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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

The Prosecutor v. Joseph Kanyabashi  
Case No. ICTR-96-15-I

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The present document is my expert report on the authority exercised by *Bourgmestre* Joseph Kanyabashi during the period between 6 April and 3 July 1994. I treated a number of subject matters which were submitted to me by the defence. In this respect, I therefore do not intend to give a detailed description of the situation as it was in Butare during the material period.

1. National issues

The setting of institutions in early 1994 was blocked by the two opposing parties. On many occasions, attempts were made to set up the Broad-Based Transitional Institutions and the Transitional National Assembly. On each occasion, one of the two political cum military blocks – “MRND and allies” or “RPF and allies” – puts up obstruction. Thus, on 5 January, President Habyarimana was sworn in, but when in the afternoon of that same day the Broad-Based Transitional Government and the Transitional National Assembly was to be installed, only candidates from the MRND circle of influence were present; neither the candidates from the other camp nor the President of the Constitutional Court was present and the ceremony was postponed *sine die*. On 8 January, demonstrators by MRND supporters prevented the installation. On 23 February, it was the “RPF camp” and the President of the Constitutional Court that failed to appear. On 21 March, the “MRND camp” hindered the ceremony. Put off for a few days, the ceremony of 25 March did not take place; everyone was present, except RPF. On 28 March, it was the President Habyarimana’s turn to stay away from the swearing in ceremony.

Some in the MRND camp certainly considered Félicien Gatabazi as pro-RPF. In fact he was Habyarimana’s fierce opponent and had openly talked about it. Like many other opponents and in the context of the strategies to seek alliances dictated by contingency considerations, he had also sought to come closer to RPF in the past. However, I believe that in the end, Gatabazi was suspicious of both MRND and PRF, and that he wished to take up the idea of a “third voice”, where a democratic opposition would strike a balance between the two extremes. In any case, the likelihood that PRF assassinated Gatabazi contradicts the assertion that he was close to RPF.

The Power tendencies in the parties – visible in MDR and PL, and certainly not so visible in the PSD – became a reality as from mid 1993 when from being three-polar, the political field became bi-polar. It seems that Froduald Karamira (MDR) was the first to mention slogan “Hutu Power” on 23 October 1993 in Kigali. It is sufficient to see the composition of the interim Government formed on 8 April 1994 to realise this reality: members of MDR, PL and PSD who

participated in the government were all regarded as members of the Power group of their respective parties.

The announcement of 12 April 1994 by the RAF command was drafted without the knowledge of the Government which had left Kigali for Gitarama on that day.

As an appointed acting Chief of Staff, Colonel Gatsinzi did not formally resign when Colonel Bizimungu succeeded him as the incumbent on 16 April 1994. He could have retained his position, but his replacement suggested that the government had taken a tougher stance.

Although the interim Government was constituted under the direction of Colonel Bagosora at the Ministry of Defence on 8 April 1994, that did not mean that it was set up soldiers. In fact, officers in the "crisis committee" were not involved in Bagosora's initiatives, and it was only on 8 April, around 5.30 p.m. that the crisis committee took note of the new Government's appointments.

The Ministers in charge of security in the interim Government were the Minister of Interior and Communal Development (Faustin Munyazesa (MRND) who rejected the appointment and was replaced on 25 May 1994 by Edouard Karemera (MRND) and the Minister of Defence (Augustin Bizimana (MRND).

## 2. Organisation of the government's structure in Rwanda as provided for in the Constitution, Rwandan Legislation and the *de facto* structure

### 2.1. Powers of the *bourgmestre* pursuant to the Constitution and the Rwandan Legislation, under the 1<sup>st</sup> Republic

Although, under the system initially provided for in the communal law of 23 November 1963, the *bourgmestre* was elected by direct suffrage, the law of 19 May 1969 amending the electoral system stipulated that the *bourgmestre* was appointed by the President of the Republic on recommendation by the communal council.

According to the communal legislation in force in the 1<sup>st</sup> Republic, it was the duty of the *bourgmestre* to implement the decisions of the communal council which was at the time, the highest organ at the communal level, at least in principle. The *bourgmestre* was also the representative of the central administration and must implement the laws and decrees as well as prefectural directives and assist in the administration of justice. Lastly, he was responsible for recruitment of communal personnel, including the police; the law forbade the employment of more than one policeman per one thousand inhabitants.

### 2.2. The role of the *bourgmestre* at the time in relation to the national government and the population.

Initially, the *bourgmestre* enjoyed considerable autonomy, but he steadily became a representative of the central government, due to the combined effect of the increased role played by the *préfet*, the improved communication and management capacity of the

central government, the establishment of single party and the President's power of appointment.

Regarding the law, the President of the Republic had authority over the acts of the communal authority, but in reality such authority was exercised by the Minister of Interior and more specifically by the *préfet*. The exercise of the authority was by way of prior authorisation or approval by the *préfet*, or suspension by the *préfet*, or cancellation by the President of the Republic or by the Minister of Interior.

To my knowledge, since no research has been carried out in respect of this subject and for the fact that I was not there at the time, I cannot dwell on the relationships between the *bourgmestre* and the population during the 1<sup>st</sup> Republic.

### 2.3 Powers and role of the *bourgmestre* in the 2<sup>nd</sup> Republic compared to the 1<sup>st</sup> Republic

A significant review of the communal law was effected by legislative-decree on 26 September 1974, about a year after the beginning of the 2<sup>nd</sup> Republic. The *bourgmestre* was thenceforth appointed by the President of the Republic on the recommendation of the Minister of Interior. The Legislative-decree stipulated that "the *bourgmestre* represents the central government in the *commune* and personifies the communal authority." "Under the authority of the administrative hierarchy," the *bourgmestre* was in charge of economic, social and cultural development of the *commune* and of implementation of laws and regulations. Moreover, he assisted in the accomplishment of tasks of general interest when required by the *préfet*. Lastly, he was responsible for the implementation of the decisions of the communal council in addition to many other administrative duties imposed on him by law.

As the representative of the Executive, the *bourgmestre* was under the superior authority of the *préfet*. As communal authority, administrative supervision was exercised by the President of the Republic or the Minister of Interior, and also by the *préfet*, either at first instance and as a last resort, or with the possibility of referring to the President of the Republic or his representative. Moreover, the *préfet* conducted inspection of the *communes* of his *préfecture* at least once a year.

This firm "control" over the *bourgmestre* by the new law was further strengthened by two other developments. On the one hand, Legislative-decree No. 10/75 of 11 March 1975 accorded legal personality to the *prefectures* with strengthened prerogatives; steady creation of *sous-préfectures* signified physical link with the prefectoral authority and therefore the strengthening of his grip at the communal level. On the other hand, on 5 July 1975, the National Revolutionary Movement for Development (MRND) was created as a single party which was made constitutional in 1978. Indeed, according to the Constitution of MRND (2 July 1976 version), "the leader of the Movement in the *commune* is the *bourgmestre*" (Article 44). Like at all levels of the State, the Zairian model imported to Rwanda instituted "overlapping function" where the organs of State and those of the Movement overlapped. Since then, in addition to the supervisory powers for in the communal and prefectoral laws, the *bourgmestre* became integrated in the pyramidal structure of MRND, which practised "central democracy."

Another point is worth mentioning. As regards policy and administration, although the *commune* only became a decentralised structure devoid of autonomy, it was at the same time assigned "development" tasks for which it must find the necessary human and material resources. Thus, the *bourgmestre* often found himself trapped between what the State imposed on him and what his people expected from him or tolerated.

#### 2.4 Multiparty system and the powers of the *bourgmestre*

The *bourgmestre's* position became more difficult following the advent of multiparty system in 1991. In fact, the various parties established themselves in the *communes*. There was a "war of flags" and local party leaders made efforts to recruit the highest possible number of members. Since the State and the MRND were formerly the same, multiparty politics also gave rise to short-lived attempts of refusal by the people to discharge a number of obligations some of which were provided for in the law, while others (*umuganda, animation*) were not provided for, namely in the area of tax system, compulsory cash crop cultivation and communal work. Moreover, the maintenance of public order became more difficult because democracy was often associated with total freedom, which had negative effect on the exercise of authority. Obviously, the problems were greatest for MRND *bourgmestres* governing a *commune* taken by the opposition.

#### 2.5 The Arusha Accords in relation the to role and powers of the *bourgmestre*

As regards territorial administration, Article 46 of the Protocol on Power-Sharing cleared the slate. On the one hand, "as a matter of urgency and priority," the Broad-Based Transitional Government (GTBE) dismissed incompetent elements as well as authorities who were involved in social unrests or whose actions constituted an obstacle to democratic process and national reconciliation. On the other hand, all local authorities (*bourgmestres, sous-préfets* and *préfets*) were either replaced or retained within three months following the setting up of the Broad-Based Transitional Institution.

Article 18 of the same Protocol provides that from thenceforth, in implementing the decisions of the council of ministers, the Prime Minister was empowered to appoint and dismiss *préfets, sous-préfets* and *bourgmestres*.

Without going into details, Article 87 provides that "communal elections shall normally take place six months prior to the transition. Meanwhile, replacement of local authorities shall be by appointment." The provisions worked for the future prospects of an elected *bourgmestre*. Certainly, the provisions were never implemented.

#### 2.6 The state of war in regard to the role and powers of the *bourgmestre*

The civil war raged while the country was in the process of democratisation (cf. 2.4). The war had quadruple impact on the role and powers of the *bourgmestre*. First, *bourgmestres* were involved in mass recruitment of soldiers which increased the ranks of the army from about 8,000 men in 1990 to about 40,000 in 1994. On the request of the Minister of Defence, *bourgmestres* "selected" young men who, after a few weeks of brief training, were sent to the front. Secondly, the mass and disordered recruitment gave rise to very serious problem of arms and ammunition

control. Thus, soldiers with official or "unofficial" permission (there were many deserters), often came to their native *communes* with firearms, ammunition and grenades, which increased insecurity, more so that such soldiers sometimes sold their war equipment to civilians. Thirdly, from the beginning of the war, *bourgmestres* were involved in implementing security measures, normally to prevent infiltrations. An intelligence system on the movement of individuals was also implemented, from "*nyumbakumi*" (ten cell leaders) in the *commune* through the *cellule* and *secteur*. In Rwanda's characteristic hierarchical system, all these security measures were set up at the instruction and under the supervision of *préfets*. We would see what form this would subsequently take, but already in October 1990, the *préfet* and the *bourgmestre* thus became the important links in the defence of the country. Lastly, the war gave rise to distrust and fear of a "fifth column." That such threat was real or imaginary mattered little: it created an enabling climate for manipulations and blunders which even the well-intentioned *bourgmestre* would have found difficult to control (cf. also No. 10 *infra*). Having stayed in Rwanda on several occasions during that period, I can testify about the reality of such fear, prompted by the fact that many young Tutsi left to join the RPF army. Government propaganda, particularly the radio, restricted the capacity of the *bourgmestres* to deal with the situation, a phenomenon which increased after 6 April 1994.

The war undeniably transformed soldiers into important local actors, at least in urban centres. Even before the war, the local commander was an influential local notable like other actors (it should not be forgotten that the Government stemmed from a coup d'état). In *préfecture* headquarters in particular, the *bourgmestre* had to "compete" with the *préfet*, the local commander, the head of prefectoral intelligence (SRP, representing the powerful central intelligence service – SCR), minister(s) from the *préfecture*, even the Bishop or academic authorities in Butare,.

## 2.7 The *de facto* powers of the *Bourgmestre*

A lot obviously depends on the *bourgmestre*'s personality and even his level of education (more and more *bourgmestres* had university degrees). His position was also influenced by the manner in which he obtained the post, both as provided for in the law and in others (for example, arbitration of disputes among people under his jurisdiction). In the rural area, in general, the *bourgmestre* was a "small king" who ruled his fief and its inhabitants. This did not prevent the fact that he was obliged to take into account other actors, such as local traders, heads of state technical services, heads of development projects, even the priest, the mission, heads of noble lineages. Under paragraph 2.6 above, I pointed out that the *bourgmestre*'s leeway in the urban area was more restricted.

## 3. Characteristics of Butare *préfecture* compared to other *préfectures* of the country.

### 3.1 Characteristics of Butare *préfecture* in relation to the structure and distribution of power in Rwandan in the 1<sup>st</sup> Republic

Butare has always been a "difficult" *préfecture*. Being the "intellectual capital" of Rwanda with the national university, teachers' training school, *Groupe scolaire*, national science research institute and the national museum, Butare was regarded in Kigali as arrogant and insubordinate;

which, besides, was not totally unfounded. The first opposition to be eliminated in the 1<sup>st</sup> Republic was that of Butare: first, the Aprosuma party, established in the south in particular and founded in Butare, and the Butare leadership of the dominant party which became a single party in 1965, the MDR-Parmehutu. From late 1963, Butare was politically marginalised in favour of Gitarama, at least up to 1973.<sup>1</sup>

### 3.2. Characteristics of Butare *préfecture* in relation to the structure and distribution of power in Rwandan in the 1<sup>st</sup> Republic, in regard to the following periods

#### 3.2.1 From 1973 to 1 October 1990

The situation in Butare did not change in substance after 5 July 1973. The *préfecture* remained marginal politically; the only difference being that "Northerners" had replaced those of Gitarama in power. Between 1973 and 1990, regional antagonism steadily displaced ethnic disputes. A new "ethnic reference" the "Bakiga" emerged (natives of the *préfectures* of Gisenyi, Ruhengeri and to lesser extent, Byumba) against the "Bayenduga" (natives of other *préfectures*, especially the mid-south and southwest). In Butare, the "anti-northerners" sentiments increased when it was noted that Gisenyi and Ruhengeri *préfectures* allocated to themselves the lion's share the cake in all areas (jobs, scholarships, access to secondary and higher education, loans, etc.). Two examples can illustrate this frustration; a major conflict between a Minister from Butare (Gatabazi) and the Minister of National Education (Nsekaliye, a native of Gsenyi) in regard to the discriminatory access to secondary school, and the fact that the management of big state (parastatal) projects in Butare (Global Development Project, Butare – DGB – and Sorwal Safety Match factory) was allocated to "Northerners".

#### 3.2.2. From 1 October 1990, outbreak of the war triggered by the RPF, to the advent of multiparty system

Free political activities started a month before the outbreak of war and was therefore prior to the advent of multiparty politics. Personalities from Butare freely expressed themselves when such became possible again, that is, from September 1990. The outbreak of war had limited impact on Butare; thus, there was no massacre in the *préfecture* and the so-called arrests "ibytso" (accomplices) were relatively few. Although curfew was imposed in Butare as everywhere in Rwanda, I can affirm from experience that it was enforced not so rigorously in Butare. However, as stated earlier, it was after 1 October 1990 that intelligence networks were set up and the fear of a "fifth column" gripped Butare like elsewhere.

#### 3.2.3. From the advent of multiparty system to the Arusha Accords

The effect of the multiparty politics in Butare was the same as elsewhere in Rwanda. Unlike the situation in the north, political parties quickly and firmly established themselves to the detriment of the MRND, MDR, PL and – particularly in Butare – the PSD, nicknamed "*parti des*

<sup>1</sup> Details of this development are found in F. Reyntjens, "*Pouvoir et droit au Rwanda*," Tervuren, MRAC, 1985, especially pp. 447-448 and pp. 482-485

*intellos*"(party of intellectuals). The "pre-selection" of *bourgmestres* in March 1993<sup>2</sup> showed that the political landscape had become very diversified and pluralist in Butare; from the 7 pre-selected *bourgmestres* in the *préfecture*, 3 were PSD, 2 PL, 1 MDR and 1 MRND. In other *préfectures*, the image was more monolithic where the MRND grabbed all the post, except one in Gisenyi, Ruhengeri, Byumba and Kibungo *préfectures*, while the MDR secured all in Gitarama.

### 3.2.4. From the Arusha Accords to the 6 April 1994 event

Here also, the situation in Butare was fundamentally different from what it was elsewhere. Earlier but especially after the signing of the Arusha Accords, the opposition parties steadily split up into two wings,<sup>3</sup> one close to the MRND and the other to the RPF. The split subsequently took effect along ethnic divide. Although Butare remained calm in general, a very serious incident there caused tension. On 21 February 1994, the Minister of Public Works and PSD leader, Félicien Gatabazi, a native of Butare, was assassinated in Butare. PSD supporters agreed that CDR was responsible for the killing. On the following day, the CDR Chairman, Martin Bucyana, was lynched near Butare town by way of reprisals. This incident was followed by threats from PSD members against militants of the Hutu Power and "Northerners" in Butare.

### 3.2.5. From 6 April 1994 to the swearing in of *Préfet* Sylvain Nsabimana

Although in Butare there were some cases of violence immediately after the downing of President Habyarimana's plane, the town and the *préfecture* were relatively calm compared to the situation elsewhere in Rwanda. Perhaps, this was due to two factors: first, the nature of social relations in Butare, where political or ethnic radicalism was not so widespread with strong awareness of the likelihood of manipulations from "Northerners"; secondly, the local authorities, the *préfet* as well as *bourgmestres*, were involved in a campaign for order and peace. By refusing to attend a meeting convened by the interim government, *Préfet* Habyarimana was already distancing himself from the genocide.

That did not prevent the situation to deteriorate in the course of the week of 11 April with the arrival of displaced people and troublemakers in Gikongoro province. From 15 April, an increasing number of locals joined the killers who had come from elsewhere. The massacre of Tutsi in Simbi, Kansi, Kigembe, Nyakizu and Huye showed that the *préfet* and the *bourgmestres* who supported him, including Joseph Kanyabashi, were losing the battle against the extension of the genocide to Butare. From then on, even before the replacement of the *préfet* and the famous speech of 19 April, Butare was inevitably sliding towards the situation which had already engulfed the entire country.

### 3.2.6. From 20 April 1994 to the appointment of civilian authorities in June 1994, *préfet and bourgmestres*

<sup>2</sup> Twenty-five per cent and more the *bourgmestres* were replaced after a "State Personnel Assessment Committee" proposed to replace a great number of officials. To my knowledge, Kanyabashi was not among those replaced.

<sup>3</sup> Although the PSD did not split in a manner as visible as the MDR and the PL, and that using the term "wings" in reference to the party is perhaps too clear-cut, certain leaders were called "pro-Arusha" or "anti-Arusha." This was quickly seen from the morning of 7 April 1994 when some people were hunted down and killed, while others were called to join the Government.

After the replacement of Jean-Baptiste Habyarimana by Sylvain Nsabimana, the speeches of Kambanda and Sidikubwabo and the introduction of elements of Presidential Guard and *Interahamwe*, the genocide was fully extended to Butare. For factual details, I refer to the report presented by Alison Des Forges, to which I fully subscribe (see also No. 14 where explained being generally, but not always, in agreement with his presentations of the facts; I would however express my disagreement with certain analysis).

### 3.2.7. From June 1994 to RPF's takeover of power in July 1994

For the period from or about 20 June, the date of installation of Lt-Col. Nteziryayo as *préfet* and of some *bourgmestres*, to early July, when Butare fell into the hands on RPF and the genocide ended, I refer to the report of Alison Des Forges (cf. however, the reservation expressed above).

### 3.3. Factors which allowed the appointment of the Tutsi *préfet*, Jean-Baptiste Habyarimana at the head of Butare *préfecture*

The appointment and rotation of *préfets*, on 4 July 1992, must be considered in the context of the policy of the new coalition government set up in April 1992. Thenceforth, apart from the case of Kigali, *préfets* were natives of the *préfecture* they governed: moreover, there was some political diversification: in fact, four *préfets* out of eleven were from an opposition party. Since a Tutsi *préfet* had to be appointed and the PL was well established in Butare (cf. "pre-selection" of *bourgmestres*, *supra*), his appointment was logical, all things considered. Butare *préfecture* was a place where such choice was obviously more achievable in a war situation with the RPF, and to my knowledge, the appointment of Habyarimana did not give rise to any significant controversy.

### 4. The characteristics of Ngoma *commune* Butare *prefecture* in relation to *bourgmestre* Kanyabashi's powers

As mentioned earlier, the *commune* authority in the urban region faced tremendous «competition». That was specifically the case for the urban *commune* of Ngoma where the *bourgmestre* had to constantly negotiate his position with the *préfet* who officially was the supervisory authority, but was also a notable with his own network of power and influence; the university circle, its administration, teaching staff and students were reluctant to respect a territorial administration which they did "not consider intellectual"; the various security bodies (local commander, ESO commander, Ngoma camp commander, Tumba gendarmerie *brigade* commander); the influential catholic hierarchy (bishop, *économat général*, *groupe scolaire*). Additionally, he also had to contend with the informal influence of ministers from the area, directors of companies (para-statales), business men and even the President of the Republic's brother Dr. Séraphin Bararengana who was residing in Butare (and was protected by the Presidential Guard from the time the war began); Moreover, Dr. Bararengana wife is the sister of the President's very influential wife).

One is very much aware of the intensity and diversity of forces and sources of pressure in Butare. Faced with all this, the *bourgmestre*, who must constantly ensure his political survival, was nothing but a "small boss" especially as Joseph Kanyabashi's temperament was rather mild; also,



he was self-effacing and tried to run his *commune* in a technical rather than a political manner. Undoubtedly, that attitude, as well as respect from his people and his management style, were responsible for the longevity of his tenure as *bourgmestre*.

Moreover, the landscape of political parties was particularly complex in Butare. No party really dominated though the PSD seemed to be more popular followed by the PL, MDR and the MRND, probably in that order. Lastly, as a result of the University and the companies (para-statals) and projects, Butare was home to a rather large community of people from the north and this was another issue that was to be managed in the «Bakiga»-«Banyenduga» split (cf. above).

It should be pointed out that unlike other parts in the country, some inter-ethnic harmony was maintained in Butare *prefecture*. In that regard, it was noted that violence broke out before 20 April 1994. The relative calm in the *préfecture* and in particular in Ngoma urban *commune* was attributable to the combination of the efforts of the *préfet*, *bourgmestre*, some soldiers (including Major Cyriaque Habyarabatuma<sup>4</sup>, the gendarmerie commander) and some civilian dignities. During my sojourn in Butare in April 1993 before the genocide, I attended an informal meeting over drinks at hôtel Ibis during which the *préfet*, *bourgmestre* and some individuals discussed ways and means of maintaining peace in the town and throughout the *préfecture*. On that occasion, the impression I got was that the relationship between Habyarimana and Kanyabashi was cordial and harmonious. This was confirmed by the complimentary statements *Préfet* Habyarimana made about *Bourgmestre* Kanyabashi in a letter dated 27 November 1992 (Exhibit D-238).

As mentioned earlier, Joseph Kanyabashi was very much respected in his *commune* for his self-effacing demeanour, his good relationship with all facets of the society and his management skills. The role he played in maintaining peace was undoubtedly important.

In April 1994, a combination of factors resulted in the disruption of this stability. The dismissal, in a humiliating manner, of *Préfet* Habyarimana resulted not only in the elimination of someone who strenuously opposed the genocide plan but also served as a strong warning to others. The message was very clear: «You are either for or against us» and those who did not support the genocide could suffer the same fate as Habyarimana. President Sindikubwabo and Prime Minister Kambanda, who were both from that *prefecture*, subsequently arrived in Butare. By threatening and manipulating public opinion, they succeeded in pushing the *préfecture* into genocide. Lastly, the arrival in the town of elements from abroad, of the Presidential Guard and the *Interahamwe* led to the introduction of violence and an instrument of constraint which was, to a large extent, absent before 19 April 1994.

5. The various alternatives open to *Bourgmestre* Joseph Kanyabashi between 6 and 19 April 1994 against the background of the tragic incidents which occurred in Rwanda

As mentioned above, *Bourgmestre* Kanyabashi did all he should and could between 6 and 19 April 1994. Together with other authorities in Butare, he attempted and, to some extent

<sup>4</sup> The fact that he was arrested in 2004, in spite of the fact that it was widely accepted that he was against the genocide changes nothing about this observation. The imprisonment reveals a lot more about the regime in power than Habyarimana's acts.

succeeded, in preventing disturbances in his *commune*. In the light of the events elsewhere in Rwanda and the effect of the violence on neighbouring areas particularly Gikongoro, he attained this goal in a restrictive, destabilizing and dangerous environment.

6. The possible alternatives for Joseph Kanyabashi from the moment the Government dismissed *Préfet* Habyarimana and appointed the new *préfet* Nsabimana

When *Préfet* Habyarimana was dismissed and replaced by Sylvain Nsabimana, a succession incited by the President of the Republic and the Prime Minister, Joseph Kanyabashi had to come to terms with the fact that a very painful episode was undoubtedly about to begin.<sup>5</sup> Aware of the balance of power, he must have also realized that his manoeuvre margin would be reduced. Should he have resigned or fled?

Resign, no for given the prevailing circumstances that would have been viewed as an act by someone in the opposition, and he would have signed his death warrant. Fleeing to Burundi would have been tantamount to betraying the population; moreover, it would have allowed for the installation of a *bourgmestre* who backed the genocide plan. It is almost certain that Kanyabashi, who everyone knew well, would never have reached the border (many others, more unpopular than him, were killed as they tried to flee to Burundi). The only option left to him was to remain in office and adopt- like some other civilian and military dignities – a survival strategy.

In that regard, it should be recalled that *préfets* and *bourgmestres* were killed at the very beginning for showing that they opposed the massacres. The *préfets* included those of Butare (Jean-Baptiste Habyarimana) and Kibungo (Godefroid Ruzindana) who were dismissed on 16 April 1994 and subsequently killed. In Butare *préfecture*, the *bourgmestres* of Nyabisindu (J.M.V. Gisagara) and of Ntyazo (N. Nyagasaza) fled and were killed in late April 1994. Outside Butare, Guichaoua cites the case of the *bourgmestre* of Muhura in Byumba *préfecture*, J. Muramutsa, who contained the massacres in his *commune* and was killed by the RAF<sup>6</sup>. In actual fact, those who openly opposed had every reason to believe that they could be killed.

7. Effective control of Ngoma *commune* from 19 April following the RPF victory in July 1994 and the possibility for the *bourgmestre* to openly confront the forces present

Between 19 April 1994 and early July 1994, the physical control of Ngoma *commune* was shared by various formal and informal actors. At the formal level, they included *commune* and *préfecture* authorities and law enforcement agents; at the informal level, they included the *Interahamwe*, local leaders (Minister Pauline Nyiramasuhuko<sup>7</sup>, traders and academics) and parallel structures, particularly within the army (thus, in spite of his lower rank, Captain

<sup>5</sup> It seems there were doubts about the content and order of the speeches. I base my observation on what Alison Des Forges mentions in her report.

<sup>6</sup> A. Guichaoua, *L'administration territoriale rwandaise*, expert report prepared for the United Nations International Criminal Tribunal for Rwanda, Arusha, August 1998, p. 48. Guichaoua adds that in the « stubborn » *communes*, « generally the *bourgmestre* and his team had to be eliminated so the 'work' could commence » (*ibid.*).

<sup>7</sup> Example of the parallel structure: Witness SJ testified that Pauline Nyiramasuhuko allegedly « (...) requested the convening of a meeting of all the *bourgmestres* of Butare *préfecture* (...) ». Transcript of 28 May 2002, page 168 of the French. Clearly she did not have the power to do this.

Nizeyimana displaced his superior Lt. Col. Muvunyi).<sup>8</sup> It is very clear that just like everywhere else in Rwanda, the genocide was led, at least partially, by those informal forces.<sup>9</sup> That does not mean that those with formal power did not join and participate in the genocide plan but this observation leads one to examine the control on the ground as presented empirically rather than its legal organization.

Alison Des Forges in pages 27-28 of the English version of her report described how the soldiers divided Ngoma *commune* into three control zones. Obviously they were «secteurs» that had no connection with the *secteur* provided for under the organization of the *commune* of which Ngoma *commune* had eight. The zones were not at all official and nothing proved that *Bourgmestre* Kanyanashi agreed with the “parallel” initiative taken by the soldiers. It was simply a geographical distribution of the massacres in Butare, under which the military camps in Ngoma, the ESO and the gendarmes «took care of» areas that had been more or less demarcated.

Even though the number of soldiers in the *préfecture* was relatively small (about 50 elements of the Presidential Guard, about 150 RAF and about one hundred gendarmes), they effectively controlled security in Ngoma *commune* and were largely responsible for the genocide in Butare. Long before the genocide, *Préfet* Habyalimana complained in a fax to Alison Des Forges that whenever there was trouble, the law enforcement agents sided with the MRND militia and the CDR (Exhibit D-241).

Apart from the Army, three main civilian groups were also actively implicated: the Sorwal militia, the militia led by Shalom Ntahobari, and Robert Kajuga's *Interahamwe*.

The planning of the massacres further proved both the importance of the parallel structures and the fact that the massacres which occurred in Ngoma *commune* was carried out by the soldiers and the militiamen rather than by the communal authorities. It goes without saying that a *bourgmestre*, who did not have any authority over the soldiers, is powerless in the face of such a planning of the massacres.

As a result of the way the situation unfolded in Butare, from 19 April at the latest, and judging from the physical control in the *commune*, it would not have been possible for *Bourgmestre* Kanyabashi to effectively and visibly resist the forces involved in the genocide. Not only did they not have the physical means but also, he would have paid for it with his life or anything close to that. In pages 71-72 of her report («Attempts at Community Control»), Des Forges describes the difficulties encountered by the *bourgmestres*, including Kanyabashi, in maintaining minimum control.

8. Kanyabashi was unable involve himself in the genocide planning in Rwanda, particularly in Butare

<sup>8</sup> It should be indicated that the ICTR Prosecutor knows the truth about this parallel structure cf. Opening Statement of the Prosecutor for the “Cyangugu Group” in the Lieutenant Imanishimwe trial (source: Fondation Hirondelle, Arusha, 18 September 2000). The fact that Muvunyi was sentenced by the ICTR changes nothing about his observation.

<sup>9</sup> Clearly, the concept of «informal force» does not exclude the fact that these persons also had official posts though officially the acts that they committed or incited did not fall under their remit. »

In my opinion, it would have been impossible for Joseph Kanyabashi to have been involved in planning the genocide. I testified in the Rutaganda trial that the development of a genocide tool and ideology was a continuous process, visible in a particularly specific manner from late 1991. A certain number of low scale "general patterns" were noticed particularly in 1992 and early 1993. However, the people behind this orchestrated violence- the «death squad» or «zero network»-, are known: they are the privileged of the former regime, politically, regionally or financially close to President Habyarimana and more specifically to his-law's family<sup>10</sup>.

Joseph Kanyabashi was not at all part of that milieu: he is a «munyenduga» and member of an opposition party, he has a good relationship with the Tutsis and that earned him the nickname «Kanyabatutsi» (*Ijambo* Newspaper No. 16 of 16-22 February 1991). According to the testimony by Col. Marcel Gatsinzi (today an RFD general and Minister of Defense), Kanyabashi was almost arrested for being an RPF accomplice («icyitso») in 1990. Gatsinzi added that Kanyabashi was not in the good books of some MRND leaders «because he was not an extremist» (Witness EI, no. Gatsmar-2).

The genocide planners would never have called on someone like Kanyabashi, in whom they had no iota of confidence. They did not see him as an ally but considered him an opponent who had no interest in or tendency to join their project.

#### 9. Why was Kanyabashi not fired?

The question is why was Joseph Kanyabashi not fired like *Préfet* Habyarimana. First of all Habyarimana was a Tutsi; however, the Interim Government did not have any Tutsi members (that had not happen since 1973) and it presided over the elimination of Tutsis. Jean-Baptiste Habyarimana was therefore an «obvious» victim. Also, I have already pointed out that Kanyabashi was a popular *bourgmestre* appreciated by his people. If he had been dismissed, that would have unnecessarily distanced the Government which, it should be recalled, the President and the Prime Minister were from Butare, from the local population. Lastly, his dismissal was not necessary because the forces I described earlier were present and/or introduced to lead the genocide; Joseph Kanyabashi did not have the requisite resources to foil the project and therefore, there was no need to eliminate him.<sup>11</sup>

#### 10. Civil defense

Civil defense was introduced in late September 1991, about one year after the war started. Initially, it involved organizing the people in areas neighbouring those occupied by the RPF in the North of the country. According to a note from Col. Nsabimana, the idea was «to experiment» with the system stage by stage by favouring the outlying *communes* exposed to enemy incursions and subsequently to extend it to the interior of the country. The project which was to ensure that at least one person per *nyumbakumi* possessed a fire arm was actually

<sup>10</sup> For more details, see F. REYNTJENS, *L'Afrique des grands lacs en crise. Rwanda, Burundi: 1988-1994*, Paris, Karthala, 1994, p. 183-196.

<sup>11</sup> It was not the few 25 poor armed and poorly trained communal policemen who would have resisted the massacres especially when the size of the *commune* is taken into consideration.

implemented from early 1992 in the North: civilians were armed and trained particularly in Kiyombe, Bwisige and Mutura *communes*.

Similarly, political parties created youth movements that gradually became militias. Some, in particular, the MRND *Interahamwe* underwent paramilitary training especially in Gabiro.

On 20 January 1993, an "Alliance of Soldiers Annoyed by the Underhand Secular acts of the Unarists" — (*Alliance des militaires agacés par les séculaires actes sournois des unaristes* — (AMASASU: in actual fact, amasasu, singular *isasu*, which means «bullets», «munitions»), and it was suspected that Col. Bagosora was behind this, proposed the creation of a popular army made up of a battalion of "robust young men" from every *commune*. However, it should be noted that the authenticity of the document was challenged.

According to a document by the ex-FAR, the spreading of civil-defense to other parts of the country was part of the government policy. The *préfet* was in charge of administration while the commander of the *secteur opérationnel* was in charge of technical matters.<sup>12</sup> Though the body had not been fully set up in April 1994, it was promptly set up when the genocide commenced.

Theoretically, the mounting of roadblocks was in particular organized and controlled by the parallel forces which I mentioned earlier: militia leader, officers and ministers. The «informal» was even formalized when a retired officer, Col. Aloys Simba, was put in charge of civil defence in Butare and Gikongoro *préfectures*. In most cases, roadblocks were set up without the knowledge of the territorial authorities but obviously that did not prevent some of the authorities from getting actively involved.

With respect to Ngoma *commune*, it seemed the *bourgmestre* did not really have authority over the mounting and running of the roadblocks manned by soldiers or *gendarmes*, *Interahamwe* leaders, or even the Shalom Ntahobari or Sorwal groups. The minutes of the meeting of the inhabitants of Butare-Ville *cellule* held on 26 April 1994 (Exhibit D-406) clearly reveals this. «Having been assigned to more urgent tasks», *bourgmestre* Kanyabashi arrived after the meeting had begun. The meeting was chaired by Bernard Mutwewingabo, a professor at the university with no official responsibility. The arrangements made, including the appointment of *responsables de cellules*, of zone and area leaders involved specific persons. Mutwewingabo again chaired the meeting of 7 June 1994 (Exhibit P-131).

When an examination of the organization of the civil defence in Butare formed on the instructions of the Prime Minister on 25 May 1994 is conducted, one is struck by its «parallel» nature. The people in charge were private individuals: officials often working outside their areas of competence. According to Alison Des Forges (page 49), the first set of people included traders, a teacher, a medical assistant and the staff of the *préfecture*; the second set included Minister Nyiramasuhuko and the President of the Court of First Instance. However, the administrative head of the *commune*, that is, the *bourgmestre* was no assigned anywhere. Kanyabashi's lack of involvement is further illustrated by another act. On 14 May 1994, when the Prime Minister came to assess the situation at the University, Kanyabashi was absent though

<sup>12</sup> Commander of the Rwandan Armed Forces in exile, *Contribution des FAR à la recherche de la vérité sur le drame rwandais*, December 1995, p. 110-111.

«everyone » was present. Kanyabashi's name did not appear on the list people who received an invitation (cf. Rapport Guichaoua, annexes, p. 255). Moreover, Kambanda criticized the authorities of Butare for being lukewarm: «According to the Intelligence Unit, the enemy is trying to infiltrate this town. We are requesting that the town be seriously protected for we have noticed that we do not have enough roadblocks. In short, it could be said that we are not at war. (...) Consequently, we are asking those in charge of security in that *préfecture* and *commune* to seriously take care of this problem.» In spite of his position as *Bourgmestre*, Kanyabashi was not a member of the civil defense supervision committee or the prefectural civil defence committee. Surprising for someone allegedly backed the genocide cause (see also *infra* no. 15).

Based on the documents in my possession, I can sincerely conclude that- as was the routine in Rwanda- Kanyabashi relayed official government orders and directives but that in transmitting them to lower bodies, he was not overzealous, did not added on anything and, in particular, did not promote a genocide policy. Laurien Ntezimana probably succeeded in putting a brake on the killing machine in Ngoma *secteur* because of the *bourgmestre*'s lack of activism.

In concluding the civil defence issue, it should be indicated that even though it became one of the genocide instruments, it was and also used an instrument to fight the RPF army. In Butare, this element was clearly relevant for in late May the FPR captured Nyabisindu and were at the entrance to the town so to speak.

The «Local Defence Forces» set up by the new Rwandan regime resembled the «civil defense» set up by the former government in the sense that they were civilians who had received basic training twice or thrice a month, in possession of fire arms, and, in principle, in charge of ensuring security in the *secteur* particularly by preventing «infiltrations». Just like in the days of old, the civil defense was a government policy for the LDF and they operated under the Minister for Territorial Administration; locally, it was under the territorial authorities and was supervised by an army officer in the province.<sup>13</sup>

When the civil war broke out in 1990, RPF supporters were visible inside Rwanda. Thus parents –almost only Tutsis– sent their children to fight for the FPR, to which many Tutsis also contributed financially. This was a well-known fact and the «*ibytso*» phenomenon was merely a mirage. Subsequently, and probably in a very intense manner since 1993, the RPF set up «*cellules*» or «*brigades*», almost everywhere in Rwanda. As gun handling was a limited part of the training given to members, the main activity was political and ideological.

A distinct but related phenomenon was the RPF infiltrations which with respect to Kigali was hitherto not really well documented but which Abdul Ruzibiza described as occurring throughout the country.<sup>14</sup> Generally, support for the RPF remained clandestine even after the signing of the Arusha Accord, but was sometimes expressed publicly for example through public visits to RPF elements in Kigali from late December 1993.

<sup>13</sup> Details can be found in: Human Rights Watch, *Rwanda. The Search for Security and Human Rights Abuses*, April 2000, p. 12-14.

<sup>14</sup> A. Ruzibiza, *Rwanda. L'histoire secrète*, Paris, Editions du Panama, 2005.

I would like to insist on the fact that the infiltration and complicity were real not because they justify the massacres of Tutsis in any way but because they would enable us understand the atmosphere of distrust and fear of a "fifth column" which surrounded the genocide.

# 11. Fabrication of evidence

The denunciation phenomenon is well known and widely acknowledged in Rwanda. A LIPRODHOR report expressed concern about false testimonies given by both Prosecution and defence witnesses.<sup>15</sup> The former Minister of Justice Faustin Nteziryayo severely denounced this phenomenon in an article which appeared after he went into exile.<sup>16</sup> In a communiqué dated 10 May 1999, even the RPF accused Ibuka, the organisation of survivors, of fabricating evidence against candidates-deputies: «The RPF advised the Government to punish anyone guilty of making false allegations to serve as an example to others.<sup>17</sup>

Many other sources agree "the denunciation union", formed at national and local levels (ex. The Association of Genocide Survivors *Association des rescapés du génocide* -ARG- in Butare), organized the denunciations and false testimonies. Thus, several thousands of Rwandan Francs were sometimes paid for prosecution testimonies; the witnesses were sometimes "prepared"; in some cases, defence witnesses testify under threat or refused to testify.<sup>18</sup> This information was reliably obtained both within and outside Rwanda. By force of circumstances, they were not published. However, the last report from the American State Department notes that: «During the year there was continuing concern among observers and analysts over what was believed to be a sizeable number of cases where persons had provided false testimony, despite the penalties for providing such testimony»<sup>19</sup>.

Even in the absence of a reward or specific or concrete threats, the atmosphere in which witnesses must testify is seen as restrictive: Rwandans are fully aware of «what is expected of them»; besides, they are reminded from time to time (the former *préfet* of Gitarama Fidèle Uwizeye was arrested after testifying for the defence in the Akayezu trial before the ICTR). At any rate, it should also be recalled that Rwandans generally testify in a cultural context where communication takes place in a strategic manner.<sup>20</sup>

The Kanyabashi file contains examples which prove the extreme caution with which testimonies must be handled. I will give a few examples:

Witness QA testified about the arrival of a helicopter in Butare before the killings began shortly after hearing Sindikubwabo and Kanyabashi speeches on the radio. The witness testified that they heard the sound of this helicopter and saw it land the following day. He was then allegedly

<sup>15</sup> LIPRODHOR, *Procès de génocide au Rwanda. Deux ans après* (déc. 96-déc.98), Kigali, 1999, p. 20-21.

<sup>16</sup> F. NTEZIRYAYO, "Enlèvement du système judiciaire et dérive des droits humains au Rwanda", *Dialogue*, no. 213, November-December 1999.

<sup>17</sup> FPR, *Itangazo rigenewe abanyamukuru*, Kigali, 10 May 1999.

<sup>18</sup> That was the case for several witnesses in the « Quatre de Butare » trial in the Court of Assizes in Brussels.

<sup>19</sup> Rwanda: Country Reports on Human Rights Practices 2006 Released by the Bureau of Democracy, Human Rights and Labor.

<sup>20</sup> In that regard, see the interesting article by C.M. OVERDULVE, "Fonction de la langue et de la communication au Rwanda", *Nouvelle revue de science missionnaire*, 1997, no. 4, p. 271-283.

told that the soldiers and *Interahamwe* arrived in the helicopter.<sup>21</sup> However, it was established that the Presidential Guard and the *Interahamwe* came to Butare by road. The only plane which landed in Butare was a Belgian C-130 on 20 April 1994 and it had come to evacuate the expatriates.

- Witness RE testified: «I remember some details about the elements of the Presidential Guard: they wore white belts and red berets»<sup>22</sup>. However, that was the *gendarmérie*'s uniform.
- I would like to conclude with testimonies relating to the Kabakobwa massacres. They seem like consistent and damning testimonies against Joseph Kanyabashi. However, it is not until much later that they began to implicate Kanyabashi in the case and the testimonies were very similar and seemed to be based on the same scenario. Though unable to confirm that this is manipulation I noted that Kanyabashi was not implicated in this massacre: neither by Alison Des Forges (p. 41-42) nor African Rights (*Rwanda. Death, Despair and Defiance*, p. 351-352).

## 12. Rwanda's current attitude towards witnesses willing to testify to the events

The previous paragraph also addresses this aspect. Since the current government in Rwanda considers that all persons charged by ICTR are guilty and thus seeks their conviction, which all Rwandans know very well, it is difficult and dangerous for them to testify for the Defence, all the more so as they no longer believe in the guarantee of anonymity. Since the Rwandan authorities are assisting<sup>23</sup> ICTR with the logistics of bringing witnesses from Rwanda, they definitely know the identity of witnesses. The presence of Rwandan criminal investigation officers at hearings before the Belgian investigative rogatory commissions calls for great restraint and a sharper critical mind when reading testimonies collected by the Belgian courts. This undoubtedly applies to witnesses interviewed by ICTR investigators, if only because of the presence of interpreters.

This problem should be viewed in a broader political context. "Tutsization" and "RPF-zation" are phenomena seen at all levels of public life in Rwanda since 1994. Most ambassadors, almost all principal secretaries and senior officials, more than 80% of bourgmestres, almost all executive secretaries, all chiefs-of-staff of the army, *gendarmérie* and intelligence services, the vast majority of university teachers and students, most directors of State corporations ... are Tutsi and from RPF. Under Habyarimana, the quota system operated gave Hutu, 90%, and Tutsi, 10%. Today, the real and unofficial quotas operated have more or less reversed the proportion: Tutsi, 90% and Hutu, 10%. In the previous regime, this was called "ethnic discrimination." Today, it is called "meritocracy."<sup>24</sup> The political space, even though President Kagame often makes fun of it publicly, does not exist. The elections, beginning with the 2001 local elections, through the presidential and legislative, to the 2006 local elections, were in reality a parody

<sup>21</sup> T., 18 March 2004, pages 84-88 and 22 March 2004, pages 39-44 of the French.

<sup>22</sup> T., 26 February 2003, pages 12-13 of the French.

<sup>23</sup> It should be noted that this "assistance" is at the same time a means to exert pressure on the Tribunal. During the incidents which occurred between it and the Government of Rwanda, the latter often engaged in a veritable blackmail as it refused to allow witnesses to travel to Arusha.

<sup>24</sup> For further detail, see my political columns in *L'Afrique des grands lacs. Annuaire* 1997-2007, published by L'Harmattan, Paris



marked by rigging and intimidations. The regime in power is based on the total control of the territory and its inhabitants.<sup>25</sup>

13. Joseph Kanyabashi's speech delivered on 19 April 1994

First, the speech should be placed in its context. But before then, it should be pointed out that, contrary to claims by the Prosecution's "supporting documents," attending the 19 April 1994 ceremony was not at all lending support to the government (p. 104). In fact, everyone was present, including the Butare Tutsi Bishop, Mgr. Gahamanyi, whom it is difficult to suspect of genocide intentions. As the eldest/longest-serving bourgmestre of Butare, Joseph Kanyabashi replied to the speech of Prime Minister Jean Kambanda.<sup>26</sup> *Préfet* Habyarimana has just been sacked under humiliating circumstances and the Prime Minister made threatening statements to "some bourgmestres (...) gone to be trained by the *Inkotanyi*. Lastly, Kanyabashi had just heard the speech by Kambanda.<sup>27</sup> Hence, he did not prepare his response: he had to improvise in a very short time and under circumstances that must have been extremely annoying and destabilizing. In short, his physical survival and that of his family hangs on it.

We are very aware of the embarrassment of Kanyabashi, who might not have refused to take the floor or disagree with the Prime Minister's statement: "it is difficult to find the right words." However, he mentioned on two occasions that the objective was to maintain peace and unity. Even though he is said to be "supporting the government (...) in order to help it attain its objectives," he did not specify the said objectives. Support for the armed forces was designed to protect national sovereignty, which, intrinsically, is legitimate in the context of resuming the war against RPF. When he returned to national sovereignty "which concerns each citizen," he seemed to refer to the war with RPF. At the end of his speech, he reiterated on two occasions the need to maintain security.

In conclusion on Kanyabashi's speech, I feel that it is impossible to understand it without understanding Rwandans and their statements. I believe that Kanyabashi would have preferred not to speak if he could, but he was compelled to take the floor. He expressed his discomfort, confirmed his support for the government without specifying the objectives, insisted on peace, unity and security, and placed the support for the army in the context of defending the national sovereignty. However, he was not clearly opposed to the message conveyed in Kambanda's speech. I imagine that the ambiguity in Kanyabashi's speech would have been understood by his citizens as a cautious refusal to endorse the government's call for genocide. I would place Kanyabashi's response in the context of a survival strategy which he subsequently adopted: no support for the genocide and no open opposition. I fear that had he adopted another attitude, he would not have been brought before ICTR, for he would have been dead.

<sup>25</sup> I summarize facts noted after 10 years of power in F. REYNTJENS, *Rwanda, Ten Years On: From Genocide to Dictatorship, African Affairs*, 2004, pp. 177-210.

<sup>26</sup> It is improbable that he also replies to the speech by the President of the Republic, since he does not address him.

<sup>27</sup> We recall (cf. *supra* note 5) that it seems there are doubts, particularly, concerning the order in which the speeches were delivered.

14. Critical analysis of the expert report on Joseph Kanyabashi filed by Alison Des Forges in the Butare case.<sup>28</sup>

I will first state, generally, that the author started off with allegations of serious guilt as laid out in Joseph Kanyabashi's Indictment and then softened this position as her research progressed. Since her work spanned several years, the traces of these two positions are found in the report.

*In defence* of Kanyabashi, Alison Des Forges shows the importance of the centre of power and violence that he could not control: the army (pp.26-28), some university teachers and students (pp. 57-59), militia and political parties (pp. 29-30), Burundian refugees (pp. 30-31), army (p. 34-37), Presidential Guard (pp. 35, 36, 38, 42), soldiers and militiamen (pp. 56-57), abuses at roadblocks (pp. 71-72). In this regard, the passage on page 62 is revealing: Bourgmestre Kanyabashi "*is noted always as the recipient, not the initiator of requests -or perhaps even orders- from the other participants.*" She acknowledges that, even after the 19 April speech, Kanyabashi still believed that it was worth trying to prevent the violence: "He told a crowded meeting at the Ngoma sector office late on April 19 that the slaughter must not happen" (p. 22); this, coming just a few hours after the incitement to violence by Sindikubwabo and Kambanda, needed courage. She also shows the importance of parallel authorities: for example, Captain Nizeyimana and Lieutenant Hategekimana to the detriment of Col. Muvunyi (pp. 26-27). In the same connection, she relates a number of cases where perpetrators of violence refused to obey orders from those supposed to be their superiors: for example, pp. 16, 30, 71-72. She also describes a number of cases where Kanyabashi protected or attempted to protect people under threat and/or attempted to maintain peace: for example, pp. 15, 16, 22, 45, 73-74, and 75. Kanyabashi's impotence in the face of the massacres, even his close relatives, is described on pp. 34-35,<sup>29</sup> 41, and 45.

There are also several examples where Kanyabashi is clearly ambiguous or attempts not to join in the abuses. Thus, on 26 April 1994, he had to preside over a security committee meeting but then he left "for other more urgent business" (p. 52);<sup>30</sup> it was only four days later that Kanyabashi implemented the directive to clear the brush (p. 60); he dragged his feet to a point that the "*coordonateur des rondes*" [coordinator of patrols] instigated him "to stand up firmly" (p. 63); page 75 has another example of this delaying tactic which, precisely, saved life.

The report also gives many examples of threats to those who refused to cooperate on the genocide: fate of former *Préfet* Habyarimana "shocked some of those who had been his subordinates and roused their fears of a similar fate" (p. 19); threats to PSD leaders and real threat to Kanyabashi whose wife is Tutsi and who is blamed for his friendly attitude towards the Tutsi (p. 20); Sindikubwabo's speech explicitly warns the local authorities (p. 21); threats from Sindikubwabo and Kalimanzira (p. 23); the only bourgmestre to oppose the genocide openly at a

<sup>28</sup> I am referring to the English version of the report.

<sup>29</sup> Des Forges describes therein the murder of Rosalie Gicanda. According to my sources, Kanyabashi and Ms. Gicanda had cordial relations and occasionally saw each other.

<sup>30</sup> Read the minutes of this meeting, it is even probable that Kanyabashi did not "leave" the meeting, but that he was present at the beginning ("The burgomaster (...) was called away for other urgent business (...) to lead the meeting"). He joined it while in progress (cf. *supra*).

Prefecture Security Committee meeting on 20 April 1994,<sup>31</sup> was first threatened and later killed (p. 24); soldiers killed important Hutus suspected of opposing the genocide (pp. 36-37); fear for "immediate reprisals" (p. 45); the two bourgmestres of the Prefecture opposed to the genocide were killed (p. 46); Col. Muvunyi, opposed to the genocide,<sup>32</sup> was threatened with death by his subordinates (p. 26).

It will be noted that Kanyabashi did not attend the meetings of the genocide ringleaders, for example, the meeting on 14 May 1994 (p. 57-58). Lastly, I recall that Alison Des Forges does not even mention Joseph Kanyabashi in relation to Kabakobwa massacre.

I will end this overview with a macabre but revealing statistic. In Ngoma *Secteur* of the commune, and Butare Town, where Joseph Kanyabashi was seen the most, the lowest percentage of Tutsis, about 37%, were killed and fled (p. 67). Of course, this figure is very high, but it is by far lower than the national average of Tutsis killed, estimated to be about 75%.

When Alison Des Forges testifies against Joseph Kanyabashi, she generally takes care to describe and she speaks evasively. A few examples:

- p.14: "Joseph Kanyabashi, burgomaster of Ngoma commune, *reportedly* stated....;"
- p. 20: "The Ngoma burgomaster *presumably* understood....;"
- p.43: "Most witnesses state that the message was delivered by communal authorities, *if not by the burgomaster himself*;"

I would disagree with Alison Des Forges on two relatively minor points and on one more important point. I start with the minor points. First, she sometimes blames Kanyabashi for having done what *Préfet* Habyarimana had also done without taking any blames: bringing displaced people together (p.17); in similar situations, couldn't Kanyabashi "presumably" believe that these people would be safe? It should be remarked that the displaced persons were accommodated in Matyazo on 16 April, before Ngoma flared up, and that Kanyabashi requested police protection; it was only on 19 April that police movements were restricted and on 21 April that the massacres began, which Kanyabashi could not imagine on 16 April (cf. also p. 41). Similar situation: pp.15, 31-32. Then, Kanyabashi setting up "Security Committees" (pp. 53-54) had nothing extraordinary. They were set up all over and, in reality, they were already in place in 1990. It would have been an "extraordinary" thing for Kanyabashi not to set them up."

The more important point concerns the 20 April 1994 security meeting. She considers it to be the formal beginning of the genocide in Butare. However, it seems to me that she "reconstructs" this meeting a lot, and that she sees in it things that were not there. Thus, she states that Bourgmestre Nyabisindu "was apparently the only one to openly dissent from the program." Yet, according to the minutes, Gisagara simply touched on the situation in his commune and the state of mind of those he governed. In fact, they say: "Nyabisindu: the citizens are mourning because their *Préfet* has left. They also say that their people were killed and that they must come together in order to have their own stronghold." It takes a lot of imagination to find open opposition to the genocide

<sup>31</sup> I will come back to this meeting, because her interpretation of it is one of the points on which I disagree with Alison Des Forges.

<sup>32</sup> I have already stated that Muvunyi's conviction by ICTR does not change my position on this subject.

in the minutes. Then, the deletion of "Ndora-Rusatira-" leads Alison Des Forges to conclude that all the communes, apart from Mbazi, had to be attacked on 22 April, but that seemed not to have been the case, since in her own words she states: "there were attacks *in most of the* previously untouched communes": how many communes were attacked on 22 April? Lastly, she says that some bourgmestres conveyed this new message of violence to their citizens, and she cites Elie Ndayambaje as an example even though he was not yet Bourgmestre of Muganza at the time. I believe it is necessary to refrain from saying what the documents do not say.

In conclusion on Alison Des Forges' report, I note that she accuses very clearly a certain number of people, but not Joseph Kanyabashi. Des Forges implicitly blames him for his ambiguous behaviour, lack of courage in the face of the genocidal killers and, perhaps, the fact that he allowed himself to be manipulated. All this chimes in with my assumption under Point 6 in particular. Joseph Kanyabashi, ensnared and powerless, fearing for his life, adopted a survival strategy.

15. Critical analysis of the expert report on Joseph Kanyabashi filed by André Guichaoua in the Butare case

I have a lot of respect for the works of Professor Guichaoua who is an excellent colleague. To be specific, I am however compelled to express a few reservations about the methodology used in this report. Very often, his assertions have no sources; sometimes, they are based on the statements of one single anonymous witness. This is to say that in reality Guichaoua should be taken at his word. In a certain number of cases, the report contains rapidly made peremptory assertions, which are sometimes unfounded accusations. More generally, I note that Guichaoua provides a "complete" and "finished" picture of an extremely complex situation involving very many actors and very fluid situations and narrations. Despite the quality of the research, often the objective, because of circumstances, is to "construct" and not to "reconstruct." Trying to propose this "finished" picture, the author identifies structures, strings of events and logic which do not necessarily correspond with the reality.

I should now look through the report for a few examples of what I have just stated. I will limit myself to passages dealing, directly or indirectly, with Joseph Kanyabashi.

- p. 29: "At the level of Butare, his direct opposite was Joseph Kanyabashi who was an embodiment of the caricature of the virtues of client and sponsor": this assessment is not based on any verifiable fact.
- p. 36: There is no indication that in 1980 Joseph Kanyabashi had allegedly played the same role with "intermediaries of the presidential clan;" Guichaoua makes this assumption without giving any solid indication.
- p. 42 (Fr): Table 1 seems to suggest that Kanyabashi was a good soldier from MRND and that he was in the good books of President Habyarimana. But then, the composition of the MRND Political Commission shows exactly the opposite of what Guichaoua suggests. In reality, this Commission also included names like Léonidas Rusatira (who, in the army, opposed *akazu*), Antoine Ntashamaje (a Tutsi, then a civil servant at the Ministry of Justice), Thaddée Bagaragaza (politician under the First Republic and, in 1991, one of MDR

founders) and Christophe Mfizi (one of the first opponents to come out in 1990). Those from Butare also included Félicien Gatabazi in the Foreign Affairs Commission; yet, he was an opponent in MRND (particularly opposed to Nsekaliye's education policy, cf. *supra* 3.2.1) and he was one of the PSD founders.

- p. 62: What makes Guichaoua say that Kanyabashi "publicly played the dual-membership card?"
- p. 67: Same remark as above. What is the basis for the assertion that Kanyabashi allegedly joined PSD "because of opportunism"?
- p. 109: Kanyabashi visited Higaniro "more often": an assertion based on one single testimony. What is the status of this witness? Why did he say that in June 2001?
- p. 118-121 (Fr): Whereas his "good management" is acknowledged (though written in quotation marks), Kanyabashi is also accused of embezzlement which is actually specified nowhere. Kanyabashi's appointment as member of the MRND Political Commission (cf. *supra*) is not at all the "explicitly manifested [the] rallying of the capital city of the South to the Habyarimana regime," but simply the fact that all the Prefectures were represented in the government, the central committee and MRND commissions. The suggested cleavage between *Préfet* Habyalimana and Bourgmestre Kanyabashi is not based on any verifiable data. I have provided above elements pointing to the contrary. Did Guichaoua pose the question to Habyarimana? The last sentence of the inset is a veritable unfounded accusation. On page 121, Guichaoua reiterates the idea already mentioned above that Kanyabashi was cautiously ambiguous and that he had not actually left MRND. However, the matter is much simpler: according to a directive from the Minister of the Interior following the introduction of multi-party politics, in order to remain the bourgmestres of their citizens, they must not be involved in active partisan politics.
- p. 154-155 (Fr): Why does Guichaoua fail to note, which is so obvious, that Kanyabashi did not join in the civil self-defence, whereas it would have just been normal for the Ngoma Bourgmestre if he was considered a supporter of the genocide? Kanyanashi was neither a member of the steering committee nor of the Prefecture civil self-defence committee. He did not contribute to the civil defence fund, even though Guichaoua says he was member of the finance committee (this assertion is based on unknown sources; Guichaoua explains away in a rather paradoxical fashion that "being a member of the committee did not necessarily mean active personal commitment." If Kanyabashi had participated in the genocide, it would have been normal for him, as bourgmestre, to play a visible role in these structures that directed its implementation.
- p.196: Guichaoua's conclusion is final: "Through fear, calculation, habit, conviction, all those who remained in their jobs or were promoted, took part in the direct implementation of massacres and/or their organization" This cold assessment may appear reasonable when he writes from a quiet and safe office in Paris, but it does not take into account the essential dilemma thus confronting the Accused. I even find it scandalous because those who remained in their jobs did everything, sometimes through small actions, to save lives and limit the

damage, while remaining alive, for which they are today blamed. Logically, it follows from this conclusion that an innocent bourgmestre must be dead. Guichaoua's summary on Kanyabashi's attitude on page 164 falls under unfounded accusations and is not supported by any concrete fact.

Done in Antwerp, on this 16<sup>th</sup> day of August 2007

[Signed]  
Filip Reyntjens

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