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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judge: Dennis C. M. Byron, Presiding
Karin Hökberg
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 20 September 2006

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THE PROSECUTOR

v.

André RWAMAKUBA
Case No. ICTR-98-44C-T

JUDGEMENT

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INTRODUCTION

1. This Tribunal has the authority to prosecute persons responsible for serious violations of international humanitarian law, including genocide and crimes against humanity, committed in the territory of Rwanda and Rwandan citizens responsible for such crimes committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.¹ Under Article 2 of the Statute, genocide is an act committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.² The crime against humanity is defined as a crime committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.³

2. The Appeals Chamber has held that genocide against Tutsi and widespread or systematic attacks against a civilian population based on Tutsi ethnic identification occurred in Rwanda between April and July 1994 are facts of common knowledge not subject to reasonable dispute.⁴ As the Appeals Chamber recalled, this ruling does not lessen the Prosecution's burden of proof: it must still demonstrate that the specific events alleged in an Indictment constituted genocide or a crime against humanity and that the conduct and mental state of an Accused establishes his culpability for such crimes.

3. The Accused, André Rwamakuba, was born in 1950 in Nduba, Gikomero *commune*, Kigali rural *préfecture*. He is qualified as a doctor having studied at Butare University,

¹ Statute, Articles 1 to 4.

² Statute, Article 2(2): Genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

³ Statute, Article 3: The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

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

⁴ *Karemura et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), paras. 29 and 35; see also: *Semanza Appeal Judgement*, para. 192.

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Rwanda, in Zaïre (now the Democratic Republic of Congo) and in Belgium.⁵ He was a public health specialist and in 1992 was appointed Director of the Kigali Health Region. In 1994, after the death of Rwandan President Juvénal Habyarimana, he was appointed Minister of Primary and Secondary Education in the Interim Government, and took oath on 9 April 1994. He was a member of the *Mouvement démocratique du Rwanda* (MDR) party.⁶

4. André Rwamakuba was first arrested on 2 August 1995 upon what appears to have been an independent initiative of the Namibian authorities. Once contacted, the Prosecution indicated that it had instructed its office in Kigali to take urgent steps to ascertain whether it was interested in the prosecution of Rwamakuba on charges within the Tribunal's jurisdiction.⁷ A month later, the Prosecution notified the Namibian authorities that it did not possess evidence which would entitle it to request his detention.⁸ Rwamakuba was subsequently released on 8 February 1996.

5. Three years after that initial arrest, the Prosecution did file an indictment against André Rwamakuba and seven other co-Accused.⁹ Rwamakuba was arrested by the Namibian authorities on 21 October 1998, in compliance with a Tribunal warrant of arrest and Order for transfer and detention,¹⁰ and transferred to the United Nations Detention Facilities ("UNDF") in Arusha the following day. Rwamakuba pleaded not guilty to all the charges against him.¹¹

6. After four of his co-Accused were severed from the 1998 Indictment,¹² the trial against André Rwamakuba and the three remaining co-Accused, namely Edouard Karemera, Mathieu Ndirumpaste and Joseph Nzirorera, commenced on 27 November 2003. Thirteen Prosecution witnesses were heard before the trial was interrupted in May 2004 as a result of the Presiding Judge's withdrawal from the case. A rehearing of the case with a different bench was then

⁵ Curriculum vitae of André Rwamakuba (Exh. D. 184); Prosecution Closing Brief, para. 6 and footnote 3; Defence Closing Brief, pp. 2-5.

⁶ Indictment, para. 1; Prosecution Pre-Trial Brief, para. 11; Prosecution Closing Brief, paras. 7-10; Defence Closing Brief.

⁷ See Prosecution's letter of 22 December 1995, attached to the Defence "Additional Evidence in Support of Motion for Stay of Proceedings on Grounds of Undue Delay of 13 May 2005", filed on 1 June 2005; *Rwamakuba*, Decision on André Rwamakuba's Motion for Severance (TC), paras. 30 and 32.

⁸ See Prosecution's letter of 18 January 1996, attached to the Defence "Additional Evidence in Support of Motion for Stay of Proceedings on Grounds of Undue Delay of 13 May 2005", filed on 1 June 2005.

⁹ *Bizimana et al.*, Confirmation and Non-Disclosure of the Indictment, 29 August 1998.

¹⁰ *Rwamakuba*, Warrant of Arrest and Order for Transfer and Detention (TC).

¹¹ See: Initial Appearance, T. 7 April 1999.

¹² See *Bizimana et al.* Case, Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Juvénal Kajelijeli (TC); *Bizimana et al.*, Decision on the Prosecutor's Motion for severance of Félicien Kabuga's Trial and for Leave to the Accused's Indictment (TC); *Bizimana et al.*, Decision on the Prosecutor's Motion for Separate Trials and for Leave to File an Amended Indictment (TC).

necessary.¹³ The new Chamber subsequently granted the Prosecution's request for severance of Rwamakuba from the joined Indictment and ordered a separate trial pursuant to an Amended Indictment.¹⁴ This Indictment filed 10 days later charges André Rwamakuba with genocide, or in the alternative complicity in genocide, and crimes against humanity.¹⁵ At a further initial appearance held on 21 March 2005, the Chamber entered a plea of not guilty to all counts in the absence of the Accused.¹⁶ The Defence for André Rwamakuba did not dispute that genocide occurred in Rwanda in 1994, but contested the Accused's participation in any of the crimes alleged in the Indictment.¹⁷ Following the Chamber's rulings on the defects in the form of the Indictment, the Prosecution filed its final version on 10 June 2005.¹⁸

7. The trial in the instant case commenced on 9 June 2005. Eighteen Prosecution witnesses were heard, including one investigator and one expert witness, over 39 trial days.¹⁹ Two Prosecution witnesses refused to testify. The Chamber was not requested to issue a subpoena order for these witnesses to appear before the Tribunal. Rather, the Prosecution moved for an adjournment of the proceedings until some unspecified time in October 2005.²⁰ After several opportunities were given to the Prosecution to clarify if and when these witnesses would testify, the Chamber denied the Prosecution's application considering the interests of justice and the right of the Accused to be tried without undue delay.²¹ In its ruling, it found that the Prosecution demonstrated a lack of diligence and had failed to persuade the Chamber that these two witnesses were critical to the case against the Accused.²²

¹³ *Karemera et al.*, Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC); *Karemera et al.*, Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC).

¹⁴ *Karemera et al.*, Decision on severance of André Rwamakuba and for Leave to File Amended Indictment (TC).

¹⁵ Amended Indictment filed on 10 June 2005, counts 1 to 4.

¹⁶ André Rwamakuba did not appear before the Chamber. His Counsel asserted that Rwamakuba had been provided with the Indictment and had been apprised of its content (T. 21 March 2005). The Amended Indictment was filed on 23 February 2005 and re-filed on 9 March 2005, due to typographical errors and in accordance with the Chamber's Order to Re-File the Amended Indictment (TC).

¹⁷ See for e.g.: T. 21 April 1994, p. 35.

¹⁸ *Rwamakuba*, Decision on Defects in the Form of the Indictment (TC). See also: T. 6 June 2005; T. 9 June 2005.

¹⁹ The Prosecution conducted its case during two trial sessions: from 9 June to 15 July 2005 and from 22 August to 13 September 2005. The expert witness was heard in part via teleconference; both parties agreed on it (T. 22, 23 and 24 August 2005).

²⁰ T. 13 September 2005, p. 3. See *Rwamakuba*, Decision on Prosecution Motion for Reconsideration or, in the Alternative, Certification to Appeal Chamber's Decision Denying Request for Adjournment (TC).

²¹ T. 13 September 2005, pp. 13-14.

²² *Rwamakuba*, Decision on Prosecution Motion for Reconsideration or, in the Alternative, Certification to Appeal Chamber's Decision Denying Request for Adjournment (TC).

8. The Defence case commenced on 7 November 2005 and 31 witnesses were called over 39 days.²³ The Chamber undertook a site visit in Rwanda with the parties in January 2006.²⁴ Key locations relevant to the charges against André Rwamakuba were viewed in Kigali, Gikomero and Butare areas.²⁵ The closing arguments of both parties were heard on 21 April 2006, approximately 10 weeks after the close of the Defence case.²⁶

9. From the outset André Rwamakuba refused to attend court proceedings. According to his Counsel, this was due to the Accused's belief that the evidence against him was being manipulated.²⁷ The Chamber nevertheless regularly invited him to attend the proceedings, through the Registrar and his Counsel.²⁸ The trial proceeded in the absence of the Accused in accordance with Rule 82*bis* of the Rules.²⁹

10. The charges against the Accused are discussed in **Chapter I**. The Chamber then reviews the evidence adduced during the trial and will reach its findings in **Chapter II**. **Chapter III** pertains to the rights of the Accused and **Chapter IV** contains the verdict.

CHAPTER I – CHARGES AGAINST THE ACCUSED

11. In its Closing Brief, the Prosecution contends that by his acts and omissions, André Rwamakuba is criminally responsible under Article 6(1) of the Statute for having planned, ordered, instigated and committed the crimes of genocide, or complicity in genocide, murder and extermination as crimes against humanity in Gikomero *commune* and at Butare University Hospital during April 1994.³⁰ It also submits that as Minister of Primary and Secondary Education, Rwamakuba “did nothing, either to denounce the crimes committed against the Tutsi, [o]r to dissociate himself from the [Interim Government]”. It submits that by

²³ The Defence case was conducted during two trial sessions: from 7 November to 16 December 2005 and from 17 January to 9 February 2006. At the Defence's request, four witnesses testified via video-link. The Prosecution did not oppose. See: *Rwamakuba*, Decision on Confidential Motion for the Testimony of Defence Witness 1/15 (TC); T. 18 January 2006, p. 37; T. 19 January 2006, p. 3.

²⁴ *Rwamakuba*, Decision on Defence Motion for A View Locus In Quo (TC).

²⁵ Minutes for the Site Visit to Rwanda in the *Rwamakuba* case, 13-16 January 2005.

²⁶ T. 21 April 2006.

²⁷ See: T. 6 June 2005, pp. 2-3.

²⁸ See for e.g.: T. 6 June 2005, p. 4; T. 27 June 2005, p. 2; T. 4 July 2005, pp. 1-2; T. 11 July 2005, pp. 1-2; T. 22 August 2005, pp. 1-2; T. 29 August 2005, p. 1; T. 1 November 2005, p. 1; T. 7 November 2005, p. 1; T. 14 November 2005, p. 1; T. 17 January 2006, p. 3.

²⁹ A chronology of the case is annexed to this Judgement (Annex II).

³⁰ Prosecution Closing Brief, paras. 19, 208, 216-217, 239, 243-244, 248, 268 and 269.

these omissions, Rwamakuba directly failed to discharge the duties entrusted to him, which he had sworn to fulfil, and that he encouraged the genocidal activities.³¹

12. The Prosecution further contends that “a Trial Chamber may find an accused guilty when it is satisfied that the accused participated in a crime by committing any one of the acts covered by the Statute, *even if the Chamber does not endorse the Prosecution’s case*”.³² It adds that “[a]s a Tribunal of fact and law, the Chamber may accept any argument that it finds relevant to the facts of the case, on condition that the said argument is consistent with the provisions of Article 6(1) of the Statute”.³³ In the Prosecution’s view, the question of notifying the Accused of the charges against him in that respect does not arise, since he was informed of the forms of responsibility under Article 6(1) of the Statute for which he was being prosecuted and which have been established by the Prosecution.³⁴

13. Article 17(4) of the Statute and Rule 47(C) of the Rules require the Prosecution to set forth in the Indictment a concise statement of the facts of the case and of the crime(s) with which the suspect is charged. This obligation must be interpreted in light of the rights of the accused to a fair trial, to be informed of the charges against him, and to have adequate time and facilities for the preparation of his defence.³⁵ According to the jurisprudence of both *ad hoc* Tribunals, this translates into an obligation on the part of the Prosecution to state the material facts underpinning the charges in the Indictment, but not the evidence by which such material facts are to be proven.³⁶

14. The Indictment, therefore, has to fulfil the fundamental purpose to inform the Accused of the charges against him with sufficient particularity to enable him to mount his defence.³⁷ Failure to set forth the specific material facts of a crime constitutes a material defect in the Indictment. This defect may nonetheless be cured, and a conviction entered, where the accused has received timely, clear, and consistent information from the Prosecution which resolves the ambiguity or clears up the vagueness.³⁸ In assessing whether a defective

³¹ Prosecution Closing Brief, para. 265.

³² Prosecution Closing Brief, para. 266 (emphasis added).

³³ *Ibidem*.

³⁴ Prosecution Closing Brief, para. 266.

³⁵ Statute, Articles 19, 20(2), 20(4)(a) and 20(4)(b).

³⁶ *Ntakirutimana* Appeal Judgement, paras. 25 and 470 ; *Rutaganda* Appeal Judgement, paras. 301-303; *Ntagerura* Appeal Judgement, para. 21; *Nalétilic* Appeal Judgement, para. 26.

³⁷ *Ntakirutimana* Appeal Judgement, paras. 25 and 470; *Ntagerura* Appeal Judgement, para. 22.

³⁸ *Niyitegeka* Appeal Judgement, para. 195; *Ntagerura* Appeal Judgement, paras. 30; *Gacumbitsi* Appeal Judgement, para. 49.

indictment was cured, the Chamber must determine whether the accused was in a reasonable position to understand the charges against him or her and to confront the Prosecution's case.³⁹

15. In the present case, after a brief description of the Accused, his authority and legal duties,⁴⁰ the four counts of the Indictment charge André Rwamakuba pursuant to Articles 2, 3 and 6(1) of the Statute, with genocide, or in the alternative, *complicity in genocide*, and extermination and murder as crimes against humanity regarding events that took place on or between 6 and 30 April 1994 in Gikomero *commune* and at Butare University Hospital.⁴¹ These four counts set out the crimes for which the Accused is charged. The respective succeeding paragraphs set out the concise statement of facts on which the allegations are based.⁴²

16. Paragraph 11 of the Indictment details how between 10 and 20 April 1994, in Gikomero *commune*, the Accused allegedly delivered machetes that were subsequently used in killing or attempting to kill Tutsi. Paragraphs 12, 13, 23 and 26 of the Indictment describe how during the same period and in the same *commune*, the Accused allegedly ordered and participated in the killing of three persons identified as Tutsi and in the massacre of Tutsi refugees at the Kayanga Health Centre. The alleged participation of the Accused in massacres at Butare University Hospital between 18 and 25 April 1994 is set forth at paragraphs 15 to 16, 23 and 26 of the Indictment.

17. The Indictment also describes André Rwamakuba's alleged political status and related political activities. It sets out how he conducted sensitization campaigns against Tutsi in Gikomero *commune* between 26 July 1993 and June 1994.⁴³ It alleges that as a Minister of Primary and Secondary Education of the Interim Government of 8 April 1994, he took part in the conception and the implementation of the Government's policies to exterminate the Tutsi throughout Rwanda.⁴⁴ The Accused is also defined as a member of the extremist wing of the *Mouvement Démocratique du Rwanda*, MDR "Hutu Power", which was allegedly created on or about 26 July 1993 and had a specific ideology of exterminating the Tutsi.⁴⁵

³⁹ *Rutaganda* Appeal Judgement, para. 303; see also: *Ntakirutimana* Appeal Judgement, paras. 27 and 469-472; *Ntagerura* Appeal Judgement, paras. 30 and 67; *Gacumbitsi* Appeal Judgement, para. 49.

⁴⁰ See Indictment, paras. 1 and 2.

⁴¹ The Amended Indictment was filed on 10 June 2005, and is attached to the present Judgement (see Annex 1).

⁴² See the use of the words "as follows" at the end of each introductory paragraph of each Count.

⁴³ Indictment, paras. 3 to 5.

⁴⁴ Indictment, paras. 1, 7, 9, 14 and 19.

⁴⁵ Indictment, para. 3.

18. The Indictment does not allege the Accused's criminal responsibility as superior for crimes committed by subordinates.⁴⁶ In addition to alleging complicity in genocide,⁴⁷ the Indictment includes only a general reference to Article 6(1) of the Statute in relation to each of the four counts. In accordance with the settled jurisprudence, such general reference implies that the Accused is prosecuted for all forms of individual participation set out by Article 6(1) of the Statute, namely planning, instigating, ordering, committing and aiding and abetting in the planning, preparation or execution of a crime.⁴⁸ The Appeals Chamber and some Trial Chambers have stated that this provision is interpreted "[to cover] first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law."⁴⁹ In the present case, there is no allegation of any legal duty under which the Accused was mandated to act and which failure to do so would constitute a criminal act.

19. Reading the Indictment as whole, the Chamber concludes that the allegations describing the political activities of the Accused provide the context or background from which inferences could be drawn either concerning his intent, his disposition or other elements of his individual participation in specific crimes in Gikomero *commune* and at Butare University Hospital between 6 and 30 April 1994. This conclusion is in accordance with the clear and consistent notice given by the Prosecution throughout its representations of the case, its Pre-Trial Brief and Opening Statement, and its evidence adduced during the trial, as described hereinafter.

20. When André Rwamakuba was jointly indicted with three co-Accused, all were charged with conspiracy to commit genocide, direct and public incitement to genocide, genocide, or alternatively complicity in genocide, rape and extermination as crimes against humanity, and serious violations of Article 3 Common to the Geneva Conventions.⁵⁰ That

⁴⁶ Statute, Article 6(3): The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior criminal responsibility if he or she knew or had reasons to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

⁴⁷ According to the jurisprudence, complicity in genocide is a form of liability. See: *Ntakirutimana* Appeal Judgement, para. 500; *Semanza* Appeal Judgement, para. 316; *Krstić* Appeal Judgement, para. 139.

⁴⁸ *Ntakirutimana* Appeal Judgement, para. 473.

⁴⁹ See: *Tadić* Appeal Judgement, para. 188; *Kayishema* Appeal Judgement, para. 187; *Musema* Judgement, para. 123; *Bagilishema* Judgement, para. 29 and footnote 19; *Kamuhanda* Judgement, para. 595; *Kajelijeli* Judgement, para. 764; *Ntagerura* Judgement, para. 659.

⁵⁰ In 1998, the Prosecution filed an Indictment against Augustin Bizimana, Félicien Kabuga, Juvénal Kajelijeli, Edouard Karemera, Mathieu Ndirumpaste, Callixte Nzabonimana, Joseph Nzirorera and André Rwamakuba. As a result of the severance of four of these co-Accused, the Prosecution charged André Rwamakuba jointly with Edouard Karemera, Mathieu Ndirumpaste and Joseph Nzirorera (see: Amended Indictment filed on 18 February 2004).

Indictment pleaded not only the direct criminal responsibility of the four Accused as perpetrators or accomplices but also as superiors for the crimes committed by their subordinates. The Prosecutor's theory alleged a "huge government conspiracy of State-sponsored genocide".⁵¹

21. In 2004, before the rehearing of the trial began, the Prosecution requested the severance of André Rwamakuba from the joint Indictment. It contended that "it [was] not necessary to support a joint trial to prosecute Rwamakuba effectively" and that it intended to focus the case entirely on Rwamakuba's "direct participation in crimes", thereby removing any allegation of conspiracy to commit genocide or joint criminal enterprise responsibility.⁵²

22. The Prosecution reiterated this affirmation several times.⁵³ It stated in open court that the entire case was to be based on André Rwamakuba's own acts and omissions and that it was not going to "attempt to bring in proof of Rwamakuba's meeting and conspiring with other interim government ministers and other MRND leaders to commit genocide".⁵⁴ The Prosecution also indicated that any pleading of 'common purpose' implicating Rwamakuba as a co-perpetrator of crimes committed throughout Rwanda in furtherance of a government conspiracy to commit genocide had been removed from the Indictment.⁵⁵

23. At first, André Rwamakuba opposed the Prosecution's application for severance.⁵⁶ Subsequently, his Defence altered its position on the premise of the Prosecution's stated new theory against the Accused.⁵⁷ It stressed the significance of that understanding in determining

⁵¹ See Prosecutor's Consolidated Motion to Sever Rwamakuba from the Joint Indictment and to Try Him Separately, For Leave to File a Separate Amended Indictment against Rwamakuba, and For Leave to File a Separate Amended Indictment against Karemera, Ndirumpatse and Nzirorera, filed on 20 December 2004, para. 11; see also Prosecutor's Motion for Leave to File an Amended Separate Indictment against Karemera, Ndirumpatse and Nzirorera, filed on 19 November 2004, para. 14.

⁵² Prosecutor's Motion of 19 November 2004, paras. 14 and 21.

⁵³ See T. 25 November 2004, p. 13; Prosecutor's Consolidated Motion.

⁵⁴ T. 25 November 2004, p. 13.

⁵⁵ Prosecutor's Consolidated Motion of 20 December 2004, para. 15.

⁵⁶ At that stage, the Defence considered that a joint trial would assist the Chamber in placing in context the nature of Rwamakuba's activities as a Minister and would assist to controvert the prosecution's theory of a concerted government plan to which all Ministers were party. The Defence further expressed its concern that the proposed Separate Indictment at that time did not reflect the stated intent of the Prosecution in its severance motion. It contended that the proposed Separate Indictment did not in fact reduce the substance of the Prosecution case against the Accused. The Defence was therefore of the view that the Accused's interests were best served within a joint trial, rather than dealt with in a less coherent manner to support indirect responsibility by virtue of his alleged influence and effective control as a Minister and so called "high ranking member of Hutu power" (Response on Behalf of Dr Rwamakuba to the Prosecutor's Motions for Separate Trials, filed on 24 November 2004, paras. 36-38).

⁵⁷ Rwamakuba's Response to the Prosecution's Motion to Sever and File a Separate Amended Indictment, filed on 10 January 2005, p. 2.

its advice to the Accused and to his subsequent consent not to oppose severance.⁵⁸ The Prosecution replied that “it [was] evident that the Prosecutor [intended] to establish Rwamakuba’s criminal responsibility under the Statute for commission of crimes in Gikomero and Butare and [would] *not rely upon the doctrine of joint criminal enterprise or seek to establish his criminal responsibility for acts and omissions of the Interim Government throughout Rwanda*”.⁵⁹ The Prosecution further submitted that the question of what evidence it may adduce to establish his responsibility was different and that it intended to offer evidence of his ministerial appointment, “*to prove elements of the Prosecution case such as mens rea for genocide*”.⁶⁰ The Chamber granted the severance of André Rwamakuba on the basis of the Prosecution’s assertions and its stated revised theory against the Accused.⁶¹

24. Later, when replying to the Defence Motion on Defects in the Form of the Indictment, the Prosecution reiterated the same position.⁶² In the light of these submissions, the Chamber ruled that one particular paragraph which could have raised ambiguities concerning the exact nature of the responsibility alleged against the Accused was to be struck from the Indictment.⁶³

25. The Prosecution’s Pre-Trial Brief also presents the factual allegations against the Accused divided between events in Gikomero *Commune* and at Butare University Hospital, and alleges his criminal responsibility under Article 6(1) of the Statute for crimes committed in those specific locations.⁶⁴ The Prosecution Opening Statement was consistent with this theory.⁶⁵

26. Until the submission made at the latest stage by the Prosecution in its Closing Brief, there was therefore no indication in the Indictment, the Pre-Trial Brief or the Opening Statement that the charges against the Accused included a responsibility, as a Minister of the

⁵⁸ *Ibid.*, pp. 2 and 4: [The Defence] have altered [its] position and provided advice to the Accused in the light of the increased clarity of the Prosecution position expressed in the renewed motion, and on the premise that the Prosecution will adhere to their expressed position. [...] It is therefore [the Defence] understanding that the position is that, on severance, the Prosecution seeks to prove culpability solely through evidence of events in Gikomero and Butare that concern Rwamakuba [...] [and] does not intend to rely on the doctrine of joint criminal enterprise.

⁵⁹ Prosecutor’s Reply to the Defence Submissions on the Consolidated Motion to Sever Rwamakuba from the Joint Indictment and for Leave to Amend the Indictment, filed on 10 February 2005, para. 2 (emphasis added).

⁶⁰ Prosecutor’s Reply, filed on 10 February 2005, para. 3 (emphasis added).

⁶¹ *Karemera et al.*, Decision on Severance of André Rwamakuba and For Leave to File Amended Indictment (TC).

⁶² *Réponse du Procureur à la requête de la Défense en date du 27 avril 2005, intitulée “Preliminary Motion on Behalf of the Accused on Defects in the Form of the Indictment of 23 February 2005”*, filed on 4 May 2005.

⁶³ *Rwamakuba*, Decision on Defects in the Form of the Indictment (TC), para. 18.

⁶⁴ Prosecution Pre-Trial Brief, paras. 15 to 29, 30 to 40 and 74.

⁶⁵ T. 9 June 2005.

Interim Government, for not having denounced the crimes committed against the Tutsi or for not dissociating himself from the Government, and for a failure to discharge the duties entrusted to him as a member of the Government. On the contrary, from the outset, the Prosecution gave clear and consistent information both to the Accused and to the Chamber that its case was limited to Rwamakuba's direct participation in criminal activities in two specific locations⁶⁶ within a specific time-frame.⁶⁷ Before and during the presentation of the evidence at trial, the Prosecution never claimed to revise this stated position.

27. The Chamber notes that in its closing arguments the Defence reiterated its understanding of the Prosecution's case against the Accused. It emphasised that it had conducted the Defence of André Rwamakuba on the plain understanding that "command responsibility, joint criminal enterprise, were out and that the relevance of his being a minister was confined to disposition and ideology".⁶⁸

28. It would therefore be contrary to the fundamental right of the Accused to a fair trial, including his right to defend himself and to know the charges against him, if the Chamber were to accede to a Prosecution request to find the Accused criminally responsible for omissions which were neither set forth in the Indictment nor subsequently notified by timely, clear, and consistent information from the Prosecution.⁶⁹ The Prosecution is expected to know its case before it goes to trial rather than seek to mould its case at the end of the trial depending on how the evidence unfolded.

29. The Chamber therefore considers that in the present case, the Prosecution charges André Rwamakuba, pursuant to Article 6(1) of the Statute,⁷⁰ with genocide, or alternatively, complicity in genocide, and crimes against humanity for acts allegedly committed between 6 and 30 April 1994 in Gikomero *commune* and at Butare University Hospital, as pleaded in Counts 1 to 4 of the Indictment. Any factual allegation related to André Rwamakuba's political activities or role as a member of the MDR party or as Minister of the Interim

⁶⁶ Gikomero *Commune* and Butare University Hospital.

⁶⁷ Between 6 and 30 April 1994.

⁶⁸ T. 21 April 2006, pp. 37 and 39.

⁶⁹ Compare with *Ntagerura* Judgement, para. 34, in which the Trial Chamber did not consider the Prosecutor's argument, which were advanced for the first time during the presentation of closing arguments, to hold the accused criminally responsible based on the theory of joint criminal enterprise. The Appeals Chamber confirmed this finding (*Ntagerura* Appeal Judgement, paras. 33-46).

⁷⁰ For planning, instigating, ordering, committing or otherwise aiding and abetting in the planning, preparation or execution of these crimes.

Government must be considered as context or background from which inferences could be drawn concerning, for instance, his intent, disposition or other elements of the crimes.⁷¹

CHAPTER II - FINDINGS

30. Before addressing its factual findings (II), the Chamber briefly discusses two applicable rules on evidentiary matters (I).

I. RULES ON EVIDENTIARY MATTERS

31. In the Chamber's view, there are two principles especially significant in the assessment of the evidence: first, the presumption of innocence of each accused person (I.1.); and second, the Chamber's discretionary power concerning the assessment of the evidence in view of a fair determination of the matter (I.2.).

I.1. PRESUMPTION OF INNOCENCE

32. Each accused is presumed innocent.⁷² Accordingly, the Prosecution bears the onus of establishing the accused's guilt beyond reasonable doubt.⁷³ The Defence does not have to adduce rebuttal evidence to the Prosecution's case. The Prosecution will fail to discharge its persuasive burden of proof if the Defence's evidence raises a reasonable doubt within the Prosecution's case.⁷⁴ This principle also applies when the accused denies commission of the crimes with which he is charged because he was not at the scene of the crime at the time of its commission: "the Prosecution's burden is to prove the accused's guilt as to the alleged crimes beyond reasonable doubt in spite of the proffered alibi".⁷⁵ According to the settled jurisprudence, if the defence is reasonably possibly true, it must be successful.⁷⁶

⁷¹ See: Indictment, paras. 3 to 9, 14 and 17-19.

⁷² Statute, Article 20(3).

⁷³ See also Rule 87(A):

[...] A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.

⁷⁴ *Kayishema* Judgement, para. 117; *Musema* Judgement, para. 213; *Niyitegeka* Judgement, paras. 60-61.

⁷⁵ *Kajelijeli* Judgement, para. 43.

⁷⁶ *Niyitegeka* Judgement, paras. 60-61.

1.2. CHAMBER'S DISCRETIONARY POWER IN THE ASSESSMENT OF THE EVIDENCE

33. The Rules of Procedure and Evidence govern the proceedings. The Chamber is not bound by national rules of evidence and may, in cases not otherwise provided for in the Rules, apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.⁷⁷ A Chamber may also admit any relevant evidence which it deems to have probative value.⁷⁸

34. Considering these principles, corroboration of evidence is not necessarily required: a Chamber may rely on a single witness' testimony as proof of a material fact.⁷⁹ A Chamber also has a broad discretion to admit hearsay evidence, even when it cannot be examined at its source and when it is not corroborated by direct evidence.⁸⁰

35. The probative value to be attached to testimony is determined according to its credibility and reliability. When a witness is found to be credible, a Chamber must also determine whether his or her evidence is reliable. When applying these criteria, a Chamber must consider the evidence as a whole, including other witnesses' testimonies and the exhibits admitted.⁸¹

II. FACTUAL FINDINGS

36. In the present case, the Prosecution's evidence consisted mainly of hearsay evidence concerning both the content of the allegations and also the identification of André Rwamakuba. Five of the 18 Prosecution witnesses claimed to have direct knowledge of Rwamakuba.⁸² Two witnesses also gave uncorroborated evidence to support specific allegations in the Indictment.⁸³ The Prosecution did not specify why this was the case and it must be presumed that this was the best evidence available. The Defence called witnesses who had both direct and indirect knowledge of Rwamakuba and many of them claimed to have been eyewitnesses to events alleged in the Indictment.

⁷⁷ Rules 89(A) and (B).

⁷⁸ Rules 89(C).

⁷⁹ See for e.g.: *Semanza* Appeal Judgement, para. 153; *Gacumbitsi* Appeal Judgement, para. 72.

⁸⁰ See for e.g.: *Akayesu* Appeal Judgement, para. 286; *Kajelijeli* Judgement, para. 45; *Gacumbitsi* Appeal Judgement.

⁸¹ *Ntagerura* Appeal Judgement, paras. 172-174.

⁸² See: Prosecution Witnesses GLM and GIT claimed that they personally knew André Rwamakuba's family; Prosecution Witnesses GIN and ALA claimed that they were personally introduced to Rwamakuba; Prosecution Witness XV testified that he used to see Rwamakuba when the latter was a student.

⁸³ See Prosecution Witness GAC with respect to the delivery of machetes at Kamanzi's house; and Prosecution witness GIN regarding the killing of three people at the Gikomero *secteur* office.

37. The Chamber will assess the evidence in order to determine whether the Prosecution has proved beyond reasonable doubt that any of the criminal acts pleaded in the Indictment⁸⁴ were planned, instigated, ordered, committed or aided and abetted by the Accused, or with respect to the genocide that he was complicit in these acts, in Gikomero *commune* and at Butare University Hospital in April 1994. If established, the Chamber will determine whether these criminal acts were committed with the specific intent to destroy, in whole or in part, the Tutsi group, and whether these acts were committed as a part of a widespread or systematic attack against the Tutsi civilian population on political, ethnic, or racial grounds. Pursuant to the established jurisprudence, the criminal intent of an accused may be proved through inferences from the facts and circumstances of a case.⁸⁵ This approach does not relieve the Prosecution of its burden of proving each element of its case, including genocidal intent, beyond reasonable doubt.⁸⁶

38. The case against the Accused revolves around two sets of events allegedly committed in Gikomero *commune* and at Butare University Hospital. They are reviewed in Sections II.1. and II.2. respectively.

39. For each allegation, the Chamber will bear in mind that the Indictment is the main accusatory instrument. As discussed in Chapter 1, the Pre-Trial Brief and the Opening Statement may, in some circumstances, resolve any ambiguities in the Indictment, provided that the Accused was in a reasonable position to understand the charges against him and confront the Prosecution case.

40. The evidence will be assessed as a whole, although the different elements of the assessment of the evidence are divided into sub-sections in the interests of clarity. For each allegation, the Chamber discusses the identification of the Accused, and the credibility and reliability of the Prosecution and Defence witnesses, including the alibi evidence. The Chamber will use various criteria in its assessment of the evidence, such as internal discrepancies in the witness' testimony, inconsistencies with other witnesses' testimony, inconsistencies with the witness' prior statements, relationship between the witness and the Accused and other witnesses, the criminal record of the witness, the impact of trauma on a

⁸⁴ According to the Indictment: killings, or causing serious bodily or mental harm to the Tutsi population, or deliberately inflicting conditions of life upon the Tutsi population that were calculated to bring about its physical destruction in whole or in part, as genocide, and murder or extermination as crimes against humanity.

⁸⁵ *Gacumbitsi* Appeal Judgement, paras. 39-41; *Rutaganda* Appeal Judgement, para. 525; see also: *Akayesu* Judgement, paras. 523-524; *Bagilishema* Judgement, para. 63; *Gacumbitsi* Judgement, para. 252.

⁸⁶ *Gacumbitsi* Appeal Judgement, para. 41.

witness' memory, discrepancies in translation, social and cultural factors, and the demeanour of the witness. References to admitted exhibits will also be made where appropriate.

41. Most Prosecution and Defence witnesses were granted protective measures in order to prevent public disclosure of their identities.⁸⁷ The Chamber seeks to set forth the basis of its reasoning as clearly as possible, whilst avoiding disclosure of any information that may reveal the identity of protected witnesses.

II.1. ALLEGED CRIMINAL ACTS COMMITTED BY ANDRÉ RWAMAKUBA IN GIKOMERO COMMUNE

42. The *commune* of Gikomero, presently named Gasabo District, lies approximately 25 kilometres north of Kigali town.⁸⁸ In 1994, it was within the *préfecture* of Kigali Rural and was divided into ten *secteurs*, including the Bumbogo, Gasabo, Gicaca, Gikomero, Gishaka, Kayanga, Nduba, Rutunga, Sha and Shango *secteurs*.⁸⁹ Each *secteur* was divided into *cellules*. Gikomero *commune* was surrounded by the *communes* of Giti, Gikoro, Rubungo, Rutongo and Mugambazi.⁹⁰ The Chamber and the parties went to Gikomero *commune* in January 2006 and viewed specific locations relevant to the case including the Trading Centre, the *secteur* Office, the Protestant School site, Kayanga School, Kayanga Health Centre and the Ndatemwa Trading Centre.⁹¹

43. The Indictment alleges that from 26 July 1993 until June 1994, André Rwamakuba travelled around various *secteurs* of the Gikomero *commune* organizing and participating in meetings which called upon the Hutu majority to exterminate the Tutsi, recruiting members for "MDR-Hutu Power" and supporting the "Hutu Power" (II.1.1.). It further alleges that between 10 and 11 April 1994, after these sensitization campaigns, Rwamakuba delivered weapons that were to be used to kill the Tutsi to the homes of André Muhire, near Ndatemwa Trading Centre in Gasabo *secteur*, and Etienne Kamanzi, located in the Kayanga *secteur* (II.1.2.). He is also alleged to have instigated the killing of three unknown men, but identified

⁸⁷ *Karemera et al.*, Order on Protective Measures for Prosecution Witnesses (TC); *Rwamakuba*, Decision on Defence Motion for Protective Measures (TC), and Decision on Prosecution Motion For Variation, or in Alternative Reconsideration of the Decision on Protective Measures for Defence Witnesses (TC).

⁸⁸ Distance between Kigali town and Gikomero *secteur* Office, Exh. P. 2. The Defence acknowledges that the routes to Gikomero *commune* are reasonably reviewed in that document (Defence Closing Brief, p. 22).

⁸⁹ See: Testimony of Prosecution investigator Upendra Baghel, T. 13 June 2005, pp. 8-9; *Defence Closing Brief*, para. 23.

⁹⁰ See Exh. P. 2.

⁹¹ Minutes for the Site Visit to Rwanda in the *Rwamakuba* case, 13-16 January 2005 (Annex A).

as Tutsi, at the Gikomero *secteur* office (II.1.3).⁹² Finally, between 13 and 15 April 1994, Rwamakuba allegedly went to the Kayanga Health Centre where he signalled the beginning of the massacres against Tutsi refugees and witnessed their killing committed by soldiers and *Interahamwe* (II.1.4.).

44. The Chamber will address each of these allegations in turn, and assess the related evidence. Neither the Indictment nor the Prosecution Pre-Trial Brief and Opening Statement are very explicit, but they seem to suggest, as does the evidence adduced, that for each event alleged, the Accused commuted between Kigali town and the various locations in Gikomero *commune*.⁹³

45. The Prosecution and Defence witnesses agree that in April 1994, attacks and massacres were committed in Gikomero *commune* against the Tutsi population, and specifically at the Ndatemwa Trading Centre, Gikomero Protestant School, Gishaka Parish and the Kayanga Health Centre.⁹⁴ Prosecution and Defence witnesses also described an *Interahamwe* named Ephrem Nyirigera, the communal *brigadier* named Michel Nyarwaya and the communal accountant named Mathias Rubanguka as three of the main leaders of the attacks and massacres against Tutsi throughout Gikomero *commune* during the 1994 genocide.⁹⁵ The Defence denies that André Rwamakuba was involved in any of those attacks and massacres.

II.1.1. Alleged Public Instigation in Gikomero from July 1993 through June 1994

46. The Prosecution alleges at paragraphs 3 to 5 of the Indictment that

3. [...] After the establishment of MDR "Power" on 26 July 1993 or thereabouts, **André RWAMAKUBA**, practically every weekend, up to and including January 1994, and often accompanied by local authorities and officials of MDR "Power", traveled about his home *commune* in Gikomero, Kigali-rural *préfecture*. He organized meetings and participated in rallies in Kayanga, Gikomero, Rutunga, Gasabo and Gicaca *secteurs*. During the rallies, **André RWAMAKUBA** distributed songs of the Parmehutu party. The *Accused's* objective at the time was to recruit members for MDR "Power" party and to support "Hutu Power". The *Accused* called upon the Hutu majority to oppose the Arusha Peace Accords and to exterminate the Tutsi.
4. During those "sensitization" campaigns in Gikomero *commune*, particularly in January 1994, **André RWAMAKUBA** occasionally went about in a vehicle equipped with a public address system exhorting Hutu to unite in order to get rid of Tutsi. His announcements, the objective of which was to exhort Hutu to unite in order to get rid of Tutsi, included repeated statements that "the time has come for you, Hutu, to get rid of the enemy".

⁹² Exh. P. 2.

⁹³ See also the Prosecution Pre-Trial Brief, Opening Statement and Prosecution Closing Brief.

⁹⁴ These events are discussed below.

⁹⁵ See Prosecution Witnesses GAB, GAC and GIN; Defence Witnesses 3/1, 4/16, 6/10, 7/18 and 9/20.

5. During the period from January through June 1994, **André RWAMAKUBA** made statements at various meetings and public gatherings in Gikomero *commune*, or publicly associated himself with statements or acts by other persons at such gatherings. Thus, from January 1994 and during the entire period preceding the events of April 1994 in Sha, Nduba, Shango, Kayanga and Gikomero *secteurs*, and in the *communes* adjoining Gikomero, namely Rutungo, Rubungo and Kanombe, he publicly instigated participants to combat “the enemy”, all the Tutsi being characterized as “the enemy”, “accomplices of the enemy” or “accomplices of RPF”. After these gatherings, during which the Accused called for the extermination of Tutsi, the participants became excited, aggressive and disposed to physically attack and destroy the Tutsi as a group. Such speeches by the Accused signaled the start of killings in the *commune*. Furthermore, after the killings began in early April 1994, **André RWAMAKUBA** often praised and congratulated militiamen publicly for and on having killed Tutsi, thereby instigating other militias and armed civilians to participate in further attacks and massacres against the Tutsi population.

(1) Evidence Adduced

47. Six Prosecution Witnesses testified that between 1992 and March 1994, André Rwamakuba came to Gikomero *commune* several times.⁹⁶ Some of them attested that during that period, he participated in MDR party meetings at Kayanga Primary School (1.1), and in political rallies in four *secteurs* (1.2.). It was also said that Rwamakuba was present at gatherings in bars, and used a vehicle equipped with a loudspeaker in order to call for the extermination of the Tutsi (1.3.) and to recruit members for the MDR extremist wing, “Hutu Power” (1.4.).

48. The Prosecution contends that the sensitization campaigns allegedly conducted by the Accused between 23 July 1993 and April 1994 were principally aimed at laying the groundwork for the struggle against the Tutsi in which André Rwamakuba personally involved himself.⁹⁷ This Tribunal is only competent to prosecute individuals for crimes committed between 1 January and 31 December 1994.⁹⁸ Evidence of events prior to 1994 that can establish a “pattern, design or systematic course of conduct by the accused” or provide a context or background to crimes falling within the temporal jurisdiction of the Tribunal is however admissible.⁹⁹ Moreover, in the light of the discussion under Chapter I regarding the charges against the Accused, the Chamber will consider the evidence on the alleged public instigation in Gikomero *commune* discussed hereinafter as circumstantial evidence that could be relevant concerning the alleged crimes committed by the Accused in the Gikomero *commune* in April 1994.

⁹⁶ See Prosecution Witnesses ALA, GAB, GAC, GIQ, GIT and GLM.

⁹⁷ Prosecution Closing Brief, para. 49.

⁹⁸ Statute, Article 1.

⁹⁹ *Simba*, Decision on Interlocutory Appeal Regarding Temporal Jurisdiction (AC): *Nahimana* Judgement, para. 101.

(1.1.) MDR Party Meetings at Kayanga Primary School

49. Prosecution Witnesses GIQ, GAC and GAB did not personally know André Rwamakuba, but testified that they saw him at an MDR party meeting or several such party meetings held at Kayanga Primary School. None of them could recollect the exact date of the meeting or meetings. Witness GIQ placed a meeting at the school in 1992 “before the split of the MDR party”, GAC could not specify the year of the event,¹⁰⁰ and GAB testified that a meeting took place in 1993 at Kayanga Primary School.

50. Prosecution Witness GIQ testified that in 1992, he saw André Rwamakuba with MDR leaders Anastase Gasana, Faustin Twagiramungu and Aloys Munyangazu recruiting members for their party in the courtyard of Kayanga Primary School. The witness recognized Anastase Gasana and Aloys Munyangazu because he knew them prior to that event.¹⁰¹ He also recognized Twagiramungu because he used to hear him on the radio and was able to recognize his voice.¹⁰² Along with the other party dignitaries, Rwamakuba was introduced to the crowd by Gasana,¹⁰³ as a native of Gikomero. They were told that those dignitaries were united and that they all belonged to the MDR party. Rwamakuba did not make any public statement on that day.

51. Prosecution Witness GAC also testified about an MDR rally organized by Faustin Twagiramungu at an unspecified date in the courtyard of Kayanga Primary School, which MRND party members also attended out of curiosity.¹⁰⁴ According to the witness, Twagiramungu, the then Prime Minister Agathe Uwilingiyimana, Jean De Dieu Kamuhanda and André Rwamakuba were introduced at the rally by the person conducting the ceremony. The witness heard approximately five people giving speeches, including Twagiramungu, who made a long speech about the MDR in his capacity as chairman of the party.¹⁰⁵ He also heard Rwamakuba addressing the population using language which, in the witness’ view, amounted to calling on the audience to attack and kill Tutsi.¹⁰⁶ GAC also attested that the objective of the Kayanga Primary School rally was to call on the people to accept the coalition between

¹⁰⁰ T. 4 July 2005, p. 50; T. 5 July 2006, p. 43. Although the English transcript mentions the year “1992”, the witness was testifying to a 1993 meeting (see: French version of the transcript at p. 43).

¹⁰¹ T. 15 June 2005, p. 53.

¹⁰² T. 15 June 2005, p. 53.

¹⁰³ T. 15 June 2005, p. 55.

¹⁰⁴ T. 4 July 2005, p. 46.

¹⁰⁵ T. 4 July 2005, p. 46.

¹⁰⁶ According to the witness, André Rwamakuba said: “According to you, who are those who are many more than the others: is it people who have tinned roofs or those who have thatched roof?” Rwamakuba added: “if you were asked to burn down the house of people, which houses are with thatched roofs would it take much time?” GAC explained that he understood it as “If I were to order today that Tutsis be killed from now, would you think - did you think that there would be survivors?” (T. 4 July 2005, pp. 6 and 45).

the MDR-Power, the MDR-PARMEHUTU and the MRND-Power. He further testified that “Twagiramungu taught the Hutu to kill the Tutsi”, and that the participants, including Twagiramungu, implemented the killing of Tutsis.¹⁰⁷

52. Prosecution Witness GAB also testified to an MDR Power party meeting held in the courtyard of Kayanga Primary School in 1993, where he saw André Rwamakuba and other authorities attending that meeting.¹⁰⁸ The witness asserted that Twagiramungu and Gasana were not present.¹⁰⁹ According to GAB, the main objective of the rally was to sensitize members of the MDR, Hutus in general, to the fact that their enemy was the Tutsi “who had attacked Rwanda”.¹¹⁰ The witness heard the MDR Power representative say that the enemy of the MDR and of the Hutu in general was “the Tutsi who collaborate with the *Inkotanyi*.” As soon as the witness heard this statement, he left the meeting. He did not know whether Rwamakuba took the floor to make a speech on that day.¹¹¹ The witness testified that after this meeting, there was a conflict between the Hutu and the Tutsi in Kayanga.¹¹²

(1.2.) Political Rallies in Sha, Nduba, Shango and Kayanga secteurs

53. Prosecution Witnesses GLM and GIT claimed to know André Rwamakuba personally,¹¹³ and testified to various rallies that took place between 1993 and March 1994 in Sha, Nduba, Shango and Kayanga *secteurs* where Rwamakuba was said to have been present. None of them attended any of those rallies, but rather learned of them from other persons present.¹¹⁴ These witnesses further testified that prior to each rally they heard or saw a vehicle equipped with a loudspeaker which was used to invite the population to attend the rallies.

54. Around October 1993, on a Sunday “about two months after the Hutu Power wing of the MDR had been created”, Witness GLM saw André Rwamakuba pass where the witness lived on his way to and from Nduba *secteur*. He saw him in a car equipped with a megaphone calling out to people to attend a rally.¹¹⁵ The witness was not present at the rally in Nduba, but

¹⁰⁷ T. 4 July 2005, p. 44.

¹⁰⁸ T. 5 July 2005, p. 19.

¹⁰⁹ T. 5 July 2005, p. 45.

¹¹⁰ T. 5 July 2005, p. 19.

¹¹¹ T. 5 July 2005, p. 20.

¹¹² T. 5 July 2005, p. 20.

¹¹³ GLM and GIT are brothers. They both stated that their family and Rwamakuba’s family were well acquainted since they were neighbours. GIT knew Rwamakuba when he was a secondary school pupil. He would have visited Rwamakuba’s parents several times and met the Accused on these occasions. GLM was also used to see André Rwamakuba on visits to Gikomero. In particular, he met him at a parents’ meeting of the free secondary school in Nduba, the *École Technique Libre* (ETL), which had been created by Rwamakuba and in which GLM had registered one of his elder brother’s children. (See: T. 21 June 2005, pp. 65-66; T. 16 June 2005, p. 4).

¹¹⁴ T. 16 June 2005, p. 10.

¹¹⁵ T. 16 June 2005, p. 11.

a man¹¹⁶ later told him that Rwamakuba had been there.¹¹⁷ According to that man, Rwamakuba spoke to the public at the rally and explained the political situation in the country, and specifically that “the Hutu needed to unite their forces so that they can exterminate the Tutsi.” He is also alleged to have said that “all the evils that the country was faced with were due to the Tutsi; the Tutsi were at the origin of all these evils, so they needed to be exterminated so that the country could be governed properly after having gotten rid of that problem.”¹¹⁸

55. The witness testified that a similar event occurred at the end of November 1993, also on a Sunday.¹¹⁹ Witness GLM was standing close to his house and saw a passing vehicle equipped with loudspeakers calling on the people to attend an MDR Power meeting to learn about the ideals and program of the party.¹²⁰ He saw André Rwamakuba driving the vehicle while the person next to him was speaking into the loudspeaker. On the following day, a man¹²¹ who had attended the meeting met the witness at his workplace¹²² and told him that Rwamakuba had publicly addressed a meeting held in Shango *secteur*. According to this informant, the meeting was related to the extermination of the Tutsi. It was allegedly said that since the Tutsis were behaving like traitors to the country, they had to be exterminated. Party members were told that the MDR Power was the party which contained the word “power,” representing the force or the strength of Hutu to be counted on to exterminate the Tutsi. Witness GLM asserted that it was Rwamakuba who addressed the population about the MDR Power and the party’s program.¹²³

56. In January 1994, GLM again heard a vehicle equipped with a loudspeaker pass on the hill opposite his house. The message from the loudspeaker called upon the people to attend a rally at Kayanga *secteur*. Slogans of MDR Power were diffused asking the Hutu to unite. GLM was not able to see the person driving the vehicle, because it passed too far away from him.¹²⁴ The witness did not attend the Kayanga rally, but again, a man¹²⁵ who had attended told him that André Rwamakuba and other people who had come from Kigali were introduced

¹¹⁶ The name of the man was provided by Witness GLM, Exh. P. 32 (under seal).

¹¹⁷ T. 16 June 2005, p. 11. The name of the man has been written down by Witness GLM, Exh. P. 32 (under seal).

¹¹⁸ T. 16 June 2005, p. 12.

¹¹⁹ T. 16 June 2005, p. 13.

¹²⁰ T. 16 June 2005, pp. 12-13.

¹²¹ The name of the man was provided by Witness GLM, Exh. P. 32 (under seal).

¹²² T. 16 June 2005, p. 13 and Exh. P. 32 (under seal).

¹²³ T. 16 June 2005, p. 14.

¹²⁴ T. 16 June 2005, pp. 14-15.

¹²⁵ T. 16 June 2005, p. 15. The name of the man was provided by Witness GLM, Exh. P. 32 (under seal).

to the audience. During the rally, the ideals of the MDR Power – the extermination of the Tutsi in particular – were “taught”. It was said that the Hutu should not scatter into several parties but should instead unite into one party in order to exterminate the Tutsi.¹²⁶

57. Prosecution Witness GIT was told about rallies or meetings organized in the centre of Sha *secteur*, in the square near the Kayanga School of Kayanga *secteur* and on the football field of Nduba *secteur* between August 1993 and March 1994. He did not attend these meetings but he did see André Rwamakuba going to the rallies on five separate occasions, driving a red pick-up truck, the last occasion being in March 1994.¹²⁷ Witness GIT would see Rwamakuba passing because he lived at a distance of 15 meters from the road coming from Kigali and going in the direction of the rallies.¹²⁸ He saw other people in the vehicle with Rwamakuba but did not know their names. According to the witness, they were singing in praise of their party and wearing caps and small flags bearing the MDR Power emblem.¹²⁹ Two people informed the witness about the content of the meetings and Rwamakuba’s participation at the various rallies.¹³⁰ The latter had allegedly taken the floor and said that the time had come to eliminate the enemy Tutsi who were causing problems throughout the country.¹³¹

(1 3.) Calls for the Extermination of the Tutsi

58. Prosecution Witnesses GLM and ALA testified that they once heard André Rwamakuba personally call for the extermination of the Tutsi. Witness ALA saw him during the third week of January 1994 in his cellule on a Sunday, around one o’clock in the afternoon.¹³² The witness was in his house, which is near the commercial centre. He heard a voice coming from a megaphone and went to see what was happening. He saw a khaki coloured Peugeot model 505 equipped with a megaphone, which was idling near the commercial centre with three people on board.¹³³ As ALA was approaching the vehicle, he was called by one of its passengers, Anastase Gasana who knew the witness, and asked to

¹²⁶ T. 16 June 2005, p. 17.

¹²⁷ T. 22 June 2005, p. 5.

¹²⁸ T. 21 June 2005, p. 69.

¹²⁹ T. 21 June 2005, p. 71. According to the witness, the caps and flags were red and black – the colour of their party. Some others wore the *Interahamwe* uniform of the MRND.

¹³⁰ T. 21 June 2005, p. 73.

¹³¹ T. 22 June 2005, p. 2.

¹³² T. 14 June 2005, pp. 47 and 75.

¹³³ T. 14 June 2005, p. 46.

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repair the vehicle.¹³⁴ Gasana then introduced the witness to the other two people in the vehicle, Aloys Munyangazu and André Rwamakuba.¹³⁵ As the witness was attempting to repair the car, Rwamakuba took the megaphone and called out to the people saying several times that “it was time for the Hutus to get rid of the enemy”. The witness asserted that a reasonable person would have understood that Rwamakuba was referring to the Tutsi when speaking about the enemy.¹³⁶ Witness GLM testified that in February 1994,¹³⁷ he saw Rwamakuba in Froduard Birasa's bar in Nduba Centre¹³⁸ and heard him say that the Tutsis were a big problem and it was time to get rid them.¹³⁹ Rwamakuba is alleged not to have gone into greater depth on the matter because of GLM's presence. The witness stated that this was the only time he heard Rwamakuba speak such words.¹⁴⁰ In GLM's view, the people present at the bar planned to exterminate the Tutsi and later implemented this extermination plan.¹⁴¹

(1.4.) Recruitment of Members for the MDR “Hutu Power”

59. Prosecution Witnesses GIQ and ALA testified that they saw or heard André Rwamakuba recruiting members for the MDR party. In January 1994, Witness GIQ saw him in Emmanuel Rubagumya's bar. Rwamakuba had bought people drinks and was telling them that they should join the MDR party, recruit other members and that they should kill anyone who refused to join the party.¹⁴² GIQ also testified that he saw Rwamakuba in 1992 or in 1993 in a white vehicle which was equipped with loudspeakers playing songs glorifying the MDR-Power Hutu.¹⁴³ The songs were asking the Hutu to unite, and claiming that due to this unity, they would overcome. Rwamakuba was accompanied by the then Minister of Information, Pascal Ndengejeho. The vehicle was going slowly, ensuring that people could hear what was being said including GIQ who was standing close to where the vehicle passed.¹⁴⁴ Witness ALA testified that he saw Rwamakuba in the third week of October 1993, on or about 22

¹³⁴ The witness explained that he knew Anastase GASANA from when he was still a Professor at Nyakinama University. The witness was a friend of GASANA's brother and therefore used to visit them (T. 14 June 2005, p. 46).

¹³⁵ T. 14 June 2005, p. 46.

¹³⁶ T. 14 June 2005, p. 75.

¹³⁷ T. 16 June 2005, p. 31.

¹³⁸ T. 16 June 2005, p. 17.

¹³⁹ T. 16 June 2005, pp. 9-10 and 30-31.

¹⁴⁰ T. 20 June 2005, p. 55.

¹⁴¹ T. 16 June 2005, p. 19.

¹⁴² T. 15 June 2005, pp. 30-32. According to the witness, the following persons were also in the bar: Callixte Kabarira, Sebahinzi, Joseph Ayirwanda and his son Frédéric Turatsioze. Emmanuel Rubagumya, Callixte Kabarira, and Sebahinzi are in prison in Remera. Ayirwanda and Frédéric Turatsinze are both dead.

¹⁴³ T. 15 June 2005, pp. 30-31.

¹⁴⁴ T. 15 June 2005, pp. 31 and 59.

October 1993, in a vehicle passing by in Kayanga.¹⁴⁵ He was speaking to Mathias Rubanguka and Gérard Gakuba from his car.¹⁴⁶ Later, Rubanguka informed the witness that Rwamakuba was recruiting members for the “MDR power”, and was looking for people whom he could trust to assist him with additional recruitment.

(2) Assessment of the Evidence

60. In the Chamber’s view, the Prosecution witnesses’ testimonies on the alleged sensitization campaigns led by the Accused in Gikomero are not consistent with certain allegations in the Indictment (2.1.). Furthermore, the Prosecution evidence is tainted by internal contradictions (2.2.) and directly contradicted by the defence alibi evidence (2.3.).

(2.1.) Lack of Consistency between the Indictment and the Prosecution Evidence

61. Testimony was given on eleven instances between 1992 and March 1994 during which André Rwamakuba allegedly came to Gikomero *commune*. It has not been shown that towards the end of 1993 and in early January 1994, the Accused went to Gikomero *commune* “practically every week-end”, as alleged in paragraph 3 of the Indictment. None of the witnesses testified about meetings held in Gikomero, Rutunga, Gasabo and Gicaca *secteurs*, or in the adjoining *communes* of Rutungo, Rubungo and Kanombe, although one Prosecution witness testified that he saw Rwamakuba passing by in a vehicle in Rutunga and Gasabo *secteurs* at the beginning of 1994.¹⁴⁷ The Prosecution, therefore, failed to prove that during meetings in these *secteurs* and *communes*, the Accused instigated participants to “combat” and exterminate the Tutsi, as alleged in paragraph 5 of the Indictment.

(2.2.) Reliability Issues

62. The identification of the Accused raises a number of concerns. Witnesses GIT and GLM, who are brothers, are the sole witnesses claiming to know André Rwamakuba personally. They said they were neighbours of Rwamakuba’s parents, and have known him for a long time. Neither of them, however, could give a satisfactory description of

¹⁴⁵ T. 14 June 2005, pp. 48 and 70.

¹⁴⁶ T. 14 June 2005, p. 71.

¹⁴⁷ Witness GIQ did not hear or see André Rwamakuba say anything and did not see him do anything (T. 15 June 2005, p. 32).

Rwamakuba nor much detail concerning how they came to know him.¹⁴⁸ It is interesting to note that Witness GIT claimed not to know whether his brother was testifying in this case, although they live near one another and both testified in this case within a short space of time.¹⁴⁹

63. Both GAB and GAC testified that they saw André Rwamakuba for the first time at the stone-laying ceremony of a primary school in Rutunga, in the company of the then Minister of Primary and Secondary School, Faustin Munyanzesa.¹⁵⁰ GAB could not specify the exact date of this ceremony, except that it was before 1994, but GAC placed the event in 1992. Neither witness had any prior knowledge of Rwamakuba. The latter was pointed out to GAC by a young man who used to live in Rutunga.¹⁵¹ He was also told that Rwamakuba was working in the Ministry of Health. GAB stated that the Accused was introduced to the assembly as “the doctor André Rwamakuba, a native of Gikomero *commune*.”¹⁵² It is noteworthy that GAB was only fifteen years old at that time and was not able to provide any details about the event. In contrast to Witness GAB’s testimony, GAC did not specify that Rwamakuba was introduced during the alleged rally held in 1993 at Kayanga Primary School.

64. The lack of consistency between the Indictment and the testimonies adduced on this aspect of the case was compounded by witnesses who gave different and irreconcilable versions of the facts. Witnesses GAC, GAB, GIQ, GLM and GIT testified about various rallies held in Gikomero *commune*. The Prosecution seemed to present these as separate rallies held on different occasions.¹⁵³ It is however uncertain as to whether the witnesses testified to the same rallies or to different ones. Different dates were given for a meeting at Kayanga Primary School, which the same authorities were alleged to have attended and at which similar speeches were given. In his testimony, Witness GAC could not specify the year of the Kayanga School meeting, but in a previous signed statement, had attested that it took

¹⁴⁸ Prosecution Witness GIT described André Rwamakuba as follows: “Someone who was of average size. Now, as for his complexion, his skin was between light complexion and dark complexion, the light complexion being the more dominant. He was not a fat man, nor was he thin; between the two. [...] He was someone who was solid in build, and he was neither too big nor too thin.” (T. 23 June 2005, p. 53).

Prosecution Witness GLM described Rwamakuba as follows: “a man of average size, his complexion was neither dark nor light, medium. He seemed to have a tendency to have chubby cheeks and very little hair.” “He was a well built man and I would say that he wasn’t thin.” “His voice was deep and somewhat rough.” (T. 20 June 2005, p. 4).

¹⁴⁹ T. 22 June 2005, p. 20; T. 24 June 2005, pp. 12 and 16.

¹⁵⁰ T. 4 July 2005, p. 35.

¹⁵¹ T. 4 July 2005, p. 37.

¹⁵² T. 5 July 2005, p. 43.

¹⁵³ Prosecution Closing Arguments, paras. 33-48.

place at the end of 1993.¹⁵⁴ Witness GAB testified to the presence of Rwamakuba at a Kayanga meeting in 1993, and although Witness GIQ acknowledged the existence of a meeting in 1993 in Kayanga he specified that Rwamakuba was not in attendance.¹⁵⁵

65. The Chamber recalls that the evidence of GIT and GLM is indirect and mostly hearsay in many respects. The source of Witness GIT's information casts doubt upon the reliability of his testimony. According to this witness, his informer was respectable and honest, but Witness GLM asserted that a man with the same name as GIT's informer was partial, biased and disrespectful towards others.¹⁵⁶

66. Some major aspects of GLM's testimony are also vague and inconsistent. When the Prosecution asked who GLM thought had called for the extermination of Tutsi, the witness replied that the person usually there to speak about MDR Power was André Rwamakuba.¹⁵⁷ He also recalled the Nduba *secteur* rally as having been held on a Sunday, whereas later, he stated that he *was told* that it was on a Sunday.¹⁵⁸ Similarly, he first said that he saw André Rwamakuba holding the megaphone and calling on people to come and attend the Nduba rally,¹⁵⁹ but during cross-examination, stated instead that Rwamakuba was driving the car and that the person sitting beside him was speaking through the megaphone.¹⁶⁰ The witness placed the event at Birasa's bar in February 1994,¹⁶¹ then at the end of the year in 1993, only to later reaffirm that it was in February 1994.¹⁶² This important event at Birasa's bar, where Witness GLM allegedly heard Rwamakuba calling for the extermination of Tutsi, was mentioned for the first time in court. Also mentioned for the first time in court was Rwamakuba's alleged discussion about the split in MDR-Hutu Power. GLM claimed that he had already mentioned these details to the Prosecution, but that the first investigators recorded only a summary and the subsequent team of investigators made many mistakes in the document and did not return to him to enable the necessary corrections to be made.¹⁶³ The Chamber however notes that on 11 February 1998, GLM signed a statement describing Rwamakuba's political and anti-Tusti

¹⁵⁴ Exh. D. 34 A and B (under seal). In the same statement, he declared that the meeting took place at the Kayanga *secteur* office and that he could no longer remember what André Rwamakuba said on that occasion. On the contrary, the witness testified in court that the meeting took place in the courtyard of the Kayanga School. He further stated the alleged speech made by Rwamakuba on that occasion.

¹⁵⁵ T. 15 June 2005, p. 58.

¹⁵⁶ T. 20 June 2005, p. 2 and Exh. P. 32.

¹⁵⁷ T. 16 June 2005, p. 14.

¹⁵⁸ T. 20 June 2005, p. 57.

¹⁵⁹ T. 16 June 2005, p. 11.

¹⁶⁰ T. 20 June 2005, p. 57.

¹⁶¹ T. 16 June 2005, p. 31.

¹⁶² T. 16 June 2005, pp. 17, 22, 30 and 31; T. 20 June 2005, pp. 53-55; T. 21 June 2005, p. 2.

¹⁶³ T. 20 June 2005, pp. 55-56; T. 21 June 2005, pp. 2-3.

activities which mentioned Birasa as one of the extremists with whom Rwamakuba used to work.¹⁶⁴

67. The testimony of these witnesses is also contradicted by other Prosecution witnesses' testimonies. Witness ALA described an incident where André Rwamakuba travelled with Anastase Gasana and called for the extermination of the Tutsi in Gasana's presence. GAC alleged that at the Kayanga Primary School meeting, Faustin Twagiramungu "taught to kill the Tutsi". Witnesses GIT, GIQ and Prosecution Expert Witness Alison Des Forges, however, testified that Anastase Gasana and Faustin Twagiramungu were all moderate MDR politicians.¹⁶⁵ Witness GIQ stated that he would have been surprised to see Rwamakuba and Gasana together.¹⁶⁶ GAC's placing of Jean de Dieu Kamuhanda at the MDR meeting in Kayanga was also contradicted by evidence that Kamuhanda was an MRND politician.¹⁶⁷

68. GLM's testimony concerning a meeting in Nduba *secteur* around October 1993, "about two months after" the creation of the MDR-Power wing¹⁶⁸ is also inconsistent with the Prosecution expert witness' evidence. She described the process of division within the MDR as starting from February 1993 (when the Rwandan Patriotic Front ("RPF") violated the ceasefire and launched a massive military advance across the northern part of Rwanda causing the displacement of hundreds of thousands of people) until 23 July 1993 when Twagiramungu was expelled from the MDR party because he wished, *inter alia*, to maintain the party's collaboration with the RPF.¹⁶⁹ Twagiramungu's expulsion was confirmed by Defence Witness Jean-Marie Nkezebera, a former member of the MDR's political bureau and vice-president of the party in the Kigali area. Therefore, GLM's assertion that Twagiramungu attended an MDR-Power meeting around October 1993 appears inherently unlikely. In addition, the expert witness stated that, after the October 1993 assassination of the Burundian President – the first freely and fairly elected Hutu President – by Tutsi soldiers, Froduald Karamira introduced the concept of Hutu Power at a massive political rally at the Amohoro stadium in Kigali.¹⁷⁰ Although the expert witness was told that there was a meeting in Gitarama in September 1993 where the term "Hutu power" was used, she agreed that the term originated at the rally in October 1993. This testimony conflicts with GAC's testimony, who instead

¹⁶⁴ Exh. D. 19 A and B (under seal).

¹⁶⁵ GIT testified that when the MDR party came into conflict, Gasana joined the moderate wing (T. 21 June 2005, p. 67); T. 15 June 2005, pp. 54-55.

¹⁶⁶ T. 15 June 2005, p. 56.

¹⁶⁷ See Defence Witness 1/5, T. 13 December 2005, p. 28. This was not disputed by the Prosecution.

¹⁶⁸ T. 16 June 2005, p. 11.

¹⁶⁹ T. 14 July 2005, pp. 15-16.

¹⁷⁰ T. 14 July 2005, p. 17.

testified to the use of the term or slogan “power” at rallies in 1992 and in the earlier parts of 1993.

69. These inconsistencies cannot be justified by the time elapsed, translation discrepancies, or the manner in which the statements were taken. They become still more significant when viewed against the alibi evidence adduced by the Defence.

(2.3.) Alibi

70. The Defence alleges that André Rwamakuba could not have participated in the alleged public instigations in Gikomero between September 1993 and March 1994 because he was not in Rwanda for most of that time.¹⁷¹ Evidence was adduced that between 23 September 1993 and 10 March 1994, the Accused was studying at the Prince Leopold Institute in Antwerp, Belgium, and that between 17 and 29 March 1994, he attended a World Health Organization (WHO) Conference in Aswan, Egypt. The Defence put the Prosecution on notice of the Belgian alibi at a preliminary hearing held in 2000.¹⁷² In addition, the Defence served notice of the alibi to the Prosecution at the outset of trial and disclosed the names and addresses of witnesses and other evidence which it intended to rely upon in the presentation of this defence.¹⁷³

71. To support the alibi, the Defence called six witnesses who mostly relied on their own diaries or personal documents to recollect the exact dates when they met André Rwamakuba during the time in question.¹⁷⁴ The Prosecution did not dispute and the Chamber accepts that the Accused was trained as a medical doctor, studying medicine in Belgium between 1970 and 1974 and then at Butare University between 1975 and 1978,¹⁷⁵ and had a career as a public health specialist, being appointed Director of the Kigali Health Region in 1992.¹⁷⁶

72. Defence Witnesses Henri Van Balen and Pierre Mercenier are co-founders of the Prince Leopold Institute (Institute of Tropical Medicine) in Antwerp, Belgium.¹⁷⁷ Both of them have had long medical careers working with both Belgian authorities and international

¹⁷¹ Defence Closing Brief, p. 230 and seq.

¹⁷² *Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44-I, T. 7 November 2000.

¹⁷³ See Confidential Alibi Notice, filed on 8 June 2005, Corrigendum to Confidential Alibi Notice, filed on 14 June 2005 and Further Alibi Details, filed on 21 June 2005.

¹⁷⁴ Defence Witness Edith Van Wynsberghe, Pierre Mercenier, Henri Van Balen, François Monet, 1/1 and 3/A. Due to the particularly close relationship between the Accused and Witness 3/A and the age of the witness at the time of the event, the Chamber is of the view that it will be more appropriate to set aside this evidence.

¹⁷⁵ Curriculum vitae of André Rwamakuba (Exh. D. 184) and Prosecution Closing Brief at para. 6, footnote 3: “The Prosecutor does not dispute the periods and the studies undertaken by the Accused.”

¹⁷⁶ Exh. D. 184; Prosecution Closing Brief, para. 6 and Defence Closing Brief, pp. 2-5.

¹⁷⁷ T. 14 December 2005, p. 2.

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organizations such as the World Health Organization.¹⁷⁸ In 1993-1994, they were both professors of public health at the Antwerp Institute of Tropical Medicine. Relying on various documents,¹⁷⁹ both testified that André Rwamakuba participated in a training course at the Institute in Belgium between 27 September 1993 and March 1994. According to Professor Mercenier's attestation, the training course ended on 9 March 1994.¹⁸⁰ The report drafted by Rwamakuba and the attestation signed by Professor Van Balen, however, mentioned the end date of the course as 27 March 1994.¹⁸¹ The explanation given for the discrepancy in this date was that since the training report submitted by Rwamakuba was made to the Belgian Technical Cooperation for scholarship purposes and had to cover a six months period, it did not correspond with the exact end date of the course.¹⁸² Professor Van Balen explained further that in May 1995, Rwamakuba, who was in Namibia at the time, wrote him a letter requesting certification of his training in Antwerp. In his letter, Rwamakuba explained that he was looking for work in Namibia and had had to leave Rwanda where he abandoned all of his documents. Since Professor Mercenier was already retired when Henri Van Balen received the letter, the latter drafted the certificate on the basis of Rwamakuba's training report. The witness stated that as he had personal knowledge that Rwamakuba had completed the six-month scholarship, he therefore did not pay attention to the exact dates.

73. Professors Van Balen and Pierre Mercenier could not categorically attest to André Rwamakuba's presence every day in Belgium during the period of his training,¹⁸³ but they specified that it was a full-time course and that he would have had to stay in Belgium for its duration. Professor Mercenier testified that initially he would have seen Rwamakuba about once per week and later on, about once a fortnight. Both Professors also saw him from time to time in passing in the corridors of the Institute.¹⁸⁴ They further testified to specific dates when meetings had been arranged with him, as recorded in their diaries. Henri Van Balen noted that his diary mentions a meeting with Rwamakuba on 13 October 1993 to discuss a colloquium,¹⁸⁵ and Pierre Mercenier stated that he met Rwamakuba on 21 February 1994 in

¹⁷⁸ *Ibidem*,

¹⁷⁹ Both witnesses relied upon their own diaries. Professor Van Balen produced the following documents: Training report drafted by André Rwamakuba, attestation signed by Professor Van Balen in May 1995, letter drafted by the Secretary of the Institute dated 28 January 1993, attestation by Professor Mercenier, letter drafted by the Secretary of the Institute dated 25 February 1994 (Exh. D. 186).

¹⁸⁰ Exh. D. 186(B).

¹⁸¹ Exh. D. 186 (A and D); T. 6 December 2005, pp. 34-35 and 42-43.

¹⁸² T. 6 December 2005, p. 43; T. 14 December 2005, pp. 8, 15 and 17.

¹⁸³ T. 6 December 2005, pp. 35, 42 and 44; T. 14 December 2005, p. 15.

¹⁸⁴ T. 14 December 2005, pp. 4-12 (Witness Van Balen) and T. 6 December 2005, p. 43 (Witness Mercenier).

¹⁸⁵ T. 14 December 2005, p. 4.

Belgium to discuss the end of the training and his prospective mission to Rwanda in April 1994.¹⁸⁶

74. Doctor Francis Monet is a doctor specialized in tropical medicine who was working for the Belgian Technical Cooperation in Rwanda from 1990 to 1994.¹⁸⁷ He came to know André Rwamakuba when the latter was appointed as the Director of the Kigali Health Region in 1992. They used to meet on a daily basis when they were both in Rwanda.¹⁸⁸ Doctor Monet confirmed that he was present at the airport when Rwamakuba left Rwanda on 23 September 1993, between 6.30 and 7 a.m., for Belgium. The witness relied on his diary,¹⁸⁹ but could also recall that event because, on that occasion, he had been somewhat upset that Rwamakuba had arrived very late to the airport for his flight. He also testified that he was at the airport for Rwamakuba's return to Rwanda on the morning of 10 March 1994. According to the witness, Rwamakuba did not return to Rwanda between 23 September 1993 and 10 March 1994. While the witness did not recall receiving any news from the Accused during that period, he submitted that it was practically impossible for Rwamakuba to return to Rwanda without him knowing about it. Even if Rwamakuba had not contacted him directly, he was still certain that others would have told him of his return.¹⁹⁰

75. Defence witness Edith Van Wynsberghe met André Rwamakuba during his medical studies in Belgium in 1973. She stated that she saw him approximately ten times while he was attending the training course at the Tropical Institute of Antwerp in Belgium, between September 1993 and March 1994. Relying on various receipts,¹⁹¹ the witness was able to recollect specific dates when she met Rwamakuba during that period. She saw him sometime between the end of November 1993 and the beginning of December 1993, when she went to Antwerp to order a sewing machine.¹⁹² She later visited him for his birthday on 27 December 1993, at his house in Antwerp.¹⁹³ She could not confirm where Rwamakuba was between about 1 December 1993 and 27 December 1993.¹⁹⁴ Around 6 January 1994, the witness and

¹⁸⁶ T. 6 December 2005, pp. 36 and 45.

¹⁸⁷ T. 14 December 2005, p. 23.

¹⁸⁸ Witness Monet came to know André Rwamakuba in particular as a result of the latter's appointment in 1992 as Director of the Kigali Health Region. The witness stated that he met Rwamakuba on a daily basis (T. 14 December 2005, p. 24).

¹⁸⁹ Exh. D. 187. Only one page of his diary was entered into evidence, the entire diary was offered for inspection by the Chamber.

¹⁹⁰ T. 14 December 2005, pp. 26-27, 38-39, 48-49.

¹⁹¹ Exh. D. 182.

¹⁹² The receipt is dated 8 December 1993; the witness came to Antwerp a week or so before the delivery date.

¹⁹³ T. 1 December 2005, p. 57.

¹⁹⁴ T. 2 December 2005, p.3.

her daughter accompanied Rwamakuba to look for a used car in another town in Belgium.¹⁹⁵ On 2 March 1994, she took Rwamakuba to a pharmacy in Antwerp to buy medical supplies.¹⁹⁶ She also accompanied the Accused to the airport on 9 March 1994 when he left Belgium for Rwanda.¹⁹⁷

76. Defence Witness 1/1, who is a close relative of André Rwamakuba, testified that he left Rwanda to pursue a program of study in Belgium between late September 1993 and March 1994.¹⁹⁸ Witness 1/1 confirmed that Rwamakuba never came back to Rwanda during that period. The witness further provided some correspondence received by Rwamakuba at an address in Belgium where Edith Vanwynsberghe testified having visited him for his birthday and Rwamakuba's diary from 1993 diary with references to his stay in Belgium.¹⁹⁹

77. The Defence also adduced evidence concerning André Rwamakuba's presence in Egypt between 17 and 29 March 1994. Edith Van Wynsberghe saw Rwamakuba again on 18 March 1994, while he was in transit at the airport in Brussels.²⁰⁰ Doctor Francis Monet testified that he met him in Kigali on the evening of his return from Egypt at the Regional Health Centre offices on 29 March 1994.²⁰¹ Professor Henri Van Balen testified that Rwamakuba was to attend an international conference organized by the WHO in Egypt upon completion of the course in Belgium. The secretary of the Institute told Professor Van Balen that she had made reservations for Rwamakuba to attend this conference, but that these were not final tickets. Finally, Witness 1/1 also testified that André Rwamakuba left Rwanda on 17 March 1994 and returned on 29 March 1994 from a seminar in Egypt.

76. Defence Witness Monet testified that between André Rwamakuba's return from Belgium and departure to Egypt, he saw him every day at the Regional Health Centre since they were working together. On 11 March 1994, they went together with a delegation of Belgian members of Parliament to Rutungo Hospital.²⁰² Witness 1/1 testified that during the

¹⁹⁵ T. 1 December 2005, p. 57.

¹⁹⁶ T. 1 December 2005, pp.57-58; Exh. D. 182.

¹⁹⁷ The witness recollected this meeting by producing the customs documents concerning the medical supplies bought which were stamped and dated by the Belgian customs authorities; T. 1 December 2005, pp.60-61 and Exh. D. 182.

¹⁹⁸ Witness 1/1 placed the return day of André Rwamakuba in Rwanda on 14 March 1994. Confronted with Rwamakuba's passport, the witness conceded that the date was given according to the witness' recollection; T. 14 December 2005, p. 58; T. 15 December, pp. 25, 32-35.

¹⁹⁹ Exh. D. 190 and D. 193.

²⁰⁰ T. 1 December 2005, pp.60-61. The witness assisted André Rwamakuba in buying a mobile phone and a fax. She relied on a receipt dated 18 March 1994 (Exh. D. 182).

²⁰¹ T. 14 December 2005, pp. 28-29. The witness referred to his diary which also had an entry on 17 March 1994 stating the day André Rwamakuba left for Egypt.

²⁰² T. 14 December 2005, p. 27

same period, Rwamakuba visited his parents once in Gikomero to console them over the death of a relative who died in February.²⁰³

79. The Defence tendered into evidence the Rwandan passport of André Rwamakuba, which was in the custody of the UNDF and provided to the parties for inspection.²⁰⁴ This passport was issued in Kigali in August 1993, with a visa for studies (as intern) issued by the Belgian Embassy on 2 September 1993, an entry stamp dated 23 September 1993 for Belgium and an exit stamp dated 9 March 1994 from Belgium, a single-entry visa for Egypt issued on 17 March 1994, entry and exit stamps for Egypt, a transit stamp for Kenya dated 28 March 1994, and an exit stamp from Kenya dated 29 March 1994.²⁰⁵

80. The Chamber finds these Defence witnesses individually credible and reliable. Henri Van Balen, Pierre Mercenier and François Monet were professors and colleagues of André Rwamakuba and nothing has emerged to indicate that they would have any particular interest in protecting him by providing false testimony. Their evidence is supported by various documents admitted into exhibit. Edith Van Wynsberghe, although closer to the Accused, also gave a fair and probable account of the facts, which was based on her analysis of the specific documents she had in her possession and which were tendered into exhibit. None of these documents admitted into evidence were rebutted by the Prosecution. The Chamber took particular care with the evidence of Defence Witness 1/1, as a close relative of the Accused; it is nonetheless satisfied that she was also reliable.

81. The Chamber accepts the explanation given by Professors Van Balen and Mercenier concerning the inconsistency between the dates of André Rwamakuba's attendance at the training program in Belgium on the certificates and in the report. It is noteworthy that the Accused requested Van Balen's confirmation of his attendance at the training program before his arrest by the Namibian authorities in 1995.²⁰⁶

82. The Chamber also notes that the Prosecution failed to rebut the alibi evidence. It acknowledged that the Accused was in Belgium between September 1993 and March 1994, but submitted that he must have come back to Rwanda at the times the witnesses testified to having seen him. The Prosecution was aware of the defence alibi a long time before the beginning of the trial and was therefore in a position to conduct a proper investigation,²⁰⁷ it

²⁰³ T. 15 December 2005, pp. 3, 24-25.

²⁰⁴ T. 22 August 2005, pp. 12-13; T. 24 August 2005, p. 68; T. 7 September 2005, pp. 4-5.

²⁰⁵ Exh. D. 151.

²⁰⁶ The Accused was arrested on 2 August 1995.

²⁰⁷ *Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44-I, T. 7 November 2000.

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did, however, not adduce any evidence to support its theory, nor did it explain the fact that there were no records of these alleged trips in Rwamakuba's passport which was in the UNDF's possession.²⁰⁸ The Prosecution did rely upon a copy of a page from another Rwandan passport belonging to Rwamakuba, containing a picture of the Accused and a description of his identity,²⁰⁹ but it was not able to tender other pages failing to possess the entire document and was not able to provide any other information concerning its source.²¹⁰

83. In the Chamber's view, the proffered alibi concerning André Rwamakuba's absence from Rwanda between 23 September 1993 and 29 March 2004 is sufficient to cast reasonable doubt upon the allegations regarding the Accused's participation in public meetings and gatherings during that period in Gikomero *commune*. The Chamber notes that paragraph 5 of the Indictment could be interpreted as alleging the participation of the Accused in sensitization meetings beyond 29 March 2004, extending through June 1994. This possible contention was not clarified, nor supported by the Prosecution evidence. Witnesses ALA, GAB, GAC, GIQ, GIT and GLM testified to meetings held only until March 1994, and not beyond. Other Prosecution witnesses testified to the Accused's participation in specific attacks against Tutsi in April 1994 during which he congratulated militiamen,²¹¹ but their testimonies did not include any statements made by the Accused at various meetings or that he participated in any specific gatherings. This lack of clarity of the charges in the Indictment and the Prosecution's evidence cannot, for reasons of fairness, be interpreted to the disadvantage of the Accused.

84. In light of the earlier conclusions regarding inconsistencies in the Prosecution evidence and the unreliability of the Prosecution witnesses and considering the proffered alibi, the Chamber finds that the Prosecution has failed to prove, beyond reasonable doubt, the allegations set forth in paragraphs 3 to 5 of the Indictment.

²⁰⁸ Exh. D. 151.

²⁰⁹ Exh. P. 3.

²¹⁰ Exh. P. 3.

²¹¹ See below: evidence on the alleged murder of three Tutsi near the Gikomero office *secteur* and on the massacre at the Kayanga Health Centre.

II.1.2. Alleged Delivery of Machetes by André Rwamakuba in Gikomero Commune in April 1994

85. The Prosecution alleges at paragraph 11 of the Indictment that

Between 10 and 20 April 1994, **André RWAMAKUBA** delivered bags of machetes to the home of André Muhire, near Ndatemwa trading center in Gasabo *secteur*, in his home *commune* of Gikomero, Kigali-rural *préfecture*. On that occasion, between 10 and 11 April, **André RWAMAKUBA** held a meeting with several influential local members of MDR "Hutu Power" political party, including the persons known as Joas Habimana, Chairman of MDR "Power" in Rutunga *secteur*, Ndamage and André Muhire. Several days later, about 13 April, André Muhire distributed the machetes to local residents, who then used them to attack and massacre the Tutsi population. Following such attacks, many Tutsi were killed, including residents of Ndatemwa Centre, namely the wife of a man called Gakumba and her son, Kambanda, and the persons known as Kanuma, Rwhimba, Kankidi, Rutembya, Rutembesa, and many unidentified refugees from Rutongo, Nkuzuzu and Rutunga *secteurs*. Again, between 10 and 11 April 2004, **André RWAMAKUBA** delivered bags of machetes to the home of Etienne Kamanzi, the director of the Kayanga Health Center. The Accused knew, or had reasons to know, that the machetes would be used in attacks against the Tutsi in those areas, thereby aiding and abetting the killing campaign against the Tutsi population.

86. The Chamber will address first the delivery of machetes to André Muhire's home (II.1.2.1.) and then the one to Etienne Kamanzi's home (II.1.2.2.).

II.1.2.1. Alleged Delivery of Machetes to André Muhire and Subsequent Massacres of Tutsi at Ndatemwa Trading Centre

87. Despite the large time-frame pleaded at the beginning of paragraph 11 of the Indictment, "between 10 and 20 April 1994", the subsequent sentence of this paragraph specifies that the Accused delivered bags of machetes to the home of André Muhire "between 10 and 11 April"²¹² and that the machetes were distributed "several days later, about 13 April". As confirmed in the Prosecution Pre-Trial Brief, Opening Statement and Closing Arguments, there is no doubt that it was the Prosecution's case that this event took place "between 10 and 11 April 1994".²¹³ The Chamber will therefore take into consideration this more specific time-frame when dealing with the assessment of the evidence.

(1) Evidence Adduced

88. Ndatemwa Trading Centre is located in the Gasabo *secteur* of the Gikomero *commune*, approximately 36 kilometres from Kigali town,²¹⁴ where André Rwamakuba was living at the

²¹² Emphasis added.

²¹³ Prosecution Pre-Trial Brief, para. 19; Opening Statement, T. 9 June 2005, p. 8; Prosecution Closing Brief, paras. 50-52.

²¹⁴ See Exh. P. 2: distance between Kigali/Remera and Gikomero *secteur* office is 25 kilometres; the distance between this office and Ndatemwa Centre is 11 kilometres.

time of the allegations in the Indictment. Both Prosecution and Defence witnesses testified that between 9 and 11 April 1994, two Tutsi named Rutembya and Rutembesa, were beaten up at that Centre and then taken to Kayanga Health Centre where they were subsequently killed.²¹⁵ These witnesses also testified that an attack was led against the Tutsi population at Ndatemwa Trading Centre on 13 April 1994.²¹⁶ The detailed recollection of this event differs between Prosecution and Defence witnesses.

89. Prosecution Witness GII stated that, between 10 and 11 April 1994 in the afternoon, while he was standing on the road a few meters from Muhire's house in Ndatemwa Trading Centre, he saw five bags unloaded from the boot of a white car and taken into Muhire's house. André Rwamakuba had already come out of the car. Prosecution Witnesses AVD and AVC affirmed that they saw a car with a similar description arriving at Ndatemwa Centre,²¹⁷ although they placed this event on a different date than Witness GII: AVD asserted that this event occurred on 12 April 1994 in the afternoon;²¹⁸ AVC stated first that he saw the car between 10 and 13 April 1994, and during cross-examination he said that it could have been on 12 April 1994.²¹⁹ Witness AVD saw three bags being unloaded from the boot of the car and taken into Muhire's house. AVC testified that the vehicle stayed at Muhire's home for less than an hour,²²⁰ but GII and AVD indicated that Rwamakuba remained at Muhire's house for approximately one to two hours in the company of other persons.²²¹ According to Witness GII, Joas Habimana, Ndamage and other people were also in Muhire's house; and Witness AVD placed Ndoli and Murangira at the house. Witness AVC was also told that Rwamakuba went to Muhire's house on that occasion with an *Interahamwe* named Ephrem.²²² The Prosecution Witnesses asserted that machetes were distributed by Muhire to young people from Rutungo and Gasabo *secteurs*²²³ during the night of 12 April or the morning of 13 April

²¹⁵ Prosecution Witness AVC testified that Rutembya and Rutembesa were beaten up on 9 or 11 April 1994 (T. 27 June 2005, pp. 33-35); Prosecution Witness AVD said that this event took place during the same week of Habyarimana's death but before André Rwamakuba's arrival at the Ndatemwa Trading Centre (T. 28 June 2005, pp. 5-6); Prosecution Witness GII testified that this event took place on or about 11 April 1994 (T. 23 June 2005, pp. 43-44). According to Defence Witnesses 9/20, Rutembya and Rutembesa were beaten up on 11 April 1994 (T. 7 November 2005, p. 22); and Defence Witness 4/16 said that it happened between 11 and 12 April 1994 (T. 19 January 2006, p. 57).

²¹⁶ Defence Closing Brief, p. 83.

²¹⁷ T. 28 June 2005, pp. 19 and 39; T. 27 June 2006, p. 12.

²¹⁸ Witness AVD testified that the event took place "four or five days after Habyarimana's death". Responding to the Defence Counsel, the witness said that Rwamakuba arrived on 12 April 1994 in the afternoon (T. 28 June 2006, pp. 7 and 31).

²¹⁹ T. 27 June 2006, pp. 12 and 35.

²²⁰ The witness stated that the vehicle stayed for approximately 10 to 15 minutes (T. 27 June 2005, p. 54).

²²¹ T. 28 June 2005, p. 9.

²²² T. 27 June 2005, pp. 12-13 and 54.

²²³ AVD specified that they were young *Interahamwe*, Hutus.

1994.²²⁴ Witness AVD further stated that Muhire was assisted by Ndoli and Murangira on that occasion. The Prosecution witnesses testified that after that distribution, houses of Tutsi were attacked and destroyed. According to Witness GII, Tutsi from the commune but also Tutsi refugees from Rubungo and Kanombe were killed.

90. Defence Witnesses 9/20 and 4/16 gave very different accounts of the events at Ndatemwa Trading Centre. They stated that the events took place on 13 April 1994 and, on that day, Ephrem Nyirigera, accompanied by three communal policemen, about fifteen *Interahamwe* from Ruhengeri as well as refugees from Gitega and members of the local population, looted houses belonging to Tutsi and threatened the people with machetes and clubs.²²⁵ That attack was stopped by the intervention of the *Conseiller* from Gasabo *secteur*, named Ntamuhanga, who was assisted by soldiers. The Defence witnesses asserted that no killings occurred in Ndatemwa²²⁶ or Gasabo *secteur*,²²⁷ except for the two brothers, named Rutembesa and Rutembya, who were beaten on or about 11 April 1994 and then subsequently killed at Kayanga Health Centre.²²⁸ They also asserted that André Rwamakuba never came to Ndatemwa during that period.

(2) Assessment of the Evidence

91. The Chamber notes that the testimonies of the Prosecution witnesses are not consistent with the allegations against the Accused (3.1.). In addition, they are generally unreliable, especially when considering the evidence adduced to support the Accused's alibi (3.2.).

(2.1.) Lack of Consistency between the Indictment and the Prosecution Evidence

92. Witnesses AVC's and AVD's testimonies that Rwamakuba delivered machetes to Muhire's home on 12 April 1994 are inconsistent with the allegation that this event took place between 10 and 11 April 1994.²²⁹

²²⁴ AVC testified that the machetes were distributed after Rwamakuba's departure, in the night of 12 April 1994; GII stated that the machetes were distributed on 13 April 1994, around 9.40 am; AVD situated the distribution on the "morning of the third day" after the beating up of two people at the Centre (T. 28 June 2006, p. 30).

²²⁵ T. 7 November 2005, pp. 24-25 (Witness 9/20); T. 19 January 2006, pp. 57-58 (Witness 4/16).

²²⁶ Witness 9/20.

²²⁷ Witness 4/16.

²²⁸ T. 7 November 2005, pp. 22-24 (Witness 9/20); T. 19 January 2006, pp. 57-58 (Witness 4/16).

²²⁹ Indictment, para. 11; Prosecution Pre-Trial Brief, para. 19; Opening Statement, T. 9 June 2005, p. 8; Prosecution Closing Brief, paras. 50-52.

93. Witnesses GII, AVC and AVD also testified that two Tutsi named Rutembya and Rutembesa were *beaten up* on 9 or 11 April 1994 at the Ndatemwa Centre, *before* the alleged delivery of machetes at Muhire's house, and were killed later at the Kayanga Health Centre. This evidence, corroborated by testimony from Defence witnesses,²³⁰ is inconsistent with the allegation that Rutembya and Rutembesa were killed as a result of attacks against some Tutsi after the delivery of machetes by Rwamakuba at Ndatemwa Trading Centre.

(2.2.) *Reliability Issues*

94. The identification of André Rwamakuba at the time of the alleged machetes delivery to Muhire's home is unreliable. AVC and AVD had no prior knowledge of him when he allegedly arrived at Ndatemwa Trading Centre. Their identification of the Accused is based on untested hearsay evidence. Witness AVC who was hiding in a clump of bushes and could not see the people in the car, was told by two men that the person who had arrived in the car was Rwamakuba.²³¹ AVD testified that he could not see the people in the car due to the crowd surrounding it. In court, AVC and AVD were not able to offer any physical description of the person they claim to be Rwamakuba.

95. GII is the sole Prosecution witness who claimed to have prior knowledge of André Rwamakuba. GII allegedly saw Rwamakuba when the latter came to attend a meeting at Muhire's house, on 4 or 5 April 1994, with the President of MDR-Power in Rutunga *secteur*, Joas Habimana, and the MDR-Power representative at Gasabo, Ndamage. On that occasion, people told GII that it was Rwamakuba who had come to attend this meeting. GII claimed that a few days later, when Rwamakuba came to deliver machetes at Muhire's place, he recognized him as the man who was identified to him on 4 or 5 April 1994.

96. The Chamber notes that GII identified André Rwamakuba from information given to him by unknown and unidentified people. The witness described him in very general terms²³² and was only able to specify that he wore spectacles. The Defence, however, challenged that Rwamakuba wore spectacles at that time and tendered into evidence a letter from the UNDF Commanding Officer stating that the Accused had "no spectacle in his possession upon his

²³⁰ See: Witness 9/20 and 4/16.

²³¹ T. 27 June 2005, pp. 44, 50 and 54. According to AVC, one of these men had also just met André Rwamakuba. He is dead now and the second man who identified him as Rwamakuba to AVC is in exile but the witness does not know whether he is still alive.

²³² The witness said: "His skin is not too dark. He's not very big, but he's quite robust, quite solid, average size, average height, neither too tall nor too short; he was wearing a jacket and also spectacles."

transfer to the UNDF".²³³ In addition, Defence witnesses who had personal knowledge of Rwamakuba, testified that he never wore glasses.²³⁴

97. Alibi evidence from the Defence strengthens the doubt on GII's reliability to identify André Rwamakuba. According to Defence Witness François Monet, Rwamakuba spent the day of 5 April 1994 from 7.30 a.m. to 5.30 p.m. with himself and Pierre Mercenier.²³⁵ Not only did he rely on his diary entries to confirm this date,²³⁶ but the witness also asserted that he remembered very well Rwamakuba's presence on that day since the latter had been leading the delegation when they met with the Director General of Health. Although Pierre Mercenier could not actually remember whether the Accused was present on 5 April 1994, he claimed that he would have been surprised if he had not met him on that day. The other possible date given by Witness GII as having met Rwamakuba was 4 April 1994. That day was Easter Monday, and testimony was given that Rwamakuba spent the day with his family in Kigali.²³⁷ Considering GII's untested indirect evidence on Rwamakuba's identification and the reliability of the Defence witness' testimony, the Chamber finds that there is some reasonable doubt that GII would have seen Rwamakuba on 4 or 5 April 1994 when the Accused allegedly came to attend a meeting at Muhire's place. This doubt is supported by the Defence evidence on the road access to Gikomero in April 1994.

(2.3.) Road Access to Gikomero

98. The Defence disputed that the Accused could have been present in Gikomero *commune* at the time of the alleged event. The parties agreed and the Chamber accepts that André Rwamakuba was sworn in as a Minister of the Interim Government on 9 April 1994, attended a governmental meeting held in Kigali at the *Hotel des Diplomates* on 11 April 1994,²³⁸ and was living in Kigali until 12 April 1994 when he went to Gitarama with the convoy of the Interim Government.²³⁹ The admission of these facts has a major impact on the Prosecution's theory since at the onset of this trial, the Defence challenged the accessibility from and to Gikomero *commune* due to geographical and military obstacles to road travel in

²³³ Exh. D. 215.

²³⁴ See: Edith Van Wynsberghe (T. 1 December 2005, p. 61); Witness 1/1 (T. 14 December 2005, p. 65); Witness 1/15 (T. 18 January 2006, p. 14) and Witness 9/1 (T. 29 November 2005, pp. 37 and 63-65).

²³⁵ They first met in the morning at the Kigali Regional Health headquarters. Then, the three of them also spent the afternoon together, including at meeting with the director general of public health in the Ministry, during which they discussed the project and the work they were planning to do in Rwanda.

²³⁶ Exh. D. 187.

²³⁷ Witness 1/1, T. 15 December 2005, pp. 35-36. The Prosecution Counsel did not dispute that the 4th April 1994 was Easter Monday.

²³⁸ These are facts not disputed by the parties. See Prosecution Closing Brief, para. 68; Defence Closing Brief.

²³⁹ *Ibidem*.

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April 1994. In its Closing Brief, the Prosecution submitted that the Defence did not show that it was impossible to move to Gikomero at that time.²⁴⁰ It further contended that as a Minister, Rwamakuba could move more easily around the country than an ordinary citizen.²⁴¹ No evidence, however, was adduced in support of that submission. The Chamber recalls that, contrary to the Prosecution's assertion, the Accused is presumed innocent and does not have to prove anything. If the evidence adduced by the Defence raises reasonable doubt, the Prosecution has failed to establish the guilt of the Accused.

99. In the present case, the Prosecution decided not to call any witness to rebut the Defence allegation "but preferred to focus on the credibility and limited knowledge of Defence witnesses on this point".²⁴² It only called investigator Upendra Baghel who testified to a study he conducted in 2003, and who spoke of several routes between Kigali and Gikomero *commune*. According to his report, the average distance between Kigali and Ndatemwa Trading Centre is approximately 36 kilometres which would have taken one and a half hours to travel.²⁴³ The Defence acknowledged that the routes and timing of journeys to Gikomero *commune* were reasonably reviewed in that document, "with the caveat that [the timings] were based on a journey in a good, four wheel drive vehicle, in the dry season, and in peace time".²⁴⁴ The Prosecution investigator admitted that the routes were hilly and difficult, and that he had no knowledge of the conditions for travel in that area in 1994.²⁴⁵ He also denied having knowledge of the positions occupied by the military between 8 and 30 April 1994. The weight of his evidence is therefore less than that of a witness who was present in the relevant area in 1994.

100. Defence witnesses, who were present in Gikomero or tried to get there in April 1994, testified that shortly after 7 April 1994, four main routes between Kigali and Gikomero *commune* were all effectively severed by military positions of the RPF.²⁴⁶ According to Witness 9/20, it was impossible that André Rwamakuba came to Ndatemwa between 10 and 13 April 1994, because the people who lived there could not move about and were ordered to stay home.²⁴⁷ The witness explained that the road from Kigali to Ndatemwa was impassable

²⁴⁰ Prosecution Closing Brief, paras. 190-192.

²⁴¹ Prosecution Closing Brief, para. 192.

²⁴² Prosecution Closing Brief, para. 178.

²⁴³ Exh. P. 2.

²⁴⁴ Defence Closing Brief, p. 22.

²⁴⁵ T. 13 June 2005, pp. 39-40.

²⁴⁶ See references below.

²⁴⁷ T. 7 November 2005, p. 27.

and that vehicles could only travel from Rutunga to Ndatemwa and could go no further.²⁴⁸ The witness asserted that no Minister came to Gikomero in the days in leading up to 13 April 1994.²⁴⁹ Defence Witness 6/10 stated that from 9 April 1994, roads, especially those from Rutongo, were not practicable because the RPF had already taken control of that area. He could not see how a vehicle would have left Kigali and come to the east.²⁵⁰ Defence Witness 7/3 confirmed this evidence and stated that between President Habyarimana's death and 14 April 1994, it was not easy to travel from Gikomero to Kigali because the RPF had overrun strategic positions, especially on Gikomero hills.²⁵¹ According to Defence Witnesses 1/5, 3/13 and 3/4, several roads from Kigali leading up to Gikomero could not be used after 8 or 9 April 1994 because of the RPF's presence and ongoing fighting.²⁵² Defence Witness 3/22 also testified that it was not possible to get to and from Kigali after 12 April 1994 because there were soldiers on the roads.²⁵³ He acknowledged that there were other secondary roads that might have been used to Gikomero, but those small roads were connected to the main road coming from Kigali, which was blocked.²⁵⁴ His testimony was corroborated by Defence Witness 4/12 who lived close to the road. This witness asserted that, after 12 April 1994, he did not see any other vehicle apart from the four vehicles carrying soldiers who were going to fight the *Inkotanyi*.²⁵⁵ He claimed that the road was not safe and Rwamakuba would not have risked his life to get from Kigali to Gikomero at that time.²⁵⁶ Defence witness 2/18 stated that after 13 April 1994, no one could leave Kigali to get to Gikomero because Kigali and Remera were already captured.²⁵⁷

131. It was also a major part of the Defence case that André Rwamakuba's name was not mentioned during the *Gacaca* proceedings in relation to the events that took place in Gikomero *commune* in April 1994. This was supported by the evidence given by several

²⁴⁸ T. 9 November 2005, p. 6.

²⁴⁹ T. 9 November 2005, p. 6.

²⁵⁰ T. 24 November 2005, p. 8.

²⁵¹ T. 19 January 2006, pp. 14-15.

²⁵² The RPF was occupying Remera (road near the Kigali Stadium and Hotel Amahoro) and the "CND" (Parliament - road from German Radio Station *Deutsche Welle*) and the road that goes out towards Kanombe. See: Defence Witnesses 3/4 (T. 17 January 2006, p. 6-12); 3/13 (T. 24 January 2006, pp. 15, 30 and 32); 1/5 (T. 13 December 2005, pp. 24 and 38). Moreover, Defence Witness 2/18 said that after 13 April 1994, no one could leave Kigali to get to Gikomero because Kigali and Remera were captured at that time (T. 23 January 2006, p. 28), and Defence Witness 3/22 testified that Defence Witness 3/22 further testified that after 12 April 1994, it was no longer possible to get to and from Kigali because there were soldiers on the roads (T. 30 November 2005, p.16).

²⁵³ T. 30 November 2005, p.16.

²⁵⁴ T. 30 November 2005, pp.29-31.

²⁵⁵ T. 22 November 2005, pp. 22-23.

²⁵⁶ T. 22 November 2005, pp. 22-23.

²⁵⁷ T. 23 January 2006, p. 28.

Defence witnesses who lived in the area in 1994, or were participating in *Gacaca* proceedings in the *commune*. Defence Witnesses 3/1, 3/22, 3/11 and 4/16 asserted that they never saw or heard of a Minister coming to Gikomero in the days leading up to 13 April 1994.²⁵⁸ Defence Witnesses 7/18 and 9/31 said that Rwamakuba never came to Gikomero after 6 April 1994.²⁵⁹ Witnesses 1/5, 4/12, 6/10 and 7/18 asserted that they never heard that Rwamakuba played any role in the genocide.²⁶⁰ Particularly, several Defence Witnesses also contended that they did not hear any mention of the Accused's name in the *Gacaca* hearings concerning the 1994 massacres in Gikomero.²⁶¹ Defence Witness 3/10, however, testified that, in September or October 2005 after the beginning of the present trial, two of the Prosecution Witnesses mentioned André Rwamakuba's name in the *Gacaca* hearings in the witness' cellule.²⁶²

102. The Chamber finds that these Defence witnesses generally gave a consistent and objective account of the facts sufficient to levy a reasonable doubt on the Prosecution's case. Witnesses 9/20 and 3/1 had no personal relationship with the Accused: they do not know him personally and admit that they would not recognize him.²⁶³ They are both Tusti, whose family members were killed during the genocide in 1994.²⁶⁴ One of them is a coordinator of a local *Gacaca* court in Rwanda. Witness 1/5 did not know André Rwamakuba very well.²⁶⁵ It was not shown that these witnesses would have any particular interest to defend him. For instance, the Prosecution did not attempt to question Witness 3/4 concerning his knowledge of Rwamakuba or the existence of any relationship with him.²⁶⁶ The Chamber notes that Defence Witnesses 3/10, 6/10 and 7/18 knew Rwamakuba's family very well and that Witnesses 4/16 and 7/3 have criminal records. Due to these individual circumstances, the Chamber has taken particular care in assessing their testimonies.²⁶⁷ The evidence adduced from these witnesses

²⁵⁸ T. 10 November 2005, p. 8 (Witness 3/1); T. 30 November 2005, p.17 (Witness 3/22); Witness 1/5 never heard of André Rwamakuba coming to Gikomero *commune* between 8 and 17 April 1994 (T. 12 December 2005, p. 26).

²⁵⁹ T. 1 December 2005, p. 33 (Witness 7/18). Defence Witness 9/31 stated that he never saw André Rwamakuba in Gikomero *secteur* during April 1994 (T. 1 February 2006, p. 8).

²⁶⁰ T. 12 December 2005, p. 26 (Witness 1/5); T. 24 November 2005, p. 7 (Witness 4/12); T. 24 November 2005, p. 24 (Witness 6/10). Witness 7/18 added that she had not heard people at Gikomero or in the Rutare camp for displaced persons discussing Rwamakuba in connection with the massacres (T. 1 December 2005, p. 9).

²⁶¹ See: Defence Witnesses 3/1 (T. 10 November 2005, p. 9); 3/22 (T. 30 November 2005, p. 34); 4/12 (T. 24 November 2005, p. 7); 4/16 (T. 19 January 2006, p. 55); 5/16 (T. 2 February 2006, p. 34); 9/31 (T. 1 February 2006, p. 9); 6/10 (T. 24 November 2005, p. 25).

²⁶² T. 15 November 2005, pp. 19-20.

²⁶³ T. 7 November 2005, p. 26; T. 10 November 2005, p. 25.

²⁶⁴ T. 7 November 2005, pp. 19, 31 and 32; T. 10 November 2005, p. 3.

²⁶⁵ T. 12 December 2005, p. 26 (Witness 1/5).

²⁶⁶ T. 17 January 2005.

²⁶⁷ Defence Witness 3/10 knew Rwamakuba's family very well; 4/16 is charged in his country with killings of four people but claims his innocence. Defence Witnesses 6/10 and 7/18 were very closed to the Accused's

does corroborate the testimony of the other Defence witnesses. The Prosecution's cross-examination of Defence Witnesses 3/10, 6/10, 7/18, 4/16 and 7/3 did not raise any convincing element to show that they were unbelievable or unreliable, nor did the Prosecution adduce any evidence to rebut their testimonies on the above issues.

103. Furthermore, the evidence given on the content of the alleged bags delivered and the subsequent massacres of Tutsi people was merely hearsay evidence. None of the Prosecution witnesses actually saw the content of the bags. They were told later that machetes were brought and the inhabitants were requested to start killing the Tutsi.²⁶⁸ They also did not see the alleged massacres of Tutsi since they fled the area on 13 April 1994 and only learned about it when they returned to the Centre months later and when human skeletal remains were found. These witnesses did not mention the name of any particular victims of the 13 April 1994 attack at Ndatemwa Trading Centre. Their evidence was challenged by the Defence. There was direct testimony that André Muhire never distributed any machetes. Evidence was also adduced regarding the criminal charges against Muhire in Rwanda. It was specified that he was never prosecuted for distributing machetes and that André Rwamakuba's name was never mentioned in his Rwandan judicial records. Witness 9/20 furthermore stated that no new machetes were distributed at that time in Ndatemwa because individuals used their own weapons which they took from their own houses.²⁶⁹

104. The absence of any reliable identification of the Accused at the time and place of the alleged event, his undisputed presence to certain locations during the considered period, the evidence on the potential hazards of travel to and from Gikomero, the absence of any reliable evidence on the exact context of the alleged event, all cumulatively contribute to cast a reasonable doubt that the Accused delivered machetes to André Muhire at Ndatemwa Trading Centre as alleged in paragraph 11 of the Indictment.

II.1.2.2. Alleged Delivery of Machetes to Etienne Kamanzi Used in Attacks against Tutsi

105. The Prosecution alleges that, between 10 and 11 April 1994, the Accused delivered bags of machetes to the home of Etienne Kamanzi, director of the Kayanga Health Centre,

family; they are moreover relatives. Defence Witness 7/14 was Prosecution Witness GIN's relative and Defence Witness 7/3 has a criminal record related to the 1994 genocide.

²⁶⁸ See: Witnesses AVC, AVD and GII.

²⁶⁹ The witness added that, during the *Gacaca* sessions, she never heard about the distribution of new machetes at Ndatemwa Trading Centre (T. 7 November 2005, p. 27).

and that he knew, or had reasons to know, that the machetes would be used in attacks against the Tutsi in the areas.²⁷⁰ Kamanzi's home was located in Kayanga *secteur*, Gikomero *commune*, which is approximately six kilometres from the Ndatemwa Trading Centre and 30 kilometres northeast of Kigali town where André Rwamakuba resided until 12 April 1994. On that date, he moved to Gitarama which is 53 kilometres southwest of Kigali.²⁷¹

(1) Evidence Adduced

106. Prosecution Witness GAC, who claimed to be an eyewitness of this event, was the sole witness called to testify on this allegation. He also claimed that he knew André Rwamakuba since he had already seen him on three occasions before that event.²⁷²

107. The witness testified that "on the day following the death of [President] F.abyarimana"²⁷³ or a few days after the President's death, between 10 and 13 April 1994,²⁷⁴ he saw André Rwamakuba unloading bags containing machetes from a white car and giving them to Etienne Kamanzi.²⁷⁵ The witness heard Rwamakuba blaming Kamanzi for continuing to provide medical treatment to Tutsi at the Kayanga Health Centre.²⁷⁶ He saw Rwamakuba give machetes to Kamanzi indicating that it was the "medicine to treat them", namely to kill the Tutsi.²⁷⁷ Witness GAC then saw a woman named Anatalie Mukarulinda telling Rwamakuba and Kamanzi that she had six "Abakigas"²⁷⁸ who could work and she requested machetes for them. Kamanzi then gave, in the presence of Rwamakuba, six machetes to Mukarulinda.²⁷⁹ GAC saw Mukarulinda distributing the machetes to the six Abakigas.²⁸⁰ The witness did not see machetes being distributed to other persons, but he attested that when the killing began, everyone was provided with a new and recently sharpened machete.²⁸¹

²⁷⁰ Indictment, para. 11.

²⁷¹ Exh. P. 2.

²⁷² See above: Alleged Public Instigation in Gikomero from July 1993 through June 1994.

²⁷³ T. 4 July 2005, p. 7.

²⁷⁴ T. 4 July 2005, pp. 50-53.

²⁷⁵ T. 4 July 2005, pp. 8 and 58.

²⁷⁶ According to Witness GAC, André Rwamakuba asked Kamanzi: "You mean you are continuing to give treatment to the Tutsis?" (T. 4 July 2005, pp. 8-9 and 18).

²⁷⁷ T. 4 July 2005, pp. 6, 7, 9, 11 and 18.

²⁷⁸ Witness GAC explained that the Abakigas were Rwandan natives of Adukiga, located in Byumba and Ruhengeri, who had come from their own region, to flee the war that was being waged by the *Inkotanyi* (T. 4 July 2005, p. 12).

²⁷⁹ T. 4 July 2005, pp. 11 and 58.

²⁸⁰ T. 4 July 2005, pp. 18 and 58.

²⁸¹ T. 4 July 2005, p. 18.

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108. Witness GAC claimed to be “aware”²⁸² that the Abakigas used the machetes to kill Tutsi. The witness learnt from a *conseiller* that a policeman named Nyarwaya had taken part in a meeting in Nduba the day before the attacks, with *Interahamwe*, policemen and *conseillers*, where instructions were issued.²⁸³ According to the witness, on or about 13 April 1994, the six Abakigas went toward Rutunga Trading Centre.²⁸⁴ Then, Nyarwaya, who was standing at the Rutunga marketplace, shot his gun in the air and told the Abakigas to “begin”.²⁸⁵ The witness was not present at the market at that time.²⁸⁶ After the gunshot, the Abakigas began burning down houses, looting and assaulting neighbouring persons, beginning with Mukarulinda’s neighbours.²⁸⁷ According to Witness GAC, the victims of the attacks were Tutsi and the perpetrators were Hutu. These attacks by the Abakigas marked the beginning of the massacres in Kayunga. The witness stated that the first person who was killed was an inhabitant,²⁸⁸ then Tutsi patients of the Kayunga Health Centre were killed after 13 April 1994 and until the end of the week by *Interahamwe* from Gasabo.²⁸⁹

(2) Assessment of the Evidence

109. The Chamber notes that Witness GAC was a Prosecution witness in the *Kamuhanda* case. The Defence submits that his evidence should not be admitted since the Trial Chamber in the *Kamuhanda* case found him not credible.²⁹⁰ It contends that once a Trial Chamber finds a witness not credible, in respect of significant and substantial testimony, it is only appropriate in the most exceptional circumstances for the Prosecution to tender him as a witness of truth in another trial. In the Defence’s view, failure to follow such good practice is likely to bring the administration of justice into disrepute and the Chamber should refuse the admission of such evidence as an abuse of process.²⁹¹

110. The Chamber has discretionary power to assess the evidence brought before it and cannot be bound by the assessment of Witness GAC’s credibility made in the *Kamuhanda* case. The Chamber, however, already found his testimony unreliable concerning the political

²⁸² T. 4 July 2005, p. 12.

²⁸³ T. 4 July 2005, pp. 15-16.

²⁸⁴ T. 4 July 2005, p. 12.

²⁸⁵ T. 4 July 2005, p. 12.

²⁸⁶ T. 5 July 2005, p. 3.

²⁸⁷ T. 4 July 2005, pp. 12 and 15.

²⁸⁸ T. 4 July 2005, pp. 18 and 60.

²⁸⁹ T. 4 July 2005, pp. 18-19.

²⁹⁰ *Kamuhanda* Judgement, para. 287; Defence Closing Brief, pp. 191-193.

²⁹¹ Defence Closing Brief, pp. 192-193.

meetings in Kayanga.²⁹² Moreover, Witness GAC's testimony on the alleged delivery of machetes to Kamanzi also appears to be tainted with major internal inconsistencies which seriously challenge his credibility (2.1.). This challenge is reinforced by the Defence evidence on the road access to Gikomero at the time of the event (2.2.).

(2.1.) *Credibility Issues*

111. Witness GAC's testimony is not consistent concerning the date when the alleged event took place. The witness first testified that the delivery of machetes by the Accused to Kamanzi took place "the day following the death of Habyarimana". Later in his testimony, he asserted that the event had taken place *a few days* after the President was killed, around 10 and 13 April 1994.²⁹³ Similarly, the witness stated that a *conseiller*, who was his neighbour, informed him about the meeting in which Nyarwaya participated the day before the attacks in Nduba. Later in his testimony, he denied that this *conseiller* was a neighbour and added that he is no longer alive.²⁹⁴

112. The witness' account of the event is also subject to concerns. After Witness GAC saw the alleged distribution of machetes, he did not directly inform his family but continued on his way and went off for a drink in a bar.²⁹⁵ Such behaviour is odd when considering the particular insecure context of threats against the Tutsi people as described by the witness himself. The witness' testimony as to his presence when the massacres started at the Rutunga Trading Centre on 13 April 1994 also seemed unlikely: he both affirmed that he was present on the spot when massacres started and that he fled Kayanga on the same day.²⁹⁶

113. In addition to these internal inconsistencies and unlikely behaviours and actions, Witness GAC's testimony substantially differed from his statement to the Prosecution on 8 November 2004.²⁹⁷ In that statement, the witness declared that Kamanzi opened the bag of machetes which had been unloaded *on Rwamakuba's order*, but in the courtroom, he testified that it was Rwamakuba who had opened his car and was giving machetes to Kamanzi himself.²⁹⁸ In the same statement, the witness specified that he clearly heard Rwamakuba *ask* Kamanzi to give Mukarulinda the machetes, while in his testimony the machetes were given

²⁹² See: Alleged Public Instigation in Gikomero from July 1993 through June 1994.

²⁹³ T. 4 July 2005, pp. 50-53.

²⁹⁴ T. 5 July 2005, p. 2.

²⁹⁵ T. 4 July 2005, p. 62.

²⁹⁶ T. 4 July 2005, pp.29-30.

²⁹⁷ Exh. D. 34 A and B (under seal).

²⁹⁸ T. 4 July 2005, pp. 9 and 58.

to her *at her request*. In 2004, he also gave the name of three companions, including Alexis Karekezi, who were present when he saw Rwamakuba giving the machetes. According to his statement, these three persons were then killed at the Kayanga Health Centre. In court, the witness testified that *only* Alexis Karakezi was with him on that occasion and that there were *Interahamawe* who were not far away.²⁹⁹ The witness' statement does not contain any information concerning the alleged attacks of the six Abakigas against Tutsi at the Rutunga Trading Centre, the meeting held the day before the attacks where instructions to kill Tutsi were issued, and the incident with Nyarwaya firing his gun in the air and telling the Abakigas to begin the attacks, all of which he testified extensively about in court. The witness also qualified Etienne Kamanzi as the Head of the Kayanga Health Centre in his 2004 statement,³⁰⁰ but in court he referred to him as a nurse at the Kayanga Health Centre.³⁰¹

114. These discrepancies cannot be justified by the time elapsed since the event or translation discrepancies. They are significant in the assessment of the credibility of this witness who omitted any reference to André Rwamakuba in his early statements to the Prosecution investigators. Witness GAC gave a statement in 1999 to the Prosecution and testified in the *Kamuhanda* case in 2002 about the activities of Kamuhanda and Kamanzi in the distribution of weapons in Kayanga between 8 and 12 April 1994. He testified on the occasions where he saw Kamanzi prior to the massacres. It was not until he gave his statement in 2004 that he mentioned Rwamakuba for the first time. He explained the prior omission by the fact that he was not questioned about Rwamakuba at the time. Even if that were the case, the Chamber does not find this to be a satisfactory explanation, as the absence of certain questions would not preclude a witness, who wanted to give a credible picture of an event, from volunteering information.³⁰²

115. Witness GAC's demeanour in court supports the Chamber's conclusion that the witness cannot be found credible. Although the Chamber acknowledges that a witness' behaviour may be influenced by the fact that he or she is responding to the opposite party, in the present case, the witness was particularly reluctant or unwilling to respond to the

²⁹⁹ T. 4 July 2005, pp. 59-60.

³⁰⁰ Exh. D. 34.

³⁰¹ T. 4 July 2005, p. 7.

³⁰² It is interesting to note that GAC gave his first statement as a result of a visit to the United Nations office in Kigali. As he was requesting free medical assistance, an investigator asked him whether he had information about the crimes committed by a man named André Rwamakuba in Gikomero in April 1994 (T. 4 July 2005, pp. 32-33).

Defence's questions in cross-examination.³⁰³ He was also extremely disinclined to speak about or comment on his previous testimony in the *Kamuhanda* case.³⁰⁴

116. The defence evidence on the potential hazards of travel between Kigali and Gikomero *commune* at the time of the event reinforces the Chamber's doubts on GAC's credibility.

(2.2.) Road Access to Gikomero

117. Neither the Indictment nor the Prosecution's evidence seems to suggest that the delivery of machetes to Kamanzi's house took place on the same day as the alleged delivery of machetes at Muhire's place in Ndatemwa Trading Centre.³⁰⁵ The Prosecution did not provide any chronology of the alleged four occasions when the Accused came to Gikomero over a period of five days. According to Witness GAC, André Rwamakuba met Kamanzi and decided to give him machetes by chance. There is no other explanation or account of that event. However, in the Chamber's view, the chronology of the facts was particularly relevant to the Prosecution case. As previously discussed, it was admitted that the Accused attended other activities in Kigali on 11 April 1994.³⁰⁶ The Prosecution did not attempt to explain how the Accused moved from that town to deliver machetes in a location 30 kilometres apart or how he came over a period of two days to two different locations six kilometres apart,³⁰⁷ whereas the Defence adduced evidence that it was hazardous to travel to and from Gikomero after 7 April 1994, that Rwamakuba never came to Gikomero *commune* in the days leading up to 13 April 1994 and that his name was never mentioned in relation to the massacres in the *commune* in April 1994.³⁰⁸ The Chamber already found the Defence evidence consistent and objective enough to levy a reasonable doubt on the Prosecution's case.³⁰⁹

118. The lack of credibility of Witness GAC, the admitted presence of André Rwamakuba in other activities, the evidence on the potential hazards to travel, cumulatively contribute to reasonable doubt on the alleged presence of the Accused in Kayanga *secteur*, Gikomero *commune* between 10 and 13 April 1994. Since Witness GAC was the sole witness called and

³⁰³ See for e.g.: T. 4 July 2005, pp. 11, 27, 39-42 and 51.

³⁰⁴ T. 4 July 2005, pp. 45-48.

³⁰⁵ See above the testimonies of Prosecution Witnesses AVC, AVD and GH on the alleged delivery of machetes to Muhire's house.

³⁰⁶ On 11 April 1994, André Rwamakuba participated in a governmental meeting held in Kigali at the *Hotel des Diplomates*. See: Statement of Admissions by the Parties and Other Matters not in Dispute, filed on 3 June 2005. Prosecution Witness GLM and Prosecution Expert Witness Des Forges.

³⁰⁷ When he allegedly came to Ndatemwa Trading Centre to deliver machetes to Muhire's house (see above) and when he allegedly came to Kayanga to deliver machetes to Kamanzi's house.

³⁰⁸ See paras 100-101.

³⁰⁹ See para. 102.

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no additional evidence was adduced that between 10 and 11 April 1994, the Accused delivered bags of machetes to the home of Etienne Kamanzi, the Prosecution failed to prove this allegation.

II.1.3. Alleged Murder of Three Tutsi near Gikomero Secteur Office

119. At paragraph 12 of the Indictment, the Prosecution alleges that

Between 10 and 20 April 1994, **André RWAMAKUBA** went to Gikomero *commune* where, during a rally near the *secteur* office, accompanied by RUTAGANIRA, *bourgmestre* of the *commune*, Brigadier NYARWAYA, Mathias KABANGUKA, accountant of the *commune*, and two men unknown but who were identified as policemen, he asked persons in the crowd why the massacres had not started. He then seized documents belonging to two unknown youths, but who were identified as Tutsi, tore the documents and ordered the crowd to seize the youths and kill them. Persons present in the crowd armed with firearms, machetes and clubs, including NGIRUWOSANGA, a *secteur* inhabitant, NGARAMBE and KAYIBANDA, and two communal policemen, immediately seized the two young men that **André RWAMAKUBA** had designated, led them away to a wooded area and killed them as the *Accused*, who was not far, looked on. Thereafter, this same crowd stopped an unidentified man on a motorcycle claiming to flee the massacres in Rutongo *commune*. **André RWAMAKUBA**, while speaking to the crowd, stated that the motorcyclist could not be a Hutu since only Tutsi were fleeing, and decided that the youth should be killed. At the instigation of and following orders from **André RWAMAKUBA**, the same armed crowd led him away to a wooded area to kill him. The *Accused* then told the crowd that it had just started the killings and that it was a good start. The same day, in the afternoon, Interahamwe militiamen, elements of the Presidential Guard, with the assistance of members of the population, following such orders and instigations, began to massacre Tutsi refugees, in Gikomero *commune*, notably at Kayanga Health Center, Gikomero Protestant School and Gicaca. Thousands were massacred, including refugees from Remera, in Kigali town centre, refugees from the neighbouring *commune* of Gikoro and Kabuga *secteur*, Rubungu *commune*.

(1) Evidence Adduced

120. The Gikomero *secteur* office is approximately 25 kilometres northeast of Kigali town, where André Rwamakuba was living until 12 April 1994; 11 kilometres from Ndatemwa Trading Centre and five kilometres from Kayanga *secteur*. From Kigali town it is 53 kilometres southwest to Gitarama where Rwamakuba moved to on 12 April 1994.³¹⁰

121. To support the allegation at paragraph 12 of the Indictment, the Prosecution only called Witness GIN, who claimed to have been present at this event. This witness also asserted that she was introduced to André Rwamakuba for the first time in 1992 at a wedding in the family of a man named Karuyonga who, according to the witness, seemed to be Rwamakuba's friend.³¹¹ She saw the Accused again at Nyamirambo, Kigali-ville, in 1992

³¹⁰ Exh. P. 2.

³¹¹ T. 29 June 2005, p. 9. The Chamber notes an interpretation discrepancy between the French ("Karuyonga") and English transcript ("Kayiranga").

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when he came to visit her family.³¹² The witness testified that she saw Rwamakuba a third time in Gikomero *commune* between 10 and 14 of April 1994, between 10.00 a.m. and 11.00 a.m. He was in the company of *Bourgmestre* Rutaganira, the accountant Mathias Rubanguka, the brigadier Nyarwaya, two *commune* policemen, Ngarambe and Kayibanda, and other members of the population such as François-Xavier Kamanzi, Ngiruwosanga and Mivumbi.³¹³

122. According to Witness GIN, when André Rwamakuba got to the centre, the inhabitants had stopped two young people and were asking them to show their identity cards. As these young people showed their certificates instead of their identity cards, Rwamakuba tore them up³¹⁴ and said that these young people were Tutsi because they had refused to show their identity cards.³¹⁵ He then ordered that they be arrested and killed. The two young men were taken off to a wooded area by the same group, which included Rwamakuba, Ngiruwosanga, Murekezi, Runyota, Ngarambe, Kayibanda, Rubanguka and Rutaganira.³¹⁶ They were armed with machetes, clubs, and some carried guns.³¹⁷ There was a distance of 70 to 100 meters between the entrance to the yard of GIN's house where she was standing and the place in the woods where the two men were taken. They stayed in the woods for about one and a half hours.³¹⁸ GIN heard the two young persons screaming as they were beaten up and she concluded that they were killed because the people who took them away returned alone.³¹⁹ GIN cannot confirm whether Rwamakuba went right to the spot where the people were killed, but she asserted that he was there and he saw what was happening.³²⁰

123. After the two young people were killed, André Rwamakuba allegedly encouraged and gave instructions to members of the population to continue the killings. He is also alleged to have thanked them for starting the killings in the *commune*.³²¹

124. Then, still according to GIN, while André Rwamakuba was still there, a young man showed up on a motorcycle. He was stopped and was required to show his identification documents. GIN heard Rwamakuba say that only Tutsis were fleeing and he then gave orders for the motorcyclist to be killed.³²² The witness saw that the same armed group took the

³¹² T. 29 June 2005, p. 10; T. 30 June 2005, pp. 27-29 and 32-33.

³¹³ T. 29 June 2005, p. 10.

³¹⁴ T. 29 June 2005, pp. 11-12.

³¹⁵ T. 29 June 2005, p. 12.

³¹⁶ T. 29 June 2005, p. 13.

³¹⁷ T. 29 June 2005, p. 14.

³¹⁸ T. 29 June 2005, p. 14.

³¹⁹ T. 29 June 2005, pp. 13, 16 and 28.

³²¹ T. 29 June 2005, pp. 14-15.

³²² T. 29 June 2005, p. 15.

motorcyclist into the same woods as the two young people. This time, Rwamakuba allegedly remained with the *bourgmestre* in an open area,³²³ as the motorcyclist was killed. GIN testified that he left shortly thereafter.³²⁴

(2) Assessment of the Evidence

125. In the Chamber's view, GIN's evidence is not consistent with the Prosecution's allegation set forth in the Indictment (2.1.). It is also highly improbable that the alleged killing of three people at the Gikomero *secteur* office between 10 and 14 April 1994 would have occurred as described by Witness GIN (2.2.).

(2.1.) Lack of Consistency between the Dates in the Indictment and the Evidence

126. In addition to GIN's testimony, evidence has also been adduced by both parties that in April 1994, Tutsi refugees from Mbandazi and from Rubungo *communes* were attacked and killed by *Interahamwe* at Gikomero Protestant School. GIN was not present at the location but was informed that this massacre took place between 8 and 12 April 1994. She asserted that André Rwamakuba was not involved in that massacre.³²⁵ Defence Witnesses 2/18, 3/1,³²⁶ 3/11, 9/31 who were present at the time and location of the event, were more specific and all affirmed that the Tutsi refugees were killed on 12 April 1994, between 1.00 p.m. and 2.00 p.m. This date was confirmed by Defence Witnesses 3/22, 4/12 and 7/3 following information they received from others.³²⁷ Prosecution Witnesses GAB and GII also testified that on 12 April 1994, Tutsi refugees were killed at the Gishaka parish in Gikomero *commune*.³²⁸ Both parties accepted that this massacre took place at that time.³²⁹

127. Consequently, the suggestion made by GIN that the killings at the Gikomero *secteur* office could have taken place after 12 April 1994, on 13 or 14 April 1994, is inconsistent with the Prosecution's allegation that the day of the killings of three people at the Gikomero *secteur* office, after Rwamakuba's departure, in the afternoon, *Interahamwe* militiamen,

³²³ T. 29 June 2005, p. 16.

³²⁴ T. 29 June 2005, p. 16.

³²⁵ T. 29 June 2005, p. 27.

³²⁶ The witness stated that the victims at the Gikomero Protestant School included members of her family that came from Mbandazi (T. 10 November 2005, p. 7).

³²⁷ T. 30 November 2005 (Witness 3/22); T. 22 November 2005, pp. 12-14 (Witness 4/12); T. 19 January 2006, p. 11 (Witness 7/3).

³²⁸ T. 23 June 2005, pp. 44-45 (Witness GII); T. 6 July 2005, p. 22 (Witness GAB).

³²⁹ T. 5 July 2005, p. 52.

elements of the Presidential Guard, with the assistance from members of the population, began to kill Tutsi refugees, notably at the Gikomero Protestant School.

(2.2.) *Credibility Issues*

128. GIN's evidence includes major discrepancies between her prior statements and testimony, and is also seriously challenged by facts admitted by both parties and the evidence adduced by the Defence.

129. A comparison between her testimony regarding the identification of André Rwamakuba, and her prior statements and testimony in the *Kamuhanda* case reveals important discrepancies. In her first statement of 3 February 1998,³³⁰ she stated that her husband told her that it was Rwamakuba who came to Gikomero in April 1994, and that she recognized him as well because she used to see him driving his car in Gikomero *commune*. GIN confirmed this information in the investigator's report dated 13 February 2004,³³¹ but two months later, she stated that she met Rwamakuba for the first time at a wedding between 1991 and 1992.³³² She then specified that the wedding took place at Karuyonga's house who was her mother's neighbour in Gicaca, and not Rwamakuba's friend, as she declared in court.³³³ In the *Kamuhanda* case, in 2001, prior to her amended statement, the witness gave a different account of her knowledge of Rwamakuba: she testified that she saw him for the first time in front of her house in 1994.³³⁴

130. Witness GIN's physical description of André Rwamakuba was also extremely vague³³⁵ and contradictory. In her earlier statements, she described him wearing clothes with the colours and emblem of the MRND party.³³⁶ Despite giving several other statements,³³⁷ it was not until April 2004 that she changed her statement and specified that Rwamakuba was not wearing the MRND colours.³³⁸ During her testimony, when confronted with the obvious discrepancy because of Rwamakuba's membership in the opposing MDR party, the witness

³³⁰ Exh. D. 35 A and B (under seal).

³³¹ Exh. D. 38 (under seal).

³³² See: Notice of Additional Evidence Pursuant to Rule 67(D), Exh. D. 39 (under seal).

³³³ *Ibidem*.

³³⁴ *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-98-54A-T, T. 17 April 2001, p. 68 (Exh. D. 43).

³³⁵ T. 30 June 2005, pp. 30-32. According to Witness GIN, André Rwamakuba was "not very tall, he was fat but not very fat. He was not obese. As for his colour, he was somewhere between dark and light; fair skinned." The witness further added that he "was a well built man. He was stout".

³³⁶ Statement of 3 February 1998, Exh. D 35 (under seal).

³³⁷ Witness GIN made a statement to Prosecution on 3 February 1998 (Exh. D. 35); and interview reports were taken on 27 March 2002 (Exh. D. 36); 27 May 2003 (Exh. D. 37) and 13 February 2004 (Exh. D. 38).

³³⁸ See: Notice of Additional Evidence Pursuant to Rule 67(D), Exh. D 39 (under seal), p. 2.

explained that the investigator made a mistake when taking notes of her description of Rwamakuba's attire. She maintained, however, that he was wearing a cap with the MRND colours and emblem.³³⁹ This explanation and comment are not satisfactory and raises further doubts on her credibility.

131. The witness' account of the event is also radically different from her prior statements made with the Prosecution and her testimony in the *Kamuhanda* case. In court, she testified that André Rwamakuba arrived at the Gikomero *secteur* office between 10 and 14 April 1994 and that three Tutsi people were killed on that occasion. She also testified that massacres took place at the Gikomero Protestant School between 8 and 12 April 1994. In 1998, however, the witness explicitly affirmed that the killing of the three people at Gikomero *secteur* office took place on 12 April 1994, a date on which according to the witness' statement, the killings had not yet started in the *commune*. In the same statement, she stated that Rwamakuba came to launch the beginning of the massacre in the *commune* and that as soon as he left, in the afternoon, Tutsi refugees were killed at the Gikomero Protestant School. In that statement, she asserted that she did not see him again after that massacre. In 2001 in the *Kamuhanda* case, the witness testified that the killings at the Protestant School were the first killings in the *secteur*. Later, in 2003, the witness stated that she did not see Rwamakuba exactly on 12 April 1994 but between 12 and 20 April 1994.³⁴⁰ This declaration was amended again a year later when she stated that she saw him, after the killings at the Gikomero Protestant School between 6 and 20 April 1994.³⁴¹ In this case, GIN testified that Rwamakuba came with the crowd to the wooded area where the two young people were killed, but in 2003 she requested the investigator to amend her prior statement and indicated that the Accused did not follow the crowd to the wooded area but stayed by his car in front of the *secteur* office, from where he was able to see the killings. The witness also gave an inconsistent account of her whereabouts in April 1994. She admitted that she had gone to Kibobo with her sister in law to seek refuge, but she was uncertain on the dates.³⁴² This is a major matter of concern considering that Defence witnesses testified that GIN was not in Gikomero at the time of the alleged murders.³⁴³ The Defence challenged GIN on her prior statements and testimonies. The Chamber found her answers to be inconsistent and unconvincing.

³³⁹ T. 30 June 2005, pp. 32-33.

³⁴⁰ Interview Report of 27 May 2003 (Exh. D. 37).

³⁴¹ Interview Report of 13 February 2004 (Exh. D. 38).

³⁴² T. 1 July 2005, pp. 14-15.

³⁴³ See: Defence Witnesses 7/14 and 3/31 who personally knew GIN (T. 25 January 2006, p.22; T. 11 November 2005, p. 10).

132. These major inconsistencies between GIN's testimony and her prior statements cannot be explained by the time elapsed, translation discrepancies, the manner in which the statements were taken or the impact of trauma inflicted upon the witness. Neither can they be considered additional details provided to the witness' prior statements.

133. Several Defence witnesses also gave testimony to Witness GIN's personality. The Chamber has considered and weighed this information with great caution due to the personal relationship between GIN and some of the Defence witnesses. During the genocide, the witness lost her mother and one of her siblings.³⁴⁴ According to Defence Witness 3/22 who has known GIN since she was very young, and Defence Witness 5/15, who also has a close relationship to GIN, she has been greatly affected by her experience in 1994 and had changed since then. Witness 3/22 described GIN as someone who is highly emotional, dishonest,³⁴⁵ and not trustworthy.³⁴⁶ Witness 7/14 submitted that GIN was plotting with other people to fabricate evidence against key figures of Gikomero.³⁴⁷ Witness GIN's criminal record indicating a conviction in Rwanda for the murder of a colleague, was also raised by the Defence to undermine her credibility.³⁴⁸

134. Her credibility is further challenged by the admitted fact that on 11 April 1994 the Accused was in Kigali,³⁴⁹ and the day after was moving from there to Gitarama.³⁵⁰ The Indictment and the Prosecution evidence did not provide a chronological account of the Accused's alleged activities in Gikomero in April 1994. GIN's testimony seemed to require that the Accused made a separate or third trip to the area in addition to the alleged delivery of machetes to Muhire and Kamanzi.³⁵¹ The evidence adduced by the Defence that travel between Kigali and Gikomero was difficult and hazardous at that time due to the presence of RPF troops reinforces the doubt on GIN's credibility.³⁵²

135. In view of the major inconsistencies in the witness' evidence, her particular personality and judicial record, the admitted presence of the Accused on other locations at the

³⁴⁴ T. 29 June 2005, p. 42.

³⁴⁵ T. 30 November 2005, p. 20.

³⁴⁶ See: Defence Witness 3/1 (T. 10 November 2005, pp. 9 and 29).

³⁴⁷ T. 25 January 2006, pp. 16-19; T. 03 February 2006, pp. 12-14 and 43.

³⁴⁸ Exh. D. 213 (under seal).

³⁴⁹ See: Prosecution Witness GLM; Prosecution Witness Des Forges; Prosecution Closing Brief, footnote 5; Defence Closing Brief.

³⁵⁰ Statement of Admissions by the Parties and Other Matters not in Dispute, filed on 3 June 2005; see also: Prosecution Witness GLM and Prosecution Expert Witness Des Forges.

³⁵¹ See above, para. 85 and seq.

³⁵² See above, paras. 100 and 102.

time of the alleged event, the potential hazards of access to the commune at the time of the event, Witness GIN cannot be found credible. Since no other evidence has been adduced to establish the allegation in the Indictment, the Chamber finds that the Prosecution failed to prove beyond reasonable doubt André Rwamakuba's involvement in the killings of three Tutsi people in Gikomero *commune* between 10 and 20 April 1994.

II.1.4. Alleged Participation of André Rwamakuba to the Massacre at Kayanga Health Centre

136. The Prosecution alleges at paragraph 13 of the Indictment that

Between 13 and 15 April 1994, in the morning, **André RWAMAKUBA**, accompanied by local authorities, including Mathias RUBANGUKA, accountant of the *commune*, Callixte KABARERA, Inspector of Schools, Brigadier NYARWAYA, RUTAGANIRA, *bourgmestre* of Gikomero *commune*, Thomas MABANGO, *conseiller* of Kanyanga [sic],³⁵³ and soldiers and *Interahamwe* militiamen, arrived at the Kayanga Health Center in Kayanga *secteur*, where many Tutsi fleeing the massacres that had started in their *secteurs* had sought refuge. At a man unknown but identified as the deputy director's request, they assembled in the courtyard of the Health Centre [sic]³⁵⁴. Upon his arrival, **André RWAMAKUBA** stated that the killings had started everywhere else and that he realized that nothing had been done at the Health Centre. The *Accused*, stating that he was showing the example, then brandished a firearm, signaling the start of the massacres to soldiers and *Interahamwe* who began, in his presence, to attack and kill the Tutsi with firearms, machetes and clubs. Shortly after the beginning of the killings, while it was raining, **André RWAMAKUBA**, referring to the bodies of Tutsi, demanded that such filth be cleared. The *Accused* witnessed the killings until he left the Health Centre, while the soldiers and *Interahamwe* continued the killings for several hours. No one survived the massacre in which about a hundred people are alleged to have died. The bodies of the victims were thrown into a mass grave. These victims were mostly in-patients and Tutsi refugees fleeing the killings in the neighbouring *secteurs*, notably the killings in the Parishes of Gikomero and Gicaca.

(1) Evidence Adduced

137. Kayanga Health Centre is located in Kayanga *secteur*, Gikomero *commune*, which is approximately 80 kilometres from Gitarama where André Rwamakuba resided at the time of the event.³⁵⁵

138. There is no dispute in the present case that there were killings at Kayanga Health Centre in April 1994 and that the victims were murdered solely because they were Tutsi.³⁵⁶

³⁵³ The French version of the Indictment, which is the original language, reads as follows: "Kayanga".

³⁵⁴ The French version of the Indictment reads as follows: "Ils étaient, à la demande d'un homme inconnu, mais identifié comme étant le Directeur-adjoint, rassemblés dans la cour du Centre."

³⁵⁵ See: Exh. P. 2: the distance between Kigali and Kayanga is approximately 30 kilometres; and Gitarama is 53 kilometres southwest from Kigali.

Both parties adduced evidence on this event. The alleged participation of the Accused, however, is disputed.

IC9. Five Prosecution witnesses gave evidence on this massacre,³⁵⁷ including Witness GAB who said that he was the sole survivor and eyewitness of the event.³⁵⁸ On 13 April 1994, after the massacres had started in his *secteur*, Prosecution Witness GAB began to flee.³⁵⁹ He testified that he arrived at Kayanga Health Centre between 13 and 15 April 1994.³⁶⁰ He spent the night in the courtyard between the rooms, the open space at the Centre.³⁶¹ The morning after his arrival, around 8.00 a.m., the Deputy Director of the Centre, Etienne Kamanzi, arrived with *Interahamwe*. The witness and the people who were in the wards as well as refugees were taken out with the Tutsis and collected in the big courtyard in front of the Centre.³⁶² They were told to sit down and not to move. Around 10.00 a.m., four vehicles arrived, including a military truck. The witness saw the Accused, *Bourgmestre* Rutaganira, the *brigadier* Nyarwaya, the accountant and the school inspector.³⁶³ When he saw them, the witness hid in a nearby sorghum field near the Centre.³⁶⁴ From that place, he heard Rwamakuba say “[e]verywhere I have been, they have begun to work - and “work” meant to kill – so what are you waiting for?”³⁶⁵ The *brigadier* Nyarwaya replied that they did not start to kill because they did not have enough materials for the task.³⁶⁶ The witness then saw Rwamakuba take out a pistol, wave it in the air, and say “Here is the pistol; the *Interahamwe* are present. The material is available; I don't see why you continue to raise that question while everything is ready.”³⁶⁷ After that, many people, mostly Tutsi, were shot or attacked with machetes, clubs and bludgeons.³⁶⁸ The witness also heard the Accused stating that the Tutsis should be killed “so that in [the] future, a Hutu who is born asks what a Tutsi look[ed] like”.³⁶⁹ Rwamakuba allegedly left with the other vehicles in the direction of Gikomero, around midday when people had already been killed.³⁷⁰ After his departure, the *Interahamwe*

³⁵⁶ Defence Closing Brief, p. 167, para. 6; See: Prosecution Witnesses ALA, AVC, GAC, GIN and GAB; Defence Witnesses 3/1, 7/14, 6/10, 7/18.

³⁵⁷ Witnesses ALA, AVC, GAB, GAC and GIN.

³⁵⁸ T. 5 July 2005, p. 35; see also: Prosecution Closing Brief, para. 62.

³⁵⁹ T. 5 July 2005, p. 22.

³⁶⁰ T. 6 July 2006, p. 8.

³⁶¹ T. 6 July 2006, p. 7.

³⁶² T. 6 July 2005, p. 7.

³⁶³ T. 5 July 2005, p. 24.

³⁶⁴ T. 5 July 2005, p. 24.

³⁶⁵ T. 5 July 2005, p. 25.

³⁶⁶ T. 5 July 2005, p. 26.

³⁶⁷ T. 5 July 2005, p. 26.

³⁶⁸ T. 5 July 2005, p. 26.

³⁶⁹ T. 5 July 2005, p. 26.

³⁷⁰ T. 5 July 2005, p. 27.

and the soldiers went on killing, until everybody was killed.³⁷¹ According to GAB, around one hundred persons died in this massacre.³⁷²

140. Prosecution Witness GIN testified that “about four or five days” after the killing of the three young people in Gikomero centre between 10 and 14 April 1994,³⁷³ she saw André Rwamakuba arrive at the trading centre in a white station wagon.³⁷⁴ He stopped for a few minutes and spoke to some inhabitants from his vehicle. Some of the people who were present at that time included one person named Callixte, Twagirayezu, Drocella Mukayiranga, Ngiuwosanga, Mirumbi, a policeman by the name of Ngarambe, Gihanga and Gatinseyi.³⁷⁵ Then, Rwamakuba allegedly went on his way towards Kayanga.³⁷⁶ Later, two vehicles, with Mathias Rubanguka,³⁷⁷ Nzaramba, and the *brigadier* Nyarwaya aboard, came to collect *Interahamwe* as well as *communal* policemen. They were carrying firearms, guns and grenades.³⁷⁸ One of the vehicles stopped in front of GIN’s house and the other stopped in front of Karekezi’s house.³⁷⁹ GIN’s husband, *Interahamwe* and other people got into the vehicles and went off together to Kayanga. When GIN’s husband came back from Kayanga, he told her that he had found Rwamakuba in the company of the person in charge of the Kayanga Health Centre, Kamanzi. He also told GIN that Rwamakuba ordered the massacre of the Tutsi people, that the massacre actually began and then Rwamakuba left Kayanga Health Centre.³⁸⁰

141. Prosecution Witnesses ALA and AVC were told that attacks against Tutsi people took place at Kayanga Health Centre.³⁸¹ ALA specified that the attack claimed about a hundred victims.³⁸² AVC said that this happened some time between May and June 1994.³⁸³ He was told that people were killed there, including four of his brothers and other people who had sought refuge at Kayanga Health Centre.³⁸⁴ Witness GAC testified that Tutsi patients of Kayanga Health Centre were killed after 13 April 1994 and until the end of the week by the

³⁷¹ T. 5 July 2005, p. 27.

³⁷² T. 5 July 2005, p. 28.

³⁷³ See above.

³⁷⁴ T. 29 June 2005, p. 21.

³⁷⁵ T. 29 June 2005, p. 21.

³⁷⁶ T. 29 June 2005, p. 22.

³⁷⁷ T. 29 June 2005, p. 22. The Chamber notes an interpretation discrepancy between the French (“Rubanguka”) and English transcript (“Rubaruka”).

³⁷⁸ T. 29 June 2005, p. 23.

³⁷⁹ T. 29 June 2005, p. 23.

³⁸⁰ T. 29 June 2005, p. 25.

³⁸¹ T. 14 June 2005, p. 53 (Witness ALA); T. 27 June 2005, p.67 (Witness AVC).

³⁸² T. 14 June 2005, p. 53.

³⁸³ T. 27 June 2005, p. 19.

³⁸⁴ T. 27 June 2005, p. 18.

Interhamwe from Gasabo.³⁸⁵ He did not specify whether he was present at the time of the event.

142. Defence Witnesses 6/10, 7/18 and 7/3 testified that they were survivors of the Kayanga Health Centre massacre that, according to them, took place on 15 April 1994 and was led by the *brigadier* Nyarwaya.³⁸⁶

(2) Assessment of the Evidence

143. In the Chamber's view, the Prosecution's evidence is inconsistent with the allegation set forth in the Indictment (2.1.) and suffers major challenges as far as the witness' credibility is concerned (2.2.).

(2.1.) Lack of Consistency between the Indictment and the Prosecution Evidence

144. Witnesses ALA, AVC and GAC did not provide any evidence on the presence of the Accused at the Kayanga Health Centre massacre in April 1994. ALA and AVC gave hearsay evidence, and AVC's testimony that the massacre took place between May and June 1994 contradicts the other evidence adduced by both parties and does not support the charges against the Accused which place this event between 13 and 15 April 1994.

(2.2.) Credibility Issues

145. The Chamber has already found that Witness GIN was not a credible witness as far as her evidence concerned the alleged participation of the Accused in the murder of three Tutsi near the Gikomero *secteur* office.³⁸⁷ For the present event, she provided hearsay evidence from her deceased husband. It is noteworthy that she mentioned the Kayanga Health Centre massacre of April 1994 and André Rwamakuba's participation in the massacre for the first time in April 2004,³⁸⁸ in her fifth meeting with the Prosecution.³⁸⁹ In particular, in her first statement dated 3 February 1998,³⁹⁰ she asserted that she had not seen Rwamakuba after the

³⁸⁵ T. 4 July 2005, pp. 18-19.

³⁸⁶ T. 19 January 2006, p. 14. Defence Witness 9/20 also learnt that people were killed at the Kayanga Health Centre on 15 April 1994.

³⁸⁷ See above.

³⁸⁸ Notice of Additional Evidence pursuant to Rule 67(D), filed on 23 April 2004, Exh. D. 39.

³⁸⁹ Witness GIN made statements to Prosecution on 3 February 1998 (Exh. D. 35); and interview reports were taken on 27 March 2002 (Exh. D. 36); 27 May 2003 (Exh. D. 37) and 13 February 2004 (Exh. D. 38).

³⁹⁰ Exh. D 35.

killing of the three people at the Gikomero *secteur* office.³⁹¹ Such a major inconsistency seriously undermines GIN's credibility regarding her evidence of Rwamakuba's participation to the Kayanga Health Centre massacre.

146. Witness GAB is the only one who claims to be an eyewitness of the event. As already noted,³⁹² this Chamber is not bound by the prior finding made by the Trial Chamber in the *Kamuhanda* case where the witness was found not credible. However, after reviewing and assessing the evidence as a whole, this Chamber finds that there are serious doubts as to GAB's credibility in the present case.

147. The Chamber has already found that the identification of the Accused by the witness raises serious concerns.³⁹³ In addition, his testimony contains several irreconcilable inconsistencies between his prior statement to the Prosecution, his testimony in the *Kamuhanda* case,³⁹⁴ and also within his own testimony given in court.

148. GAB first testified that he arrived at Kayanga Health Centre in the night of 13 April 1994.³⁹⁵ During cross-examination, however, he claimed that he did not give the exact date of his arrival at the Centre, but that he arrived between 13 and 15 April 1994.³⁹⁶ In his statement of 4 November 2004, which was read into the record by the Defence Counsel, the witness provided a more specific date: he stated that he started fleeing on the night of 13 April 1994 towards Kayanga Health Centre, where he arrived in the morning.³⁹⁷ A mere comparison of the witness' testimony and his prior statements shows other inconsistencies. In his 2004 statement, it is said that after 8.00 a.m., he, along with the other people at the Centre, was instructed to stay in the Centre's courtyard, and that prior to Rwamakuba's arrival, he lagged behind the rest of the people by creeping and was able to reach the rear of the building where he hid in an adjoining sorghum farm. In court, however, GAB testified that he hid *after* Rwamakuba's arrival at the Centre around 10.00 a.m. In his statement of 1999, which was read into the record by the Defence Counsel, the witness stated that a week after 13 April 1994, the RPF soldiers "*arrived and assembled and took [them] to Rutare*".³⁹⁸ The witness gave a different account of this fact in court: he testified that he *went* to Rutare the night he left the Centre after hiding in the sorghum field, since Rutare was a secure place occupied by

³⁹¹ Exh. D. 35 to 38.

³⁹² See above: Alleged Public Instigation in Gikomero from July 1993 through June 1994.

³⁹³ See above: Alleged Public Instigation in Gikomero from July 1993 through June 1994.

³⁹⁴ Exh. D. 33 A and B.

³⁹⁵ T. 6 July 2005, p.23.

³⁹⁶ T. 5 July 2005, p. 52; T. 6 July 2005, p. 5.

³⁹⁷ T. 6 July 2005, p. 3.

³⁹⁸ Statement of 24 June 1999, p. 4.

RPF.³⁹⁹ This account also differs from GAB's evidence in the *Kamuhanda* case, where he said that he was moving from one hiding place to another, and around 15 April 1994, he surrendered to the attackers.⁴⁰⁰

149. Such inconsistencies in the chronology of facts cannot be explained by the time elapsed, translation discrepancies or considered as additional information provided by the witness. On the contrary, they directly challenge the truthfulness of his account. This challenge is reinforced by the disturbing similarities between GAB's testimony in this case and in the *Kamuhanda* case. In this trial, the witness described André Rwamakuba's behaviour and the account of the events in the same way as he described Kamuhanda's criminal acts when testifying as Prosecution witness in that case; he also attributed much of the same words to Kamuhanda and Rwamakuba.⁴⁰¹ GAB explained in court that he was not able to recall the contents or the purport of his evidence in the *Kamuhanda* trial,⁴⁰² and further submitted that Kamuhanda and Rwamakuba used almost the same words because these were statements that held the same logic.⁴⁰³

150. This explanation is not persuasive, especially since the witness only mentioned André Rwamakuba's name for the first time in November 2004 after making a statement to the Prosecution in 1999 and testifying in the *Kamuhanda* case in 2001. He explained his failure to mention Rwamakuba's name at an earlier time by stating he was not previously questioned about the Accused. Although this is a fairly common explanation provided by both Prosecution and Defence Witnesses, this is not a satisfactory explanation considering the fact that the Kayunga Health Centre massacre is the only one that Witness GAB allegedly witnessed. The witness' obvious reluctance to answer questions from the Defence,⁴⁰⁴

³⁹⁹ T. 5 July 2005, p. 27.

⁴⁰⁰ T. 6 July 2005, p. 17.

⁴⁰¹ In the *Kamuhanda* case, Witness GAB said that when Jean de Dieu Kamuhanda arrived on 12 April, he said: "Everywhere I went, even in Kigali, the *Interahamwe* and CDR have been killing people. What are you doing?" Nyarwaya and Rubanguka who were present, then said: "What we are doing at this time is detailing them and when we get the necessary instruments to accomplish our task, we shall accomplish our task." (see Extract read by the Defence, T. 6 July 2005, p. 13).

In the present trial, Witness GAB testified that André Rwamakuba said: "Everywhere I have been, they have began to work – and "work" meant to kill – so what are you waiting for?" Then, the Brigadier Nyarwaya took the floor and replied that they did not start to kill because they had not material enough for the task. Then the witness saw Rwamakuba taking out a pistol, waving it in the air, and saying that "Here is the pistol; the *Interahamwe* are present. The material is available; I don't see why you continue to raise that question while everything is ready." (T. 5 July 2005, pp. 25-26).

⁴⁰² T. 6 July 2005, p. 13.

⁴⁰³ T. 6 July 2005, p. 23.

⁴⁰⁴ See for e.g.: about the distances between his house and the field, between his place and the Kayunga Health Centre (T. 5 July 2005, pp. 3-4); between the sorghum field and the Centre when he was hiding (T. 6 July 2005, p. 12); whether the date 13 April has been chosen for the reburial ceremony in 2004 because it was the date of the massacres (T. 6 July 2005, p. 14-15); about the exact date when the witness reached the RPF secured zones

particularly in relation to his testimony in the *Kamuhanda* case, further contributes to challenge his overall credibility.⁴⁰⁵

151. The Defence's evidence reinforces the Chamber's doubt on the Prosecution's case. The Prosecution did not provide a chronology of Rwamakuba's movement to and from Gikomero area over the five days-period, during which it is alleged that he delivered machetes at two different locations, ordered the killing of three Tutsi people and went to Kayanga Health Centre. The parties agreed that after 12 April 1994, the Accused moved to Gitarama with his family, along with the Interim Government.⁴⁰⁶ The present allegation would therefore have required that the Accused made a fourth trip there. Such theory was seriously challenged by the Defence evidence on the hazardousness and difficulties to move from and to Gikomero *commune* after 7 April 1994.⁴⁰⁷ There were also testimonies that the Accused never went to Kayanga Health Centre during the massacre. Defence Witnesses 6/10 and 7/18 testified that they were present at Kayanga Health Centre on 15 April 1994 when the massacres against the Tutsi took place. While they were hiding in a room in the maternity ward of the Centre,⁴⁰⁸ they saw refugees dragged out, beaten up, taken out of the Centre and finished off by the *brigadier* Nyarwaya, who was with Mathias Rubanguka, the *communal* policeman Kayibanda, and other *Interahamwe*.⁴⁰⁹ Both witnesses knew Rwamakuba very well. Witness 6/10 denied any Rwamakuba's involvement in the 1994 killings in Gikomero *commune* and Witness 7/18 stated that the Accused never came to Gikomero during the genocide.⁴¹⁰ Defence Witness 7/3 who admitted to having played a direct role in the killings which took place at Kayanga Health Centre on 15 April 1994 and claimed to know Rwamakuba very well,⁴¹¹ also testified that the attack was led by the *brigadier* Nyarwaya in the company of policemen. He asserted that Rwamakuba was not involved in these killings.⁴¹² Defence Witness 3/1 was told that patients were killed at Kayanga Health Centre and that the *brigadier communal* and communal officers were the ones responsible. She asserted that no one ever

(T. 6 July 2005, p.15); about the details of the stone laying ceremony at the Rutunga School (T. 5 July 2005, pp. 41-42).

⁴⁰⁵ See for e.g.: T. 5 July 2005, pp. 47-50.

⁴⁰⁶ Prosecution Closing Brief, para. 68; Defence Closing Brief.

⁴⁰⁷ See paras. 100 and 102.

⁴⁰⁸ T. 24 November 2005, p. 2.

⁴⁰⁹ T. 24 November 2005, pp. 3 and 35; T. 30 November 2005, pp. 55 and 57. According to Witness 7/18, one of the victims was called Rutembesa.

⁴¹⁰ T. 24 November 2005, p. 7; T. 1 December 2005, p. 33.

⁴¹¹ T. 19 January 2006, p. 33. Defence Witness 7/3 claimed that he knew Rwamakuba very well as he hailed from their *commune* and was an intellectual present at *communal* meetings.

⁴¹² T. 19 January 2006, pp. 8-10 and 18-19.

mentioned Rwamakuba as playing a part in the killings at Kayanga Health Centre⁴¹³ Defence Witness 7/14, who knew Witness GIN very well, stated that GIN's husband stayed in Gikomero and never went to Kayanga Health Centre.⁴¹⁴ Due to their individual circumstances, the evidence of Defence Witnesses 6/10, 7/18, 7/3 and 7/14 was assessed with great caution.⁴¹⁵ The Chamber, however, found their accounts consistent and objective enough to challenge the Prosecution's evidence.

152. In the Chamber's view, the major inconsistencies in Prosecution Witnesses GAB and GIN testimonies cast serious doubt on their credibility. This doubt is supported by the Defence evidence on the improbable presence of the Accused at the scene of the crimes. In addition to testimonies on the potential hazards of road access to Gikomero *commune* in April 1994, there was detailed and consistent evidence from other witnesses which identified the *brigadier communal* Nyarwaya and other communal officers as the leaders of this massacre. They denied Rwamakuba's involvement. The other Prosecution witnesses who mentioned Kayanga Health Centre massacre in their testimonies never spoke of Rwamakuba as playing a role in it. Considering the evidence as a whole, the Chamber finds that the allegations of the Accused's participation in the massacre at Kayanga Health Centre in April 1994 have not been proved beyond reasonable doubt.

Conclusion on the Alleged Criminal Acts Committed by André Rwamakuba in Gikomero Commune

153. The Chamber first notes that there was no evidence adduced on certain allegations concerning the events in Gikomero *commune* and that some of the Prosecution witnesses' testimonies were inconsistent with the Indictment. Specifically, no evidence was given about the alleged meetings or public instigations in which André Rwamakuba allegedly participated in Gikomero, Rutunga, Gasabo and Gicaca *secteurs* or in Rutungo, Rubungo and Kanombe *communes*. There was also no evidence on the various statements made by Rwamakuba at various meetings and gatherings in Gikomero *commune* between March and June 1994.

⁴¹³ T. 10 November 2005, p. 9.

⁴¹⁴ T. 25 January 2006, p. 16.

⁴¹⁵ Defence Witnesses 6/10 and 7/18 seemed close to André Rwamakuba's family; they are moreover relatives. Defence Witness 7/14 was Prosecution Witness GIN's relative and Defence Witness 7/3 has a criminal record related to the 1994 genocide.

154. Then, the Prosecution evidence on the sensitization campaigns allegedly conducted by the Accused in Gikomero *commune* between 1992 and March 1994 was unreliable in many instances, including the Prosecution witnesses' identification of Rwamakuba at the time and place of the events. This conclusion is supported by the Defence evidence indicating that the Accused participated in two events in his capacity as a doctor during the time in question. A reasonable probability has been shown that between 23 September 1993 and 10 March 1994, Rwamakuba attended a training course at the Institute of Tropical Medicine in Antwerp, Belgium, and that between 17 and 29 March 1994, he attended an international colloquium organized by the WHO in Egypt. The Chamber therefore finds that the Prosecution failed to prove beyond reasonable doubt the allegations set forth in paragraphs 3 to 5 of the Indictment.

155. Both parties adduced evidence that attacks and massacres took place against Tutsi in Gikomero *commune* in April 1994, including in Ndatemwa Trading Centre, at Gikomero Protestant School, Gishaka Parish and Kayanga Health Centre. The Prosecution called six witnesses to support its allegations that during a period of five days between 10 and 15 April 1994, André Rwamakuba went to four different locations in Gikomero *commune* to deliver machetes that were to be used in killings against the Tutsi, to encourage and give instructions to kill Tutsi, and to launch the beginning of the attacks against Tutsi in the *commune*.

156. The Prosecution witnesses' testimonies were tainted of major deficiencies which could not be justified by the time elapsed, translation discrepancies, the manner in which the prior statements were taken or the impact of trauma inflicted upon the witnesses. In the Chamber's view, these inconsistencies undermined the witnesses' credibility or reliability. Furthermore, the Defence disputed that the Accused could have been present in Gikomero *commune* at the time of the alleged event. The parties agreed and the Chamber accepted that André Rwamakuba was sworn in as a Minister of the Interim Government on 9 April 1994, attended a governmental meeting held in Kigali at the *Hotel des Diplomates* on 11 April 1994,⁴¹⁶ and was living in Kigali until 12 April 1994 when he went to Gitarama with the convoy of the Interim Government.⁴¹⁷ The admission of these facts had a major impact on the Prosecution's case since the Defence challenged the accessibilities from and to Gikomero *commune* in April 1994. The Prosecution did not provide a chronological account of the Accused's alleged activities in Gikomero in April 1994, and seemed to suggest that on each event alleged, the Accused commuted between Kigali or Gitarama and the various locations in Gikomero

⁴¹⁶ These are facts not disputed by the parties. See Prosecution Closing Brief, para. 68; Defence Closing Brief.

⁴¹⁷ *Ibidem*.

commune.⁴¹⁸ There was, however, reliable evidence on the potential hazards to travel to and from Gikomero *commune* after 7 April 1994. Reliable testimonies were also given that Rwamakuba's name was not mentioned before Rwandan local courts in relation to the crimes committed in Gikomero *commune* in April 1994 and that he was not present at the scene of the crimes. This evidence, however, was not satisfactorily rebutted by the Prosecution.

157. The absence of any reliable identification of André Rwamakuba at the time and location of the alleged events, the lack of credibility or reliability of the Prosecution witnesses, the admitted facts that the Accused participated in other activities during the period alleged in the Indictment, the potential hazards of travel to the locations of the alleged crimes, cumulatively contribute to raise a reasonable doubt on the Prosecution's case.

158. The Chamber therefore finds that the Prosecution failed to prove at all or beyond reasonable doubt the charges against the Accused in Gikomero *commune* as pleaded at paragraphs 3 to 5, 10 to 13, 23 and 26 of the Indictment. The Chamber will now address André Rwamakuba's alleged participation in the killings at Butare University Hospital in April 1994.

II.2. ALLEGED PARTICIPATION OF ANDRÉ RWAMAKUBA TO KILLINGS AT BUTARE UNIVERSITY HOSPITAL IN APRIL 1994

159. Butare University Hospital is located in Butare town, Butare *préfecture*, approximately 136 kilometres from Kigali in south west Rwanda.⁴¹⁹ The Hospital has barely changed since the events of April 1994.⁴²⁰ The site is not very large and is composed of six main buildings.⁴²¹ During the trial, various pictures and sketches of the Hospital were admitted into evidence and the Chamber visited the building premises with the parties on 15 January 2005.⁴²²

160. At paragraphs 15 and 16 of the Indictment, the Prosecution alleges that

- 15. Between 18 and 25 April 1994, at Butare University Hospital, **André RWAMAKUBA**, along with Dr. Geoffroy Gatera, soldiers, militiamen and armed civilians, ordered, instigated, committed, or otherwise aided and abetted killings of Tutsi patients and displaced persons seeking refuge at Butare University Hospital with intent to destroy, in whole or in part, the

⁴¹⁸ See the Indictment, the Prosecution Pre-Trial Brief, the Opening Statement and the Prosecution Closing Brief.

⁴¹⁹ See: Exh. P. 2.

⁴²⁰ See: Exh. P. 2; Defence Closing Brief, p. 282.

⁴²¹ Archives building, Clinic and ORL/ENT, Surgery, Paediatrics, Hospitalization and Maternity wards; see: Exh. P. 2 and D. 48.

⁴²² See: Exh. P. 2, P. 33, D. 48, D. 53, D. 78, D. 105, D. 106, D. 112 and D. 124; and Minutes for the Site Visit to Rwanda in the *Rwamakuba* case, 13-16 January 2005 (Annex B).

Tutsi ethnic group. Thus, during an official delegation's visit to the Hospital, he asked a woman unknown but identified as the head of Doctors Without Borders not to treat Tutsi casualties, to get rid of them and not to admit any others. During the above-mentioned period, **André RWAMAKUBA**, armed with a small axe hung on his belt, and often accompanied by Dr. Gatera, armed soldiers, *Interahamwe* militiamen and civilians armed with machetes, axes and clubs, went around the hospital wards checking identity cards and identifying Tutsi refugees and patients, selecting them and putting them on board a vehicle manned by *Interahamwe* armed with clubs and machetes. The persons taken away were never seen again. During this period, in the morning or afternoon, during his rounds, **André RWAMAKUBA** regularly removed drips from patients, in particular, in a ward where sick women were admitted.

16. Concurrently with the events related above, **André RWAMAKUBA** directly caused the death of several persons identified as Tutsi. Thus, during his ward rounds, he caused the death of an unknown Tutsi patient by wounding him in the head with an axe. The militiamen subsequently took away the body of that person. Five of the patients referred to above as having been in the in-patients ward, and who were identified as Tutsi, died from axe wounds inflicted by **André RWAMAKUBA**. The *Accused* wounded Tutsi found in the corridors of the Hospital by striking them on the head with an axe. Some of them, including the persons called Rukara and Mutabazi, who suffered serious bodily harm caused by **André RWAMAKUBA**, were subsequently finished off by *Interahamwe*. As a result of such orders and instigation by the *Accused*, many Tutsi refugees and patients were massacred in Butare University Hospital. The victims included the persons known as Déogène, Placide and the parents of several survivors of the killings. The bodies of hundreds of victims of the massacres organized by **André RWAMAKUBA** at Butare University Hospital were gathered and buried in mass graves located behind the Hospital.

161. The Chamber will first provide a brief and general description of the evidence adduced on the Butare University Hospital massacre in April 1994 and the alleged involvement of the *Accused* (II.2.1.). The content of the evidence will then be more detailed in the second section when discussing the credibility and reliability of the witnesses (II.2.2).

II.2.1. Evidence Adduced

162. The existence of a massacre against Tutsi at Butare University Hospital in April 1994 was not a contentious matter and both parties adduced evidence on that event. The Defence, however, disputed any involvement of the *Accused* therein.

163. The Prosecution called six witnesses who asserted their presence at Butare University Hospital at the same time as **André Rwamakuba** allegedly committed the crimes outlined in the Indictment. Prosecution Witnesses ALV, ALW, GIO, HF and RJ placed the events on different dates between 21 and 25 April 1994, and Prosecution Witness XV, the only one who claimed to know **Rwamakuba** personally, testified that they took place in May 1994. The Prosecution witnesses generally stated that **Rwamakuba** came to Butare University Hospital at various times, during which he conducted the identification and injured some of the Tutsi

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patients with an axe, removed drips from Tutsi patients, which killed some of them, and gave orders to *Interahamwe* and soldiers to kill or take away to kill Tutsi patients in a pick-up truck. The witnesses specified that during those events, Rwamakuba was often in the company of Doctors Gatera, Twagirayezu and Jotham. In addition, Prosecution Witness XV testified that Rwamakuba took part in a government meeting at the Hospital on 15 May 1994, which was to assess whether the killings were being satisfactorily conducted in Butare. Prosecution expert witness Alison Des Forges also testified to reports of a massacre of about 170 patients and staff members at Butare University Hospital on 24 April 1994.⁴²³ She did not give evidence on the presence of the Accused at the Hospital during the massacre, but commented on an extract from a Radio Rwanda news broadcast which said that “Doctor Rwamakuba refuse[d] the information that was being broadcast by a foreign radio station, talking about the massacres of 200 people by members of the national army who might have found the victims in the Butare Hospital”.⁴²⁴

164. The Defence called six witnesses to testify on the same event. They confirmed that there were attacks on patients and meetings at Butare University Hospital,⁴²⁵ and that criminal acts took place under the supervision of military and armed civilians or militiamen. They denied André Rwamakuba’s presence or involvement in those acts.

II.2.2. Assessment of the Evidence

165. After reviewing the evidence adduced as a whole, the Chamber is of the view that the Prosecution evidence is inconsistent with some of the allegations against the Accused (1). The identification of André Rwamakuba at the time and place of the alleged event also raises serious doubt (2) and the internal discrepancies in the Prosecution witnesses’ testimonies, notably when considering their prior statements and testimonies in Rwandan proceedings, cast doubt on their credibility and reliability (3). The Defence evidence supports this conclusion since it tends to show that Rwamakuba was not present at the scene of the crimes (4).

(1) Lack of Consistency between the Indictment and the Prosecution Evidence

166. None of the Prosecution witnesses testified, as alleged at paragraph 15 of the Indictment, that “during an official delegation’s visit to the Hospital, [Rwamakuba] asked a

⁴²³ T. 14 July 2005, pp.70-71.

⁴²⁴ T. 14 July 2005, pp. 72-73.

⁴²⁵ See: Witnesses 5/7, 5/13, 5/15, 5/16, 9/17 and 9/29.

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woman unknown but identified as the head of Doctors Without Borders not to treat Tutsi casualties, to get rid of them and not to admit others". No evidence either was adduced on the allegation at paragraph 16 of the Indictment that persons known as Rukara, Déogène, Placide were massacred in the Butare University Hospital.

167. Since Witness XV asserted that André Rwamakuba committed crimes at Butare University Hospital in May 1994, his testimony cannot support the allegation in the Indictment that these offences took place between 18 and 25 April 1994.⁴²⁶

168. This witness also testified that André Rwamakuba attended a government meeting at the Hospital on 15 May 1994.⁴²⁷ While paragraph 18 of the Indictment does plead a meeting held by the Prime Minister Kambanda at the Faculty of Medicine of the Hospital on that day, it does not allege the presence of the Accused.⁴²⁸

(z) Identification of André Rwamakuba

169. **Witness XV** was the only witness to the Butare University Hospital events who claimed prior knowledge of André Rwamakuba. In the Chamber's view, the witness gave an unsatisfactory account of when he actually met him. The witness allegedly knew Rwamakuba when the latter attended the Faculty of Medicine at Butare "from 1974 until he went to do his internship that concluded his studies".⁴²⁹ He said that doctors studied for six years and then the seventh year was devoted to an internship. When Rwamakuba began his internship, Witness XV had not yet begun to work at the Hospital but was at the University. He declared that he lived near the Hospital and used to go to the students' residence to do their washing or to sell cigarettes.⁴³⁰ He allegedly saw Rwamakuba more than ten times over a period of one or two years, but never actually spoke to him. The witness said that Rwamakuba was already doing his internship when he, himself, started to work at the Hospital in 1981. Witness XV also testified that around 1973 or 1974, he saw Rwamakuba at the University, actively participating in unrest where Tutsi were chased away from the University.⁴³¹ The witness saw

⁴²⁶ Indictment, para. 15-16; Prosecution Pre-Trial Brief, paras. 30-38; Opening Statement, T. 9 June 2005, p. 10.

⁴²⁷ T. 30 August 2005, pp. 52-54.

⁴²⁸ Indictment, para. 18: "Massacres of Tutsi at Butare University Hospital continued and intensified through late May 1994, particularly after a meeting, held at the Faculty of Medicine on or about 15 May 1994, where Prime Minister Jean Kambanda addressed university authorities, encouraging them to "continue the fight until ultimate victory".

⁴²⁹ T. 30 August 2005, p. 25. In his will-say statement dated 6 August 2005, XV also stated that he remembered André Rwamakuba from a strike at the University in around 1974 (Exh. D. 121 A and B, under seal).

⁴³⁰ T. 30 August 2005, pp. 25-26. The Witness however did not do washing for Rwamakuba.

⁴³¹ T. 30 August 2005, p. 28.

Rwamakuba on two additional occasions before April 1994: towards the end of 1993 in a dancing bar in Butare, and in January 1994 during a rally organized at the Huye stadium.⁴³²

170. Witness XV testified to two occasions when he saw André Rwamakuba during the genocide. The first time was at a meeting of Government Ministers at the Faculty of Medicine at Butare University Hospital, and the second was at the maternity ward when Rwamakuba was giving instructions to some *Interahamwe* to get Tutsi people into the pick-up truck in order for them to be killed.⁴³³ He claimed that, on that occasion, he was also put into the pick-up truck but was able to escape and went into hiding at the Hospital until he left on 6 June.⁴³⁴ The witness asserted, on one hand, that he arrived at Butare University Hospital between 21 and 22 April 1994⁴³⁵ and that the incident with the pick-up truck occurred two weeks after his arrival at the Hospital;⁴³⁶ on the other hand, he testified that the meeting of Government Ministers was on 15 May 1994.⁴³⁷ The witness' chronological account of the facts is mistaken and therefore unreliable because two weeks after 21 or 22 April – the alleged second occasion he saw Rwamakuba – would fall before 15 May 1994 – the alleged first occasion he saw the Accused.

171. Witness XV' identification of André Rwamakuba is contradicted by admitted facts and reliable Defence evidence. The parties agreed and the Chamber accepts that the Accused studied in Belgium between 1970 and 1974 and in Butare between 1975 and 1978.⁴³⁸ Contrary to XV's assertion, Rwamakuba was not a student at the Faculty of Medicine of Butare University either before 1975 or after 1979. Further, the Chamber has already found that the Defence's evidence raised serious doubt that the Accused was in Rwanda between 23 September 1993 and 10 March 1994.⁴³⁹ XV, therefore, could not have reasonably seen him chasing Tutsi students in 1973 or 1974, nor doing his internship after 1980, in a bar at the end of 1993 or at a meeting in Rwanda in the beginning of January 1994.

172. Witness XV's testimony in court was furthermore inconsistent with testimonies in other cases and prior statements. The witness testified in three cases in Rwanda between 1997 and 1999 where he never mentioned Rwamakuba's name. He was also interviewed by the

⁴³² T. 30 August 2005, pp. 28, 30, 35 and 36.

⁴³³ T. 30 August 2005, p. 36.

⁴³⁴ T. 30 August 2005, pp. 36 and 64.

⁴³⁵ T. 31 August 2005, p. 6.

⁴³⁶ T. 30 August 2005, p. 39.

⁴³⁷ T. 30 August 2005, p. 52.

⁴³⁸ Curriculum vitae of André Rwamakuba (Exh. D. 184) and Prosecution Closing Brief at para. 6, footnote 3: "The Prosecutor does not dispute the periods and the studies undertaken by the Accused."

⁴³⁹ See above at para. 70 and seq.

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Prosecution nine times between 1997 and 2005.⁴⁴⁰ In his first statement in November 1997, XV gave a detailed statement about the events he witnessed at Butare University Hospital in 1994. In that statement, he referred to a man named Rwamakuba who was an *Interahamwe* leader, a native of Huye *commune* and who had also been a second lieutenant during the Kayibanda regime.⁴⁴¹ The description of that man was inconsistent with the Accused André Rwamakuba. In 2003, after six more signed statements which have no mention of Rwamakuba, in an interview to confirm his statements before his testimony in the first trial in this case, the witness specified that the mention of man named Rwamakuba in his 1997 statement was a mistake and that the right person was a man named Nkiramakuba. He then referred to meeting Rwamakuba as a student at Butare University in 1982, and to the meeting of Government Ministers of 15 May 1994, but he did not refer to the incident with the red pick-up truck nor did he specify that he had been a victim of Rwamakuba's actions. There was no mention of the attempted abduction which was meant to lead to his death, as he testified in court. This traumatic event was mentioned to the Prosecution for the first time, less than one week before XV gave evidence in this trial.⁴⁴² In court, the witness corrected himself again and stated that the man mentioned in his 1997 statement was actually Emmanuel Rekeraho.⁴⁴³ He asserted that he only knew one man named Rwamakuba, but realized that the person he used to call Rwamakuba was in fact Rekeraho.⁴⁴⁴

173. Witness XV explained that the absence of any reference to the Accused in seven of his prior statements was due to the fact that “[he] could only think of [Rwamakuba] when it was the time of his trial”.⁴⁴⁵ The Chamber notes that in 2003, XV was on the Prosecution’s witness list for the first trial against André Rwamakuba, and his reconfirmation statement was

⁴⁴⁰ See: Statement of 25 November 1997, Exh. D. 113 A and B (under seal); 7 December 2000, Exh. D. 114 A and B (under seal); 22 February 2001, Exh. D. 115 A and B (under seal); 19 April 2001, Exh. D. 116 A and B (under seal); 5 June 2001, Exh. D. 117 A and B (under seal); 28 June 2001, Exh. D. 118 A and B (under seal); 5 December 2001, Exh. D. 119 A and B (under seal). All these statements were signed by the witness. See also: “Witness Confirmation”, 8 July 2003, Exh. D. 120 A and B (under seal); Will-Say Statement, 26 August 2005, Exh. D. 121 A and B (under seal). These documents were not signed by the witness but, following the usual practice, drafted by Prosecution’s representative.

⁴⁴¹ In his statement dated 25 November 1997 (Ex. D. 113), XV stated: “I also recall a man named *Rwamakuba* coming to the university hospital from Sovu hospital in an ambulance which he had requisitioned to transport *Interahamwe*. I no longer recall the date. He was dressed in civilian clothing and the *Interahamwe* accompanying him were armed with hoes and clubs. I recognized him because he was a native of Huye *commune*. He was a second lieutenant during the Kayibanda regime and a driver for a DGB project until the war broke out. He was a member of MDR Power and was very active in the meetings. He had even become the *Interahamwe* leader when the war started.” (para. 9, emphasis added).

⁴⁴² Will-Say Statement, 26 August 2005, Exh. D. 121.

⁴⁴³ T. 31 August 2005, pp. 55-59; T. 1 September 1994, pp. 9-10.

⁴⁴⁴ T. 31 August 2005, pp. 56-59.

⁴⁴⁵ T. 30 August 2005, p. 63.

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made in Arusha in preparation for his testimony in that trial. This reconfirmation statement, however, did not mention major elements of the evidence that he gave in this trial.

174. Witness XV did not appear to know what André Rwamakuba looked like. First, as acknowledged by the witness, he confused Rwamakuba with one Rekeraho. Then, when shown a picture in court, he confused Rwamakuba with a priest.⁴⁴⁶ He also testified that Rwamakuba wore glasses. This assertion was seriously challenged by the Defence which provided a letter from UNDF Commanding Officer, who stated that the Accused had “no spectacle in his possession upon his transfer to the UNDF”,⁴⁴⁷ and called witnesses who had personal knowledge of the Accused and denied that he wore glasses at that time.⁴⁴⁸ In view of these circumstances and the major inconsistencies in Witness XV’s testimony, the Chamber is of the view that his evidence is subject to serious doubt and cannot be relied upon.

175. Except for Witness XV, none of the other Prosecution witnesses had prior knowledge of André Rwamakuba. Their identification of Rwamakuba is based on untested hearsay evidence or on XV’s evidence which has already been found unreliable.

176. Witnesses **ALV** and **ALW** said that André Rwamakuba was identified him to them by refugees and students when they were at Butare University Hospital.⁴⁴⁹ These people, however, are now dead.⁴⁵⁰ Witness **RJ** was made aware of who Rwamakuba was by two persons: first by a Hutu lady who helped the witness at the Hospital and then, by XV while the witness was in the corridor of the surgery unit.⁴⁵¹ It is important to note that RJ was not able to recognize in court a picture of the priest who helped her during the genocide and took her to the Hospital in April 1994.⁴⁵² Witness **GIO** testified that Rwamakuba was first identified her by Witness RJ and then some students told her that his first name was André.⁴⁵³ It is noteworthy that during her evidence, Witness GIO identified, on the basis of a picture showed by the Defence, the man named Rekeraho as probably being André Rwamakuba.

⁴⁴⁶ T. 1 September 2005, pp. 21-22.

⁴⁴⁷ Exh. D. 215.

⁴⁴⁸ See: Edith Van Wynsberghe (T. 1 December 2005, p. 61); Witness 1/1 (T. 14 December 2005, p. 65); Witness 1/15 (T. 18 January 2006, p. 14) and Witness 9/1 (T. 29 November 2005, pp. 37 and 63-65).

⁴⁴⁹ Witness ALV stated that other refugees who knew Rwamakuba because some of them worked in the Hospital or knew him from when he was a student and intern identified him to her (T. 6 July 2005, pp. 28 and 46). Witness ALW said that she learned the identity of André Rwamakuba by other refugees and students (T. 25 August 2005, pp. 13-14, 26; T. 26 August 2005, p. 15).

⁴⁵⁰ T. 6 July 2005, p. 50. Witness ALW gave the name of the student who informed her but said that he was dead (T. 25 August 2005, p. 26; T. 30 August 2005, p. 16).

⁴⁵¹ T. 2 September 2005, pp. 24-26; T. 5 September, pp. 2-3; Exh. P. 71 (under seal).

⁴⁵² See Exh. D. 143. Witness RJ even stated that she “[did] not know the person on the photograph.” (T. 5 September 2005, p. 9).

⁴⁵³ T. 24 August 2005, p. 9.

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Witness **HF** testified that while in the presence of Witness **RJ**, Witness **XV** pointed out Rwamakuba to them.⁴⁵⁴ The Chamber also notes that the description of the Accused provided by Witnesses **ALV**, **HF** and **RJ** was particularly vague.⁴⁵⁵

177. In view of these circumstances, the identity of the person who the Prosecution's witnesses claim to have seen committing the alleged crimes raises serious doubt. Other elements, as discussed below, also contribute to the Chamber's doubt on Rwamakuba's involvement in the massacres at Butare University Hospital as alleged in the Indictment.

(3) Internal Discrepancies

178. Apart from Prosecution Witness **XV**, Prosecution Witnesses **ALV**, **ALW**, **GIO**, **HF** and **RJ** testified that they saw André Rwamakuba committing crimes at Butare University Hospital at different times and places between 21 and 25 April 1994. As a preliminary matter, the Chamber can accept that if found reliable, these testimonies are not necessarily contradictory since it is reasonably acceptable that the Prosecution witnesses saw Rwamakuba on different times and rooms while at the Hospital.

179. The Chamber will discuss the evidence for each of the Prosecution witnesses. For a clearer assessment, the discussion will be preceded by a brief summary of the relevant part of their testimony.

180. **Witness ALV** was 16 years old in 1994. Fleeing from Ngoma with her father, she arrived at Butare University Hospital on 20 April 1994.⁴⁵⁶ She saw André Rwamakuba on two occasions at the Hospital. She first saw him on the evening of 21 April 1994 when he was pulling out drips from some of the Tutsi patients in the intensive care unit while in the company of Doctor Gatera, Colonel Muvunyi, Sister Theopiste, and Doctor Jotham.⁴⁵⁷ She next saw him on 22 April 1994, about 11 a.m. when he was with the same people, including

⁴⁵⁴ T. 11 July 2005, pp. 11, 13, 14; T. 12 July 2005, p. 11.

⁴⁵⁵ Witness **ALV** described Rwamakuba as follows: "a medium-sized man, neither too big nor too short; colour of skin somewhere between light and dark, thick lips and a strong jaw; sort of nose which Hutus generally have." (T. 6 July 2005, p. 57). Witness **HF** said: "This is a man of average height, who has a nose like the nose of the Hutus. He has broad lips, with big cheeks." (T. 11 July 2005, p. 29). Witness **RJ** stated that Rwamakuba was "dark skinned with a large nose, of medium height, and he was somewhat quite corpulent, but not too fat" (T. 2 September 2005, p. 25).

⁴⁵⁶ T. 6 July 2005, p. 27.

⁴⁵⁷ T. 6 July 2005, pp. 27-29 and 45.

Handwritten signature or initials.

some soldiers, and he took away her father from his hiding place in the kitchen.⁴⁵⁸ She testified that, as she followed the group to see where her father was being taken, Rwamakuba hit her on the back.⁴⁵⁹ Witness ALV's account of this fact was particularly confused. She first testified that she did not see who struck the blow, but was told later that it was Rwamakuba.⁴⁶⁰ Then, she explained that she lost consciousness after the hit, but not really,⁴⁶¹ and after a few moments, she turned and saw that it was Rwamakuba who had hit her.⁴⁶² ALV then testified that the refugees were forced to leave the Hospital and go the *préfecture*, where she met her two sisters. They stayed for two days and then went to her grandmother's house where they stayed for about one hour before they had to flee from assailants. They then returned to the *préfecture* from where they were taken to a centre at Rango where they stayed for a month and a half.

181. Witness ALV evidence substantially differs from her prior statements to the Prosecution investigators which she verified and signed.⁴⁶³ Her first statement contains a detailed account of the events she suffered in 1994, particularly at Butare University Hospital, without any mention of André Rwamakuba.⁴⁶⁴ In that statement, she described the abduction of her father from the Hospital storeroom by Sister Theopiste and soldiers without any mention of the Accused, Doctor Gatera, Colonel Muvunyi, or Doctor Jotham being present or participating. She gave a detailed account of her stay at the Hospital for a week after that incident, and described how Doctor Jotham ordered the refugees to be removed from the *préfecture* as filth. In her second statement of 13 November 2003, she said she was forced to leave on the same day, under orders from Doctor Gatera and the soldiers just as in her testimony in court.⁴⁶⁵ In her second statement, she also described with significant detail how she followed Rwamakuba and saw the atrocities he committed in the intensive care ward. She specified that he took away her father, and even hit her on the shoulder.⁴⁶⁶ The statement described that she saw Rwamakuba and his entourage leave the ward where she stayed for another 20 minutes, in contradiction with her testimony in court when she claimed that she

⁴⁵⁸ T. 6 July 2005, pp. 31-32, 50 and 63.

⁴⁵⁹ T. 6 July 2005, p. 54.

⁴⁶⁰ T. 6 July 2005, p.33.

⁴⁶¹ Witness ALV specified that she did not really lost consciousness, but that she was tremendously scared, and, however, maintained consciousness all the time. T. 6 July 2005, pp. 33 and 34.

⁴⁶² T. 6 July 2005, pp. 33 and 55.

⁴⁶³ Witness ALV stated that she signed these statements as she was satisfied that everything contained therein reflected what she had said (T. 6 July 2005, pp. 26 and 43).

⁴⁶⁴ Statement of 29 November 2000 (Exh. D. 49 A and B, under seal).

⁴⁶⁵ Exh. D. 50 A and B (under seal).

⁴⁶⁶ Statement of 13 November 2003 (Exh. D. 50 A and B, under seal).

was in the unit for about 20 minutes and left *before* Rwamakuba.⁴⁶⁷ Witness ALV's prior statements also present a different and irreconcilable account of the facts she presented of what happened after she had left Butare University Hospital. Specifically, in her first statement, the witness stated that after leaving the Hospital, she spent two weeks at the Butare *préfecture* office, giving details about her activities during that period, which included witnessing the murder of her brother by *Interahamwe*, but in her second statement and in her testimony, she said that she stayed there for only two days.⁴⁶⁸ In the first statement she said that she was taken to Rango after two weeks at the *préfecture*. In the second statement, she stated that she left the *préfecture* and took refuge first in her grandmother's house, then with her aunt at Cyarwa, and asserted that they are both alive today and reside in Butare. There is no mention of going to Rango.

182. In view of these omissions and inconsistencies which cannot be explained by the passage of time, translation discrepancies or the way the statements were taken, the Chamber cannot find Witness ALV's evidence reliable, mainly when considering the witness' affirmation that "[André Rwamakuba's] image remained engraved in [her] memory" because he hit her at the Hospital.⁴⁶⁹ The witness explained in court that she omitted his name from her first statement because she was suffering from "anterograde" amnesia. The Chamber is not satisfied by this explanation that is not supported by any medical or other report and that is inconsistent with a prior explanation she gave in her 2003 statement. In that statement, she stated that she did not mention Rwamakuba "because the investigators did not ask [her] any question about him".⁴⁷⁰ In addition, were the witness' amnesia established, this would strengthen the Chamber's doubt on her reliability. ALV's testimony cannot support a conviction against the Accused in the present case.

183. **Witness ALW** arrived with her wounded aunt at Butare University Hospital on 21 April 1994.⁴⁷¹ About three days after her arrival, she saw André Rwamakuba for the first time when he was with Doctor Gatera; he was removing the drips from five Tutsi patients in the surgical ward and then striking them on the head with a small axe.⁴⁷² They were immediately removed and put on a red pick-up truck. On or around 27 April 1994, the witness also saw

⁴⁶⁷ T. 6 July 2005, p. 49.

⁴⁶⁸ T. 6 July 2005, pp.35 and 60.

⁴⁶⁹ T. 6 July 2005, p. 34.

⁴⁷⁰ Statement of 13 November 2003 (Exh. D. 50 A and B, under seal).

⁴⁷¹ T. 25 August 2005, p. 25.

⁴⁷² T. 29 August 2005, p. 12; T. 25 August 2005, p. 28.

Rwamakuba strike two men named Mutabazi and Kazasumaho with the same axe.⁴⁷³ He said that “there was no hiding place for snakes”. The two men fell down from the blows and were immediately taken away by *Interahamwe* and put in a red pick-up truck. During cross-examination, the witness confirmed that Rwamakuba in fact killed the seven people she saw him hit with an axe.⁴⁷⁴

184. Witness ALW’s account of the event suffered from internal discrepancies,⁴⁷⁵ and was mainly inconsistent with her evidence given in the *Gatera* case in Rwanda.⁴⁷⁶ In that case, ALW testified about the killing of Mutabazi and Kazasumaho. She said that Doctor Gatera, who was with soldiers, stabbed them with bayonets and beat them with a small club saying that their time had come. The soldiers then took them beside the medicine intern block in order to kill them. Rwamakuba is not mentioned as being present or participating. Before this Chamber, the witness explained that she did not mention Rwamakuba during the *Gatera* trial because she did not know where he was and because she was only asked about Gatera’s participation.⁴⁷⁷ She further asserted that her account was consistent because Rwamakuba was with Gatera and that they acted together.⁴⁷⁸ In the present case, the witness did not mention Gatera’s presence when Rwamakuba allegedly attacked Mutabazi and Kazasumaho, although she specifically testified that Gatera was with Rwamakuba when the latter was removing drips from Tutsi patients. Witness ALW’s explanation of these contradictory accounts of the same event is not convincing. Evidence about the abduction of these two men, their female relative and a fourth man was given by Defence Witnesses 9/17 and 9/29, who are also Tutsi survivors and were present at Butare University Hospital in April 1994. Witness 9/17 explicitly denied any involvement of Rwamakuba in the attacks of Mutabazi and Kazasumaho,⁴⁷⁹ and Witness 9/29 provided a complete description of the event with no mention of Rwamakuba’s involvement at all.⁴⁸⁰ The Chamber also notes that Witness ALW’s

⁴⁷³ T. 25 August 2005, pp. 28-29 and 35; T. 29 August 2005, pp. 22-23; T. 30 August 2005, p. 18.

⁴⁷⁴ T. 26 August 2005, p. 3.

⁴⁷⁵ For instance, Witness ALW evidence was inconsistent on whether the five Tutsi patients hit by André Rwamakuba were actually killed by him, whether she saw that he killed them or blood on Rwamakuba’s axe (T. 29 August 2005, p.17; T. 30 August 2005, p. 7). Likewise, ALW’s account of the attack of two men by Rwamakuba contains contrary information. For instance, the witness said that she knew the two men very well but was not able to give their first name; she also placed the pick-up once opposite to the maternity, and then behind; she said first that she met the two men in the corridor, but also said that at that moment, she was standing close to the tents where the other refugees were.

⁴⁷⁶ Exh. D. 108 and D. 109.

⁴⁷⁷ T. 30 August 2005, p. 6.

⁴⁷⁸ T. 30 August 2005, p. 8.

⁴⁷⁹ T. 12 December 2005, p. 13.

⁴⁸⁰ T. 27 January 2006, pp. 12-13 and 6 February 2006, pp. 11-13: Witness 9/29 stated that stated that Mutabazi and Kazasumaho were taken away in a wooded area. She never saw them again.

[Handwritten signature]

evidence in this trial on when and how she left the Hospital differs from her testimony in the *Gatera* trial.⁴⁸¹ In the Chamber's view, the internal discrepancies in ALW's testimony and inconsistencies with her prior statements and testimonies cannot be explained by the time elapsed or translation discrepancies, and seriously undermine her credibility. ALW's evidence cannot support a conviction against the Accused in the present case.

185. On or about 22 or 23 April 1994, Witness GIO went to Butare University Hospital with her brother who was wounded.⁴⁸² The witness testified that two days after her arrival, André Rwamakuba, along with a group of five or six doctors and *Interahamwe*, was checking identity cards of the patients in the surgical ward, and identified that GIO's brother was Tutsi. Doctor Gatera then killed him by a blow on his head with an axe.⁴⁸³ According to the witness, another patient was similarly attacked. Then, Rwamakuba, Doctor Gatera and some *Interahamwe* allegedly put those people they had killed in a pick-up truck that was parked near the maternity ward.⁴⁸⁴

186. Witness GIO gave substantially different accounts of the events at the Hospital both in her prior statements⁴⁸⁵ and testimonies before both this Tribunal and Rwandan courts.⁴⁸⁶ The core element of her evidence is the attack of her brother which description in court is the opposite of what she said previously. In a statement signed by the witness in 1997, she stated that her brother had been taken away in a pick-up truck and that she never saw him again.⁴⁸⁷ There was no mention of an attack with an axe or her brother being killed in her presence. During her testimony in December 2003 in the prior joint case involving André Rwamakuba and three other Accused, she added that Doctor Gatera put her brother in a pick-up truck. She testified that she never saw her brother being killed by an axe and that she never said that

⁴⁸¹ In court, the witness testified that the refugee's tents at the Hospital were removed towards the end of April, beginning of May, before she left the Hospital. On the contrary, in the *Gatera* trial, she testified that the tents had already been dismantled upon her arrival at the Hospital. The witness explained that she returned to the Hospital between May and June to find out whether her aunt was still alive and that at that time, she realized that the tents were dismantled. The witness also stated that her aunt was still alive when she left the Hospital, while in the *Gatera* trial she said that she left the Hospital after her aunt was killed, at the end of May. (See T. 29 August 2005, p. 30 and T. 30 August 2005, p. 19).

⁴⁸² T. 22 August 2005, p. 24.

⁴⁸³ T. 22 August 2005, pp. 26-27.

⁴⁸⁴ T. 22 August 2005, pp. 29-30 and 38.

⁴⁸⁵ Statement of 5 May 1998 (Exh. D. 71 A, B and C, under seal); 19 May 1998 (Exh. D. 72, under seal); 7 May 1999 (Exh. D. 73 A, B and C, under seal); 7 February 2000 (Exh. D. 74, under seal); Transcripts of December 2003 (Exh. D. 76, under seal); 17 September 1997 (Exh. D. 75). On 7 July and 22 November 2003, she confirmed the content of her statement (Exh. D. 80, under seal).

⁴⁸⁶ The Witness testified before Rwandan courts: *Gatera* case (Exh. D. 71 and D. 72), *Twagirayezu* case (Exh. D. 73) and *Mukabandora* case (Exh. D. 74) and in the prior joint trial in the case *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera, André Rwamakuba*, Case No. ICTR-98-44.

⁴⁸⁷ Statement of 17 September 1997 (Exh. D XX).

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Doctor Gatera killed her brother.⁴⁸⁸ In a statement taken in 1998, by Rwandan authorities, prior to her first testimony before this Tribunal,⁴⁸⁹ Witness GIO gave a third different account of this event: Rwamakuba was not present, and Doctor Gatera, who was inspecting the wounded patients, immediately struck her brother on the head with a small axe saying that he was an *Inkotanyi*.⁴⁹⁰ This version of the facts is again modified a year later in a statement given by the witness in another case in Rwanda: GIO stated that Doctor Gatera ordered a man named "Athanas" to kill her brother, which he did; she fails to mention Rwamakuba's name.⁴⁹¹ These major inconsistencies cannot be explained by the time elapsed or translation discrepancies. It must be noted that, in her will-say statement, GIO directly addressed these inconsistencies.⁴⁹² She stated that she could not remember a meeting with the Prosecution's investigators in 1997 or whether the document was read to her, even if she signed it. She even denied her signature on some other documents. In light of the above-mentioned inconsistencies, these explanations are not convincing and, conversely, support the conclusion that Witness GIO lacks credibility as far as her evidence in this case is concerned.

187. **Witness HF** arrived at Butare University Hospital on 18 April 1994 because her sister had gone there to give birth, and left on 29 April 1994 for the Butare *préfecture*.⁴⁹³ After three days, she allegedly saw André Rwamakuba with Doctor Gatera in the maternity ward ordering Tutsi patients to get up and then delivered them to the *Interahamwe* who took them away in a pick-up truck.⁴⁹⁴ She then saw Rwamakuba on the same day in the afternoon, in the surgical ward with Doctors Gatera and Twagirayezu and some *Interahamwe*. On that occasion, Rwamakuba allegedly hit the head of a Tutsi patient with an axe, woke up another patient and stepped on his neck, and then proceeded to give them to the *Interahamwe*, who subsequently put them in a pick-up truck.⁴⁹⁵ Witness HF saw Rwamakuba for the third time, on the next day, in front of the paediatrics ward while he was selecting people to be taken away in a pick-up truck. The witness however also said that on this third occasion, she saw Rwamakuba in the maternity ward, when he took away the witness' sister. This account was

⁴⁸⁸ *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera, André Rwamakuba*, Case No. ICTR-98-44-T, T. 12 December 2003, 51-52. The witness said: "Yes. I'm saying that we are testifying because we saw Mr. Rwamakuba and Gatera, but I never said Gatera used an axe to kill my brother. I say that he put them into a vehicle, but I never said that Gatera used an axe to kill my brother. [...] I never saw my brother being killed by an axe. I don't know where you're getting this information from."

⁴⁸⁹ Statement of 5 May 1998 (Exh. D. 71).

⁴⁹⁰ Exh. D. 71 A, B and C (under seal).

⁴⁹¹ Exh. D. 73 A, B and C (under seal).

⁴⁹² Exh. D. 79. The will-say statement is the results of two meetings between the witness and the Prosecution Counsel.

⁴⁹³ T. 11 July 2005, p. 9.

⁴⁹⁴ T. 11 July 2005, pp. 10 and 17; T. 12 July 2005, p. 38.

⁴⁹⁵ T. 11 July 2005, pp. 10 and 17; T. 12 July 2005, pp. 38 and 47.

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not consistent. HF identified her elder sister, her brother and a nurse as victims of the massacres at the Hospital.

188. During her testimony, Witness HF denied important factual elements that she consistently mentioned in her three prior statements.⁴⁹⁶ The different accounts of the events the witness gave in her three successive interviews with the Prosecution and in court are also critical in the assessment of her credibility.⁴⁹⁷ In a statement taken in 1997, Witness HF affirmed that she went to the Hospital to “seek refuge”; there is no mention of her sister or brother and she then stated that she did not recall the names of any victim.⁴⁹⁸ She stated that she saw André Rwamakuba dressed in banana leaves. In 2001, she declared that she went to the Hospital “to take care of [her] sister [...] who was sick”; she also specified that this sister and her brother who had come to seek medication were killed and taken away in a pick-up truck.⁴⁹⁹ She again said she saw Rwamakuba dressed in banana leaves and when he passed by, people whispered that he was an *Interahamwe* leader. In her testimony, she denied all this, along with other matters recorded in those statements. In 2003, she stated that she was at the Hospital helping her “sister who had given birth to a premature baby”; this sister, her baby and her brother were then killed while lying “in their hospital beds”.⁵⁰⁰ During her testimony, Witness HF provided a fourth account of the same event, saying that, on two different dates, her wounded brother and her sister with her baby were both taken away by the *Interahamwe* while lying in their beds respectively in the surgical and maternity wards of the Hospital.⁵⁰¹

189. The Chamber notes that Witness HF’s account of facts also differs from her evidence in Rwandan proceedings. In the *Gatera* case, the witness stated that she went to the Hospital to take care of her sister who was pregnant, but she gave a different name from the one provided in her statements and testimony in this case.⁵⁰² Doctor *Gatera* came into the ward selected the victims, including her sister and brother, and put them in a pick-up truck. There is no mention of André Rwamakuba being present. In another Rwandan case held in 1997, the

⁴⁹⁶ Contrary to what she stated in 2001 and 2003 (see Exh. D. 55 and 54), in court she denied that she left the Butare University Hospital on 25 April 1994. As opposed to what she stated in 1997, 2001 and 2003 (see Exh. D. 56, 55 and 54) in court she denied that André Rwamakuba wore banana leaves and that he disembowelled a pregnant woman.

⁴⁹⁷ Witness HF gave a statement respectively on 11 September 1997, Exh. D. 56 A and B (under seal); on 6 and 8 February 2001, Exh. D. 55 A and B (under seal); and on 12 March 2003, Exh. D. 54 A and B (under seal). The witness also testified during the joint trial in the case the *Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera and André Rwamakuba* (Case No. ICTR-98-44) before the severance of André Rwamakuba in December 2003.

⁴⁹⁸ Statement of 11 September 1997, Exh. D. 56 A and B (under seal).

⁴⁹⁹ Statement of 6 and 8 February 2001, Exh. D. 55 A and B (under seal).

⁵⁰⁰ Statement of 12 March 2003, Exh. D. 54 A and B (under seal).

⁵⁰¹ T. 12 July 2005, p. 39.

⁵⁰² This statement was read to the witness in open court, see T. 12 July 2005, pp. 54-55.

witness testified that her sister was shot by a man named Rurangirwa in a specific *secteur* in Butare *préfecture*. The name of this sister was exactly the same Christian name as the one of her sister allegedly killed at Butare University Hospital.⁵⁰³ In this trial, when confronted with the judgement in that case, the witness explained that she had twin sisters with the same Christian name. The Chamber is not convinced by this explanation. In that respect, it is noteworthy that the Rwandan court in the above-mentioned case denied the witness' claim against Rurangirwa for payment of pain and suffering because she could not provide any communal death certificate for the sister and brother who she said were abducted by Rwamakuba.⁵⁰⁴ In December 2003, in the first trial in this case, the witness testified that she had never claimed that Rurangirwa had killed her sister and that she had never lodged any compensation claim nor was even aware of any claim being made in relation to her brother and sister.⁵⁰⁵

190. The Chamber is of the view that the above-mentioned inconsistencies in Witness HF's evidence cannot be explained by the time elapsed, translation discrepancies or mistakes in the way the statements were taken by Prosecution investigators. In addition to these major inconsistencies, the Chamber notes that Witness HF's evidence is contradicted by other Prosecution evidence. For example, the witness testified that after she left Butare University Hospital on 29 April 1994, she witnessed a massacre in the Kabakobwa. This evidence is in conflict with the testimony of Prosecution Expert Witness Alison des Forges, who placed the Kabakobwa massacre on 22 April 1994,⁵⁰⁶ and also with the Prosecution's allegations in the Indictment against Joseph Kanyabashi, which plead that the Kabakobwa massacre took place on 21 or 22 April 1994.⁵⁰⁷ If this massacre took place on 21 or 22 April 1994 and HF was there at that moment, she could not have been at Butare University Hospital to witness the events about which she testified. The Chamber also finds that the demeanour of Witness HF in court is relevant. She was extremely reluctant to answer questions on her prior statements and testimonies. The witness was disinclined to admit having given a statement in the *Gatera* case and denied that what was read in court was that statement. She even alleged that the

⁵⁰³ See: *Procès-Verbal* of the Public Hearing dated 17 November 1997 (Exh. D. 61 A, B and C); Judgement in the *Sahera* case, dated 23 March 1998 (Exh. D. 59 and D. 60 A and B). HF admitted that she was a witness in that case and accepted the Judgement exhibited (T. 13 July 2005, pp. 3 and 8; T. 12 July 2005, p. 66); she however denied her signature on the *Procès-Verbal* of the Public Hearing dated 17 November 1997 (T. 13 July 2005, p. 15).

⁵⁰⁴ Judgement in the *Sahera* case, dated 23 March 1998 (Exh. D. 59 and D. 60 A and B).

⁵⁰⁵ *Prosecutor v. Édouard Karemera, Mathieu Ndirumpitse, Joseph Nzirorera and André Rwamakuba*, Case No. ICTR-98-44-T, T. 11 December 2003, pp. 13-14 (see: Exh. D. 76).

⁵⁰⁶ Expert Report by Alison Des Forges prepared for the *Butare* case ICTR-98-42-T, 1 June 2001, Exh. D. 101.

⁵⁰⁷ *Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-96-15-I, Indictment, filed on 11 June 2001, Exh. D. 51.

document which had been received from the Rwandan authorities was false.⁵⁰⁸ There were similar denials in relation to information in the statements taken by Prosecution investigators. In view of these circumstances, the Chamber finds that Witness HF is not credible and her evidence cannot support a conviction against the Accused in the present case.

191. On 21 April 1994, **Witness RJ** arrived at Butare University Hospital where she was taken by a priest to receive medical assistance.⁵⁰⁹ She testified that she saw André Rwamakuba three times at the Hospital in April 1994: at the tents, when a delegation of doctors, including Rwamakuba and some military inspected identification cards from the patients;⁵¹⁰ when Rwamakuba and Doctor Gatera came to the maternity ward; and when she saw Rwamakuba removing drips from patients in the surgical ward and ordering them to get onto a red pick-up truck. She allegedly saw him assault a man in plaster. She testified that her child was beaten by Doctor Gatera in the presence of Rwamakuba, but she could not remember whether this happened at the first, the second or the third instance when she saw him.⁵¹¹ She fled from the Hospital and went to the *préfecture* office, and while she was there, she saw Rwamakuba and heard him say to the *préfet* that the Tutsi had to be killed.

192. Witness RJ's prior accounts of the events to which she testified were substantially different from her in-court testimony. In a statement taken by the Rwandan authorities in the *Gatera* case before her statement to the Prosecution in this case, she stated that Doctor Gatera was the person who ordered the soldiers to beat her and other Tutsi;⁵¹² she did not mention André Rwamakuba.⁵¹³ Similarly, in a statement taken in June 1998 by the Rwandan authorities in the *Kageruka* case, Witness RJ failed to mention Rwamakuba in her recollection of the events that took place at the Hospital, and Doctors Gatera and Kageruka are described as the main perpetrators of the attacks. Particularly, she stated that Doctor Kageruka took identity cards of Tutsi patients and tore them up and together with Doctor Gatera, put the Tutsi patients in a vehicle and told them to "look at the world for the last time".⁵¹⁴ In a statement taken a year later in another Rwandan proceeding, Witness RJ presented Doctor Twagirayezu as the main perpetrator of the killings. She declared that Doctor Gatera was also present, but she did not mention Doctor Kageruka and described Rwamakuba as committing

⁵⁰⁸ T. 12 July 2005, pp. 49-53.

⁵⁰⁹ T. 2 Sept. 2005, pp. 11-12.

⁵¹⁰ T. 2 September 2005, pp. 12-16.

⁵¹¹ T. 5 September 2005, p. 5.

⁵¹² Statement in *Gatera* case, 30 April 1997 (Exh. D. 137 A, B and C, under seal). In that statement, Witness RJ did not state that Dr. Gatera also had beaten her child.

⁵¹³ Exh. D. 137 A, B and C (under seal).

⁵¹⁴ Exh. D. 139 A, B and C (under seal).

the same acts and saying the same words as were previously attributed to Doctor Kageruka in her *Kageruka* statement of 1998.⁵¹⁵ Witness RJ also made a statement in the *Misago* case in 1999 where she stated that she did not stay at Butare University Hospital at all because they refused to keep her there; she went then to Butare *préfecture*.⁵¹⁶ The same year, she also gave an interview published in a report by *African Rights*, where she described soldiers from the *Ecole des Sous-Officiers* (ESO) at the centre of the crimes committed at Butare University Hospital; she did not mention Rwamakuba; and she stated that the soldiers *threw them out of the Hospital and told them to go to the office of the préfecture*.⁵¹⁷

193. These various inconsistencies regarding the same events are not reconcilable and cannot be reasonably explained by the time elapsed or translations discrepancies. The Chamber notes that the witness was particularly reluctant to discuss her prior statements. She eventually denied the content of each of the Rwandan statements and of the *African Rights* Report, and she claimed that her words were distorted.⁵¹⁸ She even alleged that her signature must have been forged.⁵¹⁹ In view of these circumstances, the Chamber finds that Witness RJ lacks credibility.

194. The Chamber finds that the Prosecution witnesses on the alleged crimes committed by the Accused at Butare University Hospital lack credibility and reliability. This conclusion is supported by the alibi evidence.

(4) Alibi

195. It was also the Defence case that the Accused would not have been able to spend time in Butare to the extent suggested by the Prosecution witnesses because between 18 and 25 April 1994, the period during which André Rwamakuba is alleged to have committed crimes

⁵¹⁵ Statement in *Twagirayezu* case, 6 May 1999, Exh. D. 138 A, B and C (under seal). André Rwamakuba is described as arriving aboard a vehicle, where Tutsi patients were then put on and taken away. The witness stated that he told them "to look at the world for the last time". In the *Kageruka* statement, RJ said that her elder sister who had given birth to a boy at the Hospital was put on the vehicle by Dr. Gatera and Kageruka; but in 1999, she stated that her elder sister and her *two twins whom she had just given birth*, were taken away by Dr. Gatera and Twagirayezu.

⁵¹⁶ Statement in *Misago* case, 21 April 1994, Exh. D. 145 A, B and C (under seal). Witness RJ stated that when she arrived at Butare University Hospital, they refused to keep her there. She then went to the Butare *préfecture*.

⁵¹⁷ See Exh. D. 140 (under seal). In court, Witness RJ testified that she fled to a nearby sorghum field and then made her way to the *préfecture* office; in the *African Rights* Report, she stated: "the soldiers *threw us out of the hospital and told us to go to the office of the prefecture*" (emphasis added).

⁵¹⁸ See for e.g.: T. 5 September 2005, p. 28.

⁵¹⁹ T. 5 September 2005, pp. 31 and 35; T. 6 September 2005, pp. 2 and 11.

at Butare University Hospital, he was first staying in Gitarama and then, after 20 April 1994, in Gisenyi.⁵²⁰

196. The parties agreed and the Chamber accepted that on 12 April 1994, the Accused moved to Gitarama with the convoy of the Interim Government.⁵²¹ Prosecution investigator Upendra Baghel also gave evidence that the distance between Gitarama and Butare is approximately 83 kilometres and between Gisenyi and Butare 247 kilometres.⁵²² The Defence accepted these figures⁵²³ and provided evidence that the Accused was not present at the scene of the crimes.

197. According to Defence Witnesses 1/1, André Rwamakuba was in Gitarama from 12 to 20 April 1994. During that period, the witness saw him each morning, at lunch, and again each evening starting from around 5.00 p.m. Defence Witnesses 1/1 and 9/1 testified to Rwamakuba's presence in Gisenyi from 20 April to 2 May 1994. They each gave an account of his daily activities including attempts to get air tickets for his family to leave Rwanda. Specifically, from 20 to 24 April 1994, they stated that Rwamakuba spent his days and nights at home with his wife and his family. Witness 1/15 also testified that he met with Rwamakuba in Gisenyi between 20 and 22 April 1994 as he assisted the witness to get a new passport and a visa to Zaïre.⁵²⁴ Copies of that document were tendered into evidence by the Defence.⁵²⁵

198. The testimonies of Witnesses 1/1 and 9/1 are corroborated to a certain extent by Witnesses 5/16, 5/7, 9/17, 5/13, 5/15 and 9/29 who testified that they never saw André Rwamakuba at Butare University Hospital during the genocide in April and May 1994. Witnesses 5/16, 5/7, and 5/15 who were employees of Butare University Hospital in April and May 1994, said that they never saw Rwamakuba there and that they never heard any such allegation against him. They testified that they would come to work at the Hospital in the morning and find that people had been abducted and were told that the killings were done by soldiers during the night. Witness 5/13 was at Butare University Hospital in the surgical ward with his relative throughout the time Rwamakuba was alleged to have been there and confirmed that he did not see him. The witness stated that he was familiar with all of the doctors at the Hospital because they greeted each other as neighbours. He also never heard

⁵²⁰ See Defence Witnesses 1/1, 9/1 and 1/15. Defence Witness 3/A gave a similar evidence. However, due to the particularly close relationship between the Accused and this witness, and the age of the witness at the time of the event, the Chamber will set aside this evidence.

⁵²¹ *Ibidem*.

⁵²² Exh. P. 2.

⁵²³ Defence Closing Brief, p. 283.

⁵²⁴ T. 18 January 2006, pp. 10-13 and 16-17.

⁵²⁵ Exh. D. 198.

that a Minister was at the Hospital taking part in the genocide, except a woman named Nyiramasuhuko.

199. The Prosecution did not call any direct witness to rebut these testimonies. Only the Expert witness testified that on 19 April 1994, several members of the Government, including André Rwamakuba, went to Butare to publicly remove the Tutsi *préfet* who had attempted to stop the killings against the Tutsi.⁵²⁶ A transcript of Prime Minister Kambanda's speech made on that date mentioning the presence of the Minister of Primary and Secondary Education was also admitted into evidence.⁵²⁷ The Prosecution did not attempt to present a comprehensive chronology of the Accused's presence in Butare, particularly concerning his attendance at the government meeting of 19 April 1994 and then between 21 and 25 April 1994, as asserted by the Prosecution witnesses.

200. The Chamber assessed with particular caution the evidence given by Defence Witnesses 1/1 and 9/1 due to their close relationship with André Rwamakuba, but it should be acknowledged that these witnesses testified with great detail and answered questions on cross-examination in a steady demeanour. In addition, none of Witnesses 5/16, 5/7, 9/17, 5/13, 5/15 and 9/29 knew Rwamakuba personally. They did not appear to have any special interest in defending the Accused and their cross-examination by the Prosecution did not raise any convincing element to show that they were unbelievable or unreliable. In the Chamber's view, their testimonies were consistent and objective enough to levy an additional doubt on the Prosecution's case.

Conclusion on the Alleged Participation of André Rwamakuba to Crimes at Butare University Hospital

201. As discussed above, first, the Prosecution did not adduce evidence on some allegations at Butare University Hospital and adduced evidence inconsistent with some of the allegations in the Indictment.

202. Then, the identity of the person who the Prosecution witnesses saw committing the alleged crimes at Butare University Hospital in April 1994 raised doubt. Apart from Witness XV who claimed to have personally known André Rwamakuba, the identification of the Accused was either based on untested hearsay evidence or on Witness XV's identification.

⁵²⁶ T. 14 July 2005, p. 40.

⁵²⁷ Exh. P. 64.

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Specifically, Witness XV pointed out Rwamakuba to Witnesses HF and RJ, who in turn identified him to Witness GIO. In that respect, it is remarkable that Witness XV was confusing Rwamakuba with a man named Rekeraho. This confusion was also entertained by Witness GIO. As developed in detail above, Witness XV's evidence contained many inconsistencies that cannot be reasonably explained or reconciled. His personal knowledge and identification of Rwamakuba is therefore unreliable.

203. In addition to these identification issues, the credibility and reliability of the Prosecution witnesses also raised serious concerns. In the Chamber's view, the major inconsistencies between the witnesses' testimonies and their prior statements and testimonies in other cases cannot be explained by the time elapsed, translation discrepancies, the manner in which the prior statements were taken or the impact of trauma inflicted upon the witnesses. They undermine the credibility and reliability of the Prosecution witnesses. In addition, the Prosecution did not satisfactorily rebut the Defence evidence that Rwamakuba did not participate in the killings at Butare University Hospital or that, during the considered period, he was staying in Gitarama and Gisenyi, and could not have been in Butare to the extent suggested by the Prosecution witnesses.

204. The absence of any reliable identification of André Rwamakuba at the time and location of the event, the lack of credibility and reliability of the Prosecution witnesses and the Defence alibi evidence, cumulatively contribute to levy reasonable doubt on the Prosecution's case.

205. Consequently, the Chamber finds that the Prosecution failed to prove at all or beyond a reasonable doubt the allegations against the Accused at the Butare University Hospital, as set forth in paragraphs 15 to 16, 23 second and third limbs and 26 second to fourth limbs of the Indictment. The Chamber will now address the other allegations in the Indictment.

II.3. OTHER ALLEGATIONS IN THE INDICTMENT

206. In addition to the charges pertaining to events in Gikomero and Butare events, the Indictment contains allegations regarding André Rwamakuba's political status and related political activities. It alleges that as the Minister of Primary and Secondary Education of the Interim Government of 8 April 1994, he took part in the conception and the implementation

of the Government's policies to exterminate the Tutsi throughout Rwanda.⁵²⁸ It is said that between 27 and 29 April 1994, he was spokesman for the Interim Government.⁵²⁹ On 17 May 1994, he was allegedly assigned to the Civil Defence Forces (CDF) program with other ministers.⁵³⁰ This program would have been used to identify, search out and kill the Tutsi population.⁵³¹ The Accused is also described as a member of the MDR extremist wing, MDR "Hutu Power", which would have been created on or about 26 July 1993 and which would have had a specific ideology of exterminating the Tutsi.⁵³² He is alleged to have mobilized the physical and logistical resources of the MDR "Hutu Power", the other parties allied with the *Mouvement Révolutionnaire National pour le Développement* (MRND) and "Hutu Power", the Interim Government Ministries controlled by those parties and the military to execute a campaign sought to kill or destroy the Tutsi as a group.⁵³³

207. It is noted that no evidence was adduced concerning what the Accused could or should have done as Minister or what he failed to do. The Prosecution also did not bring any evidence to prove its contentions regarding the structures of the MDR "Hutu Power", André Rwamakuba's alleged authority over local administrative officials, his alleged mobilization of the physical and logistical resources of the other parties that were allied with MRND and "Hutu Power", the Interim Government ministries controlled by these parties and the military to execute the campaign of destruction of the Tutsi throughout Rwanda. No direct evidence was adduced concerning the responsibilities of Rwamakuba with regard to the program of civilian self defence or how he might have used it to kill Tutsi. There was also no evidence that on or about 28 April 1994 he announced on Radio Rwanda that "security had been restored in Butare because the Inyenzi had been suppressed".

208. As discussed under Chapter I, André Rwamakuba was not alleged to be criminally responsible as a member of the Interim Government for failing to denounce the crimes committed against the Tutsi, for not dissociating himself from the Government or for failing to discharge his duties as Minister. In view of the charges against the Accused set forth in the Indictment and according to the clear and consistent notice given by the Prosecution, the above-mentioned allegations pertaining to Rwamakuba's political role and activities are

⁵²⁸ Indictment, paras. 7 and 19.

⁵²⁹ Indictment, paras. 1 and 14.

⁵³⁰ Indictment, para. 9.

⁵³¹ Indictment, para. 8.

⁵³² Indictment, para. 3. It is specifically said that André Rwamakuba was a member of the Executive Committee of MDR "Power" Political Party and was a member of that party's *comité préfectoral* in Kigali-Rural *préfecture* (see Indictment, para. 2).

⁵³³ Indictment, para. 6.

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considered as context or background from which inferences concerning his intent, disposition or other required elements of the crimes could be drawn.

209. Since the Prosecution failed to prove beyond reasonable doubt the charges against the Accused pertaining to Gikomero *commune* and Butare University Hospital as detailed above, the Chamber need not to discuss the allegations and evidence concerning his criminal intent or disposition in relation to these alleged incidents.

CONCLUSION

210. That genocide against Tutsi and widespread or systematic attacks against a civilian population based on Tutsi ethnic identification occurred in Rwanda between April and July 1994 are notorious facts not subject to reasonable dispute,⁵³⁴ and nor were they disputed by the Defence in the present case. This Tribunal was established to contribute to the process of reconciliation and to the restoration of peace and security in Rwanda.⁵³⁵ The Tribunal's contribution in this area is by conducting impartial criminal proceedings where the burden of proving the guilt of an individual accused is on the Prosecution.

211. In the present case, André Rwamakuba was charged with specific acts committed in Gikomero *commune* and at Butare University Hospital between 6 and 30 April 1994. No charges were brought on the basis of his acts, omissions or duties as Minister of the Interim Government in 1994.

212. The Chamber heard 49 Prosecution and Defence witnesses, 94 Prosecution and 218 Defence exhibits were admitted into evidence over 78 trial days. The Prosecution case was largely circumstantial, and much evidence adduced was of hearsay character. Five of the 18 Prosecution witnesses claimed to have direct knowledge of André Rwamakuba. Two witnesses also gave uncorroborated evidence to support specific allegations in the Indictment. The Defence witnesses were mainly issued from different ranges of the Rwandan society, including victims of the genocide, they had both direct and indirect knowledge of Rwamakuba, and many of them claimed to have been eyewitnesses to events alleged in the Indictment.

213. The parties agreed that that Tutsi people were attacked and massacred in the Gikomero *commune* in April 1994, including at the Ndatewma Trading Centre, the Gikomero Protestant

⁵³⁴ *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC).

⁵³⁵ UN S.C. Res. 955 (1994), 8 November 1994.

School, the Gishaka Parish and the Kayanga Health Centre, and at Butare University Hospital. Both the Prosecution and the Defence adduced substantial evidence on these massacres. The Defence, however, denied the Accused's involvement in any of them.

214. After assessing the evidence as a whole, the Chamber found that all of the Prosecution witnesses not to be credible or reliable. Their testimonies were either inconsistent with the Indictment or contained other discrepancies which could not be satisfactorily explained. The absence of any credible or reliable identification of André Rwamakuba at the time and place of the alleged crimes, the lack of credibility or reliability of the Prosecution witnesses, the participation of the Accused in other activities during periods alleged in the Indictment and the Defence alibi evidence, cumulatively raise a reasonable doubt regarding the Prosecution's case.

215. Consequently, in the Chamber's view, the Prosecution has failed to prove beyond reasonable doubt that André Rwamakuba participated in sensitization campaigns in Gikomero *commune* from June 1993 up to and including June 1994; that between 10 and 11 April 1994, Rwamakuba delivered machetes to Muhire's house in Ndatemwa Trading Centre; that around the same period, he delivered machetes to Kamanzi's house in Kayanga Centre; that between 10 and 20 April 1994, at the Gikomero *secteur* office, he ordered the killings of three Tutsi people and encouraged the beginning of the massacres against Tutsi in the commune; and that between 13 and 15 April 1994, he participated in the massacre at Kayanga Health Centre. The Prosecution also failed to prove beyond reasonable doubt that the Accused committed criminal acts against Tutsi people between 18 and 25 April 1994 at Butare University Hospital.

216. Before concluding on the verdict, the Chamber will address a particular issue concerning the violation of the rights of the Accused.

CHAPTER III – RIGHTS OF THE ACCUSED

217. In a Decision of 12 December 2000,⁵³⁶ Trial Chamber II, composed of Judges Laity Kama, presiding, William H. Sekule and Mehmet Güney, considered that the Tribunal had no jurisdiction over André Rwamakuba's conditions of detention by the Namibian authorities between 2 August 1995 and 7 February 1996 since he had not been arrested at the Tribunal's request. That same Chamber found that there was a violation of Rwamakuba's right to legal

⁵³⁶ *Rwamakuba*, Decision on the Defence Motion concerning the Illegal Arrest and Illegal Detention of the Accused (TC).

assistance during the first months of his detention at the UNDF, from 22 October 1998 until 10 March 1999, and that the delay in assigning him duty Counsel further caused a delay in his initial appearance.⁵³⁷

218. The Appeals Chamber held that “any violation of the accused’s rights entails the provision of an effective remedy pursuant to Article 2(3)(a) of the [International Covenant on Civil and Political Rights].”⁵³⁸ The Appeals Chamber has previously ordered or decided the reduction of an accused’s sentence where he was found guilty at trial.⁵³⁹ In the *Barayagwiza* and *Semanza* cases, it also decided that “if the [accused] [was] not found guilty, he shall receive financial compensation.”⁵⁴⁰

219. In the present case, the Appeals Chamber moreover considered that “it [was] open to [Rwamakuba] to invoke the issue of the alleged violation of his fundamental human rights by the Tribunal in order to seek reparation as the case may be, at the appropriate time”.⁵⁴¹

220. Since a violation of the Accused’s right to legal assistance during the first months of his detention was found, André Rwamakuba is at liberty to file an application seeking an appropriate remedy after the time-limit to file an appeal against this Judgement has elapsed. The Prosecution and the Registry are also at liberty to file any related submissions.

CHAPTER IV – VERDICT

I. For the foregoing reasons, having considered all the evidence and the arguments of the parties, the Chamber **FINDS** André Rwamakuba, unanimously:

- Count 1: Not Guilty of Genocide
- Count 2: Not Guilty of Complicity in Genocide
- Count 3: Not Guilty of Crimes against Humanity (Extermination)
- Count 4: Not Guilty of Crimes against Humanity (Murder)

Accordingly, André Rwamakuba is **ACQUITTED** on all counts in the Indictment.

⁵³⁷ *Ibidem*.

⁵³⁸ See: *Barayagwiza*, Decision (Prosecutor’s Request for Review or Reconsideration) (AC), paras. 74-75; *Kajelijeli* Appeal Judgement, paras. 255 and 322; *Semanza*, Decision of 31 May 2000 (AC), para. 125: “The Appeals Chamber nevertheless finds that any violation, even if it entails only a relative degree of prejudice, requires a proportionate remedy.”

⁵³⁹ *Ibidem*.

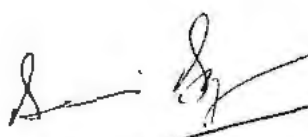
⁵⁴⁰ *Barayagwiza*, Decision (Prosecutor’s Request for Review or Reconsideration) (AC), para. 75; *Semanza*, Decision of 31 May 2000 (AC), disposition.

⁵⁴¹ *Rwamakuba*, Decision (Appeal Against Dismissal of Motion Concerning Illegal Arrest and Detention) (AC).

II. Pursuant to Rule 99 (A) of the Rules, the Chamber **ORDERS** the immediate release of André Rwamakuba from the Tribunal's Detention Facilities and **REQUESTS** the Registrar to make all necessary arrangements in the implementation of this decision. This order is without prejudice to any further order that may be made by the Chamber pursuant to Rule 99 (B) of the Rules.

III. The Defence is at liberty to file any application seeking appropriate remedy to the violation of his right to legal assistance between 22 October 1998 and 10 March 1999 no later than 23 October 2006; the Prosecution and the Registry to file their respective submissions no later than 30 October 2006; and the Defence to file any reply thereto no later than 6 November 2006. This order is subject to any appeal to be filed within a 30 days time-limit as set out in Rule 108 of the Rules.

Arusha, delivered on 20 September 2006, done in English.



Dennis C. M. Byron
Presiding Judge



Karin Hökberg
Judge



Gberdao Gustave Kam
Judge

[Seal of the Tribunal]

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Judgement – Annex I

20 September 2006

ANNEX I: INDICTMENT



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International Criminal Tribunal for Rwanda
Tribunal pénal International pour le Rwanda

Case No. ICTR-98-44C-I

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Original: FRENCH

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THE PROSECUTOR
against
ANDRÉ RWAMAKUBA

INDICTMENT

Of 9 June 2005

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

ANDRÉ RWAMAKUBA

Pursuant to Article 2 of the Statute of the Tribunal, with:

- (i) **GENOCIDE** *or, alternatively,*
- (ii) **COMPLICITY IN GENOCIDE**

Pursuant to Articles 3 of the Statute of the Tribunal, with:

- (iii) **EXTERMINATION, and**
- (iv) **MURDER, as CRIMES AGAINST HUMANITY**

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The Accused

I. Particulars of the Accused

1. **André RWAMAKUBA** was born in 1950 in Gikomero *commune*, Kigali-rural *préfecture*, Rwanda. **André RWAMAKUBA** was trained as a physician and was Minister of Primary and Secondary Education in the Interim Government of 8 April 1994, taking the oath of office on 9 April 1994 and continuing in that capacity until the Interim Government fled from Rwanda in July 1994. **André RWAMAKUBA** also served as "spokesman" for the Interim Government, and was a member of MDR political party, associated with that party's "Hutu Power" wing.

II. Authority and Legal Duties of the Accused

2. **André RWAMAKUBA** was a member of the Executive Committee of MDR "Power" political party and was a member of that party's *comité préfectoral* in his *préfecture* of origin. As Minister of Primary and Secondary Education in the Interim Government, he had authority and influence over local administrative officials that executed his instructions. The Accused exercised the same authority and control over regional and local leaders of the "civil defense force", particularly over the *Interahamwe* and related militias in Gikomero, his home *commune*, and militiamen that were present in and around the Butare University Hospital.

Charges

Count 1: Genocide

The Prosecutor charges **André RWAMAKUBA** with **Genocide**, pursuant to Articles 2 and 6(1) of the Statute of the Tribunal in that on or between 6 April and 30 April 1994, in Gikomero *commune* and at Butare University Hospital, he was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population, or deliberately inflicting conditions of life upon the Tutsi population that were calculated to bring about its physical destruction, with the intent to destroy, in whole or in part, the Tutsi racial or ethnic group;

Or, alternatively,

Count 2: Complicity in Genocide

The Prosecutor charges **André RWAMAKUBA** with **Complicity in Genocide**, pursuant to Articles 2 and 6(1) of the Statute of the Tribunal in that on or between 6 April and 30 April 1994, in Gikomero *commune* and at Butare University Hospital, he instigated or provided the means to other persons to kill or cause serious bodily or mental harm to members of the Tutsi population, or to deliberately inflict conditions of life upon the Tutsi population that were calculated to bring about its physical destruction, knowing that those other persons intended to destroy, in whole or in part, the Tutsi racial or ethnic group, committed as follows:

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3. Following an extraordinary congress of MDR political party held at Kabusunzu in Kigali on or about 26 July 1993, **André RWAMAKUBA** became associated with the party's extremist "Hutu Power" wing as a member of its executive team, along with Frodouald Karamira, a leader of the party, and Jean Kambanda, a leading politician who would subsequently become Prime Minister of the Interim Government of 8 April 1994. After the establishment of MDR "Power" on 26 July 1993 or thereabouts, **André RWAMAKUBA**, practically every weekend, up to and including January 1994, and often accompanied by local authorities and officials of MDR "Power", traveled about his home *commune* in Gikomero, Kigali-rural *préfecture*. He organized meetings and participated in rallies in Kayanga, Gikomero, Rutunga, Gasabo and Gicaca *secteurs*. During the rallies, **André RWAMAKUBA** distributed songs of the Parmehutu party. The *Accused's* objective at the time was to recruit members for MDR "Power" party and to support "Hutu Power". The *Accused* called upon the Hutu majority to oppose the Arusha Peace Accords and to exterminate the Tutsi.

4. During those "sensitization" campaigns in Gikomero *commune*, particularly in January 1994, **André RWAMAKUBA** occasionally went about in a vehicle equipped with a public address system exhorting Hutu to unite in order to get rid of Tutsi. His announcements, the objective of which was to exhort Hutu to unite in order to get rid of Tutsi, included repeated statements that "the time has come for you, Hutu, to get rid of the enemy".

5. During the period from January through June 1994, **André RWAMAKUBA** made statements at various meetings and public gatherings in Gikomero *commune*, or publicly associated himself with statements or acts by other persons at such gatherings. Thus, from January 1994 and during the entire period preceding the events of April 1994 in Sha, Nduba, Shango, Kayanga and Gikomero *secteurs*, and in the *communes* adjoining Gikomero, namely Rutungo, Rubungo and Kanombe, he publicly instigated participants to combat "the enemy", all the Tutsi being characterized as "the enemy", "accomplices of the enemy" or "accomplices of RPF". After these gatherings, during which the *Accused* called for the extermination of Tutsi, the participants became excited, aggressive and disposed to physically attack and destroy the Tutsi as a group. Such speeches by the *Accused* signaled the start of killings in the *commune*. Furthermore, after the killings began in early April 1994, **André RWAMAKUBA** often praised and congratulated militiamen publicly for and on having killed Tutsi, thereby instigating other militias and armed civilians to participate in further attacks and massacres against the Tutsi population.

6. Between 1 January and 17 July 1994, **André RWAMAKUBA** participated in a killing campaign against Tutsi in Gikomero *commune* and in Butare *préfecture*, instigated or ordered others to participate in this campaign, or otherwise aided and abetted the planning, preparation or execution of the campaign. In so doing, the *Accused* mobilized the physical and logistical resources of his political party, MDR "Power", the other parties that were allied with MRND and "Hutu Power", the Interim Government ministries controlled by those parties, and the military, to target Rwanda's Tutsi population as "the enemy" or "accomplices of the enemy", and to execute this campaign that sought to attack, kill and destroy the Tutsi as a group.

7. **André RWAMAKUBA** participated in formulating, articulating, publicizing, and legitimizing the policies of the Interim Government of 8 April 1994. Such policies were

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elaborated and used to implement a vast campaign of violence against the Tutsi population throughout Rwanda.


8. In this regard, **André RWAMAKUBA** utilized a state-endorsed program of "civilian self defense", whereby officials in the territorial administration [*préfets, bourgmestres* and *conseillers*] and officials in MRND and MDR "Power" political parties recruited civilians, usually local Hutu youth, and consolidated them with political party "youth wing" militias under the authority of retired military officers and reservists. The militias were used to mount and control roadblocks that tracked and killed Tutsi civilians. Furthermore, this "civilian self defense" corps was deployed in armed patrols to identify, search out, and kill the Tutsi population.

9. On or about 17 May 1994, during a meeting of the *Conseil des ministres*, the Interim Government implemented measures to manage the "civil defense force", formally entrusting responsibility for this program to **André RWAMAKUBA** and other ministers.

10. **André RWAMAKUBA** planned, instigated, ordered, committed or otherwise aided and abetted attacks against the Tutsi population in his home *commune* of Gikomero. All those acts were intended to destroy, in whole or in part, the Tutsi as a group.

11. Between 10 and 20 April 1994, **André RWAMAKUBA** delivered bags of machetes to the home of André Muhire, near Ndatemwa trading center in Gasabo *secteur*, in his home *commune* of Gikomero, Kigali-rural *préfecture*. On that occasion, between 10 and 11 April, **André RWAMAKUBA** held a meeting with several influential local members of MDR "Hutu Power" political party, including the persons known as Joas Habimana, Chairman of MDR "Power" in Rutunga *secteur*, Ndamage and André Muhire. Several days later, about 13 April, André Muhire distributed the machetes to local residents, who then used them to attack and massacre the Tutsi population. Following such attacks, many Tutsi were killed, including residents of Ndatemwa Centre, namely the wife of a man called Gakumba and her son, Kambanda, and the persons known as Kanuma, Rwihimba, Kankidi, Rutembya, Rutembesa, and many unidentified refugees from Rutongo, Nkuzuzu and Rutanga *secteurs*. Again, between 10 and 11 April 2004, **André RWAMAKUBA** delivered bags of machetes to the home of Etienne Kamanzi, the director of the Kayanga Health Center. The Accused knew, or had reasons to know, that the machetes would be used in attacks against the Tutsi in those areas, thereby aiding and abetting the killing campaign against the Tutsi population.

12. Between 10 and 20 April 1994, **André RWAMAKUBA** went to Gikomero *commune* where, during a rally near the *secteur* office, accompanied by RUTAGANIRA, *bourgmestre* of the *commune*, Brigadier NYARWAYA, Mathias KABANGUKA, accountant of the *commune*, and two men unknown but who were identified as policemen, he asked persons in the crowd why the massacres had not started. He then seized documents belonging to two unknown youths, but who were identified as Tutsi, tore the documents and ordered the crowd to seize the youths and kill them. Persons present in the crowd armed with firearms, machetes and clubs, including NGIRUWOSANGA, a *secteur* inhabitant, NGARAMBE and KAYIBANDA, and two communal policemen, immediately seized the two young men that **André RWAMAKUBA** had designated, led them away to a wooded area and killed them as the *Accused*, who was not far, looked on. Thereafter, this same crowd stopped an unidentified man on a motorcycle claiming to flee the massacres in Rutongo *commune*. **André RWAMAKUBA**, while speaking to the crowd, stated that the motorcyclist could not be a Hutu since only Tutsi were fleeing, and decided that the youth should be killed. At the

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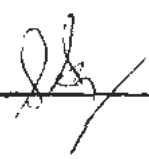
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instigation of and following orders from **André RWAMAKUBA**, the same armed crowd led the youth away to a wooded area to kill him. The *Accused* then told the crowd that it had just started the killings and that it was a good start. The same day, in the afternoon, *Interahamwe* militiamen, elements of the Presidential Guard, with the assistance of members of the population, following such orders and instigations, began to massacre Tutsi refugees, in Gikomero *commune*, notably at Kayanga Health Center, Gikomero Protestant School, and Gicaca. Thousands were massacred, including refugees from Remera, in Kigali town centre, refugees from the neighbouring *commune* of Gikoro, and Kabuga *secteur*, Rubungo *commune*.

13. Between 13 and 15 April 1994, in the morning, **André RWAMAKUBA**, accompanied by local authorities, including Mathias RUBANGUKA, accountant of the *commune*, Callixte KABARERA, Inspector of Schools, Brigadier NYARWAYA, RUTAGANIRA, *bourgmestre* of Gikomero *commune*, Thomas MABANGO, *conseiller* of KANYANGA, and soldiers and *Interahamwe* militiamen, arrived at the Kayanga Health Center in Kayanga *secteur*, where many Tutsi fleeing the massacres that had started in their *secteurs* had sought refuge. At a man unknown but identified as the deputy director's request, they assembled in the courtyard of the Health Centre. Upon his arrival, **André RWAMAKUBA** stated that the killings had started everywhere else and that he realized that nothing had been done at the Health Centre. The *Accused*, stating that he was showing the example, then brandished a firearm, signaling the start of the massacres to soldiers and *Interahamwe* who began, in his presence, to attack and kill the Tutsi with firearms, machetes and clubs. Shortly after the beginning of the killings, while it was raining, **André RWAMAKUBA**, referring to the bodies of Tutsi, demanded that such filth be cleared. The *Accused* witnessed the killings until he left the Health Centre, while the soldiers and *Interahamwe* continued the killings for several hours. No one survived the massacre in which about a hundred people are alleged to have died. The bodies of the victims were thrown into a mass grave. These victims were mostly in-patients and Tutsi refugees fleeing the killings in the neighbouring *secteurs*, notably the killings in the Parishes of Gikomero and Gicaca.

14. Between 27 and 29 April, or thereabouts, **André RWAMAKUBA** was spokesman for the Interim Government and, in that capacity, delivered radio addresses and communiqués on Radio Rwanda and RTL M encouraging the *Interahamwe* and the listening audience to continue the hunt for Tutsi. Moreover, from May to June 1994, **André RWAMAKUBA** made several radio broadcasts in which he urged *Interahamwe* militiamen and the listening audience to continue to hunt down the Tutsi wherever they were hiding and to exterminate them.

15. Between 18 and 25 April 1994, at Butare University Hospital, **André RWAMAKUBA**, often accompanied by Dr. Geoffroy Gatera, soldiers, militiamen and armed civilians, ordered, instigated, committed, or otherwise aided and abetted killings of Tutsi patients and displaced persons seeking refuge at Butare University Hospital with intent to destroy, in whole or in part, the Tutsi ethnic group. Thus, during an official delegation's visit to the Hospital, he asked a woman unknown but identified as the head of Doctors Without Borders not to treat Tutsi casualties, to get rid of them and not to admit any others. During the above-mentioned period, **André RWAMAKUBA**, armed with a small axe hung on his belt, and often accompanied by Dr. Gatera, armed soldiers, *Interahamwe* militiamen and civilians armed with machetes, axes and clubs, went around the hospital wards checking identity cards and identifying Tutsi refugees and patients, selecting them and putting them on board a vehicle manned by *Interahamwe* armed with clubs and machetes. The persons taken away



were never seen again. During this period, in the morning or afternoon, during his rounds, **André RWAMAKUBA** regularly removed drips from patients, in particular, in a ward where unidentified sick Tutsi women were admitted.

16. Concurrently with the events related above, **André RWAMAKUBA** directly caused the death of several persons identified as Tutsi. Thus, during his ward rounds, he caused the death of an unknown Tutsi patient by wounding him in the head with an axe. The militiamen subsequently took away the body of that person. Five of the patients referred to above as having been in the in-patients ward, and who were identified as Tutsi, died from axe wounds inflicted by **André RWAMAKUBA**. The *Accused* wounded Tutsi found in the corridors of the Hospital by striking them on the head with an axe. Some of them, including the persons called Rukara and Mutabazi, who suffered serious bodily harm caused by **André RWAMAKUBA**, were subsequently finished off by *Interahamwe*. As a result of such orders and instigation by the *Accused*, many Tutsi refugees and patients were massacred in Butare University Hospital. The victims included the persons known as Déogène, Placide and the parents of several survivors of the killings. The bodies of hundreds of victims of the massacres organized by **André RWAMAKUBA** at Butare University Hospital were gathered and buried in mass graves located behind the Hospital.

17. On or about 28 April 1994, **André RWAMAKUBA** announced on Radio Rwanda that "security had been restored in Butare because the *Inyenzi* had been suppressed", referring to massacres of Tutsi residents that had taken place after the sensitization campaign of 25 April 1994 or thereabouts conducted by an Interim Government delegation in which he had participated.

18. Massacres of Tutsi at Butare University Hospital continued and intensified through late May 1994, particularly after a meeting, held at the Faculty of Medicine on or about 15 May 1994, where Prime Minister Jean Kambanda addressed university authorities, encouraging them to "continue the fight until ultimate victory".

19. By the time the Interim Government fled Rwanda in mid-July 1994, hundreds of thousands of unarmed men, women and children had been killed as a direct result of policies formulated and authorized by MRND and affiliated "Hutu Power" political parties, and executed through the instrumentalities of the State. **André RWAMAKUBA** contributed to formulating and implementing those policies and is directly responsible for the killing of hundreds of Tutsi in Gikomero *commune* and Butare University Hospital, and intended those killings to destroy the Tutsi as a group.

Count 3: Extermination as a Crime Against Humanity

The Prosecutor charges **André RWAMAKUBA** with **Extermination as a Crime Against Humanity**, pursuant to Articles 3 and 6(1) of the Statute of the Tribunal in that on or between 6 April and 30 April 1994, in Gikomero *commune* and at Butare University Hospital, he was responsible for killing persons, or causing persons to be killed, as part of a widespread or systematic attack against a civilian population on political, ethnic, or racial grounds.



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20. The allegations contained in paragraphs 1 through 19, above, are reiterated and incorporated herein by reference as a concise statement of facts to support the charges under this specific count of the Indictment.

21. Between 6 April 1994 and 17 July 1994, throughout Rwanda there were widespread or systematic attacks against a civilian population based on Tutsi ethnic or racial identification, or political opposition to MRND and "Hutu Power" political parties. **André RWAMAKUBA** planned, instigated, ordered, committed or otherwise aided and abetted the planning and execution of killings of persons perceived to be Tutsi or deemed to be political opponents to "Hutu Power", as set forth above.

22. **André RWAMAKUBA** is responsible, by act or by omission, for killing numerous persons in Gikomero *commune*, Kigali-rural *préfecture*, and at the Butare University Hospital in that he planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation and execution of the crimes detailed above.

23. As recounted in paragraphs 11, 12, 13 and 15, between 10 and 25 April 1994, **André RWAMAKUBA** instigated attacks against Tutsi in Gikomero *commune* and at Butare University Hospital that claimed hundreds of victims.

The victims of the said attacks included:

- Many persons identified as Tutsi residing or seeking refuge in Gikomero *commune*, precisely at Ndatemwa Health Centre, and those seeking refuge at Kayanga Health Centre where there were no survivors;
- Many Tutsi refugees and patients forcibly taken out of Butare University Hospital in mid-April by armed militiamen and killed upon the instructions of **André RWAMAKUBA**;
- Many persons killed by armed militiamen in the premises of Butare University Hospital, during the second half of April 1994, upon the orders or instigation of **André RWAMAKUBA**, or in his presence;

Count 4: Murder as a Crime Against Humanity

The Prosecutor charges **André RWAMAKUBA** with **Murder as a Crime Against Humanity**, pursuant to Articles 3 and 6(1) of the Statute of the Tribunal in that on or between 6 April and 30 April 1994, in Gikomero *commune* and at Butare University Hospital, he was responsible for killing persons, or causing persons to be killed, as part of a widespread or systematic attack against a civilian population on political, ethnic, or racial grounds.

24. The allegations contained in paragraphs 1 through 23 above are reiterated and incorporated herein by reference as a concise statement of facts to support the charges under this specific count of the Indictment.

25. **André RWAMAKUBA** is responsible, by act or by omission, for killing numerous persons in Gikomero *commune*, Kigali-Rural *préfecture*, and at the Butare University

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Hospital in that he planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation and execution of the crimes detailed above.

26. As recounted in paragraphs 12 and 16, between 10 and 25 April, during the systematic and widespread attacks carried out at Butare University Hospital against Tutsi refugees and patients, **André RWAMAKUBA** was personally responsible for the death of:

- Three unknown youths, but who were identified as Tutsi in a crowd that had gathered near the Gikomero *secteur* office;
- A man who was a patient at Butare University Hospital, unknown but identified as a Tutsi, who was struck on the head with an axe. His body was subsequently taken away by the *Interahamwe*;
- The persons known as Rukura and Mutabazi, two Tutsi encountered in the corridors of Butare University Hospital whom he struck on the head with an axe, seriously wounding them. The said persons were immediately finished off by armed *Interahamwe*;
- Five unknown patients, who were identified as Tutsi, in a Butare University Hospital ward by striking them on the head with an axe, while pulling out their drips.

The acts and omissions of André RWAMAKUBA detailed herein are punishable pursuant to Articles 22 and 23 of the Statute of the Tribunal.

Dated: Arusha, this 9 day of June 2005:

Hassan Bubacar Jallow

Prosecutor



ANNEX II: CHRONOLOGY OF THE CASE

The main factual elements and decisions pertaining to the case are presented in chronological order under the present section.

1995

2 August 1995: André Rwamakuba is arrested at the initiative of the Namibian authorities

1996

8 February 1996: André Rwamakuba is released by the Namibian authorities following the ICTR Prosecutor’s notification that he did not possess evidence to request Rwamakuba’s further detention

1998

29 August 1998: Prosecutor files an Indictment against Augustin Bizimana, Félicien Kabuga, Juvénal Kajelijeli, Edouard Karemera, Mathieu Ndirumpaste, Callixte Nzabomimana, Joseph Nzirorera and André Rwamakuba

29 August 1998: Judge Pillay confirms the Indictment and orders non-disclosure of the Indictment

8 October 1998: Judge Pillay issued a warrant of arrest against André Rwamakuba and ordered for his transfer and detention

21 October 1998: André Rwamakuba is arrested by the Namibian authorities in accordance with the Tribunal’s warrant of arrest and transferred to the Tribunal

1999

7 April 1999: Initial appearance of André Rwamakuba

27 September 1999: Rescission of the Order for non disclosure of 29 August 1998

2000

6 July 2000: Trial Chamber II grants the Defence motion for severance and separate trial of Juvénal Kajelijeli and orders the Prosecutor to file a separate indictment pertaining only to that accused

12 December 2000: Trial Chamber II denies the Defence Motion seeking severance of André Rwamakuba from the Indictment

22 September 2000: Trial Chamber II grants the Prosecutor's Motion for Protective Measures for Witnesses

2001

25 April 2001: Trial Chamber II finds defects in the form of the Indictment and orders its amendment

21 November 2001: Prosecutor files the Amended Indictment against Augustin Bizimana, Félicien Kabuga, Edouard Karemera, Mathieu Ndirumpaste, Callixte Nzabonimana, Joseph Nzirorera and André Rwamakuba

2003

1 September 2003: Trial Chamber III grants the severance of Félicien Kabuga

8 October 2003: Trial Chamber III grants the severance of Augustin Bizimana and Callixte Nzabonimana and grants in part the amendment of the Indictment

27 November 2003: The trial starts before Trial Chamber III composed of Judges Andresia Vaz, presiding, Flavia Lattanzi and Florence Rita Arrey.

11 December 2003: End of the first trial session

2004

15 February 2004: Trial Chamber III grants in part the Prosecution request for leave to amend the Indictment

18 February 2004: Prosecutor files an Amended indictment against Edouard Karemera, Mathieu Ndirumpaste, Joseph Nzirorera and André Rwamakuba

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23 February 2004: Further Initial Appearance of Edouard Karemera, Mathieu Ngirumpaste, Joseph Nzirorera and André Rwamakuba

14 May 2004: Judge Andresia Vaz withdraws from the case

24 May 2004: The remaining Judges order the continuation of the proceedings with a substitute Judge

21 June 2004: Appeals Chamber allows Joseph Nzirorera's appeal on the continuation of the proceedings, and remands the matter to the remaining Judges for reconsideration

16 July 2004: The remaining Judges orders the continuation of the proceedings with a substitute Judge

28 September 2004: Appeals Chamber quashes the Trial Chamber's Decision to continue the proceedings with a substitute Judge

22 October 2004: Reasons for Appeals Chamber Decision of 28 September 2004 and Declaration of Judge Shahabudeen

23 October 2004: Declaration of Judge Schomburg on the Appeals Chamber Decision of 28 September 2004

2005

14 February 2005: Trial Chamber III, composed of Judges Dennis Byron, Presiding, Emile Francis Short and Gberdao Gustave Kam, grants severance of André Rwamakuba and leave to file an Amended Indictment

15 February 2005: Corrigendum to the Decision on Severance

23 February 2005: Prosecutor files the Amended Indictment against André Rwamakuba

3 March 2005: Order directing the Prosecution to provide additional information on its Motion to renew and extend transfer of a Detained Prosecution Witness

8 March 2005: Order to re-file the Amended Indictment

21 March 2005: Further Initial Appearance of André Rwamakuba: a not guilty plea is entered for all charges

24 March 2005: Status Conference and Scheduling Order (commencement of the Prosecution case)

6 May 2005: *Proprio Motu* Order requesting the Prosecution to file Additional Information for its Motion for Temporary Transfer of Witnesses

23 May 2005: Decision granting the transfer of Witness GIQ

26 May 2005: Decision on Defects in the Form of the Indictment and Decision granting extension of time to file any statement of admitted or contested facts and law

27 May 2005: Judges Dennis C. M. Byron, Presiding, Karin Hökberg and Gberdao Gustave Kam are appointed to compose the Trial Chamber for the trial

1 June 2005: Decision ordering transfer of detained Witness GIN under Rule 90*bis* of the Rules. Prosecutor files the Amended Indictment in compliance with the Chamber's Decision of 26 May 2005.

3 June 2005: Decision denying Defence Motion for a stay of proceedings

6 June 2005: Pre-Trial Conference

8 June 2005: Prosecutor files a new Amended version of the Indictment in accordance with the Chamber oral Order of 6 June 2005

9 June 2005: (TD1) Prosecution case starts with the Prosecutor's Opening Statements

From 10 June to 15 July 2005: (TD 2 to 23) 14 witnesses testified, including Prosecution Investigator Upendra Baghel and Expert Witness Alison Des Forges

10 June 2005: Prosecutor files a new Amended version of the Indictment in accordance with the Chamber oral Order of 9 June 2005

14 June 2005: Decision on Prosecution Motion for Notice of Alibi and Reciprocal Inspection

14 July 2005: Decision denying Defence Motion seeking directives from the Chamber to get signatures on will-say statements

From 22 August to 6 September 2005: (TD 25 to 36) Continuation of the Prosecution's case: 5 witnesses testified, including continuation of the testimony of Expert Witness Alison Des Forges (teleconference)

7 September 2005: (TD 37) Hearing on the issue of the willingness of two Prosecution witnesses to testify in the case

9 September 2005: (TD 38) Hearing on the issue of the willingness of two Prosecution witnesses to testify in the case

13 September 2005: (TD 39) Hearing on the issue of the willingness of two Prosecution witnesses to testify in the case and the Chamber oral Decision denying the Prosecution's request for adjournment. End of the Prosecution case.

21 September 2005: Decision granting the Defence Motion for Protective Measures

29 September 2005: Decision denying the Prosecution motion for Reconsideration or, in the alternative, Certification to the Appeal Chamber's Decision Denying Request for Adjournment

4 October 2005: Decision granting the Prosecution motion for disclosure of the Defence Witness Statements

7 October 2005: Status Conference

10 October 2005: Scheduling Order (commencement of the Defence Case)

28 October 2005: Decision denying Defence motion for Judgment of acquittal

1 November 2005: Pre-Defence Conference

2 November 2005: Decision granting in part the Prosecution motion to modify the Decision on Protective measures for Defence witnesses

From 7 November to 16 December 2005: (TD 40 to 64) Defence case starts with the Defence Opening Statements: 19 witnesses testified

29 November 2005: (TD 55) Decision granting the Defence motion on protective measures regarding one Defence witness

8 December 2005: Decision granting the Defence motion for the testimony of Defence Witness 1/15 to be taken by video-link

16 December 2005: Decision requesting the Registry to prepare a subpoena addressed to Witnesses 5/16, 5/7, 5/15 and 4/4, ordering their appearance before the Chamber for the next trial scheduled in January 2006; Scheduling Order (Video-Link); Decision granting a site visit to Rwanda

2006

9 January 2006: Decision ordering the transfer of detained Witnesses 7/3, 4/16 and 9/22 from Rwanda

13-16 January 2006: Site Visit in Rwanda

From 17 January to 9 February 2006: (TD 65-79) Continuation of the Defence's case: 12 witnesses testified

20 January 2006: Decision requesting the Registry to enquire on the availability of Witnesses 9/22 and 4/18 to testify by video-transmission and report back; and dismissing the Defence motion to subpoena Witnesses 9/21 and 4/7

17 February 2006: Scheduling Order (closing briefs and arguments)

5 April (but filed on 10 April) 2006: Decision denying the Defence request to take judicial notice, and ordering the admission into evidence of three documents

21 April 2006: Closing Oral Arguments

ANNEX III: DEFINED TERMS AND JURISPRUDENCE

1. LIST OF ABBREVIATIONS

<i>Abbreviated Form</i>	<i>Long Form</i>
Defence Closing Brief	<i>Prosecutor v. André Rwamakuba, Case No. ICTR-98-44C-I, Defence Closing Brief (confidential) 18 April 2006</i>
Indictment	<i>Prosecutor v. André Rwamakuba, Case No. ICTR-98-44C-I, Amended Indictment, filed 10 June 2005</i>
Prosecution Closing Brief	<i>Prosecutor v. André Rwamakuba, Case No. ICTR-98-44C-I, Réquisitoire du Procureur, 18 April 2006</i>
Prosecution Pre-Trial Brief	<i>Prosecutor v. André Rwamakuba, Case No. ICTR-98-44C-I, Mémoire préalable au procès, 23 May 2005</i>
Rules	Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda
Statute	Statute of the International Criminal Tribunal for Rwanda
T.	Transcript. Unless otherwise indicated, all reference to the transcripts are to the official English transcript in the case <i>Prosecutor v. André Rwamakuba, Case No. ICTR-98-44C-T</i>

2. JURISPRUDENCE

2.1. Appeals Chamber Judgements

<i>Abbreviated Form</i>	<i>Long Form</i>
<i>Akayesu</i> Appeal Judgement	<i>Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001</i>
<i>Gacumbitsi</i> Appeal Judgement	<i>Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006</i>
<i>Kajelijeli</i> Appeal Judgement	<i>Prosecutor v. Juvenal Kajelijeli, Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005</i>
<i>Kayishema</i> Appeal Judgement	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement (Reasons) (AC), 1 June 2001</i>

<i>Krstić</i> Appeal Judgement	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, Judgement (ICTY AC), 19 April 2004
<i>Naletilic</i> Appeal Judgement	<i>Prosecutor v. Mladen Naletilic and Vinko Martinovic</i> , Case No. IT-98-34-A, Judgement (ICTY AC), 3 May 2006
<i>Niyitegeka</i> Appeal Judgement	<i>Prosecutor v. Eliézer Niyitegeka</i> , Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004
<i>Ntagerura</i> Appeal Judgement	<i>Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe</i> , Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006
<i>Ntakirutimana</i> Appeal Judgement	<i>Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana</i> , Case No. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004
<i>Rutaganda</i> Appeal Judgement	<i>Prosecutor v. Georges Anderson Nderubumwe Rutaganda</i> , Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003
<i>Semanza</i> Appeal Judgement	<i>Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005
<i>Tadić</i> Appeal Judgement	<i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A, Judgement (ICTY AC), 15 July 1999

2.2. Appeals Chamber Decisions

Abbreviated Form

Long Form

Barayagwiza, Decision (Prosecutor's Request for Review or Reconsideration) (AC)

Prosecutor v. Jean Bosco-Barayagwiza, Case No. ICTR-97-19-AR72, Decision (Prosecutor's Request for Review or Reconsideration) (AC), 31 March 2000, *ICTR Report 2000*, pp. 240 and seq.

Karemura et al., Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC)

Prosecutor v. Edouard Karemura, Mathieu Ngirumpatse and Joseph Nzirorera, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006

Rwamakuba, Decision (Appeal Against Dismissal of Motion Concerning Illegal Arrest and Detention) (AC)

Prosecutor v. André Rwamakuba, Case No. ICTR-98-44-A, Decision (Appeal Against Dismissal of Motion Concerning Illegal Arrest and Detention) (AC), 11 June 2001

Semanza, Decision of 31 May 2000 (AC)

Prosecutor v. Laurent Semanza, Case No. ICTR-97-23-A, Decision (AC), 31 May 2000, *ICTR Report 2000*, pp. 2252 and seq.

Simba, Decision on Interlocutory Appeal Regarding Temporal Jurisdiction (AC)

Prosecutor v. Aloys Simba, Case No. ICTR-01-76-AR72.2, Decision on Interlocutory Appeal Regarding Temporal Jurisdiction (AC), 29 July 2004

2.3. Trial Chambers Judgements

<i>Abbreviated Form</i>	<i>Long Form</i>
<i>Akayesu</i> Judgement	<i>Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998, <i>ICTR Report 1998</i> , pp. 44 and seq.
<i>Bagilishema</i> Judgement	<i>Prosecutor v. Ignace Bagilishema</i> , Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001
<i>Gacumbitsi</i> Judgement	<i>Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-T, Judgement (TC), 17 June 2004
<i>Kajelijeli</i> Judgement	<i>Prosecutor v. Juvénal Kajelijeli</i> , Case No. ICTR-98-44A-T, Judgement and Sentence (TC), 1 December 2003
<i>Kamuhanda</i> Judgement	<i>Prosecutor v. Jean de Dieu Kamuhanda</i> , Case No. ICTR-99-54A-T, Judgement and Sentence (TC), 22 January 2003
<i>Musema</i> Judgement	<i>Prosecutor v. Alfred Musema</i> , Case No. ICTR-96-13-T, Judgement and Sentence (TC), 27 January 2000
<i>Nahimana</i> Judgement	<i>Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze</i> , Case No. ICTR-99-52-T, Judgement and Sentence (TC), 3 December 2003

2.4. Trial Chambers Decisions

<i>Abbreviated Form</i>	<i>Long Form</i>
<i>Bizimana et al.</i> Case, Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Juvénal Kajelijeli (TC)	<i>Prosecutor v. Augustin Bizimana, Félicien Kabuga, Juvénal Kajelijeli, Edouard Karemera, Mathieu Ngirumpaste, Callixte Nzabomimana, Joseph Nzirorera and André Rwamakuba</i> , Case No. ICTR-98-44-T, Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Juvénal Kajelijeli (TC), 6 July 2000
<i>Bizimana et al.</i> , Decision on the Prosecutor's Motion for severance of Félicien Kabuga's Trial and for Leave to the Accused's Indictment (TC)	<i>Prosecutor v. Augustin Bizimana, Félicien Kabuga, Edouard Karemera, Mathieu Ngirumpaste, Callixte Nzabomimana, Joseph Nzirorera and André Rwamakuba</i> , Case No. ICTR-98-44-PT, Decision on the Prosecutor's Motion for severance of Félicien Kabuga's Trial and for Leave to the Accused's Indictment (TC), 1 September 2003

- Bizimana et al.*, Decision on the Prosecutor's Motion for Separate Trials and for Leave to File an Amended Indictment (TC)
- Karempera et al.*, Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC)
- Karempera et al.*, Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC)
- Karempera et al.*, Order on Protective Measures for Prosecution Witnesses (TC)
- Karempera et al.*, Decision on severance of André Rwamakuba and for Leave to File Amended Indictment (TC)
- Rwamakuba*, Warrant of Arrest and Order for Transfer and Detention (TC)
- Rwamakuba*, Decision on André Rwamakuba's Motion for Severance (TC)
- Rwamakuba*, Decision on the Defence Motion concerning the Illegal Arrest and Illegal Detention of the Accused (TC)
- Rwamakuba*, Order to Re-File the Amended Indictment (TC)
- Augustin Bizimana, Félicien Kabuga, Edouard Karempera, Mathieu Ndirumpaste, Callixte Nzabomimana, Joseph Nzirorera and André Rwamakuba*, Case No. ICTR-98-44-PT, Decision on the Prosecutor's Motion for Separate Trials and for Leave to File an Amended Indictment (TC), 8 October 2003
- Prosecutor v. Edouard Karempera, Mathieu Ndirumpaste, Joseph Nzirorera and André Rwamakuba*, Case No. ICTR-98-44-A, Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 28 September 2004
- Prosecutor v. Edouard Karempera, Mathieu Ndirumpaste, Joseph Nzirorera and André Rwamakuba*, Case No. ICTR-98-44-A, Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 22 October 2004
- Prosecutor v. Edouard Karempera, Mathieu Ndirumpaste, Joseph Nzirorera and André Rwamakuba*, Case No. ICTR-98-44-R75, Order on Protective Measures for Prosecution Witnesses (TC), 10 December 2004
- Prosecutor v. Edouard Karempera, Mathieu Ndirumpaste, Joseph Nzirorera and André Rwamakuba*, Case No. ICTR-98-44-PT, Decision on severance of André Rwamakuba and for Leave to File Amended Indictment (TC), 14 February 2005
- Prosecutor v. André Rwamakuba*, Case ICTR-98-44-I, Warrant of Arrest and Order for Transfer and Detention (TC), 8 October 1998, *ICTR Report 1998*, p. 954.
- Prosecutor v. Rwamakuba*, Case No. ICTR-98-44-T, Decision on André Rwamakuba's Motion for Severance (TC), 12 December 2000, *ICTR Report 2000*, pp. 784 and seq.
- Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44-T, Decision on the Defence Motion concerning the Illegal Arrest and Illegal Detention of the Accused (TC), 12 December 2000, *ICTR Report 2000*, p. 784.
- Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-PT, Order to Re-File the Amended Indictment (TC), 8 March 2005

<i>Rwamakuba</i> , Decision on Prosecution Motion for Notice of Alibi and Reciprocal Inspection (TC)	<i>Prosecutor v. André Rwamakuba</i> , Case No. ICTR-98-44C-R72, Decision on Prosecution Motion for Notice of Alibi and Reciprocal Inspection (TC), 14 June 2005
<i>Rwamakuba</i> , Decision on Defence Motion for Protective Measures (TC)	<i>Prosecutor v. André Rwamakuba</i> , Case No. ICTR-98-44C-T, Decision on Defence Motion for Protective Measures (TC), 21 September 2005
<i>Rwamakuba</i> , Decision on Prosecution Motion for Reconsideration or, in the Alternative, Certification to Appeal Chamber's Decision Denying Request for Adjournment (TC)	<i>Prosecutor v. André Rwamakuba</i> , Case No. ICTR-98-44C-T, Decision on Prosecution Motion for Reconsideration or, in the Alternative, Certification to Appeal Chamber's Decision Denying Request for Adjournment (TC), 29 September 2005
<i>Rwamakuba</i> , Decision on Prosecution Motion For Variation, or in Alternative Reconsideration of the Decision on Protective Measures for Defence Witnesses (TC)	<i>Prosecutor v. André Rwamakuba</i> , Case No. ICTR-98-44C-T, Decision on Prosecution Motion For Variation, or in Alternative Reconsideration of the Decision on Protective Measures for Defence Witnesses (TC), 2 November 2005
<i>Rwamakuba</i> , Decision on Confidential Motion for the Testimony of Defence Witness 1/15 (TC)	<i>Prosecutor v. André Rwamakuba</i> , Case No. ICTR-98-44C-T, Decision on Confidential Motion for the Testimony of Defence Witness 1/15 (TC), 8 December 2005
<i>Rwamakuba</i> , Decision on Defence Motion for A View Locus In Quo (TC)	<i>Prosecutor v. André Rwamakuba</i> , Case No. ICTR-98-44C-T, Decision on Defence Motion for A View Locus In Quo (TC), 16 December 2005