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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

United Nations
Nations Unies

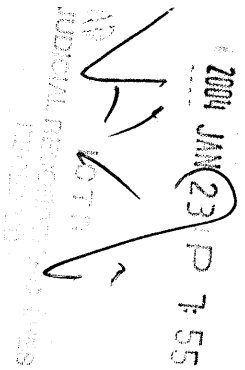
OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 22 January 2003



The PROSECUTOR

v.

Jean de Dieu KAMUHANDA

Case No. ICTR-99-54A-T

JUDGMENT AND SENTENCE

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PART I - INTRODUCTION

A. The Tribunal and its Jurisdiction

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

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

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

4. Pursuant to the Statute, the Tribunal has the authority to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring states. Under Article 1 of the Statute, the Tribunal's temporal jurisdiction is limited to acts committed between 1 January 1994 and 31 December 1994. Articles 2, 3, and 4 of the Statute provide the Tribunal with subject-matter jurisdiction over genocide, crimes against humanity, and war crimes arising from serious violations of Article 3 Common to the Geneva Conventions ("Common Article 3") and Additional Protocol II thereto. The provisions of Articles 2, 3, and 4 are set out below in Part IV. The Accused

1 UNSG Report on Rwanda, 1994/924, 1994/924; Expert Report Pursuant UNSC Resolution 935, 1994/1125; Special Rapporteur Reports, 1994/1157, Annexes I and II.
2 UNSC Resolution 955 (1994).

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5. The Indictment alleges that Jean de Dieu Kamuhanda (the "Accused") was born on 3 March 1953 in Gikomero *commune*, Kigali-Rural *préfecture*, in Rwanda.[3]

6. The Defence admitted the following facts:

> Jean de Dieu Kamuhanda was born on 3 March 1953 in Gikomero commune, Kigali-Rural *préfecture*, Rwanda.[4]
>
> In late May 1994, Jean de Dieu Kamuhanda held the office of Minister of Higher Education and Scientific Research in the Interim Government, replacing Dr. Daniel Nbangura.[5]
>
> Jean de Dieu Kamuhanda held the office until mid-July 1994.[6]
>
> In his capacity as Minister of Higher Education, Jean de Dieu Kamuhanda was responsible for the articulation and the implementation of the government policy concerning post-secondary school education and scientific research in Rwanda for the Interim Government.[7]

B. Procedural Background

1. Pre-Trial Phase

7. On 1 October 1999, Judge N. Pillay reviewed and confirmed an Indictment dated 27 September 1999 against Jean de Dieu Kamuhanda and Augustin Ngirabatware and issued an Order for Non-Disclosure of the Indictment.[8] On the same date the Tribunal issued a Request for Arrest and Transfer as well as a Warrant of Arrest and Order for Transfer and Detention[9] of the Accused pursuant to the Prosecutor's request.[10]

8. The Accused was arrested on 26 November 1999 in France and was transferred from France to the seat of the Tribunal in Arusha on 7 March 2000.

9. At his Initial Appearance, on 10 March 2000, the Chamber found that the Accused was unprepared to enter a plea, considering an issue he raised about a manner in which the Indictment had been redacted. Consequently, the Tribunal granted his request for another copy of the Indictment

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3 Indictment, para. 4.
4 Defence Response to Prosecutor's Request to Admit Facts, filed on 24 April 2001, Fact number: 127.
5 Ibid, Fact number: 128.
6 Ibid, Fact number: 129.
7 Ibid, Fact number: 137.
8 Ngirabatware and Jean De Dieu Kamuhanda, 1 October 1999, Confirmation of the Indictment and Order of Non-Disclosure (TC).
9 Ngirabatware and Jean De Dieu Kamuhanda, 1 October 1999, Request for the Arrest and Transfer (TC).
10 Ngirabatware and Jean De Dieu Kamuhanda, 1 October 1999, Warrant of Arrest and Order for Transfer and Detention (TC).

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redacted differently. Accordingly, the Accused's initial appearance was re-scheduled to 24 March 2000, before Judge Y. Ostrovsky, at which time the Accused pleaded not guilty to all nine counts alleged in the Indictment.

10. On 7 November 2000, Trial Chamber II, composed of Judge L. Kama, presiding, Judge W. H. Sekule and Judge M. Güney, granted the Defence's motion for severance and separate trial and ordered the Prosecutor to file a separate Indictment pertaining exclusively to Jean De Dieu Kamuhanda, bearing the Case Number 99-54A.[11] The separate Indictment was filed on 15 November 2000. The Trial Chamber, did not consider this separate Indictment to be an amendment of the original Indictment; therefore no new initial appearance of the Accused was required.

11. On 28 December 2000, the Defence notified the Prosecution of its intention to provide alibi evidence with respect to allegations against the Accused. Pursuant to Rule 67(A)(ii)(a), the Defence filed notice of alibi on 31 August 2001. On 8 April 2002 the Trial Chamber granted a Defence Motion to Correct a Material Error in the Notice of Alibi.[12]

2. The Indictment of 15 November 2000

12. There are nine counts in the Indictment, charging Jean De Dieu Kamuhanda with genocide, crimes against humanity, and serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II. The Indictment alleges that these crimes were committed between 1 January and 31 December 1994 in Rwanda where the Tutsi, the Hutu and the Twa were identified as racial or ethnic groups. The Indictment asserts that during this period, widespread or systematic attacks were directed against the civilian population on political, ethnic or racial grounds, and that a state of non-international armed conflict existed in Rwanda.

13. The Indictment alleges that before the events of 1994, the Accused was the Director of Higher Education and Scientific Research, and then Counsellor to President Sindikubwabo until late May 1994.

14. The Indictment alleges that in late May 1994, the Accused held the office of Minister of Higher Education and Scientific Research in the Interim Government. The Indictment further asserts that in his capacity as Minister, the Accused attended Cabinet meetings and participated in formulating the policies adopted by the Interim Government, and that he neither publicly disavowed these policies nor did he resign. The Indictment also asserts that in his capacity as Minister, the Accused exercised authority and control over all the institutions and staff members

11 Kamuhanda, Decision 7 November 2000, Severance and Separate Trial (TC).
12 Kamuhanda, Decision 8 April, Correct a Material Error (TC).

under his ministry and that he failed in his duty to ensure the security of Rwandan citizens.

15. The Indictment alleges that from late 1990 until July 1994, the Accused conspired with others to work out a plan with the intent to exterminate the civilian Tutsi population and to eliminate members of the opposition, by, amongst others things, recourse to hatred and ethnic violence, the training of and the distribution of weapons to militiamen as well as the preparation of lists of people to be eliminated. The Indictment further alleges that in executing this plan, the Accused and others, organized, ordered and participated in the massacres perpetrated against the Tutsi population and moderate Hutu.

16. The Indictment alleges that from 7 April 1994, massacres of the Tutsi population and murders of numerous political opponents were perpetrated throughout the territory of Rwanda and that these crimes were carried out by militiamen, military personnel, and gendarmes on the orders and directives or with the knowledge of authorities, including the Accused.

17. The Indictment alleges that the Accused and others knew or had reason to know that their subordinates had committed or were preparing to commit crimes, and failed to prevent those crimes from being committed or to punish the perpetrators thereof.

18. The Indictment alleges that the Accused was an influential member of the MRND in Kigali-Rural. It is also stated that the Accused supervised killings during the month of April 1994 in the area of Gikomero *commune*, Kigali-Rural *préfecture*, where he had family ties. The Indictment further asserts that the Accused personally led attacks of soldiers and *Interahamwe* against Tutsi refugees in Kigali-Rural *préfecture*, notably on or about 12 April 1994, at the Parish Church and adjoining school in Gikomero, where several thousand persons were killed. During the attack on the school in Gikomero the militia also selected women from among the refugees, carried them away and raped them before killing them.[13]

19. The Indictment alleges that on several occasions the Accused personally distributed firearms, grenades, and machetes to civilian militia in Kigali-Rural for the purpose of "killing all the Tutsi and fighting the [RPF]".

20. For his alleged involvement in the acts described in the Indictment, the Accused is charged with conspiracy to commit genocide (Count 1); genocide (Count 2) or, alternatively, complicity in genocide (Count 3); murder as a crime against humanity (Count 4), extermination as a crime against humanity (Count 5), rape as a crime against humanity (Count 6), and other inhumane acts of crime against humanity (Count 7). The

13 Indictment, para. 6.44.

Accused is also charged with the war crimes of serious violations of Common Article 3 and Additional Protocol II: for outrages upon personal dignity (Count 8) and killing and causing violence (Count 9). For all the Counts, the Accused is charged cumulatively with all forms of personal responsibility pursuant to Article 6(1) and with superior responsibility pursuant to Article 6(3) of the Statute.

21. On 20 August 2002, following the end of the case for the Prosecution, the Trial Chamber partly granted a Defence motion, under Rule 98, for partial acquittal, and entered a Judgment of Acquittal in respect of Count 1 of the Indictment: conspiracy to commit genocide. The Chamber denied the Motion to enter a Judgment of Acquittal with respect to Count 6: crimes against humanity—rape.[14]

3. Trial Phase

22. The Trial Chamber ordered protective measures for both Defence[15] and Prosecution[16] Witnesses. These included the use of pseudonyms, the non-disclosure of the identity of Witnesses, and the disclosure to the opposing party of identifying information before 21 days of a Witness' testimony at trial. Following a Defence Motion, the Trial Chamber requested the cooperation of certain States and the United Nations High Commissioner for Refugees in order to facilitate the execution and enforcement of the Chamber's order for protective measures for Defence Witnesses.[17]

23. On 22 March 2001, a Pre-Trial Conference was held, and the trial was scheduled to start on 17 April 2001. The Prosecution filed its Pre-Trial Brief on 30 March 2001.[18]

24. On 17 April 2001, the trial began before Trial Chamber II, then composed of Judge L. Kama, presiding, Judge W. H. Sekule and Judge M. Güney. The Prosecution presented its opening statement, and the first Prosecution Witness was heard. On 18 April 2001, the trial was suspended until 3 September 2001.

25. On 3 September 2001, following the death of Judge Kama and the assignment of Judge M. Güney to the Appeals Chamber, the President's Order pursuant to Rule 15*bis*(C) dated 20 August 2001[19] was read out in court, inviting the Trial Chamber to make a determination as to the

14 Kamuhanda, Decision 20 August 2002, Partial Acquittal (TC).
15 Kamuhanda, Decision 22 March 2001, Protective Measures for Defence Witness (TC).
16 Kamuhanda, Decision 7 July 2000, Protective Measures for Witness (TC).
17 Kamuhanda, Decision 9 May 2002, Extension of Judicial Cooperation to Certain States and to the UNHCR (TC).
18 Prosecutor's Pre-Trial Brief, 30 March 2001.
19 Kamuhanda, Decision 20 August 2001, President's Order on Proceedings (TC).

rehearing or the continuation of this part-heard case. The Defence requested a trial *de novo,* pursuant to Rule15(E), and the Prosecution did not object. The Trial Chamber, composed of Judge W. H. Sekule, presiding, Judge W. C. M. Maqutu and Judge Ramaroson, granted the Defence request, and the trial re-started with a hearing of the Parties' opening statements and the testimonies of three Prosecution Witnesses. This trial session was adjourned on 25 September 2001, ending the first session of the Prosecution case. The Prosecution case was heard during two further trial sessions, from 28 January 2002 until 19 February 2002, and from 6 May 2002 until 14 May 2002. The Prosecution closed its case after having called 28 Witnesses and introduced 53 exhibits.

26. A Pre-Defence Conference and a Status-Conference were held on 15 May 2002. The Defence filed its Pre-trial brief on 25 July 2002.

27. The Defence case was heard during three sessions: from 19 August 2002 until 12 September 2002, from 13 January 2003 until 30 April 2003 and from 5 May 2003 until 15 May 2003. A total of 36 Witnesses were called by the Defence, including the Accused, who testified first, and 88 exhibits were introduced. On 15 May 2003 the Trial Chamber adjourned the proceedings.

28. On 13 May 2003,[20] the Trial Chamber denied a Motion for Leave to Call Rebuttal Evidence filed by the Prosecution on 14 April 2003, pursuant to Rule 85(A)(ii) of the Rules. On 15 May 2003, the Chamber issued a Scheduling Order for the filing of the Closing Briefs and the Closing Arguments of the Parties.[21]

29. On 22 May 2003, the Chamber granted a Defence motion and admitted into evidence two written statement of a deceased Witness.[22]

30. The Prosecution and the Defence submitted their Closing Briefs on 2 July 2003 and 13 August 2003, respectively. Closing Statements were heard on 27 and 28 August 2003, and thereafter Judge W. H. Sekule, the Presiding Judge, declared the trial hearing closed, pursuant to Rule 87(A).

C. Evidentiary Matters

31. The Chamber will, in this Part of the Judgment, address general evidentiary matters of concern that arose during the course of the trial, Witness protection issues, and some general principles of evidence evaluation, including the impact of trauma on the testimony of Witnesses,

20 Kamuhanda, Decision 13 May 2002, Motion for Leave to Call Rebuttal Evidence (TC).
21 Kamuhanda, Scheduling Order 15 May 2003, (TC).
22 Kamuhanda, Decision 20 May 2002 filed on 21 May 2003, Admit into Evidence Statements by Witness GER (TC); Kamuhanda, Corrigendum 22 May 2003, Admit into Evidence Statements by Witness GER (TC).

false testimony, the use of prior Witness statements, and problems of interpretation from Kinyarwanda into French and English.

32. The Chamber has considered the charges against Jean de Dieu Kamuhanda on the basis of testimonies and exhibits introduced by the Parties to prove or disprove allegations made in the Indictment.

1. General Principles of the Assessment of Evidence

33. The Chamber notes that, under Rule 89(A) of the Rules, it is not bound by any national rules of evidence. The Chamber in this case has therefore applied, in accordance with Rule 89(B), the rules of evidence, which in its view, best favour a fair determination of the matters before it and which are consonant with the spirit of the Statute and the general principles of law, where such have not been expressly provided for in the Tribunal's Rules of Procedure and Evidence.

2. Credibility

34. The Chamber notes that many of the Witnesses who have testified before it have seen and experienced atrocities. They, their relatives, or their friends have, in many instances, been the victims of such atrocities. The Chamber notes that recounting and revisiting such painful experiences may affect the Witness's ability to recount the relevant events fully or precisely in a judicial context. The Chamber also notes that some of the Witnesses who testified before it may have suffered, and may continue to suffer stress-related disorders.

35. The Chamber recognises, in addition, the time that had elapsed between the time of the events in question and the testimonies of the Witnesses.

36. In assessing the credibility of the Witnesses, the Chamber is mindful of the considerations which motivated the following judicial pronouncements. We begin with the observations of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia ("ICTY") in the *Kupreskić* case saying:

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

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> Trial Chamber from relying on the evidence. However, the Trial Chamber should consider such factors as it assesses and weighs the evidence.[23]

37. In that pronouncement, the ICTY Appeals Chamber was reiterating its opinion in its earlier judgment in the *Delalić* Case. There, it had said as follows:

> As is clear from the above discussion, the other matters raised by Delić as undermining the credibility of the Witnesses are not, in the view of the Appeals Chamber, of such a character as would require a reasonable Trial Chamber to reject their evidence. The Appeals Chamber is satisfied that on the evidence before the Trial Chamber it was open to accept what it described as the "fundamental features" of the testimony.
>
> [...]
>
> Delić also refers to certain inconsistencies in the victim's testimony, which he states illustrate that it was unreliable. The Appeals Chamber notes that as an introduction to its consideration of the factual and legal findings, the Trial Chamber specifically discussed the nature of the evidence before it. It found that often the testimony of Witnesses who appear before it, consists of a "recounting of horrific acts" and that often "recollection and articulation of such traumatic events is likely to invoke strong psychological and emotional reactions [...]. This may impair the ability of such Witnesses to express themselves clearly or present a full account of their experiences in a judicial context". In addition, it recognised the time which had lapsed since the events in question took place and the "difficulties in recollecting precise details several years after the fact, and the near impossibility of being able to recount them in exactly the same detail and manner on every occasion [...]." The Trial Chamber further noted that inconsistency is a relevant factor "in judging weight but need not be, of [itself], a basis to find the whole of a Witness' testimony unreliable".
>
> Accordingly, it acknowledged, as it was entitled to do, that the fact that a Witness may forget or mix up small details is often as a result of trauma suffered and does not necessarily impugn his or her evidence given in relation to the central facts relating to the crime. With regard to these counts, the Trial Chamber, after seeing the victim, hearing her testimony (and that of the other Witnesses) and observing her under cross-examination chose to accept her testimony as reliable. Clearly it did so bearing in mind its overall evaluation of the nature of the testimony being heard. Although the Trial Chamber made no reference in its findings to the alleged inconsistencies in the victim's testimony, which had been pointed out by Delić, it may nevertheless be assumed that it

23 Kupreskic, Judgment (AC), para 31. See also Musema, Judgment (AC) para 20; Akayesu, Judgment (TC), paras. 142 and 143.

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> regarded them as immaterial to determining the primary question of Delić's perpetration of the rapes. The Appeals Chamber can see no reason to find that in doing so it erred.
>
> The Trial Chamber is not obliged in its Judgment to recount and justify its findings in relation to every submission made during trial. It was within its discretion to evaluate the inconsistencies highlighted and to consider whether the Witness, when the testimony is taken as a whole, was reliable and whether the evidence was credible. Small inconsistencies cannot suffice to render the whole testimony unreliable. Delić has failed to show that the Trial Chamber erred in disregarding the alleged inconsistencies in its overall evaluation of the evidence as being compelling and credible, and in accepting the totality of the evidence as being sufficient to enter a finding of guilt beyond a reasonable doubt on these grounds. [24]

3. Corroboration

38. As a general principle, the Trial Chamber has weighed all the evidence presented in this case and, accordingly, has attached—or declined to attach—probative value to the testimony of each Witness and exhibit, according to its relevance and credibility. The Trial Chamber recalls that it is not bound by any national rules of evidence and, has been guided by the foregoing principles recalled above[25], with a view to a fair determination of the issues before it. In particular, the Trial Chamber notes the finding in the *Tadić* Appeals Judgment that corroboration of evidence is not a customary rule of international law and as such should not be ordinarily required by the International Tribunal.[26]

39. The Chamber notes further the decision in the *Aleksovski* Appeal Judgment that whether a Trial Chamber will rely on single Witness testimony as proof of a material fact, will depend on various factors that have to be assessed in the circumstances of each case.[27] It may be that a Trial Chamber would require the testimony of a Witness to be corroborated, but according to the established practice of this Tribunal and the ICTY, that is clearly not a requirement.[28]

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24 Delalic et al. (Celebici Case), Judgment (AC), paras. 485, 496-249.
25 Part I, Section B, para. 33.
26 Tadic, Judgment (TC), para. 539; Akayesu, Judgment (TC), paras. 132-136.
27 Aleksovski, Judgment (AC), para. 63; Tadic, Judgment (AC), para. 65.
28 Kayishema and Ruzindana Judgment (AC), paras. 154 and 229; Aleksovski, Judgment (AC), para. 62 ("the testimony of a single witness does not require, as a matter of law, any corroboration"); Tadic, Judgment (AC), para. 65; Delalic et al. (Celebici Case), Judgment (AC), paras. 492 and 506.

40. In the *Musema* case, the Trial Chamber affirmed that it may rule on the basis of a single testimony, if in its opinion the testimony is relevant and credible.[29] It further stated that:

> (...) it is proper to infer that the ability of the Chamber to rule on the basis of testimonies and other evidence is not bound by any rule of corroboration, but rather on the Chamber's own assessment of the probative value of the evidence before it.
>
> The Chamber may freely assess the relevance and credibility of all evidence presented to it. The Chamber notes that this freedom to assess evidence extends even to those testimonies which *are* corroborated: the corroboration of testimonies, even by many Witnesses, does not establish absolutely the credibility of those testimonies.[30]

41. The Appeals Chamber in the *Musema* case held that these statements correctly reflect the position of the law regarding the trial Chamber's discretion in assessing testimonies and evidence before it.[31]

4. Hearsay Evidence

42. The Chamber observes that Rule 89(c) of the Rules provides that "a Chamber may admit any relevant evidence which it deems to have probative value". The Chamber notes that this Rule makes provision for the admission of hearsay evidence even when it cannot be examined at its source and when it is not corroborated by direct evidence. The Chamber, however, notes that though evidence may be admissible, the Chamber has discretion to determine the weight afforded to this evidence. The Chamber makes its decision as to the weight to be given to testimony based on tests of "relevance, probative value and reliability."[32] Accordingly, the Chamber notes that evidence, which appears to be "second-hand", is not, in and of itself, inadmissible; rather it is assessed, like all other evidence, on the basis of its credibility and its relevance.

D. Witness Protection Issues

43. In analysing evidence received during closed sessions, the Chamber has been mindful of the need to avoid unveiling identifying particulars of protected Witnesses so as to prevent disclosure of their identities to the press or the public. At the same time, the Chamber wishes to provide in the judgment significant detail to assist in an understanding of its reasoning. In view of these concerns, when referring to evidence received in closed

29 Musema, Judgment (TC), para. 43.
30 Musema, Judgment (TC), paras. 45 and 46.
31 Musema, Judgment (AC), para. 38.
32 Musema, Judgment (TC), para. 51.

sessions in this Judgment, the Chamber has used language designed not to reveal protected information yet specific enough to convey its reasoning.[33]

PART II – THE DEFENCE CASE

A. Introduction

44. In an effort to challenge the case for the Prosecution, the Defence raised several issues as described below.

45. The evidence of the Defence will be considered together with the Prosecution evidence. The Chamber has, for each Prosecution allegation, considered in full the evidence presented by both parties and has weighed such evidence appropriately.

B. Vagueness of the Indictment

1. Allegations

46. The Defence requested the Chamber to rule the allegations concerning the events at the Catholic Parish of Gishaka as vague; and, consequently, to exclude or disregard the evidence presented in support of that aspect of the Prosecution case.[34]

47. The Defence submitted that only paragraphs 6.44, 6.45 and 6.46 of the Indictment refer to the Accused's alleged involvement in acts allegedly committed in the *commune* of Gikomero.[35]

48. The Defence submitted that in the above paragraphs of the Indictment, the Prosecution vaguely refers to weapons that the Accused allegedly distributed in his *commune* of Gikomero and to massacres which he allegedly led. Nowhere in the Indictment did the Prosecution provide the particulars of the circumstances in which these crimes were allegedly committed.[36]

49. The Defence submitted that although it is alleged at paragraph 6.45 of the Indictment that the Accused personally led the attacks in the *préfecture* of Kigali-Rural, this is insufficient to give the Accused notice of the

33 Semanza Judgment (TC), para. 37.
34 Defence Closing Brief (English Translation), para. 1841.
35 Indictment.
36 Defence Closing Brief (English Translation), paras. 1809, 1811.

allegations relating specifically to the massacres at the Catholic Parish of Gishaka. The Indictment said nothing about the massacres in the Catholic Parish of Gishaka. Accordingly, the Defence argued that the Accused has not been properly informed as to the nature and the reasons underlying the accusations brought against him in that regard.[37]

50. The Defence thus submitted that the Indictment, the pre-trial brief and the evidence disclosed pursuant to Rule 66 do not refer to the massacres in the Parish of Gishaka. It argued that it was only at the time of the Motion to amend the Prosecution list of Witnesses[38] that the Accused understood that the Prosecution was also imputing to him responsibility for the massacres at the Parish of Gishaka.[39]

51. The Defence relied on the jurisprudence of this Tribunal as well as on ICTY jurisprudence.[40]

52. In response to this issue, the Prosecution, during its oral closing statement, recalled that the Defence, raised a few preliminary matters on the vagueness of the indictment to the effect that the crimes the Accused was alleged to have committed in Gishaka were not properly before this court. In response, the Prosecution argued that the indictment was not vague. The Prosecution stated that the testimony of the crimes committed were properly before this court and they were validly pleaded and led in evidence. The Prosecution informed the Court that these were matters the Court was entitled to take cognisance of and that the Court could find the defendant guilty on this basis.[41]

2. Discussion

53. The relevant paragraphs of the Indictment are paragraphs 6.44, 6.45 and 6.46

54. In the Prosecution Pre-Trial brief, Gishaka is mentioned once in the Annex summarizing the statement of Prosecution Witness GAB.[42]

55. The Prosecution Pre-Trial brief also mentioned Gicaca in the Annex summarizing the statement of Prosecution Witness GEU.[43]

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37 Ibid, para. 1811. At para. 1821, the Defence specifically submit that, "It does not expect the Prosecution to identify persons who were killed However, the Prosecution is required to mention in the indictment that the Accused directed massacres in the Catholic Parish of Gishaka and that it should specify the date and circumstances pursuant to which the accused allegedly directed the attack."
38 Kamuhanda, Decision 6 February 2002, To The Prosecutor's Motion To Add Witnesses (TC).
39 Defence Closing Brief (English Translation), para. 1835.
40 Semanza, Judgment (TC); Kupreskic et. al Judgment (AC), paras. 78 – 124.
41 T. 27 August 2003, p. 59.
42 Prosecution Pre-Trial brief, 30 March 2001, p. 20.
43 Prosecution Pre-Trial brief, 30 March 2001, p. 21.

56. In its opening statements (17 April 2001 and 3 September 2001) the Prosecution did mention that a massacre took place at the Catholic Church in Gishaka close to Gikomero, on the same day [12 April 1994] and that one Witness, GET, whose statement had been available for a long time, would give evidence about the mass graves that were found at Gishaka and the approximate dates of the massacres.[44]

57. Relating to this issue, the Chamber recalls its Decision dated 6 February 2002.[45] The Chamber, in that decision, disposed of a Prosecution Motion to amend its list of Witnesses in order to add three Witnesses who would testify on the Catholic Parish of Gishaka. In the Decision, the Chamber considered the Defence argument that allegations with regard to the Parish were vague because they were neither mentioned in the Indictment against the Accused, nor in the Pre-trial Brief. On this issue, the Chamber ruled thus:

> "The Chamber is of the opinion that, although events at Gishaka Parish were not directly referred to in the Indictment against the Accused, the said Indictment states that the Accused is alleged to have "[s]upervised the killings in the area [Kigali-Rural]" during the month of April 1994. The Chamber notes that Gishaka Parish is in a *Commune* located in the *Préfecture* of Kigali-Rural and that similar mention of the activities of the Accused can be found in the Prosecutor's Pre-Trial Brief. Additionally, the Prosecutor points out that her opening statement sets out allegations with respect to the involvement of the Accused in events that occurred in Gishaka Parish. It is also noted that the Prosecutor filed exhibits identifying locations at the Gishaka Catholic Parish."[46]

58. The Chamber further considered that it was necessary to give the Defence sufficient time to prepare for the cross-examination of the said three Witnesses. Hence, the Chamber directed that they be heard at a subsequent trial session.[47]

3. Findings

59. The Chamber notes that it is alleged at para. 6.44 of the Indictment that the Accused had family ties to Gikomero *commune*, Kigali-Rural *préfecture*, and that during April 1994 he supervised the killings in the area. At paragraph 6.45 of the Indictment, it is alleged more specifically that the Accused was responsible for the massacres at Gikomero Parish in

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44 T. 3 September 2001, p. 19.
45 Kamuhanda, Decision 6 February 2002, To The Prosecutor's Motion To Add Witnesses (TC).
46 Kamuhanda, Decision 6 February 2002, To The Prosecutor's Motion To Add Witnesses (TC). para. 13.
47 Kamuhanda, Decision 6 February 2002, To The Prosecutor's Motion To Add Witnesses (TC), para. 15.

Gikomero *commune*, Kigali-Rural *Préfecture*. The Chamber finds that the precision made in paragraph 6.45 of the Indictment does not preclude evidence tending to substantiate the allegation made at paragraph 6.44 of the Indictment that the Accused had supervised the killings in the area of Kigali-Rural *préfecture* in April 1994. Thus, the Chamber finds that the Indictment is not vague and that it sufficiently gave the Defence notice of the allegations relating to Kigali-Rural *Préfecture* within which the Catholic Parish of Gishaka is located.

60. Moreover, the Chamber recalls its Decision of 6 February 2002 mentioned above whereby the Defence was given time to prepare its cross-examination of the additional Witnesses who were to testify on the Catholic Parish of Gishaka. In the circumstances, the Chamber finds that no prejudice would have resulted to the Defence.

C. In and out of Court Identification of the Accused by the Prosecution.

1. Allegations

61. The Defence points out that the Prosecution had its Witnesses identify the Accused by two methods: in and out of court. For the out of court identification the Defence recalled that the Prosecution presented a picture to the Witnesses from which they were supposed to identify the Accused. The Defence argued that contrary to the established methods set up by the Tribunal for the identification of Witnesses, the Prosecution used methods that ought to be entirely unacceptable to this Tribunal. The Defence stated that the methods used by the Prosecution significantly departed from customary methods of identification.[48] The Defence reminded the Court that in the picture that was used by the Prosecution in the identification process, the Accused was the only man with a group of females and also that the Accused had a red mark on his shirt which was meant to make the identification even easier. The Defence recalled also that the second picture used for identification was just an enlargement of the earlier one, which then amounted to the fact that only one picture was indeed used for the process of out-of-court identification by the Witnesses.[49]

62. Secondly, as regards the in-court identification, the Defence recalled that the Prosecutor asked several Witnesses to point out the Accused in the Courtroom where the Accused was flanked on both sides by two uniformed guards, while the rest of the people at the Defence side of the

48 Defence Closing Brief, para. 433.
49 Defence Closing Brief, para. 458.

Courtroom were women.[50] This, in the opinion of the Defence, made the identification of the Accused all the more improper.

2. Discussion and Conclusion

63. The Chamber notes that in Court the Witnesses were not asked to look at a specific part of the Courtroom to identify the Accused. The Chamber is mindful of the fact that the Witnesses were asked to look in the Courtroom as a whole and see if they could identify the Accused. The Chamber notes further that the process of the identification of the Accused in the Courtroom does not stand in isolation: it is rather part of a process, the culmination of which is the identification of the Accused in the Courtroom.

64. The Chamber has also noted the Defence submission on the issue of the identification through the use of photographs.

65. All these issues have been considered in the assessment of the evidence in the case. The Chamber has assessed the credibility of each Witness, bearing in mind all the factors argued in favour and against each Witness.

D. The Defence Contention that the Citizens of Gikomero Were Surprised by the Attacks and That the Assailants Came from Rubungo.

1. Allegations

66. The Defence, in their case, sought to show that the killers at Gikomero on 12 April 1994, came from Rubungo and were not *Interahamwe* from the Gikomero commune. The Defence recalled the evidence of its Witnesses that the assailants came from Rubungo.[51]The Defence stated further that assailants from Rubungo forced residents of Rubungo village to flee to the Gikomero Parish where they killed them. The Defence asserted that this supported their theory that the Accused was not in any way connected to the massacre at Gikomero Parish. The Defence recalled further that one Bucundura, a pastor from Rubungo, was the first person to be killed when the *Interahamwe* arrived. The Defence stated that this fact established their theory that the killers were from Rubungo and not Gikomero as had been stated by the Prosecution Witnesses.[52]

50 Defence Closing Brief, para. 463-465.
51 Defence Closing Brief, para. 1525.
52 Defence Closing Brief, para.1526.

2. Discussion and Conclusion

67. The Chamber finds that there is no conclusive evidence that the attackers came from Rubungo.[53] The Chamber also notes the evidence of Witness GEC[54] that local Hutus joined those who had arrived in vehicles. The Chamber has considered all the evidence tendered and finds that as far as the criminal responsibility of the Accused is concerned the issue raised by the Defence is not material.

E. Defence Contention that Prosecution Witnesses Bore False Testimony against the Accused and That the Charges against the Accused are Fabrication

1. Allegations

68. The Defence asserted that Prosecution Witnesses bore false testimony against the Accused. The Defence Witnesses stated that any Witness who stated that the Accused was in the Parish of Gikomero or Gishaka was lying.[55]

69. The Defence noted that one of the characteristics of the post-genocide period is the multiplication of false accusations, which are sparked by a wish to settle accounts. The Defence presented a Witness who testified that he was asked to falsely testify against the Accused.[56]

70. The Defence attacked the credibility of most Prosecution Witnesses. The Defence submitted that most of the Witnesses who claimed that they saw the Accused at the Parishes of Gikomero and Gishaka did not know the Accused. The Defence further submitted that some of these Witnesses could not identify the Accused, even in the Courtroom. It was the theory of the Defence that these Witnesses were just out to discredit the Accused, an innocent man, and cause mischief.[57]

2. Conclusion

71. The Chamber has noted this criticism levelled against Prosecution Witnesses. The Chamber does not, however, accept this sort of broad

53 For the Evidence on Gikomero Parish Compound attack, see below: Part III, Section F.
54 see below: Part III, Section F.
55 Defence Closing Brief, para. 1731.
56 Defence Closing Brief, para. 2755.
57 Defence Closing Brief, para. 1199.

challenge, especially as it is not substantiated by the evidence. The Chamber has assessed the credibility of each Witness on the basis of the specific factors relating to each Witness's testimony.

F. The Alleged Influence of the Accused.

1. Allegations

72. The Defence recalled the testimony of certain Prosecution Witnesses to the effect that the Accused was such an influential person that he could have supervised and directed the massacres committed in the commune of Gikomero in April 1994.[58] The Defence further recalled that the Prosecution argued that the Accused's influence was in the nature of holding a command position as a hierarchical superior.[59] The Defence maintains that the Prosecutor improperly applied the command doctrine of liability of the hierarchical superior. The Defence, on its part, maintains that the Accused was not an influential person at the national, communal or local level. [60]

2. Conclusion

73. A general review of the evidence shows that the Accused held a prominent position in the country and this gave him certain influence in the Gikomero community. However, the Chamber analysed the evidence adduced in the case with the aim of determining any act or conduct of the Accused material to his criminal responsibility. The Chamber did not merely come to conclusions from a general assessment of his social, economic, or political status.

G. The Personality of the Accused was Incompatible with the Description of the Person Presented by the Prosecutor.

1. Allegations

74. The Defence recalled the testimony of the Prosecution Witnesses who described the Accused. The Defence asserted that the character of the person that was described and presented by the Prosecution is entirely different from the character and the person of the Accused. The Defence recalled the testimony of the Prosecution that the Accused is a frenzied

58 Defence Closing Brief, para. 2933.
59 Defence Closing Brief, para. 2936.
60 Defence Closing Brief, para. 2936.

extremist and a notorious anti-Tutsi who entered Government in order to exterminate all Tutsi. The Defence stated that the Prosecution was unable to produce any document, speech, or policy paper to that effect. The Defence maintained that the Accused was not an extremist, as the Prosecution would have liked to prove[61] but rather a calm and loving family man.[62]

2. Conclusion

75. As stated before under Sub-section F of this Part, on influence of the Accused, the Chamber has assessed the totality of the evidence of the Witnesses in relation to all the acts and conduct of the Accused, as part of the process of assessing the Prosecution case.

H. Prosecution Allegation That the Accused Was an Advisor to the President.

1. Allegations

76. The Defence recalled the allegation of the Prosecution that the Accused was an advisor to the President. The Defence asserted that the Accused was never an advisor to the President.[63]

2. Conclusion

77. The Chamber finds that no evidence was brought to substantiate the allegation made by the Prosecution that the Accused was an advisor to the President of Rwanda.

I. Defence Contention that the Accused Became a Member of the Interim Government under Duress

1. Allegations

78. The Defence further submitted that the Accused became a member of the Interim Government because his life and that of his family were threatened and at stake, and, as such, the Accused had no choice but to accept the position in the Interim Government. In these circumstances, submitted the

61 Defence Closing Brief, para. 2807.
62 Defence Closing Brief, paras. 2868 and 2929.
63 Defence Closing Brief, para. 3567.

Defence, the Accused became a member of the Interim Government under duress. The Defence therefore maintained that the Accused should not be held liable in any way for the acts of the Interim Government as the Prosecution sought to do.[64]

2. Conclusion

79. The Chamber has noted the submission of the Defence in respect of the appointment of the Accused to the Interim Government. The Chamber further notes that this appointment occurred in May after the events that are charged in the Indictment with regard to Gikomero *commune*. The Chamber therefore finds the evidence tendered relating to the appointment of the Accused to the Interim Government irrelevant to the acts and conduct of the Accused as regards events in the Gikomero commune.

80. Moreover, on the basis of the evidence heard at trial, the Chamber finds no merit in the contention that the Accused was reluctant to be appointed Minister.

J. Alibi

81. Following the start of the trial, the Defence advanced an alibi pursuant to Rule 67 of the Rules of Procedure and Evidence. In his alibi, the Accused asserted that at all times material to in the Indictment, and especially from 7 to 17 April 1994, the Accused was not present during any of the massacres that occurred.[65]

1. Applicable Law

82. Pursuant to Rule 67(A)(ii) the Defence shall notify the Prosecution of its intent to advance an alibi as early as reasonably practicable, and in any event, prior to the commencement of the Trial. Although Rule 67(B) provides that the failure to give such notice does not limit the right of the Accused to rely on the alibi, the Chamber may take such failure into account when weighing the credibility of the alibi.[66]

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64 Defence Closing Brief, para. 3604.
65 Defence Closing Brief, para. 45 (English translation) and para 8 (French original).
66 Kayishema, Decision 3 September 1998 Rule 67 (A) (ii) (TC), (ICTR Reports, 1998, pp. 1003-1006) - recalled in Kayishema and Ruzindana, Judgment (TC), para. 237. See also: Musema, Judgment (TC), para. 107; Niyitegeka, Judgment (TC), para. 50; Semanza, Judgement (TC), para. 82. The Appeals Chamber in the Rutaganda case stated that not withstanding Rule 67 (B) failure to raise the alibi in due time may have consequences on the Trial Chamber's findings: Rutaganda, Judgment (AC), footnote 392.

2. The Burden of Proof Regarding the Alibi

83. As has been held by the Appeals Chamber in the *Čelibići Case*, the submission of an alibi by the Defence does not constitute a defence in its proper sense.[67] The relevant section of the judgment reads:

> "It is a common misuse of the word to describe an alibi as a "Defence". If a defendant raises an alibi, he is merely denying that he was in a position to commit the crime with which he is charged. That is not a Defence in its true sense at all. By raising this issue, the defendant does no more [than] require the Prosecution to eliminate the reasonable possibility that the alibi is true."[68]

84. Therefore, as consistently held throughout the jurisprudence of the Tribunal and as asserted by the Defence,[69] when an alibi is submitted by the Accused the burden of proof rests upon the Prosecution to prove its case beyond a reasonable doubt in all aspects.[70] Indeed, the Prosecution must prove "that the accused was present and committed the crimes for which he is charged and thereby discredit the alibi defence".[71] If the alibi is reasonably possibly true, it will be successful.[72]

85. Pursuant to Rule 67(A)(ii), the Defence is solely required at the pre-trial phase—in addition to the notification of his intention to rely on the alibi—to disclose to the Prosecution the evidence upon which the Defence intends to rely to establish the alibi.[73] Thus, during the trial the Defence bears no onus of proof of the facts in order to avoid conviction. But, during the trial, the Accused may adduce evidence, including evidence of alibi, in order to raise reasonable doubt regarding the case for the Prosecution.[74] It must be stressed, however, that the failure of the Defence to submit credible and reliable evidence of the Accused's alibi must not be construed as an indication of his guilt.[75]

67Delalic et al. (Celebici Case), Judgment (AC), para. 581.
68Delalic et al. (Celebici Case), Judgment (AC), para. 581.
69 Defence Closing Brief, para. 98.
70Kayishema and Ruzindana, Judgment (TC), para. 234 - confirmed in Kayishema and Ruzindana, Judgment (AC), para. 113; Musema, Judgment (TC), para.. 108 - confirmed in Musema, Judgment (AC), para. 200; Ntakirutimana and Ntakirutimana, Judgment (TC), para. 294; Niyitegeka, Judgment (TC), para. 51.
71Musema, Judgment (AC), para. 205; Musema, Judgment (TC), para. 108.
72Musema, Judgment (AC), para. 205-206; Musema, Judgment (TC), para. 108; Ntakirutimana and Ntakirutimana, Judgment (TC), para. 294; Niyitigeka, Judgment (TC), para. 51.
73Kayishema and Ruzindana, Judgment (TC), para. 111; Rutaganda, Judgment (AC), para. 242.
74 Kayishema and Ruzindana, Judgment (TC), para. 111; Rutaganda, Judgment (AC), para. 242.
75Kayishema and Ruzindana, Judgment (TC), para. .112; Semanza, Judgment (TC), para. 148.

3. Notice of Alibi

86. The Defence Notice of Alibi filed on 28 December 2000 states as follows

> That at all material times of the Indictment [*sic*] specifically related to the events unfolding from 7 April to 17 April 1994, Mr Jean De Dieu Kamuhanda remained at his home in Kigali without interruption, between 6 April and 18 April 1994. On 18 April he travelled to Gitarama, accompanied by his family and several neighbours.

4. Defence Statement of Alibi

87. The Defence asserted that the Accused, in compliance with Article 67 of the Rules, notified the Prosecutor of his intent to raise an alibi in support of his defence. The Defence asserted further that this notice was served in December 2000 and March 2001, prior to the presentation of the Prosecution case. The Defence stated further that the Accused provided the names and addresses of Witnesses and the places he was at the relevant times of the events.[76]

88. The Defence submitted that by raising the alibi defence, the Accused not only denies that he committed the crimes for which he is charged but also asserts that, at the times that the alleged crimes were being committed, he was not at the scenes of the crimes.[77]

89. **The Accused** testified that he learned of the death of President Habyarimana on the morning of 7 April 1994. He was at home in the company of his wife and two of his children, Rosine and Fernand. His two other children—Irène and René—were on vacation. Irène was in Nyabikenke at her grandmother's and René was at his aunt's in Kimihurura, a neighbourhood of Kigali.[78] According to the Accused, he remained at home with his wife until 8 April 1994 when he went to pick up his son René, who at the time was four years old. His wife had gone to the residence of Defence Witness ALR in order to telephone her son René. She found him in a state of great anxiety. Thereupon, the Accused decided to go and pick up his son as he could not bear the thought of remaining far from him knowing he was in such a state of anxiety.[79]

90. According to the Accused, it took him two attempts to complete his mission to pick up René. During the first attempt, in the early morning, he was accompanied by one of Defence Witness ALS' household staff, one Canisius, and by one Mr Karemera. The second time the Accused went

76 Defence Closing Brief, para. 79 (English); para .43 (French).
77 Defence Closing Brief, para. 80 (English); para 43 (French).
78 Defence Closing Brief para 102 (English); para. 43 (French).
79 Defence Closing Brief para 104 (English); para. 43 (French).

out, at the beginning of the afternoon, he was accompanied by a neighbour known by the nickname "Juif".[80] The Accused testified that upon his return the family had already moved to the house of Defence Witness ALS, who lived next door, because it afforded better protection against flying bullets. The Accused further testified that during the evening of 8 April 1994, the family of Defence Witness ALR joined them at ALS's house. Together they remained there until their departure on 17 April 1994.[81]

91. The Accused testified that he did not leave his neighbourhood from 7 April 1994 until 8 April 1994 when he went to look for his son René: and that during the entire period of 7 April 1994 to 17 April 1994, he was in his neighbourhood with his family and neighbours and that they did not leave each others' sides.[82] The Defence averred that during that period the Accused and his family shared meals in common in the home of ALS, and that the women and children slept inside the house while the men slept outside.[83] The Accused stated that on 17 April 1994, the situation in their Kigali neighbourhood of Kacyiru had deteriorated, forcing the Accused and his family to move several metres from the residence where they had spent the night.[84]

92. On the morning of 18 April 1994, stated the Accused, he visited the *Hôtel des Diplomates*, which was located near the military camp in Kigali city, to try and contact his friend General Gatsinzi, as the situation in the neighbourhood had deteriorated. The Accused testified further that General Gatsinzi provided them with a bus and that he and his family, ALS and her family and ALA and other neighbours got onto the bus and travelled to Gitarama from there. The Accused testified that they arrived at about 8:00pm on the night of 18 April 1994 and spent the night in the stadium. The following morning, he met Defence Witness ALB, who agreed to accompany him to Nyabikenke where his in-laws resided. The Accused returned at the stadium on the same day, still accompanied by ALB. After ensuring that ALS had departed for Butare, and ALR had left for her parents' in Gitarama, the Accused returned to his own family.[85]

80 Defence Closing Brief, para. 103 (English); para. 43 (French).
81 Defence Closing Brief, para. 105 (English); para. 43 (French).
82 Defence Closing Brief, para. 107 (English); para. 43 (French).
83 Defence Closing Brief, para. 108 (English); para. 43 (French).
84 Defence Closing Brief, para. 112 (English); para. 43 (French).
85 Defence Closing Brief, para. 114 (English); para. 43 (French).

5. Evidence on Alibi

a. Evidence of the Accused

93. **The Accused, Defence Witnesses ALS, ALR, ALB, ALM** and **ALF**, all testified regarding the whereabouts of the Accused between 7 April and 17 April 1994.[86]

- *6 April 1994*

94. **The Accused** testified that on 6 April 1994, he went to work at 8:00am and at around 8:30 or 9:00am he went to the district of Zaza with a colleague called Jean D. Ndayisaba.[87] The Witness testified that the reason for this trip was to continue with the preparations for a mission to France planned to start on 9 April 1994.

- *7 April 1994*

95. The Accused testified that he was at home in Kigali with his wife and two children on the morning of 7 April 1994 when at around 6:00am his night watchman informed him of the death of the President.[88] The Accused testified that he did not go anywhere that day and remained at home the rest of that day.[89]

- *8 April 1994*

96. The Accused testified that at around 10:00am on the morning of 8 April 1994, he went to look for his son René who was staying with his aunt at Kimihurura, one of the districts of Kigali-Kacyiru *commune*, about two kilometres from the Accused's house.[90] The Accused stated that he was accompanied by two people, Canisius, who was a member of Defence Witness ALS' household staff and one Mr. Karemera who is a relative of the Accused's wife.[91] The Accused stated that on the first attempt to go to Kimihurura, they were unable to do so as there was a roadblock which had been set up and the people manning the roadblock began to shoot at

86 Defence Closing Brief, para. 115 (English); para. 43 (French).
87 T. 20 August 2002, pp. 59-60.
88 T. 20 August 2002, p. 62.
89 T. 20 August 2002, p. 63.
90 T. 20 August 2002, pp. 69.
91 T. 20 August 2002, p. 87 (ICS).

them.[92] The Accused stated that later that afternoon he went out again to get his son from Kimihurura and that he was successful this time. On that occasion, stated the Accused, he was accompanied by a neighbour more commonly known by his nickname "Juif".[93] The Accused testified that on 8 April 1994, he moved his family from his house to the house of his neighbour Defence Witness ALS because they all felt that it was safer there[94] and also because they wanted to keep ALS company as her husband was not in the country. The Accused does not specify in his testimony what happened on the night of 8 April 1994. The Accused stated that the family of ALR joined them at ALS's residence either on the afternoon of 8 April 1994 or on the night of the next day, but he was unsure of the exact date.[95]

- *9 to 16 April 1994*

97. The Accused stated that after going to pick up his son from Kimihurura on 8 April 1994, he neither left the house of Defence Witness ALS where he was taking refuge with his family nor did he leave ALS's residence until 17 April 1994,[96] when he fled to Gitarama with his family. The Accused stated that they all ate together and the men slept outside to protect the families. The Accused stated further that the men who were in the house stayed together 24 hours a day. The Accused testified that during that period he saw his wife on short periods in the morning for tea and in the evening for dinner.[97]

- *17 April 1994*

98. The Accused testified that on the evening of 17 April 1994, due to the escalating insecurity, at around 6:00pm, he and his family, together with the families of ALS and ALR left the residence of ALS and spent the night at a military post located some 500 metres from ALS's house.[98]

92 T. 20 August 2002, p. 72.
93 Defence Closing Brief, para. 103.
94 T. 20 August 2002, p. 86 (ICS).
95 T. 20 August 2002, pp. 88-89 (ICS).
96 Defence Closing Brief, para. 105.
97 T. 21 August 2002, pp. 23-24.
98 T. 21 August 2002, pp. 29-30.

- *18 April 1994*

99. The Accused testified that on the morning of 18 April 1994, he went to the *Hôtel des Diplomates* which is located in the centre of Kigali where he contacted his friend General Gatsinzi, a ranking soldier from the *préfecture* of Kigali and Chief of staff of the Rwandan Army in April 1994, by telephone from the hotel reception.[99] The Accused testified that two jeeps were given to them by General Gatsinzi and the various families got into the cars and they were dropped off at a military camp in Kigali. The Accused testified that he arrived at the military camp at around 2:00 or 3:00 o'clock in the afternoon. The Accused stated that from there they left for Gitarama and arrived there at between 8:00 and 8.30pm on the night of 18 April 1994.[100]

b. Evidence of Defence Witnesses

100. **Defence Witness ALS** testified that she was a neighbour of the Accused in Kacyiru in Kigali in April 1994 and that they shared a wall between their houses which were less than a metre apart.[101] Defence Witness ALS testified that her house was situated in such a way that it was protected from the gunfire so the Accused and his family decided to move in with her.[102]

101. She testified that she saw the Accused on the morning of 7 April 1994, when he came to her house to discuss the shooting down of the President's plane.[103] Defence Witness ALS stated that the Accused left Kacyiru only on two occasions during the period of 7 April 1994 to 18 April 1994. She testified that the Accused left her house on 8 April 1994 and went to Kimihurura (which is about 1.5 kilometres from Kacyiru) to pick up his son René who had gone to his aunt who lived in that area. Defence Witness ALS stated further that the Accused went on foot and that he was accompanied by ALS's domestic servant. She stated that the Accused made two trips to Kimihurura that day before he was able to get his son.[104]

102. Defence Witness ALS testified that she saw the Accused everyday during this period because he was living in her house. Defence Witness ALS stated that she could not specify the number of times she saw him during the day because they were always together. She stated that she never lost sight of him for longer than a two hour period. She testified that they

99 T. 21 August 2002, p. 38.
100 T. 21 August 2002, p. 39.
101 T. 28 August 2002, p. 138 (ICS).
102 T. 29 August 2002, p. 24 (ICS).
103 T. 28 August 2002, p. 144 (ICS).
104 T. 29 August 2002,p. 36 (ICS).

shared meals together and that when he was not accompanied by the women, he was resting in the house, walking in an enclosed area or in the company of the other men in the house.[105] Defence Witness ALS stated that the Accused could not have left the quarters without her knowledge because she was always with the wife and the children of the Accused, and that the Accused could not have left Kacyiru without informing either his wife or his children.[106]

103. Defence Witness ALS testified that the Accused was absent a second time on 18 April 1994, when he went to seek the assistance of his friend General Gatsinzi at the *Hôtel des Diplomates* as the security situation had worsened.[107]

104. **Defence Witness ALR** testified that in April 1994 he lived in the Kacyiru neighbourhood of Kigali city, across from the Accused's residence.[108] Defence Witness ALR testified further that he saw the Accused on the morning of 7 April 1994 when most of the residents in the Kacyiru neighbourhood came out of their houses and met by the roadside to talk about the shooting down of the President's plane.[109] He testified further that he saw the Accused again later that day when he met with him in the afternoon to talk about what was happening in the country.[110]He testified that on 8 April 1994, he moved to the residence of ALS for security reasons and the Accused was there as well.[111] Defence Witness ALR testified that between 7 April 1994 and 18 April 1994, the Accused only left the house on two occasions. The first time was on 8 April 1994, when the Accused went to pick up his son René and the second time was on 18 April 1994, when the Accused went to seek assistance from his friend Gatsinzi.[112]

105. Witness ALR stated that during the period of 8 April 1994 to 18 April 1994, he saw the Accused everyday. He stated that they were together every night. This was because from 8 April 1994, the men who were in ALS's residence, which included the Accused, "Juif", Revocate, ALA, Telesphore Jean-Baptiste, ALB and the Witness, carried out night patrols in their quarters and they were always in a group.[113]

105 T. 29 August 2002, p. 47 and 48 (ICS).
106 T. 29 August 2002, p. 49 (ICS).
107 T. 29 August 2002, p. 53 (ICS).
108 T. 3 September 2002, p. 33 (ICS).
109 T. 3 September 2002, p. 33 (ICS).
110 T. 3 September 2002, p. 41 (ICS).
111 T. 3 September 2002, pp. 49 and 56 (ICS).
112 T. 4 September 2002. p. 51.
113 T. 3 September 2002, p. 58 (ICS).

106. Defence Witness ALR further testified that after these night patrols, he always had tea with the Accused in ALS's residence. He stated that they all had their meals together and were at each other's side during the day.[114]

107. Defence Witness ALR stated that during the period from 8 April 1994 to 18 April 1994, the Accused left the residence of ALS twice. The first time was on 8 April 1994, when the Accused went to fetch his son René, and the second time was on the morning of 18 April 1994, when the Accused went to see his friend General Gatsinzi.[115]

108. Defence Witness ALR testified that on the evening of 17 April 1994, the three families of ALR, ALS and Kamuhanda, left ALS's house and sought refuge in a shelter designated by military personnel which was not far from their location.[116]

109. In Cross Examination, the Prosecution pointed out to the Witness that, contrary to his testimony in court asserting that the Accused had left Kacyiru on 18 April 1994, he had, in a prior statement to the Investigators from the Office of the Prosecutor, asserted that the Accused left the Kacyiru neighbourhood on 12 April 1994. The Prosecution also pointed out that Witness ALR had omitted to mention to the investigators that his family and that of the Accused had left Kacyiru with the family of Witness ALS.[117]

110. The Witness explained that he had made a mistake during his Witness statement. The Witness testified that he realised his mistake when he spoke to his wife later that evening after speaking to the investigators. The Witness stated that it was during the conversation that his wife reminded him that the correct date of their families' departure from Kacyiru was 18 April 1994 and not 12 April 1994.[118] The Witness testified further that he did not make any attempt to inform the investigators of his mistake.[119] Witness ALR testified that he forgot to mention that the family of Witness ALS travelled with the Kamuhanda family from Kacyiru.[120]

111. **Defence Witness ALB** testified that he was one of the neighbours of the Accused. He stated further that he had known the Accused since 1975 when they were both students.[121] Defence Witness ALB stated that his family and that of the Accused had, for security reasons, moved to stay in the house of Witness ALS on 8 April 1994.[122]

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114 T. 3 September 2002, p. 59 (ICS).
115 T. 3 September 2002, p. 59 (ICS).
116 Defence Closing Brief, para. 140.
117 T. 4 September 2002, p. 31.
118 T. 4 September 2002, p.29.
119 T. 4 September 2002, p. 47-49.
120 T. 4 September 2002, p.29.
121 T. 5 September 2002, p. 100.
122 T. 5 September 2002, p. 100.

112. He testified that during this period, he saw the Accused several times in a day. On 7 April 1994, Witness ALB stated that he was with the Accused and they discussed the security situation in Kigali.[123] On 8 April 1994, Defence Witness ALB testified that the Accused went out to find his son René, he stated that the Accused came back at 12:00 noon without his son and went out again and came back at around 3:00pm in the afternoon, this time with his son.[124] Defence Witness ALB testified further that on the night of 8 April 1994, he began security patrols accompanied by the Accused and Defence Witnesses ALR and ALA. He testified further that he was with the Accused from 8 April 1994 to 14 April 1994.[125]

113. Defence Witness ALB stated that he, the Accused and the others were together every night, throughout the night, until approximately 6:00am the next morning. Defence Witness ALB stated further that he saw the Accused during the day from approximately 10:00am till noon each day when they met and carried out patrol of their quarters. He testified further that they had lunch at noon each day and rested after that until about 2:00pm; and then met again after dinner which was between 6:00 and 7.30pm each day. Defence Witness ALB testified that he saw the Accused everyday between 8 April 1994 and 14 April 1994 and that there that the Accused could not have left the quarters within that period of time.[126]

114. **Defence Witness Ingabire Theopitse Kamuhanda (ALF)** is the wife of the Accused. She testified that the Accused could not have travelled to Gikomero between 6 and 18 April 1994; because, first, they did not leave each other's side during the said period and, secondly, access to the Gikomero commune was impossible.[127]

115. Mrs Kamuhanda testified that on 8 April 1994, the Accused went to Kimihurura to look for their son René, who was staying with the Witness' sister.[128] The Witness stated that the Accused twice attempted to go for his son, once in the morning and later on in the afternoon, before he was able to get him from Kimihurura. She testified that on both occasions, he went on foot and was accompanied the first time by a gentleman known as Innocent Karemera and the second time by someone known as "Juif".[129] The Witness stated that from 8 April 1994 to 17 April 1994, a routine was set up and followed by the men who were in the residence of ALS and the Accused was a part of it. She testified that the men met from 4:00pm to 6:00pm each afternoon. At 6:00pm, they would all go and spend the night

123 T. 5 September 2002, p. 102.
124 T. 5 September 2002, p. 107.
125 T. 5 September 2002, p.109.
126 T. 5 September 2002, p. 111.
127 Defence Closing Brief, para. 147.
128 T. 9 September 2002, p. 155.
129 T. 9 September 2002, p.156.

outside returning in the morning towards 6:00am. The men, the Accused included, would have breakfast and then rest till 10:00am. Between 10:00am and 12:00 noon or 1:00pm, they would meet again. At 1:00pm, they would have lunch and thereafter rest. They would meet again at 4:00pm and the cycle would begin again.[130] The Witness testified that this pattern was followed as closely as possible from 8 April 1994 to 17 April 1994, although there were some days when the shelling and bombardment were so intense that the men, including the Accused, stayed inside the house and did not venture outside.[131] Thus when her husband was not with the family, he was with the other men, conducting patrols in the neighbourhood within calling distance.[132]

116. Mrs Kamuhanda testified further that due to the intensive fighting in Kacyiru, a decision was made on 17 April 1994 to leave the neighbourhood. She testified that all the families present in the house of ALS, did not spend the night of 17 April in ALS's residence but rather spent the night outside at a house which was guarded by two soldiers.[133] She testified that on the morning of 18 April 1994, the Accused left ALS's house with Defence Witness ALR and sought out his friend General Gatsinzi who provided them with a Jeep that took them (the families of the Accused, ALR and ALS) all to Camp Kigali.[134] She testified that at Camp Kigali, they got on a bus which took them to Gitarama.[135]

117. **Defence Witness ALM** testified that he lived in Kacyiru south in 1994, which is about 1.5 kilometres from the Accused's neighbourhood. He testified that he saw the Accused twice during the period of 8 April 1994 to 17 April 1994.[136] He testified that he saw the Accused around 10 April 1994, when he went to the Accused's neighbourhood. He stated further that the Accused was standing close to his house with Witness ALR and some other people who the Witness did not know. Witness ALM stated that it was around 2:00pm in the afternoon and that he spoke to the Accused for about twenty minutes.[137] Witness ALM testified that he saw the Accused again around 13 or 14 April 1994 before he left Kacyiru.[138] He testified that he saw the Accused at practically the same place he had seen him earlier on 10 April 1994. On the road in front of his house with the same people that he was with on 10 April 1994.[139] Witness ALM stated that he talked with the Accused and those he was with for a few minutes. He asked them if there was a general migration of people to their

130 T. 9 September 2002, pp. 163 and 164.
131 T. 9 September 2002, p. 163.
132 T. 9 September 2002, p. 164.
133 T. 10 September 2002, p. 9.
134 T. 10 September 2002, pp. 7 and 8.
135 T. 10 September 2002, p. 10.
136 T. 4 September 2002, pp.81and 82.
137 T. 4 September 2002, pp.82,83 and 84.
138 T. 5 September 2002, p.6.
139 T. 5 September 2002, p.6.

neighbourhood, as he saw happening in his, due to increased fighting in areas beyond Kacyiru. He testified that after the Accused and his group replied him in the negative, he promptly left and went back to his own quarters.[140]

6. Prosecution Allegations on Alibi

118. The Prosecution in their case contended that the Defence alibi was contrived after the Accused knew the nature of the case against him. The Prosecution maintained that the Accused went out of his way to procure Witnesses to try and bear out his contrived alibi.[141] The Prosecution maintained that the evidence they presented during their case-in-chief, did not place the Accused at his residence at all relevant times. The Prosecution maintained that the Accused had ample opportunity to travel to Gikomero to commit all the crimes alleged against him.[142]

119. The Prosecution stated that the testimony of the Defence Witnesses lacked credibility and that the Chamber should not rely on them. The Prosecution stated further that the Defence Witnesses should not be believed as every alibi Witness was a friend, a colleague or a Hutu who shared his political leanings. The Prosecution maintained that all the Defence Witnesses were biased and therefore their testimonies ought to be disregarded by the Chamber.[143] The Prosecution stated further that the testimonies of the Defence Witnesses should not be given credence as they contradicted each other and these testimonies were simply attempting to "fit around the Accused's contrived story."[144]

120. The Prosecution maintained that the alibi theory being propounded by the Accused did not exclude the possibility of the Accused travelling back and forth between Kacyiru and Gikomero.[145]

121. The Prosecution in attacking the alibi of the Accused enumerated the various inconsistencies in the testimonies of the various Defence Witnesses. They include the following.

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140 T. 5 September 2002, p.7.
141 Prosecution Closing Brief, para. 611.
142 Prosecution Closing Brief, para. 611.
143 Prosecution Closing Brief, para. 613.
144 Prosecution Closing Brief, para. 614.
145 Prosecution Closing Brief, para 615.

a. The Accused's Attempts to Retrieve His Son.

122. The Prosecution recalled that during his testimony, the Accused stated that on his first attempt to retrieve his son, he was accompanied by Canisius (ALS's domestic employee) and Karemera. The Prosecution recalled further that during his testimony, the Accused referred to the companions as houseboys. The Prosecution however noted that Karemera is also referred to as a family friend or relative, later in the testimony.[146]

123. The Prosecution reminded the Court that the testimony of Defence Witness ALS is different from that of the Accused. She testified that the Accused was accompanied by Canisius on both attempts to retrieve his son.[147]

124. The Prosecution recalled that during the interview of Witness ALR on 12 March 1999, he stated that to his knowledge, the Accused went to Kimihurura somewhere between 9 and 10 April 1994.[148]

125. The Prosecution recalled the testimony of Defence Witness ALB, that on the first attempt to retrieve his son, the Accused was accompanied by a member of the family of the Accused's wife.[149]

b. Reasons Why the Accused Returned after the First Attempt.

126. The Prosecution reminded the Court that the Accused stated in his testimony that on his first attempt to get his son, he was unable to make it as he was shot at by men guarding a roadblock who were not wearing uniforms.[150]

127. The Prosecution recalled further that during the testimony of Witness ALS, she made no mention of any shooting at the Accused. Rather she testified that at the Accused's first attempt to fetch his son, he was met by a group of soldiers who told him to go back.[151]

146 T. 20 August 2002, pp.82 and 87 (ICS).
147 T.29 August 2002, p.50; T. 2 September, p.64.
148 Witness Statement 12 March 1999.
149 T. 5 September 2002, p.107.
150 T. 20 August 2002, p.72.
151 T. 29 August 2002, p.36.

128. The Prosecution recalled the testimony of Witness ALB who stated that he was told that on the first attempt by the Accused to retrieve his son, he witnessed a shooting which is why the Accused returned.[152]

c. Accused's Second Attempt to Retrieve Son

129. The Prosecution recalled the testimony of the Accused that on his second attempt to retrieve his son, he was accompanied by Nizeyimana "Juif".[153]

130. The Prosecution reminded the Court of the testimony of Witness ALS that the Accused was accompanied by Canisius a houseboy on his second attempt to retrieve his son.[154]

131. The testimony of Witness ALB was noted by the Prosecution that on his second attempt to retrieve his son, the Accused was accompanied by Juif.[155]

132. The Prosecution referred the Chamber to the differences between the testimonies of the Witnesses regarding those who accompanied the Accused when he went to look for his son.

d. Discussion to Move to ALS's House

133. The Prosecution recalled that during the testimony of the Accused, he stated that there was no discussion on whether or not to move to ALS's house.[156]

134. The Prosecution also recalled the testimony of Witness ALS who stated that she raised and discussed with the Accused, the matter of moving to her house.[157]

135. The testimony of Defence Witness ALB on this matter was that he spoke of moving to ALS's house with the Accused and they decided to move.

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152 T. 9 September 2002, p..155.
153 T. 20 August 2002, p. 87 (ICS).
154 T. 29 August 2002, p. 37.
155 T. 5 September 2002, p. 107; T. 9 September 2002, p. 156.
156 T. 27 August 2002, p. 66.
157 T. 2 September 2002, p. 41.

e. Decision to Move to ALS's House

136. The Prosecution recalled the testimony of the Accused that the parties present for the decision to move were Defence Witness ALS, the wife of the Accused and the Accused himself. The Accused claimed that no one else was present when the decision was made.[158]

137. The Prosecution reminded the Court of the testimony of Defence Witness ALS who stated that Defence Witness ALR was present when the decision to move to ALS's house was made.[159]

f. Parties Living at ALS' house; Alibi and Notice of Alibi

138. The Prosecution recalled that in the original notice of alibi dated 10 April 2001, the Defence stated that Defence Witness ALB was resident in ALS's house during the period from 8 April 1994 to 18 April 1994. The Prosecution reminds the Court that when the Defence tendered the Revised Notice of Alibi, the claim that Defence Witness ALB lived in ALS's house during that period had been struck out. The Defence now stated that ALB was not living in the house of ALS during the period of 8 April 1994 to 18 April 1994.[160]

139. The Prosecution recalled the testimony of Defence Witness ALB. The Prosecution notes that during the interview at his home and during his testimony in court, Defence Witness ALB stated that he did not live in other people's homes during the period following 7 April 1994. He stated that he slept in his own house during the period from 7 April 1994.

140. The Prosecution noted the testimony of Defence Witness AG who is the mother-in-law of the Accused. The Prosecution noted that in her Witness statement on 31 July 2002, the Witness AG stated that the wife of the Accused never told her that she spent a few nights in another house in Kigali.[161]

141. The Prosecution reminded the Court that during her testimony in court, however, the Defence Witness AG recalled suddenly that the family of the Accused and other neighbours had assembled in the house of one of the neighbours.[162]

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158 T. 27 August 2002, p. 68.
159 T. 2 September 2002, p. 45.
160 T. 27 August 2002, p. 93.
161 T. 12 September 2002, p. 47.
162 T. 12 September 2002, p. 48.

g. Organisation of Patrols

142. The Prosecution recalled the testimony of the Accused that they spent the night of 7 April 1994 outside.[163] He later stated that he did not go outside on the night of 7 April 1994 but rather stayed inside the house.[164] The Prosecution recalled further the testimony of the Accused that during the day he slept outside with the group with whom he patrolled the area.[165]

143. The Prosecution recalled the testimony of Defence Witness ALS that the men, including the Accused, returned at dawn each day and slept in the sitting room and in the corridor.[166]

144. The Prosecution recalled the Witness statement of Defence Witness ALB given to the Office of the Prosecutor on 5 January 1997. The Prosecution recalled further that he stated that he stayed in Kigali for a week with his family, after which he left the neighbourhood.[167] The Prosecution noted that he did not tell the investigators that he participated in neighbourhood patrols.[168] The Prosecution noted however that during his examination-in-chief, Witness ALB testified that he and the Accused had been involved in night patrols which was contradictory to his earlier statement given to the Office of the Prosecutor on 5 January 1997.[169]

h. Night Patrol Systems

145. The Prosecution recalled that the Accused stated that there was no roster or system concerning protection of the house.[170] The Prosecution noted that the Accused later testified that there was a system.[171]

146. The Prosecution recalled also the testimony of Witness ALR that the men were involved in what was traditionally known as night patrols[172] and that the night patrols were organised in such a manner.[173]

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163 T. 27 August 2002, p. 59.
164 T. 27 August 2002, p. 59.
165 T. 27 August 2002, p. 89.
166 T. 2 September 2002, p. 76.
167 Witness Statement 5 January 1997, p. 825.
168 T. 9 September 2002, p. 48.
169 T 5 September 2002 p. 121.
170 T. 27 August 2002, p. 61.
171 T. 27 August 2002, p. 88.
172 T. 3 September 2002, p.58
173 T. 27 August 2002, p. 69.

i. Trajectory of Bullets

147. The Prosecution recalled that the Accused testified that his house acted as a shelter for the bullets that might have hit ALS's residence.[174]

148. The Prosecution recalled also the testimony of Defence Witness ALS that the bullets came from the right side of the house and flew over the house of Witness ALS.[175]

149. The contradicting testimony of Defence Witness ALR that the bullets came from the north has been noted by the Prosecution.[176]

j. Date the Accused Left for Gitarama

150. The Prosecution recalled that the Accused stated that he left on 18 April 1994 with his family to Gitarama. The Prosecution reminded the Court that the Accused stated that this was done with the help of ALS and ALR's family.[177] The Prosecution recalled further that the Accused stated that he went with ALR's vehicle and a driver.[178]

151. The Prosecution recalled the testimony of ALS that they left for Gitarama on 18 April 1994.[179]

152. The Prosecution drew the attention of the Chamber to the contradictory evidence of Witness ALR. The Prosecution recalled that during his Witness statement given to investigators from the Office of the Prosecutor on 12 March 1999, Defence Witness ALR stated that the Accused and his family left Kacyiru on 12 April 1994. The Prosecution recalled that the Witness when testifying in court at a later date stated that the Accused left Kacyiru on 18 April 1994.[180] The Prosecution noted that a second inconsistency was the fact that Witness ALR only mentioned the departure of his family and that of the Accused. The Prosecution noted that Defence Witness ALR did not make any mention of the departure of Defence Witness ALS and her family.[181]

174 T. 27 August 2002, p. 70.
175 T. 29 August 2002, p. 33.
176 T. 3 September 2002, p. 48
177 T. 21 August 2002, p. 37.
178 T. 21 August 2002, p. 38.
179 T. 29 August 2002, p. 53.
180 T. 4 September 2002, p. 29.
181 T. 4 September 2002, p. 30.

k. Bus Trip to Gitarama

153. The Prosecution recalled that the Accused testified that on the bus trip to Gitarama, he was sitting next to Enzi Muleka's wife and that he did not get up at any time during the trip.[182]

154. The Prosecution reminded the Court of the contradicting testimony of Defence Witness ALS that on the bus trip to Gitarama, the men remained standing and the Prosecution also recalled her testimony that the Accused stood in front of her during the journey.[183]

l. Showing of Identity Cards.

155. The Prosecution recalled the testimony of the Accused that on the bus trip to Gitarama, the group had to show their identity cards to men who were not in uniform and who were not armed.[184] The Prosecution further recalled that the Accused stated that the bus had no military escort.[185]

156. The Prosecution reminded the Court of the contrasting testimony of Defence Witness ALS that on the journey to Gitarama, the group was not required to show their identity cards[186] and further more that there was a military officer on the bus with them.[187]

m. Gitarama Stadium

157. The Prosecution recalled the testimony of the Accused that he spent two nights at the Gitarama stadium with Defence Witnesses ALS and ALR.[188]

158. The Prosecution reminded the Court of the contrasting testimony of Defence Witness ALS that she spent only one night at the Gitarama stadium after which she left.[189]

159. The Prosecution noted the testimony of the wife of the Accused that the Accused spent at least two nights at the stadium in Gitarama.[190]

182 T. 28 August 2002, p. 10.
183 T. 2 September 2002, p. 99.
184 T. 28 August 2002, p. 12.
185 T. 28 August 2002, p. 6.
186 T. 2 September 2002, p. 57.
187 T. 2 September 2002, p. 95.
188 T. 21 August 2002, p. 42.
189 T. 29 August 2002, p. 76.
190 T. 11 September 2002, p. 6.

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160. The Prosecution also recalled the testimony of Defence Witness AG, the mother-in-law of the Accused, that the family of the Accused spent a night at Gitarama stadium.[191]

n. Presence of *Interahamwe* in the Kacyiru Neighborhoods.

161. The Prosecution recalled that the Accused initially stated that there were no *Interahamwe* in his neighbourhood. He later changed his testimony by stating that the *Interahamwe* were everywhere but he did not see them during that period.[192]

162. The Prosecution reminded the Court of the testimony of Defence Witness ALS that there was a small wood in the area of Kacyiru where the *Interahamwe* used to meet.[193]

o. Relationship Between the Accused and ALB

163. In discussing the relationship between Witness ALB and the Accused the Prosecution noted the testimony of the Accused that he knew Defence Witness ALB since 1974 but they were not friends.[194] The Prosecution also noted the testimony of Witness ALB who stated that the Accused was his neighbour but there was no special relationship between them.[195] The Prosecution noted the apparent contradiction by the wife of the Accused who testified that the Defence Witness ALB was a long time friend of the Accused.[196] The Prosecution was of the view that the Accused and Witness ALB sought to hide their friendship so that it will not seem as if the Defence Witness ALB's testimony was biased in favour of the Accused.

7. Findings

a. Discussion

164. The Chamber notes that there is no issue raised by the Prosecution regarding the alibi notice in terms of its delivery, timeliness or content.

165. The Chamber has made a finding on the Alibi of the Accused after a careful consideration of the testimony of the various Prosecution

191 T. 12 September 2002, p. 46.
192 T. 28 August 2002, p. 109.
193 T. 3 September 2002, p. 25.
194 T. 27 August 2002, p. 51.
195 T. 5 September 2002, p.100.
196 T. 10 September 2002, p. 44.

Witnesses who testified that they saw the Accused in Gikomero *commune* in April 1994.

166. The Chamber has carefully considered the alibi of the Accused and the Defence Witnesses and finds as follows :

167. The Chamber finds that the Accused may have been in the Kacyiru area at some time during the period of 7 April 1994 to 18 April 1994. The Chamber finds, however, that this did not preclude him from travelling to the Gikomero *commune* at times during the same period.

168. The Chamber has weighed the testimony of the different Defence Witnesses and finds that their testimony as to what exactly took place at Defence Witness ALS's house has significant contradictions.

169. The Chamber particularly notes the testimony of Witness ALS. She testified that the Accused never left her house except on 8 April 1994 when the Accused attempted twice to retrieve his son René from Kimihurura, succeeding only on the second attempt. She testified that she saw the Accused practically 24 hours a day and that the Accused never left the house again until 18 April 1994. She testified that it was impossible for the Accused to have left the house without her knowledge, considering especially that she was always in the company of the Accused's wife.

170. Concurring with ALS, Mrs Kamuhanda also testified that she was always in the company of the Accused, never taking her eyes off him.

171. Clearly, there is a potential for bias in the evidence of ALS and Mrs Kamuhanda. The one Witness is the wife and the other a family friend and neighbour with whom the Kamuhanda family may well have gone through a difficult time together. Although a potential for bias tends to taint the testimony of a Witness, since it is harder to show that such evidence is independent of all motives of interest, this will not always be the case. There may indeed be instances when the testimony of a Witness with a basis for bias may come with evident indicia of reliability which will assist the search for the truth. That said, it needs also be said that the evidence of a Witness from whom bias might be expected is not helped by material contradictions. And such is the case with the testimonies of ALS and Mrs Kamuhanda. The Chamber finds that it is the Accused himself who contradicts the testimony of Witness ALS and his wife, when he testified that he did not see his wife much during the period of 7 April 1994 to 17 April 1994. The Chamber notes that the Accused testified that he saw his wife twice or sometimes three times during the day. The Chamber recalls that the Accused testified that he saw his wife in the mornings for tea, in the afternoon for lunch and sometimes he saw her for dinner. It thus becomes difficult to rely on the evidence of ALS and Mrs Kamuhanda when they testified that the Accused never left Kacyiru between 7 April

1994 and 17 April 1994 because they were with him all the time and he never left their side so as to be in Gikomero on 12 April 1994 and commit the crimes alleged.

172. The Chamber has also noted the evidence of Defence Witness ALR. During his cross-examination, it was pointed out that he had no independent recollection of the dates involved in the alibi. Specifically, he admitted that he was mistaken when he told the investigators of the ICTR Prosecutor's Office that the Accused left Kacyiru on 12 April 1994; and that it was his wife that reminded him that it was on 18 April 1994 that they all left Kacyiru, including the Accused and his own family. In view of this, the Chamber feels unsafe relying on this Witness as regards the other dates to which he testified in relation to alibi.

173. The Chamber has considered the testimonies of Witnesses ALR and ALB and finds that there are some contradictions in their testimonies. The Chamber considers that if these Witnesses were together as they claimed to be, 24 hours a day, seven days a week, then it is most inconsistent that they should have differing accounts of what happened. The Chamber has also noted that the Accused in his testimony does not really go into detail as to what the men who were in ALS's house did during that period. The Chamber notes that the Accused just testified that they were together 24 hours a day and that he does not really state what the exact routine was during that 24 hour period.

174. The Chamber finds that the evidence of Witness ALB does not exonerate the Accused from being present at Gikomero, in the circumstances that he was sighted there. The Prosecution evidence, upon which the Chamber relies, does not claim that the Accused was in Gikomero for any extended period. Prosecution Witness GEK, for instance, testified that she witnessed a meeting during which the Accused distributed weapons on between 6 to 10 April 1994. That meeting lasted 20 to 30 minutes. For his part, Prosecution Witness GAF testified that the Accused was at the Gikomero Parish for one or two minutes. That being the case, the time-lines described by Defence Witness ALB cannot foreclose the possibility described by these Prosecution Witnesses who testified that the Accused was seen in Gikomero on or about 12 April 1994.

175. Finally, the Chamber also notes the evidence of Defence Witness ALM. Notably, he testified that he saw the Accused twice during the period from 8 April 1994 to 17 April 1994. Surely, these two instances could not afford an alibi which would exclude the possibility of the Accused going to Gikomero. The Chamber attaches no weight to the testimony of Witness ALM.

b. Conclusion

176. The Chamber has weighed all the different testimonies that have been adduced and comes to the following conclusion as to the alibi of the Accused. In coming to its conclusion about the alibi of the Accused, the Chamber noted in particular the testimonies of the different Witnesses as to the patrols that took place in the quarter from 7 April 1994 to 17 April 1994. The Chamber noted the testimonies of these Witnesses that these patrols were mounted primarily to protect them and their families from looters. The Chamber has also noted from the testimonies that these patrols were very intensive and around the clock. The Chamber has carefully analysed these testimonies and finds it incredible that a patrol as intensive as this would be mounted just to protect the Witnesses and their families from looters. The Chamber finds that in an attempt to provide an alibi for the Accused, the Witnesses ended up relating stories that appeared designed for a purpose and therefore not credible. The Chamber finds that the Accused may have been at the house of Defence Witness ALS at times during 7 to 18 April 1994. The Chamber finds, however, that the Accused was able to travel to and from Gikomero *commune* between 6 and 17 April 1994. The Chamber refers to its earlier findings that it was not impossible for the Accused to move around from 6 April 1994 to 17 April 1994. The Chamber therefore finds that the alibi of the Accused from 6 April 1994 to 17 April 1994 is not credible.

K. Impossibility of Travel from Kigali to Gikomero in April 1994

1. Allegations

177. The Defence asserted that it was physically impossible for the Accused to participate in the acts or be at the places alleged in the Indictment during the period 6 April 1994—13 April 1994.

178. In connection with the Prosecution's allegations about the massacre at the Gikomero Parish, the Defence submitted that the Accused did not travel to Gikomero after 6 April 1994, and could not have travelled there, as the principal travel routes leading from Kacyiru, Kigali where he alleged to have been at that time to Gikomero were not passable due to the fighting.[197] The Defence stated further that it was impossible for civilians to move on the three roads leading out of Kigali to Gikomero due to the combat situation and the position of the armies at that time.[198] The three routes that led to Gikomero from Kacyiru, Kigali at that time were the

197 Defence Closing Brief, para. 3177 (English).
198 Defence Closing Brief, Para. 3189(English).

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Kacyiru—Kimihurura—Remera—Gikomero route,[199] the Kacyiru—Kimihurura—Remera—Kanombe—Gikomero,[200] and the Kacyiru—Muhima—Gatsata route in the direction of Byumba.[201]

179. The Prosecution did not call any evidence specifically rebutting the evidence of the Defence on impossibility. The Prosecution's Application to call rebuttal evidence was denied by the Trial Chamber on 13 May 2002.[202] The Prosecution therefore focused on the credibility of the Defence Witnesses.

2. Evidence

a. The Kacyiru—Kimihurura—Remera—Gikomero Route (Kigali/Remera Artery).

180. On subject of this route, the Defence led the evidence of Laurent Hitimana and Witness VPG.

181. **Defence Witness** Laurent Hitimana was protected Witness **RKA** but he renounced his protected status. His evidence related to the Kacyiru—Kimihurura—Remera—Gikomero Route (Kigali/Remera Artery). Witness RKA testified that in April 1994 he was living in Remera in Bibare area of Kigali.[203] He testified that as at 7 April 1994 the exit from Remera by the tarred road towards Kanombe was closed by the government forces (the FAR), at the junction known as Remera.[204] The Witness testified that on 7 April 1994 refugees started arriving at Bibare. The refugees said they had come from Remera I and Remera Kicukiro because the RPF had attacked their neighbourhoods.[205] On 7 April 1994 the Witness had to move from his home in Remera moving eastward to Gasogi where he arrived on 8 April 1994 after spending the night at the *bureau communal* of Rubungo.[206] The Witness testified that on 10 and 11 April 1994 there was a flow of refugees, arriving at Gasogi coming from Jurwe, who were fleeing the RPF.[207] The Witness returned to his house in Remera on 11 April 1994 and saw that soldiers of the FAR were patrolling the road leading to Amahoro stadium.

199 Defence Closing Brief, para. 3180 (English),
200 Defence Closing Brief, para. 3184 (English).
201 Defence Closing Brief, para. 3182 (English).
202 Kamuhanda, Decision 13 May 2003, Motion for Leave to Call Rebuttal Evidence (TC).
203 T. 13 February 2003, p. 51.
204 T. 13 February 2003, p. 54.
205 T. 13.February 2003, p. 52.
206 T. 13 February 2003, p. 55.
207 Defence Closing Brief, para. 3193 (English).

182. According to the Witness, the only route one could take to Gikomero was the Kigali-Remera-Kimironko-Karama-Gikomero Route, which was impossible to use because the government forces already blocked it.[208]

183. The Witness stated that the road through Kicukiro was blocked by the RPF at the Kicukiro junction point and it was therefore not possible to use it to get to Gikomero.[209]

184. In cross-examination the Witness stated that he did not go to the positions of the Armies and that the positions he gave were either the officially known positions of the Armies in 1994 or were based on the information he got from the refugees.[210]

185. **Defence Witness VPG** lived in Kacyiru, Kigali, in April 1994 but was originally from Gikomero Commune and a member of the Electoral Commission on which the Accused also sat.[211] He testified that it was impossible to travel to Gikomero around 12 April 1994 because all the roads were cut off due to the fighting.[212] According to him, there were two main routes from Kigali to Gikomero. The first route was the Byumba route and the second route was through Remera.[213] According to the Witness, the more practical route was the one through Remera; and it was the route he used when he travelled to Gikomero on 25 April 1994.[214] The Umuganda Boulevard separated the two fighting parties and was insecure. The Remera *Gendarmerie* station had already been taken by the RPF.[215]

186. Defence Witness VPG testified that from the Accused's house it was not possible to move towards the Kanombe airport. Defence Witness VPG testified that the second route was not available for use because the RPF had control of it. According to Witness VPG, to go to Gikomero on this route, one had to turn towards Kabuye and then Nyacyonga, zones that were already in RPF hands as at 12 April 1994.[216]

187. In cross-examination the Witness stated that in 1994 he was neither in the military nor was he a combatant and that he did not personally visit the locations he was testifying about.[217]

208 T. 13 February 2003, p. 57.
209 T. 13 February 2003, p. 60.
210 T. 13 February 2003, pp. 71-72.
211 T. 11 February 2003, p. 3.
212 Defence Closing Brief, para. 3234 (English).
213 T. 11 February 2003, pp. 18-19.
214 Defence Closing Brief, para. 3235 (English).
215 T. 11 February 2003, p. 19.
216 Defence Closing Brief, para. 3250 (English).
217 T. 11 February 2003, pp. 42-43.

b. On the Positions of the Different Belligerents on the Different Routes Leading to Gikomero

188. The Defence led the evidence of three Witnesses: RGM, RGG and RKF who were all military people.

189. **Defence Witness RGG** was *Gendarme* in April 1994, stationed at Muhima camp in Kigali, and was in charge of security.[218] The gendarmerie controlled the Kigali—Gitarama route, the Kigali—Ruhengeri route, and the Kigali—Kicukiro route.[219] Defence Witness RGG testified that on 7 April 1994, he was sent to Remera camp to collect bullets.[220] He successfully avoided RPF positions by taking a detour to avoid the CND where RPF soldiers had been stationed since 8 December 1993.[221] As soon as Witness RGG left the Remera *Gendarmerie* station, the RPF began shooting at the station from the CND. On his return to Muhima the Witness was assigned to go and reinforce the *Gendarmerie* headquarters. The Headquarters were attacked by the RPF on 7 April 1994. On 9 April 1994 Witness RGG undertook another mission to Kicukiro. On 9 April 1994 it was impossible to travel the Muhima—Remera road.[222]

190. Defence Witness RGG testified that the FAR controlled the Kigali—Gitarama, Kigali—Ruhengeri, and Kigali—Kicukiro routes. The RPF controlled Kigali—Kinyinya, Kigali—Remera—Kimironko, Kigali—Kibungo and Kigali—Byumba.[223]

191. **Defence Witness RGM** was a young *gendarme* of low rank stationed at Jari camp, Rutungo commune, six to seven kilometres from Kigali. He testified that on 7 April 1994 he heard that *gendarmes* at the Mugambazi and Nyacyonga refugee camps had seen the RPF columns coming from the hills. By 8 April 1994 the RPF had taken the Mugambazi and Nyacyonga camps.[224]On 8 April 1994 the RPF attacked the Cyangugu Battalion, forcing them to withdraw. On 9 April 1994, a vehicle was sent from Jari camp to Kigali for supplies, and at about 11:00am before the vehicle reached the Karuruma road it was ambushed by the RPF. On 12 April 1994 the RPF attacked Jari camp and the gendarmes withdrew to Shyirongi on the road to Ruhengeri. In cross-examination the Witness stated that the government forces were in control of Jari until 4 July 1994.[225] On 12 April 1994 the road from Byumba to Karuruma was open.

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218 T. 29 April 2003, p. 45.
219 Prosecution Closing Brief, para. 585.
220 T. 29 April 2003, p. 47.
221 Defence Closing Brief, para. 3359 (English).
222 T. 30 April 2003, p. 5.
223 Defence Closing Brief, paras. 3388-3396 (English).
224 T. 28 April 2003, p. 60.
225 T. 29April 2003, p. 32.

The Witness testified that he received the information about the ambush at Karuruma from his company operator.[226]

192. **Defence Witness RKF** worked at the Ministry of Defence in 1994 where he was responsible for analysing information related to the military situation in the city of Kigali.[227] According to the Witness, the RPF attacked the Presidential Guard and the Headquarters of the Gendarmerie Nationale on 7 April 1994 and took control of zones surrounding the Amahoro stadium.[228] On 8 April 1994, the RPF took control of the Gendarmerie brigade in Remera, the displaced persons camp at Nyacyonga and controlled Gasozi.[229] On 9 April 1994, the RPF took control of Karuruma. On 12 April 1994, the RPF took control of Jali [Jari] camp to hold the Nyabugogo—Gatsata—Karuruma access. The Witness testified that the RPF controlled the Kigali-Byumba road and no civilian could go there.[230] As for the Kigali—Remera route the Witness testified that it was impossible to use that route to go to Gikomero around 12 April 1994 because the RPF had infiltrated the zone and there was heavy artillery combat underway.[231]

193. In cross-examination the Witness admitted that in a war situation lines of control are ill-defined and fluid and infiltration is possible and further that there were small roads that were passable and that could be used.[232]

c. The Kacyiru—Muhima—Gatsata—Byumba Route (Kigali/Byumba Route)

194. In relation to the Kacyiru—Muhima—Gatsata—Byumba Route, the Defence led evidence of Witness RGB and RGS.

195. **Defence Witness RGB** lived in Rutungo *Commune* in February 1994.[233] This Witness' testimony related to the situation on the Kacyiru—Muhima—Gatsata—Byumba route (Kigali/Byumba). On 9 April 1994, RGB saw RPF soldiers coming down the mountains of Kiyanza. The RPF occupied the Rutungo Parish. Defence Witness RGB stated that he fled, taking the route towards Remera–Mbogo *commune* and arrived at Remera at about 7:00pm the same day. On 10 April 1994 the government positions at Remera were attacked by the RPF and the Witness moved to Jari, which was a *Gendarmerie* camp.[234] On 11 April 1994, at about 3:00pm, the

226 T. 29 April 2003, pp. 39-40.
227 T. 5 May 2003, p. 14.
228 T. 5 May 2003, pp. 16-17.
229 T. 5 May 2003, p. 19.
230 T. 5 May 2003, p. 20.
231 T. 5 May 2003, p. 20.
232 T. 5 May 2003, p. 75.
233 Defence Closing Brief, para. 3257 (English).
234 Defence Closing Brief, para. 3258 (English).

gendarmes informed Witness RGB that their camp at Jari was to be attacked the next day and therefore the Witness left the camp. Defence Witness RGB testified that he arrived at Karuruma in the evening, using the Byumba route, which was packed with refugees from Nyacyonga and Rutungo.[235] Defence Witness RGB testified further that at Karuruma, he met refugees from Nyacyonga, Kabuye and Jabana who confirmed that those zones had been taken by the RPF.[236] On the morning of 12 April 1994 Karuruma was attacked by the RPF and the Witness RGB testified that he fled towards Gatsata. By 12 April 1994, the RPF had closed all the roads from Karuruma to Kabuye and Byumba.[237] Defence Witness RGB testified that he travelled on foot in the bush and went to Gitarama arriving on 12 April 1994.

196. **Defence Witness RGS** lived in Gatsata in April 1994, not far from Kigali.[238] He testified that between 9 and 10 April 1994, he saw a great number of refugees arriving from the displaced persons camp at Nyacyonga into his neighbourhood. Defence Witness RGS testified that he was told by the refugees that the Nyacyonga camp had been attacked by the RPF.[239] The Witness testified further that on the night of 11 April 1994, he received a phone call from a friend who informed him that the RPF had taken Jari hill.[240] The Witness testified that he decided to flee the area on 12 April 1994. Witness RGS testified that he left by car towards Nyabugogo aiming to go to Kiyovu in Kigali town centre, but at Nyabugogo, a FAR soldier told him that he could not go further and was directed towards Gitarama.[241] According to Witness RGS, there were only two routes from Kigali to Gikomero. The first was Kigali—Byumba—Gatsata—Nyacyonga—Nyabugogo—Kajevuba. The second route was Rubungo through Jurwe. The Witness testified that the first route was impassable on 12 April 1994 because Nyacyonga zone and the region surrounding were occupied by the RPF.[242] The Witness stated that on 12 April the only route, which was passable, was the one leading to Gitarama.[243]

235 Defence Closing Brief, paras. 3264-3266 (English).
236 Defence Closing Brief, para. 3259 (English).
237 T. 17 February 2003, pp. 72-73.
238 Defence Closing Brief, para. 3285 (English).
239 T. 13 February 2003, p. 6 .
240 T. 13 February 2003, p. 5.
241 T. 13 February 2003, p. 8.
242 T. 13 February 2003, p. 9.
243 T. 13 February 2003, p. 10.

d. Other Witnesses Not Directly Dealing with Impossibility

197. **Defence Witness GPR** stated that the refugees in Gikomero came from Mbandazi and Musave in Rubungo.[244]

198. **Defence Witness GPE** stated that refugees who came to Gikomero around 7 to 9 April 1994 were from Rubungo.[245]

199. **Defence Witness GPF** also testified that the persons that attacked the refugees in Gikomero on 12 April 1994 came from Rubungo *commune*.[246]

200. **Defence Witness GPT** also testified that the Tutsi that sought refuge in Gikomero had arrived from Rubungo *commune*, Gasogi, Ndera and Mbandazi.[247]

201. In summing up the evidence on impossibility the Defence concluded that the evidence showed that the road from Kigali to Byumba was occupied by the RPF on 7 April 1994. As of 8 April 1994 the RPF occupied the Kigali—Remera—Gikomero artery. The Kigali—Kanombe—Gikomero artery was cut off at the level of Giporoso and Gikondo by 8 April 1994. On this premise, the Defence asserted that it was impossible for the Accused to have travelled out of his home around 12 April 1994, as alleged by the Prosecution, so as to perpetrate the events that occurred in Gikomero on or about 12 April 1994.[248]

e. Assertions by the Parties Regarding the Evidence

202. According to the Defence, the evidence of Laurent Hitimana provided a detailed description of the situation prevailing in the Remera area, on the route to Gikomero, and corroborates the evidence of the Accused and other Witnesses.[249]

203. Assessing the evidence of Witness RKF, the Defence stated that the Witness was at the core of military information channels in April 1994 and was well positioned to give a precise portrait of the situation on the roads leading from Kigali to Gikomero.[250]

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244 T. 15 January 2003, pp. 27 and 28.
245 T. 16 January 2003, p. 51 (ICS).
246 T. 20 January 2003, p. 31 (ICS).
247 T. 14 January 2003, p. 3.
248 Defence Closing Brief, para. 3459 (English).
249 Defence Closing Brief, para. 3231 (English).
250 Defence Closing Brief, para. 3457 (English).

204. Addressing the evidence of **Witness RGG** the Prosecution stated that the Witness was not fully aware of the situation regarding the movement of the armies, by virtue of the fact that he was only a corporal in the army.[251] The Prosecutor also submitted that in reply to a question from the Bench as to why the Tutsi were fleeing Rubungo if the RPF had taken a base nearby, the Witness gave no credible answer.[252] The Defence stated that this Witness had information, which was disclosed to all combatants, about the situation even where he did not observe personally.[253]

205. The Prosecutor submitted that Defence **Witness RGS**, a long-standing friend of the Accused, did not at any time go or attempt to go to Gikomero. The Prosecution therefore maintained that his views on the route were pure speculation.[254] The Defence pointed out that this Witness was a resident of Gatsata and was a direct Witness to the events happening in his area especially the Kigali—Byumba road[255] thus he was qualified to testify.

206. The Prosecution stated that Defence **Witness VPG** had at no time attempted to use the routes in question; therefore his testimony was merely speculative[256]and should be disregarded. The Defence pointed out that this Witness lived in Kacyiru in the same neighbourhood as the Accused and he could therefore testify to the situation in the area around 12 April 1994.[257]

207. The Prosecutor asserted that due to the fact that **Witness RKF** was in Kigali at the time, he was not in a position to know the exact roads that were controlled by the opposing armies and especially so after he admitted that during a war, the lines of control are ill-defined and fluid.[258] Witness RKF stated in evidence that "when there are two warring parties in any war, you can never say anything is air tightly closed, there is always infiltration."[259] To a question from the Bench the Witness stated that there was "a lot of small roads, secondary roads, not many, but - well, roads are passable, that could be used...".[260] Defence stated that the Witness was at the core of military information channels and could thus give precise details of the situation prevailing on the roads from Kigali to Gikomero.[261]

208. **In respect of Witness Laurent Hitimana** the Prosecution stated that the Witness was at too many places that tend to confirm the Defences' theory of blocked access. In addition the Witness was not able to reply to the fact

251 Prosecution Closing Brief, para. 590.
252 Prosecution Closing Brief, para. 588.
253 Defence Closing Brief, para. 3412 (English); T. 29 April 2003, p. 70.
254 Prosecution Closing Brief, para. 547.
255 Defence Closing Brief, para. 3316 (English).
256 Prosecution Closing Brief, para. 541.
257 Defence Closing Brief, para. 3253 (English).
258 Prosecution Closing Brief, para. 593.
259 Prosecution Closing Brief, para. 592; T. 5 May 2003, p. 60.
260 Prosecution Closing Brief, para. 593; T. 5 may 2003, p. 75.
261 Defence Closing Brief, para. 3457 (English).

that Tutsi from Rubungo fled towards Gikomero around this same period.[262] The Defence stated that this Witness gave a detailed description of the situation as it prevailed in Remera on the Route to Gikomero and thereby supported the evidence of the Accused.[263]In cross-examination, the Witness stated that the positions of the forces as he had given were the official positions in 1994.[264] The Witness also admitted that he did not personally go to the roadblocks or to the positions of the forces at that time.[265]

209. Defence Witness Laurent Hitimana testified that he was able to move out of Remera on 7 April 1994, and fled to Rubungo and later to Gasogi where he arrived on 8 April 1994. He returned to Remera on the 12 April 1994.[266]

210. **On Witness RGM** the Prosecution stated that this Witness was a young *gendarme* of low rank.[267] The Prosecution asserted further that he was not at any of the events that he testified about. The Prosecution stated that he neither witnessed the events at Mugambazi and Nyacyonga nor did he see the ambush at Karuruma.[268]The Defence affirmed that this Witness is credible and where he had no direct evidence, he received his information from his superiors in the course of his work.[269]

211. The Prosecution stated that **due to the position** occupied by Defence **Witness RGB,** his evidence should not be believed.[270] The Defence stated that the Prosecution was unable to impugn the credibility of the Witness since the Witness testified that he was a moderate Hutu and his name could be on the list of people sought by Rwanda for genocide simply because of the post he occupied in Rwanda in 1994.[271]

212. The evidence of **Defence Witnesses GPR, GPE, GPF,** and **GPT** demonstrate that there were refugees arriving from Rubungo, Ndera, Mbandazi and Musave from 6 April 1994 and show that it was possible to pass through these areas.

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262 Prosecution Closing Brief, para. 555.
263 Defence Closing Brief, para. 3231 (English).
264 T. 13 February 2003, p. 71.
265 T. 13 February 2003, p. 72.
266 T. 13 February 2003, p. 80.
267 Prosecution Closing Brief, para. 580.
268 Prosecution Closing Brief, para. 582.
269 Defence Closing Brief, para. 3356 (English); T. 29 April 2003, p. 25.
270 Prosecution Closing Brief, para. 575.
271 Defence Closing Brief, para. 3278 (English); T. 18 February 2003, p. 49

3. Findings

a. Discussion

213. The Chamber has noted the testimony of the Accused and the various Defence Witnesses as to the impossibility of moving from Kigali to Gikomero commune during the period of 7 April 1994 to 17 April 1994.

214. In making its findings as to the impossibility or otherwise of movement to and from Kigali to Gikomero during the period from 7 April 1994 to 17 April 1994, the Chamber has considered the evidence of the various Defence Witnesses and the challenge made to that evidence and credibility of the Witnesses.

215. The Chamber notes that Defence Witness Laurent Hitimana was able to move easily from Remera in Kigali to Rubungo and later to Gasogi between 7 and 8 April 1994 and to return to Remera on 11 April 1994. The Chamber further notes that the Witness was never present at the various locations he testified about and admitted that the positions of the Armies that he gave were either the known official positions in 1994 or it was information that he got from refugees.

216. The Chamber is not satisfied that Witness RGM, a low ranking member of the *Gendarmerie,* could have had access to information about the various detailed positions, of which he testified. The Chamber notes the Witness's admission that he never was at these locations.

217. The Chamber notes that Witness RKF was based in the offices in Kigali city at the Ministry of Defence. While he could have had access to intelligence regarding the general situation, he did not have firsthand information about the condition of travel between Kigali and Gikomero in the period in question.

218. Furthermore the Chamber notes that Witness RKF admitted in cross-examination that there were small, secondary roads that could have been used to travel between Kigali and Gikomero.

219. The Chamber notes that the evidence of Defence Witnesses GPR, GPE, GPF and GPT, who all testified about the situation in Gikomero, showed that some of the refugees at Gikomero had come from Mbandazi, Rubungo, Musave, Gasogi and Ndera and therefore that it was possible to pass through these areas. Those areas were way out from Remera area of Kigali. This evidence, taken in conjunction with the evidence of Defence Witness Laurent Hitimana who testified that he fled to Rubungo on 7 April 1994 and came back to Remera on 11 April 1994, demonstrates that it was possible to move from Remera all the way to Rubungo and onwards to Gikomero.

b. Conclusion

220. The Chamber therefore finds that, although it might have been difficult, it was possible to move from Kigali to Gikomero within the period between 7 and 17 April 1994.

L. Expert Witness

221. The Defence called Mr Nkiko Nsengimana as an expert Witness who produced a report[272] and was heard by the Chamber on 7 and 8 May 2003.

222. The Chamber has considered the full evidence of the Defence Expert Witness. He testified on various general, historical and political topics. In the case at hand, the Chamber focused on the Accused's alleged individual criminal responsibility. And, due to the general nature of the matters discussed in the Expert Witness's report and testimony, the Chamber finds them to be matters of background information which do not inform on the Accused's acts and conduct.

272 Report of the expert Mr. Nkiko Nsengimana: Few Elements Of Political Expert Analysis On The Rwandan Massacre Of 1994 (Defence Exhibits 87a and 87b).

PART III - THE PROSECUTION CASE

A. Introduction

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

- Paragraphs 5.1 to 5.9; 6.10 and 6.90 are related to issues which are no longer of any relevance to the case, due to the fact that the **Accused** was acquitted on Count 1 of the Indictment;
- Paragraphs 1.1 to 1.30; 3.3 to 3.19; 5.11 to 5.20; 5.22; 5.23; 5.25 to 5.39; 6.1 to 6.4; 6.6; 6.11 to 6.14; 6.15; 6.16; 6.17; 6.24; 6.28 to 6.30; 6.33; 6.35; 6.36; 6.38 and 6.39; 6.40 to 6.43; 6.47; 6.49 to 6.55; 6.57 to 6.80 to 6.84; 6.85 to 6.87 are of a general nature, deal with historical issues, have no direct linkage to this case and/or have such characteristics that there is no need for the Chamber to make findings on them and/or are related to facts upon which there was no evidence presented to the Chamber.

224. The Paragraph 4.1 of the Indictment has been addressed in the Part I (Introduction), Section A of the Judgment.

225. The Charges (Final section of the Indictment) will be addressed in the Part IV (Legal Findings) of the Judgment.

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

B. Paragraph 2.1 of the Indictment (Relevant Time-Frame for the Case)

227. Paragraph 2.1 of the **Indictment** reads:

> The crimes referred to in this indictment took place in Rwanda between 1 January and 31 December 1994.

228. The **Accused** admitted that :

> The crimes referred to in this document [the Prosecutor's request to admit facts] took place in Rwanda between 1 January and 31 December 1994, particularly between 1 January and July 1994.[273]

229. The Chamber takes note of these admissions.

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273 Defence Response to Prosecutor's Request to Admit Facts, filed on 24 April 2001, Fact number: 86.

C. Paragraph 2.2 of the Indictment (Administrative Structure of Rwanda in 1994)

230. Paragraph 2.2 of the **Indictment** reads:

> 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*.

231. The **Accused** admitted that:

> Between 1 January 1994 and 17 July 1994, Rwanda consisted of the following administrative structures:
>
> (a) Rwanda was divided into 11 *préfectures*: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-Ville, Kigali-Rural and Ruhengeri.[274]
>
> (b) Each *préfecture* was subdivided into *communes*.
>
> (c) Each *commune* was subdivided into *secteurs*.
>
> (d) Each *secteur* was subdivided into *cellules*.

232. The Chamber takes note of the Rwandese administrative structure as of between 1 January and 17 July 1994, as well as of the existence during the relevant period of a *préfecture* called "Kigali-Rural".

D. Paragraph 2.3 of the Indictment (Existence of Ethnic Groups in Rwanda in 1994)

1. Allegations

233. Paragraph 2.3 of the **Indictment** reads:

> During the events referred to in this indictment, the Tutsi, the Hutu and the Twa were identified as racial or ethnic groups.

234. The **Accused** admitted that :

> Between 1 January 1994 and 17 July [1994], the Tutsi, the Hutu and the Twa were respectively identified as racial or ethnic groups.[275]

274 Defence Response to Prosecutor's Request to Admit Facts, filed on 24 April 2001, Fact number: 87.
275 Defence Response to Prosecutor's Request to Admit Facts, filed on 24 April 2001, Fact number: 88

2. Findings

235. Accordingly, it has been established for the purposes of this case that at all relevant times for the indictment the Tutsi, the Hutu and the Twa were identified as ethnic groups in Rwanda.

E. Paragraph 2.4 of the Indictment (Existence of Widespread or Systematic Attacks in Rwanda)

236. Paragraph 2.4 of the **Indictment** reads:

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

237. The **Accused** admitted that :

> The following state of affairs, among others, obtained in Rwanda between 1 January 1994 and 17 July 1994: [276]
>
> (a) there were throughout Rwanda widespread or systematic attacks against human beings.
>
> (b) the widespread or systematic attacks were directed against a civilian population on the following grounds:
>
> (i) political persuasion
>
> (ii) ethnic affiliation
>
> (iii) racial origin
>
> (c) The widespread or systematic attacks as indicated above, had the following features:
>
> (i) they had specific objective of extermination of the Tutsi.

238. The Chamber takes note of the admission of the Defence.

239. The Chamber has analysed the specific issue of widespread or systematic attacks in Kigali-Rural in the relevant sections below.[277]

276 Defence Response to Prosecutor's Request to Admit Facts, filed on 24 April 2001, Fact number: 89
277 see below: Part III, Section I.

F. Paragraph 2.5 of the Indictment (State of Non-International Armed Conflict in Rwanda)

1. Allegations

240. Paragraph 2.5 of the **Indictment** reads:

> 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.

241. The **Accused** admitted that :

> During the events referred to in [the Prosecutor's Request to Admit Facts] , a state of non-international armed conflict existed in Rwanda.[278]

2. Findings

242. It is not in contention by the Parties for the purposes of this case that at all relevant times for the indictment a state of non-international armed conflict existed in Rwanda.[279]

G. Ministerial Position of the Accused and his Responsibility as Minister of the Interim Government

1. Allegations

243. Numerous paragraphs of the Indictment deal with the alleged responsibility of the Accused as Minister of the Interim Government.[280]

2. Findings

244. It is not in contention that the Accused became Minister of Higher Education and Scientific Research in the Interim Government on the 25

278 Defence Response to Prosecutor's Request to Admit Facts, filed on 24 April 2001, Fact number: 90
279 The Chamber notes ICTR Chambers have found in previous cases that a state of non-international armed conflict existed in Rwanda in 1994, namely between April to July 1994. See: Rutaganda, Judgment (TC), para. 436 ; Semanza, Judgement (TC), paras. 280-282 and 514.
280 Paragraphs 3.1; 3.2; 4.2 to 4.5; 5.10; 6.5; 6.7; 6.9; 6.10; 6.18 to 6.23; 6.25 to 6.27; 6.32; 6.39;6.48; 6.56 and 6.88 of the Indictment.

May 1994, replacing Dr. Daniel Nbangura and that he held the office until mid-July 1994.

245. The Chamber notes that no specific evidence has been brought by the Prosecution with regards to the acts and conduct of the Accused after he became Minister of the Interim Government.

246. The Prosecution has presented evidence only on alleged crimes committed by the Accused before the 25 May 1994.

247. Accordingly the Chamber finds that the Prosecution has not proven its case in relation with the acts and conduct of the Accused in capacity of Minister of the Interim Government.

H. Paragraphs 5.24 and 6.44 of the Indictment (Distribution of Weapons)

1. Allegations

248. Paragraph 5.24 of the **Indictment** reads:

> 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.

249. Paragraph 6.44 of the **Indictment** reads:

> Interim Government Minister Jean de Dieu Kamuhanda had family ties to Gikomero commune, Kigali-Rural *préfecture*. During the month of April 1994 he supervised the killings in the area. On several occasions he personally distributed firearms, grenades and machetes to civilian militia in Kigali-rural for the purpose of "killing all the Tutsi and fighting the FPR".

2. Distribution of Weapons at the Homes of the Accused's Cousins

a. Evidence

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

251. **Prosecution Witness GEK,** a Tutsi woman, testified that her husband, who belongs to the Hutu ethnic group,[281] was a member of Kamuhanda's family[282] and that Kamuhanda "usually came to the house to say hello when he [was] on his way home just around Muhazi."[283] On cross-examination, the Defence attacked the Witness's identity, attempting to show that she was not in fact who she claimed to be. After the Accused in his testimony acknowledged Witness GEK to be who she claimed to be, the Defence continued the attack on her credibility by attempting to show that she was not in Gikomero during the events about which she gave testimony. The Witness disputed this proposition.[284] The Witness identified the Accused in Court.[285]

252. Prosecution Witness GEK testified that prior to the April 1994 events she saw the Accused about four times.[286] She further testified that the Accused came to visit her neighbour before the death of the President of the Republic either on 5 April 1994 or on 6 April 1994. According to the Witness, the Accused arrived on his own in a white pick-up vehicle, and he was driving himself.[287] The Witness saw the Accused again sometime between 6 April 1994 and 10 April 1994 when he came to their residence in Gikomero and stayed to talk to her husband.[288] She stated that she was not in the same room when the discussion occurred between the Accused and her husband.[289] She said, "When he [the Accused] entered the house my husband requested me to go inside the room, because, at that time war had erupted, so he asked me to hide myself. But I was not far away and I could hear what they were saying to each other."[290]

253. Prosecution Witness GEK testified that there were four people in the room with the Accused and her husband.[291] She identified those people as Ngiruwonsanga, Kamanzi, Karakezi and Ngarambe,[292] who was just a neighbour.[293] She said that these people came approximately two minutes after the Accused.[294] She testified that the Accused told Kamanzi that the killing had not yet started in Gikomero *commune* and went on to say that "...those who were to assist him to start had married Tutsi women..."[295]

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281 T. 5 September 2001, p. 82 (GEK) (ICS).
282 T. 4 September 2001, pp. 15 and 16 (GEK).
283 T. 3 September 2001, pp. 159 and 160 (GEK) (ICS).
284 T. 4 September 2001, pp. 24 and 25(GEK).
285 T. 3 September 2001, p. 160(GEK) (ICS).
286 T. 3 September 2001, pp. 160 (GEK) (ICS).
287 T. 3 September 2001, p. 167 (GEK) (ICS).
288 T. 3 September 2001, p. 167 (GEK) (ICS).
289 T. 3 September 2001, p. 167 (GEK) (ICS).
290 T. 3 September 2001, pp. 167and 168 (GEK) (ICS).
291 T. 3 September 2001, p. 168 (GEK) (ICS).
292 T. 3 September 2001, p. 168 (GEK) (ICS).
293 T. 3 September 2001, p. 174 (GEK) (ICS).
294 T. 3 September 2001, p. 174 (GEK) (ICS).
295 T. 3 September 2001, p. 170 (GEK) (ICS).

She said that the Accused went on, saying that he would bring equipment for them to start, and that if their women were in the way they should first eliminate them.[296]

254. Prosecution Witness GEK testified that her husband, in response to the Accused, said that "he would continue to persecute his spouse and that he had even married her against their will."[297] She said that the meeting lasted between 20 and 30 minutes.[298]

255. Prosecution Witness GEK, when asked if she knew whether any weapon or item was handed over in that room, testified, "When I went outside I was able to see firearms, grenades, and machetes, which they distributed when he went outside the house."[299] She said that the Accused distributed firearms and grenades inside the house before they went outside and she saw her husband carrying "four grenades that resembled a hammer, a hammer, four grenades that looked like hammers."[300] She testified that she knew the grenades, because she had seen them before when her husband was carrying them while he was a soldier.[301]

256. Prosecution Witness GEK testified, "When Kamuhanda went outside he went to Karakezi's home, a distance of about between five and ten steps. He distributed to them [Kamanzi, Karekezi, Njiriwonga and Ngarambe] grenades and machetes. He had distributed, given, distributed a weapon, a gun I should say, inside our house."[302] She said that the Accused distributed the weapons to four persons, but he left them other weapons that these four people were to distribute to others.[303] When asked how she knew that these people were supposed to distribute the weapons to others, the Witness said, "... From where I was, from where they were, I could see [*sic*] what they were saying. He [Kamuhanda] said to them to distribute those weapons and said that he would return to assist them."[304] She testified that the Accused said that he would return to see if they had started with the killings or that he would return so that the killings would start.[305] She said that she saw what happened to the weapons when the Accused returned to arrange for the killing to start.[306]

257. Prosecution Witness GEK testified that the Accused distributed the weapons to Karekezi, Kamanzi, Njiriwonga and Ngarambe.[307] She

296 T. 3 September 2001, p. 171 (GEK) (ICS).
297 T. 3 September 2001, p. 173 (GEK) (ICS).
298 T. 3 September 2001, p. 174(GEK) (ICS).
299 T. 3 September 2001, p. 174 (GEK) (ICS).
300 T. 3 September 2001, p. 175 (GEK) (ICS).
301 T. 3 September 2001, p. 175 (GEK) (ICS).
302 T. 3 September 2001, p. 176 (GEK) (ICS).
303 T. 3 September 2001, p. 176 (GEK) (ICS).
304 T. 3 September 2001, pp. 176 and 177 (GEK) (ICS).
305 T. 3 September 2001, p. 177 (GEK) (ICS).
306 T. 3 September 2001, p. 177 (GEK) (ICS).
307 T. 3 September 2001, p. 177 (GEK) (ICS).

testified on cross-examination that Ngiruwonsanga was a well-known *Interahamwe* and when the Accused came to distribute arms Ngiruwonsanga was present.[308] She said that Ngiruwonsanga was present at all the locations where attacks were carried out.[309] Witness GEK testified that she personally saw Garambe and Ngiruwonsanga cutting up people at the trade centre.[310]

258. Prosecution Witness GEK testified that the Accused did not return that day when he came to distribute the weapons; he went through Kagagevuba because he wanted to see an accountant named Rubanguka.[311]

259. **Defence Witness GPK** testified that he knew the Accused because they were both born in the same *secteur*.[312] The Witness stated that he knew Kamanzi and Karekezi, and that he wouldn't spend two days without going to see them.[313] He estimated that the distance between his residence, near Gikomero trade centre, and theirs was approximately eighty to one hundred metres.[314] In answer to a question put to him, the Witness stated that between 6 April 1994 and 12 April 1994 he never saw the Accused at the residence of Kamanzi or Karakezi. Neither did he observe the Accused distributing weapons. Furthermore, had this happened in his absence, he would certainly have heard about it.[315]

260. Defence Witness GPK testified that he met Karakezi after the attacks on 12 April 1994, and that Karakezi was armed with a bow and arrows. He said that Karakezi asked him to come to a place where he had left his wife and his brother's wife to check on their situation. He went with Karakezi to a place called Kibobo where the women were. They were to assure them of the security situation so that they would not flee and perhaps he would not be able to find them.[316] He stated that Karakezi's wife was known as Dorsilla Mukayiranga and Kamanzi's wife was known as Mukamazimpaka.[317]

261. **Defence Witness EM**, who was fourteen years during the events in question, testified that she had stayed with the GEK family during April 1994.[318] She testified that the day after the plane crash GEK's husband took them to Kibobo *cellule* to spend night. During the day they returned to GEK's house.[319] From 7 April 1994 until 9 April 1994 they continued

308 T. 4 September 2001, p. 50 (GEK) (ICS).
309 T. 4 September 2001, p. 50 and 51 (GEK) (ICS).
310 T. 4 September 2001, p. 13 (GEK) (ICS).
311 T. 3 September 2001, p. 179 (GEK) (ICS).
312 T. 20 January 2003, p.62 (GPK) (ICS).
313 T. 20 January 2003, p.50 (GPK) (ICS).
314 T. 20 January 2003, p.61 (GPK) (ICS).
315 T. 20 January 2003, p.62 (GPK) (ICS).
316 T. 20 January 2003, p.58 (GPK) (ICS).
317 T. 20 January 2003, p.58 (GPK) (ICS).
318 T. 30 January 2003, p.8 (EM) (ICS).
319 T. 30 January 2003, p.8 (EM) (ICS).

this routine.[320] From 9 April 1994 until 12 April 1994 they stayed in Kibobo *cellule*. However, on 12 April there was a "significant attack" and GEK's husband took them back to his residence.[321] The Witness stated that GEK delivered her baby on the night of 12 April 1994. The Witness remembered this particular date because it was also the date of the attack.[322] The Witness stated that whilst they travelled back on 13 April 1994, she carried for GEK's child and GEK carried the new born baby.[323] During this period, from 9 April to 13 April 1994, the Witness never left GEK's side, because she was very tired.[324] The Witness stated that she knew the Accused, but that the last time she saw him was in 1993.[325] She stated that she would not have failed to see the Accused if he had come to the house.[326]

262. **Defence Witness Xaviera Mukaminani**, the Accused's younger sister, testified that the Accused helped his family in many ways, including building a house for them and paying their bills. He was close to his family and would often come to visit them in Gikomero especially since their mother suffered badly from asthma.[327] When she had a bad spell, the Accused would take her to hospital in Kigali for treatment.[328] The Witness stated that when the Accused came to visit, he would be driven in an official vehicle. She never saw him driving.[329] In so far, as she was the only adult in the family, apart from her mother, she would have known about any visit of the Accused to the family house in Gikomero *commune*.[330]

263. Defence Witness Xaviera Mukaminani testified that Kamanzi and Karekezi were her cousins. She also stated that her house and their houses were next to each other, separated only by a road.[331] She testified that the last time the Accused came to Gikomero was during the Easter holidays in 1994, and that they had not seen him in Gikomero since.[332] In answer to a question put to her, she replied that it was not true that weapons had been distributed by the Accused at her cousins' houses, and that when the *Interahamwe* attacked at Gikomero they already had their weapons.[333] She

320 T. 30 January 2003, p.8 (EM) (ICS).
321 T. 30 January 2003, p.8 (EM) (ICS).
322 T. 30 January 2003, p.9 (EM) (ICS).
323 T. 30 January 2003, p.9 (EM) (ICS).
324 T. 30 January 2003, pp. 7 and 8 (EM) (ICS).
325 T. 30 January 2003, p.11 (EM) (ICS).
326 T. 30 January 2003, p.11 (EM) (ICS).
327 T. 10 February 2003, pp. 22 and 23 (Xaviera Mukaminani).
328 T. 10 February 2003, p. 23 (Xaviera Mukaminani).
329 T. 10 February 2003, p. 23 (Xaviera Mukaminani).
330 T. 10 February 2003, p. 25 (Xaviera Mukaminani).
331 T. 10 February 2003, p. 30 (Xaviera Mukaminani).
332 T. 10 February 2003, p. 30 (Xaviera Mukaminani).
333 T. 10 February 2003, p. 30 (Xaviera Mukaminani).

also stated that because there were not many vehicles in Gikomero, everybody knew when a vehicle arrived.[334]

264. Defence Witness Xaviera Mukaminani testified that she did not see the wives of her cousins Kamanzi and Karekezi the day after the President's plane was shot down.[335] When she asked where they were, she was not told. The Witness testified that it was only later that she found out from Defence Witness EM that Kamanzi had placed them in a safe place near Kibobo.[336]

265. Defence Witness Xaviera Mukaminani testified that the *Interahamwe* attacked on 12 April 1994, and that she fled to Gasagara and joined her elderly mother and an old Tutsi woman who had sought refuge there.[337]

b. Findings

- *Discussion*

266. The Defence initially claimed that Prosecution Witness GEK was not the person she claims to be.[338] However, the Chamber notes that the Accused, in his testimony, attested to knowing the Witness GEK and, in effect, admitted that she is the person she claims to be.[339] The Chamber thus finds that Prosecution Witness GEK and the Accused did in fact know each other, and that the Defence challenge to her identity is unfounded. In relation to the Witness GEK's testimony that on 5 April 1994 or 6 April 1994 the Accused drove himself in a white pick-up to the house of the Witness, the Chamber accepts that the Witness may have been mistaken about the driver of the vehicle.

267. The Defence also claimed that Witness GEK was not at the home of her husband during the period when the meeting would have taken place, nor was she in Gikomero during the massacres. Defence Witness EM testified that Witness GEK gave birth to a baby on 12 April 1994, and that from 9 April 1994 to 13 April 1994 Witness GEK was in Kibobo *cellule*, and not where she testified to have been. On 4 February 2002, the Defence made an oral application to recall Prosecution Witness GEK, and informed the Chamber of having information to show that Witness GEK was not in Gikomero *secteur* during the relevant time period. The Prosecution did not object to the recall, and the Chamber granted the Oral Motion.[340] When the

334 T. 10 February 2003, p. 25 (Xaviera Mukaminani).
335 T. 10 February 2003, p. 30 (Xaviera Mukaminani).
336 T. 10 February 2003, p. 30 (Xaviera Mukaminani).
337 T. 10 February 2003, p. 30 (Xaviera Mukaminani).
338 T. 5 September 2001, pp. 58-59 (GEK) (ICS).; Prosecution Witness GEK is a protected Witness.
339 T. 26 August 2002, p. 124 (Kamuhanda)
340 T. 4 February 2002, pp. 4-7

Witness appeared before the Chamber on 13 January 2003, the Defence questioned her regarding allegations made by other Witnesses that she had not been in Gikomero *secteur* on 12 April 1994.

268. During Witness GEK second appearance before the Chamber, the Defence failed to confront her with the new evidence regarding the birth of her child. Basic fairness requires that the Defence confront the Witness with evidence that it intends to use to discredit her credibility.

269. Furthermore, the Chamber notes that Defence Witness GPK did not confirm Witness EM's account that Witness GEK was expecting a child or had delivered a child on 12 April 1994, when Witness GPK claims to have been with her.

270. The Chamber finds that the testimony of Defence Witness EM lacks credibility, and is not sufficient to impugn the credibility of Prosecution Witness GEK.

271. On the basis of the testimonies of Witnesses GPK and Xaviera Mukaminani, the Accused's sister, the Defence claimed: firstly, that the Accused was not in Gikomero between 6 April 1994 and 10 April 1994; secondly, that he did not meet with his cousins; and, thirdly, that he did not distribute weapons at the homes of his cousins. The Chamber notes that the testimonies of these two Witnesses, that they did not see the Accused in Gikomero, does not exclude that he could have been there, as claimed by Witness GEK.

272. Having considered all the evidence in relation to this event, and having considered her demeanour in court, the Chamber finds that Prosecution Witness GEK is highly credible.

- *Conclusion*

273. Accordingly, the Chamber finds that a meeting occurred sometime between 6 April 1994 and 10 April 1994 at the home of one of his cousins in Gikomero. This meeting involved the Accused, two of his two cousins, an *Interahamwe*, and a neighbour. The Chamber finds that at this meeting, the Accused addressed those present and told them that the killings in Gikomero *commune* had not yet started and that "those [who] were to assist him to start had married Tutsi women". The Accused told those present that he would bring "equipment" for them to start, and that if their women were in the way, they should first eliminate them. Whilst in his house, Kamanzi received four grenades and a gun from the Accused. Following the meeting which took place in the house, the group went a few steps next door to the home of Karakezi, who is also a cousin of the Accused. Whilst there, the Accused gave the others grenades and

machetes, for themselves, and also additional weapons which they were to distribute to others. The Accused told them that they should distribute those weapons and that he would return to assist them. He also said that he would return to see if they had begun the killings, or so that the killings could start. The Accused then left, and did not return that day.

3. Distribution of Weapons at a Football Field in Kayanga Secteur

a. Evidence

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

275. **Prosecution Witness GAB** gave testimony that the Accused attended and spoke at an MRND political rally during August 1993 in Kayanga *secteur*, Gikomero *commune*.[341] According to the Witness, the Accused was the Guest of Honour.[342] The Witness testified that the Accused delivered a speech in which he said, "Let these Tutsis not bother you because their own fate has been considered by the appropriate authorities. A solution has been found to the problems that they are raising and this will be conveyed, that solution will be conveyed to you in the not too distant future."[343] The Witness testified that someone who was not a Hutu would not be invited to such meetings, and if they attended, they could be wounded or even killed.[344]

276. Prosecution Witness GAB testified that between 2:00 and 2:30pm sometime between 9 April and 11 April 1994 he and his compagnions were playing football in Nyamise *cellule*, Kayanga *secteur*, Gikomero *commune*, when they saw the Accused get out of a vehicle, accompanied by soldiers. The Witness stated that the Accused met with the *conseiller* of the *commune*, called Rubanguka Mathias. Also present at the meeting were Nyarugwaya, the Brigadier of the *commune*, and Mabango Thomas, the *conseiller*. The Witness stated that "[t]here were *Interahamwe* there to just -- near where we were playing soccer and he talked to these people and in the course of their discussion, he gave them the instruments, the means that he had promised them beforehand, that is, means to defend themselves, as he promised them before."[345]

341 T. 11 September 2001, p. 45 (GAB).
342 T. 11 September 2001, p. 48 (GAB).
343 T. 11 September 2001, pp. 49 and 50 (GAB).
344 T. 11 September 2001, pp. 50 and 51 (GAB).
345 T. 11 September 2001, pp. 64 and 65 (GAB).

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277. Prosecution Witness GAB testified that the Accused arrived in a white Hilux vehicle that he was driving.[346] In cross-examination, the Witness repeated that the Accused was driving,[347] and attested that the vehicle arrived from the direction of Kigali.[348] He further testified that there were weapons in the Hilux. He stated, "Those arms were covered by plastic material. We were able to observe these arms only when the plastic was removed so this [...]."[349]

278. Prosecution Witness GAB testified to hearing the Accused address the accountant, Brigadier, *conseiller*, and *bourgmestre* who had just arrived. The Accused said, "Everywhere I went, even in Kigali, the *Interahamwe* and CDR have been killing people. What are you doing? How far have you gone?"[350] The accountant said, "It is true that we have not started killing these people. All we were doing at this time is detailing them and when we get the necessary instruments to accomplish our task, ... we shall accomplish our task and we shall accomplish it appropriately."[351] The Witness testified that the Accused then asked if the people to whom the instruments had been entrusted could be counted on to perform. The accountant replied that they were people trained to fulfil that purpose.

279. Prosecution Witness GAB testified that the Accused selected two Kalashnikovs, two grenades, and two machetes, which he gave to the accountant, who handed these weapons to the young people. He recalled the names of these young men who received weapons. Munyentwari (known as Kapore) was given a gun, and Desire Habineza a grenade.[352]

280. Prosecution Witness GAB testified that the Accused was present during the distribution of the weapons. Before leaving the assembled group of men, the Accused said, "I don't want to hear that any single Tutsi has escaped you."[353] Rutaganira [the *bourgmestre* of Gikomero] answered the Accused, "We will do all in our power and just in case the instruments which you have given us turn out to be insufficient, we shall resort to you again."[354] The Accused responded, "I shall wait for [your] initiative, your reaction."[355]

281. **The Accused** testified that he attended a MRND political rally in Kayanga in October 1992. He stated, however, that he had been invited at the last minute, and that he had not even planned on going to the meeting.[356]

346 T. 11 September 2001, p. 65 (GAB).
347 T. 11 September 2001, p. 65 (GAB).
348 T. 11 September 2001, p. 117 (GAB).
349 T. 11 September 2001, p. 66 (GAB).
350 T. 11 September 2001, p. 66 (GAB).
351 T. 11 September 2001, p. 67 (GAB).
352 T. 11 September 2001, p. 68 (GAB).
353 T. 11 September 2001, p. 68 (GAB).
354 T. 11 September 2001, p. 69 (GAB).
355 T. 11 September 2001, p. 69 (GAB).
356 T. 21 August 2002, pp. 11-12 (Accused) (ICS).

Defence Witness VPG testified that he attended a MRND political rally in Kayanga in September 1993 or October 1993 with the Accused. He further stated that the Accused introduced himself to the crowd but did not give a speech.[357]

b. Findings

- *Discussion*

282. After considering the totality of the evidence, the Chamber is not convinced that Prosecution Witness GAB presented a truthful account of what the Accused said at the MRND political rally. Considering the dangers, alleged by the Witness, faced by anyone not of Hutu ethnicity attending such an event, and considering that the Witness is a Tutsi, the Chamber is not convinced that the Witness even attended this rally. Concerning the testimony of the Witness about the distribution of weapons by the Accused in Kayanga *secteur* during April 1994, the Chamber finds it unlikely that Prosecution Witness GAB, a young Tutsi male, would casually have been playing football at such time when tensions between Hutus and Tutsis were high, and the situation was becoming increasingly perilous for the Tutsi population. That he might stand around listening to orders for the massacre of Tutsis, whilst weapons were being distributed, seems improbable. The Chamber finds that the testimony of Prosecution Witness GAB as to the actions of the Accused is not credible.

- *Conclusion*

283. On the basis of the evidence, the Chamber does not find it established that the Accused distributed weapons in Myamise *cellule*, Kayanga *secteur*, Gikomero *commune*, as Witness GAB describes.

4. Distribution of Weapons at a Bar in Ntaruka Secteur

a. Evidence

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

357 T. 11 February 2003, pp. 13 and 14 (VPG)

285. **Prosecution Witness GAC** testified that one day between 8 April 1994 and 12 April 1994 he was at a bar at Gatanga in Ntaruka *secteur*, Gikomero *commune*, owned by a man called Damien. The Witness saw the Accused arrive in a truck loaded with weapons, which were covered by a tarpaulin.[358] The Accused asked a man called Daniel where his *Interahamwe* forces were.[359] When Daniel indicated that some personnel were present and that others were on their way, the Accused produced a list from which he called out names. The Accused then personally handed out weapons, including guns and grenades, to those who came forward.[360] When asked by the Prosecutor whether or not he was present from the beginning to end of the distribution of the weapons, the Witness affirmed that he was.[361]

286. Prosecution Witness GAC testified that the Accused distributed weapons in other locations, because "he said so himself". The Witness stated, "He [the Accused] said he was going to continue with the distribution of weapons in other locations where he had not done so."[362]

b. Findings

- *Discussion*

287. Having considered the testimony of Prosecution Witness GAC the Chamber finds it to be improbable that the events would have occurred in the manner described by the Witness. The Chamber does not find the testimony that the Accused read from a list of names and distributed weapons in or around the bar to be credible. Accordingly, the Chamber cannot rely on this evidence.

- *Conclusion*

288. The Chamber does not find that the Accused came to a bar at Gatanga in Ntaruka *secteur*, Gikomero *commune*, and distributed weapons.

358 T. 18 February 2002, p. 64 (GAC) (ICS).
359 T. 14 February 2002, p. 76 (GAC) (ICS).
360 T. 14 February 2002, p. 77 (GAC) (ICS).
361 T. 14 February 2002, p. 79 (GAC) (ICS).
362 T. 14 February 2002, p. 85 (GAC) (ICS).

5. People Heard from Others That the Accused Distributed Weapons

a. Evidence

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

290. **Prosecution Witness GAD** testified that whilst at a bar, he heard *Interahamwe* saying that the Accused had distributed machetes which had been kept in Kayanga.[363] **Prosecution Witness GET** testified that when he conducted an investigation into who was involved in the killings in Gikomero, the results of his enquiry showed that the Accused had distributed weapons.[364]

b. Findings

- *Discussion and Conclusion*

291. The Chamber finds that the testimonies of Prosecution Witnesses GAD and GET on the issue of weapons distribution constitute hearsay evidence, which in the circumstances of the present case cannot be relied on for the purpose of establishing the Accused's involvement in the distribution of weapons.

I. Paragraph 6.44, 6.45 and 6.46 of the Indictment (Gikomero and Gishaka Massacres)

1. Allegations

292. Paragraph 6.44 of the **Indictment** reads:

> Interim Government Minister Jean de Dieu Kamuhanda had family ties to Gikomero commune, Kigali-Rural *préfecture*. During the month of April 1994 he supervised the killings in the area. On several occasions he personally distributed firearms, grenades and machetes to civilian militia in Kigali-rural for the purpose of "killing all the Tutsi and fighting the FPR".

363 T. 28 January 2002, p. 102 (GAD).
364 T. 6 September 2001, p. 38 (GET).

293. Paragraph 6.45 of the **Indictment** reads:

> Furthermore, Jean de Dieu Kamuhanda personally led attacks of soldiers and *Interahamwe* against Tutsi refugees in Kigali-Rural *préfecture*, notably on or about April 12th at the Parish Church and adjoining school in Gikomero. On that occasion Jean de Dieu Kamuhanda arrived at the school with a group of soldiers and *Interahamwe* armed with firearms and grenades. He directed the militia into the courtyard of the school Compound and gave them the order to attack. The soldiers and *Interahamwe* attacked the refugees. Several thousand persons were killed.

294. Paragraph 6.46 of the **Indictment** reads:

> During the attack on the school in Gikomero the militia also selected women from among the refugees, carried them away and raped them before killing them.

295. In its closing brief, the Prosecution alleges that:

> Between the period of 8 and 20 April 1994, by his acts and omissions in the wider Gikomero area and more particularly at the Gikomero Protestant and Gishaka Catholic Parish Churches and schools respectively, the Accused acted and engaged in activities that make him guilty of all the extant charged offences. On 12 April, the Accused a very powerful MRND man went to the Gikomero Parish Church and school where he condoned the shooting of an elderly Tutsi who was trying to intervene and ordered the massacres of the refugees at the place. It is the Prosecution case that he did the same as the Gishaka Catholic Parish and school.[365]

296. In its closing brief, the Defence submits that it does not dispute that there were massacres on 12 April 1994 at the Parish of Gikomero. Rather the Defence strictly denies the involvement of the Accused in any capacity. The Accused testified that from 6 April 1994 he never went to his birthplace of Gikomero *commune* and that he was in Kigali throughout this time until he, his family members and his neighbours went to Gitarama on 18 April 1994.[366]

365 Prosecution Closing Brief, para. 65.
366 Defence Closing Brief, para. 431 (French original) and para. 1320 (English translation).

2. *Massacre at the Gikomero Parish Compound*

a. Prosecution Evidence

- *Presence of the Accused in Gikomero Commune on 12 April 1994*

Prosecution Witness GEB

297. **Prosecution Witness GEB,** a Tutsi, [367] testified that before the war, he knew the Accused because they came from neighbouring *secteurs*.[368] The Witness testified that he had known the Accused for about three years before April 1994. The Witness remembered the day the Accused introduced his wife to his family[369] in Gikomero[370], which was the last time that they saw each other.[371] Later, he testified that the last time he saw the Accused was at the opening of Kayanga Health Centre.[372] The Witness could not tell the Court the date of the opening ceremony of the Kayanga Health Centre.[373] On cross-examination, the Defence asserted that the Accused could not have been at the opening ceremony that was held in 1991 because the Accused was in Butare and had stayed there for two years without going to Gikomero.[374] The Witness identified the Accused in Court.[375]

298. Prosecution Witness GEB testified that he lived in Gicaca *secteur*.[376] He testified that he was baptised in Gikomero Parish in 1985.[377] He testified that on 7 April 1994 he was at home with his wife when he heard about the death of the President.[378] The Witness testified that "the Hutu decided to kill the Tutsi at that point in time"[379] and that from that moment he and the others went to the bush and neighbouring forest.[380] He testified that he left his place of hiding on 12 April 1994.[381]

299. The Witness testified that when he returned from the bush, he learnt that refugees were gathered at Gikomero.[382] He and three others, namely

367 T. 12 September 2001, p. 62 (GEB).
368 T. 12 September 2001, p. 66 (GEB).
369 T. 12 September 2001, p. 65 (GEB).
370 T. 12 September 2001, p. 100 (GEB).
371 T. 12 September 2001, p. 66 (GEB).
372 T. 12 September 2001, p. 102 (GEB).
373 T. 12 September 2001, p. 100 (GEB).
374 T. 12 September 2001, p. 101 (GEB).
375 T. 12 September 2001, p. 67 (GEB).
376 T. 12 September 2001, p. 63 (GEB).
377 T. 12 September 2001, p. 83 (GEB).
378 T. 12 September 2001, pp. 62, 63 and 78 (GEB).
379 T. 12 September 2001, p. 63 (GEB).
380 T. 12 September 2001, p. 64 (GEB).
381 T. 12 September 2001, p. 64 (GEB).
382 T. 12 September 2001, p. 64 (GEB).

Ruhindura, Munyensanga, and a man from Rubungo, joined the refugees at Gikomero;[383] but left their wives and children at Gahini Centre for safety reasons.[384] He further testified that they believed that no one would dare to attack the place of worship, and that is why they went to Gikomero Parish.[385]

300. He testified that on his way to Gikomero Parish, at Kagikomero,[386] he saw the Accused on board a pick-up[387] together with two others sitting in the front of the vehicle. The people in the back were singing songs which are known to *Interahamwe*. He testified that the Accused was sitting in the middle of the front seat of the pick-up.[388] The Witness testified that there were about 20 people in the back of the pick-up[389] and that some were wearing Kitenge material, others trousers, and some military uniforms.[390] The Witness added that some of the people in the back of the pick-up were carrying weapons, and that about five of them were carrying Kalashnikov guns.[391] The Witness testified that when the vehicle passed him he was a kilometre and a half from Gikomero Parish.[392] The car was coming from behind the refugees in the direction of Gikomero and the distance between him and the vehicle was "just a step away".[393] He testified that they did not go further than the place where the vehicle passed them, and waited to see what the *Interahamwe* were going to do.[394]

301. Prosecution Witness GEB testified that they heard gunshot noise coming from the Gikomero Parish,[395] "salvos from several guns and it made a lot of noise",[396] approximately 30 minutes after the vehicle passed them.[397] He testified that they immediately returned to the Gahini Centre where they had left their wives and children.[398]

302. Prosecution Witness GEB testified that at around 6:00pm or 6:30pm, Tutsi survivors from Gikomero Parish arrived at the Gahini Centre.[399] The wounded told them that it was the "*Interahamwe* that Kamuhanda had brought from Kigali that had shot them."[400] The Witness testified that

383 T. 12 September 2001, pp. 64 and 65 (GEB).
384 T. 12 September 2001, pp. 76 and 82 (GEB).
385 T. 12 September 2001, p. 82 (GEB).
386 T. 12 September 2001, pp. 65 and 66 (GEB).
387 T. 12 September 2001, pp. 65, 66, 71 and 72 (GEB).
388 T. 12 September 2001, pp. 70, 84 and 85 (GEB).
389 T. 12 September 2001, p. 70 and 71 (GEB).
390 T. 12 September 2001, p. 72 (GEB).
391 T. 12 September 2001, pp. 71 and 72 (GEB).
392 T. 12 September 2001, p. 75 (GEB).
393 T. 12 September 2001, pp. 68 and 69 (GEB).
394 T. 12 September 2001, p. 75 (GEB).
395 T. 12 September 2001, p. 75 (GEB).
396 T. 12 September 2001, p. 76 (GEB).
397 T. 12 September 2001, pp. 75 and 91 (GEB).
398 T. 12 September 2001, p. 76 (GEB).
399 T. 12 September 2001, p. 76 (GEB).
400 T. 12 September 2001, p. 77 (GEB).

Aciel, a Hutu communal policeman of Gikomero *commune,* met the Witness and others at the Gahini Centre the same evening.[401] He testified that Aciel informed the people that they had to go and obtain weapons at the *commune*.[402] The Witness explained that from the Gahini Centre they went beyond Giti, in Byumba *préfecture,* to a place called Rutare for safety.[403]

Prosecution Witness GEU

303. **Prosecution Witness GEU** identified himself as a Tutsi.[404] The Witness indicated that he lived on the banks of Lake Muhazi in April 1994.[405] He testified that while at home at around 5:00am on 7 April 1994, he learnt about the death of President Habyarimana on an international radio station.[406] He felt that the Tutsis were going to be killed because they had been killed prior to 1994, and because there were roadblocks set up to stop Tutsis, even before 1994.[407] He testified that some people disappeared at roadblocks because they were Tutsis, *Inyenzi*.[408] The Witness explained that "*Inyenzi*" was used by supporters of the Habyarimana government to designate those attacking Rwanda at that time.[409] He stated that *Inyenzi* literally meant "insect", but figuratively meant "the Tutsi."[410] The Witness stated that *Inyenzi* meant *Inkotanyi*. It meant that all Tutsis were *Inyenzi* or traitors, and the word was "pejorative, despising, negative."[411]

304. Prosecution Witness GEU testified that on 8 April 1994, he saw many refugees in flight, coming from Bicumbi, Kabuga, and Mbandazi, saying that *Interahamwe* were killing Tutsi in that area.[412] The Witness explained that *Interahamwe* usually meant the youth of the MRND party who had undergone military training, but subsequently the word was used for the entire youth wing of that party because they behaved like *Interahamwe*.[413] The Witness testified that the *Interahamwe* were Hutus[414] whereas the refugees were all Tutsis.[415] On 8 April he was sent to the Gicaca trading centre to determine whether members of his extended family were among

401 T. 12 September 2001, pp. 93, 94 and 101 (GEB).
402 T. 12 September 2001, pp. 94 and 95 (GEB).
403 T. 12 September 2001, p. 121 (GEB).
404 T. 12 February 2002, p. 13 (GEU).
405 T. 12 February 2002, p. 75 (GEU) (ICS).
406 T. 12 February 2002, pp. 6-7 (GEU).
407 T. 12 February 2002, pp. 8-9 (GEU).
408 T. 12 February 2002, pp. 10, 11 and 13 (GEU).
409 T. 12 February 2002, pp. 10-11 (GEU).
410 T. 12 February 2002, p. 11 (GEU).
411 T. 12 February 2002, p. 101 (GEU).
412 T. 12 February 2002, pp. 13-14 (GEU).
413 T. 12 February 2002, p. 14 (GEU).
414 T. 12 February 2002, p. 16 (GEU).
415 T. 12 February 2002, p. 15 (GEU).

the refugees.[416] He testified that he found only the *conseiller* telling people to go back to their homes and organise the rounds.[417]

305. Prosecution Witness GEU testified that on 12 April 1994 his parents sent him again to the Gicaca trading centre to obtain new information.[418] He testified that refugees were scattered all over the Gicaca Trading Centre.[419] In closed session cross-examination, he confirmed that he was aware of a large influx of refugees from Gikomero on 12 April 1994 and that it was impossible to know from Kibara what was going on in Gikomero because of the distance between the two locations.[420]

306. Prosecution Witness GEU testified that while he was at Gicaca on 12 April 1994, at almost 1:00pm, a white-coloured vehicle arrived. People approached it and shouted: "That is Kamuhanda, that is Kamuhanda who has arrived."[421] The Witness testified that the vehicle looked like the vehicles used by non-governmental organisations or the United Nations, like a Land Cruiser.[422] The vehicle had a distinctive mark, black or blue in colour, which said MINUAR.[423] The Witness testified that the mark was on adhesive paper, pasted on the side of the vehicle with letters fading.[424] It was also possible that the same mark was on the roof of the vehicle.[425] The Witness testified that Kamuhanda was with his driver.[426] Some people spoke with Kamuhanda for not more than three minutes.[427] The Witness indicated that the distance between himself and the people who spoke with Kamuhanda was equivalent to the distance between himself and the Judges' bench.[428] The Witness testified that he did not hear clearly what was said because there was a crowd.[429]

307. Witness GEU testified that those who had spoken with Kamuhanda told them, "Kamuhanda has just confirmed the fact that the Tutsis had to die."[430] The information was conveyed immediately after the conversation with Kamuhanda and Kamuhanda himself must have heard what the people were saying.[431] The Witness testified that the vehicle departed in the direction of the Gikomero *secteur*. There is only one road and that road

416 T. 12 February 2002, pp. 16-17 (GEU).
417 T. 12 February 2002, p. 17 (GEU).
418 T. 12 February 2002, pp. 17-18 (GEU).
419 T. 12 February 2002, p. 47 (GEU).
420 T. 12 February 2002, pp. 25 and 72 (GEU); T. 12 February 2002, pp. 75-78 and 80. (GEU) (ICS).
421 T. 12 February 2002, pp. 18 and 19 (GEU).
422 T. 12 February 2002, p. 48 (GEU).
423 T. 12 February 2002, p. 49 (GEU).
424 T. 12 February 2002, p. 49 (GEU).
425 T. 12 February 2002, p. 49 (GEU).
426 T. 12 February 2002, p. 51 (GEU).
427 T. 12 February 2002, p. 19 (GEU).
428 The Defence approximated that distance to be about 5 metres, and the President stated that record should reflect 5 metres; T. 12 February 2002, pp. 51 and 52 (GEU).
429 T. 12 February 2002, pp. 52 and 53 (GEU).
430 T. 12 February 2002, pp. 19 and 20 (GEU).
431 T. 12 February 2002, p. 102 (GEU).

leads to the Gikomero *secteur*.[432] The Witness had never met Kamuhanda personally, but he had heard mention of him in his *secteur* because he was an influential person whose name was familiar.[433] The Witness testified that after Kamuhanda's visit, the population's attitude changed because someone influential had said that all the Tutsis had to die. All the Hutus started to get ready to carry out killings.[434] The Witness heard some Hutus saying they would start sharpening their knives now that they understood who the target was.[435]

308. Witness GEU testified that he used a side path to return home from the Gicaca Trading Centre because he was afraid of the dangers. On the way, he heard grenade explosions and gunshots from the direction of Gikomero.[436] The Witness estimated that he heard the sounds when he was halfway between Gicaca Trading Centre and his parents' house.[437] He did not recall how long it took him to get home.[438]

309. Witness GEU stated that in the evening, some of the refugees told him that Kamuhanda had ordered that Tutsis be killed and had distributed weapons to the Hutus, including grenades and guns.[439] Kamuhanda distributed weapons in a Gikomero *secteur* location where there was a Protestant Church, a primary school and many refugees.[440] On cross-examination, the Witness stated that he understood that the weapons distribution took place after he saw Kamuhanda in Gicaca.[441]

310. Witness GEU testified that a certain *communal* policeman, Sibomana Aseal [phonetic],[442]travelled virtually everywhere telling the Hutus to embark on the killings, saying that even Kamuhanda had said that Tutsis had to die,[443] and that no mistake should be made with regard to the target.[444] The policeman said these things in public at the location where the Witness lived.[445]

311. Witness GEU testified that on 13 April 1994 he started seeing houses belonging to Tutsis being burnt.[446] He and other refugees ran away in the direction of the *préfecture* of Byumba because killings had not yet started

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432 T. 12 February 2002, pp. 55 and 56 (GEU).
433 T. 12 February 2002, p. 20 (GEU).
434 T. 12 February 2002, pp. 20 and 21 (GEU).
435 T. 12 February 2002, pp. 21 and 22 (GEU).
436 T. 12 February 2002, p. 23 (GEU).
437 T. 12 February 2002, pp. 65-67 (GEU).
438 T. 12 February 2002, p. 61 (GEU).
439 T. 12 February 2002, pp. 23 and 24 (GEU).
440 T. 12 February 2002, p. 67 (GEU).
441 T. 12 February 2002, p. 67 (GEU).
442 T. 12 February 2002, p. 96 (GEU) (ICS).
443 T. 12 February 2002, p. 24 (GEU).
444 T. 12 February 2002, p. 24 (GEU).
445 T. 12 February 2002, pp. 68 and 72. (GEU).
446 T. 12 February 2002, p. 83 and 84. (GEU).

there.[447] The Witness stated that they crossed Lake Muhazi, where Hutu canoe men raised their fares for taking people across the lake 100 to 150 per cent.[448] He thought the canoe men assisted people across the lake initially because they were not properly informed of the situation; as they later started killing instead.[449]

Prosecution Witness GEK

312. The Chamber recalls that in Section H[450] the evidence of **Prosecution Witness GEK,** a Tutsi married to a member of Kamuhanda's family, was discussed extensively and that the Chamber found this Witness credible as to her prior knowledge of the Accused.

313. The Chamber recalls that Prosecution Witness GEK testified that her husband was a member of Kamuhanda's family,[451] and that she saw Kamuhanda about four times prior to the April 1994 events.[452] On 10 April 1994,[453] her husband asked her to hide inside a room when Kamuhanda came to their residence and stayed to talk to her husband. The Witness testified that she was not far away, and could hear what they were saying to each other.[454] Kamuhanda told her husband that the killings had not yet started in the Gikomero *commune* and that those who were to assist them had married Tutsi women. She testified that Kamuhanda indicated that he would bring equipment for them to start and if their Tutsi women were obstacles "they should, first, eliminate them".[455] She testified that the Accused said that he would return to see if they had started with the killings or that he would return so that the killings would start.[456] She said that she saw what happened with the weapons when the Accused returned to arrange for the killing to start.[457]

314. The Chamber further recalls that Prosecution Witness GEK testified that Kamuhanda came to the house of a neighbour[458] to arrange for the killings to start between 10 and 14 April 1994 at the primary school. Kamuhanda parked his vehicl, which was followed by another vehicle, a blue Daihatsu carrying a large number of people. The Witness explained that in the second vehicle some people were carrying machetes, clubs, and guns, but not everyone was armed, and that occupants either wore ordinary clothes or the *Interahamwe* uniform. The vehicle came from the direction of Kigali. On leaving, Kamuhanda entered his vehicle and went towards the

447 T. 12 February 2002, p. 25 (GEU).
448 T. 12 February 2002, p. 26 (GEU).
449 T. 12 February 2002, pp. 26-27 (GEU).
450 see above: Part III, Section H.
451 T. 4 September 2001, pp. 15 and 16 (GEK).
452 T. 3 September 2001, pp. 160 (GEK) (ICS).
453 T. 3 September 2001, p. 180 (GEK) (ICS)
454 T. 3 September 2001, pp. 167 and 168 (GEK) (ICS).
455 T. 3 September 2001 p. 171 (GEK) (ICS).
456 T. 3 September 2001, p. 177 (GEK) (ICS).
457 T. 3 September 2001, p. 177 (GEK) (ICS).
458 T. 3 September 2001, p.180 (GEK) (ICS).

primary school where there were large numbers of refugees.[459] The Witness testified that she heard gunshots and noise for between 20 and 40 minutes after Kamuhanda left.[460] After the gunshots ceased, they were frightened, and could hear the vehicles' engines, but could not see them as they left.[461] The Witness testified that she could see wounded children fleeing towards them and a young girl whose legs were amputated sought refuge in their house.[462]

315. Prosecution Witness GEK testified that three days after the shootings which occurred between 10 and 14 April 1994, when the *Interahamwe* from Rubungo *commune* came after them, she and relatives headed for Kibobo. There, they found bodies in the school. The Witness estimated the number of bodies at four to five thousand.[463] The Witness went to Kibobo with a relative and Defence Witness EM, her house-help. In further cross-examination, she denied that they stayed at Kibobo from 9 to 13 April 1994, as the Defence alleged Drocella and Defence Witness EM had stated.[464] She testified that they went to Kibobo because they were afraid of being killed, but they came back quickly because their Hutu husbands ensured their security, though they were Tutsis.[465] She denied the allegation by the Defence that she spent the night at Kibobo in Kayumba's house.[466] She testified in re-examination that she also travelled to Kibobo with her servant[467] and one child.[468] The Witness testified in re-examination that Drocella and her sisters were Tutsi and that Defence Witness EM was Hutu.[469]

- *Presence of the Accused at Gikomero Parish Compound on 12 April 1994 and the Attack*

Prosecution Witness GAF

316. **Prosecution Witness GAF**, a Tutsi, testified that he knew the Accused when the Accused was a student at the IPN.[470] He also knew the Accused from when he started working and met him on several occasions both when the Accused became involved in politics,[471] and when he was the Director General at the Ministry of Higher and Scientific Research.[472] The

459 T.3 September 2001, pp. 181 and 182 (GEK) (ICS).
460 T. 3 September 2001, p. 184 and 185 (GEK) (ICS).
461 T. 3 September 2001, p. 184 (GEK) (ICS).
462 T. 3 September 2001, pp. 185 and 186 (GEK) (ICS)
463 T. 4 September 2001, pp. 8 and 9 (GEK) (ICS).
464 T. 13 January 2003, p. 61 (GEK) (ICS).
465 T. 13 January 2003, p. 61 (GEK) (ICS).
466 T. 13 January 2003, p. 63 (GEK).
467 T. 13 January 2003, p. 71 (GEK) (ICS).
468 T. 13 January 2003, pp. 71 and 72 (GEK) (ICS).
469 T. 13 January 2003, p. 72 (GEK) (ICS).
470 T. 13 September 2001, pp. 45 and 46 (GEK) (ICS).
471 T. 13 September 2001, p. 46 (GAF) (ICS).
472 T. 13 September 2001, p. 46 (GAF).

Witness met the Accused at the inaugurations of the *commune* office in 1991 and of the Kayanga Health Centre in 1992. The Witness added that the Accused was very well known in his area and was known to be a very influential politician and an influential member of the MRND party from the Gikomero area.[473] In cross-examination, the Witness testified that he made a mistake in the dates.[474] He testified that he saw the Accused at the inauguration of the *commune* office in Gikomero in 1987, at the Kayanga Health Centre in 1991, and when the Accused attended MRND meetings in 1992.[475] The Witness testified that the opening of the *commune* office was a long time ago. When the Defence suggested that the opening was in 1986, the Witness testified that he thought it was in 1987.[476] The Witness testified that Kamuhanda was thanked for what he had done and given the position of Minister in May 1994.[477] The Witness identified the Accused in court.[478]

317. Prosecution Witness GAF testified that Tutsi members of his family took refuge in his house on 7 April 1994 between 5:00 and 6:00pm. He testified that he and his family members hid in the forests around the houses.[479] At around 5:00am on 8 April 1994, they left their hiding places, went back to their houses[480] and saw the massive arrival of refugees, mostly Tutsis, [481] from Kabuga and Ndera regions.[482] On the same day, 8 April 1994, they decided to follow the refugees to Gikomero Hill together with their cattle.[483] The Witness went back home and on nearing his house on 9 April 1994, he found a Hutu police officer,[484] armed with a rifle, telling the Hutus not to flee as only the Tutsis were being sought.[485]

318. Prosecution Witness GAF testified that on 9 April 1994 he suggested to his family that they take refuge at the Gikomero Parish.[486] He left his wife and family with his relative, Gakwene Antoine, for safekeeping.[487] However, his wife and some other persons sought refuge at Gakwene's son's house nearby because there were too many people in Gakwene's house.[488] The Witness did not go back to the Gikomero Parish that night.[489] In the morning after 10 April 1994, after spending the night at Rutabingwa's

473 T. 13 September 2001, p. 46 (GAF).
474 T. 17 September 2001, p. 35 (GAF)
475 T. 17 September 2001, p. 35 (GAF).
476 T. 17 September 2001, p. 36 (GAF).
477 T. 17 September 2001, pp. 39 and 40 (GAF).
478 T. 13 September 2001, p. 50 (GAF).
479 T. 13 September 2001, p. 24 (GAF).
480 T. 13 September 2001, pp. 24 and 25 (GAF) .
481 T. 13 September 2001, p. 26 (GAF).
482 T. 13 September 2001, p. 25 (GAF).
483 T. 13 September 2001, p. 27 (GAF)
484 T. 13 September 2001, p. 29 (GAF).
485 T. 13 September 2001, p. 28 (GAF).
486 T. 13 September 2001, p. 30 (GAF).
487 T. 13 September 2001, p. 30 (GAF)
488 T. 13 September 2001, p. 31 (GAF).
489 T. 13 September 2001, p. 31 (GAF).

house, he went to the Parish to check on the situation because his elder brothers were there.[490] There was peace in Gikomero Parish.[491] When the Witness arrived at the Parish, they milked a cow and he took the milk to his children and their mother who had stayed at Gakwene's house.[492] On the following day, 11 April 1994, he left Rutabingwa's house to go back to his house and take some food for his family.[493] The Witness went back to the household of Rutabingwa that evening and returned later to the Parish where he spent the night with other people.[494] While at the Parish, at approximately 10:00pm, they listened to Radio Muhabura.[495] While they were listening, Pastor Nkuranga Charles, who was in charge of the Parish, [496] arrived and shouted "[...] Now that I have given you shelter, you are listening to the radio of the *Inyenzi* which means that you yourselves are *Inyenzi*."[497] They switched off the radio on the Pastor's orders.[498]

319. Prosecution Witness GAF testified that he found Hutus and Tutsis at the Parish.[499] A small market had been set up there to enable the refugees to get food supplies.[500] Although Hutus were among the refugees, the Hutus who were at the market were natives of the area conducting business.[501] The Witness remained at the Parish the following day[502][12 April 1994] when they milked the cows, and that he had to take supplies to the children and their mother.[503] He testified that he took his bicycle[504] to the Centre where his store was located to get some beans.[505] When the Witness returned to the Parish between 2:00pm and 3:00pm[506] he heard noisy vehicles and that there were cows all around the courtyard. The Witness testified that he wanted to take a few cows away but he was not allowed by Pastor Nkuranga. The Witness accepted Pastor Nkuranga's statement that they should wait to find out the purpose of those who were coming.[507]

320. Prosecution Witness GAF testified that he saw four vehicles arrive from the upper side of the Parish.[508] The leading vehicle had its headlights turned on. As the vehicles were moving directly at him, he moved away

490 T. 13 September 2001 p. 31 (GAF).
491 T. 13 September 2001 p. 32 (GAF).
492 T. 13 September 2001, p. 33 (GAF).
493 T. 13 September 2001, pp. 34, 37 and 38 (GAF).
494 T. 13 September 2001, p. 38 (GAF).
495 T. 13 September 2001, p. 39 (GAF).
496 T. 13 September 2001, p. 39 (GAF).
497 T. 13 September 2001, p. 39 (GAF).
498 T. 13 September 2001, p. 39 (GAF).
499 T. 13 September 2001, pp. 40 and 41 (GAF).
500 T. 13 September 2001, p. 41 (GAF).
501 T. 13 September 2001, p. 41 (GAF).
502 T. 13 September 2001, p. 39 (GAF).
503 T. 13 September 2001, p. 40 (GAF).
504 T. 13 September 2001, p. 108 (GAF).
505 T. 13 September 2001, p. 40 (GAF).
506 T. 13 September 2001, p. 41 (GAF).
507 T. 13 September 2001, p. 42 (GAF).
508 T. 13 September 2001, p. 42 (GAF).

and stood by the side of the Church.[509] The first vehicle was a white Pajero and the second a white Hilux pick-up truck, with UN markings.[510] The third vehicle was also a white Hilux pick-up and the fourth a Daihatsu, but the Witness could not recall the colour, though it may have been blue.[511] The vehicles stopped and the Witness was approximately 15 to 20 meters from the line of parked vehicles, though some were only 10 meters away.[512] The Daihatsu vehicle was full of *Interahamwe,* wearing all kinds of attire and carrying clubs, grenades, guns and machetes.[513] The Witness saw the Accused come out from the vehicle with UN markings,[514] but could not recall what the Accused was wearing.[515]

321. Prosecution Witness GAF testified that when the vehicles came to a stop, they shot at Augustin Bucundura, Pastor Nkuranga's assistant, who fell to the ground.[516] He could not tell who shot at Bucundura, but that it was the people who came with the Accused,[517] a soldier disguised as an *Interahamwe.*[518] The vehicle was still in motion when Bucundura, a Tutsi, was killed.[519] Bucundura was standing next to Pastor Nkuranga, a Hutu,[520] when he was shot because they had come out from the house together.[521] Pastor Nkuranga was not shot.[522]

322. Prosecution Witness GAF testified that Kamuhanda stepped down from the vehicle, raised his hands and spoke to those who came with him, particularly the *Interahamwe.*[523] Kamuhanda was accompanied by *Interahamwe,* a word used to designate members of the MRND.[524] However, even the inhabitants of the region that killed were called *Interahamwe, and* the word *Interahamwe* came to mean anybody who participated in the killings.[525] Kamuhanda spoke in *Kinyarwanda* to those who were with him, particularly the *Interahamwe,* and said "*Mukore*", which means, "work".[526] Kamuhanda, as he came with killers and was their leader, used this word to tell them that they should begin the killings. The killings started after he pronounced that word and all but one

509 T. 13 September 2001, p. 42 (GAF).
510 T. 13 September 2001, p. 43 (GAF).
511 T. 13 September 2001, p. 43 (GAF).
512 T. 13 September 2001, p. 44 (GAF).
513 T. 13 September 2001, pp. 43 and 44 (GAF).
514 T. 13 September 2001, p. 45 (GAF).
515 T. 13 September 2001, pp. 46 and 47 (GAF).
516 T. 13 September 2001, pp. 44 and 45 (GAF).
517 T. 13 September 2001, p. 45 (GAF).
518 T. 17 September 2001, p. 54 (GAF)
519 T. 13 September 2001, p. 51 (GAF).
520 T. 13 September 2001, p. 51 (GAF).
521 T. 13 September 2001, p. 51 (GAF).
522 T. 13 September 2001, p. 51 (GAF).
523 T. 13 September 2001, p. 47 (GAF).
524 T. 13 September 2001, p. 56 (GAF).
525 T. 13 September 2001, p. 56 (GAF).
526 T. 13 September 2001, pp. 47 and 48 (GAF).

of the vehicles left.[527] Kamuhanda was not armed when he got out of the car.[528] Kamuhanda incited the people to start the killing[529] and the young people who he had brought with him started killing on his order.[530] Kamuhanda was only there briefly; approximately one or two minutes before leaving.[531] Kamuhanda was not present when the killings started.[532] When Kamuhanda spoke, there were a lot of gunshots[533] following which most the cattle dispersed. Other cattle were shot in the courtyard and one of the vehicles carried away the beef.[534]

323. Prosecution Witness GAF testified that nothing happened before Kamuhanda's arrival.[535] Before Kamuhanda's arrival, there were no rifles, grenades, guns, machetes or Rwandan clubs. Kamuhanda brought instruments to distribute to people without any. [536] When the Accused left, others stayed behind and started killing, including some communal police officers.[537] The killers used rifles, grenades, machetes, Rwandan clubs and even spears.[538] The killers were composed of *Interahamwe* and Hutus, but the Witness could not tell whether there were no Tutsi police officers.[539] Among the police officers, he recognized Karezi, who lived in Gikomero.[540] Also present were Ngarimbe and John Ntawuruhinga, reservists from Gikomero,[541] a brigadier Nyarwaya,[542] and another police officer by the name of Asiel whose first name he did not know.[543]

324. Prosecution Witness GAF testified that he took refuge in a sorghum field and ran away during the night.[544] From that location, he could see people being killed in the Compound, but not the killers in the classrooms.[545] The Witness testified that the number of people killed that day at the Parish was approximately one thousand.[546] The Witness was shown photographs from Prosecution Exhibit P2 and pointed out the area to the court.[547] The

527 T. 13 September 2001, p. 48 (GAF).
528 T. 13 September 2001, p. 52 (GAF).
529 T. 13 September 2001, p. 52 (GAF).
530 T. 13 September 2001, p. 52 (GAF).
531 T. 13 September 2001, p. 55 (GAF).
532 T. 13 September 2001, p. 55 (GAF).
533 T. 17 September 2001, p. 8 (GAF).
534 T. 17 September 2001, pp. 8 and 9 (GAF).
535 T. 13 September 2001, p. 52 (GAF).
536 T. 13 September 2001, p. 52 (GAF).
537 T. 13 September 2001, p. 53 (GAF).
538 T. 13 September 2001, p. 56 (GAF).
539 T. 13 September 2001, p. 53 (GAF).
540 T. 13 September 2001, pp. 53 and 54 (GAF).
541 T. 13 September 2001, p. 54 (GAF).
542 T. 13 September 2001, p. 54 (GAF).
543 T. 17 September 2001, p. 42 (GAF).
544 T. 13 September 2001, p. 48 (GAF).
545 T. 13 September 2001, pp. 56 and 57 (GAF).
546 T. 13 September 2001, p. 59 (GAF).
547 T. 13 September 2001, pp. 62-76 (GAF).

Witness was also shown a video[548] to clarify what he had identified from the photographs.[549]

Prosecution Witness GES

325. **Prosecution Witness GES** testified that as he is from Rubungo *commune,* which borders Gikomero,[550] and that he knew Kamuhanda as a local intellectual, as did most people from that area.[551] Witness GES worked as a civil servant in the Department of Public Works in the Bridges and Roads Division.[552] He testified that during a period of approximately three years from 1990 to 1994, Kamuhanda was Director of Higher Education, a senior post in the civil service, and that Kamuhanda was well known in the civil service.[553] The Witness testified that, because his office was across the road from Kamuhanda's office, he often saw Kamuhanda before and after work, and during breaks.[554] The Witness testified that the IRST was a division of the Registry of Higher Education and Scientific Research, where Kamuhanda was employed. The Defence suggested that Kamuhanda was at the IRST for two years from 1990 to 1992, contrary to the Witness' testimony.[555] The Witness clarified that he did not keep close account of Kamuhanda's whereabouts and it was possible that Kamuhanda went on a mission between 1990 and 1994.[556] The Witness had the opportunity to see Kamuhanda at several *Umugundas* and *animations* that included personnel from several civil service divisions.[557] When the Defence suggested that the different divisions of the civil service conducted separate *Umugandas* and *animations*,[558] the Witness responded that sometimes different divisions conducted joint gatherings.[559] In cross-examination, the Witness maintained that his offices were in the building across the street from Kamuhanda's offices housed at the Kacyiru complex, though the offices may not have actually faced each other.[560] The Witness identified Kamuhanda in court.[561]

326. Prosecution Witness GES testified that he fled from his home in Kigali on 8 April 1994 after the Hutus had begun killing the Tutsi there.[562] He fled to

548 Exhibit D.1; T. 13 September 2001, p. 66 (GAF).
549 T. 13 September 2001, pp. 66-70. (GAF).
550 T.30 January 2002, p. 57 (ICS). (GES.
551 T.30 January 2002, p. 58. (GES).
552 T. 29 January 2002, p. 114 and 116 (GES); T. 30 January 2002, pp. 63 and 64 (ICS). (GES).
553 T. 29 January 2002, pp. 114-118 (GES).
554 T. 29 January 2002, p. 117 (GES).
555 T. 30 January 2002, p. 70 and 71 (GES).
556 T. 30 January 2002, pp. 71-74 (GES).
557 T. 30 January 2002, pp. 79 and 80 (GES).
558 T. 30 January 2002, pp. 82, 98 (GES).
559 T. 30 January 2002, pp. 85, 97-98 and 100 (GES).
560 T. 30 January 2002, pp 99-100 (GES).
561 T. 29 January 2002, pp. 123 and 124 (GES).
562 T. 29 January 2002, p. 102. (GES).

the North via Karagari and Rutare, in Byumba *préfecture*,[563] and arrived in Gikomero Protestant Church on the evening of 11 April 1994.[564]

327. Prosecution Witness GES testified that he saw Kamuhanda arrive at Gikomero Parish on the morning of 12 April 1994.[565] Kamuhanda arrived in the passenger seat of a single-cab truck[566] with approximately ten armed men in the back of the truck.[567] Witness GES recognised Kamuhanda as the latter got out of the truck to speak with the pastor of the Parish, Pastor Nkuranga,[568] approximately fifty metres away.[569] During this conversation, the truck backed into a parking place and armed men got out of the truck.[570] In response to a question from the Bench as to whether or not the men who arrived in the truck with Kamuhanda were wearing uniforms, the Witness testified that he only remembered that they wore hats covered with grass and branches.[571] In cross-examination, the Witness testified that the investigators erred in writing that Kamuhanda had arrived at 10:00am whereas the Witness testified that he told the investigators that some Hutus had arrived at approximately 10:00am to loot the Tutsi refugees. He maintained that Kamuhanda arrived at the Parish sometime between 12:00pm and 2:00pm.[572]

328. Prosecution Witness GES testified that after approximately ten minutes, the armed men began to kill refugees who had taken refuge in Gikomero Parish, starting with a man named Bucundura.[573] The Witness testified that Bucundura was killed by a person who came with Kamuhanda[574] while Kamuhanda was still there.[575]

329. Prosecution Witness GES testified that the killings continued in Gikomero, forcing him to flee once again, across the river to Giti *commune* and then across Lake Muhazi.[576]

Prosecution Witness GAA

330. **Prosecution Witness GAA,** a Tutsi, first met Kamuhanda when Kamuhanda's sister Mukabandora was married to Vincent Ngirumpatse and lived in Mbandazi, about five hundred metres from where he lived.

563 T. 29 January 2002, pp. 103 and 104. (GES).
564 T. 30 January 2002, p.15. (GES).
565 T. 29 January 2002, pp. 108-109. (GES).
566 T. 30 January 2002, pp. 40, 41, 91 and 92. (GES).
567 T. 29 January 2002, pp. 106-108 (GES); T. 30 January 2002, pp.38-42. (GES).
568 T. 30 janvier 2002, p.104. (GES).
569 T. 29 January 2002, p. 109*. (GES).
570 T. 30 janvier 2002, pp. 91-92. (GES).
571 T. 30 January 2002, p. 108. (GES).
572 T. 30 January 2002, p. 88. (GES).
573 T. 29 janvier 2002, pp.120, 122. (GES). The English transcript refers to Bicindira.
574 T. 29 January 2002, p. 112. (GES).
575 T. 29 January 2002, p. 113. (GES).
576 T. 29 January 2002, pp. 41, 120, 122 and 123. (GES).

Kamuhanda went to Mbandazi to take gifts to his sister on the birth of her first child and the Witness was present during this ceremony, although he was not officially invited. Witness GAA sat outside the house for about one hour and saw Kamuhanda for a short while.[577] The Witness further testified that he saw Kamuhanda again when he had gone to Mbandazi to bury his sister.[578] The Witness identified Vincent Ngirumpatse from a photograph[579] taken at the Accused's sister's funeral. During both occasions, he never spoke to, nor was he introduced to Kamuhanda but someone showed him who Kamuhanda was.[580] The Witness identified the Accused in Court, and the Court noted that the Witness had recognised the Accused.[581]

331. Prosecution Witness GAA testified that, while in Mbandazi, he was told that he was being sought because he was a Tutsi and because he represented the PL Party.[582] He stayed in Mbandazi on 7 and 8 April 1994 and went to Kabuga on 9 April 1994. The Witness did not stay in Kabuga but went back to Mbandazi and Gicaca on the same day. He spent the night in Gicaca and went to Gikomero on 10 April 1994.[583] The Witness knew Pastor Nkuranga, who was of Hutu origin. On 10 April 1994, the Pastor told him that it was safe in Gikomero.[584] In Gikomero, the Witness could see houses on fire in Mbandazi. Witness GAA felt unsafe in Gikomero where there were people who knew him and because he saw *Interahamwe* at roadblocks; so he left and went to Kibara. Nevertheless, he returned to Gikomero on 12 April 1994 because about thirty of his family members where there.[585] The Witness testified that he saw *Interahamwe* wearing uniforms at Gikomero on 10 April 1994, but they were not carrying weapons,[586] and they were only at the roadblocks.

332. Prosecution Witness GAA testified that on 12 April 1994 at Gikomero Parish, there were about six thousand refugees[587] and livestock in the courtyard of the Protestant Parish. Local Hutus came to the Church to sell goods to the refugees.[588] The Witness did not recognise photographs 4, 6 and 8 in Prosecution Exhibit 2.[589] The Witness testified to having seen a white pick-up truck bearing the letters "UN" on its side arrive at Gikomero. There were about ten people who came from the rear of the

577 T. 19 September 2001, pp. 107 – 110. (GAA).
578 T. 19 September 2001, pp. 108 and 109. (GAA).
579 Prosecution exhibit 4.
580 T. 19 September 2001, pp. 107 - 110. (GAA).
581 T. 19 September 2001, pp. 111-113. (GAA).
582 T. 19 September 2001, pp. 93, 94, 95 and 98. (GAA).
583 T. 19 September 2001, pp. 95, 97 and 98. (GAA).
584 T. 19 September 2001, p. 100. (GAA).
585 T. 19 September 2001, pp. 101 – 103. (GAA).
586 T.19 September 2002, p.102. (GAA).
587 T. 20 September 2001, p. 23. (GAA).
588 T. 20 September 2001, pp. 26 – 27. (GAA).
589 Prosecution Exhibit P2, Maps, sketches and still photographs of Gikomero Parish; T. 20 September 2001, p. 29. (GAA).

vehicle including soldiers, *Interahamwe* and communal policemen. All of these people wore their respective uniforms and carried weapons such as rifles, cudgels and knives.[590] He further testified that another vehicle arrived from which Kamuhanda alighted raising his hands as if greeting the people. The Witness indicated that he was less than one hundred metres away from Kamuhanda.[591] He testified that there was a stampede when the two vehicles arrived and people were being shot at.[592] The Witness initially testified that the shooting had started when the first vehicle arrived, and that as soon as he saw the second vehicle arrive, he left.[593]

333. Prosecution Witness GAA testified that Pastor Nkuranga, accompanied by Bucundura, came out of his house and shouted, "I am Pastor Nkuranga, do not shoot at me." The Witness testified that at that moment, one of the soldiers shot and killed Bucundura and afterwards they shot three others. He further testified that Bucundura was shot when the two vehicles were there.[594] The Witness did not mention Bucundura's shooting in his statement of 6 July 1999.[595]

334. Prosecution Witness GAA testified that in Kamuhanda's presence, Hutus shouted, "Get to work Kamuhanda is here now."[596] The Witness testified that Kamuhanda went back into his vehicle and left while Hutus continued to shoot Tutsis. The Witness further testified that Kamuhanda was present during these killings but he did not stop the soldiers from shooting. The Witness's family members told him that the shooting continued for four to five hours, and after he returned from exile he estimated the number of people killed at approximately three thousand.[597]

Prosecution Witness GEE

335. **Prosecution Witness GEE**, a Tutsi, testified that the day after he heard on RTLM Radio that the President's plane had been shot down,[598] Tutsi refugees went to his house, and *Interahamwe* attacked and killed those refugees.[599] He survived and fled to Gikomero *commune* on 7 April 1994. On the way he met approximately one hundred Tutsi refugees coming from the Kabuga Region. The Witness testified that he and the refugees were detained by *Interahamwe*, who took their belongings and then

590 T. 19 September 2001, pp. 104-106. (GAA).
591 T. 19 September 2001, pp. 113, 114 and 119 (GAA); T. 20 September 2001, p. 32. (GAA).
592 T. 20 September 2001, p. 31 (GAA).
593 T. 20 September 2001, p. 33 (GAA).
594 T. 20 September 2001, p. 33 (GAA).
595 T. 20 September 2001, pp. 42 and 43 (GAA).
596 T. 19 September 2001, p. 115 (GAA).
597 T. 20 September 2001, pp. 36 and 37 (GAA).
598 T. 17 September 2001, pp. 99 and 103 (GEE).
599 T. 17 September 2001, pp. 104 and 105 (GEE).

released them. They went to Burunga to a place known as "*Je t'aime*" where the Jurwe *secteur* Office is located. At Jurwe, they saw a white "taxi," coming towards them and they ran to Samutuha because the people in the vehicle were distributing machetes and other tools used to kill Tutsis.[600] The Witness explained that he did not talk about this taxi to the investigators in the statement of 28 February 2000 because he could not explain every detail.[601] The Witness testified that from Samutuha he went to Cyabatanzi[602] where he spent two days until the *Interahamwe* drove him and the refugees out to Gicaca.[603] They spent a night in Gicaca and the next morning the *Interahamwe* attacked them again and they ran to Gikomero *secteur* in Gikomero *commune*.[604] He further testified that he got to Gikomero at 10:00am on or about 11 April 1994.[605]

336. Prosecution Witness GEE testified that he knew Pastor Nkuranga.[606] He further testified that there were approximately 400 people in the classrooms of the Gikomero Parish Compound.[607] The Witness spent the night of 11 April 1994 in Gikomero with other refugees.[608] He did not recognise any of the buildings in the Compound from the photographs shown to him in Court.[609]

337. Prosecution Witness GEE testified that between 2:00pm and 3:00pm on 12 April 1994, while they were attacked by *Interahamwe*, refugees exclaimed, "We're going to be killed. Kamuhanda is coming."[610] The Witness was standing in front of a classroom when he saw vehicles arrive. Kamuhanda arrived first, at 3:00pm,[611] with soldiers and communal policemen in a white pick-up truck. This was the first time the Witness saw Kamuhanda.[612] After the arrival of Kamuhanda, two other vehicles arrived and stopped to let *Interahamwe* and soldiers alight.[613] When Kamuhanda arrived, Pastor Nkuranga was with an old man named Bucundura.[614]

338. Prosecution Witness GEE testified that a policeman shot at Bucundura, who died on the spot.[615] He was able to see the shooting from where he stood, despite the crowd of refugees and the cattle. The refugees then fled

600 T. 17 September 2001, pp. 105 – 109 (GEE).
601 T. 19 September 2001, p. 61 – 62 (GEE).
602 T. 17 September 2001, p. 110 (GEE).
603 T. 18 September 2001, p. 4 (GEE).
604 T. 18 September 2001, p. 4 and 5 (GEE).
605 T. 19 September 2001, p. 13 (GEE).
606 T. 18 September 2001, p. 6 (GEE).
607 T. 19 September 2001, p. 7 (GEE).
608 T. 18 September 2001, p. 5 (GEE).; T. 19 September 2001, p. 25 (GEE).
609 T. 19 September 2001, pp. 32 – 36 (GEE). Photographs 4, 6, and 8 in Prosecution Exhibit 2
610 T. 18 September 2001, p.5 (GEE).
611 T. 18 September 2001, p. 6 (GEE); T. 19 September 2001, p. 25 (GEE).
612 T. 18 September 2001, pp. 6 and 8 (GEE); T. 19 September 2001, pp. 56 – 58 (GEE).
613 T. 18 September 2001, p. 9 (GEE).
614 T. 18 September 2001, pp. 6 and 7 (GEE).
615 T. 18 September 2001, pp. 7 and 9 (GEE).

to the classrooms where they were shot at, flushed out, and ordered to lie down.[616]

339. Prosecution Witness GEE testified that in the presence of those who were with him, Kamuhanda called upon the Hutus to carry out the attack and to stay up all night.[617] The Witness survived and lay among the dead until 4:00am [the next day], when another attack was launched by the Hutus who were guarding the site. He escaped to a sorghum field and later fled to Lake Muhazi.[618] According to the Defence, in his statement, the Witness declared that he hid in the sorghum fields after the attack, at 5:00pm on 12 April 1994, and not at 4:00am [the next day] as he testified in Court.[619] The Witness explained that because, he had not seen Kamuhanda then, he did not think this information to be important to the investigators. In cross-examination, the Witness was asked why he had not mentioned in his statement that Kamuhanda ordered this 4:00am attack. He testified that it was an omission on his part and that he could not explain everything.[620] Witness GEE did not see Kamuhanda leave the area because he was lying on top of dead bodies pretending to be dead.[621]

Prosecution Witness GEA

340. **Prosecution Witness GEA**, a Tutsi,[622] testified that on Wednesday, 6 April 1994, when he was at home, he heard an explosion and saw a bright light between 7:00pm and 8:00pm. He then left his house and went towards Kanombe.[623] He testified that he hid as of the night of 6 April, without his wife and his loved ones. He did this because of his experience in the 1963 war, when only Tutsi men were killed, and women and children were spared.[624] On Friday, two days after Habyarimana's plane was shot down, he went to his neighbour, an elderly woman.[625] However, when he saw three Hutus[626] armed with bows and arrows, machetes and grenades, he sought shelter in a banana plantation.[627] The three men looted his house and killed two people he had left there.[628] The Witness testified that, following this incident, on Friday, 8 April 1994, he left and hid in Cgishure in Rubungo *commune,* Jurwe *secteur*. Here he found more

616 T. 19 September 2001, pp. 37 and 38 (GEE).
617 T. 19 September 2001, p. 75 (GEE).
618 T. 18 September 2001, pp. 11 and 12 (GEE).
619 T. 19 September 2001, p. 62 - 65 (GEE).
620 T. 19 September 2001, pp. 74 and 75 (GEE).
621 T. 19 September 2001, pp. 51-53 (GEE).
622 T. 20 September 2001, p. 67 (GEA).
623 T. 20 September 2001, p. 62 (GEA).
624 T. 24 September 2001, pp. 4, 5 and 10 (GEA).
625 T. 20 September 2001, pp. 70 and 71 (GEA).
626 T. 20 September 2001, pp. 71 and 73 (GEA).
627 T. 20 September 2001, p. 71 (GEA).
628 T. 20 September 2001, p. 72 (GEA).

than three thousand Tutsi refugees from various localities.[629] The Witness testified that there were attacks every night carried out by the population and the *Interahamwe*.[630] Reinforcements came from the *communal* police and the military, who also killed.[631]

341. Prosecution Witness GEA testified that he headed for Gikomero, arriving on Monday, 11 April 1994, at the Gikomero Parish.[632] He had never been to that Church before, and has never returned.[633] The Witness testified that there were many refugees with their cattle at the Church.[634] He testified that he saw nothing when he arrived in Gikomero on 11 April 1994 because he was tired, wounded, and uncertain as to whether the place was safe or not.[635]

342. Prosecution Witness GEA testified that the day after his arrival [12 April 1994], the refugees were attacked by *Interahamwe*, policemen, and soldiers, who had arrived in a white pick-up with the letters "UN" on the side.[636] In cross-examination, the Defence indicated that the Witness had made no mention of the initials "UN" in his statement. The Witness explained that during the interview he felt it unnecessary to mention the initials because he was not directly asked this information.[637] The Witness testified that the white pick-up carried many people and that, upon its arrival, Kamuhanda alighted from the front cabin and went towards the Pastor's house.[638] The vehicle was parked near the Church.[639] Prior to the massacre, Witness GEA did not know the Accused.[640] The Witness was told this man was Kamuhanda by a boy,[641] a native of Gikomero.[642] Others with him shouted, "Kamuhanda has just arrived, our lives will no longer be peaceful and safe."[643] In response to a question from the Bench, the Witness testified that those who recognised Kamuhanda knew him as a killer.[644] The Witness further testified that upon arriving in the white pick-up, Kamuhanda talked to Pastor Nkuranga. The Witness said that Nkuranga connived with Kamuhanda, because he prevented the refugees from leaving the Compound, by reassuring their safety.[645] In cross-examination, the Witness testified that on 12 April 1994 the Pastor took

629 T. 20 September 2001, pp. 73 and 74 (GEA).
630 T. 20 September 2001, p. 75 (GEA).
631 T. 20 September 2001, p. 75 (GEA).
632 T. 20 September 2001, pp. 75 and 76 (GEA).
633 T. 20 September 2001, pp. 76 and 82 (GEA).
634 T. 20 September 2001, p. 77 (GEA).
635 T. 24 September 2001, p. 17 (GEA).
636 T. 20 September 2001, pp. 76 and 77 (GEA).
637 T. 24 September 2001, p. 26 (GEA).
638 T. 20 September 2001, p. 78 (GEA).
639 T. 24 September 2001, p. 20 (GEA).
640 T. 24 September 2001, p. 35 (GEA).
641 T. 20 September 2001, p. 78 (GEA).
642 T. 24 September 2001, p. 36 (GEA).
643 T. 20 September 2001, p. 79 (GEA).
644 T. 24 September 2001, p. 41 (GEA).
645 T. 20 September 2001, pp. 77, 79 and 81 (GEA).

pity on the refugees before the arrival of the assailants, and held a meeting to persuade them not to run away on.[646] He explained that the Pastor stood in the middle of the crowd, in the courtyard, and talked to the people.[647] The Witness testified that he personally heard the Pastor speak, and that the meeting's sole purpose was to prevent the refugees from fleeing.[648] He said that the Pastor emphasised "security and safety."[649] In cross-examination, the Witness testified that, upon arrival of the assailants, the Pastor no longer took pity on the refugees.[650] The Witness testified that people, who had remained behind at Jurwe, joined the refugees on 12 April, informing them of an imminent attack[651]

343. Prosecution Witness GEA testified that after the conversation between Kamuhanda and Pastor Nkuranga, an old man, named Bucundura, was shot. He witnessed this incident from a small eucalyptus bush where he was hiding on the veranda. The people who were in the pick-up then rushed towards the refugees and started slashing and shooting them. [652]

344. Prosecution Witness GEA testified that the attack started between 1:00pm and 2:00pm.[653] Another vehicle came to load military, *Interahamwe*, and policemen.[654] He testified that two vehicles came after the first vehicle and after Nkuranga and Kamuhanda had concluded their conversation.[655] The Witness testified that he paid attention to the identification marks on the first vehicle, but not on the others. He testified that this was because he thought the first vehicle was some ordinary vehicle until he saw that there were the policemen and *Interahamwe* who had shot at him at Gishure.[656] The Witness confirmed that one of the vehicles was from Rubungo *commune*.[657] The Witness testified that when they started shooting, Kamuhanda took his vehicle and left.[658] He testified that those who had arrived in the second vehicle encircled those trying to flee, and used rifles, grenades, and traditional weapons.[659] He testified that they shot for a long time because they chased the refugees to the surroundings of Gahini.[660]

646 T. 24 September 2001, pp. 12-14 (GEA).
647 T. 24 September 2001, p. 14 (GEA).
648 T. 24 September 2001, pp.14 and 15 (GEA).
649 T. 24 September 2001, p. 16 (GEA).
650 T. 24 September 2001, p. 12 (GEA).
651 T. 24 September 2001, pp. 12-14 (GEA).
652 T. 20 September 2001, p. 79 (GEA); T. 24 September 2001, p. 28 (GEA).
653 T. 24 September 2001, p. 19 (GEA).
654 T. 20 September 2001, pp. 79 and 80 (GEA).
655 T. 24 September 2001, pp. 20-22 (GEA).
656 T. 24 September 2001, p. 22 (GEA). Prosecution Witness GEA is likely to be referring to the incidents at Cgishure that he mentioned in his testimony-in-chief spelt with a "C".
657 T. 24 September 2001, pp. 25 and 26 (GEA).
658 T. 20 September 2001, p. 79 (GEA).
659 T. 20 September 2001, pp. 79 and 80 (GEA).
660 T. 20 September 2001, p. 82 (GEA).

345. Prosecution Witness GEA testified that he could not say how many people had died at that location, because "that day there were very many."[661] He testified that Pastor Nkuranga even chased the survivors from his own residence.[662] The Witness managed to flee through the lower part of the Church[663] when the assailants started shooting at people.[664] From there, he said that he headed for Kibobo, where he took refuge at Gahini in Gikomero.[665] When asked to identify the photographs contained in Prosecution Exhibit 2,[666] the Witness could not recognise the building in photograph No. 4[667] or the building in Photograph No. 8[668] The Witness testified that he did not expect to be asked to identify buildings, but only to comment on the events that had occurred.[669]

Prosecution Witness GEC

346. **Prosecution Witness GEC**, a Tutsi, sought refuge in Gikomero School on 11 April 1994 where there were about three thousand refugees. She arrived at 5:00pm and this was her first time there.[670]

347. Prosecution Witness GEC testified that there were refugees in each classroom and about fifty people in her room. There were also many cows and sheep in the Compound. On 12 April 1994, at noon, she and other refugees left to escape to Igasagara, but a policeman shot at them and they returned to the school.[671] When Defence Counsel showed Prosecution Exhibit 2, photographs No. 4, 6 and 8 to the Witness, she did not recognise the building. She explained that she had not noticed the structure of the building when she was a refugee there. She testified to being inside the classroom when the vehicles arrived and when she came out of the classroom she saw four vehicles. The first vehicle, a white pick-up with the "UN" logo, was full of *Interahamwe* and soldiers. Another vehicle was a Hilux model.[672] A certain Nzaramba, who was with her, recognized Kamuhanda as he stepped out of the vehicle.[673] The Witness also heard other people saying that it would all be over for them because Kamuhanda had arrived.[674] She also saw Kamuhanda standing in front of the classrooms with Pastor Nkuranga, who lived nearby.

661 T. 20 September 2001, p. 83 (GEA).
662 T. 24 September 2001, pp. 11 and 12 (GEA).
663 T. 20 September 2001, p. 80 (GEA).
664 T. 24 September 2001, p. 23 (GEA).
665 T. 20 September 2001, p. 80 (GEA).
666 T. 24 September 2001, pp. 28 and 29 (GEA).
667 T. 24 September 2001, p. 31 (GEA).
668 T. 24 September 2001, p. 32 (GEA).
669 T. 24 September 2001, pp. 31 and 32 (GEA).
670 T. 24 September 2001, p. 50 (GEC).
671 T. 24 September 2001, p. 50 (GEC).
672 T. 24 September 2001, pp. 51 and 52 (GEC).
673 T. 24 September 2001, pp. 52 and 53 (GEC).
674 T. 24 September 2001, pp. 52 and 53 (GEC).

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348. Prosecution Witness GEC testified that she heard from survivors who were hiding there that they shot at a man named Bucundura, his wife and his family in front of the classrooms. She did not, however, personnaly see the incident.[675]

349. Prosecution Witness GEC testified that Kamuhanda raised his hands and said "start working" to those who were with him.[676] She explained that the attackers had guns, grenades, machetes, clubs, and cudgels and those with guns wore military uniforms. She heard the words "start working" when she was at the door of the classroom. The distance between Kamuhanda and herself was approximately five metres. The local Hutus joined those who had arrived in the vehicles. After Kamuhanda said these words, the attackers started shooting and cutting up people who were in the classrooms.[677] The *Interahamwe* ordered the Witness and other refugees to leave the classroom and lie on the ground. The attackers undressed her and the other refugees and started cutting them up when they came out of the classroom and lay on the ground. The Witness did not know if Kamuhanda was still present. The Witness was injured on her leg, chest, and back with a spear and a club, received a cut on her head with a machete, and her ear lobe was split in two. The people lying beside her were cut up, and those trying to run away were shot. According to the Witness, the massacre started about 1:00pm or 2:00pm and continued until 5:00pm when the attackers withdrew, but the local people continued to loot. The Witness estimated that there were about three thousand refugees there, of which approximately 2,500 died.[678] She testified that at about 5:00pm she left the place, went to Pastor Nkuranga's house and then went to hide in a sorghum field. When she left the massacre site, she was injured and was only wearing a skirt which was torn by the attackers as the attackers took away the refugees' clothes.[679]

Prosecution Witness GEG

350. **Prosecution Witness GEG**, a Tutsi, testified that on the evening of 6 April he was very close to his residence in a bar. When he heard three gunshots, he came out of the bar and saw a burning plane crash. The killings started on 8 April 1994 when *Interahamwe* and soldiers launched an attack on his home where his pregnant wife and three of his nine children were, the rest of his children having already escaped. The Witness testified that when he saw the attackers approaching his house, he managed to escape through a narrow path to a banana plantation and hide in a thick bush where beans where growing.[680] He testified that when he

675 T. 24 September 2001, pp. 53 and 95 (GEC).
676 T. 24 September 2001, p. 53 (GEC).
677 T. 24 September 2001, pp. 54, 55, and 63-66 (GEC).
678 T. 24 September 2001, p. 62 (GEC).
679 T. 24 September 2001, pp. 59-61. (GEC).
680 T. 25 September 2001, pp 9-10.

came back to his house at around 8:00pm he found his wife and three of his children seriously wounded. He covered the bodies and went back to his hiding place. When he returned from exile in August 1994, he found the dead bodies in the toilet pit.[681] The Witness testified that he left for Gikomero Parish on 10 April with two of his children and that he arrived at the Protestant Church on 11 April around 8:00am or 9:00am.[682] He testified that there were around 2,000 refugees hiding there, the majority of whom were Tutsis.[683]

351. Prosecution Witness GEG testified that he spent the night in the Church courtyard, and saw Pastor Nkuranga the next day, standing in front of his residence. At this time the refugees were scattered throughout the Compound and classrooms. During the day, at around 11:00am or 12:00pm, Pastor Nkuranga called the refugees to talk to them.[684] In cross-examination, the Witness testified that he knew Pastor Nkuranga because they used to be schoolmates and not, as indicated in his written statement of February 2001, because the refugees pointed out to him the Pastor.[685] In cross-examination, the Witness also testified that there were many cows in the Compound of the Gikomero Parish and that there was no concentration of people in a particular place. Mainly women and children were in the classrooms, and the others were outside. The place was akin to a market place, with locals selling bananas and sweet potatoes.[686]

352. Prosecution Witness GEG testified that he was standing at the side of the Church facing the courtyard when a small white truck arrived, with two other vehicles following soon after, and stopped in the Compound.[687] The people in the vehicles were holding guns and other traditional weapons. The refugees identified Kamuhanda when he alighted off the white truck by shouting: "That is Kamuhanda, now that he is here, we are finished."[688] The Witness did not personally know Kamuhanda, but the refugees identified him because he was well-known.[689] In cross-examination, the Witness stated that Kamuhanda was wearing ordinary clothes. Kamuhanda was not in military uniform, but carried a rifle, which he did not use. The men accompanying him used their weapons. The Witness explained that he did not mention the rifle in his written statement of February 2000 because he only remembered details when confronted with a specific question.[690] The Witness testified that Kamuhanda walked towards Pastor Nkuranga and talked to him. They were pointing at the refugees as they

681 T. 25 September 2001, pp 11,12 and 34.
682 T. 25 September 2001, pp.15 and 51.
683 T. 25 September 2001. pp. 14-16.
684 T. 25 September 2001, pp 16-17.
685 T. 25 September 2001, pp. 42, 44, 47-55.
686 T. 25 September 2001, pp. 55-57.
687 T. 29 September 2001, pp. 57-58. (GEG)
688 T. 25 September 2001. p. 19 (GEG)
689 T. 25 September 2001, pp. 18-19 (GEG).
690 T.25 September 2001, pp.78-81 (GEG).

talked.[691] The people accompanying Kamuhanda were Hutus with guns and machetes, and were composed of both military and *Interahamwe*. The *Interahamwe* wore Kitenge uniforms with specific berets and belts, and the soldiers wore military uniforms.[692] There were Hutu policemen from Rubungo in the other two vehicles. The Witness recognised some of them: Karasira, Rubanguka, Basesa Jean de Massin, Bucana, and the counsellor of the Rusoso *secteur,* Mwongereza Bernard. At that point in time, they had surrounded some refugees.[693]

353. Witness GEG testified that the vehicle stopped near Pastor Nkuranga's residence and passed the place where he was standing at that time, namely in front of the Church, at the left corner.[694] The white truck was closed in the front and open in the back, and contained about ten armed people. The Witness did not flee when he saw the truck arrive since he was unclear about the situation even though they were armed.[695] There were two vehicles behind the first truck which stopped in the Compound. Although the Witness recognized Basesa in the *commune* vehicle,[696] and seeing Basesa frightened him, he did not try to flee since they might have asked him why he was running away.[697] The Witness left when the shooting started.[698]

354. In cross-examination, the Witness identified the Church on photograph Nos. 4 and 6[699], but did not recognize the white buildings on photograph No. 8. The Witness marked where he was standing when the vehicles arrived on photograph No. 6 but could not mark the location where the vehicles came to a stop.[700]

355. Prosecution Witness GEG testified that the attack started when a person, who arrived in the white truck shot Augustin Bucundura, an old man standing next to the pastor. In cross-examination, the Witness testified that Bucundura's wife, standing next to him, died immediately. Kamuhanda left soon afterwards. [701] In cross-examination, the Witness testified that Kamuhanda was at that location briefly, approximately two to ten minutes.[702] The Witness never saw Kamuhanda again, and said that he may not be able to recognise him.[703]

691 T. 25 September 2001, p.20 (GEG).
692 T. 25 September 2001, pp. 20,21 (GEG).
693 T. 25 September 2001, pp.22-23 (GEG).
694 T. 25 September 2001, pp. 57-58 (GEG).
695 T.25 September 2001, pp. 60-62(GEG).
696 T.25 September 2001, pp.66-67 (GEG).
697 T.25 September 2001, p. 68 (GEG).
698 T.25 September 2001, p.66 (GEG).
699 Prosecution Exhibit 2.
700 T. 25 September 2001, pp. 81-88 (GEG). Prosecution Exhibit 2.
701 T. 25 September 2001, pp. 30 and 33 (GEG).
702 T. 25 September 2001, pp. 30 and 33. (GEG).
703 T. 25 September 2001, pp. 37 and 38 (GEG).

356. Prosecution Witness GEG testified that the refugees tried to escape in every direction. The attackers assaulted the refugees with rifles, guns, grenades, machetes and traditional cudgels.[704] He ran away with his two children, but they were killed on the way. The Witness was wounded in Kayanga, in the Gikomero area, but he managed to flee because the assailants thought he was dead.[705]

Prosecution Witness GEI

357. **Prosecution Witness GEI**, a Tutsi, testified that he heard of the President's death on the radio at his home. The following morning he fled with his family, first to Mbandazi for one night, then to Ruhanga where they hid in the bush for three days, then to Gicaca, where they arrived on 10 April 1994. They left Gicaca on 11 April 1994 for the school at Gikomero.[706]

358. Prosecution Witness GEI testified that he and his family arrived at Gikomero on 11 or 12 April 1994. He had never before be at the school. On arrival, he saw Pastor Nkuranga, a Hutu, and Pastor of the Protestant Church. Pastor Nkuranga often preached at Gasogi Parish at the Witness's Church.[707] The Pastor refused the Witness's sisters request for water.[708] The Defence pointed out that in the statement of 1 March 2000, it is indicated that the Witness asked for water. However in Court the Witness testified that his sisters asked for water. The Witness explained that at first they were refused water, so they thought that maybe if girls asked, they would be given water.

359. Prosecution Witness GEI testified that on 12 April 1994, he saw a white pick-up truck arrive at Gikomero at about 1:00pm.[709] From a photograph,[710] he identified a vehicle which resembled the pick-up truck that he saw at Gikomero.[711] In the back of the vehicle, there were two *Interahamwe* clad in banana leaves and two uniformed *communal* policemen carrying firearms. There were two people in the front of the pick-up: a driver, and another person who did not carry a weapon. The latter came out of the vehicle, approached Pastor Nkuranga, and they talked. On seeing this person, the refugees were surprised and said something like, "Since Kamuhanda is here, our fate is sealed."[712] The

704 T. 25 September 2001, pp. 24-26 (GEG).
705 T. 25 September 2001, pp.25-28, 32 (GEG).
706 T. 31 January 2002, pp. 6 – 9; 32 – 33 (GEI).
707 T. 31 January 2002, p. 38 (GEI).
708 T. 31 January 2002, pp. 35 – 38 (GEI)
709 T. 31 January 2002, p. 10 (GEI).
710 Photograph 5c in Defence Exhibit 17.
711 T. 31 January 2002, pp. 50 - 56 (GEI).
712 T. 31 January 2002, pp. 12-14 (GEI).

Witness did not know this person; he had not seen him before.[713] The Witness testified that he immediately got closer to them, "up about four metres, in order to eavesdrop on their conversation."[714] He heard the person [Kamuhanda] ask the Pastor about the people there. The Pastor replied that he had seen people coming to Gikomero.[715] That person [Kamuhanda] then turned to the *Interahamwe* in the vehicle, ordered them to come out of the vehicle and said, "All these people here are Tutsis, kill them."[716]

360. Prosecution Witness GEI made a sketch of the Gikomero Parish[717]. He testified that some buildings, as shown on Prosecution Exhibit 2 Sketch B, might have been renovated since 1994.[718] The Witness indicated that the water tank was behind what is seen in Photograph No.10 of Prosecution Exhibit 2 and explained that, in reference to Photograph No. 8,[719] when the vehicle arrived in 1994, he was at the entrance of the third classroom on the left of the photograph while Kamuhanda and Nkuranga were near the Church.[720]

361. Prosecution Witness GEI testified that after the person [Kamuhanda] ordered the *Interahamwe* to kill the Tutsis, the *Interahamwe* immediately started killing. A Protestant preacher and teacher of a school in Mbandazi, Bucundura, who was standing close to the person [Kamuhanda] was killed first.[721] The Witness ran away, and he saw Tutsis falling as they were shot.[722]

362. Prosecution Witness GEI testified that he fled from Gikomero to Gicaca. He wanted to go to Kibara by canoe but the Witness then decided to return to his home area. When bodies were exhumed in 2000 the Witness identified three of his four sisters killed at the school in Gikomero.[723]

363. Prosecution Witness GEI identified Kamuhanda in Court.[724]

713 T. 31 January 2002, pp. 9 - 13 (GEI).
714 T. 31 January 2002, pp. 12-14 (GEI).
715 T. 31 January 2002, p. 14 (GEI).
716 T. 31 January 2002, pp. 12-14 (GEI).
717 Prosecution Exhibit 20; T. 31 January 2002, pp. 22 – 29 (GEI).
718 T. 31 January 2002, pp. 58 - 68 (GEI).
719 Prosecution Exhibit 2.
720 T. 31 January 2002, p. 72 (GEI).
721 T. 31 January 2002, pp. 14 and 15 (GEI).
722 T. 31 January 2002, pp. 13 – 15, 46 and 98 – 100 (GEI).
723 T. 31 January 2002, pp. 19 – 22 and 47 - 50 (GEI).
724 T. 31 January 2002, p. 31 (GEI).

Prosecution Witness GAG

364. **Prosecution Witness GAG,** a Tutsi, testified that her neighbour encouraged her to flee [8 April 1994] with him. She explained that she spent that night on a *colline,* while her children took another path.[725] The next day, she went back home to milk her cows and then fled with the others. In cross-examination, when asked why she went back to her house to milk her cows when there was danger, the Witness testified that the first night that she spent on the hill, nothing had happened in her area. Also the next day, she sent her son to milk the cows despite the danger, as they were accustomed to that kind of situation.[726] The Witness spent the night on a hill looking down at the burning houses.[727] On several occasions, she told her children to go and milk her cows.[728] They then met Pastor Bucundura, who told them to take refuge in the Parish, which they did and where another Pastor, Nkuranga offered them refuge.

365. Prosecution Witness GAG testified that on their arrival at the Parish, there were approximately 40 to 50 people. By 11 April 1994, however there were up to 15,000 refugees, all Tutsis,[729] who came from everywhere, including Kabuga, Bicumbi and Gikoro. On 12 April 1994, the Witness and other refugees had decided to leave Gikomero. On seeing them about to leave, Pastor Nkuranga reassured them that there were no problems in Gikomero. As they were standing listening to the Pastor, who was with Bucundura reassuring them, the persons who were present, including her son, told her that a white pick-up truck had arrived and guns had been distributed to the *Interahamwe.*[730] In cross-examination, the Witness clarified that Gikomero locals who were selling essentials to the refugees were told to leave by Kibano.[731] The people in the pick-up truck wore *kitenge*, banana leaves and carried weapons such as axes, machetes, guns and grenades. These people alighted from the vehicle. Pastor Nkuranga, on seeing a man who had come in the vehicle walking towards him, went forward to meet him. Many refugees who knew this man shouted, "There is Kamuhanda."[732] The Pastor then said to the refugees, "I told you that you had nothing to fear, that your safety would be guaranteed." The Pastor went aside to speak with this man [Kamuhanda] as the *Interahamwe* surrounded the refugees. The Witness thought that the *Interahamwe* were protecting them. When this man finished is discussion with the Pastor, he

725 T. 4 February 2002, pp. 25 – 28; T. 5 February 2002, pp. 8 – 11 and 21 (GAG).
726 T. 5 February 2002, pp. 13 – 14; T. 5 February 2002, pp. 16 – 19 and 25 – 26 (GAG).
727 T. 4 February 2002, pp. 32 – 37 (GAG).
728 T. 4 February 2002, pp. 37 – 38 (GAG).
729 T. 4 February 2002, pp. 44 – 49 (GAG) ; T. 5 February 2002, p. 34 (GAG).
730 T. 4 February 2002, p. 49 (GAG).
731 T. 5 February 2002, p. 39 (GAG). In examination-in-chief, the name was spelled Kabano.
732 T. 4 February 2002, pp. 53 and 54 (GAG).

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returned to the vehicle and parked it near the Church. At this moment, another man who accompanied Kamuhanda shot Bucundura.

366. Prosecution Witness GAG testified that when the Pastor saw Bucundura being shot, he raised his hands up and shouted, "I am Pastor Nkuranga."[733] Kamuhanda did not stop the shooting and a person who had come down from his vehicle shot Bucundura.[734] In cross-examination, the Witness confirmed that Kamuhanda was there when Bucundura was shot.[735]

367. Prosecution Witness GAG testified that the shooting continued and she ran towards the classrooms[736] because her 4-year-old child was there. She hid behind a blackboard and mattress with four other women including her elder sister, while others escaped outside the classroom. From behind the blackboard, she was able to see the killings from the side, and she saw the killers standing at the classrooms doors slashing people as they ran out. The attackers put beautiful girls aside and she heard the girls cry out later. The attackers specifically told them "we are going to rape you and taste Tutsi women", to which the girls replied "instead of raping us, it is better that you kill us once and for all." In cross-examination, the Witness explained that despite a lot of noise in the area she was able to hear people praying as they fled and even what the girls said.[737] The attackers were dressed in either military or *Interahamwe* uniforms, with rags on their heads like savages. Mostly Tutsis were being attacked.[738] The attackers found the Witness, her child and the four women. One of the attackers told her to give him her watch and money, while three girls were ordered to the side to join the other pretty girls. The Witness explained that the attacker asked to see her ID and then told her to show it to the other men. The other men looked at it and said that the she was going to die. They slashed her breast and her head until she was unconscious. She awakened at 5:00pm outside the classroom on top of dead bodies.[739]

368. Prosecution Witness GAG testified that she was taken by a friend's Tutsi son to the Pastor's house where she saw many young children crying and other wounded people being refused water at the Pastor's house. The Pastor told them that their fate was to die. In the evening, the Pastor came back with *Interahamwe* who had ID cards, including hers, which they gave back to her. The Pastor told her to leave then. She refused and spent the night there. In cross-examination, the Witness agreed that it was possible that the refugees went to the Pastor's house in the hope that they would be treated but were instead handed over to *Interahamwe* to be killed.[740] The

733 T. 5 February 2002, p. 47 (GAG).
734 T. 4 February 2002, p. 58 (GAG).
735 T. 5 February 2002, p. 47 (GAG).
736 T. 4 February 2002, pp. 50 – 55 and 57-58 (GAG); T. 5 February 2002, pp. 41-42 and 45 – 46 (GAG).
737 T. 5 February 2002, p. 50 (GAG).
738 T. 4 February 2002, pp. 59 – 62; T. 5 February 2002, pp. 5 – 7 (GAG).
739T. 4 February 2002, pp. 62 – 64 and 77 (GAG).
740 T. 5 February 2002, pp. 71 – 76 (GAG).

next morning, the Pastor came with Ngarambe, a policeman, and Rutayisire to forcibly remove the Witness from his house. The Pastor said that Kamuhanda had said that everyone had to be killed, including the disabled and the children and he asked her to leave so they could kill her.[741] The Witness explained that the *Interahamwe* had come to take all survivors, including children, who were scattered all over the place to the *Bureau de secteur*.[742] However, they took her to a bush where they clubbed until she was unconscious and left her for dead. The Witness crawled towards the forest and hid in a ravine for 11 days. In cross-examination, the Witness explained that on the eleventh day, she crawled towards the house of the old man who had sent his son to look for her at Gikomero after the massacres; but she came across *Interahamwe*. She was taken by the *Interahamwe* to see the *conseiller* of Gikomero, who was at a roadblock. A man she knew, identified her as a Hutu. The same man was instructed to take her to his house care for her, which he did until the *Inkotanyi* took control of the area.[743]

Prosecution Witness GEV

369. **Prosecution Witness GEV** testified that he fled from his home on 8 April 1994 on hearing reports from refugees about massacres in Rusororo.[744] He took refuge in Mbandazi until 10 April 1994, when he fled through Gicaca. He arrived at Gikomero on 11 April 1994 and took refuge at the Compound of the Gikomero Parish.[745]

370. Prosecution Witness GEV testified that on 12 April 1994, between 1:00 and 2:00pm, he observed a man arriving at Gikomero Parish in a white truck with a number of *Interahamwe*.[746] In cross-examination, the Witness was asked to provide further details on the white truck by comparing what he remembered to a selection of pictures of trucks provided by the Defence. The Witness declined to do this, stating that he was not focusing on the details of the truck on 12 April 1994.[747] He was in the Church with other people when he saw a man get out of the truck to talk to Pastor Nkuranga.[748] At that point in time, a friend of the Witness living in Gikomero identified the man as Kamuhanda.[749] The friend said, "Kamuhanda has just arrived : our fate is sealed."[750] The Witness was approximately 15 to 20 metres from Kamuhanda and Nkuranga.[751] Other

741 T. 4 February 2002, pp. 71 and 72 (GAG).
742 T. 4 February 2002, pp. 70 – 75 (GAG); T. 5 February 2002, pp. 4 – 5 and 68 – 69 (GAG).
743 T. 5 February 2002, pp. 83 – 85 (GAG); T. 6 February 2002, p. 35 (GAG).
744 T. 6 February 2002, pp. 48 and 49 (GEV).
745 T. 6 February 2002, pp. 49-52 (GEV).
746 T. 6 February 2002, p. 54 (GEV).
747 T. 6 February 2002, pp. 87-89 (GEV).
748 T. 6 February 2002, pp. 54-55. (GEV).
749 T. 6 February 2002, pp. 54-56 and 90-91 (GEV).
750 T. 6 February 2002, p. 54 (GEV).
751 T. 6 February 2002, p. 55 (GEV).

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refugees in the Parish also identified Kamuhanda.[752] The Witness saw Kamuhanda converse briefly with Pastor Nkuranga, after which Kamuhanda returned to his truck.[753]

371. Prosecution Witness GEV testified that soon afterwards, the *Interahamwe* who had arrived on the truck began killing Tutsis, beginning with Bucundura.[754] The Witness could not confirm or deny that Kamuhanda was present in Gikomero Parish when Bucundura was killed.[755] Two other trucks arrived with more *Interahamwe* and communal police, both dressed in uniforms, and blocked the road to Gishaka at a point approximately 40 metres from the Parish.[756] The Witness identified two of these communal police by name, Rubanguka and Rubwebwe, and testified that they participated in the killings.[757] He and the other refugees in the Parish were forced to flee,[758] and he fled across Lake Muhazi through Kibara Hill.[759]

Prosecution Witness GEP

372. **Prosecution Witness GEP** testified that all the refugees were at a school and a Church.[760] On cross-examination, the Witness could not specify the *cellule* or the *secteur* where the Church and school were located,[761] nor could she remember the name of the location, although she stayed there for at least three days.[762] The Defence showed Exhibit P2, photographs 3 and 4 to the Witness and asked whether the buildings in the photos meant anything to her.[763] The Witness said she was "not there to look at the buildings" but did identify the structure she saw in photograph No. 4 as a Church.[764] She said she was "in a school, in a classroom, and the others were in the Church"[765] and that the refugees were Hutus and Tutsis.[766] There was a constant in-flow of refugees on 9 April [1994], and an increase in the number of refugees on 10 and 11 April [1994].[767] On cross-examination, the Witness testified that some refugees had food and water supplies; others from the surroundings areas went home to bring food; while some came with their cows.[768] On cross-examination, the Witness testified that the men were outside, and the women and children inside the

752 T. 7 February 2002, p. 6 (GEV).
753 T. 6 February 2002, pp. 54-56 and 59 (GEV); T. 7 February 2002, p. 12 (GEV).
754 T. 6 February 2002, p. 59 (GEV).
755 T. 6 February 2002, p.95; T. 7 February 2002, p. 7 (GEV).
756 T. 6 February 2002, pp. 57-58 and 60 (GEV); T. 7 February 2002, p. 13 (GEV).
757 T. 6 February 2002, p. 63 (GEV).
758 T. 6 February 2002, pp. 62 and 63 (GEV).
759 T. 6 February 2002, pp. 62 and 63 (GEV).
760 T. 7 February 2002, p. 30 (GEP).
761 T. 7 February 2002, p. 61(GEP).
762 T. 7 February 2002, p. 62 (GEP).
763 T. 7 February 2002, p. 82 (GEP).
764 T. 7 February 2002, p. 83 (GEP).
765 T. 7 February 2002, p. 84 (GEP).
766 T. 7 February 2002, p. 30 (GEP).
767 T. 7 February 2002, pp. 30 and 31(GEP).
768 T. 7 February 2002, p. 64 (GEP).

building resting.[769] On cross-examination, when the Defence inquired about security arrangements, the Witness explained: "I was still a child, I wouldn't know about security arrangements."[770]

373. Prosecution Witness GEP testified that they were all frightened and decided to flee to areas around Byumba controlled by the RPF.[771] Her father told them to take the road towards Gikomero and Gikoro to cross Lake Muhazi. The Witness followed her father, and met "security officers or security agents" en route. These agents, who were not wearing uniforms,[772] asked to see their identity papers which they did not show.[773] The agents told her group that a lot of people who were on the run were moving towards Gikomero to the school and the Church.[774] They arrived there on 9 April 1994.[775] On cross-examination, the Witness stated that they went to the place indicated by the agents because it was their original destination and the agents had told them that there were others like them at Gikomero whom they went to join.[776]

374. Prosecution Witness GEP testified that early in the morning of 12 April, approximately 20 Hutus carrying machetes, cudgels, and axes arrived to seize the refugees' property.[777] On cross-examination, she stated that these Hutus arrived between 9:00 and 11:00am.[778] The Hutus asked if there were Hutus amongst the refugees because "they did not want Hutus killed together with the Tutsis in the event there was going to be an attack" since the Tutsis were the only target.[779] The Hutus came out, but among the Hutus were men married to Tutsis with Tutsi children, who could decide either to join the killers or turn their backs on them.[780] The Hutus who stood aside left them and went back to their homes.[781] Close to lunchtime, or just after, a vehicle packed with *Interahamwe* arrived.[782] On cross-examination, the Witness stated that it was a pick-up, possibly white.[783] On cross-examination, she also stated that two Daihatsu vehicles that she believed were blue arrived after the white pick-up.[784] However, on subsequent cross-examination, the Witness did not mention the two other vehicles, but said that "one vehicle arrived at first and that a second

769 T. 7 February 2002, p. 62 (GEP).
770 T. 7 February 2002, p. 62 (GEP).
771 T. 7 February 2002, p. 23 (GEP).
772 T. 7 February 2002, pp. 26 and 27 (GEP).
773 T. 7 February 2002, p. 27 (GEP).
774 T. 7 February 2002, p. 29 (GEP).
775 T. 7 February 2002, p. 29 (GEP).
776 T. 7 February 2002, pp. 58 and 59 (GEP)
777 T. 7 February 2002, p. 31 (GEP).
778 T. 7 February 2002, p. 65 (GEP).
779 T. 7 February 2002, p. 32 (GEP).
780 T. 7 February 2002, p. 32 (GEP).
781 T. 7 February 2002, p. 33 (GEP).
782 T. 7 February 2002, p. 33 (GEP).
783 T. 7 February 2002, p. 66 (GEP).
784 T. 7 February 2002, pp. 66 and 67(GEP).

vehicle followed the first."[785] On cross-examination, she also stated that she knew only that all the vehicles were pick-ups, but was not aware of their colour, shape, or make.[786] The people were identified as *Interahamwe* because of their particular attire, and they carried leaves or banana leaves, and weapons, with one carrying a gun.[787] On cross-examination, the Witness stated that she could not estimate the number of *Interahamwe* but there were "very many".[788] On cross-examination, she also testified that they had machetes, axes, a gun, and cudgels studded with nails.[789] On further cross-examination, the Witness confirmed that the vehicle entered the courtyard, turned around in the direction it had come, and parked on the road towards Gikomero.[790] As a man[791] stepped out of the cabin of the vehicle, the refugees from that area shouted, "This is Kamuhanda who has arrived. We are going to die."[792] Although it was the first time the Witness saw Kamuhanda, she could see and hear him, because she was in a classroom close to where he stood.[793] At that point in time the refugees panicked,[794] and those with the strength to run fled.[795]

375. Prosecution Witness GEP testified that after Kamuhanda had finished speaking to a man, one of the passengers in the vehicle he had come in shot the man dead.[796] On cross-examination, the Witness stated that people there said that the person shot was a Protestant Priest called "Bucundura", whom she did not know.[797] On cross-examination, she also stated that Kamuhanda had a discussion with the pastor before they killed Bucundura.[798] The Witness stated Kamuhanda said nothing after the man was killed, but turned around and, as their leader, told the others, "Start working", so as to incite them to kill.[799]

376. Prosecution Witness GEP testified that they were used to *Interahamwe* attacks and when they said, "work", they knew that it meant to kill.[800] At that point, a driver moved the vehicle towards the road, and another

785 T. 7 February 2002, pp. 75 and 76(GEP).
786 T. 7 February 2002, p. 81 (GEP).
787 T. 7 February 2002, pp. 33 and 34 (GEP).
788 T. 7 February 2002, p. 71 (GEP).
789 T. 7 February 2002, p. 72 (GEP).
790 T. 7 February 2002, p. 68 (GEP).
791 T. 7 February 2002, p. 34 (GEP). When the Prosecutor asked the Witness if she could recognise Kamuhanda if she saw him today, she responded, "[t]his happened a long time ago; it's possible that he could have changed." In closed session cross-examination, the Defence showed the Witness Exhibit P4, photographs KO168412 and KO168413, one an enlargement of the other. The Witness confirmed that the same photograph had been shown to her by the investigator and she correctly identified Kamuhanda in both photographs.
792 T. 7 February 2002, p. 34 (GEP).
793 T. 7 February 2002, pp. 34 and 38 (GEP).
794 T. 7 February 2002, p. 37 (GEP).
795 T. 7 February 2002, p. 73 (GEP).
796 T. 7 February 2002, p. 38 (GEP).
797 T. 7 February 2002, p. 69 (GEP).
798 T. 7 February 2002, p. 88 (GEP)
799 T. 7 February 2002, pp. 38 and 39 (GEP).
800 T. 7 February 2002, p. 39 (GEP).

vehicle with *Interahamwe* arrived. The *Interahamwe* started to assist in the killings.[801] A man stepped out of this vehicle and had them stop the massacres momentarily so he could choose some girls.[802] In closed session, the Witness testified that she heard people call him Kamina and that he had since died.[803] In closed session cross-examination, the Witness testified that Kamina was the head of an *Interahamwe* group, lived in Rugende, went everywhere with his *Interahamwe* and "got them to work."[804] In closed session cross-examination, the Witness explained that she knew Kamina because of Rugende and Mujumu's proximity, and one knows a person of that stature that lives in the area.[805] Not more than 20 girls were picked, loaded in a vehicle and taken away, and then the massacres resumed.[806] The vehicle carrying Kamuhanda left after the girls had been loaded into it.[807] On cross-examination, the Defence read the Witness' statement in which she had said that after delivering the "start working" order to the *Interahamwe*, "Kamuhanda then left for the *commune* office." The Witness replied that the vehicle was moved to allow the killing to take place, and that she did not know whether Kamuhanda went towards the *commune*.[808] On cross-examination, the Witness stated that the girls were loaded into the pick-up vehicle that had arrived first, and that she did not know any of them.[809] The Witness later learnt that the attackers raped and killed all of the girls, except one. On cross-examination, the Witness testified that she learnet the news at the camp[810] where the *Inkotanyi* took those who had escaped the massacres.[811]

377. Prosecution Witness GEP testified that the massacres resumed and that the *Interahamwe,* who had machetes, small hoes, axes and grenades, started cutting people, injuring her.[812] She survived because people fell on top of her.[813] On cross-examination, the Witness stated that the attacks took a great deal of time because of the large number of victims.[814] On cross-examination, the Witness testified that towards the end of the day, the assailants withdrew to rest.[815] Other survivors went through the bodies to

801 T. 7 February 2002, p. 39 (GEP).
802 T. 7 February 2002, p. 41 (GEP).
803 T. 7 February 2002, p. 53 (GEP) (ICS).
804 T. 7 February 2002, p. 98 (GEP) (ICS).
805 T. 7 February 2002, p. 99 (GEP) (ICS).
806 T. 7 February 2002, p. 42 (GEP).
807 T. 7 February 2002, p. 43 (GEP).
808 T. 7 February 2002, p. 94 (GEP).
809 T. 7 February 2002, pp. 76and 77 (GEP).
810 In closed session cross-examination, the Witness testified that it was at the Rwamagana camp, and she was told by a woman called Mama Beby, whom she did not know before she was a refugee. In closed session cross-examination, the Witness explained she did not know any other name for the woman, because, according to Rwandan custom, one doesn't ask an elderly person for her name, and one knows the name of the child, and the mother is given the name of the child.
811 T. 7 February 2002, pp. 79 and 80 (GEP).
812 T. 7 February 2002, p. 42 (GEP).
813 T. 7 February 2002, p. 42 (GEP).
814 T. 7 February 2002, p. 77 (GEP).
815 T. 7 February 2002, p. 77 (GEP).

see if anyone was alive and rescued her.[816] She followed four men, two women, a young boy and two girls.[817] They looked for a place of refuge, because houses were being burned everywhere.[818] On cross-examination, the Witness stated that the only survivors she saw were those who left with her.[819]

378. Prosecution Witness GEP testified that the group fled and the men of the group asked them to hide separately, which they did.[820] Her group walked at night and hid during the day.[821] Two men from the other group survived and told them that even if the war were to continue, the *Inkotanyi* could not be very far.[822] The Witness defined *Inkotanyi* as the RPF soldiers who were coming to save the victims.[823] The men went looking for the *Inkotanyi,* and soon came back to find the refugees and take them to a transit camp.[824]

Prosecution Witness GEH

379. **Prosecution Witness GEH,** a Tutsi, testified that around 8:30pm [6 April 1994] he heard an explosion and gunfire which continued throughout the night.[825] It was coming from Kanombe where a military camp is located.[826] In the morning the Witness learned from Rwanda Radio that President Habyarimana's plane had been shot down.[827] At about 8:00am refugees came from Rusororo and told him of killings there.[828] The refugees told them that Rusororo soldiers and *Interahamwe* were shooting at people.[829]

380. Prosecution Witness GEH described the *Interahamwe* as "people who have been trained in military matters. They carried guns and worked with soldiers."[830] The *Interahamwe* "were Hutus" and "were militarily trained by Habyarimana".[831] The Witness could identify *Interahamwe* by their *kitenge* uniforms.[832] He testified that the refugees told him that the Tutsis were being killed; hence he and his twenty family members together with Tutsis from the Witness's hill decided to flee.[833]

816 T. 7 February 2002, p. 43 (GEP).
817 T. 7 February 2002, p. 44 (GEP).
818 T. 7 February 2002, p. 43 (GEP).
819 T. 7 February 2002, p. 78 (GEP).
820 T. 7 February 2002, p. 44 (GEP).
821 T. 7 February 2002, p. 45 (GEP).
822 T. 7 February 2002, p. 45 (GEP).
823 T. 7 February 2002, p. 45 (GEP).
824 T. 7 February 2002, p. 45 (GEP).
825 T. 11 February 2002, p. 7 (GEH).
826 T. 11 February 2002, p. 8 (GEH).
827 T. 11 February 2002, p. 9 (GEH).
828 T. 11 February 2002, p. 9 (GEH).
829 T. 11 February 2002, p. 9 (GEH).
830 T. 11 February 2002, p. 9 (GEH).
831 T. 11 February 2002, p. 21 (GEH).
832 T. 11 February 2002, p.37 (GEH).
833 T. 11 February 2002, pp.10, 23 and 33 (GEH).

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381. Prosecution Witness GEH testified that he went towards Gikomero Protestant Church where he arrived on 10 April 1994.[834] On re-examination, the Witness testified that he had never been to Gikomero before the war and has never been back since he fled from the Parish.[835] On his arrival at Gikomero Parish, he found 2,000 people from different locations.[836] A Hutu Pastor, Nkuranga, welcomed them at the Gikomero Parish.[837] After 10 April 1994, no other refugees joined them in Gikomero Parish.[838] There were refugees everywhere in the Gikomero Compound, including the buildings, especially the classrooms, and the Church.[839] There were approximately 10,000 Tutsi refugees at Gikomero Parish.[840] On cross-examination the Witness declared that "they [refugees at Gikomero Parish] were all Tutsis that were being sought [...] chased and [...] being massacred. No others were being killed apart from the Tutsis [...]."[841]

382. Prosecution Witness GEH testified that on 12 April 1994, between 1:00 and 2:00pm, he saw a white pick-up with *Interahamwe* on board.[842] Pastor Nkuranga and Mr. Bucundura, a Tutsi catechism preacher from Mbandazi Hill in Gikomero, went to talk to the men in the vehicle.[843] Kamuhanda returned with *Interahamwe* and had a brief conversation with the Pastor. The Witness said that "it was at that time that the *Interahamwe* shot at Mr. Bucundura."[844] The Witness explained that he did not know Kamuhanda but that refugees from Gikomero told him that the man was called Kamuhanda.[845] The Witness testified that this man [Kamuhanda] was with Pastor Nkuranga when they shot at the old man. [846]

383. Prosecution Witness GEH testified on cross-examination that he did not hear the Accused give the order that the killings should start because it was impossible to hear the conversation between the Accused and the pastor.[847] The Witness testified that Kamuhanda went back to his vehicle and that when he returned, he was with the killer. The Witness believed that "he was the one that gave the order for the killing."[848] In cross-examination, the Witness testified that he did not personally hear Kamuhanda give the order to start killing.[849] *Interahamwe* shot at them, and they were with the

834 T. 11 February 2002, pp 10,11 and 24 (GEH).
835 T. 11 February 2002, p. 61 (GEH).
836 T. 11 February 2002, p. 11 (GEH).
837 T. 11 February 2002, p. 11 (GEH).
838 T. 11 February 2002, p. 30 (GEH).
839 T. 11 February 2002, p. 28 (GEH).
840 T. 11 February 2002, p. 26 (GEH).
841 T. 11 February 2002, p. 29 (GEH).
842 T. 11 February 2002, pp. 13 and 35 (GEH).
843 T. 11 February 2002, pp. 14, 20 and 26 (GEH).
844 T. 11 February 2002, p. 14 (GEH).
845 T. 11 February 2002, p.14 and 15 (GEH).
846 T. 11 February 2002, p. 41 (GEH).
847 T. 11 February 2002, p. 40 (GEH).
848 T. 11 February 2002, p. 16 (GEH).
849 T. 11 February 2002, pp. 39 and 40 (GEH)

person [Kamuhanda] who ordered them from the vehicle.[850] They all panicked and fled because the *Interahamwe* had started shooting at them.[851] They ran towards Kibara, where there were no more than 300 refugees.[852] They spent two days there. [853] . He testified that they had to move on and cross Lake Muhazi. They went to Rutare *commune*, in Byumba *préfecture* because the people in Kibara "ran after them."[854]

Prosecution Witness GEM

384. **Prosecution Witness GEM** testified that she heard the explosion of a plane at 8:30pm on 6 April 1994. Subsequently she learnt that it was the President's plane, at 9:00pm through a radio *communiqué*.[855] The *communiqué* and GEM's local *conseiller*, a Hutu, advised everyone to stay in their homes. She fled from her home on 7 April 1994, arriving in Mbandazi on 8 April 1994, after spending the night with 5,000 other refugees in a sorghum field. She subsequently fled Mbandazi to Gicaca on 8 April 1994, and then on to Gikomero by 11 April 1994.[856]

385. Prosecution Witness GEM testified that she was in Gikomero Parish on the morning of 12 April 1994 with one million other refugees.[857] She saw a man identified by others as Jean de Dieu Kamuhanda arrive at the Parish at about 11:00am, alone, in a white truck.[858] The Witness testified to hearing others identify Kamuhanda and say, "[O]ur fate is sealed."[859] She testified that they understood that they had to die, that they had been betrayed.[860] She saw Kamuhanda meet with Pastor Nkuranga[861] but testified that she had not seen Kamuhanda prior to 12 April 1994. She relied on other refugees to identify him.[862] The Witness explained that she had never seen Bucundura or Pastor Nkuranga before arriving in Gikomero.[863] She testified that an hour after Kamuhanda arrived, he left the Parish and another truck with armed *Interahamwe* arrived.[864] She testified that these armed *Interahamwe* descended from their trucks and began shooting in the air, and then into the crowd of refugees.[865] When the Witness was shown a series of pictures taken of Gikomero Parish, she testified that she did not

850 T. 11 February 2002, p. 21 (GEH).
851 T. 11 February 2002, pp. 14 and 15 (GEH).
852 T. 11 February 2002, p. 17 (GEH).
853 T. 11 February 2002, p. 17 (GEH).
854 T. 11 February 2002, p. 17 (GEH).
855 T. 11 February 2002, p. 69 (GEM).
856 T. 11 February 2002, pp. 72 and 73 (GEM).
857 T. 11 February 2002, p. 74 (GEM).
858 T. 11 February 2002, pp. 75-77 and 96-98 (GEM).
859 T. 11 February 2002, p. 75 (GEM).
860 T. 11 February 2002, p. 75 (GEM).
861 T. 11 February 2002, p. 75 (GEM).
862 T. 11 February 2002, p. 75 (GEM).
863 T. 11 February 2002, pp. 74 and 102 (GEM).
864 T. 11 February 2002, pp. 95 and 97-98 (GEM).
865 T. 11 February 2002, pp. 77 and 101 (GEM).

recognise the area depicted in those pictures.[866] She testified that a man from Rusororo named Bucundura was the first to be killed, with his wife and children. [867]

386. As Kamuhanda was driving out, the Witness testified, another truck arrived carrying armed *Interahamwe*. These *Interahamwe* shot and killed a number of refugees. Others were killed with clubs and machetes. However, Kamuhanda was not in the Parish when these killings occurred.[868]

- *Evidence After the Events*

387. **Prosecution Witness GET,** a Tutsi born in Gikomero,[869] testified that he personally knew Kamuhanda as a schoolmate in the local secondary school and as a friend during Kamuhanda's university holidays. Kamuhanda invited him to his wedding and, he visited Kamuhanda when the latter was the Director General in the Ministry of Higher Education and Scientific Research. The Witness explained that they were both members of the Gikomero Technical Commission.[870] He testified that, by virtue of his position and education, Kamuhanda was feared and respected in his local community in Gikomero, and the Witness considered him to be a good man.[871]

388. The Witness gave evidence of personally seeing Kamuhanda at the opening of the Kayanga Health Centre in the presence of the President [Habyarimana] in line with GEK's evidence on this matter.[872] The Witness confirmed GEK's identity and corroborated her marital status in 1994, as well as the account of the killings that occurred in front of GEK's house, as she had reported them to Witness GET in 1994.[873] The Witness testified that the *Gishaka* Catholic Parish School and Church, the Gikomero Protestant Parish School and Church and a road checkpoint between Gishaka and Gikomero were major massacre sites.[874] In his capacity as *bourgmestre,* the Witness testified that he made enquiries about those responsible for the genocide in Gikomero and that he was told that Kamuhanda brought and distributed the "*instruments*" to be used in the

866 T. 11 February 2002, p. 102 (GEM).
867 T. 11 February 2002, p. 77 (GEM).
868 T. 11 February 2002, p. 101 (GEM).
869 T. 5 September 2001, pp. 91 and 92 (GET) (ICS); T. 6 September 2001, pp. 34 and 124. (GET) (ICS).
870 T. 5 September 2001, pp. 98-101 (GET) (ICS); T. 6 September 2001, pp. 109 and 123 (GET) (ICS).
871 T. 5 September 2001, pp. 100 and 122 (GET) (ICS).
872 T. 6 September 2001, p. 25 (GET) (ICS).
873 T. 6 September 2001, pp. 45, 46, 48-49 and 75-76 (GET) (ICS); T. 10 September 2001, pp. 54 and 59-60. (GET) (ICS).
874 T. 6 September 2001, pp. 59-61 (GET) (ICS).

killings.[875] The Witness stated to the Chamber that the last time he saw the Accused was during the *bourgmestre* elections held in 1993.[876]

389. The Defence filed a report with the Chamber entitled: *Commission pour le mémorial du génocide et des massacres au Rwanda* (Commission for the Memorial of the Genocide and Massacres in Rwanda) which was drafted under the authority of the Ministry of Higher Education and was published in 1996.[877] The Witness admitted that he had met with members of this Commission. The Defence indicated that Jean de Dieu Kamuhanda did not appear in this report among those responsible for the genocide in the *commune*.[878] The Witness stated that it was not clear that the Commission referred to by the Defence was an official Commission. It could have been a simple research project. He added that he had not seen the Report.[879]

b. Defence Evidence

- *Defence Witness GPT*

390. **Defence Witness GPT,** a Tutsi male, testified that in 1994 he resided in Gikomero *commune* near the Accused's parents and the Protestant Parish of Gikomero; therefore he knew the Accused.[880] Although GPT testified that he was in no way related to the family of Kamuhanda, he later admitted in cross-examination that he does have family ties with him and that he is grateful to Kamuhanda's family for sheltering his mother during the war. He nonetheless denied the Prosecution suggestion that he had come to give testimony because he had received fifty thousand Rwandese francs.[881]

391. Defence Witness GPT testified that on 12 of April 1994, when he got up in the morning at about 9:00am, he went to visit a friend who lived near the market. Towards 1:00pm, as he was going to his home, he came to a small drinking place, not far from the market. He heard shots being fired from the direction of the Protestant Parish of Gikomero, as well as the sound of motor vehicles driving very quickly. Upon hearing this, he went home and informed his wife and children, and they fled. He hid in various bushes with his eldest son and his elder brother. The next day, 13 April 1994, he was able to flee to the other side of Muhazi, but without his elder brother and his eldest son, who had been killed.[882] Defence Witness GPT testified that on 12 April 1994 he did not leave the bushes where he was hiding to

875 T. 6 September 2001, pp. 35, 38-39 and 101-102. (GET) (ICS).
876 T. 5 September 2001, p. 102 (GET) (ICS); T. 6 September 2001, p. 112 (GET) (ICS).
877T. 6 September 2001, pp. 99 and 100. (GET) (ICS); Defence Exhibit D 39.
878 T. 6 September 2001, pp. 100 and 101 (GET) (ICS).
879 T. 6 September 2001, pp. 102 and 103 (GET) (ICS)
880 T. 14 January 2003, p 2 (GPT); T. 14 January 2003, p.14 and 52 (GPT) (ICS)
881 T. 14 January 2003, p. 7, and 21-22(GPT); T 14 January 2003, p. 40 (GPT) (ICS).
882 T. 14 January 2003, p. 4 (GPT).

go to the Gikomero Protestant Parish. Therefore he did not see with his own eyes the person who was responsible for the massacres. He testified that he later heard from people that the *Interahamwe* and members of the local population were responsible for these massacres. As a representative of certain organisations in his *commune* and having been charged with the task of conducting enquiries, GPT testified that nobody mentioned who led the attacks on that day.[883]

392. In cross-examination, GPT was reminded that at the time when he made the aforementioned enquiries, he had already known from the radio and the Ministry of Justice that the Accused had been arrested for participating in the genocide in the Gikomero area. GPT admitted that he did not specifically ask those he interviewed whether the Accused was involved in the killings that took place in the Gikomero area. He testified nonetheless that he would have known if people had seen the Accused in the location during the genocide.[884]

393. In cross-examination, Defence Witness GPT testified that he knew the communal policeman Asiel, although Asiel lived in Kibara. He testified that he had never heard, as suggested by the Prosecution, that Aisle had told various people at a bar that Mr. Kamuhanda was due to come the next day with reinforcements and sharpened machetes and that Kamuhanda had said that no Tutsi should escape. He testified that he did carry out investigations about this matter.

394. Defence Witness GPT testified that he knows only two people who were perpetrators of the Gikomero massacre of 12 April 1994: Nyagatare and Canisius (a native of Gikomero who lives close to the Parish and Uwimana).[885] He testified that although the *gacaca* proceedings had not yet started in Gikomero,[886] Nyagatare (a detainee who had pleaded guilty and was asking for forgiveness) was brought to his village and he [Nyagatare] mentioned those with whom he committed the massacres but he did not mention Jean de Dieu Kamuhanda as one of the participants.[887] Nor did he [Nyagatare] identify the chief of the *Interahamwe*.[888]

395. Defence Witness GPT testified that when conducting the census, he did not speak to GEK because she may have been in prison at that time. He testified that in April 1994 GEK and her husband were living in Gikomero.[889]

883 T. 14 January 2003, p. 27 and 28 (GPT); T. 14 January 2003 p. 6 and 7 (GPT) (ICS)
884 T. 14 January 2003, p. 30 and 31 (GPT).
885 T. 14 January 2003, p. 35 (GPT).
886 T. 14 January 2003, p. 10 and 13 (GPT) (ICS).
887 T. 14 January 2003, p. 14 (GPT) (ICS).
888 T. 14 January 2003, pp. 58 and 59 (GPT).
889 T. 14 January 2003, pp. 49 and 50 (GPT) (ICS).

396. Defence Witness GPT attested to knowing Witness GAD, who lived close to his residence. He said Witness GAD was lying about seeing the Accused on 8 or 9 April 1994.[890]

- *Defence Witness GPR*

397. **Defence Witness GPR,** a female Hutu, resided in Gikomero *commune* in April 1994, close to the Parish of Gikomero. She testified that before the massacres on 12 April 1994, the Hutus and Tutsis of Gikomero lived in harmony.[891] She testified that refugees had come from Mbandazi and Musave in Rubungo *commune* to seek sanctuary at the Gikomero Parish and had stayed for about one week. Nonetheless, she did not visit the refugees at the Church; rather refugees such as Bucundura came to her home.[892]

398. Defence Witness GPR testified that after the death of President Habyarimana, massacres took place in her *commune* and in the school courtyard in front of Gikomero Parish Church. Although GPR could not recall the date, she stated that the massacres occurred on a Tuesday.[893] She testified that the attack started at approximately 1:00pm, while she was at home. On that day, she saw four vehicles driving quickly on the road beside her house; and, in the vehicles, there were people who wore uniforms with caps. It was difficult for her to identify the people in the vehicles, but then one of them got out of a vehicle and came to her house asking for her daughter. Witness GPR told this person that her daughter was not there and that only her husband and she were at home.[894] This man threatened her and then left her. He went to her husband and also threatened him. When GPR turned around, she saw that her husband was on the floor dead, and this man was holding a gun which had been fired once. She testified that she neither heard the gunshot that was fired nor did she hear any gunshots at the Parish.[895] Afterwards this person took her to the Gikomero Protestant Parish Church where she saw military-type vehicles, the same colour as grass. At the Church, GPR found that refugees had already been killed by those who had arrived in the vehicles; they had been shot by the attackers who had carried guns. She saw that the attackers were in the process of slaughtering cattle, loading the various pieces of meat into the vehicles and looting the Pastor's house. GPR heard the man who had threatened her ask her nephew[896] to lead him to her daughter. The

890 T. 14 January 2003, pp.57 and 58 (GPT) (ICS).
891 T. 14 January 2003, pp. 67 and 68 (GPR); T. 14 January 2003, p. 65 (GPR) (ICS): T. 15 January 2003, p. 23 (GPR) (ICS).
892 T. 15 January 2003, pp. 3-5 and 39 (GPR).
893 T. 14 January 2003, pp. 67 and 68 (GPR); T. 14 January 2003, p. 65 (GPR) (ICS): T. 15 January 2003, p. 23 (GPR) (ICS).
894 T. 15 January 2003, pp. 6 – 10 (GPR).
895 T. 15 January 2003, p. 8 (GPR) (ICS); T. 15 January 2003, pp. 33 and 34 (GPR).
896 Actual name omitted out of witness protection considerations.

assailants returned to GPR's house to loot, loading her belongings and those of her daughter onto the vehicles.[897]

399. Defence Witness GPR testified that following the departure of the vehicles, the same man gave her meat and asked her to feed children at the Parish. He threatened her once more before he left. The Witness looked for people to bury her husband. She testified than three days later he was buried. The only assailant she recognised that day was the man who had threatened her. There were no local people from Gikomero among the attackers who looted the Church. The attackers were from Rubungo and Karama. She knew this because the man who was looking for her daughter was from Karama in Rubungo. The Witness attested that the attackers were chasing the refugees from their area who had sought shelter in Gikomero *commune*. She testified that only two people survived the attack.[898]

400. Defence Witness GPR testified that the ethnicity of those who died at the Parish was Tutsi and that the *Interahamwe* were all Hutus.[899]

401. Defence Witness GPR testified that she does not know Jean de Dieu Kamuhanda but that she knows his father, Mureramanzi, who lived on the other side of Lake Muhazi. After the events, when people spoke of the attacks, GPR did not hear any mention of Kamuhanda's name. Since the area in question is Kamuhanda's native region, where he has relatives, people would have talked if "Mureramanzi's son" had been there during the massacres.[900]

- *Defence Witness GPE*

402. **Defence Witness GPE,** a female Hutu, arrived in Gikomero as an adult. She testified that in 1994 she lived in Gikomero because of work. She testified that her residence is near the Parish of Gikomero.[901] She testified that in 1994, the refugees at Gikomero Parish had come from Rubungo, that they had come to the Parish on a Sunday, and that the attack was launched on a Tuesday.[902] She testified that in the Gikomero area where she lived, there were few Tutsis. She testified that the local Gikomero Tutsis were not among the refugees at the Church; they were in their homes because there were no problems in Gikomero at this point in time. The refugees at the Parish talked about fleeing from a bad situation which could also have occurred in Gikomero. Nevertheless, GPR testified that

897 T. 15 January 2003, pp. 8-10, 53 and 54 (GPR).
898 T. 15 January 2003, pp. 11-13 (GPR).
899 T. 15 January 2003, pp. 27 and 28 (GPR).
900 T. 15 January 2003, pp. 13 and 14 (GPR).
901 T. 15 January 2003, p. 47 (GPE); T. 15 January 2003, p. 49 (GPE) (ICS); T. 16 January 2003, p. 34 (GPE); T. 16 January 2003 p. 52 (GPE) (ICS).
902 T. 15 January 2003, pp. 51-53 (GPE).

she did not see any signs of what was to happen. She explained that although the war had broken out in areas outside her locality, such as Musha, Buganza and Rubongo, in her area there were no problems.[903]

403. Defence Witness GPE testified that after the death of President Habyarimana, there were massacres in Gikomero *commune*, committed at the Parish on 12 April 1994.[904] She testified that this attack was launched between 1:00pm and 2:00pm but closer to 2:00pm. She explained that at the time of the attack she was at home as usual. The Pastor was with the refugees at this time. When he returned to his home to eat lunch he and others in the house heard engines. The Pastor then went out of the house as did Bucundura, who was also inside, ready to eat lunch with the Pastor. She testified that, even as vehicles were arriving in front of the Church, other persons were arriving from another side. Reuben, a man from the northern side of Gikomero Hill, came from that direction. He was not in any of the vehicles. Ruben said, "Are you still here?" As Reuben spoke to them, the vehicles were still arriving and had not yet parked. The Witness also stated that, "At that point the pastor heard someone speaking to him, saying, 'Are you still there when you are amongst those persons who are meant to be killed?'" When Bucundura heard this question, he turned probably to warn his children, but at that point he was killed by a bullet. During this incident, people were alighting from the vehicles. They asked who the owner of the house was, and were told that it was the Pastor's home. At that point someone seized the Pastor and told him to point out the "accomplices". The same person went into the Pastor's residence and looted everything. The Witness testified that the assailants targeted the Pastor because he had given shelter to the refugees. She explained that the search for "accomplices" was just a pretence to pillage the Pastor's house.[905]

404. Defence Witness GPE testified that when the attack at the Gikomero Parish Compound began, she fled from her house, taking the nearest bag with clothes and her three children, one of whom she carried in her arms. She explained that the attackers, who had firearms and grenades, had taken her by surprise. She did not see the assailants because, as they were approaching, she ran out her backdoor, through her fence, and through a sorghum field. She testified that as she fled she came across attackers who beat her with clubs. They said, "You should just die. I mean, even your husband is going to die. We are beating you because you hid Tutsis." The Witness testified that her life was spared because the attackers abandoned her to loot from other people who were fleeing carrying bags of food.[906] When she finally returned home around 6:00pm that evening, she found

903 T. 15 January 2003, pp. 53 and 54 (GPE).
904 T. 15 January 2003, p. 47 (GPE); T. 15 January 2003, p. 49 (GPE) (ICS); T. 16 January 2003 p. 34 (GPE); T. 16 January 2003, p. 52 (GPE) (ICS).
905 T 15 January 2003, p. 58 (GPE); T. 16 January 2003, pp. 45 - 48 (GPE).
906 T 16 January 2003, pp. 3 and 4 (GPE) (ICS).

many dead bodies and a few survivors. The bodies she saw remained in the courtyard of the Church for two days. She testified to hearing that the Pastor had informed the *bourgmestre* about the bodies and the *bourgmestre* to buy beers for local people who help to bury the bodies.[907]

405. Defence Witness GPE testified that she did not Witness the assailants arrive at the Parish, but believes that they came in vehicles insofar, as she heard the engines. She did not see the attack. She further asserted that the Pastor was forced to go into his house to identify the "accomplices".[908]

406. Defence Witness GPE testified that she knew Jean de Dieu Kamuhanda but that she had only seen him once at his sister's wedding. Nonetheless, GPE testified that the Pastor and Kamuhanda knew each other because they met at educational meetings. She acknowledged that Kamuhanda was well known in Gikomero. She stated that neither Kamuhanda nor the Pastor is a killer.[909]

- Defence Witness GPF

407. **Defence Witness GPF,** a Hutu born in 1972, testified that in April 1994 he lived near Gikomero Parish Compound.[910] In answer to a question from the Bench, the Witness testified that 1,500 people, approximately, were sheltered at the Parish on 12 April 1994, the day of the attack. He further testified that some were killed on the spot, some were killed as they fled the attack and others survived.[911]

408. Defence Witness GPF realised that there was an attack at the Parish when he heard gunshots between 1:00pm and 1:30pm. He was having lunch when Reuben shouted at the Pastor, "You are being attacked and you are still there?" At that moment, the Pastor and Bucundura stood up and went outside the Pastor's residence. The Pastor was behind Bucundura. The Witness explained, "When I heard the gunshots, I tried to bring out the bicycle in order to go and hide it. At that point in time, the Pastor, who was already down below [from GPF's house] saw me through the window and he told me, "There is no point in that. The attackers are already upon us. It is better you go and look for a place to go and hide." The Witness left the bicycle in the sitting room of the pastor's house and fled.[912] In cross-examination, Witness GPF denied the Prosecution suggestion that Reuben and the Pastor, alerted by shouting, knew about the impending attack.[913] He also denied the Prosecution's suggestion that the Pastor had

907 T. 16 January 2003, pp. 4-6, 28-33 and 52-53 (GPE) (ICS).
908 T. 16 January 2003, pp. 16 and 17 (GPE) (ICS).
909 T. 16 January 2003, pp. 14-15 and 49 (GPE) (ICS).
910 T. 20 January 2003, p. 14 (GPF) (ICS).
911 T. 20 January 2003, pp. 33 - 36 (GPF) (ICS).
912 T. 20 January 2003, pp. 18 and 35 (GPF) (ICS).
913 T. 20 January 2003, p. 17 (GPF) (ICS).

surrendered Bucundura to the *Interahamwe* in order to save himself and his family. He testified that members of Bucundura's family have defended the Pastor against criminal allegations.[914]

409. Defence Witness GPF attested to knowing that the assailants at the Gikomero Parish Compound came from Rubungo, insofar as the policeman who shot his neighbour, GPR's husband, was from Rubungo.[915]

410. Defence Witness GPF testified that he had come to the Tribunal to show that the Pastor did not participate in the genocide.[916]

- Defence Witness GPK

411. **Defence Witness GPK**[917] testified that in 1994 he carried out his business in the Kurupangu centre, in Gikomero market. He explained the distance between Kurupangu and the Gikomero Parish Compound is approximately 300 to 350 metres. Walking at a moderate pace, one could reach the Parish in fifteen minutes.[918] In 1994, during the war, he closed his business for security reasons.[919]

412. Defence Witness GPK testified that three days before the massacres, refugees began flocking to the Parish from Remera in Rubungo *commune*, and from Mbandazi. No Tutsi from Gikomero sought refuge at the Parish insofar as there were no problems of this in Gikomero.[920]

413. According to Defence Witness GPK, the massacres occurred between 1:00pm and 3:00pm on 12 April 1994. He was near Kurupangu centre when the massacres commenced.[921] He saw vehicles coming down the road but could not count them. From a distance of 50 metres, the Witness saw people jump down from one of the vehicles. They were carrying firearms and traditional weapons. The armed people encircled the Witness and few others at the market and prevented them from fleeing. They were told, "Do not be afraid. You won't have a problem. We're only looking for the Tutsis". They were also told to follow the armed people to the Gikomero Parish Compound, which they did. On their way they saw about 10 or 20 dead bodies. When they reached the *bureau de secteur* they were divided into two groups; the first group took the normal road to the Parish to intercept the refugees in their flight from the Parish and the second group, the one of GPK, was ordered to go in front of the vehicle

914 T. 20 January 2003, pp. 18 and 19 (GPF) (ICS).
915 T. 20 January 2003, p. 31 (GPF) (ICS).
916 T. 20 January 2003, pp. 14 and 31 (GPF) (ICS).
917 T. 20 January 2003, pp. 41 and 42 (GPK).
918 T. 20 January 2003, pp. 46 and 47 (GPK) (ICS); T. 21 January 2003, p. 23 (GPK) (ICS).
919 T. 20 January 2003, p. 42 (GPK).
920 T. 20 January 2003, pp. 42 and 43 (GPK).
921 T. 20 January 2003, pp. 43 and 44 (GPK).

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proceeding in the direction of the Parish. Witness GPK testified that before the attackers arrived, he had not heard any guns fired in Gikomero *secteur* but as he approached the Parish he heard many gunshots from the direction of the Parish.[922]

414. Defence Witness GPK testified that when his group and *Interahamwe* reached the Parish, he saw another group of assailants which had already arrived at the Parish. He also observed that people had already been killed. At the Parish Compound, he saw two vehicles: a white Hilux pick-up in front of the Pastor's house; and a white Suzuki next to the Church. The Witness testified that guns were fired, grenades were thrown. The attackers looted the Pastor's residence, stealing money, mattresses and other possessions belonging both to the Pastor and the refugees.[923] The Witness did not recognise anyone during the attack. When the attackers left he recognised local people. He and other local people were coerced into joining the attack. He said that the other local people who joined the attack used bludgeons or clubs, distributed by the *Interahamwe* at the Parish. The Witness GPK acknowledged that he was present during the attack for at least one and a half hours. He also stated that he personally refused to participate in the attack, but had no other choice than to stay at the site.[924]

415. In cross-examination, Defence Witness GPK asserted that the *Interahamwe* whom he saw on 12 April 1994 were not from Gikomero and were strangers to him. Defence Witness GPK testified that on 12 April 1994, the massacre was launched exclusively on the Parish and that the *Interahamwe* killed indiscriminately. The Witness testified that he had not seen Kamuhanda distributing weapons or heard that he had done so, before the *Interahamwe* arrived in Gikomero.[925]

416. Defence Witness GPK testified that after the massacres, the RPF requested the inhabitants of Gikomero to identify the perpetrators. The Witness was personally not asked by the authorities whether or not Kamuhanda was at the Parish on the day of the massacres.[926] Defence Witness GPK disclosed to the Chamber the names of those whom he recognised participating in the Gikomero Parish Compound massacre. All of them were residents of Gikomero in 1994.[927] He testified that he did not see Reuben on the day of

922 T. 20 January 2003, pp. 48 - 52 (GPK) (ICS); T. 21 January 2003, pp. 21 – 25 (GPK); T. 21 January 2003, pp. 27 – 29 and 37 (GPK) (ICS).
923 T. 20 January 2003, pp. 53, 54 and 57 (GPK) (ICS); T. 22 January 2003, pp. 5 and 8 (GPK) (ICS).
924 T. 20 January 2003, pp. 55 - 57 (GPK) (ICS); T. 21 January 2003, pp. 37 - 45 (GPK) (ICS); T. 22 January 2003, pp. 6 and 8 (GPK) (ICS).
925 T. 21 January 2003, pp. 6, 7 and 15 (GPK).
926 T. 21 January 2003, pp. 3, 4 and 5 (GPK).
927 T. 21 January 2003, pp. 45 - 47 (GPK) (ICS).

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the attack. He further testified that he did not know whether Reuben was present during the attack.[928]

417. Defence Witness GPK testified that he has not been suspected of involvement in the massacres. Rather, local people have mentioned him as a Witness to the massacres.[929]

418. Defence Witness GPK estimated that there were between 30 to 50 assailants, and that the attack lasted about two hours. The assailants left the area at around "4:00pm or 4:30pm".[930]

419. In cross-examination, Defence Witness GPK[931] acknowledged that he has a family relationship with Kamuhanda.[932]

420. Defence Witness GPK testified that Kamuhanda did not come to his shop between 6 and 12 April 1994. He further attested that he did not hear of Kamuhanda being in the area during this period.

- *Defence Witness GPC*

421. Defence Witness **GPC, who lived** in Gikomero *commune* in April 1994,[933] testified that he has been appointed as a member of the local *gacaca* tribunal.[934] He acknowledged that he has family relationship with Kamuhanda.[935] Following the 6 April 1994 the Witness did not see Kamuhanda in Gikomero and indeed has not seen him since then.[936]

422. Defence Witness GPC testified that victims of the killings were Tutsis who sought refuge at the Gikomero Parish Compound. The Tutsis who came from the neighbouring *communes* of Rubungo, Gikoro and Bicumbi, where killings had begun, arrived at the Parish on 9 April 1994. The Witness testified that no local Gikomero residents sought refuge at the Parish since there were no security problems in Gikomero.[937]

423. Defence Witness GPC testified that killings occurred at Gikomero Parish Compound on 12 April 1994.[938] On that date, the Witness was in his field close to the Parish. Hearing gunshots from the direction of the Parish, he went to the road alongside his field. There he met a man who told him,

928 T. 21 January 2003, pp. 47 and 48 (GPK) (ICS).
929 T. 21 January 2003, pp. 12 and 13 (GPK).
930 T. 20 January 2003, pp. 6, 57 and 58 (GPK) (ICS); T. 21 January 2003, pp. 17 - 19 (GPK).
931 T. 20 January 2003, p. 62 (GPK) (ICS).
932 T. 21 January 2003, pp. 5, 52 and 53 (GPK) (ICS).
933 T. 22 January 2003, p. 11 (GPC).
934 T. 22 January 2003, p. 32 (GPC) (ICS).
935 T. 22 January 2003, p. 34, 56 and 57 (GPC) (ICS).
936 T. 22 January 2003, p. 26 and 27 (GPC).
937 T. 22 January 2003, p. 14 (GPC).
938 T. 22 January 2003, p. 12 (GPC).

"Listen, it is the *Interahamwe* who are from Rubungo who have just attacked the Tutsis who are at the Gikomero Parish." The Witness went to the Parish. When he arrived he saw attackers who were in the classrooms and in the courtyard. He testified that he was not afraid because he had already been told by the men he met on the road that the attackers were only targeting Tutsis. He observed that the attackers were *Interahamwe* from Rubungo and that they wore the distinct *Interahamwe* uniform. He also saw four vehicles : a white Suzuki in front of the Church; a double cabin pick-up four by four, near the Pastor's house; a blue Daihatsu; and a red motor car. He testified that he did not stay at the Parish more than five minutes because he had only gone to investigate. He left to inform his neighbours of what was happening.[939] He estimated that the attack commenced between 1:00pm and 2:00pm.

424. In cross-examination, Defence Witness GPC dismissed the testimonies reporting that Kamuhanda was present at the Gikomero Parish Compound as lies. He stated that Kamuhanda was not at this massacre site.[940] In re-examination, GPC acknowledged that he arrived at the Compound fifteen minutes after he heard gunshots coming from the direction of the Parish. He asserted that he would have been informed if Kamuhanda had been present at the site, before his arrival.[941]

425. In cross-examination, Defence Witness GPC testified that he had received no instruction regarding his testimony. He confirmed that he witnessed the massacres at the Parish and that he did not see Kamuhanda at the massacre site.[942]

426. Defence Witness GPC testified that he knows very well that both Kamuhanda and Pastor Nkuranga have been accused of participating in the massacres of 12 April 1994 at the Gikomero Parish. He also knows that Pastor Nkuranga was released once it was established that the accusations levelled against him had no grounds. He asserted that his testimony was not to assist Kamuhanda, but to tell the truth about what he saw.[943]

427. During re-examination, when GPC was asked whether there was an agreement among the Hutu not to denounce the *genocidaires*, GPC testified that he knows of no law that requires Hutu to be silent about the *genocidaires*. He explained that when he came to testify, he testified about what he saw with his own eyes.[944]

939 T. 22 January 2003, pp. 15 –26 and 42 - 48 (GPC).
940 T. 22 January 2003, p. 44 (GPC).
941 T. 22 January 2003, p. 50 (GPC).
942 T. 22 January 2003, p. 41 and 42 (GPC).
943 T. 22 January 2003, p. 49 (GPC).
944 T. 22 January 2003, p. 51 (GPC).

- *Defence Witness GPB*

428. **Defence Witness GPB** testified that during 1994 he lived in Gikomero *commune* and he still lives there to date.[945] He was elected as a member of the *gacaca* in his locality.[946] He testified that he has family relations with Kamuhanda.[947]

429. Defence Witness GPB testified that the refugees who started arriving at Gikomero Parish on 9 April 1994 came from Mbandazi, Rubungo and localities beyond Kanombe. The Witness passed by the Parish on 10 April 1994 but did not speak to any of the refugees. When he did so, he saw that the refugees were in the classrooms and in the Pastor's house. He testified that there were no Gikomero Tutsi at the Parish when he passed by the Parish because before 12 April 1994 there were no problems between the Hutu and Tutsi of Gikomero.[948]

430. Defence Witness GPB testified that on 12 April 1994 there had been refugees at the Gikomero Parish but some *Interahamwe* came and killed them.[949] He testified that the attack itself took place, "a few minutes after 1:00pm and definitely between 1:00 and 2:00pm."[950] At this time, he said he was on the road going to his home. He stood where the 'S.O.D.E. VAT project' road sign is located.[951] Whilst on his way home, he heard the noise of vehicles and when he looked back, he saw a blue Daihatsu-type vehicle, followed by a red car. The vehicles stopped and some *Interahamwe* came out of the Daihatsu and ordered all the people in the area, including the Witness, to follow them to the Parish. He estimates that there were about twenty *Interahamwe* and about forty local people. He testified that he and the others followed the assailants and when they reached the home of Rutayisire the two vehicles stopped. Among the *Interahamwe* who stopped at Rutayisire's home was Twagirayezu, the communal policeman who killed Edouard [Gashikazi]. The Witness and the others continued, and when they reached the Parish they were told to stop. He was among the first group to reach the Parish. After a few moments he saw two other vehicles arrive, an ISUZU and a white double-cabin pick-up. One of them parked in front of the Church and the other parked in front of the Pastor's house. He testified that when they reached the Parish they were told to stop, slightly away from the vehicles. The attackers quickly surrounded the classrooms and told the people who were inside to come out into the courtyard, where the attackers began to shoot and throw grenades into the crowd. He testified that the attackers butchered the cattle and loaded them

945 T. 27 January 2003, p. 55 (GPB).
946 T. 28 January 2003, p. 13 (GPB).
947 T. 28 January 2003, p. 16 (GPB).
948 T. 27 January 2003, p. 56 (GPB); T. 28 January 2003, p. 29 (GPB).
949 T. 27 January 2003, p. 56 (GPB).
950 T. 27 January 2003, p. 56; T. 28 January 2003, p. 35 (GPB).
951 T. 28 January 2003, p. 2 (GPB).

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into the vehicles along with the refugees' property and that of the Pastor. He did not see any of the refugees fleeing.[952] He testified that the attack commenced at around 2:00pm and the attackers left at around 4:00pm or 4:30pm, staying approximately two hours in total. Witness GPB himself stayed there the whole time because he was surrounded by attackers and was afraid to leave. He testified that he was forced to join in the attack but although he refused, some of the people he was with joined in the attack.[953] In his estimation, there were about one thousand five hundred refugees, and eighty two attackers.[954]

431. Defence Witness GPB testified that on the day of the attack, the first thing he saw was the attackers surrounding the classrooms. He never saw Pastor Nkuranga. He testified that what was being said about Pastor Nkuranga was false. Similarly, the Witness testified that he did not see Kamuhanda, and that anybody who testified against Nkuranga and Kamuhanda was a liar.[955] He testified that he knew Edouard Gashikazi, and that he witnessed Twagirayezu shoot him.[956]

432. Defence Witness GPB testified that after the death of the President on 6 April 1994, he did not see Kamuhanda in Gikomero, and on 12 April 1994 he did not see him at the Parish. He testified that he saw the vehicles arrive at the Parish and he saw the whole attack for its whole duration. He said that those who testified that they saw Kamuhanda among the attackers on 12 April 1994 were liars.[957] GPB testified that he heard of the arrest of Kamuhanda and when he did he was surprised, as were others in the Gikomero population.[958]

433. The Prosecution suggested to Defence Witness GPB that he was a young, unemployed man at the time of the attack, and that he was summoned to join in. The Witness confirmed that he was eighteen years old at the time, and that he was forced to follow these people. He denied any suggestion that he participated in the attack. Rather, he claims simply to have followed the attackers, as he was forced to do.[959]

434. In cross-examination, Defence Witness GPB testified that on 10 April 1994 when he passed the 'S.O.D.E. VAT project' road sign, no one were there; however, when he passed it on 12 April 1994, there were people there. When the attackers found them, they were all forced to follow, in order to attack the refugees at the Parish.[960]

952 T. 28 January 2003, pp. 2 – 5, 10-11; 35 – 38; 40 and 43-44 (GPB).
953 T. 28 January 2003, pp. 10 – 12 and 40-41 (GPB).
954 T. 28 January 2003, p. 44 (GPB).
955 T. 28 January 2003, pp. 43 and 44 (GPB).
956 T. 28 January 2003, p. 42 (GPB).
957 T. 28 January 2003, pp. 15 and 16 (GPB).
958 T. 28 January 2003, p. 16 (GPB).
959 T. 28 January 2003, p. 39 (GPB).
960 T. 28 January 2003, p. 39 (GPB).

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435. Defence Witness GPB testified that he knew who Rutabagirwa was, but not whether he was a Tutsi. He knew that Rutabagirwa had named his child "Umuhutagehe." After 1990, the Witness claims that "Umuhutagehe" was considered to be a Tutsi name, showing that the father of the child was amongst those who were against the Hutu interest. By giving the name "Umuhutagehe" to his son, theman blamed the Hutus, and was ready to pursue them.[961]

c. Findings

- *Discussion*

436. In the following sections, the Chamber will assess the evidence of both Parties regarding the presence of the Accused in Gikomero *commune*, at the Gikomero Parish and School Compound ("Gikomero Parish Compound") on 12 April 1994 and also the Attack at the Gikomero Parish Compound.

<u>The Presence of Kamuhanda in Gikomero *Commune* Prior to the Attack of 12 April 1994 on the Gikomero Parish Compound</u>

437. The Chamber notes that Prosecution Witnesses GEK and GEB testified to having prior knowledge of the Accused. They attested to seeing the Accused in a vehicle in Gikomero *commune* before the killings of 12 April 1994 at the Gikomero Parish Compound.

438. The Chamber recalls the Defence allegations against Prosecution Witness GEK. The Defence asserted that the Witness lied about her identity, about being at her home between 10 and 14 April 1994, and about seeing the Accused before the attack on the Gikomero Parish Compound. The Chamber recalls its previous finding that Witness GEK's testimony is both highly credible and reliable. The Witness gave credible explanations of her movements during the periods relevant to this indictment. In the Chamber's opinion, the Witness knew the Accused prior to the attack of 12 April 1994. The Chamber believes that on 10 April 1994 she was at her home and overheard the Accused talking to her husband.

439. The Chamber recalls that it found credible the testimony of Witness GEK that at her home on 10 April 1994,[962] she heard the Accused tell her husband that the killings had not started in Gikomero *commune*; who were to assist had married Tutsi women; that if their Tutsi women were in the way "they should first eliminate them";[963] and that he would bring

961 T. 28 January 2003, p. 54 and 55 (GPB).
962 T. 3 September 2001, p. 180 (GEK) (ICS).
963 T. 3 September 2001,p. 171 (GEK) (ICS).

equipment to start. The Chamber believes the evidence that the Witness saw, on that same day outside her home, weapons being distributed when the Accused came out of the house "to arrange for the killings to start [...] at the primary school".[964] The Chamber further believes the Witness' testimony that she saw the Accused at her neighbour's house the day the killings started at the Gikomero Parish Compound - between 10 April 1994 and 14 April 1994 - in a vehicle which was followed by another vehicle carrying a large number of armed people and *Interahamwe* going in the direction of Gikomero Primary School. She heard gunshots and noise for 20 to 40 minutes afterwards. The Chamber also recalls her testimony that after the gunshots had stopped, she saw wounded children fleeing. A young amputated girl sought refuge in her house.

440. The Defence challenged the credibility of Witness GEB. The Defence argued that the Witness would not have been able to identify the Accused in a moving vehicle on 12 April 1994, insofar as the Witness had met the Accused only on brief and rare prior occasions. The Defence further challenged the Witness about contradictions contained in his prior statement taken by investigators and his testimony before the Chamber. In his statement, the Witness specified that a policeman named Asiel had informed him of Kamuhanda's responsibility for the attack at the Gikomero Parish. The Witness testified before the Chamber, however, that wounded refugees had provided this information. The Defence also pointed out differences between his statement and testimony regarding the names of refugees who, according to the Witness, were on the road with him, and who also spotted the Accused in a passing vehicle.[965] The Defence challenged his account relating to two further events, occurring prior to 1994, where he attested to last seeing the Accused: the opening ceremony of the Kayanga Health Centre, in 1991, and the introduction ceremony for Kamuhanda's wife, in 1983.[966]

441. The Majority of the Chamber, Judge Maqutu dissenting, finds the account of Witness GEB regarding the two encounters with the Accused, prior to 1994, to be credible and to constitute sufficient evidence to establish that the Witness had prior knowledge of the Accused. The Majority of the Chamber also accepts the Witness's testimony that he identified the Accused in a pick-up vehicle with approximately twenty individuals in the back, some of whom were armed. The vehicle was coming from behind the refugees, who were approximately a kilometre and a half from the Gikomero Parish. The Majority of the Chamber further finds credible the Witness's testimony that he heard gunshots from the direction of the Parish, about thirty minutes after the vehicle had passed the group of refugees.

964 T. 3 September 2001, p. 180. (GEK)(ICS).
965 Defence Closing Brief, para. 326 (French original) and paras. 866-889 (English translation).
966 T. 12 September 2001, p. 66 (GEB).

442. The Chamber has carefully considered the evidence of Prosecution Witness GEU, who testified that, at 1:00pm on 12 April 1994, he saw a large white vehicle at the Gicaca Trading Centre, where Kamuhanda was also sighted, according to unidentified reports. Witness GEU was the sole Witness to testify about this sighting. The Defence pointed out contradictions between the detailed vehicle description given by Witness GEU, and the different description given by Witness GEB who claims to have seen the Accused in a different vehicle on the same day. The Defence brought the Chamber's attention to the fact that the Witness had no prior knowledge of the Accused, and that his reporting of statements, allegedly made by the Accused when the vehicle stopped at the Gicaca Trading Centre, was based on the reports of others. The Chamber finds that it cannot rely on the Witness's testimony regarding statements by the Accused, insofar as the basis of his account is uncorroborated hearsay, and anyhow of questionable credibility.

443. With respect to the identification of the Accused on 12 April 1994 in Gikomero *commune* prior to the attack, the Chamber recalls that it has accepted the evidence of Witness GEK regarding the Accused's statement about the preparation of the killing of Tutsis in Gikomero on 10 April 1994. The Chamber also accepts that the Witness sighted the Accused before the massacres. The Accused was accompanied by armed people and *Interahamwe.* The Accused was heading in the direction of the Gikomero Primary School. From this evidence, the Chamber finds that the Accused, accompanied by armed people and *Interahamwe* travelled in the direction of the Gikomero Parish Compound on 12 April 1994.

444. The Chamber finds credible, by a majority, Judge Maqutu dissenting, Witness GEB's sighting of the Accused on the road to Gikomero Parish Compound on 12 April 1994.

The Presence of Kamuhanda at the Gikomero Parish Compound on 12 April 1994

445. The Chamber observes that 13 Prosecution Witnesses testified to seeing the Accused on 12 April 1994 at the Gikomero Parish Compound. Three of the Prosecution Witness, GAF, GAA and GES, attested to having prior knowledge of the Accused. The Chamber will first assess the credibility of these Witnesses in turn, regarding identification of the Accused, before evaluating their factual evidence.

446. The Defence challenged Prosecution Witness GAF's knowledge of the Accused. The Defence submitted that the Witness provided inaccurate dates and few details concerning two occasions when he met the Accused prior to the events of 1994. Firstly, the inauguration of the *bureau communal* in 1986, and secondly, the opening of the Kayanga Health Centre in 1992. Regarding the first challenge, the Defence points out that

the ceremony for the new office occurred in 1987, and not in 1986, as stated by the Witness. Regarding the second challenge, the Defence maintained that the Accused could not have been present at the opening of the Kayanga Health Centre (located in Gikomero *commune*), because the Accused lived in Butare at that time. The Chamber notes the dock identification of the Accused by the Witness.[967] The Majority of the Chamber, Judge Maqutu dissenting, accepts the explanations given by the Witness regarding the error in the date of the ceremony for the inauguration of the *bureau communal*.[968] The Accused did not deny being there. Indeed, he attested to being responsible for protocol for this event in 1987.[969] Regarding the opening of the Kayanga Health Centre in 1992, the Chamber observes that even if the Accused had been posted in Butare at this time, this alone would not demonstrate the impossibility of the Accused's presence. The Majority of the Chamber further notes that the testimonies of Prosecution Witnesses GEK and GEB corroborate the testimony of Witness GAF that the Accused was at the opening of the Kayanga Health Centre in 1992.[970] With respect to prior knowledge of the Accused, the Majority of the Chamber, Judge Maqutu dissenting, finds the testimony of Witness GAF to be truthful. However, the Chamber does not believe the unsubstantiated testimony of Witness GAF that the Accused was known before April 1994 to be an influential politician and "an influential member of the MRND party from the Gikomero area".[971]

447. The Defence challenged Prosecution Witness GES's knowledge of the Accused. The Defence suggested that the Department of Bridges and Roads, where the Witness testified to have been employed at the time, was located more than four kilometres away from the Ministry of Higher Education and Scientific Research, where the Accused worked, and not across the street, as the Witness testified. However, the Chamber notes the Witness's explanation, that his office was in a building located across the street from the Accused's office in the Kacyiru Complex.[972] The Chamber believes that, as a civil servant, Witness GES may have known Kamuhanda, a senior civil servant. The Chamber also notes that the Witness identified the Accused in court.[973] On the basis of all the evidence presented, the Chamber therefore finds the account of the Witness's prior knowledge of the Accused to be credible.

448. The Defence pointed out that Prosecution Witness GAA provided vague descriptions of two occasions, prior to 12 April 1994, when the Witness allegedly met the Accused. The first was the birth of the Accused's sister's

967 T. 17 September 2001, p. 50 (GAF).
968 T. 17 September 2001, p. 36 (GAF).
969 T. 20 August 2002, p. 49 (Kamuhanda).
970 T. 12 September 2001, p. 102 (GEB).
971 T. 13 September 2001, p. 46 (GAF).
972 T. 30 January 2002, pp. 99 and 100 (GES).
973 T. 25 January 2002, pp. 123 and 124 (GES).

child, and the second the Accused's sister's burial at Mbandazi, less than a kilometre from the Witness's residence.[974] The Chamber notes that according to the Witness, on neither occasion was he introduced to nor did he speak with the Accused. Rather, the Accused was pointed out to the Witness. The Chamber notes that the Witness lived close to the Accused's sister's home. The Chamber also notes that the Witness was able to identify the husband of the Accused's sister from an old photograph taken at the Accused's sister's funeral[975] and that the Witness identified the Accused in Court.[976] The Chamber is satisfied that Witness GAA is credible and had prior knowledge of the Accused.

449. The Chamber therefore finds the testimonies of Witnesses GES and GAA credible regarding their prior knowledge of the Accused. The Majority of the Chamber, Judge Maqutu dissenting, also finds that the testimony of Witness GAF is credible regarding his prior knowledge of the Accused.

450. The Chamber will now assess the evidence of Witnesses GAF, GES, and GAA with respect to their identification of the Accused at the Gikomero Parish Compound on 12 April 1994.

451. Prosecution Witnesses GAF, GES, and GAA alleged that they were refugees at the Gikomero Parish Compound on 12 April 1994 and that they identified the Accused on his arrival at the Compound on this day. Witness GAF testified that between 2:00pm and 3:00pm, he saw the Accused, from a distance of 15 to 20 metres, arrive in a vehicle with UN Markings. The vehicle was the second, coming from the upper side of the Parish. The Accused remained at the Compound for only a short period of time. The Defence maintained, given the large number of refugees and the short stay of the Accused, that Witness GAF could not have identified the Accused.[977] The Majority of the Chamber finds Witness GAF's identification of the Accused in Gikomero Parish Compound to be credible, insofar as the Witness saw the Accused in broad daylight and had prior knowledge of the Accused. Witness GES testified that between 12:00am and 2:00pm he saw Kamuhanda getting out of a single–cab truck carrying approximately ten armed men in the back. The Witness was standing at a distance of approximately fifty metres from the Accused at this time. The Defence challenged Witness's identification of Kamuhanda from this distance. However, the Chamber is satisfied that the Witness was able to accurately see the Accused from that distance.[978] Witness GAA testified that he was fewer than one hundred metres away when he saw a white pick-up truck bearing the letters "UN" with about ten people in the back. Witness GAA did not mention the time of the arrival but did testify

974 T. 19 September 2001, p. 107 (GAA).
975 T. 20 September 2001, pp. 3-17 (GAA).
976 T. 19 September 2001, pp.11-113. (GAA).
977 Defence Closing Brief, paras. 288 and 289 (French) and 758 to 760 in the (English translation).
978 Defence Closing Brief, paras. 288 (French) and 758 (English Translation).

that the Accused came in another vehicle. The Defence expressed doubt that the Witness could have identified Kamuhanda from this distance. The Chamber is satisfied that, insofar as the observations of Witness GES and GAA were made in broad daylight and insofar as they had prior knowledge of the Accused, their identification of the Accused on that day at Gikomero Parish Compound by the Witnesses is accurate. The Chamber finds that slight differences in the Witnesses' accounts of the vehicle in which the Accused arrived does not affect the reliability of these Witnesses as a vehicle's arrival is a passing event.

452. The Chamber has heard the accounts of other Prosecution Witnesses who saw the Accused on 12 April 1994 at the Gikomero Parish Compound but who did not have prior knowledge of the Accused. The Chamber will now assess their evidence.

453. The Chamber notes that the Defence challenged the credibility of Prosecution Witness GEE on the basis that the Witness did not recognise the Church premises in Prosecution Exhibit 2. The Chamber notes Witness GEE's testimony that he was standing in front of a classroom between 2:00pm and 3:00pm on 12 April 1994. The Witness stated that unnamed refugees, on seeing a white pick-up truck arrive, exclaimed, "We are going to be killed. Kamuhanda is coming". The Chamber further notes Witness GEE's testimony that, although there were cattle and refugees in the area, he was able to see the man identified as Kamuhanda. The Chamber recalls that GEE attested to Witnessing the killing of Bucundura by a policeman who arrived with the Accused. The Chamber does not find the fact that the Witness did not recognise the photograph in Prosecution Exhibit 2 to be unusual, insofar as the Witness testified that he had never been at Gikomero Parish Compound before. The Chamber finds the Witness's identification of the Accused to be credible.

454. The Defence challenged Prosecution Witness GEA's identification of the Accused and the Church. The Witness who recalled that there was a veranda on the Church was unable to identify the Church building from a photograph of the Church. The Chamber recalls the Witness's testimony that on 12 April 1994, between 1:00 and 2:00pm, he saw both Kamuhanda exiting and talking to the Pastor. According to the Witness, a boy named Musonera, a native of Gikomero pointed out to him Kamuhanda. The Witness testified that other refugees exclaimed "Kamuhanda has just arrived, our lives will no longer be peaceful and safe." The Witness attested that he was hiding in a small eucalyptus bush on the veranda of the Church when he witnessed the killing of Bucundura, by a man who had arrived with Kamuhanda and in the presence of Kamuhanda. The Chamber does not find it unusual that the Witness did not recognise the Church premises from photographs shown to him during his testimony insofar that as he had been at the Gikomero Parish Compound on this one occasion.

The Chamber finds the Witness's identification of the Accused to be credible.

455. The Defence questioned the ability of Prosecution Witness GEC to identify the Accused at Gikomero Parish Compound. The Chamber recalls her testimony that on 12 April 1994, between 1:00pm and 2:00pm, she was in a classroom when vehicles arrived. A man, who stepped out of a vehicle, was pointed out to her by someone called Nzarambo as being Kamuhanda. The Chamber observes that she further testified to seeing Kamuhanda with Pastor Nkuranga in front of the classroom and to seeing Kamuhanda raise his hands. From a distance of five metres, she heard him say, "start working". The Chamber finds that the Witness's identification of the Accused is credible.

456. Defence pointed out that Prosecution Witness GEG is the sole Witness to have testified to seeing the Accused with a weapon at the Gikomero Parish Compound. The Defence also pointed out that Witness GEG was unable to recognise the Accused in court. The Witness testified that he was standing at the side of the Church facing the courtyard when a vehicle carrying the man identified by other refugees as Kamuhanda arrived and passed by the place he was standing. According to the Witness, the Accused arrived while the refugees were meeting with Pastor Nkuranga. The refugees shouted "[T]hat is Kamuhanda, now that he is here, we are finished.". Concerning the Defence submission that GEG is the only Witness to testify about seeing the Accused with a weapon, it is the Chamber's opinion the Witness may simply have been mistaken. The Chamber finds that the Witness's testimony in the main corroborates the evidence of other Witnesses with regard to the sequence of events at Gikomero Parish Compound on 12 April 1994. The Chamber finds, therefore, the Witness's identification of the Accused at the Gikomero Parish Compound to be credible.

457. The Defence submitted that Prosecution Witness GEI's sketch, drawn for the ICTR investigators, does not correspond to the Gikomero Parish Compound, as it looked in 1994. Rather, it resembles the Parish today. The Chamber notes Witness GEI's testimony that he visited the Gikomero Parish Compound in 2000 during the exhumation of massacre sites. Accordingly, the Chamber is of the opinion that Witness GEI may have mistakenly included new buildings in his sketch given to the Tribunal investigators. The Witness testified that at approximately 1:00pm, on 12 April 1994, he saw a white pick-up truck in Gikomero. The person who exited the vehicle identified by refugees who shouted, "Since Kamuhanda is here, our fate is sealed." The Witness attested to moving to approximately four metres from the Accused in order to eavesdrop on his conversation with Pastor Nkuranga. The Witness heard the Accused ask the Pastor, "[what] are these people still doing here". The Pastor replied that he saw "these people come here". The Witness testified that the

Accused immediately ordered the *Interahamwe* to come down from the vehicle. He told them that "all these people here are Tutsi, kill them". The Accused also gave an order for the *Interahamwe* to shoot Bucundura. After consideration of all the evidence presented, the Chamber does not find credible the Witness's account that he moved significantly closer to the Accused to "eavesdrop on a conversation"; particularly in respect of his testimony that the refugees said their fate was sealed when Kamuhanda arrived. The Chamber acknowledges that Witness GEI is the only Witness who testified that Kamuhanda ordered the *Interahamwe* to kill Bucundura. Consequently, the Chamber cannot rely upon this uncorroborated evidence.

458. The Chamber notes that Prosecution Witness GAG testified that, between 1:00pm and 2:00pm, she was outside the classrooms listening to Pastor Nkuranga, who was talking to the refugees. At this time she was told by her son, among others, that a white pick-up truck had arrived and that guns had been distributed to *Interahamwe*. She testified that many refugees shouted "that is Kamuhanda" and that a man who had come with Kamuhanda shot at Bucundura in Kamuhanda's presence. She added that once Kamuhanda had finished talking to the Pastor, he returned to the vehicle. The Defence challenged Witness GAG's familiarity with the Gikomero Compound because she could not recognise photographs 7 and 8 in Prosecution Exhibit 2. The Chamber, however, finds the description of the classrooms by the Witness to be reliable. The Chamber recalls that Defence Witness GPE testified to having given shelter to Witness GAG who was wounded after the attack at the Gikomero Parish Compound. The Chamber finds the Witness's account of her identification of the Accused at the Gikomero Parish Compound to be credible.

459. The Chamber notes that Prosecution Witness GEM testified that on the morning of 12 April 1994, she was at the Gikomero Parish with approximately one million other refugees. She testified that a man, identified by others as Kamuhanda, arrived at 11.00am in a white truck. The Witness testified that she heard people say that Kamuhanda was there and that, "our fate is sealed". The Witness testified that within one hour of Kamuhanda's arrival, the Accused left in his truck and another truck arrived with armed *Interahamwe* who got out of the truck and started shooting at the refugees. She testified that the first person to be killed was a man from Rusororo named Bucundura with his wife and children. When shown photographs of the Gikomero Parish, the Witness testified that she did not recognise the area depicted therein. The Chamber finds that the inability of the Witness to identify Gikomero Parish in the pictures is not unusual given that this was the Witness's first time at the Parish. However, the Witness's estimates of time and numbers are unreliable when compared to the corroborated evidence of other credible Witnesses.

Consequently, the Chamber does not find the Witness to be reliable on such issues.

460. The Chamber notes that Prosecution Witness GEV testified that, between 1:00pm and 2:00pm on 12 April 1994, he saw a man arrive at Gikomero in a white truck with *Interahamwe*. He testified that a friend said "Kamuhanda has just arrived, our fate is sealed." At this time he was approximately fifteen to twenty metres from the place where Kamuhanda and Nkuranga talked together. Soon afterwards, the *Interahamwe* shot at Bucundura. The Witness did not know whether the Accused was still on the premises at that time. The Chamber finds the Witness's identification of the Accused at the Gikomero Parish Compound to be credible.

461. Prosecution Witness GEP was unable to recognise Gikomero Parish Compound from Prosecution Exhibit 2. The Defence used this to challenge the Witness's credibility. However, the Chamber is satisfied with the Witness's description of Gikomero Parish Compound as it was on 12 April 1994. The Chamber notes that Witness GEP testified that around lunchtime on 12 April 1994 she was in a classroom when she saw a vehicle arrive in the Compound and a man get out of the vehicle. She testified that refugees shouted "this is Kamuhanda who has arrived." The Chamber finds the Witness's identification of the Accused at the Gikomero Parish Compound to be credible.

462. Prosecution Witness GEH was unable to recognise Gikomero Parish Compound from Prosecution Exhibit 2. The Defence used this to challenge the Witness's credibility. However, the Chamber is satisfied with the Witness's description of the Gikomero Parish Compound as it was on 12 April 1994. The Chamber notes the testimony of Witness GEH that on 12 April 1994, between 1:00pm and 2:00pm, he saw a white pick-up with *Interahamwe* on board. He testified that Nkuranga and Bucundura went to talk to a man in the vehicle and that some refugees from Gikomero told him that this man was Kamuhanda. The Witness did not hear their conversation but testified that Kamuhanda was present when Bucundura was shot. He did not hear the Accused give an order to start the killings. The Chamber finds the Witness's identification of the Accused at the Gikomero Parish Compound to be credible.

463. The Chamber does not find it unusual that some Prosecution Witnesses could not recognise the buildings in the photographs shown to them. Since the events in question, the Compound has been renovated and new buildings added.

464. The Chamber recalls the testimony of Witness PC who told the Chamber that "Kamuhanda" can mean "on the road" in Kinyarwanda. The Chamber does not accept this explanation given the context.

465. The Defence submits that it is not reliable identification evidence that on 12 April 1994 some Prosecution Witnesses identified a man called Kamuhanda at Gikomero Parish through shouts from the crowd, when they did not personally know the Accused, and could not identify him in court. It submitted that "Kamuhanda" was a common name in Rwanda. Furthermore, only one of these Witnesses with no prior knowledge of the Accused gave the Chamber names of those in the crowd who drew attention to the man called "Kamuhanda" by shouting out his arrival at the scene. The Chamber recalls the testimony of those Prosecution Witnesses who fit in this category, and their testimony regarding the crowd's general exclamation of "Here is Kamuhanda" or words to that effect. Due to the circumstances of the event, the Chamber finds nothing unusual in the fact that these Witnesses could not give the Chamber names of those shouting out the name "Kamuhanda", and therefore finds that this fact does not adversely affect their credibility. The Chamber recalls its finding that the evidence of Witnesses GES and GAA, who identified the Accused arriving at the Gikomero Parish on 12 April 1994 just before the massacre, is credible. By a majority, Judge Maqutu dissenting, the Chamber also found the evidence of Witness GAF, identifying the Accused at the massacre, to be credible. With regard to the Witnesses who had no prior knowledge of the Accused, the Chamber finds that their testimonies provide further corroboration regarding the identification of the Accused by other Witnesses with prior knowledge of the Accused at Gikomero Parish Compound on 12 April 1994.

466. The Chamber accepts the sighting of the Accused by Witnesses GEK, GES and GAA at Gikomero Parish Compound before the attack. The Majority of the Chamber, Judge Maqutu dissenting, also accepts the evidence of Witnesses GEB and GAF in this respect. Additionally, other Prosecution Witnesses, with no prior knowledge of the Accused, testified to hearing that Kamuhanda had arrived at the Gikomero Parish Compound. Given the above, the Chamber finds that the Accused arrived in a vehicle at Gikomero Parish Compound in the afternoon of 12 April 1994.

467. The Chamber recalls that both Prosecution and Defence Witnesses testified that people took refuge at the Gikomero Parish Compound from around 9 April 1994. The Chamber recalls that Witness GAF testified that there were mainly Tutsi refugees at the Parish on 10 April 1994. Witness GAA testified that there were about six thousand refugees at the Parish on 12 April 1994. Witness GEE testified that there were refugees and cattle at the Parish. Witness GEC testified that there were refugees in each classroom, about fifty people in her room, and also cattle in the Compound. Witness GEG testified that there were approximately two thousand mainly Tutsi refugees at the Parish on 11 April 1994, with women and children in the classrooms and the others outside. Witness GEH testified that that there were about ten thousand Tutsi refugees at the

Parish Compound on 12 April 1994. Witness GAG testified that there were up to fifteen thousand Tutsi refugees at the Gikomero Parish Compound by 11 April 1994. Witness GEP testified that in the early morning of 12 April, he was asked by a Hutu whether there were any Hutu amongst the refugees because "they did not want Hutus killed together with the Tutsis in the event there was going to be an attack". Based on the totality of the evidence, the Chamber finds that a large number of mainly Tutsi people had taken refuge at the Gikomero Parish Compound on 12 April 1994.

468. The Chamber recalls the testimony of the Defence Witnesses on the events that took place at the Gikomero Parish Compound on 12 April 1994. The Chamber further recalls that most of these Witnesses testified that the attack of 12 April 1994 on the Gikomero Parish Compound began between 1:00pm and 2:00pm.

469. The Chamber recalls that Defence Witnesses testified that they did not see the Accused at the Gikomero Parish Compound during the massacre of 12 April 1994. Defence Witness GPT, however, testified that he did not go to the Gikomero Parish Compound at all. Defence Witness GPR did not indicate when exactly she arrived at the Gikomero Parish Compound but that when she did, she found dead bodies and the attackers were looting. Defence Witness GPE testified that she did not see the attackers arrive because she had fled. Defence Witness GPF testified that he was having lunch when he heard the vehicles arrive. When the Pastor saw him through a window, trying to hide a bicycle, he was advised to flee and he did. Defence Witness GPK testified that he was apprehended by the attackers and he reached the Gikomero Parish Compound forty minutes after he first heard gunshots from the direction of Gikomero Parish. Defence Witness GPC testified that he was harvesting in his fields when he heard gunshots from the direction of the Parish, he went to investigate. He arrived fifteen minutes later to find that an attack was in progress at the Gikomero Compound. On the other hand Defence Witness GPB testified that he was apprehended and he was among the first group to arrive at the Gikomero Parish Compound on 12 April 1994 and the first thing he saw was an attack in progress. Witness GPB testified that he did not see Pastor Nkuranga or the Accused from the time when he arrived at the Gikomero Parish Compound to the time when he left to go to his home at the end of the attack.

470. The Chamber notes that the Defence Witnesses may have arrived on the scene of the events after the man identified as Kamuhanda had already left. In such a case, even if the Chamber were to believe these Witnesses, it would not demonstrate that the Accused was not there.

471. The Chamber recalls the testimony of Witness GPB. He testified that he was in the first group of attackers to arrive at Gikomero Parish Compound on 12 April 1994, however he did not see Pastor Nkuranga. The Chamber

recalls the version of events given by Defence Witnesses GPE and GPF, who testified that Pastor Nkuranga was present when the vehicles arrived at the Compound. The Chamber finds that even if Witness GPB were to be believed, he may have missed seeing both Pastor Nkuranga as well as the man identified as Kamuhanda at Gikomero Parish Compound on 12 April 1994.

472. The Chamber notes the evidence of Defence Witness GPT that following the inquiries he made there was no mention of a leader of the attack of 12 April 1994 at the Gikomero Parish Compound. The Chamber notes that while indeed GPT may have made inquiries, he testified that he did not question Prosecution Witness GEK. The Chamber thus finds that even if GPT did make such inquiries, it does not rule out the possibility that a man identified as Kamuhanda had been at the Gikomero Parish Compound for a brief period on 12 April 1994, bringing with him attackers who attacked the refugees sheltering there.

473. The Chamber notes that Defence Witness GPK testified that he did not see Kamuhanda in Gikomero between 6 April 1994 and the day of the attack on 12 April 1994. In fact, he testified that he did not see Kamuhanda for a long time prior to 6 April 1994. He therefore asserts that Kamuhanda had not been in Gikomero at any time prior to 6 April 1994 up until 12 April 1994. The Chamber finds Witness GPK to be entirely lacking in credibility on the material facts. The Chamber does not find it credible that GPK was unable to flee during the forty minutes from the time he was apprehended to the time he arrived at the Gikomero Parish Compound. The Chamber is not satisfied that GPK could observe the attack, without participating, but could not flee at any time during the attack, a period of approximately one and a half hours. Neither was he able to help the three young refugee children who he was asked to help after the attack, nor was he able to recognise most of the attackers. The Chamber is not satisfied that the Witness saw Karekezi, a cousin of Kamuhanda, arrive on the scene of the massacre after the attack. According to the Witness, Karekezi had come to find out what had happened. The Chamber found his demeanour in court to be evasive and finds that his aim in testifying was to protect the Accused. This was particularly evident by his insistence that as he did not see Kamuhanda in Gikomero at the relevant time, he could not have been there. Witness GPK did not give truthful testimony about the events of 12 April 1994, and the Chamber rejects his evidence.

474. Defence Witness GPC asserted that because he had not seen Kamuhanda in Gikomero between 6 April 1994 and 12 April 1994, Kamuhanda was not there. The Chamber finds his testimony to be unsubstantiated. The Witness holds the Accused in high esteem, and the objective of his testimony was to protect him.

475. The Chamber considered the statement of Defence Witness GER, Pastor Nkuranga, admitted under Rule 92*bis* of the Rules. In it he made no mention of the Accused in relation to the events of Gikomero Parish Compound on 12 April 1994. Having considered the evidence of all the other Witnesses who testified in relation to this event, the Chamber does not accept Pastor Nkuranga's evidence. Moreover, the Chamber finds the observations of Pastor Nkuranga to be unreliable, as he was under investigation for the crimes with which the Accused is charged.

476. Having considered the evidence of all the Defence Witnesses, the Chamber finds that even if believed, it would not provide a sufficient basis to rule out the possibility that the Accused was present at the Gikomero Parish Compound on 12 April 1994. Taking into account the Prosecution evidence and considering the evidence as a whole, the Chamber finds that it has been established beyond a reasonable doubt that the Accused was present at the Gikomero Parish Compound on 12 April 1994.

The Attack at the Gikomero Parish Compound on 12 April 1994

477. The Chamber will hereinafter discuss the Witnesses' accounts of the sequence of events leading to the attack and the attack itself.

478. The Chamber recalls that Prosecution Witnesses GES, GAA and (for the majority, Judge Maqutu dissenting) GAF, knew and identified the Accused upon his arrival at the Gikomero Parish Compound. Witnesses GAF and GES testified that the Accused, accompanied by *Interahamwe*, got out of the vehicle to speak with the Pastor of the Parish, Pastor Nkuranga. Witness GAF testified that Bucundura, a Tutsi, was shot dead by the people who came with the Accused when the vehicles were still moving. Witness GAF testified that Kamuhanda stepped down from the vehicle, raised his hands and spoke to those who came with him, particularly the *Interahamwe*. Witness GAF added that the Accused said "*mukore*", which means "work", and the killings started after the Accused left the Compound, which was only shortly after his arrival. The Witness testified that the attackers- including communal policemen and reservists- had rifles, grenades, machetes, Rwandan clubs and spears. The Witness fled, hid in a sorghum field. He testified that the number of people who were killed at the Parish on that day were about one thousand. The Chamber by a majority, Judge Maqutu dissenting, relies on the testimony of Witness GAF in its findings.

479. The Chamber recalls that Witness GES testified that approximately ten minutes after the arrival of the Accused, armed men wearing hats covered with grass and branches began to kill the refugees. The killing started when Bucundura was shot in the presence of the Accused.

480. The Chamber observes that Witness GAA testified that when the Accused alighted from the vehicle he raised his hands up and the shooting began. Witness GAA further stated that, in the Accused's presence, Hutus shouted "get to work Kamuhanda is here now". The Witness testified that Pastor Nkuranga and Bucundura came out of the Pastor's house at that moment and one of the soldiers shot and killed Bucundura, and three other persons. At that stage, the Accused went back to his vehicle and left while the attackers continued shooting. The Defence attacked the testimony of Witness GAA on the basis that the Witness did not recognise the photographs of Gikomero Parish Compound and that the Witness testified that he was not very familiar with this Church. The Chamber accepts the explanation of Witness GAA on his lack of recognition of the photographs.

481. The Chamber notes that the testimonies of Witnesses GES and GAA do not fully corroborate one another, and there is a slight discrepancy in relation to the moment when a Tutsi called Bucundura was killed by armed persons who accompanied the Accused. However the Chamber finds that this does not affect the substance of their testimonies. In this respect, the Majority of the Chamber also relies on the testimony of Witness GAF.

482. The Chamber recalls that it has, in the previous sub-section entitled "The presence of Kamuhanda on 12 April 1994 at the Gikomero Parish Compound", analysed the testimonies of other Prosecution Witnesses with respect to the events leading up to the attack. The Chamber will hereafter only recall certain aspects of their testimonies which are relevant to the findings of the Chamber on the Accused's role in the sequence of events.

483. The Chamber notes that Prosecution Witness GEE testified that after one policeman shot at Bucundura, the refugees fled to the classrooms where they were shot at, flushed out and ordered to lie down. Regarding his reference to a second attack which, according to the Witness occurred during the night between 12 and 13 April 1994, the Chamber does not rule out that this may have happened.

484. Prosecution Witness GEA testified that after the conversation between Kamuhanda and Pastor Nkuranga, an old man was shot. The Witness added that the people from the pick-up truck then rushed towards the refugees and started cutting them up, shooting at them and maltreating them. The Witness testified that when the attackers started shooting, Kamuhanda took his vehicle and left. Witness GEA testified that he could not say how many people had died at that location, because "that day there were very many."

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485. The Chamber recalls that Witness GEC testified that she saw the Accused with Pastor Nkuranga in front of the classroom and that the Accused raised his hands and said "start working". The Witness claims to have been five metres away at this moment. The Chamber notes that Prosecution Witness GEC testified that she did not know if the Accused was still there when the attack started. According to the Witness, the massacre started at about 1:00pm or 2:00pm and continued until 5:00pm when the attackers withdrew, and the locals continued to loot. The Witness estimated that out of the three thousand refugees who were there, two thousand five hundred were killed.

486. The Chamber recalls that Prosecution Witness GEG testified that the attack started when someone from the white truck shot Bucundura and his wife. Immediately after this, Kamuhanda left. The Witness testified that Kamuhanda was at that place for a short time, approximately two to ten minutes.

487. The Chamber recalls that Prosecution Witness GAG testified that the Pastor went to the side to speak with Kamuhanda as the *Interahamwe* surrounded the refugees. The Witness testified that when Bucundura was shot, Kamuhanda did not stop the shooting, and furthermore that Bucundura was shot by a person who had come down from his vehicle. The Witness testified that the shooting continued, and she ran towards the classrooms. When the attackers found her, they started slashing her breast and her head until she became unconscious and she woke up at 5:00pm outside the classroom, on top of dead bodies.

488. The Chamber recalls that Prosecution Witness GEV testified that after the conversation between Kamuhanda and the Pastor, the *Interahamwe* who had arrived on the truck began killing Tutsis, beginning with Bucundura. The Witness did not know whether Kamuhanda was still present when Bucundura was killed.

489. The Majority of the Chamber observes that Prosecution Witness GEP testified that after Kamuhanda finished speaking to a man, one of the passengers of the vehicle shot at Bucundura. She added that from the classroom, she saw Kamuhanda turn around and she heard him tell the others "Start Working". She added that the attack took a long time because there were many victims and that towards the end of the day, the assailants withdrew to rest.

490. The Chamber recalls that Witness GEH testified that Nkuranga and Bucundura went to talk to a man in the vehicle. He did not hear their conversation. He said that Kamuhanda was present when they shot Bucundura.

491. After careful consideration of all the evidence presented, and mindful of the fact that the Witnesses who had taken refuge at the Gikomero Parish Compound were fearful for their lives and were hiding when the attack started on 12 April 1994, the Chamber finds credible the evidence that the Accused spoke with Pastor Nkuranga, witnessed the killing of a Tutsi man named Bucundura by an armed person who arrived together with him, and left shortly thereafter. The Chamber also finds credible that by his gesture and (for the Majority of the Chamber, Judge Maqutu dissenting) words, the Accused intimated to the attackers to start the killings shortly before leaving the scene.

492. As to the identity of the attackers, the Chamber has heard evidence that the Accused came with Hutus, *Interahamwe* wearing all kinds of attire carrying clubs, grenades, guns and machetes, a police officer from Gikomero, reservists from Gikomero, a brigadier, Hutu policemen from Rubongo, a *conseiller* of Rusoso secteur, and soldiers. The Chamber finds that the differences between the accounts are not significant enough to affect the credibility of the Witnesses. The Chamber is therefore satisfied that those who attacked the Tutsi refugees at Gikomero Parish Compound were armed Hutus, *Interahamwe*, soldiers, communal policemen and reservists who were led by the Accused to start the killings.

493. As to the attack itself, the Chamber notes the evidence that after the killing of Bucundura, the people who came with the Accused attacked the refugees using rifles, grenades and traditional weapons. The Chamber further notes that the attackers blocked the refugees' escape from the classrooms and the courtyard, ordered the refugees to lie down, undressed the refugees and finished off the work by cutting up the refugees using cudgels and guns. The Chamber is satisfied with the evidence of Witnesses to the effect that refugee women, children and men, of Tutsi origin, were killed, injured and forced to flee at Gikomero Parish Compound on 12 April 1994. The Chamber is further satisfied that this was carried out by attackers brought by and led by the Accused, though the Accused left as the attack had just started.

494. The Chamber has considered the evidence of Witness GET and finds it credible. However, the Chamber considers that the nature of his evidence based exclusively on hearsay is not relevant because he did not Witness any of the events at stake in the Indictment.

495. With respect to the allegations of rape, the Chamber has noted that the Defence stated that Prosecution Witness GAG testified that during the attack of 12 April 1994 she had seen women taken away by assailants to be raped. The Chamber observes that GAG did not Witness the rapes, but learned from her daughter and two victims about them after the war.

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496. The Chamber further notes that the Defence highlighted the testimony of Prosecution Witness GEP who asserted that during the massacres some girls were selected and led away in a vehicle while the massacres continued. The Witness specified that the Accused left after the departure of the girls. The Witness added that no more than 20 girls were picked. She indicated that she did not know any of these girls, but later learnt at the camp where the *Inkotanyi* took those who escaped the massacres, that all the girls except one were raped and killed by the attackers. The Chamber observes that Witness GEP did not Witness the rapes but learnt about them after the events.

497. The Chamber recalls that on 20 August 2002, it denied a Defence Motion to enter a judgement of acquittal with respect to Count 6 of the Indictment, Crimes Against Humanity (Rape), finding that at that stage of the proceeding, the evidence adduced was not *prima facie* insufficient for a conviction.[979] Having analysed all the evidence presented, the Chamber finds that the testimonies of both Witnesses GAG and GEP are credible but that the hearsay nature of the evidence adduced by these Witnesses is not sufficient to sustain a rape charge against the Accused. The Chamber finds therefore that there is insufficient evidence for a conviction of Rape as a Crime against humanity.

- *Conclusions*

498. The Chamber recalls the Accused's admission that between 1 January 1994 and 17 July 1994 there were throughout Rwanda widespread or systematic attack against a population with the specific objective of extermination of the Tutsi.[980]

499. Both Prosecution and Defence Witnesses testified to the effect that Tutsi civilians from Kigali-Rural *préfecture* had started taking refuge at the Gikomero Parish Compound from around 9 April 1994 onwards, fleeing an attack on Tutsis. Therefore, the Chamber accepts that by 12 April 1994 a large number of men, women and children mainly of Tutsi origin, along with their cattle, had taken refuge at the Parish.

500. The Chamber has found that the Accused was seen on the road in Gikomero, in a white vehicle accompanied by armed *Interahamwe*, prior to the killing of Tutsi refugees at Gikomero Parish Compound on 12 April 1994.

501. The Chamber finds that the Accused arrived at the Gikomero Parish Compound in the early afternoon of 12 April 1994 in a white pick-up

979 Kamuhanda, Decision 20 August 2002, Partial Acquittal (TC), para. 25.
980 Defence Response to the Prosecutor's Request to Admit Facts, filed on 24 April 2001, Fact number: 89.

vehicle. The Chamber further finds that he was in the passenger section of the front cabin and that he was accompanied by armed people who were in the back.

502. Based on the totality of the evidence, the Chamber accepts that the Accused stepped out of the vehicle and had a conversation with Pastor Nkuranga, a Hutu in charge of the Parish and who resided there. The Majority of the Chamber, Judge Maqutu dissenting, accepts that after that conversation, the Accused told the armed persons whom he had brought to the Parish to "work" which, in this context, was understood by some Witnesses as an order that the killings of the Tutsi refugees should start. The Majority of the Chamber, Judge Maqutu dissenting, accepts the Witnesses understanding that the Accused gave an order to start the killings.

503. The Chamber finds that a Tutsi man called Augustin Bucundura, who accompanied Pastor Nkuranga in the Gikomero Parish Compound, was shot shortly after the arrival of the Accused and while the Accused was still present in the Compound. The Chamber further finds that Bucundura was shot by someone who came with the Accused.

504. The Chamber finds that the Accused was in a position of authority over the armed attackers because he led them to the Gikomero Parish Compound and because he ordered the attack. The Chamber does not, however, find that the Accused was in a formal superior-subordinate relationship with the attackers of the Gikomero Parish Compound nor that he maintained an effective control over them on the day of the attack.

505. The Chamber finds that the Accused arrived on 12 April 1994 at the Gikomero Parish Compound with a group of *Interahamwe*, soldiers, policemen and local population armed with firearms, grenades and other weapons and that he led them in the Gikomero Parish Compound, Kigali-Rural *préfecture*, to initiate the attack. The Chamber finds on the basis of the totality of the evidence that the Accused initiated the attack and the Majority further finds that the Accused said the word "work" to give an order to the attackers to start the killings.

506. The Chamber finds that at the Gikomero Parish Compound on 12 April 1994, the attackers used traditional weapons, guns and grenades to kill and injure a large number of Tutsi refugees. The killings were committed by armed *Interahamwe*, soldiers, policemen and the local population, and were committed in the Compound, Church and classrooms. The Chamber finds that the Accused left the Compound in a vehicle when the killings began.

507. The Chamber does not find the hearsay evidence adduced by the Prosecution to demonstrate alleged rapes committed during the attack at

the Gikomero Parish Compound on 12 April 1994 sufficient to implicate the Accused, as alleged in paragraph 6.46 of the Indictment.

3. Massacre at Gishaka Parish

a. Evidence

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

509. **Prosecution Witness GKL**, a Tutsi man, testified to having seen the Accused during the day on 10 April 1994 at a roadblock at Kayanga in Gishaka *secteur*, with armed *Interahamwe* and police,[981] as well as on the following day, 11 April 1994, between 8:00 and 10:00am, outside the Gishaka Parish and at the football field, where Tutsis were assaulted and killed.[982]

510. Prosecution Witness GKL testified about the events which preceded his flight to the Gishaka Parish. According to the Witness, on 7 April 1994, soldiers came to his *cellule*, searched his home, and physically assaulted him.[983] Realizing that there was no security in the area, the Witness and others left their *cellule* and went towards Jurwe.[984] There were approximately three hundred Tutsi from different areas travelling with them "but some of them died along the way" in attacks from Hutu *Interahamwe*.[985] After reaching Jurwe *secteur* on 9 April 1994, the group proceeded on to Kayanga, where they arrived on 10 April 1994.

511. Prosecution Witness GKL testified that on this same day, 10 April 1994, he saw the Accused from a distance of twenty metres "right in front of him"[986], together with "one Pascal, Brigadier Nyarwiya, [and] another *Interahamwe*,"[987] at a roadblock in Kayanga. The Witness acknowledged that he did not have an unobstructed view of the Accused, as there were several people in the way.[988] The Witness, who was moving through a queue of refugees toward the roadblock, was able to observe the Accused's activities for approximately fifteen minutes.[989] The Witness testified that

981 T. 6 May 2002, p. 18.
982 T. 6 May 2002, p. 48 (GKL).
983 T. 6 May 2002, p. 7 (GKL).
984 T. 6 May 2002, pp. 10-11 (GKL).
985 T. 6 May 2002, p. 12 (GKL).
986 T. 6 May 2002, pp. 23, 31 (GKL).
987 T. 6 May 2002, p. 24 (GKL).
988 T. 6 May 2002, p. 31 (GKL).
989 T. 6 May 2002, pp. 28-29, 64 (GKL).

because "everything took place during the day time and not at night time", it was clear to him the Accused was "in charge of that roadblock."[990] He further stated, "The situation as I was able to observe it was such that all of those who were with Kamuhanda, everything they did, they did this after consulting with Kamuhanda and Kamuhanda was there making hand gestures and he was either pointing in the direction in which we should be led or what should be done. It was obvious that he was their leader even though he was not personally carrying any weapons."[991] The Witness stated that the Accused was wearing *Interahamwe* clothing, consisting of a shirt and trousers that were blue and white and made of *Ibitenge* cloth.[992] The Witness estimated that there were approximately twenty *Interahamwe* and police officers manning the roadblock. The police had modern weapons, and the *Interahamwe* were armed with machetes, spears, clubs, and hoes.[993]

512. Prosecution Witness GKL testified that the *Interahamwe* pulled refugees, shouting and screaming, from the group, which was lined up in single file at the roadblock. The Accused did nothing to prevent the *Interahamwe's* violent assaults. Although the Witness was unable to estimate the number of people dragged from the queue at the roadblock, he did provide the names of two refugees whom he knew, Riziga and Muhire.[994] The Witness saw no dead bodies at the Kayanga roadblock, but did see bodies lying on the ground approximately 20 metres below the road.[995] The situation at the roadblock was chaotic; the Accused told the *Interahamwe* to move the refugees towards Gishaka Parish where their safety would be assured and said to the refugees, "Go to Gishaka; there you will find protection".[996]

513. Prosecution Witness GKL testified that the group of refugees then left the Kayanga roadblock in the direction of Gishaka Parish. *En route* they travelled through another smaller roadblock at Rwegeka in Gishaka *secteur*. This roadblock was manned by *Interahamwe* and people displaced by the war, referred to as *Abakiga*. The Witness and his group arrived at Gishaka Parish on the afternoon of the following day. The testimony was unclear as to whether this was 10 or 11 April 1994.[997] According to the Witness, "It took us only one day to go from Kayanga to Gishaka."[998] When the Witness and his group arrived at the Gishaka Catholic Church, the *Interahamwe* and the *Abakiga* who were at the site pushed the refugees into the Church and stole their cattle and other property.[999] The Witness

990 T. 6 May 2002, pp. 24-25 (GKL).
991 T. 6 May 2002, p. 30 (GKL).
992 T. 6 May 2002, p. 64 (GKL).
993 T. 6 May 2002, p. 18 (GKL).
994 T. 6 May 2002, pp. 20 and 21 (GKL).
995 T. 6 May 2002, p. 31 (GKL).
996 T. 6 May 2002, p. 19 (GKL).
997 T. 6 May 2002, p. 38 (GKL).
998 T. 6 May 2002, p. 38 (GKL).
999 T. 6 May 2002, pp. 41 and 67 (GKL).

said that he was not able to estimate the number of refugees at the site, but that the Church was full of Tutsis when he arrived.[1000] Once they were inside the Church, the refugees were prevented from exiting by the *Interahamwe* and *Abakiga*, who closed the front and back doors.[1001] In the evening, from inside the Church, he heard the *Interahamwe* rejoicing about their work accomplished that day. The Witness heard screams throughout the night of people dying, although he did not see how they were killed. He testified that "people were taken away from the Church through a back door" by *Interahamwe* and "never came back."[1002] The Witness did not see the Parish Priest at the Church.[1003] The Witness stated that he did not personally observe any killing and that no one was killed inside the Church or in the courtyard but farther away where there was grass for the cattle.[1004]

514. Prosecution Witness GKL testified that the next morning [11 or 12 April 1994], Bizimana, a guard at the convent, came to the Gishaka Church and told the *Interahamwe*, "[L]eave these people to go back to their *commune*."[1005] The refugees were then ordered to come out of the Church. The Witness stated, "We sat in a small wood of cypress trees near the convent and in this location we were separated with the men on one side and women and children on the other."[1006] The Witness then saw Kamuhanda, who was with members of the *Interahamwe* and several policemen."[1007] While the Accused was "going around this place", with "his hands in his pocket", where the refugees were gathered, the *Interahamwe* took the refugees' money and belongings, especially the "clothing that was still new".[1008] According to the Witness, the Accused was with Nzaramba, who was the ambulance driver from the health centre, Nyarwaya, Hamachiga and some policemen.[1009] On cross-examination, the Witness testified that the Accused had come to Gishaka Parish in Nzaramba's white ambulance.[1010]

515. Prosecution Witness GKL testified that the refugees were then taken to the canton tribunal, where the women were told to return to their homes and the men, numbering between 80 and 90,[1011] were led to the football field, where the *Abakiga* had already constructed "bullet proof" structures.[1012] The Witness stated, "Once we got to the football field ...

1000 T. 6 May 2002, p. 40 (GKL).
1001 T. 6 May 2002, pp. 68 and 69 (GKL).
1002 T. 6 May 2002 pp. 41and 42 (GKL).
1003 T. 6 May 2002 p. 68 (GKL).
1004 T. 6 May 2002 pp. 70 and 72 (GKL).
1005 T. 6 May 2002, p. 44 (GKL).
1006 T. 6 May 2002, p. 45 (GKL).
1007 T. 6 May 2002 p. 44 (GKL).
1008 T. 6 May 2002 pp. 44 and 49 (GKL).
1009 T. 6 May 2002 p. 45 (GKL).
1010 T. 6 May 2002, pp. 59,72 and 73 (GKL).
1011 T. 6 May 2002, p. 47 (GKL).
1012 T. 6 May 2002, pp. 45 and 46 (GKL).

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they started pushing us, beating us up." The Witness, who was able to escape from the crowd of refugees, saw the Accused at the site, along with policemen who were leading the other men away. The Witness said that he did not see any of these men again, and that after the war bodies were exhumed from the football field.[1013] The Witness stated that Kamuhanda was present that morning at the Gishaka Parish site from 8:00am until 10:00am, from the time that the refugees were released from the Church until the men were led to the football field.[1014]

516. In relation to his identification of the Accused, the Witness testified that his former classmates at Cerai school, in Gishaka *commune*, had pointed out the Accused to him prior to 1993 and that he had seen the Accused on four occasions near the Gishaka *communal* office before the war.[1015] In the words of the Witness, "I saw him on four occasions, that is whilst I was attending school and it was at the time that we used to walk around with other students and we passed by and saw him with other people."[1016] In regard to his identification of the Accused at the roadblock at Kayanga, the Witness testified that two refugees by the names of Muyanga and Kanango, both now dead, were with him at the roadblock, and that they first spotted the Accused.[1017] The Witness added, "When I saw him, myself, I realized that it was a man that usually I saw at the *communal* office at Gishaka."[1018] In cross-examination the Witness attested to hearing from "fellow pupils,"[1019] as well as from Muyanga and Kananza at the roadblock, that the Accused was Minister for Education in the "government of the *Abatabazi*".[1020] In regard to the identification of the Accused at the Gishaka Parish Church, the Witness stated that this man was the same person whom he had just seen at the Kayanga roadblock and whom he recognised from his student days.[1021] The Witness was unable to recognise the Accused in court.[1022]

517. **Prosecution Witness GKJ**, a Tutsi woman, testified that, following the attacks directed against Tutsis which began in her area on 7 April 1994,[1023] she fled with others to Jurwe.[1024] This journey took them "a few days".[1025] The refugees, who numbered approximately three thousand, were attacked at every location where they spent the night before arriving in Jurwe.[1026]

1013 T. 6 May 2002, p. 46 (GKL).
1014 T. 6 May 2002, p. 48 (GKL).
1015 T. 6 May 2002, pp. 32, 56 and 63 (GKL).
1016 T. 6 May 2002, p. 59 (GKL).
1017 T. 6 May 2002, p. 25 (GKL).
1018 T. 6 May 2002, pp. 25 and 26 (GKL).
1019 T. 6 May 2002, p. 62 (GKL).
1020 T. 6 May 2002, pp. 25, 62an 63 (GKL).
1021 T. 6 May 2002, p. 48 (GKL).
1022 T. 6 May 2002, p. 53 (GKL).
1023 T. 7 May 2002, p. 8 (GKJ).
1024 T. 7 May 2002, p. 10 (GKJ).
1025 T. 7 May 2002, p. 13 (GKJ).
1026 T. 7 May 2002, p. 10 (GKJ).

They stayed at Jurwe for four to six nights, where they were also subject to attacks, and then they travelled to Gasagara and on to Kayanga.[1027] The Witness testified that on the road to Kayanga the refugees saw a blue Daihatsu pick-up belonging to the Accused.[1028] The Witness was able to identify the driver and two passengers, who told the refugees to proceed to Gishaka, where their security would be ensured. The Witness stated, "I able to recognize the police brigadier. His name was Nyarwiya, [...]. I was also able to recognize the driver of the vehicle. His name is Nzaramba [...], and between the people was another person and this person was Kamuhanda."[1029] Approximately twenty people amongst the three thousand refugees[1030] mentioned the Accused's name when the vehicle passed on the road.[1031] The Witness acknowledged that she did not know who were the owners of the either of the two vehicles. She also stated that she had never before personally seen the Accused.[1032] The persons inside the vehicle told the refugees to go to Gishaka. A second vehicle, which was white, followed the blue pick-up. According to the Witness, "[T]he occupants of that vehicle repeated what the occupants of the blue vehicle had said, to go to Gishaka."[1033]

518. Prosecution Witness GKJ testified that the refugees then proceeded to Gishaka. *En route* they travelled through Kayanga, where there was a principal roadblock held by the *Interahamwe*.[1034] The refugees, many of whom were accompanied by children or were leading cattle, walked in groups. Some used the road, and others followed paths next to the road. According to the Witness, several of the refugees were clubbed to death by the *Interahamwe* at the roadblock at Kayanga.[1035] In response to a question on direct examination about her survival, the Witness attested to taking another path and returning to the main road after the roadblock.[1036]

519. Prosecution Witness GKJ testified that, on instructions from the individuals in the two vehicles, the refugees travelled to Gishaka, where they arrived in the afternoon.[1037] The Witness testified, "Once we got there, we were told to get into the Church."[1038] There were already other refugees both inside and outside of the Church.[1039] The refugees were initially separated. Women with children entered the Church first, and men

1027 T. 7 May 2002, pp. 14 and 15 (GKJ).
1028 T. 7 May 2002, p. 16 (GKJ).
1029 T. 7 May 2002, p. 17 (GKJ).
1030 T. 7 May 2002, p. 72 (GKJ).
1031 T. 7 May 2002, p. 29 (GKJ).
1032 T. 7 March 2002, p. 69 (GKJ).
1033 T. 7 May 2002, pp. 33 and 71 (GKJ).
1034 T. 7 May 2002, p. 26 (GKJ).
1035 T. 7 May 2002, pp. 20 and 26 (GKJ).
1036 T. 7 May 2002, p. 27 (GKJ).
1037 T. 7 May 2002, p. 34 (GKJ).
1038 T. 7 May 2002, p. 33 (GKJ).
1039 T. 7 May 2002, p. 34 (GKJ).

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followed.[1040] According to the Witness, "We closed the [Church] doors, because we knew that there were *Interahamwe* arriving. In just a few moments after that, we heard the engines of the vehicles arriving, and then people ran to the windows to see what was happening outside. And I heard people saying, this is our dawn, our fate is sealed, because Kamuhanda has arrived."[1041] She could see the Accused through the window of the Church, "but there was a lot of hustle and bustle."[1042] The Accused was not alone; "he was in front of the others."[1043] The Witness also said, "At that time they were on foot, because they had parked the vehicle in the courtyard."[1044] The Witness recognized the Accused as the same man whom she had seen in the vehicle earlier that day.[1045] Moreover Nyarwaya was still with him.[1046] Many other refugees in the Church recognized the Accused, and called out, "Kamuhanda, there comes Kamuhanda."[1047] The assailants carried traditional weapons, except for Nyarwaya who had a gun. It was now nightfall, and the assailants tried to break down the doors of the Church. The Parish Priest spent the night trying to prevent the assailants from committing atrocities,[1048] and instructing the refugees to pray. According to the Witness, the Priest said, "Rwandans are bad. You are going to be exterminated because Kamuhanda has come."[1049] There was no killing inside the Church that night; "only the children died asphyxiated."[1050] The Witness also stated, in cross-examination, that the assailants had been told not to kill the refugees in the Church.

520. Prosecution Witness GKJ testified that the killings intensified in the morning."[1051] The refugees opened the Church doors, on which the *Interahamwe* were pounding, upon the arrival of the Priest, who told them to leave the Church.[1052] "We heard an engine [*sic*] arriving, and at that point, the Parish Priest told us, 'You are going to die. I would like you to make your last prayer.'" The refugees were then separated into two groups, the men on one side and the women on the other,[1053] and were attacked. The Witness saw the Accused in the Church courtyard and heard him say to the *Interahamwe* "to kill people and to send the rest of the people home."[1054] The Witness testified to seeing bodies lying everywhere

1040 T. 7 May 2002, p. 81 (GKJ).
1041 T. 7 May 2002, p. 36 (GKJ).
1042 T. 7 May 2002, pp. 36 and 37 (GKJ).
1043 T. 7 May 2002, p. 37 (GKJ).
1044 T. 7 May 2002, p. 39 (GKJ).
1045 T. 7 May 2002, p. 41 (GKJ).
1046 T. 7 May 2002, p. 41 (GKJ).
1047 T. 7 May 2002, p. 45 (GKJ).
1048 T. 7 May 2002, pp. 47, 49 and 75 (GKJ).
1049 T. 7 May 2002, p. 49 (GKJ).
1050 T. 7 May 2002, p. 48. (GKJ).
1051 T. 7 May 2002, p. 49 (GKJ).
1052 T. 7 May 2002, pp. 77 and 78 (GKJ).
1053 T. 7 May 2002, pp. 50 and 52 (GKJ).
1054 T. 7 May 2002, p. 52 (GKJ).

around Gishaka Parish.[1055] She stated that the refugee men were taken away to another location, where they were killed.[1056] Although the Witness fled from the Parish which was later attacked by assailants, thrown into a ditch, and left for dead.

521. Prosecution Witness GKJ attested, in cross-examination, to first seeing the Accused when he and others drove by the group of refugees in a blue Daihatsu pick-up. Other refugees pointed out the Accused.[1057] The Witness also stated that she was able to distinctly see the persons in the vehicle at that time.[1058] In regard to her identification of the Accused subsequently at the Gishaka Parish Church, the Witness stated that she recognised him twice: first, on the day of her arrival, when she saw him through the window of the Church, as pointed out by an elderly man by the name of Chbakanga;[1059] second, on the following morning between 7:00am and 9:00am outside the Church when her life was being threatened, and she was able to catch only a "swift glance of him."[1060]

522. **Prosecution Witness GEL**, a Tutsi man, testified to having seen the Accused on 10 April 1994 both in front of the Gishaka *communal* office, with other local officials, and at the Gishaka Parish Church, shortly before an attack on Tutsi refugees who were gathered there.[1061]

523. Prosecution Witness GEL testified about the events preceding his flight to Gishaka Parish Church, following the death of President Habyarimana. On 7 April 1994, he, five members of his immediate family and more than twenty people from his uncle's family fled from the hill where they lived in the Kigali-Rural *Préfecture* to escape attacks against Tutsis by the *Interahamwe* in this area. On direct examination, the Witness testified that the refugees fled to Jurwe before proceeding through Gikomero to Kayanga and then to Gishaka. On cross-examination, the Witness testified that his group of refugees also travelled through Rutinga. When asked why he had not mentioned Rutinga earlier, he responded that the Prosecutor had not asked him about all the stops which the refugees had made on their odyssey.[1062] The Witness testified that in Jurwe they were attacked by *Interahamwe* from the local population. According to the Witness, Stanislas Mbonampeka led this attack.[1063] During the attack, which lasted all day, the refugees confiscated three grenades and a gun from their

1055 T. 7 May 2002, pp. 53 and 54 (GKJ).
1056 T. 7 May 2002, p. 54 (GKJ).
1057 T. 7 May 2002, p. 69 (GKJ).
1058 T. 7 May 2002, p. 72 (GKJ).
1059 T. 7 May 2002, pp. 42-43, 81 and 83-87 (GKJ).
1060 T. 7 May 2002, p. 87 (GKJ).
1061 T. 13 February 2002, pp. 59,77-79, 81-82, 90-92 and 95-97 (GEL); T. 14 February 2002, pp. 9,25-28 and 33 (GEL).
1062 T. 14 February 2002, pp. 105 and 106 (GEL).
1063 T. 13 February 2002, p. 53 (GEL).

assailants.[1064] These weapons, however, were later taken from them, without incident, when they arrived in Kayanga, where the road "was blocked".[1065]

524. Prosecution Witness GEL testified that, in Kayanga, the refugees met the following three local authorities: the *bourgmestre* of Gikomero *commune*, the accountant for the *commune*, and Nyarwaya, who was brigadier of the Gikomero *communal* police. The Witness testified that the Gikomero communal office was located at Gishaka[1066] and that these three individuals "assured us that they were going to take us [to] the *communal* office in Gishaka and that at the *communal* office our security would be guaranteed by the soldiers of UNAMIR."[1067]

525. Prosecution Witness GEL testified that, as a result of the security assurances given by the *bourgmestre* of Gikomero and the other two local authorities, he and his group of refugees travelled from Kayanga that day, which he thought to be 10 April, to the Gikomero *communal* office in Gishaka.[1068] There, while walking along the road leading to the Parish Church, the Witness recognized the Accused, who was standing in front of the *communal* office, conversing with local authorities, including the *bourgmestre*, the accountant and the brigadier, who had gone ahead of the refugees. The Witness provided a broad estimate of the distance between himself and the Accused, as "between 50 metres, 20 metres, 10 metres",[1069] and acknowledged, "I wasn't able to look at him for long because I was escaping".[1070] There were no UNAMIR soldiers at the *communal* office. The Witness testified that other refugees also recognized the Accused and said, "That one is Kamuhanda. He is an authority and he is going to intercede on our behalf."[1071] The Witness stated that he did not know the Accused well, yet he thought that the Accused would lead the refugees to the UNAMIR soldiers, who would protect them.[1072]

526. Prosecution Witness GEL testified that four soldiers of the presidential guard were also with Kamuhanda, the *bourgmestre*, and the other local authorities at the Gikomero *communal* office in Gishaka that day. In direct examination, the Witness said that he knew the members of the presidential guard; however, he had never before seen any of these soldiers. In cross-examination, the Accused acknowledged that he did know one of the soldiers, who was responsible for the security of

1064 T. 13 February 2002, p. 55 (GEL); T. 14 February 2002, p. 31 (GEL).
1065 T. 13 February 2002, pp. 55-56 and 106-107(GEL); T. 14 February 2002, p. 24 (GEL).
1066 T. 13 February 2002, p. 55 (GEL).
1067 T. 13 February 2002 pp. 55-56 (GEL); T. 14 February 2002, pp. 22-24 (GEL).
1068 T. 13 February 2002, p. 58 (GEL).
1069 T. 13 February 2002, p. 82 (GEL).
1070 T. 13 February 2002, p. 92 (GEL).
1071 T. 13 February 2002, pp. 59, 81-82, 92 and 127 (GEL).
1072 T. 13 February 2002, pp. 81 and 82 (GEL).

Nsabimana.[1073] The Witness estimated that a thousand refugees of Tutsi ethnicity, coming from Bicumpi, Kanombe, Rubungo Gikomero and other locations, were amassed at the *commune* office on that day.[1074]

527. Prosecution Witness GEL testified that, after seeing Kamuhanda at the *communal* office in Gishaka, he and his group of refugees reached the Church on the afternoon of the same day, 10 April 1994.[1075] The Witness said that the roadblock on the main road between the *commune* office in Gishaka and the Parish Church had been lifted to allow refugees to pass through.[1076] When asked how many people were gathered at the Church, the Witness answered, "There were many, many people there, sir, and I would put them at more than a thousand. Our group was composed of about a thousand people too, but they were more than a thousand. I didn't count. This is a simple estimate."[1077] The Witness testified that the people in the Church were Tutsis and that they sought shelter at the Church because there was not enough space at the *commune* office in Gishaka.[1078] The Witness did not see the Parish Priest Father Michel Donnet on 10 April 1994. According to the Witness, "[H]e had already left, but people told us that he was there in the morning."[1079]

528. Prosecution Witness GEL testified that, once inside the Church, he looked through the window and saw the Accused outside, driving around the Compound in a Hilux double cabin vehicle, which he thought to be red.[1080] The Accused did not stay long, and the Witness did not hear him say anything.[1081] [1082] Shortly following the Accused's visit to the Parish, the refugees amassed at the Church were attacked. According to the Witness, "Between 30 minutes and one hour elapsed between the arrival of Kamuhanda and the attack."[1083]

529. Prosecution Witness GEL testified that immediately after the Accused's departure and just before the attack on the refugees, Stanislas Mbonampeka, who had led the violent assault against refugees in Jurwe, arrived at the Church. "He simply said that [President] Sindikubwabo had died and that he was killed by Tutsi. He didn't say anything else, and, then,

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1073 T. 13 February 2002, pp. 79, 125 and 126 (GEL).
1074 T. 13 February 2002, p. 59 (GEL).
1075 T. 13 February 2002, p. 93 (GEL); T. 14 February 2002, p. 24 (GEL).
1076 T. 14February 2002, p. 16 (GEL).
1077 T. 13 February 2002, p. 94 (GEL).
1078 T. 13 February 2002, p. 94 (GEL).
1079 T. 14 February 2002, p. 18 (GEL).
1080 T. 13 February 2002, p. 96 (GEL); T. 14 February, pp. 25-29, 33 and 46 (GEL). In response to a question from the Bench, the Witness clarified that he saw the Accused driving through the compound in a vehicle. The Witness explained that there may have been some confusion in the translation of his testimony when he used the verb "marcher", (to walk) in referring to the Accused's vehicle.
1081 T. 13 February 2002, p. 96 (GEL).
1082 T. 14 February 2002, p. 25 (GEL).
1083 T. 13 February 2002, p. 97 (GEL).

he immediately left."[1084] Following this announcement, the Witness saw *Interahamwe*, soldiers, and police officers "coming from nowhere."[1085] The *Interahamwe* had traditional weapons, whilst the police and the military carried grenades and guns. According to the Witness, civilians and peasants also charged the refugees with traditional weapons. The attackers hurled grenades through the windows of the Church, because the doors were closed.[1086] Most of the refugees who attempted to escape from the Church were killed with machetes.[1087] The Witness estimated that 200 people, approximately, survived the attack on the Gishaka Parish Church.[1088]

530. Prosecution Witness GEL recalled having seen the Accused prior to April 1994 on two separate occasions. He first saw the Accused some time before 1994 at the Ministry of Primary and Secondary Education in Kigali, where a friend pointed out the Accused, as a "senior official" in the ministry.[1089] The Accused was walking down the corridor, and the Witness, from a distance of "five to ten metres", was not able to observe him at length.[1090] Approximately a year later, the Witness again observed the Accused, this time at a public ceremony for a development project held at the *bureau communal* office in Rubungo. The Witness recalled that the ceremony was held on a Sunday and that he arrived around 11am just as the Accused was introduced to the audience. The Witness also testified to having been in the midst of a crowd, to having seen from a distance of ten to twenty metres, approximately, , and to having left the ceremony "five minutes after the introduction of Kamuhanda".[1091] The Witness identified the Accused in court.[1092]

531. **Prosecution Witness GKI** testified that on 11 April 1994 the *bourgmestre* of Gikomero *commune*, Telesphore Rutaganira, a Hutu, visited her hill and met the Hutus residents. Shortly thereafter, the Hutus began to establish roadblocks, and the Tutsis began to flee from the hill.[1093] The Hutus had been told to go to the Gishaka *bureau communal*, and the Tutsis to the Gishaka Parish Church.[1094]

532. Prosecution Witness GKI testified that on 12 April 1994 at approximately 4:00am or 5:00am she and members of the family left their home in

1084 T. 13 February 2002, p. 96 (GEL).
1085 T. 13 February 2002, p. 98 (GEL).
1086 The French transcript, which the Chamber takes as authoritative on this issue, states: « Les assaillants ont également lancé des grenades à l'intérieur de l'église, à travers les fenêtres puisque les portes étaient fermées ». T. 13 février 2002, p. 110 (GEL).
1087 T. 13 February 2002, pp. 95 and 98 (GEL).
1088 T. 13 February 2002, p. 99 (GEL).
1089 T. 13 February 2002, p. 61 (GEL).
1090 T. 13 February 2002, pp. 61-63, 108 and 111-115 (GEL).
1091 T. 13 February 2002, pp. 64-69 and 115-124 (GEL).
1092 T. 13 February 2002, p. 103 (GEL).
1093 T. 8 May 2002, p. 32 (GKI) (ICS).
1094 T. 10 May 2002, p. 37 (GKI) (ICS).

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Gikomero *commune* to seek shelter at the Gishaka Parish Church, where they arrived early in the morning with a group of between fifty and eighty Tutsis. The Witness recalled the date because her birthday was the next day. They were the first refugees to arrive at the site.[1095] Later in the day, other refugees, fleeing from attacks at Nyakonga,[1096] joined them and, in the afternoon, between 800 and 1000 refugees had gathered at the Church. Many of them carried papers to guarantee their security at Gishaka Parish, which they gave to the Priest.[1097] Many of the refugees who sought shelter at the Parish told the Witness about being attacked by the *Interahamwe,* and some bore wounds from machetes and grenade explosions.[1098]

533. Prosecution Witness GKI testified that children in her family were ill and that she sought medicine for them from Dr. Rusatsi at the health centre in the area. The Witness testified that when she entered the canteen at the health centre, people stopped conversing and withdrew to the inner part of the room.[1099] At the centre, she greeted and spoke briefly with the *bourgmestre*, Telesphore Rutaganira, about the refugees' security problems. The *bourgmestre* was with other people, and said to one of them "Mr. Kamuhanda we will see you. We will meet again later."[1100] The Witness testified, "This was Kamuhanda, and when he [the *bourgmestre*] said this person's name, I turned around and looked at the person he was speaking to. I saw this man's face" The Witness also recalled that this was same man whom her brother had pointed out in a passing white vehicle on the morning of 30 March 1994, six days before the death of President Habyarimana. On that date her brother had told her that the *bourgmestre's* wife had information from Kamuhanda of plans for the *Interahamwe* to kill Tutsi accomplices in Nkuzuzu *cellule.*

534. Prosecution Witness GKI testified that she returned to the Gishaka Parish Church from the health centre around 5:00pm on this same day. While sitting in the courtyard in front of the Church,[1101] she saw a blue minibus, used as an ambulance, arrive with the *bourgmestre* and policemen carrying rifles.[1102] The Witness confirmed that the *bourgmestre* was the same person whom she saw with Kamuhanda at the health centre one hour earlier.[1103]

535. Prosecution Witness GKI testified that the *bourgmestre ordered* the Tutsi refugees to enter the Parish Church and the Hutus to go to the *bureau commune*. She testified, "[W]e were pushed into the Church and the doors

1095 T. 9 May 2002, pp. 18-20 (GKI) (ICS).
1096 T. 9 May 2002, p. 23 (GKI) (ICS).
1097 T. 9 May 2002, pp. 25 and 26 (GKI) (ICS).
1098 T. 9 May 2002, p. 26 (GKI) (ICS).
1099 T. 9 May 2002, pp. 32 and 33 (GKI) (ICS).
1100 T. 9 May 2002, p. 39 (GKI) (ICS).
1101 T. 9 May 2002, p. 45 (GKI) (ICS).
1102 T. 9 May 2002, p. 41 (GKI) (ICS).
1103 T. 9 May 2002, p. 42 (GKI) (ICS).

were closed [and] I saw persons that were armed surrounding the Church."[1104]

536. Prosecution Witness GKI gave testimony about rumours that spread amongst the refugees in the Church that the Accused helped to distribute equipment for the killing in the Gikomero region.[1105] She testified, "While we were at the Church during the night people were screaming saying we must pray because we are about to die and these people said that Kamuhanda had brought weapons."[1106] She testified that throughout the night of 12 April 1994 assailants opened the door and took people out; then the refugees in the Church heard people screaming and shots being fired.[1107]

537. Prosecution Witness GKI stated there was a lull between 5:00am and 6:00am on the morning of 13 April.[1108] The Witness approached the Priest, who was baptizing refugees, and requested a drink of water. The Priest told her to follow him to his house for water. While she was at the Priest's house, the Witness heard screams and shots from the Church. The Witness testified that the Priest asked her to hide in one of the bedrooms, but that between 4:00pm and 5:00pm, someone informed the Priest that he too would be killed if he hid a Tutsi. Shortly thereafter, when the Witness left the Priest's residence,[1109] she saw between fifty and a hundred dead bodies. Witness GKI testified before the Chamber that she stepped over the body of her own dead mother[1110] as she fled from the site. According to the Witness's estimate, the attack on the Gishaka Church lasted until some time between 8:00pm and 10:00pm, after beginning between 5:00am and 6:00am, with a lull around 2:00pm.[1111]

538. The record does not indicate the Witness's identification of the Accused in court. The Witness attested to having seen the Accused on two brief occasions prior to the attack at the Gishaka Parish Church. Although she heard rumours from other refugees about Kamuhanda's distribution of equipment to the assailants, the Witness did not personally see the Accused at the Parish Church during the massacre.

539. **Defence Witness PCE**[1112], a female relative of the Accused,[1113] testified that on 12 April 1994 she went to the health centre near the Gishaka Parish in order to meet with her uncle, a Tutsi. Together they went to the Gishaka

1104 T. 9 May 2002, p. 46 (GKI) (ICS).
1105 T. 10 May 2002, pp. 74 and 75 (GKI) (ICS).
1106 T. 9 May 2002, p. 48 (GKI) (ICS).
1107 T. 9 May 2002, pp. 46 and 47 (GKI) (ICS).
1108 T. 10 May 2002, p. 62 (GKI) (ICS).
1109 T. 9 May 2002, p. 49 (GKI) (ICS).
1110 T. 9 May 2002, pp. 49 and 50 (GKI) (ICS).
1111 T. 9 May 2002, p. 52 (GKI) (ICS).
1112 T. 30 January 2003, p. 39 (PCE)
1113 T. 2 February 2003, p. 27 (PCE) (ICS).

Parish Church to discover if any of their relatives had sought shelter there .They did not find any relative at the Church. Back at the health centre, the Witness noticed Prosecution Witness GKI, whom she knew well as they attended Church together,[1114] and who had come from the Parish to ask for medicine.[1115] Witness GKI had come to ask for medicine, and it was only Witness PCE and her uncle who were present. Witness PCE saw Witness GKI come and go.[1116] Defence Witness PCE visited her uncle between around 11:00am and 3:00pm, however they only spent around 20 minutes together at the Church.[1117] That day, the Witness also passed by the house of Rutaganira, the *bourgmestre* of Gikomero *commune*, and could see that no one was in. In response to a specific question, the Witness stated that between 6 April 1994 and 13 April 1994 she never saw the *bourgmestre* working at the *commune* office, nor did she hear that he was there. Nor had she heard of any meeting held at the canteen located between the health centre and the *bureau communal* that took place on 12 April 1994, and thinks that this would have been impossible anyway, as it had been closed due to the security situation.[1118] The Witness heard from others that the *bourgmestre* had already fled, and that he had found refuge with a person called Akayunga.[1119]

540. Defence Witness PCE testified that killings took place at the roadblocks next to the Gishaka *secteur* office on 13 April 1994.[1120] At that time there was around two hundred Hutus displaced by the war gathered at the Gishaka *secteur* office and another four hundred Hutus displaced by the war gathered at the Gikomero *commune* office in Gishaka. The distance separating these two offices was around 400 to 500 metres. The distance between the Gishaka *secteur* office and the Gishaka Catholic Parish was around 200 metres.[1121] The Witness testified that there were around three hundred Tutsi refugees gathered at the Gishaka Catholic Church. Up until 13 April 1994, these two communities of Tutsi Refugees and Hutu displaced persons lived in harmony, and were even provided with food by the local people.[1122] The Witness remained in her house on 13 April 1994 but observed many Tutsis fleeing from the Gishaka Catholic Church. Some of them stopped by her house on the way to ask for water, and she learned that the brigade commander, Nyarwaya, and his team, particularly, Rwanyange and Ephrem, had chased away the refugees. The Tutsis and also those "opposed to the regime" were being massacred at the roadblocks set up around the Gishaka Parish, but there were no killings at

1114 T. 3 February 2003, p. 44 (PCE) (ICS).
1115 T. 30 January 2003, pp. 43 and 44 (PCE); T. 30 January 2003, pp. 49 and 51 (PCE) (ICS).
1116 T. 30 January 2003, pp. 54 and 55 (PCE) (ICS).
1117 T. 3 February 2003, p. 34 (PCE) (ICS).
1118 T. 30 January 2003, p. 52 (PCE) (ICS).
1119 T. 3 February 2003, p. 44 (PCE) (ICS).
1120 T. 30 January 2003, pp. 39 and 40 (PCE)
1121 T. 30 January 2003, p. 43 (PCE)
1122 T. 30 January 2003, p. 44 (PCE)

the Parish itself.[1123] The Witness testified that she did not see the Accused in April 1994.[1124]

541. Defence Witness PCE testified that on 19 April 1994 the *Inkotanyi* put her in a camp in an occupied zone, and she stayed there until around the end of July 1994 or the beginning of August 1994. She testified to meeting Prosecution Witness GKJ in the camp, and to discussing their experiences. Witness GKJ told her that she had left the Gishaka Parish before the massacre took place, and fled to the residence of a man named Niyivugu, and where she stayed until the *Inkotanyi* found her.[1125]

542. Defence Witness PCE testified that she is a relative of the family of Witness GEK. The Witness went to see GEK on 16 April 1994 and observed she had a newborn child[1126], who could hardly have been a week old.[1127]

543. **Defence Witness PC** testified that on 8 April 1994, Tutsi refugees began to arrive at the Gishaka Parish Church. They came first from Rubungo *commune*, and later from Gikomero *commune.*[1128]The Parish was traditionally considered has a sanctuary in times of danger and the Witness expected that refugees would seek shelter in the Church[1129] Indeed, between 500 and 1000 Tutsi refugees sought refuge in the Church, filling both the main structure and the Church meeting room. .[1130] According to the Witness the refugees had fled from the *Interahamwe*, whom he described as young unemployed people with no future who had been trained by some politicians as instruments of death.[1131]

544. Defence Witness PC testified that approximately 20,000 Hutus, displaced by the war, had arrived in the Gishaka area since 1992. [1132].[1133] One large group of displaced Hutus had put up their tents next to the football field just down from the Gikomero *bureau communal* in Gishaka *secteur*, and another group was camped next to the Gishaka *secteur* office.[1134] According to the Witness the distance between the Gikomero *bureau communal* and the Gishaka Parish is one kilometre by road, and 400 metres "as the crow flies".[1135] He estimated the distance between the Gishaka *secteur* office and the Gishaka Parish to be around 300 metres.

1123 T. 30 January 2003, pp. 46-48 (PCE)
1124 T. 3 February 2003, p. 27 (PCE) (ICS).
1125 T. 3 February 2003, pp. 24 and 25 (PCE) (ICS).
1126 T. 30 January 2003, pp. 56-58 (PCE) (ICS).
1127 T. 3 February 2003, p. 24 (PCE) (ICS).
1128 T. 4 February 2003, p. 26 (PC) (ICS).
1129 T. 4 February 2003, pp. 25-27 (PC) (ICS).
1130 T. 4 February 2003, p. 27 (PC) (ICS).
1131 T. 4 February 2003, p. 27 (PC) (ICS).
1132 T. 4 February 2003, pp. 28 and 29 (PC) (ICS).
1133 T. 4 February 2003, p. 28 (PC) (ICS).
1134 T. 4 February 2003, pp. 29 and 30 (PC) (ICS).
1135 T. 5 February 2003, p. 36 (PC) (ICS).

545. Defence Witness PC testified that until 9 April 1994 there was no trouble between the Hutu displaced persons and the Tutsi refugees, as the Hutu displaced persons occupied sites close to the *secteur* and *commune* offices.[1136] However, on 9 April 1994, Hutu displaced persons also started coming from a place called Nyaconga, and to settle in the classrooms of the Primary School close to the Gishaka Parish. This created a situation where, "as they say in Rwanda, they started looking at each other with leopard eyes".[1137] The Witness testified that on 10 April 1994 *bourgmestre* Rutaganira came to the Parish to observe the situation, and the Witness told him that the Hutu displaced persons and the Tutsi refugees could not stay in the same place, and that it was absolutely necessary to find a solution to the problem.[1138] Rutaganira then went away with two delegates from the displaced persons to find another place in Bumboga *secteur* where they could move. A part of the Hutu displaced persons, sheltered in the classrooms of the primary school and camped at the Parish field, left on 10 April 1994, but the majority left the next day, 11 April 1994.[1139]

546. Defence Witness PC testified that as of 12 April 1994 the official *communal* institutions no longer existed. The last time he saw the *bourgmestre*, during this period, was on 10 April 1994. On 12 April 1994 the *communal* offices were vacated. The *bourgmestre* as well as all the *conseillers*, had left.[1140] However the health centre next to the Gikomero *bureau communal* remained operational up to the 14 April 1994 or 15 April 1994.[1141]

547. Defence Witness PC attested to having seen, on 12 April 1994, a man outside of the Parish premises, watching the refugees. This man told the Witness that he "was watching the refugees to avoid them fleeing". From the man's conduct, the Witness identified him as member of the *Interahamwe*.[1142]

548. According to Defence Witness PC, on the morning of 13 April 1994, around 9:00am or 10:00am, a man, identified as a lieutenant of the FAR, led a group of between fifty and one hundred armed *Interahamwe*, to the Gishaka Parish Church.[1143] The Tutsi refugees, while greater in number than the *Interahamwe*, were all unarmed.[1144] The Witness observed that it was impossible to reason with the *Interahamwe*, and some of them seem to be under the influence of drugs.[1145] The *Interahamwe*, under the leadership

1136 T. 4 February 2003, pp. 30 and 31 (PC) (ICS).
1137 T. 4 February 2003, p. 30 (PC) (ICS).
1138 T. 4 February 2003, p. 31 (PC) (ICS).
1139 T. 4 February 2003, p. 31 (PC) (ICS).
1140 T. 4 February 2003, p. 32 (PC) (ICS).
1141 T. 4 February 2003, p. 33 (PC) (ICS).
1142 T. 4 February 2003, p. 46 (PC) (ICS).
1143 T. 4 February 2003, pp. 41 and 42 (PC) (ICS).
1144 T. 4 February 2003, pp. 41 and 42 (PC) (ICS).
1145 T. 4 February 2003, p. 42 (PC) (ICS).

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of the lieutenant, led the refugees away from the Church, preventing them from fleeing[1146] Only Prosecution Witness GKI and a small boy, hidden behind the alter, remained in the Church.[1147] There were no gunshots and no wounded at the Parish. The buildings were undamaged.[1148] The Witness later learned that the refugees were led to the *bureau communal* to be executed.[1149]

549. Defence Witness PC denied the testimony of Prosecution Witness GKJ that the Priest had shouted "Kamuhanda, Kamuhanda has arrived, say your last prayers".[1150] He denied also the testimony of other Prosecution Witnesses that members of the crowd had exclaimed "Look at Kamuhanda, we are finished".[1151] He further denied having seen the Accused at any time during the events which occurred at the Gishaka Parish Church.[1152]

550. Defence Witness PC stated that on 15 April 1994 the RPF arrived in Gikomero *commune*.[1153]

551. Defence Witness PC estimated that between 300 and 400 Tutsis were killed in Gishaka *secteur*.[1154] In answer to a question from the Bench, the Witness attested that he did not know why the Tutsi refugees were led away from the Church to be killed rather than being killed in the Church itself.[1155]

552. **Defence Witness PCB** testified that there were no incidents in Gishaka *secteur* until 9 April 1994. [1156] On that day, the situation began to deteriorate. A refugee from Nduba, who sought shelter in the Witness's home, informed her that displaced Hutus from Nyacongo had arrived in Gishaka to loot the Tutsi's property and to kill them. [1157] The Witness testified that displaced persons of Hutu ethnicity, numbering between 400 and 500, had been living in Gishaka *secteur* since 1992. [1158] They had set up camps in the courtyard behind the bureau communal, in an area near the *secteur* office, around the health centre, and at the football pitch. [1159]

1146 T. 4 February 2003, p. 43 (PC) (ICS).
1147 T. 4 February 2003, p. 44 (PC) (ICS).
1148 T. 4 February 2003, pp. 44 and 45 (PC) (ICS).
1149 T. 4 February 2003, p. 43 (PC) (ICS).
1150 T. 4 February 2003, p. 56 (PC) (ICS).
1151 T. 4 February 2003, p. 57 (PC) (ICS).
1152 T. 4 February 2003, p. 56 (PC) (ICS).
1153 T. 4 February 2003, p. 50 (PC) (ICS).
1154 T. 4 February 2003, p. 64 (PC) (ICS).
1155 T. 5 February 2003, pp. 36 and 37 (PC) (ICS).
1156 T. 5 February 2003, p. 44 (PCB)
1157 T. 5 February 2003, p. 44 (PCB)
1158 T. 5 February 2003, p. 44 (PCB)
1159 T. 5 February 2003, pp. 44 and 45 (PCB)

553. According to Witness PCB, Tutsi refugees began to arrive on 9 April 1994. The flow of refugees continued on 10 and 11 April 1994. The refugees settled in two places, one group numbering around 200 persons in the courtyard next to the *bureau communal,* [1160] and the other group at the Gishaka Catholic Parish. [1161]

554. Defence Witness PCB estimated the distance between the two separate communities, of Tutsi refugees and displaced Hutus, which had settled near the *bureau communal*, to be 100 metres. Conflicts arose between the two groups. The *bourgmestre* came to warn the Hutus that they would be chased from the *commune* if they continued to create problems and instructed the *communal* police to keep the displaced Hutus away from the Tutsi refugees. [1162] According to the Witness, some of the displaced persons, offended by the warning, called the bourgmestre and the communal police "accomplices of the *Inkotanyi*". [1163]

555. Defence Witness PCB testified that the anger of the displaced persons increased over the next few days, and on 11 April 1994 the *commune* brigade commander, Michele Nyarwaya, came to the *bourgmestre* and asked, "Why then are you preventing us from working?". The Witness testified that, at that time, "to work" meant "to kill". [1164] The *bourgmestre* replied, "That it is my responsibility to ensure the safety of people under my administration. I shall maintain the peace of the people, I should therefore protect them". [1165] The *commune* brigade commander then got angry and left. [1166]

556. Defence Witness PCB testified that on 11 April 1994, at around 1:00pm, after the *commune* brigade commander had left the meeting with *bourgmestre*, a man who lived nearby, but who is now dead, came to the *bourgmestre* to tell him that the *commune* brigade commander had left angry and that he had said he was going to bring back *Interahamwe* from Remera [1167] to kill them and then to kill the Tutsis. [1168] At around 4:00pm the same day he repeated the warning with even more urgency. [1169] The *bourgmestre* decided to flee and he left for Kayanga with his family. [1170]

557. Defence counsel questioned Witness PCB about an allegation, made by Prosecution Witness GKI, that, on 12 April 1994, the *bourgmestre* of Gikomero *commune* attended a meeting about killings at the health centre

1160 T. 5 February 2003, pp. 46 and 48 (PCB)
1161 T. 5 February 2003, p. 46 (PCB)
1162 T. 5 February 2003, p. 49 (PCB)
1163 T. 5 February 2003, p. 50 (PCB) (ICS).
1164 T. 5 February 2003, p. 54 (PCB) (ICS).
1165 T. 5 February 2003, p. 52 (PCB) (ICS).
1166 T. 5 February 2003, p. 53 (PCB) (ICS).
1167 T. 5 February 2003, p. 52 (PCB) (ICS).
1168 T. 5 February 2003, p. 55 (PCB) (ICS).
1169 T. 5 February 2003, p. 55 (PCB) (ICS).
1170 T. 5 February 2003, pp. 55 and 56 (PCB) (ICS).

canteen located in Gishaka *secteur*. Witness PCB denied the allegation and insisted that the *bourgmestre* did not attend this meeting. [1171]

558. Defence Witness PCB attested to having seen the Accused once, at a burial ceremony, in 1992, and stated that she probably would not even be able to recognise him in Court.[1172]

559. Defence Witness PCB testified that she had access both to the Gikomero *communal* office and the home of the *bourgmestre*. At neither place did she ever see any weapons. [1173] She also related facts that in her opinion had motivated Prosecution Witness GET to bear false Witness against the *bourgmestre* as a genocide suspect.[1174]

560. Witness PCB testified, in cross-examination, that the Gishaka Catholic Parish Church was not destroyed. Rather the *bureau communal,* the Tribunal, and the health centre suffered destruction..[1175]

b. Findings

- *Discussion*

561. The Chamber recalls the testimony of Witness GKL that he recognised the Accused as Minister of Education "in the government of the *Abatabazi*", and that the Accused position had been pointed out to him by his friends. The Chamber notes that at the point in time to which the Witness referred, the Accused had not yet been appointed to the position of Minister of Higher Education and Scientific Research in the Interim Government. The Witness placed excessive emphasis on his sighting of the Accused at the *bureau communal,* in an attempt to convince the Chamber that he knew the Accused well. Moreover, the Witness was unable to identify the Accused in Court. The Chamber finds that the Prosecutor did not adequately demonstrate that the Witness knew or recognised the Accused, and thus the Chamber is not satisfied that the Witness properly identified the Accused, and finds his testimony regarding the Accused's actions to be unreliable. Furthermore, the Chamber is not convinced that the Witness's account is accurate. Although it is not inconceivable that the Accused would be wearing *Interahamwe* clothing and would personally be commanding a roadblock as described by the Witness, in the absence of specific corroboration, the Chamber cannot rely on this testimony. The

1171 T. 5 February 2003, pp. 56 and 58 (PCB) (ICS).
1172 T. 5 February 2003, p. 63 (PCB) (ICS).
1173 T. 5 February 2003, p. 64 (PCB) (ICS).
1174 T. 5 February 2003, p. 65 (PCB) (ICS).
1175 T. 6 February 2003, p. 5 (PCB) (ICS).

Chamber concludes that Prosecution Witness GKL was not a truthful Witness, and therefore will not rely upon his testimony.

562. The Chamber also recalls the testimony of Prosecution Witness GKJ. It is clear from her testimony that she did not personally know the Accused, and that she identified the man said to be "Kamuhanda", only through what she heard repeated by others. The Chamber did not find the Witness's account to be coherent.

563. Prosecution Witness GEL testified that he saw the Accused in conversation with the *bourgmestre* at the Gikomero *bureau communal* in Gishaka *secteur* on 10 April 1994, and thereafter again at the Gishaka Catholic Church, where he saw the Accused walking around the Church approximately thirty minutes before the attack. The Defence pointed out in its closing brief that there is a fundamental contradiction between the testimony of the Witness in court, and a previous written statement of the Witness.[1176] In his testimony before the Court, the Witness identified the site of the attack as Gishaka Church. However, in his previous statement, the Witness placed the attack at the *bureau communal*, where he was in hiding.[1177] In Court, the Witness explained this discrepancy as the fault of the investigators who inaccurately recorded his out-of-court statement. However the Chamber is not convinced on this point. Witness GEL also testified as to the words spoken by people outside the Church. The Chamber is not convinced that, whilst packed tightly inside the Church with more than one thousand other refugees, the Witness would be able to hear what people were saying to each other outside of the Church. The Chamber notes that Witness GEL was the sole Witness to testify that assailants threw grenades through the windows of the Church. Even if this Witness's account were to be believed, it would established the Accused's presence at the Gikomero *bureau communal* and at the Gishaka Parish Church at around the time of the massacre, but it would not establish his involvement in the killings. However, in the final analysis, the Chamber is not convinced the Witness positively identified the Accused. Although Witness GEL obviously suffered a great deal during the attacks which occurred during April 1994 upon the Tutsi population, the Chamber cannot consider his evidence to be credible, and cannot rely upon his testimony in relation to the presence or acts of the Accused in connection with the attack of the Gishaka Parish Church.

564. In analysing the testimony of Prosecution Witness GKI, the Chamber has found her evidence to be credible, and the basic structure of her account to be sound, matching in broad strokes the testimonies of other Witnesses: such as that Defence Witness PCE about her being at the Gishaka Health Centre on 12 April 1994, and that of Defence Witness PC about her being

1176 Defence Exhibit 24; Witness statement of 9 September 1999.
1177 Defence Closing Brief, paras. 2125-2132 (English Translation)

sheltered at the Priest's residence. However, the Witness did not know the Accused well, and only during a visit to the dispensary at the Health Centre did she overhear a man exchanging parting words with someone he called "Mr. Kamuhanda". Later on, she overheard some people at the Church saying that "Kamuhanda had brought weapons". The Chamber has found this Witness's testimony to be truthful, but does not find it sufficient to establish the presence or the acts of the Accused in Gishaka *secteur*, Gikomero *commune*, during April 1994.

565. Having considered the totally of the evidence, the Chamber notes the many inconsistencies between the Witness testimonies. Even an analysis limited to the Prosecution Witnesses' testimonies reveals irreconcilable differences in relation to the events at the Gishaka Parish Church. Witness GKL testified that once the Tutsi refugees were inside the Gishaka Church, the *Interahamwe* and the *Abakiga* shut the doors to prevent them from escaping. Witness GKJ testified that not the *Interahamwe* and the *Abakiga* but the refugees themselves shut the Church doors to prevent the *Interahamwe* from entering. Witness GKJ further testified that the assailants tried to break down the doors. Witness GKL testified that refugees were taken out through a back door during the night and were never seen again. Witness GKL also stated that, later, the refugees were led out of the Church, where the men and the women were separated. Witness GEL is the only Witness to have testified that grenades were thrown through the windows of the Church. Witness GEL further stated that some of the refugees said, "That one is Kamuhanda. He is an authority and he is going to intercede on our behalf", whilst Witness GKJ heard people say that the refugees' fate was sealed because "Kamuhanda has arrived". Similar contradictions exist among the testimonies of all Prosecution Witnesses testifying about the events at the Gishaka Parish Church. Therefore the Chamber cannot determine with certainty either the time of the attack, the precise location of the attack, the sequence of events, or the role, if any, of the Accused in the attack.

- *Conclusion*

566. The Chamber finds that a massacre of Tutsi refugees who had sought shelter in the Gishaka Catholic Parish Church, Gikomero *commune*, Kigali-Rural *préfecture,* occurred between 10 April 1994 and 13 April 1994, with the most refugees killed around the 12 April 1994 in a devastating attack. The evidence is inconsistent as to the precise location or locations of the killings. However, it can be said without any doubt that the killings occurred in the vicinity of the Gishaka Parish Church and that many Tutsi refugees lost their lives.

567. Having considered all the evidence relating to the events which occurred between 10 April 1994 and 13 April 1994 at Kayanga Roadblock and

Gishaka Catholic Parish Church, sites which are located both in Gikomero *commune*, Kigali-Rural *préfecture*, the Chamber finds that the Prosecution has not proven the charges against the Accused in relation to his alleged involvement in the massacres which occurred there between these dates.

J. Paragraph 6.37 of the Indictment (Authority of the Accused on the Local Authorities)

1. Allegations

568. Paragraph 6.37 of the **Indictment** reads:

> 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 Jean de Dieu Kamuhanda, Augustin Ngirabatware, Augustin Bizimana, Edouard Karemera, Callixte Nzabonimana, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, Félicien Kabuga, Juvénal Kajelijeli, Eliezer Niyitegeka, 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, Augustin Bizimana, Edouard Karemera, Callixte Nzabonimana, André Rwamakuba, Eliezer Niyitegeka, Casimir Bizimungu, Prosper Mugiraneza, Jerôme Bicamumpaka and Justin Mugenzi.

2. Findings

569. The Chamber recalls its findings that during the events of Gikomero Parish Compound the Accused exercised authority over *Interahamwe*, local policemen, soldiers, and local population amongst the attackers but that he was not in a superior-subordinate relationship with them and did not maintain effective control over them.[1178]

1178 see above: Part III, Section I.

K. Paragraphs 6.31 and 6.89 of the Indictment (Failure to Prevent the Crimes Committed by the Perpetrators or to Punish Them)

1. Allegations

570. Paragraph 6.31 of the **Indictment** reads:

> 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 committing and did themselves commit massacres of members of the Tutsi population and moderate Hutu population. Jean Kambanda, Jean de Dieu Kamuhanda, Augustin Ngirabatware, Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka, Edouard Karemera, André Rwamakuba, André Ntagerura, Pauline Nyiramasuhuko and Eliezer 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.

571. Paragraph 6.89 of the **Indictment** reads:

> Knowing that massacres of the civilian population were being committed, the political and military authorities, including Augustin Ngirabatware, **Jean de Dieu Kamuhanda**, Augustin Ngirabatware, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka, Justin Mugenzi, Eliezer Niyitegeka, 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.

2. Findings

572. On the basis of the evidence brought to it, the Chamber has found [1179] that the Accused led the attackers to Gikomero Parish Compound but that no evidence shown that he was in a superior-subordinate relationship with the attackers and nor that he did maintain effective control over them on 12 April 1994.

573. Accordingly, the Chamber finds that the Accused cannot be liable for the failure to prevent the commission of the crimes or to punish the perpetrators thereof.

1179 see above: Part III, Section I.

PART IV – LEGAL FINDINGS

574. In the present Part, the Chamber will present its legal findings based on the factual findings made above in Part II and III.

575. The Indictment states that: [1180]

> 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:
>
> JEAN DE DIEU KAMUHANDA
>
> With CONSPIRACY TO COMMIT GENOCIDE; GENOCIDE, or alternatively COMPLICITY IN 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.

A. Admitted Facts

576. The Accused has admitted that:

> Between 1 January 1994 and 17 July 1994, Rwanda was a state party to the Genocide Convention (1948) having acceded to it on 16 April 1975.[1181]
>
> The victims referred to in this document were protected persons, according to the provisions of Articles 3 common to Geneva conventions and additional protocol.[1182]

B. Cumulative Convictions

577. In almost every case tried before this Tribunal, the issue has arisen as to whether or not the accused may be convicted of multiple offences based on the same facts. In *Musema*,[1183] this Tribunal's Appeals Chamber finally had an opportunity to pronounce itself on the matter. This issue as it arose in that case was whether it was permissible to convict the prisoner of both genocide and extermination (as a Crime against Humanity) based on the same facts. Approving and adopting the applicable test as it was enunciated in the ICTY Appeals Chamber's case of *Delalić* et al. (the

[1180] Indictment, "The Charges".
[1181] Defence Response to Prosecutor's Request to Admit Facts, filed on 24 April 2001, Fact number: 92
[1182] Defence Response to Prosecutor's Request to Admit Facts, filed on 24 April 2001, Fact number: 93
[1183] *Musema*, Judgment (AC), 16 November 2001, paras. 346-370.

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"Celebiči Case"), the ICTR Appeals Chamber in *Musema* held that it was permissible so to convict the prisoner.

578. In the *Celebiči* Case, the relevant test was set out as follows:

> Having considered the different approaches expressed on this issue both within this Tribunal and other jurisdictions, this Appeals Chamber holds that reasons of fairness to the accused and the consideration that only distinct crimes may justify multiple convictions, lead to the conclusion that multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.
>
> Where this test is not met, the Chamber must decide in relation to which offence it will enter a conviction. This should be done on the basis of the principle that the conviction under the more specific provision should be upheld. Thus, if a set of facts is regulated by two provisions, one of which contains an additional materially distinct element, then a conviction should be entered only under that provision.[1184]

579. In the *Musema* Case, the ICTR Appeals Chamber also noted:

> In the *Jelisić* Appeal Judgment, ICTY Appeals Chamber adopted the reasoning it had followed in the *Celebiči* case, and held that the multiple convictions entered under Article 3 and Article 5 of ICTY Statute are permissible because each Article contained a distinct element requiring proof of a fact not required by the other Article.[1185]

580. Having reviewed these ICTY cases, the Appeals Chamber in *Musema* approved the test therein as one that "reflects general, objective criteria enabling a Chamber to determine when it may enter or affirm multiple convictions based on the same acts" and then confirmed the test as "the test to be applied with respect to multiple convictions arising under ICTR Statute."[1186]

581. Concerning the elements of the offences to be considered in the application of this test, the ICTR Appeals Chamber said:

> The Appeals Chamber further endorses the approach of the *Celebiči* Appeal Judgment, with regard to the elements of the offences to be taken into consideration in the application of this test. In applying this test, *all* the legal elements of the offences, including those contained in the provisions' introductory

[1184] *Delalic et al. (Celebici Case)*, Judgment (TC), para. 370.
[1185] *Musema,* Judgment (AC), 16 November 2001, para. 362.
[1186] *Musema,* Judgment (AC), 16 November 2001, para. 363.

paragraphs, must be taken into account.[1187]

582. Applying the foregoing analysis to the issue in the *Musema* Case, the Appeals Chamber held as follows:

> Applying the provisions of the test articulated above, the first issue is whether a given statutory provision has a materially distinct element not contained in the other provision, an element being regarded as materially distinct from another if it requires proof of a fact not required by the other.
>
> Genocide requires proof of an intent to destroy, in whole or in part, a national, ethnical, racial or religious group; this is not required by extermination as a Crime against Humanity. Extermination as a Crime against Humanity requires proof that the crime was committed as a part of a widespread or systematic attack against a civilian population, which proof is not required in the case of genocide.
>
> As a result, the applicable test with respect to double convictions for genocide and extermination as a Crime against Humanity is satisfied; these convictions are permissible. Accordingly, Musema's ground of appeal on this point is dismissed.[1188]

583. In deciding the issue as it did on that occasion, however, the Appeals Chamber declined to pronounce itself on the question of whether multiple convictions under different Articles of the Statute are always permitted.[1189]

584. The Chamber considers that in the present case there is no need to pronounce on the same question, especially as the Chamber has not been invited to do so by the Parties.

C. Criminal Responsibility

1. Indictment

585. The Indictment alleges that the Accused is criminally responsible on the basis of Article 6 of the Statute for the crimes described in the Counts below.

[1187] *Musema*, Judgment (AC), 16 November 2001, para. 363.
[1188] *Musema*, Judgment (AC), paras. 365 and 367.
[1189] *Musema*, Judgment (AC), para. 368.

2. The Statute

586. The Article 6 of the Statute on Individual Criminal Responsibility reads:

> 1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.
>
> 2. The official position of any accused person, whether as Head of state or government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
>
> 3. The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
>
> 4. The fact that an accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

3. Jurisprudence

a. Responsibility under Article 6.1 of the Statute

587. Article 6(1) addresses criminal responsibility for unlawful conduct of an accused and is applicable to all three categories of crimes: genocide and derivative crimes; Crimes against Humanity; and violations of Article 3 Common to the Geneva Conventions and Additional Protocol II.

588. Article 6(1) reflects the principle that criminal responsibility for any crime in the Statute is incurred not only by individuals who physically commit that crime, but also by individuals who participate in and contribute to the commission of a crime in other ways, ranging from its initial planning to its execution, as specified in the five categories of acts in this Article: planning, instigating, ordering, committing, or aiding and abetting.[1190]

[1190] *Semanza*, Judgment (TC), para. 377; *Kayishema and Ruzindana*, Judgment (AC), para. 185; *Musema*, Judgment (TC), para. 114; *Rutaganda*, Judgment (TC), para. 33; *Kayishema and Ruzindana*, Judgment

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589. Pursuant to Article 6(1), an individual's participation in the planning or preparation of an offence within the Tribunal's jurisdiction will give rise to criminal responsibility only if the criminal act is actually committed. Accordingly, crimes which are attempted but not consummated are not punishable, except for the crime of genocide, pursuant to Article 2(3)(b),(c) and (d) of the Statute.[1191]

590. Jurisprudence has established that for an accused to incur criminal responsibility, pursuant to Article 6(1), it must be shown that his or her participation has substantially contributed to, or has had a substantial effect on, the completion of a crime under the Statute.[1192]

591. The elements of the crimes of genocide, Crimes against Humanity, and violations of Article 3 common to the Geneva Conventions and Additional Protocol II, articulated in Articles 2 to 4 of the Statute, are inherent in the five forms of criminal participation enumerated in Article 6(1), for which an individual may incur criminal responsibility. These five forms of participation are discussed below.

- *Forms of Participation*

(i) Planning

592. "Planning", implies that one or more persons contemplate a design for the commission of a crime at both the preparatory and execution phases.[1193] The existence of a plan may be demonstrated through circumstantial evidence.[1194] In *Bagilishema*, it was held that the level of participation in planning to commit a crime must be substantial, such as the actual formulation of a plan or the endorsement of a plan proposed by another individual.[1195]

(ii) Instigating

593. "Instigating", involves prompting another person to commit an offence,[1196] and needs not be direct or public.[1197] Both positive acts and

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(TC), paras. 196-197; *Akayesu*, Judgment (TC), para. 473.
[1191] *Semanza*, Judgment (TC), para. 378; *Musema*, Judgment (TC), para. 115; *Rutaganda*, Judgment (TC), para. 34,35 and 43; *Akayesu*, Judgment (TC), paras. 473 and 482.
[1192] *Kayishema and Ruzindana*, Judgment (AC), paras. 186 and 198; *Ntakirutimana*, Judgment (TC), para. 787; *Bagilishema*, Judgment (TC), paras. 30 and 33; *Musema*, Judgment (TC), para. 126; *Rutaganda*, Judgment (TC), para. 43; *Kayishema and Ruzindana*, Judgment (TC), paras. 199 and 207; *Akayesu*, Judgment (TC), para. 477.
[1193] *Semanza*, Judgment (TC), para. 380; *Musema* , Judgment (TC), para. 119; *Akayesu*, Judgment (TC), para. 480.
[1194] *Blaskic*, Judgment (TC), para. 278.
[1195] *Bagilishema*, Judgment (TC), para 30.
[1196] *Semanza*, Judgment (TC), para. 381; *Bagilishema*, Judgment, TC, para. 30; *Akayesu*, Judgment (TC), para. 482.
[1197] *Semanza*, Judgment (TC), para. 381 ; *Akayesu*, Judgment (AC), paras. 478-482.

omissions may constitute instigation.[1198] Instigation is punishable on proof of a causal connection between the instigation and the commission of the crime.[1199]

(iii) Ordering

594. "Ordering", implies a situation in which an individual with a position of authority uses such authority to impel another, who is subject to that authority, to commit an offence.[1200] No formal superior-subordinate relationship is required for a finding of "ordering" so long as it is demonstrated that the accused possessed the authority to order.[1201] The position of authority of the person who gave an order may be inferred from the fact that the order was obeyed.

(iv) Committing

595. To "commit" a crime usually means to perpetrate or execute the crime by oneself or to omit to fulfil a legal obligation in a manner punishable by penal law. In this sense, there may be one or more perpetrators in relation to the same crime where the conduct of each perpetrator satisfies the requisite elements of the substantive offence.[1202]

(v) Aiding and Abetting in the Planning, Preparation, or Execution of an Offence

596. "Aiding and abetting" relate to discrete legal concepts.[1203] "Aiding" signifies providing assistance to another in the commission of a crime. "Abetting" signifies facilitating, encouraging, advising or instigating the commission of a crime.[1204] Legal usage, including that in the Statute and case law of the ICTR and the ICTY, often inter-links the two terms and treats them as a broad singular legal concept.[1205]

597. "Aiding and abetting", pursuant to the jurisprudence of the *ad hoc* Tribunals, relates to acts of assistance that intentionally provide encouragement or support to the commission of a crime.[1206] The act of

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[1198] *Kordic and Cerkez*, Judgment (TC), para. 387.
[1199] *Semanza*, Judgment (TC), para. 381; *Bagileshema*, Judgment (TC), para. 30.
[1200] *Semanza*, Judgment (TC), para. 382; *Bagilishema*, Judgment (TC), para. 30; *Rutaganda*, Judgment (TC), para. 39 ; *Akayesu*, Judgment (TC), para. 483.
[1201] *Kordic and Cerkez*, Judgment (TC), para. 388.
[1202] *Kayishema and Ruzindana*, Judgment (AC), para. 187; *Tadic*, Judgment (AC), para. 188; *Kunarac, Vukovac and Kovac*, Judgment (TC), para. 390; *Semanza*, Judgment (TC), para. 383.
[1203] *Semanza*, Judgment (TC), para. 385; *Akayesu*, Judgment (TC), para. 484.
[1204] *Semanza*, Judgment (TC), para. 384; *Ntakirutimana*, Judgment (TC), para. 787; *Akayesu*, Judgment, para. 484.
[1205] *Semanza*, Judgment (TC), para. 384, referring to Mewett & Manning, *Criminal Law*(3rd ed. 1994), p. 272 (noting that aiding and abetting are "almost universally used conjunctively").
[1206] *Kayishema and Ruzindana*, Judgment (AC), para. 186; *Semanza*, Judgment (TC), para. 385; *Ntakirutimana*, Judgment (TC), para. 787; *Bagilishema*, Judgment (TC), paras. 33 and 36; *Musema*, Judgment (TC), paras. 125 and 126; *Kayishema and Ruzindana*, Judgment (TC), paras. 200-202; *Akayesu*, Judgment (TC), para. 484.

assistance may consist of an act or an omission, and it may occur before, during or after the act of the actual perpetrator.[1207] The contribution of an aider and abetter before or during the fact may take the form of practical assistance, encouragement or moral support, which has a substantial effect on the accomplishment of the substantive offence.[1208] Such acts of assistance before or during the fact need not have actually caused the consummation of the crime by the actual perpetrator, but must have had a substantial effect on the commission of the crime by the actual perpetrator.[1209]

- *Mens Rea*

598. To be held criminally culpable of a crime, the perpetrator must possess the requisite *mens rea* for that underlying crime.[1210]

599. For purposes of accomplice liability, the *mens rea* requirement will be fulfilled where an individual acts with the knowledge that his or her act(s) assist in the commission of the crime by the actual perpetrator(s). While the accused need not know the precise offence being committed by the actual perpetrator(s), the accused must be aware of the essential elements of the crime, and must be seen to have acted with awareness that he or she thereby supported the commission of the crime.[1211]

600. An accused's position of superior authority, in and of itself, does not suffice to conclude that the accused, by his or her mere presence at the scene of the crime, encouraged or supported the offence. The presence of the accused at the crime site, however, may be perceived as a significant *indicium* of his or her encouragement or support.[1212] The requisite *mens rea* may be established from an assessment of the circumstances, including the accused's prior and similar behaviour, failure to punish or verbal encouragement.[1213]

[1207] *Kunarac, Vukovic and Kovac*, Judgment, (TC), para. 391; *Semanza*, Judgment, (TC), para. 386.
[1208] *Kayishema and Ruzindana*, Judgment (AC), para. 186; *Kunarac, VuKovac and Kovac*, Judgment (TC), para. 391; *Semanza*, Judgment (TC), para. 385.
[1209] *Kunarac, Vukovic and Kovac*, Judgment, (TC), para. 391; *Semanza*, Judgment, (TC), para. 386.
[1210] *Kayishema and Ruzindana*, Judgment (AC), para. 187; *Semanza*, Judgment (TC), para. 387.
[1211] *Kayishema and Ruzindana*, Judgment (AC), paras. 186-187; *Semanza*, Judgment (TC), paras. 387 and 388; *Baglishema*, Judgment (TC), para. 32; *Kayishema and Ruzindana*, Judgment (TC), para. 201.
[1212] *Kayishema and Ruzindana*, Judgment (AC), para. 186; *Bagilishema*, Judgment (TC), para. 32; *Kayishema and Ruzindana*, Judgment (TC), para. 201.
[1213] *Semanza*, Judgment (TC), para. 389; *Kayishema and Ruzindana*, Judgment (TC), paras. 201 and 205. *Aleksovski*, Judgment (AC), para 162; *Vasiljevic*, Judgment (TC), para. 71; *Krnojelac*, Judgment (TC), paras. 75 and 90; *Kvocka*, Judgment (TC), paras. 255 and 262; *Kunarac*, Judgment (TC), para. 392; *Furundzija*, Judgment (TC), para. 249. But see *Ntakirutimana and Ntakirutimana*, Judgment (TC), para. 787 (stating that aiding and abetting, pursuant to Article 6(1) requires proof that an accused possessed the *mens rea* of the underlying crime, for example, the specific intent of genocide); *Akayesu*, (TC), paras. 485 and 547. The Trial Chamber observes that these cases do not provide any explanation for treating the *mens rea* requirement for aiding and abetting, pursuant to Article 6(1) differently than the requirement for complicity in genocide, which does not require proof of the *mens rea* of the underlying crime.)

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b. Responsibility Under Article 6(3) of the Statute

601. Article 6(3) of the ICTR Statute addresses the criminal responsibility of a superior by virtue of his or her knowledge of the acts and omissions of subordinates and for failure to prevent, discipline, or punish the criminal acts of his or her subordinates in the preparation and execution of the crimes charged. The principle of superior responsibility, which derives from the principle of individual criminal responsibility as applied in the Nuremberg and Tokyo trials, was subsequently codified in Article 86 of the Additional Protocol I to the Geneva Conventions in 1977. Article 6(3) of the Statute, which is applicable to genocide, Crimes against Humanity, and serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II, provides as follows:

> The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.[1214]

602. The jurisprudence of both the ICTR and the ICTY has recognised that a civilian or a military superior, with or without official status, may be held criminally responsible for offences committed by subordinates who are under his or her effective control.[1215] The chain of command between a superior and subordinates may be either direct or indirect.[1216]

603. The following three concurrent conditions must be satisfied before a superior may be held criminally responsible for the acts of his or her subordinates:

(i) There existed a superior-subordinate relationship between the person against whom the charge is directed and the perpetrators of the offence;
(ii) The superior knew or had reason to know that the criminal act was about to be or had been committed;[1217] and
(iii) The superior failed to exercise effective control to prevent the criminal act or to punish the perpetrators thereof.[1218]

[1214] ICTR Statute, Article 6(3).
[1215] *Semanza*, Judgment (TC), para. 400; *Bagilishema*, Judgment (AC), paras. 50 and 51; *Kayishema and Ruzindana*, Judgment (TC), para. 294; *Musema*, Judgment (TC), para. 148; *Celebici*, Judgment (AC), paras. 192-196.
[1216] Semanza Judgment (TC), para. 400.
[1217] i.e. crimes within the jurisdiction of the Tribunal.
[1218] *Celebici*, Judgment (AC), paras. 189-198, 225-226, 238-239, 256 and 263; *Celebici*, Judgment (TC), para. 346; *Blaskic*, Judgment (TC), para. 294; *Aleksovski*, Judgment (TC), para. 69; *Kordic*, Judgment (TC), para. 401; *Kunarac and Kovac*, Judgment (TC), para. 395; *Kayishema and Ruzindana*, Judgment (TC), paras. 217-231; *Bagilishema*, Judgment (AC), paras. 26-62 ; *Bagilishema*, Judgment (TC), paras. 38-50; *Semanza*, Judgment (TC), para. 400; *Niyitegeka*, Judgment (TC), para.477.

- *Existence of a Superior-Subordinate Relationship*

604. The test for assessing a superior-subordinate relationship, pursuant to Article 6(3), is the existence of a *de jure* or *de facto* hierarchical chain of authority, where the accused exercised effective control over his or her subordinates as of the time of the commission of the offence. The cognisable relationship is not restricted to military hierarchies, but may apply to civilian authorities as well.[1219]

605. By effective control, it is meant that the superior, whether a military commander or a civilian leader, must have possessed the material ability, either *de jure* or *de facto*, to prevent or to punish offences committed by subordinates.[1220] The test to assess a superior-subordinate relationship, in the words of the Appeals Chamber in *Bagilishema*, is:

> [...]whether the accused exercised effective control over his or her subordinates; this is not limited to asking whether he or she had *de jure* authority. The ICTY Appeals Chamber held in the *Čelebići* Appeal Judgment that '[a]s long as a superior has effective control over subordinates, to the extent that he can prevent them from committing crimes or punish them after they committed the crimes, he would be held responsible for the commission of the crimes if he failed to exercise such abilities of control.[1221]

- Mens Rea *Requirement that the Superior Knew or Had Reason to Know*

606. To hold a superior responsible for the criminal conduct of subordinates, the Chamber must be satisfied that the superior possessed the requisite *mens rea*, namely, that he or she knew or had reason to know of such conduct.

607. A superior in a chain of hierarchical command with authority over a given geographical area will not be held strictly liable for subordinates' crimes.[1222] While an individual's hierarchical position may be a significant *indicium* that he or she knew or had reason to know about subordinates' criminal acts, knowledge will not be presumed from status alone.[1223]

[1219] *Celebici*, Judgment (AC), paras. 192-193 and 197-198.
[1220] *Celebici*, Judgment (AC), para. 186 ; *Bagilishema*, Judgment (AC), paras. 59-61.
[1221] *Bagilishema*, Judgment (AC), para. 61.
[1222] *Semanza*, Judgement (TC), para. 404; *Bagilishema*, Judgment (TC), paras. 44-45; *Akayesu*, Judgment (TC), para. 489.
[1223] *Semanza*, (TC), para. 404; *Bagilishema*, Judgment (TC), para. 45.

608. A superior is under a duty to act where he or she knew or had reason to know that subordinates had committed or were about to commit offences covered by Articles 2, 3, and 4 of the Statute.[1224]

609. In accordance with current jurisprudence related to Article 6(3), a superior will be has found to possess, or will be imputed with, the requisite *mens rea* sufficient to incur criminal liability, where, after weighing a number of *indicia*, the Chamber is satisfied that (1) the superior had actual knowledge, established through direct or circumstantial evidence, that his or her subordinates were committing or were about to commit, or had committed, an offence under the jurisdiction of the Statute, or, (2) information was available to the superior which would have put him or her on notice of offences committed by subordinates.[1225]

- *Effective Control of Subordinates to Prevent or Punish Their Criminal Acts*

610. Where it is demonstrated that an individual is a superior, pursuant to Article 6(3), with the requisite knowledge, then he or she will incur criminal responsibility only for failure to take "necessary and reasonable measures" to prevent or punish crimes subject to the Tribunal's jurisdiction committed by subordinates. Such measures have been described as those within the "material possibility" of the superior, even though the superior lacked the "formal legal competence" to take these measures.[1226] Thus a superior has a duty to act in those circumstances in which he or she has effective control over subordinates, and the extent of an individual's effective control, under the circumstances, will guide the assessment of whether he or she took reasonable measures to prevent, stop, or punish a subordinate's crimes.[1227]

4. Findings

611. The Chamber finds that no specific evidence has been brought to it as regards the nature of the relationship between the Accused and the attackers of the Gikomero Parish Compound. There has been no clear evidence presented by the Prosecution that the Accused had a superior-subordinate relationship with these attackers nor that he maintained effective control over them during the period relevant to the Indictment.

[1224] *Semanza,* Judgement (TC), para. 405 ; *Bagilishema,* Judgment (TC), para. 46; *Celebici,* Judgment (TC), paras. 384-386.
[1225] *Semanza,* Judgement (TC), para. 405; *Bagilishema,* Judgment (AC), para. 28; *Bagilishema,* Judgment (TC), para. 46; *Kayishema and Ruzindana,* Judgment (TC), para. 228; *Celebici,* Judgment (AC), para. 239; *Celebici,* Judgment (TC), paras. 390-393.
[1226] *Semanza,* Judgment (TC), para. 406; *Kayishema and Ruzindana*, Judgment (AC), para. 302; *Celebici*, Judgment (TC), para. 395.
[1227] *Semanza* Judgment (TC), para. 406; *Kayishema and Ruzindana* (TC), paras. 228-230.

612. This finding is not inconsistent with the Chamber's earlier finding that the Accused was in a position of authority over the attackers, for purposes of his responsibility under Article 6(1) for ordering the attack at the Gikomero Parish Compound. The finding of a position of authority for purposes of "ordering" under Article 6(1) is not synonymous with the presence of "effective control" for purposes of responsibility under Article 6(3). It is settled that the two provisions are distinct: and, in our view, so are the considerations for responsibility under them.

613. Therefore the Chamber does not find that the Accused can bear criminal responsibility as a superior under article 6(3) of the Statute for the crimes that occurred in Kigali-Rural *préfecture* between 1 January 1994 and July 1994.

614. The Chamber will consider the elements of the individual criminal responsibility of the Accused under the Article 6(1) of the Statute in the relevant sections below in relation with each count of the Indictment.

D. Genocide and Related Crimes

615. The Trial Chamber acquitted the Accused of Count 1 of the Indictment, conspiracy to commit genocide.[1228]

616. Count 2 of the Indictment charges the Accused with genocide. Count 3 charges him with complicity in genocide.

1. The Statute

617. Article 2 of the Statute on Genocide reads:

> 1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this Article or of committing any of the other acts enumerated in paragraph 3 of this Article.
>
> 2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;

[1228] *Kamuhanda*, Decision 20 August 2003, Partial Acquittal (TC).

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

2. Genocide

a. Indictment

618. Count 2 of the Indictment charges:

Count 2 - Genocide, pursuant to Article 2(3)(a) of the Statute

By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:

Jean de Dieu Kamuhanda:

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90

is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby

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committed GENOCIDE, a crime stipulated in Article 2(3)(a) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

619. For the reasons indicated in Part III, Section I of this Judgment, the Chamber has made these factual findings based only on the relevant paragraphs of the Indictment referred to in Count 2.

b. Jurisprudence

620. The Tribunal is empowered to try the crime of Genocide under Article 2 of the Statute.

621. Article 2 of the Tribunal's Statute is a reproduction of Article II and III of the Convention on the Punishment of the Crime of Genocide, which was adopted on 9 December 1948.[1229]

622. The crime of genocide requires a finding of both *mens rea* and *actus reus*. The *mens rea* for genocide comprises the specific intent or *dolus specialis* described in the general clause of Article 2(2) of the Statute—*i.e.* the commission of a genocidal act *'with intent to destroy, in whole or in part, a national, ethnical, racial or religious group'*. And the *actus reus* consists of any of the five acts enumerated in Article 2(2) of the Statute, as shown above.

- *Proof of Specific Intent*

623. In determining the specific intent of the crime of genocide it is instructive to consider the following pronouncement of Trial Chamber I in the *Akayesu* Case:

> "intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against the same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed,

[1229] The Draft Convention was approved by the General Assembly Plenary Session with 55 votes for, none against and no abstentions. The Convention was immediately signed by twenty States. Rwanda acceded, by legislative decree to the Convention on Genocide on 12 February 1975; *see also: Jelisic,* Judgment (TC), para. 60; *Akayesu,* Judgment (TC), para. 496.

> their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of membership of a particular group, while excluding the members of other groups can enable the Chamber to infer the genocidal intent of a particular act."[1230]

624. The Chamber generally approves of this statement adding only that intent to commit a crime, even genocide, may not always be difficult or impossible to discern from the circumstances of the case.

625. In *Kayishema and Ruzindana*,[1231] Trial Chamber II also expressed the opinion that it may be difficult to find explicit manifestations of intent by perpetrators. Under such circumstances, the Chamber held, the perpetrator's actions, including circumstantial evidence, may provide sufficient evidence of intent.[1232] According to the Chamber, some of the *indicia* of intent may be "[e]vidence such as the physical targeting of the group or of their property; the use of derogatory language toward members of the targeted group; the weapons employed and the extent of bodily injury; the methodical way of planning, the systematic manner of killing."[1233] In the ICTY *Jelisić* Judgment, the Commission of Experts Report was quoted to this effect: "[i]f essentially the total leadership of a group is targeted, it could also amount to genocide. Such leadership includes political and administrative leaders, religious leaders, academics and intellectuals, business leaders and others—the totality per se may be a strong indication of genocide regardless of the actual numbers killed."[1234]

626. The Trial Chamber in *Bagilishema* stated that when demonstrating the "specific intent" of an Accused through his words and deeds, a balance has to be struck between his words and deeds and his actual purposeful conduct, especially when his intention is not clear from what he says or does.[1235]

To Destroy

627. An Accused may be liable under Article 2 if he "intends to destroy a [...] group." According to the Report of the International Law Commission, destruction within the meaning of Article 2 is "[t]he material destruction of a group either by physical and biological means and not the destruction

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[1230] *Akayesu*, Judgment (TC), para. 523.
[1231] *Kayishema and Ruzindana*, Judgment (TC), para. 93.
[1232] The Chamber drew conclusions from a legal text, which cited the Final Report of Commission of Experts to the effect that the specific intent may be inferred from sufficient facts such as the number of group members affected: see *Kayishema and Ruzindana*, Judgment (TC), para. 93.
[1233] *Kayishema and Ruzindana*, Judgment (TC), para. 93.
[1234] *Jelisic*, Judgment (TC), 14 December 1999, para. 82.
[1235] *Bagilishema*, Judgment (TC), 7 June 2001, para. 63; *Kayishema and Ruzindana*, Judgment (TC), para. 93.

of the national, linguistic, religious, cultural or other identity of a particular group."[1236]

In Whole or in Part

628. Under Article 2, an accused may be liable if he "intends to destroy in whole or in part a [...] group." As has been explained in judgments of this Tribunal, in order to establish an intent to destroy "in whole or in part", it is not necessary to show that the perpetrator intended to achieve the complete annihilation of a group from every corner of the globe. It is sufficient to prove that the perpetrator have intended to destroy more than an imperceptible number of the targeted group.[1237] In effect, the Chamber endorses the opinion expressed in the *Semanza* Judgment: the Prosecution must establish, beyond reasonable doubt, the intent of the perpetrator to destroy the target group in whole or in part, there is no numeric threshold of victims necessary to establish genocide.[1238]

629. In the Report of the Sub-Commission on Genocide, the Special Rapporteur stated: "The relative proportionate scale of the actual or attempted destruction of a group, by any act listed in Articles II and III of the Genocide Convention, is strong evidence to prove the necessary intent to destroy a group in whole or in part."[1239]

- *Protected Groups*

630. It is required to show under Article 2 that the Accused, in committing genocide intended to destroy "a national, ethnical, racial or religious" group. Trial Chambers of this Tribunal have noted that the concept of a group enjoys no generally or internationally accepted definition, rather each group must be assessed in the light of a particular political, social, historical and cultural context.[1240] Accordingly, "[f]or purposes of applying the Genocide Convention, membership of a group is, in essence, a subjective rather than an objective concept [where] the victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction."[1241] A determination of the categorized groups should be

[1236] *See* "ILC Report 1996; Draft Code of Crimes Against the Peace and Security of Mankind", p. 90; *Semanza,* Judgment (TC), 15 May 2003, para. 315; *Kayishema and Ruzindana,* Judgment (TC), para. 95.
[1237] *See* "ILC Report 1996; Draft Code of Crimes Against the Peace and Security of Mankind", p. 90; *Bagilishema,* Judgment (TC), para. 64; *Kayishema and Ruzindana,* Judgment (TC), para. 96; *Akayesu,* Judgment (TC), para. 496 - 499; *Semanza,* Judgment (TC), para. 316.
[1238] *Semanza,* Judgment (TC), para. 316.
[1239] Reference is made to this Report in *Kayishema and Ruzindana,* Judgment (TC), para. 93.
[1240] *Bagilishema,* Judgment (TC), para. 65; *Musema,* Judgment (TC), para. 161.
[1241] *Rutaganda,* Judgment (TC), para. 56; *Musema,* Judgment (TC), para. 161; *Semanza,* Judgment (TC), para. 317.

made on a case-by-case basis, by reference to both objective and subjective criteria.[1242]

- *The Acteus Reus*

631. The *acteus reus* for the crime of genocide is provided for under Article 2(2) of the Statute. As the issues arising in the present case are limited, the Chamber shall review only the meaning of the requirements for the crime: (a) "killing members of the group"; and (b) "causing serious bodily or mental harm to members of the group".

Killing Members of the Group

632. It is clear from the established jurisprudence of this Tribunal that the Prosecution bears the burden of proof to show that the perpetrator participated in the killing of one or more members of the targeted group and that the perpetrator possessed the intent to destroy the group, as such, in whole or in part. There is no requirement to prove a further element of premeditation in the killing.[1243]

Causing Serious Bodily or Mental Harm to Members of the Group

633. Regarding the requirement under Article 2(2)(b) that in order to be held liable by causing serious bodily or mental harm to members of the group, the International Law Commission has indicated that this covers two types of harm that may be inflicted on an individual, namely bodily harm which involves some type of physical injury and mental harm which involves some type of impairment of mental faculties. The International Law Commission further observed that the bodily or mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part. [1244]

634. Trial Chambers of the Tribunal have held that what is "bodily" or "mental" harm should be determined on a case-by-case basis and have further held that "serious bodily harm" does not necessarily have to be permanent or irremediable,[1245] and that it includes non-mortal acts of

[1242] *Semanza,* Judgment (TC), para. 317.
[1243] *Semanza,* Judgment (TC), para. 319; *Bagilishema,* Judgment (TC), para. 55, 57 and 58; *Musema,* Judgment (TC), para. 155; *Rutaganda,* Judgment (TC), para. 49 and 50; *Kayishema and Ruzindana,* Judgment (TC), para. 103 ; *Kayishema and Ruzindana,* Judgment (AC), para. 151; *Akayesu,* Judgment (TC), para. 501.
[1244] *See* ILC Report (1996), p. 91.
[1245] *Semanza,* Judgment (TC), para. 320; *Akayesu,* Judgment (TC), para. 502; *Kayishema and Ruzindana,* Judgment (TC), para. 108.

sexual violence, rape, mutilations and interrogations combined with beatings and/or threats of death.[1246] The Trial Chamber in *Kayishema and Ruzindana* considered "serious mental harm" to include more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat.[1247] The state of the law in this regard is aptly captured in the conclusion drawn by the *Semanza* Trial Chamber:

> The Chamber adopts the foregoing standards pronounced in Akayesu and Kayishema and Ruzindana as to the determination of serious bodily or mental harm. In addition, the Chamber finds that serious mental harm need not be permanent or irremediable.[1248]

c. Findings

635. The Chamber has found it to be established for the purposes of this case that at all times relevant to the Indictment the Tutsi, the Hutu and the Twa were identified as ethnic groups in Rwanda.[1249]

636. The Chamber will consider successively the following issues: (1) intent to destroy in whole or in part the Tutsi ethnical group; (2) the *actus reus* of genocide; (3) the individual criminal responsibility of the Accused.

- *Intent to Destroy in Whole or in Part the Tutsi Ethnic Group*

637. The Chamber has found that at a meeting occurring sometime between 6 April 1994 and 10 April 1994, at the home of his cousins in Gikomero *commune*, the Accused addressed those present, incited them to start killing Tutsi, and distributed grenades, machetes and guns to them to use and to further distribute. He also told the participants that he would return to see if they had started the killings, or so that the killings could start.[1250]

638. The Chamber has found that the Accused arrived at the Gikomero Parish Compound in the early afternoon of 12 April 1994 in a white pick-up vehicle and was accompanied by armed people in the back of the pick-up.

639. The Majority of the Chamber has found that the Accused, after a conversing with Pastor Nkuranga, ordered the armed persons whom he brought to the Parish to "work" which, in this context, was understood by

[1246] *Semanza,* Judgment (TC), para. 320; *Akayesu,* Judgment (TC), para. 502; *Kayishema and Ruzindana,* Judgment (TC), para. 108.
[1247] *Kayishema and Ruzindana,* Judgment (TC), para. 110; *Semanza,* Judgment (TC), para. 321.
[1248] *Semanza,* Judgment (TC), para. 322.
[1249] See above: Part III, Section I.
[1250] See above: Part III, Section I.

some witnesses as an order for the killings of the Tutsi refugees to start. The Majority of the Chamber agrees with the witnesses' understanding that the Accused gave a verbal order to start the killings.

640. The Chamber has found that a Tutsi preacher named Augustin Bucundura, who accompanied Pastor Nkuranga into the Compound, was shot by an armed person, who had come with the Accused. The shooting occurred shortly after the arrival of the Accused and while the Accused was still present at the Gikomero Parish Compound.

641. The Chamber has found that the Accused was in a position of authority over the armed attackers, insofar as he led them to the Gikomero Parish Compound. The Chamber, however, has not found that the Accused was in a formal superior-subordinate relationship with the attackers of the Gikomero Parish Compound, nor that he maintained effective control over them.

642. The Chamber has found that the attackers involved in the attack used traditional weapons, guns, and grenades, to kill and injure Tutsi refugees. The Chamber has found that the Accused left the Compound in a vehicle sometime after the commencement of the attack of the refugees by armed *Interahamwe*, soldiers, and policemen. The attackers attacked the refugees throughout the Compound, including in the Church and in the classrooms.

643. The Chamber has found on the basis of the totality of the evidence that the Accused initiated the attack. The Majority has further found that the Accused used the word "work" and to give an order to the attackers to start the killings. Therefore the evidence adduced by the Prosecution proves that the Accused personally led an attack of individuals, soldiers, *Interahamwe*, and policemen against Tutsi refugees on 12 April 1994 at the Parish Church and adjoining school in Gikomero, Kigali-Rural *préfecture*. The Chamber has found that the Accused arrived at the school with a group of individuals, soldiers, policemen and *Interahamwe* armed with firearms, grenades and other weapons and that he led them in the Gikomero Parish Compound and gave them the order to attack.

644. The Chamber has found that individuals, soldiers, policemen and *Interahamwe* attacked the refugees and that a large number of Tutsis were killed by those attackers at the Gikomero Parish Compound on 12 April 1994.

645. On the basis of the established facts, the Chamber finds that the killings occurring in Gikomero Parish Compound, Gikomero *commune*, Kigali-Rural *préfecture*, were systematically directed against Tutsi civilians. The conduct of the Accused shows clearly that he participated in those killings with the specific intent to destroy the Tutsi ethnic group.

- *Killing of Members of the Tutsi Group*

646. The Chamber has found that a large number of members of the Tutsi ethnic group were killed by *Interahamwe*, soldiers, policemen and individuals from the local population at the Gikomero Parish Compound on 12 April 1994.

647. Accordingly, the Chamber finds that genocidal killings of members of the Tutsi group occurred at the Gikomero Parish Compound, in Gikomero *commune*, Kigali-Rural *préfecture,* on 12 April 1994.

- *Individual Criminal Responsibility of the Accused (Article 6.1 of the Statute)*

648. On the basis of its factual findings and legal findings above, the Chamber finds that the Accused participated in the killings in Gikomero Parish Compound in Gikomero *commune* by ordering *Interahamwe*, soldiers, and policemen to kill members of the Tutsi ethnic group, instigating other assailants to kill members of the Tutsi ethnic group and by aiding and abetting in the commission of the crime through the distribution of weapons and by leading the attackers to the Gikomero Parish Compound.

649. Judge Maqutu joins with the Majority to conclude that the Accused participated in the crime by ordering these killings, but his reasoning differs from that of the Majority. This reasoning is explained in his Separate and Concurring Opinion on the Verdict.

650. The Chamber finds that at the time of his participation in these killings, the Accused had the intent to destroy the Tutsi ethnic group in whole or in part.

d. Conclusion

651. In conclusion, the Chamber finds beyond a reasonable doubt that the Accused is individually criminally responsible for instigating, ordering, and aiding and abetting the killing of members of the Tutsi ethnic group in Gikomero Parish Compound, Gikomero *commune*, Kigali-Rural *préfecture*, pursuant to Article 6(1) of the Statute.

652. Accordingly, in relation to **Count 2** of the Indictment, the Chamber finds the Accused GUILTY of GENOCIDE.

3. Complicity in Genocide

653. As an alternative count to Count 2, Count 3 of the Indictment charges:

> By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:
>
> Jean de Dieu Kamuhanda
>
> -pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90
>
> -pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90
>
> is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, 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 he is individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

654. The Chamber recalls that Count 3 is an alternative count to Count 2 of the Indictment and that both charges arise from the same factual allegations. Considering that the Chamber has already found the Accused guilty of genocide under Count 2 pursuant to Article 2(3)(a) of the Statute, the Chamber will make no finding on the charge of complicity in genocide pursuant to Article 2(3)(e) of the Statute as charged in Count 3. Accordingly, Count 3 is hereby dismissed.

E. Crimes against Humanity

1. General Elements

a. Indictment

655. The Accused is charged with the following acts as Crimes against Humanity: murder (Count 4), extermination (Count 5), rape (Count 6) and other inhumane acts (Count 7).

b. The Statute

656. Pursuant to Article 3 of the Statute:

> The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:
>
> (a) Murder;
>
> (b) Extermination;
>
> (c) Enslavement;
>
> (d) Deportation;
>
> (e) Imprisonment;
>
> (f) Torture;
>
> (g) Rape;
>
> (h) Persecutions on political, racial and religious grounds;
>
> (i) Other inhumane acts.

c. Jurisprudence

- *Relationship Between the Enumerated Acts and the General Elements*

657. The Accused is charged with the acts of murder, extermination, rape, and other inhumane acts as Crimes against Humanity.[1251] The commission of any of these acts by the Accused will constitute a Crime against Humanity, only if the Chamber finds that the offence was committed as part of a widespread or systematic attack on a civilian population on any of the following discriminatory grounds: nationality, political persuasion, ethnicity, race, or religion.

658. In relation to each count for which the Accused is charged with a Crime against Humanity, the Prosecution is required to prove the elements indicated above.

659. An act may form part of a widespread or systematic attack without necessarily sharing all the same features, such as the time and place of commission of the other acts constituting the widespread or systematic attack.

- *General Elements*

The Attack

660. The Chamber adopts the accepted definition of "attack" within this Tribunal, as "an unlawful act, event, or series of events of the kind listed in Article 3(a) through (i) of the Statute."[1252] This definition has remained constant throughout the jurisprudence of the Tribunal.[1253]

661. Moreover, an attack committed on specific discriminatory grounds need not necessarily require the use of armed force; it could also involve other forms of inhumane treatment of the civilian population.[1254]

[1251] The Count 7 on Persecutions on political, racial and religious grounds as a Crime Against Humanity was withdrawn by the Prosecution in its Closing brief (Corrigendum), 19 June 2003, paras. 138 and 139.
[1252] *Semanza*, Judgment (TC), para. 327.
[1253] *Musema*, Judgment (TC), para. 205; *Rutaganda*, Judgment (TC), para. 70; *Akayesu*, Judgment (TC), para. 581.
[1254] *Semanza*, Judgment (TC), para. 327 ; *Musema*, Judgment (TC), para.205; *Rutaganda*, Judgment (TC), para. 70; *Akayesu*, Judgment (TC), para. 581.

The Attack Must be Widespread or Systematic

662. The French and the English language versions of the Statute, equally authentic are not consistent regarding this part of the text. The French language version which uses the conjunction *"et"* reads in translation, "widespread *and* systematic",[1255] whilst the English language version uses the disjunctive "or" and reads, "widespread *or* systematic". The practice of the ICTR and ICTY Tribunals has been to accept the English language version,[1256] which is in line with customary international law.[1257]

663. Trial Chamber III in *Semanza* held that: "The Chamber does not see any reason to depart from the uniform practice of the two Tribunals."[1258] This Chamber also adopts the standard of the Tribunals and accepts the English language version, "widespread *or* systematic".

Widespread

664. The term "widespread", as an element of the attack within the meaning of Article 3 of the Statute, has been given slightly different meanings within the various Trial Chamber Judgments of the Tribunal. However, all can be said to refer to the scale of the attack, and sometimes the multiplicity of victims.[1259] The Chamber, following the definition given in the *Niyitegeka*[1260] and *Ntakirutimana*[1261] Judgments, adopts the test of "large scale, involving many victims".

[1255] The relevant provision of the French text in Article 3 of the Statute reads « généralisée et systématique ».
[1256] *Semanza*, Judgment (TC), para. 328; *Ntakirutimana and Ntakirutimana,* Judgment (TC), para. 804; *Bagilishema*, Judgment (TC), para. 77; *Musema*, Judgment (TC), paras. 202-203; *Rutaganda*, Judgment (TC), para. 68; *Kayishema and Ruzindana*, Judgment (TC), para. 123; *Akayesu*, Judgment (TC), para. 579. The same position has been taken in the ICTY, however it must be emphasized that article 5 of ICTY Statute does not contain the requirement that the crimes must be committed as part of a widespread or systematic attack, which has been constructed in ICTY jurisprudence in line with customary international law. *Tadic*, Judgment (TC), paras. 646-648. *See also Kunarac*, Judgment (AC), para. 93; *Tadic*, Judgment (AC), para. 248; *Krnojelac*, Judgment (TC), para. 55; *Krstic,* Judgment (TC), para. 480; *Kordic and Cerkez*, Judgment (TC), para. 178; *Blaskic*, Judgment (TC), para. 202; *Kupreskic*, Judgment (TC), para. 544; *Jelisic*, Judgment (TC), para. 53.
[1257] For a review of the International practice on this issue see: *Tadic*, Judgment (TC), paras. 646-648.
[1258] *Semanza*, Judgment (TC), para. 328.
[1259] *Semanza*, Judgment (TC), para. 329; *Niyitegeka*, Judgment (TC), para 439; *Ntakirutimana and Ntakirutimana*, Judgment (TC), para. 804; *Bagilishema*, Judgment (TC), para. 33; *Musema*, Judgment (TC), para. 204, *Rutaganda*, Judgment (TC), para. 69; *Kayishema and Ruzindana*, Judgment (TC), para. 123; *Akayesu*, Judgment (TC), para. 580.
[1260] *Niyitegeka*, Judgment (TC), para 439.
[1261] *Ntakirutimana and Ntakiutimana*, Judgment (TC), para. 804.

Systematic

665. There has been some debate in the jurisprudence of this Tribunal about whether or not the term "systematic" necessarily contains a notion of a policy or a plan.[1262] The Chamber agrees with the reasoning followed in *Semanza* and finds that the existence of a plan is not independent legal element of Crimes against Humanity. In *Semanza*, ICTR Trial Chamber II endorsed the jurisprudence of the Appeals Chamber of the ICTY in *Kunarac*, that whilst "the existence of a policy or plan may be evidentially relevant, in that it may be useful in establishing that the attack was directed against a civilian population and that it was widespread or systematic, [...] the existence of such a plan is not a separate legal element of the crime".[1263]

666. The Chamber finds that "systematic", as an element of the attack within Article 3 of the Statute, describes the organized nature of the attack. Demonstration of a pattern of conduct will also carry evidential value in the Chamber's final analysis.

The Attack Must be Directed against Any Civilian Population

667. *Akayesu* defined the civilian population as:

> [...] people who are not taking any active part in the hostilities, including members of the armed forces who laid down their arms and those persons *hors de combat* by sickness, wounds, detention or any other cause. Where there are certain individuals within the civilian population who do not come within the definition of civilians, this does not deprive the population of its civilian character.[1264]

668. This definition has been consistently followed in the jurisprudence of the Tribunal.[1265] *Bagilishema* added:

> It also follows that, as argued in *Blaskić*, "the specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining his standing as a civilian".[1266]

669. It was also noted in *Bagilishema* that the term "population" does not require that the Crimes against Humanity be directed against the entire

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[1262] *Semanza*, Judgment, (TC), para. 329; *Bagilishema*, Judgment (TC), para. 77; *Kayishema and Ruzindana*, Judgment (TC), para. 123-124.
[1263] *Semanza*, Judgment (TC), para. 329; referring to *Kunarac*, Judgment (AC), para. 98.
[1264] *Akayesu*, Judgment (TC), para. 582.
[1265] *Rutaganda*, Judgment (TC), para. 72; *Musema*, Judgment (TC), para. 207; *Semanza*, Judgment (TC), para. 330.
[1266] *Bagilishema*, Judgment (TC), para. 79, referring to *Blaskic*, Judgment (TC), para. 214.

population of a geographic territory or area.[1267] *Semanza* further clarified that:

> The victim(s) of the enumerated act need not necessarily share geographic or other defining features with the civilian population that forms the primary target of the underlying attack, but such characteristics may be used to demonstrate that the enumerated act forms part of the attack.[1268]

670. The Chamber endorses this jurisprudence.

The Attack Must be Committed on Discriminatory Grounds

671. Article 3 of the Statute provides that the attack against the civilian population be committed on "national, political, ethnical, racial or religious grounds". This provision is jurisdictional in nature, limiting the jurisdiction of the Tribunal to a narrow category of Crimes, and not intended to alter the definition of Crimes against Humanity in international law.

672. The *Akayesu* Appeals Chamber clarified the position:

> In the opinion of the Appeals Chamber, except in the case of persecution, a discriminatory intent is not required by international humanitarian law as a legal ingredient for all Crimes against Humanity. To that extent, the Appeals Chamber endorses the general conclusion and review contained in *Tadć*, as discussed above. However, though such is not a requirement for the crime *per se,* all Crimes against Humanity, may, in actuality, be committed in the context of a discriminatory attack against a civilian population. As held in *Tadć*: "[i]t is true that in most cases, Crimes against Humanity are waged against civilian populations which have been specifically targeted for national, political, ethnic, racial or religious reasons". It is within this context, and in light of the nature of the events in Rwanda (where a civilian population was actually the target of a discriminatory attack), that the Security Council decided to limit the jurisdiction of the Tribunal over Crimes against Humanity solely to cases where they were committed on discriminatory grounds. This is to say that the Security Council intended thereby that the Tribunal should not prosecute perpetrators of other possible Crimes against Humanity.
>
> The Appeals Chamber has found that in doing so, the Security Council did not depart from international humanitarian law nor did it change the legal ingredients required under international

[1267] *Bagilishema*, Judgment (TC), para. 80, following *Tadic*, Judgment (TC), para. 644.
[1268] *Semanza*, Judgment (TC), para. 330.

> humanitarian law with respect to Crimes against Humanity. It *limited* at the very most the jurisdiction of the Tribunal to a sub-group of such crimes, which in actuality may be committed in a particular situation. (...) In the case at bench, the Tribunal was conferred jurisdiction over Crimes against Humanity (as they are known in customary international law), but solely "when committed as part of a widespread or systematic attack against any civilian population" on certain discriminatory grounds; the crime in question is the one that falls within such a scope. Indeed, this narrows the scope of the jurisdiction, which introduces no additional element in the legal ingredients of the crime as these are known in customary international law.[1269]

673. In the present case, we follow this jurisprudence of the Appeals Chamber. However, such acts committed against persons outside the discriminatory categories need not necessarily fall outside the jurisdiction of the Tribunal, if the perpetrator's intention in committing these acts is to support or further the attack on the group discriminated against on one of the enumerated grounds.[1270]

674. The Chamber notes that a specific discriminatory intent is required for the charge of persecution as Crime against Humanity. However, since the Prosecution informed the Chamber during its closing arguments that it no longer wished to pursue this charge of persecution, the Chamber does not find it necessary to consider the legal elements of this crime.[1271]

The Mental Element for Crimes against Humanity

675. A clear statement of the mental element of Crimes against Humanity is to be found in the *Semanza* Judgment:

> The accused must have acted with knowledge of the broader context of the attack and knowledge that his act formed part of the attack on the civilian population.[1272]

676. This Chamber fully endorses this position.

[1269] *Akayesu*, Judgment (AC), para. 464-465.
[1270] *Semanza*, Judgment (TC), para. 331; *Musema*, Judgment (TC), para. 209; *Rutaganda*, Judgment (TC), para. 74.
[1271] See below: Part IV, Section D, Sub-Section 5
[1272] *Semanza*, Judgment (TC), para. 332; *Ntakirutimana and Ntakirutimana,* Judgment (TC), para. 803; *Bagilishema*, Judgment (TC), para. 94; *Musema*, Judgment (TC), para. 206; *Kayishema and Ruzindana*, Judgment (TC), para.134.

d. Findings

677. The Chamber recalls that the Accused admitted that between 1 January 1994 and 17 July 1994 there were throughout Rwanda widespread or systematic attacks against a civilian population with the specific objective of extermination of the Tutsi.[1273]

678. The Chamber has accepted that by 12 April 1994, several thousand men, women and children, mainly of Tutsi origin, along with their cattle, had taken refuge at the Parish.

679. The Chamber has found that a large number of Tutsi were killed on 12 April 1994 at the Gikomero Parish Compound, Gikomero *commune*.

680. The Chamber has also found that a large number of Tutsi were killed on or about the 13 April 1994 in Gishaka, Gikomero *commune*.

681. The evidence of both Parties shows that these Tutsi victims had taken refuge in Gikomero Parish Compound and Gishaka fleeing prior attacks against them that occurred in other areas of Kigali-Rural, such as Rubungo.

682. Thus, the Chamber finds that killings of members of the Tutsi ethnic group occurred on a mass scale in Gikomero *commune* during April 1994. The targets were whole populations of Tutsi ethnicity, attacked at places such as where they took shelter and refuge. The Chamber further finds that this constitutes a widespread attack upon a civilian Tutsi ethnic group.

683. The Chamber finds that the attack of Gikomero Parish Compound on 12 April 1994 was part of a widespread attack against the Tutsi civilian population in Rwanda and particularly in Kigali-Rural.

2. Crimes against Humanity - Murder

a. Indictment

684. Count 4 of the Indictment charges:

> By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:
>
> Jean de Dieu Kamuhanda

[1273] Defence Response to Prosecutor's Request to Admit Facts, filed on 24 April 2001, Fact number: 89

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90

pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90

is 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 the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

b. Jurisprudence

685. For the reasons set out in the next section on Legal Findings relating to murder, in the Legal Findings section on extermination as a Crime against Humanity, and in the Chamber's findings on the law relating to cumulative conviction on the same facts for both murder and extermination as Crimes against Humanity, the Chamber does not here find it necessary to set out the law relating to murder as a Crime against Humanity.

c. Findings

686. The Chamber notes that apart from the question of scale, the essence of the crimes of murder as a Crime against Humanity and extermination as a Crime against Humanity is the same. The Chamber finds that there was insufficient distinction drawn in the Indictment between the general allegations of murder as a Crime against Humanity and extermination as a Crime against Humanity. The Chamber also notes that the Indictment does not specify the identities of victims for whom the Accused is charged with murder.

687. After consideration of the evidence in this case, the Chamber finds it appropriate to consider the evidence relating to the killing of specific individuals as examples of targeting populations or groups of people for purposes of extermination, rather than murder specifically. This position accords with the Chamber's finding on the law relating to cumulative convictions on the same facts for murder and extermination.

d. Conclusion

688. Accordingly, the Chamber will make no finding in relation to **Count 4** of the Indictment (MURDER AS A CRIME AGAINST HUMANITY). The count is hereby dismissed.

3. Crimes against Humanity - Extermination

a. Indictment

689. Count 5 on Crimes against Humanity - extermination of the Indictment charges:

> By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:
>
> **Jean de Dieu Kamuhanda:**
>
> -pursuant to Article 6(1), 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90
>
> -pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90
>
> is 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 he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

690. For the reasons indicated in Part III, Section I of this Judgment, the Chamber has made these factual findings based only on the relevant paragraphs of the Indictment referred to in Count 5.

b. Jurisprudence

691. It is well established in ICTR case law that:

> Extermination is a crime, which by its very nature is directed against a group of individuals. Extermination differs from murder in that it requires an element of mass destruction, which is not required for murder.[1274]

692. Thus, the killings must have been committed on a large scale for the Chamber to find the Accused guilty of extermination. There is no conclusive authority on how many murders constitute extermination. The first judgments concerning extermination as a Crime against Humanity considered that "large scale" does not suggest a numeric minimum. It must be determined on a case-by-case basis, using a common-sense approach."[1275] Accordingly, Trial Chamber I in *Bagilishema* held that:

> A perpetrator may nonetheless be guilty of extermination if he kills, or creates conditions of life that kill, a single person, providing that the perpetrator is aware his or her acts or omissions form part of a mass killing event, namely mass killings that are proximate in time and place and thereby are best understood as a single or sustained attack".[1276]

693. In contrast, more recent judgments have held that "responsibility for a single or a limited number of killings is insufficient." [1277] This most recent approach appears to be more in conformity with established jurisprudence that an element of mass destruction is required for extermination.

694. The Chamber is satisfied that a single killing or a small number of killings do not constitute extermination. In order to give practical meaning to the charge of extermination, as distinct from murder, there must in fact be a large number of killings, and the attack must be directed against a group, such as a neighbourhood, as opposed to any specific individuals within it. However, the Chamber may consider evidence under this charge relating to the murder of specific individuals as an illustration of the extermination of the targeted group.

695. In *Bagilishema* and *Kayishema and Ruzindana* it was held that extermination is not limited to intentional acts or omissions but also covers

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[1274] *Akayesu,* Judgment (TC), para. 591. This position has been endorsed in all the Judgments following *Akayesu*: *Kayishema and Ruzindana*, Judgment (TC), para. 142; *Rutaganda*, Judgment (TC), paras. 80-82; *Musema*, Judgment (TC), para. 217; *Bagilishema*, Judgment (TC), para. 86; *Ntakirutimana and Ntakiritimana*, Judgment (TC), para. 813; *Niyitegeka*, Judgment (TC), para. 450; *Semanza*, Judgment (TC), para. 340.

[1275] *Bagilishema,* Judgment (TC), para. 87; *Kayishema and Ruzindana,* Judgment (TC), para.142.

[1276] *Bagilishema*, Judgment (TC), para. 88; *Kayishema and Ruzindana,* Judgment (TC), para. 147; *Kristic*, Judgment (TC), para. 490; Recently an ICTY Trial Chamber has adopted the same position, *Stakic*, Judgment (TC), para. 640.

[1277] *Semanza*, Judgment (TC), para. 340; *Ntakirutimana and Ntakiritimana*, Judgment (TC), paras. 813-814; *Vasilijevic*, Judgment (TC), para. 227 which review all the jurisprudence on the matter.

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reckless or grossly negligent conduct of the accused.[1278] The Chamber notes that more recent judgments have taken a slightly different approach, with *Semanza* holding that:

> [...] in the absence of express authority in the Statute or in customary international law, international criminal liability should be ascribed only on the basis of intentional conduct. [1279]

696. We do not interpret *Bagilishema* and *Kayishema and Ruzindana* to suggest that a person may be found guilty of a Crime against Humanity if he or she did not possess the requisite *mens rea* for such a crime, but rather to suggest that reckless or grossly negligent conduct are indicative of the offender's *mens rea*. Understood in that way, the *Semanza* position is not at odds with the *Bagilishema* and *Kayishema and Ruzindana* judgments.

c. Findings

697. The Chamber recalls its findings under the Count of Genocide that Tutsis were killed at Gikomero Parish Compound and that the Accused participated in this killing by ordering, instigating and aiding and abetting the commission of the crime.

698. The material element of extermination is the large-scale killing of a substantial number of civilians.[1280] Although the evidence does not indicate the specific number of victims to enable a specific finding of the number of deaths at the Gikomero Parish Compound, the evidence clearly shows that large numbers of Tutsi civilians were killed there during the attack, in which the Accused participated. On the basis of reliable and credible evidence, the Chamber finds that the scale of killings at the Gikomero Parish Compound is sufficient to be termed extermination, and that the principal perpetrators of the killings committed extermination as a Crime against Humanity.

699. The Chamber finds that the Accused participated in the attack at Gikomero Parish Compound, and that the Accused was fully aware that his actions formed part of a widespread attack. On the basis of the evidence and in view of the scale of this event, the Chamber is convinced that the Accused ordered, instigated, and aided and abetted the principal perpetrators of the attack at the Gikomero Parish Compound against the Tutsi civilians, who had gathered there in large numbers to seek shelter and refuge.

[1278] *Bagilishema*, Judgment (TC), para. 89; *Kayishema and Runzidana*, Judgment (TC), para. 144.
[1279] *Semanza*, Judgment (TC), para. 341.
[1280] *Semanza*, Judgment (TC), para. 463.

d. Conclusion

700. In conclusion, the Chamber finds beyond a reasonable doubt that the Accused is individually criminally responsible, pursuant to Article 6(1) of the Statute, for instigating, ordering, and aiding and abetting the extermination of members of the Tutsi ethnic group at the Gikomero Parish Compound in Gikomero *Commune*.

701. Judge Maqutu joins with the Majority to conclude that the Accused participated in the crime by ordering these killings, but his reasoning differs from that of the Majority. This reasoning is explained in his Separate and Concurring Opinion on Verdict.

702. Accordingly, in relation to **Count 5** of the Indictment, the Chamber finds the Accused GUILTY of EXTERMINATION AS A CRIME AGAINST HUMANITY.

4. Crimes against Humanity – Rape

a. Indictment

703. Count 6 on Crimes against Humanity – rape of the Indictment charges:

> By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:
>
> Jean de Dieu Kamuhanda
>
> -pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90
>
> -pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90
>
> is 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 is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

704. For the reasons indicated in Part III, Section I of this Judgment, the Chamber has made these factual findings based only on the relevant paragraphs of the Indictment referred to in Count 6.

b. Jurisprudence

705. In *Akayesu* the Trial Chamber considered that the traditional mechanical definition of rape did not adequately capture its true nature[1281] and instead offered a definition of rape as:

> A physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence which includes rape is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive.[1282]

706. This conceptual definition of rape was approved in *Musema*,[1283] where the Chamber highlighted the difference between "a physical invasion of a sexual nature", and "any act of a sexual nature" as being the difference between rape and sexual assault.[1284] Meanwhile, a Trial Chamber of the ICTY handed down the *Furundžija* Judgment, in which that Chamber preferred the following more detailed definition related to objects and body parts:

> Most legal systems in the common and civil law world consider rape to be the forcible sexual penetration of the human body by the penis or the forcible insertion of any other object into either the vagina or the anus".[1285]

707. This definition[1286] substantially modified and completed by Trial Chamber II in the *Kunarac* Judgment has been endorsed by the Appeals Chamber. It reads as follow:

> The *actus reus* of the crime of rape in international law is constituted by: the sexual penetration, however slight:
>
> (a) of the vagina or anus of the victim by the penis of the

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[1281] *Akayesu*, Judgment (TC), para. 597.
[1282] *Akayesu*, Judgment (TC), para. 598.
[1283] *Musema*, Judgment (TC), para. 226; See also *Celebici*, Judgment (TC), para. 479; *Niyitegeka*, Judgment (TC), para. 456.
[1284] *Musema*, Judgment (TC), para. 227.
[1285] *Furundzija*, Judgment (TC), para. 181.
[1286] *Furundzija*, Judgment (TC), para. 185.

perpetrator or any other object used by the perpetrator; or

(b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances.

708. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.[1287]

709. Given the evolution of the law in this area, endorsed in the *Furundžija/Kunarac* approach by the ICTY Appeals Chamber, the Chamber finds the latter approach of persuasive authority and hereby adopts the definition as given in *Kunarac* and quoted above. The mental element of the offence of rape as a Crime against Humanity is the intention to effect the above-described sexual penetration, with the knowledge that the act was perpetrated without the consent of the victim.

710. Other acts of sexual violence which may fall outside of this specific definition may of course be prosecuted, and would be considered by the Chamber under other categories of crimes for which the Tribunal has jurisdiction, such as *other inhumane acts*.

c. Findings

711. The Chamber is not satisfied with the evidence adduced in support of the allegation that the Accused was involved in any rapes that occurred during or in relation to the attack at the Gikomero Parish Compound.

712. Therefore the Chamber does not find the Accused criminally responsible for rape, as alleged in Count 6.

d. Conclusion

713. Thus, in relation to **Count 6** of the Indictment, the Chamber finds the Accused NOT GUILTY of RAPE AS A CRIME AGAINST HUMANITY.

[1287] *Kunarac*, Judgment (AC), para. 128; *see* also: *Semanza*, Judgment (TC), paras. 345-346.

5. Crimes against Humanity – Other Inhumane Acts

a. Indictment

714. Count 7 of the Indictment charges:

> By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:
>
> Jean de Dieu Kamuhanda
>
> -pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90
>
> - pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90
>
> is responsible for inhumane acts against 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(i) of Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

715. For the reasons indicated in Part III, Section I of this Judgment, the Chamber has made these factual findings based only on the relevant paragraphs of the Indictment referred to in Count 7.

b. Jurisprudence

716. In *Kayishema and Ruzindana* the Trial Chamber noted that since the Nuremberg Charter, the category "other inhumane acts" has been

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maintained as a useful category for acts not specifically stated but which are of comparable gravity.[1288]

717. Crimes which may fall under this category would only be acts or omissions similar in gravity to the conducts enumerated in Article 3 of the Statute, and would be decided by the Tribunal on a case-by-case basis.[1289] In proving its case, the Prosecution must prove a nexus between the inhumane act and the great suffering or serious injury to the mental or physical health of the victim.[1290] Inhumane Acts are only those which deliberately cause suffering. Therefore, where third parties observe acts committed against others, in circumstances in which the Accused may not have had an intention to injure those third parties by their observation of these acts, the Accused may still be held accountable for their mental suffering.[1291]

718. In *Kayishema and Ruzindana* the position was summarised that:

> [...] for an accused to be has found guilty of Crimes against Humanity for other inhumane acts, he must commit an act of similar gravity and seriousness to the other enumerated crimes, with the intention to cause the other inhumane act, and with knowledge that the act is perpetrated within the overall context of the attack.[1292]In the *Niyitegeka* Judgment, Trial Chamber I has found that by perpetrating gross acts of sexual violence upon a dead woman's body, the Accused caused mental suffering to civilians, his actions constituted a serious attack on the human dignity of the Tutsi community as a whole,[1293] and that these acts were part of a widespread and systematic attack against the civilian Tutsi population on ethnic grounds.

c. Findings

719. There was not enough and specific evidence to establish beyond reasonable that the Accused either planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of inhumane acts.

[1288] *Kayishema and Ruzindana*, Judgment (TC), para. 149.
[1289] *Kayishema and Ruzindana*, Judgment (TC), para. 151.
[1290] *Kayishema and Ruzindana*, Judgment (TC), para. 151.
[1291] *Kayishema and Ruzindana*, Judgment (TC), paras. 152-153.
[1292] *Kayishema and Ruzindana*, Judgment (TC), para. 154.
[1293] *Niyitegeka*, Judgment (TC), paras. 465-467.

d. Conclusion

720. Thus, in relation to Count 7 of the Indictment, the Chamber finds the Accused NOT GUILTY of OTHER INHUMANE ACTS AS A CRIME AGAINST HUMANITY.

F. Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II

1. General Elements

a. The Statute

Article 4: Violations of Article 3 Common to the Geneva Conventions
and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

(a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) Collective punishments;

(c) Taking of hostages;

(d) Acts of terrorism;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) Pillage;

(g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilised peoples;

(h) Threats to commit any of the foregoing acts.

b. Jurisprudence

o *Nature of the Conflict*

721. The provisions of Common Article 3 and Additional Protocol II, as incorporated in Article 4 of the Statute, are expressly applicable to alleged offences committed within the context of conflicts of a non-international character. Accordingly, the Chamber must address the question whether the 1994 conflict in Rwanda falls within the ambit of these provisions.

722. Common Article 3 prescribes: "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum ... [certain] provisions...". Therefore, Common Article 3 is applicable to any non-international armed conflict within the territory of a state party. In general, non-international armed conflicts referred to in Common Article 3 are conflicts with armed forces on either side engaged in hostilities that are in many respects similar to an international war, but take place within the confines of a single country."[1294]

723. Additional Protocol II develops and supplements Common Article 3. Specifically, Additional Protocol II applies to conflicts taking place "in the territory of a High contracting party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol".[1295]

724. Expanding on Common Article 3, Article 1 of Additional Protocol II sets out the material requirements for applicability:

(i) the occurrence of an armed conflict in the territory of a High Contracting party, namely, Rwanda, between its armed forces and dissident armed forces or other armed groups;

(ii) the responsible command of the dissident armed forces or other organized armed groups;

[1294] *See* International Committee of the Red Cross, The Geneva Conventions of 12 August 1949 Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in time of War p. 36 (1958) [Geneva Conventions Commentary"]
[1295] *See* Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed conflicts (Protocol II, art. 1 ["Additional Protocol II"]

(iii) the exercise of control by dissident armed forces or other organized armed groups, enabling them to carry out sustained and concerted military operations;

(iv) the implementation of Additional Protocol II by the dissident armed forces or other organized armed groups."[1296]

- *Rationae Personae: Perpetrators*

725. Pursuant to Article 4 of the ICTR Statute, the Tribunal "shall have the power to prosecute persons committing or ordering to be committed serious violations of [Common Article 3 and Additional Protocol II]". The category of persons who are accountable under this article for war crimes on civilians is not limited. As noted by the Appeals Chamber of this Tribunal, "Article 4 makes no mention of a possible delimitation of classes of persons likely to be prosecuted under this provision."[1297]

726. Similarly, Common Article 3 and Additional Protocol II do not specify classes of potential perpetrators but rather indicate who are bound by the obligations imposed by their provisions to protect victims and potential victims of armed conflicts. Under Common Article 3, "each Party to the conflict"[1298] is so bound. The ICRC *Commentary* on Additional Protocol II simply indicates that criminal responsibility extends to "those who must, within the meaning of the Protocol, conform to certain rules of conduct with respect to the adversary and the civilian population."[1299]

727. However, further clarification of the class of potential perpetrators is unnecessary in view of the principal purpose of these instruments, which is to protect victims of armed conflicts.[1300] Indeed it is well established from the jurisprudence of the International Tribunals that the protections of Common Article 3, as incorporated in Article 4 of the Statute, imply effective punishment of perpetrators, whoever they may be.[1301] In this regard, the Appeals Chamber in its judgment in the *Akayesu* case held that:

[1296] Additional Protocol II, Art. 1.
[1297] *Akayesu,* Judgment (TC), para. 435.
[1298] *See* Common Article 3.
[1299] *Additional Protocol II Commentary* p. 1359.
[1300] *Akayesu,* Judgment (AC), para. 442.
[1301] *Akayesu,* Judgment (AC), para. 443; *Semanza,* Judgment (TC), para. 360; *Rutaganda*, Judgment (TC), paras. 96-98; *Akayesu*, Judgment (TC), paras. 630-634.

> The minimum protection provided for victims under common Article 3 implies necessarily effective punishment on persons who violate it. Now, such punishment must be applicable to everyone without discrimination, as required by the principles governing individual criminal responsibility as laid down by the Nuremberg Tribunal in particular. The Appeals Chamber is therefore of the opinion that international humanitarian law would be lessened and called into question if it were to be admitted that certain persons be exonerated from individual criminal responsibility for a violation of common Article 3 under the pretext that they did not belong to a specific category.[1302]

728. The *Akayesu* Appeals Chamber also held that there need be no requisite link between the perpetrator and one of the parties to the conflict. Specifically, the Appeals Chamber stated that "such a special relationship is not a condition precedent to the application of Common Article 3 and, hence, of Article 4 of the Statute."[1303]

729. Accordingly, criminal responsibility for the commission of any act covered by Article 4 of the Statute is not conditional on any defined classification of the alleged perpetrator.

- *Rationae Personae:* Victims

730. The protections of both Common Article 3 and Additional Protocol II, as incorporated in Article 4 of the Statute, extend to persons taking no active part in the hostilities.[1304] In view of the jurisprudence of the International Tribunals, an alleged victim, under Article 4 of the Statute, is *"any* individual not taking part in the hostilities."[1305]

731. The criterion applied in the *Tadić* Judgment to determine the applicability of Article 4 to alleged victims of armed conflicts is: "whether, at the time of the alleged offence, the alleged victim of the proscribed acts was directly taking part in hostilities".[1306] If the answer to this question is the

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[1302] *Akayesu*, Judgment (AC), para. 443.
[1303] *Akayesu*, Judgment (AC), para. 444.
[1304] *Delalic et al. (Celebici Case)*, Judgment (AC), para. 420; *Semanza*, Judgment (TC), para. 365; *Baglishema*, Judgment (TC), paras. 103-104; *Musema*, Judgment (TC), para. 280; R*utaganda*, Judgment (TC), para. 101; Kayis*hema and* R*uzindana*, Judgment (TC), para. 179; *Akayesu*, Judgment (TC), para. 629. The *Akayesu* Trial Chamber stated, in essence, the position taken by the International Tribunals in regard to persons protected by Common Article 3 and Additional Protocol II: "[I]nasmuch as Common Article 3 is for the protection of 'persons taking no active part in the hostilities'... and Article 4 of Additional Protocol II is for the protection of 'all persons who do not take a direct part of who have ceased to take part in hostilities' .. [t]hese phrases are so similar that, for the Chamber's purposes, they may be treated as synonymous."
[1305] *Delalic et al. (Celebici Case)*, Judgment (AC), para. 420 (emphasis in original).
[1306] *Tadic*, Judgment (TC), para. 615; *Semanza*, Judgment (TC), para. 366.

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negative, then the alleged victim was a person protected under Common Article 3 and Additional Protocol II.

- *Rationae Loci*

732. The protection afforded to victims of armed conflicts under Common Article 3 and Additional Protocol II, as incorporated by Article 4 of the Statute, extends throughout the territory of the state where the hostilities are occurring, without limitation to the "war front" or to the "narrow geographical context of the actual theatre of combat operations,"[1307] once the objective, material conditions for applicability of these provisions have been satisfied.

- *Nexus Between the Alleged Violation and the Armed Conflict*

733. For a criminal offence to fall within the ambit of Article 4 of the Statute, the Chamber must be satisfied that a nexus existed between the alleged breach of Common Article 3 or of Additional Protocol II and the underlying armed conflict.[1308]

734. The objective of this requirement of a nexus between the crimes committed and the armed conflict can best be appreciated in light of the underlying humanitarian purpose of these instruments to protect victims of internal conflicts, not victims of offences unrelated to the hostilities, however reprehensible such offences may be.[1309]

735. The existence of the requisite nexus at the time of the alleged crime is an issue for determination on the evidence presented. It is the view of both the ICTR and the ICTY Appeals Chambers that the nexus requirement is met if the alleged offence is "closely related to the armed conflict". Indeed the Appeals Chambers have stated:

> The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established that the perpetrator acted in furtherance of or under the guise of the armed conflict, it

[1307] *Rutaganda*, Judgment (TC), paras. 102-103; *Akayesu*, Judgment (TC), paras. 635-636.
[1308] *Rutaganda*, Judgment (AC), para. 569-570; *Semanza*, Judgment (TC), para. 368; *Baglishema*, Judgment (TC), para. 105; *Musema*, Judgment (TC), paras. 283-284; *Rutaganda*, Judgment (TC), paras. 102 and 103; *Kayishema and Ruzindana*, Judgment (TC), paras. 182 and 183; *Akayesu*, Judgment (TC), paras. 635 and 636.
[1309] *Semanza*, Judgement (TC), para. 368; *Kayishema and Ruzindana*, Judgment (TC), para. 189; *Akayesu*, Judgment (TC), para. 631.

would be sufficient to conclude that his acts were closely related to the armed conflict.[1310]

736. The determination of whether or not there existed a close relationship between a particular offence and an armed conflict will usually require consideration of several factors, including: whether the perpetrator is a commander or combatant; whether the victim is a non-combatant; whether the victim is a member of the opposing party; whether the crime is part of a military campaign; and whether the crime was committed within the context of the perpetrator's official duties.[1311] These criteria are not exhaustive of the factors indicating the existence of a close relationship between a particular offence and an armed conflict.

- *Serious Violations*

Pursuant to Article 4 of the Statute, the Tribunal has been granted jurisdiction to prosecute serious violations of Common Article 3 and of Additional Protocol. A "serious violation" within the context of Article 4, in the opinion of this Tribunal, constitutes a breach of a rule protecting important humanitarian values with grave consequences for the victim.[1312] On this basis, the Tribunal has expressed the view, with which this Chamber concurs, that the acts articulated in Article 4 of the Statute, constituting serious violations of Common Article 3 and Additional Protocol II, entail individual criminal responsibility.[1313]

c. Findings

737. For the Accused to incur criminal responsibility under Article 4 of the Statute, it is incumbent on the Prosecution to prove beyond reasonable doubt that the Accused committed the alleged underlying crime or crimes against persons not taking an active part in the hostilities; that the alleged act or acts were committed in the context of an internal armed conflict; and that there existed a nexus between the alleged acts and the armed conflict.

[1310] *Rutaganda*, Judgment (AC), para. 569, citing *Kunarac*, Judgment (AC), para. 58.
[1311] *Kunarac*, Judgment (AC), para. 59.
[1312] *Semanza*, Judgment (TC), para. 370; *Bagilishema*, Judgment (TC), para. 102; *Musema*, Judgment (TC), para. 286; *Rutaganda* (TC), para. 106. This position is based on a decision of the ICTY Appeals Chamber where the Tribunal stated that" the violation must be serious, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim."
[1313] *Musema,* Judgment (TC), para. 288; *Rutaganda*, Judgment (TC), para. 106; *Kayishema and Ruzindana*, Judgment (TC), para. 184; *Akayesu*, Judgment (TC), para. 616.

738. It has been established, for the purposes of this case, that a state of non-international armed conflict existed in Rwanda as of 6 April 1994 to mid-July 1994 when the Accused left the country. [1314]

739. For the Accused to incur criminal responsibility under Article 4 of the Statute, it is incumbent on the Prosecution to prove beyond reasonable doubt that he was directly engaged in the hostilities, acting for one of the conflicting parties in the execution of their respective conflict objectives. Accordingly, it is the Prosecution's responsibility to prove that the Accused was either a member of the armed forces under the military command of the belligerent parties or that, by virtue of his authority as a public civilian official representing the Government, he was legitimately mandated or expected to support the war efforts.

740. This Chamber has found on the basis of evidence presented during trial that, at the time of the events alleged in the Indictment, the Accused distributed weapons to members of the *Interahamwe* and others engaged in the attacks in Gikomero and that the Accused himself participated in the crimes against the Tutsi population at Gikomero on 12 April 1994.

741. The Prosecution has relied in part on the same facts which support the Chamber's findings regarding genocide and extermination as a Crime against Humanity to attempt to demonstrate the existence of a nexus between the alleged actions of the Accused and the conflict in Rwanda in 1994. The Prosecution has alleged that the Accused embodied national governmental authority and that he held an executive civilian position within the administration of the country, including the communes of Gikomero and Gishaka. However, the Prosecution has not shown sufficiently how and in what capacity the Accused supported the Government effort against the RPF. No convincing evidence has been presented to demonstrate that the Accused, either in a private capacity or in his role as a civil servant, worked with the military, actively supported the war effort or that the Accused's actions were closely related to the hostilities or committed in conjunction with the armed conflict.

742. In the Chamber's view, the evidence in the present case can be distinguished from the facts of the recent Appeals Chamber judgment in *Prosecutor v. Rutaganda,* where the Accused was found, pursuant to Articles 6(1) and 4(a) of the Statute, to be criminally responsible for crimes of murder as violations of common Article 3 of the Geneva Conventions. In *Rutaganda*, evidence established beyond a reasonable doubt that a nexus existed between the armed conflict existing in Rwanda and the crimes charged against the Accused. The basis of this evidence, in significant part, was established on the testimony of two expert witnesses, which demonstrated, *inter alia*, that soldiers of the RAF provided military

[1314] *see* above, Part III, Section F

training to the members of the *Interahamwe za MRND,* which was the youth wing of the political majority in the government in power in April 1994, and that some of the army leaders most involved in the genocide influenced the activities of the *Interahamwe za MRND.*[1315] The Rutaganda Appeals Chamber also found, on the basis of facts accepted by the Trial Chamber, that the Accused was second vice-president of the youth wing of the *Interahamwe za MRND*, and that he exercised *de facto* authority over the *Interahamwe* militia. It further found beyond a reasonable doubt, on the basis of evidence presented before the Trial Chamber, that a nexus existed between the armed conflict and an attack at the site of Nyanza, in which both the Accused and RAF troops directed the activities of the *Interahamwe* and participated in the killing of refugees alongside the *Interahamwe.*[1316]

743. In the present case, as distinguished from *Rutaganda*, insufficient evidence has been established to enable a finding that there is a nexus between any crimes committed by the Accused and any conflict—either a conflict generally raging in Rwanda or one specifically affecting the material regions indicated in the Indictment.

744. Accordingly, it is not necessary for the Chamber to discuss the other elements of the following crimes, for purposes of this case.

2. Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II—Outrage on Personal Dignity

a. Indictment

745. Count 8 of the Indictment charges:

> By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below
>
> Jean de Dieu Kamuhanda:
>
> - pursuant to Article 6(1), according to paragraphs: according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90.
>
> - pursuant to Article 6(3), according to paragraphs: 5.1, 5.2,

[1315] *Rutaganda,* Judgment (AC), para. 562.
[1316] *Rutaganda,* Judgment (AC), para. 579.

5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90.

is responsible for outrages upon personal dignity, in particular humiliating and degrading treatment, rape and indecent assault, as part of an armed internal conflict, and thereby 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 he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

b. Conclusion

746. In relation to Count 8 of the Indictment, the Chamber finds the Accused NOT GUILTY of Serious Violations Of Article 3 Common To The Geneva Conventions And Of Additional Protocol II—Outrage On Personal Dignity.

3. Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II—Killing and Violence

a. Indictment

747. Count 9 of the Indictment charges:

By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:

Jean de Dieu Kamuhanda

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90.

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6. 41 to 6.46, 6.48 to 6.51, 6.54, 6.56, 6.61 to 6.68, 6.75, 6.79 to 6.90.

is responsible for killing and causing violence to health and to the physical or mental well-being of civilians as part of an armed internal conflict, 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 Statue of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

b. Conclusion

748. In relation to Count 9 of the Indictment, the Chamber finds the Accused NOT GUILTY of Serious Violations Of Article 3 Common To The Geneva Conventions And Of Additional Protocol II – killing and causing violence to health and to the physical or mental well-being of civilians as part of an armed internal conflict.

PART V - VERDICT

749. For the reasons set out in this Judgment, having considered all the evidence and arguments, the Trial Chamber finds in respect of the Accused as follows.

750. Unanimously:

Count 2 (Genocide):	**GUILTY**
Count 3 (Complicity in Genocide):	**DISMISSED**
Count 4 (Murder as a Crime against Humanity):	**DISMISSED**
Count 5 (Extermination as a Crime against Humanity):	**GUILTY**
Count 6 (Rape as a Crime against Humanity):	**NOT GUILTY**
Count 7 (Other Inhumane Acts as a Crime against Humanity):	**NOT GUILTY**
Count 8 (Outrage On Personal Dignity as Serious Violations Of Article 3 Common To The Geneva Conventions And Of Additional Protocol II):	**NOT GUILTY**
Count 9 (Killing and Violence as Serious Violations Of Article 3 Common To The Geneva Conventions And Of Additional Protocol II) :	**NOT GUILTY**

751. Judge Maqutu appends his Separate and Concurring Opinion on the Verdict.

752. Done in English and French, the English text being authoritative.

Arusha, 22 January 2003

William H. Sekule
Presiding Judge

Winston C. Matanzima Maqutu
Judge

Arlette Ramaroson
Judge

(*Seal of the Tribunal*)

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PART VI - SENTENCE

A. General Sentencing Practice

753. In considering the sentence to be imposed on Kamuhanda, the Chamber is mindful that this Tribunal was set up by the Security Council of the United Nations under Chapter VII of the Charter of the United Nations. The Chamber is particularly mindful of Security Council Resolution 955 (1994), which in the preamble stressed in the terms set out below the themes of deterrence, justice, reconciliation, and the restoration and maintenance of peace.

> [...]
>
> *Determined* to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,
>
> *Convinced* that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,
>
> *Believing* that the establishment of an international tribunal for the prosecution of persons responsible for genocide and the other above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,
>
> [...]

754. In considering the appropriate sentence to be passed upon Kamuhanda, the Chamber weighs heavily the factors which will contribute towards the realisation of these objectives. In view of the grave nature of the crimes committed in Rwanda in 1994, it is essential that the international community condemn them in a manner that carries a substantial deterrent factor against their reoccurrence anywhere, whether in Rwanda or elsewhere. Reconciliation amongst Rwandans, towards which the processes of the Tribunal should contribute, must also weigh heavily in the Chamber's mind when passing sentence.

755. In sentencing Kamuhanda, the Chamber will take into account the gravity of the offences pursuant to Article 23[1317] of the Statute and Rule 101[1318] of

[1317] The text of Article 23 appears as follows:

> 1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

the Rules, the individual circumstances of Kamuhanda, aggravating and mitigating circumstances as well as the general sentencing practice of the Tribunal. In terms of Rule 101 of the Rules, the Chamber must take into account the general practice regarding prison sentences in the courts of Rwanda. Should it be appropriate, the Chamber will give credit to Kamuhanda for time served in custody pending trial.

B. Mitigating Factors

756. Parties are required in terms of Rule 86(C) to address matters relating to sentencing in their closing briefs. The Defence did not do so. However, the Chamber invited Counsel to do so during the oral closing arguments.[1319] The Defence expressed reluctance to address matters relating to sentencing because in its submission Kamuhanda should be acquitted.[1320] When pressed on the matter, the Defence submitted that in the event Kamuhanda is found guilty, his sentence should be limited to the time period he has already spent in custody at the behest of the Tribunal.[1321]

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2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

[1318] The text of Rule 101 appears as follows:

(A) A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or the remainder of his life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 23 (2) of the Statute, as well as such factors as:

(i) Any aggravating circumstances;

(ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) The general practice regarding prison sentences in the courts of Rwanda;

(iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the Statute.

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal.

[1319] T. 28 August 2003, p. 87
[1320] T. 28 August 2003, p. 88
[1321] T. 28 August 2003, pp. 88 and 89

757. After considering the evidence, the Chamber notes the fact that prior to his involvement in the genocide, Kamuhanda was widely regarded as a good man, who did a lot to help his *commune* and his country.

758. However, the Chamber finds by a majority, Judge Maqutu dissenting, that given the gravity of the Crimes for which the Accused has been found guilty, there are insufficient reasons to conclude that there are any mitigating factors in this case.

C. Aggravating Factors

759. The Chamber notes that there is no evidence of any previous criminal conduct on the part of Kamuhanda, and the Chamber finds no aggravating circumstances in his conduct prior to 1994.

760. The Chamber notes that according to Article 23(2) of the Statute, the gravity of the crimes committed should be taken into account during sentencing. The Chamber interprets this to mean that the more heinous the crime, the higher the sentence that should be imposed upon its perpetrator. However, in assessing the gravity of the offence, the Chamber ought to go beyond the abstract gravity of the crime to take into account the particular circumstances of the case as well as the form and the degree of the participation of Kamuhanda in the crime.[1322]

761. Kamuhanda has been found guilty of Genocide and guilty of Extermination as a Crime against Humanity.

762. The Prosecution submitted in its closing brief that the fact that Kamuhanda was a top civil servant who subsequently rose to the highest position of Minister in Charge of the Ministry of Higher Education and Scientific Research is a strong aggravating factor that should be considered by the Chamber in its deliberations on sentencing.[1323] It also submitted that, as a top civil servant, Kamuhanda was a prominent figure within Rwandan society generally, and the Gikomero *commune* particularly. It submits that Kamuhanda was popular and renowned in Gikomero, where he held the position of Chairman of the Electoral College and the Technical Committee. It submits that his high position placed him under a duty to espouse the principles laid down in the Constitution, and uphold a higher than average degree of morality. Instead, according to the Prosecution, he supported the genocidal campaign, actively engaging himself in the killing of Tutsis and inciting others to kill.[1324]

[1322] *Semanza*, Judgment (TC), para. 555.
[1323] Prosecution Closing Brief, para. 868, p. 177 (English).
[1324] Prosecution Closing Brief, para. 869, pp.177 and 178 (English)

763. In determining the extent of the existence of any aggravating factors, the Chamber will consider only those factors on which it has made a positive finding.[1325] The Chamber has considered the submissions of the Parties and the entirety of the evidence in the case, and finds the following aggravating factors when considering the culpability of Kamuhanda for the crimes for which he has been found guilty.

764. The Chamber finds that the high position Kamuhanda held as a civil servant can be considered as an aggravating factor. Kamuhanda was a respected man, influential, and considered to be an intellectual. He was in the position to know and to appreciate the dignity and value of life, and also the value and importance of a peaceful coexistence between communities. He was in the position to promote the value of tolerance. Instead of doing so, he blamed people who were living peacefully for not taking part in the campaign of violence. He instigated and led an attack to kill people who had taken shelter in a place universally recognised to be a sanctuary, the Compound of the Gikomero Parish Church. As a result of this attack many people were massacred. The Chamber considers these to be gravely aggravating factors.

D. Sentencing Ranges

765. The Chamber has taken into consideration the sentencing practice in the ICTR and the ICTY, and notes particularly that the penalty must first and foremost be commensurate to the gravity of the offence. Principal perpetrators convicted of either genocide or extermination as a Crime against Humanity, for both of which Kamuhanda has been found guilty, have been punished with sentences ranging from fifteen years to imprisonment for the remainder of the convicted person's life.

766. The Chamber has considered the general sentencing practice regarding prison sentences in Rwanda. The Chamber notes that for the most serious crimes, comparable to a conviction by this Tribunal for Genocide or Extermination as a Crime against Humanity, a convict under the Rwandan judicial system would be liable to the death penalty. In regard to lower categories of crimes in Rwanda, a Rwandan court would have the power to impose a life sentence. Thus, the Chamber regards this as one factor supporting the imposition of a heavy penalty upon Kamuhanda.

E. Credit for Time Served

767. The Accused was arrested in France pursuant to a warrant of arrest issued by the Tribunal on 26 November 1999, and transferred to the seat of the Tribunal on 7 March 2000.

[1325] Delalic et al. (*Celebici* Case), Judgment (AC), para. 763.

768. Pursuant to Rule 101(D), Kamuhanda is entitled to credit for the period during which he was detained in custody pending surrender and trial.

769. The Chamber finds that Kamuhanda is entitled to credit for time served of four years and fifty eight days, if applicable.

F. Conclusion

770. Given all of the foregoing, the Chamber, by a majority, Judge Maqutu dissenting, now sentences Kamuhanda as follows:

for Genocide (Count 2):	**Imprisonment for the remainder of his life;**
for Extermination as a Crime against Humanity (Count 5):	**Imprisonment for the remainder of his life;**

771. These sentences shall run concurrently.

772. Judge Maqutu appends his Dissent on the Sentence.

773. In accordance with Rules 102(A) and 103, Kamuhanda shall remain in the custody of the Tribunal pending transfer to the State where he shall serve his sentence.

774. Done in English and French, the English text being authoritative.

Arusha, 22 January 2004

William H. Sekule
Presiding Judge

Arlette Ramaroson
Judge

(*Seal of the Tribunal*)

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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

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TRIAL CHAMBER II

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

Registrar: Adama Dieng

Judgment of: 22 January 2004

THE PROSECUTOR
v.
Jean de Dieu Kamuhanda

Case No. ICTR-99-54A-T

Judge Maqutu's Separate and Concurring Opinion on the Verdict

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1. It has become necessary to hand down a separate opinion from the majority because we do not always believe the same witnesses. Even where we do, our opinions are sometimes only partially the same.

Introduction

2. There is general agreement about the historical aspects of the Tribunal, its mandate and the history of the case. The Indictment was far wider than the evidence was able to reveal.

3. Evidence only focused on his activities in Gikomero Protestant Parish and Gishaka Roman Catholic Parish. Because evidence was not available to prove conspiracy to commit genocide, at the close of the Prosecution case the Accused was acquitted of this charge.

4. The Indictment gave prominence to the fact that the Accused became a Minister of Higher Education and Scientific Research as a culmination to his public service career.

5. The Chambers approach to evidence and issues of credibility, corroboration and hearsay have been summarized in the main judgment. There is no need to repeat them here.

Background to the Genocide and Crimes Against Humanity

6. In this case (in contrast to some other cases) the Defence did not challenge that genocide and crimes against humanity occurred in Rwanda. Consequently the Prosecution was only put to the proof of allegations in the Indictment against the Accused. In other words the Prosecution had to prove the specific involvement and guilt of the Accused.

7. The Prosecution did not lead much evidence on the historical background to the genocide and the tragedy that occurred in Rwanda. It was the Defence that did so. It was Defence Expert Witness Dr. Nkiko Nsegimana[1] who gave a version that was largely unchallenged. According to him there had been fighting between the Rwanda Patriotic Front which was identified with the Tutsi, and the Rwandan Government which was largely Hutu. There was a cease-fire that led to the signing of the Arusha Accords, on 4 August 1993. The implementation of the Arusha Accords was a problem when the President's aeroplane was shot down, killing him and his Chief of Staff. This left the country and the Rwandan armed forces without leadership.

[1] T. 7-8 May 2003 (Dr. Nkiko Nsengimana)

8. It was as a result of this vacuum at the top of government that the entirely Hutu faction of the army and some political parties took effective power. Acting President Sindikubwabo and what remained of the multi-party government became the front for the extremist Hutu faction of the army and politicians. It was because of the domination of this group that the extermination of Tutsis became inevitable.

9. However, the facade of national reconciliation and an all-inclusive government in terms of the Arusha Accords was maintained to give legitimacy to this shift of power. Acting President Sindikubwabo, who was the Speaker of the National Assembly, was made to take office because in terms of the interim constitution he was the lawful person to act as President. According to Defence Expert Witness Dr Nkiko Nsengimana, he was not a willing participant as his Tutsi wife had been killed.

10. Acting President Sindikubwabo was sworn in on 11 April 1994. By 19 April 1994 he was making speeches using words like "mukore" (work) to incite the killing of Tutsis, because pressure was put on moderate Hutus to take extremist positions.

11. According to Defence Witness VPM, a former Minister in the Rwandan Government, from January 1994 Rwanda was a powder keg and the resumption of hostilities between Government forces and the RPF was imminent.[2] Witness VPM ought to know because he had been a Minister and Chairman of a branch of MRND. Consequently, according to Defence Expert Witness Dr Nkiko Nsengimana, as early as February 1994 the extermination of Tutsis had been threatened if the RPF resumed hostilities as a solution to the political impasse.

12. Tutsi and Hutu lived together in harmony and sometimes intermarried. For example the mother of the wife of the Accused was Tutsi. It is common cause that Rwanda had had ethnic tensions for a long time. According to Witness VPM, who is an admirer of the late President Habyarimana, President Habyarimana had taken power in 1973 after ethnic disturbances. Witness VPM says he resigned from being Chairman of the branch of MRND in 1992 for personal reasons after the burning houses and massacre of Tutsi in Genda, Gashora and Kanzenze in the Bugesera region because of irresponsible speeches.

[2] T. 6-7 May 2003 (VPM)

Presence of the Accused at Gikomero on 12 April 1994

13. The Accused's defence is that he was at his home in the Kacyiru quarter of Kigali between 7 April 1994 and 17 April 1994. Consequently he could not have led the attack at Gikomero Protestant Parish. Furthermore, in any event roads to Gikomero (according to the Accused) were closed because of the fighting. It was therefore impossible for him to get from his home to Gikomero Protestant Church on 12 April 1994.

14. The Prosecution has to prove its case against the Accused in respect of the crimes charged. The Accused does not have to prove his alibi, all he has to do is to persuade the Chamber that it is reasonably possible that he was not at Gikomero, but at the place he claims to have been. He claims he was at his residence in Kacyiru. Even if he was not, clearly it does not mean he is guilty of the crimes charged. That will depend on the evidence adduced and the evaluation of the evidence as a whole.

15. The Accused states that he remained at home to protect his home from looters who took advantage of the chaos to invade homes and to steal. His home was within walking distance from the Ministry of Higher Education and Research, which he headed as a public servant with the rank of Director General. After the shooting down of the President's plane, people were instructed to remain at home. The Accused did so between 7 April 1994 and 17 April 1994, except on 8 April 1994 when he made two trips to Kimihurura, which is about one and a half kilometres from Kacyiru, in order to bring his son René home.[3] In other words the Ministry of Higher Education and Research, appears not to have functioned in Kigali during this period.

16. The Accused told the Chamber that fighting was so intense after the downing of the President's plane that he left his residence and went to live with a neighbour, Defence Witness ALS, to avoid artillery shells that were flying about.[4] The house of another neighbour that was on higher ground had been hit by a shell.

17. The Accused further informed the Chamber that the men of his neighbourhood mounted day and night patrols against looters and no more slept in their homes. Between 7 April 1994 and 17 April 1994 they all slept outside, until they left Kigali. They were only armed with sticks during these patrols, which in his view acted only as a deterrent against looters. There was a military post 500 meters from his residence. In cross-examination the

[3] T. 20 August 2002 (Accused); T. 29 August 2002 p.36 (ICS)(ALS); T. 9 September 2002 p.155 (ALF)
[4] T. 20 August 2002 p.86 (ICS)(Accused)

Accused conceded that their patrols were in violation of the order that they should stay at home. They all patrolled at the same time, and did not take turns.

18. Defence Witness ALS, in support of the Accused's alibi, said the Accused lived at her residence and that the Accused was never out of her sight for more than an hour. The Accused could never have gone to Gikomero without telling her. Defence Witness ALR supported the Accused's evidence in respect of the round-the-clock patrols. Witness ALR told the Chamber that on 8 April 1994 three armed soldiers extorted 2000 Francs from him after searching him. An hour later a group of *Interahamwe* armed with machetes invaded his house, ransacked it and took jewellery, crockery, cutlery and meat. He only informed neighbours including the Accused about the incident with the soldiers, but says he did not tell them about the *Interahamwe*. After that he went to live with Witness ALS and the Accused at the house of ALS, for his own security.

19. Defence Witness ALB told the Chamber that patrols began after that because soldiers had threatened Witness ALR. For the men patrolling, the rest periods were together and they all resumed patrols at the same time. The Accused's wife also gave evidence to the effect that the Accused could never have gone to Gikomero and confirmed the daily patrols of the Accused and others.

20. The whole story of intensive patrols and the reasons for them was not convincing. They could not patrol against armed soldiers and armed *Interahamwe* with sticks. It is significant that Witness ALR said he did not tell his neighbours about the *Interahamwe* that invaded him an hour after the soldiers. The intensive group patrols during which they all rested at the same time without taking turns are improbable, and were meant to buttress the Accused's false alibi.

Impossibility of moving from Kigali to Gikomero

21. The fact that Defence Witness RGB panicked and deserted his post as *bourgmestre* of Mbogo *commune* on 9 April 1994, when he heard firing in which soldiers of the Rwandan armed forces destroyed an RPF vehicle, but went back to Mbogo on 24 April 1994 to find that it was still in Government hands shows movement was still possible. Witness RGB did not disclose that he went back to Mbogo in his evidence-in-chief. It was in cross-examination that he disclosed the fact that the army transported him back to Mbogo, and roads were open to unimpeded military transport. Witness RGB was to remain with family in Musasa *commune* in Kigali *préfecture* until he went

into exile in July 1994.[5] Yet, Witness RGB gave evidence that roads to Gikomero were closed and it was impossible to get there.[6] The Chamber could not believe RGB, as he was not a truthful witness in other respects as well.

22. For reasons given by the majority it was not impossible to move from Kigali to Gikomero, a distance of not more than 20 Kilometres. The RPF had been in Kigali in the CND area even before the resumption of the fighting. The Defence supported impossibility through the evidence of junior front line soldiers. This evidence was brought to prove all roads were closed as soon as fighting resumed. The risk that was there after the resumption of the fighting was exaggerated. Even the evidence of Witness RKF, who held the rank of Major, and who was a legal officer whose other duties included working for the integration of the Rwandan armed forces with RPF in terms of the Arusha Accords, and some intelligence gathering - was not satisfactory. He claimed the Rwandan army had a demobilization mentality. If that is the case it could not in my view provide intelligence competently. In any event, according to Witness GEK the Accused was accompanied by a soldier when he went to Gikomero on 12 April 1994 – a limited precaution against danger. There was all over Kigali and Kigali Rural a danger that a stray bullet or an infiltrator could harm a person or a vehicle, but movement was still possible on the roads, side roads and footpaths.

Massacre at Gishaka Catholic Parish

23. I agree with the majority Judgment that the Accused could not be liable for events at the Gishaka Catholic parish on the evidence before the Chamber. Evidence that linked the Accused with events there was unsatisfactory. It is clear that the weight of evidence brought both by the Defence, especially through Defence Witness PC, and the Prosecution, show that refugees were taken out of the church to be killed. No grenades were thrown into the church as Prosecution Witness GKL testified.[7] In summary, the allegation that the Accused was at Gishaka was not backed by concrete or satisfactory evidence.

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[5] T. 18 February 2003 pp.4-6 (RGB)
[6] T. 17 February 2003 p.64 (RGB)
[7] As explained in the main Judgment, Witness GKL stated that no refugees were killed inside the church, but were instead led away to be killed. T. 6 May 2002 pp.70, 72 (GKL)

Weapons distribution at Gikomero

24. As the Judgment of the Chamber shows, the only direct evidence that the Accused distributed weapons at Gikomero is that of Prosecution Witness GEK. Evidence of a single witness must be checked with care. The Chamber has to be alive to the fact that it stands alone and cannot be checked against some other evidence. The evidence of witnesses GEB and GAC, which should have corroborated the evidence of Witness GEK, was found unsatisfactory, unreliable and containing inherent improbabilities.

25. In the Accused's favour is the strong evidence of Witness GET who told the Chamber that the Accused was a good man. Witness GET testified that the Accused was an intellectual of such integrity that the crimes he is charged with do not correspond to the Accused's character as he knew it.[8] When GET was *bourgmestre* after the genocide he got persistent reports about the Accused's participation, which persisted until they were followed up. Among Witness GET's informants was Prosecution Witness GEK.[9]

26. Another hearsay that puts the Accused among those who were worried about the massacre of the Tutsi is Witness GKI's testimony that her brother was told that the Tutsi wife of the *bourgmestre* of Gikomero had met the Accused on 30 March 1994. The report stated that the Accused had warned the wife of the *bourgmestre* to flee because the Tutsi were going to be killed.

27. Prosecution Witness GEK, a Tutsi woman, was married to a close relative of the Accused. The Accused's sister was married to a close neighbour of Witness GEK. Witness GEK testified that between 5 April 1994 and 6 April 1994 the Accused had been at her home for short time. The Accused was on the way to see his brother-in-law. Witness GEK told the Chamber that she had met the Accused about four times.

28. Later on in the trial, the Accused admitted under cross-examination that he knew Witness GEK and her husband.[10] But the Accused said he does not remember meeting or speaking to Witness GEK.[11] The Accused's reaction when Witness GEK gave evidence (through questions put by his counsel) had been that Witness GEK was an impostor, and that she was not who she claimed to be. Thus details of her evidence were not directly challenged by the Defence – save showing that the Accused could not have been there. It came as a surprise to the Chamber when the Accused acknowledged her in his testimony.

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[8] T. 5 September 2001 pp.100-102 (ICS)(GET)
[9] T. 6 September 2001 pp.45-46 (ICS)(GET)
[10] T. 26 August 2002 p.124 (Accused)
[11] T. 26 August 2002 p.128 (ICS)(Accused)

29. In her evidence-in-chief, Witness GEK stated that the Accused came to her house alone, driving a white pickup between 6 April 1994 and 10 April 1994. Her husband told her to go into the adjacent room, in which she listened to their conversation. They were four men with the Accused in the room. The Accused complained that killings had not begun in the area. Those who were supposed to help were not doing so because they had married Tutsi women. The Accused said he would bring equipment to enable them to start. If their women were in the way they should eliminate them. This conversation lasted 30 minutes.

30. When Witness GEK went outside she saw firearms, grenades and machetes in the vehicle the Accused arrived in. Inside the house the Accused had distributed firearms and grenades. Her husband received four grenades from the Accused. The Accused went next door to Ngarambe's house, where he unloaded the weapons. The Accused said they should distribute them. The Accused said that he would come back to assist.

31. Between 10 April 1994 and 14 April 1994, the Accused came back, he went to Karekizi's house, and he was in a white van with a soldier and a driver. A blue Diahatsu carrying between 30 and 50 people – all armed with guns and machetes followed him. From Karekizi's house, the Accused drove off in the direction of Gikomero Primary School. Witness GEK heard gunshots for 20 to 40 minutes. She saw children fleeing towards her – some of them wounded. Later that day when *Interahamwe* from Rubungo came for them, Witness GEK and others fled to Kibobo *cellule*.

32. After the Prosecution had called 25 more witnesses and after the Defence had called eight witnesses, Witness GEK was recalled by the Defence for further cross-examination. It was suggested to Witness GEK that between 9 April 1994 and 14 April 1994 she was not at her home. Witness GEK did not agree with that suggestion. She said that she went to Kibobo the day after the killing, and that they went with their husbands and came back the same day. Kibobo is in their *secteur*. Witness GEK denied the allegation by the Defence that she stayed at Eustache Kayumba's house from 9 April 1994 to 13 April 1994.[12] At that time, Witness GEK had only one child. Cross-examination when Witness GEK had been recalled further revealed she had been sentenced to death for an act with her husband for events that occurred several months after giving evidence before the Chamber.

33. Witness GEK was never asked about the second child that the Defence alleged had been born at Kibobo on the day of the Gikomero massacre. Witnesses GPB, PCE, EM and Xaviera Mukaminani were later called by the Defence to state that Witness GEK could not have been at her house because

[12] T. 13 January 2003 pp.62-63 (GEK)

on 12 April 1994, the day of the massacre, or 13 April 1994, and according to the Defence she was in Kibobo giving birth to her second child. The Defence challenged the accuracy of Prosecution Exhibit 49, a document originally brought by the Defence, in which Witness GEK had registered the child as having been born on 13 September 1994, five months later. What was unfair and strange was that the alleged issue of a second child born in Kibobo on 13 April 1994 had not been raised with Witness GEK even after her recall.

34. The only witness who identified the Accused from undisputed knowledge of him was Prosecution Witness GEK. The Accused's attack on the evidence of Witness GEK was not eventually that she does not know him, but rather that Witness GEK is not telling the truth when she says the Accused was in Gikomero after the shooting down of the President Habyarimana's Plane, that he distributed weapons, and that on 12 April 1994, the day of the massacre, the Accused led armed men toward the Gikomero Parish Primary School.

35. The Chamber was unanimous in not accepting the evidence of Witness GAB that between 9 April 1994 and 11 April 1994 he saw the Accused distributing weapons at the football field in the presence of the *bourgmestre*, the *conseiller*, the accountant and the police brigadier of the *commune*. This was despite the fact that Witness GAB claimed he knew the Accused. Witness GAB was a young Tutsi man and was known as such by his playmates. He had earlier seen the Accused at a political rally of the MRND in Kayanga *secteur* of the Gikomero *commune*. Witness GAB testified that the Accused at that meeting said: "Let the Tutsis not bother you because their fate is being considered by the appropriate authorities."[13] A solution had been found in the not too distant future. In that meeting a person who was not Hutu could not have been invited to that meeting at which the Accused spoke as a guest of honour. A Tutsi would be in danger of being killed.[14]

36. The Chamber for similar reasons had found the evidence of Witness GAC unbelievable because he claimed weapons were distributed by the Accused in his presence at Damien's bar although the people in the vicinity knew he was a Tutsi. Witnesses GET and GAD gave hearsay evidence about the Accused's weapon distribution, which the Chamber could not accept.

37. The result of the rejection of the evidence on weapon distribution of Witnesses GAB, GAC and hearsay from GET and GAD was that the only evidence which the Chamber could work with was that of Witness GEK alone. The evidence of Witness GEK on what she saw and heard at her house and the weapons distribution was believed. Whilst she could see what was happening at Karikezi's House, it was not clear how she heard what was

[13] T. 11 September 2001 p.49 (GAB)
[14] T. 11 September 2001 pp.50-51 (GAB)

being said. Since the Defence was claming Witness GEK was not who she claimed she was, she was not pressed to clarify this issue.

38. The fact that Witness GEK later committed a crime which led to a sentence of death was not ignored in determining her credibility as a witness before the Chamber. The event though irrelevant was considered only in so far as it might affect her reliability as a witness. Furthermore, the Accused's evidence given several months before that crime remained unchanged. The Chamber was alive to the danger of the evidence of a single witness on the issue of weapon distribution. Consequently it scrutinized it with great care.

39. The baseless attack on Witness GEK's identity, and the attempt by the Defence to remove her from her home and put her at Kibobo, was considered by the Chamber, but her evidence was not shaken. In an attempt to prove that she was known by her full name, the Defence brought evidence in the form of a document certifying that her second child was born during September 1994. Yet, three witnesses were brought by the Defence to prove that her second child was born on 12 April 1994, which was the day of the Gikomero Church massacre. This allegation concerning the birth of the second child was not put to GEK to comment upon. Witness GEK was not shaken in cross-examination, her evidence was found credible and without any real demerits.

Presence of the Accused in Gikomero on 12 April 1994

40. Since the Accused claimed that between 7 April 1994 and 17 April 1994, he had been at his residence at Kacyiru, the Prosecution tried to demonstrate others saw that the Accused in the Gikomero area on or before 12 April 1994. The evidence of Witness GAD that on 9 April 1994 he briefly saw the Accused in a chauffer driven *Peugeot 604*, sitting in a place of honour after a visit to his parents, was suspect because Witness GAD claimed the Accused normally came in a *Peugeot 504* and sat in the front. This evidence was not satisfactory. The Witness claimed to know the Accused and his sisters, but he could not name them. Also, his evidence was largely hearsay.

41. Although the Chamber by a majority was satisfied by the evidence of Witness GEB, I was not. Witness GEB's opportunities of observation of the man he saw as being the Accused were poor, and brief. I was not satisfied that his evidence that he knows the Accused was real and credible. Witness GEB claims the Accused was from a neighbouring *secteur* and that they were in fact neighbours. He said that he had known the Accused for three years[15] and proceeded to identify him in the dock.[16] The Witness claimed to have

[15] T. 12 September 2001 p.66 (GEB)
[16] T. 12 September 2001 p.67 (GEB)

seen the Accused when he came to introduce his wife to the Accused's family.[17] However, the Chamber heard evidence that this incident occurred in 1983,[18] which was 11 years before 1994.

42. Witness GEB claimed to have seen a pickup vehicle carrying over twenty people in the back, and as it passed him he looked back and saw the Accused sitting between two people. Those twenty people, who were singing, were wearing *Kitenge* uniforms (normally worn by *Interahamwe*), and some were in military uniforms. They were singing *Interahamwe* songs, and they were armed- he saw Kalashnikov firearms. When Witness GEB saw this vehicle, it was one and a half kilometres from Gikomero. Thirty minutes later, he heard gun reports.

43. Witness GEB was specifically asked if the opening of the Kayanga Health Centre was the day the Accused had come to introduce his wife to the family – the Witness evaded the question. Pressed on when the Kayanga Health Centre was opened, the Witness did not know. All he could say was that, that was the last time he had seen the Accused.[19] The Accused had come to introduce his wife to the family in 1983.[20] In cross-examination it was put to him that in his prior statement to the Prosecution investigators, had said Asio told him that Kamuhanda was with the *Interahamwe*. Witness GEB gave no satisfactory answer. I do not believe this Witness. The majority in believing Witness GEB have overlooked the fact that the evidence of this witness conflicts with that of Witness GEK. The testimonies could only be reconciled had a longer time elapsed between the time Witness GEB saw the Accused and the time Witness GEK saw the Accused with a policeman just before he led the attackers to Gikomero Parish compound.

44. I am unable to join with the majority in believing that Prosecution Witness GAF was telling the truth when he said he saw the Accused at the Gikomero massacre, and that he gave the signal for the killings to start by saying "mukore" which means "work". I am unable to believe this witness because he said that even before the vehicles stopped, Bucundura (the assistant of the Pastor) was shot at.[21] In my view, once the firing began there would be pandemonium and people could not have stopped for the Accused to get down from the vehicle and tell the people in the first three vehicles to "mukore" (work), that is to begin the killing. Witness GAF, when asked if he saw the vehicles clearly, replied that "In actual fact, I did not come that close to the vehicles because I went away, say I was about 15 to 20 meters from the vehicles and but since there were lined up, there were those which were

[17] T. 12 September 2001 p.66 (GEB)
[18] T. 12 September 2001 p.101 (GEB)
[19] T. 12 September 2001 pp.99-103 (GEB)
[20] T. 12 September 2001 p.101 (GEB)
[21] T. 13 September 2001 p.51 (GAF)

closer to me say about 10 metres away."[22] It was after Bucundura had fallen to the ground that the Accused alighted from one of vehicles with the markings UN.[23] After he had made a dock identification of the Accused,[24] the Witness was asked to clarify what happened and said: "They shot at Bucundura before the vehicles stopped. They were still in motion when they passed where I was."[25]

45. Asked if the people he came with obeyed the Accused's orders, Witness GAF contradicted himself and said: "No, but they had already agreed with the people he came with about what was to be done. He made that gesture, that was to incite people that were there."[26] When the Accused made the gesture, the killings started almost immediately.[27] In other words, the Accused made a gesture and the killings began. He did not give an order. When what Witness GAF had said was summarized to him to confirm, he said that it was the Accused who had brought the weapons to give to the people. Witness GAF had to admit that he was merely venturing an opinion.[28] Later Witness GAF said for no apparent reason "these were policemen of Gikomero *commune*. They were there with us because we sought refuge with them. It was when Kamuhanda arrived that he ordered those to be killed be killed."[29]

46. Witness GAF is the only witness who says the first vehicle, a *Pajero*, left without its passengers alighting. The Accused left immediately after raising his arms and saying "mukore" – he spent only two minutes there, and then left for somewhere else. Asked specifically if the Accused was there when the killings started, Witness GAF said no. Amongst other unrelated things, Witness GAF said that the killings started as soon as he pronounced the word. The vehicle that was left behind, loaded meat from a cow that had been killed. When asked by the Prosecutor during examination-in-chief if the Accused was still there when the cow was killed and the meat loaded, Witness GAF responded: "Well, I had told you as soon as he uttered those words, he went back into to the vehicle and left at the same time as the *Pajero* and the *Hilux* pickup."[30] Witness GAF claims to have known the Accused as a prominent MRND politician,[31] which every other witness agrees was false. Another fact just as false was that the Accused was well known in the area.[32]

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[22] T. 13 September 2001 p.44 (GAF)
[23] T. 13 September 2001 pp.44-45 (GAF)
[24] T. 13 September 2001 p. 50 (GAF)
[25] T. 13 September 2001 p.51 (GAF)
[26] T. 13 September 2001 p.52 (GAF)
[27] T. 13 September 2001 p.52 (GAF)
[28] T. 13 September 2001 pp.52-53 (GAF)
[29] T. 17 September 2001 pp.44 (GAF)
[30] T. 13 September 2001 p.55 (GAF)
[31] T. 13 September 2001 p.46 (GAF)
[32] T. 13 September 2001 p.46 (GAF)

47. All indications make it suspect that Witness GAF was at Gikomero Parish on 12 April 1994 at the time of the killings. According to his account, he only got to the parish between 2:00pm and 3:00pm.[33] He says that 20 to 30 minutes later, the vehicles of the killers arrived.[34] If he was in fact there and that near the vehicles, he would, like other witnesses, have stated that the Accused got down from the vehicle, talked to Pastor Nkuranga, and then as he was leaving there would have been a gun report and Bucundura would have fallen. His account that Bucundura was shot and fell even before the vehicles stopped and the Accused alighted from the vehicle and talked to Pastor Nkuranga is inconsistent with the evidence of the Prosecution as a whole. The view I have is that people would have scattered even before the vehicles stopped had the shooting commenced when Witness GAF claims it did. Although it impressed the majority, for me the evidence of Witness GAF was untrue.

48. I accept that Witness GES, a public servant, must have known the Accused, who was a leading public servant at that time, and that he could have identified the Accused at Gikomero Protestant Parish. Witness GES's identification of the Accused is not of a high quality because he was 50 meters away.[35]

49. Witness GAA's evidence of identification of the Accused at Gikomero Protestant Parish was somewhat hesitant because when he saw the Accused in the dock, he said: "I suppose he is that one" – later he said: "I have no doubt that is him".[36] He was being honest because the Accused had been approximately 100 metres from him when he saw him at the Parish.[37] Witness GAA lived 500 meters from the home of the Accused's sister.[38] Witness GAA had seen the Accused on two occasions. The first occasion when the Accused had brought gifts on the birth of his sister's first child. The second occasion was at the funeral of the aforementioned sister of the Accused who later died.[39]

50. I was impressed with the evidence of Witness GAA because he did not artificially enhance the value of his identification of the Accused. He testified that he saw the Accused come out of the vehicle and throw his hands in the air.[40] At that time, Pastor Nkuranga had come out of his house with Bucundura. People who were near him, were saying, "get to work,

[33] T. 13 September 2001 pp.41-42 (GAF)
[34] T. 13 September 2001 p.42 (GAF)
[35] T. 29 January 2002 p.109 (GES)
[36] T. 19 September 2001 pp.110-111 (GAA)
[37] T. 19 September 2001 p.119 (GAA)
[38] T. 19 September 2001 pp.107-108 (GAA)
[39] T. 19 September 2001 p.107 (GAA)
[40] T. 19 September 2001 pp.113-114 (GAA)

Kamuhanda is here now".[41] There was a gun report and Bucundura fell, three other people were also shot.[42] Pastor Nkuranga was shouting "I am Pastor Nkuranga, do not shoot at me".[43] People ran in all directions. Some fled, some were killed.[44] The poor quality identification of the Accused by Witness GAA was made stronger by the fact that he heard assailants shouting "get to work, Kamuhanda is here now" when the man he identified as the Accused arrived in the vehicle.

51. The Chamber was shown a photo of the Accused that was taken at the sister's funeral.[45] In it the Accused did not look exactly the same as he looked in court. The Accused has considerably aged. In concluding his evidence-in-chief about the Accused, Witness GAA said that he had some doubt about identifying Kamuhanda when giving evidence because it had been a long time since he last saw him, but he had no doubt in identifying him when he arrived in the vehicle at the time of the massacre.[46]

52. I noted the many witnesses (of different degrees of credibility) were saying they heard from others that Kamuhanda had come – their safety is threatened (or words to that effect). Witnesses such as GEE, GEA, GEV, and GEG are in my view credible when they say they did not know the Accused, but that they heard others exclaiming that Kamuhanda – the man who went to speak to Pastor Nkuranga - had come, and they were in danger. Regarding what some of the people shouted, I accept the evidence of Witness GEG as being corroborated by the others – despite Witness GEG's mistake that the Accused had a gun. As that man [the Accused] was going to his vehicle, witnesses agree that Bucundura (or an old man) was shot, and killings began. There are however witnesses such as GEP, GEC and GEI who were in the classrooms, but who claim to have seen or heard much more than their opportunities of seeing and hearing enabled them. Such witnesses I do not find credible. The behaviour of Pastor Nkuranga was interpreted as suspect before the killing – some witnesses claim or infer that he was in league with killers because he stopped them from fleeing when refugees from Jurwe told them an attack was imminent. The collective weight of this evidence does not prove this. In my view Pastor Nkuranga did what any reasonable person who believed in the inviolability of churches as sanctuaries should have done.

[41] T. 19 September 2001 p.115 (GAA)
[42] T. 19 September 2001 pp.115 (GAA)
[43] T. 19 September 2001 p.114 (GAA)
[44] T. 19 September 2001 p.117 (GAA)
[45] Prosecution Exhibit 4
[46] T. 19 September 2001 pp.119-121 (GAA)

53. The evidence of Witness GAG, whose presence at Gikomero Protestant Parish is admitted both by the Defence and the Prosecution, is to me credible although Pastor Nkuranga's wife and son found her ungrateful and untruthful in the way she claimed she lost property from the late Pastor Nkuranga. Witness GAG says that Pastor Nkuranga had looked after the refugees when they were only around fifty in number, however when they flocked to the parish in larger numbers his problems increased and his attitude changed. When on 12 April 1994 rumours of an impending attack became rife, Pastor Nkuranga called the refugees together and assured them that they were safe. He told the local people who were selling goods to the refugees to leave because they were spreading false rumours. It was at 2:00pm while the refugees were standing round the Pastor that a vehicle came and a man he did not know went towards Pastor Nkuranga. The Pastor went to meet him saying "I told you that you had nothing to fear, that your safety would be guaranteed."[47] Bucundura remained with Witness GAG and the others. According to Witness GAG, the *Interahamwe* surrounded them and she thought they were going to protect them. As the man Pastor Nkuranga had gone to talk to walked back to one of the vehicles, someone shot Bucundura. There followed volleys of firing from guns. Grenades were also thrown. All Pastor Nkuranga could say was: "I am Pastor Nkuranga."[48] According to Witness GAG, some of the refugees had said "there is Kamuhanda" when the Accused went to the Pastor.[49]

54. Witness GAG had seen people in military uniform, *Kitenge* clothing, and others wearing banana leaves during the attack. Some had guns, grenades, machetes, and clubs. This account is in many respects similar to that of GAA who in my view is a credible Witness.

55. According to Witness GAG, at dawn Pastor Nkuranga came with a policeman called Nkarambe and Rutayiseri and she was taken out of the house. It was said that the Accused said all Tutsi including children were to be killed. Pastor Nkuranga said the God of the Tutsi had abandoned them. Nkarambe and Rutayisire took her to the bush, hit her on the head and left her for dead. The Witness refused to attempt a dock identification of the Accused on the ground that she saw him only once, and consequently does not believe that she could recognize the Accused. I believe the evidence of Witness GAG, her evidence and demeanour was impressive. She was telling the truth about what she experienced, saw and heard.

56. Although Pastor Nkuranga died before he could give evidence, he left behind an affidavit in which he avoided mentioning the presence of the Accused at Gikomero and his conversation with him. The Chamber concludes that he withheld this evidence deliberately. In my view although

[47] T. 4 February 2002 p.54 (GAG)
[48] T. 4 February 2002 p.55 (GAG)
[49] T. 4 February 2002 p.54 (GAG)

he was not involved in the genocide and genuinely did what he could for the refugees – he chose to protect the Accused and others for reasons that are not clear. Pastor Nkuranga's family gave evidence solely to clear his name, but not to tell the truth.

Conclusion

57. In short I differ from the majority who have accepted from witness testimony that, at the location of the killings, the Accused was actually heard giving an order for the killing to begin. Firstly, I disbelieve the entire evidence of Witness GAF. Consequently in my view there is no direct credible evidence that the Accused ordered the killing of the Tutsis by saying "mukore" (work). Witness GAA, who in my view is a credible witness, only saw the Accused raise his hands at the time the killing commenced. As for the witnesses who were in classrooms, even if the Accused had actually said the word "mukore", would not have been able to hear it in that noisy environment. Thus, on the question of whether or not the Accused gave a verbal order when he arrived at the Parish compound, I find that there is no credible evidence that he did.

58. I do however accept the evidence of Witness GAA, who stated that when their assailants saw the Accused, the assailants said, "Let us go to work, Kamuhanda has come". From this evidence, there is an irresistible inference to be drawn that the Accused had sometime earlier said to the attackers (before they reached the Parish) that Tutsis should be killed. Consequently, because this must have come to be known, it is not surprising that it was known amongst those Tutsis who knew him, that his presence at Gikomero meant death to the Tutsis.

59. The cumulative effect of the circumstantial evidence is that, as Witness GEK stated, the Accused distributed weapons between 6 April 1994 and 10 April 1994. On the day of the massacre at the Gikomero Parish, Witness GEK saw the Accused go towards the Parish with a group of armed people. Shortly thereafter there were gun reports and explosions from the direction of the Parish. A man identified as the Accused from a distance by Witnesses GAA and GEL was seen going to Pastor Nkuranga before the killing began. Witness GAA heard some of the attackers saying they should work because the Accused had arrived. Some of the refugees (according to Witnesses GEK, GEA, GEG and GEV) said that now that the Accused had arrived their safety was threatened.

Verdict

60. I agree with the majority that the Accused led an armed group to commit the crimes of Genocide and Extermination as a Crime Against Humanity against the Tutsi people who were at Gikomero Protestant Parish. In that respect the verdict of the Chamber is unanimous.

Arusha, 22 January 2004

Winston C. M. Maqutu
Judge

(Seal of the Tribunal)

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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

UNITED NATIONS
NATIONS UNIES

TRIAL CHAMBER II

Original: English

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

Registrar: Adama Dieng

Judgment of: 22 January 2004

THE PROSECUTOR
v.
Jean de Dieu Kamuhanda

Case No. ICTR-99-54A-T

Judge Maqutu's Dissent on the Sentence

Counsel for the Prosecution:

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Ms. Anta Guisse	Legal Assistant

1. We are dealing with Rwanda. A country which is by no means different from other African countries where tribalism is at places rife and sometimes leads to genocidal civil wars and disorders. The ethnic tensions between Hutu and Tutsi are endemic and have previously led to violent killings. It is a unique problem because both the Hutu and the Tutsi speak the same language, Kinyarwanda. I understand that they have the same customs, religion and culture. They share names and surnames. Yet, in the past they had separate identity cards.

2. To an outsider, the situation and differences between Hutu and Tutsi are difficult to understand. It should have been easier if the differences were that of class distinction. But they are historical and complex. Perhaps it is similar to that of Patricians and Plebeians in ancient Rome. The tragedy that began with the Gracchi brothers, led to a violent genocidal civil war between Marius and Sulla, the vestiges of this civil war led to the accession of Julius Caesar and the end of the Roman Republic – not long thereafter. It is this blood-letting heritage that Rwandans have to divest themselves of before it is too late. The Rwandan government is presently tackling this issue and searching for ways to end the cycle of killing.

3. In Resolution 1165 of 1998, the Security Council (after reaffirming Resolution 955 of 1994 under which this Tribunal was established) stated :

> Remaining convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law **will contribute to the process of national reconciliation and the maintenance of peace in Rwanda and the region.**
>
> [Emphasis added]

4. The purpose of this Tribunal (in a traditional judicial fashion) is to firmly and robustly punish genocide and crimes against humanity with the object hopefully of helping Rwanda's reconciliation. The Government of Rwanda has taken serious steps to deal with some of the offences through the *Gacaca* courts. Although the offences dealt with by *Gacaca* may relatively speaking be more individual in scale – they cumulatively constitute the essence of genocide and crimes against humanity. The basis of *Gacaca* courts is for neighbours and peer groups to participate in the judicial process. Even the judges are ordinary villagers from the same environment. It is before them that the accused must appear and be heard. His alleged failings have to be assessed by people who have been through the same pressures and who can empathise with him. It is before them that the accused has to show penance. Only then can an attempt at moral restitution be worked out. The International Tribunal has no system or guidelines of the nature that *Gacaca* courts have, to actually put into effect the reconciliation element. These belong to the indigenous Rwandan culture.

5. At the root of my dissent from the majority is the imposition of life imprisonment on the accused. A life sentence is the highest sentence that this Tribunal may impose. I take the view that sentences should differ depending on the circumstances of each case.

6. Evidence has been given that shows the accused was a good man. It has been shown that he belonged to a group of intellectuals who were not happy with the promotion of ethnic divisions between the Hutu and Tutsi. Prosecution Witness GET has stated he was surprised when the accused chose to remain in the MRND when multi-partyism became State policy in Rwanda. Witness GET (who was made a *bourgmestre* after the genocide) could not initially entertain allegations that the Accused had committed the crimes with which he is charged. Witnesses however kept on coming with respect to the Accused's role in events of April 1994. Eventually the authorities had to take notice.

7. Evidence also shows (albeit as hearsay) that the Accused warned his Tutsi friend in Gishaka as early as 30 March 1994 that the Tutsi were going to be killed and advised them to flee. The Accused had married a woman whose mother was a Tutsi and consequently he can not be accused of hatred of the Tutsi. Two or three days before 6 April 1994 (when the President's plane was shot down), the Accused had visited his Tutsi mother-in-law with his wife and children.

8. The question that the Accused alone can answer is – why did he participate in genocide against the Tutsi?

9. The Accused told the Chamber that he became a Minister because he was afraid to decline the honour. There is evidence from Nkiko Nsengimana (which is not challenged) that Sindikubwabo, whose Tutsi wife had been killed, was fetched from Butare and made Acting President when he believed he was about to be killed. Not long thereafter Acting President Sindikubwabo was addressing meetings saying that the Hutu should "work" and kill Tutsis. It is difficult to believe that the Accused could have been afraid of a regime that was clearly on the verge of falling. We are not being told the whole story.

10. It seems to me that (from the beginning) the Accused went along with the genocide out of opportunism and because his moral courage had deserted him. He ingratiated himself to the powers of the day that were exterminating the Tutsis by leading a genocidal attack on the Tutsi who had sought sanctuary at the Gikomero Protestant Parish. Having acquired the credentials of a *genocidaire* of the Tutsis, he was now firmly in the camp of the former Rwandan government that was leading the extermination of the Tutsi and moderate Hutu. I do not believe he was compelled to be a Minister – as the Accused would have us believe. The view I take is that the Accused had

already allowed himself to be used as a tool of the genocidal extremists who were running Rwanda.

11. The Accused's conduct shows he was probably reluctant to participate in the genocide. He may have been only a public servant involved in matters of higher education and culture, yet, the prestige of the office he held and the high level of his education made him a role model to others. People looked up to him for leadership. For a reason he alone knows (and did not share with the Chamber) he went to Gikomero where Tutsi and Hutu were living together as neighbours – in peace. He led a group of armed Hutus, some of whom were from outside Gikomero, to Gikomero Protestant Parish to go and kill the Tutsi.

12. It is clear from the evidence that all he wanted was to see others do the killing. A person in a position of leadership is answerable as if he had actually killed. It is significant that some of those he incited and led to the killing are probably facing the death penalty in Rwanda. He has given Rwandan Hutus a bad name by violating the customary internationally recognized sanctuary status of the Gikomero Protestant Parish Church.

13. People of stature such as the Accused who was in a position of leadership, cannot be allowed to abdicate moral responsibility and claim they were afraid to do what is expected of them. We have no clear evidence that the political party – MRND, to which Accused belonged, was bent on genocide – and even if it had been, more would be required by law before the Accused could be called upon to account. Consequently the Accused is not being convicted merely because he belonged to the MRND. He is being convicted for inciting unwilling Hutu living in a peaceful neighbourhood with Tutsis to kill them. Some of them had Tutsi wives or, like him, half Tutsi wives. He is also being convicted for leading a group of Tutsi to Gikomero Protestant Parish (which was a sanctuary) to kill unarmed Tutsi that were there. His crime is a very serious one indeed.

14. I believe (in the light of the foregoing) despite the Accused's lack of physical and moral courage at a crucial time, the heinousness of the Accused's act, the hundreds or thousands that died, that the Accused should not be given the highest sentence of life imprisonment. The Accused must in my view be given a chance to reflect, and if possible learn from his mistakes and teach others – if he becomes so minded. Many people have done a lot of good in prison by writing for those outside prison. Rwandans are his people, perhaps he will be able to add his voice to the many voices that say Rwandans should recognise their common humanity, nationality and destiny.

I would therefore sentence the Accused to:

TWENTY FIVE (25) YEARS IMPRISONMENT

Less the time the Accused has already spent in custody at the behest of the Tribunal.

Arusha, 22 January 2004

Winston C. M. Maqutu
Judge

(Seal of the Tribunal)

ANNEXES

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Prosecutor v. Kamuhanda, Case No ICTR-99-54-A-T, Decision On Kauhanda's Motion for Partial Acquittal Pursuant to Rule 98bis of Procedure and Evidence (TC), 20 August 2002.	*Kamuhanda,* Decision 20 August 2002, Partial Acquittal (TC).
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Prosecutor v. Brdjanin, Talic and Zupljanin, Case No IT-99-36, Decision On Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001.	*Brdjanin, Talic and Zupljanin,* Decision 26 June 2001, On Form of Amended Indictment (TC).
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- ***List of Abbreviations***

Long form	**Short form**
Transcripts in English of the hearing (Closed session) on the 3	T. 3 September 2001, p.

September 2001, p. 180. Witness GEK.	180 (GEK) (ICS).
Transcripts in English of the hearing (Open session) on the 4 September 2001, p. 15. Witness GEK.	T. 4 September 2001, p. 15 (GEK).
Transcripts in French of the hearing (Closed session) on the 9 July 2001, p. 111. Witness GEK.	T. 3 Septembre 2001, p. 111 (GEK) (HC).
Transcripts in French of the hearing (Open session) on the 13 September 2001, p. 40. Witness GEK.	T. 13 Septembre 2001, p. 40 (GEK).
Prosecution Exhibit No 4 (see: Exhibits list)	Prosecution Exhibit, P4
The Prosecutor v. Kamuhanda Indictment of 10 November 2000 (Certified copy annexed)	Indictment
Statute of the ICTR	Statute (The)
Rules of Procedure and Evidence	Rules (The)
Trial Chamber II	Chamber (The)
International Criminal Tribunal for Rwanda	Tribunal (The)
United Nations Security Council	UNSC
United Nations	UN
International Criminal Tribunal for Rwanda	ICTR
International Criminal Tribunal for the former Yugoslavia	ICTY
Article 3 common to the Geneva Conventions	Common Article 3
Mouvement Révolutionnaire National pour le Développement [before July 1991]	MRND
Mouvement Républicain National pour la Démocratie et le Développement [After July 1991]	MRND
Mouvement démocratique républicain	MDR
Rwandan Patriotic Front	RPF
Forces armées rwandaises	FAR

ANNEX II: Indictment of 10 November 2000

ICTR-99-54A-I
15/11/2000
(264 — 131)

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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No.: ICTR-99-54A

THE PROSECUTOR

AGAINST

JEAN DE DIEU KAMUHANDA

INDICTMENT

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**:

JEAN DE DIEU KAMUHANDA

With **CONSPIRACY TO COMMIT GENOCIDE; GENOCIDE**, or alternatively **COMPLICITY IN 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.

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: Kougmbo Roger-Noel
SIGNATURE: ..... DATE: 10/11/2003

TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA

No. de dossier: ICTR-99-54A

LE PROCUREUR DU TRIBUNAL

CONTRE

JUDICIAL RECORDS/ARCHIVES
RECEIVED
ICTR
2000 NOV 15 A 10 15

JEAN DE DIEU KAMUHANDA

ACTE D'ACCUSATION

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**:

JEAN DE DIEU KAMUHANDA

D'ENTENTE EN VUE DE COMMETTRE LE GÉNOCIDE; GÉNOCIDE ou alternativement, **COMPLICITE DE GENOCIDE; CRIMES CONTRE L'HUMANITÉ,** 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.

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 d'Emancipation 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 the country, as had occurred between 1959 and 1963. This new outburst of ethnic and political tension between the North and

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 l'assemblée 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 s'enfuir 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, un nouvel exode de la minorité Tutsi. Cette recrudescence des tensions ethniques et politiques (entre le Nord et le Sud) aboutit,

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.

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*.

1.5 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 shared its extremist Hutu ideology, and who came mainly from the native region of the President and his wife.

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 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 hierarchie 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 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 membres de ce groupe, presque exclusivement Hutu, se joignent des personnes qui en partagent l'idéologie Hutu

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 portfolios out of 19. By contrast, the MRND retained its domination over the local administration.

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 Répubique, 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 doctobre 1990, le Président Habyarimana autorise l'introduction du multipartisme et l'adoption dune 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 son histoire, avec neuf portefeuilles ministériels sur 19. Par contre, le MRND demeure fortement dominant au niveau de

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 positions 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 positions 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.

1.12 For the men and women close to President Habyarimana, including the members of the *Akazu*, who held positions

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*).

1.12 Pour les hommes et les femmes proches du Président Habyarimana, parmi lesquels les membres de *l'Akazu*, qui

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.

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 From 1990, President 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.

1.13 À partir de 1990, le Président 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 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 labeled 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 neighboring Burundi, by Tutsi soldiers of the Burundi army. By late 1993, two of the

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 burundaise, de Melchior Ndandaye, président Hutu démocratiquement élu dans l

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 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 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 ethnic violence, prominent figures from the Presidents circle set up true hate media.

e 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 diffusion de ces appels à la violence ethnique, des personnalités de l'entourage du Président mettent sur pied de véritables

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 list was found in the vehicle of the Army Chief of Staff.

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'entraînement, 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 véhicule du Chef d'État Major de l'Armée.

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 April 1994 massacres. The early part of the 90s was marked by numerous political assassinations and large massacres of the Tutsi minority, including the that in Kibilira (1990), that of the Bagogwe (1991) and that 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 partially the cause of the postponement of the establishment of the institutions foreseen by the Arusha Accords.

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 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

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.

1.25 The leaders of various political

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 d'un 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 MINUAR au Rwanda.

1.25 Les dirigeants des divers partis

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.

1.28 As soon as it was formed, the Interim Government espoused the plan for

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.

1.28 Dès sa formation, le Gouvernement Intérimaire fait sien le plan d'extermination

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.

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 set out against the accused 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 imputés aux accusés dans 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 se réfère le présent acte d'accusation, les Tutsi, 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.

3. THE POWER STRUCTURE

The Government

3.1 According to the Constitution of Rwanda 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 at prefectural level. The *Préfet* is appointed

3. STRUCTURE DU POUVOIR

Le Gouvernement

3.1 Selon la Constitution du Rwanda 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 la 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.

L'administration territoriale

3.3 Le préfet est le représentant du pouvoir exécutif au niveau de la préfecture.

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.

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 Républicain National pour la Démocratie et le*

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.

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 MRND (Mouvement Républicain National

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.

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.

3.8 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 were civil servants directly appointed by the President of the Republic, who was also the

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 d'opposition.

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 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 mouvement au niveau de sa circonscription administrative. Ces deux personnalités

Chairman of the MRND.

étaient des fonctionnaires publics nommés directement par le Président de la République qui était en même temps le Président du 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.

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.

The Youth Wings and the Militia

Les ailes jeunesses et les milices

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.

3.10 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 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 June 1993, to ensure better territorial coverage and greater effectiveness, the MRND central

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 MRND. En juin 1993, pour garantir une meilleure couverture du territoire et une plus

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.

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.

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 companies within the sectors and the units.

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, et le bataillon de Reconnaissance. Les troupes étaient divisées en compagnies au sein des secteurs et des unités.

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).

3.16 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 The *Gendarmerie Nationale* was responsible for maintaining public order and peace and the observance of the laws in effect in the country.

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 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.

3.18 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 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.

3.19 Le Ministre de la Défense et les officiers de lArmée 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

Jean de Dieu Kamuhanda

4.1 **Jean de Dieu Kamuhanda** was born on 3 March 1953 in Gikomero *commune*, Kigali-Rural *préfecture,* Rwanda.

4.2. In late May 1994, **Jean de Dieu Kamuhanda** held the office of Minister of Higher Education and Scientific Research in the Interim Government, replacing Dr. Daniel Nbangura. **Jean de Dieu Kamuhanda** held the office until mid-July 1994. He was the Director of Higher Education and Scientific Research before the events of 1994, and then counselor to President Sindikubwabo during the events until late May 1994.

Jean de Dieu Kamuhanda was an influential member of MRND in Kigali-Rural.

4.3 In his capacity as Minister of Higher Education **Jean de Dieu Kamuhanda** was responsible for the articulation and the implementation of the government policy concerning post-secondary school education and scientific research in Rwanda for the Interim Government.

4.4 In his capacity as Minister, **Jean de Dieu Kamuhanda** attended Cabinet meetings where he was informed about the socio-political situation in the country and where he was apprised of government policy and participated in formulating the policies adopted and implemented by the Interim Government. In the exercise of his powers,

4. L'ACCUSÉ

Jean de Dieu Kamuhanda

4.1 **Jean de Dieu Kamuhanda** est né le 3 mars 1953 en commune Gikomero, Kigali-Rural préfecture, Rwanda.

4.2 Vers fin mai 1994 **Jean de Dieu Kamuhanda** a été nommé Ministre de l'Enseignement Supérieur au sein du Gouvernement intérimaire, remplaçant dans ce poste le Dr Daniel Nbangura. **Jean de Dieu Kamuhanda** a exercé ses fonctions de Ministre de l'Enseignement Supérieur au sein du Gouvernement Intérimaire jusqu'à la mi-juillet 1994. Auparavant il a été Directeur Général de l'enseignement supérieur et de la recherche scientifique avant les événements de 1994, puis Conseiller du Président Sindikubwabo durant ces événements jusqu'à la fin mai 1994.

Jean de Dieu Kamuhanda était un membre influent du MRND à Kigali Rural.

4.3 En sa qualité de Ministre de l'Enseignement Supérieur **Jean de Dieu Kamuhanda** était responsable de la formulation et de la mise en oeuvre de la politique de l'enseignement et de la recherche scientifique au Rwanda au sein du gouvernement.

4.4 Par ailleurs, en sa qualité de Ministre, **Jean de Dieu Kamuhanda** 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 participait dans la formulation de la politique adoptée et mise en oeuvre par le gouvernement intérimaire.

he never publicly disavowed the policies of the Interim Government and did not resign, as permitted by the Constitution. **Jean de Dieu Kamuhanda** never criticized or reproached the policies of the Interim Government when he was Counselor to the Interim President, and did not resign until late May 1994, when he accepted his nomination as Minister of Higher Education. Rather than distancing himself from the policies of the Interim Government, **Jean de Dieu Kamuhanda** instead reinforced his support of those policies by accepting a ministerial post almost two months after the Interim Government was formed when its policies were already clearly demonstrated by its governmental directives, proclamations, acts and omissions.

4.5 In his capacity as Minister of Higher Education, **Jean de Dieu Kamuhanda**, 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, alors que la constitution lui permettait explicitement de le faire. Par ailleurs, **Jean de Dieu Kamuhanda** n'a jamais critiqué ni remis en cause la politique du gouvernement intérimaire lorsqu'il était Conseiller du Président Intérimaire et n'a pas démissioné de ce poste. En fin mai 1994, il a accepté sa nomination comme Ministre de l'Enseignement supérieur. Au lieu de se démarquer de la politique du gouvernement intérimaire, **Jean de Dieu Kamuhanda** l'a appuyée en acceptant un poste ministériel deux mois à peine après la formation dudit gouvernement intérimaire, alors que les directives, les proclamations, et les actes et omissions de ce dernier indiquaient clairement sa ligne politique.

4.5 En sa qualité de Ministre de l'Enseignement Supérieur **Jean de Dieu Kamuhanda**, exerçait une autorité et un contrôle sur l'ensemble des départements 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, Augustin Ngirabatware, **Jean de Dieu Kamuhanda,** Juvénal Kajelijeli, Felicien Kabuga, Augustin Bizimana, and Callixte Nzabonimana 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, 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 their accomplices. The letter indicated

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, Augustin Ngirabatware, **Jean de Dieu Kamuhanda,** Juvénal Kajelijeli, Felicien Kabuga, Augustin Bizimana, et Callixte Nzabonimana 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 distribution 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 population Tutsi et des Hutu modérés.

5.2 Dans une lettre datée du 3 décembre 1993 et adressée au Commandant de la MINUAR avec ampliation à tous les Ministres, 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

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 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 over 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 women....* Among the activities the enemy

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, dune 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 lennemi 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 mécontents du régime en place, les*

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.*

5.6 The letter of 21 September 1992, and the way that the senior officers used it, aided, encouraged and promoted ethnic hatred and violence.

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 RPFs advantage in Arusha. The Peace Accords are only scraps of paper, as our father, Habyarimana, had predicted.*

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 Mugesera's speech, already at that time, incited others to exterminate the Tutsi population and its accomplices.

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 La lettre du 21 septembre 1992, et l'utilisation qu'en ont faite les officiers supérieurs, ont aidé, encouragé et favorisé la haine et la violence ethnique.

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 en 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 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 exterminer la population Tutsi et ses complices.

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 Augustin Ngirabatware, **Jean de Dieu Kamuhanda,** 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 The private company RTLM S.A. and its radio station were founded by statute signed on 8 April 1993. The media company was largely financed by Felicien Kabuga.

5.13 The broadcasting studios of RTLM were connected to the electric generators of the Presidential Palace, directly across the

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, Augustin Ngirabatware, **Jean de Dieu Kamuhanda,** 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 La société civile RTLM S.A. et sa station radio ont été fondées par statut signé le 8 avril 1993. Cette société médiatique était largement financée par Félicien Kabuga.

5.13 Les studios de RTLM étaient connectés, directement à travers la rue, au générateur éléctrique du Palais

street, permitting it to continue to operate in case of power failure. In the latter half of 1993, the RTLM began broadcasting from Kigali across Rwanda through a network of transmitter owned and operated by government owned Radio Rwanda. It later became a mobile station, installed in an armored car of the Rwanda Armed Forces (RAF). It sought refuge in what later became the Turquoise Zone set up in the jungle of Gikongoro and Kibuye Préfecture. Radio broadcasts by RTLM disappeared after mid-July 1994.

5.14 Between 9 April and mid-July 1994, the President, Théodore Sindikubwabo, the Prime Minister, Jean Kambanda, Ministers, André Rwamakuba and Justin Mugenzi and radio announcers, among whom, 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.

The Militia Groups

5.15 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.

5.16 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

Présidentiel, ce qui leur permettait de rester opérationnels en cas de panne de courant. Durant la seconde moitié de 1993, RTLM commença à diffuser de Kigali ses programmes au Rwanda, grâce à un réseau de transmetteurs possédés et utilisés par la Radio Rwanda propriété de l'Etat. Plus tard RTLM s'est transformé en station mobile installée dans une voiture blindée appartenant aux Forces Armées Rwandaises (FAR). Elle s'était réfugiée dans un espace, situé dans la jungle de Gikongoro et la Préfecture de Kibuye, qui allait devenir la zone turquoise. Les émissions de RTLM ont pris fin après la mi-juillet 1994.

5.14 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 et Hassan Ngeze ont utilisé la RTLM pour inciter, aider et encourager à exterminer la population Tutsi et à éliminer de nombreux Hutu modérés.

Les milices

5.15 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.

5.16 La transformation des *Interahamwe* au service du MRND était une entreprise illicite formellement interdite par la loi. En outre, pour étendre

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.

5.17 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 cause and to other idle youths. Furthermore, weapons were distributed to them.

Training of the Militia Groups

5.18 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.

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.

5.17 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 d'autres jeunes désoeuvrés, un entraînement militaire. En outre, des armes leur ont été distribuées.

L'entraînement des milices

5.18 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.

5.19 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.

5.20 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

5.21 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.

5.22 In 1993, President Habyarimana declared in Ruhengeri that the *Interahamwe*-MRND had to be *equipped* so that, come the right time, *ils descendent.*

5.23 On or about 12 April 1994, the Minister of Finance in the Interim government personally went to Gitarama

5.19 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.

5.20 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

5.21 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.

5.22 En 1993, le Président Habyarimana déclarait à Ruhengeri qu'on devait *équiper* les *Interahamwe*-MRND pour qu'au moment opportun, *ils descendent.*

5.23 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.

5.24 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.

5.25 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*.

5.26 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.*

5.27 Due to the proliferation of weapons in Kigali-ville *préfecture*, UNAMIR put in place a disarmament program, titled Kigali Weapon Security Area (KWSA).

5.28 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.

5.24 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.

5.25 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.

5.26 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.*

5.27 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).

5.28 Le 7 janvier 1994, Mathieu Ngirumpatse, Augustin Bizimana, Augustin Ndindiliyimana, Déogratias Nsabimana, Robert Kajuga et d'autres membres influents

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.

5.29 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

5.30 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.

5.31 In 1992, at a meeting, Colonel Théoneste Bagosora instructed the two

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.

5.29 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 militaires de ses tâches. Il a, en outre, informé la MINUAR que les armes distribuées provenaient de l'Armée.

Confection de listes

5.30 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.

5.31 En 1992, lors d'une réunion, le Colonel Théoneste Bagosora a demandé aux

General Staffs to establish lists of people 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.

deux Etats-Majors d'établir des listes de 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.

5.32 On 10 January 1994, an *Interahamwe*-MRND leader informed UNAMIR that he had received orders to establish lists of Tutsi to be eliminated.

5.32 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.

5.33 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.

5.33 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.

5.34 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.

5.34 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.

Precursors Revealing A Deliberate Course of Action

Antécédents révélant une conduite délibérée

5.35 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

5.35 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

and organized 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 authorities and by certain military personnel. On each occasion, these crimes remained unpunished and the authorities implicated were generally not taken to task.

5.36 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.

5.37 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.

(1991) ont été suscités, facilités et organisés 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.

5.36 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 l'accès 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.

5.37 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.

5.38 Finally, as of 7 April 1994, 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.

5.38 Finalement, dès le 7 avril 1994, sur 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. A plusieurs occasions, ces membres des FAR ont participé directement aux massacres.

5.39 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.

5.39 De plus, des militaires, des miliciens et des gendarmes ont commis des viols, des agressions sexuelles et d'autres crimes de nature sexuelle a l'encontre de certaines femmes et jeunes filles Tutsi et ce parfois après les avoir enlevées.

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 Theoneste Bagosora and several Army offciers attempted to seize power. While the

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 desquelles le Colonel Théoneste Bagosora et plusieurs officiers de l'armée ont tenté de

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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 brutally 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 UNAMIR's 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. Some were taken to military camps. They were subsequently moved to the *Hôtel Diplomate,* where they were guarded by members of the Reconnaissance Battalion.

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 d'un 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 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 représentants 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. Augustin Ngirabatware, Prosper Mugiraneza, Casimir Bizimungu, André Ntagerura et Pauline Nyiramasuhuko were among the nine 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. When Dr. Daniel Nbangura, originally

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. Augustin Ngirabatware, Prosper Mugiraneza, Casimir Bizimungu, André Ntagerura et Pauline Nyiramasuhuko faisaient partie des neuf ministres du MRND. Le Ministre de l'Intérieur désigné n'ayant pas assumé ses fonctions, il a été remplacé par Edouard Karemera, Vice-Président du MRND.

designated Minister of Higher Education, resigned in mid-May 1994 to become the *Chef de Cabinet* to Interim Government President Sindikubwabo, he was replaced as government minister by **Jean de Dieu Kamuhanda,** also of 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 that 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, UNAMIR's 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*

Quand le docteur Daniel Nbangura, initialement nommé Ministre de l l'Enseignement Supérieur, a démissioné en mi-mai 1994 pour occuper le poste de Chef de Cabinet du Président Intérimaire Sindikubwabo, il a été remplacé par **Jean de Dieu Kamuhanda**, qui faisait partie, lui aussi, du MRND. Le MDR était représenté par 3 ministres, Jérôme Bicamumpaka, André Rwamakuba et Eliézer Niyitegeka. 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 d'Arusha. 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.

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 UNAMIR's civilian and military personnel.

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 d'escorter le Premier Ministre Agathe Uwilingiyimana ont été assassinés par des éléments des FAR.

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 **Jean de Dieu Kamuhanda,** Augustin Ngirabatware, Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka, Eliezer Niyitegeka, 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 scoured 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 **Jean de Dieu Kamuhanda,** Augustin Ngirabatware, Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka, Eliezer Niyitegeka, 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 Augustin Ngirabatware, Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka, Edouard Karemera, André Rwamakuba, André Ntagerura, Pauline Nyiramasuhuko, Éliezer Niyetegeka and special advisor to President Sindikubwabo **Jean de Dieu Kamuhanda**. Thus, several members of the government incited the people to eliminate the enemy and its

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 Augustin Ngirabatware, Justin Mugenzi, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka, Edouard Karemera, André Rwamakuba, André Ntagerura, Pauline Nyiramasuhuko, Eliézer Niyetegeka et consieller au President Sindikubwabo **Jean de Dieu Kamuhanda,** ont adhéré au plan d'extermination mis en place. Dans ce sens plusieurs membres du gouvernement ont incité la population à éliminer l'ennemi

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accomplices and distributed weapons to them. The Government dismissed local government authorities that 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 Prime Minister, Jean Kambanda, and Ministers Augustin Ngirabatware, Augustin Bizimana, Edouard Karemera, Callixte Nzabonimana, Andre Rwamakuba, Andre Ntagerura, Pauline Nyiramasuhuko, **Jean de Dieu**

et ses complices et lui ont distribué des armes. 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 ministresk 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 governement, a lu un communiqué officiel du Gouvernement Intérimaire dans laquelle il a felicité, entre autres, les préfets de Kigali, Kibuye et Cyangugu pour l'excellent 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 Premier Ministre, Jean Kambanda, les Ministres Augustin Ngirabatware, Augustin Bizimana, Edouard Karemera, Callixte Nzabonimana, André Rwamakuba, André Ntagerura, Pauline

Kamuhanda, and Eliezer Niyitegeka were 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 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 controlled 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

Nyiramasuhuko, **Jean de Dieu Kamuhanda,** et Éliezer Niyitegeka étaient régulièrement tenu informés 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 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

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 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 Thus, in May 1994, in Kibuye, Jean Kambanda attended a meeting of heads of government departments regarding security issues. Among the other participants at the meeting were Clément Kayishema, Préfet of Kibuye, Edouard Karemera, Vice-Chairman of the MRND (subsequently appointed Minister of the Interior), Emmanuel Ndindabahizi, Minister of Finance, Eliezer Niyitegeka, Minister of Information, and

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 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 C'est ainsi qu'en mai 1994, à Kibuye, Jean Kambanda a assisté à une réunion de chefs de services administratifs consacrée à l'examen de questions de sécurité. Parmi les autres participants à cette réunion il y avait Clément Kayishema, Préfet de Kibuye; Edouard Karemera, Ministre de l'Intérieur; Emmanuel Ndindabahizi, Ministre des Finances; Eliezer Niyitegeka, Ministre de l'Information et Donat Murego, Secrétaire

Donat Murego, Executive Secretary of the MDR. In the course of the meeting, a participant asked the Prime Minster outright how to ensure the protection of the children who had survived the massacres and were at the hospital. Jean Kambanda did not reply. Instead Éliezer Niyitegeka, seated on the podium alongside the Prime Minister, replied that the survivors were the enemy and accused the person who inquired about their welfare of "protecting the enemy." None of the other ministers at the meeting proposed taking any measures to ensure the safety of the survivors. On the same day, after the meeting, the children were killed.

6.28 Furthermore, between 24 April and 14 July 1994, Théodore Sindikubwabo, Jean Kambanda, Edouard Karemera, André Rwamakuba, André Ntagerura, Augustin Ngirabatware, 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.

6.29 Between April and July 1994, Justin Mugenzi, Minister of Trade & Industry made statements inciting people to kill the Tutsis, notably in Gisenyi, Kigali and Murambi. Some of his inflammatory statements were broadcast on RTLM.

6.30 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

Exécutif du MDR. À cette occasion, un participant a demandé directement au Premier Ministre comment assurer la protection des enfants rescapés des massacres qui se trouvaient à l'hôpital. Jean Kambanda n'a pas répondu. Par contre, Éliezer Niyitegeka, assis aux côtés du Prémier Ministre, a repondu que les rescapés etaient des énemies et a accusé la personne qui a demandé du sort des rescapés de "proteger l'énemie." Aucun autre Ministre present dans la salle n'a proposé des moyens quelconques pour assurer la sécurité des rescapés. Dans la même journée, après cette réunion, les enfants ont été tués.

6.28 En outre, entre le 24 avril et le 14 juillet 1994, Théodore Sindikubwabo, Jean Kambanda, Edouard Karemera, André Rwamakuba, André Ntagerura, Augustin Ngirabatware, 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.

6.29 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 Gisenyi, Kigali et Murambi. Certains de ces propos incendiaires ont été diffusés à l'antenne de RTLM.

6.30 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

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.

6.31 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 committing and did themselves commit massacres of members of the Tutsi population and moderate Hutu population. Jean Kambanda **Jean de Dieu Kamuhanda**, Augustin Ngirabatware, 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

« complices ». Jean Kambanda a, à cette occasion, qualifié la Radio *d'arme indispensable pour combattre l'ennemi*. 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.

6.31 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 aidé à commettre et ont commis des massacres de Tutsi et de Hutu modérés. Jean Kambanda, **Jean de Dieu Kamuhanda,** Augustin Ngirabatware, 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

from being committed or to punish the perpetrators thereof.

6.32 Ministers **Jean de Dieu Kamuhanda,** Augustin Ngirabatware, 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.

6.33 In June 1994, Interior Minister Edouard Karemera ordered the Commander in Gisenyi, Anatole Nsengiyumva, to send troops into the Bisesero area, in Kibuye *préfecture*, supposedly to combat the enemy, although the RPF was in fact never in Bisesero. There was only a group of Tutsi refugees who had gathered in that region, fleeing the massacres.

6.34 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.

6.35 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

punir les auteurs.

6.32 Les Ministres **Jean de Dieu Kamuhanda,** Augustin Ngirabatware, 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.

6.33 En juin 1994, le Ministre de l'Intérieur Édouard Karemera a ordonné au Commandant de Gisenyi, Anatole Nsengiyumva, l'envoi de troupes dans la région du Bisesero, préfecture de Kibuye, dans le but supposé de combattre l'ennemi alors que le FPR ne s'était, en fait, jamais rendu à Bisesero. Il n'y avait dans cette zone qu'une concentration de réfugiés Tutsi qui fuyaient les massacres.

6.34 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.

6.35 Pendant les massacres, entre avril et juillet 1994, le Ministre André Ntagerura, a autorisé l'utilisation de véhicules appartenant à l'ONATRACOM, société d'Etat, pour effectuer le transport d'une part,

militiamen, weapons and ammunition or 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.

6.36 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.

de miliciens, d'armes et de munitions et 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.

6.36 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

6.37 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 **Jean de Dieu Kamuhanda**, Augustin Ngirabatware, Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, Félicien Kabuga, Juvénal Kajelijeli, Eliezer Niyitegeka, 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, Augustin . Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Eliezer Niyitegeka, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka and Justin Mugenzi.

6.38 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.

ETENDUE DES MASSACRES

6.37 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 **Jean de Dieu Kamuhanda**, Augustin Ngirabatware, Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, Félicien Kabuga, Juvénal Kajelijeli, Eliezer Niyitegeka, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka et Justin Mugenzi ont exercé une autorité sur les autorités locales et les milices, don't 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 Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Eliezer Niyitegeka, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka et Justin Mugenzi.

6.38 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.

6.39 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 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.

KIGALI

6.40 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.

6.41 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 saught refuge for their safety.

Centre Hospitalier de Kigali

6.42 When the massacres started, the *Centre Hospitalier de Kigali* (CHK) took in numerous wounded Tutsi from various areas

6.39 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, 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

6.40 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.

6.41 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

6.42 Dès le début des massacres, le Centre Hospitalier de Kigali (CHK) a accueilli de nombreux Tutsi blessés venant

of the city. On several occasions, soldiers who were supposed to be guarding the 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.

de différents quartiers de la ville. À plusieurs reprises, des militaires qui 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.

6.43 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.

6.43 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.

KIGALI-RURAL

KIGALI-RURAL

6.44 Interim Government Minister **Jean de Dieu Kamuhanda** had family ties to Gikomero commune, Kigali-Rural préfecture. During the month of April 1994 he supervised the killings in the area. On several ocassions he personally distributed firearms, grenades and machettes to civilian militia in Kigali-Rural for the purpose of "killing all the Tutsi and fighting the FPR."

6.44 Le nouveau ministre du gouvernement intérimaire, **Jean de Dieu Kamuhanda** avait des attaches familiales dans la commune de Gikomero, préfecture de Kigali rural. Pendant le mois d'avril 1994, il a supervisé les meurtres dans cette zone. A plusieurs occasions, il a distribué lui-même des armes à feu, des grenades et des machettes aux milices civiles de Kigali-rural aux fins de faire "tuer tous les Tutsis et de combattre le FPR."

6.45 Furthermore, **Jean de Dieu Kamuhanda** personally led attacks of soldiers and Interahamwe against Tutsi refugees in Kigali-Rural préfecture, notably on or about April 12th at the parish church and adjoining school in Gikomero. On that occasion **Jean de Dieu Kamuhanda** arrived at the school with a group of soldiers and Interahamwe armed with firearms and

6.45 En outre, **Jean de Dieu Kamuhanda** a dirigé personnellement des attaques perpétrées par des soldats et des interahamwe et dirigées contre les réfugiés tutsis dans la préfecture de Kigali rural, notamment à la paroisse de Gikomero et à l'école attenante, autour du 12 avril. A cette occasion, **Jean de Dieu Kamuhanda** est arrivé à l'école accompagné d'un groupe de

grenades. He directed the militia into the courtyard of the school compound and gave them the order to attack. The soldiers and Interahamwe attacked the refugees. Several thousand persons were killed.

6.46 During the attack on the school in Gikomero the militia also selected women from among the refugees, carried them away and raped them before killing them.

BUTARE

6.47 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, 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.

6.48 The country civil and military leaders became aware of the exceptional situation in Butare. Thus, the Interim Government, of which **Jean de Dieu**

soldats et d'interahamwe armés de fusils et de grenades. Il a conduit les miliciens dans la cour de l'école et leur a donné l'ordre d'attaquer les réfugiés. Les soldats et les miliciens lui ont obéi et plusieurs milliers de personnes ont été tuées.

6.46 Au cours de l'attaque menée à l'école de Gikomero, les miliciens ont choisi des femmes parmi les réfugiés, les ont emmenées ailleurs et les ont violées avant de les tuer.

BUTARE

6.47 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, sétait ouvertement opposé aux massacres dans sa préfecture et avait réussi à y maintenir le calme, à quelques exceptions près, parmi 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.

6.48 Les dirigeants civils et militaires du pays ont pris conscience de la situation particulière qui régnait à Butare. Ainsi le Gouvernement Intérimaire, dont **Jean de**

Kamuhanda, Augustin Ngirabatware, Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Eliezer Niyitegeka, 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.

6.49 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.

6.50 Thus, on 19 April 1994, the swearing-in ceremony in Butare for the new *Préfet*, Sylvain Nsabimana, was the occasion of a large gathering that 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 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.*

Dieu Kamuhanda, Augustin Ngirabatware, Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Eliezer Niyitegeka, 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.

6.49 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.

6.50 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 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

6.51 Because the members of the Interim Government, including Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Eliezer Niyitegeka, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka and Justin Mugenzi 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.

6.51 En ne se dissociant pas, en aucun moment, des propos ainsi tenus par le Président de la République, les membres du Gouvernement Intérimaire dont Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Eliezer Niyitegeka, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka, et Justin Mugenzi ont clairement indiqué à la population que les massacres étaient ordonnés et cautionnés par le Gouvernement.

6.52 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.

6.52 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.

6.53 In the days that 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 that was accompanying their Chairman, Robert Kajuga.

6.53 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.

6.54 From 20 April the massacres became widespread within the *préfecture*. In Butare, as in all the regions of the country, 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,

6.54 A partir du 20 avril, les massacres se sont propagés dans la préfecture. À Butare, comme dans toutes les régions du pays, 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

the refugees were attacked, abducted or killed by soldiers and militiamen, often on the orders or with the complicity of those same authorities.

6.55 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.

6.56 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," (You refuse to spill your blood for your country and the dogs drink it for nothing). 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 member of the Interim Government, including **Jean de Dieu Kamuhanda,** Augustin Ngirabatware, Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Eliezer Niyitegeka, Casimir Bizimungu, Justin Mugenzi, Jérôme Bicamumpaka and Prosper Mugiraneza, publicly expressed dissention or disagreement or criticism of any of the

réfugiés ont été attaqués, enlevés ou tués par des militaires et des miliciens souvent sur ordres ou avec la complicité de ces mêmes autorités.

6.55 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 de 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.

6.56 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 encouragement aux massacres de la part du gouvernement intérimaire. Pendant toute cette période aucun membre du gouvernement intérimaire, **Jean de Dieu Kamuhanda,** Augustin Ngirabatware, Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Eliezer Niyitegeka, Casimir Bizimungu, Justin Mugenzi, Jérôme Bicamumpaka et Prosper Mugiraneza, faisaient partie, n'a

policies that were endorsed by Jean Kambanda on behalf of the Interim Government.

Butare University Hospital

6.57 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

6.58 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 effort to drive out the *bourgmestres* who were opposed to its policy with regard to massacres and to replace them with loyal party men.

6.59 As in other regions of Rwanda, several meetings were held in Gitarama,

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

6.57 Vers la fin du mois d'avril, 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

6.58 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 siègait 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 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.

6.59 A l'instar de ce qui s'était déroulé dans d'autres régions du Rwanda plusieurs

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.

6.60 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

6.61 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 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

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.

6.60 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 d'infirmières

6.61 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 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

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committed in the Kabgayi School of Nursing or punish the perpetrators.

Santé, n'a jamais pris les mesures nécessaires pour empêcher la commission des crimes qui se perpétraient dans lécole d'infirmières de Kabgayi ou pour en punir les auteurs.

GISENYI

GISENYI

6.62 Gisenyi, the *préfecture* of origin of the deceased President, Juvénal Habyarimana, is located in northwestern Rwanda. From the time of the coup d'état 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 that 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.

6.62 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.

6.63 The massacre of the Bagogwe was a precursor to the massive killings that overcame Gisenyi during the period of 7 April to mid-July 1994. In both cases the killings were planned, ordered and coordinated by governmental authorities within the upper echelons of the MRND. During an MRND prefectural meeting in 1993 Augustin Ngirabatware reassured party members by publicly stating that only the Tutsi and their "accomplices" were targeted when the Bagogwe were killed.

6.63 Le massacre des Bagogwe était précurseur des tueries de masse perpétrées à Gisenyi au cours de la période comprise entre le 7 avril et mi-juillet 1994. Dans les deux cas, les massacres ont été planifiés, ordonnés et exécutés par les autorités gouvernementales qui étaient des hauts responsables du MRND. Au cours d'une réunion préfectorale en 1993 Augustin Ngirabatware a rassuré les membres de son parti en déclarant publiquement, après le massacre des Bagogwe, que seuls les Tutsi et leurs "complices" étaient visés.

6.64 On several other ocassions, notably at a public rally at Umuganda stadium in November 1993, Augustin Ngirabatware stated that "the enemy in this country is the Tutsi, and its accomplices are Hutu married

6.64 A plusieurs autres occasions, notamment lors d'une réunion publique au stade Umuganda, en novembre 1993, Augustin Ngirabatware a déclaré que "l'ennemi dans ce pays est le Tutsi, et ses

to Tutsi women," and warned the crowd, "don't look far away because the enemy is right next to you." Significantly, the speeches at this meeting were rebroadcast by RTLM the following day.

6.65 Augustin Ngirabatware repeated similar statements in March 1994 at MRND party meetings in Nyamyumba commune. Characterizations of the Tutsi as an "enemy" to be exterminated made by highly placed, powerful government officials such as Augustin Ngirabatware were public invitations to kill with impunity, and were part of a larger campaign to organize and prepare the civilian population and civilian militia to commit genocide against the Tutsi.

6.66 Part of the preparation for the genocide in Gisenyi was the appointment of prefectural and local authorities that would impliment the anti-Tutsi policies and directives of the MRND leadership at the national level. Since his family originated in Gisenyi, Augustin Ngirabatware often returned to his home commune of Nyamyumba, where he continued to exercise considerable influence in local affairs. Augustin Ngirabatware was instrumental in having Faustin Bagangu appointed bourgmestre in Nyamyumba. Faustin Bagangu, who had a established record of persecuting the civilian Tutsi population, was percieved by local residents as the eyes and "arms" of Augustin Ngirabatware in the commune.

6.67 Augustin Ngirabatware's open support of Faustin Bagangu, the known president of the Interahamwe in Nyamyumba, was part of the larger plan to prepare and orchestrate the killings of the Tutsi. Given the

complices sont les Hutus mariés aux femmes tutsies", et a averti la foule en disant " ne cherchez pas loin, car l'ennemi est tout près de vous". Fait révélateur, les discours prononcés lors de cette réunion ont été rediffusés sur RTLM le jour suivant.

6.65 Augustin Ngirabatware a fait des déclarations similaires en mars 1994 au cours de réunions du MRND dans la commune de Nyamyumba. Les descriptions du Tutsi comme étant "l'ennemi" à éliminer faites par des membres du gouvernement influents et haut placés tels que Augustin Ngirabatware étaient des invitations publiques à tuer impunément, et faisaient partie d'une plus grande campagne visant à organiser et préparer la population civile et les milices civiles à commettre le génocide contre les Tutsis.

6.66 Une partie des préparatifs du génocide à Gisenyi a consisté à nommer des préfets et des autorités locales prêts à appliquer, au niveau national, les politiques et les instructions anti-tutsies des dirigeants du MRND. Sa famille étant originaire de Gisenyi, Augustin Ngirabatware retournait souvent chez lui dans la commune de Nyamyumba où il continuait d'exercer une influence considérable sur les affaires locales. Augustin Ngirabatware a contribué à la nomination de Faustin Bagangu au poste de bourgmestre de Nyamyumba. Faustin Bagangu, qui s'était rendu célèbre pour avoir persécuté la population civile tutsie, était perçu par la population locale comme étant l'oeil et le bras d'Augustin Ngirabatware dans la commune.

6.67 Le soutien flagrant accordé par Augustin Ngirabatware à Faustin Bagangu, qui était le président des interahamwe à Nyamyumba, faisait partie d'un plan plus important visant à préparer et à orchestrer

predominance of the MRND in Gisenyi and the demonstrated capacity of Augustin Ngirabatware to direct development funds and projects to his native commune, Augustin Ngirabatware's anti-Tutsi pronouncements were a clear message to local residents of the likely rewards that would follow their support for the MRND policy of exterminating the "enemy".

6.68 Augustin Ngirabatware funneled state development funds in the portfolio of his minstry to the MRND for the purchase of weapons and medicines for the "civilian defense program". The arms purchases were not for legitmate purposes of national defense, but were instead intended and used to arm the civilian population and civilian militia to commit crimes against the Tutsi.

6.69 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.

6.70 The rampant violence in Gisenyi was both widespread and systematic, and was directed from above. Rather than putting forth efforts to contain the rampaging and the killing, authories of the civilian governmental administration, the military and MRND, the reigning political party in the prefecture, instead organized, encouraged, planned and instigated the attacks on the civilian Tutsi population.

6.71 In the night of 6 to 7 April 1994, in Gisenyi *préfecture*, Military Commander

les massacres des Tutsi. Compte tenu de la prédominance du MRND à Gisenyi et de la capacité avérée d'Augustin Ngirabatware à ramener les projets et les fonds de développement vers sa commune d'origine, les déclarations anti-tutsies de ce dernier étaient un message clair adressé à la population locale pour lui indiquer les récompenses probables promises à ceux qui apporteraient leur soutien à la politique d'extermination de "l'ennemi" prônée par le MRND.

6.68 Augustin Ngirabatware a acheminé vers le MRND les fonds de développement de l'Etat alloués à son ministère, pour servir à l'achat d'armes et de médicaments au bénéfice "du programme de défense civile". Les armes ainsi achetées n'étaient pas affectées aux objectifs légitimes de défense nationale, mais destinées et utilisées plutôt pour armer la population civile et les milices civiles aux fins qu'elles commettent des crimes contre les Tutsi.

6.69 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.

6.70 La violence qui sévissait à Gisenyi était à la fois généralisée, systématique et dirigée d'en haut. Au lieu de conjuguer leurs efforts pour contenir sa prolifération et les meurtres, les autorités de l'administration gouvernementale civile, les militaires et le MRND, le parti politique le plus populaire de la commune, ont plutôt organisé, encouragé, planifié et suscité des attaques contre la population civile tutsie.

6.71 Dans la nuit du 6 au 7 avril 1994, dans la préfecture de Gisenyi, le

Anatole Nsengiyumva ordered certain political leaders, local authorities and militiamen to assemble at Gisenyi military camp. At this assembly, Anatole Nsengiyumva ordered the participants to kill all the RPF accomplices and all the Tutsi. At the end of the meeting, Anatole Nsengiyumva ordered his subordinates to distribute weapons and grenades to the militiamen who were present.

6.72 Furthermore, on 7 April 1994, Anatole Nsengiyumva received a telegram from Kigali ordering him to start the massacres. Between 7 April and mid-July 1994, in Gisenyi, Anatole Nsengiyumva ordered militiamen and soldiers to exterminate the civilian Tutsi population and its "accomplices". Between April and July 1994, the militiamen, on the orders of Anatole Nsengiyumva, hunted down, abducted, raped and killed several members of the Tutsi and moderate Hutu population in Gisenyi.

6.73 From May to July 1994, Joseph Nzirorera gave orders to militiamen to kill members of the Tutsi population. He furthermore commended them for their work. He gave them money in proportion to the number of Tutsi killed.

6.74 In late May and early June, several Tutsi and moderate Hutus attempted to flee their *préfectures* and take refuge in Gisenyi. Informed of this, Joseph Nzirorera ordered militiamen to continue to search for the Tutsi and eliminate them.

6.75 In June 1994, Félicien Kabuga, Joseph Nzirorera, Anatole Nsengiyumva and Juvénal Uwiligimana held a meeting in

Commandant militaire Anatole Nsengiyumva a ordonné le rassemblement au camp militaire de Gisenyi de certains dirigeants politiques, des autorités locales et des miliciens. Lors de ce rassemblement Anatole Nsengiyumva a donné l'ordre aux participants de tuer tous les complices du FPR et tous les Tutsi. À la fin de la réunion, Anatole Nsengiyumva a ordonné à ses subordonnés de distribuer des armes et des grenades aux miliciens présents.

6.72 De plus, le 7 avril 1994, Anatole Nsengiyumva a reçu un télégramme de Kigali lui ordonnant de commencer les massacres. Entre le 7 avril et la mi-juillet 1994, à Gisenyi, Anatole Nsengiyumva a donné l'ordre à des miliciens et à des militaires d'exterminer la population civile Tutsi et ses "complices". Entre avril et juillet 1994, les miliciens sous les ordres d'Anatole Nsengiyumva ont traqué, enlevé, violé et tué plusieurs membres de la population Tutsi et Hutu modérée de Gisenyi.

6.73 Du mois de mai à juillet 1994, Joseph Nzirorera a donné ordre à des miliciens de tuer des membres de la population Tutsi. Il les a par ailleurs félicités pour leur travail. Il leur a remis de l'argent proportionnellement au nombre de Tutsi tués

6.74 À la fin du mois de mai et début du mois de juin, plusieurs Tutsi et des Hutu modérés ont tenté de fuir leur préfecture pour se réfugier à Gisenyi. Informé, Joseph Nzirorera a donné l'ordre à des miliciens de continuer de chercher les Tutsi et de les éliminer.

6.75 En juin 1994, Félicien Kabuga, Joseph Nzirorera, Anatole Nsengiyumva et Juvénal Uwiligimana ont tenu une réunion à

Gisenyi. During the meeting, Joseph Nzirorera and Juvénal Uwiligimana took note of the names of the Tutsi and moderate Hutu who had come from other *préfectures.* They drew up a list of people to eliminate, which they handed over to the *Interahamwe.*

RUHENGERI

6.76 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

6.77 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.

6.78 Bisesero is located in two communes in Kibuye préfecture. Because it was home to a large Tutsi community, it attracted a large mass of Tutsi refugees trying desparately to escape the killings under way everywhere else in the *préfecture.* However, from 9 April to 30 June 1994, the Tutsi refugees in Bisesero were the target of repeated attacks by soldiers, gendarmes, police and Interahamwe-MRND.

6.79 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.

Gisenyi. Au cours de cette réunion, Joseph Nzirorera et Juvénal Uwiligimana ont relevé les noms des Tutsi et des Hutu modérés venus d'autres préfectures. Ils ont dressé une liste de personnes à éliminer qu'ils ont remis aux *Interahamwe.*

RUHENGERI

6.76 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

6.77 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.

6.78 Bisesero s'étend sur deux communes de la préfecture de Kibuye. Parce qu'elle abritait déjà une communauté Tutsi nombreuse elle avait attiré une masse importante de réfugiés Tutsi qui tentaient désespérément d'échapper aux tueries en progression partout ailleurs dans la préfecture. Cependant, depuis le 9 avril au 30 juin 1994 les Tutsi réfugiés à Bisesero ont été une cible d'attaques réitérés de la part des militaires, des gendarmes, des policiers et des Interahamwe-MRND.

6.79 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

By their presence and their speeches, they encouraged the attackers to perpetrate the massacres.

6.80 In May 1994, Eliezer Niyitegeka, Minister of Information in the Interim Government, personally participated in the massacres that took place in Kibuye, by shooting at Tutsis.

Sexual Violence as a Policy of Genocide

6.81 During the events referred to in this indictment, rapes and other forms of sexual violence were widely and notoriously committed in Rwanda against the Tutsi population, in particular Tutsi women and girls or Hutu women married to Tutsi men. These acts were often accompanied by killing or were themselves used as a method of killing. They were perpetrated by, among others, militiamen, including *Interahamwe*-MRND, soldiers and gendarmes.

6.82 Members of the Interim Government generally instigated, encouraged, facilitated, and acquiesced to, among others, the *Interahamwe*–MRND, soldiers, and gendarmes raping and sexual violating Tutsi women. Government ministers even sometimes committed these acts themselves, thereby encouraging by their own example the commission of such acts by, among others, milicia, *Interahamwe*–MRND, soldiers and gendarmes over whom they had *de facto* and *de jure* authority. For example, on or about 20 May 1994, political party affiliates and militia men working directly under the supervision of Éliezer Niyitegeka forced a young girl to get into his car, whereupon Éliezer Niyitegeka raped her, and when she got out of the vehicle Éliezer

ont été vus à plusieurs reprises parmi les assaillants. Ils les encourageaient par leur présence et par leurs discours à perpétrer les massacres.

6.80 En mai 1994, Eliezer Niyitegeka, Ministre de l'Information au sein du gouvernement Intérimaire, a personnellemnt participé aux massacres qui se sont déroulés à Kibuye en tirant sur des Tutsi.

La violence sexuelle comme politique de la génocide

6.81 Lors des événements auxquels se réfère le présent acte d'accusation, des viols, et d'autres formes de violences sexuelles ont été commis, d'une façon généralisée et notoire contre la population tutsi notamment les femmes et les filles ou contre des femmes hutu mariées à des tutsi. Ces actes étaient suivis de meurtre ou servaient de moyens de tuer les victimes. Ces crimes ont été perpétrés, entre autres, par des miliciens, dont les *Interahamwe*-MRND, des militaires et des gendarmes.

6.82 Des membres du gouvernement intérimaire ont suscité, encouragé, facilité et acquiescé aux viols et violences sexuelles commis à l'encontre de femmes tutsi, entre autre, par des miliciens, des *Interahamwe-MRND,* des militaires et des gendarmes. Des ministres du gouvernement ont eux-mêmes à l'occasion commis de tels actes, encourageant par leur exemple la commission d'actes similaires par, entre autres, des miliciens, des *Interahamwe*–MRND, des soldats et des gendarmes sur qui ils avaient une autorité de fait et de *jure.* Ainsi le ou vers le 20 mai 1994 des militants politiques et des miliciens travaillant sous la supervision de Eliezer Niyitegeka ont forcé une fille à monter dans le véhicule de ce dernier où Niyitegeka l'a violée; quand la

Niyitegeka himself shot and killed her.

victime sortit du véhicule, Eliezer Niyitegeka-lui même la tua d'un coup de feu.

6.83 Similarly, on several ocassions Interim Government Minister of Family Affairs and Gender Pauline Nyiramasuhuko personally ordered *Interahamwe* to kill Tutsi men and to rape Tutsi women before killing them. Once the Minister publicly exhorted Interahamwe to rape Tutsi women, stating to a small crowd, "you need to rape these Tutsi women because they are arrogant ... this is your opportunity to see what they are like." As soon as Pauline Nyiramasuhuko concluded her inciting address and returned to her vehicle, the soldiers and *Interahamwe* began to rape the Tutsi refugees.

6.83 De même, à maintes reprises le ministre de la Promotion de la Famille et de la condition feminine au sein du gouvernement intérimaire, Pauline Nyiramasuhuko, a personnellement intimé aux Interahamwe l'ordre de tuer les hommes tutsis et de violer les femmes tutsies avant de les tuer. À une occasion précise elle exhorta publiquement les interahamwe à violer les femmes tutsies en s'adressant à eux dans les termes suivants: "Il faut violer ces femmes tutsies parce qu'elles sont arrogantes ... c'est une occasion qui vous est offerte pour savoir comment elles sont". À la fin de son discours Pauline Nyiramasuhuko est retournée à sa voiture et les militaires et les Interahamwe ont aussitôt commencé à violer les tutsies réfugiées.

6.84 Rape and other forms of sexual violence, including sexual torture, degrading sexual acts and indecent exposure were integral to the genocidal policy of the conspirators that seized political power from the first moments of 7th April, 1994 when political assassinations began. Not even the Prime Minister Agathe Uwiligimana was spared. Her body was discovered on the morning of 7 April 1994 with indicia of sexual torture and sexual degradation.

6.84 Le viol et autres formes de violence sexuelle, torture sexuelle, actes sexuels dégradants, outrage à la pudeur ont fait partie de la politique génocidaire de ceux qui se sont entendus pour prendre le pouvoir dès le 7 avril 1994 quand les assassinats politiques ont commencé. Même le Premier Ministre Agathe Uwiligimana n'a pas été épargnée. Son corps a été découvert dans la matinée du 7 avril 1994 avec des indices de torture et de violence sexuelle.

Responsibility

Responsabilité

6.85 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,

6.85 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

were linked to them through marriage or were opposed to the extremist Hutu ideology.

6.86 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.

6.87 The massacres thus perpetrated were the result of a strategy adopted and elaborated by political, civil and military authorities in the country, such as **Jean de Dieu Kamuhanda,** Augustin Ngirabatware, 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.

6.88 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 authorities, the principal massacres would not have occurred.

6.89 Knowing that massacres of the civilian population were being committed, the political and military authorities, including Augustin Ngirabatware, **Jean de Dieu Kamuhanda,** Augustin Ngirabatware,

parce qu'elles étaient qualifiées de complice des Tutsi, liées à ces derniers par mariage ou opposées à l'idéologie Hutu extrémiste.

6.86 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.

6.87 Les massacres perpétrés étaient le résultat d'une stratégie adoptée et élaborée par des autorités politiques, civiles et militaires du pays dont **Jean de Dieu Kamuhanda,** Augustin Ngirabatware, 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.

6.88 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 nationales, civiles et militaires, les principaux massacres n'auraient pas eu lieu.

6.89 Sachant que des massacres étaient commis contre la population civile, les autorités politiques et militaires dont **Jean de Dieu Kamuhanda,** Augustin Ngirabatware, Casimir Bizimungu, Prosper

Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka, Justin Mugenzi, Eliezer Niyitegeka, 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.

6.90 Jean de Dieu Kamuhanda, Augustin Ngirabatware, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka, 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, Félicien Kabuga, Augustin Bizimana, Callixte Nzabonimana 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.

Mugiraneza, Jérôme Bicamumpaka, Justin Mugenzi, Eliezer Niyitegeka, Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, et 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 l'Etat-Major de l'Armée Rwandaise, le Major-Général Augustin Bizimungu.

6.90 Jean de Dieu Kamuhanda, Augustin Ngirabatware, Casimir Bizimungu, Prosper Mugiraneza, Jérôme Bicamumpaka, Justin Mugenzi, Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera et Juvenal Kajelijeli, dans leur position d'autorité, en agissant de concert avec notamment André Ntagerura, Pauline Nyiramasuhuko, Éliezer Niyitegeka, Tharcisse Renzaho, Félicien Kabuga, Augustin Bizimana, Callixte Nzabonimana 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 6.90 and more specifically in the paragraphs referred to below:

Jean de Dieu Kamuhanda:

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

conspired with others to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, 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 he is individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute

7: LES CHEFS D'ACCUSATION

PREMIER CHEF D'ACCUSATION:

Par les actes et omissions décrits aux paragraphes 5.1 à 6.90 et plus particulièrement aux paragraphes référenciés ci-dessous:

Jean de Dieu Kamuhanda:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

s'est entendu avec d'autres pour tuer et porter 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 a, 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 il est individuellement responsable en vertu de l'article 6 et punissable en vertu des articles 22 et 23 du Statut.

COUNT 2:

By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:

Jean de Dieu Kamuhanda:

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, 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 he is individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

DEUXIÈME CHEF D'ACCUSATION:

Par les actes et omissions décrits aux paragraphes 5.1 à 6.90 et plus particulièrement aux paragraphes référenciés ci-dessous:

Jean de Dieu Kamuhanda:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

est responsable de meurtres et 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 a, de ce fait, commis le crime de **GÉNOCIDE** tel que prévu à larticle 2(3)(a) 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.

Or, alternatively

COUNT 3:

By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:

Jean de Dieu Kamuhanda:

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, 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 he is individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

Ou, alternativement

TROISIÈME CHEF D'ACCUSATION:

Par les actes et omissions décrits aux paragraphes 5.1 à 6.90 et plus particulièrement aux paragraphes référenciés ci-dessous:

Jean de Dieu Kamuhanda:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

est responsable de meurtres et 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 a, 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 il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

COUNT 4:

By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:

Jean de Dieu Kamuhanda:

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

is 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 he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

QUATRIÉME CHEF D'ACCUSATION:

Par les actes et omissions décrits aux paragraphes 5.1 à 6.90 et plus particulièrement aux paragraphes référenciés ci-dessous:

Jean de Dieu Kamuhanda:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

est responsable 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 a, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(a) 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 5:

By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:

Jean de Dieu Kamuhanda:

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

is 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 he is 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 6.90 et plus particulièrement aux paragraphes référenciés ci-dessous:

Jean de Dieu Kamuhanda:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

est responsable 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 a, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(b) 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. 6.90 and more specifically in the paragraphs referred to below:

Jean de Dieu Kamuhanda:

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 5.39, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 5.39, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

is 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 the Statute of the Tribunal, for he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

SIXÈME CHEF D'ACCUSATION:

Par les actes et omissions décrits aux paragraphes 5.1 à 6. 6.90 et plus particulièrement aux paragraphes référenciés ci-dessous:

Jean de Dieu Kamuhanda:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 5.39, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 5.39, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

est responsable 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 a, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(g) 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 même Statut.

COUNT 7:

By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:

Jean de Dieu Kamuhanda:

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

is responsible for inhumane acts against 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(i) of Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

SEPTIÈME CHEF D'ACCUSATION:

Par les actes et omissions décrits aux paragraphes 5.1 à 6.90 et plus particulièrement aux paragraphes référenciés ci-dessous:

Jean de Dieu Kamuhanda:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

est responsable d'actes inhumains contre des personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et a, de ce fait commis un **CRIME CONTRE L'HUMANITÉ** tel que prévu à l'article 3(i) 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 même Statut.

COUNT 8:

By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:

Jean de Dieu Kamuhanda:

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

is responsible for outrages upon personal dignity, in particular humiliating and degrading treatment, rape and indecent assault, as part of an armed internal conflict, and thereby 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 he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

HUITIÈME CHEF D'ACCUSATION:

Par les actes et omissions décrits aux paragraphes 5.1 à 6.90 et plus particulièrement aux paragraphes référenciés ci-dessous:

Jean de Dieu Kamuhanda:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

est responsable 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 a, de ce fait, commis le crime de **VIOLATIONS GRAVES 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 il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du même Statut.

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COUNT 9:

By the acts or omissions described in paragraphs 5.1 to 6.90 and more specifically in the paragraphs referred to below:

Jean de Dieu Kamuhanda:

-pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

is responsible for killing and causing violence to health and to the physical or mental well-being of civilians as part of an armed internal conflict, and thereby committed **SERIOUS VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCAL II**, a crime stipulated in Article 4(a) of the Statute of the Tribunal, for which he is are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

The Hague, 14 Nov. 2000
Arusha, this 10th day of November 2000

Carla Del Ponte Prosecutor

NEUVIÈME CHEF D'ACCUSATION:

Par les actes et omissions décrits aux paragraphes 5.1 à 6.90 et plus particulièrement aux paragraphes référenciés ci-dessous:

Jean de Dieu Kamuhanda:

-conformément à l'article 6(1), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90,

-conformément à l'article 6(3), selon les paragraphes: 5.1, 5.2, 5.11 to 5.13, 5.16, 5.18, 5.21, 5.23, 5.24, 5.30, 5.33, 5.34, 5.38, 6.5, 6.7 to 6.10, 6.14 to 6.19, 6.21 to 6.26, 6.28, 6.30 to 6.39, 6.41 to 6.46, 6.48 to 6.51, 6.54, 6.56,6.61 to 6.68, 6.75, 6.79 to 6.90.

est responsable de meurtres, d'atteintes à la santé et au bien être physique ou mental de personnes civiles dans le cadre d'un conflit armé interne, et a, de ce fait, commis le crime de **VIOLATIONS GRAVES DE L'ARTICLE 3 COMMON AUX CONVENTIONSS DE GENÈVE ET DU PROTOCOLE ADDITIONNEL II** tel que prévu à l'article 4(a) du Statut du Tribunal et 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.

La Haye, 14 Nov. 2000
À Arusha, le 10 novembre 2000

Carla Del Ponte Procureur

UNITED NATIONS
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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
Tel: 255 57 504207-11 504367-72 or 1 212 963 2850 Fax: 255 57 504000/504373 or 1 212 963 2848/49

PROOF OF SERVICE – ARUSHA
PREUVE DE NOTIFICATION – ARUSHA

Date: **26/01/2004**	Case Name / *Affaire:*	**The Prosecutor v**	**JEAN DE DIEU KAMUHANDA**
	Case No / *Affaire Nr.:*	**ICTR-99-54A-T**	

To: *A:*

	received by / *reçu par:*	**ALO:**	received by / *reçu par*
☐ TC1			
☐ Judge E.Møse, President	.....	☐	.....
☐ Judge J.R. Reddy	.....	☐	.....
☐ Judge S.A. Egorov	.....	☐	.....
☐ E. Nahamya, Co-ordinator	.....	☐	.....
	.....		
☒ **TC2**			
☐ **Judge W. H. Sekule**	.....	☐	.....
☐ **Judge W. C. Maqutu**	.....	☐	.....
☒ **Judge A. Ramaroson**	.....	☐	.....
☐ **C. Eboe-Osuji, SLO**	.....	☐	.....
☐ **A.Leroy, Co-ordinator**	.....	☐	.....
☐ TC3			
☐ Judge L. G. Williams	.....	☐	.....
☐ Judge A. Vaz	.....	☐	.....
☐ Judge S.A. Egorov (Temporarily)	.....	☐	.....
☐ .....Co-ordinator	.....		

☒ **OTP / *BUREAU DU PROCUREUR***

☒ Trial Attorney in charge of case: **MARKS MOORE** received by 27/01/2004

☒ **DEFENCE / *DÉFENSE*:**

☒ Accused / *Accusé*: **JEAN DE DIEU KAMUHANDA** complete / *remplir* "CMS4 FORM"

☒ Lead Counsel / *Conseil Principal*: **AICHA CONDE**

☐ In / à Arusha .....(signature) 26/01/04 ☐ by fax complete / *remplir* "CMS3bis FORM"

☒ Co-Counsel / *Conseil Adjoint*: **PATRICIA MONGO**

☐ In / à Arusha .....(signature) ☐ by fax complete / *remplir* "CMS3bis FORM

All Decisions: ☐ Appeals Chamber Unit, The Hague ☐ Suzanne Chenault, Jurist Linguist

All Decisions & Important Public Documents: ☐ Press & Public Affairs ☐ Legal Library

From: *De:* ☐ JP. Fomété (Chief, CMS) ☐ N. Diallo (TC 1) ☒ **R. Kouambo (TC 2)** ☐ F. Talon (TC 3) ☐ F. Talon (Appeals)

Cc: ☐ A. Dieng ☐ A. Miller, OLA, NY ☐ L. G. Munlo ☐ M. Niang ☐ S. Van Driessche

☐ WVSS- D ☐ WVSS-P ☐ E. O'Donnell ☐ DCMS ☐ P. Nyambe ☐ P. Enow

Subject *Objet:* **Kindly find attached the following document(s) / *Veuillez trouver en annexe le(s) document(s) suivant(s):***

Documents name / *titre du document*	Date Filed / *Date enregistré*	Pages
JUDGMENT AND SENTENCE	**23/01/2004**	**325**