



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

TRIAL CHAMBER III

**ENGLISH
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Before Judges: Andresia Vaz, presiding
Jai Ram Reddy
Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 17 June 2004

THE PROSECUTOR

v.

SYLVESTRE GACUMBTSI

Case No. ICTR-2001-64-T

JUDGMENT

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TABLE OF CONTENTS

	Page
CHAPTER I: INTRODUCTION	4
A. The Tribunal and its Jurisdiction	4
B. The Accused	4
C. Procedural Background	4
D. Evidentiary Matters	6
E. Witness Protection	7
CHAPTER II: FACTUAL FINDINGS	8
A. Paragraphs 1, 2, 3 and 26 of the Indictment (General Allegations)	8
B. Paragraphs 4 to 7 and 9 to 14 of the Indictment (Meetings in Rusumo and Kibungo, the Accused's movements within Rusumo <i>commune</i> and the distribution of weapons)	9
1. Allegations	9
2. Evidence	11
Thursday, 7 April 1994	11
Friday, 8 April 1994	12
Saturday, 9 April 1994	13
Sunday, 10 April 1994	14
Monday, 11 April 1994	15
Tuesday, 12 April 1994	16
Wednesday, 13 April 1994	17
Thursday, 14 April 1994	18
3. Discussions and Findings	21
C. Paragraphs 15 to 19 and 27 of the Indictment (Attacks on Nyarubuye Parish)	25
1. Allegations	25
2. Evidence	26
15 April 1994	26
16 April 1994	34
17 April 1994	36
After 17 April 1994	37
3. Discussion	38
15 April 1994	38
16 April 1994	39
17 April 1994	41
The Defence Case: massacres committed by RPF	41
4. Conclusions	42
D. Paragraphs 31 to 36 of the Indictment (Killings)	44
1. Allegations	44
2. Evidence	45
13 April 1994 – The murder of Kanyogote	45
14 April 1994 – The murder of Kanyogote	46
15 April 1994 – Attack on the Nyabitare Catholic Centre	46

3.	Discussion – Findings	47
	Paragraph 33 of the Indictment	47
	Paragraph 34 of the Indictment	47
	Paragraph 36 of the Indictment	48
E.	Paragraphs 20, 21 and 37 to 40 of the Indictment (Rapes)	49
1.	Allegations	49
2.	Evidence	50
3.	Discussion	52
4.	Findings	55
F.	Paragraphs 8, 22, 23 and 24 of the Indictment (Authority of the Accused)	56
1.	Allegations	56
2.	Evidence	56
3.	Discussion and Findings	59
CHAPTER III: LEGAL FINDINGS		60
A.	Genocide and related offences	60
1.	Statute and case law	60
2.	Genocide	62
	Killings members of the group	63
	Causing serious bodily or mental harm to members of the Tutsi	
	Ethnic Group	69
3.	Complicity in Genocide	69
B.	Crimes against Genocide	69
1.	Common elements	69
2.	Crimes against humanity – extermination	72
3.	Crimes against humanity – murder	73
4.	Crimes against humanity – rape	74
CHAPTER IV: VERDICT		76
CHAPTER V: SENTENCING		77
A.	General principles governing determination of sentences	77
B.	Aggravating circumstances	78
	Finding	79
C.	Mitigating Circumstances	79
	Conclusion	80
D.	Sentencing Ranges	81
	Thirty Years’ Imprisonment	81
Annex I – List of cited sources and abbreviations		83
Annex II – The Indictment		89

CHAPTER I: INTRODUCTION

A. *THE TRIBUNAL AND ITS JURISDICTION*

1. This Judgment is rendered in the case of *The Prosecutor v. Sylvestre Gacumbitsi* by Trial Chamber III (the “Trial Chamber” or the “Chamber”) of the International Criminal Tribunal for Rwanda (the “Tribunal”), composed of Judge Andréia Vaz, presiding, Judge Jai Ram Reddy and Judge Sergei Alekseevich Egorov.
2. The Tribunal was established in 1994 by the United Nations Security Council, pursuant to Chapter VII of the United Nations Charter.¹
3. The Tribunal is governed by the Statute appended to Security Council resolution 955 (the “Statute”)² and by its Rules of Procedure and Evidence (the “Rules”).
4. The Statute provides that the Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States. Pursuant to Article 1 of the Statute, the Tribunal’s temporal jurisdiction is limited to acts committed between 1 January and 31 December 1994. The Tribunal also has *ratione materiae* jurisdiction over genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto.

B. *THE ACCUSED*

5. Sylvestre Gacumbitsi (the “Accused”) was born in 1943 in Kigina *secteur*, Rusumo *commune*, Kibungo *préfecture*.³
6. He worked successively as a teacher in Kibungo *préfecture*, chairman of the *Banque Populaire de* Rusumo and, between 1983 and 1994, as *bourgmestre* of Rusumo *commune*, a position he held until April 1994.⁴

C. *PROCEDURAL BACKGROUND*

7. On 19 June 2001, Judge Lloyd G. Williams, Q.C., acting under Rule 40 *bis* of the Rules and at the request of the Prosecutor, requested the Tanzanian authorities to arrest and place in custody Sylvestre Gacumbitsi, then a suspect, until his transfer to the Tribunal.⁵
8. On 20 June 2001, Judge Lloyd G. Williams, Q.C. confirmed an Indictment prepared by the Prosecutor against Sylvestre Gacumbitsi (the “Indictment”) and, at the

¹ United Nations Security Council, resolution 955.

² United Nations Security Council, resolution 955. The Statute was amended by the United Nations Security Council resolutions 1165, 1329, 1411, 1431, 1503 and 1512.

³ Defence Closing Brief, para. 38.

⁴ Defence Closing Brief, paras. 41 to 47 and 60.

⁵ *Gacumbitsi*, Order, 20 June 2001 (TC).

same time, granted the Prosecution leave to amend the Indictment.⁶ An amended version of the Indictment was filed in English and French on that date, with the confirming Judge issuing a warrant of arrest against the Accused.⁷

9. Also on 20 June 2001, Tanzanian authorities arrested the Accused in Kigoma, Tanzania, and transferred him to the Tribunal, where the Registrar had him placed in custody at the Detention Facility.

10. On 26 June 2001, the Accused pleaded not guilty to each of the counts in the Indictment.⁸

11. On 25 July 2002, the Chamber dismissed a preliminary motion by the Defence based on defects in the form of the Indictment.⁹ The Chamber recalled that the confirming Judge, pursuant to Article 18 of the Statute and Rule 47 of the Rules, was satisfied that a *prima facie* case had been established.

12. On 16 May 2003, the Prosecution filed its Pre-Trial Brief.

13. On 28 July 2003, the trial opened with the Prosecution making its opening statement¹⁰ and case-in-chief.

14. On 1 August 2003, pursuant to Rule 92 *bis* of the Rules, the Chamber admitted into evidence the testimony of Expert Witness Alison Des Forges in the *Akayesu* casem¹¹ including the 49 exhibits relating thereto which had been disclosed earlier to the Defence¹² in lieu of her examination-in-chief. The Chamber ruled that it was admitting the evidence given by the said witness in *Akayesu*, together with any other parts of the transcript that could clarify their meaning.¹³

15. On 6 August 2003, the Chamber denied a Defence oral motion requesting the Chamber not to hear Witness TAP's evidence of a rape allegedly committed by the Accused himself – a new allegation that had been disclosed to the Defence the previous day. The Chamber ruled that, while it was aware of the rights of the Defence to fair notice of charges, it nevertheless decided, in the interests of justice, to hear Witness TAP's full testimony, while at same time reserving its decision as to the admissibility of the allegation itself.¹⁴

⁶ *Gacumbitsi*, Decision, 20 June 2001 (TC).

⁷ *Gacumbitsi*, Order, 20 June 2001 (TC).

⁸ Initial appearance pursuant to Rule 62 of the Rules, with Judge Lloyd G. Williams, Q.C. presiding (T., 26 June 2001).

⁹ *Gacumbitsi*, Decision, 25 July 2002 (TC).

¹⁰ T., 28 July 2003, pp. 17 to 22.

¹¹ *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-1996-4-T.

¹² Such material was disclosed to the Defence when the “*Prosecutor’s Motion for Admission of Testimony of an Expert Witness Pursuant to Rules 54, 73, 92 bis*”, was filed on the 25 June 2003 (*cf.* para. 1, footnote 1 and Annex A).

¹³ *Gacumbitsi*, Decision on Expert Witness, 1 August 2003 (TC). Evidence provided by Expert Witness Alison Des Forges in *Akayesu* was filed in the instant case as Prosecution Exhibit 15, in the form of a CD ROM. A list of the material contained therein is appended to this Judgment.

¹⁴ T., 6 August 2003, p. 23-24.

16. On 2 October 2003, the Chamber dismissed a Defence motion for acquittal of the Accused on certain counts in the Indictment, pursuant to Rule 98 *bis* of the Rules. However, the Chamber ruled, of its own motion, that in its final deliberations, it would not take into account the allegation of rape made against the Accused by Witness TAP in her testimony. The Chamber noted that, apart from the Prosecution's failure to provide notice of this charge, the Indictment did not contain any allegation of rape committed by the Accused himself, and the Prosecution had not sought an amendment of the Indictment in this respect.¹⁵

17. The Prosecution rested on 28 August 2003, following 16 days of hearings.

18. Citing difficulties in the preparation of its case, the Defence requested on 28 August 2003 that the Defence case, which was scheduled to start on 6 October 2003, be postponed to December 2003. The Chamber found that the reasons cited by the Defence were not such as to warrant postponement of the trial and ordered the Defence to file its Pre-Trial Brief no later than 3 October 2003.¹⁶

19. On 6 October 2003, the Defence proceeded with its case, following its opening statement.¹⁷ The Defence rested its case on 25 November 2003.

20. The Chamber heard a total of 15 Prosecution witnesses and 22 Defence witnesses and also admitted into evidence 15 Prosecution exhibits and 9 Defence exhibits.

21. The Chamber notes that it applied Rule 15 *bis*(A) of the Rules.

22. The Prosecution filed its Closing Brief on 23 December 2003, while the Defence filed its own Closing Brief on 9 February 2004.¹⁸ The Prosecution and the Defence made their closing arguments on 1 March 2004, on which date the trial was declared closed and deliberations commenced.¹⁹

D. EVIDENTIARY MATTERS

23. The Chamber examined the charges on the basis of the testimonies given and exhibits tendered by the parties to sustain or rebut the allegations in the Indictment.

24. Under Rule 89 of the Rules, the Chamber is not bound by national rules of evidence and may, in cases not otherwise provided for in the Rules, apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

¹⁵ *Gacumbitsi*, Decision, 2 October 2003 (TC).

¹⁶ T., 28 August 2003, pp. 20 and 21.

¹⁷ T., 6 October 2003, pp. 2 to 8.

¹⁸ On 25 February 2004, the Defence filed an amended version of its Closing Brief. Unless otherwise stated, reference will hereinafter be made to this version, which includes numbered paragraphs.

¹⁹ T., 1 March 2004.

E. WITNESS PROTECTION

25. Certain witnesses called by the Parties gave part or all of their evidence in camera to ensure their safety. In this Judgement, the Chamber wished to provide as much detail as possible to make it easy to follow its reasoning.²⁰ However, the Chamber was at the same time careful not to disclose any information that might reveal the identity of the protected witnesses to the public.

²⁰ *Semanza* Judgement (TC), para. 37.

CHAPTER II: FACTUAL FINDINGS

A. PARAGRAPHS 1, 2, 3 AND 26 OF THE INDICTMENT (GENERAL ALLEGATIONS)

26. Paragraph 1 of the Indictment alleges that:

1. Between 1 January and 31 December 1994, citizens native to Rwanda were severally identified according to the following ethnic or racial classifications: Tutsi, Hutu and Twa.

27. Prosecution Expert Witness, Alison Des Forges, testified in *Akayesu* that there were three distinct ethnic groups in Rwanda, namely the Hutu, the Tutsi and the Twa.²¹ The Defence does not dispute the fact that in 1994 Rwandan citizens were divided into three ethnic groups, but merely points out that such division dates back to the colonial or pre-colonial period.²²

28. Consequently, the Chamber concludes that during the period referred to in the Indictment, Rwandan citizens were categorised into three ethnic groups, namely Tutsi, Hutu and Twa.

29. Paragraph 2 of the Indictment alleges that:

2. Between 1 January and 17 July 1994 there was a state of non-international armed conflict in Rwanda.

30. Since the Indictment does not charge any violation of Article 3 common to the Geneva Conventions and Additional Protocol II, the Chamber does not find it necessary to make a finding on the allegation contained in paragraph 2 of the Indictment.

31. Paragraph 3 of the Indictment alleges that:

3. Following the death of Rwandan President Juvenal Habyarimana on 6 April 1994 and resumption of civil hostilities in the non-international armed conflict on the following day, a newly installed Interim Government of 8 April 1994 launched a nationwide campaign to mobilize government armed forces, civilian militias, the local public administration and common citizens to fight the Rwandese Patriotic Front (RPF), a predominantly Tutsi politico-military opposition group. Government armed forces and *Interahamwe* militias specifically targeted Rwanda's civilian Tutsi population as domestic accomplices of an invading army, *ibytso*, or as a domestic enemy in their own right. Under the guise of national defense, ordinary citizens of Rwanda, primarily Hutu peasantry, were enlisted in a nationwide campaign of looting, pillaging, murder, rape, torture, and extermination of the Tutsi.

32. This paragraph is of a general nature and does not contain any specific or contextual allegations relating to the Accused's actions and conduct over and above the

²¹ *Gacumbitsi* trial; Exhibit P15, Transcript of the hearing of Alison Des Forges' testimony of 12 February 1997 in the *Akayesu* case, p. 11 and pp. 12 to 13.

²² Defence Closing Brief, para. 124.

allegations made in other more specific paragraphs of the Indictment. Consequently, the Chamber will not make any finding on this matter.

33. Paragraph 26 of the Indictment alleges that:

26. Between 6 April 1994 and 17 July 1994, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

34. Allegations relating to events that took place outside Rusumo *commune* have not been made before the Chamber. The allegation contained in paragraph 26 of the Indictment will therefore be understood as relating only to Rusumo *commune* and will be examined as part of the Chamber's consideration of the charge of crimes against humanity. The Chamber's finding in this respect will be presented in Chapter III hereunder.

B. PARAGRAPHS 4 TO 7 AND 9 TO 14 OF THE INDICTMENT (MEETINGS IN RUSUMO AND KIBUNGO, THE ACCUSED'S MOVEMENTS WITHIN RUSUMO COMMUNE AND THE DISTRIBUTION OF WEAPONS)

1. Allegations

35. Paragraphs 4, 5, 6, 7, 9, 11, 12 and 13 of the Indictment allege that:

4. Sylvestre Gacumbitsi organized the campaign against Tutsi civilians in Rusumo *commune*, Kibungo *préfecture*. The campaign consisted in public incitement of Hutu civilians to separate themselves from their Tutsi neighbours and to kill them, and resulted in thousands of deaths. Sylvestre Gacumbitsi killed persons by his own hand, ordered killings by subordinates, and led attacks under circumstances where he knew, or should have known, that civilians were, or would be, killed by persons acting under his authority.

5. Notably, on or about 9 April 1994, Sylvestre Gacumbitsi convened a meeting of all the *conseillers de secteur*, *responsables de cellule* and party chiefs of MRND and CDR in Rusumo *commune*. The meeting was held at the *bureau communal*. During that meeting *Bourgmestre* Sylvestre Gacumbitsi announced that weapons would be distributed for purposes of the extermination of the Tutsi population.

6. On or about 10 April 1994 Sylvestre Gacumbitsi participated in a meeting at the FAR military camp in Kibungo. Present at the meeting was Col. Pierre Célestin Rwagafirita and all of the *bourgmestres* of Kibungo *préfecture*. Col. Rwagafirita and a number of other soldiers distributed cases of grenades, machetes and bladed weapons to each *bourgmestre*. Sylvestre Gacumbitsi received over 100 boxes of weapons, some of which he subsequently distributed to various locations in the *préfecture*.

7. On or about 12 April 1994, after conferring with Major Ndekezi, Sylvestre Gacumbitsi ordered soldiers and boatmen along the lakes in Gisenyi *secteur* to stop refugees in flight from escaping across the border into Tanzania.

9. Sylvestre Gacumbitsi ordered *responsables de cellule* and *nyumbakumi* to deliver weapons to certain members of the populace. He also ordered the *responsables de cellule* and *nyumbakumi* to disseminate to members of the populace and to carry out the official policy of massacring civilian Tutsi. These communal officials in turn re-distributed the weapons that they received from Sylvestre Gacumbitsi and participated in the campaign of extermination by ordering their constituents to kill civilian Tutsi throughout the *commune*.

11. During the week of 11 April 1994, Sylvestre Gacumbitsi circulated in Rusumo aboard a vehicle belonging to the *commune*. He was often accompanied by communal police and *Interahamwe*, and the vehicle was often loaded with a quantity of machetes. For example, on or about 15 April 1994 Sylvestre Gacumbitsi, accompanied by Munyabugingo, transported weapons, including machetes, in a vehicle heading towards Nyarubuye.

12. On or about 14 April 1994 Sylvestre Gacumbitsi arrived in Nyabitare *secteur* and summoned all the Hutu *nyumbakumi* and distributed machetes to them. He instructed the communal police and the *nyumbakumi* that all Tutsi in the region should be killed by nightfall, and that whoever killed a Tutsi could then appropriate his belongings. The communal police and *nyumbakumi* did as Sylvestre Gacumbitsi instructed, and many civilian Tutsi were killed, among them: Léonard Kagumya; Gahondogo and her children, Runuya and her children, including Maniriho, Kagumya (2 weeks old), Gashumba, Mutempundu, Mukabera, Nyamvura, Mukadusabe, Bimenyimana.

13. In addition to exhorting crowds to massacre the Tutsi civilians, Sylvestre Gacumbitsi travelled to the various *cellules* to monitor the course of the massacres.

36. The Chamber finds that the general allegations contained in paragraph 4 of the Indictment are a summary of the Prosecution case against Sylvestre Gacumbitsi as to his criminal responsibility for the crimes committed in Rusumo *commune* – an issue which is dealt with in Chapter III of the present Judgment. It does not deem it necessary to make factual findings on such allegations, except on the allegation of a campaign of public incitement urging Hutu civilians to separate themselves from their Tutsi neighbours and kill them.

37. As the Prosecution conceded,²³ no evidence was adduced in support of the specific allegations contained in paragraphs 10 and 14 of the Indictment. Consequently, the Chamber will not make any finding thereon.

38. The Chamber considers as unfounded the Defence's allegation that paragraph 7 of the Indictment is vague as to the place where the Accused met with Major Ndekezi and to the latter's identification.²⁴ The identification of Major Ndekezi is sufficient and the Indictment contains further details that make it possible to identify the location – “the lakes in Gisenyi *secteur*” – where the events took place.

²³ T., 1 March 2004.

²⁴ T., 1 March 2004.

39. The Defence alleges that no Prosecution witness mentioned the names of the victims referred to in paragraph 12 of the Indictment.²⁵ The Chamber considers that the count of genocide covers a large number of victims, such that the Prosecution could not be expected to provide an exhaustive list of victims. Therefore, the fact that witnesses mentioned victims not referred to in the Indictment does not prejudice the Accused.

40. The Chamber notes, however, that the evidence of Witness TAC, who testified on the massacre of 15 April 1994 at the Nyabitare Catholic Centre, fails to prove the allegations contained in paragraph 12 of the Indictment, as alleged by the Prosecutor.²⁶ Indeed, the evidence refers to an attack that allegedly occurred on 15 April 1994 in the course of which two Tutsi, Mutunzi and Rukomeza, were killed at a specific location in Nyabitare, the local Catholic Centre, whereas paragraph 12 of the Indictment alleges that attackers had killed, in an unspecified location in Nyabitare, around 14 April 1994, a number of Tutsi some of whose names were provided. The names of Mutunzi and Rukomeza were not mentioned. The Chamber notes that Witness TAC did not mention the names of the victims referred to in the Indictment and made no mention of testifying to a large-scale massacre. Rather, the witness only testified to the murder of Mutunzi and Rukomeza. In conclusion, the Chamber finds that the allegations contained in paragraph 12 of the Indictment have not been proved. The Chamber will assess Witness TAC's evidence when considering the allegations contained in paragraph 34 of the Indictment.

2. Evidence

Thursday, 7 April 1994

41. **Prosecution Witness TAW**, a Tutsi,²⁷ who had known the Accused for several years prior to 1994 and who, from a vantage point, was able to observe the actions of the Accused between 7 and 13 April 1994, testified about meetings between the Accused and *gendarmarie* officials during that period.²⁸

42. Witness TAW testified that, early in the morning of Thursday 7 April 1994, the Accused went to the temporary *gendarmarie* camp in Rwanteru to meet the camp commander, Major Ndekezi. Thereafter, the Accused and the Major went to the military camp at Rusumo Falls, at the border between Rwanda and Tanzania, where they held a meeting with Major Nsabimana. Later in the day, the Accused also met with *Gendarmerie* Colonel Rwagafirita.²⁹ Witness TAW did not take part in the meetings, but witnessed a conversation between Major Ndekezi and the Accused during which the former said: "Habyarimana is dead. Why don't we kill the Tutsi in Rwanda? If we kill them, the war might be over", and the Accused answered that not all Tutsi were bad.³⁰

43. Witness TAW further testified that, on that same day, the Accused asked the *commune*'s secretary to type out a message inviting the *conseillers* of the *secteurs* to a

²⁵ Defence Closing Brief, paras. 107 to 108.

²⁶ Prosecution Closing Brief, paras. 142 to 153.

²⁷ T., 20 August 2003, pp. 2 to 5.

²⁸ T., 20 August 2003, pp. 48 to 52. Witness TAW identified the Accused in court, T., 20 August 2003, p. 31.

²⁹ In the transcripts the name "Rwagafirita" is also spelled "Rwagafilita".

³⁰ T., 20 August 2003, pp. 7 to 9, 45 to 50.

meeting scheduled for the following Saturday, 9 April. Witness TAW testified that the message was actually delivered to the addressees by communal policemen.³¹

44. **Defence Witness ZEZ**, who worked in Rwanteru, not far from the military camp, testified that he did not see the Accused on 7 April 1994, but explained that he was not aware if the Accused went to Rwanteru military camp on that day.³²

45. The Accused testified that on the night of 6 April 1994, after hearing the news of the President's death on Radio Rwanda, he no longer went out of his house. The following day, 7 April 1994, he met with the *sous-préfet* and, together, they decided that the people needed to be consoled and to be advised to pull themselves together. Apart from the *sous-préfet*, no Rwandan official visited him in Rusumo on that day. The Accused further testified that at that time, Rusumo *commune* was not connected to the telephone network, and that it was isolated.³³

Friday 8 April 1994

46. **Witness TAW** testified that on 8 April 1994, the Accused went to a meeting, not far from Kibungo. He was accompanied, apart from his driver, by three police officers and Justin Manayabagabo, a former school inspector and MRND chairman for Rusumo *commune*, as well as the *sous-préfet* of Kirehe, Joseph Habimana. The meeting was held near the *préfecture* building, a short distance from Kibungo town where there was a bar, in the house of Rwagasori, a businessman. In attendance were: the *préfet* of Kibungo, Colonel Rwagafirita, all the *bourgmestres* of Kibungo *préfecture*, officials and leaders of political parties and some *Interahamwe*, who were led by a certain Cyasa. Witness TAW, who himself did not take part in the meeting and could not testify about what was said there, stated that many persons were present in the room where it was held, and that it was Colonel Rwagafirita "(...) who spent more time chairing the meeting". It was at the meeting that, for the first time, Witness TAW saw *Interahamwe* in uniform. The witness explained that, in the past, the people of Rusumo trained with the *Interahamwe*, but that he himself had never seen them in uniform.³⁴

47. The **Accused** testified that on 8 April 1994 he went to Kibungo to attend a meeting convened and presided over by the *préfet*, Godefroid Ruzindana, to discuss security issues. The meeting was held in the prefectoral office meeting room.³⁵

48. The Accused testified that each *bourgmestre* presented a report on the security situation in his *commune*. While all the other *bourgmestres* reported that they were encountering security problems in their *communes*, the Accused reported that there was none in his *commune*. Security instructions were issued to the *bourgmestres* so that they could be relayed to the *conseillers* and the citizens. According to the instructions, the *bourgmestres* had to ensure security and organize meetings to that effect. A curfew was agreed on. The people had to organize night patrols. There was to be no racial

³¹ T., 20 August 2003, pp. 8 to 10.

³² T., 6 October 2003, pp. 50 to 52.

³³ T., 21 November 2003, pp. 16 to 20.

³⁴ T., 20 August 2003, pp. 9 to 13, and 50 to 56.

³⁵ T., 21 November 2003, pp. 17 to 19.

discrimination. Those disturbing public peace were to be punished. Decisions taken at the meeting were broadcast on the radio.³⁶

49. The Accused further testified that after the meeting he returned to Rusumo *commune* and lost no time in convening a meeting of the communal *conseillers* for 9 April 1994 to ask them to ensure that there was security.³⁷

Saturday, 9 April 1994

50. **Prosecution Witness TBH**, a Hutu, who was a local official in 1994 and acknowledged that he took part in the massacre of the Tutsi in Rusumo *commune* between April and May 1994, stated that after he had been tried and sentenced to fifteen years' imprisonment in Rwanda for his role in the genocide in Rusumo *commune*, he was granted an early and unconditional release by presidential decree in early 2003.³⁸

51. Witness TBH testified that a meeting of *conseillers* took place on 9 April 1994, around noon, in the IGA room, located in Rusumo *commune*.³⁹ In attendance were *Conseillers* Birasa of Musaza *secteur*, Claude Ahishakiye of Gatore *secteur*, André Bizuru of Kigina *secteur*, Anastase Mutabaruka of Kirehe *secteur*, Rwabarinda of Nyabitare *secteur*, Nyiringabo of Kankobwa *secteur*, Claudien Kabandana of Nyamugari *secteur*,⁴⁰ Ananie Karamage of Nyarubuye *secteur* and Seth Sebijojo of Gisenyi *secteur*. Only the *Conseiller* of Kigarama *secteur* was absent.⁴¹ Also in attendance were Edmond Bugingo, MRND Chairman for Rusumo *commune* and Justin Manayabagabo, Secretary of MRND. The Accused, who chaired the meeting, recalled the situation in Rwanda since the assassination of President Habyarimana, the fact that the country was at war, the presence of the Rwandan Patriotic Front (RPF) at Kinihira and the fact that young Tutsi were leaving their families in the *commune* to join RPF. The Accused asked the *conseillers* of the *secteurs* of Rusumo *commune* to organize meetings, which were to be held without the knowledge of the Tutsi, between 9 and 12 April 1994 in their respective *secteurs*. He also asked them to tell the Hutu, during the meetings, that all the Tutsi should be killed, adding that otherwise, the accomplices of the *Inkotanyi* would denounce the Hutu, and such Hutu would die before the others. He said that once the Tutsi were killed, the *Inkotanyi* would not have any more accomplices. The witness explained that before the meeting, he had never heard the Accused make any statement intended for the massacre of Tutsi. According to the instructions of the Accused, all meetings were to be held before 12 April and the massacres were to commence on 13 or 14 April 1994. In response to a question put to him by the Bench, Witness TBH testified that the issue of weapons distribution was not mentioned during the meeting of 9 April 1994.⁴²

³⁶ T., 21 November 2003, pp. 17 to 23. See: Defence Exhibit D07: Broadcast Report of the meeting of 8 April 1994.

³⁷ T., 21 November 2003, pp. 23 to 25.

³⁸ T., 25 August 2003, pp. 13 to 19, and 22 to 23. TBH identified the Accused in court: T., 25 August 2003, pp. 32 to 33.

³⁹ The IGA room is a training centre which, according to Witness ZEZ, is located at the same place as the communal office. See T., 6 October 2003, pp. 52 to 53.

⁴⁰ In the transcripts, Nyamugari is also spelled Nyamugali.

⁴¹ T., 25 August 2003, pp. 23 to 28.

⁴² T., 25 August 2003, pp. 21 to 36; T., 26 August 2003, pp. 13 to 16 and 22.

52. Witness TBH testified that the Accused, as *bourgmestre*, was the superior of the *conseillers de secteurs* and that the latter had to obey his orders. The witness however pointed out that some participants in the 9 April 1994 meeting did not approve of the Accused's statements, while others decided not to hold the meetings requested by the Accused and refused to transmit his instructions to the officials of the *cellules* in their *secteurs*.⁴³

53. Witness TBH testified that the situation was calm on 9 April 1994, even though since 8 April 1994, everyone in Kigina *secteur* had been talking about the war. He pointed out that attacks had already been carried out in the surrounding *communes*. In conclusion, he testified that security had not been provided.⁴⁴

54. In response to a question from the Bench, Witness TBH admitted to never having spoken about the holding of the 9 April 1994 meeting, which was convened and chaired by the Accused, before becoming a witness at the Tribunal.⁴⁵

55. **Prosecution Witness TAW** testified that, on the morning of Saturday 9 April 1994, the Accused went to the Rusumo communal office in Nyakarambi, to take part in a meeting with the *conseillers*. The meeting ended late in the afternoon. Apart from the *conseillers de secteur* and the *cellule* officials, certain political party representatives had been invited. Subsequently, Witness TAW had a conversation with one of the participants in the meeting who told him that the general situation was serious, that the situation of the Tutsi was very delicate, as their hour was up, that "weapons were going to be distributed in the near future", with a view to massacring them and that the Hutu, MDR and CDR were in a coalition to fight against all the Tutsi.⁴⁶ The witness testified that the purpose of the meeting was to inform the *conseillers de secteurs* of the message given during the meeting of 8 April at Kibungo.⁴⁷

56. The **Accused** testified that a meeting bringing together all the *conseillers*, save one, who was retained in his *secteur* because of security problems, took place at Rusumo on 9 April 1994. The Accused, who chaired the meeting, reminded them that it was unacceptable to commit acts of injustice against an RPF accomplice. At the end of the meeting, he went to the *secteur* of the absent *conseiller*.⁴⁸

Sunday 10 April 1994

57. **Witness TAW** testified that on the morning of Sunday, 10 April 1994, the Accused went to Kibungo military camp in a convoy of three communal vehicles accompanied by Rusumo *commune* police officers. Also present there were the *bourgmestres* of Sake and Mugesera *communes*, with the vehicles of those *communes*. After speaking with Colonel Rwagafirita, the Accused asked the drivers to drive the *communes'* vehicles to a place in the camp so as to load them, under the colonel's orders, with boxes stored in a building. The soldiers and police officers loaded the boxes and the

⁴³ T., 25 August 2003, pp. 24 to 26.

⁴⁴ T., 25 August 2003, p. 66 to 67.

⁴⁵ T., 26 August 2003, pp. 13 to 16.

⁴⁶ T., 20 August 2003, pp. 13 to 16 and 55 to 56.

⁴⁷ T., 20 August 2003, pp. 52 to 53.

⁴⁸ T., 21 November 2003, pp. 23 to 25.

bourgmestres received same. Forty boxes were loaded into each of the two Stout vehicles belonging to Rusomo *commune*, and 25 boxes into the third vehicle, making a total of 105 boxes. Some similar boxes were loaded into the vehicles belonging to Sake and Mugesera *communes*. Witness TAW, who conceded that he did not see the content of the boxes, deduced, on the basis of information received the previous day from a participant at the meeting held in the *commune* office, that the boxes contained weapons.⁴⁹

58. Witness TAW testified that, upon return to the Rusomo *commune* office, in the afternoon of the same day, the Accused sent one of the three *commune* vehicles to Nyarubuye and another to Nyamugari with, on board, some communal policemen, with a mission to deliver the boxes to Kibungo camp. The Accused himself went to the house of Léonidas Gacondo, the *cellule* official for Kavuzo, Kigina *secteur* where, with the help of his driver he unloaded 15 boxes and had them stored in a room. Gacondo confided to Witness TAW the same evening that the boxes contained weapons. The Accused then went to the Gasenyi commercial centre, in Kigarama *secteur*, near the River Akagera. There he met a certain André, a boatman and trader who was also the local leader of the *Coalition pour la défense de la République* (CDR) party. The Accused then instructed the policemen accompanying him to keep the remaining boxes in a room in André's house. He also asked André to prevent "(...) people who wanted to cross (the river) from crossing" there. According to the witness, the Accused was referring to the Tutsi who were fleeing from the massacres, and wanted to seek refuge on the other side of the river, in Tanzania.⁵⁰

59. The **Accused** testified that he went to Kibungo camp on 10 April 1994. He stated that he went together with the Deputy Prosecutor to the house of *Conseiller* Birasa, a Tutsi, whose house had been set ablaze the previous night. He returned home the same evening, around 6 p.m.⁵¹

Monday, 11 April 1994

60. **Witness TAW** testified that on the morning of 11 April 1994, the Accused successively met with Cyasa, who was accompanied by four or five *Interahamwe* and Major Ndekezi, at the Rwanteru military camp, and, later, accompanied by Cyasa and Ndekezi, Major Nsabimana at the Rusumo military camp. He could not testify about their discussions.⁵²

61. The **Accused** testified that on the night of 10 to 11 April 1994, a Hutu and a Tutsi were attacked and their houses set ablaze. He visited the scene the following day and carried out an inquiry that led to the arrest, upon denunciation, of several persons. He held a security meeting in which he requested that such acts should stop. He subsequently incarcerated the criminals in the *commune* cells and sent their case files to the Deputy Prosecutor. On the night of 11 to 12 April 1994, an incident occurred in Gatore *secteur* during which some people were killed. When the Accused heard about it, he wasted no time. He convened a security meeting in the *secteur* and was informed of the identity of

⁴⁹ T., 20 August 2003, pp. 15 to 19, 49 to 50, and 56 to 57.

⁵⁰ T., 20 August 2003, pp. 18 to 23 and 58 to 63; T., 21 August 2003, pp. 2, 3 and 20 to 21.

⁵¹ T., 21 November 2003, pp. 24 to 26.

⁵² T., 20 August 2003, pp. 22 to 24.

the attackers, a groupe led by a certain “*Maréchal*”. With the help of the criminal investigations Officer (*Inspecteur de police judiciaire* (IPJ)), he carried out an investigation and a search that led to the recovery of some belongings looted during the attack and to the arrest of the criminals who were then incarcerated in the *commune* cells. In the *commune*, the situation was becoming serious, the criminals were not happy with the Accused’s decisions. Some inhabitants revolted and went to the *commune* cells and, in the afternoon of 12 April, released the detainees, since the Accused, who was held back in Gatore, was absent.⁵³

Tuesday, 12 April 1994

62. **Witness TAW** testified that on Tuesday, 12 April 1994, the Accused embarked on a tour of the *secteurs* in the *commune* to check if the *conseillers* had held or scheduled security meetings. The Accused first visited the *conseiller* of Kigina *secteur*, then Major Ndekezi, at the Rwanteru military camp and, later, Nyarubuye, Kankobwa, Nyabitare, Nyamugari, Gasenyi, Kigarama, Gatore and Kirehe *secteurs*. The last lap of his tour that ended late in the evening was Nyakarambi. The purpose of the visits was to meet with the *conseillers* – not the local population – to ask them questions relating to the holding of meetings. In Gasenyi, the Accused met André and asked him for the local situation report. He reiterated to him the instruction not to allow any person to pass through that place in order to escape. The communal police went to ensure that no one crossed the river.⁵⁴

63. **Defence Witness YEW** testified that before 10 a.m. on 12 April 1994, he saw the *bourgmestre* talking with the *commune*’s criminal investigations Officer (*Inspecteur de police judiciaire* (IPJ)), near the Gatore *secteur* office. In the evening, around 5 or 6 p.m., he saw some people from Nyamugali, including a certain Augustin Nkunuzwami, alias “*Maréchal*”; these people claimed they had been imprisoned by the *bourgmestre*, then released and were issuing threats against the *bourgmestre*.⁵⁵

64. **Defence Witness YCW** testified that around 8 a.m. on 12 April 1994, he saw the *bourgmestre*, the *conseiller* and the IPJ in the *secteur* office inquiring into the murder of Kurunziza and his family which took place in Nyamiryango *cellule*. Investigations into the killing led to the arrest of those responsible for it: Augustin Nkunuzwami alias *Maréchal*, Sunahire Bugingo, Habukubaho, Batege Nteziryayo and Uwizeye, a former soldier. Grégoire Havugimana, Ntambara and Munyarubuga, allegedly responsible for other killings, were also arrested and they confessed that they belonged to a group led by Augustin Nkunuzwami. The *bourgmestre* led the attackers away to be incarcerated with those from Nyamugali. The *bourgmestre* then held a meeting in the *secteur* office, during which he told the inhabitants that every assailant should be arrested and handed over to the authorities. The same day, in the afternoon, at Nyakarambi, some people publicly complained about the *bourgmestre* and the *sous-préfet* regarding the arrests and threatened to attack them. The witness saw about fifty demonstrators among whom were those imprisoned by the *bourgmestre*. The witness stated that he heard about a tract being

⁵³ T., 21 November 2003, pp. 24 to 27.

⁵⁴ T., 20 August 2003, pp. 24 to 26.

⁵⁵ T., 15 October 2003, pp. 69 to 70; T., 16 October 2003, pp. 3 to 4.

circulated by Cyasa calling the *bourgmestre* and the *sous-préfet* accomplices of the *Inkotanyi*.⁵⁶

65. **Defence Witness XW10** testified that he never heard the Accused instruct that no one should cross the River Akagera to seek refuge in Tanzania, and pointed out that he himself, like many other people, was able to cross the river into Tanzania on 13 April 1994. He acknowledged, in response to questions put to him by the Judges, that he did not see the Accused during the period of 7 April to 13 April 1994.⁵⁷

66. **Defence Witness XW11** testified that on 7 April 1994, he started working as a boatman at a crossing point between Karebezo hills and Bwiza, on the River Akagera. The witness added that around 27 or 28 May 1994, he took the Accused across the River Akagera as he (the Accused) was fleeing from Rwanda to Tanzania. He added that he never heard that anyone was prohibited from crossing the River Akagera during that period.⁵⁸

Wednesday, 13 April 1994

67. **Prosecution Witness TAS**, a Hutu woman married to a Tutsi, who knows the Accused very well and identified him in court, testified to having seen him near Nyakarambi market around 10 or 11 a.m. on Wednesday, 13 April 1994, accompanied by Rusumo communal policemen. Through a megaphone, the Accused invited the population to assemble behind the stores, beside the market. The policemen, who were armed, were in the vehicles, while one of them, Kazoba, also armed, had come down and was beside the Accused. Eighty to one hundred people, almost all of whom were Hutu, and some *Interahamwe*, were assembled there. Addressing the crowd, the Accused asked them to be vigilant and make sure no one escaped, adding that they should follow the example of Rukira *commune*, pointing to burning houses there, which were visible from Nyakarambi market. The witness and a Tutsi friend, who was beside her, felt targeted by those statements and decided to leave the place. Witness TAS pointed out that she had interpreted the *bourgmestre*'s statements to mean that killings should begin, as was the case in the other *communes*. Later, in the evening, while she was hiding in a bush, below a road where Kazoba was passing, though she could not see him, she heard him, as she recognized his voice, telling someone that as from 12 noon the following day, Thursday 14 April, there would not be a single Tutsi alive, for the Accused had asked that they should all be killed, starting with the women called Marie and Béatrice, his tenants. Witness TAS added that earlier in the day, the Accused had driven away people who had wanted to take refuge in the Rusumo *commune* office.⁵⁹

68. Witness TAS further testified that after President Habyarimana's death, there were secret meetings to which she was not invited because she had been married to a Tutsi, and that the killing of the Tutsi had occurred on 12 April 1994 in Kirehe and Kigina *secteurs*.⁶⁰

⁵⁶ T., 16 October 2003, pp. 18 to 21.

⁵⁷ T., 13 October 2003, pp. 26 to 27, 28 to 29, and 29 to 30.

⁵⁸ T., 13 October 2003, pp. 35 to 37 and 40 to 41.

⁵⁹ T., 5 August 2003, pp. 10 to 12, 13 to 17, 28 to 37 and 53 to 55.

⁶⁰ T., 5 August 2003, pp. 15 to 16.

69. **Witness TAW** testified that on 13 April 1994, after visiting, around 9 a.m., the house he owned in Nyakarambi, and having asked the tenants to leave, the Accused got a megaphone from the *commune* office and asked the police to assemble the people who were at Nyakarambi market square. The Accused told those assembled that it was forbidden to leave a *secteur* for another, that roadblocks should be mounted to intercept those trying to flee, that any person coming from another *commune* should be denied access to Rusumo *commune*, and that night patrols should be carried out at roadblocks. The witness testified that the Accused, pointing to burning houses in Rukira *commune*, told the people: “This is what is happening in Rukira. Go and ensure your own security. This is how things are. Each person must ensure their own security”. According to Witness TAW, that speech was a ruse, for in reality, the Accused was trying to reassure and divert the population, so that no one would try to flee: “He was seeking to distract the local population”. Witness TAW testified that there was a plan of which the Accused was aware: the *Interahamwe* were supposed to leave Kibungo and come and kill the Tutsi at the marketplace.⁶¹

70. Witness TAW explained that the attack on Nyakarambi market square did not take place that morning and that around 2 p.m., “those who were there” were discouraged. Messengers from Kibungo had announced that the attack would not take place because the attackers, notably the *Interahamwe* led by Cyasa, on their way to Rusumo to launch an attack on Nyakarambi, had learnt that in Rukira *commune* the *bourgmestre* and his policemen had objected to the massacre of the Tutsi, and had decided to go there.⁶²

71. **Defence Witness YCW**, a Hutu, testified that on 13 April 1994, while he himself was speaking with other traders in front of his store in Nyakarambi, the Accused told him the extent to which he was overwhelmed by the events and that it was in his own interest to flee. There and then, some hooligans openly threatened to attack the *bourgmestre*, calling him an *Inkotanyi* accomplice.⁶³

72. **The Accused** testified that on 13 April 1994, after a house near the River Akagera had been attacked by some bandits, he went there to assess the situation and referred the matter to the Public Prosecutor’s Office. The Accused returned to the communal office around 1 p.m. In Nyakarambi he found a tense situation, because of the presence of the same bandits, who had been sent from Kibungo by Cyasa.⁶⁴ The bandits attacked him verbally, comparing his house to CND, the building in Kigali that housed an RPF battalion. The Accused then advised his Tutsi driver to flee to Tanzania. The Accused went to the *sous-préfet*’s house, for he thought that his life was in danger. He wanted to flee.⁶⁵

⁶¹ T., 20 August 2003, pp. 27 to 30; T., 21 August 2003, pp. 9 to 10.

⁶² T., 20 August 2003, pp. 28 to 30.

⁶³ T., 16 October 2003, pp. 20 to 23.

⁶⁴ Also spelled Kasa in the French transcript, see: T., 21 November 2003, p. 35.

⁶⁵ T., 21 November 2003, pp. 34 to 37.

Thursday, 14 April 1994

73. **Prosecution Witness TBJ**, a Hutu,⁶⁶ who was arrested in 1997 on charges of genocide committed in 1994 and provisionally released in 2003 pending his appearance before the *gacaca* Court, testified that between 10 a.m. and 12 noon on Thursday, 14 April 1994, he saw the Accused arrive at the Rwanteru commercial centre. The Accused was accompanied by policemen, including Sergeant Rukara, Assistant Sergeant Kazoba and Berakumenyo. Speaking to the witness and friends with whom he was having a drink, the Accused was surprised that they were drinking beer, whereas they should be participating in “the struggle against the enemy”,⁶⁷ that is, hunting down the Tutsi and looting their belongings. At the commercial centre where the Accused made that statement, there were at least one hundred people. Juvénal Ntamwemizi, nicknamed “Sergeant” who presented himself as the Accused’s envoy or [proxy],⁶⁸ formed two groups of assailants. One of them stayed in the village and attacked Ludovico Buhanda’s house and property.⁶⁹ The other group, composed of about 50 to 60 people, including the witness, armed with clubs and machetes, followed the *bourgmestre* to Kigarama, 10 kilometres and one-hour’s walk from the commercial centre. In the group were two soldiers with guns and a few assailants armed with grenades. In Kigarama, the assailants, whom some other people had joined on the way and who now numbered between 150 and 200, were led by a young man called Bamenya to the house of Callixte, rumoured to be Tutsi. They looted his house and captured his cows. The witness testified that the purpose of the attack was clearly to “carry out the instructions” given by the Accused.⁷⁰

74. **Prosecution Witness TBH** testified that between 12 noon and 1 p.m. on 14 April 1994, he saw the Accused arrive at the Rwanteru bus stop in a *commune* vehicle accompanied by the police. The witness testified that from his vehicle, the Accused shouted at the many people who were gathered there in these terms: “You are there doing nothing while the others have finished. Go, take your machetes let no Tutsi live tomorrow morning”. The witness explained that “at those words, the population took machetes”.⁷¹ Shortly after the speech, Witness TBH saw traders closing their stores, the population, armed with machetes, set out with the Accused for Kigarama. Witness TBH also heard that the Accused had given instructions to Juvénal Ntamwemezi, a retired army sergeant.⁷²

75. Witness TBH testified that since he himself heard what the Accused had ordered, and since he could not afford to disobey him, he invited other members of the public to go and kill the Tutsi in Bugarura *cellule* and decided himself to take part in the massacres, in order to avoid being blamed for disobedience and in order to “save face”.⁷³

⁶⁶ T., 18 August 2003, pp. 68 to 69.

⁶⁷ T., 18 August 2003, pp. 68 to 69.

⁶⁸ T., 19 August 2003, pp. 3 to 4.

⁶⁹ At the hearing, Buhanda was sometimes referred to in the French transcript as Ludovico or Ludoviko and sometimes Louis.

⁷⁰ T., 18 August 2003, pp. 71 to 72; T., 19 August 2003, pp. 1 to 5 and 27 to 28.

⁷¹ T., 25 August 2003, pp. 27 to 28.

⁷² T., 25 August 2003, pp. 28 to 30.

⁷³ T., 25 August 2003, pp. 29 to 31.

76. Witness TBH explained that during the massacres that lasted from 14 to 16 April 1994, some Tutsi were killed in all the *cellules* in Rusumo. He put the death toll at between 300 and 400. He added that, in Rugando *cellule*, 57 Tutsi were locked up in their houses by the Hutu and shot dead by soldiers who had been led to those houses by the Hutu. Witness TBH further testified that the massacres were initiated by the *bourgmestre* who had the policemen's support. The witness added that the *bourgmestre* did not punish any attacker.⁷⁴

77. **Prosecution Witness TBK** is a Hutu⁷⁵ who was arrested in 1997 but provisionally released in 2003 for pleading guilty to the murder of one person, and who is awaiting trial by the *gacaca* Court. He testified that around 3 p.m. on Thursday, 14 April 1994, he saw the Accused in Musaza, at the Kanyinya commercial centre, Rusumo. The Accused arrived in a white double-cabin vehicle accompanied by four persons, including two uniformed policemen, Berakumenyo who was carrying a gun, a soldier and a driver. The Accused told a group of about ten people, including the witness: "Others have already completed their work. Where do you stand?"⁷⁶ When some people asked what he meant by 'work', Berakumenyo pointed to a woman selling sorghum beer, promising to demonstrate to them that the woman was Tutsi. When he was told that she was not Tutsi, she was spared. The Accused then said that anyone who looked like a Tutsi should be killed immediately, and he left aboard his vehicle for Nganda market. Once the Accused left, two young demobilized soldiers from the region, Nkaka and Sendama, present at the commercial centre, carried out his instructions. As early as 15 April, these two young people, who had weapons, mobilized the local population to kill, loot and destroy. The witness stated that the targets of the assailants' attacks were the Tutsi, in line with the instructions given by the Accused. The witness himself took part in the Muyoka attacks, where about 100 persons allegedly died. Witness TBK added that on 15 April he went out, armed with a bow which he used for hunting, but that it was only on 16 April that he killed a Tutsi whom he knew.⁷⁷

78. **Prosecution Witness TBI** is a Hutu⁷⁸ who, in 1994, was residing in Rusumo *commune*. He was arrested in 1997 for killing three people, a charge he has denied. After he had confessed to other crimes, he was provisionally released in 2003 and is awaiting to make his appearance before the *Gacaca* Court.⁷⁹

79. Witness TBI testified that he saw the Accused around 4 p.m. on 14 April 1994 at the Gasenyi commercial centre. The Accused, who was travelling in a white double-cabin "Hilux" belonging to Rusumo *commune*, was accompanied by communal policemen, armed with guns, and by a criminal investigations Officer (IPJ) from Rusumo. The Accused addressed a crowd of about forty people at the centre, urging them to kill the Tutsi and throw their bodies into the river. He also ordered the boatmen to remove their boats from the River Akagera, so as to prevent the Tutsi from using them to run away. After the speech, Witness TBI heard the Accused instructing André Nyandwi to make sure that the local population carried out the orders he had just given. Witness TBI stated

⁷⁴ T., 25 August 2003, pp. 30 to 32.

⁷⁵ T., 19 August 2003, pp. 34 to 36.

⁷⁶ T., 19 August 2003, pp. 40 to 41.

⁷⁷ T., 19 August 2003, pp. 38 to 42, 44 to 46, 48 to 51 and 59 to 60.

⁷⁸ T., 18 August 2003, p. 6.

⁷⁹ T., 18 August 2003, pp. 6 to 11.

that he, and Rwandans as a general rule, have a high respect for authority, and also that he obeyed the *bourgmestre*'s instructions. A small number of Tutsi who were at the Gasenyi centre during the speech immediately understood that they were threatened and tried to run away. Certain Hutu hid some Tutsi, while the local population went after them in order to kill them, attacked and destroyed their houses and looted their belongings. According to Witness TBI, the Hutu had no choice but to start looting, setting houses ablaze and killing cattle belonging to the Tutsi, as soon as the *bourgmestre*'s speech ended. Witness TBI was also one of the looters. He, however, helped two Tutsi friends to escape before killing others. After the Accused's speech, the policemen and the criminal investigations Officer (IPJ) asked the people to carry out the instructions.⁸⁰

80. Witness TBI further testified that the Accused had given specific instructions concerning the *conseiller* of his *secteur*, a Tutsi: the instruction to kill all the Tutsi did not apply to him or to his family. The witness explained that the *conseiller* is still alive and that his property was not looted.⁸¹

81. The Accused testified that on 14 April 1994 he was home and did not go out. He had told his family not to tell anyone that he was home. He did not want to flee and was waiting for the authorities to do something for him.⁸²

82. **Defence Witness RDR**, a Hutu,⁸³ testified that he did not see the Accused or any other official on that 14th day of April 1994, and maintained that neither the *conseiller* of his *secteur* nor *Bourgmestre* Gacumbitsi held any meeting in April 1994 in his village.⁸⁴

3. Discussion and Findings

83. The Chamber finds that the testimonies of Witnesses TAW and TBH largely corroborate each other. The Chamber has, however, noted a few minor discrepancies between their testimonies: the date on which invitations for the meeting of 9 April 1994 were sent out, the number of people who attended the meeting, and whether a plan for weapons distribution had been discussed at such meeting. The Chamber finds that these discrepancies can be explained by the time that has elapsed since the events, and by the locations from which each of the witnesses observed the same events.

84. The Chamber finds Witness TAW to be credible. He gave a reliable account of the activities of the Accused between 7 and 13 April 1994, when the witness fled to Tanzania. The discrepancy between his testimony before the Chamber and his previous statement as to the content of the message he allegedly left with the Accused at the time of his escape to Tanzania is not such as to seriously cast doubt on the truthfulness of his prior account of events. Witness TAW refrained from exaggerating his account of events in order to hurt the Accused. For example, he acknowledged that his certainty as to there being weapons in the boxes that were loaded onto communal vehicles on 10 April 1994,

⁸⁰ T., 18 August 2003, pp. 15, 17 to 22, 32 to 34 and 37 to 38; see also Exhibit P12.

⁸¹ T., 18 August 2003, p. 45 to 46.

⁸² T., 21 November 2003, pp. 38 to 40.

⁸³ T., 21 October 2003, pp. 42 to 43 and 48 to 49.

⁸⁴ T., 21 October 2003, pp. 47 to 49.

in Kibungo camp, did not result from personal observation, but was rather based on inference and subsequent information.

85. Lastly, the Chamber finds that no evidence tendered showed that the witness in question was biased against the Accused, as the Defence alleges.⁸⁵ Neither the witness's demeanour nor his testimony suggested that he fabricated his account in order to implicate the Accused.

86. The Chamber recalls that Witness TBH is an alleged accomplice of the Accused. It also recalls that the Accused removed Witness TBH from an official position, as the witness acknowledged. Thus, the Chamber assessed his evidence with caution. Having carefully examined Witness TBH's evidence, the Chamber finds, however, that his account of the meeting of 9 April 1994 and of the subsequent events implicating the Accused is credible and reliable, and that his testimony does not appear to have been born of any resentment towards the Accused. The Chamber cannot entertain, in the absence of evidence, the Defence's allegation that Rwandan authorities manipulated Witness TBH.

87. The Chamber is of the opinion that Witness TBH's loss of his Rwandan civic rights would not, per se, warrant, as the Defence alleges,⁸⁶ the dismissal of his evidence by this Tribunal, whose Statute and Rules of Procedure and Evidence do not subject the admissibility of evidence to requirements of Rwandan national law.

88. The Chamber finds Witnesses TAS, TBJ, TBI and TBK to be credible. Their evidence reflects a consistent account of events and does not contain facts that would cast doubt on their credibility. Their evidence shows, together with the evidence of Witnesses TBH and TAW, that after the meeting of 9 April 1994, the Accused travelled every day within and without Rusumo *commune* either to meet with *gendarmerie* officials or the *Interahamwe*, or to ensure that the orders given at the 9 April meeting were properly executed, or to urge the people of Rusumo to join in the fight against the "enemy", and in the extermination of the Tutsi.

89. The Chamber has carefully assessed the evidence of the Accused and of other Defence witnesses. In light of the reliable and cogent evidence adduced by the Prosecution about the activities of the Accused between 7 and 14 April 1994, the Chamber finds that the Defence evidence is not such as to cast any doubt over its subsequent findings.

90. Based on Witness TAW's evidence, the Chamber finds that on the morning of 7 April 1994, the Accused went to the Rwanteru provisional *gendarmerie* camp, where he met Major Ndekezi. During a conversation held in Witness TAW's presence, Major Ndekezi explained to the Accused that the Tutsi had to be killed in order to stop the war. That same day, the Accused had a conversation with Major Nsabimana at the Rusumo Falls camp and, when he returned to the communal office, *Gendarmerie* Colonel Rwagafirita visited him.

⁸⁵ Defence Closing Brief, paras. 562 to 593.

⁸⁶ Defence Closing Brief, paras. 448 to 466.

91. On 8 April 1994, the Accused went to Kibungo where he took part in a meeting in the presence, among others, of the *préfet* of Kibungo, *Gendarmerie* Colonel Rwagafirita, local political party representatives, and local *Interahamwe* leaders, including a certain Cyasa, and other *bourgmestres* of the same *préfecture*.

92. It is not disputed that the Accused, as *bourgmestre* of Rusumo *commune*, convened a meeting of the *conseillers* of the *secteurs* of the *commune* on 9 April 1994.

93. The Chamber finds that on 9 April 1994, the Accused chaired a meeting that was held in the IGA room of Rusumo *commune* in which all the *conseillers* of the *secteur* of the *commune*, with the sole exception of a Tutsi *conseiller*, took part, as well as local MRND leaders, Edmond Bugingo and Justin Manayabagabo, respectively chairman and local secretary of the party. The Accused asked the *conseillers* to organize, in their respective *secteurs* between 9 and 12 April 1994, meetings which they were to hold in secret from the Tutsi. During the meetings, they had to tell the Hutu to kill all the Tutsi, so that the *Inkotanyi* would no longer have any accomplices.⁸⁷

94. Since the evidence of Witness TAW, who did not attend the meeting, was not corroborated and contradicted the evidence of a direct witness, Witness TBH, the Chamber can only find that the issue of weapons distribution was discussed during the meeting of 9 April 1994.

95. The Chamber finds, on Witness TAW's evidence, that on 10 April 1994 the Accused, who was accompanied by the communal police, went in a convoy of three vehicles to the Kibungo *gendarmerie* camp where he met Colonel Rwagafirita. The Accused was delivered 105 boxes, which he had loaded onto Rusumo communal vehicles. The circumstances of delivery, as well as the information collected by Witness TAW from one of the consignees of the boxes, lead the Chamber to find that they contained weapons, without being able to determine which type. Upon his return to the communal office in Rusumo, the Accused delivered the boxes or had them delivered to different locations in the *commune*.

96. On the evidence of Witness TAW, the Chamber finds that on 11 April 1994, the Accused visited several places in Rusumo *commune* with Majors Ndekesi and Nsabimana and *Interahamwe* leader Cyasa. He continued visiting various *secteurs* in Rusumo *commune* on 12 April 1994 to verify whether the *conseillers* had held security meetings with the local population. The same day, he met André, the local CDR leader, in Gasenyi, and reiterated his request, which was made for the first time on 10 April, to not allow people to flee to Tanzania.

97. On the evidence of Witnesses TAS and TAW, the Chamber finds that on the morning of 13 April 1994, at Nyakarambi market, the Accused, accompanied by communal police officers, exhorted a crowd, through a megaphone, to ensure its own security, gave it security instructions and also ordered it to let no one escape. Such orders, addressed to a Hutu majority, were designed to prevent the Tutsi from escaping from the attacks and to prepare the Hutu population for the elimination of the Tutsi.

⁸⁷ In 1994, the word *Inkotanyi* was used to designate, in particular, RPF military forces, which had been waging war since 1990 against the regime of President Habyarimana.

98. On the basis of Witness TBJ's evidence, the Chamber finds that on 14 April 1994, the Accused, accompanied by communal police officers, went to Rwanteru commercial centre, where he addressed about one hundred people and incited them to arm themselves with machetes and to participate in the fight against the enemy, specifying that they had to hunt down all the Tutsi. After his speech, he went towards Kigarama, followed by a part of the population. When they arrived at Kigarama, the assailants attacked the house and property of a Tutsi called Callixte and plundered property belonging to other Tutsi. Led by a certain Juvénal Ntamwemizi, a person who was identified as the representative of the Accused, another group, comprising those who were also present when the Accused gave his speech at Rwanteru, attacked the property of a Tutsi called Buhanda. The Chamber considers that such attacks were the direct consequences of the inciting words uttered by the Accused at the Rwanteru commercial centre, and that the attack at Kigarama was carried out under his personal supervision, whereas the attack on Buhanda's house was carried out under the supervision of his representative.

99. On the basis of Witness TBK's evidence, the Chamber finds that in the afternoon of 14 April 1994, the Accused, accompanied by armed communal police officers, went to the Kanyinya commercial centre, where he addressed a group of about ten people and asked them: "Others have already completed their work. Where do you stand?". After he had left, a group of assailants, led by two demobilized soldiers, Nkaka and Sendema, began attacking Tutsi targets. On the basis of Witness TBI's evidence, the Chamber finds that on 14 April 1994, after addressing the crowd at the Kanyinya commercial centre, the Accused, still accompanied by communal police officers, went to the Gasenyi trading centre where he addressed about forty persons, most of whom were Hutu. He urged them to kill all the Tutsi and throw their bodies into the River Akagera. He also asked the boatmen to remove their boats from the river so that the Tutsi should not use them to cross the river.

100. The Prosecutor has established that on various occasions between 7 and 12 April 1994, Sylvestre Gacumbitsi conversed with Major Ndekezi of the Rwanteru camp. It is also established that the Accused instructed André, a CDR official, not to allow anyone to escape to Tanzania using the River Akagera. On the evidence adduced, the Chamber finds by inference that the purpose of the instructions given by the Accused was to prevent people, who wanted to leave the *commune* during the attacks that were under way, from using the river. The instructions were indeed directed against the Tutsi, who had been targeted since the meeting of 9 April 1994. The fact that, during the period in question, some people, including Tutsi refugees, were able to cross the river to seek refuge in Tanzania, cannot invalidate the finding made above which related to the objectives contemplated by the Accused and not to their consequences.

101. The Chamber finds that, during the meeting of 9 April 1994, the Accused instructed the *conseillers* of the *secteurs* and Hutu political leaders to tell the Hutu population to separate themselves from the Tutsi and kill them. On several occasions, in private and in public, he gave instructions for the massacre of the Tutsi. He publicly incited the Hutu population to kill the Tutsi.

102. The Chamber finds that on 10 April 1994, Sylvestre Gacumbitsi met Colonel Pierre Célestin Rwagafirita at the Kibungo military camp, where the former received

boxes of unidentified weapons. Also present at the camp to receive similar deliveries were other *bourgmestres* of Kibungo *préfecture*. Sylvestre Gacumbitsi then delivered or had these boxes delivered to several locations in the *commune*. However, there is no direct evidence of weapons distribution to the local population to kill the Tutsi, as alleged in paragraph 9 of the Indictment. Nonetheless, the Chamber considers that, based on all the evidence adduced and on the circumstances, it can draw the inference that weapons were distributed to those who were implicated in attacks within the *commune*. The Chamber notes that during the attacks in Nyarubuye, the assailants had various types of weapons, including machetes, clubs, grenades and guns.

103. The Chamber finds that the reception and redistribution of boxes of weapons in the *commune* shared the same objective as the meetings and rallies in which the Accused participated, or which he organized, namely, the practical organization of and the preparation for the massacre of Tutsi who were in Rusumo in April 1994.

104. The Prosecutor has established that during the week of 11 to 17 April 1994, the Accused drove about in Rusumo aboard vehicles belonging to the *commune*, and that the communal police often accompanied him. The purpose of these movements was to visit administrative officials, especially the *conseillers* of the *secteurs*, and military and local party officials, as well as to participate in some meetings. During these visits and meetings, the Accused discussed the security situation, distributed boxes of weapons and, either personally or through the *conseillers* of the *secteurs*, incited the Hutu to separate themselves from the Tutsi and kill them.

105. The Prosecutor has not shown beyond a reasonable doubt that during these movements that occurred before 15 April 1994, the Accused was allegedly often accompanied by the *Interahamwe*, or that his vehicle often carried a quantity of machetes, as alleged in paragraph 11 of the Indictment. However, the Chamber finds that on 14 April 1994, the Accused met Cyasa, an *Interahamwe* leader, in Kibungo *préfecture* and took part with him in meetings with military officials.

106. The Prosecutor has not proven beyond a reasonable doubt that during the period of 7 to 14 April 1994, that is before the massacre at Nyarubuye Parish on 15 April, Sylvestre Gacumbitsi allegedly visited various *cellules* to supervise the progress of the massacres. However, it is established that the movements of the Accused were aimed at inciting the population to commence the massacres in the places visited, and at mobilizing the Hutu against the Tutsi.

107. The Chamber finds that Sylvestre Gacumbitsi played a major role in organizing a campaign of incitement against Tutsi civilians in Rusumo *commune*. In the course of such campaign, he personally and publicly incited Hutu civilians to isolate themselves from their Tutsi neighbours and kill them and, generally, to kill the Tutsi who were within the territory of Rusumo *commune*.

C. PARAGRAPHS 15 TO 19 AND 27 OF THE INDICTMENT (ATTACKS ON NYARUBUYE PARISH)

1. Allegations

108. Paragraphs 15 to 19 and 27 of the Indictment allege that:

15. Between the 15th and 17th April 1994, Sylvestre Gacumbitsi led an attack on the *paroisse* of Nyarubuye, where numerous Tutsi and Hutu refugees had gathered. Sylvestre Gacumbitsi approached the church in a caravan of several vehicles of communal police and *Interahamwe*. Many of the attackers wore berets and *kitenge* uniforms bearing MRND *Interahamwe* insignia. A quantity of machetes was unloaded from the vehicles and placed before the church. Sylvestre Gacumbitsi addressed the crowd with a megaphone and ordered Hutu refugees to separate from Tutsi. Once the groups were separated the attacks began.

16. The communal police and *Interahamwe* surrounded the church compound. Sylvestre Gacumbitsi ordered the Hutu to attack the Tutsi, incorporating former Hutu refugees in attacks against the Tutsi led by communal police and *Interahamwe* under his direction.

17. Communal police and *Interahamwe* attacked the Tutsi refugees with grenades and firearms and traditional weapons. Other attackers used the machetes previously supplied by Sylvestre Gacumbitsi.

18. On the following day, Sylvestre Gacumbitsi, accompanied by Rubanguka, the President of the Rusumo Court, and a group of attackers returned to the devastated church compound at Nyarubuye armed with spears, machetes, and bows and arrows. Led by Rubanguka, the attackers finished off the survivors lying among the corpses. Afterwards the attackers looted the church compound, removing cupboards, tables, radios, beds and clothing.

19. Almost all of the Tutsi refugees, comprising several thousands, at Nyarubuye *paroisse* were killed.

(...)

27. Approximately between 15 and 18 April 1994, Sylvestre Gacumbitsi commanded, facilitated or participated in attacks upon civilian Tutsi refugees that had gathered at Nyarubuye *paroisse*. Sylvestre Gacumbitsi transported, or facilitated the transportation of, communal police or *Interahamwe* or weapons to Nyarubuye *paroisse* and led attacks against civilian Tutsi by his own example or by ordering and directing the attackers to kill the refugees.

2. Evidence

15 April 1994

109. **Prosecution Witness TAQ** is a young Tutsi woman who lived in Rusumo in 1994, and who personally knew the Accused. She was pregnant in April 1994.⁸⁸ She fled the killings carried out against the Tutsi in Nyarutunga and took refuge at Nyarubuye Parish compound, with members of her family and her neighbours, at about 4 p.m. on April 14 1994. There, she found thousands of civilians, some of whom were natives of the *communes* bordering on Rusumo, such as Rukira, Birenga

⁸⁸ T., 29 July 2003, pp. 42 to 45 and 52 to 53.

and Kigarama. She learned that these people had fled attacks carried out against the Tutsi. The number of refugees rose again between 14 and 15 April 1994.⁸⁹

110. Witness TAQ testified that at about 8 a.m. on 15 April 1994, she saw some youths arrive at the parish compound, wearing banana leaves on their waists and branches of eucalyptus on their heads, and armed with clubs, sticks and bows. Among them, she recognised one Bagaruka and a soldier known as Lyamugwiza in the company of *Conseiller* Isaïe Karamage. She testified that she believed they were *Interahamwe*, because of their attire, and because she had seen some of them during the attacks against the Tutsi at Nyarutunga the previous day. The people around her told her that those people were *Interahamwe*. She explained that they were “members of the local population” in that they were ordinary citizens, and that she knew some of them. Although those people were instilling fear into the refugees, *Conseiller* Karamage told them, before he left, not to leave the parish compound. The *Interahamwe* remained behind, trying to get bribes from the refugees, who refused to give them money.⁹⁰

111. Witness TAQ further testified that at around 3 p.m. on 15 April, while she was in front of the priests’ office in the parish compound near the church, she saw the white double-cabin vehicle belonging to Rusumo *commune* pull up in front of the parish compound. In the vehicle, she saw the Accused, who was in civilian clothes and wearing glasses, as well as other people, including the driver of the vehicle and a young man called Augustin. In the back of the vehicle, she saw machetes and uniformed communal police, including Berakumenyo and Kazoba, carrying guns. The *commune* vehicle was followed by two vehicles decorated with branches and carrying young people, dressed in the same peculiar way as the *Interahamwe*, wearing banana leaves and carrying sticks, grenades and clubs. They sang: “Let’s exterminate them”. Other vehicles followed, although the witness could not see them since the three vehicles that were in front were obstructing her view. Witness TAQ explained that she and the other refugees were heartened by the arrival of the Accused. They thought that he would restore security, as the *Interahamwe* were threatening to kill them. She saw him alight from his vehicle and head towards the refugees, who were also coming towards him.⁹¹

112. Witness TAQ explained that three refugees – Murefu, an old teacher, Simon Buhonogo and Rujigena, who were all Tutsi – enquired from the Accused as to what the Tutsi had done and why they were being killed. She too approached him at that particular moment. She heard him reply to the three Tutsi furiously that he had no answer to give them, because “the Tutsi’ hour had come”. She then saw him take a machete from an *Interahamwe* and use it to strike Murefu on the neck. Murefu dropped dead immediately. It was then that a young man, whom the witness did not know, allegedly “cut up” Simon Buhonogo with the machete, while a policeman shot Rujigena. Buhonogo and Rujigena were behind Murefu.⁹²

⁸⁹ T., 29 July 2003, pp. 47 to 48; T., 30 July 2003, pp. 7 to 10 and 27 to 29.

⁹⁰ T., 29 July 2003, pp. 46 to 49; T., 30 July 2003, pp. 12 to 13.

⁹¹ T., 29 July 2003, pp. 48 to 52.

⁹² T., 29 July 2003, pp. 51 to 54; T., 30 July 2003, pp. 21 to 22.

113. Witness TAQ testified that she heard the Accused tell the *Interahamwe* surrounding him to act quickly so that the refugees should not flee. While the refugees were being massacred with machetes, guns and grenades, she and some others fled towards the presbytery. Some people fell and “others ran over them”.⁹³ Once she was in the presbytery, near a doghouse in which she hid later, she heard the Accused asking “the Hutu who were within the area to come out”.⁹⁴ She explained that she could not see the Accused at that particular moment, but could hear him speaking on the megaphone. A young woman allegedly came out, followed by a child who had to go back after being told that he was not Hutu. Immediately after the young girl came out, grenades were thrown into the crowd.⁹⁵

114. Witness TAQ further testified that in the presbytery compound, she saw *Interahamwe* looting, carrying away vehicles and motorcycles. When the grenades exploded, she saw people being attacked with machetes; everyone was screaming. She fainted soon after, in the dog house where she was hiding and others fell on her. She regained consciousness only at around 11 p.m. or midnight, when it was raining. She was under the bodies of many seriously wounded people. Her elder sister’s mother-in-law,⁹⁶ who was also wounded, helped her to move away from the bodies. She saw many wounded and dying people, people who were screaming, many intermingled bodies of men and women. Not far away, a wounded child and three girls had survived. After some time, at around 3 p.m., the group of survivors, including the witness, went to a classroom near the priest’s house, where they spent the night.⁹⁷ Witness TAQ left the parish compound the following day, 16 April 1994, at about 8 a.m.⁹⁸

115. Witness TAQ testified that more than 100 members of her extended family died during that attack. They included her elder sister and her seven children, her younger sister with her two children and husband, her aunt and her uncles, one of whom had a family of about 70 people, including children and grandchildren. Witness TAQ explained that the people who were attacked on 15 April were Tutsi. She testified that she believed the Hutu who were among the refugees left the parish before the attack, after being asked to do so. She further testified that they are still alive, she sees them, and they talk about it from time to time. They told her that they

⁹³ T., 29 July 2003, pp. 53 to 54.

⁹⁴ T., 29 July 2003, pp. 52 to 55; T., 30 July 2003, pp. 25 to 26.

⁹⁵ T., 29 July 2003, pp. 54 to 55.

⁹⁶ According to the transcript of 29 July 2003, pp. 56 to 57, the witness mentioned her mother during examination-in-chief. In cross-examination, she explained that she was rather referring to the ‘mother-in-law of her older sister’ (T., 30 July 2003 pp. 26 to 27). The Chamber received from the Language Section a corrigendum to the transcript that the Prosecutor had sent to the Section, dated 16, 18 and 19 December 2003, in response to an *ex parte* request that the Prosecutor had sent directly to the Section. The corrigendum showed in essence that the witness had used a more general term than ‘mother’, which the Language Section replaced with ‘old woman’. The Prosecutor received this memo before filing his closing brief, whereas the Chamber and the Defence received a copy thereof only on 2 June 2004. While stressing the belatedness of this communication, the Chamber considers that as the witness herself gave additional information in cross-examination on the issue of her ‘mother’, the memo in question is irrelevant to assessing her credibility.

⁹⁷ T., 29 July 2003, pp. 55 to 57.

⁹⁸ T., 29 July 2003, pp. 53 to 55; T., 30 July 2003, p. 30.

left the parish when they heard the Accused asking them to come out of the complex.⁹⁹

116. Under cross-examination, Witness TAQ further testified that before the beginning of the massacres, when the Hutu were asked to come out of the crowd of refugees, two young men in *Interahamwe* attire went to the house of Louis, an old Hutu priest of Nyarubuye Parish, and evacuated him.¹⁰⁰ She testified that from her vantage point in front of the priests' house, the main entrance was visible "because it's quite close to the church".¹⁰¹ She further testified that she could not remember the colour of the clothes that the Accused was wearing on 15 April 1994. Nor could she testify as to whether the glasses worn by the Accused on that day were prescription glasses or sunglasses. She however testified that those were the glasses the Accused usually wore.¹⁰² She also testified that she did not know Cyasa, the *Interahamwe* from Kibungo. The Defence then reminded her that in her prior statement, she had described how Cyasa arrived at Nyarubuye Parish on 15 April 1994, in the company of the *Interahamwe*. In response, Witness TAQ maintained that she did not know Cyasa and explained that some refugees who were with her had mentioned Cyasa's name when they saw him arrive in a vehicle full of *Interahamwe*.¹⁰³

117. **Prosecution Witness TAO** is a Tutsi man who lived in Rusumo in 1994, and whose wife and children died during the events of 1994.¹⁰⁴

118. Witness TAO testified that he escaped the massacres committed by the *gendarmes*, *Interahamwe* and Hutu civilians against the Tutsi on 14 April 1994, at the Nyarutunga market place. That same day, around 4 p.m., he took refuge at Nyarubuye Parish, where he hoped to find his family. When he got there, he saw a crowd of between 20,000 to 30,000 people, Tutsi and Hutu. Some of them were natives of other *communes*, namely Mugesera, Muhazi, Rwamagana, Birenga, Rugera and Kibungo. When he arrived, he started looking for his family, whom he found only on 15 April between 1 and 2 p.m.¹⁰⁵

119. Witness TAO testified that on 15 April 1994, while he was on the right flank of the parish compound in front of the church, he saw the Accused arrive in a white double cabin pick-up with a reddish or yellowish stripe on the sides belonging to Rusumo *commune*.¹⁰⁶ The Accused was in the company of people dressed in police uniform and carrying guns. The Accused was dressed in khaki-coloured clothes resembling those worn by *gendarmes* at the time. From where he was, Witness TAO could not see the policemen who were accompanying the Accused, until they had alighted from the vehicle. He saw many new machetes in the back of the Accused's vehicle, and bags in the front cabin. Witness TAO learned later that the bags contained grenades. He heard other vehicles arrive at the place, but could not see

⁹⁹ T., 29 July 2003, pp. 53 to 59.

¹⁰⁰ T., 30 July 2003, pp. 10 to 11.

¹⁰¹ T., 30 July 2003, pp. 18 to 19.

¹⁰² T., 30 July 2003, p. 18 to 20.

¹⁰³ T., 30 July 2003, pp. 22 to 23.

¹⁰⁴ T., 30 July 2003, pp. 46 to 53; T., 31 July 2003, pp. 4 to 5.

¹⁰⁵ T., 30 July 2003, pp. 53 to 54 and 61 to 62; T., 31 July 2003, pp. 11 to 12.

¹⁰⁶ T., 30 July 2003, pp. 52 to 53.

them.¹⁰⁷ He was watching the scene from a higher position, about 30 metres from where the Accused was.¹⁰⁸

120. Witness TAO testified that when he saw the Accused arrive, he thought that the Accused had come to find out about the situation of the refugees at the church. Refugees allegedly went to meet him, but when he saw them, he ordered them to remain where they were. Some refugees, including three or four elderly persons, including a certain Murefu, allegedly went towards him. The witness heard the Accused tell one of the refugees aloud: “Do not move any closer, because the hour of the Tutsi has come”. He also told him that he did not want to hear about their problems any more.¹⁰⁹ The Accused allegedly grabbed a machete from one of the *Interahamwe* and hit Murefu with it, while another person was “cut up” with the machete. Witness TAO, however, explained that he saw the Accused hit only one person, namely Murefu.¹¹⁰ The Accused then told the policemen: “Open fire”.¹¹¹ The policemen started shooting, while others, namely, *Interahamwe* whom Witness TAO had seen the day before at the Nyarutunga market place, used machetes. Grenades were also thrown.¹¹²

121. Witness TAO further testified that it was then that the Accused asked aloud the Hutu who were at the parish to separate themselves from the Tutsi, adding that the hour of the Tutsi had come. At the time of the attack, the *Interahamwe* were singing “Let’s exterminate them”.¹¹³ Witness TAO then fled to a forest near the church, together with his children. When he looked back, he saw one of the attackers, Claver Muhirwa,¹¹⁴ throw a grenade at the refugees. He testified that the attack subsided only around 7 p.m. that evening, while he was leaving the parish. He explained that there were fewer gunshots, although the screaming continued.¹¹⁵

122. Witness TAO testified that all the victims of the attack at Nyarubuye Church were Tutsi. His younger brother, his sister and one of her children aged 6 were killed during that attack, as well as 200 members of his extended family. They were all Tutsi.¹¹⁶

123. During cross-examination, the Defence pointed out that in his prior statement, Witness TAO had estimated the number of refugees who died at Nyarubuye Parish at 12,000 and not 20,000 to 30,000 people as he had testified to during cross-examination.¹¹⁷ Witness TAO further testified that he did not see the Accused arrive at Nyarubuye Parish on 15 April 1994, but he heard his vehicle arrive there. Soon after, he saw the Accused and the six policemen who were with him.¹¹⁸ When he saw

¹⁰⁷ T., 30 July 2003, pp. 51 to 65.

¹⁰⁸ T., 31 July 2003, pp. 14 to 16 and 22.

¹⁰⁹ T., 30 July 2003, pp. 53 to 54.

¹¹⁰ T., 30 July 2003, pp. 53 to 54.

¹¹¹ On 2 June 2004, the Chamber received a corrigendum to this aspect of the testimony.

¹¹² T., 30 July 2003, pp. 53 to 54.

¹¹³ *Ibid.*

¹¹⁴ Also spelled Muhigirwa in the French transcript.

¹¹⁵ T., 30 July 2003, pp. 54 to 55.

¹¹⁶ T., 30 July 2003, pp. 55 to 56.

¹¹⁷ T., 31 July 2003, pp. 12 to 14.

¹¹⁸ T., 31 July 2003, pp. 12 to 14.

the vehicle, he concluded that the Accused and the policemen had arrived in it.¹¹⁹ He further testified that from where he was, he could see what was inside the vehicle, in the back, but not inside the front cabin. He also testified that he saw Clavier Muhigirwa take a grenade from the Accused's vehicle, unpin and throw it. The witness then testified that the bags referred to in examination-in-chief were not in the cabin, but beside it. The Defence pointed out that the witness's prior statement was contradictory as to the Accused's reaction to the approaching refugees: when the crowd, feeling reassured, went towards the *bourgmestre*, he apparently reassured them that they were safe. Witness TAO did not deny making such statements, but he stuck to the testimony that he had given during his examination-in-chief. He explained that the Accused was wearing a khaki-coloured pair of trousers and shirt, but did not know whether it was a military uniform. He explained that when the attacks started, he hid with his wife and two children in a latrine belonging to CERAI school, about 200 metres from the Nyarubuye Parish compound and 40 metres away from the road.¹²⁰

124. **Prosecution Witness TAX**, a young Tutsi woman who was 11 years old in April 1994 and lived in Rusumo, survived the attack at Nyarubuye Parish.¹²¹ She saw the Accused in 1994, before the events of April and May, at a meeting held in the witness's *secteur*. She testified that the Accused had marks on his face resembling scars. She identified him at the hearing.¹²²

125. Witness TAX testified that she saw the Accused at around 3 p.m. on Friday 15 April 1994 at Nyarubuye Parish, where she and members of her family, together with many other refugees, had taken refuge two days earlier. She was with the refugees outside in the convent compound, adjoining the presbytery, when she heard gunshots and screaming. Young men wearing leaves on their heads and armed with machetes, clubs and knives entered the convent compound, shouting, and started looting the refugees' property. The Accused arrived in the company of two men; the three of them were in civilian clothes. The Accused told the young men to stop looting, adding: "You know why we have come here. And when you strike at a snake you must begin with its head, and no one shall be spared".¹²³ The attackers then ordered the refugees, including the witness, to lie down, and the attack started. On cross-examination, Witness TAX further testified that it was the Accused who had asked the Hutu to come out of the crowd. A young man who had stood up in response to the call was allegedly hit and killed by a grenade that was thrown next to him. Witness TAX lost sight of her parents in the commotion that ensued, as the attackers attacked the refugees with machetes and grenades. She talked about despair and chaos. An attacker pierced her twice in the ribs. She fainted.¹²⁴

¹¹⁹ T., 31 July 2002, pp. 11 to 14.

¹²⁰ T., 31 July 2003, pp. 14 to 19 and 22 to 24.

¹²¹ T., 31 July 2003, pp. 19 to 31 and 48 to 50.

¹²² T., 31 July 2003, pp. 30 to 31, 43, and 52 to 53.

¹²³ T., 31 July 2003, pp. 31 to 34.

¹²⁴ T., 31 July 2003, pp. 33 to 37 and 58 to 59.

126. Witness TAX testified that the victims of the attack of 15 April in Nyarubuye were Tutsi, and that they were many in number. A number of her family members died in the attack, including her father, mother, two sisters and two brothers.¹²⁵

127. **Defence Witness NG2** is a young man who lived in Rukira *commune* in 1994.¹²⁶ He testified that on 15 April 1994, people who had come from Rukira forced everyone they met on the way to arm themselves and to join their convoy, either on foot or by car, to Nyarubuye. The witness testified that at about 2.30 p.m., in Mulindi, Rukira *commune*, he was forced to get into one of the vehicles belonging to the attackers. He further testified that he was one of the first people to arrive at Nyarubuye Parish, near the dispensary where he and others alighted shortly thereafter. They were ordered to surround the parish so that nobody could get out. He himself was near the entrance to the parish. Someone known as “lieutenant” asked the “innocent” to come out of the parish. Four or five people, including an old man and a young woman, came out of the parish compound. The refugees started throwing arrows and spears at the attackers, who were very many. The attackers retaliated by shooting at the refugees and throwing grenades at them. Some of the attackers requested to get members of their families out, but the *gendarmes* continued to shoot. Many people died. After the shootings, the *gendarmes* ordered the attackers to go and get the property, and load it into their vehicles. The attackers took away a Suzuki vehicle belonging to the parish. During the attack, Witness NG2 saw neither the Accused nor Rusumo *commune* police officers, but only *gendarmes* from the Mulindi camp.¹²⁷

128. Witness NG2 admitted that he looted, but he denied having killed anyone. He testified that he did not take part in any other attack up to his exile in May 1994. He also testified that he did not receive any weapons. He further testified that *gendarmes* had asked those who had been requisitioned to take their own weapons – machetes and clubs. Witness NG2 testified that he was not armed during the attack. When cross-examined on this point and confronted with his prior statement, of which the Prosecution read to him the following passage: “We were carrying household weapons, i.e., machetes, hoes, spears, arrows, while the *gendarmes* had firearms”, he testified that the Defence investigator was wrong, and that he had only referred to other attackers. Furthermore, Witness NG2 denied having participated voluntarily in the looting. He testified that he loaded the loot into the *gendarmes*’ vehicles, without taking away anything for himself.¹²⁸

129. **Defence Witness ZHZ**, a Hutu man who lived in Nyarubuye in 1994, testified that from 9 to 14 April 1994, many refugees took refuge at Nyarubuye Parish, after fleeing acts of violence against the Tutsi in the neighbouring *communes*, particularly Rukira. Regarding those refugees, the authorities of Rukira had allegedly threatened the inhabitants of Nyarubuye for giving refuge to the accomplices of the President’s murderers. On 14 April, both Hutu and Tutsi inhabitants of Nyarubuye defended themselves against the Rukira attackers, in Birembo. The group of “resistance

¹²⁵ T. 31 July 2003, pp. 35 to 37.

¹²⁶ T., 21 October 2003, pp. 16 to 17.

¹²⁷ T., 21 October 2003, pp. 18 to 26.

¹²⁸ T., 21 October 2003, pp. 22 to 26, 29 to 33 and 35 to 36.

fighters”, including the witness himself, killed six attackers and arrested two others, namely Gisagara and Hakizamungu, who were important officials. While they were preparing to question them, eight *gendarmes* accompanied by some attackers arrived at the Mulindi camp. Instead of questioning them, they had Gisagara and Hakizamungu released, and attacked the people of Nyarubuye, including the witness, who managed to escape and take refuge in Nyabitare. Having escaped from another attack carried out on 15 April 1994 by people who wore banana leaves on their heads and were also natives of the region known as “*cuvette*” and of Nyabitare,¹²⁹ he returned to his area.

130. Defence Witness ZHZ further testified that in Nyarubuye, in the afternoon of 15 April, attackers, who had come in several vehicles from Birembo, Rukira *commune*, requisitioned him and many other inhabitants. Some of the attackers wore banana leaves. Others, namely, *gendarmes*, wore camouflage fatigues and red berets. Gisagara, whom Mulindi *gendarmes* had released the day before, was among them. When they got to the parish, the attackers from Birembo assembled the inhabitants of Nyarubuye. The refugees in the parish were shouting and insulting the attackers. A soldier by the name of “Lieutenant” asked one Kibwa, who had come from Kibungo, to call the innocent people who were in the parish. Kibwa complied and five girls and a young priest came out. The attackers asked the old priest, Louis Ntamezeze, to come out. The inhabitants of Nyarubuye remained behind, while the attackers from Birembo and *gendarmes* surrounded the parish. The attackers were armed with ‘stream’ rockets, while other attackers had grenades. The lieutenant gave a signal and the attackers from Birembo, and the soldiers, opened fire and threw grenades at the refugees. The witness and the other inhabitants of Nyarubuye who had remained at the back fled as soon as the attack began. The witness then went into hiding until RPF arrived on 28 April 1994. Witness ZHZ further testified that he neither saw the Accused nor witnessed the distribution of weapons at Nyarubuye Parish on 15 April 1994.¹³⁰

131. **Defence Witness ZIZ**, a Hutu who lived in Rukira, Kibungo *préfecture*, in 1994¹³¹, testified that he fled the attacks that had been going on in Rukira since 10 April, and went to Nyarubuye, where a friend lodged him from 14 April 1994. He testified that the attack on Nyarubuye Parish was launched in the afternoon of 15 April 1994 by people, led by *gendarmes* from the Mulindi camp located near Rusumo, who had come from *communes* neighbouring Rusumo (Rukira and Birenga). The men and youths from Nyarubuye were allegedly forced to participate in the attack, failing which they would have been considered as accomplices. The witness and his friend were beaten up and forced to accompany the attackers who told them that there was “work to do” at Nyarubuye Parish. Attackers and vehicles were already there. One of the *gendarmes* present, who was head of the Mulindi camp, located near the parish, led the operations, and gave the signal to attack. Before that, another leader from among the attackers ordered the “innocent” to come out of the compound. The refugees threw some arrows, spears and stones and the *gendarmes* retaliated by throwing grenades and by firing ‘Stream’ rockets and guns. The bodies of many

¹²⁹ T., 15 October 2003, pp. 7 to 9 and 19 to 20.

¹³⁰ T., 15 October 2003, pp. 19 to 25.

¹³¹ T., 8 October 2003, pp. 5 to 7.

people of all ages and of both sexes, including children, lay in the parish compound. The witness and some other people fled and hid in the bush. He further testified that the Accused was not present and that the inhabitants of Nyarubuye who were gathered there thought he was dead. Defence Witness ZIZ also testified that he neither saw any official from Rusumo *commune* nor any communal police officers from Rusumo among the attackers of Nyarubuye Parish.¹³²

132. In response to questions from the Bench, Witness ZIZ testified that the Tutsi were not the only ones targeted by the acts of violence that occurred in Rukira and Nyarubuye in April 1994, and that Hutu were also killed. He testified that the victims of the massacres were targeted for ideological reasons, and not because they belonged to a particular ethnic group. He admitted that he did not know the persons who did not share the attackers' ideology. He further testified that those who did not participate in the massacres were referred to as accomplices of those who were targeted. He could not testify as to whether those refugees who considered themselves to be innocent and came out of the parish at the request of the head of the *gendarmes*, prior to the attack, were Tutsi or Hutu. He stressed that he did not know those people and that it is not possible to tell one's ethnic origin from one's physiognomy.¹³³

133. The **Accused** testified that on 15 April 1994, he was hiding in his house, about 30 km from Nyarubuye Parish, and that he feared for his life. Early in the morning of 16 April 1994, communal Sergeant Neza went to see him to report that people who had come in vehicles, including soldiers and civilians, had attacked the refugees at Nyarubuye Parish. Sergeant Neza told him that those people had come from Rukira *commune*, that they were led by *gendarmes* from Mulindi, a camp in Rukira *commune*, and that the attackers had forced inhabitants to participate in the attacks. Neza also told him that the attackers had come from Birembo, located between Rukira and Rusumo *communes*.¹³⁴

134. "The **Accused** testified that he was "greatly saddened" by the news. He further testified that for about two minutes he could not speak, as he was hiding and there was nothing he could do. He testified that he had then asked Sergeant Neza to go and report the events to the *sous-préfet* of Kirehe and also call for him. The *sous-préfet* had a vehicle. The Accused further testified that the *sous-préfet* had come to fetch him and that they had both gone to the *sous-préfet*'s house to see what they could do about the situation. He then discussed his situation, which he considered to be "very critical", with the *sous-préfet*, stressing that he was being portrayed as an accomplice of the *Inkotanyi*, which is why he, just like the *sous-préfet*, was being sought after. The Accused further testified that he "immediately" asked the *sous-préfet* to send to the scene the sergeant, who acted as criminal investigation officer, "to see what he could do."¹³⁵

135. The Accused testified that since the *sous-préfet*'s car had run out of petrol, a businessman known as Asarias accepted to provide them with a vehicle, which was

¹³² T., 8 October 2003, pp. 8 to 33 and 36 to 39.

¹³³ T., 8 October 2003, pp. 32 to 33 and 36 to 37.

¹³⁴ T., 24 November 2003, pp. 1 to 4 and 29 to 31.

¹³⁵ T., 24 November 2003, pp. 1 to 4.

given to the sergeant who had been charged with the responsibility of finding out what was happening in Nyarubuye and reporting on the situation. After the sergeant had left with other policemen, the Accused returned home. In the evening, the sergeant confirmed that people had been killed at the parish. The Accused asked him if there were many victims. The Accused testified thus: “Because I knew that there were very few people”. The sergeant replied that there was “not really” a great number of victims: between 800 and 1,000 people. The Accused further testified that in spite of the massacres at Nyarubuye Parish, security was better guaranteed in Rusumo *commune* than in the other *communes*, explaining that refugees were coming from those other *communes*, including Byumba and Kibungo, fleeing the *Inkotanyi* attacks.¹³⁶

16 April 1994

136. **Prosecution Witness TAQ** testified that at around 8 a.m. on 16 April 1994, a group of *Interahamwe* led by Bagaruka and a group of soldiers led by Liamuguiza successively went to the classroom in Nyarubuye Parish building where she had taken refuge after the attack of 15 April. There were thirty refugees, including the witness, in the classroom. Bagaruka and Liamuguiza, each in turn, asked them who had authorised them to remain in there. They then left after asking them to remain on the spot. As he was leaving, Liamuguiza said that he was going to loot. The group of refugees decided to leave the classroom, and dispersed. The witness and other refugees went to the valley below. Witness TAQ saw Judge Rubanguka wandering amidst the many scattered bodies littering the parish. He was throwing pepper on the bodies to spot the survivors. The survivors were then beaten to death with clubs studded with nails. Witness TAQ left immediately after witnessing the scene.¹³⁷ During cross-examination, Witness TAQ testified that she witnessed this scene at around 8 a.m., just after leaving the classroom, while she was in front of the nuns’ convent. She further testified that Rubanguka burned pepper in an incense burner, which he swung over the bodies.¹³⁸

137. **Prosecution Witness TAO** testified that he saw the Accused on 16 April 1994 at Nyarubuye Parish, from the latrines of the CERAI primary school where he had been hiding with his wife and two children since 15 April 1994. His hiding place was 200 metres from the parish and 40 metres from the road. The Accused allegedly arrived in the company of Evariste Rubanguka, a judge at the canton court, and another person whom, as the witness learned later, was known as Gatete. He saw them enter a bar near Nyarubuye Parish, where the witness believed they spent about 30 minutes. After leaving the bar, the Accused, Evariste Rubanguka and Gatete then allegedly headed for the parish, together with many other people, all Hutu. As they approached the parish building, Witness TAO saw Rubanguka stick a spear into the body of someone who was “already dead”. He saw Rubanguka carrying another object resembling a bottle, but which he could not identify from where he was, because of the distance.¹³⁹ Witness TAO testified that, contrary to the previous

¹³⁶ T., 24 November 2003, pp. 2 to 5.

¹³⁷ T., 29 July 2003, pp. 59 to 61.

¹³⁸ T., 30 July 2003, pp. 30 to 31.

¹³⁹ T., 30 July 2003, pp. 55 to 57; T., 31 July 2003, pp. 14 to 16, 18 to 19, and 22 to 24.

incident, he did not see what had happened after. He further testified that Rubanguka came out of the church holding an incense burner filled with pepper that he burned. Rubanguka then wandered among the corpses in the building. Those who were still alive started sneezing because of the smoke from the incense burner and, once they were discovered, they were finished off.¹⁴⁰

138. **Defence Witness UHT**, a Hutu who lived in Rusumo in 1994,¹⁴¹ testified that on 16 April 1994 at around 6 a.m. he and his brother-in-law were on their way to Rwanteru when they met a group of attackers wearing banana leaves. The attackers beat the refugees up and forced the refugees to follow them up to Nyarubuye Church, where they arrived at 7 or 8 a.m. He saw many corpses at the parish, as well as children who were roaming about, and who had allegedly survived the massacres. He also saw soldiers and people in clothes made out of *kitenge* material. The attackers then finished the survivors off with knives and clubs. One of those who was wearing a *kitenge*, and who was allegedly leader of the operation, was applauded by the others. At one point, Witness UHT saw a red vehicle allegedly belonging to the *gendarmes*. Around noon, he saw a pick-up, allegedly belonging to Rusumo *commune*, arrive at the parish. Uniformed communal policemen and three people in civilian clothes, including the driver, alighted from the pick-up. The Accused was not one of those in civilian clothes, since, as testified to by the witness, they all weighed less than 60 kg. Witness UHT managed to escape at about 2 p.m.¹⁴²

139. As stated above,¹⁴³ the **Accused** testified that early in the morning of 16 April 1994, while he was hiding at his home, communal Sergeant Neza came and informed him about the Nyarubuye massacre. The Accused further testified that the *sous-préfet* came looking for him and that they both went to the *sous-préfet*'s house where they held a meeting. The *sous-préfet* sent communal policemen to Nyarubuye to assess the situation. After returning home, the Accused remained there waiting for the sergeant's report, which he received that same evening.¹⁴⁴

17 April 1994

140. **Prosecution Witness TAX** testified that she saw the Accused around 9 a.m. on the Sunday following 15 April 1994 (17 April, by inference), when Nyarubuye Parish was attacked. Witness TAX testified that at around 7 a.m., *Interahamwe*, led by one Antoine and armed with bows, machetes, clubs and knives, had found a group of 15 Tutsi refugees in a classroom. The group comprised two adult men, children, women and young girls, including the witness. The attackers threw stones and small children at the bodies to discover survivors.¹⁴⁵ Then they gathered the 15 survivors, including the witness, on the lawn in front of the church. Two vehicles arrived. One of them was carrying *Interahamwe*, who alighted with their weapons. The other was carrying the Accused. The witness testified that the *Interahamwe* displayed their weapons when the Accused arrived. The Accused came out of the car and asked them

¹⁴⁰ T., 30 July 2003, pp. 56 to 58.

¹⁴¹ T., 7 October 2003, pp. 4 to 5.

¹⁴² T., 7 October 2003, pp. 4 to 15 and 22 to 23.

¹⁴³ See *supra*, paras. 130 to 132.

¹⁴⁴ T., 24 November 2003, pp. 1 to 4.

¹⁴⁵ T., 31 July 2003, pp. 37 to 38.

to turn around. The Accused then told them: “I do not want to repeat what I said before. Everybody should take up their weapons, and to kill a snake you have to aim at the head and spare no one.”¹⁴⁶ The witness and other survivors begged in vain for mercy. Witness TAX testified that Ferdinand and Pascal, two attackers whom she knew well, handed her over, despite her pleas, to Antoine, who hit her with a club on the right hand until her bone became visible, and on her shoulder. He then hit her again twice on the head with a machete. Witness TAX further testified that she lost consciousness again. While this was happening, the Accused stood two metres away.¹⁴⁷

141. **The Accused** testified that he was hiding in his house on 17 April 1994, waiting for the *sous-préfet*, whom he had seen the previous day, to brief him about the recommendations that had been made with regard to “our safety”, so that he could come out of hiding. The Accused explained: “My fear was founded because I remembered my colleagues who had been killed”. The Accused further explained that when he talked of his colleagues, he was referring to “the *bourgmestres*”. He testified about the *bourgmestre* of Kinigi *commune*, Ruhengeri *préfecture*, who was killed on 8 April “while he was trying to repel the assailants who had attacked his *commune*”. He testified that he thought that he would suffer the same fate.¹⁴⁸

¹⁴⁶ T., 31 July 2003, pp. 37 to 38.

¹⁴⁷ T., 31 July 2003, pp. 38 to 39 and 58 to 61.

¹⁴⁸ T., 24. November 2003, pp. 3 and 5.

After 17 April 1994

142. **Expert Witness, Alison Des Forges**, testified that in 1994 she visited, among other places in Rwanda, sites close to Nyarubuye, and that she found corpses on those sites. Based on the information she received from different sources that were not disclosed at trial, she testified that the corpses she saw in all the areas she visited were mostly those of Tutsi, or of Hutu, depending on the sites. The former were victims of attacks perpetrated by the *Forces armées rwandaises* (FAR), the militia and members of the population, while RPF was responsible for the latter.¹⁴⁹

143. The expert witness identified information contained in a document which the Defence showed to her¹⁵⁰ and which she referred to as the Gersony Report. She testified that the Office of the United Nations High Commissioner for Refugees requested the said document from Mr. Gersony, but that it was not made public. She testified that Mr. Gersony referred to corpses floating in the river a few weeks after the arrival of RPF in an area including Rusumo, the River Akagera and Nyarubuye. Ms. Des Forges explained that, according to her own information, a general distinction should be made between corpses with hands bound behind the back, dating back to the period after the arrival of RPF, and corpses with unbound hands, dating back to the period before the arrival of RPF. She further testified that that she never saw any corpse with hands bound at Nyarubuye Parish.¹⁵¹

144. **Prosecution Witness Patrick Fergal Keane**, a journalist, who, in May 1994, produced a documentary for the British Broadcasting Corporation (BBC)¹⁵² on Rwanda, focussing on the events in Rusumo *commune*, testified that at the end of May 1994, with the assistance of RPF which was in control of that area, he was in Rusumo and filmed the Nyarubuye Parish building, which was littered with corpses.¹⁵³ Having heard the stories of the survivors of the events at the parish, he started looking for *Bourgmestre* Sylvestre Gacumbitsi, and had a conversation with him at the Benaco refugee camp in Tanzania.¹⁵⁴ In the documentary, some clips of which were shown and tendered as exhibits,¹⁵⁵ many decomposing and intermingled corpses are visible. The corpses are numerous, piled on top of each other, in front of a building located behind Nyarubuye Church, under the arches. The corpses are those of persons of both sexes, and bodies of children, including some in school uniforms, can be seen.

¹⁴⁹T., 26 August 2003, pp. 61 to 63.

¹⁵⁰By Oral Decision of 20 October 2003, this document was then admitted as Defence Exhibit (D04), see T., 20 October 2003, pp. 3 to 5.

¹⁵¹T., 26 August 2003, pp. 63 to 72.

¹⁵²T., 28 July 2003, pp. 22 to 24 and 31.

¹⁵³T., 28 July 2003, pp. 25 *et seq.*

¹⁵⁴See Prosecution Exhibit P7A. The witnesses identified the Accused in court (T., 28 July 2003, pp. 30 to 31).

¹⁵⁵See Prosecution Exhibits P1, P2, P3, P4, P5, P6, P7, P8 and P9. These clips were shown in court and the witness commented on them. (T., 28 July 2003, pp. 31 *et seq.*)

3. Discussion

15 April 1994

145. The Chamber finds Prosecution Witnesses TAQ, TAO and TAX to be credible. The evidence they gave on the events they witnessed at Nyarubuye Parish was reliable. No major inconsistency or discrepancy was noted in their evidence. The discrepancies noted can be explained by the time that has elapsed since the massacres, the fact that they witnessed the massacres from different locations and at different times, and the considerable stress they were subjected to.

146. Witness TAQ was able to identify several individuals who took part in the events. The Chamber is of the opinion that the fact she did not see the machetes being off-loaded in front of Nyarubuye Church is not such as to discredit her evidence about the events that took place there, as the Defence wrongly submits. The Chamber also notes that Witness TAQ also testified to the presence of weapons, including machetes, in the Accused's vehicle.¹⁵⁶

147. Under cross-examination, Witness TAQ explained that when she fainted she was hiding with many other persons in the priests' doghouse. The Defence submits that it is not plausible that many people were able to hide in a doghouse in which, the witness admits, you could not stand up.¹⁵⁷ The Chamber, which noted the witness's reaction, is unpersuaded by this argument. The witness's reaction was: "... in our situation as refugees, we had no choice. When you are looking for a place to seek refuge you don't seek a place where you can stand. All you do is look for a place where you can hide and that's what we did".¹⁵⁸

148. The Chamber finds that the testimonies of Witnesses TAQ and TAO are by no means contradictory as to the state of mind of the refugees at the parish upon the arrival of the Accused. The evidence given on this incident by Witnesses TAQ and TAO is consistent. They testified that the refugees approached the Accused in order to dialogue with him and, perhaps, in Witness's TAQ's estimation, to seek explanations or protection from him.

149. Regarding the identification of the person from whom the Accused, as testified to by Witnesses TAQ and TAO, "borrowed" a machete, the Chamber finds that the testimonies are not contradictory but rather corroborate each other. Although, unlike Witness TAQ, Witness TAO could not identify at trial the person from whom the Accused borrowed the machete as an *Interahamwe*, the evidence he gave on this incident is not inconsistent. The turbulent circumstances of the incident may explain why the two witnesses gave the same account but with different degrees of accuracy.

150. As to the ability of the witnesses to identify people as belonging to the *Interahamwe*, the Chamber is aware that in the minds of witnesses who experienced such events, the word *Interahamwe* may sometimes refer to a member of a structured

¹⁵⁶ T., 29 July 2003, pp. 45 to 51; T., 30 July 2003, p. 22.

¹⁵⁷ T., 30 July 2003, pp. 25 to 26.

¹⁵⁸ T., 30 July 2003, pp. 25 to 26.

national and local group that was usually thought of as being the youth wing of MRND. The word may sometimes also refer to any person who took part in the massacres of 1994 and who was wearing, or not wearing, special attire. In assessing the evidence on this issue, the Chamber took care not to make a premature finding as to the presence in Rusumo *commune* of a structured *Interahamwe* group, solely on the evidence of the presence and actions of the *Interahamwe* during the massacres.

151. The Chamber finds, on Witness TAQ's evidence, which was corroborated by many other Prosecution witnesses and by Defence Witness ZHZ, that on 15 April 1994, several thousand civilians, including a large number of Tutsi, from different *communes* and certain *secteurs* in Rusumo, found refuge at Nyarubuye Parish, fleeing from the insecurity and attacks perpetrated by the *Interahamwe* and other attackers in their localities.

152. The Chamber further finds that on 15 April, around 8 a.m., a *conseiller* of a *secteur* came to the parish accompanied by many *Interahamwe* and asked the refugees to stay calm and not to leave the parish. The *conseiller* then left, while the *Interahamwe* remained. The Accused arrived at Nyarubuye Parish around 3 p.m. Rusumo communal police and the *Interahamwe* accompanied him. The *Interahamwe* were singing "Let's exterminate them". When he arrived, three refugees, including Murefu, an old Tutsi, went up to the Accused, who told them that the Tutsi's hour had come. The Accused then grabbed a machete and slashed Murefu's neck, killing him instantly. The Accused then instructed the communal police and the *Interahamwe* to attack the refugees and prevent them from escaping. The Accused also asked the Hutu to leave the parish. The attackers pushed back a child who was trying to leave the crowd because he was not Hutu. A grenade hit the child during the attack.

153. Defence Witnesses NG2 and ZIZ testified that Hutu were asked to leave the parish in order to avoid the attack, and that a major attack occurred there on 15 April 1994. However, Witnesses NG2 and ZIZ also testified that it was the *gendarmes* who carried out the massacres, and not the Accused, who was absent. The Chamber is quite aware of these testimonies. In the opinion of the Chamber, when viewed against the consistent and specific evidence of Witnesses TAQ, TAO and TAX, those testimonies are not such as to raise any doubt about the participation of the Accused in the massacres of 15 April 1994 at Nyarubuye Parish.

154. The Chamber also finds that the attackers attacked the refugees at the parish with grenades, guns and machetes up to about 7 p.m., killing, wounding and mutilating a number of them.

16 April 1994

155. The Chamber admits the direct, credible and convincing evidence of Prosecution Witnesses TAO and TAX on the actions of the Accused at Nyarubuye Parish on 16 April 1994.

156. Witness TAO testified that he saw the Accused on the morning of 16 April outside the Nyarubuye Church building. The Accused was moving towards the said

building with others, including Judge Rubanguka.¹⁵⁹ Witness TAO's testimony that he saw Rubanguka stick his spear into the body of a victim, shortly before arriving at the parish, confirms the fact that Rubanguka and those with whom the Accused was were attackers. The Chamber finds that the conditions under which Judge Rubanguka was seen are plausible, including the distance of 40 metres, which, according to Witness TAO, separated him from the judge.

157. Contrary to Defence submissions, the Chamber has no cause to doubt that Witness TAO, his wife and two children were able to hide together for two days in the latrines of CERAI, not far from the parish, under the conditions described by the witness.

158. Moreover, on the evidence of Witnesses TAO and TAQ, and that of Defence Witness UHT, who testified that that he had been requisitioned to be part of those who attacked Nyarubuye Parish in the morning of 16 April 1994, the Chamber finds that it is established that, on that morning, the group of attackers, which Witness TAQ referred to as *Interahamwe*, among whom, like Witness TAO, the witness saw Judge Évariste Rubanguka, began finishing off the survivors of the attack carried out the previous day. That some details in Witness TAO's testimony, about Judge Rubanguka spraying pepper on corpses in order to flush out survivors, were not covered in the witness's prior statements, does not affect this finding or the credibility of the witness.

159. That Witness TAQ did not testify that she saw the Accused at Nyarubuye Parish on 16 April 1994 is not such as to cast doubt on her testimony. The discrepancy may be explained by the fact that the two witnesses witnessed the event at different times from different locations. Moreover, Witness TAQ testified that she saw Judge Rubanguka in the parish building, while Witness TAO testified that he saw the Accused, not far from the parish, with Rubanguka and others, when the group was heading for the parish. Thus, Witness TAO's testimony seems to precede Witness TAQ's.

160. The Chamber finds Defence Witness UHT not very credible. Under cross-examination, Witness UHT testified that during the six hours he spent with the attackers at the parish on 16 April 1994, amongst corpses and survivors, he did not take part in finishing off the wounded. However, he could not testify as to what he did, apart from staying with his brother-in-law, being shocked and frightened. Moreover, Witness UHT was unclear as to whether the second vehicle that he saw at the parish belonged to Rusumo *commune*. Under cross-examination, he began by testifying that he did not know, then was adamant that such was not the case, a stance he maintained during re-examination. To a question from the Bench concerning the driver of the vehicle in question, the witness answered that he was able to identify the *commune* driver. The Chamber further finds that during cross-examination, when the Prosecution maintained that Witness UHT allegedly told the Defence investigator who took down his prior statement that after leaving the parish he had seen the vehicle in question at the Nyarubuye road junction, located 15 kilometres from there, the witness attributed it to an error on the part of the investigator.¹⁶⁰

¹⁵⁹ T., 30 July 2003, pp. 56 to 57.

¹⁶⁰ T., 7 October 2003, pp. 13 to 14, 22 to 24, and 26 to 27.

161. The Chamber notes, however, that Witness TAO, who alone saw the Accused in the morning of 16 April 1994, did not testify that the Accused was armed. Moreover, neither Witness TAO, Witness TAQ nor Witness UHT mentioned any looting in the parish building after the massacre.

17 April 1994

162. As the Defence points out, Witness TAQ testified that he heard the Accused speaking over a megaphone at a location, other than Nyarubuye Parish, on 17 April 1994 at around 9 a.m. Witness TAX also testified that she saw the Accused at the same time. Both Witnesses TAX and TAQ only approximated the time when they saw the Accused.¹⁶¹ Moreover, Witness TAQ testified that she heard the Accused speaking over a megaphone, and that the Accused was part of a convoy of three vehicles that she saw passing at the time, at the frontier between Kankobwa *secteur* and Nyarubuye *secteur*, in which Nyarubuye Parish is also located. As Witness TAX saw the Accused arriving at the parish in a vehicle, both witnesses could have seen the Accused within a reasonably short interval of time, at around 9 a.m. The Chamber therefore finds that Witness TAQ's evidence does not cast doubt over the reliability and credibility of Witness TAX as to this incident.

163. The Chamber finds that the conditions under which Witness TAX observed the Accused were particularly good. The incident took place in the morning and Witness TAX was at a very short distance, which she estimated to be two metres away from the Accused. On her evidence, the Chamber finds that, on 17 April 1994 at about 9 a.m., the Accused addressed a group of attackers who had gathered 15 Tutsi survivors in front of the Nyarubuye Church, and told them to take their weapons and kill the survivors, aiming at the head and sparing no one. There is no doubt that by these words, the Accused was ordering the murder of each of the 15 Tutsi survivors, given that once these words were uttered, the attackers attacked the survivors with machetes, with two of them mutilating Witness TAX, despite her pleas, leaving her for dead. On this evidence, the Chamber finds that, on 17 April 1994, the Accused led an attack against Tutsi civilians at Nyarubuye Parish by ordering the attackers to kill the refugees, as alleged in paragraph 27 of the Indictment.

The Defence Case: massacres committed by RPF

164. The Defence submits that the pictures in Fergal Keane's report do not date from the attacks on Nyarubuye Parish on 15, 16 and 17 April 1994¹⁶². Thus, regarding the bodies seen in parts of Fergal Keane's report and blamed on the massacre of 15 April at Nyarubuye Parish, the Defence submits that they are rather proof of the crimes committed by RPF. Such is the purport of the report of the two forensic pathologists, expert witnesses called by the Defence.¹⁶³ Similarly, Defence witnesses testified about the crimes committed by RPF. Thus, Defence Witness XW9, a member

¹⁶¹ T., 31 July 2003, p. 37 (Witness TAX) and T., 29 July 2003, pp. 61 to 62 (Witness TAQ).

¹⁶² Defence Closing Brief, paras. 385 to 394.

¹⁶³ Report of Expert Witnesses Vorhauer and Lecomte, p. 13.

of MDR-Power residing in Kigina *secteur*,¹⁶⁴ testified that he was arrested at his home on 28 April 1994 by three *Inkotanyi* soldiers, meaning by this expression RPF members who had attacked Rwanda. The witness testified that, amongst the RPF party members, he recognised one of his neighbours, a Tutsi, who was not wearing a military uniform. He testified further that the *Inkotanyi* had taken him away with others, after binding him. When he fell along the way, one of the soldiers allegedly fired two shots in his direction and left him for dead, while soldiers from the Rwandan Patriotic Army (RPA, the armed wing of RPF) continued with the other captives, whom they shot dead 20 metres from where the witness was, in Nyabitare. He also testified that, on 5 May 1994, his wife and five children (the youngest of whom was one and a half years old), and all his neighbours had been killed by RPA soldiers.¹⁶⁵ The Defence also relied on the Gersony Report¹⁶⁶ to establish that RPF committed crimes, especially in Rusumo *commune* and its neighbourhood.

165. On the one hand, the Defence seems to submit vaguely that RPF, the adversary in the armed conflict in Rwanda, also committed crimes. In this regard, the Chamber recalls that such a line of *tu quoque* defence against the serious crimes that this Tribunal¹⁶⁷ is prosecuting is inadmissible, all the more so as the Defence is not suggesting that RPF committed crimes in Nyarubuye before 15, 16 and 17 April 1994.

166. On the other hand, although the Defence submits only that, among the corpses found at Nyarubuye, a certain number, which it does not specify, result from killings perpetrated by RPF, the Chamber finds that the report of the two forensic pathologists leads only to a limited finding. Indeed, the pathologists simply testify that all the bodies on the clips that were viewed do not date back to April 1994, which does not rule out that bodies could date back to the period from 15 to 17 April 1994, when attacks were carried out against Tutsi civilians at Nyarubuye Parish, Rusumo *commune*. Therefore, the report is not such as to cast doubt over the occurrence of the attacks that several Prosecution and Defence witnesses have testified about.

4. Findings

167. Regarding paragraphs 15, 16 and 17 of the Indictment, the Chamber finds that on 15 April 1994, Sylvestre Gacumbitsi took part in the attack against Nyarubuye Parish, where many Tutsi refugees and Hutu had gathered. Sylvestre Gacumbitsi arrived at the parish in a convoy of vehicles carrying communal policemen and *Interahamwe*. The attackers wore clothing attributed to the *Interahamwe*. They were armed with machetes and other traditional or crafted weapons, and with guns and grenades that they used during the attack. However, the Chamber cannot, on the evidence adduced, find that Sylvestre Gacumbitsi had previously provided them with the said machetes.

168. Shortly after arriving at the parish at about 3 p.m., Sylvestre Gacumbitsi killed Murefu, a Tutsi refugee who had gone up to him, and gave a signal for the massacres

¹⁶⁴ T., 13 October 2003, pp. 6 to 7. The witness identified the Accused in court; T., 13 October 2003, p. 8.

¹⁶⁵ T., 13 October 2003, pp. 11 to 13.

¹⁶⁶ Defence Exhibit D04.

¹⁶⁷ *Kupreškić* Trial Judgment, ICTY, 14 January 2000, paras. 515 to 520.

to commence. Sylvestre Gacumbitsi addressed the crowd through a megaphone and ordered Hutu refugees to separate themselves from the Tutsi. Some obeyed the orders. Communal policemen and *Interahamwe* attacked the refugees in the church building.

169. The Chamber finds that the communal policemen who attacked the parish did so under the orders of the Accused. The Accused directed the attack and gave orders which were perceived by the attackers as an incitement or encouragement to act.

170. The Chamber finds that the Accused facilitated the attack by allowing Rusumo *commune* vehicles to ferry attackers and weapons to the parish. The Accused himself came to the parish, aboard one of the vehicles in the convoy, accompanied by the police and attackers. The same vehicles transported weapons to the location of the attack. However, no evidence was adduced that these weapons were distributed.

171. As to paragraph 18 of the Indictment, the Chamber finds that on 16 April 1994, following the attack of 15 April 1994, Sylvestre Gacumbitsi, and a group of attackers, including a certain Judge Rubanguka, went to the Nyarubuye church building. Some attackers were armed with spears, machetes and bows and arrows. It is not established that the Accused himself was armed. Rubanguka, in the presence of the Accused, planted a spear into a person's body, but it was not established if the person was dead or still alive. The Chamber finds that the Accused directed the attack of 16 April and the attack of the previous day. During the attack, the attackers, including Judge Rubanguka, finished off survivors. The attackers then went on to loot the parish building.

172. With regard to paragraph 27 of the Indictment, the Chamber finds that between 15 and 17 April 1994, Sylvestre Gacumbitsi directed attacks against Tutsi civilian refugees who had assembled at Nyarubuye Parish, and personally took part in the attacks. On 15 April 1994, he killed a Tutsi called Murefu. On 15, 16 and 17 April he directed attacks by issuing clear instructions to the attackers to attack the Tutsi who had sought refuge in the parish. Among the attackers of 15 April 1994 were the *Interahamwe*, *gendarmes* and communal police.

173. The Chamber finds that Sylvestre Gacumbitsi facilitated the transport of the communal police, *Interahamwe* and weapons to Nyarubuye Parish by authorizing or facilitating the use of *commune* vehicles. He led attacks against Tutsi civilians by example or by instructing the attackers to kill the refugees.

174. Lastly, with respect to paragraph 19 of the Indictment, the Chamber cannot, on the evidence adduced, find whether “[a]lmost all of the Tutsi refugees, comprising several thousands at Nyarubuye *paroisse*, were killed”. However, the Chamber finds that it is established that thousands of Hutu and Tutsi civilians had sought refuge there in the days preceding the attack of 15 April 1994, and that on that same day Hutu were separated from Tutsi, who were attacked. Very many Tutsi were killed that day. Survivors were finished off the following day, and two days later. The parish compound was still littered with many corpses a few weeks later. Thus, the Chamber finds that many Tutsi who found refuge at Nyarubuye Parish were killed there between 15 and 17 April 1994.

D. PARAGRAPHS 31 TO 36 OF THE INDICTMENT (MURDERS)

1. Allegations

175. Paragraphs 31, 33, 34 and 36 of the Indictment allege that:

31. In addition to personally ordering and leading attacks against groups of civilian Tutsi refugees, Sylvestre Gacumbitsi also targeted specific Tutsi civilians in Kibungu *préfecture* for murder.

32. On a certain date during April 1994, Sylvestre Gacumbitsi killed a Tutsi woman and her three children in his own home. Sylvestre Gacumbitsi was god-father to one of the children, and the woman sought refuge at the home of her former friend. Instead of protecting the woman and her children, Sylvestre Gacumbitsi personally arranged their murder.

33. On or about 14 April 1994, Sylvestre Gacumbitsi personally shot and killed two civilian Tutsi in the Catholic centre in Nyabitare. The two persons pleaded with Sylvestre Gacumbitsi, going so far as to offer him money so that they would be killed with bullets and not by machetes. Sylvestre Gacumbitsi took the money, shot them, and removed the rest of their money.

34. Sometime between 17 and 18 April 1994, Sylvestre Gacumbitsi also caused the death of several Tutsi children. Upon specific instruction from Sylvestre Gacumbitsi, infant survivors of the attack on Nyarubuye *paroisse* were lured to a location with an offer of food. Once they were assembled, Sylvestre Gacumbitsi ordered all exits blocked and the children were killed with grenades.

35. On a date uncertain during April-June 1994, Sylvestre Gacumbitsi personally ordered the tenants in one of his homes to vacate the premises. After announcing that his home was not CND, a reference to the cantonment of RPF soldiers in Kigali, Sylvestre Gacumbitsi ordered the killing of his former tenants.

176. The Chamber notes that the wording of paragraph 31 is general and there is no reference to any specific event identified by a date, specific place and named victims. The Chamber finds that this paragraph is introductory by nature, and cannot be interpreted in such a way as to include killings other than those specifically referred to in paragraphs 32 to 36 of the Indictment. Indeed, it does not contain any specific allegation as to the killing of Murefu, Simon Buhonogo, Rugegena, nor to the killing of Tassiana Mukamwiza. Thus, it cannot, contrary to Prosecution submissions, sustain the evidence adduced. Accordingly, the Chamber finds that paragraph 31 is not specific enough to warrant findings based on the evidence of the above-mentioned killings. The Chamber recalls that it has already assessed the evidence on the killing of Murefu, Simon Buhonogo and Rugegena as part of its finding on paragraph 15 of the Indictment on the attack at Nyarubuye.¹⁶⁸

177. The Prosecution admits that it did not adduce any evidence to sustain the allegations in paragraphs 32 and 35 of the Indictment. The Chamber will therefore not make any finding on such allegations.

¹⁶⁸ See *supra*: Chapter II, Part C.

178. The Chamber notes that in the Prosecution's Pre-Trial Brief, the Prosecution identifies the victims referred to in paragraph 34 of the Indictment more clearly, and explains that such allegations are based on the evidence of Witness TAC.¹⁶⁹

2. Evidence

13 April 1994 – Murder of Marie and Béatrice

179. **Prosecution Witness TBC**, a Rusumo businessman who knew the Accused well and identified him at the hearing, testified that he saw the Accused around 8 a.m. on 13 April 1994. The Accused was accompanied by police officers Mukankusi, Kazoba and Gidas alias Gitamisi. The Accused explained to his tenants, including the two Tutsi sisters, Marie and Béatrice, that the *Interahamwe* had sent him a message that they would be there at noon and that his tenants, therefore, had to leave the house and give him the keys, adding that his house was not the CND, referring, according to the witness, to the building in Kigali which had been allocated to RPF soldiers under the Arusha Peace Accords. The tenants interpreted the Accused's words as meaning that his house was not for Tutsi, and that the tenants had to leave. Witness TBC later fled to Tanzania. When he returned to Rwanda in June 1994, he learned that Marie and Béatrice had died that same night of 13 April 1994. Witness TBC testified that he did not hear the Accused order anyone to kill people.¹⁷⁰

180. **Prosecution Witness TAS** testified that she saw the Accused around 11 a.m. at the Nyakarambi market on Wednesday 13 April 1994. The only person the witness saw and recognized among those accompanying the Accused was Kazoba, a policeman. The same evening, from her hideout, she heard Kazoba who was 30 metres away, but whom she could not see, tell someone that from 12 p.m., this Thursday 14 of April, there would no longer be any Tutsi alive because Sylvestre Gacumbitsi had ordered that all Tutsi should be killed, starting with Marie and Béatrice.¹⁷¹

181. **Prosecution Witness TAW** testified that around 9 a.m. on 13 April 1994, the Accused and some communal police went to a building belonging to the Accused "to see if his tenants had decided to move out of the house".¹⁷² In the building were Marie and Béatrice, among others. The Accused's tenants asked for more time to vacate the place since they had no alternative accommodation, but the Accused asked the policemen to force them to leave the house and take their keys. The policemen dragged Marie and her child out of the house. The Accused took the house keys and said to his tenants: "I am going back to the office. When I come back if you are still here, you will have problems". When he returned there in the afternoon and found Marie and Béatrice, he once again ordered them to leave.¹⁷³

¹⁶⁹ Prosecutor's Pre-Trial Brief, para. 2.28.

¹⁷⁰ T., 5 August 2003, pp. 62 to 64 and 68 to 73.

¹⁷¹ T., 5 August 2003, pp. 13 to 17, 19 to 20, 28 to 30. TAS identified the Accused at the hearing.

¹⁷² T., 20 August 2003, p. 26 to 27.

¹⁷³ T., 20 August 2003, pp. 27 to 28 and 30 to 31.

182. **Defence Witness UPT**, who was a 16-year-old girl in 1994, testified that during the night of 13 April 1994, the killings started with the murder of Béatrice and Marie, who were Tutsi. Hooligans, including Kirenge and Kigati, led the attack. At the time of their death, the two young girls were at a place they had sought refuge in following threats against the *bourgmestre* because he had taken in some *Inkotanyi*. The witness testified that the *bourgmestre* did not expel his tenants that day.¹⁷⁴

183. **Defence Witness YEW** testified that on 13 April 1994, before 1 p.m., he met one of the *bourgmestre*'s tenants, who told him that he had fled because the *bourgmestre* had said that he could no longer guarantee the tenant's safety. The following morning, the witness learned that Marie and Béatrice had been killed, and explained that only Marie was the *bourgmestre*'s tenant, while Béatrice lived in a house belonging to the manager of the local *Banque populaire*.¹⁷⁵

14 April 1994 – The murder of Kanyogote

184. **Prosecution Witnesses TAK and TBH** testified about the murder of Augustin Kanyogote, a Tutsi, and of his two children, on 14 April 1994, near the Accused's house.¹⁷⁶

15 April 1994 – Attack on the Nyabitare Catholic Centre

185. **Prosecution Witness TAC**,¹⁷⁷ a Tutsi who said that he knew the Accused "very well" and identified him at the hearing, testified that he saw the Accused on 14 or 15 April 1994, just after midday, near the Nyabitare Catholic Centre in Rusumo *commune*, where some refugees were. Witness TAC was hiding in a banana plantation, about 30 metres away from the centre. The Accused was accompanied, among others, by Edmond Bugingo, local leader of the *Interahamwe*, the MRND youth wing, Grégoire Kabandanyi, CDR leader in Nyabitare *secteur*, and *Conseiller* Rwabalinda. Witness TAC explained that the Accused's vehicle, a double cabin pick-up, was carrying weapons at the back, where the policemen were sitting, and that the Accused was sitting in the front seat of the vehicle.¹⁷⁸

186. Witness TAC further testified that, soon after talking with the Accused, policemen Berakumenyo and Kazoba entered the Catholic Centre and came out quickly with two Tutsi refugees, Rukomeza and Vianney Mutunzi, whom Witness TAC knew well. Vianney Mutunzi was a well known football player at the time. Witness TAC observed Mutunzi and Rukomera imploring the Accused out loud not to let them suffer, and to kill them with bullets rather than with a machete. He saw them take something from their pockets and give to the Accused. Witness TAC assumed that it was money. The Accused then left in his vehicle and drove towards Nyarubuye. After he had left, Mutunzi and Rukomera were shot dead by the two policemen who

¹⁷⁴ T., 16 October 2003, pp. 22 to 23.

¹⁷⁵ T., 15 October 2003, pp. 71 to 72.

¹⁷⁶ T., 4 August 2003, pp. 47 to 52, 62 to 63, 64 to 65 and 66; T., 25 August 2003, pp. 32 to 33; T., 26 August 2003, pp. 9 to 11.

¹⁷⁷ T., 4 August 2003, pp. 7 and 20.

¹⁷⁸ T., 4 August 2003, pp. 9 to 15, 17 to 18, 24 to 29, and 31 to 33.

searched their bodies. Under cross-examination, Witness TAC explained that Mutunzi and Rukomera were shot “just as he [the Accused] left”.¹⁷⁹

3. Discussion and Findings

Paragraph 33 of the Indictment

187. The evidence given by Witnesses TAK and TBH relates to the murder, on 14 April 1994, at or near the home of the Accused, of a Tutsi man called Kanyogote, who was accompanied by his two children. Paragraph 33 of the Indictment contains a different allegation: that of murder by the Accused, at his home in April 1994, of a Tutsi woman and her three children. Thus, the Chamber can only find that the evidence of Witnesses TAK and TBH relates to a victim or victims other than those referred to in paragraph 33 of the Indictment.

188. Consequently, the Chamber finds that the Indictment does not contain any specific allegation about the murder of Kanyogote and his children. That the Prosecutor mentioned the murder of Kanyogote and his children in his Pre-Trial Brief¹⁸⁰ is not such as to cure the vagueness in the Indictment, especially as such brief does not establish a link between the new allegation and paragraph 33 of the Indictment. The Pre-Trial Brief does not seek to render the Indictment more specific, but rather alters the Indictment substantially by either changing the identity of the victims referred to in paragraph 33 or including a new allegation of murder. The Pre-Trial Brief cannot be used as an instrument to amend the Indictment substantially. Such amendment must comply with the provisions of Rule 50 of the Rules of Procedure and Evidence.

189. In this case, it is indeed the substance of the Indictment that is affected by including a new allegation of murder, or changing the identity of the victims of such murder. Consequently, the Chamber has decided to disregard the evidence adduced by the Prosecutor against the Accused on the murder of Kanyogote and his children. However, the Chamber finds that unknown perpetrators killed Kanyogote and his children, Tutsi who felt threatened because of their ethnicity, in April 1994 in Rusumo *commune*.

190. Moreover, the Chamber finds that the Prosecution adduced no evidence to sustain the allegation contained in paragraph 33 of the Indictment.

Paragraph 34 of the Indictment

191. The Chamber finds that the Pre-Trial Brief, which identified the victims more precisely, cured the vagueness in paragraph 34 of the Indictment.

192. The Chamber is unpersuaded by Witness TAC’s evidence. Several factors affect its reliability. The Chamber recalls that Witness TAC witnessed the incident only for a brief moment, lying flat on his stomach and hiding in a banana field about

¹⁷⁹ T.4, August 2003, pp. 11 to 14, 17 to 18, and 31 to 37.

¹⁸⁰ Prosecution Pre-Trial Brief, para. 2.30.

30 metres away from the *locus in quo*. In such circumstances, compounded by the enormous stress the witness experienced at the time of the events, his identification of the Accused and his account of the Accused's gestures and actions at the time he observed the Accused, have been examined with caution. Moreover, the Chamber has noted several inconsistencies and contradictions in Witness TAC's evidence. For example, the Witness gave differing accounts of the number and identity of the policemen who remained on the premises after the Accused had left. Besides, Witness TAC contradicted himself on several issues in his prior statements. In particular, Witness TAC testified that the Accused was not armed and had left the Catholic Centre before two policemen killed Mutunzi and Rukomeza, whereas in his prior statement of 8 April 1997, he alleged that the Accused was armed and had personally killed the two victims. The witness had allegedly stated to investigators that the Accused had extorted money from the two victims before killing them, whereas in court he testified that he did not know what the Accused had taken from the victims.¹⁸¹ The witness further testified that he was hiding alone in the banana fields, whereas he had alleged in his prior statement that he was in the company of his wife and three sisters. The witness's explanations about such major inconsistencies and contradictions, which cannot be attributed to error on the part of the investigators, were not persuasive.

193. In conclusion, the Chamber finds that the Prosecutor has not proven the allegations contained in paragraph 34 of the Indictment beyond a reasonable doubt.

Paragraph 36 of the Indictment

194. The Chamber finds that paragraph 36 of the Indictment is vague as it fails to identify the victims precisely, and does not specify their killers. Paragraph 36 only alleges that the Accused ordered the killing of his former tenants. However, the Chamber further finds that the Pre-Trial Brief and its annexes, which provided further details on the allegation, cured the vagueness.

195. The Chamber finds the evidence of Witnesses TBC and TAS to be credible. Their accounts corroborate each other and are consistent with that of Witness TAW, whom the Chamber has already found to be credible. On the evidence of Witnesses TAW, TBC and TAS, the Chamber finds that on 12 April 1994, at Nyakarambi, the Accused ordered Marie and Béatrice, two Tutsi sisters, to vacate the premises which they were renting, stating that the said premises did not belong to CND, a reference to the RPF cantonment in Kigali. The Accused returned to the premises on 13 April 1994 and, with the assistance of the communal police, expelled the tenants.

196. On the evidence of Witness TBC and Defence Witnesses UPT, YCW and YEW, the Chamber finds that Marie and Béatrice were killed in the night of 13 April 1994. However, the hearsay evidence of Witness TAS is insufficient, failing corroboration, to establish that the Accused ordered the murder of Marie and Béatrice.

197. In the light of the Chamber's findings on the involvement of the Accused in preparing, inciting and perpetrating the massacres of Tutsi at Rusumo, the Chamber

¹⁸¹ T., 4 August 2003, pp. 12 and 40.

further finds that on 13 April 1994, the Accused expelled his tenants, Tutsi women, knowing that by so doing he was exposing them to the risk of being targeted by Hutu attackers on grounds of their ethnic origin.

E. PARAGRAPHS 20, 21 AND 37 TO 40 OF THE INDICTMENT (RAPES)

1. Allegations

198. Paragraphs 20, 21, 37, 38, 39 and 40 of the Indictment allege that:

20. Sexual violence against Tutsi women was systematically incorporated in the widespread attacks against the Tutsi. In leading, ordering and encouraging the campaign of extermination in Rusumo *commune*, Sylvestre Gacumbitsi knew, or should have known, that sexual violence against civilian Tutsi was, or would be, widespread or systematic, and that the perpetrators would include his subordinates or those that committed such acts in response to his generalized orders and instructions to exterminate the Tutsi.

21. Furthermore, Sylvestre Gacumbitsi circulated about Rusumo *commune* in a vehicle announcing by megaphone that Tutsi women should be raped and sexually degraded. For example, on or about 17 April 1994 Sylvestre Gacumbitsi exhorted the population along the Nyarubuye road to “rape Tutsi girls that had always refused to sleep with the Hutu...” and to “search in the bushes, do not save a single snake...” Attacks and rapes of Tutsi women immediately followed.

33. During April, May and June 1994, there were widespread or systematic rapes and sexual violence of Tutsi women. The sexual assaults were often a prelude to murder, and were sometimes the cause of death of a number of civilian Tutsi.

34. On one particular occasion, on or about 17 April 1994, Sylvestre Gacumbitsi lured Tutsi women to a certain location by announcing over a megaphone that Tutsi women would be spared, and that only Tutsi men would be killed. When a number of Tutsi women gathered in response to Sylvestre Gacumbitsi’s exhortations, they were surrounded by several attackers, raped, and then killed. Attackers also sexually degraded a number of Tutsi women by inserting objects in their genitals.

39. On or about 17 April 1994, Sylvestre Gacumbitsi travelled along the Nyarubuye road in a caravan of vehicles, announcing with a megaphone “Search in the bushes, do not save a single snake Hutu that save Tutsi should be killed Tutsi girls that have always refused to sleep with Hutu should be raped and sticks placed in their genitals...”. After Sylvestre Gacumbitsi drove by, a group of men attacked Tutsi women that were hiding nearby and raped several of the women. One of the women was killed and a stick was thrust in her genitals.

40. The sexual violence was so widespread, and conducted so openly, and was so integrally incorporated in widespread attacks against civilian Tutsi, that Sylvestre Gacumbitsi must have known, or should have known, that it was occurring, and that the perpetrators were his subordinates, subject to this authority and control, and acting under his orders. This is especially so since the perpetrators of sexual violence were often the same individuals that organized and led or participated in the widespread attacks against the Tutsi that Sylvestre Gacumbitsi had ordered.

199. The Chamber notes that no evidence was tendered to sustain the allegations contained in paragraph 38 of the Indictment. Thus, it shall not make any finding on such allegations.

2. Evidence

200. **Prosecution Witness TAQ** testified that around 9 a.m. on 17 April 1994, while she was hiding under the bridge between Kankobwa *secteur* and Nyarubuye *secteur*, Rubare *cellule*, she saw some people driving around in three vehicles, ordering through a megaphone: “for the tall grass to be cleared so that any snakes found therein that they be caught, and that to kill a snake you needed to hit it on the head”. The witness further testified that she also heard those people saying that Tutsi girls who had refused to get married to the Hutu should be looked for, raped, and if they resisted, killed.¹⁸²

201. Witness TAQ testified that she recognized, among the voices in the megaphones, the voice of Sylvestre Gacumbitsi, giving the same orders that Tutsi girls who resisted should be killed in an “atrocious manner”, that is, by inserting sticks into their genitals.¹⁸³

202. Witness TAQ testified that immediately after this incident, a group of more than ten attackers chasing cows discovered them where she and seven other refugee women and girls were hiding. Among the women were an old lady and six girls, the youngest of whom was 12, and the oldest 25, called Chantal. The attackers forced them back up the hill, where the attackers ordered them to choose between dying and undressing. They then stripped them by tearing their clothes, and raped them.¹⁸⁴

203. Witness TAQ testified that she was heavily pregnant and vomited while one of the attackers was raping her by means of penetration. The witness explained that the attacker asked her if the child she was bearing was a boy or a girl, for he would have disembowelled her in order to kill the child if it was a boy. The witness explained that she did not answer since she did not know the baby’s sex.¹⁸⁵ Under cross-examination, the witness confirmed her prior statement that the same attacker told her that he wanted to take revenge on the witness’s sister who had refused to marry him.¹⁸⁶ The witness explained that the old lady assisted her during birth on the night of the rape, and that a *cellule* official also assisted her.¹⁸⁷ The *cellule* official hid them in his son’s unfinished house, and, the following day, informed her, the old lady and the other two young girls of a communiqué from *Conseiller* Isaïe Karamage asking the refugees to go to the *Conseiller*’s house to collect travel documents that would enable them to return to the ruins of their houses without anxiety. The three refugees went there. In the evening, the *cellule* official returned and informed Witness TAQ that the refugees had obtained the documents at the *conseiller*’s house, but that the refugees had subsequently been taken to the *secteur* office where they were killed and thrown into a pit that was used to collect rain water.¹⁸⁸

¹⁸² T., 29 July 2003, pp. 61 to 62.

¹⁸³ T., 29 July 2003, pp. 61 to 63.

¹⁸⁴ T., 29 July 2003, p. 63; T., 30 July 2003, p. 30.

¹⁸⁵ T., 29 July 2003, pp. 64 to 65.

¹⁸⁶ T., 30 July 2003, p. 35.

¹⁸⁷ T., 29 July 2003, pp. 64 to 65. The witness identified the official.

¹⁸⁸ T., 29 July 2003, p. 64 to 66.

204. Witness TAQ testified that she saw Chantal quartered, with a stick inserted into her genitals, and saw three other girls leave with the attackers. The attackers were going to have the girls as their partners. The witness explained that Chantal died as result of that act of sexual violence.¹⁸⁹

205. **Prosecution Witness TAO** testified that his wife told him that, after the massacres perpetrated near Nyarubuye Parish in April 1994, she was arrested at a roadblock and taken to *Conseiller* Isaïe Karamage's house. She spent two or three days¹⁹⁰ there, during which the *conseiller* raped her every evening and every night. Upon leaving the compound, the *conseiller* gave her a travel document, which was supposed to guarantee a peaceful return. The *conseiller* also promised to visit her. The witness testified that the document read as follows: "The person by the name [...] is authorized to move freely without being unduly disturbed or inconvenienced. [signed] I, *Conseiller* Isaïe Karamage". The document also bore the following expression: "The women or girls who have not yet received the said certificate should hurry to come and obtain the said certificate from the *conseiller*". The travel document bore the stamp of Nyarubuye *secteur*.¹⁹¹

206. Prosecution Witness TAO testified that he saw his wife again five days later with other persons, after she had been taken to the *conseiller*'s house, in the ruins of his grandfather's house. The witness came to see them there every evening. Then one day, around 5 p.m., he saw some attackers attack the house. Hiding, he witnessed his wife being raped. After raping her, the attacker did not want to surrender her to the second attacker, who then killed her with a machete to put an end to the dispute.¹⁹²

207. **Prosecution Witness TAP**, a young Tutsi woman,¹⁹³ testified that a group of about thirty unidentified attackers attacked her mother and drove a stick into her mother's genitals right through her head. When the witness heard her mother's screams, she concluded that she had died on the spot. The witness explained that the attack occurred the day after the President's death, in April 1994. She had heard some loud noises that told her something special was happening in Nyarubuye Parish.¹⁹⁴

208. Witness TAP testified that after the attack on her mother, some attackers came towards her. Three of the attackers, one of whom was identified by the witness, hit her. The attackers were saying that in the past Tutsi women and girls hated Hutu men and refused to marry them, but that now they were going to abuse the Tutsi girls and women freely. The three assailants forced her to sit down. Several attackers, including the man she had already identified, raped her. A branch slightly longer than a meter was driven into her genitals, wounding her and causing her to bleed profusely.¹⁹⁵

¹⁸⁹ T., 29 July 2003, p. 63 to 65; T., 30 July 2003, pp. 36 and 40 to 41.

¹⁹⁰ T., 30 July 2003, pp. 57 to 59; T., 31 July 2003, pp. 20 to 22.

¹⁹¹ T., 30 July 2003, pp. 57 to 59.

¹⁹² T., 30 July 2003, pp. 59 to 60.

¹⁹³ T., 6 August 2003, pp. 5 to 6. The witness identified the Accused in court: T., 6 August 2003, pp. 7 and 27 to 28.

¹⁹⁴ T., 6 August 2003, pp. 5 to 11, 28, and 37.

¹⁹⁵ T., 6 August 2003, pp. 7 to 11 and 40 to 41; p. 52; Exhibit P10.

209. **Prosecution Witness TAS**, a Hutu woman married to a Tutsi, testified without specifying the date, but rather referring to a previous incident that occurred on 14 April 1994, that as she was looking for a hiding place, she came across a Hutu who told her that he just wanted to rape her and not kill her. Another Hutu came and told the first Hutu that the Accused had authorized them to rape only Tutsi women and girls, explaining that no decision had yet been taken concerning Hutu women who were married to Tutsi. However, the first Hutu snatched the child the witness was carrying, lowered his trousers, undressed the young woman and raped her. The other attacker also raped her. The attackers then left when they heard a whistle. The witness thought that she was raped because she was married to a Tutsi.¹⁹⁶

210. **Defence Witnesses UA3, ZEZ, UHT, XW9, XW10, XW1, YCW, UPT, NG4, NG2, MQ1, XW15 and XW13** testified, without further detail, that they never had any knowledge of the *bourgmestre* instructing the rape of Tutsi, or of any rape committed in their areas.¹⁹⁷

3. Discussion

211. The Defence alleges that Prosecution Witness TAQ is not credible because of the many contradictions between her prior statements and oral testimony, and that her account of events is not plausible.¹⁹⁸ On this particular issue, the Defence contends that the witness could have been mistaken about the Accused's voice and that, in any case, her evidence was not corroborated¹⁹⁹ but was, quite on the contrary, contradicted by Prosecution Witness TAX, who situated the Accused at Nyarubuye Parish at the same time.

212. The Chamber recalls that it has already dismissed such Defence arguments as to the contradictions in Witness TAQ's account. The Chamber finds that the contradictions are minor and can be explained by the lapse of time.²⁰⁰

213. The Chamber finds that the witness knew the Accused sufficiently well, because of their relationship,²⁰¹ to be able to recognize his voice over the megaphone without seeing him. The Chamber recalls that there is no provision in the Rules requiring corroboration in such circumstances, and is persuaded that Witness TAQ's account is credible because she was an eyewitness.

214. Lastly, the Chamber recalls its findings on the contradiction, pointed out by the Defence,²⁰² between the evidence of Prosecution Witnesses TAQ and TAX. The Defence makes a general allegation that Witness TAQ is not credible, and that her

¹⁹⁶ T., 5 August 2003, pp. 17 to 24 and 50 to 51.

¹⁹⁷ T., 1 March 2004, pp. 52 to 53. For each witness see: T., 6 October 2003, p. 29 (UA3), and pp. 53 to 54 (ZEZ); T., 7 October 2003, pp. 11 to 12 (UHT); T., 13 October 2003, p. 14 (XW9), p. 28 (XW10), and pp. 54 to 55 (XW1); T., 16 October 2003, pp. 23 to 24, and 27 (YCW) and pp. 60 to 61 (UPT); T., 21 October 2003, pp. 10 to 11 (NG4), pp. 24 to 25 (NG2), pp. 70 to 71 (MQ1); T., 17 November 2003, pp. 22 to 23 (XW13); T., 18 November 2003, pp. 7 to 8 (XW15).

¹⁹⁸ T., 1 March 2004, pp. 34 to 36.

¹⁹⁹ Defence Closing Brief, paras. 496 *et seq.*

²⁰⁰ See *supra*: paras. 147 *et seq.*

²⁰¹ T., 29 July 2003, pp. 42 to 43.

²⁰² See *supra*: paras. 162 *et seq.*

account of events is implausible, without specifically challenging that aspect of her evidence or pointing out any contradiction therein. The Chamber reaffirms that Witness TAQ is credible and her evidence reliable. The Chamber recalls its previous reasoning on Witness TAQ's credibility.²⁰³ In the Chamber's opinion, there is no reason to believe that Witness TAQ's pregnancy during the events affected her senses. The Chamber finds her account of events reliable. The Chamber also finds Witness TAQ to be credible regarding her account of the acts of sexual violence committed against her and other Tutsi women and girls.

215. Accordingly, the Chamber finds that, on 16 April 1994, around 9 a.m., the Accused, who was driving around in Rubare *cellule*, Nyarubuye *secteur*, using a megaphone, asked that Hutu young men whom whom girls had refused to marry should be looked for so that they should have sex with the young girls, adding that "in the event [that] they [the young girls] resisted, they had to be killed in an atrocious manner".²⁰⁴ Placed in context, and considering the attendant audience, such an utterance from the Accused constituted an incitement, directed at this group of attackers on which the *bourgmestre* had influence, to rape Tutsi women. That is why, immediately after the utterance, a group of attackers attacked Witness TAQ and seven other Tutsi women and girls with whom she was hiding, and raped them. One of them, Chantal, died after her genitals had been impaled with a stick, at the instigation of the Accused. Three of the young Tutsi girls were led away forcefully.

216. The events recounted by Witness TAO are of two types in terms of evidence. On the one hand, the rape allegedly committed against Witness TAO's wife at *Conseiller* Isaïe Karamage's house is hearsay, as the witness's wife told him this. On the other hand, the rape committed against his wife in the ruins of his grandfather's house is direct evidence because Witness TAO was an eyewitness to the event.

217. As to the rape committed at *Conseiller* Isaïe Karamage's house, the Chamber finds the witness to be credible, especially as other witnesses testified that there were similar incidents of rape at the same house, or at least, that women and girls gathered there, contrary to Defence argument that such evidence was not corroborated. Thus, Prosecution Witness TAQ testified that a *cellule* official informed her that Tutsi women and girls were invited to go and look for travel documents at the *conseiller*'s house, but that once the documents were issued, the Tutsi women and girls were driven to the *secteur* office, where they were killed and thrown into a mass grave.²⁰⁵ Witness TBH also testified that a similar document was issued to a young Tutsi woman who was allegedly killed later by attackers.²⁰⁶ It can be inferred from these facts that the women and girls who had gathered at the *conseiller*'s house were raped.

218. As to the rape and subsequent killing and of Witness TAO's wife in the ruins of his grandfather's house, the Chamber finds that the witness is credible and his account of events reliable, even without corroboration, because he was an eyewitness

²⁰³ See *supra*: paras. 147 *et seq.*

²⁰⁴ T., 29 July 2003, pp. 61 to 62.

²⁰⁵ T., 29 July 2003, pp. 64 to 66.

²⁰⁶ T., 25 August 2003, pp. 16 to 17, 40 to 41, 42, 51, and 65 to 66.

and the circumstances of the events were peculiar, in particular, the relationship between the witness and the victim of the rape and murder.

219. As to the evidence given by Witness TAP, the Defence alleges that the evidence is not credible because the witness's account of events is contradictory and implausible, and it was the first time during her testimony before the Chamber that she alleged that the Accused²⁰⁷ raped her. First, the Chamber recalls that rejection of a new allegation made during a witness's testimony before the Chamber does not affect other allegations.²⁰⁸ The Chamber finds that there is no contradiction between the witness's prior statement and her testimony as to the date of the rape, as she testified during cross-examination that the time that had elapsed since the events did not allow her to ascertain dates. The Chamber further finds that Witness TAP's account of events seems to be plausible because of the peculiar circumstances of the events, a situation of extreme crisis in which the survival of certain victims may seem extraordinary. Thus, the Chamber finds that Prosecution Witness TAP is credible as to her account of the acts of sexual violence committed against her and her mother.²⁰⁹

220. The Defence submits that Prosecution Witness TAS lacks any credibility, alleging on the one hand, that as a victim the witness cannot give a reliable account of events and, on the other hand, that her evidence was fabricated by the *Ibuka* Association, as she relied on the evidence of Defence Witness RDR.²¹⁰ The Chamber finds that being a victim of the events that occurred in Rwanda in 1994 cannot automatically discredit a witness's evidence in such a way as to exclude it. The Chamber recalls that many victims have already contributed to the search for truth in judicial proceedings, especially in proceedings before this Tribunal. Moreover, as to the specific allegation that *Ibuka* fabricated evidence, the Chamber finds that that Witness RDR's evidence²¹¹ fails to prove that. The Chamber also finds that Witness TAS is credible and his account reliable.

221. The Defence also alleges that the utterances of the two attackers recounted by Prosecution Witness TAS cannot be sustained because the witness testified that she did not see the Accused himself instigate rape.²¹²

222. The Chamber notes that Witness TAS, the rape victim, is Hutu and her husband Tutsi. The Chamber finds that through the woman, it was her husband, a Tutsi civilian, who was the target. Thus, the rape was part of the widespread attacks against Tutsi civilians, as pleaded by the Prosecutor in paragraph 40 of the Indictment.

²⁰⁷ Defence Closing Brief, paras. 970 to 974.

²⁰⁸ *Gacumbitsi*, Decision of 2 October 2003, para. 25, in which the Chamber reserved its discretion to make a finding on the new allegations of rape by Witness TAP.

²⁰⁹ The Chamber recalls that it had ruled, in its Decision of 2 October 2003, that it would not make any finding on the new allegations of rape by Witness TAP against the Accused, see *supra*: para. 16.

²¹⁰ Defence Closing Brief, para. 615.

²¹¹ T., 21 October 2003, pp. 58 to 59. Defence Witness RDR affirmed that a Tutsi lady told him that Prosecution Witness TAS allegedly requested him to testify for the Prosecution against Sylvestre Gacumbitsi.

²¹² T., 1 March 2004, pp. 52 to 53.

223. The Defence makes a general allegation that no Prosecution witness is credible,²¹³ because they are either victims of the events of 1994 or accomplices and, therefore, are either in jail or on conditional release. The Defence also alleges that their evidence is not credible.²¹⁴ Lastly, the Defence further affirms that the witnesses are not credible because they alone knew of the rapes, whereas none of the Defence witnesses called heard of rape, witnessed it or was a victim thereof.²¹⁵ The Chamber has already had occasion to rule on such allegations each time it made a finding on an individual witness. The Chamber reiterates its findings, and adds that the credibility of Prosecution witnesses, who themselves were raped or witnessed rape, cannot be impeached by the fact that Defence witnesses were not raped or did not witness rape.

4. Findings

224. Regarding paragraphs 21 and 39 of the Indictment, and in light of the evidence admitted above, the Chamber finds that it is established that the Accused publicly instigated the rape of Tutsi girls, by specifying that sticks be inserted into their genitals in case they resisted. The Chamber finds that the rapes and other acts of sexual violence recounted by Prosecution Witness TAQ, the consequence of the instigation against Tutsi girls, are established.

225. Regarding paragraph 40 of the Indictment, the Chamber finds that acts of sexual violence were part of a systematic and widespread attack against Tutsi civilians in Rusumo *commune* during the events of April 1994. Although it is possible that many rapes were committed in Rusumo *commune*, the evidence tendered covered only a few cases of rape and acts of sexual violence. Thus, the Chamber cannot make a finding on the widespread character of such crimes. Nor can the Chamber find that the Accused knew or had reason to know that such acts were being perpetrated because of their widespread character. However, as the Chamber has already found that the Accused instigated such acts of violence, he thereby clearly demonstrated his intent to see them committed.

226. The Chamber finds that the rapes recounted by Prosecution Witnesses TAQ, TAO, TAS and TAP are established.

227. In light of the closeness in time and space between the instigation by the Accused on 17 April 1994 and the rapes committed against Witness TAQ and other women and girls, the mode of commission of which amounted to instigation, the Chamber finds that the rapes were a direct consequence of instigation. However, the Chamber is unpersuaded that there is a sufficient nexus between such instigation and the other rapes, the commission of which has been proved beyond a reasonable doubt. Although it is true that Prosecution Witness TAS testified that an attacker told her that he was acting in accordance with the Accused's instructions, the Chamber has not found any evidence that this part of her account is reliable.

²¹³ T., 1 March 2004, pp. 34 to 35, 42 to 43, and 52 to 53.

²¹⁴ T., 1 March 2004, pp. 34 to 36.

²¹⁵ T., 1 March 2004, pp. 52 to 53.

228. With regard to paragraphs 20 and 37 of the Indictment, and in light of the evidence adduced in respect of paragraphs 39 and 40 of the same Indictment, the Chamber finds that the Prosecutor has established beyond a reasonable doubt that, from April to June 1994, in Rusumo *commune*, rapes and other acts of sexual violence were committed as part of a widespread and systematic attack against Tutsi civilians. The Chamber finds that the Accused knew or had reason to know that such rapes were being committed because he instigated the attack against Tutsi civilians.

F. PARAGRAPHS 8, 22, 23 AND 24 OF THE INDICTMENT (AUTHORITY OF THE ACCUSED)

1. Allegations

229. Paragraphs 8, 22, 23 and 24 of the Indictment allege that:

8. As *bourgmestre*, Sylvestre Gacumbitsi exercised authority over his subordinates, among whom can be counted: administrative personnel at the level of the *commune*, including *conseillers de secteur*, *responsables de cellule* and *nyumbakumi*; and the communal police. As consequences of his public office as *bourgmestre* of Rusumo *commune* and his membership in the MRND political party, Sylvestre Gacumbitsi also exercised authority over *gendarmes* and civilian militias in Rusumo *commune*.

(...)

22. From those first days of April 1994 through 30 April 1994, Sylvestre Gacumbitsi ordered, directed or acted in concert with local administrative officials in Kibungo *prefecture*, including *bourgmestres* and *conseillers de secteur*, to deny protection to civilian Tutsi refugees and to facilitate attacks upon them by communal police, *Interahamwe*, civilian militias and local residents.

23. At all times material to this indictment Sylvestre Gacumbitsi failed to maintain public order, or deliberately undermined the public order, in districts over which he exercised administrative authority, in agreement with or in furtherance of the policies of the MRND or the Interim Government, knowing that those policies intended the destruction, in whole or in part, of the Tutsi.

24. By virtue of his positions of leadership of the MRND and the *Interahamwe*, particularly as derived from his status as *bourgmestre* of Rusumo, Sylvestre Gacumbitsi ordered or directed or otherwise authorized government armed forces, civilian militias and civilians to persecute rape and kill or facilitate the killing of civilian Tutsi. By virtue of that same authority Sylvestre Gacumbitsi had the ability and the duty to halt, prevent, discourage or sanction persons that committed, or were about to commit, such acts, and did not do so, or only did so selectively.

2. Evidence

230. In the case of *The Prosecutor v. Jean-Paul Akayesu*, **Expert Witness, Alison Des Forges**, gave evidence on the local administrative structure of Rwanda, including the powers of the *bourgmestre*, and on the history of Rwanda. In the instant case, the expert witness also gave evidence on the history of Rwanda, notably with regard to its

people from the 10th century to colonization, and the evolution of social groups that became ethnic groups, before addressing the specific issue of the powers and authority of the *bourgmestre* in Rwanda in 1994.²¹⁶

231. The expert testified that the *bourgmestre* plays in his *commune* a historically important role, attributable to the one-party system and to the fact that not only is the *bourgmestre* appointed by the President of the Republic, he is also the party's local leader. The introduction of a multiparty system reduced the importance of the local *bourgmestre*'s role without abolishing it. First, the *bourgmestre* was no longer necessarily the local political leader, as each party now had its own leader. Second, the national political situation had, to some extent, affected the *bourgmestre*'s authority.²¹⁷ Thus, the relationship between the *bourgmestre* and the President of the Republic was not as cosy as before. Therefore, when the *bourgmestre* was not from MRND, he was not perceived as the President's man, although he was still the local representative of a national political leader.

232. The expert witness testified that the importance of the *bourgmestre*'s role in his *commune* resulted from his *de jure* and *de facto* authority. He was legally responsible for implementing regulations adopted by the communal council (composed of *conseillers de secteur* and the *bourgmestre* himself), and for maintaining law and public order in the *commune*. He was also in charge of communal personnel, school enrolments and distribution of land, and also had quasi-judicial authority to settle civil disputes and prosecute crimes and misdemeanors. He also performed the duties of a judicial police officer.²¹⁸ His direct authority over the communal police derived from his authority over the forces of law and order in the *commune*. Such authority extended to the *gendarmerie* in case of emergency requiring requisitioning of *gendarmerie* units by the *préfet*.²¹⁹ However, details of the *de facto* powers were not given. The expert further testified that such *de facto* powers could allow, for example, a *bourgmestre* to disobey a *préfet* who was hostile to the killings, without the *préfet* being able to prevent the *bourgmestre* from attaining his objectives.²²⁰

233. In the instant case, the expert witness testified under cross-examination that the *préfet*, a high-level civil servant, is still the *bourgmestre*'s superior in the administrative structure, and that the *bourgmestre*'s importance in the *commune* is not affected in any way as he can ignore the hierarchy. The witness also emphasized the *bourgmestre*'s power to distribute communal resources, including land, a crucial prerogative in the socio-economic context of Rwanda. The witness further testified that the *bourgmestre* was, permanently and locally, perceived by citizens as the authority with the greatest influence on their daily lives.

²¹⁶ T., 26 August 2003, pp. 34 to 42.

²¹⁷ See *Akayesu* Judgment (TC), paras. 58 to 60. See also *Akayesu*, T., 13 February 1997, pp. 101 to 105.

²¹⁸ See *Akayesu* Judgment, T., 12 February 1997, pp. 87 to 92.

²¹⁹ T., see *Akayesu* Judgment (TC), paras. 61 to 71. As to quasi-judicial authority, see *Akayesu*, T., 12 February 1997, pp. 74 to 78. See also Articles 57 and 58 of the Law of 23 November 1963, as amended by Law No. 31/91 of 5 August 1991, the provisions of which were read at trial by Counsel for the Defence.

²²⁰ See *Akayesu*, T., 23 May 1997, pp. 31 to 32.

234. The expert witness also testified that, in light of all his prerogatives, the *bourgmestre*'s authority at the local level was such that if a citizen was a victim of a decision taken by the *bourgmestre*, or of measures imposed by him, it was nearly impossible for the victim to have recourse to any remedy whatsoever. This was borne out in his relations with the locally elected *conseillers de secteur*.

235. Under cross-examination, the witness put things into perspective as to the status of the *préfet* by testifying that the immediate superior of the *bourgmestre* is the *sous-préfet*. However, the witness explained that the presence of a *sous-préfet* did not really affect the *bourgmestre – préfet* relationship. The witness further explained that, politically, the *préfet* and *sous-préfet* did not have the same influence.²²¹ Under cross-examination, the expert conceded that there were notable differences between *communes* as to the powers and role of the *bourgmestre*. Such differences were determined by a number of factors, including the duration of the *bourgmestre*'s term of office, local rivalries and the *bourgmestre*'s relationships with the President of the Republic. The witness explained that such differences were not prescribed by law, but rather resulted from the political reality of power.²²²

236. The expert witness testified that, in view of the *bourgmestre*'s *de jure* and *de facto* powers, any targeted person would have little chance of survival were the *bourgmestre* to participate in the massacres.²²³

237. Moreover, a number of witnesses testified about their perception of the importance of *bourgmestres*. For example, **Prosecution Witness TAO** testified that *Bourgmestre* Sylvestre Gacumbitsi²²⁴ was the highest authority and most important person in 1994 in his *commune*, Rusumo. The witness explained that the *bourgmestre* was the local MRND leader and, accordingly, presided over MRND activities in the *commune*. The witness thus concluded that the Accused and his assistant, Edmond Bugingo, were *Interahamwe* officials.²²⁵ Moreover, Witness TAQ testified that, as *bourgmestre*, the Accused was responsible for security in the *commune*. Thus, at Nyarubuye Parish, the witness and the other refugees were happy to see the Accused, thinking that he would stop the *Interahamwe*²²⁶ from threatening them. The witness further testified that the Accused led the attacks against the refugees at Nyarubuye Parish on 15 April 1994 and that the *Interahamwe* and communal police took part²²⁷ in the attacks. **Prosecution Witness TBH** testified that the *bourgmestre* gave instructions and orders to the *conseillers* on matters concerning their *secteurs*.²²⁸ The witness also testified that the Accused convened and chaired meetings during which he instructed *conseillers* in his *commune* to kill Tutsi. The witness explained that the Accused had authority over the communal police, that he was the *conseillers*' superior, and that he failed in his duty to curb crime by not punishing those

²²¹ T., 27 August 2003, pp. 7 to 9.

²²² T., 27 August 2003, pp. 23 to 24.

²²³ T., 27 August 2003, pp. 23 to 24.

²²⁴ T., 30 July 2003, pp. 47 to 48.

²²⁵ T., 31 July 2003, pp. 22 to 24.

²²⁶ T., 29 July 2003, pp. 51 to 52.

²²⁷ T., 29 July 2003, pp. 52 to 53.

²²⁸ T., 25 August 2003, pp. 14 to 15 and 24 to 27.

responsible for the massacres.²²⁹ The witness explained that that he did not think that a *conseiller* could disregard *Bourgmestre* Sylvestre Gacumbitsi's²³⁰ instructions. Another witness, **Prosecution Witness TAC**, testified that the *bourgmestre* was the most important civil servant in Rusumo *commune*, while at the *sous-préfecture* level, the most important civil servant was the *sous-préfet*, Joseph Habimana, it being understood that the *sous-préfecture* of Kirehe comprised two *communes*, Rusumo and Rukira.²³¹ Another witness, **Prosecution Witness TBK**, testified that he killed someone on the Accused's instructions, because the *bourgmestre* was an authority he had to obey, for fear of being killed²³² himself. Lastly, **Prosecution Witness TBI** testified that he saw communal policemen and a judicial police officer at the Gasenyi commercial centre executing the orders of the Accused. The witness also testified that the communal policemen and judicial police officer spoke respectfully of the *bourgmestre* and referred to him as "His Excellency". The witness further testified that the police were under the Accused's authority.²³³

238. The Accused testified that, as *bourgmestre*, he was chief executive of the *commune*. He conceded that he exercised authority over communal employees, including the communal police, who themselves were under the command of the communal sergeant.²³⁴

3. Discussion and Findings

239. The Chamber recalls its previous findings on the Accused's participation in meetings and killings.

240. Alison Des Forges testified as an expert witness on the history of Rwanda. Her evidence relates mainly to the administrative structure of Rwanda prior to the advent of multiparty politics, and the powers of a *bourgmestre* prior to the events of April 1994. The Chamber finds that her evidence provides a basis for understanding the role of a *bourgmestre's* in the Rwandan society, as well as his relations with the communal police, *conseillers* and ordinary citizens within the *commune*. Her evidence does not show that the role of a *bourgmestre* changed considerably with the advent of multiparty politics. The *bourgmestre* principal prerogatives, as described by the expert witness, seem to have lasted until April 1994.

241. Based on the above-mentioned evidence and considering the Chamber's previous findings, the Chamber finds that the Accused was an influential figure in his *commune* of Rusumo. Ordinarily, he represented the central administration in the *commune* and, as such, was its highest-ranking local administrative official. Moreover, he was perceived as such by the local population, without mentioning that, in addition to his role as *bourgmestre*, he was the local MRND leader prior to the advent of multiparty politics.

²²⁹ T., 25 August 2003, pp. 26 to 27.

²³⁰ T., 26 August 2003, pp. 14 to 18.

²³¹ T., 4 August 2003, p. 9 and 21 to 24.

²³² T., 19 August 2003, pp. 45 to 46.

²³³ T., 18 August 2003, pp. 37 to 39.

²³⁴ T., 24 November 2003, pp. 20 to 21.

242. The *bourgmestre* had legal authority over communal workers and the communal police, including communal sergeants. He was a superior vis-à-vis the said communal personnel. Moreover, he was specifically responsible for the maintenance of law and order in the *commune*.

243. On the evidence tendered, the Chamber cannot find that the Accused had superior authority over the *conseillers*, *gendarmes*, soldiers and *Interahamwe* that were in his *commune* at the time of the events under consideration. The law did not, *per se*, place him in such a position. Although his responsibilities regarding the maintenance of law and order afforded him the power to take legal measures that would be binding on everyone in the *commune*, the Prosecution has not adduced any evidence that such power placed him, *ipso facto*, in the position of a superior within a formal administrative hierarchy vis-à-vis each category of persons mentioned above.

CHAPTER III: LEGAL FINDINGS

244. In setting out its legal findings, the Chamber will rely on its factual findings set forth in Chapter II.

245. The Indictment contains five counts. In its submissions, the Defence asserts that the Prosecution charges Sylvestre Gacumbitsi mainly with genocide and, alternatively, complicity in genocide and crimes against humanity (extermination, murder and rape). The Defence further asserts that the Prosecution's constant effort to establish all those crimes cumulatively clearly shows that the Prosecution is not sure of its case. The Defence therefore submits that the Chamber should make a finding only on the crime of genocide, and examine the other crimes²³⁵ only in the event of a negative finding on the crime of genocide.

246. The Chamber finds that the five counts retained against Sylvestre Gacumbitsi, with the exception of the first two (genocide and complicity in genocide), are cumulative and not alternative. This results from the original English version of the Indictment, which clearly shows the Prosecutor's intention to charge the Accused cumulatively, and not alternatively, under Counts 1, 3, 4 and 5. Far from being controverted, the Prosecutor's initial intention was confirmed in his Pre-Trial Brief, opening statement and closing argument. The Defence is aware of all this. Thus, the Chamber will enquire successively whether the Prosecutor has adduced evidence of Sylvestre Gacumbitsi's responsibility under the different counts.

A. *GENOCIDE AND RELATED OFFENCES*

247. The Accused is charged under Count 1 with the crime of genocide, and under Count 2, alternatively to Count 1, with complicity in genocide.

248. The Chamber recalls that between 1 January 1994 and 17 July 1994, Rwanda was one of the Contracting Parties to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which it signed on 12 February 1975.²³⁶

1. **Statute and case law**

249. Article 2 of the Statute provides as follows:

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this Article or of committing any of the other acts enumerated in paragraph 3 of this Article.
2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as:
 - (a) Killing members of the group;
 - (b) Causing serious bodily or mental harm to members of the group;

²³⁵ Defence arguments, see T., 1 March 2004, pp. 39 to 41.

²³⁶ *Akayesu* Judgment (TC), para. 496; *Kajelijeli* Judgment (TC), para. 744; *Kamuhanda* Judgment (TC), para. 576.

- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) Imposing measures intended to prevent births within the group;
 - (e) Forcibly transferring children of the group to another group.
3. The following acts shall be punishable:
- (a) Genocide;
 - (b) Conspiracy to commit genocide;
 - (c) Direct and public incitement to commit genocide;
 - (d) Attempt to commit genocide;
 - (e) Complicity in genocide.

250. The *mens rea* of genocide is the specific intent (*dolus specialis*) described in Article 2(2) of the Statute as the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group”.

251. The *actus reus* of genocide is found in each of the five acts enumerated in Article 2(2) of the Statute. In the case at bar, the Prosecutor focuses only on two of those acts, namely, “killing members of the group” and “causing serious bodily or mental harm to members of the group”. The Chamber will, therefore, examine only those two items.

252. It is possible to infer the genocidal intent inherent in a particular act charged from the perpetrator’s deeds and utterances considered together, as well as from the general context of the perpetration of other culpable acts systematically directed against that same group, notwithstanding that the said acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership in a particular group, while excluding members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.²³⁷

253. Evidence of genocidal intent can be inferred from “the physical targeting of the group or their property; the use of derogatory language toward members of the targeted group; the weapons employed and the extent of bodily injury; the methodical way of planning, the systematic manner of killing”.²³⁸ The notion of “destruction of a group” means “the material destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group”.²³⁹ In proving the intent to destroy “in whole or in part”, it is not necessary to establish that the perpetrator intended to achieve the complete annihilation of a group from every corner of the globe. There is no numeric threshold of victims necessary to establish genocide,²⁴⁰ even though the relative proportionate scale of the actual or attempted destruction of a group, by any act listed

²³⁷ *Akayesu* Judgment (TC), para. 523; *Ntagerura and Others* Judgment (TC), para. 663, *Kajelijeli* Judgment (TC), paras. 804 to 805.

²³⁸ *Kayishema and Ruzindana* Judgment (TC), para. 93; *Kajelijeli* Judgment (TC), para. 86.

²³⁹ See ILC Report (1996), para. 50; see also *Semanza* Judgment (TC), para. 315; *Kayishema and Ruzindana* Judgment (TC), para. 95.

²⁴⁰ *Semanza* Judgment (TC), para. 316.

in Article 2 of the Statute, is strong evidence to prove the necessary intent to destroy a group in whole or in part.²⁴¹

254. Membership of a group is a subjective rather than an objective concept. The victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction,²⁴² but the determination of a targeted group must be made on a case-by-case basis, consulting both objective and subjective criteria.²⁴³ Indeed, in a given situation, the perpetrator, just like the victim, may believe that there is an objective criterion for determining membership of an ethnic group on the basis of an administrative mechanism for the identification of an individual's ethnic group.²⁴⁴

255. The case-law of the Tribunal shows that for a conviction of genocide to be entered against a person charged with killing members of a group, the Prosecution must establish that the accused planned, ordered or instigated the killing, killed or aided and abetted in the killing of one or several members of the group in question with intent to destroy, in whole or in part, the group as such.²⁴⁵ Evidence must also be tendered to show either that the victim belonged to the targeted ethnical, racial, national or religious group²⁴⁶ or that the perpetrator of the crime believed that the victim belonged to the said group.

256. For the accused to incur criminal liability, pursuant to Article 2(2)(b) of the Statute, he must have caused serious bodily or mental harm to members of the group.²⁴⁷

2. Genocide

257. The Chamber finds that during the period covered by the Indictment, Rwandan citizens were individually identified according to ethnic groups, to wit, Tutsi, Hutu and Twa.²⁴⁸

258. The Chamber recalls that the phrase “destroy in whole or in part a[n] ethnic group” does not imply a numeric approach. It is sufficient to prove that the Accused acted with intent to destroy a substantial part of the targeted group.²⁴⁹ In this instance, the scale of the massacres and the fact that Tutsi were targeted, including in the incitement by the Accused, are sufficient proof thereof.

²⁴¹ *Kayishema and Ruzindana* Judgment (TC), para. 93.

²⁴² *Rutanga* Judgment (TC), para. 56; *Musema* Judgment (TC), para. 161; *Semanza* Judgment (TC), para. 317.

²⁴³ *Semanza* Judgment (TC), para. 317.

²⁴⁴ In the instant case, Rwanda in 1994, the existence of an identity card mentioning the bearer's ethnic group satisfies such criterion. See the evidence of Expert Witness Alison Des Forges on the existence of such an identity card mentioning the bearer's ethnic group: T., 26 August 2003, pp. 43 to 44.

²⁴⁵ *Akayesu* Judgment (TC), para. 473; *Kajelijeli* Judgment (TC), para. 757; *Semanza* Judgment, para. 377.

²⁴⁶ *Semanza* Judgment, (TC), para. 319; *ibid.* para. 55; *ibid.* paras. 154 and 155; *Rutaganda* Judgment (TC), para. 60; *Kayishema and Ruzindana* Judgment (TC), para. 99; *Akayesu* Judgment (TC), para. 499.

²⁴⁷ See *infra*: para. 291 to 293. See ILC Report (1996), para. 8.

²⁴⁸ See *supra*: Chapter II, Parts B and C.

²⁴⁹ See ILC Report (1996), para. 8.

259. In its factual findings, the Chamber extensively considered the actions and utterances of the Accused. Thus, at the meeting of 9 April, the Accused urged the *conseillers de secteur* to incite the Hutu to kill the Tutsi. Similarly, in the morning of 13 April at the Nyakarambi market, on 14 April at the Rwanteru and Kanyinya trading centres, the Accused made similar utterances to the population, and on 17 April, he instigated the rape of Tutsi women and girls. Moreover, the Accused personally killed Murefu, a Tutsi, thereby signalling the beginning of the attack at Nyarubuye Parish on 15 April 1994.²⁵⁰ The Chamber finds that at the time of the events in Rusumo *commune*, which events have been established in the factual findings above, Sylvestre Gacumbitsi had the intent to destroy, in whole or in part, the Tutsi ethnic group.

260. Having found that the Tutsi constituted an ethnic group and that the Accused had the intent to destroy the said group in whole or in part, the Chamber will now examine whether the Accused committed any of the two acts enumerated in Article 2(2) under which he is charged, namely, killing members of the [Tutsi] group (Article 2(2)(a)), and causing serious bodily or mental harm to members of the [Tutsi] group (Article (2)(2)(b)).

Killing members of the group

261. The Chamber has already found that a substantial number of Tutsi civilians were killed in Rusumo *commune* between 7 and 18 April 1994. In particular, the Chamber found that the Accused killed Murefu, a Tutsi civilian, on 15 April 1994 in Nyarubuye Parish. The Chamber also found that the Accused participated in the attack on Nyarubuye Parish on 15 and 16 April 1994.²⁵¹ Lastly, the Chamber also found that on 17 April, Chantal, a young Tutsi girl, died as a result of the impalement of her genitals, at the instigation of the Accused. The Chamber is persuaded that the Accused played a leading role in conducting and, especially, supervising the attack.

262. The Chamber therefore finds that during the period covered by the Indictment, Sylvestre Gacumbitsi participated in the killing of Tutsi with the required genocidal intent. The Chamber will now examine the form of participation in such killings.

263. In the introduction to the allegations of genocide contained in paragraphs 1 to 25 of the Indictment, the Prosecutor charges the Accused cumulatively under Article 6(1) and (3) of the Statute, which read:

(1) A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 and 4 of the present Statute, shall be individually responsible for the crime.

(...)

(3) The fact that any of the acts referred to in Articles 2 and 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate

²⁵⁰ See *supra*: Chapter II, Parts B and C.

²⁵¹ See *supra*: Chapter II, Part C.

was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

264. The Indictment charges the Accused with criminal responsibility under Article 6(1) of the Statute by virtue of his affirmative acts in “ordering, instigating, commanding, participating in and aiding and abetting the preparation and execution of the crime charged”.²⁵²

265. The Indictment charges the Accused with criminal responsibility under Article 6(3) of the Statute by virtue of his “actual constructive knowledge of the acts or omissions of soldiers, *gendarmes*, communal police, *Interahamwe*, civilian militia and civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the preparation and execution of the crime charged”.

266. These two forms of responsibility cannot be charged cumulatively on the basis of the same set of facts. In case of cumulative charging, the Trial Chamber will retain only the form of responsibility that best describes the Accused’s culpable conduct.

267. Article 6(1) of the Statute reflects the criminal law principle that criminal liability is incurred by individuals who participate in and contribute to the crime in various ways according to the five forms of participation covered by Article 6(1) of the Statute.²⁵³ In the original English version of the Indictment, the Prosecutor pleads such forms of participation as ordering, instigating, commanding, participating in and aiding and abetting in the preparation and execution, which do not exactly tie in with the statutory provisions. Of such forms, only the last two – commanding and participating in, and aiding and abetting in the preparation and execution – are not set forth in the Statute of the Tribunal, and it is incumbent upon the Chamber to throw more light on their significance.

268. “Commanding”, as a form of participation, corresponds rather to the form of participation expressed in “ordering”, as used in the Statute, taking into account the ordinary meaning of the term. Hence, the Chamber holds that this form of participation has been doubly pleaded.

269. The form “participating in and aiding and abetting in the preparation and execution” appears to encompass two propositions: first, “participating in the preparation and execution” and second, “aiding and abetting in the preparation and execution”. The first proposition corresponds to two forms of participation contemplated by the Statute: first of all, planning, which is the result of “participating in the preparation”, and secondly, committing, which is inferred from “participating in the execution”. Moreover, with respect to the first proposition, the Chamber notes that

²⁵² The English version of the Indictment reads: “Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in ordering, instigating, commanding, participating in and aiding and abetting the preparation and execution of the crime charged”.

²⁵³ *Semanza* Judgment (TC), para. 377; *Kayishema and Ruzindana* Judgment (AC), para. 185; *Musema* Judgment (TC), para. 114; *Rutaganda* Judgment (TC), para. 33; *Kayishema and Ruzindana* Judgment (TC), para. 196; *Akayesu* Judgment (TC), para. 473; *Kajelijeli* Judgment (TC), para. 757.

the Accused is charged in the Prosecutor's Pre-Trial Brief, under the heading "Genocide", with acts of planning.²⁵⁴ The Chamber also notes that the Indictment contains factual allegations sustaining the charges of preparing, planning and organizing preferred against the Accused.²⁵⁵ With regard to the form "aiding and abetting in the preparation and execution", it should be noted that aiding and abetting are pleaded at the planning and execution phases of the crime, in conformity with the Statute under which, alternatively, this form of responsibility covers three stages of the crime, namely planning, preparation and execution.

270. Pursuant to Article 6(1), the Prosecutor charges Sylvestre Gacumbitsi with planning, instigating, ordering, committing, and aiding and abetting in genocide. The Chamber will examine each of these forms of participation *seriatim*.

271. "Planning" presupposes that one or more persons contemplate the commission of a crime at both its preparatory and execution phases.²⁵⁶ On 9 April 1994, Sylvestre Gacumbitsi, as *bourgmestre* of Rusumo *commune*, convened a meeting of *conseillers de secteurs* and instructed them to organize meetings at the *secteur* level between 9 and 12 April, without the knowledge of Tutsi, and to incite Hutu to kill Tutsi. On 10 April 1994, Sylvestre Gacumbitsi, together with communal policemen, received boxes of weapons at the Kibungo *gendarmarie* camp, and had the boxes delivered to various *secteurs*. On 11 April, Sylvestre Gacumbitsi met successively with Majors Ndekezi and Nsabimana, as well as with *Interahamwe* leader, Cyasa. Together, they travelled to several areas in Rusumo *commune* on 11 April 1994. The Accused then visited several *secteurs* in Rusumo on 12 April 1994 to check whether the *conseillers* had held such meetings with the local population. The same day, he met the local CDR leader, André, in Gasenyi and reiterated his request of 10 April, namely, not to let people flee to Tanzania.²⁵⁷

272. In the morning of 13 April 1994, at the Nyakarambi market, the Accused, using a megaphone, addressed a crowd of about one hundred people who had assembled at his request. He issued various instructions and asked the crowd not to let anyone escape. The instructions were directed at the Hutu majority and aimed at preventing Tutsi from escaping from the attacks, and preparing Hutu to eliminate Tutsi.

273. On 14 April 1994, at the Rwanteru trading centre, the Accused addressed about a hundred people and urged them to arm themselves with machetes and participate in the fight against the enemy, stressing that all the Tutsi had to be driven away. After his speech, the Accused drove towards Kigarama, followed by some of the people. In Kigarama, the attackers attacked the house and property of a Tutsi called Callixte, and also looted the property of other Tutsi. Led by Juvénal Ntamwemizi, who was identified as the Accused's representative, another group, composed of people who had also listened to the Accused's speech in Rwanteru, attacked the property of a Tutsi called Buhanda.

²⁵⁴ Prosecutor's Pre-Trial Brief, para. 3.35.

²⁵⁵ Indictment of 20 June 2001, paras. 4 to 7, 9 and 11.

²⁵⁶ ICTY, *Blaškić* Judgment (TC), para. 386; *Musema* Judgment (TC), para. 119; *Akayesu* Judgment (TC), para. 480.

²⁵⁷ See *supra*: Chapter II, Part B. This reference is also relevant to subsequent factual findings.

274. The Chamber finds that these attacks resulted from the instigation stirred up by the Accused at the Rwanteru trading centre: the Kigarama attack took place under his direct supervision, while Buhanda's house was attacked under the supervision of his representative.

275. In the afternoon of 14 April 1994, the Accused, together with some armed communal policemen, went to the Kanyinya trading centre, where he told a group of about ten people: "Others have already completed their work. Where do you stand?". Soon after he left, a group of attackers set up and led by two demobilized soldiers, Nkaka and Sendama, started attacking Tutsi targets.

276. On 14 April 1994, after addressing the crowd at the Kanyinya commercial centre, the Accused, still accompanied by communal policemen, went to the Gisenyi commercial centre, where he addressed about 40 people, mainly Hutu. The Accused urged them to kill the Tutsi and throw their bodies into the River Akagera. He also asked boatmen to remove their canoes from the river to prevent the Tutsi from using them to cross the river.

277. Furthermore, the Accused met with various political and military officials, notably Colonel Rwagafirita from whom he received boxes of weapons that he had unloaded in various areas of the *commune*.

278. All such facts amount to acts of preparation for the massacres of the Tutsi in Rusumo *commune*. Sylvestre Gacumbitsi's involvement leads the Chamber to find that he planned the murder of Tutsi in Rusumo *commune* in April 1994.

279. "Instigating" involves prompting another person to commit an offence.²⁵⁸ Instigating need not be direct and public.²⁵⁹ For it to be a punishable offence, proof²⁶⁰ is required of a causal connection between the instigation and the *actus reus* of the crime. In this particular case, the Accused, at various locations, publicly instigated the population to kill the Tutsi. For example, the Accused made speeches at the Rwanteru commercial centre where, following his instigation, those who listened to his speeches participated, shortly after, in looting property belonging to the Tutsi and in killing the Tutsi.²⁶¹

280. The Chamber finds that Sylvestre Gacumbitsi incited the killing of Tutsi in Rusumo *commune* in April 1994.

281. "Ordering" refers to a situation where an individual in a position of authority uses such authority to compel another individual to commit an offence.²⁶² On this issue, the two ad hoc Tribunals have ruled differently. One has held that ordering implies the existence of a superior-subordinate relationship between the individual

²⁵⁸ *Kajelijeli* Judgment (TC), para. 762; *Bagilishema* Judgment (TC), para. 30; *Akayesu* Judgment (TC), para. 482.

²⁵⁹ *Semanza* Judgment (TC), para. 381; *Akayesu* Judgment (AC), paras. 478 to 482.

²⁶⁰ *Bagilishema* Judgment (TC), *ibid.*

²⁶¹ See *supra*: Chapter II, Part B.

²⁶² *Akayesu* Judgment (TC), para. 483; *Kajelijeli* Judgment (TC), para. 763.

who gives the order and the one who executes it.²⁶³ The other has held that ordering does not necessarily imply the existence of such a formal superior-subordinate relationship.²⁶⁴

282. The Trial Chamber is of the opinion that the issue must be determined in light of the circumstances of the case. The authority of an influential person can derive from his social, economic, political or administrative standing, or from his abiding moral principles. Such authority may also be *de jure* or *de facto*. When people are confronted with an emergency or danger, they can naturally turn to such influential person, expecting him to provide a solution, assistance or take measures to deal with the crisis. When he speaks, everyone listens to him with keen interest; his advice commands overriding respect over all others and the people could easily see his actions as an encouragement. Such words and actions are not necessarily culpable, but can, where appropriate, amount to forms of participation in crime, such as “incitement” and “aiding and abetting” provided for in Article 6(1) of the Statute. In certain circumstances, the authority of an influential person is enhanced by a lawful or unlawful element of coercion, such as declaring a state of emergency, the *de facto* exercise of an administrative function, or even the use of threat or unlawful force. The presence of a coercive element is such that it can determine the way the words of the influential person are perceived. Thus, mere words of exhortation or encouragement would be perceived as orders within the meaning of Article 6(1) referred to above. Such a situation does not, *ipso facto*, lead to the conclusion that a formal superior-subordinate relationship exists between the person giving the order and the person executing it. As a matter of fact, instructions given outside a purely informal context by a superior to his subordinate within a formal administrative hierarchy, be it *de jure* or *de facto*, would also be considered as an “order” within the meaning of Article 6(1) of the Statute.

283. The Chamber recalls its factual finding that Sylvestre Gacumbitsi had superior authority only over the communal police.²⁶⁵ The Prosecution failed to show that he also had superior authority over the *conseillers*, *Interahamwe*, *gendarmes* or any other persons who participated in the attacks. Moreover, the Prosecution failed to demonstrate that, in the absence of a formal superior-subordinate relationship between the Accused and the population and attackers, the circumstances of the case suggest that the Accused’s words of incitement were perceived as orders within the meaning of Article 6(1) of the Statute.

284. Accordingly, the Chamber finds that Sylvestre Gacumbitsi ordered communal policemen who were present at Nyarubuye Parish on 15 April 1994 to kill the Tutsi. On the evidence adduced, the participation of those policemen in the massacre was a direct consequence of the orders given by the Accused. Thus, the Accused incurs liability, pursuant to Article 6(1) of the Statute, for having ordered them to so participate in those crimes.

²⁶³ *Semanza* Judgment (TC), para. 382; *Ntagerura and others* Judgment (TC), para. 624.

²⁶⁴ ICTY, *Kordij and Cerkez*, Judgment (TC), para. 388. See also *Kajelijeli* Judgment (TC), para. 763.

²⁶⁵ See *supra*: Chapter II, Part F.

285. “Committing” refers generally to the direct and physical perpetration of the crime²⁶⁶ by the offender himself. In the present case, the Accused killed Murefu, a Tutsi. The Chamber therefore finds that he committed the crime of genocide, within the meaning of Article 6(1) of the Statute.

286. “Aiding and abetting” constitute a more complex form of participation.²⁶⁷ *Aiding* means assisting or helping another to commit a crime. *Abetting* means facilitating, advising or instigating the commission of a crime.²⁶⁸ In this case, the Accused, on several occasions, drove the attackers in a convoy, with the vehicle in which he was always leading the convoy. The attackers were transported in communal vehicles, the use of which the Accused was in a position to prevent. That the Accused was leading the convoy is sufficient proof that he consented to the use of such vehicles. Lastly, the Accused was present throughout the attack on the Tutsi in Rusumo. The Accused was also at Nyarubuye Parish on 15 April, and in the vicinity of the parish on 16 and 17 April 1994.²⁶⁹ The Chamber therefore finds that Sylvestre Gacumbitsi aided or abetted in the perpetration of the massacres, thereby encouraging the commission of the crime of genocide in Rusumo *commune* in April 1994.

287. The Chamber finds that the requisite specific intent to establish genocide is in itself evidence of the Accused’s intention to participate in the commission of such acts of genocide.

288. In the light of the foregoing, the Chamber finds Sylvestre Gacumbitsi responsible for planning, instigating, ordering the communal police, committing and aiding and abetting in the killing of members of the Tutsi ethnic group, as part of the scheme to perpetrate the crime of genocide.

289. In paragraph 25 of the Indictment, the Prosecutor also charges the Accused with conspiring with others, participating in the planning, preparation or implementation of a common plan, strategy or scheme aimed at exterminating the Tutsi, through his own acts, or through people whom he helped, or through his subordinates, whose acts he knew and approved of. The Prosecution seems to allege that the Accused participated in a joint criminal enterprise. However, the Chamber cannot make a finding on such allegation since it was not pleaded clearly enough to allow the Accused to defend himself adequately. The Prosecution also seems to allege that the Accused participated in a conspiracy, a form of commission of the crime of genocide (Article 2(3)(c) of the Statute). Again, the Chamber cannot make a finding on such allegation because the Indictment contains only the counts of genocide and complicity in genocide. In the same paragraph, the Prosecution further alleges that the Accused planned, ordered, or aided and abetted the commission of genocide. However, the Chamber has already made a finding on this matter. Lastly, the Prosecution alleges, in the alternative, that the Accused is responsible for the actions of his subordinates, i.e. he is so responsible pursuant to Article 6(3) of the Statute.

²⁶⁶ *Kayishema and Ruzindana* Judgment (AC), para. 187; ICTY, *Tadić* Judgment (AC), para. 188; ICTY, *Kunarac and Others* Judgment (TC), para. 390; *Semanza* Judgment (TC), para. 383.

²⁶⁷ *Semanza* Judgment (TC), para. 384; *Akayesu* Judgment (TC), para. 484.

²⁶⁸ *Ntakirutimana* Judgment (TC), para. 787; *Akayesu* Judgment (TC), para. 484; *Kajelijeli* Judgment (TC), para. 765.

²⁶⁹ See *supra*: Chapter II, Part C.

290. Since the Chamber has found the Accused liable under Article 6(1) of the Statute for perpetrating genocide against the Tutsi in Rusumo *commune* in April 1994, the Chamber does not deem it necessary, given the similarity of the acts charged, to find whether he also incurs criminal responsibility under Article 6(3) of the Statute.

Causing Serious Bodily or Mental Harm to members of the Tutsi Ethnic Group

291. Serious bodily harm means any form of physical harm or act that causes serious bodily injury to the victim, such as torture and sexual violence. Serious bodily harm does not necessarily mean that the harm is irremediable.²⁷⁰ Similarly, serious mental harm can be construed as some type of impairment of mental faculties, or harm that causes serious injury to the mental state of the victim.²⁷¹

292. With regard to paragraph 21 of the Indictment, the Chamber has already found that the Accused publicly instigated the rape of Tutsi women and girls, and that the rape of Witness TAQ and seven other Tutsi women and girls by attackers who heeded the instigation was a direct consequence thereof. The Chamber finds that these rapes caused serious physical harm to members of the Tutsi ethnic group. Thus, the Chamber finds that, as to the specific crime of serious bodily harm, Sylvestre Gacumbitsi incurs responsibility for the crime of genocide by instigating the rape of Tutsi women and girls.

293. Accordingly, the Chamber finds Sylvestre Gacumbitsi GUILTY of GENOCIDE, pursuant to Article 2(3)(a) and (b), as charged under Count 1 of the Indictment.

3. Complicity in Genocide

294. Count 2, complicity in genocide, is an alternative to Count 1, genocide, and is based on the same factual allegations contained in the Indictment.

295. Since the Chamber has already found the Accused guilty under Count 1 pursuant to Article 2(3) (a) and (b) of the Statute, the Chamber will not make a finding on the COUNT OF COMPLICITY IN GENOCIDE provided for in Article 2(3)(e) of the Statute. Count 2 is therefore DISMISSED.

B. CRIMES AGAINST HUMANITY

1. Common elements

296. Article 3 of the Statute provides as follows:

²⁷⁰ *Akayesu* Judgment (TC), para. 502, *Kayishema and Ruzindana* Judgment (TC), para. 110, *Semanza* Judgment (TC), paras. 320 to 321.

²⁷¹ See ILC Report (1996), para. 14, under Article 17 of the Draft Code of Crimes. Bodily harm is defined therein as “some type of physical injury”, while mental harm is defined as “some type of impairment of mental faculties”.

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape;
- (h) Persecutions on political, racial and religious grounds;
- (i) Other inhumane acts.

297. Article 3 of the Statute relating to crimes against humanity contains a common element that is applicable to all the acts enumerated therein. The commission of any of these acts by an accused would not constitute a crime against humanity unless the Chamber found that it was committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.

298. The concept of “attack”, within the meaning of Article 3 of the Statute, may be defined as an unlawful act, event, or series of events of the kind listed in Article 3(a) through (i) of the Statute.²⁷² This is the accepted definition in the Tribunal’s case law.²⁷³

299. The attack must be widespread or systematic.²⁷⁴ The concept of “widespread” attack refers to the scale of the attack and multiplicity of victims.²⁷⁵ The attack must be “massive or large scale, involving many victims”.²⁷⁶ The concept of “systematic” attack, within the meaning of Article 3 of the Statute, refers to a deliberate pattern of conduct, but does not necessarily include the idea of a plan.²⁷⁷ The existence of a policy or plan may be evidentially relevant, in that it may be useful in establishing that the attack was directed against a civilian population and that it was widespread or systematic. However, the existence of such a policy or plan is not a separate legal element of the crime.²⁷⁸

²⁷² *Semanza* Judgment (TC), para. 327.

²⁷³ *Musema* Judgment (TC), para. 205; *Rutaganda* Judgment (TC), para. 70; *Akayesu* Judgment (TC), para. 581.

²⁷⁴ Although both versions are equally authentic, the French and English versions differ on this point. The “widespread” and “systematic” components in the nature of the attacks are cumulative in the French version (“*systématique et généralisée*”), while any of those components suffices in the English version (“widespread or systematic”). In practice, ICTY and ICTR prefer the English version, which is in conformity with international customary law. See ILC Report (1996), paras. 3 to 4 under Article 18 (crimes against humanity) of the Draft Code of Crimes.

²⁷⁵ *Semanza* Judgment (TC), para. 329; *Niyitegeta* Judgment (TC), para. 439, *Akayesu* Judgment (TC), para. 580.

²⁷⁶ *Niyitegeta* Judgment (TC), para. 439; *Ntakirutimana* Judgment (TC), para. 804.

²⁷⁷ *Semanza* Judgment (TC), para. 329.

²⁷⁸ *Ibid.*, citing *Kunarac and Others*, Judgment (TC), para. 98.

300. The attack must be directed against a civilian population. The presence of certain individuals within the civilian population who do not fall within the definition of civilians does not deprive the population of its civilian character.²⁷⁹

301. The attack against the civilian population must have been carried out on discriminatory grounds, that is, on “national, political, ethnical, racial or religious grounds”. This provision is particularly relevant as it allows the Tribunal to exercise jurisdiction only over a restricted category of crimes.²⁸⁰ Acts committed against persons not falling within the discriminatory categories may nevertheless constitute acts falling within the jurisdiction of the Tribunal if the perpetrator’s intention in committing such acts was to support or further the attack on the group discriminated against on any of the enumerated grounds.²⁸¹

302. Lastly, the accused must have acted with knowledge of the broader context of the attack, and with knowledge that his act formed part of the widespread and systematic attack against a civilian population.²⁸²

303. The Chamber has already found that there were attacks against Tutsi refugees in Nyarubuye Parish during three consecutive days, from 15 to 17 April 1994. Hutu refugees at the parish had been asked to separate themselves from the crowd, thus an indeterminate number of them were saved from the attack. Many Tutsi were killed there. After the first attack on the parish on 15 April 1994, the attackers returned there the following day, and the day after, to finish off survivors. Between 7 April and 18 April 1994, other Tutsi were killed or subjected to attacks and acts of discrimination. Tutsi refugees and Tutsi inhabitants of Rusumo *commune* were attacked and their property looted. On 13 April 1994, the Accused expelled his tenants, Tutsi women, knowing that by so doing he was exposing them to the imminent risk of being targeted by Hutu attackers. The utterances and actions of the Accused at the meeting of 9 April 1994, and during the public meetings he held on the days preceding the attack on the parish, demonstrate the systematic nature of the attack. Weapons were assembled in preparation for the attacks. The Accused conferred daily with military officials to coordinate actions to be undertaken. He travelled to various locations in Rusumo *commune* disseminating his instructions. Once the population was mobilized, it started attacking Tutsi in different locations, but the most serious attack – the attack on the parish – occurred after reinforcements had come from a group of *Interahamwe*.²⁸³

304. The Chamber finds that the Accused’s instructions to the attackers contained a discriminatory element, which prevailed during the attacks and in the selection of victims.

305. Although Article 3 of the Statute does not require evidence of a widespread and systematic attack against a civilian population, the Chamber deems it appropriate

²⁷⁹ *Akayesu* Judgment (TC), para. 582.

²⁸⁰ *Akayesu* Judgment (TC), paras. 464 to 565.

²⁸¹ *Kajelijeli* Judgment (TC), paras. 877 to 878; *Semanza* Judgment (TC), para. 331.

²⁸² *Semanza* Judgment (TC), para. 332; *Ntagerura and Others* Judgment (TC), para. 698.

²⁸³ See *supra*: Chapter II, Part B, C and D.

in this case to make findings in that regard, so as to better reflect the circumstances and context of the attack against the Tutsi in Rusumo in April 1994.

306. The said attacks, which were carried out by groups of attackers, were directed against numerous victims, on the ground that they belonged to the Tutsi ethnic group. The victims were attacked particularly in their areas of residence or in places where they had sought refuge. Tutsi families were decimated.²⁸⁴ The Chamber therefore finds that a discriminatory, widespread and systematic attack was carried against a group of Tutsi civilians during the month of April 1994 in Rusumo *commune*.

2. Crimes against humanity – extermination

307. Count 3 of the Indictment charges the Accused with extermination as a crime against humanity, pursuant to Article 3(b) of the Statute. The Prosecutor sets forth factual allegations in support of the charge in paragraphs 4 to 16 and 26 to 30 of the Indictment, and submits that the Accused is criminally responsible pursuant to Article 6(1) and (3) of the Statute.

308. The Chamber finds that the factual allegations in support of the charge of extermination are similar to those sustaining the charge of genocide, including the massacre at Nyarubuye Parish on 15, 16 and 17 April 1994. The Chamber recalls that during its deliberations on the crime of genocide, it found that the Accused incurred criminal responsibility under Article 6(1) of the Statute for his leading role in the massacres at Nyarubuye Parish. The Accused personally killed Murefu, a Tutsi civilian, gave the signal for the massacre, and then instigated attackers to kill other refugees present at the parish.²⁸⁵

309. It is the settled jurisprudence of this Tribunal that extermination, by its very nature, is a crime that is directed against a group of individuals, but different from murder in that it requires an element of mass destruction²⁸⁶ that is not required for murder. “Large scale” does not suggest a numerical minimum; it must be determined on case-by-case basis using a common sense approach.²⁸⁷ Responsibility for a single or a number of killings is insufficient for a finding of extermination.²⁸⁸

310. In the light of its previous factual findings, the Chamber is of the view that the high numerical strength of the victims of the Nyarubuye Parish massacres supports a finding of widespread killing. It is established that many persons of Tutsi and Hutu origin had taken refuge in the parish on the days preceding the attack. Some witnesses testified that there were several thousand refugees there. It is also established that Hutu were asked to separate themselves from Tutsi during the massacre. The massacre lasted several hours and the attackers returned to finish off survivors during the following two days. Witness accounts show sufficiently that it was a large-scale

²⁸⁴ See *supra*: Chapter II, Part B, C and E.

²⁸⁵ See *supra*: Chapter II, Part C.

²⁸⁶ *Akayesu* Judgment (TC), para.591; *Semanza* Judgment (TC), para. 340; *Nahimana and Others* Judgment (TC), para. 1061.

²⁸⁷ *Bagilishema* Judgment (TC), para 87; *Kayishema and Ruzindana* Judgment (TC), para. 142; *Nahimana and Others* Judgment (TC), para. 1061.

²⁸⁸ *Semanza* Judgment (TC), para. 340.

massacre that resulted in numerous deaths. The fact is corroborated by Prosecution Witness Patrick Fergal Keane who, weeks later, saw many corpses.²⁸⁹

311. Considering the leading role of the Accused in preparing and launching the attack, as well as his subsequent visits to the parish to instigate attackers to kill survivors, and the fact that he supervised their actions, the Chamber does not doubt the Accused's intention to participate in a large scale massacre in Nyarubuye.

312. The Chamber finds that the Accused had knowledge of such a widespread and systematic attack against a civilian population in Rusumo in April 1994 because, at the local level, he planned and led certain operations.²⁹⁰

313. The Chamber recalls that it has already made a finding on the widespread and systematic nature of the attacks against the Tutsi.²⁹¹

314. In conclusion, the Chamber is satisfied beyond a reasonable doubt that the Accused incurs individual criminal responsibility under Article 6(1) of the Statute for planning extermination, inciting extermination, ordering communal policemen to exterminate and aiding and abetting in the extermination of members of the Tutsi ethnic group in Rusumo *commune* in April 1994.

315. Since the Chamber has found the Accused individually responsible under Article 6(1) of the Statute for the extermination of Tutsi in Rusumo *commune* in April 1994, it deems it unnecessary to find, given the similarity of the acts charged, whether the Accused is equally liable under Article 6(3) of the Statute.

316. Accordingly, the Chamber finds the Accused GUILTY OF EXTERMINATION AS A CRIME AGAINST HUMANITY, as charged under Count 3 of the Indictment.

3. Crimes against humanity – murder

317. Count 4 of the Indictment charges the Accused with murder as a crime against humanity, pursuant to Article 3(a) of the Statute. The Prosecutor's factual allegations in support of this charge are contained in paragraphs 31 to 36 of the Indictment.

318. In the Indictment, the Prosecutor alleges that Sylvestre Gacumbitsi stabbed to death a pregnant Tutsi woman and her mother-in-law, and disembowelled the pregnant woman to extract two fetuses. The Prosecutor also alleges that Sylvestre Gacumbitsi killed a Tutsi woman and her three children, one of whom was Sylvestre Gacumbitsi's godson; that he shot and killed two civilian Tutsi; that he ordered and or planned the killing of children who had sought refuge at Nyarubuye Parish and, lastly, that he expelled and ordered the killing of his tenants.²⁹²

²⁸⁹ See *supra*: Chapter II, Part C.

²⁹⁰ See *supra*: Chapter II, Parts B and C.

²⁹¹ See *supra*: paras. 303 to 306.

²⁹² See *supra*: Chapter II, Part D.

319. The Chamber recalls that no evidence has been tendered as to the allegations contained in paragraphs 32 and 35 of the Indictment. As to paragraph 33, the Prosecution rather adduced evidence on the murder on 14 April of Kanyogote, a Tutsi, and his three children. The Chamber finds that this murder is different from that charged. As to paragraph 34, the Chamber is not persuaded by the evidence adduced on the murder of Mutunzi and Rukomeza at the Catholic Centre. Lastly, as to paragraph 36, the Chamber is still not persuaded by Prosecution evidence that the Accused incurs responsibility for the murder of Marie and Béatrice, his tenants that he expelled.

320. Accordingly, the Chamber finds the Accused not guilty of MURDER AS A CRIME AGAINST HUMANITY as charged in Count 4 of the Indictment.

4. Crimes against humanity – rape

321. The Chamber is of the opinion that any penetration of the victim's vagina by the rapist with his genitals or with any object constitutes rape, although the definition of rape under Article 3(g) of the Statute²⁹³ is not limited to such acts alone. In the case at bench, the Chamber has already found that Witness TAQ was raped at the same time as seven other Tutsi women and girls; that the rapists either penetrated each victim's vagina with their genitals or inserted sticks into them; that Witness TAO's wife was raped, with the rapist penetrating the victim's vagina with his genitals; that Witness TAS was raped in a similar manner, as well as Witness TAP and her mother. The Chamber finds that all these acts fall within the definition of rape.

322. The Chamber reiterates its previous findings on the existence of a widespread and systematic attack against civilians in Rusumo in April 1994.²⁹⁴

323. In its factual findings, the Chamber held, on the one hand, that the widespread and systematic attack targeted specifically Tutsi civilians and, on the other hand, that Prosecution Witnesses TAQ, TAP and TAS, the wife of Prosecution Witness TAO, the mother of Prosecution Witness TAP, and seven Tutsi women and girls were all raped, as testified to by Prosecution Witness TAQ. The evidence shows that all these victims are civilians.²⁹⁵

324. The Chamber finds that these victims of rape were chosen because of their Tutsi ethnic origin, or because of their relationship with a person of the Tutsi ethnic group, which is the case with Prosecution Witness TAS. The Chamber finds that the order given by the Accused to attackers to attack and select rape victims was discriminatory in character.

325. Under such circumstances, the utterances made by the Accused to the effect that in case of resistance the victims should be killed in an atrocious manner, and the fact that rape victims were attacked by those they were fleeing from, adequately establish the victims' lack of consent to the rapes.

²⁹³ *Akayesu* Judgment (TC), paras. 597 to 598; ICTY, *Kunarac and Others*, (AC), paras. 127 to 133.

²⁹⁴ See *supra*: paras. 303 to 306.

²⁹⁵ See *supra*: Chapter II, Part E. This reference is also relevant to the subsequent factual findings.

326. The Prosecutor submits that the Accused planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or perpetration of the rape of the above-mentioned victims.

327. The Chamber finds that the evidence adduced establishes that Sylvestre Gacumbitsi, through such utterances as were heard by Prosecution Witness TAQ, also instigated the rape of Tutsi women and girls. On her part, Prosecution Witness TAS also testified that she heard those who raped her say that the Accused had ordered them to rape Tutsi women and girls, but her uncorroborated hearsay evidence is not such as to prove the involvement of the Accused.

328. The Chamber recalls that, immediately after the utterances made by the Accused instigating the rape of Tutsi women and girls, while he was crossing the bridge between Kankobwa and Nyarubuye *secteurs* on his way to Nyarubuye, Prosecution Witness TAQ and seven other Tutsi women and girls were raped by young men who, being in the neighbourhood, heard the *bourgmestre's* instigation. The Chamber finds that these rapes, as recounted by Prosecution Witness TAQ, resulted directly from the instigation of the Accused.

329. On the contrary, the Chamber finds no evidence establishing a link between the rape of Prosecution Witness TAS and the possible utterances of the Accused and therefore the Accused cannot incur responsibility in that respect. The same applies to the rape of the wife of Prosecution Witness TAO, and the rape of the mother of Prosecution Witness TAP. However, the Chambers finds that these rapes are established as part of the widespread and systematic attack against Tutsi civilians in Rusumo.

330. Pursuant to Article 6(1) of the Statute, the Chamber finds Sylvestre Gacumbitsi criminally liable for instigating the rape of Witness TAQ and seven other Tutsi women and girls, thereby also committing a crime against humanity.

331. As to the other forms of criminal participation, the Prosecution has not adduced evidence to show that they are applicable to the Accused.

332. Having found the Accused criminally liable under Article 6(1) of the Statute for instigating others to commit rape in Rusumo *commune* in April 1994, the Chamber does not deem it necessary to *enquire* whether he is equally responsible pursuant to Article 6(3) of the Statute, given the similarity of the acts charged and the lack evidence of a superior-subordinate relationship between the Accused and the perpetrators of the rapes.

333. Thus, with regard to Count 5, the Chamber finds Sylvestre Gacumbitsi **GUILTY OF RAPE AS A CRIME AGAINST HUMANITY.**

CHAPTER IV: VERDICT

334. For the reasons set out in this Judgement, having considered all of the evidence and the arguments, Trial Chamber III unanimously finds in respect of the Accused as follows:

Count 1 (Genocide):	GUILTY
Count 2 (Complicity in genocide):	DISMISSED
Count 3 (Crimes against Humanity) (Extermination):	GUILTY
Count 4 (Crimes against Humanity) (Murder):	NOT GUILTY
Count 5 (Crimes against Humanity) (Rape):	GUILTY

CHAPTER V: SENTENCING

A. *GENERAL PRINCIPLES GOVERNING DETERMINATION OF SENTENCES*

335. The preamble to the United Nations Security Council resolution 955 establishing the Tribunal emphasized the need to further the goals of deterrence, justice, reconciliation, and restoration and maintenance of peace.

336. In deciding the sentence to impose on the Accused, the Chamber will take into account all the factors likely to contribute to the achievement of the above goals. In view of the gravity of the offences committed in Rwanda in 1994, it is of the utmost importance that the international community condemn the said offences in a manner that will prevent a repetition of those crimes either in Rwanda or elsewhere. The Chamber will also take into account reconciliation among Rwandans towards which, pursuant to the same resolution, the Tribunal is mandated to contribute.

337. In accordance with Article 23²⁹⁶ of the Statute and Rule 101²⁹⁷ of the Rules, the Chamber will, in sentencing Sylvestre Gacumbitsi, take into account the gravity of the offences with which he is charged, his individual circumstances, any aggravating and mitigating circumstances, as well as the Tribunal's general sentencing practice, taking into account the general practice regarding prison sentences in the courts of Rwanda. If need be, the Chamber will give Sylvestre Gacumbitsi credit for any period spent in custody pending trial.

²⁹⁶ Article 23 of the Statute provides:

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.
2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

²⁹⁷ Rule 101 of the Rules provides:

- (A) A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or the remainder of his life.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Articles 23(2) of the Statute, as well as such factors as:
 - (i) Any aggravating circumstances;
 - (ii) Any mitigating circumstances, including the substantial cooperation with the Prosecution by the convicted person before or after conviction;The general practice regarding prison sentences in the courts of Rwanda;
The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the same Statute.
- (C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
- (D) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal.

B. AGGRAVATING CIRCUMSTANCES

338. The Prosecution submitted, citing various decisions, that the term of life imprisonment should be reserved for the most serious crimes and the most serious offenders, as is the case at present.²⁹⁸

339. As to aggravating circumstances, the Prosecution pointed out the gravity of the crimes committed in Rusumo, namely genocide and crimes against humanity,²⁹⁹ for which it holds Sylvestre Gacumbitsi responsible. The Prosecution also recalled the scale of the crimes committed nationwide, that is “the killing of an estimated 500,000 Tutsi civilians in Rwanda in a short span of 100 days”, and the specific nature of the “the crime of crimes”, genocide. The Prosecution also recalled that the Accused was at the centre of the events that took place in Rusumo *commune*, be it in terms of planning, incitement to commit crimes, or giving orders to that effect.³⁰⁰

340. The Prosecution then submitted that the crimes committed were premeditated. First, the crimes committed in Rusumo were not isolated but were the result of elaborate planning and, second, the Accused was the most senior government official in the *commune* at the time. He therefore knew that those crimes were being committed.³⁰¹

341. The Prosecution further submitted that the Accused’s position as *bourgmestre* is an aggravating circumstance, because he failed in his duties: first, he did not protect the civilians over whom he had responsibility and authority; second, he did not disassociate himself from the government’s genocidal policies.³⁰² Moreover, the Prosecution submitted that the Accused incurs superior responsibility under Article 6(3) of the Statute for the crimes committed by the *Interahamwe*, and under Article 6(1) of the Statute for the preparation of attacks, distribution of weapons and incitement to sexual violence.³⁰³ The Prosecution also submitted that the Accused participated voluntarily in those crimes.³⁰⁴

342. Lastly, the Prosecution submitted that the crimes were committed methodically.³⁰⁵ It pointed out the predominant role played by the Accused in that regard,³⁰⁶ and further noted that the Accused neither punished the perpetrators of the crimes nor prevented the commission of the said crimes.³⁰⁷

343. In response to the Prosecution’s allegation that the Accused did not dissociate himself from the government’s criminal policy, the Defence submitted that even Prosecution evidence shows that the crimes were not committed in Rusumo in the

²⁹⁸ Prosecution Closing Brief, paras. 419 to 425, 436 and 437.

²⁹⁹ *Ibid.*, para. 436.

³⁰⁰ *Ibid.*, para. 437.

³⁰¹ *Ibid.*, para. 438.

³⁰² *Ibid.*, para. 440.

³⁰³ *Ibid.*, paras. 441 to 442.

³⁰⁴ *Ibid.*, para. 443 and 445.

³⁰⁵ *Ibid.*, para. 446.

³⁰⁶ *Ibid.*, para. 448.

³⁰⁷ *Ibid.*, para. 449 to 450.

immediate aftermath of the attack on the presidential plane. The Defence further submitted that the Prosecution did not adduce evidence that the Accused contacted members of the Interim Government between the time the presidential plane was shot down and the time he left for exile. Moreover, criminals from elsewhere, and sometimes the refugees themselves, committed the crimes in Rusumo. Thus, the Defence denies the existence of any form of premeditation and, above all, criminal participation by the Accused in the events that took place in Rusumo in April 1994.³⁰⁸

Finding

344. The Chamber finds that under Article 23(2) of the Statute, the gravity of the crimes committed must be taken into account in determining sentence. Thus, the more heinous the crime, the heavier the sentence will be. Such interpretation of Article 23(2) underpins the Prosecution's submission that the maximum sentence is required for the most serious offenders. However, in assessing the gravity of the offences of which the Accused had been found guilty, the Chamber will also take into account the particular circumstances of the case, as well as the form and degree of the participation of the Accused in the crimes.³⁰⁹

345. In the instant case, the Chamber finds that the status of the Accused in April 1994, as *bourgmestre* and the most important and influential personality of Rusumo *commune*, is an aggravating circumstance, insofar as the Accused participated in the crimes committed and was one of the ringleaders, in terms of planning the crimes, inciting their commission and sometimes driving attackers to the massacre sites. By so doing, he betrayed the trust that the people of his *commune* had placed in him. His active participation in the said crimes explains why he could not take measures to prevent or to punish the perpetrators, when he had the opportunity to do so. The seriousness of the crimes committed, particularly genocide, but also the particularly atrocious rapes that some victims suffered, further constitute aggravating circumstances.

C. MITIGATING CIRCUMSTANCES

346. As an alternative to its plea for acquittal, the Defence made a general submission that in case of a conviction; the Chamber has the discretion to impose any sentence that would promote the interests of justice.³¹⁰

347. With respect to mitigating circumstances, the Defence submitted that some Tutsi were saved only because of the intervention of Sylvestre Gacumbitsi. The Defence further submitted that Sylvestre Gacumbitsi's family situation and clean criminal record and should be considered as mitigating circumstances. The Defence explained that the Accused is married and has six children; that his wife and children still live in harmony with the people of Rusumo *commune* in Rwanda. The Defence

³⁰⁸ Defence Closing Brief, paras. 1006 to 1019.

³⁰⁹ *Semanza* Judgment (TC), para. 555.

³¹⁰ T., 1 March 2004, pp. 54 to 55.

submitted that a less severe sentence would alleviate the suffering of his close family members who bear no responsibility for the events.³¹¹

348. The Defence further submitted that Sylvestre Gacumbitsi had a clean criminal record,³¹² having never been convicted before, and a good reputation, as testified to by several Defence witnesses.³¹³

349. The Defence submitted that Sylvestre Gacumbitsi had always been an exemplary *bourgmestre*, who knew how to administer his *commune* without resorting to discrimination based on ethnic grounds, and that he always had good relations with the people of his *commune*. The Defence emphasized that Gacumbitsi always had Tutsi friends, including some long-time ones, and that even Prosecution witnesses admitted that such was the case before April 1994. Lastly, the Defence submitted that the peace that reigned in Rusumo, in the week following the attack on President Habyarimana's plane, is evidence of the type of *bourgmestre* the Accused was. The Defence further submitted that available evidence shows that a number of people from neighbouring *communes* took refuge in Rusumo at that time, and that when disturbances were reported to the Accused, he had the perpetrators arrested.³¹⁴

350. It is the Prosecution's submission that Sylvestre Gacumbitsi could have benefited from mitigating circumstances, had he cooperated with the Prosecution in establishing the truth, or expressed remorse for the events that took place in 1994.³¹⁵ Moreover, the Prosecution contends, on the basis of the judgments rendered in the *Kajelijeli*³¹⁶ and *Media*³¹⁷ cases, particularly in respect of Hassan Ngeze, that the fact of having provided some Tutsi with shelter at the home of the Accused is not a mitigating circumstance.³¹⁸ Lastly, the Prosecution submitted that the scale and gravity of the crimes committed militate against considering the family situation of the Accused as a mitigating circumstance.³¹⁹

351. In response to the specific allegation of lack of remorse, the Defence submitted that the Accused, following his line of defence,³²⁰ could not express any such remorse in respect of events for which he is not responsible.

Conclusion

352. The Chamber is of the opinion that the work done by the Accused as *bourgmestre* certainly constitutes a mitigating circumstance, just like his conduct prior to April 1994. Evidence of the mitigating circumstances was given by Defence witnesses, including the Accused himself, and some Prosecution witnesses like

³¹¹ T., 1 March 2004, pp. 53 to 54.

³¹² Defence Closing Brief, para. 1003.

³¹³ Defence Closing Brief, paras. 1004 to 1006.

³¹⁴ Defence Closing Brief, para. 1007.

³¹⁵ Prosecution Closing Brief, para. 451.

³¹⁶ *Kajelijeli* Judgement (TC).

³¹⁷ *Nahimana et al.* Judgement (TC).

³¹⁸ Prosecution Closing Brief, para.425.

³¹⁹ Prosecution Closing Brief, para. 456.

³²⁰ Defence Closing Brief, paras. 1018 and 1019.

Witness TAW, who testified that the Accused was of good character and had good relations with the Tutsi prior to the death of President Habyarimana. Furthermore, the Accused's family still lives in Rwanda, and is on good terms with their neighbours, irrespective of which ethnic group they belong to. However, these mitigating circumstances must be balanced against the aggravating circumstances in determining sentence.

353. The Chamber finds that in the instant case, the Accused joined an ongoing process, and that he was not involved over a long period of time in the preparation of the tragic events that took place in Rusumo. Moreover, in requesting the maximum sentence for Sylvestre Gacumbitsi, the Prosecution pointed to the scale of the crimes committed throughout Rwanda, and not in Rusumo *commune* alone. Lastly, the Chamber is not persuaded that the Accused had superior responsibility over the perpetrators of the crimes committed in Rusumo *commune* in April 1994, with the exception of the communal policemen of Rusumo. Accordingly, the Chamber cannot take into account the aggravating circumstances submitted by the Prosecution.

D. SCALE OF SENTENCES

354. The Chamber has also taken into consideration the sentencing practice of ICTR and ICTY, and notes that the penalty should, first and foremost, be commensurate with the gravity of the offence. Persons found guilty of genocide or extermination as a crime against humanity, or of both crimes, have received prison sentences ranging from 15 years' imprisonment to life imprisonment. Secondary or indirect forms of participation are generally punished with a less severe sentence. Georges Ruggiu, for example, received a sentence of 12 years' imprisonment for incitement to commit genocide after having pleaded guilty, whereas Elizaphan Ntakirutimana received a sentence of ten years imprisonment for aiding and abetting the commission of genocide, on account of his advanced age.

355. The Chamber has taken into account the general practice regarding sentences in ad hoc Tribunals and the courts of Rwanda, as well as the mitigating and aggravating circumstances considered. The Chamber therefore deems it appropriate to impose an exemplary sentence on Sylvestre Gacumbitsi.

356. For the foregoing reasons, the Trial Chamber imposes on Sylvestre Gacumbitsi a single sentence of:

THIRTY YEARS' IMPRISONMENT

357. The sentence shall be served in a State designated in consultation with the Trial Chamber, and credit shall be given for the period spent in custody pending trial.

358. Furthermore, the sentence shall be enforced immediately. However, as soon as the notice of appeal is given, enforcement of the sentence shall be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention.

359. Done in Arusha, this 17th day of June 2004, in French and English, the French text being authoritative.

[Signed]

Andrésia Vaz
Presiding Judge

[Signed]

Jai Ram Reddy
Judge

[Signed]

Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

Annex I – LIST Of CITED SOURCES AND ABBREVIATIONS

- International Criminal Tribunal for Rwanda, Reports of Orders, Decisions and Judgments 80
- List of Cited Judgments 80
- List of Cited Decisions and Orders 84
- Lists of Other Sources Cited 85
- List of Cited Rwandan Laws 85
- List of Abbreviations and Conventions 86

A. *International Criminal Tribunal for Rwanda, ICTR Reports of Orders, Decisions and Judgments*

Long form	Short form
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<i>ICTR, Reports of Orders, Decisions and Judgments 1999</i> , Brussels, Bruylant, 2004 Vol. I and II.	ICTR Reports, 1999

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C. List of Cited Decisions and Orders

Long form	Short form
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<i>The Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-I, Order for Transfer and Provisional Detention Under Rule 40 <i>bis</i> of the Rules of Procedure and Evidence (TC), 19 June 2001.	<i>Gacumbitsi</i> , Order of 19 June 2001 (TC).
<i>The Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-I, Decision on the Prosecutor's Application for Confirmation of an Indictment and Related Orders (TC), 20 June 2001.	<i>Gacumbitsi</i> , Decision of 20 June 2001 (TC).
<i>The Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-I, Warrant of Arrest and Order for Transfer and Detention (TC), 20 June 2001.	<i>Gacumbitsi</i> , Order of 20 June 2001 (TC).
<i>The Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-I, Decision on Defence Motion to Amend Indictment and to Drop Certain Counts (TC), 25 July 2002.	<i>Gacumbitsi</i> , Decision of 25 July 2002 (TC).
<i>The Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-I, Decision on Prosecution Motion for Protective Measures for Victims and Witnesses (TC), 20 May 2003.	<i>Gacumbitsi</i> , Décision of 20 May 2003 (TC).
<i>The Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-I, Decision concerning the Prosecutor's Motion for the Transfer of Witnesses Detained in Rwanda (TC), 11 July 2003.	<i>Gacumbitsi</i> , Decision of 11 July 2003 (TC).
<i>The Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-T, Decision on Motion to Disclose to the Defence all the Facts and Authorities that led to the Arrest, Detention and Provisional Release of Prosecution Witnesses TBG, TBH, TBI, TBJ et TBK (TC), 1 August 2003.	<i>Gacumbitsi</i> , Decision of 1st August 2003 (TC).
<i>The Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-T, <i>Décision relative à la requête du Procureur aux fins d'admission du témoignage d'un témoin expert</i> (TC), 1 August 2003.	<i>Gacumbitsi</i> , Decision of 1st August 2003 on an expert witness (TC).

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<i>Le Procureur c. Sylvestre Gacumbitsi</i> , Affaire n° TPIR-2001-64-T, <i>Décision relative à la requête de la Défense aux fins d'acquiescement partiel (Ch.)</i> , 2 octobre 2003.	<i>Gacumbitsi</i> , Decision of 2 October 2003 (TC).
<i>The Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-T, Decision on Expert Witnesses for the Defence (TC), 11 November 2003.	<i>Gacumbitsi</i> , Decision of 11 November 2003 (TC).
<i>The Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-T, <i>Décision relative à la requête de la Défense aux fins de modification de la date de dépôt des conclusions écrites de la Défense</i> , 23 January 2004.	<i>Gacumbitsi</i> , Decision of 23 January 2004 (TC).

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United Nations Security Council Resolution 1503 28 August 2003, UN Document S/RES/1503 (2003).	Security Council Resolution 1503.

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List of Abbreviations and Conventions

Long form	Short form
United Nations	UN
United Nations Security Council	Security Council
International Criminal Tribunal for the Former Yugoslavia	ICTY
International Criminal Tribunal for Rwanda	ICTR or the Tribunal
Statute of the ICTR	Statute (The)
ICTR Rules of Procedure and Evidence	Rules (The)
Trial Chamber	TC
Appeals Chamber	AC
Trial Chamber III	Chamber (The)
International Law Commission (ILC), 1996 Activity Report (A/51/10)	ILC Report, 1996
Transcripts in French of the hearing of 3 September 2003, p. 180.	T., 3 September 2003, p. 180.
Transcripts in English of the hearing of 3 September 2003, p. 180.	T., 3 September 2003, p. 180.
<i>The Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-1996-4-T, Transcripts in French of the hearing of 23 May 1997, p. 31.	<i>Akayesu</i> , T., 23 May 1997, p. 31.
Prosecution Exhibit 1	P1
Personal Identification Sheet No. 1	PIS No. 1
Defence Exhibit D01	D01
<i>Mouvement Révolutionnaire National pour le Développement</i> [before July 1991]	MRND
<i>Mouvement républicain national pour la démocratie et le développement</i> [after July 1991]	MRND
<i>Mouvement démocratique républicain</i>	MDR
<i>Armée patriotique rwandaise</i>	APR
<i>Rwandan Patriotic Front</i>	RPF
<i>Forces armées rwandaises</i>	FAR

ANNEX II: THE INDICTMENT

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-2001-64-I

THE PROSECUTOR

AGAINST

SYLVESTRE GACUMBITSI

INDICTMENT

I. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to the authority stipulated in Article 17 of the Statute of the International Criminal Tribunal for Rwanda (the "Statute of the Tribunal") charges:

SYLVESTRE GACUMBITSI

with GENOCIDE; or in the alternative COMPLICITY IN GENOCIDE; and EXTERMINATION, MURDER and RAPE as CRIMES AGAINST HUMANITY; offenses stipulated in Articles 2 and 3 of the Statute of the Tribunal, as set forth below:

II. THE ACCUSED:

Sylvestre GACUMBITSI was born in 1947 in Rusumo *commune*, Kibungo *préfecture*, Rwanda. During the period covered by this indictment, **Sylvestre GACUMBITSI** was *bourgmestre* of Rusumo *commune* in Kibungo *préfecture*.

III. CHARGES and CONCISE STATEMENT OF FACTS:

Count 1: GENOCIDE

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre GACUMBITSI** with *GENOCIDE*, a crime stipulated in Article 2(3)(a) of the Statute, in that on or between the dates of 6 April 1994 and 30 April 1994 in Kibungo *préfecture*, Rwanda, **Sylvestre GACUMBITSI** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group;

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in ordering, instigating, commanding, participating in and aiding and abetting the preparation and execution of the crime charged; **and**

Pursuant to Article 6(3) of the Statute: by virtue of his actual or constructive knowledge of the acts and omissions of soldiers, gendarmes, communal police, *Interahamwe*, civilian militia and civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the preparation and execution of the crime charged;

or alternatively,

Count 2: COMPLICITY IN GENOCIDE

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre GACUMBITSI** with **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the Statute, in that on or between the dates of 6 April 1994 and 30 April 1994 in Kibungo *préfecture*, Rwanda, **Sylvestre GACUMBITSI** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in ordering, instigating, commanding, participating in and aiding and abetting the preparation and execution of the crime charged, in that:

Concise Statement of Facts for Counts 1 & 2:

1. Between 1 January and 31 December 1994, citizens native to Rwanda were severally identified according to the following ethnic or racial classifications: Tutsi, Hutu and Twa.
2. Between 1 January 1994 and 17 July 1994 there was a state of non-international armed conflict in Rwanda.
3. Following the death of Rwandan President Juvénal Habyarimana on 6 April 1994 and resumption of civil hostilities in the non-international armed conflict on the following day, a newly installed Interim Government of 8 April 1994 launched a nationwide campaign to mobilize government armed forces, civilian militias, the local public administration and common citizens to fight the Rwandese Patriotic Front (RPF), a predominantly Tutsi politico-military opposition group. Government armed forces and *Interahamwe* militias specifically targeted Rwanda's civilian Tutsi population as domestic accomplices of an invading army, *ibytso*, or as a domestic enemy in their own right. Under the guise of national defense, ordinary citizens of Rwanda, primarily its Hutu peasantry, were enlisted in a nationwide campaign of looting, pillaging, murder, rape, torture, and extermination of the Tutsi.

4. **Sylvestre GACUMBITSI** organized the campaign against Tutsi civilians in Rusumo *commune*, Kibungo *préfecture*. The campaign consisted in public incitement of Hutu civilians to separate themselves from their Tutsi neighbors and to kill them and resulted in thousands of deaths. **Sylvestre GACUMBITSI** killed persons by his own hand, ordered killings by subordinates, and led attacks under circumstances where he knew, or should have known, that civilians were, or would be, killed by persons acting under his authority.
5. Notably, on or about 9 April 1994 **Sylvestre GACUMBITSI** convened a meeting of all the *conseillers de secteur*, *responsables de cellule* and party chiefs of MRND and CDR in Rusumo *commune*. The meeting was held at the *bureau communal*. During that meeting *bourgmestre* **Sylvestre GACUMBITSI** announced that weapons would be distributed for purposes of the extermination of the Tutsi population.
6. On or about 10 April 1994 **Sylvestre GACUMBITSI** participated in a meeting at the FAR military camp in Kibungo. Present at the meeting was Col. Pierre Célestin RWAGAFIRITA and all of the *bourgmestres* of Kibungo *préfecture*. Col. RWAGAFIRITA and a number of other soldiers distributed cases of grenades, machetes and bladed weapons to each *bourgmestre*. **Sylvestre GACUMBITSI** received over 100 boxes of weapons, some of which he subsequently delivered to various locations in the *préfecture*.
7. On or about 12 April 1994, after conferring with Major NDEKEZI, **Sylvestre GACUMBITSI** ordered soldiers and boatmen along the lakes in Gisenyi *secteur* to stop refugees in flight from escaping across the border into Tanzania.
8. As *bourgmestre*, **Sylvestre GACUMBITSI** exercised authority over his subordinates, among whom can be counted: administrative personnel at the level of the *commune*, including *conseillers de secteur*, *responsables de cellule* and *nyumbakumi*; and the communal police. As consequences of his public office as *bourgmestre* of Rusumo *commune* and his membership in the MRND political party, **Sylvestre GACUMBITSI** also exercised authority over *gendarmes* and civilian militias in Rusumo *commune*.
9. **Sylvestre GACUMBITSI** ordered *responsables de cellule* and *nyumbakumi* to deliver weapons to certain members of the populace. He also ordered the *responsables de cellule* and *nyumbakumi* to disseminate to members of the populace and to carry out the official policy of massacring civilian Tutsi. These communal officials in turn re-distributed the weapons that they received from **Sylvestre GACUMBITSI** and participated in the campaign of extermination by ordering their constituents to kill civilian Tutsi throughout the *commune*.

10. In ordering *conseillers de secteur* and *responsables de cellule* to exterminate the Tutsi, Sylvestre **GACUMBITSI** directed that the killing should begin with parents whose children had joined the *inkotanyi*, a specific reference to the RPF. **Sylvestre GACUMBITSI** specifically ordered that attacks be directed against the *snakes*, a reference to the Tutsi.
11. During the week of 11 April 1994 **Sylvestre GACUMBITSI** circulated about Rusumo aboard a vehicle belonging to the *commune*. He was often accompanied by communal police and *Interahamwe*, and the vehicle was often loaded with a quantity of machetes. For example, on or about 15 April 1994 **Sylvestre GACUMBITSI**, accompanied by MUNYABUGINGO, transported weapons, including machetes, in a vehicle heading toward Nyarubuye.
12. On or about 14 April 1994 Sylvestre **GACUMBITSI** arrived in Nyabitare *secteur* and summoned all the Hutu *nyumbakumi* and distributed machetes to them. He instructed the communal police and the *nyumbakumi* that all Tutsi in the region should be killed by nightfall, and that whoever killed a Tutsi could then appropriate his belongings. The communal police and *nyumbakumi* did as **Sylvestre GACUMBITSI** instructed, and many civilian Tutsi were killed, among them: KAGUMYA Léonard; GAHONDOGO and her children, RUNUYA and her children, including MANIRIHO, KAGUMYA (2 weeks old), GASHUMBA, MUTEMPUNDU, MUKABERA, NYAMVURA, MUKADUSABE, BIMENYIMANA, among others.
13. In addition to exhorting crowds to massacre the Tutsi civilians, **Sylvestre GACUMBITSI** also travelled to the various cellules to monitor the course of the massacres.
14. On or about 15 April 1994, **Sylvestre GACUMBITSI** also circulated in Rusumo *commune* aboard a vehicle and announced over a loud speaker that Tutsi women and children could safely return to their homes, but that Tutsi men would be killed. His announcements were a ruse to facilitate attacks upon women and children that would come out of hiding, and an inciting call to exterminate the Tutsi men.
15. Between the 15th and 17th April 1994, **Sylvestre GACUMBITSI** led an attack on the *paroisse* of Nyarubuye, where numerous Tutsi and Hutu refugees had gathered. Sylvestre **GACUMBITSI** approached the church in a caravan of several vehicles of communal police and *Interahamwe*. Many of the attackers wore berets and *kitenge* uniforms bearing MRND *Interahamwe* insignia. A quantity of machetes was unloaded from the vehicles and placed before the church. **Sylvestre GACUMBITSI** addressed the crowd with a megaphone and ordered Hutu refugees to separate from Tutsi. Once the groups were separated the attacks began.

16. The communal police and *Interahamwe* surrounded the church compound. **Sylvestre GACUMBITSI** ordered the Hutu to attack the Tutsi, incorporating former Hutu refugees in attacks against the Tutsi led by communal police and *Interahamwe* under his direction.
17. Communal police and *Interahamwe* attacked the Tutsi refugees with grenades and firearms and traditional weapons. Other attackers used the machetes previously supplied by **Sylvestre GACUMBITSI**.
18. On the following day, **Sylvestre GACUMBITSI**, accompanied by RUBANGUKA, the President of the Rusumo Court, and a group of attackers returned to the devastated church compound at Nyarubuye armed with spears, machetes, and bows and arrows. Led by RUBANGUKA, the attackers finished off the survivors lying among the corpses. Afterwards the attackers looted the church compound, removing cupboards, tables, radios, beds and clothing.
19. Almost all of the Tutsi refugees, comprising several thousands, at Nyarubuye *paroisse* were killed.
20. Sexual violence against Tutsi women was systematically incorporated in the generalized attacks against the Tutsi. In leading, ordering and encouraging the campaign of extermination in Rusumo *commune*, **Sylvestre GACUMBITSI** knew, or should have known, that sexual violence against civilian Tutsi was, or would be, widespread or systematic, and that the perpetrators would include his subordinates or those that committed such acts in response to his generalized orders and instructions to exterminate the Tutsi.
21. Furthermore, **Sylvestre GACUMBITSI** circulated about Rusumo *commune* in a vehicle announcing by megaphone that Tutsi women should be raped and sexually degraded. For example, on or about 17 April 1994 **Sylvestre GACUMBITSI** exhorted the population along the Nyarubuye road to “rape Tutsi girls that had always refused to sleep with Hutu ...” and to “search in the bushes, do not save a single snake ...”. Attacks and rapes of Tutsi women immediately followed.
22. From those first days of April 1994 through 30 April 1994, **Sylvestre GACUMBITSI** ordered, directed or acted in concert with local administrative official in Kibungo *préfecture*, including *bourgmestres* and *conseillers de secteur*, to deny protection to civilian Tutsi refugees and to facilitate attacks upon them by communal police, *Interahamwe*, civilian militias and local residents.
23. At all times material to this indictment **Sylvestre GACUMBITSI** failed to maintain public order, or deliberately undermined the public order, in districts over which he exercised administrative authority, in agreement with or in furtherance of the policies of the MRND or the

Interim Government, knowing that those policies intended the destruction, in whole or in part, of the Tutsi.

24. By virtue of his positions of leadership of the MRND and the *Interahamwe*, particularly as derived from his status as *bourgmestre* of Rusumo, **Sylvestre GACUMBITSI** ordered or directed or otherwise authorized government armed forces, civilian militias and civilians to persecute rape and kill or facilitate the killing of civilian Tutsi. By virtue of that same authority **Sylvestre GACUMBITSI** had the ability and the duty to halt, prevent, discourage or sanction persons that committed, or were about to commit, such acts, and did not do so, or only did so selectively.
25. **Sylvestre GACUMBITSI**, in his position of authority and acting in concert with others, participated in the planning, preparation or execution of a common scheme, strategy or plan to exterminate the Tutsi, by his own affirmative acts or through persons he assisted or by his subordinates with his knowledge and consent.

Count 3: EXTERMINATION as a CRIME AGAINST HUMANITY:

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre GACUMBITSI** with *EXTERMINATION as a CRIME AGAINST HUMANITY as stipulated in Article 3(b) of the Statute*, in that on or between the dates of 6 April 1994 and 30 April 1994 in Kibungo *prefectures*, Rwanda, **Sylvestre GACUMBITSI** did kill persons, or cause persons to be killed, during mass killing events as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged; *and*

Pursuant to Article 6(3) of the Statute: by virtue of his actual or constructive knowledge of the acts or omissions of his subordinates, including soldiers, gendarmes, communal police, *Interahamwe*, civilian militia or civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the planning, preparation or execution of the crime charged, in that:

26. Between 6 April 1994 and 17 July 1994, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.
27. Approximately between 15 and 18 April 1994, **Sylvestre GACUMBITSI** commanded, facilitated or participated in attacks upon civilian Tutsi refugees that had gathered at Nyarabuye *paroisse*. **Sylvestre GACUMBITSI** transported, or facilitated the transportation of, communal police or *Interahamwe* or weapons to Nyarabuye

paroisse and led attacks against civilian Tutsi by his own example or by ordering and directing the attackers to kill the refugees.

28. As direct consequences of orders or instructions from **Sylvestre GACUMBITSI** at Nyarabuye *paroisse*, there were numerous killings of family members and entire families, including UWIRAGIYE, MUGIRANEZA and TUYIRINGIRE, three children. The identity of each victim and the proximate number of fatalities and the exact circumstances of each death cannot be detailed exhaustively due to the overwhelming devastation of the massacres.
29. **Sylvestre GACUMBITSI**'s affirmative acts in commanding, facilitating or participating in the killings of civilian Tutsi refugees at Nyarabuye *paroisse* are pleaded with greater particularity in paragraphs 4 through 16, above, which are reiterated and incorporated herein by reference.
30. Furthermore, **Sylvestre GACUMBITSI**'s generalized campaign of extermination in Rusumo *commune*, Kibungo *préfecture*, during April 1994, particularly following his distributions of weapons and organizational meetings with military and administrative officials from 7 to 15 April 1994, claimed the lives of hundreds of civilian Tutsi and moderate Hutu. **Sylvestre GACUMBITSI**'s affirmative acts in commanding, facilitating or participating in the killings of civilian Tutsi in Rusumo *commune* are pleaded with greater particularity in paragraphs 4 through 16, above, which are reiterated and incorporated herein by reference.

Count 4: MURDER as a CRIME AGAINST HUMANITY:

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre GACUMBITSI** with **MURDER as a CRIME AGAINST HUMANITY, as stipulated in Article 3(a) of the Statute**, in that on or between the dates of 6 April 1994 and 30 April 1994 in Kibungo *préfecture*, Rwanda, Sylvestre **GACUMBITSI** did kill persons, or cause persons to be killed, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged; **and**

Pursuant to Article 6(3) of the Statute: by virtue of his actual or constructive knowledge of the acts or omissions of his subordinates, including soldiers, gendarmes, communal police, *Interahamwe*, civilian militia or civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the planning, preparation or execution of the crime charged, in that:

31. In addition to personally ordering and leading attacks against groups of civilian Tutsi refugees, **Sylvestre GACUMBITSI** also targeted specific Tutsi civilians in Kibungo *préfecture* for murder.
32. On a date uncertain during April 1994, **Sylvestre GACUMBITSI** approached a pregnant Tutsi woman and her mother-in-law along a roadside. The woman appeared to be in discomfort and asked for assistance. Instead of helping the women, **Sylvestre GACUMBITSI** took a knife and slit her abdomen, causing the two fetuses that the woman was carrying to fall from her body. **Sylvestre GACUMBITSI**, assisted by another, repeatedly stabbed the woman, her mother-in-law and the two babies, causing their deaths.
33. On a date uncertain during April 1994, **Sylvestre GACUMBITSI** killed a Tutsi woman and her three children in his own home. **Sylvestre GACUMBITSI** was god-father to one of the children, and the woman sought refuge at the home of her former friend. Instead of protecting the woman and her children, **Sylvestre GACUMBITSI** personally arranged their murder.
34. On or about 14 April 1994, **Sylvestre GACUMBITSI** personally shot and killed two civilian Tutsi near the Catholic center in Nyabitare. The two persons pleaded with **Sylvestre GACUMBITSI**, going so far as to offer him money so that they would be killed with bullets and not by machetes. **Sylvestre GACUMBITSI** took the money, shot them, and removed the rest of their money.
35. Sometime between 17 and 18 April 1994, **Sylvestre GACUMBITSI** also caused the death of several Tutsi children. Upon specific instruction from **Sylvestre GACUMBITSI**, infant survivors of the attack on Nyarubuye *paroisse* were lured to a location with an offer of food. Once they were assembled, **Sylvestre GACUMBITSI** ordered all exits blocked and the children were killed with grenades.
36. On a date uncertain during April - June 1994, **Sylvestre GACUMBITSI** personally ordered the tenants in one of his homes to vacate the premises. After announcing that his home was not CND, a reference to the cantonment of RPF soldiers in Kigali, **Sylvestre GACUMBITSI** ordered the killing of his former tenants.

Count 5: RAPE as a CRIME AGAINST HUMANITY:

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre Gacumbitsi** with **RAPE as a CRIME AGAINST HUMANITY as stipulated in Article 3(g) of the Statute**, in that on or between the dates of 6 April 1994 and 30 April 1994 in Kibungo *préfecture*, Rwanda, **Sylvestre Gacumbitsi** did cause women to be raped as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged; **and**

Pursuant to Article 6(3) of the Statute: by virtue of his actual or constructive knowledge of the acts or omissions of his subordinates, including soldiers, gendarmes, communal police, *Interahamwe*, civilian militia or civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the planning, preparation or execution of the crime charged, in that:

37. During April, May and June of 1994, there were widespread or systematic rapes and sexual violence of Tutsi women. The sexual assaults were often a prelude to murder, and was sometimes the cause of death of a number of civilian Tutsi.
38. On one particular occasion, on or about 17 April 1994, **Sylvestre GACUMBITSI** lured Tutsi women to a certain location by announcing over a megaphone that Tutsi women would be spared, and that only Tutsi men would be killed. When a number of Tutsi women gathered in response to **Sylvestre GACUMBITSI's** exhortations, they were surrounded by several attackers, raped, and then killed. Attackers also sexually degraded a number of Tutsi women by inserting objects in their genitals.
39. On or about 17 April 1994, **Sylvestre GACUMBITSI** travelled along the Nyarubuye road in a caravan of vehicles, announcing with a megaphone *'Search in the bushes, do not save a single snake Hutu that save Tutsi should be killed Tutsi girls that have always refused to sleep with Hutu should be raped and sticks placed in their genitals...'* After **Sylvestre GACUMBITSI** drove by, a group of men attacked Tutsi women that were hiding nearby and raped several of the women. One of the women was killed and a stick was thrust in her genitals.
40. The sexual violence was so widespread, and conducted so openly, and was so integrally incorporated in generalized attacks against civilian Tutsi, that **Sylvestre GACUMBITSI** must have known, or should have known, that it was occurring, and that the perpetrators were his subordinates, subject to his authority and control, and acting under his orders. This is especially so since the perpetrators of sexual violence were often the same individuals that organized and led or participated in the generalized attacks against the Tutsi that **Sylvestre GACUMIITSI** had ordered.

The acts and omissions of Sylvestre GACUMBITSI detailed herein are punishable in reference to Articles 22 and 23 of the Statute.

Dated this 20 day of June 2001:

[Signed]
Carla del Ponte
Prosecutor

[Seal of the Tribunal]
