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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron
Gberdao Gustave Kam
Robert Fremr

Registrar: Adama Dieng

Date: 12 November 2008

THE PROSECUTOR

v.

Siméon NCHAMIHIGO

Case No. ICTR-01-63-T

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JUDGEMENT AND SENTENCE

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CHAPTER I: INTRODUCTION

1. THE INDICTMENT

1. In an amended indictment filed 11 December 2006 ("Indictment"), the Prosecution charges Siméon Nchamihigo with four counts of Genocide and Crimes against Humanity. The Indictment is set out in full in an Annex to this Judgement.

2. Count 1 charges Nchamihigo with committing Genocide under Article 2 (3)(a) of the Statute of the Tribunal ("Statute"), for killing or causing serious bodily or mental harm to members of the Tutsi ethnic group with the intent to destroy, in whole or in part, the group, as such.¹

3. Counts 2, 3 and 4 charge Nchamihigo under Article 3 of the Statute with committing Crimes against Humanity by Murder, Extermination and Other Inhumane Acts, respectively, as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds.²

4. The Prosecution charges Nchamihigo for planning, instigating, ordering, committing or otherwise aiding and abetting others to kill Tutsi, accomplices of the Rwandan Patriotic Front ("RPF"), and Hutu political opponents, which resulted in:

- (a) Mass killings at roadblocks erected throughout Cyangugu prefecture;
- (b) The killing of several specific individuals;
- (c) Massacres of thousands of Tutsi at places where they had taken refuge; and
- (d) Massacres of two groups who were removed from Kamarampaka Stadium on 16 and 18 April 1994, respectively.

5. Nchamihigo is also alleged to have knowingly and wilfully participated in a joint criminal enterprise.

2. OVERVIEW OF THE CASE

6. Nchamihigo is a Rwandan citizen born on 7 August 1959 in Gatare commune, Cyangugu prefecture, one of Rwanda's ten prefectures in 1994. Cyangugu is located in the south-western part of the country, near Lake Kivu to the north, and borders the Democratic Republic of Congo (formerly Zaire). In 1994, Nchamihigo was a *substitut du Procureur de la République* (Deputy Prosecutor) in Cyangugu. He left Rwanda on 17 July 1994 to go into exile in Bukavu, Zaire.³

7. Nchamihigo was arrested in Arusha, Tanzania on 19 May 2001. At the time of his arrest, Nchamihigo had been working at the International Criminal Tribunal for Rwanda ("Tribunal") as an investigator for the Defence in the case of *The Prosecutor v. Samuel*

¹ Paragraphs 1 and 19 of the Indictment.

² Paragraphs 1, 44-55 concerning Count 2; Paragraphs 1 and 56-65 concerning Count 3; Paragraphs 1 and 66-70 concerning Count 4.

³ T. 18 September 2007 pp. 3, 9-12 (Siméon Nchamihigo); Exhibit D-66.

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Imanishimwe,⁴ under the alias of “Sammy Bahati Weza”. Nchamihigo claims to have assumed the alias for personal security reasons.⁵ The Prosecution filed the original indictment against Nchamihigo on 21 June 2001, which was confirmed two days later by Judge Navanethem Pillay. During his initial appearance on 29 June 2001 before Judge Erik Møse, Nchamihigo pleaded not guilty to all the charges brought against him.

8. The trial commenced on 25 September 2006. The Prosecution called 24 witnesses over 32 trial days, closing its case on 29 January 2007. The Prosecution also called one rebuttal witness on 21 September 2007. The Chamber admitted 81 Prosecution exhibits. The Defence case began on 23 April 2007 and concluded on 21 September 2007, after the Chamber heard 36 witnesses over 25 trial days and admitted 73 Defence exhibits. The closing arguments were heard on 23 January 2008. The procedural history of this case is set out in full in an Annex to this Judgement.

9. Having deliberated on the totality of evidence, the Chamber has convicted Nchamihigo for each of the four counts, and sentenced him for imprisonment for the remainder of his life. In Chapter II, the Chamber will present its reasoned factual findings on the events pleaded in the Indictment. The Chamber will then discuss its legal findings in relation to the crimes charged in the Indictment at Chapter III, while Chapters IV and V will respectively be on the verdict and the sentence.

⁴ Case No. ICTR-97-36-I.

⁵ T. 20 September 2007 pp. 10-11 (Siméon Nchamihigo).

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CHAPTER II: FACTUAL FINDINGS

1. PRELIMINARY MATTERS

1.1. Burden of Proof and Assessment of Evidence

10. In its closing arguments, the Defence contends that the Prosecution failed to establish Nchamihigo's guilt beyond all reasonable doubt.⁶ In making its argument, the Defence relies on the criteria for the standard of proof established by the jurisprudence of the Supreme Court of Canada, and submits that the same should guide the Chamber.⁷

11. Rule 89 (A) of the Rules of Procedure and Evidence ("Rules") specifically provides that the Chamber shall not be bound by national rules of evidence. However, in cases not otherwise provided for, Rule 89 (B) of the Rules states that a Chamber shall 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.

12. In the present case, there is no controversy because the principles of Canadian jurisprudence on which the Defence relies are consonant with the general principles of law and have been consistently applied in the jurisprudence of the *ad hoc* Tribunals. The Chamber recalls some of these principles, which will govern its deliberations. Article 20 (3) of the Statute guarantees the presumption of innocence of each accused person. The burden of proving the guilt of the accused beyond reasonable doubt rests solely on the Prosecution and never shifts to the Defence. It is not sufficient for the Chamber to prefer prosecution evidence to defence evidence. The Chamber must be satisfied beyond all reasonable doubt that the accused is guilty before a verdict may be entered against him or her.⁸

13. While the Defence does not have to adduce rebuttal evidence to the Prosecution case, the Prosecution will fail to discharge its burden of proof if the Defence presents evidence that raises a reasonable doubt regarding the Prosecution case.⁹ An accused person must be acquitted if there is any reasonable explanation for the evidence other than his or her guilt.¹⁰ Refusal to believe or rely upon defence evidence does not automatically amount to a guilty verdict. The Chamber must still determine whether the evidence it does accept establishes the accused's guilt beyond reasonable doubt.

14. The Defence submits that the Prosecution failed to discharge its burden in part by often calling only one witness to give evidence on a material fact that was largely uncorroborated and weak in details such as dates and precise locations.¹¹ The rules are quite clear. Rule 89 (C) of the Rules grants the Chamber discretionary power to admit any relevant evidence which it deems to have probative value. Corroboration of evidence is not necessarily required and a Chamber may rely on a single witness' testimony as proof of a material fact.¹²

⁶ Defence Closing Brief, paras. 50-59.

⁷ *R. v. Nadeau* [1984] 2 SCR 570, pp. 572-573; *R. v. W. (D.)* [1991] 1 SCR 742, pp. 757-758.

⁸ See also Rule 87 (A) of the Rules: "[...] 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."

⁹ *Kayishema*, Judgement (AC), para. 117; *Musema*, Judgement (TC), para. 213; *Niyitegeka* Judgement (AC), paras. 60-61.

¹⁰ *Čelebići* Judgement (AC), para. 458.

¹¹ Defence Closing Brief, paras. 60-64.

¹² *Semanza* Judgement (AC), para. 153; *Gacumbitsi*, Judgement (AC), para. 72.



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As such, a sole witness' testimony could suffice to justify a conviction if the Chamber is convinced beyond all reasonable doubt.

15. The jurisprudence on the recollection of details is also well formulated.¹³ The events about which the witnesses testified occurred more than a decade before the trial. Discrepancies attributable to the lapse of time or the absence of record keeping, or other satisfactory explanation, do not necessarily affect the credibility or reliability of the witnesses. The Chamber will evaluate the testimony of each witness in the context of the testimony as a whole and determine to what extent it can believe and rely on the testimony. In making this assessment, the Chamber will consider whether the testimony was inconsistent with prior statements made by the witness and, if so, the cause of the inconsistency. The Chamber will also consider the internal consistency and integrity of the testimony and the context in which it was given. The Chamber will compare the testimony of each witness with the testimony of other witnesses and with the surrounding circumstances. The Chamber will explain the criteria on which it acts on a case-by-case basis.

16. The Defence has complained that the investigators were unreliable.¹⁴ Two investigators testified in this case. The Chamber considers that the submissions with regard to Mamadou Koné do not warrant development, because he does not play a significant role in the case and the primary reason for his testimony was to admit a statement allegedly taken from Nchamihigo shortly after he was taken into custody. The Chamber has already ruled that as a matter of law the statement was inadmissible.¹⁵ The second investigator, Jeannette Ebouea, put into evidence certain maps and gave evidence about various locations.¹⁶ However, there was abundant evidence on these matters from other witnesses in the case. Her testimony was not critical to any finding of fact that the Chamber has to make. Still, the Defence complains about her responses to a series of questions about her investigative methods. In particular, the Defence submits that her admission that she did not take notes from the majority of persons she interviewed gives rise to the inference that her investigation was biased and that she only took notes of an incriminating nature thereby depriving Nchamihigo of an investigation which may have revealed exculpatory material.¹⁷ The Chamber considers these submissions to be speculative. There was no evidence to support a conclusion that the Prosecution failed to disclose any exculpatory material in its possession, and the Defence did not make any such allegations. The submissions do not reveal any breach of duty, and the rules governing disclosure do not contain any obligation on the Prosecution to actively search for exculpatory material.¹⁸

17. In the present case, the Prosecution adduced evidence from many witnesses who admitted to participating in the crimes charged against Nchamihigo. These are accomplices. It is accepted both as a matter of law and common sense that the testimony of accomplices may be tainted by motives or incentives to falsely implicate an accused to gain some benefit or advantage in regard to their own case or sentence. A Chamber must therefore look at the testimony of accomplices, and the circumstances under which it has come to be delivered,

¹³ See e.g. *Ndindabahizi*, Judgement (AC), para. 20.

¹⁴ Defence Closing Brief, paras. 65 *et seq.*

¹⁵ *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Decision on the Prosecutor's Application to Admit into Evidence the Transcript of the Accused's Interview as a Suspect and the Defence's Request to Hold a *Voir Dire*, 5 February 2006.

¹⁶ T. 26 September 2006 and T. 27 September 2006.

¹⁷ Defence Closing Brief, paras. 83 *et seq.*

¹⁸ Rules 66 and 68 of the Rules.

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with caution.¹⁹ However, there is no rule requiring corroboration in the assessment of accomplice testimony. The Chamber may rely on the testimony of an accomplice who has not been corroborated if, after careful examination, the Chamber is convinced of the truthfulness and reliability of the witness. Testimony which supports the evidence adduced by an accomplice may bolster and strengthen the reliance that can be placed on it.²⁰

18. Most of the witnesses who testified in this trial were granted protective measures for security reasons. An important element of these measures is the concealment of their identity from the public. In writing this Judgement, this circumstance will be observed. Witnesses, in most cases, will be referred to by pseudonym. In discussing their testimony, the Chamber will exercise care not to disclose any information which may identify the protected witness. Information of such a sensitive character, when adduced, is placed under seal and remains available to the Chamber during its deliberations.

19. In conclusion, the Chamber will guarantee that Nchamihigo benefits from the presumption of innocence and will only make findings against him where the evidence establishes his guilt beyond all reasonable doubt.

1.2. Alibi

20. Rule 67 (A)(ii)(a) of the Rules envisages that the Defence shall give notice of its intention to rely on an alibi before the commencement of the trial. In the present case, Nchamihigo filed an alibi notice on 19 April 2007, long after the close of the Prosecution case. Rule 67 (B) of the Rules specifies that failure of the Defence to provide such notice shall not limit the right of the accused to rely on an alibi defence. This provision is consistent with the principle of the presumption of innocence and the duty of the Prosecution to prove guilt beyond reasonable doubt. In the present case, compliance at such a late stage in the proceedings deprived the Prosecution of the opportunity to adduce evidence related to the alibi. It also raised the question whether the alibi was recently concocted to fit the evidence adduced against Nchamihigo.

1.2.1. Nchamihigo's Alleged Location before March 1994

21. Nchamihigo offered evidence to establish that it was impossible for him to have engaged in certain alleged activities because he did not reside in Cyangugu town before the end of February 1994. He explained that he was appointed Deputy Prosecutor in 1980 and served in various communities including Kigali, Gatsibo in the Mutara region, Byumba, Kibuye, and Cyangugu. In 1990, he was moved to the prosecutor's office in Rwesero sub-prefecture, and towards the end of 1990, up to 1992, he was at the prosecutor's office in Kigali. He said that he was then transferred to the prosecutor's office in Kibuye up to the end of February 1994. Defence Witness SNB testified that Nchamihigo joined the prosecutor's office in Cyangugu in March 1994.²¹

22. Several Prosecution witnesses testified that they saw and had dealings with Nchamihigo in Cyangugu in 1992, 1993 and early 1994. Witness LM, who worked in the

¹⁹ See e.g. *Niyitegeka*, Judgement (AC), para. 98.

²⁰ See e.g. *Cyangugu*, Judgement (AC), paras. 204-206.

²¹ Exhibit D-1; T. 18 September 2007 pp. 13-15 (Siméon Nchamihigo); T. 30 August 2007 p. 42 (Witness SNB, Closed Session).

judicial sector in Cyangugu, explained that she knew Nchamihigo when he worked as Deputy Prosecutor in Cyangugu since 1991 or 1992.²²

23. Nchamihigo's wife, Colette Uwubuheta, supported other aspects of his testimony, testifying that prior to their marriage, Nchamihigo lived at a location called "La Plaine" in Cyangugu, near the airport. After they married, they lived there together for a short period before moving to a place called "La Cité". Upon the birth of their first child in 1991, they decided to move into a bigger house. They built a home in Kamurera cellule (Cyimbogo commune, Cyangugu prefecture), not far from the place called Kucyapa, where they lived together until their departure from Rwanda in July 1994. Her testimony that she was living in Cyangugu town during that period (1992, 1993) was consistent with the testimony of Defence Witness SCJ, a motorcycle taxi driver, who testified that he used to carry her to work in 1992 and 1993.²³

24. Other Defence witnesses admitted to having dealings with Nchamihigo in Cyangugu prior to March 1994. Witness SBM said Nchamihigo gave him a lift in his car on his way to school in January 1994. Witness RK3 testified that he and Nchamihigo attended the same church in Cyangugu from 1993, and that he was introduced to Nchamihigo there in December 1993. Witness CNN testified that he met Nchamihigo in 1993, and that he saw him between 1993 and 1994 in Cyangugu. CNN saw Nchamihigo going to work regularly. CNN also said that in February 1993, Nchamihigo assisted him in getting insurance for his boat.²⁴

1.2.2. Period from April to July 1994

25. Nchamihigo testified that between 6 April and 17 July 1994, he went to work every day, where he remained all day except on a few occasions, and therefore he could not have been at the places Prosecution witnesses claimed to have seen him.²⁵ Nchamihigo also disputed the evidence of Prosecution witnesses who claimed to have seen him in his red Suzuki jeep. He admitted to owning such a jeep but testified that those who said that it was a Suzuki Samurai could not be speaking the truth because his Suzuki was of an older model. He further indicated that his Suzuki jeep was not working during the period in question and that he therefore did not use it during that time. He stated that every morning Prosecutor Paul Ndorimana picked him up at his home at about 7h30 to drive him to work, and then drove him home in the evenings. Nchamihigo's wife confirmed that from March until May 1994, their car had broken down and Nchamihigo would go to work with Prosecutor Ndorimana. Nchamihigo testified that he stayed home every evening with his wife, who was ill from a difficult pregnancy.²⁶

²² T. 3 October 2006 p.29 (Witness BRQ, Closed Session); T. 19 January 2007 pp.18-19 (Witness BRJ, Closed Session); T. 29 January 2007 pp. 45, 55 (Witness LM, Closed Session); T. 25 April 2007 pp. 33-34 (Witness HUA); T. 2 May 2007 pp. 22, 28 (Witness RNN); T. 6 October 2006 pp.14, 21 (Witness LDD, Closed Session).

²³ T. 26 April 2007 p. 24 (Colette Uwubuheta); T. 1 May 2007 pp. 31-32 (Witness SCJ).

²⁴ T. 3 May 2007 pp. 32, 58 (Witness SCC, Closed Session); T. 30 April 2007 p. 53 (Witness SCK, Closed Session); T. 23 April 2007 p. 9 (Witness SGA, Closed Session); T. 29 August 2007 pp. 19-20 (Witness SBM); T. 30 August 2007 p. 33 (Witness SBA, Closed Session); T. 25 April 2007 p. 62 and T. 26 April 2007 p. 11 (Witness RK3, Closed Session); T. 3 May 2007 pp. 18, 23 (Witness CNN).

²⁵ T. 18 September 2007 pp. 13-15, 44, 55-56 (Siméon Nchamihigo).

²⁶ T. 18 September 2007 pp. 58-59, T. 19 September 2007 pp. 6-7, 30 and T. 21 September 2007 pp. 21-22 (Siméon Nchamihigo); T. 26 April 2007 pp. 29-30 (Colette Uwubuheta).

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26. During cross-examination, Nchamihigo summed up his position in a very specific, if not exaggerated, manner. He said that the only times he left his office between 7 April and 17 July 1994, except to go home, were: (i) on 12 April 1994, when he accompanied two Belgian nuns across the border to Bukavu; (ii) over the weekend of 30 April 1994, when he drove his sister and her three children to the Gatware commune after working hours; (iii) on Sunday 29 May 1994, when he travelled to the Gatware commune to visit his parents; (iv) on 7 July 1994, when he drove his wife to Bukavu; and (5) on 17 July 1994, when he left Rwanda to go into exile.²⁷

27. Nchamihigo's alibi was damaged by some Defence witnesses who offered contradicting evidence. Witness CNN, for instance, testified that Nchamihigo assisted him in getting a pass to travel between Rwanda and Congo. CNN went to Nchamihigo's office on 10 June 1994 at about 8h00, but did not find him there, so he went to Nchamihigo's home, where CNN found him. Nchamihigo then drove CNN to his office in his Suzuki jeep. CNN said that after 6 April 1994, he saw Nchamihigo in his car about twice a week. When it was put to CNN that the car had broken down, he responded that even if that were true, it could have been repaired and he did not think that it would take a whole month to repair it.²⁸

28. Witness SNB, a co-worker and good friend of Nchamihigo's, testified that Nchamihigo sometimes used his Suzuki jeep to go to work. SNB recalled that there was a time when Nchamihigo's car had broken down and he would sometimes use the same vehicle as Prosecutor Ndorimana. Moreover, the witness said that Nchamihigo would leave the office to carry out investigations and he believed that, on those occasions, Nchamihigo would not use his own vehicle.²⁹

29. Witness SGA, who worked in the same building as Nchamihigo, testified that Nchamihigo often came and went, explaining that he had been carrying out investigations. SGA also recalled that from April to July 1994, Nchamihigo owned a small Suzuki but specified that he would at times see Nchamihigo with the vehicle belonging to the Office of the Prosecutor, and at other times in vehicles requisitioned by the Prefect of Cyangugu.³⁰

30. Considering the evidence as a whole, the Chamber places no reliance on Nchamihigo's general alibi testimony, which lacks credibility. The Chamber does not question that Nchamihigo left his office on the occasions he describes. The Chamber does not accept, however, that those were the only instances that he left his office during working hours. Nchamihigo's own witnesses damaged his alibi by offering contradicting evidence on his continual office attendance, as well as the breakdown of his vehicle.

31. The Chamber recalls that disbelief of Nchamihigo's alibi does not mean that he is guilty of the charges against him. Nchamihigo is presumed to be innocent, and the Prosecution bears the onus of establishing his guilt beyond reasonable doubt.

1.3. Notice

32. Article 20 (4)(a) of the Statute guarantees an accused the fundamental right "to be informed promptly and in detail in a language which he or she understands of the nature and

²⁷ T. 21 September 2007 p. 23 (Siméon Nchamihigo).

²⁸ T. 3 May 2007 pp. 8-9, 12, 18, 20, 22 (Witness CNN).

²⁹ T. 30 August 2007 p. 44 (Witness SNB).

³⁰ T. 23 April 2007 p. 17 (Witness SGA, Closed Session).

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cause of the charges against him or her". This translates into an obligation for the Prosecution to know its case before it goes to trial and to plead all material facts in the Indictment with as much specificity as possible. The law governing challenges to the specificity of the Indictment is set forth in detail in the Appeals Chamber Judgement in *Kupreškić et al.* as well as subsequent jurisprudence.³¹

33. The degree of specificity with which the Prosecution is required to particularize the facts of its case in the indictment depends on the nature of the alleged criminal conduct charged to the accused. Where the Prosecution alleges that an accused personally committed the criminal acts, the material facts, such as the identity of the victim, the time and place of the events and the means by which the acts were committed, have to be pleaded in detail.³²

34. Paragraph 21 of the Indictment alleges that, among other things, at Gatandara roadblock Nchamihigo instigated or aided and abetted killings of selected Tutsi refugees removed from Kamarampaka Stadium. No date or date range is specified for this event.

35. Paragraph 28 of the Indictment alleges that Nchamihigo personally led the attacks at various places of refuge, and that during these attacks Nchamihigo himself "killed many people", without specifying a date or even a date range for these events either. The charge alleged at paragraph 57, which relates to a different count (extermination), provides a broad date range spanning a minimum of 37 days³³ in which to place Nchamihigo's ordering or instigating of the attacks at various places of refuge.

36. The precision with which dates have to be charged varies from case to case, and a broad date range, in and of itself, does not invalidate a paragraph of an indictment.³⁴ In certain circumstances, the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates of the commission of the crimes.³⁵

37. Nevertheless, these considerations have to be balanced with Nchamihigo's right to be informed in detail and in time about the nature and cause of the charges against him or her to prepare his defence. The Chamber considers that paragraphs 28 and 57 are of an introductory character and therefore incapable, on their own, of sustaining a conviction. These paragraphs are to be read in conjunction with their clarifying counterparts, where provided. The Chamber considers that the charge at paragraph 21 relating to Nchamihigo's instigating or aiding and abetting at Gatandara roadblock provides insufficient notice to the Accused. Any further charges for which insufficient notice has been given will be discussed where appropriate elsewhere in this Judgement.

³¹ *Kupreškić et al.*, Judgment (AC), 23 October 2001, paras. 88-90, 92, 114. See also *Kvočka et al.*, Judgment (AC), 28 February 2005, paras. 27-35; *Ntakirutimana*, Judgment (AC), 13 December 2004, paras. 24-28; *Niyitegeka*, Judgment (AC), 9 July 2004, paras. 193-200; *Krnjelac*, Judgment (AC), 17 September 2003, paras. 129-134, 138-139; *Rutaganda*, Judgment (AC), 26 May 2003, paras. 301-303.

³² *Kupreškić et al.*, Judgment (AC), para. 89.

³³ "Between 6 April and 17 July 1994, in particular from 7 April to the end of May 1994 [...]"

³⁴ See *Muvunyi* Judgment (AC), para. 58.

³⁵ *Kupreškić et al.* Judgment (AC), para. 89 (citing other ICTY Decisions).

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2. NCHAMIHIGO'S POLITICAL CONNECTIONS

2.1. Indictment

38. The Prosecution introduces Nchamihigo and his political connections at paragraphs 3 and 6 through 8 of the Indictment. In these paragraphs, it is alleged that Nchamihigo was involved in political activities for the MRND (President Habyarimana's party) and the CDR (a Hutu extremist party allied to the MRND). It is further alleged that because of his involvement in and support for the MRND, Nchamihigo managed to maintain his post as Deputy Prosecutor, which he had allegedly obtained on the basis of a forged diploma. Nchamihigo is also alleged to have been a member of a clandestine group named *Tuvindimwe*, as well as an *Interahamwe* leader responsible for recruiting young Hutu men and providing them with military training.

2.2. Evidence

39. Prosecution Witness Marianne Baziruwaha is a Hutu survivor of the massacre of a group removed from Kamarampaka Stadium on 16 April 1994.³⁶ In 1994, she was a high-ranking civil servant in her capacity as a Regional Director of Agricultural Services in Cyangugu prefecture. She was also a political activist as a member of the political bureau of the PSD at the national level. Baziruwaha opposed MRND ideology, described the CDR party as a satellite of the MRND, and testified there was much conflict and tension between them and the PSD. In February 1994, after the assassinations of Martin Bucyana (President of the CDR) and Félicien Gatabazi (Executive Secretary of the PSD), Baziruwaha and her family had to take refuge in Zaire to escape attacks against her because the CDR suspected her of being connected with Bucyana's assassination. She and Nchamihigo knew each other as political opponents, and he made his political affiliations to the MRND and CDR publicly known during political campaigns, rallies, meetings, and demonstrations. She also testified that in April 1994, Nchamihigo worked with local authorities affiliated with the MRND.³⁷

40. Prosecution Witness BRK recalled that Nchamihigo was the Secretary of the CDR at the prefectural level. Defence Witnesses SBM and SBS, however, identified Lazare Ndagijimana as the Secretary of the CDR.³⁸

41. Prosecution Witness BRJ testified that Nchamihigo recruited him for militia training. He stated that in February 1994, he was working at the Lake Kivu quay when Nchamihigo came to speak to him and his fellow workers. Nchamihigo warned that "the Tutsi had already started to kill members of the CDR party" and asked them "to be vigilant". Nchamihigo then drew up a list of the roughly 40 men to undergo military training. BRJ and others who were recruited wore CDR party uniforms and were known as the *Impuzamugambi*, the CDR party's youth-wing militia. Training was led, in part, by an *Interahamwe* named Jean Bosco Habimana. The recruits were trained to kill Tutsi, and Nchamihigo advised that whenever they did so, they would inherit their victims' property.³⁹

³⁶ See Section 5: Kamarampaka Stadium Events.

³⁷ T. 15 January 2007 pp. 63-68 (Marianne Baziruwaha).

³⁸ T. 22 January 2007 pp. 36-37 (Witness BRK); T. 29 August 2007 p. 4 (Witness SBM, Closed Session); T. 27 August 2007 p. 21 (Witness SBS, Closed Session).

³⁹ T. 19 January 2007 pp. 21-24 (Witness BRJ).

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42. Prosecution Witness LDC, a Hutu, was a neighbour of Nchamihigo's. LDC testified that along with Janvier Boravzima and Jean de Dieu Utabazi, he became a member of the *Interahamwe* (the MRND party's youth-wing militia) following a meeting at the Gihundwe sector office during the early months of 1993 at which Nchamihigo and other authorities urged those present to create a wing of the MRND party which would be responsible for security. Those in attendance were told that to be a member, one had to be strong, healthy, male and Hutu. LDC testified that he received training in weapons use and physical exercise at a place called Kamarshangi. He recalled that another group of *Interahamwe* in training, at a place called Murangi, was supervised by Nchamihigo. Instructors there included Professor Razare and Aimable Twagirayezu. Baziruwaha also recalled PSD reports where it was indicated that military training took place in Kamarshangi and other localities, but confessed that she did not pay much attention to them because some other PSD members were in charge of following up the matter.⁴⁰

43. Prosecution Witness LM testified that Nchamihigo was involved in a clandestine group of Hutu civil-servants working in Cyangugu, called *Tuvindimwe*. Nchamihigo denied any knowledge of this organization. His wife, who was a Registrar at the Court of First Instance, denied knowledge of this group's existence, as did Defence Witness SGA, also a civil servant.⁴¹

44. Nchamihigo further denied having ever been involved with any political party or engaged in any political activities. He stated that such participation would have been contrary to his professional ethics, as well as to a law forbidding magistrates from political involvement. He specifically denied having any connection to the *Interahamwe*. Moreover, he denied ever having worn either the colours of political parties, or a military uniform, or ever carrying a weapon.⁴²

45. Several Defence witnesses testified that between 6 April 1994 and 18 July 1994, they never saw Nchamihigo carry a weapon or wear military attire. These witnesses, including Nchamihigo himself, testified that he was always dressed in civilian attire, consisting mainly of shirts, trousers and a black jacket, and that he had a particular fondness for the more traditional type clothing called "abacoste" (described by Defence Witness SBM as a "short-sleeved safari suit"). Nchamihigo's wife testified that she never saw her husband wearing any uniform, neither military nor political, and ascertained that he did not own any because she never took any such uniform for washing. She also asserted that he never carried any a firearm.⁴³

2.3. Deliberations

46. No evidence was adduced to show that Nchamihigo had tendered a forged diploma to his prospective employers. The witnesses who addressed this issue did no more than indicate that there were enquiries into his qualifications and appointment. The Prosecution did not adduce any evidence to rebut Nchamihigo's testimony that he completed his secondary

⁴⁰ T. 10 January 2007 pp. 64-67 (Witness LDC); Exhibit P-28; T. 16 January 2007 pp. 77-78 (Marianne Baziruwaha).

⁴¹ T. 29 January 2007 pp. 53-54 (Witness LM); T. 18 September 2007 pp. 30-31 (Siméon Nchamihigo); T. 26 April 2007 pp. 25, 56-58 (Colette Uwubuheta); T. 23 April 2007 p. 10 (Witness SGA).

⁴² T. 18 September 2007 pp. 27-32, 54 (Siméon Nchamihigo).

⁴³ See e.g. T. 29 August 2007 p. 21 (Witness SBM); T. 18 September 2007 p. 29 (Siméon Nchamihigo); T. 24 April 2007 p. 56 (Witness ZSA); T. 26 April 2007 pp. 30-31 (Colette Uwubuheta).

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education in Bukavu, that he started working in 1979 at the Ministry of Justice in Kigali as a criminal investigations inspector, and that in accordance with normal procedure he was promoted to the position of Deputy Prosecutor in 1980. The Prosecution therefore did not establish any impropriety in the appointment of Nchamihigo as a Deputy Prosecutor.

47. With respect to Nchamihigo's alleged membership of the *Tuvindimwe*, Prosecution Witness LM, the only person to testify, was not a member of *Tuvindimwe* and her information was derived from unidentified sources. The Chamber considers that her knowledge base was too superficial to allow the Chamber to rely on it as proof beyond reasonable doubt.

48. BRK's assertion that Nchamihigo was Secretary of the CDR, at the prefectural level, conflicted with the testimonies of Defence Witnesses SBM and SBS. Though BRK was an admitted member of the CDR, his position within the party's hierarchy was too low for the Chamber to rely on his testimony about Nchamihigo's official status in the CDR beyond reasonable doubt.

49. The Chamber credits Baziruwiha's testimony that Nchamihigo made his political affiliations to the MRND and CDR publicly known during political campaigns, rallies, meetings, and demonstrations. The Chamber is mindful of the Defence's submission that her testimony should be viewed with caution, but finds that no motive has been shown for her to falsely incriminate Nchamihigo. On the contrary, the Chamber infers from her evidence that, having survived a massacre, she has an interest in justice and in the identification of the perpetrator of the crimes against her. The Chamber believes her.

50. On the issue of Nchamihigo's alleged leadership of the *Interahamwe*, the Chamber heard evidence from BRJ and LDC. At the time of his testimony, BRJ had been in custody for 11 years. He had confessed to crimes connected with the genocide for which the Rwandan prosecutor had accused him in 2005. Generally, he observed that he only confessed to crimes for which he had been accused, rather than making a full and frank confession to all crimes. Under cross-examination, he briefly denied a particular confession in 2006 but then volunteered the information confirming that he had confessed to further crimes before a Gacaca court. He testified that he had not been asked about Nchamihigo's involvement and had therefore not volunteered the information until asked by ICTR investigators who came to see him about his involvement in the Gatandara roadblock. He agreed that Rwandan authorities inform prisoners of the benefits of confessing and pleading guilty and that those who do so have something to gain in the form of a reduced sentence. BRJ stated that he had yet to appear before a judge in Rwanda and that the Rwandan Prosecutor had not called for a specific sentence in his case. He was a low-level perpetrator and an illiterate farmer. He was a member of the *Impuzamugambi* in April 1994, although a prior statement contradicted this testimony.

51. Having fled in 1994, LDC returned to Rwanda in 1997 and was arrested on charges of criminal participation in the genocide and of manning a roadblock. He testified that he had confessed to the Rwandan prosecutor but that, as a result of what he claimed to be successive, deliberate losses of his case file, in August 2000 he wrote to Ibuka, an influential genocide survivors' organization, offering his services in order to advance his case file. He testified that the conditions of imprisonment for those who confessed in Cyangugu prison had been better than for those who did not but that once he was transferred to Kigali central prison, he found that the conditions were the same for both groups. He added that those who confessed had to

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keep this fact a secret since their lives could be in danger as a consequence. He stated that he had confessed in order to obtain leniency in sentencing.⁴⁴

52. The Chamber notes that LDC gave his evidence in a straightforward and cooperative manner. It is clear that he did not refer, in prior statements, to certain aspects of the testimony he gave against Nchamihigo in this Tribunal. It is also clear that LDC had been motivated by a concern over the prosecutorial delay and treatment of the Rwandan case against him and others, prompting him to contact Ibuka. It appears that his strategy was effective in that as a result of his cooperation with Ibuka and the Rwandan authorities, he has been treated more leniently than others. The Chamber notes that the Defence contention that LDC might still have to cooperate with the Rwandan authorities, and that such cooperation might embrace his testimony before the Tribunal in this case, remains a live issue in view of LDC's testimony that his own case is currently under appeal.

53. In the Chamber's view, LDC and BRJ could have motive to incriminate Nchamihigo in order to get lesser sentences in their own cases. Moreover, their status as accomplices requires that the Chamber exercise great caution in the assessment of their testimony. The Chamber finds that the Prosecution failed to prove that Nchamihigo held any official position with either the MRND or CDR, or as a leader of the *Interahamwe* or *Impuzamugambi*. However, the Chamber believes the testimony of LDC and BRJ beyond reasonable doubt to the effect that Nchamihigo publicly exhibited his support for both political parties, and that he participated in recruiting young Hutu men for militia training as *Interahamwe* and *Impuzamugambi*. These findings, while incapable of sustaining convictions on their own, provide context to other allegations in the Indictment and will be recalled by the Chamber elsewhere in this Judgement, where appropriate.

⁴⁴ T. 11 January 2007 pp. 34-37, 42 and T. 12 January 2007 pp. 3-4 (Witness LDC, Closed Session); Exhibit D-8.

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3. INDIVIDUAL KILLINGS

3.1. Killings on or about 7 April 1994

3.1.1 Indictment

54. The Prosecution charges Nchamihigo with committing Genocide under paragraph 22 of the Indictment, and Extermination as a Crime against Humanity under paragraph 58. In these paragraphs, it is alleged that on or about 7 April 1994, Nchamihigo ordered or instigated Thomas Mubiligi⁴⁵ and *Interahamwe* to look for Tutsi and RPF accomplices and to set ablaze places where the opposition was well established. Following these orders, the *Interahamwe* killed many civilians, mostly Tutsi.

55. The Prosecution charges Nchamihigo with committing Genocide under paragraph 29 of the Indictment, and Murder as a Crime against Humanity under paragraph 45. In these paragraphs, it is alleged that on or about 7 April 1994, Nchamihigo led a group of *Interahamwe* including Christophe Nyandwi to attack the residences of Dr. Nagafizi, a Tutsi, and a certain Kongo, a Hutu. Nchamihigo allegedly ordered, instigated or aided and abetted these *Interahamwe* to kill these individuals.

56. The Prosecution charges Nchamihigo with committing Genocide under paragraph 30 of the Indictment, Murder as a Crime against Humanity under paragraph 46, Extermination as a Crime against Humanity under paragraph 59, and Other Inhumane Acts as a Crime against Humanity under paragraph 68. In these paragraphs, it is alleged that on or about 7 April 1994, Nchamihigo ordered or instigated the *Interahamwe* including Thomas Mubiligi to attack the residence of Trojean Ndayisaba and to kill him. During the attack, Ndayisaba's family was burnt to death in a vehicle. Ndayisaba himself was killed at a later date.

57. The Prosecution charges Nchamihigo with committing Genocide under paragraph 31 of the Indictment, Murder as Crime against Humanity under paragraph 48, and Other Inhumane Acts as a Crime against Humanity under paragraph 67. In these paragraphs, it is alleged that on or about 7 or 9 April 1994, Nchamihigo ordered or instigated *Interahamwe* including Joseph Habineza to kill a certain Karangwa, a Tutsi, which they did.

58. The Prosecution charges Nchamihigo with committing Murder as a Crime against Humanity under paragraph 47 of the Indictment. In this paragraph, it is alleged that Nchamihigo ordered or instigated *Interahamwe* including Joseph Habineza to kill Zacharie Serubyogo, a Hutu, which they did.

3.1.2. Evidence

Prosecution Witness LAG

59. Witness LAG knew Nchamihigo very well as the Deputy Prosecutor of Cyangugu. They lived in the same commune although in different neighbourhoods. LAG testified that on the morning of 7 April 1994, he went to the road about 300 meters from his home in

⁴⁵ The Indictment refers to both a "Thomas Mubiligi" and a "Mubiligi Thompson". These two names refer to the same person. In order to avoid confusion, the Chamber will refer to this individual as "Thomas Mubiligi" or "Mubiligi" only.

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Kamembe commune, where groups of young people, including Thomas Mubiligi and other *Interahamwe* were speaking of the death of President Habyarimana.⁴⁶

60. Shortly after 9h00, Nchamihigo arrived driving a Suzuki Samurai jeep. LAG was not prepared to insist that the car belonged to Nchamihigo, but maintained that Nchamihigo was on board. Nchamihigo did not get out of the car, but rolled down the window and spoke. He told them that the presidential plane had been shot down by the Tutsi, the *Inyenzi*, and the RPF. Nchamihigo instructed them to search for Tutsi, their accomplices, and MRND opponents. Nchamihigo further instructed them to dismantle the flags of political opposition groups, indicating that it was unacceptable for these flags not to be flying at half-mast. On that day, Nchamihigo did not mention any names.⁴⁷

61. LAG said that it was clear that Nchamihigo meant for them to kill the Tutsi when they were found. Then Nchamihigo left. He was carrying a rifle in his vehicle, probably an R4, black in colour, and it was leaning against the door of his vehicle. After his departure, the same group of young people discussed the matter and decided to implement the orders they had just received and kill the Tutsi and loot their property. They understood that when somebody of the rank of Deputy Prosecutor gave orders, those orders could be implemented without their suffering any consequences. The *Interahamwe* went looking for Tutsi, who were nearby.⁴⁸

62. LAG stated that he did not go with the *Interahamwe*. Instead, he returned to his house to assist some Tutsi to whom he had given refuge. However, he admitted that he shared the same objective as the killers, and said that even as a witness, he was asking for forgiveness for having been a member of the group of killers. He could see that all the others had followed the road taken by Nchamihigo's vehicle. Some of them returned with looted property. LAG also admitted to looting.⁴⁹

63. Amongst the victims, there was a certain Karangwa, a Tutsi businessman. There was also Kongo, a Hutu businessman. Ndayisaba's wife and daughter, who were Tutsi neighbours of Nchamihigo's, were burnt alive in a vehicle. The *Interahamwe* told LAG that they had also set Dr. Nagafizi on fire not far from his house on that day. LAG saw the burnt bodies of Ndayisaba's family and Dr. Nagafizi.⁵⁰

64. LAG gave names of the perpetrators that he could recall. The *Interahamwe* that took part in the attack at Kongo's house were members of LAG's group, and they also participated in other attacks, together with others whom he did not know. Those who went to Kongo's house took him to the military camp, which was under Lieutenant Samuel Imanishimwe's command. From there, Kongo was taken to the market square, where he was handed over to soldiers. Those soldiers asked the *Interahamwe* to kill him at the market square. He was killed with another member of his family.⁵¹

65. LAG stated that he did not participate in the attack on Karangwa, but insisted that the attackers told him that they went to Karangwa after attacking Dr. Nagafizi's house and

⁴⁶ T. 17 January 2007 pp. 32, 54 and T. 18 January 2007 p. 5 (Witness LAG); Exhibit P-38.

⁴⁷ T. 17 January 2007 pp. 32-33 (Witness LAG).

⁴⁸ T. 17 January 2007 pp. 33-34 and, 54 (Witness LAG).

⁴⁹ T. 17 January 2007 pp. 35-36 (Witness LAG).

⁵⁰ T. 17 January 2007 pp. 35-37 (Witness LAG).

⁵¹ T. 17 January 2007 p. 56 (Witness LAG).

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Ndayisaba's house. He said that when the group left to launch the attacks, he saw them. Upon their return, he heard them clamouring and saw the bodies of those victims.⁵²

Prosecution Witness BRQ

66. Witness BRQ testified that on 9 April 1994, Emmanuel Bagambiki (Prefect of Cyangugu) asked him to go through the roads in Kamembe town with the head of the Red Cross, Dr. Pio Nzeyimana, to collect dead bodies and bury them. From this testimony, it could be inferred that there were many corpses. In the course of this task, they found the bodies of Dr. Nagafizi, Karangwa, and Ndayisaba's wife and daughter. BRQ could see that the bodies had all been burnt, and was told that those people had been killed on the morning of 7 April 1994. They put the bodies in coffins and buried them at the Gihundwe public cemetery. BRQ also picked up Zacharie Serubyogo's body in the Kadasomwa River, approximately 100 meters from Lake Kivu, on 9 April 1994. Serubyogo's body was the only body there and he had been shot through the heart with a gun. He was wearing a black shirt and a black pair of trousers, and they buried his body at a place called Mururu.⁵³

Prosecution Witness Marianne Baziruwiha

67. Witness Marianne Baziruwiha testified that as soon as she learnt of the death of President Habyarimana, she was in telephone contact with Karangwa and Serubyogo to work out how to flee, because like her, they were targets. She testified that the last time she spoke with Zacharie Serubyogo was at about 3h00 and with Karangwa was at about 11h00 on 7 April 1994. At that time, Karangwa informed her of the deaths of Kongo and Dr. Nagafizi, who were fellow PSD party members. She decided to go to Karangwa but was stopped on her way there and informed by a young man that Karangwa had been killed. She immediately went into hiding.⁵⁴

Other Prosecution Witnesses

68. Witness LDD, a gendarme in Cyangugu in 1994, testified that he heard that Ndayisaba's wife and children had been burnt alive in Ndayisaba's vehicle at their home.⁵⁵

69. Witness LDC stated that on 9 April 1994, he visited his sister in Kamembe. When he arrived at the crossroads at the Gihundwe school complex, he saw Nchamihigo, Manase Bavugamenshi (*Bourgmestre* of Cyimbogo commune) and a group of *Interahamwe* and *Impuzamugambi* looting Ndayisaba's house. At the same time, a car with three people inside was burning. He later learned that the people inside the burning car were Ndayisaba's wife, daughter and domestic worker. LDC remembered hearing Nchamihigo telling *Bourgmestre* Bavugamenshi that stock should be taken of the looted goods so that the looters could contribute to finance the *Interahamwe*, the *Impuzamugambi*, and the soldiers at the front.⁵⁶

70. Witness BVM, a close relative of Karangwa's, testified that ever since the death of Martin Bucyana (President of the CDR), Karangwa and his family had been subject to threats.

⁵² T. 17 January 2007 p. 56 (Witness LAG).

⁵³ T. 4 October 2006 pp. 3-8, T. 5 October 2006 pp. 10-11, and T. 6 October 2006 p. 8 (Witness BRQ, Closed Session); Exhibit P-13.

⁵⁴ T. 15 January 2007 pp. 69-70 (Marianne Baziruwiha).

⁵⁵ T. 6 October 2006 pp. 12, 27 (Witness LDD, Closed Session).

⁵⁶ T. 10 January 2007 pp. 67-68 (Witness LDC).

On 7 April 1994, Karangwa and his wife took refuge at their neighbour's house. Emmanuel Mbabariye sent someone to ask Karangwa to come to his house, allegedly in order to help him flee to Zaire, but when he got there the *Interahamwe* caught him. He was set on fire and burnt to death.⁵⁷

71. Witness BOH, a Hutu merchant, testified that soon after Karangwa died, Yussuf Munyakazi informed him that the property of dead Tutsi should be entrusted to the State. Munyakazi asked BOH to give him the five million Rwandan francs he owed Karangwa for the authorities, Nchamihigo and Lieutenant Imanishimwe. Eventually, BOH went to Karambo military camp accompanied by Munyakazi to meet with Nchamihigo and Lieutenant Imanishimwe. Nchamihigo told him that if he did not forfeit the money, he would suffer the same fate as Karangwa. Nchamihigo drove BOH to his home in Kamembe in Nchamihigo's Suzuki to collect two million Rwandan francs in cash, which they handed over to Lieutenant Imanishimwe upon their return to the camp. Afterwards, BOH wrote a cheque for two and a half million francs to Nchamihigo. That evening, BOH wrote Munyakazi another cheque for five hundred thousand francs. BOH said that Nchamihigo's cheque was eventually cashed.⁵⁸

72. Witness LDB testified that on 17 or 18 April 1994, he saw Nchamihigo and a group of *Interahamwe* and heard that they had attacked Karangwa. LDB recalled having seen Nchamihigo driving around in Karangwa's vehicle, a blue Corolla with some yellow on top. Nchamihigo kept the vehicle at the home of Thomas Ntabadahiga and later, when people started to search for things, he then drove the vehicle to Bukavu. LDB further testified that when he visited the place where Nchamihigo lived in Bukavu, he came across four vehicles, including Karangwa's.⁵⁹

73. Witness AOY testified that a PSC meeting was held on 11 April 1994. The meeting adopted a strategy of using summonses to flush out influential Hutu and Tutsi. Since Nchamihigo was the representative of the Ministry of Justice, it was agreed that he would be the one to sign the summonses. As an example, AOY cited the case of Serubyogo, and said that soldiers went to the place where Serubyogo was hiding with a summons signed by Nchamihigo. They picked him up, and when they brought him to Cyangugu, he was killed.⁶⁰

74. Witness BRO, who was a prisoner at Cyangugu central prison in April 1994, testified that on 9 April 1994, Nchamihigo came to the prison with Munyakazi, Lieutenant Imanishimwe and various soldiers, and requested the Rwaserera cleaning team to go and pick up some bodies. The team was taken to Buduki where they had to collect bodies and bury them in a place called Kadasomwa. Nchamihigo was carrying a book and was accompanied by Munyakazi; they were searching for Karangwa. They then all left Buduki and went to Kucyapa in Kamembe, where Karangwa had been found and was being held by gendarmes and soldiers. BRO testified that Nchamihigo asked Karangwa where he had been hiding and then instructed the gendarmes to tie him up with a mattress and set him on fire. The gendarmes obeyed. Once Karangwa was dead, BRO loaded his body onto a truck. BRO was then taken back to the prison because it was nearly 18h00 and prisoners could not remain outside after such time.⁶¹

⁵⁷ T. 29 January 2007 pp. 28-29 (Witness BVM).

⁵⁸ T. 29 January 2007 pp. 6-9 (Witness BOH).

⁵⁹ T. 12 October 2006, p. 28-30 (Witness LDB); T. 18 October 2006 p. 20 (Witness LDB).

⁶⁰ T. 18 January 2007 p. 37 (Witness AOY).

⁶¹ T. 19 October 2006 p. 3, 7-8 (Witness BRO).

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75. Witness BOV testified that the head of the Red Cross, Dr. Nzeyimana, asked him and two other persons to assist in collecting dead bodies that remained along the roads. They went with him through Kadasomwa and saw many dead bodies. BOV testified that Nchamihigo was also there with *Interahamwe* and that he was recording the names of victims in a notebook. After the bodies were loaded onto a truck, Nchamihigo initiated a search for Karangwa's body. When they eventually finally found him in Kucyapa, Karangwa had been caught and was being beaten for information on another person's whereabouts. The *Interahamwe* and soldiers took a mattress and Nchamihigo ordered an *Interahamwe* to look for some petrol. BOV testified that the *Interahamwe* then lit the mattress, which had been wrapped around Karangwa, resulting in his death. BOV heard Nchamihigo say that it was not necessary to kill Karangwa's wife because she was not a Tutsi.⁶²

Siméon Nchamihigo

76. Nchamihigo admits that Karangwa, Kongo, Dr. Nagafizi, Ndayisaba's family, and Serubyogo, were all killed on 7 April 1994 or shortly thereafter, but denies that he ordered, instigated or aided and abetted the killings. He testified that on 7 April 1994 at about 7h30, his boss, Prosecutor Ndorimana, collected him from his home and took him to the office, where he remained the whole day. At the end of the work-day, Prosecutor Ndorimana drove Nchamihigo back home, where he remained with his sick wife and entertained visitors.⁶³

77. Nchamihigo testified that from an official dossier, he discovered that Thomas Mubiligi, Christophe Nyandwi and Kasim Kanyarukiko were suspects in the killings of Dr. Nagafizi and Kongo. Mubiligi and Kanyarukiko were among the group of *Interahamwe* assailants identified by LAG. Nchamihigo also testified that the suspects in Kongo's killing were Lieutenant Kajisho and Sergeant Major Marc Ruberanziza (alias "Bikomago").⁶⁴ There is evidence that both men were soldiers stationed at Karambo military camp, which is the place where LAG and other witnesses said the attackers had taken Kongo prior to his killing.

Defence Witnesses

78. Witness SCJ heard that Karangwa had been burned alive by local inhabitants and that Kongo was clubbed to death for rejoicing over the death of President Habyarimana.⁶⁵

79. Witness ZSC heard that Karangwa was killed by soldiers led by Lieutenant Kajisho and Bikomago. He stated that he arrived at the market square in Kamembe just after Kongo had been killed by soldiers. He also stated that he heard that Serubyogo was killed by soldiers led by Lieutenant Kajisho and Bikomago. He never heard that Nchamihigo was involved in any of the killings.⁶⁶

80. Witness SBS testified that on the evening of 7 April 1994, three of Ndayisaba's children were brought to him at Gihundwe school by a neighbour. He was told that their mother and sister had just been burned in a car and he decided to hide them. Later that evening, the eldest of Ndayisaba's children, Brigitte, was also brought to the school. She was

⁶² T. 23 January 2007 pp. 40-43 (Witness BOV).

⁶³ T.18 September 2007 p. 59 and T.19 September 2007 pp. 9-10, 36, 63 (Siméon Nchamihigo).

⁶⁴ T. 19 September 2007 p.9 (Siméon Nchamihigo). Some witnesses referred to Sergeant Major Marc Ruberanziza by his nickname, "Bikomago". This Judgement will refer to him by nickname where appropriate.

⁶⁵ T. 1 May 2007 pp. 23-24 (Witness SCJ).

⁶⁶ T. 10 September 2007 pp. 3, 21-23, 43 (Witness ZSC).

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severely burnt. After a few days, Brigitte was taken to the Saint François Health Centre, where she died.⁶⁷

81. Witness RO1 testified that on 7 April 1994 at around noon he saw people breaking into Dr. Nagafizi's house. RO1 witnessed this from his home, which was located 300 to 400 meters away from the scene. He testified that he did not know whether Nchamihigo was among the attackers and that he never heard Nchamihigo's name mentioned in relation to the attack. He was later told by an eyewitness to the killing that Dr. Nagafizi's body had been sprayed with petrol and set ablaze.⁶⁸

82. Witness HMN witnessed Karangwa's killing from a window on the second floor of her house. The attackers numbered between 25 and 30, wore masks and banana leaves, but she could not identify any of them. She saw them wrap Karangwa in a mattress and set it on fire. She said the attack occurred at around 9h00 in front of Karangwa's residence and lasted about 20 to 25 minutes. Two days later on 9 April 1994, she saw Dr. Nzeyimana of the Red Cross collect Karangwa's body.⁶⁹

83. Witness HDN testified that Serubyogo, a Hutu, was the President of the Cyangugu Chamber of Commerce and the Vice President of the MDR party. HDN stated that after the death of President Habyarimana, Serubyogo went into hiding when death squads started searching for him. When Serubyogo's whereabouts were discovered, soldiers took him to Cyangugu and killed him. His body was buried in Mururu.⁷⁰

84. Witness SCE was told that Serubyogo had been shot at Kadasomwa, but he did not know by whom.⁷¹

3.1.3. Deliberations

85. Except in relation to Nchamihigo's involvement in the killings, Nchamihigo's and his witnesses' testimonies were quite consistent with that of Prosecution witnesses.

86. BRO's testimony is consistent with that of BOV in many significant details. However, their description of events is inconsistent with the general trend of the rest of evidence as a whole. Their testimony conflicts entirely with BRQ about the circumstances under which corpses were retrieved on 9 April 1994. According to the testimony of BRQ and the other witnesses, Karangwa's killing occurred two or so days before the burial detail was commissioned. As such, it would have been impossible for BRO or BOV to have witnessed Karangwa's death. The Chamber considers BRO and BOV's testimonies to be unreliable.

87. The Chamber also finds that the evidence shows that Serubyogo was killed before the PSC meeting on 11 April 1994. Therefore, it would not be possible for AOY's testimony to ground a finding that the meeting directed Nchamihigo to issue a summons for Serubyogo's detention. There was no other reliable evidence that Nchamihigo gave orders or was otherwise involved in Serubyogo's death.

⁶⁷ T. 27 August 2007 pp. 20-21 (Witness SBS).

⁶⁸ T. 24 April 2007 pp. 20-21, 47 (Witness RO1).

⁶⁹ T. 28 August 2007 pp. 41-42 (Witness HMN).

⁷⁰ T. 27 August 2007 pp. 65-68 (Witness HDN, Closed Session).

⁷¹ T. 1 May 2007 pp. 57-58 (Witness SCE).

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88. LDC's testimony was important because it placed Nchamihigo at the scene of the killing and the looting. The Chamber notes that LDC is the sole witness to testify about the domestic worker being killed with Ndayisaba's wife and daughter. Although BRQ failed to mention it, the Chamber believes LDC's testimony on this issue.

89. The import of LDB's evidence is similar to that of BOH. Although there was a discrepancy concerning the dates on which LDB heard of Karangwa's attack, the Chamber believes his evidence that Nchamihigo looted Karangwa's car. LDB had some difficulty recalling dates, but the Chamber does not attribute this to lack of truthfulness.

90. The Prosecution's main witness, LAG, is an accomplice. The Chamber has therefore viewed his testimony with caution. In April 1994, at the start of the genocide, LAG joined the *Interahamwe*. He explained that on the radio the authorities had said that all Hutu should stand together, so he joined the *Interahamwe* to collaborate and fight the enemy. He explained that the enemy was the Tutsi and anyone supporting the RPF which was against the government of the day.⁷²

91. LAG admitted that he committed crimes during the period from April to July 1994 and that he participated in some of the crimes charged in the Indictment against Nchamihigo. He was arrested in Rwanda in 1995 on charges of complicity in genocide and illegal possession of a weapon. He confessed his guilt and was sentenced in August 1999 to 11 years in prison. When he pleaded guilty he knew that he was likely to receive a more lenient sentence and this knowledge contributed to his decision. He claimed that his plea was also motivated by his conscience and a desire to aid justice. After serving eight years he was granted a conditional release. There is no evidence of any pending matters relating to him before the courts of Rwanda or elsewhere. At the time of his testimony, he was free.⁷³

92. It was suggested that LAG had made some prior inconsistent statements. The Chamber did not consider any of these to be significant. For example, there was controversy about whether he said in a previous statement that he was a member of the PL or whether he mentioned holding a party card. He denied suggestions put to him that he was incriminating Nchamihigo to protect one of his relatives.⁷⁴

93. LAG admitted to testifying in other cases before this Tribunal and that it was while he was in Arusha for that purpose that he met with investigators about Nchamihigo, just around the time of Nchamihigo's arrest in 2001. A major contention of the Defence was that LAG was minimizing the role he played. He denied this and indicated that there were many opportunities for other charges to have been brought against him even at the Gacaca hearings. Even if it were true that he minimised his role it would not have a significant impact on the Chamber's assessment of his testimony as there was little connection between his culpability and Nchamihigo's. He pleaded guilty a long time ago, was sentenced, and served his time in prison.⁷⁵ The Chamber therefore does not accept that LAG had a motive to falsely implicate Nchamihigo.

94. LAG's account of events was consistent with Baziruwaha's testimony. LAG's testimony was also supported materially by several other witnesses, including those for the

⁷² T. 17 January 2007 p. 31 (Witness LAG).

⁷³ T. 17 January 2007 pp. 29-30 (Witness LAG, Closed Session).

⁷⁴ T. 17 January 2007 pp. 47-50 and T. 18 January 2007 p. 9 (Witness LAG, Closed Session).

⁷⁵ T. 17 January 2007 pp. 30, 62-63 and T. 18 January 2007 p. 2 (Witness LAG, Closed Session).



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Defence. Nchamihigo's alibi was in direct contradiction to LAG's testimony that he saw Nchamihigo on 7 April 1994 arrive in a Suzuki jeep in Kamembe at about 9h00. And there were two Defence Witnesses, SNB and SGA, who testified to having seen Nchamihigo that day outside his office.⁷⁶ LAG's testimony on Nchamihigo's presence at the road side in Kamembe and the orders he gave was not directly supported by other evidence. However, there was circumstantial support of this testimony by the evidence of Nchamihigo's theft of Karangwa's property and Nchamihigo's presence at Ndayisaba's house, which he looted while the bodies of Ndayisaba's wife, daughter and domestic worker were burning in the vehicle outside.

95. The Chamber believes LAG beyond reasonable doubt. LAG's evidence is that Nchamihigo gave general orders without specifying the names of specific victims. The Chamber has considered this testimony in the context of the death of President Habyarimana and the aftermath of insecurity and chaos. It also recalls that evidence shows that, as Deputy Prosecutor, Nchamihigo was an important figure to whom young men and *Interahamwe* deferred. Nchamihigo must have known that the natural consequence of addressing those men in the way that he did would be that they would go out and kill Tutsi and Tutsi sympathizers. The Chamber concludes that the young men to whom Nchamihigo spoke in the presence of LAG included *Interahamwe* who felt that they had to obey Nchamihigo's orders as they understood them. As a result, they killed Dr. Nagafizi, Karangwa, Kongo, who were members of the PSD, and Ndayisaba's family. Except for Kongo, they were also all Tutsi.

96. Witness LDC was also an accomplice, so his testimony must also be considered with care. He said he knew Nchamihigo. They were neighbours. He said he was recruited and joined the *Interahamwe* in 1993, in Nchamihigo's presence. The Rwandan judicial authorities charged him with participation in the genocide and he confessed to the crimes with which he was charged. He admitted that after delays in the process due to loss of his case file, he wrote to Ibuka, offering his services as a witness in order to advance his proceedings. He was eventually sentenced to 12 years' imprisonment and was freed in 2003 after serving nearly half his sentence. He believes that his confession contributed to the reduction in his sentence.

97. LDC was open in his testimony. The Chamber notes that there are circumstances recited in his testimony suggesting that he might be vulnerable to re-arrest in connection with an offence of which he had not been previously accused. Therefore, the Chamber views as a live issue the possibility raised by the Defence that he might have an incentive to cooperate with the authorities by testifying before this Tribunal in this case. The Chamber notes that there was no other eyewitness to Nchamihigo's looting of Ndayisaba's property or to the burning of Ndayisaba's family. There is, however, evidence of Nchamihigo's participation in the looting of Karangwa's property. In a separate section of this Judgement, the Chamber will consider in detail Ndayisaba's own killing, one of the victims removed from Kamarampaka Stadium on the instructions of authorities. The circumstances of Ndayisaba's murder support the conclusion that he was specifically targeted. LDC's testimony is consistent with the trend of the evidence on the events about which he testified.

98. The Chamber notes that LDC testified that the events at Ndayisaba's house occurred on 9 April 1994. The Chamber has, however, accepted the overwhelming evidence that they occurred on 7 April. However, it considers that this discrepancy does not imply that the witness is not telling the truth. The Chamber believes LDC and considers that it can rely on his testimony.

⁷⁶ See paragraphs 27 and 28 above.

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99. Two witnesses testified on Nchamihigo's participation in the looting of Karangwa's property. BOH was a victim of Nchamihigo's, and ought to be anxious to see that justice is done. There was no suggestion that he was an accomplice or had any motive to falsely implicate Nchamihigo. The Chamber believes his testimony. Despite LDB's problem with dates, the Chamber considers him to be a reliable witness and believes his testimony that he saw Nchamihigo driving Karangwa's car and that Nchamihigo stored the car in Cyanguu before taking it to Bukavu.

100. The Chamber finds that the Prosecution has established that Nchamihigo ordered LAG and those *Interahamwe* and others to whom he spoke at Kamembe on 7 April 1994 to go and look for and kill Tutsi and other civilians who were RPF supporters.

3.2. The Killing of Jean de Dieu Gakwandi and Canisius Kayihura

3.2.1. Indictment

101. The Prosecution charges Nchamihigo with committing Murder as a Crime against Humanity under paragraph 50 of the Indictment, and Other Inhumane Acts as a Crime against Humanity under paragraph 69. In these paragraphs, it is alleged that, between 15 and 17 April 1994, Nchamihigo ordered or instigated *Interahamwe* to kill a young Hutu student named Jean de Dieu Gakwandi, whom Nchamihigo had described as a Tutsi accomplice. Paragraph 69 specified that the *Interahamwe* hit him on the head causing injury and left him unconscious, thinking he was dead.

102. The Prosecution charges Nchamihigo with committing Genocide under paragraph 25 of the Indictment, and Murder as a Crime against Humanity under paragraph 51. In these paragraphs, it is alleged that on approximately 28 or 30 April 1994, Nchamihigo ordered or instigated the *Interahamwe* including Martin Ndorimana, to kill Canisius Kayihura.

3.2.3. Evidence

103. Prosecution Witness LDB was among the group of attackers, while Prosecution Witness BRG is close to Gakwandi and was an eyewitness to the attack. They corroborated each other's testimonies on the fact that on 15 April 1994, a group composed of Jean Rusine, Dany Nzeyimana and David Habanakwabo, among others, armed with clubs and machetes, attacked Jean de Dieu Gakwandi. The attackers took him out of Judge Védaste Habimana's house, where Gakwandi had sought refuge. Nzeyimana hit Gakwandi with a club on the back of his head, causing him to fall down on the ground, unconscious. LDB further testified that, afterwards, everybody left thinking he was already dead. LDB then touched Gakwandi to see if he was alive, realized that he was not dead, helped him to get up and told him to run.⁷⁷

104. LDB testified that Nchamihigo had ordered him to kill both Gakwandi and Kayihura, saying they were RPF accomplices, and gave him a grenade to use in the attack. However, LDB recalled that the attack against Kayihura did not occur because he was much loved by locals and he was a member of the MRND party. LDB is supported by LDC who testified that between 10 and 24 April 1994, while LDC was manning a roadblock near the residence of Prosecutor Ndorimana, with Martin Ndorimana, an *Interahamwe*, and Oscar and Trojan Haguma, among others, he saw Nchamihigo at that roadblock three times, the third time being around mid-April at noon. When Nchamihigo arrived at the roadblock, he told LDC and his

⁷⁷ T. 10 January 2007 pp. 36-37, 41 (Witness BRG); T. 12 October 2006 p. 23 (Witness LDB).

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fellows to look for Kayihura and to kill him because he was Tutsi but had managed to get an identity card with the designation "Hutu". However, LDC recalled that later, Prosecutor Ndorimana, having heard about the order, asked them to let Kayihura live and no attack was carried out. Kayihura died after the genocide from unrelated causes.⁷⁸

105. Defence Witness SBS knew Gakwandi as a neighbour and a student. He recalled that on 7 or 8 April 1994 at around 20h00, Gakwandi came to the Gihundwe school complex with a head injury, seeking refuge. Gakwandi told SBS that a former soldier named David had beaten him up, but that the order to do so came from a Mr. Pierre Kwitonda. SBS never heard Nchamihigo's name mentioned in relation to the attack on Gakwandi. SBS' testimony was largely corroborated by Defence Witness SBM's.⁷⁹

106. Nchamihigo admitted that he knew Gakwandi, but denied ever giving a grenade to anyone and ordering anyone to kill Gakwandi. He also admitted to knowing Kayihura as a colleague and a neighbour, but denied ever passing through the roadblock near Prosecutor Ndorimana's house or giving any orders to anyone to find and kill Kayihura. He denies having known or had contact with LDB or LDC during the events.⁸⁰

3.2.3. Deliberations

107. The Chamber finds that the evidence presented by the Defence is largely consistent with that of the Prosecution. Even if the Chamber were to accept SBS and SBM's testimonies that Gakwandi told them the order for his attack came from one Pierre Kwitonda, this does not necessarily mean that the information acquired by Gakwandi was accurate. Having not been present at the time the order was given, Gakwandi's own understanding of how he came to be attacked is largely hearsay.

108. The Chamber received direct evidence through Prosecution Witnesses BRG and LDB that Nchamihigo ordered that Gakwandi be killed for being an RPF accomplice. The Chamber has already explained that it finds LDB to be a credible and reliable witness. His testimony is corroborated by BRG's, which only strengthens the evidence on the issue, and the evidence put forth by the Defence raises no reasonable doubt as to the veracity of their assertions.

109. The Chamber finds that Nchamihigo ordered that Gakwandi and Kayihura be killed because of their political affiliations. Kayihura was neither killed nor hurt. Gakwandi was not killed, but he was hunted down by a group of attackers, clubbed over the head, causing an injury so serious that his attackers left him unconscious, thinking he was dead.

3.3. The Killing of Emilien Nsengumuremyi, Aloys Gasali, Isidore Kagenza, and Jean-Marie Vianney Tabaro

3.3.1. Indictment

110. The Prosecution charges Nchamihigo with committing Genocide under paragraph 23 of the Indictment, and Extermination as a Crime against Humanity under paragraph 62. In these paragraphs, it is alleged that on or about 15 April 1994, at a roadblock near the Bank of

⁷⁸ T. 12 October 2006 pp. 21-23 (Witness LDB); T. 10 January 2007, pp. 64, 69-72 and T. 11 January 2007 p. 61 (Witness LDC); Exhibit D-7.

⁷⁹ T. 27 August 2007 pp. 14-15, 19, 37-40 (Witness SBS, Closed Session); T. 29 August 2007, pp. 9-11, 64-67 (Witness SBM, Closed Session).

⁸⁰ T. 19 September 2007 pp. 3-4, 37-38, 66 (Siméon Nchamihigo).

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Kigali, Nchamihigo ordered or instigated Thomas Mubiligi, *Interahamwe* and others, to hunt down and kill Tutsi whose names he read from a list, including Aloys Gasali, Emilien Nsengumuremyi, Isidore Kagenza and Judge Jean-Marie Vianney Tabaro. Nchamihigo is alleged to have aided and abetted the attackers by providing them with two grenades. *Interahamwe*, on an unknown date in May 1994, including Vincent Mvuyekure (alias "Tourné") found Nsengumuremyi and killed him.

111. The Prosecution charges Nchamihigo with committing Genocide under paragraph 24 of the Indictment, and Murder as a Crime against Humanity under paragraph 53. In these paragraphs, it is alleged that on an unknown date in May 1994, in execution of Nchamihigo's order or instigation, the *Interahamwe* including Nyandwi, found Nsengumuremyi and killed him.

3.3.2. Evidence

112. Prosecution Witness LAG testified that roughly a week or eight days after 7 April 1994, Nchamihigo came to the roadblock LAG was manning. There were about 20 people manning the roadblock, including Mubiligi. Nchamihigo arrived in his Suzuki jeep. He had a list with names of Tutsi and read out the following four: Aloys Gasali, Jean-Marie Vianney Tabaro, Emilien Nsengumuremyi, and Isidore Kagenza. He said that those people were hiding in the area and they were to be hunted down. After reading out the names he gave two grenades to a certain James Mategane. After Nchamihigo left, they began searching for the named Tutsi.⁸¹

113. Nsengumuremyi was eventually found and killed, but not by LAG or anyone at the roadblock with him when Nchamihigo issued the order. LAG specified that the person who found Nsengumuremyi was an *Interahamwe* named Abdullah Omar, who handed the victim over to another *Interahamwe* called Rizinde, who later handed him over to a soldier called Lieutenant Kajisho stationed at Lieutenant Imanishimwe's camp. Lieutenant Kajisho killed Nsengumuremyi with a gunshot in the market square. LAG said that Omar was aware that these persons were being hunted down because they were Tutsi hiding in town. LAG expressed the belief that orders similar to those handed down at his roadblock were given to those manning other roadblocks.⁸²

114. Nchamihigo denied that he ordered or instigated Mubiligi or anyone to hunt down and kill Tutsi or that he read out names or handed out grenades. He alleged that Nsengumuremyi was killed by a soldier named Kajisho and not the *Interahamwe*. He denied that the other three persons whose names he allegedly read out were killed.

115. The Chamber has carefully considered Nchamihigo's alibi in relation to this event and does find it credible. Nchamihigo called witnesses who testified that they did not hear Nchamihigo's name involved or that they did not see him at the roadblock.⁸³ None of these witnesses had been in a position to oversee the roadblock on a continuous basis. Their testimony could therefore not have much weight. Defence Witness ZSC testified that he saw *Interahamwe* bringing Nsengumuremyi to the Kamembe market, and Lieutenant Kajisho

⁸¹ T. 17 January 2007 pp. 37, 42 (Witness LAG).

⁸² T. 17 January 2007 p. 43 (Witness LAG).

⁸³ See, *inter alia*, T. 2 May 2007 pp. 18-19, 23 (Witness RNN); T. 25 April 2007 pp. 60, 68 (Witness RK3).

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killing him by gunshot. ZSC asserted that Nchamihigo was not present and he never heard Nchamihigo's name mentioned in relation to this incident.⁸⁴

3.3.3. Deliberations

116. The Chamber has already explained that it considers LAG to be a reliable witness, and finds that Nchamihigo went to the roadblock on or about 15 April 1994, and read out the names of four Tutsi including Nsengumuremyi, and told the *Interahamwe* including Mubiligi and other young armed Hutu at the roadblock to look for those Tutsi hiding in town and to kill them. He provided one of the *Interahamwe* with two grenades for the killing. Defence Witnesses RO1, ZSC and Nchamihigo support LAG's testimony that Nsengumuremyi was captured by the *Interahamwe* (Abdullah Omar), and eventually handed over to Lieutenant Kajisho, who killed him with a gunshot.

117. The Chamber notes that the Prosecution offered no evidence to show that Gasali, Tabaro, or Kagenza were hurt or killed.

3.4. The Killing of Joséphine Mukashema, Hélène and Marie

3.4.1. Indictment

118. The Prosecution charges Nchamihigo with committing Genocide under paragraph 36 of the Indictment, and Murder as a Crime against Humanity under paragraph 52. In these paragraphs, it is alleged that in late April or early May 1994, Nchamihigo ordered, instigated or aided and abetted the killing of three Tutsi girls: Joséphine Mukashema, Hélène and Marie.

3.4.2. Evidence

119. In April and May 1994, Prosecution Witness BRD was living with his older brother, who worked with Nchamihigo, in Gihundwe sector and attending the Nyarukemba Institute in Bukavu. Joséphine Mukashema, Hélène and Marie, three female Tutsi classmates of BRD's, came to seek refuge at BRD's house. When Banga Kaboyi, a classmate of BRD's who had become an *Interahamwe*, discovered that the girls were staying at BRD's house, he told Nchamihigo, and together they came to collect the girls. Nchamihigo sought to take the girls to the Inshuti pastoral centre, where others had also sought refuge. BRD, believing that no harm would befall the girls, let Nchamihigo and Kaboyi take the girls away.⁸⁵

120. When BRD discovered that the girls were not taken to the Inshuti pastoral centre after all, he went in search of them. Upon reaching Kucyapa, Nchamihigo told BRD that the girls had already been killed because they were *Inkotanyi*. BRD could not believe this, so he went to Gatandara roadblock, where he found the girls' corpses and saw they had been beaten to death.⁸⁶

121. The Defence presented evidence through Witness RDCB on the school's attendance records. RDCB joined the school in 1996, and his knowledge is based only on his perusal of the records, which he checked only for the purpose of his testimony in this case. Although he testified that the names did not appear in the records of 1993-1994, his evidence indicates that

⁸⁴ T. 10 September 2007 pp. 19-20 (Witness ZSC).

⁸⁵ T. 24 January 2007 pp. 43-44, 48-49 (Witness BRD).

⁸⁶ T. 24 January 2007 p. 50 (Witness BRD).

the records were created only at the end of each year, and the records of 1993-1994 revealed a 20% drop in the number of enrolled students compared to 1992-1993.⁸⁷

122. Defence Witness SFF described himself as a distinguished teacher and personality, but he was not related to BRD's school in any way. He had been leader of the MDR youth wing. He eventually left Rwanda within the last few years to seek asylum because he was considered by the authorities to be a "negationist" and an espouser of genocidal ideology. He testified that he knew BRD and his family. He knew that BRD was a student around 1994 and that during vacations he stayed with his parents who lived in SFF's sector. He thought that BRD was a student at another school as he used to see him with other students taking a boat to an island on Lake Kivu.⁸⁸

3.4.3. Deliberations

123. The Defence challenged BRD's credibility. When he was in the witness box, the issue of the school records was not put to BRD and he had no opportunity to comment on it. However, the Chamber recalls that BRD had testified that he and the three girls did not return to school after April 1994. Considering that in light of RDCB's testimony that the records were compiled at the end of the year, the chaotic times of 1994, and the significant difference in the numbers of students on the records between the two years, the Chamber does not rely on the records to establish whether these students attended that school or not.

124. Similarly, BRD was never confronted with the SFF's allegations. The Chamber places little weight on SFF's testimony because he could not have known whether BRD was living at his brother's home in April 1994. The Chamber also considers that SFF revealed bias. This raised serious doubt as to his credibility. Consequently, the evidence given by RDCB and SFF does not raise reasonable doubt about the attendance of BRD and the girls at the school in Bukavu or BRD's staying with his brother in Gihundwe.

125. The Chamber notes that there was no testimony to corroborate BRD's story. Despite a conviction for committing forgery, BRD impressed the Chamber. His evidence was given in a forthright manner, he stood firm under cross-examination, and his story was persuasive. The Chamber believed this witness. The only reasonable inference to be drawn from his testimony is that Nchamihigo took the girls to the roadblock for the purpose of having them killed because they were *Inkotanyi*. It finds that the Prosecution has proven beyond reasonable doubt that Nchamihigo, having learnt that the three Tutsi girls were being given refuge in the house, removed them and took them to the roadblock to facilitate their being killed. They were killed at the roadblock.

3.5. The Killing of Uzier Ukwizagenza and Innocent

3.5.1. Indictment

126. The Prosecution charges Nchamihigo with committing Genocide under paragraph 27 of the Indictment, and Murder as a Crime against Humanity under paragraph 55. In these paragraphs, it is alleged that on an unknown date in May 1994, Nchamihigo ordered or instigated the *Interahamwe* to kill two Tutsi students: Uzier Ukwizagenza and Innocent.

⁸⁷ T. 17 September 2007, pp. 6-7, 9-10 (Witness RDCB, Closed Session); Exhibits D-62, D-63, D-64, D-65.

⁸⁸ T. 3 September 2007, pp. 39, 42-43 (Witness SFF).

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3.5.2. Evidence

127. Prosecution Witness BRD said that in May 1994, he saw Nchamihigo at Gihundwe roadblock in Kucyapa. BRD was with three other people: Alphonse Kayitera and two 19-20 year old male students, Uzier Ukwizagenza and Innocent. They were looking for transportation to return to their homes in Kibuye. Nchamihigo arrived in a vehicle with his wife. He stopped, looked at the group, motioned to the two students to climb into his vehicle, and told the others to remain. He made giving the students a lift a matter of priority because they had to travel a long distance. About an hour later, BRD found transportation and when he reached Buhinga, he saw that the students had been clubbed and hacked to death. During his testimony, BRD said that Kayitera later told him that the two students were Tutsi. BRD said that there was a large gathering of people at the place where he found their dead bodies. Nchamihigo was amongst those people, looking at the corpses.⁸⁹

128. Defence Witness ZSA testified that he did not see Nchamihigo or any dead bodies at any of the roadblocks in Cyangugu during April or May 1994. ZSA, a truck driver in 1994, travelled about Cyangugu making deliveries less than three times a week between April and July 1994.⁹⁰

129. Colette Uwubuheta, Nchamihigo's wife, denied that this event occurred. She stated that on account of illness, she only left her home four times from April to July 1994. She left twice in April to visit doctors, then once in June and once in July. Nchamihigo denied ever meeting the two young men referred to by BRD. He claimed that he could not have offered them a ride because his vehicle was in disrepair and, in any case, his wife was ill and did not go outside.⁹¹

130. Defence Witness RDCB had access to the attendance records from that school the students allegedly attended, but did not see the names of any students named Innocent or Uzier Ukwizagenza.⁹²

3.5.3. Deliberations

131. The Chamber notes the lack of direct evidence concerning the circumstances of the death of the two students. The Chamber recalls that it can draw inferences from the facts that it finds. However, this power is restricted in the sense that the Chamber should not draw an inference adverse to an accused unless it is the only reasonable inference that can be drawn. Even if BRD's testimony is believed, the fact that Nchamihigo picked up the students and one hour later was on the scene where their dead bodies were found allows more than one inference to be drawn. One inference would be that he handed the students to the killers. But, an hour had elapsed and there is no evidence about what he did during that time. He could have put the students down anywhere, travelled to another destination, and on his return seen their bodies.

132. This situation is different to that of the three Tutsi girls. In that case, there was evidence that Nchamihigo knew that they were Tutsi and that he had specifically sought them out. After they were killed, he told BRD that they were killed because they were *Inkotanyi*,

⁸⁹ T. 24 January 2007 pp. 51-54 (Witness BRD).

⁹⁰ T. 24 April 2007 pp. 51, 57 and T. 25 April 2007 p. 18 (Witness ZSA).

⁹¹ T. 27 April 2007 p. 3 (Colette Uwubuheta); T. 17 September 2007 pp. 6, 10 (Siméon Nchamihigo).

⁹² T. 17 September 2007 p. 7 (Witness RDCB); Exhibits D-62, D-63, D-64, D-65.

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and uttered threats to him about assisting Tutsi. This testimony provided an undeniable link between Nchamihigo and the killing of the three girls. In the case of the two male students, however, it would be speculative to conclude that Nchamihigo could have identified the students as Tutsi when he was driving past and suddenly decided to pick them up for that reason. There was no evidence that he did or said anything, before or after their death, from which any inferences could inevitably be drawn. The Chamber concludes that the Prosecution has failed to show beyond reasonable doubt that Nchamihigo had ordered or instigated the killing of these students.

3.6. The Killing of Father Joseph Boneza

3.6.1. Indictment

133. The Prosecution charges Nchamihigo with committing Genocide under paragraph 26 of the Indictment, and Murder as a Crime against Humanity under paragraph 54. In these paragraphs, it is alleged that Nchamihigo ordered or instigated the killing of Father Boneza, a Tutsi priest, on an unknown date in May 1994.

3.6.2. Evidence

Prosecution Witness BRF

134. Witness BRF was well acquainted with Nchamihigo, who was his neighbour. He lived right next to the Kucyapa roadblock which had been set up around 13 April 1994 by Vincent Mvuyekure (alias "Tourné").⁹³ He was therefore in a position to see what was happening at the roadblock, and witnessed many people killed there. BRF said that he would often see Nchamihigo in the company of Sergeant Major Marc Ruberanziza (alias "Bikomago") come to the roadblock and give orders. BRF recalled that Tourné's roadblock was removed after about a month. Subsequently, a roadblock manned by gendarmes was erected in May 1994. BRF, a boy at the time, used to look after the gendarmes, serving them food and cleaning their shoes.⁹⁴

135. BRF testified that in May 1994, he was on his way to a funeral and the car he was in had to stop close to the roadblock because the road was blocked by a crowd of people. Father Boneza, a Tutsi priest of Mibilizi parish, was in a vehicle being chased by military vehicles from Mibilizi and stopped near the roadblock. Members of the population rushed to the roadblock because they had seen this chase. Nchamihigo arrived, as did *Bourgmestre* Manase Bavugamenshi, and Bikomago. When Bikomago opened the door of Father Boneza's vehicle, the gendarmes stood in the way of the soldiers, wanting to let Father Boneza pass, but the soldiers opposed this. Bikomago then called Tourné, who was uphill from the road, and Tourné refused to come. At that point, Nchamihigo said: "Can an intelligent Hutu take him and kill him?" Mutabazi, one of the members of the population who was there, seized Father Boneza. Then Félicien Nyagatere took a tree trunk and struck the priest on the head with it. The priest died immediately. He was buried 100 metres away from the place he was killed, next to an Electrogaz booth. Nchamihigo rewarded the people who buried Father Boneza with money, which they used to buy beer.⁹⁵

⁹³ Some witnesses referred to Vincent Mvuyekure by his nickname, "Tourné". This Judgement will refer to him by nickname where appropriate.

⁹⁴ T. 24 January 2007 pp. 12-13 (Witness BRF).

⁹⁵ T. 24 January 2007 pp. 13-14 (Witness BRF).

Prosecution Witnesses LAG and LDC

136. BRF's evidence was strengthened by two Prosecution witnesses who testified about the car chase that ended in Father Boneza's death at Kucyapa roadblock. Witness LAG said that Nchamihigo came to the roadblock near the Bank of Kigali in his car. Nchamihigo told LAG and the others at the roadblock that a priest from Mibilizi parish would eventually come to the roadblock in a car, and that when he did, they should kill him. Subsequently, those manning other roadblocks told LAG that Nchamihigo had issued the same orders to them, and made it clear that he was aware that they were saving the lives of Tutsi accomplices in their town. The priest never passed LAG's roadblock, but LAG heard that the priest had eventually been stopped and killed at the Kucyapa roadblock.⁹⁶

137. Witness LDC said that he saw Nchamihigo at the roadblock near Prosecutor Ndorimana's house on a number of occasions. LDC recalled that on one occasion he saw Nchamihigo coming from Mibilizi rapidly chasing another car that had Father Boneza on board. LDC and his group opened the roadblock and the first vehicle passed. Nchamihigo and Bikomago, in the second car, stopped at the roadblock and asked how the first vehicle could have passed through. Those manning the roadblock said that they did not have the means to stop such vehicles. Nchamihigo took grenades from his vehicle and handed them to some of the people who were with LDC at that roadblock. Later on, LDC learned that the priest's vehicle had been stopped at the Kucyapa roadblock, where the priest was killed.⁹⁷

Siméon Nchamihigo

138. Nchamihigo testified that he knew that the killing of Father Boneza occurred on 19 May 1994 because he heard about it on 20 May 1994, the day after it occurred. He had not known the deceased. On 19 May 1994, he was in his office and played no part in the killing of the priest. He asserted that he passed the Kucyapa roadblock only twice: on 30 April when he accompanied his sister to Gatware commune and at the end of May when he went to visit his sick mother. He challenged the credibility of the Prosecution witnesses and suggested that the words attributed to him were previously attributed to Lieutenant Kajisho in another case in which Prosecution Witness BRF was involved. Nchamihigo also denied offering beer to those who buried the priest.⁹⁸

Other Defence Witnesses

139. Witness RO1, although denying that Nchamihigo was present and had participated in the killing, gave evidence which was consistent with Prosecution Witness BRF's in other details. RO1 testified that he heard shouts and saw two vehicles passing at high speed. Aboard one of them was Father Boneza. When the priest's vehicle stopped at the Kucyapa roadblock, people pulled him out. They took him across the road and started to beat him. RO1 testified that the attackers removed 46,000 Rwandan francs from his pocket. Then a man named Mutabazi struck him on the head with a club and Father Boneza apparently stopped breathing. They carried his body a short distance and buried it. RO1 added that the Father was, in fact, breathing when he was buried.⁹⁹

⁹⁶ T. 17 January 2007 pp. 37, 43-44 (Witness LAG); Exhibit P-40.

⁹⁷ T.10 January 2007 pp. 70-72 (Witness LDC).

⁹⁸ T. 19 September 2007 pp. 4-5 (Siméon Nchamihigo).

⁹⁹ T. 24 April 2007 p. 15 (Witness RO1).

140. Witness HDN also testified that he saw Father Boneza driving a jeep and coming from Mibilizi being chased by a Hilux pick-up truck. HDN stated that he did not know the persons in the other vehicle but that Nchamihigo was not one of them. He heard that Father Boneza was killed at the Kucyapa roadblock, which was manned by Tourné, and that Mutabazi was involved in the killing. Nobody mentioned to him that Nchamihigo was present at the roadblock when Father Boneza was killed.¹⁰⁰

141. Witness ZSA also heard of the killing. He heard Tourné was involved but not Nchamihigo.¹⁰¹

3.6.3. Deliberations

142. The Chamber puts little weight on testimony that Nchamihigo's name or presence was not mentioned to a witness in relation to Father Boneza's killing, because even if true, it does not necessarily imply that Nchamihigo was not there. It is noted that, except for his denial of Nchamihigo's presence, RO1's testimony was consistent with BRF's. The Chamber has already explained that it does not believe Nchamihigo's assertions that he stayed in his office every day and that he had no car during the relevant period. The Chamber also does not believe, in light of credible evidence to the contrary, Nchamihigo's denial of having frequented the Kucyapa roadblock.

143. There was a suggestion that LDC should not be believed because of some discrepancy in his testimony about dates. He had indicated that he had been working at the roadblock only until the end of April. If that were true and Father Boneza was killed in May, then his testimony should not be believed. The Chamber, however, considers that LDC's recollections of the dates of events that transpired over a decade before his testimony, while imperfect, is not unusual and does not raise a credibility issue. The location of the roadblocks is consistent with his story. The road from Mibilizi runs past the roadblock manned by LDC, which was situated outside Prosecutor Ndorimana's house, and then continues on to Kucyapa roadblock.

144. The Chamber believes LAG and BRF's testimonies. The Chamber finds that on 19 May 1994, Nchamihigo chased Father Boneza, a Tutsi priest, to Kucyapa roadblock. There was ample evidence that Nchamihigo desired the death of Father Boneza and made plans to effect it. BRF indicated that the gendarmes tried to protect Father Boneza, and that Tourné refused to follow the instructions of Bikomago. There was an impasse which was resolved when Nchamihigo asked for an "intelligent Hutu" to kill the priest. Mutabazi seized Father Boneza, and Nyagatere struck the priest on the head with a tree trunk, killing him.

3.7. The Killing of Thirteen FAR Soldiers

3.7.1. Indictment

145. The Prosecution charges Nchamihigo with committing Extermination as a Crime against Humanity at paragraph 65 of the Indictment. In this paragraph, it is alleged that on 7 April 1994, Nchamihigo ordered, instigated or aided and abetted the killing of 13 FAR soldiers who were in prison and were no longer combatants.

¹⁰⁰ T. 28 August 2007 pp. 7-9 (Witness HDN).

¹⁰¹ T. 24 April 2007 p. 59 (Witness ZSA).

3.7.2. Evidence

146. Prosecution Witness BRO was a prisoner at the Cyangugu central prison in April 1994. He had been in prison for theft since 1984. He was released in June 1994 but has been in and out of prison for theft and escaping for most of the 13 years between 1994 and the time he testified in this case. He maintains his innocence, claiming that he was always wrongly convicted. His confusing explanations do not warrant repetition. Although there was no allegation that he was a participant in the crimes for which Nchamihigo is charged, the Chamber considers that as a matter of fairness and common sense his criminal record requires caution to be exercised in assessing the truthfulness of his evidence.

147. BRO testified that he was head of a prison cleaning team called Rwaserera. His team was enlisted to dispose of bodies throughout Cyangugu after 8 April 1994. On 8 April 1994, Nchamihigo arrived around 11h00 with Lieutenant Samuel Imanishimwe and Yussuf Munyakazi. Nchamihigo came looking for 13 soldiers whom he described as Tutsi RPF soldiers. The soldiers were then taken to the prefecture. A few minutes after the soldiers left the prison, BRO heard gunshots. Nchamihigo then returned to the prison seeking the assistance of BRO's cleaning team. BRO and his team went with Nchamihigo to the prefecture office where BRO saw many bodies and corpses on the lawn, including those of the 13 soldiers. BRO noted that some of the soldiers had been shot while others had been beaten with clubs. Nchamihigo ordered that any victim still alive be killed and the soldiers and *Interahamwe* on the scene obeyed. The cleaning crew was ordered to load the corpses onto a vehicle.¹⁰²

148. Nchamihigo denied ever going to the prison to seek prisoners to collect bodies, and further denied having any knowledge of the murder of 13 soldiers. Defence Witnesses SGA, SBA, SCF and SCE supported Nchamihigo's testimony. They all worked at or near the prefecture office and asserted that they did not see any dead body in the courtyard throughout April 1994. They did not even hear about the killing of the soldiers.¹⁰³

3.7.3. Deliberations

149. BRO was the only Prosecution witness to testify about this alleged event. Cross-examination revealed several elements of BRO's testimony which were implausible. He said that the soldiers were RPF, but could not explain why they were in a civilian prison. He did not know whether they had been brought there by the army or gendarmes. Under examination-in-chief, BRO said the prisoners were dressed in jeans, but under cross-examination he said that he was able to identify and count their corpses because they were dressed in military uniforms. BRO's testimony was also inconsistent with the Indictment, which describes the prisoners as FAR soldiers.

150. BRO testified about participating in a burial detail until he got sick on 2 May 1994. But when pressed about his activities he said that he only participated on 8 and 9 April 1994, the two dates about which he gave evidence in the trial. He tried to explain that he began suffering as early as 10 April and was too ill to go on burial detail work. He said that on 9 April he collected the body of Serubyogo from Lake Kivu. BRO said that there were four other bodies floating in the lake. He saw Nchamihigo there with a book listing the corpses.

¹⁰² T. 18 October 2006 pp. 31-32 (Witness BRO).

¹⁰³ T. 19 September 2007 pp. 38-39 (Siméon Nchamihigo); T. 23 April 2007 p. 25 (Witness SGA); T. 29 August 2007 p. 71 (Witness SBA); T. 30 April 2007 p. 24 (Witness SCF); T. 1 May 2007 p. 52 (Witness SCE).

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BRO said he heard Nchamihigo and Lieutenant Imanishimwe asking where Karangwa was. He described going to Kucyapa and seeing Nchamihigo ordering soldiers to go after Karangwa and witnessing his being burnt in a mattress just before 18h00, when he had to return to the prison. BRO said that he was part of the detail that loaded Karangwa's body on a vehicle. But he denied knowing or seeing Dr. Nzeyimana (head of the Red Cross) or BRQ. BRO's evidence about his activities with the burial detail on 9 April was both internally inconsistent and contradicted by other testimony. The Chamber believes that there could be no other explanation than that his testimony was a complete fabrication.

151. The Chamber has already reviewed the evidence relating to the collection of Serubyogo's corpse and the killing of Karangwa and the collection of his corpse. The Chamber accepted that the burial detail which collected Serubyogo included BRQ under the leadership of Dr. Nzeyimana, and that when they collected Serubyogo, his body was the only one in the lake. The Chamber also accepted that Karangwa was killed on the morning of 7 April 1994, and not at the Kucyapa roadblock.

152. Under the circumstances, the Chamber does not credit BRO's evidence and cannot convict Nchamihigo on his dubious testimony alone. For those reasons, the Chamber finds that the allegation of the killing of 13 FAR soldiers has not been proved beyond reasonable doubt.



4. ROADBLOCKS IN CYANGUGU

4.1. Indictment

153. The Prosecution charges Nchamihigo with committing Genocide at paragraph 21 of the Indictment. In this paragraph, it is alleged that (1) Nchamihigo ordered or instigated the erection of several roadblocks to intercept and kill Tutsi, (2) Nchamihigo supervised the effective manning of those roadblocks, and (3) several Tutsi were killed by Nchamihigo's *Interahamwe* at the roadblocks, sometimes in Nchamihigo's presence.

154. Paragraph 21 also alleges that Nchamihigo ordered, instigated or aided and abetted (1) the killings at Gatandara roadblock of selected Tutsi refugees removed from Kamarampaka Stadium, and (2) the killing of Father Joseph Boneza at Kucyapa roadblock. Both of these incidents are dealt with separately, elsewhere in this Judgement.¹⁰⁴

4.2. Evidence

155. It was not disputed that there were roadblocks in Cyangugu in 1994. Both Prosecution and Defence witnesses, including Nchamihigo himself, testified that there were roadblocks at the Bank of Kigali, Kamembe market, Pendeza, Kadashya, Kucyapa, Gatandara, and near Prosecutor Paul Ndorimana's house.¹⁰⁵

156. Prosecution Witness BOV was the only witness to testify about a roadblock at Kwiperu in Muhari sector, about Nchamihigo's presence there, and about specific killings that occurred there. Nchamihigo denied ever having been to Kwiperu.¹⁰⁶

157. There was evidence from both Prosecution and Defence witnesses that the administrative authorities formally set up roadblocks. Prosecution Witness AOY testified that Prefect Bagambiki, instructed various communal authorities to set up roadblocks in their respective localities.¹⁰⁷ Defence Witness SCE testified that the decision to set up roadblocks at the Bank of Kigali and at Kucyapa was taken at a meeting convened by *Bourgmestre* Bavugamenshi, at the Gihundwe school complex on 8 April 1994. SCE stated that Nchamihigo did not attend this meeting.¹⁰⁸

158. Prosecution Witness BRJ testified that on 8 April 1994, Nchamihigo took him and a group of *Impuzamugambi* to Gatandara and ordered them to set up a roadblock there, which they did. Defence Witness SBA challenged this evidence by testifying that he was told that

¹⁰⁴ See Section 1.3: Notice, and Section 3.6: The Killing of Father Joseph Boneza.

¹⁰⁵ See e.g. T. 26 September 2006 p. 19 and T. 27 September 2006 p. 24 (Jeannette Ebouea); T. 28 September 2006 pp. 31-32, (Witness BPX); T. 4 October 2006 pp. 16-20 (Witness BRQ); T. 6 October 2006 pp. 24, 29 (Witness LDD); T. 10 October 2006 pp. 33-34 and T. 11 October 2006 p. 25 (Witness BRY); T. 10 January 2007 p. 69 (Witness LDC); T. 17 January 2007 pp. 37, 44 (Witness LAG); T. 19 January 2007 p. 25 (Witness BRJ); T. 22 January 2007 p. 20 (Witness BRK); T. 23 January 2007 p. 46 (Witness BVO); T. 24 April 2007 p. 39 (Witness RO1); T. 24 April 2007 p. 57 (Witness ZSA); T. 25 April 2007 p. 67 (Witness RK3); T. 1 May 2007 p. 18 (Witness SCJ); T. 1 May 2007 pp. 58, 60 (Witness SCE); T. 2 May 2007 p. 22 (Witness RNN); T. 3 May 2007 p. 16 (Witness CNN); T. 29 August 2007 p. 78 and T. 30 August 2007 pp. 2-3 (Witness SBA); T. 10 September 2007 pp. 15-19 (Witness ZSC); T. 29 August 2007 p. 42 (Odette Ndeberinika); T. 21 September 2007 p. 26 (Siméon Nchamihigo); Exhibits P-2, P-7, P-13, P-16, P-40, P-56, D-52, D-67.

¹⁰⁶ T. 23 January 2007 pp. 38, 43-45, 49-50 (Witness BOV); T. 18 September 2007 pp. 36-37 (Siméon Nchamihigo).

¹⁰⁷ T. 18 January 2007 pp. 32, 52 (Witness AOY).

¹⁰⁸ T. 1 May 2007 pp. 63-64 (Witness SCE).

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Gatandara roadblock was set up by the local population and was wild and uncontrolled. Nchamihigo denied ever having ordered anyone to erect Gatandara roadblock.¹⁰⁹

4.3. Deliberations

159. None of the killings at Kwiperu roadblock referred to in BOV's testimony were pleaded in the Indictment. The Chamber considers that Nchamihigo was not provided adequate notice to enable him to defend himself in relation to events in connection with Kwiperu roadblock.

160. The Chamber finds that Prefect Bagambiki ordered various *bourgmestres*, including AOY and Bavugamenshi, to erect roadblocks in their respective communities and observes that there was no evidence that Nchamihigo was within that chain of command. There was no evidence that Nchamihigo was involved in the erection of any of the roadblocks, except for Gatandara roadblock. BRJ is an accomplice. His testimony must therefore be viewed with caution. The Chamber's belief that Prefect Bagambiki ordered the erection of the roadblocks raised doubt on the reliability of BRJ's testimony in relation to this event.

161. The Chamber finds that the Prosecution failed to establish beyond reasonable doubt that Nchamihigo ordered or instigated the erection of any roadblocks. However, there was evidence that Nchamihigo visited roadblocks at the Bank of Kigali, Kadashya, Kucyapa, Pendeza, Gatandara, and near Prosecutor Ndorimana's house, and gave instructions to the persons manning them from time to time. The details of these instructions are discussed elsewhere in this Judgement, in relation to more specific allegations on Nchamihigo's involvement in different killings.

¹⁰⁹ T. 19 January 2007 pp. 25-26, 37 (Witness BRJ); T. 29 August 2007 p. 78 (Witness SBA); T. 18 September 2007 p. 35 (Siméon Nchamihigo).

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5. KAMARAMPAKA EVENTS

5.1. Introduction

162. The Prosecution charges Nchamihigo with committing Genocide at paragraphs 20(d) 21, and 38 to 42 of the Indictment, and Other Inhumane Acts as a Crime against Humanity at paragraph 70. In these paragraphs, it is alleged that Nchamihigo planned, ordered, instigated, or aided and abetted killings of refugees at the Gendarmerie after moving them to and from Kamarampaka Stadium on or about 16 April 1994, and aided and abetted the killing of a further 20 people after their removal from the stadium on or about 18 April 1994. He is also alleged to have ordered or instigated the removal of body parts and organs of some refugees who had been killed on 16 April 1994.

5.2. Killings at the Gendarmerie on 16 April 1994

5.2.1. Indictment

163. In the paragraphs relevant to the Kamarampaka allegations, it is alleged that after President Habyarimana's death, as part of a national campaign aimed at killing the Tutsi, Nchamihigo and other members of the Cyangugu Prefecture Security Council ("PSC") decided to move refugees from where they were hiding, including the Gihundwe school complex and Cyangugu Cathedral, and to assemble them at Kamarampaka Stadium with the aim of eliminating those who were suspected of being accomplices of the RPF *Inkotanyi*. Then on 16 April 1994, the PSC, including Nchamihigo, allegedly removed selected people from the stadium and instructed soldiers to take them to the Gendarmerie Camp. That same day, Nchamihigo allegedly ordered or instigated *Interahamwe* to kill 15 Tutsi removed from the stadium, which they did, and then buried the corpses in pit latrines. It is further alleged that, before the burial, Nchamihigo ordered or instigated the mutilation of three of the refugees killed.

164. The Chamber notes that the evidence adduced by the Prosecution on the involvement of the governmental or administrative authorities was limited to Cyangugu prefecture. There was evidence of the activities of the Prefect and the Cyangugu PSC, but no evidence was led of a connection with a national campaign. There was evidence that Théodore Sindikubwabo, then President of Rwanda, attended one PSC meeting, but no evidence was led as to what occurred during that meeting. There was no evidence of events in other parts of Rwanda. The Chamber considers that there was no evidence on which it could consider the relationship between the events in Cyangugu and the remainder of the country, and that the allegation that the activities of the PSC were part of a national campaign has not been proved. However, proof that the crimes alleged against Nchamihigo were part of a national campaign is not an essential element of the charges against him.

165. The Defence admitted that refugees were moved from Cyangugu Cathedral to Kamarampaka Stadium under orders of the PSC, but contended that it was to ensure the refugees' safety. The Defence denied that Nchamihigo was present at the PSC meeting or participated in the PSC decision. The Defence also admitted that refugees removed from the stadium were killed, but denied that he ordered, instigated, or aided and abetted the killings.

5.2.2. Evidence

Prosecution Witnesses



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166. Witness AOY, a former *bourgmestre* in Cyangugu prefecture, testified that he attended a PSC meeting held on 11 April 1994 at the MRND Palace on Cyangugu hill starting at around 8h30. He said that this meeting was chaired by Emmanuel Bagambiki (Prefect of Cyangugu), and attended by the Sub-Prefects, *Bourgmestres*, heads of services in Cyangugu prefecture, MRND and the CDR political party leaders in the prefecture, some religious leaders, senior army and Gendarmerie officers, leaders of the *Interahamwe* and the *Impuzamugambi* and major businessmen. According to AOY, Nchamihigo represented the Department of Public Prosecutions in Cyangugu prefecture, as Prosecutor Paul Ndorimana was absent for a long period at the beginning of the genocide due to illness.¹¹⁰

167. The 11 April 1994 meeting adopted decisions relating to security in Cyangugu prefecture. Witness AOY testified that all the participants had a common objective to exterminate the Tutsi. He stated that during this meeting, various measures were taken and strategies worked out to kill Tutsi, including a plan to use Kamarapaka Stadium for this purpose. AOY explained that Prefect Bagambiki said that they must be in a position to prove to the international community that not all Tutsi had been killed and they must thus ensure that some were saved. It was decided to identify and draw up lists of important people to be killed, such as businessmen and intellectuals. These people were made to gather at Kamarapaka Stadium where it would be easy for the authorities to enter and remove people. In particular, refugees at Cyangugu Cathedral were to be transferred to Kamarapaka Stadium. In order to facilitate the removal of the people to be killed, summonses would be issued requiring them to report to the prosecutor's office, where they would be killed. The prosecutor's office would prepare the lists and Nchamihigo, as a representative of the Ministry of Justice, would sign the summonses.¹¹¹

168. Witness AOY testified that subsequently, Prefect Bagambiki and the *Bourgmestre* of Gisuma commune telephoned to tell him that the plan they had put together was successfully carried out.¹¹²

169. Marianne Baziruhiha testified that she saw Nchamihigo at Cyangugu Cathedral. She was unsure about the dates, but the Chamber is satisfied, from all the testimony and the sequence of events that this occurred on 15 April 1994. She gave a comprehensive list of the PSC officials who arrived at the cathedral, which included Prefect Bagambiki, Lieutenant Samuel Imanishimwe (Commander of Karambo military camp), Emmanuel Kamonyo (Sub-Prefect of Political Affairs), Théodore Munyangabe (Sub-Prefect of Economic Affairs), Bishop Thaddée Nsengiyumva, Nchamihigo, and another Deputy Prosecutor, possibly named Aaron.¹¹³

170. Witnesses LM, LBB testified that Prefect Bagambiki arrived at the cathedral in the company of Bishop Nsengiyumva, Lieutenant Imanishimwe, and several other people. They did not recall the presence of Nchamihigo.¹¹⁴

¹¹⁰ T. 18 January 2007 pp. 24, 28-33, 51 (Witness AOY).

¹¹¹ T. 18 January 2007 pp. 32-34, 36-37, 47-48 (Witness AOY).

¹¹² T. 18 September 2007 pp. 48-49 (Witness AOY).

¹¹³ T. 15 January 2007 p. 73 (Marianne Baziruhiha).

¹¹⁴ T. 10 January 2007 p. 12 and T. 11 January 2007, p. 8 (Witness LBB); T. 29 January 2007 pp. 49, 57 (Witness LM).

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171. Witnesses LBB and Baziruwiha admitted that the cathedral's premises were not fenced whereas there was a high fence around the stadium. They also admitted that *Interahamwe* had attacked the cathedral on more than one occasion while they were there and the gendarmes had repulsed the attacks. They testified that Prefect Bagambiki explained that they had to move from the cathedral as better security could be provided at the stadium. Bishop Nsengiyumva also spoke to them and promised that the church would continue to provide assistance.¹¹⁵

172. Baziruwiha testified that Prefect Bagambiki explained that some of the refugees were under suspicion because their neighbours had accused them of carrying weapons and radio transmitters, having meetings with the RPF, and drawing up lists of Hutu to be killed. The Prefect told the refugees to leave their personal effects at the cathedral so that they could be searched. Witness LM said that there was an initial reluctance to move to the stadium, and that Prefect Bagambiki and Lieutenant Imanishimwe threatened they would order the soldiers to fire at the refugees who refused to leave.¹¹⁶

173. Witnesses LM, LBB, LCR, and Marianne Baziruwiha testified that the authorities made them line up and walk to the stadium. Once all the refugees were inside the stadium, the gates were closed and the gendarmes were told to guard them. Jean Marie Vianney Habimana (alias "Gapfumu")¹¹⁷ and Ananie Gatake¹¹⁸ were some of the only people allowed to remain at the cathedral because they had health problems.¹¹⁹

174. These witnesses' combined testimony indicates that on 16 April 1994, officials came to Kamarampaka Stadium, including Prefect Bagambiki, Lieutenant Imanishimwe, Commander Vincent Munyarugerero (Chief of the Gendarmerie), Nchamihigo, Prosecutor Ndorimana, Rumesha (Director of the Pentacostal School), Sub-Prefect Kamonyo, Christophe Nyandwi, (an *Interahamwe* leader), and soldiers. Witness LDD, a gendarme who was outside the stadium, testified that while he was at a shop near the stadium, he observed Commander Munyarugerero and Nchamihigo arriving at the stadium in cars from the prefecture office after a PSC meeting.¹²⁰

175. Witnesses LM and Baziruwiha testified that Prefect Bagambiki announced at Kamarampaka Stadium that there were people there who were highly sought after because they were in contact with the *Inkotanyi* who were bent on murdering Hutu and they had radios

¹¹⁵ T. 11 January 2007 pp. 7-8 (Witness LBB); T. 15 January 2007 p. 73 and T. 16 January 2007 pp. 68-69 (Marianne Baziruwiha).

¹¹⁶ T. 15 January 2007 pp. 73-74 (Marianne Baziruwiha); T. 29 January 2007 p. 50 (Witness LM).

¹¹⁷ Nearly all witnesses refer to Jean Marie Vianney Habimana by his nickname, "Gapfumu". This Judgement will refer to him by nickname where appropriate.

¹¹⁸ Different witnesses have referred to this individual as "Ananias", "Anania", or "Ananie". The Chamber will refer to this individual as "Ananie", which is the name pleaded in the Indictment.

¹¹⁹ T. 29 January 2007 pp. 50, 58 (Witness LM); T. 10 January 2007, p. 12 and T. 11 January 2007 pp. 7-9 (Witness LBB); T. 17 January 2007 pp. 10-11 (Witness LCR); T. 15 January 2007 pp. 73-74 and T. 16 January p. 69 (Marianne Baziruwiha).

¹²⁰ T. 6 October 2006 p. 26 (Witness LDD); T. 10 January 2007 p. 12 and T. 11 January 2007 pp. 9, 13 (Witness LBB); T. 15 January 2007 p. 74 (Marianne Baziruwiha); T. 17 January 2007 pp. 6-7 (Witness LCR); T. 29 January 2007 pp. 50, 60-61 (Witness LM).

and weapons. He explained that it was the decision of the PSC that these people should be taken to a more secure location.¹²¹

176. Witness LM conceded that some of the refugees at the stadium approved of the PSC's decision to remove certain individuals because they believed these people posed a security risk.¹²² Prefect Bagambiki called on Commander Munyarugerero to read out a list of suspected individuals, and instructed that those whose names were called should stand up and line up in front of them. Some people whose names were called out came out of their own volition, while others hid. LCR and his children were on the list. LCR managed to evade discovery.¹²³

177. Witnesses LBB and LCR recalled that when Trojean Nzisabira's name was called out, he tried to hide, but Nchamihigo spotted him and drew him out. Witness LM testified that after the names were called out, the individuals were removed from the stadium and were followed outside by Nchamihigo and the other officials. LM then heard shouting outside the stadium.¹²⁴

178. Baziruiha testified that she and the others whose names were called out were made to line up and leave the stadium. Outside the stadium, she noticed that there were many people and vehicles, including pick-up trucks and almost all the vehicles from the Agriculture Department, where she worked. She recognised the people who were standing outside as being *Interahamwe* because of their attire. The *Interahamwe* had machetes, clubs, grenades, firearms, and some wore pistols around their waists. She also saw that Gapfumu and Ananie Gatake were already sitting in one of the vehicles. The individuals removed from the stadium were made to climb aboard a Daihatsu pick-up truck. She refused to board the truck and said she wanted to go in one of her own vehicles from the Agriculture Department. Nchamihigo mocked her and said something to the effect that the vehicle was no longer hers and that she should just get into the Daihatsu pick-up truck like all the others. She boarded a vehicle with Commander Munyarugerero. The convoy of vehicles, including the one she was in, headed for the prefecture, but her vehicle turned to go to the Gendarmerie compound and she was taken to Commander Munyarugerero's house, where she stayed for two days.¹²⁵

179. Witness BRK testified that he saw Nchamihigo at the commercial centre in Mutongo sector with Sub-Prefect Munyangabe and three gendarmes. Nchamihigo spoke to BRK and others in the presence of local authorities from Mutongo, such as Nicodème Ntanturo (CDR Chairman). His testimony was not specific about the dates, but the Chamber concludes that it was on 16 April 1994 from the sequence of events that he described and other testimonies the Chamber discusses in this section. Nchamihigo said that there was a plan that required them to go to Kamarupaka Stadium and remove influential refugees. Nchamihigo also asked for

¹²¹ T. 15 January 2007 pp. 74-75 and T. 16 January 2007 p. 75 (Marianne Baziruiha); T. 29 January 2007 p. 50 (Witness LM).

¹²² T. 29 January 2007 p. 60 (Witness LM).

¹²³ T. 17 January 2007 pp. 7-8 (Witness LCR); T. 29 January 2007 pp. 50-51 (Witness LM).

¹²⁴ T. 10 January 2007 pp. 13-14 (Witness LBB); T. 17 January 2007 pp. 7-8 (Witness LCR); T. 29 January 2007 pp. 50-53, 59 (Witness LM).

¹²⁵ T. 15 January 2007 pp. 75-77 (Marianne Baziruiha).

names of influential people from Mutongo who were at Kamarampaka Stadium, as not all the refugees at the stadium were to be killed and they needed lists.¹²⁶

180. BRK explained that after Nchamihigo left, the local authorities made plans to attack. BRK and others boarded a vehicle and went to Gatandara roadblock, located at a five-minute walking distance from Kamarampaka Stadium. When they reached the stadium at approximately 14h00, there were approximately 80 attackers, some of whom had come from Mururu. The gendarmes stationed at the stadium told the attackers to stay back. BRK and the other attackers stood on the other side of the road close to the stadium. From there, he could see Nchamihigo, Prefect Bagambiki and Lieutenant Imanishimwe, as well as other gendarmes outside the stadium. He testified that Nchamihigo was at the front and had a megaphone in his hand. He also testified that Nchamihigo had a notebook and was reading out names. While doing so, if anyone did not step forward, he would send a gendarme to get them. The individuals were then removed and taken to the Gendarmerie, where they were to be killed.¹²⁷

181. BRK and the others ran to the Brigade Gendarmerie in a location known as Rusizi-Yandere, near the stadium. The people removed from the stadium arrived in vehicles and were put into the Gendarmerie cells. They were accompanied by soldiers. BRK testified that Nchamihigo, Prefect Bagambiki and Lieutenant Imanishimwe also arrived at the Gendarmerie, but in their own vehicles. Sub-Prefect Munyangabe and the Intelligence Officer for Cyangugu prefecture were also there. Nchamihigo had a list. It was not clear whether it was Nchamihigo who read the names from the list or someone else. The person whose name was read out came out of the cells and was immediately killed by BRK and the other attackers with him. The first name to be called out was Gapfumu's, and each name was called out one by one. BRK and the others killed each individual with traditional weapons. After they were all killed, Nchamihigo said that the bodies should not be thrown into the Ruzizi River, but into pit latrines at Gapfumu's, which Nchamihigo said Gapfumu had dug to dispose of Hutu bodies. They loaded the dead bodies onto the vehicles that they had brought, and then boarded the vehicle belonging to Félix Nsengiyumva and followed the vehicle that was carrying the dead bodies. Nchamihigo had asked them to sing the song: "No Enemy Can Attack an Armored Vehicle". They went to Mutongo and threw the bodies into the Gapfumu's latrines.¹²⁸

182. Baziruhiha testified that after a couple days, she escaped from Commander Munyarugerero's home. She went to her office to make some phone calls, and learned that Nchamihigo was searching for her. As a result, she returned to Commander Munyarugerero's residence, where she surrendered once more. Shortly after, Nchamihigo, Lieutenant Imanishimwe and Sub-Prefect Kamonyo came to the house and asked her to go back to the stadium to tell the refugees that Prefect Bagambiki had kept his promise that the individuals who were removed with her would not be killed, and that it was therefore safe to come out in the open. In exchange, she would be set free. She indicated that Lieutenant Imanishimwe led the dialogue, but Nchamihigo also addressed her. She feigned agreement and said she needed to look good enough to be believed. They left and she was fed, allowed to have a shower and obtain some clothes from Commander Munyarugerero's wife. When they returned, she told them "[i]f I look fit enough to go and tell people lies, then I feel even better to be killed". She testified that Nchamihigo, Lieutenant Imanishimwe and Sub-Prefect Kamonyo got angry, said

¹²⁶ T. 22 January 2007 pp. 18-19, 35, 39 (Witness BRK).

¹²⁷ T. 22 January 2007 pp. 19-21, 39 (Witness BRK).

¹²⁸ T. 22 January 2007 pp. 21-23 (Witness BRK).

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she should be transferred to the gendarmes, and left. She described how she then escaped from a vehicle with armed guards provided by Commander Munyarugerero and fled to Zaire.¹²⁹

Siméon Nchamihigo

183. Nchamihigo testified that the refugees had been removed from Cyangugu Cathedral to Kamarupaka Stadium upon the instructions of the PSC for security reasons. However, he denied that he participated in the meeting where this decision was taken and, accordingly, that he participated in the decision itself. He said that he was not a member of the PSC and never attended any of its meetings. He produced a ministerial order signed on 9 August 1995 by Seth Sendashonga, Minister of Interior and Communal Development, detailing the members of the PSC. Nchamihigo was not included.¹³⁰

184. Nchamihigo acknowledged, however, that he was told about extended meetings of the PSC by Prosecutor Ndurimana, who attended them. At those meetings, the security situation was discussed, in particular the transfer of refugees from Cyangugu Cathedral to Kamarupaka Stadium. He specifically denied attending the meeting of 11 April 1994 and testified that on that day, he went to his office around 8h00 where he stayed the whole day preparing for court the following day. He denied that the meeting took place at the MRND Palace, stating that it was rather at the Court of First Instance.¹³¹

185. Nchamihigo testified that he was not present at the cathedral and did not participate in any way in the transfer. He said that on 15 April 1994 he went to his office at 8h00 and stayed there the entire day. The following day he was informed about the movement of the refugees by his superior, Prosecutor Ndurimana. He contended that the purpose of the removal was to provide greater security than could be given at the cathedral.¹³²

186. Nchamihigo testified that 16 April 1994 was a Saturday. He went to work in the morning and stayed at his office until midday when he went home. In the afternoon at about 16h00, he went to a function and returned to his home at about 18h00, spending the rest of the evening and night with his wife. He said that he learnt of the events the following day when Prosecutor Ndurimana called him out of church to discuss them with him. Nchamihigo testified that Prosecutor Ndurimana instructed him to issue warrants of arrest for those taking part in the killings and that the list of persons who participated in the killings provided by the Commander Munyarugerero included BRK.¹³³

Defence Witnesses

187. Witness SBA testified that he was an official member of the PSC, and denied that Nchamihigo attended any PSC meetings. Prior to 6 April 1994, the PSC usually met once a month. After President Habyarimana's death, it met on average three to four times a week, during which time attendance was extended to include people who were not regular members. SBA attended the meeting on 11 April 1994. He testified that it was an extraordinary session

¹²⁹ T. 15 January 2007 p. 77 and T. 16 January 2007 p. 4 (Marianne Baziruwaha).

¹³⁰ T. 18 September 2007 pp. 55-56 (Siméon Nchamihigo); Exhibit D-69.

¹³¹ T. 18 September 2007 pp. 55-56 (Siméon Nchamihigo).

¹³² T. 19 September 2007 pp. 18, 27 (Siméon Nchamihigo).

¹³³ T. 19 September 2007 pp. 27-28 (Siméon Nchamihigo).

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attended by people who were not members, including representatives of various religious groups, some representatives of political parties, Sub-Prefects and *Bourgmestres*. He estimated that there were 50 people, although he did not know all of them. The meeting lasted a long time, perhaps four to six hours. He said that the meeting took place in the premises of the Court of Cyangugu. He admitted that he did not fully recollect the meeting. He denied that there were any discussions about killing Tutsi or the distribution of weapons. He was initially adamant that they did not discuss security, reinforcing roadblocks, or distributing weapons to those manning roadblocks, but eventually during cross-examination he acknowledged that officials reported on security matters in their respective areas, requested assistance and that there was discussion about the roadblocks.¹³⁴

188. SBA admitted that there was discussion about the transfer of refugees from the cathedral to Kamarupaka Stadium not only at that meeting, but also at a subsequent meeting on or about 14 April 1994 when the modalities of the transfer were determined. He also recalled that at a meeting on 18 April 1994, Commander Munyarugerero reported to the PSC that some people were called out of the stadium and escorted by the Gendarmerie to the prosecutor's office so that they could be interrogated, but that instead, they were taken to the Gendarmerie Brigade where they were attacked and killed by members of the local population.¹³⁵

189. Witness SNB was a criminal investigator and worked in the same office as Nchamihigo. He supported Nchamihigo's testimony that he never attended any PSC meetings. However, SNB testified he never attended any meetings either.¹³⁶

190. Witness SGA was a Head of Department for an Office in the prefecture, in the same building where Nchamihigo worked. He was a good friend of Nchamihigo's and used to see him on a daily basis. Though SGA was not a PSC member and therefore did not attend regular PSC meetings, he testified that he was aware of them. SGA did, however, attend two extended meetings in 1994, one in April, and one in May chaired by the President of the Republic. He denied that Nchamihigo attended any regular or extended PSC meetings. He said that the meetings were held in the MRND secretariat or the Court of First Instance, and that about 40 to 60 people, including Prefect Bagambiki who chaired the meeting, *Bourgmestres*, religious representatives, and heads of services attended and that security issues were discussed.¹³⁷

191. Witnesses SCB and SCC were gendarmes stationed at the stadium. They testified that the prefecture officials, including Prefect Bagambiki, Lieutenant Imanishimwe, and Commander Munyarugerero, accompanied approximately 4,000 to 5,000 refugees to the stadium during the 15 April 1994 transfer. These witnesses maintained that Nchamihigo was not present.¹³⁸

192. Witness SBS was at Kamarupaka Stadium on 16 April 1994 at the same time as Prefect Bagambiki and the delegation of officials. According to SBS, people were being

¹³⁴ T. 29 August 2007 pp. 69-78 and T. 30 August 2007 pp. 4, 8-10 (Witness SBA).

¹³⁵ T. 29 August 2007 pp. 11-16, 77 and T. 30 August 2007 p. 76 (Witness SBA).

¹³⁶ T. 30 August 2007 p. 54 (Witness SNB, Closed Session).

¹³⁷ T. 23 April 2007 pp. 20-21, 24, 31-32 (Witness SGA).

¹³⁸ T. 2 May 2007 pp. 44-46, 60-62 (Witness SCB, Closed Session); T. 3 May 2007 pp. 34-35, 48-49 (Witness SCC, Closed Session).

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selected from the large group of refugees. SBS said that he did not see Nchamihigo there. However, under cross-examination he admitted that he did not know whether Nchamihigo was there or not. He admitted that there were over 7,000 people at the stadium and that he could not pay attention to everyone.¹³⁹

193. Witnesses SCB and SCC testified that, on 16 April 1994, some seven authorities came to Kamarupaka Stadium, including Prefect Bagambiki, Commander Munyarugerero and Prosecutor Ndorimana, arriving in four or five cars. SCB and SCC insisted that neither Nchamihigo nor Lieutenant Imanishimwe were part of the incoming group. They testified that Prefect Bagambiki said that the authorities had not come to harm the refugees but that members of the population outside were saying that amongst the refugees there were people who had been collaborating with the enemy and they had radios and guns, and the population may attack the stadium if they were not removed. According to these witnesses, the Prefect explained that those RPF accomplices had to be taken outside the stadium for interrogation purposes. SCB testified that the refugees applauded the Prefect, who then gave Commander Munyarugerero a list, from which he read aloud 17 names. Only 13 people came out. Neither SCB nor SCC could remember all the names on the list, but the names they did recall were consistent with the names recalled by Prosecution witnesses. SCB testified that there were already people in the vehicles waiting outside when the refugees were removed from the stadium, and that Baziruwaha boarded a vehicle with Commander Munyarugerero.¹⁴⁰

5.2.3 Deliberations

194. In relation to this allegation on killing at the Gendarmerie on 16 April 1994, the Chamber has carefully considered Nchamihigo's alibi that he was in his office all day, every day, and has concluded that little weight could be given to it.

195. The Chamber finds that little weight can be given to SNB's testimony that Nchamihigo did not attend any PSC meetings, given that SNB himself never attended any of the meetings and so at best he was relying on information he received from unspecified sources or making deductions. Likewise, SGA's blanket denial that Nchamihigo attended any PSC meetings cannot be relied on as he admitted that he only attended two meetings during the period from April to July 1994, and that he only had a vague recollection of the one he attended in April. Accordingly, neither was in a position to make such a statement, and both were exaggerating their knowledge.

196. Having admitted that he attended PSC meetings throughout April 1994, SBA's evidence has to be viewed with caution because he could be an accomplice to the crimes which AOY testified were planned during the PSC meetings, crimes for which Nchamihigo is indicted. The Chamber notes that SBA admitted that he issued false passports to high officials of the governing regime at the time, including Prefect Bagambiki and General Gratien Kabiligi, to facilitate their exile after the events of April 1994. SBA himself fled from Rwanda and has never returned. He has never been charged with any offence. He therefore has a personal interest in maintaining that no crimes were planned or committed during those meetings.

¹³⁹ T. 27 August 2007 pp. 15, 31 (Witness SBS).

¹⁴⁰ T.2 May 2007 p.46-48, 66 (Witness SCB, Closed Session); T. 3 May 2007 pp. 36, 50-52 (Witness SCC, Closed Session).

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197. AOY admitted that during the PSC meetings he attended, they planned to kill the Tutsi. He was an accomplice. The Chamber must therefore consider his testimony with caution in accordance with the established jurisprudence.

198. AOY is Hutu. He had been in the MRND and MDR parties before becoming a member of the PSD, and eventually siding with the power wing of that party. He is charged with genocide offences as a Category 1 offender before the ordinary courts of Rwanda. He has pleaded guilty. At the time of his testimony, he had been in prison for nine years, his trial was not completed and he was awaiting judgement. He testified that as he understood the law, people convicted of genocide in Category 1 would never be released from prison. He explained that his motive for testifying was not to gain any advantage, but to aid justice by telling the truth.

199. AOY admitted that he had been a prominent participant in planning and executing the genocide in Cyangugu and that many people died as a result of orders he gave in his commune. He admitted that when he was arrested he tried to conceal the role that he and other authorities had played and made a number of false statements to the judicial authorities in Rwanda and to Tribunal investigators before finally confessing his guilt. Some of these false statements were inconsistent with his testimony in this trial. He confessed that his behaviour was inconsistent with principles to which he had previously been committed, and he was now seeking forgiveness and was willing to facilitate reconciliation by telling the truth. AOY did not lessen his own criminal responsibility. Even though he has not yet been sentenced, as a confessed Category 1 offender, there is no reason to conclude that the penal consequences of any sentence that may be handed down could be lessened by his testimony against Nchamihigo. The Chamber has not discerned any motive why AOY would falsely implicate Nchamihigo.

200. Although no other witness testified about Nchamihigo's presence at the PSC meeting of 11 April 1994, AOY's testimony was supported in many material particulars. Defence witnesses corroborated AOY's testimony on the content of PSC meetings and on the fact that extended PSC meetings took place in April 1994. However, evidence about Nchamihigo's attendance and the taking of the decisions in which they planned the genocide was not corroborated. The Defence did not dispute that the PSC instructed the removal of the refugees.

201. The Defence found some minor discrepancies in AOY's testimony, and inconsistencies with his statements prior to his confession. These included the issue of whether the meeting of 11 April took place at the MRND Palace or the Court of First Instance. The Chamber considers that even if AOY was wrong about the location of the meeting, this would not undermine its belief that he attended the meeting and was truthful in his description of what happened at the meeting. Similarly, AOY had testified that Prosecutor Ndorimana was absent from PSC meetings because he was ill for a long period. There was evidence that he was seen doing things. For example, he was at the stadium. The Chamber does not consider that AOY was testifying about the health of Prosecutor Ndorimana, but was providing a reason for his absence from the related meetings.

202. The Defence contended that the Prosecution failed to prove that Nchamihigo or anyone else prepared summonses or arrest warrants and that therefore, AOY's testimony could not be believed. The Chamber accepts that there was no evidence that there were arrest warrants. However, it was not disputed that there was a list of names of the people who were to be removed from the stadium. The list was in the possession of Prefect Bagambiki

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who explained to the refugees that it listed people suspected of collaborating with the enemy and that it was the PSC's decision that they should be removed from the stadium. There was no evidence that Nchamihigo prepared the list or signed it. The evidence of both Prosecution and Defence witnesses demonstrates that the use of the list of names effectively secured the removal of the persons on the list from the stadium and that they were killed. The Chamber is satisfied that, despite the absence of evidence about summonses or arrest warrants, the evidence about the list is consistent with AOY's testimony that the PSC had devised and executed a strategy to get the selected individuals out of the stadium to a location where they could be killed.

203. In addition, AOY's demeanour was impressive. He was forthright and did not attempt to minimise his responsibility. He admitted his full complicity with Nchamihigo and others in planning the genocide. The Chamber believed his testimony beyond reasonable doubt and is satisfied that Nchamihigo was present at the PSC meeting on 11 and 14 April where plans were made for the killing of influential Tutsis.

204. It was not disputed that 4,000 to 5,000 refugees were transferred from Cyangugu Cathedral to Kamarampaka Stadium on 15 April 1994. The refugees were mainly Tutsi, but some Hutu, including Baziruwaha, were among them. The Chamber believed Baziruwaha's testimony that Nchamihigo was present at the cathedral when the refugees were being moved to Kamarampaka Stadium.

205. The Defence also conceded that on 16 April, the prefecture authorities went to the stadium and, under Prefect Bagambiki's instructions, Commander Munyarugerero read out names of people to be removed from the stadium. These included Baziruwaha, Gapfumu, Ananie Gatake, Albert Mugabo, Albert Twagiramungu, Trojean Nzisabira, Georges Nkusi, Bernard Nkara, Remy Mihigo and Apian Ndorimana. Apart from Baziruwaha, all of those whose names were called out were Tutsi.¹⁴¹

206. Nchamihigo, however, denied that he participated in the transfer of the refugees from the cathedral to the stadium or that he was ever present at the stadium. He maintained that he played no role in the removal of the refugees from the stadium. He relied on the evidence he gave in support of his alibi which the Chamber has already indicated. Having carefully considered such evidence, the Chamber does not believe Nchamihigo. Moreover, the Chamber has already found that Nchamihigo was seen outside his office on 15 April 1994 during the massacres at Gihundwe sector, as well as giving orders to kill Jean de Dieu Gakwandi and Emilien Nsengumuremyi and others over the same period.¹⁴²

207. The Chamber has considered the testimony of Baziruwaha, and despite the fact that she was a political opponent of Nchamihigo, the Chamber has found that she was generally credible and had no motivation to invent a story to incriminate him. There were some inconsistencies between her testimony and a previous statement she had made to a human rights organisation in September 1994. The original version of this document was not produced into evidence. Baziruwaha admitted that the interview took place but denied seeing any written record of the interview since 1994. There was no indication on the face of the document as to who was present at the time the statement was recorded or who recorded it.

¹⁴¹ T. 15 January 2007 p. 75 (Marianne Baziruwaha); T. 17 January 2007 p. 8 (Witness LCR); T. 29 January 2007 p. 51 (Witness LM); Exhibit P-36.

¹⁴² See LAG and LDC's testimonies in Section 3: Individual Killings, and Section 6: Attacks on Places of Refuge.

Moreover, it was written in the third person. Although she recognised her signature on the last page and her initials on some pages, she did not admit that it was a complete and accurate record of what she had said. However, she admitted that when she made a list of the officials who participated in transferring the refugees from the cathedral to the stadium, she did not include Nchamihigo. The Chamber does not consider this omission to mean that her testimony is a recent invention, as Nchamihigo was mentioned in other statements she made as early as 1996, long before there were any proceedings against him.

208. Baziruwaha's story was supported by LM, LBB and LCR in several respects. No evidence was adduced to contradict the main thrust of her story. Several witnesses, including Nchamihigo, confirmed her presence at the stadium, the fact that her name was on the list, and the fact that she was removed from the stadium. However, witnesses LM, LBB, and LCR did not recall seeing Nchamihigo at the cathedral on 15 April 1994. Given that the events occurred over a decade ago, and given the large number of people present, the Chamber does not consider that failure to recall Nchamihigo's presence is evidence that he was not there. The Chamber believes Baziruwaha and finds that Nchamihigo was present at Cyangugu Cathedral when the refugees were being transferred to the stadium.

209. Witness LBB, a Tutsi, had taken refuge from attacks at Cyangugu Cathedral. Her parents and Nchamihigo were friends and they had lived close to each other and visited each other's homes.¹⁴³ She knew him well. Witness LM, worked at the Cyangugu Court of First Instance in 1994, and knew Nchamihigo well. Her husband was a Tutsi intellectual who held high office. On 7 April 1994 at about 5h00, soldiers arrived at their house and said that Prefect Bagambiki had ordered that her husband be put to death. They gave the soldiers money, their television set, music equipment and other items and were allowed to flee eventually arriving at the cathedral as refugees. Witness LCR, an elderly Tutsi, was on the list of those to be killed, and knew Nchamihigo well. He testified that he escaped from the *Interahamwe*, spent a night in the forest and sought refuge at the cathedral.

210. All of these witnesses recall that Nchamihigo was at the stadium on 16 April 1994. The Defence suggests that LBB and LCR's testimonies should be disregarded because LM recalled that it was Lieutenant Imanishimwe who sent soldiers to drag Nzisabira from his hiding place, and not Nchamihigo. The Chamber does not consider that these two recollections are necessarily inconsistent with each other. The Defence also contends that LBB's admission that in her pre-trial statement to Tribunal investigators, she failed to mention certain particulars such as Nchamihigo discovering Nzisabira, who tried to hide after hearing his name called out at the stadium on 16 April 1994, amount to inconsistencies which impinge on her credibility. After reviewing the prior statement, the Chamber accepts that there was reference to the presence and activity of Nchamihigo at the stadium and that the omission of details is a result of the manner in which the interview was conducted.

211. LCR's testimony was criticised because he said that his name was on the list and that he escaped detection by hiding under the skirts of ladies. The Defence suggested that LCR could therefore not see what was happening. LCR explained how he managed to observe what was going on while concealing himself. Considering that his life and the life of his children were at stake, it is credible that he would have maintained a look out. It was also suggested that there was an inconsistency because LCR had not mentioned in his prior statement that Nchamihigo found Nzisabira. However, LCR had always maintained Nchamihigo's

¹⁴³ T. 10 January 2007 p. 8 (Witness LBB, Closed Session).

involvement in the killing of his children and the mere omission of detail in the statement is not evidence of prevarication.

212. The Defence also suggested that LCR and LBB travelled together and may have worked out their respective testimonies together. No evidence was adduced to support this argument. The Chamber rejects the allegation that LCR and LBB concerted their testimony together. While it is true that LCR was rather belligerent during cross-examination and was intent on mentioning Nchamihigo even when it involved answering something that was not asked, the Chamber does not attribute a motive to falsely implicate Nchamihigo. The Defence neither disputed that LCR was at the stadium, nor that his name was on the list to be removed, nor that his sons were killed. The Chamber considers that those factors explained his hostility to Nchamihigo in the courtroom.

213. The Chamber found that LM, LBB and LCR were all credible and reliable witnesses. The Chamber believed their testimony. After considering the evidence as a whole, the Chamber finds beyond reasonable doubt that Nchamihigo participated in the removal of some 15 Tutsi from Kamarampaka Stadium.

214. BRK confessed to being one of the killers of the refugees removed from the stadium. He is an accomplice and his testimony must therefore be viewed with caution. Having cautiously considered the circumstances under which he is testifying in this case and his evidence, the Chamber has concluded that he does not have any motive or incentive to falsely incriminate Nchamihigo.

215. The Defence contends that BRK's description of events when he arrived at the stadium is not consistent with the testimony of other reliable Prosecution witnesses. The Chamber accepts that no one else testified that Nchamihigo had a megaphone and called out names from a list at the stadium. His evidence about this could have been exaggerated or invented to further implicate Nchamihigo. Several witnesses testified that Prefect Bagambiki and Lieutenant Imanishimwe had gone inside the stadium. The Chamber notes that even though this aspect of BRK's testimony could not be accepted, other aspects of his testimony were supported in many respects.

216. In his testimony, Nchamihigo denied knowing BRK, but confirmed that he was on the list of suspects, prepared by Commander Munyarugerero, for killing the people removed from the stadium. This supports BRK's admission that he was present and was one of the killers. In addition, although Nchamihigo denied going to the Mutongo commercial centre on that day, in his evidence he said that Sub-Prefect Munyangabe did go there to pacify the population. BRK testified that Sub-Prefect Munyangabe was there, but with Nchamihigo.¹⁴⁴

217. BRK's testimony that *Interahamwe* were outside the stadium to attack those removed was supported by LM, who heard the shouting, as well as by Baziruhiha, who saw them. Several witnesses testified to the fact that the killings took place. SBA testified that Commander Munyarugerero reported the killings to the PSC. AOY testified that Prefect Bagambiki telephoned him to confirm that the killings had taken place as planned. Nchamihigo himself testified that Prosecutor Ndorimana informed him that the people

¹⁴⁴ T. 19 September 2007 pp. 29, 67-69 (Siméon Nchamihigo).

removed from the stadium had been brought to the Gendarmerie and murdered and ordered that arrest warrants be issued for the perpetrators.¹⁴⁵

218. Several witnesses confirmed that Gapfumu's latrine was used to dispose of the bodies. LBB, LM and LCR gave evidence about the bodies being exhumed. Relatives testified that bodies retrieved from the latrine were identified, and mementos such as a ring were found.¹⁴⁶ They were identified as the persons removed from the stadium on 16 April 1994. Baziruwiha's testimony that Nchamihigo participated in the discussion where she was offered her life if she would lie to the refugees confirms his participation in the scheme. In addition to supporting BRK's testimony, it is also consistent with AOY's testimony about the strategy to make the bulk of the refugees feel protected while the authorities removed and killed those they selected. BRK had confessed to the judicial authorities in Rwanda that he was one of those killers, quite independently of any prosecution against Nchamihigo, and accepts the penal consequences of his conduct. The Chamber concludes that although there were no other witnesses to the actual killings at the Gendarmerie, BRK's evidence was supported in several aspects. The Chamber believes BRK's account of the killings at the Gendarmerie on 16 April 1994.

219. The Chamber is satisfied beyond reasonable doubt that Nchamihigo and other members of the PSC, contrived a strategy to kill influential Tutsi at PSC meetings on 11 and 14 April 1994. In accordance with the plan and under the leadership of Prefect Bagambiki, on 15 April 1994, Nchamihigo and other PSC members transferred most of the refugees at Cyangugu Cathedral to Kamarampaka Stadium. For health reasons, Gapfumu and Ananie Gatake stayed behind. Then on 16 April 1994, Prefect Bagambiki instructed the Commander Munyarugerero to read out names from a list prepared by the PSC of people to be removed from Kamarampaka Stadium.

220. The instructions were carried out and approximately 12 people, including Baziruwiha, were removed from the stadium. Once outside, they joined four others, including Gapfumu and Ananie Gatake, who were already there, awaiting in vehicles. The refugees were transferred to the Gendarmerie, except for Baziruwiha who was at Commander Munyarugerero's home. In the meantime, Nchamihigo arranged for *Interahamwe* and other civilian attackers to come to Kamarampaka Stadium to assist in killing those refugees. Upon arrival, the attackers were instructed to go to the Gendarmerie. There, all 16 refugees except for Baziruwiha, were Tutsi and were killed at the Gendarmerie in the presence of Nchamihigo, Lieutenant Imanishimwe, and Prefect Bagambiki. Nchamihigo ordered the killers to take the corpses to Mutongo sector and bury them in pit latrines at Gapfumu's house, one of the victims. The Chamber is satisfied that Nchamihigo instigated and aided and abetted these killings.

221. With respect to the allegation of mutilation, the Prosecution conceded,¹⁴⁷ and the Chamber finds, that no evidence has been led on the removal of body parts or organs.

¹⁴⁵ T. 19 September 2007 p. 26 (Siméon Nchamihigo).

¹⁴⁶ T. 10 January 2007 p. 16 (Witness LBB); T. 17 January 2007 pp. 5, 8 (Witness LCR, Closed Session); T. 29 January 2007 pp. 52-53 (Witness LM).

¹⁴⁷ Prosecution Closing Brief, para. 652.

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5.3. Further Killings on 18 April 1994

5.3.1. Indictment

222. The Prosecution charges Nchamihigo with Genocide at paragraph 43 of the Indictment. In this paragraph, it is alleged that on or about 18 April 1994, Nchamihigo returned to Kamarampaka Stadium with a PSC delegation to remove another 20 listed individuals from the stadium. Some people of Tutsi origin, including Antoine Nsengumuremyi and Félicien, who were not on the list, were nevertheless removed. All those who were taken out of the stadium that day were allegedly killed, and their bodies thrown into the Gataranga River or into mass graves. Nchamihigo is alleged to have aided and abetted these killings.

5.3.2. Evidence

223. Prosecution Witness LBB testified that the day after the first group of refugees were removed from Kamarampaka Stadium, Nchamihigo and Prefect Bagambiki came back with other officials she did not know. Nchamihigo moved about the stadium looking at the people in the stands. Georges Nkusi was seated to LBB's left. LBB saw Nchamihigo telling a soldier to take Georges Nkusi away. Two soldiers came and dragged Nkusi outside the stadium. LBB recalled the authorities called out other people, such as an old man named Kanyamara and Gatete.¹⁴⁸

224. Prosecution Witness LCR testified that the second time Nchamihigo came to Kamarampaka Stadium, he was with the same officials as the first time, and he came looking for Nkusi. Upon finding Nkusi, Nchamihigo asked two gendarmes to take him outside. LCR testified that Antoine Nsengumuremyi and his friends, including Evariste and Joseph were also removed. All persons removed that day were later found dead in a mass grave by the roadside between Kyete and Gihango.¹⁴⁹

225. Defence Witnesses SCB and SCC testified that they did not see any officials at Kamarampaka Stadium calling out names or removing refugees.¹⁵⁰

5.3.3. Deliberations

226. The Chamber recalls that LBB and LCR were found to be credible and reliable witnesses in relation to the removal of refugees from the stadium on 16 April 1994. However, their evidence in relation to a second visit to remove more refugees is unclear. Even if it could be considered reliable, no causal link has been established linking the alleged removal of refugees to the alleged subsequent killings. The Prosecution acknowledges that no conviction could be entered on this allegation because no direct evidence was adduced as to the manner in which the people named in the relevant paragraphs of the Indictment were killed.¹⁵¹

¹⁴⁸ T. 11 January 2007 pp. 11-14 (Witness LBB).

¹⁴⁹ T. 17 January 2007 pp. 5, 8, 19-20 (Witness LCR).

¹⁵⁰ T. 2 May 2007 p. 48 (Witness SCB, Closed Session); T. 3 May 2007, pp. 39-40 (Witness SCC, Closed Session).

¹⁵¹ Prosecution Closing Brief, para. 689.

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6. ATTACKS AT PLACES OF REFUGE

6.1. Introduction

227. The Prosecution charges Nchamihigo with committing Genocide and Extermination as a Crime against Humanity at paragraphs 20(a), 20(b), 28, 32 through 35, 57, 60, 61, and 63 of the Indictment. In these paragraphs, it is alleged that Nchamihigo ordered or instigated attacks against and killings of Tutsi and Hutu political opponents who had sought refuge at various places, including Shangi parish, Hanika parish, Nyamasheke parish, Nkanka parish, Mibilizi parish and hospital, Nyakanyinya school, and Gihundwe sector. Nchamihigo is alleged to have personally led all of these attacks, except the attack at Nkanka parish.

228. The Prosecution also charges Nchamihigo with committing Genocide at paragraph 37 of the Indictment by ordering or instigating the *Interahamwe* in his area to participate in a number of attacks to kill Tutsi who had sought refuge at Bisesero.

229. During the presentation of its case, the Prosecution did not adduce any evidence about killings at Nkanka parish.

6.2. Shangi Parish

6.2.1. Indictment

230. The Prosecution charges Nchamihigo with committing Genocide under paragraphs 20(a) and 28 of the Indictment, and Extermination as a Crime against Humanity under paragraph 57. In these paragraphs, it is alleged that on or about 14 April 1994 at a PSC meeting, Nchamihigo reported that he was facing difficulties in attacking Shangi parish and requested weapons such as rifles and grenades to assist in killing the Tutsi who had sought refuge there. Nchamihigo is alleged to have distributed the weapons obtained to *Interahamwe* and to have ordered or instigated them to kill the Tutsi at Shangi parish, which they did sometime in April 1994 with Yussuf Munyakazi and others. Nchamihigo is also alleged to have personally led this attack.

6.2.2. Evidence

Prosecution Witness AOY

231. Witness AOY testified that Nchamihigo attended PSC meetings on 11 and 14 April 1994. AOY, who was present at both meetings, testified that at the 11 April 1994 meeting, they planned the massacre of Tutsi throughout Cyangugu prefecture and assigned various people to be in charge of certain areas throughout the prefecture. AOY recalled that Callixte Nsabimana and Nchamihigo were appointed to supervise the massacres in Gisuma and Gafunzo communes.

232. Then on 14 April 1994, Nchamihigo presented a progress report in his capacity as a zone supervisor for Gafunzo (in which Shangi parish was located), and requested additional weapons and/or *Interahamwe* to kill Tutsi who were putting up a resistance at the parish. AOY indicated that Emmanuel Bagambiki (Prefect of Cyangugu) instructed Lieutenant Samuel Imanishimwe to sort out the weapons problem, and it was decided that the

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Interahamwe of Bugarama under the command of Yussuf Munyakazi would be asked to intervene.¹⁵²

233. AOY testified that the 14 April 1994 PSC meeting's decision was scheduled for implementation around 19 or 20 April 1994, and that although he was not personally present at the massacre, he subsequently learned of what happened at Shangi parish. In his official capacity, AOY would receive information about the implementation of the plans for massacres he helped prepare. However, AOY said he did not physically attend to the massacres because, as an authority, it was unnecessary for him to do so.¹⁵³

Prosecution Witness BRF

234. Witness BRF and Nchamihigo were neighbours. BRF testified that sometime in April 1994, a large convoy of *Interahamwe*, including Munyakazi, came to BRF's village from Bugarama. After some discussion between Munyakazi and Nchamihigo in Nchamihigo's house, BRF said Munyakazi's *Interahamwe* continued on to Bisesero. BRF says he knows this because the *Interahamwe* returned to BRF's village the following day boasting about having launched attacks there. According to BRF, Munyakazi and Nchamihigo did not go to Bisesero, but instead stayed behind to prepare food for the *Interahamwe* to eat upon their return, which they then ate in a secondary school.¹⁵⁴

235. BRF testified that the following morning he saw Nchamihigo take his vehicle and, alongside Munyakazi go to Shangi parish. They were accompanied by the *Interahamwe* of Bugarama, who did not make any secret of their destination before leaving, and who were singing about where they were headed. When they returned that same evening, BRF heard the *Interahamwe* boasting about having killed the refugees at Shangi parish, and he noticed they had looted property with them.¹⁵⁵

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236. Nchamihigo did not deny the occurrence of a massacre at Shangi parish. In fact, he offered knowledge that in the Shangi area there was a certain Pima who engaged in attacks.¹⁵⁶

237. However, Nchamihigo denied having attended or that he had ever heard of the meeting of the 14 April 1994 PSC meeting in which he allegedly called for an intervention to help people who had failed to exterminate the Tutsi at Shangi parish. He testified that he spent that day in the office and did not see Lieutenant Imanishimwe, thereby never receiving any weapons from him, nor distributing any weapons to the *Interahamwe*. He further denied having any connection to Munyakazi or to any *Interahamwe* under the latter's command.¹⁵⁷

¹⁵² T. 18 January 2007 pp. 32-35 (Witness AOY) and T. 19 January 2007 p. 6 (Witness AOY, Closed Session). According to AOY, the 11 April 1994 PSC meeting took place at the MRND Palace on Cyangugu hill and started at 8h30.

¹⁵³ T. 18 January 2007 pp. 35, 47-48 (Witness AOY); T. 19 January 2007 p. 6 (Witness AOY, Closed Session).

¹⁵⁴ T. 24 January 2007 pp. 5, 14-15, 33 (Witness BRF).

¹⁵⁵ T. 24 January 2007 pp. 15-16, 9-29, 33 (Witness BRF).

¹⁵⁶ T. 21 September 2007 p. 38 (Siméon Nchamihigo).

¹⁵⁷ T. 18 September 2007 pp. 44-45 and T. 19 September 2007 p. 21 (Siméon Nchamihigo).

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Defence Witness SCL

238. Witness SCL had relatives who had taken refuge at Shangi parish, located a 15-minute walk from where he lived in 1994. He testified that during the month of April 1994, he went to Shangi parish two or three times per day to provide food to the refugees, of which he estimates there were about 3,500 to 4,000. SCL said he witnessed several attacks on Shangi parish during the month of April, beginning with minor attacks involving looting of property, and then eventually culminating in a large-scale massacre, which he places around 28 or 29 of April. He estimated that there were about 1,500 attackers who came on foot from a variety of communes and who were led by a notorious killer called Pima.¹⁵⁸

239. SCL never saw Nchamihigo in Shangi between April and July 1994, nor did he hear anyone say Nchamihigo had been seen there. SCL knew who Nchamihigo was because Nchamihigo would come to visit his in-laws, who lived in the SCL's area.¹⁵⁹

Other Defence Witnesses

240. Witness SFF was an MDR political activist who lived about 15 kilometres from Shangi parish in 1994. He said that after President Habyarimana's death, he heard people speaking about killings of Tutsi who had sought refuge at the parish and that a notorious killer called Pima was involved. According to what he was told, SFF says there were two large-scale attacks on Shangi parish: one between 15 and 20 April 1994, and another on around 28 or 30 April 1994. SFF received his information from speaking with people in the market near Shangi, as well as with survivors in the hospitals and people who participated in the attacks. Although SFF was not present at the attacks, he attended various Gacaca trials where he heard people testify about the events at Shangi parish, but never heard Nchamihigo's name mentioned.¹⁶⁰

241. To dispute that any weapons could have been given to Nchamihigo by Lieutenant Imanishimwe, Witnesses SCF, SCK, and ZSD, soldiers stationed at Karambo military camp in April 1994,¹⁶¹ testified that no weapons were in stock at the Camp's armoury in 1994 because all armaments had already been taken to the warfront and that only very limited ammunition was available. The only weapons there were the ones individually issued to each soldier. None of these witnesses ever saw Nchamihigo enter the military camp, and they testified that if he ever did, they would have known about it.¹⁶²

6.2.3. Deliberations

242. Under cross-examination, AOY stayed firm in his testimony, stating unequivocally that the massacres at Shangi parish were implemented under the orders and according to the plans of those present at the 14 April 1994 meeting, and that they saw to it that their orders were followed. He insisted that weapons were distributed according to the decisions taken on 14 April 1994, that those weapons were used to kill people at Shangi parish, and that the *Interahamwe* of Bugarama under the command of Munyakazi were ordered to conduct the

¹⁵⁸ T. 5 September 2007 pp. 5-6 (Witness SCL, Closed Session).

¹⁵⁹ T. 5 September 2007 pp. 8, 14-15 (Witness SCL).

¹⁶⁰ T. 3 September 2007 pp. 45-48 (Witness SFF).

¹⁶¹ T. 30 April 2007 p. 10 (Witness SCF, Closed Session), p. 52 (Witness SCK, Closed Session); T. 10 September 2007 p. 53 (Witness ZSD, Closed Session).

¹⁶² T. 30 April 2007 pp. 19-20 (Witness SCF); T. 30 April 2007 pp. 34, 37 (Witness SCK); T. 10 September 2007 pp. 25-27 (Witness ZSD, Closed Session).

massacre. AOY takes full responsibility for his involvement and participation in the planning and subsequent implementation of this massacre.¹⁶³ AOY's testimony is considered in more depth elsewhere in this Judgement, where the Chamber explains that it believes AOY.¹⁶⁴ Consequently the Chamber finds it established that the attack on Shangi parish occurred as planned in the PSC meeting on 14 April 1994, and weapons were distributed while Munyakazi and his *Interahamwe* were ordered to conduct the attack.

243. BRF does not explicitly state how he knew Nchamihigo went to Shangi parish the day Munyakazi's *Interahamwe* went there; he can only assume it. BRF heard the *Interahamwe* say they were going to Shangi parish at the same time that he saw Nchamihigo leave with them and go in the same direction. While it may be reasonably inferred that Nchamihigo went to Shangi parish with Munyakazi's *Interahamwe*, it is also possible that Nchamihigo went somewhere else. Moreover, in light of AOY's testimony that as an authority, he did not physically attend to the massacres because it was unnecessary for him to do so, it may also be reasonably inferred that Nchamihigo, also an authority, did not physically attend the massacres at Shangi parish. With more than one reasonable inference capable of being drawn from BRF's evidence in this respect, the benefit of the doubt must go to Nchamihigo. As a consequence, the Chamber finds that the evidence of BRF is not sufficient to prove beyond reasonable doubt that Nchamihigo went to Shangi parish with Munyakazi's *Interahamwe*.

244. Nonetheless, the Chamber finds the evidence of BRF generally credible. He spent a long time in prison before being released because his claims that his identity had been mistaken for someone else with the same name were eventually accepted. The Chamber was impressed with his demeanour. The Chamber believes BRF lived in the same neighbourhood as Nchamihigo, and in the vicinity of the Kucyapa roadblock, which put BRF in a position to observe the movements of Nchamihigo and Munyakazi.¹⁶⁵

245. With respect to BRF's testimony on the *Interahamwe* boasting and singing about their activities, other credible and reliable witnesses have testified that those who participated in killings talked openly about them. The Chamber concludes that BRF was truthful and considers that the information he received from the *Interahamwe* boasting that they attacked Shangi parish is reliable.

246. Witnesses called by the Defence confirmed that the parish was attacked in large numbers and that many Tutsi were killed, which was consistent with AOY's evidence. Defence witnesses, including Nchamihigo, also referred to Pima as a prominent killer and declared that they never saw or heard Nchamihigo's presence during the attacks or any other time in Shangi. The Chamber considers that the testimony about Pima's presence and Nchamihigo's absence during the massacres fails to rebut the evidence that Nchamihigo was involved in the killings. The fact, even if true, that Defence witnesses did not hear mention of Nchamihigo's name has no bearing on the role he played at the PSC meeting.

247. The Chamber finds beyond reasonable doubt that, at the PSC meeting on 11 April 1991, Nchamihigo was appointed zone supervisor over an area which includes Shangi. In that capacity, on 14 April 1994, Nchamihigo requested the PSC to provide weapons and *Interahamwe* to assist in killing the Tutsi refugees at Shangi parish. The PSC directed Lieutenant Imanishimwe to provide Nchamihigo with weapons, and Munyakazi to assist with

¹⁶³ T. 18 January 2007 pp. 47-48 and T. 19 January 2007 pp. 6-7 (Witness AOY, Closed Session).

¹⁶⁴ See Section 5: Kamarampaka Stadium Events.

¹⁶⁵ T. 24 January 2007 pp. 4-10 (Witness BRF, Closed Session).

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his Interahamwe in the killing. The Chamber did not find any evidence that the weapons were provided. But it has been proven beyond reasonable doubt that Munyakazi and his Interahamwe went to Nchamihigo's house and were nourished by him, the night before they launched the attack on Shanghi parish.

248. There was no evidence to support the allegations at paragraphs 28 or 57 of the Indictment that (1) Nchamihigo personally led the attacks, or (2) Nchamihigo personally killed people during these attacks.

6.3. Hanika Parish

6.3.1. Indictment

249. The Prosecution charges Nchamihigo with committing Genocide at paragraphs 28 and 33 of the Indictment, and Extermination as a Crime against Humanity at paragraph 57. In these paragraphs, it is alleged that on or about 12 April 1994, Nchamihigo, in collaboration with others, ordered or instigated *Interahamwe* and Hutu civilians to attack and kill all Tutsi refugees at Hanika parish, resulting in the massacre of approximately 1,500 people. He is alleged to have personally led this attack.

6.3.2. Evidence

Prosecution Witness BRN

250. Witness BRN testified that he and Nchamihigo both attended an afternoon meeting convened by the Sub-Prefect of Rwesero for members of the public on 11 April 1994 near Hanika parish in Gatare commune. BRN recalls that the purpose of this meeting was to figure out how to get the Tutsi who had taken refuge at Hanika parish to leave the parish. BRN testified that both the Sub-Prefect and Nchamihigo took the floor and stated that the refugees had to leave the parish because they could create a security risk. After Nchamihigo and the Sub-Prefect left that afternoon, some soldiers tried to attack Hanika parish, but the Tutsi refugees repelled them. BRN knew some of these soldiers, one of whom was his elder brother. According to BRN, because they had failed to drive out the Tutsi refugees from the parish on 11 April 1994, the soldiers told the civilians to return the next day when the leaders and authorities would be there to forcibly evict the refugees, whose property would then be available for the civilians to loot.¹⁶⁶

251. BRN testified that Nchamihigo and the Sub-Prefect, accompanied by soldiers, returned to Hanika parish at around 13h00 on 12 April 1994. BRN said that Nchamihigo asked the civilians what they were doing there, and then told them that if they did not hurry up and kill the refugees, they would be the ones to be slaughtered. BRN testified the attackers then surrounded the church according to Nchamihigo's order and began killing the refugees. He recalled seeing Nchamihigo give the soldiers four grenades to add to those they already had, and they used them all in the attack. He asserted that some 1,500 refugees were killed at Hanika parish that day, and that when returning from Bisesero, Nchamihigo gave the soldiers money to buy everyone beer.¹⁶⁷

252. BRN then explained that a number of refugees who had managed to escape the 12 April 1994 massacre returned to the parish, and that as a result, the Sub-Prefect convened

¹⁶⁶ T. 22 January 2007 pp. 65-68 (Witness BRN).

¹⁶⁷ T. 22 January 2007 pp. 68-69 (Witness BRN).

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another meeting on 19 April 1994 for the members of the population, declaring that the refugees needed to be driven out of Hanika parish again. BRN testified that Nchamihigo also took the floor, similarly confirming that the refugees who had returned to the church were causing insecurity, were enemies of the state, and needed to be chased away. BRN and the other members of the public followed these orders immediately and killed the remaining refugees at Hanika parish. After 19 April 1994, BRN never saw Nchamihigo again.¹⁶⁸

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253. Nchamihigo does not deny that a massacre occurred at Hanika parish, and recalls that he had heard the parish was attacked on 11 April 1994. To rebut BRN's testimony, Nchamihigo raised an alibi. On 11 April 1994, Nchamihigo said that he was in his office all day. On 12 April 1994, Nchamihigo recalled that he came to the office around 8.00 am with Prosecutor Ndorimana. He prepared for a hearing scheduled for that day. Around 10.00 am, he left his office to check whether the hearing would take place. Having been told that the hearing should be postponed he came back to his office and was requested to assist some Belgian nuns to cross the border to Bukavu. He was then dropped to Rusizi I border around 12.00 am and met the nuns who came in their car driven by a prefecture driver, Fashaho. He was requested to drive the car because the driver did not have his license and could not therefore drive outside of the country. He took the nuns for the custom procedures, the vehicle was checked, on both sides of the border, and they went to the Pères Blancs noviciate to explain the purpose of their trip. From there he went to get something to eat, and search in vain for a spare part of his car. He crossed the border at the same place and arrived in Rwanda around 4.30 pm. Fashaho, the driver, was waiting at Rusizi I, took the car and dropped Nchamihigo to his office. Nchamihigo reported to Prosecutor Ndorimana on his trip, and they closed the office around 5.00 pm, and Prosecutor Nodrimana gave him a lift back home.¹⁶⁹ Nchamihigo estimated the distance between the border post for Bukavu and Hanika parish to be around 66 kilometres, and that it would take between 1.5 to 2 hours to travel the distance, which he could not do due to his movements on 12 April 1994 as he detailed it. He also contested BRN's testimony that he returned to Hanika on 19 April 1994. Nchamihigo explained that this could not have happened because Gatware commune had a *Bourgmestre* who was in charge, and Sub-Prefect Kamonyo could not have left Cyangugu to go to Gatware to hold a meeting as if the *Bourgmestre* did not exist there. Nchamihigo testified in detail about his schedule on the relevant dates.¹⁷⁰

Defence Witnesses RLN and SNB

254. Witness RLN is one of the Belgian sisters Nchamihigo assisted in crossing the border into Zaire on 12 April 1994. She testified that upon hearing about the massacre on 11 April at Hanika parish where there was a community of sisters, she became concerned about the gravity of the situation and tried to contact the closest authorities. On the night of 11 April, she spoke over the telephone with Nchamihigo, who advised her to leave the country immediately. The following day, RLN and another sister made their way to the border with Bukavu, where they met Nchamihigo, who took them across the border sometime between 11h00 and 12h00. After dropping the nuns off at their destined novitiate, 15-20 minutes from the border, RLN testified that Nchamihigo left to return to Rwanda sometime around 14h00 or 15h00; she conceded that it could even have been as early as 13h00. Witness SNB confirmed

¹⁶⁸ T. 22 January 2007 p. 70 (Witness BRN).

¹⁶⁹ T. 19 September 2007 pp. 10-12 (Siméon Nchamihigo).

¹⁷⁰ T. 19 September 2007 pp. 10-16 (Siméon Nchamihigo).

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that Nchamihigo assisted the sisters to cross the border, but that such a mission could not have taken more than two hours to accomplish.¹⁷¹

Defence Witness SCU

255. Witness SCU lived a 10-minute walk from Hanika parish in 1994. He was a close friend of Nchamihigo's and his daughter was living with Nchamihigo in April 1994. He estimates there were between 2,000 and 3,000 refugees at the parish, including some of his in-laws and neighbours whom he would visit to bring them food. SCU recalls that on 11 April 1994, there was an attack on the parish, which started in the afternoon around 13h00 and lasted until around 18h00; he was able to witness this from his workshop. The following morning, he went back to the parish and estimates there were 1,000 to 2,000 corpses.¹⁷²

256. He testified that he was never aware of any meeting on the morning of 11 April near Hanika parish, and that it would have been impossible for such a meeting to take place without his knowledge. He further testified that after 11 April there were no further attacks on Hanika parish, that he did not see Nchamihigo on either 11 or 12 April, and that Nchamihigo would not have come to Gatware without greeting him. Nor did he hear from anyone that Nchamihigo allegedly participated in the attack on 11 April or was in Gatware at the time. SCU said he only saw Nchamihigo twice between 6 April and July 1994 – once at the end of April and once at the end of May.¹⁷³

Other Defence Witnesses

257. RNN was a resident of Gatware commune in April 1994 and lived approximately 4 kilometres away from Hanika parish. He recalled massacres of Tutsi refugees having occurred at the parish around four or five days after President Habyarimana's death, but he was not an eyewitness to the event. He heard the explosion of grenades on the first day of the attack. During the events of April to July 1994, RNN never saw Nchamihigo in Gatware commune, nor did he hear that Nchamihigo had ordered the attack on the parish. RNN went into exile in July 1994 and returned to Rwanda two years later. He was arrested and detained for some time while being questioned about whether he was involved in the attacks on Hanika parish. He maintained that he was not involved and was subsequently released.¹⁷⁴

258. Witness SCV was a resident of Gatware commune in 1994. Apart from the fact that his parents were Nchamihigo's neighbours, SCV does not claim to have any special relationship with Nchamihigo. SCV testified that on 11 April 1994, he was an eyewitness to the attack on Hanika parish. Sometime between 12h30 and 14h00 that day, he heard many civilians on their way to the parish, shouting that the Tutsi there had attacked them. He and others who were in their homes rushed out to follow them and see what would happen. When they reached Hanika parish around 13h00 or 14h00, SCV estimates there were around 1,500 assailants. When SCV left the scene of the attack at around 16h00, it was still ongoing and he heard grenades exploding at around 17h00. Some days later, he was forced to assist in the burial of the bodies, which took a week. He estimated the number of victims at between 1,000 and

¹⁷¹ T. 30 August 2007 p. 56 (Witness SNB, Closed Session); T. 13 September 2007 pp. 7-8, 15-16 (Witness RLN, Closed Session).

¹⁷² T. 4 September 2007 pp. 4-9, 21 (Witness SCU, Closed Session).

¹⁷³ T. 4 September 2007 pp. 7-9, 19, 29 (Witness SCU, Closed Session).

¹⁷⁴ T. 2 May 2007 pp. 16-, 19, 24, 31-31 (Witness RNN).

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2,000. He testified that he did not attend a meeting or hear of any meeting having been convened or having taken place near or at Hanika parish on either 11 or 12 April 1994.¹⁷⁵

6.3.3. Deliberations

259. The Chamber notes that the Prosecution presented evidence from only one witness, BRN, on the events at Hanika parish. BRN admitted that he was one of the killers at Hanika parish and was therefore an accomplice to the crime charged. It is therefore necessary to examine his testimony with caution.

260. BRN has confessed to the killings and has asked for forgiveness. When he was first arrested, he claims to have made false statements and given false information about his whereabouts. After serving 8 years in prison, he pleaded guilty, confessed to his crimes, and was provisionally released in 2005. He currently awaits trial before the Gacaca courts.¹⁷⁶

261. The Chamber, having considered the testimony of BRN believes him beyond reasonable doubt. His testimony was supported in some material particulars. He was a witness who was sure of his dates. BRN confessed to his responsibility for what he did and is subject to criminal sanction for it. His testimony in this trial was consistent with his confession in his own case. There is no reason to conclude that the penal consequences of his conduct will be favourably affected by falsely incriminating Nchamihigo. The Chamber considers that witnesses may think that they may benefit from the perception that they have cooperated with the trial process, but cooperation does not necessarily imply giving false testimony. BRN's evidence was clear and detailed. His responses to cross-examination were forthright.

262. Neither SCV, nor SCU, nor RNN, were persuasive. They were vague and partial and evinced very little actual knowledge of the events at the Hanika parish. During cross-examination, SCU had to admit that he not drawn a sketch that he had previously put into evidence as his own.¹⁷⁷

263. RLN's recollection of the time of departure to Bukavu and the length of time Nchamihigo spent in Zaire was weak and vague, and she mentioned more than once that she could not be sure of timing. The Chamber believes that for the most part RLN told the truth, but that in a desire to assist Nchamihigo, who may have saved her life, she may have exaggerated how long Nchamihigo remained in Zaire before returning to Rwanda. She recalled that Nchamihigo was in a rush to take her into Zaire before lunchtime, and that he only briefly chatted with Father Blanc upon their arrival at the novitiate across the border before returning to Rwanda. The Chamber does not doubt that Nchamihigo assisted the Belgian sisters to cross the border into Zaire on 12 April 1994. However, given the 15-20 minute distance from the border to the novitiate, the Chamber considers that the entire exercise would only have taken about one hour around midday.

264. RLN's testimony is therefore not inconsistent with BRN's, who places Nchamihigo in Gatara commune at Hanika parish, 66 kilometres or 1.5 to 2 hours away, the afternoon of 12 April 1994. BRN's testimony that the day before, Nchamihigo was at a meeting in Gatara commune near Hanika parish sometime in the afternoon is also not inconsistent with AOY's

¹⁷⁵ T. 4 September 2007 p. 33-38, 43 (Witness SCV).

¹⁷⁶ T. 22 January 2007 p. 11 (Witness BRN, Closed Session).

¹⁷⁷ T. 4 September 2007 pp. 16-17 (Witness SCU, Closed Session)

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testimony, which places Nchamihigo at the PSC meeting on Cyangugu hill in Kamembe commune the morning of 11 April 1994.

265. There was no evidence to support the allegations at paragraphs 28 or 57 of the Indictment, that (1) Nchamihigo collaborated with Lieutenant Imanishimwe, Sergeant Major Ruberanziza, Théodore Munyangabe, and/or Christophe Nyandwi to order or instigate the *Interahamwe* to attack Hanika parish, (2) Nchamihigo personally led the attacks, or (3) Nchamihigo personally killed many people during these attacks.

266. The Chamber finds that after the PSC meeting on Cyangugu hill in the morning of 11 April 1994, Nchamihigo went that afternoon to attend another meeting near Hanika parish where he expressed a need to drive out the Tutsi who had sought refuge at the parish. An immediate but failed attack ensued on Hanika parish that same day. The Chamber further finds that Nchamihigo's actions on 11 April, his threat to civilians on 12 April upon his return to Hanika parish that they would be slaughtered if they did not hurry up and finish the job, and his distribution of four grenades to the soldiers present at the attack, substantially contributed to the massacre of approximately 1,500 Tutsi refugees of all ages and both genders at Hanika parish on 12 April 1994. The Chamber disregards BRN's allegation of Nchamihigo's direct instigation of a third attack on the remaining Tutsi refugees at Hanika parish 19 April 1994, because this event was not pleaded in the Indictment.

6.4. Nyamasheke Parish

6.4.1. Indictment

267. The Prosecution charges Nchamihigo with committing Genocide at paragraph 28 of the Indictment, and Extermination as a Crime against Humanity at paragraph 57. In these paragraphs, it is alleged that sometime between 6 April and 17 July 1994, in particular between 7 April and the end of May 1994, Nchamihigo, in collaboration with others, ordered or instigated *Interahamwe* to attack Tutsi civilians and Hutu political opponents who had sought refuge at Nyamasheke parish. Nchamihigo is alleged to have personally led this attack.

6.4.2. Evidence

Prosecution Witnesses BRD and BRF

268. Witness BRD said that he heard Nchamihigo discuss ethnic divisions at a bar and warn Hutus to be vigilant because Tutsis were a threat. He did not specify when this occurred. BRD also testified that he saw Nchamihigo and Munyakazi together in Nyamasheke sometime in April 1994, at the house of a man named Kamoso. At the time, BRD was with his older brother, who lived opposite Kamoso's house. Nchamihigo told BRD's brother that he was headed for Gatware because *Inyenzi* had invaded the area. While they were speaking, BRD noticed Munyakazi arrive in the company of several *Interahamwe*. When the conversation between Nchamihigo and BRD's brother was over, BRD says Nchamihigo left with Munyakazi and the *Interahamwe*, heading for a church in Gatware where Tutsi had sought refuge.¹⁷⁸

269. When they returned, BRD saw Nchamihigo, Munyakazi and the *Interahamwe* at the Nyamasheke commercial centre. The *Interahamwe* were dancing in front of a statue of the Virgin Mary, holding heads of people they had killed and saying that they had killed the

¹⁷⁸ T. 24 January 2007 pp. 46-48 (Witness BRD).

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enemy. BRD testified that near the Nyamasheke commercial centre was a church where Tutsi had sought refuge. The church had not yet been attacked. BRD said that when the attackers reached the Nyamasheke commercial centre, they looked like people who had come to execute a task.¹⁷⁹

270. Witness BRF stated that his knowledge of events in 1994 at Nyamasheke was very limited. He only knew that there was a parish there where people had sought refuge, that it was the area where Nchamihigo was born, and that Nchamihigo used to go there, leaving in the morning and coming back in the evening. BRF said that he was told about Nchamihigo at Nyamasheke, but he did not see any *Interahamwe* go to Nyamasheke with Nchamihigo, and confessed that he knew almost nothing about what happened at the parish.¹⁸⁰

Defence Witnesses

271. Witness HUA lived 15 minutes away from Nyamasheke parish, where many of his Tutsi neighbours and family members had taken refuge, nearly all of whom were massacred there on 15 April 1994. Though he was not physically present at the attack, he could hear the explosions of grenades and gunshots during the attack and heard that it was someone named Pima who had organized the attack. HUA's nephew, the sole survivor among HUA's family, told him what had happened. HUA never heard anyone mention Nchamihigo in connection with the attack at Nyamasheke parish.¹⁸¹

272. Witnesses SCP and SCW witnessed an attack at Nyamasheke parish on 15 April 1994. They saw that the attack was instigated by a man named Pima in the Nyamasheke commercial centre. Pima also led the attack. Neither witness saw Nchamihigo, buses, conveyors or soldiers on the scene.¹⁸²

6.4.3. Deliberations

273. The Chamber observes that the Prosecution evidence does not address the substance of any of the allegations in the Indictment. Neither BRD nor BRF witnessed the attack at the parish, and they offered no evidence that Nchamihigo either instigated or was present at the attack. The Indictment lacked details regarding Nchamihigo's involvement in the massacre at Nyamasheke parish as required by the jurisprudence quoted above,¹⁸³ and the evidence adduced by the Prosecution witnesses failed to prove any involvement. Nothing in the testimony of BRF or BRD established any elements of the crimes Nchamihigo is alleged to have committed with respect to Nyamasheke parish.

274. Each Defence witness recalled the attack in detail and their testimonies corroborated one another's. SCP and SCW were eyewitnesses, and they, along with HUA, did more to support the occurrence of a massacre at Nyamasheke parish than the Prosecution witnesses. Relying mainly on the evidence adduced by the Defence, the Chamber is convinced that an attack did occur against civilians who sought refuge at Nyamasheke parish. However, the Prosecution's evidence was insufficient to prove beyond reasonable doubt that Nchamihigo led, ordered, or instigated the massacre of Tutsi at Nyamasheke parish.

¹⁷⁹ T. 24 January 2007 pp. 48, 59 (Witness BRD).

¹⁸⁰ T. 24 January 2007 pp. 16-17 (Witness BRF).

¹⁸¹ T. 25 April 2007 pp. 32-35 (Witness HUA).

¹⁸² T. 3 September 2007 pp. 9-17 (Witness SCP); T. 4 September 2007 pp. 62-65 (Witness SCW).

¹⁸³ See paras. 32 and 34 above.

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6.5. Mibilizi Parish and Hospital

6.5.1. Indictment

275. The Prosecution charges Nchamihigo with committing Genocide at paragraphs 28 and 35 of the Indictment, and Extermination as a Crime against Humanity at paragraphs 57 and 63. In these paragraphs, it is alleged that on or about 18 April 1994, Nchamihigo, in collaboration with others, ordered, instigated, or aided and abetted a group of *Interahamwe* to attack Mibilizi parish and hospital where many Tutsi had sought refuge. Nchamihigo is alleged to have led the attackers, who massacred the Tutsi and looted their property. Afterwards, he allegedly rewarded the killers with beer.

6.5.2. Evidence

Prosecution Witness BRK

276. Witness BRK joined the *Impuzamugambi* in 1993. He said that there was no difference between the *Impuzamugambi* and the *Interahamwe*: both groups had the same objectives of Tutsi extermination. In April 1994, BRK was working at a bar in the centre of Mutongo sector in Cyangugu prefecture. BRK testified that he was involved in an attack on Mibilizi parish, which occurred sometime in April 1994, but he could no longer remember the date. He recalled that before the attack, but after the death of President Habyarimana, Nchamihigo came to see the people of Mutongo in the town centre and told Jean Barati (Conseiller of Mutongo) to mobilize the public to go and attack Mibilizi in order to avenge the death of a leader of the CDR party, Martin Bucyana. Nchamihigo had come to the Mutongo town centre in a Suzuki Samurai Jeep, and was accompanied by Sergeant Major Marc Ruberanziza (alias "Bikomago").¹⁸⁴

277. Upon their arrival, BRK heard Nchamihigo reproaching Conseiller Barati for not having asked the members of the public to flush out the Tutsi who had sought refuge at Mibilizi parish and hospital. After this exchange, BRK said Conseiller Barati went home to fetch seven guns. Because there were eight people to be armed, Nchamihigo went to get another gun from the military camp. The guns were distributed among those who had received training, including BRK. The group went to launch the attack. The distance between Mutongo and Mibilizi can be covered in around 1.5 hours by vehicle. BRK recalled that when he arrived at Mibilizi with over 100 attackers, he met several more already on the scene. Nchamihigo and Sergeant Major Ruberanziza had left Mutongo before BRK and the others and they too were already in Mibilizi. The attackers broke into two groups, one which included BRK, surrounding the church and the other surrounding the hospital.¹⁸⁵

278. Upon arrival, BRK and his fellow *Impuzamugambi* had a brief meeting with their chief, Mandevu, who told them to be careful not to shoot any members of their group. Then Nchamihigo called them over to him and told them to shoot at everyone in the building. The attack lasted about 2.5 hours, and the casualties were Tutsi of both genders and all ages. Nchamihigo then ordered the attackers to loot the premises and load the booty onto a vehicle with which he subsequently drove towards Cyangugu. BRK and the rest of the attackers returned to Mutongo, where they were greeted by the former CDR chairman, Nicodème

¹⁸⁴ T. 22 January 2007 pp. 7-10 (Witness BRK).

¹⁸⁵ T. 22 January 2007 pp. 10-12 (Witness BRK).

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Ntaturu, who bought everyone beer. About one hour later, Nchamihigo rejoined BRK and the others in Mutongo, thanked the CDR chairman, and bought everyone much more beer.¹⁸⁶

Other Prosecution Witnesses

279. Witness BRF, who lived near Kucyapa roadblock close to the road leading to Mibilizi, stated that Nchamihigo often went to Mibilizi with *Interahamwe* and someone named David, and they would often return with looted property. BRF knew where they were headed because the *Interahamwe* would shout out where they were going.¹⁸⁷

280. Like BRF, Prosecution Witnesses LDB and LDC were also neighbours of Nchamihigo's, living in the same sector in Kucyapa. LDB testified that on 17 or 18 April 1994, while he was at Nchamihigo's house, Nchamihigo took back an unused grenade he had previously given LDB, gave it to somebody else, and exclaimed that they were going to launch an attack at Mibilizi. Nchamihigo sent a group of attackers to Mibilizi before going there himself. LDB, however, claims to have stayed behind at the house of Nchamihigo, who had ordered a gendarme named Mandela to guard him. LDB testified that upon arriving at Mibilizi the assailants found the *Interahamwe* had already killed members of the population. He did not explain how he came to know this.¹⁸⁸

281. LDC, an *Interahamwe* manning a roadblock near Prosecutor Paul Ndorimana's residence, remembered that on either 11 or 12 April 1994 at around 8h00, he saw Nchamihigo with a Kalashnikov onboard one of three Daihatsu pick-up trucks carrying *Interahamwe*. Nchamihigo said they were on their way to attack Mibilizi and that LDC should let them pass the roadblock. When they returned from Mibilizi at around 17h00, Nchamihigo was seated in a Suzuki vehicle, which he had looted during the attack. Although LDC was not personally present at the attack, he later met someone who had participated in the attack and told him what had happened.¹⁸⁹

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282. Nchamihigo admits that there was a massacre at Mibilizi parish, but denies any involvement. He said he never ordered anyone to kill or attack anybody at either Mibilizi parish or hospital, nor did he issue any orders for anyone to loot the property of others. He recalled that 18 April 1994 he spent the whole day in the office and never met the persons who led the attack on Mibilizi. He denied rewarding assailants in Mutongo with beer after an attack on Mibilizi. He also denied having known BRK, BRF, LDB, or LDC at the time of these events.¹⁹⁰

Defence Witnesses

283. Witness SCZB lived a 15-20 minute walking distance from Mibilizi parish in 1994, close enough that during Mass he could hear the choir sing. On 13 April 1994, some clients of his informed him that 1,000 or 2,000 Tutsi had taken refuge at Mibilizi parish. Three days later, there was an attack on the parish, which started around 15h00 and lasted one or two hours. SCZB said that the assailants went to the parish on foot, and he heard them say they

¹⁸⁶ T. 22 January 2007 pp. 13-14 (Witness BRK).

¹⁸⁷ T. 24 January 2007 p. 15 (Witness BRF).

¹⁸⁸ T. 12 October 2006 pp. 18, 28 (Witness LDB); T. 10 January 2007 p. 64 (Witness LDC).

¹⁸⁹ T. 10 January 2007 pp. 69-70 (Witness LDC).

¹⁹⁰ T. 19 September 2007 pp. 19-20, 66-68 (Siméon Nchamihigo).

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were not going to leave any Tutsi alive. This frightened him, so he went home. The only authorities SCZB heard had come to Mibilizi parish that day were Edouard Badentse, Pierre Kwitonda, and a Sub-Prefect.¹⁹¹

6.5.3. Deliberations

284. BRK was arrested in 1994 on charges relating to burning houses during the genocide, to which he pleaded guilty in 1999. He received a 9-year prison sentence. Having been released provisionally in 2003 he subsequently pleaded guilty in 2005 before the Gacaca courts to further crimes during attacks in Nyakanyinya, Mibilizi and at Kamarampaka Stadium after being confronted by witnesses who had accused him. He has been charged as a Category I offender and his case is still pending. He is also charged with forgery. He explained that he had initially pleaded guilty to the offences in relation to which he had been charged and did not volunteer confessions for other crimes. When he was confronted with further charges, he decided to tell the truth. It is in relation to the events about which he confessed in 2005 that he testified against Nchamihigo.¹⁹²

285. BRK's testimony was direct and forthright. He was an active participant in the massacre and provided detailed evidence. The Chamber has cautiously evaluated the totality of his evidence and the circumstances in which it was tendered when weighing its probative value. BRK did not minimise his own responsibility and openly testified about events for which he will suffer penal consequences. The Chamber is mindful of BRK's thought that he could benefit from lenience if he gives evidence for the Prosecution.¹⁹³ Despite such statement, the Chamber, having cautiously considered all the circumstances of BRK's evidence believes him.

286. The evidence of the three other Prosecution witnesses is largely based on hearsay and must therefore be considered with caution. BRF said he often saw Nchamihigo go towards Mibilizi with *Interahamwe* who would boast about where they were going and where they had been. The Chamber believes BRF and views his evidence as supporting BRK's.

287. With respect to LDB, the Chamber notes that the witness affirmed having been kept in Nchamihigo's house under the surveillance of Gendarme Mandela, while Nchamihigo went for the attack on Mibilizi. However the Chamber recalls that it was alleged in the Indictment that Gendarme Mandela participated in the Mibilizi attack. In addition Prosecution Witness BRF testified that LDB took part in the attack on Mibilizi and drove a vehicle which was carrying the *Interahamwe*.¹⁹⁴ These circumstances led the Chamber to infer that LDB participated in the attack on Mibilizi but did not want to incriminate himself by admitting such participation. Having cautiously considered the evidence and those circumstances, the Chamber still believes LDB.

288. The Chamber notes that LDB was charged in Rwanda with offences that overlap with charges in the Indictment against Nchamihigo. LDB was cross-examined extensively on this issue and the Chamber is satisfied that his guilty plea and statements in his Rwandan trial are consistent with his testimony. However, it does not appear from the record that he was charged with any involvement in the Mibilizi attacks. If LDB was in fact present at the attack,

¹⁹¹ T. 5 September 2007 pp. 43-48 (Witness SCZB).

¹⁹² T. 22 January 2007 pp. 4-5 (Witness BRK, Closed Session).

¹⁹³ See T. 22 January 2007 p. 34, where BRK states: "My position is that by telling the truth, I will be fostering reconciliation in Rwanda and that this might help in the reduction of my sentence."

¹⁹⁴ T. 24 January 2007 p. 15 (Witness BRF).

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it would not be surprising for him to want to lie about it in this case. Under the circumstances, his failure to incriminate himself does not mean that the rest of his testimony cannot be believed. The Chamber finds LDB's knowledge of detail allows a clear inference that he was present at the attack. LDB's testimony supports BRK's.

289. LDC places Nchamihigo and several *Interahamwe* at the roadblock LDC manned in Kamembe commune on their way to attack Mibilizi at 8h00 and on their way back from the attack at 17h00 on either 11 or 12 April 1994. Apart from LDC's assertion that Nchamihigo himself told LDC that they were headed to Mibilizi to launch an attack, LDC's understanding of what unfolded at Mibilizi is based on hearsay information provided to him by an unknown assailant. The Chamber, in exercising the necessary caution when considering his testimony, believes LDC.

290. The evidence of Defence Witness SCZB was not clear as to what he witnessed. In cross-examination, he stated having heard about an attack on Mibilizi while the expression of certain fear which led him to stop working and go home demonstrated that the attack had not taken place yet. In his examination in chief, he recalled having heard one person mentioning 1000 refugees, while another person referred to 2000. But in cross examination, it became 2000 and 3000 refugees. During his cross-examination, he admitted that his house was at approximately 1.2 km from Mibilizi parish, and he could not witness anything happening at the parish.¹⁹⁵ The Chamber considers that his evidence is not sufficient to raise doubt on the prosecution case.

291. The Chamber notes that BRK was unable to provide a date for the incident other than "sometime in April." As previously explained, the Chamber does not view BRK's uncertainty with dates as indicating any lack of credibility or reliability. BRK made reference to 18 April 1994 as the date of the attack in a prior statement on 8 March 2006. The Chamber infers that BRK was referring to the 18 April 1994 attack alleged in the Indictment, and believes BRK beyond reasonable doubt.

292. As such, the Chamber finds that on 18 April 1994, Nchamihigo and Bikomago came to the town centre in Mutongo sector. Upon their arrival, Nchamihigo reproached Conseiller Barati for not having mobilized the people of Mutongo to flush out the Tutsi who had sought refuge at Mibilizi parish and hospital. Thereafter, Conseiller Barati and Nchamihigo distributed arms and a group went to launch the attack at Mibilizi. At Mibilizi, Nchamihigo gave instructions on how to conduct the attack, and after it was over, ordered the attackers to loot the premises and load the booty onto a vehicle with which he subsequently drove away with.

6.6. Nyakanyinya School

6.6.1. Indictment

293. The Prosecution charges Nchamihigo with Genocide at paragraphs 28 and 32 of the Indictment, and Extermination as a Crime against Humanity at paragraph 60. In these paragraphs, it is alleged that on or about 12 April 1994, Nchamihigo ordered or instigated *Interahamwe* and others to kill the Tutsi who had sought refuge at Nyakanyinya school. Nchamihigo is alleged to have distributed weapons which were used during the attack, as well as to have personally led the attack.

¹⁹⁵ T. 5 September 2007 pp. 45-50 (Witness SCZB).

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6.6.2. Evidence

Prosecution Witness BRK

294. BRK was the Prosecution's main witness on this event. He testified that Nchamihigo ordered him and his fellow *Impuzamugambi* to launch the attack on Nyakanyinya school, but could not remember the date on which the attack occurred. BRK recalled that Nchamihigo convened a meeting of members of the population at the Conseiller Barati's house in Mutongo sector. During the 20-minute meeting, Nchamihigo said there were Tutsi refugees at Nyakanyinya school attacking Hutus. BRK was present at this meeting, as well as Christophe Nyandwi (MRND representative), Nicodème Ntaruro (CDR representative), and Sergeant Major Ruberanziza.¹⁹⁶

295. After the meeting, everyone boarded two vehicles, but there were not enough attackers so they went to bars and restaurants and forced civilians to assist them. They left Mutongo town centre when the vehicles were fully loaded, carrying approximately 150 attackers. By the time they were on their way to Nyakanyinya, Nchamihigo had already left. He was not at the school when the attackers arrived. Nchamihigo and Sergeant Major Ruberanziza arrived at Nyakanyinya together after the attackers had started shooting at refugees. They came with three cartons of grenades, one of which they handed over to Alexandre Munyurangabo, who was in charge of the attack. Nchamihigo told Munyurangabo to be careful as to who he was shooting at and to kill all the Tutsi. BRK recalled that after they handed over the carton of grenades, Nchamihigo and Sergeant Major Ruberanziza left Nyakanyinya and the attackers continued killing the refugees.¹⁹⁷

296. BRK said the refugees were all Tutsi, of both genders and all age groups, and that around 1,000 of them were massacred on that day. When the attack was over, at around 17h00, the attackers boarded their vehicles and returned home to Mutongo, where they were greeted and rewarded with beer by authorities including Nchamihigo.¹⁹⁸

297. BRK testified that the following day, Bosco (Conseiller of Nyakanyinya) came to Mutongo and Conseiller Barati that some Tutsi had not been killed and therefore posed a threat in town. As a result, that day there was a second attack on Nyakanyinya school.¹⁹⁹

Siméon Nchamihigo

298. Nchamihigo denies every allegation brought forth by BRK and contained in paragraphs 32 and 60 of the Indictment. He maintains that on 12 April 1994, he was either in his office or helping nuns across the border.

Defence Witness SCJ

299. Witness SCJ is a native of Nyakanyinya sector and lived 500 metres away from the school in 1994. SCJ met Nchamihigo at the funeral of Nchamihigo's father and at the wedding of his sister. SCJ worked as a motor-taxi driver, and counted civil servants among his clients. He occasionally transported Nchamihigo's wife to work. SCJ would often see

¹⁹⁶ T. 22 January 2007 p. 15 (Witness BRK).

¹⁹⁷ T. 22 January 2007 pp. 15-17 (Witness BRK).

¹⁹⁸ T. 22 January 2007 p. 17 (Witness BRK).

¹⁹⁹ T. 22 January 2007 pp. 25-34 (Witness BRK).

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Nchamihigo in the mornings on the latter's way to work, just before 7h00, and estimates he saw him about 60 times between 6 April and 18 July 1994.²⁰⁰

300. He recalls that on 8 April 1994, between 200 and 300 refugees, most of whom had come from Winteko sector, were attacked and killed at Nyakanyinya school. Though SCJ was not physically present at the attack, he heard from a boy named Patrice or Patrick who lived close to the school that most of the attackers had come from Mururu sector, and that among them was someone he recognized as Mandevu. SCJ never heard that Nchamihigo gave orders for an attack on Nyakanyinya school.²⁰¹

Other Defence Witnesses

301. While he was in prison, Witness ZSC heard from fellow detainees who had confessed their involvement that killings had occurred in Nyakanyinya school. He heard people say that the person who had killed people in Nyakanyinya was a former brigadier of the commune and member of the police force. Nobody ever mentioned Nchamihigo's name in connection with the Nyakanyinya attack.²⁰²

6.6.3. Deliberations

302. Having admittedly participated in the Nyakanyinya school massacre, BRK is an accomplice. In accordance with established jurisprudence the Chamber will consider his testimony with great care. In a prior statement, BRK mentioned that the attack on Nyakanyinya school took place on 12 April 1994, but he became very non-committal about giving dates on the stand, saying he could no longer remember them. However, he was able to offer that the Mibilizi attack occurred before the Nyakanyinya attack, which was followed by the attack at Kamarampaka Stadium.

303. The Chamber notes that the Defence admitted that a massacre took place at Nyakanyinya. Although Nchamihigo did not give any details about it, he called a witness, SCJ, who was not present at the massacre but was told it had occurred on 8 April. It was notable that SCJ gave evidence that his informant told him that Mandevu was present. BRK had said that Mandevu was the leader of the attack on Mibilizi, but did not mention his name in relation to the attack on Nyakanyinya. SCJ testified that he did not hear that Nchamihigo took any part in the part. The Chamber cannot see any reason for SCJ to hear everything about the attack, and consequently cannot give any weight his evidence in that regard.

304. The Defence contended that BRK's failure to have confessed fully to his crimes earlier than he did and his omission to testify about the second attack in his evidence in chief was a discrepancy affecting his credibility. The Chamber rejects those arguments. An initial failure for a witness to incriminate himself is not a reason to disbelieve a subsequent confession. Further, the witness did not exercise any choice as to the subject matter of his testimony in court. All of his evidence was in response to questions put to him by Counsel. The Prosecution did not interrogate him about the second attack, which is why he said nothing about it. Counsel for the Defence asked the relevant questions and BRK responded fully. The Prosecution had access to his previous statement and could have led him on it if it chose to do so.

²⁰⁰ T. 1 May 2007 pp. 15-17, 22-23, 31-34 (Witness SCJ).

²⁰¹ T. 1 May 2007 pp. 26-29 (Witness SCJ).

²⁰² T. 10 September 2007 p. 23 (Witness ZSC).

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305. The Chamber believes that BRK participated in the attack on the school. While BRK previously stated that the attack took place on 12 April 1994, on the stand, he could not remember the dates, and the Chamber considers that the time elapsed explains such difficulty. There is no other massacre at Nyakanyinya alleged in the Indictment other than the one alleged to have occurred on 12 April 1994 and in its Pre-Trial Brief, the Prosecution mentioned in the summary of the anticipated testimony of BRK. In those circumstances, the Chamber accepts 12 April as the date.

306. The Chamber recalls that BRK's evidence is that the attack was over around 5.00 pm. The Chamber finds that on 12 April 1994, after he took the nuns across the border, either on his way to or from Hanika parish, Nchamihigo stopped in Mutongo sector (Mururu commune) where he briefly spoke at a small meeting convened for members of the public and told them Tutsi refugees were attacking Hutus at Nyakanyinya school. Immediately after the meeting, an attack was launched on the school and Nchamihigo, accompanied by Sergeant Major Ruberanziza, provided a carton of grenades that were used to kill the refugees.

6.7. Gihundwe Sector

6.7.1. Indictment

307. The Prosecution charges Nchamihigo with committing Genocide at paragraphs 20(b), 28 and 34 of the Indictment, and Extermination as a Crime against Humanity at paragraph 61. In these paragraphs, it is alleged that on 14 or 15 April 1994, Nchamihigo led a group of *Interahamwe* and *Impuzamugambi* in an attack on Tutsi in Gihundwe sector, and that he ordered, instigated, or aided and abetted the killing of Tutsi and the destruction of their houses. It is further alleged that in late April 1994, Nchamihigo instigated further killings of Tutsi in Gihundwe sector by making certain comments or enquiries at a meeting in the sectoral office.

6.7.2. Evidence

Prosecution Witness LDC

308. Witness LDC is a native of Gihundwe sector and former *Interahamwe* member who was manning a roadblock in Gihundwe near Prosecutor Ndorimana's house from 10 April to 24 April 1994. He recalled that on either 14 or 15 April 1994, an attack was carried out against the four *cellules* of Gihundwe sector, namely Murangi, Muganda, Murindi and Kabugi. LDC said the attackers included soldiers, *Interahamwe*, *Impuzamugambi*, and civilians. The soldiers were organized and led by a certain Sergeant Major while the civilians, *Interahamwe* and *Impuzamugambi* were organized and led by Nchamihigo and Prosecutor Ndorimana.²⁰³

309. Nchamihigo divided the group into four, one to attack each cellule. LDC was part of the group that went to attack Kabugi, while Nchamihigo left with the group that went to Murindi. LDC admits he did not personally see Nchamihigo in Murindi, so he cannot know for certain what, if anything, Nchamihigo did there. The attack began at 8h00, continued for about four hours, and resulted in the deaths of over 100 Tutsi. LDC was armed with a club, and admits to participating in the attack, but declares he did not kill anyone at Kabugi that day. He also recalls having participated in another attack with Nchamihigo in Kamurera

²⁰³ T. 10 January 2007 pp. 69-73 (Witness LDC).

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cellule, also in Gihundwe, but did not specify any date or anything further in respect to this incident.²⁰⁴

310. LDC further testified that he attended a meeting at the Gihundwe sectoral office on 24 April 1994 at 13h00. Participants included members of the public, as well as important figures such as acting *Bourgmestre* of Cyimbogo commune, Manase Bavugamenshi, who chaired the meeting, Nchamihigo, Védaste Habimana and Christophe Nyandwi. At this meeting, Nchamihigo asked those in attendance whether they had killed all the Tutsi, whether there were any more Tutsi in hiding, and what needed to be done to exterminate all the Tutsi in all the sectors. At that point, one of the leaders of the attackers requested two weeks to accomplish the task. Habimana responded that the Tutsi had to be exterminated within three days. As a result, attacks were launched within the next three days. Tutsi were found in the bush and killed.²⁰⁵

Siméon Nchamihigo

311. Nchamihigo denies ever having been to the meeting or participating in the attacks in Gihundwe sector, as alleged in the Indictment and by Witness LDC. Nchamihigo does, however, acknowledge that a meeting at the Gihundwe sectoral office took place on 24 April 1994, which he only heard about the day after it had taken place. Prosecutor Ndorimana, who had attended the 24 April 1994 meeting, came to pick up Nchamihigo from his home to take him to work and told him what had transpired at the meeting. Apparently, Prosecutor Ndorimana had a heated exchange at the meeting with a Conseiller named Jean Nkikabahizi who wanted Prosecutor Ndorimana to give him three days to exterminate the Tutsi who were in hiding. Prosecutor Ndorimana said he disapproved and told Nchamihigo that he intended to arrest Conseiller Nkikabahizi. Conseiller Nkikabahizi was eventually prosecuted in relation to these events.²⁰⁶

312. With respect to the attacks alleged by LDC to have occurred on 14 or 15 April 1994, Nchamihigo maintains he was in his office all day on those dates.²⁰⁷

Defence Witness SCE

313. Witness SCE testified he only attended a meeting at the Gihundwe sectoral office on 8 April 1994, and that Nchamihigo was not at that meeting. He acknowledges that there were other meetings held thereafter, but he cannot say for certain if one took place on 24 April 1994. SCE's brothers and neighbours did attend the other meetings and if the extermination of Tutsi was discussed at these meetings, they would have told him about it.²⁰⁸

6.7.3. Deliberations

314. LDC was arrested and charged in 1997 in Rwanda and was eventually found guilty of criminal activity, criminal participation, and having manned a roadblock. He was sentenced to 12 years' imprisonment but was released early in 2003, after having served only 6 years. LDC

²⁰⁴ T. 10 January 2007 pp. 73-74 and T. 11 January 2007 pp. 52, 62-63 (Witness LDC).

²⁰⁵ T. 10 January 2007 p. 75 (Witness LDC).

²⁰⁶ T. 18 September 2007 p. 52 (Siméon Nchamihigo).

²⁰⁷ T. 19 September 2007 pp. 17-18 (Siméon Nchamihigo).

²⁰⁸ T. 1 May 2007 p. 60 (Witness SCE).

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admitted to having confessed to his crimes in 2000 with the hope of receiving a reduced sentence.²⁰⁹

315. LDC is an accomplice witness and his testimony is uncorroborated, which requires the Chamber to approach it with extra care. However, the Chamber notes that LDC gave his evidence in a straightforward, cooperative manner. He stood firm under cross-examination and his testimony is consistent with that which he gave to the Rwandan courts in his own trial. The Chamber finds LDC to be truthful and his eyewitness testimony to be reliable.

316. Given LDC's eyewitness accounts regarding the Mibilizi attacks and the meeting in Gihundwe sector, the Chamber does not accept Nchamihigo's simple denial of everything alleged by LDC. After careful consideration of Nchamihigo's alibi in relation to this event, the Chamber does not find it to be credible. Finally, SCE's testimony, even if credible, carries little to no weight in Nchamihigo's favour.

317. The Chamber finds that on 14 or 15 April 1994, Nchamihigo instigated civilians, *Interahamwe* and *Impuzamugambi* to launch attacks against Tutsis who had been hiding in their own or others' homes in the four cellules of Gihundwe sector. His contribution to the gathering of civilians and organization thereof into four groups was substantial in bringing about the subsequent massacre of Tutsi on that day.

318. The Chamber also finds that on 24 April 1994, Nchamihigo made inquiries into the status of the extermination of the Tutsi in Gihundwe sector, and that the nature of his inquiries instigated others present at the meeting to find more Tutsi in hiding to kill within the three-day time frame advocated by Habimana.

6.8. Bisesero

6.8.1. Indictment

319. The Prosecution charges Nchamihigo with committing Genocide at paragraph 37 of the Indictment. In this paragraph, it is alleged that between 20 and 25 June 1994, Nchamihigo ordered or instigated the *Interahamwe* in his area to participate in a number of attacks to kill Tutsi who had sought refuge in Bisesero, Kibuye prefecture.

6.8.2. Evidence

Prosecution Witness LDB

320. LDB's home was just opposite to Nchamihigo's, near Kucyapa roadblock, which often allowed him to observe Nchamihigo's movements. LDB witnessed Munyakazi's *Interahamwe* of Bugarama pass through Kucyapa roadblock on several occasions, and eat many times at Nchamihigo's house. During a meal on 25, 26 or 28 April 1994, LDB heard Munyakazi's *Interahamwe* shouting and boasting about going to Bisesero in Kibuye prefecture. LDB recalled that while the *Interahamwe* were boarding buses and getting ready to go to Bisesero, Nchamihigo was present, but LDB was unsure as to whether Nchamihigo went to Bisesero with the others. LDB subsequently learned that many people were killed in Bisesero, and even heard *Interahamwe* boasting about it years later while in prison.²¹⁰

Prosecution Witness BRF

²⁰⁹ T. 10 January 2007 p. 62 and T. 11 January 2007 p. 41 (Witness LDC, Closed Session).

²¹⁰ T. 12 October 2006 pp. 18, 26-27 (Witness LDB).

321. BRF and Nchamihigo were neighbours. BRF recalled that sometime in April 1994, a large convoy of *Interahamwe*, including Munyakazi, came to BRF's village from Bugarama. After some discussion between Munyakazi and Nchamihigo in the Nchamihigo's house, BRF said Munyakazi's *Interahamwe* continued on to Bisesero. BRF says he knows this because they returned to BRF's village the following day boasting about having launched attacks there. According to BRF, Munyakazi and Nchamihigo did not go to Bisesero, but instead stayed behind to prepare food for the *Interahamwe* to eat upon their return.²¹¹

Defence Witnesses

322. Colette Uwubuheta has been married to Nchamihigo since 4 December 1989. She was born in Gafunzo commune, and in April 1994 she and Nchamihigo lived in Kamurera cellule, Cyimbogo commune, near Kucyapa. She said that during the 1994 events, she rarely left the house. She declared that she never saw any *Interahamwe* enter her house, and stated that it would be odd if they did because she and her husband were not part of any political party. Finally, she testified that she knew of Munyakazi, but that she never saw him in her house.²¹²

323. Witness RJN, a relative of Nchamihigo's who spent much time at his house during the events, confirms that she never saw any food being prepared for *Interahamwe* at Nchamihigo's house or any buses ever stop in front of it.²¹³

6.8.3. Deliberations

324. The Chamber notes that the Prosecution evidence was very limited. More significantly, there is a major discrepancy between the date alleged in the Indictment and the date about which the witnesses testified. In any event, the Chamber considers that there was no evidence that Nchamihigo had any dealings with "Jean-Paul, Mvuyekure Vincent, alias Tourné, [or] Nzeyimana" in connection with attacks on Bisesero or that he issued orders or instigated them or other *Interahamwe* to go to Kibuye, as alleged at paragraph 37 of the Indictment.

325. The evidence of his entertaining Munyakazi's *Interahamwe* with food and drink is not in itself sufficient to support a finding beyond reasonable doubt that Nchamihigo ordered or instigated *Interahamwe* to kill Tutsi who had taken refuge in Bisesero. It could, however, support a finding of aiding and abetting but the evidence is substantially different from the allegation: the entertainment and hospitality took place in April 1994, and not in June 1994 as stated in the Indictment. Consequently, the Chamber finds that it was not proved reasonable doubt that Nchamihigo ordered, instigated or aided and abetting the attack on Bisesero.

²¹¹ T. 24 January 2007 pp. 5, 14-15, 33 (Witness BRF).

²¹² T. 26 April 2007 pp. 22-23, 30-33 (Colette Uwubuheta).

²¹³ T. 12 September 2007 p. 10 (Witness RJN, Closed Session).

CHAPTER III: LEGAL FINDINGS

1. JOINT CRIMINAL ENTERPRISE

326. The Prosecution alleges at paragraphs 15, 16 and 17 of the Indictment that, in addition to his personal criminal responsibility under Article 6 (1) of the Statute for committing genocide and crimes against humanity, Nchamihigo knowingly and wilfully participated in a joint criminal enterprise ("JCE") between 6 April and 17 July 1994, the purpose of which was to destroy the Tutsi group in Cyangugu prefecture. Nchamihigo is also alleged to be responsible for genocide and crimes against humanity on the basis that they were the natural and foreseeable consequences of the execution and the common purpose of the JCE.

327. JCE is not a crime but a mode of liability, for which the jurisprudence has identified three forms. The Appeals Chamber in *Tadić* has stated that the *actus reus* remains the same for each category of JCE, and requires: (i) a plurality of persons involved in the JCE, (ii) a common purpose or plan which amounts to or involves the commission of a crime provided for in the Statute, and (iii) the accused's participation in the common purpose. The common purpose need not have been previously arranged or formulated. It may materialise extemporaneously and it can be inferred from the facts. And the accused's participation need not involve the commission of a specific crime, but may take the form of assistance in, or contribution to, the execution of the common purpose.²¹⁴

328. The Defence challenged the JCE pleading on the basis that it had not been proved beyond reasonable doubt. The Chamber recalls that the mode and extent of an accused's participation in an alleged crime are material facts which must be clearly set forth in the indictment. In its preliminary paragraphs, the Indictment did allege JCE, identified its purpose, and named participants. But in the paragraphs where the Indictment detailed the factual allegations on which the crimes charged were based, JCE was not specified as a form of commission. Instead, the paragraphs specified in each case whether Nchamihigo ordered, instigated or otherwise aided and abetted the crimes. In its closing brief, the Prosecution mentioned JCE only in general terms and did not relate it to any particular event. In these circumstances, the Chamber considers that Nchamihigo did not have adequate notice that his liability for any event would depend on his participation in a joint criminal enterprise.

2. SPECIFIC INTENT FOR GENOCIDE

329. The Prosecution charges Nchamihigo with committing Genocide at paragraphs 1 and 19 through 43 of the Indictment. In these paragraphs, it is alleged that Nchamihigo is responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group, as such.

330. To find an accused guilty of the crime of genocide, it must be established that he or she committed any of the acts enumerated at Article 2 (2) of the Statute with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.

331. The Appeals Chamber in *Media* has recently held that the jurisprudence accepts that in most cases genocidal intent will be proved by circumstantial evidence. In such cases, it is necessary that the finding that the accused had genocidal intent be the only reasonable inference from the totality of the evidence. In the absence of direct evidence, the following

²¹⁴ See *Tadić*, Judgement (AC), para. 227.

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circumstances have been found, among others, to be relevant for establishing intent: the overall context in which the crime occurred, the systematic targeting of the victims on account of their membership in a protected group, the fact that the perpetrator may have targeted the same group during the commission of other criminal acts, the scale and scope of the atrocities committed, the frequency of destructive and discriminatory acts, whether the perpetrator acted on the basis of the victim's membership in a protected group and the perpetration of acts which violate the very foundation of the group or considered as such by their perpetrators.²¹⁵

332. In its factual findings above, the Chamber has found direct evidence of Nchamihigo's genocidal intent, as well as facts and circumstances from which it could be inferred.

333. Some Prosecution witnesses recounted words that Nchamihigo expressed. LAG, for instance, testified that Nchamihigo asked him and others to search for Tutsi and kill them, including Father Boneza, who Nchamihigo referred to as a Tutsi. The Chamber found the witnesses to be credible and their evidence reliable, and various circumstances supported their testimonies, including Nchamihigo's political connections and his participation in PSC meetings.

334. Prosecution Witness AOY gave direct evidence on Nchamihigo's conduct at PSC meetings. He testified that he and Nchamihigo both shared the common intention of exterminating the Tutsi in Cyangugu prefecture, and both participated in making plans and implementing the agreement to exterminate the Tutsi, which included the idea of sparing some Tutsi so as to mislead the international community. In particular, at the PSC meeting on 14 April 1994, Nchamihigo made specific reference to targeting Tutsi at Shangi parish.

335. Nchamihigo's public exhibition of support for both the MRND and CDR political parties has been established, as well as his participation in the recruitment of young Hutu men for militia training as *Interahamwe* and *Impuzamugambi*. In addition, most of the refugees who were specifically targeted and killed were Tutsi. At Kamarampaka Stadium, a list of selected individuals to be removed was read out, and everyone on the list except Marianne Baziruwaha was Tutsi. Nchamihigo instigated the *Interahamwe* to kill all the Tutsi removed from Kamarampaka Stadium. All of these acts took place throughout Cyangugu prefecture, and it was established that the victims were Tutsi. The Chamber has found these facts to be proven beyond reasonable doubt.

336. After considering the evidence as a whole, including Nchamihigo's proven statements, AOY's testimony on them sharing a common intent and behaviour which evinced the intention to kill and the intention to destroy the Tutsi of Cyangugu prefecture, the Chamber finds that Nchamihigo held the requisite specific intent characterizing the crime of genocide which is the intent to destroy in whole or in part an ethnic group.

3. PROTECTED GROUPS

337. The Indictment has also specified that some of the victims are Tutsi, RPF accomplices and Hutu. Genocide is a crime against a national, ethnic, racial or religious group committed with intent to destroy the group in whole or in part. It has been judicially determined that acts committed against "Hutu political opponents", the Hutus who are politically opposed to the MRND regime in April 1994, may be crimes against humanity but they cannot be perceived

²¹⁵ *Media*, Judgement (AC), para 524; *Rutaganda*, Judgement (AC), para. 525; *Semanza*, Judgement (AC), para. 261-262; *Gacumbitsi*, Judgement (AC), para. 41.

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as acts of genocide, because the victim of an act of genocide must have been targeted by reason of the fact that he or she belonged to a protected group under Article 2 of the Statute and Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide.²¹⁶ The group "Hutu political opponents" does not constitute a "national, ethnic, racial or religious group" under these provisions.²¹⁷

338. In the *Media* case, the Appeals Chamber clarified that the jurisprudence of the *ad hoc* Tribunals acknowledges that the perception of the perpetrators of the crimes may in some circumstances be taken into account for purposes of determining membership of a protected group,²¹⁸ where the evidence demonstrates that the perpetrators of the crimes perceived Hutu political opponents as Tutsi. Where the perpetrators of the genocide believed that eliminating Hutu political opponents was necessary for the successful execution of their genocidal project against the Tutsi population, the killing of Hutu political opponents cannot constitute acts of genocide. However, the fact that Hutu political opponents were killed in circumstances where such killings constitute crimes against humanity, does not prevent the killing of the Tutsi from constituting genocide. The charges of killing Hutu political opponents in the present case could result in convictions for crimes against humanity, but not for genocide.

4. COMMON ELEMENTS FOR CRIMES AGAINST HUMANITY

339. The Prosecution charges Nchamihigo with Murder, Extermination, and Other Inhumane Acts as Crimes against Humanity (Counts 2, 3, and 4, respectively) at paragraphs 44 through 70 of the Indictment. In these paragraphs, it is alleged that these crimes were committed between 6 April and 17 July 1994 against a number of Tutsi as well as Hutu political opponents, in Cyangugu prefecture, as part of a widespread or systematic attack against a civilian population on ethnic, racial or political grounds.

340. To find an accused responsible for Crimes against Humanity pursuant to Article 3 of the Statute, the Prosecution must prove that mass crimes were committed against a civilian population. Crimes against humanity are any of the crimes enumerated at Article 3 (a)-(i) of the Statute, which are committed as part of a widespread or systematic attack on any civilian population on national, political, ethnic, racial or religious grounds. Whereas "widespread" refers to the scale of the attack, "systematic" describes its organised nature, as distinguished from random and unrelated acts.²¹⁹

341. The Chamber has found that there were attacks against the civilian population of Cyangugu prefecture. Thousands of civilians were killed. These civilians were Tutsi or Hutu political opponents, and they were killed at places where they had sought refuge (Gihundwe sector, Hanika parish, Mibilizi parish and hospital, Nyakanyinya school, Nyamasheke parish, and Shangi parish). Civilians were killed after being removed from Kamarampaka Stadium. Civilians were killed at their homes and in the street. There was evidence that at the roadblocks those trying to flee were stopped, their identities controlled, and their fate decided

²¹⁶ UN GA Resolution 260 A (III) of 9 December 1948 ("Genocide Convention").

²¹⁷ In this regard, see *Stakić* Appeal Judgement, para. 22, which recalls that the drafters of the Genocide Convention declined to include destruction of political groups within the definition of genocide.

²¹⁸ See *Media*, Judgement (AC), para. 496; *Stakić*, Judgement (AC), para. 25; *Muhimana*, Judgement (TC), para. 500; *Ndindabahizi*, Judgement (TC), para. 468; *Gacumbitsi*, Judgement (TC), para. 255; *Kajelijeli*, Judgement (TC), para. 813; *Bagilishema*, Judgement (TC), para. 65; *Musema*, Judgement (TC), para. 161; *Rutaganda*, Judgement (TC), para. 56.

²¹⁹ *Media*, Judgement (AC), para. 920.

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accordingly. The Chamber believed that the killings were planned at PSC meetings and has found that Nchamihigo participated in two of those meetings. The Chamber is satisfied that the attack against the civilian population was both widespread and systematic. The Chamber believed the evidence that these attacks were aimed at destroying the Tutsi and RPF supporters or those who were opposed to the incumbent authorities. They were therefore committed on ethnic or racial, and political grounds.

342. On the basis of all the evidence, the Chamber has found that there was a widespread and systematic attack against civilian population of Cyangugu prefecture on racial or ethnic and political grounds. Considering Nchamihigo's position as Deputy Prosecutor in Cyangugu and his role in the events as established in the factual findings, the Chamber has no doubt that he knew that his acts were part of such widespread and systematic attack.

5. CUMULATIVE CONVICTIONS

343. The Prosecutor has charged that the conduct alleged could constitute more than one crime. The law is already well settled. Cumulative charging is permitted because prior to the presentation of all of the evidence, it is not possible to determine to a certainty which of the charges brought against an accused will be proven. The Trial Chamber is better poised, after the Parties' presentation of the evidence, to evaluate which of the charges may be retained, based upon the sufficiency of the evidence.²²⁰

344. Cumulative convictions for Genocide and Crimes against Humanity based on the same conduct are permitted, because each of the crimes contains a distinct element requiring proof of a fact not required by the other.²²¹ However, in the instances where there are charges for Extermination, Murder and/or Other Inhumane Acts arising from the same conduct, the crime of Extermination subsumes the crime of Murder, as Murder does not require any additional materially distinct element than what is contained in the definition of Extermination. In return, Extermination requires an additional element, i.e. the killing of one or more persons as part of a mass killing of civilians²²² and the crime of Other Inhumane Acts is subsumed by every other Crime against Humanity as it requires no additional element to any other Crime against Humanity.²²³

6. APPLICATION

345. In its factual findings, the Chamber found that several specific individuals were killed, thousands of Tutsi were massacred at places where they had taken refuge, and a group of refugees removed from Kamarampaka Stadium on 16 April 1994 were killed at the Gendarmerie. The Chamber will now discuss Nchamihigo's criminal responsibility, if any, for these deaths.

²²⁰ See *Celebici*, Judgement (AC), para. 400. See also *Kunarac*, Judgement (AC), 12 June 2002, para. 167.

²²¹ *Musema*, Judgement (AC), paras. 365-370; *Krstic*, Judgement (AC), paras. 219-227.

²²² *Krstic*, Judgement (TC), para. 683.

²²³ *Krnjelac*, Judgement (AC), para. 172.

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6.1. Individual Killings

6.1.1. Killings on or about 7 April 1994

346. The Chamber found that the Prosecution established that Nchamihigo instigated LAG and those *Interahamwe* and others to whom he spoke at Kamembe on 7 April 1994 to go and look for and kill Tutsi and other civilians who were RPF supporters. The Chamber has considered as credible and reliable the testimony of AOY who explained that he shared a common intent with Nchamihigo to eliminate the Tutsi because the RPF was made up of Tutsi. They also intended to eliminate RPF supporters and anyone who wanted to take power by force. The Chamber has also found that the leaders of the PSD political party were in that category and had been targeted.

347. The Chamber finds that, with the intent to destroy, in whole or in part, the Tutsi ethnic group, Nchamihigo thereby instigated the people to kill Tutsi victims including Karangwa, Dr. Nagafizi, and Ndayisaba's family. The Chamber is also satisfied that these killings were part of a widespread and systematic attack against the civilian population and that the same people, acting on the instigation of Nchamihigo, killed the aforementioned civilian Tutsi as well as Kongo, a prominent Hutu businessman considered to be an RPF accomplice. As such, the Chamber finds Nchamihigo guilty of Genocide and Extermination as a Crime against Humanity for these killings. The pleadings of Murder and Other Inhumane Acts as a Crime against Humanity are subsumed under Extermination and are therefore not considered as possible cumulative convictions.

348. The Chamber dismisses the charge that Nchamihigo ordered or instigated the killing of Serubyogo. There was no Prosecution evidence to support such a finding.

6.1.2. The Killing of Jean de Dieu Gakwandi and Canisius Kayihura

349. In paragraphs 25 and 51, the Prosecution alleges the killing of Kayihura. Because Kayihura was neither hurt nor killed, the Chamber finds that no conviction could be entered in relation to the charges in those paragraphs of the Indictment. With respect to Gakwandi, because he was not killed, no conviction could be brought against Nchamihigo for Murder as Crime against Humanity under paragraph 50. The only pleading the Chamber may consider in relation to Gakwandi's attack is Other Inhumane Acts under paragraph 69.

350. The Chamber found that Nchamihigo ordered that Gakwandi be killed because of his political affiliations. Though Gakwandi was not killed, he was hunted down by a group of attackers, clubbed over the head, causing an injury so serious that his attackers left him unconscious, thinking he was dead. As a matter of law, the infliction of serious bodily injury could constitute an Inhumane Act.²²⁴ In the present case, the Chamber finds that the circumstances under which he was targeted and attacked are particularly grievous as well as the injury itself. The Chamber considers that Gakwandi's attack was an Inhumane Act. Because the attack occurred on the basis of Gakwandi's political affiliation and as part of a widespread or systematic attack against the civilian population on ethnic and political grounds, Nchamihigo's instructions to kill Gakwandi constitute a crime against humanity. As such, the Chamber finds Nchamihigo guilty beyond reasonable doubt for Other Inhumane Acts as a Crime against Humanity for Gakwandi's attack.

²²⁴ *Blaskic* Judgement (TC), 3 March 2000, para. 239.

6.1.3. The Killing of Emilien Nsengumuremyi, Aloys Gasali, Isidore Kagenza, and Jean-Marie Vianney Tabaro

351. The Chamber found that Nchamihigo read out Nsengumuremyi, Gasali, Tabaro, and Kagenza's names at the roadblock near the Bank of Kigali and instructed the *Interahamwe* there to find them and kill them. The Prosecution offered no evidence to show that Gasali, Tabaro, and Kagenza were hurt or killed. Nsengumuremyi was eventually found and killed by Lieutenant Kajisho.

352. The crimes of genocide, murder and extermination require proof of a causal link between the order which Nchamihigo gave the *Interahamwe*, and Nsengumuremyi's murder. The crime is not committed when the order is given unless the specific consequences set out in the Statute occur. In the present case, the consequence did occur but the evidence has not established that Nsengumuremyi's death resulted from the order Nchamihigo gave. LAG gave unequivocal evidence that neither he nor his group were involved in Nsengumuremyi's killing; both Prosecution and Defence witnesses point to Lieutenant Kajisho as the killer. No evidence was adduced from which the Chamber could find that Nchamihigo gave orders to or instigated Lieutenant Kajisho to kill Nsengumuremyi, or that the grenades Nchamihigo distributed aided and abetted Lieutenant Kajisho to kill Nsengumuremyi. The finding of fact that the killing was executed in that manner does not allow the imposition of criminal responsibility on Nchamihigo for that killing.

6.1.4. The Killing of Joséphine Mukashema, Hélène and Marie

353. The Chamber found that Nchamihigo, having learnt that the three Tutsi girls were being given refuge in BRD's house, removed them and took them to Gatandara roadblock so that they may be killed, declaring them to be *Inkotanyi*.

354. By his actions, Nchamihigo aided and abetted their killing. The Chamber is satisfied that he did this because they were Tutsi and in furtherance of his intention to destroy the Tutsi ethnic group in whole or in part, and that he did this as part of a widespread or systematic attack on the Tutsi civilian population. As such, the Chamber finds Nchamihigo guilty beyond reasonable doubt of Genocide and Murder as a Crime against Humanity for aiding and abetting the killing of Joséphine Mukashema, Hélène and Marie.

6.1.5. The Killing of Uzier Ukwizagenza and Innocent

355. The Chamber found that the Prosecution failed to show beyond reasonable doubt that Nchamihigo ordered or instigated the killing of these students. No convictions may therefore be brought against him for their deaths.

6.1.6. The Killing of Father Joseph Boneza

356. The Chamber found that on 19 May 1994, Nchamihigo chased Father Boneza, a Tutsi priest, to Kucyapa roadblock. Nchamihigo desired the death of Father Boneza and made plans to effect it. Those present at the roadblock showed reluctance to attack the priest. The impasse was resolved when Nchamihigo asked for an "intelligent Hutu" to kill the priest. Mutabazi seized Father Boneza, and Nyagatere struck the priest on the head with a tree trunk, killing him.

357. Nchamihigo's words were calculated. As a Deputy Prosecutor, he was a man of influence. At that very roadblock he had previously exercised the power of life and death by

giving orders to either kill or spare those who attempted to pass through. The Chamber finds that Nchamihigo intended his words to induce one of the persons present to kill Father Boneza, and his expectations were realised when Mutabazi and Félicien Nyagatere did so. The conduct and words of Nchamihigo satisfy the legal definition of instigating the killing. The Chamber concludes, beyond reasonable doubt, that Nchamihigo intended to destroy the Tutsi ethnic group in whole or in part and that Father Boneza was killed, at Nchamihigo's instigation, because he was a Tutsi. The killing also occurred as part of a widespread and systematic attack on the Tutsi civilian population. The Chamber therefore finds Nchamihigo guilty of Genocide and Murder as a Crime against Humanity for the killing of Father Boneza.

6.1.7. The Killing of Thirteen FAR Soliders

358. The Chamber found the Prosecution evidence with respect to this allegation to be unreliable, and therefore dismisses the charge of Extermination as a Crime against Humanity for this event contained at paragraph 65 of the Indictment.

6.2. Kamarampaka Events

6.2.1. Killings at the Gendarmerie on 16 April 1994

359. The Chamber found beyond reasonable doubt that Nchamihigo and other members of the PSC contrived a strategy to kill influential Tutsi at PSC meetings on 11 and 14 April 1994. On 15 April 1994, Nchamihigo and other PSC members transferred most of the refugees at Cyangugu Cathedral to Kamarampaka Stadium. Then on 16 April 1994, Prefect Bagambiki instructed the Commander Munyarugerero to read out names from a list prepared by the PSC of people to be removed from Kamarampaka Stadium.

360. The instructions were carried out and approximately 12 people, including Baziruwiha, were removed from the stadium. Once outside, they joined four others who stayed behind at the cathedral the previous day. All 16 refugees except for Marianne Baziruwiha were Tutsi, were transferred to the Gendarmerie, and were killed there by *Interahamwe* and other civilian attackers who had been brought in by Nchamihigo to assist in the killings. The killings took place in the presence of Nchamihigo, Lieutenant Imanishimwe, and Prefect Bagambiki. Nchamihigo ordered the killers to take the corpses to Mutongo sector and bury them in pit latrines at Gapfumu's house, one of the victims. The Chamber is satisfied that Nchamihigo instigated the killings, and finds him guilty beyond reasonable doubt of Genocide, as pleaded at paragraphs 20(d), 21 and 38 to 42 of the Indictment.

361. The Chamber found no evidence on the allegation of mutilation and therefore dismisses the charge of Other Inhumane Acts as a Crime against Humanity contained at paragraph 70 of the Indictment in its entirety.

6.2.2. Further Killings on 18 April 1994

362. The Prosecution evidence in relation to a second visit to remove more refugees is unclear. Even if it could be considered reliable, no causal link has been established between the alleged removal of refugees and the alleged subsequent killings. No conviction could be entered on this allegation because no direct evidence was adduced as to the manner in which the people named in the relevant paragraphs of the Indictment were killed. The Chamber therefore dismisses the charge of Genocide contained at paragraph 43 of the Indictment in its entirety.

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6.3. Attacks at Places of Refuge

6.3.1. Introduction

363. The Chamber notes that Nchamihigo is generally charged with Genocide for the attacks at Shangi parish, Hanika parish, Nyamasheke parish, Nkanka parish, Mibilizi parish and hospital, Nyakanyinya school, and Gihundwe sector at paragraph 28 of the Indictment. For each massacre, the Indictment may contain one or two additional and more specific paragraphs under the count of Genocide to clarify the general charge at paragraph 28. He is also charged with Genocide for the massacres at Bisesero for at paragraph 37.

364. The Chamber further notes that Nchamihigo is charged with Extermination as a Crime against Humanity in the same general manner at paragraph 57, which provides a broad date range spanning a minimum of 37 days²²⁵ in which to place Nchamihigo's ordering or instigating of the attacks at various places of refuge. The information provided at paragraph 57 may go to establishing the widespread nature of the attacks. For each massacre, the Indictment may contain one or two additional and more specific paragraphs under the count of Extermination as a Crime against Humanity to clarify the general charge at paragraph 57.

365. The Chamber considers that paragraphs 28 and 57 are of an introductory character and therefore incapable, on their own, of sustaining a conviction. These paragraphs are to be read in conjunction with their clarifying counterparts, where provided.

366. The Chamber recalls that no evidence was led on any killings at Nkanka parish. Consequently, no conviction could be entered against Nchamihigo in relation to this event.

6.3.2. Shangi Parish

367. The Chamber accepted that Nchamihigo was appointed zone supervisor for the area in which Shangi was located by the PSC at its meeting on 11 April 1994. In that capacity, on 14 April 1994, Nchamihigo requested the PSC to provide additional weapons and *Interahamwe* to assist in killing the Tutsi refugees at Shangi parish. The PSC directed Lieutenant Imanishimwe to provide Nchamihigo with arms, but there was no evidence that Lieutenant Imanishimwe did so. The PSC also decided on 14 April 1994 that the *Interahamwe* of Bugarama under the Munyakazi's command would be asked to intervene. Subsequently, Munyakazi and his *Interahamwe* came to Nchamihigo's locality, where they were welcomed and nourished by Nchamihigo the night before they went on to launch an attack on Shangi parish. The *Interahamwe* then returned from this attack with looted property, singing and boasting about killing Tutsi refugees at Shangi.

368. The *Kordić and Čerkez* Appeal Judgement established that the legal causation requirement for instigation as sufficing to show that the accused's instigation substantially contributed to the conduct of another person committing the crime; it is not necessary to prove that the crime would not have been committed without involvement of the accused.²²⁶ The period of time which elapsed between the instigation and the commission of the criminal act is a relevant consideration in determining whether there has been a substantial contribution; the longer the lapse of time, the weaker the link.²²⁷ In the present case, the criminal act in

²²⁵ "Between 6 April and 17 July 1994, in particular from 7 April to the end of May 1994 [...]"

²²⁶ *Kordić and Čerkez*, Judgement (AC), para. 27; see also *Gacumbitsi*, Judgement (AC), paras. 127-129.

²²⁷ *Media*, Judgement (AC), para. 513.

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question was committed sometime in April, but after the 14th according to BRF, and most likely around the 28th, 29th, or 30th of the month, as per SCL and SFF's testimonies.

369. The Chamber is mindful that a two-week time period may reduce the impact of the instigation. However, the Chamber considers that the particularity of the call for intervention at Shangi parish and the immediate decision to dispatch Munyakazi's Interahamwe leaves no room for reasonable doubt. The Chamber concludes that Nchamihigo's call for intervention on 14 April 1994 and subsequent encouragement and hospitality substantially contributed to the killings at Shangi parish perpetrated by Munyakazi's *Interahamwe*. In this way, Nchamihigo instigated Munyakazi's *Interahamwe* to kill the Tutsi refugees at Shangi parish. He did so with the intent to destroy in whole or in part the Tutsi group. As such, the Chamber finds Nchamihigo guilty of Genocide, as pleaded at paragraph 20(a) of the Indictment.

6.3.3. Hanika Parish

370. The Chamber found that after the PSC meeting on Cyangugu hill in the morning of 11 April 1994, Nchamihigo went that afternoon to attend another meeting near Hanika parish where he expressed a need to drive out the Tutsi who had sought refuge at the parish. An immediate but failed attack ensued on Hanika parish that same day. The Chamber further found that Nchamihigo's actions on 11 April, his threat to civilians on 12 April upon his return to Hanika parish that they would be slaughtered if they did not hurry up and finish the job, and his distribution of four grenades to the soldiers present at the attack, substantially contributed to the massacre of approximately 1,500 Tutsi refugees of all ages and both genders at Hanika parish on 12 April 1994.

371. The Chamber therefore finds Nchamihigo guilty of Genocide beyond reasonable doubt by having instigated soldiers and civilians to kill the refugees at Hanika parish on or about 12 April 1994 with the intent to destroy in whole or in part the Tutsi group, as pleaded at paragraph 33 of the Indictment.

6.3.4. Nyamasheke Parish

372. The Chamber found that while a massacre did occur against Tutsi civilians who sought refuge at Nyamasheke parish, the Prosecution's evidence was insufficient to prove that Nchamihigo led, ordered, or instigated the massacre. Moreover the allegations against Nchamihigo in respect of this event were made under paragraphs 28 and 57 of the Indictment, which are incapable of sustaining convictions on their own. The Chamber therefore dismisses the charges against Nchamihigo in respect of the massacres at Nyamasheke parish.

6.3.5. Mibilizi Parish and Hospital

373. The Chamber found that on 18 April 1994, Nchamihigo came to the town centre of Mutongo sector. Upon their arrival, Nchamihigo reproached Conseiller Barati for not having mobilized the people of Mutongo to "flush out" the Tutsi who had sought refuge at Mibilizi parish and hospital. Thereafter, Conseiller Barati and Nchamihigo distributed arms and a group went to launch the attack at Mibilizi. At Mibilizi, Nchamihigo gave instructions on how to conduct the attack, and after it was over, ordered the attackers to loot the premises and load the booty onto a vehicle with which he subsequently drove away with. The casualties were Tutsi of both genders and all ages.

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374. After considering the totality of the evidence adduced, the Chamber concludes that Nchamihigo's actions and words substantially contributed to the massacres perpetrated against the Tutsi refugees at Mibilizi parish and hospital on 18 April 1994. Nchamihigo intended to destroy the Tutsi group in whole or in part, and instigated the massacre as part of a widespread and systematic attack on the Tutsi civilian population. The Chamber therefore finds Nchamihigo guilty of Genocide and Extermination as a Crime against Humanity, as pleaded at paragraphs 35 and 63 of the Indictment.

6.3.6. Nyakanyinya School

375. The Chamber found that on 12 April 1994, after he took the nuns across the border, either on his way to or from Hanika parish, Nchamihigo stopped in Mutongo sector (Mururu commune) where he briefly spoke at a small meeting convened for members of the public and told them Tutsi refugees were attacking Hutus at Nyakanyinya school. Immediately after the meeting, an attack was launched on the school and Nchamihigo, accompanied by Sergeant Major Ruberanziza, provided a carton of grenades that were used to kill the refugees. In so doing, Nchamihigo instigated the massacre of Tutsi refugees at Nyakanyinya school on 12 April 1994, both with the intent to destroy in part the Tutsi group, and as part of a widespread and systematic attack on the Tutsi population.

376. As such, the Chamber finds Nchamihigo guilty beyond reasonable doubt of Genocide by instigation as pleaded at paragraph 32 of the Indictment, and of Extermination as a Crime against Humanity, as pleaded at paragraph 60.

6.3.7. Gihundwe Sector

377. The Chamber found that on 14 or 15 April 1994, Nchamihigo instigated civilians, *Interahamwe* and *Impuzamugambi* to launch attacks against Tutsis who had been hiding in their own or others' homes in the four cellules of Gihundwe sector. His contribution to the gathering of civilians and organization thereof into four groups was substantial in bringing about the subsequent massacre of Tutsi on that day. The Chamber also found that on 24 April 1994, Nchamihigo made inquiries into the status of the extermination of the Tutsi in Gihundwe sector, and that the nature of his inquiries instigated others present at the meeting to find more Tutsi in hiding to kill within the three-day time frame advocated by Habimana.

378. Thus, the Chamber finds Nchamihigo guilty of Genocide for instigating the 14-15 and 24 April 1994 massacres in Gihundwe sector with the intent to destroy part in whole or in part the Tutsi group, as pleaded at paragraphs 20(b) and 24 of the Indictment, and guilty of Extermination as a Crime against Humanity for instigating the 14-15 April massacres in Gihundwe sector as part of a widespread and systematic attack against the Tutsi civilian population, as pleaded at paragraph 61.

6.3.8. Bisesero

379. The Chamber found that the evidence of Nchamihigo's entertaining Munyakazi's *Interahamwe* with food and drink is not in itself sufficient to support a finding beyond reasonable doubt that Nchamihigo ordered or instigated *Interahamwe* to kill Tutsi who had taken refuge in Bisesero. It could, however, support a finding of aiding and abetting. However, given the fact that the entertainment and hospitality were alleged to have taken place in April 1994, and not in June 1994 as per the Indictment, the Chamber disregarded this evidence as irrelevant.

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380. The Chamber therefore dismisses the charges against Nchamihigo contained at paragraph 37 of the Indictment in their entirety.



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CHAPTER IV: VERDICT

381. For the reasons set out in this Judgement, the Chamber unanimously finds in respect of Siméon Nchamihigo as follows:

Count 1: Genocide	GUILTY
Count 2: Crimes against Humanity (Murder)	GUILTY
Count 3: Crimes against Humanity (Extermination)	GUILTY
Count 4: Crimes against Humanity (Other Inhumane Acts)	GUILTY



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CHAPTER V: SENTENCE

382. The Chamber has found Nchamihigo guilty on all counts of the Indictment. The Chamber now determines the appropriate sentence.

383. The penalty imposed should reflect the goals of retribution, deterrence, rehabilitation, and the protection of society. Pursuant to Article 23 of the Statute and Rule 101 of the Rules, the Chamber shall consider the general practice regarding prison sentences in Rwanda, the gravity of the offences or totality of the conduct, the individual circumstances of the accused, including aggravating and mitigating circumstances, and the extent to which any penalty imposed by a court of any State on the accused for the same act has already been served. As pointed out by the Appeals Chamber in *Kajelijeli*, these considerations are not exhaustive when determining the appropriate sentence. In addition, the Trial Chamber shall credit the accused for any time spent in detention pending transfer to the Tribunal and during trial.²²⁸

384. The Prosecution submitted that Nchamihigo should face the highest possible sentence, being a sentence of life imprisonment, as someone who planned and ordered atrocities, and committed the crimes with especial zeal and sadism. The Prosecution argued that such a sentence would enable the Chamber to punish, deter and consequently stigmatize those crimes at a level that corresponds to their overall magnitude and reflect the extent of the suffering inflicted upon the victims.²²⁹

385. The Defence submitted that punishment must be free from vindictiveness and vengeance and must be tempered by compassion. It submitted that the Chamber should take cognisance of Nchamihigo's good character, that he is family man and that he is a good father.²³⁰

386. The Chamber will assess the gravity of the crimes, the individual, aggravating and mitigating circumstances.

1. GRAVITY OF THE CRIMES

387. All crimes under the Statute are serious violations of international humanitarian law. When determining a sentence, a Trial Chamber has considerable, though not unlimited, discretion on account of its obligation to individualize penalties to fit the individual circumstances of an accused and to reflect the gravity of the crimes for which the accused has been convicted.²³¹

388. The Chamber has found that Nchamihigo agreed with others to destroy the Tutsi population in Cyangugu. He instigated the massacre of thousands of Tutsi and Hutu political opponents at places of refuge, including churches. The victims included people of both genders and of all ages. He personally ordered, instigated and aided and abetted systematic killings of influential Tutsi and Hutu political opponents. He instigated militias to commit those crimes. He looted property from victims. The Chamber determined that Nchamihigo was a principal perpetrator. Under Rwandan law, Genocide and Crimes against Humanity

²²⁸ *Kajelijeli*, Judgement (AC), para. 290. See Rule 101 (D).

²²⁹ Prosecution Closing Brief, paras. 1103-1104.

²³⁰ T. 23 January 2008 pp. 43, 47-48 (Closing Arguments).

²³¹ *Kayishema and Ruzindana*, Judgement (AC), para. 367 (quoting Article 1 of the Statute); *Kajelijeli*, Judgement (AC), para. 291.

carry the possible penalty of life imprisonment. In the Tribunal's jurisprudence, principal perpetration generally warrants a higher sentence than aiding and abetting.²³² However, this alone does not mean that a life sentence is the only appropriate sentence for a principal perpetrator of Genocide and Crimes against Humanity.²³³ At this Tribunal, a sentence of life imprisonment is generally reserved for those who planned or ordered atrocities and those who participated in the crimes with especial zeal or sadism.²³⁴ Offenders receiving the most severe sentences also tend to be senior authorities.²³⁵

2. INDIVIDUAL, AGGRAVATING AND MITIGATING CIRCUMSTANCES

389. Mitigating circumstances need only to be established on the balance of probabilities, while aggravating circumstances need to be proven beyond reasonable doubt.²³⁶ Any particular circumstance that is included as an element of the crime for which an accused is convicted will not be considered as an aggravating factor.²³⁷

390. At the time of his conviction, Nchamihigo is a Rwandan citizen and a Hutu. He is 49 years old, married to Colette Uwubuheta and has five children. He spent the totality of his professional career in Rwanda working for the Rwandan Ministry of Justice as a Deputy Prosecutor.

391. Among the aggravating factors, the Chamber notes Nchamhigo's stature in Rwandan society. As a Deputy Prosecutor, he was expected to uphold the rule of law and principles of morality. He had a perceived position that demanded obedience and compliance to his instructions. The Chamber further observes the way in which he committed his crimes. The Chamber considers it highly aggravating that he promoted violence, planned and actively participated in killings, ordered and instigated others to follow suit. Prosecution witnesses testified that because of his position they believed that they could participate in the killings without suffering consequences. Thus he promoted an environment of impunity for mass atrocity. The Chamber also considers the number of victims which resulted from the killings as an aggravating factor especially as genocide is a crime with no numeric minimum of victims.²³⁸ Additionally, note must be taken of his cruelty and disregard for personal dignity.

²³² *Semanza*, Judgement (AC), para. 388.

²³³ See, e.g., *Ntakirutimana*, Judgement (TC), paras. 791-793, 832-834, 908-909, 924 (imposing twenty-five years' imprisonment for personal participation).

²³⁴ *Musema*, Judgement (AC), para. 383 (noting that the leaders and planners of a particular conflict should bear heavier responsibility, with the qualification that the gravity of the offence is the primary consideration in imposing a sentence); *Niyitegeka*, Judgement (TC), para. 486; *Muhimana*, Judgement (TC), paras. 604-616 (Conseiller, but recounting the particularly atrocious manner in which the accused personally raped, killed, mutilated, and humiliated his victims).

²³⁵ Life sentences have been imposed against senior government authorities in: *Ndindabahizi*, Judgement (TC), paras. 505, 508, 511 (Minister of Finance); *Niyitegeka*, Judgement (TC), paras. 499, 502 (Minister of Information); *Kambanda*, Judgement (TC), paras. 44, 61-62 (Prime Minister); *Kamuhanda*, Judgement (TC), paras. 6, 764, 770 (Minister of Higher Education and Scientific Research). In addition, life sentences have been imposed on lower level officials, as well as those who did not hold government positions. See, e.g., *Musema*, Judgement (TC), 27 January 2000, paras. 999-1008 (influential director of a tea factory who exercised control over killers); *Rutaganda*, Judgement (TC), paras. 466-473 (second vice-president of *Interahamwe* at national level).

²³⁶ *Kajelijeli*, Judgement (AC), para. 294; *Ndindabahizi*, Judgement (TC), 15 July 2004, para. 502; *Semanza*, Judgement (TC), 15 May 2003, paras. 565, 574.

²³⁷ *Ndindabahizi*, Judgement (TC), para. 502; *Semanza*, Judgement (TC), para. 571; *Ntakirutimana*, Judgement (TC), para. 893.

²³⁸ *Id.* at paras. 337-338.

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LDC saw him looting Trojean Ndayisaba's house while Ndayisaba's wife and daughter were burning to death. BRK testified that Nchamihigo ordered the *Interahamwe* to bury corpses in a latrine. The Chamber considers that these factors and the distances he travelled, the number of locations at which he intervened cumulatively place him in the category of exhibiting extreme zeal in killing.

392. The Prosecution also argued that Nchamihigo did not express any remorse. The Chamber notes the statement made by Nchamihigo on 23 January 2008.²³⁹ The Chamber does not view such statement as an expression of remorse. Nchamihigo did not even admit that genocide was committed in his country in 1994.

393. The Chamber finds few mitigating circumstances. Nchamihigo spent much of his life and career before 1994 as an official of the judiciary. He failed to persuade on the balance of probabilities that any particular qualities of character has been established. The evidence of Baziruwaha and LDB persuaded the Chamber that Nchamihigo had previously used violence as a political tool. The Chamber does not question the fact that he is a good father. However, this is not a factor which has high impact on the sentence. There was evidence that he assisted members of his family and others of Tutsi origin, but only a few people close to him were involved. His assistance to the religious sisters is also very limited and selective. This evidence carries limited weight as a mitigating factor.

394. In the Chamber's view, after weighing the gravity of the crime against Nchamihigo's circumstances, no mitigation is warranted.

3. CONCLUSION

395. Nchamihigo is convicted of nine (9) charges of Genocide, two (2) charges of Murder as a Crime against Humanity, four (4) charges of Extermination as a Crime against Humanity, and one (1) charge of Other Inhumane Acts as a Crime against Humanity. At the time of the events, Nchamihigo was a Deputy Prosecutor. Although this does not make him a senior authority within the government, the Chamber considers that it was a prominent position of trust. The Chamber has taken due notice of the intrinsic gravity of the crimes in consideration; genocide and crimes against humanity being offences which are particularly shocking to the conscience of mankind. The Chamber also considers that Nchamihigo has exhibited zeal in the perpetration of these grave crimes. The Chamber finds that the aggravating factors in this case overwhelm any mitigating factors.

396. For the foregoing reasons, the Chamber sentences Nchamihigo to:

IMPRISONMENT FOR THE REMAINDER OF HIS LIFE

397. The above sentence shall be served in a State designated by the President of the Tribunal, in consultation with the Chamber. The Government of Rwanda and the designated State shall be notified of such designation by the Registrar.

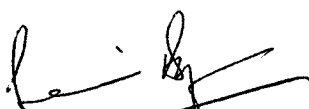
²³⁹ T. 23 January 2007 p. 56: "Lastly, and to conclude, I regret the tragedy which befell Rwanda following the death of the president of the republic, and the fact that the war broke out again and got Rwandans to kill one another."


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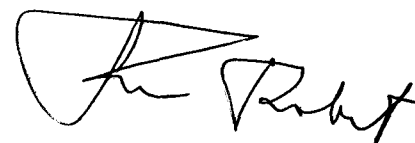
398. Until his transfer to his designated place of imprisonment, Nchamihigo shall be kept in detention under the present conditions.

399. Pursuant to Rule 102 (B) of the Rules, on notice of appeal, if any, enforcement of the above sentences shall be stayed until a decision has been rendered on the appeal, with the convicted person nevertheless remaining in detention.

Arusha, done in English, 12 November 2008.


Dennis C.M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Robert Fremr
Judge



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ANNEX I: PROCEDURAL HISTORY

400. On 19 May 2001, Nchamihigo was arrested in Arusha, Tanzania, inside the premises of the Tribunal, and detained by the Tanzanian Police. On 21 May 2001, Judge Mehmet Güney granted the Prosecutor's request for an Order for Transfer and Provisional Detention under Rule 40*bis* of the Rules. On 25 May 2001, Nchamihigo was transferred to the Tribunal's Detention Facility in Arusha for a period of 30 days. On 4 June 2001, Nchamihigo appeared before Judge Mehmet Güney pursuant to Rule 40*bis* (J) of the Rules.

401. On 21 June 2001, the Prosecutor filed its initial indictment charging Nchamihigo with Genocide, or Complicity in Genocide (in the alternative), Extermination as a Crime against Humanity, or Murder as a Crime against Humanity (in the alternative), and Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II.

402. On 23 June 2001, Judge Navanathem Pillay confirmed the original indictment, and ordered a number of amendments. In a separate Order, Judge Pillay also requested the Registrar to serve on Nchamihigo a copy of the Indictment and the related warrant of arrest. Finally, she ordered the continuous detention in the custody of the Tribunal. On 26 June 2001, the Prosecutor filed an amended indictment ("Indictment") in compliance with the Confirming Judge's order.

403. On 29 June 2001, the initial appearance took place before Judge Erik Møse and Nchamihigo pleaded not guilty to all charges.

404. On 3 October 2001, the President of the Tribunal assigned the case to Trial Chamber I. Soon after, on 8 October 2001, the Chamber issued its Decision on the Defence Motion challenging the legality of the detention, rejecting the arguments put forward by Nchamihigo. On 8 May 2002, the Chamber also denied the Defence Motion for release alleging an abuse of process. Finally, on 10 July 2002, the Chamber denied the application for review, and sanctioned the Defence, instructing the Registrar not to pay fees related to the submissions.

405. At that stage, Nchamihigo's legal representation had become an issue and on 2 October 2001, the Registrar granted the request for withdrawal by Lead Counsel, but excluded him from the list of counsel for having given priority to his commitment in his home country. Thereafter, the Registrar appointed another counsel. But a year later, Nchamihigo asked for his withdrawal. On 14 April 2003, the Registrar denied the request, and the President confirmed such decision on 12 September 2003. Nchamihigo then brought the matter to the Chamber. On 29 September 2004, in his response to the Motion, the Registrar acknowledged that there was a complete breakdown in communication despite his efforts, and that the situation did not look like one which could improve. He concluded in his submissions that he was prepared to withdraw the counsel and to appoint another counsel. On 1 October 2004, the Chamber declared moot the request for replacement of counsel. On 12 October 2004, the Registrar withdrew Lead Counsel for Nchamihigo, and appointed Mr. Denis Turcotte on 28 January 2005.

406. On 18 July 2006, the Chamber granted in part the Prosecution Motion to amend the Indictment, and the Prosecution complied with the order on 18 July 2006.

407. In July 2006, the President of the Tribunal reassigned the case to Trial Chamber III and appointed Judge Dennis Byron to preside over the case. Gberdao Gustave Kam and Robert Fremr were later appointed to join him.

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408. On 26 July 2006, the Chamber granted protective measures for Prosecution witnesses.

409. On 7 August 2006, Nchamihigo appeared again before the Chamber and pleaded not guilty to all the charges. Soon after, on 10 August 2006, the Chamber issued a Scheduling Order indicating the trial was scheduled to commence on 25 September 2006.

410. On 13 September 2006, the Chamber denied the request for certification to appeal the decision granting leave to amend the Indictment. However the Chamber later on 27 September 2006 granted in part the Defence Motion on defects in the form, and ordered the Prosecution to make some adjustments. On 29 September 2006, the Prosecutor complied with the order and filed a Revised Amended Indictment. However, in adjudicating a Defence Motion, on 7 December 2006, the Chamber ordered the Prosecution to make further amendments to the Indictment and to provide additional information in certain instances. The Prosecutor complied on 11 December 2006, and that was the last Indictment filed which the Chamber bases this Judgement.

411. The Prosecution case was presented during two trial sessions, from 25 September to 20 October 2006, and from 9 January to 1 February 2007. The Prosecution called 24 witnesses over 32 trial days. During the Prosecution case, on 5 February 2007, the Chamber refused to admit the transcripts of the interview of Nchamihigo held shortly after his arrest and transfer, because the suspect did not have any legal assistance during the interrogation.

412. After the close of the Prosecution case, the Defence requested acquittal pursuant to Rule 98bis but the Chamber denied the Motion on 8 March 2007. The Defence case could thereafter commence, and the Chamber granted protective measures to its witnesses on 20 March 2007.

413. The Defence case was also presented in two trial sessions, from 23 April to 3 May 2007, and from 27 August to 21 September 2007. The Defence called 36 witnesses over 25 trial days.

414. At the end of the Defence case, the Prosecution was granted leave to call a rebuttal witness on the school records which the Defence raised through some of its evidence, notably Witness RDCB. BWH, the 25th and last Prosecution Witness, came to testify on 21 September 2007.

415. As for the filing of the closing briefs, the Chamber decided on 21 September 2007 that they should be filed on 3 December 2007, and informed the Parties that oral closing arguments should not exceed two hours in duration, respectively. On 26 November 2007, the Chamber granted an extension of time for seven days. The two closing briefs were filed on 11 December 2007. The Defence also filed a corrigendum on 4 January 2008, and then a reply to the Prosecution Closing Brief on 17 January 2008. On 23 January 2008, the Parties presented their oral arguments.

416. On 24 September 2008, the Chamber orally rendered its Judgement, but indicated that the only authoritative version would be the written Judgement, to be filed at a later stage.

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ANNEX II: JURISPRUDENCE AND DEFINED TERMS

1. JURISPRUDENCE

1.1. ICTR

AKAYESU

Prosecutor v. Akayesu, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001

BAGILISHEMA

Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001

GACUMBITSI

Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-T, Judgement and Sentence (TC), 17 June 2004

Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006

KAJELIJELI

Prosecutor v. Juvenal Kajelijeli, Case No. ICTR-99-44-T, Judgement and Sentence (TC), 1 December 2003

Prosecutor v. Juvenal Kajelijeli, Case No. ICTR-99-44-A, Judgement (AC), 23 May 2005

KAMBANDA

Prosecutor v. Jean Kambanda, Case No. ICTR-97-23-S, Judgement (TC), 4 September 1998

KAMUHANDA

Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-95-54A-T, Judgement (TC), 22 January 2004

KAYSIHEMA AND RUZINDANA

Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-T, Judgement and Sentence (TC), 21 May 1999

Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement (Reasons) (AC), 1 June 2001

MUHIMANA

Prosecutor v. Mikaeli Muhimana, Case No. ICTR- 95-1B-T, Judgement and Sentence (TC), 28 April 2005

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MUSEMA

Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T, Judgement (TC), 27 January 2000

Prosecutor v. Alfred Musema, Case No. ICTR-98-39-A, Judgement (AC), 16 November 2001

MUVUNYI

Prosecutor v. Muvunyi, Case No. ICTR-00-55-A, Judgement (AC), 29 August 2008

NAHIMANA, "MEDIA CASE"

Prosecutor v. Nahimana et al, Case No. ICTR-99-52-I, Decision on the Defence Motion Opposing the Hearing of the Ruggiu Testimony Against Jean Bosco Barayagwiza (TC), 31 January 2002

Prosecutor v. Nahimana et al, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007

NCHAMIHIGO

Prosecutor v. Siméon Nchamihigo, Case No. ICTR-2001-63-T, Decision on Defence Compliance with Rule 67 of the Rules, 5 April 2007

NDINDABAHIZI

Prosecutor v. Emmanuel Ndindabahizi, Case No. ICTR-2001-71-I, Judgement and Sentence (TC), 15 July 2004

Prosecutor v. Emmanuel Ndindabahizi, Case No. ICTR-2001-71-A, Judgement (AC), 16 January 2007

NIYITEGEKA

Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-T, Judgement and Sentence (TC), 16 May 2003

Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004

NTAGERURA, "CYANGUGU"

Prosecutor v. André Ntagerura et al., Case No. ICTR 99-46-T, Judgement and Sentence (TC), 25 February 2004

Prosecutor v. André Ntagerura et al., Case No. ICTR 99-46-A, Judgement (AC), 7 July 2006

NTAKIRUTIMANA

Prosecutor v. Elizaphan and Gérard Ntakirutimana, Case No. ICTR-96-10 & ICTR-96-17-T, Judgement and Sentence (TC), 21 February 2003

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RUTAGANDA

Prosecutor v. Georges Anderson Nderubumwe Rutaganda, Case No. ICTR-96-3-T, Judgement and Sentence (TC), 6 December 1999

Prosecutor v. Georges Anderson Nderubumwe Rutaganda, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003

RWAMAKUBA

André Rwamakuba v. Prosecutor, Case No. ICTR-98-44-T, Judgement (TC), 20 September 2006

SEMANZA

Prosecutor v. Laurent Semanza, Case No. ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003

Prosecutor v. Laurent Semanza, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005

SIMBA

Prosecutor v. Aloys Simba, Case No. ICTR-01-76-A, Judgement (AC), 27 November 2007

1.2. ICTY

ALEKSOVSKI

Prosecutor v. Aleksovski, Case No. IT-95-14/1, Judgement (AC), 24 March 2000

BLAŠKIĆ

Prosecutor v. Blaškić, Case No. IT-95-14, Judgement (TC), 3 March 2000

DELALIC ET AL, "ČELEBIĆI"

Prosecutor v. Delalic, et al, Judgement (AC) Case no. IT-96-21, 8 April 2003

KORDIĆ AND ČERKEZ

Prosecutor v. Kordić and Čerkez, Case No. IT-95-14/2, Judgement (AC), 29 July 2004

KRNOJELAC

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgment (AC), 17 September 2003

KRSTIĆ

Prosecutor v. Radislav Krstić, Case No. IT-98-33-T, Judgment (TC), 2 August 2001

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Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Judgment (AC), 19 April 2004

KUNARAC ET AL.

Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23 & IT-96-23/1-A, Judgment (AC), 12 June 2002

KUPREŠKIĆ ET AL,

Prosecutor v. Zoran Kupreškić et al, Case No. IT-95-16-A, Judgment (AC), 23 October 2001,

NALETILIĆ AND MARTINOVIĆ

Prosecutor v. Naletilić and Martinović, Case No. IT-98-34, Judgement (AC), 3 May 2006

STAKIĆ

Prosecutor v Stakić, Case No. IT-97-24, Judgement (AC), 22 March 2006

TADIC

Prosecutor v. Duško Tadić, Case No. IT-94-1-A, Judgment (AC), 15 July 1999

VASILJEVIĆ

Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-A, Judgment (AC), 25 February 2004

OTHER

SUPREME COURT OF CANADA

R. v. Nadeau [1984] 2 SCR 570

R. v. W. (D.) [1991] 1 SCR 742

2. DEFINED TERMS

CDR

Coalition pour la défense de la république

Defence Closing Brief

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The Prosecutor v. Siméon Nchamihigo, Case No. ICTR-2001-63-T, Mémoire final de la défense conformément à l'article 86 A) du Règlement de procédure et de preuve, filed 11 December 2007.

(See also Corrigendum to Defence Closing Brief, filed 4 January 2008)

Indictment

The Prosecutor v. Siméon Nchamihigo, Case No. ICTR-2001-63-I, Second Revised Amended Indictment (in conformity with Trial Chamber III Decision dated 07 December 2006), filed 11 December 2006.

MDR

Mouvement démocratique républicain

MRND

Mouvement révolutionnaire national pour la démocratie et le développement

PL

Parti libéral

PSC

Prefecture Security Council

PSD

Parti social démocrate

Prosecution Closing Brief

The Prosecutor v. Siméon Nchamihigo, Case No. ICTR-2001-63-T, Prosecutor's Closing Brief, filed 11 December 2007.

RPF

Rwandan Patriotic Front

Rules

Rules of Procedure and Evidence

Statute

Statute of the International Criminal Tribunal for Rwanda

Tribunal

International Criminal Tribunal for Rwanda

by

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T.

Transcript. All references to the transcript are to the official, English transcript.



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ANNEX III: INDICTMENT





ICTR-2001-63-T
11-12-2006
(1771 - 1754)
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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

OFFICE OF THE PROSECUTOR
BUREAU DU PROCUREUR

Arusha International Conference Centre
P.O. Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzania
Tel: 255 27 2504207-11/2504367-72 or 1 212 963 2850 -- Fax: 255 27 2504000/4373 or 255 27 2504367-72/4373

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255 27 2504367-72/4373

INTEROFFICE MEMORANDUM — MEMORANDUM INTERIEUR

To: Animatta N'Gum, CMS Co-ordinator
A: Trial Chamber III
Date: 11 December 2006
Ref: [Signature]
From: Madeleine Schwarz, Assistant Trial Attorney
De: [Signature]
Subject: *Prosecutor v. Nchamihigo*, Case No. ICTR-01-63-I
Objet: Second Revised Amended Indictment (in conformity with Trial Chamber III decision of 07 December 2006)

Further to the Decision of Trial Chamber III of 07 December 2006, attached please find the Second Revised Amended Indictment for filing.

In accordance with the Chamber's Decision, we have made the following changes (changes indicated by underline):

1. Title of Document – changed to “Second Revised Amended Indictment”.
2. Paragraph 10 – Paragraph 10 refers to a meeting held on or about 11 April 1994 which relates to Count 1 – Genocide. We have moved this paragraph into new paragraph 20(f) so that it is now contained in the concise statement of facts.
3. Paragraph 21 - amended as follows: “Such roadblocks included: a roadblock near the Banque de Kigali manned by Thomas Mubiligi, a roadblock near the Kamembe Market...”.
4. Paragraph 22 – amended as follows: “SIMEON NCHAMIHIGO spoke to Thomas Mubiligi and a group of young Hutu in Kamembe and ordered...”.
5. Paragraph 23 – amended as follows: “SIMEON NCHAMIHIGO arrived at a road block near the Banque de Kigali manned by Thomas Mubiligi and about 20 people...”
6. Paragraph 24 – amended as follows: “...in execution of SIMEON NCHAMIHIGO's order or instigation issued at a road block near the Banque de Kigali in Kamembe...”.

[Signature]

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7. Paragraph 25 – amended as follows: “...**SIMEON NCHAMIHIGO** went to a roadblock near Paul Ndorimana’s house manned by the *Interahamwe*...”.

8. Paragraph 26 – amended as follows:

On an unknown date in May 1994, **SIMEON NCHAMIHIGO** went to the roadblocks in Kamembe, including the roadblocks near Cuyapa and the Banque de Kigali, and ordered or instigated the *Interahamwe* manning the roadblocks, including Vincent Mvuyekure alias Tourné and Thomas Mubiligi to kill a Tutsi priest of the Mibirizi Catholic parish, whose name he did not reveal but who, according to him, was expected to pass by the roadblock in a vehicle. **SIMEON NCHAMIHIGO** had issued similar instructions at all the roadblocks that he supervised and he had threatened to kill the *Interahamwe* if they let the Tutsi priest through. In the presence of **SIMEON NCHAMIHIGO**, the *Interahamwe* killed the priest later that day at the roadblock erected at the entrance to Kamembe next to the residence of the accused and manned by the *Interahamwe* Habirora Nehemi and Patrick Nsengumuremyi. Later on the Catholic priest was known to be Father Joseph Boneza.

9. Paragraph 54 – amended as follows: “On an unknown date in May 1994, **SIMEON NCHAMIHIGO** went to the roadblocks in Kamembe that he supervised, including the Cuyapa and the Banque de Kigali roadblocks, and ordered or instigated the *Interahamwe* manning the roadblocks, including Vincent Mvuyekure alias Tourné and Thomas Mubiligi, to kill a Tutsi priest of the Mibirizi Catholic parish, Father Joseph Boneza, who was expected to pass by the roadblock in a vehicle. **SIMEON NCHAMIHIGO** threatened to kill the *Interahamwe* if they let the Tutsi priest through.

10. Paragraph 64 has been deleted as the only incident alleged in the indictment in connection with paragraph 64 is contained in paragraph 65.

11. The first word, “Thus”, has been deleted from paragraph 65.

I trust this is satisfactory. If you have any questions, please do not hesitate to contact me.

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THE PROSECUTOR

v.

SIMÉON NCHAMIHIGO

Case No. ICTR-2001-63-I

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SECOND REVISED AMENDED INDICTMENT
(In conformity with Trial Chamber III Decision dated 07 December 2006)

I. THE CHARGES

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

SIMEON NCHAMIHIGO with the following crimes:

Count 1: **GENOCIDE**, pursuant to Articles 2 (3) (a) and 6 (1) of the Statute;

Count 2: **MURDER** as a **crime against humanity**, pursuant to Articles 3 (a) and 6(1) of the Statute;

Count 3: **EXTERMINATION** as a **crime against humanity**, pursuant to Articles 3 (b) and 6(1) of the Statute and

Count 4: **OTHER INHUMANE ACTS** as a **crime against humanity**, pursuant to Articles 3 (i) and 6(1) of the Statute.

II. THE ACCUSED:

2. **SIMEON NCHAMIHIGO** was born on 8 September 1960 in Gatare *commune*, Cyangugu Prefecture (Rwanda). He was *Substitut du Procureur* [Assistant Prosecutor] at the Cyangugu Court of First Instance from sometime in 1991 until 17 July 1994.

3. Between 1 January and 17 July 1994, **SIMEON NCHAMIHIGO** acted in his capacity of *Substitut du Procureur* in the Office of the Prosecutor of the Republic in Cyangugu on the basis

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of a forged diploma which he produced sometime in 1991 in support of his application for the post of *Substitut du Procureur* in Rwanda. He was investigated by the Deputy Prosecutor General Ntakirutimana Charles in connection with the forged diploma, but the investigation was stopped when a pro-MRND Deputy Prosecutor General, Musekura Jean Damascene, was appointed to replace Ntakirutimana Charles.

4. On an unknown date around mid-April 1994, **SIMEON NCHAMIHIGO**, in his capacity of *Substitut du Procureur*, issued counterfeit warrants of arrest against Tutsi who had sought refuge at the Cyangugu Cathedral or at the Bishopric of Cyangugu, including Gapfumu, to enable and thus aid and abet officers from the office of the Prosecutor of the Republic, soldiers and *Interahamwe* to remove those refugees and kill them and they did so.

5. Similarly, on an unknown date around mid-April 1994, **SIMEON NCHAMIHIGO**, in his capacity as *Substitut du Procureur*, issued counterfeit warrants of arrest against Tutsi who had been transferred to Kamarampaka Stadium from various places. On or around the same date, the members of the prefecture security council, including **SIMEON NCHAMIHIGO**, brought outside the stadium those Tutsi. **SIMEON NCHAMIHIGO** ordered or instigated the *Interahamwe* to kill those Tutsi, or otherwise aided and abetted the killing of those Tutsi, resulting in the killing of those Tutsi by the *Interahamwe*.

6. From about 1992 until 17 July 1994, **SIMEON NCHAMIHIGO**, although he was *Substitut du Procureur*, was also involved in political activities in Cyangugu Prefecture both for the MRND, President Juvénal Habyarimana's political party and the political party known as *La Coalition pour la Défense de la République*, or CDR. CDR was a Hutu extremist party and allied to MRND. It opposed parties that were in opposition to the MRND.

7. Between 1 January and 17 July 1994, **SIMEON NCHAMIHIGO** was also a member of a clandestine group of Hutu civil servants working in Cyangugu, called *Tuvindimwe*, which was formed in 1991 or thereabouts. This group supported the MRND and CDR. *Tuvindimwe* recruited its members from the Prefecture, the Appeals Court, the *parquet general* [Public Prosecutor's office at the Appeal Court], the Court of First Instance and the *parquet de la république* [Public Prosecutor's office at the Court of First Instance]. Tutsi and moderate Hutu who opposed the MRND were excluded from *Tuvindimwe* because they were considered accomplices of the *Inkotanyi*, a term applied to the Tutsi-dominated Rwandan Patriotic Front, or RPF.

8. Between 1 February and 17 July 1994, **SIMEON NCHAMIHIGO** was an *Interahamwe* leader in Cyangugu Prefecture. He recruited many young Hutu men as *Interahamwe*, including Jean de Dieu Utabazi, Janvier Borauzima, Faustin Sinashebeje & Joseph Habineza and he instructed Habimana Jean Bosco alias Masudi, a former soldier, in collaboration with Sergeant Major Marc Ruberanziza, alias Bikomago, Christophe Nyandwi and caporal Aimé, to train these, among other *Interahamwe* in Karambo military camp, to enable them to kill the Tutsi. In addition, **SIMEON NCHAMIHIGO** allowed *Interahamwe* to stay in his house in Cyangugu and he provided them with food and drink. He ordered or instigated the *Interahamwe* to kill the Tutsi, or otherwise, aided and abetted the killing of Tutsi, as described below in the concise statement of facts relating to the charges.

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9. Between 6 April and 17 July 1994, **SIMEON NCHAMIHIGO** acted as a member of the prefecture security council of Cyangugu and participated in its meetings. The following persons, among others, were members of the prefecture security council: Emmanuel Bakambiki, Prefect of Cyangugu; Samuel Imanishimwe, commander of the Cyangugu military camp; Vincent Munyarugerero, commander of the Cyangugu *gendarmerie*; Bernadin Bayingana, President of the Cyangugu Court of First Instance; Paul Ndorimana, the Public Prosecutor of Cyangugu, who was often represented by **SIMEON NCHAMIHIGO**, and sous-Prefects Emmanuel Kamonyo, Théodore Munyangabe and François Nzeyimana. The prefecture security council met regularly to discuss matters relating to security in Cyangugu Prefecture. The prefecture security council was particularly active from 6 April 1994, following the death of President Habyarimana, until 17 July 1994. During this time it met more often and made decisions concerning the setting of roadblocks in Cyangugu, the transfer of refugees to Kamarampaka Stadium from locations where they had sought to escape the violence, the drawing of lists of Tutsi and moderate Hutu and the selection of individual refugees for removal from the Kamarampaka Stadium, as described below in the concise statements of the facts relating to the charges.

10. Paragraph moved to paragraph 20(f).

III. GENERAL ALLEGATIONS

11. Between 6 April and 17 July 1994, and during all the periods referred to in this indictment, Rwandan citizens were identified according to the following ethnic or racial classifications: Tutsi, Hutu and Twa.

12. Between 6 April and 17 July 1994, soldiers, *Interahamwe* and armed civilians attacked, killed or caused bodily or mental harm to members of the Tutsi ethnic group in Cyangugu Prefecture and throughout Rwandan, with intent to destroy, in whole or in part, the Tutsi ethnic group as such.

13. Between 6 April and 17 July 1994, in Cyangugu Prefecture and throughout Rwandan, *Interahamwe*, soldiers and armed civilians murdered individually identified or targeted people or committed widespread killings, as part of widespread or systematic attacks against Tutsi civilians and/or Hutu opponents. As result of these attacks, *Interahamwe*, soldiers and armed civilians killed hundreds of thousands of Tutsi civilians and Hutu political opponents in Cyangugu Prefecture and throughout Rwanda.

IV INDIVIDUAL CRIMINAL RESPONSIBILITY

14. Pursuant to Article 6 (1) of the Statute, **SIMEON NCHAMIHIGO** is criminally responsible for the crimes of genocide, murder as a crime against humanity, extermination as a crime against humanity and other inhumane acts as a crime against humanity, for planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation or

execution of the crimes of genocide, murder as a crime against humanity, extermination as a crime against humanity and other inhumane acts as a crime against humanity. **SIMEON NCHAMIHIGO** ordered people over whom he had authority by virtue of his position described in paragraphs 2, 3, 4, 5, 6, 8, 9 and 10 of this indictment, to commit the crimes of genocide, murder as a crime against humanity, extermination as a crime against humanity and other inhumane acts as a crime against humanity, and instigated or otherwise aided and abetted those who were not under his authority to commit the crimes of genocide, murder as a crime against humanity, extermination as a crime against humanity and other inhumane acts as a crime against humanity.

15. In addition to his responsibility under Article 6(1) of the Statute for having planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of the crimes of **genocide, murder as a crime against humanity, extermination as a crime against humanity and other inhumane acts as a crime against humanity**, **SIMEON NCHAMIHIGO** knowingly and willfully participated in a **joint criminal enterprise**, in his role as set out in paragraphs 2, 3, 4, 5, 6, 8, 9, 10 and 15 of this indictment. The purpose of the joint criminal enterprise was the destruction of the Tutsi racial or ethnic group in Cyangugu prefecture through the commission of the crimes of genocide, murder as a crime against humanity, extermination as a crime against humanity and other inhumane acts as a crime against humanity. This joint criminal enterprise came into existence on or about 6 April 1994 and continued until 17 July 1994.

16. **SIMEON NCHAMIHIGO** and the other members of the joint criminal enterprise shared the same intent to effect the common purpose. To fulfill the common purpose, **SIMEON NCHAMIHIGO** acted in concert with *Interahamwe* Christophe Nyandwi, Yusuf Munyakazi, Mubiligi Thompson, Pierre Munyandamutsa, alias *Pressé*, Mvuyekure Vincent, known as *Tourné*, Habimana Jean Bosco, alias Masudi, Bizimungu Anasthase, Nsengumuremyi Patrick, Sinashebeje Faustin, and Habirora Nehemi, among others, as well as other participants who were not *Interahamwe*, including Samuel Imanishimwe, commander of the Cyangugu military camp, Sergeant Major Marc Ruberanziza, alias Bikomago, Habimana Vedaste, and Prefet Ennamuel Bagambiki, among others.

17. In addition to his participation in a joint criminal enterprise as set out in paragraphs 15 and 16 above, **SIMEON NCHAMIHIGO** is responsible for the crimes of **genocide, murder as a crime against humanity, extermination as a crime against humanity and other inhumane acts as a crime against humanity** on the basis that these crimes were the natural and foreseeable consequences of the execution of the common purpose of the joint criminal enterprise. **SIMEON NCHAMIHIGO** intended to further the common purpose of the joint criminal enterprise. In addition, it was foreseeable that the crimes of genocide, murder as a crime against humanity, extermination as a crime against humanity and other inhumane acts as a crime against humanity, might be perpetrated by one or other members of the group and **SIMEON NCHAMIHIGO** willingly took that risk.

18. The particulars that give rise to **SIMEON NCHAMIHIGO**'s individual responsibility for the crimes charged are set out in this indictment as follows:

- For the crime of **genocide** in paragraphs 19 through 43;
- For the crime of **murder as a crime against humanity** in paragraphs 44 through 55;
- For the crime of **extermination as a crime against humanity** in paragraphs 56 through 69 and
- For the crime of **other inhuman acts as a crime against humanity** in paragraphs 67 through 70.

V CRIMES CHARGED AND CONCISE STATEMENT OF FACTS

COUNT 1 : GENOCIDE

19. The Prosecutor of the International Criminal Tribunal for Rwanda charges **SIMEON NCHAMIHIGO** with **GENOCIDE**, a crime provided for in Article 2 (3) (a) of the Statute, in that between 6 April and 17 July 1994, in Cyangugu Prefecture (Rwanda), he was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population, with the intent to destroy, in whole or in part, an ethnic or racial group as such, as described in the facts contained in paragraphs 20 through 43 of this indictment.

CONCISE STATEMENT OF THE FACTS RELATING TO COUNT 1

20. Following the death of the President of Rwanda, Juvenal Habyarimana, on 6 April 1994, the interim government formed on 8 April 1994 launched a national campaign aimed at mobilizing the government armed forces, civilian militia, *Interahamwe*, the local public administration and ordinary citizens to fight the Rwandan Patriotic Front, or RPF, a politico-military opposition group comprising mainly Tutsi. The Rwandan government armed forces and *Interahamwe* militia specifically targeted the Tutsi civilian population of Rwanda as domestic accomplices of an invading army, *ibytso*, or categorically as a domestic enemy. Under the pretext of ensuring national defence, ordinary citizens of Rwanda, mainly Hutu, mobilized into action by the authorities, killed Tutsi and political opponents and looted their property. Between 6 April 1994 and 17 July 1994 hundreds of thousands of Tutsi and moderate Hutu were killed as a result of this campaign. **SIMEON NCHAMIHIGO** participated in the organization and the implementation of this campaign as follows:

(a) On or about 14 April 1994, during meetings called by the Prefect Emmanuel Bakambiki in the MRND office in Cyangugu, all zone supervisors, including **SIMEON NCHAMIHIGO**, were requested to report on the ongoing massacres in their zones. During the meeting, **SIMEON NCHAMIHIGO** reported that he was facing difficulties in attacking the Shangi parish as so many Tutsi had sought refuge there and that, according to him, it was not possible to kill all of them with traditional weapons. He claimed that he needed fire arms, such as rifles and grenades. These were later given to him by Lieutenant Samuel Immanishimwe in Karampo military camp. **SIMEON NCHAMIHIGO** distributed the weapons to the *Interahamwe* and ordered or instigated them to attack the Shangi parish and to kill the Tutsi and they did so some time in April 1994 with Yussuf Munyakazi and others.

(b) In late April 1994, **SIMEON NCHAMIHIGO** participated in a meeting at Gihundwe *secteur* office the purpose of which was to put in place security measures. Acting *bourgmestre*,

Manase Buvugamenshi, presided over the meeting, which was attended by Védaste Habimana, **SIMEON NCHAMIHIGO** and Christophe Nyandwi, president of the *Interahamwe* in Cyangugu prefecture, among others. During the meeting, **SIMEON NCHAMIHIGO** enquired about the security situation in the *secteur* and whether there were more Tutsi in hiding to be killed. Védaste Habimana replied that three days would suffice to "mop up" the *secteur*. In the context of the meeting, "to mop up" was understood to mean "to finish killing all the Tutsi." The "mopping up" of the *secteur* did in fact continue. By his enquiries regarding the remaining Tutsi to be killed, **SIMEON NCHAMIHIGO** instigated and aided and abetted the killing of these Tutsi.

(c) Between 6 April and 17 July 1994, **SIMEON NCHAMIHIGO**, in collaboration with Sergeant Major Marc Ruberanziza, alias Bikomago, Christophe Nyandwi, president of the *Interahamwe* at the prefecture level, Habimana Jean Bosco, alias Masudi, a former soldier and caporal Aimé, among others, organized and supervised military training for *Interahamwe* in Cyangugu prefecture namely: Jean de Dieu Utabazi, Janvier Borauzima, Faustin Sinashebeje, Joseph Habineza among others to enable and thus to aid and abet them to kill the Tutsi.

(d) On unknown dates in April and May 1994 **SIMEON NCHAMIHIGO** was involved with Prefect Emmanuel Bakambiki, Lieutenant Samuel Immanshimwe, and others, in the drawing up of lists of influential Tutsi and Hutu political opponents, on the basis of which the prefecture security council, including **SIMEON NCHAMIHIGO**, identified persons to be killed. As a result, **SIMEON NCHAMIHIGO** planned, ordered, instigated or aided and abetted the *Interahamwe* and other Hutu civilians in killing many Tutsi and Hutu political opponents, as described further below in paragraphs 20(e), 23, 24, 25, 26, 29, 30, 31, 40, 41, 42 and 43 of this indictment.

(e) Between 6 April and 17 July 1994, **SIMEON NCHAMIHIGO** kept a stockpile of weapons in his residence in Cyangugu. He distributed weapons to the *Interahamwe* who included David Habanakwabo and Jeremy Nsengiyumva and others and ordered or instigated them to go and kill specifically named people, Tutsi and Hutu political opponents, or launch large-scale attacks against Tutsi, who were sometimes assembled in specific places, such as parishes and schools as described in paragraphs 28, 32, 33, 34, 35 and 37 of this indictment.

(f) On or about 11 April 1994 a meeting was called by the Prefect Emmanuel Bagambiki in the prefecture office which was attended by the Sous-Prefects, bourgmestres, religious authorities, prominent businessmen who financed the MRND political party, the *Interahamwe* leaders and political authorities of the MRND, CDR, MDR-power and PL -power parties. Civil servants, including **SIMEON NCHAMIHIGO**, were also present at the meeting. During this meeting, **SIMEON NCHAMIHIGO** and Callixte Nsabimana, manager of Shangasha Tea Factory, were appointed supervisors for the security of Gisuma and Gafunzo zones. At the end of the meeting, all zone supervisors, including **SIMEON NCHAMIHIGO**, went to Karambo military camp to receive weapons from Lieutenant Samuel Imanishimwe. Shortly thereafter, the zone supervisors, including **SIMEON NCHAMIHIGO**, distributed these weapons to Anasthase Bizimungu and other *Interahamwe* posted in their respective zones and ordered them to kill the Tutsi with those weapons.

21. Between 6 April and 17 July 1994, **SIMEON NCHAMIHIGO** ordered or instigated the *Interahamwe* to erect several roadblocks in Cyangugu town and supervised the effective manning of these roadblocks. Such roadblocks included: a roadblock near the Banque de Kigali manned by Thomas Mubiligi, a roadblock near the Kamembe Market and the Pendeza roadblock on the road to the Airport as well as the Kadashya roadblock, manned by an *Interahamwe* leader, Pierre Munyandamutsa alias *Pressé*, an associate of **SIMEON NCHAMIHIGO**, the Cuyapa roadblock manned by Mvuyekure Vincent, alias *Tourné*, and the Gatandara roadblock, manned by an *Interahamwe*, Habimana Jean Bosco. The aim of the roadblocks was to stop the Tutsi and Hutu opponents from fleeing to safer areas and to kill them. **SIMEON NCHAMIHIGO** controlled and supervised the roadblocks by inspecting them several times a day, and he ordered or instigated the *Interahamwe* who manned the roadblocks to kill the Tutsi attempting to pass through. **SIMEON NCHAMIHIGO's** *Interahamwe* killed many Tutsi at the roadblocks, sometimes in the presence of **SIMEON NCHAMIHIGO**. The Prefect of Cyangugu, Emmanuel Bakambiki appointed people like Ndagijimana Shabani to remove dead bodies at the roadblocks and throughout the Cyangugu city in this period. At the Gatandara roadblock, **SIMEON NCHAMIHIGO** ordered or instigated the *Interahamwe* to kill many Tutsi who had been selected in the Karampaka Stadium. The Cyapa roadlock was erected just next to **SIMEON NCHAMIHIGO's** residence. **SIMEON NCHAMIHIGO** ordered, instigated or aided and abetted the killing of Tutsi at that roadblock, including the catholic priest, Father Boneza Joseph.

22. On or about 7 April 1994, **SIMEON NCHAMIHIGO** spoke to Thomas Mubiligi and a group of young Hutu in Kamembe and ordered or instigated them to look for all the Tutsi and RPF accomplices and hand them over to the *Interahamwe* and to set ablaze all the places where the opposition was well-established. Following **SIMEON NCHAMIHIGO's** orders or instigation, the *Interahamwe* tracked down and killed many people, mostly Tutsi men, women and children, on or about 7 April 1994 and in the months that followed.

23. On or about 15 April 1994, in Kamembe, **SIMEON NCHAMIHIGO** arrived at a road block near the Banque de Kigali manned by Thomas Mubiligi and about 20 people, comprised of *Interahamwe* and young armed Hutu alike. He read out to these people names of Tutsi who were reportedly hiding in Kamembe town, and ordered or instigated that they be hunted down. The names read out from the list by **SIMEON NCHAMIHIGO** included Gasali Aloys, Emilien Nsengumuremyi, Isidore Kagenza and Judge Jean-Marie Vianney Tabaro. After reading out the names and before leaving the roadblock, **SIMEON NCHAMIHIGO** ordered or instigated the *Interahamwe* to look for Tutsi and to kill them and aided and abetted by providing them with two grenades. These *Interahamwe* then hunted down and killed the Tutsi.

24. On an unknown date in May 1994, in execution of **SIMEON NCHAMIHIGO's** order or instigation issued at a road block near the Banque de Kigali in Kamembe on or about 15 April 1994, the *Interahamwe* including Mvuyekure Vincent alias *Tourné* found Emilien Nsengumuremyi and killed him. They continued to look for the other Tutsi whose names had been read out by **SIMEON NCHAMIHIGO**, in order to kill them.

25. On or about 28 or 30 April 1994, **SIMEON NCHAMIHIGO** went to a roadblock near Paul Ndorimana's house manned by the *Interahamwe*, including Ndorimana Martin, and ordered or instigated them to kill the accountant of Cyangugu Prefecture, Kayihura Canisus, a Tutsi, who

had supposedly managed to obtain an identity card indicating that he belonged to the Hutu ethnic group.

26. On an unknown date in May 1994, **SIMEON NCHAMIHIGO** went to the roadblocks in Kamembe, including the roadblocks near Cuyapa and the Banque de Kigali, and ordered or instigated the *Interahamwe* manning the roadblocks, including Vincent Mvuyekure alias *Tourné* and Thomas Mubiligi to kill a Tutsi priest of the Mibirizi Catholic parish, whose name he did not reveal but who, according to him, was expected to pass by the roadblock in a vehicle. **SIMEON NCHAMIHIGO** had issued similar instructions at all the roadblocks that he supervised and he had threatened to kill the *Interahamwe* if they let the Tutsi priest through. In the presence of **SIMEON NCHAMIHIGO**, the *Interahamwe* killed the priest later that day at the roadblock erected at the entrance to Kamembe next to the residence of the accused and manned by the *Interahamwe* Habirora Nehemi and Patrick Nsengumuremyi. Later on the Catholic priest was known to be Father Joseph Boneza.

27. On an unknown date in May 1994, at the Cyapa roadblock manned by the *Interahamwe* including Vincent Mvuyekure alias *Tourné*, Patrick Nsengumuremyi and the *gendarmes*, **SIMEON NCHAMIHIGO** took into the car he was driving two young Tutsi students, Uzier and Innocent, who were seeking a lift to go back home. **SIMEON NCHAMIHIGO** handed the two students over to the *Interahamwe* and ordered or instigated them to kill the Tutsi students, and they did so.

28. After President Juvénal Habyarimana's death on 6 April 1994, a large number of Tutsi and Hutu political opponents fleeing acts of violence and massacres, sought refuge in places considered safe in Cyangugu such as the main cathedral, Mibirizi parish, Hanika parish, Nkanka parish, Shangi parish, Nyamasheke parish, the Mibirizi hospital, the Gihundwe school and the Nyakanyinya school, among others. Other Tutsi and Hutu political opponents remained in their homes. **SIMEON NCHAMIHIGO**, in collaboration with Lieutenant Samuel Imanishimwe, Sergeant Major Marc Ruberanziza alias Bikomago, Sous-Prefet Theodore Muyengabe and Christophe Nyandwi, president of the *Interahamwe* at the prefecture level, ordered or instigated the *Interahamwe* including Kamenero to launch attacks against Tutsi and Hutu political opponents who had sought refuge in safe places and also on individuals in their homes. **SIMEON NCHAMIHIGO** personally led all these attacks, except the attack at Nkanka parish. During these attacks, **SIMEON NCHAMIHIGO** and the *Interahamwe* killed many people, as described in paragraphs 29 through 37 of this indictment.

29. On or about 7 April 1994, **SIMEON NCHAMIHIGO** led a group of *Interahamwe* including Christophe Nyandwi among others in an attack on the residence of Doctor NAGAFIZI, a Tutsi regional chief medical officer of Cyangugu and member of the *Parti Libéral*, allegedly with RPF leanings, and an attack on the residence of a businessman called Kongo, a Hutu and member of the PSD political party. During the attacks, the *Interahamwe*, led by **SIMEON NCHAMIHIGO** and ordered, instigated or aided and abetted by him, killed Doctor NAGAFIZI and Kongo.

30. On or about 7 April 1994, **SIMEON NCHAMIHIGO** ordered or instigated the *Interahamwe*, namely Mubiligi Thompson, to attack the residence of Trojean Ndayisaba a Tutsi trader and member of the PSD political party and to kill him. Trojean Ndayisaba was accused of

receiving money from the RPF. During the attack, the *Interahamwe* killed the whole family of Trojean Ndayisaba and looted their house. The *Interahamwe* killed Trojena Ndayisaba himself afterwards on an unknown date between the end of April 1994 and early July 1994.

31. On or about 7 or 9 April 1994, **SIMEON NCHAMIHIGO** ordered or instigated the *Interahamwe*, including Habineza Joseph, alias Sekuse, to kill Theoneste Karangwa, an influential Tutsi trader and member of the PSD political party in Cyangugu. **SIMEON NCHAMIHIGO** said that the *Interahamwe* should not to kill Karangwa's wife because she was not Tutsi. The *Interahamwe* then attacked and killed Theoneste Karangwa and his driver Iyakaremye. **SIMEON NCHAMIHIGO** seized Karangwa's vehicle and later took it to Bukavu in neighboring Zaire.

32 On or about 12 April 1994, **SIMEON NCHAMIHIGO** ordered or instigated the *Interahamwe*, including Bizimungu Anasthase, and communal police, gendarmes and military reservists to attack the Nyakanyinka school and kill the Tutsi who sought refuge there. The attackers received from **SIMEON NCHAMIHIGO** grenades and rifles which were used during the attack and were thus aided and abetted by him in the attack. As a result, the *Interahamwe* and other attackers killed about 600 Tutsi.

33. On or about 12 April 1994, **SIMEON NCHAMIHIGO**, in collaboration with Samuel Imanishimwe, commander of Cyangugu military camp, and the Sous-Prefect *Kamonyo*, ordered or instigated the *Interahamwe* including Uwimana Jean Charles, alias Karoli, and a group of Hutu civilians, to attack the Hanika parish and kill all the refugees who were supposed to be Tutsi. As a result of **SIMEON NCHAMIHIGO**'s order or instigation, the attackers killed about 1, 500 people, including children and the aged.

34. On a day sometime between 14 and 15 April 1994, at about 8 o'clock in the morning, **SIMEON NCHAMIHIGO** led a group of *Interahamwe* and *Impuzamugambi* (the militiamen of the CDR political party) including Ndorimana Martin, in an attack against Tutsi of the Gihundwe *Secteur*, particularly targeting Tutsi of Kabugi, Ruganda, Murindi and Murangi *Cellules*. During the attack, the *Interahamwe*, led by **SIMEON NCHAMIHIGO**, and ordered, instigated or aided and abetted by him, killed a large number of Tutsi and destroyed their houses.

35. On or about 18 April 1994, **SIMEON NCHAMIHIGO**, in collaboration with Lieutenant Samuel Imanishimwe, Sergeant Major Marc Rubenziza, alias Bikomago and Sous-Prefect Theodore Muyengabe, led a group of *Interahamwe* which included *Gendarme Mandela* and *Anathase Bizimungu*, among others, that attacked Mibirizi convent and Mibirizi hospital, where many Tutsi had sought refuge. During the attacks, the *Interahamwe*, led by **SIMEON NCHAMIHIGO**, and ordered, instigated or aided and abetted by him, massacred the Tutsi refugees and looted their property. After the attacks, **SIMEON NCHAMIHIGO** rewarded the killers with beer.

36. In late April or early May 1994, three young Tutsi girls, Mukashema Josephine, Marie and Helene, sought refuge in the residence of a certain Hutu named Jonas. **SIMEON NCHAMIHIGO** accused Jonas and his brother Niyikiza Jonathan of hiding *Inyenzi*. **SIMEON NCHAMIHIGO**, assisted by one of his *Interahamwe* namely Banga Kaboyi Johnson, removed

the three Tutsi girls from Jonas's house and took them away to an unknown place. On the same day, **SIMEON NCHAMIHIGO** told Niyikiza Jonathan that the *Inyenzi* had been killed and threatened Niyikiza Jonathan to kill him if he continued to hide Tutsi. By his actions, **SIMEON NCHAMIHIGO** committed, ordered, instigated or aided and abetted the killing of these Tutsi girls.

37. Between 20 and 25 June 1994 or thereabouts, **SIMEON NCHAMIHIGO** ordered or instigated the *Interahamwe* in his area, including Jean-Paul, Mvuyekure Vincent, alias *Tourné*, Nzeyimana, among others, to go to Kibuye together with Yusufu Munyakazi and his *Interahamwe*, and participate in a number of attacks to kill Tutsi who had sought refuge at Bisesero in Kibuye Prefecture. The *Interahamwe* travelled in an ONATRACOM bus to Bisesero and assisted the Kibuye *Interahamwe* in killing the Tutsi. Together, they killed many Tutsi. On the return of the *Interahamwe* from Kibuye after one or two days, **SIMEON NCHAMIHIGO** rewarded them with drinks and food at the Gihundwe school.

38. After President Juvénal Habyarimana's death on 6 April 1994, **SIMEON NCHAMIHIGO** and other members of the prefecture security council, including Prefect Emmanuel Bakambiki and Lieutenant Samuel Imanishimwe, the Cyangugu military camp commander, decided to move refugees from their places of refuge and assembled them at Kamarampaka Stadium in Cyangugu, ostensibly with the purpose of providing the refugees with better security but with the aim of eliminating those who were suspected of being accomplices of the *Inkotanyi*.

39. On or about 14 April 1994, **SIMEON NCHAMIHIGO**, Lieutenant Samuel Imanishimwe and other members of the prefecture security council including Emmanuel Bakambiki moved the refugees from the Gihundwe school to Kamarampaka stadium.

40. On or about 15 April 1994, **SIMEON NCHAMIHIGO**, Lieutenant Samuel Imanishimwe and other members of the prefecture security council including Emmanuel Bakambiki moved the refugees from Cyangugu Cathedral and took them to Kamarampaka Stadium. The refugees transferred to the stadium that day included Baziruwaha Marianne, Nkusi Georges, Albert Twagiramungu, Jean Fidèle Murekezi, his wife Kanyamibwa Christine and their children, among others.

41. On the 16th of April 1994, **SIMEON NCHAMIHIGO** and other members of the prefecture security council, including Prefet Emmanuel Bakambiki, Lieutenant Samuel Imanishimwe, Christophe Nyandwi, President of the *Interahamwe* at the Prefecture level, Major Munyarugerero, Theodeore Munyangabe, sous-prefect, Paul Ndorimana, Prosecutor, Simeon Remesh, Headmaster of Gihundwe Primary School, Ngagi, customs officer and Sergeant Major Marc Ruberanziza went to Kamarampaka Stadium. The commander of the gendarmerie camp, using a megaphone, called out names of civilians who were alleged to be *Inkotanyi* accomplices from a list that had been prepared by the prefecture security council, including **SIMEON NCHAMIHIGO**. The list included: Benoît Sibomana, Jean-Fidèle Murekezi, Apiane Ndorimana, Albert Mugabo, Albert Twagiramungu, Ibambasi, Bernard Nkara, Trojean Nzisabira, Rémy Mihigo, Dominique Gapeli, Albert Mugabo and Marianne Baziruwaha. All of the individuals named on the list were Tutsi, except for Marianne Baziruwaha who was a Hutu and an influential member of the PSD political party in Cyangugu. The individuals were asked to

come out, and were escorted out of the Stadium by **SIMEON NCHAMIHIGO** and the prefecture delegation. Outside the stadium, about four people of Tutsi origin, including Vital Nibagwire, Ananie Gatake, Jean-Marie Vianney Habimana alias Gapfumu, whom **SIMEON NCHAMIHIGO** and the other members of the prefecture delegation had brought from the cathedral, were waiting in vehicles. **SIMEON NCHAMIHIGO** and the prefecture delegation instructed soldiers to take the selected 16 people to the gendarmerie camp purportedly for questioning.

42. When, on or about 16 April 1994, **SIMEON NCHAMIHIGO** and other members of the prefecture security council took the 16 selected persons to the gendarmerie camp, they removed Marianne Baziruwaha from the group and instructed the drivers to proceed with the remaining 15, all Tutsi, to a place near Cyangugu prison. **SIMEON NCHAMIHIGO** then ordered or instigated the *Interahamwe* whom he had brought along with him from Mutongo Centre earlier the same day, including Bizimungu Anasthase and Jean Bosco Habimana to kill the 15 remaining Tutsi. Following **SIMEON NCHAMIHIGO**'s order or instigation, the *Interahamwe* killed the 15 Tutsi near Cyangugu prison and threw their dead bodies into a latrine in Gapfumu's compound.

43. On or about 18 April 1994, **SIMEON NCHAMIHIGO** went back to Kamarampaka Stadium in a delegation of the prefecture security council, comprising Prefet Emmanuel Bakambiki, Samuel Imanishimwe, and Sous-Prefet Emmanuel Kamonyo, among others. Bakambiki, using a megaphone, called out about 20 names from a list which the prefecture security council had drawn up. They took the listed people out of the stadium. Some people of Tutsi origin, such as Antoine Nsengumuremyi and Felicien, whose names had not been called out, were nevertheless taken out of Kamarampaka Stadium that day, together with the others. These people were subsequently killed and their bodies thrown into the Gataranga River or into mass graves. **SIMEON NCHAMIHIGO** and the prefecture delegation aided and abetted the killing of all those who had been taken out of the stadium.

COUNT 2: CRIME AGAINST HUMANITY: MURDER

44. The Prosecutor of the International Criminal Tribunal for Rwanda charges **SIMEON NCHAMIHIGO** with **MURDER**, as a **CRIME AGAINST HUMANITY**, pursuant to Article 3 (a) of the Statute, in that between 6 April and 17 July 1994 he was responsible for the murder of a number of Tutsi and of people considered as Tutsis, as well as Hutu opponents, particularly in Cyangugu Prefecture, as part of a widespread or systematic attack against a civilian population on ethnic, racial or political grounds, as set out in paragraphs 45 through 55 of this indictment.

Concise statement of the facts relating to Count 2

45. On or about 7 April 1994, **SIMEON NCHAMIHIGO** led a group of *Interahamwe* including Nyandwi Christophe in an attack on the residence of Doctor NAGAFIZI, a Tutsi regional chief medical officer of Cyangugu and member of the *Parti Liberal*, with RPF leanings, and an attack on the residence of a businessman called Kongo, a Hutu and member of the PSD political party.

During the attacks, the *Interahamwe*, led by **SIMEON NCHAMIHIGO** and ordered, instigated or aided or abetted by him, killed Doctor NAGAFIZI and Kongo.

46. On or about 7 April 1994, **SIMEON NCHAMIHIGO** ordered or instigated the *Interahamwe*, namely Mubiligi Thompson, to attack the residence of Trojean Ndayisaba, a Tutsi trader and member of the PSD political party and to kill him. Trojean Ndayisaba was accused of receiving money from the RPF. During the attack, the *Interahamwe* killed the whole family of Trojean Ndayisaba and looted their house. The *Interahamwe* killed Trojena Ndayisaba himself afterwards on a unknown date between the end of April 1994 and early July 1994.

47. On or about 7 or 9 April 1994, **SIMEON NCHAMIHIGO** in collaboration with Nyandwi Christophe, an *Interahamwe* leader at the prefecture level, ordered or instigated *Interahamwe* including Joseph Habineza, among others to kill Zacharie Serubyogo, a Hutu trader and MDR political party member of Parliament, together with other people. The *Interahamwe* then killed Zacharie Serubyogo and many unknown people near Lake Kivu in the presence of **SIMEON NCHAMIHIGO**. After the killing of Zacharie Serubyogo, **SIMEON NCHAMIHIGO** ordered his *Interahamwe* to look for a Tutsi by the name of Theoneste Karangwa and kill him.

48. On or about 7 or 9 April 1994, **SIMEON NCHAMIHIGO** ordered or instigated *Interahamwe*, including Habineza Joseph, alias Sekuse, to kill Théoneste KARANGWA, an influential Tutsi trader and member of the PSD political party in Cyangugu. **SIMEON NCHAMIHIGO** said that the *Interahamwe* should not to kill Karangwa's wife because she was not Tutsi. The *Interahamwe* then attacked and killed Théoneste Karangwa and his driver Iyakaremye. **SIMEON NCHAMIHIGO** seized Karangwa's vehicle and later took it to Bukavu in neighboring Zaire.

49. Deleted.

50. Between 15 and 17 April 1994, **SIMEON NCHAMIHIGO** ordered or instigated a group of *Interahamwe* who included David Habanakwabo, Rusine and Nzeyimana, to kill a young Hutu student called Jean de Dieu Gakwandi, whom he had described as a traitor and an accomplice of the Tutsi. To this end, **SIMEON NCHAMIHIGO** gave a grenade to someone called David Habanakwabo, alias Vicky, and ordered him to join other *Interahamwe* in order to kill Jean de Dieu Gakwandi. The assailants hit Jean de Dieu Gakwandi with a club on the head. Jean de Dieu Gakwandi sustained serious injuries. The assailants left him there, unconscious, thinking he was dead.

51. On or about 28 or 30 April 1994, **SIMEON NCHAMIHIGO** went to a roadblock manned by *Interahamwe*, including Ndorimana Martin, and ordered or instigated them to kill the accountant of Cyangugu Prefecture, Canisius Kayihura, a Tutsi civilian, who had managed to obtain an identity card indicating that he belonged to the Hutu ethnic group.

52. In late April or early May 1994, three young Tutsi girls, Mukashema Josephine, Marie and Helene, sought refuge in the residence of a certain Hutu named Jonas. **SIMEON NCHAMIHIGO** accused Jonas and his brother Niyikiza Jonathan of hiding *Inyenzi*. **SIMEON NCHAMIHIGO** assisted by one of his *Interahamwe* namely Banga Kaboyi Johnson, removed

the three Tutsi girls from Jonas's house, took them away to an unknown place. On his return the same day, **SIMEON NCHAMIHIGO** told Niyikiza Jonathan that the *Inyenzi* had been killed and he threatened Niyikiza Jonathan to kill him if he continued to hide Tutsi. By his actions, **SIMEON NCHAMIHIGO** ordered, instigated or aided and abetted the killing of these Tutsi girls.

53. On an unknown date in May 1994, in execution of **SIMEON NCHAMIHIGO**'s order or instigation issued at a road block in Kamembe on or about 15 April 1994, the *Interahamwe* including Christophe Nyandwi, found Emilien Nsengumuremyi and killed him. They continued to look for the other Tutsi whose names had been read out by **SIMEON NCHAMIHIGO**, in order to kill them because of their Tutsi origin.

54. On an unknown date in May 1994, **SIMEON NCHAMIHIGO** went to the roadblocks in Kamembe that he supervised, including the Cuyapa and the Banque de Kigali roadblocks, and ordered or instigated the *Interahamwe* manning the roadblocks, including Vincent Mvuyekure alias *Tourné* and Thomas Mubiligi, to kill a Tutsi priest of the Mibirizi Catholic parish, Father Joseph Boneza, who was expected to pass by the roadblock in a vehicle. **SIMEON NCHAMIHIGO** threatened to kill the *Interahamwe* if they let the Tutsi priest through. Later that day and in the presence of **SIMEON NCHAMIHIGO**, the *Interahamwe* killed Father Joseph Boneza at the roadblock erected at the entrance to Kamembe next to the residence of the accused and manned by the *Interahamwe* Habirora Nehemi and Patrick Nsengumuremyi.

55. On an unknown date in May 1994, at the Cyapa roadblock manned by the *Interahamwe* including Nsengumuremyi Patrick and the *gendarmes*, **SIMEON NCHAMIHIGO** took into the car he was driving, two young Tutsi students, Uzier and Innocent, who were seeking a lift to go back home. **SIMEON NCHAMIHIGO** handed the two boys over to the *Interahamwe* and ordered or instigated them to kill the Tutsi students and they did so.

COUNT 3: CRIME AGAINST HUMANITY: EXTERMINATION

56. The Prosecutor of the International Criminal Tribunal for Rwanda charges **SIMEON NCHAMIHIGO** with **EXTERMINATION** as a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3 (b) of the Statute, in that between 6 April and 17 July 1994,, particularly in Cyangugu prefecture, **SIMEON NCHAMIHIGO** was responsible for the large scale killing of Tutsi or of people considered as Tutsi and of Hutu opponents, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as described below in the concise statement of facts relating to the charges in paragraphs 57 through 65 of this indictment.

Concise statement of the facts relating to Count 3

57. Between 6 April and 17 July 1994, in particular from 7 April to the end of May 1994, **SIMEON NCHAMIHIGO**, in collaboration with Sergeant Major Marc Ruberanziza, alias Bikomago, and Christophe Nyandwi, president of the *Interahamwe* at the prefecture level,

ordered or instigated the *Interahamwe* amongst whom was Kamenero, to launch attacks against Tutsi civilians and Hutu opponents refugees in Hanika parish, Mibirizi parish, Mibirizi hospital, Nkanka parish, Shangi parish and Nyamasheke parish among other places where those people had sought refuge including their homes. **SIMEON NCHAMIHIGO** personally led all of these attacks, except the attack at Nkanka parish. During the attacks, the *Interahamwe* and other Hutu civilians led by **SIMEON NCHAMIHIGO** killed many civilians who thus were targeted as described in paragraphs 59, 60, 61, 62, 63, 64 and 65 of this indictment.

58. On or about 7 April 1994, **SIMEON NCHAMIHIGO** arrived at a road block manned by a group of young Hutu in Kamembe and ordered or instigated them to look for all the Tutsi and RPF accomplices and hand them over to the *Interahamwe* and to set ablaze all the places where the opposition was well-established. Following **SIMEON NCHAMIHIGO**'s orders or instigation, the *Interahamwe* tracked down and killed many civilians, mostly Tutsi men, women and children, after or around 7 April 1994.

59. On or about 7 April 1994, **SIMEON NCHAMIHIGO** ordered or instigated the *Interahamwe*, namely Mubiligi Thompson, to attack the residence of Trojean Ndayisaba a Tutsi trader and member of the PSD political party and to kill him. Trojean Ndayisaba was accused of receiving money from the RFP. During the attack, the *Interahamwe* killed the whole family of Trojean Ndayisaba and looted their house. The *Interahamwe* killed Trojean Ndayisaba himself afterwards on an unknown date between the end of April 1994 and early July 1994.

60. On or about 12 April 1994, **SIMEON NCHAMIHIGO** ordered or instigated *Interahamwe*, including Bizimungu Anasthase, and communal police, gendarmes and military reservists to attack the Nyakanyinka school and kill the Tutsi civilians who sought refuge there. The attackers received from **SIMEON NCHAMIHIGO** grenades and rifles which were used during the attack, and were thus aided and abetted by him in the attack. As a result, the *Interahamwe* and other attackers killed about 600 Tutsi civilians.

61. On a day sometime between 14 and 15 April 1994, at about 8 o'clock in the morning, **SIMEON NCHAMIHIGO**, leading a group of *Interahamwe* and *Impuzamugambi* (the militiamen of the CDR political party) including Ndorimana Martin, launched an attack against Tutsi of the Gihundwe *Secteur*, particularly targeting Tutsi of Kabugi, Ruganda, Murindi and Murangi *Cellules*. During the attack, the *Interahamwe* led by **SIMEON NCHAMIHIGO**, and ordered, instigated or aided and abetted by him, killed a large number of Tutsi and destroyed their houses.

62. On or about 15 April 1994 in Kamembe, **SIMEON NCHAMIHIGO** arrived at a road block manned by about 20 people comprised of *Interahamwe* and young armed Hutu alike. He read out to these people names of Tutsi who were reportedly hiding in Kamembe town, and ordered or instigated that they be hunted down. The names read out from the list by **SIMEON NCHAMIHIGO** included Gasali Aloys, Emilien Nsengumuremyi, Isidore Kagenza and Judge Jean-Marie Vianney Tabaro. After reading out the names and before leaving the road block, **SIMEON NCHAMIHIGO** ordered or instigated the *Interahamwe* to look for Tutsi and to kill them and aided and abetted by providing them with two grenades. These *Interahamwe* then hunted down and killed the Tutsi.

63. On an unknown date in April 1994, **SIMEON NCHAMIHIGO** led a group of *Interahamwe*, which included *Anathase Bizimungu* in their number, accompanied by *Gendarme Mandela*, in an attack on Mibirizi convent, where many Tutsi civilians had sought refuge. During the attack, the *Interahamwe*, led by **SIMEON NCHAMIHIGO**, and ordered, instigated or aided and abetted by him, massacred the Tutsi refugees and looted their property.

64. Deleted.

65. On or about 7 or 9 April 1994, **SIMEON NCHAMIHIGO** in collaboration with lieutenant Samuel Imanishimwe and Yusuf Munyakazi, went to Cyangugu prison and ordered the director of the prison to remove about 13 FAR soldiers who had been sent to jail for their alleged complicity with RPF. The detainees were taken to the Prefecture office. **SIMEON NCHAMIHIGO** then ordered, instigated or aided and abetted the killing of the 13 FAR soldiers. Following **SIMEON NCHAMIHIGO**'s order, instigation or aiding and abetting, the 13 FAR soldiers who were no longer combatants, were killed and their dead bodies thrown into a garden of the Prefecture near the lake. Later on the same day, **SIMEON NCHAMIHIGO** ordered or instigated other prisoners, including Ndamira Damien, to remove the dead bodies of the 13 FAR soldiers from the garden and bury them along with the dead bodies of 8 unknown persons found at the same place.

COUNT 4: CRIME AGAINST HUMANITY: OTHER INHUMANE ACTS

66. The Prosecutor of the International Criminal Tribunal for Rwanda charges **SIMEON NCHAMIHIGO** of other inhumane acts as a crime against humanity, a crime stipulated in Article 3 (i) of the Statute, in that between 6 April and 17 July 1994, throughout Rwanda, particularly in Cyangugu Prefecture, **SIMEON NCHAMIHIGO** was responsible for committing inhumane acts against Tutsi civilians or of people considered as Tutsi, and of Hutu opponents, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as outlined in paragraphs 67 through 70 of this indictment

Concise statement of the facts relating to Count 4

67. On or about 7 or 9 April 1994, **SIMEON NCHAMIHIGO** ordered or instigated *Interahamwe*, including Habineza Joseph, alias Sekuse, to kill Theoneste Karangwa, an influential Tutsi trader and member of the PSD political party in Cyangugu. **SIMEON NCHAMIHIGO** said that the *Interahamwe* should not to kill Theoneste Karangwa's wife because she was not Tutsi. Following **SIMEON NCHAMIHIGO**'s order or instigation, the *Interahamwe* attacked and caught Theoneste Karangwa in his house. The *Interahamwe* then covered Theoneste Karangwa with his own mattress, poured fuel into the mattress and burnt Theoneste Karangwa, causing him great pain and suffering before his death. The *Interahamwe* also killed Theoneste Karangwa's driver by the name of Iyakaremye. **SIMEON NCHAMIHIGO** then seized Theoneste Karangwa's vehicle and later took it with him to Bukavu in neighboring Zaire, together with other vehicles and various items looted during the attacks.

68. On or about 7 April 1994, **SIMEON NCHAMIHIGO** ordered or instigated the *Interahamwe*, namely Mubiligi Thompson, to attack the residence of Trojean Ndayisaba, a Tutsi trader and member of the PSD political party and to kill him. Trojean Ndayisaba was accused of receiving money from the RFP. During the attack, the *Interahamwe* burnt the whole family of Trojean Ndayisaba inside their vehicle causing them great pain and suffering before their deaths. The *Interahamwe* killed Trojean Ndayisaba himself afterwards on an unknown date between the end of April 1994 and early July 1994.

69. Between 15 and 17 April 1994, **SIMEON NCHAMIHIGO** ordered or instigated a group of *Interahamwe* which included in their number David Habanakwabo, Rusine and Nzeyimana, among others, to kill a young Hutu student called Jean de Dieu Gakwandi, whom he had described as a traitor and an accomplice of the Tutsi. To this end, **SIMEON NCHAMIHIGO** gave a grenade to someone called David Habanakwabo, alias Vicky, and ordered him to join other *Interahamwe* in order to kill Jean de Dieu Gakwandi. The assailants hit Jean de Dieu Gakwandi with a club on the head causing him pain and suffering. Jean de Dieu Gakwandi sustained serious injuries. The assailants left him there, unconscious, thinking he was dead.

70. On 16 April 1994 or thereabouts, **SIMEON NCHAMIHIGO** and other members of the prefecture security council, including Lieutenant Samuel Imanishimwe and Christophe Nyandwi, removed from Karampaka Stadium about 15 Tutsi and 1 Hutu woman by the name of Marianne Baziruwiha, and took them to a place near the prison after dropping off Marianne Baziruwiha at the gendarmerie camp. Among the 15 Tutsi who were removed from the stadium by **SIMEON NCHAMIHIGO** and others, were Jean-Fidele Murekezi, Albert Twagiramungu and Gapfumu. **SIMEON NCHAMIHIGO** then ordered or instigated the *Interahamwe* whom he had brought along with him from Mutongo Centre earlier the same day, including Bizimungu Anasthase, to kill the 15 Tutsi. Following **SIMEON NCHAMIHIGO**'s order or instigation, the *Interahamwe* killed the 15 Tutsi near Cyangugu prison and threw their dead bodies into a latrine in Gapfumu's compound; before doing so the *Interahamwe* removed the genitals of Jean-Fidele Murekezi and Albert Twagiramungu and the heart of Gapfumu.

The acts and omissions of **SIMEON NCHAMIHIGO** set out herein are punishable pursuant to Articles 22 and 23 of the Statute.

Done at Arusha, Tanzania, on 11 December 2006


Hassan Bubacar Jallow
Prosecutor

