect Tharcisse Renzaho chaired a meeting at the prefecture office, attended by Bizimungu, Minister of Public Works Hyacinthe Rafiki Nsengiyumva, ICRC delegate Philippe Gaillard, and employees of the ministries. Directions concerning the removal of bodies were given by Bizimungu and Renzaho, and Gaillard indicated that fuel would be made available by the ICRC.[1306]

898. Witness UL testified that when giving directions, neither Renzaho nor Bizimungu referred to the dead Tutsis throughout Kigali as "corpses" or "bodies", rather, they used the terms "dirt" or "things". Because Philippe Gaillard did not have a translator, he could not understand Bizimungu, who spoke in Kinyarwanda. Furthermore, according to the witness, Bizimungu's request that bodies be removed from CHK was to hide killings.

899. At the outset, the Chamber accepts that Witness UL was present during the 11 April 1994 meeting. His description concerning the participants and its general contents are corroborated by Bizimungu and Witness WFQ1. The Defence sought to challenge the witness's testimony on the basis that his statements to Tribunal investigators had not identified Philippe Gaillard by name and did not reflect that Renzaho and Bizimungu used the word "dirt" or "things" in place of "corpse". The witness responded that Renzaho had only identified Gaillard by position and that he came to learn his name subsequently. He also explained that he used the word "corpse" to investigators so that they could understand, and affirmed that the Kinyarwanda words for "dirt" and "things" were spoken during the meeting.[1307]

900. The Chamber does not consider the inconsistencies material in this instance. The explanations are reasonable. It further observes that Prosecution Witness DCH provided a similar, albeit brief, description of orders from Renzaho being broadcast over the radio around 25 April 1994. In it, the terms "dirty", "dirt" or "filth" were used as references to corpses throughout the town. The Chamber, however, has reservations about this circumstantial corroboration. His evidence is not supported by the one transcript presented in relation to a radio broadcast pertaining to the clean-up operation in Kigali.[1308]

901. The Chamber also observes that Witness UL's details about the meeting are in contrast with Defence evidence. Witness WFQ1, who worked closely with Gaillard, noted that he regularly attended meetings with an interpreter.[1309] Given the central importance of this meeting to the ICRC's mission of ensuring the health and safety of the population, it seems unlikely that Gaillard would have gone to it without one. Under the circumstances, Bizimungu's denial that he or Renzaho uttered such words is reasonable.

902. Of greater importance, the Defence evidence provides a reasonable explanation that the presence of decomposing bodies posed a public health hazard and that removal could

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[1306] Bizimungu, T. 28 May 2007 pp. 25-26; Exhibit 1D197(E & F) (Radio Rwanda Broadcast, 10 April 1994) pp. 1-2.
[1307] Witness UL, T. 3 March 2004 pp. 29-31.
[1308] Exhibit 1D197(E & F) (Radio Rwanda Broadcast, 10 April 1994 transcript of radio broadcast) pp. 1-2.
[1309] Witness WFQ1, T. 3 October 2006 pp. 71-72.

avert it.[1310] Specifically, the presence of bodies and the seasonal rains presented a considerable threat of an epidemic. Moreover, the involvement of an international organisation – the ICRC – undercuts the argument that the purpose was to hide the killings from the international community. That this was the purpose of the clean-up operation was also supported by the testimony of Prosecution Witness DCH.

903. The evidence does not demonstrate that Bizimungu intended to hide killings from the international community given his participation in the removal of bodies.[1311] Moreover, the evidence fails to demonstrate that this act necessarily furthered killings, or was done with the intention to do so.

(iii) Bizimungu's Supervision and Instigation of Killings at the CHK, 12 April 1994

904. Prosecution Witnesses QU and GIE testified that they observed Bizimungu at the CHK around mid-April 1994. Witness GAT heard that Bizimungu went there after killings had occurred. To the contrary, Defence Witnesses WZ4 and WKA, who were at the CHK on 12 April, denied Bizimungu was there that day. Witness WAA had not heard of this either. Rather, Bizimungu and Witness WZ4 suggest that he came on 10 April with ICRC delegate Philippe Gaillard to review the risks presented by corpses. Moreover, Bizimungu and Ndindabahizi testified that Bizimungu was at the French Embassy evacuating his family from Rwanda in the morning, and that they had left Kigali for Gitarama before Witness GIE purportedly saw the Minister of Health on 12 April.

905. Witness QU, who arrived at the CHK on 7 April 1994, saw Bizimungu with two other CHK staff near the maternity ward one morning during the second week of her stay there. Witness GIE observed Bizimungu with about 10 to 20 medical staff near the emergency room and laboratory around 9.30 a.m. on 12 April. There is no evidence of killings occurring in his presence.[1312] Witness GAT heard that Bizimungu went there after killings, and her diary reflects that it was 11 April.[1313]

906. Turning first to the merits of Witness QU's evidence, the Chamber has previously considered her general reliability (II.7.4.i). Looking at her basis for identifying Bizimungu,

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[1310] Witness WFQ1, T. 3 October 2006 pp. 69-71, T. 4 October 2006 pp. 49-50; Witness WZ4, T. 6 September 2006 pp. 16-17; Bizimungu, T. 24 May 2007 p. 35, T. 11 June 2007 p. 12; Ruppol, T. 2 October 2006 pp. 55-56; Mugenzi, T. 9 November 2005 pp. 32, 35, T. 14 November 2005 pp. 10-12. *See also* Exhibit 2D60 (Kambanda Press Conference), read into the record by Bizimungu Defence Witness Eugène Shimamungu, T. 14 May 2007 pp. 23-32.

[1311] Furthermore, the Chamber notes that the Prosecution evidence does not necessarily demonstrate that Bizimungu was even in charge of the removal of bodies. *See* Witness UL, T. 2 March 2004 p. 30 (Renzaho ordered the removal of bodies, not Bizimungu).

[1312] Witness QU, T. 17 March 2004 pp. 26-27 ("THE WITNESS: I explained that people were being killed by day by day, hour by hour, and Minister Casimir Bizimungu … I saw where he pass with the doctor who was the director of the hospital, and another doctor. In any case, he knew that killings were taking place, because although we were in problems, we could hear the radios talk about it, and I believe a high position leader and who is a doctor must have known what was taking place there. But asking me whether I saw that – I saw him – I witness his seeing – where killings were taking place, I was not his policeman. I could not follow him. I could not know if he was supervising this."). The Chamber excluded evidence from Witness GIE about killings at the hospital. Witness GIE, T. 17 March 2004 pp. 39-42.

[1313] Chambers Exhibit 1 (Diary of Witness GAT) pp. 33-34.

the Chamber recalls that she had worked at the Ministry of Health, since January 1993.[1314] Bizimungu was Minister of Health from 16 April 1992 to July 1994.[1315]

907. The record fails to set forth exacting detail of Witness QU's ability to identify Bizimungu. Although he was the minister in charge of her secretariat, the two did not work in the same building and the evidence is not clear about prior contacts between them. However, the Chamber considers it probable that she would know the minister in charge of her secretariat. Moreover, considering Bizimungu's seniority at this post, the Chamber is satisfied that Witness QU was able to identify Bizimungu in 1994.[1316]

908. Furthermore, her evidence suggests that she saw Bizimungu sometime between 14 and 21 April 1994. However, it is undisputed that Bizimungu left Kigali (and then Rwanda) on 12 April (II.8.1; II.14.2.1). Given the significance lapse of time between the event and her testimony, as well as the traumatic circumstances surrounding her purported sighting of Bizimungu, it is possible that she miscalculated the date. Nonetheless, her evidence is insufficiently reliable to stand on its own. Furthermore, it is too distinct, for example, from Witness GIE's account of Bizimungu coming on 12 April to necessarily corroborate it as well.[1317]

909. Turning to Witness GIE, the Chamber has little doubt about his ability to identify Bizimungu. He worked within the Ministry of Health since 1990 and was stationed at its headquarters with Bizimungu prior to April 1994.[1318] The Defence sought to discredit him based on purported inconsistencies between his prior statement to Tribunal investigators and his testimony relating to his arrival at the CHK.[1319] The Chamber considers that translation or typographical errors could explain the differences, which, in any event, are immaterial. Furthermore, the fact that Witness GIE worked with Witnesses QU and GAT does not reasonably raise concerns about collusion as it relates to his testimony.[1320] As noted above, their evidence is sufficiently distinct to undermine this assertion.

910. For the same reasons expressed above (II.7.4.i), the Chamber places little weight in Witness GAT's hearsay evidence. As noted above, it is also clear that she obtained information from Witnesses QU and GIE in documenting facts about the genocide, as they are referenced in her diary that was written for this purpose.[1321] Notably, her notations about

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[1314] Witness QU, T. 17 March 2004 pp. 2, 4, 32-34; T. 18 March 2004 p. 34; Exhibit P. 44 (Witness QU's Personal Information Sheet).
[1315] Bizimungu, T. 22 May 2007 p. 60.
[1316] Witness QU, T. 17 March 2004 pp. 2-3 (location of her office compared to Ministry of Health headquarters), 34 (she did not specify meeting Bizimungu prior to April 1994).
[1317] Witness QU only saw Bizimungu with two CHK staff, while Witness GIE saw him with between 10 and 20; Witness QU saw Bizimungu near the maternity ward going in the direction of the pediatrics area, while Witness GIE saw him near the laboratory and emergency services area. For a general overview of CHK's layout, see the testimonies of Witnesses WZ4 and WKA (summarised above) and Exhibit 1D96 (Diagram of CHK).
[1318] Witness GIE, T. 17 February 2004 p. 13.
[1319] *See* Witness GIE, T. 18 February 2004 pp. 11, 16; Exhibit 1D18(E) (Witness GIE's Statement, 12 May 1999) p. 7.
[1320] *See* Witness GAT, T. 1 March 2004 pp. 12-14; Exhibit 1D25 (List of Prosecution Witnesses, including Witnesses GIE and QU); Exhibit 1D29 (Written Statement of Witness GAT's Colleagues Listed on Exhibit 1D25); Witness GIE, T. 17 February 2004 p. 50 (identifying Witnesses GAT and QU as persons known to him).
[1321] Witness GAT, T. 2 March 2004 pp. 6, 9; Chambers Exhibit 1 (Diary of Witness GAT) pp. 20, 34 (referencing Witnesses QU and GIE, respectively).

events at the CHK are immediately followed by a reference to Witness GIE.[1322] This raises the possibility her testimony relied directly on information from him, and, thus, is cumulative rather than corroborative.[1323]

911. Looking at the Defence evidence, Bizimungu contends that he was not at the CHK the morning before he fled Kigali for Gitarama. In the Chamber's view, this testimony appears reasonable. Bizimungu stated that he took his family to the French Embassy to be evacuated from Rwanda in the morning of 12 April 1994, and this is corroborated by several witnesses.[1324] In addition, Bizimungu's testimony that his flight from Kigali occurred in the early morning is also corroborated.[1325]

912. Bizimungu also contends, and several witnesses affirm, that the Interim Government's flight from Kigali was immediate and frantic, because guests at the hotel were told Kigali would soon be under RPF control.[1326] The Chamber observes that by Bizimungu's own account, the CHK was within walking distance of the *Hôtel des Diplomates*.[1327] However, under these crisis circumstances, it is reasonable that Bizimungu would not risk walking or travelling to the CHK in order to incite people there.

913. Finally, Prosecution Witness Fidèle Uwizeye testified that the convoy of the Interim Government arrived in Gitarama between 10.00 and 11.00 a.m.[1328] Significant evidence also shows that although a journey from Gitarama to Kigali took an hour under normal conditions, the trip took far longer on 12 April 1994 because of the numerous people on the road also fleeing Kigali.[1329] The Chamber thus has reservations that Bizimungu was present at the CHK at 9.30 a.m., as the Prosecution alleges.

914. The Chamber recognises that these testimonies come largely from other Accused in the case or witnesses closely associated with the Interim Government's activities in 1994. The Chamber is mindful of the possible interest of these individuals in distancing Bizimungu and themselves from the crimes committed at the CHK. However, the consistent and

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[1322] Chambers Exhibit 1 (Diary of Witness GAT) pp. 33-34 ("*Dr. Casimir a visité le CHK le 11/4/94 il loge a l'hotel des diplomats mais ne fait rien pour empecher les militaries de tuer les maladies. 3000 malades ont ete tues.*"), 34 (reference to Witness GIE).

[1323] The Chamber has considered Witness GAT's testimony that she received information about events at the CHK from persons receiving patients there. This does not eliminate the concern that her testimony relies on information from Witnesses QU and GIE.

[1324] Bizimungu, T. 28 May 2007 pp. 15-23, 31-32; Mugiraneza, T. 22 May 2008 pp. 48-49, T. 3 June 2008 p. 55, T. 5 June 2008 p. 12; Bongwa, T. 12 May 2008 pp. 14-15; Exhibit 1D196 (List of Rwandan Officials Evacuated from the French Embassy on 12 April 1994).

[1325] Bizimungu, T. 28 May 2007 pp. 31-32 (left at 8.00 or 8.30 a.m.); Mugiraneza, T. 22 May 2008 pp. 48-49 (left in his own car in the early in the morning); Bicamumpaka, T. 27 September 2007 p. 5; T. 11 October 2007 p. 35 (left between 9.00 and 9.30 a.m.); Ndindabahizi, T. 30 April 2007 pp. 9-10, 16 (left at 8.00 a.m.); Witness RWW, T. 13 March 2008 pp. 22-26 (Mugiraneza left in his own car at about 10.00 a.m.); Witness RWV, T. 8 June 2008 p. 28 (Mugiraneza left in his own car between 9.00 and 10.00 a.m.).

[1326] Bizimungu, T. 28 May 2007 pp. 32-33; Mugiraneza, T. 22 May 2008 p. 49; T. 2 June 2008 pp. 58-59; Mugenzi, T. 9 November 2005 pp. 45, 47-48; Bicamumpaka, T. 4 October 2007 p. 65; Ndindabahizi, T. 1 May 2007 pp. 16-17, 69-70; T. 2 May 2007 p. 13; Ntagerura, T. 19 February 2007 p. 16.

[1327] Bizimungu, T. 24 May 2007 p. 35.

[1328] Uwizeye, T. 7 April 2005 pp. 71-72; T. 18 April 2005 p. 29.

[1329] Uwizeye, T. 7 April 2005 pp. 71-72; Bizimungu, T. 28 May 2007 p. 32; Mugiraneza, T. 22 May 2008 pp. 53-54; Bicamumpaka, T. 27 September 2007 pp. 6-7; T. 4 October 2007 p. 65; T. 11 October 2007 p. 35; Ndindabahizi, T. 30 April 2007 pp. 10, 16, T. 1 May 2007 p. 45; Witness RWW, T. 13 March 2008 pp. 23-24, 26; Witness RWV, T. 9 June 2008 pp. 27-28, 30.

reasonable nature of this evidence raises questions with respect to the Prosecution's evidence about his presence at the hospital on the morning of 12 April 1994.

915. The Defence also presented evidence from Witnesses WZ4 and WKA, who were present at the CHK on 12 April 1994 and testified that Bizimungu did not come to the hospital that day.[1330] As noted above, the Chamber has considered their evidence with some caution (II.7.4.i). Nonetheless, it appears unlikely that his presence would have gone unnoticed by them. Witnesses QU and GIE purportedly spotted him in the general area where the two worked. Furthermore, the Prosecution witnesses testified that Bizimungu was with hospital staff, raising further doubts that the two would not have at least been informed of his visit.[1331] Under the circumstances, their evidence raises further doubt about Bizimungu's presence at the CHK on 12 April.

916. Even if the Chamber were to accept that Bizimungu was present, there is no evidence of killings happening in Bizimungu's presence. Moreover, he was described as addressing staff, rather than the persons purportedly killing Tutsis at the CHK – namely soldiers and *Interahamwe*.

917. Having considered all the relevant evidence, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Bizimungu went to the CHK on 12 April 1994 (or later) and incited killings, as suggested by Witnesses QU and GIE. In light of the foregoing, the Chamber finds it unnecessary to consider the notice challenges raised with respect to this allegation or those assessed above.

7.5 Meeting at *Hôtel des Diplomates*, 11 April 1994

Introduction

918. The Indictment alleges that, on 11 April 1994, an emergency meeting was held in Kigali attended by all the Interim Government ministers and the country's prefects except those of Ruhengeri, Cyangugu and Butare. The situation regarding the massacres in each prefecture was analysed. The Prosecution contends that the Interim Government took no steps to stop the massacres, instead taking steps to promote them, including by characterising some prefects as inactive. Notably, Kigali-Ville Prefect Tharcisse Renzaho spoke of the establishment of roadblocks for the purpose of arresting Tutsis and their accomplices. In addition, a programme for avenging President Juvénal Habyarimana was read out. Prosecution Witness Fidèle Uwizeye and Expert Witness Alison Des Forges testified about this event.[1332]

919. The Accused do not dispute that the Interim Government held a meeting with prefects in Kigali on 11 April 1994. Bicamumpaka and Bizimungu denied attending. Moreover,

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[1330] The Chamber places no weight on Witness WAA's testimony that he was unaware of Bizimungu going to the CHK on 12 April 1994. His basis for knowledge is unclear.
[1331] The Chamber recalls that Witness WKA was unaware of Bizimungu's undisputed visit to the CHK on 10 April 1994. Notably, however, Bizimungu was with Philippe Gaillard on that occasion, rather than hospital staff, and they were near the mortuary. Under the circumstances, it seems reasonable that his visit would not have been reported to or seen by Witness WKA.
[1332] Indictment, para. 6.19; Prosecution Pre-Trial Brief, para. 119 (p. 26); Prosecution Closing Brief, paras. 122, 261, 355; Prosecution 21 November 2008 Document, Item No. 74; Prosecution Closing Arguments, T. 1 December 2008 pp. 23-24; T. 5 December 2008 p. 10.

Mugenzi and Bizimungu claim that its purpose was to restore security rather than to further the genocide. All four Accused submit that Uwizeye's testimony lacks credibility and that the Chamber should not rely upon it. In addition, Mugiraneza argues that while the Accused had notice of the meeting, there was no notice of the Prosecution's allegations that the programme was to avenge the President or that civil defence was discussed. Mugenzi, Mugiraneza, Bizimungu, Bicamumpaka, Emmanuel Ndindabahizi, Agnès Ntamabyaliro, André Ntagerura and Expert Witness Eugène Shimamungu provided relevant evidence.[1333]

Evidence

Prosecution Witness Fidèle Uwizeye

920. Fidèle Uwizeye, a Hutu, was a founding member of the MDR party and the prefect of Gitarama from 3 July 1992 until he was removed from that post during the genocide.[1334] He was informed by the prefect of Kibungo that there was to be a meeting between the Interim Government and all the prefects on 11 April 1994 at the *Hôtel des Diplomates* in Kigali. Uwizeye called Prime Minister Jean Kambanda, who confirmed this. It took three hours to travel to Kigali from Gitarama because of the "many roadblocks across Nyabarongo River" and as a result of the violence in Kigali. President Théodore Sindikubwabo, Prime Minister Jean Kambanda, Interim Government ministers including all four Accused, other political leaders and all the prefects except those from Byumba, Butare, and possibly Cyangugu, were present.[1335]

921. The meeting lasted less than an hour. Every prefect was asked about and reported on the situation in their respective prefectures. Colonel Tharcisse Renzaho, the prefect of Kigali-Ville, explained that there was fighting in Kigali, and that the *Inkotanyi* had started killing civilians. Renzaho also discussed the need to find out the identities of the accomplices because they were hiding the *Inkotanyi* soldiers. Uwizeye testified that the reference to accomplices included not only persons who assisted the *Inkotanyi* but also Tutsis and Hutus who were friends with Tutsis, as well as persons opposed to the regime. Renzaho explained that roadblocks were the best way to find out where the *Inkotanyi* and their accomplices were. The objective of the roadblocks was to arrest and detain the *Inkotanyi* and their accomplices, but, in reality, this meant killing them. Uwizeye believed that Renzaho's roadblock strategy became the government's civil defence programme, which it installed throughout the country.[1336]

922. Uwizeye informed those gathered of the attacks in Gitarama on 9 and 10 April 1994, which originated in Kigali and were led by a man named Setiba. He requested that soldiers be put on the border between Kigali and Gitarama prefectures, at Nyabarongo, to prevent future attacks from Kigali into Gitarama. The prefect of Kibungo said that he had neutralised people

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[1333] Bizimungu Closing Brief, paras. 1171-1172, 1181-1184; Mugenzi Closing Brief, paras. 1291, 1293-1301, 1329-1336, 1353-1375; Bicamumpaka Closing Brief, paras. 777, 885-897; Mugiraneza Closing Brief, paras. 496-497, 499, 621(a)(iv)-(v); Mugenzi Closing Arguments, T. 2 December 2008 p. 53, T. 3 December 2008 pp. 3-4; *see also* Bizimungu Closing Brief, paras. 238, 241, 249, 300-304, 540-552, 1211. The Chamber has also considered the testimony of Witness CF-1. His evidence is immaterial to the central considerations of this event and, for witness protection purposes, has been omitted.

[1334] Uwizeye, T. 5 April 2005 pp. 9-10, 13; T. 14 April 2005 p. 23.

[1335] Uwizeye, T. 7 April 2005 pp. 56, 59-62; T. 11 April 2005 pp. 37-41; T. 15 April 2005 pp. 44-45.

[1336] Uwizeye, T. 7 April 2005 pp. 60-62, 67; T. 11 April 2005 p. 41.

who were causing upheavals in his prefecture. According to Uwizeye, Kayishema, the prefect of Kibuye, lied by saying that there had been no violence in his prefecture when, according to Uwizeye's knowledge, the church at Nyange Parish had been demolished and the Tutsis inside attacked on 8 April. In general, the other prefects said they had no problems.[1337]

923. After the reports from the prefects, Uwizeye generally testified that "they" read out a general "programme" for unity and "restoring peace" and to "avenge Habyarimana". The prefects were not given specific guidelines on what should be done. More specifically, Uwizeye testified that Kambanda, at around 11.00 a.m., said that the *Inkotanyi* had shot down the presidential plane, and that the government must fight the *Inkotanyi* so that the Arusha Accords could be implemented. Kambanda also said that public order and security must be restored. In addition, he spoke of tracking down the enemies of the country and making sure that the enemy does not infiltrate "their ranks".[1338] Uwizeye denied that a Radio Rwanda transmission by Kambanda on 11 April 1994 was the message given to the prefects at the meeting he attended.[1339]

Prosecution Expert Witness Alison Des Forges

924. Alison Des Forges testified as an expert in Rwandan history and human rights abuses in Rwanda in the 1990s. Her expert report states that although all of the prefects spoke openly about the killings of Tutsis that were taking place at the meeting on 11 April 1994, the government took no action and the prefects were sent home with no clear orders or additional resources to end the violence. They were merely told that there would be some directives from the government at a future time. In her opinion, "the absence of a message was itself a message" that "the killings were to continue". In addition, her report suggests that Prefect Jean-Baptiste Habyalimana of Butare was criticised in absentia for being "inactive".[1340]

925. Des Forges was presented with the transcript of a speech by Prime Minister Jean Kambanda broadcast over Radio Rwanda on 11 April 1994. She believed that Kambanda's address was broadcast on the radio, but she did not know if it was broadcast live. From the transcript, however, it did seem as if the prefects and some of the ministers were there.[1341]

926. In Des Forges's view, Kambanda's speech refused to sufficiently acknowledge that killings on an ethnic basis were occurring en masse. She specifically identified Kambanda's extensive recital of the "security" situations in various prefectures. According to Des Forges, there was very little actual combat between the Rwandan army and the RPF in Rwanda, the

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[1337] Uwizeye, T. 7 April 2005 pp. 60-63; T. 11 April 2005 pp. 41-44; T. 18 April 2005 pp. 14-17.
[1338] Uwizeye, T. 7 April 2005 p. 62; T. 11 April 2005 pp. 46-48, 53.
[1339] Uwizeye, T. 11 April 2005 pp. 58-66, 70-71.
[1340] Exhibit P101(E) (Expert Report of Alison Des Forges) p. 27; Des Forges, T. 31 May 2005 p. 3; T. 3 June 2005 pp. 26-28, 36-42; T. 7 June 2005 p. 26; T. 23 June 2005 p. 51; *see also* Exhibit P100 (Des Forges, *Leave None to Tell the Story*) p. 202. Des Forges testified that directives from the Interim Government to the prefects were eventually issued in writing on 27 April 1994. *See* Des Forges, T. 3 June 2005 p. 40; T. 7 June 2005 p. 26. The Chamber notes that there are some differences between Des Forges's treatment of the 11 April 1994 meeting in her expert report (Exhibit P101(E)) and the treatment of the meeting in the book *Leave None to Tell the Story* (Exhibit P100). They concern the number of prefects who attended. The discussion of open criticism of Prefect Jean-Baptiste Habyalimana is only mentioned in her expert report. The sources for her account of the 11 April 1994 meeting were primarily Prime Minister Jean Kambanda, Clément Kayishema and Fidèle Uwizeye. Des Forges, T. 2 June 2005 pp. 77-79; T. 3 June 2005 pp. 24-25, 42-43; T. 23 June 2005 p. 51.
[1341] Des Forges, T. 3 June 2005 pp. 29, 47-48; *see also* Exhibit 2D42(K) (Radio Rwanda Broadcast, 11 April 1994).

killings were aimed at Tutsis, and this was not acknowledged. Under such circumstances, she viewed Kambanda's generalised calls on Rwandans to act as brothers as insignificant, particularly in Kigali where it was reported that there were approximately 10,000 dead. She questioned the purpose of the barriers supported by the local government and what type of "security" they were intended to restore. Moreover, she believed that Kambanda was not clear enough as to which roadblocks were authorised and which were not.[1342]

Mugenzi

927. Mugenzi testified that the 11 April 1994 prefects' meeting began around 9.00 a.m. and lasted until midday. All the cabinet ministers except for Bizimungu, who was working with Mr. Gaillard of the ICRC, and most of the prefects save those from Ruhengeri, Gisenyi, Cyangugu, Byumba and Butare, were present. The purpose of the meeting was for the cabinet to meet the prefects and assess the situation throughout the country, particularly with respect to killings, as the Interim Government had received information that violence was spreading outside Kigali. Mugenzi testified that the radio recording of Kambanda's speech was in fact the speech he delivered to the prefects on 11 April. Mugenzi did not consider that there was anything in the speech to suggest that the killings should continue. Rather, Kambanda called for peace and for mutual help or assistance. The oral instructions issued to the prefects that day were provided in writing in a letter from the Prime Minister to the prefects on 27 April.[1343]

Mugiraneza

928. Mugiraneza attended the brief meeting on 11 April 1994. Most of the prefects, except those of Byumba, Ruhengeri, Gisenyi, Cyangugu and Butare, were also in attendance. The meeting had been convened so that the ministers could be briefed about the security situation outside Kigali. Some prefects talked about insecurity in their prefectures. Mugiraneza specifically recalled that the prefects of Gikongoro and Kibuye talked about massacres in their areas. In his speech, Prime Minister Kambanda issued oral recommendations for restoring security. He said that those roadblocks not under government control had to be dismantled. Only those individuals with weapons or those who could be identified as RPF soldiers could be arrested and if arrested had to be handed to the authorities. These recommendations were put in writing in a letter issued by the Prime Minister on 27 April.[1344]

Bizimungu

929. Bizimungu denied attending the meeting. From 10.00 a.m. on 11 April 1994 he was at a meeting at the conference hall in the Kigali-Ville prefecture office with Philippe Gaillard of the ICRC. The prefect of Kigali opened the meeting, which lasted no longer than an hour. After that meeting, Bizimungu had a private conversation with Gaillard for 30 minutes. He then returned to the *Hôtel des Diplomates* arriving just as the meeting with the prefects

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[1342] Des Forges, T. 3 June 2005 pp. 32, 36-43.

[1343] Mugenzi, T. 8 November 2005 pp. 85, 93; T. 9 November 2005 pp. 32, 35-39, 65-66; T. 10 November 2005 p. 26; T. 14 November 2005 p. 10; T. 15 November 2005 p. 21; T. 21 November 2005 p. 70.

[1344] Mugiraneza, T. 22 May 2008 pp. 47-48; T. 26 May 2008 pp. 14, 18-24, 53; T. 27 May 2008 p. 41; T. 2 June 2008 pp. 44, 47; T. 4 June 2008 p. 8; *see also* Exhibit 2D30(E) (Letter from Prime Minister Kambanda to All Prefects, 27 April 1994).

ended. The meeting had been called because while the Interim Government was aware of widespread violence in Kigali, it was unaware of the situation countrywide. Cabinet members briefed him on what had taken place and in particular on Kambanda's speech. Kambanda gave a number of directives to the prefects about how they should restore security in their prefectures. These directives were issued in written form on 27 April.[1345]

Bicamumpaka

930. Bicamumpaka denied attending the meeting with the prefects. It had been called to determine whether there was calm in the rest of the country. Bicamumpaka, however, was in his office at the *Hôtel des Diplomates* "taking care of routine matters" in his capacity as Minister of Foreign Affairs while waiting for UNAMIR officials, General Roméo Dallaire and Jacques-Roger Booh-Booh's political adviser, with whom he had a meeting. Both meetings were scheduled for the same time between 10.00 and 11.00 a.m., so he had not planned to participate in the meeting between the Prime Minister and the prefects. General Dallaire was late and arrived in the afternoon at the exact time that the meeting with the prefects ended.[1346]

Bizimungu Defence Witness Emmanuel Ndindabahizi

931. Ndindabahizi, a Hutu, was appointed the Minister of Finance of the Interim Government on 9 April 1994.[1347] He attended the 11 April meeting with the prefects. Fidèle Uwizeye and the Kibungo prefect were among the prefects who attended. At the meeting, Colonel Tharcisse Renzaho, prefect of Kigali-Ville, talked about insecurity in Kigali but did not mention a programme to arrest and kill RPF accomplices or Tutsis. Prime Minister Jean Kambanda did not tell the prefects that there would be a programme of revenge for Habyarimana's death. Rather, he gave them instructions about how to maintain security throughout the country.[1348]

932. Radio Rwanda broadcast Kambanda's speech, but Ndindabahizi did not hear it as he did not have a radio. He confirmed that the transcript of the radio recording of Kambanda's speech reflected the meaning and spirit of what he had communicated to the prefects in the meeting. Its content was consistent with the objectives of the government.[1349]

933. Ndindabahizi approached Uwizeye immediately after the meeting. Ndindabahizi asked him if he could provide refuge for Ndindabahizi's family. Uwizeye agreed. The two did not discuss the contents of the meeting. Uwizeye appeared quite normal and did not show

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[1345] Bizimungu, T. 28 May 2007 pp. 28-30; T. 4 June 2007 p. 44; T. 5 June 2007 pp. 22, 56, 58; T. 7 June 2007 p. 18. *See also* II.7.4.
[1346] Bicamumpaka, T. 26 September 2007 pp. 10-11; T. 27 September 2007 p. 2; T. 2 October 2007 pp. 13-14; T. 11 October 2007 p. 37.
[1347] Ndindabahizi, T. 30 April 2007 pp. 4-5; Exhibit 1D158 (Ndindabahizi's Personal Information Sheet). Ndindabahizi is presently serving a life sentence for his role in the events in Rwanda in 1994. Ndindabahizi, T. 30 April 2007 pp. 5, 45-49. Notably, Ndindabahizi was not tried for crimes in Rwanda based on his position as Minister of Finance of the Interim Government. Ndindabahizi, T. 30 April 2007 p. 35. At the time of his testimony, he resided in the United Nations Detention Facility with the Accused. Ndindabahizi, T. 1 May 2007 pp. 49-50.
[1348] Ndindabahizi, T. 30 April 2007 pp. 38-39, 68; T. 1 May 2007 p. 9; T. 2 May 2007 p. 17.
[1349] Ndindabahizi, T. 30 April 2007 pp. 51-61.

signs that he had any problem arising from the previous gathering.[1350] Kambanda's instructions to the prefects during the 11 April 1994 meeting were later issued in writing on 27 April.[1351]

Mugenzi Defence Witness Agnès Ntamabyaliro

934. Agnès Ntamabyaliro, Minister of Justice at the relevant time, testified that during the cabinet meeting on 10 April 1994 it was decided that the Prime Minister should hold a meeting with the prefects and sensitise them on the need to maintain security. It was necessary for the prefects to do everything in their power to ensure that the massacres that were taking place in Kigali did not spread to other prefectures and to ensure that the killings in Kigali were stopped. This meeting, led by the Prime Minister, was held on 11 April, but Ntamabyaliro did not attend.[1352]

Bizimungu Defence Witness André Ntagerura

935. André Ntagerura, Minister of Transport and Communication at the relevant time, was in Bujumbura, Burundi on 11 April 1994. He was aware of the meeting with the prefects and that the government had instructed that, while the roadblocks were "good", prefects had to supervise and control them. The government also told the prefects that "any troublemaker should be arrested and brought to book. All killers or outlaws should be arrested and brought to justice".[1353]

Bizimungu Expert Witness Eugène Shimamungu

936. Eugène Shimamungu was admitted as an expert in linguistic sciences, grammar, and the Kinyarwanda language as well as political information and communication.[1354] He summarised Kambanda's 11 April 1994 speech in his expert report, noting that his summary was based on a redacted transcript with material missing from the beginning and middle of the speech. In his report and testimony he summarised three messages to the prefects in Kambanda's speech: (i) the prefects must inform the population not to fight each other on the basis of ethnicity or region; (ii) the prefects must inform the population not to take the law into their own hands and tell the authorities to remain in place; and (iii) the prefects should inform the population not to abandon the culture of solidarity. With respect to security, Shimamungu's testimony was that Kambanda expressed concern over unauthorised and disorderly roadblocks where looting took place. Kambanda said that roadblocks authorised by the local authorities should remain in place. Shimamungu believed that these were concrete measures. He did not believe there was any doublespeak or coded language in Kambanda's speech. The message was unambiguous and complete.[1355]

[1350] Ndindabahizi, T. 30 April 2007 pp. 8-10.
[1351] Ndindabahizi, T. 2 May 2007 pp. 17-18, 31.
[1352] Ntamabyaliro, T. 21 August 2006 p. 9; T. 22 August 2006 pp. 1-2.
[1353] Ntagerura, T. 15 February 2007 p. 65; T. 19 February 2007 pp. 68-69.
[1354] Shimamungu, T. 10 May 2007 pp. 1-2. The Chamber did not accept Shimamungu as an expert in lexicography and terminography. T. 10 May 2007 p. 2.
[1355] Shimamungu, T. 14 May 2007 pp. 33-37, 46-50, 55-56; Exhibit 1D166(E) (Shimamungu's Expert Report) pp. 64-66.

Deliberations

937. It follows from the evidence that, on 11 April 1994, a meeting of Interim Government ministers and prefects was held at the *Hôtel des Diplomates* in Kigali. Prefects from throughout Rwanda briefed the Interim Government ministers on security issues in their respective prefectures. The Prime Minister responded with a message to the prefects. There is no dispute that Prosecution Witness Fidèle Uwizeye, Gitarama's prefect at the time, attended the meeting.

938. Through Fidèle Uwizeye, the Prosecution has presented evidence that during the meeting Colonel Tharcisse Renzaho, the prefect of Kigali-Ville, spoke approvingly of roadblocks in tracking down the *Inkotanyi* and their accomplices. By Uwizeye's own observations, roadblocks in Kigali were a source of widespread killings and he interpreted Renzaho's references to "accomplices" to include Tutsis generally.[1356] Instead of disagreeing or providing a specific program for peace, Prime Minister Jean Kambanda addressed those gathered and set forth a brief agenda, aimed at fighting the *Inkotanyi* for the purposes of implementing the Arusha Accords.

939. Before turning to the evidence, the Chamber shall evaluate Uwizeye's general credibility. The Chamber observes that the Prosecution has presented evidence that Uwizeye attended a rally with members of the Interim Government where a speaker discussed the enemy, which was understood to be Tutsis and Hutus who opposed the government (II.8.4).[1357] There is other evidence that Uwizeye supported roadblocks for the purpose of ensuring security (discussed below). However, Uwizeye was not charged with any genocide-related crime and had no pending criminal proceedings against him at the time of his testimony. In the Chamber's view, these circumstances, as well as Uwizeye's position within the government during the genocide, do not raise concerns about him being an accomplice witness who might have an interest in deflecting responsibility for crimes onto the Accused in this proceeding. The Chamber does not consider that his position within the Rwandan government after the genocide necessarily renders his evidence partial or unreliable.

940. The Defence has raised further concerns about the general credibility of Uwizeye due to his arrest in Rwanda after having testified in the Tribunal's *Akayesu* trial. In the Defence's view, his evidence has necessarily been tainted by the harsh treatment he received in Rwanda and cannot be trusted. Indeed, his evidence here must be evaluated in light of the fact that Uwizeye was to return to Rwanda after testifying.

941. With respect to Uwizeye, he testified for the Defence in the *Akayesu* proceeding in March 1998.[1358] Within two months, starting on 1 May 1998, he was imprisoned in Rwanda

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[1356] *See* Uwizeye, T. 7 April 2005 pp. 62, 66-67.

[1357] *See also* Des Forges, T. 8 June 2005 p. 22 (concerning unrelated alleged criminal conduct).

[1358] During this proceeding, Uwizeye testified that he had not been aware that he had appeared in the *Akayesu* trial as a Defence witness. Uwizeye, T. 12 April 2005 pp. 66-68, 70-72, 74-75, 77-78; T. 13 April 2005 p. 15; T. 15 April 2005 pp. 32-33; T. 14 April 2008 pp. 12-14, 72. The Chamber observes that he was told before and during his testimony in the *Akayesu* case that he had been called to testify by the Defence. However, the proceeding reflects that the Prosecution had contacted and interviewed him as well and that the Defence had not taken a statement from him or met with him in Arusha before his testimony began. *See* Exhibit C3 (Excerpts of *Akayesu* Trial Transcripts, 3 March 1998) pp. 4-8, 124. His confusion about whether he was called to offer evidence in support of the Defence is understandable, particularly in light of the fact that the Presiding Judge corrected Uwizeye by telling him he was not called to testify "for the defence but by the defence" and his own

and remained in detention until 28 January 2000. Amnesty International reported that during Uwizeye's detention he was criticised for testifying in the *Akayesu* proceeding. Similarly, the International Crisis Group stated that reliable information indicated Uwizeye was incarcerated as retaliation for participating in that trial.[1359] Indeed, Uwizeye's March 2001 statement to Tribunal investigators reflects that he had requested that they inform the Rwandan Prosecutor General that he was cooperating with the Tribunal.[1360]

942. Uwizeye denied that his arrest was a result of having testified in the *Akayesu* trial and that he was questioned about his participation in it while detained. Rather, he was detained on charges of interfering with national security.[1361] He further denied that his cooperation with the Tribunal investigators and his testimony were influenced by a desire to avoid punishment by the Rwandan authorities.[1362]

943. Uwizeye's incarceration history raises questions about whether his arrest was intended to punish him for providing testimony that was viewed as favourable to Jean-Paul Akayesu. This alone, however, does not demonstrate that his evidence has necessarily shifted as a result of it. Uwizeye was not cross-examined about the material inconsistencies between these statements and his present testimony regarding this event.[1363] Nor has the Defence presented supporting arguments that once incarcerated, his testimony about this event has become more incriminating against the Accused.[1364]

944. Moreover, Uwizeye was recalled for further questioning about a Radio Rwanda broadcast in which he was interviewed. In this context, Uwizeye proved to be a problematic witness. During his initial appearance before the Chamber, he denied that he had been interviewed by Gaspard Rwakana on Radio Rwanda in early June 1994. When a tape of the interview was played for him, he insisted that he did not recognise his voice or others on the tape and suggested that it was a "forgery". However, Uwizeye subsequently acknowledged the authenticity of a recording of the same interview during his testimony in the trial of

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comments during that trial that he was hoping to testify "about this government more than the case of Akayesu". Exhibit C3 (Excerpts of *Akayesu* Trial Transcripts, 3 March 1998) pp. 125-126.

[1359] Uwizeye, T. 13 April 2005 pp. 15-16; T. 15 April 2005 pp. 33-35; T. 19 April 2005 pp. 67, 70-71; T. 14 April 2008 pp. 72-73; Exhibit 1D63 (Amnesty International Report: "Rwanda: The troubled course of justice, April 2000") p. 2 ("[Uwizeye] was also criticized for testifying in the trial of Jean-Paul Akayesu by the ICTR in Arusha."). The Report of the International Crisis Group was referenced at T. 19 April 2005 pp. 69-71.

[1360] Uwizeye, T. 14 April 2008 pp. 76, 79.

[1361] Uwizeye, T. 11 April 2005 pp. 78-79; T. 13 April 2005 pp. 15-17; T. 15 April 2005 pp. 34-35, 37-41; T. 19 April 2005 pp. 68, 70-71; T. 14 April 2008 pp. 73, 76-79.

[1362] Uwizeye, T. 13 April 2005 p. 17; T. 15 April 2005 p. 42; T. 14 April 2008 pp. 73, 76-79.

[1363] Counsel for Mugenzi, referring to Uwizeye's 16 March 1997 statement to Tribunal investigators, asked Uwizeye why he had not mentioned that Kambanda informed him about the 11 April 1994 prefects' meeting. Uwizeye explained that he had not been asked by the Prosecutor. Uwizeye, T. 11 April 2005 pp. 37-38. The Chamber, noting that it is undisputed that Uwizeye attended the gathering, finds the variance immaterial.

[1364] Fidèle Uwizeye's prior statements to Tribunal investigators were provided to the Defence in unredacted form on 8 October 2003. *See* Prosecution Memorandum entitled: Disclosure of Unredacted Witnesses Statements, 8 October 2003.

Karemera et al. on 27 July 2007.[1365] The Chamber recalled him for further cross-examination to discuss this contradiction, as well as the contents of the interview.[1366]

945. With respect to his failure to originally acknowledge before this Chamber that the Radio Rwanda interview had taken place, Uwizeye explained that he recognised his voice in the *Karemera et al.* trial because the recording played was clearer than the recording played before this Chamber.[1367] The reasonableness of Uwizeye's explanation is mitigated by the fact that he also denied the contents of the words he spoke on it. Indeed, he rejected the assertion that he had ever been interviewed by Gaspard Rwakana during the war, and claimed that the interview could not have taken place because he had sought refuge at Buramba Health Centre at the time.[1368]

946. It is not unreasonable that Uwizeye forgot that he gave an interview on Radio Rwanda when testifying before this Chamber nearly 11 years later.[1369] In particular, the violence that engulfed the country could have rendered this incident insignificant. Furthermore, Uwizeye indicated that the circumstances surrounding this meeting were relatively impromptu.[1370] Witness GKJ's testimony also suggests that Uwizeye's interview with Rwakana arose in reaction to a public meeting and an evolving need to calm the public.[1371]

947. The Chamber next considers alleged contradictions between the contents or statements Uwizeye made during that interview and his testimony before the Chamber. For example, the 7 June 1994 Radio Rwanda broadcast unequivocally indicates that Uwizeye was Gitarama's prefect at that time. Nothing in Uwizeye's comments during the interview suggest that he had lost the powers of his post. This is in contrast to his testimony that, after 18 April, he no longer effectively functioned as Gitarama's prefect, was on the run and hiding from the government perpetrating the massacres, and that Jean-Damascène Ukulikiyeyezu, Uwizeye's eventual replacement in June, had acquired parallel powers and acted as Gitarama's *de facto* prefect before Uwizeye was officially removed around 10 June.[1372]

948. When confronted with the inconsistency between his testimony and the broadcast, Uwizeye explained that he had not yet been officially removed at the time of the interview. He insisted, however, that he was prefect in name only and had been since 10 May 1994, when Ndindabahizi told him that he would be replaced.[1373] However, Ndindabahizi denied that he informed Uwizeye of his dismissal.[1374] Furthermore, Defence Witness Martin

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[1365] Uwizeye, T. 11 April 2005 pp. 81-82, T. 12 April 2005 pp. 38-40 (denying his involvement in the 7 June 1994 Radio Rwanda interview). *See also* Decision on Justin Mugenzi's Motion for the Recall of Prosecution Witness Fidèle Uwizeye for Further Cross Examination (TC), 9 October 2007, para. 3, fn. 8 *citing Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, T. 27 July 2007 p. 7.

[1366] *See* Decision on Justin Mugenzi's Motion for the Recall of the Prosecution Witness Fidèle Uwizeye for Further Cross Examination (TC), 9 October 2007.

[1367] Uwizeye, T. 14 April 2008 pp. 16-17; T. 15 April 2008 pp. 29-32. The recording from the *Karemera et al.* trial was not played before this Chamber.

[1368] Uwizeye, T. 11 April 2005 pp. 81-82; T. 12 April 2005 pp. 38-40.

[1369] Uwizeye, T. 15 April 2008 pp. 13-15.

[1370] *See, e.g.*, Uwizeye, T. 14 April 2008 p. 28.

[1371] Witness GKJ, T. 25 May 2005 pp. 8, 18-19, 29, 39-40.

[1372] Uwizeye, T. 6 April 2005 pp. 55-57, 62, 69; T. 8 April 2005 pp. 38-42; T. 11 April 2005 pp. 72-73, 79-81; T. 12 April 2005 p. 40; T. 19 April 2005 pp. 45-46, 74-76; T. 14 April 2008 pp. 25-27; T. 15 April 2008 pp. 23-25.

[1373] Uwizeye, T. 6 April 2005 p. 55; T. 8 April 2005 pp. 39, 41-42; T. 11 April 2005 pp. 72-73, 79-80; T. 19 April 2005 pp. 45-46, 76; T. 14 April 2008 pp. 25-27, 63-64.

[1374] Ndindabahizi, T. 30 April 2007 pp. 44, 71-72; T. 3 May 2007 p. 34.

Ndamage testified that Uwizeye continued to act as prefect after 18 April. Notably, Uwizeye presided over Ndamage's installation ceremony as *bourgmestre* of Mugina commune on 22 May, and issued him a letter attesting that Ndamage had obtained that position the same day.[1375] Ndamage further observed Uwizeye acting in his capacity as the Gitarama prefect on 2 June during a meeting attended by local officials, Édouard Karemera and Prime Minister Jean Kambanda.[1376]

949. Another example of alleged inconsistencies between the June 1994 broadcast and Uwizeye's testimony concerns his position towards roadblocks. During the interview, Uwizeye praised the effectiveness of barriers in capturing real *Inkotanyi* "carrying guns", and implied – through the use of the Kinyarwanda word "*kweshizeho*", the equivalent of "we" in English – that he had been involved in establishing them. Much of his original testimony before this Chamber, however, concerned his efforts to work against their establishment because they led to the killings of Tutsis.[1377] Indeed, he stated that no legal roadblocks were ever set up and that had he made any radio broadcasts, he would have requested that barriers be removed.[1378]

950. When confronted with the broadcast on recall, Uwizeye sought to challenge the authenticity of the recording, the transcript and its accuracy. He then insisted that what he had said during the interview was "exaggerated", and that the truth was that no *Inkotanyi* soldiers were arrested at roadblocks, which served no purpose other than killing Tutsis. He denied that he had been involved in establishing roadblocks and explained that his use of "we" in reference to the establishment of roadblocks was "just a way of speaking in answering".[1379]

951. Notably, Prosecution Witness GTD testified that Prefect "Fidel Uwizeyimana" authorised the establishment of a roadblock, which was close to where members of the

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[1375] Ndamage, T. 21 March 2006 pp. 31, 33-34, 48.

[1376] Ndamage, T. 21 March 2006 pp. 33-35, 45 (Fidèle Uwizeye ceased to be prefect of Gitarama around the middle of June), 48. *See also* Witness WFQ3, T. 29 January 2007 pp. 27-28 (Uwizeye was overwhelmed by April 1994 and stopped working as prefect because he was powerless; however, Uwizeye never told the witness that he had been warned about being dismissed as prefect); Witness GKJ, T. 25 May 2005 pp. 27, 40 (it was possible that Uwizeye was fired as prefect in May and not notified until later in June).

[1377] Exhibit 2D44(E & K) (Radio Rwanda Broadcast, 7 June 1994) p. 14. *See, e.g.*, Uwizeye, T. 6 April 2005 pp. 43, 51, 55; T. 7 April 2005 pp. 59, 66-67; T. 8 April 2005 pp. 11-13, 15, 48; T. 11 April 2005 pp. 24, 72-73, 77, 80-81; T. 13 April 2005 p. 48; T. 18 April 2005 pp. 39-40.

[1378] *See* Uwizeye, T. 8 April 2005 p. 15 ("JUDGE SHORT: Did ... you give evidence about any occasion, when it became necessary to set up a legal roadblock? MADAM PRESIDENT: Whether any legal roadblock was ever set up? THE WITNESS: None was set up. No roadblock was ever set up following the no-more legal procedure. I explained and I said that I had ordered that those roadblocks should not be set up because I knew that the objective was to separate – to create conflict among Rwandans, which might lead to killings. Even after the plane crash on the 8th of April, during the *bourgmestres* meeting, I told the *bourgmestres* that no roadblocks should be set up in Gitarama, so that Tutsis are not identified in order to be killed. So, no roadblocks was [sic] ever legally set up. Even Captain Rusigariye, who set up a roadblock, I reported him to the authorities. And, when his superiors did not wish to transfer him, I asked for (inaudible) assistance and she had him transferred to another préfecture."); T. 11 April 2005 pp. 72 ("Q. ... Mr. Uwizeye, ... I think you have us told [sic] this clearly that your attitude to the setting up of roadblocks in your préfecture was one of ... you were dead against the idea because you thought that was were [sic] killings were happening yes? A. That would stop the killings from taking place."), 73 ("A. Even after that between – from the 16th, up to even beyond the 18th of April, I got discouraged on the 10th of May, that is when a meeting had been held and that it had been decided that I should be dismissed. So I took my own precaution and I tried to hide, but in answer to your question, because you were saying that if I had been able to make a radio broadcast that I would have said that roadblocks should be removed. If I had the powers, if I had been able, I would have said that, yes.").

[1379] Uwizeye, T. 14 April 2008 pp. 42-43, 49-52; T. 15 April 2008 pp. 37-38.

government were staying, "to ensure security".[1380] When confronted with this information, Uwizeye denied having given such a written authorisation.[1381] The Chamber observes that a 19 May 1994 Radio Rwanda broadcast by Gaspard Rwakana provides instructions about the administration of roadblocks purportedly on behalf of Uwizeye.[1382] Uwizeye denied having given such a message.[1383]

952. Similarly, Uwizeye's statements regarding guns during the June 1994 Radio Rwanda interview contradict his original testimony before this Chamber. In the interview, he praised the Interim Government's efforts at providing firearms for the people, whereas during his original testimony he had been critical of such actions.[1384] When recalled before the Chamber, Uwizeye explained that he disagreed with the way guns were used, or what he called the consequences of distribution, and also suggested that he "did not know at the time [of the interview] the extent of the genocide nationwide".[1385]

953. Uwizeye's general comments about the discrepancies between his original testimony and the statements made in the June 1994 Radio Rwanda interview raise concerns about the completeness of his testimony, particularly when it involves issues of his own conduct in 1994. He also testified that the statements in the interview were "exaggerations" or "sensationalism". They were part of a "narrative". At the time, he was scared and trying to survive. He was afraid that if he had said otherwise he could have been killed. His objective was to ensure that the population remained calm and stayed at home.[1386]

954. In the Chamber's view, the statements made by Uwizeye on Radio Rwanda may suggest that at times he was aligned with the efforts of the Interim Government once in Gitarama in 1994. Consequently, Uwizeye may have used his appearances in this proceeding to distance himself from these statements. In this regard, the Chamber has concerns about the completeness of Uwizeye's accounts, particularly as it relates to his conduct in 1994. His evidence must be viewed with appropriate caution and should be assessed on a case-by-case basis.

955. Turning to the merits of his evidence, Uwizeye's presence at the meeting is corroborated by Defence evidence.[1387] However, the Defence has challenged Uwizeye about his general recollections as they relate to it. Notably, Uwizeye was critical of the failure of the prefect of Kibuye to discuss attacks on Tutsis through the destruction of Nyange church, even though this had occurred on 8 April 1994.[1388] However, Defence Counsel presented a

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[1380] Witness GTD, T. 5 July 2004 p. 6. The Chamber is satisfied that Witness GTD was referring to Fidèle Uwizeye.
[1381] Uwizeye, T. 18 April 2005 pp. 39-41.
[1382] Exhibit 2D43 (Radio Rwanda Broadcast, 19 May 1994).
[1383] Uwizeye, T. 11 April 2005 pp. 74-77.
[1384] *See, e.g.*, Uwizeye, T. 6 April 2005 p. 55; T. 8 April 2005 pp. 11-12, 39-40, 48; T. 11 April 2005 pp. 6-7.
[1385] Uwizeye, T. 14 April 2008 p. 58.
[1386] Uwizeye, T. 14 April 2008 pp. 57-60; T. 15 April 2008 p. 38. Uwizeye defined a narrative as "something you utter, mixing it with what you heard, what you read, what is true and what is not quite true. A narrative has no scientific base or an analysis and it doesn't contain any documentation in the form of a report." Uwizeye, T. 14 April 2008 p. 60.
[1387] *See* Ndindabahizi, T. 30 April 2007 p. 8 (expressly identifying Fidèle Uwizeye as present during the 11 April 1994 meeting); Mugenzi, T. 9 November 2005 pp. 35-36 (identifying the "Gitarama" prefect as attending the meeting).
[1388] Uwizeye, T. 7 April 2005 p. 63; T. 11 April 2005 pp. 41-43; T. 18 April 2005 pp. 14-17.

Rwandan trial judgement, as well as the Tribunal's indictment for Anastase Seromba, which suggest that these attacks on the church did not occur until 15 April.[1389]

956. Uwizeye, referring to his recollection, claimed that this information was incorrect.[1390] He also suggested the Rwandan judgement did not include reference to the church.[1391] While his explanation is not convincing, the significant passage of time between the event and his testimony may explain his confusion as to when he learned about this event. Notwithstanding, it raises some questions about the reliability of his recollections as they pertain to the meeting.

957. Likewise, Uwizeye's evidence shifted as it related to which prefects were present.[1392] Notably, he repeatedly asserted that the Ruhengeri prefect was there.[1393] However, there is evidence that he had been killed and Mugenzi and Mugiraneza specified that this had occurred prior to the 11 April 1994 gathering.[1394] The Chamber observes that Uwizeye conceded that he had difficulties remembering which prefects were there.[1395] This is reasonable given the intervening period between the event and Uwizeye's testimony. Nonetheless, it raises some questions about his general identification of who was present, particularly to the extent he offered no details regarding their participation in the meeting.

958. Indeed, the Chamber considers that, for example, Uwizeye's evidence that Bizimungu was present is unreliable. Notably, he did not specify any action taken by Bizimungu, but he only generally listed him as among the ministers who attended.[1396] Furthermore, the Prosecution led evidence that Bizimungu attended a meeting that morning at the Kigali-Ville prefecture office to organise the removal and burial of bodies with various agencies, including the ICRC (II.7.4). Thus, the evidence of Mugenzi and Bizimungu that the latter did not attend the 11 April 1994 prefects' meeting as he continued to meet with the ICRC's Philippe Gaillard is reasonable. In reaching this conclusion, the Chamber is mindful that Kigali-Ville Prefect Tharcisse Renzaho had also attended this earlier meeting with Bizimungu and Gaillard that morning for this purpose and still managed to attend the prefects' meeting (II.7.4). However, it is reasonable that the Minister of Health would have continued to coordinate body removal and burial efforts in Kigali with the ICRC representative, while Prefect Renzaho would have left for the meeting that was specifically convened for prefects.

[1389] *See* Uwizeye, T. 18 April 2005 pp. 17-18; Exhibit 1D78(E) (Ruhengeri Appeal Judgement) pp. 22-24 (describing attacks commencing on 15 April and the destruction of Nyange church on 16 April 1994).
[1390] Uwizeye, T. 18 April 2005 pp. 17-18.
[1391] Uwizeye, T. 18 April 2005 p. 19.
[1392] For example, he testified that there was no prefect for Kigali-*Rurale* but later testified that this prefect was present. *Compare* Uwizeye, T. 11 April 2005 p. 41 *and* T. 15 April 2005 p. 44. He initially stated that the Cyangugu prefect was present but later stated he was not. *Compare* Uwizeye, T. 7 April 2005 p. 62 *and* T. 15 April 2005 p. 44.
[1393] Uwizeye, T. 7 April 2005 p. 62; T. 15 April 2005 pp. 44-45. *See also* T. 11 April 2005 pp. 41, 43 (noting that only the Byumba, Kigali-*Rurale* and Butare prefects were not present).
[1394] Mugenzi, T. 9 November 2005 p. 36 (the Ruhengeri prefect was killed on 7 April 1994 in Kigali); Mugiraneza, T. 22 May 2008 p. 47 (had been informed that the Ruhengeri prefect had been killed by the *Inkotanyi*); *see also* Nsabumugisha, T. 22 October 2007 p. 28 (Sylvestre Bariynanga, the former Ruhengeri prefect, had died).
[1395] Uwizeye, T. 15 April 2005 p. 44.
[1396] *See* Uwizeye, T. 7 April 2005 p. 61.

959. Uwizeye also testified that Bicamumpaka attended the 11 April 1994 prefects' meeting, but did not describe his role in it.[1397] Bicamumpaka denied this. Instead, he stated that he waited to meet with UNAMIR representatives, Roméo Dallaire and Jacques-Roger Booh-Booh, in the *Hôtel Des Diplomates*. No other witness who attended the prefects' meeting specified whether Bicamumpaka was present.[1398] Even viewing Bicamumpaka's evidence with suspicion, the Chamber is not satisfied that Uwizeye's testimony establishes beyond reasonable doubt that Bicamumpaka was present.

960. Turning to the merits of Uwizeye's account, Ndindabahizi and Mugiraneza expressly confirmed his evidence that prefects reported the situation in their respective prefectures.[1399] This evidence is consistent with other evidence indicating that the purpose of the meeting was to be informed as to what was happening in prefectures throughout Rwanda.[1400]

961. Furthermore, Ndindabahizi corroborated Uwizeye's account that Kigali-Ville Prefect Colonel Tharcisse Renzaho addressed the gathering. However, Ndindabahizi contradicted Uwizeye's evidence in a material respect about what Renzaho said. Uwizeye testified that Renzaho approved roadblocks for the purpose of hunting down the *Inkotanyi* and their accomplices, the latter meaning Tutsis generally. Ndindabahizi denied this. According to Ndindabahizi, Renzaho talked about insecurity in Kigali and about bandits who had set up roadblocks. He did not discuss a plan to arrest and kill "accomplices" or Tutsis.[1401]

962. The Chamber considers Ndindabahizi's evidence with suspicion. He is an alleged accomplice of the Accused as a former member of the Interim Government, serving a life sentence for his participation in the genocide. Furthermore, it is believable that Renzaho, both the administrative head of Kigali and a colonel from the Rwandan army, would have been involved in civilian defence efforts in the capital. Indeed, in a 14 April 1994 speech, Renzaho called on citizens to unite and conduct night patrols to "prevent the enemy from infiltrating".[1402] Likewise, he called on civilians to get involved in roadblocks.[1403] However, other aspects of the *communiqué* condemned killing and lootings generally, as well as crimes committed at roadblocks, which were blocking Kigali's supply lines.[1404]

[1397] *See* Uwizeye, T. 7 April 2005 pp. 60-61.
[1398] The Chamber observes that Mugenzi generally testified that all ministers, with the exception of Bizimungu, were present. *See* Mugenzi, T. 9 November 2005 pp. 32, 35; T. 14 November 2005 p. 10. However, in addition to Bicamumpaka, Ntamabyaliro and Ntagerura also testified that they did not attend this meeting. *See* Ntamabyaliro, T. 22 August 2006 p. 2; Ntagerura, T. 19 February 2007 pp. 68-69. The Chamber considers the evidence concerning their absence reasonable.
[1399] *See, e.g.*, Ndindabahizi, T. 30 April 2007 pp. 38-39; Mugiraneza, T. 22 May 2008 p. 48.
[1400] *See, e.g.*, Mugenzi, T. 8 November 2005 p. 93, T. 9 November 2005 p. 36; Bizimungu, T. 4 June 2007 p. 44, T. 5 June 2007 p. 22.
[1401] Ndindabahizi, T. 30 April 2007 pp. 39, 68.
[1402] Exhibit P2(52) (Radio Broadcasts, Various) p. 75 (Renzaho transmission, 14 April 1994).
[1403] Exhibit P2(52) (Radio Broadcasts, Various) p. 76 (Renzaho transmission, 14 April 1994) (" ... citizens have to conduct patrols, they have their roadblock they are guarding and at which they must remain.").
[1404] *See, e.g.*, Exhibit P2(52) (Radio Broadcasts, Various) pp. 75 ("So, we appeal all the citizens to unite their efforts for facing the enemy. That cannot be done while some people are busy stealing and looting, and killing. So I would like you to stop those activities. ... I want to inform you that we have given instructions to the security agents so that they should take severe measures against anyone they would see doing those looting, killing activities."), 76 ("I wanted to tell you that about improving security, especially in fighting lootings, thefts, killings; I held a meeting with officials of political parties at the prefecture and commune levels. ... [T]hose in charge of the citizens' problems must do their best to try to make citizens understand that those

963. Read in its entirety and in the context of the larger record in this proceeding, the Chamber is of the view that the broadcast does not sufficiently address the ethnic nature of the killings at roadblocks (*see* II.9.2; II.12.1). Nonetheless, the Chamber does not consider that this broadcast corroborates Uwizeye's account of Renzaho's statements during the 11 April 1994 prefects' meeting that roadblocks should be established to kill Tutsis. In this instance, the Chamber is not satisfied that Uwizeye's evidence alone is sufficient to demonstrate beyond reasonable doubt that Renzaho provided a plan for killing Tutsis at roadblocks to the prefects or to members of the Interim Government who were present.

964. The Chamber now turns to Uwizeye's account of Prime Minister Jean Kambanda's statements to the prefects during the meeting. Uwizeye testified that Kambanda said that the government must fight the *Inkotanyi*, who had shot down the presidential plane, to ensure sovereignty of the national territory so that the Arusha Peace Accords may be implemented.[1405] He added that public order should be restored and that "we" must find "enemies of the country" and "check out for infiltrators".[1406] Uwizeye denied that Kambanda stated that there should be no violence based on ethnicity or that unauthorised roadblocks should be removed.[1407]

965. Uwizeye was then confronted with Kambanda's 11 April 1994 speech, which was broadcast on Radio Rwanda.[1408] He described it as a collection of "good" or "nice" words, but that it did not reflect what was said during the meeting.[1409] Mugenzi, however, testified that the 11 April broadcast "represents the speech the Prime Minister gave … at that meeting".[1410] Mugiraneza also suggested that Kambanda's remarks at the meeting were reflected in the speech exhibited during the proceeding.[1411] Ndindabahizi did not hear the radio broadcast, but confirmed that the transcript of it reflected the meaning and spirit of what Kambanda had communicated to the prefects.[1412] Internal references within the speech could reflect that it was recorded during the meeting.[1413]

966. The Chamber need not determine whether the 11 April 1994 Radio Rwanda broadcast was a contemporaneous transcription of Kambanda's remarks to the prefects. The Chamber notes that despite Uwizeye's reaction to the transcript during trial, there are some points of accord between Uwizeye's recollection of what Kambanda said with respect to the *Inkotanyi*

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criminal actions are not the ones that will allow us to win the war."), 77 ("[W]e should take measures bringing peace among the citizens, for stopping definitively those activities of looting and killing … .").

[1405] Uwizeye, T. 11 April 2005 p. 46.

[1406] Uwizeye, T. 11 April 2005 p. 47.

[1407] Uwizeye, T. 11 April 2005 p. 47.

[1408] Exhibit 2D42(K) (Radio Rwanda Broadcast of Prime Minister Jean Kambanda's Speech on 11 April 1994) translated at Uwizeye, T. 11 April 2005 pp. 58-63. *See also* Des Forges, T. 3 June 2005 pp. 30-35 (translation) *and* Shimamungu, T. 14 May 2007 pp. 33-37, 46-49 (translation). The Prosecution initially contested the authenticity of Exhibit 2D42(K) (T. 11 April 2005 pp. 48-58) but later conceded that it was a genuine transcript "of the radio broadcast on the date given". Letter from Mr. P. Ng'arua to Mr. B. Gumpert, 8 August 2005.

[1409] Uwizeye, T. 11 April 2005 pp. 63-65, 71.

[1410] Mugenzi, T. 9 November 2005 p. 37.

[1411] Mugiraneza, T. 27 May 2008 p. 41 ("The prime minister, himself, had delivered a speech to the préfets orally on the 11th of April, and I would remind the Chamber of the various speeches, including that of the president of the republic. All of these are exhibits or parts of exhibits in this case.").

[1412] Ndindabahizi, T. 30 April 2007 p. 53.

[1413] As an example, Kambanda indicates that he will not speak on behalf of the prefect of Kibuye, who is present. Uwizeye, T. 11 April 2005 p. 60.

and the Arusha Accords,[1414] and, to a lesser extent, concerning issues of security[1415] and the broadcast.

967. While Uwizeye described Kambanda's remarks as being presented in the context of avenging President Juvénal Habyarimana's death, the Chamber observes that Uwizeye's evidence does not indicate that Kambanda was calling for the killing of Tutsis. Indeed, Uwizeye testified that at a later meeting in Gitarama on 18 April 1994, Kambanda essentially repeated the remarks he had made on 11 April. Uwizeye characterised them as non-responsive to the information Kambanda was provided about killings in Gitarama by local officials. Uwizeye did not, however, say that Kambanda's remarks reflected a necessary desire to kill Tutsis.[1416]

968. Moreover, the Chamber has also heard considerable anecdotal accounts that, when viewed together, convincingly reflect that terms used to identify the RPF were also understood to mean Tutsis generally (II.9.2). However, Uwizeye's testimony leaves open the reasonable possibility that Kambanda was referring to the RPF combatant forces when he purportedly referred to fighting them.

969. Furthermore, the Chamber has also considered Uwizeye's account of Kambanda's statements to prefects in the context of the competing interpretations of the Prime Minister's 11 April 1994 speech given by Prosecution Expert Witness Alison Des Forges, on the one hand, and Defence Expert Eugène Shimamungu, on the other. For Des Forges, this speech

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[1414] Uwizeye testified that Kambanda said that the *Inkotanyi* shot down the President's plane and that they must be fought in order to implement the Arusha Accords. In Kambanda's radio broadcast on that date, he says the following about the *Inkotanyi* and the Arusha Accords: "We also said that the problems that are found all over this country can never be finished because one or the other party has won the war. Their political problems which must be solved by the – which must be solved through negotiations and that such fighting – that if the fighting, even if the fighting resumes that negotiations must continue, that negotiations are necessary and, therefore, people should not disregard them. And we showed them that such negotiations are necessary especially as it was – especially as it had come to some understanding or agreement – I mean, the Arusha agreements, and we also came to the conclusion that the government accepts the Arusha agreements up to now and we are asking the *Inkotanyi*. … That the government has never, as some people might suspect that the government has never rejected the agreements. It agrees that the Arusha agreements should be implemented and we are also requesting the *Inkotanyi* that they should come to understand that fighting will never settle that question, but rather the implementation of the Arusha agreement, that would be the only way to settle the issues that this country is facing." Translation at Uwizeye, T. 11 April 2005 pp. 58-59.

[1415] Uwizeye testified that Kambanda spoke of the necessity of using force because the enemy was using force, and of the need to find enemy infiltrators. In the radio broadcast, Kambanda said: "As far as the minister in charge of security, we have also instructed them, so that they may cooperate with the others who are also in charge of security especially the armed forces, to bring back the security all over the country. … As to the minister of defence, he was asked to do his level best to ensure that gendarmerie which work in cooperation with the national army should ensure that security is restored in the country, whether it is here in Kigali or in the rest of the country, and they should even ensure that all our borders are secure because we had heard that the *Inkotanyi* had resumed fighting. … This doesn't mean that the roadblocks should be removed because they help the population to ensure that there is security, but they have to be known by the administration and those that are not recognised by the administration, should not be erected in a disorderly manner such that anyone who so fancies should erect his or her own roadblock. … We believe that the national army cannot alone fight this war, but that even the population should give them a hand in ensuring their security and in future therefore, they will get specific directives to be taken to the population to show them what they should do to ensure the armed security during this very difficult time." Translation at Uwizeye, T. 11 April 2005 pp. 59-63.

[1416] *See* Uwizeye, T. 6 April 2005 p. 53; T. 19 April 2005 pp. 42-43. *Cf.* Witness GKJ, T. 27 September 2004 p. 45 (noting that Kambanda's speech on 18 April 1994 in Gitarama was not bad, but that the government's actions did not match the words spoken).

refused to sufficiently acknowledge that killings on an ethnic basis were occurring en masse. Kambanda's extensive recital of the "security" situations in various prefectures ignored that, other than Ruhengeri, Byumba, Gisenyi and Kigali, there was very little actual combat between the Rwandan army and the RPF in Rwanda, and that the killings elsewhere were aimed at Tutsis, but not acknowledged. In this view, she believed that Kambanda's generalised calls on Rwandans to act as brothers were insincere, particularly in Kigali where it was reported that there were nearly 10,000 dead. She questioned the purpose of the barriers supported by the local government and what type of "security" they were intended to restore. Moreover, she believed that Kambanda was not clear enough as to which roadblocks were authorised and which were not.

970. Shimamungu, on the other hand, highlighted that the speech indicated that Hutus, Twas and Tutsis all have a right to the country and that persons should not take the law into their own hands. It reflected that only roadblocks authorised by local government officials should exist to avoid criminal activities at them.

971. Having reviewed this speech in the context of several other messages broadcast by the Interim Government during the genocide, the Chamber considers that it is ambiguous as to Kambanda's intent towards preventing the killing of Tutsis that was occurring throughout the country. The same is true with respect to the rest of the Interim Government ministers who participated in the meeting.

972. The Chamber need not address the credibility of Uwizeye's recollections of Kambanda's speech. This speech and Uwizeye's evidence about the 11 April 1994 prefects' meeting (even if accepted), fail to reflect a clear desire held, at that moment, by Kambanda, or any other Interim Government minister who attended the meeting, to promote criminal conduct, including the killing of Tutsis. It likewise fails to reflect that the gathering's purpose was necessarily aimed at monitoring and promoting massacres.

973. The Chamber finds that the Prosecution has not established beyond reasonable doubt its allegations with respect to Prefect Renzaho's or Prime Minister Kambanda's speeches at the 11 April 1994 meeting. The Chamber therefore does not need to address Mugiraneza's challenge with respect to the notice provided for this meeting.

8. GITARAMA PREFECTURE, 12 – 18 APRIL 1994

8.1 Bizimungu's Trip to Zaire, 12 April 1994

Introduction

974. The Indictment alleges that the Interim Government moved from Kigali to Gitarama prefecture on 12 April 1994, where it was based until late May. On 12 April, the Minister of Finance of the Interim Government ordered that all the money in a Gitarama safe deposit be provided to him in order for Bizimungu to be sent abroad to purchase weapons. Witness Fidèle Uwizeye provided relevant evidence.[1417]

975. The Accused do not dispute that the Interim Government moved to Gitarama and set up at Murambi Training Centre. Furthermore, Bizimungu went on mission to Zaire on 12

[1417] Indictment, para. 5.21; Prosecution Pre-Trial Brief, para. 164 (p. 37); Prosecution Closing Brief, paras. 583, 586-589, 680-682, 696, 709, 726, 729, 731, 735, 1036.

April 1994, but for the purpose of getting assistance from President Sese Seko Mobutu in negotiating a ceasefire. The Accused and Witnesses Emmanuel Ndindabahizi, Agnès Ntamabyaliro, WFQ3, WAE, WAA and WDK provided relevant evidence.[1418]

Evidence

Prosecution Witness Fidèle Uwizeye

976. Fidèle Uwizeye, a Hutu, was a member of the MDR party. He was appointed prefect of Gitarama in July 1992 and was officially removed from his position around 10 June 1994.[1419] The Interim Government arrived in Gitarama prefecture on 12 April 1994. When Uwizeye reached his office at approximately 10.00 a.m., he observed a long line of vehicles with a very large UN armoured vehicle in the lead moving from the prefecture office to the military barracks and prison. General Augustin Ndindiliyimana, who was in the lead vehicle, suggested that Uwizeye receive President Théodore Sindikubwabo at his home, and Uwizeye accepted.[1420]

977. The President and members of his family arrived at Uwizeye's home around 10.30 a.m. Uwizeye spoke to the President briefly but then left to go and buy refreshments for his guests. When he was buying refreshments, he found some ministers talking in front of the sub-prefects' houses and told them to go speak with the President at his home. He returned to his house around 11.00 a.m., and served the drinks that he had bought. He then left his house again, at General Ndindiliyimana's instruction, to look for somewhere that the Interim Government could stay. When he returned home his guests had already left and his wife informed him that they had gone to the Murambi Training Centre in Gitarama ("Murambi Centre"). Uwizeye denied that he was at his house when the Interim Government allegedly discussed sending Bizimungu to Zaire.[1421]

978. Around 3.00 p.m. that day, Minister of Finance Emmanuel Ndindabahizi returned to Uwizeye's home and asked him where the prefecture accountant lived. As Uwizeye did not know he asked his neighbour, Sub-Prefect Gatsinzi, who then went with Ndindabahizi to pick up the chief accountant. With the exception of Uwizeye, who remained at home, they all then went to the Gitarama prefecture office. He learned that they removed all the money from the "coffers". Later, from the prefecture office, Uwizeye observed Ndindabahizi escort Bizimungu to a waiting helicopter, which then departed with the Minister of Health. Ndindabahizi subsequently went to Uwizeye's office and confirmed that Bizimungu had left with the money removed from the prefecture office. That evening Ndindabahizi told Uwizeye that Bizimungu had been given the money to buy arms in Kinshasa and South Africa. Ndindabahizi did not know the exact amount of money taken other than that it was a substantial amount.[1422]

[1418] Bizimungu Closing Brief, paras. 432-442, 520-539, 542-543, 554, 556, 559-561, 581, 583, 1676; Mugiraneza Closing Brief, para. 369; Bicamumpaka Closing Brief, para. 710; Bizimungu Closing Arguments, T. 2 December 2008 pp. 6, 10, 29.
[1419] Uwizeye, T. 5 April 2005 pp. 9-10; T. 6 April 2005 p. 62; T. 8 April 2005 pp. 41-42; T. 11 April 2005 pp. 73, 76-77, 79-80; T. 14 April 2005 pp. 23, 41; T. 18 April 2005 p. 63; T. 19 April 2005 pp. 45-48, 73-77; T. 15 April 2008 pp. 15, 24-25, 41.
[1420] Uwizeye, T. 7 April 2005 pp. 71-72; T. 18 April 2005 p. 29.
[1421] Uwizeye, T. 7 April 2005 pp. 71-74; T. 18 April 2005 pp. 29-30.
[1422] Uwizeye, T. 8 April 2005 pp. 8-10; T. 18 April 2005 pp. 29-32, 36-37, 39.

979. The Interim Government settled in and operated out of the Murambi Centre, which was about two to three kilometres from the Gitarama prefecture offices. The Murambi Centre consisted of approximately 10 hectares of classrooms, halls, two restaurants, gardens, apartments and bungalows, offices and recreation grounds, all surrounded by a large fence. The telephones there were not operational at the time, but there were computers.[1423]

Bizimungu

980. Early in the morning on 12 April 1994, Bizimungu took his family to the French Embassy in Kigali to be evacuated. Upon his return to the *Hôtel des Diplomates*, he learned that General Augustin Ndindiliyimana, Chief of Staff of the gendarmerie, had ordered people to leave Kigali. Bizimungu left for Gitarama that day between 8.00 and 8.30 a.m. The convoy moved slowly because of the numerous people on the road and he did not arrive in Gitarama until approximately 11.00 a.m.[1424]

981. Once in Gitarama, the President, Prime Minister and Interim Government ministers went to Prefect Fidèle Uwizeye's residence, where a cabinet meeting was held. The ministers discussed where to house the Interim Government in Gitarama and also sending an emissary to President Sese Seko Mobutu of Zaire to seek his assistance in negotiating a ceasefire. Bizimungu was chosen as the emissary of the Rwandan government. After the meeting, Bizimungu went with the Minister of Finance and Uwizeye to find the chief accountant and take him to his prefecture office to obtain funds for his mission. Bizimungu was given 3,500,000 Rwandan francs in the presence of Uwizeye and Ndindabahizi, the latter having authorised the amount. Ndindabahizi explained that the funds were to cover expenses such as hotels, communication costs and travel including hiring a plane if necessary. The amount was also used to cover his subsequent missions to Switzerland, Tunisia and return trips to see Mobutu. This was despite the fact that separate mission orders were prepared for these trips providing a daily subsistence allowance of 14,300 Rwandan francs, or approximately $70 United States Dollars ("USD"), per day. He did not draw money against these mission orders, instead using the balance of the amount given for the mission to Kinshasa on 12 April 1994.[1425]

982. Bizimungu travelled by military helicopter from Gitarama to Gisenyi, where he exchanged the Rwandan francs he had been given into $17,500 USD at the Bank of Kigali. He picked up Colonel Ephrem Setako, who was a member of the neutral military observer group ("GOMN") and accompanied Bizimungu in that capacity. Setako was not sent to obtain arms, but to apprise Mobutu, as the mediator, of the military situation as it was evolving on the ground. They then went to Goma airport by private car, and by air to Ndjili

[1423] Uwizeye, T. 7 April 2005 pp. 74-76; T. 18 April 2005 p. 72; Exhibit P92(V) (Video of Murambi Training Grounds).
[1424] Bizimungu, T. 28 May 2007 pp. 31-32; T. 4 June 2007 pp. 14-15.
[1425] Bizimungu, T. 28 May 2007 pp. 32-34; T. 5 June 2007 pp. 41-42; T. 6 June 2007 pp. 46-47; T. 7 June 2007 pp. 2-13; Exhibit 1D210 (Mission Order to Kinshasa, Dakar and Abidjan, 28 June 1994); Exhibit 1D203 (Mission Order to Kinshasa and Geneva, 27 April 1994); Exhibit P154 (Letter from Bizimungu to Kambanda, 30 October 1994).

airport in Kinshasa, where they were received around 5.00 or 6.00 p.m. on 12 April 1994 by the Rwandan Ambassador to Zaire, Etienne Sengegera.[1426]

983. While in Kinshasa, Bizimungu and Setako stayed at the InterContinental Hotel and Bizimungu covered the expenses with the money he received. Bizimungu was eventually granted an audience with President Mobutu on 16 April 1994 in Gbadolite, Zaire, and he travelled there by a plane arranged by the Zairians. Mobutu only met Bizimungu, as he refused to see Setako and the Rwandan Ambassador. Bizimungu asked for Mobutu's assistance in brokering a ceasefire. Bizimungu denied that he sought to purchase arms from Mobutu. After the meeting, Bizimungu, Setako and Sengegera returned to Kinshasa. Setako immediately returned to Rwanda while Bizimungu returned to stay at the InterContinental Hotel and waited for a message from Mobutu, which was to be delivered to President Sindikubwabo. On 24 April, Bizimungu was told that Mobutu had sent the message intended for Sindikubwabo through Kokule, the Zairian Ambassador for Rwanda, so Bizimungu returned the next day to Rwanda.[1427]

984. Bizimungu was told that a day after he had left Gbadolite, Mobutu met with the RPF. As a result, a second Rwandan delegation, comprised of Interim Government ministers André Ntagerura and Agnès Ntamabyaliro, General Marcel Gatsinzi and an unnamed colonel, was invited by Mobutu around 23 April 1994.[1428]

985. It was only after his arrest that Bizimungu became aware that Bagosora purchased arms from Zaire on 24 May 1994 and that he had labelled them as drugs as they entered Rwanda. Bizimungu testified that, between April and July 1994, unidentified emissaries went to purchase arms with at least $1,500,000 USD.[1429]

Mugenzi

986. On the morning of 12 April 1994, Mugenzi and others took their families to the French Embassy in Kigali for evacuation. Mugenzi returned to *Hôtel des Diplomates*, where he and other members of the Interim Government had been staying. Military authorities advised the Interim Government to leave Kigali and head south to a safer location. Mugenzi left Kigali with Bicamumpaka around 8.00 a.m. They were provided with an escort from General Augustin Ndindiliyimana, the Chief of Staff of the gendarmerie.[1430]

987. When members of the Interim Government arrived in Gitarama, they stopped at the home of Fidèle Uwizeye, the Gitarama prefect. Uwizeye welcomed the ministers and they discussed the security situation with the President and Prime Minister. At this meeting, the Interim Government decided to send an emissary to the President of Zaire, Sese Seko

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[1426] Bizimungu, T. 28 May 2007 pp. 34, 39-42, 51, 53, 57-61; T. 5 June 2007 pp. 58-71; T. 6 June 2007 pp. 12, 44; Exhibit 1D199 (Fax of Bill from InterContinental Hotel, Kinshasa, Zaire); Exhibit 1D200 (Radio Rwanda Broadcast, 25 April 1994) p. 2.

[1427] Bizimungu, T. 28 May 2007 pp. 34, 39-42, 51, 53, 56-61; T. 5 June 2007 pp. 58-72; T. 6 June 2007 pp. 12, 44; T. 7 June 2007 pp. 2-3; Exhibit 1D199 (Fax of Bill from InterContinental Hotel, Kinshasa, Zaire); Exhibit 1D200 (Radio Rwanda Broadcast, 25 April 1994) p. 2. Bizimungu also testified that he paid for the stay of family members in Kinshasa for one or two days as they travelled to Nairobi, Kenya. Bizimungu, T. 5 June 2007 p. 59.

[1428] Bizimungu, T. 28 May 2007 pp. 53-55; T. 5 June 2007 p. 64.

[1429] Bizimungu, T. 5 June 2007 pp. 76-77; T. 12 June 2007 pp. 31-32.

[1430] Mugenzi, T. 9 November 2005 pp. 45-48, 52; T. 15 November 2005 pp. 22-23; T. 24 November 2005 p. 76; T. 29 November 2005 p. 48.

Mobutu, to brief him on the current situation and report that the Arusha Accords had collapsed. As President Mobutu had been the mediator between the RPF and the Rwandan government during the Arusha negotiations, the Interim Government wanted him to intervene and resume negotiations. Bizimungu was selected because he had been in Kinshasa many times before, was known in Mobutu's presidential circle and had the means to enter Zaire without much protocol. To pay for Bizimungu's trip, funds from the local treasuries had to be utilised because there was no bank in Gitarama and the official accounts were in Kigali. The treasury in Gitarama contained insufficient funds for Bizimungu's trip, so funds from another local treasury were also obtained. Bizimungu left for Zaire that day.[1431]

988. Also during the meeting, General Ndindiliyimana told the Interim Government to occupy the Murambi Centre, which was nearby. The complex consisted of three or four dormitories and approximately five staff houses, one of which was occupied by President Théodore Sindikubwabo. Another staff house was occupied by Prime Minister Jean Kambanda and the remainder were shared by ministers.[1432]

Bicamumpaka

989. Around 8.00 a.m. on 12 April 1994, Prime Minister Jean Kambanda told Bicamumpaka that, as a result of mounting insecurity, people in Kigali were being evacuated to Gitarama. Around 9.30 a.m., the convoy, which included gendarmes, as well as the vehicles of members of the government, departed from Kigali. Thousands of people were fleeing the city along the same road causing the convoy to move very slowly. He estimated that the trip, which usually took less than an hour, took two hours or more that day, and he arrived between 11.00 a.m. and noon.[1433]

990. The convoy drove straight to Fidèle Uwizeye's home in Gitarama, where those present, including some of the ministers, Uwizeye and President Théodore Sindikubwabo, had a meeting. The President, Prime Minister and Uwizeye discussed and agreed that the government would be based at the Murambi Centre. Furthermore, President Sindikubwabo also decided to send Bizimungu to Zaire. Bicamumpaka was present when the decision was made.[1434]

Mugiraneza

991. On the morning of 12 April 1994, Mugiraneza registered his family for evacuation through the French Embassy in Kigali. Upon his return to *Hôtel des Diplomates*, he was advised by the Minister of Defence that the hotel was going to be attacked and that the cabinet was going to meet at the Murambi Centre in Gitarama. Mugiraneza travelled directly from the hotel to Gitarama in his vehicle with his driver and two gendarmes. He did not travel in a convoy and arrived at Murambi around 10.00 a.m. He was the first member of the

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[1431] Mugenzi, T. 9 November 2005 pp. 46, 48-49, 54-56, 65, 82; T. 14 November 2005 pp. 12-13; T. 23 November 2005 p. 44; T. 30 November 2005 p. 60.
[1432] Mugenzi, T. 9 November 2005 pp. 49-51.
[1433] Bicamumpaka, T. 26 September 2007 p. 44; T. 27 September 2007 pp. 4-6; T. 28 September 2007 p. 20; T. 4 October 2007 p. 65; T. 11 October 2007 p. 35.
[1434] Bicamumpaka, T. 27 September 2007 pp. 6-8; T. 11 October 2007 pp. 35-36.

Interim Government to arrive at the Murambi Centre. Others arrived at approximately 11.00 a.m.[1435]

992. The Murambi Centre was a training centre for state employees under the supervisory authority of the Ministry of Civil Service and Vocational Training. The location included classrooms, an administrative building, and also residential quarters for students and trainers. Mugiraneza stayed in one of the small rooms in the students' quarters. The centre also had an operational telephone line, but he did not use the telephone and did not know if it was an international line or otherwise.[1436]

Bizimungu Defence Witness Emmanuel Ndindabahizi

993. Emmanuel Ndindabahizi, a Hutu, was Minister of Finance in the Interim Government established on 9 April 1994.[1437] Ndindabahizi moved to Gitarama on 12 April 1994 with his family in a borrowed vehicle after he realised that *Hôtel des Diplomates* was almost empty and was told that people were leaving for Gitarama. He departed Kigali at approximately 8.00 a.m. He saw many people and vehicles on the road to Gitarama, including refugees from Nyaconga camp. The scene was chaotic.[1438]

994. Ndindabahizi arrived in Gitarama at approximately 10.00 a.m. He went directly to Prefect Fidèle Uwizeye's house to drop off his children, as he had asked Uwizeye to take care of them after the 11 April 1994 meeting of prefects in Kigali. Ndindabahizi found President Théodore Sindikubwabo, the Prime Minister, Mugenzi, Bizimungu, Mugiraneza and other Interim Government ministers there. They met for approximately one hour at which Uwizeye was present. No one left the meeting and no one was served refreshments. They first discussed where to stay and Uwizeye proposed the Murambi site. They then discussed Bizimungu's mission to Zaire. The President decided to send Bizimungu to Zaire to ask President Sese Seko Mobutu to facilitate negotiations for a ceasefire between the RPF and the Rwandan government. Bizimungu was chosen because he had met Mobutu before. Ndindabahizi was tasked with arranging daily subsistence and transportation allowances for Bizimungu's mission.[1439]

995. When the meeting ended around 11.00 a.m., Ndindabahizi and Bizimungu went with Uwizeye to find the accountant as Uwizeye knew where he lived. Once they had collected the accountant, they went to the prefecture office and *en route* Uwizeye explained to the accountant that he should provide funds to Bizimungu for his mission to Zaire. The accountant gave Bizimungu approximately 3,000,000 Rwandan francs, the equivalent of $17,000 USD, in the presence of Ndindabahizi and Uwizeye. The money was intended to cover Bizimungu's expenses including travel from Goma to Kinshasa and, if necessary, by a charter plane. The amount given was an estimate, so that he had "sufficient" funds to carry

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[1435] Mugiraneza, T. 22 May 2008 pp. 48-50, 52-54; T. 2 June 2008 pp. 58-59; T. 3 June 2008 pp. 55-56.
[1436] Mugiraneza, T. 22 May 2008 pp. 50-52.
[1437] Ndindabahizi, T. 30 April 2007 pp. 4-5; Exhibit 1D158 (Ndindabahizi's Personal Information Sheet). Ndindabahizi is presently serving a life sentence for his role in the events in Rwanda in 1994. Ndindabahizi, T. 30 April 2007 pp. 5, 45-49. Notably, Ndindabahizi was not tried for crimes in Rwanda based on his position as Minister of Finance of the Interim Government. Ndindabahizi, T. 30 April 2007 p. 35. At the time of his testimony, he resided in the United Nations Detention Facility with the Accused. Ndindabahizi, T. 1 May 2007 pp. 49-50.
[1438] Ndindabahizi, T. 30 April 2007 pp. 8-10, 16.
[1439] Ndindabahizi, T. 30 April 2007 pp. 7, 10-19, 22, 29, 34-35; T. 1 May 2007 pp. 45-47; T. 3 May 2007 p. 37.

out the mission. Bizimungu then left immediately at 1.00 p.m. for Zaire by helicopter from the Gitarama military camp and Ndindabahizi accompanied Uwizeye home. To Ndindabahizi's knowledge, Bizimungu went on the trip alone and no other delegations were sent to Zaire.[1440]

996. After signing the Arusha Accords, weapons purchases were frozen by the Minister of Defence as the government viewed the war as being at a close. When the war resumed in April 1994, the Prime Minister gave Bagosora $1,000,000 USD to purchase weapons.[1441]

Bizimungu Defence Witness André Ntagerura

997. André Ntagerura was the Minister of Transport and Communication since April 1992 and was reappointed to the position in the Interim Government formed on 9 April 1994.[1442] On 23 April 1994, Ntagerura went to Gbadolite, Zaire, to review a proposed ceasefire document presented to President Sese Seko Mobutu of Zaire by the RPF. He led a delegation consisting of Agnès Ntamabyaliro, Brigadier General Marcel Gatsinzi and Colonel Aloys Ntiwiragabo. Ntagerura and his delegation went to Gbadolite by "chance" because while they were passing through Kinshasa *en route* to Arusha, Tanzania, they were informed that there was an RPF delegation in Gbadolite who had just proposed a ceasefire. His delegation signed the ceasefire agreement on behalf of Rwanda. The RPF did not sign. On 24 April, his delegation returned to Kinshasa and stayed at the InterContinental Hotel. There, Ntagerura met Bizimungu, who had not been part of his delegation.[1443]

Mugenzi Defence Witness Agnès Ntamabyaliro

998. Agnès Ntamabyaliro, a Hutu, was appointed Minister of Justice in July 1993 and retained that position after the formation of the Interim Government in April 1994.[1444] On the morning of 12 April 1994, she awoke to find that all the Interim Government ministers except for Mugenzi and Pauline Nyiramasuhuko had left Kigali. She then travelled to Gitarama with her family. When she arrived she went to Prefect Fidèle Uwizeye's house to determine where the Interim Government was staying. Uwizeye informed her that they might be at Murambi. Consequently, she went to the Murambi Centre where she found some members of the government. She went on a government mission to Zaire and Tanzania in April and May 1994 with Ntagerura, Gatsinzi and Ntiwiragabo.[1445]

[1440] Ndindabahizi, T. 30 April 2007 pp. 19-28; T. 1 May 2007 pp. 46-47; T. 3 May 2007 pp. 28, 35, 37.
[1441] Ndindabahizi, T. 30 April 2007 pp. 30-31, 34, 61-62, 64; Exhibit P159 (Weapons Contract Between the Government of Rwanda and *Société Commerciale du Sud*, 24 May 1994).
[1442] Ntagerura, T. 14 February 2007 pp. 65-67; Exhibit 1D158 (Ntagerura's Personal Information Sheet). Ntagerura, formerly an accused before the Tribunal, was acquitted of all counts. Ntagerura, T. 19 February 2007 pp. 40-41. *See also* Ndindabahizi, T. 1 May 2007 pp. 60, 62.
[1443] Ntagerura, T. 15 February 2007 pp. 28-31; T. 19 February 2007 pp. 39-40; T. 20 February 2007 pp. 29-35; Exhibit 1D150 (Ceasefire Agreement, 23 April 1994). The Prosecution alleges that the presence of Mugiraneza at Fidèle Uwizeye's house on 12 April 1994 was corroborated by André Ntagerura. This is not supported by a review of Ntagerura's testimony.
[1444] Ntamabyaliro, T. 21 August 2006 pp. 3-4, 7; Exhibit 2D102A (Ntamabyaliro's Personal Information Sheet). At the time of her testimony, Ntamabyaliro was being tried in Rwanda for genocide. Defence Counsel and the court advised her of her right, pursuant to Rule 90 (E) of the Rules, not to provide evidence that would inculpate her in relation to her proceedings in Rwanda. *See* T. 21 August 2006 pp. 1-2; T. 22 August 2006 p. 26; T. 23 August 2006 p. 19.
[1445] Ntamabyaliro, T. 22 August 2006 pp. 2-3; T. 23 August 2006 p. 38.

Bizimungu Defence Witness WFQ3

999. Witness WFQ3, a Hutu, was a businessman from Gitarama in April 1994.[1446] At the beginning of April 1994, he was living in Kigali. However, he fled with his family on 12 April along with the Interim Government and went to Gitarama. There were thousands of people on the road and the journey took two hours. He followed the Interim Government convoy to Prefect Fidèle Uwizeye's house and learned that the government would be based at the Murambi Centre. There was a "continuous influx" of people fleeing from Kigali into Gitarama that day.[1447]

Bizimungu Defence Witness WAE

1000. Witness WAE, a Hutu, was a Rwandan government official at the relevant time.[1448] Due to his affiliation with the Rwandan embassy in Zaire, he had knowledge of the goings on at the embassy and the movements of the Rwandan Ambassador to Zaire at the material time. He testified that the Rwandan Ambassador met Bizimungu and Colonel Ephrem Setako at Kinshasa International Airport on 12 April 1994. The Ambassador later accompanied Bizimungu and Setako to Gbadolite, where Bizimungu met President Sese Seko Mobutu on 16 April alone. The mission's purpose was to secure Mobutu's role as mediator in the Rwandan conflict and to ask him to contact the necessary parties to negotiate a ceasefire. Following this meeting, Mobutu facilitated negotiations a few days later between the RPF and a different delegation representing Rwanda comprising Marcel Gatsinzi, Agnès Ntamabyaliro, Aloys Ntiwiragabo and André Ntagerura. Only the Rwandan government delegation signed the ceasefire declaration on 23 April. Bizimungu returned to Rwanda around 24 or 25 April. Witness WAE denied that Bizimungu came to Kinshasa between April and July 1994 in order to seek arms and ammunition.[1449]

1001. Witness WAE testified that Setako was a Rwandan military liaison officer with GOMN, the neutral military observers set up by the OAU. GOMN was in charge of observing the application of the ceasefire agreement between the RPF and the Rwandan government. Setako's role as part of Bizimungu's delegation to see Mobutu was to explain to the President the military developments on the ground. Since Mobutu was a soldier, it was believed that an explanation from a fellow military officer would be "easier to understand". However, Setako did not meet with Mobutu.[1450]

1002. On 24 May 1994, Witness WAE saw Colonel Bagosora sign documents related to the purchase of weapons at the Rwandan Embassy in Kinshasa. Bizimungu was not at the Embassy when the documents were signed and the witness was not sure if Bizimungu was in Kinshasa during that period. Due to the arms embargo imposed on the Rwandan armed forces at the time, Bagosora attempted to circumvent the embargo by disguising the purchase as an

[1446] Witness WFQ3, T. 24 January 2007 p. 6; Exhibit 1D132 (Witness WFQ3's Personal Information Sheet).
[1447] Witness WFQ3, T. 24 January 2007 pp. 10-12, 25-26; T. 26 January 2007 p. 9.
[1448] Witness WAE, T. 13 February 2007 p. 43; Exhibit 1D149 (Witness WAE's Personal Information Sheet).
[1449] Witness WAE, T. 13 February 2007 pp. 44-49, 65-70; T. 14 February 2007 pp. 2-4, 10, 41-42, 52-53, 59; Exhibit 1D150 (Ceasefire Agreement, 23 April 1994).
[1450] Witness WAE, T. 13 February 2007 p. 70; T. 14 February 2007 pp. 52-53.

order for medication intended for the Ministry of Health. Witness WAE did not believe that Bizimungu was aware of this diversionary tactic.[1451]

Bizimungu Defence Witness WAA

1003. Witness WAA, a Hutu, was an official in the Ministry of Health during the genocide.[1452] He testified that, in April 1994, Bizimungu travelled to meet President Sese Seko Mobutu of Zaire.[1453]

Bizimungu Defence Witness WDK

1004. Witness WDK, a Hutu, was a Rwandan student living in Zaire in April 1994.[1454] Her father was friends with Bizimungu. On an unspecified day, approximately one–and-a-half weeks after 7 April 1994, she met Bizimungu in the Rwandan Embassy in Kinshasa. Bizimungu said he was going on a government mission to Gbadolite to see President Mobutu. At the time, Bizimungu was with Embassy staff, including Sengegera and Innocent Nzabona. She did not know Setako.[1455]

Deliberations

1005. There is no dispute that, on 12 April 1994, the Interim Government relocated from Kigali to Gitarama and Bizimungu travelled to Zaire on a government mission. It is also not disputed that Bizimungu was given the equivalent of $17,500 USD by Emmanuel Ndindabahizi from the Gitarama prefecture office for his trip.[1456] The sole issue before the Chamber is the purpose of the mission.

1006. Relying on the testimony of Uwizeye, the Prosecution alleges that Bizimungu was sent to Zaire to buy weapons. In support of its position, it submits that $17,500 USD was an excessive amount of money for simply a diplomatic mission.

1007. Bizimungu denied that he was sent to purchase weapons, contending that he went to Zaire to urge President Sese Seko Mobutu to assist in brokering a ceasefire with the RPF. Moreover, the money he was given was to cover all eventualities in Zaire, including the possibility of chartering a plane. He used the balance of the amount for his subsequent foreign missions.

1008. Uwizeye is the sole Prosecution witness to testify that Bizimungu's mission was to purchase weapons. At the outset, the Chamber has elsewhere discussed the need to evaluate Uwizeye's evidence with appropriate caution and on a case-by-case basis (II.7.5; II.8.5). Turning to the merits of his evidence, he testified that on the evening of 12 April 1994,

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[1451] Witness WAE, T. 14 February 2007 pp. 4-5, 33-36, 48-50, 58-60; Exhibit P159 (Weapons Contract Between the Government of Rwanda and *Société Commerciale du Sud*, 24 May 1994); Exhibit P160 (Certificate of Funds Transfer, 26 May 1994).
[1452] Witness WAA, T. 30 January 2007 pp. 63, 68; Exhibit 1D136 (Witness WAA's Personal Information Sheet).
[1453] Witness WAA, T. 31 January 2007 pp. 33-34.
[1454] Witness WDK, T. 7 February 2007 p. 7; Exhibit 1D144 (Witness WDK's Personal Information Sheet).
[1455] Witness WDK, T. 7 February 2007 pp. 7-10, 14, 17-21, 23-25, 28.
[1456] Although various witnesses state the amount of funds given to Bizimungu was either $17,000 or $17,500 USD, the Chamber shall use the figure of $17,500 USD since Bizimungu admits to having that amount (Bizimungu, T. 28 May 2007 p. 34; T. 5 June 2007 p. 67).

following a meeting of Interim Government ministers at his home, which Uwizeye did not attend, Ndindabahizi told Uwizeye that Bizimungu had been given money to buy arms in Kinshasa and South Africa.[1457]

1009. Consequently, Uwizeye's evidence is hearsay and of limited probative value. Furthermore, it is contradicted by its source, Ndindabahizi, who testified that Bizimungu was sent to Zaire to ask Mobutu to facilitate ceasefire negotiations with the RPF. Ndindabahizi further testified that Uwizeye knew that this was the purpose of Bizimungu's mission, as he was present at the meeting at his house when this was decided. Uwizeye denied this, testifying that he had been absent when this was discussed.

1010. Ndindabahizi's evidence about the purpose of Bizimungu's trip is corroborated by Bizimungu, Mugenzi and Witness WAE.[1458] The Chamber considers their evidence with suspicion. Bizimungu has a clear interest in denying that he was sent on a mission to buy arms and Mugenzi, Bicamumpaka, Ndindabahizi and Witness WAE would be considered accomplices of Bizimungu in relation to this event. Furthermore, Bizimungu, Mugenzi and Ndindabahizi, who were central to rebutting Uwizeye's allegation, were detained together in the United Nations Detention Facility and Bizimungu had heard the testimonies of Mugenzi and Ndindabahizi before he testified.[1459] Notwithstanding, their evidence raises doubts about Uwizeye's hearsay testimony that Ndindabahizi had said Bizimungu was being sent to purchase weapons.

1011. The Chamber considers that several other circumstantial factors lend credence to Bizimungu's evidence that his mission was to broker a ceasefire rather than purchase weapons. First, Bizimungu was accompanied by Colonel Ephrem Setako, a legal advisor to the Rwandan army and a member of its neutral military observer group.[1460] Given his position, it is likely that Setako would have been involved as the military's representative in ceasefire negotiations with the RPF. Further, Witness WAE testified that, since Mobutu was a soldier, it was believed that a briefing for Mobutu done by a fellow military officer about the military developments would be "easier to understand".[1461]

1012. Furthermore, the day after Bizimungu's meeting with Mobutu, the latter met with the RPF and, less than a week later, Mobutu met with a second Rwandan government delegation who signed a ceasefire agreement. Bizimungu's testimony about the second delegation is corroborated by some of its members – Ntagerura, Ntamabyaliro and Witness WAE – and

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[1457] The Chamber observes that there is some disagreement as to whether Mugiraneza was present at the gathering when it was decided that Bizimungu would go to Zaire. Specifically, Mugiraneza and Witness RWV testified that Mugiraneza went straight to the Murambi Centre and did not stop at Fidèle Uwizeye's home once in Gitarama. *See* Mugiraneza, T. 22 May 2008 pp. 48-50, 52-54; T. 2 June 2008 pp. 58-59; T. 3 June 2008 pp. 55-56; Witness RWV, T. 9 June 2008 pp. 27-28, 30-32, 68. Witness RWW, on the other hand, testified that Mugiraneza joined several other government officials at Uwizeye's home when he arrived in Gitarama. Witness RWW, T. 13 March 2008 pp. 23, 25, 27, 37-38, 46. The Chamber considers it unnecessary to resolve this discrepancy.

[1458] Aside from indicating that Bizimungu was going to see President Sese Seko Mobutu in Zaire, the testimonies of Bicamumpaka as well as Witnesses WAA and WDK shed little light on why Bizimungu went there.

[1459] The fact that Bizimungu testified after other Defence witnesses is relevant when evaluating his evidence. *Ntakirutimana* Appeal Judgement, paras. 392-393.

[1460] Witness WAE, T. 13 February 2007 p. 70; T. 14 February 2007 pp. 52-53; Bizimungu, T. 5 June 2007 pp. 60-61.

[1461] Witness WAE, T. 13 February 2007 p. 70.

documentary evidence.[1462] This evidence reflects that Mobutu was being used generally as a mediator by the Rwandan government to facilitate ceasefire negotiations with the RPF.

1013. The Chamber has also considered the significant sum Bizimungu was allotted for this mission. On its face, the equivalent of $17,500 USD appears to be an excessive amount given the stated purpose of Bizimungu's mission in neighbouring Zaire. Further, Uwizeye testified that all the money in the prefecture's "coffers" or safe was taken.[1463] It is a reasonable possibility that additional funds could have been taken if they had been available in the coffers. Notwithstanding, Bizimungu testified that this money was also used to cover future missions, including his later travel to Switzerland and Tunisia. Bizimungu repeated this in a letter to Jean Kambanda in October 1994, in which he sought to rebut allegations that he had misappropriated funds.[1464] Bizimungu also added that his daily expenses in Zaire were significant, with his room at the InterContinental Hotel costing between $180 to $200 USD per day.[1465] The Chamber also observes that Ndindabahizi suggested that the sizeable amount anticipated the contingency that Bizimungu might have had to charter a plane while in Zaire.

1014. The Chamber considers that the explanations about why Bizimungu received around the equivalent of $17,500 USD and his use of the funds are equivocal.[1466] Although Bizimungu testified that he did not draw against them, his later mission orders allotted additional monies to be allocated to Bizimungu for those missions.[1467]

1015. Notwithstanding, other evidence in the record indicates that monies allocated for weapons purchases were substantially higher than the amount Bizimungu received. For example, Ndindabahizi testified that Colonel Théoneste Bagosora was given $1,000,000 USD to purchase weapons and a contract for the purchase of arms for $1,499,499 USD signed by Colonel Bagosora was entered as an exhibit.[1468] The significant difference between the expenditures made by Bagosora – nearly $1,500,000 USD – and the money given to Bizimungu – the equivalent of $17,500 USD – raises questions about whether the latter amount would have been considered sufficient to cover an arms purchase.[1469]

1016. Finally, in assessing the Prosecution case, the Chamber also considers Witness WAE's evidence that Colonel Théoneste Bagosora signed a contract to purchase weapons in Kinshasa, Zaire on 24 May 1994. In an attempt to circumvent an arms embargo, he disguised the arms purchase as an order for medication intended for the Ministry of Health. This is

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[1462] *See* Exhibit 1D150 (Ceasefire Agreement, 23 April 1994).
[1463] Uwizeye, T. 8 April 2005 pp. 8-10. Mugenzi testified that the Gitarama prefecture treasury did not have sufficient funds and he believed that other unidentified sources in the south provided funds as well (Mugenzi, T. 9 November 2005 pp. 55-56). However, no other witness corroborated this testimony.
[1464] Exhibit P154 (Letter from Bizimungu to Jean Kambanda, 30 October 1994) p. 2.
[1465] Bizimungu, T. 7 June 2007 pp. 8-9.
[1466] Having reviewed, for example, Bizimungu's hotel records in Kinshasa, Zaire, the Chamber is unable to determine the amount he was charged in USD.
[1467] *See* Exhibit 1D203 (Mission Order, 27 April 1994) *and* 1D210 (Mission Order, 28 June 1994) (providing daily subsistence allowances of 14,300 Rwandan francs, or approximately $70 USD, per day).
[1468] Exhibit P159 (Contract for the Purchase of Arms Between the Government of Rwanda and the *Société Commerciale du Sud*, 24 May 1994).
[1469] The Bizimungu Defence cites Expert Witness Helmut Strizek's Report that the omission of Bizimungu's name from the list of weapon buyers provided by André Guichaoua in his report in the *Nyiramasuhuko et al.* trial proves the falsity of any claim that Bizimungu went to buy weapons. The list was not entered into evidence in this case and the Chamber considers this evidence to have little probative value. *See* Exhibit 1D143 (Expert Report of Helmut Strizek) p. 40.

supported by documentary evidence.[1470] Notably, Bizimungu has presented evidence that he was in Zaire in the days before and possibly the very day this agreement was signed (II.14.2.2). Thus, evidence that Bagosora was sent to purchase weapons in Zaire and intended to disguise them as medical supplies *could be* consistent with the proposition that Bizimungu, the Minister of Health, was involved in or complicit in this purchase and possibly earlier ones. Further, Bizimungu was accompanied by a military officer, Setako, who conceivably could have assisted with a weapons purchase and it is a reasonable possibility that the funds given to Bizimungu was an initial payment, either related to Bagosora's purchase or a different weapons shipment.

1017. Notwithstanding, Witness WAE testified that Bizimungu was not present at the Rwandan Embassy when Bagosora signed the contract on 24 May 1994. Indeed, a contemporaneous radio broadcast indicates that Bizimungu was in Rwanda that day (II.14.2.2). Furthermore, Witness WAE did not believe that Bizimungu was aware of Bagosora's decision to disguise the weapons in this manner and Bizimungu testified that he did not learn of this until after his incarceration. The Prosecution did not cite to any direct evidence that Bizimungu would have known about this.[1471]

1018. The Chamber recalls that elsewhere in the Judgement it found that evidence implicating Bizimungu in the receipt and distribution of weapons in Gisenyi was insufficient to support findings beyond reasonable doubt (II.11.3). Under the circumstances, the Chamber is not satisfied that Uwizeye's uncorroborated hearsay evidence, which is contradicted by its source, provides a sufficient basis for it to conclude beyond reasonable doubt that Bizimungu was sent to Zaire on 12 April 1994 with $17,500 USD to buy weapons and did purchase them.

8.2 Kamonyi School, After 12 April 1994

Introduction

1019. The Prosecution contends that shortly after the Interim Government moved from Kigali to Gitarama prefecture, Prosper Mugiraneza and other Interim Government ministers, including Callixte Nzabonimana, were at Kamonyi parish school in the midst of an attack by armed *Interahamwe*. Reference is made to Fidèle Uwizeye.[1472]

1020. The Mugiraneza Defence argues that there was no attack as alleged by Uwizeye. Reference is made to the testimony of Witness RRJ and the Rule 92 *bis* statements of Witnesses RWY, BGK, BGL and BGD.[1473]

[1470] Exhibit P160 (Certificate of Funds Transfer, 26 May 1994). *See also* Witness WAE, T. 14 February 2007 pp. 59-60.
[1471] Prosecution Closing Brief, paras. 681-682.
[1472] Prosecution Closing Brief, paras. 261, 1192-1193; Prosecution Closing Arguments, T. 1 December 2008 p. 67. The Indictment contains no reference to the attack at Kamonyi secondary school nor is it mentioned in the Prosecution Pre-Trial Brief. The Chamber considers it for context only.
[1473] Mugiraneza Closing Brief, paras. 87, 621(v), 678; Mugiraneza Closing Arguments, T. 4 December 2008 p. 67. *See also*, Mugenzi Closing Brief, para. 411.

Evidence

Prosecution Witness Fidèle Uwizeye

1021. Fidèle Uwizeye, a Hutu, was a member of the MDR party. He was appointed prefect of Gitarama in July 1992 and was officially removed from his position around 10 June 1994.[1474] On an unspecified date after 12 April 1994, the head of Kamonyi parish school, Sister Francine, requested Uwizeye's assistance, reporting that *Interahamwe* had attacked the school. Upon arrival, he found people with guns "down the hill, near the school, in a place called Rwabashashya". Mugiraneza, Nzabonimana and Édouard Karemera were present. There had been no killings, but those present had come to loot the food stores and take over the dormitories. Uwizeye was assaulted and insulted by those present, who numbered more than a thousand and were chased away before he could provide assistance. This was an example of how senior leaders in the country came to Gitarama and discredited the local leadership and brought about an atmosphere of looting, killing and later roadblocks.[1475]

Mugiraneza Defence Witness RRJ

1022. Witness RRJ, a Hutu, lived in Kamonyi and worked at the convent school in 1994.[1476] At the time of President Juvénal Habyarimana's assassination, the students at Kamonyi school were on holiday and they did not return. The nuns left the school at an unspecified date in April and prior to their departure there was never any violence at the school and he never saw a large group of people there. The school's head mistress was named Madelaine, and no employee went by the name "Francine". Tutsis were killed in their homes by *Interahamwe* about two kilometres away from the school.[1477]

Mugiraneza Defence Witnesses RWY, BGK, BGL and BGD

1023. Witnesses RWY's, BGK's, BGL's and BGD's statements were admitted pursuant to Rule 92 *bis*. They were not cross-examined by the Prosecution. Witness RWY is a *Gacaca* official familiar with *Gacaca* proceedings in the area of Kamonyi parish, and stated that there is no information about any attack at Kamonyi secondary school in the *Gacaca* records of the relevant *cellule*. Witnesses BGD, BGK and BGL were all affiliated with the Kamonyi secondary school in varying capacities. All three attested that the headmistress of the school was named Madeline or Madelaine Kalenga Mwewa. Witnesses BGK and BGL stated that there was no Francine affiliated with the school, and Witness BGD never heard of a Francine. Witnesses BGD and BGL stated that Kamonyi secondary school was closed for Easter when President Juvénal Habyarimana died, although the latter stated that she did not return after

[1474] Uwizeye, T. 5 April 2005 pp. 9-10; T. 6 April 2005 p. 62; T. 8 April 2005 pp. 41-42; T. 11 April 2005 pp. 73, 76-77, 79-80; T. 14 April 2005 pp. 23, 41; T. 18 April 2005 p. 63; T. 19 April 2005 pp. 45-48, 73-77; T. 15 April 2008 pp. 15, 24-25, 41.
[1475] Uwizeye, T. 6 April 2005 pp. 48-51; T. 19 April 2005 pp. 29-31.
[1476] Witness RRJ, T. 28 April 2008 pp. 32-33, 39; Exhibit 4D114 (Witness RRJ's Personal Information Sheet).
[1477] Witness RRJ, T. 28 April 2008 pp. 34-36, 38.

Easter. Witness BGD indicated that the students did not return until 1995. Witness BGK stated that there was no attack at Kamonyi parish school from April to late May 1994.[1478]

Deliberations

1024. Based on the evidence presented, the Chamber has doubts about the incident described by Uwizeye at Kamonyi parish school. Uwizeye's evidence that more than a thousand people were poised to attack the school is contradicted by the live testimony of Defence Witness RRJ and the statements of Defence Witnesses RWY, BGK, BGL and BGD, each of whom was connected to the secondary school in some capacity. All denied that an attack or incident occurred at the school during the time of the events in question, and each said that no students were there. Moreover, each identified the school's headmistress as Madeline or Madelaine Kalenga Mwewe and indicated there was nobody by the name of Francine at the school. As a result, the Prosecution has failed to prove beyond reasonable doubt that Mugiraneza and other Interim Government ministers were at Kamonyi parish school in the midst of an attack by armed *Interahamwe*.

8.3 Meeting at Mariane's Home, Second Week of April 1994

Introduction

1025. The Indictment alleges that members of the Interim Government incited people to eliminate the enemy and its accomplices, as well as dismissed local government authorities who were opposed to the massacres and replaced them with others who were devoted to the cause. In support of these charges, the Prosecution argues that, in April 1994, members of the Interim Government, including Bicamumpaka, attended a meeting at the home of Mariane, the MRND president in Ruhango *cellule*, Gitarama prefecture. There, Bicamumpaka incited those gathered to kill Tutsis. Days later, security committees in Ruhango were replaced and killings of Tutsis occurred in the *cellule*. Witness GHV provided relevant evidence.[1479]

1026. The Bicamumpaka Defence argues that there is no notice for the evidence provided by Witness GHV. Furthermore, his testimony is unreliable. Bicamumpaka was in Burundi between 15 and 17 April 1994 and, consequently, could not have attended a meeting at Mariane's house. Reference is made to the testimonies of Bicamumpaka and Dominique Makeli.[1480]

[1478] Exhibit 4D152 (Statement and Witness RWY's Personal Information Sheet); Exhibit 4D153 (Statement and Witness BGD's Personal Information Sheet); Exhibit 4D154 (Statement and Witness BGK's Personal Information Sheet); Exhibit 4D155 (Statement and Witness BGL's Personal Information Sheet).

[1479] Indictment, paras. 5.1, 6.10; Prosecution Pre-Trial Brief, paras. 284-285 (p. 56); Prosecution Closing Brief, paras. 84-86, 96, 252, 257, 308, 320, 340-341, 852, 942-948; Prosecution 21 November 2008 Document, Item Nos. 91, 94-95; Prosecution Closing Arguments, T. 1 December 2008 p. 53; T. 4 December 2008 pp. 81-82. Relying exclusively on the testimony of Witness GHV, the Prosecution has argued that Bicamumpaka spoke at a rally near the Umuco or Umucho or Umuchio Hotel prior to the meeting at Mariane's home. While Witness GHV saw a gathering near the Umuco Hotel prior to the purported meeting at Mariane's residence, he provided no details about Bicamumpaka speaking there. Witness GHV, T. 4 March 2004 p. 30; T. 5 March 2004 p. 12. Indeed, the witness categorically testified that he only attended one meeting, which occurred at Mariane's home. *See* Witness GHV, T. 4 March 2004 p. 34; T. 5 March 2004 p. 13. The summary above reflects this correction.

[1480] Bicamumpaka Closing Brief, paras. 445-479; Bicamumpaka Closing Arguments, T. 3 December 2008 pp. 74-76; T. 5 December 2008 pp. 26-28. The Chamber also considers the testimony of Defence Expert Witness

Evidence

Prosecution Witness GHV

1027. Witness GHV, a Hutu, lived in Tambwe commune, Gitarama prefecture, in 1994.[1481] During the second week of April 1994, the witness learned from Suleimani Rudomo, a member of the MDR's youth group (*Jeunesse Démocratique Rwandaise* or *Inkuba*), that an impromptu meeting would be held the following day. Officials from Kigali were supposed to be present and the purpose was to address the fact that Tutsis, who were being killed elsewhere, were not being attacked in Ruhango.[1482]

1028. The next day, the witness walked to the ERP petrol station in Ruhango and observed persons gathered at the football field near the Umuco hotel. A convoy left towards Gatangazi and to the home of Mariane, the MRND President for Ruhango sub-prefecture. Witness GHV went to the house with Rudomo. He stood at the door and observed about 20 persons, including the meeting's leaders, from about 20 metres away. Among the attendees were Ruhango residents, as well as MDR leader Bicamumpaka, Minister Callixte Nzabonimana, a member of parliament from Tambwe commune named Pierre Kayonde, Tambwe commune *bourgmestre* and the MDR's Ruhango President, Nathan Mugaga, Colonel Simba, a Court of First Instance Judge named Grégoire and a journalist named Dominique Makeli.[1483]

1029. The meeting commenced between 10.30 and 11.00 a.m. and Mariane introduced the guests. After introducing Bicamumpaka, whom the witness had previously seen at a football match in Gitarama in 1993, Mariane invited Bicamumpaka to take the floor. Bicamumpaka warned those gathered that the *Inyenzi-Inkotanyi* from Uganda had brought war to Rwanda. He said that Hutus who did not fight the enemy were no different from the *Inyenzi-Inkotanyi*. Bicamumpaka concluded that a new sub-prefect had come to replace the previous one who did "not know what he [was] supposed to do".[1484]

1030. In Witness GHV's view, Bicamumpaka's reference to being at war with the *Inkotanyi* was disconnected from the reality in Gitarama. The RPF had not yet arrived and no battle front existed there. Consequently, his message was for Hutus to kill Tutsis and references to *Inyenzi* not only included the *Inkotanyi* from Uganda, but Tutsi citizens as well. Furthermore, the witness remarked that the outgoing sub-prefect, Placide Koloni, had not been supporting the killings and had developed a reputation of protecting Tutsis.[1485]

1031. Nzabonimana spoke next. He told the Ruhango residents that the delegation had come to make clear that the war did not concern a single political party, but every Hutu. He identified the enemy as Tutsis and Hutus aligned with the opposition. He concluded that the

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Willem Albert Wagenaar concerning visual identification in its Deliberations, but finds it unnecessary to summarise in the evidence section.

[1481] Witness GHV, T. 4 March 2004 pp. 26-27; Exhibit P36 (Witness GHV's Personal Information Sheet).

[1482] Witness GHV, T. 4 March 2004 pp. 28-29, 34; T. 5 March 2004 pp. 2, 8-11.

[1483] Witness GHV, T. 4 March 2004 pp. 27-34, 48-49; T. 5 March 2004 pp. 7-8, 12-16, 18-19. The Chamber observes that Makeli's name is spelled in several different ways. *See* T. 4 March 2004 p. 29 ("Dominic Makeri (phonetic)"), 30 ("Dominic Macheri"). Given the similarities between the name and his identification as a journalist, the Chamber is satisfied that the identification concerns Bicamumpaka Defence Witness Dominique Makeli. T. 4 March 2004 pp. 29-30.

[1484] Witness GHV, T. 4 March 2004 pp. 30-32, 34-35, 43-44; T. 5 March 2004 pp. 1-2, 10, 13.

[1485] Witness GHV, T. 4 March 2004 pp. 42-46; T. 5 March 2004 p. 2.

new sub-prefect would help the population, as he shared the plan of killing Tutsis. Bicamumpaka did not react to Nzabonimana's comments.[1486]

1032. Pierre Kayonde then thanked the leaders who had come to visit. He stated that Placide Koloni, the outgoing sub-prefect, had been described as an accomplice of the *Inyenzi* based on his protection of Tutsis. Kayonde expressed his gratitude for the installation of his replacement, who was present at the meeting and who Kayonde stated would work closely with the residents of Tambwe commune in executing the plan. Nathan Mugaga spoke next, but the witness did not testify about what he said.[1487]

1033. Witness GHV left the meeting between 3.00 and 3.30 p.m. to go to the mosque for prayers before returning to Mariane's house around 4.00 p.m. When he returned to the house, the meeting had ended and people were taking refreshments.[1488]

1034. The next day, the killings of Tutsis by Hutus increased. The witness observed that, between 9.00 and 10.00 a.m., a Hutu called Mutabazi was shot in a field between the ERP petrol station and the Tambwe commune office. He had been brought to the communal office by Pierre Kayonde and presented to several persons, including *Bourgmestre* Nathan Mugaga, Tambwe communal policemen named Karara, Rwangwe and Kaddaffi, as well as an *Interahamwe* named Michellin. Rwangwe then shot Mutabazi. Witness GHV did not believe Kayonde was punished for this murder since Kayonde was carrying out the mission of the *Abatabazi* government.[1489]

Bicamumpaka

1035. Bicamumpaka denied ever meeting Witness GHV and maintained that he never attended a meeting at Mariane's residence around the second week of April 1994. Once appointed as Interim Government minister on 9 April, he remained in Kigali at the *Hôtel des Diplomates* until 12 April. On that day, he left for Gitarama with all the members of the Interim Government, moving into office space in the Murambi Centre between 4.00 and 4.30 p.m. He commenced working on 13 April and remained there until 15 April, carrying out duties related to his post. This included drafting diplomatic memoranda and preparing for diplomatic missions.[1490]

1036. On 15 April 1994, Bicamumpaka left the Murambi Centre in a vehicle around noon. He travelled to Bujumbura, Burundi, with the Burundian Ambassador to Rwanda for the burial of the Burundian President, who had died in the plane crash with President Juvénal Habyarimana. He remained there until 17 April before returning to Rwanda. He arrived at the Rwandan border shortly before 6.00 p.m., stopped in Butare and continued to Murambi, passing through Ruhango without stopping. He arrived in Murambi around 1.00 a.m. on 18 April.[1491]

[1486] Witness GHV, T. 4 March 2004 pp. 46-48.
[1487] Witness GHV, T. 4 March 2004 pp. 48-49; T. 5 March 2004 pp. 11-12.
[1488] Witness GHV, T. 4 March 2004 pp. 32-33, 35, 42; T. 5 March 2004 pp. 1-3, 10, 13, 18-19.
[1489] Witness GHV, T. 5 March 2004 pp. 3-5.
[1490] Bicamumpaka, T. 27 September 2007 pp. 9, 25, 31; T. 2 October 2007 pp. 64-65.
[1491] Bicamumpaka, T. 26 September 2007 pp. 43-45, 47-50; T. 2 October 2007 pp. 64-65; T. 8 October 2007 pp. 33-34; T. 29 October 2007 p. 41; Exhibit 3D89(E) (Radio Rwanda Broadcast, 16 April 1994) p. 9; Exhibit 3D112 (Bicamumpaka's Personal Passport) pp. 7-9. *See also* II.14.3.2.

1037. From 18 to 21 April 1994, Bicamumpaka remained within the premises of the Murambi Centre. He prepared various documents, including a cable to the UN's Jacques-Roger Booh-Booh, and made arrangements for government missions to Europe and New York. He also prepared a radio interview that he granted to Radio Rwanda on 18 April. On 21 April, around 1.00 p.m., Bicamumpaka left Gitarama in order to travel to Europe, passing through Gisenyi and Goma, Zaire. He remained outside Rwanda until 25 May.[1492]

Bicamumpaka Defence Witness Dominique Makeli

1038. Dominique Makeli, a Hutu, was a journalist for Radio Rwanda living in Kigali in 1994.[1493] A native of Runini sector, Tambwe commune, Gitarama prefecture, Makeli knew a Mariane who lived in Ruhango within Tambwe commune, which was about 15 kilometres from Gitarama town. The two had attended school together and she was the daughter of a parliamentarian named Léonidas Biseruka.[1494]

1039. Prior to testifying before the Chamber, Makeli last saw Bicamumpaka around 1982 or 1983 when the witness went to Bicamumpaka's place of business in Kigali to buy cement. He also knew Callixte Nzabonimana, the Minister of Youth, Pierre Kayondo, a Member of Parliament from Ruhango, Nathan Mugaga, Tambwe's *bourgmestre* in 1994 and Colonel Aloys Simba, a former soldier and Gikongoro native. He denied meeting with these personalities or Mariane in April 1994 and that he ever went to Mariane's home.[1495] Similarly, although he knew of a "Mutuo" hotel, he denied attending a rally in front of it with the same persons around 17 April.[1496] None of the charges brought against him in Rwanda concerned a meeting with these persons either.[1497]

1040. Makeli acknowledged bringing his family to Gitarama in April 1994 due to the relative calm in that area. Specifically, they fled Kigali on 17 April, crossed the Nyabarongo bridge and entered Gitarama prefecture where they spent the night. They continued to his father-in-law's home in Gitarama town the following day. He left his family there, and on the same day, 18 April, returned to Kigali. He remained in Kigali until 25 May, living on Radio Rwanda's premises. Before leaving Kigali on 25 May, he visited his family in Gitarama on two occasions, only staying during the day before returning.[1498]

[1492] Bicamumpaka, T. 26 September 2007 p. 45; T. 27 September 2007 pp. 36-40; T. 2 October 2007 pp. 55, 64-65; T. 8 October 2007 p. 49. *See also* II.14.3; II.14.4.
[1493] Makeli, T. 22 October 2007 pp. 33, 37, 40, 44, 46; T. 24 October 2007 pp. 10, 32, 37; T. 29 October 2007 pp. 4-6, 41; Exhibit 3D163 (Makeli's Personal Information Sheet); Exhibit 3D165 (Amnesty International Document Concerning Dominique Makeli's Incarceration); Exhibit 3D166 (Reporters Without Borders Request for Release of Journalist Dominique Makeli). Makeli's name is recorded differently throughout the transcripts. The Chamber adopts the spelling on the witness's personal information sheet.
[1494] Makeli, T. 22 October 2007 p. 36; T. 30 October 2007 pp. 41-45, 63.
[1495] Makeli, T. 22 October 2007 pp. 35-36; T. 29 October 2007 pp. 39, 43, 46-50, 53; T. 30 October 2007 pp. 41-42, 62-63, 66.
[1496] Makeli, T. 30 October 2007 p. 65.
[1497] Makeli, T. 30 October 2007 p. 66.
[1498] Makeli, T. 22 October 2007 pp. 36, 38-41, 46-47; T. 23 October 2007 p. 4; T. 29 October 2007 pp. 35, 49-50, 53-54; T. 30 October 2007 pp. 24-25, 32, 50, 63, 68-69.

Deliberations

1041. Relying on Witness GHV, the Prosecution alleges that Bicamumpaka attended a meeting at Mariane's house, the President of the MRND in Ruhango, around the second week of April 1994. There, Bicamumpaka told about 20 persons gathered that the *Inyenzi-Inkotanyi* had brought war to Rwanda and that Hutus who did not fight the enemy were no different from the *Inyenzi-Inkotanyi*. Others gave speeches aimed at inciting violence against Tutsis. Finally, a new sub-prefect was introduced as the replacement for Placide Koloni, who had resisted ethnically targeted killings.[1499]

1042. The Bicamumpaka Defence disputes that the Accused attended a meeting at Mariane's home in April 1994. It has challenged the reliability of Witness GHV's testimony. It points to internal inconsistencies between his testimony and a January 2000 statement he gave to Tribunal investigators, contradictions within his testimony, as well as evidence rebutting his account. The Chamber will assess the issues raised in turn.

1043. The Defence confronted Witness GHV with alleged inconsistencies between his testimony and his January 2000 statement to Tribunal investigators. In particular, it pointed to the statement, which indicated that there were 15 visitors at the meeting. It argued that during his testimony the day before, he only listed about 10 persons at the meeting.[1500]

1044. The Chamber observes that the witness's evidence shifted concerning the number of attendees. He first testified that "not more than 20 [persons]" were present, that he was "among the 20 people" there and that "people present were more than 20".[1501] Nonetheless, when confronted with the alleged inconsistency between his statement and testimony, the witness explained that there were probably 10 persons from Kigali at the meeting, and that Ruhango residents also attended, making the attendance around 20.[1502] Indeed, he coherently differentiated the meeting he attended from a large gathering that might be considered a "rally".[1503]

1045. Given that he participated at the meeting as a curious observer, rather than an organiser, it is reasonable that the witness's estimates about the number of persons present were imprecise. Of greater significance, his evidence was clear about who attended – political leaders and Ruhango residents, and in particular JDR-*Inkuba* members. In this regard, his testimony is also consistent with his January 2000 statement.[1504] Under the circumstances, the Chamber finds the differences between his statement and testimony, as well as the slight variations in his in-court evidence about the number of persons who attended, immaterial.

[1499] Witness GHV, T. 4 March 2004 pp. 43-45, 47-49.
[1500] Witness GHV, T. 5 March 2004 pp. 14-15.
[1501] Witness GHV, T. 5 March 2004 p. 14.
[1502] Witness GHV, T. 5 March 2004 p. 14.
[1503] Witness GHV, T. 5 March 2004 p. 14.
[1504] *See* Exhibit 3D4(E & F) (Witness GHV's Statement, 18 January 2000) pp. 2-3 (identifying Mariane, Bicamumpaka, Callixte Nzabonimana, Pierre Kayonde, Colonel Simba and Nathan Mugaga among the attendees). The Bicamumpaka Defence additionally highlights that the January 2000 statement is also inconsistent with Witness GHV's evidence, as the former indicates that Mariane introduced the visitors and that they were surrounded by members of the JDR and communal police. However Witness GHV testified that Mariane introduced the visitors (T. 4 March 2004 pp. 30-31) and that the meeting was attended by "leaders" and JDR-*Inkuba* youth wingers (T. 5 March 2004 pp. 12-13) and Ruhango residents (T. 5 March 2004 pp. 14-15). The Chamber does not find any substantive inconsistency.

1046. The January 2000 statement also reads that the meeting started at 6.00 p.m. and ended at 10.00 p.m., whereas Witness GHV had earlier testified that it started in the morning and ended around 3.30 p.m. The witness responded that this was a recording error. While the statement was read back to him, he had not caught this insertion by the Tribunal investigator. He affirmed that the meeting started around midday and ended around 3.30 p.m. when he left for prayers.[1505]

1047. It is reasonable that a recording error about the timing of the meeting's start and finish would have gone unnoticed during the witness's interview. This information is relatively insignificant when compared to the substantive allegations he made against Bicamumpaka. The Chamber again observes that other details, such as the prominent personalities first gathering near the Umuco hotel before going to Mariane's home, who was present at Mariane's, who spoke during the gathering, as well as why the witness decided to leave, are consistent with his testimony.[1506]

1048. The Bicamumpaka Defence has also raised inconsistencies between Witness GHV's January 2000 statement to Tribunal investigators and his testimony that it failed to put to him at trial. For example, Witness GHV's January 2000 statement indicates that he followed the personalities to Mariane's home out of curiosity whereas he testified to having learned about the meeting the day before.[1507] However, contrary to the Defence argument, the fundamental features of Witness GHV's testimony are consistent with his prior statement. For example, he testified that he followed the group out of curiosity – like his statement – and that he was able to access the meeting based on assistance from a JDR member.[1508] As Witness GHV explained, the purpose of his testimony was to provide further details.[1509] The fact that the statement does not contain a reference to having learned about the meeting the day before does not reflect inconsistency. Its omission, in the Chamber's view, is immaterial.

1049. The Defence also argues that the January 2000 statement is inconsistent with his testimony in that the former indicates that *Bourgmestre* Nathan Mugaga introduced the new sub-prefect during the meeting and makes no mention of Bicamumpaka doing so.[1510] The Chamber observes that Witness GHV was not questioned about what Mugaga said during the meeting while testifying.[1511] Furthermore the fundamental features of what is recorded in Witness GHV's statement concerning Bicamumpaka's message at the meeting – that the war

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[1505] Witness GHV, T. 5 March 2004 pp. 18-19; Exhibit 3D4(E & F) (Witness GHV's Statement, 18 January 2000) p. 2.
[1506] *See* Exhibit 3D4(E & F) (Witness GHV's Statement, 18 January 2000) pp. 2-3. In this instance, and every other where it is raised, the Chamber does not consider that the consistencies between Witness GHV's prior statement and testimony bolster the latter. The comparison is done to highlight the relative insignificance of the discrepancies raised by the Defence when viewing the information and evidence provided by the witness in their entirety. *See Ntakirutimana* Appeal Judgement, paras. 145-155.
[1507] *See* Bicamumpaka Closing Brief, para. 460.
[1508] *Compare* Witness GHV, T. 5 March 2004 pp. 12 ("A. … I saw a convoy at Umuco. I got curious and went to see."), 13 ("A: I explained from the start that it was easy. Although I was not a member of any political party, but my friends were in different parties, in MRND, MDR. I went – I went along with Suleimani Rudomo, who was a JDR or MDR youth winger. I had no problem getting there. That is how I happened to go in. Moreover, I was curious about what was going on in my area."), *and* Exhibit 3D4(E & F) (Witness GHV's Statement, 18 January 2000) p. 2 ("I followed these personalities out of curiosity. Although we were not invited, we managed to attend the meeting through the complicity of some JDR members.").
[1509] Witness GHV, T. 5 March 2004 p. 19.
[1510] Bicamumpaka Closing Brief, para. 459.
[1511] *See* Witness GHV, T. 4 March 2004 p. 49.

concerns all Hutus and that those who do not come together to fight the Tutsis are no different than the *Inyenzi* from Uganda attacking them – are consistent with his testimony before the Chamber.[1512] The fact that the statement does not include Bicamumpaka introducing the sub-prefect is of minor importance, and, in the Chamber's view, does not raise concerns about the reliability of his testimony.

1050. Turning to purported frailties within the witness's testimony alone, the Chamber observes that he had difficulty providing a date of the occurrence. He initially stated that the meeting occurred in April, but said he did not recall the exact day.[1513] He later stated that it was held a week after the President's death.[1514] During cross-examination, he testified that the gathering happened the "second week before … the crash of … President Habyarimana's plane" but immediately corrected himself stating that it was the "following week" after the 6 April 1994 plane crash.[1515]

1051. The witness consistently stated he could only provide estimates as to when the meeting at Mariane's home occurred.[1516] He repeated this explanation when the Bicamumpaka Defence confronted him with the proposition that the installation of the new sub-prefect was on 29 April 1994.[1517] In the Chamber's view, Witness GHV's testimony coherently reflects his belief that the meeting occurred in the second week of April 1994.

1052. Furthermore, the Bicamumpaka Defence has highlighted that at one point, the witness denied attending the meeting at Mariane's home.[1518] The Chamber observes that the witness immediately corrected this statement, affirming that he went to Mariane's home.[1519] This is consistent with the rest of his evidence before the Chamber. The misstatement is immaterial.

1053. The Chamber next assesses Witness GHV's ability to identify Bicamumpaka. When asked to locate him in court, the witness stated that it had been a long time and that he could guess, prompting the Prosecution to forego the exercise.[1520] Nonetheless, he testified that he had seen Bicamumpaka at a football game in Gitarama in 1993 and stated that Mariane introduced Bicamumpaka before he spoke.[1521]

1054. The Defence highlights other alleged frailties in his identification. It argues that it is incongruous that the witness could identify the positions of other attendees, such as Nzabonimana, Kayonde, Simba and Makeli, but was unaware of whether Bicamumpaka was an Interim Government minister. Notably, almost all the other personalities were Gitarama

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[1512] Exhibit 3D4(E & F) (Witness GHV's Statement, 18 January 2000) p. 2 ("She then gave the floor to Bicamumpaka who said: 'the war we are going through concerns all Hutus wherever they come from. If a Hutu does not join hands with other Hutus to fight the Tutsis, then he is like those fighting us. He is not different from those *Inyenzi* attacking us from Uganda. By *Inyenzi*, we mean the Rwandan Patriotic Front soldiers fighting the Government.'").
[1513] Witness GHV, T. 4 March 2004 pp. 28-29.
[1514] Witness GHV, T. 4 March 2004 p. 34.
[1515] Witness GHV, T. 5 March 2004 p. 9. Witness GHV's January 2000 statement records the meeting as happening "roughly two weeks after President Habyarimana's death". Exhibit 3D4(E & F) (Witness GHV's Statement, 18 January 2000) p. 2. He was not questioned about this aspect of his statement.
[1516] Witness GHV, T. 4 March 2004 pp. 28, 34; T. 5 March 2004 p. 9.
[1517] Witness GHV, T. 5 March 2004 p. 11.
[1518] Witness GHV, T. 4 March 2004 p. 34 ("Personally, ... I did not attend the meetings at Mariane's place.").
[1519] Witness GHV, T. 4 March 2004 p. 34 ("A. The rallies that were held in Ruhango were many, I couldn't tell the number. The only one I attended was that one that took place at Mariane's house.").
[1520] Witness GHV, T. 4 March 2004 p. 45.
[1521] Witness GHV, T. 4 March 2004 pp. 32, 45.

natives, whereas Bicamumpaka came from Ruhengeri and worked in Kigali prior to April 1994. Indeed, Kayonde and Mugaga were government officials representing the witness's home commune, Tambwe, and Makeli was from there. In this regard, the fact that Bicamumpaka was not from Gitarama would make his position unique among the several others that were there and explain why the witness was not aware of his exact position at that time. Furthermore, Witness GHV knew Bicamumpaka held a high position within the MDR.[1522] Given that Bicamumpaka was newly appointed to the Interim Government in April 1994, the witness's uncertainty as to whether Bicamumpaka was a minister is understandable.

1055. The Chamber next considers evidence brought to raise doubt about Witness GHV's testimony through Willem Albert Wagenaar, an expert in the field of eyewitness identification. The Bicamumpaka Defence argued that Witness GHV's testimony that he identified Bicamumpaka from about 20 metres away should not be relied upon. Specifically, Wagenaar testified that the details required to recognise someone are lost between 12 and 20 metres. The risk of misidentification rapidly increases at 20 metres or more. His evidence also suggests that if more than one person was introduced at such an event, there may be confusion with respect to their individual identities. Indeed, the Defence argues that another Bicamumpaka might have been identified at the event.[1523]

1056. Witness GHV *estimated* that 20 metres separated him from the meeting's "leaders". For clarity, he added that he stood at the home's doorway and that the distance was comparable to that between Defence Counsel and the witness while testifying.[1524] It is possible that Witness GHV could have been closer than his numerical estimation of the distance between him and Bicamumpaka. Indeed, in-court identifications of the Accused occur at a distance similar to that described by the witness. While the Chamber also considers that the trial setting surrounding an in-court identification procedure could vary vastly from a meeting where persons are being incited to kill Tutsis, the circumstances discussed above bolster Witness GHV's identification.

1057. The Defence has presented additional evidence directly refuting the substance of Witness GHV's testimony. Specifically, Bicamumpaka and Makeli each denied attending a meeting at Mariane's home. While Bicamumpaka was in Gitarama as early as 12 April 1994, he travelled to Burundi on 15 April, remained there until 17 April and left Rwanda again from 22 April to 25 May. While in Gitarama, he remained in Murambi, busy preparing official documents and for international travel. Makeli denied ever going to Ruhango. While he moved his family to Gitarama town on 18 April, he only stayed there briefly. He made two day trips to visit them between 18 April and 25 May (when he fled Kigali), but never went to Mariane's home.

1058. The Chamber views the testimony of Bicamumpaka and Makeli with some suspicion. Both have a clear interest in denying their participation in the meeting described by Witness GHV. Furthermore, although Bicamumpaka's alibi evidence for 15 to 17 April and from 22 April 1994 through the end of that month creates the reasonable possibility that he was outside of Rwanda during those periods (II.14.3.2-II.14.3.4), it is not necessarily inconsistent with his presence at Mariane's home in the second week of April. Specifically, his alibi does

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[1522] Witness GHV, T. 4 March 2004 p. 29.
[1523] Wagenaar, T. 12 February 2008 pp. 11-14; Exhibit 3D182 (Expert Report of Willem Albert Wagenaar) pp. 7-8, 11.
[1524] Witness GHV, T. 4 March 2004 pp. 31-32; T. 5 March 2004 pp. 15-17.

not cover the period from 12 to 15 April, when he was based in Murambi. Furthermore, Bicamumpaka conceded that he travelled through Ruhango at least on his return from Burundi, raising the very distinct possibility that he also went through it when he left Rwanda on 15 April. Finally, Gitarama town, by Makeli's estimate, was "more than 15 kilometres" from Ruhango, making the distance between the two relatively short.[1525]

1059. In light of the above, the Chamber considers Witness GHV's testimony about the meeting generally credible and convincing. Furthermore, while the Defence has pointed to evidence that Koloni was still sub-prefect around 18 April 1994, the Chamber considers this variance immaterial.[1526] Witness GHV's description of the event does not appear to describe an installation ceremony. Evidence of Koloni's continued *de jure* position as sub-prefect is not inconsistent with Witness GHV's evidence that Interim Government leaders were identifying to their followers a parallel authority more inclined to fight the war as the Interim Government saw fit to do so. Moreover, as discussed elsewhere, Uwizeye testified generally that two sub-prefects who administered sub-prefectures in Gitarama, as well as a sub-prefect for economic affairs, were replaced by the Interim Government with persons aligned with the power faction (II.8.5). Furthermore, the Chamber has elsewhere found that the Tutsi prefect of Butare was removed to undercut the real and symbolic resistance that he presented to the killing of Tutsis there (II.9.1). This evidence offers strong circumstantial corroboration that Bicamumpaka and other members of the Interim Government would be engaged in the activity described by Witness GHV.

1060. Based on the foregoing and on the evidence adduced by the parties, the Chamber would be prepared to find that certain members of the Interim Government, including Bicamumpaka, attended a meeting at Mariane's home in Ruhango *cellule*, Gitarama prefecture, in the second week of April 1994.[1527] The Chamber would also accept Witness GHV's testimony concerning the statements made by Bicamumpaka and others at the meeting, specifically that Bicamumpaka warned those gathered that the *Inyenzi-Inkotanyi* from Uganda had brought war to Rwanda, and that Hutus who did not fight the enemy were no different from the *Inyenzi-Inkotanyi*.[1528]

1061. The Chamber would further accept Witness GHV's interpretation that Bicamumpaka's references to the *Inyenzi-Inkotanyi* included Tutsi civilians and that Bicamumpaka intended them to be interpreted as such. The witness's interpretation was based, in part, on the fact that the RPF or *Inkotanyi* had not yet reached Gitarama, and Ruhango *cellule* in particular, and that no battle front existed there. His evidence on this point finds circumstantial support from Prosecution and Defence witnesses who testified that Gitarama was relatively peaceful prior to the arrival of the Interim Government and that the RPF had not opened a military front in Gitarama until June 1994.[1529] Furthermore, the

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[1525] Makeli, T. 30 October 2007 p. 45. *See also* Uwizeye, T. 11 April 2005 p. 6 (Ruhango is a short distance from Gitarama); T. 13 April 2005 p. 48 (Ruhango is near Gitarama).
[1526] Uwizeye, T. 6 April 2005 p. 52.
[1527] Witness GHV consistently stated that he could only provide estimates as to when the meeting at Mariane's home occurred. Nonetheless, a review of his testimony in its entirety places the event in the second week of April 1994. Witness GHV, T. 4 March 2004 pp. 28, 34; T. 5 March 2004 pp. 9, 11.
[1528] Witness GHV, T. 4 March 2004 p. 42; T. 5 March 2004 pp. 1-2.
[1529] Witness GHV, T. 4 March 2004 pp. 35, 42-46, T. 5 March 2004 pp. 1-2, 10, 13; Witness GKJ, T. 23 September 2004, pp. 3, 13-17, T. 24 September 2004 p. 42 (there were no killings in the commune from 7 to 12 April 1994 but the killing of Tutsis in Gitarama started when the Interim Government arrived on 12 April 1994); Witness GKJ, T. 25 May 2005 pp. 26-27, 29, 31 (fled his commune in Gitarama after 2 June 1994 once the RPF

Chamber would consider that Bicamumpaka's approval of having the previous sub-prefect, who had resisted killings, removed along with his failure to object to the more express statements identifying Tutsis and moderate Hutus as the enemy only bolsters this conclusion.

1062. The Chamber would also be prepared, based on the record before it, to accept Witness GHV's evidence concerning the killing of a Hutu called Mutabazi the day after the meeting. However, his general evidence that the killings of Tutsis increased in reaction to this event, is too vague to establish a causal link between Bicamumpaka's actions or allow findings regarding the killings.[1530] However, for the reasons discussed below, the Chamber is not prepared to make findings in this instance.

Prosecution Violation of Its Duty to Disclose Exculpatory Material

1063. As explained above (I.10), the Prosecution's late disclosure of information which a *prima facie* evaluation shows is highly relevant, highly probative and clearly exculpatory information has caused material prejudice to the Accused in this trial. The Chamber recalls the jurisprudence as it relates to disclosure violations and available remedies. At this late stage in the case, calling further witnesses would delay the proceedings unduly. The Chamber has concluded that the most appropriate remedy for this violation is to draw reasonable inferences in favour of the Accused in light of the late-disclosed material.

1064. In addition to testifying in these proceedings, Witness GHV also gave evidence in the *Nzabonimana* case under the pseudonym Witness CNAK. In *Nzabonimana*, Witness GHV/CNAK initially claimed that he learned of Mutabazi's death because the killers boasted to him about it. He confirmed that he was not present when Mutabazi was killed. But after being confronted with his testimony in this case that he saw the murder with his own eyes and that a policeman named Rurangwa had shot Mutabazi, he explained that he had forgotten about this information. He then stated that his eyewitness testimony in these proceedings, in fact, corresponded to reality.[1531]

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captured Kabgayi, although they could have attacked it earlier); Witness D, T. 15 June 2004 pp. 42-43, 46 (relative calm existed in Gitarama on 12 April 1994; he did not see any killings or roadblocks on that day whereas roadblocks were there when he passed through at the end of April); Witness VF-1, T. 18 October 2007 pp. 4, 8, 18, 21-25 (prior to the arrival and installation of the Interim Government in Murambi around 12 April 1994, Gitarama had not experienced the violence that was occurring elsewhere in Rwanda); Uwizeye, T. 11 April 2005 p. 81 (the RPF did not reach Gitarama until June 1994).

[1530] *See Kalimanzira* Appeal Judgement, paras. 72-80 (in reversing a conviction for aiding and abetting genocide, the Appeals Chamber considered that it was unclear "whether the witnesses had first-hand knowledge of the killings or whether their evidence was hearsay. They refer to no particular incident, provide no approximate time-frame for the killings, and do not give any identifying information concerning the assailants or victims. In such circumstances, the Appeals Chamber finds ... that it is impossible to determine with any reasonable certainty whether any killings in fact occurred following the meeting and, if so, the degree to which they were related to the ceremony.").

[1531] *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Witness CNAK, T. 25 November 2009 p. 47; T. 26 November 2009 pp. 26-31. The Chamber notes that the material cited here was incorporated by reference in Annex A of Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011. The Bicamumpaka Defence also alleges that the Prosecution is in possession of other exculpatory material, but has yet to disclose it. *See* Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011, paras. 41-45 (referencing apparent statements by Witness GHV/CNAK in March 2005 and November 2008, Ruhango *Gacaca* records between June 2005 and October 2006, and Witness CNAJ's testimony in the *Nzabonimana* case). The Chamber has not reviewed this purported material.

1065. Drawing the reasonable inferences due to the late disclosure of this highly relevant, probative and exculpatory material, the Chamber entertains reasonable doubt with respect to the Prosecution evidence in this proceeding concerning the meeting at Mariane's house in the second week of April 1994 and the subsequent killing of Mutabazi.[1532] In the midst of this Chamber's judgement deliberations, the Prosecution held onto this material for over a year before discharging its disclosure obligations. The ensuing prejudice cannot be minimised, and the Chamber's consideration in this regard would not be impacted even if there is merit in the Prosecution's position that Bicamumpaka delayed in raising the issue.[1533] There is no excuse for the late disclosure, particularly considering Prosecution Counsel in *Nzabonimana* was the same Prosecution Counsel in this proceeding. Accordingly, the Chamber will not consider the meeting at Mariane's house as a basis for conviction in its Legal Findings.

1066. In any event, the Chamber also makes the following observations concerning the notice provided to the Bicamumpaka Defence for this event.

Notice

1067. The Indictment contains no express reference to the meeting at Mariane's home in Ruhango *cellule*, Gitarama prefecture, in the second week of April 1994, where Bicamumpaka announced the removal of the Ruhango sub-prefect and the need to fight the *Inyenzi-Inkotanyi*.

1068. The Prosecution did not specify the intended Indictment paragraphs in either its Closing Brief or further submissions of 21 November 2008.[1534] In its closing arguments, however, the Prosecution indicated that it was relying on paragraphs 5.1 and 6.10 of the Indictment.[1535] These paragraphs allege that the Accused "conspired among themselves and with others" and supported this conspiracy by "dismiss[ing] local authorities who were opposed to the massacres" and "incit[ing] the people to eliminate the enemy and its accomplices". This allegation is only limited in time by the indication that this happened "[a]s soon as the Interim Government was formed".[1536]

1069. The Chamber recalls that the charges against an accused and the material facts supporting them must be pleaded with sufficient precision in an indictment so as to provide notice to the accused. Criminal acts that were physically committed by the accused personally must be set forth in the indictment specifically. Where it is alleged that the accused planned,

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[1532] In drawing the adverse inference, the Chamber has not treated as evidence portions of the *Nzabonimana* record to which the Chamber refers. Likewise, this Chamber has not evaluated nor does it draw any conclusions with respect to the reliability of the evidence from *Nzabonimana*. Rather, the inference stems from the Chamber's knowledge that highly relevant, probative and exculpatory material has been impermissibly withheld from the Accused in this proceeding.

[1533] *See generally Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings (AC), 26 September 2000, paras. 1, 33, 37 (the Defence was put on notice of exculpatory material but did not raise it until after the Trial Chamber rendered its Judgement, approximately four or five months later; despite this silence from the Defence, the Appeals Chamber did not consider that the Accused effectively waived his right to complain about non-disclosure, reasoning that "[t]he delayed reaction by the Defence in this case cannot alter the duty of the Prosecution to comply with Rule 68").

[1534] *See* Prosecution Closing Brief, paras. 96, 252, 257, 852, 892, 942, 944-948; Prosecution 21 November 2008 Document, Item Nos. 91, 95.

[1535] *See* Prosecution Closing Arguments, T. 1 December 2008 p. 53 (referring to a handout).

[1536] *See* Indictment, paras. 5.1, 6.10.

instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused which forms the basis for the charges in question (I.7). The Chamber finds the Indictment materially deficient in this regard.

1070. The Chamber recalls that this event was included as an allegation in the Prosecution's Proposed Amended Indictment.[1537] The Chamber rejected this proposal in its entirety and, even though the Appeals Chamber expressly indicated to the Prosecution that it could file a further proposal to amend the indictment, the Prosecution decided not to do so. The Prosecution's failure to re-file another proposed amended indictment resulted in unnecessary ambiguity as to which material facts in the Prosecution Pre-Trial Brief were permissible and which were unacceptably prejudicial. In particular, the Chamber considers that, as a result of the Prosecution's decision not to re-amend the Indictment to clearly identify how the allegation concerning Mariane's house fits within the existing Indictment and to which paragraphs it pertains, some ambiguity remained concerning the status of this allegation. Nevertheless, and for the reasons explained above (I.7), the Chamber will assess whether the Prosecution gave sufficient notice of this allegation to the Accused through other means.

1071. The Prosecution provided further details about this event in its Pre-Trial Brief, and in the annexed summary of Witness GHV's anticipated testimony. The Prosecution specified that "[o]n a date unknown between 15 and 30 April 1994" at the home of Mariane, MRND President for Ruhango, Bicamumpaka and others agreed to kill Tutsis, and Bicamumpaka called on all Hutus to unite to fight and kill Tutsis. A day later, the killing of Tutsis began in Ruhango *cellule*.[1538] The annexed summary for Witness GHV coincides with this allegation and provides further specificity to the Prosecution's case. It alleges that the event occurred "[a]pproximately two weeks after the death of the President" and that the other speakers at the meeting were Callixte Nzabonimana and a "parliamentarian".[1539]

1072. In the Chamber's view, the Prosecution Pre-Trial Brief provided clear and consistent notice that this meeting took place at Mariane's home "[b]etween 15 and 30 April 1994". These dates also appear to coincide with the notice concerning Witness GHV's evidence, which was anticipated to confirm that this meeting occurred "[a]pproximately two weeks after the death of the President", or around 20 April.

1073. This notice, however, is at variance with the evidence adduced in this case. Instead of proving that Bicamumpaka attended a meeting at Mariane's house between 15 and 30 April 1994, and approximately two weeks after the President's death, the evidence indicates that Bicamumpaka attended such a meeting in the second week of April. Combined with the ambiguity resulting from the Prosecution's failure to re-amend the Indictment, this variance has increased the confusion over whether this earlier meeting was charged by the Prosecution.

1074. In some cases, variances between the evidence and the allegation as set forth in the Indictment and Prosecution Pre-Trial Brief might be considered harmless.[1540] However, not

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[1537] *See* Proposed Amended Indictment, paras. 31(f), 63-64.
[1538] Prosecution Pre-Trial Brief, paras. 284-285 (p. 56). *See also* Prosecution Pre-Trial Brief, para. 194 (p. 42) ("Moreover, on or about the 16 April 1994, Bicamumpaka participated in the search for Tutsis, including in Ruhango, with intent to kill them. Many Tutsis were killed.").
[1539] Prosecution Pre-Trial Brief, Annex p. 131.
[1540] *See, e.g.*, *Rutaganda* Appeal Judgement, paras. 304-306.

all variances are acceptable. In the *Ntakirutimana* case, the Appeals Chamber found that "given that the information available to the Defence in [curing documents] was inconsistent with the case that the Prosecution presented at trial, the Defence was, in fact, prejudiced by lack of notice". As a result, the Appeals Chamber held that it was an error to rely on the relevant findings in convicting the Accused of genocide.[1541]

1075. In the context of this case, the Chamber considers that the variance between the notice provided and the evidence adduced is significant and materially prejudicial to the Defence. First, the date range given in the Prosecution Pre-Trial Brief is specific – "[b]etween 15 and 30 April 1994" – and is not open to approximations in the same vein as other formulations, such as "on or about".[1542] Consequently, the Bicamumpaka Defence would have focussed on this specific date range when preparing to meet the Prosecution's allegation, instead of offering a defence that concentrated on the preceding week. For example, Bicamumpaka could have raised evidence concerning the feasibility of travel from Murambi to Ruhango during the second week in April. Instead, even in its Closing Brief, the Bicamumpaka Defence stated that it "still does not know at what time he is alleged to have been present at Marianne's house".[1543] During its closing arguments, it appeared to understand that the Prosecution's case was that this meeting occurred on 17 April.[1544]

1076. Moreover, the Prosecution itself appears to contend that Bicamumpaka received notice that this meeting took place on 17 April 1994, and that he defended himself accordingly. Referring to Bicamumpaka's alibi concerning his whereabouts on 15 through 18 April 4, the Prosecution Closing Brief "submits that this evidence is an afterthought to address the charge that he held a meeting at Ruhango on 17th April 1994 with Marianne and others and incited the killing of Tutsis there".[1545]

1077. In addition, the Prosecution exhibits considerable confusion about the date and other aspects of this event.[1546] Combined with the ambiguity surrounding the decision not to re-file an amended indictment, as well as with the unanticipated variance between the original allegation and the evidence, the Chamber finds that the Prosecution's confusion in its final submissions is indicative of the uncertainty that has plagued this allegation for the duration of this trial.

[1541] *See Ntakirutimana* Appeal Judgement, paras. 63-71.
[1542] *See generally Setako* Trial Judgement, para. 49.
[1543] Bicamumpaka Closing Brief, para. 454. *See also* Bicamumpaka Closing Brief, paras. 446-450, 473-474.
[1544] *See* Bicamumpaka Closing Arguments, T. 5 December 2008 p. 27 ("You see what the problem is when you get no notice. The Prosecutors can say whatever they want. They can just mold their case against you. They can change their dates if they don't fit them. They can change everything. They can put him speaking there if he is not. The Prosecutor suggested to both Makeli, who was allegedly present at that meeting, and Bicamumpaka in their cross-examination that this meeting happened on the 17th of April. I don't know what happened since that date. They probably read some of the other parts of the evidence. But on 17th April in the morning, Bicamumpaka is with Jean Ghiste in Bujumbura, asking for help on behalf of the interim government.").
[1545] Prosecution Closing Brief, para. 852.
[1546] For the apparent confusion pertaining to the date, *compare* Prosecution Closing Brief, paras. 942-948 (alleging that this meeting occurred on 17 April 1994), *and* Prosecution Closing Brief, para. 252 ("On a date unknown between 15th and 17th April 1994 ... ."), *with* Witness GHV, T. 4 March 2004 pp. 28-29, 34, T. 5 March 2004 pp. 9, 11 (second week of April 1994). For the apparent confusion concerning the venue of the meeting, *compare* Prosecution Closing Brief, paras. 96, 257, 942 (interpreting Witness GHV's evidence as concerning a rally at the Hotel Amucho) *and* Prosecution Closing Arguments, T. 1 December 2008 p. 53, T. 4 December 2008 pp. 82-83 (same), *with* Witness GHV, T. 4 March 2004 pp. 30, 34, T. 5 March 2004 pp. 12-13 (testifying that he only attended one meeting, which was at Mariane's house).

Conclusions

1078. Based on the record in this case, the evidence is compelling that Bicamumpaka attended a meeting at Mariane's house in Ruhango *cellule*, where he announced the removal of the Ruhango sub-prefect and the need to fight the *Inyenzi-Inkotanyi*. In the context of the meeting, these instructions were intended to identify Tutsi civilians as the enemy, and were interpreted as such. Some participants were involved in the killing of a Hutu called Mutabazi the following day.

1079. The Prosecution, however, held onto highly relevant, probative and exculpatory material for over a year in the midst of this Chamber's judgement deliberations. Having drawn the reasonable inferences due to this late disclosure, the Chamber entertains reasonable doubt with respect to the meeting at Mariane's house and the subsequent killing of Mutabazi.

1080. Moreover, this allegation formed part of the Proposed Amended Indictment that was rejected by the Trial Chamber, and this rejection was later affirmed on appeal. Although instructed that the Prosecution could re-file a new amended indictment that would clarify the existing Indictment, thereby enhancing the fairness of the proceedings, the Prosecution opted not to do so. This failure created some ambiguity as to the events the Defence needed to prepare against. Moreover, although this meeting took place in the second week of April 1994, the Prosecution provided notice that it happened "[b]etween 15 and 30 April 1994", and Bicamumpaka defended himself based on this accusation. Even at the end of the case, the Prosecution has generally maintained that this event occurred on 17 April. The Prosecution's confusion reflects the ambiguity that has surrounded this allegation since the beginning of the case.

1081. Bicamumpaka cannot be expected to defend himself against a moving target without having timely access to exculpatory material, and to hold otherwise would materially prejudice him. Accordingly, the Chamber will not consider this meeting as a basis for conviction of Bicamumpaka.

8.4 Misizi Football Field and Uwamahoro's Home, From 15 April 1994

Introduction

1082. The Indictment alleges that from late 1990 to July 1994 all four Accused conspired among themselves and others to exterminate Tutsi civilians and eliminate members of the opposition. They supported and took steps to execute this plan, in part, by inciting people to eliminate the enemy and its accomplices. Specifically, the Prosecution alleges that, around 15 April 1994, at Misizi football field in Gitarama prefecture, President Théodore Sindikubwabo and other members of the Interim Government incited the public to kill Tutsis. Fidèle Uwizeye, the prefect of Gitarama, was present at the rally and introduced certain individuals. Bicamumpaka was introduced during the rally and did not distance himself from the President's speech. Days after the rally, Bicamumpaka attended at least three meetings at the nearby home of Emmanuel Uwamahoro, an *Interahamwe* leader. Subsequently,

widespread killing of Tutsis occurred in the prefecture. Prosecution Witnesses GHR and Fidèle Uwizeye provided relevant evidence.[1547]

1083. The Bicamumpaka Defence argues that insufficient notice was provided for these events. Furthermore, he was in Burundi between 15 and 17 April 1994 and, consequently, could not have attended a rally at Misizi on 15 April or any subsequent meetings at the house of Uwamahoro. Witness GHR's evidence is hearsay and unsupported by the record. Bicamumpaka and Witness VF-1 provided relevant evidence.[1548]

Evidence

Prosecution Witness GHR

1084. Witness GHR, a Tutsi, moved to Nyamabuye commune, Gitarama prefecture, around the evening of 12 April 1994.[1549] On 15 April, the prefect of Gitarama convened a meeting at Misizi football fields, about two to three kilometres from where Witness GHR was staying at the time. He had learned about it from a neighbour called Samson, a Twa, who explained that President Théodore Sindikubwabo would be introduced and cabinet members would attend. The witness felt compelled to attend because a person's absence would lead him to being labelled as *Inyenzi* and cause him or her "a lot of trouble".[1550]

1085. Witness GHR walked to the gathering at Misizi football field, in Ruri sector, Nyamabuye commune, arriving around 10.30 a.m. Witness GHR believed that the rally had commenced about 40 minutes prior. Once less than 30 metres away from the venue and, through loudspeakers, he heard instructions that the people of Gitarama should stand together and search for peace. The speaker asked them to look for *Inyenzi* and not to let the *Inyenzi* divide the population. He emphasised that the population knew who the enemy was and should ensure its security. The witness understood the "enemy" to be Tutsis and Hutus opposed to the government. The speaker then thanked the prefect, who had allowed him to speak. The prefect spoke afterwards, but the witness could not hear him due to noise from the

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[1547] Indictment, paras. 5.1, 5.3, 5.10, 6.10, 6.14, 6.35-6.36; Prosecution Pre-Trial Brief, para. 280 (p. 56), p. 124; Prosecution Closing Brief, paras. 97, 149, 248, 309, 871, 879; Prosecution 21 November 2008 Document, Item Nos. 46, 64; Prosecution Closing Arguments, T. 1 December 2008 pp. 50-52; T. 4 December 2008 pp. 80-81. The Prosecution Closing Brief submits that the Misizi rally occurred "on or about 14 April 1994". However, it cites to the testimony of Witness GHR, who testified that it occurred on 15 April (Witness GHR, T. 19 March 2004 pp. 20-21). The Chamber's summary reflects this correction. Further, the Chamber also considers the evidence of a third Prosecution witness who provided relevant testimony. For the purposes of witness protection, however, the witness's evidence is not summarised in the Evidence section but discussed in the Deliberations.

[1548] Bicamumpaka Closing Brief, paras. 64-72, 242, 303, 409-444; Bicamumpaka Closing Arguments, T. 3 December 2008 pp. 67-70; T. 5 December 2008 pp. 22, 25-26.

[1549] Witness GHR, T. 18 March 2004 pp. 39, 45; T. 19 March 2004 pp. 10-11, 20; Exhibit P45 (Witness GHR's Personal Information Sheet).

[1550] Witness GHR, T. 18 March 2004 pp. 47-50; T. 19 March 2004 pp. 20-21, 32-33; T. 22 March 2004 p. 4. Witness GHR affirmatively estimated that the Misizi rally occurred on 15 April (T. 19 March 2004 pp. 20-21) but later agreed with the suggestion of counsel that it happened "on about the 12th of April" (T. 22 March 2004 p. 4). Considering Witness GHR's evidence in its entirety, and, in particular, his other testimony that he did not arrive in Gitarama until the evening of 12 April (T. 19 March 2004 p. 20), the Chamber considers that his evidence reflects that the meeting occurred on 15 April 1994.

crowd. Witness GHR left before the meeting ended to avoid walking among those who had attended.[1551]

1086. The witness was unable to visually identify the first speaker or any of the persons gathered around him at Misizi football field given his distance from them. However, he joined Samson there, who told the witness that it was President Théodore Sindikubwabo speaking. Furthermore, Samson stated that cabinet ministers, including Bicamumpaka and Callixte Nzabonimana, were accompanying the President.[1552]

1087. Two days after the meeting at Misizi, unidentified persons started killing Tutsis, forcing Witness GHR to go into hiding. Nonetheless, the residence where Witness GHR hid was about eight metres from the home of Emmanuel Uwamahoro and he could hear persons gathering there around this time. Samson confirmed to Witness GHR that three meetings had taken place on separate days at Uwamahoro's house, starting about two to three days after the rally at Misizi and that he saw Bicamumpaka, Dr. Senkima, Thomas, who was an employee of Nyamabuye commune, as well as prefects, *bourgmestres*, and other members of the Interim Government attend. However, Samson did not go to the meetings and did not know what was said.[1553]

1088. Witness GHR did not see any killings. However, Samson also informed the witness that some time after a meeting at Uwamahoro's home, Théogène, his wife and four children – all Tutsis – were killed. From where he was hiding, the witness saw persons he could not identify carrying possessions looted from Théogène's home.[1554]

Prosecution Witness Fidèle Uwizeye

1089. Fidèle Uwizeye, a Hutu, was a founding member of the MDR party and the prefect of Gitarama prefecture from 3 July 1992 until he was removed from that post during the genocide.[1555] Uwizeye did not testify about a rally at Misizi football field or meetings at Uwamahoro's house in April 1994. He saw Bicamumpaka when the Interim Government came to the Murambi Centre in Gitarama on 12 April. Uwizeye's testimony about his activities regarding 14 and 15 April does not include a description of attending a rally at Misizi football field. Furthermore, he generally did not see Bicamumpaka when he visited the centre, and heard radio broadcasts on RTLM and Radio Rwanda that led him to believe that Bicamumpaka was outside of Rwanda on missions.[1556]

Bicamumpaka

1090. Bicamumpaka denied that he attended a meeting at Misizi football field on 15 April 1994 or any gatherings at the home of a man named Uwamahoro, whom he did not know. Specifically, on 15 April Bicamumpaka was travelling to Bujumbura, Burundi, with

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[1551] Witness GHR, T. 18 March 2004 pp. 47, 50-52, 54-55; T. 22 March 2004 pp. 4-5.
[1552] Witness GHR, T. 18 March 2004 pp. 50, 52-54; T. 19 March 2004 pp. 4, 20-21, 24, 32. The reference in the transcript is to an Interim Government Cabinet Minister and Gitarama native Callixte "Nsabimana". T. 18 March 2004. The reference, under the circumstances, appears to be to Callixte Nzabonimana.
[1553] Witness GHR, T. 19 March 2004 pp. 2-6, 20-21, 23-24, 32-34.
[1554] Witness GHR, T. 19 March 2004 pp. 2-4, 6, 20, 34.
[1555] Uwizeye, T. 5 April 2005 pp. 9, 13.
[1556] Uwizeye, T. 8 April 2005 pp. 33-34; T. 11 April 2005 p. 23; T. 13 April 2005 pp. 64-65, 74; T. 18 April 2005 pp. 55-56.

Burundi's Ambassador to Rwanda for the burial of the Burundian President, who had died in the plane crash with President Juvénal Habyarimana. They left Gitarama around 12.00 p.m., stopped in Butare for a short while and arrived at the Akanyaru border post around 5.00 p.m. Bicamumpaka reached Bujumbura around 8.00 or 8.30 p.m. The funeral took place the next day. Bicamumpaka subsequently conveyed a message from President Théodore Sindikubwabo to the new Burundian President and on the night of 17 April, he travelled to Gitarama, arriving in Murambi around 1.00 a.m. on 18 April.[1557]

1091. Bicamumpaka could not have attended any subsequent meetings as alleged by Witness GHR because from 18 to 21 April 1994 he remained within the premises of the Murambi Centre. He was preparing documents for various organisations, including a cable to the UN's Jacques-Roger Booh-Booh, and making arrangements for government missions to Europe and New York, and, for example, a radio interview that he granted to Radio Rwanda. On 21 April, around 1.00 p.m., Bicamumpaka left Gitarama in order to travel to Europe, passing through Gisenyi and Goma in Zaire. He was out of the country continuously starting on 23 April and did not return to Rwanda until 25 May.[1558]

Bicamumpaka Defence Witness VF-1

1092. Witness VF-1, a Hutu, stayed in the household of Emmanuel Uwamahoro in 1994.[1559] He was not aware of a rally at Misizi football field where President Sindikubwabo addressed the people of Gitarama. Further, he testified that he never met nor saw Bicamumpaka in Uwamahoro's home. Fidèle Uwizeye, the Nyamabuye *bourgmestre* and other Interim Government ministers did not visit Uwamahoro's house in 1994 either. Even if the witness had not been in Uwamahoro's household at the time, he would have known of such visits.[1560]

1093. Witness VF-1 testified that the home in which Witness GHR had hidden was about 200 metres from Uwamahoro's home and separated by a banana plantation. He knew of a Twa called "Samson", who lived near Uwamahoro's home.[1561]

Deliberations

1094. Relying on Witness GHR, the Prosecution alleges that Bicamumpaka attended a rally at Misizi football field around 15 April 1994 where the population was incited to kill Tutsis. The Accused also went to meetings at the home of Emmanuel Uwamahoro days later, where persons were encouraged to and subsequently attacked Tutsis, including Théogène, his wife and four children. The Bicamumpaka Defence points to evidence that he left Rwanda on 15 April and did not return to Gitarama until 1.00 a.m. on 18 April. It also submits that he did not attend the rally at Misizi football field or any meetings at the house of Uwamahoro.

[1557] Bicamumpaka, T. 26 September 2007 pp. 43-45, 47-50; T. 2 October 2007 pp. 64-65; *see also* Exhibit 3D89(E) (Radio Rwanda Broadcast, 16 April 1994) p. 15; Exhibit 3D112 (Bicamumpaka's Personal Passport) pp. 8-9; *see also* II.14.3.2.
[1558] Bicamumpaka, T. 26 September 2007 pp. 44-45; T. 27 September 2007 pp. 36-40; T. 2 October 2007 pp. 55, 64-65; T. 8 October 2007 p. 49; *see also* II.14.3.3; II.14.3.4.
[1559] Witness VF-1, T. 18 October 2007 pp. 2, 4, 11-12, 15; Exhibit 3D160 (Witness VF-1's Personal Information Sheet). At the time of his testimony, Witness VF-1 had been incarcerated in Rwanda since April 1997 and was awaiting trial for genocide and murder charges. T. 18 October 2007 pp. 5, 15.
[1560] Witness VF-1, T. 18 October 2007 pp. 7-10, 22-23.
[1561] Witness VF-1, T. 18 October 2007 pp. 12-15.

1095. Witness GHR is the only Prosecution witness to testify about Bicamumpaka's presence at the Misizi rally on 15 April 1994 and the subsequent meetings at Uwamahoro's house. However, he was unable to visually identify any persons at the rally on Misizi football field. Likewise, while he testified that he heard gatherings at Emmanuel Uwamahoro's home, he did not testify about what he heard and otherwise did not see what occurred there. His knowledge of Bicamumpaka's presence at any of these events, as well as subsequent killings, came from his neighbour, Samson.

1096. Notably, a Prosecution witness, who was in a unique position to observe Witness GHR's interactions with Samson and provide more direct evidence about Samson's own observations during the relevant period, contradicted Witness GHR. Specifically, while the witness confirmed that meetings occurred at Uwamahoro's home in 1994, the witness's testimony indicates that Samson did not see Bicamumpaka after 1993.[1562]

1097. Likewise, Prosecution Witness Fidèle Uwizeye did not testify, nor was he asked about, the rally at Misizi football field, notwithstanding that Witness GHR testified (a year prior to Uwizeye's testimony) that the prefect of Gitarama spoke at the rally. Uwizeye also did not testify, nor was he asked about, meetings at Uwamahoro's home even though Witness GHR's description of "prefects" attending them supports an inference that Uwizeye, as the resident prefect of Gitarama, would have been one of the prefects attending.[1563]

1098. The decision not to present corroborating evidence from Uwizeye leaves significant evidentiary gaps in the Prosecution case – particularly because Witness GHR's testimony about Bicamumpaka's involvement in any of the events is entirely second-hand.[1564] Indeed, Uwizeye's testimony that he did not see Bicamumpaka much in Rwanda raises questions about the Accused's participation in such events.

1099. Furthermore, Witness GHR's testimony about Bicamumpaka's participation in the Misizi football field rally and the meetings at Uwamahoro's home evolved since his 11 January 2000 statement to Tribunal investigators. His statement gives the impression that he *saw* Bicamumpaka at the rally even though he testified that he learned of his presence from Samson.[1565] Indeed, while his testimony is clear that he did not observe a single meeting at Uwamahoro's home, his prior statement indicates that he saw meetings and Bicamumpaka's presence at Uwamahoro's home.[1566]

[1562] For the purposes of witness protection, the Chamber cites to the Confidential Bicamumpaka Closing Brief. Bicamumpaka Closing Brief, paras. 416, 421-424. The Chamber has reviewed the testimony of the witness cited by the brief in its entirety and related exhibits. Its analysis is based on its review of the testimony and exhibits and not the party's representation of them.

[1563] Witness GHR, T. 19 March 2004 p. 4 (mentioning "*préfets*" as attending meetings at Uwamahoro's home).

[1564] Indeed, another Prosecution witness who was a local official within Nyamabuye commune in 1994 similarly denied attending meetings at Uwamahoro's home. Witness GKJ, T. 22 September 2004 pp. 44-46; T. 23 September 2004 pp. 2-3; T. 27 September 2004 p. 56; Exhibit P74 (Witness GKJ's Personal Information Sheet).

[1565] Exhibit 3D5(E) (Witness GHR's Statement, 11 January 2000) p. 2 ("Two days after my arrival, I saw President Sindikubwabo, surrounded by members of his Government, including Jérôme. They were at Misizi, in Ruri secteur. … I later saw Jérôme Bicamumpaka again at the home of Emmanuel Uwamahoro … .").

[1566] Exhibit 3D5(E) (Witness GHR's Statement, 11 January 2000) pp. 2-3 ("I later saw Jérôme Bicamumpaka again at the home of Emmanuel Uwamahoro, a leader of the *Interahamwe* militia, the militia movement of the [MRND], the ruling political party. Uwamahoro was a native of Ruhengeri. … The natives of Ruhengeri held meetings. Among the people who were in the house, I knew Dr. Senkima, the person in-charge of the local hospital at a place known as "Icyakabiri" in Murambi, our locality, and a man named Thomas, son of Kamana, a Nyamabuye commune office employee. I saw these people meet on two successive days. After these meetings,

1100. While Witness GHR's testimony before the Chamber is far less inculpatory and probative than the contents of his June 2000 statement to Tribunal investigators, the shift in his evidence only weakens the assertion that if these events occurred, Bicamumpaka would have been present. In reaching this conclusion, the Chamber has considered that Misizi football field and Uwamahoro's house were in the Nyamabuye commune. Murambi, the seat of the Interim Government by 12 April 1994, was located in the same commune, creating the possibility that Bicamumpaka *could have* gone there.[1567]

1101. Likewise, the Chamber notes a speech of President Théodore Sindikubwabo was broadcast on Radio Rwanda on 14 April 1994, the day before the alleged rally at Misizi football field. During the speech, the President stated that, while there have been many innocent victims from the war, killings and looting had stopped.[1568] Progress relied on improving mutual tolerance and anger, hatred and revenge should be forgotten. He asked that persons continue to "work" and continue to assist in identifying those with evil plans of creating a worse situation. He asked that they be reported to soldiers and those "in charge of security", while not unfairly attacking such individuals. Authorised night patrols should continue and he asked that persons continue "fighting for peace".[1569]

1102. Witness GHR interpreted this speech as having similar, sinister undertones as the one he heard on 15 April 1994 at Misizi football field. The President's instructions for people to "work" were coded directives to locate and kill Tutsis. His comments that persons should rejoice concerned happiness over the killing of Tutsis even though the President stated that the end of killings and lootings had occurred. At one point, the witness also criticised the President for not admitting in his speech that genocide was taking place, but conceded that the reference to "innocent victims" was to Tutsis being killed at that time.[1570]

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massacres became wide spread throughout Gitarama. *I want to make it clear that this is what I personally saw because these people met almost daily.*") (emphasis added).

[1567] Uwizeye, T. 7 April 2005 pp. 74-75; T. 18 April 2005 p. 4 (Murambi, where the government installed itself is about two to three kilometres from the Gitarama prefecture offices in Nyamabuye commune); Witness GKJ, T. 22 September 2004 p. 45; T. 23 September 2004 p. 22 (Murambi was about two kilometres from the Gitarama prefecture office and Gitarama town was in Nyamabuye commune).

[1568] During his translation from Kinyarwanda to English, Expert Witness Shimamungu quoted President Théodore Sindikubwabo as saying that killings and lootings are "getting fewer" (Shimamungu, T. 15 May 2007 p. 2) as opposed to having "stopped" or "*ont cessé*". *See* Exhibit 2D60 (Radio Rwanda Broadcast, 14 April 1994) pp. 198, 172 (respectively). However, Shimamungu then summarised the content of the speech as stating that "the killings and the lootings ceased – have ceased". T. 15 May 2007 p. 5.

[1569] Exhibit 2D26(E) pp. 8-9, Exhibit P2(52)(E, F & K) pp. 15-16 *and* Exhibit 2D60(E & F) pp. 172-173 (English), 198 (French) (Radio Rwanda Broadcast, 14 April 1994); Shimamungu, T. 15 May 2007 pp. 2-5 (translation from Kinyarwanda). *See also* Des Forges, T. 6 June 2005 pp. 20-21.

[1570] Witness GHR, T. 22 March 2004 pp. 3-6, 29-30. *See also* Des Forges, T. 6 June 2005 pp. 22-23 (President Théodore Sindikubwabo's message of mutual tolerance, although unclear, might have been aimed at preventing Hutus from attacking each other and that Hutus were the innocent victims; those with "evil plans" to return Rwanda to a "worse situation" could have been an allusion to Tutsis seeking to reinstate the monarchic rule that existed prior to the 1959 revolution; the phrase "fighting for peace" might be eliminating the enemies who, in the context of this war, are being identified, even by authorities, on ethnic grounds); *but see* Shimamumgu, T. 15 May 2007 pp. 5-6, T. 17 May 2007 pp. 49-50, 63-65 (President Théodore Sindikubwabo's 14 April 1994 speech is consistent with his 8 April message and does not contain doublespeak; crime has stopped and government is continuing to work to enable the Arusha Accords; the population should be vigilant and turn over to authorities those taking part in killings and lootings).

1103. Nonetheless, Witness GHR did not confirm that this was the speech that he purportedly heard at Misizi football field on 15 April 1994.[1571] The transcription of the broadcast does not state where the President was at the time or when precisely the speech was given. Ultimately, it does not amount to additional support that Bicamumpaka was involved in or attended the rally discussed by Witness GHR or subsequent meetings at Uwamahoro's home.

1104. Turning to the Defence evidence, Bicamumpaka denied attending the alleged Misizi rally and the meetings at Uwamahoro's house. Instead, he left Gitarama around 12.00 p.m. on 15 April 1994, arriving in Burundi around 5.00 p.m. He did not return to Murambi, Gitarama until around 1.00 a.m. on 18 April (II.14.3.2). His testimony is corroborated by his passport.[1572] Furthermore, a Radio Rwanda broadcast on 16 April also confirmed that Bicamumpaka attended the slain Burundian President's funeral in Bujumbura.[1573] In the Chamber's view, this evidence is not necessarily inconsistent with an allegation that he attended a meeting at Misizi football field on the morning of 15 April, particularly in light of the fact that Misizi and Murambi were both situated in Nyamabuye commune. This evidence, however, does raise some questions that he attended any gathering at Uwamahoro's home two days later.

1105. Witness VF-1 corroborated Bicamumpaka's testimony. He was unaware of a rally at Misizi football field and testified that Bicamumpaka did not attend meetings at Uwamahoro's house. He further stated that the distance between the house in which Witness GHR hid in April 1994 and Uwamahoro's home was 200 metres rather than eight, mitigating Witness GHR's assertion that he could hear goings on there. However, at the time of his testimony, Witness VF-1 was detained and awaiting trial in Rwanda for committing genocide, murders, and being part of a joint criminal enterprise. He had a clear interest in denying his own involvement in such events.[1574]

1106. While the Defence evidence is of limited probative value and the self-interested nature of it leads the Chamber to view it with suspicion, the frailties of Witness GHR's second-hand evidence create doubt. Indeed, Prosecution witnesses, who could have provided more direct evidence and corroborated Witness GHR's testimony, did not do so, and, in some cases contradicted him. Based on the foregoing, the Prosecution has not proven beyond reasonable doubt that Bicamumpaka attended a rally at Misizi football field on 15 April 1994 or subsequent meetings at the house of Emmanuel Uwamahoro. It has also failed to prove that Bicamumpaka bears responsibility for any alleged subsequent killings discussed by Witness GHR.[1575] Given the Chamber's findings, it need not address Defence arguments concerning insufficient notice.

[1571] Witness GHR, T. 22 March 2004 pp. 4-5.
[1572] Exhibit 3D112 (Bicamumpaka's Personal Passport) pp. 8-9.
[1573] Exhibit 3D89(E) (Radio Rwanda Broadcast, 16 April 1994) p. 15.
[1574] Witness VF-1, T. 18 October 2007 pp. 5, 15.
[1575] Other evidence in the record indicates that a "Théogine" in the area where Witness GHR hid in April 1994 was a Hutu *Interahamwe*. Witness GHU, T. 4 March 2004 p. 7. This raises questions about the second-hand evidence of Witness GHR that this person was a Tutsi and was killed. Witness GHR's other evidence about killings is vague and insufficient to support findings beyond reasonable doubt. *See Kalimanzira* Appeal Judgement, paras. 72-80.

8.5 Meeting in Gitarama, 18 April 1994

Introduction

1107. The Indictment alleges that members of the Interim Government and others held meetings in Gitarama prefecture to supervise and encourage massacres in the region. Between April and July 1994, in Gitarama, *bourgmestres* who had refused to carry out the government's directives to massacre the Tutsi, or who had not shown sufficient zeal in carrying them out, were reprimanded, dismissed, attacked or "physically eliminated". Specifically, during a mid-April meeting held at Murambi Centre, Mugenzi supported the massacres committed by the *Interahamwe* in Gitarama prefecture and asked that the prefect and *bourgmestres* opposed to them be sacked. *Bourgmestres* who refused to carry out government directives were reprimanded or attacked and then dismissed or eliminated. In particular, Callixte Ndagijimana, the *bourgmestre* of Mugina commune, Gitarama prefecture, was killed while the *bourgmestres* of Kanyanbanda and Masongo communes, who opposed the massacres, were replaced. The Prosecution relies on the testimonies of Witnesses Fidèle Uwizeye, GKJ and Expert Witness Alison Des Forges.[1576]

1108. The Mugenzi Defence argues that there was insufficient notice of this allegation. Furthermore, violence in Gitarama before the Interim Government arrived and there is no direct evidence that it had planned massacres. Furthermore, Prosecution Witnesses Uwizeye and GKJ lack credibility, having given prior inconsistent statements. Each also had an interest in implicating Mugenzi due to their prior imprisonment in Rwanda.[1577] The Mugiraneza Defence argues that no notice has been given with respect to his involvement in the 18 April 1994 meeting and that the evidence should be disregarded. Furthermore, he was not present during the part of the meeting in which the alleged statements inciting genocide were made.[1578]

Evidence

Prosecution Witness Fidèle Uwizeye

1109. Fidèle Uwizeye, a Hutu, was a member of the MDR party. He was appointed prefect of Gitarama in July 1992 and was officially removed from his position around 10 June 1994.[1579] On 18 April 1994, Uwizeye scheduled a meeting at the Gitarama prefecture office with *bourgmestres*, sub-prefects and political leaders in order to discuss the security situation. Before it started, Prime Minister Jean Kambanda's personal secretary delivered a message from the Prime Minister to Uwizeye requesting that he conduct the meeting in Murambi with members of the Interim Government's cabinet. Between 80 to 100 persons attended including

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[1576] Indictment, paras. 6.53-6.55; Prosecution Pre-Trial Brief, paras. 131-132 (pp. 29-30), 183 (pp. 40-41), 258-259 (p. 53); Prosecution Closing Brief, paras. 56, 60-64, 91, 187, 207-208, 236-237, 239, 263, 297, 299-301, 336, 664; Prosecution 21 November 2008 Document, Item Nos. 8, 56, 60, 83, 96; Prosecution Closing Arguments, T. 1 December 2008 p. 66.
[1577] Mugenzi Closing Brief, paras. 95-96, 331, 710-717, 1324-1373; Mugenzi Closing Arguments, T. 2 December 2008 pp. 44, 77, 85-86.
[1578] Addendum to Mugiraneza Closing Brief, paras. 12, 14. *See also* Bicamumpaka Closing Brief, paras. 868-869, 885-896.
[1579] Uwizeye, T. 5 April 2005 pp. 9-10; T. 6 April 2005 p. 62; T. 8 April 2005 pp. 41-42; T. 11 April 2005 pp. 73, 76-77, 79-80; T. 14 April 2005 p. 23; T. 19 April 2005 pp. 45-48, 73-77; T. 15 April 2008 pp. 24-25.

Kambanda, Mugenzi, Mugiraneza, Karemera, Nzabonimana, Mathieu Ngirumpatse and Shingiro Mbonyumutwa.[1580]

1110. Uwizeye, in the presence of Kambanda, complained about the recent killings and requested that the Interim Government prevent further violence. He explained that the Interim Government contributed to the violence in Gitarama by establishing roadblocks, where Tutsis were being killed. Uwizeye mentioned that *bourgmestres* had been expelled or beaten. He provided the example of Minister Callixte Nzabonimana, who, in Rutobwe, slapped the *bourgmestre* five times because he had arrested Hutus who had attacked their Tutsi neighbours. Nzabonimana released the eight Hutu prisoners. At the meeting, Uwizeye also asked why the local gendarmes had been removed from Gitarama when they were needed to defend the people who were being targeted and killed. In response, the Prime Minister made a speech similar to the one he gave on 11 April 1994, which spoke about the programme for unity in order to restore peace and to avenge the death of President Juvénal Habyarimana. Uwizeye expressed dissatisfaction with this response.[1581]

1111. Other political leaders spoke at the meeting. Ngirumpatse accused Uwizeye of opposing the MRND. Karemera made similar statements, adding that he did not understand Uwizeye's role in regards to security. Mugenzi stated that the Prime Minister was wasting his time because Uwizeye and the *bourgmestre* of the commune did not understand current politics and should be removed. Others also sharing this lack of understanding should resign. In response, everybody at the meeting applauded. Mugenzi also stated that the activities of the *Interahamwe*, the politicians and the soldiers that Uwizeye criticised concerned the defence of the nation. He accused Uwizeye of trying to stop such activities. Discouraged at the response he received, Uwizeye left the meeting, slamming the door behind him.[1582]

1112. Uwizeye viewed the 18 April 1994 meeting as a turning point for Gitarama. While killings had been resisted initially, they spread to every corner of the prefecture given the government's support for the genocide and guidelines issued at the meeting.[1583] Prior to the 18 April gathering, Uwizeye had worked well with about 14 of the 18 *bourgmestres* in his commune to quell violence. However, the instructions received during the 18 April meeting weakened their resistance, and several *bourgmestres* "changed" and began aligning with attackers and leading killings in light of the Interim Government's support for the genocide.[1584]

1113. For example, Uwizeye heard that the *bourgmestre* of Kigoma, a man called Célestin, had begun meeting with the Interim Government after the 18 April 1994 gathering. He later led the pursuit of businessmen named Fidèle and Mupagase, alleging that RPF soldiers were hiding in Fidèle's home. They were killed.[1585]

1114. On an unspecified date, Uwizeye was informed by a businessman named Gad that the Murama commune *bourgmestre*, called Rutiganda, had brought around 10 Tutsis to the

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[1580] Uwizeye, T. 6 April 2005 pp. 42-43, 51-53; T. 8 April 2005 p. 43; T. 19 April 2005 pp. 38-41; T. 15 April 2008 pp. 10-12.
[1581] Uwizeye, T. 6 April 2005 pp. 51-53, 55-56; T. 7 April 2005 p. 60; T. 11 April 2005 pp. 23-24, 80-81; T. 13 April 2005 pp. 37, 48, 55; T. 19 April 2005 pp. 41-43; T. 14 April 2008 p. 24; T. 15 April 2008 pp. 9-12, 37-38.
[1582] Uwizeye, T. 6 April 2005 pp. 51-53, 55-56, 61-62; T. 11 April 2005 pp. 4-5; T. 19 April 2005 pp. 42-43; T. 15 April 2008 pp. 9-12.
[1583] Uwizeye, T. 6 April 2005 pp. 62, 64; T. 13 April 2005 p. 37; T. 14 April 2008 p. 24.
[1584] Uwizeye, T. 6 April 2005 pp. 54, 62-63, 65, 67-68; T. 14 April 2008 p. 24; T. 15 April 2008 p. 9.
[1585] Uwizeye, T. 6 April 2005 pp. 63, 65, 67.

Buhanda marketplace within the commune. There, he shot them in the stomach, killing them. Uwizeye went there and upon arrival found a large group of attackers. He learned that the *bourgmestre* had called on his citizens to attack pastors who had taken refuge at the Gitwe Adventist centre. Uwizeye, noting that the war between soldiers was only occurring in Kigali, convinced the citizens not to carry out the attack. However, Uwizeye learned that the *bourgmestre*, with a soldier called "Bikunzira" from Nyanza, went to the Gitwe Adventist centre 10 days later and killed the pastors there.[1586]

1115. Other *bourgmestres* that acquiesced and began participating in the violence included the Taba commune *bourgmestre*, Jean-Paul Akayesu, Ntongwe commune *bourgmestre*, "Karoli", as well as the *bourgmestres* for Mushubati, Kayenzi and Nybikenge communes.[1587] Furthermore, several *bourgmestres* who resisted killings were either killed or dismissed. For example, the Mugina commune *bourgmestre*, who had utilised police and gendarmes to resist attacks from assailants entering his area, was killed at an unidentified roadblock on 21 April 1994, three days after the 18 April meeting. He also learned from a previous *bourgmestre* that Callixte Nzabonimana, Major Ukulikiyeyezu, a captain from Ngoma in Butare named Hategekimana, and Burundian refugees from Gisari had held a meeting where they plotted to kill, and later did, persons whom the Mugina commune *bourgmestre* was protecting. Likewise, the *bourgmestre* of Musango commune, called "Ludovico" or "Louis", who had fought against persons from Bwatira attacking his area, was replaced by a person called Mwanafunzi. The *bourgmestre* from Kanyabanda was also dismissed.[1588]

1116. Similarly, the Interim Government removed two sub-prefects, who administered sub-prefectures as well as the sub-prefect of economic affairs. They were replaced with members of the "power" factions of political parties.[1589] For example, the sub-prefect for economic affairs, a man called Gasana, who belonged to the Landoald Ndasingwa faction of the PL, was replaced by a CDR representative named Antoine Rutegesha. Two days after his appointment, Rutegesha led an attack at Kabgayi during which 11 people were killed. Victims included a representative of the Josephite Brotherhood and "Sister Benigne".[1590]

Prosecution Witness GKJ

1117. Witness GKJ, who possessed a Hutu identity card, had a Tutsi father and a Hutu mother. A member of the MDR party, he took a local government post in Nyamabuye commune, Gitarama prefecture, in 1994, which he held during the relevant period.[1591] Gitarama Prefect Fidèle Uwizeye scheduled a gathering in the prefecture office on the morning of 18 April 1994 to examine the security situation and seek the Interim Government's assistance to prevent the violence that the local administration and security forces were unable to prevent. However, that morning Uwizeye advised Witness GKJ and the other attendees that Prime Minister Jean Kambanda wished to meet at Murambi.

[1586] Uwizeye, T. 6 April 2005 pp. 65-67.
[1587] Uwizeye, T. 6 April 2005 pp. 65-66
[1588] Uwizeye, T. 6 April 2005 pp. 54, 63, 66; T. 8 April 2005 pp. 47-48; T. 11 April 2005 p. 5; T. 14 April 2008 p. 24; T. 15 April 2008 p. 9.
[1589] Uwizeye, T. 6 April 2005 p. 44.
[1590] Uwizeye, T. 6 April 2005 pp. 42-44, 46-47; T. 11 April 2005 pp. 4-5.
[1591] Witness GKJ, T. 22 September 2004 pp. 44-46; T. 23 September 2004 pp. 2-3; T. 24 September 2004 pp. 15-16; T. 27 September 2004 pp. 28-30; T. 25 May 2005 p. 37; Exhibit P74 (Witness GKJ's Personal Information Sheet).

Consequently the prefect, Witness GKJ and the other *bourgmestres* went to Murambi. Witness GKJ and about 100 others including Mugenzi, Édouard Karemera, Callixte Nzabonimana, and most of the other ministers of the Interim Government were present at the Murambi meeting. Among the local officials in attendance were Gitarama's *bourgmestres*. At the meeting, the Prime Minister wished to hear their proposals regarding the situation in Gitarama, and had a message to give to them.[1592]

1118. The meeting was divided in two parts. First, Uwizeye explained that he and other local officials had made unsuccessful attempts to stop the killings. He requested that the Interim Government assist them in their efforts. Other communal leaders then discussed individual problems, including security issues, and asked for assistance from the Interim Government. Kambanda then spoke to the attendees, but he did not address the problems highlighted by the previous speakers. Instead, he delivered a prepared speech concerning the civil defence programme and stated that people should be taught how to use firearms. He also discussed patrols and roadblocks. In response, Uwizeye and the attending bishops talked about the many displaced persons who were in Kabgayi and the need for some gendarmes to be present there. The Prime Minister accepted that recommendation, after which he and the ministers in attendance left the room. Uwizeye stated that the *bourgmestres* should stay behind. The other attendees left.[1593]

1119. For the second part of the meeting, the *bourgmestre* from Runda, named Sixbert, introduced papers, which he claimed had come from an unidentified *Inkotanyi* collaborator. They described how the *Inkotanyi* were going to take over the country and kill people, and, according to Sixbert, proved that the *Inkotanyi* and their accomplices had infiltrated Gitarama. Unidentified attendees at the meeting said that the documents were proof that Witness GKJ and others supported the *Inkotanyi*. Mugenzi stated that some of the new appointees were *Inkotanyi* collaborators and that Witness GKJ and others were part of the opposition. Mugenzi also said that the best thing was to work with the *Interahamwe* in order to help the country, and that the *Interahamwe* were protecting and supporting the interests of the people. Mugenzi then told Witness GKJ and others to stop supporting Tutsis because they were enemies of the people, and that those who supported them would pay dearly for it. Nzabonimana stated that some leaders were accomplices of *Inkotanyi* and that if they were removed matters would improve. Karemera said that leaders were going to be screened in order to remove those who supported the *Inkotanyi*, and that supporters of the *Inkotanyi* should be treated as enemies of the people and the country. Witness GKJ thought the purpose was to frighten them and tell them that Tutsis were supposed to be persecuted and killed.[1594]

1120. In the days following this meeting, a number of local officials in Gitarama prefecture were killed. Specifically, on 24 April 1994, Witness GKJ learned from Fidèle Uwizeye that Callixte Ndagijimana, the *bourgmestre* of Mugina commune, had been killed on 21 April 1994.[1595] Furthermore, after having received calls from Musumba sector residents, the

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[1592] Witness GKJ, T. 23 September 2004 pp. 19, 21-25; T. 24 September 2004 p. 25. Witness GKJ initially testified that the meeting was held on 15 April (T. 23 September 2004 p. 19) but later corrected that it was on 18 April (T. 23 September 2004 p. 21).

[1593] Witness GKJ, T. 23 September 2004 pp. 23-24, 35-36; T. 27 September 2004 pp. 40, 45-49.

[1594] Witness GKJ, T. 23 September 2004 pp. 24-25, 35-36; T. 24 September 2004 pp. 37-38, 61; T. 27 September 2004 pp. 40-49; T. 25 May 2005 p. 36.

[1595] The Chamber observes that the spelling in the transcript for Ndagijimana is "Ndagimana". Witness GKJ, T. 23 September 2004 p. 38. As there is no dispute as to this person's identity, the Chamber has opted for the commonly accepted spelling of the name.

witness went there and learned that the *conseiller*, his wife and children had been killed. Witness GKJ observed that the official's house had been destroyed and residents there informed him that attackers had been escorted by soldiers. Similarly, in Ruli sector, where the government was located, the *conseiller*, his wife and children were also killed. The witness also went to Mbuye and found that the home of the *conseiller* there had also been destroyed and the sector office ransacked.[1596] There, a man called Kipimo, a former soldier from Gisenyi, told Witness GKJ that he was working for the government and had organised the attack there.[1597]

Prosecution Expert Witness Alison Des Forges

1121. Alison Des Forges, an expert in Rwandan history and human rights abuses there in the 1990s, testified that genocidal killings did not begin immediately in Gitarama after the shooting down of the President's plane. Rather, killings commenced in Gitarama after the arrival of the Interim Government, and particularly an 18 April 1994 meeting there. From that moment on, the behaviour of the political authorities in Gitarama changed and those who had opposed the killings were driven underground. To the extent that they continued to help Tutsis or victimised Hutus, they did so discretely. One reason for this change may have been because of the "presence of the national authorities".[1598]

Mugenzi

1122. On the morning of 18 April 1994, Mugenzi and others were informed that the Gitarama prefect had convened a meeting of the local *bourgmestres*. Upon hearing this, Prime Minister Jean Kambanda invited the ministers to join him and meet Gitarama's local officials in Murambi. Two meetings were held. The first was a big gathering, which included *bourgmestres*, civil servants and religious leaders. The Prime Minister addressed the audience presenting a speech that reiterated the one he had made on 11 April 1994, in which he discussed the administration and security of land and the welfare of the people. He expressed that the Arusha peace process should be saved. After Kambanda's speech, unidentified members of the audience spoke of the problems that they faced. This first gathering ended around noon.[1599]

1123. For the second meeting, the Prime Minister requested the prefect and the *bourgmestres* to remain with the gathered ministers, while the other attendees left. Mugenzi generally recalled that he spoke against the killings occurring in some communes of Gitarama. He opposed seeking revenge for the death of President Juvénal Habyarimana, and stated that the Interim Government wanted the policy outlined by the Prime Minister to be

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[1596] The Chamber observes that the reference in the English transcripts is to "Nyamabuye/Mubuye" or "Nyamabuye". Witness GKJ, T. 23 September 2004 p. 37 (English). The references in the French are to "Mubuye (phonetic)" and "Mbuye". Witness GJK, T. 23 September 2004 pp. 32-33 (French). The Chamber accepts the French reference to "Mbuye" as this was a sector within Nyamabuye commune. *See* Witness GKJ, T. 25 May 2005 pp. 25-26.
[1597] Witness GKJ, T. 23 September 2004 pp. 36-38; T. 24 September 2004 pp. 25, 61; T. 27 September 2004 pp. 39-40, 45-46.
[1598] Des Forges, T. 31 May 2005 pp. 3-4; T. 2 June 2005 pp. 37-38; T. 7 June 2005 p. 14; Exhibit P99(E) (Curriculum Vitae of Alison Des Forges); Exhibit P101 (Expert Report of Alison Des Forges) pp. 27, 31.
[1599] Mugenzi, T. 9 November 2005 pp. 37, 59-64, 66.

followed. If individuals were not prepared to follow what the Prime Minister told them, then they should quit or they would be dismissed.[1600]

Mugiraneza

1124. Mugiraneza was present for part of the 18 April 1994 meeting held at Murambi. Attendees included Fidèle Uwizeye, *bourgmestres*, as well as religious and political leaders in Gitarama. There, Prime Minister Jean Kambanda repeated the directives that he had issued during the gathering of prefects on 11 April. He asked the attendees to convene meetings with members of the population at all levels and to tell those who were involved in the massacres to stop. Kambanda stated that the population should be told that the enemy was not the Tutsi, but armed RPF soldiers. He instructed that only the administrative authorities were empowered to set up roadblocks and control the manning of those roadblocks and that only the roadblocks recognised by local authorities should stay in place.[1601]

1125. The Prime Minister also stated that before someone was arrested for being an RPF fighter, there should be evidence of this, such as weapons discovered on that person, or other external signs. Such individuals should be given to the authorities and persons should not take the law into their own hands. The Prime Minister appealed to the religious leaders to help the members of the population found in the various locations where they had sought refuge. The meeting ended between 12.00 and 1.00 p.m. Mugiraneza accompanied the bishops back to their vehicles outside Murambi. Afterwards, Mugiraneza met with the director of the Murambi Centre. He learned later that other meetings had apparently taken place after he had left.[1602]

Bizimungu and Bicamumpaka

1126. On 18 April 1994, Bizimungu was on mission in Zaire to discuss the situation in Rwanda with President Sese Seko Mobutu (II.14.2.1). Bicamumpaka had returned from Burundi on and arrived to Murambi around 1.00 a.m. on 18 April 1994 (II.14.3.2). He granted an interview to Radio Rwanda that day, and after 10 April 1994, he did not attend another Interim Government meeting until 19 or 20 April.[1603]

Bizimungu Defence Witness WFQ3

1127. Defence Witness WFQ3, a Hutu member of the MDR, left Kigali for Gitarama on 12 April 1994 along with the Interim Government.[1604] Fidèle Uwizeye, who Witness WFQ3 knew from having stayed with him for three months in 1971 or 1972, invited him to attend an 18 April 1994 meeting at Murambi. The meeting took place between 11.00 a.m. and noon. Uwizeye chaired the meeting, which was held for the purpose of welcoming the Interim Government and to make sure that massacres were avoided in Gitarama. He did not recall a

[1600] Mugenzi, T. 9 November 2005 pp. 59-64.
[1601] Mugiraneza, T. 27 May 2008 pp. 17-19; T. 2 June 2008 p. 45.
[1602] Mugiraneza, T. 27 May 2008 pp. 17-19; T. 2 June 2008 p. 45.
[1603] Bicamumpaka, T. 26 September 2007 p. 43; T. 27 September 2007 p. 53.
[1604] Witness WFQ3, T. 24 January 2007 pp. 6, 10-12, 25-26.

minister taking the floor and denied that the Interim Government espoused a genocidal message at the gathering.[1605]

Bizimungu Expert Witness Eugène Shimamungu

1128. Eugène Shimamungu was admitted as an expert in linguistic sciences, grammar, and the Kinyarwanda language, as well as political information and communication.[1606] Shimamungu testified regarding a Radio Rwanda broadcast, which reported the 18 April 1994 meeting in Gitarama. The message reported in the broadcast was in keeping with all the previous broadcasted speeches by the President and the Prime Minister, which were aimed primarily at maintaining security for Rwandans citizens, retaining unity and putting a stop to killings and lootings.[1607]

Mugenzi Defence Witness Martin Ndamage

1129. In 1994, Ndamage, a Hutu, worked as the principal of a private school in Mugina commune, Gitarama prefecture, called Saint Ignace, APRECOM. On 19 April 1994, Ndagijimana was killed. On 20 April, the same day Ndagijimana's death was reported, a Spanish priest living in the area decided to leave. The witness described these two persons as the "major protectors of the refugees". Once they were gone, assailants from a refugee camp of Burundians in a neighbouring commune killed refugees at Mugina parish. Ndamage saw many bodies at Mugina parish, but could not specify the number. Many Tutsis were killed in Mugina commune, particularly at Mugina parish. On 20 May 1994 he heard a Radio Rwanda broadcast that he was to replace Ndagijimana as *bourgmestre* of Mugina commune. Ndamage was sworn in by Prefect Fidèle Uwizeye on 22 May.[1608]

Deliberations

1130. It follows from the evidence that a meeting was held on 18 April 1994 at the Murambi Centre in Gitarama.[1609] Originally planned by Fidèle Uwizeye to be a discussion among local officials at the prefecture, Prime Minister Jean Kambanda interceded. He asked that it be held at Murambi, the new seat of the national government, allowing Interim Government ministers to participate. Uwizeye, Witnesses GKJ and WFQ3, other local officials and religious authorities from Gitarama, as well as Mugenzi, Mugiraneza and Jean Kambanda, attended. Kambanda delivered a speech at the meeting and some attendees spoke of particular problems they faced. A second meeting was held among certain Interim Government ministers, including Mugenzi, as well as Uwizeye and Gitarama *bourgmestres*.

[1605] Witness WFQ3, T. 24 January 2007 pp. 6-7; T. 25 January 2007 pp. 28-30; T. 26 January 2007 pp. 8, 12.
[1606] Shimamungu, T. 10 May 2007 pp. 1-2. The Chamber did not accept Shimamungu as an expert in lexicography and terminography.
[1607] Shimamungu, T. 17 May 2007 pp. 29-30.
[1608] Ndamage, T. 21 March 2006 pp. 29-31, 40-44, 46, 53-55, 65; Exhibit 2D70 (Ndamage's Personal Information Sheet).
[1609] In addition to the evidence summarised above, Defence Witnesses André Ntagerura and Emmanuel Ndindabahizi also confirmed the occurrence of the 18 April 1994 meeting in Murambi. They did not attend and Ntagerura was unaware of Kambanda berating *bourgmestres* or other officials who refused to support the *Interahamwe*. *See* Ntagerura, T. 20 February 2007 pp. 35-36; Ndindabahizi, T. 2 May 2007 pp. 24-25.

1131. The first critical question for the Chamber is whether Interim Government ministers used the gathering as an opportunity to supervise and support killings. In particular, it must determine if Mugenzi expressed his support for killings committed by the *Interahamwe* and asked that local officials opposed to them be fired.[1610] The Chamber must next consider whether the subsequent killing or removal of Gitarama officials resulted from the gathering or were a natural extension of it.[1611] Finally, the Chamber will consider whether its assessment of the evidence has been impacted by the Prosecution's failure to disclose exculpatory material relating to this allegation (I.10). The Chamber shall address these matters in turn.

(i) Meeting at Murambi, 18 April 1994

1132. Before assessing the merits of the Prosecution case, the Chamber will first evaluate the context in which Fidèle Uwizeye and Witness GKJ testified. As local government officials situated in Nyamabuye commune, Uwizeye and Witness GKJ were well-placed to observe the activities of the Interim Government once established at Murambi Centre. Furthermore, there is no dispute that Uwizeye and Witness GKJ attended the 18 April 1994 meetings.

1133. Turning to the context in which the witnesses testified, the Chamber observes that the Prosecution has presented evidence that Uwizeye attended a rally with members of the Interim Government where a speaker discussed the enemy, which was understood to be Tutsis and Hutus who opposed the government (II.8.4).[1612] There is other evidence that Uwizeye supported roadblocks for the purposes of ensuring security (discussed below). However, Uwizeye was not charged with any genocide-related crime and had no pending criminal proceedings against him at the time of his testimony. In the Chamber's view, these circumstances, as well as Uwizeye's position within the government during the genocide, do not raise concerns about him being an accomplice witness who might have an interest in deflecting responsibility for crimes onto the Accused in this proceeding. The Chamber does not consider that his position within the Rwandan government after the genocide necessarily renders his evidence partial or unreliable.

1134. Turning to Witness GKJ, Rwandan authorities were investigating him for his involvement in crimes committed in Gitarama at the time of his testimony. Documents pertaining to criminal investigations indicate that former Interim Government minister Callixte Nzabonimana was an alleged co-perpetrator.[1613] These circumstances warrant that the Chamber consider his evidence with appropriate caution.[1614]

1135. The Defence has raised further concerns about the general credibility of Uwizeye and Witness GKJ due to their arrests in Rwanda after having testified in the Tribunal's *Akayesu* trial. In the Defence's view, their evidence has necessarily been tainted by the harsh treatment received in Rwanda and cannot be trusted.

[1610] Indictment, paras. 6.54-6.55.
[1611] Indictment, paras. 6.18, 6.55.
[1612] *See also* Des Forges, T. 8 June 2005 p. 22 (concerning unrelated alleged criminal conduct).
[1613] *See* Witness GKJ, T. 27 September 2004 pp. 22-23; Exhibit 2D32(K & E) (Witness GKJ's *Pro Justicia* Statement, 17 December 1999) p. 1.
[1614] The Defence has also raised challenges about Witness GKJ's testimony pertaining to the nature of the charges against him. *See, e.g.*, Mugenzi Closing Brief, paras. 1340-1342. The Chamber does not consider that the arguments highlight evidence that raise concerns about his general reliability.

1136. With respect to Uwizeye, he testified for the Defence in the *Akayesu* proceeding in March 1998.[1615] Within two months, starting on 1 May 1998, he was imprisoned in Rwanda and remained in detention until 28 January 2000. Amnesty International reported that during Uwizeye's detention he was criticised for testifying in the *Akayesu* proceeding. Similarly, the International Crisis Group stated that reliable information indicated Uwizeye was incarcerated as retaliation for participating in that trial.[1616] Indeed, Uwizeye's March 2001 statement to Tribunal investigators reflects that he had requested that they inform the Rwandan Prosecutor General that he was cooperating with the Tribunal.[1617]

1137. Uwizeye denied that his arrest was a result of having testified in the *Akayesu* trial and that he was questioned about his participation in it while detained. Rather, he was detained on charges of interfering with national security.[1618] He further denied that his cooperation with the Tribunal investigators and his testimony were influenced by a desire to avoid punishment by the Rwandan authorities.[1619]

1138. Similar events followed Witness GKJ's participation in the *Akayesu* trial.[1620] He appeared as a Prosecution witness in January 1997, but provided evidence that the Trial Chamber considered exculpatory in relation to allegations against the accused in that proceeding.[1621] Witness GKJ was subsequently arrested by Rwandan authorities in mid-March 1997 (around six weeks after his testimony). He remained incarcerated when testifying before this Chamber in 2004, awaiting formal charges and trial.[1622]

1139. In this regard, the Defence confronted Witness GKJ with the proposition that his treatment in Rwanda motivated him to level allegations against the Accused in this proceeding. He denied that his testimony was motivated by a desire to obtain leniency from

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[1615] During this proceeding, Uwizeye testified that he had not been aware that he had appeared in the *Akayesu* trial as a Defence witness. Uwizeye, T. 12 April 2005 pp. 66-68, 70-72, 74-75, 77-78; T. 13 April 2005 p. 15; T. 15 April 2005 pp. 32-33; T. 14 April 2008 pp. 12-14, 72. The Chamber observes that he was told before and during his testimony in the *Akayesu* case that he had been called to testify by the Defence. However, the proceeding reflects that the Prosecution had contacted and interviewed him as well and that the Defence had not taken a statement from him or met with him in Arusha before his testimony began. *See* Exhibit C3 (Excerpts of *Akayesu* Trial Transcripts, 3 March 1998) pp. 6-10, 126. His confusion about whether he was called to offer evidence in support of the Defence is understandable, particularly in light of the fact that the Presiding Judge corrected Uwizeye by telling him he was not called to testify "for the defence but by the defence" and his own comments during that trial that he was hoping to testify "about this government more than the case of Akayesu". Exhibit C3 (Excerpts of *Akayesu* Trial Transcripts, 3 March 1998) pp. 125-126.

[1616] Uwizeye, T. 13 April 2005 pp. 15-16; T. 15 April 2005 pp. 33-35; T. 19 April 2005 pp. 67, 70-71; T. 14 April 2008 pp. 72-73; Exhibit 1D63 (Amnesty International Report: "Rwanda, The Troubled Course of Justice, April 2000") p. 2 ("[Uwizeye] was also criticized for testifying in the trial of Jean-Paul Akayesu by the ICTR in Arusha"). The Report of the International Crisis Group was referenced at T. 19 April 2005 pp. 70-71.

[1617] Uwizeye, T. 14 April 2008 pp. 76, 79.

[1618] Uwizeye, T. 11 April 2005 pp. 78-79; T. 13 April 2005 pp. 15-17; T. 15 April 2005 pp. 34, 37-41; T. 19 April 2005 pp. 68, 70-71; T. 14 April 2008 pp. 73, 77-79.

[1619] Uwizeye, T. 13 April 2005 p. 17; T. 15 April 2005 p. 42; T. 14 April 2008 pp. 73, 76-79.

[1620] Notably, in July 1994, Witness GKJ was detained in Gitarama, and like other former local officials, subjected to a week of interrogation concerning the genocide. He was cleared after a week. *See* Witness GKJ, T. 24 September 2004 pp. 17-20.

[1621] *See* Witness GKJ, T. 24 September 2004 pp. 14, 21-22, 26; T. 28 September 2004 pp. 30-32.

[1622] *See* Witness GKJ, T. 22 September 2004 p. 44; T. 24 September 2004 pp. 13, 17, 19-20, 28, 31-32, 34-35; T. 27 September 2004 pp. 22-27, 54-56; T. 28 September 2004 pp. 34-35. In 2003, Witness GKJ was briefly released to Ingando re-education camp in 2003. T. 24 September 2004 pp. 19, 28; T. 27 September 2004 pp. 55-56; T. 28 September 2004 pp. 35-37.

the Rwandan authorities or that he had been sent to testify against the Accused on behalf of the Rwandan government.[1623]

1140. The incarceration histories of Uwizeye and Witness GKJ in Rwanda raise questions about whether their arrests were intended to punish them for providing testimony that was viewed as favourable to Jean-Paul Akayesu. However, and of greater significance, the Chamber has no reasonable concerns that their testimonies in this proceeding have been tainted by their detentions. At the outset, they were not incarcerated together, raising considerable doubts about whether they could have colluded to fabricate evidence against the Accused.[1624]

1141. Moreover, Uwizeye provided a statement to Jean-Paul Akayesu's counsel on 4 March 1998, nearly two months *prior* to his arrest, which materially corresponds with his testimony before this Chamber. Specifically, he discussed the 18 April 1994 meeting and Mugenzi's threat that local officials who were "incapable of following the political line of the government should be removed".[1625] Similarly, in May 1996, nearly a year *before* Witness GKJ's incarceration, Witness GKJ referred to Mugenzi making statements at a gathering with Interim Government ministers, the Gitarama prefect and *bourgmestres* in Murambi that were contrary to a message of pacification and ending killings in Gitarama.[1626] Consequently, whatever ulterior interest Uwizeye and Witness GKJ might have had in testifying in this proceeding, the Chamber has no reasonable concerns that their incarceration histories reflect that their evidence in this proceeding has been fabricated.[1627]

1142. The Chamber further recalls that Uwizeye and Witness GKJ were recalled for further questioning on Radio Rwanda broadcasts in which they were interviewed. In this context, Uwizeye proved to be a problematic witness. During his initial appearance before the

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[1623] Witness GKJ, T. 27 September 2004 p. 23.

[1624] Witness GKJ, T. 24 September 2004 pp. 13, 21, 23 (testifying that the last time he saw Uwizeye was in Kigali in 1996, prior to the witness's incarceration; heard that Uwizeye had been incarcerated in Kimironko prison from detainees transferred from there); Uwizeye, T. 13 April 2005 pp. 15-16; T. 15 April 2005 pp. 33-35 (was initially detained in the Presidential Guard barracks in Kimihurura for three months before being taken to Remera prison); *see also* Exhibit 1D63 (Amnesty International Report: "Rwanda, The Troubled Course of Justice, April 2000") p. 2 (Uwizeye was initially detained in Remera, Kigali on 1 May 1998, moved to Kimihurura, Kigali and then to Kimironko prision).

[1625] Exhibit 2D45(E) (Uwizeye's Statement to Akayesu's Counsel, 4 March 1998) pp. 2-3.

[1626] Exhibit 2D28(E & F) (Witness GKJ's Statements of 22 May 1996 and 19 August 2003) pp. 3-4 ("Some other members of the Government spoke including, I remember, Mugenzi and Karemera. Their speeches did not go along the lines to pacify or stop the killings. They rather criticized the Prefect and the Bourgmestres of Gitarama for opposing the expansion of the MRND in our prefecture.").

[1627] In so finding, the Chamber observes that Witness GKJ's May 1996 statement is considerably less detailed about the 18 April 1994 meeting than a subsequent statement, taken in August 2003, after he had been detained and gone to re-education camp. *Compare* Exhibit 2D28(E & F) (Witness GKJ's Statements of 22 May 1996 and 19 August 2003) pp. 2-4, *and* 9-11. Indeed, when questioned about why he could not recall the date of this meeting in May 1996 but remembered it during his interview in August 2003, the witness explained that conversations with fellow detainees facilitated his ability to remember that date and others. Witness GKJ, T. 28 September 2003 p. 37. The Chamber is not concerned by the evolution of information Witness GKJ provided to Tribunal investigators between 1996 and 2003. The differences in precision between the 1996 and 2003 statements about the ministers' conduct during the 18 April 1994 meeting resulted from the fact that the first statement was elicited during an investigation of *Bourgmestre* Jean-Paul Akayesu's conduct during the genocide and not that of Interim Government ministers. Furthermore, while the witness admitted that he was later able to recall dates of meetings after conversing with others about the event, his descriptions about the nature of the 18 April 1994 meeting in his pre-incarceration and incarceration statements did not shift but are fundamentally consistent.

Chamber, he denied that he had been interviewed by Gaspard Rwakana on Radio Rwanda in early June 1994. When a tape of the interview was played for him, he insisted that he did not recognise his voice or others on the tape and suggested that it was a "forgery". However, Uwizeye subsequently acknowledged the authenticity of a recording of the same interview during his testimony in the trial of *Karemera et al.* on 27 July 2007.[1628] The Chamber recalled him for further cross-examination to discuss this contradiction, as well as the contents of the interview.[1629]

1143. With respect to his failure to originally acknowledge before this Chamber that the Radio Rwanda interview had taken place, Uwizeye explained that he recognised his voice in the *Karemera et al.* trial because the recording played was clearer than the recording played before this Chamber.[1630] The reasonableness of Uwizeye's explanation is mitigated by the fact that he also denied the contents of the words he spoke on it. Indeed, he rejected the assertion that he had ever been interviewed by Gaspard Rwakana during the war, and claimed that the interview could not have taken place because he had sought refuge at Buramaba Health Centre at the time.[1631]

1144. The Chamber accepts that Uwizeye could have forgotten that he gave an interview on Radio Rwanda when testifying before this Chamber nearly 11 years later.[1632] In particular, the violence that engulfed the country could have rendered this incident insignificant. Furthermore, Uwizeye indicated that the circumstances surrounding this meeting were relatively impromptu.[1633] Witness GKJ's testimony also suggests that Uwizeye's interview with Rwakana arose in reaction to a public meeting and an evolving need to calm the public.[1634]

1145. The Chamber next considers alleged contradictions between the contents or statements Uwizeye made during that interview and his testimony before the Chamber. For example, the 7 June 1994 Radio Rwanda broadcast unequivocally indicates that Uwizeye was Gitarama's prefect at that time. Nothing in Uwizeye's comments during the interview suggest that he had lost the powers of his post. This is in contrast to his testimony that, after 18 April 1994, he no longer effectively functioned as Gitarama's prefect, that he was on the run and hiding from the government perpetrating the massacres, and that Jean-Damascène Ukulikiyeyezu, Uwizeye's eventual replacement in June 1994, had acquired parallel powers and acted as Gitarama's *de facto* prefect before Uwizeye was officially removed around 10 June 1994.[1635]

[1628] Uwizeye, T. 11 April 2005 pp. 81-82, T. 12 April 2005 pp. 38-40 (denying his involvement in the 7 June 1994 Radio Rwanda interview). *See also* Decision on Justin Mugenzi's Motion for the Recall of Prosecution Witness Fidèle Uwizye for Further Cross Examination (TC), 9 October 2007, para. 3, fn. 8 *citing The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, T. 27 July 2007 p. 7.
[1629] *See* Decision on Justin Mugenzi's Motion for the Recall of Prosecution Witness Fidèle Uwizye for Further Cross Examination (TC), 9 October 2007.
[1630] Uwizeye, T. 14 April 2008 pp. 16-17; T. 15 April 2008 pp. 29-32. The recording from the *Karemera et al.* trial was not played before this Chamber.
[1631] Uwizeye, T. 11 April 2005 pp. 81-82; T. 12 April 2005 pp. 38-40.
[1632] Uwizeye, T. 15 April 2008 pp. 13-14.
[1633] *See, e.g.*, Uwizeye, T. 14 April 2008 p. 28.
[1634] Witness GKJ, T. 25 May 2005 pp. 8, 18, 29, 39-40.
[1635] Uwizeye, T. 6 April 2005 pp. 55-57, 62, 69; T. 8 April 2005 pp. 38-42; T. 11 April 2005 pp. 72-73, 79-81; T. 12 April 2005 p. 40; T. 19 April 2005 pp. 45-46, 74-76; T. 14 April 2008 pp. 25-27; T. 15 April 2008 pp. 23-25.

1146. When confronted with the inconsistency between his testimony and the broadcast, Uwizeye explained that he had not yet been officially removed at the time of the interview. He insisted, however, that he was prefect in name only and had been since 10 May 1994, when Ndindabahizi told him that he would be replaced.[1636] However, Ndindabahizi denied he informed Uwizeye of his dismissal.[1637] Furthermore, Defence Witness Martin Ndamage testified that Uwizeye continued to act as prefect after 18 April 1994. Notably, Uwizeye presided over Ndamage's installation ceremony as *bourgmestre* of Mugina commune on 22 May 1994, and issued him a letter attesting that Ndamage had obtained that position the same day.[1638] Ndamage further observed Uwizeye acting in his capacity as the Gitarama prefect on 2 June 1994 during a meeting attended by local officials, Édouard Karemera and Prime Minister Jean Kambanda.[1639]

1147. Another example of alleged inconsistencies between the June 1994 broadcast and Uwizeye's testimony concerns his position towards roadblocks. During the interview, Uwizeye praised the effectiveness of barriers in capturing real *Inkotanyi* "carrying guns", and implied – through the use of the Kinyarwanda word "*kweshizeho*", the equivalent of "we" in English – that he had been involved in establishing them. Much of his original testimony before this Chamber, however, concerned his efforts to work against their establishment because they led to the killings of Tutsis.[1640] Indeed, he stated that no legal roadblocks were ever set up and that had he made any radio broadcasts, he would have requested that barriers be removed.[1641]

[1636] Uwizeye, T. 6 April 2005 p. 55; T. 8 April 2005 pp. 39, 41-42; T. 11 April 2005 pp. 72-73, 79-80; T. 19 April 2005 pp. 45-46, 76; T. 14 April 2008 pp. 25-27, 63-64.
[1637] Ndindabahizi, T. 30 April 2007 pp. 44, 71-72; T. 3 May 2007 p. 34.
[1638] Ndamage, T. 21 March 2006 pp. 31, 33-34, 48.
[1639] Ndamage, T. 21 March 2006 pp. 33-35, 48. *See also* Ndamage, T. 21 March 2006 p. 45 (Fidèle Uwizeye ceased to be prefet of Gitarama around the middle of June). *See also* Witness WFQ3, T. 29 January 2007 pp. 27-28 (Uwizeye was overwhelmed by April 1994 and stopped working as prefect because he was powerless; however, Uwizeye never said that he had been warned about being dismissed as prefect); Witness GKJ, T. 25 May 2005 pp. 27, 40 (it was possible that Uwizeye was fired as prefect in May and not notified until later in June).
[1640] Exhibit 2D44(K & E) (Radio Rwanda Broadcast, 7 June 1994) p. 14. *See, e.g.*, Uwizeye, T. 6 April 2005 pp. 43, 51, 55; T. 7 April 2005 pp. 59, 66-67; T. 8 April 2005 pp. 11-13, 15, 48; T. 11 April 2005 pp. 24, 72-73, 77, 80-81; T. 13 April 2005 p. 48; T. 18 April 2005 pp. 39-40.
[1641] *See* Uwizeye, T. 8 April 2005 p. 15 ("JUDGE SHORT: Did ... you give evidence about any occasion, when it became necessary to set up a legal roadblock? MADAM PRESIDENT: Whether any legal roadblock was ever set up? THE WITNESS: None was set up. No roadblock was ever set up following the no-more [sic] legal procedure. I explained and I said that I had ordered that those roadblocks should not be set up because I knew that the objective was to separate – to create conflict among Rwandans, which might lead to killings. Even after the plane crash on the 8th of April, during the bourgmestres meeting, I told the bourgmestres that no roadblocks should be set up in Gitarama, so that Tutsis are not identified in order to be killed. So, no roadblocks was [sic] ever legally set up. Even Captain Rusigariye, who set up a roadblock, I reported him to the authorities. And, when his superiors did not wish to transfer him, I asked for (inaudible) assistance and she had him transferred to another préfecture."); Uwizeye, T. 11 April 2005 pp. 72 ("Q. ... Mr. Uwizeye, ... I think you have us told [sic] this clearly that your attitude to the setting up of roadblocks in your préfecture was one of ... you were dead against the idea because you thought that ... killings were happening yes? A. That would stop the killings from taking place."), 73 ("A. Even after that between – from the 16th, up to even beyond the 18th of April, I got discouraged on the 10th of May, that is when a meeting had been held and that it had been decided that I should be dismissed. So I took my own precaution and I tried to hide, but in answer to your question, because you were saying that if I had been able to make a radio broadcast that I would have said that roadblocks should be removed. If I had the powers, if I had been able, I would have said that, yes.").

1148. When confronted with the broadcast on recall, Uwizeye sought to challenge the authenticity of the recording, the transcript and its accuracy. He then insisted that what he had said during the interview was "exaggerated", and that the truth was that no *Inkotanyi* soldiers were arrested at roadblocks, which served no purpose other than killing Tutsis. He denied that he had been involved in establishing roadblocks and explained that his use of "we" in reference to the establishment of roadblocks was "just a way of speaking in answering".[1642]

1149. Notably, Prosecution Witness GTD testified that Prefect "Fidel Uwizeyimana" authorised the establishment of a roadblock, which was close to where members of government were staying "to ensure security".[1643] When confronted with this information, Uwizeye denied having given such a written authorisation.[1644] The Chamber observes that a 19 May 1994 Radio Rwanda broadcast by Gaspard Rwakana provides instructions about the administration of roadblocks purportedly on behalf of Uwizeye.[1645] Uwizeye denied having given such a message.[1646]

1150. The Chamber considers that there is no direct evidence that Uwizeye participated in crimes at roadblocks. In addition to Uwizeye's own testimony, Witness GKJ portrayed Uwizeye as attempting to quell violence during the genocide.[1647] Notwithstanding, the Chamber observes that Uwizeye's testimony reflecting categorical opposition to *all* roadblocks is inconsistent with his statements on Radio Rwanda in 1994.

1151. Similarly, Uwizeye's statements regarding guns during the June 1994 Radio Rwanda interview contradict his original testimony before this Chamber. In the interview, he praised the Interim Government's efforts at providing firearms for the people, whereas during his original testimony he had been critical of such actions.[1648] When recalled before the Chamber, Uwizeye explained that he disagreed with the way guns were used, or what he called the consequences of distribution, and also suggested that he "did not know at the time [of the interview] the extent of the genocide nationwide".[1649]

1152. Uwizeye's general comments about the discrepancies between his original testimony and the statements made in the June 1994 Radio Rwanda interview raise concerns about the completeness of his testimony, particularly when it involves issues of his own conduct in 1994. He also testified that the statements in the interview were "exaggerations" or "sensationalism". They were part of a "narrative". At the time, he was scared and trying to

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[1642] Uwizeye, T. 14 April 2008 pp. 42-43, 49-52; T. 15 April 2008 pp. 37-38.
[1643] Witness GTD, T. 5 July 2004 p. 6. The Chamber is satisfied that Witness GTD was referring to Fidèle Uwizeye.
[1644] Uwizeye, T. 18 April 2005 pp. 39-41.
[1645] Exhibit 2D43 (Radio Rwanda Broadcast, 19 May 1994).
[1646] Uwizeye, T. 11 April 2005 pp. 76-77.
[1647] *See, e.g.*, Witness GKJ, T. 23 September 2004 pp. 16-17 (after the President's plane crash of 6 April 1994, the prefect met the *bourgmestres* twice and told them they should do their best and prevent killings based on either party or ethnic lines in their area; those instructions were immediately implemented and no killings took place during that time), 19, 21-23 (it was the prefect who organised a meeting and had the idea of seeking assistance from the government to ask the government to tell the people who had come with it to stop their "activities").
[1648] *See, e.g.*, Uwizeye, T. 6 April 2005 p. 55; T. 8 April 2005 pp. 11-12, 39-40, 48; T. 11 April 2005 pp. 6-7.
[1649] Uwizeye, T. 14 April 2008 p. 58.

survive. He was afraid that if he had said otherwise he could have been killed. His objective was to ensure that the population remained calm and stayed at home.[1650]

1153. Turning to Witness GKJ, he was also recalled on the basis of an interview he gave to Radio Rwanda in 1994.[1651] Dissonance exists between his testimony before this Chamber and his statements in that broadcast. Notably, the thrust of his evidence concerning the 18 April 1994 meeting reflects that certain members of the Interim Government, including Mugenzi, sought to undercut resistance to ethnically targeted violence. However, in his 1994 Radio Rwanda interview, the witness stated the population's support of "the *Abatabazi* government" and the hope that it would "rescue the country". Similarly, he praised "the government led by Jean Kambanda" for having "managed to halt killings among civilians".[1652] The witness explained that these comments, made towards the end of the war, were an attempt to calm the population and prevent them from attacking Tutsi refugees in Gitarama. Instead, they should support the army in fighting the RPF.[1653]

1154. In the Chamber's view, the statements made by Uwizeye and Witness GKJ on Radio Rwanda may suggest that at times they were aligned with the efforts of the Interim Government once in Gitarama in 1994. Consequently, Uwizeye and Witness GKJ may have used their appearances in this proceeding to distance themselves from these statements. With respect to Witness GKJ, his testimony provided him with an opportunity to shift blame related to his pending criminal case to national government ministers present in the region that he governed, for the crimes that occurred there. In this regard, the Chamber has concerns about the completeness of their accounts, particularly as it relates to their own conduct in 1994. Their evidence, and in particular Witness GKJ's testimony, must be viewed with appropriate caution. Notwithstanding, the Chamber is not of the opinion that these issues necessarily impugn their observations and evaluations of the conduct of Interim Government ministers in Gitarama during the genocide.

1155. The Defence also confronted Witness GKJ with his prior testimony in the *Akayesu* trial concerning the 18 April 1994 meeting in Murambi, which contained no reference to Mugenzi speaking. In particular, Witness GKJ testified that after Kambanda gave his speech, "they … responded in a threatening way by saying that they knew very well that some of the commune leaders were *Inkotanyi* accomplices, and furthermore, if these people continued to work in this manner, there would be very serious consequences for them". When asked in that proceeding who "they" included, the witness clarified that the term meant "*Interahamwe* ministers who were part of the government". Asked to provide further clarification, he stated "ministers who were members of the MRND party and who were in favor of killing".[1654]

[1650] Uwizeye, T. 14 April 2008 pp. 57-60; T. 15 April 2008 p. 38. Uwizeye defined a narrative as "something you utter, mixing it with what you heard, what you read, what is true and what is not quite true. A narrative has no scientific base or an analysis and it doesn't contain any documentation in the form of a report". T. 14 April 2008 p. 60.

[1651] Decision on Prosper Mugiraneza's Motion to Order a Witness to Be Returned for Further Cross Examination or in the Alternative to Strike His Testimony based upon Late Disclosure of Rule 68 Material (TC), 6 May 2005.

[1652] Exhibit 2D44(K & E) (Radio Rwanda Broadcast, 7 June 1994) p. 6. *See also* Witness GKJ, T. 25 May 2005 pp. 8-9, 11-12, 17-18 (confirming that the transcript of the broadcast substantially represented the statements he provided on Radio Rwanda); Mugenzi, T. 9 November 2005 pp. 64-65 (affirming Witness GKJ's statement about the broadcast on Radio Rwanda).

[1653] Witness GKJ, T. 25 May 2005 pp. 18-19.

[1654] Witness GKJ, T. 27 September 2004 pp. 42-44.

1156. When confronted in this trial with his repeated failure to mention Mugenzi specifically, the witness explained that he had used "*Interahamwe* ministers" as a short-hand for people who acted like militia members. Although he further clarified that these ministers were MRND members – which would exclude Mugenzi (who belonged to the PL) – he noted that he intended to refer to persons who acted like *Interahamwe,* which included Mugenzi. The witness further observed that he did not mention any minister by name.[1655]

1157. The Chamber considers Witness GKJ's explanations reasonable and compelling. His failure to expressly identify Mugenzi by name or *de jure* political association does not render his prior testimony necessarily inconsistent with his evidence before this Chamber. Indeed, his testimony in this proceeding reflects that he observed Mugenzi making statements in support of the *Interahamwe*. As observed by the witness, he was not asked the particular names of the ministers to whom he was generally referring in the prior proceeding. As noted earlier, Witness GKJ consistently described Mugenzi threatening local officials during this meeting in his prior statements to Tribunal investigators.[1656] The omission during his *Akayesu* trial is explained by the failure to ask Witness GKJ the names of the ministers who spoke.

1158. Having considered the general credibility issues pertaining to Uwizeye and Witness GKJ as they relate to the 18 April 1994 meeting, the Chamber will now review their testimonies in the context of the Defence evidence. Uwizeye, Mugenzi and Mugiraneza testified that Kambanda's speech during the 18 April 1994 meeting was similar to the one he delivered at the 11 April prefects' meeting in Kigali (II.7.5). According to Uwizeye and Witness GKJ, the Prime Minister failed to address specific complaints raised at the gathering. Witness GKJ further specified that Kambanda delivered a prepared speech that addressed civil defence, training people to use firearms, patrols and roadblocks. Both Uwizeye and Witness GKJ did not consider Kambanda's speech to be particularly relevant.[1657]

1159. The Chamber accepts that Kambanda delivered a prepared speech at the meeting that was consistent with his speech of 11 April 1994. Witness GKJ's testimony that Kambanda spoke of training people in the use of firearms, night patrols and roadblocks finds limited corroboration. Notably, Mugiraneza testified that Kambanda issued instructions that roadblocks recognised by commune and prefecture authorities should remain.[1658] While the radio reports of the gathering include no specific reference to Kambanda discussing roadblocks or night patrols, they generally reflect that Kambanda "briefed participants on the measures taken by the government to maintain security" and refer to "participants" calling on each other "to contribute to the restoration of security".[1659]

1160. Prosecution Witness GKJ and Mugenzi testified that there were two meetings on 18 April 1994 and Mugiraneza testified that he had heard another was held after his departure following Kambanda's address. The Radio Rwanda reports by journalists Gaspard Rwakana and Hyacinthe Bicamumpaka corroborate that a second meeting occurred among members of the Interim Government, Gitarama *bourgmestres* and Prefect Fidèle Uwizeye.[1660] While Uwizeye did not specify that two meetings occurred, he was not specifically questioned on

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[1655] Witness GKJ, T. 27 September 2004 pp. 43-44.
[1656] Exhibit 2D28(E & F) (Witness GKJ's Statements of 22 May 1996 and 19 August 2003) pp. 4, 7, 10.
[1657] *See, e.g.*, Uwizeye, T. 6 April 2005 p. 53; T. 19 April 2005 pp. 42-43; Witness GKJ, T. 23 September 2004 pp. 24, 35; T. 27 September 2004 pp. 40, 45.
[1658] Mugiraneza, T. 27 May 2008 p. 18.
[1659] Exhibit 2D48 (Radio Rwanda Broadcast, 19 April 1994) pp. 3, 6.
[1660] Exhibit 2D48 (Radio Rwanda Broadcast, 19 April 1994) pp. 3, 7.

this point. In the Chamber's view, the omission is immaterial and the evidence unequivocally reflects that he attended both.

1161. Differences emerge between the testimonies of Uwizeye and Witness GKJ about this second gathering. While the two identify Édouard Karemera and Mugenzi speaking, Uwizeye testified that Mathieu Ngirumpatse also attended and spoke.[1661] Witness GKJ, on the other hand, did not refer to Ngirumpatse's presence.[1662] Furthermore, while Uwizeye testified that Callixte Nzabonimana was present, Witness GKJ is alone in stating that he addressed the gathering.[1663] Furthermore, Uwizeye generally described Mugenzi as threatening officials who did not understand the current politics with removal, while Witness GKJ attributes similar statements to Nzabonimana and Karemera.[1664]

1162. Given the significant passage of time, the Chamber considers these differences to be immaterial. The compelling evidence of Uwizeye and Witness GKJ portrays certain members of the Interim Government, as well as Édouard Karemera, threatening and intimidating local officials, while Mugenzi singled out local officials who he believed were opposing the government. The *Interahamwe* were portrayed as contributing to the defence of the nation, and those who opposed them were fighting against the government and would pay for these actions. Witness GKJ testified that Mugenzi told the attendees they should support *Interahamwe*, because the *Interahamwe* were supporting the interests of the people, and should stop supporting Tutsis, because they were enemies of the people.[1665] Uwizeye testified that Mugenzi adopted the remarks of Karemera and Ngirumpatse who had spoken before him and had criticised Uwizeye for opposing the MRND and *Interahamwe*, before concluding

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[1661] Uwizeye, T. 6 April 2005 pp. 53, 56, T. 15 April 2008 pp. 10-11 (referring to statements made by Ngirumpatse).
[1662] Witness GKJ, T. 23 September 2004 p. 25 (listing attendees without identifying Ngirumpatse).
[1663] Uwizeye, T. 15 April 2008 p. 10 (identifying Callixte Nzabonimana as present during the gathering); Witness GKJ, T. 23 September 2004 p. 36.
[1664] *Compare* Uwizeye, T. 6 April 2005 pp. 53 ("And then Mugenzi took the floor and said, 'Honourable Prime Minister, I think you are wasting your time. The préfet of Gitarama préfecture' – referring to me – 'and the bourgmestre of this commune,' he said, 'who do not understand the politics, the current politics should be removed'"), 56 ("When [Mugenzi] said that the préfet of this préfecture and the bourgmestres who don't understand the politics of today should be removed. He said it as a concluding part of the meeting ..."); T. 7 April 2005 p. 54 ("It's because Mugenzi said that this person who doesn't follow our policy should be removed, and it was done."); T. 15 April 2008 p. 11 ("Then Minister Mugenzi said, 'Please, Mr. Prime Minister, I request you, we are now wasting time. The préfet of this préfecture and the bourgmestres who do not understand the politics of the time we are in should be removed.'") *and* Witness GKJ, T. 23 September 2004 p. 36 ("I remember there was Callixte Nzabonimana, who further supported that idea, saying that some leaders were accomplices of *Inkotanyi* and if they were removed matters would improve a lot. I think Edouard Karemera also supported the same idea, saying they were going to screen the leaders to remove those who were supportive of *Inkotanyi*, who should be treated as enemies of the people of the government – of the country. Those are some of the speakers that I can recall.").
[1665] Witness GKJ, T. 23 September 2004 p. 36. *See also* Witness GKJ, T. 23 September 2004 p. 24 ("Mugenzi ... said that some new appointees were *Inkotanyi* collaborators and that we were in opposition, and that the best thing was to work with the *Interahamwe* and help the country."); T. 27 September 2004 pp. 40-41 ("Mugenzi intimidated us, saying ... we are collaborators of *Inkotanyi* and we are opposed to the government. He wished that we should, together, fight against *Inkotanyi* and their accomplices, and it was clear that the accomplices were Tutsis, and that is what I reproached Mugenzi. But other ministers also spoke in the same vein, saying we should, together, fight against *Inkotanyi* and their accomplices."), 46 ("Q. ... [I suggest] there was nothing in the words used by ministers at that meeting to encourage such actions ... ? A. I do not agree because Mugenzi himself stated that 'Any of you who continue to collaborate with the enemy instead of supporting *Interahamwe*, you are going to pay for it.'").

that those who did not follow government policy should be removed.[1666] Considered together, their evidence demonstrates that Mugenzi's remarks were intended to intimidate the local officials into supporting the *Interahamwe*, who were described as supporting the interests of the people and defending the nation.

1163. Turning to the Defence evidence, Mugenzi conceded that he spoke at this meeting and that he threatened that those who failed to follow the policy outlined by the Prime Minister should be removed. He, however, testified that it was the local government officials that supported revenge killings following Habyarimana's death and that his statements reflected that such actions were against the government's policy.[1667] The evidence of Mugiraneza indicates that he left with members of the general public after Kambanda's speech. He was not cross-examined by the Prosecution on this point. The Chamber accepts that his evidence raises the reasonable possibility he was not present during the second, smaller gathering. Uwizeye generally testified that Prosper Mugiraneza was present at the 18 April 1994 gathering. However, neither Uwizeye nor Witness GKJ described him as talking. Even considering Mugiraneza's evidence with suspicion, it raises the reasonable possibility that he left before the second gathering. Witness WFQ3 testified that he only heard Uwizeye speak during the 18 April 1994 gathering, which would reflect that he too left at the early stages of the meeting. Their evidence, consequently, is of limited probative value with regard to statements made during the second gathering.

1164. The Chamber also considers the Radio Rwanda broadcasts of journalists Hyacinthe Bicamumpaka and Gaspard Rwakana, who reported on the second gathering. Hyacinthe Bicamumpaka briefly noted that the *bourgmestres* of Gitarama met separately with the Prime

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[1666] Uwizeye, T. 6 April 2005 pp. 53 ("And then Mugenzi took the floor and said, 'Honourable Prime Minister, I think you are wasting your time. The préfet of Gitarama préfecture' – referring to me – "and the bourgmestre of this commune,' he said, 'who do not understand the politics, the current politics should be removed'. Everybody clapped, everybody applauded. He said that because one Karamera [sic] had said that the people called *Interahamwe*, the people were killing others here, were MDR, PSD, who were donning MRND uniforms, and they were on the side of the soldiers of the national army helping in the national fight. He was taking them as heroes who must exercise their duties to protect and defend the interests of the nation."), 56 ("When [Mugenzi] said that the préfet of this préfecture and the *bourgmestres* who don't understand the politics of today should be removed. He said it as a concluding part of the meeting, adding to what Karamera [sic] and Mathieu Ngirumpatse had said, saying that those activities I was fighting against, the *Interahamwe*, the politicians, and the soldiers, those are activities concerned with defending of [sic] the nation, and they were accusing me of stopping such activities. We could not come to any understanding, and that's why they concluded that, 'Since you don't understand what we are doing, you should leave.'"); T. 15 April 2008 p. 11 (after referring to statements by Karemera and Ngirumpatse in support of the *Interahamwe*, stated "Then Minister Mugenzi said, 'Please, Mr. Prime Minister, I request you, we are now wasting time. The préfet of this préfecture and the bourgmestres who do not understand the politics of the time we are in should be removed.'").

[1667] *See* Mugenzi, T. 9 November 2005 pp. 60 ("I agree, that ... I spoke in that meeting. And I spoke against the killings which were going on in some communes of Gitarama. And the bourgmestres thought ... that ... the government ... would appreciate that they were revenging the president who had died. That was the spirit they had. They thought that revenging was the good thing. I said: 'Come on, no, this is not what we want. Listen to the prime minister. Listen to the speech the prime minister has just made. The prime minister has outlined the government policy, this is what the government wants.' And I said: 'If you are not prepared to follow what the prime minister tells you – you better quit or we are going to dismiss him [sic]. We want you to apply the government policy and we don't have two policies, the prime minister has spoken.'"), 61 ("I said: 'The business of power is not of ... my type, we want you to protect the population [and] apply the government policy. And that is where we differ.' And at the end, when I told them that those who did not want to apply the government policy will be dismissed or they should resign and you probably remember, also, that they made other charges ...".).

Minister and "some members of the Government". After the meeting, Kambanda urged the *bourgmestres* to make every effort "to wipe out crime", and promised to pursue "national unity and reconciliation among all the people of Rwanda".[1668]

1165. Gaspard Rwakana's summary indicates that *bourgmestres* raised problems, some in regard to "disturbances", and that the government urged them to use their authority to get members of the population involved in maintaining security. Commune and sector officials were told "to ensure that those under their authority do not initiate attacks against one another".[1669] Expert Witness Eugène Shimamungu testified that the statements Rwakana reported were consistent with the several messages broadcast by the Interim Government aimed at restoring peace and maintaining unity.

1166. The Chamber observes that these journalists' reports, made a day later, are summaries rather than unedited transmissions of what was spoken at the gathering. Notably, coverage of the second meeting is considerably shorter and less detailed than with respect to the first meeting.[1670] In light of the compelling first-hand accounts of Uwizeye and Witness GKJ, these broadcasts, from the state-controlled radio station, do not raise doubts that Mugenzi singled out local officials who he believed were opposing the government and expressly called on those present to support the *Interahamwe*. It likewise does not raise doubts that the other prominent national figures who remained used the second gathering to intimidate the local officials and threaten to remove those who did not follow the government policy.[1671]

1167. Turning to the intentions behind the statements, the Chamber observes that neither Uwizeye nor Witness GKJ testified that Mugenzi, Karemera or any prominent official at the second gathering expressly called for the killing of Tutsis, although they understood this to be the message. Moreover, Mugenzi was well aware that *Interahamwe* were engaged in massacres at this time.[1672] While there is no express acceptance of this in his testimony, the

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[1668] Exhibit 2D48 (Radio Rwanda Broadcast, 19 April 1994) p. 7.
[1669] Exhibit 2D48 (Radio Rwanda Broadcast, 19 April 1994) pp. 3-4.
[1670] Mugenzi argues that the detailed nature of the transmission supports the likelihood that the reporters were present during the 18 April 1994 gatherings, bolstering the accuracy of their reports. Mugenzi Closing Brief, paras. 711-712. As noted above, the evidence indicates that Kambanda's speech was prepared, raising the possibility that the reporters were able to obtain a copy of it after the meeting and report on it in detail. Indeed, the possibility that the reporters did not attend either gathering and that they were forced to piece together what was said finds further support from the fact that the more private statements made to Gitarama's local officials received remarkably less coverage. Ultimately, the Chamber's conclusions would not be impacted if the reporters had attended both gatherings.
[1671] *See, e.g.*, Shimamungu, T. 17 May 2007 pp. 24-25, 31-32 (Radio Rwanda was a state-run radio station, it functioned to disseminate the government's propaganda and journalists who did not convey the desired message would be punished); Makeli, T. 24 October 2007 p. 32, T. 29 October 2007 p. 5 (Minister of Information Eliézer Niyitegeka was the boss of François Nsengiyumva, who controlled editorial content for Radio Rwanda); Witness AEI, T. 4 February 2004 p. 36 (Radio Rwanda was government-run); Ntagerura, T. 19 February 2007 p. 25 (the Minister of Information was in charge of Radio Rwanda); Witness CC-1, T. 31 October 2007 pp. 19, 21 (Radio Rwanda was state-run and differed from RTLM, for example, in that it did not broadcast "all the news").
[1672] Mugenzi, T. 28 November 2005 p. 10; T. 29 November 2005 pp. 33, 39, 41. *See also* Mugiraneza, T. 22 May 2008 pp. 6, 31, 36 (by the 9 April 1994 meeting of Interim Government ministers, the council of ministers were made aware that *Interahamwe* constituted the largest group among youth wings in the political parties engaged in killings at that time; it was being said that Tutsis were the ones being killed by *Interahamwe*); Mugiraneza, T. 4 June 2008 pp. 17-18 (could observe by 9 April that Tutsis were being killed as they were perceived to support the *Inkotanyi* although the Interim Government did not discuss why these persons were targeted); Bizimungu, T. 5 June 2007 pp. 26-29, 33-35 (during the 9 April cabinet meeting, the Interim

Chamber has no doubt that by 18 April 1994 Mugenzi knew that these assailants had been targeting and would kill Tutsi civilians.

1168. Specifically, that the defence of the nation *could* include a policy aimed at targeting Tutsi civilians within the context of this war had historical precedent.[1673] That civilian militia, including the *Interahamwe*, *would* engage in the killing of such persons is reflected in Mugenzi's knowledge that they were engaged in massacres in Kigali by this time and the fact that they had been repeatedly implicated in ethnic attacks since the recommencement of

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Government recognised that *Interahamwe* were among those committing killings in Kigali, and the cabinet "pursued" security "of citizens who were threatened by killings"); Bicamumpaka, T. 27 September 2007 pp. 13, 17-18 (by 9 April 1994 there were concerns that soldiers were inciting *Interahamwe* to kill); Ntamabyaliro, T. 21 August 2006 pp. 43-44 (during first cabinet meeting of Interim Government, they discussed killings in Kigali and learned that unruly soldiers and *Interahamwe* were contributing to the "deterioration of security"; it was not initially clear the ethnicity of those being killed, as, for example, Hutu ministers had been killed); Ndindabahizi, T. 2 May 2007 pp. 8-13, 16 (during the 9 April 1994 cabinet meeting, there were discussions about *Interahamwe* engaged in killings).

[1673] *See, e.g.*, Exhibit P101(E) (Expert Report of Alison Des Forges) pp. 3-4, 12-13 (massacres and killings by soldiers of the Tutsi-related *Hima* in Mutara occurred in October 1990 and was just the first of a series of attacks against Tutsi and Tutsi-related persons before 1994; attacks occurred in Kibilira in March 1992, December 1992 and January 1993, in the Bugesera region in January and February 1991 and in several communes of Kibuye in August 1992); Des Forges, T. 31 May 2005 p. 45, T. 16 June 2005 p. 54 (in October 1990 there was the first massacre of Tutsi civilians in the region called Kibilira, approximately 300 civilians were killed; substantial number of Tutsis and members of political opposition parties were killed in Bugesera in March 1992); Sebera, T. 19 October 2004 p. 41, T. 20 October 2004 p. 37, T. 25 October 2004 p. 34 (starting from 1959, when the *Inyenzi* attacked Rwanda, Tutsis were being killed on allegations that they were hiding *Inyenzi*; when the RPF-*Inkotanyi* attacked in 1990, Tutsis were detained, called accomplices and many were killed, especially the Tutsis in Kibilira in 1990 and Bugesera in 1992); Witness GAT, T. 25 February 2004 pp. 54-55, T. 26 February 2004 pp. 1-2, 20 (after the RPF's October 1990 attack, Tutsis, including the Bagogwe, were terrorised and killed in Bugesera, Murambi, as well as in Gisenyi, Kigali city and Byumba); Mugiraneza, T. 21 May 2008 pp. 26, 33, T. 27 May 2008 p. 52, T. 3 June 2008 pp. 56-58 (in certain regions of Rwanda, including Kibilira, inter-ethnic violence existed; those who perpetrated the killings used the attacks of the RPF-*Inkotanyi* as an excuse; when the RPF attacked and killed Hutus they felt it was necessary to get revenge by killing; Tutsis were killed in Bugesera in March 1992 by "extremists" although he was unable to identify them by political party; after the massacres in Kibilira and Bugesera disturbances occurred in Ruhengeri prefecture, in Kigali town and in Kibuye); Bicamumpaka, T. 17 September 2007 pp. 26-27, 49 (there was a climate of mistrust around the Bagogwe as they were accused of having sent their children to join the RPF; persons seeking revenge following RPF attacks killed the Bagogwe Tutsis in Kinyegi and Mukingo communes); Witness WZ10, T. 11 September 2006 pp. 17-18 (after the RPF attack in October 1990 Tutsis in Rwanda were being labelled as accomplices, and the witness recalled that the Bagogwe and Tutsis in Bugesera were killed); Strizek, T. 5 February 2007 pp. 63-64 (RPF invasions intensified anti-Tutsi feelings and led to them being attacked); Flaten, T. 20 February 2008 p. 50, T. 21 February 2008 pp. 15-16, 29-31, 39, 47 (in 1990 in Kibilira Hutus started killing about 300 of their Tutsi neighbours; by 1992 the Embassy had fears that an RPF invasion might lead to all Hutus attacking their Tutsi neighbours as evidenced by Hutus killing Tutsis in Kibilira and Bugesera; he was unaware if *Interahamwe* were involved in those attacks) *and* Exhibit 1D267 (Cable from US Embassy in Rwanda to Washington, D.C., July 1992) p. 2 ("4. More recently, leaders from all sides have begun to realise the more terrifying implications of an RPF march to Kigali. No matter how many Hutus the RPF may have representing it, it's perceived in Rwanda as essentially a Tutsi organization. Should this group break through to Kigali, all the fears of the Hutu majority, of again being subjected to slavery or feudal vassalage will be resurfaced. When threatened with the restoration of the feudal system, the Hutus on the *collines* will begin to eliminate their Tutsi neighbours. When this happened in October 1990 in Kibilira, Habyarimana sent an army unit in to stop it. When it happened in Bugesera in March 1992, the gendarmes eventually arrived to encourage the restoration of calm. This was done with an administration and communications in place. Neither of which would be the case should Kigali fall to the RPF.").

hostilities in 1990.[1674] When viewed in light of other evidence reflecting general knowledge that militias were killing Tutsis immediately after Juvénal Habyarimana's death, there is no doubt that Mugenzi knew *Interahamwe* had and would kill Tutsi civilians in defence of Rwandan sovereignty.[1675]

1169. Beyond the historical precedent of targeting Tutsi civilians when fighting the RPF, other circumstances surrounding this meeting support the conclusion that Mugenzi and other prominent national figures and members of the Interim Government present wanted to expand the war effort in this way. At the time of the meeting in question, the Interim Government had sustained significant military losses, having been deposed from Kigali by

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[1674] *See, e.g.*, Exhibit P101(E) (Expert Report of Alison Des Forges) pp. 12-13; Witness GAT, T. 25 February 2004 pp. 54-55 (after the RPF attack in October 1990 Tutsis and moderate Hutus considered accomplices were detained; the witness explained that militia members of the *Interahamwe* were being trained and were attacking different parts of the country; most of the Tutsis who were killed did not know about the RPF); Witness GJX, T. 21 June 2004 pp. 8-9, 11-13 (the *Interahamwe* descended and exterminated the Tutsis in Bugesera and Bigogwe in 1992); Betabura, T. 5 December 2005 p. 4 (there were massacres in Bugesera and Bigogwe for which the MRND youth wing was blamed; at Bugesera persons in opposition parties were massacred); Mugenzi, T. 1 November 2005 pp. 66, 69, T. 2 November 2005 pp. 1-2 (held a rally in March 1992 criticising the MRND regime as persons accused of "being accomplices of the *Inkotanyi*" were disappearing and were presumed to have been arbitrarily killed); Mugenzi, T. 7 November 2005 pp. 7-10 (translating his joint MDR, PSD and PL letter to the President, dated 24 May 1993, listing killings of thousands in attacks on the Bagogwe and in Bugesera, Kibuye, Gisenyi and Ruhengeri and implicating MRND and CDR militia in particular in terrorising several sectors throughout Kigali); Mugenzi, T. 17 November 2005 pp. 12-14 (persons killed in Bugesera were Tutsis and believed that they were targeted by extremist groups under the control of Habyarimana; in 1993 a regime of terror spread throughout the country with bombs exploding in schools, marketplaces and public roads, and all or some of these things were attributed to the RPF; in 1993, around the same time he became a cabinet minister, the RPF was destablising the country, it was launching a new war and trying to seize power, while still present in the country negotiating with the government to organise a peace deal); Ntamabyaliro, T. 22 August 2006 p. 41, T. 24 August 2006 pp. 26-27 (investigations were carried out and it was suspected that *Interahamwe* killed Tutsis in Bugesera in 1992); Ntamabyaliro, T. 24 August 2006 pp. 22-26, 60-61 (Hutus killed Tutsis/Bagogwe in Gisenyi and it was alleged that the *Interahamwe* were involved but she did not verify this information); Witness D, T. 16 June 2004 p. 49 (heard reports that *Interahamwe* were involved in Bugesera killings but testified that other youth wings could have been involved and blamed the *Interahamwe*); Witness WZ10, T. 11 September 2006 p. 18 (heard that *Interahamwe* killed and harassed persons before the 1994 war); Exhibit 3D22(F) (Letter from Dismas Nsengiyaremye to the President, 22 September 1992) p. 4 (reflecting the refusal of MRND members of government to investigate allegations regarding Bugesera and stating that since the *Interahamwe* is the only organisation that includes soldiers among it and is coordinated by police and politicians; this group should be called to order and it should be asked to refrain from terrorising members of the population).

[1675] *See, e.g.*, Mugiraneza, T. 26 May 2008 p. 53, T. 2 June 2008 pp. 46-47 (Tutsis were generally killed at roadblocks and by the 11 April 1994 meeting between the Prime Minister and prefects, the government, as a result, was calling for all roadblocks not under government control to be dismantled); *cf.* Mugiraneza, T. 26 May 2008 pp. 16, 18-19 (testifying that "we were all aware Tutsis were being massacred" when discussing the Prime Minister's 23 April 1994 warning to him that he was suspected of being a Tutsi). Indeed, UNAMIR observers were able to determine that violence committed by civilians targeted Tutsis and moderate Hutus. *See, e.g.*, Exhibit 3D85 (Cable from Booh-Booh to Annan, 9 April 1994) pp. 1 (*Interahamwe* militia are committing atrocities and some areas of Kigali are under its control), 2 (as many as thousands may be dead in Kigali as killings in government-controlled areas continue; victims are "mostly" Tutsis "or Hutus from the south or from non-MRND / CDR political parties"). *See also* Des Forges, T. 31 May 2005 pp. 69-70 ("The government that took power on April 9th knew the history of the country. They knew the attacks that had been carried out against Tutsi civilians, ordinary people, those people on the hills. They knew the propaganda base which had been laid equating Tutsi civilians with the military enemy … .").

the RPF advance.[1676] Furthermore, the Interim Government's attempts to negotiate a ceasefire with the RPF had been rebuffed.[1677] With the Interim Government losing on the military front, motivating civilian assailants to kill Tutsis was a war resource used by the Rwandan government that the RPF could not effectively combat. In this context, Mugenzi's statements in support of the *Interahamwe* and threats to local officials who posed obstacles to them during the 18 April 1994 meeting can only be interpreted as an express call for attacks on Tutsi civilians – and not just the RPF. The Prosecution evidence presented through Uwizeye and Witness GKJ reflects that they understood these words and the aim of this meeting to be a provocation towards killing Tutsis rather than instructions aimed at ending them.[1678]

[1676] *See, e.g.,* Mugenzi, T. 9 November 2005 p. 45 (on the morning of 12 April 1994, military authorities moved the government to Gitarama from the *Hôtel des Diplomates* in Kigali because the RPF shelling was so intense); Ndindabahizi, T. 1 May 2007 pp. 16-17, 70, T. 2 May 2007 p. 13 (the government was compelled to flee Kigali as the RPF had battalions surrounding the town and had infiltrated it); Ntagerura, T. 19 February 2007 p. 16 (the government was forced to flee Kigali on 12 April 1994 as the RPF "bombarded" the town); Bizimungu, T. 28 May 2007 p. 32 (General Ndindiliyimana ordered the government to leave Kigali as it would "fall into the hands of the RPF at any moment"); Bicamumpaka, T. 26 September 2007 p. 44, T. 27 September 2007 p. 5, T. 4 October 2007 p. 65 (by 12 April 1994, RPF bombardments on Kigali had made the *Hôtel des Diplomates* unsafe and reports from the army and gendarmerie indicated that it would be prudent to abandon Kigali); Witness WAA, T. 1 February 2007 p. 31 (witness was forced to leave Rumira on 12 April 1994 due to the RPF attack).

[1677] *See, e.g.*, Bizimungu, T. 28 May 2007 pp. 14, 34, 53-54, 62, T. 31 May 2007 pp. 55, 73 (discussing failed attempts to negotiate with the RPF in April 1994, who started to refuse to meet with and recognise members of the Rwandan government); Bicamumpaka, T. 13 August 2007 p. 44 (the RPF refused to recognise the Rwandan government and used massacres as a pretext in refusing to negotiate); Bicamumpaka, T. 26 September 2006 p. 26 (by 9 April 1994 the RPF was refusing to negotiate) *and* Exhibit 3D85 (Outgoing Cable from Booh-Booh to Annan, 9 April 1994) pp. 2-3 (despite requests for a ceasefire and the formation of a new transitional government with RPF membership, the RPF denounced the new government as puppets; the RPF rejected a deal with the military crisis committee, government forces or with "a new transitional government"); Bicamumpaka, T. 26 September 2006 p. 53 (referring to his 10 April 1994 letter) *and* Exhibit 3D91 (13 April 1994 Letter from the Permanent Representative of Rwanda to the United Nations and Annex of 10 April 1994 Letter from Bicamumpaka) p. 3 ("Secondly, the Crisis Committee requested, through UNAMIR, the signing of a cease-fire agreement in Kigali … . The proposal for the ceasefire agreement was rejected by the [RPF], which had begun the hostilities in the city of Kigali."); Bicamumpaka, T. 27 September 2007 p. 21 (discussing the RPF's refusal to enter into a cease-fire agreement) *and* Exhibit 3D94 (Situation Report from Jacques-Roger Booh-Booh, 12 April 1994) p. 2 ("Force comd tried to negotiate a cease fire but the RPF did not agree because this would include the recognition of the new President and the government.") *and* Exhibit 3D95 (Situation Report from Jacques-Roger Booh-Booh, 13 April 1994) p. 2 ("On 130000 April 94 RGF forwarded a letter to UNAMIR stating an unconditional ceasefire. The answer of the RPF is not yet known."); Bicamumpaka, T. 27 September 2007 pp. 29, 31 (referring to his *note verbale*, drafted on 14 April and signed the following day; noting in particular that the RPF continued to refuse to agree to a ceasefire) *and* Exhibit 3D98 (Bicamumpaka *Note Verbale*, 15 April 1994) p. 3 ("16. Faced with the war declaration launched by the RPF, the Rwandan Government for its part proposed a peaceful solution by way of dialogue. To that end, a ceasefire was proposed to the RPF. 17. The RPF continued its misinformation and disintoxication campaign of international public opinion deluding itself that it would take the capital by force and by so doing seize all power."); Bicamumpaka, T. 27 September 2007 pp. 33-35 (referring to a 17 April 1994 UNAMIR cable as reflecting the RPF's refusal to negotiate in good faith to a ceasefire) *and* Exhibit 3D99 (Outgoing Cable from Dallaire to Baril, 17 April 1994) p. 1 (referring to the difficulties of convincing the RPF to meet with the RGF and reticence to enter into negotiations).

[1678] Uwizeye, T. 6 April 2005 pp. 61-62 (Uwizeye left the meeting, realising that the government did not only not wish to stop the killings, but was in fact instigating what was happening in Gitarama). In the context of Uwizeye's testimony pertaining to killings in Gitarama generally, the Chamber is satisfied that Uwizeye was referring to the killing of Tutsi civilians and possibly those who opposed such killings when describing his interpretation of the message sent during the 18 April 1994 meeting. *See also* Witness GKJ, T. 23 September 2004 pp. 24 (the audience was scared when they left the meeting since they were told that "whoever was going

1170. In evaluating the evidence above, the Chamber has also considered evidence that, just over a week earlier, Mugenzi and the Interim Government had organised a convoy of *Interahamwe* leaders to circulate through Kigali to encourage people to stop killings in Kigali (II.7.3). In the Chamber's view, such action does not raise doubt in the present context. Given the significant number of killings and the international attention on them, the Kigali pacification tour is not necessarily a reflection of a genuine attempt to limit killings. As noted previously, circumstances surrounding the Interim Government's position in the war had significantly changed in the intervening week.

1171. Turning to Mugiraneza, the Chamber recalls that the evidence raises doubt about Mugiraneza's presence at the second meeting in Murambi on 18 April 1994. However, it has elsewhere found that Mugiraneza participated in the decision to remove Jean-Baptiste Habyalimana as the prefect of Butare to undermine the real and symbolic resistance he posed to the killing of Tutsis in Butare a day before this meeting (II.9.1). Likewise, he subsequently attended the installation ceremony of Habyalimana's replacement, where Sindikubwabo gave an inflammatory speech inciting the killing of Tutsis in Butare (II.9.2). In the Chamber's view, the instructions issued during this 18 April 1994 gathering are a natural extension of the previous decision to remove Habyalimana, as well as the ensuing incitement that occurred during the installation ceremony of his replacement. On this occasion, the acts reflect efforts aimed at furthering attacks on Tutsi civilians in Gitarama prefecture. Under the circumstances, the only reasonable inference is that Mugiraneza, although possibly absent when instructions were given to Gitarama's local officials, agreed to encouraging attacks on Tutsi civilians in that prefecture as well.

1172. The Chamber is not convinced, however, that the evidence establishes that Bizimungu and Bicamumpaka were involved in the planning or execution of the instructions given during the 18 April 1994 meeting given their absence from it. Indeed, Bizimungu had been in Zaire since 12 April and testified that there was no telephone communication into Rwanda while he was outside the country.[1679] Bicamumpaka only returned to Gitarama, arrving in Murambi around 1.00 a.m. on 18 April 1994. These issues, in light of the ambiguous Prosecution evidence, raise reasonable doubt that they were involved in these actions.

(ii) The Killing and Removal of Gitarama Officials

1173. Uwizeye and Witness GKJ generally testified that the meeting of 18 April 1994 marked a turning point for Gitarama. In their view, the policy set forth by those at the gathering further led to the killing or removal of local officials who refused to join the massacres. Other officials acquiesced to or even joined the attacks. The Chamber shall address these allegations in turn.

1174. There is no dispute that Callixte Ndagijimana, the *bourgmestre* of Mugina commune, was killed in April 1994. Uwizeye and Witness GKJ testified that this occurred on 21 April

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to help the Tutsi would be punished for that" and, indeed, their threats came to fruition), 25 ("I think the main purpose was to frighten us and tell us that the Tutsi were supposed to be persecuted and killed."), 36 (Mugenzi and others said that they should stop supporting Tutsis because they are enemies of the people); Witness GKJ, T. 27 September 2004 pp. 40-41 (when Mugenzi spoke about fighting the *Inkotanyi* and their accomplices, it was clear the accomplices were Tutsis), 46 (the witness disagreed that the words uttered by the ministers at the meeting did not encourage killings, as the meaning of Mugenzi's statement, those of "you who continue to collaborate with the enemy instead of supporting the *Interahamwe* ... are going to pay for it" was clear).

[1679] Bizimungu, T. 29 May 2007 p. 27; T. 4 June 2007 p. 44.

1994. Defence Witness Martin Ndamage confirmed Ndagijimana was killed but stated that it happened on 19 April 1994.

1175. According to Uwizeye, Ndagijimana had previously resisted attacks in his commune, and was ultimately killed at a roadblock.[1680] Witness GKJ learned of Ndagijimana's death from Uwizeye. Ndamage did not provide details concerning the murder. In the Chamber's view, the evidence is insufficiently precise to link Ndagijimana's killing to any of the Accused in this proceeding. While it may be inferred that it resulted from policies expressed during the 18 April 1994 meeting, the absence of any reliable description of the assailants and their connection to the Accused prevents the Chamber from making findings beyond reasonable doubt. This allegation is dismissed.

1176. The Chamber has also considered evidence that Uwizeye learned from a former *bourgmestre* that Callixte Nzabonimana, Major Ukulikiyeyezu, a captain from Ngoma in Butare named Hategekimana and Burundian refugees from Gisari had held a meeting where they plotted to kill the persons the Mugina commune *bourgmestre* was protecting. Afterwards, they were killed.[1681] This evidence is also hearsay, general and insufficiently reliable to allow for findings beyond reasonable doubt.

1177. Witness GKJ also testified that he had learned that *conseillers* for Musumba and Ruli sectors, as well as their family members, had been killed. Upon reaching Musumba sector, persons informed him that the assailants had been escorted by soldiers. Furthermore, Ruli sector was where the Interim Government was located. Witness GKJ's observations related to these attacks are second-hand and general in nature. The evidence is insufficiently precise to link them to the 18 April 1994 meeting or any conduct – act or omission – of the Accused. These allegations are dismissed.

1178. Similarly, Witness GKJ testified that the house and office of the Mbuye sector *conseiller* had been attacked. Upon arriving, he was informed by a former soldier that he had organised the attack there and that he was working for the "government". The evidence linking the attack to the "government" is hearsay and fails to directly implicate any of the Accused. Evidence about the attack is also general. This evidence cannot support findings of liability for any of the Accused beyond reasonable doubt. This allegation is also dismissed.

1179. Uwizeye testified that two regional sub-prefects and a sub-prefect for legal affairs, as well as *bourgmestres* for Musango and Kanyabanda communes, were dismissed. Notably, the Musango *bourgmestre* had resisted attacks and the dismissed sub-prefect for legal affairs was a member of the PL and aligned with the Landoald Ndasingwa faction of it. According to Uwizeye, the new sub-prefect for legal affairs, a CDR member called Antoine Rutegesha, led an attack at Kabgayi killing 11 persons two days after his appointment.

1180. With the exception of the dismissal of the Ruhango sub-prefect, which is discussed in detail elsewhere (II.8.3), Uwizeye's testimony about these dismissals are uncorroborated. They lack essential details linking the involvement of any of the Accused with respect to them. In so finding, the Chamber recalls the threats made during the 18 April 1994 meeting

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[1680] Uwizeye, T. 6 April 2005 p. 63. *See also* Uwizeye, T. 8 April 2005 p. 47; T. 11 April 2005 p. 5; T. 15 April 2008 p. 9; Witness WFQ3, T. 24 January 2007 p. 27, T. 26 January 2007 p. 5 (Uwizeye informed the witness that the Mugina commune *bourgmestre* was killed trying to prevent a massacre carried out by *Interahamwe* and Burundian refugees); Des Forges, T. 31 May 2005 p. 76 (generally testifying that the Interim Government allowed the killing of the *bourgmestre* of Mugina).
[1681] Uwizeye, T. 8 April 2005 p. 48.

that those who did not align themselves with the government's policy would be removed. Likewise, there is evidence that Interim Government ministers, including Mugenzi and Mugiraneza participated in the removal of other local officials around this time (II.9.1). Notwithstanding, the imprecision of this evidence cannot support findings beyond reasonable doubt.

1181. Moreover, it is not clear that Uwizeye's basis for knowledge about the involvement of Rutegesha – the new sub-prefect for legal affairs – in the Kabgayi attack is first-hand. This evidence is uncorroborated and fails to sufficiently link this event to the 18 April 1994 meeting or any conduct – act or omission – of the Accused. Allegations pertaining to the general dismissal of local Gitarama officials and the involvement of Rutegesha in killings are dismissed.

1182. Finally, Uwizeye testified that before the 18 April 1994 meeting, he was working well with about 14 of the 18 Gitarama *bourgmestres*. However, given the government's stated support for the genocide at the gathering, several of them "changed" and started leading or supporting the killings. He generally identified *bourgmestres* who had "changed" as the Taba commune *bourgmestre* (Jean-Paul Akayesu), Ntongwe commune *bourgmestre* ("Karoli"), as well as the *bourgmestres* for Mushubati, Kayenzi and Nybikenge communes. He specified that he had heard that the Kigoma *bourgmestre* led attacks against businessmen named Fidèle and Mupagase. Likewise, on an unspecified date, he heard that the Murama *bourgmestre* killed 10 Tutsis in the Buhanda marketplace and later participated in the killings of pastors at the Gitwe Adventist Centre.

1183. Evidence concerning the involvement of the *bourgmestres* in killings is either unsupported by reference to specific incidents or is hearsay. The Chamber is mindful that Gitarama *bourgmestres* have been convicted for crimes related to the genocide or have been incarcerated based on their purported involvement in them.[1682] As reflected by Defence submissions and evidence, there is no dispute that crimes in Gitarama occurred on a massive scale around this time.

1184. However, the Chamber cannot conclude that the only reasonable inference is that instructions to support the *Interahamwe* and threats of removal issued on 18 April 1994 had a causal link, much less a substantial causal impact, on specific acts of violence Uwizeye and Witness GKJ described. Indeed, these very Prosecution witnesses who testified about this event suggested that they did not subsequently participate in crimes notwithstanding having attended the meeting. Furthermore, much of the evidence about criminal conduct occurring outside of the Accused's presence in Gitarama frequently lacked details necessary to evaluate its reliability, particularly in determining the involvement of each individual Accused or alleged collective actions.[1683] The Prosecution's closing submissions provide no assistance in

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[1682] *See, e.g.*, Witness GKJ, T. 24 September 2004 p. 23 (Musambira and Masango *bourgmestres* were incarcerated).

[1683] In reaching this finding, the Chamber has also considered general evidence that killings increased after the arrival of the Interim Government in Gitarama, including the proliferation of roadblocks where Tutsis were killed. *See* Uwizeye, T. 6 April 2005 p. 30, T. 8 April 2005 pp. 7-8 (testified that problems in Gitarama occurred when the government, accompanied by soldiers and *Interahamwe*, came; thereafter the "activities" that had been carried out in Kigali, such as killings of Tutsis and opponents, came to Gitarama); Witness GKJ, T. 23 September 2004 pp. 14-18, 40, T. 24 September 2004 p. 40 (no killings took place in Gitarama prefecture between 7 and 12 April 1994, although they had begun in Kigali; the killings in Gitarama prefecture commenced shortly after the Interim Government and its entourage arrived in the prefecture from Kigali; after

this regard either. Consequently, the Chamber's ability to assess the Accused's culpability through inaction is seriously impaired and creates reasonable doubts.

(iii) Conclusions Based on the Record

1185. The Chamber finds it established that, on 18 April 1994, Fidèle Uwizeye, prefect of Gitarama, called a meeting of Gitarama *bourgmestres* and local officials in order to discuss security issues. On that day, Prime Minister Jean Kambanda interceded and required the local officials come to Murambi, where the Interim Government had installed itself, so that certain Interim Government ministers and prominent national figures could attend the meeting. Mugenzi, Mugiraneza and Jean Kambanda attended the meeting, as did Uwizeye, Witnesses GKJ and WFQ3 and other local officials and religious authorities from Gitarama. At that meeting, Uwizeye outlined security problems experienced in Gitarama prefecture and requested the intervention of the Interim Government to prevent further violence. In reply,

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the government moved to Gitarama on 18 April 1994, more roadblocks appeared in Gitarama, especially in the hills surrounding the government seat); Witness GKJ, T. 27 September 2004 pp. 35-36, 39-40 (as of 18 April 1994, those who had started the killings were the people who had come along with the government, including the Presidential Guards and the *Interahamwe*); Witness VF-1, T. 18 October 2007 pp. 8, 22 (upon the government's arrival in Murambi, roadblocks were set up by Murambi Centre together with special security plans to check the *cellules* around Murambi; these plans included night and house-to-house patrols); P2(179) (Rousseau Report) pp. 58-72 (detailing massacres in Gitarama prefecture, many of which are said to have taken place in April 1994 after the arrival of the Interim Government); Exhibit P2(82) (Nkole Report) p. 4 (95,728 victims in Gitarama prefecture). The Chamber has also considered the evidence of Witnesses GTD and Uwizeye that leaders encouraged the establishment and manning of roadblocks in Gitarama prefecture. *See* Witness GTD, T. 5 July 2004 pp. 6, 16-17 (testified that Fidèle Uwizeye authorised the setting up of the roadblocks; Ndindiliyimana visited the witness's roadblock and told them to continue hunting down the enemy and that the enemy was the Tutsis); Uwizeye, T. 6 April 2005 pp. 38, 55 (testified that in Ntongwe the *bourgmestre* used former members of the Burundian army to set up roadblocks; a Captain Ruzigariye erected roadblocks in Gitarama town without the approval of local security; Uwizeye personally ordered the removal of roadblocks set up on roads leading to Mbonyumutwa's home, and claimed Callixte Nzabonimana set up military roadblock, and Major Ukulikiyeyezu set up civilian roadblocks in Gitarama). It has further considered evidence given by Uwizeye and Witnesses GKJ, GTD and D as to Nzabonimana's specific role as an Interim Government minister supporting and monitoring the killings throughout Gitarama prefecture. Uwizeye, T. 8 April 2005 pp. 43-49; Witness GKJ, T. 23 September 2004 pp. 36-38; Witness GTD, T. 5 July 2004 pp. 9-11 (he thought Nzabonimana instructed that guns be brought to a roadblock); *see also* Witness D, T. 15 June 2004 pp. 46-47 (hearing that the government appointed an *Interahamwe* called Onesphore to monitor massacres in Gitarama). The Chamber recalls that Witness GTD was a detainee witness at the time of his testimony, having pleaded guilty in February 2003 to charges of genocide and crimes against humanity in Gitarama, including for the murder of a Tutsi at the Cyakabiri roadblock that he manned. *See* Witness GTD, T. 1 July 2004 pp. 14-15; T. 6 July 2004 pp. 3, 6-7, 10-12; Exhibit ID60(E) (Witness GTD's Confession and Guilty Plea). Furthermore, Uwizeye's, Witness GTD's and Witness GKJ's evidence of Nzabonimana's role in Gitarama and Witness D's evidence as to the government's role in monitoring massacres is hearsay. Finally, the Chamber has considered Uwizeye's allegation that the Interim Government used Jean-Damascène Ukulikiyeyezu, who was appointed with "parallel powers" to him and carried out the policies of the Interim Government in Gitarama, to further the killings. Uwizeye, T. 6 April 2005 pp. 55-57, 62, 69, T. 8 April 2005 pp. 39-42, 48, T. 11 April 2005 pp. 72-73, 79-81, T. 19 April 2005 pp. 45-46, 74-76, T. 14 April 2008 pp. 25-27, T. 15 April 2008 pp. 23-25. *See also* Ndamage, T. 21 March 2006 p. 46 (Ukulikiyeyezu was in charge of civil defence in Mugina commune). However Uwizeye's evidence with respect to Ukulikiyeyezu's alleged role in establishing roadblocks or distributing weapons is hearsay. Furthermore, none of this evidence directly implicates the Accused. Considering the testimonies individually, collectively and when viewed against the record as a whole, they fail to create a sufficiently compelling record that would support individual criminal liability or superior responsibility for the Accused in this proceeding. The Chamber considers it unnecessary to adjudicate this evidence further.

Prime Minister Kambanda gave a prepared but non-responsive speech about the programme for unity.

1186. On the basis of the testimonies of Witness GKJ, Mugenzi and Mugiraneza, the Chamber finds it established that a second meeting was held immediately thereafter. The second meeting was attended by certain Interim Government ministers, including Mugenzi and Nzabonimana, as well as prominent national figures such as Édouard Karemera. On the basis of the consistent testimonies of Uwizeye and Mugenzi, the Chamber is satisfied that Prime Minister Jean Kambanda remained for the second meeting.[1684] Mugiraneza did not attend the second meeting and there was no evidence that either Bizimungu or Bicamumpaka were present at either of the 18 April 1994 meetings.

1187. Based on the record in this trial, the evidence is compelling that a second meeting occurred, where senior figures intimidated the local officials to adopt the government's war policy, and threatened dismissal for those who would fail to comply. Thereafter Mugenzi singled out local officials who he believed were opposing the government and called on those present to support the *Interahamwe* who were described as supporting the interests of the people and defending the nation.

1188. The Chamber would also be prepared to find, based on the evidence adduced by the parties, that in light of the *Interahamwe's* history of repeated ethnic attacks between 1990 and 1994, and Mugenzi's testimony that he was aware by 9 April 1994 that the *Interahamwe* were engaged in killing civilians in Kigali, the only reasonable conclusion would be that at the time of the 18 April 1994 meeting, Mugenzi knew that the *Interahamwe* had and would kill Tutsi civilians in defence of Rwandan sovereignty. Furthermore, those present such as Uwizeye and Witness GKJ would have understood the aim of the instructions received as a provocation towards killing Tutsis. Notwithstanding the above, the Chamber has found that the Prosecution has failed to demonstrate that Mugenzi's remarks had a substantial impact on ensuing crimes committed in Gitarama.

(iv) Prosecution Violation of Its Duty to Disclose Exculpatory Material

1189. As explained above (I.10), the Prosecution's late disclosure of information that, based on a *prima facie* evaluation, is highly relevant, highly probative, and clearly exculpatory has caused material prejudice to the Accused in this trial. The Chamber recalls the jurisprudence as it relates to disclosure violations and available remedies. At this late stage in the case, calling further witnesses would delay the proceedings unduly. The Chamber has concluded that the only appropriate remedy for this violation is to draw the reasonable inferences in favour of the Accused in light of the late-disclosed material.

1190. The late-disclosed material mostly consists of evidence presented in the *Nzabonimana* case. The most exculpatory information comes from the testimonies of Defence Witnesses

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[1684] In finding that Kambanda remained for the second, smaller gathering, the Chamber observes that Witness GKJ testified that Kambanda left after the first. Witness GKJ, T. 23 September 2004 p. 36; T. 27 September 2004 p. 40. Notably, the evidence of Uwizeye and Mugenzi reflect that Kambanda played a far less active role during the smaller gathering. It is understandable that Witness GKJ thought he left and his evidence does not raise doubt about this conclusion. Further, the Radio Rwanda broadcast of Gaspard Rwakana reported that after the first meeting, the members of the government, with Prime Minister Jean Kambanda, held another meeting with Gitarama's *bourgmestres* and Prefect Uwizeye). Witness GKJ, T. 27 September 2004 pp. 47-48, Exhibit 2D35(E & F) (Radio Rwanda Report of the Gitarama Meeting of 18 April 1994) p. 8.

T24 and Jean Marie Vianney Mporanzi. In *Nzabonimana*, each testified that they attended both meetings on 18 April 1994. They expressly denied that, during the second gathering, anyone was told to support the *Interahamwe* or that local government officials were threatened.[1685] In addition, Witnesses T24 and Mporanzi denied that Nzabonimana spoke during the second meeting in Murambi, thereby contradicting the evidence of Witness GKJ in this case.[1686]

1191. Mporanzi, who was the Rutobwe *bourgmestre*, also contradicted Uwizeye's testimony that Nzabonimana slapped him and released prisoners from the Rutobwe communal jail.[1687] Furthermore, Witness GKJ testified as Witness CNAA in the *Nzabonimana* case in a way that, the Bicamumpaka Defence alleges, impugns his credibility.[1688]

1192. The Chamber is in no position to evaluate the credibility of this evidence, although a *prima facie* evaluation demonstrates that it is highly relevant, highly probative and clearly exculpatory. Drawing the reasonable inferences due to the late disclosure of this exculpatory material, the Chamber entertains reasonable doubt with respect to the Prosecution evidence in this proceeding concerning the Murambi meetings on 18 April 1994.[1689] In the midst of this Chamber's judgement deliberations, the Prosecution held onto some of this material for almost a year, some of it over a year, before it discharged its disclosure obligations. The ensuing prejudice cannot be minimised and the Defence delay in raising the issue (or total failure to do so), while unfortunate, does not impact this consideration.[1690] There is no excuse for the late disclosure, particularly because Prosecution Counsel in *Nzabonimana* was also the Prosecution Counsel in this case. Accordingly, the Chamber will not consider the 18 April 1994 Murambi meetings as a basis for conviction in its Legal Findings.

1193. In any event, the Chamber observes that Indictment paragraph 6.55 is the operative pleading, and that the Prosecution *only* pleaded this paragraph against Mugenzi, and *only* in support of Count 5 (direct and public incitement to commit genocide).[1691] Mugenzi's

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[1685] *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Witness T24, T. 27 April 2010 pp. 3, 5, 25; Mporanzi, T. 25 May 2010 pp. 62-63, 70-72, T. 26 May 2010 pp. 4-6, T. 31 May 2010 pp. 36, 43-44, 51. The Chamber notes that the material cited here and in the following footnotes was incorporated by reference into Annex A of Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011.

[1686] *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Witness T24, T. 27 April 2010 pp. 3-5, 25-26; Mporanzi, T. 26 May 2010 p. 4.

[1687] *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Mporanzi, T. 25 May 2010 pp. 37, 61; T. 26 May 2010 pp. 3, 7, 9, 25; T. 31 May 2010 pp. 10-11, 52-53.

[1688] *See* Bicamumpaka's Urgent Motion for Disclosure Violations, 12 September 2011, paras. 28-38.

[1689] In drawing the adverse inference, the Chamber has not treated as evidence portions of the *Nzabonimana* record to which the Chamber refers. Likewise, this Chamber has not evaluated nor does it draw any conclusions with respect to the reliability of evidence from *Nzabonimana*. Rather, the inference stems from the Chamber's knowledge that highly relevant, highly probative and highly exculpatory materially has been impermissibly withheld from the Accused in this proceeding.

[1690] *See generally Blaškić*, Case No. IT-95-14-A, Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings (AC), 26 September 2000, paras. 1, 33, 37 (the Defence was put on notice of exculpatory material but did not raise it until after the Trial Chamber rendered its Judgement around four or five months later; despite this silence from the Defence, the Appeals Chamber did not consider that the Accused effectively waived his right to complain about non-disclosure, reasoning that "[t]he delayed reaction by the Defence in this case cannot alter the duty of the Prosecution to comply with Rule 68").

[1691] *See* III.3.3.2, which states that introductory language in the Indictment – when it pleads all paragraphs in support of all counts before expressly setting forth specific paragraphs in support of each count – creates

statements were made to a relatively small gathering of prominent national figures and local officials, after a larger meeting that was open to members of the public. This reflects that the statements were not intended to be heard by the public generally. These circumstances would not suffice to establish the requisite *mens rea* for direct and public incitement to commit genocide.[1692]

9. DISMISSAL AND INSTALLATION OF PREFECTS, 17 – 25 APRIL 1994

9.1 Removal of Butare Prefect, 17 April 1994

Introduction

1194. The Indictment alleges that Butare prefecture, with the notable exception of Nyakizu commune, remained relatively peaceful while massacres were occurring elsewhere in Rwanda in April 1994. Factors contributing to this were the significant Tutsi population there, the relatively small presence of the MRND party and the open opposition of the Tutsi prefect, Jean-Baptiste Habyalimana, to the killings. Given the exceptional circumstances in Butare, the Interim Government, which included the four Accused, removed Jean-Baptiste Habyalimana from office on 17 April 1994 in order to trigger massacres there. Other prefects, who were also opposed to killings were replaced on the same day. Habyalimana was subsequently arrested, and he disappeared at the same time that *Interahamwe* and military soldiers were sent to Butare to assist in the killings. Prosecution Witnesses Alison Des Forges, Déogratias Mbonyinkebe, Fidèle Uwizeye, D, Harriet Sebera and UL provided relevant evidence.[1693]

1195. The Defence does not dispute that Jean-Baptiste Habyalimana was removed from his office in April 1994 and Mugenzi concedes that he approved of it. However, they deny that his removal was to provoke massacres, noting in particular that killings had already commenced in Butare prefecture. Rather, Habyalimana had not been in communication with the government since 10 April and the ministers had lost confidence in his war-time leadership abilities. Mugiraneza and Bizimungu emphasise that his removal resulted from an agreement between the PL and PSD parties to switch control over Kibungo and Butare prefectures. Furthermore, the Prosecution has adduced no evidence that his replacement, Sylvain Nsabimana, committed crimes. Each of the Accused and Defence Witnesses Ntagerura and Ndindabahizi provided relevant evidence.[1694]

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ambiguity as to whether the Indictment pleads a non-specified event in support of a specific count. In this instance, this event would only be considered under Count 5.

[1692] *See Kalimanzira* Appeal Judgement, paras. 161-164; *Nahimana et al.* Appeal Judgement, para. 862.

[1693] Indictment, paras. 5.1, 6.10, 6.18, 6.20-6.21, 6.42-6.43; Prosecution Closing Brief, paras. 40, 42, 69-70, 208, 701, 720, 1016; Prosecution 21 November Document, Item No. 83; Prosecution Closing Arguments, T. 1 December 2008 pp. 9, 24.

[1694] Mugenzi Closing Brief, paras. 89, 136, 222-239, 342-343, 543, 566, 570-571, 588, 680-687, 690-696; Mugiraneza Closing Brief, paras. 4(f)(viii), 502-510, 630-631, 634; Mugenzi Closing Arguments, T. 2 December 2008 pp. 77, 83; T. 3 December 2008 pp. 2-3, 6-7, 13-14; Mugiraneza Closing Arguments, T. 4 December 2008 pp. 9-11, 50, 52-54; T. 5 December 2008 p. 31. *See also* Bicamumpaka Closing Brief, para. 1047; Bizimungu Closing Brief, paras. 1185-1191, 1718.

Evidence

Prosecution Expert Witness Alison Des Forges

1196. Alison Des Forges was presented as an expert in history and human rights violations in Rwanda.[1695] She testified that the Interim Government removed Jean-Baptiste Habyalimana, a Tutsi PL member, as prefect of Butare for being "inactive" due to his resistance to the killings and in order to trigger massacres there. His removal, which Mugenzi and other PL delegates to the Interim Government would have had to approve, coincided with the removal and installation of several other prefects throughout Rwanda. The changes resulted in a shift of which political party held the position. So, for example, the prefecture post in Butare went from the PL to PSD party, Kibungo went from a PSD prefect to Anaclet Rudakubana from the PL or MRND and Gisenyi from an MRND prefect to Charles Zilimwabagabo of the PL. The CDR party, which had taken a clear position towards eliminating Tutsis, was, in Des Forges's view, "rewarded" with the Byumba prefect post.[1696]

1197. Des Forges testified that the government had the authority to nominate and remove prefects although, since the government was constituted by "political party blocks", they only did so with the consent of the relevant political party leaders. In assessing Habyalimana's removal, Des Forges relied primarily on statements that former Prime Minister Jean Kambanda provided to Tribunal investigators after his arrest in 1997, as well as the practices surrounding the designation of prefects since the advent of multi-party politics in Rwanda.[1697] During his interview, Kambanda stated that justifications for the removal and replacement needed to be made by the nominating party. During a 16 April 1994 meeting, the reasons given for Habyalimana's replacement included that he had allegedly instituted a 2.00 p.m. curfew intended to facilitate Tutsi attacks on Hutu, had wounded the *bourgmestre* of Kigembe commune and was bringing RPF in from Burundi to attack Butare. Sylvain Nsabimana, who replaced Jean-Baptiste Habyalimana, had stated that he was told that one justification for Habyalimana's removal was that "he was close to the RPF".[1698]

1198. Kambanda had told Tribunal investigators that, although uncertain, he had doubts that the reasons justifying Habyalimana's removal were true and Des Forges believed that their falsity would have been evident to members of the Interim Government. Specifically, as far as Des Forges knew, the *bourgmestre* of Kigembe commune was never wounded, and no 2.00 p.m. curfew was ever imposed. Furthermore, fear of an incursion from Burundi was unfounded, as there were no reports of RPF soldiers entering Butare from Burundi. The border had been effectively closed since 12 April 1994, and Des Forges was aware of only one report around 13 or 14 April 1994 of RPF forces gathering across the border through Nyakizu commune. It came from RTLM and she found it had no factual basis. Furthermore,

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[1695] Des Forges, T. 31 May 2005 p. 3.
[1696] Des Forges, T. 31 May 2005 pp. 70, 73-75; T. 1 June 2005 pp. 12-13; T. 3 June 2005 pp. 41, 44; T. 6 June 2005 pp. 51, 55-59, 61; T. 8 June 2005 p. 51; T. 15 June 2005 pp. 73, 86; T. 23 June 2005 pp. 4-5. Des Forges testified that despite his selection as prefect of Kibungo, Anaclet Rudakubana from the PL or MRND was unable to take office. T. 1 June 2005 p. 13.
[1697] Des Forges also considered that she might have reviewed the diary of Pauline Nyiramasuhuko when investigating the circumstances behind Jean-Baptiste Habyalimana's removal. T. 6 June 2005 pp. 60-61.
[1698] Des Forges, T. 6 June 2005 pp. 45-46, 48-52, 60-61; T. 7 June 2005 pp. 32, 36; T. 8 June 2005 p. 46. Des Forges was unaware of whether Habyalimana's failure to attend the 11 April 1994 meeting between prefects and Interim Government ministers was a basis for his removal. T. 6 June 2005 pp. 45, 51.

the military correspondence Des Forges reviewed highlighted greater concern of an RPF incursion through Gikongoro under the cover of its forests rather than Butare, even though the latter prefecture shared a longer border with Burundi.[1699]

Prosecution Expert Witness Déogratias Sebahire Mbonyinkebe

1199. Déogratias Mbonyinkebe was accepted as an expert of social and cultural anthropology relating to the events of 1994 in Rwanda.[1700] Butare residents had strong interethnic links between Hutus and Tutsis, formed through business partnerships and intermarriage. Based on this history, as well as the leadership of its Tutsi prefect, Jean-Baptiste Habyalimana, the area initially resisted the killings occurring elsewhere in the country.[1701] Once it was clear that Habyalimana did not support the genocide, he lost support from those in authority.[1702] Mbonyinkebe also observed that Kambanda's statement during the installation ceremony, that he was uninformed about why Habyalimana did not attend a prior prefect's meeting, ignored the reality that Jean-Baptiste Habyalimana had been under threat and would have been wary of attending it.[1703]

Prosecution Witness Fidèle Uwizeye

1200. Fidèle Uwizeye, a Hutu, was a member of the MDR party. He was appointed prefect of Gitarama in July 1992 and was officially removed from his position around 10 June 1994.[1704] Jean-Baptiste Habyalimana, a Tutsi, was the prefect of Butare in 1994. Prefects were selected by a party's political bureau and the decision was communicated to the Prime Minister. The same party had the right to recommend the removal of that person. However, in 1994, the political policies of the *Abatabazi* government were guided by those of the MRND and CDR parties. Consequently, those who did not follow the policies of that government were removed.[1705]

1201. Habyalimana (the PL prefect of Butare) and Ruzindana (the PSD party prefect of Kibungo) were removed from office during a meeting shortly after the Interim Government's arrival in Gitarama and before its meeting of 18 April 1994 with Gitarama's *bourgmestres* and Uwizeye (II.8.5). New prefects for other regions, including for Byumba, were also

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[1699] Des Forges, T. 6 June 2005 pp. 44-46, 49-52; T. 7 June 2005 p. 36; Exhibit P108 (Interview of Jean Kambanda, 26 September 1997) pp. 2-3. *See also* Exhibit P107 (Interview of Jean Kambanda, 1 May 1998) p. 3 ("*Les raisons avancées pour remplacer le préfet de Butare étaient qu'il était, disait-on, incapable d'assurer la sécurité de sa population, mais veritable mobile de son limogeage était qu'il était d'ethnie Tutsi.*").
[1700] Mbonyinkebe, T. 2 May 2005 pp. 53-54. Mbonyinkebe's expert report was admitted on this basis. T. 2 May 2005 p. 66.
[1701] Mbonyinkebe, T. 2 May 2005 p. 64; T. 3 May 2005 pp. 3, 13, 43-44, 55; T. 4 May 2005 p. 10; T. 5 May 2007 p. 7.
[1702] Mbonyinkebe, T. 3 May 2005 pp. 55, 58.
[1703] Mbonyinkebe, T. 5 May 2005 p. 46. In view of the limited uses of expert witness testimony (*see Nahimana et al.* Appeal Judgement, para. 212) and the necessary caution in evaluating hearsay evidence (*see Kalimanzira* Appeal Judgement, para. 96), the Chamber has not considered Mbonyinkebe's evidence based on an article by L. Kanamugire, which cites to an anonymous informant (B81), about a meeting attended by Jean-Baptiste Habyalimana and President Théodore Sindikubwabo on 19 April 1994 prior to the installation ceremony of Sylvain Nsabimana. Mbonyinkebe, T. 3 May 2005 p. 59; T. 4 May 2005 pp. 11-12, 14, 18; T. 5 May 2005 pp. 55, 65.
[1704] Uwizeye, T. 5 April 2005 pp. 9-10; T. 6 April 2005 p. 62; T. 8 April 2005 pp. 41-42; T. 11 April 2005 pp. 73, 76-77, 79-80; T. 14 April 2005 p. 23; T. 19 April 2005 pp. 45-48, 73-77; T. 15 April 2008 pp. 24-25.
[1705] Uwizeye, T. 7 April 2005 pp. 51-54.

chosen during that gathering. Uwizeye learned that his removal was also discussed but that the President, who he believed needed to ultimately approve the decision, opposed it. Uwizeye noted, in particular, that Habyalimana had not attended the 11 April prefects' meeting in Kigali and that Kambanda had stated that the Butare prefect would have to explain his absence. Habyalimana, like other officials who were viewed as "accomplices", was killed.[1706]

Prosecution Witness D

1202. Witness D, a Hutu, was an *Interahamwe* official who lived in Kigali until 12 April 1994, when he moved to Butare.[1707] He testified that Jean-Baptiste Habyalimana, a Tutsi, was a member of a faction of the PL that was opposed to Mugenzi's faction, the latter viewing the RPF and Tutsis as the enemy. The witness believed that Habyalimana was replaced because of his opposition to Mugenzi and not because he was sincerely considered part of the RPF. Between 12 and 19 April 1994, Witness D attended a meeting in Butare. There, then Prefect Habyalimana told those gathered that, with the assistance of soldiers, Butare would not face the problems occurring outside the prefecture. The prefect had been able to maintain relative peace in Butare until his removal on 19 April 1994 and the witness was unaware of attacks occurring in Nyakizu commune around 12 and 13 April 1994. Likewise, he was unaware of an RPF plan to infiltrate Rwanda through Butare's border with Burundi. After being replaced, Witness D believed that Habyalimana was killed.[1708]

Prosecution Witness Harriet Sebera

1203. Harriet Sebera, a Tutsi, was a member of the PL and lived in Butare in 1994.[1709] She generally believed that prefects were selected by party committees. Nominations were subsequently appointed through the office of the Prime Minister, President or the ministry responsible for prefecture administration. She was unsure if this process was followed for Jean-Baptiste Habyalimana, a Tutsi and PL member, who was installed as the prefect of Butare in 1992.[1710]

1204. Around 8 April 1994, Sebera and her family moved to where she worked, in Butare town, not far from the PL office and the Hotel Ibis. Until the visit of the President on 19 April only the border regions of Butare, next to Gikongoro, had been impacted by violence. There, Tutsis had been killed and sought refuge in locations, such as schools. Curfews, announced at the sector level, had been installed in Butare in reaction to the killings occurring elsewhere in the country to keep people from fleeing. Nonetheless, the war had not yet reached Butare.[1711]

1205. On 19 April 1994, President Théodore Sindikubwabo gave a speech, removing Jean Baptiste-Habyalimana from his post as prefect of Butare (II.9.2). A fellow PL member, Sebera spoke with Habyalimana in the evening after the event. Habyalimana said that, based

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[1706] Uwizeye, T. 7 April 2005 pp. 51-54, 56; T. 18 April 2005 pp. 79-80, 82; T. 19 April 2005 pp. 43-44; T. 14 April 2008 p. 27; T. 15 April 2008 p. 40.
[1707] Witness D, T. 15 June 2004 pp. 2-3, 12, 32, 46, 48, 62, 66; T. 16 June 2004 pp. 29-30, 44-47, 52; T. 17 June 2004 pp. 23, 58-59, 65-66; Exhibit P52 (Witness D's Personal Information Sheet).
[1708] Witness D, T. 15 June 2004 pp. 11-12, 32-33; T. 16 June 2004 pp. 68-69; T. 17 June 2004 pp. 23-24, 55-56.
[1709] Sebera, T. 19 October 2004 pp. 35-36; T. 20 October 2004 pp. 36-37.
[1710] Sebera, T. 21 October 2004 pp. 10-11.
[1711] Sebera, T. 20 October 2004 pp. 38-40, 42, 44; T. 21 October 2004 pp. 10, 12-13.

on his observations from the day's meeting, now they were only waiting to die. Sebera had previously instructed Habyalimana to flee, but Habyalimana had remained because prior to his dismissal he had received assurances from persons in charge of the gendarmerie and army that Butare would be secure and not experience killings like those in Kigali. He was arrested on 21 April and not seen again.[1712]

Prosecution Witness UL

1206. Witness UL, a Hutu, worked as a driver in the Ministry of Public Works in 1994.[1713] He testified that on an unspecified day after 22 April 1994, he went to see Sylvain Nsabimana to get a fuel voucher signed. When he approached the Butare prefect near holding cells close to the prefecture office, he saw Habyalimana standing with Nsabimana, Lieutenant-Colonel Muvunyi and Lieutenant-Colonel Nteziryayo. Witness UL recognised Habyalimana because the witness had previously worked on a bridge in Butare with Habyalimana. Nsabimana instructed Witness UL to see the sub-prefect for social affairs. The witness left them but later heard that Muvunyi and Nteziryayo had taken him to be killed.[1714]

Mugenzi

1207. Mugenzi denied that the Interim Government replaced prefects who were sympathetic to Tutsis and installed in their place hardliners willing to carry out massacres. During a meeting on 16 April 1994, members of the Interim Government discussed the removal of Butare Prefect Jean-Baptiste Habyalimana. Although the cabinet members generally expressed satisfaction with his performance during times of peace, concerns emerged about his ability to administer Butare during the war. For example, he previously had failed to attend the 11 April 1994 prefects' meeting in Kigali. He had not explained his absence and generally had been out of contact with the government, even after it moved to Gitarama.[1715]

1208. Furthermore, the security services had warned the cabinet that the RPF or Tutsi-led Burundian troops planned to attack Butare by crossing the Burundian border. There were also rumours that Habyalimana, a Tutsi, had connections with the RPF but his ethnicity was not a factor in the decision. Mugenzi was unaware of whether Habyalimana opposed the massacre of Tutsis. In light of these issues, the Interim Government lost confidence in its ability to

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[1712] Sebera, T. 20 October 2004 pp. 40-41; T. 21 October 2004 pp. 10-12. Sebera also testified that the PSD party prefect of Kibungo, who she believed was a Tutsi, was also removed on 19 April 1994 and killed. T. 20 October 2004 p. 41; T. 21 October 2004 p. 12.

[1713] Witness UL, T. 1 March 2004 p. 44; T. 2 March 2004 pp. 18, 31; T. 3 March 2004 p. 49; Exhibit P34 (Witness UL's Personal Information Sheet). Witness UL had been charged with committing genocide in Rwanda. He was detained for nearly five years before being acquitted in 2002. He provided statements to Tribunal investigators in 1998, while detained, and participated in investigations in September 2002 shortly after his release. T. 1 March 2004 p. 44; T. 3 March 2004 pp. 18-22.

[1714] Witness UL, T. 2 March 2004 pp. 41-42; T. 3 March 2004 p. 4. The Chamber relies on the French version of the transcript in regard to Witness UL's description of who was alleged to have removed Habyalimana. *Compare* T. 2 March 2004 p. 46 (French) ("R... *C'était une nouvelle très connue de tous, tout le monde en parlait à savoir que l'ancien préfet Habyarimana... le lieutenant colonel Nteziryayo et le colonel Muvunyi avaient emmené Habyarimana, et les gens disaient qu'ils l'avaient amené pour qu'il soit tué.*"), *and* T. 2 March 2004 p. 42 ("A. ... it was well-known news, everyone was talking about it, that the former préfet Habyarimana had (interpretation unintelligible) and Lieutenant-Colonel Muvunyi had taken the former préfet Habyarimana – and people were saying that they had taken him to be killed.").

[1715] Mugenzi, T. 10 November 2005 pp. 25-32; T. 24 November 2005 p. 73; T. 30 November 2005 p. 53.

effectively work with Habyalimana. It was unanimously decided by the Prime Minister and members of the cabinet to replace him with Sylvain Nsabimana, a Hutu, in whom they had more confidence and could expect greater communication.[1716]

1209. Although Jean-Baptiste Habyalimana was a member of the PL, Mugenzi had little power to question his dismissal. The moment a prefect was appointed he became a civil servant governed by civil service law, and thus the cabinet, and not party members, would decide whether to maintain or remove him.[1717] The decision to remove Habyalimana and other prefects, including those in Kibungo and Gisenyi, was announced on 17 April 1994, when Mugenzi was still in Gitarama.[1718]

Mugiraneza

1210. On 17 April 1994 the Interim Government held a meeting during which the security situation and nomination of six prefects were discussed. Mugiraneza explained that the prefect for Ruhengeri had been killed on 7 April 1994 and the Gisenyi prefect was sick and unable to continue his work. Augustin Bizimana, formerly Byumba's prefect, had been promoted to Minister of Defence creating a vacancy there. A prefect for Kigali-*Rurale* was also selected.[1719]

1211. With respect to the prefects of Kibungo and Butare, Prime Minister Jean Kambanda informed those present that a decision to remove Jean Baptiste Habyalimana, the PL's Tutsi prefect of Butare, had been agreed upon previously by the PL and PSD parties. The PSD claimed that it held a majority within Butare, which had a particularly high population of Tutsis within Rwanda and was the former location of the Tutsi monarchy, and should be entitled to hold the prefecture's head administrative post. They were not interested in maintaining that position in Kibungo and the PL desired to put a prefect there. Anaclet Rudakunda, a former MRND member and sub-prefect in Kibungo, switched to the PL to be promoted to prefect of Kibungo. Because Habyalimana was a member of the PL, and not the PSD, he lost his position. Sylvain Nsabimana, a Hutu civil servant and PSD member, was selected as Habyalimana's replacement, after scrutiny by the director of the Ministry of Interior who was present at the meeting.[1720]

1212. Kambanda told those gathered that the intelligence services, who worked with the Prime Minister, had informed him that Habyalimana was involved in the infiltration of RPF

[1716] Mugenzi, T. 10 November 2005 pp. 25-28, 30-32; T. 30 November 2005 pp. 3-5, 53.
[1717] Mugenzi, T. 10 November 2005 p. 27.
[1718] Mugenzi, T. 30 November 2005 pp. 1, 3; Exhibit P2(42)(E & F) (Radio Rwanda Broadcast, 17 April 1994) pp. 3-4, 15-16.
[1719] Mugiraneza, T. 26 May 2008 p. 34; T. 27 May 2008 p. 53; T. 2 June 2008 p. 45; T. 4 June 2008 p. 10.
[1720] Mugiraneza, T. 26 May 2008 pp. 33-36; T. 27 May 2008 pp. 54-56; T. 4 June 2008 pp. 8-10, 13. Sylvain Nsabimana was later replaced in June 1994 by the Interim Government by Alphonse Nteziryayo. Mugiraneza was not present when the decision was made but explained that Butare was under attack at that point and it was believed that Nteziryayo, a soldier, may be better suited for the position. He denied that the reason was because Nsabimana was not following the Interim Government's orders to kill Tutsi civilians. Mugiraneza, T. 4 June 2008 pp. 21-23.

soldiers from Burundi. Kambanda also remarked that Habyalimana had not attended the 11 April 1994 meeting of prefects and had not explained his absence.[1721]

1213. Mugiraneza did not object to Habyalimana's removal, nor did other Interim Government ministers, including PSD representatives Straton Nsabumukunzi (Minister of Agriculture), Emmanuel Ndindabahizi (Minister of Finance) and Rafiki Hyacinthe Nsengiyumva (Minister of Public Works). The parties had the right to change prefects and determine which region should hold the post, and Mugiraneza found this justification sufficient enough to abstain from objecting to Habyalimana's removal or Nsabimana's installation. At no point was the ethnic composition of the new prefects discussed and Mugiraneza did not consider the implications of dismissing Rwanda's only Tutsi prefect. Furthermore, Mugiraneza had no information to counter the security concerns raised by Kambanda. While he was not aware of the specific security situation in Butare, he believed that massacres were occurring there, as they were in other prefectures. Mugiraneza generally denied that plans were made to carry out or encourage the genocide at cabinet meetings, and he was unaware of any of his fellow ministers doing so.[1722]

1214. Mugiraneza highlighted evidence from the Prosecution case suggesting that killings had occurred in Butare prior to Habyalimana's removal. In particular, he pointed to excerpts from Alison Des Forges's book, which discussed killings of Tutsis at Nkawa and Cyahinda on 15 April 1994, as well as the massacre of 20,000 persons in Nyakizu commune by that day. Killings continued the following day in Nyakizu and reflected that the large-scale slaughter experienced elsewhere had reached Butare as well. He also pointed to Tribunal investigator Maxwell Nkole's report that about 2,500 and 1,500 persons were killed by 17 April in Nyanza sector.[1723] Mugiraneza learned some time after Habyalimana's removal that the latter had been killed, but he did not how or by whom.[1724]

Bizimungu and Bicamumpaka

1215. Bizimungu and Bicamumpaka were not in Rwanda on 16 or 17 April 1994. Bizimungu was on mission in Zaire to discuss the situation in Rwanda with President Sese Seko Mobutu (II.14.2.1). Bicamumpaka was in Burundi for the burial of that country's President, who had died in the plane crash with Juvénal Habyarimana (II.14.3.2). Bizimungu generally testified that since the multi-party era, the political parties could replace a prefect and examples of this occurred between 1992 and April 1994.[1725]

[1721] Mugiraneza, T. 26 May 2008 p. 34; T. 27 May 2008 pp. 2, 36-37; T. 4 June 2008 pp. 8-11, 15. *See also* T. 22 May 2008 p. 47 (Prime Minister Jean Kambanda, during the 11 April 1994 prefects' meeting did not know why the prefect of Butare was not present).
[1722] Mugiraneza T. 26 May 2008 pp. 34, 35, 36, 37, 47-48; T. 4 June 2008 pp. 8-16, 21. *See also* T. 20 May 2008 p. 35 (generally discussing the process of selecting prefects once opposition parties were allowed in Rwanda); T. 22 May 2008 p. 45 (did not appreciate the full scope of killings until 23 April 1994).
[1723] Mugiraneza, T. 4 June 2008 pp. 21, 56-60. *See also* Exhibit P100 (*Leave None to Tell the Story*) pp. 214-215, 248-250; Exhibit P2(82) (Maxwell Nkole Report) pp. 7-12 (concerning massacres sites throughout Butare).
[1724] Mugiraneza, T. 4 June 2008 pp. 8, 16-17.
[1725] Bizimungu, T. 4 June 2007 p. 36.

Bizimungu Defence Witness André Ntagerura

1216. André Ntagerura was the Minister of Transport and Communication since April 1992 and was reappointed to the position in the Interim Government formed on 9 April 1994.[1726] He attended a cabinet meeting of the Interim Government on 17 April 1994 where it was decided that Jean-Baptiste Habyalimana, the prefect of Butare and PL member, would be removed. The PL, which held the prefect post for Butare, and the PSD party, which held the same position in Kibungo, agreed to switch control of these prefectures. However, since prefects had to be natives of their prefecture and Habyalimana was not a native of Kibungo, he could not be re-assigned there.[1727]

1217. Prime Minister Jean Kambanda gave additional reasons behind Habyalimana's removal at the meeting. He stated that no reports about measures to prevent massacres had been received from Habyalimana since the Interim Government's formation. Furthermore, Habyalimana had failed to attend the 11 April 1994 meeting of prefects. At no point did they discuss that Habyalimana should be removed in order to encourage massacres in Butare and, given the agreement between the PL and PSD parties, there was little discussion about the decision during the meeting.[1728]

1218. Ntagerura recalled that at the time of the decision on 17 April 1994, the Interim Government was well aware of violence occurring in Butare. Specifically, during a meeting on 16 April, Kambanda informed those present that several Butare communes had been affected by violence. Ntagerura conceded that it was possible that as many as 12 communes – as suggested by Alison Des Forges – were impacted.[1729] Ntagerura spent the night of 11 to 12 April in Butare after returning from Burundi. When returning to Murambi on 12 April, he recalled observing only one roadblock and no dead bodies at it.[1730]

Bizimungu Defence Witness Emmanuel Ndindabahizi

1219. Emmanuel Ndindabahizi, a Hutu, was Minister of Finance in the Interim Government established on 9 April 1994.[1731] On 17 April 1994, Prime Minister Jean Kambanda chaired a meeting of Interim Government ministers, which Ndindabahizi, the Executive Secretary of the PSD party, attended. At the gathering, Kambanda gave a list of prefects to be replaced. He announced that the PL, which controlled the prefect post for Butare, and the PSD, who held the same position in Kibungo, had agreed to switch control over these seats. The parties desired this change given their significant party membership in the prefectures they sought to

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[1726] Ntagerura, T. 14 February 2007 pp. 66-67. Ntagerura, formerly an accused before the Tribunal, was acquitted of all counts. T. 19 February 2007 pp. 40-41. *See also* Ndindabahizi, T. 1 May 2007 pp. 60, 62.
[1727] Ntagerura, T. 19 February 2007 pp. 28-30; T. 20 February 2007 p. 35.
[1728] Ntagerura, T. 19 February 2007 pp. 29-30; T. 20 February 2007 p. 35.
[1729] Ntagerura, T. 19 February 2007 pp. 28-29; T. 20 February 2007 p. 37.
[1730] Ntagerura, T. 19 February 2007 pp. 69-70.
[1731] Ndindabahizi, T. 30 April 2007 pp. 4-5, 67; Exhibit 1D158 (Ndindabahizi's Personal Information Sheet). Ndindabahizi is presently serving a life sentence for his role in the events in Rwanda in 1994. Ndindabahizi, T. 30 April 2007 pp. 5, 45-49. Notably, Ndindabahizi was not tried for crimes in Rwanda based on his position as Minister of Finance of the Interim Government. T. 30 April 2007 p. 35. At the time of his testimony, he resided in the United Nations Detention Facility with the Accused. T. 1 May 2007 pp. 49-50.

gain control over. Sylvain Nsabimana, a PSD member, was selected as the new prefect of Butare.[1732]

1220. At the time, Jean-Baptiste Habyalimana, a Tutsi and PL member, was the prefect of Butare. However, because only natives of a prefecture could serve as its prefect, Habyalimana could not become the PL's prefect of Kibungo. Ndindabahizi denied that the ministers discussed Habyalimana's loyalty or competence, the fact that he was Tutsi or allegations that he was pro-RPF. Regarding the prefects' posts in Butare and Kibungo, the discussion focussed on the control over positions rather than the dismissal of sitting prefects. No ministers objected to the decision, which was viewed as a settled agreement between the political parties.[1733] Fidèle Uwizeye's name also arose during the meeting as possibly being replaced. However, he retained his position as ministers, with the exception of Callixte Nzabonimana, defended him.[1734]

1221. Ndindabahizi denied that the Interim Government had a plan to kill Tutsis and moderate Hutus and that they had installed prefects to carry this out. When the government arrived in Murambi on 12 April 1994, Kambanda informed cabinet ministers that massacres had reached Butare. By 17 April, Butare town was a "ghost-town" as persons had "gone up the hills".[1735]

Deliberations

1222. The parties do not dispute that Jean-Baptiste Habyalimana, the Tutsi prefect of Butare, was removed from his post by the Interim Government around 17 April 1994 and was subsequently killed during the genocide. However, the Defence disputes that his removal was motivated by a genocidal plan aimed at sparking killings of Tutsis in Butare. Furthermore, it submits that the evidence does not suggest that any of the four Accused bear responsibility for his death. The Chamber will address the allegations in turn.

(i) Removal of Jean-Baptiste Habyalimana as Prefect of Butare, 17 April 1994

1223. The Prosecution presented no direct evidence about the decision of the Interim Government to remove Jean-Baptiste Habyalimana as prefect of Butare on 17 April 1994.[1736] Nonetheless, undisputed circumstances surrounding his replacement emerge from the record. The dismissal of Habyalimana, a Tutsi and PL representative, as the prefect of Butare occurred during a meeting of the Interim Government's ministers on 17 April 1994, which Mugenzi and Mugiraneza attended. During that gathering, the ministers also decided to install new prefects in Kibungo, Byumba, Gisenyi (II.9.3), Ruhengeri (II.9.4), and Kigali-*Rurale* prefectures.

[1732] Ndindabahizi, T. 30 April 1007 pp. 4, 70-71; T. 1 May 2007 pp. 6-8, 33, 45; T. 2 May 2007 pp. 31-33; T. 3 May 2007 pp. 6, 9, 14, 17, 20, 31.

[1733] *But see* Ndindabahizi, T. 1 May 2007 p. 42 (testifying that every minister opposed the removal of the prefect of Butare, except Kambanda who argued that Habyalimana was unable to stop the RPF advance).

[1734] Ndindabahizi, T. 30 April 1007 pp. 71-72; T. 1 May 2007 pp. 7-8; T. 3 May 2007 pp. 6-10, 14-18, 31.

[1735] Ndindabahizi, T. 1 May 2007 pp. 9, 19; T. 3 May 2007 pp. 15, 19.

[1736] The Prosecution intended to call former Prime Minister Jean Kambanda as a witness but was unable to secure his testimony. *See* T. 23 June 2005 p. 68 ("MR. NG'ARUA: ... we had anticipated to have three more witnesses, that is GHS, Jean Kambanda and Colonel General Rusatira ... and also Chris MacGrill, but ... it was not possible to get these witnesses because of various hardships that we had. So, since we can't be able to get them as this juncture, the Prosecutor now closes its case.").

1224. In this context, the Prosecution argues that the changes in prefects, and, in particular, the removal of Habyalimana as Butare's administrative head, were motivated by a desire to undercut resistance to the genocide. In particular, the Prosecution evidence highlights that Butare presented a unique problem to a genocidal government, given the significant number of Tutsis and relatively successful integration between Tutsis and Hutus there. In this respect, Butare, led by a Tutsi prefect, posed a problem for those who sought to motivate the masses there to kill Tutsis and moderate Hutus.

1225. The Defence, however, disputes that Habyalimana's removal was based on his Tutsi ethnicity or perceived opposition to the genocide or that any other prefects were removed or installed in order to encourage killings of Tutsis.[1737] At the outset, killings had commenced in Butare prior to Habyalimana's removal on 17 April 1994. Furthermore, several logistical and wartime administration considerations, aside from Habyalimana's Tutsi ethnicity, factored into the decision.

1226. The Chamber recalls that Mugiraneza, Ntagerura and Ndindabahizi described the removal of Habyalimana as a rather casual decision that primarily resulted from a prior agreement between the PSD and the PL parties to switch control over Kibungo and Butare prefectures.[1738] Each suggested that the decision was undisputed, and indeed, that ultimate power to effect the decision rested with the political parties rather than members of the Interim Government.[1739] Mugenzi, however, made no mention of this prior agreement between the parties or his role, as a PL representative, in it. Indeed, he testified generally that while the political parties were central in selecting prefects, once installed their management and termination was largely left to the cabinet of ministers.[1740] The Defence account of the interaction between the roles of the government and political parties in nominating and removing prefects was corroborated by Des Forges, who testified that the government had the authority to nominate and remove prefects. However, since the government was constituted by "political party blocks", they only did so with the consent of the relevant political party leaders.[1741]

1227. Turning to the justifications discussed during the meeting in which Habyalimana was dismissed, Mugenzi, Mugiraneza and Ntagerura each testified that ministers noted that Habyalimana had not attended the 11 April 1994 prefects' meeting in Kigali or explained his

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[1737] *See* Mugenzi, T. 24 November 2005 p. 73; T. 30 November 2005 p. 53; Mugiraneza, T. 4 June 2008 p. 11. *See also* Ntagerura, T. 19 February 2007 p. 30; Ndindabahizi, T. 3 May 2007 p. 15.

[1738] *See also* P2(42) pp. 3, 15-16 (Radio Rwanda Broadcast, 17 April 1994) (Eliézer Niyitegeka states: "The Cabinet Ministers met today, 17 April 1994, under the chairmanship of the Prime Minister ... After having heard the desires and proposals of the political parties represented in the Government, the Council made the following appointments to these prefectures ... The Council also decided to dismiss the prefects of Butare and Kibungo ...").

[1739] Mugiraneza, T. 26 May 2008 pp. 34-37; T. 4 June 2008 pp. 9-12, 15-16; Ntagerura, T. 19 February 2007 pp. 29-30; Ndindabahizi, T. 1 May 2007 p. 7; T. 3 May 2007 pp. 6, 8, 14-16. The Chamber observes that Ndindabahizi gave contradictory accounts about the decision to replace Habyalimana. He primarily testified that the discussion during the 17 April 1994 meeting concerned only the swapping of posts between Kibungo and Butare, without specifically mentioning the names of the sitting prefects or discussing the need to remove them. *See* T. 1 May 2007 p. 7; T. 3 May 2007 pp. 6, 8, 14-17. However, in one instance, he stated that Kambanda expressly recommended that Habyalimana be dismissed because he could not halt the RPF's advance. While "everyone" at the meeting opposed the recommendation, Kambanda, a Butare native, prevailed. T. 1 May 2007 p. 42.

[1740] Mugenzi, T. 10 November 2005 p. 27.

[1741] Des Forges, T. 8 June 2005 p. 46.

absence in the intervening period. This raised questions about his ability to work with the Interim Government at that time of war.[1742] Mugenzi and Mugiraneza further stated that, during the relevant meeting, it was reported that the government's intelligence services had suspected Habyalimana of having links to the RPF and facilitating the movement of RPF troops across Butare's border with Burundi. Neither minister had any reason to doubt this information.[1743]

1228. In the Chamber's view, the evidence compellingly establishes that Mugenzi and Mugiraneza agreed to the removal of Habyalimana as Butare's prefect and shared a common purpose (discussed below) when doing so. The evidence further establishes that the decision to remove Habyalimana was presented as an agreement between the PL and PSD parties at the meeting of the Interim Government ministers. However, and in contrast to Mugenzi's testimony, the only reasonable conclusion is that Mugenzi played a central role in this decision.[1744] Notably, while the Prosecution evidence suggests that the replacements were driven by MRND and CDR policies of extremism, it converges with the Defence evidence, which consistently demonstrates that the decision to install a prefect or remove that person primarily rested with the political party that he or she represented.[1745] The Chamber observes that Mugenzi was the PL's highest ranking official in the Interim Government.[1746]

1229. Furthermore, the record reflects that around this time, Mugenzi regularly represented the Interim Government in some of its most decisive public actions. Specifically, although a member of the PL, Mugenzi was chosen to, and did, liaise with the leadership of the MRND and the *Interahamwe* – the MRND's youth wing – on 9 April 1994 when requesting them to try to quell killings committed by their adherents in Kigali (II.7.3). On 19 April 1994, Mugenzi travelled to Butare and spoke during the installation ceremony of Sylvain Nsabimana (II.9.2) and spoke during Charles Zilimwabagabo's installation ceremony in Gisenyi on 20 April (II.9.3).

1230. When viewing the record as a whole, Mugenzi's general evidence, namely that this was a decision for the cabinet of the Interim Government ministers and not the political party affiliated with the prefect, is patently absurd and contradicted by other evidence in the record.[1747] The only reasonable conclusion is that he agreed to Habyalimana's dismissal both

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[1742] Mugenzi, T. 10 November 2005 pp. 26, 30-32; Mugiraneza, T. 26 May 2008 p. 34; T. 4 June 2008 pp. 8-9, 15. *See also* Ntagerura, T. 19 February 2007 pp. 29-30 (no reports had been received by the Prime Minister from Jean-Baptiste Habyalimana about efforts to stop massacres in Butare).

[1743] Mugenzi, T. 10 November 2005 pp. 26-27, 30, 32; Mugiraneza, T. 26 May 2008 pp. 34, 36; T. 4 June 2008 p. 9. *See also* Exhibit P108 (Jean Kambanda's September 1997 Interview) p. 2 (one basis for dismissing the prefect of Butare included allegations that "he was bringing RPF soldiers from Burundi into his prefecture").

[1744] The Chamber observes that the Mugenzi Closing Brief concedes that Mugenzi agreed to the removal of Habyalimana. Mugenzi Closing Brief, paras. 231, 342.

[1745] *See, e.g.*, Uwizeye, T. 7 April 2005 pp. 53-54; Des Forges, T. 31 May 2005 p. 74; Bizimungu, T. 4 June 2007 p. 36 ("Q. And if the political party chose, could they replace that prefect or minister or whoever it is? A. A political party could replace a minister, a prefect, if ... a need arose. And between 1992 and April 1994, we saw examples of that happening inside a number of political parties.").

[1746] Agnès Ntamabyaliro, another member of the PL in the Interim Government, was not questioned about the decision to remove Jean-Baptiste Habyalimana as prefect of Butare. She also refused to answer questions about her involvement in the subsequent installation ceremony of Sylvain Nsabimana in Butare, as it related to her ongoing criminal proceedings in Rwanda. Ntamabyaliro, T. 22 August 2006 pp. 27-28.

[1747] In this regard, the Chamber observes Ndindabahizi's comments concerning discussions about the removal of Fidèle Uwizeye, an MDR member, as prefect of Gitarama during the 17 April 1994 meeting. According to him, Kambanda had presented his name as a possible prefect to be dismissed. Notwithstanding, several ministers

as a PL member and Interim Government minister and that it could only have occurred with his support. In so finding, the Chamber is also cognisant of Mugenzi's arguments that pursuant to Article 51(4) of the Rwandan Constitution, the legal responsibility of this action was with the Prime Minister.[1748] In the Chamber's view, Mugenzi's participation in the process was just as decisive as any formal action required to effectuate the decision.

1231. Likewise, the Chamber has considered Mugiraneza's evidence that instead of necessarily agreeing to Habyalimana's removal, he merely abstained from participating in the decision, leaving it largely to the political parties. Indeed, Mugiraneza presented evidence that he acted passively within the Interim Government in light of suspicions that he was a Tutsi.[1749] The Chamber views this self-serving evidence with considerable suspicion. Mugiraneza was active within the Interim Government and represented it in the culminating installation of Sylvain Nsabimana as Butare's new prefect days later (II.9.2). The only reasonable conclusion is that Mugiraneza, in his capacity as member of the cabinet of Interim Government ministers, also agreed to this decision, rather than abstained from it.

1232. Turning to the motivations behind the decision to remove Habyalimana, Mugiraneza, Ntagerura and Ndindabahizi testified that PSD and PL parties had decided to trade prefect posts in Kibungo and Butare, because Butare had a significant number of PSD followers while the PL wanted control over Kibungo. The Chamber has considerable reservations about this explanation. Notably, the RPF opened a front in Kibungo prefecture less than a week after Habyarimana's death. Evidence indicates that they took control over much of it by April 1994, rendering the trade immediately useless to the PL.[1750]

1233. The Chamber also recalls the undisputed evidence that Habyalimana failed to attend the 11 April 1994 prefects' meeting in Kigali, which, according to Defence evidence, raised doubts about his ability to lead Butare prefecture in a time of war. The Chamber further considers the testimonies of Mugenzi and Mugiraneza that during the meeting where his dismissal was agreed, the ministers received information that Habyalimana might have links with the RPF and might be facilitating their movement from Burundi into Butare. That this issue was discussed finds some corroboration in the Prosecution evidence.[1751]

1234. Des Forges took the position that these justifications for Habyalimana's removal were transparently false and that there was no legitimate threat of the RPF crossing into Butare

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defended Uwizeye, Kambanda, an MDR member, agreed and Uwizeye was retained. *See* Ndindabahizi, T. 3 May 2007 pp. 8-10, 31.

[1748] *See* Mugenzi Closing Brief, para. 226.

[1749] Mugiraneza, T. 26 May 2008 pp. 15-18, 59; Mugiraneza Closing Brief, paras. 492-494.

[1750] *See, e.g.*, Mugenzi, T. 9 November 2005 p. 63 (*Inkotanyi* occupied the road east of Kigali to the Tanzanian border within the first week of fighting); Mugiraneza, T. 26 May 2008 p. 15 (the RPF entered Kibungo as early as 12 April 1994 and took over Kibungo's headquarters by 20 April 1994); Ndindabahizi, T. 1 May 2007 p. 70, T. 2 May 2007 p. 28 (noting that the RPF gained early control of Byumba, Kigali and Kibungo); Witness GKR, T. 30 June 2004 p. 10, *and* Exhibit P63 (Witness GKR Personal Information Sheet) (the RPF took control of his commune in Kibungo prefecture, Kigarama, sometime between 15 and 20 April 1994); Witness RDI, T. 25 February 2008 pp. 5, 17-20, 34-35, 39, 47 (describing *Inkotanyi* attacks in early April 1994 in Kigarama commune, Kibungo prefecture); Kayinamura, T. 30 March 2006 pp. 23, 49 (the RPF captured Rusumo commune, Kibungo prefecture, on 28 April 1994).

[1751] Exhibit P108 (Jean Kambanda's September 1997 Interview) p. 2 (one purported justification for the dismissal of the prefect of Butare included allegations that "he was bringing RPF soldiers from Burundi into his prefecture"); *but see* Ndindabahizi, T. 3 May 2007 pp. 14-15 (Jean-Baptiste Habyalimana's loyalty to the government or allegations that he was pro-RPF were not discussed).

from Burundi.[1752] Furthermore, Des Forges testified that Kambanda criticised Habyalimana for being "inactive" and not having started killings in his prefecture.[1753] Witness D similarly disputed that Habyalimana's removal was due to perceived allegiances with the RPF and was unaware of suspicions of a war front being opened by the RPF from Burundi.[1754] Uwizeye testified that the changes of local government officials at that time were driven by the MRND's and CDR's extremist policies.[1755]

1235. The Chamber does not consider that the Defence explanations for Habyalimana's removal, when viewed in the context of all the evidence, raise doubt in the Prosecution evidence that his dismissal was part of a larger agenda aimed at furthering the killing of Tutsi civilians in Butare. For example, neither Ntagerura nor Ndindabahizi testified that it was alleged that Habyalimana had links to the RPF when his dismissal was decided. To the extent such allegations were discussed by the cabinet ministers, the Chamber has no doubt that all participants would have understood them as relying primarily on the fact that he was a Tutsi and political moderate rather than any genuine threat he posed to safety in his prefecture through RPF infiltration.

1236. Indeed, evidence of RPF "infiltration" in this case tended to be general, with more detailed accounts referring to events prior to 1994.[1756] Mugenzi conceded that during the genocide, he did not believe that infiltration was on a significant scale.[1757] Likewise, third-party reports observed that RPF infiltration was used as a means of targeting Rwandan government positions, not civilians, particularly in light of the limited man-power the RPF was working with.[1758] In this context, the Chamber considers it significant that there is no

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[1752] Des Forges, T. 6 June 2005 pp. 44-45, 50-52; T. 7 June 2005 p. 36. *See also* Exhibit P107 (Interview of Jean Kambanda, 1 May 1998) p. 3 ("*Les raisons avancées pour remplacer le préfet de Butare étaient qu'il était, disait-on, incapable d'assurer la sécurité de sa population, mais veritable mobile de son limogeage était qu'il était d'ethnie Tutsi.*").

[1753] Des Forges, T. 3 June 2005 p. 41; T. 8 June 2005 p. 51.

[1754] Witness D, T. 16 June 2004 pp. 68-69.

[1755] Uwizeye, T. 7 April 2005 pp. 53-54.

[1756] Des Forges, T. 2 June 2005 pp. 33-34 (infiltration was a tactic employed by the RPF); Des Forges, T. 16 June 2005 pp. 64 (the RPF recruited Rwandan Tutsis and Hutus dissatisfied with the Habyarimana regime), 72 (guerrilla warfare can involve infiltration and military activities behind enemy lines), 72 (acknowledging that there were several hundred cells of RPF supporters within Rwanda); Mugenzi, T. 9 November 2005 p. 66 (infiltration was an RPF tactic employed since 1991 or 1992); Mugiraneza, T. 27 May 2008 pp. 16-17 (infiltration was a "daily reality" and the government sought to distinguish between Tutsis generally and infiltrators); Flaten, T. 20 February 2008 pp. 57-58 (referring to a 17 February 1993 report from the U.S. Embassy that RPF personnel had taken MRND cards possibly for the purposes infiltrating areas outside the war zone), *and* Exhibit 1D268 (Outgoing Cable from US Embassy in Rwanda, 17 February 1993) p. 5 ("Eyewitnesses told journalists that the RPF shot persons who produced MRND or CDR party cards. ... Reports reaching embassy personnel suggest the RPF may have confiscated MRND cards and identification cards, presumably to use for infiltrating Kigali or other areas outside the war zone."); Kayinamura, T. 31 March 2006 pp. 3-4 (starting from 1992, members of the RPF would come into government controlled areas in ordinary civilian dress, bearing no ostensible link to the RPF).

[1757] Mugenzi, T. 9 November 2005 p. 72 (in response to a 2004 radio interview of Abdul Ruzibiza, who stated that extensive RPF infiltration of *Interahamwe* and CDR militias occurred, and that they had participated in killing Tutsis, Mugenzi was asked: "Q. But on the subject of infiltration, did you at that time regard it as a genuine threat against which the people had to be warned? A. It was being said that there were infiltrators, but to be honest, I was not convinced that they were in such big numbers.").

[1758] *Compare* Des Forges, T. 8 June 2005 p. 42 (referring to 17 April 1994 UNAMIR cable from Dallaire to Baril, which refers to infiltration by the RPF but describes how it is used to target attacks on military targets rather than posing any threat to the Rwandan civilian population), *and* Exhibit 3D99 (Outgoing Cable from

particularised evidence of RPF attacks in Butare at this time. The Prosecution evidence compellingly suggests that this region was far from the war zone.[1759]

1237. Rather, a broad view of the record reveals that Habyalimana's dismissal was intended to undermine the real and symbolic resistance he posed to the genocide in Butare. In particular, this event cannot be considered separately from the 19 April 1994 installation ceremony for Habyalimana's replacement, over which President Théodore Sindikubwabo presided. Notably several of the Interim Government ministers who agreed to Habyalimana's dismissal, including Mugenzi, Mugiraneza and Kambanda, also attended. In Butare town, Sindikubwabo gave an inflammatory speech while removing the region's Tutsi prefect. He accused Butare residents of indifference towards the war, although it had not yet reached the prefecture. Demanding that listeners needed to work to fight against a nebulously defined enemy in their midst and to rid the area of irresponsible people, Sindikubwabo's words were intended to and were interpreted as an incitement to kill Tutsis in Butare (II.9.2).

1238. Furthermore, Habyalimana's removal on 17 April 1994 and President Sindikubwabo's inciting speech on 19 April must be viewed in the context of the ongoing war and the considerable historical precedent of attacking Tutsi civilians as a means of defence against RPF incursions to be fully understood. Notably, by 17 April, the government had sustained significant military losses, having been deposed from Kigali by the RPF advance.[1760] Furthermore, the Interim Government's attempts to negotiate a ceasefire with the RPF had been rebuffed.[1761]

Dallaire to Baril, 17 April 1994) p. 4 ("The RPF offensive appears to have slowed, especially in the Kigali area. The RPF tactics appear to be infiltration from the north in large (100) or small (4) groups, attack upon a government position like Kacyiru Gendarmerie Camp, village Ojugwiro, Presidential Guard Camp or Camp Kanombe by fire, flanking movements to envelop and isolate the position from its logistics and command control, harassment for a period of time and a final assault and mop up ... While these actions are well planned, effective and conducted, they are slow and based on infiltration and strangulation."); *see also* Mugenzi T. 9 November 2005 p. 67 (referring to 17 April 1994 UNAMIR cable from Dallaire to Baril, which refers infiltration by the RPF).

[1759] Witness D, T. 16 June 2004 p. 67; Sebera, T. 20 October 2004 pp. 42, 44; Des Forges, T. 7 June 2005 pp. 15, 17, 20. *See also* Des Forges, T. 7 June 2005 p. 57 (there was no evidence of infiltration on 27 April 1994 in the areas of Butare, Gikongoro, Cyangugu or Kibuye; for at least half of the country infiltration in any real military sense was simply not the issue).

[1760] *See, e.g.,* Mugenzi, T. 9 November 2005 p. 45 (on the morning of 12 April 1994, military authorities moved the government from the *Hôtel des Diplomates* in Kigali to Gitarama because the RPF shelling was so intense); Ndindabahizi, T. 1 May 2007 pp. 16-17, 70, T. 2 May 2007 p. 13 (the government was compelled to flee Kigali as the RPF had battalions surrounding the town and had infiltrated it); Ntagerura, T. 19 February 2007 p. 16 (the government was forced to flee Kigali on 12 April as the RPF "bombarded" the town); Bizimungu, T. 28 May 2007 p. 32 (on 12 April 1994 General Ndindiliyimana ordered the government to leave Kigali as it would "fall into the hands of the RPF at any moment"); Bicamumpaka, T. 26 September 2007 p. 44, T. 27 September 2007 p. 5, T. 4 October 2007 p. 65 (by 12 April 1994, RPF bombardments on Kigali had made the *Hôtel des Diplomates* unsafe and reports from the army and gendarmerie indicated that it would be prudent to abandon Kigali); Witness WAA, T. 1 February 2007 p. 31 (witness was forced to leave Rumira on 12 April due to the RPF attack).

[1761] *See, e.g.*, Mugenzi, T. 15 November 2005 pp. 45-46 (on 12 April 1994 an unconditional truce was offered to the RPF through UNAMIR, which the RPF rejected; UNAMIR reports reflect that all attempts by the Rwandan civilian and military authorities were "null" and that the RPF did not want a ceasefire); Bizimungu, T. 28 May 2007 pp. 14, 34, 53-54, 62, T. 31 May 2007 pp. 55, 73 (discussing failed attempts to negotiate with the RPF in April 1994, who started to refuse to meet with and recognise members of the Rwandan government); Bicamumpaka, T. 13 August 2007 p. 44 (the RPF refused to recognise the Rwandan government and used massacres as a pretext in refusing to negotiate); Bicamumpaka T. 26 September 2007 p. 26 (by 9 April 1994

1239. Thus, with little demonstrated capacity to fight the RPF militarily, dismissing the Tutsi prefect of Butare was an initial step in unleashing a war resource – the killing of Tutsi civilians – in that region, which had considerable historical precedent[1762] and which the RPF, with limited manpower, could not effectively combat.[1763]

RPF was refusing to negotiate) *and* Exhibit 3D85 (Outgoing Cable from Booh-Booh to Annan, 9 April 1994) pp. 2-3 (despite requests for a ceasefire and the formation of a new transitional government with RPF membership, the RPF denounced the new government as puppets; RPF rejected a deal with the military crisis committee, government forces or with "a new transitional government"); Bicamumpaka, T. 26 September 2006 p. 53 (referring to his 10 April 1994 letter) *and* Exhibit 3D91 (13 April 1994 Letter from the Permanent Representative of Rwanda to the United Nations and Annex of 10 April 1994 Letter from Bicamumpaka) p. 3 ("Secondly, the Crisis Committee requested, through UNAMIR, the signing of a cease-fire agreement in Kigali … The proposal for the cease-fire agreement was rejected by the [RPF], which had begun the hostilities in the city of Kigali."); Bicamumpaka, T. 27 September 2007 p. 21 (discussing the RPF's refusal to enter into a cease-fire agreement) *and* Exhibit 3D94 (Situation Report from Jacques-Roger Booh-Booh, 12 April 1994) p. 2 ("Force comd tried to negotiate a cease fire but the RPF did not agree because this would include the recognition of the new President and the government") *and* Exhibit 3D95 (Situation Report from Jacques-Roger Booh-Booh, 13 April 1994) p. 2 ("On 130000 April 94 RGF forwarded a letter to UNAMIR stating an unconditional cease-fire. The answer of the RPF is not yet known."); Bicamumpaka, T. 27 September 2007 pp. 29, 31 (referring to his *note verbale*, drafted on 14 April and signed the following day; noting in particular that the RPF continued to refuse to agree to a ceasefire) *and* Exhibit 3D98 (Bicamumpaka *Note Verbale*, 15 April 1994) p. 3 ("16. Faced with the war declaration launched by the RPF, the Rwandan Government for its part proposed a peaceful solution by way of dialogue. To that end, a cease-fire was proposed to the RPF. 17. The RPF continued its misinformation and disintoxication campaign of international public opinion deluding itself that it would take the capital by force and by so doing seize all power."); Bicamumpaka, T. 27 September 2007 pp. 33-35 (referring to a 17 April 1994 UNAMIR cable as reflecting the RPF's refusal to negotiate in good-faith to a ceasefire) *and* Exhibit 3D99 (Outgoing Cable to Baril, 17 April 1994) p. 1 (referring to the difficulties of convincing the RPF to meet with the RGF and reticence to enter into negotiations).

[1762] *See, e.g.*, Exhibit P101(E) (Expert Report of Alison Des Forges) pp. 3-4, 12-13 (massacres and killings by soldiers of the Tutsi-related *Hima* in Mutara occurred in October 1990 and was just the first of a series of attacks against Tutsi and Tutsi-related persons before 1994; attacks occurred in Kibilira in March 1992, December 1992 and January 1993, in the Bugesera region in January and February 1991 and in several communes of Kibuye in August 1992); Des Forges, T. 31 May 2005 p. 45, T. 16 June 2005 p. 54 (in October 1990 there was the first massacre of Tutsi civilians in the region called Kibilira, approximately 300 civilians were killed; a substantial number of Tutsis and members of political opposition parties were killed in Bugesera in March 1992); Sebera, T. 19 October 2004 p. 41, T. 20 October 2004 p. 37, T. 25 October 2004 p. 34 (starting from 1959, when the *Inyenzi* attacked Rwanda, Tutsis were being killed on allegations that they were hiding *Inyenzi*; when the RPF-*Inkotanyi* attacked in 1990, Tutsis were detained, called accomplices and many were killed, especially the Tutsis in Kibilira in 1990 and Bugesera in 1992); Witness GAT, T. 25 February 2004 pp. 54-55, T. 26 February 2004 pp. 1-2, 20 (after the RPF's October 1990 attack, Tutsis, including the Bagogwe, were terrorised and killed in Bugesera, Murambi, as well as in Gisenyi, Kigali city and Byumba); Mugiraneza, T. 21 May 2008 pp. 26, 33, T. 27 May 2008 p. 52, T. 3 June 2008 pp. 56-58 (in certain regions of Rwanda, including Kibilira, inter-ethnic violence existed; those who perpetrated the killings used the attacks of the RPF-*Inkotanyi* as an excuse; when the RPF attacked and killed Hutus they felt it was necessary to get revenge by killing; Tutsis were killed in Bugesera in March 1992 by "extremists" although he was unable to identify them by political party; after the massacres in Kibilira and Bugesera disturbances occurred in Ruhengeri prefecture, in Kigali town and in Kibuye); Bicamumpaka, T. 17 September 2007 pp. 26-27, 49 (there was a climate of mistrust around the Bagogwe as they were accused of having sent their children to join the RPF; persons seeking revenge following RPF attacks killed the Bagogwe Tutsis in Kinyegi and Mukingo communes); Witness WZ10, T. 11 September 2006 pp. 17-18 (after the RPF attack in October 1990 Tutsis in Rwanda were being labelled as accomplices and recalled that the Bagogwe and Tutsi in Bugesera were killed); Strizek, T. 5 February 2007 pp. 63-64 (the RPF invasions intensified anti-Tutsi feelings and led to them being attacked); Flaten, T. 20 February 2008 p. 50, T. 21 February 2008 pp. 15-16, 29-31, 39, 47 (in 1990 in Kibilira Hutus started killing about 300 of their Tutsi neighbours; by 1992 the embassy had fears that an RPF invasion might lead to all Hutus attacking their Tutsi neighbours as evidenced by Hutus killing Tutsis in Kibilira and Bugesera; was unaware if *Interahamwe* were

1240. Indeed, under Habyalimana's administration, most of Butare prefecture had avoided the scale of ethnic violence occurring elsewhere. The Prosecution has led evidence that Butare – and Butare town in particular – had remained peaceful prior to Habyalimana's removal.[1764] Furthermore, while UNAMIR reports referred to mounting tension in Butare in the days leading up to the decision to remove Habyalimana, they do not reflect the perception that widespread killings had occurred throughout the prefecture. This is in marked contrast with UNAMIR's perception of what was happening in other regions.[1765]

1241. Indeed, while killings occurred in Butare prior to Habyalimana's removal, they appear to have been localised, happening in the prefecture's outer communes, near Gikongoro.

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involved in those attacks) *and* Exhibit 1D267 (Cable from US Embassy in Rwanda to Washington, D.C., July 1992) p. 2 ("4. More recently, leaders from all sides have begun to realise the more terrifying implications of an RPF march to Kigali. No matter how many Hutus the RPF may have representing it, it's perceived in Rwanda as essentially a Tutsi organization. Should this group break through to Kigali, all the fears of the Hutu majority, of again being subjected to slavery or feudal vassalage will be resurfaced. When threatened with the restoration of the feudal system, the Hutus on the *collines* will begin to eliminate their Tutsi neighbours. When this happened in October 1990 in Kibilira, Habyarimana sent an army unit in to stop it. When it happened in Bugesera in March 1992, the gendarmes eventually arrived to encourage the restoration of calm. This was done with an administration and communications in place. Neither of which would be the case should Kigali fall to the RPF."). *See also* II.1.

[1763] *Cf.* Exhibit 3D99 (Outgoing Cable from Dallaire to Baril, 17 April 1994) p. 4 (noting that the Rwandan government forces' resistance may be stiffening as the conflict turns into an ethnic war; the Rwandan government forces can draw from 85% of the population and there is no shortage of manpower, while the RPF, whose advances are slowing, treat manpower as its most precious resource; the RPF is suspected of being logistically short of supplies, and may believe that it has every recruit possible already in uniform).

[1764] *See* Sebera, T. 20 October 2004 pp. 38, 42; T. 21 October 2004 pp. 10, 12-13; Witness D, T. 15 June 2004 pp. 32, 41; T. 16 June 2004 p. 32; T. 17 June 2004 pp. 23-24, 55-56; *see also* Des Forges, T. 7 June 2005 p. 22.

[1765] Early reports on violence in UNAMIR's "southern sector" tend to focus on violence in Cyangugu. *See* Exhibit 3D88 (Situation Report from UNAMIR-Kigali and logbook, 9 April 1994) p. 2 (report from Butare that several convoys from the Red Cross, UNDP and US Embassy were passed and escorted to Burundi by UNAMIR); Exhibit 3D85 (Outgoing Cable from Booh-Booh to Annan, 9 April 1994) pp. 1 ("5. UNMO's report killings and looting by MRND supporters under the protection of the Gendarmerie in Bugarama, Kibuye and Cyangugu outside Kigali. The conflict appears to be spreading to other areas of the country."), 2 ("7. In the southern sector, some killings and lootings was reported. About 350 persons have taken refuge in a catholic church."); Exhibit 3D94 (Situation Report from Jacques-Roger Booh-Booh to Kofi Annan, 12 April 1994) p. 4 ("(A) Situation has calmed down except for Cyangugu where factional killings have started on 11 April in large scale. RGF soldiers are participating in these killings. No gendarmerie in Cyangugu."). By 12 April, UNAMIR had received reports of mounting tension in Butare, but does not refer to ethnic killings, as it does with reference to surrounding prefectures. *See* Exhibit 3D95 (Situation Report from Jacques-Roger Booh-Booh to Kofi Annan, 13 April 1994) p. 3 ("(A) Situation in Butare is tense. There are Presidential Guards and parts of the government in Butare. Many Tutsis and Sud Hutus are evacuating direction south. Sec Comd is tasked to try to get into contact with any government personnel if there is any. RGF patrols the streets of Butare while RGF in Cyangugu is said to participate in the ethnic killings. (B) In Cyangugu, Kibuye and Gikongoro murders are continuing. This ethnic massacre is said to be mainly carried out by CDR supporters."). By 15 April, UNAMIR expressed concerns that Presidential Guards might spark a massacre in Butare. *See* Exhibit 3D103 (Outgoing Cable from Dallaire to Annan, 15/16 April 1994) p. 4 ("13. The ethnic cleansing continues and may in fact be accelerating. Behind RGF lines a systematic extermination of Tutsis is taking place. It appears now that the Presidential Guard initiated the ethnic exterminations and then handed this task over to the militias like the *Interahamwe* and then withdrew to Butare, possible [*sic*] to start another campaign in the area with the largest concentration of Tutsi in the country (Butare Prefecture)."). The Chamber is convinced that the sentences that follow the quoted text, which refer to violence at roadblocks, are not about killings in Butare as of 16 April 1994. Specifically, the following *communiqué* to Baril on 17 April 1994, which conveyed fundamentally similar information, clarifies that these observations pertaining to killings at roadblocks are from Kigali. Exhibit 3D99 (Outgoing Cable from Dallaire to Baril, 17 April 1994) p. 5.

Moreover, they commenced on a large scale more than a week after President Juvénal Habyarimana's assassination.[1766] Investigations into massacre sites reflect that killings in Butare prefecture spread dramatically – including to the administrative capital – and peaked from 19 through 26 April 1994, after Habyalimana was removed from office and after Sindikubwabo's inflammatory speech.[1767] These investigations reflect that killings tapered off

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[1766] Exhibit P2(179)(E) (Rousseau Report) pp. 15-16 (Maraba commune, Kibanda sector, Kendajuru cell; 75,000 victims; SIMBI church: 5,000 victims; 15 April 1994), 15 (Kigembe commune, Nyanza sector, Ruvugizo cell; Grave I: 2,500 victims; Grave II: 1,500 victims; 17 April 1994), 21 (Nyakizu commune, Cyahinda sector, Cyahinda cell; 20,915 victims; 15 April 1994); Exhibit P2(82)(E) (Maxwell Nkole Report) pp. 7 (Kigembe commune, Nyanza sector, Ruvugizo cell; Grave 1: 2,500 victims; Grave 2: 1,500 victims; 17 April 1994), 8 (Maraba commune, Kibanda sector, Kendajuru cell; Site 1: 75,000 victims; Simbi Church: 5,000; 15 April 1994), 11 (Nyakizu commune, Cyahinda sector, Cyahinda cell; 20,915 victims; 15 April 1994); Exhibit P100 (*Leave None to Tell the Story*) pp. 247-248 (attack against 20,000 displaced persons in Nyakizu commune on 15 and 16 April 1994 and small-scale attacks in Maraba and Runyinya parishes); *see also* Exhibit P88 (Map of Rwanda) (which reflects that Maraba and Nyakizu communes border Gikongoro prefecture; Kigembe commune is east of and borders Nyakizu commune). *See also* Des Forges, T. 6 June 2005 pp. 9 (soldiers led killings at a parish in Nyakizu commune on 14 April 1994), 41-42 (listing attacks in Butare town by Presidential Guards on 7 April, as well as killings in Nyakizu, Maraba and Runyinya communes and Kibeho, Cyahinda, Simbi and Kansi), 64 (discussing raids from Gikongoro into Butare); T. 7 June 2005 pp. 21-22 (killings occurred in Butare prior to Habyalimana's removal, but he had achieved relative calm and it spiked around the time when his dismissal was announced; small-scale killings started around 12 April 1994 and at the end of that week a *bourgmestre* who opposed Habyalimana had organised attacks; cross-border raids from Gikongoro were also organised outside the prefecture and violence was coming from Kigali-*Rurale*); Mugiraneza, T. 4 June 2008 pp. 8, 21, 56-60 (summarising the Nkole report and Alison Des Forges's observations in *Leave None to Tell the Story* as they pertain to killings in Butare prefecture prior to 19 April 1994); Bicamumpaka, T. 10 October 2007 pp. 28-29 (while travelling to Burundi on 15 April and returning to Rwanda on 17 April 1994, he spoke with persons from Gikongoro and the regions of Butare bordering Gikongoro, who said they were fleeing attacks in Gikongoro prefecture); *see* Mbonyinkebe, T. 5 May 2005 pp. 4-9, 49-51.

[1767] Nkole, T. 18 November 2003 pp. 51-52; Exhibit P2(82)(E) (Maxwell Nkole Report) pp. pp. 7 (Kibayi commune, Mukindo sector, Nyabisagara cell; 6,000 victims; 19 April 1994), 8 (Muganza commune, Mugombwa sector, Rwakaronkano cell; 26,700 victims; 19 April 1994), 10 (Ngoma commune, Ngoma sector; 26,000 victims; 19 April 1994), 7 (Gishamvu commune, Nyakibanda sector, Nyakibanda cell; 6,000 victims; 20 April 1994), 10 (Ndora commune, Gisagara sector; 25,000 victims; 20 April 1994), 11 (Nyabisindu commune, 7,500 victims; 21 April 1994), 11 (Nyaruhengeri commune, Kibilizi sector, Burashi cell; 3,000 victims; 21 April 1994), 11 (Nyaruhengeri commune, Kansi sector; Kanserege cell; 1,530 victims; 21 April 1994), 11 (Nyaruhengeri commune, Nyaruhengeri sector, Gitwa cell; 3,000 victims; 21 April 1994), 12 (Runyinya commune, Raranzige sector, Karimba cell; 500 victims; 21 April 1994), 12 (Runyinya commune, Karama sector, Gahororo cell; 40,000 victims; 21 April 1994), 7 (Huye commune, Rukira sector, Kanazi cell; 21,000 victims; 22 April 1994), 10 (Muyira commune, Muyira sector; 8,500 victims; 22 April 1994), 12 (Ruhashya commune, Ruhashya sector; 20,000 victims; 22 April 1994), 12 (Rusatira commune, Kabona sector, Gikoro cell; 10,000 victims; 22 April 1994), 12 (Shyanda commune, Kayenzi sector, Rwoserezo cell; 12,000 victims; 22 April 1994), 7 (Gishamvu commune, Gishamvu sector, Gishamvu cell; 16,718 victims; 23 April 1994), 11 (Ntyazo commune, Kibirizi sector, Rwotso cell; 150 victims; 24 April 1994), 11 (Ntyazo commune, Karama sector, Karuyumbu cell; 4,000 victims; 24 April 1994), 11 (Ntyazo commune, Nyamure sector; 11,000 victims; 24 April 1994), 8 (Mbazi commune, Mutunda sector, Ruryango cell; 8,000 victims; 25 April 1994), 9 (Mugusa commune, Gafumba sector; 1,500 victims; 26 April 1994); Exhibit P2(179)(E) (Rousseau Report) pp. 8 (Ngoma commune, Ngoma sector; 25,000 victims; 19 April 1994), 13-14 (Muganza commune, Mugombwa sector, Rwakaronkano cell; 26,700 victims; 19 April 1994), 14 (Kibayi commune, Mukindo sector, Nyabisagara cell; 6,000 victims; 19 April 1994), 12 (Gishamvu commune, Nyakibanda sector, Nyakibanda cell; 6,000 victims; 20 April 1994), 18-17 (Ndora commune, Gisagara sector; 25,000 victims; 20 April 1994), 13 and 16 (Runiyana commune, Karama sector, Gahororo cell; 40,000 victims; 21 April 1994), 13 and 16 (Runiyana commune, Raranzige sector, Karimba cell; 500 victims; 21 April 1994), 15 (Nyaruhengeri commune, Nyaruhengeri sector, Gitwa cell; 3,000 victims; 21 April 1994), 18 (Nyaruhengeri commune, Kansi sector, Kanserege cell; 1,530 victims; 21 April 1994), 18 (Nyaruhengeri commune, Kibilizi sector, Burashi cell; 3,000 victims; 21 April 1994), 17 (Nyabisindu commune; 7,500 victims; 21 April 1994), 10 (Huye commune, Rukira sector, Kanazi

in Butare toward the end of the month.[1768] In this regard, Habyalimana and his prefecture had achieved relative success in keeping killings in abeyance while he retained the post as prefect.[1769]

1242. Indeed, evidence from the Accused and Interim Government ministers who testified about their *knowledge* of violence in Butare around the time of Habyalimana's dismissal was very general.[1770] This evidence tended to be in contradiction with more direct Defence evidence (as well as Prosecution evidence), which also reflects a common perception that the region had remained relatively peaceful.[1771] Notably, a public statement by Jean Kambanda

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cell; 21,000 victims; 22 April 1994), 11 (Shyanda commune, Kayenzi sector, Rwoserezo cell; 12,000 victims; 22 April 1994), 17 (Rusatira commune, Kabona sector, Gikoro cell; 10,000 victims; 22 April 1994), 20 (Ruhashya commune, Ruhashya sector; 20,000 victims; 22 April 1994), 20 (Muyira commune, Muyira sector; 8,500 victims; 22 April 1994), 12-11 (Gishamvu commune; Gishamvu sector, Gishamvu cell; 16,718 victims; 23 April 1994), 22 (Ntyazo commune, Nyamure sector; 11,000 victims; 24 April 1994), 22 (Ntyazo commune, Karama sector, Karuyumbu cell; 4,000 victims; 24 April 1994), 22-21 (Ntyazo commune, Kibirizi sector, Rwotso cell; 150 victims; 24 April 1994), 11 and 14 (Mbazi commune, Mutunda sector Ruryango cell; 8,000 victims; 25 April 1994), 7 (Mugusa commune, Gafumba sector, Kabaliza cell; 700 victims; 26 April 1994). The Chamber observes slight discrepancies between the numbers in the two reports. In Ngoma commune, Ngoma sector, Exhibit P2(179)(E) lists 25,000 victims for 19 April 2004 while Exhibit P2(82)(E) has 26,000 victims for that same day. In Mugusa commune, Gafumba sector, Exhibit P2(179)(E) lists 700 victims for 26 April 1994, while Exhibit P2(82)(E) has 1,500 victims for that same day.

[1768] Exhibit P2(179)(E) (Rousseau Report) pp. 9 (Muyaga commune, Mamba sector, Rugunga cell; Grave I: 8,000 victims; Grave II: 198; 27 April 1994), 9 and 12 (Muyaga commune, Ramba sector, Kanyirantiba cell; 234 victims; 27 April 1994), 7 (Mugusa commune, Sanzu sector, Kendajuru cell; 170 victims; 30 April 1994), 7 and 10 (Mugusa commune, Gikonko sector, Runyinya cell; Grave I: 257 victims; Grave II: 300 victims; 30 April 1994); Exhibit P2(82)(E) (Maxwell Nkole Report) pp. 9 (Muyaga commune, Ramba sector, Kanyirantiba cell; 234 victims; 27 April 1994), 9 and 10 (Muyaga commune, Mamba sector, Rugunga cell; Grave II: 198 victims; Grave I: 8,000 victims; 27 April 1994), 8 (Mugusa commune, Sanzu sector; 250 victims; 30 April 1994), 9 (Mugusa commune, Gikonko sector, Runyinya cell; Grave I: 257 victims; Grave II: 300 victims; 30 April 1994). The Chamber observes that in Mugusa commune, Sanza sector Exhibit P2(179)(E) lists 170 victims for 30 April 1994, while Exhibit P2(82)(E) lists 250 victims for that same day. The Chamber considers the discrepancy immaterial.

[1769] Having considered the testimonies of Rousseau and Nkole, the Chamber finds that their investigations are thorough and compelling. Moreover, their conclusions, if contested, are done so only generally. *See* Mugenzi Closing Brief, paras. 336 (noting that Rousseau's report was compiled under the supervision of the RPF government "and thus hardly a document likely to be favourably inclined towards the accused"), 615 (referring to Nkole's evidence as "inaccurate and unhelpful" in the context of a separate document admitted through him). In contrast, the Mugiraneza Defence has tacitly accepted the Nkole report, pointing to information in it that the Defence argues is exculpatory. *See* Mugiraneza Closing Brief, paras. 509, 634(b); Mugiraneza Closing Arguments, T. 4 December 2008 pp. 52-54; Mugiraneza, T. 27 May 2008 pp. 23-24. In this regard, however, the Chamber also observes the limitations of such investigations, particularly in their ability to precisely identify victims and assailants. *See* Nkole, T. 14 November 2003 p. 55 (based on information gathered, victims at burial sites were likely Tutsis and moderate Hutus); Rousseau, T. 24 November 2005 p. 35 (evidence collected did not suggest that killers were other than Hutu extremists).

[1770] As examples, Mugiraneza was unsure of what the situation in Butare was at that time, but thought all prefectures had been affected by massacres. Mugiraneza, T. 26 May 2008 p. 35. Mugenzi testified that the 16 April 1994 joint *communiqué* from the prefects of Gikongoro and Butare about security concerns as well as information about a massacre prompted Sindikubwabo's visit to the region. Mugenzi, T. 10 November 2005 pp. 19-20. Ntagerura and Ndindabahizi only provided general accounts suggesting that by 16 or 17 April 1994 that the government was aware of killings in Butare. Ntagerura T. 19 February 2007 pp. 28-30, T. 20 February 2007 p. 37; Ndindabahizi, T. 1 May 2007 p. 9, T. 3 May 2007 p. 19.

[1771] Notably, Ntagerura stayed in Butare town on the evening of 11 to 12 April 1994 but did not provide any first-hand evidence of violence there. To the contrary, he commented about the fact that he passed only one roadblock while travelling from there to Murambi on 12 April 1994. Ntagerura, T. 19 February 2007 pp. 69-70. Where Ndindabahizi offered further details concerning the situation in Butare, he characterised the situation of

less than a week earlier reflected that the Interim Government was receiving reports that the situation was calm there.[1772] In this regard, the record convincingly reflects that the common perception was that Butare, around 17 April, had resisted the ethnic violence that gripped much of the country.

1243. Moreover, the Chamber has no doubt that Habyalimana, a Tutsi and moderate PL opposition party leader, would have been perceived by those who removed him as opposing the targeted killings of Tutsi civilians.[1773] Witness D provided credible and uncontested testimony that during a meeting prior to Habyalimana's removal, the prefect, with a commander from Ngoma camp, informed the population that, with the assistance of soldiers, Butare would avoid the problems experienced in other prefectures.[1774] Similarly, it is undisputed that on 16 April 1994, Habyalimana issued a joint *communiqué* with the prefect of Gikongoro in direct response to violence in the border regions of the two prefectures.[1775] The Chamber considers that this *communiqué*, which condemned the violence and expressly designated it as ethnically motivated, also reflected this Tutsi prefect's public commitment toward stopping it.[1776] Bizimungu testified that he was aware that the Butare prefect was

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violence in Butare as "serious" and referred to Butare town as a "ghost town" by 17 April. He too, provided no further precision about the purported violence occurring there. Ndindabahizi, T. 1 May 2007 p. 9. To the contrary, the Minister of Justice, Agnès Ntamabyaliro, referred generally to Butare as a place of relative calm and a location where her ministry was highly functional when compared with other war-torn areas. Ntamabyaliro, T. 22 August 2006 p. 10. This appears to be corroborated by Bizimungu, who testified that he had heard that in two or three Butare communes persons were arrested for involvement in killings and lootings. Bizimungu, T. 4 June 2007 p. 49, T. 7 June 2007 pp. 18-19. Similarly, Bicamumpaka, who travelled through Butare on his way to and from Burundi on 15 and 17 April 1994 referred to having observed persons fleeing from violence in Gikongoro. He made no reference to attacks occurring in Butare. Bicamumpaka, T. 10 October 2007 pp. 28-29.

[1772] *See* Exhibit 2D42(K) (Radio Rwanda Broadcast of Prime Minister Jean Kambanda's 11 April 1994 Speech) translated at Des Forges, T. 3 June 2005 pp. 30-35 ("We hope that, therefore, according to the news reaching us, that security has not been very much destabilised. There may be problems elsewhere, problems we may not be aware of. There is one préfet whose reason for not attending this meeting ... he is the préfet of Butare ... but, according to reports reaching us, there are no serious problems in that area. But we have not been able to know why he has not come over. Maybe there are some problems, but we are not aware of such problems.").

[1773] *Cf.* Sebera, T. 20 October 2004 p. 34; Des Forges T. 31 May 2005 p. 74; T. 1 June 2005 pp. 12-13.

[1774] Witness D, T. 15 June 2004 pp. 32-33; T. 16 June 2004 p. 68.

[1775] Exhibit 2D56(K) (Joint *Communiqué* of Prefects of Gikongoro and Butare, 16 April 1994); Mbonyinkebe, T. 10 May 2005 pp. 13-14, 16 *and* Shimamungu, T. 16 May 2007 pp. 21-22 (translations from Kinyarwanda); Exhibits P2(34) *and* P2(42) (Radio Rwanda broadcast, 17 April 1994) pp. 4-7 and pp. 5-6, 17-18 (respectively). The exhibits of the radio broadcast of the report issued by the prefects are inconsistent as to whether the violence had already reached Butare. *Compare* Exhibit P2(42) p. 17 ("The council noted that on the whole a fragile security situation prevailed following the ethnic unrest with which had occurred in Mushili, Mubuga, Muramuko, Nyamagabe, Kinyamakara, and Rotondo in Gikongoro. *The same unrest could soon spread* to the communes of Nyakizu Runyinya, Maraba, Ruhashya and Nyabisindu in Butare because of the large number of refugees moving to those places.") (emphasis added), *and* Exhibit P2(34) p. 5 ("*The conflict was spilling over* to Nyakizu, Maraba, Ruhashya and Nyabisindu of Butare communes because many refugees sought refuge in this communes.") (emphasis added).

[1776] The Defence has pointed out that the joint *communiqué* Habyalimana issued called for pacification meetings, for refugees to stay in place and for roadblocks to be implemented for the purposes of maintaining peace. It has argued that this demonstrates that he was giving the same instructions as the Interim Government, implying that their similar requests throughout the genocide were reasonable and reflected a commitment to ending violence. *See* Mugenzi Closing Brief, para. 695; Shimamungu, T. 16 May 2007 pp. 24-26, 39-40; *see also* Des Forges, T. 6 June 2005 pp. 63-66, 68-70; Mbonyinkebe, T. 10 May 2005 pp. 13-14, 16. Having reviewed the statements of the Interim Government (II.9.2) and considered this statement in the context in which it was issued, the Chamber finds little merit in this argument. It notes the joint *communiqué*'s particular

among the prefects who took action to stop killings and lootings.[1777] Under the circumstances, Mugenzi's purported obliviousness to the Butare prefect's opposition to the massacres lacks any credibility.[1778] Indeed, Mugenzi pointed to Habyalimana's 16 April 1994 *communiqué* as prompting Sindikubwabo's visit to the region.

1244. Under these circumstances, and in the midst of a war that was divided largely by ethnicity, the Defence evidence suggesting that the Interim Government did not consider the fact that Habyalimana was a Tutsi or the symbolic significance of removing him is unbelievable.[1779] Indeed, Butare was the seat of the former Tutsi monarchy. It had a significant Tutsi population that had integrated with Hutus for generations through business and marital ties.[1780]

1245. That Habyalimana's dismissal sought to undermine resistance to the genocide in Butare is also underscored by the fact that the Interim Government repeatedly called on civilian defence efforts to be led by prefects, or local officials beneath that office.[1781] By

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emphasis that the violence is ethnically driven. *See* Exhibit P2(34) p. 4 ("The meeting noted that, in general, there was no security as it had been disrupted by the ethnic conflict ..."); Exhibit P2(42) p. 5 ("*Le conseil a trouvé que la sécurité est en générale précaire parce que a été dérangé par les troubles ethnique...*"), translation at Mbonyinkebe, T. 10 May 2005 p. 13 ("The meeting found that there was insecurity in general and this has been caused by disturbances arising from ethnic sectarianism ..."). Moreover, calling for the organisation of pacification meetings, roadblocks and night patrols in a prefecture where they had not yet been employed for the massive slaughter of Tutsi civilians is different than continuing to call for their existence where they have. *Cf.* Witness D, T. 15 June 2004 p. 32 (did not see roadblocks in Butare from 12 April until 19 or 20 April 1994); *see also* Des Forges, T. 6 June 2005 p. 64, T. 7 June 2005 p. 73 ("At that time the préfecture of Butare had organised the barriers, and night patrols which included Hutu and Tutsi together, in an effort to stem incursions from Gikongoro so that at this time, these mechanisms were operating and they were operating in an attempt to prevent the expansion of violence into Butare préfecture.").

[1777] Bizimungu, T. 12 June 2007 p. 42 ("JUDGE MUTHOGA: Do you recollect ... any action by either the ... central government, or the local government taking action against the killers in those areas, which is recorded, which one can read? THE WITNESS: My Lord, I was able to learn that in the préfectures of Butare, Gikongoro, bourgmestre in certain communes took the initiative, because we should remember that soon after ... April 6th, 1994, the prefects took the initiative, some did it even before the date of April 11th, 1994, to meet with the bourgmestre and ask them to restore security or maintain, at least, security in their communes. So, My Lord, there are communes which, indeed, where bourgmestre and law and order officers arrested people who were either killing or looting ... I happen to know that it happened in Butare, in Gikongoro, but I do not exclude that it occurred in other préfectures.").

[1778] *See* Mugenzi, T. 30 November 2005 p. 53 ("Q. And that there was a view that the préfet of Butare, before his dismissal, was opposed to massacres of Tutsis in that préfecture? A. I don't know that.").

[1779] *See, e.g.*, Mugiraneza, T. 4 June 2008 p. 11 ("Regarding the issue of pacification, we did not view that issue in that perspective. We did not consider the question with a view to dismissing a Tutsi préfet, and we did not look into the impact or the implications of the dismissal of a Tutsi préfet at a time when there was a pacification drive. We did not consider the issue in that perspective."); Mugenzi, T. 10 November 2005 pp. 25-28, 30-32; T. 30 November 2005 pp. 3-4, 53.

[1780] *See* Mbonyinkebe, T. 2 May 2005 p. 64; Witness D, T. 16 June 2004 p. 70; Mugiraneza, T. 4 June 2008 p. 8; Des Forges, T. 6 June 2005 p. 75. *See also* Nkole, T. 18 November 2003 p. 50 (Butare had the highest concentration of Tutsis in Rwanda).

[1781] *See, e.g.*, Exhibit 2D60 (Broadcasts, Various) pp. 67 (Sindikubwabo appealing to the public for its support and contribution to the government by abiding orders and instructions received from all levels of the administration to bring about peace), 73 (Kambanda urging *bourgmestres*, *conseillers* and *responsables de cellules* to organise pacification meetings for people to regain their confidence in administrative institutions), 107-108 (statement from the Minister of Defence asking all prefects, *bourgmestres*, *conseillers* and *cellule* committee members to ... get closer to the people and help them ensure security), 150 (Kambanda's concluding comments to prefects: "*Le message principale à tirer de cette réunion est celui de rassurer les membres de la population en les informant que l'administration existe...*"), 155 ("*les membres de la population doivent rétablir*

dismissing the Tutsi prefect, those who removed Habyalimana intended to and did signal to persons in Butare that their efforts to defend Rwandan sovereignty would *not* be guided by a political moderate who was openly opposed to the ethnically driven slaughter and who had taken steps against it. Sindikubwabo's subsequent speech inciting the killing of Tutsis and possibly moderate Hutus who opposed this, revealed the nature of the defensive efforts the Interim Government sought to have carried out in Butare after Habyalimana was out of the way.

1246. In light of all the circumstances, the only reasonable conclusion is that Mugenzi, Mugiraneza, Kambanda and the other members of the Interim Government who agreed to remove Habyalimana, made this decision with the intention to undercut the real and symbolic

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leur solidarité et faire des rondes nocturnes... et soutenir leurs Forces armées ..." - *Communiqué* du Ministère de la Defense), 198 (Sindikubwabo asks Rwandans to help the government and bring "back peace in the residents' hearts, for a better mutual tolerance"); Exhibit 3D92 (Radio Rwanda Broadcast, 10 April 1994) p. 2 (Kambanda stating that the government would request prefects, *bourgmetres*, *conseillers* and *cellule* officials to convene meetings and restore the population's confidence in their leaders); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 66-67 (interview with the Minister of Defence, 15 April 1994, imploring local authorities to organise meetings of the local population to bring about peace as well as seek out the enemy and defeat it); Exhibit P2(13)(E) (Transcript of Kambanda's Address in Butare, 19 April 1994) pp. 13-15 (the Interim Government sent a message to prefecture leaders to be forwarded to *bourgmestres*, *conseillers* and *cellule* leaders asking them to ensure the population's security and defend the country's sovereignty), 21 (recalling that Kambanda previously asked each member of the population to be mindful of his neighbour's security), 25-26 (noting Prefect Renzaho had called upon Kigali's residents to step up their efforts to ensure their security), 26-27 (advocating efforts to ensure security in one's area); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 103, 105 (Radio Rwanda journalist Hyacinthe Bicamumpaka transmission on Kibungo installation, 22 April 1994) translated at Makeli, T. 23 October 2007 p. 24 (officials should coordinate with the population, including religious people, with a view to restoring peace and security in the country); Makeli, T. 23 October 2007 pp. 24-25 (regarding Hyacinthe Bicamumpaka transmission on Kibungo installation, 22 April 1994, testified that administrative officials should coordinate with the population with a view to restoring peace and security in the country); Exhibit 2D(58)(E) (Radio Rwanda Broadcast, 28 April 1994) (Prime Minister Jean Kambanda's speech to prefects, 27 April 1994) translated at Makeli, T. 23 October 2007 pp. 28-29 (directives presented in cabinet meetings held on 11, 23 and 27 April 1994 on behalf of the Rwandan government must be followed so that common security in all parts of the country will be restored), 31 (government requested that officials meet with the people in the communes to seek ways of restoring and maintaining security); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 134-135 (Niyitegeka transmission, 30 April 1994) translated at Makeli T. 29 October 2007 p. 13 (sometimes the *bourgmestre* may not reach all sectors, and in that case a *conseiller* who has attended the meeting can call the people in the sector and tell them that a message has been given by the government); Exhibit 2D57(E) (Radio Rwanda Broadcast, Various) pp. 26-32 (Prime Minister Jean Kambanda transmission, 22 or 23 April 1994) p. 30 ("Ladies and gentlemen, the government has invited you to assist armed forces to block enemy attacks ... Join hands with communal authorities, sector administration, but in particular with cellule committee members to stop [the] enemy's infiltration."); *see also* Makeli, T. 24 October 2007 pp. 9-10 (directions from local administration should be given to the population regarding security and meetings would be held for this purpose); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 148 (Niyitegeka transmission, 30 April 1994) translated at Makeli, T. 29 October 2007 pp. 13-14 (*bourgmestres*, *conseillers*, soldiers and other prominent persons in the community should communicate the government's message to the public...; "Therefore many of the decisions that we were supposed to talk about, some of these decisions are in this letter, in this document, but the other decisions that are in the message communicated to you by the préfet, which message has been read to you."); Exhibit 2D108(E) (Radio Rwanda Broadcast) (Prime Minister Jean Kambanda's address in Kibuye prefecture, early May 1994) p. 9 (people should consult the local *bourgmestre* in order for both of them to figure out how to ensure security). *See also* Makeli, T. 24 October 2007 pp. 9-10 (directions from local administration should be given to the population regarding security and meetings would be held for this purpose, although the witness never attended such a meeting); Makeli, T. 29 October 2007 pp. 22-23 (government ministers travelled to the prefectures to give instructions to leaders to pass onto the population).

resistance the Tutsi prefect posed to the targeted killing of Tutsi civilians inhabiting or seeking refuge in Butare.[1782]

1247. In reaching this conclusion, the Chamber is mindful of Defence evidence that Charles Zilimwabagabo, who was chosen as Gisenyi's prefect at the same time, was a moderate who has not been prosecuted for genocide-related crimes. In the Defence's view, this demonstrates that local officials were not removed or installed to support the targeted killings of Tutsis and moderate Hutus.

1248. Evidence that Zilimwabagabo was not involved in crimes, which is hardly disputed by the Prosecution, fails to raise any doubt with respect to intentions surrounding Habyalimana's removal.[1783] The Chamber considers this evidence ancillary to the specific determination pertaining to Habyalimana's removal. Moreover, the record reflects that, unlike Butare, the targeted killings of Tutsis occurred in Gisenyi almost immediately after President Habyarimana's death.[1784] Indeed, the quick execution of such killings might have been perceived as a natural by-product of their proximity to the Gisenyi Operational Commander, Colonel Anatole Nsengiyumva. Notably, two years earlier, Nsengiyumva had expressed his opposition to reconciliation with the RPF, the dangers of integrating with *Inkotanyi* as set forth in the Arusha Accords and warned of Tutsis being massacred in anticipation of the *Inkotanyi* arrival.[1785] In this regard, the installation of a moderate politician in an area already besieged with violence does not reflect a general desire to end targeted killings of Tutsis and moderate Hutus. It does not raise doubts about the Chamber's determinations as to why Habyalimana was dismissed.

1249. Along the same lines, the Defence also points to the fact that the Interim Government initially retained Fidèle Uwizeye as Gitarama's prefect. Uwizeye has also not been prosecuted for genocide-related crimes and was a civil servant in the RPF government at the time of his testimony. Once again, the Chamber considers this evidence ancillary to the motivations concerning Habyalimana's removal and it does not raise doubt.[1786]

[1782] The Chamber emphasises that this finding is a necessary conclusion from a broad view of the record before it. In reaching this determination, the Chamber has assessed expert evidence mindful of the appropriate limitations of its uses. *See Nahimana et al.* Appeal Judgement, paras. 212, 509. Likewise, the Chamber has evaluated Expert Witness Alison Des Forges's evidence in light of the guidelines previously set forth by it. *See* Decision on Defence Motion for Exclusion of Portions of Testimony of Expert Witness Dr. Alison Des Forges (TC), 2 September 2005; *see also* T. 14 June 2005 p. 58.

[1783] *See* Des Forges, T. 1 June 2005 p. 13 ("Q. But we would be wrong, therefore, to read your report as a definite assertion that Mr. Mugenzi put in place a préfet in Gisenyi to hasten the killings. A. It might be more correct to say he removed Habyalimana who was stopping the killings. I don't know what his intention was in Gisenyi, nor do I make any assertion in that regard.").

[1784] Murashi, T. 9 June 2004 p. 45; T. 10 June 2004 pp. 38-39, 62; Exhibit P50 (Murashi's Statement, 19 August 1996) pp. 3-4, 8-9 (statements about attacks on Nyundo, which were admitted into evidence as if provided during Murashi's live testimony; T. 10 June 2004 p. 15); Witness GTC, T. 2 March 2005 p. 61; Witness WZ8, T. 18 September 2006 pp. 22-24; T. 20 September 2006 pp. 16-22, 39-40; Muhirwa, T. 4 April 2006 pp. 54-56; T. 5 April 2006 pp. 12, 50-52, 57-59, 61, 63 (heard that *Interahamwe* started killing Tutsis as early as 7 April 1994 and believed that they might have all been dead by the time of the new prefect's installation; *Interahamwe* did not listen to Zilimwabagabo's calls for peace in Gisenyi town). *See also* Mugenzi, T. 10 November 2005 p. 53 (noting that after the installation of Zilimwabagabo, "Gisenyi remained a very hot pot in these massacres").

[1785] *See* Exhibit P102(E) (Memorandum to the Army Chief of Staff, 27 July 1992).

[1786] The Mugenzi Defence also argues that less than half of the other prefects who were retained or installed on 17 April 1994 have been prosecuted at the Tribunal and that Emmanuel Bagambiki has been acquitted. Mugenzi

1250. Based on the foregoing, the Chamber concludes that on 17 April 1994, members of the Interim Government, including Kambanda, Mugenzi and Mugiraneza, decided to remove Jean-Baptiste Habyalimana as prefect of Butare. The evidence convincingly establishes that the intention shared by those who made the decision was to further the killings of Tutsi civilians in Butare by undercutting the real and symbolic resistance Habyalimana posed to them. The Chamber shall consider the implications of these conclusions in its Legal Findings (III). Both Bizimungu and Bicamumpaka were out of the country when the decision to remove Jean-Baptiste Habyalimana was formalised. There is no evidence concerning their participation in the decision, or any act or omission that substantially contributed to it.

(ii) Killing of Jean-Baptiste Habyalimana

1251. As noted above, there is no dispute that Jean-Baptiste Habyalimana was killed during the genocide.[1787] Prosecution Witnesses UL, D, Harriet Sebera, Fidèle Uwizeye, DCH, GHR and Expert Witness Alison Des Forges all gave evidence relating to his death or disappearance. None of the evidence directly implicates any of the four Accused. The descriptions of the circumstances of his death are brief, conflicting and of varying reliability.

1252. The most direct evidence pertaining to Habyalimana's death comes from Witness UL, who saw Habyalimana in the presence of Sylvain Nsabimana, Lieutenant-Colonel Tharcisse Muvunyi and Lieutenant-Colonel Alphonse Nteziryayo and later learned that the latter two had taken him to be killed.[1788] According to information Des Forges had received, Habyalimana initially went into hiding and was arrested after a Butare security council meeting on 6 May 1994. She testified that he was held in Gitarama, released without charge, and was killed when left alone on a public highway.[1789] Harriet Sebera testified that Habyalimana was killed. Specifically, he was arrested on 21 April 1994, disappeared and was never heard of again.[1790] Fidèle Uwizeye briefly testified that he believed that "authorities" killed Habyalimana.[1791] Witnesses D, DCH and GHR offered no specific details concerning his death.[1792]

1253. In the Chamber's view, the record establishes that Habyalimana was killed after his removal as Butare's prefect. However, the evidence fails to provide sufficient details that necessarily link Habyalimana's death to the Accused. Likewise, the record is too imprecise to

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Closing Brief, para. 683. This argument does not raise doubt with respect to the Chamber's findings concerning the decision to remove Jean-Baptiste Habyalimana as Butare's prefect.

[1787] *See, e.g.*, Mugiraneza, T. 4 June 2008 pp. 8, 16-17.

[1788] Witness UL, T. 2 March 2004 pp. 41-42; T. 3 March 2004 p. 4. The Chamber relies on the French version of the transcript in regard to Witness UL's description of who was alleged to have removed Habyalimana. *Compare* T. 2 March 2004 p. 46 (French) ("R... *C'était une nouvelle très connue de tous, tout le monde en parlait à savoir que l'ancien préfet Habyarimana... le lieutenant colonel Nteziryayo et le colonel Muvunyi avaient emmené Habyarimana, et les gens disaient qu'ils l'avaient amené pour qu'il soit tué.*"), *and* T. 2 March 2004 p. 42 ("A. ... it was well-known news, everyone was talking about it, that the former préfet Habyarimana had (interpretation unintelligible) and Lieutenant-Colonel Muvunyi had taken the former préfet Habyarimana – and people were saying that they had taken him to be killed.").

[1789] Des Forges, T. 8 June 2005 p. 5.

[1790] Sebera, T. 20 October 2004 p. 41; T. 21 October 2004 p. 12.

[1791] Uwizeye, T. 15 April 2008 p. 40.

[1792] Witness D, T. 16 June 2004 p. 69; Witness DCH, T. 20 September 2004 p. 50; Witness GHR, T. 22 March 2004 p. 6. *See also* Mbonyinkebe, T. 5 May 2005 pp. 81-82 (Mbonyinkebe was unaware of the circumstances surrounding Habyalimana's disappearance).

establish that any of the Accused had effective control over the perpetrators or knowledge of the killing sufficient to establish superior responsibility.

9.2 Installation of Butare Prefect and Incitement, 19 April 1994

Introduction

1254. The Indictment alleges that after the dismissal of Jean-Baptiste Habyalimana was announced on 17 April 1994, the Interim Government held an installation ceremony for Sylvain Nsabimana as the new prefect of Butare on 19 April 1994. During the event, President Théodore Sindikubwabo called on Butare residents to follow the example of other prefectures and begin massacres. He denounced those who did not appear concerned, and asked them to step aside and let others work. Prime Minister Jean Kambanda also spoke without contradicting this message. Mugenzi, Mugiraneza, Bizimungu, and Bicamumpaka did not distance themselves or express disagreement with the President's message. This gave a clear signal that massacres were ordered and condoned by the government. From the next day, soldiers in tandem with *Interahamwe*, took part in massacring civilians, including Rosali Gicanda, former Queen of Rwanda and historical symbol for all Tutsis. Furthermore, numerous people sought refuge in places like Butare University hospital and the prefecture offices in Butare town. Despite the promise made to protect them by authorities, the refugees were attacked, abducted or killed by soldiers and militiamen, often on the orders or with the complicity of those same authorities. Expert Witnesses Alison Des Forges and Déogratias Mbonyinkebe, as well as Witnesses D, Harriet Sebera, GLP, GHR, DCH and UL provided relevant evidence.[1793]

1255. Bizimungu contends he was not in Rwanda on 19 April 1994 and Bicamumpaka argues that he was in Gitarama, not Butare, during Sylvain Nsabimana's 19 April 1994 installation. Aside from submissions concerning vagueness of the Indictment, Mugenzi and Mugiraneza concede that they were present, but they and Bicamumpaka contend that the speeches of Sindikubwabo and Kambanda were not incitements to kill and that the Prosecution evidence on this point lacks credibility. Furthermore, no causal link exists between the speeches and the killings in Butare, which had already commenced. The Accused, Witnesses André Ntagerura, Emmanuel Ndindabahizi, Agnès Ntamabyaliro, Augustin Kayinamura, Nelson Muhirwa, LF-1, Ignace Karuhije, RWW, CC-1, Dominique Makeli, as well as Expert Witnesses Eugène Shimamungu and Mark McPhail, provided relevant evidence.[1794]

[1793] Indictment, paras. 5.10, 6.10, 6.18, 6.43, 6.45-6.46; Prosecution Opening Statement, T. 6 November 2003 pp. 8, 10-11; Prosecution Closing Brief, paras. 40-42, 69-71, 180, 203, 208, 213, 295-296, 311-312, 699-702, 756, 759-761, 894, 1017, 1022, 1037-1038, 1164-1165; Prosecution 21 November 2008 Document, Item Nos. 59, 86, 111; Prosecution Closing Arguments, T. 1 December 2008 pp. 9, 24, 31-32, 38-41, 57-60; T. 5 December 2008 pp. 9-11. The Prosecution alleges in its Closing Brief and 21 November 2008 Document that Mugiraneza attended this ceremony on 19 April 1994, but makes no mention of Mugenzi's alleged attendance and speech. *See* Prosecution Closing Brief, paras. 295, 1017; Prosecution 21 November 2008 Document, Item No. 59. The Prosecution Closing Arguments, however, address Mugenzi's alleged role in this ceremony. Prosecution Closing Arguments, T. 1 December 2008 pp. 38-41; T. 5 December 2008 p. 11. Despite the absence of total clarity within the Prosecution submissions, the Chamber considers it clear that the Prosecution is pursuing Mugenzi's presence at this ceremony, as explicitly alleged in paragraph 6.45 of the Indictment.

[1794] Mugenzi Closing Brief, paras. 63, 68, 89-93, 110, 136, 229-234, 309, 342-343, 408, 505-507, 543, 566, 570-571, 580, 588, 594, 681-683, 693-696, 727, 740-796, 802, 825, 838-852, 921, 1376-1388 (and tables at pp. 49,

Evidence

Prosecution Witness Alison Des Forges

1256. Alison Des Forges was presented as an expert in history and human rights violations in Rwanda.[1795] She testified that the Interim Government removed Jean-Baptiste Habyalimana, a Tutsi member of the PL, as prefect of Butare due to his resistance to the killings and in order to trigger massacres there (II.9.1). An installation ceremony for Habyalimana's replacement, Sylvain Nsabimana, was held in Butare on 19 April 1994 and attended by President Théodore Sindikubwabo and Prime Minister Jean Kambanda. In Des Forges's view, their presence intended to emphasise a policy change in Butare aimed at inciting massacres there. The President's genocidal message was then reinforced by the fact that the outgoing prefect was not given the opportunity to speak, an act, in Des Forges's view, that was intended to humiliate him.[1796]

1257. Des Forges analysed the speeches given by Kambanda and Sindikubwabo at the ceremony. The Prime Minister outlined that the three goals of the government were to restore security, implement the Arusha Accords and solve the famine crisis. He claimed that this government, whom he called the *Abatabazi*, or "saviours", had reduced the killings in Rwanda, but security could not be fully restored as long as the RPF were fighting. Kambanda trusted that the people would cooperate with the government because they did not want to return to the "1959 yoke". Finally, he praised the people for ensuring their own security and establishing roadblocks, and for protecting the sovereignty of their country.[1797]

1258. In looking at Kambanda's speech at the 19 April 1994 ceremony, Des Forges stated she did not know if he was sincere in calling for the killings to stop and the Arusha Accords to be implemented. She did know, however, that at that time the Interim Government was sincere in calling for an end to fighting amongst Hutus. When the Prime Minister indicated that security could not be restored as long as the RPF were fighting, he meant that the massacres would not end until the RPF granted the government a ceasefire. She questioned why the Prime Minister would be telling the population to ensure security in Butare when it was far from the combat zone at that time. Rather, those coming into Butare at the time were Tutsi civilians fleeing attacks in Gikongoro, and so "security" was not an issue.[1798]

1259. In addition, warning the audience that they may return to the "1959 yoke", in her view, was intended to conjure images of Tutsi domination and to emphasise that every Hutu needed to fight in order to maintain the gains that came from the revolution. Moreover, Kambanda's praise of the roadblocks of Kigali was questionable, as they played a primary role in the slaughter of Tutsis there. Finally, in the Prime Minister's admonition that the

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104, 107, 120, 194, 347); *see also* Mugenzi Closing Brief, paras. 693-802 (generally); Mugenzi Addendum pp. 16-18; Mugiraneza Closing Brief, paras. 4(f)(viii) and (ix), 502-515, 615 fn. 772, 630-631, 638-642; Bizimungu Closing Brief, paras. 326-327, 339, 365, 436-442, 1192-1207, 1718-1722; Bicamumpaka Closing Brief, paras. 154-155, 164, 839-859, 1051; Mugenzi Closing Arguments, T. 2 December 2008 pp. 51, 55-56, 77; T. 3 December 2008 pp. 2-3, 6-24; Mugiraneza Closing Arguments, T. 4 December 2008 pp. 4, 9-11, 40-41, 50-62; T. 5 December 2008 p. 31.

[1795] Des Forges, T. 31 May 2005 p. 3.

[1796] Des Forges, T. 31 May 2005 p. 73; T. 6 June 2005 pp. 55-56, 59-60; T. 7 June 2005 pp. 12-13; T. 23 June 2005 p. 5.

[1797] Exhibit P2(13)(E) (Radio Rwanda Broadcast, 19 April 1994) pp. 7-21 (Kambanda's 19 April 1994 speech).

[1798] Des Forges, T. 7 June 2005 pp. 14-17.

people had not understood the directives given to them, he was criticising them for not taking part in the massacres. The Radio Rwanda transcript from the Butare event indirectly reveals that Mugenzi may have also spoken words that could have incited attacks on Tutsis.[1799]

1260. Concerning Sindikubwabo's speech on 19 April 1994, Des Forges, who spoke with two *bourgmestres* and reviewed transcripts, stated that the speech played an important role in the killings that followed in Butare.[1800] Sindikubwabo first noted that the people in Nyakizu commune, in Butare, were panicked because refugees in the commune were heavily armed, and "people" were assembled with weapons and grenades. The President asked more than once "[w]ho are" the refugees in Butare, and obliquely referred to a "myth" and "lies" that produced irresponsibility in Butare. He noted that some took refuge in makeshift shelters, while others fed on porridge.[1801]

1261. Des Forges also interpreted Sindikubwabo's statements that Butare leaders had trained to "fight us" and that the population knew "the traitors who have trained to use guns in order to exterminate us", whom the President did not know. She said that there were reports that youth from the PSD party, under the guise of participating in a football match, had gone to Mulindi to get military training from the RPF. There was also an allegation that a *bourgmestre* or two had gone for such training. Moreover, PSD and PL leaders, who were powerful in Butare, were viewed as sympathetic to the RPF, and Sylvain Nsabimana said that he had been told that one reason for Habyalimana's removal as Butare prefect was that he was "close" to the RPF. Des Forges remarked how the President did not specifically identify "the traitors", even though he certainly would have known them. Instead of involving the appropriate judicial authority to take action against those suspected of supporting the RPF, he left it to the population to take the law into their own hands and get rid of the enemies or persons said to be RPF accomplices.[1802]

1262. Des Forges also assessed Sindikubwabo's reference to Mugenzi's statements that some refugees were well received and fed porridge, while others were left to fend for themselves in the rain and in makeshift shelters. She believed that the Kinyarwanda references to "*bamwe*" as the group being provided for and the *abanda*, or "others", created a distinction. In her view, the speech was a reference to the Tutsi refugees who had received humanitarian assistance while Hutu residents went hungry and was properly interpreted to mean that Tutsis were being treated well while Hutus displaced from the war were not. Around this time, RTLM and possibly Radio Rwanda had reported that Tutsis in churches were arming themselves and killing Hutus at night, which was untrue. This allowed for displaced Tutsis gathered at such locations to be transformed from innocent civilians to the enemy.[1803]

1263. Sindikubwabo ordered that those who were "irresponsible" step aside while we "work", as there was no shortage of "good workers who are willing to serve their country". He thanked the outgoing Butare prefect for his accomplishments and wished him success. And finally, he admonished the audience to listen to the government officials well and analyse every word they say in order to understand, emphasising that this was a period of

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[1799] Des Forges, T. 7 June 2005 pp. 15-18, 20-22, 36.
[1800] Des Forges, T. 1 June 2005 pp. 84-85.
[1801] Exhibit P54(E, F & K) (Radio Rwanda Broadcast, 21 April 1994) pp. 15-18 (transcription of President Théodore Sindikubwabo's 19 April 1994 speech in Butare).
[1802] Des Forges, T. 7 June 2005 pp. 32-33.
[1803] Des Forges, T. 7 June 2005 pp. 36-38.

emergency.[1804] His statements that those holding administrative posts would be closely watched was a warning to those who were not facilitating or permitting the killing of Tutsis.[1805]

1264. Des Forges contended that Sindikubwabo's urging that he be properly understood demonstrated that there was a subtext to his speech. In her view, Sindikubwabo's call on civilians to "ensure security" in an area where war had not arrived and in which unarmed civilians were being attacked was a call to ensure Hutus' safety by killing Tutsi civilians.[1806] Furthermore, the President's oblique assertion about "lies" and "myth" in Butare that produced irresponsibility were references to a presumed belief that Butare residents were exempt from the war and therefore did not have to follow government policy of killing Tutsis. Des Forges also hypothesised that "lies" referred to the false idea that the government was controlled by the MRND, which had committed a *coup d'état*, and was attempting to massacre Tutsis.[1807] Furthermore, Sindikubwabo, who used the term "work", would have known its connotation of killing Tutsis.[1808]

1265. Des Forges denied that the President was sincere in thanking Habyalimana in his speech, saying that he did so only because an open insult to a man who was highly valued in Butare could have prevented the people from going along with the government's genocidal program. Instead there was the pretence of thanking him, but the refusal to let him speak, which would have been normal, was also an act of humiliation.[1809]

1266. In comparing a speech by Sindikubwabo on 8 April 1994, which she deemed more innocuous than the speech from 19 April, Des Forges noted that the circumstances surrounding the two speeches differed. On 8 April, when foreigners remained in the country, the government courted international support for their cause. However, by 19 April there were few foreigners in the country and thus Sindikubwabo's speech was directed towards the Rwandan people.[1810]

Prosecution Expert Witness Déogratias Sebahire Mbonyinkebe

1267. Déogratias Mbonyinkebe was accepted as an expert of social and cultural anthropology relating to the events of 1994 in Rwanda.[1811] He testified that Butare's Tutsi prefect, Jean-Baptiste Habyalimana, lost the authorities' support when it became clear that he did not support the genocide in a region that initially was resisting it (II.9.1). The situation in

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[1804] Exhibit P54(E, F & K) (Radio Rwanda Broadcast, 21 April 1994) pp. 17-18; Des Forges, T. 7 June 2005 p. 20. *See also* Des Forges, T. 6 June 2005 pp. 75-76 (President Sindikubwabo's reference to persons who were "indifferent" referred to those who had not joined attacks against Tutsis; Butare had the highest rate of intermarriage between Hutus and Tutsis, and the personal ties between the two weighed against getting involved in attacks against Tutsis).
[1805] Des Forges, T. 31 May 2005 p. 73; T. 6 June 2005 p. 55.
[1806] Des Forges, T. 6 June 2005 p. 75; T. 7 June 2005 pp. 36-38.
[1807] Des Forges, T. 7 June 2005 pp. 34-35; Exhibit P54(E, F & K) (Radio Rwanda Broadcast, 21 April 1994) p. 16.
[1808] Des Forges, T. 7 June 2005 p. 35.
[1809] Des Forges, T. 31 May 2005 p. 73; T. 6 June 2005 pp. 56, 59-60.
[1810] Des Forges, T. 3 June 2005 pp. 43-44; T. 7 June 2005 pp. 40-41.
[1811] Mbonyinkebe, T. 2 May 2005 pp. 53-54. Mbonyinkebe's expert report was admitted on this basis. T. 2 May 2005 p. 66.

Butare changed when higher authorities, including President Théodore Sindikubwabo, went there and used "stronger words".[1812]

1268. Evaluating the contents of Sindikubwabo's speech during the 19 April 1994 installation ceremony of Sylvain Nsabimana, Mbonyinkebe interpreted the President's criticism of "people who are not concerned" as a veiled reference to those who had not identified and eliminated internal enemies and accomplices of the RPF. While persons who left to train with the RPF could reasonably be perceived as the enemy, Mbonyinkebe posited that even if Sindikubwabo was describing the enemy as soldiers, others may have misinterpreted this to mean that they should fight all Tutsis, including innocent bystanders. The President's comments about men being out looting and killing reflected that such activities distracted from the primary objective, which was protecting their neighbours and identifying the enemy. Sindikubwabo's statement "getting rid of [irresponsible persons]" was left ambiguous by the President and could have meant several things.[1813]

1269. Mbonyinkebe also turned to Sindikubwabo's questioning of the audience as to "[w]ho are the refugees" located in Butare prefecture. He contended that this was a rhetorical question, because, as President of the country and with his education and experience, Sindikubwabo must have known the identity of the refugees, who were in large part internally displaced persons fleeing from fighting in the North and Kigali. Although he conceded that the President could have been referring to displaced Hutus from Burundi, Mbonyinkebe believed that the refugees were internally displaced Tutsis, and Sindikubwabo was urging the people to look for RPF accomplices among them and to defend against them.[1814]

1270. After this speech and other officials' speeches that indicated "danger … was on the country's doorstep", persons in Butare began to work not to secure the population, but to track down the enemy within, who were Tutsis and Hutus sympathetic to the RPF.[1815] When confronted with a 27 April 1994 letter from Sindikubwabo and the Butare Security Council, Mbonyinkebe testified that it was possible that the press release reflected Sindikubwabo's concern that his prior calls for peace were misunderstood. However, Mbonyinkebe referred to Prunier's description of the military being helicoptered into Butare to carry out attacks as evidence that actions surrounding the speech were inconsonant with a commitment to end killings. He also found that the statement "[k]illings and looting must stop immediately, and attacks by individuals carrying arms of any kind, with the exception of those manning roadblocks installed by the proper authorities, must come to an end" confusing.[1816]

[1812] Mbonyinkebe, T. 3 May 2005 pp. 44-45, 55, 58.

[1813] Mbonyinkebe, T. 5 May 2005 pp. 71-81; T. 12 May 2005 pp. 78-80. Although unclear, Mbonyinkebe also appears to have testified that during a meeting that preceded Sylvain Nsabimana's public installation ceremony, President Théodore Sindikubwabo stated that "[i]f you Butare people don't get on with the killing, the *Bakiga* will come down from the north and will kill you". Later, Mbonyinkebe confirmed that these words are not reflected in the recording of Sindikubwabo's speech at Sylvain Nsabimana's installation ceremony. Mbonyinkebe, T. 3 May 2005 p. 59; T. 4 May 2005 p. 14; T. 5 May 2005 pp. 55, 65.

[1814] Mbonyinkebe, T. 5 May 2005 pp. 66-69; T. 12 May 2005 pp. 71-74.

[1815] Mbonyinkebe, T. 3 May 2005 pp. 58-59; T. 5 May 2005 pp. 87-88.

[1816] Mbonyinkebe, T. 5 May 2005 pp. 87-91; *see also* Mbonyinkebe, T. 5 May 2005 p. 43 ("Q: Do you say that this speech is also an incitement to genocide in coded language? A: I will prefer that you say it is ... coded language that is calling for solidarity, for self-defence.").

Prosecution Witness D

1271. Witness D, a Hutu, was an *Interahamwe* official who lived in Kigali until 12 April 1994, when he moved to Butare.[1817] He testified that Jean-Baptiste Habyalimana, a Tutsi member of the PL and Butare prefect in 1994 had managed to maintain relative peace there up until his removal in April 1994 (II.9.1). On 19 April, President Théodore Sindikubwabo and Prime Minister Jean Kambanda spoke during the installation of Habyalimana's replacement as Butare prefect, Sylvain Nsabimana. The ceremony was at the MRND hall in Butare and was attended by many persons, including military officials and various Butare *bourgmestres*.[1818]

1272. Witness D, who stood outside the room of the MRND hall in which the ceremony occurred, heard the President's speech as it was broadcast on loudspeakers. Sindikubwabo told Butare residents who were "not concerned" to allow others, specifically the military and gendarmes, to "work". He understood the message to reflect the government's intention to rid Rwanda of Tutsis, particularly those who had obtained training with the RPF. The witness was also able to hear Sindikubwabo's speech because it was broadcast on either the national radio or RTLM that evening.[1819]

1273. Before 19 April 1994, the war had not yet reached Butare and killings were not occurring in the area. However, on the evening of 19 April 1994, killings commenced in Butare town. Although he did not observe killings, he testified, for example, that soldiers from *École des Sous-Officiers* came to his cousin's home in Butare town that evening. They informed him that the Queen and her family had been killed and that they had come to kill Witness D's cousin on the instructions of a captain. Given the witness's position in the *Interahamwe*, the soldiers let his relative live. However, this person was later killed.[1820]

1274. Furthermore, roadblocks were established and other massacres of Tutsis began. He believed that officers from the *École des Sous-Officiers* military school and members of the population, led by local officials, committed massacres from April to May. For example, Witness D attended a meeting where a *cellule* leader within Shyanda commune instructed Hutus to kill Tutsis within the *cellule*. Witness D did not participate in the subsequent attack, but heard from eyewitnesses that the four to five Tutsi families from the area were taken to a pond and drowned.[1821]

[1817] Witness D, T. 15 June 2004 pp. 2-3, 12, 32, 46, 48, 62, 66; T. 16 June 2004 pp. 29-30, 44-47, 52; T. 17 June 2004 pp. 23, 58-59, 65-66; Exhibit P52 (Witness D's Personal Information Sheet).

[1818] Witness D, T. 15 June 2004 pp. 32-33, 35-39, 41; T. 16 June 2004 pp. 39-40; T. 17 June 2004 pp. 21-22, 55-56.

[1819] Witness D, T. 15 June 2004 pp. 32-33, 35-39, 41; T. 16 June 2004 pp. 39-40, 66-70; T. 17 June 2004 pp. 21-23, 55-56.

[1820] Witness D, T. 15 June 2004 pp. 32, 41; T. 16 June 2004 p. 32; T. 17 June 2004 pp. 55-56, 66.

[1821] Witness D, T. 15 June 2004 pp. 32, 41-43, 45; T. 16 June 2004 pp. 32, 34-35, 59-60; T. 17 June 2004 pp. 23-24, 55-56, 66-67; Exhibit P55(A) (Location of Witness D in Butare in 1994); Exhibit P55(B) (Names of Two Persons Who Told Witness D About the Drownings). The Chamber observes that Witness D states that "[t]here [were] no killings in Butare". T. 16 June 2004 p. 35. When read in the context of the preceding questions, this testimony is a response to Counsel's suggestion that the RPF carried out massacres in Butare. *See* Witness D, T. 16 June 2004 pp. 34-35.

Prosecution Witness Harriet Sebera

1275. Harriet Sebera, a Tutsi, was a member of the PL and lived in Butare in 1994.[1822] Around 8 April 1994, Sebera and her family moved to where she worked, in Butare town, not far from the PL office and the Hotel Ibis. On 19 April, Sebera saw an *Abatabazi* government convoy pass the location where she was hiding. The *Abatabazi* government had been set up around 9 April and she believed that its purpose was to "rescue" Rwandans who were not Tutsi. She saw displaced persons coming from Gikongoro prefecture, near the border with Butare, but the massacres had not yet come to Butare.[1823]

1276. Sebera's husband, who was listening to Radio Rwanda since the morning, told her to follow the broadcast. Her husband said that Justin Mugenzi, her aunt's son-in-law, had earlier stated that Butare residents were being negligent, because they provided porridge and shelter to displaced Tutsis but not displaced Hutus. Sebera then heard President Théodore Sindikubwabo speak on a number of issues. He expressed disappointment at having learned that Butare leaders received military training from the RPF, and stated that they should be killed before they kill "us". He admonished listeners that this was wartime and that all Rwandans should stand up and fight the enemy. He also stated that Butare residents who did not want to "work[]" – which meant "kill[]" – should be gotten "rid of". In her view, Sindikubwabo's speech was intended to incite Hutus to kill Tutsis. During the course of this speech Sebera heard Sindikubwabo thank Mugenzi for his prior words at the ceremony, confirming her husband's account that Mugenzi had spoken there previously.[1824]

1277. As this meeting occurred, Sebera observed truckloads of uniformed *Interahamwe* arrive at the Hotel Ibis and off-load jerry cans of petrol in front of the hotel. That evening she spoke to Habyalimana, the former Butare prefect, and, as she had prior to his removal, encouraged him to flee to Burundi. He was arrested on 21 April 1994 and Sebera did not hear from him again.[1825]

1278. Sebera believed that the systematic killings of Tutsis in Butare started with the arrest and removal of Rosalie Gicanda, the Queen, and others on 20 April 1994. Subsequently, Hutu civilians responded to the call to kill Tutsis, moving from house to house. On 21 April, *Interahamwe* coming from the Hotel Ibis and armed with clubs, machetes and spears broke into the place where Sebera and her family were staying. They killed her husband and his brother and looted her home. Sebera hid upstairs with her children and fled around 2.00 a.m. She denied that she heard Sindikubwabo's speech on 21 April, noting that she was hiding outside at that point.[1826]

[1822] Sebera, T. 19 October 2004 pp. 35-36; T. 20 October 2004 pp. 36-37.
[1823] Sebera, T. 20 October 2004 pp. 38-40, 42, 44; T. 21 October 2004 pp. 10, 13.
[1824] Sebera, T. 20 October 2004 pp. 41-45, 48; T. 21 October 2004 pp. 6, 9-11, 15-16, 19; T. 25 October 2004 pp. 39-42.
[1825] Sebera, T. 20 October 2004 pp. 41-42; T. 21 October 2004 pp. 10-14.
[1826] Sebera, T. 21 October 2004 pp. 12-13, 17-18; T. 25 October 2004 pp. 39-40, 42. Sebera did not expressly identify the ethnicity of her husband or his brother but later qualified that the victims of the increased attacks were Tutsis. T. 21 October 2004 p. 13. She also noted that members of his family were killed in Gikongoro, suggesting that they were Tutsis. T. 21 October 2004 p. 19.

Prosecution Witness GLP

1279. Witness GLP, a Hutu, joined the MDR in 1991 and held an elected position within Ruhengeri starting in 1992.[1827] He heard President Théodore Sindikubwabo's speech in Butare prefecture on Radio Rwanda, although he could not remember the date. He interpreted the President's reference to "those who don't care" as persons who had not joined in eliminating RPF accomplices and killing Tutsis. The witness was surprised that the President was inviting the people to join in the killings.[1828]

Prosecution Witness GHR

1280. Witness GHR, a Tutsi, moved to Nyamabuye commune, Gitarama prefecture, on the evening of either 11 or 12 April 1994.[1829] He heard a *communiqué* on Radio Rwanda where Théodore Sindikubwabo, in a "certain" prefecture he could not recall, stated "[s]tand up, arise and work", which was a reference to massacres. At that time, "work" meant to kill people. Three weeks after President Juvénal Habyarimana's death, Sindikubwabo replaced the Tutsi prefect of Butare, who was then killed.[1830]

Prosecution Witness DCH

1281. Witness DCH, a Hutu, was a government driver and MRND member in 1994.[1831] He testified that, during the genocide, the term "work" – "*gukora*" in Kinyarwanda – meant killing Tutsis. The witness also recalled that President Théodore Sindikubwabo told persons in Butare that they were "indifferent", causing its residents to kill each other. They also killed the prefect of Butare and appointed another prefect that started the massacres.[1832]

Prosecution Witness UL

1282. Witness UL, a Hutu, worked as a driver in the Ministry of Public Works in 1994.[1833] He left Kigali for Butare on 22 April 1994, having volunteered to work as an excavator there.

[1827] Witness GLP, T. 22 June 2004 pp. 17, 21; T. 24 June 2004 pp. 30, 57; Exhibit P60 (Witness GLP's Personal Information Sheet).
[1828] Witness GLP, T. 22 June 2004 pp. 62-63; T. 24 June 2004 pp. 11-14. Witness GLP initially testified that President Sindikubwabo's speech was made between 15 and 28 May 1994 but later stated that he could not remember the date. Witness GLP, T. 24 June 2004 pp. 12, 14.
[1829] Witness GHR, T. 18 March 2004 pp. 39, 45; T. 19 March 2004 pp. 10-11, 20; Exhibit P45 (Witness GHR's Personal Information Sheet).
[1830] Witness GHR, T. 19 March 2004 pp. 14, 35-36; T. 22 March 2004 pp. 6, 29-30.
[1831] Witness DCH, T. 16 September 2004 pp. 71, 75-76; T. 20 September 2004 pp. 14-15; Exhibit P72 (Witness DCH's Personal Information Sheet). Witness DCH was arrested in Rwanda in 1995 and was charged with genocide, massacres, looting and related crimes. He pleaded guilty and received a seven-year sentence on 8 December 2001. In light of his pre-trial detention, Witness DCH completed his sentence and was released on 1 February 2002. Witness DCH, T. 16 September 2004 pp. 71-73; T. 20 September 2004 p. 2; T. 22 September 2004 pp. 8-9, 14-17.
[1832] Witness DCH, T. 20 September 2004 pp. 5-6, 50. Witness DCH generally recalled that ministers, such as Jean Kambanda, issued similar instructions about working over Radio Rwanda, employing phrases such as "[g]et the hoe and cultivate your fields. Use your weapons. Use your guns." T. 20 September 2004 p. 6,
[1833] Witness UL, T. 1 March 2004 p. 44; T. 2 March 2004 pp. 18, 31; T. 3 March 2004 p. 49; Exhibit P34 (Witness UL's Personal Information Sheet). Witness UL had been charged with committing genocide in Rwanda. He was detained for nearly five years before being acquitted in 2002. He provided statements to

He arrived in Butare town on 25 April, first digging graves and clearing a road towards Mbazi. He also collected dirt in lorries, which he was told would be used to cover graves.[1834]

1283. Around 27 April 1994, Butare Prefect Sylvain Nsabimana instructed the witness to work under the instructions of Eugène Rwamucyo, whom the witness identified as the director of the Butare regional health sector. The witness and Rwamucyo first went to a church and classroom in Gishamvu commune where they found "very many bodies". Working with Pascal Kambanda, the *bourgmestre* of Gishamvu, he dug graves. He did not ask who the dead were or how they were killed.[1835]

1284. The following day, Witness UL, Kambanda, Rwamucyo and some prisoners went to Nyakibanda major seminary. Many corpses were on the road leading to the seminary, at its entrance and in the nearby field. He estimated there were between 10,000 and 15,000 bodies. Upon arrival, not all the victims were dead. Kambanda summoned persons with clubs and machetes and issued orders to them after which the victims were "finished off". The assailants identified the living by yelling out that the Red Cross was coming to take people to the hospital. Survivors who called out for assistance were killed. Kambanda and Rwamucyo did nothing to stop the killings. The witness remained at the seminary for four days, and dug three graves.[1836]

1285. Witness UL returned to Butare town after leaving Gishamvu. Kanyabashi took him and Rwamucyo to another site where, upon Kanyabashi's orders, the witness dug a large grave. While working there, Lieutenant-Colonel Bizumuremyi, a medical doctor working at the Butare polytechnic school, arrived. Rwamucyo told Bizumuremyi that bodies were being brought from the polytechnic school. Corpses arrived in lorries.[1837]

1286. In late May 1994, Witness UL returned to the prefecture office at approximately 3.00 or 3.30 p.m. Fresh blood was on the seal of Nsabimana's office, identity papers were littered about and unidentified onlookers stood by. The witness picked up the student identity card of a man named Jules Cesar Kayibanda. At that moment, Nsabimana instructed the witness to dig a grave behind the residential houses for the Ministry of Transportation, near the prefecture office. The witness went to the location, where the body of a young man, with a shattered skull, was brought. Unidentified persons told Witness UL that it was the person who had been killed near Nsabimana's window. A student, who lived at Motel Chez Bahenga, where Witness UL was staying, subsequently informed the witness that Jules had been killed because his brother Louis was suspected to have joined the *Inyenzi*.[1838]

1287. One morning in early June – the day after Alphonse Nteziryayo replaced Nsabimana as Butare's prefect – Witness UL saw Nteziryayo with Rwamucyo near the prefecture office. Accompanying them was Shalom Ntahobali, a high-ranking *Interahamwe* and the son of Interim Government minister Pauline Nyiramasuhuko. Many people had taken refuge nearby, bearing significant injuries. Nteziryayo stated that he did not want any "dirt" near the

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Tribunal investigators in 1998, while detained, and participated in investigations in September 2002 shortly after his release. Witness UL, T. 1 March 2004 p. 44; T. 3 March 2004 pp. 18-22.

[1834] Witness UL, T. 2 March 2004 pp. 31-33.

[1835] Witness UL, T. 2 March 2004 pp. 33-38; T. 3 March 2004 pp. 37-38, 40-42, 51-52.

[1836] Witness UL, T. 2 March 2004 pp. 38-40.

[1837] Witness UL, T. 2 March 2004 pp. 40, 42-43.

[1838] Witness UL, T. 2 March 2004 p. 34; T. 3 March 2004 pp. 3-4, 43.

prefecture office.[1839] The people, who were Tutsis, could not leave, as they would be killed at roadblocks.[1840]

1288. That evening, Witness UL saw Ntahobali and someone in a military uniform driving approximately 10 refugees away in a white Peugeot pick-up truck. The following morning, Witness UL was directed to go behind the Institute of Research, in a small forest near the university. There, Ntahobali ordered the witness to cover partially buried bodies. He believed that the corpses were the people removed from outside the prefecture office because the blood was still fresh, but he was unable to identify them.[1841]

Mugenzi

1289. Mugenzi denied that Jean-Baptiste Habyalimana was removed as prefect of Butare in order to spark violence there. Mugenzi went to Butare with the Interim Government delegation that installed Sylvain Nsabimana as Butare's new prefect on 19 April 1994. A number of Interim Government ministers, including the Minister of Information and Minister of Civil Service attended. President Sindikubwabo's appearance was unplanned. He came because he had slept in Butare the evening before having toured Gikongoro and Butare to bring pacification to the region. Among the speakers were the President, Prime Minister, the *directeur du cabinet* of the Ministry of the Interior and the *bourgmestre* of Butare town.[1842]

1290. At this ceremony, Prime Minister Jean Kambanda spoke prior to Sindikubwabo, stating that the government's priority was security, establishing law and order, and seeking a negotiated settlement with the RPF. He referred to his prior message to political party leaders to ensure security while avoiding divisions based on ethnicity or regionalism. This was a clear message for Hutus not to fight Tutsis and undermines the contention that Habyalimana was removed because he was a Tutsi. Kambanda concluded that the President's plane crash and criminal acts of revenge should be brought to justice.[1843]

1291. Mugenzi also spoke, describing the conditions of the refugees installed in a refugee camp in a Catholic mission in Kiruhura, close to Butare. In the midst of the rainy season, he had observed that many of the displaced there were forced to be outside. Mugenzi stated that everything had to be done to return security to the villages, because people were dying of hunger and misery in the refugee camps. His message made no distinction between Hutus or Tutsis nor did the President's reference to Mugenzi's remarks suggest that some were being treated better than others by being fed porridge.[1844]

1292. Sindikubwabo's speech followed Mugenzi's. With respect to the President's initial questions about whether the refugees he visited were Hutu or Tutsi and why they fled, this was a rhetorical device that did not reflect the President's lack of knowledge. Rather, it invited persons to think about the situation. In particular, since the Burundian President's assassination in 1993, Rwanda was receiving refugees from Burundi who were chased out in light of the belief that they were responsible for the death of two Burundian Presidents.

[1839] The transcripts are unclear as to what Witness UL meant by the term "dirt" – corpses or injured individuals or both.
[1840] Witness UL, T. 3 March 2004 pp. 4-5, 10-14, 32.
[1841] Witness UL, T. 3 March 2004 pp. 14-17.
[1842] Mugenzi, T. 10 November 2005 pp. 9-10, 22-23, 33; T. 24 November 2005 pp. 40, 42.
[1843] Mugenzi, T. 10 November 2005 pp. 22-25, 30, 32-33.
[1844] Mugenzi, T. 10 November 2005 pp. 10, 40.

People were also fleeing RPF advances from the east and Tutsis were fleeing the spontaneous violence from locations such as Kigali and Gisenyi. Thus, it was important to consider who they were, as Tutsis, for example, "needed to have special care" while Burundians should be treated differently.[1845]

1293. Furthermore, the President's reference to persons with "big bellies" and his directives that were not understood reflected his discontent that people in Gikongoro were looting and threatening others, rather than ensuring security. This behaviour, Mugenzi stated, went against the President's earlier speeches, including those on 14 to 17 April 1994.[1846]

1294. The President's remarks regarding the people of Butare "who were not concerned" reflected that persons there had not sufficiently recognised that the country was at war, that they were being called to man roadblocks and secure their villages. Moreover, the President had been informed that some *bourgmestres* and civil servants in Butare, particularly members of the PSD party, had gone secretly to Mulindi to train with the RPF. Mugenzi had not known this was happening in Butare until the date of this gathering. Angry, Sindikubwabo wanted such persons to be identified but asked people not to make accusations without evidence.[1847]

1295. Mugenzi discussed the President's statements that he did not normally speak with such vigour in his voice and his ensuing orders that the "irresponsible" step aside while others "work". Mugenzi believed that Sindikubwabo was particularly angered by learning that there were persons within the country who had trained to fight the government. With respect to the use of the term "work", Sindikubwabo was referring to those who did not want to participate in the peacemaking and security of the country. Thus, such persons should be identified and those responsible for getting rid of such people should do so quickly, through the due processes of law governing the country. Mugenzi did not understand this speech to be an oblique reference to the killing of Tutsis, but considered it a war speech, made just one week after the government had fled Kigali and was "in the bush". Finally, Sindikubwabo admonished that persons should not be prevented from seeing civil servants.[1848]

1296. Mugenzi denied that the Interim Government's actions in Butare on 19 April 1994 were the catalyst for the killing of Tutsis as their messages did not contain such incitement. Rather, violence had erupted elsewhere prior to their visit, recalling there was a massacre of 2,000 persons. Killings that followed after 19 April 1994 were a result of other sources.[1849]

Mugiraneza

1297. Mugiraneza went to the installation ceremony of the new prefect of Butare on 19 April 1994. The chief of protocol told him that President Théodore Sindikubwabo would be present at this occasion and asked that the ministers accompany him. Mugiraneza did not know the contents of the President's speech prior to him giving it.[1850]

1298. Mugiraneza understood the President's 19 April 1994 speech as calling on the population to put an end to the massacres, a message that he had advocated previously.

[1845] Mugenzi, T. 10 November 2005 pp. 34-35.
[1846] Mugenzi, T. 10 November 2005 pp. 19, 35-36.
[1847] Mugenzi, T. 10 November 2005 pp. 36-39, 41.
[1848] Mugenzi, T. 10 November 2005 pp. 40-43.
[1849] Mugenzi, T. 10 November 2005 pp. 19-20; T. 30 November 2005 p. 60.
[1850] Mugiraneza, T. 26 May 2008 pp. 44-45; T. 27 May 2008 pp. 21-23, 37; T. 2 June 2008 p. 45. *See also* T. 26 May 2008 pp. 14-15 (in Gitarama, ministers decided to visit their native prefectures for pacification purposes).

Specifically, Mugiraneza assessed this speech in the context of a prior speech, broadcast on Radio Rwanda on 17 April, where the President expressed his anger that he had called for persons to stop massacres but that they had continued to occur. He conceded, however, that "[s]ome people certainly understood it otherwise".[1851]

1299. Mugiraneza confirmed that in his prior statement to Tribunal prosecutors he wrote that a "killing frenzy" occurred in Butare after the President's speech. However, he did not have personal knowledge of it, but based this conclusion on books he had read, such as Des Forges's book and Prosecution Investigator Maxwell Nkole's report.[1852]

Bizimungu and Bicamumpaka

1300. Bizimungu was on mission in Zaire on 19 April 1994 (II.14.2.1). He testified that he could not communicate with Rwanda while outside of it. He denied that he spoke to Sindikubwabo about his plans to visit Butare and that he had encouraged the President to visit Butare town.[1853] Bicamumpaka, who had returned from Burundi early on 18 April 1994, remained in Gitarama at Murambi until he left on 21 April 1994 (II.14.3.2).[1854]

Bizimungu Defence Witness André Ntagerura

1301. André Ntagerura was the Minister of Transport and Communication since April 1992 and was reappointed to the position in the Interim Government formed on 9 April 1994.[1855] He attended the 19 April 1994 installation ceremony for the new prefect of Butare, as it was custom for available ministers to accompany the President and Prime Minister to public events. The event was in a room that held between 300 and 400 persons, and a few persons were positioned outside the hall. No loudspeakers were set-up to broadcast the speeches outside the room.[1856]

1302. President Théodore Sindikubwabo's speech had not been previously reviewed by Interim Government ministers. His remarks were a call for the restoration of peace, law and order, as well as security for all persons and property. Ntagerura, a native Kinyarwanda speaker, interpreted Sindikubwabo's reference for persons to "work" in its obvious sense of resuming normal employment activities. He denied that this was a call to commit murder, noting the President's consistent appeals for killings to end. Furthermore, his statements that ministers should interact directly with the population were to ensure that they played a direct role in restoring law and order, peace and security. Ntagerura denied that this speech sparked violence in Butare, pointing to evidence that the prefecture had already been affected by it.[1857]

[1851] Mugiraneza, T. 26 May 2008 pp. 40-46; T. 27 May 2008 p. 4.
[1852] Mugiraneza, T. 27 May 2008 pp. 23-24; T. 4 June 2008 pp. 21, 56-60.
[1853] Bizimungu, T. 29 May 2007 p. 27; T. 4 June 2007 pp. 44-45.
[1854] Bicamumpaka, T. 26 September 2007 pp. 43-44, 49; T. 27 September 2007 pp. 36-37; T. 2 October 2007 pp. 64-66; T. 8 October 2007 p. 34. *See also* Exhibit P2(27)(E & F) (Bicamumpaka's Interview with Tribunal Investigators, 8 April 1999) p. 14 (denying that he accompanied the President to Butare).
[1855] Ntagerura, T. 14 February 2007 pp. 66-67; Exhibit 1D158 (Ntagerura's Personal Information Sheet). Ntagerura, formerly an accused before the Tribunal, was acquitted of all counts. T. 19 February 2007 pp. 40-41. *See also* Ndindabahizi, T. 1 May 2007 pp. 60, 62.
[1856] Ntagerura, T. 15 February 2007 p. 43; T. 19 February 2007 pp. 30, 37; T. 20 February 2007 p. 37.
[1857] Ntagerura, T. 19 February 2007 pp. 28-29, 30, 32-34, 36-37; T. 20 February 2007 p. 37.

Mugenzi Defence Witness Agnès Ntamabyaliro

1303. Agnès Ntamabyaliro, a Hutu, was appointed Minister of Justice in July 1993 and retained that position after the formation of the Interim Government in April 1994.[1858] President Théodore Sindikubwabo's speech in Butare on 19 April 1994 implored everyone to be his brother's keeper, meaning they should protect each other from violence. When Sindikubwabo said "those who were irresponsible and not concerned should step aside and allow others to work", he was referring to *bourgmestres* who were lazy and expected others to do their work for them. The President also referred to different categories of workers who were only interested in money regardless of whether their work was done. She interpreted "those responsible for ridding us of such persons should do so quickly" to mean that the authorities must discipline persons who refuse to carry out their duties.[1859] Ntamabyaliro denied that Sindikubwabo's reference to "getting rid" of such persons or "work" meant the killing of Tutsis, and she saw nothing in the speech that would incite the killing of Tutsis. By imploring Rwandans to analyse every word he said, the President was reprimanding journalists for misquoting his statements and taking them out of context.[1860]

Bizimungu Defence Witness Emmanuel Ndindabahizi

1304. Emmanuel Ndindabahizi, a Hutu, was Minister of Finance in the Interim Government established on 9 April 1994.[1861] He did not go to Butare or ever hear President Théodore Sindikubwabo's 19 April 1994 speech. However, while Ndindabahizi was in exile in Bukavu, Zaire, around September or October 1994, he heard rumours that Sindikubwabo's speech was the root cause of the massacres in Butare, as "Butare was set on fire and plunged in a blood bath" after it. Ndindabahizi also talked to Sindikubwabo in Bukavu, who complained that his speech had been misinterpreted. Sindikubwabo said that he had asked Butare residents to help and protect one another and informed listeners that people were aware of the problems there.

[1858] Ntamabyaliro, T. 21 August 2006 pp. 3-4, 7; Exhibit 2D102A (Ntamabyaliro's Personal Information Sheet). *See also* Exhibit P2(11) (RTLM Broadcast, 9 April 1994) p. 10 (swearing in Ntamabyaliro as Minister of Justice in the Interim Government). At the time of her testimony, Ntamabyaliro was being tried in Rwanda for genocide. Defence Counsel and the court admonished her of her right, pursuant to Rule 90 (E) of the Rules, not to provide evidence that would incriminate her in relation to her proceedings in Rwanda. *See* T. 21 August 2006 pp. 1-2; T. 22 August 2006 p. 26, 28; T. 23 August 2006 p. 19. Ntamabyaliro would not confirm whether she was present at President Théodore Sindikubwabo's speech on 19 April 1994 but answered questions of a general nature about the speech. T. 22 August 2006 pp. 27-28. She did not testify as to the arrest of the Butare prefect because it related to her case in Rwanda. T. 23 August 2006 p. 50.

[1859] Ntamabyaliro compared President Théodore Sindikubwabo's reference to those who are indifferent or *ntibindeba* to a speech made by Kagame in 2000, where he said that the international community had turned its back on Rwanda during the genocide. T. 22 August 2006 p. 19; T. 23 August 2006 pp. 38-40; Exhibit 2D51 (Kagame's Speech at the 6th Anniversary of the Genocide, Kigali, 7 April 2000).

[1860] Ntamabyaliro, T. 22 August 2006 pp. 20, 31-39; T. 23 August 2006 pp. 38-40. *See also* T. 22 August 2006 p. 22 (in the context of another speech, Ntamabyaliro defined *gukora* to represent the verb "work" in English or *faire* or *travailler* in French).

[1861] Ndindabahizi, T. 30 April 2007 pp. 4-5, 67; Exhibit 1D158 (Ndindabahizi's Personal Information Sheet). Ndindabahizi is presently serving a life sentence for his role in the events in Rwanda in 1994. Ndindabahizi, T. 30 April 2007 pp. 5, 45-49. Notably, Ndindabahizi was not tried for crimes in Rwanda based on his position as Minister of Finance of the Interim Government. T. 30 April 2007 p. 35. At the time of his testimony, he resided in the United Nations Detention Facility with the Accused. T. 1 May 2007 pp. 49-50.

He made no mention of massacres having resulted from his speech. Ndindabahizi testified that massacres had started in Butare before Sindikubwabo's 19 April speech.[1862]

Bizimungu Defence Expert Witness Eugène Shimamungu

1305. Eugène Shimamungu was admitted as an expert in linguistic sciences, grammar and the Kinyarwanda language, as well as political information and communication.[1863] He analysed speeches made by the Interim Government, including President Théodore Sindikubwabo's, and distilled three primary themes throughout them. The first concerned re-establishing order and the safety of people and property, the second reflected an expressed desire of the Interim Government to reach a negotiated resolution with the RPF and the final theme pertained to the need to address famine.[1864]

1306. Shimamungu analysed Sindikubwabo's speech on 19 April 1994 in Butare during the installation ceremony of Sylvain Nsabimana. In his view, it was improvised and was directed towards local government officials, rather than the population generally. It was not broadcast live, but on Radio Muhabura and then two days later on Radio Rwanda. It focussed on overcoming insecurity, and highlighted concerns about the infiltration of the RPF or those trained by them. Given the lack of gendarmes, Sindikubwabo called upon the population to play its role in restoring security.[1865]

1307. Shimamungu did not believe that the President's order that "spectators step aside and let those concerned with security act" was a coded message. Neither were his instructions for the government to "work closely with the population" coded. Sindikubwabo's admonition that his words not be misinterpreted showed his frustration that prior orders regarding re-establishing security had not been implemented. In Shimamungu's view, his reference to Mugenzi's statement that some people were living in makeshift shelters battered by rain while others ate porridge referred to two precarious circumstances in which Rwandans were living. Shimamungu agreed that Sindikubwabo's question, "[w]ho are these refugees?," was rhetorical, but believed he intended to raise awareness that refugees were from all different ethnic groups, and that RPF combatants are not necessarily all Tutsis, but could be Hutu as well. He warned that some refugees were armed and attacked local authorities. It contained no reference to the *Abakiga*, or Rwandans from the north.[1866]

1308. It was unusual for a president to attend the installation of a prefect, an administrative appointment that normally does not involve a ceremony. However, the government was in Butare because it had been expelled from Kigali by the RPF and was fleeing. Shimamungu stated that the Kinyarwanda word, *gukora*, which commonly is interpreted as "functioning",

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[1862] Ndindabahizi, T. 1 May 2007 p. 9; T. 3 May 2007 pp. 18-21. *See also* T. 3 May 2007 pp. 9, 15-18 (concerning the government's decision to remove Habyalimana). He believed the cabinet decision to remove Habyalimana on 17 April 1994 would have been communicated to the President by the time of his 19 April 1994 speech in Butare. T. 3 May 2007 pp. 20-21.

[1863] Shimamungu, T. 10 May 2007 pp. 1-2. The Chamber rejected that Shimamungu had the requisite expertise to testify as an expert in lexicography and terminography. T. 10 May 2007 p. 2. He lived in France at the time of his testimony. T. 16 May 2007 p. 9.

[1864] Shimamungu, T. 10 May 2007 pp. 58-59; T. 14 May 2007 pp. 5-6; T. 17 May 2007 p. 44.

[1865] Shimamungu, T. 15 May 2007 pp. 31-44, 46-52, 60-61; T. 16 May 2007 p. 46; T. 21 May 2007 pp. 8-10; T. 22 May 2007 pp. 3-4, 28-29, 31-32.

[1866] Shimamungu, T. 15 May 2007 pp. 50-56, 58, 60-63; T. 16 May 2007 pp. 36-38; T. 17 May 2007 p. 27; T. 21 May 2007 pp. 4-12; T. 22 May 2007 p. 38.

"to do" or "to work", is susceptible to different translations depending on context. He acknowledged that some experts had suggested that it meant to kill Tutsis during the genocide but stated that this was not the appropriate translation of it in any speech that he analysed.[1867]

1309. Reviewing the speech of Prime Minister Jean Kambanda given on the same day, Shimamungu agreed that a primary task identified by Kambanda was to stop killings in Kigali. He believed the speech was primarily directed towards civil servants rather than the population.[1868]

Mugenzi Defence Witness Augustin Kayinamura

1310. Augustin Kayinamura, a Tutsi with a Hutu identity card, was vice-president of the PL in Nyarubuye region, Kibuye prefecture, during the genocide.[1869] He heard excerpts of President Théodore Sindikubwabo's 19 April 1994 speech in Butare on the Radio Muhabura, where he stated that "people should not feel unconcern" and that they "should stand up and work". Kayinamura believed that the President, a native of Butare, went there in order to assess the security situation. He conceded that after 6 April 1994, some extremists chose to interpret Sindikubwabo's use of the phrase "to work" – or *gukora* in Kinyarwanda – as an order to kill Tutsis, but Kayinamura did not believe that the word contained this meaning. Rather, the President was telling Rwandans to help ensure security along with, for example, gendarmes.[1870]

Mugenzi Defence Witness Nelson Muhirwa

1311. Nelson Muhirwa, a Hutu, was an employee of the *Banque de Kigali* in Gisenyi town from March 1993 to July 1994.[1871] Although he could not recall the precise date, he heard on the radio that President Théodore Sindikubwabo spoke of people who were "unconcerned" or "indifferent". Muhirwa interpreted this to mean persons were not paying attention to security matters. He believed the Butare prefect, whose ethnicity he did not know, was removed immediately after.[1872]

[1867] Shimamungu, T. 14 May 2007 pp. 53, 55-56; T. 15 May 2007 p. 52; T. 22 May 2007 pp. 16-17.
[1868] Shimamungu, T. 16 May 2007 pp. 41, 43-46.
[1869] Kayinamura, T. 30 March 2006 pp. 21-24; T. 31 March 2006 pp. 12-14; T. 3 April 2006 p. 14; Exhibit 2D75 (Kayinamura's Personal Information Sheet). While testifying during the *Gacumbitsi* trial in October 2003, Kanyinamura testified that he was a Hutu. Kayinamura, T. 31 March 2006 pp. 15-18. Kanyinamura fled Rwanda on 28 April 1994, returned briefly in 1996, but was living abroad at the time of his testimony. Kayinamura, T. 30 March 2006 pp. 46, 48, 52-53; T. 31 March 2006 pp. 7, 22-25, 28; T. 3 April 2006 pp. 12-13; T. 4 April 2006 p. 23. He had also been charged with the murder of an employee and sentenced to five years imprisonment for "negligence" in relation to that person's death although, after appealing he was released after three months. Kayinamura, T. 31 March 2006 pp. 18-22; T. 4 April 2006 pp. 41-42.
[1870] Kayinamura, T. 30 March 2006 p. 45; T. 4 April 2006 pp. 18-22, 29.
[1871] Muhirwa, T. 4 April 2006 pp. 51, 54; T. 5 April 2006 pp. 2, 8, 16-17, 20.
[1872] Muhirwa, T. 5 April 2006 pp. 66-70.

Bicamumpaka Defence Witness LF-1

1312. Witness LF-1, a Hutu, worked in the Ministry of Foreign Affairs from November 1986 to early May 1994.[1873] He heard excerpts of President Théodore Sindikubwabo's speech in Butare during the installation of the new prefect. He recalled, in particular, Sindikubwabo's statement that there are "people who are behaving as if the situation does not concern them". Spoken at a time when massacres were occurring nationwide, the words were interpreted in two manners depending on political leanings. The witness believed the remark admonished persons who felt that what was happening only concerned their "neighbors". He believed that the President would not have given a speech that provoked violence as his family in Butare had also been threatened by 20 April. However, the witness had conversations with numerous persons on the streets in Gitarama town – a majority who were Hutu – and learned that some interpreted this as the President expressing his desire for people to "kill others".[1874]

Bicamumpaka Defence Witness Ignace Karuhije

1313. Ignace Karuhije, a Hutu member of the MDR's secretariat in Ruhengeri, lived in Kigali in 1994.[1875] Karuhije testified that he never heard secret instructions to kill Tutsis on the radio. He once heard a statement by President Théodore Sindikubwabo on Radio Rwanda in which he criticised people who were not "participating" or "not concerned" with what was happening. Karuhije was surprised to learn that after the RPF took power in Rwanda, they claimed this speech contained coded messages inciting Hutus to kill Tutsis. Karuhije understood Sindikubwabo to be criticising those who were not involved in the peace process.[1876]

Bicamumpaka Defence Witness CC-1

1314. Witness CC-1, a Hutu, had personal ties with Bicamumpaka and lived in Kigali in 1994.[1877] He testified that Rwandan communication is filled with innuendo and that meaning can be extrapolated from context. He heard that President Théodore Sindikubwabo's use of the term "work" in a speech in Butare during April or May 1994 was interpreted by some to mean killing, although he believed that this interpretation was created after the genocide. The witness had understood uses of the word during the genocide to mean daily work or labour, but he had not reviewed the speech. Killings followed Sindikubwabo's visit to Butare.[1878]

[1873] Witness LF-1, T. 12 June 2008 pp. 3-5, 10, 12-16; Exhibit 3D187 (Witness LF-1's Personal Information Sheet); Exhibit 3D188 (Letter from Prime Minister Jean Kambanda Dismissing Witness LF-1, 1 May 1994).
[1874] Witness LF1, T. 12 June 2008 pp. 31-38, 42.
[1875] Karuhije, T. 5 November 2007 pp. 5-7; T. 6 November 2007 pp. 1-2; Exhibit 3D171 (Karuhije's Personal Information Sheet).
[1876] Karuhije, T. 5 November 2007 pp. 20, 36.
[1877] Witness CC-1, T. 31 October 2007 pp. 4, 7, 15; Exhibit 3D168 (Witness CC-1's Personal Information Sheet).
[1878] Witness CC-1, T. 31 October 2007 pp. 23, 41-42.

Mugenzi Defence Witness TJO

1315. Witness TJO, had a residence in Gahini sector, Rukara commune, and knew Mugenzi on this basis.[1879] He recalled listening to a few minutes of the speech made by President Théodore Sindikubwabo, who was in Butare, during the genocide. Sindikubwabo asked the population not to remain indifferent and to provide security for their neighbours as this was not only the concern of policemen, gendarmes and "others". He did not recall the President asking for persons to step aside as there were plenty of others to do work.[1880]

1316. The witness testified that on one occasion a soldier, in the company of the Butera *conseiller*, had told him to "work" – *gukora* in Kinyarwanda. The witness stated that the soldier further explained that this meant to kill people, as it was clear the interpretation was not obvious to the witness. Although *gukora* is a verb that could mean many things, the witness did not agree that the term was coded and implied an instruction to kill Tutsis.[1881]

Mugiraneza Defence Witness RWW

1317. Witness RWW, a Hutu, worked in a security detail for Mugiraneza in 1993 and 1994.[1882] Sometime in April 1994, he escorted Mugiraneza and other unidentified ministers to the MRND palace in Butare, where they met President Théodore Sindikubwabo. The witness remained outside the building, and, since no loudspeakers broadcast what was occurring inside, he did not hear what was going on. Furthermore, no one, other than security details of the ministers and the President, had gathered outside the building. The witness later heard over Radio Rwanda that Sindikubwabo installed the new prefect of Butare during the event, but he did not hear a transmission of the President's speech. The witness did not know if the killings in Butare started after this event.[1883]

Bicamumpaka Defence Witness Dominique Makeli

1318. In 1994, Dominique Makeli, a Hutu, was a journalist for Radio Rwanda living in Kigali until he fled on 25 May 1994.[1884] Having reviewed several broadcasts made in Rwanda between 6 and 21 May 1994, it was clear to him that the word "work" did not mean "to kill".[1885] He did not recall President Théodore Sindikubwabo's speech on 19 April 1994 and was unaware of it sparking killings in Butare.[1886]

[1879] Witness TJO, T. 27 March 2006 pp. 3-4; Exhibit 2D71 (Witness TJO's Personal Information Sheet).
[1880] Witness TJO, T. 29 March 2006 p. 72.
[1881] Witness TJO, T. 29 March 2006 pp. 72-73, 76-79.
[1882] Witness RWW, T. 13 March 2008 pp. 4-5, 35, 48; Exhibit 4D90 (Witness RWW's Personal Information Sheet).
[1883] Witness RWW, T. 13 March 2008 pp. 35, 38, 48, 65-67; T. 17 March 2008 pp. 3-4. Witness RWW did not know the name of the new Butare prefect or whether the old one was a Tutsi or why he was being replaced. T. 13 March 2008 pp. 65-66; T. 17 March 2008 p. 3.
[1884] Makeli, T. 22 October 2007 pp. 33, 37, 40, 44, 46-47; T. 24 October 2007 pp. 10, 29, 32-33, 37; T. 29 October 2007 pp. 4-6, 27, 41, 53, 58; Exhibit 3D163 (Dominique Makeli's Personal Information Sheet); Exhibit 3D165 (Amnesty International Document Concerning Dominique Makeli's Incarceration); Exhibit 3D166 (Reporters Without Borders Request for Release of Journalist Dominique Makeli). Makeli's name is recorded differently throughout the transcripts. The Chamber adopts the spelling on the witness's personal information sheet.
[1885] Makeli, T. 23 October 2007 pp. 6-7, 23; T. 24 October 2007 pp. 31-32.
[1886] Makeli, T. 30 October 2007 p. 22.

Mugenzi Defence Witness Alfred Gahizi

1319. Alfred Gahizi was a PL member and school teacher in Gahini sector, Rukara commune, during the genocide.[1887] He testified that he was unaware that the word "work" – or *gukora* in Kinyarwanda – meant to kill during the genocide.[1888]

Mugiraneza Defence Expert Witness Mark McPhail

1320. Mark McPhail was admitted as an expert in rhetoric, communications, argumentation and research methodology, and his expert report entitled "Communications and Social Influence" was admitted into evidence at trial.[1889] McPhail testified that Prosecution Expert Déogratias Mbonyinkebe's expert report suffered from a lack of methodological vigour and coherence, and Alison Des Forges's report was biased and incomplete.[1890]

1321. Specifically, Mbonyinkebe's survey sample was too small, the questions were leading and the methodology failed to allow for a review to ensure uniformity of questioning, as well as the qualifications of those conducting the research. Furthermore, his conclusions were not supported by the data presented.[1891] Finally, those that had been surveyed close to areas where significant massacres occurred would be pre-disposed towards the report's conclusion.[1892] McPhail viewed Des Forges's expert report as failing to be inclusive and objective. As an example, he was troubled that Des Forges did not incorporate or acknowledge historical accounts of RPF culpability for the genocide.[1893]

Deliberations

1322. The parties do not dispute that on 19 April 1994, a ceremony was held in Butare town at the MRND palace for the installation of Sylvain Nsabimana as the region's new prefect. There is further agreement that Prime Minister Jean Kambanda, President Théodore Sindikubwabo and Mugenzi spoke during the event.[1894] Mugiraneza was also present at the ceremony. The Prosecution alleges that Sindikubwabo openly called on Butare residents to join in the massacres of Tutsis committed elsewhere. This message was conveyed most directly by the President admonishing those who did not appear concerned to step aside in order to allow others to "work".

[1887] Gahizi, T. 6 April 2006 pp. 7-8.
[1888] Gahizi, T. 10 April 2006 pp. 25-29.
[1889] McPhail, T. 24 April 2008 pp. 1-3. *See generally* Exhibit 4D113 (McPhail Expert Report).
[1890] Exhibit 4D113 (McPhail Expert Report) p. 17; McPhail, T. 24 April 2008 pp. 54-55; T. 25 April 2008 pp. 15-16, 45.
[1891] McPhail, T. 24 April 2008 pp. 36-39, 67, 72-73, 90-91; T. 25 April 2008 pp. 15-16, 46-47; Exhibit 4D113 (McPhail Expert Report) pp. 17-18.
[1892] McPhail, T. 24 April 2008 pp. 68-75, 85-88; T. 25 April 2008 pp. 2-7, 46-47; Exhibit 4D113 (McPhail Expert Report) pp. 17-23. Question number 18 was presented as an example of a leading question administered in Mbonyinkebe's survey. In Mbonyinkebe's report, Question 18 read: "Viewed within the Rwandan context, did the ministers' silence mean that they endorsed what was said?" McPhail suggested a more appropriate phrasing would be "How would you interpret the silence of the ministers?". McPhail, T. 24 April 2008 pp. 74-75.
[1893] Exhibit 4D113 (McPhail Expert Report) pp. 9-17, 23; McPhail, T. 24 April 2008 pp. 54-64.
[1894] Mugenzi further testified that the *directeur du cabinet* of the Ministry of the Internal Affairs, the *Bourgmestre* for "Butare town" and possibly another person spoke. Mugenzi, T. 10 November 2005 pp. 10, 33.

1323. The Defence disputes the interpretation of the speech given by the Prosecution. It argues that Sindikubwabo's call for people to "work" was not a coded message that meant to kill Tutsis. It highlights other elements of Sindikubwabo's address as well as Jean Kambanda's speech at the same ceremony that called for peace and an end to ethnic violence. It further proffers that public statements by members of the Interim Government throughout the genocide reflect its commitment to restoring peace and ending ethnic violence. In this context, the President's speech cannot be interpreted as a call to kill Tutsis.

1324. Before turning to the contents of Sindikubwabo's 19 April 1994 speech and the merits of the Prosecution evidence, the Chamber considers the general credibility of the Prosecution witnesses who testified that they heard Sindikubwabo's speech as it was given – Witnesses D, GLP, Harriet Sebera, DCH and GHR.[1895] At the outset, the Chamber has elsewhere noted that the evidence of Witness D, a former *Interahamwe*, must be assessed on a case-by-case basis and approached with appropriate caution in light of his extensive relationship with the Prosecution and his own attempts to minimise his involvement with the *Interahamwe* in 1994 (II.7.3).

1325. At the time of his testimony, Witness GLP had been provisionally released after several months of detention in Rwanda based on allegations of illegal campaigning. He expressed concern about Rwandan government reprisals for speaking out against it but affirmed that his testimony was not impacted by this.[1896] Witness GLP's circumstances warrant some caution. The possibility that he might have tailored his evidence to obtain favourable treatment from the Rwandan government cannot be ignored.

1326. The Chamber has no general reservations about Sebera's evidence. It does not consider that her affiliation with the RPF after the genocide and her political views, which opposed Mugenzi's, necessarily render her evidence partial or unreliable (II.5.1). Likewise, the Defence argument pointing to Sebera's brief statement that she came to testify "against" Mugenzi does not raise concerns about the general reliability of her evidence.

1327. The Chamber recalls that Witness DCH has been convicted for his participation in the genocide. Defence witnesses testified that he had fabricated evidence in a Rwandan proceeding although there was no finding to this effect in portions of the relevant Rwandan judgement that was an exhibit (II.10.2). In light of this, however, the Chamber shall treat his evidence with appropriate caution. While the Chamber has elsewhere refused to rely on Witness GHR's evidence to support findings beyond reasonable doubt, it has no general credibility reservations about the witness (II.8.4).

1328. The Defence seeks to raise doubt that Witnesses D and Sebera heard President Sindikubwabo's speech as it was given. Witness D testified that he heard Sindikubwabo's speech from outside the hall of the MRND palace as it was broadcast inside and outside on loud speakers. However, Ntagerura and Witness RWW, who attended the meeting, denied that such a speaker system had been set up. Indeed, Witness RWW waited outside the MRND palace as the event occurred and could not hear what was said inside.[1897] He further indicated

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[1895] The Chamber has evaluated Expert Witness Alison Des Forges's evidence in light of the guidelines previously set forth by it. *See* Decision on Defence Motion for Exclusion of Portions of Testimony of Expert Witness Dr. Alison Des Forges (TC), 2 September 2005; *see also* T. 14 June 2005 p. 58.
[1896] Witness GLP, T. 24 June 2004 pp. 18, 62-67.
[1897] Ntagerura, T. 19 February 2007 p. 37; Witness RWW, T. 13 March 2008 pp. 48, 66-67; T. 17 March 2008 p. 3.

that no one, other than security details for the ministers and President, gathered outside the building.[1898]

1329. A recording of the event reflects that the meeting was attended by local officials and the public.[1899] The Chamber considers that Witness D, a former national official of the *Interahamwe*, held a position that presumably would have allowed him access to the Butare's MRND palace for this event. Moreover, Ntagerura explained that there were also "curious persons who were outside the room", offering support for Witness D's assertion that some persons were gathered outside of it.[1900]

1330. Furthermore, the Chamber views the testimonies of Ntagerura and Witness RWW with considerable suspicion. Ntagerura, although acquitted at the time of his testimony,[1901] may have had a continued interest in undermining Prosecution evidence related to this event. Similarly, Witness RWW, who worked closely with Mugiraneza, likewise had an interest in providing exculpatory evidence. Given the nature of his working relationship with Mugiraneza, he has a personal interest in providing exculpatory information as it relates to Mugiraneza for the purposes of exonerating himself. Even if the Chamber considered that the Defence evidence raised reasonable doubts that Witness D heard the speech from outside the room in which it was given, his evidence reflects that he also followed it through subsequent radio broadcasts.[1902] The Chamber accepts that he heard Sindikubwabo's speech around the time it was given.[1903]

1331. Turning to Sebera, she testified that she heard a broadcast of Sindikubwabo's speech on Radio Rwanda on 19 April 1994.[1904] Notably, transcripts of its Radio Rwanda transmission that were exhibited in this proceeding indicate that it was broadcast two days after the event, on 21 April 1994.[1905] Notwithstanding, the Defence concedes that a transcription of a radio transmission containing Kambanda's speech at the same ceremony appears to have been broadcast by Radio Rwanda the day it was held.[1906] Witness D testified

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[1898] Witness RWW, T. 13 March 2008 p. 66; T. 17 March 2008 p. 3.

[1899] Exhibit P2(13)(E) (Radio Rwanda Broadcast, 19 April 1994) pp. 7 (Kambanda's opening address to "Your Excellency the President of the Republic, Honourable Ministers, Préfets and *Burgmestres*, and residents of Butare attending this meeting..."), 22 (report of Cyprien Musabirema noting that Kambanda presided over the swearing-in ceremony of the Butare prefect and met with *bourgmestres*, sub-prefects and members of the prefecture security council).

[1900] Ntagerura, T. 19 February 2007 p. 37.

[1901] Ntageura, T. 19 February 2007 pp. 40-41.

[1902] *See* Witness D, T. 15 June 2004 p. 33; T. 17 June 2004 pp. 21-22.

[1903] The Chamber has also considered the Defence arguments about Witness D's initial confusion about whether the document presented to him by the Prosecution was President Sindikubwabo's speech of 19 April 1994. In the Defence's view, this raises questions about whether he had heard the speech. Mugenzi Closing Brief, paras. 1383-1384. Witness D resolved this error when testifying to the substance of Sindikubwabo's speech. His evidence provided the foundation for Exhibit P54(E, F & K) pp. 15-18, 22-27, which includes Sindikubwabo's 19 April 1994 speech. Witness D, T. 15 June 2004 p. 38. This argument does not raise doubt that Witness D heard Sindikubwabo's 19 April 1994 speech.

[1904] *See* Sebera, T. 20 October 2004 p. 41; T. 25 October 2004 pp. 39-42.

[1905] Exhibit P54(E, F & K) (Radio Rwanda Broadcast, 21 April 1994) p. 15 (report of Jules Nizeyimana referring to Sindikubwabo's speech made "the day before yesterday during the swearing in ceremony of the new Prefect of Butare").

[1906] Mugenzi Closing Brief, paras. 740-743 referring to Exhibit P2(13) pp. 6-21. *See also* Exhibit 3D164 (Radio Rwanda Broadcast, Various) pp. 90-107 *and* Exhibit 2D52 (Radio Rwanda Broadcast, 19 April 1994) pp. 8-25 (Kambanda transmission).

that the speech was broadcast that evening, on either the national radio or RTLM.[1907] Defence Expert Witness Eugène Shimamungu did not believe the speech was broadcast live, but was aired by Radio Muhabura and then two days later broadcast on Radio Rwanda.[1908]

1332. The transcripts in the record likely reflect only a fraction of the broadcasts aired between April and July 1994.[1909] In light of this, and evidence that the President's speech was not just broadcast on Radio Rwanda on 21 April 1994, the Chamber has no doubt that Sebera heard Sindikubwabo's speech around the time it was given. Similarly, Witness GLP had difficulty remembering if he heard Sindikubwabo's speech in April or May 1994. Given the significant lapse of time between the event and the witness's testimony, the Chamber considers the confusion reasonable, and has no doubt that he heard the speech during the genocide.

1333. Turning to the speech, there is no dispute about the contents of President Sindikubwabo's 19 April 1994 remarks, which were recorded and translated in Exhibit P54.[1910] The Chamber has reviewed the speech in its entirety and in the context of the numerous public statements issued by the Interim Government that have been exhibited in this case (discussed below).

1334. Having undergone this exercise, the Chamber observes that this speech takes on a markedly different tone than all others. While Sindikubwabo repeats the government's refrain that "everyone should protect his neighbour", his precision about what is happening in Butare reveals both menace and disappointment with the situation as it stands.[1911] Specifically, in the context of removing the Tutsi prefect of Butare, he warned of having learned that "leaders here in Butare have trained to fight us".[1912] Furthermore, while he described Butare as "lucky" because the war had not yet reached it, this statement was surrounded by allegations that "myths" and "lies" existed in this particular prefecture.[1913] He admonished the in-coming

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[1907] *See* Witness D, T. 15 June 2004 p. 33; T. 17 June 2004 pp. 21-22, 55-56.
[1908] *See* Shimamungu, T. 15 May 2007 p. 61; T. 21 May 2007 p. 8; T. 22 May 2007 pp. 3-4.
[1909] *See* Des Forges, T. 1 June 2005 p. 84; T. 2 June 2005 pp. 2-3. *See also* Mugenzi Closing Brief, para. 582; Witness D, T. 17 June 2004 p. 57 (Prosecution's Submissions: "MR. RAPP: Just by way of evidence, since I was heavily involved in bringing together evidence in the Media case, this is – we don't have all the transcripts of all the broadcasts, and this is a particular broadcast of Radio Rwanda in which the speech appeared on the 21st of April. We don't know whether there were other broadcasts prior to that time on RTLM or on Radio Rwanda itself."); Ntamabyaliro, T. 22 August 2006 p. 26 (Mugenzi Defence Counsel referring to Sindikubwabo's 19 April 1994 speech: "This is a speech that was broadcast on the radio, we know, on several occasions.").
[1910] Mugenzi Closing Brief, paras. 766, 781 (adopting Exhibit P54 and its contents). Defence Counsel for Mugenzi repeatedly led examinations by referring to the English translation of Exhibit P54, contained within "K" pages K0133693 through K0133697. *See, e.g.*, Des Forges, T. 7 June 2005 pp. 20 (referring to K0133694), 37 (referring to K0133695); Mugenzi, T. 10 November 2005 pp. 33 (referring to K0133694), 40 (referring to K0133696); Ntamabyaliro, T. 22 August 2006 p. 26 (referring to K0133696). The Mugenzi Defence also re-admitted Exhibit P54 as Exhibit 2D53 (E, F & K). The Chamber has also considered Shimamungu's translation into French from the Kinyarwanda cassette recording and the differences identified by him. Shimamungu, T. 15 May 2007 pp. 31-50; *see also* Exhibit 1D166(E) (Shimamungu Expert Report) pp. 75-76, 78-79.
[1911] Exhibit P54(E, F & K) (Radio Rwanda Broadcast, 21 April 1994) p. 16.
[1912] Exhibit P54(E, F & K) (Radio Rwanda Broadcast, 21 April 1994) p. 16. In this regard, the Chamber notes that Sindikubwabo thanked the outgoing prefect and that he accomplished a lot that was within his capabilities. Exhibit P54(E, F & K) (Radio Rwanda Broadcast, 21 April 1994) p. 18. Des Forges explained that Habyalimana customarily would have been allowed to speak. The fact of merely thanking him instead of allowing him the opportunity to speak had a humiliating effect. Des Forges, T. 6 June 2005 pp. 59-60.
[1913] Exhibit P54(E, F & K) (Radio Rwanda Broadcast, 21 April 1994) pp. 16-17.

prefect, stating that he should not be confused that this is "paradise" and that he needed to work closely with the officials beneath him and urge the lazy or carefree to "work harder".[1914] This statement was further clarified as follows:[1915]

> Dear Butare fellows, I have to beg your pardon since I do not normally talk with such vigour in my voice but these days I have no choice. I do not want you to take our messages, speeches, and lessons as if they were mere words spoken in the air; these are important messages since we are in a period of war. What this means is that those who are irresponsible should be identified and brought out into the open. They should step aside, stay away from us while we work. Those who feel that they are not concerned or who are afraid should step aside. Those responsible for ridding us of such persons should do so quickly; there is no shortage of good workers who are willing to serve their country.
>
> You know the traitors who have trained to use guns in order to exterminate us. I do not know them. The person who knows them should tell us so that we can be rid of them; as the Prime Minister indicated, we have to fight and win this war. We have to win it since, as he pointed out, it is a final one. As it is a final one, you have to make your choice soon and spare us the trouble of wasting our energy; either we lose it or we make the right choice and we win it. We shall win it if you rid us of the irresponsible people; I am particularly addressing this message to this Government; they should look for these irresponsible people, who trained to kill us; rid us of them. We, the remaining conscientious Rwandans shall move on and win this war.

Sindikubwabo then admonished listeners that "everybody's behaviour" would be examined. He commended the outgoing prefect for his many good achievements and accomplishing what was within his capabilities. The President concluded by instructing listeners that they "should listen to us and interpret our speech correctly … Jokes, laughs and negligence should give way to work".[1916]

1335. Through Sebera, a Tutsi member of the PL in 1994, Witness D, a Hutu and former *Interahamwe* official during the genocide, Witness GLP, a Hutu and member of the MDR party, and Alison Des Forges, an expert in history and human rights violations in Rwanda, a cross-section of Rwandan society and an expert have presented detailed and consistent interpretations that Sindikubwabo's speech amounted to direct incitement to commence massacres of Tutsis in Butare.[1917] Moreover, Witnesses DCH, a former *Interahamwe* and admitted participant in the genocide, and Witness GHR, a Tutsi, provided more general corroboration of these interpretations.

1336. In particular, the Prosecution witnesses emphasised that war had not yet reached Butare, a fact that is revealed in Sindikubwabo's speech on 19 April 1994. With the exception of regions bordering Gikongoro, much of Butare had also resisted the ethnically driven massacres that were experienced elsewhere (II.9.1). Moreover, Butare was a region with historically strong ties between Hutus and Tutsis (II.9.1). Spoken in the context of removing the area's Tutsi prefect, Jean-Baptiste Habyalimana, the Prosecution witnesses'

[1914] Exhibit P54(E, F & K) (Radio Rwanda Broadcast, 21 April 1994) p. 17.
[1915] Exhibit P54(E, F & K) (Radio Rwanda Broadcast, 21 April 1994) p. 17.
[1916] Exhibit P54(E, F & K) (Radio Rwanda Broadcast, 21 April 1994) pp. 17-18.
[1917] The Chamber has given due consideration to the fact that Des Forges's analysis of the speech appears to rely, in part, on information provided by two *bourgmestres* whom she did not identify. Des Forges, T. 1 June 2005 p. 85; T. 6 June 2005 pp. 59-60; T. 7 June 2005 p. 27.

interpretations that the President was admonishing Butare residents for not have commenced the killings of Tutsis is compelling.[1918]

1337. The Chamber has given due consideration to the interpretations of Sindikubwabo's speech provided by Mugenzi, Mugiraneza and Ntagerura, who attended the meeting in their shared capacity as members of the Interim Government. Similarly, Ntamabyaliro spoke in detail about its contents. The Chamber considers that their self-interested views on the President's remarks do not raise reasonable doubt with respect to the Prosecution evidence. Mugenzi, Mugiraneza and Ntamabyaliro were all on trial in relation to this event when testifying. As noted above, Ntagerura also had a continued interest in providing exculpatory evidence about the event as he may also be implicated in it and has never been tried for it.

1338. Of greater significance, Defence evidence tends to confirm that Sindikubwabo's remarks were interpreted as calls to kill. For example, while Mugiraneza did not think that the President's 19 April 1994 message could have been viewed as a call for the "people to engage in massacres", he conceded that "[s]ome people certainly understood [the speech] otherwise".[1919] Similarly, while Defence Witness LF-1 did not consider Sindikubwabo's speech inflammatory, he testified that it was interpreted depending on the political leanings of the listeners. He heard conversations in Gitarama, mainly among Hutus, that the President's remarks were interpreted as a call to kill.[1920] Furthermore, Defence Witness Augustin Kayinamura conceded that extremists could have interpreted Sindikubwabo's use of the word "work" as instructing that "people should carry out killings" even though he did not believe Sindikubwabo used the term in that sense.[1921]

1339. Other Defence evidence further implies that Sindikubwabo's remarks had been interpreted to provoke violence. Ndindabahizi testified that while exile in Bukavu, Zaire, in 1994, he heard rumours that Sindikubwabo's speech was the root cause of the massacres in Butare. He also spoke to Sindikubwabo in Bukavu around September or October 1994. The former President said that he had asked Butare residents to help and protect one another and complained that he had been misinterpreted.[1922] Indeed, in an interview while in exile in Bukavu, Zaire, Sindikubwabo explained that his use of the word "*gukora*" (or "work") in his Butare speech was aimed at getting persons to return to their normal occupation rather than continuing conflict or involving themselves in political quarrelling.[1923]

[1918] *See* Witness D, T. 15 June 2004 p. 41; T. 16 June 2004 pp. 67-68; Sebera, T. 20 October 2004 p. 43; Witness GLP, T. 22 June 2004 pp. 62-63; Des Forges, T. 6 June 2005 p. 75; T. 7 June 2005 p. 35.
[1919] Mugiraneza, T. 26 May 2008 p. 45.
[1920] *See* Witness LF-1, 12 June 2008 pp. 31-37.
[1921] Kayinamura, T. 4 April 2006 p. 22.
[1922] Ndindabahizi, T. 3 May 2007 pp. 18-21.
[1923] Exhibit 2D107(F) (Théodore Sindikubwabo Interview, Bukavu, Zaire, undated). *See also* Shimamungu, T. 16 May 2007 pp. 46-47 (translation from French) ("Théodore Sindikubwabo: 'I knew that there was tension in Butare. I had been warned about this tension in Butare. I went to Butare with the express purpose of giving a message, a pacification message, to request that the people of Butare take care, rather, of manual work, work in the interest of their households rather than lose themselves in political quarrels. That is how I described my visit to Butare.' Journalist: 'And do you have the impression that it took what you said literally?' Théodore Sindikubwabo: 'If people took what I said literally, that is that they are to work for their own households, or if there are people who have interpreted what I said and what I thought, otherwise, I do not know.' Journalist: 'That is reassuring to hear, Mr. President. Do you not give any order with a meaning?' Théodore Sindikubwabo: 'I gave no message encouraging confrontation between populations. On the contrary, I, rather, gave people the order to go about their habitual business. This is what we referred to as *gukora, gukora imilimo yeyu*, do your work. Go about your habitual business and do not become involved in conflict.'").

1340. In the Chamber's view, Sindikubwabo's statement, as well as the testimonies of Ntamabyaliro, Ntagerura and Witness CC-1 that the President's call for people to "work" meant for people or government officials return to their habitual business and avoid conflict is unbelievable.[1924] Read in context of the speech, the term immediately preceded warnings of "traitors who have trained to use guns in order to exterminate us" and his admonishment that "we have to fight to win this war". As observed by Mugenzi, this speech was made in the context of war.[1925]

1341. Furthermore, while Mugenzi and Shimamungu acceded that this speech was made in the context of war and was a call for ensuring the security of all Rwandans,[1926] these interpretations appear divorced from the reality that much of Butare had resisted ethnic attacks and was removed from the war front.

1342. The Prosecution evidence that Sindikubwabo's speech was an invocation to kill Tutsis finds further, circumstantial corroboration, when viewed among evidence of how the term "*gukora*" (or "work") was used during the genocide. Certainly, there is Prosecution evidence that the term "work" was not always meant as an instruction to kill Tutsis.[1927] However, as summarised above, Witness GHR, a Tutsi, generally testified that he heard a *communiqué* on Radio Rwanda where Théodore Sindikubwabo stated "[s]tand up, arise and work". This was a reference to massacres and at the time, "work" meant to kill people.[1928] Sebera, when

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[1924] *See* Ntamabyaliro, T. 22 August 2006 pp. 31-32, 34, 36, 38-39, T. 23 August 2006 pp. 39-40; Ntagerura, T. 19 February 2007 pp. 33-34, 37; Witness CC-1, T. 31 October 2007 pp. 41-42.

[1925] Mugenzi, T. 10 November 2005 p. 41.

[1926] Mugenzi, T. 10 November 2005 p. 10 (discussing the need to return security in the villages, as they were dying of hunger in the refugee camps; describing the refugees as "people running from the war from and people running away from their homes because of local unrest"); Shimamungu, T. 15 May 2007 pp. 52 ("What has to be pointed out here is that the president and the government are in flight. They are in Butare because they can no longer stay in Kigali. So they are in the process of fleeing and this is why ... they find themselves in this ceremony which should not have taken place."), 60 (stating that this speech was addressed to the civil servants of Butare, and that "[i]t means that they have to reflect on the message that has been given to them so as to deal with the issue of maintaining security to do everything possible to restore security amongst the population").

[1927] *See, e.g.*, Exhibit 2D44(K & E) p. 16 (Radio Rwanda Broadcast) ("Thank you Rwakana to give the microphone again, as I said before the population of Nyamabuye is ready to fight the *Inkotanyi* so that we beat them, nothing else can be done. Concerning the traders I think that I saw some of them even today, I saw them opening the shops, they were trying to take provisions to people who are manning roadblocks. All I wish to ask them is to continue that way of doing, they must be used to working during the war ... ."); Witness GKJ, T. 25 May 2005 pp. 20-21 ("Q. Sir, when you use the word 'working' did you mean working like doing their jobs, or did you mean working like doing something else? A. It is clear that it is carrying out their normal duties, what they do normally, their daily activities. That's what I meant. ... resuming doing their daily activities. The traders would do their business, then the farmers would go to their plots and farm. That is it.").

[1928] Witness GHR, T. 19 March 2004 pp. 14, 35-36; T. 22 March 2004 pp. 29-30. When viewing Witness GHR's evidence about the use of the term "work" along with his discussion concerning the President's involvement in the removal of Butare's prefect, it appears that he is discussing Sindikubwabo's use of the term "work" in his 19 April 1994 speech in Butare. *See* Witness GHR, T. 22 March 2004 p. 6 ("Q. Well, Witness, ... I want to put this to you: The broadcasts which you heard and the speeches which you heard from members of the government, during the time about what you can give evidence, were, in truth, all messages about peace and ... forgetting anger and revenge. I suggest that there isn't a single speech which you can point to, although you've had ten years to think about your evidence, made by a member of the government which encourages violence in any way whatsoever. Can you do so? A. He, for instance, he dismissed a Tutsi préfet who – in Butare, I believe. He was replaced and killed. Do you think he meant peace for this area? Three weeks after Habyarimana's death and after Sindikubwabo had visited Butare, his native area, he dismissed the préfet there, and this préfet was later on killed.").

discussing the President's speech, also testified that the term work "meant killing".[1929] Similarly, Witness DCH, a Hutu who admitted to participating in the genocide, stated that, during the genocide, the term "work" – "*gukora*" in Kinyarwanda – meant killing Tutsis.[1930]

1343. Defence Witnesses Makeli and Gahizi generally testified that the word "work" was not used as a coded reference to kill. However, other Defence evidence tended to confirm that the term was a euphemism for killing Tutsis during the genocide. As noted above, Kayinamura testified that he did not believe the President's use of the phrase "to work" meant to kill or exterminate Tutsis or that it would generally be interpreted that way.[1931] Notably, Kayinamura, while testifying in the *Gacumbitsi* trial in October 2003, stated that the phrase "to work" meant to "to defend oneself or to struggle against a specific group" and he defined the "specific group" as "the Tutsi, and those who shared the same ideas of the Tutsi". When confronted with his testimony in *Gacumbitsi*, he explained that his evidence in that proceeding related to a different context and he believed that Sindikubwabo could not have used "work" in this sense.[1932]

1344. In the same vein, Witness TJO testified that "work" did not clearly imply to kill people or Tutsis specifically. When confronted with his testimony in the *Mpambara* trial, wherein he stated: "And let me point here that 'working' at that time meant massacring Tutsi", he clarified that during that proceeding he was generalising and the underlying meaning needed to be explained to him.[1933] Read in light of his prior testimony, his explanation is reasonable, but it still confirms that to "work" was used as a way of instructing persons to kill Tutsis.

1345. In light of the consistent Prosecution evidence concerning the use of the term "work" and the equivocal Defence testimonies intended to rebut it, further Defence evidence that the sinister interpretations of Sindikubwabo's speech or the term "work" were developed after the genocide also lacks credibility. For example, Karuhije heard Sindikubwabo's speech that people were acting as if "they were not concerned" and thought it related to the peace process. He heard after the RPF came to power that it was interpreted as a call to kill.[1934] This position is expressly contradicted by the Prosecution evidence pertaining to the speech. Similarly, Defence Witness LF-1's testimony reflects that the speech was immediately viewed at least by some as an instruction to kill.[1935]

1346. Furthermore, Witness CC-1 testified that the interpretation that Sindikubwabo's use of the term "work" meant to kill was developed after the genocide. However, he qualified this assertion by stating that words can be ambivalent and that meaning is extrapolated from

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[1929] Sebera, T. 20 October 2004 p. 43.
[1930] Witness DCH, T. 20 September 2004 pp. 5-6, 50.
[1931] Kayinamura, T. 4 April 2006 pp. 19-20, 22.
[1932] Kayinamura, T. 4 April 2006 pp. 20-22. The relevant pages from the *Gacumbitsi* transcript were read in court but not exhibited. Kanyinamura confirmed that what was read reflected his testimony in that proceeding. T. 4 April 2006 pp. 21, 22.
[1933] Witness TJO, T. 29 March 2006 pp. 73, 76-79; Exhibit P123(E) (Witness TJO's Testimony in *Mpambara*) p. 9.
[1934] Karuhije, T. 5 November 2007 pp. 20, 36.
[1935] *See* Witness LF-1, T. 12 June 2008 p. 33 ("JUDGE MUTHOGA: Mr. Witness, how did you come to know that some people interpreted it differently? THE WITNESS: I was in the country, and that is how people on the streets interpreted the speech. So it is not something I heard when I was abroad, but was something I heard whilst in the country, at least where I was residing at the time.").

context. He conceded that he could not ultimately "pronounce" on Sindikubwabo's use of the word "work".[1936]

1347. When viewing the record as a whole, the only reasonable conclusion is that Sindikubwabo's speech was a direct call for those in Butare to engage in the killing of Tutsi and possibly Hutu civilians – the irresponsible or unconcerned – who were resisting such killings. Sindikubwabo's war cry, made while removing the Tutsi prefect, was inconsonant with the situation in Butare town and most of the prefecture. While violence had occurred in the outer regions of Butare prefecture close to Gikongoro, relative peace had remained in most of it (II.9.1). Furthermore, the RPF had not opened a front there.[1937] As such, Sindikubwabo's remarks that the "unconcerned" or "irresponsible" must be identified and gotten "rid of" while others "work" cannot reasonably be interpreted as a call for providing further security to residents who had remained relatively peaceful and to displaced persons who had sought refuge from killings there.

1348. The Chamber has considered Sindikubwabo's admonishment to listeners about "traitors who have trained to use guns in order to exterminate us". Defence evidence suggests that this qualification reflected the President's intention to identify RPF infiltrators rather than Tutsis generally.[1938] There is evidence that references to the enemy, for example, the

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[1936] Witness CC-1, T. 31 October 2007 p. 42.

[1937] Witness D, T. 16 June 2004 p. 67 ("Q. ...The reality is that Rwanda ... had been invaded by an armed force from another country; that is, the RPF. And Rwanda at this time was a country at war, wasn't it? A. Yes, but the war had not yet ... reached Butare."); Sebera, T. 20 October 2004 pp. 42 ("Q. Now, what did you hear President Sindikubwabo say? A. What I heard in ... Sindikubwabo's speech ... was something ... terrible. It was meant to incite people ... to start massacres. Let me state here that we were seeing displaced persons coming from Gikongoro préfecture ... near the border with Butare. But the extraordinary massacres had not yet come to Butare. We were seeing other people fleeing to Butare."), 44 ("A. ... these were meant to fight the civilians, not to fight the soldiers. There were no *Inkotanyi* in that area. And they know that when they came to Butare, that's when massacres started, as they had started in Gikongoro when massacres took place at the school in Murambi."); Des Forges, T. 7 June 2005 pp. 15, 17 (questioned why during Kambanda's 19 April speech the Prime Minister would be requesting the population to ensure security in Butare when it was far from the combat zone at that time; rather, those coming into Butare at the time were civilians fleeing attacks in Gikongoro), 20 (highlighting Sindikubwabo's concession during his 19 April 1994 speech that war had not yet reached Butare). *See also* II.9.1.

[1938] Mugenzi, T. 10 November 2005 pp. 40-41 (Mugenzi understood that Sindikubwabo was extremely angry with the information he had received that people went to train and wanted to react against people from the interior who were supporting the RPF's war effort); Shimamungu, T. 15 May 2007 pp. 58-60 (Sindikubwabo's speech focussed on overcoming insecurity and highlighted concerns about the infiltration of the RPF); Ntamabyaliro, T. 22 August 2006 pp. 34-35 (the reference to "the traitors who are trained to use guns in order to exterminate us" was clear and had no ethnic reference); *see also* Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 75-80 (Bicamumpaka interview, 18 April 1994) and in particular, p. 78 (explaining that they were aware that a number of RPF agents had infiltrated Kigali dressing as soldiers as well as wearing civilian clothes, reflecting that, here and there, are RPF sympathisers); Exhibit 2D57(E) (Radio Rwanda Broadcast, Various) pp. 26-32 (Prime Minister Jean Kambanda transmission, 22 or 23 April 1994), 30 ("Ladies and gentlemen, the government has invited you to assist armed forces to block enemy attacks. Organise night patrols. Erect barriers. Join hands with communal authorities, sector administration, but in particular with cellule committee members to stop [the] enemy's infiltration."); Exhibit 2D58(E) (Prime Minister Jean Kambanda Letter to Prefects, 27 April 1994) p. 12 (system should be in place in order for the roadblocks to prevent the enemy from infiltrating); Mugiraneza, T. 27 May 2008 p. 14 (accompanied the Prime Minister who spoke at Nyakabanda Commune on 2 June 1994 and said that Tutsis should not be confused with RPF armed infiltrators); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 56-62 (interview with the Minister of Defence) (the population needs to remain vigilant and should organise to fight against RPF infiltration, as they are using a number of tricks). *See*

RPF, *Inkotanyi* or *Inyenzi* in some instances were understood to be referring to the military rebel force invading Rwanda and not Tutsis generally.[1939] However, the Chamber has also heard considerable anecdotal accounts that, when viewed together, convincingly reflect that terms used to identify the RPF were also understood to mean Tutsis generally.[1940] Indeed, that

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also Des Forges, 7 June 2005 pp. 32-33 (Sindikubwabo's reference to those who went to train referred to Tutsis and young PL members, and maybe even a *bourgmestre* or two).

[1939] Witness LEL, T. 16 February 2004 p. 35 (*Inkotanyi* referred to RPF soldiers); Witness D, T. 17 June 2004 p. 45 (*Inyenzi* and *Inkotanyi* were words used in Kigali to describe either Tutsis or Hutus who were said to be working with the RPF); Witness GJX, T. 21 June 2004 p. 58 (accomplices referred to parents who sent their children to train with the RPF); Witness GJX, T. 22 June 2004 p. 8 (*Inkotanyi* was the fighting force of the RPF); Witness FW, T. 5 December 2003 pp. 25, 27 (*Inyenzi* meant RPF soldiers); Witness GLP, T. 22 June 2004 pp. 43, 62 (*Inkotanyi* referred to RPF soldiers who were on the front line but when the war started Tutsis within the country were identified as *Inkotanyi* accomplices and it was said that as the Tutsis had attacked, Tutsis and political opponents of the regime "could not have peace"); Witness GIE, T. 17 February 2004 p. 14 (*Inyenzi* and *Inkotanyi* both referred to the armed wing of the RPF); Des Forges, T. 14 June 2005 p. 12 (confirming that the term *Inyenzi* was used to describe Tutsis who invaded Rwanda in the 1960s and members of the RPF in the 1990s); Strizek, T. 8 February 2007 pp. 65-66 (because the RPF called itself *Inyenzi* the word could not have anti-Tutsi connotations); Mugiraneza, T. 20 May 2008 p. 45 (the RPF movement had styled itself as the *Inkotanyi*; *Inkotanyi* means courageous people who fight relentlessly and was their self-appointed *nom de guerre*, not an insult); Mugenzi, T. 1 November 2005 p. 61 (*Inkotanyi* was an official name of the RPF whereas *Inyenzi* was its code name); Des Forges, T. 2 June 2005 pp. 34 (agreed that *Inyenzi* and *Inkotanyi* were a proper military description of the RPF), 63 (referring to the RPF-*Inkotanyi*); Des Forges, T. 7 June 2005 p. 9 (in his 19 April 1994 speech, Kambanda specified that the enemy was the RPF); Witness GKJ, T. 25 May 2005 pp. 24-25 (the enemy referred to RPF soldiers); Witness WZ8, T. 21 September 2006 p. 19 (neither *Inyenzi* nor *Inkotanyi* meant Tutsis); Mbonyinkebe, T. 3 May 2005 p. 39 (agreed that the vast majority of those called *Ibitsos*, internal accomplices, were Tutsi although one should not generalise); Makeli, T. 23 October 2007 pp. 8, 21-22, 26-27 (in a speech of 21 April 1994 Kambanda stated that Rwanda's enemy were those who had attacked the country, namely the RPF-*Inkotanyi* and not neighbours who were of a different ethnic group or political party); Makeli, T. 29 October 2007 pp. 5-6, 8 (in a speech broadcast over Radio Rwanda on 23 or 24 April 1994 Niyitegeka stated that the enemy was he who had attacked the country, namely the RPF); Murashi, T. 10 June 2004 pp. 73-74 (*Inkotanyi* was a traditional Kinyarwanda term adopted by the RPF to represent its bravery as combatant freedom fighters).

[1940] Witness GTE, T. 1 December 2003 pp. 5, 7, 9 (*Inkotanyi-Inyenzi* were the Tutsis who were expelled from Rwanda around 1960 and had children in exile; however, the Tutsis who remained within Rwanda were being labelled accomplices); Witness FW, T. 4 December 2003 p. 3, T. 5 December 2003 p. 25 (describing scenariors where *Inyenzi* or *Inkotanyi* were considered the enemy and were terms used to refer to any Tutsi); Witness GAP, T. 20 January 2004 pp. 2, 6 (*Inyenzi* and their "accomplices" were references to Tutsis, including Tutsi civilians, while *Inkotanyi* referred to Tutsi "military soldiers" on the battlefront), 14 (was taught at Mukamira barracks that the Tutsi had invaded the country and were the enemy; their army of people was called the *Inkotanyi* rather than *Inyenzi* as it was previously known); Higiro, T. 26 January 2004 p. 36 (within the collective national opinion, references to *Inkotanyi* included all Tutsis); Higiro, T. 29 January 2004 p. 39 (the PL was labelled a Tutsi party and since "Tutsis are *Inkotanyi*", this led to allegations that the RPF-*Inkotanyi* recruited through the PL); Mugenzi, T. 1 November 2005 p. 61, T. 7 November 2005 p. 64 (the MRND labelled the PL as a party of the Tutsis, or of the *Inyenzi* or *Inkotanyi* that was attacking the country, in order to discourage people from joining); Witness GKE, T. 9 February 2004 pp. 13, 18 (it was said that *Inkotanyi* and the RPF party were Tutsis); Witness GIE, T. 17 February 2004 pp. 14-17 (the witness, a Tutsi, was detained from late-1990 until 25 April 1991 because he was said to be an alleged accomplice of the *Inkotanyi*; generally speaking, *Inyenzi* at the time signified every Tutsi); Witness DY, T. 23 February 2004 pp. 14, 34, 41 (*Inyenzi* meant RPF but was also used to refer to Tutsis); Witness UL, T. 3 March 2004 p. 31 (in 1994, *Inyenzi* was used in reference to Tutsis); Witness GJI, T. 15 March 2004 p. 27 (accomplices of the RPF were Tutsis inside Rwanda and Hutus in the opposition who did not agree with the Power factions); Witness QU, T. 17 March 2004 pp. 6-7 (at the time of the Bugesera killings, *Inyenzi* meant Tutsis), 15-16, 18 (after President Juvénal Habyarimana's death, Tutsis generally were considered the enemy); Murashi, T. 9 June 2004 pp. 6 (attackers with traditional weapons were stating that all Tutsis were accomplices of the *Inyenzi* or RPF), 27-28 (in some contexts to fight the *Inyenzi* meant the RPF on the war front and in others the "undertone is that it's the Tutsis within"); Witness GKR, T. 29

Tutsis were generally viewed as the enemy in the context of Rwandan hostilities with the RPF is bolstered by the undisputed accounts that Tutsis within Rwanda were repeatedly attacked in retaliation to perceived RPF incursions, particularly from 1990 onward.[1941]

1349. In the context of the ethnically driven slaughter that gripped much of Rwanda, with the exception of Butare, Sindikubwabo's reference to a nebulously defined "enemy" sought to rouse panic about hidden threats within the prefecture. It intentionally allowed for assailants to identify Tutsi civilians as this enemy. That these persons had to be killed was made clear by Sindikubwabo's calls to "work". His statement that the war could be won if Butare "rid us of the irresponsible people" made clear that the passivity of Butare residents towards killing Tutsis could no longer be accepted, and that those who opposed such killings could be eliminated as well.[1942]

1350. That the message to "kill Tutsis" could be directly and clearly understood without expressly stating so is supported by evidence that Kinyarwanda is a dynamic language that often employs indirect communication and may require context for full extrapolation.[1943]

June 2004 p. 67 (accomplices of the *Inyenzi* were Tutsis inside the country); Witness GTD, T. 1 July 2004 pp. 19-20, 26, T. 5 July 2004 pp. 2, 8, 16 (*Inyenzi* originally meant the fighting *Inkotanyi* RPF but later on, particularly when the RPF had not arrived in an area, it was used to refer to Tutsis generally); Witness GJU, T. 18 October 2004 p. 7 (*Inkotanyi* meant Tutsis who had fled to Uganda starting in 1959 and was the name the RPF adopted, but after the 1990 RPF invasion, Tutsis were being called accomplices of the *Inkotanyi*); Des Forges, T. 31 May 2005 pp. 69-70 (the Interim Government knew about attacks against Tutsi civilians and the propaganda base that equated them with the military enemy); Des Forges, T. 1 June 2005 p. 46 (evaluating a *Kangura* document and noting how it suggested that the PL is a proxy for the RPF and that the use of *Inkotanyi* in combination with Tutsi suggests that they are the same); Des Forges T. 6 June 2005 p. 69 (when infiltrators are associated with the RPF, *Inkotanyi* or *Inyenzi*, they are associated with the Tutsis); Des Forges, T. 7 June 2005 pp. 56-57 (since 1990, the word *Ibyitso* or "accomplice" was used to refer to Tutsis or Hutus who associated with them); Witness WCA-1, T. 17 January 2007 p. 11 (Tutsis within Rwanda were perceived as collaborators of the RPF); Witness RWE, T. 19 March 2008 p. 55 (even Hutu government opponents were regarded as accomplices of the Tutsis); Witness RDC, T. 3 March 2008 p. 41 (whenever the youth-wingers had training and demonstrations, they would come back and beat up any Tutsi, claiming that any Tutsi was an accomplice); Witness RDO, T. 4 March 2008 pp. 68-69 (initially enemy meant the RPF, but later enemy meant the RPF and its accomplices); Karamage, T. 15 April 2008 p. 62 (Tutsis were considered accomplices of the RPF); Ndindabahizi, T. 1 May 2007 p. 58 (while some persons referred to Tutsis as accomplices and the enemy, that was not the position of the government); Mugiraneza, T. 4 June 2008 p. 17 (Tutsis were killed because the killers thought that they supported the *Inkotanyi*).

[1941] *See* II.2.1; II.9.1.

[1942] Witness D, T. 15 June 2004 pp. 35-39, 41 (Sindikubwabo told Butare residents who were "not concerned" to allow others, specifically the military and gendarmes, to "work" which he understood reflected the government's intention to rid Rwanda of Tutsis, particularly those who had obtained training with the RPF); Sebera, T. 20 October 2004 pp. 42-44, T. 21 October 2004 pp. 13, 15-16 (Sindikubwabo also stated that Butare residents who did not want to "work[]" – which meant "kill[]" – should be gotten "rid of"; in her view, Sindikubwabo's speech was intended to incite Hutus to kill Tutsis); Witness GLP, T. 22 June 2004 pp. 62-63 (interpreted the President's reference to "those who don't care" as persons who had not joined in eliminating RPF accomplices and killing Tutsis; the witness was surprised that the President was inviting the people to join in the killings); Witness GHR, T. 19 March 2004 pp. 14, 35-36, T. 22 March 2004 pp. 6, 29-30 (heard a *communiqué* on Radio Rwanda where Sindikubwabo stated "[s]tand up, arise and work", which was a reference to massacres; at that time, "work" meant to kill people); Witness DCH, T. 20 September 2004 pp. 6, 50 (during the genocide, the term "work", "*gukora*", meant killing Tutsis; Sindikubwabo told persons in Butare that they were "indifferent", causing its residents to kill each other). *See also* Mbonyinkebe, T. 5 May 2005 pp. 71-81; T. 12 May 2005 pp. 78-80 (Sindikubwabo's statement "getting rid of [irresponsible persons]" was left ambiguous by the President and could have meant several things).

[1943] *See* Des Forges, T. 6 June 2005 p. 77; Witness CC-1, T. 31 October 2007 p. 23. *Cf.* Ntagerura, T. 20 February 2007 p. 22 ("BY MR. BABAJIDE: Q. Witness, the Kinyarwanda language is very rich in proverbs; is

Sindikubwabo's closing admonishments that people analyse closely the words spoken to them, when viewed in context, confirms the coded nature of his instructions.[1944]

1351. In reaching this conclusion, the Chamber observes that Sindikubwabo's speech was preceded by Kambanda's.[1945] Like several others the Chamber has surveyed (discussed below), Kambanda indicated that the government's mission was to restore peace and reduce killings.[1946] In this vein the government requested political party leaders to help contain the massacres by asking their constituents to avoid criminal acts and killings. These instructions were quickly followed with the parties meeting on 11 April and recommending to their followers that they avoid anything that might divide Rwandans based on "ethnicity, regionalism jealousy or any other cause". Similar instructions were given to prefects to pass on to their *bourgmestres*, *conseillers* and *cellule* heads on 11 April 1994.[1947] Kambanda likewise noted that "we" are against acts of revenge and that those who participated in "those criminal acts could be brought to justice".[1948]

1352. However, and in more practical terms, Kambanda turned to the government's mission in Butare – namely what local officials must do in order to "ensure the security of the population" and "defend the country's sovereignty".[1949] While this required that the population not turn against "one another" he warned that "no commune should be infiltrated by the enemy, by the RPF". He trusted that the population would engage in this fight as it does "not want us to be taken back to the 1959 yoke". Indeed, as a positive example of how the population had contributed to the war effort, he commended the extensive networks of

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that correct? A. Indeed, Mr. Prosecutor, that is what I've just said to the Trial Chamber. Q. And these proverbs are sometimes couched in flowery imagery; is that correct? A. Yes, as I just said, the proverbs are imaged. Q. And this leaves the audience or the person who is knowledgeable in this rich language the opportunity to translate that imagery that has been expressed to him or her; is that correct? A. Yes, indeed. Like somebody talking to you, well, yes, he has to understand those images, as would any Rwandese."). *Cf.* Des Forges, T. 31 May 2005 p. 84 (when discussing a civil defence document, Des Forges explained: "I think the idea that a group of Rwandans in such circumstances would sit down and say, 'Let us develop a plan to kill Tutsi civilians' and put it on paper, ...would be to sadly underestimate their intelligence. They knew to whom they were speaking. They were speaking to each other. They knew the language ... and its implications were the result of years of a creation of meanings. Words like 'work' obviously to us appear innocent. Words like 'the defence of the republic' appear like a good slogan, but to the people who were involved in the situation, those words carried special meaning.").

[1944] Exhibit P54(E, F & K) (Radio Rwanda Broadcast, 21 April 1994) p. 18 ("Dear fellows, I would like to stop here, but I have to repeat what I said, you should listen to us and interpret our speech correctly. You have to understand why we act the way we do and to analyse every word we say in order to understand why we say it, bear in mind that this is an emergency period.").

[1945] Exhibit 1D185 (Radio Rwanda Broadcast, 19 April 1994), Exhibit 3D164 (Radio Rwanda Broadcast, Various) pp. 90-107 *and* Exhibit 2D52(E, F & K) (Radio Rwanda Broadcast, 19 April 1994) pp. 1-21 (Kambanda transmission).

[1946] Exhibit 2D52(E, F & K) (Radio Rwanda Broadcast, 19 April 1994) pp. 8, 10-13, 15 (French), 45, 48-50 (English).

[1947] Exhibit 2D52(E, F & K) (Radio Rwanda Broadcast, 19 April 1994) pp. 15, 17-18 (French), 50-52 (English).

[1948] Exhibit 2D52(E, F & K) (Radio Rwanda Broadcast, 19 April 1994) pp. 19 (French), 54 (English). The comments requesting that criminal acts be brought to justice are preceded by a reference to both the shooting down of President Juvénal Habyarimana's plane and acts of "revenge". It is not clear if it is the killing of Juvénal Habyarimana or the acts of revenge that Kambanda is asking to be investigated. Mugenzi interpreted it to mean both. Mugenzi, T. 10 November 2005 pp. 32-33.

[1949] Exhibit 2D52(E, F & K) (Radio Rwanda Broadcast, 19 April 1994) pp. 52-53.

roadblocks in Kigali, established by persons "who are ensuring their security, who are protecting the sovereignty of their country and their property through hard toil".[1950]

1353. Prosecution and Defence witnesses have given conflicting interpretations of Kambanda's speech.[1951] It contains no express call to kill Tutsis and the plain language includes approving acts aimed at ending ethnic divisions. However, such suggestions are also countered by others that the speech reflected a coded call for the population, far from the war zone, to fight Tutsis generally. This was made clear through thinly veiled references to the Tutsi domination that ended with the 1959 revolution – which Kambanda trusted the population would not let happen. It was also evoked by his praise of roadblocks in Kigali, which were undisputed and notorious sources of Tutsi civilian slaughter by this time.[1952] The Chamber has no doubt that Kambanda's brief calls to avoid ethnic division and for killings to end would have been ignored in the context of his speech and Sindikubwabo's.[1953]

1354. The Chamber has also taken note of the 27 April 1994 press release issued by the Butare Prefecture Security Council, which was reportedly chaired by Sindikubwabo. The

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[1950] Exhibit 2D52(E, F & K) (Radio Rwanda Broadcast, 19 April 1994) pp. 53-54.

[1951] *See* Des Forges, T. 7 June 2005 pp. 14-18; Mugenzi, T. 10 November 2005 pp. 22-25, 30, 32-33; Makeli, T. 23 October 2007 pp. 19-21. *See also* Mbonyinkebe, T. 5 May 2005 pp. 44-51.

[1952] *See, e.g.*, Des Forges, T. 7 June 2005 pp. 14-18 (testified that while Kambanda's speech may have been completely sincere in calling for an end to fighting, it also showed approval of the roadblocks established throughout Kigali which were known means for selecting and killing Tutsi civilians; Kambanda also recalled the imagery of the 1959 revolution and Tutsi domination thereby generalising that the RPF and Tutsis were united in their attempt to re-establish Tutsi hegemony); Mbonyinkebe, T. 5 May 2005 pp. 44-51 (testified that in as much as Kambanda was asking the population to take measures that would ensure peace, they were also organising killings; referring to Kambanda's appraisal of Kigali's roadblocks, it was common knowledge that roadblocks were places where people were killed; while the content of Kambanda's speech was transparent, the whole picture could only be understood by analysing the events that followed the speech; it has been said that there were official speeches intended to appease international opinion and a parallel speech intended for self-defence with all that that implied). *See also* Witness UL, T. 1 March 2004 pp. 52-54, T. 2 March 2004 p. 18, T. 3 March 2004 pp. 26-27 (while travelling through Kigali saw a roadblock manned by *Interahamwe* armed with clubs and a dead person beside it; they checked identity cards and the witness was able to pass because his indicated that he was Hutu; after Habyarimana's death, Tutsis were being killed); Uwizeye, T. 7 April 2005 pp. 59-60 (there were roadblocks throughout Kigali and Tutsis were being hunted down and killed); Witness GHR, T. 18 March 2004 pp. 46-47 (when leaving Kigali they passed roadblocks manned by soldiers and *Interahamwe* who asked for identity cards; the witness, a Tutsi, had obtained a Hutu identity card as a means of surviving because Tutsis and Hutus that did not share the same opinion were being persecuted); Witness DY, T. 23 February 2004 pp. 26, 34-35 (testified that *Interahamwe* manning the roadblocks were busy killing Tutsis, including a Tutsi second lieutenant Mudenge who was killed at the roadblock in Kimihurura); Witness GHT, T. 1 October 2004 p. 17 (the purpose of the roadblocks was to check those who were passing by and to kill them); Witness GIE, T. 17 February 2004 p. 29 (persons were taken to roadblocks and if they were identified as Tutsis they would be killed); Witness WFQ1, T. 4 October 2006 pp. 8-10 (wounded who were transported by the ICRC and were identified at roadblocks as either Tutsis or opposition party members were forced to stay at roadblocks and would later be killed); Witness RWV, T. 9 June 2008 pp. 28-29 (saw corpses around roadblocks in Kigali); Nduwayezu, T. 4 February 2008 pp. 33-34 (knew that other persons at roadblocks had to show identification cards and could be kept behind if they were determined to be Tutsi); Mugenzi, T. 14 November 2005 pp. 11-12 (everybody knew that there were killings and bodies were found both in houses and at roadblocks); Mugenzi, T. 29 November 2005 pp. 16-17, 21, T. 30 November 2005 pp. 7, 27-31 (it came to his attention that some people manning roadblocks were separating Hutus from Tutsis, and killing those identified as Tutsis); Exhibit 3D99 (Outgoing Cable from Dallaire to Baril, 17 April 1994) p. 5 ("14. ... In Kigali, frequent roadblocks are established, ID cards checked and Tutsis executed on the spot. If the RGF or gendarmerie are present they do not interfere. In fact in some areas they are prohibited transit by the militias.").

[1953] In the same vein, the Chamber has considered Mugenzi's speech at the 19 April 1994 installation ceremony. Its contents do not raise doubt about the Chamber's analysis of the President's speech.

communiqué questioned why the security situation continued to deteriorate after the President's speech concerning the upholding of security. It called for killings and lootings to stop immediately and attacks by individuals carrying arms of any kind, with the exception of those manning roadblocks installed by proper authorities, to end.[1954] The Defence presented evidence that the content should be evaluated on its face, while the Prosecution comments suggest otherwise.[1955]

1355. Finally, the Chamber has considered Sindikubwabo's message in the context of several others given by the Interim Government throughout the course of the genocide. Not a single exhibited recording of the contemporaneous public statements of members of the Interim Government explicitly calls for the population to kill Tutsi civilians. Rather, letters and transcribed broadcasts uniformly express a stated desire to restore peace and security in Rwanda.[1956]

[1954] Exhibit 2D54(E, F & K) (Radio Rwanda Press Release of Butare Prefecture Security Council, 27 April 1994) p. 4.

[1955] *See, e.g.*, Mugenzi, T. 10 November 2005 pp. 43-45 (Mugenzi, who was outside Rwanda, was unaware at the time that this press release had been issued; the security situation in Butare had deteriorated and this press release reflected Sindikubwabo's concern over this given his prior instructions "for everybody to be the guardian of his neighbour"); Ndindabahizi, T. 3 May 2007 pp. 43-44 (the press release reflected concern that "disturbances must end"; the message was clear and called for members of the population and local officials to uphold law and order, urging that killings and lootings must stop and judicial services must cooperate with security services in order to punish those who infringe those directives; references to a prior message being misunderstood could have referred to one of many given by the President, Kambanda or the Minister of Defence); Shimamungu, T. 16 May 2007 pp. 38-41 (reflects that the President with the Butare Security Council was trying to determine why security continued to deteriorate and queried whether it was because the President's 19 April message to local officials was not communicated to the community, or that the message was not understood or was ignored; Shimamungu suggested that this message reflected that the President's 19 April speech could not have been a call for killings); *but see* Des Forges, T. 7 June 2005 pp. 26-27 (the President's 19 April 1994 speech had a significant impact; although tours were being made under the guise of pacification, such messages were being contradicted by the ongoing action of the authorities, particularly on a local level), 27-28 (the public posture of the authorities was a commitment to pacification and to ending the violence but at the same time authorities in Butare on these very same days were organising and carrying out activities which resulted in tracking down and killing Tutsis; the value of these words needs to be taken in context of what the authorities were doing at this time, for example, the Prime Minister gave a speech in Kibuye about pacification and restoring security and then referred to lists of Tutsis who were RPF which resulted in an immediate increase in killings in Kibuye prefecture), 39-40 (discussing another *communiqué*, Des Forges noted that around 27 April, the government was increasingly concerned about its public image given growing international pressure and fear of an arms embargo; public statements were made and control was put into the hands of administrative authorities to give the appearance there was a procedure in fighting the enemy); Mbonyinkebe, T. 5 May 2005 pp. 84-91 (it is possible that the press release reflected Sindikubwabo's concern that his prior calls for peace were misunderstood but the witness did not agree that press release was clear about stopping killings and the manning of roadblocks; Mbonyinkebe referred to Prunier's description of military being helicoptered into Butare to carry out attacks; he also found that the statement "Killings and looting must stop immediately, and attacks by individuals carrying arms of any kind, with the exception of those manning roadblocks installed by the proper authorities, must come to an end" confusing).

[1956] *See, e.g.*, Exhibit 2D60 (Broadcasts, Various) pp. 19-23 *and* Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 12-15 (Sindikubwabo transmission, 8 April 1994) (announces three goals agreed upon by the political parties, including re-establishing safety of people and property); Exhibit 2D60 (Broadcasts, Various) pp. 28-29 *and* Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 8-9 (Niyitegeka transmission, 7 or 8 April 1994) translated at Makeli, T. 22 October 2007 pp. 51-52 (stated that fighting and killing among the population should stop, and that soldiers should stop firing "unnecessarily"; expressed the government's desire to continue negotiations with the RPF in order to create a broad-based transitional government); Shimamungu, T. 14 May 2007 pp. 6-9 (Translation of Prime Minister Jean Kambanda's 9 April 1994 speech) (Kambanda

stated that security of the population and its property, and peace for "all the Rwandese people living in Rwanda" were the new government's primary objective); Exhibit 2D60 (Broadcasts, Various) pp. 36-37 *and* Exhibit 3D164 pp. 21-24 (Interim Chief of Staff Colonel Marcel Gatsinzi transmission, 10 April 1994) translated at Makeli, T. 22 October 2007 pp. 56-57 (explained that undisciplined soldiers who had sought revenge and killed persons following the president's death had been brought back under control; authorities have given instructions that peace must be restored and efforts by gendarmerie and military police were also being instituted to end massacres and looting by "bandits"); Exhibit 2D27(E) (Radio Rwanda Broadcast of Speech by Sindikubwabo, 10 April 1994) pp. 1-2 *and* Exhibit 2D60 (Broadcasts, Various) pp. 66-67 (Radio Rwanda Broadcast of Speech by Sindikubwabo, 10 April 1994) pp. 66-67 translated at Shimamungu, T. 14 May 2007 pp. 14-17 (Sindikubwabo stated that the primary objective of the newly established Interim Government would be to restore peace and security for the population and no person had the right to take their neighbour's life or property; unauthorised roadblocks should be removed and groups of bandits must be disbanded; citizens must identify where criminals may be hiding or gathering to law enforcement); Exhibit 2D60 (Broadcasts, Various) pp. 60-65, 71-78 (Kambanda transmission, 10 April 1994) translated at Shimamungu, T. 14 May 2007 pp. 20-29 *and* at Des Forges, T. 2 June 2005 pp. 62-64, 68 (Kambanda explained the three goals of the new government, the first being restoring security; killing and looting by individual soldiers should not be attributed to the army as a whole, which was working to ensure security; the Interim Government had enlisted political parties to talk to members to ensure security and stop killing and looting; he encouraged the Minister of Internal Affairs to also organise a meeting with the same aim; Kambanda further requested that efforts to ensure the "hygiene and cleanliness" of the town were required); Exhibit P2(63)(E) (*Communiqué* issued by MRND, MDR, PSD, PDC and PL Political Parties After Their Meeting of 10 April 1994) *and* Exhibit 2D60 (Broadcasts, Various) pp. 45-50 (Transmission from political party leaders, 10 April 1994) translated at Des Forges, T. 3 June 2005 pp. 18-19 (the party leaders request their members to do everything in order to halt immediately the violence, killings and looting regardless political parties, ethnic groups or regional affiliations; they also recommend institutions in charge of security to punish immediately anybody caught contravening the law or other instructions intended to restore security; asked that local authorities do everything possible to stop killings as well as work with residents and the national army to "ensure security" and prevent "bad activities"); Exhibit P2(52)(E, F & K) (Jean Kambanda's Interview, 14 April 1994) p. 70 *and* Exhibit 2D60 (Broadcasts, Various) p. 195 (Radio Rwanda, 14 April 1994) (Jean Kambanda: "The message I will address to the Rwandans is the same as the one I earlier addressed to them, telling them to avoid divisions. Go on collaborating with the Rwandan Armed Forces, keep your unity, avoid any kind of division based on regions, ethnic groups or anything else. Because that would be like attacking yourself while they attack you."); Exhibit P2(52)(E, F & K) pp. 15-16 *and* Exhibit 2D60 (Broadcasts, Various) pp. 172-173, 198 (Sindikubwabo transmission, 14 April 1994) translated at Shimamungu, T. 15 May 2007 pp. 2-5 (Sindikubwabo asked Rwandans to bring "back peace in the residents' hearts, for a better mutual tolerance"); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 56-62 (Hyacinthe Bicamumpaka interview with the Minister of Defence, 18 April 1994) (population is to avoid anger and looting, and refrain from killing one and other), Exhibit P2(42)(E), Exhibit 2D47(E) pp. 2-3 *and* Exhibit 2D34(F) pp. 1-2 (which reflects reference to a 10 April 1994 *communiqué* instead of 14 April 1994) *and* Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 68-70 (Sindikubwabo transmission, 17 April 1994) (Sindikubwabo reiterated that "peace must be restored", requiring "tolerance, mutual forgiveness and repentance"; he noted that "criminal bandits" or "enemies of peace" remained and that the population should "flush them out" in order for them to be "punished in an exemplary manner"); Exhibit P2(34) (Radio Rwanda Broadcast, 17 April 1994) pp. 7-18 (interviews with Mugenzi, along with Interim Government ministers Donat Murego and Rafiki Hyacinthe Nsengiyumva as well as MRND Chairman Mathieu Ngirumpatse); Exhibit P2(42)(E & F) (Transcript of RTLM, 17 April 1994) pp. 20-21 (Mugenzi's speech on 17 April 1994) ("The political parties and the people of Rwanda who spoke through political parties understood that domination by one group was no longer possible. Also, the Hutus could no longer impose their rule on the Tutsis. And the Tutsis too should not try to impose themselves, for, if a solution were to be found, it had to be through democratic means."); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 75-80 (Bicamumpaka interview, 18 April 1994) translated, in part, at Makeli, T. 23 October 2007 pp. 13-14 (urging citizens to remain calm, not attack neighbours in haste and that victory will ultimately be peace and democracy); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 66-67 (Interview with the Minister of Defence, 18 April 1994) (urging Radio Rwanda, RTLM and Radio Muhabura to stop broadcasting content causing discord among Rwandans and stating that they should be helping cultivate a spirit of tolerance that will lead to an end of people killing each other); Exhibit 2D48(E) pp. 8-10, Exhibit P2(12)(F) pp. 12-15 *and* Exhibit 1D182(K) pp. 14-15 (Radio Rwanda Broadcast, 19 April 1994) (Sindikubwabo, on "Monday" 18 April 1994, emphasised that citizens were responsible for ensuring each other's safety and

indicated that Rwandans should not act as Cain did in the Bible but should each be their brother's keeper; persons must control feelings of anger and vengeance; people were dying and property was being destroyed, creating further problems for the country); Exhibit P54(E, F & K) (Radio Rwanda Broadcast, 21 April 1994) pp. 19-20 (interviews with Donat Murego and Stanislas Mbonampeka) (Murego said that to love Rwanda entails mutual respect and involves protecting neighbours); Exhibit 2D110(K) (Speech of the Minister of Defence, 21 April 1994) translated at Bicamumpaka, T. 3 October 2007 pp. 14-21 ("Members of the population, stop – stop ethnic conflict. The enemy who invaded us, whenever he sends bullets, he does not know who such bullets will hit. He wouldn't know whether it will hit a Hutu, a Tutsi, or a Twa. Work together like we have been doing before, stop fighting so that you may not give the chance to the enemy to have an excuse to fight."); Exhibit 2D57(E) (Radio Rwanda Broadcast, Various) pp. 25-32 (Prime Minister Jean Kambanda transmission, 22 or 23 April 1994) pp. 26 (armed forces are in collaboration with civilians to protect the sovereignty and to ensure security), 28 (since the formation of the government on 9 April, requests have been made to the RPF-*Inkotanyi* to stop hostilities and to resume negotiations; the Rwandan government reiterates its conviction that armed hostilities cannot resolve political disputes; the decision to participate in negotiations was aimed at stopping the war), 30 (asking political party leaders to explain to fellow party members that assaulting innocent persons who have nothing to do with the enemy constitutes a crime); *see also* translations at Mbonyinkebe, T. 10 May 2005 pp. 26-27 *and* Des Forges, T. 7 June 2005 p. 53; Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 115, 117-118, 130 (Niyitegeka transmission, 23 or 24 April 1994) translated at Makeli, T. 23 October 2007 p. 28, T. 29 October 2007 p. 7 (the government wants security and peace to reign in Rwanda); Exhibit 2D58(E) (Letter from Prime Minister Jean Kambanda to Prefects, 27 April 1994) pp. 8-13 (subject: Instructions to Restore Security), 10 (government received mandate to quickly restore and maintain security; security meetings should be organised without delay), 12 (clear plan for public meetings should be created in order to restore peace and maintain security); Exhibit 2D(58)(E & F) (Radio Rwanda Broadcast, 28 April 1994) (Broadcast Prime Minister Jean Kambanda to Prefects, 27 April 1994) translated at Makeli, T. 23 October 2007 pp. 29 (President's message that he communicated on 13, 14 and 15 April 1994 and in view of the message the Prime Minister has been communicating to the Rwandan people in their constant search for security; directives presented in cabinet meetings held on 11, 23 and 27 April 1994 on behalf of the Rwandan government must be followed so that common security in all parts of the country will be restored), 31 (government requested that officials meet with the people in the communes to seek ways of restoring and maintaining security); Exhibit 2D55(E) (Message from Butare Prefect Sylvain Nsabimana, 27 April 1994) p. 1 (message aimed at restoring security in Butare; first mission of current government is to restore peace and security in the country; disturbances must stop so that citizens can enjoy tranquillity); *see also* translation at Mbonyinkebe, T. 5 May 2005 pp. 96-97; Exhibit 3D164 (Radio Rwanda Broadcasts, Various) (Niyitegeka transmission, 28 April 1994) translated at Makeli, T. 29 October 2007 pp. 8-9 (no Rwandan should victimise another); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 145 (Niyitegeka transmission, 30 April 1994) translated at Makeli, T. 23 October 2007 p. 35 (the government wants peace and security); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 148 (Niyitegeka transmission, 30 April 1994) translated at Makeli, T. 29 October 2007 p. 14 (the government message is to work for peace); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 128, 131-135, 140-148 (Niyitegeka transmission, 30 April 1994) translated at Makeli, T. 23 October 2007 pp. 34-36 (the government wants peace and security); Makeli, T. 24 October 2007 pp. 2-4 (do everything so that peace and security can be restored), 9 (security meetings should be held often; each prefecture's security committees should monitor the implementation of those security strategies so it can appraise the return of security); Makeli, T. 29 October 2007 pp. 13-14 (Bishops and Christians should read this message so that they know the government wants to achieve peace and security; god's commandments and bishops tell us never to kill; should support security issues; government message is to work for peace and security; if no one wants to kill others or take away property then security and peace will be restored), 16 (peace and security should be restored among all Rwandans), 17 (do your best so that peace and security are restored in our country), 19 (please assist us so that peace and security can be restored); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 140-148 *and* Exhibit 2D5 (Radio Rwanda Broadcast) pp. 1-20 (Niyitegeka transmission, 30 April 1994) translated at Witness AEI, T. 4 February 2004 pp. 46-47 (the government urged people to make peace and ensure security); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 165-171 (Speech of Prime Minister Jean Kambanda, May 1994) translated at Makeli, T. 24 October 2007 pp. 6-7 ("Let me add here and make it clear here that the government is not support – is not supporting any criminals, those killing innocent people."); Exhibit 2D108(E) (Radio Rwanda Broadcast) (Prime Minister Jean Kambanda's address in Kibuye prefecture, early May 1994) p. 21 (stating that they are there to see how security can be restored); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 153 (Kambanda transmission, unknown date in Kibuye) (tape 951) translated at Makeli, T. 24 October 2007 pp. 7-8

1356. The Defence presented evidence that the Interim Government used Radio Rwanda and public directives as a means of thwarting violence, having no other means available to do so.[1957] Contemporaneous Radio Rwanda reporting on public addresses also tended to emphasise the calls for unity and peace.[1958]

(message passed on to every prefect for the return of security and for the violence to stop; this violence can be used as a weapon by the enemy); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 189-191 (*Communiqué* from the Minister of Defence, 7 May 1994) translated at Makeli, T. 24 October 2007 p. 19 ("7. As you know, following the interethnic tension caused by the resumption of hostilities by the RPF, and the assassination of the head of state, the Rwandan government has made every effort to restore calm throughout the country and stop the massacres which were going to devour the whole country."); Exhibit 2D102(F) (Prime Minister Jean Kambanda's Letter to the Minister of Justice, 10 May 1994); *see also* Ntambyaliro, T. 22 August 2006 p. 8 (Kambanda urged authorities to continue with the message of peace and to explain to people how to ensure their own safety); Exhibit 2D102(E) (Radio Rwanda Broadcast) (prefectural bureau meeting of judicial officials, 11 May 1994) p. 3 (participants urged authorities to continue with the message of peace and to explain to the people how to assure their own safety; help those who have fled to go back to their places of work); *see also* Ntambyaliro, T. 22 August 2006 pp. 6-8; Exhibit 2D102(G) (Radio Rwanda Broadcast, Various) (President Sindikubwabo transmission, 17 May 1994) pp. 2-4 (most important objective is to put a stable government in place, restore security and law throughout the country; the government's goals are ensuring peace and it has appealed to Rwandans to overcome anger as well as forgive and tolerate each other), 5 (we should promote all that can restore peace and security); *see also* Exhibit 2D102(G) (Radio Rwanda Broadcast, Various) (Ntamabyaliro transmission, 17 May 1994) pp. 7 (government wanted to restore peace and continue negotiations with the *Inkotanyi* as part of the Arusha Accords; since the government has been put in place it has done its best to restore security; ministers have gone to various parts of the country in a bid to restore security; government met with members of the population and officials in the prefecture in order to explore how security could be restored), 9 (soldiers should assist the authorities in restoring security); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 199 (Sindikubwabo transmission, 17 May 1994) translated at Makeli, T. 24 October 2007 pp. 23-24, 26 (the government's goals are ensuring peace and it has appealed to Rwandans to overcome anger as well as forgive and tolerate each other); Exhibit P2(55)(E) (Radio Rwanda Broadcast, Various) (Ntagerura transmission, 17 May 1994) (the people must do their best so that peace may be restored); Exhibit 3D132 (Bicamumpaka's interview on Radio Rwanda, 1 June 1994) pp. 13-17, 37-42 (outlining government missions abroad seeking assistance from third countries to restore security in Rwanda).

[1957] *See, e.g.*, Mugiraneza, T. 26 May 2008 p. 46; Ntamabyaliro, T. 22 August 2006 p. 3; Ndindabahizi, T. 2 May 2007 pp. 23-24; Ntagerura, T. 20 February 2007 p. 13. *See also* Ndamage, T. 21 March 2006 pp. 37-38, 76-80; Exhibit 3D89(E) (Radio Broadcast, 16 April 1994) p. 13 (Augustin Bizimana, Minister of Defence: "We cannot continue in this direction. I ask the written press to help us inculcate in Rwandans the culture of mutual tolerance, and the general public to stop killing one another so that our country can have peace."); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 189-191 (*Communiqué* from the Minister of Defence, 7 May 1994) translated at Makeli, T. 24 October 2007 p. 19 ("7. … Both public and private media must favour, in their publications and broadcasts, the message of national reconciliation."); Exhibit 3D132 (Bicamumpaka's interview on Radio Rwanda, 1 June 1994) pp. 13-17, 37-42 (outlining government missions abroad seeking assistance from third countries to restore security in Rwanda).

[1958] Exhibit 2D106 (Radio Rwanda Broadcast, 9 April 1994) pp. 1-4 (Radio Rwanda journalist François Nsengiyumva transmission, 9 April 1994) translated at Shimamungu, T. 14 May 2007 pp. 3-5 (reporting on a meeting at *Hôtel des Diplomates* led by Prime Minister Jean Kambanda, where among other decisions, it was agreed to issue "messages of pacification, specifically to remind the Rwandan people to consolidate themselves, to reconcile … with themselves, once again, so that this violence can come to a definitive end …"); Exhibit 2D26(E) pp. 3-8 *and* Exhibit 2D60 pp. 193-198 (Kambanda Radio Rwanda Interview, 14 April 1994) (unidentified journalist introduces interview between Kambanda and Hyacinthe Bicamumpaka, stating that government is "trying to restore a climate of peace among all the sons and daughters of the home country"); Exhibit 2D48(E) pp. 8, 10-12, Exhibit P2(12)(F) p. 15 *and* Exhibit 1D182(K) pp. 15-16 (Radio Rwanda reports of journalist Cyprien Musabirema, 19 April 1994) (summarised President Théodore Sindikubwabo's 18 April addresses to those in Gikongoro prefecture as well as his speeches in Maraba and Nyakizu communes of Butare; addressing Gikongoro Prefect Laurent Bucyibaruta, Sindikubwabo said that no one had the right to attack innocent citizens and that everyone was to ensure the security of his or her neighbours; in Nyakizu commune,

1357. In this vein, the Interim Government issued directives demanding that members of the population avoid divisions on "ethnicity" or "ethnic grounds".[1959] In a number of cases,

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residents informed the President that there were armed refugees at Cyahinda parish, and that they had killed gendarmes and injured the *bourgmestre*; four communal officers had gone missing and were believed to have been killed; Sindikubwabo asked that violence and aggression against innocent persons cease; non-official night patrols and barriers must be removed); *see also* Makeli, T. 23 October 2007 pp. 18 (summary indicates that Sindikubwabo asked those in Nyakizu to avoid acts of aggression, remove any illegal roadblocks and stop night patrols that are illegal, and that all should take the message of peace to their neighbours), 32 (at Cyahinda parish, Sindikubwabo was made aware of armed infiltrators whose intention was to cause insecurity); *see also* Shimamungu, T. 17 May 2007 pp. 31-32 (the President's messages in Gikongoro and Butare were similar to previous ones that no one had the right to attack others or their property, but must ensure their safety); *but see* Des Forges, T. 6 June 2005 pp. 73-74, T. 8 June 2005 p. 39 (the two gendarmes had been killed while attacking the Tutsis gathered at Cyahinda parish; the population responded to the President's message by launching another assault and killing the Tutsis who remained there). *But see* Exhibit P2(13)(E) (Radio Rwanda Broadcast, 19 April 1994) p. 23 (during the installation of the new Butare prefect, Sindikubwabo reminded the *bourgmestres* that they were at war, the messages should be analysed and acted upon; he warned the new prefect against the myth and rumours that are entertained in Butare, which create an attitude of irresponsibility among the people). *But see* Exhibit P54(E, F & K) (Radio Rwandan Broadcast, 21 April 1994) p. 15 (report by Radio Rwanda journalist Jules Nizeyimana) (in the President's 19 April 1994 speech during the installation of the new Butare prefect he called on people to be mutually tolerant); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 97 (report by Radio Rwanda journalist, 21 April 1994) translated at Makeli, T. 23 October 2007 pp. 21-22 (Security Council of Cyangugu prefecture continues to look for ways to restore security in all communes); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 103, 105 (Radio Rwanda journalist Hyacinthe Bicamumpaka transmission on the Kibungo installation, 22 April 1994) translated at Makeli, T. 23 October 2007 p. 24 (officials should coordinate with the population, including religious people, with a view to restoring peace and security in the country); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 196 (Radio Rwanda journalist Hyacinthe Bicamumpaka transmission, 11 May 1994) (the President conveyed messages of unity and pacification on 8, 13, 14 and 17 April 1994); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 213 (Radio Rwanda journalist Hyacinthe Bicamumpaka transmission, 18 May 1994) (reported on the President's speech in Kibuye, wherein he spoke about problems of public safety, security and national reconciliation and condemned recidivists who refused to abide by the decisions of the state); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 214 (Radio Rwanda journalist Hyacinthe Bicamumpaka transmission, 18 May 1994) translated at Makeli, T. 24 October 2007 pp. 27 (the President spoke at length on problems of public safety and security and national reconciliation), 49 (Sindikubwabo praised efforts of Cyangugu prefecture authorities in the matter of pacification, but he expressed regret that hundreds of communes' acts were contrary to the line of conduct that the government had called for). *See also* Exhibit 3D89(E) (Radio Broadcast, 16 April 1994) p. 13 (Augustin Bizimana, Minister of Defence: "We cannot continue in this direction. I ask the written press to help us inculcate in Rwandans the culture of mutual tolerance, and the general public to stop killing one another so that our country can have peace.").

[1959] Exhibit 2D60 (Broadcasts, Various) pp. 45-50 (Transmission from political party leaders, 10 April 1994) translated at Des Forges, T. 3 June 2005 pp. 18-19 (party members should struggle to restore security without discrimination based on parties "or ethnicity"); Exhibit 2D42(K) *and* Exhibit 2D60 (Broadcast, Various) pp. 116-122 (Kinyarwanda original of Kambanda transmission, 11 April 1994), 143-150 (French) translated at Shimamungu, T. 14 May 2007 pp. 33-37, 46-49 *and* Des Forges, T. 3 June 2005 pp. 30-35; Exhibit P2(52)(E, F & K) p. 70, Exhibit 2D26(E) pp. 3-8 *and* Exhibit 2D60 pp. 193-198 (Kambanda Radio Rwanda interview, 14 April 1994) (Rwandans should avoid division based on "regions, ethnic groups or anything else"); Exhibit P2(42)(E & F) (Transcript of RTLM, 17 April 1994) pp. 21-22 (Mugenzi's speech on 17 April 1994) ("The political parties and the people of Rwanda who spoke through political parties understood that domination by one group was no longer possible. Also, the Hutus could no longer impose their rule on the Tutsis. And the Tutsis too should not try to impose themselves, for, if a solution were to be found, it had to be through democratic means."); Exhibit 2D110(K) (Speech of the Minister of Defence, 21 April 1994) translated at Bicamumpaka, T. 3 October 2007 pp. 14-21 ("Members of the population, stop – stop ethnic conflict. The enemy who invaded us, whenever he sends bullets, he does not know who such bullets will hit. He wouldn't know whether it will hit a Hutu, a Tutsi, or a Twa. Work together like we have been doing before, stop fighting so that you may not give the chance to the enemy to have an excuse to fight."); Exhibit 2D57(E) (Radio Rwanda

ministers noted that Tutsis had a place in Rwanda, and on occasions condemned attacking persons simply because they were Tutsis. Rather, the enemy was the RPF-*Inkotanyi* and its accomplices.[1960] Decisive action should be taken against those committing violence, killers, looters, rapists and "bandits".[1961]

Broadcast, Various) pp. 26-32 (Prime Minister Jean Kambanda transmission, 22 or 23 April 1994), 30 ("do not assault your neighbour with whom you share everything; ethnic differences should not be a reason for you to burn their houses"); *see also* translations at Mbonyinkebe, T. 10 May 2005 pp. 26-27 *and* Des Forges, T. 7 June 2005 p. 53; Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 115, 117-118, 130 (Niyitegeka transmission, 23 or 24 April 1994) translated at Makeli, T. 23 October 2007 p. 28 (should not "hand down someone" because that person belongs to a different ethnic group; the government does not support this attitude); Makeli, T. 29 October 2007 pp. 7 (when you hear someone joined the *Inkotanyi* or that person is a Tutsi or a Hutu or a Twa this should not make you treat that person as an enemy; do not hunt persons based on "ethnic difference"), 8 (Hutus, Tutsis and Twa inside the country should all work together if the government decides to fight the *Inkotanyi*); Exhibit 2D58(E) pp. 8-13 (Letter from Prime Minister Jean Kambanda to Prefects, 27 April 1994), 11 (avoid violence on the pretext of ethnic groups, regions, denominations, political parties and hatred); *see also* Witness GKJ, T. 24 September 2004 pp. 58-59 (the Prime Minister's instructions in the letter of 27 April 1994 were useless because the government later sent people to contradict what was included in the document); Makeli, T. 29 October 2009 p. 9 (testifying about a statement by Niyitegeka on 28 April 1994 that no one should be victimised based on "ethnicity"); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 150 (Kambanda transmission, 30 April 1994) translated at Makeli, T. 23 October 2007 p. 6 (request to explain that people "must avoid anything that can create divisions based on ethnicity, region, religion, political parties, mutual hatred, and other factors"); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 133-135 (Niyitegeka transmission, 30 April 1994) translated at Makeli, T. 29 October 2007 pp. 17-18 (people should not be victimised based on their ethnic group or region of origin); Exhibit 2D102(G) (Radio Rwanda Broadcast, Various) pp. 2 (President Sindikubwabo transmission, 17 May 1994), 4-5 (everyone should be his brother's keeper and should avoid doing to others what they would not want others to do to them); *see also* Ntamabyaliro, T. 22 August 2006 pp. 13, 19-21; Exhibit 2D108(E) (Radio Rwanda Broadcast) pp. 14-26 (Prime Minister Jean Kambanda's address in Kibuye prefecture, early May 1994), 19 (people should start practicing transparency; we would provide Tutsis with security in the same way security is provided to refugees; if a Tutsi has taken refuge somewhere, then he is a displaced person and should be protected; administration is there to protect the entire population regardless of ethnicity, religion or region of origin); *see also* translation at Shimamungu, T. 17 May 2007 pp. 8-9; Exhibit P2(55)(E) (Radio Rwanda Broadcast, Various) (Prime Minister Jean Kambanda transmission on 3 June 1994) p. 3 (must not use ethnicity as a reason to assert that a person who does not belong to our ethnic group or does not come from our region is an enemy); *see also* Mugiraneza, T. 27 May 2008 p. 14 (accompanied the Prime Minister who spoke at Nyakabanda commune on 2 June 1994 and said that Tutsis should not be confused with RPF armed infiltrators).

[1960] Exhibit 2D42(K) *and* Exhibit 2D60 (Broadcast, Various) pp. 116-122 (Kinyarwanda original of Kambanda transmission, 11 April 1994), 143-150 (French) translated at Shimamungu, T. 14 May 2007 pp. 33-37, 46-49 *and* Des Forges, T. 3 June 2005 pp. 30-35 (Rwanda is made up of the Hutu, Tutsi and Twa ethnic groups and each has a "role to play" in the country and avoid anything leading to division among them); Exhibit P2(60)(K) pp. 12-13 *and* Exhibit 2D60 (Broadcasts, Various) pp. 216-217, 222-223, 235-238 (Mugenzi interview, 15 April 1994) translated, in part, at Witness AEI, T. 4 February 2004 p. 38 (Mugenzi states that the PL envisions all three ethnic groups living in peace and is saddened that the hostilities have brought back ethnic antagonism); Exhibit 2D57(E) (Radio Rwanda Broadcast, Various) pp. 26-32 (Kambanda transmission, 22 or 23 April 1994), 28 (the RPF have noticed, despite their propaganda, that Rwandans in general dishonour and do not want them), 30 (Rwandans should avoid falling into the enemy's trap; the enemy is not the Tutsi who has nothing to do with RPF-*Inkotanyi* bad acts), 32 (avoid violence based on ethnic or regional differences); Exhibit P2(62)(F) (Radio Rwanda Broadcast, 23 April 1994) pp. 2-4 (Florent Kampaya report of Charles Zilimwabagabo's 20 April 1994 invocation as Prefect of Gisenyi) translated at Murashi, T. 10 June 2004 pp. 62-64 (Justin Mugenzi stating that the war should be won so we no longer have to talk about the problem of the *Inkotanyi*; he said that the people needed to work in concert and be vigilant so as to smoke out the enemies); the summary read and was generally adopted by Mugenzi, but differs from the translation of Exhibit P2(62). Mugenzi, T. 10 November 2005 pp. 49-50 ("He stated that it was absolutely imperative to win the war so that in the future there would be no more talk of the *Inkotanyi* problem. And, in order to win, there must be solidarity and vigilance in order to unmask all

enemies wherever they may be. It is in this context or framework that the government was finally able to resolve the issue of the members of cellule committees, which had been shelved by the previous government, which wanted to favour the *Inkotanyi*. So, together, he concluded, we will win once and for all. Let us be with our armed forces by supporting them as much as we can, and along with our government by adhering to its programme."); *see also* Muhirwa, T. 5 April 2006 pp. 11-12 (*Inkotanyi* in Mugenzi's speech is a reference to the RPF); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 115, 117-118, 130 (Niyitegeka transmission, 23 or 24 April 1994) translated at Makeli, T. 29 October 2007 p. 7 ("Hutus must not be in conflict with Tutsis or Twas, when such a people have not been taking up arms to fight the Hutu. ... Then, when you hear that someone joined the *Inkotanyi*, or that a person is a Tutsi or a Hutu or a Twa, this should not make you treat such a people as an enemy, because that's not right. Indeed, whether we like it or not, Rwanda will always be inhabited by Hutus, Twas, and Tutsis.... [T]here is no way one ethnic group can try to exterminate the other and succeed in such a design."); Exhibit 2D55(E) (Message from Butare Prefect Sylvain Nsabimana, 27 April 1994) p. 1 (everyone must avoid doing harm to another person without proof that he or she is a real accomplice of the *Inkotanyi*); *see also* translation at Mbonyinkebe, T. 5 May 2005 pp. 92-93, 96-97; Exhibit 2D58(E) (Prime Minister Jean Kambanda Letter to Prefects, 27 April 1994) p. 11 *and* (Radio Rwanda Broadcast, 28 April 1994) (Broadcast of Kambanda Letter to Prefects, 27 April 1994) translated at Makeli, T. 23 October 2007 p. 30 (the enemy who attacked Rwanda is well known, it is the RPF-*Inkotanyi*); *see also* translation at Mbonyinkebe, T. 10 May 2005 p. 32; Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 150 (Kambanda transmission, 30 April 1994) translated at Makeli, T. 24 October 2007 p. 6 ("People should not confuse the enemy with the neighbour. They should have no confusion between the enemy and the Tutsi.... [W]e know the enemy who attacked our country. That enemy is the RPF-*Inkotanyi*"); Makeli, T. 29 October p. 18 (the enemy is only one, that is the *Inkotanyi*; be careful and try to identify and pursue them); *see also* Witness AEI, T. 4 February 2004 pp. 47-48; Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 145 (Niyitegeka transmission, 30 April 1994) translated at Makeli, T. 23 October 2007 p. 36, T. 29 October 2007 pp. 16-17 (do not accuse one of being an "accomplice" on looks alone ... take the person to authorities as a person should not be victimised just because he or she is "Tutsi, Hutu or Twa"); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 214 (Radio Rwanda journalist Hyacinthe Bicamumpaka transmission, 18 May 1994) (reported on the President's speech in Kibuye, wherein he stated that the enemy, against whom "we" must fight, is none other than the RPF); Exhibit 2D108(E) (Radio Rwanda Broadcast) (Prime Minister Jean Kambanda's address in Kibuye prefecture, early May 1994) pp. 14 (stating that the few paltry *Inkotanyi* have not been completely flushed out), 16 (that *Inkotanyi*'s presence is not accepted in Rwanda and that "we" shall fight), 17 (if you are an *Inkotanyi* you are an enemy of this country and of the Rwandan people; you must know we will fight you; you must take precautions), 18 ("I" do not support the RPF); Exhibit 2D102(G) (Radio Rwanda Broadcast, Various) p. 2 (Sindikubwabo transmission, 17 May 1994) p. 5 (the enemy is not your neighbour, it is not that poor man living next door, it is not that old lady, and it is not that innocent child); *see also* Ntamabyaliro, T. 22 August 2006 pp. 11-15, 18-19, 21 (President Théodore Sindikubwabo asked people to respect each other's rights and to try and restore peace in the country); Exhibit P2(55)(E) (Radio Rwanda Broadcast, Various) (Prime Minister Jean Kambanda transmission, 3 June 1994) pp. 2-3 (it is known that the enemy who attacked Rwanda was RPF-*Inkotanyi*; as long as the RPF continues to attack Rwanda it will remain an enemy), 9-10 (reporting on President Théodore Sindikubwabo's 17 May 1994 speech in Cyangugu, where he reminded Rwandans who love their motherland that RPF-*Inkotanyi* are the enemy of the nation and that it was inconceivable to see "dissidents" assault their neighbours or any other person, be him Tutsi, Hutu or Twa, who has no links to the enemy). *See also* fn. 1962.

[1961] Shimamungu, T. 14 May 2007 pp. 6-9 (Translation of Prime Minister Jean Kambanda's 9 April 1994 speech) (Kambanda asked the Minister of Justice to prosecute criminals taking "part in killings or the looting"); Exhibit 2D27(E) (Radio Rwanda Broadcast of Speech by Sindikubwabo, 10 April 1994) pp. 1-2 *and* Exhibit 2D60 (Broadcasts, Various) pp. 66-67 (Radio Rwanda Broadcast of speech by Sindikubwabo, 10 April 1994) translated at Shimamungu, T. 14 May 2007 pp. 14-17 (Sindikubwabo warns that those found guilty of crimes will be punished in exemplary fashion); Exhibit 2D60 (Broadcasts, Various) pp. 60-65, 71-78 (Kambanda transmission, 10 April 1994) translated at Shimamungu, T. 14 May 2007 pp. 20-29 *and* Des Forges, T. 2 June 2005 pp. 62-64, 68 (Kambanda called upon the Minister of Justice to investigate those involved in killings and lootings); Exhibit 2D42(K) *and* Exhibit 2D60 (Broadcast, Various) pp. 116-122 (Kinyarwanda original of Kambanda transmission, 11 April 1994), 143-150 (French) translated at Shimamungu, T. 14 May 2007 pp. 33-37, 46-49 *and* Des Forges, T. 3 June 2005 pp. 30-35 (instructs the Minister of Justice to do everything possible so that the offices of the prosecutor can start working so that all troublemakers are punished in accordance with the law); Exhibit P2(42)(E), Exhibit 2D47(E) pp. 2-3 *and* Exhibit 2D34(F) pp. 1-2 (which reflects reference to a 10 April 1994 *communiqué* instead of 14 April 1994) (Sindikubwabo transmission, 17 April 1994)

1358. However, to the extent these statements reflect that the Interim Government sought peace and ethnic unity, they just as clearly raised alarm, warning of accomplices in their midst, demanding vigilance and being mindful of the enemy's ruses.[1962] They admonished the

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(Sindikubwabo called all levels of government, including *cellule*, sector and commune officials to work with the prosecutor's office and courts in order to punish offenders who sought to take life or to destroy property and who are tarnishing the country's image); Exhibit 2D57(E) (Radio Rwanda Broadcast, Various) pp. 26-32 (Prime Minister Jean Kambanda transmission, 22 or 23 April 1994) p. 30 (asking political party leaders to explain to fellow party members that assaulting innocent refugees who have nothing to do with the enemy constitutes a crime); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 115, 117-118, 130 (Niyitegeka transmission, 23 or 24 April 1994) translated at Makeli, T. 29 October 2007 p. 7 (if anyone has a grudge against another, let the matter be reported officially, let there be a case in court; in a case someone loses the case and punishment should be administered); Exhibit 2D54(E) (Press Release for Radio Rwanda, 27 April 1994) (Butare Prefecture Security Council Meeting, statement from Butare Prefect Sylvain Nsabimana) p. 4 (directives from the President and Butare Prefecture Security Council stating that killings and looting must stop immediately; attacks by individuals carrying arms of any kind must come to an end; judicial services must collaborate with authorities in charge of security to punish all persons who contravene the directives given in this press release; *bourgmestres* instructed to collaborate with officials in charge of prosecution to find the persons that continue to sow insecurity); Exhibit 2D58(E) (Prime Minister Jean Kambanda Letter to Prefects, 27 April 1994) p. 12 (all criminal acts and lootings must stop immediately; judicial authorities have to punish severely any person who is found guilty of these acts); *see also* (Radio Rwanda Broadcast, 28 April 1994) (Broadcast of Kambanda Letter to Prefects, 27 April 1994) translated at Makeli, T. 23 October 2007 p. 31; Exhibit 3D164 (Radio Rwanda Broadcasts, Various) (Niyitegeka transmission, 28 April 1994) translated at Makeli, T. 29 October 2007 pp. 8-9 (officials should react when they see someone engage in looting and victimising other people; officials of security should punish these people in an exemplary manner); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 155 (Kambanda transmission, 1 May 1994) translated at Makeli, T. 24 October 2007 p. 7 ("[A]cts of victimisation, looting, and other criminal acts should be stopped at once. This is why the national army, the prosecutor's office, and other judicial services must punish severely anybody found to be committing those acts. Whenever it is necessary, you can resort to the national army as well as the judiciary to stop the violence, to fight against looting acts, and to help the people to maintain the good culture and tradition of helping each other and defending themselves."); Exhibit 2D108(E) pp. 14-26 (Radio Rwanda Broadcast) (Prime Minister Jean Kambanda's address in Kibuye prefecture, early May 1994), 15 (quoted the *bourgmestre* of Bwakire commune, who noted the presence of armed bandits; suggested contacting the Ministry of Defence to prevent those thugs from continuing to disturb the peace, and from causing insecurity at a time when they wanted peace to return; believed that the government should talk with the commander of this military region in order to prevent these thugs from causing insecurity when we all want peace to return); Exhibit 2D102(F) (Prime Minister Jean Kambanda's Letter to the Minister of Justice, 10 May 1994) p. 2 (directs initiation of judicial inquiry into massacres following assassination of the President and resumption of hostilities by RPF; request to call together the senior officers of the Prosecutor's office to examine methods of beginning this inquiry); Exhibit 2D102(G) (Radio Rwanda Broadcast, Various) pp. 2 (Sindikubwabo transmission, 17 May 1994), 5 (people who continue to commit crimes, to be tempted by greed and looting, they do not want peace to reign in the country and are enemies of the country; they are enemies of peace and should be prosecuted and punished), 9 (Ntamabyaliro transmission, 17 May 1994) (the Prosecutor's office should redouble efforts against those who commit crimes against their neighbours); *see also* Ntamabyaliro, T. 22 August 2006 pp. 14-15, 21-22 (people who are thirsty for killing, looting, for doing criminal acts should be taken to court by government leaders); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 214 (Radio Rwanda journalist Hyacinthe Bicamumpaka transmission, 18 May 1994) translated at Makeli, T. 24 October 2007 p. 28 (prosecutor's office should arrest all troublemakers and show exemplary strictness).

[1962] Exhibit P2(60)(K) pp. 12-13 *and* Exhibit 2D60 (Broadcasts, Various) pp. 216-217, 222-223, 235-238 (Mugenzi interview, 15 April 1994) (while noting that there are two groups of Tutsis in Rwanda, one who has the impression that they were born to rule and the other living simply with the rest of Rwanda; the RPF has recruited from the villages "every boy and girl aged 14" and over and sent them to Mulindi for firearms training for future attacks; normal relations are spoiled); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 56-62 (interview with the Minister of Defence) (the population needs to remain vigilant and should organise to fight against RPF infiltration, as they are using a number of tricks); Exhibit P2(42)(E), Exhibit 2D47(E) pp. 2-3 *and* Exhibit 2D34(F) pp. 1-2 (which reflects reference to a 10 April 1994 *communiqué* instead of 14 April 1994) *and*

public that it too was responsible for security of the nation.[1963] In order to fight the RPF-*Inkotanyi* and its accomplices, the population was to support roadblocks authorised by the appropriate authorities.[1964] Night patrols were to be conducted.[1965]

Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 68-70 (Sindikubwabo transmission, 17 April 1994) (Sindikubwabo says that time has come to be vigilant, noting that one of the RPF's devices was to "sow discord" and split the ranks of the Rwandan resistance; he adds: "we will be watching you closely, particularly those holding positions of trust in the civil service of this country because any error, whoever might have committed it must be wiped out."); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 75-80 (Bicamumpaka interview, 18 April 1994), 78 (explaining that they were aware that a number of RPF agents had infiltrated Kigali dressing as soldiers as well as wearing civilian clothes, reflecting that, here and there, are RPF sympathisers); Exhibit 2D57(E) (Radio Rwanda Broadcast, Various) pp. 26-32 (Prime Minister Jean Kambanda transmission, 22 or 23 April 1994), 26 (Rwandan armed forces in collaboration with the political parties that formed the former government learned about those traitors' tricks and foiled their plan), 28 (the RPF plan of taking power through the gun or through the tricks of political party leaders who do not represent anyone has failed), 30 (warns that the enemy is capable of disguise); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 130 (Niyitegeka transmission, 23 or 24 April 1994) translated at Makeli, T. 29 October 2007 p. 7 ("We know that some people have taken up arms to fight the Rwanda government. We know ... some people send their children to join the *Inkotanyi*, and they did this on their own free will. We also know that there's ... some children ... people who left their parents and joined the *Inkotanyi* without being sent there by their own parents. ... "); Exhibit 2D58(E) (Prime Minister Jean Kambanda Letter to Prefects, 27 April 1994) p. 11 (population must remain watchful in order to unmask the enemy and his accomplices/tools and hand them over to authorities); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 133-135, 145 (Niyitegeka transmission, 30 April 1994) translated at Makeli, T. 24 October 2007 pp. 2-3 (Minister tells the crowd not to be less vigilant just because the government wants peace; do not make the enemy more comfortable when you have discovered that he is the enemy; look carefully and do not confuse the enemy with innocent people; collaborators cannot pass unnoticed); Makeli, T. 29 October 2007 p. 17 (when you see someone who looks like an accomplice, if you are suspicious, point out that person to the authorities; the authorities will ask that person if they are an accomplice without committing violence; authorities should look at criteria that characterise the enemy, we have found what they are; there are people collaborating with the enemy, you must be vigilant; be vigilant and do not confuse the enemy with a person who is not; be vigilant so that peace and security can be restored); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 145-146 (Niyitegeka transmission, 30 April 1994) translated at Makeli, T. 23 October 2007 p. 36, T. 24 October 2007 pp. 2-3, T. 29 October 2007 pp. 16-17 (accomplices are in Butare ... admonishing listeners not to be less vigilant just because the government wants peace, as there are persons "collaborating with the enemy"); Exhibit 2D102(G) (Radio Rwanda Broadcast, Various) pp. 2 (Sindikubwabo transmission, 17 May 1994), 6 (the enemy came with another formidable weapon, a ruse, a ruse mixed with lies and wickedness); *see also* Ntamabyaliro, T. 22 August 2006 p. 23.

[1963] Exhibit 2D26(E) pp. 3-8 *and* Exhibit 2D60 pp. 193-198 (Kambanda Interview on Radio Rwanda, 14 April 1994) (asking the population to unite with the army to ensure their own security); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 54-55 (Radio Rwanda journalist Hyacinthe Bicamumpaka's summary of Sindikubwabo's 14 April 1994 address) (interpreting Sindikubwabo's 14 April 1994 speech as asking the population to assist the Rwandan army ensure security but without attacking innocent civilians); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 75-80 *and* Exhibit 3D109 pp. 20-26 (Bicamumpaka interview, 18 April 1994) translated, in part, at Makeli, T. 23 October 2007 pp. 13-14 (Rwandans are urged to come to the assistance of the Rwandan armed forces to ensure the territorial integrity of the country); Exhibit 2D48(E) pp. 8-10, Exhibit P2(12)(F) pp. 12-15 *and* Exhibit 1D182(K) pp. 14-15 (Radio Rwanda Broadcast, 19 April 1994) (Sindikubwabo, responding to calls to send gendarmes, informed local officials that security is everyone's concern and responsibility; he emphasised that those who were indifferent to the issues facing the region needed to be identified); Exhibit 2D57(E) (Radio Rwanda Broadcast, Various) pp. 26-32 (Prime Minister Jean Kambanda transmission, 22 or 23 April 1994), 30 ("Ladies and gentlemen, the government has invited you to assist armed forces to block enemy attacks. Organise night patrols. Erect barriers. Join hands with communal authorities, sector administration, but in particular with cellule committee members to stop [the] enemy's infiltration. Ask [for] identity documents from travelers and let them proceed with their journey after asking them where they are coming from and where they are traveling to. In case you are in doubt, take them to authorities. We are aware that the enemy is capable [of] disguise, but we know at the same time that you are capable of scrutinizing them."); Exhibit 2D(58)(E) (Prime Minister Jean Kambanda Letter to Prefects, 27 April

1359. While certain Defence witnesses testified that they interpreted the Interim Government's public statements as calls for peace and outlining efforts towards that end, Prosecution witnesses confronted with these statements often gave conflicting interpretations.[1966]

1994) p. 10 *and* (Radio Rwanda Broadcast, 28 April 1994) (Broadcast of Kambanda Letter to Prefects, 27 April 1994) translated at Makeli, T. 23 October 2007 p. 30 (responsibility of everyone to reinforce security); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 140-148 *and* Exhibit 2D5 (Radio Rwanda Broadcast) pp. 1-20 (Niyitegeka transmission, 30 April 1994) translated at Makeli, T. 23 October 2007 p. 34 (government wants the people to help it restore peace and security); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 154 (Kambanda transmission, 1 May 1994) translated at Makeli, T. 24 October 2007 pp. 6-7 ("Secondly, because ... the restoration of security is a concern of everyone, you are requested, at all levels you are requested, you people, in all levels that are in charge of security, to use all people to seek help from everyone, including the representatives of political parties, officials of religious bodies, or government officials, the judiciary, and the national army. ... In this regard we can be pleased with the fact that in this meeting, all those people who can assist government the government, as well as préfecture d'administration, in maintaining security have been invited to this meeting and are present here."), 9-10 (directions from local administration should be given to the population regarding security and meetings would be held for this purpose).

[1964] Exhibit 2D27(E) (Radio Rwanda Broadcast of Speech by Sindikubwabo, 10 April 1994) pp. 1-2 *and* Exhibit 2D60 (Broadcasts, Various) pp. 66-67 (Radio Rwanda Broadcast of Speech by Sindikubwabo, 10 April 1994) translated at Shimamungu, T. 14 May 2007 pp. 14-17 (roadblocks not set up by legitimate authorities must be dismantled); Exhibit 2D60 (Broadcast, Various) pp. 116-122 (Kinyarwanda original of Kambanda transmission, 11 April 1994), 143-150 (French) translated at Shimamungu, T. 14 May 2007 pp. 33-37, 46-49 *and* Des Forges, T. 3 June 2005 pp. 30-35 (roadblocks established by criminals were a source of looting and should be disbanded, while only those supported by the authorities should remain); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 54-55 (Radio Rwanda journalist Hyacinthe Bicamumpaka's summary of Sindikubwabo's 14 April 1994 address) (roadblocks set up by competent local authorities should remain while unauthorised barriers should be dismantled); Exhibit 2D57(E) (Radio Rwanda Broadcast, Various) pp. 26-32 (Prime Minister Jean Kambanda transmission, 22 or 23 April 1994), 30 (government invited citizens to assist armed forces to block enemy attacks and to organise day or night patrols and erect barriers; ask for identity documents); Exhibit 2D58(E) (Prime Minister Jean Kambanda Letter to Prefects, 27 April 1994) p. 12 (authorities of the communes, sectors and *cellules*, with the assistance of the National Army are requested to identify places where roadblocks should be officially set up; the system should be in place in order for the roadblocks to prevent the enemy from infiltrating); *see also* (Radio Rwanda Broadcast, 28 April 1994) (Broadcast of Kambanda Letter to Prefects, 27 April 1994) translated at Makeli, T. 23 October 2007 p. 30 *and* Mbonyinkebe, T. 10 May 2005 p. 32.

[1965] *See, e.g.*, Exhibit P2(52) pp. 15-16 *and* Exhibit 2D60 pp. 172-173, 198 (Sindikubwabo transmission, 14 April 1994) translated at Shimamungu, T. 15 May 2007 pp. 2-5 (Sindikubwabo called on persons to give information to soldiers, those in charge of security are to conduct night patrols); Exhibit 2D(57)(E) (Radio Rwanda Broadcast, Various) pp. 26-32 (Prime Minister Jean Kambanda transmission, 22 or 23 April 1994), 30 (government invited citizens to assist armed forces to block enemy attacks and to organise day or night patrols).

[1966] Regarding the Interim Government generally issuing instructions for peace and denials that its speeches incited killings: Betabura, T. 1 December 2005 pp. 38-39, T. 5 December 2005 p. 21; Turatsinze, T. 13 April 2006 p. 33; Makeli, T. 24 October 2007 pp. 31-32, T. 29 October 2007 pp. 6, 24-25, 64. Regarding Sindikubwabo's 8 April 1994 speech: Shimamungu, T. 10 May 2007 pp. 58-59 (President Sindikubwabo's 8 April 1994 address asked Rwandans to remain calm and avoid attacking others, ensure property is protected and expressed the government's interest in restarting negotiations with the RPF); Makeli, T. 22 October 2007 pp. 53-56 (the new government's primary aim was restoration of security of people and property); *see also* Des Forges, T. 2 June 2005 pp. 43-45 (contained no blatant call to kill; however, this might have been a time of caution, when the international community remained in Rwanda and at a point when a plan to kill Tutsis might not have materialised yet). Regarding Niyitegeka's 7 or 8 April 1994 speech: Makeli, T. 22 October 2007 pp. 51-52; *but see* Des Forges, T. 2 June 2005 pp. 47-52 (the calls for peace among the population and discipline among soldiers were made because the government feared the possibility of a civil war between members of opposition parties and the MRND, and was not directed at Tutsis; the call for peace could have been an attempt to get Tutsis to come out of hiding; she also emphasised the authorities' concern with the country's image in the

international community). Regarding Kambanda's 9 April 1994 speech: Mugenzi, T. 24 November 2005 p. 16 (the President and Prime Minister directed the judicial system to start investigating killings but nothing was done and by 12 April the government was on the run); Shimamungu, T. 14 May 2007 pp. 3, 5-6, T. 16 May 2007 p. 18 (tracks Sindikubwabo's speech of 8 April 1994 and suggests that the journalists interpretation of it was accurate). Regarding Gatsinzi's 10 April 1994 address: Makeli, T. 22 October 2007 p. 57, T. 29 October 2007 pp. 65-66 (Gatsinzi acknowledged that some soldiers were causing insecurity but the witness interpreted Gatsinzi's speech as a protest against this and a threat to punish in an exemplary manner); Ntagerura, T. 20 February 2007 pp. 29, 69 (recalled the Minister of Defence speaking on Radio Rwanda and asking the military to remain disciplined, for soldiers to avoid harming civilians and property and for senior officers to "apprehend and bring to justice" anyone responsible for "serious offences"); *see also* Mugenzi, T. 24 November 2005 pp. 77-78 (Gatsinzi issued a *communiqué* on 10 April that soldiers were involved in killings and that he was asking this to be investigated); *but see* Des Forges, T. 2 June 2005 pp. 55-56 (Gatsinzi's comments were less than forthcoming as contemporaneous radio reports stated that nearly 8,000 persons were being killed at this time, a sizeable slaughter, which in Des Forges's view, could not have resulted from isolated banditry). Regarding Sindikubwabo's 10 April 1994 speech: Makeli, T. 22 October 2007 pp. 61-62 (Sindikubwabo asked all Rwandans to work towards security, which was the administration's primary objective, and explained that efforts were being made to punish the criminals); *see also* Des Forges, T. 2 June 2005 p. 72, T. 3 June 2005 p. 16 (this speech was innocuous and did not, in her view, carry a coded message to kill Tutsis); Witness D, T. 16 June 2004 p. 41 (despite statements that nobody had the right to kill someone else, killings continued from 10 April onwards). Regarding Kambanda's 10 April 1994 Radio Rwanda address: Shimamungu, T. 14 May 2007 pp. 30-33 (the killing of the President created a void in power, which led to further disturbances, including the killing of Prime Minister Agathe Uwilingiyimana; the speech served to legitimise the process of establishing the Interim Government, whose objectives were to obtain peace for all Rwandans, implement the Arusha Accords and provide resources, including food, particularly to displaced persons; did not find doublespeak or coded language in the speech); *but see* Des Forges, T. 2 June 2005 pp. 65-67, 70-71, T. 6 June 2005 p. 55, T. 7 June 2005 pp. 29-30, T. 8 June 2005 pp. 1-2, 4, T. 15 June 2005 p. 86 (speech was generally innocuous and did not call for killings of Tutsis but the statement that sanitary conditions posed a public health risk reflects the Interim Government's knowledge of the massive civilian slaughter and speaking in terms of "hygiene" and "cleanliness" was a "disingenuous" reference to the need to dispose of thousands of corpses; calls for prosecution were insincere, in part because a significant proportion of those in the Rwandan judiciary were Tutsis; records Des Forges reviewed generally reflected that investigations concerned minor criminal activity unrelated to the killing of Tutsis; in prefectures like Butare and Gitarama, suspects accused of killing Tutsis in early April were imprisoned but released by authorities). Regarding Bicamumpaka's 10 April 1994 press-briefing: Swinnen, T. 7 May 2008 pp. 23, 34 (called for peace, end of hostilities and implementation of Arusha Accords); *see also* Bicamumpaka, T. 26 September 2007 pp. 55-58 (explaining the contents of his 10 April 1994 speech). Regarding the 10 April 1994 *communiqué* from the leaders of political parties: *see* Des Forges, T. 3 June 2005 pp. 19-22 (while acknowledging that this message expressed a desire to restore peace irrespective of political party allegiances or ethnicity, Des Forges noted that each of the signers of this *communiqué* – Mathieu Ngirumpatse (MRND), Édouard Karemera (MRND), Froduald Karamira (MDR), Donat Murego (MDR), Francois Ndungutse (PSD), Hyacinthe Nsengiyumva (PSD), Gaspard Ruhumuliza (PDC), Justin Mugenzi (PL) and Agnès Ntamabyaliro (PL) – were all Hutus and members of the first Rwandan government where no Tutsis were represented; the request to ignore these divisions likely concerned killings between members of the MRND and MDR rather than attacks on Tutsis; given the international attention and Des Forges's belief that the message would be understood by those for whom it was intended, it is reasonable that there were no express calls to attack Tutsis). Regarding Kambanda's 11 April 1994 broadcast: *see* II.7.5; Makeli, T. 22 October 2007 p. 65 (interpreted it to mean that Rwanda's ethnic groups should not turn against each other and had an obligation to come to the rescue of each other; more importantly, jealousy over, for instance, wealth should not lead to violence among persons); Shimamungu, T. 14 May 2007 pp. 49-50, 56 (message reflects that Hutus, Twas and Tutsis all have a right to the country and that persons should not take the law into their own hands; only roadblocks authorised by local government officials should exist to avoid criminal activities at them; no evidence of doublespeak or coded language); *but see* Des Forges, T. 3 June 2005 pp. 29-38 (this speech refused to sufficiently acknowledge that killings on an ethnic basis were occurring *en masse*; specifically, Kambanda's extensive recital of the "security" situations in various prefectures ignored that, other than in Ruhengeri, Byumba, Gisenyi and Kigali, there was very little actual combat between the Rwandan army and the RPF in Rwanda and that the killings elsewhere were aimed at Tutsis, but not acknowledged; under such circumstances, she viewed Kambanda's generalised calls on Rwandans to act as brothers insincere, particularly in Kigali where

it was reported that there were nearly 10,000 dead). Regarding Kambanda's 14 April 1994 Radio Rwanda interview: Shimamungu, T. 15 May 2007 pp. 13-14 (Prime Minister Jean Kambanda's 14 April 1994 reiterated that the government's objectives were aimed at effectuating the Arusha Accords and reflects the difficulty experienced with trying to get the RPF to negotiate as they continue to fight; the speech does not reflect doublespeak); *but see* Des Forges, T. 6 June 2005 pp. 8, 11-12, 17-19 (by this date, between 15,000 and 30,000 persons had been killed and Kambanda's 14 April interview fails to sufficiently acknowledge what was occurring; furthermore, it was clear that the Rwandan army was leading attacks against Tutsis in Kigali and elsewhere and the government would have been aware of it; consequently, asking for civilians to support it would be a call to further such attacks; calls not to be divided based on regional or party differences were sincere as there had been fighting, particularly among the youth wings of the MRND and the MDR, after Agathe Uwilingiyimana's death; otherwise, the list of divisions that should be avoided could have gone unnoticed in the course of this speech). Regarding Sindikubwabo's 14 April 1994 address: Makeli, T. 22 October 2007 pp. 67-68 (Sindikubwabo was stating that people committing violence and looting were taking advantage of the situation and he was calling on persons in charge of security to pursue such individuals); Shimamungu, T. 15 May 2007 pp. 5-6, T. 17 May 2007 pp. 49-50, 63-65 (President Sindikubwabo's 14 April 1994 speech is consistent with his 8 April message and does not contain doublespeak; crime has stopped and the government is continuing to work to enable the Arusha Accords; the population should be vigilant and turn over to authorities those taking part in killings and lootings); *see also* Mugenzi, T. 10 November 2005 pp. 12-13 (understood Sindikubwabo's message to be a sincere call for peace, advising people to forget about anger, hatred and revenge); *but see* Des Forges, T. 6 June 2005 pp. 22-23 (the message of mutual tolerance, although unclear, might again have been aimed at preventing Hutus from attacking each other and that Hutus were the innocent victims; reference to those with "evil plans" to return Rwanda to a "worse situation" could have been an allusion to Tutsis seeking to reinstate the monarchic rule that existed prior to the 1959 revolution; she testified that one interpretation of "fighting for peace" might be eliminating the enemies who, in the context of this war, were being identified on ethnic grounds; persons on the ground were left with the choice to listen to generic calls for peace or follow the example of *bourgmestres*, *conseillers* and soldiers engaged in killing Tutsis – the very persons identified as carrying the government's message to the public); *see also* Witness DCH, T. 21 September 2004 pp. 17-19 (analysing Sindikubwabo's 14 April 1994 speech not as a directive to stop killing but as an instruction to cross-check with the army or local officials before killing Hutus who were identified as Tutsi accomplices or opposing Hutu power factions; these were instructions issued from local officials, who indicated they were getting them from higher authorities; instructions to collaborate with the army were followed); *see also* analysis of this speech given by Witness GHR in II.8.4. Regarding Mugenzi's 15 April 1994 interview: *see* Des Forges, T. 6 June 2005 pp. 32-38 (Mugenzi's words only served to heighten fear and anger among Hutus and his distinction between Tutsis who sought power versus those who lived peacefully among other Rwandans was erased by the assertion that even the latter group betrayed Rwanda by sending their children for training with the RPF; she also emphasised that Mugenzi blamed the RPF's military incursion for the cause of ethnic violence towards Tutsis; Mugenzi framed such killings as an understandable inevitability, and while he repeated that this was sad, he did not call them illegal or ask for them to stop); *see also* Witness AEI, T. 4 February 2004 pp. 38-40 (did not view Mugenzi's remarks as the PL wishing that the war be stopped). Regarding the Minister of Defence's 15 April 1994 speech: Makeli, T. 23 October 2007 pp. 7-8 (the "enemy" identified by Bizimana, as made clear by all speeches made at that time, was not one's neighbour, a member of an opposing political party, or a person of a different ethnic group, but the RPF). Regarding Sindikubwabo's 17 April 1994 address: Makeli, T. 23 October 2007 pp. 10-11 (references to bandits were those engaged in looting and killings and included *Interahamwe*); Shimamungu, T. 15 May 2007 pp. 15-18, T. 21 May 2007 pp. 14-18 (Sindikubwabo's 17 April 1994 speech reiterated the government's objective to restore peace, calling upon citizens to denounce "enemies of peace" or those involved in killing, and the administrative and judicial authorities to exert their power to bring peace; band of thugs tarnishing the country's image, while not identified by ethnicity, are clearly identified not as RPF combatants but persons acting lawlessly, and the President is expressing that this cannot be tolerated); *see also* Mugiraneza, T. 26 May 2008 pp. 40-46 (this speech reflected the President's anger that despite repeated calls for killings to end they continued; phrases such as "enemies of peace, bandits" were quite strong terms used to describe criminals); Mugenzi, T. 10 November 2005 pp. 13-14 (despite instructions to the contrary, killings were spreading and in this context the President was saying that this would not be tolerated); *but see* Des Forges, T. 2 June 2005 pp. 65-67, 70-71, T. 6 June 2005 pp. 54-55, 70 (she believed that Sindikubwabo, when referring to divisions, concerned those between Hutus, rather than killings of Tutsis as conflicts began to rise among Hutus from property and authority stolen from Tutsis, which became a government concern; his description of offences carried out by "criminal bandits" was disingenuous in light of the tens of thousands of

killings that had been carried out by possibly 10,000 to 20,000 assailants; the request for prosecutions were insincere, noting that those jailed in Butare for crimes related to killing Tutsis were released; the President's warning that the government would be "watching", particularly those in administrative posts, revealed concerns that some were not facilitating or even permitting the killing of Tutsis, as evidenced by the removal of Butare's prefect); Mbonyinkebe, T. 4 May 2005 pp. 80-86 (this speech contained no express call to kill and, in fact, requested mutual forgiveness and peace; considered that speech might have been intended for international consumption). Regarding Sindikubwabo's 18 April 1994 address in Gikongoro prefecture, as well as Maraba and Nyakizu communes in Butare, which was broadcast on 19 April 1994: Shimamungu, T. 15 May 2007 pp. 24-26, 30, T. 16 May 2007 pp. 26-27 (Hutus and Tutsis were responsible for each other's safety and should support law and armed forces; those unconcerned must explain themselves to the authorities while killers and looters should be denounced; refugee camps should close and persons should go home; the reference to Cain (a cultivator) killing Abel (a pastor) had particular significance as Rwandan mythology placed Hutus in the profession of Cain and Tutsis in that of Abel; because the country was largely Christian, the message would be clearly understood as asking Hutus to stop killing Tutsis and there was no doublespeak); *see also* Mugenzi, T. 10 November 2005 pp. 11, 14-16 (Sindikubwabo's reference to Cain and Abel and that each should be his brother's keeper meant Hutus should protect Tutsis; this simple biblical metaphor would clearly have been understood by the people of Rwanda); *but see* Des Forges, T. 6 June 2005 pp. 73, 75 79-81 (Sindikubwabo's call for citizens to ensure each other's safety meant for Hutus to protect other Hutus and to not let regional or political differences come between them; the President's refusal to send gendarmes reflected a desire for citizens to take more responsibility for dealing with the problem facing the country, namely the Tutsis, although it might also indicate that he did not seek to spread killings through the use of such security forces; the President's statements that those who are "indifferent" must be identified, in her view, referred to those who had not recognised the threat posed by the Tutsis and had not joined the attack against them; t heir indifference, particularly in the southern regions where there are historically strong bonds between Hutus and Tutsis, risked creating a civil war between the north and the south); *but see* Mbonyinkebe, T. 5 May 2005 pp. 19-22, 24 (nothing in the speech is expressly inflammatory, but it was extremely complex and could carry implications that he could not decode; in his view, the speech called for unity of the population in maintaining civil defence; reference to the events of 1990, which created divisions among all Rwandans and hurt everyone, was used to emphasise the importance of civilian participation in civil defence in order to protect the gains of the nation). Regarding Bicamumpaka's 18 April 1994 address: Makeli, T. 23 October 2007 p. 14 (when Bicamumpaka referred to having "victory", he was referring to peace and democracy, neither of which could be achieved while the people were in chaos). Regarding Hyacinthe Bicamumpaka's transmission on the Kibungo installation, 22 April 1994: Makeli, T. 23 October 2007 pp. 24-25 (administrative officials should coordinate with the population with a view to restoring peace and security in the country). Regarding Kambanda's 22 or 23 April 1994 speech: Shimamungu, T. 15 May 2007 pp. 65-68 (the Prime Minister's speech clarified that those they were fighting are not the Tutsis; reminded the population to avoid divisions based on ethnicity; he told the people to be vigilant and not to confuse the enemy with his Tutsi neighbour); Makeli, T. 23 October 2007 pp. 26-27 (Prime Minister's message clearly explained that they should not turn against each other on the basis of ethnic groups; clarified that the RPF-*Inkotanyi* was the enemy); *but see* Des Forges, T. 7 June 2007 pp. 53-55 (allegations regarding Tutsis having arms in their houses was a frequently used excuse to search and kill Tutsis; very rarely were searches for arms productive; the Prime Minister authorised the search of 10 Tutsi homes based on the allegation that they were hiding arms; the Prime Minister learned that no arms were found but that the persons in these homes were slaughtered; calling on people to regard those with military training or who had hidden arms in their households became a justification for killing Tutsis; she found little significance in Kambanda's opening statements that the Tutsi neighbour was not their enemy). Regarding Niyitegeka's address broadcast on Radio Rwanda on 23 or 24 April 1994: Makeli, T. 29 October 2008 pp. 7-8 (in this speech and others, officials stated that Hutus, Tutsis and Twas should not attack each other and the enemy was clearly identified as the RPF; Hutus, Tutsis and Twas should work together to fight the enemy who had attacked the country). Regarding Prime Minister Jean Kambanda's 27 April 1994 letter to Prefects: the Chamber observes that there are discrepancies between interpretations of "accomplice" v. "tool" in the letter: *see* Des Forges, T. 7 June 2005 pp. 56-57 (testified that the Prime Minister meant to use the word "accomplices"); *but see* Shimamungu, T. May 2007 p. 71 *and* Ndindabahizi, T. 1 May 2007 pp. 20-25 (the Prime Minister meant to use the word "tools"); *see also* Mbonyinkebe, T. 10 May 2005 p. 32 (translating excerpts from Kambanda's directive and stating "[The population] must remain vigilant in order to identify the enemy and his tools ... "); Des Forges, T. 7 June 2005 pp. 56-57 (questioned the instruction about having to unmask the enemy because an RPF-*Inkotanyi* soldier would be easily identifiable; the message insinuates that he is hidden among the civilian

population, and it is not just him it is his "accomplices"; those are the people the government was attacking); Mbonyinkebe, T. 3 May 2005 pp. 48-49 (authorities did not go to the field and tell officials to stop the violence; if government leaders had gone to the field and told people to stop they would have obeyed those orders; he did not believe that the issuing of messages and speeches was effective); Mbonyinkebe, T. 10 May 2005 pp. 33-34 (references to *umwanzi* or "he who has taken up arms" could have allowed good faith distinctions between the true enemy and the Tutsis to be overlooked; while the message on its face may be innocent, it cannot be interpreted outside the context of, for example, "*Interahamwe* who are heating things up"); Witness GKJ, T. 24 September 2004 pp. 57-61 (the instructions in the 27 April 1994 letter, which he had not received, were of no use precisely because the government was contradicting them by sending persons around to incite killings of Tutsis at this time); Witness GKJ, T. 28 September 2004 p. 22 (the actions of the government were totally different from the policy of peace mentioned by the Prime Minister in his written letter on 27 April 1994; the writings were very nice, but when it came to action it was totally different); *but see* Shimamungu, T. 15 May 2007 pp. 68-69 (instructions and objectives announced by the Prime Minister constitute a recapitulation of the official message for restoring and maintaining peace and security; continue negotiations with the RPF; the Prime Minister refers to messages issued by the President dealing with safeguarding security in the country; does not refer to accomplices of the RPF, rather it is equipment or "tools"); Makeli, T. 23 October 2007 pp. 31-32 (government leaders told the people in speeches to be careful to avoid victimising innocent people); Makeli, T. 29 October 2007 p. 20 (government wanted peace and security restored; no one should be victimised); *see also* Mugenzi, T. 30 November 2005 pp. 30 (government gave many instructions telling people that nobody should suffer based on ethnicity; this instruction was part of the Prime Minister's 11 April 1994 speech to the prefects and was later put into written form; letter clearly states that ethnicity is not a reason for people to be victimised; agreed that there had been victims at roadblocks based on their ethnicity), 37-38 (the Prime Minister reminded the people that those identified as *Inkotanyi* should be presented to authorities; people stopped at roadblocks should be taken to the local judicial authority); *see also* Mugiraneza, T. 26 May 2008 pp. 20 (the Prime Minister's speech was meant to inform the people that the enemy of the country was not the Tutsis, but the RPF-*Inkotanyi*; urged officials to dismantle roadblocks established by unknown persons; only roadblocks recognised by the authorities that could be monitored should be sustained; only RPF combatants should be arrested at roadblocks; those identified as RPF were to be taken to the authorities; prefects were to request assistance from the army to restore law and order wherever necessary; judicial authorities were to prosecute and punish perpetrators of these attacks), 21-22 (the Prime Minister's oral recommendations from the 11 April 1994 meeting regarding the restoration of security were only put into a written draft on 23 April and signed on 27 April 1994; the Prime Minister did not explain why it took four days for the draft to be signed; Mugiraneza, one of the drafters of the Prime Minister's letter, testified that the committee in charge of this draft decided against using stronger language regarding massacres; the letter's wording was decided during a 23 April 1994 cabinet meeting and reflected a consensus; words used were clear to enable persons to understand that the government's policy was to try and end massacres); *see also* Ndindabahizi, T. 2 May 2007 pp. 17-18 (government promised on 11 April 1994 that it would issue instructions regarding security throughout the country; the Prime Minister did not issue instructions until 27 April 1994; explanation provided for the delay was that Minister Mbangura who had to prepare the document was abroad; Ndindabahizi testified that the Prime Minister did not do his best to ensure that the document was prepared in time); *see also* II.12.2. Regarding the message from Butare Prefect Sylvain Nsabimana, 27 April 1994: Des Forges, T. 7 June 2005 pp. 39-40 (as a result of international awareness at the end of April 1994 a series of statements from the government attempted to tighten control over the killings that were going on; this was done to make the killings less visible; massive assaults and a large number of Tutsis diminished after this period; policy became one of putting control more into the hands of administrative authorities so that there would be the appearance of procedure rather than simply hunting down and killing people; citizens told to bring suspects to the commune and in some parts of the country this became a joke; mass graves where bodies were dumped became known as the commune and people would say that they were "taking the suspect to the commune", which meant that they were taking that person to be executed; in other parts of the country people were actually taken to the commune office and dealt with by official authorities); *but see* Mbonyinkebe, T. 5 May 2005 pp. 95 (witness stated that this was a very important and necessary statement that would avoid the killing of innocent people; document was in favour of justice, but many innocent people still died), 97 (the message that everybody must avoid doing harm to another person without proof that he or she was a real accomplice of the *Inkotanyi* was important yet ambiguous). Regarding Niyitegeka's 30 April transmission broadcasted on Radio Rwanda: Makeli, T. 23 October 2007 p. 34 (greeted audience with wishes for peace and security because they did not have them); Makeli, T. 24 October 2007 pp. 2-4 (Minister tells the crowd not to be less vigilant just because the government wants peace; do not make the enemy more comfortable when you have

1360. In the Chamber's view, these broadcasts do not raise doubts about the interpretations of Sindikubwabo's speech in Butare on 19 April 1994. For example, a collective view of testimonies before the Chamber undeniably demonstrates that roadblocks throughout the country routinely singled out Tutsi civilians for slaughter and the Chamber has no doubt that the Interim Government knew this.[1967] In this regard, continued calls for civilian participation

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discovered that he is the enemy; look carefully and do not confuse the enemy with innocent people; collaborators cannot pass unnoticed), 5 (message was for Rwandans to help the government restore peace); Makeli, T. 29 October 2007 pp. 18 (after speaking about peace and restoring security the minister identified the enemy as the *Inkotanyi*; people should try and identify them and they should be the ones that are pursued; should not victimise a person based on their ethnic group, that person has a right to life except if he was the enemy, because the enemy was indeed the enemy), 19-20 (did not call for persons to kill but to strive for peace and security), 22-23 (referred to as a government of killers, Niyitegeka explained that people engaged in killings were ignoring the government's instructions). Regarding Prime Minister Jean Kambanda's 10 May 1994 letter to the Minister of Justice: Ndindabahizi, T. 1 May 2007 p. 16 (Kambanda was asking that the minister try and open up the public prosecution departments so that the people accused of having committed massacres could be prosecuted); Ntamabyaliro, T. 22 August 2008 pp. 6-8 (following the Prime Minister's request for investigations into the massacres, the director general held a meeting calling for prosecutions and requested the Prime Minister to ensure that staff involved in such prosecutions should be given proper security; in light of the fighting they were told it would be difficult to ensure staff security). Regarding President Sindikubwabo's 17 May 1994 transmission on Radio Rwanda: Ntamabyaliro, T. 22 August 2006 pp. 13, 19-21 (Sindikubwabo was asking people to respect each other's rights; never told people to hate each other). Regarding Prefectural Bureau meeting of Judicial Officials, 11 May 1994: Exhibit 2D102(E) (Radio Rwanda Broadcast) p. 3 (participants urged authorities to continue with the message of peace and to explain to the people how to assure their own safety); Ntamabyaliro, T. 22 August 2006 p. 8 (urged authorities to continue with the message of peace). Regarding Sindikubwabo's 17 May 1994 speech in Kibuye: Makeli, T. 24 October 2007 pp. 23, 26-27 (the Minister of Justice said that the organs of justice would be used to punish those guilty of infractions; people who victimise others, all of those people belong to this country should be characterised by the rule of law and should be arrested), 28 (heard about Sindikubwabo's 17 May 1994 visit and that in this tour, like others, leaders told the people to "maintain peace"); Ntamabyaliro, T. 22 August 2006 pp. 14-15, 21 (the Minister of Justice maintained his position that the government wanted people to be prosecuted for the crimes that they committed). Regarding Prime Minister Jean Kambanda's 3 June 1994 transmission on Radio Rwanda: Des Forges, T. 7 June 2005 p. 63 (noted that the Prime Minister's speech emphasised that enemies should not be defined based on regional grounds).

[1967] *See, e.g.*, Witness GIE, T. 17 February 2004 p. 29 (in April 1994, *Interahamwe* in Kigali set up roadblocks and persons identified as Tutsis were killed); Witness UL, T. 1 March 2004 pp. 52-54, T. 2 March 2004 p. 18, T. 3 March 2004 pp. 26-27 (while travelling through Kigali he saw a roadblock manned by *Interahamwe* armed with clubs and a dead person beside it; they checked identity cards and the witness was able to pass because his indicated that he was Hutu; after Habyarimana's death, Tutsis were being killed); Witness UL, T. 2 March 2004 p. 32 (while travelling from Kigali to Butare in April 1994, passed between 20 and 30 roadblocks; found dead bodies at a roadblock near a building called "Kabuga's"; remarked of a particularly "terrible roadblock" manned by *Interahamwe* and civilians in Nkoto where he saw several corpses in that area but not at the roadblock; those identified as Tutsis were being killed); Witness UL, T. 2 March 2004 p. 33, T. 3 March 2004 p. 11 (once in Butare, the witness was given a password that allowed him to pass roadblocks; women and children seeking refuge at the Butare prefecture office could not leave because of nearby roadblocks; if they were identified as Tutsis at such barriers they would be killed); Witness WFQ3, T. 26 January 2007 pp. 22-24 (by 8 April 1994, saw many corpses in Kigali when leaving from the *Hôtel des Diplomates* but not necessarily at roadblocks; when fleeing from Kigali to Gitarama, observed a roadblock manned by soldiers at Nyabarongo; did not observe corpses at roadblocks he passed when travelling to Gitarama but heard about killings); Witness RDO, T. 5 March 2008 pp. 18-19 (at roadblocks in Kigali-*Rurale* people were allowed to pass if it was confirmed they were Hutu; a soldier had to intervene on one occasion to prevent a person from being thrown in a river; the witness did not see dead bodies at the roadblocks but several in the Akagera river); Makeli, T. 29 October 2007 p. 64, T. 30 October 2007 pp. 32-33 (although he never saw anyone killed at roadblocks, he was asked to present identification; learned that *Interahamwe* manned them and that Tutsis were killed at barriers); Witness GHR, T. 18 March 2004 pp. 46-47 (observed soldiers and *Interahamwe* manning roadblocks; the witness's Hutu identification card saved him as most persons killed were Tutsis and Hutus who did not share the *Interahamwe*'s

in such defence efforts, even when qualified by demands that they be authorised by civilian authorities, at best, reflect indifference towards preventing the killing of Tutsi civilians.[1968]

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or CDR's views); Ntamabyaliro, T. 28 August 2006 p. 23 (in April 1994, persons were killed at roadblocks manned by *Interahamwe*, although at some barriers persons were not killed); Witness WZ4, T. 7 September 2006 p. 67 (observed a roadblock in "Kyiti Kinonyi" manned by "young people" and saw dead bodies); Mugiraneza, T. 26 May 2008 p. 53, T. 2 June 2008 pp. 46-47 (Tutsis were generally killed at roadblocks and by the 11 April 1994 meeting between the Prime Minister and prefects, the government, as a result, was calling for all roadblocks not under government control to be dismantled); Mugenzi, T. 30 November 2005 pp. 7, 27-31, 33, 56, 105-106 ("we" had very little influence at roadblocks and "the people" manning them engaged in killings; those identified as Tutsis were killed there despite government instructions otherwise); Witness RWV, T. 9 June 2008 pp. 28-30 (observed soldiers and civilians armed with sticks and machetes manning the roadblocks, the latter at those situated in the more rural areas; saw corpses around the roadblocks on the tarmac road to Gitarama); Witness GTC, T. 2 March 2005 pp. 62-65 (discussing various roadblocks established in Gisenyi from 7 April 1994; many were established to arrest and kill fleeing Tutsis; testified about several instances of this); Muhirwa, T. 5 April 2006 pp. 5-6, 53, 55-56 (identifying various roadblocks in and around Gisenyi town and noting that identity cards were requested; being identified as a Tutsi could lead to being killed); Witness WCA-1, T. 29 September 2006 pp. 16-17, 40-42 (prior to 6 April 1994, roadblocks were established to prevent RPF infiltration but later they were used to "look for Tutsis"; the witness observed gendarmes and *Interahamwe* with machetes manning them; the witness was placed among Tutsis at roadblocks and threatened with being killed; she managed to pass by paying off those manning them); Ruppol, T. 2 October 2006 pp. 5, 39-40, T. 3 October 2006 pp. 8-9 (returned to Rwanda on 16 and 17 May 1994 and travelled from Butare to Gitarama; observed over 100 roadblocks, many armed by civilians with spears, clubs with nails and some machetes; travelling with a colonel the witness was not asked to produce documents; the colonel informed him that these barriers were to prevent RPF infiltration; he never observed killings or corpses at roadblocks but heard, even in preparation for his May 1994 trip to Rwanda, that Tutsis, including women and children, were being killed at them); Exhibit 3D103 (Outgoing Cable from Dallaire to Annan, 15/16 April 1994) p. 4 ("13. ... Frequent roadblocks are established, ID cards checked and Tutsis executed on the spot. Bodies are removed in a systematic manner and the cycle continues. If the RGF or gendarmerie are present they do not interfere. In fact in some areas they are prohibited transit by the militia. These massacres have been witnessed by UN troops. This ethnic cleansing infuriates the RPF who have stated they will continue to fight and advance until it is stopped even if that means 'moving on Gitarama or even Butare'. If the ethnic cleansing is not stopped the RPF will not negotiate a ceasefire. The question is can the government stop the attacks or has this programme gone so far out of control (as MGEN Kagame stated) that it cannot be stopped and therefore can only be stopped by 'sorting it out once and for all' ..."); Exhibit 3D99 (Outgoing Cable from Dallaire to Baril, 17 April 1994) p. 5 ("14. ... In Kigali, frequent roadblocks are established, ID cards checked and Tutsis executed on the spot. If the RGF or gendarmerie are present they do not interfere. In fact in some areas they are prohibited transit by the militias."). *But see* Witness WFP10, T. 31 August 2006 pp. 34-36, 68 *and* Exhibit 1D91 (List of 54 People) (describing roadblocks in Gisenyi manned by local leaders such as a head of *cellule*; the witness was away from Gisenyi from 4 April to 12 May 1994, but denied having seen Witness GTC manning a roadblock but heard that he had taken a person from a roadblock and killed him); Witness WZ8, T. 20 September 2006 pp. 46-47, T. 21 September 2006 p. 22 (testifying that members of the population did establish roadblocks in Gisenyi; identity cards were checked but denied that Tutsi were separated from Hutus and did not see anyone killed or dead bodies at roadblocks).

[1968] *See* Des Forges, T. 3 June 2005 p. 27 ("Q. ... If the government had required that unauthorised roadblocks be dismantled in the préfet's préfectures, that too would have been a clear order, wouldn't it? A. That would have been a clear order if it had been absolutely clear what "unauthorised roadblocks" meant. If roadblocks were permitted by militia leaders, for example, was that considered an authorised roadblock, as opposed to one by local people who simply wished to profit from ... passers-by? ... Q. If the government talked about unauthorised roadblocks to the préfets, surely they would clearly be meaning those, you, the préfets, or your legitimate subordinates have not authorised. Do you agree with that proposition? A. Yes, but the question was who had the authority, and clearly in some circumstances in some places it was not simply the administrative agents who had the authority; in some cases and places political party leaders could direct that roadblocks be put up and they would be considered authorised.").

1361. The record before the Chamber demonstrates the error of placing undue emphasis on the Interim Government's ambiguous distinctions between "authorised" versus "unauthorised roadblocks" or fleeting clarifications between the "*Inkotanyi*", "RPF", "infiltrators", or "accomplices", on the one hand, and Tutsi civilians, on the other. This is poignantly reflected in the testimony of former Radio Rwanda journalist and Defence Witness Dominique Makeli. Confronted with the 28 April 1994 broadcast of Kambanda's directives to all prefects, which called on the population to establish official roadblocks and conduct night patrols to check "infiltrations", the witness acceded that the definition of "infiltrator" was ambiguous. He reminded the Chamber, however, that the government requested that the population bring such persons to authorities and avoid victimising innocent people.[1969]

1362. Makeli only generally testified that he heard infiltrators were taken to authorities. When pressed for an example of how infiltrators were handled, he turned to the murder of his son – identified as an infiltrator in the foreign region of Kibuye prefecture because he was tall, slim and looked like a Tutsi.[1970] As noted above, the record is replete with evidence that Tutsis generally were considered the enemy and killed because of their ethnicity. Again, the Interim Government's calls for civilians to ensure security, particularly in regions where war had not reached it, reflect, at best, indifference towards the killing of Tutsi civilians. Such public instructions undermine the Defence contentions that these speeches reflected a genuine commitment to stopping such crimes.

1363. Furthermore, Defence arguments reflecting that government *communiqués* were carefully tailored to avoid conflation between Tutsi civilians and the RPF-*Inkotanyi* stumble when read in the context of Prime Minister Jean Kambanda's June 1994 interview on RTLM. The evidence reflects that several government ministers viewed RTLM as inciting violence, or at a minimum, interfering with achieving peace in Rwanda.[1971] Several witnesses have testified that RTLM incited violence against Tutsis generally.[1972] When confronted with a 14 April 1994 broadcast, Des Forges explained how it conflated the *Inkotanyi* with starving

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[1969] Makeli, T. 23 October 2007 pp. 31-33.
[1970] Makeli, T. 23 October 2007 pp. 33-34.
[1971] Mugenzi, T. 23 November 2005 pp. 28-30, 43-45, T. 24 November 2005 pp. 48-49, 51-52, 57-58, T. 30 November 2005 pp. 57-59; Mugiraneza, T. 22 May 2008 pp. 11-12; T. 26 May 2008 pp. 15-16, 28-30; Bizimungu, T. 5 June 2007 p. 35; Bicamumpaka, T. 26 September 2007 pp. 37-38; Ntagerura, T. 20 February 2007 pp. 52, 53-54, 56-57, T. 21 February 2007 pp. 6-7; Ndindabahizi, T. 1 May 2007 pp. 67-69, 71. *See also* II.5.1.
[1972] Muhirwa, T. 5 April 2006 pp. 8-9 (RTLM was a very bad and extremist radio station, it revealed where people were hiding and incited people to kill each other); Witness LF-1, T. 12 June 2008 p. 42 (the first people who were victims of the RTLM were not only Tutsi, but actually political opposition; those were the ones who were killed, irrespective of whether they were Hutu or Tutsi); Witness CC-1, T. 31 October 2007 pp. 19-23 (RTLM was certainly not in favour of ethnic cohesion; since RTLM was created to counter Radio Muhabura which was pro-Tutsi then one would understand that RTLM was more biased towards Hutus; RTLM was not only against Tutsis, but also against Hutus that were in the opposition); Witness WFQ1, T. 4 October 2006 p. 2 (RTLM was considered to be linked to extremists); Witness DCH, T. 20 September 2004 p. 50 (RTLM radio was encouraging killings); Nkuliyingoma, T. 8 July 2004 pp. 22-23 (RTLM said accomplices, Tutsis or *Inyenzi* should be killed, and in areas where the *Inkotanyi* was not present, these were references to all Tutsis and all prominent leaders who opposed the Habyarimana regime); *see also* Exhibit 3D99 (Outgoing Cable from Dallaire to Baril, 17 April 1994) p. 5 ("14. ... RTLM radio broadcasts inflammatory speeches and songs exhorting the population to destroy all Tutsis (RTLM was damaged by RPF mortar fire on 17 April). Even the Minister of Defence, a known hardliner, has condemned this propaganda, but has not closed down the station."). *See also* II.7.4.i.

Tutsi civilians that had been in hiding for a week.[1973] Notwithstanding, Kambanda went on RTLM in June 1994 and expressly praised the radio station for educating the people about the truth of the war.[1974]

1364. Under the circumstances, Interim Government instructions, which on their face differentiated Tutsis civilians from the RPF-*Inkotanyi*, do not raise doubt with respect to the Chamber's interpretation of Sindikubwabo's speech during the 19 April 1994 installation ceremony. As discussed above, Sindikubwabo's remarks that day necessarily sought to raise panic and allow for the enemy to include Tutsi civilians. It similarly reflected his discontent with the passivity in Butare towards killing Tutsis.

1365. Furthermore, as much as the Interim Government's speeches called for peace and unity, they equally informed the public that their instructions would be brought to them through local authorities.[1975] In this regard, the ambiguous messages about peace and security in the broadcasts could be overridden by more direct instructions to kill Tutsi civilians, identified as "suspected accomplices", through face to face instructions with local

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[1973] Des Forges, T. 6 June 2005 p. 9.

[1974] Exhibit P2(35)(F) (RTLM, 21 June 1994) p. 26. *See also* Mugenzi, T. 24 November 2005 pp. 35-43 (acknowledging that the government had tried to stop broadcasts by the RTLM and testifying he could not account for Kambanda's RTLM interview in June 1994); Ntamabyaliro, T. 29 August 2006 p. 44 (the only radio station that the government was supposed to use was Radio Rwanda).

[1975] *See, e.g.*, Exhibit 2D60 (Broadcasts, Various) pp. 45-50 (Transmission from MRND, MDR, PDC and PL party leaders, 10 April 1994) translated at Des Forges, T. 3 June 2005 pp. 18-19 (*conseillers*, *cellule* and the heads of 10 houses should work cooperatively with the people and national army to "ensure security" so that no one becomes "a victim of bad activities"); Exhibit 2D26(E) pp. 3-8 (Radio Rwanda broadcast, 14 April 1994) *and* Exhibit 2D60 pp. 193-198 (Radio Rwanda Broadcast, 14 April 1994), at 7 and 197 (respectively) (Rwandans are asked to continue to collaborate with the Rwandan army); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 66-67 (interview with the Minister of Defence, 15 April 1994) (imploring local authorities to organise meetings of the local population to bring about peace as well as seek out the enemy and defeat it); Exhibit 2D(58)(E) pp. 8-13 (Letter from Prime Minister Jean Kambanda to Prefects, subject: Instructions to Restore Security, 27 April 1994), 10 (government received a mandate to quickly restore and maintain security; security meetings should be organised without delay), 12 (clear plan for public meetings should be created in order to find a way to restore and maintain security); Makeli, T. 29 October 2009 p. 9 (concerning a statement by Niyitegeka on 28 April 1994: "We are telling the people that there is no reason for killing each other. Where we have managed the [sic] visit the people, we have found that the people indeed understand this, and préfets, as well as bourgmestres, are helping us in this task. That is why we have decided to appoint new sous préfets, to make them assist the préfet ... [and] the government, and that way they will help to solve that problem in Rwanda."); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) pp. 140-148 (Niyitegeka transmission, 30 April 1994) at 148, translated at Makeli, T. 29 October 2007 pp. 12-14 (*bourgmestres*, *conseillers*, soldiers and other prominent persons in the community should communicate the government's message to the public; sometimes the *bourgmestre* may not reach all sectors, and in that case a *conseiller* who has attended the meeting can call the people in the sector and tell them that a message has been given by the government; "Therefore many of the decisions that we were supposed to talk about, some of these decisions are in this letter, in this document, but the other decisions that are in the message communicated to you by the préfet, which message has been read to you."); *see also* Makeli, T. 24 October 2007 pp. 9-10 (directions from local administration regarding security should be given to the population and meetings would be held for this purpose, although the witness never attended such a meeting); Makeli, T. 29 October 2007 pp. 22-23 (government ministers travelled to the prefectures to give instructions to leaders to pass on to the population); Exhibit 2D108(E) pp. 14-26 (Radio Rwanda Broadcast) (Prime Minister Jean Kambanda's address in Kibuye prefecture, early May 1994), 22 (people should consult the local *bourgmestre* in order for both of them to figure out how to ensure security); Exhibit 3D164 (Radio Rwanda Broadcasts, Various) p. 197 (Radio Rwanda journalist Hyacinthe Bicamumpaka transmission, 11 May 1994) (providing instructions from the government for prefecture security council meetings to be urgently convened to define and implement strategies of restoring security).

government and security officials.[1976] For this reason as well, the statements of the Interim Government do not raise doubts about the Chamber's interpretation of Sindikubwabo's 19 April 1994 speech at the installation ceremony.

1366. Ultimately, the public broadcasts of speeches by members of the Interim Government are ambiguous, and do not reasonably reflect the government's commitment to preventing the killing of Tutsi civilians. Moreover, the most relevant contextual considerations in evaluating Sindikubwabo's speech during the 19 April 1994 ceremony are the highly coordinated and

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[1976] *See, e.g.*, Witness DCH, T. 20 September 2004 pp. 4, 48-49; T. 21 September 2004 pp. 23-27; T. 22 September 2004 pp. 30-31 (confronted with Sindikubwabo's 10 April 1994 speech, the witness, an *Interahamwe*, testified that statements about not harming neighbours were meaningless in the face of orders from local officials, who said they were passing on instructions from higher authorities; the instructions he received after this speech were to search for a way to get rid of the "enemy" and to avoid turning against other Hutus). The Chamber recalls that it did not find this evidence sufficient to implicate any of the Accused in Witness DCH's roadblock, but that his evidence about activities at his was credible (II.12.1); Witness GKJ, T. 27 September 2004 pp. 37-39 (confronted with Sindikubwabo's speech of 17 April 1994, he recognised that the speech pleaded for peace; however, whenever the President made a speech like that their collaborators, such as Callixte Nzabonimana, would engage in criminal actions contrary to such instructions); Witness GTD, T. 1 July 2004 pp. 19-20, T. 5 July 2004 pp. 5-6 (the initial instructions, which were received over the radio, stated that roadblocks were to be used to identify *Inyenzi* and *Inkotanyi*; however, leaders subsequently said that the enemy were Tutsis generally, rather than just RPF combatants; Witness GTD understood that all Tutsis were to be targeted since the RPF had not reached his area when his roadblock was established; Tutsis arrested at the witness's and other roadblocks were killed, rather than brought to the communal office, which was not functioning at the time). The Chamber has elsewhere questioned the reliability of Witness GTD about the involvement of, for example, Bizimungu in killings at roadblocks (II.10.1). However, in this instance, it finds his evidence about what was generally occurring at roadblocks credible, when viewed in light of the entire record and the fact that he was convicted for his participation in crimes at a roadblock during the genocide. *See also* Des Forges, T. 3 June 2005 p. 17 (analysing Sindikubwabo's 10 April 1994 speech, Des Forges commented that "[t]he invocation of security as an issue was often followed by the suggestion that it was Tutsi who troubled security and therefore dealing with the problems of security meant dealing with Tutsi"; she also remarked on Sindikubwabo's insistence at the end that "'you abide by all orders and instructions that you receive from all levels of the administration'. Simply again stressing the very strong emphasis given in this society to listening to official orders. … You must obey orders as part of the concluding segment."), 20-22 (analysing the 10 April 1994 *communiqué* from political party leaders, she suggested that the instructions for citizens to actively participate in restoring security in that context provided them with a license to attack persons, and specifically, those who were associated with the RPF based on their ethnicity), 27-28 ("Q. Well, Dr. Des Forges, I accept that the préfets and, indeed, the government themself were not in the situation – the chaotic situation in Rwanda in 1994, the only source of de facto authority in power, but we've seen, to take your recent example, what the political party leaders had said. And whatever subliminal interpretation you put upon it, the clear meaning of the words is no kind of incitement to violence. So other steps were being taken apart from just addressing the préfets, were they not? A. Indeed, it's one of the characteristics of the genocide that there was collaborative action between political party leaders, military leaders and administrative leaders. Q. But not that we are seeing in the broadcasts that we have seen so far. A. Well, yes, didn't we see calling upon the population to cooperate with the army, "Go together with the soldiers and assure security in your region". Q. "So that no one should be harmed" is how that sentence ended, as I recollect. A. "So that no one should be harmed by bad activities"; if you define bad activities as being those perpetrated by people whom you call enemies, they are bad activities."), 37-38 (finding Kambanda's 11 April 1994 *communiqué* regarding barriers as less than clear; in particular, she questioned what type of "security" they were intended to restore; suggested the instructions could be interpreted as calling on militia, including *Interahamwe*, and political party leaders to collaborate with local officials to ensure such barriers are not mistakenly identified as those set up by criminals or bandits); Des Forges, T. 7 June 2005 pp. 27-28 ("THE WITNESS: The public posture of the authorities was a commitment to pacification and to ending violence. And in furtherance of that posture, the préfet adopted the use of these rhetorical questions; but at the same time, authorities in Butare préfecture on these very same days are organising and carrying out activities which result in tracking down and killing Tutsi. And any value in these words has to be taken in the context of what the authorities themselves were doing at that time.").

decisive actions taken by certain members of the Interim Government leading up to this event. In particular, the Chamber recalls its findings that the Tutsi prefect, Jean-Baptiste Habyalimana, was removed days before in order to undercut the real and symbolic resistance he posed to the killing of Tutsi civilians in Butare (II.9.1). These events, when read in the larger context of the record, compellingly support the conclusion that Sindikubwabo's speech was a direct call for the killing of Tutsis in Butare.

1367. When viewed in light of this conduct, the only reasonable conclusion is that Sindikubwabo's words reflected a clear intent to incite massacres of Tutsi civilians in Butare. Having assessed the Prosecution and Defence evidence pertaining to the speech's content, the Chamber also finds that the only reasonable conclusion is that it would have been generally understood as calling for the killings of Tutsi civilians in Butare.

1368. The Chamber next turns to Defence evidence that the Accused did not know what Sindikubwabo would say during the 19 April 1994 installation ceremony. Mugiraneza testified to this effect. Ntagerura provided similar evidence, stating that the President's speeches were never reviewed by the cabinet of ministers.[1977] Expert Witness Eugène Shimamungu testified that the speech appeared to have been improvised.[1978]

1369. Sindikubwabo's speech was the culmination of the decision by the ministers of the Interim Government, including Mugenzi and Mugiraneza, to remove Jean-Baptiste Habyalimana as Butare's prefect. The President's inciting message reflects the policy that the dismissal of Habyalimana intended to enact – namely motivating the killing of Tutsi civilians in Butare. The evidence reflects that the presence of so many high level officials was unusual and intended to make a point.[1979] The ceremony was clearly a coordinated and concerted effort, accumulating an array of national and local officials as well as the resources to have the messages transmitted nationally. With prominent Butare natives, such as Sindikubwabo and Kambanda, as well as representation from the MDR party through Kambanda, the PL through Mugenzi and the MRND party through Mugiraneza, the delegation presented a united Interim Government front in support of Sindikubwabo's speech. Mugenzi and Kambanda also addressed the attendees and, in the Chamber's view, did not contradict the President's message. Thus, to the extent that the ministers in Butare, including Mugenzi and Mugiraneza, did not know the precise words the President would utter during the installation

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[1977] *See* Mugiraneza, T. 26 May 2008 p. 45; Ntagerura, T. 19 February 2007 p. 30. Mugenzi testified that the President's appearance at the 19 April 1994 installation ceremony was unexpected. Mugenzi, T. 10 November 2005 pp. 22-23. However, Mugiraneza testified that he attended the ceremony because he had been informed by chief of protocol that the President would be present and that, according to protocol, ministers should accompany the President. Mugiraneza, T. 26 May 2008 p. 45. Ntagerura also gave evidence implying he had advance notice that the President would attend the ceremony. Specifically, he testified that he went because, as a general matter, available ministers were called on to join the President when he meets the "people". Ntagerura, T. 19 February 2007 p. 30. These accounts undermine Mugenzi's assertion that the President's presence was unexpected.

[1978] *See* Shimamungu, T. 21 May 2007 pp. 4-5, 7. The Chamber considers this evidence speculative and lacking credibility. Shimamungu appears to point to the President's use of rhetorical questions as evidence that his 19 April speech was improvised. However, the 27 April 1994 *communiqué* issued on behalf of the Butare Security Council in conjunction with the President similarly contains questions. Exhibit 2D54(E, F & K) (Radio Rwanda Press Release of Butare Prefecture Security Council, 27 April 1994) p. 4.

[1979] Shimamungu, T. 15 May 2007 p. 52 (it was unusual for a president to attend the installation of a prefect, an administrative appointment that normally does not involve a ceremony); *see also* Des Forges, T. 23 June 2005 p. 5 (in Des Forges's view, the presence of President Sindikubwabo and Prime Minister Kambanda was intended to emphasise a policy change in Butare aimed at inciting massacres there).

ceremony, the only reasonable conclusion is that they knew the message would be aimed at sparking killings of Tutsi civilians there. The Chamber shall consider these conclusions in the Legal Findings (III).

1370. Both Bizimungu and Bicamumpaka were not present during this ceremony. There is no evidence demonstrating any act or omission by them that substantially contributed to it.

(ii) General Killings in Butare, from 19 April 1994

1371. The Indictment alleges that shortly after Sindikubwabo's speech, the massacres began in Butare prefecture.[1980] In particular, elements of the Presidential Guard and Para-Commando Battalion arrived in Butare and these soldiers, along with *Interahamwe* of Butare, massacred civilians, including the former Queen of Rwanda, Rosalie Gicanda, a historical Tutsi symbol for all Tutsis.[1981] Moreover, from 20 April 1994 massacres spread in Butare and numerous people sought refuge in places like the prefecture offices in Butare town. Despite the promise made to protect them by authorities, the refugees were attacked, abducted or killed by soldiers and militiamen, often on the orders or with the complicity of those same authorities.[1982]

1372. As noted previously, the Prosecution has presented evidence that, as a general matter, killings spread dramatically within Butare prefecture and peaked from 19 through 26 April 1994 (II.9.1). The conclusion that Butare prefecture suffered the most victims during the genocide was based in part on the influx of Tutsis fleeing from elsewhere.[1983] Nonetheless, the Prosecution has not pursued, in a methodical or comprehensive manner, evidence of particular killings that result from this speech. Notably, the Prosecution conceded that it led no evidence that elements of the army and *Interahamwe* militiamen were sent to Butare as reinforcements to start the massacres, as alleged in paragraph 6.43 of the Indictment.[1984] Its closing submissions only generally point to evidence that killings occurred in Butare prefecture from 19 April 1994 onwards.[1985]

1373. Moreover, the more direct accounts of what occurred after Sindikubwabo's speech tend to be second-hand or anecdotal and uncorroborated. For example, the testimonies pertaining to the alleged killing of Rosalie Gicanda, the Queen and symbol of the former

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[1980] Indictment, para. 6.45.
[1981] Indictment, para. 6.47.
[1982] Indictment, para. 6.49.
[1983] Exhibit P2(82)(E) (Maxwell Nkole Report) p. 5.
[1984] *Compare* Prosecution Closing Arguments, T. 1 December 2008 p. 39 *and* Prosecution Pre-Trial Brief, para. 127 (p. 28), *with* Indictment, para. 6.43.
[1985] *See* Prosecution Closing Brief, paras. 213, 311 (referring to Witness D, T. 15 June 2004 pp. 41-42 that after the President's 19 April 1994 speech, killings in Butare started with those carried out by "the soldiers of the ESO and subsequently, the population joined the massacres of Tutsis"), 296 (the day following the President's speech, "massacres began in the region, with the killing of Queen Rosalie Gicanda, a Tutsi, and the former prefect of Butare, Jean-Baptiste Habyalimana, a Tutsi"), 1017 (asserting that "Prosecution Witness[es] Harriet Sebera, UL, Fidèle Uwizeye, Alison Des Forges and Mbonyinkebe all testified that the speech incited killings in Butare" without citation to the record); *see also* Prosecution Closing Arguments, T. 1 December 2008 p. 39 ("And that, indeed, massacres actually took place from 27th [*sic*] April '94 onwards."); Prosecution Closing Arguments, T. 5 December 2008 pp. 9-10 (referring to the Rousseau Report's coverage on grave excavation, which indicates that after 19 April 1994 300,000 Tutsis were killed in Butare and that "killings from the 19th were quite palpable. So we have ample witnesses on that.").

Tutsi monarchy, were second-hand, brief and inconsistent as to its timing.[1986] Likewise, although Witness D testified about the drowning of four or five Tutsi families, his evidence was hearsay. Sebera, in the context of describing the systematic killing of Tutsis after Sindikubwabo's speech, provided a first-hand account that her husband and brother-in-law were killed. Witness UL described numerous corpses and mass graves in Butare, as well as a specific instance when wounded victims were killed at Nyakibanda major seminary toward the end of April. His evidence that persons were taken from the Butare prefecture office and killed was circumstantial. None of the evidence about these events directly implicates the Accused or provides evidence that would demonstrate sufficient knowledge of such crimes to establish superior responsibility.[1987]

1374. The Chamber observes that the Prosecution is only pursuing the counts of conspiracy to commit genocide and direct and public incitement to commit genocide with respect to Habyalimana's removal, the President's 19 April 1994 speech and subsequent killings.[1988] Neither offence requires proof of the substantive crime of genocide.[1989] In this context, the evidence led by the Prosecution as well as its closing submissions suggest that testimonies were only presented as context for evaluating the purpose of Habyalimana's removal and Sindikubwabo's subsequent speech.

1375. When viewing the investigations into massacres in Butare in 1994 alongside the anecdotal accounts provided by Witnesses D, Sebera and UL, the Chamber is convinced that killings of Tutsis in Butare prefecture spread after Sindikubwabo's speech. Not only is the Prosecution evidence about killings in Butare largely uncontested, but evidence adduced by the Defence confirms that killings increased in Butare and that they were ethnically motivated.[1990]

[1986] *Compare* Witness D, T. 16 June 2004 p. 32 (heard on 19 April 1994 from officers of the *École des Sous-Officiers*, who came to where he was staying in Butare town, that they had killed the Queen) *and* Sebera, T. 21 October 2004 p. 13 (generally testified that Rosalie Gicanda was arrested on 20 April 1994 and that this was the beginning of the systematic search and killing of Tutsis).

[1987] *See generally Nahimana et al.* Appeal Judgement, para. 791 ("Under Article 6 (3) of the Statute, the *mens rea* of superior responsibility is established when the accused 'knew or had reason to know' that his subordinate was about to commit or had committed a criminal act."); *Bagilishema* Appeal Judgement, para. 42 (addressing the "reason to know" standard, and distinguishing between information about the general situation prevailing in Rwanda at the relevant time and information which would suffice to put the Accused on notice that his subordinates might commit crimes).

[1988] *See* III.2.

[1989] *See, e.g., Nahimana et al.* Appeal Judgement, para. 720 ("[A]n inchoate crime penalizes the commission of certain acts capable of constituting a step in the commission of another crime, even if that crime is not in fact committed. ... [D]irect and public incitement to commit genocide is an inchoate offence, like conspiracy to commit genocide ....").

[1990] Mugiraneza conceded that killings erupted in Butare after Sindikubwabo's speech, although he clarified that his knowledge of this was second-hand. Mugiraneza, T. 27 May 2008 pp. 23-24; *see also* Mugiraneza, T. 4 June 2008 pp. 21, 56-60 (testifying that there was nevertheless also violence *before* 19 April 1994). Mugenzi, discussing the 27 April 1994 *communiqué* of the Butare Security Council interpreted it to reflect that the security situation in Butare had deteriorated since 19 April 1994. Mugenzi, T. 10 November 2005 pp. 43-45. Witness CC-1 generally testified that killings followed Sindikubwabo's speech in Butare. Witness CC-1, T. 31 October 2007 p. 42. Jean-François Ruppol travelled to Rwanda on 16 and 17 May 1994, was aware that Tutsis were being killed on a large scale there and learned that "major killings" had occurred in Butare prior to his visit. Ruppol, T. 2 October 2006 pp. 5, 41; T. 3 October 2006 pp. 9-10; *cf.* Mugenzi Closing Brief, para. 343 (pointing to the 27 April 1994 *communiqué* of the President and a later broadcast from the Minister of Information that Tutsis should not be killed on the pretext of being "accomplices" as evidence that the government was aware of killings in Butare).

1376. The Chamber is also convinced that Sindikubwabo's speech marked the commencement of a tide of ethnically driven killings that took over areas of Butare prefecture that had previously resisted it. In light of the fact that the Prosecution is pursuing only inchoate offences, the Chamber need not make any further findings with respect to this evidence.

Notice

1377. The Indictment expressly alleges that on 19 April 1994, a large ceremony was held in Butare to swear in Sylvain Nsabimana as the new prefect. President Théodore Sindikubwabo made an inflammatory speech calling for the commencement of massacres in Butare. None of the ministers present, including Justin Mugenzi, contradicted this message. The next day, the massacres of Tutsis began throughout Butare. The Interim Government signalled that it condoned these massacres through the failure of its members to dissociate themselves from Sindikubwabo's message.[1991]

1378. Paragraph 6.45 of the Indictment makes reference to "the Ministers present, including Justin Mugenzi". Although the word "including" indicates that other ministers were also present at the ceremony, this paragraph does not specify whether Mugiraneza was alleged to have been among them. The Chamber finds the Indictment to be defective in this regard.

1379. The Chamber notes that while paragraph 6.45 only explicitly identifies Mugenzi among the four Accused as a minister who attended the ceremony, the next paragraph claims that "the members of the Interim Government, including Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka did not dissociate themselves from [Sindikubwabo's statement] at any time". This contrast raises some ambiguity as to whether Mugiraneza would have known that the Prosecution also alleged his presence at this ceremony.

1380. The Chamber also recalls that Mugiraneza's presence at this ceremony was included as an allegation in the Prosecution's Proposed Amended Indictment.[1992] The Chamber rejected this proposal in its entirety and, even though the Appeals Chamber expressly indicated to the Prosecution that it could file a further proposal to amend the Indictment, the Prosecution decided not to do so. In some instances, the Prosecution's failure to re-file another proposed amended indictment resulted in some ambiguity as to which alleged events were charged in the Indictment (II.8.3). This is not the situation here. The Indictment explicitly pleads the ceremony on 19 April 1994, and alleges a host of specific, material facts in the individual paragraph dedicated to this allegation. In any event, the Chamber has explained that the inclusion of an allegation in the Proposed Amended Indictment does not preclude that the Prosecution could have provided sufficient notice to permit an Accused to defend himself against that allegation (I.7).

1381. The Chamber will therefore determine whether the vagueness in paragraph 6.45, coupled with the lack of precision arising from the contrast with paragraph 6.46 and the Prosecution's failure to re-file an amended indictment, was cured through the provision of timely, clear and consistent notice.

1382. The Prosecution provided further details about Mugiraneza's alleged presence at this ceremony in its Pre-Trial Brief. Paragraph 124 specified that "the Interim Government sent a

[1991] Indictment, paras. 6.45-6.46, 6.49.
[1992] *See* Proposed Amended Indictment, paras. 16, 98.

substantial delegation to Butare ... [including] Justin Mugenzi, Prosper Mugiraneza" and another minister. Similarly, paragraph 125 of the Pre-Trial Brief alleges clearly that "[o]n or about the 19 April 1994, in the company of ... Justin Mugenzi, Prosper Mugiraneza [and two others], and on behalf of the Interim Government, President Sindikubwabo incited the people of Butare to begin [the] killing of Tutsis". This paragraph continues that "[a]ll Ministers present, including Mugenzi and Mugiraneza, supported the incitement and subsequent killings". Both paragraphs 124 and 125 of the Pre-Trial Brief are clearly linked to paragraph 6.45 of the Indictment.[1993] Finally, paragraph 289 of the Pre-Trial Brief also expressly alleges that "Mugiraneza was part of the Interim Government delegation that went to Butare on or about the 19 April 1994 ... [,] installed a new *préfet* and incited the people of Butare to begin the killing of Tutsis. Mugiraneza supported the incitement". Moreover, in its opening statement, the Prosecution further elaborated on its allegation that Mugiraneza was among the ministers who attended the ceremony on 19 April 1994.[1994]

1383. The Prosecution provided timely, clear and consistent notice of its allegation that Mugiraneza attended the Butare swearing-in ceremony of Sylvain Nsabimana on 19 April 1994. Accordingly, the Chamber considers that the Prosecution cured the defect in paragraph 6.45 of the Indictment, and that Mugiraneza was not materially prejudiced in the preparation of his defence. The legal implications, if any, of Mugiraneza's presence at this ceremony will be addressed in the Chamber's Legal Findings (III).

9.3 Installation of Gisenyi Prefect and Incitement, 20 April 1994

Introduction

1384. The Indictment alleges that the Interim Government dismissed local government authorities who were opposed to the massacres and replaced them with others who were devoted to the cause. Furthermore, between April and July 1994 Mugenzi made statements inciting people to kill the Tutsis in Gisenyi prefecture, among others. The Prosecution contends that on 20 April 1994, after the installation ceremony for Charles Zilimwabagabo as the prefect of Gisenyi, Mugenzi gave a speech where he incited the killing of Tutsis in Gisenyi. Prosecution Witness Isaie Sagahutu Murashi testified about this event.[1995]

1385. The Mugenzi Defence contends that the former prefect of Gisenyi was ill, resulting in the appointment of Zilimwabagabo. Mugenzi denied making any inciting speech on 20 April

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[1993] Prosecution Pre-Trial Brief, paras. 124-125, fns. 74-75 (p. 28).

[1994] Prosecution Opening Statement, T. 6 November 2003 p. 10 ("On the 19th of April 1994, [the] interim government in furtherance of their agreed policy to kill Tutsis, sent a delegation led by [*inter alia*] ... ministers, including Justin Mugenzi [and] Prosper Mugiraneza; they went to Butare to install a new *préfet*. The president and the prime minister delivered inflammatory speeches inciting the population to begin the killing of Tutsis ... The meeting was broadcast by Radio Rwanda throughout the country but, however, Bizimungu, Mugenzi, Bicamumpaka, and Mugiraneza did not condemn the incitement ....").

[1995] Indictment, paras. 6.18, 6.28, 6.30; Prosecution Pre-Trial Brief, paras. 122 (p. 27), 184 (p. 41), 260 (p. 53); Prosecution Closing Brief, paras. 92, 238, 317, 444, 454-455; Prosecution 21 November 2008 Document, Item No. 68; Prosecution Closing Arguments, T. 1 December 2008 pp. 42-45. The Prosecution Closing Brief argues that Murashi testified that Mugenzi gave instructions to Charles Zilimwabagabo to prioritise the killing of Tutsis *during* his installation as Gisenyi's prefect. However, the testimony referenced indicates that this occurred at the Palm Beach hotel *after* the installation ceremony. Indeed, the Prosecution appears to have clarified during oral closing arguments that evidence it was relying upon referred to the event at the Palm Beach hotel. T. 1 December 2008 pp. 43-44. The Chamber's summary above reflects this correction.

1994 around the time of the new prefect's installation. Furthermore, rather than encouraging killings, Zilimwabagabo was a moderate Hutu who made substantial efforts to prevent further killings. Finally, the testimony of Isaie Sagahutu Murashi is not credible. Mugenzi and Defence Witnesses Alphonsine Uwase, WZ8, Nelson Muhirwa and Emmanuel Ndindabahizi provided relevant evidence.[1996]

Evidence

Prosecution Witness Isaie Sagahutu Murashi

1386. Isaie Sagahutu Murashi was a Tutsi member of the PL and a teacher at the *Notre-Dame d'Afrique* girls' secondary school in Nyundo from 1986 to 1994.[1997] In 1998 he was the Rwandan Ambassador to Uganda, appointed as a member of the PL under the Arusha Accords at the end of 1995. Murashi testified that he knew Mugenzi as the president of the PL, and that he knew Mugenzi's voice well.[1998]

1387. Around 12 April 1994, Murashi took refuge with a group of priests in a house adjacent to the Palm Beach hotel, with only a hedge separating the two. On 20 April, Charles Zilimwabagabo, a member of the Hutu Power faction of the PL, was appointed prefect of Gisenyi. After the installation ceremony, which had occurred at a stadium, Mugenzi gave a speech from the terrace of the Palm Beach hotel around midday, where military and political authorities, as well as *Interahamwe*, had gathered. Specifically, Murashi had heard that Gisenyi Military Commander Anatole Nsengiyumva, Gendarmerie Commander Biganiro, former Gisenyi Prefect Banyurwabuka, as well as *Interahamwe* leader Ngarishari and Hassan Ngeze were present among the many persons there. The witness, who did not attend either the installation ceremony or subsequent cocktail party, was in the garden of the house next to the Palm Beach hotel during the cocktail party. He could not see but heard Mugenzi introduce Zilimwabagabo and announce that the new prefect had to represent the government in Gisenyi and, in particular, ensure the killing of Tutsis so that none would be left alive.[1999] Murashi read a Radio Rwanda broadcast of the installation ceremony and Mugenzi's subsequent speech and noted that it did not accurately reflect what he heard Mugenzi say at the Palm Beach hotel.[2000]

1388. Murashi believed that Zilimwabagabo supported a policy of Hutu extremism and was chosen as prefect because of it. He referred to an incident in September 1993, when the PL was organising the election of party members to form the transitional government. Zilimwabagabo, driving a Hilux pick-up truck with "Ministry of Trade" inscribed on it, came to Murashi's home. There he threatened Murashi about his plans to be elected to the transitional government, asking him if he, a Tutsi, was not ashamed of running for a position in a primarily Hutu region. The following Sunday, when elections were to be held, the two continued to argue about Murashi's plan to be elected as a PL representative, and

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[1996] Mugenzi Closing Brief, paras. 235-239, 826-835, 1389-1426; Mugenzi Closing Arguments, T. 3 December 2008 pp. 1-3.
[1997] Murashi, T. 9 June 2004 pp. 3-5; Exhibit P50 (Murashi's Personal Identification Sheet).
[1998] Murashi, T. 9 June 2004 pp. 3-4; T. 10 June 2004 pp. 41, 55; T. 11 June 2004 pp. 34-35; Exhibit P50 (Murashi's Personal Identification Sheet).
[1999] Murashi, T. 9 June 2004 pp. 43, 47-51; T. 10 June 2004 pp. 41-44, 46-48, 50-56, 58-61; T. 11 June 2004 pp. 55-56.
[2000] Murashi, T. 10 June 2004 pp. 62-65; T. 11 June 2004 pp. 55-56.

Zilimwabagabo publicly announced that the candidate should be Hutu. The growing divisions among Tutsis within the PL and its "power faction", which included Mugenzi and Zilimwabagabo, ultimately prevented the PL from carrying out these elections.[2001]

1389. Murashi also heard from a secondary teacher called Rutabana that Zilimwabagabo had come to Nyundo parish after 10 April 1994, where attacks had occurred on 7 and 9 April. Zilimwabagabo had promised relief and supplies to refugees there, but an attack by *Interahamwe* commenced the next day, decimating them.[2002]

1390. After Zilimwabagabo became prefect, the killings in Gisenyi continued. He held public meetings under the guise of trying to pacify the situation. He tried to get persons to start working and institutions, such as banks, to open. However, the Tutsis who came out of hiding based on his assurances were targeted and killed.[2003]

Mugenzi

1391. On 20 April 1994, Mugenzi travelled to Gisenyi to represent the Interim Government during the installation of Charles Zilimwabagabo as prefect. The former prefect of Gisenyi had been ill and bed-ridden for a long time. He died soon after the 20 April ceremony. Zilimwabagabo was chosen as a successor because he was thought to be a peaceful man who would bring calm to the Gisenyi prefecture, rather than encourage more violence. Mugenzi noted that the violence continued in Gisenyi prefecture after the installation; however, it diminished soon after, particularly by June of 1994 when the Interim Government moved there.[2004]

1392. The only speech Mugenzi made on 20 April 1994 was inside the MRND hall during the official installation ceremony, which was contemporaneously summarised and broadcast on Radio Rwanda afterwards. He talked generally about winning the war and maintaining solidarity against the enemy. He emphasised the need to follow the government program for restoring peace in Rwanda. Immediately after the installation ceremony, Mugenzi left and went back to Gitarama. He denied the occurrence of a cocktail party at the Palm Beach hotel following the official ceremony, adding that, if one had occurred, he was not present.[2005]

Mugenzi Defence Witness Alphonsine Uwase

1393. Witness Alphonsine Uwase, a Hutu, worked as the Gisenyi prefect's secretary in April 1994.[2006] She attended the installation ceremony of Charles Zilimwabagabo on 20 April 1994, which was held at the former MRND hall. The ceremony started at 11.00 a.m. and lasted about one-and-a-half hours. Zilimwabagabo was introduced by Mugenzi, who spoke for about 30 minutes and called upon officials to ensure calm in the prefecture. After the ceremony there was no reception. Uwase explained that the financial situation of the prefect

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[2001] Murashi, T. 9 June 2004 pp. 52-59.
[2002] Murashi, T. 9 June 2004 pp. 45, 61-62.
[2003] Murashi, T. 9 June 2004 pp. 60-62.
[2004] Mugenzi, T. 9 November 2005 p. 36; T. 10 November 2005 pp. 45-54; T. 30 November 2005 p. 60.
[2005] Mugenzi, T. 10 November 2005 pp. 45-54; Exhibit P2(62)(F) (Radio Rwanda Broadcast, 23 April 1994) pp. 2-5.
[2006] Uwase, T. 5 May 2006 p. 5; Exhibit 2D101 (Witness Uwase's Personal Information Sheet).

was critical, and that, as secretary of the prefect, she would have known if a reception occurred. There was also no mention in the ceremony program of a reception.[2007]

1394. Uwase explained that her father's house and the Palm Beach hotel were next to each other and shared a fence. The Bishop's house, where Murashi was hiding, was located beside the Palm Beach hotel. She did not know if one could hear or see what was happening at the Palm Beach hotel from the Bishop's house. Uwase testified that before the installation of Zilimwabagabo there was already calm in the prefecture. However, she did hear about some killings on 6 April 1994 after President Habyarimana's plane crashed.[2008]

Bizimungu Defence Witness WZ8

1395. In April 1994, Defence Witness WZ8, a Hutu, was an officer in the national gendarmerie in Gisenyi prefecture and worked primarily in and around Gisenyi town.[2009] Among other tasks, he provided security for political figures during public meetings and was "informed" of the 20 April 1994 installation ceremony of Charles Zilimwabagabo as Gisenyi's prefect. However, he did not attend and was not aware of any subsequent reception of authorities at the Palm Beach hotel. Witness WZ8 would have been informed of this, as the gendarmerie would have been asked to protect those authorities.[2010]

1396. Witness WZ8 was present with gendarmes at Nyundo parish between 9 and 12 April 1994 and had attempted to intercede in attacks. He did not describe Charles Zilimwabagabo as present in relation to these attacks. Rather, on 1 May 1994, during an attack on Bagogwe Tutsi refugees in the Muyange cathedral in Nyundo, Zilimwabagabo was informed and went to stop these massacres. Zilimwabagabo spoke with the gendarmerie's commanding officer, and while Witness WZ8 was not present for their conversation, the message communicated to gendarmes was to maintain the peace. Witness WZ8 was also present at the May 1994 public meeting in which Zilimwabagabo called for calm in the prefecture. He testified that after 7 April two platoons of reinforcements were sent to Gisenyi, though the situation remained calm. Some killings occurred immediately after the President's death by a few extreme members of the population and an unidentified number of citizens were arrested.[2011]

Mugenzi Defence Witness Nelson Muhirwa

1397. Nelson Muhirwa, a Hutu, lived in Gisenyi and worked there at the Bank of Kigali in 1994.[2012] On 20 April 1994 during the 7.00 p.m. news he heard a journalist on Radio Rwanda read a summary of Mugenzi's speech at the installation of Charles Zilimwabagabo, a member of the PL, as Gisenyi's prefect, which he did not attend. The journalist explained that Mugenzi introduced Zilimwabagabo and stated that he would restore security in the prefecture. Muhirwa did not recall hearing any words to incite killings. A new prefect was installed because the previous prefect of Gisenyi was an old and sick man. Indeed, the

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[2007] Uwase, T. 5 May 2006 pp. 3-4, 9, 14, 16-17.
[2008] Uwase, T. 5 May 2006 pp. 4-5, 7, 10-11, 16-17.
[2009] Witness WZ8, T. 18 September 2006 pp. 20-21, 37; T. 19 September 2006 pp. 2, 32-38; Exhibit 1D102 (Witness WZ8's Personal Information Sheet).
[2010] Witness WZ8, T. 18 September 2006 pp. 37-38.
[2011] Witness WZ8, T. 18 September 2006 pp. 10, 21, 32-33, 37-39; T. 20 September 2006 pp. 16-39.
[2012] Muhirwa, T. 4 April 2006 pp. 51, 54; T. 5 April 1994, pp. 2, 8, 16-17, 20.

previous prefect, on an unspecified date, had come to Muhirwa's bank and was unable to sign checks due to trembling and illness.[2013]

1398. Muhirwa testified that Zilimwabagabo was not known as an extremist, rather as a neutral person who wanted peace. After Zilimwabagabo's installation, Muhirwa heard from others that he held meetings with the heads of the departments, *bourgmestres* and the public and made speeches throughout Gisenyi prefecture. Instructions were for persons to remain calm, continue working and not turn against each other. Around this time, persons in Gisenyi were able to resume their work and move around freely. Muhirwa himself thereafter had the courage to move around Gisenyi. He heard that Zilimwabagabo later, at an unidentified time, returned to his work as a medical doctor in Kigali.[2014]

Bizimungu Defence Witness Emmanuel Ndindabahizi

1399. Emmanuel Ndindabahizi, a Hutu, was Minister of Finance in the Interim Government in April 1994.[2015] He denied that Mugenzi, a historically pro-Tutsi politician, would have installed Charles Zilimwabagabo to encourage killings. As the new prefect, he was overwhelmed by the situation there. Ndindabahizi fled Kigali to Goma on 1 July 1994, where he encountered Charles Zilimwabagabo. In July or August 1994 Zilimwabagabo returned and was reappointed prefect of Gisenyi by the RPF, who did not hold him responsible for the killings that had occurred there. At the time of Ndindabahizi's testimony, Zilimwabagabo was a medical doctor in a Kigali government hospital.[2016]

Deliberations

1400. The parties do not dispute that Charles Zilimwabagabo was installed as prefect of Gisenyi on 20 April 1994 and that Mugenzi made a speech at the installation ceremony. Rather, two issues are before the Chamber. The first is whether the installation of Zilimwabagabo was part of an Interim Government plan to install prefects who would advance a plan of eliminating Tutsis. The second is whether Mugenzi gave a speech inciting the killing of Tutsis at the Palm Beach hotel after Zilimwabagabo's installation ceremony.

1401. Murashi is the sole witness to provide evidence related to the purpose of Zilimwabagabo's installation as Gisenyi's prefect and Mugenzi's subsequent statement that the new official was tasked with ensuring that all Tutsis in Gisenyi be killed. Before reviewing the specific allegations, the Chamber turns to Murashi's general credibility.

1402. To support inferences of Murashi's alleged bias against Mugenzi, the Defence pointed to his shift within the PL to align with the RPF in opposition to Mugenzi and his supporters. Notably, Murashi denied that he and others became a radicalised faction of the PL.[2017] While

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[2013] Muhirwa, T. 4 April 2006 pp. 51, 54-60; T. 5 April 2006 pp. 10-13, 26, 28, 30-32, 40-42, 44, 49-50, 57, 60-63, 67.
[2014] Muhirwa, T. 4 April 2006 pp. 58-67; T. 5 April 2006 pp. 5-7, 28-29, 31-32.
[2015] Ndindabahizi, T. 30 April 2007 pp. 4-5; Exhibit 1D158 (Ndindabahizi's Personal Information Sheet). Ndindabahizi is presently serving a life sentence for his role in the events in Rwanda in 1994. Ndindabahizi, T. 30 April 2007 pp. 5, 45-49. Notably, Ndindabahizi was not tried for crimes in Rwanda based on his position as Minister of Finance of the Interim Government. T. 30 April 2007 p. 35. At the time of his testimony, he resided in the United Nations Detention Facility with the Accused. T. 1 May 2007 pp. 49-50.
[2016] Ndindabahizi, T. 1 May 2007 pp. 15, 17-19; T. 3 May 2007 pp. 14-16, 62.
[2017] Murashi, T. 10 June 2004 p. 35.

it is clear that Murashi perceived a distinct gap between Mugenzi's political activities and his own and referred to him as a criminal, this does not necessarily undermine Murashi's credibility.[2018] The Defence also argued Murashi was partial based on his position as a Rwandan ambassador to Uganda at the end of 1995, his post within the Rwandan government at the time of his testimony, and his membership in the genocide survivors group *Ibuka*.[2019] The Chamber considers that his positions in the RPF government and a genocide survivors' group alone are not indicative of partiality nor do they render his testimony unreliable.

1403. Murashi was also confronted with assertions that he made a complaint against a lieutenant in the Rwandan army, subsequently testified in the Rwandan trial, and that the soldier was convicted of all charges. On appeal, the lieutenant's conviction was overturned, and the judgement contained a finding that Murashi's evidence had been motivated by a desire for compensation. Murashi tacitly acknowledged this.[2020] Murashi also agreed that two other persons against whom he filed complaints and in whose Rwandan proceedings he testified had their trial convictions overturned on appeal. Murashi filed a complaint against a fourth person who was eventually released without trial.[2021]

1404. This trial record lacks detail with respect to any adverse findings related to Murashi's evidence in these Rwandan proceedings that would have led to the reversal of those trials. As a general matter, the observations of judges reviewing an entirely separate record are of little probative value in this proceeding.[2022] However, judicial findings that a witness lied or did not comply with his or her testimonial oath in a separate proceeding – rather than just general credibility concerns – could be a basis for considering his or her evidence before this Tribunal with caution.[2023]

1405. Turning to the merits of Murashi's evidence, the Chamber will first consider the question of whether the installation of Zilimwabagabo was part of the Interim Government's plan to replace local authorities opposed to the killings with individuals supporting such a plan. The Prosecution led no direct evidence about the decision to replace the previous Gisenyi prefect with Zilimwabagabo. Indeed, the Chamber observes that while Prosecution Expert Witness Alison Des Forges discussed at length that the removal of Jean-Baptiste Habyalimana as Butare's prefect was motivated by the Interim Government's desire to further killings there (II.9.1), she was equivocal about whether Zilimwabagabo's installation

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[2018] Murashi, T. 10 June 2004 pp. 38, 65-66.
[2019] Mugenzi Closing Brief, paras. 1417-1420; Murashi, T. 10 June 2004 pp. 34-35 (Murashi and other members of the PL radicalised and became RPF supporters); T. 9 June 2004 p. 4; T. 11 June 2004 pp. 34-36 (position as Rwandan ambassador), 39-40 (*Ibuka* membership).
[2020] Murashi, T. 10 June 2004 pp. 65-66 ("Q. During the course of the judgement of the appeal court, the learned appellate judges made a finding that your evidence had been motivated by a desire for compensation, did they not? A. I didn't say that; it was the judge who said that.").
[2021] Murashi, T. 10 June 2004 pp. 65-66.
[2022] *Cf. The Prosecutor v. Georges Rutaganda*, ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification (AC), 8 December 2006, paras. 15, 20 (alleged findings in a Rwandan proceeding that Tribunal witnesses generally lacked credibility were insufficient to justify review proceedings).
[2023] *Cf. Nchamihigo* Appeal Judgement, paras. 68, 77, 83, (overturning factual findings of the Trial Chamber, in part, because it relied on the uncorroborated evidence of a witness convicted for forgery without having exercised appropriate caution), 305, 309, 312-314 (overturning factual findings of the Trial Chamber, in part, because insufficient caution was used when assessing the evidence of an accomplice witness who admitted to misleading judicial officials in his own criminal case).

in Gisenyi was for the same purpose.[2024] Nonetheless, the Prosecution theory that this new official would support the government's genocidal plan largely relies on Murashi's anecdotal evidence about Zilimwabagabo's extremism. For example, Murashi alleged that Zilimwabagabo argued in September 1993 that a Hutu – rather than Tutsi – PL member should be the representative of Gisenyi in the transitional government. This account is uncorroborated and insufficient to support a theory that Zilimwabagabo supported killings of Tutsis in 1994.

1406. Other evidence of Zilimwabagabo's extremism is also of limited probative value. Murashi's allegation that Zilimwabagabo went to Nyundo parish, promised relief to those who had gathered there, but that *Interahamwe* attacked the following day, is hearsay and uncorroborated.[2025] Furthermore, this information is not contained in Murashi's 1996 statement to Tribunal investigators, which discusses the attack at Nyundo parish.[2026] Finally, even if the Chamber were to ignore these frailties, this evidence also fails to show a causal link between Zilimwabagabo's actions and the ensuing attack, which Murashi testified happened a day later.[2027]

1407. The Defence has led evidence that Zilimwabagabo was not an extremist or involved in the genocide. For example, both Mugenzi and Defence Witness Muhirwa discussed a return to calm in the prefecture, as well as the subsequent efforts of Zilimwabagabo to restore security after his appointment.[2028] Moreover, the Defence emphasised that Zilimwabagabo has never been charged with any genocide-related crimes and, as of 2008, was practicing medicine in Kigali Regional Hospital.[2029] He was also reinstalled as prefect of Gisenyi under the RPF in July or August of 1994.[2030] These assertions went unchallenged by the Prosecution.

1408. Furthermore, Muhirwa and Mugenzi explained that a new prefect was installed in Gisenyi in April 1994 because the previous one was sick, and in fact, he died soon after the installation ceremony.[2031] In light of the above, the Prosecution has not proved beyond reasonable doubt that the installation of Charles Zilimwabagabo was to further a genocidal plan to kill Tutsis.

[2024] Des Forges, T. 1 June 2005 p. 13 ("Q. But we would be wrong, therefore, to read your report as a definite assertion that Mr. Mugenzi put in place a préfet in Gisenyi to hasten the killings. A. It might be more correct to say he removed Habyalimana who was stopping the killings. I don't know what his intention was in Gisenyi, nor do I make any assertion in that regard.").

[2025] *See* Witness WZ8, T. 20 September 2006 pp. 26-37. Witness WZ8 testified that he and the acting prefect of Gisenyi went to the Nyundo Cathedral. At no time did he mention the presence of Zilimwabagabo at the site during the April attacks.

[2026] Exhibit P50 (Murashi's Statement, 19 August 1996) pp. 3-4, 8-9. The information in the statement pertaining to the attack on Nyundo and, in particular, to the death of Murashi's relatives there, was admitted in place of live testimony. Murashi, T. 10 June 2006 p. 15.

[2027] Murashi, T. 9 June 2004 p. 62.

[2028] Mugenzi, T. 10 November 2005 p. 53; Muhirwa, T. 4 April 2006 pp. 58-67. *See also* Uwase, T. 5 May 2006; Witness WZ8, T. 20 September 2006 pp. 24-25. Both testified that when Zilimwabagabo was installed there was already calm in the prefecture.

[2029] Mugenzi Closing Arguments, T. 3 December 2008 pp. 2-3; Des Forges, T. 1 June 2005 pp. 13-14; Murashi, T. 10 June 2004 pp. 57-58; Ndindabahizi, T. 1 May 2007 pp. 17-19. *See also* Uwizeye, T. 11 April 2005 p. 77 (noting that the former Prefect Gisenyi "Dr. Charles" was working in the "Kigali health centre" at the time of his testimony).

[2030] Ndindibahizi, T. 1 May 2007 pp. 17-18; Mugenzi Closing Brief, para. 1406.

[2031] Mugenzi, T. 10 November 2005 p. 46; Muhirwa, T. 4 April 2006 p. 58. *See also* Mugiraneza, T. 27 May 2008 p. 53.

1409. Turning to whether Mugenzi instructed Zilimwabagabo to ensure that Tutsis in Gisenyi be killed in front of those gathered at the Palm Beach hotel terrace after the installation ceremony, the Prosecution again only relies on Murashi. His testimony about this allegation evolved, and only after extensive questioning was it made clear that Murashi did not see Mugenzi or others at the Palm Beach hotel. To the contrary, he was told by others of the presence of certain authorities.[2032]

1410. Murashi insisted that, although he could not see Mugenzi, he heard his voice.[2033] His ability to identify Mugenzi this way is reasonable given their roles within the PL's leadership and the likely repeated contact the two had in this context.[2034] Notably, the Mugenzi Defence did not cross-examine the witness on this issue nor subsequently argue that he could not identify Mugenzi on this basis. Mugenzi's testimony also does not raise doubts about Murashi's ability to identify him by voice.

1411. The Defence confronted Murashi about his ability to overhear any alleged statements at the Palm Beach hotel had a gathering occurred there. Murashi consistently testified that only the hedge surrounding the compound in which he was hiding separated him from the Palm Beach hotel where Mugenzi allegedly incited the killing of Tutsis.[2035] Uwase was uncertain whether one could overhear events at the Palm Beach hotel from the location where Murashi was hiding.

[2032] *Compare* Murashi, T. 9 June 2004 pp. 49-51 (English), *and* T. 9 June 2004 pp. 56-58 (French), revealing that the word "*suivre*" in the French is translated as "see" in the English transcript. However, there are instances in both the English and French version where Murashi clearly asserts that he can "see" what is occurring at the Palm Beach hotel. *Compare* Murashi, T. 9 June 2004 p. 51 (English), *and* T. 9 June 2004 pp. 57-58 (French). *See also* Murashi, T. 10 June 2004 pp. 51-52 ("I do not recall having said that I had seen [Mugenzi]. Perhaps there was an error in the interpretation, but I did not say I saw him. I'm very sorry, but I did not see him. … Q. … you did not see Mr. Mugenzi at the Palm Beach hotel but … you heard a voice that you identified as being that of Mr. Mugenzi. … A. Absolutely."), 55 ("Q. … Yesterday, what you did tell us is that you were able to identify certain individuals who were present. Now, are you saying that, when you told us that yesterday, this was something else told you by the gendarme or something which you observed with your own eyes? A. Face-to-face identification, I am telling you that this is not it. If you say to follow something, it is not because you were there – that is, you were not – a situation where I was able to see."), 56 ("A. … Those who were there told me that Mugenzi – the authorities were there.").

[2033] Murashi, T. 10 June 2004 pp. 51("A. I heard. … I heard [Mugenzi]."), 54 ("A. … The most important thing is that Mugenzi was there, that he made a speech, that he introduced the prefect. And I heard this."), 55 ("A. … But I could hear …), 56 ("A. … I heard the speech.").

[2034] *See* Murashi, T. 10 June pp. 51 ("A. … And I know Mr. Mugenzi's voice very well."), 55 ("A. … Regarding Mr. Mugenzi, I told you that I know his voice very well. He was … the chairman of PL. It's not necessary for me to see him to identify him.").

[2035] Murashi, T. 9 June 2004 p. 49 ("A. … Between the two, that is between the [Palm Beach] hotel and the house, there is only a hedge …"); T. 10 June 2004 pp. 41 ("Q. … give us an estimation of the distance in metres between the house you were staying in and the Palm Beach hotel, more particularly, the terrace of the Palm Beach Hotel. A. … As I said, that these houses were continguous to each other, and they were separated by a hedge, not a wall, a hedge."), 42 ("A. … The terrace was in open air but the house is surrounded by hedge, and so between the hotel and the house there is a hedge. And then there is the inner courtyard of the house, which is what is surrounded by the hedge."), 43 ("A. I told you this: Two houses that are next to each other which are separated by a hedge, you yourself can estimate the distance. It is not far; you can see through the hedge. You can hear what is being said. You can always be able to follow the activities in a neighbouring house.") 44 ("THE WITNESS: Madam, I mean between the two houses there is a hedge. Supposing that the hedge were not there, you will take one step and you will be in the hotel.").

1412. Photographs demonstrate that between the raised terraces of the Palm Beach hotel and the hedge Murashi described was a substantial annex of the hotel.[2036] The evidence reflects that the distance between the hedge and the terrace is not so great that it would be impossible to hear a public announcement from it, particularly if it had been made while those gathered went silent to listen.[2037] But this form of identification, in light of the distance, does raise some questions about its reliability. Indeed, while Murashi also testified that he learned about the presence of some dignitaries at this meeting from others, it is not clear that they identified Mugenzi among them.[2038]

1413. The Defence also presented evidence that no reception was held at the Palm Beach hotel after the installation ceremony. Mugenzi denied such a cocktail party occurred and insisted that the only speech he made was at the official installation ceremony that day. Uwase, as a secretary in the office of the prefecture, denied that there was a cocktail party. She explained that she would have known about it because of her role within the prefecture's administration. Defence Witness WZ8, a member of the gendarmerie, similarly was unaware of such a gathering, stating that he would have known about it as his agency would have provided protection for government officials.

1414. Mugenzi has a clear motive to deny his presence at the alleged reception. Furthermore, the denials of Uwase and WZ8 do not result from their direct observations of the Palm Beach hotel that day, but were based on their position within organisations that, according to them, would have been informed. Consequently, their evidence is of limited probative value.

1415. Nonetheless, Murashi's uncorroborated evidence, which lacked clarity with respect to key parts and relied on a tenuous identification of Mugenzi, cannot support findings beyond reasonable doubt. The Defence evidence, although of limited probative value, also raise doubts. Therefore, the evidence does not establish beyond reasonable doubt that a cocktail reception was held at the Palm Beach hotel on 20 April 1994 after the installation of Charles Zilimwabagabo as Gisenyi prefect or that Mugenzi gave a speech there inciting the killing of Tutsis. In light of this finding, the Chamber need not address notice objections.

9.4 Installation of Ruhengeri Prefect and Incitement, 19 – 25 April 1994

Introduction

1416. The Indictment alleges that the Interim Government dismissed local government authorities, including prefects, who were opposed to the massacres and replaced them with others who were devoted to the cause. According to the Prosecution, about two weeks after

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[2036] Murashi was first confronted with Prosecution Exhibit 216 from the *Bagosora et al.* trial. T. 10 June 2004 pp. 46-48. He was later re-examined on the basis of photographs that have similar points of view. Exhibit P51 (Photographs of Palm Beach Hotel and Neighbouring House) *and* Murashi, T. 11 June 2004 p. 54.

[2037] *See* Murashi, T. 10 June 2004 p. 55 ("A. … He may have spoken to ten or 100 people or even more, but when – what about the number of people? When they are listening to a minister, they are silent.").

[2038] Murashi appears to first testify that persons told him Mugenzi was there but subsequently clarify that he was informed generally that "authorities" were present. *Compare* Murashi, T. 10 June 2004 pp. 54-55, 56 (English) ("A. … Those who were there told me that Mugenzi – the authorities were there.") *and* T. 10 Juin 2004 p. 58 (French) ("*Et je n'avais pas la liberté d'aller à cet endroit, mais je savais ce qui se passait. Les autorités étaient (inaudible), puis j'ai entendu le discours. Ceux qui étaient là-bas — on m'a rapporté —, c'étaient des gens, des autorités qui étaient réunies là-bas, mais Mugenzi était là aussi. C'est ça le plus important, d'ailleurs.*").

President Juvénal Habyarimana's death or between 19 and 25 April 1994, Bicamumpaka incited the killing of Tutsis during the ceremony where Basile Nsabumugisha was installed as prefect of Ruhengeri. Many Tutsis were killed in Ruhengeri following this. Prosecution Witnesses GAP, GLP and GBR provided relevant evidence.[2039]

1417. The Bicamumpaka Defence submits that the Indictment does not provide sufficient notice of this allegation. It challenges the credibility of Witness GAP and argues that the installation ceremony occurred on 22 April 1994 when Bicamumpaka travelled from Gisenyi prefecture to Goma, Zaire. In any event, he did not attend it or incite the killing of Tutsis there. Indeed, Witness GBR gave evidence that Bicamumpaka did not return to Ruhengeri once killings started. Bicamumpaka, as well as Defence Witnesses Basile Nsabumugisha and Ignace Karuhije, provided relevant evidence.[2040]

Evidence

Prosecution Witness GAP

1418. Witness GAP, a Hutu, worked for the communal police in Mukingo commune, Ruhengeri prefecture in 1994 and was a local representative of the MRND.[2041] Between 19 and 25 April 1994, he accompanied Juvénal Kajelijeli to the hall of the Ruhengeri prefecture office for the swearing-in ceremony of the new Ruhengeri prefect, Basile Nsabumugisha. Persons in attendance included Bicamumpaka – the son of former Parmehutu leader Balthazar Bicamumpaka and current Minister of Foreign Affairs – Colonel Bivugabagabo, Sub-Prefect Pierre Célestin Ntarwanda, senior army officials and civil servants, heads of schools and *bourgmestres*. Bicamumpaka, representing the Prime Minister at this ceremony, presented the new prefect as a member of the MDR-power faction and a "true Hutu". He stated that Nsabumugisha was in charge of the extermination of Tutsis and asked the crowd to ensure that no Tutsi in Ruhengeri survived. Colonel Bivugabagabo, Sub-Prefect Ntarwanda, and Nsabumugisha reiterated Bicamumpaka's remarks.[2042]

1419. After this meeting, Kajelijeli, who had learned that Witness GAP was hiding a Tutsi called Matias Munyambigi, warned the witness that he might die along with that person. Consequently, Witness GAP shot and killed Munyambigi. He explained that, ultimately,

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[2039] Indictment, paras. 6.10, 6.18, 6.21; Prosecution Pre-Trial Brief, paras. 122 (p. 27), 196 (p. 43); Prosecution Closing Brief, paras. 46, 98-102, 246, 321-324, 342; Prosecution 21 November 2008 Document, Item No. 70; Prosecution Closing Arguments, T. 1 December 2008 p. 62. As discussed previously, the Chamber will not consider Witness GFA's testimony (I.9). The Prosecution, while reviewing Bicamumpaka's testimony, suggests that Witness GKB testified about the installation ceremony of Basile Nsabumugisha. Prosecution Closing Brief, paras. 872, 896. They provide no citation to relevant testimony. The Chamber has not found any relevant testimony in his evidence about this event.

[2040] Bicamumpaka Closing Brief, paras. 244, 480-508; Bicamumpaka Closing Arguments, T. 3 December 2008 pp. 61, 76-77, 86. *See also* Mugenzi Closing Brief, paras. 326, 345, 362, 409 (the evidence fails to implicate Mugenzi or establish a joint criminal enterprise).

[2041] Witness GAP, T. 19 January 2004 pp. 17-18, 22; T. 21 January 2004 pp. 11-12; Exhibit P22 (Witness GAP's Personal Information Sheet). At the time of his testimony, Witness GAP was detained in Ruhengeri prison. In 1999 he pleaded guilty having sold property looted from murdered Tutsis. In August 2002, he also pleaded guilty to genocide charges and, in particular, the murder of three individuals. He was still awaiting sentencing. Witness GAP, T. 19 January 2004 pp. 19, 28-29; T. 20 January 2004 pp. 31-32; T. 21 January 2004 pp. 1-2, 17-18, 20-22, 25-29, 33-37.

[2042] Witness GAP, T. 20 January 2004 pp. 18-22, 30-31, 36, 38, 40; T. 21 January 2004 pp. 4-5.

Bicamumpaka's speech to kill remaining Tutsis was responsible for this murder. By 19 April 1994, very few Tutsis, other than those in hiding, remained in Ruhengeri prefecture.[2043]

Prosecution Witness GLP

1420. Witness GLP, a Hutu, joined the MDR in 1991 and held an elected position within Ruhengeri starting in 1992.[2044] He left Ruhengeri for Gitarama on 10 April 1994 where he began hiding. On 26 April, his friend and the MDR's President for Ndusu commune, Joseph Mpendwanzi, met the witness. They discussed Basile Nsabumugisha's installation as Ruhengeri prefect. Witness GLP decided that, because he knew Nsabumugisha and the two were from the same party, it would be safe to return. He made this decision even though Nsabumugisha had conveyed a message to the witness through the witness's sister that he was risking his life by coming out of hiding. He went to a friend's home near his own.[2045]

1421. On the morning of 28 April 1994, Witness GLP went to a meeting at an unspecified location. There, Nsabumugisha took the floor. The witness and other members of the MDR were identified as accomplices. The witness left before the meeting ended. He went back into hiding. He initially hid in a bush and then returned to Gitarama on 13 May, where he remained until 28 May.[2046]

1422. Despite Nsabumugisha's membership in the MDR party, the witness believed that after his appointment as prefect, killings continued in Ruhengeri and that he encouraged the search for accomplices. For example, he believed that the CDR leadership on the commune level made hit-lists of persons and that the prefect would organise meetings announcing the names of persons to kill. Furthermore, on 28 May 1994, the witness attended a meeting at the Janja Economic School to discuss issues of the security of MDR party members in hiding among the party's grass-roots leaders. Towards the evening Nsabumugisha arrived. He had earlier arrested Mpendwanzi and gave him to *Interahamwe* who killed him.[2047]

Prosecution Witness GBR

1423. Witness GBR, a Hutu, had been an active MDR party member since inception in 1991.[2048] In April 1994, shortly before President Juvénal Habyarimana's plane was brought down, Witness GBR met a member of the MDR's secretariat near the Okapi hotel in Kigali.

[2043] Witness GAP, T. 19 January 2004 pp. 28-29; T. 20 January 2004 pp. 20-21; T. 21 January 2004 pp. 3-4, 34. The Chamber notes that the English version of the transcripts refers to Witness GAP killing "Mathias" after a meeting in Ruhengeri chaired by "Nyiramasuhuko". T. 19 January 2004 p. 29. The French version refers to Bicamumpaka rather than Nyiramasuhuko. T. 19 January 2004 p. 31 (French) ("*L'autre agent appelé Mathias, je l'ai tué sur l'ordre, après une réunion dirigée par Jérôme Bicamumpaka, et cette tuerie a eu lieu à Ruhengeri.*"). The English reference to Nyiramasuhuku is clearly a typo as references elsewhere to this event overwhelmingly refer to Bicamumpaka.

[2044] Witness GLP, T. 22 June 2004 pp. 17, 21; T. 24 June 2004 pp. 30, 57; Exhibit P60 (Witness GLP's Personal Information Sheet). Witness GLP was alleged to have committed genocide in Rwanda and had been detained between 1997 and 2002, when he was acquitted. T. 23 June 2004 pp. 29-31. He was subsequently arrested for campaigning violations and incarcerated from August 2003 to March 2004. At the time of his testimony, he was on provisional release with charges pending. T. 23 June 2004 pp. 33-34; T. 24 June 2004 pp. 15-18, 64-67.

[2045] Witness GLP, T. 22 June 2004 pp. 59, 61; T. 23 June 2004 pp. 4-5; T. 24 June 2004 p. 12.

[2046] Witness GLP, T. 22 June 2004 p. 61; T. 23 June 2004 pp. 5-7; T. 24 June 2004 p. 12.

[2047] Witness GLP, T. 22 June 2004 pp. 60, 62; T. 23 June 2004 pp. 7-8, 24-25; T. 24 June 2004 p. 12.

[2048] Witness GBR, T. 7 June 2004 pp. 6-7, 46, 63, 65; Exhibit P48 (Witness GBR's Personal Information Sheet); Chambers Exhibit X2 (Handwritten Piece of Paper).

This person also informed him that he was one of several persons that would be killed and that he needed to be careful. Around the same time, the witness was warned that persons burying a CDR party member called Katumba in Ruhengeri were going to kill him, causing him to leave his home in Kigombe commune. He hid in Ndusi commune and then Kigali.[2049]

1424. Nonetheless, the witness learned that Sylvestre Bariyanga, the prefect of Ruhengeri, was killed in Kigali shortly after President Juvénal Habyarimana's death. He also was aware that Basile Nsabumugisha, a MDR-power member, was appointed prefect about one to two weeks after the killing of Habyarimana. He was installed with the support of influential MDR personalities such as Bicamumpaka, Donat Murego and Ignace Karuhije. He did not know if Bicamumpaka, who had been appointed as Minister of Foreign Affairs, returned to Ruhengeri once the genocide began.[2050]

1425. While in hiding, Witness GBR heard from other MDR party members about the newly installed prefect's activities in Ruhengeri. He learned that Nsabumugisha encouraged a plan of exterminating Tutsis and political opponents through participating in communal meetings. According to Witness GBR, Nsabumugisha went to Kigombe commune around 4 or 5 May 1994, where he admonished the crowd that to "uproot a tree" requires taking "it out with all its roots". The metaphor meant that all the Tutsis, including children, needed to be killed and their property destroyed. Additionally, Mpendwanzi, chairman of the MDR for Ndusu commune, was arrested by Nsabumugisha and killed towards the end of May 1994. At the time of Witness GBR's testimony, Nsabumugisha was detained in Ruhengeri prison for inciting killings.[2051]

Bicamumpaka

1426. Bicamumpaka believed that a second prefect from the MDR party was selected on 17 April 1994, while he was away in Burundi (II.14.3.2). Nonetheless, he did not attend the installation ceremony of Ruhengeri's new prefect, which occurred on 22 April. Specifically, on 21 April, Bicamumpaka left Gitarama for Gisenyi. He arrived at the Meridien hotel in Gisenyi around 3.30 p.m. without passing by Ruhengeri. On 22 April, around 9.00 a.m., Bicamumpaka crossed the border and went to Goma in order to get a visa for Zaire. He obtained his visa around 11.00 a.m. and purchased an airline ticket to Kinshasa. The following morning, Bicamumpaka flew from Goma to Kinshasa. Bicamumpaka did not know Witness GAP and testified his allegations were fabricated.[2052]

Mugenzi

1427. Mugenzi testified that the former prefect for Ruhengeri was killed on 7 April 1994 while visiting his family in Kigali.[2053]

[2049] Witness GBR, T. 7 June 2004 pp. 26, 28-29, 39, 47-49, 69-71.
[2050] Witness GBR, T. 7 June 2004 pp. 38, 59.
[2051] Witness GBR, T. 7 June 2004 pp. 10, 20, 39-42, 48-49, 59-61, 69.
[2052] Bicamumpaka, T. 2 October 2007 pp. 65-66; T. 3 October 2007 p. 21; T. 8 October 2007 pp. 38-49; T. 11 October 2007 pp. 24-30.
[2053] Mugenzi, T. 9 November 2005 p. 36.

Bicamumpaka Defence Witness Basile Nsabumugisha

1428. Basile Nsabumugisha, a Hutu, heard on the radio on 17 April 1994 that he had been appointed prefect of Ruhengeri. His predecessor, Sylvestre Bariynanga had died. Nsabumugisha was sworn in on 22 April during a ceremony in a large hall of the prefecture building in Ruhengeri. He could not recall the exact timing, estimating that it could have commenced in the morning and carried over into midday. Approximately 100 people attended this ceremony, including local officials such as Sub-Prefects Pierre Célestin Ntwarwanda and Dismas Nzanana. National ministers including Jean Kambanda and other members of the Interim Government were also present. Bicamumpaka, however, was not there.[2054]

Bicamumpaka Defence Witness Ignace Karuhije

1429. Ignace Karuhije, a Hutu member of the MDR's secretariat in Ruhengeri, lived in Kigali in 1994 and was installed as Ruhengeri's prefect in October of that year.[2055] As a prefect, Karuhije coordinated investigations into crimes committed in Ruhengeri during the genocide. He never heard anything about Bicamumpaka's activities there during that period.[2056]

Deliberations

1430. There is no dispute that Basile Nsabumugisha was installed as the prefect of Ruhengeri sometime during the second half of April 1994.[2057] The Prosecution, however, alleges that Bicamumpaka attended his swearing-in ceremony and incited the killing of Tutsis at it. It further argues that the appointment was part of a larger plan of the Interim Government to install local officials committed to the killing of Tutsis, and provided anecdotal evidence of Nsabumugisha's involvement in them. The Defence denies these allegations. In particular, it contests that Bicamumpaka was present during the installation ceremony, pointing to evidence that he left the country on 22 April 1994, the day it occurred.

1431. Before evaluating the merits of the Prosecution case, the Chamber recalls its previous decision that the killing of Matias Munyambigi, as described by Witness GAP, is not an allegation pleaded against Bicamumpaka.[2058]

[2054] Nsabumugisha, T. 18 October 2007 pp. 74-76; T. 22 October 2007 pp. 4, 7-8, 10-11, 15, 19, 25-30; Exhibit 3D162 (Nsabumugisha's Personal Information Sheet); Exhibit P182(E) (Nsabumugisha's Statement, 2 March 2000). Nsabumugisha had been arrested in Rwanda in 1997 on genocide charges. He was detained at the time of his testimony, awaiting the commencement of his trial. T. 22 October 2007 pp. 16, 18.

[2055] Karuhije, T. 5 November 2007 pp. 5-7, 18; T. 6 November 2007 pp. 1-2; Exhibit 3D171 (Karuhije's Personal Information Sheet). Karuhije was installed as prefect of Ruhengeri on 30 October 1994. In March 1997, he reviewed reports that implicated RPF soldiers in a number of killings within Ruhengeri in the preceding months. He publicly expressed concern over this on 3 March 1997. Consequently, he received threatening calls from military personnel and was dismissed from his position on 4 April 1997. He remained in Ruhengeri until November 1997 and then moved to Kigali. In July 1998, Karuhije left for Belgium where he received political asylum. T. 5 November 2007 pp. 18, 22, 24, 30-35; T. 6 November 2007 pp. 36-38.

[2056] Karuhije, T. 5 November 2007 pp. 5-7, 17-18, 22-23; T. 6 November 2007 pp. 1-2.

[2057] *See* Exhibit 3D164 (Various Radio Broadcasts) pp. 70, 74 (17 April 1994 radio announcement of Basile Nsabumugisha as Prefect of Ruhengeri).

[2058] Decision on Jérôme-Clément Bicamumpaka's Motion for the Recall of Prosecution Witness GAP, 5 March 2009, para. 16.

(i) Installation of Basile Nsabumugisha as Prefect of Ruhengeri, 19 to 25 April 1994

1432. Turning first to Bicamumpaka's presence and speech inciting the killing of Tutsis during the installation of Nsabumugisha as prefect of Ruhengeri, Witness GAP attended the new prefect's swearing-in ceremony in the Ruhengeri prefecture hall between 19 and 25 April 1994. The Chamber recalls that he was detained and awaiting sentencing at the time of his testimony, having pleaded guilty to the genocide charges stemming from the murder of three persons.[2059] He identified Bicamumpaka as ultimately responsible for one of the killings – the murder of Matias Munyambigi (described above). Considering that Witness GAP's testimony may be motivated to obtain leniency in sentencing by deflecting responsibility for one of his crimes onto Bicamumpaka, the Chamber views his evidence with caution.

1433. Raising further concerns about the general credibility of Witness GAP are statements and testimonies given in other proceedings before this Chamber. Notably, while testifying in this proceeding in January 2004, he gave extensive evidence regarding the acts of Juvénal Kajelijeli, implicating him in various crimes.[2060] Moreover, he had previously appeared as a Prosecution witness before the Tribunal in the *Kajelijeli* trial in November 2001.[2061]

1434. However, in a letter sent to the President of the *Gacaca* Court in Rwinzovu *cellule*, dated 4 September 2006, Witness GAP recanted his prior statements and testimonies to the effect that Juvénal Kajelijeli played a role in the genocide. But then, in 2008, Witness GAP testified on behalf of the Prosecution in the trial of *Prosecutor v. Ephrem Setako*, where he disavowed the truthfulness of the recantation. He explained that he had recanted his prior evidence so he could be released from prison.[2062]

1435. In light of these developments, on 5 March 2009, this Chamber directed the Registrar to appoint an *amicus curiae* to investigate whether grounds existed to prosecute Witness GAP for alleged perjury.[2063] While the report of the *amicus curiae* did not recommend prosecution, the interview conducted with Witness GAP reflects that his recantation letter to the President of the *Gacaca* Court of Rwinzovu *cellule* was motivated by desires to have greater security while in prison and receive clemency.[2064] This interview affirms the need to carefully scrutinise the witness's testimony.

1436. Furthermore, Witness GAP gave statements to Tribunal investigators on 21 April 1999, 26 June 2000, 24 September 2002, 16 October 2002, 17 March 2003, 16 April 2003, 14 and 15 July 2003, and 23 September 2003. A review of these suggests that the witness was asked questions by Tribunal investigators about particular defendants on each occasion and

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[2059] Witness GAP, T. 19 January 2004 pp. 19, 28-29; T. 20 January 2004 pp. 30-32; T. 21 January 2004 pp. 1-2, 17-18, 20-22, 25-29, 33-37.

[2060] *See* Witness GAP, T. 19 January 2004 pp. 3-4, 7-13, 15-17, 19-21, 23-25, 33, 39; T. 21 January 2004 pp. 12-14.

[2061] Witness GAP, T. 19 January 2004 p. 19; T. 20 January 2004 pp. 31-33.

[2062] Decision on Jérôme-Clément Bicamumpaka's Motion for the Recall of Prosecution Witness GAP, 5 March 2009, paras. 9-10 *citing* Bicamumpaka's Urgent Motion for the Recall of Witness GAP, and for Other Remedies (TC), 5 November 2008, Annex B, *The Prosecutor v. Setako*, Case No ICTR-04-81-T, T. 25 August 2008 pp. 48-50, *and* the Statement of Witness GAP to Tribunal investigators, 28 March 2008.

[2063] Decision on Jérôme-Clément Bicamumpaka's Motion for the Recall of Prosecution Witness GAP, 5 March 2009, paras. 23-27 and p. 13 (order).

[2064] *Amicus Curiae* Report Relating to the Motion the Recall of Prosecution Witness GAP in the Case of Jérôme-Clément Bicamumpaka, 14 January 2011, paras. 25-26, 30, 81, 83-86.

that the 17 March 2003 statement focussed on Bicamumpaka.[2065] Nonetheless, the Chamber is troubled that the first three statements, which focussed on the conduct of Kajelijeli and others, did not mention this event. These statements each detailed a range of criminal events in April 1994. Given Kajelijeli's purported presence at this ceremony and his instructions to witness GAP to kill after it, the absence of any reference to the installation ceremony in these statements raises concerns.[2066]

1437. Indeed, the earlier statements appear to be used as a medium by Witness GAP to claim his innocence in relation to crimes committed in 1994 while inculpating authorities.[2067] His explanation that he withheld information that would incriminate him – which would appear to include his attendance at the installation ceremony and subsequent killing – when giving his April 1999 statement to Tribunal investigators and while testifying in the *Kajelijeli* case because he had not yet pleaded guilty increases the Chamber's concerns about his credibility.[2068]

1438. Under these circumstances, the Chamber has considerable doubts about the reliability of Witness GAP. There is no direct corroboration of his evidence.[2069] Witness GLP's general statement that Bicamumpaka assisted in selecting Nsabumugisha as prefect is too remote to bolster Witness GAP's account.

1439. The Chamber also observes that Nsabumugisha testified that he was installed on 22 April 1994 and that Bicamumpaka was not present. Furthermore, Bicamumpaka testified that he was travelling from Gisenyi to Goma, Zaire that day. The Chamber considers Bicamumpaka's alibi evidence is of limited probative value, as it is not necessarily inconsistent with evidence that he was in the neighbouring prefecture of Ruhengeri that day. However, given the frailties of the Prosecution evidence, it has not established that Bicamumpaka attended the installation ceremony of Basile Nsabumugisha as prefect of Ruhengeri and incited the killing of Tutsis during it. In light of this finding, the Chamber need not address notice objections to this event.

(ii) Appointment of Basile Nsabumugisha as Ruhengeri Prefect to Promote Killings

1440. The Indictment alleges that the Interim Government dismissed local government authorities, including prefects, who were opposed to the massacres and replaced them with others who were devoted to the cause. In this regard, the Prosecution has argued that the

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[2065] Witness GAP, T. 19 January 2004 pp. 12-13; T. 20 January 2004 p. 32; Exhibits 1D14-1D21 (Witness GAP's Statements, 21 April 1999, 26 June 2000, 24 September 2002, 16 October 2002, 17 March 2003, 16 April 2003, 14 and 15 July 2003, and 23 September 2003, respectively).

[2066] Exhibit 1D14(E & F) (Witness GAP's Statement, 21 April 1999) *en passim*; Exhibit 1D15(E & F) (Witness GAP's Statement, 26 June 2000) *en passim*; Exhibit 1D16(E & F) (Witness GAP's Statement, 24 September 2002) *en passim*.

[2067] *See* Exhibit 1D14(E & F) (Witness GAP's Statement, 21 April 1999) p. 5 ("Those who really killed refused to speak the truth and very often, those who did nothing are being punished instead. That is what happed to me ..."); Exhibit 1D15(E & F) (Witness GAP's Statement, 26 June 2000) p. 6 ("As for me, I think I was unfairly arrested because I know I did nothing wrong").

[2068] Witness GAP, T. 20 January 2004 pp. 32-33.

[2069] The Chamber recalls that it is not considering Witness GFA's evidence concerning an introduction of Basile Nsabumugisha as the new Prefect of Ruhengeri (I.9). However, even if it did, Witness GFA described a separate event occurring near the CEFOTEL school in Gisesero, Mukingo commune (not the Ruhengeri prefecture hall). Under the circumstances, this circumstantial corroboration would be insufficient to support Witness GAP's testimony.

appointment of Basile Nsabumugisha led to the killing of Tutsis and that he participated in them.[2070]

1441. The Prosecution has led no direct evidence pertaining to the Interim Government's decision to install Nsabumugisha as the prefect of Ruhengeri. Instead, its theory that this new official would support the government's genocidal plan largely relies on anecdotal evidence from Witness GAP, GLP and GBR about his support for and involvement in killings in 1994.

1442. However, the examination of Nsabumugisha's crimes has received scant treatment by the Prosecution. Witness GAP's testimony fails to involve Nsabumugisha in any killings he participated in.[2071]

1443. Turning to Witness GLP, he testified that he attended a meeting on 28 April 1994 where Nsabumugisha spoke and the witness and other MDR party members were identified as accomplices. While this evidence is first-hand, it is uncorroborated. The Chamber has elsewhere warned that this witness's evidence should be viewed with caution given his provisional release from Rwandan incarceration at the time of his testimony and his own admission that one can fear reprisals when taking positions against the Rwandan government (II.4.1). This event is not proven beyond reasonable doubt.

1444. Furthermore, Witnesses GLP and GBR each gave general evidence that Nsabumugisha travelled throughout Ruhengeri and promoted the killing of Tutsis and accomplices.[2072] Witness GBR described an event on 4 or 5 May 1994 in Kigombe commune, where he used a metaphor concerning uprooting trees as a need to kill all Tutsis, including children, and destroy their property. However, their evidence generally reflects that they were in hiding around these times. Indeed, Witness GBR testified that he had left his home commune of Kigombe, confirming that he would not have been present during the early May 1994 meeting.[2073] Thus, his hearsay evidence is of limited probative value.

1445. Finally Witnesses GLP and GBR testified about Nsabumugisha's involvement in the killing of Joseph Mpendwanzi, the MDR head for Ndusu commune, in late May. However, Witness GBR was in hiding at the time and his evidence about the crime fails to demonstrate that he observed it.[2074] Likewise, while Witness GLP testified that he saw Nsabumugisha on the day Mpendwanzi was killed. His evidence is very brief on this subject and it is not clear that he observed any act by Nsabumugisha related to this killing.[2075] This evidence too is insufficient to support findings beyond reasonable doubt.

[2070] *See* Prosecution Closing Brief, paras. 46, 98-102, 321.
[2071] Witness GAP, T. 19 January 2004 pp. 28-29; T. 20 January 2004 pp. 20-21; T. 21 January 2004 pp. 3-4, 34 (describing his involvement in killings without implicating Nsabumugisha in them).
[2072] *See* Witness GLP, T. 23 June 2004 pp. 7, 24-25 (describing Nsabumugisha's role in promoting killings); Witness GBR, T. 7 June 2004 pp. 39-41 (Nsabumugisha organised killings and communal meetings to promote them).
[2073] Witness GBR, T. 7 June 2004 pp. 39, 69-71.
[2074] Witness GBR, T. 7 June 2004 pp. 20 ("A. The people who were on that list, right from the start, Mpendwanzi was killed, he was arrested by Basile Nsabumugisha, ... A. I don't recall the dates well, but Mpendwanzi, as far as I'm concerned, as far as I can remember, he was killed towards the end of May in 1994."), 40 ("A. ... [Nsabumugisha] caught Mpendwanzi but he could not get me. You understand, that is the agenda that had been prepared, the lists of those people that were mentioned, and he was personally involved, and he went to catch Mpendwanzi himself.").
[2075] Witness GLP, T. 22 June 2004 p. 60 ("A. ... If any of them were – Mpendwanzi was caught, who had been – he had been president of MDR in Ndusu commune; he was killed by Préfet Basile, the préfet of Ruhengeri

1446. The Chamber observes that Basile Nsabumugisha was incarcerated in Rwanda when he appeared before this Tribunal, awaiting trial for his role in crimes committed in 1994. This, like the other general evidence about his involvement in killings, creates a strong suspicion of his involvement in crimes. It does not, however, establish his involvement in them beyond reasonable doubt in this proceeding.

1447. At any rate, the Chamber, when viewing the record as a whole, is unable to find that any of the Accused would necessarily be responsible for crimes committed by Nsabumugisha. There is no evidence establishing their participation in any of the crimes or acts or omissions that substantially contributed to their commission. Likewise, the evidence does not demonstrate the Accused's effective control over Nsabumugisha, knowledge or a reason to know of the latter's involvement in alleged crimes.

1448. The Chamber also finds that the evidence fails to establish that Nsabumugisha was appointed as prefect of Ruhengeri to further a genocidal plan to kill Tutsis. He appears to have filled a void left by the fact that the former prefect had been killed.[2076]

10. GITARAMA PREFECTURE, LATE APRIL AND MAY 1994

10.1 Bar Mimosas and Cyakabiri Roadblock, Late April and Early May 1994

Introduction

1449. The Indictment alleges that, from 7 April 1994, military personnel, on the orders and directives or to the knowledge of authorities, including Bizimungu, murdered Tutsi civilians throughout Rwanda, including Gitarama. Bizimungu knew or had reason to know that his subordinates had committed such crimes, and failed to prevent them or to punish the perpetrators. Specifically, on an unknown date between 15 April and 15 May 1994, at Bar Mimosas in Murambi, Gitarama prefecture, Bizimungu ordered members of the Presidential

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préfecture. Basile was one of those people who were leading, top leaders, among the top leaders of MDR in Ruhengeri, and he was appointed préfet during that period. He went with his *Interahamwe* to go and look for that gentleman. He arrested him, brought him in the car, and had killed him."); Witness GLP, T. 23 June 2004 p. 8 ("A. … And towards the evening, the préfet, Basile, came, after having gone to arrest Joseph Mpendwanzi, and he had delivered this person to the *Interahamwe* and they had killed him.").

[2076] The Prosecution also led evidence through Witnesses GAP and GKB about Juvénal Kajelijeli's swearing-in ceremony as the *bourgmestre* of Mukingo commune in Ruhengeri prefecture, and Bicamumpaka's presence at it. *See* Witness GAP, T. 19 January 2004 p. 32; T. 20 January 2004 pp. 30, 38; Witness GKB, T. 10 December 2003 pp. 21-26. The Chamber previously ruled this evidence to be admissible. Decision on Motion of Defendant Bicamumpaka Opposing the Admissibility of Witnesses GFA, GKB and GAP (TC), 6 October 2004, paras. 16-21. However, the Chamber considers the variances between the dates provided for this event in the Prosecution Pre-Trial Brief (10 May to 30 June 1994) and Witness GAP's testimony (5 May 1994), does not provide the Accused with adequate notice as to which event he should have been prepared to rebut. *Compare* Prosecution Pre-Trial Brief, para. 195 (pp. 42-43), *and* Witness GAP, T. 20 January 2004 pp. 30, 38. Furthermore, the 5 May 1994 date Witness GAP provided for this event falls squarely within a period for which Bicamumpaka presented the reasonable possibility that he was outside of the country (II.14.3.4) and the Chamber has considerable reservations about his reliability. The Prosecution failed to identify the relevance of this evidence in either its Closing Brief or oral submissions. In the circumstances, the Chamber concludes that the Prosecution has abandoned this event, the evidence of which, lacks sufficient reliability to support findings beyond reasonable doubt.

Guard to kill a soldier because he was Tutsi and supported the killing of another Tutsi man. Prosecution Witness GTD provided relevant evidence.[2077]

1450. The Bizimungu Defence argues that insufficient notice was provided for the allegations of murder at Bar Mimosas and Cyakabiri roadblock. Furthermore, Bizimungu was not in Rwanda at the time of these events, but was participating in government missions abroad. Moreover, Witness GTD was an accomplice whose uncorroborated evidence lacks credibility. Bizimungu and Defence Witness WFQ3 provided relevant evidence.[2078]

Evidence

Prosecution Witness GTD

1451. Witness GTD, a Hutu, was a member of the *Interahamwe* who worked at a bar in Gitarama in 1994.[2079] On an unspecified afternoon approximately one week after the Interim Government moved to Murambi, Witness GTD saw Bizimungu taking refreshments at Bar Mimosas in Gitarama with Callixte Nzabonimana, Thomas Kigufi, and Kigufi's brother, Shingiro. He was approximately eight metres from Bizimungu and the others, and although he could not hear their conversation "that well", he could observe their movements. At the time, the witness was busy doing some work at the bar, so what was said among Bizimungu's group was not important to him. His attention was drawn to the group because two people were eventually carried away from the bar.[2080]

1452. A soldier came into the bar to visit an unidentified employee with a young boy named Vedaste from the witness's sector. Bizimungu and the other three men called the soldier and asked for his identity papers, which he gave them. They observed him very closely, pointed a finger at him and asked him questions. Witness GTD testified that the soldier, whose uniform was different from the other soldiers, was from Habyarimana's army and had returned from Belgium. The boy with him was rather tall and, "at that time, anyone who looked handsome and tall was assumed to be Tutsi". The group of four men did not accept his identity papers, apparently believing he was a Tutsi, and "immediately decided that this [*sic*] should be killed". The four men then called the Presidential Guard soldiers who were guarding them and Shingiro gave one of them keys to a Toyota Hilux pick-up truck. The Presidential Guard took the soldier and the boy and left.[2081]

1453. About one hour later, Witness GTD was told by an unidentified young man who worked at the bar that the soldier and the boy had been shot dead at Kivumu. He knew this as

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[2077] Indictment, paras. 5.1, 6.14, 6.26, 6.30, 6.35, 6.36, 6.54; Prosecution Pre-Trial Brief, paras. 131 (p. 29), 156 (p. 35), 228 (p. 48), 229 (p. 49); Prosecution Closing Brief, paras. 226-227, 234, 346; Prosecution 21 November 2008 Document, Item Nos. 73, 87; Prosecution Closing Arguments, T. 1 December 2008 p. 63.

[2078] Bizimungu Closing Brief, paras. 20, 147, 176-178, 237, 249-250, 296-299, 690-721, 1109, 1631, 1747; Bizimungu Closing Arguments, T. 2 December 2008 pp. 16, 19-20.

[2079] Witness GTD, T. 1 July 2004 pp. 16, 21; T. 5 July 2004 pp. 11-13; T. 6 July 2004 pp. 27, 74; Exhibit P66 (Witness GTD's Personal Information Sheet). At the time of his testimony, Witness GTD was imprisoned in Rwanda. He pleaded guilty in February 2003 to charges of genocide and crimes against humanity. Witness GTD, T. 1 July 2004 pp. 14-15; T. 6 July 2004 pp. 3, 6-7, 10-12; Exhibit 1D60(E) (Witness GTD's Confession and Guilty Plea). The Chamber notes that he testified that he pleaded guilty in March 2003, but his confession is dated February 2003.

[2080] Witness GTD, T. 1 July 2004 p. 22; T. 6 July 2004 pp. 8, 31-32.

[2081] Witness GTD, T. 1 July 2004 pp. 22-23; T. 6 July 2004 pp. 34, 36-42.

he had gone to buy beer from a warehouse near Kivumu. When the Hilux truck returned to Bar Mimosas, one of the boy's shoes was in it.[2082]

1454. Witness GTD next saw Bizimungu in the beginning of May 1994 at the Cyakabiri roadblock, which the witness was manning. Between 6.00 and 6.30 p.m., Bizimungu arrived at the roadblock in a vehicle driven by Nzabonimana. Nzabonimana said "[w]here are my boys?" and asked those manning the roadblock whether they had beverages. When they replied that they did not, he gave 7,500 Rwandan francs to Eulade Ndahayo.[2083]

1455. Nzabonimana then gave Ndahayo his car keys and told him to look in the rear of the vehicle where there was "a small *Inyenzi*". Witness GTD understood this phrase to mean that he was an enemy and, at the time, *Inyenzi-Inkotanyi* meant Tutsis. Bizimungu did not say anything, but he smiled.[2084]

1456. Those manning the roadblock looked in the back of the car where they found a light-skinned young man who had been badly beaten. Those who brought the *Inyenzi* told those manning the roadblock to remove him and then immediately departed. Witness GTD testified that they were left "to do the job, and the job was to kill the young man". Bizimungu did not try to stop them from killing the man.[2085]

1457. Those manning the roadblock, including Witness GTD, took the man out of the vehicle, beat him up and took him "below the road" where Ndahayo stabbed and killed him. Afterwards, Witness GTD went back to the roadblock, and a man named Twagira came with a motorcycle and pulled the body behind the motorcycle with a rope to a location where the body was buried.[2086]

Bizimungu

1458. Bizimungu testified that he had never heard of, nor been to, Bar Mimosas between April and July 1994. While he was in Gitarama, between April and June 1994, he never met Thomas Kigufi or Shingiro Mbonyumutwa. Further, Bizimungu denied witnessing the murder of Tutsis in May 1994 at a roadblock in Cyakabiri in Gitarama allegedly on the orders of Callixte Nzabonimana. Further, he denied travelling at any moment in Gitarama with Nzabonimana.[2087]

1459. Bizimungu was out of the country during the material time. On 12 April 1994, Bizimungu travelled by helicopter to Gisenyi where he took a car with Ephrem Setako to Goma Airport. At Goma Airport, Bizimungu and Setako flew to Kinshasa where they arrived around 5.00 or 6.00 p.m. that same day. Bizimungu was welcomed by the Rwandan Ambassador to Zaire, Etienne Sengegera, who drove them to his residence. Later in the night, Bizimungu and Setako left the Ambassador's residence for the InterContinental hotel in Kinshasa where they stayed until 25 April 1994 when Bizimungu returned to Gitarama.[2088]

[2082] Witness GTD, T. 1 July 2004 pp. 23-24; T. 6 July 2004 pp. 40-42.
[2083] Witness GTD, T. 1 July 2004 p. 22; T. 5 July 2004 pp. 6-8; T. 6 July 2004 pp. 8-10.
[2084] Witness GTD, T. 5 July 2004 pp. 7-8.
[2085] Witness GTD, T. 5 July 2004 pp. 7-8.
[2086] Witness GTD, T. 5 July 2004 pp. 7-9.
[2087] Bizimungu, T. 28 May 2007 pp. 39-40; T. 29 May 2007 pp. 34-35.
[2088] Bizimungu, T. 28 May 2007 pp. 39-53; T. 5 June 2007 pp. 59-63, 67-69; T. 6 June 2007 p. 44; T. 7 June 2007 pp. 13-31. For a more detailed summary and references to exhibits, *see* II.8.1; II.14.2.1.

1460. Bizimungu left Rwanda again on 30 April 1994 for Kinshasa, Zaire, and stayed there until 6 May. On that day, he travelled to Geneva, where he remained until 9 May, when he flew to Nairobi, Kenya to see his family, arriving there on 10 May. He left Nairobi that evening, returning to Geneva on 11 May, where he stayed until 17 or 18 May. On 17 or 18 May, Bizimungu flew to Kinshasa, where he stayed until 23 or 24 May. He left Zaire through Goma, entering Rwanda through Gisenyi and then going directly to Gitarama.[2089]

Bizimungu Defence Witness WFQ3

1461. Witness WFQ3, a Hutu and member of the MDR political bureau, was a businessman in April 1994.[2090] He left Kigali for Gitarama with the Interim Government on 12 April and remained there until 2 June. Witness WFQ3 was in a unique position to testify regarding the alleged meeting of Bizimungu, Callixte Nzabonimana, Thomas Kigufi, and Thomas's brother, Shingiro Mbonyumutwa, at Bar Mimosas. Witness WFQ3 denied that the four individuals had held a meeting together in Gitarama. He further denied that Mbonyumutwa met with Nzabonimana between April and May 1994. He testified that Mbonyumutwa, who was an MDR member, would have been dismissed from the party for meeting Nzabonimana who was from the MRND as the competition between them in Gitarama at that time was "keen". He further denied that Mbonyumutwa was aware of or that he had gone to a bar called Mimosas between the middle of April and the end of May. According to him, after 15 April people could not go to bars due to the security situation.[2091]

Deliberations

1462. The Prosecution relies exclusively on the evidence of Witness GTD in support of the allegations that Bizimungu was involved in the killings of Tutsi at Bar Mimosas and the Cyakabiri roadblock, both in Gitarama.

1463. The Bizimungu Defence disputes Bizimungu's involvement in either crime and submits that Witness GTD's evidence is uncorroborated and lacks credibility. Moreover, the Bizimungu Defence advances an alibi for both allegations.[2092] The Chamber shall address the events in turn.

(i) Incident at Bar Mimosas, Gitarama

1464. Witness GTD is the only Prosecution witness to provide a first-hand account of Bizimungu's purported presence at Bar Mimosas in Gitarama, about one week after the Interim Government moved to Murambi on 12 April 1994. It is alleged that a soldier and a boy were taken away in Bizimungu's presence by the Presidential Guard and later killed.

1465. Before turning to the merits of Witness GTD's evidence, the Chamber considers the context in which he testified. Witness GTD was imprisoned at the time of his testimony. He pleaded guilty to charges of genocide and crimes against humanity in Gitarama in February

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[2089] Bizimungu, T. 28 May 2007 pp. 62-70; T. 29 May 2007 pp. 7-10, 12-19, 22-23, 47-48; T. 6 June 2007 pp. 45-47, 51; T. 11 June 2007 pp. 2-6; T. 12 June 2007 pp. 21-25. For a more detailed summary and references to exhibits, *see* II.14.2.2.
[2090] Witness WFQ3, T. 24 January 2007 p. 6; Exhibit 1D132 (Witness WFQ3's Personal Information Sheet).
[2091] Witness WFQ3, T. 24 January 2007 pp. 10-14, 16-19, 24-26.
[2092] Bizimungu Closing Brief, paras. 690-721.

2003, including the murder of a Tutsi at the Cyakabiri roadblock that he manned.[2093] His statements to Tribunal investigators, dated July 2003 and January 2004, were made after his arrest and guilty plea. While the witness testified that he had not been sentenced when he pleaded guilty, it is unclear if he has been sentenced since.[2094] Given the witness's status as an alleged accomplice, the Chamber views his evidence with appropriate caution.[2095]

1466. The Chamber next considers whether an alleged internal inconsistency between Witness GTD's statements to Tribunal investigators and his testimony raises concerns about his credibility as alleged by the Defence. Witness GTD gave two statements to Tribunal investigators on 9 July 2003 and 30 January 2004.[2096] He only mentions the incidents at Bar Mimosas and Cyakabiri roadblock in his first statement of 9 July 2003.[2097] The Chamber observes that the January 2004 investigation focussed on the conduct of Augustin Ndindiliyimana and therefore the absence of reference to the incidents at Bar Mimosas and Cyakabiri roadblock in this statement appears reasonable.

1467. The Defence submits that Witness GTD's evidence that *Interahamwe* killed the soldier and the child named Vedaste contradicts his written statement in which he states that it was the Presidential Guard.[2098] This submission is erroneous. In both his testimony and July 2003 statement, Witness GTD stated that the two individuals were killed by the Presidential Guard. The Chamber considers that perhaps the Bizimungu Defence got confused by Witness GTD's statement that Vedaste's father was killed by *Interahamwe*.[2099]

1468. Turning to the merits of Witness GTD's testimony alone, the Chamber has reservations about his identification of Bizimungu. The first time he saw Bizimungu was at the alleged incident at Bar Mimosas although he did not know who he was at the time. He only learned of Bizimungu's identity later during the incident at the Cyakabiri roadblock when he was told who Bizimungu was by unidentified sources and he then recalled having seen Bizimungu before at Bar Mimosas.[2100] When asked to identify Bizimungu in the courtroom, Witness GTD pointed to Justin Mugenzi.[2101] Under the circumstances, his basis of identification is weak and his identification of Bizimungu in 1994 is called into question.

1469. Further, the Chamber has reservations regarding Witness GTD's ability to hear and comprehend the conversation between Bizimungu (and his alleged companions) and the soldier at Bar Mimosas. The witness admitted that he "could not hear [the conversation] that well" (despite stating the contrary immediately afterwards) and the conversation was "not

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[2093] Witness GTD, T. 1 July 2004 pp. 14-15; T. 6 July 2004 pp. 3, 6-7, 10-12; Exhibit 1D60(E) (Witness GTD's Confession and Guilty Plea). The Chamber notes that he testified that he pleaded guilty in March 2003, but his confession is dated February 2003.
[2094] Witness GTD, T. 6 July 2004 p. 10.
[2095] Exhibit 1D42(E & F) (Witness GTD's Statement, 9 July 2003) pp. 4, 8-9.
[2096] Witness GTD, T. 6 July 2004 pp. 4-6, 19-23; Exhibit 1D42(E & F) (Witness GTD's Statement, 9 July 2003); Exhibit 1D41(E & F) (Witness GTD's Statement, 30 January 2004).
[2097] Exhibit 1D42(E & F) (Witness GTD's Statement, 9 July 2003) pp. 4, 8-9.
[2098] Bizimungu Closing Brief, para. 705.
[2099] Witness GTD, T. 1 July 2004 pp. 23-24; T. 6 July 2004 pp. 41-42; Exhibit 1D42(E & F) (Witness GTD's Statement, 9 July 2003) p. 4.
[2100] Witness GTD, T. 1 July 2004 p. 22; T. 5 July 2004 pp. 2-3; T. 6 July 2004 p. 32.
[2101] Witness GTD, T. 6 July 2004 pp. 32-34.

important" to him since he was busy doing work at the bar.[2102] Consequently, Witness GTD's comprehension and interpretation of the conversation in the bar is called into question.

1470. Turning to the Defence evidence, Bizimungu provided an alibi for the period between 12 to 25 April 1994, which covers the period when this event allegedly occurred. Specifically, Bizimungu testified that he was on mission to Zaire at this time. As discussed elsewhere, the Chamber considers that Bizimungu's alibi evidence, supported by testimony and contemporaneous documentation, creates the reasonable possibility that he was outside Rwanda during the period described by Witness GTD (II.14.2.1). Indeed, aspects of the Prosecution case against Bizimungu pertain to his trip to Zaire, beginning on 12 April 1994 (II.8.1).

1471. The Chamber observes that Defence Witness WFQ3 provided evidence intended to rebut Witness GTD's account of events at Bar Mimosas. The Chamber views his testimony with suspicion. He has an interest in denying that Bizimungu, Nzabonimana, Kigufi and Mbonyumutwa ever met in Bar Mimosas in April 1994 and participated in the killing of the soldier and the young boy. Consequently, the Chamber finds that his evidence has limited probative value.

1472. The Chamber has general concerns about Witness GTD's uncorroborated testimony, which are compounded by his weak identification of Bizimungu as well as Bizimungu's alibi evidence for the period. As a result, the Chamber does not find that the Prosecution has proven beyond reasonable doubt that on an unspecified date approximately one week after 12 April, at Bar Mimosas, Gitarama, a soldier and a boy were taken away by the Presidential Guard in Bizimungu's presence and later killed. Given the Chamber's findings, it need not address Defence arguments concerning insufficient notice.

(ii) Incident at Cyakabiri Roadblock, Gitarama

1473. Again, Witness GTD is the only Prosecution witness to provide a first-hand account that Bizimungu and Callixte Nzabonimana transported a Tutsi to be killed at the roadblock he manned. According to him, this occurred in the beginning of May.[2103]

1474. The Bizimungu Defence submits that Witness GTD's evidence is uncorroborated and lacks credibility. Moreover, Bizimungu was not in Rwanda in early May, the period in which they submit this alleged incident took place, as established by his alibi.[2104]

1475. In addition to the general concerns with Witness GTD's credibility, described above, the Chamber recalls that he pleaded guilty for his participation in this specific murder. However, he made no mention of Bizimungu's involvement in this crime in his confession

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[2102] Witness GTD, T. 6 July 2004 p. 31.
[2103] The Chamber observes that Witness GTD initially testified that this event happened about "a week or two" after the event at Bar Mimosas (T. 5 July 2004 p. 6; T. 6 July 2004 p. 8) or "within three weeks" after the Interim Government's arrival in Gitarama (T. 6 July 2004 p. 8). When confronted with his July 2003 statement, which placed the event at "May ending", the witness clarified that it was after the conclusion of April and in the beginning of May, placing particular emphasis on the correctness of the month (T. 6 July 2004 pp. 9-10). Moreover, Witness GTD's guilty plea indicates that the event occurred on 11 May 1994. Exhibit 1D60 (Witness GTD's Confession and Guilty Plea) p. 8. The Chamber interprets his evidence to be that this event occurred in the beginning of May 1994.
[2104] Bizimungu Closing Brief, paras. 690-691, 707-709.

and guilty plea although he did mention Nzabonimana's role.[2105] Witness GTD first mentioned Bizimungu's presence at the Cyakabiri roadblock in his July 2003 statement to Tribunal investigators.

1476. Witness GTD's failure to mention Bizimungu's involvement in this murder in his guilty plea is striking. While Bizimungu's limited involvement in the event might provide some explanation as to why the witness did not discuss him, the witness elsewhere acknowledged that a guilty plea requires a person to, *inter alia*, state "the people who took part in this crime".[2106] It is particularly troubling as he identified another government minister, Nzabonimana, in this plea.[2107]

1477. The Chamber observes that Witness GTD was not confronted with this omission because the guilty plea was not in evidence at the time of his testimony and was entered as an exhibit on 6 April 2005. The Defence did not recall Witness GTD to cross-examine him on the exhibit.[2108] Regardless, the shift in Witness GTD's version of events between his guilty plea made in February 2003 and his first statement to Tribunal investigators further calls his credibility into question.

1478. Turning to the Defence evidence, Bizimungu provided an alibi for the period between 1 to 23 or 24 May 1994, which covers the period in which this event allegedly occurred. As discussed elsewhere, the Chamber considers that Bizimungu's alibi evidence, supported by testimony and contemporaneous documentation, creates the reasonable possibility that he was outside Rwanda in early May 1994, creating further doubt with respect to Witness GTD's allegation (II.14.2.2).

1479. Given the Chamber's concerns for Witness GTD as well as Bizimungu's alibi evidence for the period, the Chamber has reservations about this allegation. As a result, the Chamber does not find that the Prosecution has proven beyond reasonable doubt that Bizimungu was involved in transporting a Tutsi to be killed at Cyakabiri roadblock, Gitarama, on an unspecified date in early May 1994. Given the Chamber's findings, it need not address Defence arguments concerning insufficient notice.[2109]

10.2 Murder of John Vuningoma, April or May 1994

Introduction

1480. The Indictment alleges that, from 7 April 1994, military personnel, on the orders and directives or to the knowledge of authorities, including Bicamumpaka, murdered Tutsi civilians throughout Rwanda, including Gitarama. Bicamumpaka knew or had reason to know that his subordinates had committed such crimes, and failed to prevent them or to punish the perpetrators. Specifically, the Prosecution alleges that, on an unknown date

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[2105] Exhibit 1D60 (Witness GTD's Confession and Guilty Plea) pp. 3, 8-9.
[2106] Witness GTD, T. 6 July 2004 pp. 10-11; *see also* T. 6 July 2004 p. 7.
[2107] The February 2003 guilty plea and the July 2003 statement contain several parallels, with the latter containing reference to Bizimungu's involvement. *Compare* Exhibit 1D60 (Witness GTD's Confession and Guilty Plea) pp. 3, 8-9 *and* Exhibit 1D42(E & F) (Witness GTD's Statement, 9 July 2003) pp. 8-9.
[2108] Uwizeye, T. 6 April 2005 pp. 1-2; *see also* Witness GTD, T. 6 July 2004 pp. 55-72; T. 7 July 2004 pp. 4-5.
[2109] Bizimungu Closing Brief, paras. 147, 176-178, 693-699, 1631; Bizimungu Closing Arguments, T. 2 December 2008 pp. 16, 19. *See also* Decision on Urgent and Confidential Motion from Casimir Bizimungu Opposing the Admissibility of the Testimony of Witnesses GKF, GBN, ADT, GTD, 1 July 2004.

between 25 April and 15 May 1994, near the Gitarama prefecture office, Bicamumpaka with other members of the Interim Government, ordered soldiers to kill a driver, John Vuningoma, because he was Tutsi and the "enemy" of Rwanda. Following the order, soldiers immediately killed Vuningoma. Prosecution Witnesses GTA and DCH provided relevant evidence.[2110]

1481. The Bicamumpaka Defence argues that insufficient notice was provided for this allegation. Furthermore, Bicamumpaka was not in Rwanda during the alleged murder of Vuningoma, but participating in government missions abroad. Moreover, Witnesses GTA and DCH lack credibility and the timing and content of their previous statements to Tribunal investigators support the conclusion that this allegation is fabricated. Bicamumpaka and Witness TN-1 provided relevant evidence.[2111]

Evidence

Prosecution Witness GTA

1482. Witness GTA, a Hutu, was a member of the PL-power faction in 1994.[2112] On an unspecified date after the Interim Government meeting at *Le Palais du MRND,* Cyangugu, which Witness GTA attended (II.11.2), he travelled by bus to Kigali to visit his mother. The bus dropped him and the other passengers *en route* at a roadblock in Gitarama near the prefecture headquarters. As there was heavy fighting in Kigali between the RPF, Rwandan government troops and the *Interahamwe*, the bus could not proceed to the capital.[2113]

1483. Many *Interahamwe* and a lot of drivers also stopped their vehicles at this roadblock in Gitarama due to the fighting in Kigali, which meant that they could not go any further. Around noon or 1.00 p.m., Witness GTA saw Bicamumpaka driving a khaki-coloured Audi vehicle with a soldier in the passenger seat. He was coming from the new government headquarters at Murambi, Gitarama, and stopped at the roadblock.[2114]

1484. Bicamumpaka remained in his vehicle, but wound down the window. He pointed at an unidentified young man and told him that he was "indifferent" and was sitting with Tutsis, who were the enemy. He then pointed at another man named "Jean Vuninguma", who was standing in the crowd, and asked him if he was a Tutsi. Bicamumpaka told the crowd that the man was a Tutsi and an *Inyenzi*. Witness GTA heard Bicamumpaka order a soldier at the roadblock to shoot Vuningoma. After Bicamumpaka pointed at Vuningoma, unidentified people dragged him aside. Witness GTA saw the soldier shoot at Vuningoma. Witness GTA

[2110] Indictment, paras. 6.14, 6.30, 6.35, 6.54; Prosecution Pre-Trial Brief, paras. 131 (p. 29), 193 (p. 42), 272 (p. 55); Decision on Bicamumpaka's Urgent Motion to Declare Parts of the Testimony of Witnesses GTA and DCH Inadmissible, 24 November 2004, para. 9.

[2111] Bicamumpaka Closing Brief, paras. 241, 260-262, 389-408; Bicamumpaka Closing Arguments, T. 3 December 2008 pp. 36-37, 73-74.

[2112] Witness GTA, T. 9 March 2004 pp. 9-12, 53; T. 10 March 2004 p. 21; Exhibit P38 (Witness GTA's Personal Information Sheet). Witness GTA was arrested in Rwanda in February 1995. With the possibility of a genocide conviction that could result in 20 or more years of imprisonment if he pleaded not guilty, he submitted a written guilty plea in 1996 and was sentenced to a reduced sentence of 11 years imprisonment. He served nearly eight and was released in March 2003. Witness GTA, T. 9 March 2004 pp. 5-6, 23-27.

[2113] Witness GTA, T. 9 March 2004 pp. 13-16, 36-37. Witness GTA testified that the first time he ever saw Bicamumpaka was at a public meeting in his region held between 12 and 15 April 1994 (II.11.2) and the second time was at the murder of John Vuningoma. Witness GTA, T. 9 March 2004 pp. 29-30.

[2114] Witness GTA, T. 9 March 2004 pp. 15-16, 35-38.

and other unidentified people immediately ran away, fearing stray bullets. He later learned that Vuningoma had been killed.[2115]

1485. Aside from himself, Witness GTA identified Witness DCH as a bus driver who had also witnessed the killing of Vuningoma. There were approximately 50 or more people at the roadblock during the killing. Witness GTA learned the deceased man's name (after he had been killed) from an unnamed driver, who identified Vuningoma as a fellow bus driver and a Tutsi.[2116] Witness GTA knew Witness DCH before this event, as he was a bus driver, but he was not from his area and he never saw him after the event. He did not know his current whereabouts or whether he was ever detained in prison.[2117]

Prosecution Witness DCH

1486. Witness DCH, a Hutu, was a government driver and member of the MRND in 1994.[2118] He first met Bicamumpaka in 1978 or 1979 when Bicamumpaka was a student. Witness DCH stayed at Bicamumpaka's family hotel in Ruhengeri. Bicamumpaka would stay at the hotel with his sisters. At the time, Witness DCH worked for the tourist authority transporting tourists. Sintasha *(phonetic)*, a driver for the tourist authority who drove Bicamumpaka's father, identified Bicamumpaka to Witness DCH. The witness also met Bicamumpaka in Kigali where Bicamumpaka had a shop called *Haut Plateau*. Further, Witness DCH lived with Desiré Bicamumpaka, the Accused's younger brother, and attended one of Desiré's wedding ceremonies where the dowry was paid. Bicamumpaka also attended the ceremony. When the Interim Government was set up, he heard on radio broadcasts that Bicamumpaka had become Minister of Foreign Affairs.[2119]

1487. Sometime between 28 April and 10 May 1994, Witness DCH saw Bicamumpaka in Gitarama one day before noon. They met in the compound of the Gitarama prefecture office, where vehicles were parked. Bicamumpaka arrived in a khaki-coloured Audi vehicle, which was driven by an unidentified individual. An armed gendarme was in the front passenger seat and Bicamumpaka was in the rear seat. At the time, Witness DCH was standing by a kiosk taking refreshments. After Bicamumpaka got out of his vehicle, Witness DCH greeted and congratulated him on his ministerial appointment. Bicamumpaka was dressed in a khaki-coloured suit with "a kind of military camouflage on top".[2120]

1488. Bicamumpaka told Witness DCH that Tutsis were "really putting lots of pressure on us and they were killing us", and he was surprised to find that Witness DCH and those with him were with Tutsis. Bicamumpaka asked if a driver in the gathered group, named John

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[2115] Witness GTA, T. 9 March 2004 pp. 15-16, 38-40.
[2116] Witness GTA, T. 9 March 2004 pp. 16-19, 39-40; Exhibit P39 (Name of Witness DCH).
[2117] Witness GTA, T. 9 March 2004 pp. 40, 42.
[2118] Witness DCH, T. 16 September 2004 pp. 71, 75-76; T. 20 September 2004 pp. 14-15, 18; Exhibit P72 (Witness DCH's Personal Information Sheet). Witness DCH was arrested in Rwanda in 1995 and was charged with genocide, massacres, looting and related crimes. He pleaded guilty and received a sentence of 7 years on 8 December 2001. In light of his pre-trial detention, Witness DCH completed his sentence and was released on 1 February 2002. Witness DCH, T. 16 September 2004 pp. 71-73; T. 20 September 2004 p. 2; T. 22 September 2004 pp. 8-9, 14-17.
[2119] Witness DCH, T. 20 September 2004 pp. 19, 21-25; T. 21 September 2004 pp. 48-51, 54-55; T. 22 September 2004 pp. 1-2.
[2120] Witness DCH, T. 20 September 2004 pp. 26-28, 31-32; T. 21 September 2004 pp. 47-48; T. 22 September 2004 pp. 24-25.

Vuningoma, was Tutsi. He asked Vuningoma for his identity papers. Vuningoma could not produce the papers because he had lost them. Witness DCH testified that Vuningoma was hiding the papers because he was Tutsi. Bicamumpaka called a soldier, nicknamed Gacabuterezi, and told him to kill Vuningoma. Gacabuterezi shot Vuningoma immediately and removed the corpse to an existing mound of dead bodies, which were behind the prosecutor's office in the prefecture. Bicamumpaka then left towards Murambi in the same vehicle accompanied by Gacabuterezi, the gendarme and the driver.[2121]

1489. Witness DCH was approximately two to two-and-a-half metres from Bicamumpaka when he ordered the killing of Vuningoma. Bicamumpaka spoke loudly enough that people at the refreshment kiosk and in the prefecture office could hear him. In addition to 12 other drivers that were present, there were a lot of other people including unidentified people working at the prefecture headquarters and soldiers.[2122]

1490. Witness DCH knew Vuningoma because they were both drivers for the same government organisation and first met in 1989. They would meet each other at various places during their driving routes. Vuningoma had brought people from Butare to Gitarama just prior to his death. Witness DCH also knew Witness GTA, whom he identified as one of the *Interahamwe* he had transported from Cyangugu to Gitarama when Vuningoma was killed. He denied that they had ever been detained in the same prison together and stated that the last time he had spoken to him was "quite a while ago, in Cyangugu".[2123]

Bicamumpaka

1491. Bicamumpaka denied that he was in Rwanda at the relevant time to have committed this crime. Specifically, on 15 April 1994, Bicamumpaka was travelling to Bujumbura, Burundi, with the Ambassador of Burundi to Rwanda for the burial of the Burundian President, who had died in the plane crash with President Juvénal Habyarimana. They left Gitarama around 12.00 p.m., stopped in Butare for a short while and arrived at the Akanyaru border post around 5.00 p.m. Bicamumpaka reached Bujumbura around 8.00 or 8.30 p.m. The funeral took place the next day. Bicamumpaka subsequently conveyed a message from President Théodore Sindikubwabo to the new Burundian President and on the night of 17 April 1994, he travelled to Gitarama, arriving in Murambi around 1.00 a.m. on 18 April 1994.[2124]

1492. From 18 to 21 April 1994 he remained within the premises of the Murambi Centre. He was preparing documents for various organisations, including a cable to the UN's Jacques-Roger Booh-Booh, and making arrangements for government missions to Europe and New York, and, for example, a radio interview that he granted to Radio Rwanda. On 21 April, around 1.00 p.m., Bicamumpaka left Gitarama to travel to Europe passing through Gisenyi and Goma in Zaire. He was out of the country continuously starting on 23 April and

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[2121] Witness DCH, T. 20 September 2004 pp. 28-30, 32-37; T. 22 September 2004 pp. 7, 11-12, 24-25.
[2122] Witness DCH, T. 20 September 2004 pp. 30-31; T. 22 September 2004 pp. 25-26.
[2123] Witness DCH, T. 20 September 2004 p. 30; T. 22 September 2004 pp. 18-19, 23-24. Witness DCH did not testify nor was he asked about whether he knew Witness TN-1.
[2124] Bicamumpaka, T. 26 September 2007 pp. 43-45, 47-50; T. 2 October 2007 pp. 64-65; *see also* Exhibit 3D89(E) (Radio Rwanda Broadcast, 16 April 1994) p. 15; Exhibit 3D112 (Bicamumpaka's Personal Passport) p. 7. *See also* II.14.3.2.

did not return to Rwanda until 25 May. Between 25 and 31 April he was in Paris continuously and therefore could not have ordered Vuningoma's death.[2125]

1493. Further, Bicamumpaka denied knowing Witnesses GTA or DCH. However, he did confirm that his family owned a hotel that included a restaurant and a bar.[2126]

Bicamumpaka Defence Witness TN-1

1494. Witness TN-1, a Tutsi, was a bus driver at the relevant time.[2127] He knew John Vuningoma, as he was a fellow driver for the same organisation although he worked in Butare. Prior to meeting him at work, Witness TN-1 had known Vuningoma because he used to sell goods in a market in the witness's place of birth. Around September 1994, Witness TN-1 was told by a colleague, who had apparently viewed administrative papers, that Vuningoma was a Tutsi.[2128]

1495. Witness TN-1 saw Vuningoma in Gitarama in early May 1994 when they went to receive their April salaries. Approximately two weeks later, Witness TN-1 saw him again in Butare at Vuningoma's place of work, which was called Karubanda. It was a building with offices and a garage to service the vehicles. That day, Vuningoma arrived around 5.00 p.m., having transported regular passengers. Witness TN-1 believed he was coming from Cyangugu because he heard that Vuningoma had been assigned to that area. Witness TN-1 had arrived in Butare the night before from Kigali with injured soldiers, who needed to be taken to the hospital. His vehicle required repairs at Karubanda.[2129]

1496. At an unspecified time that day, three armed soldiers in uniform came to where the busses were parked at Karubanda and asked for Vuningoma, who inquired why they wanted to see him. The soldiers responded that he would be told once they reached their destination. A Michel Ruzibiza told the soldiers that Vuningoma was a colleague and asked where they were taking him. The soldiers "almost" harassed Ruzibiza and he stopped. An old Tanzanian man called Karikurubu, who was with Vuningoma, tried to run away, but was brought back by the soldiers. Both men were taken away by the soldiers. Approximately 10 people were present when this all occurred, including a man named Justin.[2130]

1497. By 6.30 or 7.00 p.m., Witness TN-1's vehicle had been repaired. Since his vehicle had been assigned to soldiers, he had to park it in the military barracks at Ngoma in Butare. As he entered the barracks he saw Vuningoma and Karikurubu sitting on the floor next to the parking area. Vuningoma's work overalls had been removed and his arms were tied behind his back. Between 10.00 and 11.00 p.m., Witness TN-1 and other unidentified people heard a lot of gunshots in the barracks. He believed that those gunshots were when "these [unidentified] people were being shot".[2131]

[2125] Bicamumpaka, T. 26 September 2007 pp. 44-45; T. 27 September 2007 pp. 36-40; T. 2 October 2007 pp. 55, 64-66; T. 8 October 2007 p. 49; T. 11 October 2007 pp. 23-25; *see also* II.14.3.3; II.14.3.4.
[2126] Bicamumpaka, T. 13 August 2007 p. 28; T. 2 October 2007 p. 66.
[2127] Witness TN-1, T. 18 October 2007 pp. 29-31, 39; Exhibit 3D161 (Witness TN-1's Personal Information Sheet).
[2128] Witness TN-1, T. 18 October 2007 pp. 30, 45-48.
[2129] Witness TN-1, T. 18 October 2007 pp. 30-33, 48-49, 55-56.
[2130] Witness TN-1, T. 18 October 2007 pp. 33-34.
[2131] Witness TN-1, T. 18 October 2007 pp. 34-35, 60-61.

1498. The next morning, Witness TN-1 returned to Gitarama. He did not see Vuningoma that day or anytime afterwards. A few days later, Witness TN-1 spent the night in Gatumba on his way to Gisenyi. In Gatumba, he met a driver named Charles Bitereye, who told him that Katagirama had died the previous day. Katagirama was Vuningoma's nickname. The next day at approximately 5.00 p.m., Witness TN-1 arrived in Gisenyi. He met some of his colleagues including Ruzibiza, Justin and an individual named Jean-Pierre. Witness TN-1 was told by Ruzibiza that a soldier came to the garage the day after he left Butare and told them that Katagirama had been killed the previous night.[2132]

1499. Witness TN-1 denied that Vuningoma met his death between 27 April and 15 May 1994 during a bus trip from Cyangugu to Gitarama in a bus driven by Witness DCH. He insisted that Vuningoma was killed in the Ngoma barracks in Butare, but conceded that Vuningoma could have been taken in a vehicle to Gitarama after he saw him being taken away. He confirmed that he did not see Vuningoma get killed.[2133]

1500. He did not know Witness GTA, but he knew Witness DCH through his work. After the genocide he heard that Witness DCH had been arrested because of crimes he committed during the genocide.[2134]

Deliberations

1501. At the outset, in November 2004 the Chamber determined that the Indictment did not plead with sufficient particularity the alleged killing of John Vuningoma. Consequently, the evidence could not support the charge of murder as a crime against humanity. It reserved the issue of whether it would consider this evidence in support of other allegations specifically pleaded in the Indictment.[2135]

1502. In this regard, the Chamber notes that the Prosecution has not pursued this allegation for any purpose in its Closing Brief, closing arguments or its 21 November 2008 Document. The absence of any further reference to this event, particularly in light of the pleading deficiencies identified by the Chamber, gives the strong impression that the Prosecution is no longer relying upon it.[2136] Nonetheless, the Chamber considers this allegation relevant to other pleaded allegations and will consider it.

1503. The Prosecution relies on the testimonies of Witnesses GTA and DCH in support of Bicamumpaka's involvement in the alleged killing of Vuningoma. The Chamber observes that the two witnesses provided generally consistent accounts about the event. They confirmed that Bicamumpaka arrived in a khaki-coloured Audi vehicle. Both heard similar accusations made by Bicamumpaka regarding the ethnicity of Vuningoma and described him as ordering Vuningoma's killing. The witnesses also confirmed the other's presence.

1504. However, this evidence cannot be viewed in isolation, but must be understood in light of the entire record. Both witnesses had pleaded guilty to genocide charges in Rwanda but

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[2132] Witness TN-1, T. 18 October 2007 pp. 34-37, 61.
[2133] Witness TN-1, T. 18 October 2007 pp. 60-61.
[2134] Witness TN-1, T. 18 October 2007 pp. 18, 59-60.
[2135] Decision on Bicamumpaka's Urgent Motion to Declare Parts of the Testimony of Witnesses GTA and DCH Inadmissible (TC), 24 November 2004, paras. 28-29. The Chamber also entered a judgement of acquittal for Bicamumpaka in respect of the count of murder as a crime against humanity. Decision on Defence Motions Pursuant to Rule 98 *bis*, 22 November 2005, paras. 18, 80.
[2136] *Ntagerura et al.* Appeal Judgement, paras. 148-150.

had been released prior to testifying in this proceeding. The Chamber observes that there is no obvious connection between their crimes and those alleged to have been committed by Bicamumpaka.[2137] Similarly, they have no ostensible interest in inculpating him. Nonetheless, several issues raise concern about their testimonies.

1505. As noted elsewhere, Witness GTA provided statements to Tribunal investigators on 22 June 1999, 5 June 2001, 19 March 2003 and 15 April 2003 (II.11.2). However, he only mentioned Bicamumpaka in his April 2003 interview, approximately one month after his release from prison. The failure to mention Bicamumpaka in the June 2001 and March 2003 statements appears reasonable given their focus on Siméon Nchamihigo and an unrelated event at a roadblock in Cyangugu, respectively.[2138] However, the absence of any mention of this event from his June 1999 statement raises questions. Its contents, although focussed on Cyangugu, are broad ranging, referencing preparations for the genocide as early as 1993 and events throughout it. It implicates prominent persons, as well as several local and national government officials.[2139] The absence of any reference to having observed Bicamumpaka order the killing of a Tutsi is troubling. As discussed elsewhere, the fact that Witness GTA's April 2003 statement is generally consistent with his testimony on this issue does not bolster his reliability (II.11.2). Indeed, the shift in his evidence between his June 1999 and his April 2003 statements is also troubling.

1506. Turning to Witness DCH, the Defence sought to discredit him based on two previous statements to Tribunal investigators, dated 23 February 2000 and 23 April 2003. Witness DCH confirmed that in his February 2000 statement he did not allege that Bicamumpaka ordered the killing, but that he arrived at the scene of the crime *after* the murder had been committed. However, he testified that in his April 2003 statement he first described Bicamumpaka ordering Vuningoma's murder.[2140]

1507. The witness explained that he did not initially tell Tribunal investigators that Bicamumpaka ordered Vuningoma's killing because his Rwandan criminal proceedings were pending. He was afraid of being considered an accomplice to this crime and generally feared "bad consequences".[2141] Indeed, his April 2003 statement affirms that he omitted facts about Bicamumpaka's involvement in this incident based on such concerns.[2142] The Chamber is troubled that Witness DCH would intentionally mislead Tribunal investigators only to correct his misstatements once his own criminal proceedings had been resolved. While his fears may

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[2137] *See* Witness GTA, T. 9 March 2004 pp. 5-6, 23-28; Witness DCH, T. 16 September 2004 pp. 71-73; T. 20 September 2004 p. 2; T. 22 September 2004 pp. 8-9, 14-17.
[2138] Exhibit 2D6(E, F & K) (Witness GTA's Statements, 22 June 1999, 5 June 2001, 19 March 2003 and 15 April 2003) pp. 22-25, 27.
[2139] Exhibit 2D6(E, F & K) (Witness GTA's Statements, 22 June 1999, 5 June 2001, 19 March 2003 and 15 April 2003) pp. 17-20.
[2140] Witness DCH, T. 20 September 2004 pp. 33-36; T. 22 September 2004 pp. 5-7, 9-12.
[2141] Witness DCH, T. 20 September 2004 pp. 33-36; T. 22 September 2004 pp. 9-17.
[2142] Witness DCH's April 2003 statement was not admitted. However, the relevant aspects were read onto the record at T. 22 September 2004 pp. 9-10: "I would like to bring the following information to your attention to complete my statement of 23 February 2000. At that time, my case was pending before the courts in my country. I did not know what effects some revelations would have on me. It was for that reason that I remained silent about the role played by Bicamumpaka."

have been reasonable, they also reflect a clear willingness to craft evidence in order to protect his particular interests. Such conduct warrants that his evidence be treated with caution.[2143]

1508. The Defence has also argued that Witnesses GTA and DCH colluded in incriminating Bicamumpaka. They point to the fact that they only first implicated him in the killing of Vuningoma in statements obtained eight days apart in April 2003. Furthermore, while Witness GTA testified that approximately 50 persons were present during the killing, he only identified Witness DCH among them.[2144]

1509. The Chamber has already expressed its concern that Witnesses GTA and DCH had failed to describe Bicamumpaka's involvement in this incident in earlier statements. Nonetheless, there is no evidence that the two were, for example, incarcerated together or met after the incident.[2145] The fact that Witness GTA identified Witness DCH could have resulted from preparation by the Prosecution, but does not reflect tampering or alteration of evidence. In this regard, the Chamber recalls that Witness DCH did not spontaneously mention Witness GTA. Rather, Witness DCH only identified him as one of the *Interahamwe* he had transported from Cyangugu to Gitarama when Vuningoma was killed after being asked by Bicamumpaka Defence Counsel if he knew him.[2146]

1510. Furthermore, the Defence points to evidence led through six witnesses and a supporting exhibit to argue that Witness DCH had fabricated testimony in his Rwandan proceeding. For the purposes of witness protection, the Chamber cites to the relevant paragraph of the Confidential Bicamumpaka Closing Brief but not the excerpts in the record.[2147]

1511. Having reviewed the relevant witness testimonies, the Chamber observes that three of the Defence witnesses testified that Witness DCH gave false testimony in the Rwandan proceeding. Another heard that Witness DCH gave testimony against persons, but not that it was false. Two others were not asked, nor did they testify about Witness DCH. The Kigali Court of First Instance judgement in which these Defence witnesses were tried alongside of Witness DCH was also entered. It refers to a witness indicating that Witness DCH gave false testimony about him on the basis of which, among other evidence, he was sentenced to death for genocide. However, there is no finding in relation to this allegation about false testimony.[2148]

1512. Viewed collectively, the collateral concerns about the credibility of Witnesses GTA and DCH discussed above warrant that their evidence be treated with caution. These concerns are compounded by questions about their ability to identify Bicamumpaka. Specifically, the Chamber has elsewhere doubted Witness GTA's ability to identify Bicamumpaka in 1994

[2143] *Cf. Nchamihigo* Appeal Judgement, paras. 305, 309, 312-314 (overturning factual findings of the Trial Chamber, in part, because insufficient caution was used when assessing the evidence of an accomplice witness who admitted to misleading judicial officials in his own criminal case).
[2144] Bicamumpaka Closing Brief, paras. 394, 402, 404; Witness GTA, T. 9 March 2004 pp. 16-19; Witness DCH, T. 22 September 2004 p. 19.
[2145] Witness DCH, T. 22 September 2004 pp. 18-19; Witness GTA, T. 9 March 2004 pp. 40, 42.
[2146] Witness DCH, T. 22 September 2004 p. 19.
[2147] Bicamumpaka Closing Brief, para. 401. The exhibit referenced at footnote 452 of paragraph 401 of the Brief was admitted through the Defence witness, whose identity is not disclosed here.
[2148] Bicamumpaka Closing Brief, para. 401. *See* pp. 75, 77, 78, 89, 98-100, 150 of the exhibit referenced in Bicamumpaka Closing Brief, para. 401, fn. 452. In evaluating this evidence the Chamber has noted that multiple pages of the judgement are missing.

(II.11.2). He testified that he had only seen Bicamumpaka once before Vuningoma's alleged murder at the purported April 1994 meeting at Cyangugu.[2149] His basis for identifying Bicamumpaka on this second occasion relies entirely on having previously seen him in April 1994.[2150] However, the Chamber has discredited this evidence (II.11.2). Consequently, his identification in this instance similarly lacks credibility.

1513. Turning to Witness DCH's identification, he testified to having met Bicamumpaka on several occasions starting as early as 1978 or 1979. Notably, he had stayed at Bicamumpaka's father's hotel.[2151] Bicamumpaka confirmed that his father did indeed operate a hotel during the relevant period and that he worked full time with him in his various businesses. However, he denied knowing Witness DCH.[2152] When asked to identify Bicamumpaka in the courtroom, Witness DCH pointed to Prosper Mugiraneza. He then stated that Bicamumpaka was not present.[2153] There is no mention in the transcript for that day of trial that Bicamumpaka was absent and the Chamber has reviewed the video recording for that day and confirms that Bicamumpaka was present. The following day, Witness DCH stated that he had been having problems with his sight for a few days and his spectacles had recently broken.[2154] Given the Chamber's general concerns about Witness DCH's credibility, his identification of Bicamumpaka in 1994 is also called into question.

1514. Furthermore, differences emerge in their accounts. For example, Witness GTA testified that there was only one other person in the car which Bicamumpaka was driving, whereas Witness DCH testified that there were three people in the car and that Bicamumpaka was in the rear passenger seat. Witness GTA testified that Bicamumpaka remained in his vehicle, while Witness DCH stated that Bicamumpaka stepped out of his car before ordering Vuningoma's death. Witness GTA stated that Bicamumpaka identified Vuningoma as a Tutsi and ordered his death. Witness DCH testified that Bicamumpaka asked for Vuningoma's identity papers before pronouncing his execution. The Chamber considers these differences to be minor and explicable by the passage of time.

1515. However, the Chamber is troubled by the different dates provided by Witnesses GTA and DCH. Witness DCH places the event between 28 April and 10 May 1994. Witness GTA did not provide a date for this incident but only that it was after the meeting in Cyangugu that took place between 12 and 15 April. The Chamber notes that in his written statement of 15 April 2003, Witness GTA states that he went to Kigali a few days after the Cyangugu meeting (which is undated in the statement) and the event occurred *en route*.[2155] The Defence submits that this contradicts the testimony he gave in the *Nahimana et al.* trial where he stated that he "remained in Cyangugu until May 1994". Although Witness GTA confirmed his testimony in the *Nahimana et al.* trial when it was read to him in court, the Chamber considers that it is confusing as to the date from which Witness GTA was in Cyangugu, as in

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[2149] Witness GTA, T. 9 March 2004 pp. 26, 28-30, 50-53.
[2150] Witness GTA, T. 9 March 2004 p. 16 (Witness GTA stated that he "knew he was the same person who had attended the meeting [at the MRND hall], and that people around there at the roadblock in Gitarama said the government is implementing the decisions it has taken.").
[2151] Witness DCH, T. 20 September 2004 pp. 19, 21-25; T. 21 September 2004 pp. 48-51, 54-55; T. 22 September 2004 pp. 1-2.
[2152] Bicamumpaka, T. 13 August 2007 p. 28; T. 2 October 2007 p. 66.
[2153] Witness DCH, T. 20 September 2004 pp. 37-38.
[2154] Witness DCH, T. 20 September 2004 pp. 37-38; T. 21 September 2004 pp. 51-52.
[2155] *See* Exhibit 2D6(E, F & K) (Witness GTA's Statements, 22 June 1999, 5 June 2001, 19 March 2003 and 15 April 2003).

the excerpt read into the record he also acknowledged going to Kigali to visit relatives. The Chamber therefore rejects this Defence submission about a contradiction between Witness GTA's testimony in this case and *Nahimana et al.*[2156] Nonetheless it does accept that there is no corroboration of Witness DCH's testimony that this event took place between 28 April and 10 May.

1516. Turning to the Defence evidence, Bicamumpaka provided an alibi for both sets of dates. First, on 15 April 1994 he left Rwanda for Burundi and returned to Gitarama, arriving in Murambi around 1.00 a.m. 18 April (II.14.3.2). Bicamumpaka's testimony is corroborated by his personal passport, which has an entry stamp for Burundi on 15 April 1994 and an exit stamp dated two days later. Furthermore, a Radio Rwanda broadcast on 16 April 1994 also confirmed that Bicamumpaka attended the slain Burundian President's funeral in Bujumbura.[2157]

1517. Second, Bicamumpaka's diplomatic passport supports his testimony that he entered Zaire on 23 April 1994. It further indicates continuous travel outside of Africa, until he returned to Zaire on 22 May (14.3.4).[2158]

1518. The Chamber recalls that Witness TN-1, a colleague of Vuningoma, denied that he met his death between 27 April and 15 May 1994 when travelling in a bus from Cyangugu to Gitarama. Witness TN-1 insisted that Vuningoma was killed in the Ngoma barracks in Butare. The Prosecution attempted to challenge this witness's credibility on the basis of his August 2004 statement to Tribunal investigators in which he stated that he came to Butare from Cyangugu, and Vuningoma came there from Gitarama. This was in contradiction to his evidence in which he stated that he was arriving from Kigali and Vuningoma from Cyangugu. The Chamber does not consider this discrepancy to be material and finds that Witness TN-1's evidence raises doubt in the Prosecution evidence.[2159]

1519. In conclusion, while the Chamber notes that Witnesses GTA and DCH corroborate each other on key aspects of this allegation, it does not find that this is sufficient to surmount its significant doubts about their evidence. Specifically, the Chamber is troubled by their weak identification of Bicamumpaka; the different dates they put on this event; by Witness GTA's failure to mention this incident in his first broad statement to Tribunal investigators and by Witness DCH's omission of Bicamumpaka's role in the murder in his first prior statement regarding this incident. The Chamber considers that combined, these factors raise doubts in their evidence. Moreover, the evidence of Witness TN-1 raises further doubt in the Prosecution evidence. While the self-interested nature of Bicamumpaka's testimony leads the Chamber to view it with suspicion, Bicamumpaka's passport entries and the frailties of

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[2156] Witness GTA, T. 9 March 2004 p. 32; Bicamumpaka Closing Brief, para. 395.
[2157] Exhibit 3D89(E) (Radio Rwanda Broadcast, 16 April 1994) p. 15; Exhibit 3D112 (Bicamumpaka's Personal Passport) pp. 7-8.
[2158] Exhibit 3D113 (Bicamumpaka's Diplomatic Passport) pp. 8-12.
[2159] In reaching this conclusion the Chamber has considered the witness's explanation about the difference between his 2004 statement as opposed to his testimony. Notably, while his interview was conducted in Kinyarwanda in a vehicle full of passengers, his statement was then translated and read to him in French, a language he does not understand, which the interviewer knew. He nonetheless signed it as he trusted the interviewer and thought the interviewer had written down what he had said. He realised the mistake when he gave the will say statement and the interviewers repeated his initial statement to him in Kinyarwanda. He informed the interviewers of the mistake and they changed it. *See* Witness TN-1, T. 18 October 2007 pp. 49, 55-56. The Prosecution did not enter as an exhibit the 2004 statement, which was referenced in court. The Chamber has reviewed the excerpt of the statement, which was read into the record.

Witnesses DCH and GTA's testimony (described above) create a doubt in the Prosecution case. As a result, the Chamber does not find that the Prosecution has proven beyond reasonable doubt that Bicamumpaka ordered soldiers to kill a driver, John Vuningoma, because he was Tutsi.

10.3 Killing of Jean-Baptiste Muyango, Around 11 May 1994

Introduction

1520. The Indictment alleges that although the Accused were aware that from 7 April 1994 their subordinates were committing massacres of civilians, they took no measures to prevent these crimes or to punish the perpetrators. Specifically, the Prosecution argues that around 11 May 1994, Mugenzi's "bodyguard" killed a Tutsi named Jean-Baptiste Muyango in Gitarama prefecture. Mugenzi knew or had reason to know about this event and failed to prevent the killing or punish the perpetrator. Prosecution Witness GKJ testified about this event.[2160]

1521. The Mugenzi Defence submits that insufficient notice was provided for this allegation. It also argues that Witness GKJ's evidence is hearsay, uncorroborated and lacks credibility. Even if believed, Mugenzi was not involved in and lacked knowledge of the alleged crime. Specifically, Mugenzi and his family were not in the area when it occurred. Mugenzi and Defence Witnesses Jeanette Uzamukunda, Mechtilde Mukandagijimana, Vestine Ugiranyina, Edreda Mukagakwavu, Agnès Ntamabyaliro, WZ8, Emmanuel Ndindabahizi and André Ntagerura provided relevant evidence.[2161]

Evidence

Prosecution Witness GKJ

1522. Witness GKJ, possessed a Hutu identity card but had a Tutsi father and a Hutu mother. A member of the MDR party, he held a local government position in Nyamabuye commune, Gitarama prefecture, in 1994.[2162] About one week after 12 April 1994, the witness learned that Mugenzi had moved members of his family into the home of his brother-in-law, Aloys Bizimungu, at Kivumu sector, Gitarama prefecture, on 15 April. The witness was unaware of their exact relation to Mugenzi, but learned that they were protected by military

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[2160] Indictment, paras. 6.14, 6.30-6.31, 6.35, 6.67-6.68; Prosecution Pre-Trial Brief, para. 187 (p. 41); Prosecution Closing Brief, para. 189; Prosecution 21 November 2008 Document, Item No. 57. The Prosecution Closing Brief and its 21 November 2008 Document indicate that Muyango was killed between 12 April and 30 May 1994. However, Witness GKJ, the sole individual to testify about this event, stated that the killing was around 11 May 1994. This correction is reflected in the summary above.

[2161] Mugenzi Closing Brief, paras. 1324-1328, 1337-1352, 1471-1487; Mugenzi Closing Arguments, T. 2 December 2008 pp. 84-85.

[2162] Witness GKJ, T. 22 September 2004 pp. 44-46; T. 23 September 2004 pp. 2-3; Exhibit P74 (Witness GKJ's Personal Information Sheet). Witness GKJ was first arrested around 20 July 1994. Placed in a house near Gitarama prison, he underwent interrogation and was released after a week without charge. He was next arrested on 14 or 15 March 1997, after having testified in the *Akayesu* trial, and detained in Gitarama prison on suspicion of having taken part in the 1994 genocide. He pleaded not guilty. Between February and May 2003, the witness attended a mass re-education program in Ingando and was returned to Gitarama prison on 14 August 2003. At the time of his testimony, he remained incarcerated without formal charges against him. T. 22 September 2004 pp. 44-45; T. 24 September 2004 pp. 14, 17-20, 28-29, 31; T. 27 September 2004 pp. 21-23, 55; T. 28 September 2004 pp. 34-37; Exhibit 2D32 (Witness GKJ's *Pro Justicia* Statement, 17 December 1999).

escorts. Around 12 May, Witness GKJ learned from the Kivumu sector *conseiller* that, the previous day, 11 May, these military escorts went into a shop and asked if any Tutsis were present. Jean-Baptiste Muyango, a person with whom Witness GKJ had previously worked, was identified by persons there as a Tutsi. The soldiers shot Muyango and killed him. The witness interpreted the act to mean that the soldiers were sending a message to those around them that Tutsis were to be killed.[2163]

1523. The witness also heard that a roadblock was set up on the tarmac road about 400 metres from where the Mugenzi family stayed and manned by the soldiers protecting Mugenzi's family, the same ones who killed Muyango. The barrier was situated on a common route used by many who were running away, and many persons were killed there.[2164]

Mugenzi

1524. Mugenzi first heard about a man named Muyango on the day of Witness GKJ's testimony, through the witness's will-say statement and subsequent testimony. Mugenzi explained that he had no power to punish one of his personal guards or anyone who would have been involved in that killing.[2165]

1525. Mugenzi's parents lived in Shyogwe, about 10 kilometres from Gitarama town. His mother-in-law and sister-in law, together with her two children and a niece, were in Gitarama town at the home of the prefecture's Minister of Commerce. Mugenzi informed the prefect of Gitarama and asked him to look after them, particularly when Mugenzi would be away. No guards or armed persons provided security to them. Mugenzi's sister and "brother-in-law" lived in Kivumu, 10 kilometres outside of Gitarama town. Mugenzi visited them but they did not have guards.[2166]

1526. Mugenzi left Rwanda on 22 April 1994, visited several countries, and returned on 13 May 1994, arriving in Cyangugu. He stayed there until 18 May and then returned to Gitarama.[2167]

Mugenzi Defence Witness Jeannette Uzamukunda

1527. Jeannette Uzamukunda, a Tutsi, is Mugenzi's wife.[2168] On 14 April 1994, Uzamukunda and her children were evacuated from the French Embassy in Kigali to Bujumbura, Burundi, and then later to Bukavu, Zaire. Mugenzi was with her until she was evacuated. Uzamukunda and her children stayed in Zaire for about two weeks before moving to Cyangugu. She next saw Mugenzi in mid-May 1994 in Cyangugu. Mugenzi told her that

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[2163] Witness GKJ, T. 23 September 2004 pp. 39-40; T. 27 September 2004 pp. 3-12.
[2164] Witness GKJ, T. 23 September 2004 p. 40.
[2165] Mugenzi, T. 9 November 2005 p. 83.
[2166] Mugenzi, T. 9 November 2005 pp. 82-83.
[2167] Mugenzi, T. 9 November 2005 p. 75; T. 10 November 2005 pp. 43, 54-55, 65-69; T. 14 November 2005 pp. 17, 61; T. 15 November 2004 p. 61; T. 24 November 2004 p. 12; T. 28 November 2005 pp. 3, 5-9, 11-15, 17-19, 22, 26-27, 29; T. 30 November 2005 pp. 19-21, 25; Exhibit P3(4)(E, F & K) (Mugenzi's Passport issued in Kigali on 21 April 1994); Exhibit P117 (Human Rights Watch Press Release, 29 April 1994) (mentions statements Mugenzi made to reporters in Nairobi); Exhibit P118 (Outgoing Cable from Booh-Booh to Annan, 30 April 1994).
[2168] Uzamukunda, T. 20 April 2006 pp. 47-48; Exhibit 2D98 (Uzamukunda's Personal Information Sheet).

he had just returned from a mission abroad. Uzamukunda was not in Gitarama in April 1994 or any time since before the war. She also testified that the gendarmes who were assigned to Mugenzi were not under his control. Rather, they were under the control of the gendarmerie. Mugenzi could not order them to do things.[2169]

Mugiraneza Defence Witness Mechtilde Mukandagijimana

1528. Mechtilde Mukandagijimana, a Hutu, is the wife of Prosper Mugiraneza.[2170] Mukandagijimana testified that on 12 April 1994 she travelled from Rwanda to Bujumbura with the wife of Mugenzi, Jeannette Uzamukunda, and her children.[2171]

Mugenzi Defence Witness Vestine Ugiranyina

1529. Vestine Ugiranyina, a Tutsi, is Mugenzi's sister-in-law and was living in Rukara commune, Kibungo, in 1994.[2172] On 15 April she travelled with her family to Gitarama prefecture, first staying in Shyogwe at the home of Mugenzi's friend, Baptista Kamugisha. At an unknown later date, Mugenzi's sister Christine arrived with some gendarmes to take Ugiranyina and her family to a house behind the democracy stadium, in Gitarama town.[2173]

Mugenzi Defence Witness Edreda Mukagakwavu

1530. Edreda Mukagakwavu, a Hutu, is Mugenzi's mother and was living in Rukara commune, Kibungo in 1994.[2174] Near the end of April 1994, Mukagakwavu went with her family and Vestine Ugiranyina's family to Shyogwe, staying at the home of Baptista Kamugisha, a friend of Mugenzi's. Mugenzi came to visit them once at an unidentified time. Around mid-May 1994, the family left Gitarama and went to Kibuye.[2175]

Mugenzi Defence Witness Agnès Ntamabyaliro

1531. Agnès Ntamabyaliro, a Hutu, was appointed Minister of Justice in July 1993. She retained this post when the Interim Government was formed on 9 April 1994.[2176] Ntamabyaliro explained that if Mugenzi came to know that a gendarme was involved in the killing of Muyango, he could have only reported the event to the relevant authorities or the superior officer of the gendarme. Mugenzi himself did not have authority to perform an arrest or prosecution.[2177]

[2169] Uzamukunda, T. 20 April 2006 pp. 54-59, 72; T. 21 April 2006 p. 20.
[2170] Mukandagijimana, T. 1 May 2008 pp. 5, 25-26; Exhibit 4D123 (Mukandagijimana's Personal Information Sheet).
[2171] Mukandagijimana, T. 1 May 2008 pp. 45-46.
[2172] Ugiranyina, T. 19 April 2006 p. 64.
[2173] Ugiranyina, T. 20 April 2006 pp. 10-19, 23-29, 36.
[2174] Mukagakwavu, T. 24 April 2006 pp. 5, 7.
[2175] Mukagakwavu, T. 24 April 2006 pp. 11-12.
[2176] Ntamabyaliro, T. 21 August 2006 pp. 3, 7; Exhibit 2D102 (Ntamabyaliro's Personal Information Sheet). At the time of her testimony, Agnès Ntamabyaliro was a detainee in Kigali prison. Her trial for genocide charges had commenced but was postponed so that she could testify before the Tribunal. T. 23 August 2006 p. 19.
[2177] Ntamabyaliro, T. 21 August 2006 pp. 22, 29-33.

Mugenzi Defence Witness WZ8

1532. Witness WZ8, a Hutu member of the gendarmerie, testified that gendarmes assigned to protect political figures received orders from the military authorities that dispatched them, not civilian authorities. Gendarmes who committed crimes were judged and punished by a military court called the *Conseil de Guerre*. Civil authorities could only inform military authorities who would then make the decision to prosecute. The same rules and procedures also applied to members of the Rwandan army.[2178]

Bizimungu Defence Witness Emmanuel Ndindabahizi

1533. Emmanuel Ndindabahizi, a Hutu, was Minister of Finance in the Interim Government, established on 9 April 1994.[2179] Ndindabahizi testified that Mugenzi left Rwanda on 23 April 1994 for mission. He met Mugenzi at the Hilton hotel in Nairobi, Kenya on 11 May. Ndindabahizi knew that Mugenzi had been on mission to several African countries, but he did not know the particulars of Mugenzi's visit, nor did they discuss it. They stayed at the same hotel for one or two nights.[2180]

Bizimungu Defence Witness André Ntagerura

1534. André Ntagerura, a Hutu, was re-appointed Minister of Transport and Communication for the Interim Government on 9 April 1994.[2181] Without providing further details, Ntagerura testified that he went on mission to Zaire with Mugenzi on 16 May 1994.[2182]

Deliberations

1535. Relying solely on Witness GKJ, the Prosecution has presented evidence that around 11 May 1994, military escorts protecting Mugenzi's family, who were residing at his brother-in-law's home in Kivumu sector, killed Jean-Baptiste Muyango. Muyango had been identified to the perpetrators as a Tutsi.

1536. Mugenzi concedes that he had a brother-in-law who lived in Kivumu sector and that he had gone to this home once the minister had relocated to Gitarama. However, Mugenzi also presented evidence that members of his family, who had fled from other regions in Rwanda because of fighting, were staying either in other areas or outside of Rwanda at the time of the alleged killing of Muyango. None of the family members in Gitarama had security assigned to them. Furthermore, Mugenzi did not have authority over security personnel, or authority to punish perpetrators of this killing. Mugenzi also denies knowledge of the purported killing, pointing to evidence that he was out of the country at the time.

[2178] Witness WZ8, T. 18 September 2006 pp. 20, 40-42; T. 19 September 2006 p. 5.
[2179] Ndindabahizi, T. 30 April 2007 pp. 4-5; Exhibit 1D158 (Ndindabahizi's Personal Information Sheet). Ndindabahizi is presently serving a life sentence for his role in the events in Rwanda in 1994. Ndindabahizi, T. 30 April 2007 pp. 5, 45-49. Notably, Ndindabahizi was not tried for crimes in Rwanda based on his position as Minister of Finance of the Interim Government. T. 30 April 2007 p. 35. At the time of his testimony, he resided in the United Nations Detention Facility with the Accused. T. 1 May 2007 pp. 49-50.
[2180] Ndindabahizi, T. 1 May 2007 pp. 43-44, 74-75; *see also* T. 30 June 2007 pp. 41-42, 44.
[2181] Ntagerura, T. 14 February 2007 pp. 65-68; Exhibit 1D152 (Ntagerura's Personal Information Sheet). Ntagerura, formerly an accused before the Tribunal, was acquitted of all counts. T. 19 February 2007 pp. 40-41.
[2182] Ntagerura, T. 15 February 2007 p. 43; T. 20 February 2007 p. 47.

1537. In assessing the credibility of Witness GKJ, the Chamber recalls that he was incarcerated at the time of his testimony and waiting to be tried for his purported role in the 1994 genocide.[2183] The Chamber has discussed elsewhere the circumstances of his arrest, which followed his testimony in the *Akayesu* trial in 1997. The Chamber views his evidence with the appropriate caution, as his testimony in this trial may be motivated by a desire to positively influence his own proceedings (II.8.5).

1538. Witness GKJ testified that he was unaware of the exact crimes with which he was charged. The Chamber observes that he provided a *pro justicia* statement to Rwandan authorities in 1997, during which he was questioned about his alleged incitement to kill Tutsis in collaboration with, among other persons, "Aloys Bizimungu".[2184] When confronted with this aspect of his recorded interview, he denied that he was involved in crimes, explaining that his "own understanding is that the government may be held responsible – for some of these allegations and some other people may be held responsible".[2185] The explanation, which does not directly rebut criminal allegations but re-directs responsibility for them to the "government", does not eliminate concerns about the witness's possible interests in inculpating Mugenzi to favourably impact his criminal proceedings.[2186]

1539. The Defence has also challenged Witness GKJ's credibility based on omissions and purported inconsistencies between his 22 May 1996 and 19 August 2003 statements to Tribunal investigators and his testimony before the Chamber.[2187] In particular, neither statement contains reference to this event. Indeed, the first mention of this event was in Witness GKJ's will say statement.

1540. When reviewing the May 1996 statement in its entirety, it is clear that focus of the investigation at that time pertained to the conduct of former Taba commune *Bourgmestre* Jean-Paul Akayesu. While it also includes reference to Mugenzi, it does so in the context of describing one of the three meetings attended by Gitarama's local government officials, including Akayesu.[2188] Given that Mugenzi was not the focus of that investigation, the omission of any reference to Mugenzi's security personnel purportedly killing Muyango is not surprising.

1541. Turning to the August 2003 statement, it mentions Mugenzi and his family going to his brother-in-law's home on 13 April 1994 but does not discuss the killing of Muyango.[2189] The remainder of the statement's content details what occurred each day from 12 to 18 April 1994, and provides a lengthy description of the 18 April 1994 security meeting chaired by the

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[2183] Witness GKJ, T. 22 September 2004 p. 44; T. 24 September 2004 pp. 19-23, 30-33; T. 27 September 2004 pp. 21-23; Exhibit 2D29 (Excerpt of *Akayesu* Trial Transcripts, 28 January 1998); Exhibit 2D32 (Witness GKJ's *Pro Justicia* Statement, 17 December 1999).
[2184] Exhibit 2D32(E & K) (Witness GKJ's *Pro Justicia* Statement, 17 December 1999) p. 1 ("It is alleged that you collaborated with Minister Callixte Nzabonimana, Aloys Bizimungu, Habimana and Bonaventure. It is said that with them you were inciting the population to kill their neighbours. What about that?").
[2185] Witness GKJ, T. 27 September 2004 p. 23.
[2186] *See also* Exhibit 2D32(E & K) (Witness GKJ's *Pro Justicia* Statement, 17 December 1999) p. 5 (In responding to this question, Witness GKJ described circumstances detailing why he could not have worked in collaboration with Nzabonimana and concluded that he must have been mistakenly identified; he did not expressly respond to the allegation as it related to Aloys Bizimungu).
[2187] Exhibit 2D28(E & F) (Witness GKJ's Statements, 22 May 1996 and 19 August 2003).
[2188] Exhibit 2D28(E & F) (Witness GKJ's Statements, 22 May 1996 and 19 August 2003) p. 4.
[2189] Exhibit 2D28(E & F) (Witness GKJ's Statements, 22 May 1996 and 19 August 2003) pp. 12-13.

Prime Minister.[2190] The statement also gives additional details, although with less precision, about the situation in Gitarama after the 18 April meeting and later instructions received from the Interim Government.[2191] Once again, the Chamber considers the omission of any reference to the Muyango killing immaterial, given its rather remote connection to Mugenzi and the second-hand basis of Witness GKJ's knowledge of the killing.

1542. The Defence also highlights alleged inconsistencies between Witness GKJ's witness statements and testimony. In particular, it confronted him with the fact that his August 2003 statement indicates that Mugenzi lived with his brother-in-law in Kivumu, while he had earlier testified that Mugenzi stayed elsewhere. The witness responded that Mugenzi had taken his family there, that security escorts were provided and that Mugenzi had visited his family. The witness felt that there was little difference between his statement and testimony.[2192]

1543. The Chamber observes that the English translation of the statement is ambiguous as to whether Mugenzi lived at his brother-in-law's home or if he just brought his family there. The French version, which was signed by the witness, however, gives the clear impression that he resided there.[2193] The Chamber considers that discrepancy is immaterial. Variances between the statement and Witness GKJ's later testimony could reasonably be attributed to recording error or insufficient questioning during the interview process.

1544. The Defence also confronted Witness GKJ with his will-say statement, which indicated that he learned that Mugenzi came to Kivumu sector around 12 April 1994, yet decided not to pay a visit to Mugenzi for fear of associating with him. However, while testifying, Witness GKJ had previously claimed that it was only after the killing of Muyango that he knew Mugenzi and his family were in the area.[2194] Witness GKJ's testimony reflects that he never visited the Mugenzi family nor did he have personal knowledge of their presence in Kivumu sector. Under the circumstances, the ambiguity about when he knew of their arrival is understandable.

1545. Turning to the merits of the allegation, the Chamber notes that the Prosecution did not lead any direct evidence that Mugenzi knew that military escorts assigned to family members of his were involved in the purported killing of Muyango. Witness GKJ's testimony does not implicate Mugenzi in the killing. Specifically, it does not describe Mugenzi as being present or having given an order to kill Muyango. Rather, the Prosecution invites the Chamber to infer this connection based on Witness GKJ's evidence that the military escorts were

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[2190] Exhibit 2D28(E & F) (Witness GKJ's Statements, 22 May 1996 and 19 August 2003) pp. 13-15.
[2191] Exhibit 2D28(E & F) (Witness GKJ's Statements, 22 May 1996 and 19 August 2003) pp. 15-16.
[2192] Witness GKJ, T. 27 September 2004 pp. 3, 5-7.
[2193] *See* discussion at T. 27 September 2004 pp. 6-7; *Compare* Exhibit 2D28(E & F) (Witness GKJ's Statements, 22 May 1996 and 19 August 2003) p. 8 ("*Le 13 avril 1994, le gouvernement provisoire était installé à Murambi, et des gendarmes, des militaires, des miliciens et les familles de tous les ministres se trouvaient à Murambi. Cependant, certains ministres tel que Mugenzi Justin, ministre du commerce avec sa famille* ***s'est installé*** *dans la résidence de son beau frère à Kivumu.*"), *and* p. 13 ("On 13 April 1994, the transitional government was installed in Murambi; gendarmes and soldiers, militiamen and family members of all the ministers were at Murambi. However, some ministers such as Justin Mugenzi, Minister of Trade, and his family **went** to the residence of his brother in law at Kivumu.") (emphasis added).
[2194] Witness GKJ, T. 27 September 2004 pp. 8-12.

guarding Mugenzi's family. However, his evidence that these military escorts were involved in the killing of Muyango is also hearsay, and, consequently, of limited probative value.[2195]

1546. Furthermore, the Chamber considers that Witness GKJ's evidence that Mugenzi's family stayed at Aloys Bizimungu's home is also of questionable reliability. It observes that Mugenzi conceded that his sister and brother-in-law did live in Kivumu sector and that he had gone there once since relocating to Gitarama. However, Witness GKJ never went to Aloys Bizimungu's home or identified the persons staying there as members of Mugenzi's family. He frequently explained that he was unsure of their relation to the Interim Government minister. Likewise, Witness GKJ did not personally verify that the soldiers who purportedly killed Muyango were military escorts working under Mugenzi's instructions or protecting his family.[2196]

1547. Indeed, the Mugenzi Defence has brought evidence that his immediate family never went to Gitarama. Extended family members who did go to this prefecture testified that they stayed in Shyogwe and then Gitarama town. Mugenzi denied that he provided them, or his brother-in-law, with security escorts.[2197]

1548. Furthermore, the Defence has presented evidence that Mugenzi was not in control of security assigned to him or his family, which were identified as gendarmes (rather than soldiers). Rather, they were under the control of the gendarmerie.[2198] Punishment of a gendarme could only come from a particular gendarme's superior officer or other relevant authority. Ministers and ordinary citizens, according to Defence evidence, did not have authority to punish.[2199]

1549. Under the circumstances, the Chamber has reservations about the reliability of Witness GKJ's evidence as it relates to the killing of Muyango and about whether the purported perpetrators were military escorts assigned by Mugenzi to protect his family. Even

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[2195] Witness GKJ, T. 23 September 2004 p. 40 ("[T]he following day, the *conseiller* came to tell me about it [killing of Muyango]"); T. 27 September 2004 pp. 8 ("[T]here was a report that the soldiers escorting his family had killed someone called Jean-Baptiste Muyango"), 9 ("[T]he soldiers who guarded the family killed Muyango, and the *conseiller* of that area came to report to me ... I did not go there to monitor the situation, but according to what I was told, there were brothers of his wife's and his children, and other people close to the family, either friends or relatives.").

[2196] Witness GKJ, T. 27 September 2004 pp. 8-9.

[2197] Mugenzi's sister and brother-in-law lived in Kivumu but did not have any guards. Mugenzi, T. 9 November 2005 pp. 82-83. Uzamukunda was in Zaire and then Cyangugu during the relevant period and had not gone to Gitarama once the war had commenced. Uzamukunda, T. 20 April 2006 pp. 54-59, 72. Uzamukunda's evidence that she was in Zaire is corroborated by Mukandagijimana. Mukandagijimana, T. 1 May 2008 pp. 45-46. Mukagakwayu and family stayed in Shyogwe. Mukagakwavu, T. 24 April 2006 pp. 11-12. Ugranyina and family stayed in Shyogwe and then Gitarama town. Ugiranyina, T. 20 April 2006 pp. 10-19, 23-29, 36. The Chamber also observes that Fidèle Uwizeye, the Gitarama Prefect in April 1994, testified that, on 14 April 1994, Mugenzi brought Vestine Ugiranyina and an old lady to Uwizeye and asked him to find them accommodation. Uwizeye hid them in the home of an employee of the ministry of commerce. Mugenzi did not check where Uwizeye hid the two women. Uwizeye, T. 11 April 2005 pp. 19-21. The Chamber considers it unnecessary to resolve the discrepancies between the accounts of Mugenzi and Uwizeye about the placement of these women. Notably, Uwizeye does not corroborate Witness GKJ's evidence that relatives of Mugenzi were accompanied by military escorts.

[2198] Uzamukunda, T. 21 April 2006 p. 20. *See also* Witness WZ8, T. 18 September 2006 pp. 40-42.

[2199] Mugenzi, T. 9 November 2005 p. 83; Ntamabyaliro, T. 21 August 2006 pp. 22, 29-33; Witness WZ8, T. 18 September 2006 pp. 41-42.

assuming that security escorts guarding Mugenzi's family had killed Muyango, there is no evidence that Mugenzi or his family members would have been aware of this event.

1550. Indeed, Mugenzi has presented evidence that he was out of Rwanda from about 22 or 24 April to 13 or 15 May 1994, and that he only returned to Gitarama on 18 May.[2200] Mugenzi's passport indicates that, on 10 May 1994, he was in Cairo, Egypt, and on 11 May in Kenya.[2201] His presence abroad around the time of Muyango's killing is confirmed by the testimony of Emmanuel Ndindabahizi, who saw him in Nairobi, Kenya on 11 May 1994. Prosper Mugiraneza, Ntamabyaliro and Ntagerura also confirmed that Mugenzi went on mission during the war.[2202] In the Chamber's view, this evidence raises further doubts that Mugenzi would have been aware of this isolated killing had it occurred.

1551. The Chamber views the testimonies of Mugenzi and the Defence witnesses with suspicion. Mugenzi has an interest in denying his ability to control soldiers and gendarmes, who, in the Indictment, are part of a category of assailants for which the Prosecution seeks to hold him responsible.[2203] Likewise, Defence Witnesses Jeanette Uzamukunda, Edreda Mukagakwavu and Vestine Ugiranyina are close personal relations who received assistance from Mugenzi during the relevant period. Ndindabahizi is an alleged accomplice of Mugenzi, as are Mugiraneza, Ntamabyaliro, Ntagerura and Witness WZ8.

1552. However, the Chamber cannot accept that Witness GKJ's uncorroborated evidence establishes beyond reasonable doubt that military escorts guarding members of Mugenzi's family killed a man called Jean-Baptiste Muyango around 11 May 1994. Furthermore, had this killing occurred, the evidence necessarily fails to establish that such individuals were acting under Mugenzi's orders or that he had any knowledge of the event.[2204] In light of these findings, the Chamber need not consider the Defence objections to insufficient notice for this allegation.[2205]

[2200] Mugenzi T. 9 November 2005 p. 75; T. 10 November 2005 pp. 54-55, 65-69; T. 14 November 2005 pp. 17, 61; T. 15 November 2005 p. 61; T. 24 November 2005 p. 12; T. 28 November 2005 pp. 3, 5-9, 11-15, 17-19, 22, 26-27, 29; T. 30 November 2005 pp. 19-21, 25; Exhibit P3(4)(E, F & K) (Mugenzi's Passport issued in Kigali on 21 April 1994) (mentioning statements Mugenzi made to reporters in Nairobi); Exhibit P117 (Human Rights Watch Press Release, 29 April 1994); Exhibit P118 (Outgoing Cable from Booh-Booh to Annan, 30 April 1994).

[2201] Exhibit P3(4)(E, F & K) (Mugenzi's Passport issued in Kigali on 21 April 1994) pp. 10-11.

[2202] Ndindabahizi, T. 1 May 2007 pp. 43-44, 74-75; T. 30 June 2007 pp. 41-42, 44; Mugiraneza, T. 2 June 2008 p. 45; Ntamabyaliro, T. 28 August 2006 p. 29; Ntagerura, T. 15 February 2007 p. 43; T. 20 February 2007 p. 47.

[2203] *See, e.g.*, Indictment, paras. 6.63, 6.66.

[2204] Witness GKJ also gave evidence that soldiers working for Mugenzi and guarding his family manned a roadblock where many Tutsis were killed. Witness GKJ, T. 23 September 2004 p. 40. Like his evidence related to the Muyango killing, this testimony is hearsay. There is no indication of first-hand knowledge regarding the existence of the roadblock, who was manning it or whether such persons had any link to Mugenzi. The Chamber is not convinced that this allegation has been proven beyond reasonable doubt.

[2205] In addition to objections raised in the Mugenzi Closing Brief, contemporaneous objections were raised about Witness GKJ's evidence to the extent that it would be led to show that Mugenzi sent the military personnel to kill Muyango. Witness GKJ, T. 22 September 2004 pp. 32-41. *See also* Defence Motion for the Chamber to Exclude the Prosecutor's Will Say Statement Concerning Witness GKJ of the 20th of September 2004, 22 September 2004.

11. ADDITIONAL EVENTS

11.1 *Chez Bernard*, Kigali, First Half of May 1994

Introduction

1553. The Indictment alleges that in order to incite Butare citizens to massacre Tutsis, Bizimungu and Joseph Nzirorera insisted that a government delegation, including President Théodore Sindikubwabo, be sent there. The Prosecution points to the evidence that Bizimungu met with Witness D in Kigali in the first half of May 1994, where he explained that the Interim Government had sent Butare natives, such as the President and Prime Minister, to that prefecture given concerns that Butare may be resistant to participating in the killing of Tutsis.[2206]

1554. The Defence submits that Witness D is unreliable. It points to alibi evidence that Bizimungu was not in Rwanda in the first half of May when the two allegedly met.[2207]

Evidence

Prosecution Witness D

1555. Witness D, a Hutu, was an *Interahamwe* official living in Kigali in 1994.[2208] He moved to Butare, his native prefecture, on 12 April because there was relative calm there compared to the violence in Kigali. However, he returned to Kigali within the first half of May, where he met Bizimungu in Gitega sector at a bar called *Chez Bernard*. Bizimungu was visiting Kigali and asked for news about Butare since the dismissal of Jean-Baptiste Habyalimana as prefect. Witness D informed him that killings had commenced. Bizimungu responded that there had been concern that Butare might be the only prefecture to oppose the killings. For this reason, they had sent a large delegation of senior officials who were Butare natives, such as the President and Prime Minister, to the prefecture. Bizimungu also told the *Interahamwe* who were present that he was proud of what the *Interahamwe* were doing and stated that the government supported them.[2209]

[2206] Indictment, para. 6.44; Prosecution Closing Brief, paras. 71, 180; Prosecution 21 November 2008 Document, Item Nos. 10, 89; Prosecution Closing Argument, T. 1 December 2008 p. 63. The Prosecution Closing Brief and 21 November Document indicate that Witness D met Bizimungu at *Chez Bernard* in "late April" and their closing arguments place the date between 30 April and 4 May 1994". However, Witness D testified, and confirmed, that he met Bizimungu in the "first half of May." This correction is reflected in the summary above.

[2207] Bizimungu Closing Brief, paras. 722-735, 740, 1108-1109, 1719. *See also* Mugenzi Closing Brief, paras. 167, 1246-1253; Mugenzi Closing Arguments, T. 3 December 2008 pp. 3-4.

[2208] Witness D, T. 15 June 2004 pp. 2, 3, 62; T. 16 June 2004 pp. 44-47, 52; T. 17 June 2004 pp. 34, 58-59, 65-66; Exhibit P52 (Witness D's Personal Information Sheet).

[2209] Witness D, T. 15 June 2004 pp. 32, 49-51, 54-55, 66-67; T. 16 June 2004 pp. 29-30, 34, 39; T. 17 June 2004 p. 23. In analysing Witness D's testimony, the Chamber identified a discrepancy between the English and French transcripts. The English transcript indicates that Witness D heard Bizimungu say that the Interim Government "was going to send a delegation" of senior officials to Butare in order to incite massacres there. Witness D, T. 15 June 2004 p. 54. The French transcript, however, reads that Witness D heard Bizimungu describe a delegation that had been sent, "avaient envoyé", in the past. Witness D, T. 15 June 2004 pp. 54-55 (F). The Chamber, having reviewed the videotape of his testimony, confirmed that Witness D testified in French

Bizimungu

1556. Bizimungu denied ever having spoken with the *Interahamwe* in May 1994 about President Théodore Sindikubwabo going to Butare to provoke massacres there. He was in Zaire starting on 12 April, had no means to communicate with the President while outside of Rwanda, and only learned of the President's travels after he returned to Rwanda. Furthermore, Bizimungu left Rwanda again on 30 April 1994 for Kinshasa, Zaire, and stayed there until 6 May. On that day, he travelled to Geneva, where he remained until 9 May, when he flew to Nairobi, Kenya to see his family, arriving there on 10 May. He left Nairobi that evening, returning to Geneva on 11 May, where he stayed until 17 or 18 May. On 17 or 18 May, Bizimungu flew to Kinshasa, where he stayed until 23 or 24 May. He left Zaire through Goma, entering Rwanda through Gisenyi and then going directly to Gitarama. He did not return to Kigali once he left it with the rest of the Interim Government on 12 April 1994.[2210]

Bizimungu Defence Witness WAE

1557. Witness WAE, a Hutu, was a Rwandan working in Kinshasa, Zaire, in 1994.[2211] He testified that around the beginning of May 1994, he met Bizimungu in Kinshasa, who was preparing to travel to Geneva, Switzerland. Bizimungu went to Geneva for a couple weeks before returning to Kinshasa in the first half of May. He believed that Bizimungu then went to visit his family in Nairobi and did not think that Bizimungu was in Kinshasa on 24 May.[2212]

Mugiraneza Defence Witness Augustin Karamage

1558. Augustin Karamage, a Hutu, served as Rwandan Ambassador in Switzerland and Austria, as well as Rwanda's permanent representative to the UN offices in Geneva and Vienna from January to July 1994. He lived in Berne, Switzerland.[2213] Bizimungu arrived in Geneva in early May 1994. After their initial meeting, Karamage returned to Berne. On 8 May, he learned that Bizimungu was going to Nairobi, Kenya but would return. Karamage saw Bizimungu again around 15 May 1994 in Geneva, after his trip to Nairobi, at the *Hôtel des Arbres* in Geneva.[2214]

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and, consequently, relies on the French transcript of his testimony in this instance. *See also* Witness D, T. 15 June 2004 p. 2 (declaration made by Witness D in French).

[2210] Bizimungu, T. 28 May 2007 pp. 62-70; T. 29 May 2007 pp. 7-10, 12-19, 22-23, 27, 30, 47-48; T. 6 June 2007 pp. 45-47, 51; T. 11 June 2007 pp. 2-6; T. 12 June 2007 pp. 21-25. For a more detailed summary and references to exhibits, *see* II.14.2.2.

[2211] Witness WAE, T. 13 February 2007 pp. 43, 63; Exhibit 1D149 (Witness WAE's Personal Information Sheet). Witness WAE was living abroad at the time of his testimony. T. 13 February 2007 p. 44.

[2212] Witness WAE, T. 13 February 2007 p. 50; T. 14 February 2007 pp. 23, 41, 58-59. For a more detailed summary and references to exhibits, *see* II.14.2.2.

[2213] Kara mage, T. 15 April 2008 pp. 46-47, 55; Exhibit 4D98 (Karamage's Personal Information Sheet). Karamage was a Swiss national, living in Switzerland at the time of his testimony. T. 15 April 2008 p. 47.

[2214] Karamage, T. 15 April 2008 pp. 53-57, 60, 71-72; Exhibit 4D98 (Karamage's Personal Information Sheet). For a more detailed summary and references to exhibits, *see* II.14.2.2.

Defence Witness Jean-François Ruppol and Dominique Makeli

1559. Jean-François Ruppol worked in Rwanda from 1991 to 7 April 1994 as the head of a Belgian agency that cooperated with the Rwandan Ministry of Health and Dominique Makeli, a Hutu, was a journalist for Radio Rwanda in 1994.[2215] Ruppol was in Murambi, Gitarama prefecture on 16 and 17 May 1994 on a medical assistance mission, where he met with several Interim Government ministers, including André Rwamakuba. Ruppol asked him where Bizimungu was and was told that he was abroad.[2216]

1560. Makeli heard that the government sent various ministers all over the world to go and explain the "Rwanda issue", and read transcripts from a 19 May 1994 Radio Rwanda broadcast, where Rwamakuba stated that he was following the population's health "when the Minister of Health [was] on a foreign visit". Given Bizimungu's prior experience in the Ministry of Foreign Affairs, Makeli considered him to be the "right person to be sent out of the country" to explain what was happening in Rwanda.[2217]

Deliberations

1561. The Prosecution, relying on the testimony of Witness D, argues that Bizimungu met the witness in Kigali in the first half of May 1994 and informed him that the Interim Government had been concerned that killings would not occur in Butare. Consequently, it had decided to send a delegation of Butare natives, like the President and Prime Minister, to incite persons there. Bizimungu also stated that he was proud of what the *Interahamwe* was doing and that the Interim Government supported them. Bizimungu denies that this occurred, relying particularly on alibi evidence that he was not in Rwanda in the first half of May 1994.

1562. Before turning to the merits of the Prosecution evidence, the Chamber looks at the general credibility of Witness D. His relationship with the Prosecution is extensive. He has provided information to the Prosecution and evidence on its behalf concerning the events of 1994 and assisted in the location of fugitives.[2218] Furthermore, he received direct or indirect payments from the Prosecution between 1996 and May 2007 for his assistance and has been placed in a witness protection program. Many payments appear to be reasonable expenditures to cover travel, communication and other hardships related to assisting investigations or testifying before the Tribunal.[2219] Notwithstanding, the payments are significant.[2220]

1563. Furthermore, in February 2002, the Prosecutor issued a statement that it had decided not to open an investigation against Witness D given that the "evidence assessed" did not

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[2215] Ruppol, T. 2 October 2006 pp. 3-4; Exhibit 1D118 (Ruppol's Personal Information Sheet); Makeli, T. 22 October 2007 pp. 33, 37; T. 24 October 2007 pp. 37, 40; T. 29 October 2007 pp. 4, 22, 41; Exhibit 3D163 (Makeli's Personal Information Sheet).
[2216] Ruppol, T. 3 October 2006 pp. 13-14.
[2217] Makeli, T. 29 October 2007 pp. 33-34.
[2218] *See* Witness D, T. 15 June 2004 pp. 67-68; T. 17 June 2004 pp. 13-14, 67-70.
[2219] *See, e.g.*, Witness D, T. 15 June 2004 pp. 68-69; T. 16 June 2004 pp. 8-9, 71; Exhibit P56 (Statement of Payments to Witness D, 15 February 2002).
[2220] *See* Exhibit 4D163 (Payments to Witness D). In so finding, the Chamber has considered the Prosecution submissions about the nature of the compensation received by Witness D. *See* Witness D, T. 16 June 2004 p. 15. Indeed, Witness D's estimates of the payments he received are significantly lower than what records reveal. *See* Witness D, T. 16 June 2004 p. 71.

provide sufficient grounds to prosecute him. It further described his willingness to cooperate with the Office of the Prosecutor.[2221] Notably, this agreement was made in order to secure his testimony in the *Nahimana et al.* trial. While Witness D testified that this was done to allay suspicions about his involvement in the genocide and affirm his general credibility, it can also be seen as a concession made to obtain testimony.[2222] The record does not reflect that the Prosecution has acted improperly or sought to influence Witness D's testimony. Nonetheless, the possibility that Witness D is motivated to provide evidence favourable to the Prosecution in order to ensure continued benefits cannot be ignored.

1564. In addition, aspects of Witness D's testimony regarding his position within the *Interahamwe* raise questions about his credibility. He testified that, by 1992, his position within the *Interahamwe* was by title only and that he held little influence within the organisation.[2223] However, he was a signatory to a January 1994 letter from the *Interahamwe* to UNAMIR that complained about the lack of neutrality of its peacekeepers.[2224] After the formation of the Interim Government, Witness D was called upon to pacify *Interahamwe* killing Tutsis throughout Kigali, and during his tour, was able to move freely throughout Kigali. In the last week of April 1994, he was part of a contingent of *Interahamwe* officials who met with General Roméo Dallaire to address the fact that *Interahamwe* were preventing UNAMIR-escorted refugees from the *Hôtel des Mille Collines* from reaching Kanombe airport.[2225] Finally, while in Butare, he was approached by Colonel Muvunyi to discourage *Interahamwe* arriving from Kigali from participating in looting.[2226]

1565. Given his own admissions that *Interahamwe* participated in killings in 1994, his attempts to distance himself from the organisation, while understandable, are inconsistent with the contemporaneous recognition of his status by those in power in 1994 and his acts on the organisation's behalf.[2227] Under these circumstances, the Chamber does not consider Witness D to be an accomplice witness. However, the Chamber has some concerns that his evidence might be incomplete, particularly to the extent that it implicates him in criminal conduct. Under these circumstances, his evidence should be assessed on a case-by-case basis and approached with the appropriate caution.

1566. Turning to the allegation, the Chamber observes that the Defence does not dispute Witness D's ability to identify Bizimungu. Indeed, Bizimungu testified to his knowledge of *Interahamwe* officials.[2228] Given Witness D's position within the *Interahamwe* and Bizimungu's in the MRND and their mutual presence in Kigali for overlapping periods, it is not unlikely that the two knew each other.

[2221] *See* Witness D, T. 15 June 2004 pp. 69-70; Exhibit P57 (Letter of Non-Prosecution of Witness D, 5 February 2002).
[2222] Witness D, T. 15 June 2004 p. 70; T. 16 June 2004 pp. 16, 71-72.
[2223] Witness D, T. 15 June 2004 pp. 61-65; T. 16 June 2004 pp. 44-45, 58-59; T. 17 June 2004 pp. 48-50, 58-59.
[2224] Witness D, T. 16 June 2004 pp. 51-52; Exhibit 2D14 (Letter from *Interahamwe* to UNAMIR, 19 January 1994).
[2225] Witness D, T. 15 June 2004 pp. 48, 50-54; T. 16 June 2004 pp. 29-32, 57-59.
[2226] Witness D, T. 17 June 2004 p. 65.
[2227] *See* Witness D, T. 17 June 2004 p. 51 ("Q. … Some people have said that the *Interahamwe* is a criminal, genocidal organisation. Would you say it is fair or unfair to characterise the *Interahamwe* in general that way? A. It would be dishonest, in my view, to call this organisation as genocidaire, because as I explained to you, it is not only the *Interahamwe* who perpetrated the killings in Rwanda.").
[2228] *See* Bizimungu, T. 30 May 2007 p. 37.

1567. Nonetheless, Witness D's testimony about this incident was brief. He described the event as unplanned, testifying that the two happened to run into each other as Bizimungu was visiting Kigali.[2229] He repeatedly confirmed that the meeting was in the first half of May 1994.[2230] However, the Chamber considers that Bizimungu's alibi evidence, supported by testimony and contemporaneous documentation, creates the reasonable possibility that he was outside Rwanda during the period described by Witness D (II.14.2.2). Bizimungu further testified that, notwithstanding a Radio Rwanda broadcast on 24 May 1994 indicating that he provided an interview in Kigali, he never returned to Kigali after the Interim Government left it on 12 April 1994 and that he gave the interview from Murambi, Gitarama.[2231]

1568. Under the circumstances, the Chamber has reservations about the reliability of the Prosecution evidence. Consequently, the Prosecution has not proven beyond reasonable doubt that Bizimungu met Witness D at *Chez Bernard* in Kigali in the first half of May 1994, where he discussed having sent a delegation to Butare to incite killings there or that he was proud of the *Interahamwe* and that the Interim Government supported them.

11.2 *Le Palais du MRND*, Cyangugu, Mid-April and Mid-May 1994

Introduction

1569. The Indictment alleges that from late 1990 to July 1994 all four Accused conspired among themselves and others to exterminate Tutsi civilians and eliminate members of the opposition. They supported and took steps to execute this plan, in part, by inciting the people to eliminate the enemy and its accomplices. More specifically, between 12 and 15 April 1994, members of the Interim Government, including Bicamumpaka and Mugenzi, attended a meeting at *Le Palais du MRND* in Cyangugu prefecture, at which Prime Minister Jean Kambanda incited the killing of Tutsis in the area. Interim Government officials, including Bicamumpaka, returned to the same location between 15 and 20 May, where they again incited the population to kill Tutsis. The Prosecution points to the testimony of Witness GTA.[2232]

[2229] Witness D, T. 15 June 2004 p. 54.

[2230] Witness D, T. 15 June 2004 p. 50 ("THE WITNESS: The second trip – I cannot give you the specific date. It was the first half of the month of May."); T. 16 June 2004 pp. 30 ("Q. Could you please give us the dates in May 1994 that you met my client in Kigali? Could you please tell the Court when you met my client, what date you met my client in a bar in Kigali? A. Madam, I think I told you that the last half of the month of May. THE ENGLISH INTERPRETER: Interpreter corrects: the first fortnight of the month of May."), 39 ("Q. Mr. Witness, you referred to a meeting with my client in a bar in Kigali. When you mentioned the first half of May to the Court, could you tell us whether it was at the beginning of the first half or towards the end or in the middle of this first half of May? A. Madam, I could not give you any clarifications as to date; I can only give you the period, that is, of the first half of the month of May."). *See also* French transcripts at T. 15 June 2004 p. 49; T. 16 June 2004 pp. 33, 43.

[2231] Bizimungu, T. 29 May 2007 p. 12.

[2232] Indict ment, paras. 5.1, 6.10, 6.14, 6.27; Prosecution Pre-Trial Brief, paras. 130 (p. 29), 28 1 (p. 56); Prosecution Closing Brief, paras. 83, 94, 219, 249, 307, 335, 338; Prosecution 21 November 2008 Document, Item No. 63; Prosecution Closing Arguments, T. 1 December 2008 pp. 45-46, 52. The Prosecution Closing Brief cites to Witness GKJ at para. 307 to suggest that Bicamumpaka subsequently travelled to mobilize the Hutu population to kill the Tutsis. The testimony cited relates to a meeting in Gitarama on 18 April 1994 and is summarised elsewhere (II.8.5). In the same paragraph, the Prosecution mistakenly refers to Witness GAP, but the accompanying citation is to the testimony of Witness GTA.

1570. The Bicamumpaka Defence argues that there is no notice for the evidence provided by Witness GTA. Furthermore, the Bicamumpaka and Mugenzi Defences contend that his testimony is unreliable. Bicamumpaka did not attend the meeting in Cyangugu in April 1994, but went to the prefecture for the first time on 14 July 1994. Indeed, the only public meeting of Interim Government officials in Cyangugu occurred on 17 May 1994, which was not for the purpose of inciting killings. Mugenzi has conceded that he attended the 17 May meeting, but Bicamumpaka contends that he was in New York meeting with the United Nations Security Council. Reference is made to Bicamumpaka, Mugenzi and Defence Witnesses CF-1 and André Ntagerura.[2233]

Evidence

Prosecution Witness GTA

1571. Witness GTA, a Hutu, was a member of the PL-Power faction in 1994.[2234] He attended a public meeting between 12 and 15 April 1994 in a large hall at *Le Palais du MRND* in Cyangugu. Many people were there, and although Witness GTA was a member of the PL and not the MRND, he gained access because he was Hutu. Around the hall's podium sat President Théodore Sindikubwabo, Prime Minister Jean Kambanda, Bicamumpaka, soldiers, including Presidential Guards, and government officials. Mugenzi, however, was not at the meeting and Witness GTA never saw him in Cyangugu. Witness GTA had not seen Bicamumpaka prior to this event.[2235]

1572. Kambanda spoke to the attendees, outlining the Interim Government's objectives. He explained that the country was at war and that the enemy was "none other than the Tutsi", as well as the RPF, who were "enemies of peace". Kambanda also said that every person in Rwanda, including peasants, should be armed. He added that the youth should learn to use firearms in order to help the army prevent enemy infiltration into Rwanda. Bicamumpaka did not speak nor were members of the Interim Government introduced in the witness's presence. Witness GTA claimed that the killing of Tutsis started in earnest after Kambanda's speech. He was also told about a second meeting sometime in May at which Sindikubwabo and government ministers were present.[2236]

Bicamumpaka

1573. Bicamumpaka did not attend a meeting between 12 and 15 April 1994 as alleged by Witness GTA. He was not in Cyangugu that month, but first went there on 14 July 1994 when fleeing Rwanda. Bicamumpaka could not have been at the meeting, as he travelled

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[2233] Bicamumpaka Closing Brief, paras. 363-388; Mugenzi Closing Brief, paras. 109, 350-51, 938, 975-77; Bicamumpaka Closing Arguments, T. 3 December 2008 pp. 71-72. *See also* Bicamumpaka Opening Statement, T. 13 August 2007 p. 12.
[2234] Witness GTA, T. 9 March 2004 pp. 9-12, 53; T. 10 March 2004 p. 21; Exhibit P38 (Witness GAT's Personal Information Sheet). Witness GTA was arrested in Rwanda in February 1995. With the possibility of a genocide conviction that could result in 20 years of imprisonment, he submitted a written guilty plea to a lesser charge of genocide and was sentenced to 11 years of imprisonment. He served eight and was released in March 2003. Witness GTA, T. 9 March 2004 pp. 5-6, 23-27.
[2235] Witness GTA, T. 9 March 2004 pp. 9-13, 16, 28-31, 33, 35, 43-46, 49-50, 53-54; T. 10 March 2004 pp. 14-16, 20-21.
[2236] Witness GTA, T. 9 March 2004 pp. 10-13, 30, 34-35, 40-52, 54-56; T. 10 March 2004 pp. 13-16, 19-20.

from Kigali to Gitarama on 12 April where he remained until 15 April, when he went to Bujumbura, Burundi. He then returned to Rwanda on the night of 17 April, arriving in Gitarama around 1.00 a.m. on 18 April. Furthermore, the only meeting held in Cyangugu at which Sindikubwabo was present occurred on 17 May, the date on which Bicamumpaka met with the United Nations Security Council in New York.[2237]

Mugenzi

1574. Mugenzi denied going to Cyangugu between 9 and 22 April 1994. Rather, he was present at a meeting at *Le Palais du MRND* in Cyangugu on 17 May 1994 with President Théodore Sindikubwabo and Minister André Ntagerura. The President asked the population to obey orders to keep peace. Mugenzi and Ntagerura also spoke and references to "work" were for continued agricultural and business operations. Bicamumpaka, however, was not present at this meeting, nor did Mugenzi ever travel to Cyangugu with Prime Minister Jean Kambanda. Radio Rwanda broadcast the speeches of this 17 May meeting.[2238]

Bicamumpaka Defence Witness CF-1

1575. Witness CF-1, a Hutu, was a member of the MRND and a local government official in Cyangugu until July 1994.[2239] He testified that no public meeting was held in Cyangugu with the ministers of the Interim Government in April 1994. Rather, Minister Daniel Mbangura met with local officials and prominent persons in the community on 18 April. The gathering involved less than 50 persons. Interim Government Ministers and President Théodore Sindikubwabo only attended one public gathering in Cyangugu. It occurred on 17 May 1994 and was attended by 400 to 500 persons, including the witness. Sindikubwabo used this as an opportunity to introduce himself to Cyangugu. He and Ministers André Ntagerura and Mugenzi asked that the population assist in restoring order and peace and apprehend those disrupting it. Bicamumpaka and Prime Minister Jean Kambanda were not there. The witness did not see either of them in Cyangugu during this time period, and he would have been aware of any minister's presence in the prefecture.[2240]

Bizimungu Defence Witness André Ntagerura

1576. André Ntagerura was the Minister of Transport and Communication since April 1992 and was reappointed to the position in the Interim Government formed on 9 April 1994.[2241] A native of Cyangugu, Ntagerura only knew of one meeting involving Interim Government ministers in the prefecture between 12 April and July 1994. It was held on 17 May, and attended by Ntagerura, President Théodore Sindikubwabo, ministers Mugenzi and Donat Murego, Cyangugu Prefect Emmanuel Bagambiki and local officials, religious

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[2237] Bicamumpaka, T. 27 September 2007 pp. 35-36; T. 2 October 2007 pp. 24-25, 66-67; T. 10 October 2007 p. 26. *See also* II.14.3.2; II.14.3.4.
[2238] Mugenzi, T. 10 November 2005 pp. 55-64; T. 14 November 2005 p. 61; T. 21 November 2005 p. 20; T. 24 November 2005 p. 40; T. 30 November 2005 pp. 7-8, 17, 60.
[2239] Witness CF-1, T. 11 February 2008 pp. 9, 46; Exhibit 3D180 (Witness CF-1's Personal Information Sheet).
[2240] Witness CF-1, T. 11 February 2008 pp. 9-13, 20, 22, 27-28, 40, 53-54, 59.
[2241] Ntagerura, T. 14 February 2007 pp. 65-67; Exhibit 1D152 (Ntagerura's Personal Information Sheet). Ntagerura, formerly an accused before the Tribunal, was acquitted of all counts. T. 19 February 2007 pp. 40-41.

representatives and political party leaders. Bicamumpaka was not present. Ntagerura was unaware of Prime Minister Jean Kambanda ever attending a political rally in Cyangugu.[2242]

Deliberations

1577. Relying on Witness GTA, the Prosecution alleges that Bicamumpaka attended two meetings at *Le Palais du MRND* in Cyangugu. One occurred between 12 and 15 April 1994 and another in between 15 and 20 May. Mugenzi attended the first. During these gatherings, members of the Interim Government incited the local population to kill Tutsis.

1578. The Bicamumpaka and Mugenzi Defences dispute that any gathering of the Interim Government in Cyangugu occurred in April 1994. While a meeting involving the Interim Government was held at *Le Palais du MRND* in Cyangugu on 17 May 1994, Bicamumpaka was not present and its purpose was not to incite the killing of Tutsis. The Chamber shall address the events in turn.

(i) Meeting between 12 and 15 April 1994

1579. Witness GTA is the only Prosecution witness to provide a first-hand account of Bicamumpaka's presence at the meeting at *Le Palais du MRND* in Cyangugu between 12 and 15 April 1994. At the outset, the Prosecution points to his testimony in support of its argument that Mugenzi was also present at this gathering.[2243] However, Witness GTA expressly contradicted this assertion.[2244] This aspect of the Prosecution's allegation has not been proven.

1580. Before turning to merits of Witness GTA's evidence about the purported April 1994 meeting, the Chamber considers the context in which he testified. He pleaded guilty to genocide charges in Rwanda in 1996 and was released from prison in March 2003. He had been free for over a year at the time he testified before the Tribunal. Furthermore, there is no apparent overlap between Witness GTA's crimes and those Bicamumpaka is alleged to have committed.[2245] Considering all the circumstances, the Chamber finds no obvious interest for Witness GTA to inculpate Bicamumpaka or any reason to necessarily view his evidence with caution.

1581. The Defence sought to discredit the witness based on his failure to mention Bicamumpaka in his guilty plea. However, he explained that they did not commit the same crimes, were not arrested or detained together, and that they were not from the same region.[2246] Under the circumstances, the omission of Bicamumpaka's activities in 1994 in the witness's guilty plea is reasonable.

1582. The Chamber next considers whether alleged internal inconsistencies between Witness GTA's statements to Tribunal investigators and his testimony raise concerns about his credibility. He gave four statements to Tribunal investigators: on 22 June 1999, 5 June 2001, 19 March 2003 and 15 April 2003. The only mention of the purported April 1994

[2242] Ntagerura, T. 19 February 2007 pp. 4-5, 33, 37-38; T. 20 February 2007 pp. 28, 37.
[2243] Prosecution Closing Brief, paras. 83, 94, 219, 307, 335, 338.
[2244] Witness GTA, T. 9 March 2004 p. 54.
[2245] *See* Witness GTA, T. 9 March 2004 p. 26.
[2246] Witness GTA, T. 9 March 2004 p. 26.

meeting at which he and Bicamumpaka were present is in his last statement of 15 April 2003, made one month after he was released from prison.[2247]

1583. Turning to Witness GTA's June 1999 statement, it contains reference to a meeting that is similar to his testimony about the April 1994 gathering. Specifically, it reads that "[d]uring the genocide" a meeting was held at the "MRND building in Cyangugu" for "President Sindikubwabo to introduce his government". During it, the President stated that "the Tutsi were the sole enemy". Notably, the statement reflects that the witness only learned about this event from others and through a radio broadcast.[2248]

1584. When confronted with the excerpt, Witness GTA replied that this was not a reference to the April 1994 meeting that he attended but described a subsequent gathering that he only heard about.[2249] In light of this clarification, he was asked why he would give information to Tribunal investigators about a meeting that he did not attend and omit reference to one he did. He responded that he was not questioned about the April 1994 meeting or Bicamumpaka.[2250]

1585. While Witness GTA's initial explanation that the excerpt refers to the meeting he did not attend may be reasonable, the omission of any mention of the April 1994 gathering that he allegedly went to raises concerns. Specifically, the absence of any mention of this event from his June 1999 statement raises questions. Its contents, which focussed on Cyangugu, are broad-ranging, referencing preparations for the genocide as early as 1993 and events throughout it. It implicates prominent persons, as well as several local and national government officials.[2251] If he had observed national government ministers at a meeting in Cyangugu and listened to Kambanda urge the population that Tutsis were the enemy, failure to mention this event, even if unprompted by investigators, is startling. Consequently, the Chamber considers his evidence with caution.

1586. Witness GTA was not confronted with his statements of 5 June 2001 and 19 March 2003. Rather, he only generally acknowledged that he did not discuss the April 1994 meeting in them.[2252] The Chamber observes that the June 2001 investigation focussed on the conduct of Siméon Nchamihigo. The March 2003 statement sought to clarify information pertaining to an event at a roadblock that the witness had discussed with Tribunal investigators in 2001.[2253] Under the circumstances, the absence of reference to the April 1994 meeting appears reasonable.

1587. Finally, Witness GTA's 15 April 2003 statement, which focussed on Bicamumpaka, is largely consistent with his testimony.[2254] The Defence noted that the statement's timing, one month after his release from incarceration, was "odd". The witness explained that there

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[2247] Witness GTA, T. 9 March 2004 pp. 20, 27-28.
[2248] Exhibit 2D6(E, F & K) (Witness GTA's Statements, 22 June 1999, 5 June 2001, 19 March 2003 and 15 April 2003) p. 19.
[2249] Witness GTA, T. 9 March 2004 pp. 34-35, 44-46.
[2250] Witness GTA, T. 9 March 2004 pp. 44-46, 48-49, 53; T. 10 March 2004 pp. 15-16, 20-21.
[2251] Exhibit 2D6(E, F & K) (Witness GTA's Statements, 22 June 1999, 5 June 2001, 19 March 2003 and 15 April 2003) pp. 17-20.
[2252] Witness GTA, T. 9 March 2004 pp. 20, 27-28.
[2253] Exhibit 2D6(E, F & K) (Witness GTA's Statements, 22 June 1999, 5 June 2001, 19 March 2003 and 15 April 2003) pp. 22-25, 27.
[2254] Exhibit 2D6(E, F & K) (Witness GTA's Statements, 22 June 1999, 5 June 2001, 19 March 2003 and 15 April 2003) p. 29.

was "no coincidence" in the timing of his release and his first mention of Bicamumpaka to Tribunal investigators.[2255]

1588. As discussed above, the circumstances of the witness's incarceration do not appear to generally affect his credibility as it pertains to this issue. There is also no clear link between his release and his statement. However, the fact that the 15 April 2003 statement corresponds with his testimony does not bolster his credibility.[2256] Indeed, the Chamber considers the shifting nature of the witness's accounts between his June 1999 and April 2003 statements troubling.

1589. Furthermore, the Chamber has reservations about Witness GTA's identification of Bicamumpaka. Notably, he conceded that Bicamumpaka was not from his region or affiliated with his political party.[2257] The first time he saw Bicamumpaka was at the purported April 1994 meeting in Cyangugu.[2258] He further testified that Bicamumpaka did not give a speech nor was he introduced.[2259] Under the circumstances, the witness's explanation about how he was able to identify the minister is muddled.[2260] Consequently, his basis of identification is weak.

1590. Turning to the Defence evidence, Bicamumpaka denied attending the meeting at *Le Palais du MRND* in Cyangugu in April, stating that he was not in the prefecture at that time. Indeed, he testified that from 12 to 15 April 1994, he was in Gitarama, left for Burundi on 15 April and returned to Gitarama, arriving in Murambi around 1.00 a.m. on 18 April (II.14.3.2). Bicamumpaka's testimony is corroborated by his personal passport, which has an entry stamp into Burundi on 15 April 1994 and an exit stamp two days later.[2261] Similarly, Witness CF-1,

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[2255] Witness GTA, T. 9 March 2004 pp. 27-28.

[2256] *Ntakirutimana* Appeal Judgement, para. 147 ("The Rules of Procedure and Evidence of the Tribunal do not expressly forbid the use of prior consistent statements to bolster credibility. However, the Appeals Chamber is of the view that prior consistent statements cannot be used to bolster a witness's credibility, except to rebut a charge of recent fabrication of testimony. The fact that a witness testifies in a manner consistent with an earlier statement does not establish that the witness was truthful on either occasion; after all, an unlikely or untrustworthy story is not made more likely or more trustworthy simply by rote repetition.").

[2257] Witness GTA, T. 9 March 2004 pp. 26, 28.

[2258] Witness GTA, T. 9 March 2004 pp. 29-30.

[2259] Witness GTA, T. 9 March 2004 pp. 30-31, 50-53.

[2260] Witness GTA, T. 9 March 2004 pp. 30 ("A. … everybody that was around the meeting, they were saying that we can identify people in MDR in this or that faction. There was no other person other than himself because he was representing his party and he was … a minister, and the minister must get known."), 30-31 ("THE WITNESS: The people who were present, for example, the prime minister introduced himself and he announced he was the prime minister, and the other people I was with, they proceeded in a manner… There were people and party members who said that, 'We are represented by so-and-so.' He was also announced and I saw him."), 50 ("A. During the first meeting which I attended, no one was introduced. Because if they had been introduced, I would mention them. But I saw them with my eyes. Even though – even if they hadn't been introduced, I could see them with my own eyes."), 51 ("A. Yes, I remember very well that the members of the government who were introduced, except if they were introduced after – before I came in, but he could not address the meeting before introducing the government. It means that those who reached there before me had been introduced to the new government."), 52 ("THE WITNESS: My understanding is that the people I found seated – did not present anyone. I found Bicamumpaka seated and the prime minister was speaking. He was giving a speech, but he was seated. But I did not see anyone introducing such-and-such and such a person, because that would have been involved – that would have involved naming those people being introduced."), 53 ("THE WITNESS: They were never introduced by name, but the government was presented. It was present in front of the community, where the prime minister was giving a speech. They did not name names so they may stand and show themselves. That did not happen.").

[2261] Exhibit 3D112 (Bicamumpaka's Personal Passport) pp. 1, 7-8.

a government official in Cyangugu, as well as Minister André Ntagerura, a Cyangugu native, also denied that any meeting like the one described by Witness GTA occurred in April 1994. Witness CF-1 further rejected the proposition that Bicamumpaka and Kambanda were in the prefecture that month and Ntagerura denied that Kambanda ever attended a rally there.[2262]

1591. The Chamber views the evidence of Bicamumpaka and Witnesses CF-1 and Ntagerura with caution. Bicamumpaka has a clear interest in denying his involvement in such a gathering. Even though Witness CF-1 no longer had any pending criminal proceedings pertaining to the events of 1994 at the time of his testimony, he was once detained with Bicamumpaka.[2263] The same considerations apply to Ntagerura, a former Interim Government minister who was once incarcerated with Bicamumpaka before being acquitted.[2264] His testimony is viewed with caution as well.

1592. While the self-interested nature of the Defence testimonies leads the Chamber to view it with suspicion, Bicamumpaka's passport entries and the frailties of Witness GTA's testimony (described above) create doubt. The Chamber is mindful that the radio transmissions exhibited in this proceeding likely reflect a fractional amount of those broadcast in Rwanda during the genocide (II.9.2). Nonetheless, an abundance of available records of radio broadcasts are in the possession of the Prosecution and, in these circumstances, the Chamber considers the absence of any physical evidence or corroboration of this particular event troubling. The record reflects that Interim Government trips to hold meetings throughout Rwanda were regularly covered in the media (*see* II.9.2). Indeed, Interim Government Minister Daniel Mbangura's meeting with a relatively small gathering of prominent persons in Cyangugu in April 1994 was broadcast by Radio Rwanda.[2265] Furthermore, a public meeting of the Interim Government on 17 May 1994 at *Le Palais du MRND* in Cyangugu was broadcast on Radio Rwanda (discussed below).

1593. However, the absence of any corroboration of Witness GTA's evidence concerning a widely attended public meeting involving the President, Prime Minister and various other Interim Government officials raises further questions about his reliability, particularly when viewed in light of Defence evidence denying his account.[2266] In sum, the Prosecution has not proven beyond reasonable doubt this allegation, that Bicamumpaka and Mugenzi attended a meeting at *Le Palais du MRND* in Cyangugu on 12 to 15 April 1994.

(ii) Meeting between 15 to 20 May 1994

1594. The Prosecution, relying on the testimony of Witness GTA, alleges that between 15 and 20 May 1994, Bicamumpaka and other Interim Government officials went to *Le Palais du MRND* in Cyangugu and incited the population to kill Tutsis.[2267]

[2262] *See* Exhibit 3D180 (Witness CF-1's Personal Information Sheet).
[2263] *See* Prosecutor's Closing Brief, para. 881; Witness CF-1, T. 11 February 2008 pp. 56-58.
[2264] *See* Ntagerura, T. 19 February 2007 pp. 40-41, 46-47. *See also Ntagerura et al.* Appeal Judgement, 7 July 2006; *Ntagerura et al.* Trial Judgement, 25 February 2004.
[2265] Witness CF-1, T. 11 February 2008 pp. 11, 13, 40; Exhibit 3D164 (Radio Rwanda Broadcasts) pp. 110-111.
[2266] Notably, on 14 April 1994 Radio Rwanda broadcast an interview Prime Minister Jean Kambanda gave to one of its journalists, raising the possibility that he was not in Cyangugu between 12 and 15 April. Exhibit 2D26(E) (Radio Rwanda Broadcast, 14 April 1994) pp. 3-8.
[2267] Prosecution Closing Brief, para. 249.

1595. At the outset, the Prosecution did not lead any evidence in support of this allegation during Witness GTA's examination-in-chief. Rather, he testified about a meeting of Interim Government ministers in May 1994 only after being confronted by Defence Counsel with his 1999 statement to Tribunal investigators and a Radio Rwanda broadcast discussing the government's visit to Cyangugu's *Le Palais du MRND* on 17 May 1994.

1596. Notably, the witness provided little substantive testimony about this alleged meeting. Rather, he tacitly accepted the contents of his June 1999 statement (which briefly mentions it) without offering any live testimony about, for example, the meeting's purpose. Instead, a majority of his evidence concerned how this purported meeting was different than the April 1994 meeting (about which the Prosecution did elicit testimony).[2268]

1597. The Chamber is reluctant to rely on the contents of Witness GTA's June 1999 statement to support a finding that Interim Government ministers held a meeting in Cyangugu in May for the purpose of inciting the population to kill Tutsis. The Tribunal's Rules of Procedure and Evidence evince a clear preference for live testimony.[2269] The Prosecution had the opportunity to lead such evidence from Witness GTA but opted not to.

1598. Furthermore, his testimony reflects that his knowledge about the gathering is second-hand and at no point did he state that Bicamumpaka was present. On these grounds alone, the Prosecution allegation that Bicamumpaka and other government officials went to Cyangugu between 15 and 20 May to incite the killings lacks sufficient evidentiary weight to support a finding beyond reasonable doubt.

1599. In making this determination, the Chamber acknowledges that there is no dispute that certain Interim Government officials held a meeting at Cyangugu's *Le Palais du MRND* on 17 May 1994. While it views the Defence evidence with considerable suspicion, the testimonies of Defence witnesses do not advance the Prosecution's argument that the gathering was used to incite the killing of Tutsis.[2270]

1600. Furthermore, there is reliable evidence that Bicamumpaka was not in Rwanda between 15 and 20 May 1994. Mugenzi, Ntagerura and Witness CF-1 confirmed Bicamumpaka's testimony that he was not at the 17 May 1994 meeting. Moreover, Bicamumpaka's diplomatic passport reflects that he was in the United States between 10 and 18 May 1994 and subsequently in France until 21 May.[2271] Minutes from a United Nations Security Council meeting in New York on 16 May 1994 indicate that Bicamumpaka spoke before it at approximately 11.00 p.m.[2272] The Prosecution has accepted this aspect of Bicamumpaka's evidence in making its case against him.[2273]

[2268] *See, e.g.*, Witness GTA, T. 9 March 2004 pp. 34-35, 49; T. 10 March 2004 pp. 14-16, 19-20.

[2269] *See Simba* Appeal Judgement, para. 19 ("[The Appeals Chamber] further recalls that in exercising its discretion to admit witness testimony, the Trial Chamber shall be guided by the general principle, enshrined in Rule 90(A) of the Rules, that witnesses be heard directly by the Chambers.").

[2270] *See* testimonies of Mugenzi, Witness CF-1 and André Ntagerura summarised above. *See also* Exhibit P2(55)(E) (Radio Rwanda Broadcast, 3 June 1994) pp. 9-18 (reporting on and broadcasting speeches given at the meeting of 17 May 1994 at *Le Palais du MRND* in Cyangugu).

[2271] Exhibit 3D113 (Bicamumpaka's Diplomatic Passport) pp. 10 (exit stamp from France, 10 May 1994; entry stamp to France, 18 May 1994; exit stamp from France, 21 May 1994), 12 (entry stamp to USA, 10 May 1994).

[2272] Exhibit 3D125(E & F) (United Nations Security Council Session 3377, 16 May 1994) pp. 1-2.

[2273] *See* T. 1 December 2008 p. 19 ("Indeed, My Lords, when Jérôme Bicamumpaka appeared before the Security Council on the 16th of May in New York, he said that the RPF was fighting on behalf of and for the minority Tutsis in Rwanda and he wanted the international community to understand that.").

1601. Based on the foregoing, the Prosecution has not proven beyond reasonable doubt that between 15 and 20 May 1994, Bicamumpaka and other Interim Government officials went to *Le Palais du MRND* in Cyangugu and incited the population to kill Tutsis.

11.3 Meridien Hotel and Umuganda Stadium, Gisenyi, Mid-May 1994

Introduction

1602. The Indictment alleges that from late 1990 to July 1994 all four Accused conspired among themselves and others to exterminate Tutsi civilians and eliminate members of the opposition. They supported and took steps to execute this plan, in part, by inciting the people to eliminate the enemy and its accomplices. The Indictment further alleges that before and during the events referred to in the Indictment, members of the Interim Government and MRND leaders distributed weapons to militiamen and civilians to exterminate the Tutsi population and its accomplices. More specifically, the Prosecution contends that on an unspecified day between 12 and 31 May 1994, members of the Interim Government attended a meeting at the Meridien hotel, Gisenyi town, at which Bizimungu incited the killing of Tutsis. Moreover, in mid-May Bizimungu received weapons from Goma, Zaire, at the Meridien hotel and the next day distributed them and incited the killing of Tutsis at an *Interahamwe* training session at Umuganda stadium in Gisenyi town. Bizimungu allegedly promised the participants a reward for killing Tutsis. The Prosecution relies on the testimonies of Witnesses GTC and GKI.[2274]

1603. The Bizimungu Defence argues that no notice was provided for these allegations and that Prosecution Witness GTC and GKI's testimonies lack credibility. Moreover, the Defence points to evidence directly rebutting the Prosecution accounts, as well as alibi evidence that Bizimungu was not in Rwanda from 30 April to 23 May 1994 during which time these events allegedly took place. Reference is made to Bizimungu and Defence Witnesses WFP2, WZ8 and WFP10.[2275]

[2274] Indictment, paras. 5.1, 5.3, 5.15, 5.19, 5.22, 6.10, 6.18, 6.22, 6.23, 6.27; Prosecution Pre-Trial Brief, paras. 130 (p. 29), 163 (pp. 36-37), 239 (p. 50), 240 (p. 50); Prosecution Closing Brief, paras. 93, 127-129, 131-132, 165, 229-230, 305-306, 318-319, 337, 572, 587, 634, 640, 737-753; Prosecution 21 November 2008 Document, Item Nos. 32, 33, 62, 63, 69; Prosecution Closing Arguments, T. 1 December 2008 pp. 9-10, 46-47, 63-65. The Prosecution mistakenly refers to Witness GTA having testified about this event at para. 696 of the Prosecution Closing Brief.

[2275] Bizimungu Opening Statement, T. 30 August 2006 pp. 8-9, 14; Bizimungu Closing Brief, paras. 140-144, 177, 249-250, 263-272, 290-293, 305-307, 736-827, 1108-1109, 1620-1621, 1747 (p. 306); Bizimungu Closing Arguments, T. 1 December 2008 p. 70; T. 2 December 2008 pp. 15-16, 20-21. The Chamber also considers the testimonies of Bicamumpaka and Witnesses WAE, Augustin Karamage, Jean-François Ruppol and Dominique Makeli pertaining to the relevant aspects of Bicamumpaka's and Bizimungu's alibis. Their evidence is summarised elsewhere. II.14.2.2; II.14.3.4. *See also* Mugenzi Closing Brief, paras. 357-358, which argue that Witness GKI's account of what Bizimungu said at Meriden hotel on 21 May 1994 was not criminal.

Evidence

Prosecution Witness GTC

1604. Witness GTC, a Hutu, and member of the *Impuzamugambi*, resided in Rubavu commune, Gisenyi prefecture, in April 1994.[2276] In May 1994, he was in charge of security for Jean-Bosco Barayagwiza.[2277] On an unspecified day between 12 and 19 May 1994, Witness GTC went to Meridien hotel in Gisenyi town with Barayagwiza to meet and assist Barayagwiza's family friends who were arriving from Kigali. Bizimungu was already at the hotel when Witness GTC arrived. Bizimungu was waiting with Colonel Théoneste Bagosora, Colonel Anatole Nsengiyumva, Major Uwimana, Major "Habifute", Major Kabera, and Augustin Ngirabatware for their colleagues who had gone on mission to bring arms.[2278]

1605. Between 10.00 a.m. and midday, Froduald Karamira and Édouard Karemera arrived at the hotel with three vehicles loaded with weapons. They were received by Bizimungu, Bagosora, Colonel Nsengiyumva, Major Uwimana, Major "Habifute", Major Kabera and Ngirabatware. Bizimungu was the only person who spoke and he said that the weapons were now available and "they" were ready to go and liberate Kigali. Bizimungu and the others then went immediately to the military camp commanded by Nsengiyumva, where they unloaded the weapons. Witness GTC's neighbour, who was the driver of one of the vehicles, told him that the weapons came from Goma airport in Zaire.[2279]

1606. Around 4.00 p.m. the next day (or sometime between 13 and 20 May 1994), Witness GTC accompanied Barayagwiza to Umuganda stadium in Gisenyi, where Lieutenant Bizimuremye was training over 100 *Interahamwe*, *Impuzamugambi* and others on how to use rifles, grenades and steam launchers. Bizimungu, Colonel Nsengiyumva, *Bourgmestre* of Rubavu commune Marc Mpozembizi, Bernard Munyagishari, Hassan Ngeze, Head of the Gisenyi gendarmerie barracks, Major Biganiro and Prefect Charles Zilimwabagabo were present. During this period, *Interahamwe*, *Impuzamugambi*, including Witness GTC, and others were being trained in weapons handling at Umuganda stadium.[2280]

1607. At the stadium, the witness heard Bizimungu issue instructions and inform those present how the weapons had been acquired. He told the *Interahamwe* that "they must go and hunt down the Tutsis in Kigali and their accomplices and kill them and then liberate the city of Kigali and that they would be rewarded greatly, that he was in charge of their lives". Bizimungu added that French soldiers were about to come and support them in the "liberation of Kigali".[2281]

[2276] Witness GTC, T. 1 March 2005 pp. 7-8, 15-16, 28, 30; Exhibit P82(A) (Witness GTC's Personal Information Sheet). Witness GTC was arrested in Rwanda on 7 December 1996 and charged with genocide. He pleaded guilty and was sentenced to death on 25 May 2001. When testifying, his appeal was pending. T. 1 March 2005 pp. 9-10; T. 3 March 2005 pp. 1-2, 10; T. 8 March 2005 pp. 47-50; T. 9 March 2005 p. 15; Exhibit 1D52(F) (Judgement of the Gisenyi Court of First Instance) pp. 93, 96.
[2277] Witness GTC, T. 2 March 2005 p. 6; T. 4 March 2005 p. 8.
[2278] Witness GTC, T. 2 March 2005 pp. 5-10; T. 4 March 2005 pp. 7- 9, 20-21, 28. The Chamber notes that the transcript refers both to a Major Uwimana and a Major Muhimana whom it considers are the same person and that this is a typographical error. T. 2 March 2005 p. 7; T. 4 March 2005 p. 8.
[2279] Witness GTC, T. 2 March 2005 pp. 10-13; T. 4 March 2005 pp. 9, 17-18.
[2280] Witness GTC, T. 2 March 2005 pp. 15-17, 20; T. 4 March 2005 pp. 5-7, 9.
[2281] Witness GTC, T. 2 March 2005 p. 17.

1608. After Bizimungu's address, buses and weapons from the Gisenyi military barracks were brought into the stadium by Colonel Nsengiyumva, Lieutenant Bizimuremye and Major Kabera. They distributed the weapons to militiamen who were "going to Kigali". Each *Interahamwe* loaded magazines into the guns they were given. Food was then served and around 11.00 p.m. that evening, Colonel Nsengiyumva issued directives for people to go to Kigali. Those who had received weapons then left the stadium in a bus to "liberate Kigali". A man from the witness's native *cellule* informed him that people were subsequently shot dead at Mburabutoro in Kigali with weapons received that day.[2282]

Prosecution Witness GKI

1609. Witness GKI, a Hutu, was a trader in livestock in 1994 and lived in Rubavu commune, Gisenyi prefecture.[2283] On 21 May 1994, he went to the Meridien hotel at 9.00 a.m. to cook for dignitaries involved in the swearing-in of either the National Assembly or members of parliament that was being held there that day. Around 12.30 p.m., guests started arriving at a hotel meeting room. While in the hotel, the witness saw Bizimungu, along with all the members of the Interim Government. After the swearing-in ceremony, he heard Bizimungu publicly address the gathering. Bizimungu explained that the Interim Government was now strong and no longer working in isolation. The Government needed to combine efforts and go and fight those who had fought them so that they could return to Kigali to work. The witness understood that those who were fighting against the Interim Government were Tutsis.[2284] He recognised Bizimungu as it was not the first time he had seen him. Witness GKI went home, which was close to Umuganda stadium, around 4.00 p.m.[2285]

1610. Later that day, the witness, from his home, observed Hutu youths receive firearms training by military personnel at Umuganda stadium. That evening, weapons originating from Goma, Zaire were brought into the stadium from the Gisenyi military camp, which was led by Anatole Nsengiyumva. The youths were then packed into busses and sent to Kigali to fight the enemy.[2286]

Bizimungu

1611. Bizimungu denied supervising any reception of weapons from Goma, Zaire at any time or going to Umuganda stadium in May 1994.[2287] He further denied that a swearing-in ceremony, or any other meeting, of members of parliament occurred at Meridien hotel in May 1994. The first time that members of parliament met after the installation of the Interim Government was on 4 July 1994, at the investiture ceremony for members of the National Assembly in Rwambura, about 50 kilometres from Gisenyi town.[2288]

[2282] Witness GTC, T. 2 March 2005 pp. 18-25.
[2283] Witness GKI, T. 9 February 2004 pp. 56-58; Exhibit P25 (Witness GKI's Personal Information Sheet). At the time of his testimony, Witness GKI was detained in Gisenyi prison pending appeal. He pleaded guilty to genocide on 10 December 1998 and was sentenced to life imprisonment on 25 May 2001. T. 9 February 2004 pp. 43-46, 53; Exhibit 1D52(F) (Judgement of the Gisenyi Court of First Instance) pp. 92-94.
[2284] Witness GKI, T. 9 February 2004 pp. 33-38, 49-50, 52-54, 58; T. 10 February 2004 pp. 1-2, 7-12.
[2285] Witness GKI, T. 9 February 2004 pp. 33-35, 38, 52, 58-59; T. 10 February 2004 pp. 2-7.
[2286] Witness GKI, T. 9 February 2004 pp. 35, 38-39; T. 10 February 2004 p. 12.
[2287] Bizimungu, T. 29 May 2007 pp. 34-35.
[2288] Bizimungu, T. 29 May 2007 pp. 23-26, 34; Exhibit 1D205 (Handwritten Document Summarising the Investiture Ceremony of the Rwandan National Assembly Held on 4 July 1994).

1612. Furthermore, Bizimungu was not in Rwanda between 30 April and 24 May 1994. He left the country on 30 April 1994 for Kinshasa, Zaire, and stayed there until 6 May. On that day, he travelled to Geneva, where he remained until 9 May, when he flew to Nairobi, Kenya to see his family, arriving there on 10 May. He left Nairobi that evening, returning to Geneva on 11 May, where he stayed until 17 or 18 May. On 17 or 18 May, Bizimungu flew to Kinshasa, where he stayed until 23 or 24 May. He left Zaire through Goma, entering Rwanda through Gisenyi and then going directly to Gitarama.[2289]

Bizimungu Defence Witness WFP2

1613. Witness WFP2, a Hutu, was an officer in the Rwandan armed forces in Byumba operational sector in 1994.[2290] The Byumba operational sector commander was Lieutenant Colonel Juvénal Bahufite.[2291] On the evening of 17 April 1994, four battalions making up the operational sector's forces retreated from various positions, including its command post in Byumba town, due to continued RPF shelling that had commenced on 7 April.[2292]

1614. For about two to three weeks, the Byumba operational forces retreated one to two kilometres a day due to the RPF's continued advance and the force's failure to be re-supplied with materials or supplemental forces. After covering a distance of about 100 kilometres, the Byumba operational forces, between 8 May and early June 1994, reached the eastern edge of the Gishwati forest. There, Bahufite ordered that the soldiers abandon their positions and retreat to Zaire where they could reconvene. This was the last time the witness saw Bahufite.[2293]

1615. Starting between 8 May and early June 1994, Witness WFP2 travelled between 20 and 40 kilometres through the Gishwati forest towards Gisenyi town and bordering Zaire. He and the others moved slowly on foot in groups of three or four. There was no path and the forest was dense and mountainous. The witness arrived in Gisenyi town, which was about three kilometres from the western edge of the Gishwati forest, around 17 July 1994, between 4.00 and 5.30 p.m. He stayed for 12 hours or less before crossing into Goma, Zaire.[2294]

1616. Witness WFP2 denied that he went to Gisenyi town in May 1994 or that he saw Bizimungu that month or anytime between April and July 1994.[2295] He also did not learn of weapons having come to Gisenyi in mid-May 1994.[2296] He explained that in times of peace and war, weapons were acquired by the Minister of Defence after receiving and reviewing requests from the Chiefs of Staff of the gendarmerie and Rwandan army. The Minister of

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[2289] Bizimungu, T. 28 May 2007 pp. 62-70; T. 29 May 2007 pp. 7-10, 12-19, 22-23, 47-48; T. 6 June 2007 pp. 45-47, 51; T. 11 June 2007 pp. 2-6; T. 12 June 2007 pp. 21-25. For a more detailed summary and references to exhibits, *see* II.14.2.2.
[2290] Witness WFP2, T. 22 January 2007 pp. 10, 12, 24, 27, 35; Exhibit 1D128 (Witness WFP2's Personal Information Sheet); Exhibits 1D129 *and* P145 (Situation Report of Rwandan Army, 5 March 1994) pp. 3 and 2 (respectively).
[2291] Witness WFP2, T. 22 January 2007 pp. 21-26, 35-36; Exhibits 1D129 and P145 (Situation Report of Rwandan Army, 1 March 1994) pp. 3, 2 (respectively). Witness WFP2 did not know of a Colonel "Habufite". T. 22 January 2007 p. 22; T. 23 January 2007 p. 14.
[2292] Witness WFP2, T. 22 January 2007 pp. 22, 39-42; T. 23 January 2007 pp. 39-40, 82.
[2293] Witness WFP2, T. 22 January 2007 pp. 22, 39-49, 55; T. 23 January 2007 pp. 15-17, 39, 41-43, 65-67, 70, 72-73, 81-82.
[2294] Witness WFP2, T. 22 January 2007 pp. 45, 47-49; T. 23 January 2007 pp. 39, 65-68, 70, 72-73.
[2295] Witness WFP2, T. 22 January 2007 pp. 46, 51-52; T. 23 January 2007 pp. 14-15, 74.
[2296] Witness WFP2, T. 22 January 2007 p. 51; T. 23 January 2007 pp. 79-80.

Defence dealt with foreign suppliers and the delivery of munitions and armaments. In this context, Bizimungu, the Minister of Health, would not have obtained weapons and Witness WFP2 never learned of him doing so in 1994.[2297]

1617. The witness believed that the Kigali airport was no longer operational by 21 April 1994 and testified that when provisions could not come through Kigali, the country would have to be supplied through Goma, Zaire. Had weapons been brought into Gisenyi from there, he insisted that the most direct route to the military camp from either border crossing did not go past the Meridien hotel. Moreover, Witness WFP2 testified that it would not make sense to bring the weapons to the hotel before going to the military camp.[2298]

1618. Furthermore, Witness WFP2 rejected having trained civilians to kill Tutsis with Anastase Bizimuremye, whom he did not know, once arriving in Gisenyi town.[2299] He testified that Umuganda stadium would not have been a strategically sound location to conduct military training. It presented hazards to civilians who lived nearby or were passing around the field, it was too small for exercises, and the grounds around it, which were covered in lava stones, made it difficult to walk. Furthermore, it needed to be accessed by a 4x4 vehicle.[2300]

Bizimungu Defence Witness WZ8

1619. Witness WZ8, a Hutu, was an officer in the national gendarmerie, stationed in Gisenyi town in April 1994.[2301] The gendarmerie guarded the two border crossings into Goma, Zaire, which were referred to as *la corniche* and *poids lourds*. Daily reports were prepared by those administering the posts and the witness was able to review them. None documented the importation of weapons from Zaire during May 1994 or through the end of Operation Turquoise.[2302]

1620. The gendarmerie also guarded the Meridien hotel in the beginning of May as Interim Government ministers began to arrive. The witness denied that weapons were ever brought there, as he never received reports of such activities. Similarly, the witness denied that he or Bizimungu distributed weapons in April or May 1994 or that any were given out in Gisenyi in May 1994. Specifically, he did not see Bizimungu or Lieutenant Colonel Juvénal Bahufite in Gisenyi in April or May 1994 and did not hear of the Minister of Health going there at any time during the genocide.[2303] Furthermore, he added that the swearing-in ceremony for

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[2297] Witness WFP2, T. 22 January 2007 pp. 52-56.
[2298] Witness WFP2, T. 22 January 2007 pp. 57, 63-65; T. 23 January 2007 pp. 79-80; Exhibit 1D131 (Map of Gisenyi Town Prepared by Witness WFP2).
[2299] Witness WFP2, T. 23 January 2007 pp. 33-36, 62-65, 74-75; Exhibit P143 (List of Military Officers in Gisenyi's Command Sector between January 1991 and July 1993); Exhibit P145 (Situation Report of Rwandan Army, 5 March 1994) p. 3 (lists Anastase Bizimuremye).
[2300] Witness WFP2, T. 22 January 2007 pp. 65-67; Exhibit 1D131 (Map of Gisenyi Town Prepared by Witness WFP2).
[2301] Witness WZ8, T. 18 September 2006 pp. 20-21; Exhibit 1D102 (Witness WZ8's Personal Information Sheet).
[2302] Witness WZ8, T. 18 September 2006 pp. 29-32; T. 20 September 2006 p. 40; T. 21 September 2006 p. 1.
[2303] Witness WZ8, T. 18 September 2006 pp. 21, 32-35; T. 20 September 2006 pp. 33-34; T. 21 September 2006 pp. 1, 11-12, 20-21. Witness WZ8 did not know of a "Habufite". T. 18 September 2006 pp. 34-35.

members of parliament took place in April 1994 at Kibihekane secondary school, more than 60 kilometres from Gisenyi town.[2304]

1621. He denied that Lieutenant Bizimuremye and Major Christophe Kabera provided military training at Umuganda stadium in April and May 1994. He did not see Kabera in Gisenyi in May 1994. Furthermore, if training had occurred in Gisenyi, areas like Bugesera were better suited for it.[2305]

Bizimungu Defence Witness WFP10

1622. Witness WFP10, a Hutu, was a business man in Rubavu commune, Gisenyi prefecture, in 1994.[2306] He was in Kigali for the first part of May 1994, returning to Gisenyi on 12 May.[2307] The witness never went to the Meridien hotel in May 1994 and could not account for Witness GTC's or Witness GKI's whereabouts during that time. However, the three fled Rwanda on 14 July 1994 pursuant to a military order and were later detained together. At no point did Witness GTC mention going to the Meridien hotel or seeing authorities there. Similarly, Witness GKI never worked or talked about working at the Meridien hotel in Gisenyi. Moreover, he never heard anyone say that Witness GTC went to Meridien hotel to see authorities or that Witness GKI worked there.[2308]

1623. Witness WFP10 further denied that any military training or distribution of weapons took place at Umuganda stadium in May 1994.[2309] Had that occurred it would have been known all over Gisenyi town and it would have been mentioned during the multi-accused trial of 54 persons in Gisenyi in which both he and Witness GTC were tried. During that trial no one testified that they had seen any distribution of weapons at Umuganda stadium. Furthermore, the judgement in the case proved that there was no such distribution in Gisenyi in May 1994.[2310]

1624. Witness WFP10 did not see Barayagwiza in Gisenyi town in May 1994 and did not hear that he had been there from 1 to 12 May when the witness was in Kigali. He denied that there was any connection between Barayagwiza and Witness GTC, pointing out that they came from different communes.[2311]

1625. Witness WFP10 knew Witnesses GTC and GKI since childhood. In 1997, they were detained together for nine months in Gisenyi police station before being transferred to Gisenyi central prison pending their trial. Witness GTC was the leader of a group of detainees within the police station who, in conjunction with the Rwandan Prosecutor's Office and the police, harassed and mistreated detainees in order to force them to fabricate testimony against military officers and senior government officials, including Bizimungu. At one time, Witness GTC was ordered by a soldier named Aloys to give Witness WFP10 sixty lashes using a piece of broom because Witness WFP10 refused to confess to crimes that he had not

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[2304] Witness WZ8, T. 18 September 2006 pp. 34-35.
[2305] Witness WZ8, T. 18 September 2006 pp. 33-34; T. 21 September 2006 pp. 11-12.
[2306] Witness WFP10, T. 31 August 2006 pp. 50, 66-67; Exhibit 1D92 (Witness WFP10's Personal Information Sheet).
[2307] Witness WFP10, T. 30 August 2006 p. 49; T. 31 August 2006 pp. 38-39.
[2308] Witness WFP10, T. 31 August 2006 pp. 31, 44-46, 68-70; T. 5 September 2006 p. 18.
[2309] Witness WFP10, T. 30 August 2006 p. 49; T. 31 August 2006 pp. 41-42; T. 5 September 2006 pp. 21, 23.
[2310] Witness WFP10, T. 31 August 2006 pp. 5-6; T. 5 September 2006 pp. 19-23.
[2311] Witness WFP10, T. 31 August 2006 pp. 37-38, 53-54.

committed. Those who agreed to give false testimony received preferential treatment. Witness GTC himself agreed to fabricate evidence against military and government officials. Witness GKI also fabricated evidence against government officials in exchange for more favourable prison conditions. In their subsequent trial, Witness GTC was sentenced to death and Witness GKI to life imprisonment. Witness WFP10 was acquitted.[2312]

Deliberations

1626. Witnesses GTC and GKI gave evidence that Bizimungu was present at Meridien hotel in May 1994. Witness GTC testified that he saw Bizimungu receive weapons at the hotel on an unspecified day between 12 and 19 May. Witness GKI said that he saw him attending a swearing-in ceremony of the National Assembly or parliament on 21 May, and afterwards instruct those present of the need to return to Kigali and fight those fighting the Interim Government, whom the witness interpreted to be the Tutsis.

1627. Both witnesses also stated that military training was taking place at Umuganda stadium in May 1994. Witness GKI observed weapons from Gisenyi military camp being distributed to those receiving training in the evening after Bizimungu had spoken at Meridien hotel (21 May 1994). Witness GTC likewise observed weapons being distributed at Umuganda stadium the day after he saw Bizimungu at Meridien hotel (between 13 and 20 May 1994). He further testified that Bizimungu was there when this happened and instructed the trainees, once armed, to "liberate Kigali".

1628. The Chamber recalls its interlocutory decision of 3 September 2004 where it found that Witness GTC's testimony pertaining to Umuganda stadium included facts that were included in the Prosecution's Proposed Amended Indictment, which was rejected in its entirety by the Chamber.[2313] The Prosecution evidence was admitted as relevant to the activities of the Interim Government during the relevant period that were pleaded in the Indictment and, consequently, will be evaluated.[2314]

1629. The Chamber recalls that Witnesses GTC and GKI, at the time of their testimonies, were incarcerated together pending appeal of their criminal convictions in Rwanda. They had been tried together in a multi-accused case with 54 defendants and had both been found guilty of genocide on 25 May 2001. Witness GTC was sentenced to death and Witness GKI to life imprisonment. The Defence has alleged that both witnesses agreed to fabricate evidence against military and government officials in exchange for preferential treatment while detained. Specifically, Witness WFP10 testified that the two agreed to provide false testimony against senior government officials. In the Chamber's view, Witness WFP10's evidence, while far from conclusive, warrants that the evidence of Witness GTC and GKI be viewed with appropriate caution.

1630. Having considered the context in which Witnesses GTC and GKI testified, the Chamber turns to the merits of the Prosecution case. Witness GTC testified that on an

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[2312] Witness WFP10, T. 30 August 2006 pp. 51-59; T. 31 August 2006 pp. 5-10, 13-22, 29-30, 50, 66; T. 4 September 2006 pp. 3, 15-21, 24-27, 29-37; T. 5 September 2006 pp. 5-6.
[2313] Decision on Prosecutor's Very Urgent Motion Pursuant To Rule 73 *bis* (E) to Vary the Prosecutor's List of Witnesses filed on 25 May 2004, 3 September 2004, paras. 20-21.
[2314] Decision on Prosecutor's Very Urgent Motion Pursuant To Rule 73 *bis* (E) to Vary the Prosecutor's List of Witnesses filed on 25 May 2004, 3 September 2004, para. 21 (admitted as relevant paragraphs 5.3, 5.19, 5.22 and 6.30).

unspecified day between 12 and 19 May 1994, he saw Bizimungu, together with Bagosora, Colonel Nsengiyumva, Major Uwimana, Major "Habifute", Major Kabera and Ngirabatware at Meridien hotel. Between 10.00 a.m. and noon, Bizimungu and his colleagues received weapons brought from Goma, Zaire. Immediately after receiving the weapons, Bizimungu and others went to the military camp commanded by Nsengiyumva where they were unloaded.

1631. Witness GKI also testified that Bizimungu was present at Meridien hotel in May 1994; however, he specified that it was on 21 May. That day, Bizimungu, along with all members of the Interim Government, attended the swearing-in ceremony of the National Assembly or members of parliament. He did not specify the time that he saw Bizimungu but noted that dignitaries began arriving for the ceremony around 12.30 p.m. Unlike Witness GTC, Witness GKI made no mention that weapons were unloaded at the hotel that day.

1632. Broad parallels exist between the testimonies of Witnesses GTC and GKI. Their evidence of events at Meridien hotel occurred, at most, within nine days. Both testimonies tend to place Bizimungu at the Meridien hotel around midday and in the presence of other prominent officials. Furthermore, they each reported hearing Bizimungu state his desire for renewed war efforts in Kigali.

1633. Nonetheless, significant differences emerge. Witness GKI's evidence suggests a swearing-in ceremony occurred there while Witness GTC, who testified that he saw Bizimungu arrive at the hotel, made no reference to this event or Bizimungu attending it. Furthermore, even though Witness GKI was continually present at the Meridien hotel, he at no point discussed weapons being brought there from multiple trucks. Even accounting for varying vantage points, the Chamber has doubts that the two witnesses testified about the same event. Indeed, neither the Prosecution nor Defence submissions argue that they testified about the same event. Consequently, the Chamber will address these allegations in turn.

(i) Weapons Distribution at Meridien Hotel, between 12 and 19 May 1994

1634. Turning first to Witness GTC's account of Bizimungu receiving weapons at the Meridien hotel, the Chamber recalls that he admitted that he had lied before the Gisenyi Court of First Instance multiple times. Specifically on 31 March 2000, and later on 8 January 2001, the witness pleaded guilty and confessed only to illegal possession of a firearm and being a member of the *Impuzamugambi* militia. Witness GTC admitted before this Chamber that this was untruthful as he also had killed people. He explained that he had initially lied to protect "top leaders", who were his collaborators, and who had led him into the crimes that he committed.[2315]

1635. After having been sentenced to death on 25 May 2001, Witness GTC wrote two letters to the Appeals Court on 26 May and 25 July 2001 to appeal his sentence. On 24 October 2001, he sent a third letter in which he made further confessions and admitted that his letters of 26 May and 25 July 2001 contained lies as he had tried to conceal crimes committed by his collaborators such as Hassan Ngeze, Anatole Nsengiyumva and Jean-Bosco Barayagwiza. In this letter of 24 October 2001, he named those that he had killed and gave a list of his collaborators, some of whom had already given evidence against him. He did not, however, mention Bizimungu in this list of collaborators. On 29 August 2002, he made a

[2315] Witness GTC, T. 3 March 2005 pp. 5-7, 10-11.

final additional confession to the Appeals Court by letter and again did not mention Bizimungu amongst his purported accomplices.[2316]

1636. The Chamber is troubled by Witness GTC's admission that he lied multiple times to a court in Rwanda before providing a complete list of his collaborators and the crimes he committed. Moreover, it is striking that even when Witness GTC finally decided to tell the truth and give a full list of his accomplices to a Rwandan court he did not mention Bizimungu. Indeed, Witness WFP10, who fled Rwanda with Witness GTC and was imprisoned with him, testified that he never talked about going to the Meridien hotel. Consequently, the Chamber considers Witness GTC's evidence with great suspicion.

1637. Turning to the merits of his testimony as it pertains to Bizimungu's presence at the Meridien hotel, the Chamber observes that the record is unclear as to Witness GTC's ability to identify Bizimungu, a Ruhengeri native. Furthermore, Witness GTC testified that he was there with Jean-Bosco Barayagwiza, acting as his bodyguard. However, in his previous testimony before this Tribunal in the *Nahimana et al.* case, Witness GTC said that Barayagwiza was not seen in Gisenyi in April and May 1994, and was only seen there in June 1994.

1638. When confronted with this contradiction, Witness GTC explained that he was misheard in the *Nahimana et al.* trial, as he meant that Barayagwiza was seen in Gisenyi in May.[2317] The Chamber has doubts about this explanation. Indeed, other reliable evidence in this proceeding indicates that Barayagwiza was abroad with Bicamumpaka in May 1994 around the time Witness GTC allegedly accompanied him to the Meridien hotel. Specifically, Bicamumpaka and Witness WAE testified that Barayagwiza was part of the Rwandan delegation to the United Nations in 1994.[2318] This is confirmed by a contemporaneous newspaper article.[2319] This evidence raises additional concerns about Witness GTC's testimony.

1639. Turning to the Defence evidence, Witnesses WFP2 and WZ8 rejected that weapons were brought from Goma, Zaire to the Meridien hotel in Gisenyi and then distributed to civilian militia receiving training at Umuganda stadium (see below). In particular, Witness WZ8, who was stationed in Gisenyi town, never saw Bizimungu there in April or May 1994 or heard of him coming at any point during the genocide. Both testified that Lieutenant Colonel Juvénal Bahufite was not in Gisenyi in April or May 1994, Witness WFP2 testifying

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[2316] Witness GTC, T. 3 March 2005 pp. 6, 16, 20-28, 50-54; T. 8 March 2005 pp. 48-49; T. 9 March 2005 pp. 10-13; Exhibit 1D53(K) (Letter to Appeals Court, 24 October 2001). The letter was translated through the court interpreters. *See* T. 3 March 2005 pp. 20-27. The Chamber notes that Witness GTC made a subsequent confession to the president of the Appeals Court on 29 August 2002 (Witness GTC, T. 3 March 2005 pp. 16, 47-54; Exhibit 1D54(E) (Letter to Appeals Court, 29 August 2002)).

[2317] Exhibit 1D55(E) (Transcript of *Prosecutor v. Ferdinand Nahimana et al.*, Case No. 99-52-T, 4 September 2001) pp. 101-102; Witness GTC, T. 4 March 2005 pp. 11-12. The Chamber notes that the Bizimungu Defence erroneously states at para. 779 of its Closing Brief that Witness GTC testified that he, rather than Barayagwiza, was not in Gisenyi in April and May 1994. This appears to be a typographical error with other paragraphs describing this evidence. *See* Bizimungu Closing Brief, paras. 759, 801.

[2318] Bicamumpaka, T. 2 October 2007 pp. 24-26, 28-30, 50, 55; Witness WAE, T. 13 February 2007 pp. 57-58; T. 14 February 2007 p. 52. *See also* II.14.3.4.

[2319] Exhibit 1D207 (Times Article Entitled "Rwanda Minister Snubbed at UN over Massacre", 13 May 1994) para. 3; Exhibit 3D123 (Times Article Entitled "Rwanda Minister Snubbed at UN over Massacre", 13 May 1994) para. 3. In paragraph three of the article it explains that "Mr. Bicamumpaka is being accompanied by Jean Bosco Barayagwiza" during his mission in New York "that week".

that the two were together, outside of Gisenyi, confronting the RPF until 8 May or early June 1994. Neither witness knew an officer named "Habufite". Likewise, they have consistently presented evidence suggesting that Major Christophe Kabera was not in Gisenyi in May 1994.

1640. The Chamber views the testimonies of Witnesses WFP2 and WZ8 with considerable suspicion. Both, former high ranking military and gendarmerie personalities (respectively), are alleged accomplices of Bizimungu for activities in Gisenyi in May 1994 and have a clear interest in denying these events. Indeed, Witness WFP2's former experience as a military trainer and logistics officer would suggest that had he been in Gisenyi, he would have facilitated weapons acquisitions and training.[2320] Furthermore, aspects of their testimony raise considerable doubts about their reliability.

1641. For example, Witness WFP2's testimony that he was not in Gisenyi in May and June 1994 is scant and appears to serve as a means of presenting an alibi in reaction to allegations of misconduct in Gisenyi in May 1994. As an alternative, he explained that, as early as 8 May 1994, he was retreating on foot, slowly through Gishwati forest, and did not arrive in Gisenyi town until around 17 July 1994. His account of how long he took to travel between 20 and 40 kilometres through the forest is uncorroborated. His general testimony about tactical necessities and general hardships of moving through a forest simply fail to explain the length of time he spent in Gishwati.[2321] Indeed, his evidence, when considered in its entirety, would suggest that he would have wanted to and could have been able to move quickly through the forest.[2322] In particular, his evidence demonstrates that he and his fellow soldiers travelled more than twice that distance in a month-and-a-half (or less) while at the same time engaging in fighting with the RPF. Given his clear interest of denying being in Gisenyi in May 1994, the Chamber views his evidence with considerable suspicion.

1642. Turning to Witness WZ8, his purported confusion about the nature of the attacks occurring in Gisenyi appears wholly inconsistent with a person tasked with supervising security forces in the area. In particular, his inability to realise whether persons were

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[2320] *See* Witness WFP2, T. 22 January 2007 pp. 15-21, 26; T. 23 January 2007 pp. 17, 22-23.

[2321] Witness WFP2, T. 22 January 2007 p. 45 (Gishwati was dense and mountainous and without paths); Witness WFP2, T. 23 January 2007 pp. 65-67 (a tactical withdrawal can be very slow, and involve checking for landmines or taking precautions against ambush; similarly, crossing forests presents challenges, such as crossing rivers, which impedes rapid progress).

[2322] Indeed, Witness WFP2's evidence indicates that Bahufite's orders reflected a desire to retreat quickly. *See* Witness WFP2, T. 22 January 2007 pp. 44 ("Lieutenant Colonel Bahufite, via the general staff, requested that each and every soldier use his own initiative to abandon his weapon, to leave that area."), 48 ("[Bahufite] ordered everyone to flee as best they could … each unit should go back to Goma"), 49 ("[Bahufite] told us to leave immediately"). Notably, Witness WFP2's evidence indicates that the RPF front was moving from the north and east. *See, e.g.*, Witness WFP2, T. 22 January 2007 pp. 22, 39-41, 43-44, T. 23 January 2007 pp. 14-17 (describing moving south and west due to RPF advances); Witness WFP2, T. 23 January 2007 p. 80 (conceding that the RPF was in control of much of eastern Rwanda), 82 (referring to Exhibit 1D130 as a reflection of his retreat); Exhibit 1D130 (Map of Rwanda). Thus, the tactical advantage gained by retreat would be aided by moving quickly west and regrouping with reinforcements from the Gisenyi operational sector in Gisenyi town, rather than trudging, unorganised, through the Gishwati forest. Furthermore, Witness WFP2's wife and children lived in Gisenyi town. His statement that he did not know if they had remained is not an explanation as to why he would then not want to quickly determine where they were or if they were safe. Witness WFP2, T. 23 January 2007 p. 70.

identified and attacked based on ethnicity, if not dishonest, appears to reflect wilful blindness.[2323]

1643. In this context, the Chamber considers the evidence of Witnesses WFP2 and WZ8 of limited probative value. Their ability to critically testify about events, particularly those that would expose them to liability, raises fundamental concerns about their evidence generally. In this context, their evidence rejecting specific activities, as well as normal protocol pertaining to weapons acquisitions and training, are of limited probative value. Likewise, Witness WFP10 did not go to the Meridien hotel, and, thus, his evidence about whether weapons were distributed there is of limited use in resolving this issue.

1644. In any event, and notwithstanding the frailties of some of the Defence evidence detailed above, the Chamber has also considered Bizimungu's alibi evidence for the relevant period. Bizimungu presented a generally consistent and coherent body of evidence suggesting that he was out of the country between 30 April and 23 or 24 May 1994. Given the Chamber's particular concerns surrounding Witness GTC's testimony, the alibi evidence only raises further doubt about this allegation. Consequently, it has not been proven beyond reasonable doubt that Bizimungu received weapons at the Meridien hotel between 12 and 19 May.

(ii) Swearing-in Ceremony at Meridien Hotel, 21 May 1994

1645. The Chamber now turns to Witness GKI's testimony that he saw Bizimungu and heard him speak at the Meridien hotel on 21 May 1994.[2324] At the outset, the Chamber recalls that at the time of his testimony, he had been convicted in Rwanda and his appeal was pending. Furthermore, the Defence, through Witness WFP10, has presented evidence that he agreed to falsify evidence against officials while imprisoned in Gisenyi. As noted above, this evidence is inconclusive, but the circumstances surrounding his testimony warrant that it be treated with caution.

1646. Turning to the merits of his evidence, the Chamber observes that the record is opaque with respect to the witness's ability to identify Bizimungu.[2325] Furthermore, his testimony evolved when questioned about what he observed and heard Bizimungu say that day.

[2323] *See, e.g.*, Witness WZ8, T. 20 September 2006 pp. 16-22, 26, 37 (with the exception of attacks at Nyundo parish, the witness was unable to confirm that persons were being killed in Gisenyi based on ethnicity); Witness WZ8, T. 20 September 2006 pp. 39-40, T. 21 September 2006 p. 22 (claimed to be unaware of whether refugees at Mudende University, who were attacked on 8 April, were Tutsis); Witness WZ8, T. 20 September 2006 pp. 47, T. 21 September 2006 pp. 22-23 (civilians, possibly Hutus, Tutsis and Twas established roadblocks; agreed that identifications were checked to see if persons were RPF "infiltrators" but denied observing Tutsis being separated at roadblocks or having seen any killings or dead bodies at barriers).

[2324] Witness GKI remembered that Bizimungu attended a swearing-in ceremony at the Meridien hotel on 21 May 1994 because he had written it in his diary. During cross-examination, he was confronted with his 11 February 2003 statement (the relevant parts of which were read into the record), which reads that the ceremony occurred on a "certain day". He conceded that in 2003 he could not recall the date of the ceremony. Ultimately, the Chamber observes that the witness provided largely consistent testimony that the date of this ceremony was 21 May 1994 and accepts that his evidence reflects this. Witness GKI, T. 9 February 2004 pp. 37, 49-50, 52, 54; T. 10 February 2004 p. 7. Indeed, the Defence submissions also accept that this is his evidence. *See* Bizimungu Defence Brief, para. 819.

[2325] Witness GKI testified that he had known Bizimungu from Ruhengeri. *See* Decision on Motion from Casimir Bizimungu Opposing the Admissibility of the Testimony of Witnesses AEI, GKE, GKF and GKI (TC), 3 February 2004, para. 4.

Specifically, he initially testified that he could hear what happened. However, he was cross-examined with his February 2003 statement, which indicated that he could see what was going on. He explained that he passed through the corridor and could hear what was being said in the meeting room as the windows were open. Specifically, he had heard what was being said through loudspeakers as he walked through the corridor and looked into the meeting hall. While the loudspeakers are not described in the witness's February 2003 statement, he testified that he had informed investigators of them.[2326]

1647. The Chamber considers the shifting nature of Witness GKI's evidence on the stand, as well as the differences between his testimony and February 2003 statement, understandable. Nonetheless, his evidence does not provide a clear basis for identifying Bizimungu.

1648. Of greater significance, Witness GKI's testimony is uncorroborated. The Defence has presented evidence that installation ceremonies occurred elsewhere and at different times. Specifically, Bizimungu has testified that the first time that members of parliament met after the installation of the Interim Government was on 4 July 1994, at the investiture ceremony for members of the National Assembly in Rwambura, about 50 kilometres from Gisenyi town. Witness WZ8 testified that the swearing-in ceremony for members of parliament took place in April 1994 at Kibihekane secondary school, more than 60 kilometres from Gisenyi town. The Chamber views both of their evidence with suspicion.

1649. Furthermore, as discussed above, the Chamber has also considered Bizimungu's alibi evidence for the relevant period. Bizimungu presented a generally consistent and coherent body of evidence suggesting that he was out of the country between 30 April and 23 or 24 May 1994. In light of the frailties of the Witness GKI's evidence, Bizimungu's alibi raises additional doubt. This allegation is dismissed.

(iii) Military Training and Weapons Distribution at Umuganda Stadium

1650. The Chamber will now turn to Witnesses GTC and GKI's evidence that military training of youths took place at Umuganda stadium in May. Witness GTC stated that around 4.00 p.m. the day after the unloading of weapons at Meridien hotel, or sometime from 13 to 20 May 1994, he accompanied Barayagwiza to Umuganda stadium where Lieutenant Bizimuremye was training over 100 *Interahamwe*, *Impuzamugambi* and others how to use rifles, grenades and steam launchers. Bizimungu told the *Interahamwe* that they must go and hunt down the Tutsis in Kigali and kill them and then liberate the city of Kigali and that they would be rewarded greatly, that he was in charge of their lives. After Bizimungu's address, busses and weapons from the Gisenyi military barracks were brought into the stadium by Colonel Nsengiyumva, Lieutenant Bizimuremye and Major Kabera. They distributed the weapons to militiamen who were going to Kigali and that evening those who had received weapons left the stadium in an Ontracom bus to "liberate Kigali".

1651. The Chamber notes that although Witness GKI corroborates Witness GTC's testimony that weapons were distributed and youth trained in firearms handling at Umuganda stadium before being sent to Kigali in May, he does not corroborate his testimony on the critical allegation that Bizimungu was present at Umuganda stadium during this training. In this regard, the Chamber recalls its serious reservations about Witness GTC's evidence

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[2326] *See* Witness GKI, T. 9 February 2004 pp. 34-35; T. 10 February 2004 pp. 2-3.

detailed above and declines to rely on it regarding the presence of Bizimungu in the absence of corroboration.

1652. The Defence rejects that training occurred at Umuganda stadium. WFP10, who lived close to the stadium and therefore would have been in a position to observe military training taking place there, denied that such occurred. Witnesses WZ8 and WFP2 similarly rejected that training would have occurred at Umuganda stadium as it was not well suited for it.

1653. In addition, the Chamber has also considered Bizimungu's alibi evidence for the relevant period. Bizimungu presented a generally consistent and coherent body of evidence suggesting that he was out of the country between 30 April and 23 or 24 May 1994. Given the Chamber's particular concerns surrounding Witness GTC's testimony and the confusion in Witness GKI's testimony, this evidence only tends to raise further doubts about these allegations.

1654. Based on the foregoing, the Chamber concludes that the Prosecution has not proven beyond reasonable doubt that (i) Bizimungu received weapons from Goma, Zaire, at the Meridien hotel and the next day distributed them and incited the killing of Tutsis at an *Interahamwe* training session at Umuganda stadium in Gisenyi in May 1994 or that (ii) he attended a meeting at Meridien hotel on 21 May 1994 where he incited the killing of Tutsi. Given the Chamber's findings, it need not address Defence arguments concerning insufficient notice.

11.4 Mugenzi's Incitement on RTLM, End of May 1994

Introduction

1655. The Indictment alleges that between 9 April and mid-July 1994, radio announcers and members of the Interim Government, including Mugenzi, used RTLM to incite and aid and abet the extermination of Tutsis and moderate Hutus. During the same period, Mugenzi made speeches inciting the killing of Tutsis in Gisenyi, Kigali and Murambi and some were broadcast on RTLM. In furtherance of these allegations, the Prosecution points to evidence that at the end of May 1994, Mugenzi gave an interview with RTLM journalist Gaspard Gahigi during which he stated that, in 1959, the Hutus expelled the Tutsis but that they should now exterminate all Tutsis, including their babies. Witness FW provided relevant evidence.[2327]

1656. Mugenzi concedes that he gave interviews and speeches that were broadcast on the radio during this time period, and that Witness FW could have recognised his voice had he heard it. He submits, however, that he made no such inciting statements on RTLM and that Witness FW is not credible.[2328]

[2327] Indictment, paras. 5.12, 6.28; Prosecution Closing Brief, paras. 87-89, 242, 314-315; Prosecution 21 November 2008 Document, Item No. 16; Prosecution Closing Arguments, T. 1 December 2008 pp. 41-42. The Prosecution contends that Prosper Higiro corroborates Witness FW's testimony, but provides no supporting citation. An examination of Higiro's testimony reveals that he does not discuss the radio broadcast described by Witness FW.

[2328] Mugenzi Closing Brief, paras. 1302-1317; Mugenzi Closing Arguments, T. 2 December 2008 pp. 51-52.

Evidence

Prosecution Witness FW

1657. Witness FW, a Tutsi, lived in Kigali-Ville in 1994.[2329] Witness FW testified that he listened to RTLM daily as soon as it was established in 1992, up until 1994. While in hiding in April and May 1994, he listened to RTLM and Radio Muhabura on his personal battery-operated radio.[2330]

1658. At the end of May 1994, he testified to hearing an interview with Mugenzi by RTLM journalist Gaspard Gahigi. Mugenzi stated that the reason the Tutsis were returning to fight was that the Hutus had only expelled them from the country in 1959. It was not the first time they were fighting the Tutsis, they had always been winning the war against them. This time, Mugenzi stated, the mistake they made earlier would not be repeated, and now was the time to finish the matter once and for all, and kill them without mercy. They should kill them all, up to the babies that are suckling their mothers.[2331]

Mugenzi

1659. Mugenzi conceded that his speeches and interviews were transmitted on the radio in 1994. For example, his speeches at Nyamirambo stadium on 16 January 1994 and in Cyangugu on 17 May 1994 were broadcast on the radio (*see* II.5.1; II.11.2). Similarly, a summary of his speech given during the installation ceremony of Charles Zilimwabagabo as Gisenyi's prefect on 20 April 1994 was also broadcast (II.9.3).[2332] Mugenzi denied, however, that during any radio interview he incited Hutus to kill Tutsis. To the contrary, all the speeches of the Interim Government broadcast on the radio at this time were made in order to restore peace.[2333]

Deliberations

1660. There is no dispute that Mugenzi, the head of the PL and Minister of Trade and Industry of Rwanda's Interim Government, gave speeches that were either broadcast verbatim or summarised by reporters on the radio in 1994. Furthermore, the Mugenzi Defence concedes that Witness FW could have recognised his voice had he heard it. He denies, however, making inciting statements on RTLM.[2334] Thus, at issue before the Chamber is whether the content of the alleged broadcast was as Witness FW testified.

1661. Throughout the Judgement, the Chamber has considered several speeches and interviews of members of the Interim Government that were broadcast on Radio Rwanda or RTLM. The Prosecution has conceded that it has not presented a transcription or audio

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[2329] Exhibit P16 (Witness FW's Personal Information Sheet).
[2330] Witness FW, T. 2 December 2003 pp. 44-45; T. 3 December 2003 pp. 46-47; T. 4 December 2003 pp. 15, 20-21.
[2331] Witness FW, T. 4 December 2003 pp. 6-7, 45-46.
[2332] Mugenzi, T. 10 November 2005 pp. 45-54, 55-64; T. 14 November 2005 p. 61; T. 21 November 2005 pp. 20, 36; T. 22 November 2005 pp. 26, 33-34, 40-41, 95-96; T. 23 November 2005 p. 34; T. 24 November 2005 p. 40; T. 30 November 2005 pp. 7-8, 17, 60; Exhibit P2(62)(F) (Radio Rwanda Broadcast, 23 April 1994) pp. 2-5.
[2333] Mugenzi, T. 9 November 2005 p. 56; T. 28 November 2005 pp. 39-41.
[2334] Witness FW, T. 4 December 2003 p. 14; Mugenzi, T. 9 November 2005 p. 56; T. 28 November 2005 pp. 39-41.

recording of a broadcast supporting Witness FW's claims that Mugenzi expressly called for all Tutsis, including their babies, to be exterminated.[2335] The Chamber is mindful that the radio transmissions exhibited in this proceeding likely reflect a fractional amount of those broadcast in Rwanda during the genocide (II.9.2). Nonetheless, an abundance of available records of radio broadcasts are in the possession of the Prosecution and, in these circumstances, the Chamber considers the absence of any physical evidence or corroboration of this particular broadcast troubling.[2336] Indeed, the broadcasts reviewed by the Chamber reflect that neither the members of the Interim Government nor Mugenzi used such explicit language as was alleged to have been used by Mugenzi in this interview.

1662. For his part, Mugenzi testified that he never made inciting statements on the radio. The Chamber views his interpretation of radio transmissions made by him and fellow Interim Government ministers as self-serving and with some suspicion. Nonetheless, after having examined transcriptions of Mugenzi's speeches on the radio in 1994, the Chamber finds no language similar to Witness FW's testimony.

1663. In sum, owing to the contrast between the language Witness FW alleges was used and the other statements of the Interim Government, and the lack of any recording corroborating his testimony, the Chamber has reasonable doubt that Mugenzi gave an interview on RTLM in which he stated that all Tutsis, including their suckling babies, should be killed.

12. ROADBLOCKS

12.1 Kigali and Environs (Kabuga)

Introduction

1664. The Indictment alleges that as of the night of 6 to 7 April 1994, in the capital, elements of the FAR and *Interahamwe*-MRND set up roadblocks. Peoples' identities were checked, notably by verification of identity cards, and Tutsis or those identified as such were summarily executed. The Prosecution points to the evidence of Witness DCH who, on the instructions of the *conseiller* of Rusororo, set up a road block near the Kabuga mosque on 7 April 1994 in order to arrest and kill Tutsis. Witness GHT also provided relevant evidence.[2337]

1665. The Defence does not dispute that roadblocks were set up after 6 April 1994. However, the Accused had no control over the roadblocks and the people who manned them. They tried to dismantle unauthorised barriers. Witness DCH's evidence of being armed and

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[2335] Witness FW, T. 4 December 2003 pp. 26, 35-36.

[2336] The Mugenzi Defence confronted Witness FW with his November 1995, December 1999 and July 2000 statements to Tribunal investigators as well as his testimony in the *Nahimana et al.* proceeding. In particular, it argued that the information evolved within the statements and throughout his testimony. Witness FW, T. 4 December 2003 pp. 21-27, 33-40. While his testimony in this proceeding is more detailed, the Chamber considers that the fundamental features of the testimony he provided previously are materially consistent.

[2337] Indictment, paras. 1.26, 6.15; Prosecution Pre-Trial Brief, paras. 135-136 (p. 30), 138 (p. 31), 143 (p. 32); Prosecution Closing Brief, paras. 122-123, 175-177, 355, 656, 776, 962, 981, 1022; Prosecution 21 November 2008 Document, Item Nos. 30, 53, 74; Prosecution Closing Arguments, T. 1 December 2008 pp. 4, 12, 23-24, 34, 61-62; T. 5 December 2008 p. 10.

killing Tutsis at his roadblock fails to implicate the Accused. Defence Witnesses TK-1 and OK-3 provided relevant evidence.[2338]

Evidence

Prosecution Witness DCH

1666. Witness DCH, a Hutu, lived in Kabuga and was a government driver in 1994.[2339] He testified that early on the morning of 7 April 1994, the *conseiller* of Rusororo sector and gendarmes woke him up and took him to a meeting. This meeting was organised by Lieutenant Colonel Kazenga, among others, and was attended by the *conseiller*, soldiers, leaders and patrons of the *Interahamwe*, and other citizens. At the meeting, the authorities gave them instructions to carry out killings. They were told to establish roadblocks at all road junctions in order to stop every Tutsi, and to hand them over to *Interahamwe*, government or military leaders so that they could be tried and killed.[2340]

1667. After the meeting Witness DCH and others immediately set up roadblocks. Witness DCH was stationed at what was called the "tarmac road roadblock", between the road to Rwamagana near the mosque and the petrol station. He, along with *Interahamwe* including Joseph Sebisogo, who was first advisor to the *Interahamwe*, gendarmes, soldiers and *Impuzamugambi*, manned the roadblock where they killed Tutsis. At an unspecified time Witness DCH was given a rifle by the *conseiller* of Rusororo sector.[2341]

1668. Witness DCH was a government employee, and while in Kabuga he was working under the *conseiller*, obeying the orders that he was given. In addition to manning the roadblock, he would transport *Interahamwe* and soldiers around the country to kill Tutsis. The *conseiller* and others told them that their orders were "from the top". Witness DCH stated this was a reference to persons, including the President, who stated over the radio "[w]e have given orders". At this time, the government incited people to kill Tutsis via radio broadcasts.[2342]

1669. Witness DCH testified that they would identify Tutsis by checking identification cards, and if a person's identification was in doubt they would be taken to Joseph Sebisogo's house for the *Interahamwe* to make a decision.[2343]

[2338] Bizimungu Closing Brief, paras. 1219-1230, 1687, 1699; Mugenzi Closing Brief, paras. 65, 73, 496-521; Mugiraneza Closing Brief, para. 507; Bicamumpaka Closing Brief, paras. 776, 898, 901, 903; Mugenzi Closing Arguments, T. 2 December 2008 pp. 79-80.

[2339] Witness DCH, T. 16 September 2004 p. 71; T. 20 September 2004 pp. 14-15, 18; Exhibit P72 (Witness DCH's Personal Information Sheet). Witness DCH was arrested in Rwanda in 1995 and was charged with genocide, massacres, looting and related crimes. He pleaded guilty and received a sentence of 7 years on 8 December 2001. In light of his pre-trial detention, Witness DCH completed his sentence and was released on 1 February 2002. Witness DCH, T. 16 September 2004 pp. 71-74; T. 20 September 2004 p. 2; T. 22 September 2004 pp. 8-9, 14-17.

[2340] Witness DCH, T. 20 September 2004 pp. 4, 9; T. 21 September 2004 pp. 17, 32.

[2341] Witness DCH, T. 20 September 2004 pp. 4-9; T. 21 September 2004 pp. 17, 46-47; T. 22 September 2004 p. 26.

[2342] Witness DCH, T. 20 September 2004 pp. 9, 15-19, 48-50; T. 21 September 2004 pp. 3-6, 11-14, 16-20, 26-27; Exhibit 2D26(E, F & K) (Radio Rwanda Broadcast, 14 April 1994).

[2343] Witness DCH, T. 20 September 2004 pp. 4-5, 10-11; T. 21 September 2004 p. 30.

Prosecution Witness GHT

1670. Witness GHT, a Tutsi, lived in Kabuga in April 1994.[2344] While fleeing on 8 April 1994, she passed through a roadblock in Kabuga located on the upper left-hand side of the tarmac Kigali-Kibungo road, which was manned by people wearing the *kitenge* MRND uniform.[2345]

Bicamumpaka Defence Witnesses TK-1 and OK-3

1671. Witnesses TK-1 and OK-3, Hutus, lived and or worked in Kabuga in 1994.[2346] Witness OK-3 testified that a gendarme erected a roadblock on 8 April 1994 approximately 80 metres from his house in Kabuga. The witness's home was located in front of and slightly downhill from the only mosque in Kabuga.[2347] Witness TK-1 was aware that roadblocks existed in Kabuga, including one down-hill from his home.[2348]

Deliberations

1672. In support of its Indictment paragraph pertaining to the establishment and administration of roadblocks for the purposes of killing Tutsis in Kigali, the Prosecution points to the testimony of Witness DCH. Witness DCH provides no direct evidence of any of the Accused's involvement in the administration of his roadblock.

1673. The Chamber has elsewhere evaluated Witness DCH's evidence in detail and expressed a need to view it with caution (II.10.2). The Chamber's concerns relate primarily to his evidence implicating the Accused. However, his testimony in this instance, which includes confessions to participating in the criminal administration of a roadblock in Kabuga, when viewed in light of his criminal record, appears generally credible. Indeed, Witnesses GHT, TK-1 and OK-3 offer corroboration that this roadblock existed.

1674. Moreover, a broad view of the record reveals that roadblocks were erected throughout Kigali almost immediately after the President's plane crash.[2349] Both parties led evidence that

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[2344] Witness GHT, T. 30 September 2004 p. 26; T. 1 October 2004 p. 2; Exhibit P76 (Witness GHT's Personal Information Sheet).

[2345] Witness GHT, T. 30 September 2004 pp. 26-27, 37, 41-42.

[2346] Witness TK-1, T. 16 October 2007 pp. 63, 65, 67-68, 90; Exhibit 3D153 (Witness TK-1's Personal Information Sheet). At the time of his testimony, Witness TK-1 was detained in Kigali Central Prison pending appeal. He was found guilty of genocide and sentenced to death in 2000. Witness TK-1, T. 16 October 2007 pp. 65, 75-76, 77-81; Exhibit 3D8(F) (Judgement of the Kigali Court of First Instance) pp. 23-26. Witness TK-1 also testified that the *Gacaca* court conducted an investigation and on 13 July 2007 found that he was not guilty of genocide for which he was being prosecuted by the Public Prosecutor's Office. Witness TK-1, T. 16 October 2007 pp. 80-86; T. 17 October 2007 pp. 7-8. Exhibit 3D157(E, F & K) (*Gacaca* Ruling, 13 July 2007), which was read into the record at T. 16 October 2007 pp. 84-85. Witness OK-3, T. 17 October 2007 pp. 19-20, 51-53, 57-59; Exhibit 3D158 (Witness OK-3's Personal Information Sheet); Exhibit P179 (Handwritten Name); Exhibit P180(E & F) (Statement to Bicamumpaka's Defence Counsel, 2 June 2004). Witness OK-3 was detained at Kigali prison at the time of his testimony pending appeal. He was found guilty of genocide in 2000. Witness OK-3, T. 17 October 2007 pp. 37-43, 57; Exhibit 3D156 (Judgement of the Kigali Court of First Instance) pp. 16-20, 42.

[2347] Witness OK-3, T. 17 October 2007 pp. 20-21, 69-70, 74.

[2348] Witness TK-1, T. 17 October 2007 p. 8.

[2349] Witness GIE, T. 17 February 2004 p. 29 (in April 1994 the government set up roadblocks); Witness GLG, T. 27 October 2004 pp. 14, 23-24 (one could not go a kilometre away without seeing a roadblock); Uwizeye, T. 7 April 2005 pp. 59-60 (stated there were roadblocks everywhere in Kigali; while it normally took 40 minutes to

roadblocks were manned by civilian militia, commonly referred to as *Interahamwe*, as well as gendarmes and soldiers.[2350] Those manning roadblocks checked identification cards that

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travel from Gitarama to Kigali, there were so many roadblocks across the Nyabarongo River and bridge that it took him three hours); Witness UL, T. 1 March 2004 pp. 52-54, T. 2 March 2004 p. 18, T. 3 March 2004 pp. 26-27 (saw about 10 roadblocks between his house and the Kigali prefecture office on 11 April 1994, including roadblocks at the football pitch, on the bridge, near the Ministry of Agriculture, at Saint Michel Church, and described roadblocks in Kimisagara, one near the Kimisagara soccer field and roadblocks on the other side of the bridge near the soccer field); Witness DY, T. 23 February 2004 pp. 26, 32-34, 38-39 (observed a roadblock in Kimihurura and around five roadblocks while travelling from the *Hôtel Des Diplomates* with Minister Niyitegeka to Rwampara, about four roadblocks around 20 and 21 April 1994 while escorting Colonel Kabiligi to Kimihurura; and about eight roadblocks when travelling to the Kigali mountains); Witness GHT, T. 30 September 2004 p. 42 (saw a roadblock on the upper side of the tarmac road to the left on the road from Kigali to Kibungo and passed the tarmac roadblock on 8 April 1994); Witness D, T. 15 June 2004 pp. 21, 24, 48, 50, T. 16 June 2004 pp. 53, 56-57 (was stopped at a roadblock next to Saint André College between 7 and 9 April 1994 and on his second trip to Kigali he went through Gitega sector, where a roadblock had been erected; when he returned to Kigali in late April he saw an increase in the number of roadblocks making travelling into town more difficult); Witness GTC, T. 2 March 2005 p. 34, T. 3 March 2005 pp. 57-58 (described a roadblock in Sheronji commune, Kigali-*Rurale* area); Makeli, T. 30 October 2007 p. 32 (heard roadblocks were set up in Kigali after the death of the President); Nduwayezu, T. 4 February 2008 pp. 32, 42 (heard roadblocks were set up in Kigali and saw roadblocks on the major roads while travelling towards Kigali); Ntagerura, T. 19 February 2007 pp. 59-60 (*Interahamwe* set up roadblocks in Kigali); Witness LF-1, T. 12 June 2008 pp. 42-43 (observed roadblocks every 50 metres in Kigali, including a roadblock on 18 April 1994 on his way to Nyabugogo); Betabura, T. 5 December 2005 pp. 9-11 (saw around 10 roadblocks while travelling from his home in Remera to the market, a distance of about six kilometres); Turatsinze, T. 19 April 2006 pp. 51-52 (passed a roadblock close to the French Embassy and passed roadblocks when travelling from Kigali to Kayonza); Witness RWW, T. 13 March 2008 pp. 24-26, Witness RWV, T. 9 June 2008 pp. 28-29, 62-63 (both observed roadblocks in Kigali at a place called Nyabugogo and at another location called Giticyinyoni); Witness WZ4, T. 5 September 2006 p. 7, T. 6 September 2006 p. 42, T. 7 September 2006 p. 67 (saw roadblocks in the town sector, a roadblock in Muhima and a roadblock between his house and a hospital); Witness RWU, T. 5 June 2008 pp. 52-53 (was stopped at a roadblock by the Kigali diocese); Nyetera, T. 25 September 2006 p. 31, T. 27 September 2006 pp. 38-39, T. 28 September 2006 pp. 4-6 (roadblocks were set up in Kigali immediately after the crash of the President's plane in the direction of the airport and in other communes and sectors of Kigali; roadblocks were set up on 9 April after the installation of the transitional government; after the President's death he witnessed a roadblock around 50 metres from his house, near the entrance of the market, and even heard about a roadblock by the regional stadium); Witness RDO, T. 5 March 2008 pp. 18-19 (passed through at least three different roadblocks while travelling in the Kigali-*Rurale* area, including one roadblock on a bridge); Witness WFQ1, T. 3 October 2006 pp. 8-9, 66 (after the downing of the President's plane roadblocks were set up in *cellules*, communes, and at the prefecture level throughout Kigali); Witness WFQ3, T. 26 January 2007 pp. 22-24 (recalled seeing many roadblocks while travelling from Kigali to Gitarama and then to Gisenyi; on the Kigali road leading to Gitarama there were military roadblocks; the witness also identified a roadblock near Nyabarongo); Mugiraneza, T. 22 May 2008 p. 54 (he saw three roadblocks while travelling from Kigali to Gitarama on 12 April 1994); Bizimungu, T. 12 June 2007 p. 43 (passed through roadblocks when he went through Kigali on 12 April 1994 towards Gitarama).

[2350] Witness UL, T. 1 March 2004 pp. 52-54, T. 2 March 2004 p. 18, T. 3 March 2004 pp. 26-27 (testified about a roadblock manned by soldiers at Saint Michel Church); Witness D, T. 15 June 2004 pp. 21, 24, 48, 52-53, T. 16 June 2004 pp. 53, 56-57 (testified that while attempting to escort refugees to Kanombe international airport, General Dallaire and UNAMIR found a big roadblock manned by *Interahamwe* at Gikondo); Witness GTC, T. 3 March 2005 pp. 57-58 (described a roadblock manned by French soldiers and Warrant Officer Hakizimana in Sheronji commune, Kigali-*Rurale* area); Witness GLG, T. 27 October 2004 p. 24 (saw armed young men manning the roadblocks); Witness GHR, T. 18 March 2004 p. 46 (there were soldiers and *Interahamwe* manning the roadblocks); Witness UL, T. 1 March 2004 pp. 52-54, T. 3 March 2004 p. 27 (roadblocks were manned by a mixture of armed *Interahamwe* and civilians); Witness GHT, T. 30 September 2004 p. 42 (saw persons dressed in MRND uniforms manning the roadblocks); Witness D, T. 15 June 2004 pp. 48-49, T. 16 June 2004 pp. 56-57, T. 17 June 2004 p. 64 (roadblocks were manned by the *Interahamwe*, but not all of them); Ntagerura, T. 19 February 2007 pp. 59-60 (*Interahamwe* set up roadblocks in Kigali); Ntagerura, T. 19 February 2007 pp. 60-62

indicated an individual's ethnicity.[2351] Those with *laissez-passers*, official letters, riding in ministerial cars or with escorts could pass roadblocks.[2352] Frequently, those identified as Tutsis were targeted and killed at roadblocks.[2353] Numerous witnesses testified that they saw bodies at or near roadblocks in Kigali.[2354]

(in addition to roadblocks manned by *Interahamwe* there were also unauthorised roadblocks manned by young civilians); Ntamabyaliro, T. 23 August 2006 p. 46, T. 28 August 2006 p. 23 (in addition to roadblocks guarded by *Interahamwe* she was also stopped by armed civilians at a roadblock); Witness RDO, T. 5 March 2008 pp. 18-19 (soldiers were present at a roadblock on a bridge); Witness OK-3, T. 17 October 2007 p. 69 (roadblocks were manned by gendarmes); Witness WFQ3, T. 26 January 2007 pp. 22-24 (from Kigali to Gitarama and then Gisenyi passed roadblocks manned by soldiers); Witness RWW, T. 13 March 2008 p. 24 (the roadblock at Nyabugogo was manned by ordinary civilians while the roadblock at Giticyinyoni was manned by members of the army); Witness WAA, T. 1 February 2007 p. 33 (civilians manned the roadblocks he passed between Kigali and Gitarama); Witness RWV, T. 9 June 2008 pp. 28-29 (roadblocks were manned by a mixture of persons armed with modern and traditional weapons); Mugiraneza, T. 22 May 2008 p. 54 (testified about two roadblocks manned by civilians and a third that was guarded by soldiers); Bizimungu, T. 12 June 2007 p. 43 (roadblocks were manned by civilians who he thought were Hutus); Bicamumpaka, T. 27 September 2007 pp. 5-7 (major roadblock located near the Nyabarongo river was manned by soldiers).

[2351] Witness UL, T. 2 March 2004 p. 32 (recalled that when he crossed roadblocks he had an identity card bearing the word "Hutu", and this was why he was able to cross the roadblocks); Witness GHR, T. 18 March 2004 pp. 46-47 (was asked by the *Interahamwe* to provide identification papers, which contained a person's name and ethnicity; the witness showed the *Interahamwe* a forged identify card that listed his ethnicity as a Hutu, and stated that if he did not have this card he would have been killed); Witness WFQ1, T. 4 October 2006 pp. 8-11 (*Interahamwe* manning roadblocks in Kigali would ask for identity papers and would kill those determined to be Tutsis); Betabura, T. 5 December 2005 pp. 10-11 (Betabura and his companion were both required to show identification cards at a roadblock near his home in Remera); Makeli, T. 30 October 2007 pp. 32-33 (was required to show his identification card at roadblocks); Ntagerura, T. 19 February 2007 pp. 60-62 (identification papers and *laissez-passers* were checked at roadblocks, but this was to prevent RPF infiltrators and not to identify Tutsis; persons without identification papers would be taken to the local administrative authorities; people may have been killed based on the ethnicity marked on their identification); Witness OK-3, T. 17 October 2007 pp. 69-70 (it was well known that gendarmes at the roadblocks would check identification cards); Nyetera, T. 27 September 2006 pp. 38-40, T. 28 September 2006 pp. 4-6 (identification cards had to be checked at roadblocks); Witness WZ4, T. 5 September 2006 pp. 8-10, T. 6 September 2006 p. 42, T. 7 September 2006 p. 67 (identification cards had to be checked at roadblocks); Ndindabahizi, T. 1 May 2007 pp. 76-79 (his identification card was checked at a roadblock while walking from Rafiki's home); Mugenzi, T. 30 November 2005 pp. 27-33 (agreed identification cards were checked at roadblocks).

[2352] Witness D, T. 16 June 2004 pp. 55-57 (was able to pass through roadblocks in Kigali because he was issued a *laissez-passer* from Colonel Renzaho, the prefect of Kigali, which allowed him to travel across Rwanda); Witness GLG, T. 27 October 2004 pp. 24-25 (used a *laissez-passer* from the government in order to pass the roadblocks on the Kigali-Gitarama road); Witness RDO, T. 5 March 2008 p. 18 (did not have to pay to pass through any roadblocks because the witness had a letter from the *conseiller*); Witness RWW, T. 13 March 2008 p. 25 (they were not stopped at roadblocks because the vehicle was clearly a Ministerial vehicle); Witness WFQ1, T. 5 October 2006 p. 47 (on one occasion the witness obtained a signed letter from the *Interahamwe* which allowed him to go through roadblocks); Turatsinze, T. 19 April 2006 p. 52 (was not asked for his identification card because he was being escorted by a uniformed soldier).

[2353] Uwizeye, T. 7 April 2005 pp. 59-60 (roadblocks were being used to identify Tutsis); Witness GHR, T. 18 March 2004 p. 46 (the *Interahamwe* were killing Tutsis at roadblocks); Witness DY, T. 23 February 2004 pp. 26, 33-35 (testified that *Interahamwe* manning the roadblocks were busy killing Tutsis, including a Tutsi Second Lieutenant Mudenge who was killed at the roadblock in Kimihurura); Witness GHT, T. 1 October 2004 p. 17 (the purpose of the roadblocks was to check those who were passing by and to kill "them"); Witness GIE, T. 17 February 2004 p. 29 (persons were taken to roadblocks and if they were identified as Tutsis they would be killed); Witness WFQ1, T. 4 October 2006 pp. 8-10 (some wounded or members of the opposition party being transported by the ICRC were forced to stay at roadblocks and would later be killed if identified as Tutsis); Witness RWV, T. 9 June 2008 pp. 28-29 (saw corpses at roadblocks); Nduwayezu, T. 4 February 2008 pp. 33-34 (knew that other persons at roadblocks had to show identification cards and could be kept behind if they were

1675. Witness DCH's evidence, when compared with this more general evidence is convincing. The Chamber accepts the details of how his roadblock was operated and that Tutsis were targeted and killed at it. Notwithstanding, his evidence fails to directly implicate any of the Accused. Notably, the Interim Government was not formed until 9 April 1994 and left Kigali on the morning of 12 April, raising questions about how any of the Accused in this case administered Witness DCH's roadblock (II.7.2; II.7.4.iii). The Prosecution has not led evidence demonstrating that any of the Accused took any action towards supporting killings at roadblocks while it remained in Kigali. Indeed, the Prosecution case reflects that once installed on 9 April 1994, the Interim Government, and Mugenzi in particular, requested that the *Interahamwe* leadership tour Kigali in order to quell killings (II.7.3). Notably, while Witness DCH generally testified that messages broadcast by the government were inciting, the instructions to kill did not come from them but from local leaders.

1676. In the Chamber's view, the record is also insufficiently clear to establish the direct involvement of the Accused in roadblocks in Kigali generally starting from the evening of 7 April 1994. The Chamber is mindful that on 9 April 1994, Mugenzi's discussions with the MRND and *Interahamwe* leadership led to attempts to quell killings in Kigali, particularly at roadblocks. While this reflects a degree of influence, using status in order to stop killings does not necessarily demonstrate the creation of a formal or informal hierarchical relationship or effective control over a group perpetrating killings. The Chamber is not satisfied that this evidence establishes effective control over those perpetrating crimes at roadblocks throughout

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determined to be Tutsi); Mugenzi, T. 30 November 2005 pp. 27-33 (denied the roadblocks' purpose was to identify Tutsis but testified it came to his attention that some people manning roadblocks were separating Hutus from Tutsis, and admitted that the reality was that Tutsis identified as such were killed). *See also* Exhibit 3D103 (Outgoing Cable from Dallaire to Annan, 15 April 1994) p. 4 ("Frequent roadblocks are established, ID cards checked and Tutsis executed on the spot. Bodies are removed in a systematic manner and the cycle continues. If the RGF or gendarmerie are present they do not interfere. In fact in some areas they are prohibited transit by the militias."); Exhibit 3D99 (Outgoing Cable to Baril, 17 April 1994) p. 5 ("In Kigali, frequent roadblocks are established, ID cards checked and Tutsis executed on the spot. If the RGF or gendarmerie are present they do not interfere. In fact in some areas they are prohibited transit by the militias."). *See also* II.9.2. *But see* Ntagerura, T. 19 February 2007 pp. 60-62 (both Hutus and Tutsis were killed at roadblocks); Witness RWW, T. 13 March 2008 pp. 24-25, T. 17 March 2008 p. 13 (did not see any signs of violence while travelling through roadblocks in Nyabugogo and Giticyinyoni); Mugiraneza, T. 22 May 2008 p. 54, T. 26 May 2008 p. 49 (did not see any killings at the roadblocks he crossed); Bizimungu, T. 12 June 2007 p. 43 (never personally saw any killings at roadblocks); Bicamumpaka, T. 27 September 2007 pp. 5-7 (did not see any killings or dead bodies during his trip from Kigali to Gitarama and did not see any corpses or violence at the Nyabarongo roadblock).

[2354] Witness UL, T. 1 March 2004 pp. 52-54, T. 2 March 2004 p. 32, T. 3 March 2004 pp. 26-27 (recalled seeing dead bodies while passing a roadblock at the building known as Kabuga's); Witness DY, T. 23 February 2004 p. 26 (saw a lot of dead bodies at roadblocks); Turatsinze, T. 19 April 2006 pp. 51-52 (saw dead bodies in the Gikondo area and on the Kicukiro road, as well as at roadblocks while travelling from Kigali to Kayonza and believed those persons were killed by the men manning the roadblocks; he believed persons were killed because of their ethnicity or political allegiances); Witness RWV, T. 9 June 2008 pp. 28-29 (saw corpses around roadblocks on the tarmac roads through the Kabuga building, in the direction of Nyabugogo and also saw bodies in an area known as Giticyinyoni); Makeli, T. 30 October 2007 pp. 32-33 (it was no secret that people were being killed at roadblocks, but he did not see any dead bodies first hand); Mugenzi, T. 14 November 2005 pp. 11-12, T. 30 November 2005 pp. 7, 27-33 (after 6 April 1994 people had been killed publicly and corpses were said to be at roadblocks; was also aware that people engaged in killings at roadblocks). *But see* Witness WFQ3, T. 26 January 2007 pp. 22-24 (did not see any corpses at roadblocks); Betabura, T. 5 December 2005 pp. 10-13 (did not see any corpses at the 10 roadblocks he saw between his home in Remera and the market); Bicamumpaka, T. 27 September 2007 pp. 5-7 (did not see any killings or dead bodies during his trip from Kigali to Gitarama and did not see any corpses or violence at the Nyabarongo roadblock).

Kigali. The Chamber finds no basis to hold any of the Accused responsible for killings at roadblocks in Kigali from the evening 6 April 1994.

12.2 27 April 1994 Letter

1677. The Indictment alleges that on 27 April 1994, the Interim Government ordered roadblocks to be set up, knowing that the roadblocks were being used to identify the Tutsi and their accomplices for the purpose of eliminating them.[2355] However, in neither its closing arguments, nor its Closing Brief, does the Prosecution make any submissions concerning the Interim Government instructions of 27 April 1994.

1678. The Defence submits that the Prosecution has not proven beyond reasonable doubt that the directive of 27 April 1994 was intended to characterise Tutsis as the enemy. The Defence argues that other evidence supports the proposition that the killings occurring at roadblocks were perpetrated in spite of Interim Government instructions as to how the barriers should be operated.[2356]

1679. The Bizimungu, Mugenzi and Mugiraneza Defence teams presented Prime Minister Jean Kambanda's 27 April 1994 letter to prefects concerning the restoration of security in the country as exculpatory evidence. Specifically, while the letter called for the establishment of roadblocks, their purpose was to search for and identify RPF-*Inkotanyi*, a legitimate goal given the ongoing conflict.[2357] The letter also advocated avoiding violence under the pretext of "ethnic groups, regions, denominations, political parties, [and] hatred".[2358]

1680. According to Defence Expert Witness Eugène Shimamungu, Kambanda's instructions reiterated the government's three objectives, namely restoring and maintaining peace and security, continuing negotiations with the RPF and resolving the problem of the famine and displaced persons. Further, Kambanda's message also did not refer to unmasking RPF accomplices, but rather to unmasking the enemy and its equipment or "tools".[2359] Contrary to the allegation in the Indictment, several of the Accused and several Defence witnesses similarly testified that Kambanda's message urged peace, did not label Tutsis as the enemy, and contained instructions that "infiltrators" stopped at roadblocks be taken to the proper authorities.[2360] As noted elsewhere, Des Forges disputed these interpretations during her

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[2355] Indictment, para. 6.24.

[2356] Bizimungu Closing Brief, paras. 1219-1230, 1687, 1699; Mugenzi Closing Brief, paras. 73, 496-521; Mugiraneza Closing Brief, para. 481; Mugenzi Closing Arguments, T. 2 December 2008 pp. 56, 79-80, 82-83; T. 3 December 2008 p. 23.

[2357] *See* Exhibit 2D58(E) (Prime Minister Jean Kambanda's Letter to Prefects entitled: Instructions to Restore Security in the Country, 27 April 1994) pp. 8-13. *See also* Exhibit 2D30(K) (Prime Minister Jean Kambanda's Letter to Prefects entitled: Instructions to Restore Security in the Country, 27 April 1994); Makeli, T. 23 October 2007 pp. 28-31; Witness GKJ, T. 24 September 2004 pp. 57-58.

[2358] *See* Exhibit 2D58(E) (Prime Minister Jean Kambanda's Letter to Prefects entitled: Instructions to Restore Security in the Country, 27 April 1994) p. 11.

[2359] Shimamungu, T. 15 May 2007 pp. 68-69, 71. The Chamber observes that there are discrepancies between interpretations of "accomplice" vs. "tool" in the letter. *Compare* Des Forges, T. 7 June 2005 pp. 56-58 (accomplice), *with* Shimamungu, T. May 2007 p. 71 *and* Ndindabahizi, T. 1 May 2007 pp. 20-25 (tools).

[2360] Makeli, T. 23 October 2007 pp. 31-32 (government leaders told the people in speeches to be careful to avoid victimising innocent people); Mugenzi, T. 30 November 2005 p. 30 (government gave instructions that nobody should suffer based on ethnicity), 37-38 (Prime Minister reminded people that those identified as *Inkotanyi* and people stopped at roadblocks should be presented to the local judicial authority); Mugiraneza, T. 26 May 2008 p. 20 (Prime Minister's speech was meant to inform people that the country's enemy was not the Tutsi, but rather the RPF-*Inkotanyi*; urged officials to dismantle roadblocks set up by unknown persons; only roadblocks

cross-examination.[2361] During cross-examination, Witness GKJ testified that the instructions in the 27 April 1994 letter, which he had not received, were of no use precisely because the government was contradicting them by sending persons to incite the killing of Tutsis at this time.[2362]

1681. The Chamber has elsewhere discussed that the various public statements made by the Interim Government do not raise doubt that certain actions taken by them reflected clear intent to further the killings of Tutsis (II.9.1; II.9.2). This letter's attempt to define the enemy as the "RPF-*Inkotanyi*" and instructions to avoid violence among people on "the pretext of ethnic groups" is no different.

1682. There is evidence that references to the enemy, for example, the RPF, *Inkotanyi* or *Inyenzi* in some instances were understood to be referring to the military rebel force invading Rwanda and not Tutsis generally (II.9.2). However, the Chamber has also heard considerable anecdotal accounts that, when viewed together, convincingly reflect that terms used to identify the RPF were also understood to mean Tutsis generally (II.9.2). The letter's later instruction that the population remain watchful and "unmask the enemy and his accomplices" could reasonably be interpreted to include Tutsi civilians and moderate Hutus.[2363] In the Chamber's view, the calls for the population to get involved in self-defence, as well as the letter's ambiguity about whom the enemy might be – at best – reflects indifference towards the killing of Tutsi civilians that had engulfed the country by this time, particularly at roadblocks. The Chamber also notes that the letter contains no explicit condemnation of the massacres that were occurring. Indeed, by Mugiraneza's own account, stronger language against such behaviour was left out of the 27 April 1994 letter that was ultimately circulated.[2364]

1683. Furthermore, Defence witness testimony indicates that the Prime Minister promised to issue these directives at the meeting between the Interim Government and the prefects on 11 April 1994, and yet delayed in doing so until 27 April 1994.[2365] The record reflects, however, that widespread killings occurred during this time period.[2366] The more than two week delay in the issuing of these directives indicates little interest on the part of the Interim Government in stopping the killings.

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recognised by the authorities that could be monitored should be sustained; only RPF combatants should be arrested at roadblocks; those persons identified as RPF were supposed to be taken to the authorities).

[2361] Des Forges, T. 3 June 2005 p. 40; T. 7 June 2005 pp. 26, 56-58.

[2362] Witness GKJ, T. 23 September 2004 p. 40; T. 24 September 2004 pp. 56-64.

[2363] *See, e.g.*, Des Forges, T. 7 June 2005 pp. 56-57 (since there was no evidence of infiltration by 27 April 1994 in Butare, Gikongoro, Cyangugu and Kibuye, the enemy who needed to be unmasked was hidden among the civilian population).

[2364] Mugiraneza, T. 26 May 2008 pp. 21-22.

[2365] Mugiraneza, T. 26 May 2008 pp. 21-23; Mugenzi, T. 9 November 2005 p. 9; Ndindabahizi, T. 2 May 2007 pp. 17-18; Bizimungu, T. 5 June 2007 p. 56; T. 7 June 2007 pp. 16-17.

[2366] Ntagerura, T. 19 February 2007 pp. 62-63 (stating that the greatest period of killing was during the month of April); Ntagerura, T. 20 February 2007 p. 12 (recognising that by 27 April 1994, the killings had ceased); Des Forges, T. 7 June 2005 p. 39 (stating that assaults and killings diminished after 27 April 1994); Mugenzi, T. 10 November 2005 p. 14 (stating that a week after the installation of the Interim Government on 9 April the killings were spreading and reaching new areas); Mugenzi, 30 November 2005 pp. 18-19 (stating that in mid-May the killings were not as bad as it had been in April 1994); Mugiraneza, T. 26 May 2008 pp. 21-23 (acknowledging that the directives were issued tardily); Uwiyeze, T. 14 April 2005 p. 67 (stating that the letter was too late compared with the number of people who had been killed by this time).

1684. Notwithstanding, the Prosecution has in no methodical way elicited evidence or developed an argument with respect to the interpretation of this letter. Fidèle Uwizeye, who was a prefect when this letter was issued, testified upon cross-examination that he had never received it.[2367] Upon perusing it for the first time during his testimony, Uwizeye stated that its content was contrary to the government's actions.[2368] Further, while the letter referred to security committees, it, in Uwizeye's view, deliberately omitted any reference to the civil defence system that concerned the erection of roadblocks or distribution of weapons and the killings, in an attempt to display the government's good side.[2369]

1685. Ultimately, the letter's intent and impact is left to be determined not by Prosecution witnesses who consistently interpreted it as a call to establish roadblocks and kill Tutsis, but only from general evidence that Tutsis were killed at roadblocks. The fact that Tutsis were killed at roadblocks is clearly reflected in the record and there is evidence that in certain instances military and civilian authorities were participants or complicit in these crimes (II.9.2; II.12.1). However, that this *communiqué* was intended to and had a substantial impact on such crimes remains uncertain. This allegation, which appears to have been abandoned by the Prosecution, is dismissed.

13. CIVIL DEFENCE

1686. The Indictment alleges that on 25 May 1994 the Interim Government adopted directives concerning the civil self-defence programme. Its purpose was to legalise the distribution of weapons to militiamen and legitimise the massacres of civilians. As part of the civil defence programme, the Interim Government, by ministerial decisions, appointed several military officers to lead civil defence committees established in each prefecture. Some of these officers took an active part in the massacres, including Alphonse Nteziryayo in Butare. The Prosecution alleges that the Accused took part in the formulation and supported the adoption and implementation of the Interim Government's decisions, policies and directives for the perpetration of the killing of Tutsis, including Prime Minister Jean Kambanda's directive of 25 May 1994 on the organisation of civil defence to all prefects.[2370]

1687. The Bicamumpaka Defence does not contest the existence of civil defence, which it submits was enacted in May 1994 and not immediately after 6 April 1994, but rather its purpose. It argues that the evidence led by the Prosecution failed to demonstrate that the civil defence system targeted massacring Tutsis and lacked indicia of "anti-Tutsi purposes".[2371] Further, it argues that the Interim Government was not a "unified collective", noting that the Minister of Defence, on whose recommendations prefecture civil defence officials were allegedly appointed, received orders from the MRND party rather than the government.[2372] It further submitted that Uwizeye's credibility was impeached on recall, and contested the Prosecution's reliance on Expert Witness Alison Des Forges.[2373]

[2367] Uwizeye, T. 13 April 2005 pp. 66-67, 69-73; T. 18 April 2005 pp. 63, 65-68. Uwizeye also testified that he equally did not see it in the April 1994 edition of the government newspaper. Uwizeye, T. 13 April 2005 pp. 69-73.
[2368] Uwizeye, T. 13 April 2005 p. 73; T. 18 April 2005 p. 67.
[2369] Uwizeye, T. 18 April 2005 p. 67.
[2370] Indictment, para. 6.25; Prosecution Opening Statement, T. 6 November 2003 pp. 7, 11.
[2371] Bicamumpaka Closing Brief, paras. 898-904.
[2372] Bicamumpaka Closing Brief, para. 772.
[2373] Bicamumpaka Closing Brief, paras. 162-181 (concerning Des Forges), 885-897 (concerning Uwizeye).

1688. The Bizimungu Defence submits that Édouard Karemera and Prime Minister Kambanda's directives of 25 May 1994 do not advocate the killing of Tutsis. Moreover, considering most massacres had already been perpetrated in Rwanda by 25 May 1994, it submits the establishment of the civil defence could not have been designed to further killings, but only to ensure self-defence and prevent RPF infiltration. Lastly, it recalls Bizimungu was not in Rwanda at the time the directive was issued and was not involved in its issuance.[2374]

1689. In addition to submissions concerning the vagueness of Indictment paragraph 6.25, the Mugenzi Defence submits that the directives of 25 May 1994 do not promote or condone ethnic massacres, that the establishment of a "Home Guard" was necessitated by the circumstances of the time, and that the directives came after the killings had largely been completed. Further, it submits that the Indictment fails to set out what Mugenzi's alleged role in the civil defence programme was.[2375]

1690. The Mugiraneza Defence submits Mugiraneza opposed the civil defence programme and blocked its adoption as a government policy, suspecting it might be used as a means to kill Tutsis. Further, Kambanda's sole signature on the 25 May 1994 directive indicated the directive was not approved by the cabinet.[2376]

1691. Defence and Prosecution evidence tends to reflect that a civil defence programme pre-dated the events of 1994.[2377] Since its inception, the civil defence system was implemented through the establishment of roadblocks, the distribution of weapons and the training of civilians in the use of those weapons.[2378] To this end, the Chamber recalls the extensive

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[2374] Bizimungu Closing Brief, paras. 1239-1241; *see also* paras. 1231-1238.
[2375] Mugenzi Closing Brief, paras. 74, 515-518, 522-579 (on civil defence), 944-959 (on the 25 May 1994 directives specifically), 979, 1290, 1372.
[2376] Mugiraneza Closing Brief, paras. 575-578, 590, 599, 721.
[2377] Murashi, T. 9 June 2004 p. 12 (when the 1990 war broke out, administrative authorities and political and military officials mobilised a system for civil defence); Nk uliyingoma, T. 7 July 2004 pp. 49-50, T. 14 September 2004 p. 63 (the civil defence system was initiated after the January or February 1993 attack); Ntagerura, T. 21 February 2007 p. 7 (the government started organising civil defence from 1992 by reinforcing police who were threatened by RPF gangs); Bizimungu, T. 30 May 2007 pp. 45, 47 (testified about a CDR press release from 1993 that urged the training of a civil defence), Exhibit 1D223 (CDR Party Press Release, 9 March 1993); Mugenzi, T. 24 November 2005 pp. 68-70, T. 29 November 2005 p. 100 (there was a previous civil defence programme under the Minister of Defence, James Gasana, that had been called off in May or June 1993 after a cabinet decision recalling all weapons that had been distributed to civilians); Des Forges, T. 31 May 2005 pp. 56-58, Exhibit P101(E) (Des Forges Expert Report) pp. 22-25, 33 (discussing the evolution of the programme from the 1960s until April 1994). *See also* Exhibit P103(E) (Letter from Lieutenant Colonel Anatole Nsengiyumva to the Minister of National Defence, subject: Civil Defence, Gisenyi, 14 December 1993); Exhibit P106(E) (Document entitled "Organization of the Civilian Self-Defence," undated). *But see* Witness WFQ3, T. 26 January 2007 p. 20 (was not aware of any civil defence program in Rwanda in April 1993); Witness WZ8, T. 20 September 2006 p. 43 (civil defence did not exist in Gisenyi and Ruhengeri prefectures after the 1990 attack and he did not know if a civil defence system ever existed between 1990 and 1994); Witness RWL, T. 5 March 2008 pp. 50-51 (had not heard of the civil defence programme while he was in Rwanda; he only heard of it in June 1994); Mujyambere, T. 6 May 2008 pp. 24-25 (heard nothing about a civil defence programme in Kibungo prefecture).
[2378] Uwizeye, T. 18 April 2005 p. 67 (the civil defence system was quite important during the genocide "because it concerned the erection of roadblocks or distribution of weapons and the killings in general"); Uwizeye, T. 15 April 2008 pp. 37-38 (the civil defence system distributed weapons to civilians and set up roadblocks to identify Tutsis); Murashi, T. 9 June 2004 pp. 15-16 (testifying about weapons distribution by the area commander in charge of operations in Gisenyi, who was also the commander of the *Interahamwe* militia and therefore the civil defence system); Witness GKJ, T. 23 September 2004 p. 24 (at the 18 April 1994 meeting in Gitarama

evidence it has previously considered concerning the training of and distribution of weapons to civilians and *Interahamwe* pre-1994 (II.2.1). It is also undisputed that from immediately after the President's plane crash on 6 April 1994 until July 1994 activities generally associated with the civil defence programme, such as the establishment of roadblocks and training of civilians, were gradually (re-)implemented,[2379] although the programme was only formally institutionalised on 25 May 1994 with the issuance of Prime Minister Kambanda's directives concerning the "organisation of civil defence".[2380]

1692. What is disputed is the purpose of the civil defence programme and the extent to which the Accused, as Interim Government members, were implicated in the programme's establishment for the purpose of killing Tutsis. Prosecution Witness Fidèle Uwizeye, provided the most direct evidence in this regard. Uwizeye testified that during the 11 April

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Kambanda talked about civil defence, that the people should be taught how to use firearms, about patrols and roadblocks); Witness GKJ, T. 28 September 2004 p. 27 (testifying about weapons training carried out under the civil defence programme); Nkuliyingoma, T. 7 July 2004 pp. 49-52, T. 14 September 2004 p. 63 (testifying about weapons distribution among the population, especially in Byumba and Ruhengeri, carried out under the civil defence programme, including to an *Interahamwe* called Laurent Habyarimana); Ntagerura, T. 21 February 2007 pp. 7-8 (weapons were distributed under the guise of civil defence and later withdrawn before the signing of the Arusha Accords; in 1993 the Ministry of Defence trained a few hundred youths in Akagera Park); Mugenzi, T. 30 November 2005 p. 56 (knew the government had a programme of distributing arms to the civil defence); Mugiraneza, T. 4 June 2008 pp. 38-39 (had heard that the establishment of barriers and patrols was part of the civil defence programme); Karamage, T. 15 April 2008 p. 68 (was told by Gaspard Ruhumuliza that civilian defence was a project to give weapons to people to protect themselves); Des Forges, T. 31 May 2005 p. 68 (apart from encompassing militia groups, self-defence extended to the rest of the population by recruiting ordinary citizens into military training, distributing firearms to them and putting them to work under barriers and doing patrols); Exhibit P101(E) (Expert Report of Alison Des Forges) pp. 33-36 (discussing elements of the civilian defence programme, including, *inter alia*, mobilising, recruiting and training of forces in the use of weapons, as well as the distribution of firearms); Mbonyinkebe, T. 10 May 2004 p. 33 (as part of the civil defence programme, everyone was forced to do patrols). *But see* Nyetera, T. 27 September 2006 p. 38 (roadblocks were not only set up pursuant to the civil defence programme).

[2379] Mugiraneza, T. 26 May 2008 pp. 52-54 (from the time of the attack against the president's plane, people, nationwide, set up roadblocks stating that those roadblocks were a form of civilian defence; civil defence became a "parallel organisation" that established roadblocks and killed Tutsis); Nyetera, T. 28 September 2006 p. 4 (in other communes and sectors roadblocks were set up after 9 April 1994 and the installation of the transitional government in relation to civil defence); Uwizeye, T. 8 April 2005 p. 41 (as soon as the government arrived in Gitarama, one of the first things it did was to remove the prefect and sous-prefect and set up the civilian self defence); Ntagerura, T. 20 February 2007 p. 62 (training of civil defence started around the end of June and was organised by prefecture); Des Forges, T. 31 May 2005 p. 67 (beginning on 6 April 1994, the ideas of the civilian self-defence system were put into effect immediately in Kigali and in certain other parts of the country near military bases, in particular in urban areas). *See also* II.12.1.

[2380] *See* Exhibit P105 (Letter from Prime Minister Kambanda to all Prefects on the Organisation of Civil Defence, 25 May 1994); Mugenzi, T. 24 November 2005 pp. 68-70, T. 29 November 2005 p. 100 (the civil defence programme was set up in May 1994; in April there was no programme for civil defence); Witness D, T. 15 June 2004 pp. 50-51, 55 (at a meeting in Kigali attended by the witness during the second half of May 1994, Colonel Gasake was appointed director of civil defence within the Ministry of Defence); Witness GKJ, T. 28 September 2004 p. 18 (there was someone in charge of civil defence at the prefecture level); Des Forges, T. 7 June 2005 pp. 67-68 (there was a letter naming Lieutenant Colonel Aloys Simba to the post of civilian self-defence director). *But see* Mugiraneza, T. 4 June 2008 pp. 38-39 (denying knowledge that Rwagafilita and Emmanuel Mugiraneza were in charge of civil defence in Gasetsa or that the MRND replicated civil defence at all levels of government and put MRND members in charge of the civil defence). *See also* Exhibit P104(E) (Letter from the Minister of Interior Karemera entitled "Implementation of the Prime Minister's directives on self organisation of civil defence", 25 May 1994); Exhibit P103(E) (Letter from Lieutenant Colonel Anatole Nsengiyumva to the Minister of National Defence, subject: Civil Defence, Gisenyi, 14 December 1993); Exhibit P106(E) (Document entitled "Organization of the Civilian Self-Defence", undated).

1994 meeting of Interim Government ministers and prefects in Kigali, Kigali-Ville Prefect Tharcisse Renzaho talked about the establishment of roadblocks for the purposes of tracking down the *Inkotanyi* and their accomplices. In Uwizeye's assessment, Renzaho's statements condoned the killing of Tutsi civilians. The Chamber, however, found his evidence insufficiently reliable to prove that Renzaho made these statements during that gathering (II.7.5).

1693. Uwizeye provided further evidence of the implementation of a civil defence program in Gitarama after the Interim Government's arrival there on 12 April 1994. In particular, he testified about the appointment of Major Jean-Damascène Ukulikiyeyezu as the civil defence representative in Gitarama.[2381] According to Uwizeye, Ukulikiyeyezu's appointment undercut his ability to protect civilians as Gitarama's prefect.[2382] Mugenzi Defence Witness Martin Ndamage corroborated that Ukulikiyeyezu was appointed head of civil defence in Gitarama.[2383] Furthermore, it is undisputed that Ukulikiyeyezu, variously described as a Major and a soldier,[2384] eventually replaced Uwizeye as Gitarama's prefect in June, shortly after the RPF had invaded Gitarama.[2385]

1694. Uwizeye testified that Ukulikiyeyezu led civil defence and that he generally led massacres in Gitarama.[2386] However, Uwizeye's evidence that Ukulikiyeyezu led massacres

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[2381] Uwizeye, T. 8 April 2005 pp. 39, 41-42, T. 11 April 2005 p. 79, T. 12 April 2005 pp. 40, 55-56, T. 15 April 2008 pp. 23-25, T. 19 April 2005 pp. 45-46 (Major Ukulikiyeyezu replaced Uwizeye and was the civil defence force representative in Gitarama; Uwizeye met Ukulikiyeyezu around 2 June 1994 who told him he had been dismissed; he had also heard of his replacement over the radio); T. 19 April 2005 p. 75 (the Radio Rwanda broadcast reporting Uwizeye's replacement and Ukulikiyeyezu's appointment).

[2382] Uwizeye, T. 6 April 2005 pp. 55 (Major Ukulikiyeyezu would not listen to him), 62 (Uwizeye stopped working as a prefect from 10 May 1994), 69 (after 18 April 1994, it was not possible anymore for Uwizeye to report his *bourgmestre's* and other officials' activities to the Minister of the Interior or to members of the government because, *inter alia*, they were cooperating with Major Ukulikiyeyezu who appointed himself as prefect); T. 8 April 2005 pp. 38-39, T. 14 April 2008 pp. 25-27 (while trying to calm and prevent the killings that occurred after 18 April 1994, instructions were given to those manning roadblocks to stop Uwizeye; on occasions he was stopped and forced to descend from his vehicle such that he eventually drove around in a CARE International vehicle; his security was not assured), T. 8 April 2005 pp. 39 (even before he (formally) took over Uwizeye's position, Ukulikiyeyezu had been acting as if he had wanted to replace Uwzieye or as if he had been given orders to that effect, because he was in the committee of the civilian self defence, heading that programme in Gitarama), 41 (from the time Ukulikiyeyezu was given his position in civilian defence, he established powers and authority parallel to Uwizeye); T. 11 April 2005 p. 79 (Ukulikiyeyezu was given a programme by the government that the government did not discuss with Uwizeye; cabinet members Prime Minister Kambanda would refuse to meet him such that Uwizeye had his own programme to defend people); T. 19 April 2005 pp. 45-46 (although Uwizeye officially remained prefect until the decree was signed, Major Ukulikiyeyezu replaced him and the government tried to argue that he was the vice-president of the civil defence force, a member of parliament, from Gitarama, and thus had greater say than Uwizeye).

[2383] Ndamage, T. 21 March 2006 p. 46.

[2384] Uwizeye, T. 8 April 2005 p. 39, T. 11 April 2005 p. 79 (Ukulikiyeyezu was a major and "an army man"); Ndindabahizi, T. 3 May 2007 p. 6 (Ukulikiyeyezu was a soldier).

[2385] Ndamage, T. 21 March 2006 p. 38; Ndindabahizi, T. 1 May 2007 pp. 2-3, 5, T. 3 May 2007 pp. 6-7 (Ukulikiyeyezu replaced Uwizeye after the RPF captured Gitarama).

[2386] Uwizeye, T. 6 April 2005 p. 55, T. 14 April 2008 p. 48 (Major Ukulikiyeyezu set up civilian roadblocks and was responsible for the distribution of weapons); T. 8 April 2005 pp. 39-40 (Callixte and Ukulikiyeyezu, received weapons, distributed them to youths and taught them how to use them), 47-48 (Uwizeye was told by the former *bourgmestre* that there had been a meeting chaired by Callixte and attended by, *inter alia*, Major Ukulikiyeyezu, where they plotted a joint operation to kill the Mugina *bourgmestre*, around 21 April, along with people the latter had protected), 48 (Ukulikiyeyezu, with Nzabonimana, also established roadblocks where most massacres were carried out and firearms were distributed); T. 11 April 2005 p. 79 (Ukulikiyeyezu appointed

was vague, while his testimony concerning Ukulikiyeyezu's role in the establishment of roadblocks, distribution of weapons and a plot to kill persons the Mugina *bourgmestre* was protecting was second-hand.[2387] Moreover, although the Chamber views the Defence evidence with some suspicion, it did not corroborate Uwizeye's assertion that Ukulikiyeyezu committed crimes.

1695. Notwithstanding the significant evidence as to the existence of the programme and the appointment of people to head civil defence committees in given prefectures, in neither its closing arguments nor its Closing Brief does the Prosecution make any submissions as to how the Accused are implicated in the civil defence programme. The Prosecution only points to Prosecution and Defence evidence concerning instances of weapons distribution, training and the establishment and manning of roadblocks without establishing any link to the Accused's role in these respects.[2388] Indeed, the Prosecution does not refer to Kambanda's 25 May 1994 letter at all.

1696. Turning to the Defence evidence regarding the pleaded allegation pertaining to civil defence, Indictment paragraph 6.25, Mugiraneza testified that he and the Minister of Tourism and Environment, Gaspard Ruhumuliza, opposed the bill concerning the civil defence programme when it was presented by Kambanda to the cabinet.[2389] Although this evidence is self-serving, it was, nevertheless, corroborated by Des Forges and Karamage.[2390] According to Mugiraneza, the bill never became law because several cabinet members opposed its adoption for which reason Kambanda unilaterally signed the document as a directive.[2391]

1697. Bicamumpaka and Bizimungu point to evidence that they were not in Rwanda at the time and, thus, did not participate in the meeting at which the directive was adopted.[2392] With

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himself to kill people; he was getting all kinds of directives for killings, had a big responsibility and was one of the leaders in the massacres).

[2387] Uwizeye, T. 8 April 2005 p. 41, T. 14 April 2008 p. 48 (with respect to the establishment of roadblocks, it was people he asked who said Ukulikiyeyezu or Callixte were responsible); T. 8 April 2005 pp. 47-48 (Uwizeye was told by the former *bourgmestre* that there had been a meeting chaired by Callixte and attended by, *inter alia*, Major Ukulikiyeyezu, where they plotted a joint operation to kill the Mugina *bourgmestre* and those he was protecting).

[2388] *See, e.g.*, Prosecution Closing Brief, paras. 37, 192 (alleging the joint criminal enterprise/conspiracy consisted of the training, arming and guiding of the militia and subsequent killing of Tutsis), 112, 114-121, 129-130, 139-142, 153, 206, 210-212, 337, 352, 357, 504, 557, 645, 692, 746, 751, 810, 812, 866-867, 1015 (citing prosecution and defence evidence concerning the training, arming and distribution of weapons to the *Interahamwe* from 1990 throughout 1994), 62, 239, 300 (that at the 18 April 1994 Murambi meeting, Prime Minister Kambanda spoke about training and arming civilians and the intensification of roadblocks and patrols), 263 (that the Government's guidelines for the "Civil Defence" system were put in place at the 18 April 1994 Murambi meeting), 1181, 1183 (citing Karamage's testimony that Mugiraneza opposed the civil defence programme), 1222 (citing Witness RWQ that civilians did not receive military training), 52, 102, 122-123, 133, 146, 175, 176-177, 184, 209, 261, 324, 355, 618, 635, 644, 648, 655, 656, 776-777, 962, 965, 981, 983, 1047, 1146, 1163-1164 (on the establishment, manning and events at roadblocks).

[2389] Mugiraneza, T. 20 May 2008 p. 16; Mugiraneza, T. 26 May 2008 pp. 52-54, 56, T. 27 May 2008 p. 17 (opposed an official civil defence programme claiming it would be confused with the "parallel organisation" that was uncontrolled civil defence); Mugiraneza, T. 27 May 2008 p. 5 (he also opposed the civil defence programme because he did not consider it to be well structured).

[2390] Karamage, T. 15 April 2008 p. 68 (was told by Gaspard Ruhumuliza that the latter and Mugiraneza were against the civil defence project); Des Forges, T. 15 June 2005 pp. 7-8 (agreed that Kambanda himself indicated, albeit not explicitly, that there was opposition to the civil defence policy).

[2391] Mugiraneza, T. 26 May 2008 p. 54.

[2392] Bicamumpaka Closing Brief, para. 65; Bizimungu Closing Brief, paras. 460-461, 468, 1237. *See also* Mugenzi, T. 24 November 2005 p. 70; T. 30 November 2005 pp. 16-17, 19.

regard to Bicamumpaka, the Chamber has elsewhere accepted his alibi for the period covering 23 April until 22 May 1994 as reasonably possibly true. While Bicamumpaka was not sure whether he returned to Rwanda on 25, 26 or 27 May 1994, and thus could have attended the 25 May meeting where the directive was issued, the Chamber notes no evidence was led through Bicamumpaka as to the issuance of the 25 May 1994 directive or his presence at that cabinet meeting.[2393] With respect to Bizimungu, the Chamber notes Bizimungu returned to Gitarama on 24 May 1994, the day before Kambanda's directive was issued.[2394] Nevertheless, no evidence was led through Bizimungu as to the issuance of the 25 May 1994 directive or his presence at that cabinet meeting.

1698. Regarding Mugenzi, he left Rwanda on 22 April 1994 and returned to Cyangugu on 13 May 1994. He met a government delegation there on 17 May 1994.[2395] His claim that he was not in Rwanda around this time is variously corroborated by the evidence of Ndindabahizi, Ntagerura, Mugiraneza and Ntamabyaliro and moreover, does not appear to be disputed by the Prosecution.[2396] Mugenzi later testified that he did not take part in the cabinet meetings that resulted in the 25 May directive, although he learned that the government's civil defence had been put in place. He was not aware of the *Interahamwe*'s involvement in it and, by this time, killings had largely subsided.[2397]

1699. The Chamber recalls its previous finding that Rwandan military and civilian authorities were arming and training civilians before April 1994. Some such instances of training and arms distribution may have been carried out under the legitimate auspices of the civil defence programme (II.2.1). Nevertheless, as a general matter, the evidence concerning arming and training of civilians did not implicate any of the Accused as to the implementation of the civil defence programme.

1700. Similarly, the evidence concerning the establishment of the civil defence programme is general. The extent of its implementation by the national government, and then its subsequent use in committing crimes in Rwanda is general and undefined. This is true with respect to the Accused's involvement in such a program.[2398] The Prosecution appears to have

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[2393] Bicamumpaka, T. 26 September 2007 p. 45 (estimated he returned from New York and Europe at the end of May; "I think I arrived in Gitarama on the 28th of May"); T. 2 October 2007 pp. 55-56, 66-67 (he left New York on 18 May, returned to Rwanda and Gisenyi around 25 May 1994 and continued to Gitarama the following day); T. 8 October 2007 p. 37 (estimated he returned to Gisenyi around 26 or 27 May 1994).

[2394] Bizimungu Closing Brief, paras. 460-461, 468; Bizimungu, T. 29 May 2007 pp. 7-8, 47-48 (he re-entered Rwanda around 23 or 24 May 1994); T. 7 June 2007 p. 25 (he gave an interview on Radio Rwanda on 24 May 1994); Exhibit 1D206 (Radio Rwanda Broadcast, 24 May 1994) p. 25.

[2395] Mugenzi, T. 11 November 2005 pp. 54-55, 65. *See also* II.11.2.

[2396] *See* Ndindabahizi, T. 1 May 2007 pp. 44 (in May 1994 many ministers, including Mugenzi, Ntamabyaliro and even Ndindabahizi, were outside the country), 74-75 (saw Mugenzi in Nairobi on 11 May 1994 while he was in transit on mission); Ntagerura, T. 15 February 2007 pp. 43, 69, T. 20 February 2007 p. 47 (went on mission to Zaire with Mugenzi on 16 May 1994); Mugiraneza T. 2 June 2008 p. 45 (stating that Mugenzi was on mission outside the country after 19 April 1994 but without specifying any dates); Ntamabyaliro, T. 28 August 2006 p. 29 (generally stating that Mugenzi, as well as other Ministers, went abroad on mission to explain to the international community what was occurring, although not specifying any dates).

[2397] Mugenzi, T. 24 November 2005 p. 70; T. 30 November 2005 pp. 16-19.

[2398] *See, e.g.*, Des Forges, T. 31 May 2005 pp. 78-79 (testified that Exhibit P106(E) was a document produced by a small nucleus of planners, many of whom held high government position or high position in political parties, but was not a policy of the Rwandan government; the "list of actions" outlined in the document requires actions by senior leadership persons from the Ministry of Interior, the Ministry of Defence, the prefect and *bourgmestres* of Kigali city, certain political parties or various coordination committees, soldiers and gendarmes etc; the president of the republic was to negotiate with friendly countries and organise training courses); Exhibit

largely relied on the judicially noticed fact that a genocide occurred in Rwanda, but has not methodically traced killings committed under the auspices of civil defence as a general matter to the individual Accused in this case. Indeed, it has not even made submissions regarding how the pleaded event – namely the publication of the 25 May 1994 directive on civil defence – necessarily led to further killings of Tutsis. Accordingly, this allegation, which appears to have been abandoned by the Prosecution, is dismissed.

14. ALIBIS

Law

1701. In the *Zigiranyirazo* Appeal Judgement, the Appeals Chamber reaffirmed the basic principles concerning the assessment of alibi evidence:

> An alibi does not constitute a defence in its proper sense. By raising an alibi, an accused is simply denying that he was in a position to commit the crime with which he was charged. An accused does not bear the burden of proving his alibi beyond reasonable doubt. Rather "[h]e must simply produce the evidence tending to show that he was not present at the time of the alleged crime" or, otherwise stated, present evidence "likely to raise a reasonable doubt in the Prosecution case." If the alibi is reasonably possibly true, it must be accepted.
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> Where an alibi is properly raised, the Prosecution must establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true. The Prosecution may do so, for instance, by demonstrating that the alibi does not in fact reasonably account for the period when the accused is alleged to have committed the crime. Where the alibi evidence does *prima facie* account for the accused's activities at the relevant time of the commission of the crime, the Prosecution must "eliminate the reasonable possibility that the alibi is true," for example, by demonstrating that the alibi evidence is not credible.[2399]

1702. The Appeals Chamber has held that the manner in which an alibi is presented may impact its credibility.[2400] Therefore, it was within the Trial Chamber's discretion to take this into account in assessing the alibi evidence in this case.

P106(E) (Document entitled "Organization of the Civilian Self-Defence," undated) pp. 4-6; Des Forges, T. 7 June 2005 p. 70 (testifying about the layers of coordination and supervision and the wide variety of agencies implicated in civil defence, such as military authorities, administrative authorities and political leaders); Des Forges, T. 8 June 2005 p. 38 (national coordination of the civilian self-defence structure was headed by the Ministry of Defence and the Ministry of Interior; the government made certain decisions concerning appointments of military officers; not only military authorities, but civilian authorities and political party leaders present at Murambi, Gitarama, exercised considerable influence on the situation); Des Forges, T. 15 June 2005 p. 6 (given the civilian self-defence programme was a major initiative announced by the Prime Minister and developed by the Minister of Interior the same day, one would suppose the issue was discussed by the government as a whole).

[2399] *Zigiranyirazo* Appeal Judgement, paras. 17-18.

[2400] *Kalimanzira* Appeal Judgement, para. 56 *citing Rutaganda* Appeal Judgement, para. 242; *Musema* Appeal Judgement, para. 201.

14.1 Mugiraneza Alibi

Introduction

1703. As set forth elsewhere in the Judgement, the Prosecution alleges that on 7 April 1994, Mugiraneza ordered *Interahamwe* to kill Tutsis at the Cyamuribwa Centre in Kibungo prefecture (II.6.2). Subsequently, on the afternoon or evening of 9 April 1994, Mugiraneza was purportedly seen meeting with *Interahamwe* at the Kigarama commune office in Kibungo prefecture. The Prosecution alleges that he also went to a meeting at the nearby home at Jean-Baptiste Rwatoro, where weapons were distributed. A massive attack on Tutsi civilians at the Kigarama commune office occurred later that day. Furthermore, the Prosecution alleges Tutsis were later removed from the commune office and killed. A communal policeman providing protection was disarmed and killed and additional attacks were launched on the commune office (II.6.3).[2401]

1704. The Mugiraneza Defence argues that Mugiraneza was in Kigali from 6 to 12 April 1994 and did not travel to Kibungo prefecture at that time. Moreover, the road between Kigali and Kibungo was impassable due to fighting during this period. The Defence relies on the testimony of Mugiraneza, as well as Bizimungu, Bicamumpaka, Mugenzi, Mechtilde Mukandagijimana, Witness RWW, Witness RWV, Jeannette Uzamukunda, André Ntagerura, Agnès Ntamabyaliro, Emmanuel Ndindabahizi, Léoncie Bongwa, Witness WFQ1, Antoine Nyetera and Witness BGM.[2402]

1705. The Defence filed the notice of alibi on 21 October 2005, after the close of the Prosecution's case on 23 June 2005.[2403] The Prosecution did not object to the late filing of the notice.

Evidence

Mugiraneza

1706. Mugiraneza was at home on the evening of 6 April 1994. Upon hearing that President Juvénal Habyarimana's plane had been shot down, he spoke to the gendarmes guarding his house, including two named Karenzo and Habyarimana and Antoine Nkurunziza, to alert them of the situation. Before 11.00 p.m. André Ntagerura telephoned and informed him that all the other MRND Ministers had gone to seek refuge at the Presidential Guard Camp and he would see if the Presidential Guard troops could also take him there. Around 11.00 p.m., soldiers came to his home and took Mugiraneza and his family to the camp. Mugiraneza

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[2401] As noted in II.6.3, the Prosecution submissions regarding the date of Mugiraneza's presence and the following attack on the Kigarama commune office vary. The Chamber, after a review of the relevant evidence, has determined that these events, along with the meeting at Jean-Baptiste Rwatoro's home, occurred on 9 April 1994.

[2402] Mugiraneza Closing Brief, paras. 336-382; Mugiraneza Closing Arguments, T. 4 December 2008 pp. 40, 47-48. Mugiraneza has also raised an alibi in connection with his involvement in the creation of the Kibungo Club before 6 April 1994. The Chamber has set forth the evidence and evaluated this aspect of his alibi in that particular section (II.6.1).

[2403] Prosper Mugiraneza's Notice of Alibi, 21 October 2005; *see also* Prosper Mugiraneza's Corrected Notice of Alibi, 20 March 2006.

found many people at the camp, including all the MRND Ministers except the Ministers of Defence and of the Interior.[2404]

1707. Mugiraneza and his family remained in the camp until the next day. In the afternoon of 7 April 1994, the camp came under attack. Around 3.00 p.m., soldiers came looking for Callixte Nzabonimana's wife to evacuate her from the military camp. She refused to leave unless other people came with her, and so Mugiraneza agreed to accompany her. After driving away Mugiraneza and his wife realised that their son Robert remained at the camp. They searched for him but the soldiers ordered everyone to evacuate the camp immediately. Mugiraneza, his wife, and his children except Robert were evacuated together with Nzabonimana's wife to the Ministry of Defence.[2405]

1708. At the Ministry of Defence, soldiers informed them that Nzabonimana had gone to the French Embassy, and gave instructions that his wife should meet him there. Consequently, Mugiraneza and his family, together with Nzabonimana's wife, went to the French Embassy where they arrived around 4.00 p.m. They saw about 20 to 30 people there including Mugenzi. In the evening, Mugiraneza phoned his bodyguard Antoine Nkurunziza and asked him to collect his official vehicle (a dark blue Daewoo car) from his home and go and find Robert, whom they had left at the Presidential Guard Camp. Mugiraneza and his family spent the night of 7 to 8 April 1994 in the French Embassy.[2406]

1709. Mugiraneza spent the entire next day at the French Embassy and did not leave at any time. In the morning, he asked Nkurunziza to fetch his driver, Jean-Pierre Karenzi. He did not give Karenzi any instructions when he arrived but just wanted him nearby. In the early afternoon Ntagerura, Ntagerura's family and Mugiraneza's son Robert, who had spent the previous night at the Presidential Guard Camp, arrived at the French Embassy. In the evening, Mugiraneza heard on the radio that he had been appointed Minister in the Interim Government.[2407]

1710. Around 9.00 a.m. on 9 April 1994, Mugiraneza attended the swearing-in ceremony of the Interim Government at the *Hôtel des Diplomates*. They then took a short break to take photographs and then held a cabinet meeting at the hotel from 11.00 a.m. to 5.00 p.m. After the meeting, Mugiraneza went back to the French Embassy and spent the night there with his family. He did not leave Kigali that day.[2408]

1711. On 10 April 1994, Mugiraneza returned to the *Hôtel des Diplomates* to attend a press conference convened by the Prime Minister at 9.00 or 10.00 a.m. He stayed at the hotel the entire day and participated in a cabinet meeting in the evening. He spent the night at the hotel.[2409] In the early morning of 11 April, Mugiraneza collected his family from the French Embassy and brought them to *Hôtel des Diplomates*. He subsequently attended a meeting of prefects, which did not last long, and then spent the rest of the day with his family at the hotel.[2410]

[2404] Mugiraneza, T. 22 May 2008 pp. 20-25; T. 3 June 2008 pp. 58-62.
[2405] Mugiraneza, T. 22 May 2008 pp. 25-26.
[2406] Mugiraneza, T. 22 May 2008 pp. 26-34.
[2407] Mugiraneza, T. 22 May 2008 pp. 33-35.
[2408] Mugiraneza, T. 22 May 2008 pp. 35-46.
[2409] Mugiraneza, T. 22 May 2008 p. 46.
[2410] Mugiraneza, T. 22 May 2008 pp. 47-48; T. 4 June 2008 p. 8; *see* Letter from the French Authorities dated 13 March 2008 and three telegrams from the French Embassy in Kigali dated 7, 9 and 11 April 1994 confirming

1712. Early in the morning on 12 April 1994, Mugiraneza took his family to the French Embassy to register them for evacuation. Bizimungu, who was carrying out the registration at the embassy, registered Mugiraneza's wife and children but advised him that members of the government had to stay in order to continue their work. Consequently he returned to *Hôtel des Diplomates*, where he was advised by the Minister of Defence that they had to leave the city quickly, as the hotel was going to be shelled. Mugiraneza left immediately for Gitarama in his own vehicle with his driver and two gendarmes while the other members of the Interim Government travelled in a convoy. Mugiraneza arrived at Murambi around 10.00 a.m. and was the first cabinet member there. Other members of the cabinet arrived at approximately 11.00 a.m.[2411]

Bizimungu

1713. Bizimungu testified that he heard about the death of Habyarimana on the evening of 6 April 1994 around 8.45 p.m. while he was at home with his family. Around 2.00 a.m., Bizimungu and his family moved to the Presidential Guard Camp, where he found several ministers, including Mugiraneza, who was with his family and Ntagerura. Around 4.00 a.m. he returned to his house as his son was sick.[2412]

1714. On 7 April 1994, around 9.00 a.m., Bizimungu and his family took refuge at the French Embassy, where they stayed until 9 April. Bizimungu did not see Mugiraneza arriving at the Embassy but saw him on the afternoon of 7 April around 4.00 p.m. He saw him again with his family many times on 8 April inside the Embassy compound.[2413]

1715. On 9 April 1994, Bizimungu left the Embassy around 9.00 a.m. in order to participate in the swearing-in ceremony of the Interim Government, which took place around 10.00 a.m. at the *Hôtel des Diplomates*. Bizimungu did not travel with Mugiraneza to the ceremony but he saw him at the Embassy beforehand, and saw him again during and after the swearing-in ceremony. The ceremony was not long and ended at approximately 10.45 a.m. It was followed by a brief photo of all the members of the new Interim Government, including Mugiraneza. Immediately thereafter, around 11.00 a.m., a cabinet meeting with all the ministers, including Mugiraneza, took place. The cabinet meeting went for one-hour-and-a-half.[2414]

1716. Bizimungu also saw Mugiraneza during lunch with the cabinet, which ended around 2.00 or 2.30 p.m. after which he left with Bicamumpaka and Ngirabatware to meet the ambassadors of Belgium, France and the Vatican. When he came back to *Hôtel des Diplomates* between 4.00 and 5.00 p.m., the cabinet meeting was finished. Bizimungu saw Mugiraneza again at the *Hôtel des Diplomates* on the evening of that day, but did not specify the time he saw him. The next day Bizimungu saw Mugiraneza again before noon.

Mugiraneza's presence with his wife and his four children at the French Embassy of Kigali between 7 and 11 April 1994 attached to the Decision on Confidential Defence Motion to Admit Documents from the Government of France, 2 June 2008. *See also* Mugiraneza's Motion to Admit Documents from the Government of France, 12 April.

[2411] Mugiraneza, T. 22 May 2008 pp. 48-50, 53; T. 2 June 2008 pp. 58-59; T. 5 June 2008 p. 12.

[2412] Bizimungu, T. 24 May 2007 pp. 24-26; T. 4 June 2007 pp. 4-6, 64-66; T. 5 June 2007 pp. 5-19.

[2413] Bizimungu, T. 24 May 2007 pp. 28-31, 34; T. 4 June 2007 pp. 5-12, 66-67, 70; T. 5 June 2007 p. 8.

[2414] Bizimungu, T. 24 May 2007 pp. 31-34; T. 4 June 2007 pp. 5, 12-14; T. 5 June 2007 pp. 19-39.

Bizimungu remembered that there was a cabinet meeting on 10 April 1994, but did not personally attend.[2415]

1717. On 12 April 1994, around 7.00 a.m., Bizimungu took his family to the French Embassy in Kigali to be evacuated. A French official asked Bizimungu to write down the names of those who were evacuated, and he remembered clearly that the families of Mugiraneza and Mugenzi were there. Upon his return to the *Hôtel des Diplomates*, he learned that General Augustin Ndindiliyimana had ordered people to leave Kigali. Bizimungu left for Gitarama that day between 8.00 and 8.30 a.m. The convoy moved slowly because of the numerous people on the road, and he did not arrive in Gitarama until approximately 11.00 a.m.[2416]

Mugenzi

1718. On 7 April 1994, Mugenzi stayed at home all day until around 6.00 p.m., when he and his family were transferred by the gendarmerie from his house to the French Embassy. There, Mugenzi saw several ministers, including Mugiraneza and Bizimungu. Mugenzi and his family spent the night there.[2417]

1719. On 8 April 1994 at 9.00 a.m. the French Ambassador held a meeting with all the ministers who had spent the night in his compound. Mugenzi had been with Mugiraneza at the Embassy until approximately 10.00 a.m., when an army convoy took Mugenzi to the Ministry of Defence where political party leaders were meeting. Mugiraneza was not invited. The meeting ended around 7.00 p.m. and then the leaders met the Crisis Committee to report back. Mugenzi returned to the Embassy around 8.00 p.m. but could not remember if he saw Mugiraneza there. As he was not at the Embassy on 8 April during the day, Mugenzi did not know if Mugiraneza remained there.[2418]

1720. On 9 April 1994, Mugenzi first saw Mugiraneza at approximately 9.00 a.m., during the swearing-in ceremony for the members of the Interim Government at *Hôtel des Diplomates*. This was followed by a cabinet meeting, which Mugiraneza attended. The meeting ended at approximately 1.00 p.m. Mugenzi believed that all the ministers stayed at the *Hôtel des Diplomates* after the cabinet meeting except for those sent on diplomatic missions of which Mugiraneza was not one.[2419]

1721. The next day, Mugiraneza attended another cabinet meeting with Mugenzi from 9.00 a.m. to 2.00 p.m. He did not recall if he saw him after the meeting.[2420] On 11 April 1994, Mugenzi and Mugiraneza attended another cabinet meeting, which started around 9.00 a.m.

[2415] Bizimungu, T. 24 May 2007 pp. 31-35; T. 4 June 2007 pp. 5, 12-14; T. 5 June 2007 pp. 19-40. *See also* II.7.2; II.14.3.1.
[2416] Bizimungu, T. 28 May 2007 pp. 15-23, 31-32; T. 4 June 2007 pp. 14-15; Exhibit 1D196 (List of Rwandan Officials Evacuated from the French Embassy on 12 April 1994).
[2417] Mugenzi, T. 8 November 2005 pp. 50-53, 55-59; T. 15 November 2005 pp. 18-19.
[2418] Mugenzi, T. 8 November 2005 pp. 51, 59-60, 74-75; T. 15 November 2005 pp. 19-20; T. 29 November 2005 p. 81.
[2419] Mugenzi, T. 8 November 2005 pp. 77-79; T. 9 November 2005 p. 4; T. 15 November 2005 pp. 20-21.
[2420] Mugenzi, T. 15 November 2005 p. 21.

and lasted until 12.00 noon. Mugenzi could not remember if he saw Mugiraneza that afternoon.[2421]

1722. On the morning of 12 April 1994, Mugenzi took his family to the French Embassy in Kigali for evacuation. Mugenzi and Mugiraneza's wives were evacuated to Bujumbura on a French military aircraft. Mugenzi subsequently left Kigali with Bicamumpaka for Gitarama at approximately 8.00 a.m.[2422]

Bicamumpaka

1723. On 9 April 1994, the Interim Government was sworn in between 10.30 a.m. and noon. Immediately following the ceremony, President Théodore Sindikubwabo chaired a cabinet meeting at *Hôtel des* Diplomates. The discussions concluded at approximately 12.15 p.m. Bicamumpaka left the *Hôtel des Diplomates* around 2.15 p.m.[2423]

1724. Bicamumpaka and Bizimungu contacted and met with the ambassadors of France, Belgium and the Vatican in person, as well as Jacques-Roger Booh-Booh by telephone, until 5.45 p.m. When they returned to *Hôtel des Diplomates*, a second ministerial council meeting was underway. The ministerial meeting ended a few minutes past 8.00 p.m.[2424]

Mugiraneza Defence Witness Mechtilde Mukandagijimana

1725. Mechtilde Mukandagijimana, a Hutu, is the wife of Prosper Mugiraneza.[2425] She was at home with her husband and their children when the President's plane was shot down on 6 April 1994. During the night, André Ntagerura called and asked Mugiraneza to stay at home. He called again to report that a military vehicle had been sent to escort them to the Presidential Guard Camp. Shortly thereafter, a military vehicle came and took Mugiraneza's family to the camp, where they spent the night in a large hall filled with people.[2426]

1726. The following morning the situation was very tense. Between 9.00 and 10.00 a.m., she, her husband, and their children were led to a smaller room so as to reduce the number of people crowded in the large hall. The children were very scared, asking if they would live or die; she did not have milk for the baby, or food or a change of clothes for the children.[2427]

1727. The next afternoon the camp was attacked by gunfire. One of their children, Robert, took refuge with Ntagerura's family. Around 3.00 p.m., she left the camp with her husband to accompany Callixte Nzabonimana's wife to the Ministry of Defence as she was scared to go with unknown soldiers. They were compelled to leave Robert with Ntagerura's family. When they arrived at the Ministry of Defence, Nzabonimana had already left for the French Embassy leaving instructions to join him there. They left immediately and went to the French

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[2421] Mugenzi, T. 9 November 2005 pp. 32, 35-39, 65-66; T. 14 November 2005 p. 10; T. 15 November 2005 pp. 21-22.
[2422] Mugenzi, T. 9 November 2005 pp. 45-48; T. 15 November 2005 pp. 22-23; T. 29 November 2005 p. 108.
[2423] Bicamumpaka, T. 25 September 2007 pp. 44, 57; T. 26 September 2007 pp. 34-36.
[2424] Bicamumpaka, T. 25 September 2007 p. 57; T. 26 September 2007 pp. 36-43; Exhibit 3D91 (Letter from the Permanent Representative of Rwanda to the President of the UN Security Council, 13 April 1994).
[2425] Mukandagijimana, T. 1 May 2008 pp. 5, 25; Exhibit 4D123 (Mukandagijimana's Personal Information Sheet).
[2426] Mukandagijimana, T. 1 May 2008 pp. 2, 5, 10-11.
[2427] Mukandagijimana, T. 1 May 2008 pp. 11-12.

Embassy, where they arrived around 5.00 p.m. Mugiraneza, his wife, and their three children spent the night at the Embassy.[2428]

1728. On the morning of 8 April 1994, Ntagerura and his family arrived together with Mugiraneza's son Robert. Mugiraneza and his family spent the entire day together at the Embassy.[2429] On 9 April 1994, Mukandagijimana stayed at the Embassy with her children the whole day. Mugiraneza left the Embassy around 9.00 a.m. in order to attend a cabinet meeting. He returned to the Embassy between 4.00 and 5.00 p.m. and remained there with his family for the rest of the evening.[2430]

1729. On 10 April 1994, Mugiraneza went to the *Hôtel des Diplomates* to attend a meeting. He tried to find a room at the hotel for his family but was unable to find one, so Mugiraneza slept there by himself while his family stayed at the Embassy. The next day, Mugiraneza found a room at the *Hôtel des Diplomates* and the whole family slept there. Mukandagijimana was unaware of the details of Mugiraneza's activities on 10 and 11 April other than that they were trying to put an end to killings.[2431]

1730. In the early morning hours of 12 April 1994, Mugiraneza took his family to the French Embassy where they registered for evacuation from Rwanda. Around 9.00 or 10.00 a.m., they left in a truck to the airport where they took a plane for Bujumbura. Mugiraneza remained in Kigali.[2432]

Mugiraneza Defence Witness RWW

1731. Witness RWW, a Hutu, worked for Mugiraneza at the relevant time.[2433] On 6 April 1994, around 9.30 p.m., Mugiraneza informed him that he must be vigilant as Habyarimana's plane had been shot down. Around 10.30 to 11.00 p.m. Mugiraneza returned and told him that the Presidential Guard would come to collect him and his family to take them to the Presidential Guard Camp. The Presidential Guard came around 11.00 p.m., collected Mugiraneza and his family and took them to the camp. Witness RWW stayed at Mugiraneza's home until the next day.[2434]

1732. Around 4.00 p.m. on 7 April 1994, Mugiraneza called the witness and asked him to meet him at the French Embassy. At the Embassy, Mugiraneza asked Witness RWW to return to the Presidential Guard Camp to collect his son Robert and the vehicle he had left there. Witness RWW went to the camp and found the vehicle, but could not find Robert. He returned the vehicle to the French Embassy and told Mugiraneza that he could not find his son, and then spent the night of 7 April in the vehicle.[2435]

1733. On 8 April 1994, Mugiraneza asked Witness RWW to find a gendarme named Bonaventure Karenzo and Witness RWV to help him. Witness RWW picked up Karenzo and then Witness RWV and drove them to the French Embassy. When they arrived, Witness

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[2428] Mukandagijimana, T. 1 May 2008 pp. 12-14.
[2429] Mukandagijimana, T. 1 May 2008 pp. 14-15.
[2430] Mukandagijimana, T. 1 May 2008 p. 16.
[2431] Mukandagijimana, T. 1 May 2008 pp. 16-17.
[2432] Mukandagijimana, T. 1 May 2008 pp. 17-19.
[2433] Witness RWW, T. 13 March 2008 pp. 4-5, 7-8, 51; Exhibit 4D90 (Witness RWW's Personal Information Sheet).
[2434] Witness RWW, T. 13 March 2008 pp. 13-16.
[2435] Witness RWW, T. 13 March 2008 pp. 16-18.

RWV sent the Embassy watchman to call Mugiraneza. Mugiraneza came to the gate and greeted him. Witnesses RWW, Witness RWV and Karenzo remained in front of the Embassy the rest of the day and spent the night there in the vehicle.[2436]

1734. On 9 April 1994, around 9.00 a.m., Witnesses RWW, RWV and Karenzo escorted Mugiraneza to the *Hôtel des Diplomates* for the swearing-in ceremony of the Interim Government. The escort did not attend the ceremony, but remained in Mugiraneza's vehicle parked outside in front of the hotel for the entire day. At approximately 5.00 to 5.30 p.m., Witnesses RWW, RWV and Karenzo drove Mugiraneza back to the French Embassy, where Mugiraneza remained for the rest of the day. After having dropped Mugiraneza there, Witness RWW waited in front of the Embassy while Witness RWV and Karenzo went to Mugiraneza's home to bring back some food. Once again, Witnesses RWW, RWV and Karenzo spent the night in the vehicle.[2437]

1735. Around 9.00 a.m. the following morning of 10 April 1994, Witnesses RWW, RWV and Karenzo escorted Mugiraneza to the *Hôtel des Diplomates*. They spent the whole day there and went back to the French Embassy around 6.30 p.m. Mugiraneza stayed at the French Embassy for about 30 minutes and returned to the *Hôtel des Diplomates*, where he spent the night.[2438]

1736. On 11 April 1994, Mugiraneza spent the whole day at the *Hôtel des Diplomates*. Around 6.00 p.m., he and his escort went to pick up his family and returned immediately to the *Hôtel des Diplomates*. They spent the night there.[2439] The next day, around 6.00 a.m., Witness RWW took Mugiraneza and his family to the French Embassy in order for his wife and children to be evacuated from Kigali. After Mugiraneza left his family at the Embassy, Witness RWW drove him back to the *Hôtel des Diplomates*. Around 9.30 a.m., Mugiraneza told Witnesses RWW, RWV and Karenzo that they had to leave Kigali for Gitarama, and they left immediately.[2440]

Mugiraneza Defence Witness RWV

1737. Witness RWV, a Hutu, was employed by Mugiraneza at the relevant time.[2441] On 6 April 1994 he heard on the radio that the presidential plane had been shot down and that people should stay at home, so he did not leave his residence until 8 April.[2442]

1738. On 8 April 1994, between 9.00 and 10.00 a.m., Mugiraneza sent Witness RWW to pick him up and drive him back to the French Embassy, where Mugiraneza and his family had taken refuge. Around 4.00 p.m., Witness RWV saw Mugiraneza at a distance near the compound of the French Embassy but was not able to talk to him. He, RWW, and Karenzo, Mugiraneza's bodyguard, waited beside the car until dusk and slept in the car in front of the Embassy. He did not know whether Mugiraneza left the Embassy that night.[2443]

[2436] Witness RWW, T. 13 March 2008 pp. 18-20.
[2437] Witness RWW, T. 13 March 2008 pp. 20-21.
[2438] Witness RWW, T. 13 March 2008 pp. 21-22.
[2439] Witness RWW, T. 13 March 2008 p. 22.
[2440] Witness RWW, T. 13 March 2008 pp. 22-26.
[2441] Witness RWV, T. 9 June 2008 pp. 6, 21-22, 42; Exhibit 4D137 (Witness RWV's Personal Information Sheet).
[2442] Witness RWV, T. 9 June 2008 pp. 22-23.
[2443] Witness RWV, T. 9 June 2008 pp. 23-24, 42-48, 84-85.

1739. Around 6.30 a.m. on 9 April 1994, RWV drove Mugiraneza to *Hôtel des Diplomates* with Witness RWW and Karenzo. Witness RWV did not enter the hotel and waited in the car in the parking lot opposite the hotel the whole day where he slept "off and on". He did not see Mugiraneza again until between 6.00 and 7.00 p.m., when he returned and asked Witness RWV to drive him to the French Embassy. After dropping Mugiraneza off at the Embassy, Witness RWV went to Mugiraneza's residence accompanied by gendarmes in order to collect food for the gendarmes. After collecting the food, Witness RWV came back to the Embassy and spent the night in the vehicle.[2444]

1740. The next day, 10 April 1994, Mugiraneza asked RWV to drive him to the *Hôtel des Diplomates* where they arrived before 7.00 a.m. Witness RWV waited in the car but Mugiraneza did not exit the hotel before the next morning. Witness RWV spent the night in the vehicle.[2445] On 11 April 1994, around 6.45 a.m., Mugiraneza requested his driver to bring him to the French Embassy. Mugiraneza collected his family at the Embassy and returned with him to the *Hôtel des Diplomates*. At approximately 3.00 p.m. Mugiraneza came to see Witness RWV and asked him to go to buy milk for his daughter Stella. Witness RWV left and came back with the milk around 4.00 p.m.[2446]

1741. Around 6.30 a.m. on 12 April 1994, Witness RWV drove Mugiraneza and his family to the French Embassy, where the witness saw many trucks and refugees. Mugiraneza's wife and her children went aboard one of these trucks and Mugiraneza and Witness RWV left the French Embassy to return to the *Hôtel des Diplomates*. There, Mugiraneza asked Witness RWV to drive him to Gitarama, where the Interim Government was staying. Witnesses RWV, RWW, Karenzo and Mugiraneza left Kigali between 9.00 and 10.00 a.m. and arrived in Gitarama around 1.00 p.m.[2447]

Bizimungu Defence Witness André Ntagerura

1742. André Ntagerura, a Hutu, was re-appointed Minister of Transport and Communication for the Interim Government on 9 April 1994.[2448] Around 10.00 p.m. on 6 April 1994, Ntagerura and his family left their home to take refuge at the Presidential Guard Camp. Ntagerura saw Mugiraneza and his family arrive at the camp at approximately 11.30 p.m.[2449]

1743. Ntagerura saw Mugiraneza again at the camp the next morning before 12.00 p.m. On 8 April 1994 Mugiraneza's son, who was with Ntagerura's wife and children, explained that he had lost his parents the previous day. Ntagerura, his family and Mugiraneza's son left the camp and took refuge at the French Embassy between the late morning and early afternoon. There, Ntagerura met Mugiraneza and returned his son to him.[2450]

1744. On 9 April 1994, Ntagerura participated in the swearing-in ceremony of the Interim Government, which took place at the *Hôtel des Diplomates* between 10.00 and 11.00 a.m.

[2444] Witness RWV, T. 9 June 2008 pp. 24-26, 54-62; Exhibit P212 (Sketch drawn by Witness RWV showing the *Hôtel des Diplomates*. its entrance and the parking lot).
[2445] Witness RWV, T. 9 June 2008 p. 26.
[2446] Witness RWV, T. 9 June 2008 pp. 26-27.
[2447] Witness RWV, T. 9 June 2008 pp. 27-28, 30, 69.
[2448] Ntagerura, T. 14 February 2007 pp. 65-68; Exhibit 1D152 (Ntagerura's Personal Information Sheet). Ntagerura, formerly an accused before the Tribunal, was acquitted of all counts. T. 19 February 2007 pp. 40-41.
[2449] Ntagerura, T. 19 February 2007 pp. 12-14.
[2450] Ntagerura, T. 19 February 2007 pp. 14-15.

Mugiraneza was there, together with the other ministers of the new government. The ceremony lasted less than one hour and was followed by a photo of the new cabinet. Ntagerura left immediately after to accompany the bodies of the Burundian authorities who died in Habyarimana's plane. Ntagerura later learned that a cabinet meeting was held that morning.[2451]

1745. Ntagerura left for Burundi on the morning of 10 April 1994 and left his family at the French Embassy. His family, together with Mugiraneza and Mugenzi's were evacuated to Bujumbura.[2452] Ntagerura further testified that, in normal conditions, a return trip from Kigali to Kibungo would take about three hours.[2453]

Mugiraneza Defence Witness Léoncie Bongwa

1746. Léoncie Bongwa, a Hutu, is the wife of André Ntagerura.[2454] She was at home with her husband when the presidential plane was shot down on 6 April 1994. Around 10.00 p.m., Ntagerura's family fled to the Presidential Guard Camp. Bongwa saw Mugiraneza, Bizimungu and their families arrive at the Presidential Guard Camp after her. She believed Mugiraneza remained there on 7 April since his son, Robert, was with her, but could not recall.[2455]

1747. When her family was left the camp on 8 April 1994, the witness realised that Mugiraneza's family was no longer there but their son, Robert, was with her family. They took Robert with them to the French Embassy that afternoon where they saw Mugiraneza and his family again.[2456] On the morning of 9 April, Ntagerura and the other ministers left the Embassy in order to attend the swearing-in ceremony of the Interim Government. Ntagerura came back to the French Embassy early in the afternoon. She and her family were evacuated to Bujumbura on the morning of 12 April 1994, along with the families of Mugiraneza and Bizimungu.[2457]

Mugenzi Defence Witness Jeannette Uzamukunda

1748. Jeannette Uzamukunda, a Tutsi, is Mugenzi's wife.[2458] On 6 April 1994, she was at home with her children, Mugenzi's nephew Turatsinze and a friend of his. Around 9.00 p.m., Mugenzi informed them that the presidential plane had been shot down. They stayed at home through the night.[2459]

1749. Mugenzi and his family remained at their residence until 5.00 p.m. on 7 April 1994, when they sought refuge at the French Embassy. They were among the first persons to arrive

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[2451] Ntagerura, T. 19 February 2007 pp. 15-20.
[2452] Ntagerura, T. 19 February 2007 pp. 16, 38-39.
[2453] Ntagerura, T. 19 February 2007 p. 20; *see also* Exhibit 1D24 (Administrative and Roads Map of Rwanda)
[2454] Bongwa, T. 12 May 2008 p. 4; Exhibit 4D128 (Bongwa's Personal Information Sheet).
[2455] Bongwa, T. 12 May 2008 pp. 5-9.
[2456] Bongwa, T. 12 May 2008 pp. 7-11.
[2457] Bongwa, T. 12 May 2008 pp. 11-15.
[2458] Uzamukunda, T. 20 April 2006 pp. 47-48; T. 21 April 2006 pp. 2-3; Exhibit 2D98 (Uzamukunda's Personal Information Sheet).
[2459] Uzamukunda, T. 20 April 2006 pp. 49-50; T. 21 April 2006 pp. 16-17, 26-29.

there. Later, Uzamukunda saw Mugiraneza and his family arrive. Uzamukunda and her family spent the night at the Embassy.[2460]

1750. On 8 April 1994, Uzamukunda saw Mugiraneza throughout the day at the French Embassy. Mugenzi and his family moved to the *Hôtel des Diplomates* on 8 April in the evening, where they stayed until 12 April. Uzamukunda did not see Mugiraneza while she was at *Hôtel des Diplomates* as she did not leave her hotel room.[2461]

1751. Early in the morning on 12 April 1994, Uzamukunda, Mugenzi and their children left *Hôtel des Diplomates* to go to the French Embassy. From there, Uzamukunda and her children were evacuated to Bujumbura. Bizimungu and Mugiraneza's families were also evacuated.[2462]

Mugenzi Defence Witness Agnès Ntamabyaliro

1752. Agnès Ntamabyaliro, a Hutu, was appointed Minister of Justice in July 1993. She retained this post when the Interim Government was formed on 9 April 1994.[2463] On 9 April 1994, the Interim Government was established and sworn in at the *Hôtel des Diplomates*. There were no other meetings that day. On 10 April, the first full cabinet meeting of the Interim Government was held.[2464]

Bizimungu Defence Witness Emmanuel Ndindabahizi

1753. Emmanuel Ndindabahizi, a Hutu, was Minister of Finance in the Interim Government established on 9 April 1994.[2465] He did not really know Mugiraneza and saw him for the first time on 9 April during the swearing-in ceremony of the Interim Government. Shortly after the swearing-in ceremony, the new cabinet held a meeting to determine how to restore peace and security.[2466]

Bizimungu Defence Witness WFQ1

1754. Witness WFQ1, a Hutu member of the Rwandan government in 1994, worked as a full time ICRC volunteer in Rwanda from 15 April 1994.[2467] Between 7 and 12 April, the roads to the east of Rwanda could not be used by vehicles. Witness WFQ1 could not move from the Kicukiro region of Kigali from 7 until 15 April. The Kibungo prefecture had been

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[2460] Uzamukunda, T. 20 April 2006 pp. 50-53, 70; T. 21 April 2006 pp. 18-21, 32-35.
[2461] Uzamukunda, T. 20 April 2006 pp. 53-54, 70-71; T. 21 April 2006 pp. 22-23.
[2462] Uzamukunda, T. 20 April 2006 pp. 54-56, 71-72; T. 21 April 2006 pp. 22-26, 29-30.
[2463] Ntamabyaliro, T. 21 August 2006 pp. 3-4, 7; Exhibit 2D102 (Ntamabyaliro's Personal Information Sheet). At the time of her testimony, Agnès Ntamabyaliro was a detainee in Kigali prison. Her trial for genocide charges had commenced but was postponed so that she could testify before the Tribunal. T. 23 August 2006 p. 19.
[2464] Ntamabyaliro, T. 21 August 2006 pp. 3-7, 36-37, 42-44; T. 28 August 2006 pp. 55-56.
[2465] Ndindabahizi, T. 30 April 2007 pp. 4-5; Exhibit 1D158 (Ndindabahizi's Personal Information Sheet). Notably, Ndindabahizi was not tried for crimes in Rwanda based on his position as Minister of Finance of the Interim Government. T. 30 April 2007 p. 35. At the time of his testimony, he resided in the United Nations Detention Facility with the Accused. T. 1 May 2007 pp. 49-50.
[2466] Ndindabahizi, T. 30 April 2007 p. 69; T. 1 May 2007 p. 39; T. 2 May 2007 pp. 8-15.
[2467] Witness WFQ1, T. 3 October 2006 pp. 58-61; Exhibit 1D119 (Witness WFQ1's Personal Information Sheet).

captured by the RPF very quickly, and it was practically impossible for someone who did not belong to that rebel movement to access the area.[2468]

Bizimungu Defence Witness Antoine Nyetera

1755. Antoine Nyetera, a Tutsi, testified that by the morning of 7 April 1994, he heard shooting coming from the east of Kigali, which was the RPF position at the CND. The road from Kigali to Kibungo, exiting Kigali to the east, was in a combat area controlled by the RPF. Accordingly, the route was impassable and anyone who wanted to travel from Kigali to Kibungo between 7 and 12 April would have taken a great risk.[2469]

Mugiraneza Defence Witness BGM

1756. Witness BGM, a Hutu, was a soldier in the Rwandan Armed Forces on duty at Mount Kigali on 6 April 1994. He learned on 7 April that the RPF attacked the Kanombe military camp located in the east of Kigali city, near the Kanombe airport and the road to Kibungo prefecture. On 8 and 9 April he personally witnessed that the road to Kibungo was blocked at the level of the SGP (General Petrol Company) gas station and the Alfa Palace hotel, where the combat was concentrated.[2470]

Deliberations

(i) 7 April 1994

1757. As set forth elsewhere in the Judgement, the Prosecution alleges that before 10.00 a.m. on 7 April 1994 Mugiraneza ordered *Interahamwe* to kill Tutsis at the Cyamuribwa Centre (II.6.2).

1758. Mugiraneza testified that he remained in Kigali on 7 April 1994. On the night of 6 April he and his family took refuge at the Presidential Guard Camp, where he stayed until the next day. On 7 April around 3.00 p.m., Mugiraneza and his family left the Presidential Guard Camp and took refuge at the French Embassy, where they arrived around 4.00 p.m. They then spent the rest of the night at the Embassy.[2471]

1759. Mugiraneza's arrival at the Presidential Guard Camp the night of 6 April 1994 is corroborated by his wife, Bizimungu, Ntagerura and Ntagerura's wife.[2472] His continued presence at the Presidential Guard Camp is further corroborated by his wife and Ntagerura.[2473] Finally, his arrival and stay at the Embassy on 7 April 1994 are corroborated by his wife, Bizimungu, Mugenzi, Mugenzi's wife and Witness RWW.[2474]

[2468] Witness WFQ1, T. 3 October 2006 p. 60; T. 4 October 2006 pp. 48-49.
[2469] Nyetera, T. 26 September 2006 pp. 10-13; Exhibit 1D105 (Nyetera's Personal Information Sheet).
[2470] Witness BGM's evidence was admitted pursuant to Rule 92 *bis* of the Rules as Exhibit 4D151 (Witness BGM's Statement, 5 March 2008) p. 2.
[2471] Mugiraneza, T. 22 May 2008 pp. 20-33; T. 3 June 2008 pp. 58-62.
[2472] Bizimungu, T. 24 May 2007 pp. 24-27; T. 4 June 2007 pp. 4-5, 64-66; T. 5 June 2007 pp. 5-40; Mukandagijimana, T. 1 May 2008 pp. 5, 10-11; Witness RWW, T. 13 March 2008 pp. 13-16; Ntagerura, T. 19 February 2007 pp. 12-14; Bongwa, T. 12 May 2008 pp. 4-9.
[2473] Mukandagijimana, T. 1 May 2008 pp. 11-12, Ntagerura, T. 19 February 2007 p. 14.
[2474] Bizimungu, T. 24 May 2007 pp. 28-31, 34; T. 4 June 2007 pp. 5-11, 66-70; T. 5 June 2007 pp. 5-8; Mugenzi, T. 8 November 2005 pp. 50-59; T. 15 November 2005 pp. 18-19; Mukandagijimana, T. 1 May 2008

1760. The Prosecution alleges that the witnesses called to confirm Mugiraneza's alibi are unreliable, or not to be believed because of their close relationship with the Accused.[2475] At the outset, the Chamber recognises that the testimonial evidence supporting Mugiraneza's alibi comes primarily from himself, his wife, co-Accused or former Interim Government ministers, their wives and his former employees. Thus, the Chamber is mindful of the self-interested nature of some of the evidence, the possibility of collusion between the Accused and former co-detainees,[2476] as well as possible personal interests in providing exculpatory evidence for Mugiraneza based on close personal and professional relationships. However, this is not enough to disregard their evidence entirely.

1761. Mugiraneza does not give specific detail on his activities between when he awoke at the Presidential Guard Camp on 7 April 1994 and the time he left for the French Embassy, at 3.00 p.m., stating only that he was at the camp during this period. The Chamber notes, however, that Ntagerura recalled seeing Mugiraneza at the camp before 12.00 noon. In addition, Mukandagijimana specified that between 9.00 and 10.00 a.m. she and Mugiraneza were moved into a room for soldiers and remained there until the afternoon.[2477]

1762. In the Chamber's view, Mugiraneza's alibi, that he remained at the Presidential Guard Camp with his family for the morning of 7 April 1994, appears reasonable. First, Mugiraneza testified that he arrived at the Presidential Guard Camp after 11.00 p.m. on 6 April, and his late arrival is corroborated by his wife, Bizimungu, Ntagerura and Ntagerura's wife. Several witnesses testified to the chaos that prevailed at the Presidential Guard Camp, with families crowded in a great hall, and his wife described his children as being terrified and crying. On 7 April 1994, Mugiraneza had not yet been sworn in as a member of the Interim Government, and thus had no official obligations to fulfil. Under the circumstances, it is believable that Mugiraneza would have remained with his family from the evening of 6 April and throughout the day of 7 April to ensure their security at the camp.

1763. Furthermore, while the evidence before the Chamber does not demonstrate that it was impossible to travel from Kigali to Kibungo (II.6.4), it is reasonable that it was difficult. The Prosecution has presented no evidence indicating the feasibility of travelling between Kigali and Kibungo prefecture during this period in light of the prevailing conditions, which likely included chaos, extensive roadblocks, and armed hostilities.[2478]

1764. To the contrary, the Defence has presented substantial evidence calling into question Mugiraneza's ability to travel this distance. The RPF had recommenced hostilities within Rwanda and there were killings occurring throughout Kigali. Witnesses BGM, WFQ1 and Nyetera testified that the road from Kigali to Kibungo was impassable because of its location

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pp. 11-14; Witness RWW, T. 13 March 2008 pp. 16-18; Uzamukunda, T. 20 April 2006 pp. 50-53, 70; T. 21 April 2006 pp. 18-21, 32-35; Bongwa, T. 12 May 2008 pp. 7-9.

[2475] Prosecution Closing Brief, paras. 1026-1041.

[2476] Ntagerura, T. 19 February 2007 pp. 46-47.

[2477] Mukandagijimana, T. 1 May 2008 pp. 11-12, Ntagerura, T. 19 February 2007 p. 14.

[2478] Exhibit 3D81 (Outgoing Cable from Annan to UN Secretary General, 7 April 1994) pp. 2-3 (reporting that there is "no authority in control at this moment in Kigali"); Exhibit P2(83) (Outgoing Cable from Baril to Dallaire, 7 April 1994) p. 6 (reporting "continuous calls for help from the local, UN and expatriate community but due to roadblocks very few actioned. Terrified refugees swamp the [headquarters]."); Exhibit 4D45 (Outgoing Cable from Booh-Booh to Annan, 8 April 1994) pp. 1, 4 (reporting that "a company-size of RPF military personnel left the CND complex on 7 April at 16 hours local time and moved into areas where the Presidential Guards are located and engaged the Guards in a fierce exchange of fire.").

in a zone of combat controlled by the RPF.[2479] Ntagerura further testified that in normal conditions, a Kigali-Kibungo return trip would take approximately three hours.[2480] The Chamber considers that in the conditions present on 7 April, this trip could have taken substantially longer. Thus, the Chamber has reservations that Mugiraneza, in early hours of 7 April left his family to travel to Kibungo before 10.00 a.m., the time the Prosecution alleges he was at the Cyamuribwa Centre.

1765. The evidence supporting Mugiraneza's alibi for the afternoon of 7 April 1994 is significant. The circumstances surrounding Mugiraneza's departure from the Presidential Guard Camp, the fact that he was compelled to leave his son Robert because of the chaos there, and Mugiraneza's arrival at the French Embassy are corroborated with a degree of precision and consistency that convinces this Chamber that his alibi for that time period is reasonable. Mugiraneza's statements in custodial interviews with Tribunal investigators are detailed, and do not undermine his trial testimony concerning his time at the Presidential Guard Camp and the Embassy from 6 through 7 April 1994.[2481]

1766. Furthermore, Mugiraneza presented a letter from the French authorities dated 13 March 2008, and three telegrams from the French Embassy in Kigali dated 7, 9 and 11 April 1994, confirming his and his family's presence at the French Embassy between 7 and 11 April.[2482] The letter and telegrams do not provide any details as to Mugiraneza's specific schedule during those dates, and, in fact, Mugiraneza testified that he left the Embassy on 9 and 10 of April, and did not sleep there on 10 and 11 of April. These documents do, however, corroborate the Defence witnesses' testimonies that he and his family took refuge there during this time period.

1767. Finally, the Chamber considers the Prosecution's evidence for 7 April 1994. Regarding Mugiraneza's presence at Cyamuribwa Centre, the Chamber reiterates its concerns with the credibility of Witness GJR's testimony, as well as the fact that her identification of Mugiraneza was uncorroborated (II.6.2). In sum, Mugiraneza's alibi, when viewed as a whole and weighed against the Prosecution evidence, provides a reasonable explanation for his activities throughout 7 April 1994.

(ii) 9 April 1994

1768. As set forth elsewhere in the Judgement, the Prosecution presented evidence that in the afternoon or early evening of 9 April 1994, Prosper Mugiraneza was seen meeting with *Interahamwe* at the Kigarama commune office. They further allege that he distributed weapons to the *Interahamwe* at a meeting held at the nearby home of Jean-Baptiste Rwatoro at 3.00 p.m. that same day. It is also undisputed that, in the evening on the same day,

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[2479] Witness WFQ1, T. 4 October 2006 pp. 48-49; Nyetera, T. 26 September 2006 p. 13. *See also* Exhibit 4D151 (Witness BGM's Statement, 5 March 2008) p. 2.
[2480] Ntagerura, T. 19 February 2007 p. 20; *see also* Exhibit 1D24 (Administrative and Roads Map of Rwanda).
[2481] Exhibit P2(21)(E & F) (Transcript of Interview of Mugiraneza by Tribunal Investigators) pp. 5, 18; Exhibit P2(22)(E & F) (Transcript of Interview of Mugiraneza by Tribunal Investigators) pp. 17-18; Exhibit P2(25)(E & F) (Transcript of Interview of Mugiraneza by Tribunal Investigators) pp. 4-8, 10-12, 14-16.
[2482] Decision on Confidential Defence Motion to Admit Documents from the Government of France, 2 June 2008. *See also* Mugiraneza's Motion to Admit Documents from the Government of France, 12 April 2008.

Interahamwe and other civilian militias armed with weapons and grenades returned and attacked the commune office, killing several refugees there (II.6.3).[2483]

1769. Mugiraneza contends that he was in Kigali on 9 April 1994, specifically at the *Hôtel des Diplomates* and the French Embassy.[2484] He testified that on that date, he attended the swearing-in ceremony of the Interim Government starting at 9.00 a.m., and then participated in a cabinet meeting from 11.00 a.m. to 5.00 p.m. After the meeting, Mugiraneza returned to the French Embassy and spent the night there with his family.[2485]

1770. It is undisputed that the Interim Government was sworn-in on 9 April 1994 and that Mugiraneza attended the cabinet meeting that followed (II.7.2). However, there are differences among the witnesses' accounts as to when this meeting ended. Mugiraneza testified that the meeting concluded at approximately 5.00 p.m. Bicamumpaka stated that there were two meetings on 9 April: one that ended at approximately 12.15 p.m., and one that started in the afternoon and concluded at 8.00 p.m. Bizimungu testified that the meeting after the swearing-in ceremony ended at approximately 12.30 p.m. and that he saw Mugiraneza at a luncheon that ended at 2.30 p.m. Mugenzi stated that the cabinet meeting ended at 1.00 p.m., and made no mention of a luncheon.[2486]

1771. That Mugiraneza remained at the *Hôtel des Diplomates* after the swearing-in ceremony and following the cabinet meeting finds some general and specific circumstantial corroboration. For example, Mugenzi testified that, after the cabinet meeting, all ministers that were not assigned missions abroad stayed at the *Hôtel des Diplomates*.[2487] Furthermore, Witnesses RWW and RWV, who, according to their testimony, were responsible for escorting Mugiraneza between 8 and 12 April 1994 and eventually to Gitarama on 12 April, did not drive Mugiraneza to Kigarama on 9 April. They also did not see him leaving the hotel during the day.[2488]

1772. In addition, Bizimungu confirmed that he returned from his mission between 4.00 and 5.00 p.m. on 9 April 1994 and saw Mugiraneza at the *Hôtel des Diplomates* that evening.[2489] Witness RWW testified Mugiraneza left the *Hôtel des Diplomates* to return to the French

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[2483] As discussed in detail elsewhere, the Chamber, after reviewing the entire record, determined that each of these events occurred on 9 April 1994. *See* II.6.3.
[2484] Mugiraneza Closing Brief, paras. 342-356, 395-456.
[2485] Mugiraneza, T. 22 May 2008 pp. 35-46.
[2486] Mugiraneza, T. 22 May 2008 pp. 45-46; Bicamumpaka, T. 26 September 2007 pp. 35-36, 41-43; Bizimungu T. 24 May 2007 pp. 31-32; T. 4 June 2007 pp. 13-14; Mugenzi, T. 8 November 2005 pp. 77-79, 84; T. 9 November 2005 p. 4; T. 15 November 2005 pp. 20-21; T. 29 November 2005 pp. 81-82. *See also* Exhibit P2(21)(E & F) (Transcript of Interview of Mugiraneza by Tribunal Investigators, 8 April 1999) pp. 10-13; Exhibit P2(25)(E & F) (Transcript of Interview of Mugiraneza by Tribunal Investigators, 11 October 1999) pp. 21-22. Ntamabyaliro testified that there were no meetings on 9 April after the swearing-in ceremony, but that the cabinet meeting was held on 10 April 1994. Ntamabyaliro, T. 21 August 2006 p. 42. Ntagerura did not attend a cabinet meeting after the swearing-in ceremony, as he was preparing for his mission to Burundi to escort the remains of the Burundian officials who died in the 6 April plane crash. Ntagerura, T. 19 February 2007 pp. 16-20.
[2487] Mugenzi, T. 8 November 2005 pp. 78-79, 84; T. 9 November 2005 p. 4; T. 15 November 2005 pp. 20-21; T. 29 November 2005 pp. 81-82.
[2488] Witness RWW testified that Bizimungu left the *Hôtel des Diplomates* around 5.30 p.m. while Witness RWV testified that Mugiraneza left between 6.00 and 7.00 p.m. Considering the passage of time since the event, the Chamber considers that this slight discrepancy does not affect RWW and RWV's accounts of the events.
[2489] Bizimungu, T. 4 June 2007 pp. 13-14.

Embassy between 5.00 and 5.30 p.m.[2490] Witness RWV stated that this occurred between 6.00 and 7.00 p.m.[2491] Mugiraneza's wife stated that her husband returned to the Embassy in the evening, between 4.00 and 5.00 p.m.[2492]

1773. The Chamber considers that much of Mugiraneza's alibi for 9 April 1994 derives from Mugiraneza or co-Accused in this proceeding. Furthermore, Witnesses RWW and RWV would have an interest in denying that Mugiraneza left on the afternoon of 9 April 1994 to go to Kigarama commune, as they too may be implicated in the attacks there through their close professional association with him. The Chamber also observes that Mugiraneza's testimony that the Interim Government's meeting after the swearing-in ceremony lasted until 5.00 p.m. is markedly longer than the evidence provided by others who had first-hand knowledge of it. Indeed, evidence about his continued presence at the *Hôtel des Diplomates* between 2.30 p.m. and 4.00 or 5.00 p.m. only finds circumstantial corroboration. The Chamber is mindful that the Prosecution evidence tends to suggest that he was present in Kigarama commune on 9 April between 3.00 p.m. and dusk.[2493]

1774. While Mugiraneza's evidence does not provide a comprehensive account for his time on 9 April 1994, the Chamber recognises that the Defence does not carry an independent burden when presenting alibi evidence. In this regard, the Prosecution did not lead evidence pertaining to the feasibility of travel between Kigali and Kibungo prefectures on 9 April 1994. Notably, Defence evidence indicates that a round trip from Kigali to Kigarama commune in Kibungo prefecture would take between two and three hours.[2494] The Chamber has considered evidence that it was possible to travel between Kigali and Kibungo prefectures, and, in particular to Rukara commune around this time (II.6.4). However, as stated previously, Witnesses BGM, WFQ1 and Nyetera testified that the road from Kigali to Kibungo was impassable because it was located in a zone controlled by the RPF.[2495] Contemporaneous UNAMIR reports indicate that the RPF had taken control over some parts of eastern Kigali – the most likely route to Kibungo prefecture.[2496]

1775. Under the circumstances, the significant body of direct evidence pertaining to Mugiraneza's presence in Kigali in the early afternoon and early evening of 9 April 1994 raises questions about his ability to have been in Kigarama commune as alleged by the Prosecution witnesses. Indeed, although Mugiraneza's family was installed at the French Embassy on 9 April, it is also reasonable that he would have stayed nearby in Kigali in order to ensure their comfort and safety.

[2490] Witness RWW, T. 13 March 2008 pp. 20-21.
[2491] Witness RWV, T. 9 June 2008 pp. 24-25.
[2492] Mukandagijimana, T. 1 May 2008 pp. 16-17.
[2493] Prosecution Witness GKS testified that the meeting at the Kigarama commune office, which Mugiraneza attended, occurred around 3.00 p.m., while Witness GTE stated that it occurred in the evening. *Cf.* Witness GKS, T. 24 March 2004 pp. 59-60; Witness GTE, T. 1 December 2003 pp. 13, 49. Prosecution Witness GKM testified that the meeting at Rwatoro's house occurred at 3.00 p.m. Witness GKM, T. 25 October 2004 pp. 65-66.
[2494] Ntagerura, T. 19 February 2007 p. 20; *see also* Exhibit 1D24 (Administrative and Roads Map of Rwanda).
[2495] Witness WFQ1, T. 4 October 2006 pp. 48-49; Nyetera, T. 26 September 2006 p. 13. *See also* Exhibit 4D151 (Witness BGM's Statement, 5 March 2008) p. 2.
[2496] Exhibit 3D85 (Outgoing Cable from Booh-Booh to Annan, 9 April 1994) p. 1 (reporting that the RPA has the vicinity of their complex of the CND under control); Exhibit 3D88 (Situation Report from UNAMIR-Kigali, 9 April 1994) pp. 1, 4-5 (reporting situation as "chaotic" and that RPF set up roadblocks near the CND).

1776. Finally, the Chamber also considers the Prosecution's evidence for 9 April 1994. The Chamber reiterates its concerns with respect to the Prosecution evidence placing Mugiraneza at the Kigarama commune office and Rwatoro's home before the attacks on the commune office the same day (II.6.3). In sum, Mugiraneza's alibi for 9 April, when viewed as a whole and weighed against the Prosecution evidence, provides a reasonable explanation for his activities on that date, raising doubt in the Prosecution's case against him.

14.2 Bizimungu Alibi

Introduction

1777. Bizimungu presented an alibi covering most of the period of the alleged crimes, involving numerous locations and spanning multiple, distinct time periods.[2497] In order to preserve a coherent narrative of this evidence and to avoid repetition of details in specific sections, the alibis are recounted and assessed below.

14.2.1 Zaire: 12 – 25 April 1994

1778. Within the dates referenced above, the Prosecution seeks to incriminate Bizimungu based on allegations that approximately one week after 12 April 1994, when the Interim Government moved to Gitarama, Bizimungu ordered the killing of a Tutsi at Bar Mimosa in Murambi, Gitarama (II.10.1).[2498]

1779. The Bizimungu Defence denies Bizimungu ordered the killing of a Tutsi in Gitarama, arguing that he was in Zaire from 12 to 25 April 1994. The Defence relies on the testimonies of Bizimungu, Witnesses WAE, WDK and André Ntagerura.[2499]

1780. The parties do not dispute that the Interim Government moved to Gitarama on 12 April 1994, and that Bizimungu left for Zaire that same day.[2500] The sole issue before the Chamber is the date of Bizimungu's return from Zaire and whether his alibi creates the reasonable possibility that he was not present in Gitarama approximately one week after 12 April 1994, contrary to the Prosecution's allegation.

[2497] The Bizimungu Defence filed its notice of alibi on 6 March 2006 after the close of the Prosecution case. *Avis d'Alibi Amende de Casimir Bizimungu Article 67 du Règlement de Procédure et de Preuve*, 6 March 2006. It has argued that the late filing resulted from the fact that Prosecution witness statements were not disclosed on time and because it did not have all the necessary materials. T. 15 December 2003 pp. 15, 19-22; Bizimungu Closing Brief, paras. 405-416.

[2498] The Chamber notes that although the Prosecution alleges in their submissions that the incident at Bar Mimosas occurred between 15 April and 15 May 1994, the only witness to testify to this event, Witness GTD, specified that it occurred one week after the Interim Government arrived in Gitarama. *See* II.10.1. This correction is reflected in the summary above.

[2499] Bizimungu Closing Brief, paras. 436-442, 464.

[2500] Indictment, para. 5.21 ("On or about 12 April 1994 … Bizimungu was instructed to travel abroad in order to negotiate the purchase [of weapons]"); Prosecution Closing Brief, para. 587 ("The Prosecutor therefore submits that the Chamber accept the testimonies [sic] of Prosecution witnesses [sic] Fidèle Uwizeye that Bizimungu went to Zaire on 12th April 1994, with a large sum of money to purchase arms."). *See also* II.8.1.

Evidence

Bizimungu

1781. Bizimungu testified that on 12 April 1994, he fled from Kigali to Gitarama between 8.00 and 8.30 a.m., and arrived in Gitarama at approximately 11.00 a.m.[2501] Once in Gitarama, Bizimungu met with the Interim Government cabinet on 12 April at Prefect Fidèle Uwizeye's residence. The cabinet discussed sending an emissary to President Sese Seko Mobutu of Zaire in order to seek his assistance in negotiating a ceasefire. Bizimungu testified that, to his surprise, he was chosen to carry out this mission.[2502]

1782. The same day, Bizimungu travelled by helicopter to Gisenyi where he took a car with Ephrem Setako to Goma Airport. At Goma Airport, Bizimungu and Setako flew by plane to Kinshasa where they arrived around 5.00 or 6.00 p.m. Bizimungu was welcomed by Witness WAE, who drove them to his residence. Later that night, Bizimungu and Setako left for the InterContinental hotel in Kinshasa, where they stayed until 25 April 1994.[2503]

1783. Once in Kinshasa, Bizimungu waited to be received by President Mobutu. Finally on 16 April 1994, President Mobutu received Bizimungu alone at his residence in Gbadolite. Mobutu requested Bizimungu to stay in Zaire, saying that there would be a message that he would have to carry to President Théodore Sindikubwabo. Bizimungu then learned that a day after he left Gbadolite, Mobutu convened an RPF delegation. The RPF insisted on negotiating with military officers rather than the Interim Government, which then led to Mobutu's meeting on 23 April with André Ntagerura, Agnès Ntamabyaliro and two military officers. On 24 April, Bizimungu was told that Mobutu had sent a message to Sindikubwabo through the Zairian ambassador to Rwanda. As soon as Bizimungu learned there was no message to carry, he returned to Rwanda to report on his mission. On 25 April, Bizimungu left Kinshasa for Gitarama in Rwanda.[2504]

Bizimungu Defence Witness WAE

1784. Witness WAE, a Hutu, testified that on 12 April 1994, he received Bizimungu and Ephrem Setako at Kinshasa International Airport. They had travelled to Kinshasa to meet President Sese Seko Mobutu, a mediator in the Rwandan conflict, to ask him to reinitiate negotiations with RPF in order to reach a ceasefire. During his mission, Bizimungu stayed at the InterContinental hotel in Kinshasa. Witness WAE met Bizimungu almost every day from 12 until 24 April 1994.[2505]

1785. On approximately 16 April 1994, Bizimungu was finally received, alone, by Mobutu at his residence near Gbadolite. In accordance with Bizimungu's request, Mobutu organised a meeting between the Rwandan government delegation and the RPF. However, Bizimungu

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[2501] Bizimungu, T. 28 May 2007 pp. 15-23, 31-32; T. 4 June 2007 pp. 14-15; Exhibit 1D196 (List of Rwandan Officials Evacuated from French Embassy on 12 April 1994) pp. 2-6.
[2502] Bizimungu, T. 28 May 2007 pp. 32-34; T. 5 June 2007 pp. 41-42, 67; T. 7 June 2007 pp. 2-13.
[2503] Bizimungu, T. 28 May 2007 pp. 39-53; T. 5 June 2007 pp. 58-63, 67-69; T. 6 June 2007 p. 44; Exhibit 1D199 (Bizimungu's Bill at the Grand Hotel in Kinshasa, 13 to 25 April 1994).
[2504] Bizimungu, T. 28 May 2007 pp. 53-56, 60-61; T. 5 June 2007 pp. 64-66, 71-73; T. 6 June 2007 pp. 9-10; T. 7 June 2007 pp. 2-3.
[2505] Witness WAE, T. 13 February 2007 pp. 41-49, 62-69; T. 14 February 2007 pp. 2-4, 14, 29; Exhibit 1D149 (Witness WAE's Personal Information Sheet).

was not in the delegation sent to negotiate the ceasefire. This delegation was composed of André Ntagerura, Agnès Ntamabyaliro, Marcil Gatsinzi and Aloys Ntiwiragabo. Subsequently, on 23 April 1994, the Rwandan government signed a declaration of ceasefire, which was not signed by the RPF. The delegation then informed Bizimungu of this signing when they met with Bizimungu upon their return to Kinshasa from Gbadolite. Witness WAE believed that Bizimungu left Kinshasa around 24 or 25 April.[2506]

Bizimungu Defence Witness WDK

1786. Witness WDK, a family friend of Bizimungu's, met him several times in Kinshasa between April and July 1994 in order to receive news of her family in Rwanda. The first time they saw each other was one-and-a-half weeks after 7 April 1994, when Witness WDK met him by chance at the Rwandan Embassy around 10.00 a.m. During this meeting, Bizimungu told her that he came to Kinshasa in order to see President Sese Seko Mobutu. Witness WDK met Bizimungu again at the Embassy approximately three weeks later, when the Accused was travelling from Rwanda, and brought her a letter from her father. Subsequently, Witness WDK met Bizimungu several other times in order to obtain news of her family and to give Bizimungu letters for them.[2507]

Bizimungu Defence Witness André Ntagerura

1787. André Ntagerura, a Hutu, was re-appointed Minister of Transport and Communication in the Interim Government on 9 April 1994.[2508] On 23 April 1994, Ntagerura led a Rwandan delegation composed of the Minister of Justice, Agnès Ntamabyaliro, and two military officials, General Marcel Gatsinzi and Colonel Aloys Ntiwiragabo, sent to Arusha in order to negotiate with the RPF. On his way to Arusha, Ntagerura heard that an RPF delegation in Gbadolite just presented a ceasefire document to President Sese Seko Mobutu. The Rwandan delegation decided to stop by Gbadolite in order to see the document. When the Rwandan delegation arrived, the RPF delegation had already left Gbadolite but after the promise that the RPF would also return to sign the ceasefire, Ntagerura signed the declaration to commit to a ceasefire and instructed the ceasefire agreement be signed.[2509]

1788. The next day, 24 April 1994, Ntagerura and the Rwandan delegation returned to Kinshasa, where he met Bizimungu at the InterContinental hotel for half an hour. Ntagerura informed Bizimungu that the ceasefire had been signed by the Rwandan government but had not been signed yet by the RPF.[2510]

Deliberations

1789. Bizimungu testified that he was in Kinshasa from 12 to 25 April 1994 in order to gain assistance from Sese Seko Mobutu in negotiating a ceasefire. His presence in Kinshasa is

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[2506] Witness WAE, T. 13 February 2007 pp. 45-49, 67-70; T. 14 February 2007 pp. 2-3, 10, 12-13, 59; Exhibit 1D150 (Declaration of Ceasefire, 23 April 1994).
[2507] Witness WDK, T. 7 February 2007 pp. 7-11, 18-25, 28.
[2508] Ntagerura, T. 14 February 2007 pp. 65-68; Exhibit 1D152 (Andre Ntagerura's Personal Information Sheet).
[2509] Ntagerura, T. 15 February 2007 pp. 27-31, 41; T. 20 February 2007 pp. 29-35; Exhibit 1D150 (Declaration of Ceasefire, 23 April 1994); Exhibit 1D154 (Declaration to a Commitment to a Ceasefire and Cessation of Hostilities Between the Parties to the Conflict in Rwanda).
[2510] Ntagerura, T. 15 February 2007 p. 30; T. 20 February 2007 pp. 30-35.

corroborated by Witness WAE, who saw him almost every day between those dates. Witness WDK also testified that she saw him one-and-a-half weeks after 7 April, which would place their meeting around 17 or 18 April. Finally, André Ntagerura stated that he met Bizimungu on 24 April.

1790. Bizimungu's alibi is supported by the testimonies of persons who worked closely with the Interim Government and or had close personal ties to him. Witness WAE worked in coordination with the Interim Government during the genocide and had professional ties to Bizimungu before 1994.[2511] André Ntagerura was a former member of the Interim Government and Witness WDK was a family friend. The Chamber is mindful of the self-interested nature of some of this evidence and the possible interest in providing exculpatory evidence for Bizimungu based on close personal and professional relationships. However, this is not enough to disregard their evidence entirely, and their testimony is corroborated by substantial documentary evidence. Furthermore, their evidence finds strong circumstantial corroboration from contemporaneous documents tending to reflect Bizimungu's presence in Zaire during this period.

1791. For example, in support of his alibi Bizimungu produced a receipt from the InterContinental hotel in Kinshasa confirming that he was a guest there from 13 to 25 April 1994. The documents provide a detailed rendering of his expenses during this time period.[2512] He also introduced a Radio Muhabura broadcast of 17 April indicating that he was in Kinshasa that day.[2513] Finally, he introduced the excerpt of a Radio Rwanda broadcast of 25 April confirming that he gave a press conference in Kinshasa on 24 April.[2514] The Chamber finds this documentary evidence significant in calling into question the Prosecution's assertion that Bizimungu was in Rwanda approximately one week after the Interim Government arrived in Gitarama (approximately 19 April 1994), as alleged by Witness GTD.

1792. The Prosecution contends that irregularities in Bizimungu's passports, such as a lack of exit stamp, entry stamp or visa indicating the date of his return to Rwanda from Zaire in April, should be a basis for disregarding his alibi.[2515] For his part, Bizimungu admitted that he lacked a passport stamp or visa confirming his return from Zaire. He explained, however, that because of a formal agreement between Rwanda and Zaire one did not need a visa for travel between the two countries and a passport was not always stamped upon transit between them. Bizimungu's testimony in this regard is corroborated by Bicamumpaka, André Ntagerura, Mechtilde Mukandagijimana and Defence Witnesses WAE and WFP2, as well as a document

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[2511] Witness WAE indicated that he received professional visits from Bizimungu in 1989 and 1990. Witness WAE, T. 13 February 2007 pp. 44, 62-63.

[2512] Exhibit 1D199 (Receipt of Bizimungu's Stay at the Grand Hotel in Kinshasa, 13 to 25 April 1994) pp. 2-8. The Chamber notes that the InterContinental Hotel in Kinshasa changed its name to the Grand Hotel.

[2513] Exhibit 1D201 (Radio Muhabura Broadcasts from 16 to 19 April 1994) p. 2.

[2514] Exhibit 1D200 (Radio Rwanda Broadcast from 25 April 1994) p. 2. The Chamber notes that the English version of this exhibit identifies the broadcast as occurring on 25 April 1999, while the French and Kinyarwanda versions provide it occurred on 25 April 1994. *See* Bizimungu, T. 28 May 2007 pp. 56-58. The Chamber accepts that the English version, which states that the broadcast occurred in 1999, reflects a typographical error and that the broadcast occurred in 1994.

[2515] Prosecution Closing Brief, paras. 590-595. *See also* Exhibit 1D204 (Bizimungu's Diplomatic Passport); Exhibit 1D209 (Bizimungu's Passport No. 002992); Exhibit P171 (Index of Travel Endorsements of Bizimungu on Passport No. 000912); Exhibit P172 (Coloured Chart of Travel Endorsements of Bizimungu's Passport No. 000912); Exhibit 1D274 (Affidavit from Gilles Saint Laurent).

indicating the Economic Community of the Great Lakes Countries Agreement.[2516] Considering the above, the Chamber finds Bizimungu's explanation of his passport irregularities to be reasonable.

1793. In the Chamber's view, Bizimungu's alibi that he stayed in Kinshasa from 12 to 25 April 1994 also appears reasonable. The Chamber previously considered significant evidence indicating that Bizimungu travelled to Kinshasa in order to ask President Sese Seko Mobutu to broker a ceasefire between the Rwandan army and the RPF (II.8.1). Bizimungu testified that he was told by Mobutu to stay in Kinshasa awaiting a message for President Théodore Sindikubwabo, and that thereafter he heard that Mobutu met with both an RPF and a Rwandan delegation. It was only upon learning that there was no message for him to carry to Sindikubwabo that Bizimungu returned to Rwanda. Under the circumstances, it is reasonable that Bizimungu would obey the order to stay in Kinshasa from President Mobutu, who was intimately involved in negotiations between the parties to the Rwandan conflict, so that he could complete his mission. Furthermore, Ntagerura, who remained with the Interim Government in Gitarama, stated that he did not see Bizimungu in Gitarama at all after 12 April, but only met him again on 24 April in Kinshasa.

1794. Finally, the Chamber considers the Prosecution's evidence for the alleged incident at Murambi Bar in Gitarama. The Chamber reiterates its concerns with the uncorroborated testimony of Witness GTD, as well as his weak identification of Bizimungu (II.10.1). In sum, Bizimungu's alibi, when viewed as a whole and weighed against the Prosecution evidence, provides a reasonable explanation for his activities from 12 to 25 April 1994, which is inconsistent with the Prosecution's evidence.

14.2.2 Zaire, Switzerland and Kenya: 30 April to 23 or 24 May 1994

Introduction

1795. Within the dates referenced above, the Prosecution seeks to incriminate Bizimungu based on allegations that he: participated in a killing in early May in Gitarama at the Cyakabiri roadblock (II.10.1); met with Witness D in Kigali during the first half of May 1994 and told him that they had sent a delegation to Butare to incite killings while also expressing the Interim Government's support for the *Interahamwe* (II.11.1); received weapons at the Meridien hotel between 12 and 19 May 1994 and incited civilian militia to kill Tutsis the following day (or between 13 and 20 May 1994) at Umuganda stadium (II.11.3); and encouraged persons at the Meridien hotel to fight Tutsis on 21 May 1994 (II.11.3).

1796. The Bizimungu Defence argues that Bizimungu was out of the country from 30 April to 23 or 24 May 1994, travelling to Zaire, Switzerland and Kenya. It relies on the testimonies of Bizimungu and Witnesses WAE, Augustin Karamage, Jean-François Ruppol and Dominique Makeli, as well as documentary evidence.[2517]

[2516] Bicamumpaka, T. 8 October 2007 p. 37; Ntagerura, T. 15 February 2007 pp. 44-51; Witness WAE, T. 14 February 2007 p. 44; Mukandagijimana, T. 1 May 2008 p. 23; Witness WFP2, T. 22 January 2007 pp. 57-58; Witness WAE, T. 13 February 2007 p. 54; Exhibit 1D153 (Three Documents Pertaining to the Economic Community of the Great Lakes Countries) p. 3 (stating that travellers between Rwanda, Burundi and Zaire are not required to obtain a visa for travel between these countries).

[2517] Bizimungu Closing Brief, paras. 446-468, 724, 796, 818; Bizimungu Closing Arguments, T. 2 December 2008 p. 28.

Evidence

Bizimungu

1797. On 27 April 1994, President Théodore Sindikubwabo approved a mission for Bizimungu to travel to Switzerland from 29 April to 9 May. Bizimungu left Rwanda and arrived in Kinshasa, Zaire on 30 April, where he stayed until 6 May at the InterContinental hotel. During this period, Bizimungu obtained a visa allowing him to enter Switzerland, and flew to Geneva on 6 May. He remained in Switzerland until 9 May, attending a convention of the General Assembly of the World Health Organisation. On the evening of 9 May 1994, he flew from Geneva to Nairobi, Kenya, in order to visit his family, and he arrived there on 10 May 1994. He took an evening flight back to Geneva, arriving there on 11 May 1994.[2518]

1798. Bizimungu remained in Switzerland until 17 or 18 May 1994 before returning to Kinshasa. He stayed at the InterContinental hotel from 19 until 21 May. On 21 May, he tried to fly back to Rwanda. However, mechanical errors prevented him from leaving. He decided to stay at a small hotel called *La voix du Zaire* or "Invest" hotel, located close to the airport. Bizimungu returned to Rwanda around 23 or 24 May 1994, passing through Goma and Gisenyi before returning to Murambi, Gitarama.[2519]

Bizimungu Defence Witness WAE

1799. Witness WAE, a Hutu, was a Rwandan working in Kinshasa, Zaire in 1994.[2520] He testified that around the beginning of May 1994, he met Bizimungu in Kinshasa. Bizimungu was preparing to travel to the World Health Organisation meeting in Geneva, Switzerland. This meeting was important to Rwanda, which had a candidate, Sixte Butera, for the organisation's regional director in Brazzaville. The witness believed that Bizimungu remained in Geneva for a couple of weeks before returning to Kinshasa in the "first half of May". He believed that Bizimungu then went to visit his family in Nairobi and did not think that Bizimungu was in Kinshasa on 24 May.[2521]

Mugiraneza Defence Witness Augustin Karamage

1800. Augustin Karamage, a Hutu, served as Rwandan Ambassador in Switzerland and Austria, as well as Rwanda's permanent representative to the United Nations offices in

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[2518] Bizimungu, T. 28 May 2007 pp. 62-70; T. 29 May 2007 p. 7; T. 6 June 2007 p. 45; T. 12 June 2007 pp. 21-25; Exhibit 1D203 (Mission Order for Bizimungu's Travel, 27 April 1994, authorising Bizimungu's travel to Switzerland from 29 April to 9 May 1994); Exhibit 1D199 (Grand Hotel Receipt) pp. 9-12 (Bizimungu's expenses from 30 April until 6 May 1994); Exhibit 1D202 (Report of the 47th Assembly of World Health Organisation, 2 to 12 May 1994); Exhibit 1D204 (Bizimungu's Diplomatic Passport) pp. 18-19 (containing visa stamps dated 30 April and 6 May 1994 from Zaire and Kenyan entry and exit stamps dated 10 May 1994).
[2519] Bizimungu, T. 29 May 2007 pp. 7-10, 12-19, 22-23, 47-48; T. 6 June 2007 pp. 46-47, 51; T. 11 June 2007 pp. 2-6; Exhibit 1D199 (Grand Hotel Receipt) p. 13 (Bizimungu's expenses from 19 to 21 May 1994); Exhibit 1D206 (Radio Rwanda Broadcast, 24 May 1994) pp. 19-32 (Bizimungu Interview).
[2520] Witness WAE, T. 13 February 2007 pp. 43, 63; Exhibit 1D149 (Witness WAE's Personal Information Sheet).
[2521] Witness WAE, T. 13 February 2007 p. 50; T. 14 February 2007 pp. 23, 41, 58-59; Exhibit 1D151 (Letter from Doctor Sixte Butera to Witness WAE, 27 June 1994).

Geneva and Vienna from January to July 1994. He lived in Berne, Switzerland.[2522] Between 2 and 12 May 1994, Geneva, Switzerland, was hosting the General Assembly of the World Health Organisation. Bizimungu arrived in Geneva in early May, but after the event's opening session. Karamage came to meet him. Bizimungu, who was there in part to campaign for Dr. Sixte Butera's position as the regional director of the World Health Organisation, explained to Karamage that the situation in Rwanda was catastrophic. The Interim Government was appealing to the population to end the violence and the RPF to enter a ceasefire agreement. However, the government was effectively powerless.[2523]

1801. After their initial meeting, Karamage returned to Berne to campaign for Butera's position as well. On 8 May 1994, Butera, who was with Bizimungu at the World Health Organisation event, called Karamage to inform him that Bizimungu was going to Nairobi, Kenya but would return. Karamage saw Bizimungu again around 15 May 1994 at the *Hôtel des Arbres* in Geneva, after his trip to Nairobi. Bizimungu had returned to seek assistance for victims of war in Rwanda from international organisations there.[2524]

Defence Witnesses Jean-François Ruppol and Dominique Makeli

1802. Jean-François Ruppol worked in Rwanda from 1991 to 7 April 1994 as the head of a Belgian agency that cooperated with the Rwandan Ministry of Health and Dominique Makeli, a Hutu, was a journalist for Radio Rwanda in 1994.[2525] Ruppol was in Murambi, Gitarama prefecture, on 16 and 17 May 1994 on a medical assistance mission, where he met with several Interim Government ministers, including André Rwamakuba. Ruppol asked him where Bizimungu was and was told that he was abroad.[2526]

1803. Makeli heard that the government sent various ministers all over the world to explain the Rwanda issue and read transcripts from a 19 May 1994 Radio Rwanda broadcast where Rwamakuba stated that he was following the population's health "when the Minister of Health is on a foreign visit". Given Bizimungu's prior experience in the Ministry of Foreign Affairs, Makeli considered him to be the "right person to be sent out of the country" to explain what was happening in Rwanda.[2527]

Deliberations

1804. Bizimungu's alibi for 30 April to 23 or 24 May 1994 involves trips to Kinshasa, Zaire, Geneva, Switzerland, and Nairobi, Kenya. The Chamber will assess them in turn.

(i) Kinshasa, Zaire, 30 April to 6 May 1994

1805. Bizimungu testified that he was in Kinshasa from 30 April to 6 May 1994, where he obtained a visa to travel to Geneva, Switzerland, and attended the General Assembly of the

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[2522] Karamage, T. 15 April 2008 pp. 46-47, 55; Exhibit 4D98 (Karamage's Personal Information Sheet). Karamage was a Swiss national, living in Switzerland at the time of his testimony. T. 15 April 2008 p. 47.
[2523] Karamage, T. 15 April 2008 pp. 53-57, 60, 71-72; Exhibit 4D98 (Karamage's Personal Information Sheet); Exhibit 1D202 (Report of the 47th Assembly of World Health Organisation, 2 to 12 May 1994).
[2524] Karamage, T. 15 April 2008 pp. 54, 71-72.
[2525] Ruppol, T. 2 October 2006 pp. 3-4; Makeli, T. 22 October 2007 pp. 33, 37; T. 24 October 2007 pp. 37, 40; T. 29 October 2007 pp. 4, 22, 41, 51; Exhibit 3D163 (Makeli's Personal Information Sheet).
[2526] Ruppol, T. 3 October 2006 pp. 13-14.
[2527] Makeli, T. 29 October 2007 pp. 32-34; Exhibit 3D163 (Makeli's Personal Information Sheet).

World Health Organisation. He obtained the visa and left for Geneva on 6 May. His presence in Kinshasa is generally corroborated by Witness WAE, who also stated that Bizimungu was there in early May for that purpose.

1806. At the outset, the Chamber observes that Witness WAE worked in coordination with the Interim Government during the genocide and could have an interest in providing exculpatory evidence on Bizimungu's behalf. His testimony also reflects that the witness had direct professional ties with Bizimungu, which pre-dated 1994.[2528] Notwithstanding, his prior professional relationship with Bizimungu and existing ties with the Rwandan government in 1994 also make it likely that he would assist Bizimungu during official travel. Furthermore, his account, along with Bizimungu's, finds significant circumstantial support through contemporaneous documentary evidence.

1807. Specifically, a mission order signed by President Théodore Sindikubwabo and dated 27 April 1994 indicates that Bizimungu was expected to travel to Kinshasa, Zaire, and Geneva, Switzerland, from 29 April to 9 May 1994.[2529] Bizimungu's explanation that he first went to Kinshasa, Zaire, from 30 April until 6 May to obtain a visa are supported by an exit stamp from Rwanda and an entry stamp from Zaire, both dated 30 April 1994.[2530] Furthermore, he produced hotel bills from Kinshasa's InterContinental hotel from 30 April to 6 May 1994, a Swiss visa stamp allowing entry between 5 May and 5 June 1994 and an exit stamp from Zaire on 6 May 1994.[2531]

1808. The Chamber recalls Witness D's evidence that he met with Bizimungu in Kigali in the first half of May 1994. However, Witness D's testimony was uncorroborated (II.11.1). Furthermore, Witness GTD testified that Bizimungu and Callixte Nzabonimana transported a Tutsi to be killed at the roadblock he manned in Gitarama in the beginning of May. However, his status as an accomplice, as well as a striking inconsistency between his guilty plea and testimony, raised considerable concerns about his evidence (II.10.1). In light of the evidence above, the Prosecution has not eliminated the reasonable possibility that Bizimungu was not in Rwanda between 30 April and 6 May 1994.

(ii) Geneva, Switzerland and Nairobi, Kenya, 6 May to 17 or 18 May 1994

1809. Bizimungu testified that he arrived in Geneva on 6 May 1994, remained there for three days, and, on 9 May, flew to Nairobi, Kenya, arriving the following day. He left the same day, 10 May, to return to Switzerland, arriving in Geneva on 11 May and remaining there until 17 or 18 May. Similarly, Karamage testified to having received Bizimungu in Geneva in early May but after the World Health Organisation conference had commenced. He heard that Bizimungu had left to go to Nairobi on 8 May and saw him later in Geneva as Bizimungu had returned to seek assistance for Rwandan victims of war from international organisations.

[2528] Witness WAE, T. 13 February 2007 pp. 44, 62-63 (received professional visits from Bizimungu in 1989 and 1990).
[2529] Exhibit 1D203 (Mission Order for Bizimungu's Travel).
[2530] Exhibit 1D204 (Bizimungu's Diplomatic Passport) p. 17 (exit stamp from Rwanda and entry stamp from Zaire, 6 May 1994).
[2531] Exhibit 1D204 (Bizimungu's Diplomatic Passport) pp. 17 (exit stamp from Zaire, 6 May 1994), 18 (Swiss Visa, 5 May to 5 June 1994); Exhibit 1D199 (Grand Hotel's Receipt) pp. 9-12 (expense report for Bizimungu from 30 April to 6 May 1994). The Chamber notes that the InterContinental Hotel in Kishasa changed its name to the Grand Hotel. Bizimungu, T. 28 May 2007 p. 45.

1810. Like Witness WAE, Karamage also worked in coordination with the Interim Government during the genocide. Karamage and Bizimungu also had overlapping personal and professional pasts. They were at Rwanda's National University in Butare together and Bizimungu, as the Minister of Foreign Affairs, was Karamage's superior from 1989 to 1992. Karamage explained that the two had friendly relations.[2532] While these circumstances may raise concerns about the impartiality of his testimony, their personal history and Karamage's position as the Rwandan Ambassador to Switzerland, would also support the notion that Karamage would receive Bizimungu while travelling abroad. Furthermore, documentary evidence also supports aspects of their testimonies.

1811. A report of the 47th Assembly of World Health Organisation held in 1994 identifies Bizimungu and Karamage as members of the Rwanda delegation at the event.[2533] This offers circumstantial corroboration for the general proposition that Bizimungu went to Geneva in early May 1994. Bizimungu also relies on his passport to provide more precise indications of his whereabouts.

1812. The Prosecution, having reviewed Bizimungu's passport, exhibited internal documents that reflect its position that the passport has an entry stamp from Geneva for 9 May and an exit stamp for 11 May.[2534] Bizimungu, on the other hand, testified that his passport reflects that he arrived in Geneva on 6 May 1994 (not 9 May) and that the 11 May stamp indicates his re-entry into the country (rather than exit).[2535] He further stated that he did not obtain exit stamps when leaving Geneva on 9 or around 17 or 18 May.[2536]

1813. The Chamber, having closely reviewed the relevant page copied from the passport, considers that the stamps state "E06.05.94" and "E11.05.94" (or 6 May 1994 and 11 May 1994). Both stamps also include "*Suisse*" at the top and "*Aeroport Geneve*" along the bottom, revealing that the stamp is to be considered in French (rather than English). Consequently, the "E" preceding the dates would appear to reflect an abbreviation for the French word "*entrée*" (rather than the English word "exit" or the French equivalent, "*sortie*"). This interpretation of the entries would be consistent with the other stamps in Bizimungu's passport that reflect entry into and exit from Nairobi, Kenya, on 10 May 1994.[2537] It would also adhere with Karamage's testimony that he had heard on 8 May that Bizimungu was travelling to Nairobi from Geneva and that he saw Bizimungu in Geneva after he had returned.

1814. Regarding Bizimungu's continued presence in Geneva from 11 May to 17 or 18 May 1994, the Chamber observes that this evidence lacks precision. Karamage's testimony is vague about the timing and length of Bizimungu's continued presence in Geneva once he

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[2532] Karamage, T. 15 April 2008 pp. 54, 56.
[2533] Exhibit 1D202 (Report of the 47th Assembly of World Health Organisation, 2 to 12 May 1994); *see also* Exhibit P154 (Letter from Bizimungu to Prime Minister Jean Kambanda titled Denial of False Accusations Against Me, 30 October 1994) p. 2.
[2534] Exhibit P171 (Index of Travel Endorsements on Bizimungu Passport No. 000-912) pp. 3 (Item number 66 reflects that Bizimungu entered Geneva, Switzerland on 9 May 1994), 4 (Item number 70 reflects that Bizimungu exited Geneva, Switzerland on 11 May 1994); Exhibit P172 (Coloured Chart of Travel Endorsements of Bizimungu's Passport No. 000-912) p. 5 (Bizimungu entered Geneva, Switzerland on 9 May 1994 and exited on 11 May).
[2535] Bizimungu, T. 28 May 2007 pp. 67-68; T. 6 June 2007 pp. 38-39.
[2536] Bizimungu, T. 29 May 2007 p. 8; T. 12 June 2007 pp. 21-23.
[2537] Exhibit 1D204 (Bizimungu's Diplomatic Passport) p. 18 (entry and exit stamp from Nairobi, Kenya, 10 May 1994).

returned from Kenya. There is no documentary evidence indicating Bizimungu's presence there beyond the 11 May 1994 entry stamp.

1815. The Chamber considers the absence of details in Karamage's testimony could reasonably result from the significant passage of time. Indeed, while he could not provide precise dates, he recalled that Bizimungu stayed at the *Hôtel des Arbres* in Geneva when he returned from Nairobi. Furthermore, there is other evidence that Bizimungu was not in Rwanda at that time. Belgian Doctor Jean-François Ruppol testified that he was on a medical mission in Murambi, Gitarama, on 16 and 17 May 1994. While there, Minister André Rwamakuba told Ruppol that Bizimungu was abroad.

1816. The Chamber recalls Witness D's evidence that he met with Bizimungu in Kigali in the first half of May 1994. However, Witness D's testimony was uncorroborated (II.11.1). Furthermore, Witness GTD testified that Bizimungu and Callixte Nzabonimana transported a Tutsi to be killed at the roadblock he manned in Gitarama in the beginning of May 1994. However, his status as an accomplice, as well as a striking inconsistency between his guilty plea and testimony, raised considerable concerns about his testimony (II.10.1).

1817. Witness GTC testified that he saw Bizimungu receive weapons at the Meridien hotel in Gisenyi on an unspecified day between 12 and 19 May 1994. The next day, he was alleged to have incited persons receiving training at Umuganda stadium to kill Tutsis. However, the Chamber has reservations about Witness GTC's evidence, given his status as an accomplice, his admission that he had lied in other proceedings and in light of other evidence that contradicted aspects of his testimony (II.11.3).

1818. Looking at the totality of the evidence, the Chamber observes that ambiguities exist in Bizimungu's alibi for this period. Nonetheless, a relatively coherent narrative remains and the Prosecution evidence implicating him has not eliminated the reasonable possibility that Bizimungu was not in Rwanda between 6 May and 17 or 18 May 1994.

(iii) Kinshasa, Zaire, 17 or 18 May to 23 or 24 May 1994

1819. Bizimungu testified that he arrived in Kinshasa around 17 or 18 May 1994 and remained there until 23 or 24 May 1994. Witness WAE confirmed that Bizimungu was gone for a couple of weeks while attending the World Health Organisation event in Geneva before returning to Kinshasa "in the first half of May".[2538] In view of the significant passage of time and the documentary support (discussed below), the Chamber does not find the relatively minor inconsistency about the timing of Bizimungu's return to Kinshasa material. Indeed, Witness WAE repeatedly noted that he could only provide estimates for the dates Bizimungu was in Kinshasa.[2539]

1820. The earlier portion of Bizimungu's alibi for this period is corroborated by other evidence. The Defence has pointed to a Radio Rwanda broadcast from 19 May 1994, where Minister André Rwamakuba stated that he was following the health of the Rwandan

[2538] Witness WAE, T. 14 February 2007 p. 59.
[2539] Witness WAE, T. 13 February 2007 p. 50; T. 14 February 2007 pp. 23, 58-59.

population closely "when the Minister of Health is away".[2540] The Bizimungu Defence also produced hotel bills from the InterContinental hotel in Kinshasa from 19 to 21 May 1994.[2541]

1821. The Chamber observes that the passport pages exhibited do not contain an entry stamp corresponding with the testimonies described above. However, in light of the documentary evidence described above, the Chamber considers the absence of an entry stamp immaterial. It has received considerable evidence that, pursuant to agreements of the countries of the Great Lakes community, passports of Rwandan citizens were not always stamped when entering Zaire in 1994 (II.14.2.1).

1822. Bizimungu's evidence about his continued presence in Kinshasa from 21 May to 23 or 24 May before returning to Gitarama through Goma and Gisenyi finds less support. He explained that he checked out of the InterContinental hotel on 21 May as he had intended to leave Kinshasa. However, technical difficulties with his plane forced him to stay. He decided to find accommodation close to the airport at *La voix du Zaire* or "Invest" hotel, where he remained until 23 or 24 May 1994. Unlike the rest of his stay in Kinshasa, he did not offer hotel bills in support. The Prosecution draws attention to the fact that Witness WAE did not confirm this scenario.[2542] The Chamber observes that the witness was not questioned about it. Nonetheless, Witness WAE believed that Bizimungu was no longer in Kinshasa on 24 May 1994.[2543]

1823. While evidence about Bizimungu's continued presence in Kinshasa is scant, another contemporaneous account gives an indication that Bizimungu might not have been in Rwanda until 24 May. Specifically, the Defence has provided transcripts from a 24 May 1994 Radio Rwanda broadcast indicating that Bizimungu had returned to Rwanda that day.[2544]

1824. Witness GTC testified that he saw Bizimungu receive weapons at the Meridien hotel in Gisenyi on an unspecified day between 12 and 19 May 1994. The next day, he was alleged to have incited persons receiving training at Umuganda stadium to kill Tutsis. However, the

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[2540] Exhibit 3D164 (Radio Rwanda Broadcast) pp. 215-217 (transcript of statements by Minister André Rwamakuba, 19 May 1994).
[2541] Exhibit 1D199 (Grand Hotel Receipt) pp. 13, 17 (expense report for Bizimungu from 19 to 21 May 1994). The Chamber notes that the InterContinental Hotel in Kinshasa changed its name to the Grand Hotel. Bizimungu, T. 28 May 2007 p. 45.
[2542] Prosecution Closing Brief, para. 594.
[2543] Witness WAE, T. 14 February 2007 p. 59.
[2544] Exhibit 1D206(K) (Radio Rwanda Broadcast, 24 May 1994) pp. 19-32; *see also* Bizimungu, T. 29 May 2007 pp. 12-19 (translation). The Chamber observes that Bizimungu testified that, notwithstanding what was reported during the interview, he did not meet with the reporter in Kigali. *See* Bizimungu, T. 29 May 2007 p. 12 ("THE WITNESS: ... 'In national news, the minister of health, Dr. Casimir Bizimungu, returned to Kigali today at the end of a mission to various foreign countries. We are giving the floor to the minister of health who is going to talk to us briefly about his mission and its outcome.' Q. ... Did you go back to Kigali on the day of the 24th of May 1994? A. I left Kigali with other ministers on the 12th of April 1994, and I didn't go back to Kigali after that date."). Notably, Radio Rwanda was broadcasting from Gitarama during this period. Makeli, T. 29 October 2007 p. 57. There is other evidence in the record that documents and transmissions, although indicating that they were executed in Kigali, were done elsewhere. *See* Ndindabahizi, T. 1 May 2007 p. 21 (discussing a 23 April 1994 document that indicated that it was done in "Kigali"; the government was in Murambi but continued to use "Kigali" as that was its official seat); Mugiraneza, T. 26 May 2008 pp. 19-20 (noting that the government continued to mark documents as done in "Kigali" because it did not want to give the impression that the authorities had surrendered the capital); *see also* Exhibit 2D58(E) (Prime Minister Jean Kambanda's Letter to Prefects entitled: Instructions to Restore Security in the Country, 27 April 1994) p. 8 (reads "Kigali on 27 April 1994").

Chamber has reservations about Witness GTC's evidence, given his status as an accomplice, his admission that he had lied in other proceedings and in light of other evidence that contradicted aspects of his testimony (II.11.3).

1825. Witness GKI testified that he saw Bizimungu and heard him speak at the Meridien hotel in Gisenyi on 21 May 1994. However, he too was an accomplice witness with pending criminal proceedings while testifying in this case. Moreover, the Defence presented testimony that Witness GKI agreed to falsify evidence against officials while imprisoned. Moreover, his ability to identify Bizimungu was unclear. The Chamber has reservations about relying on his uncorroborated testimony (II.11.3).

1826. Similar to the period of 6 May to 17 or 18 May 1994, aspects Bizimungu's alibi for this period contain ambiguities. Nonetheless, the Prosecution evidence has not excluded the reasonable possibility that Bizimungu was not in Rwanda between 17 or 18 May until 24 May 1994.

14.3 Bicamumpaka Alibi

1827. The Bicamumpaka Defence has presented an alibi in connection with some of the allegations against Bicamumpaka. The evidence covers the periods of 9, 15 to 17 April and 22 April to late May 1994, involves multiple locations and spans several criminal incidents. In order to preserve a coherent narrative of this evidence and to avoid repetition of details in specific sections, the alibis are recounted and assessed below. In the relevant sections, the Chamber shall determine the impact, if any, of the late filing of Bicamumpaka's Notice of Alibi.[2545]

14.3.1 Kigali: 9 April 1994

Introduction

1828. As set forth elsewhere in the Judgement, the Prosecution alleges that Bicamumpaka distributed weapons at the house of a man named Sebisogo in Kabuga at approximately 3.30 p.m. on 9 April 1994 (II.7.1). The Defence submits that Bicamumpaka was with Ambassador Swinnen at about 3.30 p.m. on 9 April. Defence Witness Johan Swinnen and Bizimungu provided relevant evidence.[2546]

[2545] Bicamumpaka filed his Notice of Alibi on 18 May 2005, near the end of the Prosecution case on 23 June 2005. Notice of Alibi from the Defence of Jerome Bicamumpaka, 18 May 2005, p. 10. The Prosecution did not object to the late filing of the Notice of Alibi, but argued that it lacked sufficient detail. Prosecutor's Response to Notice of Alibi from the Defence of Jerome Bicamumpaka, 24 May 2005. Subsequently, the Chamber urged the Defence to disclose to the Prosecution the required information. Decision on Jérôme Bicamumpaka's Notice of Alibi, 7 July 2005. In any event, the Defence submits that the Prosecution was aware of Bicamumpaka's alibi, prior to the filing of the notice, from the statements he gave to Prosecution investigators on 8 and 13 April 1999 in which he detailed his whereabouts from April to July 1994. *See* Bicamumpaka Closing Brief, para. 64; Bicamumpaka Closing Arguments, T. 3 December 2008 pp. 40-41; Bicamumpaka, T. 2 October 2007 p. 61; T. 8 October 2007 pp. 26-27, 32; T. 11 October 2007 pp. 23-25; *see also* Exhibit P2(27)(E & F) (Bicamumpaka's Interview with Tribunal Investigators, 8 April 1999); Notice of Alibi from the Defence of Bicamumpaka Concerning Allegations Made by Witness GAP, 10 December 2003.

[2546] Bicamumpaka Closing Brief, paras. 22, 65, 67, 239, 261, 333, 359, 692-697. The Chamber observes that Bicamumpaka has not provided specific alibi evidence with respect to Prosecution allegations relevant to 6 and 7 April 1994. In the Notice of Alibi from the Defence of Jérôme Bicamumpaka, the Defence referred to Witnesses SK-1, IK-1 and NE-1, who did not appear (p. 2). Further, the Bicamumpaka Closing Brief does not

Evidence

Bicamumpaka

1829. On 9 April 1994, the Interim Government was sworn in between 10.30 a.m. and noon. Immediately following the ceremony, President Sindikubwabo chaired a discussion amongst the cabinet members at the *Hôtel des Diplomates*. During this meeting it was determined that assistance from the international community was needed to restore peace and ensure security. Bicamumpaka, Bizimungu and Augustin Ngirabatware were tasked with contacting UNAMIR and representatives of countries involved in the peace process for assistance. The discussions concluded at approximately 12.15 p.m.[2547]

1830. Between 12.30 and 1.00 p.m. on 9 April 1994, Bicamumpaka contacted the ambassadors of France, Belgium and the Vatican, as well as Jacques-Roger Booh-Booh by telephone. About 2.15 p.m., Bicamumpaka, Bizimungu and Ngirabatware left the hotel and went to Belgian Ambassador Johan Swinnen's residence close to the hotel in the lower eastern sector of Kigali town. Around 3.30 p.m., they left and met with the French Ambassador, Jean Marlaud, until approximately 4.30 p.m.[2548] They then went to meet the Vatican representative at his residence until approximately 5.45 p.m. when they returned to the *Hôtel des Diplomates*. The discussions with the ambassadors concerned the formation of the Interim Government, its programme and the assistance that it was hoping to receive from Belgium, France and the international community to restore peace and order in Kigali. When they returned to the *Hôtel des Diplomates*, the cabinet meeting was underway. Bicamumpaka reported on his meetings with the ambassadors. The ministerial meeting ended a few minutes past 8.00 p.m.[2549]

Bizimungu

1831. In the early afternoon of 9 April 1994, Bizimungu left the *Hôtel des Diplomates* with Bicamumpaka and Augustin Ngirabatware to meet with the ambassadors of Belgium, France and the Vatican. He did not give an exact time for their departure, just that it was after lunch which ended between 2.00 and 2.30 p.m. They first visited the Belgium ambassador at his residence, followed by the French ambassador at the French Embassy and then finally the representative of the Vatican. The discussions concerned the formation of the Interim Government, its programme and the assistance that it was hoping to receive from the international community to restore peace and order in Kigali. They returned to the *Hôtel des Diplomates* between 4.00 and 5.00 p.m.[2550]

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refer to alibi evidence with respect to the two dates (paras. 63-68). However, evidence tending to suggest an alibi for 6 and 7 April has been considered in the relevant factual findings (II.7.1).

[2547] Bicamumpaka, T. 25 September 2007 pp. 44, 57; T. 26 September 2007 pp. 34-36.

[2548] The Chamber notes that the French transcript makes it clear that they *left* Swinnen's house around 3.30 p.m., *see* T. 26 September 2007 p. 43 (F).

[2549] Bicamumpaka, T. 26 September 2007 pp. 36-44; T. 27 September 2007 p. 18; Exhibit 3D91 (Letter from the Permanent Representative of Rwanda to UN addressed to the President of the UN Security Council, 13 April 1994) pp. 4-5; Exhibit 3D90 (Letter from the Vatican Embassy in Tanzania to the Tribunal, 18 March 2005).

[2550] Bizimungu, T. 24 May 2007 pp. 31-34; T. 4 June 2007 pp. 5, 13; T. 5 June 2007 pp. 26, 35, 43.

Bicamumpaka Defence Witness Johan Swinnen

1832. Johan Swinnen was the Belgian Ambassador to Rwanda starting from August 1990 and was evacuated on 12 April 1994.[2551] On 9 April 1994, around 3.00 p.m., a delegation from the Interim Government, including Bicamumpaka, Bizimungu and Augustin Ngirabatware met with Swinnen at his residence. It was the first time that Swinnen met Bicamumpaka. Bicamumpaka briefed Swinnen on the establishment of the Interim Government and its general objectives which were to restore peace and strive to work with international partners in order to rebuild the country. Bicamumpaka sought understanding from the Belgium government of the dire situation within the country. The discussion lasted just under an hour.[2552]

Deliberations

1833. Bicamumpaka testified that around 3.30 p.m. on 9 April 1994 he was just leaving a meeting with Belgian Ambassador Johann Swinnen. Swinnen testified that the meeting with Bicamumpaka began around 3.00 p.m. and lasted for under an hour, which corroborated Bicamumpaka's evidence that he was in his presence at 3.30 p.m. Bizimungu also provided corroboration of Bicamumpaka's activities all afternoon including his meeting with Swinnen.

1834. The Chamber considers that Swinnen provided consistent and credible evidence and can see no obvious motive for fabrication. Although Bizimungu is a co-Accused, he also corroborated Bicamumpaka's evidence and provided testimony consistent with Bicamumpaka and Swinnen. Moreover, despite its allegation against Bicamumpaka in Kabuga, the Prosecution appears to accept that Swinnen met with Bicamumpaka at approximately 3.00 p.m. on 9 April.[2553] Consequently, the Chamber considers that this evidence supports the reasonable possibility that Bicamumpaka was not in Kabuga at approximately 3.30 p.m. on 9 April, as alleged by the Prosecution (II.7.1).

1835. Turning to the notification of the evidence for this alibi, the Chamber observes that in his interview to Prosecution investigators on 8 April 1999 Bicamumpaka stated that at 3.00 p.m. on 9 April 1994 he telephoned the ambassadors of Belgium, France and the Vatican to arrange appointments at their residences. Appointments were set up at 2.00 p.m. at the residence of Belgium Ambassador "Joan Suinen"; at 3.30 p.m. with French Ambassador Jean Michel Marlau and later at the residences of the Pope's representative. The appointments then took place.[2554] Considering the statement was provided in 1999, the impact of the late notice upon the credibility of this alibi is negligible.

14.3.2 Burundi: 15 – 17 April 1994

Introduction

1836. As set forth elsewhere in the Judgement, the Prosecution alleges that Bicamumpaka attended a rally on 15 April 1994 at Misizi football field in Gitarama, during which President Théodore Sindikubwabo and other members of the Interim Government incited the public to

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[2551] Swinnen, T. 7 May 2008 p. 7; Exhibit 3D186 (Swinnen's Personal Information Sheet).
[2552] Swinnen, T. 7 May 2008 pp. 9-14, 29-34; T. 8 May 2008 pp. 25-27, 48, 56.
[2553] Prosecution Closing Brief, para. 1035.
[2554] Exhibit P2(27)(E & F) (Bicamumpaka's Interview with Tribunal Investigators, 8 April 1999) pp. 5-9.

kill Tutsis. Days after the rally, Bicamumpaka is alleged to have attended meetings at the nearby home of Emmanuel Uwamahoro, an *Interahamwe* leader (II.8.4). It is further alleged that Bicamumpaka attended a meeting at "Mariane's house" in Ruhango around the second week of April where he incited those gathered to kill Tutsis (II.8.3). The Prosecution also presented evidence that Bicamumpaka attended a meeting in Cyangugu between 12 and 15 April (II.11.2).

1837. The Bicamumpaka Defence submits that Bicamumpaka travelled to Bujumbura, Burundi, on 15 April 1994 to attend the funeral of the Burundian President and did not return to Rwanda from Burundi until the early hours of 18 April 1994. It submits that he therefore has a partial alibi for some of these allegations. Reference is made to Witness Ghiste, Bicamumpaka's personal passport and a Radio Rwanda broadcast of 16 April 1994.[2555]

1838. The Prosecution notes that part of Bicamumpaka's alibi for 15 through 17 April 1994, specifically that he stopped in Butare on his way back to Rwanda on 17 April, was not in his Alibi Notice or in his 1999 interview with Tribunal investigators and submits that it was therefore an invention to address the charge concerning Mariane's house.[2556]

Evidence

Bicamumpaka

1839. On 15 April 1994, Bicamumpaka travelled to Bujumbura, Burundi, with the Burundian Ambassador to Rwanda for the burial of the Burundian President, who had died in the plane crash with President Juvénal Habyarimana. They left Gitarama by car around noon, stopped in Butare for a short while and arrived at the Akanyaru border post around 5.00 p.m. Bicamumpaka reached Bujumbura around 8.00 or 8.30 p.m. On 16 April around 8.00 a.m., he was received by the interim President of Burundi at his official residence and had engagements until 8.30 p.m. including the funeral. At 9.00 a.m. on 17 April, he had a meeting at the residence of a Belgium diplomat, Jean Ghiste, in Bujumbura, and placed a telephone call to Alain de Brouwer from Ghiste's residence an hour later. He left Burundi in mid-afternoon that day, around 3.00 p.m., and travelled by road back to Rwanda. He crossed the border around 6.00 p.m. and reached the Murambi Centre at approximately 1.00 a.m. on 18 April. His arrival in Murambi was delayed as they stopped in Butare *en route*. They passed through Ruhango, Gitarama, as the road went through there, but did not stop. He did not mention that he stopped in Butare in his Alibi Notice as it was not relevant for his alibi.[2557]

Bicamumpaka Defence Witness Jean Paul Ghiste

1840. Jean Paul Ghiste was a Belgian diplomat in Bujumbura, Burundi in April 1994.[2558] He met Bicamumpaka at President Cyprien Ntaryamira's funeral in Burundi on 16 April 1994.

[2555] Bicamumpaka Closing Brief, paras. 64-68, 241, 365, 380, 396-397, 408, 427, 436-437, 442-443, 720-726.
[2556] Prosecution Closing Brief, para. 852.
[2557] Bicamumpaka, T. 26 September 2007 pp. 43-44, 47-50; T. 27 September 2007 pp. 14, 25, 36-37; T. 2 October 2007 pp. 64-66; T. 8 October 2007 pp. 33-35, 41-42, 49; T. 10 October 2007 pp. 25-26; T. 11 October 2007 pp. 24-25, 30; Exhibit 3D89(E) (Radio Rwanda Broadcast, 16 April 1994) p. 15; Exhibit 3D112 (Bicamumpaka's Personal Passport) pp. 7-9; Exhibit P2(27)(E & F) (Bicamumpaka's Interview with Tribunal Investigators, 8 April 1999) p. 10; Exhibit P(2)63(E, F & K) (Radio Rwanda Broadcast, 18 April 1994) pp. 62-63; Exhibit P(2) 59(E, F & K) (Radio Rwanda Broadcast, 18 April 1994) p. 36.
[2558] Ghiste, T. 28 January 2008 pp. 4-5, 20; Exhibit 3D174 (Jean Ghiste's Personal Information Sheet).

The following day around 9:30 a.m., Bicamumpaka went to Ghiste's home for an informal meeting which lasted about an hour-and-a-half. Bicamumpaka briefed him about the situation in Rwanda and sought the assistance of the international community, especially Belgium, to negotiate a ceasefire with the RPF. Bicamumpaka used Ghiste's telephone to contact Alan de Brouwer, who was in charge of political affairs of the Belgian Christian Democratic Party.[2559]

Bicamumpaka Defence Witness CB-1

1841. Witness CB-1, a Hutu, was a Rwandan diplomat in April 1994.[2560] Although he never met Bicamumpaka, he knew of him through family friends. He learned from unidentified colleagues at the Rwandan Embassy in Burundi and through the media that Bicamumpaka visited Bujumbura, Burundi, between 14 and 17 April 1994 to attend the funeral of the Burundian President.[2561]

Deliberations

1842. Bicamumpaka testified that he left Gitarama around noon on 15 April 1994 and arrived in Burundi around 5.00 p.m. in order to attend the funeral of the late President Cyprien Ntaryamira. He returned to Rwanda on the evening of 17 April and arrived in Gitarama around 1.00 a.m. on 18 April. His presence in Bujumbura from 15 to 17 April is corroborated by Ghiste and Witness CB-1.[2562]

1843. The Chamber considers that Ghiste provided consistent and credible evidence and can see no obvious motive for fabrication. The Chamber notes that Witness CB-1's evidence is hearsay from unidentified sources. However, it does corroborate Ghiste's testimony about Bicamumpaka's whereabouts on 16 and 17 April 1994 which the Chamber finds to be consistent and credible.

1844. Bicamumpaka's testimony is further corroborated by his personal passport which contains a stamp from Rwanda[2563] and an entry stamp for Burundi, both dated 15 April 1994.[2564] Bicamumpaka's passport also has a Burundian exit stamp and Rwandan stamp, both dated 17 April.[2565] Furthermore, a Radio Rwanda broadcast on 16 April announced that Bicamumpaka attended the Burundian President's funeral in Bujumbura that day.[2566]

1845. The Chamber notes that Bicamumpaka testified that André Ntagerura accompanied the body of the President of Burundi to Bujumbura on 10 April 1994, returning to Rwanda on 14 April.[2567] However, later Bicamumpaka read into the record and confirmed the accuracy of relevant portions of his 1999 interview to Tribunal investigators, specifically that he was in Bujumbura from 14 to 17 April having himself accompanied the body of the late President

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[2559] Ghiste, T. 28 January 2008 pp. 6-8, 20-25, 28-33, 43, 47-48.
[2560] Witness CB-1, T. 25 October 2007 p. 5; Exhibit 3D167 (Witness CB-1's Personal Information Sheet).
[2561] Witness CB-1, T. 25 October 2007 pp. 6-7, 18, 21-24.
[2562] *See also* Mugiraneza, T. 2 June 2008 p. 60.
[2563] The Chamber presumes that it is an exit stamp from Rwanda as it is illegible. Its authenticity was not disputed by the Prosecution.
[2564] Exhibit 3D112 (Bicamumpaka's Personal Passport) pp. 7-8.
[2565] Exhibit 3D112 (Bicamumpaka's Personal Passport) pp. 8-9. The Chamber presumes that the Rwandan stamp is an entry stamp as it is illegible. Its authenticity was not disputed by the Prosecution.
[2566] Exhibit 3D89(E) (Radio Rwanda Broadcast, 16 April 1994) p. 15.
[2567] Bicamumpaka, T. 26 September 2007 pp. 35, 44.

Ntaryamira of Burundi on 14 April.[2568] While the Chamber is troubled by this discrepancy, Bicamumpaka was not confronted by it and it does not affect his alibi for 15 to 17 April, which, as stated above, was corroborated by witness testimony and documentary evidence.[2569]

1846. Similarly, while the Chamber notes that Bicamumpaka failed to mention his stop in Butare in his Alibi Notice or his 1999 interview as alleged by the Prosecution, it finds that his explanation that he did not believe it was necessary is reasonable.[2570] The Chamber finds that the totality of the evidence provides a coherent and credible narrative and that it is reasonably possibly true that Bicamumpaka was in Burundi from the early evening of 15 to 17 April 1994.

1847. Turning to the notification of this alibi, the Chamber observes that, in his 1999 interview, Bicamumpaka stated that he was in Bujumbura, Burundi, from 14 to 17 April 1994 having accompanied the body of, and then attending, the funeral of the late President Ntaryamira.[2571] As a result, the impact of the late notice upon the credibility of the alibi is negligible. Furthermore, the Chamber has elsewhere considered that the Prosecution allegations that clearly occurred within the period of 15 to 17 April are insufficiently reliable to support findings beyond reasonable doubt (II.8.4; 11.2), and have not eliminated the reasonableness of this evidence.

14.3.3 Gisenyi and Zaire: 22 April 1994

Introduction

1848. As set forth elsewhere in the Judgement, the Prosecution alleges that Bicamumpaka incited the killing of Tutsis during the swearing-in of Basile Nsabumugisha as prefect of Ruhengeri, which occurred between 19 and 25 April 1994 (II.9.4). The Defence submits that Nsabumugisha's installation ceremony took place on 22 April and that Bicamumpaka was in Zaire that day as confirmed by his diplomatic passport showing that he was issued with a multiple-entry visa for Zaire on 22 April in Goma.[2572]

1849. The Prosecution submits that Bicamumpaka's alibi should be rejected as false as there was a protocol that exempted Rwandans from the formalities of visas for entry to Zaire and therefore he had no need to get a visa.[2573]

Evidence

Bicamumpaka

1850. Bicamumpaka testified that on 21 April 1994 around 1.00 p.m. he travelled directly from Gitarama to Gisenyi without passing through Ruhengeri and arrived at the Meridien

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[2568] Bicamumpaka, T. 11 October 2007 pp. 24-25; Exhibit P2(27)(E & F) (Bicamumpaka's Interview with Tribunal Investigators, 8 April 1999) p. 10.
[2569] The Chamber also recalls Ntagerura's evidence that he accompanied the body of the late President Ntaryamira. Ntagerura, T. 19 February 2007 pp. 23-24, 69.
[2570] Bicamumpaka, T. 8 October 2007 pp. 33-35.
[2571] Exhibit P2(27)(E & F) (Bicamumpaka's Interview with Tribunal Investigators, 8 April 1999) p. 10.
[2572] Bicamumpaka Closing Brief, paras. 65-67, 244, 507-508.
[2573] Prosecution Closing Brief, para. 880.

hotel, Gisenyi, around 3.30 p.m. On 22 April around 9.00 a.m., he crossed the border to Goma to get a visa for Zaire. He explained that citizens living along the Rwandan-Zairian border could cross the border without a visa, but could not go beyond the prefecture bordering the frontier. On arrival in Goma, he first went to see if there was a plane to Kinshasa that day or the next. He then went to the immigration department to request visas for himself and his family, but the officer in charge was not available until 10.30 a.m. It took approximately 20 minutes to get the visas after which he returned to the Shabair Airline office where he bought airplane tickets for himself and his family. Around 1.00 p.m., they had lunch and returned to Meridien hotel, Gisenyi, at approximately 3.00 p.m. He denied that he could have sent a member of his staff to Goma as it would have resulted in a 24 hour delay, he urgently had to go to Europe and the United States and he had to apply on behalf of his family.[2574]

Deliberations

1851. Bicamumpaka testified that he was in Goma getting a visa for Zaire and plane tickets for Kinshasa on 22 April 1994. His alibi is confirmed by the stamp in his diplomatic passport showing that he was issued a multi-entry visa for Zaire on 22 April in Goma.[2575]

1852. At the outset, the Chamber recalls that irrespective of whether a Protocol existed exempting Rwandans from visa formalities for entry into Zaire, this, in the absence of evidence of fabrication, cannot negate the clear multi-entry visa stamp in Bicamumpaka's passport issued in Zaire on 22 April. Whether or not Bicamumpaka needed a visa is not the issue.

1853. The Prosecution further challenged Bicamumpaka's alibi on 22 April 1994 based on errors in his notice of alibi with respect to the date that he travelled from the Murambi Centre to Gitarama and his day trip to Goma, Zaire.[2576] Bicamumpaka corrected his notice during his testimony to read that he travelled to Gisenyi on 21 April, rather than 20 April, that he went to Goma only on 22 April, as opposed to 21 and 22 April.[2577] Bicamumpaka admitted that he saw the errors after the notice had been filed and he informed his Counsel that there was a mistake, but did not ask him to correct it. In court, he only remembered the errors when the specific question was put to him.[2578] The Chamber considers this to be a minor issue, which does not impact on the credibility of his consistent evidence supported by his passport that he was in Goma on 22 April.

1854. The Chamber notes that there was no reference to this aspect of Bicamumpaka's alibi in his 1999 interview with Tribunal investigators. Nonetheless, the documentary evidence of the multi-entry visa from Goma corroborates Bicamumpaka's testimony and creates the reasonable possibility that Bicamumpaka was in Goma on 22 April. Indeed, the Prosecution evidence that he was in Ruhengeri during the installation of Basile Nsabumugisha lacks reliability. Notably, Nsabumugisha, who was installed as prefect, testified that his swearing-

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[2574] Bicamumpaka, T. 27 September 2007 p. 38; T. 2 October 2007 pp. 55, 64-67; T. 3 October 2007 p. 21; T. 8 October 2007 pp. 38-41, 43-50; T. 11 October 2007 p. 30; Exhibit 3D113 (Bicamumpaka's Diplomatic Passport) p. 9.
[2575] Exhibit 3D113 (Bicamumpaka's Diplomatic Passport) p. 9.
[2576] Prosecution Closing Brief, paras. 854, 880.
[2577] Bicamumpaka, T. 8 October 2007 pp. 38-40, 49-50; T. 11 October 2007 p. 30; Notice of Alibi from the Defence of Jerome Bicamumpaka, 18 May 2005, p. 4, nos. 23, 24.
[2578] Bicamumpaka, T. 8 October 2007 pp. 38-40.

in occurred on 22 April 1994 and that Bicamumpaka was not there (II.9.4). The Prosecution evidence has failed to eliminate the reasonableness of Bicamumpaka's alibi evidence for this day.

14.3.4 Zaire, Europe and United States: 23 April to Late May 1994

Introduction

1855. As set forth elsewhere in the Judgement, the Prosecution alleges that Bicamumpaka ordered the killing of John Vuningoma on an unknown date between 25 April and 15 May 1994 (II.10.2),[2579] and that he attended a meeting in Cyangugu between 15 and 20 May 1994 (II.11.2).

1856. The Defence submits that Bicamumpaka left Rwanda on 23 April 1994 and travelled to Europe and the United States via Zaire on various diplomatic missions and did not return to Rwanda until late May. Reference is made to his diplomatic passport, an article from the Times newspaper, a cable from Kofi Annan to Booh-Booh and Dallaire dated 13 May 1994, a UN Security Council Report dated 16 May 1994, and Security Council Resolution 918. Witness WAE provided relevant evidence.[2580]

1857. The Prosecution submits that Bicamumpaka's passport stamps are not reliable indicators of his whereabouts. On occasion, Bicamumpaka's passport has border stamps indicating his travel in and out of Rwanda and simultaneously at other times does not.[2581]

Evidence

Bicamumpaka

1858. Bicamumpaka travelled to Europe and the United States on diplomatic missions from 23 April 1994 until the end of May 1994. He left Gisenyi on 23 April, arriving at Kinshasa airport, Zaire, at noon that day. He then travelled to France arriving in the morning of 24 April. He remained in France, where he held meetings with French government officials until 1 May when he left for Germany. He was in Germany on 4 May. He later returned to France where he left for the United States on 8 May.[2582]

1859. From 8 May 1994, Bicamumpaka was in New York meeting with UN officials and representatives of various States for about nine days. On 16 May at approximately 10.00 p.m., he attended a meeting of the UN Security Council, which concluded at about

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[2579] The Prosecution alleges that the murder of John Vuningoma occurred between 25 April and 15 May 1994. Prosecution Pre-Trial Brief, paras. 131 (p. 29), 193 (p. 42), 272 (p. 55). However, Prosecution Witness DCH places the event between 28 April and 10 May 1994. Witness GTA did not provide a date for this incident stating only that it was after the meeting in Cyangugu that took place between 12 and 15 April. *See* II.11.2. Moreover, in his written statement of 15 April 2003, Witness GTA states that he went to Kigali a few days after the Cyangugu meeting (which is undated in the statement) and the event occurred *en route*.

[2580] Bicamumpaka Closing Brief, paras. 65-68, 245, 513, 732-735.

[2581] Prosecution Closing Brief, para. 853.

[2582] Bicamumpaka, T. 26 September 2007 p. 45; T. 28 September 2007 pp. 16-19; T. 2 October 2007 pp. 15, 66; T. 8 October 2007 p. 49; T. 11 October 2007 pp. 22-23; Exhibit 3D113 (Bicamumpaka's Diplomatic Passport) pp. 8-10, 12; Exhibit 3D115(E) (Radio Rwanda Broadcast, 24 April 1994) pp. 2-3; Exhibit 3D114 (Radio Rwanda Broadcast, 28 April 1994) p. 3.

1.00 a.m. on 17 May. He left New York on the morning of 18 May and flew back to France.[2583]

1860. On 21 May 1994 at 11.00 p.m., he arrived in Kinshasa and stayed at the InterContinental hotel. He did not remember what he did on the following day. On 23 May, President Mobutu received him at his Gbadolite residence. President Mobutu's plane picked up Bicamumpaka in Kinshasa and returned him to the city the next day.[2584]

1861. On 25 May 1994, Bicamumpaka crossed the border into Rwanda. He believed he arrived in Gisenyi on 25, 26 or 27 May and in Gitarama around 28 May 1994. There was no stamp in his passport regarding his transit from Zaire to Rwanda because he was a government official and was escorted from the international airport in Goma, Zaire, directly into Rwanda.[2585]

Bizimungu Defence Witness WAE

1862. Witness WAE, a Hutu, was a Rwandan government official in Kinshasa, Zaire, in 1994.[2586] At the end of April 1994 he saw Bicamumpaka in Kinshasa preparing for his trip to Europe, including France, and then onto the UN Security Council in New York. Witness WAE took care of the formalities for Bicamumpaka's trip including visas. Bicamumpaka returned to Rwanda on 24 May via Kinshasa. During that period, all Rwandan delegations going abroad were obliged to pass through Kinshasa.[2587] Within the economic community of the Great Lakes there were agreements for the free circulation of people, so certain people, for example officials and businessmen, did not need visas to travel between countries.[2588]

Deliberations

1863. Bicamumpaka testified that he left Rwanda for Zaire on 23 April 1994 and participated in diplomatic missions abroad until he returned in late May. His presence in Kinshasa at the end of April and on 24 May is confirmed by Witness WAE. The Chamber notes that the Prosecution has acknowledged that Bicamumpaka was in New York in mid-May.[2589]

1864. At the outset, the Chamber rejects the Prosecution argument that Bicamumpaka's passport stamps are not good evidence of Bicamumpaka's whereabouts. It argues, for example, that his passport was not stamped when he returned to Rwanda in late May. However, there is considerable evidence that, pursuant to agreements of the countries of the

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[2583] Bicamumpaka, T. 27 September 2007 pp. 46-50; T. 2 October 2007 pp. 21, 24-33, 37-38, 43-56, 66-67; T. 10 October 2007 pp. 55-56, 69; T. 11 October 2007 pp. 13-14; Exhibit 3D106 (Letter, 17 April 2001) p. 2; Exhibit 3D122 (Outgoing Cable from Annan to Booh-Booh/Dallaire, 13 May 1994); Exhibit 3D123 (Article in the Times Newspaper, 13 May 1994); Exhibit 3D125 (UN Report of Security Council Meeting of 16 May 1994); Exhibit 3D126 (UN Security Council Resolution 918, 17 May 1994); Exhibit 3D127(E & F) (Bicamumpaka's Statement to the UN Security Council, 17 May 1994); Exhibit 3D113 (Bicamumpaka's Diplomatic Passport) pp. 10, 12.
[2584] Bicamumpaka, T. 2 October 2007 p. 55; T. 8 October 2007 pp. 36-38; Exhibit 3D113 (Bicamumpaka's Diplomatic Passport) p. 9.
[2585] Bicamumpaka, T. 26 September 2007 p. 45; T. 2 October 2007 pp. 55-56, 66; T. 8 October 2007 p. 37.
[2586] Witness WAE, T. 13 February 2007 p. 43; Exhibit 1D149 (Witness WAE's Personal Information Sheet).
[2587] Witness WAE, T. 13 February 2007 pp. 57-58; T. 14 February 2007 p. 52.
[2588] Witness WAE, T. 13 February 2007 p. 54.
[2589] Prosecution Closing Brief, paras. 859-862; Prosecution Closing Arguments, T. 1 December 2008 p. 19.

Great Lakes community, passports of Rwandan citizens were not always stamped when entering or exiting Zaire in 1994 (14.2.1; 14.2.2).

1865. Turning to the evidence of Witness WAE, the Chamber recalls that he worked in coordination with the Interim Government during the genocide and could have an interest in providing exculpatory evidence on behalf of Bicamumpaka.[2590] He also had a professional working relationship with Bicamumpaka. Notwithstanding, his prior professional relationship with Bicamumpaka and his existing ties with the Rwandan government in 1994 also make it likely that he would assist Bicamumpaka during official travel. Furthermore, his account, along with Bicamumpaka's testimony, finds significant circumstantial support through contemporaneous documentary evidence.

1866. Bicamumpaka's diplomatic passport corroborates his evidence regarding the countries that he visited and that he was travelling through between 23 April and 22 May 1994. His diplomatic passport contains a Rwandan exit stamp, a Zairian entry stamp, and a French visa issued by the French Embassy in Zaire, all dated 23 April.[2591] It contains an exit stamp for Zaire and an entry stamp for France dated 24 April.[2592] It further contains exit and entry stamps, from France and the United States and visas for Germany and the United States corroborating Bicamumpaka's testimony about his travels in May.[2593] The last relevant stamp records his return to Zaire on 22 May.[2594]

1867. In addition to Bicamumpaka's diplomatic passport, other documents attest to his activities outside of Rwanda during the material time. A Radio Rwanda broadcast on 28 April 1994 announced his meetings with French government officials on 26 April.[2595] Iqbal Riza, a UN official, provided a letter describing his meeting with Bicamumpaka in the afternoon of 13 May 1994 in New York. The same meeting is confirmed by a cable from Kofi Annan to Booh-Booh and Dallaire.[2596] An article in the Times Newspaper dated 13 May 1994 also confirms Bicamumpaka's presence in New York at this time.[2597] The UN Report of 16 May 1994 confirms Bicamumpaka's attendance at the UN Security Council meeting that evening.[2598] The Chamber also notes that various witnesses believed that Bicamumpaka was abroad during this timeframe.[2599]

1868. The Chamber observes that there are discrepancies in Bicamumpaka's testimony regarding when he left Rwanda and when he arrived in the United States.[2600] Further, he was

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[2590] *See* II.14.2.2.
[2591] Exhibit 3D113 (Bicamumpaka's Diplomatic Passport) pp. 8-10.
[2592] Exhibit 3D113 (Bicamumpaka's Diplomatic Passport) pp. 9-10.
[2593] Exhibit 3D113 (Bicamumpaka's Diplomatic Passport) pp. 11 (visa for Germany issued in Paris dated 30 April to 15 May), 10 (stamp from France dated 30 April), 10 (stamp from France dated 5 May), 12 (visa for United States issued in Paris dated 9 May), 10, 12 (stamp from France and entry stamp from United States, both dated 10 May), 10 (stamp from France dated 18 May), 10 (stamp from France dated 21 May).
[2594] Exhibit 3D113 (Bicamumpaka's Diplomatic Passport) p. 9.
[2595] Exhibit 3D114 (Radio Rwanda Broadcast, 28 April 1994) p. 3.
[2596] Exhibit 3D106 (Letter, 17 April 2001) p. 2; Exhibit 3D122 (Outgoing Cable from Annan to Booh-Booh/Dallaire, 13 May 1994).
[2597] Exhibit 3D123 (Article in Times Newspaper, 13 May 1994).
[2598] Exhibit 3D125 (UN Report of Security Council Meeting of 16 May 1994); Exhibit 3D126 (UN Security Council Resolution 918, 17 May 1994); Exhibit 3D127(E & F) (Bicamumpaka's Statement to the UN Security Council, 17 May 1994).
[2599] Witness WFQ3, T. 25 January 2007 p. 26; Des Forges, T. 14 June 2005 pp. 45-46.
[2600] Bicamumpaka testified that he arrived in Kinshasa on 21 May 1994 although his diplomatic passport contains an entry stamp for Zaire dated 22 May. *Compare* Bicamumpaka, T. 8 October 2007 pp. 36-37, *and*

not clear regarding his activities in Zaire in late May 1994 and his date of arrival in Rwanda. Notwithstanding these ambiguities, looking at the totality of the evidence, a relatively coherent narrative remains and the Chamber finds that it is reasonably possibly true that Bicamumpaka was outside of Rwanda between 23 April and 22 May 1994. The Prosecution evidence implicating him in crimes during the relevant period has not eliminated this reasonableness of Bicamumpaka's alibi for this period.

1869. Turning to the notice of this alibi, the Chamber observes that in his 1999 interview Bicamumpaka stated that one or two days after he returned from Burundi on 17 April 1994, he left for Zaire, then to Europe and North America, including New York, to attend a meeting of the UN Security Council.[2601] As a result of this information, the impact of the late notice upon the credibility of the alibi is negligible.

Exhibit 3D113 (Bicamumpaka's Diplomatic Passport) p. 9. Bicamumpaka testified that he had been in New York since 8 May although his diplomatic passport contains a United States entry stamp dated 10 May 1994. *Compare* Bicamumpaka, T. 27 September 2007 p. 50; T. 10 October 2007 p. 56 *and* Exhibit 3D113 (Bicamumpaka's Diplomatic Passport) p. 12.

[2601] Exhibit P2(27)(E & F) (Bicamumpaka's Interview with Tribunal Investigators, 8 April 1999) pp. 10-12.

CHAPTER III: LEGAL FINDINGS

1. CRIMINAL RESPONSIBILITY

1870. The Prosecution asks the Chamber to convict the Accused pursuant to Articles 6 (1) and 6 (3) of the Statute.

1.1 Article 6 (3) of the Statute

1.1.1 Introduction

1871. The Prosecution charges all four Accused with superior responsibility pursuant to Article 6 (3) of the Statute, under each Count of the Indictment. The Chamber recalls that it has entered a judgement of acquittal for the four Accused on Count 1 (conspiracy to commit genocide) in respect of Article 6 (3) of the Statute.[2602]

1.1.2 Law

1872. For an accused to incur criminal responsibility under Article 6 (3) of the Statute, in addition to establishing beyond reasonable doubt that his or her subordinate is criminally responsible, the following elements must be established beyond reasonable doubt: (1) the existence of a superior-subordinate relationship; (2) that the superior knew or had reason to know that his or her subordinate was about to commit a crime or had done so; and (3) that the superior failed to take necessary and reasonable measures to prevent or punish the commission of the crime by his or her subordinate.[2603]

1873. The threshold for a superior-subordinate relationship is established by showing that the accused had effective control over a subordinate at the time the offence was committed. Effective control requires that the accused had the material ability to prevent or punish criminal conduct. The superior must also have possessed power or authority over subordinates either *de jure* or *de facto*. The superior-subordinate relationship entails that the accused, by virtue of his or her position, is senior to the perpetrator in a formal or informal hierarchy.[2604] This requirement is not satisfied by a showing of general influence on the part of the accused.[2605]

1874. A direct and individualised superior-subordinate relationship is not required for responsibility pursuant to Article 6 (3). Effective control may descend from the superior to

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[2602] Decision on Defence Motions Pursuant to Rule 98 *bis* (TC), 22 November 2005, p. 32. The Chamber also entered a judgement of acquittal for Bicamumpaka and Mugiraneza on Count 6, and for all Accused on Counts 8 and 10, in their entirety.

[2603] *Dragomir Milošević* Appeal Judgement, para. 280; *Orić* Appeal Judgement, para. 18; *Nahimana et al.* Appeal Judgement, para. 484; *Gacumbitsi* Appeal Judgement, para. 143.

[2604] *See Halilović* Appeal Judgement, para. 210 ("[T]he material ability to punish and its corresponding duty to punish can only amount to effective control over the perpetrators if they are premised on a pre-existing superior-subordinate relationship between the accused and the perpetrators. In this regard, the ability to exercise effective control in the sense of material power to prevent or punish necessitates a pre-existing relationship of subordinate, hierarchy or chain or command."), *citing Delalić et al.* Appeal Judgement, para. 303; *Blaškić* Appeal Judgement, para. 372; *Kajelijeli* Appeal Judgement, paras. 85-86; *Blagojević and Jokić* Appeal Judgement, paras. 301-303; *Gacumbitsi* Appeal Judgement, para. 143; *Nyiramasuhuko et al.* Trial Judgement, para. 5647.

[2605] *Ntagerura et al.* Trial Judge ment, para. 628; *Semanza* Trial Judgement, para. 402; *Kajelijeli* Appeal Judgement, paras. 85-87; *Bagosora et al.* Trial Judgement, para. 2012.

the subordinate culpable of the crime through intermediary subordinates.[2606] The doctrine of command responsibility encompasses a civilian superior, but his or her effective control – whether *de jure* or *de facto* – should be similar to that of a military superior.[2607]

1875. Factors indicative of effective control include the accused's position, the procedure for appointment, the actual tasks performed, his or her capacity to issue orders, the nature of such orders, and whether any orders were followed.[2608] The Chamber recalls that although the authority to issue orders may be indicative of effective control over subordinates, it does not automatically establish such control.[2609] Effective control can only be determined by looking at the evidence in its entirety on a case-by-case basis.[2610]

1.1.3 Deliberations

1876. The Chamber recalls the proven events, namely, the decision to dismiss Jean-Baptiste Habyalimana in order to undercut the real and symbolic resistance he posed to the killings of Tutsis in Butare (II.9.1), as well as President Théodore Sindikubwabo's speech inciting the killing of Tutsi civilians in Butare (II.9.2). None involve proven criminal conduct by alleged subordinates.

1877. The Prosecution, in its Closing Brief, generally refers to crimes described elsewhere in its submissions as the basis for criminal liability pursuant to Article 6 (3) of the Statute.[2611] Throughout its Factual Findings (II), the Chamber has made relevant findings about the Accused's direct involvement or contribution in alleged criminal conduct. The evidence concerning the particular events pursued by the Prosecution equally does not support liability for any of the Accused pursuant to Article 6 (3) of the Statute.

1878. However, and in addition to the particular events pursued, in its closing submissions, the Prosecution also appears to contend that the four Accused bear superior responsibility for the genocide as a whole.[2612] Only somewhat more specifically, the Prosecution alleges that the Accused are criminally liable for the acts perpetrated by a range of subordinates, including: the staff of their respective ministries, the FAR, the *gendarmerie*, soldiers, prefects, prefects' subordinates, *bourgmestres*, communal police, *conseillers*, local authorities, civic leaders, militias, *Interahamwe*, "the killers", civilians and "the Hutu population throughout Rwanda".[2613]

1879. Preliminarily, the Prosecution asks the Chamber to "break new ground" and, it appears, depart from settled jurisprudence in the *ad hoc* Tribunals by recognising that "charismatic power over [a] population based on the history and sociological make-up of that

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[2606] *Orić* Appeal Judgement, para. 20; *Nahimana et al.* Appeal Judgement, para. 785.
[2607] *Bagilishema* Appeal Judgement, para. 52.
[2608] *Strugar* Appeal Judgement, para. 254; *Halilović* Appeal Judgement, para. 66; *Blaškić* Appeal Judgement, para. 69.
[2609] *Strugar* Appeal Judgement, para. 253.
[2610] *Strugar* Appeal Judgement, para. 254; *Halilović* Appeal Judgement, para. 66; *Nyiramasuhuko et al.* Trial Judgement, para. 5651.
[2611] *See* Prosecution Closing Brief, paras. 158, 160 fn. 152.
[2612] *See, e.g.*, Prosecution Closing Arguments, T. 1 December 2008 pp. 7-8.
[2613] Prosecution Pre-Trial Brief, paras. 351-352 (pp. 69-70); Prosecution Closing Brief, paras. 15, 157-162, 169, 171; Prosecution Closing Arguments, T. 1 December 2008 pp. 11-12.

community" can be a sufficient foundation for finding a superior-subordinate relationship.[2614] It asks the Chamber to consider "the manner in which [the Accused] were perceived by society as Ministers, and the power of influence they commanded".[2615] The Accused were "powerful Ministers", "revered by their constituents, the people of Rwanda".[2616] In addition, due to their "uncontroversial entrenchment in the hierarchal structure of command in the Interim Government" the Accused had "awesome power that cut across the social spectrum".[2617]

1880. The Chamber recalls that in the *Ntagerura et al.* case the Prosecution prayed the Appeals Chamber to find that Prefect Emmanuel Bagambiki exercised effective control over gendarmes. In that case, the Prosecution contended that it was the prefects who monopolised power in April 1994, and thus Bagambiki should have enjoyed the material ability to prevent and punish crimes. In rejecting this contention, "the Appeals Chamber observe[d] that general statements of the situation in Rwanda in April 1994 may be illustrative as to the background of the case, but they are not suited to prove the individual guilt of the Accused".[2618]

1881. More significantly, the Prosecution does not link its theory to any specific, proven events in this case. Instead, it presents vague arguments and, in the Prosecution's words, evidence that "may be general in nature".[2619] Such general evidence, however, is wholly insufficient to establish the rigorous requirements necessary to impose criminal responsibility pursuant to Article 6 (3) of the Statute. Indeed, to the extent the Prosecution seeks to prove the Accused's guilt based on unspecified crimes committed by unspecified perpetrators, the Chamber could summarily dismiss this argument on the basis that such generality fails to allow for any examination of whether a superior-subordinate relationship existed.[2620] Nonetheless, the Chamber shall set forth some of the relevant and dispositive considerations here.

[2614] *See, e.g.*, Prosecution Closing Brief, para. 164 ("While some of [the] existing jurisprudence has found that the power of influence of a person over others alone may be insufficient to render one a superior, the Prosecutor submits that a consideration of such power of influence is preferable."); Prosecution Closing Arguments, T. 1 December 2008 pp. 7-8 ("So the command structure that we are talking of here – and this is where, My Lords, that we ask this Court to push the heavy milestone of international criminal law one step forward ..."), 13-15 ("In this trial, My Lords, which must break new ground .... Judge Short: This new ground that you are asking us to break ... what exactly do you mean? Mr. Ng'arua: What I mean, My Lords, is that the jurisprudence so far that touches on superior responsibility has not extended to armed Hutu persons who were acting under the instructions of the four accused persons and the government. And the four accused persons were acting on behalf of the government."), 16 ("Now, the ground that I want the Court to break is to exceed it. And I think there is logic, and I think there is evidence to show that there is a group of killers that were neither *Interahamwe* nor belonging to militia or any civil defence movement .... So that is the group of persons I'm saying that this Court should break new ground by including it in the jurisprudence as subordinates because of the social structure, the political make-up of that society.").

[2615] Prosecution Pre-Trial Brief, paras. 347-360 (pp. 69-72); Prosecution Closing Brief, para. 164.

[2616] Prosecution Closing Arguments, T. 1 December 2008 p. 3.

[2617] Prosecution Closing Brief, paras. 159, 161, *citing* Exhibit P101 (Expert Report of Alison Des Forges) pp. 36-37; Exhibit P95 (Expert Report of Déogratias Mbonyinkebe) pp. 13-14.

[2618] *Ntagerura et al.* Appeal Judgement, paras. 346-347.

[2619] *See, e.g.*, Prosecution Closing Arguments, T. 1 December 2008 p. 16 ("And I think there is logic, and I think there is evidence ... Judge Short: This is just a theory which you are putting forward; it's not based on evidence. Mr. Ng'arua: My Lords, there is evidence. And I will point you to the evidence. It may be general in nature...").

[2620] *See Brđanin* Trial Judgement, para. 371 ("Due to lack of specific evidence, it is not possible to examine whether a superior-subordinate relationship existed between the Accused and Bosnian Serb armed civilians or unidentified individuals.").

1882. There is no dispute that the Accused were sworn in as members of the Interim Government on 9 April 1994: Bizimungu as Minister of Health; Mugenzi as Minister of Trade and Industry; Bicamumpaka as Minister of Foreign Affairs; and Mugiraneza as Minister of Civil Service.

1883. In alleging that the Accused possessed *de jure* authority over *all* those who committed atrocities throughout Rwanda, the Prosecution relies exclusively on Articles 35, 45 and 50 of the 1991 Rwandan Constitution:[2621]

> Article 35: Executive power shall be exercised by the President of the Republic, assisted by the Government, composed of the Prime Minister and Ministers or Secretaries of State.
>
> Article 45: The President of the Republic shall be the Supreme Chief of the Armed Forces.
>
> Article 50: (1) The Government shall determine and conduct the Nation's policies. (2) It shall have at its disposal the administration and the armed forces. It shall be accountable to the National Assembly according to the conditions and procedures prescribed in Articles 81 and 84.

1884. These Articles provide considerable *de jure* authority to the President and to the Government, which was composed of the Prime Minister and Ministers. It is notable that, although Ministers were part of the Government, these Articles do not provide them with any independent *de jure* authority. Instead, only the Government as a whole, in addition to the President, wield power by force of law. Nonetheless, the Chamber has taken into account that this Constitution does appear to provide some authority to the Accused, even if it is necessarily diluted through the requirement that it be exercised by the Government.

1885. Notwithstanding, there is also evidence that tends to limit the *de jure* authority of each individual Accused in their particular ministerial posts. Further examination of the Constitution reveals that it is the judiciary, independent of the executive branch, that retains the power to punish criminal conduct:[2622]

> Article 33: Judicial power, as the guardian of public rights and liberties, shall ensure the respect thereof within the conditions prescribed by law.
>
> Article 86: (1) Judicial power shall be exercised by courts, tribunals, and other jurisdictions; it shall be independent from the legislative and executive powers; (2) The President of the Republic shall guarantee the independence of the judicial power; (3) Justice shall be dispensed in the name of the people.

1886. The Defence presented further evidence that crimes perpetrated by soldiers and gendarmes would be prosecuted by a military court.[2623] Moreover, the Defence case sought to establish that, in their individual capacities, the Accused did not have control over local

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[2621] Prosecution Closing Brief, para. 160, fn. 151; Exhibit P2(1)(E) (1991 Rwandan Constitution) pp. 9, 12-13.
[2622] Exhibit P2(1)(E) (1991 Rwandan Constitution) pp. 8, 23; *see also* Ntamabyaliro, T. 21 August 2006 pp. 7-17, 32 (stating that it was the courts and the prosecutor's office that punished the perpetrators of crimes).
[2623] Witness WZ8, T. 18 September 2006 pp. 40-42; T. 19 September 2006 p. 5; Ntamabyaliro, T. 21 August 2006 pp. 18-22. *See also* Witness DY, T. 25 February 2004 pp. 14-16 (stating that the President and Minister of Defence had authority over the army).

government officials such as prefects, *bourgmestres* and communal police, who ultimately reported to the Minister of the Interior or the President.[2624]

1887. In this regard, the Defence has presented evidence that none of the Accused exercised *de jure* authority over any of the alleged perpetrators of the genocide that were within the Rwandan army, the gendarmes, the local government structure, as well as communal police who reported to *bourgmestres*. The Chamber recalls, however, that the main question is whether the Accused exercised effective control over alleged subordinates. In this respect, the possession of *de jure* authority, without more, provides only some evidence of effective control.[2625] Thus, it is critical for the Chamber to assess the facts as presented through this case, to determine whether the Accused exercised effective control over any of the alleged subordinates committing crimes.

1888. The Prosecution also points to evidence from the Expert Reports of Alison Des Forges and Déogratias Mbonyinkebe as evidence of the Accused's authority over a wide range of persons.[2626] This evidence, however, is extremely general in nature. It fails to set forth the particularised authority of any of the Accused over categories of assailants. Indeed, much of Des Forges's assessment about the ability to control assailants during the genocide focussed on the capabilities of the government as a whole,[2627] unidentified members of

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[2624] Mugenzi, T. 30 November 2005 pp. 33-34, 39 (roadblocks were established by the local administrative authority, either the *bourgmestre* or the prefect, who were under the authority of the Minister of Interior); Mugiraneza, T. 19 May 2008 pp. 54-55 (stating that prefects and *bourgmestres* were disciplined by the Ministry of the Interior or the President); Uwizeye, T. 7 April 2005 p. 29 (as prefect he answered to the Minister of Internal Affairs); Exhibit P90(F) (Law of 11 March 1975, Structure and Functioning of the Prefecture) pp. 2 (Article 3 stating that the prefect exercises his functions under the hierarchal authority of the Minister of the Interior; Article 4 stating the prefect is appointed and removed by order of the President, decided by the council, on the proposal of the Minister of the Interior), 3 (Article 10 stating the prefect submits regulations for prior approval to the Minister of the Interior; Article 16 stating when temporarily suspending the instructions of a higher authority, the prefect must inform the Minister of the Interior), 4 (Article 44 stating that instructions addressed to the prefect must pass through the Minister of the Interior); Exhibit P91(F) (Law of 23 November 1963, Organisation Communale) pp. 5 (Article 38 stating that the *bourgmestre* is nominated by the President on the recommendation of the Minister of Interior, and the Minister of Interior determines the other advantages to be granted to *bourgmestres*), 6 (Article 59 stating that the *bourgmestre* is subject to the hierarchical authority of the prefect; Articles 46 and 47 stating that sanctions against *bourgmestres* are decided by the prefect, with the right of appeal to the Minister of the Interior; Article 48 stating that the Minister of the Interior can suspend a *bourgmestre* upon recommendation of the prefect), 8 (Article 94 stating that all decisions on the hiring, firing and suspending of personnel must be approved by the prefect or his delegate; Article 93 stating that the *bourgmestre*'s powers to hire or fire the communal police may only be exercised after consultation with the commune counsel and the Minister of the Interior), 9 (Article 104 stating that the *bourgmestre* has sole authority over the members of the communal police; Articles 103-105, 108-109 stating that *bourgmestres* have power over the hiring, firing and suspension of communal police officers).

[2625] *Orić* Appeal Judgement, paras. 91-92. *See also Renzaho* Trial Judgement, para. 752.

[2626] *See* Exhibit P101 (Expert Report of Alison Des Forges) pp. 27, 36-37; Exhibit P95 (Expert Report of Déogratias Mbonyinkebe) pp. 4, 13-23, 25-29. The Prosecution also cites to the testimony of Fidèle Uwizeye on T. 6 April 2005 p. 11 and Witness GKJ on T. 23 September 2004 pp. 34-35 as further evidence of the Accused's broad control. The citation to Uwizeye's evidence, however, includes no testimony from that witness. The excerpt from Witness GKJ's testimony only includes a brief discussion of Kambanda speaking at the end of T. 23 September 2004 p. 35.

[2627] *See, e.g.*, Des Forges, T. 8 June 2005 p. 62 ("The argument that the government did not control the *Interahamwe* is an argument which is accurate for some places and some times. This was a complex series of events which had offshoots in various directions. But if you look at the totality of the picture from beginning to end, it is wrong to conclude that this government did not have the capacity to control the situation."); Des Forges, T. 15 June 2005 p. 5 ("Q. And, ma'am, what is your opinion as to the control of the interim government

political parties,[2628] or military,[2629] rather than the particularised capabilities of the Accused in this proceeding.

1889. The record reflects that, when acting collectively, the Interim Government, of which the Accused were members, exercised considerable influence. After its formation on 9 April 1994, the Interim Government sent Mugenzi to speak with the MRND and *Interahamwe* leadership, and successfully prompted *Interahamwe* leaders to travel throughout Kigali to instruct persons to stop killing (II.7.3). Two days later, the Interim Government was able to convene a meeting in Kigali, attended by most of the country's prefects (II.7.5), and coordinated efforts with local and international officials to remove bodies from the streets of Kigali (II.7.4).

1890. The Interim Government also wielded its power to remove and install local officials, such as the prefects of Butare, Gisenyi and Ruhengeri (II.9.1-II.9.4). Although it has not been proven that each Accused played a role in all of these events, they nonetheless demonstrate the level of influence wielded by the Accused, particularly when acting as part of the Interim Government.

1891. Influence, however, is not synonymous with effective control.[2630] It is clear, for example, that being a government official is not tantamount to enjoying superior responsibility over every person in the jurisdiction. For example, in the *Gacumbitsi* case, the Accused was a *bourgmestre* who exercised general authority to enforce law and order in his commune, and who played a leading role in the genocidal campaign there. "Yet", held the Appeals Chamber, "it cannot be extrapolated from these findings that he exercised effective control over every person who was present in the commune during the time in question". Concerning three alleged rapes, the Appeals Chamber found that the Prosecution had not met its burden of proving the Accused's effective control over the perpetrators, because it

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over the military? A. That is a complicated question. The interim government was put in place by the military, with the cooperation of political party leaders. The government functioned as a government, but it also represented a conjurer of political party leaders. And it was, in particular, leaders of the MRND party who played by far the predominant role in setting the agenda for the government. As I have attempted to describe, the integration of military, civilian and political, was essential to the development of the genocide on the scale that we witnessed. As to the larger question of control of the government, it would depend upon the issue and the situation of the moment. Q. Well, ma'am A. In other words, there is no simple answer. Q. Ma'am, ... by the way, you said leaders of the MRND party. Who did you mean by that? A. I meant by that Mr. Ngirumpatse, Mr. Nsanzuwera, Mr. Karemera; essentially, those would be the most important who would come to mind. Q. Now, you know, don't you, that ... within the interim government, there was a security council or war cabinet or some such ... inner group that ran the war and ran the national defence, national security; isn't that right? A. My understanding is that there was no formal structure of that kind, but that there were rather informal groupings that came together over various issues.").

[2628] *See, e.g.*, Des Forges, T. 8 June 2005 p. 42 ("Even the scene unfolding before Dallaire was a scene where the *Interahamwe* were subject to command and control by military officers as well as by political party leaders who in some cases were also members of government.").

[2629] Des Forges, T. 8 June 2005 p. 42 ("When Dallaire wanted to arrange the safe passage of people he passed through Bagosora, Rwazaho in order to do so. Those were his channels to the *Interahamwe* leaders.").

[2630] *See, e.g.*, *Delalić et al.* Appeal Judgement, para. 266 ("[C]ustomary law has specified a standard of effective control, although it does not define precisely the means by which the control must be exercised. It is clear, however, that substantial influence as a means of control in any sense which falls short of the possession of effective control over subordinates ... lacks sufficient support in State practice and judicial decisions.").

"advances no arguments specifically addressing the relationship between the [Accused] and the perpetrators".[2631]

1892. Moreover, being an influential member of an influential group does not prove effective control. Specifically, in *Brđanin*, the Trial Chamber concluded that even though the Accused was President of the ARK Crisis Staff, and although the ARK Crisis Staff "closely co-operated with the army and had great influence over it", this did not suffice to establish the Accused's effective control over members of the army.[2632] Similarly, the *Brđanin* Trial Chamber found that in spite of the influence of the Accused and the ARK Crisis Staff over paramilitary organisations, it was not established that he was in a superior-subordinate relationship with them.[2633]

1893. Indeed, being a member of a group that has *de facto* authority over assailants does not necessarily impute effective control to all members of that group. Specifically, even though the *Brđanin* Trial Chamber found that the ARK Crisis Staff had *de facto* authority to direct the action of the police, this was not indicative of Brđanin's material ability to prevent or punish the commission of crimes by members of the police.[2634]

1894. In this case, there is little reliable evidence concerning the Accused's interactions with their alleged subordinates around the time of the alleged criminal conduct. Fully aware that Article 6 (3) liability is a crime of omission, this dearth of evidence stands in marked contrast to the findings in other cases where a civilian superior has been held responsible for the conduct of a principal perpetrator.[2635] Significantly, in the *Nahimana et al.* case, the Appeals Chamber found the existence of continued *de jure* authority insufficient to demonstrate effective control in the absence of proof of any affirmative acts demonstrating such control and where the record, like here, is lacking in any evidence relating to it.[2636]

1895. To the extent the Prosecution relies on the Accused's general influence within Rwanda, the Defence presented evidence that it generally lacked the ability to stop killings

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[2631] *Gacumbitsi* Appeal Judgement, paras. 144-145.
[2632] *Brđanin* Trial Judgement, para. 372.
[2633] *Brđanin* Trial Judgement, para. 373.
[2634] *Brđanin* Trial Judgement, para. 374.
[2635] For example, in the *Kajelijeli* case, "the Trial Chamber found *inter alia* that the assailants in the attacks in Nkuli and Mukingo Communes reported back daily to the Appellant on what had been achieved; the Appellant instructed the *Interahamwe* to kill and exterminate Tutsis and ordered them to dress up and start the work; the Appellant directed the *Interahamwe* from Byangabo Market to Rwankeri *Cellule* to join that attack; the Appellant transported armed assailants; the Appellant ordered and supervised attacks; the Appellant bought beers for the *Interahamwe* while telling them that he hoped they had not spared anyone; and the Appellant played a vital role in organising and facilitating the *Interahamwe* in the massacre at Ruhengeri Court of Appeal by procuring weapons, rounding up the *Interahamwe* and facilitating their transportation." *Kajelijeli* Appeal Judgement, para. 90. In the *Kayishema and Ruzindana* case, "[Prefect Clément Kayishema] was ... found to have effective control over the communal police and the *gendarmerie*, as evidenced by legislative provisions, and the actual control he wielded over all the assailants including the *gendarmes*, soldiers, prison wardens, armed civilians and members of the *Interahamwe* as demonstrated by the identification of Kayishema as leading, directing, ordering, instructing, rewarding and transporting them to carry out the attacks". *Kayishema and Ruzindana* Appeal Judgement, para. 299. *See also Nsengimana* Trial Judgement, paras. 827, 829 (coming to a similar conclusion based on the facts of that case and finding that the Prosecution had not proven effective control beyond reasonable doubt).
[2636] *Nahimana et al.* Appeal Judgement, para. 635; *see also Nsengimana* Trial Judgement, para. 827.

and crimes as they spread throughout the country.[2637] The Interim Government's lack of control over violence generally is confirmed by several contemporaneous UNAMIR and United States governmental reports, which assert that while certain factions within the Interim Government may have been complicit in crimes, it did not have control over those perpetrating them. Some explicitly state that the Interim Government, of which the Accused were members, had no control over the perpetrators of the massacres.[2638] Others indicate that

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[2637] *See, e.g.*, Ntamabyaliro, T. 23 August 2006 pp. 46-47 (roadblocks were frequently manned by civilians who disregarded the authority of a government minister); Exhibit 3D83 (US State Department Intelligence Report, 7 April 1994) (US intelligence had formed the view that the Presidential Guard was "out of control" on the streets of Kigali while all other military units were said to be calm in their barracks); Exhibit 3D85 (Outgoing Cable from Booh-Booh to Annan, Goulding and Hansen, 9 April 1994) p. 2 ("11. ...the Military Crissis [sic] Committee either cannot ... control large portions of their forces or are implicated in the terror campaign"); Exhibit 2D59 (Outgoing Cable from Annan to the Secretary-General, 9 April 1994) p. 187 ("2. the Interim Government ... does not appear to have any authority because it has been disavowed by the RPF"); Exhibit 4D29 (Outgoing Facsimile from Booh-Booh to Annan, 18 April 1994) p. 2 ("2. ... the Rwandese new interim government is believed to be installed in Gitarama. They [have] however yet to demonstrate any administrative control over the country."); Exhibit 2D59 (Outgoing Cable from Booh-Booh to Annan, 18 April 1994) pp. 204-206 ("1. There is currently a vacuum in the political leadership in the country. The appointment of an Interim Government following the death of President Habyarimana on April 6th in a plane crash, has not produced credible political leaders who could take decisions representative of the government. Most of the ministers of the so called interim government have either left Kigali or are in hiding in the city and are not available to the public. 2. In a radio interview ... the Minister of Defence has assured the population that the military was representing the government in negotiations with the ... RPF and that the government ... had retreated to the countryside for strategic reasons. The accuracy of this assertion is doubtful because of reports that some of the ministers have sought asylum or are living in neighbouring countries. What is equally baffling is the complete disappearance of the leaders of the political parties. Presumably, they too have left city or are in hiding in the city. The question then arises as to who speaks and acts on behalf of the government. Obviously in the present environment, there are only two forces that are visible and represent the realities of the current situation. Those are the Rwandese Government Forces and the RPF"); Exhibit 2D59 (UN Secretary-General's Special Report on Rwanda, 20 April 1994) p. 210 (para. 3: noting that "[a]uthority collapsed, the provisional Government disintegrated and some of its members were killed in the violence. An Interim Government ... proclaimed on 8 April 1994 ... could not establish authority, and on 12 April 1994, as fighting between the armed forces and the RPF intensified, left the capital"); Exhibit 4D36 (Outgoing Facsimile from Booh-Booh to Annan, 24 April 1994) p. 2 ("3. ... FC's discussions with interim govt did not give the impression that politicians are in control of the situation. FC observed there is no direct communications between RGF High command and interim govt."); Exhibit 3D164 (Transcript of an interview by Hyacinthe Bicamumpaka of Philippe Gaillard, ICRC representative, 5 May 1994) pp. 172-180 (Gaillard considered that "in spite of the efforts made by the government to calm people down and to try to pacify the country, to try to re-establish a minimum social contract, I believe that there are a number of people who do not understand these pacification messages, or who do not wish to understand them.").

[2638] Exhibit 3D99 (Outgoing Cable from Dallaire to Baril, 17 April 1994) pp. 2, 5-6 (reporting that "[t]he major present question is can the government stop the attacks or has this programme gone so far out of control (as MGEN Kagame stated) that it cannot be stopped. ... Negotiations have been fruitless in this area because the government/RGF will not or cannot control this situation or these militias."); Exhibit 4D29/Exhibit 3D107 (Situation Report from UNAMIR-Kigali, 18 April 1994) p. 2 (reporting that "[t]he Rwandese new Interim Government is believed to be installed in Gitarama. They however [sic] yet to demonstrate any administrative control over the country."); Exhibit 4D31 (Outgoing Cable from Booh-Booh to Annan, 18 April 1994) p. 1 (reporting that "[t]here is currently a vacuum in the political leadership in the country. The appointment of an interim government ... has not produced credible political leaders who could take decisions representative of the government. Most of the ministers of the so called interim government have either left Kigali or are in hiding in the city and are not available to the public. ... In a radio interview on 15th of April, the Minister of Defense assured the public that ... the government ministers were in control of the country but had retreated to the countryside for strategic reasons. The accuracy of this assertion is doubtful because of reports that some of the ministers have sought asylum or are living in neighbouring countries"); Exhibit 4D32 (Situation Report from

no one was in control of those committing crimes.[2639] Some suggest that the Rwandan army controlled civilian perpetrators, and that the Rwandan army was not working in coordination with the civilian government.[2640] Several describe the situation as "chaotic", or "out of

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UNAMIR-Kigali, 19 April 1994) p. 2 (stating that the Interim Government was operating from Gitarama but the "[g]overnment is yet to be in full control of the situation"); Exhibit 4D36 (Situation Report from UNAMIR-Kigali, 24 April 1994) p. 2 (reporting that "[Dallaire's] discussion with interim government do not give the impression that politicians are in control of the situation. [Dallaire] observed there is no direct communications [sic] between RGF high command and interim government. This gap is causing lots of delays on issues that need urgent attention."); Exhibit 4D41 (U.S. Central Intelligence Agency Daily Intelligence Report, 26 April 1994 p. 5 (stating that "[t]he government has virtually no control over the military or the Hutu militias"); Exhibit 4D39 (Situation Report from UNAMIR-Kigali, 30 April 1994) pp. 2-3 (reporting that "[w]idening gap between high command and interim government causing concern"); Exhibit 4D42 (U.S. Defence Intelligence Report, 9 May 1994) p. 4 ("Almost immediately after President Habyarimana was killed, in Kigali the presidential guards began the systematic execution of prominent Tutsi and moderate Hutus sympathetic to reconciliation. Multiple sources indicate that the violence by the presidential guards and various youth militias was not spontaneous, but was directed by high level officials within the interim government. It appears that in addition to the random massacres of Tutsi by Hutu militia and individuals, there is an organised parallel effort of genocide being implemented by the army to destroy the leadership of the Tutsi community. The original intent was to kill only the political elite supporting reconciliation. However, the government lost control of the militias and the massacre spread like wild fire. It continues to rage out of control."); Exhibit 4D43 (Telegram from U.S. Secretary of State to U.S. Mission to U.N., 13 May 1994) p. 1 (expresses serious concerns with UNAMIR's request for an additional 5,500 troops for Rwandan mission. Vice President Gore raised concerns about basing a humanitarian operation in Kigali while a civil war is raging, and states that this would require a Chapter VII mandate "given the interim government's lack of command and control over renegade army units and extremist militias"); *cf.* Exhibit 4D39 (Situation Report from UNAMIR-Kigali, 30 April 1994) p. 3 (reporting that "[t]wo (UNAMIR) teams went to Gitarama to establish contact with interim government officials through RGF command. Officers of command were uncooperative"); Exhibit 3D129 (Outgoing Cable from Booh-Booh to Annan, 21 May 1994) p. 2 (reports that Dallaire "received a positive response from the interim government to his request for the airport to be declared a 'neutral zone' under the control of UNAMIR").

[2639] Exhibit 3D81 (Outgoing Cable from Annan to UN Secretary-General, 7 April 1994) pp. 2-3 (Special Representative to the U.N. Secretary-General Jacques-Roger Booh-Booh and UNAMIR Field Commander Roméo Dallaire report that there is "no authority in control of Kigali" on 7 April); Exhibit 4D28 (Outgoing Cable from Dallaire to Annan, 15 April 1994) p. 2 (reports that the killings "are the work of some soldiers/gendarmes, of groups of militias who are more and more seemingly organizing themselves and in fact controlling some portions of the city even preventing RGF to enter. ... The stopping of the massacres may become more and more difficult as local groups/militias are becoming seemingly bolder.").

[2640] Exhibit 3D85 (Outgoing Cable from Booh-Booh to Annan, 9 April 1994) p. 2 (reports that to the extent the "RGF, Gendarmerie and Presidential Guards" are not "actually conducting the terror campaign they are ... at a minimum assisting, observing and not taking any action to maintain law and order. ... Despite assurances to restrain their forces the military crisis committee either cannot control large portions of their forces or are implicated in the terror campaign."); Exhibit 4D31 (Outgoing Cable from Booh-Booh to Annan, 18 April 1994) p. 1 (reporting that "[t]he question then arises as to who speaks and acts on behalf of the government. Obviously in the present environment, there are only two forces that are visible and represent the realities of the current situation. These are the RGF and the RPF. On the government side, senior officers of the RGF constituted themselves into a committee that acts like a cabinet and takes decisions for and on behalf of the government. It is still not clear as to the extent of their influence within the armed forces or their effective control of the levers of power in the government. It is also not clear if they are being manipulated by politicians who are still in hiding and have decided to stay in the background. Notwithstanding these uncertainties, the fact is that they are the only identifiable force in the city that seems to carry the mantle of government and thus the only party that can take decisions and ensure their implementation for the government side."); Exhibit 4D36 (Outgoing Cable from Booh-Booh to Annan, 24 April 1994) p. 2 ("[Force Commander's] discussions with Interim Govt did not give the impression that politicians are in control of the situation. [Force Commander] observed there is no direct communications between the RGF high command and the interim government."); Exhibit 4D39 (Outgoing Cable from Booh-Booh to Annan, 24 April 1994) p. 2 ("Widening gap between high command and the Interim Government causing concern."); Exhibit 3D192 (Telegram from U.S. Secretary of State to U.S.

control", or the perpetrators as under the influence of drugs or alcohol.[2641] The absence of control, particularly over civilian assailants, appeared to grow as time passed. This is clearly reflected in a 5 May 1994 *communiqué* from Roméo Dallaire, force commander of UNAMIR, to Kofi Annan, then United Nations Secretary-General:[2642]

> In the RGF territory, civil defence militias are unruly, unmanageable and unpredictable as already described. The government and its armed forces seem to have limited to no control over them and although they state they are attempting pacification, they have not really been able to bring these militias under their grasp. Some elements of these militias do seem to move and gain their strength in areas where certain components of the RGF Army are in evidence. The direct links in this regard are not quite clear as yet but we are attempting to grasp their real chain of command.

1896. The Chamber observes that these documents are hearsay, although many were prepared with the assistance of a network of military observers trained to objectively monitor and assess the situation in Rwanda. Notably, these reports are also anecdotal accounts rather than a comprehensive reporting. The drafters may not have been privy to any surreptitious alliances between certain members of the Interim Government and those perpetrating crimes. Prosecution Expert Witness Alison Des Forges, on several occasions, suggested that the analysis by UNAMIR and other foreign observers was not entirely accurate due to lack of perspective, incorrect information, or because the reports were driven by the particular interests of the drafters.[2643]

1897. Nonetheless, the burden remains on the Prosecution to demonstrate effective control of the genocide's assailants sufficient to establish a superior subordinate relationship. Generalised statements that the government could control assailants, simply is insufficient to impose criminal liability on the Accused in this proceeding. As the Factual Findings of this case demonstrate (II), the Prosecution has not met its burden as it relates to particular crimes committed by alleged subordinates.

1898. In its final effort to hold the Accused responsible for the *whole* genocide as superiors of *all* perpetrators, the Chamber is reminded that, while it must "be alive to the realities on the ground and be prepared to pierce veils of formalism that may shield those individuals carrying the greatest responsibility for heinous acts, great care must be taken lest an injustice be committed in holding individuals responsible for the acts of others in situations where the link of control is absent or too remote".[2644] In this regard, the Tribunals' jurisprudence

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Embassies, 27 April 1994) pp. 3-4 (stating that in a telephone conversation on 27 April Bizimungu, Chief of Staff of the Rwandan army, told Prudence Bushnell of the U.S. State Department that, if the RPF were to agree to a ceasefire, "he would need only 48 hours to return the country to order".).

[2641] Exhibit 3D83 (Outgoing US Department of State Cable, 7 April 1994) p. 1 (stating that army headquarters reports that the Presidential Guard is "out of control" on the streets of Kigali); Exhibit 3D88 (Situation Report from UNAMIR-Kigali, 9 April 1994) p. 1 (reports that the situation is "[c]haotic"); Exhibit 3D85 (Outgoing Cable from Booh-Booh to Annan, 9 April 1994) p. 1 (reporting that "[i]n many cases government troops and militia are drunk or under the influence of drugs"); Exhibit 3D99 (Outgoing Cable from Dallaire to Baril, 17 April 1994) pp. 2, 5 (reporting that "[t]he Militias have displayed drunkenness, drug abuse and sadistic brutality. They do not respect the UN flag, the Red Cross, or any other human symbol").

[2642] Exhibit 3D120 (Dallaire report on Proposed Future Mandate and Force Structure of UNAMIR, 5 May 1994) p. 4.

[2643] Des Forges, T. 8 June 2005 pp. 42, 55-56, 59, 62; T. 13 June 2005 pp. 58-59; T. 15 June 2005 pp. 25-29, 31, 41-44, 56, 63, 66, 85-86; T. 16 June 2005 p. 9.

[2644] *Delalić et al.* Trial Judgement, para. 377.

persuasively suggests that "[t]he law does not know of a universal superior without a corresponding subordinate".[2645] The Prosecution's argument appears to ignore this proposition. The evidence it has presented has not demonstrated that the Chamber should as well.

1.2 Article 6 (1) of the Statute

1.2.1 Liability Through Omission

(i) Introduction

1899. The Prosecution asks the Chamber to convict the Accused for their purported omissions that fall within the ambit of Article 6 (1) of the Statute.[2646] Although the Prosecution's closing submissions on this matter are somewhat unclear, the Chamber discerns from them that the Prosecution is pursuing convictions for aiding and abetting by omission.[2647] The Chamber will therefore assess this mode of responsibility below.

(ii) Law

1900. Omission proper may lead to individual criminal responsibility under Article 6 (1) of the Statute where there is a legal duty to act. The *actus reus* of aiding and abetting by omission consists of the failure to discharge a legal duty, where that failure assisted, encouraged or lent moral support to the perpetration of the crime and had a substantial effect on the realisation of that crime. This implicitly requires that the accused had the ability to act, such that means were available to the accused to fulfil his or her duty. As for the *mens rea*, the aider and abettor must know that his or her omission assists in the commission of the crime of the principal perpetrator and must be aware of the essential elements of the crime which was ultimately committed by the principal.[2648]

[2645] *Delalić et al.* Trial Judgement, para. 647. *See also Gacumbitsi* Appeal Judgement, paras. 141-145.

[2646] *See* Prosecution Closing Brief, paras. 11, 65, 192, 199, 224-225, 235, 244, 258-259, 279, 444, 448, 549, 555, 649, 652, 694, 733, 860, 1009; Prosecution Closing Arguments, T. 1 December 2008 pp. 4, 35-36, 45. *See also* Prosecution Closing Brief, paras. 5, 12-13, 286, 344, 349-350, 370-371, 1231; Prosecution Closing Arguments, T. 1 December 2008 p. 27; T. 4 December 2008 pp. 73-74.

[2647] *See, e.g.,* Prosecution Closing Brief, para. 11 (equating, in the section titled "Summary of the Prosecution Case" the alleged failure to discharge a legal duty with "criminal negligence", or alternatively with "tacit encouragement, aiding and abetting of the crimes"); Prosecution Closing Arguments, T. 1 December 2008 pp. 35 (repeating the Prosecution's desire to "establish their guilt for criminal negligence", and submitting in the alternative "that such culpable omission should be viewed ... as a form of participation. Their culpable omission may be viewed as a form of tacit encouragement, aiding and abetting the crime"), 45. Regarding the Prosecution's submissions concerning "criminal negligence", the Chamber recalls the *Bagilishema* Appeal Judgement. There, the Appeals Chamber addressed criminal negligence in the context of superior responsibility, and stated that "[t]he Statute does not provide for criminal liability other than for those forms of participation stated therein, expressly or implicitly. In particular, it would be both unnecessary and unfair to hold an accused responsible under a head of responsibility which has not clearly been defined in international criminal law". *Bagilishema* Appeal Judgement, para. 34; *see also Blaškić* Appeal Judgement, para. 63. The Chamber considers that this reasoning applies equally in the context of aiding and abetting by omission, and thus will not address the Prosecution's theory of criminal negligence.

[2648] *Nyiramasuhuko et al.* Trial Judgement, para. 5597; *Mrkšić and Šljivančanin* Appeal Judgement, para. 49; *Orić* Appeal Judgement, para. 43.

(iii) Deliberations

1901. The Prosecution advances mostly generalised arguments that the Accused failed to stop the genocide, despite having the duty and means to do so. To the limited extent that the Prosecution links this type of liability to specific allegations,[2649] they have not been proven beyond reasonable doubt. By and large, however, the Prosecution does not connect its theory with any particular events in this case upon which evidence has been adduced.[2650]

1902. In other cases where aiding and abetting by omission has been proven, the Accused has shared a close temporal and geographical proximity with the underlying crimes. For example, the *Nyiramasuhuko et al.* Trial Chamber found that Prefect Sylvain Nsabimana was criminally responsible for the massacres that took place at his own office after he left for the day.[2651] In the *Mrkšic and Šljivančanin* case, the Appeals Chamber found Veselin Šljivančanin guilty for the killing of prisoners of war, whom he was obliged to protect, that took place shortly after the troops guarding them were withdrawn.[2652]

1903. The Appeals Chamber has also faced a situation where the only information available was general in nature. In the *Orić* case, it was "left with only a small number of general findings – for instance, that [an alleged perpetrator] might have been 'wilfully blind' to the crimes and that he was 'conspicuously absent' from the detention facilities – without any indication of whether and how they relate to any form of criminal liability under the … Statute." According to the Appeals Chamber, "[t]hese scattered fragments" were insufficient to explain how the alleged perpetrator could have been found criminally responsible. Accordingly, Orić's convictions for superior responsibility over this one subordinate could not stand.[2653]

1904. In this case, the Prosecution has not linked its theory of omission liability with any specific events that have been proven beyond reasonable doubt. Accordingly, the Chamber dismisses this theory as unproven, and will not consider it as a potential mode of responsibility below.

1.2.2 Joint Criminal Enterprise

1905. The Prosecution seeks convictions for all four Accused based on a theory of joint criminal enterprise for the Interim Government's dismissal of Jean-Baptiste Habyalimana as Butare's prefect on 17 April 1994 in order to undermine resistance to the killings of Tutsis[2654]

[2649] *See* Prosecution Closing Brief, paras. 448, 649, 652, 733; Prosecution Closing Arguments, T. 1 December 2008 p. 45.
[2650] *See, e.g.*, Prosecution Closing Brief, para. 11 ("[T]he Prosecutor submits that all four accused persons' failure to take action in the face of massive and systematic killings, rape and other acts of violence amounts to tacit encouragement, aiding and abetting of the crimes."); Prosecution Closing Arguments, T. 1 December 2008 p. 35 ("The Accused, as members of the interim government, bore overhead responsibility to prevent and/or punish genocide and other transgressions of international humanitarian law. The Accused failed in their duties and must incur criminal liability.").
[2651] *See Nyiramasuhuko et al.* Trial Judgement, paras. 5890-5906.
[2652] *See Mrkšić and Šljivančanin* Appeal Judgement, paras. 45-46, 73-74, 101-103.
[2653] *Orić* Appeal Judgement, paras. 47-48.
[2654] *See* Prosecution Closing Brief, paras. 39, 42, 69-70; Prosecution Closing Arguments, T. 1 December 2008 p. 24.

and President Théodore Sindikubwabo's inflammatory speech during the 19 April 1994 installation ceremony of Sylvain Nsabimana as Habyalimana's replacement.[2655]

1.2.2.1 Elements of Joint Criminal Enterprise

1906. Article 6 (1) of the Statute has been interpreted to contain three forms of joint criminal enterprise: basic (or category I), systemic (or category II) and extended (or category III).[2656] At the close of its case, the Prosecution indicated that it was pursuing the basic and extended forms of joint criminal enterprise.[2657]

1907. The required *actus reus* for each form of joint criminal enterprise comprises three elements.[2658] First, a plurality of persons is required.[2659] Second, the existence of a common purpose which amounts to or involves the commission of a crime provided for in the Statute is required. The common purpose need not be previously arranged or formulated; it may materialise extemporaneously.[2660] Third, the participation of the accused in the common purpose is required, which involves the perpetration of one of the crimes provided for in the Statute.[2661] This participation need not involve commission of a specific crime under one of the provisions (for example, murder, extermination, torture, or rape), but may take the form of assistance in, or contribution to, the execution of the common purpose.[2662] While the contribution need not be necessary or substantial, it "should at least be a significant contribution to the crimes for which the accused is to be found responsible".[2663]

1908. The categories of joint criminal enterprise vary only with respect to the *mens rea* element.[2664] The basic form of joint criminal enterprise requires the intent to perpetrate a certain crime, this intent being shared by all co-perpetrators.[2665] Where the underlying crime requires a special intent, such as discriminatory intent, the accused, as a member of the joint criminal enterprise, must share the special intent.[2666]

1909. For the extended form of joint criminal enterprise, the accused may be found responsible provided that he participated in the common criminal purpose with the requisite intent and that, in the circumstances of the case, (i) it was foreseeable that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the

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[2655] *See* Prosecution Closing Brief, para. 40; Prosecution Closing Arguments, T. 5 December 2008 pp. 10-11.
[2656] *Kvočka et al.* Appeal Judgement, paras. 82-83; *Ntakirutimana* Appeal Judgement, paras. 463-465; *Vasiljević* Appeal Judgement, paras. 96-99; *Krnojelac* Appeal Judgement, para. 30.
[2657] *See* Prosecution Closing Brief, paras. 21-28 (relating to joint criminal enterprise doctrine generally), 2, 4, 8-9, 29-31 (relating to basic joint criminal enterprise), 3, 29, 33-35 (relating to extended joint criminal enterprise).
[2658] *Kvočka et al.* Appeal Judgement, para. 96; *Ntakirutimana* Appeal Judgement, para. 466; *Vasiljević* Appeal Judgement, para. 100; *Krnojelac* Appeal Judgement, para. 31.
[2659] *Brđanin* Appeal Judgement, paras. 364, 430.
[2660] *Brđanin* Appeal Judgement, paras. 364, 418.
[2661] *Brđanin* Appeal Judgement, para. 364.
[2662] *Brđanin* Appeal Judgement, para. 424; *Kvočka et al.* Appeal Judgement, para. 96, *citing Vasiljević* Appeal Judgement, para. 100; *Simba* Trial Judgement, para. 387.
[2663] *Brđanin* Appeal Judgement, para. 430.
[2664] *Simba* Appeal Judgement, para. 77; *Brđanin* Appeal Judgement, para. 365; *Duško Tadić* Appeal Judgement, paras. 227-228.
[2665] *Ntakirutimana* Appeal Judgement, para. 467; *Vasiljević* Appeal Judgement, para. 101; *Krnojelac* Appeal Judgement, para. 32.
[2666] *Brđanin* Appeal Judgement, para. 429; *Kvočka et al.* Appeal Judgement, paras. 109-110.

joint criminal enterprise) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took that risk.[2667]

1.2.2.2 Notice

(i) Introduction

1910. The mode and extent of an accused's participation in an alleged crime are material facts that must be clearly set forth in the indictment.[2668] In cases where the Prosecution intends to rely on a theory of joint criminal enterprise, the Prosecution must plead the purpose of the enterprise, the identity of its participants, the nature of the accused's participation in the enterprise and the period of the enterprise.[2669] The Indictment should also clearly indicate which form of joint criminal enterprise is being alleged.[2670] Failure to specifically plead joint criminal enterprise, including the supporting material facts and the category, constitutes a defect in the indictment.[2671]

1911. During the trial, the Bicamumpaka and Bizimungu Defences objected that the Prosecution failed to provide adequate notice of its intention to rely on joint criminal enterprise as a mode of liability.[2672] The Chamber declined to rule on the merits of these issues and invited the Parties to raise them during their final submissions at the end of the case.[2673]

1912. At the close of proceedings, all four Defence teams repeated this objection. In particular, they highlight that the words "joint criminal enterprise" are not contained in the Indictment.[2674] They further argue that the Prosecution's inclusion of this mode of liability in the Pre-Trial Brief, filed on 20 October 2003 and just over two weeks prior to the commencement of trial, does not amount to timely, clear or consistent notice sufficient to cure this deficiency.[2675]

[2667] *Martić* Appeal Judgement, para. 168; *Brđanin* Appeal Judgement, para. 411.
[2668] *Kvočka et al.* Appeal Judgement, paras. 28, 42; *Krnojelac* Appeal Judgement, para. 138.
[2669] *Simba* Appeal Judgement, para. 63; *Simić* Appeal Judgement, para. 22; *Ntagerura et al.* Appeal Judgement, para. 24; *Krnojelac*, Decision on Form of Second Amended Indictment (TC), 11 May 2000, para. 16.
[2670] *Simba* Appeal Judgement, para. 63; *Simić* Appeal Judgement, para. 22; *Gacumbitsi* Appeal Judgement, para. 162, referring to *Kvocka et al.* Appeal Judgement, paras. 28, 42.
[2671] *Simić* Appeal Judgement, para. 22; *Gacumbitsi* Appeal Judgement, para. 162; *Kvočka et al.* Appeal Judgement, paras. 43-54.
[2672] *See* Bicamumpaka's Request for a Declaration that the Indictment does not Allege that he is Liable for any Form of Joint Criminal Enterprise, dated 8 September 2005, signed 14 September 2005 and circulated 19 September 2005; *Appuie de Casimir Bizimungu à la Requête de Jérôme Bicamumpaka Intitulée* Bicamumpaka's Request for a Declaration that the Indictment does not Allege that He is Liable for any Form of Joint Criminal Enterprise, 22 September 2005.
[2673] Decision on Jérôme Bicamumpaka's Request for a Declaration that the Indictment Does Not Allege that He is Liable for any Form of Joint Criminal Enterprise (TC), 23 March 2006.
[2674] The Bizimungu Defence notes that in May 1999, when the Indictment was confirmed, the mode of joint criminal enterprise had not yet been articulated. Bizimungu Closing Brief, para. 89.
[2675] Mugenzi Closing Brief, paras. 10-18; Mugenzi Closing Arguments, T. 2 December 2008 pp. 71-72; Bicamumpaka Closing Brief, paras. 917-936; Bicamumpaka Closing Arguments, T. 3 December 2008 pp. 55-56; Mugiraneza Closing Brief, paras. 32-38, 43-51, 550-552; Mugiraneza Closing Arguments, T. 4 December 2008 pp. 16-17; Bizimungu Closing Brief, paras. 79-92, 117-119, 1458-1464; Bizimungu Closing Arguments, T. 1 December 2008 pp. 84-85; T. 2 December 2008 pp. 2-3.

1913. In its Closing Brief and oral submissions, the Prosecution concedes that the Accused's participation in a "joint criminal enterprise" was not specifically stated in the Indictment.[2676] However, the Indictment sufficiently pleaded this mode of liability without express reference to the phrase.[2677] Specifically, the Prosecution outlined several Indictment paragraphs that, in its view, demonstrated that it was alleging that a plurality of persons, sharing a common criminal purpose, were acting in concert to further that purpose, as well as the material facts supporting these elements.[2678] It further argued that any purported defect had been cured through its Pre-Trial Brief, witness statements and in its opening submissions.[2679] Finally, the Defence brought evidence to rebut this mode of liability, indicating that adequate notice was provided.[2680]

(ii) The Indictment

1914. The failure to include the expression "joint criminal enterprise" in the indictment does not alone indicate a defect with respect to pleading this mode of liability. Other phrasings might effectively convey the same concept and meaningfully inform the accused "of the nature of the charges so as to be able to prepare an effective defence".[2681]

1915. In the *Gacumbitsi* case, the Appeals Chamber considered that the following indictment paragraph *came close* to providing necessary notice of the Prosecution's reliance on joint criminal enterprise:

> 25. **Sylvestre GACUMBITSI,** in his position of authority and acting in concert with others, participated in the planning, preparation or execution of a common scheme, strategy or plan to exterminate the Tutsi, by his own affirmative acts or through persons he assisted or by his subordinates with his knowledge and consent. [Emphases added]

The *Gacumbitsi* Appeals Chamber highlighted the paragraph's references to concerted action among a plurality of persons in support of a common criminal purpose of eliminating Tutsis. These pleadings, it suggested, could support the conclusion that the indictment pleaded joint criminal enterprise.[2682]

1916. The Chamber has reviewed the Indictment paragraphs that the Prosecution argues provide notice of its reliance on joint criminal enterprise liability. Indictment paragraph 6.68 most closely corresponds to the mode's pleading requirements. It reads:

[2676] Prosecution Closing Brief, para. 20. *See* Prosecution Closing Arguments, T. 1 December 2008 pp. 20-21.
[2677] Prosecution Closing Arguments, T. 1 December 2008 pp. 20-21; T. 5 December 2008 pp. 6-9.
[2678] Prosecution Closing Arguments, T. 1 December 2008 pp. 20 (referring to paragraphs 5.1 and 6.68), 22 (referring to paragraphs 5.1, 6.64 and 6.68), 23 (referring to paragraph 6.19, 6.50 and 6.55), 24 (referring to paragraphs 6.19, 6.20 and 6.43), 26 (referring to paragraph 6.68), 27 (referring to paragraphs 1.28, 1.51, 5.3, 5.10 through 6.68); T. 5 December 2008 pp. 5-6 (referring to paragraphs 5.1 and 6.68), 8 (referring to paragraphs 5.1, 6.44 and 6.68).
[2679] Prosecution Closing Brief, para. 20; Prosecution Closing Arguments, T. 1 December 2008 pp. 21-23, 27-29; T. 5 December 2008 pp. 6-9.
[2680] Prosecution Closing Brief, para. 20.
[2681] *Simić* Appeal Judgement, para. 32; *Gacumbitsi* Appeal Judgement, para. 165.
[2682] *Gacumbitsi* Appeal Judgement, paras. 168, 172. Because the Appellant and his counsel worked from the French documents throughout the trial, the Appeals Chamber held that a review the French translation of the operative indictment was critical to determining if proper notice had been received. *Gacumbitsi* Appeal Judgement, para. 169.

> 6.68 **Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka** and **Justin Mugenzi,** Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera and Juvénal Kajelijeli, in their position of authority, acting in concert with, notably André Ntagerura, Pauline Nyiramasuhuko, Éliezer Niyitegeka, Tharcisse Renzaho and Théoneste Bagosora, participated in the planning, preparation or execution of a common scheme, strategy or plan, to commit the atrocities set forth above. The crimes were committed by them personally, by persons they assisted or by their subordinates, and with their knowledge or consent. [Emphases added]

1917. Like the indictment paragraph in *Gacumbitsi*, this paragraph alleges concerted action among a plurality of persons and a common scheme to "commit atrocities" referred to earlier in the Indictment.[2683]

1918. However, this Indictment paragraph suffers from approximately the same pleading deficiencies that rendered paragraph 25 of the *Gacumbitsi* indictment insufficient to provide adequate notice that joint criminal enterprise was being pursued. In particular, the description of Gacumbitsi's participation in a common scheme "by his own affirmative acts or through persons he assisted or by his subordinates with his knowledge and consent" also invoked the modes of liability of "committing" and "aiding and abetting" under Article 6 (1) of the Statute and superior responsibility pursuant to Article 6 (3) of the Statute. Furthermore, "at the time of the *Gacumbitsi* indictment, joint criminal enterprise was still an unfamiliar mode of liability in this Tribunal". Consequently, the *Gacumbitsi* Appeals Chamber held that this indictment paragraph provided insufficient notice of the Prosecution's reliance on joint criminal enterprise because the Accused could have interpreted the language as referring to these other modes of liability.[2684]

1919. Paragraph 6.68 of the Indictment also alleges that each Accused's participation in the common "scheme, strategy or plan" occurred through "crimes [that] were committed by them personally, by persons they assisted or by their subordinates, and with their knowledge or consent". Like paragraph 25 of the *Gacumbitsi* indictment, this pleading also invokes the modes of "committing" and "aiding and abetting" under Article 6 (1) of the Statute and superior responsibility pursuant to Article 6 (3) of the Statute.

1920. Furthermore, this Indictment was confirmed in May 1999, more than two years prior to the filing of the *Gacumbitsi* indictment.[2685] The theory of "joint criminal enterprise" was only expressly identified as a form of "committing" within Article 7 (1) of the ICTY Statute in July 1999.[2686] Under the circumstances, it is reasonable for this Chamber to assume that the Accused interpreted Indictment paragraph 6.68 as referring to the modes expressly set forth in Articles 6 (1) and 6 (3) of the Statute rather than joint criminal enterprise liability. Consequently, this Indictment paragraph provides insufficient notice of the Prosecution's reliance on joint criminal enterprise.

[2683] The French translation of Indictment paragraph 6.68 corresponds to the language in the French translation of paragraph 25 in the *Gacumbitsi* indictment. *Compare* Gacumbitsi indictment, para. 25 ("*à la planification, la préparation ou l'exécution d'un plan, d'une stratégie ou d'un dessein communs* [sic] *visant à exterminer les Tutsis*"), *and* Indictment, para. 6.68 ("*à la planification, la préparation ou l'exécution d'un plan, d'une stratégie ou d'un dessin commun, afin de perpétrer les atrocités énoncées ci-dessus*").
[2684] *Gacumbitsi* Appeal Judgement, paras. 172-174.
[2685] The *Gacumbitsi* indictment was filed on 20 June 2001. *See Gacumbitsi* Trial Judgement, para. 8, Annex II.
[2686] *See Duško Tadić* Appeal Judgement, paras. 220-229.

1921. Finally, the *Gacumbitsi* Appeals Chamber also rejected the Prosecution's contentions that several other paragraphs in the indictment, when read collectively, provided sufficient notice of its intention to rely on joint criminal enterprise liability. It held that "even assuming the Indictment can be construed as containing all the material facts necessary to support a [joint criminal enterprise] theory", these facts were not clearly identified as supporting it. Consequently, the "mere inclusion in an indictment of scattered facts that might relate to a mode of liability does not suffice to put an accused on notice that the mode of liability is being alleged".[2687]

1922. The law requires that an indictment be read as a whole when determining whether there is notice of the relevant modes of liability applicable to the particulars pleaded in it.[2688] However, the Prosecution's reliance on various Indictment paragraphs (in addition to paragraph 6.68), which include facts relevant to joint criminal enterprise liability, fail to reflect a clear pleading of this mode.[2689]

1923. Under the circumstances, the Chamber considers that the Indictment reflects the Prosecution's desire to pursue each of the Accused through a form of joint criminality based on a concerted action in support of a common criminal purpose.[2690] However, based on the foregoing, the Chamber concludes that its language is insufficiently clear to provide each Accused notice of the Prosecution's intention to rely specifically on joint criminal enterprise liability. The Chamber therefore concludes that the Indictment is defective with respect to pleading joint criminal enterprise liability.

(iii) Curing

1924. The Chamber recalls the principles set forth earlier, which limit the Prosecution's ability to cure a defective indictment through timely, clear and consistent notice (I.7). Moreover, the Chamber recalls the numerous Defence objections to the Prosecution's inclusion of material facts in the Pre-Trial Brief that mirror details within the Proposed Amended Indictment, which was rejected by the Trial and Appeals Chambers (I.7).

1925. At the outset, the Chamber observes that the Prosecution did not seek leave to incorporate the theory of joint criminal enterprise in the Proposed Amended Indictment.[2691]

[2687] *Gacumbitsi* Appeal Judgement, para. 173.

[2688] *Gacumbitsi* Appeal Judgement, para. 123.

[2689] *See* Prosecution Closing Arguments, T. 1 December 2008 pp. 20 (referring to paragraphs 5.1 and 6.68), 22 (referring to paragraphs 5.1, 6.64 and 6.68), 23 (referring to paragraph 6.19, 6.50 and 6.55), 24 (referring to paragraphs 6.19, 6.20 and 6.43), 26 (referring to paragraph 6.68), 27 (referring to paragraphs 1.28, 1.51, 5.3, 5.10 through 6.68); T. 5 December 2008 pp. 5-6 (referring to paragraphs 5.1 and 6.68), 8 (referring to paragraphs 5.1, 6.44 and 6.68).

[2690] The *Duško Tadić* Appeal Judgement clearly established that a Prosecution case could have, prior to that Appeal Judgement, relied on the theory of joint criminal enterprise since it "reflects customary rules of international criminal law". *Duško Tadić* Appeal Judgement, para. 226. This Indictment's pleading, particularly in paragraph 6.68, reveals the Prosecution's intention to do so in this proceeding. Consequently, the Chamber has no doubt that the Indictment is capable of being cured for its deficient pleading of joint criminal enterprise.

[2691] The Chamber does not consider that the Proposed Amended Indictment's references to "common enterprise" (para. 12), "government policy" (paras. 13, 18, 19), "agreed policy" (paras. 15, 16, 18, 20), "this policy" (paras. 19, 24, 30, 31, 32, 33), "the Interim Government's policy" (para. 21), and "policy of the Government" (para. 29) to "kill Tutsis" within the revised Conspiracy charge indicated an intention to rely on the theory of joint criminal enterprise. Rather, these allegations reflected the Prosecution's pleading of the *actus reus* of the crime of conspiracy to commit genocide.

Thus, Defence arguments that the Pre-Trial Brief could not cure a defective pleading of joint criminal enterprise because the theory had been rejected through the Trial and Appeals Chambers decisions denying the Proposed Amended Indictment are inapplicable.

1926. The Pre-Trial Brief, filed on 20 October 2003, addresses joint criminal enterprise responsibility expressly and in extensive detail.[2692] It pleads the nature and purpose of the enterprise, the period over which the enterprise is said to have existed, the identity of the participants in the enterprise, and the nature of the Accused's participation in the enterprise. It also specifies that the Prosecution intends to rely on the basic and extended forms of joint criminal enterprise.

1927. According to the Prosecution, the common purpose of the Accused was "the destruction of", "to eliminate" or the "killing of" Tutsis.[2693] It further submitted that besides the killing of Tutsis, "all other crimes alleged in the Indictment were either actions within the joint criminal enterprise, or were a natural or reasonably foreseeable consequence of the joint criminal enterprise".[2694]

1928. The Pre-Trial Brief further elaborates that the enterprise's duration was between 9 April and 31 July 1994.[2695] The plurality of persons were identified as each of the Accused as members of the Interim Government of 9 April 1994.[2696] Further delineation of participants was provided through identification of Prime Minister Jean Kambanda, President Théodore Sindikubwabo and "other Ministers, including [Eliézer] Niyitegeka, the spokesman of the Interim Government".[2697] The Pre-Trial Brief also references categories of persons mobilised by the joint criminal enterprise, thus identifying imputed members as well.[2698]

1929. Turning to the nature of the Accused's participation in the joint criminal enterprise, the Chamber observes that the Pre-Trial Brief linked its reliance on joint criminal enterprise through reference to numerous Indictment paragraphs charged against the Accused.[2699] It set forth in detail the nature of the Accused's participation and material facts supporting it. It generally alleged that the Interim Government mobilised various local authorities, *Interahamwe*, the civil defence, "FAR", gendarmerie and the Hutu population to carry out the common criminal purpose of eliminating Tutsis.[2700] Furthermore, each Accused directly perpetrated massacres, were involved in planning, ordering, publicly and directly inciting "militiamen, local authorities, FAR, Gendermerie [sic] and the Hutu population to eliminate Tutsis", and "aiding and abetting" killings by "training and arming of militiamen" for this purpose.[2701]

[2692] *See* Prosecution Pre-Trial Brief, paras. 86-93 (pp. 19-21) (context and law), 95-105 (pp. 22-23) (defining the basic, systemic and extended forms of joint criminal enterprise).
[2693] Prosecution Pre-Trial Brief, paras. 45, 47 (p. 12), 107-110 (p. 24), 115-117 (pp. 25-26).
[2694] Prosecution Pre-Trial Brief, para. 110 (p. 24).
[2695] Prosecution Pre-Trial Brief, paras. 45, 47 (p. 12), 108 (p. 24), 115 (p. 25).
[2696] Prosecution Pre-Trial Brief, paras. 45 (p. 12), 107-109 (p. 24), 112 (pp. 24-25).
[2697] Prosecution Pre-Trial Brief, para. 112 (pp. 24-25).
[2698] Prosecution Pre-Trial Brief, paras. 112, 116 (pp. 24-26).
[2699] Prosecution Pre-Trial Brief, paras. 107 (p. 24) (citing Indictment paragraphs 1.28, 5.1, 5.3, 5.10, 5.21, 5.22, 6.5, 6.8, 6.10, 6.14, 6.18-6.23, 6.25-6.30, 6.32, 6.35, 6.43-6.46, 6.50-6.51, 6.54-6.55, 6.64, 6.66-6.68), 117 (citing Indictment paragraphs 5.1, 5.12, 5.22, 6.17-6.30, 6.34-6.36, 6.41, 6.43-6.48, 6.50-6.52, 6.54-6.56, 6.64, 6.66-6.68).
[2700] Prosecution Pre-Trial Brief, para. 116 (pp. 25-26).
[2701] Prosecution Pre-Trial Brief, para. 117 (p. 26).

1930. Of particular significance, the Pre-Trial Brief points to the Interim Government's removal of Butare's prefect as an example of furthering the common purpose of killing Tutsis by dismissing prefects who opposed the massacres.[2702] The Pre-Trial Brief clearly links this example with the relevant Indictment paragraphs.[2703]

1931. Furthermore, the Pre-Trial Brief alleges that each Accused supported the Interim Government's decision to send a "big delegation to Butare to incite the killing of Tutsis". Around 19 April 1994, Mugenzi and Mugiraneza accompanied this delegation. There, "President Sindikubwabo" and the "Prime Minister" incited the people of Butare to kill Tutsis. Each of the ministers, including those who were not present, failed to disassociate themselves from the inflammatory speeches, giving a clear signal of support to the massacres.[2704] Once again, the Pre-Trial Brief linked these allegations to relevant Indictment paragraphs, which provide consistent information.[2705]

1932. The Pre-Trial Brief provides an extensive and detailed explanation of the Prosecution's theory of joint criminal enterprise, which meets the curing requirements articulated above. The references above provide sufficient notice of the requisite *mens rea* for the basic and extended forms of joint criminal enterprise.[2706] These details are consistent with the allegations contained in the Indictment.

1933. Moreover, the submissions in the Pre-Trial Brief provide further clarity to the Indictment rather than prejudicially expanding the case against the Accused. Notably, the Indictment, when indicating the Accused's modes of liability within the specific counts, only generally refers to the Accused's liability pursuant to Article 6 (1) and 6 (3) of the Statute. In this regard, the Pre-Trial Brief provides necessary specificity with respect to the particular modes it is pursuing under Article 6 (1) of the Statute.[2707]

1934. The Accused were also given timely notification of the Prosecution's theory relying on the basic and extended forms of joint criminal enterprise.[2708] The Pre-Trial Brief was filed

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[2702] Prosecution Pre-Trial Brief, para. 121 (pp. 26-27).
[2703] Prosecution Pre-Trial Brief, para. 121 (pp. 26-27) fns. 66-67 (citing Indictment paragraphs 6.21, 6.42-6.43).
[2704] Prosecution Pre-Trial Brief, paras. 123-127 (pp. 27-28).
[2705] Prosecution Pre-Trial Brief, paras. 123-127 (pp. 27-28) fns. 73-77 (citing Indictment paragraphs 6.43-6.46).
[2706] *See The Prosecutor v. Aloys Simba*, ICTR-01-76-I, Decision on the Defence's Preliminary Motion Challenging the Second Amended Indictment (TC), 14 July 2004, paras. 8, 10-11 *cited with approval in Simba* Appeal Judgement, para. 79.
[2707] *See Gacumbitsi* Appeal Judgement, para. 163 ("The mode of liability under Article 6(1) (including the JCE theory) must be pleaded in the indictment, or the indictment is defective."); *cf. Ntakirutimana* Appeal Judgement, para. 473 ("While the Appeals Chamber accepts that it has been the practice of the Prosecution to merely quote the provisions of Article 6(1), and in the ICTY Article 7(1), the Prosecution has also long been advised by the Appeals Chamber that it is preferable for it not to do so. For example, the ICTY Appeals Chamber in the *Aleksovski* case stated that 'the practice by the Prosecution of merely quoting the provisions of Article 7(1) in the indictment is likely to cause ambiguity, and it is preferable that the Prosecution indicate in relation to each individual count precisely and expressly the particular nature of the responsibility alleged.' The Appeals Chamber endorses this statement."); *see also Semanza* Appeal Judgement, para. 357; *Krnojelac* Appeal Judgement, para. 134.
[2708] The Chamber is mindful of the statement by the *Simić et al.* Trial Chamber that trial chambers of the ICTY "have refused to rely on an *extended* form of joint criminal enterprise in the absence of an amendment to the Indictment expressly pleading it". *Simić et al.* Trial Judgement, para. 146. However, the cases highlighted by the *Simić et al.* Trial Chamber clearly reflect that the Prosecution had expressly stated that it was not pursuing the extended form of joint criminal enterprise (*Vasiljević* Trial Judgement, para. 63) or that the trial chamber had determined that the Prosecution had failed to provide timely, clear or consistent notice to cure the indictment in this regard due to specific circumstances of that case (*Krnojelac* Trial Judgement, para. 86 *affirmed in Krnojelac*

on 20 October 2003. The Prosecution presented its opening statements on 6 November 2003 and led its first witness that day. Where notice is clear and consistent, the Appeals Chamber has considered notification similarly close to the commencement of trial sufficiently timely to cure a defective indictment.[2709] Given the clarity and consistency of the Pre-Trial Brief's submissions, the notice provided by it is sufficiently timely.[2710]

1935. The Prosecution provided further timely, clear and consistent notice of its intention to rely on the theory of joint criminal enterprise through its opening statements on 6 November 2003.[2711] No Defence Counsel objected at the close of the Prosecution's submissions.[2712] The first objections were raised in September 2005, which the Chamber considered as filed out of time and as failing to show good cause for the delay in filing.[2713]

(iv) Conclusion

1936. Based on the foregoing, the Chamber is convinced that the Prosecution has provided timely, clear and consistent notice with respect to its reliance on the basic and extended forms of joint criminal enterprise. The manner in which the Prosecution has given notice of its theory of joint criminal enterprise has in no way materially impaired the Accused's abilities to prepare their defences or rendered the trial unfair. The Chamber shall consider the joint criminal enterprise mode in light of the proven allegations.

1.2.2.3 Deliberations

1937. On 17 April 1994, certain members of the Interim Government, including Mugenzi, Mugiraneza and Prime Minister Jean Kambanda, met in Murambi, Gitarama, and agreed to remove Jean-Baptiste Habyalimana from his post as prefect of Butare. While killings had occurred in Butare prior to this decision, they had been localised in the outer communes of

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Appeal Judgement, paras. 137-145). The Chamber is mindful that the extended form of joint criminal enterprise liability broadens criminal responsibility beyond what is captured in, for example, the basic mode. However, this Chamber is not of the view that this jurisprudence supports a *per se* rule that an indictment defect with respect to pleading the extended form of joint criminal enterprise liability can only be cured through amending the indictment to include it.

[2709] *Kvočka et al.* Appeal Judgement, paras. 45 (final updated pre-trial brief, which pleaded the requisite elements of joint criminal enterprise and expressed the theories it intended to rely on was filed on 14 February 2000), 46 (opening statements were made on 28 February 2000, just two weeks later). *See also Kvočka* Trial Judgement, Annex A, para. 768 ("The trial ... opened on Monday, 28 February 2000 in Trial Chamber I .... The trial was adjourned on 6 March 2000 following the arrest of a co-indictee .... It resumed for all five accused on Monday, 2 May 2000...").

[2710] The scenario in this case can be contrasted with that in *Kalimanzira*, where the Appeals Chamber considered that inconsistent information, presented in the pre-trial brief hours before the opening trial day and just four days before the relevant witness was to provide testimony was neither timely, clear or consistent. *Kalimanzira* Appeal Judgement, paras. 139, 141-143, 149. It is distinguishable from *Ntakirutimana*, where, although clear and consistent information was provided to the accused, it was only given four days prior to trial and 11 days prior to presentation of the relevant witness's evidence, and thus was not timely. *Ntakirutimana* Appeal Judgement, paras. 83-85.

[2711] Prosecution Opening Statement, T. 6 November 2003 pp. 6, 8-9, 12.

[2712] Prosecution Opening Statement, T. 6 November 2003 pp. 13-14. The Prosecution continued to argue its reliance on the joint criminal enterprise theory during the presentation of its case. *See* T. 12 November 2003 p. 41; T. 13 November 2003 p. 43; T. 22 January 2004 pp. 27, 30, 33; T. 3 February 2004 p. 18; T. 5 February 2004 p. 5.

[2713] Decision on Jérôme Bicamumpaka's Request for a Declaration that the Indictment Does Not Allege that He is Liable for any Form of Joint Criminal Enterprise (TC), 23 March 2006, paras. 16, 18.

the prefecture and commenced on a large scale more than a week after the President's assassination. In this regard, Habyalimana had achieved relative success in keeping ethnically driven killings at abeyance and there is evidence that he had taken a public stand against them. Indeed, Habyalimana, a Tutsi and moderate PL opposition party leader, would have been perceived by those who removed him as opposing the targeted killings of Tutsi civilians.

1938. Furthermore, at this time, the Interim Government was losing the war on the military front, having already been deposed by the RPF from the nation's capital. The RPF had also refused to agree to a ceasefire. With little demonstrated capacity to fight the RPF militarily, dismissing the Tutsi prefect of Butare was an initial step in unleashing a war resource – the killing of Tutsi civilians – in that region, which the RPF could not effectively combat. As discussed above, Habyalimana had posed considerable resistance to such violence and removing him undercut the resistance that Butare's top administrative official posed to it. Furthermore, in the context of the Interim Government's repeated calls for civilians to ensure their own security, dismissing the Tutsi prefect also signalled to those in Butare that their efforts to defend Rwandan sovereignty would *not* be guided by a political moderate who was openly opposed to the ethnically driven slaughter and who had taken steps against it.

1939. Indeed, the true import of the Interim Government's decision was made clear on 19 April 1994, when Jean-Baptiste Habyalimana's removal was finalised during the installation of his replacement, Sylvain Nsabimana. A significant delegation of the Interim Government, including Mugenzi, Mugiraneza and Kambanda, went to Butare to attend. During the event, Mugenzi and Kambanda addressed the crowd. Mugenzi questioned why certain refugees were being treated with care, while others were being left out in the rain. Kambanda's comments more expressly reflected the Interim Government's purpose for being in Butare. He called on Butare residents to ensure their security and trusted that the population would fight to avoid being "taken back to the 1959 yoke", a reference to the prior Tutsi monarchy that ruled Rwanda. As a positive example of the civilian contribution to the war effort, Kambanda referred to the extensive network of roadblocks in Kigali, which were notorious sources of Tutsi slaughter by that time. President Théodore Sindikubwabo followed Mugenzi's and Kambanda's remarks with an inflammatory speech, admonishing that the "irresponsible" should be identified and should step aside while "we work". He then nebulously defined the enemy as "traitors who have trained to use guns in order to exterminate us". He told the government to "look for those irresponsible people, who trained to kill us [and] rid us of them" so that the "conscientious Rwandans" would win the war.

1940. As discussed in greater detail previously (II.9.2) and below (III.4.3), Sindikubwabo's speech was intended to be, and was in fact, interpreted as instructions to kill Tutsis in Butare. Indeed, killings in Butare prefecture spread significantly and peaked from 19 to 26 April 1994.

1941. The temporal and thematic consistency of these acts demonstrate that they were highly coordinated and concerted actions, sharing the common criminal purpose of killing Tutsis in Butare. Habyalimana's removal and the President's subsequent speech reflect that certain members of the Interim Government, including Mugenzi, Mugiraneza, Kambanda and

Sindikubwabo, decided to weaken resistance to the genocide in Butare and then spark the killings of Rwandan Tutsis there.[2714]

1942. In so finding, the Chamber has considered that there is no credible evidence that Sindikubwabo was present when members of the Interim Government agreed to remove Jean-Baptiste Habyalimana as Butare's prefect. Furthermore, there is no direct evidence that Mugenzi, Mugiraneza and Kambanda met with Sindikubwabo immediately prior to the 19 April 1994 installation ceremony.

1943. The fact that these four were not continually in each other's presence, as well as the absence of direct evidence concerning pre-planning, is not surprising in this context and does not raise doubt. The immediate temporal proximity of these events and their thematic consistency necessarily reflect coordination and agreement to use the administrative authority of the Interim Government and their national prominence to implement policies and directives aimed at killing Tutsis in Butare.

1944. In this context, Defence evidence that the Interim Government ministers did not know what Sindikubwabo would say is unbelievable. Indeed, the appearance of the President and so many national figures at the local installation ceremony was unusual and was intended to make a point.[2715] Sindikubwabo's speech clearly tracked the message intended by the earlier decision to dismiss the Tutsi prefect of Butare on 17 April 1994, and built upon the speeches that Mugenzi and Kambanda made at the 19 April installation ceremony. The Chamber considers it possible that Sindikubwabo joined Mugenzi, Mugiraneza and Kambanda as a member of the joint criminal enterprise sometime after its initial formation, but the Chamber has no doubt that Sindikubwabo became a member, sharing its common criminal purpose, before making his speech on 19 April 1994.

[2714] In the Chamber's view, these acts reflect the joint criminal enterprise's contribution to the war effort against the RPF at that time. The RPF had refused to enter into ceasefire agreements at this time and its military advance was not being stopped by the Rwandan army. Consequently, the possibility of countless Tutsi deaths was the only means this joint criminal enterprise had to achieve capitulation from the RPF as well as cut ties to its internal supporters.

[2715] Des Forges, T. 23 June 2005 pp. 4 ("Q. ... Dr. Des Forges you'd agree ... that when the president ... the prime minister and many of the members of the cabinet went to Butare for the ... change of préfet, that ... was ... because Kambanda was ... a native of Butare, and the rest of ministers went just as a matter of protocol? ... A. No. ... It was ... relatively rare for an entire government to go to the installation of a new préfet."), 5 ("A. It was certainly not just for protocol. The entire occasion had enormous importance. The removal of Préfet Habyalimana was a turning point in terms of government policy and the presence of a large delegation, including the president and the prime minister, was of enormous importance in underlying the symbolic nature of the act."); Shimamungu, T. 15 May 2007 p. 52 ("Q. Would you be able to tell the court whether this was a normal procedure for the president to be present at the swearing in of a préfet? A. It was abnormal that the president of the republic be involved in this kind of ceremony, because, first of all, it doesn't exist, and the appointment of a préfet is generally an administrative appointment which does not merit a ceremony. So it was quite inhabitual, and this was the first time that this kind of thing happened in Rwanda. Q. And when you say it is unusual, what conclusions can you draw from that? A. What has to be pointed out here is that the president and the government are in flight. They are in Butare because they can no longer stay in Kigali. So they are in the process of fleeing and this is why they found ... themselves in this ceremony which should not have taken place."). *See also* Exhibit 1D166(E) (Expert Report of Eugène Shimamungu) p. 77 ("A simple administrative appointment would have been sufficient to allow the *préfet* to assume his new position. There had never been a public swearing in [*sic*] *préfet*. President Sindikubwabo speaks of it as if to support the new *préfet*, but in reality the interim government was collapsing. It had been dislodged from Kigali and had relocated to Murambi (Gitarama). The fact that a President came to the swearing in a [sic] *préfet* is out of the ordinary and an indication of some weakness in the eyes of the population. In any event, it was a sign that the RPF had won the war.").

1945. These acts reflect that these four, along with others from the Interim Government, worked within their unique administrative capacity to undermine local government resistance to the genocide in Butare and used their prominence as national figures to bring a message of genocide to the public. Turning to their particular contributions, Mugenzi and Mugiraneza substantially and significantly contributed to the common criminal purpose by agreeing to remove Butare's top administrative official. Habyalimana had taken a public stand against ethnically driven killings and posed a considerable and symbolic threat to the killing of Tutsis in that region. Likewise, this decision created a platform for Sindikubwabo to ceremoniously and publicly air his inflammatory speech.

1946. Furthermore, as an additional significant and substantial contribution to the joint criminal enterprise, Mugenzi and Mugiraneza were present in Butare when the President gave his inflammatory speech. The Chamber has no doubt that their presence provided substantial moral encouragement to Sindikubwabo as he incited the killing of Tutsis and, moreover, it contributed significantly to the appearance of a unified Interim Government that supported his message.[2716]

1947. Based on the foregoing, the Chamber is satisfied that, from at least 17 through 19 April 1994, Mugenzi and Mugiraneza were part of a joint criminal enterprise with certain members of the Interim Government, including Prime Minister Jean Kambanda and, at some point prior to his speech on 19 April, President Théodore Sindikubwabo. All shared the enterprise's common criminal intention of killing Tutsis in Butare. The Chamber considers, in particular, that Sindikubwabo's speech, inciting the killing of Tutsis, was made in furtherance of this common criminal purpose.

1948. The Chamber, however, is not convinced that Bizimungu or Bicamumpaka were members of this joint criminal enterprise, or of any other. Their connection to these events is unclear, and the Prosecution has not established a basis for inferring that any act or omission by them assisted in or contributed to the execution of a common purpose. In particular, the Chamber recalls that both Bizimungu and Bicamumpaka were out of the country when the decision to remove Jean-Baptiste Habyalimana was formalised and there is no evidence concerning their participation in the decision. Likewise, Bizimungu and Bicamumpaka were absent from the Butare installation ceremony on 19 April 1994, and the evidence fails to establish that they were involved in the planning or execution of the instructions given there. Furthermore, the two spent a considerable amount of time out of the country before and after these events. Accordingly, the evidence fails to demonstrate their participation in the joint criminal enterprise, either through act or omission, or that they shared the intent of the joint criminal enterprise.

1949. To the extent that the actions committed by the joint criminal enterprise have been both proven beyond reasonable doubt and charged against Mugiraneza and Mugenzi, the Chamber shall assess below these actions against the elements of the underlying crimes.

[2716] It is clear from Sindikubwabo's repeated references to the prior remarks of Mugenzi and Kambanda that he used their particular presence to punctuate his own speech. Furthermore, Sindikubwabo's words reflect the encouragement that he received from the presence of all the ministers in Butare that day. He similarly used their presence to emphasise that the Interim Government was united. *See* Exhibit P54(E, F & K) p. 16 ("I am also happy since many cabinet ministers have attended this ceremony of installing the new *Préfet* of Butare (drums). This should serve as a clear indication for you since as the Prime Minister had correctly remarked, governments used to rule through the radio … We witnessed and condemned such a system rather helplessly, but now we can put the system right.").

2. THE CRIMES

1950. The Chamber recalls its findings that the Interim Government dismissed Jean-Baptiste Habyalimana as Butare's prefect on 17 April 1994 and that President Théodore Sindikubwabo gave an inflammatory speech during the 19 April 1994 installation ceremony of Sylvain Nsabimana as Habyalimana's replacement.[2717]

1951. With respect to the removal of Habyalimana as Butare's prefect, the relevant Indictment paragraphs are 5.1, 6.10, 6.18, 6.21 and 6.42-6.43. The Prosecution is pursuing this allegation against all four Accused with respect to Count 1 in the Indictment (conspiracy to commit genocide).[2718]

1952. Turning to President Sindikubwabo's speech on 19 April 1994, the relevant Indictment paragraphs are 5.10, 6.10, 6.18, 6.43, 6.45-6.46. The Chamber observes that paragraphs 6.45 and 6.46 set forth the material facts specific to this incident. The Prosecution argues that this allegation supports Counts 1 (conspiracy to commit genocide), 4 and 5 (direct and public incitement to commit genocide).[2719]

1953. In light of the Prosecution's position, the Chamber observes that none of the proven allegations are being pursued in support of Counts 2 or 3 (genocide or complicity in

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[2717] II.9.1; II.9.2.

[2718] Prosecution Closing Brief, para. 208 (the removal of Habyalimana and appointment of Nsabimana in Butare is listed as an event relevant to the conspiracy to commit genocide); Prosecution 21 November 2008 Document, Item No. 83 (listed in support of conspiracy to commit genocide). *See also* Prosecution Closing Brief, paras. 220-289 (alleging events that support the counts of genocide and complicity in genocide, and omitting any discussion of the events in Butare); Prosecution Closing Arguments, T. 1 December 2008 pp. 2 (stating that the Assistant Trial Attorney would address the count of genocide), 60-66 (addressing the count of genocide, as well as the count of complicity in genocide, but making no mention of the events in Butare). Regarding the Prosecution 21 November 2008 Document, the Chamber recalls that the Prosecution filed it in response to the Chamber's request to provide written submissions in respect of specific events and/or incidents for which the Prosecution was seeking a conviction on a count or counts in the Indictment. *See* Prosecution 21 November 2008 Document, paras. 1-2.

[2719] Prosecution Closing Brief, paras. 203, 213 (President Sindikubwabo's speech is listed as relevant to the conspiracy to commit genocide), 295-296 (listed as relevant to direct and public incitement to commit genocide, specifying Mugiraneza's presence at the event), 311-312 (listed as relevant to direct and public incitement to commit genocide); Prosecution 21 November 2008 Document, Item Nos. 59 (listed in support of direct and public incitement to commit genocide against Mugiraneza), 86 (listed in support of conspiracy to commit genocide and direct and public incitement to commit genocide against all four Accused); Prosecution Closing Arguments, T. 1 December 2008 pp. 38-41, 57-60 (referring to the speech in the context of the Prosecution's case in support of direct and public incitement to commit genocide). *See also* Prosecution Closing Brief, paras. 220-289 (alleging events that support the counts of genocide and complicity in genocide, and omitting any discussion of the events in Butare); Prosecution 21 November 2008 Document, Item No. 111 (referring to digging graves in Butare after 22 April 1994 in support of conspiracy to commit genocide against all four Accused); Prosecution Closing Arguments, T. 1 December 2008 p. 2 (stating that the Assistant Trial Attorney would address the count of genocide), 60-66 (addressing the count of genocide, as well as the count of complicity in genocide, but making no mention of the events in Butare). The Chamber also notes that the Prosecution did not methodically pursue the killings in Butare during the presentation of its evidence. Finally, as discussed below, the operative pleading of the installation ceremony is charged only in support of direct and public incitement to commit genocide (III.3.3.2). Consequently, questions persist as to whether this event was pleaded for the counts of genocide and complicity in genocide. This questionable notice further compounds the Prosecution's decision not to pursue this event as a basis for genocide or complicity in genocide. The Chamber considers that, regardless of the quality of the Prosecution evidence, it would be unfair to consider entertaining a finding of guilt for genocide or complicity in genocide arising from the events at the installation ceremony. *See generally Ntagerura et al.* Appeal Judgement, paras. 148-150, 164.

genocide), 6 and 7 (murder and extermination as crimes against humanity), 9 (violence to life, health and physical or mental well-being of persons as serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto). Furthermore, the Chamber entered a judgement of acquittal for all four Accused on Counts 8 (rape as a crime against humanity) and 10 (outrages upon personal dignity as serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto) at the close of the Prosecution case.[2720] Consequently, Counts 2, 3, 6, 7, 8, 9 and 10 will not be considered in the Chamber's legal findings.

3. COUNT 1: CONSPIRACY TO COMMIT GENOCIDE

3.1 Introduction

1954. As discussed above, the Prosecution is pursuing a conviction for conspiracy to commit genocide based on the Interim Government's dismissal of Jean-Baptiste Habyalimana as Butare's prefect on 17 April 1994 and on President Théodore Sindikubwabo's speech in Butare on 19 April 1994, during the installation ceremony of Sylvain Nsabimana as the region's prefect.

3.2 Law

1955. Conspiracy to commit genocide is "an agreement between two or more persons to commit the crime of genocide".[2721] The act of entering into an agreement to commit genocide constitutes the *actus reus* of the criminal act of conspiracy to commit genocide.[2722] The individuals involved in the conspiracy must possess the same *mens rea* as genocide, namely, the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.[2723] As an inchoate offence, the crime is completed at the time the agreement is concluded regardless of whether genocide is actually committed as a result of the agreement.[2724]

1956. The existence of a formal or express agreement is not needed to prove the charge of conspiracy.[2725] The *actus reus* can be inferred from circumstantial evidence, as long as the

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[2720] Decision on Defence Motions pursuant to Rule 98 *bis* (TC), 22 November 2005, paras. 90, 93, 96, 110.
[2721] *Seromba* Appeal Judgement, paras. 218, 221; *Nahimana et al.* Appeal Judgement, paras. 894, 896; *Ntagerura et al.* Appeal Judgement, para. 92; *Popović et al.* Trial Judgement, para. 868; *Bagosora et al.* Trial Judgement, para. 2087; *Kajelijeli* Trial Judgement, para. 787; *Niyitegeka* Trial Judgement, para. 423; *Ntakirutimana* Trial Judgement, para. 798; *Musema* Trial Judgement, para. 191.
[2722] *Seromba* Appeal Judgement, paras. 218, 221; *Nahimana et al.* Appeal Judgement, para. 894; *Bagosora et al.* Trial Judgement, para. 2087; *Kajelijeli* Trial Judgement, para. 788.
[2723] *Nahimana et al.* Appeal Judgement, para. 894; *Bagosora et al.* Trial Judgement, para. 2087; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192.
[2724] *Nahimana et al.* Appeal Judgement, para. 720 (listing conspiracy to commit genocide as an inchoate offence). *See also Popović et al.* Trial Judgement, para. 868; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 193. *See also The Prosecutor v. Milan Milutinović et al.*, Case No IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction—Joint Criminal Enterprise (AC), 21 May 2003, para. 23 ("Joint criminal enterprise and 'conspiracy' are two different forms of liability. Whilst conspiracy requires a showing that several individuals have agreed to commit a certain crime or set of crimes, a joint criminal enterprise requires [...] that the parties to that agreement took action in furtherance of that agreement.").
[2725] *Nahimana et al.* Trial Judgement, para. 1045 *affirmed by Nahimana et al.* Appeal Judgement, para. 898; *Popović et al.* Trial Judgement, para. 869.

existence of conspiracy to commit genocide is the only reasonable inference.[2726] In particular, an agreement can be inferred from the concerted or coordinated actions of a group of individuals.[2727] Given the requirements of "concerted or coordinated", it is insufficient to simply show similarity of conduct.[2728]

1957. As for the *mens rea*, although there is no numeric threshold, the perpetrator must act with the intent to destroy at least a substantial part of the group.[2729] The perpetrator need not be solely motivated by a criminal intent to commit genocide, nor does the existence of personal motive preclude him from having the specific intent to commit genocide.[2730]

1958. In the absence of direct evidence, a perpetrator's intent to commit genocide may be inferred from relevant facts and circumstances that lead beyond any reasonable doubt to the existence of the intent. Factors that may establish the specific intent include the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a protected group, or the repetition of destructive and discriminatory acts.[2731]

3.3 Deliberations

3.3.1 Removal of Butare Prefect, 17 April 1994

1959. The Chamber recalls its findings above that, from at least 17 April 1994, a joint criminal enterprise came into existence whose members shared a common purpose aimed at the killing of Tutsis in Butare (III.1.2.2.3). Specifically, these persons decided to remove Prefect Jean-Baptiste Habyalimana from his post in order to undermine the real and symbolic resistance that he posed to the killing of Tutsis in Butare. The members of this joint criminal enterprise included Mugenzi, Mugiraneza, Prime Minister Jean Kambanda, and others in the Interim Government, who agreed to this decision.

1960. On the same basis, the Chamber concludes that Mugenzi, Mugiraneza, Kambanda and other Interim Government members agreed on 17 April 1994 to commit genocide. The agreement to dismiss Habyalimana to undermine resistance to the genocide can be contrasted with, for example, an agreement to send an army to kill Tutsi civilians in Butare. The relative directness of the latter agreement as a conspiracy to commit genocide, however, reflects a difference in capacity rather than one of intent. Indeed, the *travaux préparatoires* of the

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[2726] *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, para. 896. For the standard of proof applicable to circumstantial evidence, *see Stakić* Appeal Judgement, para. 219; *Nahimana et al.* Appeal Judgement, para. 896; *Ntagerura et al.* Appeal Judgement, paras. 306, 399; *Krstić* Appeal Judgement, para. 41; *Vasiljević* Appeal Judgement, paras. 120, 131; *Delalić et al.* Appeal Judgement, para. 458.
[2727] *Nahimana et al.* Appeal Judgement, para. 897.
[2728] *Nahimana et al.* Appeal Judgement, para. 898.
[2729] *Bagosora et al.* Trial Judgement, para. 2115, *citing Seromba* Appeal Judgement, para. 175, *Gacumbitsi* Appeal Judgement, para. 44, *Simba* Trial Judgement, para. 412, *Semanza* Trial Judgement, para. 316.
[2730] *Bagosora et al.* Trial Judgement, para. 2115, *citing Simba* Appeal Judgement, para. 269, *Ntakirutimana* Appeal Judgement, paras. 302-304, *Niyitegeka* Appeal Judgement, paras. 48-54, *Krnojelac* Appeal Judgement, para. 102, referring to *Jelisić* Appeal Judgement, para. 49.
[2731] *Bagosora et al.* Trial Judgement, para. 2116, *citing Seromba* Appeal Judgement, para. 176, referring to *Seromba* Trial Judgement, para. 320, *Nahimana et al.* Appeal Judgement, paras. 524 -525, *Simba* Appeal Judgement, para. 264, *Gacumbitsi* Appeal Judgement, paras. 40-41, *Rutaganda* Appeal Judgement, para. 525, *Semanza* Appeal Judgement, para. 262, *citing Jelisić* Appeal Judgement, para. 47, *Kayishema and Ruzindana* Appeal Judgement, paras. 147-148. *See also Nsengimana* Trial Judgement, para. 832.

Genocide Convention reveal that the drafters extensively debated whether the Genocide Convention should expressly contain "preparatory acts".[2732] It was ultimately excluded based on the difficulties of enumerating such acts and the fact that such preparatory acts, clearly aimed at furthering genocide, would necessarily be incorporated within the crime of conspiracy to genocide.[2733] The commentary reflects, however, that a conspiracy to commit genocide includes agreements to undertake acts that precede physical perpetration of genocide but are clearly aimed at it.

1961. The Chamber has no doubt that the dismissal of Habyalimana exemplifies that certain members of the Interim Government, including Mugenzi, Mugiraneza and Kambanda, acted within their sphere of control to further a genocide that was perpetrated through various different organisations – including military and civilian militia. The record reflects that each group had unique power structures and capabilities. The only reasonable conclusion is that this decision, agreed upon by Mugenzi, Mugiraneza, Kambanda and certain other members of the Interim Government, reflects that certain members of the Interim Government acted within their unique, administrative capacity to extend the genocide to Butare by removing the

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[2732] 1 THE GENOCIDE CONVENTION: THE TRAVAUX PRÉPARATOIRES, (Hirad Abtahi & Philippa Webb, eds. 2008) ("GENOCIDE CONVENTION") p. 540 (including "preparatory acts" in draft Article II of the Genocide Convention, including "issuing instructions or orders, or distributing tasks to promote genocide"), 896 (E/AC.25/SR.15) (the inclusion of "preparatory acts" presented a danger to the Genocide Convention's ratification; the United States' representative "stressed that in the event of there being preparation with the intention of committing genocide, there would also be 'conspiracy' or 'attempt' or perhaps both. It is for this reason that his delegation was opposed to the inclusion of either the word 'preparing' or the expression 'preparatory acts'"), 897 (E/AC.25/SR.15) (the Venezuelan representative warned that enumerating preparatory acts would limit governments' domestic legislation and "a detailed listing [of preparatory acts] could not be all-inclusive and there would be a danger that some acts would remain unpunished"). *See generally* 1 THE GENOCIDE CONVENTION pp. 911-914 (E/AC.25/SR.17), and, in particular, pp. 911 (the French representative noted that "a preparatory act was punishable only if it involved attempt or complicity. It was superfluous to add preparation to the list in Article III, if that list included the attempt, conspiracy to commit the crime and complicity"), 911 (the USSR representative "urged that preparation be retained as a punishable offence"), 912 (the USSR representative stated that"[p]reparatory acts for the crime of genocide could be divided into various categories, such as 1) investigation, study and perfection of means to commit the crime of genocide; 2) purchase of materials, setting up of installations, etc. with a view to the crime; and 3) issuing of instructions to commit genocide"), 913 (the French representative responded that its "delegation fully realized the necessity of anticipating and punishing preparatory acts whose purpose was completely evident .... Since the committee had accepted the idea of conspiracy, offenders would certainly be prosecuted and punished on that charge; it was therefore unnecessary to introduce into the Convention the vague and general concept of 'preparatory acts'"), 913 (the Lebanese representative "agreed that preparatory acts should be punished if their purpose could be clearly determined; but it was difficult and dangerous to introduce the general concept of 'preparatory acts' into the convention without qualifying it"); 913 (the Chinese representative "thought that preparatory acts, which were crimes in themselves regardless of their purpose, were punishable" and questioned "whether the word 'conspiracy' covered all preparatory acts of that category"); 913 (the Polish representative "thought that the Convention should specify all punishable preparatory acts, although, from a strictly legal point of view, the word 'conspiracy' included only preparatory acts committed by two or more persons"), 913-914 (the French representative "replied that it was very difficult to conceive of a single individual building crematoriums or undertaking research with a view to committing genocide. Consequently all punishable preparatory acts were sufficiently covered by the terms 'conspiracy' and 'complicity'"), 914 (the USSR representative "regretted that although unanimous in its condemnation of preparatory acts whose purpose was evident, the Committee did not expressly provide for the penalty. There were many punishable acts that would not be covered by the word 'conspiracy'"), 914 (omission from the Genocide Convention of "preparation" was adopted by four votes to two, with one abstention).

[2733] 1 THE GENOCIDE CONVENTION pp. 986-987 (E/AC.25/W.1/Add.1), 1064-1065 (E/AC.25/W.4), 1131-1132 (E/794); 2 THE GENOCIDE CONVENTION pp. 1553-1567 (A/C.6/SR.86).

administrative head, who had opposed the genocide in Butare and would have been widely perceived as against it.

1962. Furthermore, the Chamber is satisfied that both Mugenzi and Mugiraneza possessed genocidal intent when agreeing to remove Habyalimana. This conclusion is undeniable when viewed against their continued contribution to ensuring that this "policy" decision was properly understood by forming part of a large delegation of Interim Government ministers who went to Butare and show support to Sindikubwabo while making his inflammatory speech.[2734]

1963. Although the agreement to dismiss Habyalimana was made in order to commit genocide, the Chamber has not found that Bicamumpaka or Bizimungu were involved in this agreement. The evidence before the Chamber does not support a finding that any act or omission of Bicamumpaka or Bizimungu amounted to a substantial contribution to this crime.[2735]

3.3.2 Installation of Butare Prefect and Incitement, 19 April 1994

1964. The Chamber recalls its findings above that Mugenzi and Mugiraneza, after joining the joint criminal enterprise by at least 17 April 1994, remained members through 19 April 1994. In reaching this finding, the Chamber relied in part on the fact that on 19 April 1994, Mugenzi and Mugiraneza attended the installation ceremony of the Butare prefect, where President Théodore Sindikubwabo made an inflammatory speech that called for Tutsis in Butare to be killed (III.1.2.2.3).

1965. In the Chamber's view, Mugenzi's and Mugiraneza's involvement in the 19 April 1994 installation ceremony further reflects their genocidal intent, and offers further evidence of their prior involvement in a conspiracy to commit genocide. This conclusion is undeniable when viewed in light of the temporal proximity to, and thematic consistency with, their participation in the removal of Jean-Baptiste Habyalimana for the purpose of undercutting the real and symbolic resistance the Tutsi prefect posed to the killings of Tutsis in Butare. However, for the reasons discussed below, the Chamber will not consider this event as an independent basis for a conviction on the charge of conspiracy to commit genocide.

1966. The Chamber observes that Indictment paragraph 6.45 sets forth the material details about the Butare installation ceremony on 19 April 1994. Specifically, it refers to the timing, location and content of Sindikubwabo's speech. It also refers to others who were present.

[2734] Implicit in the Chamber's findings is that both Mugenzi and Mugiraneza were aware of the genocidal intent of other members of the Interim Government who agreed to dismiss Jean-Baptiste Habyalimana as prefect of Butare for the purpose of extending the massacres of Tutsis to Butare. The Chamber also considers that Mugenzi's and Mugiraneza's agreement with such members of the Interim Government to dismiss Habyalimana amounted to a substantial contribution to the conspiracy to commit genocide.

[2735] The Chamber is satisfied that the Accused were provided sufficient notice for the pleading of conspiracy as it relates to these facts. *See* Indictment, paras. 5.1 (identifying all four Accused as having conspired amongst themselves and others between 1990 and 1994 with intent to exterminate the civilian Tutsi population), 6.10 (from its formation, the Interim Government dismissed local government officials opposed to massacres and adopted directives intended to facilitate the massacre of the civilian Tutsi population), 6.18 (listing all four Accused as "support[ing] a plan of extermination in place" and listing the government's dismissal of "local government authorities who were opposed to massacres" as an example), 6.21 and 6.43 (on 17 April the Interim Government dismissed Jean-Baptiste Habyalimana for refusal to take part in massacres so that killings could spread). These paragraphs are expressly pleaded in support of Count 1 (conspiracy to commit genocide) against each of the Accused. *See also* Mugenzi Closing Brief, para. 89.

This paragraph, however, is expressly omitted from those listed in support of Count 1 (conspiracy to commit genocide). Furthermore, a more general Indictment paragraph alleging that Sindikubwabo, among others, propagated incitement to hatred from April to July 1994 is also not listed in support of this count.[2736]

1967. Indictment paragraph 6.46 alleges that certain members of the Interim Government, including Mugiraneza, did not dissociate themselves from Sindikubwabo's statement – as set forth in paragraph 6.45 – and thereby gave a clear signal to the people that the massacres were ordered and condoned by the Interim Government. Paragraph 6.46, unlike paragraph 6.45, is pleaded in support of the conspiracy to commit genocide count, and arguably alleges facts that are relevant to their *mens rea* for conspiracy to commit genocide. However, the Chamber considers that the Indictment, when read as a whole, is ambiguous as to whether the Butare installation ceremony, as alleged in paragraph 6.45, was charged under Count 1. Furthermore, in assessing the allegation that a conspiracy exists, the central considerations rely primarily on the details expressed in Indictment paragraph 6.45, and paragraph 6.46 is necessarily dependent upon paragraph 6.45 in furnishing relevant details.

1968. While the Chamber considers that the evidence of the 19 April 1994 Butare installation ceremony is relevant to the conspiracy count, it cannot form an independent basis for conviction.[2737] In so finding, the Chamber is mindful of both the need to read the Indictment as a whole, and the introductory phrasing within the conspiracy to commit genocide count (as well as every other count) that reads "the acts or omissions described in paragraphs 5.1 to 6.68 and more specifically in the paragraphs referred to below". This statement includes paragraph 6.45.

1969. However, other Trial Chambers, when considering similarly structured indictments, have not taken introductory language into account. For example, the Trial Chamber in the *Nyiramasuhuko et al.* case, when evaluating initial indictment defect allegations, found an indictment's similar introductory language was too imprecise to provide guidance, and ordered that it be deleted to leave only the specific paragraphs concerning the allegations against the accused.[2738] Similarly, in the *Kamuhanda*, *Nahimana et al.* and *Bagosora et al.* Trial Judgements, the Chambers took into account only those indictment paragraphs that were specifically mentioned pursuant to each count, notwithstanding similar introductory language pleaded before the specific paragraphs.[2739]

[2736] Indictment, para. 5.10.

[2737] *See Renzaho* Appeal Judgement, paras. 71, 90; *Arsène Shalom Ntahobali and Pauline Nyiramasuhuko v. The Prosecutor*, Case No. ICTR-97-21-AR73, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004, para. 15.

[2738] *The Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-96-15-I, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 31 May 2000, paras. 5.17-5.18, p. 8; *The Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on Arsène Shalom Ntahobali's Preliminary Motion Objecting to Defects in the Form and Substance of the Indictment (TC), 1 November 2000, paras. 32, 35(a)(iii).

[2739] *See Kamuhanda* Trial Judgement, paras. 223, 619, 690, 704, 715. *Compare Nahimana et al.* Trial Judgement, para. 1086 (focusing, in its consideration of murder as a crime against humanity charged against Hassan Ngeze, on "[p]aragraphs 7.6, 7.8 and 7.9 of the Indictment"), *and The Prosecutor v. Hassan Ngeze*, Case No. ICTR-99-52-T, Amended Indictment, 10 November 1999, p. 24 (charging Ngeze with murder as a crime against humanity "[b]y the acts or omissions described in paragraphs 5.1 to 7.15 and more specifically in the [15] paragraphs referred to below [including 7.6, 7.8 and 7.9]"). *Compare Bagosora et al.* Trial Judgement,

1970. The Chamber recalls the limited circumstances in which a defective Indictment may be cured through timely, clear and consistent notice (I.7). In this instance, the Pre-Trial Brief is ambiguous as to whether the Prosecution is pursuing this event in support of conspiracy to commit genocide or direct and public incitement to commit genocide, as it is referenced in a section entitled "Participation in Plans or Agreements to Kill Tutsis, or Ordering, Instigating and/or in Directly and Publicly Inciting Massacres and violence against Tutsis".[2740] In its opening statement, the Prosecution more clearly linked this event as evidence of the conspiracy to commit genocide count.[2741] To the extent this notice is neither clear nor consistent, the Chamber is further cautioned by the fact that "omitted charges can be incorporated into the indictment only by formal amendment pursuant to Rule 50 of the Rules".[2742]

1971. The Prosecution's decision to omit paragraph 6.45 from the count of conspiracy to commit genocide creates ambiguity as to whether the Indictment is pleading this event in support of it. The fact that the Prosecution subsequently chose to pursue a conspiracy to commit genocide conviction based on the event does not change that. The Prosecution's attempt to now seek a conviction on this conduct is prejudicial to Mugenzi and Mugiraneza. It exposes them to greater criminal liability and possibly increased punishment. Moreover, based on the omission in the Indictment, they would have reasonably assumed that this paragraph *only* pertained to the charge of direct and public incitement. Accordingly, the Chamber will not base any conviction for this event pursuant to the conspiracy to commit genocide count.

4. COUNTS 4 AND 5: DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE

4.1 Introduction

1972. As discussed above, of the remaining proven allegations, the Prosecution is pursuing a conviction for direct and public incitement to commit genocide based only on President Théodore Sindikubwabo's speech in Butare on 19 April 1994, during the installation ceremony of Sylvain Nsabimana as the region's prefect.

4.2 Law

1973. A person may be found guilty of direct and public incitement to commit genocide, pursuant to Article 2 (3)(c) of the Statute, if he or she directly and publicly incited the commission of genocide (*actus reus*) and had the intent to directly and publicly incite others to commit genocide (*mens rea*).[2743] Such intent presupposes genocidal intent.[2744]

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para. 2163, fn. 2345 (citing, in support of the charge against Anatole Nsengiyumva of direct and public incitement to commit genocide, "paras. 6.14, 6.16, 6.30, Count 4"), *and The Prosecutor v. Anatole Nsengiyumva*, Case No. ICTR-96-12-I, Amended Indictment, 12 August 1999, p. 38 ("Count 4: By the acts or omissions described in paragraphs 5.1 to 6.37 and more specifically in the paragraphs referred to below: Anatole Nsengiyumva: -pursuant to Article 6(1), according to paragraphs: 6.14, 6.16, 6.30 is responsible for direct and public incitement. ... ").

[2740] Prosecution Pre-Trial Brief, para. 289 (p. 57). *See also* Prosecution Pre-Trial Brief, p. 48 (setting forth the section title).

[2741] Prosecution Opening Statement, T. 6 November 2003 pp. 9-10.

[2742] *Rukundo* Appeal Judgement, para. 29; *Karera* Appeal Judgement, para. 293.

[2743] *Kalimanzira* Appeal Judgement, para. 155; *Nahimana et al.* Appeal Judgement, para. 677.

1974. "Direct" incitement to commit genocide requires that the speech is a direct appeal to commit an act referred to in Article 2 (2) of the Statute. It must be more than a vague or indirect suggestion, and an accused cannot be held accountable for this crime based on hate speech that does not directly call for the commission of genocide. However, even when a speech contains no explicit appeal to commit genocide, it may still constitute direct incitement to commit genocide in a particular context, so long as the speech is not considered ambiguous within that context. In order to determine the speech's true meaning, it may be helpful to examine how it was understood by the intended audience. In the context of Rwanda, the culture and nuances of the Kinyarwanda language should be considered when determining what constitutes direct incitement to commit genocide.[2745]

1975. In *Kalimanzira*, the Appeals Chamber recently reviewed the *mens rea* regarding the intent to publicly incite. It noted that "all convictions before the Tribunal for direct and public incitement to commit genocide involve speeches made to large, fully public assemblies, messages disseminated by the media, and communications made through a public address system over a broad public area".[2746] Moreover, the *travaux préparatoires* of the Genocide Convention confirmed that "public" incitement to genocide pertains to mass communications. Conversely, they revealed that "private" incitement – understood as more subtle forms of communication such as conversations, private meetings, or messages – was specifically removed from the Convention.[2747]

4.3 Deliberations

1976. The evidence demonstrates that, on 17 April 1994, members of the Interim Government, including Kambanda, Mugenzi and Mugiraneza, dismissed Jean-Baptiste Habyalimana from his post as prefect of Butare. While killings had occurred in Butare prior to this decision, they had been localised in the prefecture's outer communes and commenced on a large scale more than a week after the President's assassination. In this regard, Habyalimana had achieved relative success in keeping ethnically driven killings in Butare at abeyance and there is evidence that he had taken a public stand against them. Indeed, Habyalimana, a Tutsi and moderate PL opposition party leader, would have been perceived by those who removed him as opposing the targeted killings of Tutsi civilians.

1977. Habyalimana's dismissal culminated two days later, on 19 April 1994, during the installation of Sylvain Nsabimana as the region's new prefect. A significant delegation of the Interim Government, including Kambanda, Mugenzi and Mugiraneza, went to Butare to attend. During the event, Mugenzi and Kambanda addressed the attendees. President Théodore Sindikubwabo built upon their remarks and gave an inflammatory speech, admonishing that the "irresponsible" should be identified and step aside while "we work". He then nebulously defined the enemy as "traitors who have trained to use guns in order to exterminate us". He told the government to "look for those irresponsible people, who trained to kill us [and] rid us of them" so that the "conscientious Rwandans" shall win the war.

1978. When viewing the record as a whole, the only reasonable conclusion is that Sindikubwabo's speech was a direct call for those in Butare to engage in the killing of Tutsi

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[2744] *Bikindi* Appeal Judgement, para. 135; *Nahimana et al.* Appeal Judgement, para. 677.
[2745] *Nyiramasuhuko et al.* Trial Judgement, para. 5986 *citing Nahimana et al.* Appeal Judgement, paras. 692-693, 700-701, 703.
[2746] *Kalimanzira* Appeal Judgement, paras. 155-156; *see also Nyiramasuhuko et al.* Trial Judgement, para. 5987.
[2747] *Kalimanzira* Appeal Judgement, para. 158.

civilians, and possibly of Hutu civilians – the irresponsible or unconcerned – who were resisting such killings. Sindikubwabo's war-cry, made while removing the Tutsi prefect, was inconsonant with the situation in Butare town and most of the prefecture. While violence had occurred in the outer regions of Butare prefecture close to Gikongoro, relative peace had remained in most of it. Furthermore, the RPF had not opened a front there. Sindikubwabo's remarks that the "unconcerned" or "irresponsible" must be identified and gotten "rid of" while others "work" cannot reasonably be interpreted as a call for providing further security to residents who had remained relatively peaceful and to displaced persons who had sought refuge in Butare from killings.

1979. The Chamber has considered Sindikubwabo's admonishment to listeners about "traitors who have trained to use guns in order to exterminate us". Defence evidence suggests that this qualification reflected the President's intention to identify RPF infiltrators rather than Tutsis generally. There is evidence that references to the enemy – for example, the RPF, *Inkotanyi* or *Inyenzi* – in some instances were understood to be referring to the military rebel force invading Rwanda and not Tutsis generally. However, the Chamber has also heard considerable anecdotal accounts that, when viewed together, reflect that references to the enemy, accomplices, infiltrators and *Inyenzi* included non-combatant Tutsi civilians. Indeed, that Tutsis were generally viewed as the enemy in the context of Rwandan hostilities with the RPF is bolstered by the undisputed accounts that Tutsis within Rwanda were repeatedly attacked in retaliation for RPF incursions from 1990 onward.

1980. In the context of the ethnically-driven slaughter that gripped much of Rwanda outside of Butare, Sindikubwabo's reference to a nebulously defined enemy sought to rouse panic about hidden threats within the prefecture. It intentionally allowed for assailants to identify Tutsi civilians as this enemy. That these persons must be killed was made clear by Sindikubwabo's calls to "work", which in the context of the genocide was frequently interpreted as a call to "kill". His statement that the war could be won if Butare "rid us of the irresponsible people" made clear that the passivity of Butare residents towards killing Tutsis could no longer be accepted, and that those who opposed such killings could be eliminated as well.

1981. That the underlying message to "kill Tutsis" could be directly and clearly understood is supported by the fact that Kinyarwanda is a dynamic language, where communication is at times indirect and may require context to extrapolate meaning. Sindikubwabo's closing admonishments that people analyse closely the words spoken to them, when viewed in context, confirms the coded nature of his instructions. Killings in Butare spread dramatically and peaked from that day until 26 April 1994.

1982. Having considered the foregoing, the Chamber has no doubt that at that moment, Sindikubwabo possessed genocidal intent and that he intended to directly incite genocide. Furthermore, the contents of Sindikubwabo's remarks, wherein he addressed Butare residents generally, reflect his desire for mass dissemination. The record reflects that several of Sindikubwabo's speeches had already been broadcast and or summarised by journalists of Radio Rwanda, a state-run radio station. The Chamber has no doubt that he knew and intended his remarks at this ceremony to be retransmitted to the general public in the same or similar manner. This in fact occurred, as his speech was broadcast over the Rwandan airwaves, including by Radio Rwanda.

1983. This event must be viewed in the context of surrounding events. In particular, by 17 April 1994, certain members of the Interim Government, including Mugenzi and Mugiraneza, had agreed to dismiss Jean-Baptiste Habyalimana as prefect in order to undermine the

resistance he posed to the killing of Tutsis in Butare (and thereby seeking to further such killings).

1984. As discussed above (III.1.2.2.3), these events are not coincidental. They reflect coordinated and concerted action among Mugenzi, Mugiraneza, Prime Minister Jean Kambanda, President Théodore Sindikubwabo and other members of the Interim Government, sharing a common criminal purpose of killing Tutsis in Butare. The Chamber has no doubt that Sindikubwabo's direct and public incitement to commit genocide on 19 April 1994 was made in furtherance of this criminal purpose. The Chamber also has no doubt that Mugenzi and Mugiraneza possessed the same genocidal intent held by Sindikubwabo. This intent is undeniably demonstrated by their involvement in the decision to remove Butare's Tutsi prefect. Their attendance at the ceremony is further evidence of their shared intent to eliminate Tutsis in Butare.

1985. Furthermore, by agreeing to remove Jean-Baptiste Habyalimana in the days before this event, Mugenzi and Mugiraneza substantially and significantly contributed to the President's incitement. They created a scenario that would allow for Sindikubwabo to publicly and ceremoniously air his inflammatory speech. Moreover, the decision to dismiss the Tutsi prefect created a context that would ensure that Sindikubwabo's inciting message would be understood.

1986. By attending the 19 April 1994 installation ceremony, Mugenzi and Mugiraneza provided significant and substantial moral encouragement to Sindikubwabo as he incited the killing of Tutsis. Moreover, their individual and collective presence contributed significantly to the appearance of a unified Interim Government that supported his message.[2748]

1987. Based on the foregoing, the Chamber finds that Mugenzi and Mugiraneza are guilty of direct and public incitement to commit genocide through their participation in a joint criminal enterprise.

[2748] It is clear from Sindikubwabo's repeated references to the prior remarks of Mugenzi and Kambanda that he used their particular presence to punctuate his own speech. Furthermore, Sindikubwabo's words reflect the encouragement that he received from the presence of all the ministers in Butare that day. He similarly used their presence to emphasise that the Interim Government was united. *See* Exhibit P54(E, F & K) p. 16 ("I am also happy since many cabinet ministers have attended this ceremony of installing the new *Préfet* of Butare (drums). This should serve as a clear indication for you since as the Prime Minister had correctly remarked, governments used to rule through the radio … We witnessed and condemned such a system rather helplessly, but now we can put the system right.").

CHAPTER IV: VERDICT

1988. For the reasons set out in this Judgement, having considered all evidence and submissions of the parties, the Trial Chamber finds unanimously in respect of

CASIMIR BIZIMUNGU as follows:

Count 1: NOT GUILTY of Conspiracy to Commit Genocide

Count 2: NOT GUILTY of Genocide

Count 3: NOT GUILTY of Complicity in Genocide

Count 4: NOT GUILTY of Direct and Public Incitement to Commit Genocide

Count 5: None Charged

Count 6: NOT GUILTY of Murder as a Crime Against Humanity

Count 7: NOT GUILTY of Extermination as a Crime Against Humanity

Count 8: NOT GUILTY of Rape as a Crime Against Humanity

Count 9: NOT GUILTY of Violence to Life, Health and Physical or Mental Well-Being of Persons as Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto

Count 10: NOT GUILTY of Outrages upon Personal Dignity as Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto

JUSTIN MUGENZI as follows:

Count 1: GUILTY of Conspiracy to Commit Genocide

Count 2: NOT GUILTY of Genocide

Count 3: NOT GUILTY of Complicity in Genocide

Count 4: None Charged

Count 5: GUILTY of Direct and Public Incitement to Commit Genocide

Count 6: NOT GUILTY of Murder as a Crime Against Humanity

Count 7: NOT GUILTY of Extermination as a Crime Against Humanity

Count 8: NOT GUILTY of Rape as a Crime Against Humanity

Count 9: NOT GUILTY of Violence to Life, Health and Physical or Mental Well-Being of Persons as Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto

Count 10: NOT GUILTY of Outrages upon Personal Dignity as Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto

JÉRÔME-CLÉMENT BICAMUMPAKA as follows:

Count 1: NOT GUILTY of Conspiracy to Commit Genocide

Count 2: NOT GUILTY of Genocide

Count 3: NOT GUILTY of Complicity in Genocide

Count 4: NOT GUILTY of Direct and Public Incitement to Commit Genocide

Count 5: None Charged

Count 6: NOT GUILTY of Murder as a Crime Against Humanity

Count 7: NOT GUILTY of Extermination as a Crime Against Humanity

Count 8: NOT GUILTY of Rape as a Crime Against Humanity

Count 9: NOT GUILTY of Violence to Life, Health and Physical or Mental Well-Being of Persons as Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto

Count 10: NOT GUILTY of Outrages upon Personal Dignity as Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto

PROSPER MUGIRANEZA as follows:

Count 1: GUILTY of Conspiracy to Commit Genocide

Count 2: NOT GUILTY of Genocide

Count 3: NOT GUILTY of Complicity in Genocide

Count 4: GUILTY of Direct and Public Incitement to Commit Genocide

Count 5: None Charged

Count 6: NOT GUILTY of Murder as a Crime Against Humanity

Count 7: NOT GUILTY of Extermination as a Crime Against Humanity

Count 8: NOT GUILTY of Rape as a Crime Against Humanity

Count 9: NOT GUILTY of Violence to Life, Health and Physical or Mental Well-Being of Persons as Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto

Count 10: NOT GUILTY of Outrages upon Personal Dignity as Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II Thereto

CHAPTER V: SENTENCING

(i) Introduction

1989. Having found Mugenzi and Mugiraneza guilty of crimes under the jurisdiction of the Tribunal, the Chamber must determine appropriate sentences.

(ii) Law

1990. All crimes under the Tribunal's Statute are serious violations of international humanitarian law.[2749] When determining a sentence, a Trial Chamber has considerable, though not unlimited, discretion on account of its obligation to determine penalties to fit the individual circumstances of an accused and to reflect the gravity of the crimes for which the accused has been convicted.[2750]

1991. The gravity of the offences committed is the deciding factor in the determination of the sentence.[2751] Gravity entails the particular circumstances of the case, the form and degree of the participation of the accused in the crimes, and the number of victims.[2752] The consequences of the crime upon any victims who were directly injured are also relevant.[2753]

1992. The Appeals Chamber has stated that "sentences of like individuals in like cases should be comparable".[2754] However, similar cases do not provide a legally binding benchmark for sentences. Although assistance can be drawn from previous decisions, such assistance is often limited, as each case contains a multitude of variables.[2755] In light of this, the Appeals Chamber has recognised that "[d]ifferences between cases are often more significant than similarities and different mitigating and aggravating circumstances might dictate different results".[2756]

1993. Pursuant to Article 23 of the Statute, and Rule 101 (B) of the Rules, the Chamber shall take into account the general practice regarding prison sentences in the courts of Rwanda, any aggravating circumstances, any mitigating circumstances, and the extent to which the convicted person has already served any penalty imposed by a court of any State for the same act. These factors are not exhaustive.[2757]

[2749] *Kayishema and Ruzindana* Appeal Judgement, para. 367 (quoting Article 1 of the Statute). *See also Nyiramasuhuko et al.* Trial Judgement, paras. 6188-6199.
[2750] *Nahimana et al.* Appeal Judgement, para. 1037; *Kajelijeli* Appeal Judgement, para. 291.
[2751] *Nshogoza* Appeal Judgement, para. 98; *Nahimana et al.* Appeal Judgement, para. 1060.
[2752] *Munyakazi* Appeal Judgement, para. 185; *Rukundo* Appeal Judgement, para. 243.
[2753] *See Blaškić* Appeal Judgement, para. 683 (addressing this issue in a subsection labeled "[t]he gravity of the offence").
[2754] *Dragomir Milošević* Appeal Judgement, para. 326; *Strugar* Appeal Judgement, para. 348; *Kvočka et al.* Appeal Judgement, para. 681.
[2755] *Dragomir Milošević* Appeal Judgement, para. 326; *Kvočka et al.* Appeal Judgement, para. 681.
[2756] *Dragomir Milošević* Appeal Judgement, para. 326, *citing Limaj et al.* Appeal Judgement, para. 135; *Dragan Nikolić* Appeal Judgement, para. 19.
[2757] *Seromba* Appeal Judgement, para. 228; *Nahimana et al.* Appeal Judgement, para. 1038; *Kajelijeli* Appeal Judgement, para. 290.

1994. Under Rwandan law, similar crimes as those at issue here carry the possible penalty of life imprisonment, depending on the nature of the accused's participation.[2758]

1995. Aggravating circumstances need to be proven beyond reasonable doubt.[2759] The Chamber may only consider aggravating circumstances that are pleaded in the indictment,[2760] and any circumstance that is included as an element of the crime for which an individual is convicted will not be considered as an aggravating factor.[2761]

1996. The Appeals Chamber has listed various factors which, if proven beyond reasonable doubt, may qualify as aggravating circumstances. These include the position of the accused, the length of time during which the crime continued, premeditation and motive, and the circumstances of the offences generally.[2762]

1997. In circumstances where the Chamber has not found alleged superior responsibility beyond reasonable doubt, the Chamber may consider an individual's influence as an aggravating circumstance.[2763] Similarly, while a position of authority does not automatically warrant a harsher sentence, the abuse of such a position may constitute an aggravating factor.[2764]

1998. Mitigating circumstances need only be established by the balance of probabilities.[2765] Such circumstances include an expression of remorse, good character with no prior criminal convictions, personal and family circumstances, the character of the accused subsequent to the conflict, duress, indirect participation, age and assistance to victims.[2766] Selective assistance of Tutsis may be given only limited weight as a mitigating factor,[2767] and poor health is to be considered only in exceptional or rare cases.[2768]

1999. Rule 86 (C) of the Rules states that "[t]he parties shall also address matters of sentencing in closing arguments", and it is therefore the parties' prerogative to identify any relevant circumstances at the time. As a general rule, if a party fails to put forward relevant information at the appropriate time, the Chamber is not under an obligation to seek out such

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[2758] *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 28 June 2011, paras. 47-50 (assessing Rwanda's penalty structure); *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-2000-61-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008, paras. 22-25 (same); *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008, paras. 22-25 (same). *See also Nyiramasuhuko et al.* Trial Judgement, paras. 6186, 6192 (finding Alphonse Nteziryayo guilty only of direct and public incitement to commit genocide, and considering that Rwandan law would carry the possible penalty of life imprisonment for similar crimes at issue in that Judgement); *Semanza* Appeal Judgement, para. 377 ("The command for Trial Chambers to 'have recourse to the general practice regarding prison sentences in the courts of Rwanda does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice.'"), *quoting Serushago* Appeal Judgement, para. 30; *Dragan Nikolić* Appeal Judgement, para. 69.

[2759] *Nahimana et al.* Appeal Judgement, para. 1038; *Kajelijeli* Appeal Judgement, paras. 82, 294.

[2760] *Renzaho* Appeal Judgement, para. 615; *Simba* Appeal Judgement, para. 82.

[2761] *Ndindabahizi* Appeal Judgement, para. 137.

[2762] *Blaškić* Appeal Judgement, para. 686.

[2763] *Semanza* Appeal Judgement, paras. 335-336.

[2764] *Munyakazi* Appeal Judgement, para. 170; *Dragomir Milošević* Appeal Judgement, para. 302.

[2765] *Nahimana et al.* Appeal Judgement, para. 1038; *Kajelijeli* Appeal Judgement, para. 294.

[2766] *Blaškić* Appeal Judgement, para. 696.

[2767] *Nchamihigo* Appeal Judgement, para. 389. *See also Rukundo* Appeal Judgement, para. 256; *Kajelijeli* Appeal Judgement, paras. 309-311.

[2768] *Blaškić* Appeal Judgement, para. 696.

information.[2769] Nevertheless, to the extent that the parties did not identify any relevant circumstances, the Chamber will consider them in the interests of justice.

(iii) Mugenzi

(a) Submissions

2000. The Prosecution seeks a sentence of life imprisonment for each crime committed by Mugenzi. The crimes are so grave as to shock the collective conscience, and Mugenzi's abuse of trust is also relevant to the gravity of the offence. Although the Prosecution includes the language of Rule 101 (B) of the Rules,[2770] it does not address any aggravating or mitigating circumstances. Instead, it asks the Chamber to be guided by the principles of retribution and deterrence.[2771]

2001. The Mugenzi Defence submits that, if convicted, Mugenzi should be sentenced to less than ten years, especially because any criminal liability would be remote from the offences perpetrated by others. Mitigating factors include Mugenzi's age, health and length of detention. Additionally, Mugenzi has expressed his sorrow for the victims of the genocide, and he has pronounced his respect for the work of this Tribunal. Finally, the Defence asks the Chamber to mitigate Mugenzi's sentence due to his advocacy of human rights.[2772]

(b) Gravity of the Offences

2002. The Chamber has found Mugenzi guilty of two crimes: conspiracy to commit genocide, and direct and public incitement to commit genocide. Both crimes are inchoate offences, and the Prosecution has not linked them with any specific instances of killings or other attacks that directly injured any victims. This may appear to suggest that the crimes were not very grave.

2003. Nonetheless, these crimes were serious violations of international humanitarian law, both of which require genocidal intent. The Chamber also takes particular note that Mugenzi is not indirectly responsible for these crimes, but rather he actively committed them. In this regard, the Chamber has found that Mugenzi committed conspiracy to commit genocide. He also committed, via a joint criminal enterprise whose purpose was to kill Tutsis in Butare, direct and public incitement to commit genocide. There is no doubt that the commission of these two crimes is inherently grave, regardless of the circumstances surrounding their commission.

2004. The Chamber considers, moreover, that the context in which Mugenzi committed these crimes further compounds their gravity. He entered into an agreement to kill Tutsis, and did so on 17 April 1994, more than a week after the genocidal killing of Tutsis started in Rwanda. Two days later, he played a direct role in the statements inciting the killing of Tutsis. Given these circumstances and the time period during which Mugenzi acted, there is no doubt that he knew the horror that could result from his crimes. Moreover, the prospect

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[2769] *Setako* Appeal Judgement, para. 286; *Rukundo* Appeal Judgement, para. 255; *Bikindi* Appeal Judgement, para. 165; *Muhimana* Appeal Judgement, para. 231.
[2770] Prosecution Closing Brief, fn. 1418.
[2771] Prosecution Closing Brief, paras. 1228-1237.
[2772] Mugenzi Closing Brief, paras. 1488-1499. *See also* Mugiraneza Closing Arguments, T. 3 December 2008 pp. 29-30.

that this horror might take hold in an area that had remained relatively peaceful further enhances the gravity of Mugenzi's crimes.

(c) Individual, Aggravating and Mitigating Circumstances

2005. As he committed his crimes, Mugenzi was the Minister of Trade and Industry, which was undoubtedly a position of authority during the relevant time period. Instead of utilising this position and the influence that flows from it to reintroduce harmony into Rwanda, Mugenzi abused it to form an agreement and a joint criminal enterprise that acted to trigger the conspiracy and incitement of genocidal killings in Butare.[2773] This abuse of authority constitutes an aggravating factor.

2006. As for individual and mitigating factors, the Chamber first notes that prior to the signing of the Arusha Accords in 1993, Mugenzi appears to have had a peaceful disposition and to have worked towards democratic principles.[2774] Mugenzi is 72 years old, and has a wife, eight children, and grandchildren.[2775] He also expressed his remorse and deep sorrow for the number of victims and the suffering of all Rwandan families, and has acknowledged the work of this Tribunal.[2776] The Chamber accords these factors some weight.

2007. In the Chamber's view, however, Mugenzi's situation is not sufficiently exceptional or rare as to justify mitigation for any health conditions that he may have. The Chamber, Judge Short dissenting, also does not consider that the length of these proceedings or of Mugenzi's detention warrants mitigation, as the Chamber has not found that there was a violation of Mugenzi's rights in this respect.[2777]

2008. These circumstances will be taken into account in determining an appropriate sentence. Nevertheless, the Chamber recalls that the gravity of the offences is to be the primary consideration in sentencing.[2778]

(iv) Mugiraneza

(a) Submissions

2009. The Prosecution seeks a sentence of life imprisonment for each crime committed by Mugiraneza, and makes the same submissions as those relating to Mugenzi. Mugiraneza's crimes are so grave as to shock the collective conscience, and his abuse of trust is also relevant to the gravity of the offence. The Prosecution includes the language of Rule 101 (B) of the Rules,[2779] but does not address any aggravating or mitigating circumstances. Instead, it asks the Chamber to be guided by the principles of retribution and deterrence.[2780]

[2773] Read together, the operative Indictment paragraphs upon which Mugenzi has been convicted sufficiently pleaded his abuse of authority.
[2774] *See, e.g.*, Prosecution Opening Statement, T. 6 November 2003 p. 7.
[2775] *See* Mugenzi, T. 1 November 2005 p. 29; Uzamukunda, T. 20 April 2006 pp. 47-49, 66-68; Exhibit 2D99 (Letter from Jeannette Uzamukunda).
[2776] Mugenzi, T. 10 November 2005 p. 78.
[2777] *See generally Setako* Appeal Judgement, para. 297.
[2778] *See, e.g., Nahimana et al.* Appeal Judgement, para. 1038.
[2779] Prosecution Closing Brief, fn. 1418.
[2780] Prosecution Closing Brief, paras. 1228-1237.

2010. The Mugiraneza Defence submits that, in case of conviction, Mugiraneza's sentence should not exceed the time he has already served. While the crimes committed in Rwanda were horribly grave, Mugiraneza's culpability should be judged against other accused. Moreover, the Defence submits that Mugiraneza is a political moderate who banned his ministry from discriminating against Tutsis. He has expressed sympathy for the victims of the genocide, and has admitted his own errors as well as those of the Interim Government. Mugiraneza is married and has four children, and if convicted and released, he will work towards reconciliation among Rwandans.[2781]

2011. The Mugiraneza Defence also emphasises that Mugiraneza tried to stop the killings and save lives during the genocide. He succeeded in having the Interim Government issue a directive ordering that the killings stop. He sought to have the military shut down RTLM, although this plan was thwarted by the Minister of Defence. Mugiraneza also tried to prevent the civil defence programme from operating under the umbrella of the Interim Government, and he continued in these efforts even after he perceived that his life was at risk.[2782]

2012. Finally, the Mugiraneza Defence contends that Mugiraneza acted under duress, and that this warrants mitigation of his punishment.[2783]

(b) Gravity of the Offences

2013. The Chamber has found Mugiraneza guilty of conspiracy to commit genocide, and of direct and public incitement to commit genocide. Both crimes are inchoate offences, which the Prosecution has not linked with any specifically identified killings or other attacks that directly injured any victims. In the Chamber's view, this may appear to imply that Mugiraneza's crimes were not very grave.

2014. Nonetheless, his crimes were serious violations of international humanitarian law, both of which require genocidal intent. The Chamber also considers that Mugiraneza is not guilty of these crimes via an indirect form of responsibility. Instead, the Chamber has found that Mugiraneza committed both conspiracy to commit genocide and direct and public incitement to commit genocide, the latter via a joint criminal enterprise whose purpose was to kill Tutsis in Butare. There is no doubt that the commission of these two crimes is inherently grave, regardless of the circumstances surrounding their commission.

2015. Moreover the context in which Mugiraneza committed these crimes further compounds their gravity. On 17 April 1994, Mugiraneza entered into an agreement to kill Tutsis. This was more than a week after the genocidal killing of Tutsis had commenced in Rwanda. Two days later, he played a direct role in the incitement to kill Tutsis. Given these circumstances and the time period during which he acted, the Chamber has no doubt that Mugiraneza knew the horror that his crimes might provoke. That these horrors might result in an area that had, until then, remained relatively peaceful further amplifies the gravity of Mugiraneza's crimes.

[2781] Mugiraneza Closing Brief, paras. 750-752, 755-756.
[2782] Mugiraneza Closing Brief, para. 750, 755; Mugiraneza Closing Arguments, T. 4 December 2008 pp. 17-18, 61, 72.
[2783] Mugiraneza Closing Brief, para. 755; Mugiraneza Closing Arguments, T. 4 December 2008 pp. 32-37.

(c) Individual, Aggravating and Mitigating Circumstances

2016. During the commission of his crimes, Mugiraneza was the Minister of Civil Service, which undoubtedly was a position of authority and influence during the relevant period. Rather than using his position and influence to quell the genocide throughout most of Rwanda, Mugiraneza instead acted to promote genocide in Butare. Mugiraneza's formation of an agreement for this purpose, and his further incitement through a joint criminal enterprise, constitute an abuse of his authority.[2784] The Chamber considers this to be an aggravating factor.

2017. Turning now to individual and mitigating factors, the Chamber notes that Mugiraneza is married and has four children.[2785] He also expressed his sadness at the loss of so many innocent lives, most of whom were Tutsis, and apologised directly to the victims for his personal failings and for those of his government. In addition, Mugiraneza said that upon his release from prison, he would militate for reconciliation among Rwandans.[2786] The Chamber accords these factors some weight.

2018. But as for the claims that Mugiraneza was a moderate[2787] who tried to save lives during the genocide,[2788] the Chamber finds these to have been unsubstantiated. Similarly, the Chamber finds the submission that Mugiraneza acted under duress to be unfounded, particularly given that he acted with genocidal intent in committing his crimes. Finally, the Chamber, Judge Short dissenting, does not consider the length of these proceedings to warrant mitigation, as the Chamber has not found that Mugiraneza's rights were violated in this respect.[2789]

2019. Although these circumstances will be taken into account in determining an appropriate sentence, the Chamber recalls that the gravity of the offences should be the primary consideration in sentencing.[2790]

[2784] Read as a whole, the operative Indictment paragraphs upon which Mugiraneza has been convicted sufficiently pleaded his abuse of authority.
[2785] Mugiraneza, T. 20 May 2008 pp. 26, 31, T. 21 May 2008 p. 8, T. 27 May 2008 p. 10; Mukandagijimana, T. 1 May 2008 p. 5.
[2786] Mugiraneza, T. 27 May 2008 pp. 45-47.
[2787] Mugiraneza Closing Brief, para. 752 (citing the testimony of a single Prosecution witness who identified Mugiraneza as a "democrat" who worked with a moderate, and who said he could not criticise Mugiraneza's role in the genocide).
[2788] *See* Mugiraneza Closing Brief, paras. 750, 755; Mugiraneza Closing Arguments; T. 4 December 2008 pp. 17-18, 61, 72.
[2789] *See generally Setako* Appeal Judgement, para. 297.
[2790] *See, e.g., Nahimana et al.* Appeal Judgement, para. 1038. *See also Bagosora et al.* Trial Judgement, para. 2276.

(v) Conclusion

2020. The Chamber has the discretion to impose a single sentence. This practice is usually appropriate where the offences may be characterised as belonging to a single criminal transaction.[2791] The Chamber considers the interrelated nature of the distinct crimes committed justifies the imposition of a single sentence for both crimes.

2021. Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Justin Mugenzi to

30 YEARS OF IMPRISONMENT

2022. Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Prosper Mugiraneza to

30 YEARS OF IMPRISONMENT

(vi) Consequential Orders

2023. Mugenzi and Mugiraneza shall receive credit for time served since their arrest, pursuant to Rule 101 (C) of the Rules. The above sentences shall be served in a State designated by the President of the Tribunal, in consultation with the Chamber. The Government of Rwanda and the designated State shall be notified of such designation by the Registrar.

2024. Until their transfer to their designated places of imprisonment, Mugenzi and Mugiraneza shall be kept in detention under the present conditions.

2025. Pursuant to Rule 102 (A) of the Rules, on notice of appeal, if any, enforcement of the above sentences shall be stayed until a decision has been rendered on the appeal, with the convicted persons nevertheless remaining in detention.

2026. The Chamber has acquitted Casimir Bizimungu and Jérôme-Clément Bicamumpaka of all counts against them and orders their immediate release.

2027. It requests the Registry to make the necessary arrangements.

[2791] *Nahimana et al.* Appeal Judgement, para. 1042.

Arusha, 30 September 2011

Khalida Rachid Khan	Lee Gacuiga Muthoga	Emile Francis Short
Presiding Judge	Judge	Judge

[Seal of the Tribunal]

PARTIALLY DISSENTING OPINION OF JUDGE EMILE FRANCIS SHORT

1. I am unable to agree with the reasoning of the Majority opinion regarding whether the Accused's right to trial without undue delay has been violated. I therefore respectfully set out my partially dissenting opinion.

2. I concur with the Majority that the proceedings in this case have been lengthy, litigious and complex. I also agree with the reasoning of the Majority that the reasonableness of a delay cannot be evaluated by a certain length of time, but must be assessed on a case-by-case basis, taking into account the factors laid out by the Appeals Chamber.[2792]

3. I believe, however, that the Majority has not sufficiently considered the reasonableness of the time taken to deliver this Judgement in light of the totality of the proceedings that have occurred to date. Bizimungu was transferred to the seat of this Tribunal on 23 February 1999, and Mugenzi, Mugiraneza and Bicamumpaka were likely transferred on 31 July 1999. Their trial commenced on 6 November 2003. The evidence phase of this case closed on 12 June 2008, and closing arguments were heard between 1 and 5 December 2008. The Judgement is hereby rendered on 30 September 2011, more than three years after the close of the evidence in this case. This, in my view, is sufficient to constitute a violation of the Accused's right to trial without undue delay.

4. I consider that the Majority has not given due regard to the extent an expeditious trial is guaranteed under Articles 19 and 20 (4)(c) of the Statute. Furthermore, I note that the right to a trial without undue delay is laid out clearly in major international human rights instruments: Article 14 (3)(c) of the International Covenant on Civil and Political Rights grants to the accused an entitlement "[t]o be tried without undue delay"; Article 6 (1) of the European Convention on Human Rights provides "everyone is entitled to a fair and public hearing within a reasonable time"; Article 8 (1) of the American Convention on Human Rights provides the right to a hearing "within a reasonable time"; and Article 7 (1)(d) of the African Charter on Human and Peoples' Rights grants "[t]he right to be tried within a reasonable time".

5. I further consider that the United Nations Security Council and General Assembly have a duty to organise the Tribunal so as to allow it to comply with the requirements of Articles 19 and 20 (4)(c) of the Statute. I find that they have failed in this regard in this case. I have, in a previous dissenting opinion of 23 June 2010, iterated the numerous administrative and scheduling delays, which have stalled the delivery of this Judgement. I have also recognised that my distinguished colleagues, Judges Khan and Muthoga, have been assigned to a multitude of cases, significantly increasing their and their legal staffs' caseloads.[2793] It has now been more than one year since I made these findings in my prior dissenting opinion, and they still hold true. All of this resulted in undue delay of the proceedings.

6. The right of the Accused to a trial without undue delay not only avoids keeping them in a state of uncertainty as to their fate, but serves the interests of justice. The Accused have been incarcerated without judgement for more than 12 years. I believe an Accused has the

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[2792] *See* Decision on Prosper Mugiraneza's Interlocutory Appeal from Trial Chamber II Decision of 2 October 2003 Denying the Motion to Dismiss the Indictment, Demand Speedy Trial and for Appropriate Relief (AC), 27 February 2004, p. 3.

[2793] Decision on Prosper Mugiraneza's Fourth Motion to Dismiss Indictment for Violation of Right to Trial Without Undue Delay (TC), 23 June 2010, Partially Dissenting Opinion of Judge Short, paras. 4-5.

right to be informed of the outcome of his case as soon as practicably possible, and this was not achieved in this case.

7. For the foregoing reasons, I find that the Accused's right to trial without undue delay has been violated. I do not, however, consider that dismissal of the Indictment against them with prejudice is the appropriate remedy. For Mugenzi and Mugiraneza, I would provide a five-year reduction of sentence. The record is insufficiently precise to ascertain the appropriate remedies for Bizimungu and Bicamumpaka, who have been acquitted in this proceeding.[2794] I note, however, that the Tribunal maintains jurisdiction to litigate these issues after the conclusion of the trial at first instance.[2795]

Arusha, 30 September 2011



Emile Francis Short

Judge

[Seal of the Tribunal]

[2794] The Bicamumpaka Defence team, in its Closing Brief, requested a stay of proceedings because of the undue delay. It also requested the opportunity, after the Judgement is entered in this case, to make submissions concerning the violation of his rights. Bicamumpaka Closing Brief, paras. 1060-1065, 1106. The Chamber notes that a stay of the proceeding is foreclosed at this point in the case and, in any event, is not an appropriate remedy for the violation. The Bizimungu Defence team only asked that the Chamber "take into account" the delay in the proceedings. Bizimungu Closing Brief, para. 211.

[2795] *See André Rwamakuba v. The Prosecutor*, Case No. ICTR-98-44C-A, Decision on Appeal against Decision on Appropriate Remedy (AC), 13 September 2007.

ANNEX A: PROCEDURAL HSTORY

1. CASIMIR BIZIMUNGU

1. Casimir Bizimungu was arrested in Kenya on 11 February 1999.[2796] On 15 February 1999, the Tribunal's Office of the Prosecutor requested that Kenyan governmental and judicial authorities provisionally detain Bizimungu pursuant to Rule 40.[2797]

2. On 18 February 1999, Judge William H. Sekule, having found that reliable and consistent information tended to show Bizimungu may have committed crimes within the Tribunal's jurisdiction, issued an order for transfer and provisional detention pursuant to Rule 40 *bis*. The order requested Bizimungu's immediate transfer from Kenya to the United Nations Detention Facility ("UNDF") and his provisional detention for a maximum period of 30 days upon arrival.[2798]

3. Bizimungu was transferred to the Tribunal on 23 February 1999, and on 23 March 1999 Judge Sekule extended Bizimungu's provisional detention for an additional 30 days.[2799] During a 20 April 1999 hearing, Bizimungu's provisional detention was extended for an additional 21 days, beginning on 24 April 1999.[2800]

4. On 4 May 1999, the Chamber denied a Bizimungu Defence application requesting review of the conditions of Bizimungu's provisional detention, holding that only the President had the power to modify the conditions of detention.[2801]

2. JUSTIN MUGENZI, JÉRÔME-CLÉMENT BICAMUMPAKA AND PROSPER MUGIRANEZA

5. Justin Mugenzi, Jérôme-Clément Bicamumpaka and Prosper Mugiraneza were arrested in Yaoundé Cameroon on 6 April 1994.[2802] On 16 April 1999, Judge Pavel Dolenc issued an order for transfer and provisional detention pursuant to Rule 40 *bis*, finding that reliable and consistent information tended to show that Bicamumpaka may have committed crimes within the Tribunal's jurisdiction. It requested his immediate transfer from Cameroon to the UNDF in Arusha, Tanzania, and ordered his provisional detention for a maximum

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[2796] *Bizimungu,* Order for Transfer and Provisional Detention (Under Rule 40*bis* of the Rules) (TC), 18 February 1999.
[2797] Request for Provisional Measures to the Government and Judicial Authorities of Kenya by the Prosecutor of the International Criminal Tribunal for Rwanda, 15 February 1999. The Chamber observes that this was first filed with the Tribunal on 17 February 1999.
[2798] *Bizimungu,* Order for Transfer and Provisional Detention (Under Rule 40*bis* of the Rules) (TC), 18 February 1999.
[2799] T. 23 March 1999 pp. 9-10, 25-26; *Bizimungu,* Decision on the Extension of the Provisional Detention for a Maximum Period of Thirty Days (Rule 40*bis* (F) of the Rules of Procedure and Evidence) (TC), 23 March 1999.
[2800] T. 20 April 1999 pp. 25-30.
[2801] *Bizimungu,* Decision on an Extremely Urgent Application Filed by the Defence Pursuant to Rule 40*Bis* (K) of the Rules for an Order to Apply the Provisions of Rule 40*bis* (L) of the Rules, 4 May 1999.
[2802] *Mugenzi et al.*, Decision on Mugenzi's Motion for Relief Under Rule 54 (TC), 18 October 2000. The Chamber observes that during the initial appearance on 17 August 1999, the transcript mistakenly indicates that Mugenzi was arrested in Cameroon on 16 April 1994. T. 17 August 1999 p. 14. *Bicamumpaka,* Order for the Transfer and Provisional Detention (Under Rule 40*bis* of the Rules of Procedure and Evidence) (TC), 16 April 1999. *Mugiraneza*, Order for Transfer and Provisional Detention (Under Rule 40*bis* of the Rules of Procedure and Evidence) (TC), 19 April 1999; *Mugiraneza*, Decision on Mugiraneza's Motion for Relief under Rule 54 (TC), 18 October 2000.

period of 30 days upon arrival.[2803] Judge Lloyd G. Williams ordered the transfer from Cameroon and provisional detention of 30 days for Mugenzi on and Mugiraneza pursuant to Rule 40 *bis* on 19 April 1999, having also found that reliable and consistent information tended to show that Mugenzi and Mugiraneza may have committed crimes within the Tribunal's jurisdiction.[2804]

3. CASIMIR BIZIMUNGU *ET AL.*

3.1 Pre-Trial Proceedings

6. On 7 May 1999, the Prosecution submitted an Indictment against Bizimungu, Mugenzi, Bicamumpaka and Mugiraneza. Five days later, on 12 May 1999, Judge Navanethem Pillay confirmed the Indictment, subject to an amendment that complicity in genocide be pleaded as an alternative to genocide. The Judge held that reasonable grounds existed to believe that the Accused had committed conspiracy to commit genocide, genocide, complicity in genocide, direct and public incitement to commit genocide, murder, extermination and rape as crimes against humanity, as well as violence to life and outrages upon personal dignity as violations of Article 3 common to the 1949 Geneva Conventions and Additional Protocol II thereto.[2805] The Prosecution re-filed the Indictment on 12 May 1999.

7. On 13 May 1999, after having confirmed the Indictment, Judge Navanetham Pillay issued a warrant of arrest and order of continued detention for Bizimungu.[2806] Judge Pillay also issued warrants of arrest and continued detention of Mugenzi, Bicamumpaka and Mugiraneza. The orders repeated requests that these three Accused be transferred from Cameroon to the Tribunal.[2807]

8. On 31 July 1999, Mugenzi, Bicamumpaka and Mugiraneza were transferred to the Tribunal from Cameroon.[2808] Bizimungu and these three Accused made their initial appearances pursuant to Rule 62 on 17 August 1999. The Chamber granted a motion raised by Bizimungu's Duty Counsel to post-pone his initial appearance and enter of plea until the imminent arrival of his assigned Counsel.[2809]

9. The Chamber dismissed an oral motion raised by Bicamumpaka's Duty Counsel, Raphaël Constant, to adjourn the 17 August 1999 hearing until the Registry had made a determination on Bicamumpaka's chosen counsel, Francine Veilleux. Instead, the Chamber

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[2803] *Bicamumpaka*, Order for Transfer and Provisional Detention (TC), 16 April 1999.
[2804] *Mugenzi*, Order for Transfer and Provisional Detention (TC), 19 April 1999; *Mugiraneza*, Order for Transfer and Provisional Detention (TC), 19 April 1999.
[2805] Confirmation of the Indictment (TC), 12 May 1999, p. 2. The same Indictment was re-filed on 16 August 1999 with the Registry.
[2806] *Bizimungu*, Warrant for Arrest and Order for Continued Detention (Office of the President), 13 May 1999.
[2807] *Mugenzi*, Warrant for Arrest and Order for Continued Detention (Office of the President), 13 May 1999; *Bicamumpaka*, Warrant for Arrest and Order for Continued Detention (Office of the President), 13 May 1999; *Mugiraneza*, Warrant for Arrest and Order for Continued Detention (Office of the President), 13 May 1999.
[2808] T. 17 August 1999 p. 14 (Mugenzi arrived on 31 July 1999); Decision on Mugenzi's Motion for Relief under Rule 54 (TC) 18 October 2000 (noting Mugenzi's transfer to the Tribunal on 31 July 1999); Decision on the Motion Requesting the Assignment of Francine Veilleux as Defence Counsel for Jérôme-Clément Bicamumpaka (TC), 6 October 1999 (considering that Bicamumpaka was transfered to the Tribunal on 31 July 1999); Decision on Mugiraneza's Motion for Relief under Rule 54 (TC), 18 October 2000 (noting Mugiraneza's transfer to the Tribunal on 31 July 1999).
[2809] T. 17 August 1999 pp. 20-26, 42-44.

ordered Duty Counsel to proceed for the hearing, and the Chamber entered a plea of not guilty to all counts on Bicamumpaka's behalf.[2810] Mugenzi and Mugiraneza pleaded not guilty to all counts in the Indictment.[2811] On 3 September 1999 Bizimungu made a second initial appearance, where he pleaded not guilty to the charges in the Indictment.[2812]

10. Michael Greaves was assigned as Lead Counsel for Prosper Mugiraneza on 23 September 1999.[2813] On 6 October 1999, the Chamber dismissed Bicamumpaka's motion requesting assignment of Francine Veilleux as Lead Counsel, finding that the matter was under the competence of the Registrar. The Chamber ordered the Registry to urgently make a determination on the indigence of the Accused and either grant or deny Bicamumpaka assignment of Counsel.[2814] Bicamumpaka's appeal of the decision was rejected by the Appeals Chamber. It held that because the appeal was not from a conviction or an objection based on lack of jurisdiction pursuant to Rule 72 (D), the matter was not under the Appeals Chamber's competence.[2815] By a letter dated 27 January 2000, the Registry assigned Francine Veilleux as Lead Counsel for Bicamumpaka.[2816]

11. On 8 May 2000, the Chamber dismissed a Bicamumpaka Defence motion objecting to defects in the form of the Indictment under Rules 47 (B) and (D) and 72 (B)(ii) and lack of jurisdiction pursuant to Rules 5 and 72 (B)(i).[2817]

12. On 4 July 2000, the Chamber granted a Mugenzi Defence motion for withdrawal of its 2 May 2000 motion requesting separate trials.[2818] On 6 July 2000, Trial Chamber II denied a Prosecution motion to join Bizimungu, Mugenzi, Bicamumpaka and Mugiraneza with the case of Édouard Karemera and André Rwamakuba (ICTR-98-44-T), Jean de Dieu Kamuhanda (ICTR-98-54-T) and Eliézer Niyitegeka (ICTR-96-14-T).[2819]

13. On 12 July 2000, the Chamber granted protective measures for Prosecution witnesses in proceedings against Mugenzi, Bicamumpaka and Mugiraneza, and ordered the disclosure of those witnesses' identities no later than 21 days before their testimony.[2820] The Chamber issued the same order with respect to Bizimungu on 22 September 2000.[2821]

[2810] T. 17 August 1999 pp. 14, 26-39, 44-48, 98-108.
[2811] T. 17 August 1999 pp. 14, 92-98 (Mugenzi plea), 108-111 (Mugiraneza plea).
[2812] T. 3 September 1999 pp. 52-55.
[2813] Decision of Withdrawal of Mr. Michael Greaves Lead Counsel of the Accused Prosper Mugiraneza (Registry), 5 May 2002.
[2814] Decision on the Motion Requesting the Assignment of Francine Veilleux as Defence Counsel for Jérôme-Clément Bicamumpaka (TC), 6 October 1999.
[2815] Decision Rejecting Notice of Appeal (AC), 11 November 1999.
[2816] Decision of Withdrawal of Ms. Francine Veilleux Lead Counsel of the Accused Jérôme Bicamumpaka (Registry), 3 May 2002.
[2817] *Bicamumpaka*, Decision on Motion for Defects in the Form of the Indictment (TC), 8 May 2000.
[2818] *Décision Autorisant le Retrait de la Requête de la Défense en Disjunction d'Instances* (TC), 4 July 2000.
[2819] *Bizimungu et al., Karemera et al., Kamuhunda, and Niyitegeka*, Decision on the Prosecution's Motion for Joinder (TC), 6 July 2000. On 2 May 2000, Trial Chamber II granted a Prosecution request to withdraw a prior motion seeking joinder of Niyitegeka with Bizimungu, Mugenzi, Bicamumpaka, and Mugiraneza, with Bizimana, Karamera, Nzabonimana, Rwamakuba, Ngirumpatse, Nzirorera, Kabuga and Kajelijeli.
[2820] *Bicamumpaka,* Decision on the Prosecution's Motion for Protective Measures for Witnesses (TC), 12 July 2000; *Mugenzi,* Decision on the Prosecution's Motion for Protective Measures for Witnesses (TC), 12 July 2000; *Mugiraneza,* Decision on the Prosecution's Motion for Protective Measures for Witnesses (TC), 12 July 2000.
[2821] *Bizimungu,* Decision on the Prosecution's Motion for Protective Measures for Witnesses (TC), 22 September 2000

14. On 20 September 2000, Judith Bourne requested the Registrar to withdraw her as Bizimungu's Counsel. The Chamber ordered the replacement of Bourne on 21 September.[2822] Taking note of the Chamber's decision, the Registry withdrew Bourne on 29 September 2000,[2823] and subsequently appointed Mr. Brian Shell.[2824]

15. On 18 October 2000, the Chamber dismissed a Mugenzi and Mugiraneza Defence motions seeking annulment of the Indictment because it did not bear the stamp of the Office of the Prosecutor and the Seal of the Tribunal. The Chamber decided that the Indictment was valid, and therefore the arrest, detention and all subsequent proceedings against Mugenzi and Mugiraneza were lawful.[2825]

16. On 23 July 2001, the Registrar denied the respective requests of Bizimungu and Brian Shell to withdraw Shell as Lead Counsel, stating that a loss of confidence between the two had not been established.[2826] Judge Navanethem Pillay subsequently reversed the decision, and directed the Registrar to assign a new Lead Counsel without delay.[2827] The Registrar withdrew Shell[2828] and thereafter Michelyne C. St-Laurent became Lead Counsel.[2829]

17. On 25 July 2001, the Chamber denied a Bicamumpaka Defence motion for provisional release, determining that the Accused had not provided enough information to prove his release was medically necessary. The Chamber further found that the length of his detention did not constitute an "exceptional circumstance" under Rule 65 (B).[2830]

18. On 19 September 2001, the Chamber dismissed a Mugiraneza Defence motion alleging obstruction by the Commandant of UNDF concerning communication between Mugiraneza and his Defence Counsel. The Chamber found that the identified incidents were not violations of privileged communication. The Chamber acknowledged, however, that correspondence or communication brought from a member of the Defence team other than Counsel may be passed to the Accused if clearly identified as privileged and secured so that no one other than the Accused may see its contents.[2831]

[2822] *Bizimungu,* Décision Relative à la Requête de l'Accusé Bizimungu Visant au Retrait et au Remplacement de son Conseil Principal (TC), 21 September 2000.

[2823] *Bizimungu,* Decision of Withdrawal of Mrs. Judith Bourne as Defence Counsel of Casimir Bizimungu (Registry), 29 September 2000.

[2824] *Bizimungu,* Decision Denying the Request for Withdrawal of Assignment of Mr. Brian Shell as Lead Counsel for Mr. Casimir Bizimungu (Registry), 23 July 2001 (noting that Mr. Brian Shell was appointed counsel on 7 November 2000).

[2825] *Mugenzi et al.*, Decision on Mugenzi's Motion for Relief under Rule 54 (TC), 18 October 2000; *Mugiraneza et al.*, Decision on Mugiraneza's Motion for Relief under Rule 54 (TC), 18 October 2000.

[2826] *Bizimungu,* Decision Denying the Request for Withdrawal of Assignment of Mr. Brian Shell as Lead Counsel for Mr. Casimir Bizimungu (Registry), 23 July 2001.

[2827] *Bizimungu,* The President's Decision on Review, in Accordance with Article 19 (E) of the Directive on Assignment of Defence Counsel (President), 20 September 2001.

[2828] *Bizimungu,* Decision on the Withdrawal of the Assignment of Mr. Brian Shell, Lead Counsel for Casimir Bizimungu (Registry), 21 September 2001.

[2829] T. 30 November 2001 p. 2.

[2830] *Bicamumpaka,* Decision on the Defence's Motion for Provisional Release Pursuant to Rule 65 of the Rules (TC), 25 July 2001. The Chamber rejected a later motion requesting clarification on what constitutes an "exceptional circumstance", holding that the matter had been decided in its decision of 25 July 2001. *Bicamumpaka,* Decision on the Defence Motion on a Point of Law (Rule 73) (TC), 8 April 2003.

[2831] *Mugiraneza et al.*, Decision on the Defence Urgent Motion for Relief under Rule 54 to Prevent the Commandant of the UNDF from Obstructing the Course of International Criminal Justice (TC), 19 September 2001.

19. On 3 May 2002, the Registrar simultaneously approved Francine Veilleux's request for withdrawal as Bicamumpaka's Lead Counsel and assigned Pierre Gaudreau in her place.[2832] The Registrar approved Mugiraneza's request to withdraw Michael Greaves as his lead counsel on 23 May 2002.[2833]

20. On 5 September 2002, the Chamber granted a Bizimungu Defence motion for protective measures for witnesses, and ordered the disclosure of their identities to the Prosecution at least 21 days before testimony.[2834]

21. On 4 November 2002, the Chamber dismissed a Bizimungu Defence motion for provisional release, holding that no "exceptional circumstances" under Rule 65 (B) justified the request.[2835] The Appeals Chamber subsequently dismissed Bizimungu's appeal against this decision, holding that the Defence failed to establish that the Trial Chamber erred in reaching its decision and therefore failed to show "good cause" justifying appellate review.[2836]

22. On 8 November 2002, the Chamber denied a Mugenzi Defence motion for a stay of the proceedings or, in the alternative, provisional release and severance of trial for violation of his right to be tried without undue delay. The Chamber held that undue delay had not been established by the Defence. Provisional release and a separate trial were not warranted.[2837]

23. On 15 November 2002, the Chamber dismissed a Bizimungu Defence motion requesting that Defence investigators and legal assistants be allowed privileged access to the Accused under Rule 65. The Chamber held that Rule 65 only protects privileged access to the Accused for Counsel and Co-Counsel, but noted that the Registrar may grant access to other members of the Defence under exceptional circumstances.[2838]

24. On 2 October 2003, the Chamber dismissed a Mugiraneza Defence motion to dismiss the Indictment for undue delay, in violation of Article 20 (4)(c) of the Statute. The Chamber held that the rights of the Accused must be balanced with other considerations, such as the fundamental purpose of the Tribunal, which is to ascertain the truth about the crimes charged. The Chamber also noted that the trial was scheduled to imminently commence.[2839] The

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[2832] *Bicamumpaka*, Decision of Withdrawal of Ms. Francine Veilleux Lead Counsel of the Accused Jérôme Bicamumpaka (Registry), 3 May 2002.
[2833] *Bicamumpaka*, Decision of Withdrawal of Mr. Michael Greaves Lead Counsel of the Accused Prosper Mugiraneza (Registry), 23 May 2002.
[2834] Decision on Bizimungu's Motion for Protective Measures for Witnesses (TC), 5 September 2002.
[2835] Decisio n on Bizimungu's Motion for Provisional Release Pursuant to Rule 65 of the Rules (TC), 4 November 2002.
[2836] *Bizimungu*, Decision on the Applicant to Appeal Against the Provisional Release Decision of Trial Chamber II of 4 November 2002 (AC), 13 December 2002.
[2837] *Mugenzi et al.*, Decision on Justin Mugenzi's Motion for Stay of Proceedings or in the Alternative Provisional Release (Rule 65) and in Addition Severance (Rule 82 (B)) (TC), 8 November 2002; *Mugenzi et al.*, Corrigendum to the Decision on Justin Mugenzi's Motion for Stay of Proceedings or in the Alternative Provisional Release (Rule 65) and in Addition Severance (Rule 82 (B)) (TC), 29 November 2002.
[2838] *Bizimungu*, Decision on the Defence Motion to Protect the Applicant's Right to Full Answer and Defence (TC), 15 November 2002.
[2839] *Mugiraneza*, Decision on Prosper Mugiraneza's Motion to Dismiss the Indictment for Violation of Article 20 (4)(C) of the Statute, Demand for Speedy Trial and for Appropriate Relief (TC), 2 October 2003.

Chamber granted certification to appeal the decision[2840] and the Appeals Chamber subsequently vacated it. It held that the Trial Chamber erred as a matter of law by considering the fundamental purpose of the Tribunal as a factor to be considered in its determination, and for failing to conduct a proper inquiry into the conduct of the parties. The issue was remitted to the Trial Chamber.[2841] Considering the Appeals Chamber decision, the Trial Chamber held that Article 20 (4)(c) had not been violated and dismissed the motion.[2842] The Trial Chamber denied a Mugiraneza Defence motion for leave to appeal this decision.[2843]

25. On 6 October 2003, the Chamber denied the Prosecution leave to file a proposed amended indictment ("Proposed Amended Indictment").[2844] The Chamber certified this decision for appeal.[2845] After the commencement of trial the Prosecution case, the Appeals Chamber affirmed the Trial Chamber's decision.[2846]

26. The Prosecution filed its Pre-Trial Brief on 20 October 2003. Three days later, the Chamber dismissed a Mugiraneza Defence motion requesting equality of arms when interviewing Prosecution witnesses, holding that the integrity of the proceedings does not necessarily require that Defence representatives be present when the Prosecution interviews its own witnesses.[2847] On the same day, it rejected a Mugiraneza Defence motion for protective measures for witnesses.[2848]

27. On 29 October 2003, the Chamber denied a Mugenzi Defence motion for a pre-trial conference and confirmation of a trial date, noting that the pre-trial conference had already occurred, and that the trial had been scheduled for 3 November 2003.[2849]

28. On 31 October 2003, the Chamber dismissed a Defence motion requesting relief from the Prosecution's failure to disclose unredacted witness statements 21 days before trial. The Chamber noted that the Prosecution filed the statements 14 days before trial, and that the Defence had failed to show prejudice caused by the seven-day delay.[2850] On 5 November 2003 the Chamber rejected a second Defence motion to exclude the testimony of any

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[2840] *Mugiraneza*, Decision on Prosper Mugiraneza's Request Pursuant to Rule 73 for Certification to Appeal Denial of His Motion to Dismiss for Violation of Article 20 (4)(c) of the Statute, Demand for Speedy Trial and Appropriate Relief (TC), 29 October 2003.
[2841] *Mugiraneza*, Decision on Prosper Mugiraneza's Interlocutory Appeal from the Trial Chamber II Decision of 2 October 2003 Denying the Motion to Dismiss the Indictment, Demand Speedy Trial and for Appropriate Relief (AC), 27 February 2004.
[2842] Decision on Prosper Mugiraneza's Application for a Hearing or Other Relief on His Motion for Dismissal for Violation of His Right to a Trial without Undue Delay (TC), 3 November 2004.
[2843] Decision on Prosper Mugiraneza's Motion for Leave to Appeal from the Trial Chamber's Decision of 3 November 2004 (TC), 24 February 2005.
[2844] Decision on the Prosecution's Request for Leave to File an Amended Indictment (TC), 6 October 2003.
[2845] Decision on the Prosecution's Request Pursuant to Rule 73(B) for Certification to Appeal an Order Denying Leave to File an Amended Indictment (TC), 29 October 2003.
[2846] Decision on Prosecution's Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment (AC), 12 February 2004. For further discussion regarding litigation over the Proposed Amended Indictment, *see* I.7.
[2847] *Mugiraneza*, Decision on Prosper Mugiraneza's Motion for Equality of Arms Related to Access to Witnesses (TC), 23 October 2003.
[2848] *Mugiraneza et al.*, Decision on Prosper Mugiraneza's Motion for Protective Measures for Witnesses (TC), 23 October 2003.
[2849] Decision on Motion on Behalf of Justin Mugenzi for the Confirmation of a Trial Date and a Fixing of a Date for a Pre-Trial Conference (TC), 29 October 2003.
[2850] Decision on Prosper Mugiraneza's Motion to Prohibit the Calling of Any Prosecution Witness until the Prosecution Complies with the Trial Chamber's Disclosure Order (TC), 31 October 2003.

witnesses until the Prosecution complied with the Trial Chamber's disclosure order and Rule 66 (A)(ii), holding that the same issues raised in the motion had been resolved in previous decisions.[2851]

3.2 The Prosecution Case

29. The Prosecution case in the *Bizimungu et al.* proceedings commenced on 6 November 2003 before Trial Chamber II, composed of Judge Asoka de Zoysa Gunawardana, presiding, Judge Khalida Rachid Khan and Judge Lee Gacuiga Muthoga.[2852] Over the course of 178 trial days, the Prosecution led evidence through 57 witnesses and concluded its case on 23 June 2005. The Prosecution's case comprised five trial sessions: from 6 November through 15 December 2003; from 19 January through 25 March 2004; from 7 June through 8 July 2004; from 13 September through 28 October 2004; and from 1 March through 23 June 2005.

30. The Chamber took judicial notice under Rule 94 (B) of the existence and authenticity of certain UN Documents and official Rwandan government on 2 December 2003.[2853] On 3 December 2003, the Trial Chamber granted Mugenzi's Defence to disregard evidence from Witness FW concerning alleged meetings with Mugenzi in Witness FW's cousin's home and the PL headquarters, three rallies and any matters prior to 1994 not related to events in the witness statement because the Defence was given inadequate notice of this evidence.[2854]

31. On 4 December 2003, the Chamber denied a Mugiraneza Defence motion requesting exclusion of custodial statements from his detention in Cameroon, holding that the Accused unequivocally waived his right to counsel under Rule 42 when he spoke to authorities there. The Chamber further held that his eight-day detention between his arrest and the request for transfer by the Prosecution was not unlawful.[2855]

32. On 8 December 2003, 10 December 2003 and 29 January 2004, the Chamber granted in part three Mugiraneza Defence motions requesting the interview of Witnesses GJS, GNN, GJT, GKT, GKP, GTF and potential Witness GNH for possible exculpatory information, as well as the disclosure of the unredacted witness statement of Witness GNH.[2856]

33. On 16 December 2003, the Chamber ordered the adjournment of proceedings, and scheduled the next trial session resume on 19 January 2004 and to continue until 26 March 2004.[2857]

[2851] Decision on Prosper Mugiraneza's Renewed Motion to Exclude Testimony of Witnesses until the Prosecution Complies with the Trial Chamber's Disclosure Order and Rule 66(A)(ii) (TC), 5 November 2003.
[2852] T. 6 November 2003. The Prosecution case in *Bizimungu et al.* proceedings was initially scheduled to commence on 3 November 2003 but was postponed until 6 November 2003 as counsel for Mugiraneza was unable to be present. T. 3 November 2003 p. 9.
[2853] Decision on Prosecution's Motion for Judicial Notice Pursuant to Rules 73, 89 and 94 (TC), 2 December 2003.
[2854] T. 3 December 2003 pp. 35-37. The following day, the Prosecution was instructed to provide translations of extracts of audio tapes played to Witness FW. T. 4 December 2003 pp. 13-14.
[2855] Decision on Prosper Mugiraneza's Renewed Motion to Exclude His Custodial Statements from Evidence (TC), 4 December 2003.
[2856] Decision on Prosper Mugiraneza's Motion for Exculpatory Evidence Pursuant to Rule 68 and to Vary Protective Measures (TC), 8 December 2003; Decision on Prosper Mugiraneza's Motion to Compel Disclosure of Exculpatory Evidence Pursuant to Rule 68 (TC), 10 December 2003; Decision on Prosper Mugiraneza's Motion to Vary Protective Measures and to Order the Prosecution to Provide an Unredacted Copy of Admittedly Exculpatory Statement (TC), 29 January 2004.
[2857] T. 16 December 2003 pp. 6-7.

34. On 23 January 2004, the Trial Chamber found that no specific acts were alleged against Bizimungu in the Indictment for events that took place in Ruhengeri prefecture. Therefore, the testimony of Witnesses GKB and GAP regarding Bizimungu's involvement in Ruhengeri prefecture was to be disregarded and future testimony of Witnesses GKC, GKD and GFA in this regard was to be disallowed.[2858] On 3 February 2004, noting its previous decision, the Chamber similarly held that Witnesses AEI, GKE, GKF and GKI should not give testimony regarding Bizimungu in Ruhengeri prefecture.[2859] Certification to appeal these decisions was granted.[2860] Both were subsequently upheld by the Appeals Chamber.[2861]

35. On 27 January 2004, the Chamber denied a Mugenzi Defence motion to exclude portions of the testimony of Prosper Higiro as outside the scope of his statements, holding that the Defence was not materially prejudiced by the testimony.[2862]

36. On 5 February 2004, the Chamber found that evidence of Witnesses GJV, GJQ, GJY, GKS, GKM, GTF, GKR, GJT, GJR, GJU, GJN, GJO, GKT, GJX, GJW, GJZ and LY was inadmissible insofar as it implicated Mugiraneza in Kibungo and Cyangugu prefectures. However, evidence from Witnesses GJV, GJQ, GJY, GKS, GKM, GTF, GKR, GJT, GJR, GJU, GJN, GJO, GKT, GJX, GJW and GJZ could be adduced in support of Counts 1 (conspiracy to commit genocide) and 3 (complicity in genocide) of the Indictment. Finally, the Chamber held that evidence from Witnesses GTE and GKP implicating Mugiraneza for events that took place in Kibungo prefecture could be relied upon, as the Witnesses had already testified and the Defence failed to raise their objection at the appropriate time.[2863]

37. The Prosecution and Prosper Mugiraneza were granted certification to appeal the 5 February 2004 decision.[2864] The Appeals Chamber ordered the Trial Chamber to reconsider its decision of 5 February 2004. Specifically, it noted that the Trial Chamber had excluded evidence of Bizimungu's involvement in events in Ruhengeri where material facts of related to events in that area were not included in the Indictment. By allowing evidence of events in prefectures not included in the Indictment in support of counts 1 and 3 against Mugiraneza, the Trial Chamber had treated similarly situated defendants differently and committed error.

[2858] Decision on Motion from Casimir Bizimungu Opposing to the Admissibility of the Testimony of Witnesses GKB, GAP, GKC, GKD and GFA (TC), 23 January 2004. *See also* T. 26 January 2004 p. 1 (French).
[2859] Decision on Motion from Casimir Bizimungu Opposing to the Admissibility of the Testimony of Witnesses AEI, GKE, GKF and GKI (TC), 3 February 2004. *See also* T. 4 February 2004 p. 1 (providing instruction that the Prosecution cannot lead evidence from witnesses on the basis of certain witness statements, which refer only to events involving Bizimungu in Ruhengeri prefecture).
[2860] Decision on the Prosecution Motion for Certification to Appeal the Chamber's Decision of 3 February 2004 (TC), 20 February 2004.
[2861] Decision on Prosecution's Interlocutory Appeals Against Decisions of the Trial Chamber on Exclusion of Evidence (AC), 25 June 2004.
[2862] T. 27 January 2004 p. 47; Decision on Motion to Exclude Portions of the Evidence of Witness Prosper Higiro (TC), 30 January 2004.
[2863] Decision on Prosper Mugiraneza's Motion to Exclude Testimony of Witnesses Whose Testimony is Inadmissible in View of the Trial Chamber's Decision on 23 January 2004 and for Other Appropriate Relief (TC), 5 February 2004.
[2864] Decision on the Prosecution Motion for Certification to Appeal the Chamber's Decision of 5 February 2004 (TC), 24 March 2004; Decision on the Accused Mugiraneza's Motion for Certification to Appeal the Chamber's Decision of 5 February 2004 (TC), 24 March 2004.

It also directed the Trial Chamber to reconsider its decision not to exclude Witness GTE's testimony for the same reasons.[2865]

38. In light of the Appeals Chamber's guidance, Trial Chamber expanded its reasoning as to why the evidence pertaining to events in Kibungo and Cyangugu prefectures could be considered in support of the conspiracy to commit genocide and complicity in genocide counts, upholding its original decision of 5 February 2004. It considered that given prior notice provided through the Pre-Trial Brief and witness statements, the Mugiraneza Defence received adequate notice of these events and suffered no prejudice from the admission of this evidence.[2866] The Trial Chamber subsequently denied certification to appeal this decision.[2867]

39. On 11 February 2004, the Chamber denied a Bicamumpaka Defence motion requesting judicial notice that Juvénal Kajelijeli was appointed *bourgmestre* of Mukingo commune on 26 June 1994 based on the Trial Judgement in *Prosecutor v. Kajelijeli*.[2868]

40. On 23 April 2004, the Chamber granted a Bicamumpaka Defence motion and ordered the Prosecution to request previous statements of Witness GAP made to the Rwandan authorities, and disclose to the Defence the location of Witnesses GLK, GLN and GLO, who were no longer being called as Prosecution witnesses.[2869]

41. On 12 May 2004, the Chamber denied a Mugiraneza Defence motion requesting that the Prosecution Senior Trial Attorney be held in contempt for the accidental filing of a public motion that included the names of protected witnesses.[2870]

42. On 19 May 2004, the Chamber denied, without prejudice to further applications, the Prosecution's motions to vary the Prosecution's initial witness list. It ordered the Prosecution to file a consolidated and final list of witnesses three days after the filing of its decision.[2871]

43. On 25 May 2004 the Chamber denied Bicamumpaka's motion to inspect material in Prosecution's possession relating to Prime Minister Jean Kambanda.[2872] Also on this day, the Chamber granted the Mugiraneza Defence motion for the disclosure of information related to Witness CD by the Prosecution.[2873]

[2865] Decision on Mugiraneza Interlocutory Appeal Against Decision of the Trial Chamber on Exclusion of Evidence (AC), 15 July 2004.
[2866] Decision on Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004 (AC), 4 October 2004.
[2867] Decision on Prosper Mugiraneza's Motion for Leave to Appeal from the Trial Chamber's Decision of 4 October 2004 (TC), 8 December 2004.
[2868] Decision on Bicamumpaka's Motion for Judicial Notice (TC), 11 February 2004.
[2869] Decision on Motion of Accused Bicamumpaka for Disclosure of Exculpatory Evidence (TC), 23 April 2004.
[2870] Decision on Prosper Mugiraneza's Motion for an Order Requiring Paul Ng'arua to Show Why He Should Not Be Held in Contempt of the Tribunal (TC), 12 May 2004. The Chamber later denied a motion requesting that the witnesses be informed of the disclosure of their identities, in light of the fact that circulation of the information was limited and that no actual harm had occurred from the disclosure. Decision on Prosper Mugiraneza's Motion to Order the Registrar to Inform Witnesses of Breach of Protective Order (TC), 21 June 2004.
[2871] Decision on the Motions for Variation of the Prosecution's Initial Witness List (TC), 19 May 2004.
[2872] Decision on Jérôme Bicamumpaka's Motion to Inspect Material Relating to Jean Kambanda (TC), 25 May 2004.
[2873] Decision on Prosper Mugiraneza's Motion Pursuant to Rule 68 for Exculpatory Evidence (TC), 25 May 2004. The Chamber subsequently held that the Prosecution had fulfilled its obligations pursuant to Rule 68 in relation to the 25 May 2004 decision. It also denied a corresponding request to subpoena the United States Government in view of the fact that the Defence had not made all reasonable efforts to obtain information on its

44. On 4 June 2004, the Chamber announced that Judge Asoka de Zoysa Gunawardana had asked to be released on the ground of ill health, and that his request had been accepted by the President of the Tribunal. In his place, the Chamber welcomed Judge Emile Francis Short to the panel, who certified that he had familiarised himself with the record in the proceedings.[2874]

45. On 4 June 2004 the Trial Chamber granted the Prosecution motion for allowing the testimonies of Witnesses D and M be permitted via secure audio-video transmission located in The Hague. The Prosecution was ordered to disclose to the Defence all redacted statements of Witness M immediately.[2875]

46. On 17 June 2004, the Chamber ruled that the Mugiraneza Defence could not enter exhibits into evidence to show the inconsistencies in statements made by Prime Minister Jean Kambanda. The Chamber denied the request, as the purpose of the exhibits were to impeach Kambanda, who was not testifying at that moment.[2876] On the same day, the Chamber denied the Bizimungu Defence's urgent motion opposing the testimony of Witness GKD.[2877]

47. On 22 June 2004, the Chamber granted a Bicamumpaka Defence motion for the return of passports that were in possession of the Commander of the UNDF, ruling that they were useful in the preparation of his defence.[2878]

48. On 23 June 2004, the Chamber held that Prosecution Witness GLP could testify regarding an alleged MDR hit-list, but that the Prosecution could not link the evidence of an actual list directly to Bicamumpaka during examination-in-chief.[2879] Also on this day, the Chamber granted a Prosecution to remove Witnesses Silas Siyingaya, Upendra Baghel, Filip Reyntjens, Roméo Dallaire, Mathaias Ruzindana, Georges Ruggiu, André Guichaoua, Jean-Baptiste Nsanzimfura, GLX, GLQ, ACV, GKH, GJD, CV, ADT, GBN, GKF, GJJ, GHX,

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own. Decision on Prosper Mugiraneza's Motion Pursuant to Rule 68 for Exculpatory Evidence or in the Alternative, Motion for Subpoena to the Government of the United States of America (TC), 8 December 2004.

[2874] T. 4 June 2004 p. 1; Certification in the Matter of Proceedings under Rule 15*bis* (C) (TC), 3 June 2004 (bearing Judge Emile Francis Short's certification in this regard, and also noting that all four Accused had agreed to continue the proceedings with a substitute Judge).

[2875] Decision on Prosecution's Extremely Urgent Motion Requesting that the Extraordinarily Vulnerable Witnesses X/006 and 039 Testify by Closed Video Transmission Link with a Location at The Hague and Other Related Special Protective Measures Pursuant to Article 21 of the Statute and Rules 73 and 75 of the Rules of Procedure and Evidence (TC), 4 June 2004. A prior Prosecution *ex parte* motion for this relief was rejected and the Prosecution was ordered to refile the motion *inter partes*. *See* Decision on Prosecution's Extremely Urgent and *Ex Parte* Motion Requesting that the Extraordinarily Vulnerable Witnesses X/006 and O39 Testify by Closed Video Transmission Link with a Location at The Hague and for Other Related Special Protective Measures Pursuant to Article 21 of the Statute and Rules 73 and 75 of the Rules of Procedure and Evidence (TC), 6 May 2004.

[2876] T. 17 June 2004 pp. 29-31. The Chamber later refused a Mugiraneza Defence request for certification of this decision. Decision on Prosper Mugiraneza's Motion Pursuant to Rule 73(b) for Leave to Appeal the Trial Chamber's Oral Rulings of 17 June 2004 (TC), 30 September 2004. *See also* Decision on Justin Mugenzi and Jérôme Bicamumpaka's Motion to Have the Chamber Inquiring into the Matter of the Testimony of Jean Kambanda (TC), 17 June 2004 (denying the motion on the basis that the Prosecution has indicated that Jean Kambanda is on its witness list).

[2877] Decision on Casimir Bizimungu's Urgent Motion Opposing the Testimony of Witness GKD (TC), 17 June 2004.

[2878] Decision on Jérôme-Clément Bicamumpaka's Motion for Return of Personal Properties (TC), 22 June 2004.

[2879] T. 23 June 2004 p. 19.

GJZ, GLL, GIA, GJN, GMG, GMB, GTC, JO, LY, CR, GIC and DCR from its witness list and to include Witnesses AME, GFA, DCH, GHT and GHY.[2880]

49. On 1 July 2004, the Chamber denied Bizimungu's urgent and confidential motion for exclusion of the testimonies of Witnesses GKF, GBN, ADT and GTD. It held that the Defence had been given sufficient notice to prepare its case regarding their evidence.[2881]

50. On 24 August 2004, the Chamber varied its prior decision of 2 October 2003, which would allow the Defence to interview Prosecution Witness Prime Minister Jean Kambanda in the presence of Prosecution representative. The Chamber noted that Kambanda had indicated that he would only conduct the interview in the absence of a Prosecution representative. It ordered that a Registry representative be present.[2882] The Chamber denied a subsequent Mugiraneza Defence motion to interview former Prime Minister Jean Kambanda in the absence of a representative of the Tribunal.[2883] It later varied this decision to allow the Mugiraneza Defence to interview Kambanda without a Registry representative being present.[2884]

51. On 3 September 2004, the Chamber granted a Prosecution motion to include Witness GTC on the Prosecution witness list.[2885] The Chamber denied a Mugiraneza Defence motion for adjournment of the 13 September 2004 trial session on the same day.[2886]

52. On 14 September 2004, the Chamber denied a Mugiraneza Defence request for information from meetings between the Prosecution and Witness GKI at UNDF on or around 7 February 2004. The Defence had failed to demonstrate disclosure was required pursuant to Rule 68.[2887]

53. On 28 September 2004, the Chamber dismissed a Mugenzi Defence motion for exclusion of the report and evidence of Witness Joseph Ngarambe.[2888] However, it later upheld Defence objections to Ngarambe's report, emphasising that he was not an expert and that the Chamber did not have access to the materials upon which the report was based.[2889]

[2880] Decision on Prosecution's Very Urgent Motion Pursuant to Rule 73*bis* (e) for Leave to Vary the Prosecution's List of Witnesses (TC), 23 June 2004.
[2881] Decision on Urgent and Confidential Motion from Casimir Bizimungu Opposing to the Admissibility of the Testimony of Witnesses GKF, GBN, ADT, GTD (TC), 1 July 2004.
[2882] Decision on Prosper Mugiraneza's Motion to Vary Restrictions in the Trial Chamber's Decision of 2 October 2003 Related to Access Jean Kambanda (TC), 24 August 2004.
[2883] Decision on Prosper Mugiraneza's Extremely Urgent Motion to Vary Conditions of Interview with Jean Kambanda (TC), 19 January 2005.
[2884] Decision on Prosper Mugiraneza's Emergency Motion to Vary Conditions on Interview of Jean Kambanda (TC), 5 April 2006.
[2885] Decision on Prosecution's Very Urgent Motion Pursuant to Rule 73*bis* (e) to Vary the Prosecution's List of Witnesses Filed on 25 May 2004. (TC), 3 September 2004.
[2886] Decision on Prosper Mugiraneza's Motion for Adjournment of 13 September Trial Session (TC), 3 September 2004.
[2887] Decision on Prosper Mugiraneza's Motion Pursuant to Rule 68 for Exculpatory Evidence Related to Witness GKI (TC), 14 September 2004.
[2888] Decision on Justin Mugenzi's Motion in Respect of the Report and Proposed Evidence of Joseph Ngarambe (TC), 28 September 2004. On 18 October 2004, the Chamber amended paragraph 2 on page 2 and paragraph 19 on page 5 of this decision. Decision on Justin Mugenzi's Motion in Respect of the Report and Proposed Evidence of Joseph Ngarambe (TC), 18 October 2004.
[2889] T. 8 October 2004 pp. 27-31.

54. On 6 October 2004, the Chamber denied a Bicamumpaka Defence motion for exclusion of the testimonies of Witnesses GFA, GKB and GAP, holding that the Defence had not suffered any prejudice as a result of the admission of the witnesses' evidence.[2890] The Chamber denied a subsequent Bicamumpaka Defence motion for certification to appeal this decision.[2891]

55. On 21 October 2004, the Chamber denied a Bicamumpaka Defence motion for exclusion of the testimonies of Witnesses GHT, GHY and GHS, holding that the Defence had not suffered any prejudice as a result of the admission of their evidence.[2892] The Chamber also rejected a Mugiraneza Defence motion for the deposition of Witness CR on 4 November 2004.[2893]

56. On 10 November 2004, the Chamber partially granted a Mugenzi Defence motion requiring that Alison Des Forges's curriculum vitae and final statement be filed by 15 December 2004. The order further required that the Prosecution indicate any variances in the previously submitted draft expert reports of Déogratias Mbonyinkebe and Binaifer Nowrojee and their final reports by the same date.[2894]

57. On 17 November 2004, the Chamber denied a Prosecution motion to admit evidence of 51 witnesses in the form of witness statements in lieu of oral testimony, ruling that none of the persons annexed to the motion had been mentioned in the Prosecution's list of witnesses submitted on 9 June 2004.[2895] Also on this date, the Chamber denied Bicamumpaka's Defence motion requesting that the Prosecution obtain materials known as the "Kigali Court Case Files" from a third party. The materials were not in the Prosecution's possession, the Defence did not show that the requested information was exculpatory or that it had made necessary efforts to obtain the material on its own.[2896]

58. On 24 November 2004, the Chamber partially granted a Bicamumpaka Defence motion for exclusion of evidence of witnesses, ruling that portions of the testimony of Witnesses GTA and DCH on the killing of John Vuningoma would not be considered in support of Count 6 of the Indictment due to pleading deficiencies. The Chamber, however, denied the request to exclude the evidence as it may be relevant to other charges in the Indictment.[2897] The Chamber subsequently denied a Bicamumpaka Defence motion for certification to appeal this decision.[2898]

[2890] Decision on Motion of Defendant Bicamumpaka Opposing the Admissibility of Witnesses GFA, GKB, and GAP (TC), 6 October 2004.
[2891] Decision on Bicamumpaka's Request for Certification to Appeal Decision of 6 October 2004 on Bicamumpaka's Motion Opposing the Admissibility of the Testimony of Witnesses GFA, GKB, and GAP (TC), 17 November 2004.
[2892] Decision on Bicamumpaka's Motions to Declare Parts of the Testimony of Witnesses GHT, GHY and GHS Inadmissible (TC), 21 October 2004.
[2893] Decision on Prosper Mugiraneza's Motion Pursuant to Rule 71 for Deposition of a Witness (TC), 4 November 2004.
[2894] Decision on Mugenzi's Confidential Motion for the Filing, Service or Disclosure of Expert Reports and/or Statements (TC), 10 November 2004.
[2895] Decision on the Prosecution's Motion and Notice Pursuant to Rule 92*bis* (e) (TC), 17 November 2004.
[2896] Decision on Bicamumpaka's Motion for Disclosure of Exculpatory Evidence (MDR Files) (TC), 17 November 2004.
[2897] Decision on Bicamumpaka's Urgent Motion to Declare Parts of the Testimony of Witnesses GTA and DCH Inadmissible (TC), 24 November 2004. *See also* T. 20 September 2004 pp. 19-21 (allowing Witness DCH to

59. Also on 24 November 2004, the Chamber ordered the Prosecution to file with the Registry a summary providing clear, accurate and exhaustive information in relation to all materials currently within its possession regarding the status of the disclosure of statements and exculpatory materials involving Prosecution Witness Jean Kambanda.[2899]

60. The Chamber, on 24 November 2004, also granted in part the Bicamumpaka and Mugenzi Defence motions requesting specificity in the Prosecution's Pre-Trial Brief by asking that the Prosecution file a list of the remaining witnesses and specifying the paragraphs of the Indictment to which each witness would testify.[2900] The Chamber subsequently clarified this decision by stating that it applied to all factual witnesses who had yet to testify.[2901]

61. On 30 November 2004, the Trial Chamber denied a Bizimungu Defence motion for exclusion of Witness GTD's testimony due to the Prosecution's failure to timely disclose witness statements pursuant to Rules 66 and 67 (D). The Chamber determined that no prejudice had been suffered by the Accused.[2902]

62. On 1 December 2004, the Chamber denied a Bicamumpaka and Mugenzi Defence motion for the disclosure of relevant material by the Prosecution in accordance with Rule 68. The Chamber held that Rule 68 did not allow the Defence unrestricted access to search the electronic database of the Prosecution for material, which the Prosecution was under no obligation to disclose.[2903] The Chamber subsequently denied a Bicamumpaka Defence motion requesting certification to appeal the decision.[2904]

63. On 10 December 2004, the Chamber denied a Bicamumpaka Defence motion for disclosure of a comprehensive list of radio broadcasts in its possession pursuant to either Rule 66 or 68. The Defence had failed to show how a list of all radio broadcasts was material to the preparation of its defence or that it would suggest the innocence or mitigate the guilty of the accused or affect the credibility of Prosecution evidence.[2905] The Chamber also dismissed a Mugiraneza Defence motion for exclusion of some portions of the Prosecution Pre-Trial

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testify about the murder of John Vuningoma pending the Chamber's decision on the Bicamumpaka motion to exclude this evidence).

[2898] Decision on Bicamumpaka's Request Pursuant to Rule 73 for Certification to Appeal the 24 November 2004 Decision on Bicamumpaka's Urgent Motion to Declare Parts of the Testimony of Witnesses GTA and DCH Inadmissible (TC), 25 February 2005.

[2899] Decision on Prosper Mugiraneza's Motion to Order the Prosecution to Disclose All Statements of Jean Kambanda (TC), 24 November 2004.

[2900] Decision on Bicamumpaka and Mugenzi's Motion for Specificity in the Pre-Trial Brief (TC), 24 November 2004.

[2901] Decision on the Prosecution's Extremely Urgent Motion for the Review and Clarification of the Trial Chamber's Decision Dated 24 November 2004 on Bicamumpaka and Mugenzi's Motion for Specificity in the Pre-Trial Brief (TC), 6 December 2004.

[2902] Decision on Casimir Bizimungu's Motion to Declare Part of the Testimony of Witness GTD Inadmissible (TC), 30 November 2004.

[2903] Decisio n on the Motion of Bicamumpaka and Mugenzi for Disclosure of Relevant Material (TC), 1 December 2004.

[2904] Decision on Bicamumpaka's Request Pursuant to Rule 73 for Certification to Appeal the 1 December 2004 "Decision on the Motion of Bicamumpaka and Mugenzi for Disclosure of Relevant Material." (TC), 4 February 2005.

[2905] Decision on Bicamumpaka's Motion for Disclosure of Existing Comprehensive List of Radio Broadcasts (TC), 10 December 2004.

Brief, holding that this motion was imprecise.[2906] Finally, the Chamber denied a Mugiraneza Defence motion for judicial notice of paragraphs 58 to 77 of the *Akayesu* Trial Judgement, ruling that the motion failed to fulfil the requirements of judicial notice in accordance with Rule 94.[2907] The Chamber denied a Prosecution motion for judicial notice of a list of 65 paragraphs of "adjudicated facts".[2908]

64. On 10 December 2004, the Deputy Registrar granted a Defence motion to withdraw Howard Morrison as Lead Counsel for Mugenzi.[2909]

65. On 15 December 2004, the Chamber denied a Bicamumpaka Defence motion for judicial notice of judgement from the Rwanda Court of First Instance concerning the credibility of Witnesses DHC, GHY and GHT. It also ruled that the Chamber could not order the disclosure of material pursuant to Rule 68 as the Defence had failed to sufficiently identify the material it sought.[2910]

66. On 27 January 2005, the Deputy Registrar granted the motion to withdraw Co-Counsel for Mugiraneza.[2911]

67. On 2 February 2005, the Chamber granted a Mugiraneza Defence motion for protection of Defence witnesses,[2912] and later denied a Prosecution request for reconsideration of the Chamber's decision, holding that the Prosecution had not suffered any prejudice or injustice as a result of these measures.[2913]

68. On 2 February 2005, the Chamber dismissed a Prosecution request for an order for the disclosure of transcripts and exhibits in accordance with Rules 75 (F)(i) and (ii), stating the Rule was intended to create a mechanism for routine disclosure of closed session testimony without the need for parties to make individual applications to the Chamber.[2914]

69. On 4 February 2005, the Chamber directed the Registry not to pay fees and costs associated with the filing of Mugiraneza's Defence motion requesting relief for a violation of Rule 66 by the Prosecution because it was filed belatedly and the request was moot.[2915] The Chamber denied a motion for certification to appeal this decision on 7 July 2005.[2916]

[2906] Decision on Prosper Mugiraneza's Motion to Remove Confidentiality from Portions of the Prosecution's Pre-Trial Brief (TC), 10 December 2004.
[2907] Decision on Prosper Mugiraneza's First Motion for Judicial Notice Pursuant to Rule 94 (TC), 10 December 2004.
[2908] Decision on the Prosecution's Motion and Notice of Adjudicated Facts (TC), 10 December 2004.
[2909] Decision of Withdrawal of Mr. Howard Morrison as Lead Counsel for the Accused Justin Mugenzi (Registry), 10 December 2004.
[2910] Decision on Jérôme-Clément Bicamumpaka's Motion for Judicial Notice of a Rwandan Judgement of 8 December 2000 and in the Alternative for an Order to Disclose Exculpatory Evidence (TC), 15 December 2004.
[2911] Decision of Withdrawal of Mr. Christian Gauthier as Co-Counsel for the Accused Prosper Mugiraneza, (Registry), 27 January 2005.
[2912] Decision on Prosper Mugiraneza's Motion for Protection of Defence Witnesses (TC), 2 February 2005.
[2913] Decision on Prosecution's Consolidated Corrigendum to Prosecution's Response to Defence Motions for Protection of Defence Witnesses and Request for Reconsideration of Decision on Prosper Mugiraneza's Motion for Protection of Defence Witnesses (TC), 7 July 2005.
[2914] Decision on Prosecution's Request for an Order of Disclosure of Closed Session Transcripts and Sealed Prosecution Exhibits (TC), 2 February 2005.
[2915] Decision on Prosper Mugiraneza's Motion for Appropriate Relief for Violation of Rule 66 (TC), 4 February 2005.
[2916] Decision on Prosper Mugiraneza's Motion for Certification (TC), 7 July 2005.

70. On 24 March 2005 the Chamber found that Prosecution Witness Jean Rubaduka was not qualified to testify as an expert witness.[2917] On 13 June 2005, the Chamber dismissed the Prosecution's request for certification to appeal this decision.[2918]

71. On 6 May 2005, the Chamber granted a Mugiraneza Defence motion to recall Witness GKJ for further cross-examination in light of the late disclosure of his statement by the Prosecution. The Chamber rejected the request to strike his entire testimony from the record if he did not return for further examination.[2919]

72. On 16 May 2005 the Chamber held that any opinions formed by Prosecution Expert Witness Binaifer Nowrojee based on witness statements from persons whom she was unable to personally interview would be inadmissible.[2920] On 8 July 2005, the Chamber ruled inadmissible those portions of Nowrojee's expert testimony that fell outside the scope of her expertise or that expressed opinions on ultimate issues before the Chamber.[2921]

73. On 14 June 2005, the Chamber orally denied a Mugenzi Defence motion to exclude portions of Expert Witness Alison Des Forges's testimony for which sources had not been disclosed because the non-disclosure of sources went to the weight of the evidence rather than the admissibility.[2922] It subsequently filed its written reasons based on oral and written submissions from all parties on 2 September 2005. It held that the limited testimony upon which she provided that relied on undisclosed sources had probative value and that the ultimate weight given to such evidence would be assessed in light of a number of factors.[2923]

74. On 23 June 2005, the Chamber found that the admissibility of transcripts of the interviews between Tribunal investigators and former Prime Minister Jean Kambanda was not in dispute and thus could be entered into evidence. The translation of Pauline Nyiramasuhuko's diary was not relied on by Des Forges as the source of her opinions and was therefore not admissible. Finally, the transcripts of the broadcast previously entered as Exhibits P2(37), P2(38) and P2(84) could be referred to during Des Forges's re-examination.[2924]

75. On 24 June 2005, the Chamber denied a Mugenzi and Bizimungu Defence motion to conduct a site visit, and directed the Defence to renew their applications for a site visit after the commencement of the Defence case. The Chamber asked the parties to provide justifications for the proposed visits in light of the allegations against the Accused, and indicate a proposed itinerary.[2925]

[2917] T. 24 March 2005 pp. 15-16.
[2918] Decision on the Prosecution's Request Pursuant to Rule 73 for Certification to Appeal the Oral Decision of 24 March 2005 Refusing to Qualify and Admit Jean Rubuduka as an Expert Witness (TC), 13 June 2005.
[2919] Decision on Prosper Mugiraneza's Motion to Order a Witness to be Returned for Further Cross-Examination or in the Alternative to Strike His Testimony Based upon Late Disclosure of Rule 68 Material (TC), 6 May 2005.
[2920] T. 16 May 2005 pp. 30-32, 38.
[2921] Decision on the Admissibility of the Expert Testimony of Dr. Binaifer Nowrojee (TC), 8 July 2005.
[2922] T. 14 June 2005 p. 58.
[2923] Decision on Defence Motion for Exclusion of Portions of Testimony of Expert Witness Dr. Alison Des Forges (TC), 2 September 2005.
[2924] T. 23 June 2005 pp. 33, 35-41, 48.
[2925] Decision on the Defence Motion for the Chamber to Visit Sites in Rwanda (TC), 24 June 2005.

76. On 27 June 2005, the Chamber granted Mugenzi's, Bizimungu's and Bicamumpaka's Defence motions for protection of Defence witnesses.[2926] On 28 September 2005, the Chamber granted a Prosecution motion for certification to appeal this decision.[2927]

77. On 7 July 2005, the Chamber directed the Bicamumpaka Defence to disclose to the Prosecution as soon as reasonably practicable the names and addresses of witnesses and any other evidence upon which the Accused intended to rely to establish the defence of alibi, in accordance with Rule 67 (A)(ii)(a).[2928]

78. On 2 September 2005, the Chamber partially granted a Bizimungu Defence motion for the exclusion of Déogratias Mbonyinkebe's expert report, ruling as inadmissible those portions of the report or testimony expressing opinions on ultimate issues of fact in the trial.[2929]

79. On 26 September 2005, the Chamber granted the Bizimungu and Bicamumpaka Defence motions for translation of the Prosecution's response pursuant to Rule 98 *bis*, as well as an extension of time to file replies.[2930]

80. On 27 September 2005, the Chamber denied a Mugiraneza Defence motion for voice exemplars by Witness Fidèle Uwizeye for determining whether his voice matches tape recorded broadcasts, holding that the Defence failed to establish that the recording was necessary for investigation, preparation or conducting of the trial.[2931]

3.3 Defence Case

81. The Defence commenced its case on 1 November 2005 and finished it on 12 June 2008. Over the course of 221 trial days, the Defence presented 114 witnesses, including all four of the Accused. These witnesses were heard during nine trial sessions: from 1 November through 14 December 2005; from 20 March through 5 May 2006; from 21 August through 12 October 2006; from 16 January through 21 February 2007; from 30 April through 12 June 2007; on 13 and 14 August 1007; from 17 September through 8 November 2007; from 28 January through 19 March 2008; and from 14 April through 12 June 2008.

82. On 31 October 2005, the Chamber held a Pre-Defence Conference.[2932] The next day, the Defence case commenced with the Opening Statement from Counsel for Mugenzi, followed by testimony from Mugenzi.[2933]

83. On 16 November 2005, the Appeals Chamber partially granted a Prosecution appeal of the Trial Chamber decision of 27 June 2005, regarding witness protection measures. The Appeals Chamber held that protected witness information should be disclosed only to

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[2926] Decision on Justin Mugenzi's Confidential Motion for Protection of Defence Witnesses (TC), 27 June 2005.
[2927] Decision on the Prosecution's Motion for Certification to Appeal the Trial Chamber's Decisions on Protection of Defence Witnesses (TC), 28 September 2005.
[2928] Decision on Jérôme Bicamumpaka's Notice of Alibi (TC), 7 July 2005.
[2929] Decision on Casimir Bizimungu's Urgent Motion for the Exclusion of the Report and Testimony of Déo Sebahire Mbonyinkebe (TC), 2 September 2005.
[2930] Decision on Casimir Bizimungu and Jérôme Bicamumpaka's Extremely Urgent Motion Requesting the Chamber to Order Urgent Translation of the Prosecution's Response Pursuant to Rule 98*bis* of the Rules as Well as Time to File a Reply (TC), 26 September 2005.
[2931] Decision on Prosper Mugiraneza's Extremely Urgent Motion for Voice Exemplars for Witness Fidel Uwizeye (TC), 27 September 2005.
[2932] T. 31 October 2005.
[2933] T. 1 November 2005 pp. 1-23, 25.

members of the immediate Prosecution team, and not to any other member of the Office of the Prosecution.[2934] The Trial Chamber issued an amended decision in accordance with the Appeals Chamber ruling on 17 February 2006.[2935]

84. On 22 November 2005, the Trial Chamber held that the 9 November 2004 statement of proposed witness Agnès Ntamabyaliro could be admitted into evidence under Rule 89 (C).[2936] On 24 November 2005, the Chamber, reconsidered its 22 November 2005 decision and found that the Ntamabyaliro statement should not be entered into evidence.[2937]

85. Also on 22 November 2005, the Chamber partially granted the Defence motions pursuant to Rule 98 *bis* by entering a judgement of acquittal for all four Accused on conspiracy to commit genocide pursuant to Article 6 (3); for Mugenzi on murder as a crime against humanity pursuant to Article 6 (1); for Bicamumpaka and Mugiraneza on murder as a crime against humanity pursuant to Articles 6 (1) and 6 (3); for all four Accused on rape as a crime against humanity pursuant to Articles 6 (1) and 6 (3); and for all four Accused on serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II – outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault – pursuant to Articles 6 (1) and 6 (3).[2938]

86. On 23 February 2006, the Chamber denied the Defence motion for reconsideration of its oral decision of 1 June 2005, affirming that the question of who was responsible for shooting down the plane of President Habyarimana was not before the Chamber and was not discussed in the book of Expert Witness Alison Des Forges, and was therefore irrelevant.[2939]

87. On 23 March 2006, the Chamber denied a Bicamumpaka Defence motion for a declaration that the Indictment failed to allege his liability for any form of joint criminal enterprise, as the motion was filed out of time and the defence failed to show good cause for the delay in filing. Notwithstanding, the Chamber indicated that the parties could raise the issue during their final submissions.[2940]

88. On 25 April 2006, the Chamber ruled that Barrie Collins was not qualified to testify as an expert witness before the Chamber.[2941]

89. On 22 May 2006, the Chamber dismissed a Mugiraneza Defence motion requesting that a Registry decision concerning a Defence team member be placed under seal.[2942] The Chamber subsequently denied reconsideration of that decision.[2943]

[2934] Decision on Prosecution Appeal of Witness Protection Measures (AC), 16 November 2005.
[2935] Reconsideration of Decisions on Protective Measures for Defence Witnesses Pursuant to Appeals Chamber Ruling of 16 November 2005 (TC), 17 February 2006.
[2936] T. 22 November 2005 p. 23.
[2937] T. 24 November 2005 pp. 47-48.
[2938] Decision on Justin Mugenzi Application for Certification to Appeal the Trial Chambers Decision on Defence Motions Pursuant to Rule 98 *bis* (TC), 20 March 2006.
[2939] Reconsideration of Oral Ruling of 1 June 2005 on Evidence Relating to the Crash of the Plane Carrying President Habyarimana (TC), 23 February 2006.
[2940] Decision on Jérôme Bicamumpaka's Request for a Declaration that the Indictment Does Not Allege that He is Liable for Any Form of Joint Criminal Enterprise (TC), 23 March 2006.
[2941] T. 25 April 2006 pp. 1-4.
[2942] Decision on Prosper Mugiraneza's Emergency Ex Parte Motion to Seal Registry Decision as Violation of a Defence Team Members' Right to Privacy (TC), 22 May 2006.

90. On 17 August 2006, the Chamber granted a Bizimungu Defence motion to cancel the protective measures for Witnesses WDA, WAG and WDP.[2944]

91. On 11 September 2006, the Chamber denied a Bizimungu Defence motion requesting disclosure of protected information to Defence expert witnesses, holding that the witnesses did not fall within the scope of "other persons working on the immediate Defence team", and therefore were not authorised to have access to protected information.[2945] Also on this day, the Chamber authorised the taking of Dr. Helmut Strizek's testimony by video-link due to his health condition.[2946] This was the first of many decisions rendered during the Defence case that concerned video-link testimony.[2947]

92. On 22 September 2006, the Chamber took judicial notice of various facts of common knowledge.[2948] The Chamber later denied Mugenzi's application for certification to appeal this decision.[2949]

93. On 25 September 2006, the Chamber denied a Bizimungu Defence motion for disclosure of the "Bruguière Report", holding that the Defence failed to show the report was of probative value to the trial for purposes of Article 28.[2950]

94. On 28 September 2006, the Chamber ordered the Prosecution to provide to the Chamber a detailed statement of all expenses incurred on Witness D's behalf and on behalf of members of his family in order to determine whether these payments were exculpatory for the purpose of Rule 68.[2951]

95. On 11 December 2006, the Chamber ordered that information obtained by the Bizimungu Defence from the United States government be treated as confidential pursuant to Rule 70 of the Rules.[2952]On 12 December 2006, the Chamber granted a Bizimungu Defence

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[2943] Confidential Decision on Prosper Mugiraneza's Motion to Reconsider Decision on Prosper Mugiraneza's Emergency *Ex-Parte* Motion to Seal Registry Decision as a Violation of a Defence Team Member's Right to Privacy (TC), 1 September 2006.
[2944] Decision on Casimir Bizmungu's Motion for Cancellation of Witness Protection Orders for Witnesses WDA, WAG and WDP (TC), 17 August 2006.
[2945] Decision on Casimir Bizimungu's Motion for Permission to Convey Protected Information to Defence Experts (TC), 11 September 2006.
[2946] Decision on Casimir Bizimungu's Confidential Motion Requesting the Chamber to Hear Expert Witness Helmut Strizek in the Hague or Alternatively to Authorise Testimony by Video-Link (TC), 11 September 2006.
[2947] *See* Decision on Casimir Bizimungu's Extremely Urgent and Confidential Motion to Have Witness WDK Testify via Video Link (TC), 7 December 2006; Decision on Casimir Bizimungu's Very Urgent Motion for an Order Applying Rule 70 to Specific Information To Be Provided to the Defense by the United States Government (TC), 11 December 2006; Decision on Jérôme-Clément Bicamumpaka's Motion for Video-Link Testimony for Witness LJ-1 (TC), 27 April 2007; Decision on Jérôme-Clément Bicamumpaka's Motion for Video-Link Testimony for Witness JS-L (TC), 21 September 2007; Decision on Confidential Motion from Mr. Bicamumpaka to Allow Video-Link Testimony for Witness CF-1 (TC), 23 January 2008; Decision on Prosper Mugiraneza's Confidential Motion for Video-Link Testimony of Witness RWU (TC), 5 May 2008.
[2948] Decision on Prosecution's Motion for Judicial Notice (TC), 22 September 2006.
[2949] Decision on Justin Mugenzi's Application for Certification for Interlocutory Appeal of the Decision on the Prosecution's Motion for Judicial Notice (TC), 11 December 2006.
[2950] Decision on Casimir Bizimungu Requests for Disclosure of the Bruguière Report and the Cooperation of France (TC), 25 September 2006.
[2951] Decision on Prosper Mugiraneza's Motion for Records of all Payments Made Directly or Indirectly to Witness D (TC), 28 September 2006.
[2952] Decision on Casimir Bizimungu's Very Urgent Motion for an Order Applying Rule 70 to Specific Information to Be Provided to the Defence by the United States Government (TC), 11 December 2006.

motion concerning pay for expert witnesses that was conditional upon their being eventually qualified as experts by the Chamber, and directed the Registrar to reconsider his general policy regarding the terms offered to potential Defence expert witnesses in this case.[2953]

96. On 8 February 2007, the Chamber denied a Bizimungu Defence motion relating to the United States government's request that the testimony of its former official be limited in scope to areas authorised by that government.[2954] The Chamber denied a Bizimungu Defence motion to reconsider the decision on 26 April 2007, finding that the concerns of the United States government had been adequately addressed by its prior rulings.[2955] On 22 May 2007, the Trial Chamber granted a Bizimungu Defence motion for certification to appeal its decision,[2956] and on 16 July 2007, the Appeals Chamber granted the interlocutory appeal, holding that the Trial Chamber on 8 February 2007 committed a discernible error in the exercise of its discretion when denying the request.[2957] United States Ambassador Robert Arnold Flaten testified on 20 and 21 February 2008.

97. On 8 May 2007, the Chamber partially granted a Defence motion to permit Witness DW2 to be accompanied by counsel in the courtroom during his testimony for protection against self-incrimination, but denied a Defence request to limit cross-examination.[2958]

98. On 28 May 2007, the Chamber granted a Bicamumpaka Defence motion requesting specific information from the United States government.[2959]

99. On 29 May 2007, the Chamber denied a Mugiraneza Defence motion to dismiss the case due to the alleged violation of his right to trial without undue delay, holding that the Defence failed to show a violation of the Accused's rights.[2960]

100. On 30 May 2007, the Chamber denied a Bicamumpaka Defence motion for admissibility of the statement of a deceased witness, Faustin Nyagahima, ruling that the Chamber was not satisfied it possessed sufficient indicia of reliability.[2961]The Chamber later denied a Bicamumpaka Defence motion for certification to appeal this decision.[2962]

[2953] Decision on Casimir Bizimungu's Motion in Respect of a Condition in the Special Services Agreement for Expert Witness (TC), 12 December 2006.
[2954] Decision on Casimir Bizimugu's Motion in Relation to Condition (B) Requested by the Government of the United States of America (TC), 8 February 2007.
[2955] Decision on Casimir Bizimungu's Motion in Reconsideration of the Trial Chamber's Decision Dated February 8, 2007, in Relation to Condition (B) Requested by the United States Government (TC), 26 April 2007.
[2956] Decision on Casimir Bizimungu's Request for Certification to Appeal the Decision on Casimir Bizimungu's Motion in Reconsideration of the Trial Chambers Decision Dated February, 8, 2007 in Relation to Condition (B) Requested by the United States Government (TC), 22 May 2007.
[2957] Decision on Interlocutory Appeal Relating to the Testimony of Former United States Ambassador Robert Flaten (AC), 16 July 2007.
[2958] Decision on DW2's Urgent Request to Limit the Cross-Examination of DW2 Before Trial Chamber II and to Permit DW2 to be Accompanied by Counsel (TC), 8 May 2007.
[2959] Decision on Jérôme-Clément Bicamumpaka's Confidential Urgent Motion for an Order Applying Rule 70 to Specific Information to be Provided to the Defence by the United States Government (TC), 28, May 2007.
[2960] Decision on Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of His Right to Trial without Undue Delay (TC), 29 May 2007.
[2961] Decision on Jérôme-Clément Bicamumpaka's Motion for the Statement of the Deceased Witness Faustin Nygahima, to be Accepted as Evidence (TC), 30 May 2007.
[2962] Decision on Jérôme Bicamumpaka's Application for Certification to Appeal the Trial Chamber's Decision on the Rule 92*bis* Admission of Faustin Nyagahima's Written Statement (TC), 22 August 2007.

101. On 14 June 2007, the Chamber denied a Mugenzi Defence motion alleging undue delay and seeking severance as a relief, holding that the Defence had not suffered any prejudice.[2963]

102. On 12 September 2007, the Chamber granted a Bicamumpaka Defence motion for an order for state cooperation addressed to the Kingdom of Belgium.[2964]

103. On 26 September 2007, the Chamber granted a Bicamumpaka Defence motion for an order of cooperation addressed to the Republic of France.[2965] It also granted a Bicamumpaka Defence motion for the subpoena of Jean Ghiste.[2966]

104. On 9 October 2007, the Chamber partially granted a Mugenzi Defence motion to recall Prosecution Witness Fidèle Uwizeye for further, but limited, cross-examination.[2967]

105. On 18 October 2007, the Chamber granted a Bicamumpaka Defence motion to vary protection measures for Witnesses OK-I, LJ-I, JS-I, OC-I and NE-2, holding that the witnesses were aware of the consequences of their decision to testify openly.[2968]

106. On 26 October 2007, the Registrar granted the request for Marie-Pierre Poulain to be withdrawn as Co-Counsel for Prosper Mugiraneza.[2969]

107. On 5 November 2007, the Chamber partially granted a Bicamumpaka Defence motion for inspection of documents in the custody or control of the Prosecution.[2970]

108. On 5 December 2007, the Chamber granted a Bicamumpaka Defence motion to meet with Prosecution Witnesses GFA and GKB in order to prepare its case.[2971]

109. On 23 January 2008, the Chamber granted Bicamumpaka's Defence motion for a subpoena to compel the appearance of the former Ambassador of Belgium, John Swinnen.[2972] On this same day, the Chamber granted a Mugiraneza Defence motion for a subpoena to compel the appearance of a witness in Rwanda who refused to appear voluntarily.[2973]

110. On 24 January 2008, the Chamber denied Mugiraneza's Defence motion for the testimony of Witness RDG to be taken by deposition, but ordered that Witness RDG testify before the Chamber by video-link from the Tribunal's Kigali office.[2974] On 29 January 2008

[2963] Decision on Justin Mugenzi's Motion Alleging Undue Delay and Seeking Severance (TC), 14 June 2007.
[2964] Decision on Mr. Bicamumpaka's Request for Order for Cooperation of the Kingdom of Belgium (TC), 12 September 2007.
[2965] Decision on Mr. Bicamumpaka's Request for an Order for the Cooperation of the Republic of France (TC), 26 September 2007.
[2966] Decision on Jérôme-Clément Bicamumpaka's Request for a Subpoena (TC), 26 September 2007.
[2967] Decision on Justin Mugenzi's Motion for the Recall of the Prosecution Witness Fidel Uwizeye for Further Cross Examination (TC), 9 October 2007.
[2968] Decision on Defendant Bicamumpaka's Motion to Vary Protection Measures for Certain Defence Witnesses, (TC), 18 October 2007.
[2969] Decision on Withdrawal of the Assignment of Ms. Marie-Pierre Poulain, Co-Counsel for the Accused Prosper Mugiraneza (Registry), 26 October 2007.
[2970] Decision on Bicamumpaka Motion to Inspect Documents Pursuant to Rule 66(B) of the Rules of Procedure and Evidence (TC), 5 November 2007.
[2971] Decision on Jérôme-Clément Bicamumpaka's Motions to Meet with Prosecution Witnesses GFA and GKB (TC), 5 December 2007.
[2972] Decision on Jérôme-Clément Bicamumpaka's Request for a Subpoena (TC), 23 January 2008.
[2973] Decision on Prosper Mugiraneza's Request for a Subpoena (TC), 23 January 2008.
[2974] Urgent Decision on Prosper Mugiraneza's Motion for the Testimony of Witness RDG to be Taken by Deposition And Chamber's Order for Video-Link Testimony (TC), 24 January 2008.

the Chamber modified this decision and ordered that the testimony of Witness RDG be taken by deposition from his home.[2975]

111. On 28 January 2008, the Chamber granted a Mugiraneza Defence motion for an extension the deadline for the filing of certain documents, and ordered the Defence to submit a revised witness list substantially reducing the number of witnesses no later than 11 February 2008.[2976] On 20 February 2008 the Chamber granted a Mugiraneza Defence motion to consider documents that had been filed late, and provided a deadline for the Defence to make an application for the admission of written statements. The Chamber also ordered the Defence to further reduce its witness list.[2977]

112. On 7 February 2008, the Chamber granted in part Bicamumpaka's Defence motion for reconsideration of the 11 October 2007 oral decision, found that the oral decision erroneously concluded that the Prosecution had not violated its obligation pursuant to Rule 66 (B), and ordered the exclusion of Exhibit P178 and all related testimony.[2978]

113. On 12 February 2008, the Chamber denied Bicamumpaka's Defence request for a subpoena for Defence Witness LF-1, as the motion was filed late.[2979] The Chamber granted certification to appeal this decision on 19 March 2008.[2980] On 22 May 2008, the Appeals Chamber granted the Bicamumpaka Defence appeal, ordering the Trial Chamber to consider the merits of the request because the Defence had filed the request within a reasonable time.[2981] On 3 June 2008, the Trial Chamber granted the request to subpoena Witness LF-1 to testify.[2982]

114. On 15 February 2008, the Registrar assigned Cynthia Cline as Co-Counsel for Prosper Mugiraneza.[2983] On 18 February 2008, the Chamber granted a Mugiraneza Defence motion for the disclosure of all payments made directly or indirectly to Witness D by the Prosecution, and also ordered the Prosecution to disclose any future payments to Witness D.[2984]

[2975] Extremely Urgent Decision Reconsidering Trial Chamber's Decision of 24 January 2008 and Order for the Testimony of Witness RDG to be Taken by Deposition (TC), 29 January 2008.
[2976] Decision on Prosper Mugiraneza's Motion to Extend Deadlines in Scheduling Order of 4 December 2007 and Order for Reduction of Witness List (TC), 28 January 2008.
[2977] Decision on Prosper Mugiraneza's Motion for Leave to File Documents Out of Time and Order for Further Reduction of Witness List (TC), 20 February 2008.
[2978] Decision on Defendant Bicamumpaka's Motion for Reconsideration of Oral Decision Regarding Violation of Prosecutor's Obligations Pursuant to Rule 66 (B) of the Rules of Procedure and Evidence, Dated 11 October 2007 (TC), 7 February 2008.
[2979] Decision on Jérôme-Clément Bicamumpaka's Request for a Subpoena (TC), 12 February 2008.
[2980] Decision on Jérôme-Clément Bicamumpaka's Application for Certification to Appeal the Trial Chamber's Decision on Bicamumpaka's Request for a Subpoena of 12 February 2008 (TC), 19 March 2008.
[2981] Decision on Jérôme-Clément Bicamumpaka's Interlocutory Appeal Concerning a Request for a Subpoena (AC), 22 May 2008.
[2982] Second Decision on Jérôme-Clément Bicamumpaka's Request for a Subpoena (TC), 3 June 2008.
[2983] Decision on Assignment of Ms. Cynthia Cline as Co-Counsel for the Accused Prosper Mugiraneza (Registry), 15 February 2008.
[2984] Decision on Prosper Mugiraneza's Motion for Records of All Payments Made Directly or Indirectly to Witness D (TC), 18 February 2008.

115. On 21 February 2008, the Chamber denied a Bicamumpaka Defence motion to admit the expert report of Dr. Bernard Lugan into evidence.[2985]

116. On 27 February 2008, the Chamber granted a Bicamumpaka Defence motion requesting cooperation from the Kingdom of Belgium by respectfully requesting they turn over documents pertaining to Witness Jean Ghiste.[2986]

117. On 7 March 2008, the Registrar granted Alexandra Marcil's request to be withdrawn as Co-Counsel for Bizimungu's Defence.[2987]

118. On 16 April 2008, the Chamber found that the Prosecution had breached its disclosure obligations pursuant to Rule 66 (B), and excluded two letters that should have been disclosed. As for a third letter, the Chamber found that this document did not fall within the Rule 66 (B), obligation, and thus the Prosecution was permitted to use it during cross-examination. The Chamber also reminded the Prosecution of the need to faithfully discharge its disclosure obligations.[2988]

119. On 21 April 2008, the Chamber granted a Bicamumpaka Defence motion to order the recall of Prosecution Witness GFA for further cross-examination on his alleged false testimony. The Chamber further found that a meeting between Witness GFA and the Defence must include the Prosecution and a representative of WVSS, and that the Prosecution must disclose all materials pertaining to Witness GFA.[2989] The Chamber subsequently ordered the Registrar to prepare a subpoena addressed to Witness GFA requiring his appearance before the Chamber for cross-examination.[2990]

120. On 21 April 2008, the Chamber granted the Prosecution and Defence motions for a site visit to Rwanda.[2991]

121. On 1 May 2008, the Chamber ordered subpoenas for Mugiraneza Witnesses RRI and RWV, but denied the request for video-link testimony.[2992] On the same day, the Chamber granted a Bizimungu motion to vary the witness list to include Mr. Giles St-Laurent. It would admit evidence of the witness in the form of a written statement in lieu of testimony but ordered that the Prosecution must have the opportunity to cross-examine him.[2993]

122. On 19 May 2008, the Chamber granted Mugiraneza's Defence motion requesting a subpoena to compel the appearance of Defence Witness RWU.[2994]

[2985] Decision on Motion of Jérôme-Clément Bicamumpaka to Admit the Report of Expert Dr. Bernard Lugan into Evidence (TC), 21 February 2008.
[2986] Decision on Urgent Second Motion of Defendant Bicamumpaka Regarding Cooperation of the Kingdom of Belgium (TC), 27 February 2008.
[2987] Decision on Withdrawal of the Assignment of Ms. Alexandra Marcil, Co-Counsel for the Accused Casimir Bizimungu (Registry), 7 March 2008.
[2988] T. 16 April 2008 pp. 32-35.
[2989] Decision on Jérôme-Clément Bicamumpaka's Motion Requesting Recall of Prosecution Witness GFA; Disclosure of Exculpatory Material; And to Meet with Witness GFA (TC), 21 April 2008.
[2990] T. 21 May 2009 pp. 28-30.
[2991] Decision on Motions for Site Visits to Rwanda (TC), 21 April 2008.
[2992] Confidential Decision on Prosper Mugiraneza's Confidential Motion for Subpoena and for Video-Link Testimony for Witnesses RRI and RWV (TC), 1 May 2008.
[2993] Decision on Casimir Bizimungu's Motion to Vary Witness List; And to Admit Evidence of Witness in Written Form In Lieu of Oral Testimony (TC), 1 May 2008.
[2994] Decision on Prosper Mugiraneza's Motion to Subpoena Witness RWU Pursuant to Rule 54 (TC), 19 May 2008.

123. On 16 May 2008, the Chamber granted the Prosecution's motion objecting to the admission of Defence Expert Witness Geoffrey Corn's report. It found that his report and anticipated testimony were irrelevant to the allegations against Prosper Mugiraneza, and the Chamber ordered his removal from the Defence witness list.[2995]

124. On 2 June 2008, the Chamber granted the Mugiraneza Defence motion ordering that confidential documents from the French Government be admitted into evidence.[2996] On this same day, the Chamber denied two Mugiraneza Defence motions requesting that church and school records be entered into evidence, stating that the Defence did not establish a *prima facie* case for their relevance.[2997] The Chamber later denied a Mugiraneza Defence motion to reconsider the decision.[2998]

125. On 3 June 2008, the Chamber denied a Mugiraneza Defence motion to admit documents under seal for the purpose of impeaching Prosecution Witness GJQ, stating that they were not probative or relevant.[2999]

126. On 5 June 2008 the Chamber denied the Mugiraneza Defence urgent motion to recall seven of the Defence witnesses.[3000] On this same day, the Chamber denied two Mugiraneza Defence motions to remove one witness from his witness list, and require another witness to testify in person.[3001]

127. On 10 June 2008, the Chamber granted a Bicamumpaka Defence motion to admit documents from the United States government into evidence.[3002] Also on this day, the Chamber denied motions from Mugenzi's and Bizimungu's Defences pertaining to four documents disclosed by the Prosecution, stating that they were not exculpatory under Rule 68 (A).[3003] On 23 July 2008, the Chamber denied a Mugenzi Defence motion for certification to appeal the Chamber's decision.[3004]

128. Also on 10 June 2008, the Chamber granted a Bicamumpaka Defence motion to admit Rwandan judicial records into evidence.[3005]

129. On 11 June 2008 the Chamber granted in part the Mugiraneza Defence motion to present evidence in written form in lieu of oral testimony by admitting written statements of

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[2995] Decision on Prosecution's Motion Objecting to the Admission of Professor Geoffrey Corn's Report (TC), 16 May 2008.
[2996] Decision on Confidential Defence Motion to Admit Documents from the Government of France (TC), 2 June 2008.
[2997] Decision on Defence Motions to Admit Church Records and School Records (TC), 2 June 2008.
[2998] Decision on Defence Motion to Reconsider Order of 2 June 2008 Denying Admission of Church and School Records (TC), 23 July 2008.
[2999] Decision on Defence Motion to Admit BBC Documents Pursuant to Rule 89 (TC), 3 June 2008.
[3000] Decision on Prosper Mugiraneza's Emergency Motion to Recall Witnesses for Further Testimony (TC), 5 June 2008.
[3001] Decision on Prosper Mugiraneza's Motion to Vary His Witness List; And Decision on Motion to Drop One Witness and Require One 92*bis* Witness to Testify in Person (TC), 5 June 2008.
[3002] Decision on Jérôme Bicamumpaka's Confidential Motion to Admit USA Government Documents into Evidence Pursuant to Rule 89 (C) (TC), 10 June 2008.
[3003] Decision on Justin Mugenzi's Motion for Further Certified Disclosure and Leave to Reopen his Defence (TC), 10 June 2008.
[3004] Decision on Justin Mugenzi's Motion for Certification to Appeal the Decision on Mugenzi's Motion for Further Certified Disclosure and Leave to Reopen his Defence (TC), 23 July 2008.
[3005] Decision on Jérôme Bicamumpaka's Confidential and Amended Motion to Admit Rwandan Judicial Records into Evidence (TC), 10 June 2008.

Witnesses RRB, RRK, RDQ, FCB, FCC, FCD, FCE, BGM, FCI and FCJ; admitting also the written statements of Witnesses BGE, BGM, RWY, DGD, BDK and BGL, but directing that these witnesses be made available for cross-examination; and directing the Defence to remove Witnesses RDS, RDT, RWT, RDD, RDJ, RWH, BGG, BGA, RRC and RRE from the witness list.[3006]

130. On 12 June 2008 the Chamber denied the Mugiraneza Defence's motion to vary its witness list to include the Tribunal's "custodian of records" and another individual who would testify to Defence Witness RWV's reluctance to appear.[3007]

3.4 Post Trial

131. On 24 June 2008, the Chamber ordered that the final brief for each of the parties would not exceed 300 pages. The Chamber stated that any party unable to comply with this directive must seek an order from the Chamber to vary the length of the brief.[3008] The Chamber subsequently denied Mugenzi Defence motions to reconsider the decision[3009] and for certification to appeal it.[3010] On 24 October and 20 November 2008, respectively the Chamber granted a Mugenzi Defence motion and a Bizimungu Defence motion for relief from this page limitation.[3011]

132. On 25 June 2008 the Chamber granted a Mugiraneza Defence motion to order the Registrar to make submissions concerning allegations that Witnesses RDA, RDB, RDI, RWE, RWZ, RWD, RDW, RWG and RDC were harassed and intimidated in Rwanda after they testified.[3012]

133. On 23 July 2008, the Chamber partially granted a Bicamumpaka Defence motion that sought appointment of *amicus curiae* to investigate possible false testimony given by Witness GFA. It denied requests for investigations into Witnesses GAP and GKP.[3013]

134. On the same day, the Chamber partially granted a Mugiraneza Defence motion for the admission of transcripts and video and audio recordings of, and exhibits tendered during, the deposition of Witness RDG.[3014] The Chamber denied a Mugenzi Defence motion for admission into evidence transcripts from the *Munyakazi* referral hearing, holding that the

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[3006] Confidential Decision on Prosper Mugiraneza's Motion to Admit Evidence of Witnesses in Written Form in Lieu of Oral Testimony and Order for Reduction of Witness List (TC), 11 June 2008.
[3007] Decision on Prosper Mugiraneza's Emergency Motion to Vary Witness List (TC), 12 June 2008.
[3008] Decision on Further Orders Regarding the Filing of Closing Briefs (TC), 24 June 2008.
[3009] Decision on Justin Mugenzi's Motion for Reconsideration of the Chamber's Further Orders Regarding the Filing of Closing Briefs (TC), 23 July 2008.
[3010] Decision on Justin Mugenzi's Composite Motion Concerning Page Limits on Closing Briefs (TC), 2 September 2008.
[3011] Decision on Justin Mugenzi's Motion for Relief from the Page Limitation on Final Trial Briefs (TC), 24, October 2008; Decision on Casimir Bizimungu's Motion for Relief from the Page Limitation on Final Trial Briefs (TC), 20 November 2008.
[3012] Decision on an Order for the Registrar to Make Submissions on Proper Mugiraneza's Motion to Institute Proceedings Pursuant to Rule 77 (TC), 25 June 2008.
[3013] Decision on Defence Motion Seeking the Appointment of *Amicus Curiae* to Investigate Possible False Testimony by Witnesses GFA, GAP and GKB (TC), 23 July 2008.
[3014] Decision on Prosper Mugiraneza's Motion to Admit Portions of the Deposition of Witness RDG (TC), 23 July 2008.

evidence was not of probative value.[3015] Finally, the Chamber denied a Mugenzi Defence motion requesting the disclosure of the questions and answers used to create Prosecution Expert Witness Déogratias Mbonyinkebe's expert report, because the Prosecution was under no obligation to disclose this material and was making all efforts to obtain the requested information.[3016]

135. Also on 23 July 2008, the Chamber issued a confidential decision admitting all but one of the UN documents that were requested by the Bicamumpaka Defence into evidence.[3017] The Chamber also denied the Bicamumpaka Defence motion requesting the admission of a purported French diplomatic record into evidence.[3018] Additionally, the Chamber granted Mugiraneza's Defence motion to admit 29 pages of a document which showed payments made to or on behalf of Witness D.[3019]

136. On 2 September 2008, the Chamber denied a Mugiraneza Defence motion requesting that transcripts from the *Munyakazi* referral proceedings be admitted into evidence.[3020]

137. On 26 September 2008, the Chamber granted a Mugenzi and Bicamumpaka Defence motion for admission of Witness GFA's evidence given in the *Karemera et al.* case.[3021]

138. On 1 October 2008, the Chamber denied Mugiraneza Defence's motion requesting the admission of a document purported to be from the Archdiocese of Kigali confirming the baptism of Mugiraneza's daughter.[3022]

139. On 15 October 2008, the Chamber denied a Bizimungu Defence motion requesting admission of two excerpts from Witness UL's closed session testimony in the *Renzaho* case.[3023]

140. On 30 October 2008, the Chamber partially granted a Mugiraneza Defence motion for a cooperation order addressed to the Republic of Burundi to provide documents to the Accused that indicated names of persons who arrived in Bujumbura on 12 April 1994 from Kigali on French military aircraft.[3024]

[3015] Decision on Justin Mugenzi's Motion to Admit into Evidence the Transcripts from the Munyakazi Referral Hearing (TC), 23 July 2008.
[3016] Decision on Justin Mugenzi's Request for Disclosure Order (TC), 23 July 2008.
[3017] Confidential Decision on Jérôme Bicamumpaka's Confidential Motion to Admit United Nations Documents into Evidence (TC), 23 July 2008.
[3018] Confidential Decision on Jérôme Bicamumpaka's Motion to Admit French Diplomatic Record into Evidence (TC), 23 July 2008.
[3019] Confidential Decision on Prosper Mugiraneza's Confidential Motion to Admit Witness D Records (TC), 23 July 2008.
[3020] Decision on Prosper Mugiraneza's Motion to Admit Portions of Transcript of Another Proceeding (TC), 2 September 2008.
[3021] Decision on Defence Motions for the Admission of Testimony Given by Prosecution Witness GFA before the *Karemera et al.* Chamber (TC), 26 September 2008.
[3022] Decision on Mugiraneza's Motion to Admit Church Records Pursuant to Rule 89(C) (TC), 1 October 2008.
[3023] Decision on Casimir Bizimungu's Motion to Admit into Evidence the Transcripts from the Testimony of Witness UL in the *Renzaho* Proceedings (TC), 15 October 2008.
[3024] Decision on Prosper Mugiraneza's Motion Regarding Cooperation with the Republic of Burundi (TC), 30 October 2008.

141. On 3 November 2008, the Chamber denied a Mugenzi Defence motion for formal disclosure and leave to reopen his defence, holding that the Defence had not demonstrated any exceptional circumstances that would warrant reopening of its case.[3025]

142. On 4 November 2008, the Chamber granted a Mugenzi Defence motion for admission of parts of General Roméo Dallaire's evidence in the *Ndindiliyimana et al.* proceedings, holding that the Accused had been prejudiced by the Prosecution's non-disclosure in violation of Rule 68.[3026] Also on this day, the Chamber responded to four motions brought by Mugiraneza's Defence pertaining to its witness list by admitting the written statements of Witnesses RWY-A, RWR, RDR and RWM, and declaring a previous motion for reconsideration to be moot.[3027]

143. On 18 November 2008, the Chamber granted a Prosecution motion for admission of two pages of General Roméo Dallaire's book, *Shake Hands with the Devil*, as Defence Exhibit 2D120, ruling that the admission would assist the Chamber in determining the weight to be attached to transcript extracts from his testimony in the *Ndindiliyimana et al.* proceedings.[3028]

144. On 20 November 2008, the Chamber granted Mugiraneza's Defence motion requesting an investigation into the conduct of the government of Rwanda and the group known as *Ibuka* for allegedly intimidating witnesses. Additionally, the Chamber directed the Registrar to take all necessary and appropriate measures to ensure ongoing safety and security of any witnesses who were threatened.[3029]

145. On 3 February 2009, the Trial Chamber denied a Bicamumpaka Defence motion for judicial notice of an Appeals Chamber decision.[3030]

146. On 4 February 2009, the Trial Chamber denied a Bicamumpaka Defence motion for disclosure of exculpatory material relating to Witness OK-3, holding that the Defence had not established that the material existed and was in the custody or control of the Prosecution.[3031]

147. On 6 February 2009, the Chamber directed the Registrar to make written submissions detailing the exact circumstances and timing of the Registrar's appointment of counsel for Mr. Bicamumpaka in accordance with Rule 33.[3032]

148. On 9 February 2009, the Chamber partially granted a Bicamumpaka Defence motion for disclosure of exculpatory material, including closed session transcripts and relevant exhibits pertaining to Witness GTA's testimony the *Nchamihigo* case.[3033]

[3025] Decision on Justin Mugenzi's Second Motion for Formal Disclosure and for Leave to Reopen His Defence (TC), 3 November 2008.
[3026] Decision on Justin Mugenzi's Motion to Admit Transcript Extracts of General Romeo Dallaire's Evidence in the *Ndindiliyama* Proceedings (TC), 4 November 2008.
[3027] Decisions on Four Prosper Mugiraneza Motions Concerning Witness List (TC), 4 November 2008.
[3028] Decision on Prosecution's Motion to Admit Extracts from General Romeo Dallaire's Book, "Shake Hands with the Devil" (TC), 18 November 2008.
[3029] Confidential Decision on Prosper Mugiraneza's Emergency Motion to Institute Proceedings Pursuant to Rule 77 (TC), 20 November 2008.
[3030] Decision on Bicamumpaka's Motion for Judicial Notice of an Appeals Chamber Factual Finding (TC), 3 February 2009.
[3031] Decision on Bicamumpaka's Urgent Motion for Disclosure of Exculpatory Material (TC), 4 February 2009.
[3032] Order for the Registrar's Submission on Initial Assignment of Counsel to Jérôme-Clément Bicamumpaka (TC), 6 February 2009.

149. On 10 February 2009, the Chamber denied a Mugiraneza Defence motion to dismiss the Indictment for violation of his right to trial without undue delay.[3034]

150. On 26 February 2009, the Registrar withdrew Philippe Larochelle's assignment as Co-Counsel for Jérôme Bicamumpaka.[3035]

151. On 27 February 2009, the Chamber denied Bicamumpaka's Defence motion requesting a permanent stay of proceedings due to alleged prosecutorial misconduct and to the alleged violations of Bicamumpaka's rights to be tried without undue delay, to counsel, and to be informed of the nature of the charges against him.[3036]

152. On 5 March 2009, the Chamber granted in part Bicamumpaka's Defence motion by inviting the Prosecution to respond to the Defence request that the Chamber admit various exhibits into evidence. The Chamber also denied the request for the recall of Prosecution Witness GAP.[3037]

153. On 19 May 2009, the Chamber declared moot the portion of a Bicamumpaka Defence motion seeking disclosure of documents pertaining to Witness GKB, and denied the Defence request for a stay of proceedings.[3038]

154. On 10 August 2009, based on the findings of the *amicus curiae* assigned on 23 July 2009 to investigate allegations of false testimony by Witness GFA, the Chamber declined to direct *amicus curiae* to prosecute the matter.[3039]

155. On 28 August 2009, the Chamber granted in part Mugiraneza's Defence motion pertaining to the transcripts of Witness ALL-42 in the *Bagosora et al.* trial, and admitted those transcripts into the record. The Chamber found that the Prosecution had violated its disclosure obligations pursuant to Rule 68 (A), and warned the Prosecution pursuant to Rule 46 (A) that its continuing failure to comply with its disclosure obligations was violating the Accused's right to a fair and expeditious trial, was obstructing the proceedings, and was contrary to the interests of justice.[3040]

156. On 23 June 2010, the Chamber, Judge Emile Francis Short dissenting in part, denied a Mugiraneza Defence motion to dismiss the Indictment for violation of the Accused's right to trial without undue delay.[3041] On 31 August 2010, the Chamber denied, with Judge Short

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[3033] Decision on Jérôme-Clément Bicamumpaka's Urgent Motion for Disclosure of Exculpatory Material (TC), 9 February 2009.
[3034] Decision on Prosper Mugiraneza's Third Motion to Dismiss Indictment for Violation of His Right to a Trial without Undue Delay (TC), 10 February 2009.
[3035] Decision on the Withdrawal of the Assignment of Mr. Philippe Larochelle, Co-Counsel for the Accused Jérôme Bicamumpaka (Registry), 26 February 2009.
[3036] Decision on Jérôme-Clément Bicamumpaka's Motion Seeking Permanent Stay of Proceedings (TC), 27 February 2009.
[3037] Decision on Jérôme-Clément Bicamumpaka's Motion for the Recall of Prosecution Witness GAP (TC), 5 March 2009.
[3038] Decision on Jérôme-Clément Bicamumpaka's Submissions for Stay of Proceedings and Motion for Disclosure Concerning Witness GKB (TC), 19 May 2009.
[3039] Confidential Decision Following the Report of *Amicus Curiae* on Whether There are Sufficient Grounds to Proceed Against Witness GFA for Giving False Testimony (TC), 10 August 2009.
[3040] Decision on Prosper Mugiraneza's Request for Disclosure Pursuant to Rule 68 and for Appropriate Relief (TC), 28 August 2009.
[3041] Decision on Prosper Mugiraneza's Fourth Motion to Dismiss Indictment for Violation of Right to Trial without Undue Delay (TC), 23 June 2010.

dissenting, a Mugiraneza Defence motion requesting reconsideration or, in the alternative, certification to appeal the decision.[3042]

157. On 17 December 2010, the Chamber granted the Mugiraneza Defence access to the report and papers of the appointed *amicus curiae* pertaining to the Defence allegations Rwandan government and *Ibuka* officials interfered with a number of protected witnesses.[3043]

158. On 27 July 2011, the Chamber granted two Prosecution motions to vary the protective measures for Witness GJQ in order to provide the authorities of Norway and Germany with documents relating to his testimony before the Tribunal. The Chamber dismissed an application brought by Defence counsel in the German matter seeking similar disclosure.[3044]

159. On 9 August 2011, the Chamber granted a Prosecution motion to vary the protective measures for Witness GAP in order to provide the Canadian authorities with documents relating to his testimony before the Tribunal.[3045]

160. On 19 August 2011, the Chamber, with a partially dissenting opinion by Judge Khan, denied a Mugiraneza Defence motion requesting the initiation of contempt proceedings based upon allegations that officials from the government of Rwanda and *Ibuka* had interfered with witnesses who testified before the Tribunal on behalf of Mugiraneza.[3046]

161. The Trial Chamber rendered its Judgement on 30 September 2011. The written Judgement was issued on 19 October 2011 after the completion of the editorial process.

[3042] Decision on Mugiraneza's Request for Reconsideration or Alternatively Certification to Appeal the Decision on Mugiraneza's Fourth Motion to Dismiss Indictment for Violation of Right to Trial without Undue Delay Dated 23 June 2010 (TC), 31 August 2010.
[3043] Confidential Decision on Request for Disclosure of *Amicus Curiae* Report and Related Documents (TC), 17 December 2010.
[3044] Confidential Decision on Prosecution's Urgent Confidential Motions to Vary Protective Measures for Witness GJQ and the Extremely Urgent Application for Variation of Protective Measures and Disclosure of Documents by Counsel for Onesphore Rwabukombe (TC), 27 July 2011.
[3045] Confidential Decision on Prosecution's Confidential Motion to Rescind Protective Measures for Witness GAP (TC), 9 August 2011.
[3046] Confidential Decision on Request to Initiate Contempt Proceedings (TC), 19 August 2011.

ANNEX B: CITED MATERIALS AND DEFINED TERMS

1. CITED MATERIALS

1.1 ICTR

Akayesu

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001 ("*Akayesu* Appeal Judgement")

Bagilishema

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-A, Judgement (AC), 3 July 2002 ("*Bagilishema* Appeal Judgement")

Bagosora et al.

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR 98-41-T, Judgement and Sentence (TC), 18 December 2008 ("*Bagosora et al.* Trial Judgement")

Bikindi

Simon Bikindi v. The Prosecutor, Case No. ICTR-01-72-A, Judgement (AC), 18 March 2010 ("*Bikindi* Appeal Judgement")

Gacumbitsi

The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-T, Judgement (TC), 17 June 2004 ("*Gacumbitsi* Trial Judgement")

Sylvestre Gacumbitsi v. The Prosecutor, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006 ("*Gacumbitsi* Appeal Judgement")

Kajelijeli

The Prosecutor v. Juvénal Kajelijeli, Case No. ICTR-98-44A-T, Judgement and Sentence (TC), 1 December 2003 ("*Kajelijeli* Trial Judgement")

Juvénal Kajelijeli v. The Prosecutor, Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005 ("*Kajelijeli* Appeal Judgement")

Kalimanzira

Callixte Kalimanzira v. The Prosecutor, Case No. ICTR-05-88-A, Judgement (AC), 20 October 2010 ("*Kalimanzira* Appeal Judgement")

Kambanda

Jean Kambanda v. The Prosecutor, Case No. ICTR-97-23-A, Judgement (AC), 19 October 2000 ("*Kambanda* Appeal Judgement")

Kamuhanda

The Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-95-54A-T, Judgement and Sentence (TC), 22 January 2004 ("*Kamuhanda* Trial Judgement")

Karera

François Karera v. The Prosecutor, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009 ("*Karera* Appeal Judgement")

Kayishema and Ruzindana

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement (AC), 1 June 2001 ("*Kayishema and Ruzindana* Appeal Judgement")

Muhimana

Mikaeli Muhimana v. The Prosecutor, Case No. ICTR-95-1B-A, Judgement (AC), 21 May 2007 ("*Muhimana* Appeal Judgement")

Munyakazi

The Prosecutor v. Yussuf Munyakazi, Case No. ICTR-97-36A-A, Judgement (AC), 28 September 2011 ("*Munyakazi* Appeal Judgement")

Musema

The Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T, Judgement and Sentence (TC), 27 January 2000 ("*Musema* Trial Judgement")

Alfred Musema v. The Prosecutor, Case No. ICTR-96-13-A, Judgement (AC), 16 November 2001 ("*Musema* Appeal Judgement")

Muvunyi

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008 ("*Muvunyi I* Appeal Judgement")

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-2000-55A-A, Judgement (AC), 1 April 2011 ("*Muvunyi II* Appeal Judgement")

Nahimana et al.

The Prosecutor v. Ferdinand Nahimana et al., Case No. ICTR-99-52-T, Judgement and Sentence (TC), 3 December 2003 ("*Nahimana et al.* Trial Judgement")

Ferdinand Nahimana et al. v. The Prosecutor, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 ("*Nahimana et al.* Appeal Judgement")

Nchamihigo

Siméon Nchamihigo v. The Prosecutor, Case No. ICTR-2001-63-A, Judgement (AC), 18 March 2010 ("*Nchamihigo* Appeal Judgement")

Ndindabahizi

Emmanuel Ndindabahizi v. The Prosecutor, Case No. ICTR-01-71-A, Judgement (AC), 16 January 2007 ("*Ndindabahizi* Appeal Judgement")

Niyitegeka

The Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-T, Judgement and Sentence (TC), 16 May 2003 ("*Niyitegeka* Trial Judgement")

Eliézer Niyitegeka v. The Prosecutor, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004 ("*Niyitegeka* Appeal Judgement")

Nsengimana

The Prosecutor v. Hormisdas Nsengimana, Case No. ICTR-01-69-T, Judgement (TC), 17 November 2009 ("*Nsengimana* Trial Judgement")

Nshogoza

Léonidas Nshogoza v. The Prosecutor, Case No. ICTR-2007-91-A, Judgement (AC), 15 March 2010 ("*Nshogoza* Appeal Judgement")

Ntagerura et al.

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-T, Judgement and Sentence (TC), 25 February 2004 ("*Ntagerura et al.* Trial Judgement")

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 ("*Ntagerura et al.* Appeal Judgement")

Ntakirutimana

The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004 ("*Ntakirutimana* Appeal Judgement")

Nyiramasuhuko et al.

The Prosecutor v. Pauline Nyiramasuhuko et al., Case No. ICTR-98-42-T, Judgement and Sentence (TC), 24 June 2011 ("*Nyiramasuhuko et al.* Trial Judgement")

Renzaho

The Prosecutor v. Tharcisse Renzaho, Case No. ICTR-97-31-T, Judgement and Sentence (TC), 14 July 2009 ("*Renzaho* Trial Judgement")

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

Rukundo

Emmanuel Rukundo v. The Prosecutor, Case No. ICTR-2001-70-A, Judgement (AC), 20 October 2010 ("*Rukundo* Appeal Judgement")

Rutaganda

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003 ("*Rutaganda* Appeal Judgement")

Semanza

The Prosecutor v. Laurent Semanza, Case No. ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003 ("*Semanza* Trial Judgement")

Laurent Semanza v. The Prosecutor, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005 ("*Semanza* Appeal Judgement")

Seromba

The Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-I, Judgement (TC), 13 December 2006 ("*Seromba* Trial Judgement")

The Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-A, Judgement (AC), 12 March 2008 ("*Seromba* Appeal Judgement")

Serushago

Omar Serushago v. The Prosecutor, Case No. ICTR-98-39-A, Reasons for Judgement (AC), 6 April 2000 ("*Serushago* Appeal Judgement")

Setako

The Prosecutor v. Ephrem Setako, Case No. ICTR-04-81-T, Judgement and Sentence (TC), 25 February 2010 ("*Setako* Trial Judgement")

Ephrem Setako v. The Prosecutor, Case No. ICTR-04-81-A, Judgement (AC), 28 September 2011 ("*Setako* Appeal Judgement")

Simba

The Prosecutor v. Aloys Simba, Case No. ICTR-01-76-T, Judgement and Sentence (TC), 13 December 2005 ("*Simba* Trial Judgement")

Aloys Simba v. The Prosecutor, Case No. ICTR-01-76-A, Judgement (AC), 27 November 2007 ("*Simba* Appeal Judgement")

Zigiranyirazo

Protais Zigiranyirazo v. The Prosecutor, Case No. ICTR-01-73-A, Judgement (AC), 16 November 2009 ("*Zigiranyirazo* Appeal Judgement")

1.2 ICTY

Blagojević and Jokić

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Judgement (AC), 9 May 2007 ("*Blagojević and Jokić* Appeal Judgement")

Blaškić

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement (AC), 29 July 2004 ("*Blaškić* Appeal Judgement")

Brđanin

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Judgement (TC), 1 September 2004 ("*Brđanin* Trial Judgement")

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Judgement (AC), 3 April 2007 ("*Brđanin* Appeal Judgement")

Delalić et al.

Prosecutor v. Zejnil Delalić et al., Case No. IT-96-21-T, Judgement (TC), 16 November 1998 ("*Delalić et al.* Trial Judgement")

Prosecutor v. Zejnil Delalić et al., Case No. IT-96-21-A, Judgement (AC), 20 February 2001 ("*Delalić et al.* Appeal Judgement")

Halilović

Prosecutor v. Sefer Halilović, Case No. IT-01-48-A, Judgement (AC), 16 October 2007 ("*Halilović* Appeal Judgement")

Haradinaj et al.

Prosecutor v. Ramush Haradinaj et al., Case No. IT-04-84-A, Judgement (AC), 19 July 2010 ("*Haradinaj et al.* Appeal Judgement")

Jelisić

Prosecutor v. Goran Jelisić, Case No. IT-95-10-A, Judgement (AC), 5 July 2001 ("*Jelisić* Appeal Judgement")

Kordić and Čerkez

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-A, Judgement (AC), 17 December 2004 ("*Kordić and Čerkez* Appeal Judgement")

Krnojelac

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgment (TC), 15 March 2002 ("*Krnojelac* Trial Judgement")

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgement (AC), 17 September 2003 ("*Krnojelac* Appeal Judgement")

Krstić

Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Judgement (AC), 19 April 2004 ("*Krstić* Appeal Judgement")

Kupreškić et al.

Prosecutor v. Zoran Kupreškić et al., Case No. IT-95-16-A, Judgement (AC), 23 October 2001 ("*Kupreškić et al.* Appeal Judgement")

Kvočka et al.

Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-T, Judgement (TC), 2 November 2001 ("*Kvočka et al.* Trial Judgement")

Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005 ("*Kvočka et al.* Appeal Judgement")

Limaj et al.

Prosecutor v. Fatmir Limaj et al., Case No. IT-03-66-A, Judgement (AC), 27 September 2007 ("*Limaj et al.* Appeal Judgement")

Martić

Prosecutor v. Milan Martić, Case No. IT-95-11-A, Judgement (AC), 8 October 2008 ("*Martić* Appeal Judgement")

Dragomir Milošević

Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-A, Judgement (AC), 12 November 2009 ("*Dragomir Milošević* Appeal Judgement")

Mrkšić and Šljivančanin

Prosecutor v. Mile Mrkšić and Veselin Šljivančanin, Case No. IT-95-13/1-A, Judgement (AC), 5 May 2009 ("*Mrkšić and Šljivančanin* Appeal Judgement")

Dragan Nikolić

Prosecutor v. Dragan Nikolić, Case No. IT-94-2-A, Judgement on Sentencing Appeal (AC), 4 February 2005 ("*Dragan Nikolić* Appeal Judgement")

Orić

Prosecutor v. Naser Orić, Case No. IT-03-68-A, Judgement (AC), 3 July 2008 ("*Orić* Appeal Judgement")

Popović et al.

Prosecutor v. Vujadin Popović et al., Case No. IT-05-88-T, Judgement (TC), 10 June 2010 ("*Popović et al.* Trial Judgement")

Simić et al.

Prosecutor v. Blagoje Simić et al., Case No. IT-95-9-T, Judgement (TC), 17 October 2003 ("*Simić et al.* Trial Judgement")

Prosecutor v. Blagoje Simić, Case No. IT-95-9-A, Judgement (AC), 28 November 2006 ("*Simić* Appeal Judgement")

Stakić

Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Judgement (AC), 22 March 2006 ("*Stakić* Appeal Judgement")

Strugar

Prosecutor v. Pavle Strugar, Case No. IT-01-42-A, Judgement (AC), 17 July 2008 ("*Strugar* Appeal Judgement")

Duško Tadić

Prosecutor v. Duško Tadić, Case No. IT-94-1-A, Judgement (AC), 15 July 1999 ("*Duško Tadić* Appeal Judgement")

Vasiljević

Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-T, Judgement (TC), 29 November 2002 ("*Vasiljević* Trial Judgement")

Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-A, Judgement (AC), 25 February 2004 ("*Vasiljević* Appeal Judgement")

1.3 Other Materials

Genocide Convention

Convention for the Prevention and Punishment of the Crime of Genocide, *adopted* 9 December 1948, 78 U.N.T.S. 277 (entered into force 12 January 1951)

***Travaux Préparatoires* of the Genocide Convention**

THE GENOCIDE CONVENTION: THE TRAVAUX PRÉPARATOIRES (Hirad Abtahi & Philippa Webb, eds. 2008)

2. DEFINED TERMS AND ABBREVIATIONS

***Ad hoc* Tribunals**

The ICTR and the ICTY

Arusha Accords

A set of five accords (or protocols) signed in Arusha, Tanzania on 4 August 1993, by the Rwandan Government and the Rwandan Patriotic Front, designed to implement a power-sharing arrangement through a broad-based transitional government

Bicamumpaka Closing Brief

The Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-T, Jérôme Bicamumpaka's Final Brief & Motion for Stay of Proceedings, 21 November 2008

Bizimungu Closing Brief

The Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-T, Casimir Bizimungu's Amended Brief Filed Pursuant to Rule 86(B) of the Rules of Procedure and Evidence, 5 December 2008

CDR

Coalition pour la Défense de la République

CHK

Centre Hospitalier de Kigali

CND

Conseil National du Développement

EDS

Electronic Disclosure Suite

Exhibit

Exhibits tendered during the proceedings. All page references to the exhibits correspond to the actual page in order of each exhibit's admission (or .pdf viewer number) rather than any numbering on the exhibit itself.

FAR

Forces Armées Rwandaises

fn. (fns.)

Footnote

Gendarme

An officer of the *Gendarmerie*

Gendarmerie

Replaced the National Police force in 1973, responsible for maintaining public law and order and enforcing the laws in force in Rwanda; members were assigned to public security territorial companies and brigades

GOMN

Groupe d'Observateurs Militaires Neutres (Neutral Military Observer Group)

Ibuka

Association of genocide survivors

ICRC

International Committee of the Red Cross

ICTR or Tribunal

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994

ICTY

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Impuzamugambi

The youth wing of the CDR party

Indictment

The Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-I, Indictment as confirmed, 12 May 1999

Interahamwe

The youth wing of the MRND party

JDR

Jeunesse Démocratique Rwandaise, the youth wing of the MDR party

Judgement

The Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-T, Judgement and Sentence (TC), 30 September 2011

MDR

Mouvement Démocratique Républicain

MRND

Mouvement Révolutionnaire National pour la Démocratie et le Développement (prior to 1991) and *Mouvement Républicain National pour la Démocratie et le Développement* (from 1991)

Mugenzi Closing Brief

The Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-T, Justin Mugenzi's Closing Brief, 10 November 2008

Mugiraneza Closing Brief

The Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-T, Prosper Mugiraneza's Corrected Closing Brief, 24 November 2008

OAU

Organisation of African Unity

p. (pp.)

page (pages)

para. (paras.)

paragraph (paragraphs)

PL

Parti Libéral (Liberal Party)

Presidential Guard

The Presidential Guard Battalion, a specialised unit of the Rwandan Armed Forces, was responsible for ensuring the security of the Rwandan President

Proposed Amended Indictment

The Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-I, Prosecutor's Request for Leave to File an Amended Indictment, 26 August 2003, Annex A

Prosecution Closing Brief

The Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-T, Prosecutor's Closing Brief with Applied Corrigendum, 10 November 2008

Prosecution 21 November 2008 Document

The Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-T, Prosecutor's Written Submissions on the Request of the Trial Chamber Dated 14th November 2008, 21 November 2008

Prosecution Pre-Trial Brief

The Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-I, Prosecution's Pre-Trial Brief Pursuant to Rule 73 *Bis* (B)(i), 20 October 2003

PSD

Parti Social Démocrate

RGF

Rwandan (also Rwandese) Government Forces

RPF

Rwandan (also Rwandese) Patriotic Front

RTLM

Radio Télévision Libre des Mille Collines

Rules

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

SRSG

Special Representative of the Secretary-General of the United Nations

Statute

Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955

T.

Transcript

TNA

Transitional National Assembly

UN

United Nations

UNAMIR

United Nations Assistance Mission for Rwanda

UNDF

United Nations Detention Facility located in Arusha

UNDP

United Nations Development Programme

USD

United States Dollar(s)

WVSS

Witnesses and Victims Support Section

(SDS

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ICTR
CRIMINAL REGISTRY
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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA

Case No.: ICTR-99-

No. de dossier: ICTR-99-

THE PROSECUTOR

AGAINST

CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JERÔME BICAMUMPAKA
PROSPER MUGIRANEZA

INDICTMENT as confirmed

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**:

CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JERÔME BICAMUMPAKA
PROSPER MUGIRANEZA

With **CONSPIRACY TO COMMIT GENOCIDE; GENOCIDE**, or alternatively **COMPLICITY IN GENOCIDE; DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE; CRIMES AGAINST HUMANITY** and **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II,** offences stipulated in Articles 2, 3, and 4 of the Statute of the Tribunal.

LE PROCUREUR DU TRIBUNAL

CONTRE

CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JERÔME BICAMUMPAKA
PROSPER MUGIRANEZA

ACTE D'ACCUSATION tel que confirmé

Le Procureur du Tribunal Pénal International pour le Rwanda, en vertu des pouvoirs que lui confère l'article 17 du Statut du Tribunal Pénal International pour le Rwanda (le Statut du Tribunal) **accuse**:

CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JERÔME BICAMUMPAKA
PROSPER MUGIRANEZA

D'ENTENTE EN VUE DE COMMETTRE LE GÉNOCIDE; GÉNOCIDE ou alternativement, **COMPLICITE DE GENOCIDE; D'INCITATION DIRECTE ET PUBLIQUE A COMMETTRE LE GENOCIDE; CRIMES CONTRE L'HUMANITE,** et de **VIOLATIONS DE L'ARTICLE 3 COMMUN AUX CONVENTIONS DE GENEVE ET DU PROTOCOLE ADDITIONEL II,** crimes prévus aux articles 2, 3 et 4 du Statut du Tribunal.

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIEE CONFORME A L'ORIGINAL PAR NOUS

NAME / NOM: NOUHOU DIALLO

SIGNATURE: ..... *DATE:* 19.10.04

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1. HISTORICAL CONTEXT

1.1 The revolution of 1959 marked the beginning of a period of ethnic clashes between the Hutu and the Tutsi in Rwanda, causing hundreds of Tutsi to die and thousands more to flee the country in the years immediately following. The revolution resulted in the abolition of the Tutsi monarchy and the proclamation of the First Republic in early 1961, confirmed in a referendum held in the same year. Legislative elections held in September 1961 confirmed the dominant position of the MDR-PARMEHUTU (*Mouvement Démocratique Républicain- Parti du Mouvement dEmancipation Hutu*), led by Grégoire Kayibanda, who was subsequently elected President of the Republic by the Legislative Assembly on 26 October 1961.

1.2 The early years of the First Republic, which was under the domination of the Hutu of central and southern Rwanda, were again marked by ethnic violence. The victims were predominantly Tutsi, the former ruling elite and those related to them, who were killed, driven to other regions of Rwanda or forced to flee the country. The gradual elimination of the opposition parties in those early years confirmed the MDR-PARMEHUTU as the single party, the only party to present candidates in the elections of 1965.

1.3 The early part of 1973 in Rwanda was again marked by ethnic confrontations between the Hutu and Tutsi, prompting another exodus of the Tutsi minority from

1. CONTEXTE HISTORIQUE

1.1 La révolution de 1959 marque le début d'une période d'affrontements ethniques entre les Hutu et les Tutsi au Rwanda, provoquant au cours des années qui ont immédiatement suivi, des centaines de morts chez les Tutsi et l'exode de milliers d'entre eux. Cette révolution entraîne l'abolition de la monarchie Tutsi et la proclamation de la Première République au début de l'année 1961, confirmée par référendum au cours de la même année. Les élections législatives de septembre 1961 confirme la domination du MDR-PARMEHUTU (Mouvement Démocratique Républicain-Parti du Mouvement dÉmancipation Hutu) de Grégoire Kayibanda, qui est élu Président de la République par lassemblée législative le 26 octobre 1961.

1.2 Les premières années d'existence de cette république, dominée par les Hutu du centre et du sud du Rwanda, sont de nouveau marquées par la violence ethnique. Les victimes furent principalement des Tutsi, l'ancienne élite dirigeante, et leurs alliés; ceux-ci furent tués, chassés vers d'autres régions du Rwanda ou forcés de senfuir du pays. L'élimination progressive des partis d'opposition durant ces premières années confirme le MDR-PARMEHUTU comme parti unique, qui est le seul à présenter des candidats aux élections de 1965.

1.3 Le début de l'année 1973 au Rwanda est de nouveau marqué par des affrontements ethniques entre Hutu et Tutsi qui provoquent, après ceux de 1959 à 1963,

the country, as had occurred between 1959 and 1963. This new outburst of ethnic and political tension between the North and South resulted in a military coup by General Juvénal Habyarimana on 5 July 1973, shifting power from civilian to military hands and from Hutu of central Rwanda to Hutu of the northern *préfectures* of Gisenyi (Habyarimanas native region) and Ruhengeri.

un nouvel exode de la minorité Tutsi. Cette recrudescence des tensions ethniques et politiques (entre le Nord et le Sud) aboutit, le 5 juillet 1973, à un coup d'État militaire mené par le Général Juvénal Habyarimana. Le coût d'État entraîne un renversement du pouvoir, qui passe des mains des civils à celles des militaires et de celles des Hutu du centre du Rwanda à celles des Hutu des préfectures de Gisenyi et Ruhengeri au nord du pays (région natale du Président Habyarimana).

1.4 In 1975, President Habyarimana founded the *Mouvement Révolutionnaire National pour le Développement* (MRND), a single party, and assumed the position of party Chairman. The administrative and party hierarchies were indistinguishable in this single party state from the level of the *Préfet* to the *bourgmestres*, and down to that of the *conseillers de secteur* and *responsables de cellule*.

1.4 En 1975, le président Habyarimana fonde le Mouvement Révolutionnaire National pour le Développement (MRND), parti unique, dont il assume la présidence. La structure administrative et la hiérarchie du MRND se confondent en un véritable parti-État à tous les niveaux de l'administration territoriale, du Préfet aux Bourgmestres, jusqu'aux conseillers de secteurs et responsables de cellule.

1.5 From 1973 to 1994, the government of President Habyarimana used a system of ethnic and regional quotas which was supposed to provide educational and employment opportunities for all but which was used increasingly to discriminate against both Tutsi and Hutu from regions outside the northwest.

In fact, by the late 1980's, persons from Gisenyi and Ruhengeri occupied many of the most important positions in the military, political, economic and administrative sectors of Rwandan society. Among the privileged elite, an inner circle of relatives and close associates of President Habyarimana and his wife, Agathe Kanziga, known as the Akazu, enjoyed great power. This select group, almost exclusively Hutu, was supplemented by individuals who

1.5 De 1973 à 1994, le gouvernement du Président Habyarimana applique un système de quotas basé sur l'origine ethnique et régionale qui était censé offrir des chances égales à tous en matière d'éducation et d'emploi, mais qui fut utilisé progressivement de manière discriminatoire à l'encontre des Tutsi et des Hutu originaires d'autres régions que le nord-ouest.

De fait, à la fin des années 1980, plusieurs des postes les plus importants dans les secteurs militaires, politiques, économiques et administratifs de la société rwandaise étaient occupés par des personnes originaires de Gisenyi et Ruhengeri. Parmi l'élite privilégiée, un noyau, connu sous l'appellation Akazu, composé de membres de la famille et d'intimes du Président Habyarimana et de son épouse, Agathe Kanziga, jouit d'un grand pouvoir. Aux

shared its extremist Hutu ideology, and who came mainly from the native region of the President and his wife.

1.6 In 1990, the President of the Republic, Juvénal Habyarimana, and his single party, the MRND, were facing mounting opposition including from other Hutu.

1.7 On 1 October 1990, the Rwandan Patriotic Front (RPF), made up mainly of Tutsi refugees, attacked Rwanda. Within days the government began arresting thousands of people, presumed to be opponents of Habyarimana and suspected of being RPF accomplices. Although the Tutsi were the main target, Hutu political opponents were also arrested.

1.8 Following pressure from the internal opposition and the international community, and the RPF attack of October 1990, President Habyarimana permitted the introduction of multiple political parties and the adoption of a new constitution on 10 June 1991. The *Mouvement Révolutionnaire National pour le Développement* (MRND) was renamed *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). The first transitional government was made up almost exclusively of MRND members, following the refusal of the main opposition parties to take part. With the second transitional government in April 1992, the MRND became a minority party for the first time in its history, with nine ministerial

membres de ce groupe, presque exclusivement Hutu, se joignent des personnes qui en partagent l'idéologie Hutu extrémiste et qui sont principalement originaires de la région natale du Président et de son épouse.

1.6 Au cours de l'année 1990, le Président de la République, Juvénal Habyarimana, et son parti unique, le MRND, font face à une opposition grandissante, notamment de la part d'autres Hutu.

1.7 Le 1er octobre 1990, le Front Patriotique Rwandais (FPR), composé majoritairement de réfugiés Tutsi, attaque le Rwanda. Dans les jours qui suivent, le gouvernement procède à l'arrestation de milliers de personnes présumées être des adversaires d'Habyarimana et soupçonnées de complicité avec le FPR. Parmi les personnes arrêtées, majoritairement d'origine Tutsi, il y a également des opposants politiques Hutu.

1.8 Suite aux différentes pressions de l'opposition interne et de la communauté internationale, et à l'attaque du FPR d'octobre 1990, le Président Habyarimana autorise l'introduction du multipartisme et l'adoption d'une nouvelle constitution le 10 juin 1991. Le *Mouvement Révolutionnaire National pour le Développement* (MRND) est alors rebaptisé *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). Le premier Gouvernement de transition est composé presque exclusivement de membres du MRND, suite au refus des principaux partis d'opposition d'en faire partie. Avec la mise en place du second Gouvernement de transition en avril 1992, le MRND se retrouve minoritaire pour la première fois de

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portfolios out of 19. On the other hand, the MRND retained its domination over the local administration.

1.9 The new government then entered into negotiations with the RPF, which resulted in the signing of the Arusha Accords on 4 August 1993. The Accords provided for a new system of sharing military and civilian power between the RPF, the opposition parties and the MRND.

1.10 By the terms of the Arusha Accords, which provided for the integration of both sides armed forces, the new national army was to be limited to 13,000 men, 60% FAR (*Forces Armées Rwandaises*) and 40% RPF. The posts of command were to be shared equally (50%-50%) between the two sides, with the post of Chief of Staff of the Army assigned to the FAR.

The Gendarmerie was to be limited to 6,000 men, 60% FAR and 40% RPF, with the posts of command shared equally (50%-50%) between the two sides and the post of Chief of Staff of the Gendarmerie assigned to the RPF.

1.11 As regards representation within the government, the Arusha Accords limited the number of ministerial portfolios to be held by the MRND to five, plus the Presidency. The other portfolios were to be shared as follows: RPF, five; MDR (*Mouvement démocratique républicain*), four (including the post of Prime Minister); PSD (*Parti social-démocrate*), three; PL (*Parti libéral*), three; and the PDC (*Parti démocrate-chrétien*), one.

son histoire, avec neuf portefeuilles ministériels sur 19. Par contre, le MRND demeure fortement dominant au niveau de l'administration territoriale.

1.9 Le nouveau Gouvernement entame alors des négociations avec le FPR qui aboutissent le 4 août 1993 à la signature des Accords d'Arusha. Ces Accords prévoient un nouveau partage des pouvoirs militaires et civils entre le FPR, les partis d'opposition et le MRND.

1.10 Aux termes des Accords d'Arusha qui prévoient l'intégration des forces armées des deux parties, l'effectif de la nouvelle armée nationale est limité à 13 000 hommes dont 60% proviennent des FAR (Forces Armées Rwandaises) et 40% du FPR. Quant aux postes de commandement, ils sont attribués à parts égales (50%-50%) aux deux parties, le poste de Chef d'État Major de l'armée revenant aux FAR.

L'effectif de la Gendarmerie est limité à 6 000 hommes, composé de 60% des FAR et 40% du FPR, avec les postes de commandement répartis équitablement (50%-50%) entre les deux parties, le poste de Chef d'État Major de la Gendarmerie revenant au FPR.

1.11 Au niveau de la représentation au sein du gouvernement, les Accords d'Arusha limitent à cinq le nombre de portefeuilles ministériels du MRND en plus de la Présidence de la République. Les autres portefeuilles se répartissent ainsi: cinq pour le FPR, quatre pour le MDR (*Mouvement démocratique républicain*) dont le poste de premier Ministre, trois pour le PSD (*Parti social-démocrate*), trois pour le PL (*Parti libéral*) et un pour le PDC (*Parti démocrate-chrétien*).

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1.12 For the men and women close to President Habyarimana, including the members of the *Akazu*, who held positions of prominence in the various sectors of Rwandan society, this new power sharing plan, as demanded by the political opposition and as stipulated in the Arusha Accords, meant a relinquishment of power and the loss of numerous privileges and benefits. With political changes following the establishment of the multi-party government of April 1992, several important military officers from the north had been forced to retire. At the same time, many of the military were facing massive demobilisation with the implementation of the Arusha Accords.

1.13 From 1990, Habyarimana and several of his close associates devised the strategy of inciting hatred and fear of the Tutsi minority as a way of rebuilding solidarity among Hutu and keeping themselves in power. They strongly opposed any form of power sharing, including the one envisaged by the Arusha Accords.

1.14 Determined to avoid the power sharing prescribed by the Arusha Accords, several prominent civilian and military figures pursued their strategy of ethnic division and incitement to violence. They targeted and labelled as RPF accomplices the entire Tutsi population, and also Hutu opposed to their domination, particularly those from regions other than northwestern Rwanda. At the same time, they sought to divide Hutu opposition parties, attracting some of their members back to the support of Habyarimana. These efforts to divide the Hutu opposition were favored by the assassination of Melchior Ndandaye, a democratically elected Hutu President in

1.12 Pour les hommes et les femmes proches du Président Habyarimana, parmi lesquels les membres de *l'Akazu*, qui occupaient des fonctions importantes au sein des divers secteurs de la société rwandaise, ce nouveau partage du pouvoir, tel qu'exigé par les opposants politiques et stipulé par les Accords d'Arusha, signifie l'abandon du pouvoir et la perte de nombreux privilèges et d'importants bénéfices. Les changements politiques consécutifs à l'établissement dun régime multipartite en avril 1992 obligent plusieurs officiers militaires importants, originaires du Nord, à prendre leur retraite. En même temps, l'application des Accords d'Arusha confronte plusieurs militaires à une démobilisation massive.

1.13 À partir de 1990, Habyarimana et plusieurs de ses plus proches collaborateurs conçoivent une stratégie d'incitation à la haine et à la peur face à la minorité Tutsi, afin de rétablir la solidarité parmi les Hutu et de se maintenir au pouvoir. Ils s'opposent fortement à toute forme de partage du pouvoir et particulièrement au partage prévu par les Accords d'Arusha.

1.14 Déterminées à éviter le partage des pouvoirs prévu par les Accords d'Arusha, plusieurs personnalités civiles et militaires en vue poursuivent leur stratégie de conflit ethnique et d'incitation à la violence. Elles visent la population Tutsi tout entière, qui est qualifiée de complice du FPR, de même que les Hutu opposés à leur domination, particulièrement ceux qui sont originaires d'autres régions que le nord-ouest du Rwanda. Parallèlement, elles tentent de diviser les partis d'opposition Hutu, en ramenant certains de leurs membres dans le camp d'Habyarimana. Les efforts destinés à diviser l'opposition Hutu sont favorisés par l'assassinat, par des soldats Tutsi de l'armée

neighboring Burundi, by Tutsi soldiers of the Burundi army. By late 1993, two of the three major parties opposed to the MRND had each split into two factions. The faction of each known as the Power faction aligned itself with the MRND.

1.15 The strategy adopted in the early 1990s, which culminated in the widespread massacres of April 1994, comprised several components, which were carefully worked out by the various prominent figures who shared the extremist Hutu ideology, including the members of the *Akazu*.

In addition to the incitement to ethnic violence and the extermination of the Tutsi and their accomplices, was the organization and military training of the youth wings of the political parties, notably the *Interahamwe* (youth wing of the MRND), the preparation of lists of people to be eliminated, the distribution of weapons to civilians, the assassination of certain political opponents and the massacre of many Tutsi in various parts of Rwanda between October 1990 and April 1994.

1.16 The incitement to ethnic hatred took the form of public speeches by people sharing the extremist ideology. These political and military figures publicly appealed to hatred and fear of the Tutsi and urged the Hutu majority to finish off the enemy and its accomplices. A perfect illustration is the speech made in November 1992 by Léon Mugesera, vice-chairman of the MRND for Gisenyi *préfecture*, who at the time was already inciting the public to exterminate the Tutsi and their accomplices.

With the intention of ensuring widespread dissemination of the calls to

burundaise, de Melchior Ndandaye, président Hutu démocratiquement élu dans le Burundi voisin. À la fin de 1993, deux des trois principaux partis opposés au MRND s'étaient divisés en deux factions chacun. Les factions connues sous le nom de Power s'allient au MRND.

1.15 La stratégie adoptée au début des années 90, qui va connaître son apogée avec les massacres généralisés d'avril 1994, comporte plusieurs éléments qui sont soigneusement élaborés par les différentes personnalités qui partagent cette idéologie extrémiste, dont les membres de l'*Akazu*. À l'incitation à la violence ethnique et à l'extermination des Tutsi et de leurs complices, s'ajoutent l'organisation et l'entraînement militaire des jeunesses politiques, notamment les *Interahamwe* (jeunesses du MRND), la préparation de listes de personnes à éliminer, la distribution d'armes à des civils, l'assassinat de certains opposants politiques et le massacre de nombreux Tutsi dans diverses régions du Rwanda entre octobre 1990 et avril 1994.

1.16 L'incitation à la haine ethnique prend la forme de discours publics prononcés par des personnalités partageant cette idéologie extrémiste. Ces personnalités politiques et militaires appellent publiquement à la haine et à la peur des Tutsi et exhortent la majorité Hutu à en finir avec l'ennemi et ses complices. Le discours prononcé en novembre 1992 par Léon Mugesera, vice-président du MRND pour la préfecture de Gisenyi, qui dès cette époque incitait publiquement à l'extermination des Tutsi et leurs complices, en est la parfaite illustration.

Dans le but d'assurer une large

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ethnic violence, prominent figures from the Presidents circle set up true hate media. Thus the creation of *Radio Télévision Libre des Mille Collines (RTLM)* and of the newspaper *Kangura* was a part of the strategy and pursued the same logic.

1.17 The creation of the youth wings of the political parties, originally established to encourage or even force adherence to one or another party in the newly-established multi-party system, provided Habyarimanas circle with a large, devoted and effective workforce to implement the adopted strategy. These youth organizations, which were affiliated to the political parties, were soon manipulated as part of the anti-Tutsi campaign. Some of the members of these organizations, notably the *Interahamwe* (MRND), were organized into militia groups, which were financed, trained and led by prominent civilians and military figures from the President of the Republics entourage. They were issued weapons, with the complicity of certain military and civilian authorities. The militia groups were transported to training sites, including certain military camps, in public administration vehicles or vehicles belonging to companies controlled by the Presidents circle.

1.18 During the mass arrests of October 1990, the civilian and military authorities followed lists that had been drawn up in order to identify and locate the presumed accomplices of the RPF, the majority of whom were Tutsi. Later, Army, Gendarmerie, local authorities and *Interahamwe* were given orders to prepare new lists or update the existing ones, which were subsequently used during the massacres of 1994. In March 1993, such a

diffusion de ces appels à la violence ethnique, des personnalités de l'entourage du Président mettent sur pied de véritables média de la haine. La création de la Radio Télévision Libre des Mille Collines (RTLM) et du journal *Kangura* participe de cette stratégie et s'inscrit dans cette logique.

1.17 La création des ailes jeunesses des partis politiques, qui avait à l'origine pour objectif d'encourager ou même de forcer l'adhésion à l'un ou l'autre des partis du nouveau régime multipartite, va fournir à l'entourage d'Habyarimana une main d'oeuvre dévouée, nombreuse et efficace pour mettre en oeuvre la stratégie adoptée. Ces organisations de jeunesse affiliées aux partis politiques sont très vite manipulées dans le cadre de la campagne anti-Tutsi. Des membres de ces organisations, particulièrement les *Interahamwe*-MRND, sont organisés en milices, financées, entraînées et dirigées par des personnalités civiles et militaires de l'entourage du Président de la République. Des armes leur sont distribuées avec la complicité de certaines autorités militaires et civiles. Leur transport vers les sites d'entrainement, dont certains camps militaires, est assuré par des véhicules de l'administration publique ou appartenant à des sociétés contrôlées par l'entourage du Président.

1.18 Lors des arrestations massives d'octobre 1990, les autorités civiles et militaires se réfèrent à des listes établies pour identifier et localiser les présumés complices du FPR, en majorité Tutsi. Par la suite, l'Armée, la Gendarmerie, les autorités locales et les Interahamwe reçoivent des directives pour préparer de nouvelles listes ou tenir à jour les listes existantes, qui vont servir lors des massacres de 1994. En mars 1993, une telle liste est retrouvée dans le

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list was found in the vehicle of the Army Chief of Staff.

véhicule du Chef d'État Major de lArmée.

1.19 Towards the end of 1991, certain Rwandan authorities distributed weapons to certain civilians in the north-eastern region of the country as part of a civil self-defence campaign, in reaction to the RPF attack of October 1990. Later, some authorities distributed weapons nationwide, notably to the *Interahamwe* and carefully selected individuals, even in regions distant from the war zone. Towards the end of 1993, the Bishop of Nyundo criticized the distribution of weapons in a public letter and questioned its purpose.

1.19 Vers la fin de 1991, certaines autorités rwandaises distribuent des armes à certains membres de la population civile du nord-est du pays dans le cadre de la campagne d'auto-défense civile en réaction à l'attaque du FPR d'octobre 1990. Plus tard, en dehors du cadre de l'auto-défense civile, des armes sont distribuées dans tout le pays par des autorités, notamment aux *Interahamwe* et à des personnes soigneusement choisies, même dans des régions éloignées de la zone de guerre. Vers la fin de 1993, l'Évêque de Nyundo critique dans une lettre publique cette distribution d'armes, s'interrogeant sur sa finalité.

1.20 The pursuit of the strategy thus described played a catalytic role in the political and ethnic violence of the time, which climaxed in the April 1994 massacres. The early part of the 90s was marked by numerous political assassinations and large massacres of the Tutsi minority, including the one in Kibilira (1990), that of the Bagogwe (1991) and the one in Bugesera (1992). The massacres were instigated and organized by local authorities with the complicity of certain prominent persons from the Presidents circle. Therein can be found the components of the strategy which culminated in the genocide of 1994.

1.20 La mise en place de la stratégie ainsi décrite joue un rôle de catalyseur dans la violence politique et ethnique de cette époque qui atteint son paroxysme avec les massacres d'avril 1994. Le début des années 90 est marqué par de nombreux assassinats politiques et d'importants massacres de la minorité Tutsi, dont celui de Kibilira (1990), ceux des Bagogwe (1991) et celui du Bugesera (1992). Ces massacres sont suscités et organisés par des autorités locales avec la complicité de certaines personnalités de l'entourage du Président Habyarimana. On y retrouve tous les éléments de la stratégie qui va aboutir au génocide de 1994.

1.21 In early 1994, certain prominent people from Habyarimanas circle instigated violent demonstrations in Kigali aimed at preventing the implementation of the Arusha Accords. Soldiers in civilian clothes and militiamen took part, seeking to provoke confrontations with the Belgian UNAMIR soldiers. These incidents were

1.21 Au début de 1994, des manifestations violentes visant à empêcher la mise en place des Accords d'Arusha se déroulent à Kigali à l'instigation de certaines personnalités de l'entourage d'Habyarimana. On y retrouve des militaires en civil aux côtés des miliciens qui cherchent à provoquer des affrontements

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partially the cause of the postponement of the establishment of the institutions foreseen by the Arusha Accords.

1.22 On 6 April 1994, the plane carrying, among other passengers, the President of the Republic of Rwanda, Juvénal Habyarimana, was shot down on its approach to Kigali airport.

1.23 In the hours which followed the crash of the Presidents plane, the senior officers of the FAR convened to assess the situation. Those who shared the extremist Hutu ideology, generally from the North, proposed an Army take-over. During a second meeting which took place on the morning of 7 April, that option was rejected in favour of setting up an interim Government.

1.24 Already on the morning of 7 April and while these discussions were taking place, groups of military, lists in hand, proceeded to arrest, confine and carry out systematic assassinations of a large number of political opponents, both Hutu and Tutsi, including the Prime Minister, some of the Ministers in her Government and the President of the Constitutional Court. At the same time, however, the military were evacuating prominent members of the dead Presidents circle, including the MRND Ministers, to safe locations.

The Belgian UNAMIR soldiers sent to protect the Prime Minister were disarmed, arrested and taken to Kigali military camp, where they were massacred, prompting the withdrawal of the Belgian contingent in the days that followed. After the withdrawal of the Belgian troops, the UN Security Council drastically reduced the number of UNAMIR personnel in Rwanda.

avec les soldats belges de la MINUAR. Ces incidents sont en partie à l'origine du report de la mise en place des institutions prévues dans les Accords d'Arusha.

1.22 Le 6 avril 1994, l'avion transportant, entre autres passagers, le Président de la République du Rwanda, Juvénal Habyarimana, est abattu peu avant son atterrissage à l'aéroport de Kigali.

1.23 Dans les heures qui suivent la chute de l'avion présidentiel, les principaux officiers des FAR se réunissent pour évaluer la situation. Ceux qui partagent l'idéologie extrémiste Hutu, généralement les militaires du nord du pays, proposent la prise du pouvoir par l'Armée. Le 7 avril au matin, lors dune deuxième réunion, cette option est rejetée au profit de la mise sur pied dun gouvernement intérimaire.

1.24 Dès le 7 avril au matin, parallèlement à ces discussions, des groupes de militaires, listes en main, procèdent à l'arrestation, à la séquestration et à l'assassinat de nombreux opposants politiques, Hutu et Tutsi, parmi lesquels le Premier Ministre, certains des ministres de son gouvernement et le Président de la Cour Constitutionnelle. Par contre, au même moment, des militaires évacuent dans des endroits sûrs des personnalités de l'entourage du défunt Président, y compris les ministres du MRND.

Les militaires belges de la MINUAR envoyés pour protéger le Premier Ministre sont désarmés, arrêtés et conduits au camp militaire de Kigali où ils sont massacrés. Cet incident précipite le retrait du contingent belge dans les jours qui suivent. Après le retrait des troupes belges, le Conseil de sécurité des Nations-Unies réduit de façon draconienne le nombre de personnel de la

1.25 The leaders of various political parties not targeted in the assassinations assembled at the request of military officers. Other than members of the MRND, most participants were members of the Power wings of their respective parties. Given the political and constitutional void created by the deaths of most national political authorities, they set up a government based on the 1991 constitution. Composed solely of Hutu, the government was sworn in on 9 April 1994. The MRND held nine ministerial posts, plus the Presidency of the Republic, while the remaining 11 positions, including that of Prime Minister, went to the Power factions of the other parties.

1.26 In the hours that following the crash of President Habyarimanas plane, military and militiamen set up roadblocks and began slaughtering Tutsi and members of the Hutu opposition in Kigali and in other parts of Rwanda. At the roadblocks, they checked the identity cards of passers-by and killed those or most of those who were identified as Tutsi. Military patrols, often involving militiamen, scoured the city, lists in hand, to execute the Tutsi and certain political opponents.

1.27 During the entire period of the genocide, FAR military, particularly units of the Presidential Guard, the Para-Commando Batallion, Reconnaissance Battalion and the Gendarmerie, in complicity with militiamen, actively participated in the massacres of the Tutsi throughout Rwanda.

MINUAR au Rwanda.

1.25 Les dirigeants des divers partis politiques non visés par les assassinats se réunissent à la demande d'officiers militaires. En dehors des membres du MRND, la plupart des participants sont membres des ailes Power de leurs partis respectifs. Étant donné le vide politique et constitutionnel créé par la mort de la plupart des personnalités politiques nationales, ils mettent sur pied un gouvernement fondé sur la constitution de 1991. Le gouvernement, exclusivement composé de personnalités Hutu, prête serment le 9 avril 1994. Neuf postes ministériels sont attribués au MRND, en plus de la présidence de la République, et les onze postes restants, incluant celui de premier ministre, reviennent aux factions Power des autres partis.

1.26 Dans les heures qui suivent la chute de l'avion du Président Habyarimana, les militaires et les miliciens érigent des barrages et commencent à massacrer les Tutsi et les membres de l'opposition Hutu à Kigali et dans d'autres régions du Rwanda. Aux barrages, ils procèdent à la vérification des cartes d'identité de tous les passants et exécutent toutes les personnes, ou la plupart des personnes, identifiées comme étant Tutsi. Des patrouilles de militaires, souvent accompagnés de miliciens sillonnent la ville, listes en main, pour exécuter les Tutsi et certains opposants politiques.

1.27 Durant toute la période du génocide, des militaires des FAR, particulièrement des unités de la Garde Présidentielle, du Bataillon Para-Commando, du Bataillon reconnaissance et de la Gendarmerie, avec la complicité de miliciens, participent activement aux massacres de Tutsi sur toute l'étendue du Rwanda.

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1.28 As soon as it was formed, the Interim Government espoused the plan for extermination put in place. Throughout the period of the massacres, the Government made decisions and issued directives to aid and abet in the extermination of the Tutsi population and the elimination of the Hutu political opponents. Members of the Government incited the population to eliminate the enemy and its accomplices, some of them participating directly in the massacres.

1.29 Local authorities, including *préfets*, *bourgmestres*, *conseillers* and *responsables de cellule* applied the Government-issued directives in execution of the plan for the extermination of the Tutsi population. They incited and ordered their subordinates to perpetrate the massacres and took a direct part in them.

1.30 Having been psychologically and militarily prepared for several months, the groups of militiamen spearheaded the execution of the extermination plan and were directly involved in the massacres of the civilian Tutsi population and of moderate Hutus, thus causing the deaths of hundreds of thousands of people in less than 100 days.

1.28 Dès sa formation, le Gouvernement Intérimaire fait sien le plan d'extermination mis en place. Durant toute la période des massacres, le Gouvernement prend des décisions et donne des directives dans le but d'aider et encourager l'extermination de la population Tutsi et l'élimination des opposants politiques Hutu. Des membres de ce gouvernement incitent la population à éliminer l'ennemi et ses complices, certains d'entre eux prennent part directement aux massacres.

1.29 Des autorités locales, telles que les Préfets, les Bourgmestres, les conseillers de secteur et les responsables de cellule, appliquent les directives du Gouvernement visant à exécuter le plan d'extermination de la population Tutsi. Ils incitent et ordonnent à leurs subordonnés de se livrer aux massacres et y prennent eux-mêmes part directement.

1.30 Les groupes de miliciens, psychologiquement et militairement préparés depuis plusieurs mois, constituent le fer de lance dans l'exécution du plan d'extermination et sont directement impliqués dans les massacres de la population civile Tutsi et des Hutu modérés, causant ainsi la mort de centaines de milliers de personnes en moins de 100 jours.

2. TERRITORIAL, TEMPORAL AND MATERIAL JURISDICTION

2.1 The crimes referred to in this indictment took place in Rwanda between 1 January and 31 December 1994.

2.2 During the events referred to in this indictment, Rwanda was divided into 11 *préfectures*: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-Ville, Kigali-Rural and Ruhengeri. Each *préfecture* was subdivided into *communes* and *secteurs*.

2.3 During the events referred to in this indictment, the Tutsi, the Hutu and the Twa were identified as racial or ethnic groups.

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

2.5 During the events referred to in this indictment, a state of non-international armed conflict existed in Rwanda. The victims referred to in this indictment were protected persons, according to the provisions of Article 3 common to the Geneva Conventions and of Additional Protocol II.

2. COMPÉTENCES TERRITORIALE, TEMPORELLE ET MATÉRIELLE

2.1 Les crimes visés par le présent acte d'accusation ont été commis au Rwanda entre le 1er janvier 1994 et le 31 décembre 1994.

2.2 Lors des événements auxquels se réfère le présent acte d'accusation, le Rwanda était divisé en 11 préfectures: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-ville, Kigali-rural et Ruhengeri. Chaque préfecture est subdivisée en communes et en secteurs.

2.3 Lors des événements auxquels réfère le présent acte d'accusation, les Tu... les Hutu et les Twa étaient identifiés comme des groupes ethniques ou raciaux.

2.4 Lors des événements auxquels se réfère le présent acte d'accusation, il y a eu sur tout le territoire du Rwanda des attaques systématiques ou généralisées contre une population civile, en raison de son appartenance politique, ethnique ou raciale.

2.5 Lors des événements auxquels se réfère le présent acte d'accusation, il y avait un conflit armé non international sur le territoire du Rwanda. Les victimes auxquelles se réfère le présent acte d'accusation étaient des personnes protégées, au sens de l'article 3 commun aux Conventions de Genève et du Protocole additionnel II.

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3. THE POWER STRUCTURE

The Government

3.1 According to the Constitution of 10 June 1991, executive power is exercised by the President of the Republic, assisted by the Government, composed of the Prime Minister and the ministers. The members of the Government are appointed by the President of the Republic upon the proposal of the Prime Minister. The Prime Minister directs the Governments program. The Government determines and applies national policy. To that effect, it controls the civil service and the armed forces. The Prime Minister decides the functions of the ministers and officials under the Prime Ministers authority. The resignation or termination of tenure of the Prime Minister, for whatever reason, causes the Government to resign.

3.2 The Ministers implement the Governments policy, as defined by the Prime Minister. They are answerable to the Head of the Government for doing so. In the discharge of their duties, the ministers stand by the President of the Republic. Before taking up their posts, they take an oath promising to uphold the interests of the Rwandan people and to respect the Constitution and the law. Further, in carrying out their duties, they have at their disposal the civil service and local administration corresponding to their functions.

The Local Public Administration

3.3 The *Préfet* represents executive power

3. STRUCTURE DU POUVOIR

Le Gouvernement

3.1 Selon la Constitution du 10 juin 1991, le pouvoir exécutif est exercé par le Président de la République, assisté du gouvernement composé du Premier Ministre et des ministres. Les membres du gouvernement sont nommés par le Président de la République sur proposition du Premier Ministre. Le Premier Ministre est chargé de diriger l'action du gouvernement. Le gouvernement détermine et conduit la politique de la nation et dispose, à cet effet, de l'administration publique et de la force armée. Le Premier Ministre détermine les attributions des ministres et des agents placés sous son autorité. La démission ou cessation des fonctions du Premier Ministre, pour quelque cause que ce soit, entraîne la démission du gouvernement.

3.2 Les ministres exécutent la politique du Gouvernement définie par le Premier Ministre. Ils répondent devant le Chef du Gouvernement de cette exécution. Dans l'exercice de leurs fonctions les ministres sont solidaires du Président de la République. Ils prêtent serment avant de pouvoir assumer formellement leurs fonctions. Ils sont tenus, en vertu de ce serment, de promouvoir les intérêts du peuple rwandais dans le respect de la Constitution et des lois. En outre, dans l'exercice de leurs fonctions ils disposent de l'administration publique et territoriale correspondante à leurs attributions.

Ladministration territoriale

3.3 Le préfet est le représentant du

at prefectural level. The *Préfet* is appointed by the President of the Republic on the recommendation of the Minister of the Interior and carries out his duties under that Ministers hierarchical authority. The *Préfets* authority covers the entire *préfecture*.

3.4 In his capacity as administrator of the *préfecture*, the *Préfet* is responsible for ensuring peace, public order and the safety of people and property. The *Préfet*, in the discharge of his policing duties, maintaining peace and public order, may request the intervention of the army and of the *Gendarmerie Nationale*. The *Préfet* has hierarchical authority over all civil servants and all persons holding public office within the boundaries of the *préfecture*, including the *bourgmestres* and the *conseillers de secteur*.

3.5 Similarly to the the *Préfet*, the *Bourgmestre* represents executive power at the *commune* level. He is appointed by the President of the Republic on the recommendation of the Minister of the Interior. He is under the hierarchical authority of the *Préfet*. He has authority over the civil servants posted in his *commune*. Moreover, he has policing duties in regard to maintaining order and law enforcement.

pouvoir exécutif au niveau de la préfecture. Il est nommé sur proposition du ministre de l'Intérieur par le Président de la République et exerce ses fonctions sous l'autorité hiérarchique du ministre de l'Intérieur. L'autorité du préfet s'étend sur l'ensemble de la préfecture.

3.4 En sa qualité d'administrateur de la préfecture, le préfet est chargé d'assurer la tranquillité, l'ordre public et la sécurité des personnes et des biens. Dans l'exercice de ses attributions de police, le maintien de l'ordre et de la paix publics, le préfet peut requérir l'intervention de l'armée ou et de la Gendarmerie Nationale. Le préfet exerce son autorité hiérarchique sur tous les agents de l'administration publique et toutes les personnes détentrices de la puissance publique officiant dans la préfecture, parmi lesquels les Bourgmestres et les Conseillers de secteur.

3.5 A l'instar du préfet, le bourgmestre est le représentant du pouvoir exécutif au niveau de la commune. Il est nommé par le Président de la République sur proposition du ministre de l'Intérieur. Il est placé sous l'autorité hiérarchique du préfet. Il a autorité sur les agents de l'administration officiant dans sa commune. Il a par ailleurs des attributions de police dans le cadre du maintien de l'ordre et de l'exécution des lois.

The Political Parties, Youth Wings and Militia

Political Parties

3.6 During the events referred to in this indictment, the main political parties in Rwanda were the MRND (*Mouvement*

Les Partis Politiques, les ailes jeunesses et les Milices

Les Partis Politiques

3.6 Lors des événements visés dans le présent acte d'accusation, les principaux partis politiques au Rwanda étaient: le

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Républicain National pour la Démocratie et le Développement), the CDR (*Coalition pour la Défense de la République*), the MDR (*Mouvement Démocratique Républicain*), the PSD (*Parti Social-Démocrate*) and the PL (*Parti Libéral*). The RPF (Rwandan Patriotic Front) was a politico-military opposition organization.

MRND (Mouvement Républicain National pour la Démocratie et le Développement), la CDR (Coalition pour la Défense de la République), le MDR (Mouvement Démocratique Républicain), le PSD (Parti Social-Démocrate) et le PL (Parti Libéral). Le FPR (Front Patriotique Rwandais) était une organisation politico-militaire dopposition.

3.7 The MRND (*Mouvement Révolutionnaire National pour le Développement*) was founded by Juvénal Habyarimana on 5 July 1975. The organization was in fact a true Party-State. Its aim was to provide the President of the Republic with a powerful apparatus intended to control the workings of the State. The movements objectives were, among others, to support and control the actions of the various State powers. Only the Chairman of the MRND could stand for the Presidency of the Republic. All Rwandans were members of the MRND from birth.

3.7 Le MRND (Mouvement Révolutionnaire National pour le Développement) était une organisation créée par Juvénal Habyarimana le 5 juillet 1975. Cette organisation était de fait un véritable Parti-Etat. Il visait à doter le Président de la République d'un appareil puissant destiné à contrôler tous les rouages de l'Etat. Parmi les objectifs du mouvement, il y avait le soutien et le contrôle des activités des divers pouvoirs de l'Etat. Seul le Président du MRND pouvait être candidat à la Présidence de la République. Le Rwandais était membre du MRND dès sa naissance.

3.8 The organs of the MRND (*Mouvement Révolutionnaire National pour le Développement*) were very centralized at the top and spread out at the bottom. This pyramidal structure enabled all Rwandan citizens to be involved in political life. The national organs included the chairmanship, the general secretariat, the national congress and the central committee. The central committee was made up of the Chairman, other members appointed by the Chairman, the Secretary General and the Speaker of Parliament (the *Conseil National de Développement* - CND). At local level, there were organs at *préfecture*, *commune* and *cellule* levels. The *Préfet* and *Bourgmestre* were each responsible for the movement in their respective administrative districts. These two figures

3.8 Les organes du MRND (Mouvement Révolutionnaire National pour le Développement) étaient très centralisés au sommet et très ramifiés à la base. Il s'agit d'une structure pyramidale permettant l'intégration de tous les citoyens rwandais à la vie politique. Les organes nationaux comprenaient la Présidence du Mouvement, le Secrétariat Générale, le Congrès National et le Comité Central. Le Comité Central était composé du Président du Mouvement, d'autres membres nommés par lui, du Secrétaire Général et du Président du CND (Conseil national de Développement). Au niveau local, il y avait des organes au niveau de la préfecture et à la base au niveau de la commune et de la cellule. Le préfet et le bourgmestre étaient chacun responsable du

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were civil servants directly appointed by the President of the Republic, who was also the Chairman of the MRND.

3.9 With the institution of the multiparty system and the adoption of a new Constitution on 10 June 1991, the *Mouvement Révolutionnaire National pour le Développement* (MRND) was renamed the *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). Although its statutes were amended, the structure of the new party remained essentially the same.

The Youth Wings and the Militia

3.10 Most of the political parties had created their own youth wings. The members of the MRNDs youth wing were known as the *Interahamwe*, while those of the CDR were known as the *Impuzamugambi*. The youth wings were formed in response to two concerns within the political parties: sensitizing the youth to politics and mobilizing them. The MRND and CDR followed the example set by the MDR and the RPF, which had already insituted their youth movements.

3.11 The *Interahamwe*-MRND were formed in late 1991 on the initiative of the MRND central committee, following the advent of multiparty politics. The *Interahamwe*-MRND were highly structured, along the same lines as the MRND party. At national level, they had a chairman, two vice-chairmen, a secretary general and a treasurer. The chairman was to liaise with the MRND central committee, among other things. In

mouvement au niveau de sa circonscription administrative. Ces deux personnalités étaient des fonctionnaires publics nommés directement par le Président de la République qui était en même temps le Président du MRND.

3.9 Avec l'instauration du multipartisme et l'adoption d'une nouvelle constitution le 10 juin 1991, le *Mouvement Révolutionnaire National pour le Développement* (MRND) est alors rebaptisé *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). Les Statuts ont été amendés mais la structure du nouveau parti est demeuré essentiellement la même que celle de l'ancien.

Les ailes jeunesses et les milices

3.10 La plupart des partis politiques avaient créé une aile jeunesse en leur sein. Celle du MRND était connue sous l'appellation *Interahamwe* et celle de la CDR sous le nom de *Impuzamugambi*. La création des ailes jeunesses répondait à deux préoccupations au sein des partis politiques: sensibiliser les jeunes à la politique et les mobiliser. Le MRND et la CDR ont suivi l'exemple du MDR et du FPR qui avaient déjà institué leur mouvement de jeunesse.

3.11 Les *Interahamwe*-MRND ont été créés à la fin de 1991 à l'initiative du comité central du MRND suite à l'avènement du multipartisme. Les *Interahamwe*-MRND avaient une organisation bien structurée à l'image du parti MRND. Ils avaient au niveau national un Président, deux vice-présidents, un Secrétaire Général et un Trésorier. Le président devait, entre autre, assurer la liaison avec le comité central du

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June 1993, to ensure better territorial coverage and greater effectiveness, the MRND central committee decided to create *Interahamwe*-MRND branches in the various *préfectures* in the country.

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

The *Forces Armées Rwandaises*

3.13 The *Forces Armées Rwandaises (FAR)* were composed of the Rwandan Army (AR) and the *Gendarmerie Nationale* (GN). The *Forces Armées Rwandaises* did not have a unified command and came directly under the Minister of Defence, and consequently the Government. The Commander-in-Chief of the *Forces Armées Rwandaises* was the President of the Republic.

3.14 The General Staff of the Rwandan Army was headed by the Chief of Staff, assisted by four senior officers in charge of four bureaux: G-1 (Personnel and Administration), G-2 (Intelligence), G-3 (Military Operations) and G-4 (Logistics).

3.15 The territory of Rwanda was divided into various military operations sectors, each headed by a military sector commander. Also, there were elite units within the Rwandan Army, namely the Presidential Guard, Para-Commando Battalion and Reconnaissance Battalion. The troops were divided into

MRND. En juin 1993, pour garantir une meilleure couverture du territoire et une plus grande efficacité, le Comité Central du MRND a décidé de créer des sections d*Interahamwe*-MRND au niveau des différentes Préfectures du pays.

3.12 À partir de 1992, plusieurs membres de l'aile jeunesse du MRND ont reçu un entraînement militaire et des armes; ce qui a transformé ces mouvements de jeunesse en milices.

Les Forces Armées Rwandaises

3.13 Les Forces Armées Rwandaises (FAR) étaient composées de l'Armée Rwandaise (AR) et de la Gendarmerie Nationale (GN). Les Forces Armées Rwandaises ne disposaient pas d'un Etat-Major unifié et relevaient directement du Ministre de la Défense, et par conséquent du gouvernement. Le chef suprême des Forces Armées Rwandaises était le Président de la République.

3.14 L'Etat-Major de l'Armée Rwandaise était dirigé par un Chef d'Etat-Major assisté par quatre officiers supérieurs responsables de quatre bureaux: le bureau du G-1, (Personnel et Administration), le bureau du G-2 (Renseignements et Intelligence), le bureau du G-3 (Opérations militaires) et le bureau du G-4 (Logistique).

3.15 Le territoire du Rwanda était divisé en différents secteurs d'opérations militaires. Chaque secteur était dirigé par un commandant militaire. En outre, il y avait des unités d'élites au sein de l'Armée Rwandaise: le bataillon de la Garde Présidentielle, le bataillon Para-Commando,

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companies within the sectors and the units.

3.16 The General Staff of the *Gendarmerie Nationale* was headed by the Chief of Staff, assisted by four senior officers in charge of four bureaux: G-1 (Personnel and Administration), G-2 (Intelligence), G-3 (Military Operations) and G-4 (Logistics).

3.17 The *Gendarmerie Nationale* was responsible for maintaining public order and peace and the observance of the laws in effect in the country.

3.18 The *Gendarmerie Nationale* was under the Minister of Defence but could carry out its duties of ensuring public order and peace at the request of the local government authority having jurisdiction, namely the *Préfet*. In cases of emergency, this request could be made verbally, notably by telephone. Such requests had to be carried out immediately. In addition, the *Gendarmerie Nationale* was obliged to transmit to the *Préfet* all information relating to public order. It had the duty to assist anyone in danger.

3.19 By virtue of their rank and their functions, the Minister of Defence and the officers of the Rwandan Army and the *Gendarmerie Nationale* had the duty to enforce the general rules of discipline for all soldiers under their authority, even those not belonging to their units.

et le bataillon de Reconnaissance. Les troupes étaient divisées en compagnies au sein des secteurs et des unités.

3.16 L'Etat-Major de la Gendarmerie était dirigé par un Chef dEtat-Major assisté par quatre officiers supérieurs responsables de quatre bureaux: le bureau du G-1, (Personnel et Administration), le bureau du G-2 (Renseignements et Intelligence), le bureau du G-3 (Opérations militaires) et le bureau du G-4 (Logistique).

3.17 La Gendarmerie Nationale était chargée du maintien de l'ordre et de la paix publics et de l'exécution des lois en vigueur dans le pays.

3.18 La Gendarmerie Nationale relevait du Ministre de la Défense, mais pouvait exercer ses attributions de maintien de l'ordre et de la paix publique à la requête de l'autorité administrative territoriale compétente, en la personne du préfet. En cas d'urgence, cette réquisition pouvait être faite verbalement, notamment par téléphone. Cette réquisition devait être exécutée sans délai. En outre, la Gendarmerie Nationale devait porter à la connaissance du préfet tout renseignement concernant l'ordre public. Elle devait assistance à toute personne en danger.

3.19 Le Ministre de la Défense et les officiers de l'Armée Rwandaise et de la Gendarmerie Nationale, de par leur grade et leurs fonctions, avaient le devoir de faire respecter les règles générales de discipline pour tous les militaires sous leur autorité, même s'ils n'appartenaient pas à leurs unités.

4. THE ACCUSED

Casimir Bizimungu

4.1 **Casimir Bizimungu** was born in 1951 in Nyamugari *commune*, Ruhengeri *préfecture*, Rwanda.

4.2 From 9 April to mid-July 1994, **Casimir Bizimungu** held the office of Minister of Health in the Interim Government. He held office until mid-July 1994. He was a medical doctor; he had previously held the offices of Director Public Health, Butare University Teaching Hospital, Minister of Foreign Affairs in the MRND governments of 15 January 1989, 9 July 1990, 4 February 1991 and in the first pluralist government. He was also Minister of Health in the MRND government of 5 January 1987, in the second pluralist government of 16 April 1992, in the third pluralist government of 18 July 1993 and the Interim government. Moreover, **Casimir Bizimungu** was a member of the MRND central committee.

4.3 In his capacity as Minister of Health, **Casimir Bizimungu** was responsible for the articulation and the implementation of the government health policy.

4.4 In his capacity as Minister, **Casimir Bizimungu** attended Cabinet meetings where he was informed about the socio-political situation in the country and where he was apprised of government policy and/or participated in formulating the policies adopted and implemented by the Interim Government. In the exercise of his

4. LES ACCUSÉS

Casimir Bizimungu

4.1 Casimir Bizimungu est né en 1951 dans la commune de Nyamugari, préfecture de Ruhengeri, Rwanda.

4.2 Entre 9 avril et mi-juillet 1994, **Casimir Bizimungu** exerçait les fonctions de Ministre de la Santé au sein du Gouvernement Intérimaire. Il a exercé ses fonctions jusqu'à la mi-juillet 1994. Docteur en médecine, il a été auparavant : directeur du Centre Universitaire de la Santé Publique à Butare, Ministre des Affaires étrangères au sein des gouvernements MRND du 15 janvier 1989, du 9 juillet 1990, du 4 février 1991 et au sein du premier gouvernement dit pluraliste. Il a été également Ministre de la Santé au sein du gouvernement MRND du 5 janvier 1987, du deuxième gouvernement pluraliste du 16 avril 1992, du troisième gouvernement pluraliste du 18 juillet 1993 et du gouvernement intérimaire. Par ailleurs, **Casimir Bizimungu** était membre du comité central du MRND.

4.3 En sa qualité de Ministre de la Santé, **Casimir Bizimungu** était responsable de la formulation et de la mise en oeuvre de la politique de santé du gouvernement.

4.4 Par ailleurs, en sa qualité de Ministre, **Casimir Bizimungu** assistait au Conseil des Ministres où il a été informé de la situation socio-politique du pays et où il a été mis au courant de la politique gouvernementale et/où participait dans la formulation de la politique adoptée et mise en oeuvre par le gouvernement intérimaire.

powers, he never publicly disavowed the policies of the Interim Government and did not resign between 9 April and mid July 1994, as permitted by the Constitution.

4.5 In his capacity as Minister of Health, **Casimir Bizimungu**, exercised authority and control over all the institutions and staff members under his ministry.

Il n'a jamais désavoué publiquement la politique du gouvernement intérimaire et n'a jamais présenté sa démission entre le 9 avril et mi-juillet 1994, alors que la constitution lui permettait explicitement de le faire.

4.5 En sa qualité de Ministre de la Santé, **Casimir Bizimungu**, exerçait une autorité et un contrôle sur l'ensemble des institutions et du personnel de Santé Publique.

Justin Mugenzi

4.6 **Justin Mugenzi** was born in 1949 in Gahini *secteur*, Rukara *commune*, Kibuye *préfecture*, Rwanda.

4.7 From 9 April to mid-July 1994, **Justine Mugenzi** held the offices of Minister of Trade & Industry in the Interim government until mid July 1994. He was also Minister of Trade in the government of 8 July 1993 and was nominated Minister in the new composition of the broad-based transition government made public on 18 March 1994. He was a businessman and politician, he participated to the creation of the Liberal Party and led its Hutu Power faction.

4.8 In his capacity as Minister of Trade & Industry in the Interim Government, **Justin Mugenzi** was responsible for government policy on Trade & Industry.

4.9 In his capacity as Minister, **Justin Mugenzi** attended Cabinet meetings where

Justin Mugenzi

4.6 **Justin Mugenzi** est né en 1949 dans la commune de Rukara, secteur Gahini, dans la préfecture de Kibuye, Rwanda.

4.7 Entre 9 avril et mi-juillet 19(**Justin Mugenzi** exerçait les fonctions de Ministre du commerce, de l'industrie et de l'artisanat au sein du Gouvernement Intérimaire. Il a exercé ses fonctions jusqu'à la mi-juillet 1994. Il a également été ministre du commerce au gouvernement du 8 juillet 1993 et avait été proposé ministre dans la nouvelle composition du Gouvernement de transtion à base élargie rendue publique le 18 mars 1994. Homme d'affaire et politicien, il a participé à la création du Parti Libéral et dirigé son aile dites hutu power.

4.8 En sa qualité de Ministre du commerce, de l'industrie et de l'artisanat, au sein du gouvernement intérimaire, **Justin Mugenzi** était responsable de la politique gouvernementale adoptée dans le secteur du commerce, industrie et artisanat.

4.9 Par ailleurs, en sa qualité de Ministre, **Justin Mugenzi** assistait au

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he was informed about the socio-political situation in the country and where he was apprised of government policy and/or participated in formulating the policies adopted and implemented by the Interim Government. In the exercise of his powers, he never publicly disavowed the policies of the Interim Government and did not resign between 9 April and mid July 1994, as permitted by the Constitution.

4.10 In his capacity as Minister of Trade & Industry, **Justin Mugenzi** exercised authority and control over all the institutions and staff member under his ministry.

Conseil des Ministres où il a été informé de la situation socio-politique du pays et où il a été mis au courant de la politique gouvernementale et/ou participait dans la formulation de la politique adoptée et mise en oeuvre par le gouvernement intérimaire. Il n'a jamais désavoué publiquement la politique du gouvernement intérimaire et n'a jamais présenté sa démission entre le 9 avril et mi-juillet 1994, alors que la constitution lui permettait explicitement de le faire.

4.10 En sa qualité de Ministre du commerce, de l'industrie et de l'artisanat **Justin Mugenzi** exerçait une autorité et un contrôl sur l'ensemble des institutions et du personnel de son ministère.

Prosper Mugiraneza

4.11 Prosper Mugiraneza was born in 1957 in Kigarama *commune*, Kibungo *préfecture*, Rwanda.

4.12 From 9 April to mid-July 1994, **Prosper Mugiraneza** held the office of Minister of the Civil Service in the Interim government. He was also Minister of Labour & Social Affairs in the government of 31 December 1991, Minister of the Civil Service in the governments of 16 March 1992 and 18 July 1993. He was also nominated Minister of the Civil Service on the list of the two broad-based governments. **Prosper Mugiraneza** was a very influential member of the MRND.

4.13 In his capacity as Minister of the Civil Service in the Interim government, **Prosper Mugiraneza** was responsible for

Prosper Mugiraneza

4.11 Prosper Mugiraneza est né en 1957 dans la commune de Kigarama, préfecture de Kibungo, Rwanda.

4.12 Lors des événements visés dans le présent acte d'accusation, **Prosper Mugiraneza** exerçait les fonctions de Ministre de la fonction publique au sein du Gouvernement Intérimaire. Il a exercé ses fonctions jusqu'à la mi-juillet 1994. Il a également été ministre du travail et des affaires sociales au gouvernement du 31 décembre 1991, ministre de la fonction publique aux gouvernements du 16 avril 1992 et du 18 juillet 1993. En outre, il a été proposé ministre de la fonction publique sur la liste des deux gouvernements à base élargie. **Prosper Mugiraneza** a été un élément très influent du MRND.

4.13 En sa qualité de Ministre de la fonction publique, au sein du gouvernement intérimaire, **Prosper Mugiraneza** était

government policy in the administration of public sector employment.

4.14 In his capacity as Minister, **Prosper Mugiraneza** attended Cabinet meetings where he was informed about the socio-political situation in the country and where he was apprised of government policy and/or participated in formulating the policies adopted and implemented by the Interim Government. In the exercise of his powers, he never publicly disavowed the policies of the Interim Government and did not resign between 9 April and mid July 1994, as permitted by the Constitution.

4.15 In his capacity as Minister of the Civil Service, **Prosper Mugiraneza** exercised authority over all the institutions and staff members under his ministry.

responsable de la politique gouvernementale adoptée dans le secteur de la fonction publique.

4.14 Par ailleurs, en sa qualité de Ministre, **Prosper Mugiraneza** assistait au Conseil des Ministres où il a été informé de la situation socio-politique du pays et où il a été mis au courant de la politique gouvernementale et/ou participait dans la formulation de la politique adoptée et mise en oeuvre par le gouvernement intérimaire. Il n'a jamais désavoué publiquement la politique du gouvernement intérimaire et n'a jamais présenté sa démission entre le 9 avril et mi-juillet 1994, alors que la constitution lui permettait explicitement de le faire.

4.15 En sa qualité de Ministre de la fonction publique **Prosper Mugiraneza** exerçait une autorité sur l'ensemble des institutions et du personnel de son ministère.

Jerôme Bicamumpaka

4.16 **Jérôme Bicamumpaka** was born in 1957 in Mukono *sector*: Ruhondo *commune*: Ruhengeri *préfecture*, Rwanda.

4.17 From 9 April to mid-July 1994, **Jérôme Bicamumpaka** held the office of Minister of Foreign Affairs and Cooperation in the Interim government until mid-July 1994. He was a member of the MDR.

4.18 In his capacity as Minister of Foreign Affairs, **Jérôme Bicamumpaka** was responsible for government policy on foreign affairs.

Jerôme Bicamumpaka

4.16 **Jérôme Bicamumpaka** est né en 1957 secteur dans la commune de Ruhondo, secteur Mukono, préfecture de Ruhengeri, Rwanda.

4.17 Entre 9 avril et mi-juillet 1994, **Jérôme Bicamumpaka** exerçait les fonctions de Ministre des Affaires étrangères et de la coopération au sein du Gouvernement Intérimaire. Il était membre du MDR.

4.18 En sa qualité de Ministre des affaires étrangères et de la coopération, au sein du gouvernement intérimaire, **Jérôme Bicamumpaka** était responsable de la

4.19 In his capacity as Minister, **Jérôme Bicamumpaka** attended Cabinet meetings where he was informed about the socio-political situation in the country and where he was apprised of government policy and/or participated in formulating the policies adopted and implemented by the Interim Government. In the exercise of his powers, he never publicly disavowed the policies of the Interim Government and did not resign between 9 April and mid July 1994, as permitted by the Constitution.

4.20 In his capacity as Minister of Foreign Affairs & Cooperation, **Jérôme Bicamumpaka** exercised authority and control over all the institutions and staff members under his ministry.

4.19 Par ailleurs, en sa qualité de Ministre, **Jérôme Bicamumpaka** assistait au Conseil des Ministres où il a été informé de la situation socio-politique du pays et où il a été mis au courant de la politique gouvernementale et/ou participait dans la formulation de la politique adoptée et mise en oeuvre par le gouvernement intérimaire. Il n'a jamais désavoué publiquement la politique du gouvernement intérimaire et n'a jamais présenté sa démission entre le 9 avril et mi-juillet 1994, alors que la constitution lui permettait explicitement de le faire.

4.20 En sa qualité de Ministre des affaires étrangères et de la coopération **Jérôme Bicamumpaka** exerçait une autorité et un contrôl sur l'ensemble des institutions et du personnel de son ministère.

5. CONCISE STATEMENT OF THE FACTS: PREPARATION

5.1 From late 1990 until July 1994, **Casimir Bizimungu, Justin Mugenzi, Jérôme Bicamumpaka, Prosper Mugiraneza,** André Ntagerura, Pauline Nyiramasuhuko and Eliezer Niyitekega, conspired among themselves and with others, notably Théoneste Bagosora, Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, Juvénal Kajelijeli, to work out a plan with the intent to exterminate the civilian Tutsi population and eliminate members of the opposition, so that they could remain in power. The components of this plan consisted of, among other things, recourse to hatred and ethnic violence, the training of and distribution of weapons to militiamen as well as the preparation of lists of people to be eliminated. In executing the plan, they organized, ordered and participated in the massacres perpetrated against the Tutsi population and of moderate Hutu.

5.2 In a letter dated 3 December 1993, and addressed to the UNAMIR Commander, with copies to all the Ministers including **Casimir Bizimungu, Justin Mugenzi, Prosper Mugiraneza, Jérôme Bicamumpaka,** certain FAR officers revealed, the existence of what they called a Machiavellian plan conceived by military who were mainly from the North and who shared the extremist Hutu ideology. The objective of the Northern military was to oppose the Arusha Accords and keep themselves in power. The means to achieve this consisted in exterminating the Tutsi and

5. EXPOSE SUCCINT DES FAITS : PREPARATION

5.1 Dès la fin de 1990 jusqu'à juillet 1994, **Casimir Bizimungu, Justin Mugenzi, Jérôme Bicamumpaka, Prosper Mugiraneza,** André Ntagerura, Pauline Nyiramasuhuko et Eliezer Niyitekega, se sont entendus entre eux et avec d'autres, notamment Théoneste Bagosora, Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, Juvénal Kajelijeli, pour élaborer un plan dans l'intention d'exterminer la population civile Tutsi et d'éliminer des membres de l'opposition et se maintenir ainsi au pouvoir. Les éléments de ce plan comportaient, entre autres, le recours à la haine et à la violence ethnique, l'entraînement et la distributio d'armes aux miliciens ainsi que la confection de listes de personnes à éliminer. Dans l'exécution de ce plan ils ont organisé, ordonné et participé aux massacres perpétrés à l'encontre de la popuiation Tutsi et des Hutu modérés.

5.2 Dans une lettre datée du 3 décembre 1993 et adressé au Commandant de la MINUAR avec ampliation à tous les Ministres, parmi lesquels, **Casimir Bizimungu, Justin Mugenzi, Prosper Mugiraneza, Jérôme Bicamumpaka,** des officiers des FAR ont révélé l'existence d'un plan machiavélique conçu par des militaires essentiellement originaires du Nord et partageant l'idéologie Hutu extrémiste. L'objectif de ces militaires nordistes était de s'opposer aux Accords d'Arusha et de se maintenir au pouvoir. Le moyen pour le réaliser consistaient à

their accomplices. The letter indicated moreover the names of political opponents to be eliminated. Some of them were in fact killed on the morning of 7 April 1994.

Speeches and Incitement

5.3 The incitement to ethnic hatred and violence was a fundamental part of the plan put in place. It was articulated, before and during the genocide, by elements of the FAR on the one hand, and by members of the Government and local authorities on the other.

5.4 On 4 December 1991, President Juvénal Habyarimana set up a military commission. The commission, presided by Théoneste Bagosora, was given the task of finding an answer to the following question: *What do we need to do in order to defeat the enemy militarily, in the media and politically?*

5.5 In a letter dated 21 September 1992, the General Staff of the Rwandan Army ordered that an extract from the commission report be circulated among the troops. The extract defined the main enemy as follows: *The Tutsis from inside or outside the country, who are extremists and nostalgic for power, who do not recognize and have never recognized the realities of the Social Revolution of 1959, and are seeking to regain power in Rwanda by any means, including taking up arms.* The secondary enemy was defined as: *Anyone providing any kind of assistance to the main enemy.* The document specified that the enemy was being recruited from within certain social groups, notably: *the Tutsis inside the country, Hutus who are dissatisfied with the present regime, foreigners married to Tutsi*

exterminer les Tutsi et leurs complices. La lettre mentionnait, par ailleurs, les noms d'opposants politiques à éliminer. Certains d'entre eux ont effectivement été assassinés dans la matinée du 7 avril 1994.

Discours et Incitation

5.3 L'incitation à la haine et à la violence ethniques a constitué un élément essentiel du plan mis en place. Elle a été articulée, avant et durant le génocide, d'une part par des éléments des FAR, et d'autre part par des membres du gouvernement et des autorités locales.

5.4 Le 4 décembre 1991, le Président Juvénal Habyarimana a mis en place une commission militaire. Cette commission, présidée par Théoneste Bagosora, était chargée de répondre à la question suivante : *Que faut-il faire pour vaincre l'ennemi sur le plan militaire, médiatique et politique?*.

5.5 Dans une lettre datée du 21 septembre 1992, l'Etat-Major de l'Armée Rwandaise a ordonné la diffusion, parmi les troupes, d'un extrait du rapport produit par cette commission. Ce document définissait l'ennemi principal comme étant *le Tutsi de l'intérieur ou de l'extérieur, extrémiste et nostalgique du pouvoir, qui n'a jamais reconnu et ne reconnaît pas encore les réalités de la Révolution Sociale de 1959 et qui veut reconquérir le pouvoir au Rwanda par tous les moyens, y compris les armes* et l'ennemi secondaire comme étant *toute personne qui apporte tout concours à l'ennemi principal.* Le document précisait que le recrutement de l'ennemi se faisait parmi certains groupes sociaux, notamment : *...Les Tutsi de l'intérieur, les Hutu*

women.... Among the activities the enemy was accused of, the document mentioned *the diversion of national opinion from the ethnic problem to the socio-economic problem between the rich and the poor.*

mécontents du régime en place, les étrangers mariés aux femmes Tutsi... Parmi les activités reprochées à l'ennemi, le document mentionnait le *...Détournement de l'opinion nationale du problème ethnique vers le problème socio-économique entre les riches et les pauvres.*

5.6 The document and the use made of it by the senior officers aided, encouraged and promoted ethnic hatred and violence.

5.6 Ce document et l'utilisation qu'en ont faite les officiers supérieurs ont aidé, encouragé et favorisé la haine et la violence ethnique.

5.7 Colonel Théoneste Bagosora participated in the Arusha talks, and openly manifested his opposition to the concessions made by the Government representative, Boniface Ngulinzira, Minister of Foreign Affairs, to the point of leaving the negotiation table. Colonel Théoneste Bagosora left Arusha saying that he was returning to Rwanda to *prepare the apocalypse*. On 11 April 1994, Boniface Ngulinzira was assassinated by the military. His death was announced on RTLM in these terms: *We have exterminated all the accomplices of the RPF. Boniface Ngulinzira will no longer go and sell the country to the RPF's advantage in Arusha. The Peace Accords are only scraps of paper, as our father, Habyarimana, had predicted.*

5.7 Le Colonel Théoneste Bagosora a participé aux négociations d'Arusha et a manifesté ostensiblement son opposition aux concessions faites par le représentant du Gouvernement, Boniface Ngulinzira, Ministre des Affaires Étrangères, au point de quitter la table des négociations. Le Colonel Théoneste Bagosora a quitté Arusha déclarant qu'il rentrait au Rwanda *pour préparer l'apocalypse*. Le 11 avril 1994, Boniface Ngulinzira était assassiné par les militaires. La RTLM a annoncé sa mort en ces termes: *nous avons exterminé tous les complices du FPR. Boniface Ngulinzira n'ira plus vendre le pays au profit du FPR à Arusha. Les Accords de paix ne sont plus que des chiffons de papier comme l'avait prédit notre papa Habyarimana .*

5.8 The characterization of the Tutsis as the enemy and of members of the opposition as their accomplices was echoed by politicians, notably by Léon Mugesera, MRND Vice-Chairman for Gisenyi *préfecture*, in a speech he made on 22 November 1992. Broadcast on the state radio and therefore reaching a much larger audience, Léon Mugeseras speech already at that time was an incitement to exterminate

5.8 La qualification des Tutsi comme étant l'ennemi et des membres de l'opposition comme étant leurs complices, a été reprise par des politiciens, notamment Léon Mugesera, Vice Président du MRND pour la préfecture de Gisenyi, dans un discours prononcé le 22 novembre 1992. Diffusé sur la Radio d'Etat et s'adressant ainsi à un public beaucoup plus large, le discours de Léon Mugesera, a incité, dès cette époque, à

the Tutsi population and their accomplices.

5.9 In February 1994, Mathieu Ngirumpatse chaired an MRND gathering at Nyamirambo stadium, where speakers took the floor and incited violence against the Tutsis.

5.10 From April to July 1994, incitement to hatred and violence was propagated by various prominent persons, including members of the MRND, the Government and local authorities. The President, Théodore Sindikubwabo, the Prime Minister, Jean Kambanda, Ministers André Rwamakuba, Eliezer Niyitegeka and André Ntagerura and local authorities publicly incited the people to exterminate the Tutsi population and its accomplices.

Propaganda

5.11 The creation of media, such as the newspaper *Kangura* and *Radio Télévision Libre des Mille Collines (RTLM)*, launched and directed by MRND and CDR leading figures, helped to propagate the extremist Hutu ideology and its message of ethnic hatred and violence, and contributed to the indoctrination of the Rwandan people. RTLM was openly designed and used by many MRND leaders and members of the government a means of propagandizing Hutu "Power".

5.12 Between 9 April and mid-July 1994, the President, Théodore Sindikubwabo, the Prime Minister, Jean Kambanda, Ministers, André Rwamakuba and **Justin Mugenzi** and radioannouncers, among whom,

exterminer la population Tutsi et ses complices.

5.9 En février 1994 Mathieu Ngirumpatse a présidé un rassemblement MRND au stade de Nyamirambo où des orateurs ont pris la parole pour inciter à la violence contre les Tutsi.

5.10 D'avril à juillet 1994, cette incitation à la haine et à la violence a été propagée par différentes personnalités, dont des membres du MRND, du Gouvernement et des autorités locales. Le Président, Théodore Sindikubwabo, le Premier Ministre, Jean Kambanda, les ministres, André Rwamakuba, Eliezer Niyitegeka et André Ntagerura et des représentants de l'autorité locale ont incité publiquement la population à exterminer la population Tutsi et ses complices.

La propagande

5.11 La création de moyens médiatiques, tels que le journal *Kangura* et la Radio Télévision Libre des Milles Collines (RTLM), fondée et dirigée, par de hautes personnalités du MRND et du CDR, a aidé à propager l'idéologie Hutu extrémiste et son discours de haine et de violence ethniques, et a contribué à endoctriner la population rwandaise. La RTLM a été ouvertement conçue et utilisée par plusieurs leaders du MRND et les membres du gouvernement comme un moyen de propagande du Hutu "Power".

5.12 Entre 9 avril et mi-juillet 1994, le Président, Théodore Sindikubwabo, le Premier Ministre, Jean Kambanda, les Ministres André Rwamakuba et **Justin Mugenzi**, des journalistes, parmi lesquels,

Georges Ruggiu and Hassan Ngeze, used RTLM to incite, aid and abet the extermination of the Tutsi population and the elimination of numerous moderate Hutu.

Georges Ruggiu et Hassan Ngeze ont utilisé la RTLM pour inciter, aider et encourager à exterminer la population Tutsi et à éliminer de nombreux Hutu modérés.

The Militia Groups

5.13 Political rivalries during the multi-party period exacerbated tensions among the various political parties. Thus, in a climate of almost total impunity, the *Interahamwe*-MRND were encouraged to use violence to oppose the political demonstrations organized by parties of the opposition and to terrorize Rwandan citizens in order to prevent them from joining parties other than the MRND.

5.14 The transformation of the *Interahamwe* to serve the interests of the MRND was an illicit operation formally forbidden by the law. Further, to extend the activities of the militia group, the MRND central committee formed *Interahamwe*-MRND committees at *préfecture* level in June 1993. This decision was carried out in their localities by political figures including among others Pauline Nyiramasuhuku in Butare and Joseph Nzirorera in Ruhengeri.

5.15 In order to ensure that, when the time came, the extermination of the enemy and its accomplices would be carried out swiftly and effectively, it was necessary to turn the *Interahamwe*-MRND into a militia group, structured, armed and complementary to the Armed Forces. As from 1993, and even before that date, the leaders of the MRND, in collaboration with officers of the FAR, decided to provide military training to those members most devoted to their extremist

Les milices

5.13 Les rivalités politiques de la période du multi-partisme ont exacerbé les tensions entre les différents partis politiques. Ainsi les *Interahamwe*-MRND ont été encouragés, dans un climat d'impunité quasi total, à s'opposer violemment aux manifestations politiques organisées par les partis de l'opposition et à semer la terreur parmi les citoyens rwandais pour les empêcher d'adhérer à d'autres partis que le MRND.

5.14 La transformation des *Interahamwe* au service du MRND était une entreprise illicite formellement interdite par la loi. En outre, pour étendre l'action de cette milice, le Comité Central du MRND a créé en juin 1993 des comités d'*Interahamwe*-MRND au niveau de chaque préfecture. Cette décision a été mise en oeuvre par des personnalités politiques du MRND au niveau de leur circonscription parmi lesquelles Pauline Nyiramasuhuku à Butare et Joseph Nzirorera à Ruhengeri.

5.15 Afin de s'assurer qu'à terme, l'extermination de l'ennemi et de ses complices se ferait rapidement et efficacement, il était nécessaire de constituer les *Interahamwe*-MRND en milice, structurée, armée et complémentaire aux Forces Armées. Dès 1993 et même avant, les dirigeants du MRND en collaboration avec des officiers des FAR, ont décidé de faire suivre aux éléments les plus dévoués à leur cause extrémiste et à dautres jeunes

cause and to other idle youths. Furthermore, weapons were distributed to them.

Training of the Militia Groups

5.16 The training of *Interahamwe*-MRND and *Impuzamugambi*-CDR was supervised and encouraged by civilian and military authorities, including Joseph Nzirorera, Juvenal Kajelijeli and Andre Ntagerura. Training was conducted simultaneously in several *préfectures* around the country: Kigali, Cyangugu, Gisenyi and Butare, as well as in the Mutara sector. Training also took place in military camps, notably Gabiro, Gako, Mukamira and Bigogwe, as well as around these camps or in neighbouring forests.

désoeuvrés, un entraînement militaire. En outre, des armes leur ont été distribuées.

L'entraînement des milices

5.16 L'entraînement des *Interahamwe*-MRND et *Impuzamugambi*-CDR était facilité et encouragé par des autorités miltaires et civiles dont Joseph Nzirorera, Juvenal Kajelijeli, et Andre Ntagerura. Ces entraînements ont eu lieu simultanément dans plusieurs préfectures du pays : Kigali, Cyangugu, Gisenyi, Butare et dans le secteur du Mutara. Ces entraînements se tenaient dans des camps militaires, notamment les camps de Gabiro, Gako, Mukamira et de Bigogwe et également aux alentours de ces camps ou dans les forêts avoisinantes.

5.17 On 10 January 1994, a leader of the *Interahamwe*-MRND militia informed UNAMIR that 1,700 militiamen had undergone training and that they could eliminate 1,000 Tutsis every twenty minutes. This informer stated that he took his orders from Mathieu Ngirumpatse, Chairman of the MRND.

5.18 The secret training of the militiamen became more and more notorious. They could on some occasions be seen training in public places or on their way to the training sites, while chanting slogans inciting the extermination of the enemy.

Distribution of Weapons

5.19 In order to implement the plan for the extermination of the enemy and its accomplices, the militiamen were to receive weapons, in addition to military training. Hence, the civilian and military authorities distributed weapons to the militiamen and certain carefully selected members of the civilian population in various préfectures of the country. Between April and July, Fund raising activities were organized by MRND leading figures in order to bolster the armament of the militiamen who were committing massacres of the Tutsi population and of moderate Hutu.

5.20 In 1993, President Habyarimana declared in Ruhengeri that the *Interahamwe*-MRND had to be *equipped* so that, come the right time, *ils descendent.*

5.21 On or about 12 April 1994, the Minister of Finance in the Interim government personally went to Gitarama

5.17 Le 10 janvier 1994, un dirigeant des milices *Interahamwe*-MRND a informé la MINUAR que 1,700 miliciens avaient suivi un entraînement et qu'ils pouvaient éliminer 1,000 Tutsi toutes les vingt minutes. Cet informateur affirmait recevoir ses ordres de Mathieu Ngirumpatse, Président du MRND.

5.18 Les entraînements secrets des miliciens sont devenus de plus en plus de notoriété publique. On a pu les voir s'entraîner, à certaines occasions, dans des endroits publics ou se diriger vers les sites d'entraînement, en chantant des slogans incitant à l'extermination de l'ennemi.

La distribution d'armes

5.19 Pour mettre en oeuvre le plan d'extermination de l'ennemi et ses complices, les miliciens devaient recevoir, en plus dun entraînement militaire, des armes. Dès lors, les autorités civiles et militaires ont distribué des armes aux miliciens et à certains membres soigneusement choisis de la population civile, dans différentes préfectures du pays. Entre avril et juillet 1994, des campagnes de collecte de fonds ont été organisées par des membres éminents du MRND afin d'armer d'avantage les miliciens qui se livraient à des massacres de la population Tutsi et de Hutu modérés.

5.20 En 1993, le Président Habyarimana déclarait à Ruhengeri qu'on devait *équiper* les *Interahamwe*-MRND pour qu'au moment opportun, *ils descendent.*

5.21 Le ou vers le 12 avril 1994 le Ministre des Finances du Gouvernement Intérimaire s'est présenté personnellement à

and ordered that all the money in the safe deposit be given to him. He said that the money collected was meant for the purchase of weapons and that **Casimir Bizimungu** was instructed to travel abroad in order to negotiate the purchase.

5.22 Before and during the events referred to in this indictment, some members of the Interim government, MRND leaders and some soldiers participated in the distribution of weapons to the militiamen and certain carefully selected members of the civilian population with the intent to exterminate the Tutsi population and eliminate its accomplices.

5.23 Towards the end of 1993, in an open letter broadcast on national radio, the Bishop of the diocese of Nyundo, in Gisenyi *préfecture*, denounced the distribution of weapons in that *préfecture*.

5.24 Further, in a letter from Prime Minister Agathe Uwilingiyimana dated 19 January 1994, the Minister of Defence, Augustin Bizimana, was reproached for refusing to carry out a Cabinet decision *to recover all firearms distributed illegally to the civilian population*.

5.25 Due to the proliferation of weapons in Kigali-*ville préfecture*, UNAMIR put in place a disarmament program, titled Kigali Weapon Security Area (KWSA).

5.26 On 7 January 1994, Mathieu Ngirumpatse, Augustin Bizimana, Augustin Ndindiliyimana, Déogratias Nsabimana, Robert Kajuga and other influential MRND

la Préfecture de Gitarama et a ordonné qu'on lui remette tout l'argent déposé dans son coffre fort. Il a affirmé que l'argent ainsi collecté est destiné à l'achat d'armes et que **Casimir Bizimungu** était chargé de voyager à l'étranger pour négocier ces achats.

5.22 Avant et durant les événements visés dans le présent acte d'accusation, des membres du gouvernement intérimaire, des leaders du MRND et des militaires ont participé à la distribution d'armes aux miliciens et à certaines personnes soigneusement choisies parmi la population civile dans l'intention d'exterminer la population Tutsi et d'éliminer ses complices.

5.23 Vers la fin 1993, dans une lettre ouverte diffusée sur les ondes de la Radio Nationale, l'évêque du diocèse de Nyundo, préfecture de Gisenyi, a dénoncé la distribution d'armes dans cette préfecture.

5.24 Par ailleurs, dans une lettre du Premier Ministre Agathe Uwilingiyimana datée du 19 janvier 1994, le Ministre de la Défense Augustin Bizimana s'est vu reprocher son refus d'exécuter une décision du Conseil des Ministres *de retirer toutes les armes à feu distribuées illégalement à la population civile*.

5.25 En raison de la prolifération des armes dans la préfecture de Kigali-ville, la MINUAR a mis en place un programme de désarmement, dénommé Kigali Weapon Security Area (KWSA).

5.26 Le 7 janvier 1994, Mathieu Ngirumpatse, Augustin Bizimana, Augustin Ndindiliyimana, Déogratias Nsabimana, Robert Kajuga et d'autres membres influents

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members participated in a meeting at the MRND headquarters in opposition to the disarmament program. It was decided at this meeting to use all possible means to resist the implementation of the disarmament, and also to hide weapons at various locations.

5.27 On 10 January 1994, UNAMIR was informed by an *Interahamwe*-MRND leader of the existence of weapons caches in Kigali and a plan to eliminate the Tutsi population. It instructed one of its officers to uncover the exact locations of the weapons. That officer identified several caches throughout Kigali, in places controlled by members of the MRND, notably at the party headquarters in Kimihurura, in a house belonging to General Augustin Ndindiliyimana. During the search of that house, the UNAMIR officer discovered several firearms and cases of ammunition. The informer asserted that, as regards the military aspects of his duties, he was under the orders of MRND Chairman, Mathieu Ngirumpatse, and the Army Chief of Staff, Déogratias Nsabimana. Moreover, he informed UNAMIR that the weapons that had been distributed came from the Army.

Establishment of Lists

5.28 Having identified the Tutsi as the enemy and the members of the opposition as their accomplices, members of the Army General Staff, civilian authorities and militiamen established lists of people to be executed.

5.29 In 1992, at a meeting, Colonel Théoneste Bagosora instructed the two General Staffs to establish lists of people

du MRND ont participé à une réunion au quartier général du MRND, pour s'opposer au programme de désarmement. Il y a été décidé, d'une part, de résister par tous les moyens à l'éxécution du programme de désarmement, et d'autre part de dissimuler des armes à différents endroits.

5.27 Le 10 janvier 1994, la MINUAR a été informée, par un dirigeant des *Interahamwe*-MRND, de l'existence de caches d'armes à Kigali, et d'un plan pour éliminer la population Tutsi. Elle a mandaté un de ses officiers pour s'assurer de l'emplacement exact des armes. Cet officier a localisé plusieurs caches d'armes à travers la ville de Kigali, dans des lieux contrôlés par des membres du MRND, notamment au quartier général du parti, situé à Kimihurura, dans une maison appartenant au Général Augustin Ndindiliyimana. Lors de la fouille, l'officier de la MINUAR a découvert, à cet endroit, plusieurs armes à feu et des caisses de munitions. L'informateur a affirmé travailler sous les ordres du Président du MRND, Mathieu Ngirumpatse, et du Chef dEtat Major de l'Armée, Déogratias Nsabimana pour les aspects militaire de ses tâches. Il a, en outre, informé la MINUAR que les armes distribuées provenaient de l'Armée.

Confection de listes

5.28 Après avoir identifié le Tutsi comme étant l'ennemi principal et les membres de l'opposition comme ses complices, des membres de l'Etat-Major de l'Armée, des autorités civiles et des miliciens ont dressé des listes de personnes à exécuter.

5.29 En 1992, lors d'une réunion, le Colonel Théoneste Bagosora a demandé aux deux Etats-Majors d'établir des listes de

identified as the enemy and its accomplices. The Intelligence Bureau (G-2) of the Rwandan Army established the lists under the supervision of Anatole Nsengiyumva. The lists were regularly updated during the time that Augustin Bizimana was Minister of Defense.

5.30 On 10 January 1994, an *Interahamwe*-MRND leader informed UNAMIR that he had received orders to establish lists of Tutsi to be eliminated.

5.31 On 25 February 1994, at a meeting at MRND headquarters in Kimihurura, chaired by the Chairman of the *Interahamwe*-MRND, Robert Kajuga, *Interahamwe*-MRND leaders of *Kigali-ville* ordered their militants to establish lists of names of Tutsi with the intent to eliminate them.

5.32 From 7 April to late July, military and *Interahamwe*-MRND massacred members of the Tutsi population and of moderate Hutu by means of pre-established lists, among other things.

Precursors Revealing A Deliberate Course of Action

5.33 The political and ethnic violence of the early 1990s was characterized by the use of the elements of the strategy which achieved its finality in the genocide of April 1994. The massacres of the Tutsi minority at that time, including those in Kibilira (1990), in Bugesera (1992), and those of the Bagogwe (1991), were instigated, facilitated and organized by civilian and military

personnes identifiées comme étant l'ennemi et ses complices. Les agents du service de renseignements du G-2 de l'Armée Rwandaise ont procédé à la confection de ces listes, sous la supervision d'Anatole Nsengiyumva. Ces listes ont été régulièrement mises à jour durant la période où Augustin Bizimana était ministre de la défense.

5.30 Le 10 janvier 1994, un dirigeant des *Interahamwe* a informé la MINUAR qu'il avait reçu l'ordre de préparer des listes de Tutsi à éliminer.

5.31 Le 25 février 1994, lors d'une réunion à la permanence du MRND à Kimihurura, présidée par le Président des *Interahamwe*-MRND, Robert Kajuga, des dirigeants des *Interahamwe*-MRND de Kigali-ville ont donné ordre à leurs militants de préparer des listes nominatives de Tutsi dans le but de les éliminer.

5.32 Du 7 avril à la fin juillet, des militaires et des *Interahamwe*-MRND ont perpétré des massacres de membres de la population Tutsi et des Hutu modérés, entre autres à l'aide de listes pré-établies.

Antécédents révélant une conduite délibérée

5.33 La violence ethnique et politique du début des années 90 a été caractérisée par l'utilisation des éléments de la stratégie qui allait connaître son aboutissement avec le génocide de 1994. Les massacres de la minorité Tutsi perpétrés à cette époque, tels que ceux à Kibilira (1990), à Bugesera (1992), et ceux à l'encontre des Bagogwe (1991) ont été suscités, facilités et organisés

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authorities. On each occasion, a campaign of incitement to ethnic violence, conducted by local authorities, was followed by massacres of the Tutsi minority, perpetrated by groups of militiamen and civilians, armed and assisted by the same authorities and by certain military personnel. On each occasion, these crimes remained unpunished and the authorities implicated were generally not taken to task.

5.34 Cooperation between the *Interahamwe*-MRND and certain military personnel, particularly those in the Presidential Guard and the Para-Commando Battalion, was manifested in early 1994 in opposition to the implementation of the institutions provided for under the Arusha Accords. On 5 January 1994, at the time of the swearing-in ceremony of the Broad-Based Transitional Government, the *Interahamwe*-MRND organized a demonstration in cooperation with members of the Presidential Guard. They prevented political opponents from entering the *Conseil national de développement (CND)*. The swearing-in of the members of the Government did not take place. In the end, only the President, Juvénal Habyarimana, was sworn in.

5.35 On 8 January 1994, *Interahamwe*, in complicity with elements of the Presidential Guard and the Para-Commando Battalion dressed in civilian clothes, again organized a demonstration near the CND. On that occasion, the *Interahamwe*-MRND had hidden weapons very nearby and were equipped with radios provided by the Presidential Guard. That demonstration was intended to provoke and cause injury to the Belgian UNAMIR soldiers.

5.36 Finally, as of 7 April 1994,

par des autorités civiles et militaires. À chaque occasion une campagne d'incitation à la violence ethnique menée par des autorités locales a été suivie de massacres de la minorité Tutsi, perpétrés par des groupes de miliciens et de civils, armés et aidés par ces mêmes autorités et certains militaires. À chaque occasion, ces crimes sont demeurés impunis et les autorités impliquées n'ont généralement pas été inquiétées.

5.34 La collaboration entre des *Interahamwe*-MRND et certains militaires, particulièrement de la Garde Présidentielle et du Bataillon Para-Commando, s'est de nouveau manifestée au début de 1994 pour s'opposer à la mise en place des institutions prévues par les Accords d'Arusha. Le 5 janvier 1994, lors de la cérémonie prévue pour la prestation de serment du Gouvernement de Transition à Base Elargie, les *Interahamwe*-MRND ont organisé une manifestation en collaboration avec des éléments de la Garde Présidentielle. Ils ont interdit laccès au CND (Conseil national de développement) aux opposants politiques. La prestation de serment des membres du Gouvernement na pas eu lieu. Finalement seul le Président, Juvénal Habyarimana, a prêté serment.

5.35 De nouveau, le 8 janvier 1994, les *Interahamwe* en complicité avec des éléments de la Garde Présidentielle et du Bataillon Para-Commando habillés en civils, ont organisé une manifestation près du CND. À cette occasion, les *Interahamwe*-MRND avait dissimulé des armes à proximité et étaient équipés de radios fournies par la Garde Présidentielle. Cette manifestation visait à provoquer et agresser les soldats belges de la MINUAR.

5.36 Finalement, dès le 7 avril 1994, sur

throughout Rwanda. Tutsis and certain moderate Hutus began to flee their homes to escape the violence to which they were victims on their hills and to seek refuge in places where they had traditionally felt safe, notably churches, hospitals and other public buildings such as *commune* and *préfecture* offices. On several occasions, gathering places were indicated to them by the local authorities, who had promised to protect them. For the initial days, the refugees were protected by a few gendarmes and communal police in these various locations, but subsequently, the refugees were systematically attacked and massacred by militiamen, often assisted by the same authorities who had promised to protect the refugees. During the numerous attacks on the refugees throughout the country, personnel of the FAR, military or gendarmes, who were supposed to protect them, prevented the Tutsi from escaping and facilitated their massacre by the *Interahamwe*-MRND. On several occasions, these FAR personnel participated directly in the massacres.

5.37 Furthermore, soldiers, militiamen and gendarmes raped or sexually assaulted or committed other crimes of a sexual nature against Tutsi women and girls, sometimes after having first kidnapped them.

tout le territoire du Rwanda, des Tutsi et certains Hutu modérés, pour échapper à la violence dont ils étaient victimes sur leurs collines, ont commencé à fuir leurs maisons pour chercher refuge dans des endroits où traditionnellement ils s'étaient sentis en sécurité, notamment des églises, des hôpitaux et d'autres édifices publics comme les bureaux communaux et préfectoraux. À plusieurs occasions, des endroits de rassemblement leur avaient été indiqués par des autorités locales qui avaient promis de les protéger. Durant les premiers jours, les réfugiés ont été protégés par quelques gendarmes et policiers communaux dans ces différents endroits, mais par la suite, systématiquement, les réfugiés ont été attaqués et massacrés par des miliciens, souvent aidés par ces mêmes autorités qui avaient promis de protéger les réfugiés. Au cours des nombreuses attaques menées contre les réfugiés partout à travers le pays, des membres des FAR, militaires ou gendarmes, qui devaient les protéger, ont empêché les Tutsi de fuir et facilité leur massacre par les *Interahamwe*-MRND. À plusieurs occasions, ces membres des FAR ont participé directement aux massacres.

5.37 De plus, des militaires, des miliciens et des gendarmes ont commis des viols, des agressions sexuelles et d'autres crimes de nature sexuelle à l'encontre de certaines femmes et jeunes filles Tutsi et ce parfois après les avoir enlevées.

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6. CONCISE STATEMENT OF THE FACTS: OTHER VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

Power Crisis

6.1 On 6 April 1994 at about 8:30 p.m., the plane carrying, among other passengers, the President of the Republic, Juvénal Habyarimana, was shot down on its approach to Kigali Airport, Rwanda.

6.2 Following the crash of the Presidents plane, the *Forces Armées Rwandaises* were left without leadership. The President was dead, along with the Chief of Staff of the Rwandan Army, Colonel Déogratias Nsabimana. The Minister of Defence, Augustin Bizimana, and the Chief of Intelligence Services (G2) in the Rwandan Army, Colonel Aloys Ntiwiragabo, were on mission in the Republic of Cameroon. They returned to the country in the days that followed. Gratien Kabiligi, the officer in charge of operations (G3) in the Rwandan Army General Staff, was also on mission in Egypt. In the absence of the Minister of Defence, Colonel Théoneste Bagosora, *directeur de cabinet*, asserted himself as the man of the moment capable of managing the crisis.

Military Takeover Attempt

6.3 Within the first hours following the death of the President, two important meetings took place in Kigali where Colonel

6. EXPOSE SUCCINCT DES FAITS: AUTRES VIOLATIONS DU DROIT INTERNATIONAL HUMANITAIRE

Crise du pouvoir

6.1 Au soir du 6 avril 1994 vers 20:30 heures, l'avion transportant entre autres passagers le Président de la République du Rwanda, Juvénal Habyarimana, a été abattu peu avant son atterrissage à l'aéroport de Kigali, Rwanda.

6.2 Après la chute de l'avion présidentiel, les Forces Armées Rwandaises se sont retrouvées sans direction. Le Président était mort ainsi que le chef d'Etat Major (AR), le Colonel Déogratias Nsabimana. Le Ministre de la Défense, Augustin Bizimana et le responsible des renseignements (G2) de l'Etat-Major (AR), le Colonel Aloys Ntiwiragabo, étaient en mission en République du Cameroun. Ils sont revenus au pays dans les jours qui ont suivi. Gratien Kabiligi, responsable des opérations (G3) de l'Etat-Major (AR), était également en mission en Egypte. En l'absence du Ministre de la Défense, le Colonel Théoneste Bagosora, directeur de cabinet, s'est imposé comme l'homme de la situation à même de gérer la crise.

Tentative de prise du pouvoir par les militaires

6.3 Au cours des premières heures qui ont suivi la mort du Président, deux réunions importantes ont eu lieu à Kigali, au cours

Theoneste Bagosora and several Army offciers attempted to seize power
While the second meeting was going on, the Prime Minister Mrs Agathe Uwilingiyimana, the President of the Constitutional Court, other leading political figures and ten UNAMIR Blue Helmets were brutaly massacred.

6.4 The elimination of political opponents made it possible to set aside the establishment of the Broad-Based Transitional Government (BBTG), stipulated in the Arusha Accords, in favour of an Interim Government. The murder of the Belgian soldiers prompted the withdrawal of most of UNAMIRs contingents. Those two events removed the two major obstacles to the pursuit of the massacres.

Formation of the Interim Government

6.5 Making up for the failure of the attempt at a military takeover by certain military personnel, the leaders of the MRND and of other political parties and military officers, including Colonel Théoneste Bagosora, put in place an Interim Government which would aid and abet the continuation of the massacres.

6.6 Already, in the night of 6 to 7 April, in Kigali, the Presidential Guard (PG) moved the MRND ministers, members of the Power wings of the other political parties, including **Casimir Bizimungu** and **Justin Mugenzi** and prominent members of the deceased President Habyarimanas circle.

desquelles le Colonel Théoneste Bagosora et plusieurs officiers de l'armée ont tenté de prendre le pouvoir. Alors que la seconde réunion se déroulait le Premier Ministre Madame Agathe Uwilingiyimana, le Président de la Cour Constitutionnelle, d'autres personnalités politiques importantes ainsi que dix casques bleux appartenant au contingent de la MINUAR ont été brutalement massacrés.

6.4 L'élimination des opposants politiques a permis d'écarter la mise en place du Gouvernement de Transition a Base Elargie (G.T.B.E.), prévu aux Accords d'Arusha, au profit dun Gouvernement Intérimaire. L'assassinat des militaires belges a provoqué le retrait de la majeure partie des contingents de la MINUAR. Ces deux événements ont écarté les deux obstacles majeurs à la poursuite des massacres.

Formation du Gouvernement Intérimaire

6.5 Faisant face à l'échec de la tentative de prise du pouvoir par certains militaires, les dirigeants du MRND et d'autres partis politiques et des officiers militaires parmi lesquels le Colonel Théoneste Bagosora, ont mis en place un Gouvernement Intérimaire qui allait aider et encourager la continuation des massacres.

6.6 Dès la nuit du 6 au 7 avril, à Kigali, la Garde Présidentielle (GP) a déplacé les Ministres du MRND, des membres des ailes dites power des autres parties politiques, parmi lesquels, **Casimir Bizimungu** et **Justin Mugenzi** ainsi que des personnalités de l'entourage du défunt Président

Some were taken to military camps. They were subsequently moved to the *Hôtel Diplomate,* where they were guarded by members of the Reconnaissance Battalion.

Habyarimana. Certains d'entre eux ont été conduits dans des camps militaires. Ils ont été transférés, par la suite, à l'hôtel Diplomate où leur sécurité a été assurée par des membres du Bataillon de Reconnaissance.

6.7 On 7 April, at about 7:00 a.m., Colonel Théoneste Bagosora called a meeting at the Ministry of Defence of the members of the MRND executive committee, including Mathieu Ngirumpatse, Edouard Karemera and Joseph Nzirorera. The purpose of the meeting was to appoint a new President of the Republic.

6.7 Le 7 avril aux environs de 07.00 heures, le Colonel Théoneste Bagosora a convoqué au Ministère de la Défense, une réunion des membres du comité exécutif du parti MRND, parmi lesquels, Mathieu Ngirumpatse, Edouard Karemera et Joseph Nzirorera. L'objet de la réunion était de désigner le nouveau Président de la République.

6.8 On 8 April, Colonel Théoneste Bagosora summoned political party representatives to a meeting to form a new Government. To that effect, he arranged their transport to the Ministry of Defence. The members of the Government were appointed at the meeting in the presence of MRND representatives Mathieu Ngirumpatse, Edouard Karemera and Joseph Nzirorera. They were almost all members of the *MRND* and of Power wings of the other political parties. No one of Tutsi descent was included either in the talks or in the new Government.

6.8 Dans la journée du 8 avril, le Colonel Théoneste Bagosora a convoqué des représentants des partis politiques à une réunion afin de former un nouveau gouvernement. Il a, à cet effet, organisé leur déplacement au Ministère de la Défense. Les membres du Gouvernement ont été désignés lors de la réunion en présence des representants du MRND Mathieu Ngirumpatse, Edouard Karemera et Joseph Nzirorera. Les personnes choisies pour composer le Gouvernement Intérimaire étaient presque toutes issues du MRND et des ailes dites power des autres partis politiques. Aucune personnalité d'origine Tutsi n'a été associée aux discussions ou n'a fait partie du nouveau gouvernement.

6.9 Jean Kambanda was appointed Prime Minister of the Interim Government of Rwanda formed on 8 April 1994. The Government was officially sworn in on 9 April 1994. It was composed of 19 cabinet Ministers. **Prosper Mugiraneza, Casimir Bizimungu**, André Ntagerura et Pauline Nyiramasuhuko were among the nine

6.9 Jean Kambanda a été désigné Premier Ministre du Gouvernement Intérimaire de la République Rwandaise constitué le 8 avril 1994. Le Gouvernement a officiellement prêté serment le 9 avril 1994. Il comptait 19 ministres. **Prosper Mugiraneza, Casimir Bizimungu,** André Ntagerura et Pauline Nyiramasuhuko

MRND ministers. As the designated Minister of the Interior did not take up office, he was replaced by Edouard Karemera, Vice-Chairman of the MRND. The MDR was represented by three ministers, **Jérôme Bicamumpaka**, André Rwamakuba and Eliézer Niyitegeka. Three Ministers, including **Justin Mugenzi**, represented the Liberal Party.

6.10 As soon as the Interim Government was formed, numerous Cabinet members supported the plan of extermination in place and took the necessary steps to execute it. They incited the people to eliminate the enemy and its accomplices, distributed weapons to them, dismissed local government authorities who were opposed to the massacres, replacing them with others who were devoted to the cause, and adopted directives intended to facilitate the massacre of the civilian Tutsi population.

Scaling-Down of UNAMIRs Personnel

6.11 UNAMIR was established in order to facilitate the peaceful implementation of the institutions foreseen under the Arusha Accords. This United Nations military force was perceived as an obstacle by certain members of the extremist political circles. Certain eminent figures in this circle thus adopted a strategy intended to provoke the Belgian military contingent, UNAMIRs most effective and best-equipped contingent. Their ultimate goal was to force them to withdraw.

6.12 Hence, an anti-Belgian propaganda was carried out particularly through some media and *Radio Televesion Libre des Mille*

faisaient partie des neuf ministres du MRND. Le Ministre de l'Intérieur désigné n'avant pas assumé ses fonctions, il a été remplacé par Edouard Karemera, Vice-Président du MRND. Le MDR était représenté par 3 ministres, **Jérôme Bicamumpaka**, André Rwamakuba et Eliézer Nivitegeka. Trois ministres, dont **Justin Mugenzi**, représentaient le Parti Libéral.

6.10 Dès la formation du Gouvernement Intérimaire, plusieurs membres du Cabinet ont adhéré au plan d'extermination mis en place et pris les moyens nécessaires pour l'exécuter. Ils ont incité la population à éliminer l'ennemi et ses complices, lui ont distribué des armes, ont révoqué des autorités administratives locales opposées aux massacres pour les remplacer par d'autres acquises à la cause et ont adopté des directives visant à faciliter les massacres de la population civile Tutsi.

Réduction des effectifs de la MINUAR

6.11 La MINUAR avait été instituée dans le but de faciliter la mise en place pacifique des institutions prévues aux Accords dArusha. Cette force militaire des Nations Unies était perçue comme un obstacle par certains membres de la classe politique extrémiste. Aussi des personnalités de ce groupe ont adopté une stratégie visant à provoquer les militaires belges qui avait le contingent le plus efficace et le mieux équipé de la MINUAR. L'objectif à terme était de forcer leur retrait.

6.12 Dans cet esprit, une campagne de propagande anti-belge a été menée, notamment par le truchement des médias et

Collines (RTLM). Meetings aimed at mapping out a strategy to provoke the Belgian troops were held by MRND leaders especially on 7 and 26 January 1994. On 7 April 1994, the ten Belgian Blue Helmets detailed to escort the Prime Minister Agathe Uwilingiyimana were assassinated by soldiers of the FAR.

notamment la Radio Télévision Libre des Mille Collines (RTLM). Des réunions ayant pour but d'élaborer une stratégie de provocation des troupes belges ont été tenues par les dirigeants du MRND notamment le 7 et le 26 janvier 1994. Le 7 avril 1994, les 10 casques bleux belges qui étaient chargés descorter le Premier Ministre Agathe Uwilingiyimana ont été assassinés par des éléments des FAR.

6.13 Due to the anti-Belgian propaganda and the murder of the ten Belgian para-commandos, Belgium informed the Security Council on 13 April 1994 that it was withdrawing its contingent from Rwanda. A week later, the Security Council ordered a drastic reduction of UNAMIRs civilian and military personnel.

6.13 En raison de la propagande anti-Belge et de lassassinat des 10 para-commando belges, la Belgique a informé le Conseil de Sécurité, le 13 avril 1994, quelle retirait son contingent du Rwanda. Une semaine après, le Conseil de Sécurité a ordonné une réduction drastique du personnel civil et militaire de la MINUAR.

Perpetration of the Massacres

6.14 As from 7 April 1994, massacres of the Tutsi population and the murder of numerous political opponents were perpetrated throughout the territory of Rwanda. These crimes, which had been planned and prepared for a long time by prominent civilian and military figures who shared the extremist Hutu ideology, were carried out by militiamen, military personnel and gendarmes on the orders and directives or to the knowledge of some of these authorities, including **Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka,** Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera and Juvenal Kajelijeli.

6.15 As of the night of 6 to 7 April, in the capital, elements of the *FAR* and Interahamwe-MRND set up roadblocks, reinforced with armored vehicles, on the major roads, controlling peoples movements. At these places, peoples identities were checked, notably by means of verification of identity cards, and the Tutsi or those identified as such were summarily executed. Concurrently, groups of soldiers and *Interahamwe*-MRND coured the city and murdered civilians.

6.16 Between April and July 1994, the *Interahamwe*-MRND and *Impuzamugambi*-CDR militia spearheaded the massacres, having been armed and well trained to exterminate the enemy and its accomplices when the time was deemed to be appropriate. The *Interahamwe* had a visible

Commission des massacres

6.14 À partir du 7 avril 1994, des massacres de la population Tutsi et l'assassinat de nombreux opposants politiques ont été commis sur tout le territoire du Rwanda. Ces crimes planifiés et préparés de longue date par des personnalités civiles et militaires partageant l'idéologie hutu extrémiste ont été perpétrés par des miliciens, des militaires et des gendarmes suivant les ordres et les directives ou à la connaissance de certaines de ces autorités dont **Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka,** Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera et Juvénal Kajelijeli.

6.15 Dès la nuit du 6 au 7 avril, dans la capitale, des éléments des FAR et des Interahamwe-MRND ont érigé des barrages, renforcés par des véhicules blindés, sur les principaux axes routiers, contrôlant le déplacement de la population. À ces endroits, on vérifiait l'identité des passants notamment en contrôlant les cartes d'identité et on y exécutait sommairement les Tutsi ou ceux reconnus comme tels. Parallèlement, des groupes de militaires et des milices *Interahamwe*-MRND ont sillonné la ville et se sont livrés à des assassinats de civils.

6.16 Entre avril et juillet 1994, les milices *Interahamwe*-MRND et *Impuzamugambi*-CDR, armées et bien entraînées dans le but de servir, au moment jugé opportun, à exterminer l'ennemi et ses complices, ont constitué le fer de lance des massacres. Les Interahamwe étaient dotés d'une structure

national, prefectural and local structure, as well as a secret parallel structure in which the most influential members of the MRND played a leadership role. Thanks to that very elaborate structure, supported by the existing broad-based structure of the MRND, directives circulated easily and were implemented effectively within the militias organs. The *Interahamwe*-MRND participated actively and massively in the massacres of 1994.

6.17 Fearing the opinion of the international community, certain leaders attempted to conceal the massacres in Kigali. Thus, as early as 9 April 1994, the Secretary General of the MRND, Joseph Nzirorera, ordered the *Interahamwe* to stop the massacres. The order was respected and made it possible to gather up the corpses in the streets and conceal them in mass graves. The Interahamwe reported the success of the mission to Joseph Nzirorera and **Justin Mugenzi.** **Justin Mugenzi** openly expressed his satisfaction that many Tutsis had already been killed.

Interim Government

6.18 Following the swearing in of the ministers of the Interim Government. Cabinet members supported the plan of extermination in place, including **Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka,** Edouard Karemera, André Rwamakuba, André Ntagerura, Pauline Nyiramasuhuko and Éliezer Niyetegeka. Thus, several members of the government incited the people to eliminate the enemy and its accomplices and distributed weapons to

visible à l'échelle nationale, préfectorale et locale, et d'une structure parallèle occulte où les membres les plus influents du MRND jouaient un rôle de leadership. Grâce à cette structure très élaborée, soutenue par celle déjà existante et très ramifiée du MRND, les directives circulaient facilement et étaient efficacement mis en oeuvre au sein des organes de la milice. Les Interahamwe-MRND ont très activement et très massivement participé aux massacres de 1994.

6.17 Par crainte de l'opinion de la communauté internationale, certains dirigeants ont tenté de dissimuler les massacres à Kigali. Ainsi, dès le 9 avril 1994, le secrétaire-général du MRND, Joseph Nzirorera, a ordonné aux *Interahamwe* d'arrêter les massacres. Cet ordre a été respecté et a permis le ramassage des cadavres dans les rues pour les dissimuler dans des fosses communes. Le succès de la mission a été rapporté par les Interahamwe à Joseph Nzirorera et **Justin Mugenzi**. Ce dernier exprimait ouvertement sa satifaction devant le fait que beaucoup de tutsi ont été déjà éliminés.

Gouvernement Intérimaire

6.18 Suite à la prestation de serment des ministres du Gouvernement Intérimaire, les membres du Cabinet, parmi lesquels **Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka,** Edouard Karemera, André Rwamakuba, André Ntagerura, Pauline Nyiramasuhuko et Eliézer Niyetegeka ont adhéré au plan d'extermination mis en place. Dans ce sens plusieurs membres du gouvernement ont incité la population à éliminer l'ennemi et ses complices et lui ont distribué des armes.

them. The Government dismissed local government authorities who were opposed to the massacres and replaced them with others who were devoted to the cause.

6.19 Already, on 8 April, the new Government summoned all the *préfets* to a meeting in Kigali for the purpose of assessing the situation in the country at the time. The emergency meeting was held on 11 April 1994 and recorded the participation of all the Government ministers and all the *préfets*, except those of Ruhengeri, Cyangugu and Butare. At this meeting, the situation as regards the massacres in each *préfecture* was analyzed.

6.20 On 17 April, Eliézer Niyitegeka, as Minister of Information and spokesperson for the government, read out an official communique of the Interim Government in which he congratulated the Prefets of Kigali, Kibuye and Cyangugu for the excellent work done.

6.21 Rather than take immediate action to put an end to the massacres, on 17 April, the Interim Government dismissed several authorities, among them the *Préfet* of Butare, Jean Baptiste Habyarimana, for their refusal to take part in the massacres so that the killings could spread to the country as a whole.

6.22 Between 9 April and 14 July 1994, numerous Cabinet meetings were held successively in Kigali, Gitarama and Gisenyi. During this period, the Government was regularly briefed on the situation in regard to the massacres of the civilian population. On several occasions during these meetings, the Ministers demanded weapons to distribute in their respective

Le Gouvernement a révoqué des autorités administratives locales opposées aux massacres pour les remplacer par d'autres acquises à la cause.

6.19 Dès le 8 avril, le nouveau Gouvernement a convoqué tous les préfets pour une réunion à Kigali, dans le but dévaluer la situation qui prévalait dans le pays. Cette réunion de crise tenue le 11 avril 1994, a enregistré la participation de tous les ministres, et celle de tous les préfets, exception faite de ceux de Ruhengeri, de Cyangugu et de Butare. Lors de cette réunion, la situation des massacres dans chaque préfecture a été analysée.

6.20 Le 17 avril, Eliézer Niyitegeka, en tant que Ministre de l'Infomation et porte-parole du gouvernement, a lu un communiqué officiel du Gouvernement Intérimaire dans laquelle il a felicité, entre autres, les préfets de Kigali, Kibuye et Cyangugu pour l'excellente travail qu'ils ont fait.

6.21 Le 17 avril, au lieu de prendre des mesures immédiates pour mettre fin aux massacres, le gouvernement intérimaire a plutôt limogé plusieurs responsables, dont le préfet de Butare, Jean Baptiste Habyarimana, parce qu'ils avaient refusé de prendre part aux massacres et ce, afin que les tueries s'étendent à l'ensemble du pays.

6.22 Entre le 9 avril et 14 juillet 1994, de nombreuses réunions du Conseil des Ministres se sont tenues successivement à Kigali, Gitarama et Gisenyi. Durant cette période le Gouvernement était régulièrement tenu informé de la situation des massacres de la population civile. À plusieurs occasions lors de ces réunions, les Ministres ont exigé des armes pour les distribuer dans

home *préfectures*, knowing that the weapons would be used in the massacres.

6.23 During these numerous Cabinet meetings, the Interim Government adopted directives and gave instructions to the *préfets* and the *bourgmestres*. The decisions, which were then passed on to the general public, were intended to incite, aid and abet the perpetration of the massacres. In order to ensure that the directives and instructions were carried out, the Cabinet of the Interim Government designated a Minister for each *préfecture* to be responsible for what was termed pacification. Callixte Nzabonimana for Gitarama, Pauline Nyiramasuhuko for Butare and André Ntagerura for Cyangugu were among those assigned this task.

6.24 On 27 April 1994, the Interim Government ordered roadblocks to be set up, knowing that the roadblocks were being used to identify the Tutsi and their accomplices for the purpose of eliminating them. Between April and July 1994, a roadblock was set up near the residence of Minister Pauline Nyiramasuhuko and Arsène Shalom Ntahobali in Butare town, manned and controled by them.

6.25 On 25 May 1994, the Interim Government adopted directives concerning the civil self-defence program. Its purpose was to legalize the distribution of weapons to the militiamen on the one hand and to legitimize the massacres of the civilian population on the other. As part of the civil self-defence program, the Interim Government, by ministerial decision, appointed several military officers to lead the self defence committees established in

leur préfecture d'origine, sachant qu'elles seraient utilisées dans les massacres.

6.23 Au cours de ces nombreuses réunions du Conseil des Ministres, le Gouvernement Intérimaire a adopté des directives et donné des instructions aux préfets et aux bourgmestres. Ces décisions, répercutées à la population, visaient à inciter, encourager et aider à commettre les massacres. Pour s'assurer de la mise en oeuvre de ces directives et instructions, le Conseil des Ministres du Gouvernement Intérimaire de Jean Kambanda a désigné pour chaque préfecture, un Ministre responsable de ce qu'on appelait la pacification. Callixte Nzabonimana à Gitarama, Pauline Nyiramasuhuko à Butare et André Ntagerura à Cyangugu, entre autres, devaient assumer cette mission.

6.24 Le 27 avril 1994, le gouvernement intérimaire a ordonné l'érection de barrages routiers, sachant que ceux-ci étaient utilisés pour identifier les Tutsi et leurs complices, afin de les éliminer. Entre avril et juillet 1994, un barrage routier a été érigé à proximité du domicile du Ministre Pauline Nyiramasuhuko et d'Arsène Shalom Ntahobali dans la ville de Butare, tenu et controlé par eux.

6.25 Le 25 mai 1994, le Gouvernement Intérimaire, a adopté des directives pour le programme d'auto-défense civile. Ce programme visait à légaliser d'une part la distribution des armes aux miliciens et d'autre part à légitimer les massacres de la population civile. Dans le cadre du programme d'auto-défense civile, le Gouvernement Intérimaire, par décision ministérielle, a nommé plusieurs officiers militaires pour diriger des Comités d'auto

each *préfecture*. Some of these officers took an active part in the massacres, including Alphonse Nteziryayo in Butare.

6.26 Between 11 April and 14 July 1994, Jean Kambanda, **Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka** and other ministers notably Éliezer Niyetegeka, Edouard Karemera, André Rwamakuba, André Ntagerura and Pauline Nyiramasuhuko, travelled officially, either on their own or with others, to several *préfectures*, including Butare, Kibuye and Gitarama, in order to monitor the implementation of the Government-issued instructions, directives and guidelines, notably with regard to civil defence and security. During the many visits they made, these personalities knew or had reason to know that massacres were perpetrated against the civilian Tutsi population. At no time did these ministers take any action to stop those massacres nor to punish the persons responsible.

6.27 Furthermore, between 24 April and 14 July 1994, Théodore Sindikubwabo, Jean Kambanda, Edouard Karemera, André Rwamakuba, André Ntagerura, Pauline Nyiramasuhuko, **Justin Mugenzi** and Éliezer Niyitegeka, travelled, either on their own or with others, to several *préfectures*, including Butare, Gitarama, Gisenyi, Kibuye and Cyangugu, to incite and urge the population to commit massacres, notably by commending the perpetrators.

6.28 Between April and July 1994, **Justin Mugenzi,** Minister of Trade & Industry made statements inciting people to kill the Tutsis, notably in Gisenyi, Kigali and

défense installés dans chaque préfecture. Certains de ces officiers, tels qu'Alphonse Nteziryayo à Butare, ont participé activement aux massacres.

6.26 Entre le 11 avril et le 14 juillet 1994, Jean Kambanda, **Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka** et dautres ministres notamment Éliezer Niyetegeka Edouard Karemera, André Rwamakuba, André Ntagerura et Pauline Nyiramasuhuko, se sont rendus officiellement, seuls ou avec d'autres, dans plusieurs préfectures du pays telles que Butare, Kibuye et Gitarama, en vue de contrôler la mise en oeuvre des instructions, directives et orientations données par le Gouvernement, notamment en matière de défense civile et de sécurité. Au cours de leurs nombreux déplacements, ces personnalités, savaient ou devaient savoir, que des massacres de la population civile Tutsi étaient en train de se commettre. En aucun moment ces ministres n'ont-ils agit pour faire cesser ces massacres ou pour en punir les personnnes responsables.

6.27 En outre, entre le 24 avril et le 14 juillet 1994, Théodore Sindikubwabo, Jean Kambanda, Edouard Karemera, André Rwamakuba, André Ntagerura, Pauline Nyiramasuhuko, **Justin Mugenzi** et Éliezer Niyitegeka, se sont rendus, seuls ou avec d'autres, dans plusieurs préfectures telles que Butare, Gitarama, Gisenyi, Kibuye et Cyangugu, pour inciter et encourager la population à commettre des massacres, notamment en félicitant leurs auteurs.

6.28 Entre avril et juillet 1994, **Justin Mugenzi,** Ministre du commerce, de l'industrie et de l'artisanat a tenu des propos incitant à tuer les tutsis, entre autres, à

Murambi. Some of his inflammatory statements were broadcast on RTLM.

6.29 On 21 April 1994, Jean Kambanda, in his capacity as Prime Minister, clearly demonstrated his support for *Radio Télévision Libre des Mille Collines (RTLM)*, founded and directed by Félicien Kabuga, while knowing the radio station incited to exterminate and persecute the Tutsi and their accomplices. On that occasion, Jean Kambanda described the radio station as *an indispensable weapon in the fight against the enemy*. Between 8 April and 14 July 1994, at meetings in various places in the country and over the radio, Jean Kambanda directly and publicly incited the population to carry out acts of violence, i.e. murders and assaults, against the Tutsis and their accomplices. In the radio broadcasts, the Prime Minister called on the Rwandans to rise up and mobilize against the enemy; he appealed to the *chefs de cellule* to dedicate themselves to the *work*.
On several occasions, the Minister of Education, André Rwamakuba, also encouraged the massacre of the Tutsis over the radio. Around late May 1994, he was appointed Government spokesman and continued to make inflammatory speeches over the Radio Rwanda and RTLM airwaves. Following all these repeated appeals, massacres were perpetrated against the civilian population.

6.30 Between 8 April and 14 July 1994, in several *préfectures*, including Butare, Kibuye, Kigali, Gitarama and Gisenyi, ministers, *préfets*, *bourgmestres*, civil servants and soldiers gave orders to commit, instigated, assisted in commiting and did

Gisenyi, Kigali et Murambi. Certains de ces propos incendiaires ont été diffusés à l'antenne de RTLM.

6.29 Le 21 avril 1994, Jean Kambanda, en sa qualité de Premier Ministre, a clairement manifesté son soutien à la Radio télévision libre des Mille collines (RTLM) fondée et dirigée par Félicien Kabuga, tout en sachant que cette station appelait à l'extermination et à la persécution des Tutsi et leurs « complices ». Jean Kambanda a, à cette occasion, qualifié la Radio *darme indispensable pour combattre lennemi*. Entre le 8 avril et le 14 juillet 1994, lors de réunions tenues à divers endroits du pays et sur les ondes de la radio, le Premier Ministre Jean Kambanda a directement et publiquement incité la population à commettre sur les Tutsi et leurs complices des actes de violence, en l'occurrence des meurtres et des agressions. Durant les radiodiffusions, le Premier ministre a invité les Rwandais à se soulever et à se mobiliser contre l'ennemi, et les chefs de cellule à se consacrer au *travail*.
A plusieurs reprises le Ministre de l'Education, André Rwamakuba, avait également encouragé à l'antenne les massacres des Tutsis. Aux alentours de fin mai 1994 il a été nommé porte parole du Gouvernement et a continué à tenir des discours incendiaires à travers les ondes de Radio Rwanda et sur RTLM. Suite à tous ces appels réitérés, des massacres de la population civile ont été commis.

6.30 Entre le 8 avril et le 14 juillet 1994, dans plusieurs préfectures telles que Butare, Kibuye, Kigali, Gitarama et Gisenyi, des ministres, des préfets, des bourgmestres, des fonctionnaires de l'Etat et des militaires ont donné l'ordre de commettre, ont incité, ont

themselves commit massacres of members of the Tutsi population and moderate Hutu population. Jean Kambanda, **Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka** Edouard Karemera, André Rwamakuba, André Ntagerura, Pauline Nyiramasuhuko and Éliezer Niyitegeka knew or had reason to know that their subordinates had committed or were preparing to commit crimes, and failed to prevent these crimes from being committed or to punish the perpetrators thereof.

6.31 Ministers **Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka,** Edouard Karemera, André Rwamakuba, André Ntagerura, Pauline Nyiramasuhuko and Éliezer Niyitegeka, members of Jean Kambandas Government, failed in their duty to ensure the security of the Rwandan people.

6.32 From May to July 1994, in Butare and Gitarama *préfectures*, Jean Kambanda distributed weapons and ammunition to members of the civilian population, militants of the political parties and militiamen. These weapons distributions received wide media coverage and could not have gone unnoticed by the members of the Interim Government, who had to know that the weapons would be used to massacre civilians, the majority of whom were members of the Tutsi population.

6.33 In the course of the massacres, between April and July 1994, Minister André Ntagerura authorized the use of vehicles belonging to the State company, ONATRACOM, in order to transport either militiamen, weapons and ammunition or

aidé à commettre et ont commis des massacres de Tutsi et de Hutu modérés. Jean Kambanda, **Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka,** Edouard Karemera, André Rwamakuba, André Ntagerura, Pauline Nyiramasuhuko et Éliezer Niyitegeka savaient ou devaient savoir que leurs subordonnés avaient commis ou s'apprêtaient à commettre des crimes et ont omis d'en prévenir la commission ou d'en punir les auteurs.

6.31 Les Ministres **Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka,** Edouard Karemera, André Rwamakuba, André Ntagerura, Pauline Nyiramasuhuko et Éliezer Niyitegeka membres du Gouvernement de Jean Kambanda ont failli à leur devoir dassurer la sécurité de la population rwandaise.

6.32 De mai à juillet 1994, dans les préfectures de Butare et de Gitarama, Jean Kambanda a distribué des armes et des munitions à des membres de la population civile, à des militants de partis politiques et à des miliciens. Ces distributions d'armes, fortement médiatisées, ne pouvaient échapper à l'attention des membres du Gouvernement Intérimaire qui devaient alors savoir que ces armes seraient utilisées dans les massacres de civils, en majorité, des membres de la population Tutsi.

6.33 Pendant les massacres, entre avril et juillet 1994, le Ministre André Ntagerura, a autorisé l'utilisation de véhicules appartenant à lONATRACOM, société d'Etat, pour effectuer le transport d'une part, de miliciens, d'armes et de munitions et

Tutsi victims to certain execution sites in Cyangugu *préfecture* and other *préfectures* such as Butare, Ruhengeri and Kibuye, with the intent to facilitate the extermination of the Tutsi population and the elimination of its accomplices.

6.34 On 25 April 1994, in Gisenyi *préfecture*, Félicien Kabuga, Mathieu Ngirumpatse, Edouard Karemera and Anatole Nsengiyumva agreed together and with others to establish the *Fonds de Défense Nationale* (FDN), for the purpose of providing assistance to the Interim Government to fight the enemy and its accomplices.
This Fund would serve to buy weapons, vehicles and uniforms for the *Interahamwe* militia and the Army in all *préfectures* in the country.
On 20 May 1994, Félicien Kabuga informed the Interim Government of the establishment of the fund and advised it how it should be managed and operated.

d'autre part de victimes Tutsi vers certains lieux d'exécution, dans la préfecture de Cyangugu et dans d'autres préfectures telles que Butare, Ruhengeri et Kibuye dans l'intention de faciliter l'extermination de la population Tutsi et l'élimination de ses complices.

6.34 Le 25 avril 1994, dans la préfecture de Gisenyi, Félicien Kabuga, Mathieu Ngirumpatse, Edouard Karemera et Anatole Nsengiyumva se sont mis d'accord entre eux et avec d'autres personnes pour créer le Fonds de Défense Nationale (F.D.N.), dans le but de fournir assistance au Gouvernement Intérimaire pour combattre l'ennemi et ses complices.
Ce Fonds devait servir à l'achat d'armes, de véhicules et d'uniformes pour les milices *interahamwe* et l'armée dans toutes les préfectures du pays.
Le 20 mai 1994, Félicien Kabuga a informé le Gouvernement Intérimaire de la création du Fonds et a conseillé le gouvernement sur la manière de le gérer et de s'en servir.

EXTENSION OF THE MASSACRES

6.35 From April to July 1994, by virtue of their position, their statements, the orders they gave and their acts and omissions, members of the Interim Government and influential members of MRND, MDR(hutu) and PL (hutu) including **Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka** and **Justin Mugenzi** exercised authority over the local authorities and the militia, including the *Interahamwe*-MRND militia. These local authorities and militiamen, in complicity with the military, as from 6 April, committed massacres of the Tutsi population and of moderate Hutu which extended throughout Rwandan territory, with the knowledge of members of the Interim Government, including, **Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka** and **Justin Mugenzi**.

6.36 The massacres of members of the Tutsi population and the murder of the moderate Hutu extended throughout the territory of Rwanda. In every *préfecture*, local civil and military authorities and militiamen, including *Interahamwe*-MRND, espoused the plan of extermination and followed the directives and orders in order to execute it. They called on the civilian population to eliminate the enemy and its accomplices. They distributed weapons to civilians and militiamen. They gave orders to commit, aided, abetted and participated in the massacres.

6.37 From April to July 1994, in all the regions of the country, members of the Tutsi population who were fleeing from the massacres on their hills sought refuge in locations they thought would be safe, often on the recommendation of the local civil and

ETENDU DES MASSACRES

6.35 D'avril à juillet 1994, de par leur fonctions, leurs propos, les ordres et directives qu'ils ont donnés et leurs actes et omissions, les membres du Gouvernement Intérimaire et les membres influents du MRND, MDR (hutu) et PL (hutu) dont, **Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka** et **Justin Mugenzi** ont exercé une autorité sur les autorités locales et les milices, dont les milices *Interahamwe*-MRND. Ces autorités et ces miliciens, en complicité avec des militaires, ont commis dès le 6 avril des massacres contre la population tutsi et des hutu modérés qui se sont étendus sur l'ensemble du territoire rwandais à la connaissance des membres du Gouvernement Intérimaire dont **Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka** et **Justin Mugenzi**.

6.36 Les massacres de membres de la population Tutsi et les assassinats des Hutu modérés se sont étendus sur l'ensemble du territoire du Rwanda. Dans chaque préfecture, des autorités locales, civiles et militaires et des miliciens, dont les *Interahamwe*-MRND, ont adhéré au plan d'extermination et ont suivi les directives et les ordres afin de l'exécuter. Ils ont appelé la population civile à éliminer l'ennemi et ses complices. Ils ont distribué des armes à des civils et des miliciens. Ils ont ordonné, encouragé, aidé et participé aux massacres.

6.37 D'avril à juillet 1994, dans toutes les régions du pays, des membres de la population Tutsi qui fuyaient les massacres sur leurs collines ont cherché refuge dans des endroits qu'ils croyaient sûrs, souvent sur recommandation des autorités locales.

military authorities. In many of these places, despite the promise that they would be protected by the local civil and military authorities, the refugees were attacked, abducted and massacred, often on the orders or with the complicity of those same authorities.

civiles et militaires. Dans plusieurs de ces endroits, malgré la promesse qu'ils seraient protégés par les autorités locales, civiles et militaires, les réfugiés ont été attaqués, enlevés et massacrés, souvent sur les ordres ou avec la complicité de ces mêmes autorités.

KIGALI

KIGALI

6.38 By virtue of the fact that Kigali was the capital of Rwanda, seat of the Government till 12 April 1994, the place where the elite units of the Rwandan Army were based and where the headquarters for both the Army and the Gendarmerie were situated, several of the civilian and military figures who had planned and organized the massacres played a leading role in carrying out the massacres in Kigali.

6.38 Du fait que Kigali était la capitale du Rwanda, le siège du Gouvernement jusqu'au 12 avril 1994, où étaient basés, de plus, les unités délites de l'Armée rwandaise et les États-Major de l'Armée et de la Gendarmerie, plusieurs des personnalités civiles et militaires qui avaient planifié et organisé les massacres ont joué un rôle de premier plan dans leur exécution à Kigali.

6.39 Starting on 7 April, in Kigali, *Interahamwe*-MRND, elements of the Rwandan Army and Gendarmerie perpetrated massacres of the civilian Tutsi population. Concurrently, elements of the Presidential Guard, Para-Commando Battalion and Reconnaissance Battalion and *Interahamwe*-MRND murdered political opponents. Numerous massacres of the civilian Tutsi population took place in places where they had seek refuge for their safety.

6.39 Dès le 7 avril, à Kigali, des *Interahamwe*-MRND, des éléments de l'Armée Rwandaise et de la Gendarmerie se sont livrés à des massacres contre la population civile Tutsi. Parallèlement, des éléments de la Garde Présidentielle, du Bataillon Para Commando et du Bataillon de Reconnaissance et des *Interahamwe*-MRND ont assassiné des opposants politiques. De nombreux massacres de la population civile Tutsi se sont déroulés dans des endroits où ils s'étaient réfugiés pour leur sécurité.

Centre Hospitalier de Kigali

Centre Hospitalier de Kigali

6.40 When the massacres started, the *Centre Hospitalier de Kigali* (CHK) took in numerous wounded Tutsi from various areas of the city. On several occasions, soldiers who were supposed to be guarding the

6.40 Dès le début des massacres, le Centre Hospitalier de Kigali (CHK) a accueilli de nombreux Tutsi blessés venant de différents quartiers de la ville. À plusieurs reprises, des militaires qui

hospital selected Tutsi patients and killed them on the spot. A list of the staff of Tutsi descent was drawn up and several of the people on the list were killed. Each morning, the officer in charge reported to MINADEF (Ministry of Defence) on the number of Tutsi who had been killed.

6.41 The massacres at the CHK were reported to the Interim Government, particularly to the Minister of Health **Casimir Bizimungu**, during the Ministerial meetings. Minister of Health **Casimir Bizimungu** did not take any steps to stop the crimes being committed in this public hospital or to punish the perpetrators.

BUTARE

6.42 Three important factors delayed the start of the massacres in Butare *préfecture*. Historically, this *préfecture* had a large Tutsi population living in harmony with the Hutu majority. Since the inception of the multiparty system, the *Parti Social Démocrate* (PSD) dominated the political scene in Butare and the *Mouvement républicain national pour la démocratie et le développement* (MRND) played a lesser role in that area than elsewhere in the country. Hence, the *Interahamwe* organizational structure was less elaborate and its membership was smaller. Furthermore, the *Préfet* of Butare, Jean Baptiste Habyalimana (PSD), the only *Préfet* of Tutsi descent in the country, had openly opposed the massacres in his *préfecture*, where he had succeeded in maintaining calm, with a few exceptions,

devaient assurer la protection de l'hôpital ont sélectionné des patients Tutsi et les ont tués sur place. Une liste des membres du personnel d'origine Tutsi a été dressée et plusieurs d'entre eux ont été tués. Chaque matin, l'officier responsable adressait un rapport au MINADEF (Ministère de la Défense) sur le nombre de Tutsi qui avaient été tués.

6.41 Les massacres survenus au CHK ont été rapportés au gouvernement intérimaire, et notamment au Ministre de la Santé **Casimir Bizimungu**, lors des conseils des ministres. **Casimir Bizimungu**, Ministre de la Santé, n'a jamais pris les mesures nécessaires pour empêcher la commission des crimes qui se perpétraient dans cet hôpital public ou pour en punir les auteurs.

BUTARE

6.42 Trois facteurs importants ont retardé le début des massacres dans la préfecture de Butare. Historiquement, cette préfecture comptait une forte représentation de la population Tutsi qui y cohabitait paisiblement avec la majorité Hutu. Depuis le multipartisme, le *Parti Social Démocrate* (PSD) dominait la scène politique à Butare, le *Mouvement républicain national pour la démocratie et le développement* (MRND) y jouant un rôle moins important par rapport au reste du pays. Ainsi, la structure organisationnelle des *Interahamwe* y était moins élaborée et ses adhérents moins nombreux. En outre, le Préfet de Butare, Jean Baptiste Habyalimana, (PSD), seul préfet d'origine Tutsi dans le pays, s'était ouvertement opposé aux massacres dans sa préfecture et avait réussi à y maintenir le calme, à quelques exceptions près, parmi

notably Nyakizu *commune*. Thus, thousands of people, the majority of whom were Tutsi, came from other *préfectures* to seek refuge in Butare in the days which immediately followed the start of the massacres.

6.43 The country civil and military leaders became aware of the exceptional situation in Butare. Thus, the Interim Government, of which **Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka** and **Justin Mugenzi** were members, removed *Préfet* Habyalimana from office and incited the people to get involved in the massacres. *Préfet* Habyalimana was subsequently arrested and never seen again. Moreover, elements of the Army and *Interahamwe* militiamen were sent to Butare as reinforcements to start the massacres.

6.44 In order to incite and encourage the Butare people to massacre the Tutsis, **Casimir Bizimungu** and Joseph Nzirorera insisted that the government delegation should include President Sindikubwabo himself so that the speeches could have maximum impact on the people.

6.45 Thus, on 19 April 1994, the swearing-in ceremony in Butare for the new *Préfet*, Sylvain Nsabimana, was the occasion of a large gathering which had been announced and organized by the Interim Government. On that occasion, President Théodore Sindikubwabo made an inflammatory speech, openly and explicitly calling on the people of Butare to follow the example of the other *préfectures* and begin the massacres. He violently denounced the *banyira ntibindeba*, meaning those who did not feel concerned. He asked them to *get*

lesquelles, la commune de Nyakizu. Aussi, des milliers de personnes, en majorité Tutsi, venues d'autres préfectures, avaient cherché refuge à Butare dès les premiers jours qui ont suivi le début des massacres.

6.43 Les dirigeants civils et militaires du pays ont pris conscience de la situation particulière qui régnait à Butare. Ainsi le Gouvernement Intérimaire, dont **Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka** et **Justin Mugenzi** étaient membres, a révoqué le Préfet Habyalimana et a incité les populations à s'impliquer dans les massacres. Par la suite, le Préfet Habyalimana a été arrêté et n'a jamais été revu depuis. En outre, des éléments de l'armée et des miliciens *Interahamwe* ont été envoyés en renfort pour commencer les massacres.

6.44 Pour inciter et encourager la population de Butare à massacrer les Tutsi **Casimir Bizimungu** et Joseph Nzirorera ont insisté pour que la délégation gouvernementale inclut le Président Sindibukwabo lui-même afin que les discours aient le maximum d'impact sur la population.

6.45 Dans cette perspective, le 19 avril, la cérémonie d'investiture du nouveau Préfet, Sylvain Nsabimana, à Butare, a donné lieu à un grand rassemblement annoncé et organisé par le Gouvernement Intérimaire. À cette occasion, le Président Théodore Sindikubwabo a prononcé un discours incendiaire, appelant ouvertement et explicitement la population de Butare à suivre l'exemple des autres préfectures et à commencer les massacres. Il a violemment dénoncé les *Banyira Ntibindeba*, autrement dit ceux qui ne se sentent pas concernés. Il

out of the way and *let us work*. Prime Minister Jean Kambanda, who subsequently took the floor, did not contradict the President of the Republic, nor did any of the Ministers present, including **Justin Mugenzi**. Shortly thereafter, the massacres of Tutsis began in the *préfecture*.

leur a demandé *qu'ils cèdent la place* et *qu'ils nous laissent travailler*. Le Premier Ministre Jean Kambanda a ensuite pris la parole et n'a pas contredit le Président de la République, non plus qu'aucun des Ministres présents, dont **Justin Mugenzi**. Peu après, les massacres de Tutsi ont commencé dans la préfecture

6.46 Because the members of the Interim Government, including **Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka** did not dissociate themselves from this statement of the President of the Republic, at any time, they gave a clear signal to the people that the massacres were ordered and condoned by the Government.

6.46 En ne se dissociant pas, en aucun moment, des propos ainsi tenus par le Président de la République, les membres du Gouvernement Intérimaire dont **Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka,** ont clairement indiqué à la population que les massacres étaient ordonnés et cautionnés par le Gouvernement..

6.47 The next day, two military planes landed in Butare with numerous Presidential Guard and Para-Commando Battalion soldiers on board. These soldiers, in tandem with the *Interahamwe* of Butare, took part in murdering and massacring civilians, notably the former Queen of Rwanda, Rosalie Gicanda, a historical symbol for all Tutsi.

6.47 Le lendemain, deux avions militaires ont atterri à Butare, avec à leur bord des dizaines de militaires de la Garde Présidentielle et du Bataillon Para-Commando. Ces militaires ont participé aux côtés des *Interahamwe* de Butare, aux meurtres et aux massacres de civils, parmi lesquels, l'ancienne Reine du Rwanda, Rosalie Gicanda, symbole historique pour tous les Tutsi.

6.48 In the days which followed the unleashing of the massacres, *Interahamwe*-MRND from outside the *préfecture*, notably from Kigali, came in to reinforce their fellow militiamen in Butare in perpetrating the massacres. This included a detachment of *Interahamwe*-MRND which was accompanying their Chairman, Robert Kajuga.

6.48 Dans les jours qui ont suivi le déclenchement des massacres, des *Interahamwe*-MRND de l'extérieur de la préfecture, notamment de Kigali, sont venus prêter main forte aux miliciens de Butare pour l'exécution des massacres. Ce fut le cas entre autres, d'un détachement d*Interahamwe*-MRND accompagnant leur président, Robert Kajuga.

6.49 From 20 April the massacres became widespread within the *préfecture*. In Butare, as in all the regions of the country,

6.49 A partir du 20 avril, les massacres se sont propagés dans la préfecture. À Butare, comme dans toutes les régions du pays,

numerous people sought refuge in locations they thought would be safe or impregnable, often locations that had been indicated to them by the authorities, such as **Butare university hospital** and the premises of the *préfecture* offices in the town of Butare. In these places, despite the promise made by the authorities that they would be protected, the refugees were attacked, abducted or killed by soldiers and militiamen, often on the orders or with the complicity of those same authorities.

6.50 Between April and July 1994, Prime Minister Jean Kambanda, often accompanied by other ministers, visited several *communes*, including Ndora and Muganza, in May and June 1994. These visits demonstrated his governments support for the massacres of the Tutsi and moderate Hutu. The approval of the massacres was also made manifest by the dismissal of *bourgmestres* who dared oppose the killings and by the appointment of *bourgmestres* who were more cooperative.

6.51 On or about 15 May, Prime Minister Jean Kambanda made a speech at Butare University. He urged the civilian population to take up arms. Subsequently to this meeting he adopted the slogan, "Wima igihigu amaraso imbwa zikayangwera ubusa," (Spill blood for the nation lest your own blood be spilt). The slogan then became a watch-word of his government, included in many of his public pronouncements. In the context of the civilian massacres that had overtaken Rwanda during the period of early April through late July, these incendiary words were a clear signal of support and encouragement of the massacres by the Interim Government. During this period no

plusieurs personnes ont cherché refuge dans des endroits qu'ils croyaient securitaires ou inviolables, souvent sur indication des autorités, tel que **l'Hôpital Universitaire de Butare** et l'enceinte du bureau de la préfecture dans la ville de Butare. Dans ces endroits, malgré la promesse faite par les autorités qu'ils seraient protégés, les réfugiés ont été attaqués, enlevés ou tués par des militaires et des miliciens souvent sur ordres ou avec la complicité de ces mêmes autorités.

6.50 Entre avril et juillet 1994 le Premier Ministre Jean Kambanda, souvent accompagné d'autres ministres, a visité plusieurs communes dont Ndora et Muganza en mai et juin 1994. Ces visites marquaient le soutien le son gouvernement aux massacres des Tutsi et des Hutu modérés. Cette approbation des massacres se traduisait également sous forme de destitution de bourgmestres qui osaient sopposer aux tueries et par la nomination de bourgmestres plus coopérants dans ce domaine.

6.51 Vers ou le 15 mai, le Premier Ministre Jean Kambanda a tenu un discours lors d'une réunion qui a eu lieu à l'université de Butare. Il a incité la population civile à prendre les armes. A la suite de cette réunion, il a adopté le slogan, "Wima igihigu amaraso imbwa zikayangwera ubusa," (Tu refuses de verser ton sang pour ton pays et les chiens le boivent pour rien). Ce slogan est ainsi devenu le leitmotiv de son gouvernement, souvent repris dans ses discours publics. Dans le contexte des massacres qui se déroulaient dans tout le pays pendant la période d'avril à juillet, ce discours incendiaire était un soutien clair et un

member of the Interim Government, including **Casimir Bizimungu, Justin Mugenzi, Jérôme Bicamumpaka and Prosper Mugiraneza,** publicly expressed dissention or disagreement or criticism of any of the policies that were endorsed by Jean Kambanda on behalf of the Interim Government.

Butare University Hospital

6.52 In late April 1994, numerous Tutsi went to the Butare university hospital to seek refuge or to receive treatment for their wounds. On several occasions, various authorities, including Minister Andre Rwamakuba demanded that the refugees and patients identify themselves. Those identified as being Tutsi were killed on the spot or abducted and executed elsewhere. **Casimir Bizimungu** did not take any steps to stop the crimes being committed in this public hospital or punish the perpetrators.

GITARAMA

6.53 As from 12 April 1994, the Interim Government, reacting to the pressure of the RPF attacks on the capital and in order to continue to carry out its duties, moved to Gitarama *préfecture*, west of Kigali. The Interim Government was based in Gitarama from 12 April through late May. Gitarama was the home *préfecture* of Grégoire Kayibanda, President of the First Republic, and an MDR stronghold. The MRND was not well represented in the *préfecture* in the period leading up to the events of 1994. As from April 1994, the MRND spared no

encouragement aux massacres de la part du gouvernement intérimaire. Pendant toute cette période aucun membre du gouvernement intérimaire, dont **Casimir Bizimungu, Justin Mugenzi, Jérôme Bicamumpaka et Prosper Mugiraneza,** faisaient partie, n□a exprimé ni dissension ni opposition ni critique à la politique qui a été publiquement exposée par Jean Kambanda au nom du gouvernement intérimaire.

Hôpital Universitaire de Butare

6.52 Vers la fin du mois davril, plusieurs Tutsi se sont rendus à l'hôpital universitaire de Butare pour y chercher refuge ou y être soignés de leurs blessures. À plusieurs reprises, différentes autorités, dont le Ministre Andre Rwamakuba, ont exigé que les réfugiés et les patients déclinent leur identité. Les Tutsi ainsi identifiés ont soit été tués sur place soit été enlevés pour être exécutés ailleurs. **Casimir Bizimungu,** Ministre de la Santé, n'a jamais pris les mesures nécessaires pour empêcher la commission des crimes qui se perpétraient dans cet hôpital public ou pour en punir les auteurs.

GITARAMA

6.53 Dès le 12 avril 1994, sous la pression des attaques du FPR sur la capitale, pour pouvoir continuer à exercer ses fonctions, le Gouvernement Intérimaire s'est déplacé à Gitarama préfecture qui se trouve à l'ouest de Kigali. Le gouvernement intérimaire siégait à Gitarama à partir du 12 avril jusqu'à la fin du mois de mai. Gitarama était la préfecture d'origine de Grégoire Kayibanda, Président de la première République, et un bastion du MDR. Le MRND y était très minoritaire à la veille des événements de 1994. Dès avril 1994 le

effort to drive out the *bourgmestres* who were opposed to its policy with regard to massacres and to replace them with loyal party men.

6.54 As in other regions of Rwanda, several meetings were held in Gitarama, with members of the Government, senior MRND officials and representatives of the local authorities in attendance. The purpose of the meetings was to supervise the progress of the massacres in the region and encourage the population, the militia and the army to continue committing them.

6.55 Between April and July 1994, in Gitarmama, *bourgmestres* who had refused to carry out the Governments directives to massacre the Tutsi, or who had not shown sufficient zeal in carrying them out, were reprimanded and even on occasion attacked in front of their citizens, then dismissed or, worse yet, physically eliminated. During a meeting held at Murambi around mid-April 1994, Minister **Justin Mugenzi** clearly supported the massacres committed by the Interahamwe in Gitarama préfecture and asked for the sacking of the Préfet and the Bourgmestres opposed to the massacres.

Nursing School

6.56 Between April and June 1994, several people found refuge at the secondary nursing school in Kabgayi, Gitarama *préfecture*, where students and staff were already located. On several occasions during

MRND va déployer le maximum d'efforts pour y chasser les bourgmestres opposés à sa politique de massacres et les remplacer par des hommes qui lui sont fidèles.

6.54 A l'instar de se qui s'était déroulé dans d'autres régions du Rwanda plusieurs réunions, auxquelles ont participé des membres du Gouvernement, de hauts responsables du MRND et des représentants des autorités locales, ont été tenues à Gitarama. Elles avaient pour objectif à la fois de superviser le déroulement des massacres dans la région et d'encourager la population, les milices et l'armée à continuer à les commettre.

6.55 Entre avril et juillet 1994, à Gitarama, les Bourgmestres qui avaient refusé d'exécuter les directives du Gouvernement, tendant à massacrer les Tutsi ou qui n'avaient pas montré suffisamment de zèle dans l'exécution de ces directives, comme dans beaucoup d'autres régions, se sont vus réprimandés ou même parfois molestés devant leurs administrés avant d'être limogés ou pire encore liquidés physiquement. Lors dune réunion tenue à Murambi vers mi-avril 1994, le Ministre **Justin Mugenzi** avait nettement pris position pour les massacres perpetrés par les Interahamwe dans la Préfecture de Gitarama et a demandé la destitution du préfet et des bourgmestres opposés à ces massacres.

École dinfirmières

6.56 Entre avril et juin 1994, plusieurs personnes ont trouvé refuge à lécole secondaire des infirmières de Kabgayi, préfecture de Gitarama, où se trouvaient déjà des étudiants et du personnel. À

this period, soldiers and *Interahamwe* militiamen abducted and raped female Tutsi students and refugees. Minister of Defense Augustin Bizimana and the General Staff of the Rwandan Army were informed of this situation but did not take any effective steps to end the crimes once and for all. **Casimir Bizimungu,** Minister of Health, did not take any steps to stop the crimes being committed in the Kabgayi School of Nursing or punish the perpetrators.

plusieurs reprises durant cette période, des militaires et des miliciens *Interahamwe* ont enlevé et violé des étudiantes et des réfugiées Tutsi. Informés de cette situation le Ministre de la Défense Augustin Bizimana et l'Etat-Major de l'Armée Rwandaise n'ont pris aucune mesure efficace pour mettre un terme définitif à ces crimes. **Casimir Bizimungu**, Ministre de la Santé, n'a jamais pris les mesures nécessaires pour empêcher la commission des crimes qui se perpétraient dans l'école d'infirmières de Kabgayi ou pour en punir les auteurs.

GISENYI

6.57 Gisenyi, the *préfecture* of origin of the deceased President, Juvénal Habyarimana, is located in northwestern Rwanda. From the time of the coup détat in 1973, Gisenyi was the bastion of the *Mouvement républicain national pour la démocratie et le développement* (MRND) and the *Coalition pour la défense de la république* (CDR). Several prominent civil and military figures who had espoused the extremist Hutu ideology were from this *préfecture*. After 1990, the *préfecture* was the theatre for much inter-ethnic tension and violence, causing the death of many Tutsi. This was the case with the *Bagogwe* in 1991. In early June 1994, the Interim Government moved to Gisenyi.

GISENYI

6.57 Préfecture d'origine du défunt Président, Juvénal Habyarimana, Gisenyi est située au nord-ouest du Rwanda. Depuis le coup d'Etat de 1973, elle est le bastion du *Mouvement Républicain National pour la Démocratie et le Développement* (MRND) et de la *Coalition pour la Défense de la République (CDR)*. Plusieurs personnalités civiles et militaires partageant l'idéologie Hutu extrémiste sont originaires de cette préfecture. Depuis 1990, elle a été le théatre de nombreuses tensions et violences inter-ethniques entraînant la mort de nombreux Tutsi. Ce fut le cas en 1991 avec les Bagogwe. Au début de juin 1994, le Gouvernement Intérimaire s'est installé à Gisenyi.

6.58 Between 7 April and mid-July the Gisenyi prefecture was the theater of massacres of the civilian Tutsi population its accomplices. During this same period the militia-men pursued, kidnapped, raped and killed many members of the Tutsi population and the moderate Hutus.

6.58 Entre le 7 avril et mi-juillet la prefecture de Gisenyi a été le théatre de massacres de la population civile Tutsi et ses complices. Durant la même période les miliciens y ont traqué, enlevé, violé et tué plusieurs membres de la population Tutsi et Hutu modérée.

RUHENGERI

6.59 Ruhengeri Prefecture is located in the North Western part of Rwanda and has historically been the site of periodicals massacres of its tutsi population.This was true as well in 1994.

KIBUYE

6.60 Kibuye region is located on the shores of Lake Kivu in western Rwanda. Between April and July 1994, large-scale massacres of Tutsi took place in this region, particularly in Bisesero.

6.61 From 9 April to 30 June 1994, the Tutsi refugees in Bisesero were the target of repeated attacks by soldiers, gendarmes, police and militia. Buses from ONATRACOM, a state company, were used to facilitate transportation of the attackers. Prominent figures such as the Minister of Information, Eliezer Niyitegeka, were seen among the attackers on several occasions. By their presence and their speeches, they encouraged the attackers to perpetrate the massacres.

Responsibility

6.62 From April to July 1994, several hundred thousand people were massacred throughout Rwanda. The majority of the victims were killed solely because they were Tutsi or appeared to be Tutsi. The other victims, nearly all Hutu, were killed because they were considered Tutsi accomplices, were linked to them through marriage or were opposed to the extremist Hutu ideology.

RUHENGERI

6.59 La Préfecture de Ruhengeri, située au Nord-Ouest du Rwanda a historiquement été le site de massacres périodiques de ses habitants tutsi. Cela a également été le cas en 1994.

KIBUYE

6.60 La région de Kibuye se trouve à l'ouest du pays au bord du Lac Kivu. Entre avril et juillet 1994 des massacres de Tutsi de grande envergure se sont déroulés dans cette région et notamment à Bisesero.

6.61 Depuis le 9 avril au 30 juin 1994 les Tutsi réfugiés à Bisesero ont été une cible d'attaques réitérées de la part des militaires, des gendarmes, des policiers et des milices. Les bus de l'ONATRACOM, société de l'Etat, ont été utilisés pour faciliter les déplacements des assaillants. Des personnalités importantes telles que le Ministre de l'Information Eliezer Niyitegeka ont été vus à plusieurs reprises parmi les assaillants. Ils les encourageaient par leur présence et par leurs discours à perpétrer les massacres.

Responsabilité

6.62 D'avril à juillet 1994, plusieurs centaines de milliers de personnes ont été massacrées sur tout le territoire du Rwanda. La plupart des victimes ont été tuées pour la seule raison qu'elles étaient des Tutsi ou ressemblaient à des Tutsi. Les autres victimes, surtout des Hutu, ont été tuées parce qu'elles étaient qualifiées de complice des Tutsi, liées à ces derniers par mariage ou opposées à l'idéologie Hutu extrémiste.

6.63 From 7 April 1994 around the country, most of the massacres were perpetrated with the participation, aid and instigation of *Interahamwe*-MRND militiamen, military personnel and gendarmes.

6.64 The massacres thus perpetrated were the result of a strategy adopted and elaborated by political, civil and military authorities in the country, such as **Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka, Justin Mugenzi**, Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, Juvenal Kajelijeli, André Ntagerura, Pauline Nyiramasuhuko and Éliezer Niyitegeka, who conspired to exterminate the Tutsi population. As from 7 April, other authorities at the national and local levels espoused this plan and joined the first group in encouraging, organizing and participating in the massacres of the Tutsi population and its accomplices.

6.65 During the events referred to in this indictment, rapes, sexual assaults and other crimes of a sexual nature were widely and notoriously committed throughout Rwanda. These crimes were perpetrated by, among others, militiamen including *Interahamwe*-MRND, soldiers and gendarmes against the Tutsi population, in particular Tutsi women and girls.

6.66 Members of the Interim Government, political leaders, military officers and local authorities aided and abetted their subordinates and others in carrying out the massacres of the Tutsi population and its accomplices. Without the complicity of the local and national civil and military

6.63 Dès le 7 avril 1994, partout au Rwanda, la plupart des massacres ont été commis avec la participation, l'aide et l'encouragement des miliciens *Interahamwe*-MRND, des militaires et des gendarmes.

6.64 Les massacres perpétrés furent le résultat d'une stratégie adoptée et élaborée par des autorités politiques, civiles et militaires du pays dont **Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka, Justin Mugenzi** Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, Juvenal Kajelijeli, André Ntagerura, Pauline Nyiramasuhuko et Éliezer Niyitegeka, qui se sont entendues pour exterminer la population Tutsi. À partir du 7 avril, d'autres autorités nationales et locales ont adhéré à ce plan et se sont jointes au premier groupe pour encourager, organiser et participer aux massacres de la population Tutsi et ses complices.

6.65 Lors des événements auxquels se réfère le présent acte d'accusation, des viols, des agressions sexuelles et d'autres crimes de nature sexuelle ont été commis, dune façon généralisée et notoire sur tout le territoire du Rwanda. Ces crimes ont été perpétrés, entre autres, par des miliciens dont les *Interahamwe*-MRND, des militaires et des gendarmes contre la population Tutsi, en particulier des femmes et des jeunes filles Tutsi.

6.66 Des membres du Gouvernement Intérimaire, des dirigeants politiques, des officiers militaires et des autorités locales ont aidé et encouragé leurs subordonnés et des tiers à commettre les massacres de la population Tutsi et de ses complices. Sans la complicité des autorités locales et

authorities, the principal massacres would not have occurred.

6.67 Knowing that massacres of the civilian population were being committed, the political and military authorities, including **Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka** and **Justin Mugenzi**, Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera and Juvénal Kajelijeli took no measures to stop them. On the contrary, they refused to intervene to control and appeal to the population as long as a cease-fire had not been declared. This categorical refusal was communicated to the Special Rapporteur via the Chief of Staff of Rwandan Army, Major-General Augustin Bizimungu.

6.68 Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka and **Justin Mugenzi**, Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera and Juvénal Kajelijeli, in their position of authority, acting in concert with, notably André Ntagerura, Pauline Nyiramasuhuko, Éliezer Niyitegeka, Tharcisse Renzaho and Théoneste Bagosora, participated in the planning, preparation or execution of a common scheme, strategy or plan, to commit the atrocities set forth above. The crimes were committed by them personally, by persons they assisted or by their subordinates, and with their knowledge or consent.

nationales, civiles et militaires, les principaux massacres n'auraient pas eu lieu.

6.67 Sachant que des massacres étaient commis contre la population civile, les autorités politiques et militaires dont **Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka** et **Justin Mugenzi**, Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, Juvénal Kajelijeli n'ont pris aucune disposition pour les arrêter. Au contraire ils ont refusé d'intervenir pour contrôler et faire appel à la population tant qu'un accord de cessez-le-feu ne serait pas ordonné. Ce refus catégorique a été transmis au Rapporteur spécial par l'intermédiaire du Chef de lEtat-Major de l'Armée Rwandaise, le Major-Général Augustin Bizimungu.

6.68 Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka et **Justin Mugenzi**, Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera et Juvenal Kajelijeli, dans leur position dautorité, en agissant de concert avec notamment André Ntagerura, Pauline Nyiramasuhuko, Éliezer Niyitegeka et Théoneste Bagosora ont participé à la planification, la préparation ou l'exécution d'un plan, d'une stratégie ou d'un dessein commun, afin de perpétrer les atrocités énoncées ci-dessus. Ces crimes ont été perpétrés par eux-mêmes ou par des personnes qu'il ont aidées ou par leurs subordonnés, alors qu'ils en avaient connaissance ou y consentaient.

7: CHARGES

COUNT 1:

By the acts or omissions described in paragraphs 5.1 to 6.68 and more specifically in the paragraphs referred to below:

Casimir Bizimungu :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

Justin Mugenzi :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

7: LES CHEFS DACCUSATION

PREMIER CHEF DACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.104 et plus particulièrement aux paragraphes référenciés ci-dessous;

Casimir Bizimungu :

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Justin Mugenzi:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

And

Prosper Mugiraneza :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

conspired together and with others to kill or cause serious bodily or mental harm to members of the Tutsi population with the

Jerôme Bicamumpaka:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Et

Prosper Mugiraneza:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

se sont entendus entre eux et avec d'autres pour tuer ou porter des atteintes graves à l'intégrité physique ou mentale de membres

intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **CONSPIRACY TO COMMIT GENCODE**, a crime stipulated in Article 2(3)(b) of the Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute

de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial, et ont, de ce fait commis le crime **D'ENTENTE EN VUE DE COMMETTRE LE GÉNOCIDE** tel que prévu à l'article 2(3)(b) du Statut du Tribunal pour lequel ils sont individuellement responsables en vertu de l'article 6(1) et punissables en vertu des articles 22 et 23 du Statut.

COUNT 2:

By the acts or omissions described in paragraphs 5.1 to 6.68 and more specifically in the paragraphs referred to below:

Casimir Bizimungu :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

Justin Mugenzi :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43,

DEUXIÈME CHEF DACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.68 et plus particulièrement aux paragraphes référenciés ci-dessous;

Casimir Bizimungu :

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Justin Mugenzi:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44,

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6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

And

Prosper Mugiraneza :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19,

6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Et

Prosper Mugiraneza:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21

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6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

are responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **GENOCIDE**, a crime stipulated in Article 2(3)(a) of the Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

OR, ALTERNATIVELY

COUNT 3:

By the acts or omissions described in paragraphs 5.1 to 6.68 and more specifically in the paragraphs referred to below:

Casimir Bizimungu :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

sont responsables de meurtres ou d'atteintes graves à l'intégrité physique ou mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial et ont, de ce fait, commis le crime de **GÉNOCIDE** tel que prévu à l'article 2(3)(a) du Statut du Tribunal pour lequel ils sont individuellement responsables en vertu de l'article 6 du Statut et punissables en vertu des articles 22 et 23 du Statut.

OU, ALTERNATIVEMENT

TROISIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.68 et plus particulièrement aux paragraphes référenciés ci-dessous;

Casimir Bizimungu :

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Justin Mugenzi :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

And

Prosper Mugiraneza :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19,

Justin Mugenzi:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Et

Prosper Mugiraneza:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21

6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

are responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **COMPLICITY IN GENOCIDE,** a crime stipulated in Article 2(3)(e) of the Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

sont responsables de meurtres ou d'atteintes graves à l'intégrité physique et mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial et ont, de ce fait, commis le crime de **COMPLICITÉ DANS LE GÉNOCIDE** tel que prévu à l'article 2(3)(e) du Statut du Tribunal pour lequel ils sont individuellement responsables en vertu de l'article 6 du Statut et punissables en vertu des articles 22 et 23 du Statut.

COUNT 4:

By the acts or omissions described in paragraphs 5.1 to 6.68 and more specifically in the paragraphs referred to below:

Casimir Bizimungu :

-pursuant to Article 6(1), according to paragraphs: 5.11, 5.12, 6.10, 6.12, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.62, 6.64, 6.66, 6.67,6.68

-pursuant to Article 6(3), according to paragraphs: 5.11, 5.12, 6.10, 6.12, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.62, 6.64,

QUATRIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.68 et plus particulièrement aux paragraphes référenciés ci-dessous:

Casimir Bizimungu :

-conformément à l'article 6(1), selon les paragraphes: 5.11, 5.12, 6.10, 6.12, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.62, 6.64, 6.66, 6.67,6.68

-conformément à l'article 6(3), selon les paragraphes: 5.11, 5.12, 6.10, 6.12, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.62, 6.64,

6.66, 6.67,6.68

Jerôme Bicamumpaka :

-pursuant to Article 6(1), according to paragraphs: 5.11, 5.12, 6.10, 6.12, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.62, 6.64, 6.66, 6.67,6.68

-pursuant to Article 6(3), according to paragraphs: 5.11, 5.12, 6.10, 6.12, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.62, 6.64, 6.66, 6.67,6.68

And

Prosper Mugiraneza :

-pursuant to Article 6(1), according to paragraphs: 5.11, 5.12, 6.10, 6.12, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.62, 6.64, 6.66, 6.67,6.68

-pursuant to Article 6(3), according to paragraphs: 5.11, 5.12, 6.10, 6.12, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.62, 6.64, 6.66, 6.67,6.68

are responsible for direct and public incitement to kill or cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE,** a crime stipulated in Article 2(3)(c) of the Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and

6.66, 6.67,6.68

Jerôme Bicamumpaka:

-conformément à l'article 6(1), selon les paragraphes: 5.11, 5.12, 6.10, 6.12, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.62, 6.64, 6.66, 6.67,6.68

-conformément à l'article 6(3), selon les paragraphes: 5.11, 5.12, 6.10, 6.12, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.62, 6.64, 6.66, 6.67,6.68

Et

Prosper Mugiraneza:

-conformément à l'article 6(1), selon les paragraphes: 5.11, 5.12, 6.10, 6.12, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.62, 6.64, 6.66, 6.67,6.68

-conformément à l'article 6(3), selon les paragraphes: 5.11, 5.12, 6.10, 6.12, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.62, 6.64, 6.66, 6.67,6.68

sont responsables d'incitation directe et publique à commettre le meurtre ou des atteintes graves à l'intégrité physique ou mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial et ont, de ce fait, commis le crime **D'INCITATION DIRECTE ET PUBLIQUE À COMMETTRE LE GÉNOCIDE** tel que prévu à l'article 2(3)(c) du Statut du Tribunal pour lequel ils sont individuellement responsables en vertu de l'article 6 du Statut et

23 of the Statute.

punissables en vertu des articles 22 et 23 du Statut.

COUNT 5:

By the acts or omissions described in paragraphs 5.1 to 6.68 and more specifically in the paragraphs referred to below:

Justin Mugenzi:

-pursuant to Article 6(1), according to paragraphs: 5.11, 5.12, 6.10, 6.12, 6.17, 6.18, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.55, 6.62, 6.64, 6.66, 6.67,6.68

-pursuant to Article 6(3), according to paragraphs: 5.11, 5.12, 6.10, 6.12, 6.17, 6.18, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.55, 6.62, 6.64, 6.66, 6.67,6.68

is responsible for direct and public incitement to kill or cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(c) of the Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

CINQIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.68 et plus particulièrement aux paragraphes référenciés ci-dessous:

Justin Mugenzi:

-conformément à l'article 6(1), selon les paragraphes:5.11, 5.12, 6.10, 6.12, 6.17, 6.18, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.55, 6.62, 6.64, 6.66, 6.67,6.68

-conformément à l'article 6(3), selon les paragraphes: 5.11, 5.12, 6.10, 6.12, 6.17, 6.18, 6.20, 6.27, 6.28, 6.29, 6.44, 6.45, 6.46, 6.51, 6.55, 6.62, 6.64, 6.66, 6.67,6.68

est responsable d'incitation directe et publique à commettre le meurtre ou des atteintes graves à l'intégrité physique ou mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial et ont, de ce fait, commis le crime **DINCITATION DIRECTE ET PUBLIQUE À COMMETTRE LE GÉNOCIDE** tel que prévu à l'article 2(3)(c) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

COUNT 6:

By the acts or omissions described in paragraphs 5.1 to 6.68 and more specifically in the paragraphs referred to below:

SIXIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.68 et plus particulièrement aux paragraphes référenciés ci-dessous

Casimir Bizimungu :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

Justin Mugenzi :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to

Casimir Bizimungu :

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Justin Mugenzi:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66,

6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

And

Prosper Mugiraneza :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

are responsible for the murder of persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(a) of the Statute of Tribunal, for which they are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute

COUNT 7:

By the acts or omissions described in

6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Et

Prosper Mugiraneza:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

sont responsables d'assassinats de personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(a) du Statut du Tribunal pour lequel ils sont individuellement responsables en vertu de l'article 6 du Statut et punissables en vertu des articles 22 et 23 du Statut.

SEPTIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux

paragraphs 5.1 to 6.68 and more specifically in the paragraphs referred to below:

Casimir Bizimungu :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

Justin Mugenzi :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31,

paragraphes 5.1 à 6.68 et plus particulièrement aux paragraphes référenciés ci-dessous

Casimir Bizimungu :

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Justin Mugenzi:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31,

5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

And

Prosper Mugiraneza :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

are responsible for the extermination of persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(b) of the Statute of Tribunal, for which they are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute

5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Et

Prosper Mugiraneza:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

sont responsables d'extermination de personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(b) du Statut du Tribunal pour lequel ils sont individuellement responsables en vertu de l'article 6 du Statut et punissables en vertu des articles 22 et 23 du Statut.

COUNT 8:

By the acts or omissions described in paragraphs 5.1 to 6.68 and more specifically in the paragraphs referred to below:

Casimir Bizimungu :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

Justin Mugenzi :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

HUITIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.68 et plus particulièrement aux paragraphes référenciés ci-dessous

Casimir Bizimungu :

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Justin Mugenzi:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

And

Prosper Mugiraneza :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

are responsible for rape as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(g) of Statute of the Tribunal, for which they are individually

Jerôme Bicamumpaka:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Et

Prosper Mugiraneza:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

sont responsables de viols dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(g) du Statut du Tribunal pour lequel ils sont

responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute

COUNT 9:

By the acts or omissions described in paragraphs 5.1 to 6.68 and more specifically in the paragraphs referred to below:

Casimir Bizimungu :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

Justin Mugenzi :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to.6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43,

individuellement responsables en vertu de l'article 6 du Statut et punissables en vertu des articles 22 et 23 du même Statut.

NEUVIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.68 et plus particulièrement aux paragraphes référenciés ci-dessous

Casimir Bizimungu :

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Justin Mugenzi:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44,

6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

And

Prosper Mugiraneza :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

are responsible for causing violence to life, health and physical or mental well-being of civilians as part of an armed internal conflict,

6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Et

Prosper Mugiraneza:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

sont responsables d'atteintes à la vie, à la santé et au bien être physique ou mental de personnes civiles dans le cadre d'un conflit

and thereby committed **SERIOUS VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II**, a crime stipulated in Article 4 (a) of the Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 10:

By the acts or omissions described in paragraphs 5.1 to 6.68 and more specifically in the paragraphs referred to below:

Casimir Bizimungu :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

Justin Mugenzi :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43,

armé interne, et ont, de ce fait, commis le crime de **VIOLATIONS GRAVES DE L'ARTICLE 3 COMMUN AUX CONVENTIONS DE GENÈVE ET DU PROTOCOLE ADDITIONNEL II** tel que prévu à l'article 4 (a) du Statut du Tribunal et pour lequel ils sont individuellement responsables en vertu de l'article 6 du Statut et punissables en vertu des articles 22 et 23 du Statut.

DIXIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.68 et plus particulièrement aux paragraphes référenciés ci-dessous

Casimir Bizimungu :

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Justin Mugenzi:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44,

6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

And

Prosper Mugiraneza :

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43, 6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.30 to 6.37, 6.39 to 6.41, 6.43,

6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Jerôme Bicamumpaka:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

Et

Prosper Mugiraneza:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44, 6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.14, 5.21, 5.22, 5.31, 5.32, 5.36, 6.5, 6.8, 6.9, 6.10, 6.14 à 6.19, 6.21 à 6.26, 6.30 à 6.37, 6.39 à 6.41, 6.43, 6.44,

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6.44, 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.64, 6.66, 6.67, 6.68

are responsible for outrages upon personal dignity, in particular humiliating and degrading treatment, rape and indecent assault, as part of an armed internal conflict, and there by committed **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II,** a crime stipulated in Article 4 (e) of the Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

6.46, 6.48 à 6.51, 6.54, 6.56, 6.61 à 6.64, 6.66, 6.67, 6.68

sont responsables d'atteintes à la dignité de la personne, notamment de traitements humiliants et dégradants, de viols et d'attentats à la pudeur dans le cadre d'un conflit armé interne, et ont, de ce fait, commis le crime de **VIOLATIONS GRAVES DE L'ARTICLE DE L'ARTICLE 3 COMMUNE AUX CONVENTIONS DE GENÈVE ET DU PROTOCOLE ADDITIONNEL II** tel que prévu à l'article 4(e) du Statut du Tribunal et pour lequel ils sont individuellement responsables en vertu de l'article 6 du Statut et punissables en vertu des articles 22 et 23 du même Statut.

Kigali, this 12th day of May 1999

Bernard A. Muna
Deputy Prosecutor

À Kigali, le 12 mai 1999

Bernard A. Muna
Procureur Adjoint

United Nations
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COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	☐ Trial Chamber I N. M. Diallo	☒ Trial Chamber II R. N. Kouambo	☐ Trial Chamber III C. K. Hometowu	☐ Appeals Chamber / Arusha F. A. Talon
	☐ Chief, CMS J.-P. Fomété	☐ Deputy Chief, CMS M. Diop	☐ Chief, JPU, CMS M. Diop	☐ Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	☒ Chamber II, **Judges Khan, Muthoga and Short** (names)	☐ Defence (names)	☐ Prosecutor's Office (names)	☐ Other: (names)

Case Name:	The Prosecutor vs. **Casimir Bizimungu et al.**	**Case Number:**	ICTR-99-50-T
Dates:	Transmitted: **19 October 2011**	Document's date: **30 September 2011**	
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Title of Document:	**Judgement and Sentence**		

Classification Level:
☐ Strictly Confidential / Under Seal
☐ Confidential
☒ Public

TRIM Document Type:

☐ Indictment	☐ Warrant	☐ Correspondence	☐ Submission from non-parties
☐ Decision	☐ Affidavit	☐ Notice of Appeal	☐ Submission from parties
☐ Disclosure	☐ Order	☐ Appeal Book	☐ Accused particulars
☒ Judgement	☐ Motion	☐ Book of Authorities	

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

☒ Filing Party hereby submits only the original, and **will not submit** any translated version.

☐ Reference material is provided in annex to facilitate translation.

Target Language(s):
☐ English ☒ French ☐ Kinyarwanda

CMS SHALL NOT take any action regarding translation.

☐ Filing Party hereby submits **BOTH the original and the translated version** for filing as follows:

Original	in	☐ English	☐ French	☐ Kinyarwanda
Translation	in	☐ English	☐ French	☐ Kinyarwanda

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☐ English ☐ French ☐ Kinyarwanda

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III - TRANSLATION PRIORITISATION (For Official use ONLY)

☐ Top priority	COMMENTS	☐ Required date:
☐ Urgent		☐ Hearing date:
☒ Normal		☐ Other deadlines:

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