

ICTR-00-96-7  
19-04-2007  
(64213 - 64194)

64213  
mump



UNITED NATIONS  
NATIONS UNIES

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, Tanzania  
Tel: +255 (27) 250-4207-11 250-4367-72 or +1(212) 963-2850  
Fax: +255 (27) 250-4000/4373 or +1 (212) 963-2848/49

TRIAL CHAMBER II

Before: Judge Joseph Asoka Nihal de Silva, presiding  
Judge Taghrid Hikmet  
Judge Seon Ki Park

Registrar: Adama Dieng

Date [of hearing]:  
Date [filed]: 29 January 2007  
Decision rendered on:  
Ruling given on:

THE PROSECUTOR

v.

AUGUSTIN NDINDILYIMANA  
AUGUSTIN BIZIMUNGU  
FRANÇOIS-XAVIER NZUWONEMEYE  
INNOCENT SAGAHUTU

JUDICIAL RECORDS ARCHIVES  
2007 APR 19 11 A 9: 28

**Prosecutor's response to Augustin Ndindiliyimana's motion for acquittal filed pursuant to Rule 98bis of the Rules of Procedure and Evidence**

Office of the Prosecutor:  
Ciré Aly Bâ, Senior Trial Attorney  
Moussa Sefon, Legal Advisor  
Segun Jegede, Trial Attorney  
Abubacarr Tambadou, Assistant Trial Attorney  
Felistas Mushi, Assistant Trial Attorney  
Faria Rekkas, Case Manager  
Anne Bodley, Case Manager  
Harriette Sabblah, Bilingual Secretary

Counsel for the Defence:  
For A. Ndindiliyimana:  
Christopher Black  
Patrick De Wolf  
For A. Bizimungu:  
Gilles St-Laurent  
Ronnie Mac Donald  
For François-Xavier Nzuwonemeye:  
Charles Taku  
Hamuli Rety  
For Innocent Sagahutu:  
Fabien Segatwa  
Seydou Doumbia

64212

1. By a motion dated 15 January 2007 and received at the Office of the Prosecutor on 16 January 2007, Mr. Christopher Black sought the acquittal of his client, Augustin Ndindiliyimana, of all counts charged in the Indictment of 23 August 2004.

2. The Prosecutor is going to review all the charges brought against the Accused in the Indictment of 23 August 2004, as well as in subsequent documents and communications (Pre-Trial Brief).

**Count I: Conspiracy to commit genocide**

3. Paragraph 22 of the Indictment reads:

The Prosecutor of the International Criminal Tribunal for Rwanda charges Augustin Bizimungu, Augustin Ndindiliyimana, François-Xavier Nzuwonemeye and Innocent Sagahutu with Conspiracy to Commit Genocide, an offence punishable under Article 2(3)(b) of the Statute, in that, before 6 April 1994, and, after the tragic death of President Juvénal Habyarimana, between 6 April and July 1994, in Rwanda, Augustin Bizimungu, Augustin Ndindiliyimana, François-Xavier Nzuwonemeye and Innocent Sagahutu decided and executed a common scheme with some or all of the following: Presidents Juvénal Habyarimana and Théodore Sindikubwabo, Prime Minister Jean Kambanda, Defense Minister Augustin Bizimana, General Déogratias Nsabimana, Colonels Théoneste Bagosora, Gratien Kabiligi and Anatole Nsengiyumva, Major Aloys Ntabakuze, Major Protais Mpiranya, the MRND Chairman and officials, Mathieu Ngirumpatse, Joseph Nzirorera and Juvénal Kajelijeli, *Préfet-Colonel* Tharcisse Renzaho, Nyaruhengeri *Bourgmestre* Charles Kabeza, Joseph Kanyabashi from Butare, and numerous other administrators, soldiers and civilians who espoused their cause<sup>1</sup> to destroy, in whole or in part, the Tutsi ethnic group which was one of the component elements of the Rwandan population;

**Pursuant to Article 6(1) of the Statute:** either by their acts or obstinate refusal to mobilize the *Forces armées rwandaises* to fulfill their legal mandate<sup>2</sup> to maintain and safeguard public peace, the Accused, in concert with the other actors mentioned above, planned, incited, ordered, committed, or otherwise, aided and abetted the planning, preparation or execution of the planned extermination of the Tutsi ethnic group [...].

**I – The Facts**

**A. The Accused**

4. Augustin Ndindiliyimana was appointed Chief of Staff of the *Gendarmerie Nationale* of Rwanda in September 1992. He held this post up to mid-June 1994, when he was appointed as his country's Ambassador to Germany (see *Transcript of testimony of Corporal of Gendarmerie, Witness ANC, 29 May 2006, pp. 43 - 46*).

<sup>1</sup> Emphasis added  
<sup>2</sup> Emphasis added.

5. During the night of 6 to 7 April 1994, the President of the Republic and Army Chief of Staff died when the Presidential plane crashed; the Minister of Defence, Augustin Bizimana, was on a visit to Cameroon. Senior officers of the Army and the *Gendarmerie* met and set up a Military Crisis Committee to lead the country until a new executive power was put in place (*see Transcript of testimony of Witness General Dallaire, 20 November 2006, pp. 51 - 53; p.59*).

6. General Augustin Ndindiliyimana, then Rwanda's highest-ranking officer, was designated by his peers to head the Crisis Committee (*see Transcript of testimony of Witness General Dallaire, 20 November 2006, pp. 56 -57*).

**B. The distribution of weapons to the killers by Augustin Ndindiliyimana and the gendarmes under his command: paras. 22, 25 and 53 of the Indictment**

7. Witness AMW stated that on or about 14 April 1994, General Augustin Ndindiliyimana stopped at a roadblock in Mucyakabiri and handed a pistol to the *Interahamwe* leader known as Egide, thanking him for the very good work done in combating the enemy who was the Tutsi (*see Transcripts of testimony of Witness AMW, 23 February 2005, p. 21, lines 16 to 26; p. 22, lines 26 to 33; see also para. 81 of the Pre-Trial Brief and para. 24 of Annex IV thereto*).

8. On or about 17 April 1994, Augustin Ndindiliyimana stopped at another roadblock in the same locality, manned by the *Interahamwe* leader Shitani and his men. He congratulated Shitani on the very good work done to flush out the Tutsis and promised him weapons. After Augustin Ndindiliyimana left, the militiamen began to kill the people caught at that roadblock, whereas they would usually take people to the Communal Office, where they were detained. At that stop, Augustin Ndindiliyimana told Shitani that he could go to take beer in Mucyakabiri and that he would pay for him (*see Transcripts of testimony of Witness AMW, 23 February 2005, p. 23, lines 22 to 26; p. 24, lines 2 to 3; see also para. 82 of the Pre-Trial Brief and para. 24 of Annex IV thereto*).

9. On 22 May 1994, at the height of the genocide, before a crowd of nearly 1000 people in Nyanza, Augustin Ndindiliyimana had weapons distributed to the population and advised the crowd to undergo training so as to combat the *Inkotanyi* and their accomplices inside the country (*see Transcript of testimony of Witness ANA, 22 March 2005, p. 43; see also para. 83 of the Pre-Trial Brief and para. 65 of Annex IV thereto*).

10. Witness FAV stated that between 15 and 18 April 1994 the *gendarmes* guarding Augustin Ndindiliyimana's family in Nyaruhengeri gave petrol to the *Interahamwe* militiamen and requested them to burn down houses belonging to Tutsis. Many Tutsi houses were burnt down, including those of Céléstin Munyashongore and Ndakijimana (*see Transcript of testimony of Witness FAV, 21 September 2004, pp. 25 - 28*).

11. Witness GFR stated that, on or about 22 April 1994, the *gendarmes* guarding Augustin Ndindiliyimana's family in Nyaruhengeri, accompanied by *Gendarmerie* Warrant Officer Hakizayezu, handed him two grenades and requested him to use them to kill the refugees at the Nyaruhengeri *Secteur* Office, which he did. This massacre is confirmed by

Witness **GFT** (see *Transcript of testimony of Witness GFR*, 29 March 2005, pp. 9 and 10; see also *French Transcript of testimony of Witness GFT*, 7 January 2005, pp. 26 and 27).

12. Witness **KF**, Sergeant of *Gendarmerie* who was at Kacyiru Camp in 1994, stated that as from April 1994 the *Interahamwe* militiamen manning the roadblock near the camp received weapons, ammunition, medical care and other facilities from *gendarmes* (see *Transcript of testimony of Witness KF*, 17 January 2006, pp. 27 and 29 to 30).

13. Witness **KF** further stated that, at that roadblock, which was supervised by Quartermaster Sergeant Nteziryayo and Sergeant Simpunga, the *Interahamwe* killed many Tutsis and Hutus who had come to seek refuge in the camp (see *Transcript of testimony of Witness KF*, 17 January 2006, p. 17, lines 29 and 30, pp. 31 and 32).

14. Lastly, the witness stated that General Ndindiliyimana came there to hold a meeting with his entire staff, on or about 22 April 1994 (see *Transcript of testimony of 17 January 2006*, p. 19 lines 4 to 6, lines 28 to 31).

15. Witness **ANI/KEI** stated that, on or about 20 April 1994, 300 machetes were sharpened at the Gikongoro *Gendarmerie* camp that was under the command of Captain Sebhura. Those machetes, along with other weapons, were used to kill several thousand Tutsi refugees in Murambi, on 20 and 21 April 1994. The attack was led by *gendarmes* and *Interahamwe* (see *Transcripts of testimony of Witness ANI/KEI*, 26 January 2005, p. 18 lines 25 to 34; p.19, lines 25 to 30; p. 20, lines 1 to 3; p. 22, lines 24 to 34; also see paras. 89 and 92 of the *Pre-Trial Brief*).

**C. Definition of the enemy and incitement to kill the Tutsi by Ndindiliyimana and his subordinates**

16. On or about 14 and 17 April 1994, during the two visits to Gitarama, Augustin Ndindiliyimana, before two separate groups of militiamen, defined the enemy in the following terms "the enemy was the Tutsis and all those who resembled them" (see *Transcript of testimony of Witness AMW*, 23 February 2005, p. 23, lines 12 to 18, 22 to 26).

17. On or about 22 May 1994, at the height of the genocide, and before a crowd of nearly 1000 people assembled at Nyanza Stadium, Augustin Ndindiliyimana took the floor in his capacity as the *Gendarmerie* Chief of Staff of Rwanda, and advised the crowd to undergo training so as to combat the enemies inside the country. After him, *Gendarmerie* Captain Bilikunzira who was accompanying him also took the floor, in his presence, and defined the enemy as the Tutsi (see *Transcript of testimony of Witness ANA*, 22 March 2005, pp. 41-43 and p. 44).

18. On or about 21 April 1994, Bilikunzira, the *Gendarmerie* commander of Nyanza, convened the *Secteur Conseillers* of the entire locality and informed them that the enemy was the Tutsi. After this speech, many Tutsis were killed in the locality by *gendarmes* and militiamen (see *Transcript of testimony of Witness ANH*, 19 October 2005, pp. 34 to 49).

**D. Collusion of Augustin Ndindiliyimana (and his subordinates) with MRND leaders and the *Interahamwe* and *Impuzamugambi* militiamen: paras. 22, 25, 33, 52 and 53 of the Indictment**

19. Witness FAV stated that at a meeting held by MRND officials in Nyaruhengeri, in 1992 or 1993, Augustin Ndindiliyimana took the floor to state that the other political parties were accomplices of the enemy (*see Transcript of testimony of Witness FAV, 21 September 2004, pp. 18 to 21*).

20. Witness Frank Claeys stated that, between January and March 1994, under the Kigali Weapons Secure Area (KWSA) accords the *Gendarmerie* and UNAMIR had seized a firearm from a drunken *Interahamwe*. General Ndindiliyimana ordered the weapon to be given back, which was done (*see Transcript of testimony of Frank Claeys, 11 October 2005, pp. 63 to p.64*).

21. Witness AOG stated that, between January and April 1994, in connection with the same KWSA accords, MRND, was compelled to move some arms caches in order to evade UNIMAR checks. Mathieu Ngirumpatse, MRND Chairman, told them that General Ndindiliyimana, who was working in collaboration with UNAMIR in the search operations, would inform them before checks were carried out. At least twice, General Ndindiliyimana provided such information to Ngirumpatse. The weapons could thus be moved (*see Transcript of testimony of Witness AOG, 21 February 2006, p. 24, line 4 to p. 25, line 9*).

22. General Dallaire confirmed that the *Gendarmerie* had been infiltrated, and that the search they conducted on 1 April 1994 to discover the arms caches had consequently been foiled (*see Transcript of testimony of Witness Dallaire, 20 November 2006, pp.48-49*).

23. Witness KJ stated that, in the course of April, May and June 1994, General Augustin Ndindiliyimana issued passes to *Interahamwe* leaders, including its President Robert Kajuga, Ntirugiribarube (responsible for Kibuye), Mika Muhimana (responsible for Gishyata), so that they could get foodstuffs, weapons and ammunition from the Kibuye *Gendarmerie* camp. The witness said he saw those passes as well as their holders while he was on guard duty at the entrance to the Kibuye *Gendarmerie* camp (*see Transcript of testimony of Witness KJ, 21 March 2006, pp. 31-35*).

24. Witness KJ further stated that the head of the Tutsi agronomist, Bigirimana, who had been killed by Mika Muhimana and his men, was stuck on a pole at the Kibuye roundabout for three days (*same references as above*).

25. Finally, General Dallaire stated that, between April and June, he met General Augustin Ndindiliyimana and the other military chiefs and requested them to dismantle the roadblocks manned by the militiamen and civilians which, in his opinion, were of no tactical or strategic interest to the war against the RPF; rather they were being used to massacre innocent people. The response from Augustin Ndindiliyimana, the Minister of Defence and other high-ranking officers was that the roadblocks helped protect the population and that they had been erected as measures of "Civil Defence" (*see Transcript of testimony of Witness Roméo Dallaire, 21 November 2006, pp. 27 and pp.32- 35*).

**E. Deliberate refusal to arrest, seek out and prosecute perpetrators of blatant crimes and offences: paragraphs 22, 25, 37 and 53 of the Indictment.**

26. The legislative decree of 23 January 1974 on the establishment of the Gendarmerie provides as follows:<sup>3</sup>

**Article 3** The *Gendarmerie Nationale* is made up of an armed force set up to maintain order and to enforce laws.

**Article 4** The duties of the *gendarmerie nationale* are both preventive and punitive. They are divided into ordinary and extraordinary duties. The ordinary duties are those performed by the *gendarmerie nationale* under the law without prior authorization from the competent authorities. The extraordinary duties are those that the *gendarmerie nationale* can only perform after authorization from the competent authorities.

**Article 5** The jurisdiction of the *gendarmerie nationale* covers the entire national territory.

**Article 6** The *gendarmerie nationale* shall assist any person in distress who requires its assistance.

**Article 10** The *gendarmerie nationale* shall be responsible for the prevention of offences, for detecting them, taking into custody and arresting the perpetrators thereof in a way and form provided for in the law.

**Article 11** The *gendarmerie nationale* shall detain persons caught in flagrante delicto or pursued by public clamour.

**Article 19** The *gendarmerie nationale* shall break up all armed crowds. Similarly, it shall also break up unarmed crowds that attempt to free detainees or prisoners who may harm persons or carry out acts of invasion, looting or destruction of property.

**Article 28** In the performance of their duties, members of the *gendarmerie nationale* are under the exclusive authority of their supervisors.

**Article 42** Officers or non commissioned officers of the *gendarmerie nationale* shall act as *officiers de police judiciaire*...

27. It follows from these provisions that, in case of blatant crimes or offences, the members of the *Gendarmerie* act without consultation and do not require an instruction from any authority (*see Article 11 of the Legislative Decree*).

<sup>3</sup> See *Prosecutor v. Ndingiyimana et al.*, Case No. ICTR-00-56-T, Decision on the Prosecutor's Motion for Judicial Notice, 6 December 2005.

28. It is apparent from the testimony of ANC, one of Augustin Ndingiliyimana's bodyguards, that in the last ten days of April 1994 he and a dozen other armed *gendarmes* accompanied the General on a tour from Kigali to Kibuye, during which they stopped over in Murambi, Nyanza and Nyaruhengeri before returning to Kigali.

29. Witness ANC testified:

a) That on or around April 1994, General Ndingiliyimana and his escort were on their way to the Government headquarters in Murambi when the General stopped at the Murambi road junction where militiamen were attacking civilians. The General told them not to kill the people on the road but to take them to the surrounding hills and kill them there. The General repeated the same words before *gendarmes* who were manning a check-point a hundred metres further on, telling them that they had to be careful to kill their victims elsewhere rather than on the road (*Transcript of 29 May 2006, pp. 49 to 52*).

b) That while he was on another tour around 20 April 1994, General Ndingiliyimana stopped at a roadblock in Ruhango on his way to Nyanza, where some militiamen told him that they were going to interrogate the accomplices whom they had just arrested, and then kill them. In reply, the General told them to "carry on working" (*see Transcript 29 May 2006, pp. 56 to 57*).

c) When they came to Nyanza, to a neighbourhood known as Gakinyeri, General Ndingiliyimana saw militiamen setting houses on fire, but did not react at all. Instead, he asked Warrant-Officer of *Gendarmerie* Hategekimana, who was leading a *gendarmerie* patrol that was passing by, to update him on the situation. Hategekimana replied that they were "working" and that there was no problem. According to the witness, everybody at the time knew that the word "Gukora" used by the warrant-officer meant "[to kill the enemy]", meaning the Tutsi (*See Transcript of testimony of ANC, 29 May 2006, pp. 57 to 59*).

d) At the nearby Nyanza camp, General Ndingiliyimana called for the camp Commander, Bilikunzira, and asked him to chase out the refugees (*See Transcript of 29 May 2006, pages 58 to 59*).

e) Just before his arrival in Nyaruhengeri, where they spent the night, General Ndingiliyimana addressed some militiamen and two *gendarmes* stationed near the roadblock next to Kansi parish which was overflowing with refugees, telling them that he did not want to see refugees there any more.

f) On the way back, militiamen were chasing out civilians in Kaduha. A live baby was lying on the back of its mother, who was apparently dead; another woman who was wounded beckoned to them, begging for assistance. The convoy slowed down and then continued on its way, as if nothing had happened (*See Transcript of 30 May 2006, p. 2*).

g) In Kibuye, General Ndingiliyimana conversed with some *Interahamwe*, who told him that they were going to Biseseero to help their colleagues to quell the Tutsi resistance (*See Transcript of 31 May 2006, pp. 15 and 16*).

30. Another witness, ANB, testified that, between 23 and 25 April 1994, General Augustin Ndindiliyimana went to Nyaruhengeri at the height of the killings and accused *Bourgmestre* Charles Kabeza of hiding Tutsis: "« Si tu continues à cacher des Tutsi, ta maison sera incendiée » "[If you go on hiding Tutsis, your house will be burnt]". The witness, who is a Tutsi, is a younger sister of the widow of the late *bourgmestre* of Nyaruhengeri, Kabeza Charles (*See Transcript of 7 February 2005, pages 19 and 20, p. 14*).

31. As regards speeches, Witnesses Roméo Dallaire and AOG, among others, testified that from April to June 1994, RTLM called on the population to kill the Tutsis and their accomplices. It told them where to find them and how to go about killing them (*See Transcript of Witness AOG, 21 February 2006, p. 46*).

32. General Dallaire testified that he discussed the matter with General Ndindiliyimana and other military leaders. Their unanimous reaction was that RTLM was a private radio which was exercising its legitimate right and freedom to inform (*See Transcript of Dallaire, 21 November 2006, p. 22 to 26*).

33. Thus, Augustin Ndindiliyimana, the highest ranking law enforcement officer in Rwanda, refused to react against this act of public incitement to commit genocide, which is prohibited and punished by international law<sup>4</sup> and also by Articles 310 to 312 and 393 of the Rwandan Penal Code.<sup>5</sup>

**F. The Military Crisis Committee led by Augustin Ndindiliyimana set up a government composed of Hutu extremists, after the the Rwandan Armed Forces assassinated the incumbent Prime Minister Agathe Uwilingiyimana and other leaders of the Republic suspected of supporting the implementation of the Arusha Peace Accords: paragraphs 38, 48, 49 and 50 of the Indictment.**

34. Regarding this matter, the Prosecutor refers the Chamber to General Dallaire's testimony (*See Transcript of 20 November 2006, pages 51 and 53, pages 70 ; page 66 ; see also the testimonies of Witness ANL/CJ, Florida Mukeshimana, and Annonciate Kavaruganda, 28 June 2006, 6 September 2006 and 14 November 2006*).

35. Taking coordinated action, the Military Crisis Committee effectively assumed leadership of the country between 6 and 9 April 1994; the committee also set up a "Hutu-Power" government (*See Transcript of Dallaire's testimony, 20 November 2006, pp. 61 to 64 (French version)*).

36. Regarding the conspirators in the Rwandan Army, the Prosecutor submits the following information, which is by no means exhaustive:

a) At a meeting held at the house of Nzirorera's mother in Ruhengeri in the night of 6 to 7 April 1994, **Augustin Bizimungu** announced that the President of the Republic had just been killed and asked that no Tutsi be spared. He also asked the participants to re-erect roadblocks and promised to distribute more weapons – which he did (*see Transcript of the*

<sup>4</sup> The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly on 9 December 1948. It is considered to be part of international customary law.

<sup>5</sup> See *Prosecutor v. Ndindiliyimana et al.*, Decision of 6 December 2005 cited above.

hearing of Witness **GAP**, 15 February 2005, pages 40 to 41 and following pages; see also Prosecutor's Response to "Requête en acquittement de la défense d'Augustin Bizimungu").

b) On the morning of 7 April 1994, **Aloys Ntabakuze**, commander of the para-commando squad, gathered his troops at Kanombe Camp and told them that the Tutsis were the enemy; he called on them to eliminate all the Tutsis (see *Transcript of the hearing of Witnesses LN and DP*, 12 September 2005 and 22 September 2005 respectively).

c) Witnesses **DO** and **OX** testified that, on the morning of 7 April, **Anatole Nsengiyumva**, commander of military operations in Gisenyi, distributed weapons to militiamen, and that the massacre of the Tutsis started immediately thereafter.

d) Witnesses **Roméo Dallaire**, **ANL/CJ**, **Florida Mukeshimana**, **Annonciata Kavaruganda**, **BB** and **GFQ**, among others, spoke about the many massacres carried out by the Presidential Guard under the command of **Protas Mpiranya**.

e) For **François-Xavier Nzuwonemeye** and **Innocent Sagahutu**, see the Prosecutor's Brief in Response, and paragraphs 38, 41, 48, 50 and 103 to 107 of the Indictment.

f) Regarding the issue as a whole, see also Prosecutor's Exhibits **P67**, **P112**, **P113** and **P117** tendered through Witnesses Frank Claeys and Alison Des Forges.

#### **G. Some additional considerations relating to the Defence submissions**

37. The Prosecutor wishes to point out that, according to Witness **Roméo Dallaire**, in June 1994, the RAF's defeat was unavoidable and virtually accepted (see *Transcript of Dallaire's testimony*, 21 November 2006, page 50).

38. The Prosecutor submits that the appointment of **Augustin Ndindiliyimana** as ambassador in June 1994 must therefore be regarded as a his good fortune, rather than a punishment meted out by extremists, as the Defence tries to prove.

39. During the cross-examination conducted by Mr. Christopher Black, General **Dallaire** provided some information concerning the accused's personality, that could be regarded as favourable to the accused, even though the General maintained that he continued to find him somewhat enigmatic.

40. The Prosecutor would observe that the innocence or guilt of an accused cannot be established on the basis of personality traits, reputation or usual good or bad behaviour. The notion of intrinsic capacity or incapacity to commit an offence is unknown in criminal law.

41. The Prosecutor would also draw attention to General **Dallaire's** testimony to the effect that, from 12 April 1994, he did not often see **Augustin Ndindiliyimana**, who claimed that he was in the south to save the Tutsis there.

42. In any event, General **Dallaire** was not in the company of **Augustin Ndindiliyimana** at the time that he committed the crimes charged in the Indictment.

43. Moreover, General Dallaire testified that he did not have legal counsel in carrying out his mission, nor any knowledge of the laws and regulations governing the workings of the Rwandan army and *Gendarmerie* (see *Transcript of Dallaire's testimony, 21 November 2006, p....*). He was satisfied with whatever information he got from various people.

44. Lastly, during the cross-examination of Alison Des Forges, Counsel Black tried to prove that a large part of the *Gendarmerie* was not under the control of Augustin Ndindiliyimana. The relevant passages are cited here below:

**Mr. Black:** "Doctor, I suggest to you that, (a) he wasn't part of any such alleged plan, which we, of course, we deny. Anyway, he wasn't part of it if it ever did exist." [...]

**Reply:** "Well, there are several comments that need to be made here. First of all, you have read the decision of the commission saying that there is no serious reason to believe that the claimant, that is, General Ndindiliyimana, would have committed, voluntarily encouraged or consciously tolerated crimes against humanity and so on and so forth. It is important to point out that this decision was made upon the basis of faulty information provided by the General, [...]"

This information is wrong. [...]

The—, earlier, in the same statement on the prior page, at the top of page two, again, apparently on the basis of the information from General Ndindiliyimana, the size of the *Gendarmerie* is given as 6,000 men. I believe the number more ordinarily used is 7,000, but, in any case, 6,000 to 7,000. During the genocide, there were two transfers of gendarmes to the battle front, one from Kibuye, one from Butare. Each approximately 100 to 150 men. That meant, let's say, 300—let's say, we take a minimum figure of 6,000, and, I believe, it was more likely 6,000, that still leaves well over 5,000 troops under the command of General Ndindiliyimana." [...]

**Mr. Black :** "But you say it's 5,000 left, but you know most of those commandoes passed through the orders of Major Delame, and the rest came under the disposition of commanders, of *bourgmestres* and *préfets*. So, General Ndindiliyimana will testify that he was, in fact, left only—well that is what his testimony will be, and that is what the evidence will be, to confirm this," (See *cross-examination by Mr. Black of 13 October 2006, pages 21 and 22*).

45. The Prosecutor eagerly looks forward to General Ndindiliyimana's testimony.

46. Relying on the legal provisions applicable in Rwanda in 1994, the Prosecutor submits that the Chief of Staff of the *Gendarmerie* still maintained his prerogatives regarding the power to take disciplinary measures, even in cases where his troops were involved in an "extraordinary" mission (see, *inter alia*, *Article 28 of the Legislative Decree of 23 January 1974, cited earlier*).

## II – The Law

47. Augustin Ndindiliyimana's Counsel contends that his client could not have known that *gendarmes* under his command were engaging in criminal activities.

48. The Prosecutor finds such an assertion by the Defence curious to say the least, when witnesses have testified that General Augustin Ndindiliyimana congratulated some of the killers, urging them to continue hunting down Tutsi; that he distributed arms for this purpose; that he defined the enemy as the Tutsi in the presence of his subordinates at Nyanza; that he ordered his subordinates to drive the refugees from their customary sanctuaries; that he did not react to the massacres which he witnessed, although he had the means to do so, etc. (...).

49. The Prosecutor recalls the relevant provisions of the law, which are set out in paragraphs 26 and 27 above.

50. And to conclude on this point, the Prosecutor respectfully submits to the Chamber certain extracts from case law (ICTR and ICTY) which deal with criminal conspiracy and responsibility of a superior, as well as with the notion of "commission by omission".

### Conspiracy to commit genocide

51. Trial Chamber I of the ICTR, in its judgment in the "Media" case, defined conspiracy to commit genocide in paragraphs 1045 to 1048 as follows<sup>6</sup>:

**Paragraph 1045** The essence of the charge of conspiracy is the agreement among those charged. It is a well-established principle of the Anglo-American jurisprudence on conspiracy that the existence of a formal or express agreement is not needed to prove the charge of conspiracy.<sup>7</sup> An agreement can be inferred from concerted or coordinated action on the part of the group of individuals. A tacit understanding of the criminal purpose is sufficient.<sup>8</sup>

**Paragraph 1046** In *Niyitegeka*, the Tribunal inferred the existence of a conspiracy to commit genocide based on circumstantial evidence, including various actions of the Accused, such as his participation and attendance at meetings to discuss the killing of Tutsi, his planning of attacks against Tutsi, his promise and distributions of weapons to attackers to be used in attacks against Tutsi, and his leadership role in conducting and speaking at the meetings.<sup>9</sup>

<sup>6</sup> *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, Case No. ICTR-99-52-T, TCI, Judgement and Sentence, 3 December 2003 (hereinafter *Media Judgement*).

<sup>7</sup> *Media Judgement supra* note 6 citing *State v. Bond*, 49 Conn. App. 183, 195-96 (1998); *State v. Channer*, 28 Conn. App. 161, 168-69 (1992)).

<sup>8</sup> *Media Judgement supra* note 6 citing *State v. Cavanaugh*, 23 Conn. App. 671 (1991); *State v. Grullon*, 212 Conn., 195, 1999 (1989).

<sup>9</sup> *Media Judgement supra* note 6 citing *Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-T, (TC), Judgement and Sentence, paras. 427-428.

**Paragraph 1047** The Chamber considers that conspiracy to commit genocide can be inferred from coordinated actions by individuals who have a common purpose and are acting within a unified framework. A coalition, even an informal coalition, can constitute such a framework so long as those acting within the coalition are aware of its existence, their participation in it, and its role in furtherance of their common purpose.

**Paragraph 1048** The Chamber further considers that conspiracy to commit genocide can be comprised of individuals acting in an institutional capacity as well as or even independently of their personal links with each other. Instituted coordination can form the basis of a conspiracy among those individuals who control the institutions that are engaged in coordinated action. The Chamber considers the act of coordination to be the central element that distinguishes conspiracy from “conscious parallelism,” the concept put forward by the Defense to explain the evidence in this case.

### Responsibility of a superior and the notion of “commission by omission”

52. In its Decision of 26 May 2006 in *Prosecutor v. Boškoski and Tarčulovski*, Trial Chamber II of the ICTY held as follows<sup>10</sup>:

**Paragraph 29** The Trial Chamber further considers that under the Statute a crime can be perpetrated by omission and that individual responsibility for that omission can be attributed pursuant to both Articles 7(1) and 7(3) of the Statute. [...]

**Paragraph 30** In *Krnojelac* Judgment, the Trial Chamber expressly found that a superior could be held responsible for the omission of his subordinates. [...]

**Paragraph 32** The Appeals Chamber in *Tadić* held that, “[t]his provision [Article 7(1)] covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law.”<sup>11</sup> The Trial Chamber in *Galić* found that, under all forms of participation included in 7(1) of the Statute, “a crime may be performed through positive acts or through culpable omissions.”<sup>12</sup> In the *Kvočka et al.* Appeal Judgment, the Appeals Chamber held that, “the accused’s participation in carrying out the joint criminal enterprise is likely to engage his criminal

<sup>10</sup> *Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-PT, 26 May 2006, TCII, Decision on Prosecution’s Motion to Amend the Indictment and Submission of Proposed Second Amended Indictment and Submission of Amended Pre-trial Brief (hereinafter Boškoski and Tarčulovski Decision).

<sup>11</sup> Boškoski and Tarčulovski Decision *supra* note 10 citing *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgment, 15 July 1999, para. 188. Emphasis added in the Decision; underlining added here.

<sup>12</sup> Boškoski and Tarčulovski Decision *supra* note 10 citing *Prosecutor v. Galić*, Case No. IT-98-29-T, Judgment, 5 December 2003, para. 168. Emphasis added in the Decision.

responsibility as a co-perpetrator, without it being necessary in general to prove the substantial or significant nature of his contribution: it is sufficient for the accused to have committed an act or an omission which contributes to the common criminal purpose.<sup>13</sup>

**Paragraph 33**

More specifically, in relation to the “commission” mode of liability, the Trial Chamber in Natelilić and Martinović held that it “means physically and personally perpetrating a crime or engendering a culpable omission in violation of a rule of criminal law.”<sup>14</sup> In Krstić, the Trial Chamber noted that the “essential findings” of the Tribunal and the ICTR in relation to the “commission” mode of liability were that it “covers physically perpetrating a crime or engendering a culpable omission in violation of criminal law.”<sup>15</sup> The Trial Chamber in Kvočka et al. similarly found that aiding and abetting “may consist of an act or omission of a crime perpetrated by another... To aid or abet by omission, the failure to act must have had a significant effect on the commission of a crime.”<sup>16</sup> In addition, the Trial Chamber notes that, as submitted by the Prosecution, the case law provides that “assistance” may be provided by either act or omission.<sup>17</sup>

**Paragraph 34**

The jurisprudence from the ICTR also demonstrates that the commission of a crime can occur through omission. In the Ntagerura et al. Judgment it was held that an accused could be found guilty for failing to act where certain conditions were established, although the accused, Bagambiki, was acquitted on the facts.<sup>18</sup> Moreover, in the Rutaganira Sentencing Judgment, the trial chamber found the Accused guilty of a crime against humanity (extermination)<sup>19</sup> for having aided and abetted the commission of the crime by omission.<sup>19</sup>

<sup>13</sup> Boškoski and Tarčulovski Decision *supra* note 10 citing *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005, para. 187. Emphasis added in the Decision; underlining added here.

<sup>14</sup> Boškoski and Tarčulovski Decision *supra* note 10 citing *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-T, Judgement, 31 March 2003, para. 62. See also *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001, para. 376; *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-T, Judgement, 2 November 2001, para. 251; and *Prosecutor v. Stakić*, Case No. IT-97-24-T, Judgement, 31 July 2003, para. 439.

<sup>15</sup> Boškoski and Tarčulovski Decision *supra* note 10 citing *Prosecutor v. Krstić*, Case No. IT-98-33, Judgement, 2 August 2001, para. 601. See also, *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, Judgement, 17 January 2005, para. 694.

<sup>16</sup> Boškoski and Tarčulovski Decision *supra* note 10 citing *Kvočka et al.*, Appeal Chamber Judgement, para. 256. See also *Prosecutor v. Simić et al.*, Case No. IT-95-9-T, Judgement, 17 October 2003, paras. 162-163.

<sup>17</sup> Boškoski and Tarčulovski Decision *supra* note 10 citing Reply, para. 16. See, for example, *Krnjelac* Trial Judgement, paras. 88 and 90 and *Simić et al.* Judgement, paras. 162-163.

<sup>18</sup> Boškoski and Tarčulovski Decision *supra* note 10 citing *Prosecutor v. Ntagerura et al.*, Case No. ICTR-99-46-T, Judgement and Sentence, para. 659.

<sup>19</sup> Boškoski and Tarčulovski Decision *supra* note 10 citing *Prosecutor v. Rutaganira*, Case No. ICTR-95-1C-T, Sentencing Judgement, 14 March 2005, para. 68.

## Count 2: Genocide

### Paragraphs 61 and 73 of the Indictment

53. On 20, 21 and 22 April 1994, many massacres were committed in Nyaruhengeri *commune* while Augustin Ndindiliyimana was present there. Those massacres were orchestrated and supervised by the *gendarmes* assigned to guard Augustin Ndindiliyimana's family; they provided weapons and fuel to the killers, who caused the deaths of several thousand people in Nyaruhengeri and its vicinity, particularly in Kansi Church, where more than 10,000 Tutsis had sought refuge:

- (a) Witness GFM, one of the rare survivors of the Kansi massacres, who became a judge in Nyaruhengeri *canton* after the events, testified that on 21 April 1994 Hutu militiamen and civilians, supported by armed police and *gendarmes*, attacked some 10,000 Tutsi refugees inside the Kansi parish complex. They were very few survivors of these massacres. The witness was among the refugees inside the complex (*see Transcript, 19 September 2005, pp. 56-58*).
- (b) Witness ANC, who was one of Augustin Ndindiliyimana's bodyguards, testified that at a date on or around 20 April 1994 he went with Augustin Ndindiliyimana to Nyaruhengeri. At a roadblock by the Kansi parish, which was overflowing with refugees, Augustin Ndindiliyimana spoke to some militiamen and to two *gendarmes* and told them he didn't mark to see refugees there. The next day, when they came by again on their way to Kibuye, they saw that the sides of the road were littered with corpses. Augustin Ndindiliyimana did not seem particularly concerned at what had happened to the se people (*Transcript of testimony of ANC, 29 and 30 May 2006, p. 60; pp. 1-2*).
- (c) Witness GFS testified that *gendarmes* from Augustin Ndindiliyimana's residence and militia members had carried out the killings at Kansi Parish (*Transcript, 27 September 2004*).
- (d) Witness FAV testified that in 1996 he was present at the exhumation of the bodies of the Kansi victims, which were counted. There are almost 10,000 bodies.

### Paragraphs 61, 74 and 75 of the Indictment

54. On or about 21 April 1994, *gendarmes* on duty at Augustin Ndindiliyimana's residence opposite Nyaruhengeri gave two grenades to an *Interahamwe* militiaman known as Pierre Kajugu (GFR) and told him to use them to exterminate the Tutsi. On or about 22 April 1994, Pierre Kajugu threw a grenade into the Nyaruhengeri sector office where many Tutsis had sought refuge, injuring Adolphe Karakizi and many other refugees. The refugees were then chased through the fields and killed.

- (a) *See Transcript of testimony of GFR, 29 March 2005, pp. 8-9;*

- (b) See *French Transcript of testimony of GFT, 7 January 2005, pp. 26 and 27.*

**Paragraphs 61 and 76 of the Indictment**

55. On or about 13 April 1994, *gendarmes* from the Nyamirambo unit, accompanied by militiamen, attacked Saint-André College in Kigali, where hundreds of people, mainly Tutsi, had sought refuge between 7 and 8 April 1994. After checking the identity of those present, the attackers, who had already carried out indiscriminate killings inside the college, selected all the Tutsi men and killed them outside. Those *gendarmes* were under the command of Augustin Ndingiliyimana.

- (a) See *Transcript of testimony of WG, 6 June 2005, pp. 36-39.*  
(b) See *Transcript of testimony of GCB, 14 September 2005, p. 62-64.*

**Paragraphs 61 and 77 of the Indictment**

56. On or about 22 April 1994, in Kigali, a group of about 60 Tutsi was selected at the CELA, where they had sought refuge, and led to the Muhima *gendarmerie* unit, purportedly for questioning. In fact, the *gendarmes*, instead of questioning them, handed them over to *Interahamwe* militiamen, who killed them on the road leading to the CND. Not more than five people survived that massacre. Those *gendarmes* were under the command of Augustin Ndingiliyimana. (See *Transcript of testimony of ATW, 12 June 2006.*)

**Paragraphs 61 of the Indictment, 92 of the Pre-Trial Brief and 13 of Annex IV to the Pre-Trial Brief**

57. Augustin Ndingiliyimana is criminally responsible under this count, pursuant to Article 6(3) of the Statute, for the massacres committed on or about 22 April 1994 in Nyabubare *commune*, where Chief Warrant Officer Biguma and *gendarmes*, acting on the orders of Captain Bilikunzira of the Nyanza *Gendarmerie* company, killed an estimated 300 Tutsi refugees using mortar and other light weapons. (See *Transcript of testimony of ANH, 19 October 2005, pp. 48, 49 ff.*)

**Paragraphs 61 of the Indictment, 92 of the Pre-Trial Brief and 59 of Annex IV to the Pre-Trial Brief**

58. Augustin Ndingiliyimana is criminally responsible under this count, pursuant to Article 6(3) of the Statute, for the massacres committed at the beginning of May 1994 on Karama Hill, where a *Gendarmerie* detachment led by Sergeant Twagirayezu and acting on the orders of Captain Bilikunzira, killed a large number of Tutsi refugees. (See *Transcript of testimony of ANF, 13 September 2006, pp. 32-34.*)

**Paragraphs 61 of the Indictment, 92 of the Pre-Trial Brief and 110 and 64 of Annex IV to the Pre-Trial Brief**

59. Augustin Ndingiliyimana is criminally responsible under this count, pursuant to Article 6(3) of the Statute, for the massacres committed on 20 and 21 April 1994 at Murambi,

where *gendarmes* and *Interahamwe*, armed by and acting on the orders of Captain Sebhura of the Gikongoro brigade, killed several thousand Tutsi refugees: men, women, old people and children.

(a) See *Transcript of testimony of ANI/KEI*, 26 January 2005, pp. 16 to 22;

(b) See *Transcript of testimony of ANG*, 30 May 2005, pp. 21 and 22. This witness is a survivor of the Murambi massacre. He estimates the number of Murambi victims at 50,000 dead. Official statistics in Rwanda cite figures of 40 to 50,000 dead.

**Paragraphs 61 of the Indictment, 92 of the Pre-Trial Brief and 18 of Annex IV to the Pre-Trial Brief**

60. Augustin Ndindiliyimana is criminally responsible under this count, pursuant to Article 6(3) of the Statute, for the massacres committed on or about 29 April 1994 at Cyanika Parish, where *gendarmes* from Gikongoro brigade and *Interahamwe*, armed by Captain Sebhura, killed several hundred Tutsi. The attack began at about 10 a.m. and ended around 5 p.m. (See *Transcript of testimony of ANJ/KTB*, 2 June 2005, pp. 11 to 16).

**Note**

61. The Prosecutor withdraws paragraphs 71 and 72 of the Indictment for lack of evidence.

**Count 3: Complicity in Genocide (alternative count)**

62. The Prosecutor withdraws this count, which was supported solely, in respect of Augustin Ndindiliyimana, by paragraphs 71 and 72 of the Indictment.

**Count 4: Crimes against Humanity (Murder)**

**Paragraphs 78 and [95] of the Indictment**

63. On 5 May 1994, in Nyaruhengeri, a group of *Interahamwe* including Pierre Kajugu went to the residence of Ignace Habimana and killed the latter as well as Célestin Munyashongore, following orders the murderers claimed to have received from Augustin Ndindiliyimana.

64. The widows of the victims, witnesses **GFS** and **GFT**, both testified that they had heard from a reliable source, (*gendarme* Hakizayezu for GFT and the wife of *Bourgmestre* Charles Kabeza for GFS) that the order to kill their husbands had been given by Augustin Ndindiliyimana (see the *Transcripts of their testimonies*, 27 September 2004 and 7 January 2005).

65. Witness **GFR**, who led the killers, testified that the uncle of Augustin Ndindiliyimana, Antoine Bisomimwa, and *gendarme* Hakizayezu had passed on the order from Ndindiliyimana to execute these two individuals (see *Transcripts of 29 March 2005*, pp. 12-14; 30 March 2005, pp. 18, 20.).

66. Witness FAV testified that he heard Hakizayezu and Gilbert (the former being a close associate of Augustin Ndindiliyimana and coordinator of the massacres in Nyaruhengeri) say that Augustin Ndindiliyimana had told them to look for Célestin Munyashongore and Ignace Habimana (see *Transcript of 21 September 2004, pp. 33 and 34*).

67. Finally, witness ANB, who is of Tutsi origin and the sister-in-law of *Bourgmestre* Charles Kabeza, testified that, between 23 and 25 April 1994, when she was at Charles Kabeza's house, she saw General Ndindiliyimana arrive; at that time she was hiding in a bedroom next to the living room. She had left her home in Butare to seek refuge with her brother-in-law, who was of Hutu origin. In the living room, General Ndindiliyimana accused Charles Kabeza of hiding Tutsis and told him that if he persisted in his attitude his house might be burnt down. She was afraid and went and hid in a cupboard. She couldn't hear anything more of what was said (see *Transcript of 7 February 2005, p. 22-23; 8 February 2005, pp. 13-14*).

68. These testimonies vary, but are mutually consistent.

**Paragraphs 78 of the Indictment, 94 of the Pre-Trial Brief, and 24 of Annex IV to the Pre-Trial Brief**

69. Augustin Ndindiliyimana is criminally responsible under this count, pursuant to Article 6 (1) of the Statute, for the murder, on or about 17 April 1994, of the Tutsi Rutabashisha, by militiamen led by Shitani and at the instigation of Augustin Ndindiliyimana (see *Transcript of testimony of AMW, 23 February 2005, pp. 24 ff*).

**Paragraphs 78 and 96 of the Indictment**

70. Witness KF, Sergeant of *Gendarmerie* at Camp Kacyiru in 1994, testified that in April 1994 militiamen set up a roadblock close to Camp Kacyiru, where, supervised by two NCOs of *Gendarmerie*, they killed several Tutsis as well as Hutus, who had come to seek refuge at the camp. These militiamen were armed, fed and cared for by the camp authorities (see *Transcript of testimony of KF, 17 January 2006, pp. 17, 27, 29, 30, 31 and 32*).

**Paragraphs 78 and 99 of the Indictment: murder of the Tutsi businessman Gashoki by gendarmes**

71. See:

- (a) *French Transcript of testimony of GFT, 7 January 2005, pp. 29, 33.*
- (b) *Transcript of testimony of GFR, 29 March 2005, pp. 10-11*

**Paragraphs 78, 100 and 101 of the Indictment: murder by gendarmes of Aloys Niyoyita and Kananeri Phocus**

72. See *Transcripts of testimony of GLJ, 15 June 2005, pp. 40 to 44.*

**Paragraphs 78 to 102 of the Indictment: murders committed by gendarmes at Nyamirambo**

73. See:

- (a) *Transcript of testimony of DA, 12 January 2005, pp. 14 and 15;*
- (b) *Transcript of testimony of ZA, 24 May 2005, pp. 4 and 5;*
- (c) *Transcript of testimony of GLJ, 15 June 2005, pp. 9-10.*

**Paragraphs 78 of the Indictment, 95 of the Pre-Trial Brief and 13 of Annex IV to the Pre-Trial Brief**

74. Augustin Ndindiliyimana is criminally responsible under this count, pursuant to Article 6 (3) of the Statute, for the murder at Nyabisundu, on or about 21 April 1994, of the Tutsi *Bourgmestre* Jean-Marie Gisagara and of communal policeman Eliabu who was protecting him, by militiamen acting on the orders of Captain Bilikunzira of the Nyanza *Gendarmerie* (see *Transcript of testimony of ANH, 19 October 2005, p. 47*).

**Paragraphs 78 of the Indictment, 95 of the Pre-Trial Brief and 13 of Annex IV to the Pre-Trial Brief**

75. Augustin Ndindiliyimana is criminally responsible under this count, pursuant to Article 6 (3) of the Statute, for the murder, on or about 22 April 1994, of seven (7) Tutsi arrested in Ntiazoo *commune*, by gendarmes at the instigation of Chief Warrant-Officer Biguma and Captain Bilikunzira (see *Transcript of testimony of ANH, 19 October 2005, pp. 45 and 49*).

**Note**

76. In respect of Count 4, the Prosecutor withdraws paragraphs 92, 94, 95, 97 and 98 of the Indictment.

**Count 5: Crimes against Humanity (Extermination)**

**Paragraphs 109 and 73 of the Indictment**

77. The Prosecutor relies on the large-scale killings described in paragraph 53 above.

**Paragraphs 109 and 102 of the Indictment**

78. The Prosecutor relies on the large-scale killings described in paragraph 73 above.

**Paragraphs 109 of the Indictment and 97 and of the Pre-Trial Brief**

79. The Prosecutor relies on the large-scale killings described in paragraphs 57, 58, 59 and 60 above.

80. These large-scale killings we carried out over a period of several weeks, in broad daylight, and resulted in tens of thousands of deaths in the southern part of Rwanda.

81. General Ndindiliyimana claims that, for most of this period, he was present in the area in order to rescue Tutsi.

**Count 7: Violation of Article 3 common to the Geneva Conventions and Additional Protocol II (Murder)**

82. The Prosecutor refers to what has been stated in paragraph 55 above.

**Paragraphs 118 and 77 of the Indictment**

83. The Prosecutor refers to what has been stated in paragraph 56 above.

**Paragraphs 118 and 102 of the Indictment**

84. The Prosecutor refers to what has been stated in paragraph 73 above.

**For all of these reasons,**

- A. The Prosecutor requests the Trial Chamber to take note of the fact that he withdraws paragraphs 71, 72, 92, 94, 95, 97 and 98 of the Indictment, on grounds of lack of evidence;
- B. The Prosecutor requests the Trial Chamber to take note of the facts that, in respect of Augustin Ndindiliyimana, he withdraws Count 3 (alternative count of complicity in genocide, supported by paragraphs 71 and 72 of the Indictment);
- C. The Prosecutor respectfully requests the Trial Chamber to dismiss the remainder of the Defence Motion as unmeritorious;

Accordingly to adjudge that Counts 1, 2, 4, 5 and 7 of the Indictment shall be maintained against the Accused Augustin Ndindiliyimana.

**Note:** All of the references in this Response relate to testimony given before the Honourable Judges of this Chamber on the stated dates.

**Respectfully Submitted.**

Done at the Office of the Prosecutor

29 January 2007

6494

[Signed]

Ciré Aly Bâ  
Senior Trial Attorney

[Signed]

Moussa Sefon  
Trial Attorney

[Signed]

Segun Jegede  
Trial Attorney

[Signed]

Abubacar Tambadou  
Assistant Trial  
Attorney

[Signed]

Felistas Mushi  
Assistant Trial  
Attorney

[Signed]

Faria Rekkas  
Case Manager

[Signed]

Anne Bodley  
Case Manager

-----