



UNITED NATIONS
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ICTR-99-50-T
22-11-2005
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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Or: ENG

TRIAL CHAMBER II

Before: Judge Khalida Rachid Khan, Presiding
Judge Lee Gacuiga Muthoga
Judge Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 22 November 2005

Handwritten signature and date: 22/11/2005

The PROSECUTOR

v

Casimir BIZIMUNGU

Justin MUGENZI

Jérôme-Clément BICAMUMPAKA

Prosper MUGIRANEZA

Case No. ICTR-99-50-T

DECISION ON DEFENCE MOTIONS PURSUANT TO RULE 98 BIS

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
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Mr. Justus Bwonwonga
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Mr. Ben Gumpert and Mr. Jonathan Kirk, for **Justin Mugenzi**
Mr. Pierre Gaudreau and Mr. Michel Croteau, for **Jérôme-Clément Bicamumpaka**
Mr. Tom Moran and Ms. Marie-Pierre Poulaine, for **Prosper Mugiraneza**

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”);

SITTING as Trial Chamber II, composed of Judge Khalida Rachid Khan, Presiding, Judge Lee Gacuiga Muthoga, and Judge Emile Francis Short (the “Chamber”);

BEING SEIZED of:

- (i) “Motion by Casimir Bizimungu Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence”, filed on 17 July 2005 (the “Bizimungu Motion”);
- (ii) “Justin Mugenzi’s Motion for Acquittal on Counts 1, 6, 8, 9 and 10 of the Indictment”, filed on 14 July 2005 (the “Mugenzi Motion”);
- (iii) “Bicamumpaka’s Motion for Acquittal”, filed on 15 July 2005 (the “Bicamumpaka Motion”);
- (iv) “Prosper Mugiraneza’s Motion for Judgement of Acquittal Pursuant to Rule 98 *bis*”, filed on 18 July 2005 (the “Mugiraneza Motion”);

CONSIDERING:

- (v) “Prosecutor’s Response to Defence Motions for Acquittal Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence”, filed on 4 August 2005 (the “Prosecution Response”);
- (vi) Prosper Mugiraneza's "Response to the Prosecutor's Reply to Prosper Mugiraneza's Motion for Judgement of Acquittal Pursuant to Rule 98 *bis*", filed on 31 August 2005 (the "Mugiraneza Reply");
- (vii) Jérôme-Clément Bicamumpaka's “Reply to Prosecutor’s Response to Defence Motions for Acquittal Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence”, filed on 18 September 2005 (the “Bicamumpaka Reply”);
- (viii) “*Réplique de Casimir Bizimungu en Vertu de l’Article 98 bis du Règlement de Procédure et de Preuve*”, filed on 5 October 2005, (the “Bizimungu Reply”);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), particularly Rule 98 *bis* of the Rules;

HEREBY decides the Motion, pursuant to Rule 73 (A) of the Rules, upon the basis of the written submissions of the Parties.



INTRODUCTION

1. The Prosecution closed its case on 23 June 2005, after calling 57 witnesses during 177 trial days and entering 113 exhibits. The Chamber granted the Defence permission to file Rule 98 *bis* Motions up to ten days after the Chamber issued its Decision on the testimony of Expert Witness Binaifer Nowrojee.¹ All four Defence teams subsequently filed Motions for acquittal, pursuant to Rule 98 *bis* of the Rules (the "Defence Motions").
2. On 31 October 2005 the Chamber delivered an oral summary of the present Decision on the Motions submitted by the four Accused for a judgement of acquittal.

SUBMISSIONS OF THE PARTIES

3. The submissions of the Parties can be divided into four broad categories. The first addresses the scope of the Chamber's enquiry under Rule 98 *bis* of the Rules. The second, upon which only the Defence for Casimir Bizimungu requests acquittal, regards the sufficiency of the evidence in relation to paragraphs of the Indictment. The third category, upon which the Defence for Justin Mugenzi and Prosper Mugiraneza make substantial submissions, requests acquittal on the basis of alleged defects in the Indictment, resulting in failure to provide notice to the Accused of precise material facts, in respect of relevant counts, to support conviction of the charges. The fourth category, upon which all Accused request acquittal, is the sufficiency of the evidence in relation to the crimes alleged in the counts of the Indictment.

DELIBERATIONS

(i) *Scope of the Chamber's Enquiry Under Rule 98 bis*

4. The parties agree regarding the standard which the Prosecution must meet to withstand a motion for judgement of acquittal under Rule 98 *bis* of the Rules: there must be sufficient evidence upon which a reasonable trier of fact *could* find the accused guilty of the crime charged. As the Defence for Mugenzi has stated, "[T]he test to be applied is whether the evidence, assuming it is true, could not possibly sustain a finding of guilt beyond reasonable doubt. That will only be the case where there is no evidence whatsoever which is probative of one or more of the required elements of a crime charged, or where the only such evidence is incapable of belief".²
5. Rule 98 *bis*, "Motion for Judgement of Acquittal" provides that:

If after the close of the case for the prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more counts charged in the indictment, the Trial Chamber ... shall order the entry of judgement of acquittal in respect of those counts.³

6. In its interpretation of the substantially identical provision of the ICTY Rules, the Appeals Chamber, in the case of *The Prosecutor v. Jelusic*, stated:

¹ T. 23 June 2005, p. 70.

² Mugenzi Motion, para. 1, referring to *Bagosora et al.*, Decision on Defence Motions Pursuant to Rule 98 *bis*, 2 February 2005, paras. 6-8.

³ Rule 98 *bis* of the Rules of Procedure and Evidence.

The capacity of the prosecution evidence (if accepted) to sustain a conviction beyond a reasonable doubt by a reasonable trier of fact is the key concept; thus the test is not whether the trier would in fact arrive at a conviction beyond a reasonable doubt on the prosecution evidence (if accepted) but *whether it could*. At the close of the case for the prosecution, the Chamber may find that the prosecution evidence is sufficient to sustain a conviction beyond reasonable doubt and yet, even if no defence evidence is subsequently adduced, proceed to acquit at the end of the trial, if in its own view of the evidence, the prosecution has not in fact proved guilt beyond reasonable doubt.⁴

7. The Chamber observes that the enquiry under Rule 98 *bis* is not whether, on the evidence as it stands, a conviction *would* be entered but whether a conviction *could* be entered by a reasonable trier of fact, if the evidence is believed.⁵ A decision by this Trial Chamber that there is sufficient evidence to sustain a conviction of the Accused on one or more of the counts in the Indictment is, in no sense, an indication of the view of the Chamber as to the guilt of the Accused on that count. That is not the issue at this point in the proceedings. Indeed, as the Trial Chamber in *Prosecutor v. Enver Hadzihasanovic Amir Kabura* has stated:

A dismissal of a request for acquittal merely shows that the Chamber considers that there is in the case *some prosecution evidence* which, taken at its highest, could satisfy a Trial Chamber *i.e.* is capable of persuading a Trial Chamber of the guilt of the Accused of the charge being considered. If there is no evidence of an offence charged, or if, in what is likely to be a somewhat unusual case, the only relevant evidence when viewed as a whole is so incapable of belief that it could not properly support a conviction, even when taken at its highest for the Prosecution, a Rule 98 *bis* motion for an acquittal will succeed.⁶

8. In evaluating the sufficiency of the evidence upon which a reasonable trier of fact could enter a conviction, at the end of the trial, the Chamber "is required to assume that the Prosecution's evidence is entitled to credence unless incapable of belief."⁷ The Chamber considers that the purpose of a Rule 98 *bis* enquiry is not to make determinations of fact, having weighed the credibility and reliability of the evidence. Rather, the Chamber's evaluation of credibility and reliability is to be made at the end of the trial, in light of all the evidence which has been presented.⁸

(ii) *Sufficiency of Evidence in Relation to Particular Paragraphs of the Indictment*

9. The Defence for Bizimungu asserts that the evidence should be assessed not only in relation to entire counts of an indictment but also in relation to facts specified in individual paragraphs, which are not supported by sufficient evidence, which any reasonable trier of fact would believe.⁹ While the Prosecution does not expressly

⁴ *Jeliscic*, Judgement (AC), 5 July 2001, para. 37.

⁵ *Hadzihasanovic Amir Kabura*, Decision on Motions for Acquittal Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence (TC), 27 September 2004, para. 13.

⁶ *Hadzihasanovic Amir Kabura*, Decision on Motions for Acquittal Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence (TC), 27 September 2004, para. 17.

⁷ *Nahimana et al.*, Reasons for Oral Decision of 17 September 2002 on the Motions for Acquittal (TC), 25 September 2002, para. 18.

⁸ *Muvunyi*, Decision on Tharcisse Muvunyi's Motion for Judgement of Acquittal Pursuant to Rule 98 *bis* (TC), 13 October 2005; *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal Under Rule 98 *bis* (TC), 16 December 2004, para. 71; *Kamuhanda*, Decision on Kamuhanda's Motion for Partial Acquittal Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence (TC), 20 August 2002, para. 19; *Kordic and Cerkez*, Decision on Defence Motions for Judgement of Acquittal (TC), 6 April 2000, para. 28.

⁹ Bizimungu Motion, paras. 63-92; Bizimungu Reply, paras. 111-125.

agree with this argument, it has submitted a detailed annex describing the evidence in support of each paragraph of the Indictment challenged by the Defence.

10. Rule 98 *bis* requires the Chamber to determine only whether "the evidence is insufficient to sustain a conviction on one or more *counts* charged in the indictment" and to order a "judgement of acquittal in respect of those *counts*" (emphasis added).¹⁰
 11. Furthermore, an examination of the evidence in relation to counts charged is particularly appropriate in the present case, where many of the paragraphs of the Indictment are interdependent and purport to show that one or more of the Accused committed the alleged crimes. If, at this stage of the proceedings, the Chamber were to rule on the sufficiency of the evidence in relation to each material fact in particular paragraphs of the Indictment, it would be engaging in a substantive evidentiary evaluation, which is not warranted by Rule 98 *bis*.
 12. The enquiry pursuant to Rule 98 *bis* is simply whether the Prosecution has established sufficient evidence so that a reasonable trier of fact could find a count proven beyond a reasonable doubt, if the evidence were to be believed. The Chamber, therefore, considers it appropriate to examine the evidence in relation to counts, without also testing the sufficiency of the evidence in respect of particular paragraphs of the Indictment.¹¹
- (iii) *Sufficiency of Evidence in Relation to Vague and Duplicious Allegations or Other Defects in the Indictment*
13. The Defence for Prosper Mugiraneza argues that a judgement of acquittal should be granted where the Indictment fails to provide notice of the particular act allegedly committed by the Accused constituting a crime, regardless of the nature of the evidence adduced.¹² Similarly, the Defence for Justin Mugenzi asserts that an indictment which fails to "delve into particulars"¹³ is defective, particularly when the alleged offences are murder and rape, which are victim-specific crimes.¹⁴ "The consequences of such unacceptable vagueness at the stage where a submission under Rule 98 *bis* is being considered must be a finding that there is insufficient evidence, in respect of the relevant counts, to support convictions."¹⁵ In response to the Defence, the Prosecution submits that considerations of insufficiency of notice and other legal defects in an indictment lie outside the scope of Rule 98 *bis*.¹⁶

¹⁰ Rule 98 *bis* of the Rules of Procedure and Evidence.

¹¹ The Chamber observes that most previous 98 *bis* Decisions issued by both this Tribunal and the ICTY have examined the evidence in relation to counts, without also testing the sufficiency of evidence in relation to each paragraph of an indictment. See *Muvunyi*, Decision on Tharcisse Muvunyi's Motion for Judgement of Acquittal Pursuant to Rule 98 *bis* (TC), 13 October 2005, para. 39; *Bagosora et al.*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 8.

¹² Mugiraneza Motion, paras. 12, 27.

¹³ Mugenzi Motion, para. 76, citing *Kupreskic*, Judgement (AC), 23 October 2001, para. 88.

¹⁴ Mugenzi Motion, para. 77.

¹⁵ Mugenzi Motion, para. 78.

¹⁶ Prosecution Response, para. 15.

14. In respect of this issue, the Chamber recalls the Decision in *Prosecutor v. Semanza*, in which the Trial Chamber stated that:

[P]leas for quashing the indictment cannot be raised under Rule 98 bis. Whatever defects the Defence perceived in the form of the indictment, such as its claim that the charges in the indictment are vague or in contradiction to the indictment and the supporting materials, were to be raised under Rule 72 within the time limits prescribed therein.¹⁷

The scope of Rule 98 bis of the Rules does not mandate the Chamber to consider whether the Indictment contains legal defects or whether the Defence has received sufficient notice of charges, in respect of the relevant counts in the Indictment, to lead to an acquittal or to sustain a conviction of the charges.¹⁸ These are matters for the Chamber to consider at the end of the proceedings, in light of all the evidence. The scope of the Chamber's enquiry, under Rule 98 bis of the Rules, is limited to a determination of whether "the evidence is insufficient to sustain a conviction".¹⁹

(iv) *Sufficiency of Evidence in Relation to the Counts of the Indictment*

15. In determining the sufficiency of the evidence, under Rule 98 bis, the Chamber must evaluate whether the evidence is "actually probative of the elements of the offence charged" in order to sustain a count based on that crime.²⁰ The Chamber, in assessing the sufficiency of the evidence, on Motions to acquit, may consider a number of elements, including circumstantial, uncorroborated, and hearsay evidence; contradictions between the witnesses' testimony and any prior written statements; inconsistencies or implausibilities within the testimonies; and other features of the witnesses' testimonies.²¹ The evidence of an expert witness may include both opinion evidence and factual evidence, as presented in documents.²² In the following section, the Chamber will examine the sufficiency of the evidence in relation to each count in the Indictment, in light of the legal standard under Rule 98 bis of the Rules.

¹⁷ *Semanza*, Decision on the Defence Motion for a Judgement of Acquittal (TC), 27 September 2001, para. 18.

¹⁸ *Bagosora et al.*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 7; *Nyiramasuhuko et al.*, Decision on Defence Motions for Acquittal Under Rule 98 bis (TC), 16 December 2004, paras. 73-75; *Ntagerura et al.*, 13 March 2002, para. 6; *Semanza*, Decision on the Defence Motion for a Judgement of Acquittal (TC), 27 September 2001, para. 18; *Kunarac et al.*, Decision on Motion for Acquittal (TC), 3 July 2000, para. 27 (rejecting a request to consider cumulative charging as beyond the scope of the 98 bis enquiry).

¹⁹ Rule 98 bis of the Rules.

²⁰ *Muvunyi*, Decision on Tharcisse Muvunyi's Motion for Judgement of Acquittal Pursuant to Rule 98 bis (TC), 13 October 2005, para. 39; *Bagosora et al.*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 10.

²¹ *Kupreskic*, Judgement (AC), 23 October 2001, para. 31; *Musema*, Judgement (AC), 16 November 2001, para. 20; *Delalic et al.*, Judgement (AC), 20 February 2001, paras. 485; *Kajelijeli*, Judgement (TC), 1 December 2003, paras. 39-40; *Rutaganda*, Judgement (AC), 26 May 2003, paras. 34-35; *Akayesu*, Judgement (TC), 2 September 1998, paras. 142-143; *Bagosora et al.*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 10.

²² *Bagosora et al.*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 10.

Article 6 (1): Individual Criminal Responsibility and Article 6 (3): Superior Responsibility

16. Articles 6 (1) and 6 (3) of the Statute set forth the elements of criminal responsibility, to be considered by the Chamber in its assessment of the sufficiency of the evidence in relation to the counts charged against the Accused.
17. Article 6 (1) of the Statute imposes individual criminal responsibility upon a person who "planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute". Article 6 (3) provides that where an act was committed by a subordinate, the superior is not relieved of liability, if the superior knew or had reason to know that the subordinate was about to commit such acts, or had done so, and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

Chamber's Rulings Regarding Exclusion of Evidence

18. Rulings issued on the admissibility of evidence during the course of the trial have had a substantial impact on the evidence which the Chamber may consider in relation to certain counts against certain of the Accused in the present case. The Chamber recalls these rulings: (i) the evidence of Professor Deo Mbonyinkebe will not be considered where he has expressed opinions upon ultimate issues of fact in the trial;²³ (ii) the testimony of Dr. Binaifer Nowrojee that falls outside the scope of her expertise or that is an expression of opinion on ultimate issues of fact in the trial will not be considered;²⁴ (iii) as against Jérôme-Clément Bicamumpaka, the evidence of Witnesses GTA and DCH about the killing of John Vuningoma will not be considered in respect of Count 6 (Murder) of the Indictment;²⁵ (iv) as against Prosper Mugiraneza, the evidence of Witnesses GJV, GJQ, GJY, GKS, GKM, GTF, GKR, GJT, GJR, GJU, GJN, GJO, GKT, GJX, GJW, GJZ, GTE, GKP, and LY relating to acts of the Accused in Kibungo or Cyangugu *Préfectures* will be considered only in respect of Count 1 (Conspiracy to Commit Genocide) and Count 3 (Complicity to Commit Genocide) of the Indictment;²⁶ (v) as against Casimir Bizimungu, the evidence of Witnesses AEI, GKE, GKF, GKI, GKB, GAP, GKC, GKD and GFA will not be considered in relation to acts of the Accused in Ruhengeri *Préfecture*.²⁷

²³ *Bizimungu et al.*, Decision on Casimir Bizimungu's Urgent Motion for the Exclusion of the Report and Testimony of Deo Sebahire Mbonyinkebe (Rule 98 (C)), 2 September 2005.

²⁴ *Bizimungu et al.*, Decision on the Admissibility of the Expert Testimony of Dr. Binaifer Nowrojee, 8 July 2005.

²⁵ *Bizimungu et al.*, Decision on Bicamumpaka's Urgent Motion to Declare Parts of the Testimony of Witnesses GTA and DCH Inadmissible, 24 November 2004.

²⁶ *Bizimungu et al.*, Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004, 4 October 2004.

²⁷ *Bizimungu et al.*, Decision on Motion from Casimir Bizimungu Opposing the Testimony of Witnesses AEI, GKE, GKF, and GKI, 3 February 2004; Decision on Motion from Casimir Bizimungu Opposing the Admissibility of the Testimony of Witnesses GKB, GAP, GKC, GKD, and GFA, 23 January 2004.

Count 1: Conspiracy to Commit Genocide

(i) *Introduction*

19. Count 1 of the Indictment charges all four Accused with the crime of conspiracy to commit genocide on the basis of both direct individual criminal responsibility, under Article 6 (1) of the Statute, and for imputed criminal responsibility, under Article 6 (3) of the Statute. The Indictment alleges that the Accused conspired together and with others to kill or cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed conspiracy to commit genocide. All of the Accused seek acquittal on the Count of Conspiracy to Commit Genocide under Article 6 (1) of the Statute. Casimir Bizimungu and Jérôme-Clément Bicamumpaka also seek acquittal under Article 6 (3) of the Statute.
20. The relevant time period identified in the Indictment is between late 1990 and July 1994.²⁸ The Tribunal's jurisdiction is limited to crimes committed during 1994.²⁹ However, the Chamber notes that conspiracy is a crime of a continuing nature.³⁰ For this reason, evidence of acts occurring prior to 1994 may be relied upon as evidence of crimes committed during the period between 1 January 1994 and 31 December 1994.
21. Count 1 of the Indictment alleges that the Accused persons "conspired together and with others..." The paragraphs of the Indictment which relate to the count of conspiracy name a number of co-conspirators. They are, first, in relation to each Accused, the three remaining co-Accused, and, second, the following persons: André Ntagerura,³¹ Pauline Nyiramasuhuko,³² Eliézer Niyitegeka,³³ Théoneste Bagosora,³⁴ Édouard Karemera,³⁵ André Rwamakuba,³⁶ Mathieu Ndirumpatse,³⁷ Joseph

²⁸ Indictment, para. 5.1.

²⁹ Statute, Article 1.

³⁰ *Nahimana et al.*, Judgement (TC), 3 December 2003, paras. 100-104, 1044.

³¹ Indictment, paras. 5.1, 6.9, 6.18, 6.19 (refers to "participation of all the Government ministers"), 6.21 (refers to "the Interim Government"), 6.22 (refers to "the Government" and "the Ministers"), 6.23, 6.26, 6.30, 6.31, 6.46 (refers to "the Interim Government"), 6.64, 6.66 (refers to "members of the Interim Government, political leaders"), 6.68.

³² Indictment, paras. 5.1, 5.14, 6.9, 6.18, 6.19 (refers to "participation of all the Government ministers"), 6.21 (refers to "the Interim Government"), 6.22 (refers to "the Government" and "the Ministers"), 6.23, 6.24, 6.26, 6.30, 6.31, 6.46 (refers to "the Interim Government"), 6.64, 6.66 (refers to "members of the Interim Government, political leaders"), 6.68.

³³ Indictment, paras. 5.1, 6.9, 6.18, 6.19 (refers to "participation of all the Government ministers"), 6.21 (refers to "the Interim Government"), 6.22 (refers to "the Government" and "the Ministers"), 6.26, 6.30, 6.31, 6.46 (refers to "the Interim Government"), 6.64, 6.66 (refers to "members of the Interim Government, political leaders"), 6.68.

³⁴ Indictment, paras. 5.1, 6.5, 6.8, 6.19 (refers to "participation of all the Government ministers"), 6.21 (refers to "the Interim Government"), 6.22 (refers to "the Government" and "the Ministers"), 6.46 (refers to "the Interim Government"), 6.66 (refers to "members of the Interim Government, political leaders"), 6.68.

³⁵ Indictment, paras. 5.1, 6.8, 6.9, 6.14, 6.18, 6.19 (refers to "participation of all the Government ministers"), 6.21 (refers to "the Interim Government"), 6.22 (refers to "the Government" and "the Ministers"), 6.26, 6.30, 6.31, 6.34, 6.46 (refers to "the Interim Government"), 6.64, 6.66 (refers to "members of the Interim Government, political leaders"), 6.67, 6.68.

³⁶ Indictment, paras. 5.1, 6.9, 6.14, 6.18, 6.19 (refers to "participation of all the Government ministers"), 6.21 (refers to "the Interim Government"), 6.22 (refers to "the Government" and "the Ministers"), 6.26, 6.30, 6.31, 6.46 (refers to "the Interim Government"), 6.64, 6.66 (refers to "members of the Interim Government, political leaders"), 6.67, 6.68.

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Nzirorera,³⁸ Juvénal Kajelijeli.³⁹ In those paragraphs which allege the Accused persons' commission of the crime of conspiracy, additional references are made to Prime Minister Jean Kambanda,⁴⁰ Callixte Nzabonimana,⁴¹ Arsène Shalom Ntahobali,⁴² President Sindikubwabo,⁴³ Tharcisse Renzaho,⁴⁴ Félicien Kabuga,⁴⁵ and Anatole Nsengiyumva.⁴⁶ It should also be noted that, while the Prosecution has named a number of alleged co-conspirators, the count itself uses the term "and others", as do a number of the relevant paragraphs of the Indictment.⁴⁷ Neither the count nor the paragraphs in the Indictment, therefore, name exhaustively, the alleged co-conspirators.

22. Conspiracy to commit genocide is punishable under Article 2 (3) (b) of the Statute. Genocide is defined in Article 2 (2) of the Statute as:

[a]ny of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (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.

23. Conspiracy is constituted when two or more persons agree on a common objective, the objective being a criminal act.⁴⁸ The *actus reus* of conspiracy to commit genocide is the act of entering into an agreement, the common object of which is to commit genocide; the *mens rea* is the intent to enter into such an agreement. Neither the *actus reus* nor the *mens rea* exists unless the perpetrator has, in common with his or her co-conspirators, the requisite specific intent of the crime of genocide.⁴⁹ Intent may be

³⁷ Indictment, paras. 5.1, 6.8, 6.14, 6.19 (refers to "participation of all the Government ministers"), 6.21 (refers to "the Interim Government"), 6.22 (refers to "the Government" and "the Ministers"), 6.34, 6.46 (refers to "the Interim Government"), 6.64, 6.66 (refers to "members of the Interim Government, political leaders"), 6.67, 6.68.

³⁸ Indictment, paras. 5.1, 5.14, 6.8, 6.14, 6.17, 6.19 (refers to "participation of all the Government ministers"), 6.21 (refers to "the Interim Government"), 6.22 (refers to "the Government" and "the Ministers"), 6.46 (refers to "the Interim Government"), 6.64, 6.66 (refers to "members of the Interim Government, political leaders"), 6.67, 6.68.

³⁹ Indictment, paras. 5.1, 6.14, 6.19 (refers to "participation of all the Government ministers"), 6.21 (refers to "the Interim Government"), 6.22 (refers to "the Government" and "the Ministers"), 6.46 (refers to "the Interim Government"), 6.64, 6.66 (refers to "members of the Interim Government, political leaders"), 6.67, 6.68.

⁴⁰ Indictment, paras. 6.9, 6.26, 6.30, 6.32, and 6.50.

⁴¹ Indictment, para. 6.23.

⁴² Indictment, para. 6.24.

⁴³ Indictment, para. 6.44.

⁴⁴ Indictment, para. 6.68.

⁴⁵ Indictment, para. 6.34.

⁴⁶ Indictment, para. 6.34.

⁴⁷ For example, while paragraph 5.1 names a number of alleged co-conspirators, it states that the co-Accused conspired amongst themselves "and with others, notably..." (emphasis added).

⁴⁸ *Bagosora et al.*, Decision on Motions for Judgement of Acquittal, 2 February 2005, para. 12, referring to *Musema*, Judgement (TC), 27 January 2000, para. 190.

⁴⁹ *Bagosora et al.*, Decision on Motions for Judgement of Acquittal, 2 February 2005, para. 12, referring to *Musema*, Judgement (TC), 27 January 2000, para. 192, "[W]ith respect to the *mens rea* of the crime to commit genocide, the Chamber notes that it rests on the concerted intent to commit genocide, that is, to destroy, in

proved by what the perpetrator said or, as with any crime, by drawing inferences from conduct which may show intent.⁵⁰ The offence is complete upon the agreement itself: the criminal object of the agreement need not be achieved. The agreement can be inferred from conduct.⁵¹ However, conspiracy cannot be committed by omission.⁵² Circumstantial evidence may be relied upon to prove the existence of the agreement,⁵³ for example, where evidence of coordinated action, by the Accused persons, in pursuit of the unlawful act, points irresistibly to an inference of an agreement to commit genocide.⁵⁴

24. The Chamber's task, therefore, on the basis of the legal principles concerning proof of conspiracy, as well as on the jurisprudence relating to Article 98 *bis* of the Statute discussed in paragraphs 3-7 above, is to determine whether there is evidence upon which a reasonable trier of fact could find that a conspiracy to commit genocide was formed amongst the Accused persons, the co-conspirators named in the Indictment, and others.

(ii) *Legal Issues*

Conspiracy and Genocide

25. The Defence teams for Casimir Bizimungu, Justin Mugenzi, and Jérôme-Clément Bicamumpaka all raise similar arguments relating to the preclusion of simultaneous findings of guilt on the crimes of genocide and conspiracy to commit genocide. They submit that a conspiracy itself precedes the execution of that conspiracy. As such, in its proof of the existence of a conspiracy, the Prosecution should be precluded from relying upon evidence concerning the execution of a conspiracy as evidence of that conspiracy's existence. In the context of this case, the Defence argues that the Prosecution should be limited to alleging facts demonstrating a conspiracy prior to the shooting down of President Habyarimana's plane, since evidence of events after 7 April 1994 is evidence of the crime of genocide and not of the crime of conspiracy to commit genocide. In support of this argument, the Defence for Justin Mugenzi and the Defence for Jérôme-Clément Bicamumpaka rely upon the authority of *Prosecutor v. Musema*.⁵⁵
26. The Chamber does not share the Defence views on this issue. While an Accused cannot be convicted of both genocide and conspiracy to commit genocide on the basis of the same facts, *Prosecutor v. Musema* concerns ultimate determinations, at judgement stage, by the trier of fact -- not a determination as to the sufficiency of evidence, under Rule 98 *bis*. Furthermore, the Defence argument regarding the

whole or in part, a national, ethnic, racial, or religious group, as such". See also *Niyitegeka*, Judgement (TC), 16 May 2003, para. 423.

⁵⁰ *Bagosora et al.*, Decision on Motions for Judgement of Acquittal, 2 February 2005, para. 12, referring to *Ndindabahizi*, Judgement (TC), 15 July 2004, para. 454

⁵¹ *Nahimana et al.*, Judgement, 3 December 2003, para. 1045.

⁵² *Musema*, Judgement (TC), 27 January 2000, para. 198.

⁵³ *Niyitegeka*, Judgement (TC), 16 May 2003, paras. 427-428, as cited by *Nahimana et al.*, Judgement, 3 December 2003, para. 1046.

⁵⁴ *Bagosora et al.*, Decision on Motions for Judgement of Acquittal, 2 February 2005, para. 12, referring to *Nahimana et al.*, Judgement (TC), 3 December 2003, paras. 1046-1049.

⁵⁵ *Musema*, Judgement (TC), 27 January 2000, paras. 186, 191, 193, and 198

alleged separation of the conspiracy into a planning phase, prior to 7 April 1994, and a commission phase, after 7 April 1994, fails to take into account the continuing nature of the offence, which may culminate in the commission of the act(s) contemplated by the conspiracy.⁵⁶ Accordingly, the Chamber is of the view that the Defence submission that evidence in respect of conspiracy to commit genocide should be compartmentalized into events that occurred either prior to or after 7 April 1994 is artificial. The time period covered by Count 1 is clearly articulated in the body of paragraph 5.1 of the Indictment: from late 1990 to July 1994.

27. While the date 7 April 1994 is indeed significant in this case, the Chamber does not agree that evidence concerning matters after that date should be considered in relation only to the crime of genocide. The Chamber is in no way precluded from considering evidence relating to events which occurred after 7 April 1994, which may show a meeting of the minds of the co-Accused and their co-conspirators, upon which an agreement to commit genocide could be inferred and the requisite intent established.⁵⁷ Whether that evidence is identical to the evidence relied upon in relation to the crime of genocide is a matter which will be relevant at judgement stage. At this stage of the proceedings, the Chamber is being asked to decide whether there is sufficient evidence on which a reasonable trier of fact could convict the Accused of the counts in the Indictment. The Chamber, under Rule 98 *bis*, is not required to elect which count, if any, may ultimately be the most appropriate one upon which to enter a conviction.

(iii) *Enumeration of Co-conspirators*

28. In its Reply, the Defence for Prosper Mugiraneza makes an additional argument with respect to the count of conspiracy. The Defence submits that, in the course of the Prosecution case and in its Response, an entirely different conspiracy to that alleged in the Indictment has unfolded before the Chamber. Whereas only three of the co-conspirators relied upon by the Prosecution are referred to the Indictment,⁵⁸ the Prosecution, in the course of its case, has alleged that Prosper Mugiraneza was involved in a conspiracy with a number of other persons, and has relied upon the evidence of this other alleged conspiracy in its Response.⁵⁹ The Defence also submits that the phrase "and others" used in the Indictment is not sufficient to define the alleged co-conspirators or to give the Accused notice of his alleged co-conspirators. In addition to the notice issue, the Defence argues that the conspiracy alleged in the Indictment must be the conspiracy proved at trial, and not another conspiracy. Evidence which may show that the Accused was in a conspiracy with persons who are not named in the Indictment is not sufficient to demonstrate that the Accused was a member of the conspiracy pled in the Indictment. The Defence asserts that, since there is no evidence of the Accused being in a conspiracy with the three persons

⁵⁶ *Nahimana et al.*, Judgement (TC), 3 December 2003, para. 1044.

⁵⁷ For example, how massacres were carried out, whether massacres were coordinated, the presence of Accused persons and/or their alleged co-conspirators at such massacres, meetings held after 7 April 1994 involving the co-Accused and/ or their alleged co-conspirators and what is alleged to have been said at such meetings, the alleged movement of the co-Accused and their alleged co-conspirators throughout the Rwandan territory during the relevant period and how such movement might coincide with the commencement or augmentation in the killing of Tutsi civilians.

⁵⁸ Namely, Prime Minister Kambanda, President Sindikubwaho, and Edouard Karemera.

⁵⁹ Namely, Colonel Rwagafilita, Augustine Munyaneza, Muliro and Rwatoro, Emmanuel Mugiraneza, Nchuguyinka, and Emmanuel Kabagame Rwagasore.

named in the Indictment, the evidence adduced is insufficient and, as a matter of law, the Chamber must acquit the Accused on the count of conspiracy.

29. The Chamber does not accept this submission by the Mugiraneza Defence. The question before the Chamber is whether, upon the basis of the allegations in the Indictment and the evidence presented, a reasonable trier of fact could find the Accused guilty of the crime alleged. Therefore, the Chamber must decide whether a reasonable trier of fact could find that the Accused, Prosper Mugiraneza, entered into a conspiracy to commit genocide with the persons named in the Indictment – notably, his three co-Accused and the numerous other individuals named in the Indictment. Furthermore, the Prosecution's presentation of evidence of Prosper Mugiraneza's alleged involvement, during the relevant period, with other persons not named in the Indictment does not offend any legal principle. First, the Indictment alleges that the Accused conspired with certain named individuals "and others". In the Chamber's view, it may not be possible for the Prosecution to name every single individual with whom an accused person is alleged to have conspired. Second, the Defence has received notice of the evidence to be presented by the Prosecution witnesses, and therefore, has been on notice of what such witnesses might say concerning any connection between these individuals and Prosper Mugiraneza. Third, the evidence concerning the Accused's connections with certain individuals does not mean that such evidence falls into the category of particulars not pleaded in the Indictment.

(iv) *Submissions on the Evidence*

Defence Motions

30. All the co-Accused submit that the Prosecution has failed to adduce sufficient evidence to prove the existence of a conspiracy between the persons named in the Indictment or the involvement of each co-Accused in a conspiracy, if one is found to exist. All the co-Accused also submit that they cannot be found guilty merely on the basis of their positions as Ministers of the Interim Government, which, they submit, is the basis of the Prosecution case.
31. The Defence for Casimir Bizimungu argues that conspiracy cannot be committed by omission, that the Accused must have actively participated in the alleged conspiracy, and that there is no such evidence against the Accused in this respect. The Defence for Justin Mugenzi asserts that the case against the Accused is *consistent with* rather than *probative of* a conspiracy to commit genocide. The Defence for Jérôme-Clément Bicamumpaka submits that the Prosecution is "proceeding backwards", assuming that the events of 1994 could have resulted only from a prior conspiracy. The Defence for both Jérôme-Clément Bicamumpaka and Casimir Bizimungu submit that mere presence is not sufficient to show that a person has entered into a conspiracy.

Prosecution Response

32. The Prosecution, in its Response, enumerates evidence against each of the four Accused upon which, it submits, a reasonable trier of fact could find each of them guilty of the crime of conspiracy to commit genocide.⁶⁰

⁶⁰ The case against Casimir Bizimungu is presented in paragraphs 81-92 of the Prosecution Response; the case against Justin Mugenzi is presented in paragraphs 29-39 of the Prosecution Response; the case against Jérôme-

Defence Replies

33. The Defence for Casimir Bizimungu, Jérôme-Clément Bicamumpaka, and Prosper Mugiraneza challenge several of the evidentiary summaries relied upon by the Prosecution in its Response.⁶¹ Furthermore, the Defence for Casimir Bizimungu submits that, on the basis of Decisions rendered on 23 January 2004 and 3 February 2004, the Chamber may not rely, in respect of Count 1 of the Indictment, upon any evidence against Casimir Bizimungu regarding his activities in Ruhengeri *Préfecture*.

(v) *Deliberations on the Evidence*

34. On the basis of the reasoning in paragraphs 25 and 26 above, it follows that the Chamber may consider all of the evidence before it pertaining to the count of conspiracy and is not limited to a consideration of evidence concerning events that occurred prior to 7 April 1994.

35. The Chamber must determine whether there is sufficient evidence upon which a reasonable trier of fact could find that a conspiracy to commit genocide was formed amongst the Accused persons, the co-conspirators named in the Indictment, and others, during the relevant period, and that they each had the requisite intent to commit genocide. The evidence is not based on direct observation of the Accused entering into an agreement with one another. Rather, the evidence concerns the words and conduct of the Accused, sometimes in the presence of one another and/or their alleged co-conspirators, which is said to be indicative of the existence of the alleged agreement. Furthermore, the manner in which events unfolded, following the shooting down of the President's plane, including the behaviour of the Accused, may be indicative of the existence of a conspiracy and of concerted planning prior to that date.

36. In its analysis, the Chamber has considered evidence including, but not limited to:

(1) Evidence concerning the alleged political affiliations of the co-Accused and the alleged institutional ethnic discrimination within those political parties at the relevant time and/or those parties' alleged involvement with the *Interahamwe*;⁶²

(2) Evidence concerning methods of organization and co-ordination during the period of late 1990 to July 1994 which may be evidence of pre-planning:

(a) Meetings allegedly involving all of the co-Accused, or involving one or more co-Accused, sometimes in the presence of other alleged co-conspirators (timing, content, participation, location);⁶³

Clément Bicamumpaka is presented in paragraphs 93-107 of the Prosecution Response; and the case against Prosper Mugiraneza is presented in paragraphs 108-120 of the Prosecution Response.

⁶¹ Casimir Bizimungu, Jérôme-Clément Bicamumpaka, and Prosper Mugiraneza each filed a Reply to the Prosecution Response.

⁶² See Witness GTC, who testified that, as of 1993, the PL power faction was comprised only of Hutu members and that Justin Mugenzi was the leader of the PL (T. 1 March 2005 pp. 18-22). See also Witness GJQ, who testified that Prosper Mugiraneza participated, from September 1993 until 1994, in the recruitment of *Interahamwe* (T. 10 March 2005 pp. 35-41, 47-48). See also Witness GJW, who testified that Prosper Mugiraneza, a prominent member of the MRND party, was in charge of party activities in Kigungo. (T. 22 March 2004 pp. 36-41, 52).

⁶³ See Witness Fidèle Uwizeye, who testified about two meetings at which all of the four co-Accused, as well as certain alleged co-conspirators, were present. According to the witness, Tutsi civilians and local administrators

- (b) Use of Government resources,⁶⁴ roadblocks,⁶⁵ military training, and distribution of arms;⁶⁶
- (c) Evidence concerning the movement of the Interim Government Ministers within the territory of Rwanda, sometimes in the presence of alleged co-conspirators, during the relevant period, to their home *préfectures*, and how these movements coincide with the commencement or augmentation of violence against Tutsi civilians;⁶⁷
- (d) Expert evidence concerning organization.⁶⁸

were killed subsequent to those meetings (T. 6 April 2005 pp. 52-53, 56; T. 7 April 2005 pp. 61-67). See also Witness UL, who testified about a meeting where the Accused Casimir Bizimungu told workers to get rid of corpses in the city of Kigali before white people took pictures of them (T. 2 March 2004, pp. 18-20). See also Witness GT, who testified about a meeting involving Casimir Bizimungu, Colonel Bagosora, and other military personalities, in Gisenyi *Préfecture* in May 1994 (T. 2 March 2005 pp. 1-13). See also Witness GMJ-G, who testified that, in July or August 1993, at a meeting in Nyanza, Justin Mugenzi said that Hutu should join forces and fight the common enemy, meaning the Tutsi and all Hutu who refused to fight the Tutsi (T. 5 March 2004 p. 31). See also Witness Harriet Sebera, who testified about the content of President Sindikubwabo's speech broadcast at the official installation ceremony of the new *préfet* of Butare, on 19 April 1994. (T. 20 October 2004 pp. 42-45). See also Witness D, who testified that, on 19 April 1994, following the President's speech at the installation ceremony, killings of Tutsi began in Butare (T. 15 June 2004 pp. 33, 40-41). See also Witness Isaie Sagahutu Murashi, who testified about Justin Mugenzi's speech delivered at the Palm Beach Hotel in Gisenyi on 20 April 1994 (T. 9 June 2004 p. 50). See Witness GHV, who testified that, in April 1994, sometime during the week following President Habyarimana's death, Jérôme-Clément Bicamumpaka spoke at a meeting, urging every Hutu to fight the enemy *Inyenzi*. (T. 4 March 2004 pp. 31-35; T. 5 March 2004 pp. 1-2). See also Witness GHY, who testified that, on the evening of 6 April 1994, following the downing of President Habyarimana's plane, Jérôme-Clément Bicamumpaka participated in a meeting at the home of the *Interahamwe* treasurer in Kabuga town (T. 29 September 2004 pp. 3, 5-6). See Witness GTA, who testified that, following a meeting held around 14 or 15 April 1994, at the MRND party hall in Cyangugu *Préfecture* in which Jérôme-Clément Bicamumpaka participated, mass killings of Tutsi occurred in the area (T. 9 March 2004 pp. 12, 14-15). See also Witness GJU, who testified about night meetings held at Prosper Mugiraneza's house or at Rwagafilita's house, to which only Hutu were invited, to prepare lists for military recruitment (T. 18 October 2004 pp. 15-17). See also Witness GTF, who testified about activities associated with a MRND political rally held in 1993, attended by Prosper Mugiraneza, Colonel Rwagafilita and Minister Karemera (T. 14 October 2004 pp. 12-15).

⁶⁴ See Witness QU, who testified that Casimir Bizimungu authorized the use of official Ministry of Health vehicles and fuel for *Interahamwe* "missions to kill" (T. 17 March 2004 pp. 5-7). See also Witness UL, an employee of the Ministry of Public Works, who testified that he dug graves and buried dead bodies in Kigali (between 11 and 22 April) and Butare (after 22 April) and that he excavated bodies at the *Centre Hospitalier de Kigali*, where there were many cadavers. (T. 2 March 2004 pp. 28, 37-42; T. 3 March 2004 pp. 37, 41).

⁶⁵ See Witness Fidèle Uwizeye, who testified that roadblocks were erected to stop fleeing Tutsi and that Tutsi were hunted down and killed. The witness also testified that, following the meeting of 18 April 1994, roadblocks were constructed in Gitarama and in the hills surrounding the Government seat, where Tutsi and their accomplices were killed (T. 6 April 2005 pp. 55, 58; T. 8 April 2005 p. 43).

⁶⁶ See Witness GT concerning Casimir Bizimungu's alleged involvement in the distribution of arms (T. 2 March 2005 pp. 1-17). See Witness GHU (T. 4 March 2004 pp. 6-9), Witness GHY (T. 29 September 2004 pp. 3, 5-6), and Witness GHT (T. 29 September 2004 pp. 3, 69) concerning Jérôme-Clément Bicamumpaka's alleged involvement in the distribution of arms. See Witness GJU concerning Prosper Mugiraneza's alleged involvement in military training of youth (T. 18 October 2004 pp. 15-18). See Witness GJT concerning Prosper Mugiraneza's alleged involvement in the distribution of weapons (T. 11 March 2004 pp. 24-25).

⁶⁷ See Witness D, who testified to being told by Prime Minister Kambanda that Ministers were sometimes sent to their home *préfectures* to incite the population to kill and that the *préfets* provided the Government with a progress report each morning on the killings in their respective regions. (T. 15 June 2004 p.48).

⁶⁸ See Professor Deo Mbonyinkebe's Expert Report (Prosecution Exhibit p. 95); Witness Dr. Alison Des Forges (T. 31 May 2005 pp. 45-58, 67-78, 82-86).

(3) Evidence concerning the Accused persons' and/or alleged co-conspirators' involvement in, or oversight of, massacres, killings and other acts of genocide and the timing of such alleged involvement.⁶⁹

37. With respect to Article 6 (3) responsibility, there is no evidence that any persons, over whom the Accused exercised superior responsibility, joined or participated in the alleged conspiracy to commit genocide. Therefore, the Chamber finds, with respect to Article 6 (3), that there is insufficient evidence upon which a reasonable trier of fact could be satisfied beyond reasonable doubt of the guilt of each of the co-Accused, on the basis of Article 6 (3) responsibility, and, as such, enters an acquittal with respect to that form of liability for all of the four Accused.

38. However, on the basis of the evidence presented above, the Chamber finds that there is sufficient evidence upon the basis of which, if believed, a reasonable trier of fact could be satisfied beyond reasonable doubt of the guilt of each Accused under Article 6 (1) of the Statute.

Count 2: Genocide

39. The Accused Prosper Mugiraneza and Jérôme-Clément Bicamumpaka request acquittal on Count 2 of the Indictment, charging Genocide, pursuant to Article 2 (3) (a) of the Statute, for alleged responsibility in killing or causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy it in whole or in part. The Defence for Mugiraneza challenges the sufficiency of the evidence concerning the Accused's responsibility as an individual and as a superior for alleged crimes of genocide, under both Articles 6 (1) and 6 (3) of the Statute.⁷⁰ The Defence for Bicamumpaka challenges the sufficiency of the evidence with regard to the Accused's alleged superior responsibility for the commission of the offences, under Article 6 (3) of the Statute.

40. The Chamber recalls the material acts of genocide discussed in paragraph 22 above:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (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.

41. The evidence related to Prosper Mugiraneza's alleged individual commission of genocide will be evaluated in respect of the elements of Article 6 (1) of the Statute. An examination of the evidence in relation to the alleged superior responsibility of both Prosper Mugiraneza and Jérôme-Clément Bicamumpaka will be made in light of the elements of Article 6 (3) of the Statute.

⁶⁹ See Witness QU concerning Casimir Bizimungu's alleged involvement in genocide (T. 17 March 2004 pp. 27-28). See also Witness LEL concerning Justin Mugenzi's alleged involvement in genocide (T. 16 February 2004 pp. 25-27, 29). See also Witness GAP (T. 20 January 2004 pp. 19-20), Witness GHR (T. 18 March 2004 pp. 53-54; 19 March 2004 pp. 4-5), and Witness GHY (T. 29 September 2004 pp. 3, 6-9, 34, 36-37) concerning Jérôme-Clément Bicamumpaka's alleged involvement in genocide. See also Witness GJR (T. 19 June 2004 p. 28) and Witness Fidèle Uwizeye (T. 6 April 2005 pp. 48, 51) concerning Prosper Mugiraneza's alleged involvement in genocide.

⁷⁰ Mugiraneza Motion, paras. 74-83.

Prosper Mugiraneza: Sufficiency of Evidence Under Articles 6 (1) and 6 (3) of the Statute

42. Preliminary to its consideration of the sufficiency of the evidence, the Chamber notes that, pursuant to its Decision of 4 October 2004, the testimonies of Witnesses GJV, GJQ, GJY, GKS, GKM, GTF, GKR, GJT, GJR, GJU, GJN, GJO, GKT, GJX, GJW, GJZ, GTE, GKP, and LY have not been considered in relation to Mugiraneza's alleged crimes of genocide occurring in the *Préfectures* of Kibungo and Cyangugu.⁷¹
43. There is evidence, other than that provided by excluded witness testimonies, referred to in paragraph 42 above, that Prosper Mugiraneza participated in acts of genocide in Gitarama *Préfecture*, by providing support and encouragement to *Interahamwe* to engage in genocide.⁷² Witness Fidèle Uwizeye, *Préfet* of Gitarama, testified to seeing the Accused at a meeting of *Préfets* in Kigali on 11 April 1994. At this meeting a programme was "read out" for avenging the death of President Habyarimana,⁷³ and a roadblock strategy explained "to fight the *Inkotanyi* or to fight the Tutsis".⁷⁴ The day following this meeting, 12 April 1994, the Interim Government moved its headquarters from Kigali to Murambi, in Gitarama *Préfecture*. Shortly thereafter, the witness saw Prosper Mugiraneza, and other Interim Government Ministers, at Kamonyi Parish Secondary School, in Gitarama *Préfecture*, in the midst of a large attack by armed *Interahamwe*.⁷⁵
44. Evidence also exists to support the Prosecution allegation that the Accused, a Government Minister and a leader in the MRND Party, participated in formulating the policy of the Interim Government and that he was aware of and involved in planning and perpetrating the genocide.⁷⁶ According to Fidèle Uwizeye, *Préfet* of Gitarama in April 1994, many local leaders, including *bourgmestres*, became instrumentalities used by the Accused and others in the Interim Government to mobilize the population to carry out the genocide.⁷⁷

⁷¹ *Bizimungu et al.*, Decision: Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004, 4 October 2004, para. 35.

⁷² T. 6 April 2005 pp. 48-51; T. 7 April 2005 pp. 60-62, 66-67.

⁷³ T. 7 April 2005 p. 60.

⁷⁴ T. 7 April 2005 p. 66.

⁷⁵ T. 7 April 2005 pp. 48-51. Fidèle Uwizeye testified that, after the Interim Government moved its headquarters from Kigali to Murambi, in Gitarama *Préfecture*, on 12 April 1994, an attack by *Interahamwe* occurred at Kamonyi Parish Secondary School. The Mother Superior of the school, Mama Francine, sought out the witness, who was the *préfet*, for assistance, "reporting that *Interahamwe* had attacked the school". Upon his arrival at the site, the witness saw assailants with "guns -- down the hill, near the school, in a place called Rwabashashya". The witness testified that "some of the ministers present here [in court] were there on that spot. They insulted me. I had no escort; I was driving myself, and I left this locality as a dog." The witness further testified, "Minister Prosper Mugiraneza was present, and he was with a Minister called Callixte" (T. 6 April 2005 pp. 48, 51).

⁷⁶ Witness Fidèle Uwizeye testified that the "senior leaders in the country" headquartered at Murambi "discredited the local leadership in Gitarama and brought about an atmosphere of looting, of killing and ... set up the roadblocks in Gitarama." According to the witness, "Their main purpose was to organise the killing of people" (T. 6 April 2005 p. 51).

⁷⁷ Witness Fidèle Uwizeye testified about a meeting, held on 18 April 1994, at which Ministers Prosper Mugiraneza and Justin Mugenzi, as well as national and local leaders, including *bourgmestres* from Gitarama *Préfecture* were present. At this meeting the Government's guidelines for the "civil defence" system were put in place, and it was suggested that anyone who did not support the Government policy should be removed from office (T. 6 April 2005 pp. 53, 56). The witness stated, "That's why after the 18th of April, the killings intensified and reached all the corners of the *préfecture*" (T. 6 April 2005 p. 63). The witness also testified that this meeting was a "turning point" in Gitarama *Préfecture*, following which many

45. To establish an individual's liability for genocide, it is necessary to adduce evidence not only of the commission of one or more of the material genocidal crimes, as enumerated in Article 2 (2) of the Statute, but to establish evidence of an individual's specific intent to commit genocide. According to the jurisprudence of this Tribunal, "[T]he specific intent for genocide requires that the perpetrator target his victims because of their membership in a protected group, with the intent to destroy at least a substantial part of that group".⁷⁸

46. In the absence of overt statements, an individual's intent to commit genocide may be inferred from the surrounding facts and circumstances, particularly the conduct of the individual. In *Jelusic*, the ICTY Appeals Chamber stated thus:

As to proof of specific intent, it may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive acts.⁷⁹

47. In view of the established jurisprudence cited above, the Chamber disagrees with the Defence assertion that genocidal intent cannot be inferred from "the fact that a perpetrator participates in the context of a wave of killings".⁸⁰

48. Accordingly, on the basis of the evidence concerning the Accused's commission of crimes of genocide, along with all reasonable possible inferences from such commission, the Chamber is of the view that there is evidence which, if believed, could lead a reasonable trier of fact to conclude that Prosper Mugiraneza supported and encouraged acts of genocide against the Tutsi. Whether the Accused's support and encouragement, assuming that the evidence is believed, constitutes individual responsibility, under Article 6 (1) of the Statute, or superior responsibility, under Article 6 (3) of the Statute, is a question of fact and law to be determined after full arguments by the parties at the end of the proceedings. Accordingly, the Chamber denies Prosper Mugiraneza's Motion for a judgement of acquittal on Count 2, under both Articles 6 (1) and 6 (3) of the Statute.

Jérôme-Clément Bicamumpaka: Sufficiency of Evidence Under Article 6 (3) of the Statute

49. There is evidence concerning Jérôme-Clément Bicamumpaka's responsibility as a superior for acts of genocide committed in Rwanda in 1994. Indeed there is direct evidence of the Accused's effective control over local leaders, *Interahamwe*, and youth-wingers known as *JDR-Inkuba*, whom he encouraged, through his words, his presence, and the distribution of weapons, to engage in genocide.⁸¹ There is evidence

bourgmestres "changed and became -- joined those who were doing the bad acts, the crimes" (T. 6 April 2005 p. 63).

⁷⁸ *Ndindabahizi*, Judgement (TC), 15 July 2004, para. 454, citing *Krstic*, Judgement (AC), 19 April 2004, para. 12. ("The intent requirement of genocide under Article 4 of the [ICTY] statute is therefore satisfied where evidence shows that the alleged perpetrator intended to destroy at least a substantial part of the protected group.")

⁷⁹ *Jelusic*, Judgement (AC), 5 July 2001, para. 47.

⁸⁰ Mugiraneza Motion, para. 78.

⁸¹ Witness GHV testified that, during the second week of April 1994, the Accused addressed "the leaders, the people in power, the youth-wingers known as *JDR-Inkuba*" at a meeting, where the Accused explained to the audience that "all Hutu must be vigilant and fight the enemy ... it was obvious he was calling upon Hutu to kill

that, as a Minister in the Interim Government, the Accused exercised influence over local authorities. There is evidence that Jérôme-Clément Bicamumpaka knew or had reason to know of crimes of genocide committed by local leaders and members of the *Interahamwe* and that he failed to take the necessary and reasonable measures to prevent such crimes or to punish the perpetrators thereof.⁸² Accordingly, the Chamber is satisfied that there is evidence which, if believed, could lead a reasonable trier of fact to conclude that the Accused is criminally responsible as a superior for genocidal killings, and denies the Defence Motion for acquittal of Count 2, under Article 6 (3) of the Statute.

Count 3: Complicity in Genocide

50. Two Accused, Prosper Mugiraneza and Jérôme-Clément Bicamumpaka, request acquittal on Count 3 of the Indictment, Complicity in Genocide, pursuant to Article 2 (3) (e) of the Statute. Prosper Mugiraneza requests acquittal of the count under both Articles 6 (1) and 6 (3) of the Statute. Jérôme-Clément Bicamumpaka requests acquittal for responsibility as a superior, under Article 6 (3) of the Statute.
51. From a review of the jurisprudence of this Tribunal, the Chamber is of the view that complicity to commit genocide refers to "all acts of assistance or encouragement that have substantially contributed to, or have had a substantial effect on, the completion of the crime of genocide."⁸³ Thus, a finding of aiding and abetting genocide could also sustain a conviction for complicity in genocide.⁸⁴ The Chamber, therefore, considers that the same evidence discussed in the preceding two sections, if believed, is also relevant to the two Accused in relation to Count 3, Complicity in Genocide.

Prosper Mugiraneza: Sufficiency of Evidence Under Articles 6 (1) and 6 (3) of the Statute

52. The evidence concerning Prosper Mugiraneza on Count 3 of the Indictment includes the testimonies of witnesses about events that occurred in Kibungo and Cyangugu *Préfectures*, which was excluded in respect of Count 2, Genocide.⁸⁵ However, in regard to the present count, the testimonies of these witnesses may be considered as evidence of the Accused's alleged acts of support and encouragement of *Interahamwe* and local authorities to participate in genocide.⁸⁶

Tutsi" (T. 5 March 2004, pp. 2-3, 9). Witness GHT testified that, on 9 April 1994, she saw the Accused arrive at Sebisogo's house, at approximately 3.30 in the afternoon. According to the witness, the Accused came in a white pick-up with yellow Government plates, accompanied by another vehicle, which was loaded with weapons, including grenades, guns, small axes, clubs, and long screwdrivers. Shortly after the Accused entered Sebisogo's compound, the witness saw many *Interahamwe* who off-loaded the contents from the vehicle. The following day massacres were carried out in her area (T. 29 September 2004 pp. 3, 69).

⁸² Witness Fidèle Uwizeye testified that the members of the Interim Government, while at Murambi, organized the killings in Gitarama *Préfecture* (T. 6 April 2005 p. 51). According to Witness GHV, "Bicamumpaka and company" went around all regions organizing meetings to incite the population to kill Tutsi (T. 5 March 2004, pp. 2-3, 9).

⁸³ *Semanza*, Judgement (TC), 15 May 2003, para. 395.

⁸⁴ *Bagosora et al.*, Decision on Motions for Judgement of Acquittal, 2 February 2005, para. 21.

⁸⁵ *Bizimungu et al.*, Decision: Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004, 4 October 2004, para. 35.

⁸⁶ Witness GJQ testified that Mugiraneza not only participated in the planning and had knowledge of massacres of Tutsi civilians but supplied the *Interahamwe* with weapons, which they used against Tutsi (T. 14 March 2005 pp. 9, 16).

53. Indeed an examination of the testimonies of Witnesses GJV, GJQ, GJY, GKP, GKS, GKM, GTF, GKR, GJT, GJU, GJX, and GTE indicates further evidence that Prosper Mugiraneza recruited membership for the *Interahamwe* and that he was involved in the training and distribution of weapons to the *Interahamwe*.⁸⁷ There is also evidence that the Accused exercised control over members of the *Interahamwe*, that he knew about the genocidal killings throughout Rwanda, and that he did nothing to prevent or punish these crimes.⁸⁸ Accordingly, at this stage of the proceedings, the Chamber is satisfied that sufficient evidence exists, if believed, to sustain a conviction of the Accused pursuant to his responsibility under Articles 6 (1) and 6 (3) of the Statute on the Count of Complicity in Genocide.

Jérôme-Clément Bicamumpaka: Sufficiency of Evidence Under Article 6 (3) of the Statute

54. ~~The Chamber is of the view that the same evidence discussed in relation to Count 2, if believed, could be sufficient for a reasonable trier of fact to find Jérôme-Clément Bicamumpaka guilty, under Article 6 (3) of the Statute, of Complicity in Genocide.~~

Count 4: Direct and Public Incitement to Commit Genocide

55. Two Accused, Prosper Mugiraneza and Jérôme-Clément Bicamumpaka, request acquittal on Count 4 of the Indictment, Direct and Public Incitement to Commit Genocide, as prescribed by Article 2 (3) (c) of the Statute. Prosper Mugiraneza requests acquittal of the count under both Articles 6 (1) and 6 (3) of the Statute. Jérôme-Clément Bicamumpaka requests acquittal for responsibility as a superior, under Article 6 (3) of the Statute.
56. The Chamber recalls the definition of Direct and Public Incitement to Commit Genocide articulated in *Prosecutor v. Akayesu*:

Direct and public incitement must be defined for the purposes of interpreting Article 2 (3), as directly provoking the perpetrator(s) to commit genocide, whether through speeches, shouting or threats uttered in public places at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at public gatherings, or through the public display of placards or posters, or through any other means of audiovisual communication.⁸⁹

57. In reviewing the meaning of each term in the definition of "direct and public incitement", the Chamber observes that incitement has been interpreted as

⁸⁷ Witness GJU testified that Prosper Mugiraneza and Celestin Rwagafilita invited grass-roots leaders to compile lists of youth for the purpose of training them for the *Interahamwe* and *Abajekaro* militia. One of the grass-roots leaders was Murwanashyaka, who trained the *Abajekaro* and incited them to massacre and loot Tutsi (T. 18 October 2004 pp. 7-8). Witnesses GKP and GJQ testified that the Accused distributed guns to the *Interahamwe*, which they used against the Tutsi (GKP: T. 8 December 2003 p. 8), (GJQ: T. 14 March 2005 pp. 9, 16).

⁸⁸ Witness GJQ testified that the Accused participated in the planning and had knowledge of massacres of Tutsi civilians (T. 14 March 2005 pp. 9, 16). According to Witness GJQ, the Accused was aware of the massacres occurring throughout the country; he "followed everything by the minute" (T. 10 March 2005 p. 47; T. 14 March 2005 pp. 3-4, 8-9, 11-18). Witness GTE also testified that Prosper Mugiraneza knew of the massacres throughout Rwanda (T. 1 December 2003 pp. 5-6, 11-12).

⁸⁹ *Akayesu*, Judgement (TC), 2 September 1998, para. 559.

"encouragement or provocation to commit an offence".⁹⁰ To be direct, the incitement must be "more than mere vague or indirect suggestion",⁹¹ but may be "implicit".⁹² The direct element of the crime should be viewed "in the light of its cultural and linguistic context" and assessed on a case-by-case basis by "focusing mainly on the issue of whether the persons for whom the message was intended immediately grasped the implication thereof".⁹³

58. The public element of incitement has been interpreted as a "call for criminal action to a number of individuals in a public place or to members of the general public at large by such means as the mass media".⁹⁴ In determining whether the incitement is public, two important factors to consider are: the place where the incitement occurred and whether or not the assistance was selective or limited.⁹⁵ The *mens rea* of the crime lies in the "intent to directly prompt or provoke another to commit genocide".⁹⁶ When examining the evidence, the Chamber is mindful that direct and public incitement to commit genocide is an inchoate offence which is punishable even where such incitement proves unsuccessful.⁹⁷

Prosper Mugiraneza: Sufficiency of Evidence Under Articles 6 (1) and 6 (3) of the Statute

59. The Defence acknowledges evidence that "Mugiraneza made or was present at speeches and political rallies both before and during the Tribunal's temporal jurisdiction", but asserts that this evidence fails to support a finding of direct and public incitement to commit genocide.⁹⁸ Specifically, the Defence challenges the sufficiency of the evidence in relation to the public character of the meetings and rallies and in relation to any speeches made by the Accused, in 1994, which could be construed as incitement".⁹⁹
60. There is also evidence that the Accused attended political meetings and rallies in 1994, where inciting words were spoken by speakers with whom he was politically associated. Specifically, Harriet Sebera testified that President Sindikubwabo

⁹⁰ *Nahimana et al.*, Judgement (TC), 3 December 2003, para. 1011; *Akayesu*, Judgement (TC), 2 September 1998, para. 555.

⁹¹ *Bagosora et al.*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 22; *Nahimana et al.*, Judgement (TC), 3 December 2003, para. 1011; *Akayesu*, Judgement (TC), 2 September 1998, para. 557.

⁹² *Nahimana et al.*, Judgement (TC), 3 December 2003, para. 1011; *Akayesu*, Judgement (TC), 2 September 1998, para. 557.

⁹³ *Nahimana et al.*, Judgement (TC), 3 December 2003, para. 1011; *Akayesu*, Judgement (TC), 2 September 1998, para. 557.

⁹⁴ *Nahimana et al.*, Judgement (TC), 3 December 2003, para. 1011; *Akayesu*, Judgement (TC), 2 September 1998, para. 556, citing the definition of the International Law Commission in its Report to the General Assembly, 51 U.N. ORGA Supp. (no. 10) at 26, U.N. Doc A/5/10 (1996).

⁹⁵ *Muvunyi*, Decision on Tharcisse Muvunyi's Motion for Judgement of Acquittal Pursuant to Rule 98 bis, 13 October 2005, para. 61; *Nahimana et al.*, Judgement (TC), 3 December 2003, para. 1011; *Niyitegeka*, Judgement (TC), 16 May 2003, para. 431; *Akayesu*, Judgement (TC), 2 September 1998, para. 557.

⁹⁶ *Muvunyi*, Decision on Tharcisse Muvunyi's Motion for Judgement of Acquittal Pursuant to Rule 98 bis (TC), 13 October 2005, para. 61; *Bagosora et al.*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 22; *Akayesu*, Judgement (TC), 2 September 1998, para. 560.

⁹⁷ *Muvunyi*, Decision on Tharcisse Muvunyi's Motion for Judgement of Acquittal Pursuant to Rule 98 bis (TC), 13 October 2005, para. 61; *Nahimana et al.*, Judgement (TC), 3 December 2003, para. 1013; *Niyitegeka*, Judgement (TC), 16 May 2003, para. 431; *Akayesu*, Judgement (TC), 2 September 1998, para. 562.

⁹⁸ Mugiraneza Motion, para. 96.

⁹⁹ Mugiraneza Motion, para. 96.

exhorted the population to kill on the occasion of the swearing-in ceremony of the newly-appointed *Préfet* of Butare, on 19 April 1994. Although the Accused did not speak on this occasion, there is evidence that he was present as one of the Government Ministers in the President's entourage.¹⁰⁰ The witness, who listened to President Sindikubwabo's address broadcast live on public radio, testified to hearing him say repeatedly, "Get rid of them", referring to Tutsi, and to hearing him make "different statements ... inciting the people in Butare to kill Tutsi, who were considered as the enemy".¹⁰¹ The following day, massacres began in the region, with the killing of Queen Rosalie Gicanda, a Tutsi, and the former *préfet* of Butare, Jean-Baptiste Habyarimana, a Tutsi.¹⁰² Witness Fidèle Uwizeye also testified that the Accused was present, on 18 April 1994, at a meeting in Gitarama *Préfecture*, led by Prime Minister Kambanda, following which "the killings intensified in Gitarama and reached all corners of the *préfecture*".¹⁰³

61. In the Chamber's view, there is evidence concerning the Accused's participation or attendance at political meetings and rallies, which, if believed, could be sufficient evidence to sustain a conviction for his responsibility, under Article 6 (1), for direct and public incitement to commit genocide. While no evidence has been presented that Prosper Mugiraneza spoke at the Government ceremony on 19 April 1994 in Butare, or at the Government meeting in Gitarama on 18 April 1994, the Chamber finds that evidence of his attendance at these public meetings, where Government officials incited massacres of Tutsi, could, if believed, be sufficient to lead to a finding beyond reasonable doubt that the Accused aided and abetted in the commission of incitement to commit genocide. Therefore, the Chamber denies Prosper Mugiraneza's Motion for a judgement of acquittal on Count 4, under Article 6 (1) of the Statute.
62. The Chamber has considered the evidence concerning Prosper Mugiraneza's authority, by virtue of his position as a Minister of the Interim Government, his leadership of the MRND Party, and his influence over local Government and MRND officials and leaders. There is evidence that he encouraged local leaders to incite others to engage in criminal conduct. There is evidence that Prosper Mugiraneza knew, or had reason to know, of the killing of Tutsi civilians instigated by local leaders through their speeches to the local population, and that he failed to take measures to punish or to prevent the commission of these crimes.¹⁰⁴ Accordingly, the Chamber is of the view that there is sufficient evidence which, if believed, could sustain a conviction of the Accused for his responsibility under Article 6 (3) for direct and public incitement to commit genocide, and denies the Defence Motion for acquittal on Count 4, under Article 6 (3) of the Statute.

Jérôme-Clément Bicamumpaka: Sufficiency of Evidence Under Article 6 (3) of the Statute

63. There is evidence that Jérôme-Clément Bicamumpaka, as a Minister of the Interim Government exercised *de jure* and *de facto* authority over local leaders and

¹⁰⁰ P.2 (22) E) pp. K012-4789-K012-4790.

¹⁰¹ T. 20 October 2004 pp. 43-44.

¹⁰² T. 20 October 2004 p. 44; T. 21 October 2004 pp. 8-15.

¹⁰³ T. 6 April 2004 p. 63.

¹⁰⁴ For example, Witness Fidèle Uwizeye offered evidence in respect of the Accused's alleged participation in, knowledge of, and influence over the widespread and mass killings throughout Rwanda (T. 6 April 2005 pp. 4-8, 11-15, 18-19).

Interahamwe. There is also evidence capable of establishing the Accused's knowledge of several meetings organized by local leaders, including the *préfet* of Gitarama and an *Interahamwe* chief, where "people's heads were heated up and they started killing".¹⁰⁵ The Chamber is of the view that this evidence, if believed, is sufficient to lead a reasonable trier of fact to find Jérôme-Clément Bicamumpaka guilty beyond a reasonable doubt of direct and public incitement to commit genocide, under Article 6 (3) of the Statute. Accordingly, the Defence Motion for acquittal of Count 4, under Article 6 (3) of the Statute, is denied.

Count 6: Murder as a Crime against Humanity

64. Three Accused, Casimir Bizimungu, Justin Mugenzi, and Prosper Mugiraneza, request acquittal on Count 6 of the Indictment, Murder as a Crime against Humanity, under Articles 6 (1) and 6 (3) of the Statute. Jérôme-Clément Bicamumpaka requests that the Chamber enter a judgement for acquittal on all counts, including Count 6, for Article 6 (3) liability, and further requests that the Chamber, *proprio motu*, grant acquittal on any count for which the Prosecution has not presented sufficient evidence.

65. The definition of Murder as a Crime against Humanity is not in controversy between the Parties. Both the Defence for Mugenzi and the Prosecution cite the definition of murder enunciated in *Prosecutor v. Ndindabahizi*.¹⁰⁶

66. Furthermore, the Prosecution specifically supports the slightly higher threshold of the definition of murder requiring premeditation:

In brief, the *mens rea* of murder is a premeditated intent to kill or inflict grievous bodily harm, with knowledge of and reckless [disregard] toward the likelihood that this harm will cause the victim's death.¹⁰⁷

67. The Trial Chamber in *Prosecutor v. Muhimana* articulated substantially the same standard as that applied by the Trial Chamber in *Prosecutor v. Ndindabahizi*, stating that:

Murder is the intentional killing of a person, or intentional infliction of grievous bodily harm committed with the knowledge that such harm, will likely cause the victim's death, and with no lawful justification or excuse. Murder, like rape, is punishable as a crime against humanity, "when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds."¹⁰⁸

68. The Chamber endorses this definition of murder, with the requirement that the intentional killing be premeditated.

69. The Chamber has carefully examined the record, and is persuaded that there is sufficient evidence to establish that during the period April-July 1994, widespread, if not also systematic, attacks were committed in Rwanda.

¹⁰⁵ T. 19 March 2004 pp. 4, 24.

¹⁰⁶ Mugenzi Motion, para. 49; Prosecution Response, para. 329.

¹⁰⁷ Prosecution Response, para. 238.

¹⁰⁸ *Muhimana*, Judgement and Sentence (TC), 28 April 2005, para. 568.

Casimir Bizimungu: Sufficiency of Evidence Under Articles 6 (1) and 6 (3) of the Statute

70. The Defence for Casimir Bizimungu admits that Witness GTD presented evidence linking the Accused to the murder of a soldier and a child named Védaste at a bar in Gitarama. However, according to the Defence, this evidence was “riddled with improbabilities and contradictions”. The Defence submits that the Prosecution case in respect of the alleged murder “completely broke down” and that no reasonable trier of fact could conclude that Casimir Bizimungu had the necessary *mens rea* to be found guilty of this alleged crime.
71. The Chamber has examined the record, particularly the evidence presented by Witness GTD,¹⁰⁹ connecting Casimir Bizimungu with the events leading to the killing of a soldier and a child named Védaste at a bar in Gitarama. Although the Defence has characterized this evidence as unreliable, the Chamber cannot say that the evidence is so lacking in credibility that no reasonable trier of fact could find the Accused guilty under either Article 6 (1) or 6 (3) of the Statute for Murder as a Crime Against Humanity. Consequently, the Chamber cannot enter a judgement of acquittal for Casimir Bizimungu, in respect of Count 6, under Article 6 (1) or 6 (3) of the Statute, and denies the Defence motion on this count. The Chamber’s ultimate determination must be based on findings of fact which can be made only at the end of the proceedings, when all the evidence has been presented.

Justin Mugenzi: Sufficiency of Evidence Under Articles 6 (1) and 6 (3) of the Statute

72. The Defence for Justin Mugenzi accepts, in general terms, that there is evidence regarding the commission of crimes against humanity in Rwanda in 1994. However, it disputes the sufficiency of evidence in relation to Count 6 of the Indictment against the Accused. The Defence argues that, for a conviction to be entered against the Accused on the alleged acts of murder, the Prosecution must establish a link between Justin Mugenzi and the killings.
73. The Prosecution responds that Witnesses GKJ and LEL gave evidence of Justin Mugenzi’s direct link to the killings. Witness GKJ testified about the killing of Jean-Baptiste Muyango at Kivumu on an unspecified date in April 1994.¹¹⁰ Witness LEL testified that she heard from others that Justin Mugenzi had sent a soldier to the church where she was taking refuge, and that that soldier removed from the Church a woman called Vestine prior to an attack on the church,¹¹¹ which, according to the Prosecution, shows the selective use of Justin Mugenzi’s authority to save people from being killed, his general influence and power, and his responsibility for the deaths of the refugees who remained in the church.
74. After considering the parties’ submissions, the Chamber cannot say that there is no evidence linking Justin Mugenzi to the killing of identifiable individuals during the events of 1994 in Rwanda. The Chamber notes, in particular, Witness GKJ’s testimony relating to the death of Jean-Baptiste Muyango, which goes to the Accused’s responsibility, as a superior for the crime of murder, under Article 6.3 of

¹⁰⁹ T. 1 July 2004 pp. 22-24.

¹¹⁰ T. 23 September 2004 pp. 39-40.

¹¹¹ T. 16 February 2004 pp. 28-33.

the Statute. Therefore, the Chamber denies the Defence motion for acquittal on Count 6, under Article 6 (3) of the Indictment.

75. The Chamber can find no evidence on which a reasonable trier of fact could convict Justin Mugenzi for Article 6 (1) responsibility for the crime of murder. Consequently, the Chamber enters a judgement of acquittal in respect of Article 6 (1) of the Statute for Justin Mugenzi on Count 6 of the Indictment.

Prosper Mugiraneza: Sufficiency of Evidence Under Articles 6 (1) and 6 (3) of the Statute

76. The Defence for Prosper Mugiraneza submits that there is no admissible evidence linking Prosper Mugiraneza to any murder or no evidence that any of Prosper Mugiraneza's subordinates in the Ministry for Civil Service was involved in the commission of murders. The Defence further asserts that no evidence was adduced to establish a superior-subordinate relationship between the Accused and anyone outside of the Ministry for Civil Service, and that, therefore, he cannot be held responsible for crimes of murder committed by the general population.
77. The Prosecution in its Response cites no evidence linking Prosper Mugiraneza to the killing of clearly identifiable individuals. The Chamber is unable to accept the Prosecution argument that Prosper Mugiraneza may be found guilty of murder for the generalized killings that occurred in Rwanda between April and July 1994, without sufficient evidence establishing a link between the commission of a specific killing of an identifiable individual by the Accused, or by one or more persons over whom the Accused exercised authority.
78. The Chamber recalls the evidence of Witness GKS, who testified that, on 11 April 1994, a Tutsi man called Musonera was disarmed by *Bourgmestre* Emmanuel Mugiraneza on the instructions of Prosper Mugiraneza, and was later killed that same day.¹¹² However, this testimony, in relation to the present count of the Indictment against the Accused, was excluded by the Chamber in its Decision of 4 October 2004.¹¹³ Other than this testimony, no other evidence has been presented in relation to the allegations against the Accused on Count 6. Consequently, the Chamber grants the Motion of Prosper Mugiraneza for a judgement of acquittal on Count 6 of the Indictment, under both Articles 6 (1) and 6 (3) of the Statute.

Jérôme-Clément Bicamumpaka: Sufficiency of Evidence Under Articles 6 (1) and 6 (3) of the Statute

79. In its Response, the Prosecution does not provide the Chamber with any examples of the Accused's criminal responsibility for commission of murder, apparently proceeding on the basis that the Defence has not requested acquittal on Count 6, although, in fact, the Defence seeks "a judgement of acquittal on all counts of the Indictment with regards to their commission pursuant to Article 6 (3)" and on any count, *proprio motu*, for which insufficient evidence has been adduced.¹¹⁴

¹¹² T. 24 March 2004 pp. 57-60; T. 25 March 2004 pp.1-5.

¹¹³ *Bizimungu et al.*, Decision: Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004, 4 October 2004, para. 35.

¹¹⁴ Bicamumpaka Motion, para. 31.

80. Having examined the record, the Chamber finds the only evidence against the Accused, in respect of Count 6, to be testimony of his alleged involvement in the killing of John Vuningoma, which evidence the Chamber excluded, on this count, in its Decision of 24 November 2004.¹¹⁵ Other than this excluded testimony, the Chamber finds no evidence on which a reasonable trier of fact could convict the Accused for the crime of murder either under Article 6 (1) or Article 6 (3) of the Statute. Therefore, the Chamber enters a judgement of acquittal for Jérôme-Clément Bicamumpaka in respect of Count 6 of the Indictment, under both Articles 6 (1) and 6 (3) of the Statute.

Count 7: Extermination as a Crime against Humanity

81. Two Accused, Prosper Mugiraneza and Jérôme-Clément Bicamumpaka, request a judgement of acquittal on Count 7 of the Indictment, Extermination as a Crime against Humanity. Prosper Mugiraneza requests acquittal of the count under both Articles 6 (1) and 6 (3) of the Statute. Jérôme-Clément Bicamumpaka requests acquittal for responsibility as a superior, under Article 6 (3) of the Statute.
82. The Appeals Chamber has recently defined extermination as participation in the widespread or systematic killing of a group or systematically subjecting a number of people to conditions of living that would inevitably lead to their deaths.¹¹⁶ The Appeals Chamber stressed that the Prosecution is not required to establish that the perpetrator is individually responsible for killing any specific individual (by the forms of commission set out in Article 6 (1) of the Statute) and that the victims need not be named or described in the Indictment.¹¹⁷ In contrast with the crime of murder, whose material element may be satisfied by the killing of an individual and proof that the perpetrator intended the death of that individual, as part of a widespread or systematic attack, extermination is directed at a group collectively, resulting in the killing of a large number of victims. Whether the participation is sufficient to constitute extermination depends on a complete evaluation of the facts.¹¹⁸

Prosper Mugiraneza: Sufficiency of Evidence Under Article 6 (1) of the Statute

83. In view of the evidence concerning Prosper Mugiraneza discussed in regard to the charge of genocide, the Chamber is satisfied that there is evidence which, if believed, could lead a reasonable trier of fact to conclude that the Accused participated in activities whose purpose and effect was to cause the mass death of Tutsi civilians. Additionally, there is evidence that such mass killings did indeed occur. The Chamber, therefore, denies the Defence motion for judgement of acquittal on Count 7 of the Indictment, under Article 6 (1) of the Statute.

¹¹⁵ *Bizimungu et al.*, Decision on Bicamumpaka's Urgent Motion to Declare Parts of the Testimony of Witnesses GTA and DCH Inadmissible, 24 November 2004, in which the Chamber held that it "will disregard the evidence of Witnesses GTA and DCH on the killing of John Vuningoma in relation to Count Six of the Indictment".

¹¹⁶ *Ntakirutimana*, Judgement (AC), 13 December 2004, para. 522.

¹¹⁷ *Ntakirutimana*, Judgement (AC), 13 December 2004, paras. 522, 546; *Bagosora et al.*, Decision on Motions for Judgement of Acquittal, 2 February 2005, para. 28.

¹¹⁸ *Ntakirutimana*, Judgement (AC), 13 December 2004, paras. 542, 546; *Ndindabahizi*, Judgement (TC), 15 July 2004, paras. 479, 482; *Akayesu*, Judgement (TC), 2 September 1998, para. 591; *Bagosora et al.*, Decision on Defence Motions Pursuant to Rule 98 bis, 2 February 2005, para. 28.

Prosper Mugiraneza and Jérôme-Clément Bicamumpaka: Sufficiency of Evidence Under Article 6 (3) of the Statute

84. Evidence has been presented that both Prosper Mugiraneza and Jérôme-Clément Bicamumpaka wielded authority and influence over local Government officials and leaders of the *Interahamwe*. Evidence also has been adduced that both Accused were informed of crimes of mass killings directed by identified local Government officials and MRND leaders, and that the Accused failed to take the necessary and reasonable measures to prevent such crimes or to punish the perpetrators thereof. The evidence of the relationship between the Accused and local Government and MRND officials and *Interahamwe* leaders could, if believed, establish a superior-subordinate relationship. That finding, of course, must be based on determinations of fact which the Chamber can make only at the end of the proceedings, in light of the full arguments of the parties. Accordingly, the Chamber denies the Motions of both Prosper Mugiraneza and Jérôme-Clément Bicamumpaka for acquittal on Count 7 of the Indictment, under Article 6 (3) of the Statute.

Count 8: Rape as a Crime against Humanity

85. The four Accused, Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, and Prosper Mugiraneza, request a judgement of acquittal, on Count 8, Rape as a Crime against Humanity, pursuant to Article 3 (g) of the Statute. All Accused request acquittal under both Articles 6 (1) and 6 (3) of the Statute.

Justin Mugenzi: Sufficiency of the Evidence Under Articles 6 (1) and 6 (3) of the Statute

86. The Defence for Justin Mugenzi argues that charges on Count 8 should be dismissed for lack of any evidence linking the Accused with alleged acts of rape in Rwanda in 1994, under Article 6 (1) or Article 6 (3) of the Statute. With respect to the Accused's alleged liability under Article 6 (1) of the Statute, the Defence submits that neither the Indictment nor the Pre-Trial Brief nor any admissible evidence indicates Justin Mugenzi's involvement, directly or indirectly, in acts of rape.
87. With respect to Justin Mugenzi's alleged liability under Article 6 (3), the Defence submits that no evidence has been adduced to establish the existence of a superior-subordinate relationship between Justin Mugenzi and any individual who is shown to have committed acts of rape. The Defence further argues that there is no evidence that the Accused knew or should have known of any acts of rape. The assertion that Justin Mugenzi, by virtue of his position as a Government Minister, had or should have had knowledge of individual crimes of rape is both "unrealistic" and "wholly unsupported by any evidence". In support of this argument, the Defence refers to the evidence presented by the *préfet* of Gitarama, who testified to having no knowledge of any rape in his *préfecture* until after the period of the Tribunal's temporal jurisdiction.¹¹⁹ The Defence also reminds the Chamber that, as parts of Dr. Nowrojee's testimony were declared inadmissible, any evidence demonstrating the Accused's alleged knowledge of crimes of rape, under Article 6 (3), is "utterly missing" from the Prosecution case.

¹¹⁹ Mugenzi Motion, para. 88.

88. The Chamber recalls the evidence presented by Witness LEL, who testified to the rape of a certain Uwera. The Chamber notes that Witness LEL was the only witness to have mentioned Justin Mugenzi during the course of testimony. According to this witness, some refugees, who had sought shelter in a church, mentioned the Accused's name, after a soldier had entered and left the church.¹²⁰ The witness later heard it said that Justin Mugenzi was responsible for the attack on this church.¹²¹
89. Having closely reviewed Witness LEL's testimony, the Chamber finds no evidence to implicate Justin Mugenzi with the rape of Uwera. The witness's testimony does not provide a link between the Accused and the alleged perpetrator of Uwera's rape so as to establish a superior-subordinate relationship; nor does the record show that the Accused knew or had reason to know of the rape of Uwera.
90. The Chamber finds that Justin Mugenzi has no case to answer in respect of any rape committed under the Tribunal's jurisdiction. Consequently, the Chamber grants a judgement of acquittal to Justin Mugenzi on this count, under both Article 6 (1) and Article 6 (3) of the Statute.

Casimir Bizimungu: Sufficiency of the Evidence Under Articles 6 (1) and 6 (3) of the Statute

91. The Defence argues that the Prosecution has not accused Casimir Bizimungu of rape under Article 6 (1) of the Statute. Indeed, the relevant paragraphs of the Indictment (5.37 and 6.65) are not listed among the factual elements, in support of Count 8. Furthermore, according to the Defence, no evidence has been adduced to establish the Accused's responsibility for the crime of rape either by individual commission, aiding and abetting, or incitement.
92. The Defence further submits that no evidence has been adduced to demonstrate that Casimir Bizimungu was aware that any of his subordinates committed acts of rape. In support of its argument, the Defence refers to the testimony of the *préfet* of Gitarama that the authorities only learned of the commission of crimes of rapes well after July 1994. The Defence also refers to the Chamber's Decision of 8 July 2005 in respect of the inadmissibility of Dr. Binaifer Nowrojee's opinion regarding government authorities' knowledge of rapes throughout Rwanda in 1994.
93. The Chamber notes that, by virtue of the Decision issued on 23 January 2004, the testimonies of Witnesses GKB and GAP are inadmissible as evidence against Casimir Bizimungu. Although Witness GAT testified to sexual threats from members of the *Interahamwe* who worked at the Ministry of Health, the witness did not provide any evidence of any act of rape against an identified individual or any evidence that linked the Accused with any crime of rape.¹²² Accordingly, the Chamber finds that Casimir Bizimungu has no case to answer in respect of Count 8, and the Chamber grants his Motion for a judgement for acquittal, under Article 6 (1) and Article 6 (3) of the Statute.

¹²⁰ T. 16 February 2004 pp. 28-29.

¹²¹ T. 16 February 2004 p. 32.

¹²² T. 26 February 2004 pp. 11, 17.



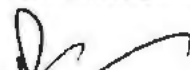
Jérôme-Clément Bicamumpaka and Prosper Mugiraneza: Sufficiency of the Evidence Under Articles 6 (1) and 6 (3) of the Statute

94. The Defence for Jérôme-Clément Bicamumpaka argues that no evidence has been presented to associate the Accused with the offence of rape. The Defence further asserts that the Accused was ignorant of "occurrences of rape", as supported by the testimony of Fidèle Uwizeye, *Préfet* of Ruhengeri in April 1994, that reports by victims of rape were not made to the authorities until well after the genocide.
95. The Defence for Prosper Mugiraneza argues that the Indictment does not specify the dates, locations, and identities of the victims and perpetrators in respect of the alleged rapes and that the Indictment cannot therefore support a conviction. Furthermore, the Defence submits, the knowledge requirement, under Article 6 (3) of this crime is not met, insofar as there is no evidence that the Interim Government knew or had reason to know of widespread rapes.
96. The Chamber notes that none of the witnesses who presented evidence on Count 8 has mentioned Jérôme-Clément Bicamumpaka or Prosper Mugiraneza in connection with any crime of rape. Although there is expert testimony as to the widespread and systematic nature of rapes between April and July 1994 in Rwanda, the Chamber cannot infer knowledge on the part of the Accused of these crimes, in respect of Article 6 (3) responsibility.¹²³ Accordingly, the Chamber finds that there is insufficient evidence against Jérôme-Clément Bicamumpaka and Prosper Mugiraneza for a reasonable trier of fact to find guilt beyond a reasonable doubt for the commission of rape, under either Article 6 (1) or Article 6 (3). Therefore, the Chamber grants the Motions for a judgement of acquittal in respect of Count 8 for both Jérôme-Clément Bicamumpaka and Prosper Mugiraneza, under Articles 6 (1) and 6 (3) of the Statute.

Count 9: Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II Violence to Life, Health and Physical or Mental Well-Being of Civilians as Part of an Internal Armed Conflict

97. Three of the Accused, Justin Mugenzi, Jérôme-Clément Bicamumpaka, and Prosper Mugiraneza, seek acquittal on Count 9 of the Indictment, under both Articles 6 (1) and 6 (3) of the Statute.
98. The Indictment charges the Accused with causing violence to life, health, and physical or mental well-being of persons, acts prescribed by Article 4 (a) of the Statute, which criminalizes serious violations of Article 3 common to the 1949 Geneva Convention, and of Additional Protocol II thereof.
99. The following three pre-requisites must be met for the applicability of a crime under Article 4 of the Statute: the existence of a non-international armed conflict in the territory of the concerned state; a nexus between the alleged violation and the armed

¹²³ *Bizimungu et al.*, Decision on the Admissibility of the Expert Testimony of Dr. Binaifer Nowrojee, 8 July 2005 (in which this Chamber ruled "inadmissible those portions of Dr. Nowrojee's evidence that fall outside the scope of her expertise or express opinions on ultimate issues before the Chamber").



conflict; and the status of the victims, specifically, that the victims were not directly taking part in the hostilities at the time of the alleged violations.¹²⁴

(i) *Nature of the Conflict*

100. The Defence for Justin Mugenzi argues that evidence has not been adduced to demonstrate the non-international character of the conflict in Rwanda.¹²⁵ In its Response, the Prosecution challenges the Defence submission and requests the Chamber to take judicial notice that the conflict which occurred in Rwanda between April and July 1994 was of a non-international nature.¹²⁶ The Chamber has determined that judicial notice is not appropriate in this instance.¹²⁷ However, on the basis of the evidence presented, the Chamber is satisfied that the conflict within Rwanda was not international in character. The conflict was between Government forces and the Rwandan Patriotic Front (the "RPF"), which consisted of Rwandan refugees, seeking to exercise their right of return. Accordingly, the Chamber does not agree with the Defence submission.

(ii) *Nexus Between the Alleged Violation and the Armed Conflict*

101. The Defence for Jérôme-Clément Bicamumpaka submits that that Accused should be acquitted on Count 9 because no nexus exists between the armed conflict and the offences charged.¹²⁸ The Chamber, at this stage of the proceedings, does not agree with the Defence submission.

102. For a criminal offence to fall within the ambit of Article 4 of the Statute, the Chamber must be satisfied that a nexus existed between the alleged breach of Common Article 3 or of Additional Protocol II and the underlying armed conflict.¹²⁹ It is the view of both the ICTR and the ICTY Appeals Chambers that the nexus requirement is met if the alleged offence is "closely related to the armed conflict".¹³⁰ Specifically, the Appeals Chambers have stated, "[I]f it can be established that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict."¹³¹

103. In the instant case, there is evidence that the Accused participated in meetings on 11 April 1994 in Kigali and on 18 April 1994 in Gitarama to implement a Government civil defence programme, purportedly in response to armed incursions by the RPF.¹³² There is evidence that the civil defence programme included setting up roadblocks,

¹²⁴ *Kunarac et al.*, Judgement (AC), 12 June 2002, para. 59.

¹²⁵ Mugenzi Motion, paras. 19-23.

¹²⁶ Prosecution Response, para. 422.

¹²⁷ See *Bizimungu et al.*, Decision on the Prosecutor's Motion and Notice of Adjudicated Facts, 10 December 2004, in which this Chamber rejected the Prosecution request for judicial notice of the non-international character of the conflict in Rwanda in 1994.

¹²⁸ Bicamumpaka Motion, paras. 20-26.

¹²⁹ *Rutaganda*, Judgement (TC), 6 December 1999, paras. 102-103; *Akayesu*, Judgement (TC), 2 September 1998, paras. 635-636.

¹³⁰ *Rutaganda*, Judgement (AC), 26 May 2003, para. 569, citing *Kunarac et al.*, Judgement (AC), 12 June 2002, para. 58.

¹³¹ *Rutaganda*, Judgement (AC), 26 May 2003, para. 569, citing *Kunarac et al.*, Judgement (AC), 12 June 2002, para. 58.

¹³² Witness Fidèle Uwizeye, then *préfet* of Gitarama, testified that the subject matter of both meetings was civil defence, which included setting up roadblocks, establishing patrols, and providing training in the use of firearms (T. 6 April 2005 pp. 52-53, 56; T. 7 April 2005 pp. 61-67).

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establishing patrols, and training in the use of firearms. There is evidence that, following these meetings, roadblocks were established by *Interahamwe* civil militia, and that many civilians, protected under Article 4 of the Statute, were detained and killed at the roadblocks. There is also evidence that *Interahamwe* were involved in acts of violence against victims, who were civilians protected under Common Article 3 to the Geneva Conventions and Additional Protocol II to the Geneva Conventions, over which this Tribunal has jurisdiction, pursuant to Article 4 of the Statute.¹³³

104. On the basis of this evidence, the Chamber is satisfied that a reasonable trier of fact could find that the requisite nexus existed between the alleged offence and the armed conflict, under Article 4 of the Statute, during the Tribunal's temporal jurisdiction. The Chamber's final determination on this matter will be made at the end of the trial, when all of the evidence has been presented.

(iii) *Status of the Victims*

105. There is evidence that civilians, protected under Article 4 of the Statute, were victims of the Government's civil defence measures in force between April and July 1994.¹³⁴ Accordingly, the Chamber is satisfied that a reasonable trier of fact could find that the third prerequisite of crimes enumerated under Article 4 existed during the relevant time in Rwanda.

(iv) *Principle of Nullum Crimen Sine Lege*

106. The Defence for Prosper Mugiraneza argues that a conviction of the Accused on Count 9 of the Indictment would violate the principle of *nullum crimen sine lege*. The Chamber does not agree with the Defence submission. Indeed the Tribunal has already determined that Common Article 3 and Additional Protocol II were applicable in Rwanda in 1994 as a matter of convention and custom.¹³⁵ Rwanda became a party to the Geneva Conventions of 1949 on 5 May 1964 through succession,¹³⁶ and, through ratification, to the Additional Protocol II thereto on 19 November 1984.¹³⁷ Moreover, the Article 4 offences named in the Indictment constituted crimes under the laws of Rwanda in 1994.¹³⁸ The Chamber, therefore, finds that Common Article 3 and Additional Protocol II were in force in Rwanda in 1994 and that the application of Article 4 of the Statute to the situation in Rwanda during the Tribunal's temporal jurisdiction does not violate the *nullum crimen sine lege* principle.

107. Accordingly, the Chamber finds that there is evidence upon which a reasonable trier of fact could determine that each of the general pre-requisites for crimes enumerated

¹³³ T. 6 April 2005 pp. 52-53, 56; T. 7 April 2005 pp. 61-67.

¹³⁴ See testimonies of Witness Fidèle Uwizeye (T. 6 April 2005 pp. 48-50, 65) and Harriet Sebera (T. 20 October 2004 pp. 43-44; T. 21 October 2004 pp. 8-20).

¹³⁵ *Semanza*, Judgement (TC), 15 May 2003, para. 353; *Baglishema*, Judgement (TC), 7 June 2001, para. 98; *Akayesu*, Judgement (TC), 2 September 1998, para. 617.

¹³⁶ The Geneva Conventions of 1949 entered into force for Rwanda with a retroactive effect as from 1 July 1962, the date of Rwanda's independence. See www.icrc.org/ihtl.nsf.

¹³⁷ See *Bizimungu et al.*, Decision on the Prosecutor's Motion and Notice of Adjudicated Facts, 10 December 2004, in which this Chamber judicially noticed that Rwanda acceded to the Geneva Conventions of 12th August 1949 on 5th May 1964 and acceded to Protocols additional thereto of 8th June 1977 on 19th November 1984.

¹³⁸ See, *Kayishema and Ruzindana*, Judgement (TC), 21 May 1999, para. 157; *Akayesu*, Judgement (TC), 2 September 1998, para. 617.

in Article 4 (a) existed during the Tribunal's temporal jurisdiction: that an armed conflict occurred in Rwanda during this period; that a close relationship existed between the armed conflict and the alleged crimes; and that many of the victims were civilians who were not taking part in the hostilities. Moreover, there is evidence of killings and cruel treatment of civilians, for which, if believed, Justin Mugenzi, Jérôme-Clément Bicamumpaka, and Prosper Mugiraneza could be held criminally responsible.¹³⁹

108. Consequently, the Chamber is satisfied that there is evidence which, if believed, could lead a reasonable trier of fact to conclude that the Accused participated in activities which constitute violations of the crimes charged under Count 9. The evidence could ground a conviction under both Articles 6 (1) and 6 (3). The Chamber, therefore, denies the Defence Motions for the acquittal of Justin Mugenzi, Jérôme-Clément Bicamumpaka, and Prosper Mugiraneza on this count, under both Articles 6 (1) and 6 (3) of the Statute.

Count 10: Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II – Outrages Upon Personal Dignity, in particular Humiliating and Degrading Treatment, Rape and Indecent Assault, as Part of an Internal Armed Conflict

109. All four Accused, Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, and Prosper Mugiraneza, request acquittal on Count 10 of the Indictment, for which they are charged with both individual and superior responsibility, under Articles 6 (1) and 6 (3) of the Statute. The crime of Outrages Upon Personal Dignity, charged under Count 10, is prescribed by Article 4 (e) of the Statute, which criminalizes serious violations of Article 3 common to the 1949 Geneva Conventions and of Additional Protocol II thereof. In light of the evidence presented, the Chamber finds that the pre-requisites, articulated in relation to Count 9, for the applicability of this crime have been satisfied.
110. All Accused have specifically challenged the alleged acts of rape, which the Prosecution, in its Response, identifies as relevant to this charge.¹⁴⁰ Having reviewed the evidence cited by the Prosecution and, in light of the foregoing discussion in respect of Count 8, Rape as a Crime against Humanity, the Chamber considers that there is insufficient evidence connecting any of the Accused to acts of rape. Furthermore, the Chamber finds no evidence linking the Accused to any other crimes which could fall under this count. Accordingly, the Chamber grants the Motions for

¹³⁹ In respect of crimes charged under Count 9 against **Justin Mugenzi**: see the testimonies of Witness Isaie Sagahutu Murashi (T. 9 June 2004 pp. 49-50) and Witness Fidèle Uwizeye (T. 6 April 2005 p. 65), who presented evidence that the Accused enjoined local officials, including the newly appointed *préfet* of Gisenyi, to participate in the Government's civil defence programme, which included killing Tutsi civilians. In respect of crimes charged under Count 9 against **Jérôme-Clément Bicamumpaka**: see the testimonies of Witness GHV (T. 4 March 2004 p. 35) and Witness GAP (T. 20 January 2004 pp. 19-20), who presented evidence that the Accused incited the population in several meetings to participate in the Government's civil defence programme by killing Tutsi civilians. In respect of crimes charged under Count 9 against **Prosper Mugiraneza**: see the testimony of Witness Fidèle Uwizeye (T. 6 April 2005 pp. 48-50), who presented evidence that the Accused, by his words and his presence at public meetings and at one massacre site (the Kamonyi Parish Secondary School), encouraged violence against Tutsi civilians as part of the Government's civil defence programme.

¹⁴⁰ The four Accused have challenged the sufficiency of the evidence in respect of Count 8, Rape as a Crime against Humanity, which the Chamber has discussed above.

acquittal on Count 10 of the Indictment, under both Articles 6 (1) and 6 (3) of the Statute.

FOR THE ABOVE REASONS, THE CHAMBER

ENTERS A JUDGEMENT OF ACQUITTAL for Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, and Prosper Mugiraneza on Count 1 (Conspiracy to Commit Genocide) of the Indictment in respect of Article 6 (3) responsibility only;

ENTERS A JUDGEMENT OF ACQUITTAL for Justin Mugenzi on Count 6 (Murder as a Crime Against Humanity) of the Indictment in respect of Article 6 (1) responsibility only;

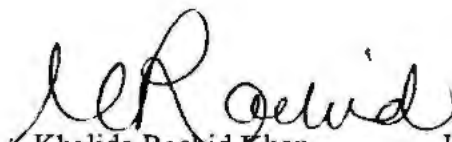
ENTERS A JUDGEMENT OF ACQUITTAL for Jérôme-Clément Bicamumpaka and Prosper Mugiraneza on Count 6 (Murder as a Crime Against Humanity) of the Indictment in respect of both Article 6 (1) and Article 6 (3) responsibility;

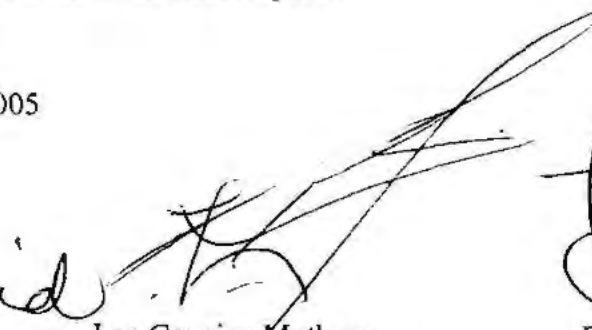
ENTERS A JUDGEMENT OF ACQUITTAL for Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, and Prosper Mugiraneza on Count 8 (Rape as a Crime Against Humanity) of the Indictment in respect of both Article 6 (1) and Article 6 (3) responsibility;

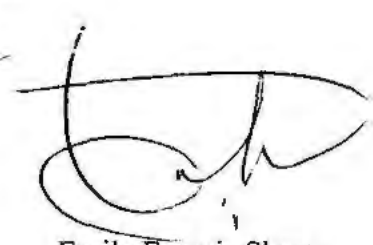
ENTERS A JUDGEMENT OF ACQUITTAL for Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, and Prosper Mugiraneza on Count 10 (Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II – Outrages Upon Personal Dignity, in particular Humiliating and Degrading Treatment, Rape and Indecent Assault, as Part of an Internal Armed Conflict) of the Indictment in respect of both Article 6 (1) and Article 6 (3) responsibility;

DENIES the Defence Motions in all other respects.

Arusha, 22 November 2005


Khalida Rachid Khan
Presiding Judge


Lee Gacuga Muthoga
Judge


Emile Francis Short
Judge

[Seal of the Tribunal]