

ICTR-01-73-T  
18-12-2008  
(8502-8364)

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

OR: ENG

**TRIAL CHAMBER III**

**Before:** Judge Inés Mónica Weinberg de Roca, presiding  
Judge Khalida Rachid Khan  
Judge Lee Gacuiga Muthoga

**Registrar:** Adama Dieng

**Date:** 18 December 2008

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**THE PROSECUTOR**

v.

**Protais ZIGIRANYIRAZO**

*Case No. ICTR-01-73-T*

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**JUDGEMENT**

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**CHAPTER I: INTRODUCTION**

**1. The Tribunal and its Jurisdiction**

1. The Judgement in the case of *The Prosecutor v. Protais Zigiranyirazo* is issued by Trial Chamber III of the International Criminal Tribunal for Rwanda (“Tribunal” or “ICTR”), composed of Judges Inés Mónica Weinberg de Roca, presiding, Khalida Rachid Khan and Lee Gacuiga Muthoga (“Chamber”).

2. The Tribunal is governed by its Statute (“Statute”), annexed to Security Council Resolution 955,<sup>1</sup> and by its Rules of Procedure and Evidence (“Rules”).<sup>2</sup>

3. Pursuant to the Statute, the Tribunal has jurisdiction to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States.<sup>3</sup> Its jurisdiction is limited to genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 and Additional Protocol II thereto of 8 June 1977, committed between 1 January 1994 and 31 December 1994, as provided in Articles 1, 2, 3, 4 and 7 of the Statute.

**2. The Accused**

4. Protais Zigiranyirazo (“Zigiranyirazo” or “Accused”) was born on 2 February 1938 in the Giciye *commune*, Gisenyi *préfecture*. His younger sister, Agathe Kanziga, married former Rwandan President Juvenal Habyarimana, thus making Zigiranyirazo the brother-in-law of the late President.<sup>4</sup>

5. Zigiranyirazo first entered politics in 1969 as a Member of Parliament. He was appointed *préfet* of Kibuye in 1973 and later, *préfet* of Ruhengeri from 1974 until 1989. After participating in Rwandan politics for 20 years, Zigiranyirazo resigned and left Rwanda to pursue further studies at the University of Québec in Montreal. In 1993, he returned to Rwanda to work as a businessman.<sup>5</sup>

<sup>1</sup> UN Doc. S/RES/955 (1994), 8 November 1994.

<sup>2</sup> The Rules were originally adopted on 5 July 1995 and were last amended on 14 March 2008.

<sup>3</sup> Articles 1 and 5 of the Statute.

<sup>4</sup> Indictment, para 1; Prosecution Pre-Trial Brief para 17; Prosecution Closing Brief, paras 1, 3. The Chamber notes that the Defence did not contest any of these alleged facts.

<sup>5</sup> Indictment, para 1; Prosecution Pre-Trial Brief para 17; Prosecution Closing Brief, paras 1, 3. The Chamber notes that the Defence did not contest any of these alleged facts.

### 3. Indictment

6. Under the amended indictment of 8 March 2005 ("Indictment"),<sup>6</sup> the Prosecution charges Zigiranyirazo with five counts pursuant to Articles 2 and 3 of the Statute: conspiracy to commit genocide; genocide; complicity in genocide; extermination as a crime against humanity; and murder as a crime against humanity. The Indictment charges Zigiranyirazo only with individual criminal responsibility under Article 6(1) of the Statute. Criminal responsibility is not sought under Article 6(3).<sup>7</sup>

### 4. Summary of Procedural History

7. Zigiranyirazo was arrested in Belgium on 26 July 2001 by Belgian Authorities and transferred to the Detention Facility of the Tribunal in Arusha on 3 October 2001. The trial commenced on 3 October 2005 and closed on 29 May 2008. The Prosecution concluded its case on 28 June 2006, after calling 25 witnesses. It reopened its case on 27 November 2006 in order to hear the testimony of Michel Bagaragaza. The Defence case commenced on 30 October 2006. During 40 trial days, the Defence called 41 witnesses. The Chamber heard Closing Arguments on 28 and 29 May 2008. The Procedural History is set out in full in Annex I of this Judgement.

### 5. Overview of the Case

8. The Prosecution alleges that Zigiranyirazo met with government, military and family authorities in the *préfectures* of Kigali-ville and Gisenyi, both preceding and following the death of President Habyarimana, to plan, prepare and facilitate attacks on Tutsi during 1994 with the intent to destroy, in whole or in part, the Tutsi ethnic group. In furtherance of this plan, several roadblocks were established in April 1994, in direct proximity of Zigiranyirazo's three homes. The Prosecution further alleges that the Accused was involved with creating and supporting the *Interahamwe*, and with the killings of approximately 2,000 Tutsi at Kesho and Rurunga Hills, within the vicinity of the Rubaya Tea Factory, on 8 April 1994. In addition, the Prosecution alleges that Zigiranyirazo is responsible for the murders of three *gendarmes* and Stanislas Sinibagiwe.

9. The Defence denies the involvement of the Accused in any of the alleged meetings or attacks in April 1994, providing an alibi supported by witnesses. The Defence further contends that there is a lack of evidence that the Accused played a role in the creation and financing of the *Interahamwe*, and denies the involvement of the Accused in the murder of

<sup>6</sup> The Prosecutor filed a third amended Indictment on 8 March 2005.

<sup>7</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-R50, Decision on the Prosecution Conditional Motion for Leave to Amend the Indictment and on the Defence Counter-Motion Objecting to the Form of the Recast Indictment, 2 March 2005 ("Indictment Decision of 2 March 2005"); Decision on Defence Motions (i) Objecting to the Form of the Third Amended Indictment and (ii) Requesting the Harmonization or Reconsideration of the Decision of 2 March 2005, 22 September 2005. *See also* Decision on the Defence Preliminary Motions Objecting to the Form of the Amended Indictment, 15 July 2004 ("Preliminary Motion Decision of 15 July 2004").



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three *gendarmes* and of Stanislas Sinibagiwe. The Defence also submits that as the major evidence on the Accused was only found beginning in 2001, the Chamber ought to mistrust, globally, the evidence against this “allegedly” powerful person. The Defence adds that the Accused had a well-known ongoing history of good relationships with Tutsi, and in fact aided a number of Tutsi to survive the genocide.

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## CHAPTER II: FACTUAL FINDINGS

### 1. Preliminary Matters

#### 1.1. Judicial Notice

10. The Chamber recalls that it took judicial notice that, among other things: (i) between 6 April and 17 July 1994, genocide against the Tutsi ethnic group occurred in Rwanda; (ii) between 6 April and 17 July 1994, citizens native to Rwanda were severally identified according to the ethnic classifications of Hutu, Tutsi and Twa, which were protected groups falling within the scope of the Genocide Convention of 1948; and (iii) there were, throughout Rwanda, widespread and systematic attacks against the civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed, or caused serious bodily harm, or mental harm, to persons perceived as Tutsi. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity.<sup>8</sup>

#### 1.2. Pending Motions

11. On 23 September 2008, the Defence filed a confidential motion to reopen its case in order to attempt to further impugn the credibility of Prosecution Witness Michel Bagaragaza.<sup>9</sup> In light of the Chamber's strong reservations regarding the credibility of Bagaragaza,<sup>10</sup> and its unwillingness to rely on his evidence, the Chamber considers this motion moot.

12. On 6 October 2008, the Defence also filed a motion alleging a violation of Rule 68.<sup>11</sup> The documents at issue were witness statements which the Defence submitted were potentially exculpatory regarding the Accused's alleged participation in a 6 April 1994 meeting.<sup>12</sup> The Chamber considers, however, that the alleged lack of disclosure of the material at issue caused no prejudice to the Defence as the allegations it was pertinent to were not proven.<sup>13</sup>

#### 1.3. Allegations on which No Evidence was Presented

13. The Chamber recalls that in its Rule 98*bis* Decision, it found that the Accused had no case to answer in respect of the allegations contained in paragraphs 20, 25, 26, 37, 48, 49 and 50 of the Indictment.<sup>14</sup> The Chamber found that the Prosecution had

<sup>8</sup> Oral Decision on the Prosecution Motion for Judicial Notice, T. 27 November 2006 pp. 2, 3, See Annex I, Procedural History, para. 27. The Chamber also took judicial notice that there was an armed conflict in Rwanda between 6 April 1994 and 17 July 1994 that was not of an international character (fact (iv)).

<sup>9</sup> Confidential Motion to Reopen Defence Case, 23 September 2008.

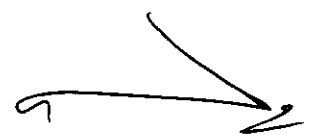
<sup>10</sup> See *infra*, paras. 137-140.

<sup>11</sup> Defence Motion alleging Violation of Rule 68, 6 October 2008.

<sup>12</sup> *Ibid.*, paras. 1, 4, 6, 9.

<sup>13</sup> See *infra*, paras. 29, 148.

<sup>14</sup> Decision on the Defence Motion Pursuant to Rule 98*bis*, 17 October 2006 ("Rule 98*bis* Decision"). While paragraph 25 is identical to paragraph 48, paragraph 26 is identical to paragraph 49, and paragraph 27 is identical to paragraph 50. The Chamber notes that paragraph 27 of the Indictment should have been included in those allegations that the Accused had no case to answer to, as it is identical to paragraph 50.





presented no evidence in connection with these allegations, specifically, that: (i) the Accused paid *Interahamwe* to dig a mass grave behind his home in Giciye, and that bodies were thrown into the grave, later exhumed, and dumped into the Basera river;<sup>15</sup> or (ii) that the Accused was involved in the deaths of the entire family of Jean-Sapeur Sekimonyo as well as 18 members of the Bahoma Tutsi clan.<sup>16</sup> The Chamber will therefore not be addressing these allegations in this Judgement.

14. The Chamber notes that the Prosecution failed to adduce evidence regarding numerous meetings specifically pleaded in the Indictment. First, the Prosecution did not bring evidence of the alleged September 1993 meeting between the Accused and Arcade Sebatware.<sup>17</sup> Second, it did not adduce evidence of the alleged message sent by Colonel Bagosora to the Accused and Jean-Bosco Barayagwiza.<sup>18</sup> Third, the Prosecution did not lead evidence of the alleged meeting at the Palm Beach Hotel in Gisenyi called by the Accused and Barayagwiza.<sup>19</sup> Fourth, no evidence was adduced of the alleged 11 February 1994 meeting between the Accused, Agathe Kanziga, and Colonel Anatole Nsengiyumva.<sup>20</sup> Lastly, no evidence was led of meetings between the Accused and military leaders in Gisenyi and Ruhengeri allegedly occurring on an almost daily basis.<sup>21</sup>

15. The Chamber further notes that the Prosecution adduced no evidence of an agreement between the Accused, and Colonels Bagosora, Nsengiyumva and Setako to “instigate and encourage” the killing of Tutsi at a roadblock near the Accused’s home in Kiyovu. Further, the Prosecution failed to lead evidence of an alleged incident where these four alleged co-conspirators approached the roadblock at Kiyovu, found the guards manning the roadblock killing passers-by with some 50 corpses on the ground nearby, and where Colonel Bagosora congratulated the guards that they were “now doing their work,” or that the Accused supported the comments saying “now you are working”.<sup>22</sup>

16. The Chamber will therefore not be addressing the above allegations in the following sections of the Judgement.

#### **1.4. Alleged Defects in the Indictment**

##### **1.4.1 Law on Defects in the Indictment**

17. The charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused.<sup>23</sup> The Prosecution is expected to know its case before proceeding to trial and cannot mould the case against the Accused in the course of the trial depending on

<sup>15</sup> Indictment, paras. 20 and 37.

<sup>16</sup> Indictment, paras. 25, 26, 48 and 49.

<sup>17</sup> Indictment, para. 7.

<sup>18</sup> Indictment, para. 7.

<sup>19</sup> Indictment, para. 7.

<sup>20</sup> Indictment, para. 8.

<sup>21</sup> Indictment, para. 9.

<sup>22</sup> Indictment, para. 10.

<sup>23</sup> Articles 17(4), 20(2), 20(4)(a) and 20(4)(b) of the Statute and Rule 47(C) of the Rules; *Muvunyi* Judgement (AC), para. 18; *Seromba* Judgement (AC), para. 27; *Simba* Judgement (AC), para. 63.

how the evidence unfolds.<sup>24</sup> Criminal acts that were physically committed by the accused must be specifically set forth in the indictment, including where feasible, “the identity of the victim, the time and place of the events and the means by which the acts were committed.”<sup>25</sup> Indictments lacking this precision are defective.

18. Defects in indictments may be “cured” by the provision of “timely, clear and consistent information detailing the factual basis underpinning the charge[s]” against an accused.<sup>26</sup> The Appeals Chamber has held that “[t]he question whether the Prosecution has cured a defect in the indictment is equivalent to the question whether the defect has caused any prejudice to the Defence or [...] whether the trial was ‘rendered unfair’ by the defect.”<sup>27</sup> The Prosecution’s ability to cure a defective indictment is not without limits: new material facts should not radically transform the Prosecution case; Trial Chambers should remain wary of the risk that adding new material facts may prejudice an accused; and where new material facts could support separate charges, the Prosecution should seek leave to amend the indictment.<sup>28</sup>

#### 1.4.2 Meetings

19. The Chamber recalls that during trial, it ordered the Prosecution not to lead evidence of the November 1992 meeting at Kabaya presided over by Leon Mugesera, as this meeting was not pleaded in the Indictment.<sup>29</sup>

20. In its Closing Brief, the Defence asserts that the Prosecution led evidence of several meetings which were not alleged in the Indictment. The Defence submits that, by decision dated 15 July 2004, a Pre-Trial Chamber directed the Prosecution to allege dates and locations for all meetings, referring to the following passage:

With respect to Count I [conspiracy to commit genocide], the Prosecutor should, to the best of his knowledge, indicate the approximate dates and locations of the meetings alleged in paragraph 10 of the Amended Indictment.<sup>30</sup>

21. The Defence asserts it did not receive notice of the Prosecution’s intention to prove the Accused’s participation in conspiracy to commit genocide through his attendance and participation at: (i) a meeting at the Presidential residence in Kanombe on 6 April 1994; (ii) a meeting at Umuganda Stadium in the last week of April 1994; (iii) two meetings at a football field in Nyundo in April 1994; (iv) meetings at the Accused’s house in Kiyovu on 10 and 12 April 1994, at which the Accused discussed

<sup>24</sup> See e.g., *Muvunyi* Judgement (AC), para. 18 (citations omitted).

<sup>25</sup> *Seromba* Judgement (AC), para. 27; *Muhimana* Judgement (AC), para. 76; *Gacumbitsi* Judgement (AC), para. 49; *Ntakirutimana* Judgement (AC), para. 32 (quoting *Kupreškić et al.*, Judgement (AC), para. 89).

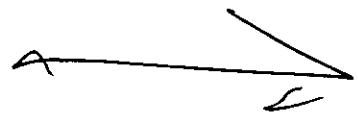
<sup>26</sup> *Muvunyi* Judgement (AC), para. 20 (citations omitted); *Kupreškić et al.*, Judgement (AC), para. 114. *Naletilić & Martinović* Judgement (AC), para. 26.

<sup>27</sup> *Ntakirutimana* Judgement (AC), para. 27 (citing *Kupreškić et al.*, Judgement (AC), para. 122).

<sup>28</sup> See *Muvunyi* Judgement (AC), para. 20 (citations omitted).

<sup>29</sup> See e.g. Witness SGP, T. 18 October 2005 p. 40.

<sup>30</sup> Decision on the Defence Preliminary Motion Objecting to the Form of the Amended Indictment, 15 July 2004, para. 47(viii). The Chamber notes that the quoted passage refers to a specific paragraph of an earlier version of the Indictment, but the principle of specificity it espouses is applicable to the Indictment as a whole.



the killing of Tutsi and allowed arms to be stored at his house; (v) regular meetings in Gisenyi in April 1994, and (vi) a meeting in Gisenyi in 1992.<sup>31</sup>

22. The Chamber will now consider whether the Defence received adequate notice of the Prosecution's intention to rely on Zigiranyirazo's attendance and participation at these meetings in support of the conspiracy count.

#### 1.4.2.1 Meeting at Presidential Residence in Kanombe, 6 April 1994

23. Prosecution Witness Michel Bagaragaza testified regarding a meeting at President Habyarimana's residence at Kanombe on the night of 6 April 1994. According to Bagaragaza, Agathe Kanziga, the Accused and others, participated in the meeting and drew up a list of important Hutu and Tutsi political opponents to kill.<sup>32</sup>

24. In its Closing Brief, the Prosecution states that this meeting is alleged in paragraph 8 of the Indictment, which reads:

8. On or about the 11<sup>th</sup> of February 1994, Protais ZIGIRANYIRAZO agreed with his sister, Agathe KANZIGA and a Colonel Anatole NSENGIYUMVA and other persons to kill the enemy and its accomplices. In furtherance of the agreement they established a list of influential members of the Tutsi ethnic group and "moderate" Hutu to be executed.<sup>33</sup>

25. The Chamber considers that the allegations in paragraph 8 are specific and detailed, at least as concerns the date of the alleged agreement, the names of some, if not all, co-conspirators, and the allegation that the agreement led to the creation of a list of Tutsi and moderate Hutu to be killed. While Bagaragaza's evidence is consistent with some of these details, such as the agreement between the Accused and Agathe Kanziga, and the drawing up of a list, his evidence bears no relation to other particulars, such as the date of the agreement and the presence of Colonel Anatole Nsengiyumva. Accordingly, the Chamber considers that paragraph 8 of the Indictment refers to a separate meeting, and that it did not provide the Defence with notice of the Prosecution's intention to prove the Accused participated in a meeting at Kanombe on 6 April 1994.

26. The Prosecution was aware of the 6 April 1994 meeting at Kanombe before it filed the current Indictment. The Prosecution took a detailed statement from Bagaragaza over a period beginning 9 May 2002 and ending 11 October 2004. The Indictment was filed in its current form on 8 March 2005. Thus, the Prosecution had ample time to request permission to amend the Indictment to include the 6 April 1994 meeting at Kanombe. The Prosecution was also aware of the need to provide details regarding the specific acts of the Accused. The Chamber recalls that the Prosecution had previously been directed to provide approximate dates and locations of meetings alleged in support of the count of conspiracy to commit genocide.<sup>34</sup>

<sup>31</sup> Defence Closing Brief, paras. 120, 125, 131, 133-135, 503-512, 647, 697-699, 747, 804, 959-960.

<sup>32</sup> Michel Bagaragaza, T. 28 November 2006 pp. 20-21, 23, 24.

<sup>33</sup> Prosecution Closing Brief, para. 121. The Prosecution is somewhat inconsistent on this point, as it noted in Closing Arguments that it brought no evidence in relation to Paragraph 8 (T. 29 May 2008 p. 31).

<sup>34</sup> Preliminary Motion Decision of 15 July 2004, para. 47(viii).

In contrast, the Prosecution sought such permission with regard to the attack at Rurunga Hill.<sup>35</sup>

27. The Chamber concludes that the Prosecution should have expressly pleaded the following material facts: that the Accused attended a meeting at Kanombe on the night of 6 April 1994; the names of the other persons alleged to be at the meeting, including the Accused's sister, Agathe Kanziga; and that the Accused participated in drawing up a list of persons to be killed at that meeting.<sup>36</sup> The Chamber finds that the Indictment is therefore defective in that respect.

28. Regarding whether the defect was cured, the Chamber notes that the Prosecution has taken contradictory positions with respect to its purpose in eliciting Bagaragaza's evidence of the 6 April 1994 Meeting. The Prosecution acknowledged that the Accused could not be convicted of conspiracy to commit genocide on the basis of the 6 April 1994 meeting at Kanombe, but asked that the evidence be heard and weighed as the Chamber saw fit.<sup>37</sup> The Defence is entitled to rely on this statement. Having stated that it was not seeking conviction on this event, the Prosecution cannot now seek conviction at the end of trial.<sup>38</sup> The Chamber is of the view that such inconsistent statements have not provided clear and consistent notice to the Defence with regard to their intention to rely on the allegations with respect to the 6 April 1994 Meeting.<sup>39</sup>

29. The Chamber therefore concludes that the Prosecution failed to discharge its burden to properly inform Zigiranyirazo that it intended to rely on this meeting as a fact underpinning the charge of conspiracy to commit genocide, and that this failure materially impaired the Accused's ability to prepare his defence with respect to the meeting.

<sup>35</sup> On 31 August 2004, the Prosecution filed a motion requesting permission to amend the Indictment for the purpose of adding allegations regarding an attack at Rurunga Hill. *See* Prosecutor's Conditional Motion for Leave to Amend the Indictment, 31 August 2004. This request was granted on 2 March 2005. *See* Indictment Decision of 2 March 2005.

<sup>36</sup> Bagaragaza testified that the Accused physically attended the meeting and assisted in the creation of a list of influential persons to be killed. Alleged criminal acts personally committed by the accused must be specifically pleaded. *See e.g.*, *Seromba* Judgement (AC), para. 27. The Prosecution does not now contest that the facts are material to the count of conspiracy to commit genocide. In paragraphs 121 through 142 of their Closing Brief, the Prosecution discusses the relevance of these allegations to the count of conspiracy to commit genocide. During Closing Arguments, the Prosecution claimed that these allegations were sufficient to prove that the Accused conspired to commit genocide (T. 28 May 2008 pp. 10-11).

<sup>37</sup> Witness Bagaragaza, T. 28 November 2006 pp. 32-33.

<sup>38</sup> Prosecution Closing Brief, paras. 120-125.

<sup>39</sup> *See e.g.*, *Muvunyi* Judgement (AC), para. 20 (citations omitted); *see also* *Muvunyi* Judgement (AC), para. 99 (noting that the Prosecution's failure to expressly seek conviction on the basis of an attack gravitated against finding that it had cured a defective indictment).



#### 1.4.2.2 Meeting at Umuganda Stadium, April 1994

30. Prosecution Witness AVY testified that he was summoned to serve as a security guard at a meeting at Umuganda Stadium in Gisenyi in the "last week of April" 1994, and that during the meeting the Accused addressed the crowd and encouraged killings.<sup>40</sup>

31. In its Closing Brief, the Defence submits that the meeting at Umuganda Stadium was not alleged in the Indictment, and therefore should not be considered by the Chamber.<sup>41</sup>

32. The Prosecution contends that the allegations concerning Umuganda Stadium are contained in paragraphs 5, 7 and 9 of the Indictment.<sup>42</sup> Paragraph 5 states:

5. **Protais ZIGIRANYIRAZO** agreed with government and military authorities in Kigali-ville prefectures and in Gisenyi, including Colonel Theoneste BAGOSORA, *Chef de Cabinet* at the Ministry of Defence, Colonel Anatole NSENGIYUMVA, Colonel Ephram SETAKO; political leaders such as Wellars BANZI of the MRND and Jean-Bosco BARAYAGWIZA of the CDR; regional administrative officials such as Gisenyi *sous-prefet* Raphaël BIKUMBI, and *Interahamwe* leaders such as Bernard MUNYAGISHARI, and with members of the elite including his sister Agathe KANZIGA; with the intent to destroy, in whole or in part, the Tutsi ethnic group, to plan, prepare and facilitate attacks on Tutsi during the course of 1994, and in particular between 6 April and 17 July 1994, throughout Rwanda, particularly in Kigali-ville and Gisenyi prefectures, as described in paragraphs 6 through 30 of this Indictment.

33. The Chamber considers that paragraph 5 does not refer to any specific meetings at which such attacks were planned, prepared or facilitated, or where any agreement to plan, prepare or facilitate such attacks was reached. To the extent that this paragraph is intended to allege specific material facts, as opposed to generally introduce the Prosecution's conspiracy charge, the Chamber finds that it is defective.

34. Paragraph 7 reads as follows:

7. Gisenyi **Protais ZIGIRANYIRAZO** agreed at various meetings with regional and local administrative officials, including with Gisenyi *sous-prefet* Raphaël BIKUMBI, Rubavu *bourgmestre* Marc MPOZAMBEZI, Birembo *conseiller de secteur* Arcade SEBATWARE, and MRND party officials and *Interahamwe* leaders such as Wellars BANZI and Bernard MUNYAGISHARI, to plan, organize and facilitate attacks on the Tutsi in Gisenyi prefecture. In or around September 1993, **Protais ZIGIRANYIRAZO** attended a meeting near his home in Giciye commune in Gisenyi Prefecture with the conseiller of Birembo secteur, Alcade SEBATWE and agreed to take action against local Tutsis. In or around early April 1994, Colonel BAGOSORA sent a message to Gisenyi addressed to Jean-Bosco BARAYAGWIZA and **Protais ZIGIRANYIRAZO** that signalled that the killings of Tutsis begin. Shortly after, Jean-Bosco BARAYAGWIZA and **Protais ZIGIRANYIRAZO** called all the *bourgmestres* and *conseiller de secteurs* to a meeting at the Palm Beach hotel in Gisenyi in order to plan and organise the genocide. In or around mid April 1994, **Protais ZIGIRANYIRAZO**, in furtherance of this plan instigated the elimination of all Tutsis at a public meeting held at a football field in Gisenyi, at which he spoke together with other officials, including Colonel Theoneste BAGOSORA and Colonel Ephram SETAKO.

<sup>40</sup> Prosecution Witness AVY, T. 19 October 2005 pp. 7-8.

<sup>41</sup> Defence Closing Brief, paras. 136, 647.

<sup>42</sup> Closing Arguments, T. 28 May 2008 p. 13; T. 29 May 2008 pp. 29-31.

35. The reference in the opening sentence of paragraph 7 to various meetings to plan, organize and facilitate attacks on Tutsi in Gisenyi *préfecture* is too general to provide adequate notice of any specific meeting. Paragraph 7 also alleges that “in or around mid April 1994” the Accused “instigated the elimination of all Tutsis at a public meeting held at a football field in Gisenyi, at which he spoke together with other officials, including Colonel Théoneste Bagosora and Colonel Ephrem Setako.” Although these allegations are detailed and specific, the Chamber is of the view that Witness AVY’s testimony does not accord with important details. Witness AVY testified about a meeting in the last week of April 1994, and did not mention the participation of Colonels Théoneste Bagosora and Ephrem Setako. The Chamber considers the meeting referred to in the Indictment to clearly be a different meeting than that referred to by Witness AVY. The Chamber does not consider that paragraph 7 of the Indictment provided Zigiranyirazo with clear notice of the rally at Umuganda Stadium.

36. Paragraph 9 states:

9. In April 1994, **Protais ZIGIRANYIRAZO** met with military leaders in Gisenyi and Ruhengeri, including Colonel NSENGIYUMVA on an almost daily basis in order to plan the organization and execution of the genocide in Gisenyi. In furtherance of this plan, on a date uncertain in April 1994, *Interahamwe* militia mounted a roadblock on the “La Corniche” roadway in Gisenyi town leading toward the main border-crossing into Zaïre. The “La Corniche” roadblock was under the general control of *Interahamwe* leaders, including Omar SERUSHAGO, reporting to Colonel NSENGIYUMVA and Bernard MUNYAGISHARI. The roadblock was also manned by CDR-affiliated armed civilians, including ABUBA, BAHATI and LIONCEAU, and gendarmes, immigration police and customs officers. The purpose of the roadblock was to prevent Tutsi and “moderate” Hutu from escaping across the border to Zaïre by taking them to be killed in a nearby location. **Protais ZIGIRANYIRAZO** was aware of the closed-border regime and ordered and instigated the *Interahamwe*, CDR-affiliated armed civilians, gendarmes, immigration police, and customs officers to operate the roadblock to cause the killing of Tutsi and “moderate” Hutu.

37. The introductory sentence of paragraph 9 alleges that the Accused attended meetings in April 1994 with military leaders in Gisenyi and Ruhengeri, including Colonel Anatole Nsengiyumva. The paragraph does not refer to any specific meetings. The Chamber does not consider that this sentence provided the Defence with any notice of the rally at Umuganda Stadium in the last week of April 1994 to which Witness AVY testified. Further, given Witness AVY’s evidence, the Chamber does not consider that the rally at Umuganda Stadium could be accurately described as a meeting where Zigiranyirazo and Colonel Nsengiyumva planned genocide in Gisenyi.

38. The Chamber notes that the Prosecution first learned about the rally at Umuganda Stadium from Witness AVY during an interview which took place on 23 September 2004, before the Prosecution filed the current Indictment.<sup>43</sup> In the Preliminary Motion Decision of 15 July 2004, the Prosecution was ordered to make certain changes to the then-current indictment and to re-file the indictment incorporating those changes by 31 August 2004.<sup>44</sup> Along with the updated version of

<sup>43</sup> See Exhibit D18B, Witness AVY’s written statement of 23 September 2004 (under seal). In this statement, Witness AVY described the meeting as having taken place four or five days after the death of President Habyarimana.

<sup>44</sup> Preliminary Motion Decision of 15 July 2004.

the indictment, the Prosecution simultaneously filed a motion requesting further permission to amend the re-cast indictment for the purpose of adding allegations regarding an attack at Rurunga Hill.<sup>45</sup> This request was granted on 2 March 2005,<sup>46</sup> and the Indictment was filed in its current form on 8 March 2005. The Chamber therefore considers that the Prosecution had ample time to supplement its amendment request to add an allegation concerning the meeting at Umuganda Stadium.<sup>47</sup> Such an amendment would have provided the Defence with clear notice of the Prosecution's case regarding the Accused's participation in conspiracy to commit genocide. The Chamber considers the allegations regarding the meeting at Umuganda Stadium to be material facts which ought to have been specifically pleaded.

39. Therefore, the Chamber considers the relevant portion of paragraph 7 of the Indictment is vague when considering the evidence of Witness AVY at trial. The Indictment is therefore defective in this respect.

40. The Chamber now turns to the question of whether the defect in the Indictment regarding the meeting at Umuganda Stadium was cured by the disclosure of timely, clear and consistent information to the Defence. The Prosecution suggests that paragraph 14 of the Pre-Trial Brief provided notice of the meeting at Umuganda Stadium:

14. To that end, various meetings were held by members of the Interim Government, the MRND, *Akazu*, *Interahamwe*, and military authorities throughout Rwanda, including Kigali-ville, Gisenyi and Ruhengeri prefectures, to militarize the MRND *Interahamwe* youth wing and to indoctrinate *Interahamwe* militias with anti-Tutsi ideology, with the intent, and in anticipation of deploying civilian militias to combat the enemy, broadly defined as the Tutsi.<sup>48</sup>

41. In the Chamber's view, this paragraph bears no relation to the meeting at Umuganda Stadium.

42. Annex I to the Pre-Trial Brief contains summaries of the proposed testimonies of Prosecution witnesses. The summary of Witness AVY's proposed testimony states that, around four or five days after the death of the President, he attended a meeting at "Gisenyi Stadium" where the Accused spoke, inciting the people to continue massacring Tutsi. The summary does not mention Colonels Bagosora and Setako.<sup>49</sup>

43. The Chamber considers that the proposed summary of Witness AVY's testimony annexed to the Pre-Trial Brief did not provide the Defence with clear and consistent notice of the Prosecution's intention to rely on this evidence in support of the conspiracy count. Nor does the Chamber consider that Witness AVY's statement, dated 23 September 2004, provided the Defence with clear and consistent notice of this

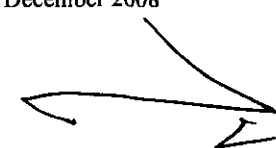
<sup>45</sup> Prosecutor's Conditional Motion for Leave to Amend the Indictment, 31 August 2004.

<sup>46</sup> Indictment Decision of 2 March 2005.

<sup>47</sup> Moreover, as discussed above in the section on the 6 April 1994 Meeting at the Presidential residence at Kanombe, the Prosecution sought such permission with regard to an attack at Rurunga Hill. In the Chamber's view, this shows that it was aware of the need to do so with regard to any allegations concerning the particular acts of the Accused.

<sup>48</sup> Closing Arguments, T. 28 May 2008 p. 13.

<sup>49</sup> Pre-Trial Brief, Annex I, Summary of Witness AVY's proposed testimony, p. 6.



intention.<sup>50</sup> The Chamber notes that the summary of Witness AVY's testimony and his witness statement refer to a meeting that took place around four or five days after the death of President Habyarimana, whereas Witness AVY testified about a meeting in "the last week of April."<sup>51</sup>

44. In light of the above, the Chamber does not consider that the Prosecution provided the Defence with clear and consistent information regarding the meeting in Umuganda, or Zigiranyirazo's participation in that meeting. The Prosecution was aware of the need to provide detailed allegations regarding meetings,<sup>52</sup> and had ample time to seek to amend the Indictment to include Witness AVY's specific allegations.

45. The Chamber therefore concludes that the Prosecution failed to discharge its burden to properly inform Zigiranyirazo that it intended to rely on this meeting as a fact underpinning the charge of conspiracy to commit genocide, and that this failure materially impaired the Accused's ability to prepare his defence.

#### 1.4.2.3 Meetings at Football Field in Nyundo, April 1994

46. Prosecution Witness ATN testified that he saw the Accused in April 1994 at a meeting in Nyundo, Gisneyi *préfecture*, at a football field next to a theatre hall. According to the Witness, the Accused instigated the killing of Tutsi and promised weapons to Bernard Munyagishari, an *Interahamwe* leader. The purpose of the meeting was to organize the killing of Tutsi.<sup>53</sup> Witness ATN also testified that he saw the Accused at a second rally in late April 1994, held at the same football field in Nyundo. This rally was attended by Colonels Théoneste Bagosora and Ephrem Setako, as well as *Interahamwe* and people from the *secteur*.<sup>54</sup> The purpose of the meeting was to call for the massacre of the Tutsi.<sup>55</sup>

47. The Defence argues that the meetings at the football field in Nyundo were not alleged in the Indictment, and therefore should not be considered by the Chamber.<sup>56</sup>

48. The Prosecution contends that the allegations concerning the meetings at Nyundo are contained in paragraphs 7 and 10 of the Indictment.<sup>57</sup> Paragraph 7 reads as follows:

7. **Gisneyi Protais ZIGIRANYIRAZO** agreed at various meetings with regional and local administrative officials, including with Gisneyi *sous-prefet* Raphaël BIKUMBI, Rubavu *bourgmestre* Marc MPOZAMBEZI, Birembo *conseiller de secteur* Arcade SEBATWARE, and MRND party officials and *Interahamwe* leaders such as Wellars BANZI and Bernard MUNYAGISHARI, to plan, organize and facilitate attacks on the Tutsi in Gisneyi *préfecture*. In or around September 1993, **Protais ZIGIRANYIRAZO** attended a meeting near his home in Giciye commune in Gisneyi *Préfecture* with the *conseiller* of Birembo *secteur*, Alcade SEBATWE and agreed to

<sup>50</sup> *Ntakirutimana* Judgement (AC), paras. 70-71 (Prosecution's failure to provide notice of accurate dates of attacks resulted in failure to cure defective indictment).

<sup>51</sup> See Pre-Trial Brief, Annex I, Summary of Witness AVY's proposed testimony, p. 6; Exhibit D18B, Witness AVY written statement of 23 September 2004; Witness AVY, T. 19 October 2005 pp. 6-7.

<sup>52</sup> Preliminary Motion Decision of 15 July 2004, para. 47(viii).

<sup>53</sup> Prosecution Witness ATN, T. 14 February 2006 pp. 7-8, 12-14.

<sup>54</sup> Prosecution Witness ATN, T. 14 February 2006 pp. 18-20.

<sup>55</sup> Prosecution Witness ATN, T. 14 February 2006 p. 20.

<sup>56</sup> Defence Closing Brief, paras. 136, 647.

<sup>57</sup> Closing Arguments, T. 28 May 2008 p. 13; T. 29 May 2008 pp. 30-31.



take action against local Tutsis. In or around early April 1994, Colonel BAGOSORA sent a message to Gisenyi addressed to Jean-Bosco BARAYAGWIZA and **Protais ZIGIRANYIRAZO** that signalled that the killings of Tutsis begin. Shortly after, Jean-Bosco BARAYAGWIZA and **Protais ZIGIRANYIRAZO** called all the *bourgmestres* and *conseiller de secteurs* to a meeting at the Palm Beach hotel in Gisenyi in order to plan and organise the genocide. In or around mid April 1994, **Protais ZIGIRANYIRAZO**, in furtherance of this plan instigated the elimination of all Tutsis at a public meeting held at a football field in Gisenyi, at which he spoke together with other officials, including Colonel Theoneste BAGOSORA and Colonel Ephram SETAKO.

49. The Prosecution states that these allegations regarding a single meeting at a football field in Gisenyi in paragraph 7 of the Indictment also provided notice of two separate meetings at a football field in Nyundo, an area in Gisenyi *préfecture*, and that these meetings were testified to by Prosecution Witness ATN.<sup>58</sup> Indeed, in the annotated Indictment filed on 2 September 2004, the Prosecution lists Witness ATN as one of the witnesses whose statement supports paragraph 7 of the Indictment.

50. However, the Chamber notes that Witness ATN's testimony differs from the allegation regarding the meeting at a football field in Gisenyi in significant respects. Witness ATN testified about two meetings as opposed to one, and stated that the Accused promised arms for the *Interahamwe*. The Chamber is of the view that the meeting referred to in the Indictment is clearly a different meeting than those referred to by Witness ATN. The Chamber therefore considers that paragraph 7 did not provide sufficient notice of the totality of the Prosecution's case as it concerns alleged events in Nyundo.

51. Paragraph 10 reads:

10. On or about 12 or 13 April 1994, **Protais ZIGIRANYIRAZO** agreed with Colonel BAGOSORA, Colonel NSENGIYUMVA, and Colonel SETAKO to instigate and encourage the killings of Tutsis and "moderate" Hutu at a roadblock established by **Protais ZIGIRANYIRAZO** at the road junction in front of his house in Kiyovu. In furtherance of that agreement, **Protais ZIGIRANYIRAZO** approached the roadblock with the above named persons, whereupon they saw the guards killing passers-by with some 50 corpses on the ground at the roadblock. Colonel BAGOSORA congratulated the guards that they were "now doing their work" and **Protais ZIGIRANYIRAZO** supported the comments saying "now you are working."

52. The Chamber notes that the only similarity between paragraph 10 and the allegations that Witness ATN testified about is that the Witness alleges that Colonel Bagosora and Colonel Setako attended the second meeting in Nyundo, and paragraph 10 names them as co-conspirators of the Accused. To the extent this paragraph was intended to notify the Defence of the Prosecution's intention to prove that Zigiranyirazo attended two meetings in Nyundo where the killing of Tutsi was discussed, it is defective.

53. The Prosecution became aware of Witness ATN's allegation that Zigiranyirazo had attended a meeting where Colonel Bagosora called for the killing of Tutsi as a result of interviews held on 10, 11 and 13 March 2003.<sup>59</sup> On 21 September 2004, Witness ATN gave a second statement describing Zigiranyirazo's participation at an

<sup>58</sup> Closing Arguments, T. 29 May 2008 p. 30; Pre-Trial Brief, paras. 33-36; Summary of Witness ATN's proposed testimony in Annex I of the Pre-Trial Brief, p. 10.

<sup>59</sup> Exhibit D20, Witness ATN's written statements of 10, 11 and 13 March 2003 (under seal).

earlier Nyundo meeting, where the Accused discussed the removal of his Tutsi children from a nearby home and promised weapons for the *Interahamwe*. The Chamber considers that Witness ATN's allegations constitute material facts. As discussed above with regard to the testimonies of Bagaragaza and Witness AVY, the Prosecution therefore should have included, or sought permission to add, Witness ATN's allegations to the Indictment.

54. The Chamber finds that paragraphs 7 and 10 of the Indictment do not provide adequate notice of the Prosecution's intention to rely on the allegations of the meetings in Nyundo supported by Witness ATN's testimony.

55. The Chamber now turns to the question of whether this defect in the Indictment was cured by the disclosure of timely, clear and consistent information to the Defence. The Prosecution submits that paragraphs 33 through 36 of the Pre-Trial Brief concern the meetings in Nyundo:

33. The Prosecution will prove that during April 1994 in a room close a (sic) football field in Nyundo, Protais Zigiranyirazo, Simon Bikindi, Bernard Munyagishari, and *Conseiller* Stanislas Kabiligi of Muhira *secteur*, Gitebe *cellule*, Rubava *Commune*, participated in a meeting to plan the killings of Tutsi in the area.

34. It is the Prosecution's case that around April 1994 in Nyundo, Protais Zigiranyirazo addressed a gathering (sic) *Interahamwe* and soldiers in which he told them to "contain" the "enemy," and promised to deliver weapons. The "enemy" was Tutsi and "moderate" Hutu, characterised as accomplices of "the enemy". To "contain" was synonym us (sic) with to "kill".

35. The Prosecution will prove that within two days after Protais Zigiranyirazo' (sic) visit to Nyundo, *Interahamwe* and soldiers delivered the weapons used to contain the enemy, as ordered by the Accused.

36. The Prosecution will prove that around mid-April 1994, Protais Zigiranyirazo spoke at a public meeting held at a football field in Gisenyi and instigated the elimination of all Tutsis. Other officials, including Colonel Theoneste Bagosora and Colonel Ephrem Setako were present at the meeting.<sup>60</sup>

56. Annex I to the Pre-Trial Brief contains summaries of the proposed testimonies of Prosecution witnesses. According to the summary of Witness ATN's proposed testimony in Annex I of the Pre-Trial Brief, the Accused was present at a meeting on or around 10 or 11 April 1994 at a football stadium. The meeting was also attended by Colonels Bagosora and Setako.<sup>61</sup>

57. The Pre-Trial Brief and the annexed summary of Witness ATN's proposed testimony do not provide additional, consistent details that relate to a more general allegation in the Indictment.<sup>62</sup> Rather, paragraphs 33 through 36 of the Pre-Trial Brief significantly expand the allegation regarding a single meeting at a football field in Gisenyi in paragraph 7 of the Indictment.<sup>63</sup> They refer to not one but three meetings where Zigiranyirazo either instigated, or planned, the killing of Tutsi and allege that he

<sup>60</sup> Closing Arguments, T. 28 May 2008 p. 13.

<sup>61</sup> Pre-Trial Brief, Annex I, Summary of Witness ATN's proposed testimony, p. 10.

<sup>62</sup> *Muvunyi* Judgement (AC), para. 28.

<sup>63</sup> See *Muvunyi* Judgement (AC), para. 28 (pre-trial brief and annexed witness summaries did not cure defective indictment where they expanded the charges against the accused).

promised weapons to the *Interahamwe*. In addition, paragraph 36 does not mention Nyundo. Rather, it refers only to a meeting at a football field in Gisenyi. The Chamber notes that Nyundo is in Gisenyi *préfecture*, but considers that by referring only to Gisenyi in paragraph 36, after referring directly to Nyundo in paragraphs 33 through 35, the Prosecution did not clearly inform the Defence that the meeting described in paragraph 36 took place at Nyundo. The summary of Witness ATN's proposed testimony in Annex I of the Pre-Trial Brief confuses matters further by referring to a single meeting at which the Accused said and did nothing. None of these pre-trial disclosures provided the Defence with accurate notice of Witness ATN's actual testimony, which differed in significant respects from the allegations in the Indictment and the Pre-Trial Brief, as well as the summary of his proposed testimony annexed to the Pre-Trial Brief.

58. In light of the above, the Chamber does not consider that the Prosecution provided the Defence with clear and consistent information regarding the meetings in Nyundo, or the Accused's participation in those meetings. The Prosecution was aware of the need to provide detailed allegations regarding meetings,<sup>64</sup> had ample time to seek to amend the Indictment to include Witness ATN's specific allegations.

59. The Chamber therefore concludes that the Prosecution failed to discharge its burden to properly inform Zigiranyirazo that it intended to rely on these meetings as a fact underpinning the charge of conspiracy to commit genocide, and that this failure materially impaired the Accused's ability to prepare his defence.

#### 1.4.2.4 Meetings in Kiyovu, mid-April 1994

60. Prosecution Witness ATO testified that, on the morning of 10 April 1994, he drove in a small two car convoy with *préfet* Renzaho to visit Zigiranyirazo at his home in Kiyovu, Kigali-ville.<sup>65</sup> Several people were at the house, including Mathieu Ngirumpatse, Georges Rutaganda, Robert Kajuga, and members of the *Interahamwe*.<sup>66</sup> According to Witness ATO, people at Zigiranyirazo's house were preparing the killing of Tutsi, and were saying that the Tutsi had to be decimated.<sup>67</sup> Witness ATO stated that on 12 April 1994 he returned to Zigiranyirazo's home with Renzaho, bringing 50 to 60 firearms to be stored there. He added that the same persons who met at the Accused's home in Kiyovu on 10 April were also at his house on 12 April.<sup>68</sup>

61. The Prosecution acknowledges that these two meetings in Kiyovu are not alleged in the Indictment or the Pre-Trial Brief, nor were they mentioned in its opening statement. Given the Prosecution's statement that it is not seeking a conviction on the basis of Witness ATO's evidence,<sup>69</sup> the Chamber considers that the Prosecution made it clear that this meeting is not a material fact underpinning the charge of conspiracy. The Chamber is of the view that it therefore should not have been pleaded in the Indictment.

<sup>64</sup> Preliminary Motion Decision of 15 July 2004, para. 47(viii).

<sup>65</sup> Witness ATO, T. 26 January 2006 pp. 16-18 (closed session).

<sup>66</sup> Witness ATO, T. 26 January 2006 p. 18 (closed session).

<sup>67</sup> Witness ATO, T. 26 January 2006 p. 23 (closed session).

<sup>68</sup> Witness ATO, T. 26 January 2006 p. 24-25 (closed session).

<sup>69</sup> Closing Arguments, T. 28 May 2008 p. 12.

62. In light of the above, the Chamber will not consider the alleged participation of the Accused in this meeting as a material fact underpinning the charge of conspiracy, but only as it relates to the proof of other allegations in the Indictment.

#### 1.4.2.5 Regular Meetings in Gisenyi Préfecture

63. Prosecution Witness PA testified that his neighbours, Hassan Ngeze, Bernard Munyagishari, and a member of the *Interahamwe* named Thomas would tell him about meetings they attended during the genocide where Zigiranyirazo was present. Discussions at these meetings included the need to kill Tutsi.<sup>70</sup>

64. The Defence objected to the admission of Witness PA's testimony regarding these meetings on the basis that they were not alleged in the Indictment.<sup>71</sup> The Chamber overruled the Defence objection and allowed the witness to testify on these meetings.<sup>72</sup> In doing so, the Chamber did not rule on the issue of whether the Indictment provided adequate notice to the Accused of Witness PA's allegations.

65. The Prosecution argues that the meetings referred to by Witness PA are alleged in paragraph 7 of the Indictment. The Chamber recalls that the reference in the opening sentence of paragraph 7 to various meetings to plan, organize and facilitate attacks on Tutsi in Gisenyi *préfecture* is too general to provide adequate notice of any specific meeting.<sup>73</sup> Moreover, this introductory sentence is followed by more detailed allegations regarding three specific meetings. The Chamber considers that the first sentence of paragraph 7 of the Indictment merely introduces the more specific allegations that follow, and finds that the Indictment is defective with respect to this allegation.

66. The Pre-Trial Brief does not assist the Prosecution in curing the defect. Paragraphs 14, 30 and 31 of the Pre-Trial Brief refer generally to meetings in, among other locations, Gisenyi. They add no additional details that would have provided notice of Witness PA's testimony about the Accused's alleged attendance of meetings in Gisenyi. In addition, there was no notice that Witness PA would discuss meetings attended by Zigiranyirazo in either the summary of his proposed testimony in Annex I to the Pre-Trial Brief or in any of his witness statements.

67. The Chamber therefore concludes that the Prosecution failed to discharge its burden to properly inform Zigiranyirazo that it intended to rely on these meetings as facts underpinning the charge of conspiracy to commit genocide, and that this failure materially impaired the Accused's ability to prepare his defence.

<sup>70</sup> Witness PA, T. 21 February 2006 p. 17.

<sup>71</sup> Witness PA, T. 21 February 2006 pp. 19-20; Defence Closing Brief, para. 136.

<sup>72</sup> Witness PA, T. 21 February 2006 p. 20.

<sup>73</sup> See *supra*, para. 35. In addition, the Chamber recalls the Pre-Trial Chamber's ruling that the Prosecution provide dates and locations for meetings alleged in the Indictment. Preliminary Motion Decision of 15 July 2004, para. 47(viii).

#### 1.4.2.6 Meeting in Giciye, 1992

68. Prosecution Witness APJ, a Hutu, and farmer in Giciye commune in 1994, had known the Accused since he was 16 years old, as a teacher, and then as a Member of Parliament and *préfet* of Ruhengeri, following former President Habyarimana's rise to power.<sup>74</sup> He testified that Zigiranyirazo attended a meeting in 1992 in Giciye, along with *bourgmestre* Bangamwabo.<sup>75</sup> The Accused told those gathered at the meeting that they were fighting against the enemy, that the enemy were the Tutsi and their accomplices, and that the citizenry should be mobilized to fight the enemy.<sup>76</sup>

69. The Chamber notes that this meeting took place in 1992, and, therefore, pursuant to the Statute and the jurisprudence of the Appeals Chamber, it cannot form the basis of a conviction.<sup>77</sup> As the Chamber does not consider it a material fact which should have been pleaded in the Indictment,<sup>78</sup> it will only consider the Accused's alleged participation in this meeting as it relates to the proof of other allegations in the Indictment, such as circumstantial evidence relating to the Accused's *mens rea*.

#### 1.4.3 Other Defects in the Indictment

##### 1.4.3.1 Evidence of Conspiracy to Commit Genocide

70. In addition to the Defence allegations of defects in the Indictment, the Chamber has identified two submissions in the Prosecution Closing Brief and a further submission by the Prosecution in Closing Arguments that raise concerns regarding the adequacy of notice provided by the Indictment. These concerns arise from the Prosecution's assertion that the Chamber can hold Zigiranyirazo accountable for conspiring to commit genocide on the basis of evidence and allegations pleaded in connection with the Counts of genocide, complicity in genocide, and the crimes against humanity of extermination and murder.

71. First, in its Closing Brief, the Prosecution contends that the attacks for which the Accused is charged were "carried out in such a methodical and systematic" manner "as to conclusively demonstrate" the existence of a conspiracy to commit genocide.<sup>79</sup> The Chamber notes that this allegation regarding the manner of the attacks was not referred to the Indictment. Further, the Chamber notes that no attacks were pleaded under the conspiracy count in the Indictment. The Chamber finds the Indictment defective in this regard.

72. The Chamber notes that the only indication the Prosecution gave to the Defence of any intention to hold Zigiranyirazo accountable for conspiracy on the basis of evidence of attacks charged elsewhere throughout the Indictment was in its Closing Brief. The Chamber therefore finds that the Prosecution failed to provide the Defence with timely, clear and consistent information that these allegations were relevant to the

<sup>74</sup> Witness APJ, T. 5 October 2005 p. 33; Exhibit P3, Protected Information for Witness APJ (under seal).

<sup>75</sup> Witness APJ, T. 5 October 2005 p. 42.

<sup>76</sup> Witness APJ, T. 5 October 2005 pp. 44-45.

<sup>77</sup> Article 7 of the Statute; *Nahimana et al.* Judgement (AC), paras. 313-314.

<sup>78</sup> See e.g., *Muvunyi* Judgement (AC), para. 18.

<sup>79</sup> Prosecution Closing Brief, para. 59.

count of conspiracy to commit genocide, and that this materially impaired the Accused's ability to prepare his defence.

73. Second, the Prosecution led evidence of the Accused's participation in an attack against Tutsi gathered at Kesho Hill on 8 April 1994 in support of allegations pleaded in the Indictment under the counts of genocide, or, alternatively, complicity in genocide.<sup>80</sup> In its Closing Brief, the Prosecution submits that this evidence should also be considered in connection with the count of conspiracy to commit genocide.<sup>81</sup>

74. The Chamber notes that paragraph 5 of the Indictment states that paragraphs 6 through 30 are to be considered in support of the count of conspiracy. The structure of the Indictment is such that each count is supported by its own concise statement of facts (counts 2 and 3, genocide and complicity in genocide, are pleaded in the alternative and therefore supported by the same concise statement of facts). This concise statement of facts is then followed by a concluding paragraph laying out the criminal responsibility of Zigiranyirazo for that count. The concise statement of facts for the count of conspiracy includes paragraphs 5 through 10, and paragraph 11 alleges that Zigiranyirazo is criminally responsible for the count of conspiracy to commit genocide on the basis of paragraphs 5 through 10.

75. The Chamber notes that elsewhere in the Indictment, where the Prosecution sought to hold the Accused criminally responsible for more than one count on the basis of the same factual allegations, it repeated the pleading of those facts in support of the multiple counts. Thus, for example, the paragraphs detailing the allegations with respect to Kesho Hill are pleaded in paragraphs 12 through 15 in support of the counts of genocide and complicity in genocide, and repeated in paragraphs 29 through 32 in support of the count of extermination as a crime against humanity.

76. The Chamber also notes that paragraph 30 is an arbitrary ending as it falls in the middle of the concise statement of facts supporting the count of extermination as a crime against humanity. Under such circumstances the Defence may have reasonably concluded that the listing of paragraphs 6 through 30 in paragraph 5 was a typographical error.

77. The Chamber is of the view that to the extent the Prosecution sought to include these allegations as part of the count of conspiracy to commit genocide, it should have pleaded the allegations unambiguously in the concise statement of facts supporting that count. The Chamber finds that the Indictment was defective in this respect.

78. The Chamber recalls that the first time the Prosecution gave notice of its intention to hold Zigiranyirazo accountable for conspiracy on the basis of the allegations with respect to Kesho Hill was in its Closing Brief. The Chamber considers that this was not timely or clear enough to cure the defect, and that this materially impaired the Accused's ability to prepare his defence. The Chamber will, therefore, consider these allegations only in connection with the counts of genocide or, alternatively, complicity in genocide.

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<sup>80</sup> Indictment, paras 12, 13.

<sup>81</sup> Prosecution Closing Brief, paras. 160-162.

79. Third, in Closing Arguments, the Prosecution suggested that evidence of the Accused's participation in a meeting at the Regina Hotel in Gisenyi where it was decided that Stanislas Sinibagiwe, a Hutu, was to be killed should also be considered in support of the count of conspiracy to commit genocide.<sup>82</sup> The Chamber notes that the Accused's alleged involvement in, and criminal responsibility for, this murder are pleaded in paragraphs 46 and 47 of the Indictment as murder as a crime against humanity.

80. Without commenting on whether evidence suggesting a possible agreement that a Hutu should be killed is relevant to the count of conspiracy to commit genocide against the Tutsi,<sup>83</sup> the Chamber considers that, for the same reasons as those discussed above in connection with the Kesho Hill evidence and allegations, the Prosecution failed to cure its defective Indictment by providing the Defence with timely and clear information that these allegations were relevant to the conspiracy count. The Chamber considers that this materially impaired the Accused's ability to prepare his defence. These allegations will therefore only be considered in connection with the count of murder as a crime against humanity.

#### 1.4.3.2 Kiyovu Roadblock

81. The Prosecution seeks convictions for genocide, or in the alternative, complicity in genocide, as well as extermination as a crime against humanity as a result of the Accused's participation in a roadblock in Kiyovu.<sup>84</sup> With respect to these charges, the Prosecution relied on the evidence of Witnesses ATO and BCW. As discussed above, the Prosecution stated during Closing Arguments that it was no longer seeking a conviction on the basis of Witness ATO's evidence. Witness BCW testified that the Accused gave orders to the *Interahamwe* to check identity cards "well", told the *Interahamwe* to remain at the roadblock as food would be brought to them, and offered the *Interahamwe* weapons.<sup>85</sup>

82. Paragraphs 23 and 40 of the Indictment state:

23 and 40. On or about 7 April 1994, soldiers guarding the residence of **Protais ZIGIRANYIRAZO** in Kiyovu cellule, Kigali-ville prefecture, who were under his *de facto* control, ordered watchmen employed at homes in the neighbourhood to man a roadblock that was set up between **Protais ZIGIRANYIRAZO**'s home and the adjacent Presbyterian church. Soldiers and *Interahamwe*, including Second Lt. Jean-Claude SEYOBOKA BONKE and Jacques KANYAMIGEZI, supervised the roadblock, the largest in the Kiyovu cellule. The civilians manning the roadblock were armed with machetes and clubs. Approximately one week later, in mid-April 1994, **Protais ZIGIRANYIRAZO** ordered and instigated soldiers, *Interahamwe* and armed civilians at the roadblock near his Kiyovu residence to search the homes in the neighbourhood and kill any Tutsi that were found. **Protais ZIGIRANYIRAZO** further ordered and instigated the soldiers and *Interahamwe* at the roadblock,

<sup>82</sup> Closing Arguments, T. 29 May 2008 p. 32.

<sup>83</sup> The Prosecution itself seems to have been somewhat confused regarding the nature of the crime, describing it as a "conspiracy to commit a crime against – a crime against humanity." Closing Arguments, T. 29 May 2008 p. 32. Conspiracy to commit a crime against humanity is not a crime within the jurisdiction of this Tribunal.

<sup>84</sup> The same facts in respect of the Kiyovu roadblocks are pleaded for Counts 2 (and alternatively Count 3), and Count 4 under the Indictment.

<sup>85</sup> Witness BCW, T. 31 January 2006 pp. 18-20.

including Sec. Lt. Jean-Claude SEYOBOKA BONKE and Jacques KANYAMIGEZI, who supervised the roadblock, to kill all Tutsi who attempted to pass through. Shortly thereafter, and on a continuing basis, soldiers and *Interahamwe* killed those who were identified as Tutsi, both in the neighbourhood and attempting to pass through the roadblock.

83. Paragraphs 24 and 41 state, with regard to the Kiyovu roadblock:

24 and 41. [...] Also as described in paragraphs 18-23, **Protais ZIGIRANYIRAZO** ordered soldiers, gendarmes, immigration police, customs officials, *Interahamwe*, and CDR-affiliated armed civilians over whom he had *de facto* control by reason of the relationship described in Paragraph 3, instigated by reward, and aided and abetted those over whom he did not have *de facto* control, to commit the killings. All of his actions were committed in concert with soldiers, gendarmes, immigration police, customs officials and *Interahamwe* for the common purpose of killing Tutsis because they were Tutsis, for the period of a criminal enterprise that extended at least from the beginning of the establishment of the roadblocks by persons under his *de facto* control up to the killing of the Tutsis and the burial of their bodies as stated in paragraphs 18 through 23.

84. The Chamber notes that Witness BCW's allegations are not specifically pleaded in the relevant paragraphs of the Indictment, quoted above, and finds the Indictment defective in this regard. However, Paragraphs 44 and 45 of the Prosecution Pre-Trial Brief provide additional particulars with respect to the Kiyovu roadblock allegations:<sup>86</sup>

44. It is the Prosecution's case that during April 1994, Protais Zigiranyirazo approached the roadblock with about four soldiers whereupon he saw several corpses of people identified as Tutsi on the ground. Protais Zigiranyirazo made no comment regarding the deaths, but told the people manning (*sic*) roadblock to check carefully for Tutsi identity cards because some Tutsi had changed the ethnicity in their identity card to read Hutu.

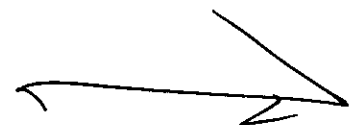
45. On another occasion during the same period, Protais Zigiranyirazo approached the roadblock and the *Interahamwe* manning the roadblock asked the Accused for permission to go out and look for food. Protais Zigiranyirazo exhorted them to remain at the roadblock and that food would be brought to them there. He also told them if they needed guns, they could get weapons from his house."

85. Additionally, the witness summaries annexed to the Pre-Trial Brief provided clear and consistent information with regard to Witness BCW's intended testimony.<sup>87</sup> The Chamber also notes that the Defence did not object to the evidence of Witness BCW during the proceedings.

86. In view of the above, the Chamber considers that the Prosecution provided the Defence timely, clear and consistent notice of the Prosecution's intention to rely on the allegations from Witness BCW concerning the Accused's alleged role with respect to the Kiyovu roadblock.

<sup>86</sup> See also, Decision on Defence Urgent Motion to Exclude Some Parts of the Prosecution Pre-Trial Brief, 30 September 2005, paras. 19, 20.

<sup>87</sup> Pre-Trial Brief, Annex I, Summary of Witness BCW's proposed testimony, pp. 7-8.





### 1.5. Alibi

87. The Defence called a number of witnesses to provide an alibi for the Accused in relation to, among other allegations, the allegations regarding events at Kesho Hill and the roadblock in Kiyovu.<sup>88</sup> The Chamber will address the evidence of these witnesses in more detail in the specific sections to which their testimony is relevant.

### 1.6. Evaluation of Evidence

#### *General Principles*

88. The Chamber has considered each piece of evidence in light of the totality of the evidence admitted at trial. It emphasises that it has duly considered and given appropriate weight to all the evidence, even if not expressly referred to in the Judgement. The evidence was assessed in accordance with the Statute, the Rules, and the jurisprudence of the Tribunal. When no guidance was found in these sources the Chamber has decided matters of evidence in such a way as would best favour a fair determination of the case in consonance with the spirit of the Statute and general principles of law.<sup>89</sup>

#### *Burden and Standard of Proof*

89. Pursuant to Article 20(3) of the Statute, an accused shall be presumed innocent until proven guilty. This presumption places on the Prosecution the burden of establishing the guilt of the accused, a burden which remains on the Prosecution throughout the entire trial. 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.<sup>90</sup> Accordingly, the Chamber determined whether it was satisfied that every element of the crime charged and of the mode of liability and any fact indispensable for a conviction were proved beyond reasonable doubt by the Prosecution.<sup>91</sup> In so doing, it has been necessary on certain occasions for the Chamber to draw inferences from circumstantial evidence. In such cases, the Chamber drew the only reasonable conclusion available from the evidence.<sup>92</sup>

#### *Viva Voce Evidence*

90. When evaluating *viva voce* evidence, the Chamber considered various factors, including the witnesses' demeanour in court, the plausibility and clarity of their testimony, and whether there were contradictions or inconsistencies within their testimony or between their testimony and their prior statements relied upon in court or admitted as exhibits. It also considered the individual circumstances of the witnesses, including their role in the events in question, their relationship with the Accused

<sup>88</sup> Defence Alibi Notice of 6 September 2005: "The accused was at Kanombe, Rwanda, at the house of the late President Habyarimana beginning on the morning of 7 April 1994. He stayed there with many other people. They left on the morning of 11 April 1994 and eventually arrived at Rubaya at the end of the day. They stayed in Rubaya for approximately one week."

<sup>89</sup> Rule 89(B) of the Rules.

<sup>90</sup> Rule 87(A) of the Rules.

<sup>91</sup> See *Ntagerura et al.*, Judgement (AC), para. 174.

<sup>92</sup> See *Ntagerura et al.*, Judgement (AC), paras. 304 and 306, referring to *Čelebići*, Judgement (AC), para. 458.

and whether the witnesses would have an underlying motive to give a certain version of the events.

91. The Chamber recognises that a significant period of time has elapsed between the events alleged in the Indictment and the testimonies given in court. Therefore, lack of precision or minor discrepancies between the evidence of different witnesses, or between the testimony of a particular witness and a prior statement, while calling for cautious consideration, was not regarded in general as necessarily discrediting the evidence. When deciding whether or not to rely on certain aspects of a witness's testimony, the Chamber nevertheless sometimes relied on other parts of the testimony deemed to be reliable and credible.

92. The Chamber also recalls that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.<sup>93</sup> However, when only one witness presented evidence on a particular incident, the Chamber examined the evidence with particular care before accepting it as a sufficient basis for entering a finding of guilt.

#### *Expert Witnesses*

93. When assessing and weighing the evidence of the expert witnesses, the Chamber considered factors such as the professional competence of the expert, the position held by the expert, the scope of his expertise, the methodologies used, the credibility of the findings made in light of these factors and other evidence, and the relevance and reliability of their evidence.

#### *Documentary Evidence*

94. Factors such as authenticity, and proof of authorship, assumed the greatest importance in the Chamber's assessment of the weight to be attached to individual pieces of documentary evidence.

#### *Interpretation and Transcription*

95. In a number of instances, the Chamber identified discrepancies between the French and English versions of the transcripts of testimonies given in Kinyarwanda. In those instances, because the testimonies given in Kinyarwanda were first interpreted in French, and then from French to English before being transcribed in English, the Chamber relied on the French version as more authentic. When in doubt, the Chamber resorted to the original testimony in Kinyarwanda with the assistance of the Tribunal's Languages Support Section.

96. The Chamber also took into account that, as a result of translation and transcription, names of individuals or locations given by witnesses which were similar, but not identical, may actually have referred to the same place or person.

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<sup>93</sup> See, e.g., *Muvunyi*, Judgement (AC), para. 128; *Seromba*, Judgement (AC), para. 79.

## 2. The Authority of the Accused

### 2.1. Indictment

97. Paragraph 3 of the Indictment reads as follows:

3. Under President HABYARIMANA's rule, political and financial power in Rwanda was consolidated within a tight circle consisting of extended family members of the president and members of an elite drawn almost exclusively from Rwanda's northern prefectures of Gisenyi and Ruhengeri. Protais ZIGIRANYIRAZO was a prominent member of this group. By virtue of his membership in this group and by virtue of his relationship with President HABYARIMANA and with Agathe KANZIGA, Protais ZIGIRANYIRAZO wielded great power and influence. As such, he had *de facto* control and authority, in the sense of having the material ability to prevent or to punish criminal conduct, over the actions of soldiers, gendarmes, the *Interahamwe*, administrative officials, and members of the civilian population in Rwanda.

### 2.2. Evidence

98. Many Prosecution Witnesses referred to a group known as the *Akazu*,<sup>94</sup> which was said to be organised around the President and the family of his wife<sup>95</sup> and drawn from the northern regions of Rwanda.<sup>96</sup> It held enough power to influence decisions in Rwanda, including those pertaining to employment and promotions, bank loans and political decisions.<sup>97</sup>

99. A number of witnesses testified that the Accused held power as a result of being an influential member of the *Akazu*.<sup>98</sup>

100. Further, the vast majority of Prosecution Witnesses testified that the Accused wielded significant influence and power before and during the genocide. Prosecution Witnesses, including Witness AKK, testified that the Accused was a very important person,<sup>99</sup> and that he exerted power or influence,<sup>100</sup> with some referring to his relationship as the brother-in-law of the President.<sup>101</sup> According to many witnesses, even after the Accused had ceased being the *préfet* of Ruhengeri he retained

<sup>94</sup> Isaïe Murashi Sagahutu, T. 23 January 2006 p. 6; Witness AKQ, T. 20 February 2006 p. 17; Witness PA, T. 21 February 2006 p. 15; Dr. Alison Des Forges, T. 2 March 2006 pp. 14, 17, 19; Michel Bagaragaza, T. 27 November 2006 p. 15.

<sup>95</sup> Isaïe Murashi Sagahutu, T. 24 January 2006 p. 6; Dr. Alison Des Forges, T. 2 March 2006 p. 17; Witness AKQ, T. 20 February 2006 p. 13; Witness PA, T. 21 February 2006 pp. 12-13.

<sup>96</sup> Witness AKQ, T. 20 February 2006 p. 8.

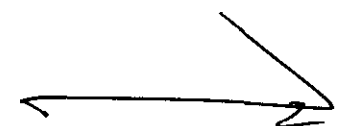
<sup>97</sup> Isaïe Sagahutu Murashi, T. 23 January 2006 p. 6 and T. 24 January 2006 pp. 5-6, 11, 23; Witness AKQ, T. 20 February 2006 p. 17; Witness PA, T. 21 February 2006 p. 15; Dr. Alison Des Forges, T. 2 March 2006 pp. 14, 17, 19; Michel Bagaragaza, T. 27 November 2006 p. 15.

<sup>98</sup> Isaïe Sagahutu Murashi, T. 23 January 2006 p. 10 and T. 24 January 2006 pp. 2-3, 5-6; Witness ATO, T. 26 January 2006 p. 28; Witness AKQ, T. 20 February 2006 p. 8; Michel Bagaragaza, T. 27 November 2006 p. 12.

<sup>99</sup> Witness AKK, T. 10 October 2005 p. 65; Witness SGI, T. 13 October 2005 p. 15; Witness AVY, T. 19 October 2005 pp. 8, 19; Witness AKO, T. October 20 2005 p. 49; Witness AKQ, T. 20 February 2006 p. 8; Witness SGA, T. 7 February 2006 p. 27.

<sup>100</sup> Witness AKK, T. 10 October 2005 p. 11; Witness SGI, T. 17 October 2005 p. 15; Witness AKQ, T. 20 February 2006 p. 17; Witness PA, T. February 21 2006 p. 12.

<sup>101</sup> Witness SGI, T. 17 October 2005 p. 23; Witness AVY, T. 19 October 2005 p. 8; Witness AKO, T. 20 October 2005, p. 49; Witness ATN, T. 14 February 2006 p. 7; Witness AKQ, T. 20 February 2006, pp. 8, 17; Witness PA, T. 21 February 2006, p. 12.



considerable influence over the population.<sup>102</sup> Further, Witness BCW testified that the Accused had a Corporal in his employ.<sup>103</sup>

101. A number of the Defence witnesses testified that after the Accused was no longer *préfet*, he maintained no power or authority.<sup>104</sup> While some testified that the population distrusted, disliked and was wary of the Accused,<sup>105</sup> others testified that he was well-liked and respected, at least by some.<sup>106</sup> Witness Séraphin Bararengana testified that the *Akazu* was unlikely to exert any influence over the President, since “[the President] could not allow himself to be influenced by his brothers, sisters, brothers-in-law or even his wife.”<sup>107</sup> Witness RDP46 testified that the Accused was not at Kesho Hill during the attack on 8 April 1994, and said the attack was led by “low level individuals” and not high level individuals such as the Accused.<sup>108</sup>

### 2.3. Deliberations

102. The Chamber notes that the Accused is only charged with individual criminal responsibility under Article 6(1) of the Statute and not with superior criminal responsibility under Article 6(3).<sup>109</sup> The Chamber will therefore not make any findings on whether the Accused had *de facto* control over the actions of soldiers, *gendarmes*, the *Interahamwe*, administrative officials or members of the civilian population, as alleged in the Indictment.<sup>110</sup>

103. Regarding the *Akazu*, considering the testimony of Expert Witness Dr. Alison Des Forges, as corroborated by multiple Prosecution witnesses, the Chamber finds it is proven beyond reasonable doubt that a power group consisting primarily of members of the extended family of the President existed before and during the genocide. Considering the testimony of Witness AKK, found by the Chamber to be credible,<sup>111</sup> and the corroboration of nearly every other Prosecution witness, it is also proved beyond reasonable doubt that the Accused was seen as important and influential. Further supporting this finding is the testimony of Witness BCW, found by the Chamber to be credible,<sup>112</sup> that the Accused had a Corporal in his employ, which the Chamber considers to indicate a substantively higher level of importance than that of an average civilian.

<sup>102</sup> Witness ATO, T. 26 January 2006 p. 28; Witness ATN, T. 14 February 2006 p. 7; Witness ATM, T. 16 February 2006 p. 13; Michel Bagaragaza, T. 27 November 2006 p. 27.

<sup>103</sup> Witness BCW, T. 31 January 2006 pp. 8, 14, 24-25.

<sup>104</sup> Witness RDP2, T. 30 October 2006 p. 47; Antoine Nyetera, T. 13 March 2007 pp. 7, 10; César Busaro, T. 19 March 2007 p. 33; Witness BNZ54, T. 21 March 2007 p. 53.

<sup>105</sup> Agnès Kampundu, T. 5 March 2007 p. 71; César Busaro, T. 19 March 2007 pp. 30, 31, 38, 61; François Lucien Hitimana, T. 21 March 2007 p. 5.

<sup>106</sup> Witness RDP2, T. 30 October 2006 pp. 25, 47, 61; César Busaro, T. 19 March 2007 p. 61.

<sup>107</sup> Séraphin Bararengana, T. 6 March 2007 p. 58.

<sup>108</sup> Witness RDP46, T. 27 March 2007 p. 79; T. 28 March 2007 pp. 6, 19.

<sup>109</sup> Indictment Decision of 2 March 2005, paras. 17-20. *See also* Preliminary Motion Decision of 15 July 2007.

<sup>110</sup> Indictment, para. 3.

<sup>111</sup> *See infra*, paras. 309, 316-317.

<sup>112</sup> *See infra*, paras. 236-244.



### 3. The Accused and the *Interahamwe*

#### 3.1. Introduction

104. The Chamber notes that there are two separate allegations regarding the Accused and the *Interahamwe*: (i) his involvement in its creation; and (ii) his later participation in and facilitation of the group. Although both allegations are contained in paragraph 6 of the Indictment, the Chamber will proceed to consider them separately.

#### 3.2. Involvement in the Creation of the Youth Movement

##### 3.2.1 Indictment

105. Paragraph 6 of the Indictment reads:

6. At an unknown date in 1992, Wellars BANZI told President HABYARIMANA and Protais ZIGIRANYIRAZO that if there was ever a thought to eliminating the Tutsi, they had formed a specialized militia group to eliminate them as they had done in 1959 in Gisenyi. After this date and continuing through July 1994, Protais ZIGIRANYIRAZO agreed with Wellars BANZI and Bernard MUNYAGISHARI to finance and execute the "specialized militia plan" meaning the creation of the *Interahamwe* in the whole of Rwanda [...]<sup>113</sup>

##### 3.2.2 Evidence

*Prosecution Witness Isaïe Murashi Sagahutu*

106. Isaïe Murashi Sagahutu, a Tutsi, was a history teacher at the *Lycée Notre Dame* of Nyundo, Gisenyi *préfecture*. Sagahutu lived with his Tutsi cousin, Sam Mudenge, for a time, while Sagahutu's parents were in exile. Mudenge was a friend of the Accused, and Sagahutu used to see them together.<sup>114</sup> Later, when he used to visit Mudenge, he "used to see [Zigiranyirazo] come in." According to Sagahutu, the friendship between the Accused and Mudenge ended when the politics changed in Rwanda. Mudenge was killed during the genocide.<sup>115</sup>

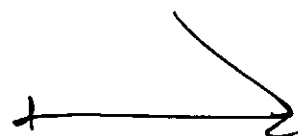
107. Sagahutu testified that Wellars Banzi, MRND Party Chairman in Gisenyi *préfecture*, met with the Accused and former President Habyarimana at Habyarimana's official residence in Gisenyi towards the end of 1992.<sup>116</sup> At this meeting, they discussed the political situation in Rwanda, including the war, the opposition, as well as the accomplices, and the *Inyenzi* (RPF). Sagahutu testified that Habyarimana and the Accused asked Banzi for advice on what to "do to dominate, to rule this situation." Banzi allegedly advised them that youth groups had been used to drive out the Tutsi in 1959, stating:

<sup>113</sup> The Chamber notes that paragraphs 26 and 27 of the Pre-Trial Brief concern the Accused's involvement with the creation of and support for the *Interahamwe*.

<sup>114</sup> Isaïe Murashi Sagahutu, T. 23 January 2006 pp. 3-4.

<sup>115</sup> Isaïe Murashi Sagahutu, T. 23 January 2006 pp. 3-4, 13-14; T. 24 January 2006 p. 18; T. 25 January 2006 p. 20.

<sup>116</sup> Isaïe Murashi Sagahutu, T. 24 January 2006 pp. 14, 18.



Now you should do the same thing, create a similar militia. You'll call it *Interahamwe*. You'll call it *Interahamwe* (sic). Otherwise, you will not be able to get to those Tutsis. They're too strong. They have Hutus who support them. They have people on the inside. You need to create a shock group, a strong militia, a civilian defence.<sup>117</sup>

108. Sagahutu acknowledged that he was not at the meeting.<sup>118</sup> He testified that he first heard about the conversation between Banzi, Habyarimana and the Accused from his cousin, Mudenge, and that he directly overheard the Accused tell Mudenge about the conversation on a different occasion.<sup>119</sup> According to the Witness, the Accused also said: "We are going to implement a system of civilian defence, and [the Tutsi] will not survive".<sup>120</sup> Sagahutu estimated that, while at his cousin Mudenge's house, he heard the Accused say that the Tutsi will be exterminated three to four times.<sup>121</sup>

109. Sagahutu also testified that he heard *conseiller* Kabiligi, whom he described as an *Akazu* member, and someone he would see in the company of the Accused, talk about the plan to exterminate the Tutsi and say that a group was being created to kill the Tutsi.<sup>122</sup>

*Prosecution Expert Witness Dr. Alison Des Forges*

110. Dr. Alison Des Forges testified that the *Interahamwe* were founded in the context of inter-party rivalry. She testified that what separated the *Interahamwe* from other party youth wings was its access to military training.<sup>123</sup>

111. Dr. Des Forges testified regarding a document that concerned the founding of the *Interahamwe*. This document, dated 14 May 1992, is entitled "Dossier 'Interahamwe Za Muvoma'" and was created by Anastase Gasana, a former MRND politician.<sup>124</sup> In it, Gasana lists the Accused as one of several notable persons involved in civilian recruitment for the *Interahamwe*. The Accused is described therein as one of the initiators of the project.<sup>125</sup> Dr. Des Forges testified that the author was well placed to provide such a list, and she considered the list to be "a credible series of names for those people involved in helping to organise the *Interahamwe*."<sup>126</sup>

*Defence Witness Georges Rutaganda*

112. Georges Rutaganda was a 36-year-old businessman in 1994. He was serving a life sentence for charges relating to genocide and crimes against humanity when he met the Accused for the first time in the United Nations Detention Facility in Tanzania.<sup>127</sup>

<sup>117</sup> Isaïe Murashi Sagahutu, T. 24 January 2006 p. 14.

<sup>118</sup> Isaïe Murashi Sagahutu, T. 24 January 2006 p. 17.

<sup>119</sup> Isaïe Murashi Sagahutu, T. 25 January 2006 pp. 22-23.

<sup>120</sup> Isaïe Murashi Sagahutu, T. 24 January 2006 p. 17.

<sup>121</sup> Isaïe Murashi Sagahutu, T. 24 January 2006 p. 20.

<sup>122</sup> Isaïe Murashi Sagahutu, T. 24 January 2006 p. 19.

<sup>123</sup> Dr. Alison Des Forges, T. 2 March 2006 p. 72-73.

<sup>124</sup> Dr. Alison Des Forges, T. 2 March 2006 pp. 73-74, Exhibit P46, *Dossier "Interahamwe Za Muvoma" ou les Irréductibles du M.R.N.D: Essai de Déracinement du mal*.

<sup>125</sup> Dr. Alison Des Forges, T. 2 March 2006 pp. 73-74; Exhibit P46, *Dossier "Interahamwe Za Muvoma" ou les Irréductibles du M.R.N.D: Essai de Déracinement du mal*, p. 3.

<sup>126</sup> Dr. Alison Des Forges, T. 2 March 2006 p. 74.

<sup>127</sup> Georges Rutaganda, T. 6 December 2006 pp. 37-38.



113. Rutaganda testified that he was “second vice-president of the *Interahamwe*” at the national level from the time the organization was created, in November 1991, until the time he left the country, after the genocide in 1994.<sup>128</sup> He testified that he was not aware of any financial contribution made to the *Interahamwe* by the Accused,<sup>129</sup> and that he would have been aware had any such contribution been made.<sup>130</sup> He later admitted that as second vice-president, he “was never informed of such contributions”, and stated that Dieudonné Niyitegeka would know who contributed, as he was in charge of contributions as the Treasurer.<sup>131</sup>

*Defence Witness Antoine Nyetera*

114. Antoine Nyetera, a Tutsi, is a member of Rwanda’s former royal family, and worked in various Rwandan Ministries from 1978 to 1994.<sup>132</sup> He testified that he first met the Accused in 1967, when Zigiranyirazo was a Member of Parliament.<sup>133</sup>

115. Nyetera testified that, in the multiparty era, each political party had its own youth wing.<sup>134</sup> He testified that the MRND affiliated *Interahamwe* was the fourth youth wing created, and that officials of the party founded the youth wing. Nyetera stated that the Accused, who was not an MRND official, was not involved in the creation of the *Interahamwe*.<sup>135</sup> He explained that, to his knowledge, the Accused was living in Canada from 1989 to 1993, during the time the *Interahamwe* was formed.<sup>136</sup> He stated he knew this from reading the “scholarships” section of the official gazette and from seeing the Accused upon his return to Rwanda in August or September 1993. Nyetera admitted he was not aware whether the Accused returned to Rwanda during the time when he was living in Canada.<sup>137</sup>

### 3.2.3 Deliberations

116. The Chamber notes that the only Prosecution Witness to testify about the alleged 1992 meeting among Wellars Banzi, the Accused and President Habyarimana, is Sagahutu. As the Defence pointed out, Sagahutu was inconsistent on whether he personally heard the Accused tell his cousin Mudenge of the meeting, or whether Mudenge told him of the meeting.<sup>138</sup> Initially, Sagahutu testified that he heard the Accused tell Mudenge about the meeting.<sup>139</sup> However, on cross-examination, Sagahutu

<sup>128</sup> Exhibit D45, Personal Information Sheet of Georges Rutaganda; T. 6 December 2006 p. 38.

<sup>129</sup> Georges Rutaganda, T. 6 December 2006 pp. 38-39.

<sup>130</sup> Georges Rutaganda, T. 6 December 2006 pp. 39, 51-52.

<sup>131</sup> Georges Rutaganda, T. 6 December 2006 pp. 53-54.

<sup>132</sup> Exhibit D61, Personal Information Sheet of Antoine Nyetera; T. 12 March 2007, pp. 10-12. He worked at the Ministry of National Education, the Ministry of Higher Education, and in the Ministry of Primary and Secondary Education from 1967 until he left Rwanda in 1995.

<sup>133</sup> Antoine Nyetera, T. 12 March 2007 p. 13.

<sup>134</sup> Antoine Nyetera, T. 13 March 2007 p. 16.

<sup>135</sup> Antoine Nyetera, T. 13 March 2007 p. 18.

<sup>136</sup> Antoine Nyetera, T. 13 March 2007 pp. 18-20.

<sup>137</sup> Antoine Nyetera, T. 13 March 2007 p. 20.

<sup>138</sup> Defence Closing Brief, paras. 616-619, 623.

<sup>139</sup> Isafe Murashi Sagahutu, T. 24 January 2006 pp. 17-18.

was confronted with his testimony from the *Bagosora et al.* proceedings, during which he never testified that he was present for such conversations.<sup>140</sup>

117. In response, Sagahutu explained that, during the *Bagosora et al.* proceedings, he answered the question he was asked, implying that he was never directly asked whether he was present when the Accused allegedly told Mudenge about the meeting with Wellars Banzi and Habyarimana.<sup>141</sup> The Chamber notes that, in both the *Bagosora et al.* proceedings and in these proceedings, Sagahutu was asked directly how he knew about the alleged meeting.<sup>142</sup> In *Bagosora et al.*, he never claimed to be present at any such meeting. Rather, his testimony suggests that the Accused informed Sagahutu's cousin Mudenge of the meeting, and then Mudenge informed Sagahutu.<sup>143</sup> The Chamber is not satisfied with Sagahutu's explanation that he first heard about the conversation from his cousin, Mudenge, and then, on a different occasion, he personally heard the Accused tell Mudenge about the conversation.<sup>144</sup> The Chamber also finds it highly implausible that the Accused would repeatedly visit the home of Mudenge, a Tutsi, to tell Mudenge and the Witness (another Tutsi), about a conversation he had with Wellars Banzi and President Habyarimana regarding the formation of a youth group to kill Tutsi.

118. Given the inconsistency between his testimony in *Bagosora et al.*, and his testimony in these proceedings, the Chamber is not convinced that Sagahutu heard the Accused tell Mudenge about the alleged 1992 meeting among Banzi, Habyarimana and the Accused. Even if the Chamber were to accept that Mudenge told Sagahutu about the alleged meeting, the Chamber does not consider such uncorroborated hearsay evidence to be sufficient to prove that the meeting took place. The Chamber therefore finds it unnecessary to assess the Defence Witnesses's evidence regarding the plausibility of Wellars Banzi making such comments.<sup>145</sup>

119. Accordingly, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that, in late 1992, the Accused discussed the creation of a specialized militia to eliminate the Tutsi with Wellars Banzi and President Habyarimana.

120. With regard to other evidence of the Accused's involvement in the establishment of the *Interahamwe*, the Chamber notes that, as a general rule, an expert witness cannot testify on the acts and conduct of the Accused unless the witness is also being called as a factual witness and having a statement disclosed in accordance with

<sup>140</sup> Isaïe Murashi Sagahutu, T. 25 January 2006 pp. 20-21; Exhibit D9, Transcript of 24 April 2004 in *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T.

<sup>141</sup> Isaïe Murashi Sagahutu, T. 25 January 2006 pp. 19-21.

<sup>142</sup> In these proceedings, Sagahutu was asked by Judge Muthoga how he got to learn of the meeting among Banzi, Habyarimana and Zigiranyirazo (T. 24 January 2006 p. 17). In the *Bagosora et al.* proceedings, Sagahutu was asked how he got to know of the conversation among Banzi, Habyarimana, and Zigiranyirazo (Exhibit D9, Transcript of 24 April 2004 in *Bagosora et al.*, Case No. ICTR-98-41-T).

<sup>143</sup> Exhibit D9, Transcript of 24 April 2004 in *Bagosora et al.*, Case No. ICTR-98-41-T.

<sup>144</sup> Isaïe Murashi Sagahutu, T. 25 January 2006 pp. 22-23.

<sup>145</sup> Witness PA, T. 21 February 2006 pp. 20, 23, 24; Charles Zilimwabagabo, T. 12 April 2007 p. 6; Witness BNZ54, T. 21 March 2007 pp. 52-53; Witness BNZ45, T. 27 March 2007 pp. 14-15; Marie Goretti Nyirahabimana, T. 20 November 2007 pp. 40-41.



the applicable rules concerning factual witnesses.<sup>146</sup> An expert witness may, however, "testify on certain facts relating to his or her expertise."<sup>147</sup> The Chamber will consider the testimony of Dr. Des Forges regarding the establishment of the *Interahamwe* in light of these principles.

121. The Chamber accepts the testimony of Dr. Des Forges, as corroborated by Defence Witness Antoine Nyetera, that the youth wings generally, and the *Interahamwe* specifically, were established in the context of the multi-party era.

122. The Chamber finds that, even if accepted, the hearsay testimony of Sagahutu regarding statements made by *conseiller* Kabiligi about a group being created to kill the Tutsi fails to establish any connection between Kabiligi's alleged statements and the Accused.

123. The remaining evidence of the Accused's involvement in establishing the *Interahamwe* consists solely of Anastase Gasana's Dossier.<sup>148</sup> The Chamber notes that Defence Witness Rutaganda claimed that he had not seen the document or been aware of it before the Prosecution showed it to him in court, and questioned its provenance.<sup>149</sup> However, Dr. Des Forges stated that she had confirmed with Gasana that he was the author of the document.<sup>150</sup> The Chamber accepts the authenticity of the Dossier on the basis of Dr. Des Forges's testimony.

124. The Dossier does not, however, expressly name the Accused as a founder of the *Interahamwe*. Rather, it suggests that the MRND National Committee founded the youth wing. The Accused is listed only as a notable person involved in recruiting civilians for the group.<sup>151</sup> To the extent it states that MRND officials founded the *Interahamwe*, the Dossier is consistent with and corroborated by Defence Witness Nyetera's testimony.

125. However, regarding the truth of the Dossier's contents, implicating the Accused in recruiting civilians for the *Interahamwe*, the Chamber notes that Dr. Des Forges's opinion evidence to the effect that Gasana was well placed to provide such a list, does not corroborate its contents. Nor does her opinion that she considers the list to be reliable. The Chamber therefore considers the list naming the Accused within the Dossier to be uncorroborated hearsay, and will not accept it without further supporting evidence.

126. The Chamber notes that it is uncontested that the Accused was living in Canada during the years 1989 until 1993.<sup>152</sup> However, the frequency and length of his returns to Rwanda during those years are not clear from the record. The Prosecution bears the burden of showing how the Accused was able to be engaged in the process of

<sup>146</sup> *Nahimana et al.*, Judgement (AC), para. 212.

<sup>147</sup> *Nahimana et al.*, Judgement (AC), para. 212.

<sup>148</sup> Exhibit P46, Dossier "*Interahamwe Za Muvoma*" ou les *Irreductibles du M.R.N.D: Essai de Déracinement du mal*.

<sup>149</sup> Georges Rutaganda, T. 7 December 2006 pp. 3-4.

<sup>150</sup> Dr. Alison Des Forges, T. 2 March 2006 p. 74.

<sup>151</sup> Exhibit P46, Dossier "*Interahamwe Za Muvoma*" ou les *Irreductibles du M.R.N.D: Essai de Déracinement du mal*; Dr. Alison Des Forges, T. 2 March 2006 p. 74.

<sup>152</sup> Prosecution Closing Brief, para. 689.

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establishing the *Interahamwe* while officially residing outside Rwanda, and it has not met that burden. Therefore, the Chamber finds that the Prosecution has not brought sufficient evidence to prove beyond reasonable doubt that the Accused was involved in establishing the *Interahamwe*.

### 3.3. Ongoing Involvement

#### 3.3.1 Indictment

127. The remainder of paragraph 6 of the Indictment reads:

6. [...] In furtherance of the plan, **Protais ZIGIRANYIRAZO** participated in and facilitated the arming, training, and clothing of the *Interahamwe* and the arming of the local population in Gisenyi, including the financing of and purchasing arms for the group, with the purpose of attacking and destroying the Tutsi population.<sup>153</sup>

#### 3.3.2 Evidence

*Prosecution Witness Isaïe Murashi Sagahutu*<sup>154</sup>

128. Sagahutu testified that the Accused was often in Gisenyi, and that he played an important role in directly influencing the appointment of the heads of the *Interahamwe* and military leaders because he attended all the meetings.<sup>155</sup> He added that Colonel Anatole Nsengiyumva, who became the military commander in Gisenyi in 1993, was very close to the Accused and was appointed by, and close to, the *Akazu*. According to Sagahutu, Nsengiyumva was tasked by the *Akazu* with training the *Interahamwe*.<sup>156</sup>

*Prosecution Witness Michel Bagaragaza*

129. Michel Bagaragaza, a Hutu, had served as Director General of OCIR-THÉ, a Rwandan parastatal agency dealing with the promotion and marketing of tea, from 1984 to 1994, and as Vice President of the Administrative Council of BACAR from 1985 or 1986 to 1994.<sup>157</sup> He had known the Accused since 1960, when the Accused was his primary school teacher. During the 1994 events, Bagaragaza and the Accused were neighbours in Giciye.<sup>158</sup>

130. Bagaragaza stated that after 1992, Bahufite, then a military commander in Gisenyi, and Bizumuremye, a lieutenant in Gisenyi, told him that the Accused facilitated the training of the *Interahamwe* in Gisenyi.<sup>159</sup> Specifically, the Accused facilitated Bahufite's and Bizumuremye's access to people to be trained.<sup>160</sup>

<sup>153</sup> The Chamber notes that paragraphs 26 and 27 of the Pre-Trial Brief concern the Accused's involvement with the creation of and support for the *Interahamwe*.

<sup>154</sup> For background information on Isaïe Murashi Sagahutu, *see supra*, para. 106.

<sup>155</sup> Isaïe Murashi Sagahutu, T. 24 January 2006 p. 23.

<sup>156</sup> Isaïe Murashi Sagahutu, T. 24 January 2006 p. 24.

<sup>157</sup> Exhibit P76, Personal Information Sheet of Michel Bagaragaza; T. 27 November 2006 pp. 7-8.

<sup>158</sup> Michel Bagaragaza, T. 27 November 2006 pp. 5-6.

<sup>159</sup> Michel Bagaragaza, T. 27 November 2006 pp. 34-35.

<sup>160</sup> Michel Bagaragaza, T. 27 November 2006 p. 37.

131. Bagaragaza also testified that Kuradusenge, an assistant *bourgmestre* of Giciye *commune* and Chairman of the Giciye *Interahamwe*,<sup>161</sup> informed him that the Accused had provided the *Interahamwe* with the support of his personal escort, as well as the Presidential Guard.<sup>162</sup> Bagaragaza testified that Kuradusenge told him that had it not been for the Accused's assistance, the *Interahamwe* would have suffered many setbacks in the Kingogo area, and that the Tutsi had been wiped out in the Giciye area "thanks to the assistance by Mr. Zigiranyirazo – that is, the support of the Presidential Guards, as well as the support of his escort."<sup>163</sup> He added that two others, Pascal Hitimana, tea maker and assistant to Director Jaribu at the Rubaya Tea Factory, and Ndugijimana, the gas attendant at Rubaya Tea Factory, told him the same thing, that "Mr. Zigiranyirazo contributed to supporting the *Interahamwe* and he decided that the Presidential Guard as well as his escort should participate in attacking the Tutsis of the area."<sup>164</sup>

*Prosecution Witness PA*

132. Witness PA, a Hutu, was *responsable* of the *cellule* in Gisenyi town from 1978 to 1994.<sup>165</sup> He knew the Accused as *préfet* of Gisenyi *préfecture*, and then as *préfet* of Ruhengeri.<sup>166</sup> Witness PA testified that Bernard Munyagishari, the Secretary of the MRND from 1992, and leader of the *Interahamwe* from 1993, expected every *responsable* to provide five people to be trained in the use of weapons and Colonel Anatole Nsengiyumva also asked for persons to be provided for weapons training.<sup>167</sup> Witness PA provided Nsengiyumva with 10 people from his area. He could not recall any of their names, but testified that they were all Hutu and that he had provided Hutu because the Tutsi were considered accomplices who had caused the war.<sup>168</sup>

*Prosecution Witness AVY*

133. Witness AVY, a Hutu, was a Protestant Evangelist pastor in 1993.<sup>169</sup> He testified that he easily recognised the Accused, as when he was in college in 1982, he had seen the Accused holding meetings as *préfet* of Ruhengeri *préfecture*, and had also seen him at football games.<sup>170</sup>

134. Witness AVY testified that in late 1993, he and approximately 600 other Hutu from different *communes* were selected by Faziri Hakizimana, the *conseiller* of Gisenyi *secteur*, to undergo a three month military training program at barracks in Bigogwe and, later, at Mukamira barracks. The trainees were told that the Tutsi who had invaded the country were the enemy, and they were instructed to investigate and spy on them.<sup>171</sup>

<sup>161</sup> Michel Bagaragaza, T. 28 November 2006 p. 10.

<sup>162</sup> Michel Bagaragaza, T. 28 November 2006 p. 19.

<sup>163</sup> Michel Bagaragaza, T. 28 November 2006 pp. 18-19; T. 30 November 2006 p. 22.

<sup>164</sup> Michel Bagaragaza, T. 28 November 2006 pp. 19-20.

<sup>165</sup> Exhibit P31, Protected Information of Witness PA (under seal); T. 21 February 2006 pp. 4-5.

<sup>166</sup> Witness PA, T. 21 February 2006 p. 12.

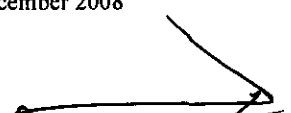
<sup>167</sup> Witness PA, T. 21 February 2006 p. 7.

<sup>168</sup> Witness PA, T. 21 February 2006 pp. 8, 10.

<sup>169</sup> Exhibit P13, Protected Information of Witness AVY (under seal); T. 19 October 2005 pp. 2-3.

<sup>170</sup> Witness AVY, T. 19 October 2005 p. 12.

<sup>171</sup> Witness AVY, T. 19 October 2005 pp. 2-4. See *infra*, paras. 207-208.



### 3.3.3 Deliberations

135. Prosecution Witness Sagahutu testified that the Accused influenced the appointment of the heads of the *Interahamwe* and military leaders. The Chamber notes, however, that Sagahutu appears to have reached this conclusion on the basis that the Accused attended all the meetings. The Chamber is unwilling to find that the Accused had such influence on the basis of uncorroborated speculation.

136. The Chamber considered the testimony of Prosecution Witnesses Sagahutu, PA, and AVY regarding the training of the *Interahamwe*, but finds that they did not specifically connect the Accused to this training. Sagahutu testified that Colonel Nsengiyumva was tasked with training the *Interahamwe*, but the only connection his evidence suggests with this training, and the Accused, is that Colonel Nsengiyumva was very close to the Accused and was tasked with this training by the *Akazu*.<sup>172</sup> The Chamber further notes that Sagahutu did not explain how he came to know that the *Akazu* tasked Colonel Nsengiyumva with taking on such training. Witness PA testified regarding training provided by Bernard Munyagashiri and Colonel Nsengiyumva, but did not link the Accused to the training, other than to suggest that Colonel Nsengiyumva and Zigiranyirazo were both members of the *Akazu*.<sup>173</sup> Witness AVY testified that he was ordered to attend training by Faziri Hakizimana, but did not link the Accused to this training.<sup>174</sup>

137. The Chamber has several concerns regarding the testimony of Prosecution Witness Bagaragaza that the Accused supported the *Interahamwe* with his personal escort and Presidential Guards. First, Bagaragaza's testimony consists entirely of hearsay. Contrary to the Prosecution's suggestion, the fact that nearly all Bagaragaza's sources, namely, Bahufite, Bizumuremye, Juvenal Uwilingiyimana, Kuradusenge, and Pascal Hitimana, are deceased, does not make this hearsay evidence more reliable.<sup>175</sup>

138. Second, Bagaragaza's status as an accused person before this Tribunal and an alleged accomplice to the Accused warrants caution when considering his evidence.<sup>176</sup> The indictment against Bagaragaza implicates him in some of the same crimes as the Accused, and it is conceivable that by testifying against the Accused, Bagaragaza seeks to shift blame away from himself.<sup>177</sup> In addition, Bagaragaza acknowledged that he provided money to Kuradusenge, to "give the *Interahamwe* drinks in order to motivate [them]." He added that Kuradusenge was always asking him for money, and

<sup>172</sup> Isaïe Murashi Sagahutu, T. 24 January 2006 p. 24.

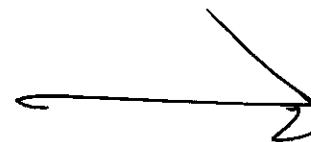
<sup>173</sup> Witness PA, T. 21 February 2006 pp. 13, 16.

<sup>174</sup> In addition, the Chamber notes its findings with regard to Witness AVY's credibility, *see infra*, paras. 154, 376-379.

<sup>175</sup> In paragraph 125 of its Closing Brief, the Prosecution argues that Bagaragaza's hearsay evidence on another event, the alleged 6 April Meeting at Kanombe, should be considered reliable because Bagaragaza's source, Pasteur Musabe, is deceased. However, the Prosecution provides no support for this argument.

<sup>176</sup> Defence Closing Brief, paras. 480-483.

<sup>177</sup> *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-2005-86-I, Amended Indictment, 1 December 2006, paras. 15, 17. (Paragraph 15 of the Indictment alleges that Bagaragaza was involved in establishing the *Interahamwe* in Gisenyi; Paragraph 17 of the Indictment alleges that Bagaragaza was involved in the Kesho Hill attack against Tutsi).



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that during Kuradusenge's last visit to his house around 14 April 1994, he told Bagaragaza that the *Interahamwe* had "finished with the Tutsis in the area and that they were going to continue" elsewhere,<sup>178</sup> in Kigongo and "probably" in Bugoye.<sup>179</sup> As noted in the *Kordić and Čerkez* Trial Judgement:

[...] it is essentially a matter of common sense that a witness with an interest to serve (particularly an interest to get his sentence reduced) may seek to inculpate others and exculpate himself. On the other hand, it does not follow that such a witness is incapable of telling the truth. In each case it is necessary to consider the witness's evidence and all the circumstances, particularly the extent to which evidence is confirmed.<sup>180</sup>

139. Moreover, the Chamber notes the perquisites provided by the Prosecution to Bagaragaza, including direct payments prior to his arrest, the payment of costs incurred in relocating and supporting his family, and promises made to Bagaragaza related to the venue of his own trial as well as his own relocation after trial.<sup>181</sup> While not inherently unreasonable, the Chamber considers such benefits warrant additional caution when considering Bagaragaza's evidence.

140. Under these circumstances, the Chamber considers it unsafe to accept Bagaragaza's uncorroborated hearsay testimony regarding the Accused's alleged support for the *Interahamwe*.

141. For these reasons, the Chamber concludes that the Prosecution has failed to prove beyond reasonable doubt that the Accused participated in and/or facilitated the arming, training and clothing of the *Interahamwe* and the local population in Gisenyi. Given this conclusion, the Chamber does not consider it necessary to assess the Defence Witness's evidence.<sup>182</sup>

#### **4. Meetings where Attacks were Planned, Organised and Facilitated**

##### **4.1. Introduction**

142. As discussed above in the section on Allegations on which No Evidence was Presented, the Prosecution failed to adduce any evidence of several meetings specifically pleaded in the Indictment.<sup>183</sup>

143. Additionally, the Chamber recalls that, during Closing Arguments, the Prosecution stated that it was not seeking a conviction on the basis of Witness ATO's evidence.<sup>184</sup> The Chamber may, however, also consider his evidence to the extent it is relevant to other allegations properly pleaded in the Indictment.

144. The Chamber notes that it may still consider the evidence of meetings for which the Prosecution failed to provide notice to the extent they are relevant to the

<sup>178</sup> Michel Bagaragaza, T. 28 November 2006 p. 13.

<sup>179</sup> Michel Bagaragaza, T. 28 November 2006 p. 34.

<sup>180</sup> *Kordić and Čerkez*, Judgement (TC), para. 629.

<sup>181</sup> Michel Bagaragaza, T. 29 November 2006, pp. 5-6, 28-30; Exhibit P80, Agreement between the Prosecutor the ICTR and Bagaragaza (sic), signed 18 December 2004.

<sup>182</sup> Witness BNZ45, T. 27 March 2007 pp. 27-30.

<sup>183</sup> See *supra*, para. 14; Indictment, paras. 7, 8, 9, 10.

<sup>184</sup> Closing Arguments, T. 28 May 2008 pp. 12-13.



proof of other allegations properly pleaded in the Indictment. The Chamber will therefore determine whether the Accused's attendance at, and participation in, these meetings was proven beyond reasonable doubt.

#### 4.2. Meeting at Presidential Residence in Kanombe, 6 April 1994

##### 4.2.1 Evidence

*Prosecution Witness Michel Bagaragaza*<sup>185</sup>

145. Michel Bagaragaza testified that Pasteur Musabe told him of a meeting at President Habyarimana's residence in Kanombe on the night of 6 April 1994. The Accused, Agathe Kanziga, and others participated in the meeting, drawing up a list of important persons to kill, including Frédéric Nzamurambaho, Landouald, and one Rucogoza.<sup>186</sup> Bagaragaza testified: "Pasteur Musabe told me that it was Mr. Zigiranyirazo who had drawn up the list and had given it to Protais Mpiranya so as to avenge the death of the president."<sup>187</sup> Bagaragaza testified that he discussed this event with Musabe on two occasions.<sup>188</sup>

*Prosecution Expert Witness Dr. Alison Des Forges*

146. Expert Witness Dr. Alison Des Forges also referred to reports regarding a meeting at the Presidential home at Kanombe on the night of 6 April 1994.<sup>189</sup> According to her sources, "discussion was not limited to the expression of condolences, but also touched on plans for the immediate future, including political plans, and, in that sense, could be called a political meeting."<sup>190</sup> She also stated that: "According to one witness, Zigiranyirazo was one of those who expressed the determination to kill Tutsi in reprisal for the shooting down of the airplane. Madam Habyarimana was another person who expressed that sentiment, as I believe did, at least, one of her children."<sup>191</sup>

##### 4.2.2 Deliberations

147. As with Bagaragaza's testimony regarding the Accused's involvement with the *Interahamwe*, his testimony on the 6 April 1994 meeting consists of hearsay. Given the Chamber's concerns regarding Bagaragaza's evidence, discussed above,<sup>192</sup> the Chamber is unable to accept Bagaragaza's testimony without corroboration.

148. The Chamber does not consider that Dr. Des Forges's testimony regarding the 6 April 1994 meeting corroborates Bagaragaza's testimony. The Prosecution stated that they were not leading her evidence as proof of the meeting.<sup>193</sup> Moreover, recalling the general rule that expert witnesses are not to testify to the acts and conduct of the

<sup>185</sup> For background information on Witness Michel Bagaragaza, *see supra*, para. 129.

<sup>186</sup> Michel Bagaragaza; T. 28 November 2006 pp. 20-21, 23, 33.

<sup>187</sup> Michel Bagaragaza, T. 28 November 2006 p. 23.

<sup>188</sup> Michel Bagaragaza, T. 28 November 2006 p. 24.

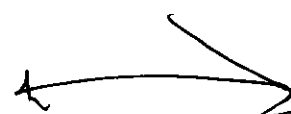
<sup>189</sup> Dr. Alison Des Forges, T. 7 March 2006 p. 27.

<sup>190</sup> Dr. Alison Des Forges, T. 7 March 2006 p. 28.

<sup>191</sup> Dr. Alison Des Forges, T. 7 March 2006 pp. 28-29.

<sup>192</sup> *See supra*, paras. 137-140.

<sup>193</sup> Dr. Alison Des Forges, T. 7 March 2006 p. 27.



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Accused unless they also testify as fact witnesses,<sup>194</sup> the Chamber notes that Dr. Des Forges testified as an expert witness only.<sup>195</sup> However, her testimony on the 6 April 1994 Meeting was more like that of a factual witness, than that of an expert witness, and therefore, the Chamber would not accept her testimony even if it were offered as proof of the meeting.<sup>196</sup>

149. The Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Zigiranyirazo attended a meeting on the night of 6 April 1994 at the Presidential residence at Kanombe.<sup>197</sup> Accordingly, the Chamber need not address the Defence evidence in that regard in detail.<sup>198</sup>

### 4.3. Meeting at Umuganda Stadium, April 1994

#### 4.3.1 Evidence

##### *Prosecution Witness AVY*<sup>199</sup>

150. Witness AVY testified that he was summoned to serve as security at a meeting at Umuganda Stadium in the last week of April 1994.<sup>200</sup> During the meeting, he saw a helicopter arrive at a nearby aerodrome. Witness AVY stated that he recognized Zigiranyirazo as one of the persons departing from the helicopter. The Accused was driven from the aerodrome to the stadium where the meeting was already in progress.<sup>201</sup> Witness AVY also recalled seeing *préfet* Charles Zilimwabagabo, and party leaders such as Jean-Bosco Sibomana, and Wellars Banzi.<sup>202</sup>

151. According to Witness AVY, *préfet* Zilimwabagabo spoke first and called for an end to the killing in Gisenyi. He was followed by Colonel Anatole Nsengiyumva, who gave a similar speech. Next, the Accused allegedly took the podium and said: "I am very surprised to hear you say that killings have to stop. Has Habyarimana, the

<sup>194</sup> *Nahimana et al.* Judgement (AC), para. 212.

<sup>195</sup> Dr. Alison Des Forges, T. 1 March 2006 p. 78.

<sup>196</sup> Further, the Chamber notes that Dr. Des Forges's testimony consists of hearsay evidence from three unnamed sources, one of whom she describes as "a person who was obviously distracted and not a particularly good observer", and two of whom are dead. Dr. Alison Des Forges, T. 7 March 2006 pp. 27-28. Moreover, only one of Dr. Des Forges's sources stated that Zigiranyirazo was present, and that he expressed the determination to kill Tutsi. Dr. Alison Des Forges, T. 7 March 2006 p. 28. The Chamber considers that, under such circumstances, it is possible that Dr. Des Forges's source regarding the presence of the Accused is the same as Bagaragaza's, or, possibly, Bagaragaza himself. During the testimony of Dr. Des Forges, she acknowledged having met Michel Bagaragaza (formerly Witness ADE). Dr. Alison Des Forges, T. 27 February 2006 pp. 18-19. It is conceivable that Bagaragaza told Dr. Des Forges about this meeting.

<sup>197</sup> The Chamber has noted that Prosecution Witness BPP was called to testify on the whereabouts of the Accused in the period immediately following 6 April 1994. However, Witness BPP routinely contradicted prior statements and expressed repeated failings of her memory (Witness BPP, T. 20 June 2006 pp. 8-57). Thus, the Chamber has not considered further the evidence of Witness BPP.

<sup>198</sup> Jean Luc Habyarimana, T. 26 February 2007 pp. 8-9, 20-21; Jeanne Marie Aimée Habyarimana, T. 26 February 2007 p. 87 and T. 27 February 2007 p. 5; Aimé Marie Ntuye, T. 28 February 2007 pp. 60-61; Marie Chantal Kamugisha, T. 7 March 2007 pp. 67, 69-70; Domitilla Makajyoni Zigiranyirazo, T. 27 February 2007 pp. 47-48, 53-54; Witness BBL, T. 3 April 2007 pp. 79-81 and T. 4 April 2007 p. 2.

<sup>199</sup> For background information on Witness AVY, *see supra*, para. 133.

<sup>200</sup> Witness AVY, T. 19 October 2005 pp. 5-7; T. 8 February 2006 p. 51.

<sup>201</sup> Witness AVY, T. 19 October 2005 pp. 7-8.

<sup>202</sup> Witness AVY, T. 19 October 2005 p. 8.

father of the nation, risen from the dead?" Witness AVY believed that, by uttering these words, Zigiranyirazo was "inciting people to killings." He testified that the Accused's speech resulted in many people standing up and making noise. Witness AVY stated that the *préfet* could not contradict the Accused because the Accused's words were important, as he was a member of the Habyarimana family, and he was accompanied by soldiers. As the killings in Gisenyi continued after Zigiranyirazo's speech, Witness AVY believed that this showed that people "gave a lot of importance" to what the Accused said.<sup>203</sup>

#### Other Evidence

152. Prosecution Witness PA and Defence Witnesses Charles Zilimwabagabo, Marie Goretti Nyirahabimana, BNZ45 and BNZ54 all testified that they were present at the meeting at Umuganda Stadium in late April 1994, but that they did not see the Accused at the meeting or in a helicopter at the aerodrome that day.<sup>204</sup> They further testified that security at the meeting was provided by *gendarmes*.<sup>205</sup>

#### 4.3.2 Deliberations

153. Prosecution Witness AVY is the sole witness who testified that the Accused attended the meeting at Umuganda Stadium.

154. The Defence asserted that Witness AVY had a motive to testify against the Accused given his request for pardon and pending appeal of his death sentence. Detained in Gisenyi prison since 1997, Witness AVY was convicted and sentenced to death in 2001 by the Gisenyi Court of first instance for genocide and extermination.<sup>206</sup> That same year, he appealed against several of his convictions,<sup>207</sup> and requested a pardon for others.<sup>208</sup> He met with ICTR investigators in 2004,<sup>209</sup> and sent a confession letter to the Public Prosecutor in the Gisenyi province the following year.<sup>210</sup> The Defence asserts that Witness AVY's 27 April 2005 confession letter to the Rwandan Prosecutor,<sup>211</sup> titled "Testimony against Messrs. Félicien Kabuga, Augustin

<sup>203</sup> Witness AVY, T. 19 October 2005 pp. 8-9.

<sup>204</sup> Witness PA, T. 21 February 2006 pp. 20-21, 23-25; Marie Goretti Nyirahabimana, T. 20 November 2007 pp. 38-41; Charles Zilimwabagabo, T. 12 April 2007 pp. 5-7, 9, 42-43; Witness BNZ45, T. 27 March 2007 pp. 14-16; Witness BNZ54, T. 21 March 2007 pp. 51-53.

<sup>205</sup> Marie Goretti Nyirahabimana, T. 20 November 2007 p. 41; Charles Zilimwabagabo, T. 12 April 2007 p. 10; Witness BNZ45, 27 March 2007 p. 16; Witness BNZ54, T. 21 March 2007 p. 53.

<sup>206</sup> Witness AVY, T. 19 October 2005 pp. 12-13, 16.

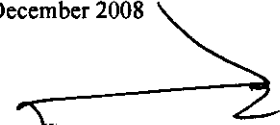
<sup>207</sup> Witness AVY, T. 8 February 2006 p. 37.

<sup>208</sup> Prosecution Closing Brief, para. 637; Witness AVY, T. 8 February 2006 pp. 31-32, 34, 36, 37. The Chamber notes that the witness stated the month as both April and May, but the day (27<sup>th</sup>) and year (2001) remain the same. The Chamber also notes that he stated he asked for pardon *after* filing appeal, but gave the same date for both (T. 8 February 2006 p. 34). Regarding his involvement, Witness AVY testified he personally killed three Tutsi in examination-in-chief, (T. 19 October 2005 pp. 16), and four Tutsi in cross-examination (T. 8 February 2006 p. 33).

<sup>209</sup> Prosecution Closing Brief, para. 637; Witness AVY, T. 8 February 2006 p. 29; Exhibit D18B, Witness AVY's written statements of 7 June, 23 September 2004; Exhibit D18C, Witness AVY's written statements of 5 and 7 October 2004.

<sup>210</sup> Witness AVY, T. 19 October 2005 pp. 18, 21; Exhibit P14, Testimony against Messrs. Félicien Kabuga, Augustin Ngirabatware, Edouard Karemera and Frodouard Karamira.

<sup>211</sup> Exhibit P14, Testimony against Messrs. Félicien Kabuga, Augustin Ngirabatware, Edouard Karemera and Frodouard Karamira.





Ngirabatware, Edouard Karemera and Frodouard Karamira”, accuses specific ICTR indictees, and only nominally addresses its author’s responsibility.<sup>212</sup> The Defence alleges that this demonstrates that Witness AVY is hoping to receive an advantage from the judiciary in Rwanda by informing them that he was providing the Office of the Prosecutor (“OTP”) with information about ICTR indictees.<sup>213</sup> Witness AVY admitted that the Judge in his appeal would likely see this letter.<sup>214</sup> The Chamber notes with concern the delay of almost four years from Witness AVY’s appeal and pardon requests to his confession letter to the Public Prosecutor in the Gisenyi Province, penned months after meeting with the ICTR OTP and titled with the names of ICTR indictees. The Chamber is not convinced by Witness AVY’s insistence that his testimony in this trial was unrelated to his pending appeal and pardon requests, nor that he was only testifying to clear his conscience.<sup>215</sup>

155. In light of the above, the Chamber is unable to exclude the possibility that Witness AVY’s testimony may be influenced by ulterior motives. The Chamber also notes the inconsistencies and contradictions in his evidence on the alleged murder of Sinibagiwe.<sup>216</sup> Therefore, the Chamber will not accept the evidence of Witness AVY without corroboration.

156. Prosecution Witness PA, and four Defence Witnesses corroborate Witness AVY’s evidence that the meeting occurred and that *préfet* Zilimwabagabo, and Wellars Banzi spoke and called for an end to the killing. The four Defence Witnesses also corroborate Witness AVY’s testimony that Colonel Nsengiyumva spoke.<sup>217</sup> However, the Chamber notes that the same five witnesses all testified that the Accused did not attend the meeting. Further, none of these witnesses saw a helicopter land at the nearby aerodrome. The Defence Witnesses all testified that security at the meeting was provided by *gendarmes* and that they did not see *Interahamwe* or civilians, such as Witness AVY, on security detail.

157. Having considered all the evidence, the Chamber accepts that there was a meeting at Umuganda Stadium in late April 1994 where *préfet* Zilimwabagabo, Wellars Banzi, and Colonel Nsengiyumva spoke. However, given that the Chamber will not rely on Witness AVY’s testimony without corroboration, it does not find that the Prosecution has proven beyond reasonable doubt that the Accused attended, and spoke at, this meeting.

<sup>212</sup> Witness AVY, T. 8 February 2006 p. 38.

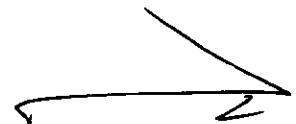
<sup>213</sup> Witness AVY, T. 8 February 2006 p. 39.

<sup>214</sup> Witness AVY, T. 8 February 2006 p. 40.

<sup>215</sup> Witness AVY, T. 19 October 2005 pp. 16, 18; T. 8 February 2006 pp. 36, 40.

<sup>216</sup> See *infra*, paras. 376-379.

<sup>217</sup> Charles Zilimwabagabo, T. 12 April 2007 p. 37; Marie Goretti Nyirahabimana, T. 20 November 2007 p. 39; Witness BNZ45, T. 27 March 2007 pp. 14, 15; Witness BNZ54, T. 21 March 2007 p. 51.



#### 4.4. Meetings at Football Field in Nyundo, April 1994

##### 4.4.1 Evidence

###### *Prosecution Witness ATN*

158. Witness ATN, a Hutu, was a trader with a shop in Rubavu in 1994.<sup>218</sup> He testified that, after the death of President Habyarimana, he joined an *Interahamwe* group of about 50 people led by a man named Kamuzinzi, and the group then commenced attacking Tutsi.<sup>219</sup>

159. Witness ATN testified that he saw Zigiranyirazo in April 1994 when the Accused came to Nyundo to take his daughters, Umwali and Chantal, from the home of their mother, Venantie, a Tutsi.<sup>220</sup> This happened after 6 April 1994.<sup>221</sup>

160. Witness ATN again saw the Accused at a meeting in Nyundo near a football field next to a theatre hall. He testified that the meeting took place four or five days after the death of the President, but stressed that he could not be certain of the date. He estimated that the meeting took place around 12 April 1994, but agreed that it could also have taken place on 10 or 11 April 1994.<sup>222</sup> According to the Witness, he attended the meeting as a member of the *Interahamwe*, as all *Interahamwe* had to attend.<sup>223</sup> The meeting was convened by the *bourgmestre* of Rubavu, and the head of the *Interahamwe*, and *conseillers* also attended; its purpose was to organize the meetings for the killing of Tutsi.<sup>224</sup> Witness ATN testified that Zigiranyirazo addressed the meeting and said that he had removed his children from the home of a Tutsi woman, and then said: "Now it is up to you, what you want to do?" The Witness understood this to mean that there must be killings.<sup>225</sup>

161. After the Accused spoke, *Interahamwe* leader Bernard Munyagishari informed the Accused that they needed weapons, and that the Accused said that weapons would be made available to them. Three to four days later, Munyagishari called the *Interahamwe* to the theatre hall next to the football field where the meeting had been held, and distributed rifles and grenades to them. Witness ATN could not say where the weapons came from. He received a Kalashnikov rifle, and Munyagishari and the *bourgmestre* provided people to train him and his fellow *Interahamwe*, how to use the rifles with trainers who were from the Bigogwe barracks.<sup>226</sup>

162. Witness ATN said he saw the Accused at a second meeting in late April 1994, held at the same football field in Nyundo, attended by Colonels Bagosora and Setako.<sup>227</sup> The meeting was called by the *bourgmestre* at the instruction of the *Interahamwe* president, and attended by many *Interahamwe* and people from the

<sup>218</sup> Exhibit P23, Protected Information of Witness ATN (under seal); T. 14 February 2006 p. 5.

<sup>219</sup> Witness ATN, T. 14 February 2006 p. 6.

<sup>220</sup> Witness ATN, T. 14 February 2006 p. 7.

<sup>221</sup> Witness ATN, T. 14 February 2006 p. 36.

<sup>222</sup> Witness ATN, T. 14 February 2006 pp. 28, 40-41.

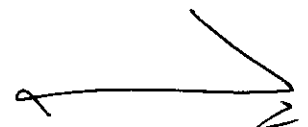
<sup>223</sup> Witness ATN, T. 14 February 2006 p. 8.

<sup>224</sup> Witness ATN, T. 14 February 2006 pp. 7-8.

<sup>225</sup> Witness ATN, T. 14 February 2006 p. 8.

<sup>226</sup> Witness ATN, T. 14 February 2006 pp. 12-14.

<sup>227</sup> Witness ATN, T. 14 February 2006 pp. 18, 20.



*secteur*. The purpose of the meeting was to call for the massacre of the Tutsi. Witness ATN testified that Colonel Bagosora spoke at this meeting, saying that the *Interahamwe* had to “find the enemy wherever he is” and making it clear that the enemy was the Tutsi. Witness ATN testified that the Accused did not speak at this meeting.<sup>228</sup>

#### 4.4.2 Deliberations

163. Prosecution Witness ATN is the only witness to testify regarding the meetings at the football field in Nyundo.

164. The Chamber is concerned with possible improper motives for Witness ATN’s testimony. He was tried, convicted, and sentenced to life imprisonment for crimes committed during the genocide, and was awaiting appeal at the time of his testimony.<sup>229</sup> Witness ATN acknowledged that he, and those “in his group”, were found guilty of murdering about 60 people.<sup>230</sup> He further admitted that he lied to Rwandan officials about his involvement in the killings of 540 other Tutsi at Nyundo Cathedral in order to avoid the death penalty.<sup>231</sup> In addition, the Chamber notes that Witness ATN suggests that the Accused led him to commit his crimes; in other words, he appears to blame the Accused for his actions.<sup>232</sup> Although Witness ATN denied that he would mention his testimony before the ICTR during the appeal of his conviction, or in connection with a request for mercy,<sup>233</sup> given his admitted willingness to lie in order to avoid punishment, and the expressed belief that the Accused is essentially responsible for his crimes, the Chamber considers it possible that Witness ATN may have been motivated to testify in order to receive more favourable treatment on appeal.

165. Furthermore, the Chamber notes some minor internal inconsistencies with the Witness’s testimony. In an earlier statement given to the Prosecution by Witness ATN, the first meeting was described as having taken place in a room near the football field in Nyundo, as opposed to in the football field; during his testimony, the witness denied having said that.<sup>234</sup> There was also some confusion about the date of the second meeting in Nyundo in an earlier statement.<sup>235</sup> In addition, the Chamber notes that Witness ATN’s testimony about the rescue of Bishop Kalibushi in late April 1994,<sup>236</sup> is contradicted by the testimony of Prosecution Witness Sagahutu, who testified that the rescue took place on 8 April 1994, and that he (Sagahutu) was rescued along with the Bishop.<sup>237</sup>

166. In light of the above, the Chamber does not accept Witness ATN’s uncorroborated testimony. As the Prosecution has failed to meet its burden of

<sup>228</sup> Witness ATN, T. 14 February 2006 pp. 20-21.

<sup>229</sup> Witness ATN, T. 14 February 2006 p. 23.

<sup>230</sup> Witness ATN, T. 14 February 2006 p. 27.

<sup>231</sup> Witness ATN, T. 14 February 2006 pp. 31, 32.

<sup>232</sup> Witness ATN, T. 14 February 2006 pp. 26, 54-55.

<sup>233</sup> Witness ATN, T. 14 February 2006 p. 36.

<sup>234</sup> Witness ATN, T. 14 February 2006 pp. 42-43; Exhibit D19, Witness ATN’s written statement of 21 September 2004.

<sup>235</sup> Witness ATN, T. 14 February 2006 pp. 46-48.

<sup>236</sup> Witness ATN, T. 14 February 2006 p. 51.

<sup>237</sup> Isaïe Murashi Sagahutu, T. 24 January 2006 p. 39.



proof regarding the Nyundo meetings, the Chamber need not consider the Defence evidence.<sup>238</sup>

#### 4.5. Meetings in Kiyovu, mid-April 1994

##### 4.5.1 Evidence

###### *Prosecution Witness ATO*

167. Witness ATO, a driver working for the Rwandan Ministry of Justice, testified that on the morning of 10 April 1994, he drove in a small two car convoy, accompanied by two police officers and *préfet* Renzaho, to visit the Accused at his home in Kiyovu, Kigali-ville.<sup>239</sup> They arrived at 10.00 a.m. and remained there until 1.00 p.m.<sup>240</sup> Witness ATO testified that several people were at the house, including Mathieu Ngirumpatse, Georges Rutaganda, Robert Kajuga, as well as *Interahamwe*.<sup>241</sup>

168. Witness ATO testified that the people who were at the Accused's house were preparing the killing of Tutsi, and saying that the Tutsi had to be decimated. He suggested that it was "obvious" that this was so, and that people outside the house were saying these things. Witness ATO explained that someone "in [his] proper understanding" could easily understand what was going on.<sup>242</sup>

169. Witness ATO stated that he returned to the Accused's house with Renzaho on 12 April 1994, and that this time they brought 50 to 60 guns which were to be stored there.<sup>243</sup> Ngirumpatse, Rutaganda, and Kajuga were also present at the Accused's house on 12 April 1994.<sup>244</sup>

##### 4.5.2 Deliberations

170. Witness ATO is the sole Prosecution Witness to testify regarding the meetings at the home of the Accused on 10 and 12 April 1994. The Chamber notes that, before the Gacaca courts in Rwanda, Witness ATO admitted to having established a roadblock near his house, and, at the time of his testimony before this Tribunal, was waiting to hear whether any charges would be brought against him.<sup>245</sup> He was not aware of anyone accusing him of having committed any crimes at the roadblock.<sup>246</sup>

<sup>238</sup> Witness KBNZ97, T. 13 March 2007 p. 59; Domitilla Zigiranyirazo, T. 27 February 2007 pp. 57, 61, 62-79; Gloria Mukumpanga, T. 11 April 2007 pp. 80-84; Séraphin Bararengana, T. 6 March 2007 pp. 39-43, 47; Marguérite Maria Mukobwajana, T. 19 November 2007 pp. 54-55 and T. 20 November 2007 pp. 21-24, 26-28; Agnès Kampundu, T. 5 March 2007 pp. 61-64; Marie Chantal Kamugisha, T. 7 March 2007 pp. 3, 71-75; Bernadette Niyonizye, T. 5 March 2007 pp. 12-15, 22, 26; Aimé Marie Ntuye, T. 28 February 2007 pp. 77-80; Witness BNZ120, T. 3 December 2007 p. 16 and T. 4 December 2007 pp. 3-6.

<sup>239</sup> Witness ATO, T. 26 January 2006 pp. 17-18 (closed session).

<sup>240</sup> Witness ATO, T. 26 January 2006 pp. 23-24 (closed session).

<sup>241</sup> Witness ATO, T. 26 January 2006 p. 18 (closed session).

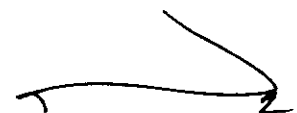
<sup>242</sup> Witness ATO, T. 26 January 2006 p. 23 (closed session).

<sup>243</sup> Witness ATO, T. 26 January 2006 p. 24 (closed session).

<sup>244</sup> Witness ATO, T. 26 January 2006 p. 25 (closed session).

<sup>245</sup> Witness ATO, T. 26 January 2006 pp. 37-40 (closed session). He established the roadblock on 7 April 1994 at the instruction of his *conseiller*. According to the Witness, the roadblock remained in place for only four or five days, there were no crimes committed there, and he was not stationed there.

<sup>246</sup> Witness ATO, T. 26 January 2006 p. 39 (closed session).



171. The Chamber further notes several minor inconsistencies between Witness ATO's testimony and his prior statements to the Prosecution. During his testimony, Witness ATO described accompanying the two policemen to get rice and oil on 10 April 1994 and to get beer on 12 April 1994, whereas in his December 2003 statement to the Prosecution, it had been beer on 10 April and rice and oil on 12 April 1994.<sup>247</sup> Further, Witness ATO's December 2003 statement referred to four, instead of two, policemen. However, he testified that the statement did not accurately reflect what he had said about the number of policemen.<sup>248</sup> Witness ATO clarified that there were four policemen at the *préfecture* office, but that he only travelled with two of them.<sup>249</sup> However, he could not recall the names of these two policemen who accompanied him from 7 through 13 April 1994.<sup>250</sup> Additionally, during his testimony, Witness ATO stated that he and Renzaho arrived at the Accused's house before Ngirumpatse, Kajuga and Rutaganda, yet in his December 2003 statement, he testified that when he and Renzaho arrived, Renzaho was greeted by the Accused and Ngirumpatse. When asked to explain this discrepancy, he clarified that they arrived at practically the same time.<sup>251</sup>

172. In the Chamber's view, the mere fact of Witness ATO's involvement in establishing a roadblock does not impact his credibility. Similarly, minor inconsistencies between his testimony, and his earlier statements, as well as his inability to recall the policemen's names, would not, on their own, impact his credibility. However, the Chamber has serious concerns regarding Witness ATO's testimony on the alleged meetings of 10 and 12 April 1994. More specifically, the Chamber considers Witness ATO's testimony regarding the discussion of the killing of Tutsi at the 10 April 1994 meeting to be problematic. Witness ATO made no mention of any such discussion in either of his prior statements to the Prosecution. When asked why he had failed to do so, Witness ATO testified that he had not been asked about such things by the Prosecution.<sup>252</sup> His testimony regarding the discussions and how he came to know of them was unclear and inconsistent. He identified no specific speakers or words spoken. From his testimony on examination-in-chief, it is unclear how he came to know of such discussions. Although Witness ATO testified that people outside the house were discussing the killing of Tutsi, he did not seem to know what was being discussed inside. Rather, given the statement that "it was obvious that the killing of Tutsis were being prepared" and that somebody with a proper understanding could easily understand what was going on, it seems that Witness ATO may have intuited that the killing of Tutsi was being discussed by the Accused and his guests.

173. Furthermore, during cross-examination, Witness ATO testified for the first time that he directly heard the Accused, Renzaho, Ngirumpatse, Kajuga and Rutaganda

<sup>247</sup> Witness ATO, T. 26 January 2006 pp. 21, 24-25 (closed session); Exhibit D10, Witness ATO's written statement of 22 December 2003.

<sup>248</sup> Witness ATO, T. 30 January 2006 pp. 8-9 (closed session); Exhibit D10, Witness ATO's written statement of ATO of 22 December 2003.

<sup>249</sup> Witness ATO, T. 30 January 2006 p. 9 (closed session).

<sup>250</sup> Witness ATO, T. 26 January 2006 p. 7 (closed session); T. 30 January 2006 p. 5 (closed session).

<sup>251</sup> Witness ATO, T. 30 January 2006 p. 10 (closed session).

<sup>252</sup> Witness ATO, T. 30 January 2006 pp. 12-13 (closed session); Exhibit D10, Witness ATO's written statement of 22 December 2003; Exhibit D11, Witness ATO's written statement of 30 November 2004.

discuss the killing of Tutsi. When asked why he had not clearly stated this on examination-in-chief or in his prior statements to the Prosecution, Witness ATO stated that he had not been asked the question directly.<sup>253</sup> The Chamber is not satisfied by this answer. The Chamber notes that Witness ATO's statements on cross-examination also suggest that he may have simply assumed that this was being discussed. He suggested that it was clear that the Accused and his guests were discussing the killing of Tutsi because Tutsi were being killed, because "everyone was saying that the Tutsis had to be decimated", and "there was no other topic of discussion".<sup>254</sup> The Chamber does not accept that the fact that Tutsi were being killed is sufficient to show that the Accused, and those visiting him at his home on 10 April 1994, must have been discussing killing Tutsi. Witness ATO testified that he heard a police officer say that this was the topic of the discussion, but later testified that he also personally heard killings being discussed. When pressed further, Witness ATO stressed that he had heard similar conversations elsewhere during the relevant time period.<sup>255</sup>

174. Regarding the meeting of 12 April 1994, the Chamber notes that Witness ATO did not mention this meeting in either of his prior statements to the Prosecution. In his December 2003 statement, Witness ATO stated only that they had dropped weapons off at the home of the Accused, and that the Accused had then borrowed Renzaho's van.<sup>256</sup> In his November 2004 statement, Witness ATO made no mention of travelling to the Accused's house. Rather, he stated only that he, Renzaho, and Kabiligi travelled to the roadblock near the Accused's house on 12 April 1994.<sup>257</sup> When asked why he had made no mention of this meeting between the Accused, Renzaho, Ngirumpatse, Rutaganda and Kajuga on 12 April 1994, Witness ATO stated that he had not been asked by the Prosecution. The Chamber is not satisfied by this explanation, especially considering that he had just described such a meeting on 10 April 1994.

175. In view of the aforementioned concerns, the Chamber does not consider Witness ATO to be reliable, and will not accept his testimony without credible corroboration. Accordingly, the Chamber is not convinced beyond reasonable doubt that Witness ATO actually heard the Accused and his guests discussing the killing of Tutsi at a meeting on 10 April 1994. Nor does the Chamber accept Witness ATO's uncorroborated evidence that there was a meeting between the Accused, Renzaho, Rutaganda, Kajuga, and Ngirumpatse at the Accused's home on 12 April 1994. In view of this finding, the Chamber will not consider the Defence evidence relevant to this meeting.<sup>258</sup>

<sup>253</sup> Witness ATO, T. 30 January 2006 pp. 11-12 (closed session).

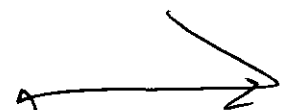
<sup>254</sup> Witness ATO, T. 26 January 2006 p. 23 (closed session); T. 30 January 2006 p. 12 (closed session).

<sup>255</sup> Witness ATO, T. 30 January 2006 pp. 11-12, 26.

<sup>256</sup> Exhibit D10, Witness ATO's written statement of 22 December 2003.

<sup>257</sup> Exhibit D11, Witness Statement of ATO, 30 November 2004.

<sup>258</sup> Defence Witness Georges Rutaganda, T. 6 December 2006, pp. 41-44; Tharcisse Renzaho T. 30 March 2007 p. 39. Several Defence Witnesses testified regarding the whereabouts of the Accused on 10 and 12 April 1994. See *supra*, fn. 238.



#### 4.6. Regular Meetings in Gisenyi Préfecture

##### 4.6.1 Evidence

###### *Prosecution Witness PA*<sup>259</sup>

176. Witness PA testified that his neighbours, Hassan Ngeze, Munyagishari, and a certain *Interahamwe* named Thomas, would tell him about meetings they attended. They would hint at what they had talked about at these meetings. He attested that discussions included the need for killing of Tutsi.<sup>260</sup> He testified that Zigiranyirazo attended some but not all of the meetings.<sup>261</sup> Witness PA did not attend any meetings with Zigiranyirazo, but testified that he was informed that the Accused had attended such meetings by other persons who were in attendance, such as the *conseiller* of the *secteur*.<sup>262</sup> The *conseiller* told Witness PA that the Accused had attended a meeting where some people wanted to stop the killings, but this idea was opposed by others who said that unless Habyarimana was resuscitated that day, they wouldn't stop killing.<sup>263</sup> Witness PA testified that Zigiranyirazo met "with many people, starting with Hassan Ngeze. They used to talk together where Ngeze was working. There was Munyagishari; there was Serushago, Omar; there was Gahutu; there was Mabuye. Those people took him as a relative and they would follow him wherever he went."<sup>264</sup> Witness PA specified that the meetings took place in his *cellule*, and that there were many meetings, especially in April 1994.<sup>265</sup>

##### 4.6.2 Deliberations

177. The Chamber does not accept Witness PA's testimony regarding Zigiranyirazo's attendance at meetings, which consists entirely of uncorroborated hearsay. Witness PA's evidence of the meetings is vague, as he does not name a date, time, location or any other specific detail of a single meeting, suggesting rather that he heard of many meetings in his *cellule* in April 1994. Furthermore, Witness PA did not mention any such meetings in any of his prior statements to the Prosecution.<sup>266</sup> Witness PA signed all of the statements, each of which included affirmations that they were true, correct and voluntary. The Chamber does not find credible Witness PA's assertion that he repeatedly informed Prosecution investigators of such meetings but the investigators consistently failed to record them.<sup>267</sup> For the above reasons, the Chamber is unable to find beyond reasonable doubt that the Accused attended regular meetings in Gisenyi based on Witness PA's evidence.

<sup>259</sup> For background on Witness PA, *see supra*, para. 132.

<sup>260</sup> Witness PA, T. 21 February 2006 p. 17.

<sup>261</sup> Witness PA, T. 21 February 2006 p. 18.

<sup>262</sup> Witness PA, T. 21 February 2006 p. 18.

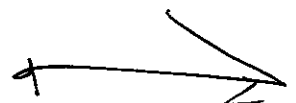
<sup>263</sup> Witness PA, T. 21 February 2006 p. 18.

<sup>264</sup> Witness PA, T. 21 February 2006 p. 16.

<sup>265</sup> Witness PA, T. 21 February 2006 p. 18.

<sup>266</sup> Exhibit D25, Witness PA's written statements (under seal). In his statement dated 24 June 2001, Witness PA described a mid-April 1994 meeting between Hassan Ngeze and Zigiranyirazo at Hassan Ngeze's kiosk in Gisenyi town. According to the statement, Ngeze informed Witness PA of the meeting but did not say what had been discussed.

<sup>267</sup> Witness PA, T. 21 February 2006 pp. 34-35, 41, 45; Exhibit D25, Witness PA's written statements of 7 September 2001 (under seal).



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#### 4.7. Meeting in Giciye, 1992

##### 4.7.1 Evidence

###### *Prosecution Witness APJ*

178. Witness APJ, a Hutu, was a 41-year-old farmer in 1994. Witness APJ, testified that he had known the Accused since he was 16 years old when Zigiranyirazo was a Member of Parliament, and later appointed as *préfet* of Ruhengeri. Witness APJ acknowledged that he was considered to be an RPF ally, and for this reason went into hiding for a period of time from 11 April 1994.<sup>268</sup>

179. He testified that he attended a meeting in 1992 in Giciye *commune* where Zigiranyirazo spoke, along with *bourgmestre* Bangamwabo.<sup>269</sup> The Accused told those gathered at the meeting that they were fighting against the enemy, that the enemy were the Tutsi, and their accomplices, and that the citizenry should be mobilized to fight the enemy.<sup>270</sup>

##### 4.7.2 Deliberations

180. Witness APJ's testimony is vague and uncorroborated. The Chamber considers his lack of specificity particularly troubling given that the Accused was living in Canada during 1992. The record does not contain evidence of the timing and frequency of his return visits to Rwanda.<sup>271</sup> In addition, Witness APJ did not mention such a meeting in his prior statements to the Prosecution.<sup>272</sup> Under these circumstances, the Chamber does not accept his uncorroborated testimony.

## 5. Roadblocks

### 5.1. Introduction

181. The Indictment alleges incidents occurring at three specific roadblocks. Paragraph 17 for Counts 2 and 3 (genocide and, alternatively, complicity in genocide), and paragraph 34 for Count 4 (extermination as a crime against humanity), refer to all three roadblocks, and read as follows:<sup>273</sup>

17 and 34. On various dates between April and July 1994, **Protais ZIGIRANYIRAZO** ordered and instigated soldiers, *Interahamwe* and armed civilians to establish roadblocks in direct proximity to each of his three residences – in Gasiza cellule, Giciye commune, Gisenyi prefecture; at the “La Corniche” border, Rubavu commune, Gisenyi prefecture; and in Kiyovu cellule, Kigali-ville prefecture, intending that they would be used in the campaign of killing Tutsi.

<sup>268</sup> Exhibit P3, Protected information of Witness APJ (under seal); T. 5 October 2005 pp. 32-33; T. 6 October 2005 pp. 36, 40-42 (closed session).

<sup>269</sup> Witness APJ, T. 5 October 2005 pp. 42-43.

<sup>270</sup> Witness APJ, T. 5 October 2005 p. 45.

<sup>271</sup> See *supra*, para. 126.

<sup>272</sup> Witness APJ, T. 5 October 2005 pp. 53-54.

<sup>273</sup> The Prosecution conceded that it led no evidence with respect to paragraphs 20 (under Counts 2 and 3) and 37 (under Count 4) of the Indictment. *Decision on the Defence Motion Pursuant to Rule 98bis*, 21 February 2007, para. 29.



182. The Chamber will now proceed to address each roadblock separately.

## 5.2. Giciye Roadblock and Roadblocks in Gisenyi Generally

### 5.2.1 Indictment

183. The statements of facts in the Indictment are identical for Counts 2 and 3, in paragraphs 18 through 19, and for Count 4, in paragraphs 35 through 40, and read as follows:<sup>274</sup>

18 and 35. Giciye Roadblock: On a date uncertain in early May 1994, **Protais ZIGIRANYIRAZO** ordered and instigated soldiers, *Interahamwe* and armed civilians to establish and command the roadblock next to his residence in Giciye commune, Gisenyi prefecture. Persons operating the roadblock were variously armed with guns, grenades and traditional weapons and controlled the traffic of persons fleeing from Rwanda to Zaïre. This stretch of road from Gitarama through Giciye-Karago-Mukamira was the main route of flight during April to July 1994; the Kigali to Gisenyi tarmac road via Ruhengeri was impassable due to fighting between the FAR and the RPF. Soldiers, *Interahamwe*, and armed civilians subject to **Protais ZIGIRANYIRAZO** ordered and instigated soldiers, *Interahamwe*, and armed civilians to kill numerous Tutsi at the Giciye Roadblock.

19 and 36. Between April and July 1994, **Protais ZIGIRANYIRAZO** visited various roadblocks in Gisenyi on numerous occasions, including the Giciye roadblock, and ordered and instigated soldiers, *Interahamwe*, and armed civilians to “work” and encouraged them by providing them with drinks and money to buy food. The word “work” was, during the events referred to in this indictment, a coded reference for killing Tutsi and “moderate” Hutu.

### 5.2.2 Evidence

#### *Prosecution Witness SGI*

184. Witness SGI, a Hutu, was 39 years old in 1994, and resided in *Maliba cellule*, Gisenyi. In 1994 he had known the Accused for approximately 30 years.<sup>275</sup>

185. Witness SGI testified that the security situation became tense after President Habyarimana’s death and that there was a war between “the *Inkotanyi* and Habyarimana’s army”. According to Witness SGI, there were roadblocks “all over the place”.<sup>276</sup>

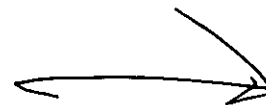
186. Witness SGI testified that around 9.00 a.m., one or two weeks after the President’s death, a retired soldier, Azarias, who was guarding the Accused’s house, brought Witness SGI to the Accused’s house. The Accused told Witness SGI and three others, *conseiller* Arcade Sebatware, *responsable* Bisizehanze, and *depute responsable* Bihigintare, to erect a roadblock at Maliba to protect the Accused.<sup>277</sup> Specifically, he testified that the Accused told them that “there was insecurity; that he was not sure of

<sup>274</sup> The Chamber recalls that it dismissed the allegations at Paragraphs 20 and 37 of the Indictment in its Rule 98bis Decision, *see supra*, para. 13.

<sup>275</sup> Witness SGI, T. 13 October 2005 p. 14; T. 17 October p. 82 (closed session); Exhibit P10, Protected Information of Witness SGI (under seal). The Chamber notes it is unclear from Witness SGI’s testimony whether he was saying he had known the Accused for 30 years in 1994 or in 2005, but it appears that he had known the Accused for at least 19 years.

<sup>276</sup> Witness SGI, T. 13 October 2005 p. 16.

<sup>277</sup> Witness SGI, T. 13 October 2005 pp. 16, 24-26; T. 17 October 2005, pp. 13, 69 (closed session).



his security so he said that we should set up a roadblock to check if there are any people – there are any people coming – moving around without identity papers.” Witness SGI added that identity papers were important due to the ongoing war between the *Inkotanyi* and Habyarimana’s army.<sup>278</sup>

187. Witness SGI erected and manned the roadblock in shifts with approximately 14 others, under the supervision of Busiza. Witness SGI was armed with a stick, and the soldiers were armed with rifles.<sup>279</sup> They stopped people at the roadblock to see if those passing were deserting soldiers. If civilians presented valid identity papers, either Hutu or Tutsi, they were permitted to pass. Those without identity papers were handed over to their “superior”.<sup>280</sup> As to whether anyone was killed at the roadblock, Witness SGI testified that only three men claiming to be *gendarmes* were killed there.<sup>281</sup>

*Prosecution Witness SGA*

188. Witness SGA, a Hutu, was a 32-year-old farmer-stockbreeder who lived approximately 400 metres from the Accused’s home in 1994. He knew the Accused as an essential figure in Maliba *cellule*.<sup>282</sup>

189. Witness SGA testified that he saw the Accused between 5.00 and 6.00 p.m. on a day in mid to late April 1994 in the company of the *conseiller*, Arcade Sebatware, as well as the *responsable de cellule*, Bisizehanze. On that day, a roadblock was erected approximately 500 metres from the Accused’s home. *Responsable* Bisizehanze told Witness SGA and others that the roadblock was to ensure security of the area, and of the Accused’s residence, as well as to “contain” the infiltration by enemies. *Conseiller* Sebatware stated it was necessary for them to work well on the roadblock, and the Accused added “I am going to send you weapons or someone who will help you on this roadblock.”<sup>283</sup> When asked during his testimony how he was “supposed to man for infiltrators”, Witness SGA answered that “[i]n truth, the roadblock in question was intended to contain the infiltration by the enemy, and when made reference to the enemy, it was meant to mean the *Inyenzi* or the Tutsi or further still, the *Inkotanyi*. The word “enemy” was to mean *Inkotanyi*, *Inyenzi*.” He added that “it was the “authorities who set [the roadblock] up, and they gave us instructions.”<sup>284</sup>

190. Witness SGA manned the roadblock in shifts with about 12 to 15 others.<sup>285</sup> He stated that if the identity card showed the person was Tutsi, they were automatically killed, but Witness SGA claimed that during the two weeks that the

<sup>278</sup> Witness SGI, T. 13 October 2005 pp. 25-26.

<sup>279</sup> Witness SGI, T. 13 October 2005 pp. 28-30. Witness SGI recalled some of the names of the individuals manning the roadblock: Bihigintare, Eugene Gashuha, Ndintuve, Bona, Habyara Bisive, Bushuwenda, and Nduwayezu who were all Hutu, and three soldiers named Ananiya, Sezirahiga and Sagaganda.

<sup>280</sup> Witness SGI, T. 13 October 2005 pp. 31-32.

<sup>281</sup> Witness SGI, T. 17 October 2005 p. 38.

<sup>282</sup> Witness SGA, T. 6 February 2006 pp. 48, 49 (closed session); T. 7 February 2006, p. 7.

<sup>283</sup> Witness SGA, T. 7 February 2006 pp. 13, 42.

<sup>284</sup> Witness SGA, T. 7 February 2006 p. 14; T. 8 February 2006 p. 7.

<sup>285</sup> Witness SGA, T. 7 February 2006 p. 13.

roadblock was in place, no Tutsi were killed, only three *gendarmes*.<sup>286</sup> Witness SGA testified that on 4 May 1994, the day after the three *gendarmes* were killed, the Accused, accompanied by *préfet* Zilimwabagabo, and the *gendarmerie* commander, told the *responsable* that the roadblock needed to be dismantled. He added that other roadblocks were also dismantled, except the one in Giciye.<sup>287</sup>

*Prosecution Witness AKQ*

191. Witness AKQ, a Tutsi, was a 47-year-old school teacher in April 1994, and resided in Gisenyi *préfecture*.<sup>288</sup> According to Witness AKQ, the security situation throughout Rwanda quickly deteriorated after President Habyarimana's death and roadblocks were established in Gisenyi on 7 April 1994.<sup>289</sup> Witness AKQ testified that roadblocks were "everywhere", mainly set-up at crossroads. They were manned by soldiers and "well-dressed and well-armed young people," whom he referred to as the *Interahamwe*.<sup>290</sup> While Witness AKQ testified to seeing machetes and guns at the roadblocks, he never saw the *Interahamwe* or soldiers using these weapons.<sup>291</sup>

*Prosecution Witness APJ*<sup>292</sup>

192. Witness APJ testified that there were a number of roadblocks erected in Giciye *commune* after the President's death in 1994: one at the communal office of Giciye *commune*; another at *Chez Haguma*; another quite close to the Accused's home near the residence of Bizegiki; and many erected along the Ruhengeri-Gisenyi Road. According to Witness APJ, the *bourgmestre* and *conseillers* ordered the roadblocks to be erected "to prevent Tutsis and those who were considered as the - as accomplices [...] from fleeing."<sup>293</sup> The roadblocks were manned by *Interahamwe* and "members of the population."<sup>294</sup>

*Prosecution Witness AKP*

193. Witness AKP, a Tutsi, was a 21 years old in 1994.<sup>295</sup> He knew the Accused as the former *préfet* of Ruhengeri, and recalled seeing him when Witness AKP was about eight or nine years old at the inauguration of the Rubaya Tea Factory in 1985. Witness AKP saw the Accused again about a year later, at a public gathering.<sup>296</sup> He testified that Tutsi could no longer use the Kabaya-Rukamira road which ran quite close to Zigiranyirazo's house because there was a roadblock opposite his home, and

<sup>286</sup> Witness SGA, T. 7 February 2006 pp. 14-15, 37; T. 8 February 2006 p. 11. Witness SGA testified: "Apart from the three *gendarmes* who were killed, no Tutsi was killed at that roadblock." (T. 17 October 2005 p. 38.) See also *infra*, paras. 351-353.

<sup>287</sup> Witness SGA, T. 7 February 2006 pp. 25-26.

<sup>288</sup> Exhibit P30, Protected information of Witness AKQ (under seal); T. 20 February 2006 pp. 7-8.

<sup>289</sup> Witness AKQ, T. 20 February 2006 pp. 25-26.

<sup>290</sup> Witness AKQ, T. 20 February 2006 pp. 30-31.

<sup>291</sup> Witness AKQ, T. 20 February 2006 pp. 31, 33.

<sup>292</sup> For background information on Witness APJ, see *supra*, para. 178.

<sup>293</sup> Witness APJ, T. 5 October 2005 pp. 62, 64.

<sup>294</sup> Witness APJ, T. 5 October 2005 pp. 62, 65.

<sup>295</sup> Exhibit P20, Protected information of Witness AKP (under seal).

<sup>296</sup> Witness AKP, T. 1 February 2006 pp. 46-47; 6 February 2006 pp. 2-3, 16-17.

“no Tutsi could any longer cross at that place” and that they “therefore, had to go around that roadblock, or avoid it.”<sup>297</sup>

*Prosecution Witness Zuhdi Janbeck*

194. Prosecution investigator Zuhdi Janbeck, placed the Maliba roadblock 500 metres from the Accused’s residence in Giciye *commune*, Gisenyi *préfecture*, and the Kibihekane roadblock 900 metres from the Accused’s residence.<sup>298</sup> The Prosecution entered into evidence photographs which Janbeck asserted depicted the locations of the Maliba and Kibihekane roadblocks.<sup>299</sup>

*Prosecution Witness Michel Bagaragaza*<sup>300</sup>

195. Michel Bagaragaza testified that there were many barriers or roadblocks in the Gisenyi area in 1994, from Gitarama to the Gisenyi border with Zaire. He also testified to two roadblocks near the Accused’s house, one on the upper side and one on the lower side. He named these two roadblocks as the Maliba roadblock, between his residence and the Accused’s, and the other as the Kibihekane roadblock.<sup>301</sup>

### 5.2.3 Deliberations

196. With regard to the charges against the Accused in relation to roadblocks in Gisenyi *préfecture*, while the Chamber notes that Prosecution and Defence evidence consistently suggests that several roadblocks existed in Gisenyi,<sup>302</sup> there is no evidence to support the allegations in the Indictment with relation to these roadblocks.<sup>303</sup> In this respect, the Chamber recalls that Witness APJ testified that the roadblocks were erected pursuant to orders from the *bourgmestre* and *conseillers*, but did not mention any orders issued by the Accused.<sup>304</sup> Similarly, Witness AKQ attested to there being roadblocks “everywhere” in Gisenyi, but did not detail who ordered, or had a role in, their establishment, or who assisted the *Interahamwe* manning the roadblocks.<sup>305</sup> Witness AKP also did not testify on whether the Accused had a role with regard to the roadblock in front of his house.<sup>306</sup>

<sup>297</sup> Witness AKP, T. 6 February 2006 p. 40.

<sup>298</sup> Zuhdi Janbeck, T. 4 October 2005 pp. 38-39.

<sup>299</sup> Exhibit P2, Maps, Sketches, Photographs, and Documents. The Chamber notes that the Witness referred to photographs marking the alleged locations of these roadblocks on pages 160 to 165 of Exhibit P2. The Chamber notes that these photographs are labelled and numbered 12-17.

<sup>300</sup> For background information on Witness Michel Bagaragaza, *see supra*, para. 129.

<sup>301</sup> Michel Bagaragaza, T. 28 November 2006 p. 34; T. 30 November 2006 p. 25.

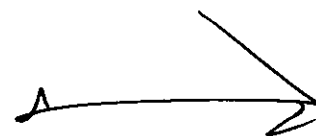
<sup>302</sup> Witness SGI, T. 13 October 2005 p. 16; Witness SGA, T. 7 February 2006 p. 42; Witness AKQ, T. 20 February 2006 pp. 30-31; Witness APJ, T. 5 October 2005 pp. 62, 64; Zuhdi Janbeck, T. 4 October 2005 pp. 38-39; Michel Bagaragaza, T. 28 November 2006 p. 34 and T. 30 November 2006 pp. 25, 26; Witness RDP2, T. 30 October 2006 pp. 39, 40; François Lucien Hitimana, T. 20 March 2007 pp. 70-75; Witness BNZ45, T. 27 March 2007 pp. 47-48; Marguérite Maria Mukobwajana, T. 19 November 2007 pp. 58-59.

<sup>303</sup> Indictment, paras. 19, 36.

<sup>304</sup> Witness APJ, T. 5 October 2005 pp. 62, 65; Prosecution Closing Brief, para. 501.

<sup>305</sup> Witness AKQ, T. 20 February 2006 pp. 30-33.

<sup>306</sup> Witness AKP, T. 6 February 2006 p. 40.



197. Specifically in relation to the Giciye roadblock referred to in the Indictment,<sup>307</sup> the Chamber notes that most of the witnesses referred to two roadblocks located in Giciye *commune*, namely, the Maliba and Kibihekane roadblocks.<sup>308</sup> Prosecution Witnesses SGI and SGA also referred to the “Giciye” roadblock as separate from the Maliba roadblock, also located in close proximity to the Accused’s residence.<sup>309</sup> However, the Chamber notes that as both the Prosecution and Defence evidence relates almost entirely to the Maliba roadblock, and not the Kibihekane, or the “Giciye” roadblock, the Chamber considers that the allegations in the Indictment with respect to the Giciye roadblock refer to the Maliba roadblock. Additionally, where some witnesses referred to a “Mariba” and “Gahumo” roadblock, the Chamber finds that they were referring to the Maliba roadblock.<sup>310</sup> Therefore, the Chamber will hereafter refer to the Giciye roadblock as the Maliba roadblock.

198. Based on the consistent evidence of the Prosecution and Defence Witnesses, the Chamber finds that the Maliba roadblock was erected in mid to late April 1994.<sup>311</sup> However, based on the following, the Chamber finds that the Prosecution evidence does not conclusively show that the Accused ordered and instigated men to establish operate, or man the Maliba roadblock for the purpose of killing Tutsi.

199. With regard to Witness SGI’s testimony, the Chamber recalls that he consistently stated that the roadblock was set up to ensure security in view of the war between the “*Inkontanyi* and Habyarimana’s army” and they were to check for people who were “moving around without identity papers.”<sup>312</sup> Witness SGI did not testify that the Accused made different orders relating to Tutsi. Rather, Witness SGI attested that all civilians with identity papers would be allowed to pass the roadblock.<sup>313</sup> More specifically, when asked if those manning the roadblock were interested whether those passing were Hutu or Tutsi, he testified that they “were only interested in soldiers,” and if someone had a Tutsi identity card, “we would allow that person

<sup>307</sup> Indictment, paras. 18, 35.

<sup>308</sup> Witness SGI, T. 17 October 2005 pp. 12-13 (the “Report of 4 May 1994 on Security in Maliba Cellule”, admitted as Exhibit No. P2A, regarding events at the Maliba roadblock, was read out to Witness SGI) and T. 18 October 2005, pp. 6, 11-12; Zuhdi Janbeck, T. 4 October 2005 pp. 38-39; Michel Bagaragaza, T. 28 November 2006 p. 34 and T. 30 November 2006 pp. 25-26; François Lucien Hitimana, T. 20 March 2007 pp. 70-72; Charles Zilimwabagabo, T. 12 April 2007 pp. 20, 26-27, 65-66; Marguérite Maria Mukobwajana, T. 19 November 2007 pp. 58-59 and T. 20 November 2007 p. 30; Witness RDP5, T. 31 October 2006 pp. 39-40; Witness RDP6, T. 28 March 2007 pp. 60-61.

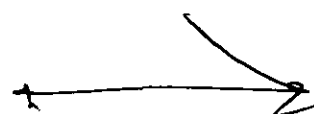
<sup>309</sup> Witness SGI separately refers to a roadblock also at Giciye, as well as the Maliba – Gahumo roadblock (T. 18 October 2005 p. 12); Witness SGA states that the Maliba roadblock was dismantled and similarly, other roadblocks were dismantled, except for the one which was set up at Giciye (T. 7 February 2006 pp. 25-26).

<sup>310</sup> Defence Witness RDP5 referred to the “Gahumo roadblock” in “Mariba cellule” where three *gendarmes* were killed (T. 31 October 2006 pp. 16, 20); Defence Witness François Lucien Hitimana testified that there was a roadblock at Gahumo, in “Mariba” cellule, which he believed was set up around 8 or 9 April 1994 (T. 20 March 2007 pp. 72, 73); and Defence Witness RDP6 testified that he knew of the Gahumo Roadblock in Maliba where three *gendarmes* had been killed (T. 28 March 2007 pp. 60-61).

<sup>311</sup> Witness SGI, T. 13 October 2005 p. 16 and T. 17 October 2005, p. 69 (closed session); Witness SGA, T. 7 February 2006 p. 12; François Lucien Hitimana, T. 20 March 2007 pp. 72-73.

<sup>312</sup> Witness SGI, 13 October 2005 pp. 25-26.

<sup>313</sup> Witness SGI, 13 October 2005 p. 32.



continue on his way.”<sup>314</sup> Accordingly, the Chamber finds that Witness SGI’s evidence does not prove beyond reasonable doubt that the Accused ordered the establishment of the Maliba roadblock for the purpose of killing Tutsi.<sup>315</sup>

200. Although Witness SGA also testified that *responsable* Bisizehanze told them that the establishment of the roadblock was to ensure “security”,<sup>316</sup> he additionally stated that “[i]n truth”, the roadblock was intended to “contain the infiltration of the enemy” which meant the “*Inyenzi* or the Tutsis” and that the “authorities” had told them how to identify the enemy, that is, by checking identity cards.<sup>317</sup> The Chamber does not consider that Witness SGA’s evidence proves beyond reasonable doubt that the Accused intended the roadblock to be established for the purpose of killing Tutsi. In addition to Witness SGA’s failure to specify further whether the Accused was among the “authorities,” and stating that “Bisizehanze was the chairman”,<sup>318</sup> the Chamber has a number of concerns regarding his evidence.

201. First, the Chamber notes inconsistencies between Witness SGA’s testimony and previous statements given to Rwandan and ICTR Prosecutors.<sup>319</sup> In a statement to the Prosecutor of Gisenyi dated 10 October 1999, Witness SGA acknowledged that he “did not say the truth” by saying that he had not spent the night at the roadblock. He explained he had been beaten by the *gendarmes*’ cousins, and “wanted to save [his] skin”.<sup>320</sup> He acknowledged that he had also lied to ICTR investigators about this.<sup>321</sup> Witness SGA disagreed with another prior statement given to Rwandan authorities on 18 June 2001, in which he had stated that they “were looking for those without identity cards.”<sup>322</sup> During his testimony, Witness SGA stated that he actually told the authorities that they were checking identity papers “specifically for the ethnic origin” and explained the omission in the 18 June 2001 statement by suggesting errors in recording the information.<sup>323</sup> He also denied telling ICTR representatives on 22 June 2001, that their “main task was to check identity cards and prevent infiltration.”<sup>324</sup> The Chamber is not convinced with these explanations. Of particular concern, is Witness SGA’s failure to mention, until his testimony, that at the roadblock, they were checking specifically for Tutsi.

<sup>314</sup> Witness SGI, 13 October 2005 p. 32.

<sup>315</sup> Witness SGI, T. 13 October 2005 pp. 24, 25.

<sup>316</sup> Witness SGA, T. 7 February 2006 p. 13.

<sup>317</sup> Witness SGA, T. 7 February 2006 p. 14.

<sup>318</sup> Witness SGA, T. 7 February 2006 p. 14.

<sup>319</sup> Witness SGA gave two previous statements to the ICTR and around five to the Prosecutor of Gisenyi (T. 6 February 2006 p. 49 (closed session)).

<sup>320</sup> Witness SGA, T. 6 February 2006 pp. 50-51 (closed session).

<sup>321</sup> Witness SGA, T. 8 February 2006 p. 3.

<sup>322</sup> Witness SGA, T. 8 February 2006 pp. 9-12; Exhibit D17 (in French), Witness SGA’s written statement of 18 June 2001.

<sup>323</sup> Witness SGA, T. 8 February 2006 p. 11.

<sup>324</sup> Witness SGA, T. 8 February 2006 p. 13.



202. Second, the evidence of both Witnesses SGI and SGA suggests that only three *gendarmes* were killed at the roadblock,<sup>325</sup> which contradicts Witness SGA's testimony that if a person's identity card showed they were Tutsi, they were "automatically killed."<sup>326</sup> Further, his evidence is inconsistent with that of Witness SGI's who testified that if a person had a valid identity card, whether Hutu or Tutsi, they were allowed to pass through.<sup>327</sup> The Chamber therefore finds Witness SGA's uncorroborated testimony, that if a person's identity card showed they were Tutsi, they were "automatically killed", to be unconvincing.

203. Furthermore, the Chamber notes Witness AKP's testimony on the existence of a roadblock opposite the Accused's house, and that Tutsi could not pass through.<sup>328</sup> However, Witness AKP did not testify as to any orders or instructions being issued by the Accused in relation to that roadblock.

204. In view of the above, the Chamber finds that the Prosecution evidence does not prove beyond reasonable doubt that the Accused visited various roadblocks in Gisenyi on numerous occasions, including the Maliba roadblock, and ordered those manning the roadblocks to "work", and encouraged them by providing drinks and money to buy food. Furthermore, although consistent Prosecution and Defence evidence supports a finding that there were many roadblocks in Gisenyi *préfecture*, including the Maliba roadblock in Giciye *commune*, and that the Accused requested the establishment of the Maliba roadblock, the Prosecution evidence does not support a finding beyond reasonable doubt that the Maliba roadblock was established with the intent that it be used in the "campaign of killing Tutsi", and that the Accused ordered and instigated the killing of Tutsi at the roadblock, as alleged in the Indictment. Nor does the evidence support a finding beyond reasonable doubt that the Accused armed those manning the Maliba roadblock in order to kill numerous Tutsi. In light of these findings, the Chamber does not consider it necessary to consider the Defence evidence.<sup>329</sup>

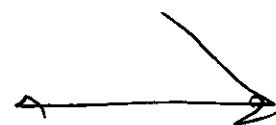
<sup>325</sup> Witness SGA, T. 7 February 2006 p. 14-15. Witness SGA testified: "Apart from the three *gendarmes* who were killed, no Tutsi was killed at that roadblock." (T. 17 October 2005 p. 38.)

<sup>326</sup> Witness SGA, T. 7 February 2006 p. 14.

<sup>327</sup> Witness SGA, T. 7 February 2006 p. 40.

<sup>328</sup> Witness AKP, T. 6 February 2006 p. 40.

<sup>329</sup> Defence Witnesses testified to the existence of many roadblocks in the area. See Witness RDP2, T. 30 October 2006 pp. 39, 40; François Lucien Hitimana, T. 20 March 2007 pp. 70, 72, 74; Charles Zilimwabagabo, T. 12 April 2007 p. 20; Witness BNZ45, T. 27 March 2007 pp. 47-48; Marguérite Maria Mukobwajana, T. 19 November 2007 pp. 58-59. The Defence Witnesses also testified on the existence of the Maliba roadblock. See François Lucien Hitimana, T. 20 March 2007 pp. 72-73; Charles Zilimwabagabo, T. 12 April 2007 p. 20; Marguérite Maria Mukobwajana, T. 19 November 2007 pp. 58-59 and T. 20 November 2007 p. 30; Witness RDP5, T. 31 October 2006 pp. 16, 20, 39-40; Witness RDP6, T. 28 March 2007 pp. 60-61. Defence Witnesses also testified on the existence of a roadblock in Kibihekane. See François Lucien Hitimana, T. 20 March 2007 pp. 70-72; Charles Zilimwabagabo, T. 12 April 2007 pp. 65-66; Marguérite Maria Mukobwajana, T. 19 November 2007 pp. 58-59.



**5.3. La Corniche Roadblock, Gisenyi Town**

**5.3.1 Indictment**

205. Paragraph 9 which concerns Count One of the Indictment, reads:

9. In April 1994, **Protais ZIGIRANYIRAZO** met with military leaders in Gisenyi and Ruhengeri, including Colonel NSENGIYUMVA on an almost daily basis in order to plan the organization and execution of the genocide in Gisenyi. In furtherance of this plan, on a date uncertain in April 1994, *Interahamwe* militia mounted a roadblock on the "La Corniche" roadway in Gisenyi town leading toward the main border-crossing into Zaïre. The "La Corniche" roadblock was under the general control of *Interahamwe* leaders, including Omar SERUSHAGO, reporting to Colonel NSENGIYUMVA and Bernard MUNYAGISHARI. The roadblock was also manned by CDR-affiliated armed civilians, including ABUBA, BAHATI and LIONCEAU, and gendarmes, immigration police and customs officers. The purpose of the roadblock was to prevent Tutsi and "moderate" Hutu from escaping across the border to Zaire by taking them to be killed in a nearby location. **Protais ZIGIRANYIRAZO** was aware of the closed-border regime and ordered and instigated the *Interahamwe*, CDR-affiliated armed civilians, gendarmes, immigration police, and customs officers to operate the roadblock to cause the killing of Tutsi and "moderate" Hutu.

206. The allegations in the Indictment related to *La Corniche* roadblock are identical for Counts 2 and 3, in paragraphs 21 and 22, and for Count 4, in paragraphs 38 and 39, and read as follows:

21 and 38. The "La Corniche" Roadblock: On a date uncertain in April 1994, *Interahamwe* militia mounted a roadblock on the "La Corniche" roadway in Gisenyi town leading toward the main border-crossing into Zaïre. As with the roadblocks mentioned in Kiyovu and Giciye, the "La Corniche" roadblock was situated in close proximity to one of **Protais ZIGIRANYIRAZO's** residences. The "La Corniche" roadblock was under the general control of *Interahamwe* leaders, including Omar SERUSHAGO, reporting to Colonel NSENGIYUMVA and Bernard MUNYAGISHARI. The roadblock was also manned by CDR-affiliated armed civilians, including ABUBA, BAHATI and LIONCEAU, and gendarmes, immigration police and customs officers. The purpose of the roadblock was to prevent Tutsi and "moderate" Hutu characterised as accomplices of "the enemy," being Tutsi, from escaping across the border to Zaïre. The *Interahamwe* routinely checked persons passing through the roadblock on their way to the border crossing. Tutsi and "moderate" Hutu were not allowed to proceed and were removed to a nearby location and killed. **Protais ZIGIRANYIRAZO** was aware of the closed-border regime and ordered and instigated the *Interahamwe*, CDR-affiliated armed civilians, gendarmes, immigration police and customs officers to operate the roadblock to cause the killing of Tutsi and "moderate" Hutu.

22 and 39. During June 1994, **Protais ZIGIRANYIRAZO** ordered and instigated the *Interahamwe*, gendarmes and immigration police who were manning the "La Corniche" roadblock at the Gisenyi-Goma border to kill Tutsis by asking them "to work" well.

**5.3.2 Evidence**

*Prosecution Witness AVY*<sup>330</sup>

207. According to Witness AVY, on the night of President Habyarimana's death, *conseiller* Hakizimana came to Witness AVY's house and ordered him to gather men who had previously participated in military training to fight Tutsi. Witness AVY

<sup>330</sup> For background information on Witness AVY, see *supra*, para. 133.





returned to the *conseiller's* house in a military vehicle with about 30 to 40 people. The Rubavu *commune* Chief of Police, and the former accountant of the *commune* were present when the recruits arrived. According to Witness AVY, guns were distributed. He testified that Colonel Anatole Nsengiyumva, military commander in Gisenyi, arrived at the *conseiller's* residence in a military vehicle and told the men that "the enemy is none other than the Tutsi" and told them to go to the border between Rwanda and Zaire, and stop anyone crossing out of or into Rwanda.<sup>331</sup>

208. Witness AVY testified that he, and the other men, armed with rifles and traditional weapons, arrived at the customs post and lined up at a point called *La Corniche*, on Lake Kivu. He began manning the roadblock the following day, on 7 April 1994 and they were stopping anybody from crossing the border "be it a Hutu or a Tutsi."<sup>332</sup> One officer, known as Bizimuremye, said they should ensure that no Tutsi cross, whether into Zaire or Rwanda.<sup>333</sup>

209. Witness AVY further testified that he met with the Accused in mid-May 1994 at the Regina Hotel where the Accused told him that "the *Interahamwe* who were operating near his home [were] trustworthy, but the post that he did not trust" was the post from which the Witness was operating. According to Witness AVY the Accused was present when Jean Mburanumwe gave 10,000 francs to those manning the roadblock so that they could "go back to [their] work."<sup>334</sup>

*Prosecution Witness Zuhdi Janbeck*

210. Prosecution investigator Zuhdi Janbeck placed *La Corniche* roadblock 70 metres from the Accused's residence in Gisenyi town.<sup>335</sup>

### 5.3.3 Deliberations

211. The Chamber recalls that no evidence was led on the alleged almost daily meetings between the Accused and military leaders including Colonel Nsengiyumva in Gisenyi and Ruhengeri, in order to plan the organization and execution of the genocide in Gisenyi.<sup>336</sup>

212. Regarding the alleged furtherance of this plan in the form of *La Corniche* roadblock, the Chamber notes that the only Prosecution Witness who provides detailed testimony with regard to this roadblock is Witness AVY.<sup>337</sup> However, the Chamber finds that his testimony does not support the charges contained in the Indictment. Rather, according to Witness AVY, it was *conseiller* Hakizimana who gathered men and distributed weapons, and Colonel Nsengiyumva who gave orders to man the two roadblocks at the customs post to prevent anyone from crossing the border. In addition,

<sup>331</sup> Witness AVY, T. 19 October 2005 pp. 4-6.

<sup>332</sup> Witness AVY, T. 19 October 2005 pp. 4-6.

<sup>333</sup> Witness AVY, T. 19 October 2005 pp. 5-6.

<sup>334</sup> Witness AVY, T. 19 October 2005 p. 9; T. 8 February 2006 pp 45, 50-51. *See also infra*, para. 364.

<sup>335</sup> Zuhdi Janbek, T. 4 October 2005 pp. 36-37; Exhibit P2, Maps, Sketches, Photographs, and Documents. The Chamber notes that the Witness referred to photographs of the Accused's residence and the alleged location of *La Corniche* roadblock on pages 152 to 157 of Exhibit P2. The Chamber notes that these photographs are labelled and numbered 4-9.

<sup>336</sup> *See supra*, para. 14.

<sup>337</sup> Witness AVY, T. 19 October 2005 pp. 5-6.

the Chamber has serious doubts regarding Witness AVY's credibility and reliability,<sup>338</sup> which it shall address in more detail when considering the alleged murder of Stanislas Sinibagiwe.<sup>339</sup>

213. Accordingly, the Chamber finds that the Prosecution has failed to adduce evidence of the Accused's role in the establishment or operation of *La Corniche* roadblock.<sup>340</sup> Additionally, the Chamber does not find that the Accused asked those manning the roadblock to kill Tutsi by working "well".<sup>341</sup> In light of these findings, the Chamber considers it unnecessary to address the Defence evidence.<sup>342</sup>

#### 5.4. Kiyovu Roadblock

##### 5.4.1 Indictment

214. Paragraph 10, which concerns Count 1 of the Indictment, reads:

10. On or about 12 or 13 April 1994, Protais ZIGIRANYIRAZO agreed with Colonel BAGOSORA, Colonel NSENGIYUMVA, and Colonel SETAKO to instigate and encourage the killings of Tutsis and "moderate" Hutu at a roadblock established by Protais ZIGIRANYIRAZO at the road junction in front of his house in Kiyovu. In furtherance of that agreement, Protais ZIGIRANYIRAZO, approached the roadblock with the above named persons, whereupon they saw the guards killing passers-by with some 50 corpses on the ground at the roadblock. Colonel BAGOSORA congratulated the guards that they were "now doing their work" and Protais ZIGIRANYIRAZO supported the comments saying "now you are working."

215. The statements of facts in the Indictment are identical for Counts 2 and 3, in paragraph 23, and for Count 4, in paragraph 40, and read as follows:

23 and 40. Kiyovu Roadblock: On or about 7 April 1994, soldiers guarding the residence of Protais ZIGIRANYIRAZO in Kiyovu cellule, Kigali-ville prefecture, who were under his *de facto* control, ordered watchmen employed at homes in the neighbourhood to man a roadblock that was set up between Protais ZIGIRANYIRAZO's home and the adjacent Presbyterian church. Soldiers and *Interahamwe*, including Second Lt. Jean-Claude SEYOBOKA BONKE and Jacques KANYAMIGEZI, supervised the roadblock, the largest in Kiyovu cellule. The civilians manning the roadblock were armed with machetes and clubs. Approximately one week later, in mid-April 1994, Protais ZIGIRANYIRAZO ordered and instigated soldiers, *Interahamwe* and armed civilians at the roadblock near his Kiyovu residence to search the homes in the neighbourhood and kill any Tutsi that were found. Protais ZIGIRANYIRAZO further ordered and instigated the soldiers and *Interahamwe* at the roadblock, including Sec. Lt. Jean-Claude SEYOBOKA BONKE and Jacques KANYAMIGEZI, who supervised the roadblock, to kill all Tutsi who attempted to pass through. Shortly thereafter, and on a continuing basis, soldiers and *Interahamwe* killed those who were identified as Tutsi, both in the neighbourhood and attempting to pass through the roadblock.

<sup>338</sup> See *supra*, para. 154.

<sup>339</sup> See *infra*, paras. 376-379.

<sup>340</sup> Indictment, paras. 9, 17, 34, 21, 38.

<sup>341</sup> Indictment, paras. 22, 39.

<sup>342</sup> Defence Witnesses testified on the existence of *La Corniche* roadblock. See Witness BNZ45, T. 27 March 2007 pp. 19-20; Jean Mburanumwe, T. 8 March 2007 pp. 667-69; Charles Zilimwabagabo, T. 12 April 2007 p. 11.

### 5.4.2 Evidence

#### *Prosecution Witness ATO*<sup>343</sup>

216. The Chamber recalls Witness ATO's testimony with regard to his visit to the Accused's Kiyovu residence on 10 and 12 April 1994.<sup>344</sup> Of particular relevance to roadblocks, is his testimony that on 12 April 1994, he, along with *préfet* Renzaho, and two policemen, delivered between 50 and 60 guns to the Accused's Kiyovu residence.<sup>345</sup> Witness ATO did not know who the weapons were given to but stated that "they must have been given to someone, to the *Interahamwe*."<sup>346</sup> Following a request from the Accused to bring him beer, Witness ATO and the two policemen went to look for beer and brought back as many cases as the vehicle could carry. According to Witness ATO, part of the consignment was distributed to the *Interahamwe* monitoring the roadblock by the Accused's house. Witness ATO stated that the Accused supplied the *Interahamwe* with beer because "those were the *Interahamwe* who protected him, and who monitored the roadblock [...] by his house [...] he had to reward them with drinks."<sup>347</sup>

217. Later the same day, they returned to the *préfecture* office, loaded more firearms and brought them to the roadblock not in front of the Accused's residence, but close by, "between the church and Zigiranyirazo's residence."<sup>348</sup> Witness ATO stated that they did not offload all the weapons, and that the soldier, Kabiligi, told the *Interahamwe*: "No Tutsi should get away from you at this roadblock. And that goes for women, children, men. No one should get through. There are embassies here. There are organisations here. People will certainly come seeking refuge there. They must not get away from you." Afterwards, the remaining weapons were delivered to other roadblocks.<sup>349</sup> He stated that *Interahamwe* were manning the roadblock; there were no soldiers.<sup>350</sup>

#### *Prosecution Witness BCW*

218. Witness BCW, a Tutsi, worked as a watchman for a foreign diplomat in a Kigali neighbourhood in 1994.<sup>351</sup> His employer was the Accused's neighbour.<sup>352</sup>

219. Witness BCW marked on a map the location of a roadblock at an intersection (the "Intersection") near the Accused's Kiyovu residence.<sup>353</sup> The roadblock was

<sup>343</sup> For background information on Witness ATO, *see supra*, para. 167.

<sup>344</sup> *See supra*, para. 60.

<sup>345</sup> Witness ATO, T. 26 January 2006 pp. 24, 27 (closed session).

<sup>346</sup> Witness ATO, T. 26 January 2006 p. 27 (closed session).

<sup>347</sup> Witness ATO, T. 26 January 2006 pp. 25-27 (closed session); T. 30 January 2006 p. 7 (closed session).

<sup>348</sup> Witness ATO, T. 26 January 2006 p. 29 (closed session).

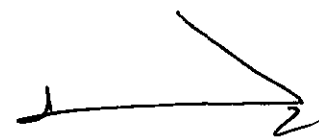
<sup>349</sup> Witness ATO, T. 26 January 2006 p. 33 (closed session).

<sup>350</sup> Witness ATO, T. 26 January 2006 p. 27 (closed session).

<sup>351</sup> Exhibit P18, Protected Identification of Witness BCW (under seal); Exhibit D13, Name and nationality of BCW's employer (under seal), T. 30 January 2006 p. 47; T. 31 January 2006 p. 10; T. 1 February 2006 p. 11.

<sup>352</sup> Witness BCW, T. 31 January 2006 p. 8.

<sup>353</sup> Witness BCW, T. 31 January 2006 p. 13, 16-17; Exhibit P19, Sketch of the area with landmarks indicated (under seal).



located between "China House" and the German Embassy, and from the Accused's house "there was a clear view of the roadblock."<sup>354</sup> He estimated that this roadblock was nine metres from the Accused's house. Witness BCW testified that he thought the roadblock at the Intersection was functioning from 7 April 1994. Although he did not leave his employer's residence between 6 and 12 April 1994, he saw soldiers at the Intersection from his employer's house on 7 April 1994. They had blocked the road, and Witness BCW witnessed these soldiers kill people on the morning of 7 April 1994. He testified that the victims might have been *Inyenzi* who had infiltrated the neighbourhood but stated that all *Inyenzi* were Tutsi.<sup>355</sup>

220. On 12 April 1994, soldiers came to Witness BCW's employer's house and forced him to man the roadblock at the Intersection. On this occasion, he also gave the soldiers crates of beer and helped take these to the Accused's house.<sup>356</sup> However, according to Witness BCW, the Accused was not at home on 12 of April 1994 and testified that he only saw the Accused at the roadblock, never at his house, and speculated the Accused may have been living elsewhere on the dates mentioned.<sup>357</sup> Witness BCW manned the roadblock between 12 and 23 April 1994.<sup>358</sup>

221. Corporal Irandemba, who according to Witness BCW worked as the Accused's guard, appeared to be "in charge of the roadblock" at the Intersection.<sup>359</sup> Witness BCW also provided names of soldiers, as well as other individuals, who manned the roadblock.<sup>360</sup> Witness BCW testified that those with Tutsi identity cards were taken aside and killed.<sup>361</sup> If there was some doubt about a Hutu person, they were also killed, including many Congolese as there was doubt of their nationality.<sup>362</sup> He was not able to give the exact figure of the people killed there, but recalled that it was "at least between 10 and 20 people."<sup>363</sup> He testified that "many" people were killed at that roadblock by firearms and if his memory served him right, "there was no day that went by without anyone being killed."<sup>364</sup>

222. During this time, Witness BCW saw the Accused on three occasions at the Intersection roadblock. The first occasion was on 12 April 1994, the day he started manning the roadblock. Upon arrival at the roadblock, Witness BCW found between six to eight dead bodies decomposing.<sup>365</sup> At around 11.00 a.m. or 12.00 p.m., Witness BCW saw the Accused, in his car, stop at the Intersection roadblock and tell those

<sup>354</sup> Witness BCW, T. 31 January 2006 pp. 14-16; Exhibit P19, Sketch of the area with landmarks indicated (under seal).

<sup>355</sup> Witness BCW, T. 30 January 2006 pp. 50, 53-54; T. 31 January 2006 pp. 8, 9, 13, 14, 17.

<sup>356</sup> Witness BCW, T. 31 January 2006 pp. 12, 15.

<sup>357</sup> Witness BCW, T. 31 January 2006 p. 12; T. 1 February 2006 pp. 14-15.

<sup>358</sup> Witness BCW, T. 31 January 2006 pp. 12, 15, 20; 1 February 2006 p. 24.

<sup>359</sup> Witness BCW, T. 31 January 2006 pp. 8, 14, 24-25.

<sup>360</sup> Witness BCW named Charles, Muroke Ndayambaje and Mugima, as soldiers manning the roadblock. He also named civilians manning the roadblock, Emmanuel Kamango who worked at the German Embassy and other workers from the Cartography Department, such as Bihwehwe, Sembagare, Cyprien, and someone whose nickname was "Zambia." (T. 31 January 2006 pp. 8, 13-14).

<sup>361</sup> Witness BCW, T. 31 January 2006 p. 14.

<sup>362</sup> Witness BCW, T. 1 February 2006 p. 22.

<sup>363</sup> Witness BCW, T. 31 January 2006 p. 15.

<sup>364</sup> Witness BCW, T. 31 January 2006 p. 15; T. 1 February 2006 p. 22, 23.

<sup>365</sup> Witness BCW, T. 31 January 2006 pp. 14, 18, 20.

manning it to "check identification papers well, since the Tutsis have changed their identification papers".<sup>366</sup> According to Witness BCW, there were about three corpses lying on the ground about four metres from the Accused's vehicle at the roadblock. Although the Accused was in a vehicle, he saw the corpses but said nothing and continued on his way.<sup>367</sup>

223. The second occasion was on or around 17 April 1994. The Accused instructed Corporal Irandemba to find food for the men so they could remain at the roadblock. Food was delivered on another day from Camp Kigali. According to Witness BCW, on the 17 April, the Accused also promised guns to the men manning the roadblock after they told him that they needed guns "in order to go and assist those who were at the battle front."<sup>368</sup> Witness BCW further testified that he later heard from others, who had also manned the roadblock, that Corporal Irandemba gave firearms to Kamango and Gaspard at the roadblock. Witness BCW heard that the guns had come from the Accused's residence and he believed they were delivered after 19 April but before 23 April 1994, when he left the roadblock.<sup>369</sup>

224. The third occasion was on or about 19 April 1994. The Accused, accompanied by his children, passed by the roadblock in a military jeep. Witness BCW attested to hearing from the Accused's bodyguards that the Accused was travelling to his native *commune*.<sup>370</sup>

*Defence Witness Stanislas Harelimana*

225. Stanislas Harelimana was the Solicitor General of the Kigali Court of Appeal in 1994. His residence was in a corner of the Kiyovu cross-section between *Rue Député Kayuku* and *Avenue de la Jeunesse*. At the time of his testimony, Harelimana was residing in Swaziland with refugee status.<sup>371</sup> Harelimana testified that he had met the Accused once before April 1994 when he passed by the Accused's home with a friend. On other occasions, he had seen the Accused from afar, either during football matches, or official ceremonies.<sup>372</sup>

226. Harelimana testified that in the days following President Habyarimana's death, he left his house on two occasions. The first was on 8 April 1994 when he had run out of food. He went to a market at the periphery of town, as the central Kigali market was closed. The second occasion was on 11 April 1994, when he went to get food and visit his office, situated approximately 800 metres from his residence in the legal department of the Public Prosecutor's office on *Rue Depute Kayuku*, opposite the Presbyterian Church.<sup>373</sup> According to Harelimana, it was difficult to move around

<sup>366</sup> Witness BCW, T. 31 January 2006 pp. 18-19.

<sup>367</sup> Witness BCW, T. 31 January 2006 p. 18-19; T. 1 February 2006 p. 15.

<sup>368</sup> Witness BCW, T. 31 January 2006 pp. 20-21.

<sup>369</sup> Witness BCW, T. 31 January 2006 pp. 22, 24, 29. The Chamber notes that the Witness also testified that many more guns were delivered to the roadblock but that these guns had come from Simbikangwa's house (T. 31 January 2006 pp. 22-23).

<sup>370</sup> Witness BCW, T. 31 January 2006 p. 20.

<sup>371</sup> Exhibit D105, Personal Information Sheet of Stanislas Harelimana (in French); T. 20 November 2007 pp. 65-66.

<sup>372</sup> Stanislas Harelimana, T. 20 November 2007 pp. 73-74.

<sup>373</sup> Stanislas Harelimana, T. 20 November 2007 p. 67-69.

“with roadblocks everywhere, soldiers [...] who were uncontrolled.”<sup>374</sup> He left Kigali for Gisenyi on around 20 April 1994 due to the shelling. During the days following the President’s death, up to when he left Kigali on 20 April 1994, Harelimana testified that he never saw a roadblock at the Intersection. Nor did he see any dead bodies or soldiers guarding it. He stated that he had not seen a roadblock in front of the Accused’s house, but that the roadblock “was beyond that point, after having crossed *Baudouin Ier*, and not in front of the entrance of Mr. Zigiranyirazo’s house.”<sup>375</sup> Harelimana testified that there was a roadblock further up at the National bank, and on the road leading to the President’s residence.<sup>376</sup> He marked the locations he testified to on a map.<sup>377</sup>

227. However, Harelimana testified that he did sometimes see about five men, “mostly house help, watchmen [and] such persons” assembled in the right hand corner when he crossed the Intersection.<sup>378</sup> Further, when he returned to Kigali from Gisenyi in early May 1994,<sup>379</sup> Harelimana saw five to six people at the Intersection and a tree trunk immediately after the Intersection. He testified that “[p]erhaps it was used as a roadblock”.<sup>380</sup>

*Defence Witness RDP2*

228. Witness RDP2 had worked as an armed escort for the Accused on three different occasions.<sup>381</sup> On 9 April 1994 at around 11.30 a.m., Witness RDP2 went to visit the Accused in order to convey his condolences regarding the death of President Habyarimana. The Accused was not at his residence, and the watchman told Witness RDP2 that the Accused had gone to Kanombe. He then waited for the same vehicle to take him back to the military barracks.<sup>382</sup> Witness RDP2 testified that he did not see a roadblock at the intersection in front of the Accused’s house.<sup>383</sup>

*Defence Witness BBL*

229. Witness BBL was staying at the Accused’s Kiyovu residence on the night of 6 April 1994.<sup>384</sup> She testified that the next morning, soldiers arrived and told the Accused they had come from President Habyarimana’s place in Kanombe. The Accused left with them to Kanombe on 7 April, and she and the others remained at the house until 9 April 1994. During this time, two armed guards remained outside the door, and Witness BBL was not aware of any activity or roadblock outside the house. On the morning of 9 April 1994, she left the Accused’s house to travel to the house of

<sup>374</sup> Stanislas Harelimana, T. 20 November 2007 p. 71.

<sup>375</sup> Stanislas Harelimana, T. 21 November 2007 p. 32.

<sup>376</sup> Stanislas Harelimana, T. 20 November 2007 p. 75.

<sup>377</sup> Exhibit D106A, Map of Kigali from a recent edition of the Lonely Planet guidebook; Exhibit D106B, Sketch of area outside the Accused’s Kiyovu residence, prepared by Prosecution Investigator Janbeck, both entered as exhibits at T. 20 November 2007 p. 85.

<sup>378</sup> Stanislas Harelimana, T. 20 November 2007 p. 80.

<sup>379</sup> Stanislas Harelimana, T. 20 November 2007 pp. 79-82.

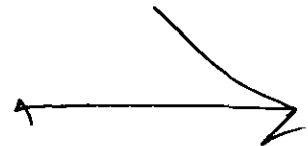
<sup>380</sup> Stanislas Harelimana, T. 21 November 2007 pp. 2-3.

<sup>381</sup> Exhibit D34, Protected Information of Witness RDP2 (under seal); T. 30 October 2006 pp. 37, 58, 82.

<sup>382</sup> Witness RDP2, T. 30 October 2006 pp. 9-10.

<sup>383</sup> Witness RDP2, T. 30 October 2006 p. 14.

<sup>384</sup> Exhibit D94, Protected Information of Witness BBL (under seal), T. 3 April 2007 pp. 79-80.



Sagatwa, the Accused's brother. The Accused's wife, Domitilla Zigiranyirazo, and some of the children, went to Kanombe. When Witness BBL left, she did not see any roadblock near the Accused's house.<sup>385</sup>

*Defence Witness Domitilla Zigiranyirazo*

230. Domitilla Zigiranyirazo testified that she was at their Kiyovu home from 6 to 9 April 1994. She testified that on the night of 6 April 1994, she and the Accused stayed up all night in the sitting room. The following morning she testified that a car came and took him to Kanombe. Domitilla spent two more nights at their Kiyovu residence. On the morning of 9 April 1994, she travelled to Kanombe. On her way, she did not see any roadblocks.<sup>386</sup>

*Defence Alibi Witnesses*

231. The Defence submits that the Accused has an alibi, relying on the evidence of nine witnesses who testified that the Accused was in Rubaya from 11 April 1994, and remained there for approximately one week.<sup>387</sup>

#### 5.4.3 Deliberations

232. The Chamber notes that the Accused is only charged with individual criminal responsibility under Article 6(1) of the Statute and not with superior criminal responsibility under Article 6(3).<sup>388</sup> The Chamber is therefore not required to make any findings on whether the Accused was vicariously responsible for any criminal actions of the soldiers who guarded his residence, and who allegedly ordered watchmen, under the Accused's "*de facto* control", to man the roadblock between his home and the adjacent Presbyterian Church, as alleged in the Indictment.<sup>389</sup>

233. Additionally, the Chamber recalls that the Prosecution led no evidence on any of the allegations in the paragraphs relating to the Kiyovu roadblock. No evidence was led on: (i) any agreement between the Accused and the Colonels Bagasora, Nsengiyumva, and Setako; (ii) of statements made by Colonel Bagasora or the Accused regarding the "work" of those manning the roadblock; (iii) of the Accused ordering or instigating soldiers, *Interahamwe* and armed civilians at the roadblock to search the homes in the neighbourhood, and kill any Tutsi found; or (iv) that the Accused ordered Seyoboka Bonke and Kanyamigezi to kill all Tutsi attempting to pass through the roadblock.<sup>390</sup>

<sup>385</sup> Witness BBL, T. 4 April 2007 pp. 2-4.

<sup>386</sup> Exhibit D51, Personal Identification Sheet of Domitilla Mukajyoni Zigiranyirazo; T. 27 February 2007 pp. 46-47, 54-55.

<sup>387</sup> Agnès Kampundu, T. 5 March 2007 p. 69; Marie Chantel Kamugisha, T. 7 March 2007 pp. 71-72, 74-75; Gloria Mugampunga, T. 11 April 2007 p. 83; Aimé Marie Ntuye, T. 28 February 2007 p. 79; Bernadette Niyonizeue, T. 5 March 2007 pp. 13-14; Domitilla Zigiranyirazo, T. 27 February 2007 pp. 61-62; Marguérite Mukobwajana, T. 19 November 2007 p. 54; Séraphin Bararengana, T. 6 March 2007 p. 45; BNZ120, T. 3 December 2007 p. 21. *See supra*, para. 87, fn. 88.

<sup>388</sup> Indictment Decision of 2 March 2005, paras. 17-20. *See also* Preliminary Motion Decision of 15 July 2007.

<sup>389</sup> Indictment, paras. 23, 40.

<sup>390</sup> Indictment, paras. 10, 23, 40.



234. The Chamber further notes that the testimonies of Prosecution Witnesses ATO and BCW contain material facts which were not pleaded in the Indictment. However, the Chamber recalls that the Prosecution has, in its Closing Arguments, stated that it does not seek a conviction on the basis of Witness ATO's evidence,<sup>391</sup> and as such, the Chamber will only consider his evidence to the extent it is relevant to other allegations in the Indictment and other evidence. The Chamber further recalls its finding that it will only accept Witness ATO's testimony to the extent that it is corroborated by other credible evidence.<sup>392</sup>

235. With regard to Witness BCW, the Chamber notes that the failure to plead, in the Indictment, factual allegations contained in his testimony, was remedied through subsequent provision of timely, clear and consistent information regarding his evidence.<sup>393</sup> The Chamber will therefore proceed to consider this evidence.

236. The Chamber finds that there were no significant internal inconsistencies in Witness BCW's detailed testimony. The Chamber found him to be a clear and forthright witness. However, the Defence raised a number of challenges regarding his credibility, which the Chamber will address.

237. First, the Defence suggested in cross-examination that it was implausible that Witness BCW would be recruited to man a roadblock given his Tutsi ethnicity.<sup>394</sup> The Chamber however accepts Witness BCW's explanation that two men, the driver of his former employer, and Corporal Irandemba, saved his life in different ways. The Chamber also accepts his evidence that he plied off his attackers the first time with beer, that the majority of people at the roadblock were house watchmen as he was, and that when told to leave for his safety by Corporal Irandemba, he fled the area and hid for the remainder of the genocide.<sup>395</sup> The Chamber notes that his testimony, that many of those manning the roadblock were house watchmen, was corroborated by Witness Harelimana.<sup>396</sup>

238. Second, the Defence argues that the Kiyovu roadblock did not exist,<sup>397</sup> and relies on the testimonies of Witnesses Harelimana, Domitilla Zigiranyirazo, BBL and RDP2. The Chamber, however, is of the view that the evidence of Harelimana corroborates the evidence of Witnesses BCW and ATO to support the conclusion that there was a roadblock at the Intersection in front of the Accused's Kiyovu residence. In this regard, the Chamber recalls that Witnesses BCW, ATO and Harelimana, all saw men at the Intersection in front of the Accused's residence. Although Harelimana testified that he did not see a roadblock at the Intersection, he did see about five men, "mostly house help, watchmen and such persons" assembled in the right hand corner when he crossed the Intersection.<sup>398</sup> It was only the absence of a tree trunk which prevented Harelimana from initially describing the men assembled at the Intersection

<sup>391</sup> Closing Arguments, T. 28 May 2008 pp. 12-13.

<sup>392</sup> See *supra*, paras. 171-175.

<sup>393</sup> See *supra*, paras. 85-86.

<sup>394</sup> Witness BCW, T. 31 January 2006 pp. 11, 25.

<sup>395</sup> Witness BCW, T. 31 January 2006 pp. 11-12, 26-27.

<sup>396</sup> Stanislas Harelimana, T. 20 November 2007 p. 80.

<sup>397</sup> Defence Closing Brief, para. 855.

<sup>398</sup> Stanislas Harelimana, T. 20 November 2007 p. 80.



as a "roadblock", yet neither Witnesses BCW, nor ATO, described the roadblock as consisting of anything other than men assembled at the Intersection.

239. In addition, the Chamber does not consider that the testimonies of Defence Witnesses Domitilla, BBL, and RDP2 raise any doubts as to the consistent and credible evidence of Witness BCW, as corroborated by Witnesses ATO and Harelimana. The Chamber recalls that the testimonies of Witnesses Domitilla, BBL, and RDP2 only support the assertion that there was no roadblock in front of the Accused's house up until the morning of 9 April 1994. Their testimonies do not exclude the possibility that a roadblock was erected some time after the morning of 9 April 1994. Nor does their evidence refute the possibility that men were assembled at the Intersection prior to 9 April 1994, as maintained by Witness BCW, because neither Witness BBL, nor Domitilla, left the house between 7 and 9 April 1994.<sup>399</sup>

240. Third, the Defence argues that the Chamber should reject the Prosecution evidence regarding the Kiyovu roadblock as the witnesses placed it on different corners. While Witness BCW placed the roadblock on the eastern side of the Intersection, Witness ATO placed it on both the western and southern sides.<sup>400</sup> The Chamber is of the view that the "roadblock" as described by the witnesses, including Harelimana, consisted of a group of men by the side of the road, and therefore could plausibly have moved around the Intersection. Even if they remained at the same corner, the Chamber considers it unsurprising that witnesses may not recall such small details due to the passage of time. Accordingly, the Chamber does not consider inconsistencies in the exact location of the roadblock at the Intersection, to be significant, particularly as Witnesses BCW, ATO and Harelimana testified to the same Intersection.

241. Fourth, the Defence questioned Witness BCW about his membership in *Ibuka*, a genocide survivor's group, as it submitted that such membership was relevant due to the role *Ibuka* allegedly plays in the recruitment and rehearsal of witnesses.<sup>401</sup> The Chamber accepts Witness BCW's testimony that he was not an office bearer, but a mere member as "the moment you are a survival (sic) of the genocide, you are automatically a member of that organisation."<sup>402</sup> He stated that he had not yet attended a meeting, and when asked why the contact person he provided on his statements was an executive member of *Ibuka*, he replied that he chose this person because they were a relative, and that he was unaware that they had a position in the organisation's committee.<sup>403</sup> The Chamber accepts Witness BCW's evidence and does not consider that membership of *Ibuka* itself gives rise to any negative inferences regarding the credibility of a witness. Such inferences would only arise in the face of actual evidence of interference with a witness.

<sup>399</sup> See *supra*, paras. 229, 230.

<sup>400</sup> Defence Closing Brief, para. 849.

<sup>401</sup> Witness BCW, T. 1 February 2006 pp. 3-4.

<sup>402</sup> Witness BCW, T. 1 February 2006 p. 4.

<sup>403</sup> Witness BCW, T. 1 February 2006 pp. 5-6.

242. In addition, the Chamber notes that Witness BCW's evidence was also corroborated in a number of respects by Witness ATO, and Defence Witness Harelimana. Witness BCW's testimony, that other employees in the locality were also manning the roadblock, was corroborated by Harelimana who saw "house-help" assembled at the Intersection. Additionally, Witness BCW's testimony is consistent, in part, with that of Witness BBL and Domitilla. In this regard, Witness BBL testified that she heard gunshots early on 7 April 1994, which sounded like they came from just outside the house, and Witness BCW witnessed killings at the Intersection on the same morning at around 9.00 a.m. but could not be certain of the exact time.<sup>404</sup> Witness BCW also testified that the Accused had not been living at his residence around 12 April 1994, which is consistent with the testimonies of Witnesses BBL and Domitilla, who both testified that the Accused left his residence for Kanombe on the morning of 7 April 1994.<sup>405</sup>

243. Accordingly, on the basis of Prosecution Witness BCW's detailed and consistent, as corroborated by Prosecution Witness ATO and Defence Witness Harelimana, the Chamber finds that from 7 April 1994, a roadblock existed at the Intersection in front of the Accused's Kiyovu residence. The evidence suggests that the roadblock initially consisted of men, mainly house help and watchmen, but possibly at times soldiers, assembled at the Intersection. A tree trunk or some other obstacle may have been erected at the Intersection at a later date.

244. Having found Witness BCW's evidence to be detailed, consistent and corroborated, the Chamber will now turn to consider the Accused's alleged role in the roadblock beginning on 12 April 1994. The Chamber will address whether the Defence alibi evidence raises doubt as to the testimony of Witness BCW.

245. The Chamber recalls that the Defence relies on nine witnesses to show that the Accused was in Rubaya from 11 April 1994, for approximately one week, and therefore could not have been in Kiyovu during this time. However, the Chamber recalls that the evidence of some of these witnesses was not sufficiently detailed on the activities of the Accused while in Rubaya, and included discrepancies. In this respect, Agnès Kampunda's recollection was vague and she stated "I don't remember well, and it is a long time."<sup>406</sup> Although she testified that the Accused remained in Rubaya for one week, she could not provide details on the Accused's activities. Rather, she testified that he "did not do anything in particular."<sup>407</sup>

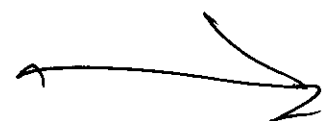
246. Marie Chantel Kamugisha's evidence on the Accused's activities in Rubaya was similarly vague. Although other witnesses testified that the Accused was among those on 10 April 1994 who failed to reach Rubaya and returned to Kanombe, Kamugisha did not mention the Accused as being in that convoy and only referred to the Accused as being with them on 11 April 1994 when she was asked "do you remember anything to do with Mr. Zigiranyirazo on that trip?" to which she replied,

<sup>404</sup> Witness BBL, T. 3 April 2007 p. 82; T. 4 April 2007 p. 2.

<sup>405</sup> Witness BBL, T. 4 April 2007 p. 3; Domitilla Zigiranyirazo, T. 27 February 2007 p. 54.

<sup>406</sup> Agnès Kampunda, T. 5 March 2007 p. 62.

<sup>407</sup> Agnès Kampunda, T. 5 March 2007 p. 69.



"I know he was there." Additionally, although she recalled the Accused being in Rubaya, she did not provide any details on the Accused's activities during that time.<sup>408</sup>

247. Witness BNZ120 also provided no details on the Accused's activities during that week.<sup>409</sup> Similarly, although Gloria Mukampunga testified that the Accused was in Rubaya from 11 April 1994 for one week, she too did not provide details regarding his activities while there.<sup>410</sup> Aimé Marie Ntuye's testimony was similarly vague. Additionally, his testimony contradicted all other Defence evidence in that he was the sole witness to testify that the convoy succeeded in reaching Rubaya on 10 April 1994.<sup>411</sup>

248. The testimony of Bernadette Niyonizeye also lacked detail. Although she attested that the Accused traveled in the convoy to Rubaya on 11 April 1994, she provided no details of his activities while in Rubaya. Furthermore, the Chamber recalls that her evidence was inconsistent with her will-say statement according to which the Accused was waiting at the Rubaya Tea Factory when the convoy arrived.<sup>412</sup>

249. Although other Defence Witnesses provided more detailed testimonies, none testified that the Accused remained in Rubaya for the *entire* period of 11 April to 17 April 1994. In this respect, the Chamber recalls the testimony of Domitilla, that the Accused did leave Rubaya during that time.<sup>413</sup> Similarly, Marguérite Maria Mukobwajana testified that the Accused left Rubaya to run errands.<sup>414</sup> Although Dr. Séraphin Bararengana attested that the Accused left Rubaya only once without him to make some purchases,<sup>415</sup> the Chamber notes that his testimony is inconsistent with that of Mukobwajana, as she suggested that the Accused left Rubaya more than once.<sup>416</sup> Agnès Kampundu also testified that the Accused did leave Rubaya during that period.<sup>417</sup>

250. Accordingly, although the Chamber does not discount the Defence evidence suggesting that the Accused was at Rubaya for approximately one week from 11 April 1994,<sup>418</sup> the Chamber finds that none of the Defence Witnesses' testimonies exclude the possibility that the Accused left Rubaya for periods between 12 and 17 April 1994. The Chamber, therefore, finds that the Accused does not have an alibi for 12 to 17 April 1994.

<sup>408</sup> Marie-Chantal Kamugisha, T. 7 March 2007 pp. 71-75.

<sup>409</sup> Witness BNZ120, T. 3 December 2007 p. 16; T. 4 December 2007 pp. 3-7.

<sup>410</sup> Gloria Mukampunga, T. 11 April 2007 p. 83.

<sup>411</sup> Aimé Marie Ntuye, T. 28 February 2007 pp. 77-78; Domitilla Zigiranyirazo, T. 27 February 2007 pp. 57-58; Bernadette Niyonizeye, T. 5 March 2007 pp. 12-13; Agnès Kampundu, T. 5 March 2007 pp. 61, 63; Séraphin Bararengana, T. 6 March 2007 pp. 39-41; Marie Kamugisha, T. 7 March 2007 pp. 71-72, 75; Gloria Mukampunga, T. 11 April 2007 pp. 80, 83; Marguérite Mukobwajana, T. 19 November 2007 p. 54;

Witness BNZ120, T. 3 December 2007 pp. 12, 14, 16.

<sup>412</sup> Bernadette Niyonizeye, T. 5 March 2007 pp. 21-22.

<sup>413</sup> Domitilla Mukajyoni Zigiranyirazo, T. 27 February 2007 p. 61.

<sup>414</sup> Marguérite Maria Mukobwajana, T. 20 November 2007 p. 32.

<sup>415</sup> Séraphin Bararengana, T. 7 March 2007 p. 25.

<sup>416</sup> Marguérite Maria Mukobwajana, T. 20 November 2007 p. 32.

<sup>417</sup> Angés Kampunda, T. 5 March 2007 p. 70.

<sup>418</sup> With the exception of Bernadette Niyonizeye's testimony.

251. Therefore, on the basis of Witness BCW's evidence, the Chamber finds that on 12 April 1994, he was compelled to man the roadblock situation at the Intersection in close proximity to the Accused's Kiyovu residence. The roadblock, under the charge of Corporal Irandemba, the Accused's guard, was also manned by other watchmen and house-help, as well as, at times, soldiers. The Chamber further finds that on 12 April 1994, the Accused passed through the Intersection in front of his Kiyovu residence, saw about three corpses, and gave orders to men manning the roadblock there to check identity papers "well [...] since Tutsis have changed their identification papers." The Chamber also finds that on 17 April 1994, the Accused passed through the Intersection again and instructed Corporal Irandemba to find food for the men so that they could remain at the roadblock. Food was later delivered to the roadblock from Camp Kigali. On the same occasion, he promised guns to those manning the roadblock. The promise came following an indication from the men that they required the guns to fight at the "battle front." The Chamber finds that Tutsi were taken aside and killed at the roadblock and that at least between 10 and 20 people were killed there. However, the Chamber is not prepared to find beyond reasonable doubt, on the basis of Witness BCW's uncorroborated hearsay testimony, that some time between 12 and 23 April 1994, guns were brought from the Accused's house to the roadblock at the Intersection.

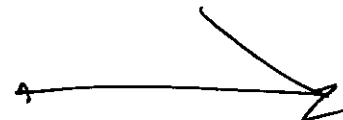
## 6. Massacre at Kesho Hill

### 6.1. Indictment

252. The statements of facts in relation to the massacre at Kesho Hill are identical for Counts 2 and 3, Genocide and Complicity in Genocide, set forth in paragraphs 12 and 13, and for Count 4, Extermination as a Crime Against Humanity, in paragraphs 29 and 30. The factual allegations in the Indictment in relation to the massacre at Kesho Hill are that:

12 and 29. On or about 8 April 1994, the local Tutsi population, numbering approximately 2,000, were in refuge at Gashihe or Kesho Hill in Rwili secteur, Gaseke commune, in Gisenyi prefecture, within the vicinity of the Rubaya Tea Factory. On or about the said date, **Protais ZIGIRANYIRAZO**, with intent that the Tutsi who sought refuge at Gashihe or Kesho Hill be killed, led a convoy of armed Presidential Guard soldiers, gendarmes, and *Interahamwe* militia as part of the attack on Tutsi seeking refuge on the hill.

13 and 30. **Protais ZIGIRANYIRAZO** ordered and instigated armed Presidential Guard soldiers, gendarmes and *Interahamwe* to attack and kill the said refugees, who did so killing approximately 1,000 of the Tutsi that had sought refuge on Gashihe or Kesho Hill. Among those killed were persons named KAZOZA, a male, age about 70; RWEGO, a male, age about 65; NDEKEZI, a male, age about 35; GATEMERI, a male, age about 18; NYIRABARUTWA, a female, age about 60; SIMPARINKA, a male, age about 35; KAMUZINZI, a male, age about 50; MUGOREWERA, a female, age about 30; KARINDA, a male, age about 35; SETAKO, a male age about 40; and MUKAMUNANA, a female age about 35.



## 6.2. Evidence

### *Prosecution Witness AKK*

253. Witness AKK, a Tutsi, was a farmer in 1994.<sup>419</sup> He testified to knowing the Accused since 1988, and described him as a “very prominent person” whom the local population “compared [...] to the President,” and “would obey whatever he ordered.”<sup>420</sup> Witness AKK testified that his elder brothers used to look after the Accused’s cattle in the areas of Gishwati and Gasiza.<sup>421</sup>

254. Witness AKK attested that early on the morning of 7 April 1994, after hearing the radio announcement of President Habyarimana’s death, he and his family fled to Kesho Hill that same evening, where they spent the night.<sup>422</sup> He testified that they found many other Tutsi people there who had come to seek refuge.<sup>423</sup> On the following rainy morning, around 8.00 or 9.00 a.m., he fought with the other refugees to repel *Interahamwe* assailants.<sup>424</sup> Witness AKK stated that approximately two hours after the first attack, he saw a convoy of “many vehicles,” both civilian and military, moving towards Kesho Hill from the Rubaya Tea Factory in Kabaya, a distance of about nine kilometres.<sup>425</sup> Among those in the convoy, Witness AKK recognized several officials, including the Accused, the *bourgmestre* of Gaseke *commune*, Bazabuhande, and Jaribu, the Manager of Rubaya Tea Factory. He recognized vehicles from the Tea Factory, vehicles of administrative officials in the area of Gaseke *commune*, and vehicles belonging to traders from Kabaya, including Ntawurhunga, Munyakazi, Bujoli, Kanyarushihe and Hassan, which was driven by his son Omar Hassan.<sup>426</sup> Witness AKK was not able to say who was leading the convoy.<sup>427</sup>

255. Although the Accused arrived at Kesho Hill in the convoy with the *bourgmestre* and Jaribu, Witness AKK was too concerned for his own security to recall whether the *bourgmestre* travelled with the Accused in the same vehicle.<sup>428</sup> Also arriving at the same time were other officials, *Interahamwe*, Presidential Guards, and soldiers, who were in the vehicles or on foot.<sup>429</sup> Witness AKK did not know the “kinds of vehicle”, but recalled that the Accused travelled in a white “low-clearance vehicle,” not a “very high-clearance vehicle” like a Daihatsu, and not a small car, which cannot manoeuvre the stony, rough roads of the region.<sup>430</sup> Referring to photos of

<sup>419</sup> Witness AKK, T. 11 October 2005 pp. 35-36, 44; Exhibit P4 Protected Information of Witness AKK (under seal).

<sup>420</sup> Witness AKK, T. 10 October 2005 pp. 22, 24.

<sup>421</sup> Witness AKK, T. 10 October 2005 p. 22.

<sup>422</sup> Witness AKK, T. 10 October 2005 pp. 16-18.

<sup>423</sup> Witness AKK, T. 10 October 2005 p. 18.

<sup>424</sup> Witness AKK, T. 10 October 2005 p. 20; T. 11 October 2005 pp. 3-4. Witness AKK testified that the assailants were dressed in banana leaves or in multi-coloured yellow, red and green uniforms made of *kitenge* cloth.

<sup>425</sup> Witness AKK, T. 10 October 2005 pp. 21, 61-64; T. 11 October 2005 pp. 5-6. Witness AKK testified that he was “not really following the time” because he was “under attack” and it was “raining heavily” and “the sky was cloudy”.

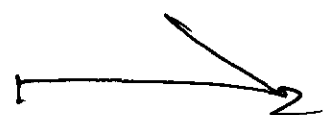
<sup>426</sup> Witness AKK, T. 10 October 2005 pp. 21-22.

<sup>427</sup> Witness AKK, T. 10 October 2005 pp. 22, 62.

<sup>428</sup> Witness AKK, T. 10 October 2005 pp. 63, 64.

<sup>429</sup> Witness AKK, T. 10 October 2005 pp. 22, 62, 64; T. 11 October 2005 pp. 5, 62, 68.

<sup>430</sup> Witness AKK, T. 10 October 2005 p. 59.



the area introduced by the Prosecution, Witness AKK indicated to the Chamber the road from Kabaya taken by the attackers, which ran through the tea fields, below Kesho Hill on the side of a river.<sup>431</sup> Witness AKK later stated that the assailants parked their vehicles on two separate roads, "one behind the other to the point that we couldn't see the end of the queue."<sup>432</sup>

256. Witness AKK testified that he, and several other refugees, descended the hill to meet the assailants, believing that they had come to "rescue" them.<sup>433</sup> Shortly after the convoy's arrival, from a distance of "about a hundred metres," Witness AKK saw the Accused, the *bourgmestre* and Jaribu, meeting with a group of attackers.<sup>434</sup> He recalled that the maize had been harvested on the hill in March, and no grass had grown in that area at that time.<sup>435</sup> Witness AKK testified that the number of assailants grew and was "over three times" greater than the number of refugees on Kesho Hill and that there were "very many soldiers", though fewer than a hundred. Although he could not definitively say how many assailants there were, Witness AKK explained that, because approximately 1,400 people were killed, the number of attackers must have been very many.<sup>436</sup>

257. According to Witness AKK, the "first person to speak was the *bourgmestre*, then Zigiranyirazo spoke second, and the director of the tea factory was the last to speak."<sup>437</sup> He stated: "Whether it's the first speaker, the second or the third, they were all together. None of them defended us." Witness AKK did not recall whether the Accused and the other officials used a microphone to address the assailants in the meeting.<sup>438</sup> He stated that he did not hear what was said in the meeting, but when it was over, he heard and saw the assailants applaud loudly.<sup>439</sup> He further testified that the "people said that Zigiranyirazo had told them to start work, and immediately they launched their attack."<sup>440</sup> However, he acknowledged that it was not until after Jaribu addressed the attackers that they attacked. He stated that the duration of the speeches "was not a long time. The purpose of their visit was well known. They told the civilians and the soldiers and said 'Attack this – the people on this hill and finish with that' and it was quickly implemented." Witness AKK stated the attack was "their plan" and followed immediately after the speeches.<sup>441</sup>

258. According to Witness AKK, the assailants in the second attack were better armed and so were able to defeat the refugees on Kesho Hill.<sup>442</sup> He testified that among many others, two old men named Kazoza and Rwego, a lady called

<sup>431</sup> Witness AKK, T. 10 October 2005 pp. 40, 48; Exhibit 5, View of Kesho Hill in Kabengo *cellule*; Rwili *secteur*; Exhibit P6, Another View in Kabengo *cellule*; Rwili *secteur*; Exhibit P7, Muhumyo Hill in Muhumyo *cellule*, Rwili *secteur*.

<sup>432</sup> Witness AKK, T. 10 October 2005 p. 61.

<sup>433</sup> Witness AKK, T. 10 October 2005 pp. 23, 24.

<sup>434</sup> Witness AKK, T. 10 October 2005 pp. 23-25, 65.

<sup>435</sup> Witness AKK, T. 11 October 2005 p. 13.

<sup>436</sup> Witness AKK, T. 10 October 2005 p. 61; T. 11 October 2005 pp. 5-7.

<sup>437</sup> Witness AKK, T. 10 October 2005 p. 25.

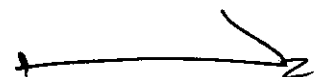
<sup>438</sup> Witness AKK, T. 10 October 2005 pp. 65, 66.

<sup>439</sup> Witness AKK, T. 10 October 2005 pp. 23-24, 65-66.

<sup>440</sup> Witness AKK, T. 10 October 2005 p. 24.

<sup>441</sup> Witness AKK, T. 10 October 2005 pp. 65, 66.

<sup>442</sup> Witness AKK, T. 10 October 2005 p. 62.



Mugorewera, as well as Gatemeri, Karinda, Simparinka and Ndekezi, were killed on Kesho Hill that day.<sup>443</sup>

259. Following the meeting, the Accused, and the other authorities, drove their vehicles down the road to turn them around. When they returned to Kesho Hill, around 30 minutes later, the assailants were "already in full action." They then immediately drove away from the massacre site.<sup>444</sup> Witness AKK did not know whether the Accused returned to the hill the same day because after being seriously injured by grenade shrapnel at the commencement of the attack, he had crawled away and hidden in a forest.<sup>445</sup>

260. Witness AKK testified that in 1995, President Bizimungu came to organise the burial of those killed. Witness AKK said the official counting of the bodies revealed that 1,400 bodies had been exhumed for a proper burial.<sup>446</sup>

*Prosecution Witness AKP*<sup>447</sup>

261. Witness AKP testified that an unsuccessful attack by *Interahamwe* took place at around 8.00 a.m. on 8 April 1994. For two to three hours, they were able to stand up to the attackers who finally "backtracked." Witness AKP and others then descended the hill below the river to another lower hill. From this position on the opposite hill, he could "clearly see" the *Interahamwe* leaving Kesho Hill. He was also able to identify vehicles in a convoy that returned to Kesho Hill, about 30 minutes or one hour later, full of reinforcements, including *Interahamwe*, soldiers, and *gendarmes* wearing red berets. According to Witness AKP, they arrived at around 2.00 p.m. He estimated that there were between "one and two thousand" *Interhamwe*, and then said that he could not "really tell how many" soldiers were gathered at Kesho Hill. Among the assailants whom Witness AKP recognized in the convoy, were the Accused, who travelled in a Land Cruiser, and the *bourgmestre* of Gaseke commune, "Vazuvahambe". He attested that the person of authority that he saw was the Accused.<sup>448</sup>

262. From a distance of 100 to 110 metres up the hill, Witness AKP testified that he had a "clear view" of the Accused, who stopped his vehicle and met with members of the *Interahamwe* and the population.<sup>449</sup> He testified that he "was not near those people" as he was on "another hill" but he heard the last words which the Accused uttered to the crowd.<sup>450</sup> Witness AKP testified that the Accused used a megaphone and stated: "Now you have what's required and what you didn't have before, so I wish you will do good work."<sup>451</sup> He understood the Accused to be referring to firearms, which the assailants had previously lacked, to enable them to do "the work of killing." Following the Accused's "order," the soldiers, *Interahamwe* and *gendarmes* opened fire on the refugees, and the *Interahamwe* used small hoes to finish off the wounded.

<sup>443</sup> Witness AKK, T. 10 October 2005 p. 28.

<sup>444</sup> Witness AKK, T. 10 October 2005 p. 27.

<sup>445</sup> Witness AKK, T. 10 October 2005 pp. 27, 29.

<sup>446</sup> Witness AKK, T. 10 October 2005 p. 31.

<sup>447</sup> For background information to Witness AKP, see *supra*, para. 193.

<sup>448</sup> Witness AKP, T. 1 February 2006 pp. 43-45; T. 6 February 2006 p. 39.

<sup>449</sup> Witness AKP, T. 6 February 2006 p. 3.

<sup>450</sup> Witness AKP, T. 6 February 2006 pp. 5, 37.

<sup>451</sup> Witness AKP, T. 6 February 2006 pp. 3, 37.

From his position on the other hill, Witness AKP could not confirm whether anyone else addressed the assailants before they started their "work." Witness AKP estimated that between 1,000 to 1,400 Tutsi were killed that day.<sup>452</sup>

*Prosecution Witness AKL*

263. Witness AKL, a Hutu, was a 21-year-old farmer in 1994.<sup>453</sup> Witness AKL knew the Accused as the *préfet* of Ruhengeri, and recalled seeing him on numerous occasions between 1991 and 1993, at ranches belonging to the Accused's family or at the ranch belonging to a younger brother of the late President Habyarimana.<sup>454</sup>

264. Witness AKL testified that, around 3.00 p.m. on 7 April 1994, his Tutsi neighbour asked him to go after his child and the cows he was tending from another area. According to Witness AKL, "he told me that if a Tutsi went to fetch his son, that Tutsi would be killed." Witness AKL found the child and cows and accompanied them to Gitaba, an area close to home. After being pursued by *Interahamwe* at Gitaba, he abandoned the cows and fled with the child to Kesho Hill, where they spent the night.<sup>455</sup> Witness AKL explained that he sought shelter at the hill with the child because he was afraid of being considered an accomplice if he returned home.<sup>456</sup> He testified that there were "very many Tutsi on the hill from all corners from Giciye."<sup>457</sup>

265. At around 7.30 a.m. on 8 April 1994, *Interahamwe* attacked the Tutsi on the hill with guns, spears, and sticks. According to Witness AKL, about four people were killed and others were injured.<sup>458</sup> Following the attack, there was a lull for about one hour.<sup>459</sup> According to Witness AKL, at about 9.30 to 10.00 a.m. the same day, the *Interahamwe* returned in "lots of vehicles" with members of the Presidential Guard.<sup>460</sup> Witness AKL recognized vehicles from the Rubaya Tea factory, including a blue Daihatsu driven by Byakweri, Hassan Ntawuruhunga's vehicle driven by his son Omar Hassan, and a vehicle driven by Bujori, as well as vehicles from Kabaya, Gasiza, and from the Giseke *commune*.<sup>461</sup>

266. Witness AKL acknowledged that, from a distance of 500 metres up the hill, he could not be certain to have seen the Accused arrive with the Presidential Guards and *Interahamwe* and other assailants in the convoy of vehicles. However, he emphasized that, when he descended the hill, he stood close to the Accused, whom he knew as the former *préfet* of Ruhengeri. Witness AKL then saw and heard the Accused as he addressed the *Interahamwe* before the second attack.<sup>462</sup>

<sup>452</sup> Witness AKP, T. 6 February 2006 pp. 3-4.

<sup>453</sup> Witness AKL, T. 15 February 2006 p. 30; Exhibit P25, Protected Information of Witness AKL (under seal).

<sup>454</sup> Witness AKL, T. 15 February 2006, pp. 3-4.

<sup>455</sup> Witness AKL, T. 15 February 2006 pp. 18-19.

<sup>456</sup> Witness AKL, T. 15 February 2006 p. 21.

<sup>457</sup> Witness AKL, T. 15 February 2006 p. 18.

<sup>458</sup> Witness AKL, T. 15 February 2006 pp. 19, 39.

<sup>459</sup> Witness AKL, T. 15 February 2006 p. 40.

<sup>460</sup> Witness AKL, T. 15 February 2006, pp. 19, 20, 22, 40-41.

<sup>461</sup> Witness AKL, T. 15 February 2006 pp. 20-22, 41. In addition to the aforementioned individuals, he also saw Theophile, Kamali and Ignace Bazubahande.

<sup>462</sup> Witness AKL, T. 15 February 2006 pp. 21, 23.





267. The assailants climbed from the vehicles and went to a house at the foot of the hill. Then "Zigiranyirazo came and held a meeting with them." Witness AKL recognized the Accused and could "even hear his voice" as he addressed the *Interahamwe*. He also saw Jaribu, the Rubaya Tea Factory Manager, and the *bourgmestre* of Gaseke *commune*, Bazabuhande. Witness AKL testified that he approached "very close" to the group, hoping that the soldiers were going to stop the killing, but they did not. From his hiding place, "between 40 and 50 metres" from the group of assailants at the bottom of the hill, Witness AKL heard the Accused "asking what the people were waiting for since the Tutsi were still there."<sup>463</sup> Witness AKL said: "There were many people who applauded him." He estimated that the Accused spoke for two to five minutes and then left,<sup>464</sup> and that the assailants attacked at around 10.00 a.m., after the Accused had come and organised the meeting, and given "directives" to attack. Major Ntabakuze and "a certain Babona" led the assailants up the hill and the shooting started.<sup>465</sup>

268. According to Witness AKL, it was "mayhem," and "people died in large numbers." He testified that "people were burnt down, and Mr. Zigiranyirazo went."<sup>466</sup> He estimated the number killed that day on Kesho Hill to be between 800 and 1500.<sup>467</sup>

*Prosecution Witness AKR*

269. In April 1994, Witness AKR was 24 years old and a farmer. He was a resident of the Kesho Hill area, where more than 100 Tutsi families resided and witnessed the arrival of the refugees seeking shelter on the hill.<sup>468</sup> Witness AKR attested to knowing the Accused since around 1988, and first saw him "coming from his farm around Gishwati."<sup>469</sup>

270. Witness AKR testified that following an unsuccessful attack on Tutsi on Kesho Hill at around 8.00 a.m. on the morning of 8 April 1994, the assailants went back down to the bottom of the hill. He thought they were waiting for reinforcements and then stated "I think they were waiting for Zigiranyirazo and others who came in the second attack."<sup>470</sup>

271. There was a lull after the first attack and then, at around 10.00 a.m., reinforcements arrived in a convoy of "many different vehicles, civilian as well as military" for the second attack on Kesho Hill.<sup>471</sup> Witness AKL recognized several officials among those in the convoy, including the *bourgmestre*, Jaribu, the *conseiller* of Magaba *secteur* and several traders, such as Omar Hassan and Fazi Hakizimana.<sup>472</sup>

<sup>463</sup> Witness AKL, T. 15 February 2006 pp. 20-23.

<sup>464</sup> Witness AKL, T. 15 February 2006 p. 47.

<sup>465</sup> Witness AKL, T. 15 February 2006 pp. 20, 21, 22.

<sup>466</sup> Witness AKL, T. 15 February 2006 p. 20.

<sup>467</sup> Witness AKL, T. 15 February 2006 pp. 23-24.

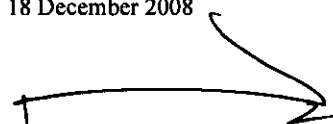
<sup>468</sup> Witness AKR, T. 11 October 2005 p. 54 (closed session); T. 12 October 2005 p. 5; Exhibit P8, Protected Information of Witness AKR (under seal).

<sup>469</sup> Witness AKR, T. 11 October 2005 p. 63.

<sup>470</sup> Witness AKR, T. 11 October 2005 p. 62.

<sup>471</sup> Witness AKR, T. 11 October 2005 p. 62; T. 12 October 2005 pp. 12, 66-67.

<sup>472</sup> Witness AKR, T. 11 October 2005 p. 63; T. 12 October 2005 p. 13. Witness AKR was also able to name some of the owners of the vehicles, such as Ntawuruhunga Hassan, Munyakazi Anastase, and Bamfafishkare Abudu. See T. 12 October 2005 p. 13.



Some of the assailants in the vehicles were armed with rifles, while others were armed with "clubs and sharpened sticks."<sup>473</sup> The Accused arrived with Jaribu, the Director of the Rubaya Tea Factory, but in a separate vehicle.<sup>474</sup> From his position "on the upper side of the hill," Witness AKR saw a "saloon car and a Land Cruiser and a Jeep," full of Presidential Guards, stop nearby. He affirmed that the Accused, who was dressed in a black suit, arrived at the site in one of these three vehicles with the Presidential Guards. Since the Accused stood near the Jeep, Witness AKR "believed" that he had come in the Jeep. Behind the saloon car, Land Cruiser and Jeep were other vehicles parked along the road. Witness AKR could not give an exact number of vehicles in the convoy because there were "very many people" standing all over the roads, obstructing his view of part of the convoy,<sup>475</sup> but he estimated that there were approximately 15 vehicles.<sup>476</sup>

272. Witness AKR testified that, from a distance of "about a hundred metres," he saw the Accused and "the people he was with" walk away from the parked vehicles and go down by the road to meet the assailants, who also "came closer" to them.<sup>477</sup> He said that he and the other refugees on Kesho Hill, who numbered more than 1,300,<sup>478</sup> were "terrified" when they recognized the Accused because they knew that they were about to die. According to Witness AKR, the Accused and the other men "looked like they held a meeting" and the Witness observed that "they were given instructions as to how to kill us" although, he testified that he "was not close enough to hear what was being said." After the Accused spoke, he was applauded.<sup>479</sup>

273. After the Accused's speech, which lasted "about ten minutes," a "military man" showed the attackers "which direction they should take."<sup>480</sup> Witness AKR then recalled seeing the assailants ascending the hill and shooting at the refugees. After some time, they shelled the church, where many Tutsi had fled for shelter.<sup>481</sup> As far as Witness AKR was "concerned, it was Zigiranyirazo who was at the front of that attack because it is after his arrival that they had enough power and force to kill us."<sup>482</sup>

274. Witness AKR stated that Mbirizi (alias Rwego), Gatmeri, Kazoza, Ndekezi, Nyirabarutwa, Mugorewera, Karinda and Setako, all Tutsi, were among those who died as a result of the attack.<sup>483</sup> According to Witness AKR, the Accused left Kesho Hill in the Jeep which he had arrived in, with three Presidential Guards, only after "he saw that many people had been killed."<sup>484</sup> Witness AKR estimated that the second

<sup>473</sup> Witness AKR, T. 12 October 2005 p. 13.

<sup>474</sup> Witness AKR, T. 12 October 2005 p. 63.

<sup>475</sup> Witness AKR, T. 12 October 2005 pp. 66-67.

<sup>476</sup> Witness AKR, T. 11 October 2005 p. 63.

<sup>477</sup> Witness AKR, T. 11 October 2005 pp. 64, 67.

<sup>478</sup> Witness AKR, T. 11 October 2005 p. 55.

<sup>479</sup> Witness AKR, T. 11 October 2005 pp. 66-68.

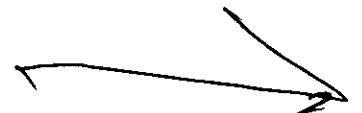
<sup>480</sup> Witness AKR, T. 11 October 2005 p. 68.

<sup>481</sup> Witness AKR, T. 11 October 2005 p. 68; T. 12 October 2005 pp. 7, 54.

<sup>482</sup> Witness AKR, T. 11 October 2005 p. 68.

<sup>483</sup> Witness AKR, T. 11 October 2005 pp. 59-60 (closed session) and T. 12 October 2005 pp. 10-11. The Chamber notes that the Witness would have continued listing victims' names, but was stopped by counsel.

<sup>484</sup> Witness AKR, T. 11 October 2005 p. 68; T. 12 October 2005 p. 68.



attack on Kesho Hill lasted from approximately 10.00 a.m. until 2.30 or 3.00 p.m.,<sup>485</sup> but emphasized that due to what was happening, he could only provide an approximation of the duration of the attack.<sup>486</sup> He testified that about 1300 people were killed.<sup>487</sup>

*Prosecution Witness AKO*

275. Witness AKO, a Tutsi, was a 22-year-old student in 1994. Witness AKO knew the Accused as the *préfet* of Ruhengeri from around 1988 and 1989. She recalled seeing him once in Nyaruhengeri and again at the Rubaya Tea Factory, where her elder sisters worked.<sup>488</sup>

276. Witness AKO testified that she took refuge in a church at the top of Kesho Hill at around 8.00 a.m. on 7 April 1994, where many other Tutsi had also sought refuge.<sup>489</sup> After an attack on that date, which they managed to repel,<sup>490</sup> the following day at around 8.00 or 9.00 a.m., she saw "many people coming" as well as many vehicles," carrying soldiers of the Presidential Guard and *Interahamwe* from Kabaya and Gasiza.<sup>491</sup> She was only able to count "about five vehicles," but testified that there was a long convoy of vehicles, including a green double-cabin pickup that looked like a military vehicle, and Daihatsu vehicles, belonging to traders from Kabaya, the Rubaya Tea Factory, and the Presidential Guards.<sup>492</sup> The vehicles were parked "on a hill across Kesho," some of them in one area and the other vehicles a bit further up the hill.<sup>493</sup> Witness AKO testified that from where she was, up to the road, there was a distance of about 500 metres, but they moved nearer to watch "closely" the arrival of the assailants in their vehicles.<sup>494</sup> Among the individuals whom she recognized were the Accused, Bamfashekare, Nyirakabanza, Giyakwari, Jaribu, who was the Director of the Rubaya Tea Factory, and Higaniro Hassan, who was an *Interahamwe* from Kapaka.<sup>495</sup>

277. According to Witness AKO, after stepping down from his vehicle, the Accused was telling people which side they would start attacking and shooting and "he distributed them as to which side they would – each group would attack, after which – after telling them, they all clapped their hands, they started shooting at us." However, because Witness AKO was "frightened", she could not properly hear what was said but could interpret the Accused's gestures.<sup>496</sup> He addressed the assailants for "up to 30 minutes," following which they "all clapped their hands" and commenced

<sup>485</sup> Witness AKR, T. 11 October 2005 p. 71.

<sup>486</sup> Witness AKR, T. 12 October 2005 p. 54.

<sup>487</sup> Witness AKR, T. 12 October 2005 p. 7.

<sup>488</sup> Witness AKO, T. 20 October 2005 pp. 9, 10, 13, 24; Exhibit P15, Protected Information of Witness AKO (under seal).

<sup>489</sup> Witness AKO, T. 20 October 2005 pp. 5, 6.

<sup>490</sup> Witness AKO, T. 20 October 2005 pp. 4-7, 54. Witness AKO testified that there was an attack on 7 April 1994 by local people using traditional weapons.

<sup>491</sup> Witness AKO, T. 20 October 2005 pp. 7-8, 54, 56-57.

<sup>492</sup> Witness AKO, T. 20 October 2005 pp. 7-8.

<sup>493</sup> Witness AKO, T. 20 October 2005 p. 54.

<sup>494</sup> Witness AKO, T. 20 October 2005 p. 15.

<sup>495</sup> Witness AKO, T. 20 October 2005 p. 8.

<sup>496</sup> Witness AKO, T. 20 October 2005 pp. 15-16.

their attack on the refugees with guns and grenades.<sup>497</sup> The refugees were then “shot at with bullets” and “scattered all over”.<sup>498</sup>

278. Witness AKO stated that, before she fled into the nearby forest, she watched the Accused for “about one hour,” including the time that he organized the assailants.<sup>499</sup> She did not see the Accused carrying a gun but attested that “the people who were with him had weapons.”<sup>500</sup> While Witness AKO could not “properly hear” what the Accused said to the assailants, because of her “state of fright,” she saw and “read the signs of his gestures.”<sup>501</sup> According to Witness AKO, the Accused “gave instructions as to how to go about it” and played a “great role” in the massacre at Kesho Hill.<sup>502</sup>

279. Witness AKO testified that she stayed close to Kesho Hill for the following three days and hid in a ravine. Approximately three days after the attack, she saw the Director of the Tea Factory order the burial of the bodies due to the smell. She was about two to three metres away from the Director at the time, hiding in the ravine alone, but could not be seen.<sup>503</sup>

#### *Prosecution Witness ATM*

280. Witness ATM, a Hutu, was a 36-year-old potato farmer in Gaseke *commune* in 1994. He knew the Accused as the “honourable *préfet*” and had personally seen him once before the relevant events, at a wedding celebration.<sup>504</sup>

281. Witness ATM testified that in mid-April, after 14 April 1994, he visited the Rubaya Tea Factory, from where he witnessed an attack by soldiers and *Interahamwe*, that killed “2000 Tutsis,” extending across the hills of Gaseke and Kajagi in the Kesho Hill area.<sup>505</sup> Along with others, he fled from Rubaya to a nearby Kangingo Hill, located “about three kilometres” from the attack, from where they watched the killings.<sup>506</sup> It was a rainy, cloudy day, but Witness ATM was able to watch the attack because he was on “higher ground” and “the clouds were moving.”<sup>507</sup> He identified the site of the attack as Kajagi summit, between the two smaller hills, Kesho and Gashihe, where many of the victims had sought shelter in an Adventist church.<sup>508</sup> He told the Chamber that, had he been seen by the *Interahamwe*, he would have been forced to take part in the attack or killed.<sup>509</sup> He did not attest to seeing the Accused at the massacre.

<sup>497</sup> Witness AKO, T. 20 October 2005 pp. 15-16, 18, 55.

<sup>498</sup> Witness AKO, T. 20 October 2005 p. 16.

<sup>499</sup> Witness AKO, T. 20 October 2005 pp. 16, 55.

<sup>500</sup> Witness AKO, T. 20 October 2005 pp. 55, 60.

<sup>501</sup> Witness AKO, T. 20 October 2005 pp. 16, 55.

<sup>502</sup> Witness AKO, T. 20 October 2005 p. 49.

<sup>503</sup> Witness AKO, T. 20 October 2005 pp. 19, 22, 23.

<sup>504</sup> Witness ATM, T. 16 February 2006 pp. 4, 11, 14; Exhibit P26, Protected Information of Witness ATM (under seal).

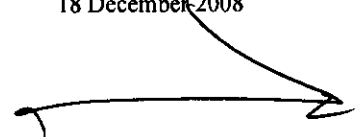
<sup>505</sup> Witness ATM, T. 16 February 2006 pp. 4, 12, 30. Witness ATM specifically referred to an attack at the Adventist Church on Kajagi Hill.

<sup>506</sup> Witness ATM, T. 16 February 2006 pp. 13, 33.

<sup>507</sup> Witness ATM, T. 16 February 2006 p. 33.

<sup>508</sup> Witness ATM, T. 16 February 2006 pp. 30-31.

<sup>509</sup> Witness ATM, T. 16 February 2006 p. 7.



*Prosecution Witness APJ*<sup>510</sup>

282. Witness APJ testified that three days after President Habyarimana's death, he was at the Kabaya Trading Centre and recognized the Accused in a convoy of "more than ten vehicles," travelling to the Rubaya Tea Factory.<sup>511</sup> The Accused was seated next to a driver in one of the vehicles.<sup>512</sup> The convoy, escorted by *Interahamwe* in uniform, was said to be transporting the former President's "mortal remains" to the Tea Factory.<sup>513</sup>

283. Witness APJ learned from a survivor of Kesho Hill that the *Interahamwe* escorts attacked the refugees on Kesho the same day. However, the *Interahamwe* "did not succeed in beating" the Tutsi. On the following day, the *Interahamwe*, who were armed with guns and other weapons, returned with the Accused to Kesho Hill.<sup>514</sup> According to Witness APJ, the survivor saw the Accused shoot a pistol toward the hill "after which the *Interahamwe* and other assailants started firing as well."<sup>515</sup> Witness APJ stated that many people were killed on Kesho Hill that day.<sup>516</sup> He testified that he went into hiding as of 11 April 1994, for approximately a month, for fear of being targeted as a Tutsi accomplice.<sup>517</sup>

*Prosecution Witness SGP*

284. Witness SGP, a Hutu, was a 63-year-old farmer in Gaseke *commune* in 1994.<sup>518</sup> At the time of the events, he had known the Accused for 30 to 40 years and had been a long-time friend of his father.<sup>519</sup>

285. Witness SGP testified that he was standing at the Kabaya Trading Centre about 1.00 or 2.00 p.m., two to three days after 6 April 1994, when he recognized the Accused in his "Benz car," from a distance of about 15 metres. According to Witness SGP, the Accused was in a convoy of "more than 200 vehicles," including military and civilian vehicles, which was said to be transporting the body of the late President to the Rubaya Tea Factory.<sup>520</sup>

*Prosecution Witness Michel Bagaragaza*<sup>521</sup>

286. Michel Bagaragaza testified that, on 8 April 1994, while speaking with the *bourgmestre* of Giciye *commune*, he saw a convoy of vehicles full of *Interahamwe* drive by toward Kabaya.<sup>522</sup> During their discussion, the *bourgmestre* Gahinjori, told Bagaragaza that Thomas Kuradusenge, who was the assistant *bourgmestre* and the

<sup>510</sup> For background information on Witness APJ, see *supra*, para. 178.

<sup>511</sup> Witness APJ, T. 5 October 2005 pp. 65-66; T. 6 October 2005 pp. 34-35, 56-57 (closed session).

<sup>512</sup> Witness APJ, T. 5 October 2005 p. 67.

<sup>513</sup> Witness APJ, T. 5 October 2005 pp. 65-67; T. 6 October 2005 pp. 34-35 (closed session).

<sup>514</sup> Witness APJ, T. 5 October 2005 pp. 67-68; T. 6 October 2005 p. 35 (closed session).

<sup>515</sup> Witness APJ, T. 6 October 2005 pp. 33, 35 (closed session).

<sup>516</sup> Witness APJ, T. 5 October 2005 pp. 65, 67; T. 6 October 2005 pp. 28, 35 (closed session).

<sup>517</sup> Witness APJ, T. 6 October 2005 pp. 36, 39, 65 (closed session).

<sup>518</sup> Exhibit P12, Protected Information for Witness SGP (under seal).

<sup>519</sup> Witness SGP, T. 18 October 2005 p. 30.

<sup>520</sup> Witness SGP also testified that it was between noon and 4.00 p.m., "neither early morning or night." Witness SGP, T. 18 October 2005 pp. 40-41, 44;

<sup>521</sup> For background information on Michel Bagaragaza, see *supra*, para. 129.

<sup>522</sup> Michel Bagaragaza, T. 28 November 2006 pp. 10, 11-12; T. 30 November 2006 pp. 18-19.

chairman of the *Interahamwe* of Giciye *commune*, was “organizing and leading attacks” in the area of Kabaya and Kingogo.<sup>523</sup>

287. Pascal Hitimana, an employee at the Rubaya Tea Factory, also told Bagaragaza that “Mr. Zigiranyirazo contributed to supporting the *Interahamwe* and that he decided that the Presidential Guard as well as his escort should participate in attacking the Tutsis of the area.”<sup>524</sup>

*Defence Witness RDP109*

288. Witness RDP109, a Hutu, was 24 years old in 1994. He testified that on the morning of 8 April 1994, the first attack on Tutsi on Kesho Hill was unsuccessful. As there were “very many” Tutsi, it became necessary for them to “go for more Presidential Guards and then, after the enforcements” arrived, they attacked and killed the Tutsi.<sup>525</sup> The Presidential Guards, and others, had arrived at the hill in a convoy of vehicles.

289. Around noon, the Presidential Guards, armed with rifles and grenades, led the second attack. Witness RDP109 testified that he did not kill anyone, as he, armed only with a traditional weapon, had been ordered to “remain back and shout.”<sup>526</sup> He explained that he had been ordered to go to Kesho Hill by the *bourgmestre*, the *conseiller*, and Presidential Guards.<sup>527</sup> He testified to carrying nail-studded club in both attacks against the Tutsi on Kesho Hill on 8 April 1994, but reiterated that he did not kill anyone.<sup>528</sup>

290. Witness RDP109 estimated that there were between 800 and 1,000 Tutsi on Kesho Hill, and that there were few survivors. After the attack, members of the Presidential Guard returned to the Rubaya Tea Factory and informed Bagaragaza that “the massacre had been carried out”, and that they had “exterminated those people.”<sup>529</sup> He denied seeing the Accused during the attack on Kesho Hill, and testified that no one delivered speeches.<sup>530</sup>

*Defence Witness RDP46*

291. Witness RDP46, a Hutu, was a 28-year-old member of the *Interahamwe* during the genocide who, prior to the events in question, knew the Accused as a “local leader.”<sup>531</sup>

292. Witness RDP46 testified that, around 9.00 or 10.00 a.m. on 8 April 1994, he and others were stopped in Kabaya and “commandeered by presidential guards,” to take assailants to Kesho Hill.<sup>532</sup> He testified that he did not see the Accused in

<sup>523</sup> Michel Bagaragaza, T. 28 November 2006 p. 10.

<sup>524</sup> Michel Bagaragaza, T. 28 November 2006 p. 19.

<sup>525</sup> Witness RDP109, T. 26 March 2007 pp. 23-25.

<sup>526</sup> Witness RDP109, T. 26 March 2007 pp. 23-25, 68, 70, 73, 74, 79.

<sup>527</sup> Witness RDP109, T. 26 March 2007 pp. 68, 70, 74.

<sup>528</sup> Witness RDP109, T. 26 March 2007 pp. 24-70.

<sup>529</sup> Witness RDP109, T. 26 March 2007 pp. 23, 25.

<sup>530</sup> Witness RDP109, T. 26 March 2007 pp. 24, 77.

<sup>531</sup> Exhibit D82, Protected Information of Witness RDP46 (under seal); Witness RDP46, T. 28 March 2007 pp. 3, 20-22.

<sup>532</sup> Witness RDP46, T. 28 March 2007 pp. 10-11.

Kabaya, or in the convoy of vehicles with Presidential Guards, which left for Kesho Hill between 10.30 and 11.30 a.m.<sup>533</sup>

293. Witness RDP46 estimated that there were about eight to ten vehicles in the convoy transporting attackers to Kesho, and that the drivers parked the vehicles either by a bridge on the road to Gikungu or at Giraro.<sup>534</sup> Upon arrival, the soldiers “went straight up the hill” and commenced their attack. The other assailants, armed with traditional weapons, followed the soldiers. According to Witness RDP46, the attack started at around 11.00 a.m. and continued to around 1.00 p.m. or 2.00 p.m. Witness RDP46 testified that no one met with or spoke to the attackers at the base of the hill, upon arrival at the site.<sup>535</sup>

294. After arriving at the hill, Witness RDP46 and the drivers who used their own vehicles to transport assailants left for the Rubaya Tea Factory to refuel, accompanied by two soldiers.<sup>536</sup> Before leaving for Rubaya, Witness RDP46 saw that shooting had begun.<sup>537</sup> On their arrival, the factory was closed, and they then drove to the home of the Director, Jaribu. Witness RDP46 was told by a man named Ndenzeho, that Bagaragaza, who was present at Jaribu’s house, authorized opening the factory and refuelling their vehicles.<sup>538</sup>

295. According to Witness RDP46, the killing continued after he and the other drivers returned to Kesho Hill. He testified that he sat on the roof of his vehicle to watch the events at Kesho Hill until 2.00 p.m. or 3.00 p.m.<sup>539</sup> Among the assailants, he identified Munyendamutsa, who was the “Chairman of the *Interahamwe*”, Séraphin, who was “leading the *Interahamwe*,” an agricultural officer called Théophile, a policeman named Barigora, and Sindayigaya, the Chairman of the *Interahamwe* from Giciye.<sup>540</sup>

296. Witness RDP46 denied that the Accused was at Kesho Hill during the attack on 8 April 1994. He added that the attack was led by “low level people”, not high level individuals such as the Accused.<sup>541</sup>

*Defence Witness César Busoro*

297. César Busoro, a Hutu, was a 25-year-old student at the ISAE agricultural college in Ruhengeri *préfecture* in 1994. In early April 1994, he had returned home to Gasiza for the Easter holiday.<sup>542</sup> He recalled that he and his mother visited the Accused during the events to collect money sent by [the witness’s] brother.<sup>543</sup>

<sup>533</sup> Witness RDP46, T. 27 March 2007 pp. 73, 79.

<sup>534</sup> Witness RDP46, T. 27 March 2007 p. 73.

<sup>535</sup> Witness RDP46, T. 27 March 2007 p. 79; T. 28 March 2007 p. 26.

<sup>536</sup> Witness RDP46, T. 27 March 2007 pp. 73-74.

<sup>537</sup> Witness RDP46, T. 27 March 2007 pp. 76-77.

<sup>538</sup> Witness RDP46, T. 27 March 2007 pp. 73-75.

<sup>539</sup> Witness RDP46, T. 27 March 2007 p. 77.

<sup>540</sup> Witness RDP46, T. 27 March 2007 p. 78.

<sup>541</sup> Witness RDP46, T. 27 March 2007 p. 79; T. 28 March 2007 p. 19.

<sup>542</sup> César Busoro, T. 19 March 2007 pp. 10-11; Exhibit D65, Personal Information Sheet for César Busoro.

<sup>543</sup> César Busoro, T. 19 March 2007 pp. 32, 64.

298. According to Busoro's information, the Accused did not arrive in the area with the Presidential family until mid-April, and therefore, could not have been involved in the Kesho Hill killings on 8 April 1994.<sup>544</sup>

*Defence Witness BNZ120*

299. Witness BNZ120 was a 19-year-old first-year student at the National University of Rwanda in Butare in 1994. In April 1994, he had returned for the Easter holidays to his family's home in Rubaya, located approximately 100 to 150 metres from the Tea Factory.<sup>545</sup> He knew the Accused as *préfet* of Ruhengeri, in 1987, while he was a student at Musanga, in Ruhengeri *préfecture*.<sup>546</sup>

300. Witness BNZ120 testified that, on the morning of 8 April 1994, he and his brother visited the Rubaya Tea Factory. The factory was deserted except for the watchman. Later, between 10.30 and 11.00 a.m., drivers of three pick-up trucks, carrying about 30 men, entered the factory premises, fuelled the vehicles and immediately drove away in the same direction from which they arrived. A few minutes after the vehicles left the tea factory, he heard what sounded like gun shots and shouting from the direction of Kesho Hill, a distance of about three kilometres. Witness BNZ120 did not investigate the gunshots, as his parents had told him to remain within the factory compound.<sup>547</sup> A day or two later he received information from a driver employed at the factory that the gunshots came from Kesho Hill, where "many" Tutsi had been attacked.<sup>548</sup>

*Defence Alibi Witnesses*

301. The Defence also relies on the evidence of nine witnesses who testified that the Accused was at the Presidential residence in Kanombe on 8 April 1994.<sup>549</sup>

### 6.3. Deliberations

302. Both Prosecution and Defence evidence consistently indicates that following an unsuccessful attack on Kesho Hill, a second attack occurred on 8 April 1994 and that many Tutsi, who had sought shelter on the hill, were killed.<sup>550</sup> However, the Defence challenges the evidence offered by the Prosecution witnesses in a number of respects.

<sup>544</sup> César Busoro, T. 19 March 2007 p. 52.

<sup>545</sup> Witness BNZ120, T. 3 December 2007 pp. 3-4 (closed session), 5; Exhibit D111, Protected Information for Witness BNZ120 (in French, under seal).

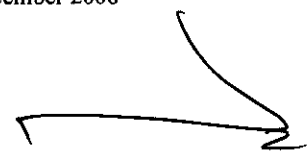
<sup>546</sup> Witness BNZ120, T. 3 December 2007 pp. 18-19.

<sup>547</sup> Witness BNZ120, T. 4 December 2007 pp. 6-10.

<sup>548</sup> Witness BNZ120, T. 3 December 2007 pp. 11-12; T. 4 December 2007 pp. 10-11.

<sup>549</sup> Agnès Kampundu, T. 5 March 2007 pp. 56, 58 and T. 6 March 2007 p. 12; Jeanne Marie Habyarimana, T. 27 February 2007 pp. 5-7; Marguerite Mukobwajana, T. 19 November 2007 p. 53; Gloria Mukampunga, T. 11 April 2007 pp. 81-82; Séraphin Bararengana, T. 6 March 2007 pp. 29-30; Aimé Marie Ntuye, T. 28 February 2007 pp. 71-72; Bernadette Niyoniyenze, T. 5 March 2007 pp. 32-33; Jean-Luc Habyarimana, T. 26 February 2007 p. 30; and Marie-Chantal Kamugisha, T. 7 March 2007 p. 70 and T. 8 March 2007 p. 4. See also Defence Closing Brief, pp. 44-45.

<sup>550</sup> Witness AKK, T. 10 October 2005 pp. 20, 31 and T. 11 October 2005 pp. 4, 5; Witness AKP, T. 1 February 2006 pp. 43-45 and 6 February 2006 pp. 4, 39; Witness AKL, T. 15 February pp. 19, 20, 23-24, 39, 40; Witness AKR, T. 11 October 2005 pp. 58 (closed session), 62, 68 and 12 October 2005 pp. 7, 68; Witness APJ, T. 5 October 2005 pp. 65, 67 and T. 6 October 2005 pp. 28-29, 35 (closed session); Witness RPD109, T. 26 March 2007 pp. 23-25, 73.





303. First, the Defence challenges the evidence offered by the Prosecution Witnesses who survived the Kesho Hill attack in that they are all members of *Ibuka*<sup>551</sup> and that they are in one way, or another, related.<sup>552</sup> According to the Defence, given their close relationship, there is a likelihood of collusion.<sup>553</sup> With regard to membership of *Ibuka*, and the relationships among the survivors, the Chamber considers this merely coincidental and a consequence of the fact they all live, or have lived, in the general area of Kesho Hill. In the Chamber's view, their relationships as neighbours or extended family, and their membership of *Ibuka*, do not adversely affect their evidence. Furthermore, the Chamber considers that, had the witnesses colluded, and had their evidence been rehearsed, as suggested by the Defence, there would be far greater uniformity in the testimonies.

304. Second, the Defence points out the failure of Witnesses AKR and AKO to have mentioned the Accused's participation in the Kesho Hill killings in their *Pro Justitia* Statements to the Rwandan judicial authorities.<sup>554</sup> The Chamber also notes that Witness AKP did not mention the Accused in his 2003 *Pro Justitia* Statement to Rwandan judicial authorities with regard to alleged crimes committed by Jaribu in 1994.<sup>555</sup> Witness AKP explained that the Rwandan court officers asked questions only about Jaribu and not about the Accused. He stated, "I couldn't speak about him if I hadn't been asked a question about him."<sup>556</sup> Under the circumstances, the Chamber is satisfied by Witness AKP's explanation, and considers that the lack of reference to the Accused in his *Pro Justitia* statement is understandable, insofar as it was intended as evidence against Jaribu and not against the Accused.

305. However, with regard to Witnesses AKR and AKO, the Chamber is not convinced by their explanation for not having mentioned the Accused in their *Pro Justitia* statements. In a statement dated 30 June 1999, Witness AKR named four individuals involved in the attack on Kesho Hill, but did not mention the Accused. He explained that he did not do so because he believed the Accused to be dead. No one had informed him that the Accused was dead, but he simply "did not see him around".<sup>557</sup> In the Chamber's view, this explanation is unconvincing, particularly in view of Witness AKR's testimony regarding the prominent role played by the Accused in the attack.<sup>558</sup> Furthermore, his explanation cannot be reconciled with the mention in his statement of a policeman, Barihenda, who Witness AKR had also believed to be dead.<sup>559</sup> The Chamber is similarly not satisfied with Witness AKO's explanation that

<sup>551</sup> Witness AKK, T. 11 October 2005 p. 35 (closed session); Witness AKR, T. 12 October 2005 p. 71 (closed session); Witness AKO, T. 20 October 2005 p. 24; Witness AKP, 6 February 2006 p. 33; Witness AKL, T. 15 February 2006 p. 31.

<sup>552</sup> Defence Closing Brief, paras. 304-323.

<sup>553</sup> Defence Closing Brief, paras. 324-328.

<sup>554</sup> Defence Closing Brief, paras. 275-279.

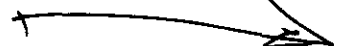
<sup>555</sup> Witness AKP, T. 6 February 2006 pp. 12-14.

<sup>556</sup> Witness AKP, T. 6 February 2006 p. 12.

<sup>557</sup> Witness AKR, T. 12 October 2005 pp. 48-49.

<sup>558</sup> Witness AKR described the Accused as the "most" and "more" "prominent person there" and the "leader of all the people present in the attack." See T. 12 October 2005 pp. 44, 56, 57.

<sup>559</sup> Witness AKR, T. 12 October 2005 pp. 57-58. The statement refers to Barihenda as having "died outside the country."



she had also believed the Accused to be dead,<sup>560</sup> notwithstanding that no one had informed her as such. The Chamber further finds Witness AKO's failure to mention the Accused in her *Pro Justicia* statement, difficult to reconcile with her testimony that it was the Accused who gave "instructions" and played a "great role" in the massacre at Kesho Hill.<sup>561</sup> The Chamber has additional concerns regarding Witness AKO's testimony as she was the only one to place the first attack on 7 April 1994, and the commencement of the second attack as early in the morning, between 8.00 and 9.00 a.m., on 8 April 1994.<sup>562</sup> Accordingly, the Chamber will only accept the testimonies of Witnesses AKR and AKO to the extent that they are corroborated by other credible evidence.

306. Third, the Defence submits that the survivors' testimonies contain a number of inconsistencies.<sup>563</sup> The Chamber notes that Witnesses AKK, AKL, and AKR, testified that the second attack began at approximately 10.00 a.m.,<sup>564</sup> Witness AKP testified that it commenced at around 2.00 p.m., and Witness AKO testified that it started around 8.00 a.m. to 9.00 a.m.<sup>565</sup> The Chamber further notes that Witness AKK was adamant that he arrived in a "low-clearance" vehicle, while Witness AKP thought it was a Land Cruiser, and Witness AKR testified that the Accused was standing beside a Jeep, in which he assumed the Accused must have arrived. Witness AKL said the Accused left in a white double-cabin Toyota.<sup>566</sup>

307. The Defence claims that there are additional inconsistencies in the Prosecution evidence concerning the number of vehicles in the convoy, whether the Accused used a megaphone when he spoke, the length of time for which he spoke, as well as the number of attackers and victims. Witness AKO said there were more than five vehicles in the convoy, while Witness AKP said ten, and Witness AKK testified that there were more than fifteen. Witness AKR stated there were between ten to fifteen vehicles, and Witness AKL stated that there were lots of vehicles in the convoy.<sup>567</sup> Witnesses AKL testified that the Accused spoke for two to five minutes, while according to Witness AKK, he spoke for a short time. Witness AKR estimated that he spoke for ten minutes, and Witness AKO that the Accused spoke for up to thirty minutes.<sup>568</sup> Additionally, with regard to the number of attackers and victims, Witness AKK testified that there were very many soldiers, though fewer than a hundred at the initial attack. He estimated that the people seeking refuge were out-numbered three to one by the

<sup>560</sup> Witness AKO, T. 20 October 2005 p. 28.

<sup>561</sup> Witness AKO, T. 20 October 2005 pp. 48-49.

<sup>562</sup> Witness AKO, T. 20 October 2005 pp. 6-7, 46.

<sup>563</sup> Defence Closing Brief, paras. 256-272.

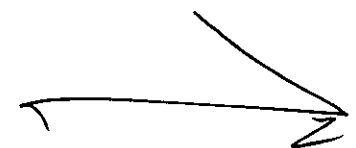
<sup>564</sup> Witness AKK testified that it was around 10.00 or 11.00 a.m. (T. 10 October 2005 p. 20; T. 11 October 2005 pp. 5-6); Witness AKL testified it was at around 10.00 a.m. (T. 15 February 2006 pp. 21, 23, 61-63); Witness AKR also testified that it was around 10.00 a.m. (T. 11 October 2005 pp. 71-72).

<sup>565</sup> Witness AKP, T. 1 February 2006 p. 45; Witness AKO, T. 20 October 2005 p. 46.

<sup>566</sup> Witness AKK, T. 10 October 2005 p. 59; Witness AKP, T. 1 February 2006 p. 44; Witness AKR, T. 11 October 2005 pp. 67-68; Witness AKL, T. 15 February 2006 p. 41.

<sup>567</sup> Witness AKO, T. 20 October 2005 p. 8; Witness AKP, T. 1 February 2006 p. 45; Witness AKK, T. 10 October 2005 p. 61; Witness AKL, T. 15 February 2006 p. 22.

<sup>568</sup> Witness AKL, T. 15 February 2006 p. 47; Witness AKK, T. 10 October 2005 p. 66; Witness AKR, T. 11 October 2005 p. 67; Witness AKO, T. 20 October 2005 p. 18.



assailants, and although not specifying the number of victims he stated that 1400 bodies were exhumed for proper burial in 1995.<sup>569</sup> Witness AKP testified that he could not tell how many attackers there were but estimated between 1000 to 2000 *Interahamwe* involved in the second attack, and between 1000 and 1400 people who died in the attacks.<sup>570</sup> Witness AKL did not indicate the number of attackers but estimated that between 800 and 1500 people died in the attack,<sup>571</sup> while Witness AKR stated that 1300 Tutsi died in the attacks, but in a previous statement had claimed that 3200 people had died.<sup>572</sup>

308. The Chamber, however, concludes that despite these discrepancies, the evidence, when considered as a whole, is consistent with regard to the salient details. Witnesses AKK, AKL, AKR, and AKO all testified that, after an initial attack on the Tutsi refugees did not succeed, a convoy of vehicles carrying reinforcements, which included Presidential Guards, soldiers, and *Interahamwe*, arrived during the morning of 8 April 1994. After the arrival of the convoy, the Accused, amongst other officials met with and spoke to the assailants. Immediately thereafter, the assailants attacked refugees on Kesho Hill.<sup>573</sup> The Prosecution evidence is also consistent on the Accused's departure from Kesho Hill after the attack had commenced.<sup>574</sup>

309. Additionally, the Chamber found that Witness AKK provided a consistent and detailed testimony of events that day with no significant inconsistencies or discrepancies. Although the Chamber notes Witness AKK's testimony that the number of attackers was possibly three times the number of Tutsi on the hill, the Chamber does not consider this adversely impacts on the credibility of his evidence. In this regard, the Chamber recalls Witness AKK estimated the number of attackers based on his belief that since 1400 people were killed, there must have been very many assailants. Additionally, the Chamber considers that in view of Witness AKK's concern for his safety, having been injured in the attack, his estimate on the number of assailants does not affect the reliability of his evidence in other respects.

310. Witness AKL's testimony was similarly detailed without significant discrepancies. However, the Chamber considers that in view of the impending attack and the refugees' fear for their security, as well as their position on a hill, the Chamber is not prepared to make a finding beyond reasonable doubt, without credible corroboration, that Witness AKL could have heard the Accused's exact words from his hiding place "between 40 and 50 metres" from the group of attackers. In this respect, the Chamber further recalls that Witness AKR, the only other witness to have testified

<sup>569</sup> Witness AKK, T. 10 October 2005 pp. 31, 61; T. 11 October 2005 pp. 4-5.

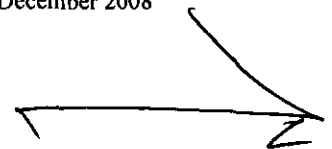
<sup>570</sup> Witness AKP, T. 1 February 2006 pp. 45-46; T. 6 February 2006 pp. 4, 6, 36; Exhibit D15, Protected Information of Witness AKP (under seal).

<sup>571</sup> Witness AKL, T. 15 February 2006 pp. 23-24.

<sup>572</sup> Witness AKR, T. 12 October 2005 pp. 7, 51.

<sup>573</sup> Witness AKK, T. 10 October 2005 pp. 20, 23-25 and T. 11 October 2005 p. 4-5; Witness AKL, T. 15 February 2006 pp. 23, 39-40; Witness AKR, T. 11 October 2005 pp. 62, 67-68; Witness AKO, T. 20 October 2005 pp. 6-8, 18, 54-55, 56-57.

<sup>574</sup> Witness AKK, T. 10 October 2005 p. 27; Witness AKL, T. 15 February 2006 p. 47; Witness AKR, T. 12 October 2005 p. 68; Witness AKO, T. 20 October 2005 p. 16.



on hearing the Accused, recalled different words being spoken.<sup>575</sup> Additionally, the Chamber does not consider Witness AKK's recollection of people informing him that the Accused had said to "start work", to be sufficient corroborative evidence as this testimony is uncorroborated hearsay. Similarly, without credible corroboration, the Chamber cannot infer the specific "directives", referred to in Witness AKL's testimony, the Accused gave. The Chamber, however, does accept Witness AKL's evidence to the extent that it corroborates the testimony of Witness AKK.

311. Further corroborative evidence on the Accused's presence, and his address to the assailants at Kesho Hill, is provided by Witness AKR. Although Witness AKR could not hear what the Accused said to the assailants, after the meeting, he did see the attackers clap, and a "military man" lead them in pursuit of the refugees. This account is consistent with the evidence of Witness AKL, that Major Ntabakuze led the assailants up the hill in pursuit of the Tutsi. It also corroborates the evidence of Witnesses AKK and AKL that the assailants clapped after the Accused spoke to them, and before they began the attack. Witness AKO similarly testified that, following the meeting with the Accused, the assailants clapped and shouted.<sup>576</sup>

312. However, in addition to the concerns regarding Witnesses AKO and AKR, due to their unconvincing explanation for failing to mention the Accused in their *Pro Justitia* statements, the Chamber also considers that Witness AKP's testimony should be treated with caution. Witness AKP is the sole witness who testified that the attack occurred in the afternoon, at 2.00 p.m. The Chamber is not convinced that from the opposite hill, he was able to hear the Accused tell the assailants, from a low hill "100 to 110 metres" away: "Now you have what's required and what you didn't have before, so I wish you will do good work."<sup>577</sup> Although Witness AKL also testified that he heard the Accused's words, neither he, nor any other witness, recalled these specific words spoken by the Accused in reference to being armed, or the Accused using a megaphone in speaking to the assailants.<sup>578</sup> The Chamber, therefore, has doubts in connection with this part of Witness AKP's testimony, which is uncorroborated by any other witness. However, the Chamber does not consider that the aforementioned discrepancies detract from Witness AKP's testimony on the Accused's arrival at Kesho Hill, and of the Accused's meeting with assailants before the attack. Indeed, this aspect of Witness AKP's testimony is corroborated by Witnesses AKK, AKL, AKR and AKO. Accordingly, the Chamber will accept this aspect of Witness AKP's testimony to the extent that it corroborates other credible evidence.

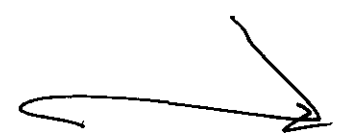
313. With regard to the testimonies of Prosecution Witnesses APJ and SGP, the Chamber notes that both testified that, from the Kabaya Trading Centre, they saw the Accused in a convoy of many vehicles two to three days after the death of President Habyarimana. According to both witnesses, the convoy was said to be transporting the

<sup>575</sup> Witness AKR, 6 February 2006 p. 3. He recalled: "Now you have what's required and what you didn't have before, so I wish you will do good work."

<sup>576</sup> Witness AKR, T. 11 October 2005 pp. 67-68; Witness AKK, T. 10 October 2005 pp. 23-24, 65-66; Witness AKL, T. 15 February 2006 p. 47.

<sup>577</sup> Witness AKP, T. 6 February 2006 p. 3.

<sup>578</sup> Witness AKP, T. 6 February 2006 p. 37.



body of the deceased President.<sup>579</sup> However, their evidence only goes so far as to support the assertion that the Accused was in the region of Kesho Hill two to three days after 6 April 1994, the date of the President's death.

314. Witness ATM's testimony that, in mid-April 1994, from a distance of three kilometres, he watched an attack which extended across Gaseke and Kajagi hills in the Kesho Hill area, is uncorroborated by other evidence presented at trial. It therefore does not assist the Chamber in relation to the Kesho Hill allegations. In any event, the Chamber does not find Witness ATM to be a reliable witness, and the Chamber will proceed to address credibility issues with regard to his evidence when considering the massacre at Rurunga Hill.<sup>580</sup>

315. With respect to Bagaragaza's testimony, the Chamber recalls its concerns regarding his credibility.<sup>581</sup>

316. Accordingly, with regard to the Prosecution Witnesses who witnessed events at Kesho Hill, the Chamber accepts the evidence of Witness AKK. It further accepts the testimony of Witness AKL, but does not accept his recollection of the words spoken by the Accused without credible corroboration. With regard to Witnesses AKP, AKR and AKO, in view of concerns regarding their testimonies, the Chamber accepts their evidence only to the extent that it is corroborated by Witnesses AKK and AKL.

317. The Chamber further accepts the evidence of Witness AKK, corroborated by Witness AKR, that the victims from Kesho Hill that day included Tutsi named Kagoza, Rwego, Mugorewera, Gatemeru, Karinda and Ndekezi.<sup>582</sup> Despite the lack of corroboration, the Chamber also considers the testimony of Witness AKK to be reliable regarding the death of Simparinka.<sup>583</sup> Further, the Chamber finds that the uncorroborated testimony of Witness AKR is insufficient to prove, beyond reasonable doubt, the deaths of Nyiarabarutwa and Setako.<sup>584</sup> Finally, the Chamber finds that no evidence was led regarding the deaths of Kamuzinzi or Mukamunana.

318. In light of these findings, the Chamber will next turn to consider the Defence evidence.

319. With regard to Defence Witness RDP109, the Chamber has misgivings regarding his testimony. The Chamber notes that Witness RDP109 was convicted by a Rwandan Court for the murder of two girls during the genocide.<sup>585</sup> Furthermore, the Chamber has concerns regarding inconsistencies in his testimony as to whether he was, or was not, armed with a nail-studded club.<sup>586</sup> In view of his acknowledgment that he

<sup>579</sup> Witness APJ, T. 5 October p. 65-66; Witness SGP, T. 18 October 2005 pp. 40-41.

<sup>580</sup> See *infra*, paras. 337-343.

<sup>581</sup> See *supra*, paras. 137-140.

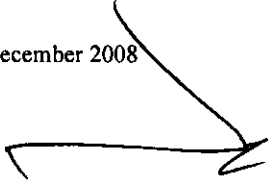
<sup>582</sup> Witness AKK, T. 10 October 2005 p. 28; Witness AKR, T. 11 October 2005 pp. 59-60 (closed session) and T. 12 October 2005 p. 11.

<sup>583</sup> Witness AKK, T. 10 October 2005 p. 28.

<sup>584</sup> Witness AKR, T. 12 October 2005 p. 11.

<sup>585</sup> Witness RDP109, T. 26 March 2007 p. 70.

<sup>586</sup> Witness RDP109, T. 26 March 2007 pp. 24, 68-71. Witness RD109 acknowledged carrying a nail-studded club in both attacks on the hill. However, despite this acknowledgment and a number of references to the weapon, Witness RDP109 then denied that the club had nails and then denied saying that he had carried a nail-studded club. Witness RDP109 also made no reference, in his confession to



would have received a greater sentence had he been found to have killed anyone on Kesho Hill, the Chamber finds his testimony that he did not use a nail-studded club to commit violent acts, and his later contradictory evidence that he did not carry such a club, to be self-serving and unconvincing.<sup>587</sup> Additionally, the Chamber notes Witness RDP109's failure to mention Bagaragaza in his confession letter to Rwandan authorities on 30 October 2005, notwithstanding his testimony that Bagaragaza told them to "exterminate the people on Kesho."<sup>588</sup>

320. Therefore, in light of his criminal history and contradictory testimony, the Chamber does not find Witness RDP109 to be a credible witness.

321. Further, the Chamber finds the testimony of Witness RDP46 unconvincing. Witness RDP46 was, at the time of his testimony, detained in Rwanda, serving a sentence of 25 years imprisonment for killing a person during the genocide. The Chamber further notes that in 1996, Witness RDP46 confessed to having committed crimes at Kesho, Muramba and at roadblocks and was sentenced to 12 years imprisonment. He was released by Presidential Decree in 2003.<sup>589</sup> In light of his confessed participation in the Kesho Hill attacks as a member of the *Interahamwe*, the Chamber is not convinced by Witness RDP46's self-serving testimony that he only watched the killings from the rooftop of his vehicle. Accordingly, the Chamber does not find Witness RDP46 to be a credible witness.

322. With regard to Witnesses César Busoro and Witness BNZ120, both provided hearsay evidence that the Accused was neither at Kesho Hill, nor in the vicinity, on 8 April 1994. The Chamber considers that their information, concerning what transpired at Kesho Hill, is of little probative value, as their testimonies are based principally on their assertion that they did not hear about the Accused's involvement in the massacre.

323. The Defence also relies on the testimonies of nine alibi witnesses to assert that the Accused could not have been at Kesho Hill on the morning of 8 April 1994, because he was in Kanombe. However, the Chamber notes that the evidence of these witnesses is inconclusive as to the Accused's presence in Kanombe for the entire day on 8 April 1994. Witnesses Agnès Kampundu and Jeanne Marie Habyarimana testified that they saw the Accused on the morning of 8 April 1994 at Kanombe, but Agnès Kampundu acknowledged that she did not "remember well", and Jeanne Marie Habyarimana testified that she spent most of the time in the sitting room, or attending to her children. Further, neither witness detailed specific times that they saw the Accused on 8 April 1994.<sup>590</sup> Similarly, aside from testifying that the Accused was in

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Rwandan authorities on 30 October 2005, to the nail-studded club. The initial confession was dated 24 March 2005 and the confession letter of 30 October 2005 was supplementary information provided by Witness RDP109. See Witness RDP109, T. 26 March 2007 pp. 69, 70.

<sup>587</sup> Witness RDP109, T. 26 March 2007 p. 70.

<sup>588</sup> Witness RDP109, T. 26 March 2007 pp. 22, 40-41, 67-69.

<sup>589</sup> Witness RDP46, T. 27 March 2007 pp. 61-62, 66 (closed session); T. 28 March 2007 pp. 11-19.

<sup>590</sup> Agnès Kampundu testified that the Accused stayed the night on 7 April 1994, and that her "family" were also there on the 8<sup>th</sup>. She testified that the Accused tried to leave and go across Kigali on either the 8<sup>th</sup> or the 9<sup>th</sup> but had to return because they were shot at. (T. 5 March 2007 pp. 56, 59); Jeanne Marie Habyarimana testified that the Accused spent the night in Kanombe on the 7<sup>th</sup> and was also there the

Kanombe on 8 April 1994, the testimonies of Marie Chantel Kamushiga, Bernadette Niyonizeye and Aimé Marie Ntuye were not detailed on specific times they saw the Accused, or regarding his activities.<sup>591</sup> Indeed, the Chamber notes that Ntuye did not mention the Accused's presence in Kanombe on 8 April 1994 until a leading question from Defence counsel.<sup>592</sup>

324. Bararengana testified that he arrived in Kanombe at around 3.00 p.m. or 3.30 p.m. and spoke to the Accused at around 3.30 p.m. or 4.00 p.m.<sup>593</sup> His testimony does not contradict the Prosecution evidence that the Accused was at Kesho Hill on the morning of 8 April 1994.

325. With respect to Jean Luc Habyarimana, the Chamber recalls his acknowledgment that he was not "a hundred per cent sure" that the Accused was present in Kanombe throughout the day of 8 April 1994.<sup>594</sup> Although he testified that he saw the Accused with Bararengana "in the middle of the day, lets say, at around 1.00 p.m.", this contradicts the evidence of Bararengana who testified that he arrived at around 3.00 p.m. or 3.30 p.m. The Chamber therefore considers that this testimony, along with his evidence that he saw the Accused in the evening, does not provide the Accused with an alibi for the morning of 8 April 1994.

326. Furthermore, the Chamber does not find Gloria Mukampunga's testimony to be reliable. The Chamber recalls that Gloria was just 12 years old at the time, and that her testimony was vague regarding the times she saw the Accused at Kanombe.<sup>595</sup> In addition, the Chamber notes that she had initially recalled only two occasions when she saw the Accused in Kanombe, namely, on the morning of 7 April 1994, and in the afternoon of 9 April 1994.<sup>596</sup> However, later in her testimony, she stated that she recalled seeing the Accused in the morning of 8 April 1994, and also around lunchtime. She recalled greeting the Accused when he was with her uncle, Bararengana, shortly after his (Bararengana's) arrival.<sup>597</sup> The Chamber additionally notes that the Witness' will-say statements stated that she could not recall the exact times she saw the Accused at Kanombe,<sup>598</sup> and that she recalled seeing him on 7 and 9 April 1994, but made no mention of the 8<sup>th</sup>.<sup>599</sup> Therefore, in view of Gloria

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next morning, and in the evening. They were inside the house but she testified that she spent most of the time in the sitting room, or attending to her children. (T. 27 February 2007 pp.5, 7, 25).

<sup>591</sup> Marie Chantel Kamushiga testified that the Accused came to Kanombe on 7 April 1994 but could not say when, and could "see a picture of him the next day" but did not know when she saw him on the 8<sup>th</sup> (T. 7 March 2007 p. 70 and T. 8 March 2007 p. 4); Bernadette Niyonizeye testified that the Accused spent the night in Kanombe on the 7<sup>th</sup>, and was there until the next morning. She recalled he did leave the house on the 8<sup>th</sup> (T. 5 March 2007 pp. 11, 30-31); Aimé Marie Ntuye testified that the Accused stayed the night in Kanombe on the 7<sup>th</sup> (T. 28 February 2007 pp. 71-73).

<sup>592</sup> Aimé Marie Ntuye was asked by Defence counsel, "And on the 8<sup>th</sup> of April, was Protais Zigiranyirazo in that house in Kanombe?" and he replied, "Yes he was present" (T. 28 February 2007 p. 72).

<sup>593</sup> Seraphin Bararengana, T. 6 March 2007 pp. 30-31.

<sup>594</sup> Jeanne Marie Habyarimana, T. 26 February 2007 p. 30.

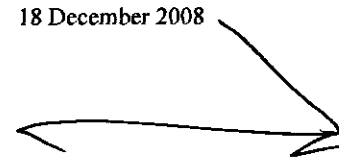
<sup>595</sup> Gloria Mukampunga, T. 11 April 2007 pp. 81-82.

<sup>596</sup> Gloria Mukampunga, T. 11 April 2007 p. 79.

<sup>597</sup> Gloria Mukampunga, T. 11 April 2007 p. 85-87.

<sup>598</sup> Gloria Mukampunga, T. 11 April 2007 p. 88. The first will-say statement was filed, in French, on 7 April 2007.

<sup>599</sup> Gloria Mukampunga, T. 11 April 2007 p. 88. Additional will-say filed on 10 April 2007.



Mukampunga's age at the time, her vague testimony, and her failure to mention seeing the Accused on 8 April 1994, until late in her testimony, the Chamber is not convinced that she saw the Accused at Kanombe on 8 April 1994.

327. With regard to Marguérite Mukobwajana, the Chamber notes her testimony that she saw the Accused at around 8.00 a.m. and then in the afternoon, at around 3.00 p.m. or 4.00 p.m. when Bararengana arrived, after which they both went to Kanombe Military Camp where the President's body lay.<sup>600</sup> Mukobwajana's testimony was not detailed and she was the only witness to testify that she saw the Accused at a specific time in the morning. Further, her evidence does not provide the Accused with an alibi between approximately 8.00 a.m. and 4.00 p.m. The Chamber therefore does not consider her evidence sufficient to refute the detailed, credible and corroborated evidence of Prosecution Witnesses AKK and AKL.

328. Therefore, although the Chamber does not discount the evidence of these Defence Witnesses, other than Gloria Mukampunga, for reasons explained above, the Chamber finds that their evidence is too vague and does not place the Accused at Kanombe at the specific times he was seen at Kesho Hill.

329. Accordingly, the Chamber makes the following findings on the basis of the testimonies of Prosecution Witnesses AKK, AKL, and also of Witnesses AKP, AKR and AKO to the extent that the testimony of the latter three is corroborated by credible evidence. The Chamber finds beyond reasonable doubt that, following an unsuccessful attack on Tutsi on Kesho Hill, the Accused arrived at hill, on the morning of 8 April 1994, as part of a convoy of Presidential Guard soldiers, *gendarmes* and *Interahamwe* militia. Hundreds, and possibly one to two thousand Tutsi had sought refuge on the hill.<sup>601</sup> The Chamber however finds that the Prosecution evidence does not support a finding that the Accused led the convoy.

330. The Chamber finds on the basis of consistent evidence that upon arrival at the site, the Accused and other officials including Jaribu, Director of the Tea Factor, and Bazabuhande, the *bourgmestre* of Gasike *commune*, from a position close to the road at the base of the hill, addressed a group of assailants. However, the Chamber does not consider Witness AKL's testimony alone, without credible corroboration, is sufficient to make a finding beyond reasonable doubt on the words spoken by the Accused during his speech to assailants. Further, the Chamber does not find sufficient credible evidence to show beyond reasonable doubt that the Accused gave specific orders to the assailants. After the speeches, the assailants applauded and immediately attacked the Tutsi refugees on the hill with guns, grenades, and traditional weapons. The Accused left the site after the killings had commenced. The attack on Kesho Hill that day lasted a few hours, and killed between 800 and 1,500 Tutsi,<sup>602</sup> including named victims, Kagoza, Rwego, Mugorewera, Gatemeru, Karinda and Ndekezi.

<sup>600</sup> Marguérite Mukobwajana, T. 20 November 2007 pp. 11-14.

<sup>601</sup> Indictment, paras. 12, 29.

<sup>602</sup> Witness AKK testified that 1400 bodies were exhumed and Witness AKL testified that between 800 and 1500 Tutsi were killed. See Witness AKK, T. 10 October 2005 p. 31; Witness AKL, T. 15 February 2006 pp. 23-24.



## 7. Massacre at Rurunga Hill

### 7.1. Indictment

331. The statements of facts in the Indictment in relation to the massacre at Rurunga Hill are identical for Counts 2 and 3, Genocide and Complicity in Genocide, articulated in paragraphs 14 and 15, and for Count 4, Extermination as a Crime Against Humanity, in paragraphs 31 and 32. The alleged facts are that:

14 and 31. About the week of 14 to 20 April 1994, at a date uncertain, many of the remaining local Tutsi population were in refuge at Rurunga Hill in Rwili secteur, Gaseke commune, in Gisenyi préfecture, within the vicinity of the Rubaya Tea Factory. On or about the said date, **Protais ZIGIRANYIRAZO**, with intent that the Tutsi who sought refuge at Rurunga Hill be killed, led a convoy of armed Presidential Guard soldiers, gendarmes, and *Interahamwe* militia as part of the attack on Tutsi seeking refuge on the hill.

15 and 32. **Protais ZIGIRANYIRAZO** ordered and instigated armed Presidential Guard soldiers, gendarmes and *Interahamwe* to attack and kill the said refugees, who did so, killing all of the Tutsi that sought refuge at the said hill.

### 7.2. Evidence

#### *Prosecution Witness ATM*<sup>603</sup>

332. Witness ATM testified that, in mid-April 1994, he observed an attack in the area of Kajagi Hill. Approximately three days after this attack, he visited the Rubaya Tea Factory "between 7.00 and 8.00 in the morning," in search of a vehicle to transport his potato crop.<sup>604</sup> He recalled that the Accused arrived shortly afterwards and that he heard him complain to Jaribu, the Director of the Tea Factory, that "the Tutsis are gallivanting around." After meeting with Jaribu, the Accused drove away in his vehicle. Approximately an hour later, he returned with about 120 to 130 men armed with rifles and clubs, in three Daihatsu vehicles, "like pick-ups." Some of these men wore military uniforms, some civilian clothes and some were *Interahamwe*, dressed in banana leaves or with grass stuck on their heads. Witness ATM recalled that the Accused asked Jaribu whether there were any weapons at the factory, to which he replied that there were "some machetes."<sup>605</sup>

333. The Accused then told Witness ATM and others at the Tea Factory to board the factory's vehicle.<sup>606</sup> Witness ATM and the others, including *Interahamwe*, Tea Factory workers, and two policemen, were armed with grass thrashers. They travelled in six vehicles to Rurunga Hill, two of which were saloon cars belonging to the Accused and Jaribu.<sup>607</sup>

334. According to Witness ATM, upon arrival at the hill, the "honourable *préfet*" and Jaribu had "a chat aside." When they rejoined the assailants, the Accused told

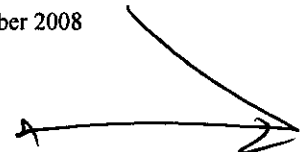
<sup>603</sup> For background information on Witness ATM, see *supra*, para. 280.

<sup>604</sup> Witness ATM, T. 16 February 2006 pp. 5, 30.

<sup>605</sup> Witness ATM, T. 16 February 2006 pp. 5-7.

<sup>606</sup> Witness ATM, T. 16 February 2006 p. 6.

<sup>607</sup> Witness ATM, T. 16 February 2006 pp. 6-8.



policeman Barihenda that he “did not want a single Tutsi to survive.”<sup>608</sup> Then the assailants removed their guns and grass thrashers from the vehicles and commenced the attack on the refugees. Witness ATM estimated that they killed 10 to 15 Tutsi.<sup>609</sup> The killing “did not last a long time,” from around 10.00 to 11.00 a.m.<sup>610</sup>

335. Witness ATM stated that if he had not joined the assailants, the *Interahamwe* would have killed him. He explained, “It was necessary to kill the Tutsis. And every Rwandan always came to take part in such attacks.” He specifically identified certain authorities who participated in the attack, including the Accused, Jaribu, an agricultural officer named Théophile, and the two policemen called Michel and Barihenda.<sup>611</sup>

336. Witness ATM testified that, following the attack, the assailants drove to Butimba in their vehicles, followed by the Accused and Jaribu in another vehicle. There, the Accused identified himself, telling the assailants, “I am *préfet* Zigiranyirazo, the brother-in-law of President Habyarimana. Thank you my boys, you have avenged the president who has been killed by Tutsis. Come and I’ll give you a reward.”<sup>612</sup> Then the Accused gave the attackers twelve cows from the ranch of Séraphin Rwabukumba.<sup>613</sup>

### 7.3. Deliberations

337. The Chamber notes that Witness ATM is the sole Prosecution witness to testify regarding the Rurunga Hill attack. The Chamber has considered the evidence of Witness ATM, an alleged accomplice of the Accused with regard to this attack, with caution for the following reasons.

338. First, the Chamber is not convinced that Witness ATM was entirely forthcoming about his own involvement in this attack. While he acknowledged carrying a grass thrasher, he maintained that he did “not touch any Tutsis” at Rurunga Hill and the “killings were done by shooting”.<sup>614</sup> Finally, on cross-examination, he admitted playing “a part” in the Rurunga Hill attack and that he was currently awaiting trial before a Gacaca court on charges related to the attack.<sup>615</sup>

339. Second, Witness ATM also acknowledged having given false information in *Pro Justitia* statements to Rwandan authorities in 1996 and 2000, about his whereabouts between 6 April and July 1994. His explanation was simply that he had lied, as had most Rwandans charged with crimes during the relevant events.<sup>616</sup>

340. Third, the Chamber notes that Witness ATM was charged and detained for nearly ten years for the alleged killing of a woman and her eight children during the

<sup>608</sup> Witness ATM, T. 16 February 2006 p. 8.

<sup>609</sup> Witness ATM, T. 16 February 2006 pp. 8-10.

<sup>610</sup> Witness ATM, T. 16 February 2006 p. 13.

<sup>611</sup> Witness ATM, T. 16 February 2006 pp. 7-8.

<sup>612</sup> Witness ATM, T. 16 February 2006 p. 13.

<sup>613</sup> Witness ATM, T. 16 February 2006 pp. 10, 13-14.

<sup>614</sup> Witness ATM, T. 16 February 2006 pp. 9, 46.

<sup>615</sup> Witness ATM, T. 16 February 2006 p. 47.

<sup>616</sup> Witness ATM, T. 16 February 2006 pp. 22-23.

relevant events.<sup>617</sup> His release in May 2004 was based not on an acquittal of the charges but on the failure of the accusers to testify before the Gacaca court. In this regard, the Defence challenged the veracity of Witness ATM's testimony, pointing out that he had never mentioned the Accused in relation to the Rurunga Hill attack before 2004, after almost ten years in custody.<sup>618</sup> However, after providing evidence of the Accused's involvement in this attack, in March 2004 to Rwandan authorities, he was released from prison shortly afterwards.<sup>619</sup>

341. Fourth, the Chamber notes inconsistencies in Witness ATM's evidence regarding this event. In his prior statement, dated 25 March 2004, Witness ATM stated that 2000 people were killed at Rurunga Hill,<sup>620</sup> yet testified that there were only ten to fifteen victims.<sup>621</sup> The Chamber is not satisfied with his explanation that the statement was mistranslated,<sup>622</sup> as he did not complain at the time, and signed the statement as truth.

342. Fifth, the Chamber notes that Prosecution Witness AKL testified that he had personally seen Witness ATM murder Nyiraramraba and her eight children.<sup>623</sup> The Chamber further notes that Witness ATM testified that he denied these allegations before a Gacaca court.<sup>624</sup> Considering the Chamber has already found Witness AKL to be generally reliable,<sup>625</sup> his testimony raises the spectre that Witness ATM has knowingly provided information to the Chamber he knows to be false.

343. In light of the above, the Chamber has serious concerns regarding Witness ATM's credibility, and the Chamber therefore declines to accept his uncorroborated testimony.

344. Accordingly, the Chamber finds that the Prosecution has not proven beyond reasonable doubt that, around the week of 14 to 20 April 1994, the Accused led a convoy of armed Presidential Guards, *gendarmes* and *Interahamwe* to Rurunga Hill, or that he gave orders to attack and kill the refugees gathered there. Indeed, the Chamber makes no findings on the Accused's involvement in that attack. In light of these findings, the Chamber does not consider it necessary to consider the Defence evidence.<sup>626</sup>

<sup>617</sup> Witness ATM, T. 16 February 2006 pp. 16, 34.

<sup>618</sup> Defence Closing Brief, paras. 440, 442. The Chamber notes that paragraph 442 of the Defence Closing Brief reference to Witness ATO is instead of Witness ATM. Considering the mention of the witness as "the only witness to these events," and their prior and subsequent references to Witness ATM on the issue of Rurunga Hill, the Chamber finds this to be a typographical error.

<sup>619</sup> Defence Closing Brief, para. 457.

<sup>620</sup> Exhibit D24, Witness ATM's written statement of 25 March 2004.

<sup>621</sup> Witness ATM, T. 16 February 2006 p. 10.

<sup>622</sup> Witness ATM, T. 16 February 2006 pp. 41-45.

<sup>623</sup> Witness AKL, T. 15 February 2006 pp. 34-36.

<sup>624</sup> Witness ATM, T. 16 February 2006 pp. 16-17, 23.

<sup>625</sup> See *supra*, paras. 310, 311, 316.

<sup>626</sup> Witness BNZ120, T. 3 December 2007 pp. 12, 14, 16-17, 19-24; T. 4 December 2007 pp. 2-7.

## 8. Murder of Three Gendarmes

### 8.1. Indictment

345. Paragraphs 42, 43, 44, and 45 of the Indictment read:

42. During the events referred to in this indictment, particularly from 6 April 1994 through 17 July 1994, there were throughout Rwanda widespread and/or systematic attacks directed against a civilian population on political, ethnic or racial grounds. Notably *Interahamwe* militias engaged in a campaign of violence against Rwanda's civilian Tutsi population and against Hutu perceived to be politically opposed to the MRND. Hundreds of thousands of civilian Tutsi men, women and children and "moderate Hutu" were killed. The acts described in paragraphs 43 through 50 were part of these attacks.

43. Between 1 and 31 May 1994, Protais ZIGIRANYIRAZO ordered his son, Jean-Marie Vianney MAKIZA to kill three gendarmes that were detained by the *Interahamwe* at the Giciye roadblock. Following orders from his father, Jean-Marie Vianney MAKIZA, armed with a Kalashnikov gun, used the weapon to shoot and kill the gendarmes at the roadblock in front of the Zigiranyirazo Giciye residence. The gendarmes were traveling toward Gisenyi and were identified as Tutsi or characterized as RPF accomplices or infiltrators.

44. Protais ZIGIRANYIRAZO further ordered and instigated several local residents to make false official reports of the killing about the killing (sic) of the three gendarmes. The false reports indicated that the gendarmes had been killed as defensive acts at the roadblock: in order to prevent an assault by one of them or thwart their escape. The reports also characterized the gendarmes as brigands, impostors or deserters from the battlefield. In ordering and instigating local residents to make the false reports, Protais ZIGIRANYIRAZO was aiding and abetting the killing of the gendarmes.

45. Protais ZIGIRANYIRAZO, as head of his family, had *de facto* control over his son, whom he ordered to commit the killings described in paragraph 43. He ordered those local residents over whom he had *de facto* control for the reasons set forth in paragraph 3, and instigated those over whom he did not have *de facto* control, to make the false reports. All his actions were committed in concert with his son for the common purpose of killing Tutsis because they were Tutsis or persons who were not willing to kill Tutsis, for the period of a criminal enterprise that extended at least from the time the order was given for the killing, and up to the time of the making of a false report regarding their killing.

### 8.2. Evidence

*Prosecution Witness SGI*<sup>627</sup>

346. The Chamber recalls Witness SGI's testimony regarding the establishment of the Maliba roadblock, which the Witness, and others, manned in April 1994.<sup>628</sup>

347. Approximately a week after erecting the roadblock, at around 9.00 p.m., Witness SGI found three men, claiming to be *gendarmes*, in a house located at the roadblock. The *gendarmes* had one rifle and had arrived at the roadblock at 3.00 p.m. They said they were not deserters but on their way home. According to Witness SGI, at 9.00 p.m., the Accused's son, Jean-Marie Vianney Makiza ("Jean-Marie"), arrived with "Ananiya" and shot the *gendarmes* dead. Witness SGI did not ask Jean-Marie why he had shot the *gendarmes*. Witness SGI was so afraid that he and the other men manning the roadblock ran away.<sup>629</sup> Witness SGI testified that he saw Jean-Marie and

<sup>627</sup> See *supra*, paras. 183.

<sup>628</sup> See *supra*, paras. 184-186.

<sup>629</sup> Witness SGI, T. 13 October 2005 pp. 30-33; 18 October 2005 p. 4. The Witness did not explain how he knew that the gendarmes arrived at the roadblock at 3.00 p.m., as his shift only started at 5:30 p.m.

Mukiza, a relative of Jean-Marie, take the *gendarmes*' bodies away in a vehicle on the same night.<sup>630</sup>

348. At around 9.00 a.m. the following morning, Witness SGI arrived at the roadblock with *responsable* Bisizehanze, deputy *responsable* Bihigintare, and *conseiller* Sebatware. The Gisenyi *préfet*, Zilimwabagabo, and the *gendarmerie* head, were also present at the scene. *Préfet* Zilimwabagabo told Witness SGI, and the others, to remove the roadblock, which they did, then went home.<sup>631</sup>

349. Approximately two hours later, the Accused invited Witness SGI to his house, along with *responsable* Bisizehanze, deputy *responsable* Bihigintare, and *conseiller* Sebatware. The Accused told them that Jean-Marie had shot "some soldiers." Witness SGI, and the others, said they knew, and that Jean-Marie had made a "mistake." The Accused then told them to sign a piece of paper which stated that Witness SGI, and the others, had killed *Inkontanyi*. The Accused told them "there would be no problem."<sup>632</sup> Witness SGI also testified that he signed a security report for Maliba *cellule* compiled on 4 May 1994.<sup>633</sup> Witness SGI said the Accused wanted "to make us guilty of a crime that had been committed by him and his son." It was *responsable* Bisizehanze and the Accused who had written the report and the Accused had the "influence and strength" to make Witness SGI sign it.<sup>634</sup> However, according to Witness SGI, the whole document, claiming that the men killed were *Inkotanyi*, was a fabrication.<sup>635</sup>

<sup>630</sup> Witness SGI, T. 17 October 2005 pp. 2-3; 18 October 2005 p. 5. The Witness at first stated that nothing happened to the bodies that night but then testified that the bodies were taken away the same night. He also stated that he was not very close to the bodies as he had run off when they were shot, but he could see the bodies being loaded into the vehicle as he was 100 metres away and could see the bodies in the lights.

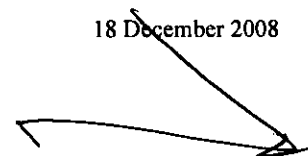
<sup>631</sup> Witness SGI, T. 17 October 2005 pp. 2-4. According to Witness SGI, *préfet* Zilimwabagabo said: "the roadblock was serving the purpose of killing people and it was, therefore, pointless to have it there." Witness SGI removed the roadblock.

<sup>632</sup> Witness SGI, T. 17 October 2005 p. 5.

<sup>633</sup> The report, entitled "Security Report for Maliba *Cellule* - 4 May 1994" (Exhibit No. P2A pp. K0204206-K204208), was submitted by the *responsable* of Maliba *cellule*, Bisize, and signed by him and deputy *responsable*, Bihigintare. It states that the population was striving to maintain security but some *Inkontanyi* had been arrested. Radio RLTM had broadcast an alert to look out for a certain vehicle. At the Maliba roadblock, a vehicle was checked in which three young men were passing for *gendarmes*. They were asked for their identity papers but had none. Neither could they produce particulars for their car, nor for their gun. Their gun was seized and the *responsable* told them they would be taken to the *communa* authorities but the three men rejected the idea. One of them threw a grenade which failed to explode and tried to escape but was shot down immediately. The others started arguing and were shot down too as it was thought they may also attack. The Report was read into the Transcript, 17 October 2005 pp. 12-13.

<sup>634</sup> Witness SGI, T. 17 October pp. 15, 23.

<sup>635</sup> Witness SGI, T. 17 October 2005 p. 19.



*Prosecution Witness SGA*<sup>636</sup>

350. The Chamber recalls Witness SGA's testimony regarding the establishment of the Maliba roadblock around the end of April 1994, which he manned with others.<sup>637</sup>

351. Witness SGA testified that Radio RTLM announced that three *gendarmes* had stolen a vehicle and were deserters. He recalled that it was between 7.00 and 8.00 p.m. on 3 May 1994 that the *gendarmes* arrived in a Peugeot vehicle. They were travelling from Kigali, towards Gitarama, to get to Gisenyi, and were arrested at the roadblock. Although they showed their identify papers, *responsable* Bisizehanze refused to release them until the Accused was informed, but the Accused was not at his residence. Subsequently, Jean-Marie arrived with two firearms, accompanied by soldiers serving as bodyguards. The soldiers asked the *gendarmes* to produce their identity papers. Jean-Marie then opened fire on the *gendarmes*. There was an exchange of gunfire and Mahindukira Azarias, a man sent by the Accused to man the roadblock, wanted to open fire on Jean-Marie but did not do so. Everybody dispersed following the killings.<sup>638</sup>

352. Witness SGA testified that on the evening of 3 May 1994, Jean-Marie, along with others, loaded the *gendarmes*' bodies into a vehicle. Witness SGA stated that he learned that the bodies were hidden under Kamiranzovu Bridge, spanning Giciye River, which is located between 8 to 10 kilometres from the roadblock. The bodies were discovered the following day by people going to the market.<sup>639</sup>

353. On 4 May 1994, Witness SGA saw the Accused accompanied by the *préfet* of Gisenyi, Ziliwabagabo, and the Gisenyi *gendarmerie* Commander. They dismantled the roadblock. Investigations were carried out in Giciye district. Witness SGA was investigated, and Jean-Marie, escorted by bodyguards, was interviewed at Giciye. Witness SGA was released after being severely beaten.<sup>640</sup>

354. On the same day, Witness SGA was called to the Accused's residence by *responsable* Bisizehanze, and *conseiller* Sebatware. He was given a report, written by Twagirumukiza, to sign.<sup>641</sup> He first refused to sign it but the Accused was "influential" and threatened him. Witness SGA attested that Jean-Marie was not present.<sup>642</sup> On cross-examination, he confirmed that following the killings, people were angry, and Jean-Marie had to "disappear." According to Witness SGA, the Accused used the

<sup>636</sup> For background information on Witness SGA, *see supra*, paras. 187.

<sup>637</sup> *See supra*, paras. 188-189.

<sup>638</sup> Witness SGA, T. 7 February 2006 pp. 21-23. In cross-examination the witness said there was no exchange of gunfire, just Jean-Marie shooting the *gendarmes*, T. 7 February 2006 p. 44.

<sup>639</sup> Witness SGA, T. 7 February 2006 pp. 24, 26, 45-47. Witness SGA testified that Jean-Marie was with the Accused's cousin, known as Twagirumukiza. On cross-examination, he confirmed that Habarugira and Théoneste, known as "Mitira", were also with Jean-Marie, and that Bisizehanze and Azarias also helped remove the bodies.

<sup>640</sup> Witness SGA, T. 7 February 2006 pp. 22, 25, 26.

<sup>641</sup> Witness SGA, T. 7 February 2006 p. 27; Exhibit P2A, Security Report of Maliba *cellule* dated 4 May 1994; *see supra* fn. 632.

<sup>642</sup> Witness SGA, T. 7 February 2006 pp. 27, 28, 34. The Accused and Sebatware "threatened" Witness SGA and told him that he was "a follower of their enemy." By that, they meant he was an "accomplice of the *Inkotanyi*."

report to conceal the ethnicity of the *gendarmes* in order to protect his son, and had tried to restrain people after the incident.<sup>643</sup>

*Prosecution Witness Zuhdi Janbeck*

355. Prosecution investigator, Zuhdi Janbeck, placed the Maliba roadblock, in Giciye *commune*, Gisenyi *prefecture*, at 500 metres from the Accused's residence near the road leading from Giciye to Gitarama.<sup>644</sup>

**8.3. Deliberations**

356. The Indictment refers to the Giciye roadblock.<sup>645</sup> However, the Chamber recalls its finding that this title refers to the Maliba roadblock in Giciye *commune*,<sup>646</sup> hereafter referred to as the Maliba roadblock.

357. The Chamber finds, on the basis of both Prosecution and Defence evidence, that three *gendarmes*, who may have been deserters, were killed at the Maliba roadblock by the Accused's son, Jean-Marie, some time in early May 1994.<sup>647</sup>

358. However, regarding the allegation that the Accused ordered his son to kill the *gendarmes*, the Chamber notes that there was no evidence adduced of such an order. Rather, if any inference can be drawn from the Prosecution evidence, it is that those around Jean-Marie disapproved of the killings and their reaction to the incident would suggest that he was not acting pursuant to his father's orders. Witness SGI testified that the head of the *gendarmerie* was very angry that the *gendarmes* had been shot,<sup>648</sup> and Witness SGA attested that one of the men sent by the Accused to man the roadblock wanted to "open fire" on Jean-Marie but did not.<sup>649</sup> The Chamber further notes that Witness SGI testified that Jean-Marie did not listen to his parents and was "undisciplined" and "irresponsible."<sup>650</sup>

359. In addition, the Prosecution adduced no evidence that the Accused was present at the Maliba roadblock, or at his nearby residence, the day that the three *gendarmes* were killed. Witness SGI did not mention the Accused's presence that day, and Witness SGA's testimony was that the Accused was not at his residence.<sup>651</sup>

360. Furthermore, the Chamber considers there is insufficient evidence to make a finding on why Jean-Marie killed the three *gendarmes*. According to Witness SGI's

<sup>643</sup> Witness SGA, T. 7 February 2006 pp. 27, 48, 50; T. 8 February 2006 p. 21.

<sup>644</sup> Zuhdi Janbeck, T. 4 October 2005 pp. 38, 39, 41; Exhibit P2, Maps, Sketches, Photographs and Documents.

<sup>645</sup> Indictment, para. 43.

<sup>646</sup> See *supra*, para. 196.

<sup>647</sup> Witness SGI, T. 17 October 2005 pp. 30-33; Witness SGA, T. 7 February 2006 pp. 21-23; Witness RDP109, T. 26 March 2007 pp. 45-48; Witness RDP2, T. 30 October 2006, pp. 42, 83-84; Witness RDP5, T. 31 October 2006 pp. 16, 20, 40; Witness César Busoro, T. 19 March 2007 pp. 36-38, 58; Witness François Lucien Hitimana, T. 20 March 2007 pp. 77, 84, and T. 21 March 2007 pp. 4, 10; Witness RDP6, T. 28 March 2007 pp. 53, 54; and Witness Charles Zilimwabagabo, T. 12 April 2007 pp. 21-23, 28, 29, 31.

<sup>648</sup> Witness SGI, T. 18 October 2005 p. 6.

<sup>649</sup> Witness SGA, T. 7 February 2006 pp. 21-23. Witness SGA named the man sent by the Accused to man the roadblock as "Mahindukira Azarias."

<sup>650</sup> Witness SGI, T. 17 October 2005 pp. 33, 85.

<sup>651</sup> Witness SGA, T. 7 February 2006 p. 22.

testimony, Jean-Marie arrived with a man named "Ananiya" and shot the *gendarmes* dead, but did not explain why he had killed them.<sup>652</sup> Witness SGA attested that Jean-Marie opened fire on the *gendarmes* when the soldiers asked them for their identify papers.<sup>653</sup> According to Witness SGA, Radio RTLM had announced an alert the same day stating that three *gendarmes* had deserted and stolen a vehicle.<sup>654</sup> However, none of the witnesses indicated that Jean-Marie was aware of the aforementioned radio announcement. Therefore, the Prosecution has not proven beyond reasonable doubt that Jean-Marie killed the *gendarmes* because he believed they were Tutsi, or RPF accomplices or infiltrators, as alleged in the Indictment.

361. For the reasons above, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that the Accused ordered his son, Jean-Marie to kill three *gendarmes* that were detained by the *Interahamwe* at the Maliba roadblock. The Chamber considers the evidence is inconclusive on why Jean-Marie killed the three *gendarmes*. Indeed, the killing of the *gendarmes* appears to have been a random act. In view of the Chamber's legal findings that Jean-Marie did not have the prerequisite *mens rea* for murder as a crime against humanity,<sup>655</sup> the Chamber does not consider it necessary to make any further factual findings regarding the remainder of the allegations set forth in paragraphs 42 through 45 of the Indictment, or to address the Defence evidence.<sup>656</sup>

## 9. Murder of Stanislas Sinibagiwe

### 9.1. Indictment

362. Paragraphs 42, 46, and 47 read:

42. During the events referred to in this indictment, particularly from 6 April 1994 through 17 July 1994, there were throughout Rwanda widespread and/or systematic attacks directed against a civilian population on political, ethnic or racial grounds. Notably *Interahamwe* militias engaged in a campaign of violence against Rwanda's civilian Tutsi population and against Hutu perceived to be politically opposed to the MRND. Hundreds of thousands of civilian Tutsi men, women and children and "moderate Hutu" were killed. The acts described in paragraphs 43 through 50 were part of these attacks.

46. Protais ZIGIRANYIRAZO, on an unknown date during the month of June 1994, aided and abetted in the killing of Stanislas SINIBAGWE, former director of the *Imprimerie Scolaire*, by identifying him to *Interahamwe* that were controlling the "La Corniche" roadblock. Stanislas SINIBAGIWE, sometimes referred to as Stanislas SIMBIZI, has been previously targeted as an accomplice of the enemy in RTLM radio broadcasts. Protais ZIGIRANYIRAZO ordered and instigated the *Interahamwe* at the roadblock, to take Stanislas SINIBAGIWE away and kill him. The *Interahamwe* removed Stanislas SINIBAGIWE to the "Commune Rouge" and killed him. They

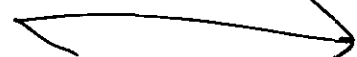
<sup>652</sup> Witness RDP109, T. 17 October 2005 pp. 30-33.

<sup>653</sup> Witness SGA, T. 7 February 2006 pp. 21-23.

<sup>654</sup> Witness SGA, T. 7 February 2006 pp. 21-23.

<sup>655</sup> See *infra*, para. 445.

<sup>656</sup> Witness RDP2, T. 30 October 2006 pp. 42, 82-84, 92; Witness RDP5, T. 31 October 2006 pp. 20, 39-40; César Busoro, T. 19 March 2007 pp. 23, 37, 56-57, 58; François Lucien Hitimana, T. 20 March 2007 pp. 72, 77-78; Witness RDP109, T. 26 March 2007 pp. 30-35, 56, 57, 62, 64-66; Witness RDP6, T. 28 March 2007 p. 61; Charles Zilimwabagabo, T. 12 April 2007 pp. 21, 22, 31.





later returned to the roadblock and reported to **Protais ZIGIRANYIRAZO** and to others that Stanislas SINIBAGIWE had been killed.

47. As described in paragraph 46, **Protais ZIGIRANYIRAZO** ordered those *Interahamwe* over whom he had de facto control by reason of the relationship described in paragraph 3, and instigated others over whom he did have directed control. All of his actions were committed in concert with the *Interahamwe* for the common purpose of killing Stanislas SINIBAGIWE because he was a moderate Hutu who opposed the killing of Tutsis, for the period of criminal enterprise that extended at least from the identification of Stanislas SINIBAGIWE up to the time that he was killed.

## 9.2. Evidence

### *Prosecution Witness AVY*<sup>657</sup>

363. The Chamber recalls its earlier summary of Witness AVY's evidence on the establishment of *La Corniche* roadblock.<sup>658</sup>

364. Witness AVY testified that in mid-May 1994, he was summoned by Augustus Ngirabatware from his post at the border between Gisenyi and Zaire to a meeting at the Regina Hotel in Gisenyi. Those present at that meeting included the Accused, Ngirabatware, who was a Minister of economic planning, Jean Mburanumwe,<sup>659</sup> who was a former director for the mining company COPIMAR,<sup>660</sup> and Omar Serushago.<sup>661</sup> During the meeting, Ngirabatware pointed out Stanislas Sinibagiwe ("Sinibagiwe") who was sitting behind them in the hotel, and stated that he should not be permitted to cross the border. The Accused commented that while the *Interahamwe* operating near his home were trustworthy, he did not trust the security at the border post that Witness AVY was working at. Omar Serushago said that Witness AVY was in charge of that post, and that he should not allow Sinibagiwe to cross the border. Jean Mburanumwe gave Witness AVY 10,000 Rwandan francs, and told him to go back to work.<sup>662</sup>

365. When Witness AVY returned to his post at the border around midday, he found a minibus carrying several *Interahamwe*, including Thomas Mugiraniza, Chance Bahati, and Kiguru Mubarak, who promptly removed Sinibagiwe from the vehicle. Witness AVY was told that *préfet* Zilimabagabo wanted to save Sinibagiwe's life, so he hid him in a pit behind the customs house.<sup>663</sup> At 5.00 p.m. that day, Omar Serushago returned with Thomas Mugiraniza, Chance Bahati, Kiguru Mubarak and others in the minibus, and asked Witness AVY to bring them Sinibagiwe. He did so,

<sup>657</sup> See *supra*, para. 133

<sup>658</sup> See *supra*, paras. 207-208

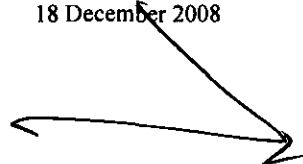
<sup>659</sup> The Chamber notes that Witness AVY testified that at the meeting in Regina Hotel, Mburanumwe Yohani and Jean Mburanumwe were both present (T. 19 October 2005 p. 9). The Chamber is of the view that these two are in fact the same person, as both have the same surname and were both directors at COPIMAR (Witness AVY, T. 19 October 2005 p. 9; Witness Jean Mburanumwe, T. 9 March 2007 pp. 10, 18; Exhibit D60, Personal Information Sheet of Jean Mburanumwe). If the Chamber is mistaken on this point, it will have no bearing on the determination of the case as this is the only mention of Mburanumwe Yohani in the entire proceedings.

<sup>660</sup> The Chamber notes that Mburanumwe refers to "COPIMAR" during his testimony, but "OPIMAR" in his Personal Information Sheet. The Chamber has elected to use the information obtained from the in-person testimony of Mburanumwe, and will refer to the company as COPIMAR.

<sup>661</sup> Witness AVY, T. 19 October 2005 p. 9; T. 8 February 2006 p. 51.

<sup>662</sup> Witness AVY, T. 19 October 2005 p. 9; T. 8 February 2006 pp. 45, 50, 51.

<sup>663</sup> Witness AVY, T. 19 October 2005 pp. 9-10; T. 8 February 2006 pp. 48-49.



and the group drove Sinibagiwe away in the minibus.<sup>664</sup> Witness AVY followed the vehicle on a motorcycle to learn whether Sinibagiwe would pay a bribe for his release. However, when the minibus reached the last roadblock before Commune rouge, Witness AVY knew that Sinibagiwe was going to be killed, and therefore abandoned his pursuit and returned to his home 50 meters from Commune rouge. From there, he heard shots. He later heard that Omar Serushago had shot and killed Sinibagiwe at Commune rouge.<sup>665</sup>

*Defence Witness Jean Mbaranumwe*

366. Jean Mbaranumwe was the Director of COPIMAR in 1994. Mbaranumwe stated that while he knew the Accused as *préfet* of Ruhengeri and as the Minister of Planning from his *commune* in Gisenyi, they had never spoken nor socialised.<sup>666</sup>

367. Mbaranumwe denied that he attended a meeting at the Regina Hotel with the Accused,<sup>667</sup> Omar Serushago or Ngirabatware.<sup>668</sup> He added that he had never been in the Regina Hotel with the Accused during working hours, given the prohibition to drink during working hours.<sup>669</sup> Mbaranumwe also denied seeing the Accused in Gisenyi from late April to mid-June 1994.<sup>670</sup> He added that he did not drink with Ngirabatware, as the man did not drink alcohol.<sup>671</sup> He also denied that he saw Sinibagiwe at the Regina Hotel,<sup>672</sup> or that he gave money to anyone at the hotel to prevent border crossings.<sup>673</sup>

*Defence Witness BNZ42*

368. Witness BNZ42, a Hutu, was a 42-year-old secondary school teacher in Gisenyi in 1994.<sup>674</sup> She testified that she is not related to the Accused, and that she knew him as the *préfet* of Ruhengeri. She added that as an ordinary employee of the ministry, she did not speak with him personally.<sup>675</sup>

369. Witness BNZ42 met Sinibagiwe when they were students together at the National Pedagogical Institute, and stated that Sinibagiwe and her husband were colleagues at the Ministry of National Education.<sup>676</sup> During the genocide, between 30 and 40 displaced persons sought refuge in her home, and she assisted several in leaving the country.<sup>677</sup> Sinibagiwe's wife and five children stayed at her home from early June for three weeks until she helped them cross into the Congo. Sinibagiwe

<sup>664</sup> Witness AVY, T. 19 October 2005 p. 12.

<sup>665</sup> Witness AVY, T. 19 October 2005 pp. 12, 15; T. 8 February 2006 pp. 49-50.

<sup>666</sup> Jean Mbaranumwe, T. 9 March 2007 pp. 2, 3.

<sup>667</sup> Jean Mbaranumwe, T. 9 March 2007 pp. 2-3, 5, 17, 25. While he admitted going to the Regina Hotel two or three times a week after work, he stated that he never shared any drink with the Accused; Exhibit D60, Personal Information Sheet of Jean Mbaranumwe.

<sup>668</sup> Jean Mbaranumwe, T. 9 March 2007 pp. 3, 4, 5, 25.

<sup>669</sup> Jean Mbaranumwe, T. 9 March 2007 pp. 5, 15.

<sup>670</sup> Jean Mbaranumwe, T. 9 March 2007 p. 13.

<sup>671</sup> Jean Mbaranumwe, T. 9 March 2007 pp. 5-7.

<sup>672</sup> Jean Mbaranumwe, T. 9 March 2007 p. 5.

<sup>673</sup> Jean Mbaranumwe, T. 9 March 2007 p. 8.

<sup>674</sup> Exhibit D101, Protected Information of Witness BNZ42 (under seal).

<sup>675</sup> Witness BNZ42, T. 19 November 2007 pp. 22-23.

<sup>676</sup> Witness BNZ42, T. 19 November 2007 p. 6 (closed session).

<sup>677</sup> Witness BNZ42, T. 19 November 2007 pp. 8, 9, 24-25.

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arrived the night his family left, and stayed at her home for three days, then he attempted to cross the border.<sup>678</sup>

370. Witness BNZ42 testified that around 2.00 p.m.,<sup>679</sup> in mid-May or mid-June 1994,<sup>680</sup> her sister-in-law drove Sinibagiwe and herself to the Customs Office at the main border crossing to Goma, *La Grande Barrière*, in a white Mercedes Benz.<sup>681</sup> They entered the immigration office, were denied stamps, and told by *gendarmes* to walk to the border. From the border, the Witness and Sinibagiwe were then directed by *gendarmes* to go to a nearby roadblock.<sup>682</sup> There were approximately ten militia at the roadblock who interrogated Sinibagiwe, until one militia looked down at his palm on which was written Sinibagiwe's name.<sup>683</sup> This militia then accused Sinibagiwe of planning to tell all the radio stations what the militia were doing, and told him that this was his end.<sup>684</sup> He then called for the vehicle, and a minivan arrived, driven by Thomas, the chairman of the militia.<sup>685</sup>

371. Witness BNZ42 and Sinibagiwe boarded the minivan at the roadblock as ordered. Although she heard one of the *Interahamwe* say that they were to be taken to the *commune*, the vehicle stopped at her home.<sup>686</sup> Sinibagiwe was prevented from leaving the van, but Witness BNZ42 was pulled out violently by two militia and forced to search the house for Sinibagiwe's wife and children. While searching, gunshots were fired outside and the two militia, Witness BNZ42, and her husband ran out. She was initially led to the van, but the driver, Thomas, pushed her away.<sup>687</sup> After the militia drove Sinibagiwe away in the minivan around 4.00 p.m., the displaced persons around Witness BNZ42's home told her that Sinibagiwe had tried to escape but had fallen when shots were fired into the air, and was put back in the minivan. That evening around 6.00 p.m., a passer-by, overhearing the conversations outside Witness BNZ42's home, told her that this must be the man he had just seen shot in the cemetery, and fall into a pit.<sup>688</sup> Witness BNZ42 testified that she did not know whether the Accused was in Gisenyi when Sinibagiwe was murdered.<sup>689</sup>

<sup>678</sup> Witness BNZ42, T. 19 November 2007 pp. 8-10, 11, 14, 15, 24, 25.

<sup>679</sup> Witness BNZ42, T. 19 November 2007 pp. 16-17.

<sup>680</sup> Witness BNZ42 stated mid-June in examination-in-chief, but admitted that it could have been mid-May in cross-examination, before explaining her confusion in re-examination. T. 19 November 2007 pp. 13, 26-28.

<sup>681</sup> Witness BNZ42, T. 19 November 2007 pp. 28, 29, 30.

<sup>682</sup> Witness BNZ42, T. 19 November 2007 pp. 15, 17, 28.

<sup>683</sup> Witness BNZ42, T. 19 November 2007 pp. 15, 17, 18. Witness BNZ42 testified that his palm read "Sinibagiwe, Stanis, IMPRISCO", and that Imprisco was the name of the School Printing Press for which Sinibagiwe worked.

<sup>684</sup> Witness BNZ42, T. 19 November 2007 p. 18. Note: Witness BNZ42 testified that the militiaman, the one who had Stanis's name written on his hand, told him, "This evening, you went to tell to all the radio stations what we are doing, and now this is the end." Although Witness BNZ42 said "went", the Chamber is of the view that she likely meant "want", as given this conversation occurred in the afternoon, and the *Interahamwe* allegedly was referring to "this evening", he likely meant that night, not the night before.

<sup>685</sup> Witness BNZ42, T. 19 November 2007 p. 18.

<sup>686</sup> Witness BNZ42, T. 19 November 2007 pp. 18, 19. Witness BNZ42 stated she initially understood the *commune* to be the communal office, but was later told it meant the cemetery.

<sup>687</sup> Witness BNZ42, T. 19 November 2007 pp. 19-20.

<sup>688</sup> Witness BNZ42, T. 19 November 2007 pp. 20-21.

<sup>689</sup> Witness BNZ42, T. 19 November 2007 p. 26.

*Defence Witness BNZ45*

372. Witness BNZ45, a Hutu and a 25 year old student in 1994, testified that although he had never had any contact with the Accused,<sup>690</sup> he knew of him as the *préfet* of Ruhengeri, the president of Mukungwa football club, and a leader from his *préfecture*.<sup>691</sup> He stated that he would have been able to recognise the Accused in 1994,<sup>692</sup> and that he did not see the Accused in Gisenyi during the genocide.<sup>693</sup>

373. Witness BNZ45 testified that in May 1994, he went looking for Hassan Gitoki at *La Corniche* roadblock to assist people he had hidden to cross the border.<sup>694</sup> While at the roadblock, he saw Sinibagiwe and a woman enter the immigration office, and then walk toward the border.<sup>695</sup> As they approached the border, Thomas, who was one of the persons manning the roadblock, identified Sinibagiwe as Twigiramungu's supporter and an RPF accomplice and said that Sinibagiwe "must be killed."<sup>696</sup> Witness BNZ45 also testified that Hassan Gitoki told the *Interahamwe* that they could stop Sinibagiwe from crossing the border, but should not kill him as he is a Hutu.<sup>697</sup> He testified that Sinibagiwe was arrested,<sup>698</sup> and forced into a vehicle with the woman who accompanied him, Thomas and three young men.<sup>699</sup> The vehicle was gone for between 20-30 minutes between 1.00 p.m. and 2.00 p.m., and when it returned, the driver told Hassan Gitoki that Sinibagiwe had just been killed at the Commune rouge.<sup>700</sup>

374. The only comment Witness BNZ45 had in relation to the Accused and the murder of Sinibagiwe, was that Sinibagiwe was arrested 100 to 150 metres from the Accused's home.<sup>701</sup>

**9.3. Deliberations**

375. The Chamber notes that Witness AVY is the sole Prosecution Witness to testify in relation to this charge. The Chamber recalls its serious concerns regarding Witness AVY's credibility.<sup>702</sup>

376. With regard to the alleged murder of Sinibagiwe, the Chamber notes numerous inconsistencies between Witness AVY's testimony and prior statement, and within his testimony. First, in his 27 April 2005 confession letter, he stated that "Abuba, son of Macafu" was in the minibus that arrived at the border crossing,<sup>703</sup> whereas in testimony, he put Kiguru Mubarak and Chance Bahiti in the vehicle, but failed to

<sup>690</sup> Witness BNZ45, T. 27 March 2007 p. 30; Exhibit D79, Protected Information of Witness BNZ45 (under seal).

<sup>691</sup> Witness BNZ45, T. 27 March 2007 p. 15.

<sup>692</sup> Witness BNZ45, T. 27 March 2007 p. 16.

<sup>693</sup> Witness BNZ45, T. 27 March 2007 pp. 25, 51.

<sup>694</sup> Witness BNZ45, T. 27 March 2007 pp. 18, 22-23.

<sup>695</sup> Witness BNZ45, T. 27 March 2007 pp. 19, 20.

<sup>696</sup> Witness BNZ45, T. 27 March 2007 p. 22.

<sup>697</sup> Witness BNZ45, T. 27 March 2007 p. 22.

<sup>698</sup> Witness BNZ45, T. 27 March 2007 p. 45.

<sup>699</sup> Witness BNZ45, T. 27 March 2007 p. 22.

<sup>700</sup> Witness BNZ45, T. 27 March 2007 pp. 22, 25.

<sup>701</sup> Witness BNZ45, T. 27 March 2007 p. 45.

<sup>702</sup> See *supra*, paras. 154-157.

<sup>703</sup> Exhibit P14, Witness AVY's confession letter, dated 27 April 2005, p. 2.

mention Abuba.<sup>704</sup> Second, during examination-in-chief, Witness AVY testified that *Ngirabatware* pointed Sinibagiwe out to the group in the Regina Hotel.<sup>705</sup> However, on cross-examination, he stated it was the Accused who pointed Sinibagiwe out.<sup>706</sup> Third, the Chamber notes that Witness AVY alternatively testified that Sinibagiwe was arrested to be killed,<sup>707</sup> and that he was arrested in order to be spared from death.<sup>708</sup> Fourth, the Chamber notes that Witness AVY initially stated that he was told by the men in the meeting at the Regina Hotel that Sinibagiwe was “the type of Hutu that was opposed to the powers that were at the time.”<sup>709</sup> However, following an evasive cross-examination on the question, Witness AVY stated that he did not know whether Sinibagiwe was seen as an RPF collaborator, and that he had only heard that Sinibagiwe was an *Inyenzi* after he was killed.<sup>710</sup>

377. In addition to the discrepancies within Prosecution Witness AVY’s own evidence, the Chamber notes various contradictions and inconsistencies between his testimony and that of Defence Witnesses BNZ42 and BNZ45. The Chamber notes that while Witness AVY stated Sinibagiwe arrived at the border in a minivan carrying *Interahamwe* members,<sup>711</sup> Witness BNZ42 testified that she and Sinibagiwe were driven to the main border crossing in a white Benz by her sister-in-law, Patricia,<sup>712</sup> and Witness BNZ45 stated that he saw Sinibagiwe and a woman, namely, Witness BNZ42, arrive at the border together.<sup>713</sup> Second, the Chamber notes that all three witnesses contradicted each other regarding what happened in the time between when Sinibagiwe arrived at the border and when he was killed. While Witness AVY stated Sinibagiwe was with him at the border post in a hole from noon or 1.00 p.m. to 5.00 p.m.,<sup>714</sup> Witness BNZ42 testified that Sinibagiwe was with her from 2.00 p.m. to 4.00 p.m.,<sup>715</sup> and Witness BNZ45 testified that the *Interahamwe* and Sinibagiwe were gone from the customs post for only about 20-30 minutes, between 1.00 p.m. and 2.00 p.m., and returned with news of Sinibagiwe’s death.<sup>716</sup> Third, while Witness AVY testified about

<sup>704</sup> Witness AVY, T. 19 October 2005 p. 10.

<sup>705</sup> Witness AVY, T. 19 October 2005 p. 9: “...then Ngirabatware asked us whether we had seen the person sitting behind him. He was a man who had a light complexion. He told us his name.”

<sup>706</sup> Witness AVY, T. 8 February 2006 p. 44: “Zigiranyirazo showed him to me”.

<sup>707</sup> Witness AVY, T. 8 February 2006 p. 48: “We arrested this man in order to kill him.”

<sup>708</sup> Witness AVY, T. 19 October 2005 p. 10: “[the *Interahamwe*] took him out of the vehicle very quickly, and he was handed to me, and I was told that Zigiranyirazo – Zirimabagabo (sic) wanted to save him, but you should hide him here”; Witness AVY, T. 8 February 2006 p. 47: “He was going to be killed. We hid him in a hole”; p. 49: “...the préfet at the time wanted to save that man, and that man’s name was Zilimwabagabo. He wanted to save him, and that is why we hid him.”

<sup>709</sup> Witness AVY, T. 19 October 2005 p. 17: “Sinibagiwe was not a Tutsi, he was a Hutu, but the type of Hutu that was opposed to the powers that were at the time. [Q: How do you know that?] Yes, we were told about that by those people who showed him to us.”

<sup>710</sup> Witness AVY, T. 8 February 2006 p. 46.

<sup>711</sup> Witness AVY, T. 19 October 2005 p. 10.

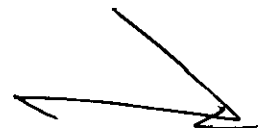
<sup>712</sup> Witness BNZ42, T. 19 November 2007 pp. 29-30.

<sup>713</sup> Witness BNZ45, T. 27 March 2007 p. 19.

<sup>714</sup> Witness AVY, T. 19 October 2005 p. 12; T. 8 February 2006 p. 46.

<sup>715</sup> Witness BNZ42, T. 19 November 2007 pp. 16-17, 21.

<sup>716</sup> Witness BNZ45, T. 27 March 2007 pp. 22, 25.



Sinibagiwe's vehicle,<sup>717</sup> Witness BNZ42 did not mention a vehicle in her evidence, including her testimony that Sinibagiwe arrived at her house under army escort.<sup>718</sup>

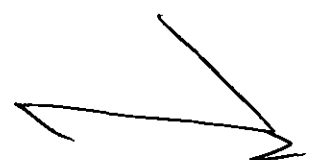
378. The Chamber found Defence Witnesses BNZ42 and BNZ45 to be straightforward, clear and generally credible witnesses, and the Chamber attaches *greater weight to their testimonies* than that of Witness AVY. The Chamber therefore finds that the aforementioned contradictions and inconsistencies raise further doubt as to the veracity of Witness AVY's evidence.

379. Accordingly, the Chamber does not find Witness AVY to be a credible and reliable witness, and will not accept his uncorroborated evidence. Given that he was the sole Prosecution Witness in relation to Sinibagiwe's murder, the Chamber is unable to base a conviction on his evidence. The Chamber therefore considers it unnecessary to make factual findings regarding the remainder of the allegations set forth in paragraphs 42, 46 and 47 of the Indictment, such as where or when Sinibagiwe was killed.

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<sup>717</sup> Witness AVY, T. 19 October 2005 p. 12; Exhibit P14, Witness AVY's confession letter, dated 27 April 2005, p. 3.

<sup>718</sup> Witness BNZ42, T. 19 November 2007 pp. 11-14, 29.



## CHAPTER III: LEGAL FINDINGS

### 10. Criminal Responsibility

380. Pursuant to Article 6(1) of the Statute, the Accused is charged with ordering, instigating, and aiding and abetting crimes under the Statute.<sup>719</sup> The Prosecution also seeks to establish the Accused's criminal responsibility based on the theory of "joint criminal enterprise" ("JCE"), which, although not explicitly referred to in the Statute, has been held by the Appeals Chamber to be a form of "commission" under Article 6(1).<sup>720</sup>

#### 10.1. Ordering

381. The *actus reus* for "ordering" is that a person in a position of authority orders another person to commit an offence or orders an act or omission. The requisite *mens rea* is the awareness of the substantial likelihood that a crime will be committed in the execution of that order. The crime must be effectively committed subsequently by the person who received the order.<sup>721</sup> It is not necessary to demonstrate the existence of a formal relationship of subordination between the accused and the perpetrator; rather, it is sufficient to prove that the accused was in some position of authority that would compel another to commit a crime following the accused's order.<sup>722</sup>

#### 10.2. Instigating

382. The *actus reus* for "instigating" is prompting another person to commit a crime.<sup>723</sup> The requisite *mens rea* is the intent to instigate another person to commit a crime or, at a minimum, the awareness of the substantial likelihood that a crime will be committed in the execution of the act or omission instigated.<sup>724</sup> It is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused; it is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime.<sup>725</sup>

<sup>719</sup> Article 6 (1) provides: "A person who planned, instigated, ordered, committed or otherwise aided and abetting in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime."

<sup>720</sup> The doctrine was first described by the Appeals Chamber in *Tadić*, Judgement (AC), paras. 188, 195-226. See also *Kvočka et al.*, Judgement (AC), paras. 79-80, 99; *Ntakirutimana*, Judgement (AC), paras. 461-462, 466, 468; *Vasiljević*, Judgement (AC), paras. 94-95. See also *Rwamakuba*, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide (AC), 22 October 2004, para. 31 (recognizing applicability of joint criminal enterprise to the crime of genocide). See also *Nahimana et al.*, Judgement (AC), para. 481.

<sup>721</sup> See, e.g., *Nahimana et al.*, Judgement (AC), para. 481.

<sup>722</sup> *Nahimana et al.*, Judgement (AC), para. 481. See also *Seromba*, Judgement (AC), para. 201, citing *Kamuhanda*, Judgement (AC), para. 75.

<sup>723</sup> See, e.g., *Nahimana et al.*, Judgement (AC), para. 480. See also *Ndindabahizi*, Judgement (AC), para. 117.

<sup>724</sup> See, e.g., *Nahimana et al.*, Judgement (AC), para. 480.

<sup>725</sup> See, e.g., *Nahimana et al.*, Judgement (AC), para. 480.



### 10.3. Participation in a Joint Criminal Enterprise

383. The jurisprudence of both *ad-hoc* Tribunals establishes three categories of JCE: basic, systemic and extended.<sup>726</sup> The *actus reus* is common to all three categories. First, a plurality of persons is required. They need not be organised in a military, political, or administrative structure.<sup>727</sup> Second, the existence of a common plan, design or purpose, which amounts to, or involves, the commission of a crime provided for in the Statute, must be established. There is no need for the plan, design or purpose to have been previously arranged or formulated. It may materialise extemporaneously and be inferred from the facts.<sup>728</sup> Third, the accused must have participated in the common purpose, either by participating directly in the commission of the agreed crime itself, or by assisting or contributing to the execution of the common purpose.<sup>729</sup> Although the contribution need not be necessary or substantial, it should at least be a significant contribution to the crimes for which the accused is to be found responsible.<sup>730</sup>

384. Furthermore, the Chamber recalls that the principal perpetrators carrying out the *actus reus* of the crimes do not have to be members of the JCE.<sup>731</sup> What matters in such cases is whether the crime in question forms part of the common purpose and whether at least one member of the JCE used the principal perpetrator acting in accordance with the common plan.<sup>732</sup>

385. The required *mens rea* differs for each of the three categories of JCE. The Prosecution relies on the basic and extended forms of JCE.<sup>733</sup> Basic JCE requires the accused's intention that the crime be perpetrated; this intent being shared by all other participants in the JCE.<sup>734</sup> Extended JCE concerns cases in which a crime, while committed outside the common purpose, was nevertheless a "natural and foreseeable consequence" of it.<sup>735</sup> This category requires the intention to participate in and further the common criminal purpose of a group and to

<sup>726</sup> See, e.g., *Stakić*, Judgement (AC), para. 64; *Ntakirutimana*, Judgement (AC), paras. 463-465, 467.

<sup>727</sup> See, e.g., *Stakić*, Judgement (AC), para. 64, referring to *Tadić*, Judgement (AC), para. 227.

<sup>728</sup> See, e.g., *Stakić*, Judgement (AC), para. 64, referring to *Tadić*, Judgement (AC), para. 227. See also *Brima et al.*, Case No. SCSL-2004-16-A, 22 February 2008, para. 80.

<sup>729</sup> *Stakić*, Judgement (AC), para. 64; *Vasiljević*, Judgement (AC), para. 100; *Tadić*, Judgement (AC), para. 227.

<sup>730</sup> *Brdanin*, Judgement (AC), para. 430.

<sup>731</sup> *Limaj et al.*, Judgement (AC), para. 120, referring to *Brdanin*, Judgement (AC), para. 430. See also *Limaj et al.*, Judgement (AC), para. 119: "In general, in the case of a third category joint criminal enterprise, the crimes must be committed by members of the joint criminal enterprise."

<sup>732</sup> *Brdanin*, Judgement (AC), paras. 410, 413, 418; *Limaj et al.*, Judgement (AC), para. 120, referring to *Brdanin*, Judgement (AC), paras. 413, 430.

<sup>733</sup> The Chamber notes that in its Closing Brief, the Prosecution specified that it was relying on the basic and extended forms of JCE for the allegations with respect to the roadblocks (para. 275) and the murder of Stanislas Sinibagiwe (para. 425). During Closing Arguments, the Prosecution specified basic JCE for Kesho Hill. See Closing Arguments, T. 28 May 2008 p. 15. However, it did not specify which categories for Rurunga Hill, the roadblocks, or Sinibagiwe. See Closing Arguments, T. 28 May 2008 pp. 17, 20, 22, 45.

<sup>734</sup> See, e.g., *Stakić*, Judgement (AC), para. 65; *Ntakirutimana*, Judgement (AC), paras. 466, 467, referring to *Tadić*, Judgement (AC), paras. 220, 228.

<sup>735</sup> See, e.g., *Stakić*, Judgement (AC), para. 65; *Ntakirutimana*, Judgement (AC), para. 467.



contribute to the JCE and the commission of its crimes.<sup>736</sup> Additionally, responsibility for a crime other than the one which was part of the common design arises only if, under the circumstances of the case: (i) it was foreseeable that such a crime might be perpetrated by one or other members of the group; and (ii) the accused willingly took that risk.<sup>737</sup>

#### 10.4. Aiding and Abetting

386. The *actus reus* for "aiding and abetting" is acts or omissions specifically directed to assist, encourage or lend moral support to the perpetration of a specific crime, and which have a substantial effect on the perpetration of the crime.<sup>738</sup> In cases where aiding and abetting by tacit approval and encouragement has been applied, the combination of a position of authority and physical presence at the crime scene have allowed the inference that non-interference by the accused actually amounted to tacit approval and encouragement.<sup>739</sup> This form of aiding and abetting is not, strictly speaking, criminal responsibility for omission.<sup>740</sup>

387. The *mens rea* for aiding and abetting is knowledge that acts performed by the aider and abettor, or his omissions, assist in the commission of the crime by the principal.<sup>741</sup> It is not necessary for the accused to know the precise crime that was intended and that was committed, but he must be aware of its essential elements.<sup>742</sup>

### 11. Conspiracy to Commit Genocide (Count 1)

388. Under Count 1 of the Indictment, the Prosecution charges the Accused with conspiracy to commit genocide pursuant to Article 6(1) of the Statute, alleging that he agreed with influential and powerful persons, among others, to kill or cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, as such.<sup>743</sup>

<sup>736</sup> See, e.g., *Stakić*, Judgement (AC), para. 65; *Ntakirutimana*, Judgement (AC), para. 467.

<sup>737</sup> See, e.g., *Stakić*, Judgement (AC), para. 65; *Ntakirutimana*, Judgement (AC), para. 467, referring to *Tadić*, Judgement (AC), para. 228.

<sup>738</sup> See, e.g., *Muvunyi*, Judgement (AC), para. 79.

<sup>739</sup> *Orić*, Judgement (AC), para. 42, referring to *Brđanin*, Judgement (AC), para. 273, with references at fns. 553, 555 and *Kayishema and Ruzindana*, Judgement (AC), paras. 201-202. See also *Muvunyi*, Judgement (AC), para. 80.

<sup>740</sup> *Brđanin*, Judgement (AC), paras. 273, 274. In this respect, the Chamber recalls that omission proper may lead to individual criminal responsibility under Article 6(1) of the Statute where there is a legal duty to act mandated by a rule of criminal law. See *Nahimana et al.*, Judgement (AC), para. 478. On the issue, see also *Orić*, Judgement (AC), para. 42; *Brđanin*, Judgement (AC), para. 274; *Ntagerura et al.* Appeal Judgement, paras. 334, 370; *Tadić*, Judgement (AC), para. 188.

<sup>741</sup> See, e.g., *Seromba*, Judgement (AC), para. 56.

<sup>742</sup> See, e.g., *Orić*, Judgement (AC), para. 43; *Nahimana et al.*, Judgement (AC), para. 482.

<sup>743</sup> Indictment, paras. 5-11.

389. Conspiracy to commit genocide is criminalised under Article 2(3)(b) of the Statute, and is defined as an agreement between two or more persons to commit genocide.<sup>744</sup> The *actus reus* is entering into an agreement to pursue a common objective of committing genocide, and the *mens rea* is the intent to enter into such an agreement. The Prosecution must also prove that the accused shared the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such, with his co-conspirators.<sup>745</sup> The crime of conspiracy to commit genocide is complete at the moment of agreement regardless of whether the common objective is ultimately achieved.<sup>746</sup> Conspiracy may be proved by direct evidence of an agreement, or inferred from other evidence, such as the coordinated or concerted actions of the conspirators or other conduct suggesting the existence of an agreement to commit genocide.<sup>747</sup> Where the Prosecution seeks to prove the existence of a conspiracy to commit genocide on the basis of indirect or circumstantial evidence, that such a conspiracy existed must be the only reasonable inference based on the evidence.<sup>748</sup>

390. In support of Count 1, the Prosecution relies on: (i) the Accused's involvement in the establishment of and support for the *Interahamwe*;<sup>749</sup> (ii) his involvement in meetings where attacks against Tutsi were planned, organised and facilitated;<sup>750</sup> (iii) his participation in the establishment of a list of influential Tutsi and "moderate" Hutu to be killed;<sup>751</sup> and (iv) his involvement in the creation of roadblocks and support for killings taking place at roadblocks show that he conspired to commit genocide.<sup>752</sup>

391. The Chamber found above that the Prosecution failed to prove beyond reasonable doubt that the Accused was involved with the establishment of the *Interahamwe*. Nor did the Prosecution evidence prove that he participated in or facilitated the organisation, arming, training or clothing of the *Interahamwe*, or the local population in Gisenyi.<sup>753</sup>

392. The Prosecution did not lead any evidence on many of the meetings pleaded in the Indictment under Count 1.<sup>754</sup> The Chamber found that the remainder of the meetings, on which Prosecution evidence was adduced, were not properly pleaded in the Indictment, although they should have been. These defects in the Indictment were not cured, and, therefore, these meetings cannot form the basis of a conviction for conspiracy to commit genocide. Nonetheless, the Chamber considered the

<sup>744</sup> *Nahimana et al.*, Judgement (AC), para. 894 (citing *Ntagerura et al.*, Judgement (AC), para. 92; *Kajelijeli*, Judgement (TC), para. 787; *Niyitegeka*, Judgement (TC), para. 423; *Ntakirutimana*, Judgement (TC), para. 798; *Musema*, Judgement (TC), para. 191).

<sup>745</sup> *Musema*, Judgement (TC), para. 192; *Niyitegeka*, Judgement (TC), para. 423.

<sup>746</sup> *Musema*, Judgement (TC), para. 194.

<sup>747</sup> *Nahimana et al.*, Judgement (AC), paras. 896-897.

<sup>748</sup> *Ibid.*

<sup>749</sup> Indictment, para. 6.

<sup>750</sup> Indictment, para. 7.

<sup>751</sup> Indictment, para. 8.

<sup>752</sup> Indictment, paras. 9, 10.

<sup>753</sup> See *supra*, paras. 135-141. See also Indictment, para. 6.

<sup>754</sup> See *supra*, paras. 21, 23-69.

evidence of these meetings for the purpose of determining whether they supported any other allegations pleaded in the Indictment, and found that the Prosecution failed to prove beyond reasonable doubt that the majority of the meetings took place and/or that the Accused attended and participated in them.

393. The Prosecution did not lead any evidence in relation to the allegations in paragraph 8 of the Indictment, which referred to an 11 February 1994 agreement amongst the Accused, Agathe Kanziga, and Colonel Anatole Nsengiyumva to kill the enemy and accomplices, as well as the establishment of a list of Tutsi and Hutu to be killed.

394. Finally, although the Prosecution did not prove the allegations regarding the Giciye (Maliba) and *La Corniche* roadblocks in Gisenyi prefecture,<sup>755</sup> the Chamber found that the Accused, on 12 April 1994, passed through the roadblock in Kiyovu, situated close to his Kiyovu residence, saw about three corpses, and gave orders to men manning the roadblock there to check identity papers "well ... since Tutsis have changed their identification papers." The Chamber also found that on 17 April 1994, the Accused passed through the roadblock again and instructed Corporal Irandemba, who was the Accused's guard, to find food for the men so that they could remain at the roadblock. On the same occasion, he promised guns to those manning the roadblock. The promise came following an indication from the men that they required the guns to fight at the "battle front." Additionally, the Chamber found that Tutsi were killed at the roadblock.<sup>756</sup> However, the Chamber does not consider that this evidence alone is sufficient to prove beyond reasonable that the Accused conspired to commit genocide. In reaching this conclusion, the Chamber recalls that in order to find that the Accused conspired to commit genocide on the basis of such indirect evidence, the existence of a conspiracy must be the only reasonable inference from the evidence.<sup>757</sup> The Chamber does not consider this to be the case with regard to the evidence regarding the Accused's actions at the Kiyovu roadblock.

395. The Chamber concludes that the Prosecution has failed to establish the Accused's criminal responsibility under Articles 2(3)(b) and 6(1) of the Statute for conspiracy to commit genocide. The Chamber, therefore, finds the Accused not guilty on Count 1 of the Indictment.

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<sup>755</sup> See *supra*, paras. 196-204; 211-213. The Chamber notes that paragraph 10 was pleaded under the Count of Conspiracy.

<sup>756</sup> See *supra*, para. 251.

<sup>757</sup> *Nahimana et al.* Judgement (AC), paras. 896-897.

## 12. Genocide (Count 2)

396. Under Count 2 of the Indictment, the Prosecution charges the Accused with genocide pursuant to Articles 2(3)(a), and 6(1) of the Statute on the basis of his responsibility for killing or causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, as such.<sup>758</sup>

397. A person commits the crime of genocide if he commits one of the enumerated acts in Article 2(2) of the Statute with the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such (“genocidal intent”).<sup>759</sup> Even if an accused has not “committed” genocide himself, his responsibility may be established under any one of the modes of liability provided for in Article 6(1) of the Statute.<sup>760</sup> The Prosecution in the present case seeks to establish the Accused’s criminal liability for the crime of genocide under Article 6(1) through ordering, instigating, committing through JCE, and aiding and abetting.

398. The Chamber recalls that the *mens rea* varies according to the mode of liability.<sup>761</sup> Notably, the requisite knowledge for aiding and abetting genocide is knowledge of the genocidal intent of the principal perpetrator(s).<sup>762</sup> In the absence of direct evidence, genocidal intent may be inferred from relevant facts and circumstances of a case,<sup>763</sup> such as the overall context in which the crime occurred, the systematic targeting of the victims on account of their membership in a protected group, the exclusion of members of other groups, the scale and scope of the atrocities committed, the frequency of destructive and discriminatory acts, or the political doctrine that gave rise to the acts referred to.<sup>764</sup>

399. Pursuant to paragraphs 11 to 24 of the Indictment, the Accused is charged with genocide in respect of the massacres at Kesho Hill and Rurunga Hill, as well as his role with respect to roadblocks in Gisenyi *préfecture* and Kiyovu *cellule*, Kigali *préfecture*. The Chamber found that the Prosecution failed to prove beyond reasonable doubt the factual allegations in the Indictment with respect to Rurunga Hill, and roadblocks in Gisenyi *préfecture*, including the Giciye (Maliba) and *La Corniche* roadblocks. Accordingly, the Chamber does not find the Accused guilty of genocide in respect of these allegations. However, it found that the Prosecution established beyond reasonable doubt certain of its allegations regarding Kesho Hill, and the Kiyovu roadblock. The Chamber will therefore now proceed to determine whether the Accused incurred criminal responsibility for his role in the events at Kesho Hill and the Kiyovu roadblock.

<sup>758</sup> Indictment, p. 4.

<sup>759</sup> *Nahimana et al.*, Judgement (AC), para. 492.

<sup>760</sup> *See, e.g., Nahimana et al.*, Judgement (AC), paras. 492, 523.

<sup>761</sup> *See supra*, paras. 381-387.

<sup>762</sup> *See, e.g., Ntakirutimana*, Judgement (AC), paras. 364, 501, 508; *Krstić*, Judgement (AC), para. 140.

<sup>763</sup> *See, e.g., Seromba*, Judgement (AC), para. 176.

<sup>764</sup> *See, e.g., Seromba*, Judgement (AC), para. 176.

**12.1. Kesho Hill**

400. The Chamber found that the Prosecution proved beyond reasonable doubt that hundreds and possibly more than a thousand Tutsi civilians sought refuge on Kesho Hill on the morning of 8 April 1994. Following a first unsuccessful attack by assailants, the Chamber found that on the morning of 8 April 1994, the Accused arrived at Kesho Hill as part of a convoy which included officials, Presidential Guards, soldiers, *Interahamwe* and civilians. The Chamber did not find that the Accused led the convoy.

401. The Chamber further found that, upon arrival at the site, the Accused and other officials, including *bourgmestre* Bazabuhande, and Jaribu, the Director of the Rubaya Tea Factory, addressed the assailants from a position close to the road at the base of the hill. Bazabuhande spoke first, then the Accused, and then Jaribu. The Chamber did not make a finding on the exact words spoken by the Accused, or whether one of the three officials ordered the attack. However, the Chamber did find that the crowd of assailants applauded the Accused's speech, and immediately after the three speeches, commenced the attack using guns, grenades and traditional weapons, on the Tutsi civilians who had sought refuge on the hill. The Chamber found that between 800 and 1500 Tutsi were killed that day.<sup>765</sup>

402. Given the ethnicity of the victims, the scale of the killings, and the context within which they took place,<sup>766</sup> the only reasonable conclusion is that the physical perpetrators of the killings possessed the intent to destroy in whole or in part the Tutsi ethnic group. Accordingly, the Chamber finds that acts of genocide, as defined under Article 2 of the Statute, took place on Kesho Hill on 8 April 1994.

403. The Chamber must next determine whether the Accused is criminally responsible for those acts of genocide under the modes of responsibility alleged in the Indictment, namely ordering, instigating, JCE and aiding and abetting.

*Ordering*

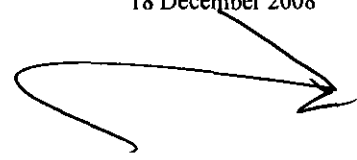
404. With respect to the allegation of ordering the attack, the Chamber recalls that it was unable to make a finding beyond reasonable doubt on what the Accused said during his speech to the crowd of assailants. Although the assailants applauded after the speech, and then commenced their attack, without knowledge of the Accused's words, the Chamber cannot find beyond reasonable doubt that the Accused either explicitly, or implicitly, ordered the assailants to attack the Tutsi on Kesho Hill.

*Instigating*

405. With regard to the allegation that the Accused instigated the killings on Kesho Hill, the Chamber recalls that the Accused was not the sole person to

<sup>765</sup> Witness AKK estimated that 1,400 bodies were exhumed (T. 10 October 2005 p. 31) and Witness AKL testified that between 800 and 1500 Tutsi were killed (T. 15 February 2006 pp. 23-24).

<sup>766</sup> The Chamber recalls it took judicial notice that between 6 April and 17 July 1994, genocide against the Tutsi ethnic group in Rwanda occurred, and that there were widespread and systematic attacks against civilians based on Tutsi ethnicity. *See supra*, para. 10.



address the assailants, and the Chamber does not know what he said to them during his speech. The Chamber therefore does not consider that the only reasonable inference to be made from the circumstances is that the Accused prompted the assailants to attack. Accordingly, the Chamber does not find beyond reasonable doubt that the Accused instigated the killings of Tutsi at Kesho Hill.

*Participation in a Joint Criminal Enterprise*

406. The Chamber now turns to consider whether the Accused participated in a JCE to kill Tutsi on Kesho Hill.<sup>767</sup> The Chamber first recalls that there were a plurality of people who were involved in the attack on Kesho Hill, whether through physically perpetrating the attack themselves, or through speaking to the assailants immediately before the attack. These people included Presidential Guard, soldiers, *Interahamwe*, and civilians, as well as *bourgmestre* Bazabuhande, Director Jaribu, and the Accused.

407. Regarding the common plan, design or purpose, there were at least hundreds, if not over a thousand assailants who arrived, many of whom were armed with a range of weapons. They arrived together as part of a convoy, and participated in a meeting where the *bourgmestre* Bazabuhande, the Accused, and Director Jaribu, delivered speeches. In the Chamber's view, the attack can only be described as a coordinated operation backed by Presidential Guards, soldiers, *Interahamwe*, and civilians, armed with guns, grenades and traditional weapons, with organisational support from prominent personalities, such as, the Accused, the *bourgmestre* and Jaribu. The Chamber considers that prior planning and coordination is the only reasonable explanation for the manner in which the perpetrators conducted the attack on Tutsi at Kesho Hill. Indeed, this finding is supported further as it appears that prior planning and coordination, resulting in a large number of well-armed assailants and the presence of officials to provide encouragement, distinguished this attack from the prior unsuccessful attack. Accordingly, the Chamber finds that the only reasonable inference from the evidence is that a common criminal purpose existed to kill Tutsi on Kesho Hill.

408. With respect to whether the Accused shared the common purpose of killing Tutsi, the Chamber recalls that the Accused arrived at the massacre site with the assailants. He, as well as the *bourgmestre* and Jaribu, met with, and addressed the assailants who then applauded and immediately commenced their attack. The assailants' applause indicates to the Chamber that the Accused's view, as well as that of the *bourgmestre* and Jaribu, was received well by the assailants. Furthermore, the Accused did not leave the massacre site until the after attack had commenced. The Chamber therefore considers that the Accused, the *bourgmestre*, Jaribu and the assailants shared the common purpose of killing Tutsi, thus being members of the basic form of JCE. Additionally, recalling the Chamber's finding that the assailants who physically perpetrated the killings possessed the genocidal intent, given the scale of the killings and their context, the Chamber finds that

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<sup>767</sup> Closing Arguments, T. 28 May 2008 p. 15.

genocidal intent was also shared by all participants in the JCE, including the Accused.

409. Finally, given the influence which the Accused's position of authority yielded,<sup>768</sup> the Chamber considers that his arrival at the site with the assailants, his speech to the assailants, and his presence when the attack commenced, would have demonstrated support for the attack and thus, amounted to a form of encouragement to the assailants. Indeed, the applause that followed the Accused's speech, and the immediate commencement of the attack after the speeches, demonstrates the significant effect which the Accused, and the other speakers, had on the assailants' conduct. Accordingly, the Chamber finds that the Accused significantly contributed to the execution of the joint criminal purpose to kill Tutsi at Kesho Hill by encouraging assailants to attack.

410. For the foregoing reasons, the Chamber finds that the Accused committed genocide through participating in the JCE to kill Tutsi at Kesho Hill. In reaching the above conclusions, the Chamber has considered the Defence arguments that the Accused could not have committed genocide, given his close relationship with Tutsi.<sup>769</sup> However, the Appeals Chamber, in addressing similar arguments, has held that such findings do not preclude a reasonable trier of fact from concluding, in light of all the evidence provided, that an accused had the requisite genocidal intent.<sup>770</sup>

#### *Aiding and Abetting*

411. Although the Accused's acts in relation to the attack at Kesho Hill may also constitute aiding and abetting genocide, the Chamber finds it unnecessary to make a finding under that mode of liability in light of its conclusion that the Accused "committed" genocide through his participation in a JCE. The Chamber considers that this latter mode of liability best reflects the Accused's criminal responsibility with regard to the killings of Tutsi on Kesho Hill.

#### **12.2. Kiyovu Roadblock**

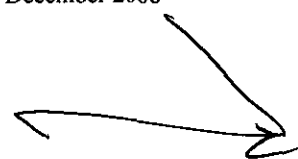
412. The Chamber recalls that the Prosecution led no evidence in support of the allegation in the Indictment that the Accused ordered and instigated soldiers, *Interahamwe* and armed civilians at the roadblock near his Kiyovu residence to search homes in the neighbourhood, and kill any Tutsi that were found. Nor did the Prosecution adduce evidence that the Accused ordered and instigated the soldiers and *Interahamwe* at the roadblock, including Sec. Lt. Jean-Claude Seyoboka, and Jacques Kanyamigezi, to kill all Tutsi who attempted to pass through.<sup>771</sup> Furthermore, the Chamber considered it was unnecessary to make a finding on

<sup>768</sup> See *supra*, para. 103.

<sup>769</sup> Defence Closing Brief, paras 41-72. The Defence produced evidence on the Accused's historical friendship with Tutsi, his marriage to Tutsi women, threats from the local population for being considered an *Inyenzi* and friend of the Tutsi, and that he saved the lives of Tutsi.

<sup>770</sup> See *Kvočka et al.*, Judgement (AC), 28 February 2005 paras. 224, 232-233 (internal citations omitted), and 416.

<sup>771</sup> See *supra*, paras. 13-15.



whether soldiers acted under the Accused's *de facto* control when ordering watchmen to man the roadblock, since the Indictment only pleads individual criminal responsibility under Article 6(1) and not superior responsibility under Article 6(3) of the Statute. The Chamber therefore does not find the Accused guilty of genocide in respect of the aforementioned allegations.

413. With regard to the evidence led by the Prosecution on the Kiyovu roadblock, the Chamber found that the roadblock was under the charge of Corporal Irandemba, the Accused's guard. On 12 April 1994, Witness BCW, whose evidence the Chamber accepted, was compelled to man the Kiyovu roadblock. Other watchmen, house-help, and at times, soldiers, also manned the roadblock. The Chamber further found that on 12 April 1994, the Accused passed through the roadblock, saw about three corpses, and gave orders to the men manning the roadblock to check identity papers "well ... since Tutsis have changed their identification papers." On 17 April 1994, the Accused passed through the roadblock again, and instructed Corporal Irandemba to find food for the men so that they could remain at the roadblock. Food was delivered on another day from Camp Kigali. On the same occasion, the Accused promised guns to those manning the roadblock. The promise came following an indication from the men that they required the guns to fight at the "battle front." Additionally, the Chamber found that those with Tutsi identity cards were taken aside and killed, and at least between 10 and 20 people were killed at the Kiyovu roadblock.

414. Given the killing of Tutsi at the Kiyovu roadblock, the context within which the killings took place,<sup>772</sup> and the checking of identification papers specifically for those of Tutsi ethnicity, the Chamber finds that the only reasonable conclusion is that those who physically perpetrated the killings, possessed the intent to destroy in whole, or in part, the Tutsi ethnic group. Accordingly, the Chamber finds that acts of genocide, as defined under Article 2 of the Statute, took place at the Kiyovu roadblock in April 1994.


415. The Chamber must next determine whether the Accused is criminally responsible for the killings at the roadblock under the modes of criminal responsibility alleged in the Indictment, namely, ordering, instigating, commission through a JCE, and aiding and abetting.

#### *Ordering*

416. The Chamber finds that although the Accused had a position of authority over his guard, Corporal Irandemba, who was in charge of the roadblock, there was no evidence of the Accused issuing orders to kill Tutsi. There was no conclusive evidence on who, if anyone, gave orders to the men at the roadblock to kill Tutsi, or, who, if anyone, ordered the establishment of the roadblock. Accordingly, the Chamber cannot find beyond reasonable doubt that the Accused either explicitly, or implicitly, ordered the killing of Tutsi at the Kiyovu roadblock.

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<sup>772</sup> See *supra*, para. 10. The Chamber's judicial notice of genocide and widespread and systematic attacks against Tutsi.





*Instigating*

417. The Chamber notes the Accused's instructions relating to identity cards and food to the persons manning the roadblock. However, the Chamber considers that there was no evidence to suggest that the Accused's instructions were perceived by those manning the roadblock as an instruction, or a prompting, to kill Tutsi. The Chamber therefore does not consider that his acts or words were such that they prompted those manning the roadblock to kill. Accordingly, the Chamber does not find the Accused criminally responsible through instigating the killings at the roadblock.

*Participation in a Joint Criminal Enterprise*

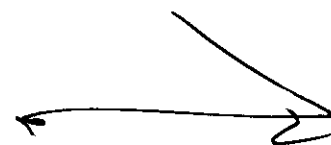
418. Although the killings at the Kiyovu roadblock may suggest that there was a concerted plan to kill Tutsi at the roadblock, the Chamber considers that there is insufficient evidence to conclude beyond reasonable doubt to the existence of a JCE to which the Accused would have been part. First, there is no conclusive evidence on who would have been the members of the criminal enterprise alleged by the Prosecution. The Chamber recalls in this respect that it found that Witness BCW, who was himself Tutsi, was compelled to man the roadblock. The evidence is also unclear as to who perpetrated the killings, that is, as to who would have executed the common purpose. Second, the existence of a JCE is not the only reasonable inference available from the evidence insofar as the killing of 10 to 20 people perpetrated at the roadblock could very well have occurred in the absence of any specific and concerted plan. Finally, the Chamber considers that the evidence on the Accused's role in relation to the roadblock is insufficient to prove that the Accused shared the alleged common plan, design or purpose beyond reasonable doubt. Although the evidence suggests that the Accused approved the killings, it does not follow that the Accused had knowledge of a plan consisting of killing Tutsi at the Kiyovu roadblock and agreed to it.

419. Therefore, the Chamber finds that the Prosecution failed to prove beyond reasonable doubt the existence of a JCE to kill Tutsi at the Kiyovu roadblock to which the Accused would have been part.

*Aiding and Abetting*

420. The Chamber will now turn to consider the charge of aiding and abetting. In this respect, the Chamber recalls that the Accused: (i) offered firearms to those manning the roadblock; (ii) gave instructions to check identity papers "well ... since Tutsi have changed their identification papers"; and (iii) ordered Corporal Irandemba to ensure food was brought to the roadblock so that the men could remain at the roadblock. The Chamber will address whether these acts can amount to acts of assistance and encouragement, such that they would have had a substantial effect on the perpetrators of the killings.

421. With regard to the offer of firearms to the men, the evidence of Witness BCW, accepted by the Chamber, was that the Accused's offer was in response to the men requesting guns "in order to go and assist those who were at the battle



front.” Thus, it cannot be concluded beyond reasonable doubt that the guns were intended for use in the killing of Tutsi at the roadblock, or, that the men manning the roadblock would have understood the Accused’s offer was for the purpose of killing Tutsi and thus perceived it as an encouragement to do so. Additionally, the Chamber made no finding of guns actually being provided by the Accused to the men at the roadblock for the killing of Tutsi.<sup>773</sup> The Chamber therefore does not find that the Accused’s offer of firearms was a form of encouragement, assistance or moral support to the killing of Tutsi at the Kiyovu roadblock, and therefore, does not amount to aiding and abetting.

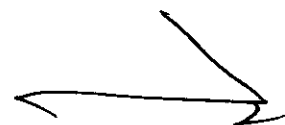
422. The Chamber will next consider the instructions issued by the Accused. In this respect, the Accused’s position of authority generally, and more specifically over Corporal Irandemba, his guard, who was in charge of the roadblock, is relevant. The Chamber considers that the Accused’s instruction to check identity cards “well” with specific reference to Tutsi, after having seen dead bodies at the roadblock, and in light of the context of widespread and systematic attacks against Tutsi in Rwanda at that time, indicated to those manning the roadblock, his approval of, and support to, the killings. In the circumstances, the Chamber considers that the only reasonable conclusion is that his instruction must have been perceived by the people manning the roadblock as an encouragement to kill Tutsi. Additionally, in view of the Accused’s authority, and the Chamber’s finding that those with Tutsi identity cards were taken aside and killed, the Chamber has no doubt that his encouragement substantially impacted on the perpetrators of the killings of Tutsi at the roadblock. Indeed, checking identity cards was a necessary step in the process of killing Tutsi at the roadblock and by his instruction that this be done well, the Accused encouraged the acts of killing which followed.

423. Additionally, the Chamber considers that the Accused’s instruction to Corporal Irandemba, to ensure that the men received food so that they could remain at the roadblock and continue with their duties, which was, to take Tutsi aside and kill them, would have had a substantial effect on the perpetration of the killings. Not only did his instruction have the effect of providing practical assistance to the killers, as food was delivered on another day from Camp Kigali, but it further demonstrated to Corporal Irandemba the Accused’s support for the killings, thereby encouraging even more the commission of the crimes.

424. Furthermore, the Chamber finds that in view of the above, particularly the context within which the roadblock existed, the killing of Tutsi at the roadblock, the Accused having seen corpses at the roadblock, and having issued instructions to check identity cards well, with specific reference to Tutsi, shows beyond reasonable doubt that the Accused, at the very least, knew that those he encouraged and assisted possessed genocidal intent. Thus, the Chamber finds beyond reasonable doubt that the Accused possessed the requisite intent for aiding and abetting genocide at the Kiyovu roadblock.

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<sup>773</sup> See *supra*, paras. 223, 251.



425. As with the findings with respect to Kesho Hill, in reaching the above conclusions with regard to the Kiyovu roadblock, the Chamber has considered and rejected the Defence arguments that the Accused could not have committed genocide given his close relationship with Tutsi.<sup>774</sup>

426. Accordingly, the Chamber finds that, through the instructions he issued, the Accused substantially contributed to the killings of Tutsi at the Kiyovu roadblock, thereby aiding and abetting the commission of acts of genocide.

### 12.3. Conclusion

427. Therefore, the Chamber finds beyond reasonable doubt that the Accused is criminally responsible under Articles 2(3)(a) and 6(1) of the Statute based on his participation in a JCE to kill Tutsi civilians on Kesho Hill, and through aiding and abetting the killing of Tutsi at the Kiyovu roadblock. Accordingly, the Chamber finds the Accused guilty of Count 2 of the Indictment for genocide.

### 13. Complicity in Genocide (Count 3)

428. Under Count 3 of the Indictment, the Accused is charged, in the alternative, with complicity in genocide pursuant to Article 2(3)(e) and 6(1) of the Statute.<sup>775</sup> The Chamber recalls that the Prosecution failed to prove beyond reasonable doubt the factual allegations with regard to Rurunga Hill, and roadblocks in Gisenyi préfecture, including the Giciye (Maliba) and La Corniche roadblocks. Further, in view of the Chamber's findings above, it will not consider the charge of complicity to commit genocide with regard to the killing of Tutsi on Kesho Hill, or the Kiyovu roadblock. Accordingly, the Chamber finds the Accused not guilty on Count 3 of the Indictment.

### 14. Crimes against Humanity – Extermination (Count 4)

429. Under Count 4 of the Indictment, the Prosecution charges the Accused with extermination as a crime against humanity pursuant to Articles 3(b) and 6(1) of the Statute on the basis that on or between the dates of 7 April 1994 and 14 July 1994, he was responsible for extermination, as part of a widespread or systematic attack against the civilian population, on political, ethnic or racial grounds.<sup>776</sup>

430. For an enumerated crime under Article 3 of the Statute to constitute a crime against humanity, the Prosecution must prove the chapeau requirement that there was a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds.<sup>777</sup> A perpetrator must have acted with knowledge of the broader context and knowledge that his acts formed part of the

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<sup>774</sup> See *supra*, fn. 768.

<sup>775</sup> Indictment, pp. 4-5.

<sup>776</sup> Indictment, p. 8.

<sup>777</sup> *Ntakirutimana*, Judgement (AC), para. 516.

discriminatory attack, but need not share the purpose or goals behind the broader attack, or possess a discriminatory intent.<sup>778</sup>

431. With regard to the specific crime of extermination under Article 3(b) of the Statute, the Prosecution must prove beyond reasonable doubt that the accused participated in a widespread or systematic killing, or in subjecting a widespread number of people, or systematically subjecting a number of people, to conditions of living that would inevitably lead to death, and that the accused intended this result.<sup>779</sup> The participation may be through any act, omission, or combination thereof, which contributes directly, or indirectly, to the killing of a large number of individuals.<sup>780</sup> Extermination as a crime against humanity is therefore distinguishable from murder as it requires that the killings occur on a mass scale.<sup>781</sup> The mens rea for extermination is the intent to perpetrate or to participate in a mass killing.<sup>782</sup>

432. Pursuant to paragraphs 28 to 41 of the Indictment, the Accused is charged with extermination as a crime against humanity in respect of the massacres at Kesho Hill and Rurunga Hill, as well as his role with respect to roadblocks in Gisenyi *préfecture* and Kiyovu *cellule*, Kigali *préfecture*. The Chamber found above that the Prosecution failed to prove beyond reasonable doubt, the factual allegations in the Indictment with respect to Rurunga Hill, and roadblocks in Gisenyi *préfecture*, including the Giciye (Maliba) and *La Corniche* roadblocks. However, it found that the Prosecution established beyond reasonable doubt certain of its allegations regarding Kesho Hill, and the Kiyovu roadblock. The Chamber will therefore now proceed to determine whether the Accused incurred criminal responsibility for his role in events at Kesho Hill and the Kiyovu roadblock.

433. The Chamber recalls it took judicial notice that between 6 April and 17 July 1994, there were, throughout Rwanda, widespread and systematic attacks against the civilian population based on Tutsi ethnic identification.<sup>783</sup> The Chamber considers that someone in the Accused's position of authority, particularly after seeing corpses at the Kiyovu roadblock, would have been aware of the aforementioned context of widespread and systematic attacks against Tutsi in Rwanda. Accordingly, the Chamber finds beyond reasonable doubt that when the Accused participated in the Kesho Hill massacre, and issued instructions at the Kiyovu roadblock, as found above, he did so with knowledge of the broader context and knowledge that his acts formed part of the discriminatory attacks occurring throughout Rwanda in 1994. The Chamber therefore finds that the *chapeau* requirements for crimes against humanity are met. The Chamber will now turn to consider whether the specific requirements for finding the Accused guilty of

<sup>778</sup> *Gacumbitsi*, Judgement (AC), para. 86; *Kunarac et al.*, Judgement (AC), paras. 99-100; *Semanza*, Judgement (AC), paras. 268-269, quoting *Akayesu*, Judgement (AC), para. 467.

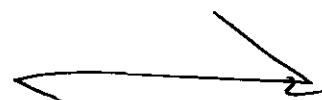
<sup>779</sup> *Ntakirutimana*, Judgement (AC), para. 522.

<sup>780</sup> *Seromba*, Judgement (AC), paras. 189; *Ndindabahizi* Judgement (AC), para. 123.

<sup>781</sup> *Ntakirutimana*, Judgement (AC), para. 542.

<sup>782</sup> *Ntakirutimana*, Judgement (AC), 13 December 2004, para. 522.

<sup>783</sup> *See supra*, para. 10.



the crime of extermination have been met in relation to Kesho Hill, and at the Kiyovu roadblock.

#### **14.1. Kesho Hill**

434. The Chamber recalls that hundreds and possibly over a thousand Tutsi were killed on Kesho Hill on 8 April 1994. The Chamber therefore finds beyond reasonable doubt that the *actus reus* requirement of large scale killings, for the crime of extermination as a crime against humanity, is met.

435. With regard to the Accused's criminal responsibility, the Chamber found above that the Accused's participation did not amount to ordering or instigating the killings on Kesho Hill. Rather, the Chamber found that he participated in a JCE to kill Tutsi on Kesho Hill. In view of the large scale killings which occurred, as well as the large number of assailants who were armed with a variety of weapons, the Chamber finds that the only reasonable inference is that all those who participated in the JCE intended to kill Tutsi on a mass scale. Accordingly, the Chamber finds beyond reasonable doubt that the Accused and the assailants intentionally participated in a JCE at Kesho Hill to kill members of the Tutsi ethnic group on a mass scale.

436. The Chamber therefore finds that the Accused committed extermination as a crime against humanity through his participation in the JCE to kill Tutsi at Kesho Hill.

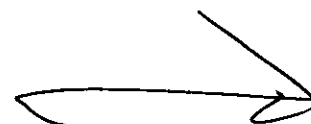
437. As found under Count 2, although the Accused's acts in relation to the attack at Kesho Hill may also constitute aiding and abetting, the Chamber finds it unnecessary to make a finding under that mode of liability in light of its conclusion that the Accused "committed" extermination as a crime against humanity through his participation in a JCE. The Chamber considers this mode of liability best reflects the Accused's criminal responsibility with regard to the killings of Tutsi on Kesho Hill.

#### **14.2. Roadblocks**

438. In view of the Chamber's finding that at least 10 to 20 people were killed at the Kiyovu roadblock, it does not find beyond reasonable doubt that the requirement of large scale killings, as required for the crime of extermination, has been met.

#### **14.3. Conclusion**

439. Accordingly, the Chamber finds beyond reasonable doubt that the Accused is criminally responsible under Articles 3(b) and 6(1) of the Statute based on his participation in a JCE to kill Tutsi civilians on Kesho Hill on 8 April 1994. The Chamber finds the Accused guilty of Count 4 of the Indictment for extermination as a crime against humanity.



## 15. Crimes against Humanity – Murder (Count 5)

440. Under Count 5, the Prosecution charges the Accused with murder as a crime against humanity pursuant to Articles 3(a) and 6(1) of the Statute.<sup>784</sup>

441. The Chamber recalls Chamber recalls the *chapeau* requirements for crimes against humanity as set out above.<sup>785</sup> The Chamber further notes that it took judicial notice that between 6 April and 17 July 1994, widespread and systematic attack occurred against the civilian population based on Tutsi ethnic identification.<sup>786</sup>

442. Murder requires proof of the following three elements: (1) the death of a victim; (2) that the death was the result of an act or an omission of the perpetrator; and (3) that the perpetrator, at the time of the act or omission, intended to kill the victim or, in the absence of such a specific intent, knew that death was a probable consequence of the act or omission.<sup>787</sup>

443. The Chamber has found above that the Prosecution failed to prove beyond reasonable doubt the Accused's participation in the alleged murder of Stanislas Sinibagiwe.<sup>788</sup> Furthermore, the Chamber recalls that the Prosecution led no evidence in respect of the alleged killing of members of the family of Jean-Sapeur Sekimonyo, and members of the Bahoma Tutsi clan.<sup>789</sup>

444. With regard to the murder of the three *gendarmes* at the Giciye (Maliba) roadblock, the Prosecution alleges the Accused's criminal responsibility under Article 6(1) of the Statute for ordering the killing of the *gendarmes*. The Prosecution further alleges that the Accused, in falsifying a report which exonerated his son, Jean-Marie, of the killings, participated in a JCE to kill the *gendarmes*, and aided and abetted the killings.

445. The Chamber recalls that there was no evidence to suggest that Jean-Marie killed the three *gendarmes* because he thought they were "identified as Tutsi or characterized as RPF accomplices or infiltrators", as alleged in paragraph 43 of the Indictment. Indeed, the Chamber could make no finding on why Jean-Marie killed the three *gendarmes*. Rather, it appeared to be a random act. Accordingly, the Chamber does not find beyond reasonable doubt that Jean-Marie, the principal perpetrator of the killing, acted with knowledge of the broader context and knowledge that his acts formed part of a discriminatory attack conducted at the time, an explicit requirement in the *chapeau* of Article 3 of the Statute. The Chamber therefore does not find that murder as a crime against humanity occurred at the Giciye (Maliba) roadblock. Thus, the Chamber need not proceed to consider

<sup>784</sup> Indictment, pp. 11, 12, paras. 42-47.

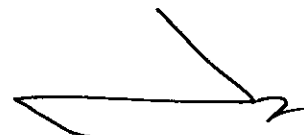
<sup>785</sup> See *supra*, paras. 430, 433.

<sup>786</sup> See *supra*, para. 10.

<sup>787</sup> *Bikindi*, Judgement (TC), para. 429.

<sup>788</sup> See *supra*, para. 379.

<sup>789</sup> Indictment, p. 11. See *supra*, para. 13.



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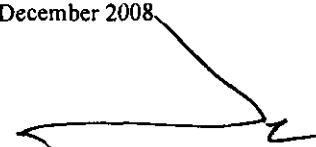
whether the Accused either ordered the killing, or, participated in a JCE to kill the *gendarmes*, or, whether he aided and abetted the killings.

446. The Chamber therefore finds that the Prosecution has failed to establish the Accused's criminal responsibility under Articles 3(a) and 6(1) of the Statute for murder as a crime against humanity. The Chamber finds the Accused not guilty on Count 5 of the Indictment.

**CHAPTER IV: VERDICT**

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

- Count 1: **NOT GUILTY** of Conspiracy to Commit Genocide
- Count 2: **GUILTY** of Genocide
- Count 3: **NOT GUILTY** of Complicity in Genocide
- Count 4: **GUILTY** of Extermination as a Crime against Humanity
- Count 5: **NOT GUILTY** of Murder as a Crime against Humanity





**CHAPTER V: SENTENCE**

**1. Introduction**

448. Having found Protais Zigiranyirazo guilty on Count 2 of the Indictment, for committing genocide, and on Count 4 for extermination as a crime against humanity, the Chamber must determine the appropriate sentence.

449. A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or for the remainder of his life.<sup>790</sup> The penalty imposed should reflect the aims of retribution, deterrence and, to a lesser extent, rehabilitation.<sup>791</sup> The Trial Chamber shall take into account the general practice regarding prison sentences in the courts of Rwanda, the gravity of the offences, including, the gravity of the crimes of which the accused has been convicted and the form or degree of responsibility for these crimes, as well as the individual circumstances of the convicted person, including aggravating and mitigating circumstances. In addition, the Trial Chamber shall ensure that any penalty imposed by a court of any State on the accused for the same act has already been served,<sup>792</sup> and shall credit the Accused for any time spent in detention pending his surrender to the Tribunal and during trial.<sup>793</sup>

**2. Determination of Sentence**

450. The Prosecution submits that the appropriate penalty is concurrent life sentences for each count of the Indictment.<sup>794</sup> The Defence submits that Zigiranyirazo should be acquitted on every count.<sup>795</sup>

451. All crimes under the Tribunal's Statute are serious violations of international humanitarian law. Trial Chambers are vested with a broad discretion in determining the appropriate sentence due to their obligation to individualise the penalties to fit the circumstances of the convicted person and reflect the gravity of the crime.<sup>796</sup>

**2.1. Gravity of the Sentence**

452. The Chamber has found Zigiranyirazo guilty of genocide for his participation in a JCE to kill Tutsi civilians at Kesho Hill. The Chamber has found that his participation in this common criminal purpose consisted of lending encouragement and approval to the attackers by addressing them before the attack and remaining at the massacre site until the attack started. Hundreds and possibly over a thousand Tutsi civilians died in this attack. The Chamber determined that Zigiranyirazo's acts of encouragement significantly contributed to the execution of

<sup>790</sup> Rule 101(A) of the Rules.

<sup>791</sup> See *Nahimana et al.*, Judgement (AC), para. 1057; *Stakić*, Judgement (AC), para 402.

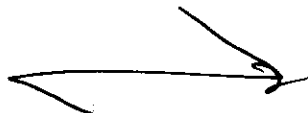
<sup>792</sup> Articles 23(1) and 23(2) of the Statute and Rule 101(B) of the Rules.

<sup>793</sup> Rule 101(C) of the Rules.

<sup>794</sup> Prosecution Closing Brief, para. 721; Closing Arguments, T. 28 May 2008 p. 46.

<sup>795</sup> Defence Closing Brief, para. 1189.

<sup>796</sup> *Seromba*, Judgement (AC), para. 228.



a joint criminal purpose to kill Tutsi at Kesho Hill by encouraging assailants to attack.

453. The Chamber has also found Zigiranyirazo guilty of genocide by aiding and abetting the killing of Tutsi at the Kiyovu roadblock. The Chamber has found that Zigiranyirazo aided and abetted those manning the roadblock by giving instructions to check identity papers with specific reference to Tutsi, which indicated his approval of the killings and encouraged those manning the roadblock to kill Tutsi, and by ordering Corporal Irandemba to ensure that food was brought to the men, which provided practical assistance to the killers and further demonstrated Zigiranyirazo's support for the killings committed there.

454. The Chamber has also found Zigiranyirazo guilty of extermination as a crime against humanity with respect to the massacres at Kesho Hill. The Chamber found that when Zigiranyirazo participated in the Kesho Hill massacre he did so with knowledge of the broader context and knowledge that his acts formed part of the discriminatory attacks occurring throughout Rwanda in 1994. The Chamber found that Zigiranyirazo participated in the JCE with intent to kill Tutsi on a mass scale.

455. The Chamber has considered that under Rwandan law, genocide and crimes against humanity carry the possible penalties of life imprisonment, or life imprisonment with special provisions, depending on the nature of the accused's participation.<sup>797</sup> In determining an appropriate sentence, the Appeals Chamber has stated that "sentences of like individuals in like cases should be comparable". However, it has also noted the inherent limits to this approach because "any given case contains a multitude of variables, ranging from the number and type of crimes committed to the personal circumstances of the individual".<sup>798</sup>

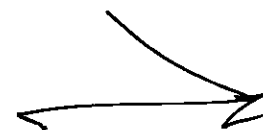
456. Considering the general sentencing practice at the Tribunal, the Chamber has paid particular attention to the Kamuhanda, Bisengimana, Rutaganira, Ruzindana, Simba and Seromba decisions, which each involved sentences for either genocide and/or extermination as a crime against humanity.<sup>799</sup>

457. Genocide is, by definition, a crime of the most serious gravity which affects the very foundations of society and shocks the conscience of humanity. Extermination as a crime against humanity is, in the Chamber's opinion, of similar gravity.

<sup>797</sup> Rwandan Organic Law No. 8/96, on the Organization of Prosecutions for Offences constituting Genocide or Crimes Against Humanity committed since 1 October 1990, published in the Gazette of the Republic of Rwanda, 35th year. No. 17, 1 September 1996, as amended by Organic Law No. 31/2007 of 25/07/2007 Relating to the Abolition of the Death Penalty.

<sup>798</sup> *Kvočka et al.*, Judgement (AC), 28 February 2005, para. 681.

<sup>799</sup> *Bisengimana*, Judgement (TC); *Rutaganira*, Judgement (TC); *Kamuhanda*, Judgement (TC); *Kayishema and Ruzindana*, Judgement (TC); *Simba*, Judgement (TC); *Seromba*, Judgement (TC) & (AC).



## 2.2. Individual Circumstance of the Accused

458. The Chamber has wide discretion in determining what constitutes mitigating and aggravating circumstances and the weight to be accorded thereto. While aggravating circumstances need to be proven beyond reasonable doubt, mitigating circumstances need only be established on a "balance of probabilities".<sup>800</sup>

### 2.2.1 Aggravating Circumstances

459. The Prosecution argues that the aggravating circumstances in this case include: Zigiranyirazo's position as a trusted and influential person in his community, as evidenced by his having been a Member of Parliament, a *préfet*, the President's brother-in-law and a member of *Akazu*; his breach of that trust; his premeditation; his direct participation as a perpetrator; the violent and humiliating nature of his acts and the vulnerability of his victims; the duration of the offences and the suffering of his victims.<sup>801</sup> The Defence made no submissions on aggravating circumstances.

460. The Chamber notes Zigiranyirazo's stature in Rwandan society as a former politician and brother-in-law of the President. However, the Chamber considers that the influence he derived from his status was not significant enough to amount to an aggravating factor.

461. The Chamber has already taken into consideration Zigiranyirazo's form of participation in assessing the gravity of the offence. The Chamber finds that no aggravating factors submitted by the Prosecution were proven beyond reasonable doubt.

### 2.2.2 Mitigating Circumstances

462. The Defence submits that the Chamber should consider the following mitigating circumstances in the determination of Zigiranyirazo's sentence, namely, that: he had previous good conduct as a teacher, public servant and father; in his advanced age he is unlikely to survive a lengthy sentence; he has been incarcerated since 2001; he had a role in saving many people, including Tutsi; he had a good relationship with Tutsi and he promoted racial tolerance in Rwanda; he was thrust into a situation not of his choosing after the murder of President Habyarimana; and he was himself a victim of the Rwandan tragedy, having lost family members, having had property confiscated and being forced into exile to live a marginal existence.<sup>802</sup>

463. The Prosecution asserts that there are no mitigating circumstances in the case, specifically pointing out that Zigiranyirazo did not voluntarily surrender, nor has he shown any remorse or acknowledged any guilt.<sup>803</sup>

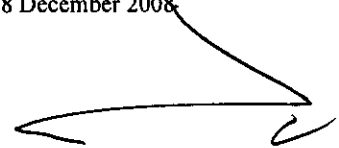
464. Exercising its discretion, the Chamber considers that Zigiranyirazo's family connections to the government and his position as a public servant in Rwandan society do not mitigate his guilt.

<sup>800</sup> *Simba*, Judgement (AC), para. 328; *Nahimana et al.*, Judgement (AC), para. 1038.

<sup>801</sup> Prosecution Closing Brief, paras. 691, 693-697; Closing Arguments, T. 28 May 2008 pp. 45-46.

<sup>802</sup> Defence Closing Brief, para. 1188.

<sup>803</sup> Prosecution Closing Brief, paras. 710, 714.



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465. Finally, the Chamber finds that Zigiranyirazo's good relationship with Tutsi and the assistance he provided to some Tutsi before and during the genocide does not warrant mitigation. The Chamber considers that Zigiranyirazo's good relationship with some Tutsi employees and Tutsi business associates is not significant and shall not have any bearing on sentencing in this case.

466. The Chamber therefore concludes that there are no mitigating circumstances that should be taken into account in the determination of the sentence.

### **2.3. Credit for Time Served**

467. Zigiranyirazo was originally arrested in Belgium, on 26 July 2001, and transferred to the Tribunal by the Belgian authorities on 3 October 2001. He has been detained in custody since 26 July 2001, first in Belgium, and then at the United Nations Detention Facility in Arusha, Tanzania. Pursuant to Rule 101(C) of the Rules, Zigiranyirazo is therefore entitled to credit for time served as of 26 July 2001.

**9. Conclusion**

468. Considering all the relevant circumstances discussed above and having ensured that the Accused is not being punished twice for the same offence, the Chamber sentences Protais Zigiranyirazo for genocide in relation to events at Kesho Hill to:

**20 YEARS OF IMPRISONMENT**

469. The Chamber sentences Protais Zigiranyirazo for genocide in relation to events at the Kiyovu roadblock to:

**15 YEARS OF IMPRISONMENT**

470. The Chamber sentences Protais Zigiranyirazo for extermination as a crime against humanity in relation to events at Kesho Hill to:

**20 YEARS OF IMPRISONMENT**

471. These sentences shall be served concurrently, and be enforced immediately. Pursuant to Rule 101(C) of the Rules, Protais Zigiranyirazo shall receive credit for the time served as of 26 July 2001.

472. In accordance with Rules 102(A) and 103 of the Rules, Protais Zigiranyirazo shall remain in the custody of the Tribunal pending transfer to the State where he will serve his sentence.

Signed on 17 December 2008 and delivered on 18 December 2008 in Arusha, Tanzania.

**Inés Mónica Weinberg de Roca**

**Presiding Judge**

**Khalida Rachid Khan**

**Judge**

**Lee Gacuga Muthoga**

**Judge**

**[Signed in Toronto, Canada]**



**ANNEX I: PROCEDURAL HISTORY****1. Pre-Trial Phase**

1. The initial indictment, confirmed on 20 July 2001, charged Protais Zigiranyirazo with two counts of Crimes Against Humanity, namely Extermination, or in the alternative, Murder.<sup>804</sup> Zigiranyirazo was arrested in Belgium, on 26 July 2001, pursuant to an Order for Arrest and Transfer issued by Judge Erik Møse on 20 July 2001.<sup>805</sup> Zigiranyirazo was transferred to the Detention Facility of the Tribunal in Arusha on 3 October 2001. The Accused made his initial appearance before Judge Navenethem Pillay on 10 October 2001, and pleaded not guilty to both charges.<sup>806</sup>

2. On 25 February 2003, Trial Chamber I issued an order granting a number of protective measures to Prosecution witnesses, including the use of pseudonyms and requiring that identifying information be placed under seal.<sup>807</sup>

3. On 15 October 2003, Trial Chamber III granted the Prosecution leave to amend the indictment based on new and additional information available to the Prosecution after the confirmation of the initial indictment.<sup>808</sup> On 5 November 2003, the Prosecution filed an amended indictment, which included three additional charges: (1) conspiracy to commit genocide, (2) genocide, or, in the alternative, (3) complicity in genocide.<sup>809</sup> On 25 November 2003, the Accused pleaded not guilty to all five charges.<sup>810</sup>

4. On 17 December 2003, Trial Chamber III granted a Defence motion for an extension of time to file preliminary motions, and ordered that the 30-day period would begin to run from the date of filing the French version of the witnesses' statements disclosed as supporting materials.<sup>811</sup>

<sup>804</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Decision Confirming the Indictment, 20 July 2001.

<sup>805</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Warrant of Arrest, Order for Transfer and Detention, 20 July 2001.

<sup>806</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Initial Appearance, T. 10 October 2001 pp. 14-15.

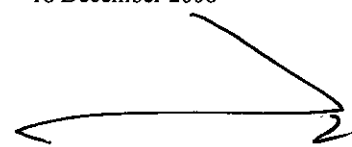
<sup>807</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses, 25 February 2003.

<sup>808</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Decision on Prosecutor's Request for Leave to Amend the Indictment and on Defence Urgent Motion for an Order to Disclose Supporting Material in Respect of the Prosecutor's Motion for Leave to Amend the Indictment, 15 October 2003.

<sup>809</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Amended Indictment, 5 November 2003.

<sup>810</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Further Initial Appearance, T. 25 November 2003 pp. 15-17.

<sup>811</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Decision on the Defence Request for Extension of Time to File Preliminary Motions: Rule 72(G) of the Rules of Procedure and Evidence, 17 December 2003.



5. On 27 January 2004, the Defence filed a motion objecting to the form of the amended indictment.<sup>812</sup> On 15 July 2004, Trial Chamber III rendered its decision, (hereinafter, "the Amended Indictment Decision"),<sup>813</sup> requiring the Prosecution to modify the amended indictment and add more specificity to the charges and the modes of liability. Trial Chamber III stated that the Prosecution still had not distinguished between individual and command responsibility under Articles 6(1) and 6(3), respectively, and ordered that Prosecution: (i) be more precise in linking factual allegations to the alleged specific type of responsibility regarding Article 6(1); (ii) either omit the pleading of command responsibility under Article 6(3) or provide a sufficiently precise factual basis to establish such responsibility; and (iii) fill in other specified facts and circumstances where vague, since mere disclosure of witness statements containing those facts was insufficient.<sup>814</sup>

6. On 31 August 2004, the Prosecution filed a second amended indictment, (hereinafter, the "Second Amended Indictment").<sup>815</sup>

7. On 9 September 2004, the Defence filed a motion objecting to the form of the Second Amended Indictment.<sup>816</sup> On 14 September 2004, the Prosecution filed a response to the Defence Motion,<sup>817</sup> and on 2 March 2005, Trial Chamber III issued a Decision granting the Prosecution leave to amend the indictment again.<sup>818</sup> Trial Chamber III allowed the Prosecution to include a new allegation of an attack on Rurunga Hill, where there was a case for the attack and insufficient prejudice against the Accused. Trial Chamber III also ordered the Prosecution to strike references to Article 6(3), as the Second Amended Indictment still contained insufficient factual basis to support an allegation of command responsibility.

8. On 8 March 2005, the Prosecution filed a third amended indictment (hereinafter, the "Indictment").<sup>819</sup> The Indictment eliminated all references to

<sup>812</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Motion Objecting to The Form of the Amended Indictment and Brief in Support, 27 January 2004.

<sup>813</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Decision on the Defence Preliminary Motion Objecting to the Form of the Amended Indictment: Rule 72(A)(ii) of the Rules of Procedure and Evidence, 15 July 2004.

<sup>814</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Decision on the Defence Preliminary Motion Objecting to the Form of the Amended Indictment: Rule 72(A)(ii) of the Rules of Procedure and Evidence, 15 July 2004 pp. 7-12.

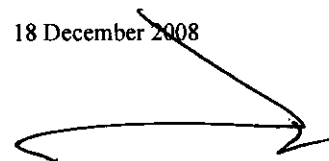
<sup>815</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Acte D'Accusation Modifié, 31 August 2004.

<sup>816</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Response to the Prosecutor's Conditional Motion for Leave to Amend Indictment and Motion Objecting in Part to the Form of the Amended Indictment Filed on August 31, 2004 (Hereafter Referred to as the Recast Indictment), 9 September 2004.

<sup>817</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Reply to Defence Response to Prosecutor's Conditional Motion for Leave to Amend Indictment and Response to Defence Motion Objecting in Part to the Form of the Amended Indictment of 31 August 2004, 14 September 2004.

<sup>818</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-R50, Decision on the Prosecution Conditional Motion for Leave to Amend the Indictment and on the Defence Counter-Motion Objecting to the Form of the Recast Indictment: Rule 18 of the Statute, Rules 50(A), 47 (E) and (F) of the Rules of Procedure and Evidence, 2 March 2005.

<sup>819</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Amended Indictment, 8 March 2005.



command responsibility pleaded under Article 6(3) of the Statute, and charged the Accused with individual criminal responsibility pursuant to Articles 6(1) as part of a joint criminal enterprise. The third amended Indictment is the final version of the charges against Zigiranyirazo.

9. On 4 May 2005, the Accused pleaded not guilty to all five charges set out in the Indictment.<sup>820</sup>

10. Status Conferences were held on 4 and 6 May 2005 to address issues of disclosure and trial scheduling.<sup>821</sup>

11. The Prosecution filed a Pre-Trial Brief on 22 July 2005 pursuant to Rule 73bis(B)(i) of the Rules.<sup>822</sup>

12. On 22 September 2005, Trial Chamber III denied Defence motions objecting to the form of the Indictment and requesting reconsideration of the 2 March 2005 Decision, which had allowed the Prosecution to amend the Second Amended Indictment.<sup>823</sup>

13. On 30 September 2005, Trial Chamber III denied a Defence motion to exclude some parts of the Prosecution Pre-Trial Brief.<sup>824</sup> Although finding that it was not necessary to remove these parts from the Pre-Trial Brief, Trial Chamber III held that the facts at issue, the alleged murder of Venantie's Family, Judge Nzamuye, three Belgians and three Tutsi priests, were new and precise material facts which were not pleaded in the Indictment.<sup>825</sup> Trial Chamber III found that the failure to include these facts in the Indictment could not be cured by the disclosure even if it was made in a timely and clear manner, and therefore held that the facts were irrelevant to any existing charges in the Indictment. Trial Chamber III further held that the Prosecution would not be allowed to lead evidence to prove those facts, and stated it would not grant leave to amend the Indictment to include any new charges as doing so would prejudice the Accused.<sup>826</sup>

<sup>820</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Further Initial Appearance, 4 May 2005 pp. 14-15.

<sup>821</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Status Conference, T. 4 May 2005; T. 6 May 2005.

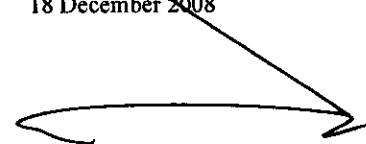
<sup>822</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-PT, Prosecutor's Pre-Trial Brief (Filed Pursuant to Rule 73(B)(i)bis of the Rules of Procedure and Evidence), 22 July 2005.

<sup>823</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-R72, Decision on Defence Motions (i) Objecting to the Form of the Third Amended Indictment and (ii) Requesting the Harmonization or Reconsideration of the Decision of 2 March 2005: Rules 72(B)(ii) and 73 of the Rules of Procedure and Evidence, 22 September 2005.

<sup>824</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-PT, Urgent Motion Seeking Exclusion of Evidence Alleged in the Prosecutor's Pre-Trial Brief, 10 August 2005.

<sup>825</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-PT, Decision on Defence Urgent Motion to Exclude Some Parts of the Prosecution Pre-Trial Brief: Rule 73bis of the Rules of Procedure and Evidence, 30 September 2005 p. 5.

<sup>826</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-PT, Decision on Defence Urgent Motion to Exclude Some Parts of the Prosecution Pre-Trial Brief: Rule 73bis of the Rules of Procedure and Evidence, 30 September 2005 p. 6.





## 2. Trial Phase

14. The trial commenced on 3 October 2005, before Trial Chamber III composed of Judges Inés Mónica Weinberg de Roca, Presiding, Khalida Rachid Khan and Lee Gacuiga Muthoga. In the course of 88 trial days, a total of 92 witnesses were heard and 227 exhibits admitted.

### *Prosecution Case*

15. The Prosecution conducted its case in four sessions commencing on 3 October 2005 and running until 20 July 2006, with a brief re-opening from 27 November 2006 to 30 November 2006. Over the course of 50 trial days the Prosecution called 25 witnesses, including one expert, and tendered 115 exhibits.

16. On 25 January 2006, the Chamber denied a Defence motion for disclosure of exculpatory evidence, finding that the evidence that the Defence was seeking was not in fact exculpatory.<sup>827</sup>

17. On 31 January 2006, the Chamber issued a Decision denying a Prosecution request to have Witness ADE give evidence via video-link and denying a Defence motion to have Witness ADE's protective order lifted.<sup>828</sup>

18. On 24 February 2006, the Chamber denied a Prosecution motion to dismiss the Defence's notice that it did not accept the qualifications of the Prosecution's expert witness, or the contents of the expert witness's report and that it wished to cross-examine the expert witness. The Defence had filed outside the prescribed time limit but the Chamber did not consider the failure to file in a timely manner as a waiver of the Accused's right to cross-examine the expert witness on her qualifications and report. Both Parties had sufficient time to prepare and no prejudice was caused to either Party by the late filing.<sup>829</sup>

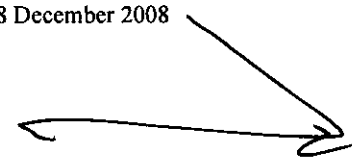
19. On 7 April 2006, the Chamber denied a Defence motion to exclude the testimony of Witness SGM. The Defence had argued that the witness's testimony was irrelevant and there was incomplete and imprecise disclosure regarding what the witness would testify about. The Defence also sought to exclude the evidence because it was regarding matters outside the temporal jurisdiction of the Tribunal. The Chamber found that the witness's evidence was anticipated in the Prosecution's Pre-Trial Brief and it was on a matter that was clearly raised in the Indictment. The

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<sup>827</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Defence Motion for Disclosure of Exculpatory Evidence from *Ephrem Setako* and *Bagosora et al.* Cases: Rule 68 of the Rules of Procedure and Evidence, 25 January 2006.

<sup>828</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on Defence and Prosecution Motions Related to Witness ADE: Rules 44, 66, 68, 73 and 75 of the Rules of Procedure and Evidence, 31 January 2006.

<sup>829</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Prosecution Motion for Dismissal of the Defence Notice Due to Failure to Meet the Time Limit: Rule 94bis(B) of the Rules of Procedure and Evidence, 24 February 2006.



Chamber also found that the witness's evidence was relevant, and that it was the Prosecution's responsibility to determine how it would prove the charges.<sup>830</sup>

20. On 12 May 2006, the President of the Tribunal, Judge Erik Møse, granted a request for authorisation to hold a trial session away from the seat of the Tribunal for the purpose of hearing the testimony of Witness ADE in The Hague, with all parties present.<sup>831</sup> It was necessary to have the hearing in The Hague to maintain the security of the witness who was too fearful to travel to Arusha.

21. The Prosecution concluded its case on 20 July 2006.

#### ***Interim Proceedings***

22. On 30 August 2006 the Defence submitted a Pre-Defence Brief.<sup>832</sup>

23. On 13 October 2006, the Chamber granted in part a Prosecution motion for severance and the exclusion of some parts of the Pre-Defence Brief. The Chamber ordered a number of witnesses be removed from the Defence witness list but denied the Prosecution's motion in all other respects.<sup>833</sup>

24. On 17 October 2006, the Chamber denied the Defence's Rule 98*bis* motion for acquittal. However, the Chamber found that the Accused had no case to answer in respect of the allegations contained in paragraphs 20, 25, 26, 37, 48, 49 and 50, of the Indictment since the Prosecution had presented no evidence in connection with the allegations.<sup>834</sup>

25. On 30 October 2006, the day the Defence opened its case, the Appeals Chamber rendered a Decision on Interlocutory Appeal.<sup>835</sup> The Accused had submitted that the Chamber violated his right to be tried in his presence, as guaranteed by Article 20(4)(d) of the Statute. The Accused argued that this violation resulted from the Chamber's decision to allow Witness Michel Bagaragaza (Witness ADE)<sup>836</sup> to testify in The Hague with the Accused participating in the proceedings via video-link from Arusha. The order permitting the travel to The Hague had allowed for all parties to be present, however, as the Accused was not permitted to enter The Netherlands, the

<sup>830</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on Defence Motion to Exclude the Testimony of Witness SGM: Rule 89(C) of the Rules of Procedure and Evidence, 7 April 2006.

<sup>831</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on Request for Authorisation to Hold Trial Session Away from the Seat of the Tribunal, 12 May 2006.

<sup>832</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Pre-Defence Brief, 30 August 2006.

<sup>833</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Prosecution Motion for Severance [sic] and Exclusion of Parts of the Pre-Defence Brief, 13 October 2006.

<sup>834</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-I, Decision on the Defence Motion Pursuant to Rule 98 *bis*: Rule 98 *bis* of the Rules of Procedure and Evidence, 17 October 2006.

<sup>835</sup> *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-2001-73-AR73, Decision on Interlocutory Appeal, 30 October 2006.

<sup>836</sup> Bagaragaza waived the use of a pseudonym at the outset of his testimony. See *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, T. 13 June 2006 pp. 4-5.

Chamber approved his participation by video-link.<sup>837</sup> The Appeals Chamber decided that the restrictions on the Accused's fair trial rights were unwarranted and excessive under the circumstances and thus failed the test of proportionality.<sup>838</sup> The witness's testimony was struck from the record. Due to this 30 October 2006 decision, the trial was temporarily adjourned in order to allow the Parties time to consider the import of the Appeals Chamber decision on their respective cases and to consider the appropriate action in consequence of it.

26. On 6 November 2006, the Prosecution filed a motion to re-open the Prosecution case in order to hear the testimony of Michel Bagaragaza.<sup>839</sup> On 16 November 2006, the motion was granted, in part, and an order made for the transfer of Michel Bagaragaza from The Hague to Arusha. On 27 November 2006, the Prosecution case re-opened and the testimony of the Prosecution Witness Michel Bagaragaza was heard again, this time in open session.<sup>840</sup> The Prosecution case closed on 30 November 2006.

27. On 27 November 2006, the Chamber gave an oral ruling granting, in its entirety, the Prosecution motion requesting judicial notice of facts of common knowledge pursuant to Rule 94(A).<sup>841</sup> The facts that were taken notice of were as follows:

- Between 1 January 1994 and 17 July 1994, Rwanda was a State Party to the:
  - *Convention on the Prevention and Punishment of the Crime of Genocide* 1948), having acceded to it on 16 April 1975; and
  - Geneva Conventions of 12 August 1949 and their Additional Protocol II of 8 June 1977, having acceded to the Geneva Conventions of 12 August 1949 on 5 May 1964 and having acceded to Protocols Additional thereto of 1977 on 19 November 1984.
- Between 6 April 1994 and 17 July 1994, there was an armed conflict in Rwanda that was not of an international character. The conflict was a

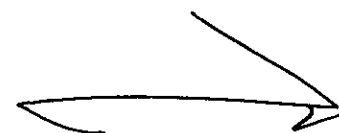
<sup>837</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Scheduling Order: Rule 54 of the Rules of Procedure and Evidence, 26 May 2006; Extremely Confidential Decision on Defence Motion Concerning the Hearing of Witness ADE, 5 June 2006.

<sup>838</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-AR-73, Decision on Interlocutory Appeal, 30 October 2006 p. 10.

<sup>839</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Prosecutor's Joint Motion for Re-opening of the Prosecution Case (made under Rules 54, 73 and 85 of the Rules of Procedure and Evidence and Appeals Chamber Decision dated 30 October 2006) and Requests for Reconsideration of the Trial Chamber Decision dated 31 January 2006 on the Hearing of Witness Michel Bagaragaza via Video Conference (made pursuant to Rule 73bis(E) of the Rules of Procedure and Evidence), 6 November 2006.

<sup>840</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Prosecution Joint Motion for Re-opening its Case and for Reconsideration of the 31 January 2006 Decision on the Hearing of Witness Michel Bagaragaza via Video-link: Rules 54, 73, 73bis(E) and 85 of the Rules of Procedure and Evidence, 16 November 2006.

<sup>841</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Oral Decision on the Prosecution Motion for Judicial Notice, T. 27 November 2006 pp. 2, 3.



genocide in which the Tutsi ethnic group, identified severally from the Hutu and Twa, were targeted for widespread and systematic attack, which caused serious bodily or mental harm and resulted in the death of a large number of Tutsi.

### **Defence case**

28. The Defence conducted its case in four sessions commencing on 30 October 2006 and concluding on 4 December 2007. During 40 trial days, the Defence called 41 witnesses, including an investigator and an expert. The Defence tendered 112 exhibits.

29. On 21 February 2007, the Chamber denied a second Rule 98*bis* motion for acquittal, which included facts raised during the re-opening of the Prosecution case,<sup>842</sup> upholding its earlier ruling that the Accused had no case to answer in respect of the allegations contained in paragraphs 20, 25, 26, 37, 48, 49 and 50 of the Indictment on which the Prosecution had led no evidence.<sup>843</sup>

30. Also on 21 February 2007, the Chamber granted a Defence motion to have two witnesses testify by video-link from The Netherlands.<sup>844</sup>

31. On 23 March 2007, the Chamber declined to qualify Emmanuel Neretse as an expert in Rwandan military affairs, but accepted his testimony as a factual witness.<sup>845</sup> On 29 March 2007, the Chamber also declined to qualify Gaspard Musabyimana as an expert in informal power networks such as the *Akazu*, but also accepted his testimony as a factual witness.<sup>846</sup>

32. A status conference was held on 13 April 2007 to establish the time frame for the Defence's final trial session.<sup>847</sup>

33. The Defence case closed on 4 December 2007.<sup>848</sup>

### **3. Further Proceedings**

34. On 19 June 2007, upon considering a motion from the Prosecution, the Chamber requested the President of the Tribunal to authorise the Chamber to exercise its functions away from the seat of the Tribunal during a site visit, pursuant to Rule 4.<sup>849</sup> On 5 July 2007 the President authorised the site visit in Rwanda from 12 and 16 November 2007.<sup>850</sup>

<sup>842</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Motion Pursuant to Rule 98*bis* RPP, 6 December 2006.

<sup>843</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Defence Motion Pursuant to Rule 98*bis*: Rule 98*bis* of the Rules of Procedure and Evidence, 21 February 2007..

<sup>844</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Defence Motions for Videolink Hearings of Witnesses BNZ104 and JFPR2, 21 February 2007.

<sup>845</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, T. 23 March 2007 p. 43.

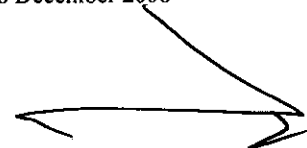
<sup>846</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, T. 29 March 2007 pp. 53-54.

<sup>847</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, T. 13 April 2007.

<sup>848</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, T. 4 December 2007.

<sup>849</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Prosecution's Motion for a View of the *Locus in quo*: Rule 54 of the Rules of Procedure and Evidence, 19 June 2007.

<sup>850</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-R4, Decision Authorizing the Site Visit in Rwanda, 5 July 2007.



35. On 15 February 2008, the Chamber issued a scheduling order to set the date for filing of Closing Briefs and set the date for Closing Arguments.<sup>851</sup> The Parties filed their Closing Briefs on 25 April 2008. On 26 May 2008<sup>852</sup> and on 27 May 2008<sup>853</sup> respectively, the Parties filed corrigenda to their Closing Briefs. Closing Arguments were heard on 28 and 29 May 2008.

36. On 23 September 2008, the Defence filed a confidential motion to reopen its case.<sup>854</sup> In light of the Chamber's findings in the Judgement, the motion is considered to be moot.

37. On 6 October 2008, the Defence also filed a motion alleging a violation of Rule 68.<sup>855</sup> In the Judgement, the Chamber considered that the alleged lack of disclosure of the material at issue caused no prejudice to the Defence as the allegations it was pertinent to were not proven.

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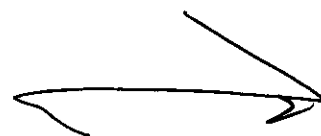
<sup>851</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Scheduling Order: Rules 54 and 86 of the Rules of Procedure and Evidence, 15 February 2008.

<sup>852</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Additional Corrections to Errors in the Corrected Filing of the Defense Closing Brief, 26 May 2008.

<sup>853</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Corrigendum to the Prosecutor's Final Trial Brief, 27 May 2008.

<sup>854</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Confidential Motion to Reopen Defence Case, 23 September 2008.

<sup>855</sup> *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Defence Motion alleging Violation of Rule 68, 6 October 2008.



**ANNEX II: GLOSSARY AND REFERENCES**

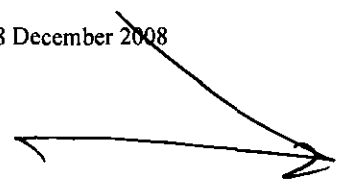
**1. List of Defined Terms, Acronyms and Abbreviations**

*According to Rule 2(B), of the Rules of Procedure and Evidence, the masculine shall include the feminine and the singular the plural, and vice-versa.*

<b>Chamber (or Trial Chamber)</b>	Trial Chamber III of the International Criminal Tribunal for Rwanda, composed of Judges Inés Mónica Weinberg de Roca, presiding, Khalida Rachid Khan and Lee Gacuiga Muthoga
<b>CDR</b>	<i>Coalition pour la défense de la République</i> (Coalition for the Defence of the Republic)
<b>Defence Closing Brief</b>	<i>The Prosecutor v. Protais Zigiranyirazo</i> , Case No. ICTR-2001-73-T, Defence Closing Brief, 24 April 2008
<b>Indictment</b>	<i>The Prosecutor v. Protais Zigiranyirazo</i> , Case No. ICTR-2001-73-I, Amended Indictment Pursuant To Decisions of Trial Chamber III of 2 March 2005, Filed on 8 March 2005
<b>ICTY</b>	International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 927 of 25 May 1993
<b>JCE</b>	Joint Criminal Enterprise
<b>MRND</b>	<i>Mouvement révolutionnaire national pour le développement</i> (National Revolutionary Movement for Development)
<b>Preliminary Motion Decision of 15 July 2004</b>	<i>The Prosecutor v. Protais Zigiranyirazo</i> , Case No. ICTR-2001-73-I, Decision on the Defence Preliminary Motion Objecting to the Form of the Amended Indictment, 15 July 2004
<b>Indictment Decision of 2 March 2005</b>	<i>The Prosecutor v. Protais Zigiranyirazo</i> , Case No. ICTR-2001-73-R50, Decision on the Prosecution Conditional Motion for Leave to Amend the Indictment and on the Defence Counter-Motion Objecting to the Form of the Recast Indictment, 2 March 2005
<b>Pre-Defence Brief</b>	<i>The Prosecutor v. Protais Zigiranyirazo</i> , Case No. ICTR-2001-73-I, Pre-Defence Brief, 30 August 2006
<b>Prosecution Pre-Trial Brief</b>	<i>The Prosecutor v. Protais Zigiranyirazo</i> , Case No. ICTR-2001-73-PT, Prosecutor's Pre-Trial Brief Filed Pursuant to Rule 73(B)(i)bis of the Rules of Procedure and Evidence, 22 July 2005

Judgement

18 December 2008



*The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-01-73-T

<b>Pre-Trial Brief Decision</b>	<i>The Prosecutor v. Protais Zigiranyirazo</i> , Case No. ICTR-2001-73-PT, Decision on Defence Urgent Motion to Exclude Some Parts of the Prosecution Pre-Trial Brief, 30 September 2005
<b>Prosecution Closing Brief</b>	<i>The Prosecutor v. Protais Zigiranyirazo</i> , Case No. ICTR-2001-73-T, Prosecutor's Final Trial Brief, 25 April 2008
<b>RPF</b>	Rwandan Patriotic Front
<b>RTL</b>	<i>Radio Télévision Libre des Mille Collines</i>
<b>Rules</b>	Rules of Procedure and Evidence of the Tribunal, adopted pursuant to Article 14 of the Statute
<b>Statute</b>	The Statute of the Tribunal adopted by Security Council Resolution 955 of 8 November 1994
<b>T.</b>	Transcript of the Trial Chamber hearings (English Version)
<b>T. (French)</b>	Transcript of the Trial Chamber hearings (French Version)
<b>Tribunal (or ICTR)</b>	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other such Violations Committed in the Territory of Neighboring States between 1 January 1994 and 31 December 1994, established by Security Council Resolution 955 of 8 November 1994

**2. Jurisprudence****ICTR****BAGARAGAZA**

*The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86-I, Amended Indictment, 1 December 2006

**BAGOSORA**

*The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006

**BISENGIMANA**

*The Prosecutor v. Paul Bisengimana*, Case No. ICTR-00-60-T, Judgement and Sentence, 13 April 2006 ("*Bisengimana*, Judgement (TC)")

**GACUMBITSI**

Judgement

18 December 2008



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

**KAJELIJELI**

*The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Judgment and Sentence, 1 December 2003 (“*Kajelijeli*, Judgement (TC)”)

**KAMUHANDA**

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