

ICTR-00-56-T
(01-12-2008
28183 - 28151)
UNITED NATIONS

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Mwamp

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Before Trial Chamber II

Joseph Asoka de Silva, Presiding
Taghriddin Hikmet
Seon Ki Park

Registrar: Mr. Adama Dieng
Date filed: 26 November 2008

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The PROSECUTOR

v

AUGUSTIN NDINDILYIMANA

Case no: ICTR-00-56-T

**AUGUSTIN NDINDILYIMANA'S 2ND MOTION FOR DISCLOSURE
VIOLATIONS, REMEDIAL AND PUNITIVE MEASURES.**

Office of the Prosecutor

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Defence counsel for F.X. Nzuwonemeye
Charles Taku & B. Lions
Defence Counsel for Innocent Sagahutu
Fabien Segatwa & Seydou Dumbia

I. INTRODUCTION

1. On September 22, 2008, this Trial Chamber ruled that the prosecution in this case “persistently” violated its disclosure obligations by withholding exculpatory material from the Defense.¹ In that decision, the Trial Chamber invited the Defense to re-call identified prosecution witnesses and to call certain witnesses whose statements were wrongfully withheld.²
2. In its decision, this Trial Chamber stated that “[t]he Prosecution’s obligation to disclose exculpatory material is essential to a fair trial.”³ Further, this Trial Chamber went on to find that:

“[T]he Prosecution has shown a lack of diligence in the disclosure of exculpatory material and its violations have prejudiced all the Defence teams in the preparation of their defences. The Accused in this case were deprived the opportunity of using the exculpatory material to test the credibility of Prosecution witnesses. Furthermore, Ndindiliyimana and Bizimungu were denied the opportunity of considering the exculpatory material and deciding whether or not to call any of the witnesses to testify on their behalf. *The Prosecution’s conduct therefore violates the right of the Accused to a fair trial.*”⁴

3. It is beyond dispute that Rule 68(A) requires that the Prosecution disclose exculpatory material defined by case law as “any material, which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the Accused or affect the credibility of Prosecution evidence.”⁵ This has been interpreted broadly to include materials having any possible relevance to the defense of an accused.⁶

¹ *Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Defense Motions Alleging Violation of the Prosecutor’s Disclosure Obligations Pursuant to Rule 68 (TC) (22 September 2008), para. 59 (hereinafter “*Ndindiliyimana*, Decision of 22 September 2008”).

² *Id.*

³ *Id.* at para. 12.

⁴ *Id.* at para. 59 [emphasis added].

⁵ *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal regarding the role of the Prosecutor’s Electronic Disclosure Suite in discharging Disclosure Obligations (AC) (30 June 2006), para. 9.

⁶ *Prosecutor v. Karemera et al.*, Decision on ‘Joseph Nzirorera’s Appeal from Decision on Tenth Rule 68 Motion (AC) (14 May 2008), para. 12 (citing approvingly *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Disclosure of Defence Witness Statements in the Possession of the Prosecution

4. The Defense understands that the initial determination of whether material is exculpatory rests to the judgment of the Prosecutor.⁷ But, the Prosecutor is charged with actively reviewing materials in its possession and informing the accused of the existence of the material. Posting materials on EDS is insufficient to discharge the Prosecutor's Rule 68 duty to make exculpatory materials known to the Accused.⁸
5. Further, the *Nyiramasuhuko* decision of 29 April 2008 held that a witness statement describing RPF infiltrations could be exculpatory if they are related to the charges against the accused.⁹
6. Evidence of widespread RPF infiltration by operatives dressed as civilians, or operating in specific locations relevant to the indictment could be germane to charges against the accused or those under his command.¹⁰
7. Evidence of possible RPF infiltration into areas controlled by the Interim Government is relevant to the defence.¹¹
8. A Trial Chamber has found that the Prosecutor violated its obligations by not disclosing statements that RPF had control over leaders of *Interahamwe*
“Accordingly the Chamber concludes that the prosecution violated its disclosure

Pursuant to Rule 68 (A) (TC) (8 March 2006), para. 5. *See also, Ndindiliyimana* Decision of 22 September 2008, para. 9.

⁷ *Ndindiliyimana* Decision of 22 September 2008, para. 11.

⁸ *Prosecutor v. Karemera et al*, Decision on Interlocutory Appeal regarding the role of the Prosecutor's Electronic Disclosure Suite in discharging Disclosure Obligations (AC) (30 June 2006), para. 10.

⁹ *Prosecutor v Nyiramasuhuko et al*, No. ICTR-98-42-T, Decision on Nyiramasuhuko's Motion for Disclosure of Documents Under Rule 68 and for Re-Opening of her Case (29 April 2008), at para. 44-45

¹⁰ *Prosecutor v Bagosora et al*, Decision on Ntabakuze Motion for Disclosure of Prosecution Files (6 October 2006), at paras. 4-5

¹¹ *Prosecutor v Karemera et al*, Decision on Oral Motions by Edouard Karemera and the Prosecution to Admit Certain Documents into Evidence (29 May 2008), at para. 9

obligation under Rule 68 (A) regarding ALL-42's statements about : (1) the RPF control over Robert Kajuga, Pheneas Ruhumuliza, and Jean Pierre Turatsinze"¹²

II. STATEMENT OF FACTS

9. On November 10, 2008, Counsel for General Ndindiliyimana read into the record statements that the Defense considers exculpatory and must be disclosed in their un-redacted forms.¹³ These statements all relate to killings carried out by the RPF in areas where the Accused is alleged to be responsible. Counsel at that time requested the entire dossier labeled with the letter "R."¹⁴
10. On November 11, 2008, Counsel for General Ndindiliyimana read into record another statement deemed to be exculpatory on Nyamirambo allegations as it showed that the so-called *Interahamwe* at Nyamirambo near Saint André College were indeed infiltrated and controlled by RPF.¹⁵
11. The Prosecutor was given up to Monday 17 November to disclose those documents which were subject to the oral motion¹⁶ but at the filing of this motion the Prosecutor has not disclosed any statement.
12. It is these materials that are the subject of this motion. The Defense considers them exculpatory because the statements clearly show that the Accused did not have control over areas in Kigali, specifically Kicukiro, Kacyiru, and Nyamirambo. The materials discredit the allegations found in many paragraphs of the Amended Indictment. Amongst other accusations, paragraph 53 alleges that General

¹² *Prosecutor v Karemera et al*, Decision on Joseph Nzirorera's eleventh notice for Rule 68 violation and motion for stay of proceedings (11 September 2008) at para 20.

¹³ Transcripts of 10 November 2008, pp 31-35.

¹⁴ Documents labeled with the letter "R" are hereinafter referred to as the "Rwanda files." The "Rwanda files" are now known to contain statements made by RPF soldiers and officers. Mr. Jegede, for the Prosecution, responded that he would look into the matter, and the Trial Chamber requested that Prosecution Counsel discuss the issue of exculpatory materials with Mr. Egbe. *Id.* The Defense submits that because each statement it has found is exculpatory, the entire dossier should be turned over.

¹⁵ Transcripts of 11 November 2008, pp. 42-44.

¹⁶ Transcripts of 11 November p.4.

Ndindiliyimana “was responsible for maintaining public order, and protecting people and their property” and “took no significant action to quell the upheaval or to seek out the perpetrators.”¹⁷

13. The following sections will identify the statements the Defense considers exculpatory and will explain why each statement is in fact exculpatory, and will finally discuss the appropriate remedy considering the expansiveness and gravity of the Prosecutor’s disclosure violations.

A. Witness Statement Dated 5 October 2002

14. A redacted statement, dated October 5, 2002, and signed on each page by the interviewers, was found on EDS by the Defense on November 9, 2008. The statement was posted in the Special Investigation files EDS on October 22, 2008.¹⁸ The statement is labeled R0000138-R0000144, and belongs to the “Rwanda files.”¹⁹ The statement has not, to the best of the Defense’s knowledge, been disclosed previously to the Accused in violation of the Prosecution’s obligation to disclose exculpatory material. A copy of the statement is attached as an appendix to this motion.²⁰

15. The statement is exculpatory and should have been disclosed pursuant to Rule 68 because General Ndindiliyimana is charged with exercising control and authority in Kigali, including Kicukiro, where as Col. Kaberebe of the RPF had control over those areas.²¹

¹⁷ Amended Indictment ¶ 53.

¹⁸ The Defense does not know whether the statement was available on EDS prior to this date. However, the statement appeared during a search of the Special Investigation files, which, according to EDS, were posted on October 22, 2008. In either event, the Prosecutor did not disclose the statement to the Defense at any point.

¹⁹ It should be noted that each statement found comes from the “Rwanda files.”

²⁰ Witness Statement, 5 Oct. 2002 [R0000138-R0000144] appears as “Appendix A.”

²¹ See generally, Amended Indictment ¶¶ 25, 53. See also, Prosecution’s Pre-Trial Brief ¶¶ 72, 85, 89, 92, 93, 100.

16. The witness stated:

Col. Kaberebe asked Lt. Silas Udahemuka, Intelligence Officer of the High Command Unit, to choose some soldiers to kill the Hutus coming from all parts where the RPF soldiers were arresting them, like Rwamagana, Musha, Nyagasambo, Rugende, *Kicukiro*, Masaka..etc. No one was allowed to go to that area except Col. Kaberebe.²²

Everyday they received 5 to 20 persons that they killed using small hoes called "UBUFUNI." after they dug a big hole where they buried them. The mission started in May 1994 during the genocide and ended in that area in August 1994. The mission continued in Camp G.P. in Kigali where there is a big prison and just behind it there is a small forest where they kill people even today...

Regarding Col Kabarebe, James, in April 1994 he was in *Kicukiro with one company of support weapons He got his instructions directly from Kagame ...*²³

17. Witness Luc Lemaire was unequivocal in attributing everything that happened at Kicukiro on gendarmes. He testified that, in early April, if the gendarmerie "had done their work, the *Interahamwe* could not have moved freely in the area."²⁴

18. Witness DW testified as to massacres at Remera and Karama Hill, and placed gendarmes at the scene. The witness also testified that there were killings at Kibagaba Church.²⁵

19. Witness AP testified that gendarmes and soldiers manned roadblocks in Kigali at Kicukiro and Gikondo that were separate from roadblocks manned by *Interahamwe*. The witness further testified as to killings conducted by *Interahamwe* at specific roadblocks throughout Kigali, including Kicukiro, Nyamirambo, St. Andre, and CHK.²⁶

²² Witness Statement, 5 Oct. 2002 at p. 6 (emphasis added)

²³ Witness Statement 5 Oct. 2002 at p. 7 (emphasis added).

²⁴ Transcript of 24 Oct. 2005 at p. 81.

²⁵ Transcript of 3 Oct. 2005 p. 71.

²⁶ Transcript of 7 Sept. 2005 p. 86, 91.

20. Therefore, the Defense submits that the statement is exculpatory because the Accused is charged with attacks in this area and the statement shows that the RPF was in control of those areas and, therefore, responsible for them. It completely undermines Prosecution allegations that the Accused had control over the area.

B. Witness Statement Dated March 29, 2002

21. This redacted statement was discovered at the same time as the statement discussed above. It is dated March 29, 2002 and each page is signed by the interviewers. Because the statement is redacted, it is unknown to the Defense whether the statement is signed by the witness. To the best of the Defense's knowledge, the statement has not been disclosed to the Defense at any point, in violation of the Prosecution's obligation to disclose exculpatory material. The statement is numbered R0000145-R0000151 and is part of the "Rwanda files." A copy of the statement is attached as an appendix to this motion.²⁷

22. The statement is exculpatory because the witness states that the RPF may have been at fault for massacres that the Accused is charged with near the CND.²⁸ However the exculpatory information was badly redacted to such an extent that one can not ascertain exactly its real content.

23. The statement, despite numerous redactions, reads:

Regarding [redacted] I can tell you that [redacted] who was based in the CND during the 1994 events, informed me that on 6 April so many people hid in the CND seeking refuge. [redacted] played a big role in chasing them from the CND; all of them were killed by the roundabout of Kimihurura and on their way to Remera. [redacted] is in Kigali and used to be a military attaché.²⁹

²⁷ Witness Statement, 29 March 2002 [R0000145-R0000151] appears as "Appendix B."

²⁸ See, Amended Indictment ¶¶ 53, 76, 77, 102. See also, Prosecution's Pre-Trial Brief ¶¶ 85, 87, 89, 92.

²⁹ Witness Statement, 29 March 2002, at p. 6.

24. Because the statement is redacted, the Defense would like the unredacted version of the statement so that it can determine its strategic value.

C. Witness Statement Dated 3 April 2002

25. A redacted statement dated April 3, 2002, was found during a search of EDS. The statement has not previously been disclosed to the Defense in violation of the Prosecutor's obligation to disclose exculpatory material. The document is labeled R0000022-R0000024. A copy of the statement is attached as an appendix to this motion.³⁰

26. The witness stated:

“In June 1994, while combat was raging around Mount Jali, he went to the front lines on the RPF side, or the RPA side. He wanted to know what was happening. And he came across an *Interahamwe* roadblock. He asked a soldier about the RPA, whose name he can't remember, what was going on. That soldier told him, he said -- this witness says the soldier told him to wait a little and he would get the information necessary from the RPA soldiers who had infiltrated that barricade, around that barricade, and that the barricade was situated about 100 to 150 metres from him, not far from the Saint André college in Nyamirambo. And then a few minutes later a response came back from the RPF soldiers at that barricade disguised as *Interahamwe* in code.”³¹

27. The prosecutor has charged through Paragraph 102 that “At Nyamirambo, gendarmes under the command of Augustin Ndindiliyimana occupied one of the many roadblocks erected in that secteur. They would check the ethnic origin of the passers-by at the roadblocks by examining their identity cards. Anyone who was of Tutsi origin or was suspected of belonging to that ethnic group was summarily executed. The executioners would then invariably accuse their victims of being ‘Inkotanyi accomplice.’”³²

³⁰ Witness Statement, 3 April 2002 [R0000022-R0000024], is attached as “Appendix C.”

³¹ Excerpt of the Statement as read and translated into records on 11 November 2008. Transcript p. 42.

³² Amended Indictment ¶102.

28. The Prosecution led extensive evidence to support the charges through witnesses WG,³³ GLJ,³⁴ DBJ,³⁵ and GCB.³⁶ The essence of the prosecution evidence is that *Interahamwe* who killed near that particular area worked with gendarmes or that gendarmes did nothing to protect Tutsi civilians. Evidence, such as this statement showing that *Interahamwe* were infiltrated and controlled by RPF is highly exculpatory because it explains the inconsistencies in witness testimonies. The Prosecution witnesses themselves confirmed that gendarmes protected them, but at the same time other gendarmes killed them. Significantly, evidence of RPF infiltration of *Interahamwe* roadblocks destroys the prosecution theory which seeks the Accused's conviction for command responsibility over those killers.
29. In order to prove a Rule 68 (A) violation, the Defense must: (1) identify with "reasonable specificity" the materials it considers exculpatory; (2) show that the Prosecutor has custody and control of the documents; and (3) demonstrate that the material is relevant to the Accused's defense.³⁷
30. In this present case, the defence has precisely identified the statements, has shown that the Prosecutor had custody and control of those documents since 2001 or 2002 before it started Ndindiliyimana's case, and finally has demonstrated its exculpatory nature by reading into record the exculpatory excerpt to the extent the unjustifiable redaction permits.
31. The defence notes that the Prosecutor did not bother himself to discharge his duty even after this clear and unequivocal notice and after the strong warning of this court. It is therefore imperative, in the interest of justice that this court address this issue by considering the appropriate remedy to the continued unprofessional, unethical, and unprecedented behavior of the Prosecutor, which is fatally prejudicial to the Defense.

³³ Transcript of 6 June 2005 at p. 36.

³⁴ Transcript of 14 June 2005 at p. 45, 49. *See also*, Transcript of 15 June 2005 at p. 42.

³⁵ Transcript of 29 Aug. 2005 at p. 37, 38.

³⁶ Transcript of 14 Sept. 2005 at p. 62.

³⁷ *Ndindiliyimana* Decision of 22 September 2008, para. 13. *See also Karemera et al* at para. 10 which held that information related to RPF infiltration and control over *Interahamwe* is exculpatory in areas where the Prosecutor has charged the Accused of having control.

III. REMEDY

32. A remedy for a Rule 68 violation will not be granted unless it is shown the Accused has suffered material prejudice, such that, without the imposition of a remedy, the Accused will not receive a fair trial.³⁸ The Defense would like to remind the Trial Chamber that it has already ruled that the Accused has not received a fair trial on these same grounds in its previous decision of September 22, 2008.³⁹
33. After material prejudice is shown, a suitable remedy falls within the Trial Chamber's discretion. Factors considered include: "the scope and significance of the violation vis-à-vis the allegations in the Indictment, the persistence of the Prosecution's non-compliance, and the timing of any late disclosure in light of the stage of the proceedings." Sanctions on the Prosecutor can be considered where there is a "persistent disregard or lack of diligence" in satisfying his/her duties under Rule 68. The Defense reminds the Trial Chamber that it already imposed sanctions on the Prosecutor in its decision of September 22, 2008 for its persistent disregard of its disclosure obligations, but clearly to no effect whatsoever.
34. If the Prosecution has already closed its case, as it has in this case, the Trial Chamber may allow the Defense to recall relevant prosecution witnesses for further cross examination based on the newly disclosed exculpatory materials.⁴⁰ The Trial Chamber may also permit the Defense to call witnesses to testify to the newly discovered exculpatory materials.⁴¹

³⁸ *Prosecutor v. Karemera et al.*, Decision on Joseph Nzirorera's Interlocutory Appeal (AC) (28 April 2006), para. 7.

³⁹ *Ndindiliyimana* Decision of 22 September 2008, para. 59.

⁴⁰ *Ndindiliyimana* Decision of 22 September 2008, para. 14.

⁴¹ *Ndindiliyimana* Decision of 22 September 2008, para. 14.

35. The Defense finds it appropriate to quote this Trial Chamber on its discussion of remedies for disclosure violations:

According to the *Oric* Decision, a Trial Chamber may, where the violation of the disclosure obligation is so extensive or occurs at such a late stage of the proceedings that it would violate the right of the accused to trial without undue delay, or where it would be impossible or impractical to recall prosecution witnesses without effectively re-opening the case in its entirety, opt to draw reasonable inferences from the disclosed material at the stage of its definitive evaluation of the evidence.”⁴²

36. The Defense considers that it has suffered great prejudice as if these statements together with those which were subject of the previous motion were timely disclosed, no reasonable judge would have confirmed the Amended Indictment against Ndindiliyimana, and no case would have remained after the Prosecution case as all his witnesses would have been adequately challenged. The statements place the RPF in locations where the Accused is charged with having control over the assailants, and the witness stated that the RPF killed in those locations. The Defense did not have the opportunity to investigate and call these witnesses in order to elicit further testimony, and the Defense could not cross examine Prosecution witnesses on the likelihood that the RPF had committed the crimes that the Accused is charged with.

37. As the Trial Chamber is aware, the Appeals Chamber of the ICC in the *Lubanga* decision affirmed a stay of proceedings, as “there was no prospect of a fair trial” because of the Prosecution’s failure to disclose exculpatory material during the pre-trial phase.⁴³ The Defense is well aware that the procedural posturing of *Military II* is significantly different. However, disclosure violations, no matter when they occur in a case, affect the fairness of a trial. It is the Defense position that the Accused has not

⁴² *Ndindiliyimana* Decision of 22 September 2008, para. 14.

⁴³ *The Prosecutor v. Lubanga Dyilo*, ICC-01/04-01/06 OA 13, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled ‘Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised by the Status Conference on 10 June 2008 (AC) (21 Oct. 2008), para. 75. “[T]he Trial Chamber imposed the stay of proceedings because it had come to the conclusion that in the circumstances of the case, *where a large number of potentially exculpatory information or information material to the preparation of the defence had neither been disclosed to the accused person nor to the chamber, there was no prospect of a fair trial.*” *Id.* (*emphasis added*).

received a fair trial because of the Prosecution's ongoing, defiant, and serious disclosure violations.⁴⁴

38. Unlike in *Lubanga*, the Accused in this case is at the end of the trial. Even as *Military II* draws to a close, the Prosecution continues to evade its disclosure obligations. This gravely influences the determination of whether the Accused has received a fair trial: because of repeated and continuing disclosure violations, it is evident that the Accused's trial has not been fair from the start. While the Trial Chamber in *Lubanga* had the opportunity to stay proceedings at an early stage, the Trial Chamber here does not have the same opportunity.

39. Therefore, at this late stage of the proceedings, the Defense submits that the best remedy is to stay all charges against the Accused and order his immediate release, as the Prosecution has continuously and egregiously deprived the Accused of the use of exculpatory materials, thereby depriving the Accused of a fair trial.

40. Short of that, the Trial Chamber should draw reasonable inferences from the repeated disclosure violations. The Defense has already applied for 18 prosecution witnesses to be recalled and the prosecution did not oppose. To recall further witnesses would be to virtually reopen the case. Therefore, the Defense submits that the Trial Chamber should draw reasonable inferences from the statements themselves, and from their suppression.

⁴⁴ In *Lubanga*, the Prosecution relied on Article 54 confidentiality agreements in declining to disclose confidential documents. In this case, the Prosecution has no like justification.

In light of the foregoing, the Defense respectfully requests the Trial Chamber to:

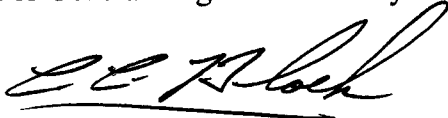
- (a) **ORDER** the stay or dismissal of all charges against Augustin Ndindiliyimana and his immediate release as he has been unfairly arrested, detained, and charged on crimes the Prosecutor knows he did not commit;
- (b) **IMPOSE** sanctions against the Prosecution for their continued disclosure violations and;

Alternatively:


- (c) **ORDER** any other appropriate remedy that the Trial Chamber considers just.

Respectfully submitted this 1 December 2008

For General Augustin Ndindiliyimana



Christopher Black
Lead Counsel



Leopold Nsengiyumva
Legal Assistant



Lauren Tipton
Legal Assistant

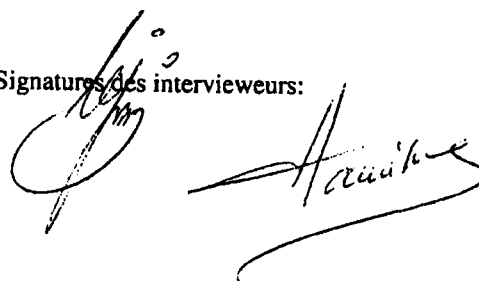
APPENDIX A

R0000139

- 8) Nom des parents
Mère:
Père:
- 9) État civil:
Nom de l'époux(se):
Nombre d'enfants:
- 10) Langue(s) parlée(s) et comprise(s):
- 11) Langue(s) écrite(s) et lue(s):
- 12) Résidence extérieure au Rwanda dans le passé
Période et date:
Lieu:
Raison:
Remarques:
- 13) Membre d'une association sociale ou d'un parti politique:
Nom:
Fonction:
Période:
Remarques:
- 14) Nom et adresse d'un ami, d'un parent ou d'une relation
Nom:
Adresse:
Relation:

Date: 10/05/2002
Signature du témoin

Signatures des intervieweurs:



ROOOO141

Regarding Col. Ibingira Alfred, I heard from sergeant Alex, who is in the Navy in Gisenyi, that his brother Sergeant Binagwaho Robert, who was under the command of Col. Ibingira, lead a platoon of 30 soldiers in December 1994 and killed 80 to 100 Hutus in Kibeho, Gikongoro Prefecture. After killing them they burried their bodies and they dug a big mass grave using a bulldozer and on the top they established a basketball field.

Sgt. Binagwaho Robert was promoted to Lieutenant and became the convoy Commander of Paul Kagame and leader of a Platoon. He died during 1997 or 1998 due to an accident in Kicukiro.

Bizimungu Pasteur went to Gikongoro for the killings that occurred in Kibeho and had a discussion with Col. Ibingira. He asked Ibingira to go to bury the bodies because he is responsible for these soldiers. Col. Ibingira replied that " you go because they are Hutus like you."

As to Lt.Col.Murokore Eric, since 1992, he was always commanding officer. During 1995-1996 he was the head of 157th Battalion. His commanding officer was Col. Ibingira.

As to Col. Kayonga Charles, he was Assistant of the Head of High Command Unit before becoming the head of the Battalion in CND.

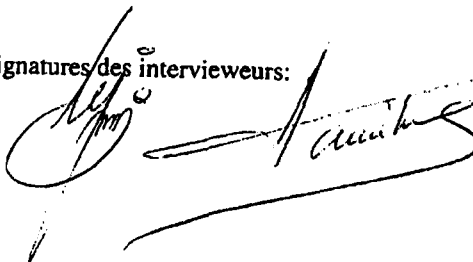
As to Col. Muhire, He was a member of the High Command and Chief of the Training Department. He is presently Brigadier General, in charge of the Air Army. He attended many courses in Russia and South Africa related to Air matters.

As to Major. Kwikiriza John, in 1994, he was in the CND as the Deputy of Lt.col. Kayonga Charles then head of the third Batallion based in CND. He was arrested for many cases such as stealing vehicles. He managed to escape in 1999.

As to Captain Kiyago, a woman wanted to recuperate her house from him. He did not hesitate to kill her with her daughter using a panga, then he threw their bodies in Nyabarongo River. His present location is unknown. Some are saying that he is in prison, others that he is in Congo, and still others that he is in Kigali-Town.

As to Col. Kayitare (possibly Vedaste), he was the Chief Escort of Rwigema Fred. He was a member of the High Command Unit. He used to be Commander of Delta. I do not know when. The Col. died in 1992 or 1993.

Date: 10/05/2002
Signature du témoin:

Signatures des intervieweurs:


R0000142

As to Col. Kiiza, in 1992, he stole vehicles in Ruhengeri with Major Dan Gapfizi. Both of them were demoted to Sub-lieutenant and to man. Dan Gapfizi after few days regained his rank of Major. Col. Kiiza died during in 2000.

As to Col. Karangwa, I did not know him before 1994, but I know that he died.

As to Major Karamba Charles, in 1994, he was in the third Battalion based in CND. He was in the Intelligence Department but I do not know if he was an IO or IS. During the genocide in 1994, a group of Hutus and Tutsis hid in the CND compound. They have been taken out by Major Karamba. All of them were killed. I received this information from _____, a Republican soldier.

Regarding Byumba and Byumba Stadium, I know that a company of over 250 soldiers came from Mulindi linked to the High Command Unit to secure and patrol Byumba town.

On the 6th of April 1994, late in the evening Kagame left Mulindi to Byumba. He spent the night there and on the 7th of April he shifted to Musha in Kigali Rural. Before going to Musha a company was sent to Musha to clear and secure the area for the V.I.P.

The company of 250 soldiers which took care of Byumba was lead by Lt. Masumbuko (now Capt. in the National Police). Sub.Lt. Kamanzi was among the leaders of that company (now Capt. in Ruhengeri).

Three soldiers known to me participated in this massacre:

- 1-Cpl. Kabana Emmanuel, who deserted the army in 1997, Uganda;
- 2-Cpl. Faida, who deserted the army in 1997, Uganda;
- 3- Sgt. Ruganzo, presently in Kagame protection in charge of support weapons.

I was told by Cpl.Kabana Emmanuel, who participated in the killings, that: Col. James Kabarebe gave the order to Lt. Masumbuko and other leaders of that company (I do not know the names and the date when the order was given). The order was that they should built confidence with the displaced persons through continued contacts and meetings. The first contact occurred between April and May 1994, they gave them Rice and Sugar. I do not remember the date of the second contact, when they gave them Cooking Oil and Sugar. During the third one (I do not know the date) they asked them to come to the stadium to held a meeting about security. While gathered in the Stadium, Col. Kabarebe arrived to the stadium, stayed for some minutes and when he was going out he talked to Lt. Masumbuko and left.

Date: 10/05/2002
Signature du témoin:

Signatures des intervieweurs:

R0000143

Right after Lt. Masumbuko gave the order of shooting the persons who were large in number. The soldiers were not many and they used machine guns, Gatimba, 12, AK47. All the refugees were killed on the spot except only one who managed to escape. I do not know what happened with the bodies of the victims.

The following persons were based in Mulindi in 1994:

- 1- Col.Lizinde, Politician,
- 2- Col.Kanyarengwe, Chairman of RPF,
- 3- Gen. Paul Kagame,
- 4- Lt. Col.Kaberebe James,
- 5- Major Alex Kagame, Responsible for the Protection of the Chairman of the RPF,
- 6- Bizimungu Pasteur, Politician,
- 7-Mazimpaka Patrick, Politician,
- 8- Bihozagara, Politician,
- 9- Aloyis Inyumba, Finance,
- 10-Col. Biseruka,
- 11- Major Rudasingwa, Doctor of the Chairman of the RPF,
- 12- Major Kazura, ADC of Kagame, presently in MINADEF,
- 13- Major Rose Kabuye, Politician,
- 14-Tito Rutaremera Politician
- 15-Col. Sam Kaka,
- 16-Col. Frank Mugambage,
- 17-Col. Rutayisire, died in DRC.

Radio Muhabura was based at the border between Uganda and Rwanda.

Regarding the massacres in the Akagera National Park during 1994 -Byumba, the following soldiers were among those chosen to kill Hutus in an area between Gabiro and the National Park of Akagera:

- 1-Sergent Gasana Kibanda, presently is Lieutenant of the Protection of the ex-President;
- 2-Sergent Kanamugire, was warrant officer class I, Driver of Col. Kaberebe James;
- 3-Commando, dead;
- 4-Private Rwabuhungu, presently out of the army and he is driver in Kigali town (he told me about the massacres); and,
- 5-Private Claude, presently in University near Meridien Hotel-Kigali (he told me about the massacres).

Col. Kaberebe asked Lt. Silas Udahemuka, Intelligence Officer of the High Command Unit, to choose some soldiers to kill the Hutus coming from all parts where the RPF soldiers were arresting them, like Rwamagana, Musha, Nyagasambo Rugende, Kicukiro, Masaka..etc . No one was allowed to go to that area except Col. Kaberebe.

Date: 10/05/2002
Signature du témoin:

Signatures des intervieweurs:

R0000144

Everyday they received 5 to 20 persons that they killed using small hoes called "UBUFUNI." After they dug a big hole where they buried them. The mission started in May 1994 during the genocide and ended in that area in August 1994. The mission continued in Camp G.P in Kigali where there is a big prison and just behind it there is a small forest where they kill people even today. The team members for this mission had been changed.

Regarding, Col. Kaberebe James, in April 1994 he was in Kicukiro with one company of support weapons He got his instructions directly from Kagame. He is very loyal to the President, he was in his escort. He has a degree in Political Science and Economics. He joined the RPF in the 80's in Uganda. As to the High Command Unit, the head of the H.C.U was Lt. Col Kaberebe; his Deputy was Lt. Col. Charles Kayonga before being the head of the Battalion based in CND. The Intelligence Officer of the H.C.U was Lt. Silas Udahemuka. The H.C.U is what we call presently the Republican Guard.

Within the H.C.U there were 3 companies:

1- "A Company" later became "Special One" headed by Major Alex Kagame, contained over 200 soldiers taking care of the protection of the RPF's President Kanyarangwe and the inside security of Mulindi. (I do not know the name of the Intelligence Staff of the company, or the different platoons or sections);

2- "B Company" later became "Special Two" headed by Major Tom Byabagamaba, contained over 250 soldiers taking care of the protection of Paul Kagame. Within the company there is:

a-Intelligence Section, its Intelligence staff is Second Lieutenant Mutshumbiro; presently a Captain in the Military court;

b-Main Communication Room which is taking care of all the communication system; and,

c-Transport Section .

3- "C Company", later became "Ego" and "Simba", the head is a captain but I do not know his name, the company contained over 100 soldiers taking care of the outside of Mulindi. It played the role of supporting the A and B companies.

In general each Platoon, Section, and Company, has its own Intelligence staff (IS); each Battalion has its own Intelligence Officer (IO) and the Brigade has its own Intelligence Officer (BIO).

Date: 10/05/2002
Signature du témoin:

Signatures des intervieweurs:

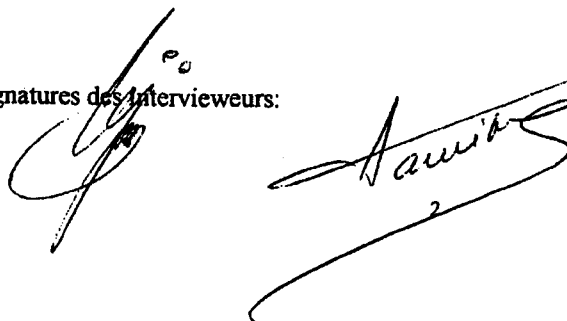
APPENDIX B

R0000146

- 8) Nom des parents
Mère:
Père:
- 9) État civil:
Nom de l'époux(se):
Nombre d'enfants:
- 10) Langue(s) parlée(s) et comprise(s):
- 11) Langue(s) écrite(s) et lue(s):
- 12) Résidence extérieure au Rwanda dans le passé
Période et date:
Lieu:
Raison:
Remarques:
- 13) Membre d'une association sociale ou d'un parti politique:
Nom:
Fonction:
Période:
Remarques:
- 14) Nom et adresse d'un ami, d'un parent ou d'une relation
Nom:
Adresse:
Relation:

Date: 29/05/2002
Signature du témoin:

Signatures des Intervieweurs:



TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA

I, _____ declare the following:

I became a member of the RPA between the months of February and May 1991 because there were problems of killings of Tutsi in Bugesera. In 1992, I left to Burundi where I met many 1959 refugees and among them were what we call the "cadres of RPF". The "cadres" took me with others to Karama (Byumba) for training. The training took three to four months. I was trained for fighting in the front line and parade. My trainers were:

Right after the training I was deployed :

I do not recall the number of soldiers i

The head of the

In Rushaki there were two platoons, each one contained 30 soldiers. The head of my platoon was S/Lt. Ntiyisingwa, Emmanuel. The objective of their presence was to protect a house which Paul Kagame was soon shifting to; by that time Kagame was in Ngondore.

In early 1993,
situated near Mulindi.

Bungwe is
who became a

Lt. Col. After my training, the platoon moved from Rushaki to Mulindi in the aim to insure its protection from outside. The task was given to a company of 100 soldiers relatively headed by a Capt. Nadyisaba.

On 6 April 1994, I was guarding an area near the house in Mulindi where the Communication Room is situated and I heard the radio operators mentioning that there is a coded message announcing the crash of "Kinani's" plane ("L'avion de Kinani vient d'etre abattu").

The names of the radio operators are: 1)

head of the communication room;

2) _____

3) _____

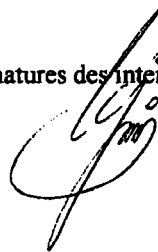
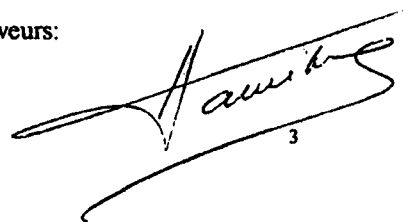
(I do not know his rank).

Right after this, all the soldiers were put on a high alert and then I was sent, along with my platoon, to Musha. The head of the platoon is _____ and the head of the second platoon is Second Lt. Gishayija Joseph. The objective was to secure Muaha area. A couple of days later,

Date: 29/05/2000

Signature du témoin:

Signatures des intervieweurs:

R0000148

Regarding what I know about some Killings in Rwanda in 1994, I can tell you the following:

I was not in Giti but I was told by _____ who was in the escort of _____ that Karera with his soldiers killed many nuns, priests and civilians in 1994 during the war. Kayitare died in DRC. Major Karera, whose nickname is "Rukokoma", which means _____, was not in Mulindi in 1994, and his real function during that period is not known to me. There are however, ongoing rumors that Major Karera is responsible for the killings that occurred in Gitarama.

As for **Byumba**, an eyewitness soldier, called _____ told me in 1995 that people were killed in Byumba stadium and within the city. The soldiers responsible for the killings were _____

As for **Gitarama**, two eyewitnesses have given me information. One of the eyewitnesses' names I do not recall, but the other one was a _____ now deserted from the RPA. The two eyewitnesses told me that _____ was in charge of the Unit 101, which was in Gitarama town.

Major Sewanyana, head of Company, was under Major Alex Kagame. The latter was asked to kill people but he refused and accordingly was put in prison. That was after Major Sewanyana became Prefet of Gitarama.

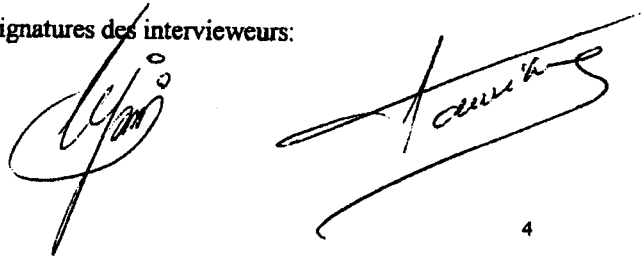
I know that the instruction of the killings in Gitarama came directly from the Army Commander Kagame, who was in Musha. The instruction for killings in and around the stadium in Gitarama in June 1994 came directly from PAUL KAGAME, the Army Commander.

I do not remember the exact date in June, but at that time I was still doing VIP protection duties for him in Musha. On that day, it was our job to secure the area where he was, but I was not actually in his presence. I knew, however, that PAUL KAGAME was in his house in Mosha and I was guarding the house where he was. The last time I had seen him personally, was the same day, when he came in his car. I was almost in the bush along with my immediate commander, Sub-Lt. Sentengo (not a witness - believed to be in Uganda). He -Sentengo- was carrying a military "walkie-talkie" radio, and was standing approximately ten meters away from me. I could hear the radio transmissions without difficulty.

We did not use special frequencies in the protection team. We were listening to transmissions that could be heard by all our army units. I know the voice of the boss PAUL KAGAME and I could recognize it on the radio. It was a normal method he used to give orders to his forces.

Date: 29/05/2002
Signature du témoin:

Signatures des intervieweurs:



R0000149

On this occasion, I heard the voice of PAUL KAGAME come over the radio. He was speaking Kinyarwanda. He asked : "what is the situation in Gitarama?" (Gitarama was an area across on the other side of Kigali from where we were in Mosha, but the radio could reach it.) The message was not being sent to us, but to our forces in Gitarama.

I then heard on the radio the voice of a person I did not recognize replying that there were a lot of people in the stadium, among them people from the ex-government.

PAUL KAGAME answered "Muwafaniye" which means "work" but in a war context it means "kill them". That is how I understood it.

did not comment the order of the "Afandi" because

At the time we were not hearing a great deal of traffic on the radio.

I have no doubt about the voice that gave the order. I recognized it, and I can also identify PAUL KAGAME.

All the persons around the town and in the stadium were killed.

was head of a company under : currently in charge of "Armurerie" guns store at the National Level based in Kanombe camp.

I do not know the name of the IO or the IS of the 101 Unit. because he was shot during the war;

As for Gikongoro, I discussed that area with who worked under Lt. Col. Ibingira. He confessed that they considered all the Hutus as Interhamwe and he added that in late 1994, with his platoon, he killed many people in Gikongoro and dug a large hole where they buried them and made it a playground. This was before the big destruction of Kibeho camp. I do not know the exact place of the massacre. during the killings and he was promoted to Lt. due to hard work and transferred to the Republican Guard as platoon commander of the close protection of Kagame until he died in a car accident in Kicukiro in late 1996 or early 1997 with Capt. Kamali.

Date: 29/03/2002
Signature du témoin:

Signatures des intervieweurs:

R0000150

Regarding _____ I can tell you that _____ who was based in the
 CND during the 1994 events, informed me that on 6 April so many people hid in the CND
 seeking refuge. _____ played a big role in chasing them from the CND: all of them
 were killed by the roundabout of Kimihurura and on their way to Remera. _____ is in
 Kigali and used to be a military attaché.

As for the structure of the RPA in 1994, normally each Unit has 6 Companies.
 What I can tell you regarding the structure of the Units and Companies is the following:

Unit Structure:

- 1-Commanding Officer (CO), they do not change him easily;
- 2-Deputy Commanding Officer (DCO), easily changed;
- 3-Operations Officer (OPTO), easily changed;
- 4-Intelligence Officer (IO), they do not change him easily;
- 5-Administration (ADM), easily changed;
- 6-Political Commissioner (PC), easily changed.

Company "COY" Structure:

- 1-Officer Commander (OC)
- 2-One of the Platoon's Commander (PC) as Deputy
- 3-Administration (ADM)
- 4-Intelligence Staff (ISC)
- 5-Political Commissioner of Company (PCC)

Platoon Structure:

- 1-Platoon Commander (PC)
- 2-P. Sergeant \Deputy (PS)
- 3-Section Commander (SC)
- 4-Intelligence Staff (ISS)

Section Structure:

- 1- Section Commander (SC)
- 2-Soldiers

Date: 29/03/2002
 Signature du témoin:

Signatures des intervieweurs:

R0000151

The structure of the High Command Unit:

The High Command Unit contained 3 companies and was headed by Lt. Col. James Kaberebe, and his Deputy was Lt. Col. Charles Kayonga; the Intelligence Officer was Lt. Silas Udahemuka.
1- First Company

First Company was called "A compagny." It was headed in the beginning by Major Alex Kagame, currently Lt. Col. Brigade Commander in Ruhengeri. His deputy was Capt. Butera Emmanuel.

The company contained 3 platoons, of almost thirty soldiers each. Each platoon contained three sections of around 10 soldiers each. The task of this Company was to protect the RPF chairman Alex Kanyarengwe. On 6 April 1994, this company was divided into two called A and B because the Army Commander was shifting to Musha. The "A" Company was headed by Capt. Butera Emmanuel. The following persons were in the Company: S\Lt.Mugabo; S\Lt.Murayija; S\Lt.Mukura; S\Lt. Juko; and S\Lt Gaspard.

2- Second Company

Second Company was called "B Company" and was headed by Capt. Tom Byabagamba (now Major head of the Republican Guard). This company contained 4 platoons with the same number of soldiers in each platoon. Its task was to protect the Army Commander Kagame and the Mulindi compound from inside. The following persons were in the company: Lt. John Gasana; Lt. Happy Ruvusha; Capt. Kanyoni Zubaru; S\Lt. Ruzindazi Gerald;

3- Third Company

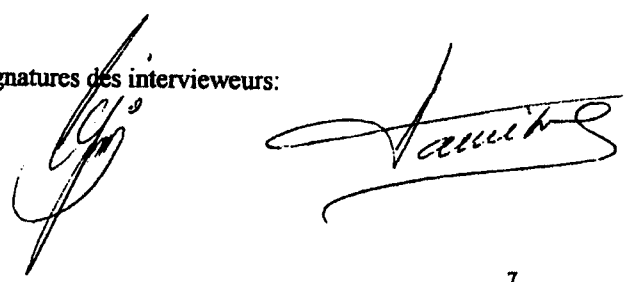
Third Company was called "C company" and was headed by Capt. Ndayisaba, who died in 1993 of (natural death). C Company contained 3 platoons. Its main task was to protect Mulindi compound from outside and to support Companies A and B.

Regarding the other Units, I am aware of the following:
Col. Sam Kaka headed Alpha Unit
Major Alex Kagame headed 101 Unit
Bravo Unit, I do not know the name of the head.
Charlie Unit: I do not know the name of the head.
7th Unit: I do not know the name of the head.

That is all what I have to declare regarding the massacres perpetrated by the RPA soldiers during 1994.

Date: 29/03/2002
Signature du témoin:

Signatures des intervieweurs:



APPENDIX C

TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA

Avant le 6 avril 1994, [REDACTED] en tant que député désigné du FPR se rendait souvent à Kigali, au CND, en vue de la cérémonie de prestation de serment des députés, cérémonie constamment reportée. Le 6 avril 1994, il était à Kigali quand il a été rappelé à Mulindi pour rencontrer le Général Kagame.

Je me trouvais moi-même, ce jour du 6 Avril à Karama. Une semaine plus tard, quand j'ai rencontré [REDACTED] il m'a raconté dans quelles circonstances il avait été rappelé. Il m'a précisé que la rencontre prévu le 6 avril avec le Général Kagame n'a jamais eu lieu.

Pendant la guerre, je me suis beaucoup déplacé à l'intérieur du pays, ... envoyé par [REDACTED] qui me donnait pour mission de sauver certaines personnes. Je lui faisais habituellement des rapports de mes missions, rapports malheureusement laissés à Kigali. De toutes les façons, elles seraient introuvables car le DMI avait fouillé notre maison après le départ en exil et au cours de mes déplacements dans les régions, j'ai pu constater beaucoup de cadavres de civils, ensanglantés, sur les bords de la route, devant les maisons des habitants.

J'ai ainsi visité Rwamagana, Gishari, Ndera, Kabuga, Kimihurura (CND), Remera I-II-III, Kicukiro, Kanombe, Bugesera, Gitarama, Nyanza, Butare, Nyamirambo. A la demande [REDACTED] je suis parti à Gishari pour tenter de sauver ma tante paternelle [REDACTED] et sa famille. Malheureusement, je ne les ai pas trouvés. Je suis retourné à Mulindi pour faire un compte rendu à [REDACTED]. Celui-ci m'avait répondu qu'il avait déjà appris que ma tante et sa famille avaient été tuées. Quelques jours plus tard, en début Mai 1994, [REDACTED] et moi sommes partis à Rwamagana-Gishari-Muhazi pour faire des enquêtes concernant la mort de ma tante et de sa famille. Il nous a été confirmé qu'elles avaient été tuées par les soldats de l'APR environs deux semaines plus tôt.

Date: 03/04/2002
Signature du témoin:

Signature des intervieweurs:

R0000023

Je venais souvent à Kigali. Lors de mes passages à Kigali, je résidais soit chez [REDACTED] à Remera soit chez [REDACTED] qui logeaient en ce moment là au Camp Kanombe, qui avait été pris par l'APR le 22 Mai 1994. [REDACTED] à la demande de [REDACTED] m'avait beaucoup aidé à rechercher les memores de ma famille.

En Juin 1994, alors que les combats faisaient rage autour du Mont Jali je me suis rendu sur la ligne du front, du coté de l'APR. Je voulais savoir ce qui se passait de l'autre coté où il y avait une barrière tenue par des interahamwe soutenus par des militaires FAR. J'ai posé la question à un soldat de l'APR dont je ne me rappelle plus du nom. Celui ci lui a demandé de patienter un peu, le temps de prendre les renseignements auprès du militaire de l'APR infiltré à la barrière. Cette barrière était située à environ 100 a 150 mètres de nous, non loin du Collège Saint André à Nyamirambo-Kigali. Mon interlocuteur a fait des signes, en direction de l'individu à la barrière. Quelques minutes après, la réponse est arrivée à travers un code.

Lorsque le 5 juillet 1994, je suis parti aller voir mes soeurs, ma grand-mère et oncle à Butare, j'ai habité chez [REDACTED] Celui-ci m'a facilité tous les déplacements dans la zone de Butare ou il [REDACTED]

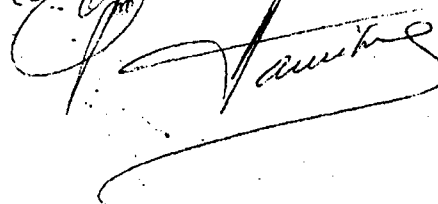
En Décembre 1995, [REDACTED] m'avait confié que le FPR avait créé une politique dite INTSINZI (la raison de la victoire) qui consistait en dix points essentiels :

1. Dès le 6 avril 1994, à la mort des Présidents Habyarimana et Ntaryamira du Burundi, l'Armée Patriotique Rwandaise, branche armée du FPR avait repris les combats et avait mis à l'écart la branche politique du FPR-Bureau Politique.

[REDACTED]

assassiné.
Date: 03/04/2002
Signature du témoin:

Signatures des intervieweurs:

4


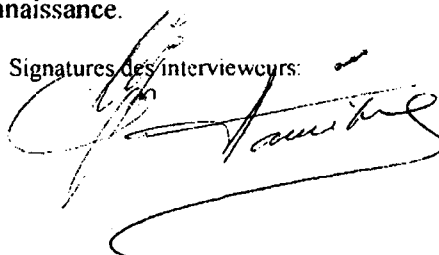
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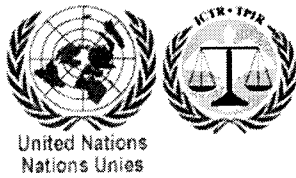
R0000024

Tels sont les faits dont je me souviens. Si d'autres faits ou détails me revenaient à l'esprit, je n'hésiterai pas à les porter à votre connaissance.

Date: 05/04/2002
Signature du témoin:

Signatures des intervieweurs:





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
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	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input type="checkbox"/> Chamber (names)	<input checked="" type="checkbox"/> Defence Chris Black (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. NDINDILIYIMANA		Case Number: ICTR-00-56-T	
Dates:	Transmitted: 1 Dec. 2008		Document's date: 1 Dec. 2008	
No. of Pages:	33	Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda		
Title of Document:	AUGUSTIN NDINDILIYIMANA'S 2ND MOTION FOR DISCLOSURE VIOLATIONS, REMEDIAL AND PUNITIVE MEASURES			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Ex-Parte		<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input checked="" type="checkbox"/> Submission from parties		
<input type="checkbox"/> Confidential		<input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars		
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities		

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CMS SHALL NOT take any action regarding translation. <input type="checkbox"/> Filing Party hereby submits BOTH the original and the translated version for filing, as follows:			
Original	in	<input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
Translation	in	<input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
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<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:		<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	

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<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: