



ICTR-01-76-T  
13-12-2005  
(3560-3428)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

3560  
S. Musesa

ORIGINAL: ENGLISH

**TRIAL CHAMBER I**

**Before:** Judge Erik Møse, presiding  
Judge Sergei Alekseevich Egorov  
Judge Dennis C. M. Byron

**Registrar:** Adama Dieng

**Date:** 13 December 2005

**THE PROSECUTOR**

v.

**Aloys SIMBA**

*Case No. ICTR-01-76-T*

2005 DEC 13 A 9 54  
[Signature]

**JUDGEMENT AND SENTENCE**

**Office of the Prosecutor:**

Richard Karegyesa  
Ignacio Tredici  
Didace Nyirinkwaya

**Counsel for the Defence**

Sadikou Ayo Alao  
Beth Lyons

NDUMHOU M. DIALLA  
[Signature] 13.12.05

6 hr

TABLE OF CONTENTS

3559

<b>CHAPTER I: INTRODUCTION.....</b>	<b>1</b>
1. The Tribunal and Its Jurisdiction .....	1
2. Indictment .....	1
3. Summary of Procedural History .....	1
4. Overview of the Case .....	1
<b>CHAPTER II: Factual Findings.....</b>	<b>3</b>
1. Preliminary Matters .....	3
1.1 Introduction.....	3
1.2 Notice .....	3
1.3 Alleged Witness Intimidation .....	10
2. Aloys Simba .....	14
3. Incitement of Kibeho Parish Massacre, 9 April 1994.....	16
3.1 Indictment .....	16
3.2 Evidence.....	16
3.3 Deliberations .....	19
4. Massacre at Murambi Technical School, 21 April 1994 .....	22
4.1 Indictment .....	22
4.2 Evidence.....	23
4.3 Deliberations .....	27
5. Massacre at Cyanika Parish, 21 April 1994 .....	31
5.1 Indictment .....	31
5.2 Evidence.....	31
5.3 Deliberations .....	33
6. Massacre at Kaduha Parish, 21 April 1994.....	35
6.1 Indictment .....	35
6.2 Evidence.....	36
6.3 Deliberations .....	40
7. Massacre in Ruhashya Commune, 29 April 1994.....	45
7.1 Indictment .....	45
7.2 Evidence.....	45
7.3 Deliberations .....	49

6 h

3558

<b>8.</b>	<b>Further Evidence of Common Criminal Purpose.....</b>	<b>52</b>
8.1	Distribution of Weapons, Rukondo Commune Office, March 1994 .....	52
8.1.1	Indictment .....	52
8.1.2	Evidence.....	52
8.1.3	Deliberations.....	53
8.2	Solicitation of Funds for Weapons, Rukondo Commune, March 1994.....	54
8.2.1	Indictment .....	54
8.2.2	Evidence.....	54
8.2.3	Deliberations.....	56
8.3	Public Meeting, Nyamagabe Commune Office, 10 April 1994.....	57
8.3.1	Indictment .....	57
8.3.2	Evidence.....	57
8.3.3	Deliberations.....	59
8.4	Incitement in Nzega Trading Centre, Nyamagabe Commune, 10 April 1994.....	59
8.4.1	Indictment .....	59
8.4.2	Evidence.....	60
8.4.3	Deliberations.....	60
8.5	Distribution of Weapons, Kinyamakara Commune Office, Mid-April 1994 .....	61
8.5.1	Indictment .....	61
8.5.2	Evidence.....	61
8.5.3	Deliberations.....	62
8.6	Meeting at CIPEP, 26 April 1994.....	63
8.6.1	Indictment .....	63
8.6.2	Evidence.....	63
8.6.3	Deliberations.....	65
8.7	Public Meeting, Ntyazo Commune, Butare Prefecture, 22 May 1994 .....	68
8.7.1	Indictment .....	68
8.7.2	Evidence.....	68
8.7.3	Deliberations.....	70
<b>9.</b>	<b>Alibi.....</b>	<b>72</b>
9.1	Introduction.....	72
9.2	Kigali and Gitarama Town, 6 to 13 April.....	73
9.2.1	Evidence.....	73
9.2.2	Deliberations.....	80

6/11

3537

9.3	Gitarama and Gikongoro, 14 to 24 April .....	82
9.3.1	Evidence .....	82
9.3.2	Deliberations .....	87
<b>CHAPTER III: LEGAL FINDINGS .....</b>		<b>90</b>
1.	<b>Criminal Responsibility .....</b>	<b>90</b>
1.1	Elements of Joint Criminal Enterprise .....	90
1.2	Notice .....	91
1.3	Application .....	93
2.	<b>Genocide .....</b>	<b>96</b>
3.	<b>Crimes against Humanity (Extermination) .....</b>	<b>98</b>
<b>CHAPTER IV: VERDICT .....</b>		<b>100</b>
<b>CHAPTER V: SENTENCE .....</b>		<b>101</b>
1.	<b>Introduction .....</b>	<b>101</b>
2.	<b>Submissions .....</b>	<b>101</b>
3.	<b>Deliberations .....</b>	<b>101</b>
3.1	Gravity of the Offence .....	101
3.2	Individual, Aggravating, and Mitigating Circumstances .....	103
3.3	Credit for Time Served .....	104
4.	<b>Conclusion .....</b>	<b>105</b>
<b>ANNEX I: PROCEDURAL HISTORY .....</b>		<b>106</b>
1.	<b>Pre-Trial Phase .....</b>	<b>106</b>
2.	<b>The Prosecution Case .....</b>	<b>108</b>
3.	<b>The Defence Case .....</b>	<b>109</b>
4.	<b>Further Proceedings .....</b>	<b>110</b>
<b>ANNEX II: JURISPRUDENCE AND DEFINED TERMS .....</b>		<b>112</b>
1.	<b>Jurisprudence .....</b>	<b>112</b>
1.1	ICTR .....	112
1.2	ICTY .....	114
2.	<b>Defined Terms .....</b>	<b>115</b>
<b>ANNEX III: INDICTMENT .....</b>		<b>117</b>

*h*

3556

## CHAPTER I: INTRODUCTION

### 1. THE TRIBUNAL AND ITS JURISDICTION

1. The judgement in the case of the *Prosecutor v. Aloys Simba* is rendered by Trial Chamber I ("the Chamber") of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judges Erik Møse, presiding, Sergei Alekseevich Egorov, and Dennis C. M. Byron.

2. The Tribunal is governed by the Statute annexed to Resolution 955 ("the Statute") and by the Rules of Procedure and Evidence of the Tribunal ("the Rules").<sup>1</sup>

3. The Tribunal has the authority to prosecute persons responsible for serious violations of international humanitarian law committed in the Republic of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States. Its jurisdiction is limited to acts of genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II thereto, committed between 1 January 1994 and 31 December 1994.

### 2. INDICTMENT

4. Under the amended Indictment of 6 May 2004 ("the Indictment"), the Prosecution charged Aloys Simba with four counts, pursuant to Articles 2 and 3 of the Statute: genocide; complicity in genocide; extermination as a crime against humanity; and murder as a crime against humanity. The Indictment, which is set out in full in an Annex to this Judgement, charged the Accused with individual criminal responsibility under Article 6 (1) and (3) for these crimes. At the end of its case, the Prosecution withdrew superior responsibility under Article 6 (3) as a form of responsibility as well as the charges of complicity in genocide and murder as a crime against humanity.

### 3. SUMMARY OF PROCEDURAL HISTORY

5. Aloys Simba was arrested in Senegal on 27 November 2001. The trial commenced on 30 August 2004 and closed on 8 July 2005. Over the course of thirty trial days, the Prosecution called sixteen witnesses. The Defence case opened on 13 December 2004. During twenty-three trial days, the Defence called twenty witnesses, including the Accused. The procedural history is set out in full in an Annex to this Judgement.

### 4. OVERVIEW OF THE CASE

6. In the days following the death of President Habyarimana, thousands of Tutsi civilians in Gikongoro prefecture in southern Rwanda fled their homes following attacks by Hutu militiamen. They sought sanctuary at places such as Kibeho Parish, Cyanika Parish, Murambi Technical School, and Kaduha Parish. Attacks against the refugees at these places began with Kibeho Parish on 14 April 1994. On 21 April 1994, Hutu militiamen assisted by local officials and gendarmes launched subsequent attacks against refugees at Murambi, Cyanika, and Kaduha in the course of a period of around twelve hours. At the end of April,

---

<sup>1</sup> Originally adopted by the Judges of the Tribunal on 5 July 1995, the Rules were last amended on 7 June 2005 during the Fifteenth Plenary Session. The Statute and the Rules are available at the Tribunal's website: <<http://www.icttr.org>>.

6h

attackers from Gikongoro prefecture continued the killings by crossing the Mwogo River into neighbouring Butare prefecture to kill Tutsi civilians who had fled to Ruhashya commune. These five massacre sites are the primary basis of this case.

7. The Prosecution places responsibility for these killings on Aloys Simba, a retired lieutenant colonel and former member of parliament. Simba hails from Musebeya commune, Gikongoro prefecture and became a national hero fighting the "*Inkotanyi*" in the 1960s. He is a member of the "comrades of the fifth of July", who participated in the *coup d'état* that brought former President Juvénal Habyarimana to power in 1973, and was well-known throughout Rwanda. At the time of the events in 1994, Simba had no formal ties to any government, military, or political structure. He claims that he was an ordinary man who had become a marginal figure in Rwandan society. Simba assumed the role of civil defence adviser to the Prefect of Gikongoro on 18 May 1994. The five massacres are not related to his actions in this position.

8. The Prosecution contends that Simba is one of the principal architects of the five massacres and that he personally participated in their execution by furnishing arms, ordering militiamen and government forces to attack and kill Tutsi.

9. The Defence presented evidence of an alibi that Simba was not in Gikongoro prefecture when the genocide was planned or unfolded and that he played no role in the killings in Butare. According to Simba, in the days following the death of President Habyarimana, he remained in Kigali gathering family, friends, and neighbours in an effort to protect them from the ensuing violence. As Kigali became a war-zone, he evacuated a number of refugees hiding in his home to Gitarama Town where some of them remained with him from 13 until 24 April. He relocated to Gikongoro prefecture on 24 April only after the killings had come to an end in the prefecture. The Defence has also challenged the fairness of the proceedings on grounds of lack of notice and of alleged undue interference with Defence witnesses.

## CHAPTER II: FACTUAL FINDINGS

3554

### 1. PRELIMINARY MATTERS

#### 1.1 Introduction

10. The Prosecution seeks convictions against Aloys Simba based on his alleged participation in four massacres at the following sites in Gikongoro prefecture: Kibeho Parish on 14 April; Murambi Technical School on 21 April; Cyanika Parish on 21 April; and Kaduha Parish on 21 April. It also requests conviction for his participation in a massacre in Ruhashya commune, Butare prefecture on 29 April 1994.<sup>2</sup> These five events are discussed in Sections 3 to 7, respectively.

11. In addition, the Prosecution has submitted evidence of Simba's activities in Gikongoro and Butare prefectures from March until May 1994. It does not seek to convict him based on these events. Rather, it is argued that they may serve as proof of a common criminal purpose and *mens rea* with respect to crimes charged in the Indictment. In addition, it may be used to rebut the Accused's alibi.<sup>3</sup> This evidence is discussed in Section 8.

12. The Defence has presented an alibi asserting that Simba was in Kigali and Gitarama town from 6 until 24 April. The Chamber has set forth this evidence separately in Section 9 in order to preserve it as a coherent narrative. Notwithstanding this structure, in making its factual findings, the Chamber has assessed the Prosecution and Defence evidence in its totality. Other alibi evidence for the period after 24 April, in Gikongoro, is recounted in the context of those criminal allegations in Sections 7 and 8.6. In addition, the Defence has submitted an expert report into evidence which focuses primarily on the role of civil defence.

13. At the close of trial, the Prosecution withdrew the charges of complicity in genocide (Count 2) and of murder as a crime against humanity (Count 4).<sup>4</sup> Additionally, it declined to pursue conviction for superior responsibility under Article 6 (3).<sup>5</sup> Furthermore, the Prosecution conceded that no evidence supports paragraphs 4, 18 (c), 23 (c), and 23 (f) of the Indictment.<sup>6</sup> Consequently, the Chamber has not made findings with respect to these parts of the Indictment.

#### 1.2 Notice

14. Article 20 (4)(a) of the Statute guarantees an accused the fundamental right "to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charges against him or her". This translates into an obligation for the Prosecution

<sup>2</sup> Prosecution Closing Brief, paras. 61-119, 208; T. 7 July 2005 p. 3.

<sup>3</sup> Prosecution Closing Brief, paras. 120-133; T. 7 July 2005 pp. 26-28; T. 8 July 2005 pp. 2-4, 8.

<sup>4</sup> Prosecution Closing Brief, paras. 49, 184-191; T. 7 July 2005 p. 26. Complicity in genocide (Count 2) is an alternative to genocide (Count 1). The charge of murder (Count 4) is supported by paragraphs 66 through 70 of the Indictment and refer to the killing of a gendarme on 20 April and the murder of three individuals in the Kaduha Trading Centre on 21 April (Monique, her child, and Gasana).

<sup>5</sup> Prosecution Closing Brief, para. 29; T. 7 July 2005 p. 26.

<sup>6</sup> T. 7 July 2005 p. 28; T. 8 July 2005 p. 4. Paragraph 4 of the Indictment recounts that in January 1993, Simba directed a rally against the Arusha Accords. Paragraph 18 (c) alleges that in January 1994, Simba ordered local officials to select young men and give them military training. Paragraph 23 (c) refers to Simba conducting a rally at the Rugogwe Trading Centre on 9 April. Paragraph 23 (f) indicates that Simba attended a meeting on 26 April in Gikongoro Town.

6ku

to know its case before it goes to trial and to plead all material facts in the Indictment with as much specificity as possible. The law governing challenges to the specificity of the Indictment is set forth in detail in the Appeals Chamber judgment in *Kupreskic et al.* as well as subsequent jurisprudence.<sup>7</sup>

15. The Defence raises several objections to the form of the Indictment as well as to evidence which it claims should be excluded for lack of proper notice. Before trial, the Defence litigated issues of notice in a series of motions challenging each version of the Indictment.<sup>8</sup> In the Tribunal's jurisprudence, precedent exists to consider the form of the Indictment at the judgement stage.<sup>9</sup> However, the Chamber declines to consider issues that were either adjudicated or should properly have been raised during the pre-trial phase of the proceedings.

16. At this stage, the Chamber has limited its review to those issues which require clarification in light of evidentiary, procedural, or legal developments arising during the course of the trial or where the failure to consider an issue might call into question the fairness of the proceedings.<sup>10</sup> Consequently, as indicated in previous decisions, the Chamber will decide whether to exclude certain aspects of the testimonies of Prosecution Witnesses KDD and KSM for lack of proper notice.<sup>11</sup> The Chamber will also consider whether paragraphs 14 through 18 of the Indictment are defective in relation to the evidence presented at trial.

#### *Paragraphs 14 to 18 of the Indictment*

17. Paragraph 14 of the Indictment alleges that in April and May 1994, Simba "acted in concert" in the planning and preparation of the genocide with eight other named individuals, primarily local officials as well as "others unknown to the Prosecution". Paragraph 15 states that Simba "regularly" met with all or some of those named individuals between 1991 and 1994, and in particular in April and May 1994, at Gasarenda Trading Centre and at the gendarmerie barracks in Gikongoro town in order to plan the genocide and to pass on instructions to *Interahamwe* before the attacks. The Defence asserts that these paragraphs should be disregarded because they are vague, fail to plead any identifiable criminal conduct

<sup>7</sup> *Kupreskic et al.*, Judgment (AC), 23 October 2001, paras. 88-90, 92, 114. See also *Kvočka et al.*, Judgment (AC), 28 February 2005, paras. 27-35; *Ntakirutimana*, Judgment (AC), 13 December 2004, paras. 24-28; *Niyitegeka*, Judgment (AC), 9 July 2004, paras. 193-200; *Krnjelac*, Judgment (AC), 17 September 2003, paras. 129-134, 138-139; *Rutaganda*, Judgment (AC), 26 May 2003, paras. 301-303.

<sup>8</sup> *Simba*, Decision on Defence Motion Alleging Defects in the Form of the Indictment (TC), 26 January 2004; *Simba*, Decision on Preliminary Defence Motion Regarding Defects in the Form of the Indictment (TC), 6 May 2004; *Simba*, Decision on the Defence's Preliminary Motion Challenging the Second Amended Indictment (TC), 14 July 2004.

<sup>9</sup> See, e.g., *Ndindabahizi*, Judgment (TC), 15 July 2004, paras. 28-29; *Ntagerura et al.*, Judgment (TC), 25 February 2004, paras. 28-39; *Semanza*, Judgment (TC), 15 May 2003, paras. 41-45; *Ntakirutimana*, Judgment (TC), 21 February 2003, paras. 49-63.

<sup>10</sup> *Ndindabahizi*, Judgment (TC), 15 July 2004, para. 29; *Ntagerura et al.*, Judgment (TC), 25 February 2004, para. 30 (noting that when assessing deficiencies in the indictment in the post-trial phase, the Chamber is primarily concerned with defects in the indictment that prejudice the defendant); *Semanza*, Judgment (TC), 15 May 2003, para. 43.

<sup>11</sup> *Simba*, Decision on the Defence Motion to Exclude the Testimony of Witness KSM, 4 October 2004, paras. 4-6; *Simba*, Decision on the Admissibility of Evidence of Witness KDD (TC), 1 November 2004, paras. 18-19.

on the part of Simba, and refer to time periods outside the temporal jurisdiction of the Tribunal.<sup>12</sup>

18. In the Chamber's view, paragraph 14 of the Indictment is not vague when read in the context of the Indictment as a whole.<sup>13</sup> It simply serves as an introductory paragraph and provides a summary list of various individuals that are mentioned elsewhere in the Indictment interacting with Simba in the context of specific events. It also qualifies and equates that later specifically pleaded interaction "as acting in concert". Therefore, the Chamber need not make specific findings on this paragraph alone. The Chamber will address Simba's alleged relationship with the named individuals in the context of making factual findings on the paragraphs of the Indictment which refer to their specific interactions. The appropriate legal conclusion will be drawn from any proven allegation in the Chamber's findings on criminal responsibility.

19. Paragraph 15 of the Indictment is not similarly general or introductory in nature. It refers to a series of "regular" meetings in Gasarenda Trading Center and at the gendarmerie barracks where the genocide in Gikongoro was allegedly planned and unfolded. If established, these events would constitute material facts supporting conviction for genocide and crimes against humanity. Consequently, this paragraph must be pleaded with specificity.

20. The date range in paragraph 15 for these alleged meetings, which encompasses about four years, appears exceedingly broad, notwithstanding the later emphasis in the paragraph on the months of April and May 1994. However, a broad date range, in and of itself, does not invalidate a paragraph. Paragraph 15 asserts that the meetings were "regular".

21. The present formulation would be entirely appropriate where the Prosecution intended to prove the existence of a series of numerous meetings to reflect a pattern of conduct. In such a case, it would be impractical and unnecessary to plead the approximate time of each meeting.<sup>14</sup> However, at trial the Prosecution did not seek to establish a regular series of meetings. It led evidence of three events occurring in a narrow two week period of time in April 1994. In particular, Witness KEL placed Simba at Gasarenda Trading centre a few days after the death of President Habyarimana and then again two weeks later. Witness KEI observed Simba at the gendarmerie barracks on 20 April. This hardly reflects "regular" conduct over a two month period, let alone from 1991 to 1994.

22. The Chamber observes that Witness KEL's first sighting of Simba at Gasarenda Trading Centre as well as Witness KEI's testimony relating to the gendarmerie barracks are pleaded with specificity elsewhere in the Indictment in connection with the Kibeho and

<sup>12</sup> Defence Closing Brief, paras. 91-100, 152, 159, 162 (concerns paragraphs 18 and 21 of the Indictment); T. 7 July 2005 pp. 34-35. The Chamber has previously adjudicated the issue of evidence of acts outside the temporal jurisdiction. See *Simba*, Decision on Defence Motion to Preclude Prosecution Evidence (TC), 31 August 2004, para. 3. The Defence also asserts that the Indictment fails to adequately plead the elements of joint criminal enterprise. This issue is addressed in greater detail in the section related to joint criminal enterprise in Chapter III.

<sup>13</sup> *Rutaganda*, Judgement (AC), 26 May 2003, para. 304.

<sup>14</sup> *Niyitegeka*, Judgement (AC), 9 July 2004, para. 193 ("If the Prosecution charges personal physical commission of criminal acts, the indictment should set forth the identity of the victim, the time and place of the events and the means by which the acts were committed. On the other hand, such detail need not be pleaded if the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes.")(internal citations omitted). See also *Kvočka et al.*, Judgment (AC), 28 February 2005, para. 30.

Murambi Technical School massacres.<sup>15</sup> Consequently, the question for the Chamber is whether paragraph 15 provides adequate notice for Witness KEL's assertion that Simba visited Gasarenda Trading Centre around two weeks after the death of President Habyarimana. The Prosecution seeks to use this as a material fact in support of conviction with respect to the massacre at Murambi Technical School.<sup>16</sup>

23. In the Chamber's view, paragraph 15 is vague when considering the evidence led at trial.<sup>17</sup> The Chamber recalls that in its previous decision relating to the form of the Indictment, it criticized the broad date range in paragraph 15 and invited the Prosecution to provide additional detail, if possible.<sup>18</sup> A review of Witness KEL's statement to Tribunal investigators dated 6 November 2000, reflects that the Prosecution was well aware of this event before trial and therefore could have provided more adequate notice.<sup>19</sup> The Pre-trial Brief, which is largely a verbatim recitation of the Indictment, provides no additional notice about this event. Witness KEL's statement alone is not sufficient to cure the Indictment.<sup>20</sup> Consequently, the Chamber finds that paragraph 15 is defective, and Witness KEL's evidence of Simba's second visit to Gasarenda Trading Centre cannot be used as a basis of conviction.<sup>21</sup>

24. Paragraphs 16 to 18 of the Indictment allege that from March 1993 until April 1994, Simba and other officials planned and prepared the genocide at CIPEP in Gikongoro town by recruiting and training *Interahamwe*, distributing weapons, and instigating "others" to kill Tutsi.<sup>22</sup> Paragraph 18 provides more specificity to the general language of paragraphs 16 and 17 and refers to a single event in March 1993 where Simba and other local authorities trained the trainers of the militia and instituted a census.

25. In support of these paragraphs, the Prosecution presented evidence through Witness KSU. He testified that in March 1994, Simba and Captain Faustin Sebhura stored weapons at CIPEP and trained *Interahamwe* there. Simba and other authorities also allegedly participated in a series of meetings to train local officials to conduct a census of the population around that time. Moreover, the witness testified that in April 1994, in the days immediately after the death of President Habyarimana, Simba distributed the weapons at CIPEP to local officials and attackers and ordered them to set up roadblocks to kill Tutsi. This last point was presented on the basis of a will-say statement disclosed on 30 August

<sup>15</sup> Indictment, paras. 23 (d), 40, 56.

<sup>16</sup> Prosecution Closing Brief, para. 96.

<sup>17</sup> This is similar to the type of radical transformation from broad sweeping allegations of conduct to specific and narrow events that the Appeals Chamber found fatal in *Kupreskic et al.*, Judgment (AC), 23 October 2001, paras. 91-95, 121.

<sup>18</sup> *Simba*, Decision on Preliminary Defence Motion Regarding Defects in the Form of the Indictment (TC), 6 May 2004, para. 4.

<sup>19</sup> Defence Exhibit 8 ("During the second week after the death of President Habyarimana on a date I do not recall, I saw the following persons in a meeting in the shop of Karamage: Col. SIMBA, Major RWAMANYWA, KAMODOKA, BINIGA, the sous-Prefect of MUNINI sous-prefecture, NTEZIRYAYO and KARAMAGE. They met at about 1500 hrs and stayed in the meeting up to about 1800 hrs.")

<sup>20</sup> *Niyitegeka*, Judgment (AC), 9 July 2004, paras. 197, 221 (noting that the mere service of witness statements does not suffice to inform the Defence of material facts that the Prosecution intends to prove at trial).

<sup>21</sup> *Id.* at paras. 215-223.

<sup>22</sup> CIPEP refers to *Centre intercommunal de perfectionnement du personnel*.

2004, shortly after the commencement of trial.<sup>23</sup> The Defence raised a general objection to the use of the will-say statement.<sup>24</sup>

26. In the Chamber's view, the Indictment is misleading because paragraph 18, in an effort to provide greater specificity to the broad allegations in paragraphs 16 and 17, directs the Defence to March 1993. The general assertions contained in paragraphs 16 to 18 provide insufficient notice for the specific allegations lodged by Witness KSU in his testimony against Simba. The witness referred to specific events occurring over the course of two to three weeks in March and early April 1994. The Prosecution characterized the mention of March 1993 in the Indictment as a typographical error.<sup>25</sup> This explanation does not remedy the defective notice provided by this paragraph.<sup>26</sup> A one year difference between the Indictment and the evidence cannot be said to be a minor discrepancies that can be overlooked.<sup>27</sup> Essentially, during the course of Witness KSU's testimony, events which according to the Indictment occurred well outside the Tribunal's temporal jurisdiction, suddenly became potential crimes.

27. The Pre-trial Brief, which is a verbatim incorporation of the Indictment, provides no additional clarity. Witness KSU's statement to Tribunal investigator's reinforces that the census training occurred in March 1993. Moreover, the statement does not mention Simba's role in connection with recruitment and training of *Interahamwe* or with storing weapons at CIPEP and distributing them after the death of President Habyarimana.<sup>28</sup> The Prosecution filed a will-say statement on 30 August 2004, at the commencement of trial, indicating that the witness would testify that Simba distributed weapons and encouraged the establishment of roadblocks after the death of President Habyarimana.<sup>29</sup> The will-say statement provided no indication that the alleged training activity and the census occurred in 1994, rather than 1993. Consequently, the Chamber finds that paragraphs 16 to 18 are defective and cannot be used in support of a conviction.

<sup>23</sup> Memorandum from the Prosecution to the Court Management Section, filed on 30 August 2004, Registry Page 2833-2835 (Will-Say Statement of Witness KSU).

<sup>24</sup> T. 7 September 2004 p. 48.

<sup>25</sup> T. 7 July 2005 p. 26.

<sup>26</sup> *Kvocka et al.*, Judgment (AC), 28 February 2005, para. 30 (the Prosecution is expected to know its case before it goes to trial). The same problem arises with respect to paragraph 23 (a) of the Indictment, referring to an alleged speech made by Simba in March 1993 after the census activities referred to in paragraph 18 (a). Witness KSU's testimony at trial placed this event in March 1994. The Prosecution does not seek to convict Simba on this paragraph. T. 7 July 2005 pp. 27-28.

<sup>27</sup> *Rutaganda*, Judgment (AC), 26 May 2003, paras. 302-303 ("The Appeals Chamber therefore considers that, in general, minor differences between the indictment and the evidence presented at trial are not such as to prevent the Trial Chamber from considering the indictment in the light of the evidence presented at trial ... Before holding that an event charged is immaterial or that there are minor discrepancies between the indictment and the evidence presented at trial, a Chamber must normally satisfy itself that no prejudice shall, as a result, be caused to the accused. An example of such prejudice is the existence of inaccuracies likely to mislead the accused as to the nature of the charges against him.").

<sup>28</sup> Defence Exhibit 11 (Statement of 21 June 2000).

<sup>29</sup> Memorandum from the Prosecution to the Court Management Section, filed on 30 August 2004, Registry Page 2833-2835 (Will-Say Statement of Witness KSU: "That as the regards the roadblocks: He will say that at a meeting in the Kabacuzi market, Gikongoro Town, soon after the death of President Habyarimana, Aloys SIMBA ordered the establishment of roadblocks and the selection of youths to man the barriers. SIMBA instructed those manning the barriers to kill anyone with a Tutsi identity card or without any identity card. Soon after this meeting Aloys SIMBA and Faustin SEBUHURA distributed weapons then stored at CIPEP to *responsables*, who were in charge of the roadblocks. In addition to these arms the youths guarding the roadblocks carried traditional weapons.").

*bl*

28. During closing arguments, the Prosecution advised that it did not seek a conviction on these paragraphs but rather invited the Chamber to treat this evidence as further corroboration of other pleaded events. In *Ntahobali and Nyiramasuhuko*, the Appeals Chamber explained the Trial Chamber's authority to admit any relevant evidence which it deems to have probative value even where it is not possible to convict an accused on such evidence due to lack of notice.<sup>30</sup> However, even if evidence of unpleaded facts may bear some general relevance to the case, the Trial Chamber may still decide to exclude it in the interests of justice when its admission could lead to unfairness in the trial proceedings such as when the probative value of the proposed evidence is outweighed by its prejudicial effect.<sup>31</sup>

29. In the Chamber's view, the prejudicial effect of considering these unpleaded events outweighs its probative value in relation to establishing Simba's criminal responsibility for the five alleged massacres in the Indictment. As noted above, there was no advance indication that the witness would place the training and census events within the temporal jurisdiction of the Tribunal. Similarly, there was no notice that the witness would incriminate Simba in the storage of weapons at CIPEP, training and recruitment, and the distribution and incitement immediately after the death of President Habyarimana. Witness KSU's statement to Tribunal investigators of 21 June 2000 gives some indication that Simba distributed weapons, but connects this with an unpleaded attack in Butare which from the evidence apparently occurred in June 1994. The will-say statement also gives some prior indication about the events after the death of the president, but this was disclosed after the commencement of trial and just a few days before the witness's testimony. Given the nature of the allegations, this was not sufficient to provide an opportunity to undertake adequate investigations before cross-examination.

30. The Prosecution has made no submissions on the specific relevance of this evidence to the pleaded massacres other than general references that it supports background and *mens rea*. On these points, the evidence would be cumulative of other more relevant testimony directly tied to the massacres. Consequently, the Chamber will exclude the evidence.

#### *Exclusion of Evidence of Witnesses KSM and KDD*

31. In prior decisions, the Chamber decided to address the admissibility of certain events mentioned by Witnesses KSM and KDD in its final judgement.<sup>32</sup> The Defence made timely objections to admission of their testimonies based on lack of notice and preserved these issues for review.

32. The Indictment does not mention the specific events mentioned by Witnesses KSM and KDD. It does not charge Simba with any form of responsibility arising out of the establishment of roadblocks. The Prosecution has not pointed to any subsequent communications that would provide adequate notice sufficient to permit conviction on these

<sup>30</sup> *Ntahobali and Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ inadmissible" (AC), 2 July 2004, paras. 14-16 (citing Rule 89 (C) as the basis for the Trial Chamber's discretionary authority to admit any relevant evidence it deems probative).

<sup>31</sup> *Bagosora et al.*, Decision on Prosecutor's Interlocutory Appeals Regarding Exclusion of Evidence (AC), 19 December 2003, paras. 13, 16, 22.

<sup>32</sup> *Simba*, Decision on the Defence Motion to Exclude the Testimony of Witness KSM (TC), 4 October 2004, paras. 4-6; *Simba*, Decision on the Admissibility of Evidence of Witness KDD (TC), 1 November 2004, paras. 18-19.

facts, if accepted as true. The Prosecution does not request a conviction for them, but rather seeks to use the evidence as corroboration for the existence of a common criminal purpose, to refute the alibi, and to prove *mens rea*.<sup>33</sup>

33. Witness KSM implicated Simba in a massacre around 12 April at Kinyamakara commune and in a meeting near Mwogo bridge at the end of April where he allegedly gave an inflammatory speech in connection with subsequent attacks in neighbouring Ruhashya commune, Butare prefecture.

34. In the Chamber's view, Witness KSM's evidence pertaining to Simba's alleged role in the massacre around 12 April at the Kinyamakara commune office should be excluded because its prejudicial effect outweighs its probative value. The Chamber notes that this massacre was the principal point of the witness's examination-in-chief. However, the Prosecution provided no indication to the Defence that the witness would focus on this event through the normal course of communicating such information provided for in Rules 66 (A), 67 (D), and 73 *bis* (B)(i) and (iv)(b) of the Rules of Procedure and Evidence. Given the highly incriminating nature of the testimony, the Defence should have been given sufficient prior notice in accord with the Rules to undertake investigations prior to cross-examination. These allegations surfaced only at trial.<sup>34</sup>

35. The Chamber will, however, admit Witness KSM's evidence concerning Simba's alleged presence at the Mwogo bridge and related matters. This part of the testimony is relevant to the attacks in Ruhashya commune, which is pleaded in the Indictment, as well as corroboration of Witness ANX's testimony about the attacks there. The Chamber notes that prior to trial, the Prosecution disclosed a statement that refers to this event.<sup>35</sup> This provided some notice under Rules 66 (A) and 73 *bis* (B) that the Prosecution might seek to present it at trial with respect to proof of another allegation pleaded in the Indictment, which would allow the Defence an opportunity to investigate before trial.<sup>36</sup> In addition, the Chamber recalls that the Defence specifically elicited this evidence, not the Prosecution.

36. Witness KDD placed Simba at four meetings on 11 April at the Karama commune office, on 13 and 26 April at CIPEP in Gikongoro town, and on 4 May at the Kirambi market in Rukondo commune. On each occasion, the witness claimed that Simba urged local authorities to establish and to maintain roadblocks for killing Tutsi. During the 26 April meeting, Simba also allegedly admitted to leading the Kaduha Parish massacre and asked leaders of the massacres at Kibeho Parish, Murambi Technical School, and Cyanika Parish to report on the numbers killed. He then purportedly urged local authorities to attack the survivors who fled to Ruhashya commune.

37. The Chamber will first consider the issues concerning the meetings of 11 April at the Karama commune office, of 13 April at CIPEP in Gikongoro town, and of 4 May at Kirambi market in Rukondo commune. This evidence relates primarily to Simba allegedly ordering the establishment and maintenance of roadblocks to kill Tutsi, a serious and important

<sup>33</sup> T. 8 July 2005 pp. 2-4.

<sup>34</sup> The witness's evidence is also uncorroborated. This creates problems in light of her difficulty identifying Simba, as discussed in paragraph 196. Thus, questions arise about the probative value of the evidence.

<sup>35</sup> Memorandum from the Prosecution to the Court Management Section, filed on 16 August 2004, Registry Pages 2808-2820 (Disclosure of statement of Witness KSM).

<sup>36</sup> However, this is not sufficient notice to allow a conviction on the basis of the evidence in and of itself. *Niyitegeka*, Judgement (AC), 9 July 2004, para. 197.

3547

allegation, which is not mentioned in the Indictment. The Prosecution has not argued in any detail how this evidence is specifically relevant to the five massacre sites pleaded in the Indictment other than making general claims that it refutes the alibi and supports *mens rea* and proof of a common criminal purpose.

38. With respect to *mens rea*, the evidence is unnecessarily cumulative of testimony which is more directly linked to the crimes pleaded in the Indictment. The 11 April and 4 May meetings carry no weight in establishing a common criminal purpose. The other participants in those events are not alleged members of the joint criminal enterprise listed in paragraph 14 of the Indictment. The 13 April meeting places a number of named members of the joint criminal enterprise together. However, according to Witness KDD, the officials at the meeting discussed how best to provide supplies and protection to the Tutsi refugees who had gathered at the various parishes and commune offices throughout the prefecture, not how to plan their killing.<sup>37</sup>

39. In the Chamber's view, the evidence related to the meetings of 11 April at Karama commune office, of 13 April at CIPEP, and of 4 May at Kirambi market in Rukondo commune has limited probative value in connection with the question of whether Simba bears criminal responsibility for the five massacres on which the Prosecution seeks conviction. Consequently, the Chamber will not make factual findings on these unpleaded events.

40. Witness KDD's testimony about Simba's actions during the meeting of 26 April is a different matter because the evidence bears direct relevance to the five pleaded massacres. The Prosecution informed the Defence of its intention to lead this evidence in a will-say statement disclosed on 30 August 2004.<sup>38</sup> In its decision of 1 November 2004, the Chamber noted that the period of notice was sufficient to allow the Defence to prepare for the evidence.<sup>39</sup> Consequently, the Chamber will consider this evidence in connection with its assessment of the five massacres.

### 1.3 Alleged Witness Intimidation

41. The Defence contends that Rwandan government officials improperly interfered in the proceedings by intimidating Defence Witnesses BJK1 and HBK and prevented them from giving relevant and exculpatory evidence at trial.<sup>40</sup> In support of its claims, the Defence points to Witness BJK1's repeated refusal to testify citing security concerns and death threats.

<sup>37</sup> T. 28 October 2004 pp. 27-28; T. 10 November 2004 p. 50.

<sup>38</sup> Memorandum from the Prosecution to the Court Management Section, filed on 30 August 2004, Registry Pages 2831-2832 (Will-Say Statement of Witness KDD: "On the Meeting dated on or about April 29, 1994 ... The witness will say that: The meeting referred to at ERN K0266149 took place on or about April 26, 1994. The accused asked for a report on the events of April 21<sup>st</sup> from four zones of Gikongoro. Individuals from each zone reported the number of refugees killed in each zone. The accused provided the report concerning the number of refugees killed in Kaduha. The accused again encouraged bourgmestres to erect roadblocks. The accused informed bourgmestres that there should be training in each sector and that the reservists and communal police should conduct the trainings.")

<sup>39</sup> *Simba*, Decision on the Admissibility of Evidence of Witness KDD (TC), 1 November 2004, para. 17. The Prosecution filed Witness KDD's will-say statement on 30 August 2004. The examination-in-chief commenced on 28 October 2004 approximately two months later. The Chamber recalls that this period coincided with a break in the trial between 24 September and 25 October 2004. Furthermore, cross-examination was postponed from 28 October until 10 November, allowing the Defence additional time to prepare.

<sup>40</sup> Defence Closing Brief, paras. 252-255, 438-44, 793, 818, 880, 911, 1282-1330. T. 7 July 2005 p. 66. The Defence also alleged that Rwanda interfered in its case by influencing Prosecution witnesses. Defence Closing Brief, paras. 1266-1281. The Chamber finds no merit in this argument.

6/6

In addition, it also relies on evidence that local Rwandan prison officials harassed potential Defence witnesses at Gikongoro prison, resulting in the refusal of Witness HBK to travel to Arusha to testify. As a result, the Defence requests the Chamber to acquit Simba on all counts. The Prosecution submits that the Defence has failed to substantiate any alleged interference.<sup>41</sup>

42. Witness BJK1 was originally scheduled to appear during the first segment of the Defence case in December 2004. He refused to accompany representatives of the Tribunal's Witness and Victims Support Section (WVSS) to Arusha, citing security concerns and death threats. The WVSS had not verified the witness's claims but confirmed that his safety concerns were the basis of his refusal to travel. In its decision of 4 February 2005, the Chamber denied a Defence request to subpoena this witness, but authorized the taking of his testimony by video-link from Kigali in an effort to allay his security concerns. The witness again refused.<sup>42</sup>

43. Witness HBK is detained in Rwanda. In a decision of 17 February 2005, the Chamber authorized his transfer to Arusha along with seven other detainee witnesses (Defence Witnesses NGJ2, HNJ, GGJ1, RGJ1, BGN3, BGJ1, and KGJ2).<sup>43</sup> Witness HBK refused to travel to Arusha. Of the transferred detained witnesses, only Witnesses NGJ2 and RGJ1 testified. Both witnesses testified to interference by local prison and prosecution officials beginning when Defence investigators first approached them until their transfer.<sup>44</sup>

44. On 29 March 2005, the Defence requested the subpoena of Witnesses BJK1 and HBK. The Defence closed its case subject to the Chamber's disposition on this motion. At the same time, the Chamber set the date for closing arguments for 7 and 8 July 2005.<sup>45</sup> In its decision of 4 May 2005, the Chamber granted the Defence's request for subpoenas, but noted that the hearing of these witnesses would not alter the date for final arguments.<sup>46</sup>

45. At the outset of closing arguments on 7 July 2005, the Chamber explained that after consultations with the WVSS it was clear that Witness BJK1 remained unwilling to testify. Witness HBK had expressed willingness to testify, but he could not be brought to Arusha to testify before final arguments. The Chamber informed the parties of this situation prior to their oral submissions. The Defence did not object to proceeding and closing the case.<sup>47</sup>

46. Article 20 (4)(e) of the Statute provides that the Accused has the right "... to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her". In *Bagosora et al.*, this Chamber observed that proven threats or interference made by state officials towards prospective or confirmed witnesses as well as non-cooperation or active obstruction would be a serious violation of a state's duty to

<sup>41</sup> T. 8 July 2005 p. 10.

<sup>42</sup> *Simba*, Decision Authorizing the Taking of the Evidence of Witness IMG, ISG, and BJK1 by Video-Link (TC), 4 February 2005, para. 6, footnote 3; T. 13 December 2004, p. 12.

<sup>43</sup> *Simba*, Order for the Transfer of Detained Witnesses (TC), 17 February 2005. The Chamber notes that the Defence withdrew Witness HNJ prior to transfer. T. 15 March 2005 pp. 2-3. In addition, the Defence removed Witnesses GGJ1, KGJ2, and BJK3 from its list prior to the close of its case. T. 29 March 2005 p. 23.

<sup>44</sup> Testimony of Witness RGJ1, T. 17 March 2005 pp. 8-9, 30-33; testimony of Witness NGJ2, T. 21 March 2005 pp. 6-12.

<sup>45</sup> T. 29 March 2005 p. 38.

<sup>46</sup> *Simba*, Decision on Defence Request for Subpoenas (TC), 4 May 2005, paras. 4-5.

<sup>47</sup> T. 7 July 2005 pp. 1-2.

cooperate with the Tribunal reflected in Article 28 of the Statute. This in turn could result in a violation of an Accused's fair trial rights.<sup>48</sup>

47. ~~Relevant case law reflects that the Defence must establish, on the balance of the probabilities, that government interference with the presentation of its evidence occurred. The proposed evidence must relate to specific allegations or charges against the Accused.<sup>49</sup> The Defence also bears the burden to exhaust all available measures afforded by the Statute and Rules to obtain the presentation of the evidence.<sup>50</sup> For a remedy to be granted at the post-trial phase there must be evidence of material prejudice.<sup>51</sup>~~

48. The Chamber is of the view that the Defence has not met its burden to establish on the balance of the probabilities that the Rwandan government engaged in any act of intimidation or interference with respect to Witness BJK1. In its 4 February 2005 decision, the Chamber observed that the witness's allegations of death threats were not substantiated.<sup>52</sup> Nothing further has been submitted to alter this view or to suggest that any threats were made by government officials. The Chamber has heard testimony from Witnesses RGJ1 and NGJ2 concerning the treatment of detained defence witnesses by local officials in Gikongoro. The Chamber is not satisfied that this evidence sufficiently substantiates the Defence allegations about Witness BJK1, who is not detained. The Chamber further observes that it has made every attempt consistent with the Rules to assist the Defence in securing the witness's testimony when requested.<sup>53</sup>

49. The situation is different with respect to Witness HBK. In sworn testimony, Witnesses RGJ1 and NGJ2, who were detained with Witness HBK, provided largely consistent, detailed, first-hand accounts of interference with detained Simba Defence witnesses by local prison and prosecution officials from the end of December 2004. Witnesses RGJ1 and NGJ2 testified that prior to 11 January 2005 the prisoners were asked on two occasions to discuss their participation in Simba's defence with local officials. Both witnesses described an initial meeting convened by the director of the Gikongoro prison and a second meeting attended by the prison director as well as a public prosecutor. Their testimony reflects that at one or both of these meetings, the witnesses were instructed to tell the Accused's counsel that they did not know him. Additionally, both witnesses described being warned that testifying for the Accused was viewed as engaging in a "fight" against the government. Witness NGJ2 identified Witness HBK as one of the prisoners warned by the director of prisons and the public prosecutor. Witness HBK subsequently cited security concerns as the basis of his refusal to travel to Arusha.<sup>54</sup>

<sup>48</sup> *Bagosora et al.*, Decision on Motion Concerning Alleged Witness Intimidation (TC), 28 December 2004, para. 7.

<sup>49</sup> *Id.* at paras. 8-10.

<sup>50</sup> *Tadic*, Judgment (AC), 15 July 1999, paras. 52-53, 55-56.

<sup>51</sup> See, e.g., *Semanza*, Judgment (AC), 20 May 2005, paras. 69-73; *Semanza*, Decision (AC), 31 May 2000, paras. 122-125. See also *Kamuhanda*, Judgment (AC), 19 September 2005, para. 12; *Ntagerura et al.*, Judgment (TC), 25 February 2004, para. 30.

<sup>52</sup> *Simba*, Decision Authorizing the Taking of the Evidence of Witness IMG, ISG, and BJK1 by Video-Link (TC), 4 February 2005, para. 6 footnote 3.

<sup>53</sup> *Tadic*, Judgment (AC), 15 July 1999, para. 53.

<sup>54</sup> See generally testimony of Witness RGJ1, T. 17 March 2005 pp. 8-9, 30-33; testimony of Witness NGJ2, T. 21 March 2005 pp. 6-12. The witnesses also stated that on 11 January, immediately after meeting with Simba's Defence team, a member of the Rwandan prosecutor's office in Gikongoro convened those prisoners and instructed them to write down what had been discussed during their individual interviews with the Defence.

8h

3544

50. It is not appropriate for a state official to warn a potential witness that he will be viewed as opposing the government if he testifies in ongoing criminal proceedings, particularly if the potential witness is detained in the custody of the state and dependent on it for his welfare. In the Chamber's view, the interference with Witness HBK by local officials in Gikongoro may have dissuaded his attendance at trial prior to the close of the Defence case on 29 March 2005.

51. Based on the testimony of Witness NGJ2 and RGJ1, the Chamber asked the WVSS to investigate and to bring these allegations to the attention to the Rwandan government for appropriate action. The Chamber further requested the Rwandan government to take appropriate action to safeguard Witness HBK.<sup>55</sup>

52. In its decision for subpoenas of 4 May 2005, the Chamber provided another opportunity to hear Witness HBK before the commencement of closing arguments on 7 July 2005. The witness expressed willingness to testify but could not logistically be brought to the Tribunal before the date scheduled for closing arguments. At this point, it was incumbent on the Defence to request a stay of the proceedings until appropriate arrangements could have been made if in its view the evidence was essential to the Defence.<sup>56</sup> The Defence, however, did not do so.

53. In any event, Witness HBK's intended testimony dealt primarily with the events surrounding the massacre at Kaduha Parish on 21 April 1994.<sup>57</sup> His proposed testimony about the massacre would have been second-hand and therefore of limited probative value. The Chamber is mindful that Prosecution Witness KXX placed Witness HBK with Simba in the Kaduha Trading Centre in the days before the attack. Witness HBK's testimony would have been relevant and direct in this respect. However, the Chamber did not find Witness KXX to be credible on matters relating to Witness HBK. Therefore, the Chamber can find no material prejudice.

---

Witnesses NGJ2 and RJG1 also testified that a total of five potential witnesses were moved from Gikongoro to Mpanga prison, and that upon arrival, they were placed in isolation cells. At Mpanga prison, officials informed them that they were undisciplined and were isolated upon the orders of the prosecutor's office. Witness NGJ2 testified that Witness HBK was not among those transferred to Mpanga. *See also* T. 29 March 2005 pp. 24-25.

<sup>55</sup> *Simba*, Decision on Defence Request for Subpoenas (TC), 4 May 2005, para. 5.

<sup>56</sup> *Tadic*, Judgment (AC), 15 July 1999, para. 55.

<sup>57</sup> Registry Pages 2177bis -3178bis (unredacted pre-trial statements of Defence Witness HBK).

6h

3543

## 2. ALOYS SIMBA

54. Simba was born on 28 February 1938 in Musebeya commune, Gikonogoro Prefecture.<sup>58</sup> He is married, and the father of eight children.<sup>59</sup> Simba initially received recognition through a career in the military. He joined the Rwandan Army in 1961 and finished military training school in 1963 with the rank of second lieutenant.<sup>60</sup> Between 1963 and 1967, he led several units fighting against the *Inyenzi* and in 1964 fought alongside President Mobutu Sese Seko of Zaire.<sup>61</sup> From 1967 to 1973, Simba worked at Camp Kanombe, earning the ranks of commander and major.<sup>62</sup> In 1973, Simba gained national military prominence as a member of the "Comrades of the fifth of July". This group, which occupies a prominent position in Rwandan national history, led a military *coup d'état* in 1973 that removed President Grégoire Kayibanda and installed Juvénal Habyarimana into power.<sup>63</sup> By Simba's own account, his military and political career gained him prominence.<sup>64</sup>

55. After the 1973 *coup d'état*, Simba's military career and close ties with heads of state parlayed into positions within the national government. However, Simba asserted, with some limited corroboration, that he began to experience professional and personal difficulties.<sup>65</sup> The evidence suggests that shortly after being appointed Minister of Information, Simba was accused of planning to overthrow the government.<sup>66</sup> Subsequently, Simba was removed from his post after around six months and sent to occupy a position within the Ministry of Defence in 1974, where he was allegedly under the instruction of a subordinate officer and had few duties.<sup>67</sup>

56. Between 1980 and 1988, Simba served as the commander of Camp Kigali. From 1989 to 1993, he was a member of parliament on behalf of Gikongoro, and he also assumed the role of MRND party chairman for that prefecture in 1991.<sup>68</sup> In September of 1993, Simba resigned from his post within the MRND after ceding his parliamentary position.<sup>69</sup> In giving reasons for his resignation, Simba cited contempt and treachery towards him and his family due to his close ties with Tutsi, the party's growing extremism and mismanagement, his ineffectiveness in parliament, and his preoccupation with his private business interests.<sup>70</sup>

<sup>58</sup> T. 22 March 2005 p. 61; Prosecution Exhibit 46 (Simba's Diary).

<sup>59</sup> Prosecution Exhibit 46 (Simba's Diary).

<sup>60</sup> T. 23 March 2005 p. 64; Prosecution Exhibit 46 (Simba's Diary).

<sup>61</sup> T. 23 March 2005 p. 64; T. 24 March 2005 pp. 3-6, 75.

<sup>62</sup> T. 23 March 2005 pp. 64-66.

<sup>63</sup> *Id.* at pp. 64-65, 67. See also testimony of Witness YC, T. 26 October 2004 pp. 81-82 (noting that he learned about the Comrades of fifth July in school and that they were discussed on the radio and in print media); testimony of Monique Mujawamariya T. 16 February 2005 p. 4 (Comrades of fifth July discussed on radio).

<sup>64</sup> T. 22 March 2005 pp. 7, 20-21. See also testimony of Witness GMA5, T. 22 February 2005 p. 7; testimony of Witness GK1, T. 23 February 2005 p. 11; testimony of Witness GL3, T. 24 February 2005 p. 8.

<sup>65</sup> T. 22 March 2005 pp. 20; T. 23 March 2005 pp. 69-71; T. 24 March 2005 pp. 75-76. See also testimony of Monique Mujawamariya, T. 16 February 2005 pp. 6-7, 16-17; T. 17 February 2005 pp. 1-2. See also Prosecution Exhibit 46 (Simba's Diary).

<sup>66</sup> T. 23 March 2005 pp. 69-71; T. 24 March 2005 pp. 75-76. Witness RGJ1 testified that Simba, among others, was suspected to have plotted a coup against the government in the early 1980s, which he suggested reflected a rift between Simba and several people in the government. T. 17 March 2005 pp. 20-21.

<sup>67</sup> T. 23 March 2005 pp. 64, 69-70. See also testimony of Monique Mujawamariya T. 16 February 2005 pp. 7-9, 17; T. 17 February 2005 pp. 1-2.

<sup>68</sup> T. 23 March 2005 pp. 64, 71-73; Prosecution Exhibit 46 (Simba's diary).

<sup>69</sup> T. 23 March 2005 pp. 71-74; Defence Exhibit 114.

<sup>70</sup> T. 23 March 2005 pp. 72-75; Prosecution Exhibit 46 (Simba's Diary).

3542

57. The Chamber acknowledges the possibility that Simba throughout his life and career suffered some professional set backs. However, the evidence on the record in no way reflects that he was ever simply an ordinary Rwandan citizen, as he suggests. While he might not have achieved the apex of his own career aspirations, he nonetheless held prominent posts in the military, government, and his political party for most of his professional life, which gained him national recognition.

58. The Chamber observes that after his resignation, Simba maintained connections with influential officials and continued to garner substantial deference due to his prior professional life. Simba's testimony reflects that in the violence following the death of the president on 6 April, he used his connections and stature, for example, to acquire military escorts throughout Kigali, contact military and government authorities to arrange for the evacuation of Witness SML2, and move through roadblocks.<sup>71</sup>

59. Additionally, Simba's substantial wealth at the time also distinguished him from the average Rwandan citizen.<sup>72</sup> Evidence suggests that Simba had substantial property interests, including a commercial and residential building in Kigali, a house and ranch in Gikoro commune, a plantation in Bicumbi commune, and an interest in the Crete-Zaire-Nil project in Musebeya commune.<sup>73</sup>

60. Simba's appointment as Gikongoro's Civil Defence Advisor in May 1994, in part, underscores his continued prominence with the Rwandan state at that time.<sup>74</sup> Official correspondences and testimony reflect that the Ministry of Defence hand picked Simba to serve as Civil Defence Advisor for Gikongoro and Butare prefectures.<sup>75</sup> The Ministry of Defence instructions were delivered to the prefectural authorities who then discussed the appointment with Simba.<sup>76</sup> The five massacres are not related to his actions in this position.

61. The Chamber notes that prior to 1994, some evidence suggests that Simba held politically moderate views tending towards ethnic cooperation.<sup>77</sup> Additionally, the evidence indicates that Simba had close personal relationships and worked harmoniously with Tutsi.<sup>78</sup> The Chamber also notes that several witnesses testifying in Simba's behalf are Tutsi.<sup>79</sup> The Prosecution disputes that Simba's wife and daughter-in-law are Tutsi.<sup>80</sup> It is unnecessary to adjudicate this issue.

<sup>71</sup> See, e.g., T. 22 March 2005 pp. 42, 44, 56, 71, 73. Simba, however, denies that he exercised any *de facto* authority. See T. 23 March 2005 p. 76.

<sup>72</sup> T. 23 March 2005 pp. 74-75; testimony of Witness YC, T. 26 October 2004 p. 81; testimony of Monique Mujawamariya, T. 16 February 2005 p. 21; T. 17 February 2005 p. 1. See also Defence Exhibit 148; Prosecution Exhibit 46 (Simba's Diary).

<sup>73</sup> Defence Exhibit 148; Prosecution Exhibit 46 (Simba's Diary). See also T. 22 March 2005 pp. 38, 43-44.

<sup>74</sup> T. 22 March 2005 pp. 2-8, 20. Prosecution Exhibits 25, 26; Defence Exhibits 109, 110.

<sup>75</sup> T. 22 March 2005 pp. 2-5, 19-20. Prosecution Exhibits 25, 26; Defence Exhibits 109, 110.

<sup>76</sup> T. 22 March 2005 pp. 2-5, 19-20. Prosecution Exhibits 25, 26; Defence Exhibits 109, 110.

<sup>77</sup> Defence Exhibit 68; T. 23 March 2005 pp. 64-65.

<sup>78</sup> Testimony of Monique Mujawamariya, T. 16 February 2005 pp. 6-7, 9-10; testimony of Witness RGJ1, 17 March 2005 pp. 21-22. Defence Exhibit 68.

<sup>79</sup> See Section 9 (Testimonies of Witnesses MIB, SML2, FMP1, and AJT1). See also testimony of GMA5, T. 22 February 2005 p. 7 ("I know that [Simba's] wife is Tutsi").

<sup>80</sup> Prosecution Closing Brief, paras. 177-181.

*th*

### 3. INCITEMENT OF KIBEHO PARISH MASSACRE, 9 APRIL 1994

3541

#### 3.1 Indictment

62. Paragraphs 23 (d) and 55 to 57 read:

23 (d). On or about 9 April 1994 at the Gasarenda Trading Centre, after having been informed about the killings in the area, Aloys SIMBA said to the interahamwe 'There are still many Tutsis in Mudasomwa Commune who you have not touched. There are very many Tutsis at Kibeho, and although it is not your commune you must go and assist your colleagues there.'

55. Aloys SIMBA and/or persons trained, armed and instructed by him participated in one or more of a series of massacres during April and May 1994 at Kibeho parish, college, primary school and hospital. This included an attack by Government armed forces, militiamen and Hutu civilians on thousands of displaced people at the parish.

56. On or about 9 April 1994, Aloys SIMBA told the interahamwe in Gasarenda centre to go to Kibeho and help their colleagues there to kill Tutsis.

57. Aloys SIMBA distributed weapons to the interahamwe, notably NGOGA, GAKURU, NKUSI, BAKUNDUKIZE Innocent, who participated in the attack on the Kibeho parish.<sup>81</sup>

#### 3.2 Evidence

##### *Prosecution Witness KEL*

63. Witness KEL is a Hutu with Tutsi family members. In April 1994, he was a fifteen-year-old student on holiday and was with his family in the vicinity of Gasarenda Trading Centre.<sup>82</sup>

64. The witness testified that around 10.00 a.m., three to five days after the death of President Habyarimana, he saw a crowd of more than 200 Hutus gathering at the nearby petrol station. He joined the crowd and observed people greeting Aloys Simba, who was accompanied by two gendarmes. The witness also saw Emmanuel Nteziryayo, the bourgmestre of Mudasomwa commune, as well as three local businessmen named Landouald Karamage, Israel Nsengiyumva and Kajigiti. Simba, who was standing on a cement block about four and a half metres away from the witness, participated in the meeting for about one hour.<sup>83</sup>

65. According to the witness, Simba asked the crowd: "What is the situation like here, because elsewhere some things have already started." A teacher named Gakuru responded:

---

<sup>81</sup> Submissions on the Kibeho massacre are found at Prosecution Closing Brief, paras. 62-64, 88-91; Defence Closing Brief, paras. 445-501; T. 7 July 2005 pp. 3-4, 7, 12-14. The Prosecution also points to the testimony of Prosecution Witness KDD who described a meeting at the *Centre intercommunal de perfectionnement du personnel* ("CIPEP") in Gikongoro town on 26 April where Damien Biniga, the sub-prefect of Munini, informed Simba that on 17 April he led an attack in Kibeho, with the assistance of gendarmes, and killed seventeen thousand five hundred Tutsi. The meeting is discussed in detail in Section 8.6.

<sup>82</sup> T. 7 September 2004 pp. 26-28; Prosecution Exhibits 5, 6.

<sup>83</sup> T. 7 September 2004 pp. 31-32, 35; T. 8 September 2004 pp. 17, 21-22, 24-28.

*6/1*

"Here too, things are good because we have already started those things as well. And we have gotten rid of some people including John Ntwali and employees of a company called EMUJECO." The witness later learned that Ntwali was a Tutsi.<sup>84</sup>

66. Simba then mentioned that there were other Tutsi in the area and told the crowd: "[I]t is your responsibility to fight against the enemy and to help your kith and kin to get rid of the enemy." People in the crowd said that they had no means to travel to remote areas, such as Kibeho. Simba told them to use vehicles belonging to EMUJECO, the Kitabi tea factory, and local businessmen. The crowd applauded Simba, and he left with the two gendarmes in a white Mercedes Benz in the direction of Musebeya commune.<sup>85</sup>

67. Following Simba's departure, a group of local leaders gathered in front of Karamage's house. Among the group were Bourgmestre Nteziryayo, Karamage, Kajigiti, Police Inspector Nsanzimana (*inspecteur de police judiciaire*), Denys Kamodoka who was director of Kitabi tea factory, and Juvénal Ndabirinze who was the director of Mata tea factory. Witness KEL did not hear what they discussed. The next morning from the roadside, the witness saw the local ringleaders Ngoga, Nkusi, and Sakindi giving instructions to a large group of more than five hundred attackers, armed with traditional weapons. The assailants, who were shouting that they were going to kill the enemy in Buhoro, Nyamigina, and Kibeho, departed on foot and in the back of two Daihatsu pick-up trucks belonging to the Kitabi tea factory. The witness understood "enemy" to mean the Tutsi. Later, the attackers, some covered in blood, returned with looted property and recounted their exploits. According to the witness, the attackers first went to Buhoro and Mwufe and in subsequent days attacked Nyamigina and Kibeho.<sup>86</sup>

68. Witness KEL, while still in primary school, learned that Simba was a national hero. He explained that he had seen Simba on more than five occasions before 1994, first before 1992 on his way home from primary school in Gasarenda, and then three times during an election campaign in 1992 or 1993. He recalled Simba having a scar on his forehead that people said he received dodging a bullet while fighting the "Inyenzis". The witness identified Simba in court.<sup>87</sup>

#### *The Accused*

69. Simba acknowledged visiting Gasarenda Trading Centre in connection with his election campaign in 1988. However, he denied holding the alleged meeting in early April in order to urge people to attack Kibeho Parish.<sup>88</sup> His alibi is discussed in full in Section 9.

#### *Defence Witness RGJ1*

70. Witness RGJ1, a Hutu, is a member of the clergy who worked with Simba in the 1980s. During the relevant events in April 1994, he was on leave from his teaching position and was visiting his family who lived near Kibeho Parish. The witness is currently charged in

<sup>84</sup> T. 7 September 2004 pp. 32-34; T. 8 September 2004 pp. 28, 30. EMUJECO is an abbreviation for *Entreprise Murenzi Jean & Co.*

<sup>85</sup> T. 7 September 2004 pp. 34-36; T. 8 September 2004 pp. 29, 31.

<sup>86</sup> T. 7 September 2004 pp. 37-42; T. 8 September 2004 pp. 35, 36, 41, 43-44, 46, 48.

<sup>87</sup> T. 7 September 2004 pp. 28-30; T. 8 September 2004 pp. 3-15; Defence Exhibit 10.

<sup>88</sup> T. 23 March 2004 pp. 34, 36.

Rwanda and awaiting trial in connection with his own alleged participation in the Kibeho Parish massacre.<sup>89</sup>

71. On 10 April 1994, Witness RGJ1 met briefly with Damien Biniga, the sub-prefect of Munini, and other priests about providing food to the refugees gathered at the parish. According to the witness, attacks occurred in the area around Kibeho parish on 11 and 13 April 1994, but he did not see the attackers. On 13 April 1994, he fled to Bukoro when assailants urged the local population to flee because the Tutsis were becoming more resistant.<sup>90</sup>

72. On 14 April 1994, while in Bukoro, Witness RGJ1 heard *Interahamwe*, soldiers, and gendarmes, who were returning to Mudasmwa commune, boasting about their exploits killing Tutsi at Kibeho Parish. According to the witness, the assailants did not mention that Simba was at the massacre site, but they spoke about Biniga, Ngoga, Gakuru, Charles Nyiridandi, Bourgmestre Isilis of Rwamiko commune, Bourgmestre Mujyerangabo of Mubuga commune, and Juvenal Ndabarinze, who was the director of the Mata tea factory. The assailants returned to Kibeho on 15 April. When the witness returned to his workplace in a different prefecture on 2 May 1994, a priest who survived the massacre at Kibeho Parish also mentioned the same named assailants, but not Simba.<sup>91</sup>

73. Witness RGJ1 stated that he has been wrongly charged in Rwanda in connection with the Kibeho Parish massacre. He added that Simba is not a co-accused in his case or other Rwandan cases which involve the Kibeho Parish massacre. Furthermore, a written report prepared by African Rights about the massacre also does not mention Simba.<sup>92</sup>

#### *Defence Witness SBL1*

74. Witness SBL1, a Hutu and a former high-level official, testified that on 16 April, he learned about massacres that occurred at Kibeho Parish on 14 to 15 April. The witness heard nothing which implicated Simba in the attacks and characterized the allegations about the Accused's involvement in the massacre as false.<sup>93</sup>

#### *Defence Witness SNB3*

75. Witness SNB3, a Hutu, attended school in the 1980s with Simba's son Robert. The witness testified that after President Habyarimana's death, he stayed with a family in Uwingingi sector, Mudasmwa commune. Given Simba's prominence, the witness would have known if in fact the Accused was in Gasarenda Trading Centre around that time, distributing weapons to Ngoga and Nkusi. The witness also noted that this was a stressful and fearful time and consequently he remained in hiding.<sup>94</sup>

<sup>89</sup> T. 17 March 2005 pp. 7-8, 10, 19.

<sup>90</sup> *Id.* at pp. 11-12, 24.

<sup>91</sup> *Id.* at pp. 12-15.

<sup>92</sup> *Id.* at pp. 7, 14-16, 19; Defence Exhibit 124 (Excerpts of *Témoin du Génocide: Damien Biniga, Un Génocide Sans Frontière*).

<sup>93</sup> T. 23 February 2005 p. 37.

<sup>94</sup> T. 15 February 2005 pp. 4-6, 9, 11-12, 17-20.

*Defence Witness NGJ2*

3538

76. Witness NGJ2, a Hutu and a former local official in Gikongoro prefecture, testified that he did not hear about Simba addressing a crowd at Gasarenda Trading Centre, around 9 April 1994. The witness explained that he and his family were in the area at this time. According to the witness, it would have been impossible to use Gasarenda Trading Centre as a staging point for killings because the local population was small and there was no network for buses or taxis.<sup>95</sup>

*Defence Witness ANL*

77. Witness ANL, a Hutu, testified that he returned from school on 21 April 1994 to his home in the vicinity of Gasarenda Trading Centre. The witness affirmed that Witness KEL's residence was in the area. However, he did not see him during the relevant events. Witness ANL heard that Witness KEL's family included both Hutu and Tutsi members and that they remained in hiding because assailants at a nearby roadblock were looking for them. The witness also testified that he had information about Witness KEL's collaboration with the RPF.<sup>96</sup>

**3.3 Deliberations**

78. The Chamber accepts that Prosecution Witness KEL lived in the vicinity of Gasarenda Trading Centre in April 1994, as corroborated by the testimony of Defence Witness ANL. The Chamber also accepts that Witness KEL observed and heard about numerous events that occurred at Gasarenda Trading Centre at that time. The crucial question is the reliability of Witness KEL's testimony in relation to Simba's alleged meeting to incite killings at Kibeho Parish. The witness attested to personally seeing Simba on more than five occasions before 1994 when he was between eleven and fourteen-years-old. Two of these occasions were before 1992 and the other three occasions occurred during an electoral campaign in 1992-93. The Chamber recalls that Simba apparently campaigned for parliament in 1988. However, Simba was in neighbouring Musebeya commune for bourgmestre elections in June 1993.<sup>97</sup> The witness was fifteen-years-old in 1994. The young age of the witness at the time of the events is not in itself a sufficient reason to discount his testimony, but implies that it should be evaluated with some caution. The witness did identify Simba in the courtroom.

79. Witness KEL testified that he observed Simba at the Gasarenda Trading Centre three to five days after the death of President Habyarimana on 6 April 1994, which gives a range from about 9 to 12 April. There are, however, inconsistencies between the witness's two written statements and his in-court testimony, leaving the Chamber with some doubt as to the reliability of his observations.

80. His first statement to Tribunal investigators, dated 6 November 2000, suggested that Simba arrived in the afternoon on 9 April, "[s]hortly after" Prefect Bucyibaruta left after a gathering which had commenced around 4.00 p.m. on that day. According to the testimony,

<sup>95</sup> T. 21 March 2005 p. 27.

<sup>96</sup> T. 15 February 2005 pp. 28-30, 46, 57-59, 77-79; Defence Exhibit 65.

<sup>97</sup> T. 21 March 2005 p. 72.

however, Simba arrived in the morning at least two days after Bucyibaruta departed.<sup>98</sup> The witness explained this discrepancy as a translation error. According to the witness, he had informed the investigators simply that Simba arrived after Bucyibaruta left; the investigators inserted the specific time. In addition, the witness said that he spoke only generally and that the investigators, of their own accord, inserted specific time references.

81. The Chamber, realizing that it may be difficult for witnesses to recall dates many years after the events, nonetheless finds Witness KEL's explanation of this discrepancy surprising. Both his statement of 2000 and a subsequent statement of 26 September 2001 contain meticulous details, including systematic references to dates and time. In his first statement, the witness acknowledged each page of his statement after having it read back to him in Kinyarwanda by a duly qualified interpreter. The witness's explanation raises questions about his credibility.

82. The Chamber has also noted that the first statement includes references to Simba, whereas the second makes no reference to him even though it addresses the events in Gasaranda Trading Centre, including the petrol station. It appears that the second statement was prepared in connection with an investigation of Denys Kamodoka, the director of the Kitabi tea factory. This may explain why the document focuses on his role and on other local leaders. However, it is still somewhat surprising that there are no references whatsoever to Prefect Bucyibaruta and to Simba in the detailed account of what transpired at the Gasaranda Trading Centre in the second statement of 26 September 2001. In particular, the statement of 2001 reflects that on Kamodoka's instructions a crowd of attackers set out for Mwufe Hill on the morning of 9 April and on subsequent days to neighbouring destinations, including Kibeho. This was before Simba allegedly arrived at Gasaranda Trading Centre and gave such instructions, according to the statement of 2000 and the witness's testimony at trial.

83. The Chamber notes that Witness RGJ1 corroborates Witness KEL's testimony with respect to the identity of some of the assailants who attacked Kibeho Parish. However, the limited corroboration provided by Witness RGJ1 does not support Witness KEL's assertion that Simba urged the assailants to attack the parish. The Chamber recalls that Witness KEL attributed this incitement, in his statement to Tribunal Investigators of 26 April 2001, to Denys Kamodoka.

84. The Chamber has also considered the assertions of Defence Witnesses RGJ1, SBL1, SNB3, NGJ2, and ANL that Simba had no involvement in the Kibeho Parish massacre. The testimony of these witnesses on this point is based principally on their assertions that they did not hear about his involvement. This is not a sufficient basis of knowledge for the Chamber to make any findings concerning Simba's activities at the relevant time.

85. The Chamber concludes that there are some doubts in connection with Witness KEL's testimony, which is largely uncorroborated. Moreover, as discussed in Section 9, the Prosecution has not eliminated the reasonable possibility that Simba was in Kigali between 6 and 13 April. This further calls into question the reliability of Witness KEL's testimony about Simba's presence at Gasaranda Trading Centre during this period of time. Consequently, the Chamber is not satisfied that there is sufficient reliable and credible evidence to establish that Simba on or about 9 April urged *Interahamwe* to kill Tutsi in Kibeho, as alleged in paragraphs 23 (d) and 56 of the Indictment.

<sup>98</sup> T. 8 September 2004 pp. 19-21, 32-33; Defence Exhibit 8.

86. Furthermore, there is no evidence that Simba trained assailants or distributed weapons to the particular attackers who participated in the massacre, as alleged in paragraphs 55 and 57 of the Indictment.

#### 4. MASSACRE AT MURAMBI TECHNICAL SCHOOL, 21 APRIL 1994

##### 4.1 Indictment

87. Paragraphs 38 to 46 read:

38. On or about 11 April 1994, thousands of Tutsi civilians fled their homes and gathered in Gikongoro Diocese. Following the orders of BUCYIBARUTA, accompanied by SEBUHURA and the then Bourgmestre of Nyamagabe Commune, SEMAKWAVU, gendarmes escorted the refugees to Murambi Technical School.

39. By 20 April 1994, around 40,000 mostly Tutsi civilians had taken refuge in Murambi Technical School. They were surrounded by roadblocks to prevent their escape and were kept under conditions calculated to bring about their destruction. They were denied access to food and water. As a result, some died due to hunger and disease.

40. On or around 19 and 20 April 1994, Aloys SIMBA, together with Gendarmerie Captain SEBUHURA, Prefet BUCYIBARUTA, Sous-prefet BINIGA and Bourgmestre MUNYANEZA amongst others, organised and ordered government armed forces, militiamen and Hutu civilians to surround and attack the displaced persons who had taken refuge at Murambi Technical School. At a meeting, at the gendarmerie barracks, immediately prior to the attack Aloys SIMBA urged Captain SEBUHURA, prefet BUCYIBARUTA and Sous-prefet BINIGA to attack the displaced Tutsi at Murambi Technical School.

41. On or about the afternoon of 20 April 1994, BUCYIBARUTA met with Captain SEBUHURA in the gendarmes' Brigade. He informed SEBUHURA about the plan to attack Murambi in the early hours of 21 April 1994. Furthermore, he ordered him to release his gendarmes, at about 01.00 hours on 21 April 1994, to join the Interahamwe in the attack on Murambi and make sure that no Tutsi escaped the massacre.

42. Aloys SIMBA came to Murambi dressed in military uniform. He arrived in a truck loaded with machetes which he subsequently distributed to the Interahamwe.

43. At about 03.00 hours, on 21 April 1994, following the orders of BUCYIBARUTA, a large group of attackers comprised of soldiers, gendarmes, Interahamwe and armed civilians encircled and attacked Murambi using heavy guns, arms, grenades, machetes, clubs and other traditional weapons. Both Laurent BUCYIBARUTA and Faustin SEBUHURA fired at the refugees.

44. The attack on Murambi continued until about 07.00 hours. Thousands of Tutsi civilians were massacred as a result of this attack and their properties were looted. During the attack, Aloys SIMBA delivered and supplied machetes to the attackers and rewarded them after the attack.

45. At about 07.00 hours on 21 April 1994, Laurent BUCYIBARUTA, Aloys SIMBA and Faustin SEBUHURA examined the massacre site. While Aloys SIMBA expressed his satisfaction at the results of the killing campaign, Laurent BUCYIBARUTA rewarded those who were active in the killing by giving them cows belonging to the victims.

46. As a result of this attack, thousands of men, women and children were massacred at Murambi Technical School on or about 21 April 1994. The majority of the victims were Tutsi. The victims were buried in mass graves dug by prisoners from Gikongoro prison shortly after the attack. The mass burial took approximately one week.<sup>99</sup>

## 4.2 Evidence

### *Prosecution Witness KSY*

88. Witness KSY, a Tutsi, first sought refuge at the Kigeme diocese after *Interahamwe* began attacking Tutsi and torching their homes on 9 April 1994. He was then moved by gendarmes to the Gikongoro diocese. After Félicien Semakwavu, the bourgmestre of Nyamagabe commune, Laurent Bucyibaruta, the prefect of Gikongoro, and Captain Faustin Sebhura of the gendarmerie indicated that they wanted to ensure the refugees' security, he was transferred to the Murambi Technical School near the Gikongoro prefecture office. The witness stayed at the school from 13 April until 21 April 1994. It was not yet completed or enclosed and consisted of several buildings. He participated in a census of the refugees at the school, which indicated that around 48,600 Tutsi had gathered there before 17 April 2004. In the following days, the number increased to 50,000. According to the witness, Prefect Bucyibaruta had requested the census through an envoy, after the refugees sent a message asking for food through a soldier guarding them.<sup>100</sup>

89. On 17 April 1994, around 10.00 a.m., an estimated 30,000 *Interahamwe*, armed with traditional weapons, attacked the refugees at the school and exploded one grenade to frighten them. Among the attackers were Karangwa, who was the registrar of the local tribunal, and François Gasana.<sup>101</sup> The refugees were numerous and repulsed the attack, using stones and tree branches. No one was killed during this first attack.<sup>102</sup>

90. A second attack started on 19 April 1994 around 7.00 a.m. About 30,000 *Interahamwe*, armed with traditional weapons, again confronted the refugees at the school. The refugees were able to defend themselves with stones without suffering any casualties. The "ringleaders" of the attack, whom the witness recognized, came on board several pickups. One belonged to the Kitabi tea factory, one to the Mudasomwa commune office (a Toyota Hilux), Israel Nsengiyumva arrived in a yellow vehicle, and Landouald Karamage in a blue Daihatsu. In addition, the witness observed two *Interahamwe* called Gakuru and Kidende.<sup>103</sup>

91. Beginning at 3.00 a.m., on 21 April 1994, *Interahamwe* and gendarmes, armed with guns and grenades, attacked the refugees for the third time. Gasana, Karamage, Havuga, and

<sup>99</sup> See Prosecution Closing Brief, paras. 65-70, 92-98; Defence Closing Brief, paras. 502-581; T. 7 July 2005 pp. 3-13, 58, 61, 69. In addition, the meetings held on 10 April at the Nyamagabe commune office and the nearby Nzega Trading Centre bear some relevance to this event. This evidence is discussed in detail in Sections 8.3 and 8.4. The Prosecution also points to the testimony of Prosecution Witness KDD who described a meeting at the *Centre intercommunal de perfectionnement du personnel* ("CIPEP") in Gikongoro town on 26 April in which Captain Faustin Sebhura of the gendarmerie informed Simba that he had led the attack against Murambi Technical School, resulting in the death of twenty thousand Tutsi. The meeting is discussed in detail in Section 8.6.

<sup>100</sup> T. 30 August 2004 pp. 21, 34, 40-44, 73-75; T. 31 August 2004 p. 5; Prosecution Exhibit 1.

<sup>101</sup> According to Witness KEH, Gasana was an MDR official in Nyamagabe commune.

<sup>102</sup> T. 30 August 2004 pp. 21-23, 42-44; T. 31 August 2004 pp. 6-7; Defence Exhibit 2.

<sup>103</sup> T. 30 August 2004 pp. 23-24, 44-46.

*h*

Ngoga were among the attackers. Witness KSY was in the courtyard in front of the school building. Between 3.00 a.m. and 6.00 a.m., the attackers killed about 20,000 refugees who tried to resist with stones. Around 6.00 a.m., the witness, who was lying amidst the dead bodies in the courtyard, saw Prefect Bucyibaruta, Captain Sebhura, and Bourgmestre Semakwavu arrive at the school. When they arrived, the assailants, who had run out of ammunition, stopped the attack and gathered together around the authorities. The witness was then lying thirty meters away. He testified that he saw Sebhura replenish the attackers' ammunition and heard Bucyibaruta tell some of the assailants to reinforce the attack at Cyanika Parish. The officials remained at the school for about ten minutes, and the attack resumed after their departure. The attackers continued to shoot until 7.00 a.m., during which time the refugees again tried to defend themselves.<sup>104</sup>

92. At 7.00 a.m., Witness KSY was standing in the courtyard. He saw Simba arrive at the school in a red Toyota pickup, belonging to the gendarmerie, along with approximately two gendarmes and five *Interahamwe*. Simba remained there for about fifteen minutes. He was in military uniform and addressed the attackers who had gathered around. The *Interahamwe* in the back of Simba's pickup then distributed machetes. The witness estimated that he was seventy to one hundred meters away, at a slightly elevated area, with about one hundred persons between himself and Simba. After Simba's departure, the attackers used machetes with even greater ardour against the refugees, who could no longer resist. Around 7.30 a.m., the witness fled to a sorghum field sixty metres away and then hid on a hill opposite Murambi. From his hiding place he could see that the killings at Murambi continued until nightfall around 6.00 p.m. The next morning he watched the attackers finish off the survivors and then bury them.<sup>105</sup>

93. Witness KSY recognized Simba because he had seen him on three prior occasions: with President Habyarimana when they both visited Gikongoro after the *coup d'état* that installed the former president into power; in Mudasmwa commune, when Simba came to campaign for parliament; and for a third time, in 1992, after the formation of political parties. On Simba's arrival at Murambi Technical School, the attackers shouted: "Here is our Simba". The witness identified Simba in court.<sup>106</sup>

#### *Prosecution Witness KEI*

94. Witness KEI, a Hutu, lived at the Gikongoro gendarmerie camp in April 1994, where he had worked from 1992. After the massacre at the Murambi Technical School, the witness stopped working at the gendarmerie camp because no one was based there any longer. He returned to his home district to search for cows belonging to Tutsi. After confessing to charges of genocide, based on crimes he committed in his home area, he was provisionally released from detention in 2003 while awaiting trial.<sup>107</sup>

95. On the morning of 20 April 1994, the witness saw Aloys Simba deliver about three hundred machetes and *coupe-coupes* (longer machetes used to cut grass) to the Gikongoro gendarmerie camp. Simba asked Captain Faustin Sebhura of the gendarmerie for a briefing on Tutsi members of the gendarmerie. Sebhura promised to check and inform Simba. Later

<sup>104</sup> T. 30 August 2004 pp. 26-28, 47-50, 52-59.

<sup>105</sup> *Id.* at pp. 28-30, 49-52, 60; T. 31 August 2004 p. 10; Defence Exhibit 1.

<sup>106</sup> T. 30 August 2004 pp. 30-31.

<sup>107</sup> T. 25 October 2004 pp. 17-19, 64; T. 26 October 2004 pp. 27-30, 48-55; Prosecution Exhibit 14.

3532

that day, around 3.00 p.m., Simba arrived at the gendarmerie camp with his military escort in a white-coloured vehicle and delivered grenades and eight guns for distribution to individuals on a list who had undergone military training.<sup>108</sup>

96. Between 4.00 and 5.00 p.m., Simba returned to the camp accompanied by a military escort. Sebhura told Simba that a Tutsi called Ndagijimana, who worked in the gendarmerie, was in the market square. This person was brought back to the camp tied and, according to the witness, was killed by Simba's military escort.

97. Around 11.00 p.m. on 20 April, Witness KEI accompanied Simba, Captain Sebhura, Prefect Bucyibaruta, Bourgmestre Semakwavu of Nyamagabe commune, and several gendarmes to Murambi Technical School. It was between five and ten minutes away from the gendarmerie camp. The witness travelled with Simba and Sebhura in a grey pick-up truck loaded with the machetes and the *coupe-coupes*. Bucyibaruta followed in a blue pick-up truck, and Semakwavu travelled in a Hilux pickup with two communal policemen. On arrival, they distributed the machetes and *coupe-coupes* to CDR militiamen from Mudusomwa commune. Simba gave guns and grenades to people whose names he read from a list. He stated that he would return with more weapons and that the attackers should ensure that no Tutsi was spared. The CDR militiamen attacked, immediately hacking people to death. The witness, who described the scene as a blood bath, left around 11.30 p.m. and returned to the gendarmerie.<sup>109</sup>

98. A few hours later, on 21 April around 3.00 a.m., Witness KEI accompanied Simba, Bucyibaruta, Sebhura, and Semakwavu in the same three vehicles on their return to Murambi Technical School to distribute the remaining weapons left at the gendarmerie camp. Simba summoned the attackers with a megaphone and distributed grenades and six guns, while the witness distributed the machetes and *coupe-coupes*. Simba told the crowd that the group which killed the largest number refugees would be rewarded. He further informed the assailants that he would return later in the morning to gather the weapons because the enemy had also surrounded Kaduha. Simba then requested the gendarmes to surround the building and to start shooting, which they did. The witness remained at Murambi Technical School for about thirty minutes before he returned with Simba, Bucyibaruta, and Sebhura to the gendarmerie camp. Semakwavu stayed behind to look for more CDR militiamen from Mudusomwa commune to transport them to the site.<sup>110</sup>

99. Around 8.00 a.m. on 21 April, the witness returned to Murambi Technical School for about twenty minutes with Simba, Bucyibaruta, Sebhura, and Semakwavu. According to the witness, all the Tutsi had been killed and more than 10,000 bodies were piled on each other. Bucyibaruta indicated that equipment should be brought to bury the dead. Simba congratulated the attackers and told them they had done well. He announced that he needed the guns which he had distributed for the attack on Kaduha Parish. The attackers returned the guns and the remaining grenades. Simba asked which group had killed the most people, and he and Bucyibaruta then distributed the looted cows of the dead Tutsi to them. Semakwavu also addressed the attackers, but the witness did not indicate what he said.<sup>111</sup>

<sup>108</sup> T. 25 October 2004 pp. 5-7; T. 26 October 2004 pp. 37-38.

<sup>109</sup> T. 25 October 2004 pp. 7-9, 17; T. 26 October 2004 pp. 37.

<sup>110</sup> T. 25 October 2004 pp. 9-10.

<sup>111</sup> *Id.* at pp. 10-11.

6h

100. After returning to the gendarmerie camp, Simba, Bucyibaruta, Sebhura, and Semakwavu met privately. Witness KEI later heard that the *coupe-coupes* would be used at Cyanika. He then asked for his salary and returned to his home area, where he perpetrated the crimes for which he is charged.<sup>112</sup>

101. Prior to the event at Murambi Technical School, the witness had seen Simba twice on 13 April 1994, at CIPEP and the Nyamagabe market, respectively. The witness identified Simba in court.<sup>113</sup>

*Prosecution Witness KEL*

102. Witness KEL is a Hutu with Tutsi family members. In April 1994, he was a fifteen-year-old student on holiday and was staying with his family in the vicinity of Gasarenda Trading Centre.<sup>114</sup> He testified that around 20 April 1994, he saw Simba in front of Landouald Karamage's bar in Gasarenda Trading Centre, Mudasomwa commune, at about 3.30 p.m. Simba was with Denys Kamodoka, the director of the Kitabi tea factory, as well as local traders including Karamage, Ngoga, Israel Nsengiyumva, Kajigita, and Nkusi. The witness did not participate in the meeting.<sup>115</sup>

103. The next morning, a group of five hundred assailants, armed with clubs, axes, machetes, and rifles congregated by the nearby petrol station. The witness heard Ngoga, Kamodoka, Karamage and others tell the crowd to carry out an attack in Murambi. The witness saw the group of assailants leave for Murambi and return that evening with looted property. The group also departed the following day for Murambi and recounted later that evening how they killed Tutsi with the assistance of gendarmes.<sup>116</sup>

*Defence Witness SBL1*

104. Witness SBL1 is a Hutu and a former high-level official who has allegedly been implicated in crimes which occurred in Gikongoro prefecture. The witness confirmed that attacks against Tutsi refugees occurred at Murambi Technical School on 21 April 1994, but stated that neither he nor Simba planned or participated in them.<sup>117</sup>

*Defence Witness NGJ2*

105. Witness NGJ2, a Hutu and a former local official in Gikongoro, testified that at about 3.00 a.m. on 21 April 1994, the Murambi refugee camp in Nyamagabe commune was attacked. All the refugees, except for a few who managed to escape, were killed. When the

<sup>112</sup> T. 25 October 2004 pp. 11-12.

<sup>113</sup> *Id.* at pp. 2-4.

<sup>114</sup> T. 7 September 2004 pp. 26-28; Prosecution Exhibits 5, 6.

<sup>115</sup> T. 7 September 2004 pp. 26, 42-43; T. 8 September 2004 pp. 35, 49; T. 9 September 2004 pp. 1-4; Prosecution Exhibit 6. The witness also noted that this meeting occurred around two weeks after the death of President Habyarimana.

<sup>116</sup> T. 7 September 2004 pp. 43-44, 47; T. 8 September 2004 pp. 46, 48.

<sup>117</sup> T. 22 February 2005 pp. 19-21; T. 23 February 2005 pp. 35-36; T. 24 February 2005 pp. 37-38, 50.

*Sh*

Murambi massacre ended, the same attackers headed towards Cyanika to attack the refugees there. The witness did not personally see the attacks at Murambi.<sup>118</sup>

### 4.3 Deliberations

106. The Indictment asserts that Simba ordered the attack against Murambi Technical School during a meeting with local officials held at the gendarmerie camp around 20 April and that on the morning of 21 April, he distributed weapons to assailants there and expressed his satisfaction with the killings. The Prosecution has supported these allegations primarily with the testimony of Witness KSY, a victim of the massacre, and Witness KEI, a former detainee who allegedly accompanied Simba and assisted in distributing the weapons. As additional corroboration, the Prosecution has also pointed to Witness KSU who claims to have seen Simba leaving Murambi on the morning of 21 April, as well as Witness KEL, who in the days before the massacre allegedly saw Simba meet with the leaders of the assailants who later set out for Murambi. The Chamber, however, has excluded the evidence of Witness KSU based on lack of notice.<sup>119</sup>

107. Witness KEI is the sole witness to testify about what transpired at the gendarmerie camp on 20 April. The Chamber recalls that at the time of his testimony, he was awaiting trial in Rwanda for genocide-related crimes, but not for crimes related to the Murambi Technical School massacre, for which he has not been implicated in Rwanda. The Chamber has viewed his testimony with caution. There are a number of inadequately explained contradictions between his testimony at trial and his written statements to Tribunal investigators, which leaves the Chamber with some doubt as to his credibility.

108. The witness's first statement to Tribunal investigators, dated 3 December 2001, does not mention Simba's role in bringing weapons to the gendarmerie camp or his participation in the massacre at Murambi Technical School. Rather, the statement implicates Bucyibaruta in visiting the Mudasomwa *Interahamwe* and in giving the order to attack Murambi. The Chamber notes that the statement appears to have been prepared in the course of an investigation against Bucyibaruta. However, when confronted with these discrepancies, the witness simply denied giving the statement. He indicated that he, in fact, also accused Simba when he spoke with the Tribunal investigators but that the individuals who took his statement were trying to exculpate the Accused. The witness also asserted that his signature appeared forged on certain pages. The witness later indicated that he did not mention Simba for fear of retribution from certain members of Simba's family, but declined to elaborate.<sup>120</sup>

109. The Chamber does not find the witness's progressively varying reasons for these inconsistencies to be convincing, in particular, the suggestion that Tribunal investigators wanted to exculpate Simba and, therefore, refrained from accurately recording the witness's statement. The witness acknowledged signing the statement.<sup>121</sup> Though the witness disputed certain signatures on some of the pages of the statement, the Chamber can observe no

<sup>118</sup> T. 21 March 2005 pp. 5, 14, 17. The witness said that Cyanika centre and Murambi centre are near one another. The distance is only 100 to 200 meters as the crow flies, whereas it is six or seven kilometres by road. T. 21 March 2005 p. 14.

<sup>119</sup> See Section 1.2.

<sup>120</sup> T. 26 October 2004 pp. 17-26, 38, 57-66; Defence Exhibit 30.

<sup>121</sup> T. 26 October 2004 p. 59. The witness also indicated that he gave other or different written statements to Tribunal investigators implicating Simba.

discernible difference. In the Chamber's view, the witness's explanation for these contradictions calls into question his credibility.

110. The Chamber has also observed other discrepancies. The witness's second statement to Tribunal investigators, dated 2 October 2002, does not mention Simba's role in bringing weapons to the gendarmerie camp on 20 April 1994 or distributing them to the attackers at Murambi on the morning of 21 April. The witness's third statement to Tribunal investigators, dated 9 December 2003, indicates that Bucyibaruta brought the weapons to the gendarmerie camp on 20 April.<sup>122</sup>

111. Other aspects of Witness KEI's testimony are also troubling. For example, the witness did not believe that his role in distributing weapons to attackers at the scene of a massacre was somehow criminal.<sup>123</sup> In addition, he indicated that the first wave of the final assault against Murambi Technical School commenced at 11.00 p.m. on 20 April resulting in a "blood bath". Witness KSY, however, testified that the attack began only around 3.00 a.m. on 21 April, which is corroborated by Defence Witness NGJ2.

112. In view of Witness KEI's questionable credibility, the Chamber declines to accept his testimony without corroboration. Consequently, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt that around 19 or 20 April, Simba organized or urged local officials at the gendarmerie camp to attack Murambi Technical School, as alleged in paragraph 40 of the Indictment. The Chamber also notes that there is insufficient evidence on the record to establish that Prefect Bucyibaruta ordered the attack, as described in paragraphs 41 and 43 of the Indictment.

113. The Chamber is next faced with the question of whether Simba distributed weapons and congratulated the attackers on the killings at Murambi Technical School on the morning of 21 April as alleged in paragraphs 45 and 46 of the Indictment. In this respect, the Chamber recalls that both Witness KSY and Witness KEI place Simba at Murambi Technical School around 7.00 a.m. on 21 April.

114. In the Chamber's view, Witness KSY provided a consistent and convincing firsthand narrative of the attacks against the Tutsi refugees at Murambi Technical School. Though his estimates of the number of attackers and refugees appear exaggerated, the Chamber finds these to be approximations, which do not affect his credibility. Contrary to Defence suggestions, Witness KSY's testimony about Simba was generally in conformity with his previous statement to Tribunal investigators, dated 16 June 2000. The fact that Simba is not mentioned in the statement of 10 May 2001 does not affect the witness's credibility, as that interview focused on Bourgmestre Nteziryayo.

115. The Defence referred to three *pro justitia* statements to Rwandan authorities, where the witness made no mention of Simba. In relation to two of the statements, the witness expressed doubts as to whether they were his statements. Leaving aside the issue of their authenticity, the Chamber observes that the first of these two documents, dated 9 September 1996, was a complaint against Israel Nsengiumva involving several locations. Another statement of 22 November 1996 related to a person who allegedly had killed a relative of the witness and did not concern the Murambi massacre in particular.<sup>124</sup> Consequently, the lack of

<sup>122</sup> Defence Exhibits 31, 32.

<sup>123</sup> T. 26 October 2004 p. 17.

<sup>124</sup> T. 31 August 2004 pp. 36-37.

26h

reference to Simba in these two documents is not significant. However, his *pro justitia* declaration of 22 November 1996 dealt generally with the massacre in Murambi. The Chamber accepts the witness's explanation that he intended to provide evidence against persons in his neighbourhood and, therefore, did not include Simba. The witness also observed that some of his statements to Rwandan authorities appeared forged. The Chamber does not find these explanations convincing.<sup>125</sup>

116. Based on Witness KSY's testimony, the Chamber finds, as alleged in paragraphs 38, 39, 43, and 46 of the Indictment, that thousands of mostly Tutsi refugees fled their homes to Murambi Technical School. In some cases, local authorities such as Bucyibaruta, Sebhura, and Semakwavu urged the refugees to go to the school, with promises of additional protection after they initially sought refuge at the Gikongoro Diocese. The *Interahamwe*, armed primarily with traditional weapons, unsuccessfully attacked the school on 17 and 19 April.<sup>126</sup> The attacks culminated in a final massive assault by militiamen who were assisted by gendarmes, armed with guns and grenades. The attack commenced around 3.00 a.m. on 21 April and lasted all day resulting in the death of thousands of Tutsi. The Chamber notes that there is insufficient evidence to suggest that the refugees were surrounded by roadblocks to prevent their escape and that they were denied food and water as alleged in paragraph 39, or that Bucyibaruta and Sebhura fired on the refugees as alleged in paragraph 43.

117. The crucial issue, with respect to Simba's criminal responsibility, is the reliability of Witness KSY's identification of the Accused addressing assailants and distributing weapons to them at Murambi Technical School around 7.00 a.m. on 21 April. In assessing this evidence, the Chamber is mindful of the traumatic and highly stressful nature of the events, particularly given that Witness KSY had been engaged in fighting off attackers for several exhausting hours before Simba's alleged arrival. The Chamber has also proceeded with due caution, given the witness's testimony that he observed Simba from a distance of seventy to one hundred meters with more than one hundred people in between them and that at times the witness was on the ground covered in blood.

118. The Chamber notes, however, that the witness explained that when the Accused arrived, the attackers shouted: "Here's our Simba". Witness KSY also observed Simba during a lull in the fighting, which lasted around fifteen minutes. The witness was at a slightly elevated area and standing at various times. During cross-examination, the Defence pointed out that the witness indicated in his 16 June 2000 statement to Tribunal investigators, that he was lying down when Simba arrived, not standing up. The witness responded that he was both lying down and standing up when he saw Simba. The Chamber accepts this explanation. The witness had some prior familiarity with Simba and identified him in court. Consequently, the Chamber accepts that Witness KSY saw Simba address the attackers and distribute weapons to them. The assailants then proceeded to attack the refugees with renewed ardour. Based on Witness KSY's testimony, this distribution occurred around 7.00 a.m. about one hour after Bucyibaruta, Sebhura, and Semakwavu provided ammunition to the attackers and urged half of the assailants to move on to attack Cyanika Parish. The Chamber observes that Witness KEI also places Simba at or near Murambi Technical School at approximately the

<sup>125</sup> T. 31 August 2004 pp. 17-23.

<sup>126</sup> During cross-examination, the Defence pointed out that according to the witness's statement of 10 May 2001 to Tribunal investigators, many Tutsi were killed in the first attack. The witness suggested that this discrepancy was the result of translation error. In the Chamber's view, this detail does not affect his credibility.

same time. While the account of Witness KEI is at variance with Witness KSY's testimony, the Chamber finds that it nonetheless provide some corroboration.

119. The Chamber has already expressed concerns regarding Witness KEL's testimony related to Simba in connection with other events transpiring at Gasarenda Trading Centre. Consequently, the Chamber is unwilling to accept his specific identification of Simba there around 20 April without further corroboration. The Chamber, however, did acknowledge that the witness had an adequate basis of knowledge concerning the general activity in the trading centre. Therefore, the Chamber accepts his testimony that *Interahamwe* from Mudasomwa commune set out to participate in the attack at Murambi Technical School, which corroborates Witness KSY's testimony on this point.

120. The Chamber has also considered the testimony of Witnesses NGJ2 and SBL1, in connection with Simba's participation in these events. The evidence of these witnesses on this point is based principally on their assertions that they did not hear about Simba's involvement. This is not a sufficient basis of knowledge for the Chamber to make any findings concerning Simba's activities at the relevant time. The Chamber is also mindful that both are implicated in the attack.

121. In assessing Witness KSY's testimony the Chamber has also considered Simba's alibi, as fully discussed in Section 9. However, in the Chamber's view, Witness KSY's reliable testimony and the numerous inconsistencies in the alibi eliminate the reasonable possibility that Simba was in Gitarama at the time of the attack.

3526

## 5. MASSACRE AT CYANIKA PARISH, 21 APRIL 1994

### 5.1 Indictment

122. Paragraphs 53 and 54 read:

53. Aloys SIMBA organised and ordered government armed forces, militiamen and Hutu civilians to attack Cyanika parish on or about 21 April 1994. This attack occurred immediately after the attack on Murambi Technical School. As a result of this attack, hundreds of displaced men, women and children were massacred at Cyanika parish. Most of the victims were Tutsi.

54. Aloys SIMBA supervised and coordinated the massacre of Tutsis in Cyanika and ordered the *interahamwe* to cut off all escape routes of any one who tried to escape.<sup>127</sup>

### 5.2 Evidence

#### *Prosecution Witness ALS*

123. Witness ALS, a Tutsi farmer living in Karama commune, stated that in the week after the death of President Habyarimana she was warned by a Tutsi teacher, Vincent Rwamikore, that Tutsi should flee to the Cyanika Parish. The witness travelled to Cyanika where the number of Tutsi refugees was roughly equal to the number of people who would fill a market place.<sup>128</sup>

124. According to the witness, a group of *Interahamwe* attacked the parish on a day at the end of April at around 11.00 a.m., but the refugees repelled the assailants with stones. Three days later, *Interahamwe* attacked Cyanika again between 8.00 and 9.00 a.m. On that occasion, the witness saw many vehicles coming in a convoy from the Cyanika-Gikongoro road. She recognized vehicles belonging to EMUJECO, Mudasomwa commune, Israel Nsengiyumva, Kajigiti, and some officials from Karama commune. The witness could also see assailants, including *Interahamwe* with banana and eucalyptus leaves on their heads, soldiers wearing military uniforms, and gendarmes wearing uniforms and red berets.<sup>129</sup>

125. The attackers, who came running on foot and surrounded Cyanika Parish, were blowing whistles, throwing grenades and explosives, and shooting with rifles. Witness ALS fell to the ground next to the church's wall, and dead bodies landed on top of her. From this position, she could see people trying to flee from the parish who were hacked with machetes or hit with blunt hoses or clubs. Witness ALS also saw people looting church property and cows. The attackers blocked all of the exits to the parish and tried to assemble the remaining survivors in the courtyard so that they could easily attack. The attack stopped around 1.00 or

<sup>127</sup> The parties' submissions on this event can be found at Prosecution Closing Brief, paras. 71-74, 99-104; Defence Closing Brief, paras. 582-674; T. 7 July 2005 pp. 3-13, 16, 58. The Prosecution also points to the testimony of Prosecution Witness KDD who described a meeting at the *Centre intercommunal de perfectionnement du personnel* ("CIPEP") in Gikongoro town on 26 April where Joseph Ntegeyintwali, the sub-prefect of Karaba, informed Simba that he led a massacre of ten thousand Tutsi at Cyanika Parish, with the help of gendarmes, *Interahamwe* from Mudasomwa commune, and members of the population. The meeting is discussed in detail in Section 8.6.

<sup>128</sup> T. 1 September 2004 pp. 45-46; Prosecution Exhibit 3. Witness ALS also testified about a public rally held in Karambi market, which is discussed in section 8.2.

<sup>129</sup> T. 1 September 2004 pp. 45-48. EMUJECO refers to *Entreprise Murenzi Jean & Co.*

6h

2.00 p.m, but the witness laid among the dead bodies and the dying until nightfall, when she crawled into a sorghum farm nearby.<sup>130</sup>

*Prosecution Witness KSU*

126. Witness KSU, a Tutsi farmer living in Nyamagabe commune, testified that on 21 April, he heard cries and explosions coming from the nearby Murambi Technical School. Around 8.00 a.m., he saw Aloys Simba and Captain Faustin Sebuhura of the Gendarmerie return from the school in a red Toyota followed by two Daihatsu vehicles full of *Interahamwe* and gendarmes, armed with clubs, guns, and grenades. The witness was in front of the Nyamagabe commune office when the convoy passed. With a megaphone, Simba rallied the *Interahamwe* together and told them to go fight at Cyanika. He alighted from the vehicle and asked why the individuals were not assisting in the attack. The *Interahamwe* in the Daihatsu vehicles shouted that they were going to Cyanika. The witness testified that after Simba returned to the vehicle, the convoy proceeded to Cyanika.<sup>131</sup>

127. The witness testified that he was familiar with Simba because he had worked at the prefecture offices in 1987, and Simba used to come there in his military uniform. The witness identified Simba in the courtroom.<sup>132</sup>

*Defence Witness NGJ2*

128. Witness NGJ2, a Hutu and a former local government official testified that, at about 3.00 a.m. on 21 April 1994, the Murambi refugee camp at Nyamagabe commune was attacked. All the refugees, except for a few who managed to escape, were killed. He said that when the Murambi massacre ended, the same attackers headed towards Cyanika Parish to attack the refugees there.<sup>133</sup>

129. Around 9.00 a.m. on the same day, Witness NGJ2 heard gunshots from the direction of the Cyanika Parish. As he moved closer to the parish, he saw assailants attacking the refugee camp there. According to the witness, the attack started around 8.00 a.m. and stopped at about 3.00 p.m.<sup>134</sup>

130. Witness NGJ2 could distinguish three groups of people among the assailants: "overzealous persons" from Mudasomwa commune, uniformed gendarmes, and local villagers who went to Cyanika Parish to loot. He recognized several attackers from his native Mudasomwa commune, including Gakura and Ngoga, who was the driver of Denys Kamodoka, the director of the Kitabi tea factory. The witness estimated that between one hundred and one hundred and fifty assailants killed around five thousand refugees.<sup>135</sup>

131. The witness did not see Simba, Sebuhura, Bourgmestre Ngezahayo, or Prefect Bucyibaruta at Cyanika Parish. He testified that he could not do anything to stop the attacks because gendarmes who would have intervened, were involved.<sup>136</sup>

<sup>130</sup> *Id.* at pp. 45-48, 81.

<sup>131</sup> T. 10 September 2004 p. 3; T. 13 September 2004 pp. 12, 32-35, 75-77; Prosecution Exhibit 7.

<sup>132</sup> T. 10 September 2004 pp. 25-27.

<sup>133</sup> T. 21 March 2005 pp. 5, 14, 17.

<sup>134</sup> *Id.* at p. 16.

<sup>135</sup> *Id.* at pp. 14, 16-18, 90, 92.

<sup>136</sup> *Id.* at pp. 16-18, 20.

Defence Witness SBL1

3524

132. Witness SBL1, a former high-level official, stated that he did not have any information about Simba's involvement in the Cyanika Parish massacre.<sup>137</sup>

### 5.3 Deliberations

133. In the Chamber's view, Witness ALS provided a reliable first-hand account of the events at Cyanika Parish where she sought refuge. From her evidence, as corroborated by Defence Witness NGJ2, the Chamber finds that around 8.00 or 9.00 a.m. on 21 April, *Interahamwe* and gendarmes attacked and killed a large number of mostly Tutsi refugees gathered at the parish. Some of the assailants were from Mudasomwa commune. Based on Witness NGJ2's testimony, the Chamber also accepts that many of the attackers at Cyanika Parish had previously participated in the killings at nearby Murambi Technical School. This point is corroborated by Witness KSY, Tutsi refugee at Murambi, who heard Bucyibaruta direct the attackers to the parish.

134. There is no direct evidence placing Simba at Cyanika Parish during the massacre. The only evidence directly connecting him to the massacre comes from Witness KSU who asserts that Simba, arriving in a convoy from the direction of Murambi Technical School, rallied *Interahamwe* in front of the Nyamagabe commune office and urged them to attack Cyanika Parish. The Prosecution seeks to use this event as a material fact to convict Simba for the Cyanika massacre.<sup>138</sup> However, the Indictment only speaks generally about Simba ordering and organizing the Cyanika Parish massacre and, in the Chamber's view, it does not provide adequate notice to the Accused concerning his alleged role in the attack.<sup>139</sup>

135. The Tribunal's jurisprudence allows a defective indictment to be cured, in the Chamber's discretion, in certain circumstances where there is clear, timely, and consistent notice.<sup>140</sup> The Chamber notes that the Prosecution did not mention this event in either its Pre-trial Brief or in its opening statements. Witness KSU's own statement mentions the incident generally, but does not implicate Simba.<sup>141</sup> The only notice that Simba was directly implicated in the Cyanika Parish massacre comes from Witness KSU's will-say statement, which was filed on 30 August 2004. The Prosecution, however, declined to pursue this point during its direct examination, in the face of a Defence objection.<sup>142</sup> The testimony only

<sup>137</sup> T. 23 February 2005 pp. 35-37.

<sup>138</sup> Prosecution Closing Brief, paras. 75, 102.

<sup>139</sup> *Niyitegeka*, Judgement (AC), 9 July 2004, para. 193 ("If the Prosecution charges personal physical commission of criminal acts, the indictment should set forth 'the identity of the victim, the time and place of the events and the means by which the acts were committed.'"), quoting *Kupreskic et al.*, Judgment (AC), 23 October 2001, para. 89.

<sup>140</sup> *Kupreskic et al.*, Judgment (AC), 23 October 2001, para. 114. See also *Ntakirutimana*, Judgment (AC), 13 December 2004, para. 27; *Niyitegeka*, Judgment (AC), 9 July 2004, para. 195.

<sup>141</sup> The Chamber notes that the "mere service of witness statements by the [P]rosecution pursuant to the disclosure requirements' of the Rules does not suffice to inform the Defence of material facts that the Prosecution intends to prove at trial". *Niyitegeka*, Judgment (AC), 9 July 2004, para. 197 (internal citations omitted).

<sup>142</sup> T. 10 September 2004 pp. 28-29 ("MR. PRESIDENT: Defence, have you been in a position to look at the last two bullet points and see whether you maintain your objections? MR. ALAO: Yes, Mr. President. We maintain our objections ... You will realise that these two paragraphs add new elements to the indictment and therefore may not be entertained ... MR. KAREGYESA: ... That is the end of our examination-in-chief. We shall not be leading any further evidence, and therefore the objection should not arise."). See also Memorandum from the

emerged spontaneously during cross-examination in response to a general question from the Chamber.<sup>143</sup>

136. The Prosecution did not provide clear, consistent, and timely notice to the Defence in order to cure the Indictment, particularly in view of the close proximity between the disclosure of the will-say statement and the witness's testimony. Moreover, the Prosecution informed the Defence that it did not intend to pursue this evidence at the close of its examination-in-chief. The Chamber therefore excludes this evidence for lack of notice and has not considered it in making its factual or legal findings.<sup>144</sup>

137. The Chamber does not find the testimony of Defence Witnesses NGJ2 and SBL1 to be sufficiently reliable or credible to make any findings concerning Simba's activities at the relevant time. Witness NGJ2, who observed the attack, did not see Simba, but his exact vantage point is unclear. Witness SBL1 simply asserts that he was not informed about Simba's involvement.

138. On the basis of the testimony of Witnesses ALS, the Chamber lacks sufficient evidence to find that Simba organized, ordered, supervised, or coordinated the attack at Cyanika parish as alleged in paragraphs 53 and 54 of the Indictment.

---

Prosecution to the Court Management Section, filed on 30 August 2004, Registry Page 2833-2835 (Will-Say Statement of Witness KSU). The Chamber recalls that an unofficial French translation was circulated on 2 September 2004.

<sup>143</sup> T. 13 September 2004 p. 12.

<sup>144</sup> *Kupreskic et al.*, Judgment (AC), 23 October 2001, para. 92. This certainly precluded the Defence from undertaking meaningful investigations about the incident before trial and would have dissuaded subsequent investigations in connection with the Defence case. See *Niyitegeka*, Judgment (AC), 9 July 2004, para. 194 ("If the Defence is denied the material facts of the accused's alleged criminal activity until the Prosecution files its pre-trial brief or until the trial itself, it will be difficult for the Defence to conduct a meaningful investigation prior to the commencement of the trial. The Trial Chamber must consider whether proceeding to trial in such circumstances is fair to the accused.")

## 6. MASSACRE AT KADUHA PARISH, 21 APRIL 1994

3522

### 6.1 Indictment

139. Paragraphs 27 to 34 read:

27. Starting from 8 April 1994, as a result of the campaign of burning and looting Tutsi homes, thousands of Tutsi civilians fled from neighbouring communes to Kaduha parish, in Karambo commune, Gikongoro prefecture.

28. On or about the 19 and 20 April Aloys SIMBA ordered the displaced children, women and men, at Kaduha parish and health centre to dig their own graves.

29. On or about 19 April 1994, Aloys SIMBA and Joachim HATEGEKIMANA, addressed Hutus gathered at Kaduha trading centre. Aloys SIMBA announced that he would go to Gikongoro to collect guns and ammunition and would distribute them on his return.

30. On or about the 20 April 1994, Aloys SIMBA returned to Kaduha with a lorry carrying soldiers, guns, and ammunition to launch the first major firearm attack on Kaduha parish. These weapons were stored in the office of the Sous-prefecture.

31. On or about 20 April 1994, Aloys SIMBA announced to the gathering at the Kaduha trading centre that there was now no other way but for the Hutus to kill all the Tutsis. He instructed soldiers to begin shooting Tutsi refugees at 03.00 hours and ordered civilian attackers to follow and kill any surviving Tutsi. He also instructed soldiers to shoot those displaying cowardice during the attack. Aloys SIMBA deployed soldiers around Kaduha parish.

32. As a result of the above incitement by Aloys SIMBA, at about 05.00 hours, a large group of attackers comprised of soldiers, gendarmes, Interahamwe, reservists or former soldiers, militiamen and Hutu civilians attacked Kaduha parish using guns, grenades, machetes, clubs and other traditional weapons. Several soldiers and National Police were camouflaged in civilian clothing while carrying guns. The attack continued until about 17.00 hours. During the attack, which lasted the whole day, Aloys SIMBA replenished the ammunition of the attackers on several occasions.

33. During the attack on Kaduha parish, BUCYIBARUTA, transported a group of gendarmes to the massacre site to reinforce the attackers' efforts. The gendarmes group joined the attackers and participated in the killings.

34. As a result of the attack, thousands of men, women and children were massacred at Kaduha parish, Gikongoro prefecture on or around 21 April 1994. A majority of the victims were Tutsi. Many of the dead were buried between 23 April and 26 April 1994 in and around Kaduha.<sup>145</sup>

---

<sup>145</sup> The parties' submissions concerning this event can be found at Prosecution Closing Brief, paras. 75-79, 105-112; Defence Closing Brief, paras. 364-444; T. 7 July 2005 pp. 3-4, 9-12, 23, 58, 61, 65. The Prosecution also points to the testimony of Prosecution Witness KDD who described a meeting at the *Centre intercommunal de perfectionnement du personnel* ("CIPEP") in Gikongoro town on 26 April where Simba stated that he led a

6h

## 6.2 Evidence

3521

### *Prosecution Witness YH*

140. Witness YH, a Hutu, served as a soldier in the Rwandan army from April 1991 until mid-April 1994 when he deserted. The witness was prosecuted in Rwanda in 1995 for possession of a firearm and a grenade. On his release from prison in 1997, he was charged as a co-perpetrator in the murder of three individuals not related to the Kaduha Parish massacre. He was provisionally released in 2003, after confessing to these murders.<sup>146</sup>

141. According to the witness, on the evening of 20 April 1994, Bourgmestre Gashugi of Karambo commune summoned former soldiers and policemen and told them to assemble at Kaduha Parish to help kill Tutsi. On the morning of 21 April, around 6.00 a.m., Bourgmestre Gashugi provided a blue Toyota single cabin pickup truck, belonging to Karambo commune, to transport the witness and nineteen other gendarmes, former policemen, and members of the public to Kaduha parish. The witness, gendarmes, and former policemen were armed with rifles and grenades while the members of the population carried machetes.<sup>147</sup>

142. Around 8.00 a.m. on 21 April 1994, Witness YH joined more than five hundred other Hutu assailants, armed with traditional weapons, at Kaduha Parish. Simba, who arrived in a white Hilux twenty minutes later, addressed the attackers for about ten minutes just before 9.00 a.m. The witness was about twenty meters away. Simba told the crowd: "I'm here before you because the government trusts me, and the government has asked me to go back to the army. We have come here because you have to kill Tutsis in order to get rid of the filth here." Then, according to the witness, Simba went to his white Hilux and distributed guns and many grenades, leaving immediately thereafter.<sup>148</sup>

143. The witness and other assailants attacked the parish around 9.00 or 10.00 a.m. and massacred the Tutsi there. Between fifty and sixty attackers were armed with guns while the members of the population carried machetes. The witness left the parish and returned to Kaduha Trading Centre around 4.00 or 4.30 p.m. after running out of ammunition. The witness believed that the killing lasted until about 6.00 p.m. The bodies of dead Tutsi covered the parish premises. The witness killed people but could not give the exact number.<sup>149</sup>

144. Witness YH had previously observed Simba between ten and thirty minutes at a public rally in Karambo commune in 1993, which he believed was part of an election campaign. He also saw Simba sometime between 16 and 19 April 1994 at a meeting at CIPEP in Gikongoro Town involving Bucyibaruta and Sebhura. The witness, as a member of the army, acted as a body guard for one of the participants in the meeting. He identified Simba in court.<sup>150</sup>

---

massacre at Kaduha Parish, where members of the population killed twenty thousand Tutsi. The meeting is discussed in detail in Section 8.6.

<sup>146</sup> T. 21 September 2004 pp. 47-49; T. 22 September 2004 pp. 19, 22-23, 34-35, 43-44; T. 23 September 2004 pp. 17-19, 26; Prosecution Exhibit 12.

<sup>147</sup> T. 21 September 2004 pp. 35-36; T. 22 September 2004 pp. 22-24, 29, 37-38, 41. The witness had just deserted the army a few days earlier to assist his family.

<sup>148</sup> T. 21 September 2004 pp. 35, 37-40; T. 22 September 2004 pp. 37, 40. The witness observed two guns.

<sup>149</sup> T. 21 September 2004 pp. 40-44; T. 22 September 2004 pp. 37-38, 40-41. The witness explained that he had used all his seventy to eighty bullets as well as others in another magazine and three grenades.

<sup>150</sup> T. 21 September 2004 pp. 33-34, 45-46; T. 22 September 2004 pp. 3-6.

3520

145. The witness testified that he had not been charged for his participation in the killings at Kaduha Parish. However, Witness YH intended to fully confess his role in the Kaduha Parish massacre before the Gacaca courts. The witness explained that no one had promised him any benefit for testifying, but that he expected to benefit from a reduced sentence.<sup>151</sup>

*Prosecution Witness KXX*

146. Witness KXX, a Hutu who was imprisoned on genocide charges in Rwanda, confessed in 1999 to the murder of three persons. At the time of his testimony, he had been provisionally released and was awaiting trial before the Gacaca courts. While he acknowledged that he participated in the Kaduha Parish massacre, the witness stated that he did not kill anyone during the attack.<sup>152</sup>

147. After the death of President Habyarimana, Witness KXX and other Hutu burned down the home of Tutsi and looted their cattle. As a consequence, the Tutsi in his area fled to Kaduha Parish. Around two weeks after the death the president, Joachim Hategekimana, the sub-prefect of Kaduha, and Aloys Simba organized a meeting around 10.00 a.m. in Kaduha Trading Centre. Hategekimana welcomed the Hutu crowd, which filled the trading centre, and introduced Simba, who had just arrived, by saying: "This is the VIP, Colonel Simba". Witness KXX estimated that he was about five meters away from Simba, who wore a military uniform. Simba told the crowd: "You see those refugees at the Kaduha parish? Don't bother them. Leave them at peace at the church ... I'll go to Murambi and Gikongoro first in order to get weapons, and when we finish our work in Murambi and Gikongoro, we will come here in Kaduha to work." Simba also said that the crowd should remove the filth from the church.<sup>153</sup>

148. The next day, the witness saw Simba pass through the Kaduha Trading Centre in a white Hilux with weapons in the back, followed by another truck filled with firearms and soldiers. Both vehicles were uncovered, and some of the guns were not in boxes. The witness followed the vehicles to the sub-prefecture office where he joined a crowd of two to three hundred persons. He watched as gendarmes unloaded the weapons into the office. The witness was about seven meters away from Simba, who was wearing a military uniform.<sup>154</sup>

149. Two days later, Witness KXX went to Kaduha Parish between 8.00 and 9.00 a.m. According to the witness, Simba arrived at the parish in a white vehicle around 9.00 a.m. and parked close to the statue of the Virgin Mary in front of the parish. The witness saw gendarmes unload the weapons from Simba's vehicle. He heard people also say grenades were unloaded.<sup>155</sup>

<sup>151</sup> T. 21 September 2004 pp. 48-49; T. 22 September 2004 pp. 34-35, 43-44; T. 23 September 2004 pp. 17-19.

<sup>152</sup> T. 24 September 2004 pp. 8-10, 12-14; Prosecution Exhibit 13. The witness also testified to the murder of Gasana and Monique, which were charged in Count 4 of the Indictment. However, in its Closing Brief and final arguments, the Prosecution indicated that it no longer intended to pursue this count. See Prosecution's Closing Brief, para. 49; T. 7 July 2005 p. 26.

<sup>153</sup> T. 23 September 2004 pp. 37-38, 40-42; T. 24 September 2004 pp. 4-5, 16-17.

<sup>154</sup> T. 23 September 2004 pp. 38, 42-43; T. 24 September 2004 pp. 6, 18, 22-26. The witness also confirmed his statement to Tribunal investigators, dated 21 July 2001, that Simba held another meeting on the same day in the Kaduha Trading Centre after leaving weapons at the sub-prefecture office in order to explain the plan of attack against the parish. T. 24 September 2004 pp. 39-40; Defence Exhibit 23.

<sup>155</sup> T. 23 September 2004 pp. 39, 43; T. 24 September 2004 pp. 2, 28-31, 40; Defence Exhibit 25.

6h

150. Simba told the assembled attackers that he had brought them weapons and soldiers. He said that the attackers should "get rid of the filth" at the church. Simba further explained that the members of the population should hack with their machetes any Tutsi fleeing the soldiers' gunfire and grenades to ensure that no one survived. The witness was about fifteen meters away from Simba, who was in military uniform. After speaking, Simba left the parish, and the soldiers began throwing grenades as the population attacked the refugees with machetes. The witness estimated that there were fifteen thousand attackers and seven or eight thousand refugees. The witness left the attack around 11.00 a.m. to return to the trading centre.<sup>156</sup>

151. When Witness KXX returned to Kaduha Parish around 2.00 p.m. to loot, he found thousands of dead Tutsi. He said that the soldiers were still continuing to kill the survivors. The witness left around 3.00 p.m. but estimated that the attack continued until around 5.00 p.m.<sup>157</sup>

152. The witness described Simba as "somebody who is not particularly tall, but who is sort of heavy set". He indicated that he was able to recognize Simba and point him out. However, after looking around the court room, the person he identified as Simba was a member of the Prosecution team.<sup>158</sup>

*Prosecution Witness KSK*

153. Witness KSK, a Tutsi farmer, testified that in the days following the death of President Habyarimana, she saw Tutsi families killed in her area and their homes burned. On 9 April, she sought refuge at Kaduha Parish where thousands of other Tutsi refugees, as well as Hutu women married to Tutsi, had fled. Father Nyandwi, the Burundian parish priest, sold the diocese's food aid for the area's poor to the refugees at daily increasing prices over the course of the first three days after the witness arrived. After that, the witness said the refugees had to scavenge food and fend for themselves.<sup>159</sup>

154. From her place at the primary school located at the upper part of the parish near the priests' quarters, the witness observed several authorities visit Kaduha Parish. They included Simba, Laurent Bucyibaruta, who was the prefect of Gikongoro, Joachim Hategekimana, who was the sub-prefect of Kaduha, Captain Faustin Sebhura of the gendarmerie, and Major Hahyarahatuma. Bucyibaruta often visited with Hategekimana and Sebhura. Hahyarahatuma also came to the parish with Sebhura, claiming that he was providing security for the refugees.<sup>160</sup>

155. Witness KSK testified that Simba visited the parish twice. The witness also saw him several times in the trading centre with Father Nyandwi. She last saw Simba at the parish in a meeting with Father Nyandwi in the priests' quarters around 1.00 or 2.00 p.m. on Monday, 18 April. Simba was wearing military khaki fatigues and a brown jacket. After Simba left the

<sup>156</sup> T. 23 September 2004 pp. 44-45; T. 24 September 2004 pp. 6, 41, 43, 60.

<sup>157</sup> T. 24 September 2004 pp. 1-2, 49-50, 60.

<sup>158</sup> *Id.* at pp. 6-7.

<sup>159</sup> T. 20 September 2004 pp. 2-5, 36-42; Prosecution Exhibit 11.

<sup>160</sup> T. 20 September 2004 pp. 4-6, 8-9, 41; T. 21 September 2004 p. 2.

3518

parish, Father Nyandwi held mass and told the refugees that they must pay for what they had done.<sup>161</sup>

156. The witness stated that she knew Simba well, having seen him on several occasions before his visit to Kaduha Parish in April 1994. She saw him and his twin sister Therese Nyirabusimba pass by Kaduha Parish in 1957 when the witness was in primary school. She also saw him pass through the region in a vehicle in the 1970s and 1980s. In particular, she saw him from afar with President Habyarimana three times in the 1990s in Musebeya and Karambo communes. According to the witness, Simba, who was a senior army officer, travelled with the president to provide security. On one of these occasions, the witness saw Simba pass in a motorcade. The witness identified Simba in court.<sup>162</sup>

157. Between 5.00 and 6.30 p.m. on 20 April, Mpamyabigwi, one of Simba's relatives, arrived from Musebeya in a truck filled with attackers who started killing people at the parish. On the morning of 21 April around 4.00 or 5.00 a.m., thousands of attackers, covered with banana leaves and armed with traditional weapons and rifles, attacked Kaduha Parish. The refugees defended themselves with bricks. The initial assault lasted until around 11.00 a.m. Between 11.30 a.m. and 12.00 p.m., the witness saw Sebhura and gendarmes arrive in a military pickup truck with guns and grenades. Sebhura and the gendarmes then began killing the refugees. According to the witness, Bucyibaruta was present during the attack, as was Habyarabatuma, who brought gendarmes, armed with guns and grenades.<sup>163</sup>

158. As the witness fled the parish at the end of the first attack around 11.30 a.m., she heard several of the attackers say that they had come from Mwendo commune, Kibuye prefecture. In the chaos of the attack, as the witness was being pursued, she heard the attackers exclaim that without the grenades brought by Simba and Habyarabatuma and without Bucyibaruta's intervention they would never have been successful.<sup>164</sup>

#### *Defence Witness Rose Simba-Thiwa*

159. Rose Simba-Thiwa, the daughter of the Accused, testified that she met Sister Milgitha, who had been at Kaduha Parish during the massacre. Sister Milgitha told the witness that Simba was not at the parish at the time of the attack.<sup>165</sup>

#### *Defence Witness GK1*

160. Witness GK1, a Hutu, was in Kaduha following the death of President Habyarimana. He heard rumours that militia men had started setting Tutsi houses on fire and Tutsi were congregating in parishes, including Kaduha Parish, to wait for the RPF. While he did not visit the parish, he heard that the refugees were guarded by gendarmes, led by First Sergeant Ntamwemezi. He was also told that on 21 April, Ntamwemezi led the gendarmes in an attack on the parish. Rukokoma and Katasi directed local militiamen during the assault. The witness was about two kilometres away from the parish on 21 April, and he heard gunshots start at 10.00 a.m. and steadily continue until 2.00 p.m. He stated that the accusations about the

<sup>161</sup> T. 20 September 2004 pp. 8-10; T. 21 September 2004 pp. 1, 8, 14-17.

<sup>162</sup> T. 20 September 2004 pp. 6-8, 12-13, 16-20, 23-30.

<sup>163</sup> *Id.* at pp. 9-11, 44; T. 21 September 2004 pp. 6-8, 10-11.

<sup>164</sup> T. 20 September 2004 p. 11; T. 21 September 2004 pp. 7, 9-12, 17-18, 27.

<sup>165</sup> T. 17 February 2005 pp. 76-77; Defence Exhibit 69.

involvement of Simba and Hategekimana in the Kaduha Parish massacre are false because the witness would have heard about their participation.<sup>166</sup>

*Defence Witness GL3*

161. Witness GL3, a Hutu, testified that, according to one of the assailants, Simba was not present when *Interahamwe* and gendarmes massacred Tutsi refugees at Kaduha Parish on 21 April 1994. The witness did not directly ask the particular assailant if Simba was there. Rather, the witness deduced that Simba did not participate in the attack from the fact that the attacker did not mention Simba or the presence of any senior officials.<sup>167</sup>

*Defence Witness GMA5*

162. Witness GMA5, a Hutu, testified that after the death of President Habyarimana, rumours circulated that Tutsi were seeking refuge in parishes to wait for the RPF. The witness specifically heard that people congregated at Kaduha Parish and that gendarmes had been sent to ensure their security. On the afternoon of 22 April 1994, the witness saw bodies on the road and leading up to the parish. He heard that the refugees had been attacked by gendarmes led by First Sergeant Ntamwemezi and militiamen headed by Rukokoma, Musonera, and Katasi. No one present at the parish on the day after the massacre mentioned Simba in relation to the attack.<sup>168</sup>

*Defence Witness SBL1*

163. Witness SBL1 is a Hutu and a former high-level official who has been implicated in crimes which occurred in Gikongoro prefecture. He confirmed that Tutsi were massacred at Kaduha Parish on 21 April and that, to his knowledge, Simba was not present. He also had heard no reports that Simba was in the area during the massacre. The witness also denied being visiting Kaduha Parish between 19 and 21 April and taking part in the massacres there.<sup>169</sup>

### 6.3 Deliberations

164. Witnesses YH and KXX are alleged accomplices of Simba. Consequently, the Chamber has viewed their testimonies with appropriate caution. Both witnesses provide a largely consistent first-hand account of Simba's arrival at Kaduha Parish on 21 April, his address to the assailants, and his subsequent distribution of weapons prior to his departure from the parish.

165. The Chamber acknowledges that there are some problematic aspects of Witness YH's testimony. In particular, the witness did not previously disclose his role in the Kaduha Parish massacre to Rwandan authorities. The witness explained that he planned to make a full confession before the Gacaca courts. The Chamber accepts this explanation and considers that he simply attempted, at earlier stages of his proceeding in Rwanda, to minimize his involvement in the genocide.

<sup>166</sup> T. 23 February 2005 pp. 6-7, 10-12, 28, 30-31; Defence Exhibit 96.

<sup>167</sup> T. 24 February 2005 pp. 7-8, 16, 26.

<sup>168</sup> T. 22 February 2005 pp. 5-9, 11.

<sup>169</sup> *Id.* at pp. 19-21, 47; T. 23 February 2005 p. 35; T. 24 February 2005 pp. 38, 50.

*6h*

166. The Chamber has also noted the discrepancy between Witness YH's testimony at trial about the duration of his military service from 1991 until mid-April 1994 and his statement to Rwandan officials of 1 October 1997. According to the statement to Rwandan authorities, he left the army almost one year earlier in August 1993. The statement of 1 October 1997 also indicates that the witness was in prison from April to July 1994. The witness testified that he did not recognize the statement and explained that he was beaten by Rwandan officials who wrote what they wanted. He could not explain the reason why Rwandan authorities might want to indicate that he left the Rwandan army in August 1993, rather than April 1994.<sup>170</sup> The Chamber finds the witness's explanations unconvincing. However, in the Chamber's view, the discrepancies between his testimony and his 1 October 1997 statement to Rwandan authorities simply reflect the witness's attempts to distance himself from the crimes which he has later acknowledged.

167. In assessing Witness YH's credibility, the Chamber has also considered several other submissions advanced by the Defence. For example, an official document which indicates that the officer whom Witness YH claimed to accompany to Gikongoro prefecture was in fact assigned to Umutara prefecture in northern Rwanda as of March 1994.<sup>171</sup> The Chamber is not satisfied that this document necessarily reflected the location of all officers in mid-April, given the events which unfolded after the death of the president. The Chamber also does not consider significant the Defence's point about the rally in 1993, where the witness first saw Simba. The witness simply opined that it involved an election rally, but was not certain. As for the alleged discrepancy between the witness's testimony that he arrived in his home area sometime around 16 to 19 April and his written statement to Tribunal investigators that he fled to Gikongoro on 14 April after an RPA attack in Butare, the Chamber accepts the witness's explanation that he was mistaken about dates. The point about the RPA attack was not developed further by the Defence.

168. The Chamber finds that Witness YH provided a convincing, credible and reliable first hand-testimony concerning Simba's participation in the massacre at Kaduha Parish. Witness KXX's corroboration of Witness YH's account confirms its reliability. Witness YH had prior familiarity with Simba and identified him in court. In the Chamber's view, the problematic aspects of Witness YH's testimony, considered above, do not call into question his first-hand account at trial. By testifying, the witness also exposed himself to further criminal liability in Rwanda. His testimony was generally consistent with his statement of 9 December 2001 to Tribunal investigators.<sup>172</sup>

169. The Chamber has accorded less weight to the evidence of Witness KXX. He had problems providing a clear chronology of the events surrounding the Kaduha Parish massacre, repeatedly placing the massacre a few days after President Habyarimana's death, until the end of his testimony.<sup>173</sup> There is no evidence of the witness's prior knowledge of

<sup>170</sup> T. 22 September 2004 pp. 13-17, 22, 25-30, 33-34; T. 23 September 2004 pp. 21-22. The witness noted that he recognized all statements made in Rwanda except the one in 1997. He noted that he signed it, but it was not read back to him. T. 22 September 2004 p. 18. The witness later noted that he did not sign it. T. 23 September 2004 p. 22; Defence Exhibit 19.

<sup>171</sup> Defence Exhibit 147 (Situation Officiers Armée Rwandaise, MINADEF, 5 March 1994).

<sup>172</sup> Defence Exhibit 18.

<sup>173</sup> Witness KXX initially stated that the attack on the Kaduha parish took place two days after the death of President Habyarimana, and then revised the timing to two days after the weapons were stored at the sub-prefecture office. Only in re-direct did he alter his account of the attack to be consistent with earlier statements

*hm*

Simba, which establishes that he was able to accurately identify the Accused during the events. This is compounded by his failure to properly identify him in court. Moreover, his statement to Tribunal investigators did not mention specifically Simba's presence at Kaduha Parish on the morning of 21 April, but rather implicated the Accused more generally in the attack.<sup>174</sup> The Chamber will only accept his testimony, if it is adequately corroborated, as where it is consistent with Witness YH's account. Given these concerns with Witness KXX's credibility, the Chamber does not accept his uncorroborated testimony that Simba addressed a crowd in Kaduha trading centre and delivered weapons to the sub-prefecture office in the days before the attack on Kaduha Parish.<sup>175</sup>

170. Witness KSK's first-hand account of what transpired at the parish is generally credible and reliable. The Chamber observes that her testimony does not directly place Simba or Bucyibaruta at the parish during the attack on 21 April. In particular, her testimony about Simba on the day of the attack comes from second-hand sources, as she fled assailants.<sup>176</sup> Rather, her testimony concerning Simba and other officials primarily focuses on their presence at the parish in the days before the massacre.

171. Given her presence at the parish, the Chamber accepts that Witness KSK likely observed the visits of various local authorities. However, the record does not adequately reflect that she had sufficient knowledge or a satisfactory basis of knowledge in order to identify Simba, Bucyibaruta, Hategekimana, and Sebhura during the difficult circumstances surrounding the events at the parish. Her testimony concerning the visits by authorities to the parish also lacks any notable detail to persuade the Chamber that she was in a position to closely follow the events and to accurately identify and distinguish among them. Consequently, the Chamber is reluctant to rely on her testimony insofar as it identifies the specific officials who visited the parish.

172. As for Witness KSK's identification of Simba, the Chamber observes that her asserted familiarity with Simba involves only a few brief sightings over the course of several ten year intervals where the person she identified as the Accused was either at distance or passed by her in a moving car. It is also striking that the witness allegedly observed Simba riding a motorbike in Kaduha trading centre. The witness is alone in making such an observation; other Prosecution and Defence witness refer to Simba travelling in a white Mercedes Benz or

---

to Tribunal investigators and date it two weeks after the death of the President. See T. 24 September 2004 pp. 2, 31, 40, 59; T. 23 September 2004 pp. 39-41, 48.

<sup>174</sup> The witness explained that the Defence's questions had made him tired, and that he was not surprised if he answered questions differently from what he told investigators. T. 24 September 2004 pp. 40-42.

<sup>175</sup> There is some suggestion in the testimony of Witness YH that Simba participated in another meeting in the Kaduha Trading Centre. This, however, arose during cross-examination in response to questions based on the witness's prior written statement. In the Chamber's view, it is not entirely clear from the record whether he understood the nature of the question given that he indicated that he had already testified about the meeting during his examination-in-chief. However, on direct examination the witness only mentioned a meeting held by Bourgmestre Gashugi on 20 April. The witness later clarified that he had not participated in a meeting in Kaduha Trading Centre involving Simba before the day of the attack. Consequently, the Chamber has accorded these exchanges no weight. T. 22 September 2004 pp. 7-8, 24-25.

<sup>176</sup> During the direct examination, Witness KSK stated that "Simba was amongst the attackers", but later she stated that she did not actually see Simba on the day of the attack. Additionally, the Prosecution asked the witness when she saw Bucyibaruta during the attack, and she replied by noting that he came on Sunday, which is a different day, to provide gendarmes to protect Sister Melgitha. T. 20 September 2004 p. 11; T. 21 September 2004 pp. 8-12, 17, 27.

3514

a Toyota Hilux. The witness also testified that in 1992 she saw Simba and Bucyibaruta, who are members of the MRND party, at an MDR rally held to remove the MRND from power.<sup>177</sup>

173. In its submissions, the Defence has also questioned Witness KSK's credibility, based on her insistence that Simba and his sister are twins, her inability to identify certain photographs due to eye problems, as well as her inflated estimates of numbers of attackers and victims. The Chamber, however, is not convinced that these arguments call into question her general credibility.<sup>178</sup>

174. Based on the testimony of Witness KSK, as corroborated by Witness KXX, the Chamber finds that in the days after the death of President Habyarimana, Hutu militiamen began attacking Tutsi and burning their homes, thus forcing them to seek refuge at Kaduha Parish. Based on the testimony of Witness YH, the Chamber finds that around 6.00 a.m. on 21 April, the bourgmestre of Karambo transported around twenty armed assailants, including Witness YH, gendarmes, former policemen, and former soldiers to Kaduha Parish, where they joined several hundred Hutu militiamen, armed with traditional weapons. The Chamber observes that Witness KSK, as well as Defence Witnesses GK1 and GL3, also refer to the participation of gendarmes in the massacre at Kaduha Parish.

175. The Chamber finds that around 9.00 a.m., Simba arrived in a white Hilux and addressed the attackers at Kaduha Parish. Simba told them to kill the Tutsi at the parish in order to "get rid of the filth here". Simba then distributed guns and grenades to the attackers before immediately leaving. The assailants then proceeded to kill the Tutsi at the parish. These events follow from the testimony of Witness YH, who observed Simba from close range, as corroborated by Witness KXX. The Chamber notes that Witness KSK's testimony reflects that the attack started earlier around 5.00 a.m. In the Chamber's view, the time given by Witness KSK for the commencement of the massacre is simply an estimate and is not inconsistent with the account of Witnesses YH and KXX.

176. In reaching these findings, the Chamber has also considered the evidence of Defence Witnesses Rose Simba-Thiwa, GK1, GL3, GMA5, and SBL1, who assert that Simba had no role in the massacre. The Chamber notes that none of these witnesses was present during the attack at Kaduha Parish. Their information concerning what transpired is second-hand and of questionable probative value. Their testimonies are based principally on their assertions that they did not hear about his involvement in the massacre.

177. In assessing testimonies placing Simba at Kaduha Parish, the Chamber has also considered Simba's alibi, as fully discussed in Section 9. However, in the Chamber's view, Witness YH's reliable and corroborated testimony as well as the numerous inconsistencies in the alibi eliminate the reasonable possibility that Simba was in Gitarama at the time of the attack.

178. The Chamber finds that the Prosecution has proven beyond a reasonable doubt that a large number of Tutsi fled to Kaduha Parish after Hutu militiamen began burning and looting their homes as alleged in paragraph 27 of the Indictment. In addition, the Chamber finds that Simba distributed weapons to the assailants during the attack at Kaduha Parish on 21 April,

<sup>177</sup> T. 20 September 2004 pp. 31-34. The Chamber recalls that, at that time, Simba was the head of the MRND party in Gikongoro prefecture. Though the witness could have been mistaken about the purpose of the rally, this raises additional questions about her basis of knowledge and ability to identify him.

<sup>178</sup> According to Defence Exhibit 146, Simba was born two years after Therese Nyirabusimba.

6/11

as alleged in paragraph 32 of the Indictment. The Chamber also finds that as a result of the attack at the parish large numbers of Tutsi were killed, as alleged in paragraph 34 of the Indictment. The Chamber has not found sufficient evidence to support paragraphs 28 to 31 of the Indictment.

3512

## 7. MASSACRE IN RUHASHYA COMMUNE, 29 APRIL 1994

### 7.1 Indictment

179. Paragraphs 47 to 52 read:

47. Sometime in April 1994, after the death of the President, Aloys SIMBA organised and ordered two major attacks by government armed forces, militiamen and Hutu civilians on displaced Tutsi civilians in Ruhashya commune, Butare prefecture. The first attack was against the displaced people at Rugogwe trading centre and the second attack was against displaced people at Gashoba Hill.

48. Aloys SIMBA armed and transported attackers for the purpose of the attacks. He transported interahamwe to Muhange Bridge, on the border between Kinyamakara (Gikongoro prefecture) and Ruhashya (Butare prefecture). From here the interahamwe pursued and killed fleeing displaced people in the communes of Ruhashya, Rusatira and Nyabisindu.

49. Aloys SIMBA, together with his escort, participated in these killings by shooting the Tutsi refugees who tried to flee from the interahamwe. In these attacks, many Tutsi men, women and children were killed. During the killings, Aloys SIMBA gave instructions and encouragements to the other killers.

50. Prior to the attack on Rugongwe Trading Centre, towards the end of March 1994, Aloys SIMBA brought weapons, including long and short guns, to Kinyamakara communal offices, where they were stored. He distributed weapons to the attackers and gave clear instructions on the methods and manner of the attack.

51. Aloys SIMBA, armed and dressed in military uniform, led more than a thousand men during the attacks in Ruhashya commune. Some armed local civilians were transported in vehicles belonging to the Bourgmestre, others in a military pickup provided by Aloys SIMBA. Aloys SIMBA was present at all times, supervising and giving the orders to attack.

52. As a result of the attacks hundreds of men women and children were massacred at Rugongwe and Gashoba in Ruhashya commune. Most of the victims were Tutsi.<sup>179</sup>

### 7.2 Evidence

#### *Prosecution Witness ANX*

180. Witness ANX, a Hutu, was a farmer in Kinyamakara commune in April 1994. At the time of the events, he was approximately eighteen-years-old and member of the MRND. The witness, a Rwandan detainee, has confessed to his national authorities concerning his participation in killings during the genocide. His trial had commenced, but in the wake of

---

<sup>179</sup> The parties' submissions concerning this event can be found at Prosecution Closing Brief, paras. 80-86, 113-119; Defence Closing Brief, paras. 657-742; T. 7 July 2005 pp. 3-4, 14-16, 59-60, 69; T. 8 July 2005 pp. 13-14. The Prosecution also points to the testimony of Prosecution Witness KDD who described a meeting at the *Centre intercommunal de perfectionnement du personnel* ("CIPEP") in Gikongoro town on 26 April where Simba asked the bourgmestres to take all necessary measures to destroy the Tutsi refugees who had fled to Ruhashya commune, Butare prefecture. The meeting is discussed in detail in Section 8.6.

6h

3511

complaints by genocide survivors, it was adjourned pending the appointment of new judges. The witness hoped through his guilty plea to receive forgiveness and pardon for his crimes. He admitted to having participated in the attack in Ruhashya commune, with the intent to kill and loot, but denied having killed anyone.<sup>180</sup>

181. Witness ANX testified that on the afternoon of 27 April 1994, Alphonse Gasasira, a youth leader, used a megaphone to call between five hundred and two thousand people together on the road between Kamweru and Kirambi. The witness joined those assembled, most of whom came from Rukondo, Karama, and Kinyamakara communes. The crowd stopped at Kamweru near the Mwogo bridge. There, Charles Munyaneza, who was the bourgmestre of Kinyamakara commune, addressed a crowd of about five hundred near the river, telling them that they should attack the refugees in the Rubaba and Gashoba hills in Butare prefecture who had fled from Gikongoro prefecture. Munyaneza stated that, in making the decision to attack the refugees, he had consulted with Laurent Bucyibaruta, the prefect of Gikongoro, and Aloys Simba. Those assembled did not attack on 27 April 1994, as they could not cross the river. Communal policemen did fire at the refugees, but none was killed because the refugees lay down on the ground when the policemen fired.<sup>181</sup>

182. On 28 April 1994, the witness and more than three thousand assailants launched an attack on Rwaniro and Kirwa centres in Ruhashya commune. Again, Munyaneza told the crowd to attack, stating that the assault was ordered by Simba, Bucyibaruta, Sebhura, and the sub-prefects. Munyaneza also promised the crowd that they would not be prosecuted for their participation in the attack. The assailants looted the Rwaniro mill and then proceeded to cut down banana trees and torch the houses. The Tutsi fled to Rubaba and Gashoba hills.<sup>182</sup>

183. On 29 April 1994 at 10.00 a.m., an estimated six thousand assailants launched the first of two attacks on Rubaba hill. Around ten thousand refugees were assembled on the hill. During this first attack, which came from Rukeribuga bridge, fifty reservists, with grenades and swords, led the crowd. As the attack progressed, Witness ANX remained behind the reservists, but at the front of the crowd. Some refugees descended from the hill to meet the attackers, coming within ten meters of the reservists. The reservists threw several grenades in a few moments during a skirmish that lasted over an hour. Each time they threw a grenade, the reservists would tell the crowd behind them to lie down in order to keep them from being injured. The Tutsi from the hill repulsed the attackers with rocks and traditional weapons, and finally, the reservists told the crowd to retreat because they had run out of grenades. The attackers fled around 11.30 a.m. in two directions: toward Rukeribuga and toward Mwogo bridge. The witness followed the crowd headed to Mwogo bridge.<sup>183</sup>

184. Witness ANX stated that when the attackers reached Mwogo bridge, they were stopped by Munyaneza, who told them: "You should not leave this spot. I have just called Colonel Simba and Captain Sebhura, and I have even informed the prefect. Do not be afraid. We are going to exterminate them." Munyaneza had a Motorola radio set, as did Charles

<sup>180</sup> T. 1 November 2004 pp. 16, 26; T. 2 November 2004 pp. 1-4; T. 3 November 2004 p. 7; T. 5 November 2004 pp. 8-9, 11, 30; Prosecution Exhibit 17. Witness ANX also testified about a weapons distribution at Kinyamakara commune in mid-April, which is discussed in Section 8.5.

<sup>181</sup> T. 1 November 2004 pp. 20, 21, 24; T. 3 November 2004 pp. 7, 9, 12-14, 17, 19, 21-22, 27, 34; T. 4 November 2004 pp. 6-7.

<sup>182</sup> T. 1 November 2004 pp. 22-23; T. 3 November 2004 pp. 7-9, 12-14, 19, 22-23, 27.

<sup>183</sup> T. 1 November 2004 pp. 23-24, 27; T. 3 November 2004 pp. 10, 17-18, 21-28, 35-36; T. 4 November 2004 pp. 4, 30, 45.

6h

Kamana, who also met them at the bridge. Shortly after Munyaneza addressed the crowd, Witness ANX saw three trucks full of gendarmes and soldiers coming from the direction of Gikongoro prefecture. The witness estimated that he saw seventy-five gendarmes, armed with Kalashnikovs and grenades, and seventy-five soldiers, armed with rifles. Simba and Captain Faustin Sebhura of the gendarmerie arrived around noon with the trucks, driving separately in a camouflaged Mercedes Benz. Simba met the crowd at the bridge, and addressed them saying: "Now we are going to go. You have to go inside the houses, but do not loot the property if you have not yet killed the people in the houses. After killing the people, you have to take away the cows, and if somebody escapes the shots, the gunshots, you have to get him and kill him." He also told them not to repeat what happened in 1959, when the Tutsi survived after crossing the Mwogo river.<sup>184</sup>

185. The witness had seen Simba once sometime after 1985 at his school and then once more chairing a MRND rally in 1993 at the Nyaruhombo marketplace. In those instances, Simba introduced himself by name. The witness also saw Simba twice in the first part of April 1994: once at a meeting held at CIPEP in Gikongoro on 9 April, and once in mid-April at the Kinyamakara commune office. He identified Simba in court.<sup>185</sup>

186. Following Simba's arrival around noon, approximately one hundred and fifty soldiers and gendarmes encircled Rubaba hill and opened fire on the refugees. The shooting lasted from around noon until 3.30 p.m. Some of the assailants, with traditional weapons, followed behind the soldiers and gendarmes, attacking refugees who escaped through the circle of soldiers and gendarmes. Others went to loot and look for Tutsi in the houses at the foot of Rubaba hill. Witness ANX first went to the houses, but did not kill anyone or loot anything. He did not loot, because looters who were discovered leaving the hill prematurely were chased. After going to the houses, he followed the soldiers. During the entire attack, the witness stayed within fifteen metres of Simba, who remained at the foot of the hill. Soldiers and looters regularly reported to Simba, at times to determine whether a particular person whom they had captured should be killed. During the fighting, Simba generally directed the soldiers while Sebhura generally directed the gendarmes. Simba told Munyaneza that gendarmes from Nyanza would also be arriving later. After the fighting commenced, the witness saw gendarmes arriving by foot from the direction of Nyanza.<sup>186</sup>

187. Between 2.30 and 3.00 p.m., Charles Kamana informed Witness ANX that the soldiers had run out of ammunition but were fortunate to be re-supplied. During cross-examination, the witness stated that he in fact saw soldiers explain to Simba that they were running out of ammunition and heard Simba promise to call for more supplies shortly. He then saw Simba call on his Motorola radio set, but because Simba spoke in French, he did not understand what was said. Soon after the call, a helicopter arrived from the direction of Nyanza. The witness testified that it was the first time he had seen a helicopter, so he went over to where it landed. There, Simba and Sebhura met the helicopter and oversaw the unloading of black boxes of ammunition. The helicopter stayed at the site for between twenty-five and thirty minutes.<sup>187</sup>

<sup>184</sup> T. 1 November 2004 pp. 24-25, 27; T. 3 November 2004 pp. 10-11; T. 4 November 2004 pp. 7-9, 11, 53; T. 5 November 2004 p. 31.

<sup>185</sup> T. 1 November 2004 pp. 16-20; T. 3 November 2004 pp. 11, 15-16; T. 4 November 2004 pp. 67-70.

<sup>186</sup> T. 1 November 2004 p. 25; T. 4 November 2004 pp. 9-13, 15, 18, 24-25, 28, 45-50, 53-54, 56, 58.

<sup>187</sup> T. 1 November 2004 pp. 25-26; T. 4 November 2004 pp. 55-65.

*h*

3509

188. Shortly before 3.30 p.m., an airplane passed over Rubaba hill. At the appearance of the airplane, Simba and Munyaneza told the soldiers to hide and the crowd to lie down. This order was given to the crowd by word of mouth and to the soldiers by walkie-talkie. Since the witness was close to Simba and Munyaneza, he saw them personally give the order. The witness thought that the airplane might have been photographing the massacre, since aerial photography was common during the war.<sup>188</sup>

189. Around 3.30 p.m., the witness saw a soldier bring a boy and a girl captured on the hill to Simba. The children claimed not to be Tutsi, and the soldier pleaded for them saying: "We do not want to shoot these children, because they told us they are not Tutsi." Simba told the children: "You decided to follow the Tutsi, you have to suffer the same fate as a Tutsi." Simba then shot and killed both of them. Shortly after this, the attackers moved on to Gashoba hill, and the witness left for home. On his way he took one cow, which was later seized from him.<sup>189</sup>

#### *Prosecution Witness KSM*

190. Witness KSM, a Tutsi farmer, lived in Gikongoro prefecture in April 1994.<sup>190</sup> She escaped from a massacre on 12 April 1994 at the Kinyamakara commune office and fled toward Ruhashya commune, Butare prefecture, in order to look for family members. At about 2.00 p.m. near the end of April, she saw a gathering near the Mwogo River on the border of Gikongoro and Butare. The witness had been fleeing for some time, and stopped to listen to the meeting. There, she heard Simba tell the residents of Gikongoro to cross over into Butare to kill the Tutsi who had taken refuge there. Simba also told the bourgmestre of Ruhashya: "If you do not hand over the Tutsis, you will be killed together with them." The day after the meeting took place, the witness saw many vehicles arrive at the river carrying Simba, the bourgmestre, the head of the gendarmerie, gendarmes, and communal policemen. They crossed into Ruhashya and attacked the Tutsi there, looting and destroying their property as well. Many of these Tutsi were shot and killed, including some who were caught fleeing toward the Mwogo River.<sup>191</sup>

191. The witness testified that she had seen Simba at the massacre on 12 April at the communal office in Kinyamakara commune, as well as at two meetings during 1993 held at the Nkenke market square and at the communal offices near her home. At both the massacre and at the meetings, the witness recognized Simba because he was wearing a military uniform. At trial, the witness described Simba's general build and noted that he usually wears glasses. She identified Simba in court with hesitation.<sup>192</sup>

#### *The Accused*

192. Simba denied that he directed attacks in Ruhashya commune. Simba noted that government forces were not under his command at the time and that the Rwandan armed forces controlled all helicopters. He presented evidence that between 24 April and 30 May 1994, he remained primarily at the Crête Zaire-Nil project in Musebeya commune. During

<sup>188</sup> T. 4 November 2004 pp. 35-37.

<sup>189</sup> T. 1 November 2004 p. 26; T. 4 November 2004 pp. 38-39, 41-43.

<sup>190</sup> T. 14 September 2004 pp. 67-76; T. 15 September 2004 pp. 6-8, 39, 41, 42; Prosecution Exhibit 10.

<sup>191</sup> T. 15 September 2004 pp. 9-14, 16-17, 43.

<sup>192</sup> T. 14 September 2004 pp. 78-84; T. 15 September 2004 pp. 2-5, 9-10, 25-27.

6 h

3508

this period, Simba spent much of his time growing potatoes, playing cards, and occasionally shopping at a local market.<sup>193</sup> Simba acknowledged that during this period he also attended a few meetings in Gikongoro and Butare. He travelled to Kabyagi to bring his daughter back to the project and occasionally visited his sister in Gifurwe.<sup>194</sup>

#### *Defence Witness NGJ2*

193. Witness NGJ2, a Hutu and former local official in Gikongoro prefecture, testified that Bourgmestre Munyaneza informed him that people from Kinyamakara commune had taken part in the killings in Ruhashya commune. He also saw Munyaneza in late-April or early-May returning from Ruhashya commune, with a truck full of looted goods. Munyaneza never informed the witness that Simba participated in the attacks in Ruhashya commune. He also never heard about the use of a helicopter during any attack.<sup>195</sup>

### **7.3 Deliberations**

194. The Chamber has considered the evidence of Witness ANX, an alleged accomplice of Simba, with appropriate caution. At the outset, the Chamber is not convinced that the witness was entirely forthcoming about his own involvement in the massacre. He acknowledged crossing the Mwogo bridge, armed with a club and an intent to kill. However, as a massive assault unfolded, involving thousands of attackers and the killing of countless refugees, the witness did nothing but take a cow, which was taken from him by another looter. Instead of engaging in the attack with the thousands of other assailants, Witness ANX remained within fifteen metres of Simba. Even in the midst of the chaos of a massive assault, the witness could hear every order given by Simba. In addition, he included Simba in inciting the killing of Tutsi at the Mwogo bridge on 15 August 1994.<sup>196</sup> The evidence suggests that Simba had then already fled Rwanda. These elements of the testimony indicate that the witness wants to incriminate Simba, even when the allegation is not well founded. This is supported by his testimony concerning the alleged distribution of weapons at Kinyamakara commune in mid-April in which he also tends to implicate Simba in a way which raises some doubt.<sup>197</sup>

195. Witness ANX did not mention the major attack on Rubaba hill, which is the central feature of his testimony, in his first statement to Tribunal investigators, dated 20 June 2001. Rather, that statement implicates Simba in a distribution of weapons at the Kinyamakara commune office in mid-April and in two events in June 1994 related to attacks against the RPF in Nyanza commune, Butare prefecture. The witness also did not mention the attacks or Simba in five *pro justitia* statements given to Rwanda authorities from 1998 to 2002. He explained that security concerns prevented him from giving a full statement concerning these events. The witness's security concerns are perhaps understandable in connection with his public statements to Rwandan authorities. However, these concerns are not equally applicable to statements given to Tribunal investigators, which are routinely placed under seal with all identifying information redacted until shortly before trial. The Chamber further observes that the witness's security concerns did not prevent him from implicating Simba, in his June 2001 statement, in two killing events in June 1994. Consequently, the Chamber does not find

<sup>193</sup> T. 22 March 2005 pp. 31, 33, 73-76; T. 23 March 2005 pp. 31-32; T. 24 March 2005 pp. 33-35.

<sup>194</sup> T. 22 March 2005 pp. 7-8, 19, 23, 25, 75-76, 80-81.

<sup>195</sup> T. 21 March 2005 pp. 19, 21, 57-58.

<sup>196</sup> T. 3 November 2004 p. 2.

<sup>197</sup> See Section 8.5.

26

3507

convincing the witness's explanation for the discrepancy between his testimony and that statement.<sup>198</sup>

196. In view of these concerns, the Chamber hesitates to rely on Witness ANX's testimony concerning the Ruhashya attacks without sufficient corroboration. The testimony of Witness KSM does not corroborate that of Witness ANX. Witness KSM was certainly convinced of Simba's role in the crimes committed in Ruhashya commune. However, her testimony was not clear and coherent. She had problems in answering even simple questions in a precise and convincing way. Her basis of knowledge for identifying Simba was not strong, and she hesitantly identified him in court only after acknowledging the difficult and traumatic circumstances of the time.<sup>199</sup> Her testimony also conflicts with Witness ANX's account that it was Munyenaza who addressed the attackers at the bridge before they set out, not Simba.

197. The Chamber has also considered the assertions of Defence Witness NGJ2 that Simba had no involvement in the killings in Ruhashya commune. The testimony of this witness on this point is based principally on his assertion that he did not hear about Simba's involvement in the massacre in Ruhashya commune. This is not a sufficient basis of knowledge for the Chamber to make any findings concerning Simba's activities at the relevant time.

198. The Chamber accepts that the evidence of Witnesses ANX and KSM indicates that *Interahamwe*, as well as other government authorities from Gikongoro prefecture, conducted an attack in Ruhashya commune at the end of April 1994, after a large gathering near the Mwogo bridge in Kinyamakara commune. Evidence of these attacks is corroborated as well by Defence Witness NGJ2. However, the Chamber is not in a position to accept beyond reasonable doubt, on the basis of this evidence alone, the specific allegations or the details offered by these witnesses concerning Simba's participation in the attacks. Consequently, the Chamber does not find that the Prosecution has proven the allegations, set forth in paragraphs

<sup>198</sup> T. 5 November 2004 pp. 2-8, 11-18; Defence Exhibits 41-46. The five *pro justitia* statements are dated 26 August 1998, 25 August 1999, 7 October 1999, 17 February 2000, and 7 July 2002. The witness mentioned Simba's role in the massacre at Rubaba hill in his statement of 23 March 2004 to Tribunal investigators prepared shortly before the original date envisioned for the commencement of trial. This statement was disclosed before trial to the Defence and the Chamber in fulfilment of the Prosecution's obligations pursuant to Rule 66 (A)(ii) and 73 bis (b). It was not used during examination or tendered as an exhibit. The Chamber also recalls that Witness ANX at the end of his testimony revealed that he had written a letter on 2 January 2002, in which he detailed his and Simba's involvement in the events of 27 to 29 April 1994. T. 5 November pp. 21-24, 26, 28-30. This letter was not used during the examination and was not tendered as an exhibit. See *Simba*, Decision on the Admission of Certain Exhibits (TC), 7 July 2005, para. 5 ("Witness ANX referred to the existence of the January 2002 documents during his re-examination. Neither the Prosecution nor the Defence examined him on the basis of these documents. The Chamber asked him to produce them and gave the parties an opportunity to review the documents and to recall him. However, the Prosecution did not seek to tender them or to recall the witness until after the close of its case. Therefore, the Chamber denies the Prosecution request to admit these documents.").

<sup>199</sup> T. 15 September 2004 pp. 3-4 ("To be frank with you, I saw him, but as I explained to you, I could have forgotten how he looked like, because I saw him during the war and I was traumatised by the events that took place. Otherwise, I used to see him. You will understand that these events took place ten years ago, and it was a situation of chaos in such a way that I may not be able to identify the person, but I saw him at that time ... I can tell you what I'm seeing without really committing myself because when I used to see him, it was during a situation of massacres and not during joyful moments. It is possible for me to be mistaken, but he looked like this person that I'm seeing next to the white person. That is on the basis of the person I saw at the time. I really did not pay attention to observe him very well because I was on the run, but I think it is this person.").

*h*

3506

47 to 52 of the Indictment, implicating Simba in the attacks in Ruhashya commune.<sup>200</sup> In view of these findings, the Chamber does not need to assess the alibi evidence provided by Simba for this period.

---

<sup>200</sup> Witness ANX provided testimony about an attack on Rubaba Hill and Simba personally killings refugees. The Indictment however refers only to attacks on Gashoba Hill and in the Rugogwe trading centre. These parts of the testimony raise concerns about whether the Indictment gave proper notice. *See Niyitegeka*, Judgement (AC), 9 July 2004 paras. 229-235. However, the Chamber need not address this issue in light of its factual finding. Similar questions arise in relation to Simba allegedly killing a boy and girl.

64

## 8. FURTHER EVIDENCE OF COMMON CRIMINAL PURPOSE

3505

### 8.1 Distribution of Weapons, Rukondo Commune Office, March 1994

#### 8.1.1 Indictment

199. Paragraph 21 reads:

Aloys SIMBA also distributed weapons in April 1994 after the death of President Habyarimana, to Rukondo communal offices. Approximately 40 AK 47 rifles were distributed through the Bourgmestre to conseillers who then distributed them to Hutu civilians.<sup>201</sup>

#### 8.1.2 Evidence

##### *Prosecution Witness YF*

200. Witness YF is a Hutu who lived near the Rukondo commune office in 1994. He was a member of the PSD party in 1994 and currently is a member of the RPF.<sup>202</sup> From January to March 1994, the witness observed six communal police officers and two drivers with military background train about thirty Hutu recruits from 10.00 a.m. to midday twice a week. Around twenty-four training sessions were conducted over the course of these three months. The witness was present during the training on two occasions and observed other training sessions from a nearby location.<sup>203</sup>

201. The recruits used bow and arrows and learned to disassemble and shoot firearms. One of the recruits, Sabagiriwa, the bourgmestre's brother-in-law, informed the witness that the purpose of the training was to fight the *Inkotanyi* and to kill their Tutsi accomplices. The witness learned from Sabagiriwa, as well as people on the way to the training, that Didas Hategekimana, the bourgmestre of Rukondo commune, organized the training on Simba's instructions.<sup>204</sup>

202. At the end of the training in March, the witness saw Hategekimana publicly distribute Kalashnikov guns to each of the recruits. The witness heard from Sabagiriwa that Simba brought the guns to the commune office.<sup>205</sup>

203. After the death of President Habyarimana on 6 April, Witness YF observed the recruits, who had been trained at the commune office, killing Tutsi in his area as well as torching and looting their homes. The attackers also killed Tutsi, or people who were not natives of the area, at roadblocks. The witness said that those who were able to flee sought refuge at Cyanika Parish.<sup>206</sup>

<sup>201</sup> The parties' submissions concerning this event are found at Defence Closing Brief, paras. 320-324; T. 7 July 2005 p. 27. The Prosecution has not referred to this event in its Closing Brief.

<sup>202</sup> T. 6 September 2004 pp. 3, 27-29; T. 7 September 2004 pp. 5-6, 12.

<sup>203</sup> T. 6 September 2004 pp. 4-8, 34-35, 37-39; T. 7 September 2004 pp. 2-4.

<sup>204</sup> T. 6 September 2004 pp. 4, 8-9, 39, 47.

<sup>205</sup> *Id.* at pp. 10-12, 47-48.

<sup>206</sup> *Id.* at pp. 12-15.

6h

*The Accused*

35074

204. Simba testified that, in his role as civil defence adviser, he visited Rukondo commune and met with Hategekimana on 24 May 1994. Hategekimana showed him thirty youth engaged in training, but who did not have weapons or proper instruction. On 25 May, Simba stated that he visited Major Bizimungu of the gendarmerie and asked him to provide weapons and training for the commune. Bizimungu told Simba on 31 May that he had issued thirty Kalashnikov rifles to Rukondo commune and had also assigned a gendarme to the commune.<sup>207</sup>

*Defence Witness NGJ2*

205. Witness NGJ2, a Hutu and former local official, testified that after 26 April 1994 bourgmestres began recruiting young men and training them at the commune offices to implement the civil defence program. The bourgmestre of Rukondo commune informed the witness that gendarmes had delivered thirty to forty Kalashnikov rifles to the recruits in fulfilment of a request for weapons made to Simba in the last days of May.<sup>208</sup>

**8.1.3 Deliberations**

206. The Chamber accepts that Witness YF resided in Rukondo commune in 1994 and that he endeavoured to give a truthful account at trial. Nonetheless, aspects of Witness YF's testimony raise questions regarding his recollection of the events which transpired in the commune and particularly of Simba's involvement in the training sessions and distribution of weapons.

207. Witness YF first indicated that he was able to observe all the training sessions because they occurred during a period of unrest, which resulted in the suspension of work for many. When asked to explain why his duties had been suspended from January to March 1994, the witness responded: "I think that is not going to be easy for me to answer that question. It is difficult for me to answer it. I think you should give me some time to answer that question". He then suggested that he was able to see the training, not because work had been suspended, but because it occurred sometimes on the weekends when he was not at work.<sup>209</sup>

208. Simba testified that he organized training in Rukondo commune and facilitated the acquisition and distribution of Kalashnikov rifles there in May 1994. Simba's testimony is corroborated by Witness NGJ2. Given Witness YF's initial account that he observed trainings due to the unrest and his suspended professional responsibilities, his testimony tends to support the Defence evidence that these activities occurred in May, rather than between January and March. The timing of these events is material as Simba is not charged with any criminal conduct related to the distribution of weapons after April 1994.

209. Witness YF's testimony regarding Simba's alleged involvement in the training and weapons distribution in Rukondo is second-hand. The witness learned of Simba's involvement through conversations with the bourgmestre's brother-in-law and from others that passed by on the way to the training. This uncorroborated hearsay evidence does not provide a sufficient basis for the Chamber to conclude that Simba was involved in the

<sup>207</sup> T. 22 March 2005 pp. 7-17.

<sup>208</sup> T. 21 March 2005 pp. 48, 53-54.

<sup>209</sup> T. 6 September 2004 pp. 34-35, 37-39.

6h

training sessions and weapons distribution from January to March, as attested to by the witness, or in April 1994, as mentioned in the Indictment.

210. The Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegations contained in paragraph 21 of the Indictment.

## **8.2 Solicitation of Funds for Weapons, Rukondo Commune, March 1994**

### **8.2.1 Indictment**

211. Paragraphs 13, 22, and 23 (b) read:

13. At a public rally in Kirambi Market, Rukondo Commune, in April 1994, a few days before the death of President Habyarimana, Aloys SIMBA raised funds in order to purchase weapons to fight the "inyenzi". A substantial amount of money was collected.

22. In addition to distributing weapons, Aloys SIMBA sought to import arms as early as April 1993. Together with Prefet BUCYIBARUTA, Capt SEBUHURA, Bourgmestre SEMUKWAVU, local businessmen and others, he raised funds for the purchase of weapons and ammunition for the interahamwe in April and/or May 1994 in Gikongoro prefecture. It was Aloys SIMBA who received this money.

23 (b). In April 1994, a few days before the death of President Habyarimana, at a public rally in Kirambi Market, Rukondo Commune Aloys SIMBA said 'You Banyarwanda do not know what is coming. Everyone of you should get armed and should always walk with your traditional arms. I want you to remember what happened in the year 1959. Look at my bald head, I was dragged on the ground by the inyenzi. It is no longer a question of staying in your homes. You must shut the doors so that the cats do not enter your houses. You must also search for the snakes in the bushes and hit them on the head. For those who find the situation difficult, I advise you to flee. Whoever remains in Rwanda will see for himself how the elephants will fight'.<sup>210</sup>

### **8.2.2 Evidence**

#### *Prosecution Witness ALS*

212. Witness ALS, a Tutsi, testified that she attended a public meeting in Kirambi market, Rukondo commune, in March 1994, two to three weeks before the death of the President. The market bordered Karama commune, where the witness lived at the time. The previous evening, sector conseillers and heads of cellules had asked the local population to attend this meeting on the instructions of Désiré Ngezahayo, the bourgmestre of Karama commune. The next day, both Hutu and Tutsi from Karama and Rukondo communes gathered at the market.

<sup>210</sup> The parties' submissions concerning this event are found at Defence Closing Brief, paras. 325-328, 589-606, 1015-1020; T. 7 July 2005 pp. 26-28. The Prosecution made no submissions on this event in its Closing Brief or oral submissions. The Chamber notes that there is other evidence on the record that Simba solicited funds to purchase weapons provided by Witnesses KEI, KSU, ANX, KDD, and Simba. However, the Prosecution makes no reference to these events in its Closing Brief and referred in its oral argument only in passing to one alleged meeting in Kabacuzi market, where funds were solicited, relating to the June 1994 attack in Nyanza. According to several witnesses, this meeting took place in June and is therefore outside the temporal scope of paragraph 22 of the Indictment. Consequently, the evidence has not been recounted in detail. The Chamber has considered it in assessing the testimony of Witness ALS.

The witness attended because she saw the vehicle of Frédéric Nzamurambaho, a member of the PSD and the Minister of Agriculture and Livestock Development. She thought that the Minister was going to distribute beans, which he had done at other rallies to recruit members. Several government officials attended the meeting including Bourgmestre Ngezahayo, Minister Nzamurambaho, and the bourgmestre of Rukondo commune.<sup>211</sup>

213. After the local population had gathered, Simba arrived accompanied by three soldiers, including one named Rwamanywa, who the witness recognized from Mudasomwa commune. Simba was wearing a military uniform. Minister Nzamurambaho gave the floor to Simba, and Simba stated very briefly: "Rwandans, remember what happened in 1959. Look at my bald head. I don't have hair on my head. My hair will start growing when Inyenzis come back to Rwanda, so take your weapons, shut your doors so that the cats do not enter your houses, you should chase away snakes from the bushes, and you should break their heads." Simba further stated: "Make a contribution so as to help the army buy ammunition, and all of you should flee because those who remain in Rwanda will see how elephants fight."<sup>212</sup>

214. Witness ALS stated that after Simba's speech, a soldier collected money from those present who had money and issued them a receipt. The soldier gave the money to Simba. The heads of cellules collected from the others later at their homes and forwarded the money to the bourgmestre. Those who were single paid 50 francs, a married man or woman paid 100 francs, and traders gave as much as 2,000 francs. The witness explained that it was necessary to produce the receipt in order to freely travel.<sup>213</sup>

215. At the time, the witness did not understand Simba's speech as inciting the killing of Tutsi but rather believed that the purpose of the contribution was to strengthen the army to fight against the *Inkotanyi* who had invaded the country. Only later did she understand Simba's statement as referring to the killing of Tutsi civilians in the wake of the violence following the death of the president.<sup>214</sup>

216. After this meeting, Albert Nkurunziza, a former soldier, began giving weapons training to young people in Rukondo and Karama communes. The witness observed some of this training which occurred at the Karama commune office.<sup>215</sup>

217. Witness ALS had seen Simba previously in 1959 at the Gasarendra trading centre recounting his exploits during the battle of Nshili and in the 1980s as a member of parliament. She described him as having a receding hairline and a scar on his forehead and identified him in court.<sup>216</sup>

#### *Prosecution Witness KDD*

218. Witness KDD was a local government official in Karama commune in April 1994.<sup>217</sup> He testified that the first time he saw Simba in 1994 was in Karama on 11 April 1994.<sup>218</sup>

<sup>211</sup> T. 1 September 2004 pp. 42-43, 55-57, 59-61, 63, 66-67, 75; Prosecution Exhibit 3. The witness also provided testimony in connection with the massacre at Cyanika Parish, which is discussed in Section 3.

<sup>212</sup> T. 1 September 2004 pp. 43, 66-69, 71.

<sup>213</sup> *Id.* at pp. 73-76, 78-79.

<sup>214</sup> *Id.* at pp. 71-72, 75-76, 78.

<sup>215</sup> *Id.* at pp. 44-45.

<sup>216</sup> *Id.* at pp. 44, 51-55.

<sup>217</sup> T. 28 October 2004 pp.14, 47-48. T. 10 November 2004 p. 3. Witness KDD also provided testimony concerning a meeting held at CIPEP in Gikongoro town on 26 April, which is discussed in Section 8.6.

Furthermore, in the beginning of June 1994, Simba spoke at a meeting in Kabacuzi market, Gikongoro town attended by several local government officials and the general public. During the meeting, Simba implored those present to give money to help fight the *Inyenzi* and *Inkotanyi* in Nyanza. Witness KDD also suggested that the training of youth in Karama and Rukondo communes began around 27 April.<sup>219</sup>

#### *Defence Witness NGJ2*

219. Witness NGJ2, a local official in Gikongoro prefecture, testified that no public meeting occurred in Kirambi to collect funds before the president's death. He added that the words attributed to Simba about having his hair grow back was actually uttered, in a different context, by Alexis Kanyarengwe, who became the president of the RPF.<sup>220</sup>

#### **8.2.3 Deliberations**

220. Witness ALS provided a first-hand and largely consistent account of Simba asking the local population to contribute money to fight the *Inyenzi* two to three weeks prior to the president's death. The Chamber accepts that Witness ALS lived near Rukondo commune in 1994 and therefore would have had some basis of knowledge concerning important events occurring there at the time, including the meeting in Kirambi.

221. The witness stated that Witness KDD was at the meeting. However, Witness KDD, who also testified for the Prosecution, indicated that the first time he saw Simba in 1994 was on 11 April, weeks after Witness ALS placed him and Simba at the Kirambi meeting. The Chamber finds this surprising. Witness KDD further testified that on 4 June, Simba asked those present at a public gathering at Kabacuzi market to donate money in connection with an attack against the RPF in Nyanza. This account is corroborated by Simba who acknowledged having participated in this meeting.<sup>221</sup> Witness KDD also indicated that the training of youths at the Karama commune office began at the end of April 1994.

222. These contradictions could be explained if Witness ALS was mistaken that Witness KDD attended the meeting, or if Witness KDD was mistaken about the first time he saw Simba in 1994. The Chamber notes, however, that Witness KDD's account on this point is in conformity with Simba's version of the events.

223. The Chamber also observes that raising money to fight the RPF is not in itself incriminating. The formulations "*Inyenzi*" and "chase away snakes" could of course have a double meaning, referring to all Tutsi, including civilians. However, Witness ALS, a Tutsi, did not understand the remarks in this way during the meeting. The presence of Frédéric Nzamurambaho, a moderate Hutu member of the PSD who was assassinated shortly after 6 April 1994, also speaks against this interpretation.

<sup>218</sup> T. 28 October 2004 pp. 15-16; T. 10 November 2004 pp. 2-4.

<sup>219</sup> T. 28 October 2004 p. 40; T. 10 November 2004 pp. 35-38, 48.

<sup>220</sup> T. 21 March 2005 pp. 5-6, 24, 27.

<sup>221</sup> Testimony of Witness KDD, T. 28 October 2004 p. 40; T. 10 November 2004 p. 48; testimony of Simba, T. 22 March 2005 pp. 82-85. See also testimony of Witness ANX, T. 1 November 2004 pp. 28-29, T. 4 November 2004 pp. 66-69 (Kabacuzi meeting in June 1994).

3500

224. In light of these considerations, the evidentiary situation is not clear.<sup>222</sup> Consequently, the Chamber cannot accept Witness ALS's account of the Kirambi meeting without further corroboration.

225. The Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegations contained in paragraphs 13, 22 and 23 (b) of the Indictment.

### **8.3 Public Meeting, Nyamagabe Commune Office, 10 April 1994**

#### **8.3.1 Indictment**

226. Paragraphs 35-37 reads:

35. On or about 10 April 1994, BUCYIBARUTA held a meeting in the Nyamagabe Commune Office attended by Colonel Aloys SIMBA, Captain Faustin SEBUHURA, Sous-Préfet BINIGA, Bourgmestre of Nyamagabe Commune SEMAKWAVU, the representative of the MRND political party, Conseillers of Sectors and other officials as well as ordinary members of the population.

36. During the meeting, BUCYIBARUTA said that he did not "want to hear any talk about a single Tutsi who did not go to Murambi. Even those who have taken refuge in the churches must go to Murambi". He explained that "the Tutsis have hatched a plot to kill the Hutus, therefore, the Hutus must start the killing first".

37. At the same meeting Aloys SIMBA asked SEBUHURA to identify the number of Tutsi gendarmes in his force and SEMAKWAVU to identify all young men who were suitable for military training.<sup>223</sup>

#### **8.3.2 Evidence**

##### *Prosecution Witness KEH*

227. Witness KEH, a Tutsi, testified that on Sunday 10 April 1994, around 9.00 a.m., he travelled to the Nyamagabe commune office with his friend François Gasana, an MDR official and friend of Bourgmestre Félicien Semakwavu. Earlier that morning, Gasana had learned that Witness KEH had a Tutsi identity card, when the two met on the witness's way to church. Gasana asked the witness to accompany him to the communal office to change the witness's identity card to Hutu as people had begun hunting down Tutsi in neighbouring areas. On arrival, Gasana spoke with Bourgmestre Semakwavu and then told the witness that Semakwavu would attend to the problem after the meeting which was about to start.<sup>224</sup>

<sup>222</sup> In addition, her statement to Tribunal investigators of 2 November 2000 reflects that the meeting occurred two months before the death of the president, rather than in March. The witness explained to the investigators that there was a mistake, but signed it anyway, noting that she planned on explaining it in due course. T. 1 September 2004 pp. 43, 52-53, 64-66; Defence Exhibit 6.

<sup>223</sup> The parties' submissions concerning this event are found at Prosecution Closing Brief, paras. 123-124, 135; Defence Closing Brief, paras. 339, 344, 526-555, 573, 857; T. 7 July 2005 pp. 7, 14, 58-59. This event is also relevant to the Murambi Technical School massacre discussed in Section 4.

<sup>224</sup> T. 31 August 2004 pp. 58-60, 67, 81-84; T. 1 September 2004 pp. 8-11, 20, 23, 31; Prosecution Exhibit 2. In closed session, Witness KEH explained that Gasana was a friend and that they also had a professional relationship.

3499

228. The witness estimated that between fifty and one hundred persons had gathered at the courtyard in front of the commune office. He also saw several authorities seated at the front of the crowd including: Aloys Simba, Laurent Bucyibaruta, who was the prefect of Gikongoro, Captain Faustin Sebhura of the gendarmerie, and Bourgmestre Semakwavu. Sector conseillers and heads of cellules were also present. The witness stated that Bucyibaruta presided over the meeting, which lasted about one hour.<sup>225</sup>

229. According to the witness, Bucyibaruta introduced Simba as the guest of honour, stating: "Here we are with a guest whom you know, and that guest is someone who represents you because he is your member of parliament. So I am going to request him to stand up and greet you." Simba greeted the population and then took his seat. Bucyibaruta then told the sector conseillers to direct Tutsi to Murambi where security could be provided for them. He then informed the crowd that the Tutsi were planning to eliminate the Hutu and waived a piece of paper which he claimed was a list of Hutu to be killed first. Simba spoke next and asked Sebhura the number of Tutsi in the gendarmerie. Sebhura indicated that he would make inquiries and forward a list to Simba. Simba then asked Semakwavu for a list of young men from each sector who could be given weapons training. Semakwavu agreed.<sup>226</sup>

230. Witness KEH was towards the back of the crowd about thirteen metres away from the officials when they spoke. Simba wore a light blue suit. The witness recognized Simba from his previous campaign for parliament in the 1980s, and from MRND rallies. According to the witness, in April 1994 Simba was between fifty and sixty years old and was losing his hair. Witness KEH believed that at the time Simba was a still member of parliament and chairman of the MRND at the prefecture level. He identified Simba in court.<sup>227</sup>

231. At the end of the meeting, Simba, Sebhura, Bucyibaruta, Semakwavu, and the other local officials conducted a private meeting in the communal office. Gasana asked the witness to wait for him at a nearby building while he attended the meeting as well. About ten minutes later, Gasana told the witness that Bourgmestre Semakwavu had been prohibited from issuing new identity cards. Gasana also urged the witness to avoid Murambi because he had just learned that the authorities were planning to kill the refugees there. He told the witness to go home and that he would protect him. Gasana then returned to the meeting, and the witness went home.<sup>228</sup>

#### *Defence Witness SBL1*

232. Witness SBL1 is a Hutu and a former high-level official, who has been implicated in the crimes which occurred in Gikongoro prefecture. After being shown a communiqué read on Radio Rwanda, he acknowledged that members of the prefectural security committee could have met on 10 April 1994. Such a meeting would not have been public. The membership of the security committee was limited and included the prefect, the heads of the prefecture's departments, the president of the court of first instances, the public prosecutor,

<sup>225</sup> T. 31 August 2004 pp. 58-60, 80; T. 1 September 2004 pp. 6, 10-11.

<sup>226</sup> T. 31 August 2004 pp. 60-61, 84-85; T. 1 September 2004 pp. 6-8, 12.

<sup>227</sup> T. 31 August 2004 pp. 61-63, 65, 80, 85; T. 1 September 2004 pp. 1-3, 5, 8. The witness estimated that the distance between him and the authorities approximated the distance between the witness stand and the side of the courtroom. According to courtroom measurements, this is thirteen metres and forty centimetres. T. 31 August 2004 pp. 62, 65.

<sup>228</sup> T. 31 August 2004 pp. 63-64, 67; T. 1 September 2004 pp. 14-16.

the gendarmerie camp commander, the army commander, the head of intelligence, and the bourgmestre of the commune where the headquarters of the prefecture is located.<sup>229</sup>

### 8.3.3 Deliberations

233. Witness KEH, the only Prosecution witness for this event, provided a first-hand and generally consistent account. However, several issues related to his identification of Simba warrant caution. The witness's prior knowledge of Simba before the event was neither recent nor strong. He observed Simba during a campaign in the late 1980s and at MRND rallies. This is not necessarily significant in view of the fact that the prefect introduced Simba at the meeting. However, the record is unclear, as the witness did not say that the prefect explicitly mentioned Simba's name.<sup>230</sup> Bucyibaruta introduced Simba as the area's representative in parliament, a post that Simba had not held for a year.<sup>231</sup> In addition, the witness described Simba as wearing a blue suit. This conflicts with the testimony of Prosecution and Defence witnesses that during this period Simba dressed in a military uniform while moving around the country or making public appearances.

234. Witness SBL1 acknowledged that members of the prefectural security council might have met on 10 April 1994. He explained that such a meeting would have been limited and would not have been public. It is not clear whether this possible meeting was the same as the one described by Witness KEH or a different one. Consequently, Witness SBL1's testimony neither supports nor detracts from Witness KEH's account.

235. The Chamber has also weighed Witness KEH's testimony in the context of the evidence of the alibi for this period, which is outlined in detail in Section 9. This evidence suggests that Simba remained in Kigali from 6 until 13 April. The accounts of the alibi witnesses for this period provide a reasonable explanation of Simba's activities in the days after the death of the president and leave the Chamber with doubt about the reliability of Witness KEH's testimony, in the absence of further corroboration.

236. The Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegations contained in paragraphs 35 to 37 of the Indictment.

## 8.4 Incitement in Nzega Trading Centre, Nyamagabe Commune, 10 April 1994

### 8.4.1 Indictment

237. Paragraph 23 (e) reads:

In April 1994, Aloys SIMBA addressed a gathering at Nzega Centre, Gasaka sector, Nyamagabe commune, where he asked why the population was idling and not behaving like their counter parts in other areas.<sup>232</sup>

<sup>229</sup> T. 22 February 2005 pp. 56-57; T. 23 February 2005 pp. 49, 51-52; Defence Exhibit 95.

<sup>230</sup> T. 31 August 2004 p. 84 ("[Prefect Bucyibaruta] said, 'Here we are with a guest whom you know, and that guest is someone who represents you because he is your member of parliament. So I'm going to request him to stand up and greet you.' That is all he said, and Colonel Simba stood up and greeted the people. After doing so, he went back to his seat and sat down.")

<sup>231</sup> At the time, the designated representative in parliament was the sub-prefect of Karaba. T. 21 February 2005 p. 5. This sub-prefecture encompassed Nyamagabe commune.

<sup>232</sup> The parties' submissions concerning this event are found at Prosecution Closing Brief, paras. 125, 135; Defence Closing Brief, paras. 338-349, 533, 857; T. 7 July 2005 pp. 58-59.

## 8.4.2 Evidence

3497

### *Prosecution Witness KSS*

238. Witness KSS, a Tutsi, testified that after President Habyarimana's death, he heard about Tutsi being attacked in neighbouring Mudasomwa commune. On 9 April, he witnessed attacks against Tutsi in his sector in Nyamagabe commune and sought help from the bourgmestre, who was unable to stop the violence.<sup>233</sup>

239. On the morning of Sunday, 10 April 1994, the witness fled the attacks in his area and attended a religious service at a church in Gasaka sector, Nyamagabe commune, which lasted from 9.00 a.m. until about 10.30 a.m. After the service, the witness, as well as the other persons leaving the church, went to the nearby Nzega Trading Centre, where a number of people, both Hutu and Tutsi, had gathered, including *Interahamwe*, armed with traditional weapons.<sup>234</sup>

240. As the witness arrived at the trading centre, he saw Aloys Simba speaking to François Gasana, the MDR chairman for Nyamagabe commune, who was in front of a crowd of people. About two hundred people were moving around or simply passing through the centre at the time. From a distance of about twelve metres, the witness heard Simba say to Gasana and those gathered around him: "The others have started working. You have not yet started working." The witness understood this to mean that Tutsi should be killed. After this statement, the Tutsi quickly left.<sup>235</sup>

241. Immediately after Simba spoke, Gasana approached the witness and told him to flee because Tutsi were going to be killed. The witness left the trading centre at once and hid in Kirehe, on Gasana's instructions. Gasana told the witness that in view of his loyal services he would not allow him to be killed.<sup>236</sup>

242. Witness KSS had seen Simba on two previous occasions during a 1988 election campaign,<sup>237</sup> but was not familiar with Simba's political affiliation. He identified Simba in court.<sup>237</sup>

## 8.4.3 Deliberations

243. Witness KSS, the only Prosecution witness for this event, provided a first-hand and consistent account both during his examination-in-chief and his cross-examination. The alleged discrepancies pointed out by the Defence between his statements to Tribunal investigators of 25 September 2000 and 19 November 2003 are minor and do not affect his general credibility.<sup>238</sup> The Chamber considers him to be a witness who endeavoured to provide a truthful account of the event.

<sup>233</sup> T. 14 September 2004 pp. 6-7, 15-17.

<sup>234</sup> *Id.* at pp. 3, 5, 14-18, 20-21, 25-26, 36, 58-59, 62.

<sup>235</sup> *Id.* at pp. 4-6, 8, 26, 27, 28, 32, 34-37. The witness indicated that the distance between Simba and himself was similar to the distance between where he was sitting and the entrance on the left side of the courtroom. According to courtroom measurements, that distance is twelve metres and ten centimetres. *Id.* at p. 6.

<sup>236</sup> T. 14 September 2004 pp. 4, 5, 7, 11, 20-21, 26-27, 32, 34, 37-41, 60. In closed session, Witness KSS explained his relationship with Gasana.

<sup>237</sup> T. 14 September 2004 pp. 8-10, 42-43.

<sup>238</sup> Defence Exhibits 13-14.

3496

244. Witness KSS observed Simba during a very brief exchange under difficult and traumatic circumstances. That morning, the witness had fled to Nzega from attacks against Tutsi in his home area. The church service he attended was cut short due to what the witness described as a "critical situation". Armed *Interahamwe* had gathered to kill Tutsi on the upper-side of the church and in the Nzega Trading Centre, where the witness allegedly saw Simba. In addition to armed attackers, a number of other people moved about the centre, where the witness passed by Simba before immediately fleeing for his life.

245. The Appeals Chamber has stressed that the Trial Chamber must always, in the interests of justice, proceed with extreme caution when assessing the identification of an accused made under difficult circumstances.<sup>239</sup> The witness's description of the exchange between Gasana and Simba did not contain much detail about the Accused which might overcome these concerns. His prior knowledge of Simba before the event was neither recent nor strong. He observed Simba on two occasions during an election campaign in 1988. Consequently, the Chamber finds it difficult to accept his testimony about Simba at the trading centre without further corroboration.

246. The Chamber has also weighed Witness KSS's testimony in the context of the alibi offered for this period, which is outlined in Section 9. The alibi evidence suggests that Simba remained in Kigali from 6 until 13 April, leaving the Chamber with further doubt.

247. The Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegations contained in paragraph 23 (e) of the Indictment.

## 8.5 Distribution of Weapons, Kinyamakara Commune Office, Mid-April 1994

### 8.5.1 Indictment

248. Paragraph 20 reads:

In the week after the death of the President Habyarimana Aloys SIMBA brought 3 boxes containing approximately 50 Kalashnikov rifles to Kinyamakara communal offices. The weapons were off-loaded from Aloys SIMBA's vehicle by soldiers and he ordered communal policemen and soldiers to assemble and distribute them. The weapons were distributed to militiamen and those Hutu civilians who had been trained to use rifles. These weapons were used immediately to kill unarmed Tutsi civilians in their homes and at shops at Rugongwe trading centre, Ruhashya commune, Butare prefecture.<sup>240</sup>

### 8.5.2 Evidence

#### *Prosecution Witness ANX*

249. Witness ANX, a Hutu, was a farmer in Kinyamakara commune in April 1994. At the time of his testimony, the witness was detained and awaiting trial in Rwanda for genocide.<sup>241</sup>

<sup>239</sup> See *Bagilishema*, Judgement (AC), 12 December 2002, para. 75; *Kupreskic et al.*, Judgment (AC), 23 October 2001, para. 39. See also *Bagilishema*, Judgement (TC), 7 June 2001, para. 532. The witness's in-court identification has limited probative value. See *Kunarac et al.*, Judgment (AC), 12 June 2002, para. 320.

<sup>240</sup> The parties' submissions concerning this event are found at Prosecution Closing Brief, para. 130; Defence Closing Brief, paras. 684-723 (addressing all of Witness ANX's testimony).

<sup>241</sup> T. 1 November 2004 p.16; T. 2 November 2004 pp. 1-4; T. 3 November 2004 p. 7; T. 5 November 2004 pp. 8-9, 11; Prosecution Exhibit 17. Witness ANX's personal particulars are described in paragraph 180 in

8/11

3495

250. According to the witness, at some point in mid-April, Aloys Simba and Captain Faustin Sebhura of the gendarmerie delivered three boxes of Kalashnikov rifles to Charles Munyaneza, the bourgmestre of Kinyamakara commune. On that day, the witness saw Simba, who was in military uniform, and Sebhura arrive between 1.00 p.m. and 2.30 p.m. at the Kinyamakara commune office in Simba's white, but mud-stained, Mercedes Benz, along with some military personnel. The witness was about forty-five or fifty metres away on the small alley that leads to the health centre, close to the commune jail. The commune office was surrounded by a cypress hedge. Two soldiers and two gendarmes unloaded three boxes of new Kalashnikov rifles from the back of a military truck that accompanied Simba and Sebhura. The soldiers and gendarmes removed the firearms from the boxes, mounted the magazines, and inspected the weapons, before repackaging them. Simba and Munyaneza signed a register, and the commune police placed the boxes in the office. Simba and Sebhura then left, after about twenty or thirty minutes.<sup>242</sup>

251. At the end of April or the beginning of May, Munyaneza distributed these guns at the Nyaruhombo centre to young people who had received training. He gave approximately twenty-five guns to each of the nine sectors in the commune.<sup>243</sup> Munyaneza did not distribute these weapons, however, during the major assault on Ruhashya commune on 29 April.<sup>244</sup>

#### *The Accused*

252. Simba denied having visited Kinyamakara commune in mid-April. He testified that, in his role as civil defence adviser, he assessed the situation in that commune on 25 May 1994. On the same day, he spoke with Major Bizimungu of the gendarmerie and asked him to provide weapons and training for the commune. Bizimungu told Simba on 31 May that he had issued thirty Kalashnikov rifles to Kinyamakara commune and had also assigned one gendarme to the commune.<sup>245</sup>

#### *Defence Witness NGJ2*

253. Defence Witness NGJ2, a Hutu and former local official in Gikongoro prefecture, testified that, after 26 April, bourgmestres began recruiting young men and training them at the commune offices to implement the civil defence program. The bourgmestre of Kinyamakara commune informed him that gendarmes had delivered thirty to forty Kalashnikov rifles to the recruits in fulfilment of a request for weapons made to Simba.<sup>246</sup>

#### **8.5.3 Deliberations**

254. The Chamber has already expressed doubt with respect to Witness ANX's testimony concerning the attacks of 27 to 29 April 1994 in Ruhashya commune. In connection with the present event, the Chamber observes that the witness in his statement to Tribunal investigators of 20 June 2001 indicated that he only heard about Simba distributing weapons

---

connection with the witness's testimony concerning the attacks on 27 to 29 April in Ruhashya commune, which is discussed in Section 7.

<sup>242</sup> T. 1 November 2004 pp. 19-20; T. 4 November 2004 pp. 69-75, 79.

<sup>243</sup> T. 1 November 2004 p. 20; T. 3 November 2004 p. 28; T. 4 November 2004 pp. 72, 76-78, 80.

<sup>244</sup> T. 3 November 2004 pp. 27-30.

<sup>245</sup> T. 22 March 2005 pp. 7-17.

<sup>246</sup> T. 21 March 2005 pp. 48, 53-54.

8h

3494

and did not personally observe him supplying arms, as the witness testified.<sup>247</sup> This clear discrepancy raises questions about the witness's credibility. The witness explained that he gave only a partial statement to the investigators because he did not feel that his security was guaranteed and that when assured of his security, he gave a more complete statement.<sup>248</sup>

255. The witness's security concerns may be well founded in connection with public statements given to Rwandan authorities. The same cannot be said for statements given in confidence to Tribunal investigators. The witness's explanation for this discrepancy raises some doubt. Consequently, the Chamber will not accept his testimony without corroboration.

256. If these weapons were, in fact, provided to the Kinyamakara commune office in mid-April, it is not clear why they were not used during the assault on Ruhashya commune at the end of the month. This would suggest that if the witness did see weapons delivered at the office it would have likely been at the end of May consistent with Simba's own admission and as corroborated by Defence Witness NGJ2. The question of when the weapons were distributed is material given that Simba is not charged with criminal conduct after April 1994.

257. The Chamber has also weighed Witness ANX's testimony in the context of the alibi offered for this period, which is outlined in Section 9. The alibi evidence suggests that Simba remained in Kigali from 6 until 13 April, leaving the Chamber with further doubt.

258. The Prosecution has not proven beyond reasonable doubt the allegations of weapons distribution pleaded in paragraph 20 of the Indictment.

## 8.6 Meeting at CIPEP, 26 April 1994

### 8.6.1 Indictment

259. This event is not pleaded in the Indictment. The Prosecution has argued that this evidence is relevant to show *mens rea* and to further demonstrate a common criminal purpose. The Defence has sought the exclusion of this evidence based on lack of notice. As discussed in Section 1.2, the Chamber decided to admit this evidence, given its relevance to the five pleaded massacres.<sup>249</sup>

### 8.6.2 Evidence

#### *Prosecution Witness KDD*

260. Witness KDD, a Hutu, was a local government official in April 1994. At the time of trial, he was appealing a death sentence in Rwanda for his role in the massacre at Cyanika Parish. The witness denied being at Cyanika Parish on 21 April 1994, but testified that he visited the parish on 22 April 1994, after the massacre had taken place. Witness KDD pleaded guilty before Rwandan courts to two other charges involving searches of Tutsi homes

<sup>247</sup> Defence Exhibit 41 ("Towards the end of April 1994, the bourgmestre Munyaneza Charles called all those who had been militarily trained and ex-soldiers and gave them guns. When we enquired from some of the workers at the commune Hqs where the guns had come from, we were told that they had been brought by Col. Simba and delivered to the bourgmestre.") (emphasis added)

<sup>248</sup> T. 5 November 2004 pp. 2-3.

<sup>249</sup> The parties' submissions concerning this event are found at Prosecution's Closing Brief, paras. 62, 75, 85, 92, 114, 131; Defence Closing Brief, paras. 607-642 (discussing KDD's testimony); T. 7 July 2005 pp. 15, 55, 61; T. 8 July 2005 pp. 1-4.

*blm*

in October 1990 and transporting *Interahamwe*, in June 1994, to attack Nyanza town, which had been captured by the RPF.<sup>250</sup>

261. On 26 April 1994, the witness was present at a meeting at CIPEP, attended by Simba, Prefect Laurent Bucyibaruta, Minister Daniel Mbangura, Captain Faustin Sebhura of the gendarmerie, all sub-prefects and bourgmestres, and other local officials. According to the witness, Bucyibaruta convened the meeting to convey instructions from the Ministry of the Interior to direct the population to stop the killing. He spoke first and then gave the floor to Simba.<sup>251</sup>

262. At this meeting, Simba asked several officials, whom he referred to as the leaders of the massacres, to report on the number of casualties in their respective areas. Damien Biniga, the sub-prefect of Munini, stated that on 17 April he led an attack in Kibeho, with the assistance of gendarmes, and killed seventeen thousand five hundred Tutsi. He used fuel to demolish the roof of the church. Sebhura stated that on 21 April he led the entire Gikongoro gendarmerie squadron, as well as *Interahamwe* from Mudasomwa commune, in the massacre of over twenty thousand Tutsi in Murambi. Joseph Ntegeyintwali, the sub-prefect of Karaba, stated that he led a massacre of ten thousand Tutsi at Cyanika Parish, with the help of gendarmes, *Interahamwe* from Mudasomwa commune, and members of the population. Simba added that he led a massacre at Kaduha Parish, where members of the population killed twenty thousand Tutsi.<sup>252</sup>

263. According to the witness, Simba also asked the bourgmestres to take all necessary measures to destroy the Tutsi refugees who had fled to Ruhashya commune, Butare prefecture.<sup>253</sup>

#### *The Accused*

264. Simba testified that on 26 April, he and his son Robert met with Silas Mucumankiko, the director of the national tobacco company TabaRwanda at a bar in Gikongoro town owned by a trader known as Majyambere. Simba testified that he did not attend the meeting at CIPEP nearby and that he was unaware that Prefect Bucyibaruta had convened it.<sup>254</sup>

#### *Defence Witness SBL1*

265. Witness SBL1, a Hutu and a former high-level government official, testified about a prefecture security council meeting held at CIPEP on 26 April, attended by sub-prefects and bourgmestres. The government officials present at the meeting discussed various massacres, and the bourgmestres reported on the situations in their respective communes. Simba was not

<sup>250</sup> T. 28 October 2004 pp. 14, 42, 47-49; Prosecution Exhibit 16. The witness also testified about a meeting on 11 April at the Karama commune office, on 13 April at CIPEP in Gikongoro town, and on 4 May at the Kirambi market in Rukondo commune. The Chamber has addressed these events in Section 1.2.

<sup>251</sup> T. 28 October 2004 p. 30; T. 10 November 2004 pp. 26, 36, 44-45, 48-49, 67; Prosecution Exhibit 44.

<sup>252</sup> T. 28 October 2004 pp. 30-31; T. 10 November 2004 pp. 26, 44, 48-49, 67. During his testimony on 28 October, the witness referred to Daniel Mbangura as the sub-prefect of Munini and the leader of the Kibeho massacre. On 10 November, he referred to Damien Biniga. Given that Biniga was the sub-prefect of Munini, the reference to Mbangura on 28 October was likely an oversight.

<sup>253</sup> T. 10 November 2004 p. 36.

<sup>254</sup> T. 22 March 2005 pp. 17, 75-76.

*Sh*

present at the meeting. On 29 April, Prefect Bucyibaruta released a communiqué, forbidding any further killing, looting, or other acts of violence.<sup>255</sup>

#### *Defence Witness NGJ2*

266. Witness NGJ2, a Hutu and a former local official, testified that, on 26 April 1994, he attended a meeting open to bourgmestres and the sub-prefects to discuss pacification and civil defence measures, including the establishment of roadblocks. Simba was not invited and did not attend the meeting. The witness also said that none at the meeting reported on the massacres. To the contrary, the witness verified a document which he stated was a list of security recommendations proposed during the meeting. Witness NGJ2 explained that the document was dated 29 April, rather than 26 April, because it was recopied after the meeting.<sup>256</sup>

#### **8.6.3 Deliberations**

267. Based on the evidence of Prosecution Witness KDD, as well as Defence Witnesses NGJ2 and SBL1, the Chamber accepts that Prefect Bucyibaruta convened a meeting of local officials at CIPEP on 26 April 1994 to discuss the security situation, including the recent massacres. However, there is considerable divergence in the accounts of these witnesses with respect to Simba's attendance and the nature of the discussions of the recent massacres in the area.

268. Witness KDD provides the only account of Simba's attendance at the meeting and of the reports by local officials taking responsibility for leading the recent massacres in the area. The Chamber recalls that at the time of his testimony, the witness was awaiting the outcome of his appeal in Rwanda from the death penalty in relation to his conviction of crimes committed during the massacre at Cyanika Parish on 21 April. The Chamber notes that Simba is charged under the Indictment with crimes in relation to the attack at Cyanika Parish as well. The Chamber also observes that Witness ALS, who was present during the massacre at the parish, identified the witness as one of the assailants. The Chamber further recalls Witness KDD's denial of any involvement in the massacre at Cyanika Parish and his attempt to place responsibility on Simba. In light of the above considerations, the Chamber has considered his evidence with caution.<sup>257</sup>

269. Witness KDD's testimony on this event was coherent and articulate. However, some differences between Witness KDD's testimony and several statements given to Tribunal investigators and Rwandan authorities warrant close consideration. In a letter of 5 September 1997 to the Rwandan Prosecutor General, the witness did not mention the meeting of 26 April. He also did not implicate Simba in connection with the massacres in Gikongoro prefecture, but placed blame on Prefect Bucyibaruta and Sub-prefect Ntegeyintwali. The witness referred to Simba only in connection with an attack against the RPF in Butare prefecture in June 1994, which according to the statement had nothing to do with the

<sup>255</sup> T. 24 February 2005 pp. 40-41, 44-45, 54; Prosecution Exhibit 44; Defence Exhibit 95.

<sup>256</sup> T. 21 March 2005 pp. 39-46, 65; Prosecution Exhibit 44; Defence Exhibit 126.

<sup>257</sup> T. 28 October 2004 pp. 48-49; T. 10 November 2004 pp. 24, 56. Likewise, the witness in his statement of 30 November of 2001 and the attached letter to the director of the Gikongoro prison incriminates Prefect Bucyibaruta, among others. Defence Exhibit 47.

3491

atrocities committed in 1994.<sup>258</sup> The Chamber observes that the witness prepared this letter of 5 September 1997 in order to answer specific charges against him. Therefore, it does not affect his credibility that the statement makes no reference to the meeting of 26 April or to Simba's participation therein.

270. The witness's *pro justitia* statement to Rwandan prosecution authorities, dated 17 August 2000, does refer to the meeting of 26 April.<sup>259</sup> This statement appears to have been prepared in connection with an investigation of Bucyibaruta, and there are no questions soliciting information about Simba. According to that statement, the purpose of the meeting of 26 April was to put a stop to the massacres. There is no reference to local authorities taking responsibility for the attacks, no mention of Simba's presence at the 26 April meeting, and no indication of his connection with massacres. Only Bucyibaruta and Ntegeyintwali are incriminated. The statement places Simba at a meeting in Kabacuzi market in May in connection with an attack against the RPF in Nyanza in June 1994.

271. In a subsequent letter of 2001 addressed to the director of the Gikongoro prison, Witness KDD, for the first time, referred to the meeting of 26 April.<sup>260</sup> This letter does not mention Simba. Rather, it describes Bucyibaruta and Sebhura as the authors of the Cyanika Parish massacre.<sup>261</sup> In the Chamber's view, the omission of Simba in connection with the attack at Cyanika may be explained by the fact that the witness prepared this letter in response to a specific request for information about Bucyibaruta.<sup>262</sup>

272. The Chamber also observes that the witness's letter of 2001 to the director of the Gikongoro prison formed the primary basis of his statement to Tribunal investigators of 30 November 2001. Like the letter, this ICTR statement focuses primarily on Bucyibaruta.<sup>263</sup> It is not significant, therefore, that the statement of 30 November 2001 does not mention Simba in connection with the 26 April meeting. However, the last three paragraphs of the statement refer to Simba distributing weapons, organizing training, and attending a meeting in June 1994. This extension of the scope of the statement raises questions about why the witness did not provide more information about Simba with respect to other events.

273. Of particular concern to the Chamber, however, is the omission of any reference to the meeting of 26 April in Witness KDD's subsequent statement of 20 November 2003 to

<sup>258</sup> Defence Exhibit 54.

<sup>259</sup> Defence Exhibit 50.

<sup>260</sup> Defence Exhibit 49 (undated letter). The statement places the meeting on 29 April rather than on 26 April. The witness explained that in giving the statement, he confused the date of the meeting with the date of the communiqué (Prosecution Exhibit 44) issued after the meeting. T. 10 November 2004 pp. 48-49, 66.

<sup>261</sup> Defence Exhibits 47, 49 ("I affirm that Bucyibaruta Laurent, in complicity with the commander of the Gikongoro gendarmerie is the perpetrator of the death of Tutsi refugees in Cyanika.")

<sup>262</sup> Defence Exhibit 47 ("You are showing me a copy of a letter that I wrote to the Gikongoro Prison Governor. I did indeed write that letter. I wrote it because the Prison Governor had requested [me] to write what [I] know about Bucyibaruta Laurent.") The copy of the letter to the director of the Gikongoro prison is attached to the witness's statement of 30 November 2001 (Defence Exhibit 47) and is also separately exhibited as Defence Exhibit 49.

<sup>263</sup> T. 10 November 2004 pp. 48-49, 65-67; Defence Exhibit 47 (Tribunal statement) ("I hereby give my opinion on the conduct of Mr. Bucyibaruta Laurent, Prefect of Gikongoro Prefecture during the April 1994 genocide."). The statement, like the letter to the director of the Gikongoro prison, also mistakenly places the meeting on 29 April, as discussed above in footnote 260.

*bl*

3490

Tribunal investigators.<sup>264</sup> This particular statement focuses exclusively on Simba. Although its apparent purpose is to provide additional information about Simba on matters raised in earlier statements, no reference is made to the meeting of 26 April.<sup>265</sup> This omission is striking, given the highly incriminating description of Simba's participation in the 26 April meeting, which the witness provided at trial. The Chamber finds it difficult to accept that Simba's participation in this meeting would not have been an important point of clarification to earlier statements which recount the meeting in starkly different terms.

274. During cross-examination, the witness explained that he was not asked specific questions about Simba during his interview with Tribunal investigators.<sup>266</sup> The Chamber does not find this explanation convincing. While Witness KDD's explanation might clarify the lack of detail about Simba in the first four statements mentioned above, the statement of 20 November 2003 is devoted to Simba. Furthermore, the witness's specific reference to Simba at the end of the statement of 30 November 2001, a statement addressing Prefect Bucyibaruta criminal involvement, is telling. The witness testified that he made the allegations about Simba in this statement "to show that he played a role in the massacres that took place".<sup>267</sup> It is surprising that the witness's discussion of the role played by Simba in the massacres, as described in his Tribunal statements, would not mention the Accused taking personal responsibility for the attack on Kaduha Parish or his apparent role in coordinating the other leaders of the attacks. Rather, in clarifying Simba's role in the events, the statement of 20 November 2003 accuses him only of alleged killings at roadblocks.<sup>268</sup> The incriminating details pertaining to the meeting of 26 April surfaced only in a will-say statement of 30 August 2004.

275. On the basis of the testimonies of Witnesses KDD, SBL1, and NGJ2, it is evident that a meeting of local authorities occurred at CIPEP on 26 April. In light of the evidence of Witness KDD and SBL1, the Chamber also accepts that at the meeting, the local authorities discussed the recent massacres which had occurred in the prefecture. The Chamber finds that Prefect Bucyibaruta then ordered that local officials put an end to the violence in the prefecture, which is corroborated by the communiqué issued after the meeting.<sup>269</sup>

276. The principal question before the Chamber is whether to accept Witness KDD's incriminating version of the discussion about the massacres and Simba's presence at the meeting. In the Chamber's view, Witness KDD's testimony about Simba's participation in the meeting is not called into question by the assertions of Witnesses SBL1 and NGJ2 to the contrary or Simba's uncorroborated alibi. The Chamber is mindful that these witnesses are also implicated in the attacks and have a motive to distance themselves from Witness KDD's account.

<sup>264</sup> This statement was taken only a few days before the Prosecution filed a motion to amend the Indictment, which requested to add, among other things, the theory of joint criminal enterprise. See *Simba*, Decision on Motion to Amend Indictment (TC), 26 January 2004, para. 3.

<sup>265</sup> Defence Exhibit 48 ("This is the second time that I have been interviewed by ICTR Investigators. Further to what I told them, I wish to clarify certain points.").

<sup>266</sup> T. 10 November 2004 pp. 48-49, 65-67; Defence Exhibits 47, 48.

<sup>267</sup> T. 10 November 2004 pp. 71-73.

<sup>268</sup> Defence Exhibit 48 ("As far as the killing of Tutsis in Gikongoro Prefecture is concerned, all the people who were killed at various road barriers were killed as a direct result of Col. Simba's directives."). Killings at roadblocks are not pleaded in the Indictment.

<sup>269</sup> Prosecution Exhibit 44.

*Sh*

3489

277. If accepted in their entirety, the details of the discussions at the meeting provided by Witness KDD would corroborate the evidence of Witnesses YH and KXX of Simba's presence at Kaduha Parish on 21 April as well as the evidence of Witness KSY placing Captain Sebhura at the Murambi Technical School. This evidence would also further reflect the highly coordinated nature of the attacks in the area, which is readily apparent from the manner of their execution. In particular, when viewed in the context of other evidence, Witness KDD's testimony reveals a clear connection between Simba, local authorities, and the assailants.

278. However, as discussed above, the Chamber has some reservations about the reliability of Witness KDD's evidence. Therefore, without further corroboration, the Chamber does not find it established beyond a reasonable doubt that Simba participated in the meeting of 26 April and that he and other local authorities admitted to leading the recent massacres in the area. The emergence of these incriminating allegations for the first time in a will-say statement disclosed only at the commencement of trial raises too many questions.

## 8.7 Public Meeting, Ntyazo Commune, Butare Prefecture, 22 May 1994

### 8.7.1 Indictment

279. Paragraph 23 (g) reads:

On or about 22 May 1994, Aloys SIMBA attended the inauguration ceremony of Mathieu Ndahimana as Bourgmestre of Ntyazo commune, Butare prefectures. He urged the participants not to spare a single Tutsi saying when you are killing rats in your home, you do not spare even the pregnant ones. Aloys SIMBA described the relationship between Hutu and Tutsi as that between cat and rat. Until this time many women, girls, infirm and elderly had been spared, but shortly after, and as a result of his speech, all surviving Tutsi in the area were killed.<sup>270</sup>

### 8.7.2 Evidence

#### *Prosecution Witness YC*

280. Witness YC, a Hutu, pleaded guilty in 2000 to charges of genocide in Rwanda. He voluntarily surrendered to Rwandan authorities in 1997 and immediately began cooperating with them. The witness attended the installation ceremony of Mathieu Ndahimana as the bourgmestre of Ntyazo commune, Butare prefecture, on 22 May 1994. The previous bourgmestre of the Ntyazo commune, a Tutsi, was killed during the genocide.<sup>271</sup>

281. The witness estimated that between five hundred and one thousand people attended the installation ceremony, which took place in the afternoon and lasted for about two hours. The participants included Sylvian Nsabimana, who was the prefect of Butare, Colonel Alphonse Ntezilyayo, Colonel Tharcisse Muvunyi, and Simba. The prefect greeted the crowd and introduced Simba as the head of civil defence in Butare and Gikongoro prefectures and Colonel Ntezilyayo as the head of civil defence in Butare. Prefect Nsabimana also explained

<sup>270</sup> The parties' submissions concerning this event are found at Prosecution Closing Brief, para. 133; Defence Closing Brief, paras. 1028-1036, 1057.

<sup>271</sup> T. 26 October 2004 pp. 71-73; T. 27 October 2004 pp. 33, 44-45, 47, 49-50; Prosecution Exhibit 15; Defence Exhibit 40.

the purpose of the ceremony and reminded people to continue fighting against the *Inkotanyi* and their accomplices. Colonel Ntezilyayo spoke next and gave a long discourse encouraging the Hutu to attack surviving Tutsi in the area.<sup>272</sup>

282. After Colonel Ntezilyayo's speech, Simba spoke for about twenty minutes and confirmed that he was responsible for the civil defence of Butare and Gikongoro prefectures. He reminded the population that the country was still at war and that they needed to continue to exterminate the remaining accomplices of the *Inkotanyi*. Simba illustrated this message with an allusion to a cat and mouse. He asked chief warrant officer Rekeraho to stand and explained that Rekeraho represented the mouse and that he, Simba, played the role of the cat. Simba added that every time a cat met a mouse, the cat would kill the mouse. He explained that this represented the hatred of the Hutu for the Tutsi. Simba also encouraged the young persons present to go to military camps to receive training. After the speech, people applauded. Simba then spoke briefly with the witness.<sup>273</sup>

283. Witness YC testified that Simba was well known in the region as a wealthy member of parliament and as a distinguished military officer with ties to President Habyarimana. The witness recalled seeing Simba when he visited the University of Butare along with President Habyarimana in 1986. He also recalled seeing Simba during a visit to the university on its golden jubilee celebration as well as at another ceremony in Kigali. The witness identified Simba in court.<sup>274</sup>

284. On the morning of 23 May 1994, a local official serving in the sector where the installation ceremony took place met Witness YC in front of the communal office. The official showed the witness a written report indicating that five hundred people had been killed the previous evening as a result of the speeches made at the ceremony. The witness later heard that their bodies were thrown into the Akanyaru River.<sup>275</sup>

#### *The Accused*

285. Simba acknowledged that he was appointed as civil defence adviser for both Gikongoro and Butare prefectures, on 18 May. He accepted the post for Gikongoro, but not for Butare. Simba said that he did not have enough resources to deal with both prefectures, given that there were thirteen communes in Gikongoro and twenty in Butare. On 22 May, he informed Prefect Nsabimana that he would not be able to take up the role of civil defence adviser for Butare. At the time, Nsabimana was on his way to the installation ceremony in Ntyazo commune and asked Simba to accompany him. Simba explained that he did so as a courtesy. It was the first time that Simba had met the prefect, and he did not want Nsabimana to attend the ceremony alone. Simba addressed the ceremony and told the members of the population to stop killing each other. He also explained that the RPF, and not the Tutsi, were the enemy and that people should avoid confusing them.<sup>276</sup>

<sup>272</sup> T. 26 October 2004 pp. 73-75; T. 27 October 2004 pp. 9, 41-43, 52, 54. Defence Exhibit 40.

<sup>273</sup> T. 26 October 2004 pp. 75-76; T. 27 October 2004 pp. 9, 54.

<sup>274</sup> T. 26 October 2004 pp. 81-82.

<sup>275</sup> *Id.* at pp. 76-77; T. 27 October 2004 pp. 17, 19-23.

<sup>276</sup> T. 22 March 2005 pp. 2-5, 19-20; T. 23 March 2004 pp. 2-3; T. 23 March 2004 p. 3 (French); Prosecution Exhibit 23; Defence Exhibit 110. Simba added that civil defence came to an end on 10 June 1994 after a failed attempt to recapture Nyanza from the RPF. After that, focus moved away from civil defence to pacification. T. 22 March 2005 p. 18.

Defence Witness GM1

3487

286. Witness GM1, a Hutu who lived in Muyaga commune in 1994, testified that he and about five hundred other mostly Hutu members of the population attended the installation ceremony for Bourgmestre Ndahimana. The witness estimated that the meeting began around 11.00 a.m. and lasted for about one and a half hours. He stated that he heard that the previous bourgmestre, who was a Tutsi, had been killed or had fled the region.<sup>277</sup>

287. According to the witness, Simba addressed the crowd for about fifteen minutes on security matters. He told the population not to turn against each other because this made things more complicated for the military. Rather, he stated that the people should assist the army and look for ways to defend themselves. The witness did not recall hearing Simba introduced as head of civil defence or any reference by the Accused to Tutsi or mice. The witness also explained that there were no refugees in Ntyazo commune. Simba was dressed in civilian clothing and was introduced by Prefect Nsabimana at the ceremony as a retired senior military officer. It was the first time the witness had seen Simba. He declined to identify him in court because he indicated it might be difficult for him to do so after eleven years.<sup>278</sup>

### 8.7.3 Deliberations

288. It is not disputed that Simba attended the installation ceremony in Ntyazo commune and addressed the crowd. At issue is the content of his speech and whether it resulted in further killings in the area. Witness YC provided the only incriminating testimony. The Chamber notes that he is a detained witness who has pleaded guilty to acts of genocide in and around the relevant area. At the time of his testimony, he was still awaiting trial. The Chamber has approached his testimony with caution.

289. During cross-examination, the Defence suggested that the witness's statement to Tribunal investigators, dated 12 October 2001, did not refer to the alleged killings which occurred after the speeches. The Chamber, however, indicated at trial that the statement in fact conformed to his testimony.<sup>279</sup>

290. The Defence also argued that discrepancies existed between the witness's testimony and his six statements to Rwandan authorities. For example, the witness did not refer to Simba speaking at the installation ceremony. None of the statements referred to the alleged subsequent killings. In addition, the witness's statement of 15 December 1999 to Rwandan authorities indicates that he remained at home on the day after the installation ceremony. The witness explained that the statements were prepared when his own responsibility was being discussed and did not include everything he remembered from the event.<sup>280</sup>

291. The witness's six statements to Rwandan authorities, which range from August 1997 until October 2000, focus on his criminal responsibility and activities from April until July 1994.<sup>281</sup> Each brief statement covers in a general manner several events during this period,

<sup>277</sup> T. 7 March 2005 pp. 3-4, 6, 11, 13, 16; Defence Exhibit 118.

<sup>278</sup> T. 7 March 2005 pp. 7-10, 14.

<sup>279</sup> T. 27 October 2004 pp. 25-30. The witness gave six statements in total to Tribunal investigators. The Prosecution sought to tender only the statement of 12 October 2001 into evidence after the close of its case. The Chamber did not admit this statement as an exhibit. *Simba*, Decision on the Admission of Certain Exhibits (TC), 7 July 2005, paras. 2-3.

<sup>280</sup> T. 27 October 2004 pp. 41-44, 50-51, 54-55.

<sup>281</sup> Defence Exhibits 35-40.

86

3486

but primarily relates to the witness's own criminal conduct in April. It follows from these statements that the witness was not questioned about the installation ceremony or what transpired afterwards. The statements do not purport to be exhaustive.<sup>282</sup> Consequently, it is understandable that they do not contain information about Simba's speech or the alleged subsequent killings. The lack of detail concerning Simba in the statements given to Rwandan authorities results from the focus of the statements.

292. In the Chamber's view, Witness YC provided a consistent first-hand account of the installation ceremony. He was in a position to closely follow the speeches and provided convincing testimony with respect to the event. Based on his testimony, the Chamber finds that Prefect Nsabimana addressed the crowd and asked them to continue the fight against the *Inkotanyi*. Colonel Ntezilyayo then delivered an inflammatory speech against the Tutsi. It also follows that Simba delivered an inflammatory speech against Tutsi, though some of the colourful details might be exaggerated.

293. In assessing Witness YC's testimony, the Chamber has also considered the evidence of Witness GM1. His account, however, does not call into question that of Witness YC. The witness acknowledged that he might not have heard everything because he arrived late, left early, and stood more than one hundred meters away from the speakers.<sup>283</sup> Moreover, the ceremony was the first occasion when the witness saw Simba, and he was reluctant to identify him in court. In the Chamber's view, Witness YC was in a better position to follow the proceedings than Witness GM1.

294. Based on his testimony, the Chamber accepts that Witness YC passed by the communal office on 23 May and saw a report about killings in the area. The fact that a prior statement to Rwandan authorities reflects that he spent the day in front of his house is insignificant. In the Chamber's view, that prior statement also clearly states that he went to the communal office.<sup>284</sup> The Chamber notes, however, that the evidence related to the killings is uncorroborated hearsay. There is no indication that the local official who provided the information to the witness had any first-hand knowledge. The witness fled an RPF advance the next day, and he was not in a position to verify this information. Witness YC next heard about the alleged killings when he fled Rwanda to Congo. Moreover, there is no evidence that the persons attending the ceremony actually perpetrated the killings. Therefore, without additional reliable evidence, the Chamber cannot accept that the speeches at the ceremony resulted in further killings in the area.

295. The Chamber finds that the Prosecution has proven beyond reasonable doubt that Simba addressed a crowd in Ntyazo commune and delivered an inflammatory speech against Tutsi. The Prosecution did not prove the allegation that Tutsi were killed as a result of Simba's speech, as alleged in paragraph 23 (g) of the Indictment.

<sup>282</sup> See, e.g., Defence Exhibit 39 (Q. Do you have anything to add? A. There are many things that I have not said and many people whom I have not mentioned. There are things that I have said in my testimony, and I am going to continue)(unofficial translation).

<sup>283</sup> T. 7 March 2005 pp. 11-12, 14-16.

<sup>284</sup> Defence Exhibit 38 ("I went to the office one day, and the the next day, 24 May 1994, I fled.")(unofficial translation).

## 9. ALIBI

3485

### 9.1 Introduction

296. As set forth in detail above, the Prosecution has presented incriminating evidence implicating Simba in the massacres at Kibeho Parish, Murambi Technical School, Cyanika Parish, Kaduha Parish, and in Ruhashya commune. This evidence places him in Gikongoro prefecture immediately after the death of President Habyarimana, inciting violence against Tutsi, attending meetings with local officials, and providing weapons to attackers during the massacres.

297. In his defence, Simba relies on an alibi. According to the evidence recounted below, in the days following the death of President Habyarimana on 6 April 1994, Simba remained at his home in Kigali gathering family, friends, and neighbours in an effort to protect them from the ensuing violence. As Kigali became a war-zone, Simba evacuated a number of persons from his home to Gitarama town on 13 April where he and others remained until 24 April. He then relocated to his native Musebeya commune in Gikongoro prefecture, only after the situation there had stabilized and the killings had come to an end.

298. The Chamber has divided its assessment of the alibi into two phases.<sup>285</sup> The first phase encompasses Simba's activities in Kigali from 6 until 13 April and his evacuation on 13 April to Gitarama town. This portion of the alibi is supported by Witnesses SML2, FMP1, MIB, Rose Simba-Thiwa, Monique Mujawamariya, AJT1 and FKP2. Their evidence, along with that of Simba, is relevant to the allegations that immediately after the death of the president, Simba travelled to Gikongoro where he incited violence against Tutsi, met with local officials, and armed militiamen.<sup>286</sup>

299. The second phase relates to Simba's time in Gitarama town from 14 until 24 April when he claims that he relocated to Musebeya commune. This portion of the alibi is supported primarily by Witnesses SML2, AJT1, MIB, FMP1, FKP2, SIH, GMA3, and GL3. Their evidence, along with that of Simba, is relevant to the allegations that Simba participated in the attacks against Murambi Technical School, Cyanika Parish, and Kaduha Parish on 21 April.<sup>287</sup>

300. In assessing the alibi, the Chamber recalls that it is settled jurisprudence before the two *ad hoc* Tribunals that in putting forward an alibi, a defendant need only produce evidence likely to raise a reasonable doubt in the Prosecution case. The alibi does not carry a separate burden. The burden of proving beyond reasonable doubt the facts charged remains squarely on the shoulders of the Prosecution. Indeed, it is incumbent on the Prosecution to establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true.<sup>288</sup>

<sup>285</sup> Simba has also raised an alibi in connection with his attendance at the 26 April meeting at CIPEP in Gikongoro town and in relation to the massacre in Ruhashya commune on 29 April. The Chamber has discussed these parts of the alibi in the sections dealing with those two events, in view of the limited nature of the evidence and the fact that it is not disputed that Simba was in Gikongoro prefecture at this time.

<sup>286</sup> See Sections 3, 8.1-8.5.

<sup>287</sup> See Sections 4-7, 8.6.

<sup>288</sup> *Niyitegeka*, Judgement (AC), 9 July 2004, para. 60. See also *Kajelijeli*, Judgement (AC), 23 May 2005, paras. 42-43; *Delalic et al.*, Judgement (AC), 20 February 2001, para. 581; *Musema*, Judgement (AC), 16 November 2001, para. 202; *Kayishema and Ruzindana*, Judgement (AC), 1 June 2001, para. 113.

Sh

## 9.2 Kigali and Gitarama Town, 6 to 13 April

3484

### 9.2.1 Evidence

#### *The Accused*

301. Simba testified that he was at his home on the *Avenue de la Justice* in Kigali when he heard the news of the death of President Habyarimana on 6 April. Throughout the night, he heard gunshots from where the RPF and Rwandan government forces were stationed in and around Kigali. Around 10.00 p.m. that evening, Witness SML2, who is a relative, telephoned from the Kibungo bishopric, asking what to do. Simba advised her to stay where she was until further notice.<sup>289</sup>

302. The next morning on 7 April around 7.00 a.m., Simba saw thugs and bandits looting nearby businesses. Gendarmes came and fired in the air to disperse them. That morning, around 10.00 or 11.00 a.m., his daughter Rose Simba-Thiwa called from Luxembourg, asking what was going on, but Simba had no answer for her. At mid-day, Jean Gashumba, a Tutsi friend and the father of Rose's husband, called and asked Simba for help because his house had been looted and he feared for his life. Simba told him to wait and promised to help. Simba then asked a gendarme he knew from Butare prefecture, named Irabukunda, who was on patrol passing by his house on foot, to help him bring Gashumba to his home. The gendarmes left in one of Simba's vehicles with his son Richard, who knew where Gashumba lived, and returned with Gashumba and his wife, child, and nephew around 1.00 or 2.00 p.m. Gashumba and his family were the first refugees to arrive at Simba's house.<sup>290</sup>

303. Between 7 and 12 April, around fifty refugees gathered at Simba's home, which had four bedrooms, a living room, two bathrooms, and an office. His wife had a small neighbourhood grocery store on the ground floor, so they were able to provide food for everyone. Simba explained that there was a military post near his home, manned by some of the soldiers who had been posted to camp Kigali when he was commander there. These soldiers accompanied him or one of his sons when they moved about the city to rescue people.<sup>291</sup>

304. On the morning of 8 April, Rose telephoned again and asked Simba to check on the family of Shamukiga, a Rwandan who acted as the consul of Luxembourg. Simba arrived at Shamukiga's home in the afternoon, but he was already dead. When Simba informed Rose later that evening, she asked him to assist Shamukiga's brother in Nyamirambo. The next morning, Simba went to the brother's home, but found it ransacked. Simba stated that he also brought Witness MIB and her family to his home on 8 April.<sup>292</sup>

305. On 9 April, Simba went to his son Robert's home to rescue him. He also dispatched one of his sons to bring his nephew Eugène Rutaganda and his family to his home. On 10 April, the family of Witness FMP1 took refuge at Simba's home.<sup>293</sup>

<sup>289</sup> T. 22 March 2005 pp. 38-40.

<sup>290</sup> *Id.* at pp. 40-41, 47-48.

<sup>291</sup> *Id.* at pp. 42-44.

<sup>292</sup> *Id.* at pp. 41-43.

<sup>293</sup> *Id.* at pp. 41-42; T. 24 March 2005 pp. 2, 50-51.

6h

3483

306. Around 5.00 p.m. on 11 April, Witness SML2 finally arrived at Simba's home from Kibungo prefecture. Over the previous days, Simba had spoken with her several times and had contacted local military officials in Kibungo prefecture to arrange her travel as well as the necessary documentation for her to return to Kigali. He had asked the Kibungo commander to do everything possible for her and to assign somebody reliable to her. At Witness SML2's request after her arrival, Simba then went to save her father and his family. Simba also dispatched his son to try to rescue another child.<sup>294</sup>

307. On 12 April, Simba went to the Hotel *Milles Collines* to inquire about flights out of the country for himself and the people who had sought refuge in his home. His daughter Rose had been calling at least three times a day urging him to leave the country and providing him with airline information. Simba had heard that Sabena pilots were at the hotel and he wanted to try to speak with someone about this. He was informed at the *Milles Collines* that it would not be possible to evacuate people so he returned home. As he was leaving the hotel, he waved at Monique Muhawamariya from about 10 metres at the roundabout near the hotel.<sup>295</sup>

308. When Simba returned from the *Milles Collines*, he contacted Rose and told her that he had been unsuccessful. Together they drew up a list of names of the various persons staying with Simba in order to arrange a proper evacuation and to secure tickets and sponsorships.<sup>296</sup>

309. The evacuation from Kigali began on the evening of 12 April. Simba explained that he heard that the remains of the President of Burundi were being repatriated, though he did not recall whether the procession left on 10, 11, or 12 April. Witness MIB and her husband had a vehicle with Burundian diplomatic plates and hoped to take advantage of the opening of the roads for the funeral procession. Witness MIB's family left that evening with Simba's youngest children Rosaline and Rohertine and the two children of Witness FMP1.<sup>297</sup>

310. On the morning of 13 April, Simba dropped Witness SML2 and Eugène Rutaganda's wife Pauline, along with both of their children, at the bus which was evacuating the wives of soldiers to Gitarama. He learned of this evacuation from a Chief Warrant Officer Mukamarutoke, a soldier stationed at the post opposite his house.<sup>298</sup>

311. Simba returned home, and he and many of those staying with him left Kigali around 10.00 a.m. in a two vehicle convoy. Simba explained that the Tutsi and women rode with him in his Mercedes Benz and that the rest followed in a Toyota pick-up truck. Simba put on his military uniform and kept the identity papers of his Tutsi passengers. He estimated that he crossed approximately forty civilian roadblocks, some of which had dead bodies. At one of the roadblocks, a former employee of Gashumba named Katange recognized Mrs. Gashumba and started shouting at Simba saying he was carrying *Agakotanyi*. Simba told Katange that if he continued, he would have him gunned down. Katange allowed them to pass, and they arrived in Gitarama around 1.00 p.m.<sup>299</sup>

312. Once in Gitarama, Simba dropped everyone off at the home of his nephew Emmanuel Niringiyimana. He then picked up Albertine and Pauline at the Gitarama military camp and

<sup>294</sup> T. 22 March 2005 pp. 41-45; T. 24 March 2005 pp. 62-63.

<sup>295</sup> T. 22 March 2005 pp. 45-46; T. 24 March 2005 p. 63.

<sup>296</sup> T. 22 March 2005 pp. 46-47; Defence Exhibit 73.

<sup>297</sup> T. 22 March 2005 p. 48; T. 24 March 2005 pp. 51-54.

<sup>298</sup> T. 22 March 2005 p. 51.

<sup>299</sup> *Id.* at pp. 52-60. Simba explained that "*Agakotanyi*" is a diminutive form of the word "*Inkotanyi*", meaning little *Inkotanyi*.

3482

brought them home. Simba proceeded to a branch of the Bank of Kigali to withdraw money and saw his friend Witness FKP2. He also paid a visit to a trader named Ngirabatware and then took the family of Witness FMP1 to stay with their relatives in Rango.<sup>300</sup>

*Defence Witness SML2*

313. Witness SML2 is a Tutsi and a relative of Simba.<sup>301</sup> She testified that she was on mission as part of her work with a non-governmental organization in Kibungo prefecture when, on 6 April 1994, she heard the president's plane had been shot down. Concerned about the situation, she called Simba at home after 7.00 p.m. According to the witness, Simba told her to stay calm and get in touch the day after, so he could find out what was happening and decide how to respond. The witness explained that on 7 April 1994, the situation was very dire. She first called her husband and then, at about 9.00 a.m., called Simba to ask whether she could safely travel to Kigali. Simba told her that it would entail risks for her to travel, so she should wait for him to obtain more information and call her back. At about 3.00 p.m., Simba called to reassure her.<sup>302</sup>

314. On 8 April 1994, the witness spoke with Simba in the morning before noon. At about 3.00 p.m., he called her saying that he would contact the prefect and the area commander of Kibungo prefecture and call her back the following morning. She called Simba again around 9.00 p.m. and spent about three hours on the phone. Later, Simba called her back to confirm that he had contacted the prefect.<sup>303</sup>

315. On 9 April 1994, two gendarmes had been sent by the prefect to collect the identity cards of those who wanted to travel to Kigali, in order to prepare their travel papers. During that day, Witness SML2 talked over the phone several times with Simba and his son Robert, who was still at his home.<sup>304</sup>

316. Witness SML2 called Robert Simba again on the morning of 10 April. He told the witness that things were getting difficult in his neighbourhood and that people were being taken from their homes. In the early afternoon, she spoke with Simba's wife who told her that Simba had gone to get Robert and his family because soldiers had threatened him. The witness said that, a few hours later, she called again and talked to Robert, who had been successfully rescued together with his children and a young girl who was visiting at their home. Then, the witness talked to Simba, who told her the documents had been prepared and she would receive them soon. Later, she received a phone call from the Kibungo area commander stating that the documents were in order so they could leave the following day. She was not quite sure about the date of Robert Simba's rescue but was certain that it could not have been earlier than 9 April.<sup>305</sup>

317. Between 6.00 and 6.30 a.m. on 11 April 1994, Witness SML2 made several short telephone calls to Simba and others at his home. She then collected the travel documents and left for Kigali at about 7.00 or 7.30 a.m. The witness said that during the trip a soldier at a military roadblock held her back because she was a Tutsi. Eventually, another soldier

<sup>300</sup> *Id.* at pp. 60-62.

<sup>301</sup> T. 13 December 2004 p. 23; T. 14 December 2004 p. 17; Defence Exhibit 58.

<sup>302</sup> T. 13 December 2004 pp. 23-24, 26-28.

<sup>303</sup> *Id.* at pp. 30, 32-34.

<sup>304</sup> *Id.* at p. 35.

<sup>305</sup> *Id.* at pp. 36-38; T. 13 December 2004 p. 44 (French); T. 14 December 2004 pp. 19-20, 49-50.

3481

recognized her from her identification card and ordered the soldier to let her go because Simba had been his boss, and he was grateful to him. She then proceeded until Rwamagana where they managed to join a military vehicle going to Kigali. The witness said that they arrived at Kigali at about 5.30 p.m. She arrived at Simba's home at about 6.00 or 6.30 p.m., where she found Simba and about fifty others there.<sup>306</sup>

318. The witness recalled that the following persons were present at Simba's home: the family of Witness FMP1; a small girl who was visiting at the witness's house when her family was rescued; Simba's nephew, Eugene, with his wife, three children and house girl; Gashumba with his wife, their daughter, and his nephew; and Witness MIB. She said there were more Hutu than Tutsi taking refuge there. The witness said that they were able to obtain food and provisions from the restaurant and a grocery store operated by Simba's wife.<sup>307</sup>

319. Witness SML2 testified that, on the evening of her arrival, she was told that her uncle Grégoire and his family had been killed and that Simba had unsuccessfully tried to recover their bodies, as well as a child who was said to have survived. The witness said that she pleaded with Simba to rescue her father from Nyamirambo. Simba and his son Raymond found some gendarmes to accompany them to Nyamirambo and, within two hours, they returned with her father and her brothers.<sup>308</sup>

320. Early in the afternoon of 12 April 1994, the witness's sister called Simba's house asking to be rescued from a location known as Muhima. At about 4.00 p.m., Simba rescued her and a friend, bringing them back to his house.<sup>309</sup>

321. On 13 April at about 9.00 or 9.30 a.m., Simba brought Witness SML2 and the wife of his nephew Eugene Rutaganda to Camp Kigali where they travelled on a military bus to Gitarama. Simba returned home to pick up others who were to leave by car. The trip to Gitarama under normal circumstances took thirty minutes, but because of roadblocks, it took nearly two and a half hours to reach Gitarama, where they waited between thirty minutes and one hour for Simba to pick them up. Simba took them to the home of Emmanuel, one of his nephews who lived nearby. Later on the same day or on 14 April, Simba went to Kigali to transport the persons who had been left behind, and he returned with them on the evening of the same day. Simba wore his military uniform to facilitate moving around.<sup>310</sup>

#### *Defence Witness FMP1*

322. Witness FMP1, a Tutsi, lived near Robert Simba in the Nyamirambo area of Kigali in April 1994. She testified that after the death of the president, soldiers came to her home looking for people collaborating with the "enemy". The soldiers searched their home, asked for money, and later returned to take a car. The soldiers fired their guns in the air, and one bullet ricocheted above the children's room.<sup>311</sup>

323. On 9 April, Simba came to Witness FMP1's house to evacuate Robert Simba and his children. The children had been staying with her family because their mother was away.

<sup>306</sup> T. 13 December 2004 pp. 38-41, 43-44.

<sup>307</sup> *Id.* at pp. 45, 48, 50.

<sup>308</sup> *Id.* at pp. 39, 42, 47, 50.

<sup>309</sup> *Id.* at p. 49.

<sup>310</sup> *Id.* at pp. 50-54.

<sup>311</sup> T. 21 February 2005 pp. 41, 44, 46-48; Defence Exhibit 93.

*Sh*

3480

Given the prevailing insecurity, the witness also wanted her family to leave and, through Robert and others, convinced Simba to allow them to take refuge at his house. A neighbour drove the witness, her husband, and three children to Simba's home on the evening of 10 April. Upon her arrival she saw Simba, and he apologized for not being able to pick them up personally.<sup>312</sup>

324. On 10 April, the witness found about fifty other Hutu and Tutsi refugees at Simba's home, including Gashumba's family, the family of Witness MIB, and Witness SML2, who arrived on 11 April. The witness noted that Rose Simba called frequently in an effort to evacuate people to Europe. Witness FMP1 saw Simba several times on 11 and 12 April and noted that he mostly remained home except for brief excursions. She admitted that she was not focused on him because she was occupied with household duties.<sup>313</sup>

325. On 12 April, two of the witness's children left Kigali with the family of Witness MIB and two of Simba's children in a car with diplomatic plates. Simba reassured the witness that they would reunite with them.<sup>314</sup>

326. Witness FMP1 left Kigali on 13 April with Simba around noon in a convoy and arrived in Gitarama around 3.00 p.m. She and her child travelled with Simba in his white Mercedes Benz along with Robert, Gashumba's wife, Clothilde, and Gashumba's daughter, Pamela. The witness's husband followed behind in a car. She recounted an incident that occurred along the way at Nyabarongo where Simba, who was dressed in a military uniform, pleaded with those manning a roadblock to allow them to pass, insisting that he was only transporting his family. Once in Gitarama, Simba took the witness and her husband to the home of Witness MIB in nearby Ruhango where they were reunited with their children.<sup>315</sup>

327. Witness FMP1 acknowledged that Simba corresponded with her, asking to testify that he was in Kigali from 9 to 14 April. The witness also admitted that she discussed the events with Rose and Witness SML2. The witness also noted that she had difficulty remembering dates and likewise could not remember the dates on which she met with Defence counsel.<sup>316</sup>

#### *Defence Witness MIB*

328. Witness MIB is a Tutsi and a relative of Simba's wife. On 8 April, about seven soldiers came to her family's home in Kigali searching for Tutsi. She responded that there were no Tutsi at the house. The soldiers stole money and said that they would return. The witness then heard gunshots next door and saw one of her Tutsi neighbours being killed. She believed that if the soldiers returned, they would kill her family. She called Simba to explain what had happened and to ask for help. Simba came that day in the late afternoon or early evening and took them to his home. She did not recall the details of the rescue.<sup>317</sup>

329. On 8 April, Simba brought his son Robert and his two children to the house. He assisted the family of Witness FMP1 on 9 April. Witness SML2 arrived on 11 April. The witness recalled that Gashumba was at the house and that Rose and Witness SML2 called on

<sup>312</sup> T. 21 February 2005 pp. 43-44, 46-47, 49, 75, 80-81.

<sup>313</sup> *Id.* at pp. 50-51, 57-58, 82.

<sup>314</sup> *Id.* at pp. 52-54.

<sup>315</sup> *Id.* at pp. 51-55, 64, 70-75; Defence Exhibit 93.

<sup>316</sup> T. 21 February 2005 pp. 63-64, 66-70, 78; Defence Exhibit 157.

<sup>317</sup> T. 14 February 2005 pp. 9, 11-14, 33, 37-38, 81-82.

*8/11*

a regular basis. She said that Simba wore civilian clothes and remained at home most of time except when he went to pick up various people.<sup>318</sup>

330. On 12 April, Witness MIB left Kigali for Gitarama with her husband, their two children, and two of Simba's children, Robertine and Rosaline. They had Burundian diplomatic plates which they thought would facilitate moving through the roadblocks, due to the procession repatriating the remains of the president of Burundi, as well as the general belief in Rwanda that all Burundians were Hutu.<sup>319</sup>

331. Before noon on 13 April 1994, she brought Simba's children to him in Gitarama before proceeding to the home of her family in Ruhango with her husband, children, and the family of Witness FMP1.<sup>320</sup>

#### *Defence Witness Rose Simba Thiwa*

332. Rose Simba Thiwa, Simba's daughter, testified that from 7 to 13 April she phoned her family at their house in Kigali from her home in Luxembourg numerous times in order to receive information from them and to try to arrange for their evacuation.<sup>321</sup>

333. On 7 April, she spoke with her father at least four times: the first, between 10.00 and 11.00 a.m. Rwandan time; the second, one hour later; the third, in the afternoon; and the fourth, in the evening after 6.00 p.m. She talked to her father over the phone at least three times on 8 April: the first, very early in the morning; the second, shortly before noon; the third in the afternoon. The witness explained that she had arranged for her family to be evacuated with the Belgian and Luxembourg authorities if they went to the airport on 8 or 9 April, but Simba said they could not go there because there were too many *Interahamwe* on the road. She learned on 11 April that Witness SML2, who had been on mission in Kibungu prefecture, had finally arrived at Simba's home.<sup>322</sup>

334. On 12 April, the witness called Simba between 8.30 and 9.00 a.m. urging him to take the persons seeking refuge at his home to the Hotel *Mille Collines* in order to be evacuated. When she called back around 3.00 p.m., Simba explained that he had gone to the *Mille Collines* but that he could not leave anyone there because he did not think that there was sufficient security. In the evening, she implored Simba to reach an airport by road and asked him to provide the passport numbers of the evacuees in order to prepare the required documents. On the same evening, Simba sent her a list of persons via fax.<sup>323</sup>

335. On 13 April, she called her father at about 7.00 a.m. asking him to reach an airport. On the evening of the same day, she spoke to her brother Richard, but after that date she was not able to reach her family until August 1994.<sup>324</sup>

<sup>318</sup> *Id.* at pp. 14-17, 37.

<sup>319</sup> *Id.* at pp. 18-20, 32, 35.

<sup>320</sup> *Id.* at pp. 20, 32, 36.

<sup>321</sup> T. 17 February 2005 pp. 9-10, 25.

<sup>322</sup> *Id.* at pp. 10, 23-27, 39-40.

<sup>323</sup> *Id.* at pp. 28-30, 32-34. Defence Exhibit 73.

<sup>324</sup> T. 17 February 2005 pp. 36-38, 43.

*Defence Witness Monique Mujawamariya*

3478

336. Monique Mujawamariya, a Hutu, stated that in April 1994 she was a human rights activist who worked with Human Rights Watch, Amnesty International, and the International Federation for Human Rights.<sup>325</sup>

337. Around midday on 12 April 1994, Monique Mujawamariya was in front of the entrance to the Hotel *Mille Collines*, when she saw Simba from a distance of about seven or eight metres. She has known Simba for thirty-two years. The witness said Simba was driving his white Mercedes Benz around the roundabout of the hotel with Gashumba. Simba stopped for a few minutes at the entrance and the two waved at each other.<sup>326</sup>

*Defence Witness AJT1*

338. Witness AJT1, a Tutsi, is married to one of Simba's relatives.<sup>327</sup> She testified that Simba and those travelling with him arrived at her compound in Nyambuye commune, Gitarama prefecture around 1.00 p.m. on 13 April 1994 and stayed there until 23 or 24 April when Simba left for Musabeya commune. The witness recalled that the following other individuals travelled with Simba and stayed at the compound: Eugene Rutaganda's family, Gasana's family, Colette and Ana Kobejo, Raymond and Robert Simba, Robert Simba's wife and children, Albertine, and Gashumba and his wife. The witness did not recall seeing Witness FMP1, but heard that some people that had taken refuge in Simba's house stayed in Ruhongo.<sup>328</sup>

*Defence Witness FKP2*

339. Witness FKP2, a Hutu, is a former government official at the national level with prior professional ties to Simba.<sup>329</sup> He testified that after the death of the president, he remained at his home in Kigali until 12 April when he fled to Gitarama. On 9 April, his sister-in-law was killed in a crossfire between the RPF and FAR, when she stepped outside of his house for air. The witness tried to report this death to the gendarmerie but to no avail and then called Simba in Kigali. According to the witness, Simba explained that he could not help because Witness FKP2's neighbourhood was in the middle of crossfire. Simba also expressed concern for his own son whom he was having difficulty contacting.<sup>330</sup>

340. On 13 April, Witness FKP2 went to the Bank of Kigali around 1.00 or 2.00 p.m. where he saw Simba in a military uniform. Simba explained that he had just arrived in Gitarama town and expressed his condolences for the witness's sister-in-law. They also discussed Simba's military uniform, and Simba explained that it helped him to pass through roadblocks.<sup>331</sup>

<sup>325</sup> T. 16 February 2005 pp. 3-4, 6-7; Defence Exhibit 67.

<sup>326</sup> T. 16 February 2005 pp. 4-5; T. 17 February 2005 pp. 3-4.

<sup>327</sup> T. 11 March 2005 pp. 3, 24; Defence Exhibit 121.

<sup>328</sup> T. 11 March 2005 pp. 3-4, 9, 22, 27.

<sup>329</sup> T. 15 December 2004 pp. 10-12.

<sup>330</sup> *Id.* at pp. 14-17.

<sup>331</sup> *Id.* at pp. 18, 40.

3477

### 9.2.2 Deliberations

341. The Prosecution has asserted that the alibi evidence is unreliable and has been discredited during cross-examination.<sup>332</sup> It points to a number of inconsistencies as well as evidence suggesting fabrication. Furthermore, it emphasizes each occasion where Prosecution witnesses place Simba in Gikongoro prefecture throughout the relevant time period covered by the Indictment. The Prosecution therefore submits that the alibi cannot cast any doubt on its case and should be disregarded in its entirety. The Chamber has considered these arguments in assessing this evidence.

342. The Chamber does not accept the evidence of these witnesses in their entirety. Each of them has a personal relationship with either Simba or a member of his family. Though the chronology provided by the witnesses is generally consistent, there are several differences with respect to details, such as the exact date various individuals sought refuge at Simba's home or the composition of passengers in the vehicles travelling to Gitarama. Moreover, elements of embellishment or exaggeration are apparent in some parts of their testimony, which can perhaps be explained by the desire to compensate for lapses in memory in a way that assists Simba.<sup>333</sup>

343. Nonetheless, the Chamber is not satisfied that the Prosecution has eliminated the reasonable possibility that Simba was in Kigali and Gitarama town rather than in Gikongoro prefecture engaging in criminal conduct, during this period from 6 to 13 April. The Chamber does not find the claims of collusion and fabrication persuasive with respect to the portion of the alibi covering 6 to 13 April. Simba has consistently affirmed his presence in Kigali during this period, well before he was charged or implicated.<sup>334</sup> In his early correspondence, he was adamant about his time in Kigali, while being more vague about when he travelled to Gikongoro prefecture.<sup>335</sup> Rose Simba-Thiwa's suggestion to Simba in her letters to gather the statements of those persons whom he saved simply reaffirms that he actually assisted several people, which also follows from the testimonies of Witnesses SML2, FMP1, and MIB.<sup>336</sup> In the Chamber's view, Simba's correspondence, requesting the people whom he saved to

<sup>332</sup> Prosecution Closing Brief, paras. 134-176. The submissions of the Defence can be found in its Closing Brief, paras. 827-959.

<sup>333</sup> For example, Witness FMP1 made use of a diary, which she insisted was written contemporaneously with the events. The witness stated that she has always used a diary to record her appointments. A review of the diary reflects that it contains no other entries beyond the first two weeks in April, and all entries appear to have been written at the same time. T. 21 February 2005 p. 78; Defence Exhibit 157.

<sup>334</sup> Prosecution Exhibit 33 (letter of 15 March 1995: "By the way, I could not stop anybody from mounting [roadblocks near Simba's home in Kigali], simply because I was not there! I left Kigali town on 14 April 1994, fleeing the war. I made a stopover in Gitarama, then I proceeded to Gikongoro and from Gikongoro I left for Bukavu ..."); Prosecution Exhibit 36 (letter of 28 April 2000: "... from 6 to 14 April 1994, we never left Kigali. I recall that during that period from 9 to 14 April 1994, we were together besides, you could testify to that if it became necessary. Moreover, if I am not mistaken, we parted on 14 April 1994 ..."); Prosecution Exhibit 46 (diary: indicating that he remained in Kigali until 14 April).

<sup>335</sup> Prosecution Exhibit 33 (letter of 15 March 1995: quoted above)

<sup>336</sup> Prosecution Exhibit 29 (undated letter: "Ask the people you took with you and whose lives were at risk to give you a written statement to the effect that you could not have sought to exterminate the Tutsi or to commit genocide."); Prosecution Exhibit 32 (letter of 20 October 1994: "Do not also forget that the objective of some of those you helped is to have no link with you any longer not even the slightest. But this is true only for some of them ...").

*h*

confirm his presence in Kigali during this period, do not leave the impression that he is soliciting false testimony, but rather legitimate support from those whom he aided.<sup>337</sup>

344. In support of its claims of fabrication, the Prosecution has pointed primarily to questions which taint the second phase of the alibi from 14 to 24 April, which encompasses the most highly incriminating allegations against the Accused. For example, Rose Simba-Thiwa's warned her father in October 1994 that the "dates are important" because President Sindikubwabo and Prefect Nsabimana had "set Butare ablaze" on 19 April.<sup>338</sup> In addition, the dates of Simba's arrival in Gikongoro prefecture fluctuate in his previous writings from 29 April to 10 May and vary from his testimony placing his arrival on 24 April.<sup>339</sup> These issues may raise questions about the latter part of Simbi's alibi, discussed below in Section 9.3.2, but do not necessarily call into question the first part from 6 to 13 April.

345. The Chamber has also noted discrepancies between the testimonies of the various alibi witnesses. However, these discrepancies may be explained by the highly stressful nature of the events as well as the passage of time. In addition, given the relationship between the witnesses, it is not surprising that they have previously corresponded, discussed the events, and contributed money to Simba's legal defence. In the Chamber's view, collusion and fabrication are not the only reasonable conclusions which flow from these exchanges. They would also be highly consistent for people who with Simba's assistance survived such events.

346. The evidence for this part of the alibi from 6 to 13 April has been considered, bearing in mind the testimonies of several Prosecution witnesses who claimed to have seen Simba in Gikongoro during this period, including Witnesses ANX, KEH, KSS, and KEL. However, each of these sightings is uncorroborated. The Chamber has already raised concerns about the credibility of these witnesses or with respect to their ability to identify Simba. These concerns are largely independent of the alibi, but are reinforced, after consideration of the alibi evidence.<sup>340</sup> An accumulation of questionably reliable uncorroborated sightings of Simba in Gikongoro prefecture at the time may leave the Chamber with a lingering suspicion that he may have been there, but this is not a substitute for proof beyond reasonable doubt.

347. In the Chamber's view, the first part of Simba's alibi appears reasonable, when viewed in the context of the events. On 6 April, Simba had no official ties to the government, the military, or the leadership of the MRND. In an interview given to the journal *Kanguka* during his time in parliament, Simba openly supported Prime Minister Agathe, the Arusha Accords, and the peaceful integration of the RPF into the government.<sup>341</sup> His immediate family lived in Kigali, and the majority of his residential and commercial property appears to

<sup>337</sup> Prosecution Exhibit 36 (letter of 28 April 2000, quoted above).

<sup>338</sup> Prosecution Exhibit 32 (letter of 20 October 1994).

<sup>339</sup> Prosecution Exhibits 46 (Simba's diary), 48 (letter of 8 February 2000).

<sup>340</sup> Witnesses KSM, KEI, KDD, and KSU also placed Simba in Gikongoro prefecture at this time. The Chamber excluded this evidence based on issues of notice. See Section 1.2. This evidence however would not have altered the Chamber's conclusion with respect to alibi.

<sup>341</sup> Defence Exhibit 68 (undated article: "This government led by Madame Agathe was established in accord with the law and it was established by agreement of all participating parties ... This government must be put in place so that it can sign the Arusha Accords with the RPF ... Q. What do you think about the RPF's admission to the government? A. I hope that its discourse is true. I think that the RPF has understood that it cannot come to power through force. If it truly seeks peace, I believe that it is possible to combine our strengths to build together our motherland, each bringing a contribution that we can use for the whole nation.")

have been concentrated there and in nearby Bicumbi and Gikoro communes.<sup>342</sup> Against this background, it is understandable that Simba would remain at his home in Kigali and focus first on his family and friends there to ensure their safe evacuation from the resumed hostilities.

348. There is considerable first-hand evidence on the record which corroborates the evidence of Simba to differing degrees. For example, Witnesses SML2, MIB, and FMP2 provided a broadly consistent account of Simba's activities both in Kigali and during the evacuation to Gitarama. Each sought refuge with Simba and accounted for his presence in Kigali during the relevant time as well as in Gitarama on 13 April. Rose Simba-Thiwa, who was in regular telephone communication, also attested to Simba's presence in Kigali during this period of time. Given her concern for her family, her testimony appears reasonable. She recounted urging her father to go to Hotel *Milles Collines* to arrange for an evacuation. Simba acknowledged going to the hotel on 12 April in an effort to evacuate family members, and Monique Mujawamariya, a human rights observer, attested to his presence there. Moreover, Witness FKP2 also recounted calling Simba for help during this period and discussing Simba's efforts on behalf of his family. Witness AJT1 corroborated the arrival of Simba and his entourage in Gitarama town on 13 April, and Witness FKP2 also placed him in Gitarama later that day.

349. The Chamber accepts that it is possible that Simba could have travelled back and forth to Gikongoro prefecture. However, the Prosecution presented no evidence indicating the feasibility of travelling between Kigali and Gikongoro prefecture at this time in light of the prevailing conditions, which likely included extensive roadblocks, checkpoints, and what must have been a massive movement of people fleeing the resumption of armed hostilities. Though the alibi evidence does not account for every moment of Simba's time, viewed as a whole and when weighed against the Prosecution evidence, it provides a reasonable and satisfactory explanation for his activities between 6 and 13 April 1994.

### 9.3 Gitarama and Gikongoro, 14 to 24 April

#### 9.3.1 Evidence

##### *The Accused*

350. Simba testified that he, his family, and the Gashumba family stayed in Gitarama from 13 until 24 April at a compound with his nephew Emmanuel Niringiyimana. Simba and his entourage stayed in one of the partially vacant guesthouses at the compound belonging to a deputy prosecutor named Kayabanda.<sup>343</sup>

351. On 14 April, Simba and his son Raymond returned to Kigali to pick up another family and one of Simba's tenants. They left Gitarama around 9.00 a.m. and returned around 4.00 p.m. Simba explained that this trip was not too difficult because those manning the roadblocks recognized him from the day before.<sup>344</sup>

<sup>342</sup> Prosecution Exhibits 33 (letter of 15 March 1995), 46 (diary: annex listing property holding). However, the Chamber is also aware that Simba had an interest in the Crete Zaire Nil project in Gikongoro prefecture. His sister lived in Gikongoro as well.

<sup>343</sup> T. 22 March 2005 pp. 60, 62-63, 65, 71; T. 24 March 2005 pp. 33, 35.

<sup>344</sup> T. 22 March 2005 pp. 58, 63-64.

3474

352. On 15 April, Simba, his son Raymond, and Kayabanda's brother Boniface travelled to Rwinyana in Mukingi commune to look for a key to one of the guesthouses. Gashumba did not accompany them because he had gone to his home in Nyabikenge to investigate the security situation there.<sup>345</sup>

353. Around 9.00 a.m. on 16 April, Simba took Witness AJT1 to a medical clinic in Kabgayi to immunize her child. While AJT1 was at the clinic, Simba went to the nursing school to pick up his daughter, who was studying there. The school director refused to allow Simba to take his daughter because of the panic it might cause among the other students. Simba then picked up Witness AJT1 and her child and returned to Gitarama around midday. Simba did not recall Witness AJT1 mentioning anything on that day about the death of her parents at Kaduha Parish or the murder of Gasana and Monique, but noted that she spoke of these events just before they left for Gatare in Gikongoro prefecture.<sup>346</sup>

354. Simba explained that Gitarama was becoming overcrowded. He therefore decided to investigate whether the roads were safe enough to travel to the Crête-Zaire-Nil project in Gatare, Musabeya commune. Later in the day on 16 April, Simba, his wife, one of his sons, and Gashumba travelled toward Gikongoro. They almost reached Nyanza in Butare prefecture, when they met Witness MIB on the road. She explained that she had just come from Ankanyaru on the border of Burundi and persuaded Simba to turn back to Gitarama for at least one more day because of the killings along the road.<sup>347</sup>

355. On 17 April, Simba travelled to Kigali with Gashumba in order to collect some of Gashumba's personal effects. They managed to go through the roadblocks, but the RPF fired on them at Gashumba's house in Kigali. While returning from Kigali, Simba picked up his cousin Cyprien Munyangondo. As he dropped Munyangondo off at the home of a trader named Ngirabatware in Gitarama, the RPF again fired at Gashumba and him.<sup>348</sup>

356. On 18 April, Simba, his wife, and Gashumba travelled in the morning to Mwendo, in Mukingi commune, to see his wife's family. They returned that afternoon. Simba remained in Gitarama over the next few days until he departed for Gikongoro. On 20 and 23 April, he met with a fellow native of Gikongoro, Silas Mucumankiko, the director of TabaRwanda, the national tobacco company, who was involved in supplying cigarettes. Simba explained that at times of crisis cigarettes sell very well so Mucumankiko agreed to supply Simba and his son Robert with cigarettes, which they would in turn sell. Mucumankiko and Simba agreed to meet again on 25 April in Gikongoro.<sup>349</sup>

357. Simba testified that around 10.00 a.m. on 24 April, he left Gitarama for Gikongoro in a two-vehicle convoy. He wore his military uniform to facilitate crossing the many roadblocks which they encountered along the way. At Kaduha, Simba stopped briefly at the sub-prefecture office around 12.00 p.m. The sub-prefect was not there, so he continued toward Musebeya commune. Simba easily passed through the roadblock at the commercial centre near the sub-prefecture office because he was well-known in the area. They saw about twenty to forty dead bodies along the roadside near Kaduha Parish. Simba called to a soldier

<sup>345</sup> *Id.* at pp. 64-65.

<sup>346</sup> *Id.* at pp. 65-66.

<sup>347</sup> *Id.* at p. 66; T. 24 March 2005 p. 50. The Crête-Zaire-Nil project was an agricultural development project involving farming and cattle. Simba had an economic interest in the project.

<sup>348</sup> T. 22 March 2005 p. 67.

<sup>349</sup> *Id.* at pp. 68-71.

*8/11*

in military uniform to ask what had happened, but the soldier only looked toward the crowd, which was advancing.<sup>350</sup>

358. Simba arrived in Gatovu, Musebeya commune around 1.00 or 2.00 p.m. He stopped by his sister Therese Nyaribusima's home for about forty minutes before continuing to the Crête-Zaire-Nil project where he arrived between 4.00 p.m. and 5.00 p.m. The assistant director of the project took Simba to one of the project's guest house.<sup>351</sup>

*Defence Witness SML2*

359. Witness SML2 testified that between 13 and 24 April, she stayed with Simba and about fifteen to twenty other persons at the home of Emmanuel Niringiyimana in Gitarama. During this period, Simba remained largely at home or in and around Gitarama, with the exception of a few excursions. Simba would have meals with the family, play cards, or perform other errands such as going to the bank or shopping for food and supplies. She noted that Simba always ensured that no one in his care was lacking. The witness explained that she spent her time in Gitarama, primarily looking after the children, cooking, and cleaning.<sup>352</sup>

360. The witness recalled that Simba went to Kigali on 14 April to bring another family to Gitarama. At one point, Simba took the witness's daughter, who had malaria, to the hospital in Kabgayi where he visited his daughter Regine who was at the nursing school there. Between 18 and 20 April, Simba went with Gashumba to Kigali. Between 20 and 22 April, Simba and his wife visited his mother-in-law who was ill.<sup>353</sup>

361. Witness SML2 explained that Simba and those in his care left Gitarama for Gikongoro prefecture because the conditions were becoming difficult. Originally, Simba had thought that they would be in Gitarama for only a short time until the security situation in Kigali stabilized. However, the insecurity in their area increased. The witness noted that someone assaulted Gashumba and Robert Simba at a neighbour's home. In addition, they felt that they were imposing on Simba's nephew Niringiyimana.<sup>354</sup>

362. On 24 April, around 10.00 a.m., Witness SML2 left Gitarama for Gikongoro in a two vehicle convoy. The witness, along with her children, Gashumba's wife and children, and Raymond, travelled with Simba in his Mercedes Benz. Others with them travelled in a double cabin pick-up truck. They passed through several roadblocks without any problem. As they passed by Kaduha Parish, however, the witness recalled seeing attackers, most likely local farmers, armed with machetes and acting like demons. People were fleeing, blood was flowing, and dead bodies were strewn along the roadside. As the people in the vehicle began screaming, Simba told his son to roll up the windows and asked the children to close their eyes. The witness held her child tightly to her chest, as attackers surrounded the vehicles. The witness recalled seeing one soldier who was far from their vehicle. Simba told Raymond to go as slowly as possible without crushing anyone. Everyone in the vehicle was paralyzed, and no one spoke. The witness explained that this was the first time during the war that she had

<sup>350</sup> T. 22 March 2005 pp. 71-72.

<sup>351</sup> *Id.* at 72-74.

<sup>352</sup> T. 13 December 2004 pp. 54, 60-61.

<sup>353</sup> *Id.* at 54, 59, 61-62.

<sup>354</sup> *Id.* at pp. 54, 60.

seen such killing. It was nauseating. When they stopped later for fresh air, she saw tears in Simba's eyes.<sup>355</sup>

*Defence Witness MIB*

363. On 14 April, Witness MIB and her husband drove Witness FMP1, her husband, and her children to the Burundian border. Witness FMP1's husband could not cross the border at that time. However, he was able to cross when Witness MIB brought him back to the border two days later on 16 April.<sup>356</sup>

364. Witness MIB testified that on her return from taking Witness FMP1's husband to the border for the second time, she encountered Simba on the road from Butare to Gikongoro prefecture. Simba was travelling to Gikongoro with his wife, children, the family of Witness SML2, and the Gashumba family. The witness and her husband warned Simba that it was not safe to drive in the area with Tutsi, referring to Simba's wife, Gashumba's wife, and Witness SML2. The witness explained that they had seen a number of dead bodies along the road. She also testified that she did not mention this encounter in her prior statement because she had not been asked about it. The witness had, however, mentioned saying goodbye to Simba at the end of the month in Gitarama.<sup>357</sup>

*Defence Witness FMP1*

365. On 14 April, Witness FMP1 and her family were taken by Witness MIB to the Burundian border. The witness and her three children made it across the border, but her husband was denied entry because he did not have a passport. The witness's husband crossed the border on 16 April.<sup>358</sup>

*Defence Witness FKP2*

366. Witness FKP2 testified that, close to midday around 20 April 1994, he met Simba at the Gitarama market, where they both were shopping with their wives.<sup>359</sup>

*Defence Witness AJT1*

367. Witness AJT1 stated that about three days after arriving in Gitarama, Simba travelled to Kigali, leaving around 10.00 a.m. and returning around 2.00 or 3.00 p.m. The next day, Witness AJT1 travelled with Simba to Kabgayi to have her daughter vaccinated and to see Simba's daughter, who was training there to be a nurse. In Kabgayi, survivors of the Kaduha Parish massacre told her that Gasana and Monique had been killed, as had her own parents and brother. The witness added that it would have been impossible for Simba to have participated in the Kaduha Parish massacres because Simba had been with her. Even without

<sup>355</sup> T. 13 December 2004 pp. 61-65; T. 14 December 2004 pp. 56, 69-70.

<sup>356</sup> T. 14 February 2005 pp. 9, 11, 20-21, 32, 36.

<sup>357</sup> *Id.* at 22-23, 35, 37-39.

<sup>358</sup> T. 21 February 2005 pp. 54-55, 65, 71-72.

<sup>359</sup> T. 15 December 2004 pp. 18-19, 39-44.

3471

the roadblocks, it took four to five hours to travel to Kaduha. Later that day, Simba travelled to Rwinyana to see his mother in law.<sup>360</sup>

368. The next day Simba again travelled to Kigali. Apart from these trips, Simba remained at the compound in Gitarama taking meals with everyone and playing cards and other games. The witness did not recall anyone important visiting Simba.<sup>361</sup>

369. Witness AJT1 testified that her husband accompanied Simba to Musebeya on 24 April and returned the next day. The witness stated that she left Gitarama on 30 May 1994 for Gikongoro prefecture where she stayed with Therese Nyirubasimba, the Accused's sister. She recalled Simba stopping by one day to pick up the children of Gacendra, the commune's accountant, who had sought refuge there.<sup>362</sup>

*Defence Witness AJG7*

370. Witness AJG7, is a Hutu, with prior political connections to Simba.<sup>363</sup> He testified that the Accused arrived in Gikongoro between 28 April and the first week in May 1994, after the killings had come to an end in the area. Simba, along with his family and others, stayed at the Crête-Zaire-Nil project until the Accused fled Rwanda at the end of June 1994. The witness stated that he visited Simba five or six times at the project and noted that Simba was usually playing cards with the children.<sup>364</sup>

*Defence Witness SIH*

371. Witness SIH, a Hutu, worked in the vicinity of the Crête Zaire-Nil project in 1994.<sup>365</sup> He testified that Simba arrived at the project around 25 April 1994. The witness met Simba the next morning when the Accused sought his assistance. According to the witness, Simba owned land in the project, along with others, including Damien Binigia, Frédéric Nzamurambaho, and Ambroise Murindagabu.<sup>366</sup>

*Defence Witness GMA3*

372. Witness GMA3, a Hutu and MRND member, worked in the vicinity of the Crête Zaire-Nil project in 1994.<sup>367</sup> Simba arrived at the project after the violence had ended in the area. Simba's house was several kilometres from the witness's workplace and ten kilometres from the road. The witness suggested that he was "living like a refugee". The witness did not know the make, model, or colour of Simba's vehicle.<sup>368</sup>

<sup>360</sup> T. 11 March 2005 pp. 10-13, 15, 18-21.

<sup>361</sup> *Id.* at pp. 10-12, 14, 22.

<sup>362</sup> *Id.* at pp. 9, 22-25, 38-39.

<sup>363</sup> T. 10 March 2005 pp. 3-6, 16, 39, 48 Defence Exhibit 119.

<sup>364</sup> T. 10 March 2005 pp. 7, 9-10, 12, 15-17, 28.

<sup>365</sup> T. 16 December 2004 pp. 33-37, 68, 74; Defence Exhibit 60.

<sup>366</sup> T. 16 December 2004 pp. 35-36, 38-43, 47, 61, 69, 71- 72, 74, 76.

<sup>367</sup> T. 21 February 2005 pp. 3-6, 21; Defence Exhibit 97.

<sup>368</sup> T. 21 February 2005 pp. 7-10, 12, 23, 25-28.

*blu*

Defence Witness GL3

3470

373. Witness GL3, a Hutu and former PSD member, lived in Gikongoro sector, Musebeya commune, Gikongoro prefecture in 1994.<sup>369</sup> The witness saw Simba and his family arrive in a white Mercedes Benz at the Gatovu market in Gatore, Musebeya commune, coming from the Gikongoro-Butare road, toward the end of April or early May 1994. The witness stated that there were many people in the car, but he did not count them. He recognized Simba's wife and son Richard, who was in school a few years ahead of him. The witness stated that, while in Gikongoro, Simba stayed at the Crête-Zaire-Nil project.<sup>370</sup>

### 9.3.2 Deliberations

374. As discussed above, Simba provided a reasonable explanation for his activities from 6 until 13 April 1994 when he relocated to Gitarama town. From 14 to 24 April 1994, Simba claimed that he remained in Gitarama town, taking periodic trips during the day to Kigali or other neighbouring localities. His version of the events is corroborated, to varying degrees by several witnesses. However, the evidence for this part of the alibi contains a number of elements which call into serious question the reasonableness of Simba's account and, in fact, lend support for an earlier arrival date in Gikongoro.

375. In particular, Simba acknowledged travelling with three others toward Gikongoro prefecture on 16 April, in order to see if the roads were sufficiently safe to relocate there. Witness MIB confirmed that Simba was travelling toward Gikongoro prefecture at this time when she met him along the road in Nyanza, Butare prefecture. According to the evidence, Simba then turned back to Gitarama town on the advice of Witness MIB who warned that it was too dangerous to travel any further with Tutsi accompanying him. As a result, Simba returned to Gitarama town. According to the Accused's testimony, and that of Witnesses SML2 and AJT1, Simba spent the next eight days playing cards, going to the market, and making short trips to Kigali or other nearby areas.

376. The Chamber notes that on 16 April, Simba was travelling in southern Rwanda toward his native area. He was a prominent figure in Rwanda based on his prior military and political career. The Chamber is certain that Simba was an imposing figure, particularly when he travelled in uniform. The Accused's own testimony reflects that when confronted at a roadblock between Kigali and Gitarama, he threatened to kill an assailant rather than surrender one of the Tutsi in his care. Though he lacked formal ties to the government and military, the evidence shows that Simba's stature in Rwandan society allowed him to obtain the assistance of authorities to facilitate movement. This point is illustrated by his ability to contact high ranking personnel in Kibungo prefecture to assist Witness SML2 in her return to Kigali. In addition, Simba had no difficulty convincing gendarmes and soldiers to accompany him to rescue various individuals throughout Kigali in the first few days after the death of the president. Simba also acknowledged that he had little fear of roadblocks in Gikongoro prefecture because he was well-known in the area.

377. In this context, it is not plausible that Witness MIB's warning would have dissuaded Simba if he had wanted to relocate to Gikongoro prefecture at the time. The Chamber also notes that, contrary to Simba's testimony, Witness MIB indicated that he was travelling with

<sup>369</sup> T. 24 February 2005 pp. 3-4.

<sup>370</sup> *Id.* at pp. 8-11, 20-21, 23-25.

a number of people under his care, including Witness SML2. Witness SML2's account of the journey to Gikongoro prefecture also suggests an earlier departure. She described *Interahamwe* surrounding Kaduha Parish as the group passed the parish. The Chamber recalls that in the days before the final assault on 21 April against Murambi Technical School, Cyanika Parish, and Kaduha Parish, *Interahamwe* clashed with Tutsi refugees at those sites. Moreover, the Chamber has noted the discrepancy between Witness AJT1's testimony and her statement to Tribunal investigators, which indicates that Simba departed Gitarama around the time the interim government relocated there.<sup>371</sup>

378. The Chamber also recalls that Witness YF placed Simba at a meeting at CIPEP in Gikongoro town between 16 and 19 April.<sup>372</sup> Witness SBL1 testified that the prefects of Gikongoro and Butare met on 16 April and that the prefecture also hosted President Sindikubwabo on 18 April, three days before the final assaults on Murambi Technical School, Cyanika Parish, and Kaduha Parish.<sup>373</sup> Prosecution evidence also places Simba on the morning of 21 April at Murambi Technical School and at Kaduha parish. As discussed in Sections 4 and 6, this evidence is first-hand and corroborated.

379. With this in mind, the Chamber is troubled by the discrepancies between Simba's testimony concerning the date of his arrival in Gikongoro and his prior writings. Simba's diary reflects that he travelled on 29 April to Gikongoro prefecture.<sup>374</sup> He had prepared this diary to refute allegations against him, and he had also sent it to his wife to assist in her asylum application.<sup>375</sup> He explained the differences between his testimony and the dates in his diary as a typing mistake in an evolving work.<sup>376</sup> This is not convincing. In another letter, Simba also placed the date of his arrival in Gikongoro on 29 April.<sup>377</sup> A subsequent letter indicated that the date of arrival was 10 May.<sup>378</sup> In correspondence to the Ministry of Foreign Affairs in Senegal, dated August 1995, before he faced concrete allegations, Simba stated that when he left Kigali, he headed to his native Musebeya commune in Gikongoro prefecture.<sup>379</sup> In the Chamber's view, this does not suggest that he did not spend any time in Gitarama.

<sup>371</sup> The interim government arrived in Gitarama on 12 April. The witness explained this discrepancy by noting that she only realized the interim government had arrived when it began looking for additional space. T. 11 March 2005 pp. 41-42. This reinforces to some extent that Simba had an earlier departure from Gitarama. In addition, the witness's account of seeing the survivors of the Kaduha parish massacre at Kabgayi on 16 April suggests that she perhaps instead accompanied Simba there on his visit from Gikongoro prefecture on 1 May.

<sup>372</sup> See paragraph 144.

<sup>373</sup> T. 23 February 2005 pp. 52-53; T. 24 February 2005 pp. 38-39.

<sup>374</sup> Prosecution Exhibit 46 (Simba's diary).

<sup>375</sup> T. 24 March 2005 pp. 32, 40.

<sup>376</sup> *Id.* at pp. 32-35 ("I wrote a denial and I'm still working on that denial. It has been seized from me. And since I have not finished it, it cannot be conceded to be a working document because I had not finished it, and I had not presented it to whom it may concern. So it was a sketch of something which I was preparing. Yes, I drew up such a document in order to deny the allegations ... I don't know whether the contents in this document reflect what I did. I have to look at it in order to know that ... And this is a draft and I did notice that I had made a mistake. And I think that this document should not bind anyone because I realise that I had made a mistake ... I'm saying that this is a draft. I was still working on it, therefore, I could have put some finishing touches on my document because I had not shown it to anyone. I could have edited it like I'm doing now or just -- or, like I have just done. This is a human error because, at that time, I did not have the exact date, that's why I noted down something else. And it's not only typing mistake, but a human error, but now what I've done is to actually reconstitute the dates.")

<sup>377</sup> Prosecution Exhibit 36 (letter of 28 April 2000).

<sup>378</sup> Prosecution Exhibit 48 (letter of 8 February 2000).

<sup>379</sup> Prosecution Exhibit 47 (letter of 7 August 1995).

Another letter written in March 1995 reflects that Simba arrived in Gitarama around 14 April, but does not indicate the length of time he spent there.<sup>380</sup> These correspondences simply underscore that his time in Gitarama was not as significant as described in his testimony.

380. The Chamber does not find the explanations for the discrepancies between his testimony and his prior writings satisfying, particularly when viewed against the relative consistency of Simba's accounts of his time in Kigali.<sup>381</sup> Such discrepancies leave the impression that Simba is trying to distance himself geographically from Gikongoro prefecture, during the period when the highest concentration of killing occurred, rather than provide a reasonable account of his activities.

381. In the Chamber's view, the evidence supporting Simba's account of his activities during the period between 13 and 24 April does not alleviate these concerns. Most of the Defence witnesses providing evidence in support of the alibi have a close personal relationship with either Simba or members of his family. While these relationships do not invalidate their testimonies, it does suggest that any lapse in their recollections might be resolved in a manner favourable to Simba. In addition, the accounts of Simba's time in Gitarama town provided by Simba and Witnesses AJT1 and SML2 are not particularly detailed or convincing. Witness AJT1 and SML2 remained at the compound engaged in domestic household matters.

382. Furthermore, the Chamber is not satisfied that Witness FKP2's second meeting with Simba suggests that the two met on 20 April. During cross-examination, the Prosecution confronted the witness with his prior statement in which he stated that he met Simba twice in Gitarama between 13 and 30 April. The witness explained that he had given a broad range of dates because he was not certain of when the second meeting occurred.<sup>382</sup>

383. The accounts of Witnesses GMA3, AJG7, GL3, and SIH provide some support for the proposition that Simba arrived in Gikongoro towards the end of April 1994. However, the testimonies of Witnesses GMA3 and AJG7 on Simba's arrival lack detail and are second-hand. Witness GL3 stated that he saw Simba in the Gatovu market at some point at the end of April or early May. This provides only very limited corroboration at best, given the location of the sighting and the uncertain date range. Witness SIH also did not have first-hand knowledge of Simba's arrival in Gikongoro. He became aware of Simba's presence only when the Accused sought his assistance around 25 April. Given these circumstances, the Chamber has accorded the evidence of these witnesses little or no weight, particularly when viewed in the context of the corroborated Prosecution evidence placing Simba in Gikongoro prefecture during this time.

384. After viewing the evidence of the alibi in its totality, it is understandable that Simba stayed for a brief period of time in Gitarama town after his arrival on 13 April. In the Chamber's view, however, the concerns outlined above, as well as first-hand corroborated Prosecution evidence, eliminate the reasonable possibility that he remained in Gitarama after 16 April. The Chamber accepts that Simba might have continued to travel to various localities outside of Gikongoro after that time. However, when considering the evidence of the alibi, together with the Prosecution evidence, the Chamber has no doubt that on 21 April Simba was in Gikongoro prefecture at Murambi Technical School and at Kaduha Parish.

<sup>380</sup> Prosecution Exhibit 33 (letter of 15 March 1995).

<sup>381</sup> T. 24 March 2005 pp. 32-39, 40, 68.

<sup>382</sup> T. 15 December 2004 pp. 39-44.

*blm*

## CHAPTER III: LEGAL FINDINGS

3467

### 1. CRIMINAL RESPONSIBILITY

385. The Prosecution seeks to establish Simba's criminal liability for the massacres at Kibeho Parish, Murambi Technical School, Cyanika Parish, Kaduha Parish, and Ruhashya commune under Article 6 (1) of the Statute based on the theory of joint criminal enterprise.<sup>383</sup> Article 6 (1) sets out certain forms of individual criminal responsibility applicable to the crimes falling within the Tribunal's jurisdiction. Article 6 (1) does not make explicit reference to "joint criminal enterprise". However, the Appeals Chamber has previously held that participating in a joint criminal enterprise is a form of liability which exists in customary international law and that it is a form of "commission" under Article 6 (1).<sup>384</sup>

#### 1.1 Elements of Joint Criminal Enterprise

386. Article 6 (1) has been interpreted to contain three forms of joint criminal enterprise: basic, systemic, and extended.<sup>385</sup> At the close of its case, the Prosecution indicated that it is primarily pursuing the basic form.<sup>386</sup> The "basic" form requires that all the co-perpetrators, acting pursuant to a common purpose, possess the same criminal intention.<sup>387</sup>

387. According to settled jurisprudence, the required *actus reus* for each form of joint criminal enterprise comprises three elements.<sup>388</sup> First, a plurality of persons is required. They need not be organised in a military, political or administrative structure. Second, the existence of a common purpose which amounts to or involves the commission of a crime provided for in the Statute is required. There is no necessity for this purpose to have been previously arranged or formulated. It may materialise extemporaneously and be inferred from the facts. Third, the participation of the accused in the common purpose is required, which involves the perpetration of one of the crimes provided for in the Statute. This participation need not involve commission of a specific crime under one of the provisions (for example, murder, extermination, torture, or rape), but may take the form of assistance in, or contribution to, the execution of the common purpose. The Appeals Chamber in *Kvočka et al.* provided guidance

<sup>383</sup> The parties' submissions concerning this mode of liability can be found at Prosecution Closing Brief, paras. 28-37; Defence Closing Brief, paras. 65-132; T. 7 July 2005 pp. 2, 4-5, 16, 31-41.

<sup>384</sup> The doctrine was first described by the Appeals Chamber in *Tadić*, Judgment (AC), 15 July 1999, paras. 188, 195-226. See also *Kvočka et al.*, Judgment (AC), 28 February 2005, paras. 79-80, 99; *Ntakirutimana*, Judgment (AC), 13 December 2004, paras. 461-462, 466, 468; *Vasiljevic*, Judgment (AC), 25 February 2004, paras. 94-95. See also *Rwamakuba*, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide (AC), 22 October 2004, para. 31 (recognizing applicability of joint criminal enterprise to the crime of genocide).

<sup>385</sup> *Kvočka et al.*, Judgment (AC), 28 February 2005, paras. 82-83; *Ntakirutimana*, Judgment (AC), paras. 463-465; *Vasiljevic*, Judgment (AC), paras. 96-99; *Krnjelac*, Judgment (AC), 17 September 2003, para. 30.

<sup>386</sup> Prosecution Closing Brief, para. 28; T. 8 July 2005 p. 6.

<sup>387</sup> *Kvočka et al.*, Judgment (AC), 28 February 2005, para. 82; *Ntakirutimana*, Judgment (AC), 13 December 2004, para. 463; *Vasiljevic*, Judgment (AC), 25 February 2004, para. 97; *Krnjelac*, Judgment (AC), 17 September 2003, para. 84.

<sup>388</sup> *Kvočka et al.*, Judgment (AC), 28 February 2005, para. 96; *Ntakirutimana*, Judgment (AC), 13 December 2004, para. 466; *Vasiljevic*, Judgment (AC), 25 February 2004, para. 100; *Krnjelac*, Judgment (AC), 17 September 2003, para. 31.

3466

on distinguishing between joint criminal enterprise and other forms of liability, such as aiding and abetting.<sup>389</sup>

388. The required *mens rea* for each form of joint criminal enterprise varies. The basic form of joint criminal enterprise requires the intent to perpetrate a certain crime, this intent being shared by all co-perpetrators.<sup>390</sup> Where the underlying crime requires a special intent, such as discriminatory intent, the accused, as a member of the joint criminal enterprise, must share the special intent.<sup>391</sup>

## 1.2 Notice

389. The mode and extent of an accused's participation in an alleged crime are material facts that must be clearly set forth in the Indictment.<sup>392</sup> If the Prosecution intends to rely on the theory of joint criminal enterprise to hold an accused criminally responsible as a principal perpetrator of the underlying crimes rather than as an accomplice, the indictment should plead this in an unambiguous manner and specify on which form of joint criminal enterprise the Prosecution will rely.<sup>393</sup> In addition, the Prosecution must also plead the purpose of the enterprise, the identity of the co-participants, and the nature of the accused's participation in the enterprise.<sup>394</sup>

390. The Defence argues that the pleading of joint criminal enterprise in the Indictment is deficient because it fails to adequately plead its requisite elements.<sup>395</sup> Its arguments focus almost exclusively on *mens rea*. The Chamber has already rejected these challenges in connection with Defence motions at the pre-trial stage.<sup>396</sup> The Chamber's decision of 14 July 2004 explains that the Prosecution's Pre-trial Brief reflects its intent to rely on all three forms of joint criminal enterprise.<sup>397</sup> In addition, the decision points to the various paragraphs in the

<sup>389</sup> *Kvocka et al.*, Judgment (AC), 28 February 2005, paras. 90 ("Where the aider and abettor only knows that his assistance is helping a single person to commit a single crime, he is only liable for aiding and abetting that crime. This is so even if the principal perpetrator is part of a joint criminal enterprise involving the commission of further crimes. Where, however, the accused knows that his assistance is supporting the crimes of a group of persons involved in a joint criminal enterprise and shares that intent, then he may be found criminally responsible for the crimes committed in furtherance of that common purpose as a co-perpetrator. Where, however, the accused knows that his assistance is supporting the crimes of a group of persons involved in a joint criminal enterprise and shares that intent, then he may be found criminally responsible for the crimes committed in furtherance of that common purpose as a co-perpetrator."). See also *Vasiljevic*, Judgment (AC), 25 February 2004, para. 102; *Tadic*, Judgment (AC), 15 July 1999, para. 229.

<sup>390</sup> *Ntakirutimana*, Judgment (AC), 13 December 2004, para. 467; *Vasiljevic*, Judgment (AC), 25 February 2004, para. 101; *Krnjelac*, Judgment (AC), 17 September 2003, para. 32.

<sup>391</sup> *Kvocka et al.*, Judgment (AC), 28 February 2005, paras. 109-110.

<sup>392</sup> *Id.* at paras. 28, 42; *Krnjelac*, Decision on Form of Second Amended Indictment (TC), 11 May 2000, para. 16.

<sup>393</sup> *Krnjelac*, Judgment (AC), paras. 138-145. See also *Ntakirutimana*, Judgment (AC), 13 December 2004, paras. 475-484; *Kvocka et al.*, Judgment (AC), 28 February 2005, paras. 41-42.

<sup>394</sup> *Kvocka et al.*, Judgment (AC), 28 February 2005, paras. 28, 42.

<sup>395</sup> Defence Closing Brief, para. 90.

<sup>396</sup> *Simba*, Decision on Preliminary Defence Motion Regarding Defects in the Form of the Indictment (TC), 6 May 2004, paras. 9-12; *Simba*, Decision on the Defence's Preliminary Motion Challenging the Second Amended Indictment (TC), 14 July 2004, paras. 5-11.

<sup>397</sup> *Simba*, Decision on the Defence Preliminary Motion Challenging the Second Amended Indictment (TC), 14 July 2004, para. 6, footnote 4.

2h

3465

Indictment pleading the *mens rea* for each form.<sup>398</sup> Consequently, the Chamber will not address these arguments again here.

391. In its Closing Brief, the Defence also raises complaints with respect to the pleading of the other requisite elements: the participants, the common criminal purpose, its timeframe, and the nature of the Accused's participation. These arguments were not raised before trial, and the Defence made only minimal submissions on them in its Closing Brief.<sup>399</sup> The Chamber does not exclude that the Prosecution could have pleaded the requisite elements of joint criminal enterprise in a more clear and organized manner in the Indictment. However, the Indictment refers to "joint criminal enterprise" under all four counts in connection with responsibility under Article 6 (1). This reference places the language in the Indictment into a clear context. In addition, the Appeals Chamber in *Krnojelac* stated that the general requirement to plead all requisite elements of joint criminal enterprise in the Indictment does not prevent the Prosecution in limited circumstances from providing adequate notice by elaborating on its theory in its Pre-trial Brief in light of the facts alleged.<sup>400</sup> In this case, the Prosecution did provide additional detail in its Pre-trial Brief.

392. With respect to the participants in the joint criminal enterprise, paragraph 14 of the Indictment lists eight officials with whom, the Prosecution claims, Simba "planned" and "prepared" the genocide.<sup>401</sup> The paragraph states that these named individuals "acted in concert" with Simba, echoing the language used in the count along with the specific reference to joint criminal enterprise. The Indictment also adequately identifies the participants alleged to have materially committed the crimes forming part of the common criminal purpose. Some are named in various paragraphs throughout the Indictment in connection with planning of the attacks.<sup>402</sup>

393. In most cases, the participants who physically perpetrated the crimes are identified in each section of the Indictment dealing with a particular massacre site by broad category, such as *Interahamwe* or gendarmes, and then further identified with geographic and temporal details. In the context of this case and given the nature of the attacks, the Chamber is not satisfied that the Prosecution could have provided more specific identification. The Indictment alleges Simba's interactions with the attackers in such a way as to reflect concerted action. In addition, paragraph 58 of the Indictment affirms that the attackers are participants when it pleads the *mens rea* for the basic form of joint criminal enterprise by stating that Simba shared the same intent to commit the pleaded crimes with "all other individuals involved in the crimes perpetrated". Moreover, the Prosecution Pre-trial Brief and

<sup>398</sup> *Simba*, Decision on the Defence's Preliminary Motion Challenging the Second Amended Indictment (TC), 14 July 2004, paras. 7-11.

<sup>399</sup> Defence Closing Brief, para. 90.

<sup>400</sup> *Krnojelac*, Judgment (AC), 17 September 2003, para. 138. See also *Kvočka et al.*, Judgment (AC), 28 February 2005, paras. 42-45; *Ntakirutimana*, Judgment (AC), 13 December 2004, paras. 471-472, 474-476.

<sup>401</sup> This list includes: Faustin Sebhura, Laurent Bucyibaruta, Damien Biniga, Denys Kamodoka, Juvenal Ndabarinzi, Augustin Rwamanya, Joachim Hategekimana, and Charles Munyaneza. They are referred to throughout the Indictment interacting with Simba.

<sup>402</sup> For example, paragraph 15 refers to Israel Nsengiyumva and Landoauld Karamage. Paragraphs 35 and 37 implicate Felicien Semakwavu. Paragraph 57 mentions *Interahamwe* named Ngoga, Gakuru, Nkusi, and Innocent Bakundukize.

6h

3464

opening statement also confirm that the named individuals as well as the attackers should be considered as participants in the joint criminal enterprise.<sup>403</sup>

394. With respect to the purpose of the joint criminal enterprise, it is clear that it was to kill Tutsi at Kibeho Parish, Murambi Technical School, Cyanika Parish, and Kaduha Parish in Gikongoro prefecture, as well as in Ruhashya commune in Butare prefecture. This follows from a reading of the Indictment in conjunction with the Pre-trial Brief.<sup>404</sup>

395. The Pre-trial Brief also makes clear that Simba's participation in the joint criminal enterprise encompasses the specific criminal acts pleaded in the Indictment. For his part, Simba is accused of planning the massacres, distributing weapons to attackers, and ordering or instigating others to commit massacres.<sup>405</sup> The Pre-trial Brief also reflects that the time frame of the joint criminal enterprise is from 6 April until 17 July 1994.<sup>406</sup>

396. The Chamber finds that the manner in which the Prosecution has given notice of its theory of joint criminal enterprise in the present case has not in any way rendered the trial unfair.

### 1.3 Application

397. In its factual findings, the Chamber found that *Interahamwe*, gendarmes, and members of the local population killed thousands of mostly Tutsi refugees at Kibeho Parish, Murambi Technical School, Cyanika Parish, Kaduha Parish, and in Ruhashya commune in Butare prefecture. The Chamber will discuss the nature and extent of Simba's criminal responsibility, if any, for these massacres below.

#### *Murambi Technical School, Cyanika Parish, and Kaduha Parish*

398. The massacres at Murambi Technical School, Cyanika Parish, and Kaduha Parish on 21 April commenced around 3.00 a.m. when *Interahamwe* and gendarmes, armed with guns and grenades began the killings at Murambi. Around 6.00 a.m., Prefect Bucyibaruta, Captain Sebhura, and Bourgmestre Semakwavu replenished ammunition and directed half of the assailants to reinforce the assault at nearby Cyanika Parish. Simba came to Murambi Technical School around 7.00 a.m. after the other authorities had left. He distributed traditional weapons to the attackers who then continued the killing.

399. Attackers at Murambi Technical School also participated in the massacre at Cyanika Parish, which commenced around 8.00 a.m. Victims at Murambi and Cyanika recounted the presence of *Interahamwe* from Mudasomwa commune at both locations. Defence Witness NGJ2 attested to the movement of the attackers from Murambi to Cyanika. The Chamber has

<sup>403</sup> Prosecution Pre-trial Brief, paras. 143, 147 ("Local authorities, including prefets, bourgmestres, conseillers and responsables de cellule, *Interahamwe*, the civil defence, FAR, gendarmerie and the Hutu population were mobilized to carry out the common criminal purpose of killing Tutsis."); T. 30 August 2004 p. 10 ("To prove the Prosecution's case we will lead evidence to show that between 7 April and 13 May 1994, Aloys Simba and the persons named in his indictment participated in the planning, preparation, and execution of a joint criminal enterprise whose sole aim was the destruction of the Tutsi population.").

<sup>404</sup> Prosecution Pre-trial Brief, para. 140 (referring to paragraphs in the Indictment pleading criminal conduct including the five massacre sites). See also T. 30 August 2004 pp. 7-8 ("The Prosecution will lead evidence aimed at showing that thousands of Tutsi civilians were brutally massacred in Murambi and in [Kibeho Parish, Cyanika Parish, and Kaduha Parish], in a conscious, meticulously planned and orchestrated killing campaign.").

<sup>405</sup> Prosecution Pre-trial Brief, paras. 140, 147-148; Indictment, paras. 19-21, 42-45, 50-51, 53-54, 57, 61-62.

<sup>406</sup> Prosecution Pre-trial Brief, para. 14.

3463

no direct evidence of the presence of Simba or local authorities such as Prefect Bucyibaruta or Captain Sebhura at Cyanika Parish.

400. Simba arrived at Kaduha Parish around 9.00 a.m. on 21 April where hundreds of attackers had already assembled. Most of the assailants were armed with traditional weapons. However, around fifty gendarmes, former soldiers, and communal policemen carried guns and grenades. Bourgmestre Gashugi had convoked some of this smaller group of well-armed attackers the previous day and brought them to the parish that morning. Simba, invoking the approval of the government, urged the attackers to "get rid of the filth" at the parish. He then distributed guns and grenades to the assailants who proceeded to kill the Tutsi at the parish. There is no reliable evidence placing Prefect Bucyibaruta and Captain Sebhura at Kaduha on the day of the attack.

401. The three massacres on 21 April at Murambi Technical School, Cyanika Parish, and Kaduha Parish can only be described, in the Chamber's view, as a highly coordinated operation involving local militiamen backed by gendarmes, armed with guns and grenades, and with the organizational and logistical support offered by local authorities and prominent personalities such as Simba who provided encouragement, direction, and ammunition. This operation was conducted over the course of a period of around twelve hours on a single day and involved the killing of thousands of Tutsi concentrated at three geographically proximate locations. Prior planning and coordination is the only reasonable explanation for the manner in which the perpetrators conducted these three massive assaults. The Chamber notes in addition, prior to 21 April, *Interahamwe*, relying principally on traditional weapons, had been largely unsuccessful in attacking refugees at these locations. Therefore, the added elements of coordination, official encouragement, well-armed gendarmes, and the use of guns and grenades proved decisive.

402. In the Chamber's view, the only reasonable inference from the evidence is that a common criminal purpose existed to kill Tutsi at these three sites. The Chamber will discuss the extent to which Simba shared this common purpose below. The Chamber finds that the massive scale and relative efficiency of the slaughter by necessity demanded the involvement of a plurality of persons, each carrying out a particular role at one or more of the massacres. In addition to the physical perpetrators of the crimes, other prominent participants in the enterprise included Simba, Prefect Bucyibaruta, Captain Sebhura, and Bourgmestre Semakwavu.

403. Simba participated in the joint criminal enterprise through his acts of assistance and encouragement to the physical perpetrators of the crimes at Murambi Technical School and Kaduha Parish. In the Chamber's view, Simba's actions at those two sites had a substantial effect on the killings which followed.<sup>407</sup> Witness KSY noted that the attackers at Murambi continued with renewed enthusiasm after Simba's departure. Moreover, the use of guns and grenades, which Simba distributed at Kaduha Parish, was a decisive factor in the success of these assaults. The Chamber notes that Simba was a respected national figure in Rwandan society and well-known in his native region. Therefore, the assailants at those places would

<sup>407</sup> The Chamber notes that, in general, there is no specific legal requirement that an accused make a substantial contribution to the joint criminal enterprise. Moreover, the Prosecution need not demonstrate that the accused's participation is a *sine qua non* without which the crimes could or would not have been committed. Nonetheless, the significance of an accused's contribution is relevant to demonstrating that the accused shared the intent to pursue the common purpose. See *Kvočka et al.*, Judgment (AC), 28 February 2005, paras. 97-98.

6m

have viewed his presence during the attacks, however brief, as approval of their conduct, particularly after Simba's invocation of the government.

404. In addition, given his stature in Rwandan society, his participation in the joint criminal enterprise would have had a similar effect on other prominent participants such as Prefect Bucyibaruta, Captain Sebhura, Bourgmestre Semakwavu as well as other local authorities. The only reasonable conclusion on the evidence is that Simba coordinated his actions with these individuals before the attacks. In reaching this conclusion, the Chamber recalls that Simba likely arrived in the prefecture only a few days before the assaults, after fleeing Kigali with his family. At the time, he had no formal ties to the government or to the military. However, on 21 April, he was accompanied by gendarmes and *Interahamwe*. At Kaduha Parish, he invoked the government's request that he return to service, before urging on the attackers. In addition, Simba had a cache of weapons, including firearms and grenades for distribution, which certainly would have come from civilian or military authorities.

405. The Prosecution argues that Simba participated in the planning of the three massacres on 21 April. There is no direct evidence of this. Moreover, the Chamber is not satisfied that this is the only reasonable inference available from the evidence. It is also possible that local authorities formulated a plan of attack and then requested Simba to assist in implementing it.

406. The Chamber finds beyond reasonable doubt that Simba shared the common purpose of killing Tutsi at Murambi Technical School and Kaduha Parish based on his presence and specific actions at the two sites. He also distributed the means to implement the killings during an ongoing massacre at Murambi Technical School. In addition, after leaving the massacre at Murambi, he distributed guns and grenades to assailants at Kaduha Parish and urged them to "get rid of the filth".

407. However, the Chamber has some doubt that he equally shared the common purpose of killing Tutsi at Cyanika Parish. There is no direct evidence linking him to Cyanika Parish or indicating that he knew and accepted that it would also form part of the operation. Accordingly, the Chamber is not satisfied beyond reasonable doubt that Simba also had the shared intention to kill Tutsi at Cyanika Parish or that the killings there would in any way be a foreseeable consequence of his role in the joint criminal enterprise at Murambi Technical School and Kaduha Parish.

408. The question of whether Simba and the other participants in the joint criminal enterprise possessed the requisite *mens rea* for the underlying crime will be addressed in the Chamber's legal findings on genocide and crimes against humanity.

#### *Kibeho Parish and Ruhashya Commune*

409. The Chamber is not satisfied beyond reasonable doubt that the massacres at Kibeho Parish or in Ruhashya commune formed part of the joint criminal enterprise described above. The massacres at Kibeho Parish on 14 April and in Ruhashya commune on 29 April are geographically and temporally removed from the massive and coordinated attack on 21 April discussed above.

410. Moreover, the evidence concerning the actual execution of the massacre at Kibeho Parish on 14 April comes exclusively from sources who heard about what transpired there. There are also doubts concerning the credibility of the evidence supporting the allegations related to the Ruhashya commune attack. The evidence reflects that *Interahamwe* from Mudasomwa commune left Gasarenda Trading Centre shouting that they were going to kill Tutsi in Kibeho. In addition, the Chamber found that some local officials, gendarmes, and Hutu militiamen from Gikongoro participated in the attack in Ruhashya commune. However,

*blm*

the lack of reliable evidence concerning the details of how these attacks unfolded prevents the Chamber from according too much weight to these events in drawing any inferences to connect them to the joint criminal enterprise described above. The Chamber is not prepared to extend Simba's criminal liability to two additional massacres, based solely on second-hand evidence and largely uncorroborated testimony.

## 2. GENOCIDE

411. In Count 1 of the Indictment, the Prosecution has charged Simba with Genocide under Article 2 of the Statute.

412. To find an accused guilty of the crime of genocide it must be established that he committed any of the enumerated acts in Article 2 (2) with the specific intent to destroy, in whole or in part, a group, as such, that is defined by one of the protected categories of nationality, race, ethnicity, or religion.<sup>408</sup> Although there is no numeric threshold, the perpetrator must act with the intent to destroy at least a substantial part of the group.<sup>409</sup> The perpetrator need not be solely motivated by a criminal intent to commit genocide, nor does the existence of personal motive preclude him from having the specific intent to commit genocide.<sup>410</sup>

413. In the absence of direct evidence, a perpetrator's intent may be inferred from relevant facts and circumstances.<sup>411</sup> Factors that may establish intent include 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 in a particular group, or the repetition of destructive and discriminatory acts.<sup>412</sup>

414. The Indictment charges Simba with killing or causing serious bodily or mental harm to members of the Tutsi group. However, in its Closing Brief, the Prosecution directs the Chamber only to evidence of killing. Killing members of the group requires a showing that the principal perpetrator intentionally killed one or more members of the group, without the necessity of premeditation.<sup>413</sup>

415. It is not disputed in the present case that Tutsi are members of a protected group under the Statute. The Chamber has found that Simba participated in a joint criminal enterprise to kill Tutsi civilians at Murambi Technical School and Kaduha Parish by providing weapons and lending encouragement and approval to the physical perpetrators. In its findings on criminal responsibility, the Chamber described this assistance as having a substantial effect on the killings that followed. The assailants at these sites killed thousands of Tutsi civilians. Given the manner in which the attacks were conducted, the Chamber finds that the assailants intentionally killed members of a protected group.

<sup>408</sup> *Ndindabahizi*, Judgement (TC), 15 July 2004, paras. 453-454; *Ntagerura et al.*, Judgement (TC), 25 February 2004, para. 662. *See also Niyitegeka*, Judgment (AC), 9 July 2004, para. 48.

<sup>409</sup> *Semanza*, Judgement (TC), 15 May 2003, para. 316.

<sup>410</sup> *Ntakirumana*, Judgement (AC), 13 December 2004, paras. 302-304; *Niyitegeka*, Judgement (AC), 9 July 2004, paras. 48-53.

<sup>411</sup> *Kayishema and Ruzindana*, Judgement (Reasons) (AC), 1 June 2001, para. 159.

<sup>412</sup> *Semanza*, Judgement (AC), 20 May 2005 paras. 261-262. *See also Rutaganda*, Judgement (AC), 26 May 2003, para. 525; *Ndindabahizi*, Judgement (TC), 15 July 2004, paras. 454; *Ntagerura et al.*, Judgement (TC), 25 February 2004, para. 663.

<sup>413</sup> *Kayishema and Ruzindana*, Judgement (Reasons) (AC), 1 June 2001, para. 151; *Semanza*, Judgement (TC), 15 May 2003, para. 319.

416. The Chamber has heard extensive evidence, which it accepts, about the targeting of Tutsi civilians in the days immediately after the death of President Habyarimana. A great many Tutsi sought refuge at Murambi Technical School and Kaduha Parish after Hutu militiamen burned and looted their homes. These Tutsi refugees were slaughtered by the thousands over the course of a period of around twelve hours on a single day. Given the scale of the killings and their context, the only reasonable conclusion is that the assailants who physically perpetrated the killings possessed the intent to destroy in whole or in part a substantial part of the Tutsi group. This genocidal intent was shared by all participants in the joint criminal enterprise, including Simba.

417. In reaching this conclusion, the Chamber has considered the arguments of the Defence that Simba could not have committed genocide, given his close association with Tutsi and his tolerant views, which it suggests resulted in his marginalization and attacks against his family in Gikongoro.<sup>414</sup> There is no clear evidence that Simba was among the adherents of a hard line anti-Tutsi philosophy. It cannot be excluded that he participated in the joint criminal enterprise, as a former career military officer and public servant, out of a misguided sense of patriotism or to ensure the protection of himself and those in his care.<sup>415</sup> In responding to similar arguments of lack of enthusiasm for killings or reluctant participation in relation to another specific intent crime (persecution), the Appeals Chamber in *Kvocka et al.* stated:

232. Kvocka replies that his association with the Muslim community, his political affiliation and his duty as a professional policemen are facts that disprove the existence of discriminatory intent.

233. The Appeals Chamber understands that Kvocka contends that the Trial Chamber erred in omitting to consider these circumstances when assessing his *mens rea* and argues that his personal situation was not consistent with the Trial Chamber's finding that he intended to further the joint criminal enterprise ... the Trial Chamber reviewed this evidence and concluded that many witnesses depicted a tolerant and politically moderate man who was close to the Muslim community, into which he had married. However, in the Appeals Chamber's view, such findings do not preclude a reasonable trier of fact

<sup>414</sup> Defence Closing Brief, paras. 1045-1097; T. 8 July 2005 pp. 15-16 ("First of all because I was not present at the sites but also because the state of my mind would not allow me to perpetrate such crimes. I believe those accusing me have not been able to demonstrate the special hatred that I could harbour against the Tutsi of Gikongoro. If ever I was thirsty for Tutsi blood I could have found such blood in Kigali especially as I had Tutsi blood in my house. Mr. President, the Tutsi of Gikongoro are my neighbours, are my friends, childhood friends, my benefactors, the people who elected me. Why would I have attacked those innocent individuals?").

<sup>415</sup> The Chamber has noted Simba's explanations for assuming the role of civil defence adviser. T. 22 March 2005 p. 2 ("Q. Is it correct that in 1994 you accepted to place yourself at the service of the nation by giving your assistance to the civil defence as advisor to the Gikongoro *préfet*? A. Yes, I accepted that, but I do not think that is an accusation, because the country was at war, and each and every citizen is called upon to help his country, to defend his country, because a good citizen cannot stay idle when a country is at war.") T. 24 March 2005 pp. 76-77 ("I also told you that, when I accepted to participate in the civil defence operation, this is not because I believed so much in the government ... It was not I who asked; this time I was contacted. Before I was contacted, I was calm in my own corner. Now, if a report were to be given that I had been contacted and that I declined the responsibilities entrusted to me, how were they going to treat me? So I thought this thing would be a problem for me. I am telling you that many people, many important and intelligent people, died. They died just like that because they did not want to collaborate because there was disagreement.").

from concluding, in light of all the evidence provided, that the accused intended to further a joint criminal enterprise whose purpose was to persecute the non-Serbs.<sup>416</sup>

418. Simba was physically present at two massacre sites. He provided traditional weapons, guns, and grenades to attackers poised to kill thousands of Tutsi. Simba was aware of the targeting of Tutsi throughout his country, and as a former military commander, he knew what would follow when he urged armed assailants to "get rid of the filth". The only reasonable conclusion, even accepting his submissions as true, is that at that moment, he acted with genocidal intent.

419. The Chamber finds beyond reasonable doubt that Simba is criminally responsible under Article 6 (1) of the Statute based on his participation in a joint criminal enterprise to kill Tutsi civilians at Murambi Technical School and Kaduha Parish. Therefore, the Chamber finds Simba guilty on Count 1 of the Indictment for genocide.

### 3. CRIMES AGAINST HUMANITY (EXTERMINATION)

420. In Count 3 of the Indictment, the Prosecution charges Simba with extermination as a crime against humanity under Article 3 of the Statute.

421. For an enumerated crime under Article 3 to qualify as a crime against humanity, the Prosecution must prove that there was a widespread or systematic attack against the civilian population for national, political, ethnic, racial or religious grounds.<sup>417</sup> Intended to be read as disjunctive elements, "widespread" refers to the large scale of the attack, while "systematic" describes the organized nature of the attack.<sup>418</sup> A perpetrator must have acted with knowledge of the broader context and knowledge that his acts formed part of the attack, but he need not share the purpose or goals behind the broader attack.<sup>419</sup>

422. The crime of extermination requires proof that an accused participated in a widespread or systematic killing or in subjecting a widespread number of people or systematically subjecting a number of people to conditions of living that would inevitably lead to death.<sup>420</sup> Extermination is distinguishable from murder because it is the act of killing on a large-scale.<sup>421</sup> Although extermination is the act of killing a large number of people, such a designation does not suggest that a numerical minimum must be reached.<sup>422</sup> The mental element for extermination is the intent to perpetrate or to participate in a mass killing.<sup>423</sup>

<sup>416</sup> *Kvočka et al.*, Judgment (AC), 28 February 2005, paras. 224, 232-233 (internal citations omitted), 416.

<sup>417</sup> *Ntakirutimana*, Judgment (AC), 13 December 2004, paras. 516; *Ntagerura et al.*, Judgment (TC), 25 February 2004, para. 697.

<sup>418</sup> *Semanza*, Judgment (TC), 15 May 2003, paras. 328-329; *Kunarac et al.*, Judgment (AC), 12 June 2002, paras. 93-97.

<sup>419</sup> *Ndindabahizi*, Judgment (TC), 15 July 2004, para. 478; *Semanza*, Judgment (TC), 15 May 2003, para. 332. See also *Semanza*, Judgment (AC), 20 May 2005, paras. 268-269.

<sup>420</sup> *Ntakirutimana*, Judgment (AC), 13 December 2004, para. 522; *Ndindabahizi*, Judgment (TC), 15 July 2004, para. 480.

<sup>421</sup> *Ntakirutimana*, Judgment (AC), 13 December 2004, para. 516. See also *Ndindabahizi*, Judgment (TC), 15 July 2004, para. 479; *Semanza*, Judgment (TC), 15 May 2003, para. 340.

<sup>422</sup> *Ntakirutimana*, Judgment (AC), 13 December 2004, para. 516.

<sup>423</sup> *Ntagerura et al.*, Judgment (TC), 25 February 2004, para. 701. See also *Ntakirutimana*, Judgment (AC), 13 December 2004, para. 522.

*h*

423. The evidence in this case amply supports the conclusion that there were widespread attacks against the Tutsi population in Gikongoro prefecture in April 1994. Witnesses recounted Hutu militiamen burning and looting Tutsi homes in the days immediately following the death of President Habyarimana on 6 April. Thousands of Tutsi then congregated at parishes and schools. The evidence of the killings at the five massacre sites as well as their massive scale can lead to no other conclusion. Having considered the totality of the evidence, and in particular the evidence concerning the ethnic composition of the individuals who sought refuge at the various sites, the Chamber finds that in April 1994 there was a widespread attack against the civilian Tutsi population of Gikongoro on ethnic grounds.

424. The Chamber finds it inconceivable that Simba, and the other participants in the joint criminal enterprise, did not know during the massacres of 21 April that their actions formed part of a widespread attack against the Tutsi civilian population. Simba was familiar with the situation in Rwanda nationally from his time in Kigali and Gitarama town. Those who sought refuge at his home in Kigali recounted soldiers looking for Tutsi. He passed roadblocks from Kigali to Gitarama town where militiamen threatened his Tutsi passengers. He was warned by Witness MIB that the road to Gikongoro was not safe because assailants were killing Tutsi. The Chamber found that on 21 April, Simba was present at two massacre sites distributing weapons and speaking with assailants. In addition, other prominent participants in the joint criminal enterprise, such as Prefect Bucyibartua, Captain Sebhura, and Bourgmestre Semakwavu, attended various meetings with local authorities to discuss the lack of security in the region. They were present during the massacres and directed attackers from Murambi Technical School to Cyanika Parish. The assailants who physically perpetrated the massacres also must have been aware of the broader context, particularly given the scale of the atrocities. The evidence of Witness KEL reflects that the Mudasomwa *Interahamwe* had participated in earlier attacks throughout the region. Many of the attackers participated in the killings on 21 April at multiple sites.

425. The assailants at Murambi Technical School and Kaduha Parish killed thousands of Tutsi civilians in what can only be said to be a large-scale killing, which was part of the widespread attack on ethnic grounds. Simba participated in this large-scale killing as a participant in the joint criminal enterprise to kill Tutsi at these two sites by distributing weapons and lending approval and encouragement to the physical perpetrators. In its findings on criminal responsibility, the Chamber described this assistance as having a substantial effect on the killings that followed. Given the manner in which the attacks were conducted, the nature of the weapons used, and the number of victims, the Chamber finds beyond reasonable doubt that Simba and the assailants intentionally participated in a mass killing of members of the Tutsi ethnic group.

426. The Chamber finds beyond reasonable doubt that Simba is criminally responsible under Article 6 (1) of the Statute based on his participation in a joint criminal enterprise to kill Tutsi civilians at Murambi Technical School and Kaduha Parish. Therefore, the Chamber finds Simba guilty on Count 3 of the Indictment for extermination as a crime against humanity.<sup>424</sup>

<sup>424</sup> See *Semanza*, Judgement (AC), 20 May 2005, para. 318 ("A conviction for genocide or complicity in genocide is not impermissibly cumulative with the convictions for crimes against humanity.").

3457

**CHAPTER IV: VERDICT**

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

- Count 1: GUILTY of Genocide
- Count 2: NOT GUILTY of Complicity in Genocide
- Count 3: GUILTY of Crimes Against Humanity (Extermination)
- Count 4: NOT GUILTY of Murder

CHAPTER V: SENTENCE

3456

1. INTRODUCTION

428. Having found Aloys Simba guilty on Counts I and III of the Indictment for genocide and extermination as a crime against humanity, the Chamber must determine the appropriate sentence.

429. The penalty imposed should reflect the goals of retribution, deterrence, rehabilitation, and the protection of society. Pursuant to Article 23 of the Statute and Rule 101 of the Rules of Procedure and Evidence, the Chamber shall consider the general practice regarding prison sentences in Rwanda, the gravity of the offences or totality of the conduct, the individual circumstances of the accused, including aggravating and mitigating circumstances, and the extent to which any penalty imposed by a court of any State on the accused for the same act has already been served.<sup>425</sup> As pointed out by the Appeals Chamber, these considerations are not exhaustive when determining the appropriate sentence. In addition, the Trial Chamber shall credit the accused for any time spent in detention pending transfer to the Tribunal and during trial.<sup>426</sup>

2. SUBMISSIONS

430. The Prosecution submits that the adequate penalty is life imprisonment.<sup>427</sup> It emphasizes the gravity of the crimes, their premeditated and systematic execution, Simba's abuse of his authority, his voluntary and direct participation, and his decision to deny his involvement in the crimes by mounting an alibi defence.<sup>428</sup> The Prosecution alludes to other life sentences handed down by the Tribunal and notes that Simba's crimes would be considered Category I offences under Rwandan law, which are punishable by death.<sup>429</sup> The Defence did not make any sentencing submissions.

3. DELIBERATIONS

3.1 Gravity of the Offence

431. All crimes under the Tribunal's Statute are serious violations of international humanitarian law.<sup>430</sup> When determining a sentence, a Trial Chamber has considerable, though not unlimited, discretion on account of its obligation to individualize penalties to fit the individual circumstances of an accused and to reflect the gravity of the crimes for which the accused has been convicted.<sup>431</sup>

432. In determining an appropriate sentence, the Appeals Chamber has stated that "sentences of like individuals in like cases should be comparable". However, it has also noted the inherent limits to this approach because "any given case contains a multitude of variables,

<sup>425</sup> Article 23 (1)-(3) and Rule 101 (B)(i)-(iv).

<sup>426</sup> *Kajelijeli*, Judgement (AC), 23 May 2005, para. 290. See Rule 101 (D).

<sup>427</sup> Prosecution Closing Brief, para. 210; T. 7 July 2005 p. 25.

<sup>428</sup> Prosecution Closing Brief, paras. 226-238.

<sup>429</sup> *Id.* at paras. 217-222.

<sup>430</sup> *Kayishema and Ruzindana*, Judgement (Reasons) (AC), 1 June 2001, para. 367 (quoting Article I of the Statute).

<sup>431</sup> *Kajelijeli*, Judgement (AC), 23 May 2005, para. 291.

3455

ranging from the number and type of crimes committed to the personal circumstances of the individual".<sup>432</sup>

433. The Chamber has found Simba guilty of genocide and extermination as a crime against humanity for his participation in a joint criminal enterprise to kill Tutsi civilians at Murambi Technical School and Kaduha Parish. His participation in this common criminal purpose consisted of distributing weapons to attackers at Murambi Technical School and Kaduha Parish and lending encouragement and approval to participants in the killings. Thousands of Tutsi civilians died in these attacks. The Chamber determined that Simba's acts of assistance and encouragement provided substantial assistance. His role in a joint criminal enterprise makes him a principal perpetrator.

434. Under Rwandan law, genocide and crimes against humanity carry the possible penalties of death or life imprisonment, depending on the nature of the accused's participation.<sup>433</sup> In the Tribunal's jurisprudence, principal perpetration generally warrants a higher sentence than aiding and abetting.<sup>434</sup> However, this alone does not mean that a life sentence is the only appropriate sentence for a principal perpetrator of genocide and extermination.<sup>435</sup> In this Tribunal, a sentence of life imprisonment is generally reserved those who planned or ordered atrocities and those who participate in the crimes with particular zeal or sadism.<sup>436</sup> Offenders receiving the most severe sentences also tend to be senior authorities.<sup>437</sup>

435. At the time of the events, Simba had no formal position within the government, military, or political structures of the government. He assumed the post of civil defence adviser on 18 May 1994. However, he is not charged with any criminal conduct based on this position. In addition, the Chamber is not convinced beyond reasonable doubt that Simba was the architect of the massacres at Murambi Technical School and Kaduha Parish or that he

<sup>432</sup> *Kvočka et al.*, Judgment (AC), 28 February 2005, para. 681.

<sup>433</sup> Rwandan Organic Law No. 8/96, on the Organization of Prosecutions for Offences constituting Genocide or Crimes Against Humanity committed since 1 October 1990, published in the Gazette of the Republic of Rwanda, 35th year. No. 17, 1 September 1996. See *Semanza*, Judgment (AC), 20 May 2005, para. 377 ("The command for Trial Chambers to 'have recourse to the general practice regarding prison sentences in the courts of Rwanda does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice.'"), quoting *Serushago*, Judgment (AC), 6 April 2000, para. 30; *Nikolic*, Judgment (AC), 4 February 2005, para. 69.

<sup>434</sup> *Semanza*, Judgment (AC), 20 May 2005, para. 388.

<sup>435</sup> See, e.g., *Ntakirutimana*, Judgment (TC), 21 February 2003, paras. 791-793, 832-834, 908-909, 924 (imposing twenty-five years' imprisonment for personal participation).

<sup>436</sup> *Musema*, Judgment (AC), 16 November 2001, para. 383 (noting that the leaders and planners of a particular conflict should bear heavier responsibility, with the qualification that the gravity of the offence is the primary consideration in imposing a sentence); *Niyitegeka*, Judgment (TC), 16 May 2003, para. 486; *Muhimana*, Judgment (TC), 28 April 2005, paras. 604-616 (conseiller, but recounting the particularly atrocious manner in which the accused personally raped, killed, mutilated, and humiliated his victims).

<sup>437</sup> Life sentences have been imposed against senior government authorities in: *Ndindabahazi*, Judgment (TC), 15 July 2004, paras. 505, 508, 511 (Minister of Finance); *Niyitegeka*, Judgment (TC), 16 May 2003, paras. 499, 502 (Minister of Information); *Kambanda*, Judgment (TC), 4 September 1998, paras. 44, 61-62 (Prime Minister); *Kamuhanda*, Judgment (TC), 22 January 2004, paras. 6, 764, 770 (Minister of Higher Education and Scientific Research). In addition, life sentences have been imposed on lower level officials, as well as those who did not hold government positions. See, e.g., *Musema*, Judgment (TC), 27 January 2000, paras. 999-1008 (influential director of a tea factory who exercised control over killers); *Rutaganda*, Judgment (TC), 6 December 1999, paras. 466-473 (second vice-president of Interahamwe at national level).

66

3454

played a role in their planning.<sup>438</sup> In addition, the manner in which Simba participated in the joint criminal enterprise did not evidence any particular zeal or sadism on his part. In particular, he did not physically participate in killings and did not remain at the sites of the massacres for more than a brief period.

436. Although Simba's crimes are grave, the Chamber is not satisfied that he is deserving of the most serious sanction available under the Statute. The Chamber finds some guidance from cases that include convictions for direct participation in genocide and extermination that did not result in life sentences.

437. In *Semanza*, the Appeals Chamber determined twenty-five years' imprisonment to be the appropriate sentence for the direct perpetration of genocide and extermination at a massacre site.<sup>439</sup> *Semanza* was a former bourgmestre and a newly appointed parliamentarian who exercised influence in the locality where his crimes were committed.<sup>440</sup> In *Gacumbitsi*, the Trial Chamber decided that a single sentence of thirty years' imprisonment for the Accused sufficiently reflected the Tribunal's sentencing goals for genocide and extermination as a crime against humanity.<sup>441</sup> In reaching this conclusion, the Trial Chamber noted that the Accused, a bourgmestre at the time of his involvement, was not involved in the long term planning of the events in his commune. In *Ruzindana*, the Appeals Chamber affirmed the Accused's sentence of twenty-five years' imprisonment for genocide, based on his participation in a "common purpose or design", which included mutilating and humiliating his victim.<sup>442</sup>

### 3.2 Individual, Aggravating, and Mitigating Circumstances

438. The Chamber will consider the individual circumstances of the Accused, including aggravating and mitigating factors. Mitigating circumstances need only be established by the balance of the probabilities, while aggravating circumstances need to be proven beyond reasonable doubt.<sup>443</sup> Any particular circumstance that is included as an element of the crime for which the Accused is convicted will not also be considered as an aggravating factor.<sup>444</sup>

439. Among the aggravating factors, the Chamber notes Simba's stature in Rwandan society as a prominent former political and military figure, as discussed in Section 2 of the

<sup>438</sup> See *Krstic*, Judgment (AC), 19 April 2004, paras. 253-255 (noting that it was proper for the Trial Chamber to consider the accused's position with respect to co-perpetrators, as such considerations are required in order to accurately comprehend the events in question and impose the appropriate sentence). *Babic*, Judgment on Sentencing Appeal (AC), 18 July 2005, para. 40 (noting that it "a finding of secondary or indirect forms of participation in a joint criminal enterprise relative to others may result in the imposition of the lower sentence").

<sup>439</sup> *Semanza*, Judgment (AC), 20 May 2005, para. 388-389.

<sup>440</sup> *Semanza*, Judgment (TC), 15 May 2003, paras. 303-304, 573.

<sup>441</sup> *Gacumbitsi*, Judgment (TC), 17 June 2004, paras 334, 345, 352-353, 356. The accused in *Gacumbitsi* was also convicted of rape and the Trial Chamber determined that the "particularly atrocious" manner in which some rapes were carried out constituted an aggravating factor. *Id.* at para. 345.

<sup>442</sup> *Kayishema and Ruzindana*, Judgment (Reasons) (AC), 1 June 2001, paras. 191, 194, 352; *Kayishema and Ruzindana*, Sentence (TC), 21 May 1999, para. 26. The aggravating factors included Ruzindana cutting off of the breasts of a victim and the tearing open of her stomach, while he openly mocked her. The Trial Chamber relied on his relatively young age and the goal of rehabilitation as one of the justifications for providing a sentence less than life.

<sup>443</sup> *Kajelijeli*, Judgment (AC), para. 294; *Ndindabahizi*, Judgment (TC), 15 July 2004, para. 502; *Semanza*, Judgment (TC), 15 May 2003, paras. 565, 574.

<sup>444</sup> *Ndindabahizi*, Judgment (TC), 15 July 2004, para. 502; *Semanza*, Judgment (TC), 15 May 2003, para. 571; *Ntakirutimana*, Judgment (TC), 21 February 2003, para. 893.

Factual Findings. The influence he derived from this status made it likely that others would follow his example, which is an aggravating factor.<sup>445</sup>

440. The Chamber also considers the number of victims which resulted from the killings as an aggravating factor in relation to his conviction for genocide, which is a crime with no numeric minimum of victims.<sup>446</sup> Additionally, it is significant that Simba supplied the attackers with guns and grenades at Kaduha Parish. These types of weaponry greatly facilitated the slaughter during the attacks on 21 April.<sup>447</sup>

441. The Chamber finds few mitigating circumstances. Simba spent much of his life and career before 1994 engaged in professions devoted to the public service of his country.<sup>448</sup> His political views before April 1994 appear to have been relatively moderate. Such evidence can in no way exonerate or excuse Simba for his participation in the killings. However, it provides a somewhat nuanced picture and may imply that his participation in the massacres resulted from misguided notions of patriotism and government allegiance rather than extremism or ethnic hatred. The Chamber also notes that Simba does not deny the existence of genocide in Rwanda and condemned the massive slaughter that occurred.<sup>449</sup>

442. The Chamber has also noted Simba's role in assisting several members of his family and others close to him after the death of President Habyarimana, but is mindful of the rather selective assistance he provided. This evidence carries limited weight as a mitigating factor.

443. In the Chamber's view, after weighing the gravity of the crime and the circumstances of the Accused, limited mitigation is warranted.

### 3.3 Credit for Time Served

444. Simba was arrested in Senegal, on 27 November 2001, pursuant to an order for transfer and provisional detention, and has been in physical custody ever since.<sup>450</sup> Thus, Simba's credit for time served as of 13 December 2005 has been calculated as four years and sixteen days.

<sup>445</sup> *Semanza* Judgement (AC), 20 May 2005, para. 336.

<sup>446</sup> *Id.* at paras. 337-338.

<sup>447</sup> *Kajelijeli*, Judgement (TC), 1 December 2003, para. 962.

<sup>448</sup> *Semanza*, Judgement (AC), 20 May 2005, para. 398.

<sup>449</sup> T. 24 March 2005 pp. 15-16.

<sup>450</sup> *Simba*, Order for Transfer and Provisional Detention (TC), 23 November 2001.

3452

#### 4. CONCLUSION

445. The Chamber has the discretion to impose a single sentence and notes that this practice is usually appropriate where the offences may be characterized as belonging to a single criminal transaction.<sup>451</sup> The convictions for genocide and extermination as a crime against humanity are based on the same underlying criminal acts, which occurred on a single day. Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Aloys Simba to

#### TWENTY-FIVE YEARS' IMPRISONMENT

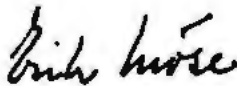
446. Simba shall receive credit for his time served, which the Chamber has calculated as four years and sixteen days.

447. The above sentence shall be served in a State designated by the President of the Tribunal, in consultation with the Chamber. The Government of Rwanda and the designated State shall be notified of such designation by the Registrar.

448. Until his transfer to his designated place of imprisonment, Aloys Simba shall be kept in detention under the present conditions.

449. Pursuant to Rule 102 (B) of the Rules, on notice of appeal, if any, enforcement of the above sentences shall be stayed until a decision has been rendered on the appeal, with the convicted person nevertheless remaining in detention.

Arusha, 13 December 2005



Erik Møse

Presiding Judge



Sergei Alekseevich Egorov

Judge



Dennis C. M. Byron

Judge

(Seal of the Tribunal)



<sup>451</sup> *Ndindabahizi*, Judgement (TC), 15 July 2004, para. 497.

## ANNEX I: PROCEDURAL HISTORY

3451

### 1. PRE-TRIAL PHASE

450. Aloys Simba was arrested in Senegal, on 27 November 2001, pursuant to an order for transfer and provisional detention issued by Judge Andréia Vaz on 23 November 2001.<sup>452</sup> The initial indictment, confirmed by Judge Winston Churchill Matanzima Maqutu on 8 January 2002, charged Simba with four counts: genocide; or in the alternative, complicity in genocide; extermination as a crime against humanity; and murder as a crime against humanity.<sup>453</sup> On 9 March 2002, having exhausted legal proceedings before the courts of Senegal, Simba was remanded into the custody of officials of the Tribunal. He arrived at the detention unit in Arusha on 11 March 2002. On 18 March 2002, he made his initial appearance, pleading not guilty to all four counts of the Indictment.

451. An informal status conference was held on 15 January 2004, to discuss the progress of the case. On 26 January 2004, the Chamber granted the Prosecution leave to amend the Indictment, noting that the amendments sought did not contain new charges but were intended to clarify the Prosecution case.<sup>454</sup> On the same day, the Chamber declared moot a Defence motion alleging defects in the Indictment,<sup>455</sup> as well as a Defence motion requesting commencement of trial or release, noting that trial had already been scheduled to proceed without delay.<sup>456</sup> Also on 26 January 2004, the Chamber denied a Defence motion to release Simba on account of alleged violations of Rule 40*bis*, finding no violations of that Rule.<sup>457</sup> The amended Indictment was filed on 16 February 2004.

452. On 24 February 2004, the Chamber granted a Prosecution request to transfer eight detained witnesses from Rwanda.<sup>458</sup> Protective measures were ordered for Prosecution witnesses on 4 March 2004.<sup>459</sup> On 11 March 2004, the Chamber denied a Defence motion to take the deposition of a witness who was unable to testify before the Tribunal for health reasons, on account of the Defence failure to provide sufficient information.<sup>460</sup>

453. Pursuant to a decision rendered by the Chamber on 5 March 2004, Simba made a further appearance on 17 March 2004, pleading not guilty to all four counts of the amended Indictment.<sup>461</sup> On 24 March 2004, the Appeals Chamber dismissed a Defence appeal regarding defects in the form of the Indictment, due to lack of appellate jurisdiction.<sup>462</sup> A Defence request to postpone the trial was granted on 28 April 2004 due to untimely disclosure by the Prosecution. Commencement was deferred to 13 May 2004.<sup>463</sup> On 4 May

<sup>452</sup> Order for Transfer and Provisional Detention (TC), 23 November 2001.

<sup>453</sup> Decision on the Prosecutor's Ex Parte Application for Review and Confirmation of the Indictment and Other Related Orders, 8 January 2002.

<sup>454</sup> Decision on Motion to Amend Indictment (TC), 26 January 2004.

<sup>455</sup> Decision on Defence Motion Alleging Defects in the Form of the Indictment (TC), 26 January 2004.

<sup>456</sup> Decision on Motion for Commencement of Trial or Release (TC), 26 January 2004.

<sup>457</sup> Decision on the Defence Motion to Release Aloys Simba Pursuant to Rules 40*bis* (H) and 40*bis* (K) (TC), 26 January 2004.

<sup>458</sup> Order for Transfer of Witnesses (TC), 24 February 2004.

<sup>459</sup> Decision on Prosecution Request for Protection of Witnesses (TC), 4 March 2004.

<sup>460</sup> Decision on the Defence's Extremely Urgent Motion for a Deposition (TC), 11 March 2004.

<sup>461</sup> Decision on Defence Motion for New Initial Appearance (TC), 5 March 2004.

<sup>462</sup> Decision on Aloys Simba's Interlocutory Appeal Regarding Defects in the Form of the Indictment (AC), 24 March 2004.

<sup>463</sup> Decision on Defence Motion to Reschedule Commencement of Trial, (TC), 28 April 2004.

2004, the Chamber rejected a Defence motion seeking disclosure of statements made by Witness FAI in another trial, noting that the request should be properly addressed to Trial Chamber II.<sup>464</sup> On 6 May 2004, the Chamber partially granted a Defence motion alleging defects in the form of the Indictment, ordering the Prosecution to file a new amended Indictment providing specific additional information.<sup>465</sup> The second amended Indictment was filed on 10 May 2004.

454. At a Pre-trial Conference held on 13 May 2004, the Chamber rejected a Defence request to postpone the trial but decided to adjourn commencement of trial, due to the potential unavailability of one of the Judges.<sup>466</sup> The Defence requested the Chamber to order the Prosecution to interview Simba on the alibi. The Chamber orally denied the request deeming itself not competent to decide how the Prosecution should conduct its investigations. On 21 May 2004, the President of the Tribunal notified the parties that the trial would commence on 16 August 2004, a date to which the Defence had agreed during previous informal communications.

455. On 14 June 2004, the Chamber granted a new Defence request to take a deposition from a witness, considering that the required information had been provided.<sup>467</sup> The Chamber denied analogous requests concerning other witnesses, due to the Defence's failure to fulfil the legal requirements. On the same date, the Chamber denied a Defence request to order the Prosecution to translate certain of its exhibits; provide a list of Prosecution witnesses indicating the order in which they would appear; and indicate for each witness's testimony, the estimated length of time, as well as the paragraphs of the Indictment and the elements of the offences supported.<sup>468</sup>

456. On 14 July 2004, the Chamber rendered four written decisions. It denied a Defence motion to disqualify Expert Witness Des Forges and to exclude her report.<sup>469</sup> It denied a Prosecution motion asking the Chamber to take judicial notice of evidence provided by Expert Witness Des Forges in a previous case, not being satisfied that this evidence fulfilled the criteria for admission.<sup>470</sup> Furthermore, a Defence motion alleging defects in the form of the Second Amended Indictment was also rejected.<sup>471</sup> Finally, the Chamber rejected a

<sup>464</sup> Decision on Urgent Defence Motion for Prosecution Statements in *Prosecutor v. Ndayambaje et al.* (TC), 4 May 2004.

<sup>465</sup> Decision on Preliminary Defence Motion Regarding Defects in the Form of the Indictment (TC), 6 May 2004. In a decision filed on 7 June 2004, a bench of the Appeals Chamber dismissed a Defence appeal against the 6 May Decision, on all but one ground, which was left to proceed, see Decision on Validity of Appeal Pursuant to Rule 72 (E) of the Rules of Procedure and Evidence (AC), 7 June 2004.

<sup>466</sup> T. 13 May 2004 p. 2.

<sup>467</sup> Decision on Extremely Urgent Defence Motion for the Deposition of Alibi Witnesses (TC), 14 June 2004.

<sup>468</sup> Decision on Defence Motion for Order in Reference to Rule 73bis (TC), 15 June 2004.

<sup>469</sup> Decision on Defence Motion to Disqualify Expert Witness, Alison Des Forges, and to Exclude her Report (TC), 14 July 2004.

<sup>470</sup> Decision on Prosecutor's Motion for Admission of Testimony of an Expert Witness (TC), 14 July 2004. On 17 August 2004, the Chamber denied a Prosecution motion seeking leave to appeal the 14 July Decision, see Decision on Prosecutor's Request for Certification to Appeal Decision Dated 14 July 2004 Denying the Admission of Testimony of an Expert Witness (TC), 17 August 2004.

<sup>471</sup> Decision on the Defence's Preliminary Motion Challenging the Second Amended Indictment (TC), 14 July 2004. On 30 September 2004, a bench of the Appeals Chamber dismissed a Defence appeal against the 14 July decision for lack of appellate jurisdiction, see Decision on Validity of Appeal Pursuant to Rule 72 (E) of the Rules of Procedure and Evidence (AC), 30 September 2004.

Defence request to order the Rwandan authorities to provide the judicial dossier of detained Prosecution witnesses.<sup>472</sup>

457. On 29 July 2004, the Appeals Chamber dismissed a Defence appeal seeking to exclude from the Indictment allegations concerning events outside the temporal jurisdiction of the Tribunal.<sup>473</sup> A Prosecution request to transfer fourteen detained witnesses from Rwanda was granted on 4 August 2004.<sup>474</sup> On 11 August 2004, the Registry denied Lead Counsel's request for withdrawal.<sup>475</sup>

458. A status conference was held with the parties in closed session on 12 August 2004. On 16 August 2004, the proceedings were adjourned pending deliberations on Co-Counsel's request to postpone trial, due to Lead Counsel's absence for health reasons. The Chamber granted the request in part on 18 August 2004, postponing trial until no later than 30 August 2004.<sup>476</sup> On the same day, a status conference was held in closed session.

459. On 25 August 2004, the Chamber granted a Defence motion for protection of Defence witnesses.<sup>477</sup> On 27 August 2004, the Prosecution was granted leave to vary its witness list by removing twelve witnesses (YA, KSD, DDG, ANQ, KCJ, XXG, XXI, KSH, YI, ALT, AMP, and KSB) and adding four new ones (YD, KTB, KSK, and KSM).<sup>478</sup>

## 2. THE PROSECUTION CASE

460. The trial commenced on 30 August 2004. The Prosecution conducted its case during two trial sessions: from 30 August to 24 September 2004 and from 25 October to 11 November 2004. Over the course of thirty trial days, the Prosecution called sixteen witnesses, including one investigator, and tendered fifty-six exhibits. A status conference was held on 11 and 12 November 2004.

461. On 1 September 2004, the Chamber denied a Defence motion seeking to preclude the Prosecution from introducing evidence concerning allegations outside the temporal jurisdiction of the Tribunal, and also alleging vagueness and imprecision of those allegations.<sup>479</sup> By oral decision of 13 September 2004, the Chamber granted the Prosecution leave to remove Witness KTB from its list of witnesses. On 23 September 2004, the Chamber rendered an oral decision granting the Prosecution leave to remove Witnesses KEC and KSQ from its list of witnesses. On the same day, the Chamber denied a Defence request to order the Prosecution to investigate Witness YH for crimes and false testimony. On 29 September 2004, the Chamber ordered the extension of the authorized transfer period for Prosecution Witnesses KDD, YG, YC, ANX, AMH, and KEI.<sup>480</sup>

<sup>472</sup> Decision on "Requête en vue d'ordonner des autorités rwandaises la communication au procureur des dossiers de poursuite des témoins prisonniers" (TC), 14 July 2004.

<sup>473</sup> Decision on Interlocutory Appeal Regarding Temporal Jurisdiction (AC), 29 July 2004.

<sup>474</sup> Order for Transfer of Witnesses (TC), 4 August 2004.

<sup>475</sup> Decision Denying the Request for Withdrawal of Assignment of Mr. Sadikou Alao as Lead Counsel for Mr. Aloys Simba Case Number ICTR-01-76 (Registry), 11 August 2004.

<sup>476</sup> Decision on Postponement of Trial (TC), 18 August 2004.

<sup>477</sup> Decision on Defence Request for Protection of Witnesses (TC), 25 August 2004.

<sup>478</sup> Decision on the Prosecution's Motion to Vary the Witness List (TC), 27 August 2004.

<sup>479</sup> Decision on the Defence Motion to Preclude Prosecution Evidence (TC), 1 September 2004.

<sup>480</sup> Decision on the Prosecution's Extremely Urgent Request for an Extension of the Trial Chamber's Order for Transfer of Witnesses Pursuant to Rule 90 *bis* (F) (TC), 29 September 2004.

3448

462. On 4 October 2004, the Chamber denied a Defence motion seeking to exclude the evidence of Prosecution Witness KSM. The parties were advised to address the issues in their Closing Briefs.<sup>481</sup> On the same day, the Chamber denied a Defence motion to obtain records of judicial proceedings concerning Prosecution witnesses. These documents were not in the Prosecution's possession and it was premature to order the Prosecution to request them.<sup>482</sup>

463. On 27 October 2004, the Chamber rendered an oral decision granting the Prosecution leave to withdraw Witnesses AMH, YD, and YG from its witness list. A Defence motion seeking to preclude the testimony of Witness KDD under oath was denied on 28 October 2004.<sup>483</sup> On the same day, the Chamber denied a Defence request to order the Rwandan government to transmit Witness KDD's judicial dossier, because the Defence had not demonstrated that it had made its own efforts to obtain the documents prior to submitting its request.<sup>484</sup> On 28 October 2004, the Chamber denied a Defence motion to recall Witness KEL because the Defence had failed to show good cause to recall the witness.<sup>485</sup>

464. On 1 November 2004, the Chamber denied a Defence motion seeking to exclude part of the evidence of Witness KDD based on lack of notice in the Indictment. The Chamber reserved its decision on the weight to accord to the evidence in its final deliberations.<sup>486</sup> On the same day the Chamber ordered the Prosecution to make efforts to obtain the judicial dossier of Witness KDD.<sup>487</sup>

465. On 3 November 2004, the Chamber rendered an oral decision granting a Defence motion for admission of Witness YA's statement into evidence in connection with its cross-examination of Witness YF.

466. An oral decision granting the Prosecution leave to remove Expert Witness Alison Des Forges from its list of witnesses was rendered on 10 November 2004. On the same day, the Chamber denied a Defence motion seeking to obtain information on whether prosecutions were underway against Witnesses YH and KXX, due to their allegedly self-incriminating testimony.<sup>488</sup>

### 3. THE DEFENCE CASE

467. The Defence case opened on 13 December 2004 and was conducted during two trial sessions: from 13 to 16 December 2004 and from 14 February to 24 March 2005. During twenty-three trial days, the Defence called twenty witnesses, including Simba. The Defence tendered one hundred fifty-nine exhibits.

468. On 25 January 2005, the Chamber denied a Defence motion seeking to admit a written statement from an individual who had expressed reluctance to testify, since the

---

<sup>481</sup> Decision on the Defence Motion to Exclude the Testimony of Witness KSM (TC), 4 October 2004.

<sup>482</sup> Decision on Defence Motion to Obtain Judicial Records Pursuant to Rule 68 (TC), 4 October 2004.

<sup>483</sup> Decision on the Defence Request to Preclude the Testimony of Prosecution Witness KDD Under Oath (TC), 28 October 2004.

<sup>484</sup> Decision on the Defence Request for the Cooperation of Rwandan Government Pursuant to Article 28 (TC), 28 October 2004.

<sup>485</sup> Decision on the Defence Motion to Recall Witness KEL for Further Cross-Examination (TC), 28 October 2004.

<sup>486</sup> Decision on the Admissibility of Evidence of Witness KDD (TC), 1 November 2004.

<sup>487</sup> Decision on Matters Related to Witness KDD's Judicial Dossier (TC), 1 November 2004.

<sup>488</sup> Decision on Defence Request for Information Related to Witnesses YH and KXX (TC), 10 November 2004.

proposed statement did not fulfil the requirements of Rule 92 *bis*.<sup>489</sup> On 31 January 2005, the Chamber denied a Defence motion requesting a site visit in Rwanda, not being persuaded of its necessity at that stage of the proceedings.<sup>490</sup> A Defence request to issue subpoenas to Witnesses BJK1, IMG, and ISG was denied on 4 February 2005, but the Chamber authorized the taking of their testimony via video-link from Kigali.<sup>491</sup> On 7 February 2005, the Chamber denied a Defence request to issue a subpoena to Witness SHB, advising the Defence to make a new attempt to contact the witness.<sup>492</sup>

469. On 9 February 2005, the Chamber denied a Defence motion to take a deposition from Witness FMP1, ordering the taking of the witness's testimony via video-link from The Hague.<sup>493</sup> On 17 February 2005, the Chamber ordered the transfer of eight detained Defence Witnesses (HBK, NGJ2, HNJ, GGJ1, RGJ1, BGN3, BGJ1, and KGJ2).<sup>494</sup> In a letter dated 9 March 2005, the Defence withdrew Witnesses AJG5, BRJ1, HNJ, AJK2, and SKG. During the proceedings of 14 March 2005, the Defence informed the Chamber that it intended to withdraw Witnesses HNJ, SHB, IMA, IMG and ISG from its list. On the same day, the Chamber declared moot a Defence motion requesting a subpoena to Defence Witness IMA, noting that he had been withdrawn.<sup>495</sup> By email correspondence of 21 March 2005, the Defence withdrew Defence Witnesses BGN3, BGJ1, and SAG. At a Status Conference held on 29 March 2005, the Defence withdrew Witnesses GGJ1, KGJ2, and BJK3. In addition, it indicated that it did not seek to lead direct testimony on its expert witness if his report were admitted into evidence. On 29 March 2005, the Prosecution indicated that it objected to the qualifications and conclusions of the Defence expert witness, but did not wish to cross-examine him.

470. On 4 May 2005, the Chamber denied a Defence further request for a site visit in Rwanda, considering it not necessary in the case.<sup>496</sup> On the same day, the Chamber granted a Defence request to issue subpoenas to Defence Witnesses BJK1 and HBK.<sup>497</sup>

#### 4. FURTHER PROCEEDINGS

471. The parties filed their Closing Briefs on 22 June 2005. On 7 July 2004, the Chamber issued a decision disposing of outstanding requests to admit various exhibits, which arose during trial.<sup>498</sup> Closing arguments were heard on 7 and 8 July 2005. During the proceedings on 7 July, the Presiding Judge informed the parties that after consultations with WVSS during the previous two weeks, it was clear that Witness BJK1 remained unwilling to appear. Witness HBK had expressed willingness to testify, but the Chamber was informed that it would not be possible to bring him to Arusha before the closing arguments. The parties were

<sup>489</sup> Decision on the Admissibility of a Written Statement (TC), 25 January 2005.

<sup>490</sup> Decision on the Defence Request for Site Visits in Rwanda (TC), 31 January 2005.

<sup>491</sup> Decision Authorizing the Taking of the Evidence of Witnesses IMG, ISG, and BJK1 by Video-Link (TC), 4 February 2005.

<sup>492</sup> Decision on the Defence Request for a Subpoena for Witness SHB (TC), 7 February 2005.

<sup>493</sup> Decision on the Defence Request for Taking the Evidence of Witness FMP1 by Deposition (TC), 9 February 2005.

<sup>494</sup> Order for the Transfer of Detained Witnesses (TC), 17 February 2005.

<sup>495</sup> Decision on the Defence Motion for a Subpoena (TC), 14 March 2005.

<sup>496</sup> Decision on Defence Renewed Request for Site Visits in Rwanda (TC), 4 May 2005.

<sup>497</sup> Decision on Defence Request for Subpoenas (TC), 4 May 2005.

<sup>498</sup> Decision on the Admission of Certain Exhibits (TC), 7 July 2005.

informed of this earlier that week. The Defence did not object to proceeding with final arguments as originally scheduled and closing the case.

3445

## **ANNEX II: JURISPRUDENCE AND DEFINED TERMS**

### **1. JURISPRUDENCE**

#### **1.1 ICTR**

##### **BAGILISHEMA**

*Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001

*Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-A, Judgement (AC), 12 December 2002

##### **BAGOSORA ET AL.**

*Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Motion Concerning Alleged Witness Intimidation (TC), 28 December 2004

*Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-AR93 & ICTR-98-41-AR93.2, Decision on Prosecutor's Interlocutory Appeals Regarding Exclusion of Evidence (AC), 19 December 2003

##### **GACUMBITSI**

*Prosecutor v. Sylvestre Gacumbitsi*, Case No. ICTR-2001-64-T, Judgement (TC), 17 June 2004

##### **KAJELIJELI**

*Prosecutor v. Juvenal Kajelijeli*, Case No. ICTR-99-44-T, Judgement and Sentence (TC), 1 December 2003

*Prosecutor v. Juvenal Kajelijeli*, Case No. ICTR-99-44-A, Judgement (AC), 23 May 2005

##### **KAMBANDA**

*Prosecutor v. Jean Kambanda*, Case No. ICTR-97-23-S, Judgement (TC), 4 September 1998

##### **KAMUHANDA**

*Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-95-54A-T, Judgement (TC), 22 January 2004

*Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-95-54A-A, Judgement (AC), 19 September 2005

##### **KAYISHEMA AND RUZINDANA**

*Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Judgement (TC), 21 May 1999

*Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Judgement (Reasons) (AC), 1 June 2001

**MUHIMANA**

*Prosecutor v. Mikaeli Muhimana*, Case No. ICTR- 95-1B-T, Judgement and Sentence (TC), 28 April 2005

**MUSEMA**

*Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Judgement (TC), 27 January 2000

*Prosecutor v. Alfred Musema*, Case No. ICTR-98-39-A, Judgement (AC), 16 November 2001

**NDINDABAHIZI**

*Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-2001-71-I, Judgement and Sentence (TC), 15 July 2004

**NIYITEGEKA**

*Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement and Sentence (TC), 16 May 2003

*Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-A, Judgement and Sentence (AC), 9 July 2004

**NTAGERURA ET AL.**

*Prosecutor v. André Ntagerura et al.*, Case No. ICTR 99-46-T, Judgement and Sentence (TC), 25 February 2004

**NTAHOBALI AND NYIRAMASUHUKO**

*Arsène Shalom Ntahobali and Pauline Nyiramasuhuko v. Prosecutor*, Case No. ICTR-97-21-AR73, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ inadmissible" (AC), 2 July 2004

**NTAKIRUTIMANA**

*Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case No. ICTR-96-10 & ICTR-96-17-T, Judgement and Sentence (TC), 21 February 2003

*Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case No. ICTR-96-10 & ICTR-96-17-A, Judgement (AC), 13 December 2004

3443

## **RUTAGANDA**

*Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, Judgement and Sentence (TC), 6 December 1999

*Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003

## **RWAMAKUBA**

*André Rwamakuba v. Prosecutor*, Case No. ICTR-98-44-AR72.4, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide (AC), 22 October 2004

## **SEMANZA**

*Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003

*Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005

*Laurent Semanza v. Prosecutor*, Case No. ICTR-97-20-A, Decision (AC), 31 May 2000

## **SERUSHAGO**

*Prosecutor v. Omar Serushago*, Case No. ICTR-98-39-A, Judgement (AC), 6 April 2000

## **1.2 ICTY**

### **BABIC**

*Prosecutor v. Milan Babic*, Case No. IT-03-72-A, Judgment on Sentencing Appeal (AC), 18 July 2005

### **DELALIC ET AL.**

*Prosecutor v. Zejnil Delalić, et al.*, Case No. IT-96-21-A, Judgment (AC), 20 February 2001

### **KRNOJELAC**

*Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgment (AC), 17 September 2003

*Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Decision on Form of Second Amended Indictment (TC), 11 May 2000

### **KRSTIĆ**

*Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgment (AC), 19 April 2004

3442

**KUNARAC ET AL.**

*Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23 & IT-96-23/1-A, Judgment (AC), 12 June 2002

**KUPREŠKIĆ ET AL.**

*Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-A, Appeal Judgment (AC), 23 October 2001

**KVOCKA ET AL.**

*Prosecutor v. Miroslav Kvocka et al.*, Case No. IT-98-30/1-A, Judgment (AC), 28 February 2005

**NIKOLIC**

*Prosecutor v. Dragan Nikolic*, Case No. IT-94-2-A, Judgment on Sentencing Appeal (AC), 4 February 2005

**TADIĆ**

*Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgment (AC), 15 July 1999

**VASILJEVIĆ**

*Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-A, Judgment (AC), 25 February 2004

**2. DEFINED TERMS**

**CIPEP**

Centre intercommunal de perfectionnement du personnel

**CDR**

Coalition pour la défense de la république

**CZN**

Crête-Zaire-Nil

**Defence Closing Brief**

*Prosecution v. Aloys Simba*, Case No. 01-76-T, Conclusions de la Défense contre l'Acte d'Accusation modifié en date du 10 Mai 2004/Defence Closing Brief Against the Amended Indictment of 10 May 2004, filed on 22 June 2005

**EMUJECO**

Entreprise Murenzi Jean & Co

3441

**Indictment**

*Prosecutor v. Aloys Simba*, Case No. 01-76-T, Amended Indictment Pursuant to 6 May 2004 Decision, filed 10 May 2004

**MDR**

Mouvement démocratique républicain

**MRND**

Mouvement révolutionnaire national pour la démocratie et le développement

**Pre-trial Brief**

*Prosecutor v. Aloys Simba*, Case No. 01-76-T, Prosecutor's Pre-trial Brief Pursuant to Article 73 *bis* (B)(i) of the Rules of Procedure and Evidence as Amended Following the Trial Chamber's 6 May 2004 Decision on Preliminary motion Regarding Defects in the Form of the Amended Indictment, filed on 10 May 2004

**Prosecution Closing Brief**

*Prosecutor v. Aloys Simba*, Case No. 01-71-T, The Prosecutor's Closing Brief, filed on 22 June 2005

**PSD**

Parti social démocrate

**Registry Page**

Reference to page in case file maintained by the Registry

**RPF**

Rwandan (also Rwandanese) Patriotic Front

**Rules**

Rules of Procedure and Evidence of the Tribunal

**T.**

Transcript. All references to the transcript are to the official, English transcript, unless otherwise indicated.

ICTR-01-76-1  
10-05-2004  
(1575- 1503)

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

3440

Case No. ICTR-2001-76-1

THE PROSECUTOR

AGAINST

Aloys SIMBA

JUDICIAL  
AT 10 F

2004 MAY 10 17 44:00

AMENDED INDICTMENT  
PURSUANT TO 6 May 2004 Decision

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

Aloys SIMBA

With:

1. **GENOCIDE**, or in the alternative
2. **COMPLICITY in GENOCIDE**
3. **EXTERMINATION as a CRIME AGAINST HUMANITY** and
4. **MURDER as a crime AGAINST HUMANITY**

Offences stipulated in Article 2 and 3 of the Statute of the Tribunal, as set forth below:

II. THE ACCUSED

Aloys SIMBA was born on 28 February 1938 in Musebeya commune, Gikongoro prefecture, in the Republic of Rwanda. At the time of the events referred to in this indictment, Aloys SIMBA was a retired Lt. Colonel of the Forces Armées du Rwanda. After retiring from the Army in December 1988, was elected as a Député in the National Assembly where he served from 1989 - 1993. Aloys SIMBA was the president of MRND in Gikongoro prefecture from 5 July 1991 - 12 September 1993. He was designated by the Minister of Defence of the interim government as Conseiller of the civil defense for Gikongoro and Butare prefectures from mid- May 1994.

### III. CHARGES, including a CONCISE STATEMENT OF FACTS:

3439

#### Count 1: Genocide

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Aloys SIMBA** with **GENOCIDE**, a crime stipulated in Article 2(3)(a) and 2(2)(a) and (b) of the Statute, in that on or between the dates of 7 April 1994 and 30 May 1994 in Gikongoro and Butare prefectures, Rwanda, **Aloys SIMBA** was responsible for killing or causing serious bodily harm to members of the Tutsi population, with intent to destroy, in whole or in part, a racial or ethnic group.

*Pursuant to Article 6(1) of the Statute:* by virtue of his affirmative acts in planning, instigating, ordering, committing or otherwise aiding and abetting in the planning, preparation or execution of the crime charged, in concert with others as part of a joint criminal enterprise.

**and /or**

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

**Or alternatively,**

#### Count 2: Complicity In Genocide:

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Aloys SIMBA** with **COMPLICITY** in **GENOCIDE** a crime stipulated in Article 2(3)(e) and 2(2) (a) and (b) of the Statute, in that on or between the dates of 7 April 1994 and 30 May 1994 in Gikongoro and Butare prefectures, **Aloys SIMBA** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with intent to destroy in whole or in part a racial or ethnic group.

*Pursuant to Article 6(1) of the Statute:* by virtue of his acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged, in concert with others as part of a joint criminal enterprise.

1. Between 1 January and 31 December 1994, Rwandan nationals were severally identified according to the following ethnic or racial classifications: Tutsi, Hutu and Twa.
2. The victims referred to in this indictment were Tutsi and moderate Hutu civilians from Gikongoro and Butare Prefectures, and other civilians who sought refuge in Gikongoro and Butare prefectures.

#### Concise Statements of Fact For Counts 1 And 2:

3. **Aloys SIMBA** was a retired Lt. Colonel of the Rwandan Armed Forces (FAR). However, during the events described in this indictment, **Aloys SIMBA** conducted himself as if he

were still in active service. In April and May 1994 **Aloys SIMBA** wore military uniform in public. On occasion, he rode in military vehicles.

4. As military and political leader in his community, in January 1993, **Aloys SIMBA** directed a rally against the Arusha Accords in the town of Gikongoro while other MRND and CDR leaders were directing violence elsewhere in the country to block the peace process.
5. As a high ranking military officer, **Aloys SIMBA**, was not subordinate to the prefect in the same way as civilian leaders.
6. Between April and July 1994, **Aloys SIMBA** co-chaired prefectural security meetings in Gikongoro prefecture with **Laurent BUCYIBARUTA**.
7. **Aloys SIMBA** was a Député in the Rwandan parliament and a well-known politician in Gikongoro prefecture.
8. **Aloys SIMBA** also derived authority from his close association with President Habyarimana. The history of Rwanda as taught in schools, from around 1975 through the 1980s, portrayed him as a national hero, who had helped bring President Habyarimana to power in 1973.
9. Gikongoro was one of the poorest prefectures of Rwanda and **Aloys SIMBA** was one of its wealthiest citizens.
10. **Aloys SIMBA** had de facto command and control over soldiers, gendarmes, reservists, interahamwe militiamen and Hutu civilians in Gikongoro prefecture and parts of Butare prefecture. His de facto power was confirmed by the Interim Government when the Ministry of Defence appointed him 'conseiller' of civil defence for Gikongoro and Butare prefectures, in May 1994.
11. **Aloys SIMBA** had access to the scarce commodity of fuel. This gave him additional power in the Musebeya commune.
12. **Aloys SIMBA** had prepared for the genocide in Gikongoro and Butare for at least a year prior to 1994.
13. At a public rally in Kirambi Market, Rukondo Commune, in April 1994, a few days before the death of President Habyarimana, **Aloys SIMBA** raised funds in order to purchase weapons to fight the "inyenzi". A substantial amount of money was collected.
14. In preparing and planning the massacres, which occurred in Gikongoro and Butare prefectures in April and May 1994, **Aloys SIMBA** acted in concert with:

**Faustin SEBUHURA**, former Gendarmerie Captain, stationed in Gikongoro;

**Laurent BUCYIBARUTA**, former Prefet of Gikongoro;  
**Damien BINIGA**, former Sous-Prefet of Munini sous prefecture, Gikongoro;  
**Denys KAMODOKA**, former Kitabi tea factory director, Gikongoro;  
**Juvenal NDABARINZI**, former Mata tea factory director, Gokongoro;  
**Lt. Col RWAMANYA Augustin**, former officer in charge of Logistics for the ex- FAR;  
**Joachim HATEGEKIMANA**, former Sous-Prefet of Kaduha, sous prefecture Gikongoro;  
**Charles MUNYANEZA**, former Bourgmestre of Kinyamakara commune; and  
**OTHERS** not known to the Prosecution.

15. **Aloys SIMBA** and all or some of the above met regularly between 1991 and June 1994 to plan the genocide at various locations including, the shop of **Israel NSENGIYUMVA** and the bar of **Landoauld KARAMAGE**, Gasarenda commercial centre, Mudasomwa commune and at the gendarmerie barracks, Gikongoro town amongst other places. More specifically, during the months of April and May 1994 some or all of the above named persons would meet to pass on their instructions to the leading Interahamwe, prior to attacks. They would meet after the attacks for debriefings and celebrations.
16. As part of the planning and preparation of the genocide, in the period from March 1993 – April 1994, at CIPEP in Gikongoro, **Aloys SIMBA** with others participated in the recruitment and training of Hutu militiamen, the acquisition and distribution of weapons, and instigated others to kill the Tutsi.
17. **Aloys SIMBA** in the period from March 1993 – April 1994, at CIPEP in Gikongoro, organised, planned and participated in the recruitment and training of the Interahamwe and Hutu youths, who joined in attacks on Kaduha, Kibeho, Murambi and Cyanika, amongst other sites in Gikongoro prefecture and Ruhashya commune in Butare prefecture.
18. More specifically, in or about March 1993, **Aloys SIMBA** together with **Prefet Laurent BUCYIBARUTA** and **Captain Faustin SEBUHURA** trained the trainers of the militia and initiated a census of all Hutu and Tutsi in the prefecture. As a result of **SIMBA's** instructions young Hutu men were recruited from various communes in Gikongoro prefecture and received military training in Nyungwe forest and other places. Former soldiers, communal policemen and others not known to the Prosecution conducted the training. In particular:
  - a) In March 1993, **Aloys SIMBA** organised and supervised the training of bourgmestres, councillors and responsables of Gikongoro Prefecture. The training took place at CIPEP in Gikongoro Town. The course for the responsables concluded with them being given two registers in which they were instructed to register the people of the cellules, one for Hutu and one for Tutsi.
  - b) **Aloys SIMBA** established training camps at Kigeme, Nyamagahe commune and in Mbuga, Mudasomwa commune, where militia were instructed.

- c) In January 1994, **Aloys SIMBA** ordered the bourgmestre and conseillers of Kinyamakara commune to select young men to be given military training. These men were then trained in Mwogo valley for three weeks.

19. During the events of April through June 1994, **Aloys SIMBA** armed militiamen and Hutu civilians who committed the massacres, in Gikongoro and Butare prefectures. He distributed firearms to militiamen for the purpose of killing Tutsi, often using the channels of the local administration, distributing to Bourgmestres for distribution to conseillers and responsables. In this matter, he worked with the Gendarmerie **Captain SEBUHURA**.
20. In the week after the death of the President Habyarimana **Aloys SIMBA** brought 3 boxes containing approximately 50 Kalashnikov rifles to Kinyamakara communal offices. The weapons were off-loaded from **Aloys SIMBA's** vehicle by soldiers and he ordered communal policemen and soldiers to assemble and distribute them. The weapons were distributed to militiamen and those Hutu civilians who had been trained to use rifles. These weapons were used immediately to kill unarmed Tutsi civilians in their homes and at shops at Rugongwe trading centre, Ruhashya commune, Butare prefecture.
21. **Aloys SIMBA** also distributed weapons in April 1994 after the death of President Habyarimana, to Rukondo communal offices. Approximately 40 AK 47 rifles were distributed through the Bourgmestre to conseillers who then distributed them to Hutu civilians.
22. In addition to distributing weapons, **Aloys SIMBA** sought to import arms as early as April 1993. Together with **Prefet BUCYIBARUTA**, **Capt SEBUHURA**, **Bourgmestre SEMUKWAVU**, local businessmen and others, he raised funds for the purchase of weapons and ammunition for the *interahamwe* in April and/or May 1994 in Gikongoro prefecture. It was **Aloys SIMBA** who received this money.
23. **Aloys SIMBA** committed the acts described in this indictment with the intent to destroy in whole or in part the Tutsi ethnic group. He publicly expressed his intent to destroy the Tutsis and incited others to do likewise in various rallies and meetings in Gikongoro and Butare prefectures before and during the events of April to July 1994.
  - a) In April 1993, after a census of Tutsi and Hutu in the prefectures, at a public rally in the market in Gikongoro town, **Aloys SIMBA** said *'Do you see how many Tutsi there are in Gikongoro now? It would be like a lorry full of sand colliding with a small car.'*
  - b) In April 1994, a few days before the death of President Habyarimana, at a public rally in Kirambi Market, Rukondo Commune **Aloys SIMBA** said *'You Banyarwanda do not know what is coming. Everyone of you should get armed and should always walk with your traditional arms. I want you to remember*

what happened in the year 1959. Look at my bald head, I was dragged on the ground by the inyenzi. It is no longer a question of staying in your homes. You must shut the doors so that the cats do not enter your houses. You must also search for the snakes in the bushes and hit them on the head. For those who find the situation difficult, I advise you to flee. Whoever remains in Rwanda will see for himself how the elephants will fight'

- c) On or about 9 April 1994, at the Rugogwe Trading Centre, where he was accompanied by 16 soldiers, **Aloys SIMBA** addressing a group of interahamwe militia, said that the Tutsis were the enemy and that they all should be killed.
- d) On or about 9 April 1994 at the Gasarenda Trading Centre, after having been informed about the killings in the area, **Aloys SIMBA** said to the interahamwe 'There are still many Tutsis in Mudasomwa Commune who you have not touched. There are very many Tutsis at Kibeho, and although it is not your commune you must go and assist your colleagues there.'
- e) In April 1994, **Aloys SIMBA** addressed a gathering at Nzega Centre, Gasaka sector, Nyamagabe commune, where he asked why the population was idling and not behaving like their counter parts in other areas.
- f) On or about 26 April 1994, at a meeting of local authorities in Gikongoro town, presided over by **Aloys SIMBA**, the Bourgmestre of Muko commune informed the participants that there were still 160 Tutsi seeking refuge at his office. In response, **Aloys SIMBA** together with Sous-prefet **MUSHENGUZI** and Captain **SEBUHURA** said that some people in the Prefecture seemed to be ignoring the fact that the President had died, and were idling in their communes.
- g) On or about 22 May 1994, **Aloys SIMBA** attended the inauguration ceremony of Mathieu Ndahimana as Bourgmestre of Ntyazo commune, Butare prefectures. He urged the participants not to spare a single Tutsi saying when you are killing rats in your home, you do not spare even the pregnant ones. **Aloys SIMBA** described the relationship between Hutu and Tutsi as that between cat and rat. Until this time many women, girls, infirm and elderly had been spared, but shortly after, and as a result of his speech, all surviving Tutsi in the area were killed.

24. **Aloys SIMBA's** intent to destroy and incite others to destroy the Tutsi, is highlighted by his actions in Musebeya commune between April and June 1994:

- a) In April 1994, **Aloys SIMBA** returned to Musebeya dressed in uniform and in an MRND car saying *'the situation is dangerous. Even I have been recalled to military service to help hunt Tutsi'*

b) Prior to **Aloys SIMBA**'s arrival in Musebeya the Bourgmestre, Higirot Viateur carried out directives to keep order and prevent attacks. On his arrival **Aloys SIMBA** countermanded Higirot's directives and led the genocide in Musebeya and the wider area.

c) In June 1994, **Aloys SIMBA** incited Hutu to 'work' and he distributed money to young men in payment for their assaults on Tutsi. Administrators did not need to be told 'kill Tutsi' to understand that this was the approved policy.

25. On or about the morning of 7 April 1994, **Juvenal NDABARINZE** arrived at Gasarendra Centre in Mudasomwa commune to meet with other organizers of the killings, including **Aloys SIMBA**, **Denis KAMODOKA**, and **Damien BINIGA**. The statement issued by **KAMODOKA** to incite the killing of the Tutsi population explained the purpose of the meeting. On the afternoon of the same day, traditional weapons brought by **Colonel RWAMANYA** were distributed to the militia in the presence of **Juvenal NDABARINZE**.

26. Between 7 April 1994 and 30 May 1994, thousands of Tutsi and moderate Hutu civilians were attacked in their homes by militiamen. As a result, they were assembled by the local authorities, or fled to, sites where they believed that they would be safe, including amongst other sites in Gikongoro and Butare prefectures:

Kaduha parish and health centre, Karambu commune, Gikongoro  
Murambi Technical college, Nyamagabo commune, Gikongoro  
Gashoba Hill, Ruhashya commune, Butare  
Rugongwe Trading centre, Ruhashya commune Butare  
Cyanika parish, Karama commune, Gikongoro  
Kibeho parish, Mubuga commune, Gikongoro

#### **Massacre at Kaduha Parish:**

27. Starting from 8 April 1994, as a result of the campaign of burning and looting Tutsi homes, thousands of Tutsi civilians fled from neighbouring communes to Kaduha parish, in Karambo commune, Gikongoro prefecture.

28. On or about the 19 and 20 April **Aloys SIMBA** ordered the displaced children, women and men, at Kaduha parish and health centre to dig their own graves.

29. On or about 19 April 1994, **Aloys SIMBA** and **Joachim HATEGEKIMANA**, addressed Hutus gathered at Kaduha trading centre. **Aloys SIMBA** announced that he would go to Gikongoro to collect guns and ammunition and would distribute them on his return.

30. On or about the 20 April 1994, **Aloys SIMBA** returned to Kaduha with a lorry carrying soldiers, guns, and ammunition to launch the first major firearm attack on Kaduha parish. These weapons were stored in the office of the Sous-prefecture.
31. On or about 20 April 1994, **Aloys SIMBA** announced to the gathering at the Kaduha trading centre that there was now no other way but for the Hutus to kill all the Tutsis. He instructed soldiers to begin shooting Tutsi refugees at 03.00 hours and ordered civilian attackers to follow and kill any surviving Tutsi. He also instructed soldiers to shoot those displaying cowardice during the attack. **Aloys SIMBA** deployed soldiers around Kaduha parish.
32. As a result of the above incitement by **Aloys SIMBA**, at about 05.00 hours, a large group of attackers comprised of soldiers, gendarmes, Interahamwe, reservists or former soldiers, militiamen and Hutu civilians attacked Kaduha parish using guns, grenades, machetes, clubs and other traditional weapons. Several soldiers and National Police were camouflaged in civilian clothing while carrying guns. The attack continued until about 17.00 hours. During the attack, which lasted the whole day, **Aloys SIMBA** replenished the ammunition of the attackers on several occasions.
33. During the attack on Kaduha parish, **BUKYIBARUTA**, transported a group of gendarmes to the massacre site to reinforce the attackers' efforts. The gendarmes group joined the attackers and participated in the killings.
34. As a result of the attack, thousands of men, women and children were massacred at Kaduha parish, Gikongoro prefecture on or around 21 April 1994. A majority of the victims were Tutsi. Many of the dead were buried between 23 April and 26 April 1994 in and around Kaduha.

#### **Massacre at Murambi Technical School:**

35. On or about 10 April 1994, **BUKYIBARUTA** held a meeting in the Nyamagabe Commune Office attended by Colonel **Aloys SIMBA**, Captain **Faustin SEBUHURA**, Sous-Préfet **BINIGA**, Bourgmestre of Nyamagabe Commune **SEMAKWAVU**, the representative of the MRND political party, Conseillers of Sectors and other officials as well as ordinary members of the population.
36. During the meeting, **BUKYIBARUTA** said that he did not "want to hear any talk about a single Tutsi who did not go to Murambi. Even those who have taken refuge in the churches must go to Murambi". He explained that "the Tutsis have hatched a plot to kill the Hutus, therefore, the Hutus must start the killing first".
37. At the same meeting **Aloys SIMBA** asked **SEBUHURA** to identify the number of Tutsi gendarmes in his force and **SEMAKWAVU** to identify all young men who were suitable for military training.

38. On or about 11 April 1994, thousands of Tutsi civilians fled their homes and gathered in Gikongoro Diocese. Following the orders of **BUCYIBARUTA**, accompanied by **SEBUHURA** and the then Bourgmestre of Nyamagabe Commune, **SEMAKWAVU**, gendarmes escorted the refugees to Murambi technical school.
39. By 20 April 1994, around 40,000 mostly Tutsi civilians had taken refuge in Murambi technical school. They were surrounded by roadblocks to prevent their escape and were kept under conditions calculated to bring about their destruction. They were denied access to food and water. As a result, some died due to hunger and disease.
40. On or around 19 and 20 April 1994, **Aloys SIMBA**, together with Gendarmerie Captain **SEBUHURA**, Prefet **BUCYIBARUTA**, Sous-prefet **BINIGA** and Bourgmestre **MUNYANEZA** amongst others, organised and ordered government armed forces, militiamen and Hutu civilians to surround and attack the displaced persons who had taken refuge at Murambi technical school. At a meeting, at the gendarmerie barracks, immediately prior to the attack **Aloys SIMBA** urged Captain **SEBUHURA**, prefet **BUCYIBARUTA** and Sous-prefet **BINIGA** to attack the displaced Tutsi at Murambi technical school.
41. On or about the afternoon of 20 April 1994, **BUCYIBARUTA** met with Captain **SEBUHURA** in the gendarmes' Brigade. He informed **SEBUHURA** about the plan to attack Murambi in the early hours of 21 April 1994. Furthermore, he ordered him to release his gendarmes, at about 01.00 hours on 21 April 1994, to join the Interahamwe in the attack on Murambi and make sure that no Tutsi escaped the massacre.
42. **Aloys SIMBA** came to Murambi dressed in military uniform. He arrived in a truck loaded with machetes which he subsequently distributed to the Interahamwe.
43. At about 03.00 hours, on 21 April 1994, following the orders of **BUCYIBARUTA**, a large group of attackers comprised of soldiers, gendarmes, Interahamwe and armed civilians encircled and attacked Murambi using heavy guns, arms, grenades, machetes, clubs and other traditional weapons. Both **Laurent BUCYIBARUTA** and **Faustin SEBUHURA** fired at the refugees.
44. The attack on Murambi continued until about 07.00 hours. Thousands of Tutsi civilians were massacred as a result of this attack and their properties were looted. During the attack, **Aloys SIMBA** delivered and supplied machetes to the attackers and rewarded them after the attack.
45. At about 07.00 hours on 21 April 1994, **Laurent BUCYIBARUTA**, **Aloys SIMBA** and **Faustin SEBUHURA** examined the massacre site. While **Aloys SIMBA** expressed his satisfaction at the results of the killing campaign, **Laurent BUCYIBARUTA** rewarded those who were active in the killing by giving them cows belonging to the victims.
46. As a result of this attack, thousands of men, women and children were massacred at Murambi technical school on or about 21 April 1994. The majority of the victims were

Tutsi. The victims were buried in mass graves dug by prisoners from Gikongoro prison shortly after the attack. The mass burial took approximately one week.

#### **Massacre In Ruhashya Commune:**

47. Sometime in April 1994, after the death of the President, **Aloys SIMBA** organised and ordered two major attacks by government armed forces, militiamen and Hutu civilians on displaced Tutsi civilians in Ruhashya commune, Butare prefecture. The first attack was against the displaced people at Rugogwe trading centre and the second attack was against displaced people at Gashoba Hill.
48. **Aloys SIMBA** armed and transported attackers for the purpose of the attacks. He transported interahamwe to Muhange Bridge, on the border between Kinyamakara (Gikongoro prefecture) and Ruhashya (Butare prefecture). From here the interahamwe pursued and killed fleeing displaced people in the communes of Ruhashya, Rusatira and Nyabisindu, Butare prefecture.
49. **Aloys SIMBA**, together with his escort, participated in these killings by shooting the Tutsi refugees who tried to flee from the interahamwe. In these attacks, many Tutsi men, women and children were killed. During the killings, **Aloys SIMBA** gave instructions and encouragements to the other killers.
50. Prior to the attack on Rugongwe Trading Centre, towards the end of March 1994, **Aloys SIMBA** brought weapons, including long and short guns, to Kinyamakara communal offices, where they were stored. He distributed weapons to the attackers and gave clear instructions on the methods and manner of the attack.
51. **Aloys SIMBA**, armed and dressed in military uniform, led more than a thousand men during the attacks in Ruhashya commune. Some armed local civilians were transported in vehicles belonging to the Bourgmestre, others in a military pickup provided by **Aloys SIMBA**. **Aloys SIMBA** was present at all times, supervising and giving the orders to attack.
52. As a result of the attacks hundreds of men women and children were massacred at Rugongwe and Gashoba in Ruhashya commune. Most of the victims were Tutsi.

#### **Massacre at Cyanika Parish:**

53. **Aloys SIMBA** organised and ordered government armed forces, militiamen and Hutu civilians to attack Cyanika parish on or about 21 April 1994. This attack occurred immediately after the attack on Murambi technical school. As a result of this attack, hundreds of displaced men, women and children were massacred at Cyanika parish. Most of the victims were Tutsi.
54. **Aloys SIMBA** supervised and coordinated the massacre of Tutsis in Cyanika and ordered the interahamwe to cut off all escape routes of any one who tried to escape.

**Massacre at Kibeho Parish:**

55. **Aloys SIMBA** and/or persons trained, armed and instructed by him participated in one or more of a series of massacres during April and May 1994 at Kibeho parish, college, primary school and hospital. This included an attack by Government armed forces, militiamen and Hutu civilians on thousands of displaced people at the parish.
56. On or about 9 April 1994, Aloys SIMBA told the interahamwe in Gasarenda centre to go to Kibeho and help their colleagues there to kill Tutsis.
57. **Aloys SIMBA** distributed weapons to the interahamwe, notably NGOGA, GAKURU, NKUSI, BAKUNDUKIZE Innocent, who participated in the attack on the Kibeho parish.
58. Aloys Simba intended to commit the acts above, this intent being shared by all other individuals involved in the crimes perpetrated.

**Count 3: Extermination as a CRIME AGAINST HUMANITY:**

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Aloys SIMBA** with **Extermination as a CRIME AGAINST HUMANITY**, as stipulated in Article 3(b) of the Statute in that on or between the dates of 6 April 1994 and 30 May 1994 in Gikongoro and Butare prefectures, Rwanda. **Aloys SIMBA** was responsible for killing persons, or causing persons to be killed, during mass killing events as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds.

*Pursuant to Article 6(1) of the Statute:* by virtue of his acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged, in concert with others as part of a joint criminal enterprise.  
**and/or,**

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

**Concise Statements of Fact For Count 3:**

59. Paragraphs 1 through 58 above are incorporated by reference herein.
60. Between 6 April 1994 and 17 July 1994, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds. *Interahamwe* militias engaged in a campaign of violence against Rwanda's civilian Tutsi population and against Hutu civilians perceived to be politically opposed to

the MRND political party. Hundreds of thousands of civilian Tutsi men, women and children and "moderate" Hutus were killed.

61. Between 7 April 1994 and 30 May 1994, **Aloys SIMBA** planned and participated in massacres that occurred in Gikongoro and Butare prefectures, including at Kaduha parish and health centre, Murambi technical school, Ruhashya commune, Cyanika parish and Kibeho parish. These massacres were part of a widespread and systematic attack both within the two prefectures and within Rwanda.
62. **Aloys SIMBA** provided training and weapons to interahamwe, militiamen and others who participated in the attacks. He facilitated the transportation of soldiers, interahamwe, militiamen and others to the above named sites for the purpose of carrying out the attacks.
63. The victims of the massacres were civilians and **Aloys SIMBA** was aware that the victims of the massacres were civilians. He planned and executed the massacres, on the basis of the ethnicity of the victims, namely that they were Tutsi or the political persuasion of the victims, namely that they were in opposition to the MRND party.
64. **Aloys SIMBA** and/ or his subordinates participated directly in the killing of civilians at the massacre sites and elsewhere in Gikongoro and Butare prefectures.
65. These acts were unlawful and intentional.

#### **Count 4: Murder as a Crime Against Humanity**

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Aloys SIMBA** with **Murder as a Crime Against Humanity**, as stipulated in Article 3(a) of the Statute in that **Aloys SIMBA** was responsible for murder, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds.

*Pursuant to Article 6(1) of the Statute:* by virtue of his affirmative acts in planning, instigating, ordering, committing or otherwise aiding and abetting in the planning, preparation or execution of the crime charged, in concert with others as part joint criminal enterprise.

#### **Concise Statements of Fact For Count 4:**

66. Paragraphs 1 through 65 above are incorporated by reference herein.
67. On or about 20 April 1994, at the barracks of the Gendarmerie in Gikongoro Town, **Aloys SIMBA** ordered and supervised the killing of a Tutsi gendarme, NDAGIJIMANA.
68. The Killing of the Tutsi gendarme was part of the campaign against Tutsi civilians.

3428

69. On or about 21 April 1994, at approximately mid-day, in the vicinity of Kaduha Trading Centre, Karambo Commune, Gikongoro prefecture Aloys **SIMBA** shot and killed GASANA, Substitut du procureur of Gikongoro prefecture.
70. At the same time and place Aloys **SIMBA** shot and killed Monique **MUNYANA**, a primary school teacher of Gikongoro prefecture and **MUNYANA**'s child.

**The acts and omissions of Aloys SIMBA detailed herein are punishable in reference to articles 22 and 23 of the Statute of the Tribunal.**

Dated this 10<sup>th</sup> day of May 2004



**Hassan Bubacar JALLOW**  
**The Prosecutor**