



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-01-70-T  
13-03-2009  
(4712-4504)

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OR: ENG

TRIAL CHAMBER II

**Before:** Judge Asoka de Silva, Presiding  
Judge Taghrid Hikmet  
Judge Seon Ki Park

**Registrar:** Mr. Adama Dieng

**Date:** 27 February 2009

THE PROSECUTOR

v.

Emmanuel RUKUNDO

Case No. ICTR-2001-70-T

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JUDGEMENT

**Office of the Prosecutor:**

William T. Egbe  
Sulaiman Khan  
Veronic Wright  
Patrick Gabaake  
Thembile Segoete  
Amina Ibrahim

**Counsel for the Defence:**

Aïcha Condé  
Alison Turner

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**I. CHAPTER I: INTRODUCTION**

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**A. THE TRIBUNAL AND ITS JURISDICTION**

1. The Judgement in the case of *Prosecutor v. Emmanuel Rukundo* is issued by Trial Chamber II (the "Chamber") of the International Criminal Tribunal for Rwanda (the "Tribunal"), composed of Judges Asoka de Silva, presiding, Taghrid Hikmet, and Seon Ki Park.
2. The Tribunal is governed by the Statute annexed to United Nations Security Council Resolution 955 (the "Statute") and by the Rules of Procedure and Evidence (the "Rules").<sup>1</sup>
3. The Tribunal has the authority to prosecute persons responsible for serious violations of international humanitarian law committed in the Republic of Rwanda, and Rwandan citizens responsible for such violations committed in the territory of neighbouring states.<sup>2</sup> Its jurisdiction is limited to acts of genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva conventions and of Additional Protocol II thereto, committed between 1 January 1994 and 31 December 1994.<sup>3</sup>

**B. THE ACCUSED**

4. Emmanuel Rukundo was born on 1 December 1959, at Mukingi *commune*, Nyagakambe *cellule*, Rugogwe *secteur*, Gitarama *préfecture* in Rwanda.<sup>4</sup> Rukundo studied at the Nyakibanda Major Seminary from 1985 until 1991.<sup>5</sup> After being ordained as a priest on 28 July 1991 he served as a parish priest in Kanyanza Parish in Gitarama *préfecture*.<sup>6</sup> In February 1993, Rukundo was appointed military chaplain for the Rwandan Armed Forces ("RAF"). Following this appointment, he was posted to the Ruhengeri and Gisenyi military sectors in May 1993, and then transferred to Kigali in May 1994.<sup>7</sup> He left Rwanda after the defeat of the RAF by the Rwandan Patriotic Front ("RPF") in September 1994, and went into exile in Burundi and then later in Europe.<sup>8</sup>

<sup>1</sup> The Statute and the Rules are available at the Tribunal's website: <http://www.icttr.org>.

<sup>2</sup> Articles 1 and 5 of the Statute.

<sup>3</sup> Article 1 of the Statute.

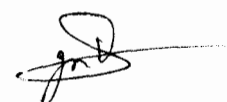
<sup>4</sup> Amended Indictment of 6 October 2006 ("Indictment"), para. II A; T. 5 October 2007, p. 1; Prosecution Closing Brief, para. 13.

<sup>5</sup> T. 5 October 2007, pp. 12-13; Prosecution Closing Brief, para. 13.

<sup>6</sup> Indictment, para. II B(i); T. 8 October 2007, pp. 13, 15, 18.

<sup>7</sup> Indictment, para. II B(ii); Prosecution Closing Brief, para. 14; T. 8 October 2007, pp. 23, 38; T. 9 October 2007, pp. 13-15; T. 4 September 2007, p. 18.

<sup>8</sup> T. 9 October 2007, pp. 60-61; T. 10 October 2007, pp. 23, 26; Para. 21 of the Indictment states that Emmanuel Rukundo left Rwanda after the defeat of the Rwanda army by the RPF in July 1994, and went into exile in Switzerland. The Chamber notes this discrepancy between the Indictment and the testimony of the Accused.



**C. INDICTMENT**

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5. In the amended Indictment of 6 October 2006 ("Indictment"), the Prosecution charged Emmanuel Rukundo ("Accused") with three counts pursuant to Articles 2 and 3 of the Statute: genocide and murder and extermination as crimes against humanity. According to the Indictment, the Accused bears individual criminal responsibility for these crimes pursuant to Article 6(1) of the Statute.

**D. SUMMARY OF PROCEDURAL HISTORY**

6. On 5 July 2001, Judge Pavel Dolenc issued a Warrant of Arrest and an Order for Transfer and Detention and for Search and Seizure.<sup>9</sup> On 12 July 2001, Emmanuel Rukundo was arrested in Geneva, Switzerland and was transferred on 20 September 2001 to the UN Detention Facility in Arusha. On 26 September 2001 the Accused made his initial appearance before Judge Erik Møse and entered a plea of not guilty to all of the counts in the Indictment.<sup>10</sup>

7. On 14 September 2006, the case was formally transferred from Trial Chamber III to Trial Chamber II. On 28 September 2006, Judge Asoka de Silva, granted in part the Prosecution's Motion to Amend the Indictment.<sup>11</sup> The Prosecution filed an Amended Indictment on 6 October 2006.

8. The trial commenced on 15 November 2006 and closed on 20 February 2008. The Prosecution presented a total of 18 witnesses over the course of 25 trial days. The Defence case started on 2 July 2007. During 41 trial days, the Defence called a total of 32 witnesses. The procedural history of this Trial is set out in full in Annex A to this Judgement.

**E. OVERVIEW OF THE CASE**

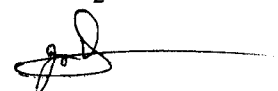
9. During the course of 1994, particularly between 6 April and 17 July 1994, there were widespread and systematic attacks against the Tutsi throughout Rwanda including Gitarama *préfecture*.<sup>12</sup> As a result, many Tutsi from this *préfecture* fled their homes and sought refuge in various places in Kabgayi, including the premises under the control of the Kabgayi diocese such as

<sup>9</sup> Warrant of Arrest and Orders for Transfer and Detention and for Search and Seizure, 5 July 2001.

<sup>10</sup> T. 26 September 2001, pp. 38-41.

<sup>11</sup> Decision on the Prosecutor's Request to File an Amended Indictment, 28 September 2006.

<sup>12</sup> Indictment, para. 10. The Appeals Chamber of the ICTR held that the existence of systematic and widespread attacks against a civilian population based on Tutsi ethnic identification between April and June 1994 to be a fact of common knowledge and therefore not amenable to reasonable dispute. See *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 33.



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the St. Léon Minor Seminary, St. Joseph's College, the Kabgayi Major Seminary, the Gitarama Parish and TRAFIPRO otherwise known as the CND.<sup>13</sup>

10. According to the Prosecution, Emmanuel Rukundo was known to be a Hutu extremist. In 1973, he was allegedly expelled from the St. Léon Minor Seminary in Kabgayi because of his extremist attitudes and actions. The Prosecution alleges that Emmanuel Rukundo promoted anti-Tutsi extremism while he was a student at the Nyakibanda Major Seminary. The Prosecution further claims that Emmanuel Rukundo's extremism towards Tutsi was evidenced by the campaigns he led in opposition to the Arusha Accords in February 1994.

11. The Prosecution alleges that the Accused relied on his authority as a priest and a military chaplain in the RAF to order, instigate, or aid and abet soldiers, *Interahamwe* and armed civilians in various places in Gitarama *préfecture* to commit the crimes set out in the Indictment, notably at the Nyabikenke communal office, the Kabgayi Bishopric, the St. Léon Minor Seminary, the CND, St. Joseph's College, the Kabgayi Major Seminary, two primary schools in Kabgayi and in other locations in Kabgayi where Tutsi refugees had sought protection between April and June 1994. The Indictment further states that Emmanuel Rukundo ordered, instigated, or aided and abetted *gendarmes* to perpetrate the killing of a Tutsi priest in Cyangugu *préfecture*.<sup>14</sup>

12. The Defence submits that Emmanuel Rukundo was not an extremist and that his relationship with Tutsi members of the clergy was friendly and cordial. The Defence further contends that Emmanuel Rukundo was not involved in any of the crimes in either Gitarama or Cyangugu *préfectures* as charged in the Indictment.<sup>15</sup>

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<sup>13</sup> Indictment, para. 10.

<sup>14</sup> Indictment, para. 17.

<sup>15</sup> Defence Closing Brief, paras. 86, 1796.



**II. CHAPTER II: PRELIMINARY ISSUES**

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**A. ISSUES RELATING TO THE INDICTMENT****1. Facts not Pleaded in the Indictment**

13. The Defence alleges that the Prosecution adduced evidence in respect of several allegations which were not pleaded in the Indictment.<sup>16</sup> The Defence argues that since it did not have sufficient notice of this evidence to be able to defend against it, the evidence should be excluded.<sup>17</sup> It also argues that the testimonies of several Prosecution witnesses are inconsistent with the Indictment.<sup>18</sup> The Defence further contends that the Indictment is vague in respect of several allegations.<sup>19</sup>

14. Article 20(4)(a) of the Statute guarantees an accused the fundamental right “to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charges against him or her.” The Appeals Chamber has interpreted this provision as placing an obligation on the Prosecution “to state the material facts underpinning the charges in the indictment, but not the evidence by which such material facts are to be proven”.<sup>20</sup>

15. The Appeals Chamber has further noted that 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>21</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 how the evidence unfolds.<sup>22</sup> However, defects in an indictment may come to light during the proceedings because the evidence turns out differently than expected. This calls for the Trial Chamber to consider whether a fair trial requires an amendment of the indictment, an adjournment of proceedings or the exclusion of evidence outside the scope of the indictment.<sup>23</sup>

16. The Appeals Chamber has also held that criminal acts that were physically committed by the accused must be set forth in the indictment specifically, including where feasible “the identity of the

<sup>16</sup> This includes, *inter alia*: 1) Parts of Witness BLJ’s testimony regarding the allegation of the attack at St. Joseph’s College; 2) A part of Witness CSE’s testimony regarding the allegation concerning the roadblock near the Kabgayi Printing Press; and 3) A part of Witness BLC’s testimony concerning the allegation at the St. Léon Minor Seminary.

<sup>17</sup> Defence Closing Brief, paras. 162-231.

<sup>18</sup> See for example Prosecution Witnesses AMA, BUW, BLP, CSH, BLC, CCN.

<sup>19</sup> Defence Closing Brief, paras. 841-848, 1304-1313.

<sup>20</sup> *Kupreškić et al.*, Judgement (AC), para. 88; *Karera*, Judgement (TC), para. 12.

<sup>21</sup> *Seromba*, Judgement (AC), paras. 27, 100; *Simba*, Judgement (AC) para. 63; *Muhimana*, Judgement (AC), paras. 76, 167, 195; *Gacumbitsi*, Judgement (AC), para. 49; *Ndindabahizi*, Judgement (AC), para. 16.

<sup>22</sup> *Ntagerura et al.*, Judgement (AC), para. 27. See also *Kvočka et al.*, Judgement (AC), para. 30; *Niyitigeka*, Judgement (AC), para. 194; *Kupreškić et al.*, Judgement (AC), para. 92.





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victim, the time and place of the events and the means by which the acts were committed.”<sup>24</sup> In certain circumstances, the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in matters such as the identity of the victims and the dates of the commission of the crimes.<sup>25</sup>

17. An indictment lacking the requisite precision is defective. However, the defect may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the factual basis underpinning the charge.<sup>26</sup> Such information includes a Pre-Trial Brief and annexed witness summaries, the opening statement and motions to vary witness lists. Yet, the principle that a defect in an indictment may be cured is not without limits. In this respect, the Appeals Chamber has emphasized:

[T]he “new material facts” should not lead to a “radical transformation” of the Prosecution’s case against the accused. The Trial Chamber should always take into account the risk that the expansion of charges by the addition of new material facts may lead to unfairness and prejudice to the accused. Further, if the new material facts are such that they could, on their own, support separate charges, the Prosecution should seek leave from the Trial Chamber to amend the indictment and the Trial Chamber should only grant leave if it is satisfied that it would not lead to unfairness or prejudice to the Defence.<sup>27</sup>

18. The Chamber also recalls that it is to be assumed that “an Accused will prepare his defence on the basis of material facts contained in the Indictment, not on the basis of all the material disclosed to him that may support any number of additional charges, or expand the scope of existing charges.”<sup>28</sup> The Appeals Chamber in *Karera* recently emphasized the clear distinction between vagueness in an indictment and omission in an indictment of certain charges altogether, which can be incorporated into the indictment only by a formal amendment.<sup>29</sup> The Chamber also recalls that

<sup>23</sup> *Ntagerura et al.*, Judgement (AC), para. 27. See also *Kvočka et al.*, Judgement (AC), para. 31; *Niyitegeka*, Judgement (AC), para. 194; *Kupreškić et al.*, Judgement (AC), para. 92.

<sup>24</sup> *Seromba*, Judgement (AC), para. 27; *Muhimana*, Judgement (AC), para. 76; *Ndindabahizi*, Judgement (AC), para. 16; *Gacumbitsi*, Judgement (AC), para. 49; *Ntakirutimana*, Judgement (AC), para. 32, quoting *Kupreškić et al.*, Judgement (AC), para. 89; *Muvunyi*, Judgement (AC), para. 120.

<sup>25</sup> *Muvunyi*, Judgement (AC), para. 94; *Muhimana*, Judgement (AC), para. 79; *Gacumbitsi*, Judgement (AC), para. 50; *Kupreškić et al.*, Judgement (AC), para. 89.

<sup>26</sup> *Seromba*, Judgement (AC), para. 100; *Simba*, Judgement (AC), para. 64; *Muhimana*, Judgement (AC), paras. 76, 195, 217; *Gacumbitsi*, Judgement (AC), para. 49. See also *Ntagerura et al.*, Judgement (AC), paras. 28, 65; *Muvunyi*, Judgement (AC), para. 20.

<sup>27</sup> *Bagosora et al.*, 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, para. 30 (internal citations omitted); also cited in *Muvunyi*, Judgement (AC), para. 20.

<sup>28</sup> *Muvunyi*, Decision on the Prosecution Interlocutory Appeal against Trial Chamber II Decision of 23 Februar 2005, 12 May 2005, para. 22; *Muvunyi*, Judgement (AC), para. 100.

<sup>29</sup> *Karera*, Judgement (AC), para. 293.

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the Appeals Chamber in the *Muvunyi* case held that a Trial Chamber can convict an accused only of crimes that are charged in the indictment.<sup>30</sup>

19. The Chamber will now address the Defence submissions concerning the exclusion of the pleading of joint criminal enterprise.

20. The Defence request to exclude specific factual evidence and contentions regarding inconsistencies and vagueness in the Indictment will be addressed in the Chamber's analysis of the corresponding sections in Factual Findings below.

## 2. The Pleading of Joint Criminal Enterprise

21. The Defence contends that the Prosecution's pleading is ambiguous and therefore defective in respect of the Accused's alleged criminal liability under the theory of joint criminal enterprise ("JCE"). As a consequence, the Defence submits, Emmanuel Rukundo was not in a position to understand the charge against him.<sup>31</sup> During the Closing Arguments, the Prosecution submitted that it relies on JCE as a mode of commission, as well as other forms of liability under Article 6(1) including ordering, instigating and aiding and abetting.<sup>32</sup> The Prosecution's Closing Brief, however, does not make any reference to JCE.

22. Under Article 6(1) of the Statute any person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the Statute shall be individually responsible for the crime. Article 6(1) does not make explicit reference to "joint criminal enterprise". However, the Appeals Chamber has held that participation in a JCE is considered as a form of "commission" under Article 6(1).<sup>33</sup>

23. There are three categories of joint criminal enterprise which have the status of customary international law: basic, systemic and extended.<sup>34</sup>

### (a) Notice

24. When the accused is charged with "committing" pursuant to Article 6(1) of the Statute, the indictment must specify whether the term is to be understood as physical commission, and/or as

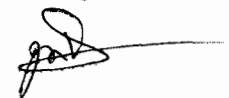
<sup>30</sup> *Muvunyi*, Judgement (AC), para.18; *Nahimana et al.*, Judgement (AC), para. 326; *Ntagerura et al.*, Judgement (AC), para. 28; *Kvočka et al.*, Judgement (AC), para. 33.

<sup>31</sup> Defence Closing Brief, paras. 237-266.

<sup>32</sup> Prosecution Closing Argument, T. 20 February 2008, p. 6.

<sup>33</sup> *Ntakirutimana*, Judgement (AC), citing *Tadić*, Judgement (AC), paras. 188 and 226.

<sup>34</sup> *Tadić*, Judgement (AC), paras. 195-226; *Ntakirutimana*, Judgement (AC), paras. 463-465; *Vasiljević*, Judgement (AC), paras. 96-99; *Krnjelać*, Judgement (AC), paras. 83-84.



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participation in a JCE.<sup>35</sup> Furthermore, if the Prosecution relies on a theory of JCE, then the purpose of the enterprise, the identity of the participants and the nature of the accused's participation in the enterprise must all be pleaded in the indictment.<sup>36</sup> Finally, the indictment should clearly indicate which form of JCE is being alleged.<sup>37</sup> Failure to plead these elements will result in a defective indictment. As explained above, a defect can only be cured in exceptional circumstances.<sup>38</sup>

(b) The Indictment

25. The Indictment states the following under the title of "individual criminal responsibility" in the *chapeau* of the concise statement of facts for Counts 1 and 2:

Pursuant to Article 6(1) of the Statute, the accused, Emmanuel Rukundo, is individually responsible for the crime of [Genocide/Murder as a Crime Against Humanity] because he planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation or execution of this crime, with the object, purpose and foreseeable outcome being the commission of [genocide/crimes against humanity] against the Tutsi racial or ethnic group, and persons identified as Tutsis, in Gitarama and Cyangugu Prefectures, Rwanda. With respect to the commission of this crime, **Emmanuel RUKUNDO**, relying on the authority due to his position as a priest and military chaplain in the RAF, ordered, instigated, or aided and abetted soldiers, armed civilians and the *Interahamwe* militia, for at least the period of 6 April through 17 July 1994, to do the acts described below in this indictment. The particulars that give rise to his individual criminal responsibility are set forth in paragraphs 3 through 22 below.

26. The paragraph makes a general reference to JCE. It states the purpose of the JCE (the commission of genocide/crimes against humanity against the Tutsi), the timeframe of the JCE (6 April to 17 July 1994), the nature of the Accused's participation and the co-participants (although this is a vague reference to general categories of persons including "soldiers", "armed civilians" and the "*Interahamwe* militia"). However, the words "joint criminal enterprise" are neither mentioned in the paragraphs on individual criminal responsibility, nor is there any specific form of JCE pleaded. The Chamber recalls that it is possible that other phrasings, other than a specific reference to "joint criminal enterprise" might effectively convey the same concept.<sup>39</sup> The question is not whether particular words have been used, but whether an accused has been meaningfully "informed of the nature of the charges" so as to be able to prepare an effective defence.<sup>40</sup>

<sup>35</sup> *Krnjelac*, Judgement (AC), para. 138; *Ntakirutimana*, Judgement (AC), para. 475.

<sup>36</sup> *Kvočka et al.*, Judgement (AC), para. 28. See also *Ntagerura et al.*, Judgement (AC), para. 24; *Krnjelac*, Judgement (AC), paras. 138-139; *Gacumbitsi*, Judgement (AC), para. 162; *Simba*, Judgement (AC), para. 63; *Simić*, Judgement (AC), para. 22.

<sup>37</sup> *Simba*, Judgement (AC), para. 63; *Simić*, Judgement (AC), para. 22; *Ntagerura et al.*, Judgement (AC), para. 24.

<sup>38</sup> See Section II.A.1.

<sup>39</sup> *Gacumbitsi*, Judgement (AC), para 165; *Ntakirutimana*, Judgement (AC), footnote 783.

<sup>40</sup> *Gacumbitsi*, Judgement (AC), para 165 quoting *Ntakirutimana*, Judgement (AC), para. 470. The Appeals Chamber notes, however, that because ICTY and ICTR cases now routinely employ the phrase "joint criminal enterprise", the

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27. Apart from the two paragraphs relating to individual criminal responsibility discussed above and the *chapeau* to the concise statement of facts for Count 3 (extermination as a crime against humanity) which states only that Rukundo "...committed or otherwise aided and abetted...", none of the other paragraphs in the Indictment refer to Rukundo's participation in a JCE. Indeed, the majority of the paragraphs set out specific factual allegations and state only that Rukundo "ordered, instigated or aided and abetted" the killing of Tutsi.<sup>41</sup> The reference to "commission" in the two paragraphs relating to individual criminal responsibility is particularly ambiguous when read in light of the particulars allegedly giving rise to individual criminal responsibility which refer only to the Accused's mode of participation as "ordering, instigating or aiding and abetting".

28. The Chamber therefore finds that the pleading of JCE in the Indictment does not provide adequate notice to the Accused of his alleged involvement in a JCE and is defective.<sup>42</sup>

(c) Has the Defect in the Indictment Been Cured?

(i) The Pre-Trial Brief

29. The Chamber notes that the Pre-Trial Brief refers extensively to JCE and states that Emmanuel Rukundo's participation in a JCE is pleaded in "various paragraphs of the [I]ndictment including 3, 10, 11, 12, 14, 15, 16, 18, 22, 33, 35, 36, and 40."<sup>43</sup> However, the paragraph references appear to refer to an old Indictment dated 27 March 2003.<sup>44</sup> The Chamber will therefore not consider the Prosecution's submission in this regard.

30. The Chamber further notes that the Pre-Trial Brief does not indicate the specific form of JCE in which Rukundo is alleged to have participated. Paragraph 78 of the Pre-Trial Brief states that "the Prosecutor will adduce evidence that speaks to all the categories of joint criminal enterprise enumerated above." The Chamber notes that no such categories of JCE were actually "enumerated above". Although the Prosecution set out the legal definition of the three categories of

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phrase should, for the sake of maximum clarity, preferably be included in future indictments where JCE is being charged.

<sup>41</sup> See *Nchamihigo*, Judgement (TC), para. 328.

<sup>42</sup> In its Decision on the Prosecutor's Request for Leave to file an Amended Indictment (TC) dated 28 September 2006, para. 12, the Chamber evaluated the pleading of JCE in the Amended Indictment of 6 October 2006 and determined the Indictment's ambiguity in respect of paragraph 15.

<sup>43</sup> Prosecutor's Pre-Trial Brief, footnote 51.

<sup>44</sup> The Amended Indictment dated 6 October 2006 only has a total of 30 paragraphs while the former Indictment dated 27 March 2003 has 41 paragraphs. In respect of the Indictment dated 27 March 2003, none of the 13 paragraph numbers listed in the Pre-Trial Brief refer to "joint criminal enterprise" nor do they stipulate which specific category of JCE is pleaded. Furthermore none of the 13 paragraphs make reference to how Rukundo "committed" such crimes. Only 3 of the 13 paragraphs refer to how Rukundo "planned, instigated, ordered or aided" respective crimes, whilst the other 10 paragraphs do not refer to the Accused's specific mode of participation.



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JCE, at no point did it specify the category of JCE upon which it intends to rely. The Chamber considers that the Prosecution was clearly in a position to determine the category of JCE upon which it would rely.<sup>45</sup>

31. The Chamber has found the reference to “commission” in the Indictment particularly ambiguous, when read in light of the paragraphs on individual criminal responsibility describing the Accused’s mode of participation as “ordering, instigating or aiding and abetting”.<sup>46</sup> In the Pre-Trial Brief, the Prosecution submits that “in furtherance of the common criminal purpose of eliminating Tutsis, Emmanuel RUKUNDO participated... in planning or organizing the massacres in diverse locations, in ordering and publicly instigating militiamen, local authorities, soldiers, gendarmerie and the Hutu population to eliminate Tutsis, and in planning, instigating, ordering aiding and abetting the massacres, he supported all.”<sup>47</sup> The Chamber notes that the Pre-Trial Brief does not provide any clarification on the ambiguity surrounding the Accused’s mode of participation in the alleged crimes.

32. In addition, the Pre-Trial Brief makes only general statements in respect of the allegation of JCE. Paragraph 98 is an example of such a vague submission:

“Between 6 April and 17 July 1994, Emmanuel RUKUNDO participated in the formulation and/or supported the adoption and implementation of various directives, decisions, policies, orders etc, to further the common criminal purpose of eliminating Tutsis. Local authorities, including *prefets, bourgmestres, conseillers and responsables de cellule, Interahamwe*, the civil defence, FAR, *gendarmerie* and the Hutu population were mobilized to carry out the common criminal purpose of killing Tutsis.”<sup>48</sup>

33. In light of the aforementioned, the Chamber finds that the Pre-Trial Brief does not provide clear, consistent and timely notice to the Defence to defend a charge of JCE. The references to JCE in the Pre-Trial Brief therefore do not cure the Indictment’s defective pleading.

(ii) Post-Indictment Disclosures

34. In its opening statement, the Prosecution provided no additional detail about the alleged JCE. The Prosecution argued only that Rukundo’s role was subtle, “involving instigation, aiding and abetting the soldiers, *Interahamwe* and armed civilians who physically committed the crimes that are charged in this Indictment.”<sup>49</sup> Furthermore at no point in post-indictment disclosures or

<sup>45</sup> For instance, the Prosecution cannot reasonably argue that it intends to rely on the second category of JCE in a case where it does not even allege the existence of a system of ill treatment (*Bikindi*, Judgement (TC), para. 400).

<sup>46</sup> See Section II.A.2.b.

<sup>47</sup> Prosecutor’s Pre-Trial Brief para. 99.

<sup>48</sup> Prosecutor’s Pre-Trial Brief para. 98.

<sup>49</sup> T. 15 November 2006, p. 3.

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during the trial did the Prosecution mention Rukundo's alleged involvement in a JCE or in a common criminal plan or purpose.

(iii) Conclusion

35. The Chamber has already found that the Indictment is defective in respect of the pleading of JCE. The Chamber further finds that neither the Pre-Trial Brief nor other post-indictment disclosures provide clear, consistent and timely notice to the Defence of the Prosecution's intention to demonstrate the Accused's responsibility under the theory of JCE. Therefore the Chamber will not consider any charge that Emmanuel Rukundo participated in a JCE.

**B. EVIDENTIARY MATTERS**

36. Article 20(3) of the Statute guarantees the presumption of innocence of each accused person. The burden of proving the guilt of the accused beyond reasonable doubt rests solely on the Prosecution and never shifts to the Defence. The Chamber must be satisfied beyond reasonable doubt that the accused is guilty before a verdict may be entered against him or her.<sup>50</sup>

37. While the Defence does not have to adduce rebuttal evidence to the Prosecution case, the Prosecution will fail to discharge its burden of proof if the Defence presents evidence that raises a reasonable doubt regarding the Prosecution case.<sup>51</sup> An accused person must be acquitted if there is any reasonable explanation for the evidence other than his or her guilt.<sup>52</sup> Refusal to believe or rely upon Defence evidence does not automatically amount to a guilty verdict. The Chamber must still determine whether the evidence it does accept establishes the accused's guilt beyond reasonable doubt.<sup>53</sup>

38. The general principle enshrined in Rule 90(A) of the Rules is that witnesses should be heard directly by the Trial Chamber.<sup>54</sup> However, there are well established exceptions to the Chamber's preference for direct, live, in-court testimony, including the taking of witness testimony by deposition,<sup>55</sup> and the admission of written statements, in lieu of oral testimony, which do not go to proof of the alleged conduct of the accused as charged in the indictment.<sup>56</sup>

<sup>50</sup> See also Rule 87(A) of the Rules: "[...] A finding of guilty may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt."

<sup>51</sup> *Kayishema*, Judgement (AC), para. 117; *Niyitegeka*, Judgement (AC), paras. 60-61.


<sup>52</sup> *Čelebići*, Judgement (AC), para. 458.

<sup>53</sup> *Nchamihigo*, Judgement (TC), para. 13.

<sup>54</sup> *Simba*, Judgement (AC), para. 19.

<sup>55</sup> Rule 71 of the Rules.

<sup>56</sup> Rule 92bis of the Rules.



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39. While direct evidence is preferred, hearsay evidence is not *per se* inadmissible before the Trial Chamber.<sup>57</sup> The Trial Chamber has the discretion to treat such hearsay evidence with caution, depending on the circumstances of the case.<sup>58</sup> In certain circumstances, hearsay evidence may require other credible or reliable evidence adduced by the Prosecution in order to support a finding of fact beyond reasonable doubt.

40. In general, a Chamber can make a finding of fact based on the evidence of a single witness if it finds such evidence to be relevant and credible.<sup>59</sup> Corroboration of a witness's testimony is not a requirement in the practice of the Tribunal.<sup>60</sup> Similarly, even if the Trial Chamber finds that a witness's testimony is inconsistent or otherwise problematic, it may still choose to accept the evidence because it is corroborated by other evidence.<sup>61</sup>

41. The Chamber further notes that the evidence of accomplices and detained witnesses is admissible. However, when necessary, the Chamber will approach such evidence with caution in order to ensure a fair trial and to avoid prejudice to the accused.<sup>62</sup>

42. When assessing the evidence, a Trial Chamber has broad discretion to determine the weight to be given to the discrepancies between a witness's testimony and his prior statements.<sup>63</sup> It is for the Chamber to decide if an alleged inconsistency is sufficient to cast doubt on a witness's evidence, and the Chamber may accept such evidence, notwithstanding the discrepancies.

### C. DECISION ON DEFENCE MOTION FOR ACQUITTAL

43. In its Decision on the Defence Motion for Acquittal ("Judgement of Acquittal"), following the close of the Prosecution case, the Chamber found that the evidence, even if believed, could not support a finding beyond reasonable doubt that Rukundo was responsible for the murder of Father

<sup>57</sup> *Muvunyi*, Judgement (TC), para. 12; *Rutaganda*, Judgement (AC), para. 34.

<sup>58</sup> Rule 89 of the Rules; *Rutaganda*, Judgement (AC), para. 34; *Aleksovski*, Decision on Prosecutor's Appeal On Admissibility Of Evidence (AC), 16 February 1999, para. 15.

<sup>59</sup> *Karera*, Judgement (AC), para. 45; *Musema*, Judgement (AC), paras. 37-38.

<sup>60</sup> *Karera*, Judgement (AC), para. 45; *Musema*, Judgement (AC), para. 36; *Ntakirutimana*, Judgement (AC), para. 132.

<sup>61</sup> *Ntakirutimana*, Judgement (AC), para. 132.

<sup>62</sup> *Ntagerura et al.*, Judgement (AC), paras. 203-205; *Niyitigeka*, Judgement (AC), para. 98; *Muvunyi*, Judgement (TC), para. 13. In *Simba*, the Trial Chamber viewed the testimonies of Witnesses YH and KXX, the alleged accomplices of the Accused, with appropriate caution. The Chamber also treated the testimony of Witness YC with appropriate caution since he was a detained witness who had pleaded guilty to acts of genocide in the relevant area. See *Simba*, Judgement (TC), paras. 164, 288.

<sup>63</sup> *Gacumbitsi*, Judgement (AC), para. 74; *Kajelijeli*, Judgement (AC), para. 96.



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Mbuguje. Accordingly, the Chamber acquitted the Accused of the murder of Father Mbuguje under Count 2 (murder as a crime against humanity).<sup>64</sup>

44. The Chamber notes that the murder of Father Mbuguje has also been pleaded in the Indictment in support of the charge of genocide under Count 1.<sup>65</sup> The Chamber, however, notes that the Prosecution in its Closing Brief no longer relies on this allegation in support of the count of genocide. The Chamber will therefore not consider the evidence of the murder of Father Mbuguje in its analysis of the count of genocide against the Accused.

45. Furthermore, in its Judgement of Acquittal, the Chamber noted the Prosecution's concession that it had not led evidence on paragraphs 10(i) and 25(i) of the Indictment, and granted its request to withdraw these paragraphs.<sup>66</sup> The Chamber also granted the Prosecution's request to withdraw paragraph 16 from the Indictment, since it had not led any evidence on it.<sup>67</sup>

#### **D. JUDICIAL NOTICE**

46. Rule 94(A) provides that the Trial Chamber shall not require proof of facts of common knowledge, but shall take judicial notice thereof. The Appeals Chamber has held that the following are all facts of common knowledge, not subject to reasonable dispute, and therefore qualify for judicial notice under Rule 94(A): (1) between 6 April 1994 and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group; (2) between 6 April 1994 and 17 July 1994, there were widespread or systematic attacks throughout Rwanda against a civilian population based on Tutsi

<sup>64</sup> Decision on Defence Motion for Judgement of Acquittal Pursuant to Rule 98bis (TC), 22 May 2007 ("98bis Decision"), para. 16. Para. 23 of the Indictment states: On or about 14 May 1994, **Emmanuel RUKUNDO** spoke to the Bernadine Sisters, in Nyarugenge secteur and commune in Kigali-Ville Prefecture, describing Father Alphonse MBUGUJE, as an *Inkotanyi* and saying that his whereabouts were known and indicating that Father Alphonse MBUGUJE would be killed. Father Alphonse MBUGUJE was killed on 30 May 1994 by *gendarmes* in Cyangugu Prefecture. As noted in paragraph 7 above, **Emmanuel RUKUNDO** denounced this victim as an *Inkotanyi* to the authorities, and this denunciation contributed substantially to the killing of the victim. **Emmanuel RUKUNDO** thus instigated or aided and abetted the killing of Father Alphonse MBUGUJE

<sup>65</sup> Paras. 7, 17 of the Indictment.

<sup>66</sup> 98bis Decision, paras. 7-8 and disposition. Paras. 10(i) and 25(i) of the Indictment both read as follows: In April 1994, **Emmanuel RUKUNDO** moved around in Gitarama, dressed in military uniform, armed with a pistol and an R4 rifle, and escorted by four or five soldiers. Sometime in this month, **Emmanuel RUKUNDO** went to Gitarama Parish hunting for the parish priest Father Juvenal BAMBONEYEHO, accusing him of hiding Tutsis in his parish and threatening that their days were numbered, meaning that Tutsis were all soon to be killed.

<sup>67</sup> 98bis Decision, paras. 7-8 and disposition. Para. 16 of the Indictment reads as follows: On a date sometime in the period between about 7 April and the end of May 1994, **Emmanuel RUKUNDO** led a group of armed soldiers to Gitarama Parish, Diocese of Kabgayi, Gitarama Prefecture, in search of Tutsi refugees to kill. When **Emmanuel RUKUNDO** did not find the parish priest whom he accused of being an accomplice of the *Inkotanyi*, he threatened a Tutsi man whom he met, saying that the days of the "*Inkotanyi*" (meaning all Tutsis) were numbered. By so doing, **Emmanuel RUKUNDO** caused this Tutsi man serious mental harm.



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ethnic identification; and (3) between 1 January 1994 and 17 July 1994 in Rwanda, there was an armed conflict not of an international character.<sup>68</sup>

47. In its Decision of 29 November 2006, the Trial Chamber took judicial notice of the following facts of common knowledge, pursuant to Rule 94(A):<sup>69</sup>

- (i) Between 6 April 1994 and 17 July 1994, genocide against the Tutsi ethnic group occurred in Rwanda;
- (ii) Between 1 January 1994 and 17 July 1994, the Twa, Tutsi and Hutu existed in Rwanda as protected groups falling under the Genocide Convention;
- (iii) Between 6 April 1994 and 17 July 1994, throughout Rwanda, there were widespread or systematic attacks against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily 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;
- (iv) Between 6 April 1994 and 17 July 1994, there was an armed conflict in Rwanda that was not of an international character;
- (v) 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
- (vi) Between 1 January 1994 and 17 July 1994, Rwanda was a State Party to the Geneva Conventions of 12 August 1949 and their Additional Protocol II of 8 June 1977, having acceded to the Geneva Convention of 12 August 1949 on 5 May 1964, and having acceded to Protocols Additional thereto of 1977 on 19 November 1984.

48. Taking judicial notice of the above facts does not relieve the Prosecution of its burden to lead evidence to prove beyond reasonable doubt that the Accused's conduct and mental state

<sup>68</sup> *Karemera et al.*, Decision on Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006.

<sup>69</sup> Decision on Prosecutor's Motion for the Trial Chamber to take Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94(A) (TC), 29 November 2006.



rendered him individually responsible for genocide and crimes against humanity as charged in the Indictment.<sup>70</sup>

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<sup>70</sup> *Semanza*, Judgement (AC), para. 192; *Karemera et al*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 30.



**III. CHAPTER III: FACTUAL FINDINGS**

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**1. EVIDENCE RELATING TO PRE-1994 EVENTS****(a) Indictment**

(3) Emmanuel Rukundo was known as an extremist. He hated the Tutsi. Since about 1973, he fought against his Tutsi colleagues at the Saint Léon Minor Seminary in Kabgayi. He was expelled from this seminary in 1973, because of his racist tendencies and was known to be sectarian at the Nyakibanda Major Seminary, in Butare, by several clergy.

(4) After the attack by the RPF, in Rwanda, in October 1990, Emmanuel Rukundo, while at the Nyakibanda Major Seminary, created and led a group of extremists called *Ngarukiragihugu* to collect money to purchase ammunition and compose songs with extremist passions to support the RAF in fighting the RPF. At that time he swore that he would take to the bush if the RPF won the war.

(5) In spite of his attitude, he was ordained a priest in July 1991, by Monsignor Thadée Nsengiyumva, and was appointed as priest of Kanyanza Parish in Gitarama.

(6) From 1990 through 1994, Emmanuel Rukundo showed hatred for Tutsi priests and systematically denounced them as accomplices of the *Inkotanyi*, saying that the Nyakibanda Major Seminary was a bastion of the Tutsi, and that it was difficult to live in such a milieu as a Hutu, and as one who would become a priest.

**(b) Evidence and Deliberations****(i) Expulsion from the St. Léon Minor Seminary in 1973<sup>71</sup>**

49. The Prosecution concedes in its Closing Brief that it did not adduce any evidence in support of this charge.<sup>72</sup> The Chamber therefore considers this allegation withdrawn.

**(ii) Ngarukiragihugu (Salvation Committee), Solidarity March, Fund-Raising and Alleged Change of Attitude<sup>73</sup>**

50. The Chamber recalls that at the pre-trial phase of this case, the Prosecution submitted before Trial Chamber III that it would rely on paragraphs 1-6 of the Indictment of 17 September 2001 (which are almost identical to paragraphs 3-6 of the current Indictment) as contextual material. In its Decision on Defence Preliminary Motions, the Trial Chamber held that it is permissible for an indictment to plead facts that fall outside the temporal jurisdiction of the Tribunal for the purpose of providing context or clarifying the events in the indictment. The Chamber found, however, that

<sup>71</sup> Para. 3 of the Indictment.

<sup>72</sup> Prosecution Closing Brief, para. 107.

<sup>73</sup> Paras. 4 and 6 of the Indictment.



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such pre-1994 facts cannot constitute elements of the crimes charged.<sup>74</sup> On appeal, the Appeals Chamber confirmed that an Indictment may refer to facts or criminal conduct that occurred before 1994 provided that such facts or conduct do not constitute independent charges, but are introduced as evidence to support the commission of crimes in 1994.<sup>75</sup>

51. In its Closing Brief, the Prosecution submits that it led evidence of Rukundo's conduct in 1990 and 1991 to demonstrate that "Rukundo had the requisite *mens rea* to commit the offences charged."<sup>76</sup> It is unclear from this statement whether the Prosecution still relies on the evidence of Rukundo's pre-1994 conduct as contextual material.

52. The Chamber notes that the primary requirement for the admission of evidence before the Tribunal is that it must be relevant and have probative value.<sup>77</sup> Although the temporal jurisdiction of the Tribunal is from 1 January to 31 December 1994, it is permissible, under certain circumstances, to adduce evidence on events prior to this time where such evidence satisfies the criteria of relevance and probative value and there is no compelling reason to exclude it. As examples, the Appeals Chamber states that the Trial Chamber could admit and subsequently rely on evidence of acts which took place prior to 1994 when 1) it clarifies a given context, 2) it establishes by inference the elements of criminal conduct occurring in 1994, or 3) demonstrating a deliberate pattern of conduct.<sup>78</sup>

53. The Appeals Chamber, however, stated that an accused person can only be convicted for a crime committed in 1994. The *actus reus* must have occurred in 1994, and at the time of such acts or omissions, the accused must have had the requisite intent (*mens rea*) to carry out that crime.<sup>79</sup>

54. In this case, the Prosecution submits that the pre-1994 evidence should be used generally to support the crime of genocide because it shows that Rukundo was a Hutu extremist even before the start of the genocide.<sup>80</sup> The Prosecution, however, has made no link between the pre-1994 evidence of Rukundo's alleged extremist behaviour, and the specific factual allegations in the Indictment. It has also not shown how the evidence clarifies any particular context. Taken at its best, the mere fact that Rukundo might have been a Hutu extremist prior to the genocide in the context of his schooling is not sufficient to prove that he had the specific intent required for the particular criminal acts as

<sup>74</sup> Decision on Defence Preliminary Motion (TC), 26 February 2003, para 12.

<sup>75</sup> *Décision (Acte D'Appel relative à la Décision du 26 Février 2003 relative aux exceptions préjudicielles)* (AC), 17 October 2003, p. 5.

<sup>76</sup> Prosecution Closing Brief, para. 111.

<sup>77</sup> *Simba*, Decision on Interlocutory Appeal Regarding Temporal Jurisdiction (AC), 29 July 2004, p. 4.

<sup>78</sup> *Nahimana et al.*, Judgement (AC), 28 November 2007, para. 315.

<sup>79</sup> *Nahimana et al.*, Judgement (AC), paras. 313-314, 317.

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alleged in the Indictment. The Chamber will therefore not consider the evidence relating to Rukundo's acts prior to 1994 at the Nyakibanda Major Seminary.

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<sup>80</sup> Prosecution Closing Brief, paras. 103-111.



2. ALLEGATION OF MOBILIZATION OF HUTU AGAINST TUTSI IN FEBRUARY 1994

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55. The Chamber notes that the Prosecution has not led any evidence on paragraphs 9 and 24 of the Indictment. The Chamber therefore dismisses this allegation.



3. EVENTS AT THE IMPRIMERIE DE KABGAYI ROADBLOCK

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(a) Indictment

56. Paragraphs 10(ii) and 25(ii) of the Indictment read as follows:

Between 12 and 15 April 1994, **Emmanuel RUKUNDO**, dressed in military uniform, armed and accompanied by soldiers, stopped at a roadblock around *Imprimerie de Kabgayi*, near the St. Léon Minor Seminary, to talk to and observe the activities of soldiers who were checking the identity cards of persons who passed through the roadblock. Several Tutsis were arrested by soldiers and *Interahamwe* at this roadblock and killed nearby. **Emmanuel RUKUNDO**'s presence at this roadblock provided encouragement to these soldiers and *Interahamwe* to carry on with the killing of Tutsis at this location. **Emmanuel RUKUNDO** thus instigated or aided and abetted the killing of Tutsis at the *Imprimerie de Kabgayi* roadblock.

(b) Evidence*Prosecution Witness BLP*

57. Prosecution Witness BLP, a Hutu who worked at St. Joseph's College in 1994, knew the Accused Rukundo as a priest and saw him at religious celebrations in Kabgayi. The witness saw the Accused in mid-April, a few days after the shooting down of the presidential plane. On that occasion, Witness BLP had left church and was on his way to St. Joseph's College when he was stopped by soldiers manning a roadblock close to the Kabayi printing press and asked to show his identity card. Rukundo, dressed in military uniform, was at the roadblock. The witness recalled that Rukundo wore a black beret (the type worn by the RAF), military boots, camouflage trousers, a camouflage shirt with a cross on his epaulette and had a pistol in his belt.<sup>81</sup>

58. According to Witness BLP, Rukundo arrived at the roadblock in a white Suzuki Samurai jeep with a military registration. Rukundo was accompanied by a driver wearing a camouflage shirt and a black beret, and another soldier who was in the back of his vehicle. Rukundo's vehicle stopped about four meters from where Witness BLP stood, and when Rukundo alighted from the vehicle to greet the soldiers, he was about one metre away from Witness BLP.<sup>82</sup>

59. Rukundo spoke with two of the soldiers who were checking the identification cards of people detained at the roadblock. Witness BLP observed that Rukundo knew the soldiers manning the roadblock because of the way they laughed together. The soldiers greeted Rukundo, saying "Good morning, Father". Witness BLP testified that he did not stay long at the roadblock. He also

<sup>81</sup> T. 15 November 2006, pp. 11-14, 27; T. 16 November 2006, pp. 10, 13.

<sup>82</sup> T. 15 November 2006, pp. 13-14; T. 16 November 2006, p. 23.

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noted, as he left, that there were people sitting on the ground next to the roadblock, who, he believed, did not have identity cards. He further noted that the task of those manning the roadblock was to identify the people going through the roadblock. Witness BLP stated that certain people were allowed to go through, whilst others were retained because they were Tutsi or because they did not have identity cards. According to Witness BLP, Tutsi were sought out because they were considered to be the enemy. Witness BLP also said that when Tutsi were found, they were often killed.<sup>83</sup>

60. Witness BLP was informed by a man whom he had met at the roadblock that the people who were retained there were later taken to a wooded area about 40 metres downhill and killed.<sup>84</sup> In cross-examination, Witness BLP attested that he did not know the man who gave him this information, but knew that he was a refugee in Kabgayi.<sup>85</sup> Witness BLP said that he passed the roadblock on his way to work and the amount of time he would spend there varied. Some days he would remain there for a long time and on other days he would go through quickly. On one particular day, he was retained for 20 minutes and was asked to sit on the ground.<sup>86</sup>

61. Witness BLP estimated that the roadblock close to the Kabgayi printing press was erected about four days after the downing of President Habyarimana's plane and that it was removed on the morning of 6 June 1994 when the *Inkotanyi* arrived in Kabgayi and the soldiers abandoned the roadblock. According to Witness BLP, there were several roadblocks in Kabgayi and the surrounding area.<sup>87</sup>

#### *Prosecution Witness CSE*

62. Witness CSE, a Tutsi from Gitarama *préfecture*, sought refuge in Kabgayi after the death of President Habyarimana on 6 April and remained there until 2 June 1994. Witness CSE testified that he saw Rukundo in Kabgayi in March 1993 and again in Kabgayi, at a roadblock between the church and the printing press store in St. Andre, sometime in April 1994. Rukundo and Witness CSE were about five to six metres apart from each other. According to the witness, Rukundo was wearing camouflage trousers and a shirt, usually referred to as *tash-tash*. Witness CSE testified that at the roadblock he saw soldiers, who were the authorities' escorts, beating a person with the butts of their guns. Rukundo was standing approximately five to six metres away from the soldiers,

<sup>83</sup> T. 15 November 2006, pp. 13-14; T. 16 November 2007, pp. 22-23.

<sup>84</sup> T. 15 November 2006, p. 14.

<sup>85</sup> T. 16 November 2006, p. 24.

<sup>86</sup> T. 16 November 2006, p. 22.

<sup>87</sup> T. 16 November 2006, pp. 21- 22.



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facing them and talking to other people. Witness CSE testified that the beating went on for a long time. Other people also saw the soldiers beating this person and commented that they were surprised that Rukundo as a priest did not intervene. In cross-examination, Witness CSE stated that when he saw Rukundo at the roadblock, he was travelling to Gahando to seek assistance after hearing shots the previous night. However, when the witness saw the person being beaten at the roadblock, he turned around and sought shelter in the church, where he remained until the danger subsided.<sup>88</sup>

### *The Accused*

63. Rukundo recalled seeing a roadblock outside the Kabgayi printing press on either 21 April or 7 May 1994. He stated that he was "under the impression" that on 15 April 1994, there was no roadblock at that location. When Rukundo arrived at the roadblock on 15 April 1994 he, like everybody else, was checked by those manning the roadblock. He was allowed to drive through and then went on to the Bishopric. Rukundo said that he went through those roadblocks two or three times during the course of his visits to Kabgayi and that he never saw anyone being beaten there. He also never saw any incident take place at the roadblock or noticed any person being mistreated. Rukundo testified that he would not have allowed such attacks to continue and, with the assistance of his escort, would have done his best to stop such violence. Rukundo did not know the people manning the roadblock. They simply asked him to show the necessary papers, which he did, and then they would open the roadblock and he would drive through.<sup>89</sup>

64. In cross-examination, Rukundo testified that, on one occasion, he saw three soldiers at the roadblock who were checking civilians passing through. Rukundo testified that there was a small wooded area on the other side of the main road leading to Butare, but he could not see into that area and did not know if there were dead bodies there. Rukundo attested that he did not see anyone killed or abused at the roadblock near the printing press or at any other roadblock in 1994.<sup>90</sup>

65. Rukundo denied that he drove a Suzuki Samurai with military license plates. The official vehicle of the military chaplaincy was the Mazda from the Episcopal Council. As a military chaplain, Rukundo stated that he never drove a military jeep, although other priests sometimes used

<sup>88</sup> T. 17 November 2006, pp. 2-6, 13-14, 18-20, 21-23. A photograph where the witness indicated the various positions at the roadblock was admitted as Exhibit D. 5 (T. 17 November 2006, pp. 26, 34-35).

<sup>89</sup> T. 9 October 2007, pp. 48-49; T. 10 October 2007, pp. 53-54.

<sup>90</sup> T. 10 October 2007, pp. 53-54.

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such vehicles to access certain areas. He added that Witness BLP may have referred to a jeep to concoct his story.<sup>91</sup>

66. Rukundo testified that on both his first and second visits from Ruhengeri to Kabgayi via Gitarama and Rango on 15 and 21 April 1994, he came across several roadblocks. As a precaution he had asked the commander of Camp Mukamira, Laurent Bizabarimana, to provide him with official travel authorisation indicating that he was on a mission to Gitarama.<sup>92</sup>

*Defence Witness SJC*

67. Witness SJC knew Rukundo when the latter was studying at the St. Léon Minor Seminary. Witness SJC also attended Rukundo's ordination as a priest.<sup>93</sup> On 6 April 1994, Witness SJC was at his father's house in Kabgayi. After President Habyarimana's plane was shot down, the authorities announced that people should stay at home. Witness SJC stayed at home for two weeks after 6 April 1994.<sup>94</sup> On or about 20 April 1994, he received information that his cousin was injured and had been admitted to the Kabgayi hospital. He visited his cousin at the hospital and stayed there from 20 April to 1 May 1994.<sup>95</sup>

68. Witness SJC testified that he saw a roadblock in Kabgayi, near the printing press and St. Joseph's College, manned by people wearing soldiers' uniforms. There was one soldier on each side of the roadblock. Witness SJC did not know when the roadblock was erected, but it was removed when the *Inkotanyi* arrived on 2 June 1994. Witness SJC said that every time he passed the roadblock he was required to show his identity card. All Rwandan citizens could pass freely through the roadblock if they presented their identification documents. Witness SJC never saw anyone being stopped at the roadblock and said that both Hutu and Tutsi could travel freely through the roadblock. He recalled that on some days there was a queue of people waiting to be allowed through the roadblock. Witness SJC acknowledged that there was a small wooded area on the other side of the road near the roadblock. He said that he never saw or heard of people being killed there, but he did not deny that such incidents may have happened without his knowledge.<sup>96</sup>

69. Witness SJC stated that there was no roadblock at the Kabgayi Major Seminary, although there was only one permanent gate at the entrance guarded by soldiers. The soldiers did not ask

<sup>91</sup> T. 9 October 2007, p. 49; T. 10 October 2007, pp. 44-45.


<sup>92</sup> T. 9 October 2007, p. 9; T. 11 October 2007, p. 10.

<sup>93</sup> T. 3 September 2007, p. 16.

<sup>94</sup> T. 3 September 2007, pp. 14-15.

<sup>95</sup> T. 3 September 2007, pp. 40-41.

<sup>96</sup> T. 3 September 2007, pp. 52-56.



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Witness SJC for his identity card, but they may have asked other people. According to the witness, the soldiers were stationed at the gate to protect the refugees from the RPF militia. Witness SJC testified that soldiers were posted at the CND, as well as at the St. Léon Minor Seminary, St. Joseph's College, St. Andre Primary School and Kabgayi hospital to protect the refugees. He acknowledged that the majority of refugees at these locations were Tutsi.<sup>97</sup>

*Defence Witness EVA*

70. Witness EVA was employed at the Kabgayi Bishopric in 1994.<sup>98</sup> Witness EVA knew Rukundo, having seen him on more than 20 occasions when she worked at the Bishopric.<sup>99</sup>

71. Witness EVA said two roadblocks were erected in Kabgayi between April and June 1994. One roadblock was on the road between her home and the Kabgayi Bishopric buildings; the other was further down on the road to Butare. Witness EVA had to pass through the roadblock between the printing press and St. Joseph's College, which was manned by two soldiers, every day on her way to work. Different soldiers manned the roadblock in the morning and in the afternoon, and the witness at times had difficulties crossing the roadblock. People without identity papers, were made to sit down close to the roadblock. Occasionally Witness EVA saw individuals sitting at the roadblock however when she returned after lunch they were always gone. Witness EVA said that she did not see anyone being mistreated at the roadblock. Witness EVA explained that the purpose of the roadblocks was to prevent people from gathering at the refugee camps, and the purpose of showing identification was to ensure security. Without identification, a person could be a suspect.<sup>100</sup> Witness EVA did not normally have trouble passing through the roadblock. She did, however, have problems passing through on two occasions when she had forgotten her identification papers at home. The soldiers detained her for about 20 minutes until the Chancellor, Bernadin, went to her house and retrieved her papers. After the second incident, Chancellor Bernadin drove her to and from work twice each day until after 2 June 1994. Witness EVA acknowledged that she was afraid to pass through the roadblocks because she thought that she would be killed. She said that she would no longer go to work unless she was driven.<sup>101</sup>

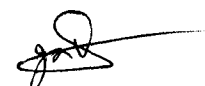
<sup>97</sup> T. 3 September 2007, pp. 56-59.

<sup>98</sup> T. 19 July 2007, pp. 5, 12-13, 15.

<sup>99</sup> T. 19 July 2007, p. 23.

<sup>100</sup> T. 19 July 2007, pp. 19-22, 53-58; Documents marked by Witness EVA as the location of the roadblock were admitted as Exhibit D. 33, T. 19 July 2007, p. 38.

<sup>101</sup> T. 19 July 2007, pp. 21-22, 54, 56.



72. Witness EVA testified that she saw Rukundo in Kabgayi around 14 or 15 April 1994.<sup>102</sup>

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*Defence Witness GSA*

73. Witness GSA was employed at the Kabgayi Major Seminary in April 1994 and knew the Accused as a theology student.<sup>103</sup>

74. Witness GSA provided an account of the killing of a young man at a roadblock in Kabgayi. Witness GSA had given a young man, whose brother he knew well, a ride. When the witness's vehicle was stopped at a roadblock between the Kabgayi printing press and St. Joseph's College, the young man was taken from the car. According to Witness GSA, two priests arrived while he was attempting to negotiate the young man's release. The priests, who carried out the negotiations, due to the possible danger facing the witness, told the witness to leave. When the young man saw Witness GSA departing, he became afraid and ran towards him, only to be shot in the back. The two priests informed Witness GSA that, if he travelled through the roadblock again, he would be in danger.

75. Witness GSA stated that, on this particular day when the young man was shot, the roadblock had been moved closer to the Gitarama highway. However, it was relocated to its former position after the incident. Witness GSA did not know who shot the young man at the roadblock. Witness GSA thought that the incident at the roadblock had occurred in May 1994, around Ascension, which is celebrated 40 days after Easter.<sup>104</sup>

76. Witness GSA testified that Brother Martin and Brother Fidele from St. Joseph's College and Sister Bénigne travelled through that roadblock (between the Kabgayi printing press and the Josephite Brothers' house) on their way to their offices from the Kabgayi Major Seminary, where they had sought refuge. Witness GSA added that nothing "untoward" happened to them at the roadblock.<sup>105</sup>

*Defence Witness SAE*

77. Witness SAE, a superior officer in the Gitarama Military Camp, testified that he was informed by his subordinates about incidents at different military positions in the area. Witness SAE testified that Rukundo could not have spoken to soldiers and encouraged acts of violence

<sup>102</sup> T. 19 July 2007, pp. 25-27, 44-46.

<sup>103</sup> T. 1 October 2007, p. 61; T. 2 October 2007, p. 1.

<sup>104</sup> T. 1 October 2007, pp. 61, 75-76; T. 2 October 2007 pp. 38-39, 48-49.

<sup>105</sup> T. 1 October 2007 pp. 67-69; T. 2 October 2007, p. 39.

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without informing his immediate commander. Witness SAE explained that it was not within the ambit of Rukundo's duties to speak to the soldiers as if he was their commander. He explained that military chaplains were attached to a command office in order to advise on religious services and morality. In principle, a military chaplain did not receive orders from a military commander.<sup>106</sup>

78. Witness SAE denied ever hearing that Rukundo had participated in any criminal activity at Kabgayi. Witness SAE explained that if Rukundo had taken part in such acts, information would have been provided to him by the soldiers stationed in Kabgayi.<sup>107</sup>

79. Witness SAE testified that he was not aware that killings of members of the population had taken place in his area. Witness SAE refuted that the reason why he did not know about the killings was because his soldiers had not reported such incidents to him. Witness SAE testified that no soldier single-handedly manned a roadblock. According to the witness, each soldier belonged to a team, which was part of a section, and a section was part of a platoon. As the soldiers' superior, Witness SAE was expected to know about all of their activities.<sup>108</sup>

#### *Defence Witness ATT*

80. Witness ATT testified that there was a "heap of stones" near St. Andre and the Kabgayi printing press, which was manned by "bandits." He stated that it was a "mobile roadblock," not a "real roadblock," and that on certain days, when he passed by he did not see anyone around the "heap of stones".<sup>109</sup> Witness ATT pleaded guilty to having participated in attacks against Tutsi refugees in Kabgayi in 1994. He was convicted and served eleven years in prison in Rwanda.<sup>110</sup>

#### *Defence Witness EVC*

81. In April 1994, Defence Witness EVC was a priest in Kabgayi. Witness EVC knew Emmanuel Rukundo. During April and May 1994, Witness EVC might have seen Rukundo once in Kabgayi and shared a beer with him. Witness EVC denied that there were soldiers throughout Kabgayi between April and June of 1994. However, he affirmed that there were soldiers at the roadblocks on the main roads. He stated that the military presence at the time could possibly be explained by the fact that the transitional government had provisionally relocated to Gitarama, in the nearby *préfecture*. Witness EVC could not confirm that soldiers were amongst the killers in and

<sup>106</sup> T. 24 September 2007, pp. 60-61.

<sup>107</sup> T. 24 September 2007, pp. 61-62.

<sup>108</sup> T. 25 September 2007, pp. 2-6.

<sup>109</sup> T. 18 July 2007, pp. 59-60.

<sup>110</sup> T. 18 July 2007, pp. 3-4, 8.

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around Kabgayi. Although the witness had been informed that people had been killed in the area, he did not know any details about the killings. In examination-in-chief, Witness EVC testified that between April and May 1994 he saw Rukundo once in Kabgayi when they may have shared a beer. However, in cross-examination, Witness EVC denied hearing anyone mention that Rukundo was in Kabgayi during this period of time.<sup>111</sup>

(c) Deliberations

82. The Indictment states that between 12 and 15 April 1994, Rukundo was present when Tutsi were arrested at the printing press- *Imprimerie de Kabgayi*- roadblock and killed nearby and that his presence instigated<sup>112</sup> or aided and abetted<sup>113</sup> these killings. The Chamber also heard evidence from Prosecution Witness CSE that sometime in April 1994, a person was beaten at that roadblock when Rukundo was present. The Defence submits that the evidence presented by Witness CSE is different from that which is pleaded in paragraphs 10(ii) and 25(ii) of the Indictment.<sup>114</sup> The Chamber notes that in the Prosecution's Closing Brief, the Prosecution misquoted the Indictment by stating that the soldiers "killed or harmed" Tutsi, whereas the Indictment only refers to killing.<sup>115</sup> It appears, however, that the Prosecution is not relying on the alleged beatings to establish an allegation of serious bodily or mental harm.<sup>116</sup> Therefore, the Chamber will only rely on Witness CSE's evidence to the extent that it supports the allegation of killing as pleaded in the Indictment.

83. Both Witness BLP and Witness CSE testified that they saw Rukundo at a roadblock near the Kabgayi printing press. Witness BLP placed Rukundo, wearing a military uniform, there in mid-April 1994, a few days after the presidential plane crash.<sup>117</sup> Witness CSE saw Rukundo, in a military uniform and accompanied by soldiers, sometime after 7 April 1994 between the church and the printing press store.<sup>118</sup> Rukundo also testified that he was in Kabgayi on 15 April 1994.<sup>119</sup>

<sup>111</sup> T. 11 September 2007, pp. 36, 52-54.

<sup>112</sup> "Instigating" requires that the Accused encouraged, urged, or otherwise prompted another person to commit an offence under the Statute. See for example, *Kordić and Čerkez*, Judgement (AC), para. 27; *Ndindabahizi*, Judgement (AC), para. 117; *Muvunyi*, Judgement (TC), para. 478.

<sup>113</sup> "Aiding and abetting" is a form of accessory liability. It refers to any act of assistance or support in the commission of the crime by another person". See for example, *Akayesu*, Judgement (TC), para. 484; *Bagilishema*, Judgement (TC), paras. 33, 186; *Nzabirinda*, Judgement (TC), para 16.

<sup>114</sup> Defence Closing Brief, para. 208.

<sup>115</sup> Prosecution Closing Brief, para. 214.

<sup>116</sup> Prosecution Closing Brief, para. 217 (reference to a Tutsi youth who was being "severely beaten") and para. 220 ("His presence, chat and camaraderie with the soldiers amounted to encouragement for the soldiers to continue to kill Tutsi" (emphasis added)).

<sup>117</sup> T. 15 November 2006, p. 12.

<sup>118</sup> T. 17 November 2006, pp. 4-6.

<sup>119</sup> T. 9 October 2007, pp. 48-49; T. 10 October 2007, p. 53.

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84. The existence of the roadblock was not contested by any Defence witness.<sup>120</sup> However, there are inconsistencies regarding the date when the roadblock was established. Witness BLP stated that the roadblock was erected about four days after President Habyarimana's death.<sup>121</sup> According to Witness CSE, the roadblock, where he saw Rukundo, was erected sometime in April 1994.<sup>122</sup> Witness EVA stated that this roadblock was established at the end of April or the beginning of May.<sup>123</sup> Witness GSA referred to an incident that took place at the roadblock in May 1994, but stated that it had not been the first time that he had passed through this roadblock.<sup>124</sup> Rukundo testified that he saw a roadblock outside the Kabgayi printing press on either 21 April or 7 May 1994. However, he did not remember a roadblock situated at that location on 15 April 1994.<sup>125</sup>

85. Witness BLP and Witness CSE testified that the roadblock was manned by soldiers, as confirmed by Defence Witnesses EVA,<sup>126</sup> SJC,<sup>127</sup> EVC<sup>128</sup> and by Rukundo.<sup>129</sup>

86. Based on the above evidence, the Chamber finds that a roadblock manned by soldiers was established near the Kabgayi printing press sometime after the death of President Habyarimana on 6 April 1994.

87. Prosecution Witness BLP testified that, on the day when he saw Rukundo, there were people standing at the roadblock, waiting for their identification cards to be examined, whilst others were seated at the side of the roadblock. Witness BLP explained that the people retained at the roadblock were Tutsi and people who carried no identification. Witness BLP stated that, when Tutsi were found, they were often killed. According to Witness BLP, a man whom he had met at the roadblock told him that, on the same day in mid-April, individuals retained at the roadblock were taken downhill to a wooded area, about 40 metres away and killed.<sup>130</sup> Witness BLP did not know this man but said that he was a refugee in Kabgayi.<sup>131</sup> Prosecution Witness CSE testified that he saw Rukundo, in military uniform, at the roadblock watching a person being beaten by soldiers with

<sup>120</sup> T. 3 September 2007, p. 52 (Witness SJC); T. 2 October 2007, pp. 38-39 (Witness GSA); T. 18 July 2007, p. 60 (According to Witness ATT the roadblock consisted of a "heap of stones").

<sup>121</sup> T. 16 November 2006, pp. 21- 22.

<sup>122</sup> T. 17 November 2006, pp. 3-6, 13-14, 18-20, 22-23, 26, 34-35.

<sup>123</sup> T. 19 July 2007, pp. 20-21.

<sup>124</sup> T. 1 October 2007, pp. 75-76; T. 2 October 2007 pp. 48-49.

<sup>125</sup> T. 9 October 2007, p. 48; T. 10 October 2007, p. 53.

<sup>126</sup> T. 19 July 2007, p. 20.

<sup>127</sup> T. 3 September 2007, p. 52.

<sup>128</sup> "But I must say that there were soldiers at roadblocks on the main roads. Yes, there were roadblocks manned by soldiers" (T. 11 September 2007, pp. 52-53).

<sup>129</sup> T. 10 October 2007, p. 53.

<sup>130</sup> T. 15 November 2006, pp. 13-14; T. 16 November 2006, p. 23.

<sup>131</sup> T. 15 November 2006, p. 14; T. 16 November 2006, p. 24.

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their gun butts. Witness CSE said that people were surprised that as a priest, Rukundo did not intervene.<sup>132</sup>

88. The testimonies of Prosecution Witnesses BLP and CSE were contradicted by the evidence presented by Defence Witness EVA who stated that she travelled through the roadblock each day and never saw anyone being mistreated there. However, Witness EVA also stated that, after two frightening experiences, she rode in a vehicle through the roadblock to and from her work, as she was afraid that she would be killed, if she were to travel through on foot.<sup>133</sup>

89. The Chamber treats Witness BLP's testimony with caution.<sup>134</sup> The Chamber notes that Witness BLP's evidence regarding the alleged killing of the Tutsi arrested at the roadblock near the Kabgayi printing press is hearsay evidence. However, the fact that this evidence is hearsay does not in itself suffice to render it not credible or reliable.<sup>135</sup> Indeed the Chamber recalls that it has been well established that it is permissible to base a conviction on hearsay evidence.<sup>136</sup> In the instant case, however, the Chamber notes that the identification of Witness BLP's source of information is not clear. Furthermore, it is not clear whether the evidence is firsthand or secondhand hearsay, as the Prosecution has not established whether the refugee from whom Witness BLP got his information was himself an eyewitness to the killing or was subsequently informed by another person.

90. The Chamber notes that the circumstances under which Witness CSE allegedly met Rukundo for the first time in Kabgayi in 1993 and the exact date of the meeting have not been established. Further, the Chamber notes that the witness could not indicate on what date he fled to Kabgayi or when he allegedly met Rukundo at the roadblock. The Chamber finds that these issues can be explained by the passage of time between the events in Rwanda in 1994 and the witness's testimony 12 years later before the Chamber, and is satisfied that the issues do not affect Witness CSE's overall credibility.

91. Regarding the evidence given by Witness CSE, namely the beating of a person by soldiers, the Chamber notes that Witness CSE did not give any information as to the person's ethnicity. Furthermore, no evidence was adduced to establish, assuming that the person was indeed Tutsi, the severity of the injury, if any, which resulted from the beating. More importantly, however, the

<sup>132</sup> T. 17 November 2006, pp. 5-6.

<sup>133</sup> T. 19 July 2007, p. 56.

<sup>134</sup> See Section III.4.c.

<sup>135</sup> *Karera*, Judgement (AC), para. 39.

<sup>136</sup> *Karera*, Judgement (AC), para. 39; *Muvunyi*, Judgement (AC), para. 70.

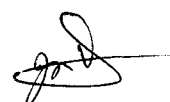


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Chamber notes that the testimonies of Witnesses BLP and CSE appear to relate to two different incidents. Indeed, no evidence has been adduced to suggest that the two incidents happened on the same date or were part of the same criminal transaction. Therefore, Witness BLP's hearsay account is the only evidence of the killing of Tutsi at the roadblock as alleged in the Indictment.

92. As mentioned above, Witness BLP's source of information has not been clearly established, and his hearsay evidence has not been corroborated.

93. In light of the aforementioned, the Chamber finds that the Prosecution has not proved beyond reasonable doubt that Rukundo instigated or aided and abetted the killing of Tutsi at the *Imprimerie de Kabgayi* Roadblock as alleged in paragraph 10(ii) of the Indictment.



4. EVENTS AT ST. JOSEPH'S COLLEGE

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(a) Indictment

94. Paragraphs 10(iii) and 22 of the Indictment read as follows:

10(iii): Between 12 and 15 April 1994, **Emmanuel RUKUNDO** brought soldiers to St. Joseph's College, Kabgayi, and ordered or instigated a search of Tutsi refugees purportedly having links with the *Inkotanyi*. During this period, the soldiers killed refugees, including Madame RUDAHUNGA, who was killed at her home. The soldiers also took away Tutsi refugees, including two of Madame RUDAHUNGA's children; a young man named Justin; and a young woman named Jeanne, all Tutsis, to the home of the RUDAHUNGAs, where they had killed Madame RUDAHUNGA, and grievously beat the two children, Justin and Jeanne with machetes and left them for dead. **Emmanuel RUKUNDO**, who was at the location at all material times, ordered, instigated or aided and abetted the killing of Madame RUDAHUNGA and the causing of grievous bodily harm to her two children, and to Justin and Jeanne.

22: Between 12 and 15 April 1994, Emmanuel RUKUNDO brought soldiers to St. Joseph's College, Kabgayi and ordered or instigated a search of Tutsi refugees purportedly having links with the INKOTANYI. The soldiers took away Madame RUDAHUNGA and shot and killed her at her home. Emmanuel RUKUNDO, who was at the location at all material times, ordered, instigated, or aided and abetted the killing of Madame RUDAHUNGA, a Tutsi.

(b) Evidence*Prosecution Witness BLP*

95. The Chamber has already considered Witness BLP's evidence in relation to the alleged incident at the *Imprimerie de Kabgayi* roadblock.

96. Witness BLP testified that after having seen Rukundo at the *Imprimerie de Kabgayi* roadblock, he saw Rukundo again very close to the main entrance of St. Joseph's College sometime between 12 and 15 April 1994, at about 8.00 a.m.<sup>137</sup> However, in cross-examination, Witness BLP appears to place the Rudahunga incident sometime around late April 1994.<sup>138</sup> At that time, Rukundo was accompanied by some soldiers. Witness BLP also saw three vehicles parked outside St. Joseph's College – a blue Hiace taxi, a khaki-coloured Toyota pick-up Hilux and a white Suzuki Samurai vehicle with a military registration number.<sup>139</sup> When Witness BLP arrived at St. Joseph's College the soldiers ordered him to remain there and not to move. At around 10.00 a.m. he saw

<sup>137</sup> T. 15 November 2006, p. 14.

<sup>138</sup> Witness BLP testified that the incident which occurred at the Major Seminary (See Section III.9.d) took place towards the end of May 1994, *about a month after* (emphasis added) the incident involving the Rudahunga family. (T. 16 November 2006, p. 30).

<sup>139</sup> T. 15 November 2006, pp. 13-14; T. 16 November 2006, p. 50.

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some soldiers coming out of St. Joseph's College. They were armed with rifles and carrying documents taken from St. Joseph's College which they showed to Rukundo.<sup>140</sup>

97. The soldiers also brought Louis Rudahunga's wife out of St. Joseph's College. They asked her to take them to her house and show them the weapons hidden there. The soldiers got Madame Rudahunga to climb aboard their vehicle and drove off. Rukundo followed them in his white Suzuki Samurai vehicle.<sup>141</sup>

98. Twenty minutes after taking Madame Rudahunga to her house, the same soldiers returned to St. Joseph's College and picked up two of Madame Rudahunga's children, a young woman called Jeanne<sup>142</sup> and a young man called Justin, who was a teacher in Kabgayi. When the soldiers returned, Witness BLP was working inside the premises of St. Joseph's College. From his vantage point, he observed the blue Hiace mini bus and saw the soldiers taking these people away.<sup>143</sup> Later that day, Witness BLP saw Jeanne again at St. Joseph's College. She was seriously wounded and bleeding a lot. Jeanne did not speak to Witness BLP directly, but she spoke to other refugees at St. Joseph's College. Witness BLP subsequently heard from the other refugees that Jeanne told them that when she arrived at Madame Rudahunga's house, she discovered that Madame Rudahunga had been killed. Jeanne also said that those who were with her had been wounded but that the Rudahunga's children and Justin were still alive.<sup>144</sup>

#### *Prosecution Witness BLJ*

99. Prosecution Witness BLJ, a Tutsi, testified that in the evening of 7 April 1994 her father received a telephone call from a friend in Kigali. The caller indicated that Tutsi were being killed in

<sup>140</sup> T. 15 November 2006, pp. 14-15. Witness BLP testified as follows: "After a while I saw soldiers coming out of the Saint-Joseph's College, and who were carrying things they had found in the college. These were mainly documents, and they were carrying rifles. They showed the papers and the other objects that they had found in Saint-Joseph's College to Father Rukundo around 10:00H."

<sup>141</sup> T. 15 November 2006, pp. 13-16.

<sup>142</sup> Sometimes this person is referred to in the evidence as Jeannine or Jannine.

<sup>143</sup> T. 15 November 2006, pp. 15-16. During examination-in-chief, BLP testified as follows:

"Q. Now, you also said that about 20 minutes later, the soldiers came back. Am I right?"

A. Yes, you are right.

Q. And were those the same soldiers who took the two children, Jeannine and Justine?"

A. Yes.

Q. And did they come back in those same vehicles?"

A. I was already at work, and I saw the Hiace minibus *blowing colour*, but from where I was located I cannot say if those were the same vehicles that went to the woman's house."

In the French language transcript however, it appears that the Witness spoke about a Blue Toyota vehicle:

« Q. Est-ce qu'ils sont revenus à bord du même véhicule ?

R. J'étais déjà à mon service, j'ai vu le minibus de marque (inaudible) de couleur bleue ; mais à l'endroit où je me trouvais, je ne pouvais pas bien voir si c'étaient exactement les mêmes véhicules qui étaient déjà partis au domicile de cette dame. » (T. 15 November 2006, p. 19 (French)).

<sup>144</sup> T. 15 November 2007, pp. 16-17.

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Kigali. Furthermore, during cross-examination, Witness BLJ stated that her father's name was announced on RTLM radio as a targeted person in Kabgayi. As a result of that information, Witness BLJ's father told Witness BLJ, her younger brother, her cousin, and a domestic worker to leave the house and go into hiding.<sup>145</sup> On the same day, *i.e.* 7 April 1994, they sought refuge at St. Joseph's College in Kabgayi, where they stayed for approximately one week before returning home early one morning. That evening, their parents sent them back to St. Joseph's College. When they returned to St. Joseph's College, they noticed that the number of Tutsi refugees had increased. A few days later, Madame Rudahunga also sought refuge at St. Joseph's College. She occupied the same room as Witness BLJ. Witness BLJ stayed at St. Joseph's College until 27 April 1994 and has not returned there since.<sup>146</sup>

100. Witness BLJ testified that around 20 April 1994, a soldier in military uniform accompanied by another man in civilian clothes, asked to speak to Madame Rudahunga. The two men took Madame Rudahunga away for 20-30 minutes and then brought her back. Upon her return, Madame Rudahunga did not tell Witness BLJ where she had been taken by the soldiers, nor did she say what transpired between her and the soldiers. However, Witness BLJ noticed that Madame Rudahunga was unhappy after meeting the soldiers.<sup>147</sup>

101. Witness BLJ testified that on 27 April 1994, at about 6.00 a.m. four soldiers knocked on the door of Witness BLJ's room which she shared with Madame Rudahunga at St. Joseph's College. The soldiers threatened to break down the door if it was not opened. When the soldiers entered, they asked for "Rudahunga's wife." Madame Rudahunga identified herself and was asked to produce an identity card. The soldiers led Madame Rudahunga away.<sup>148</sup> Witness BLJ told the Chamber that Madame Rudahunga never returned to St. Joseph's College.<sup>149</sup>

102. Witness BLJ testified that about 30 minutes after Madame Rudahunga was taken away, the same four soldiers returned to St. Joseph's College. This time they took away Witness BLJ and the three other Tutsi civilians who were with her at St. Joseph's College. They were transported in a blue Toyota pick-up vehicle which was parked outside the College. The soldiers took Witness BLJ to the Rudahunga's house. Witness BLJ discovered that the house had been totally destroyed. When

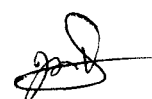
<sup>145</sup> T. 9 March 2007, pp. 3-4, 24.

<sup>146</sup> T. 9 March 2007, pp. 5-8.

<sup>147</sup> T. 9 March 2007, pp. 6, 12, 28.

<sup>148</sup> T. 9 March 2007, p. 12. Witness BLJ described their encounter with the soldiers as follows: "And then when they came in, they asked [Madame Rudahunga] ... 'Are you Rudahunga's wife? Madame. Rudahunga'? She said, 'Yes'. And they asked her for a piece of ID. She gave them her employment card. Then they were, like, 'You have to come with us.' And she had to go."

<sup>149</sup> T. 9 March 2007, p. 13.



she entered the living room, she saw Madame Rudahunga's dead body. Madame Rudahunga had been shot in the head. The soldiers then attacked Witness BLJ and her brother, beating them with the backs of their guns "so as not to waste their bullets". One soldier hit Witness BLJ on the head and she fell on her face. Another soldier stabbed her in the hip with a knife.<sup>150</sup>

103. Witness BLJ testified that after the soldiers' departure, she was bleeding heavily from her injuries and "fell asleep". When she woke up about an hour later, she found that her brother and cousin were still alive. Witness BLJ left the house to look for help and saw a neighbour who agreed to assist her and her family. The neighbour advised her to seek shelter in a neighbouring house and to be careful because "the car, that same car that brought you here, is still around." A short while later, her neighbour returned with Father Alfred Kayibanda. Witness BLJ told Father Kayibanda what had happened to her and informed him that other injured people were inside the Rudahunga's house. Father Kayibanda told Witness BLJ that he could take them to the hospital, but he could only take them one at a time. Father Kayibanda also told Witness BLJ to lie down in the back seat of his car so that people would not see him taking her to the hospital, and added that "Father Emmanuel's car was still around".<sup>151</sup> According to Witness BLJ, Father Kayibanda's remarks about "Father Emmanuel's car" initially did not make sense to her. However, at the time those remarks were made, she noticed the same blue Toyota pick-up that she had previously seen at St. Joseph's College that morning with soldiers on board when they came to get Madame Rudahunga and then was used to take her and the three other Tutsi civilians to the Rudahunga's house. Later, however, Witness BLJ was able to make a connection between the soldiers, the pick-up and Rukundo.<sup>152</sup>

104. After Father Kayibanda had taken them to the Kabgayi hospital, she and her brother received treatment for their wounds.<sup>153</sup>

105. Witness BLJ stayed at the hospital from 27 April to 2 June 1994, when the RPF forces took over Kabgayi. Witness BLJ testified that during her stay at the hospital, she saw Rukundo on two occasions. Witness BLJ testified that about one week after she was admitted to the Kabgayi hospital, in the morning sometime in early May 1994, she saw the Accused in military uniform at the Kabgayi hospital accompanied by two of the four soldiers "that came to get us from Saint Joseph [C]ollege." Witness BLP testified that they were all wearing military uniform and would walk around the hall and hold up a "human arm" or "human head" and intimidate the patients by

<sup>150</sup> T. 9 March 2007, p. 13.

<sup>151</sup> T. 9 March 2007, pp. 13-14.

<sup>152</sup> Witness BLJ concluded that "putting two pieces together, somehow there was something common [...] between the soldiers, the car, and Father Emmanuel." T. 9 March 2007, pp. 14, 19; T. 12 March 2007, p. 11.

<sup>153</sup> T. 9 March 2007, pp. 14-15.

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saying "this is you next".<sup>154</sup> According to Witness BLJ, Rukundo and the two soldiers took the list and files of the patients in order to select certain patients to take away from the hospital. The patients who they removed from the hospital never returned. On the second occasion, Rukundo was in civilian clothes and was accompanied by Bishop Thaddée Nsengiyumva and other priests. Witness BLJ testified that the group walked around the hospital ward and left. According to Witness BLJ, Rukundo did not see her or her brother at the hospital because they hid under the bed covers.<sup>155</sup>

#### *Prosecution Witness BLC*

106. Witness BLC, a Tutsi, was a student at the St. Léon Minor Seminary in 1994.<sup>156</sup> He testified that when President Habyarimana died on 6 April 1994, he was at his village. The situation in his village changed after the President's death; neighbours started killing cattle, torching houses and decimating banana plantations. About one week after 6 April 1994, Witness BLC and his family decided to seek shelter in Kabgayi and moved to the St. Léon Minor Seminary.<sup>157</sup> Witness BLC testified that before 1994, he knew Rukundo by name as a priest, but got to know him more closely in 1994. Witness BLC stated that when he saw Rukundo in 1994, the Accused was of average height and athletic build with fairly large eyes and wore glasses. Witness BLC identified Rukundo in court. Witness BLC testified that Rukundo "frequently" visited the St. Léon Minor Seminary during that year and was usually accompanied by soldiers. Witness BLC estimated that Rukundo normally came to the St. Léon Minor Seminary with two to three soldiers, but on one occasion, he came with about 15 soldiers.<sup>158</sup> This happened around 1.00 p.m. on a day when it was raining; the soldiers wore overalls and their vehicle, a pick-up truck, was covered in mud. On this occasion, Witness BLC heard Rukundo, who had come from the Rudahunga's house, say to Emmanuel Uwimana, the Rector of the St. Léon Minor Seminary, that "We entered in Rudahunga's Inyenzi's house, we killed the wife and the children, but the idiot managed to get away from us."<sup>159</sup> Witness BLC explained that Rukundo spoke in a loud voice and anyone who was around him could have heard what he said. Witness BLC testified that he did not know the circumstances surrounding Madame Rudahunga's death. All he knew was that she was killed in 1994. However, Witness BLC knew Bernard Rudahunga, one of the Rudahunga's children as they were both students at the St.

<sup>154</sup> T. 9 March 2007, p. 16.

<sup>155</sup> T. 9 March 2007, pp. 16-17; T. 12 March 2007, pp. 12-14, 30-32.

<sup>156</sup> T. 4 December 2006, p. 8; Exhibit P. 13.

<sup>157</sup> T. 4 December 2006, pp. 10-11.

<sup>158</sup> T. 4 December 2006, pp. 14-16.

<sup>159</sup> T. 4 December 2006, pp. 21-22.

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Léon Minor Seminary. Sometime in 1994, Witness BLC heard that Bernard had been killed in Kigali in the same year.<sup>160</sup>

*Prosecution Witness CCH*

107. Witness CCH first knew Rukundo in 1991 when the Accused was ordained as a priest. Witness CCH also attended his ordination ceremony.<sup>161</sup>

108. Witness CCH testified that on 8 April 1994 many people arrived in her town explaining that their houses were being set on fire. Witness CCH decided that there were too many people in her town and so decided to seek refuge at her grandmother's house. After members of the public started being killed, Witness CCH went to seek refuge at the St. Léon Minor Seminary in Kabgyi. Witness CCH stayed at the St. Léon Minor Seminary from mid-May 1994 until 3 June 1994.<sup>162</sup>

109. Witness CCH testified that she was a neighbour of the Rudahunga family. She knew that Louis Rudahunga worked at the printing press and that he was arrested and detained in 1990 for being an RPF accomplice. Witness CCH was in the same class at school as the Rudahunga's children.<sup>163</sup> Sometime in May 1994, Witness CCH met Rukundo at the St. Léon Minor Seminary. Rukundo told her that they had found documents at Louis Rudahunga's place which included names of people who made financial contributions to the *Inkotanyi*. Rukundo told Witness CCH that Louis Rudahunga had to be killed.<sup>164</sup> Rukundo also told Witness CCH that her relative's name was on the list found at the Rudahunga's home and that "the names of people on that list were the names of people who gave money to the *Inkotanyi*".<sup>165</sup>

*The Accused*

110. Emmanuel Rukundo testified that he knew Louis Rudahunga very well and that he had worked as an accountant at the Kabgayi printing press since Rukundo was at the Seminary in Kabgayi. Rukundo also stated that he knew Madame Rudahunga as she was a nurse at the Kabgayi

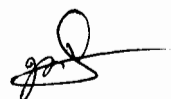
<sup>160</sup> T. 4 December 2006, pp. 21, 23.

<sup>161</sup> T. 13 February 2007, pp. 55, 60, 62-63; T. 14 February 2007, p. 5.

<sup>162</sup> T. 13 February 2007, pp. 56, 62.

<sup>163</sup> T. 13 February 2007, p. 68.

<sup>164</sup> T. 13 February 2007, p. 58. Witness CCH described her discussion with Rukundo in the following terms: "I said hello to him, I introduced myself, and I told him that [...] was a relative of mine, and then I asked him for protection, I asked him to hide me. And he answered as follows: 'If [...] is your relative, then you all have to die, because [...] was assisting *Inyenzi*. He was my friend, but when he started helping the *Inyenzi*, he is no longer my friend. We do not even talk to each other. He's no longer my friend.' He went on to say that they had found some documents at Louis Rudahunga's place and who had to be killed, and that this document included a list of people who were making financial contributions to the *Inkotanyi*."



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hospital as well as the Rudahunga's eldest daughter called Alice. However, Rukundo did not know the names of the Rudahunga's three other children because they were too young.<sup>166</sup>

111. Rukundo testified that he never went to St. Joseph's College during the events of 1994. In particular, he denied that between 12 and 15 April 1994, he was present at St. Joseph's College and was accompanied by soldiers. Rukundo stated that he did not know that members of the Rudahunga family had been abducted from St. Joseph's College. He further stated that at the time he only knew that Louis Rudahunga had been killed. Rukundo explained that he did not drive a blue pick-up truck except for a pick-up he drove which was lent to him by nuns from the Rwaza school.<sup>167</sup>

112. Rukundo told the Chamber that he had never had any problems with Louis Rudahunga or any other members of his family.<sup>168</sup> He added that he did not even know that Madame Rudahunga and her children had sought refuge at St. Joseph's College or that she had been killed.<sup>169</sup> Rukundo stated that he did not learn about Madame Rudahunga's death until he came to this Tribunal. However he subsequently admitted that he had learnt about her death earlier from information he had read in a "Goliath publication" and wrote an article defending himself against the allegation that he was responsible for her killing.<sup>170</sup>

113. Contrary to Prosecution Witness BLC's evidence, Rukundo denied that he said "We are returning from the house of Louis Rudahunga, the *Inyenzi*. We have already killed his wife and children but he escaped from us." Rukundo maintained that such remarks could never be made by a priest especially in the presence of his colleagues.<sup>171</sup> Rukundo only heard of Louis Rudahunga's death on 21 May 1994 during a visit to Kabgayi. Rukundo also denied Prosecution Counsel's suggestion that he met Father Kayibanda at the Kabgayi Bishopric on 7 May 1994.<sup>172</sup>

#### *Defence Witness SJD*

114. Witness SJD was a teacher at St. Joseph's College in 1994. He knew the Rudahunga family and their children.<sup>173</sup> He testified that the Rudahunga's house was located less than one kilometre

<sup>165</sup> T. 14 February 2007, p. 9.

<sup>166</sup> T. 9 October 2007, p. 45.

<sup>167</sup> T. 9 October 2007, pp. 53-54; T. 10 October 2007, pp. 42-45.

<sup>168</sup> T. 9 October 2007, p. 46.

<sup>169</sup> T. 9 October 2007, pp. 53-54.

<sup>170</sup> T. 10 October 2007, pp. 42-44.

<sup>171</sup> T. 9 October 2007, p. 46.

<sup>172</sup> T. 10 October 2007, pp. 42-44.

<sup>173</sup> T. 28 September 2007, pp. 4-6.





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away from St. Joseph's College.<sup>174</sup> Witness SJD did not know Rukundo in April 1994. However, in August or September 1994, he heard that there was a military chaplain present with soldiers when Tutsi refugees were abducted from St. Joseph's College in the morning of 26 April 1994. Witness SJD did not know the name of the military chaplain, and could not recall the person who gave him that information. Witness SJD did not recall specifically seeing Rukundo at St. Joseph's College on 26 April 1994.<sup>175</sup>

115. Witness SJD testified that the Rudahunga family arrived at St. Joseph's College between 10 and 20 April 1994. On 26 April 1994, at about 4.30 or 5.00 a.m., Witness SJD heard someone knocking on his door. He opened it and a soldier walked in and searched the room. The soldier asked to see Witness SJD's identity card, which he inspected and then left. Witness SJD testified that all the buildings were searched. Witness SJD estimated that, at that time, there were between 15 and 20 soldiers inside the premises of St. Joseph's College.<sup>176</sup>

116. On his way to mass on the morning of 26 April 1994, Witness SJD met a group of soldiers at the main gate of St. Joseph's College. He also saw a Toyota pick-up vehicle outside the gate and recognised four people who were sitting in the vehicle, two of whom were the Rudahunga's children.<sup>177</sup> There was also a teacher from the Kabgayi Technical School and a young lady called Jeanne. Witness SJD asked the soldiers where they were taking the children. One of them answered that they were taking them back to their home. Another soldier told Witness SJD "Now, if you want to know where we are taking them, then please join us." Witness SJD told the Chamber that at the time, he already knew that the Rudahunga's home had been destroyed and therefore thought that it would be dangerous to go there. Witness SJD continued on his way to mass at the Kabgayi Basilica.<sup>178</sup>

117. Witness SJD spent about one hour at mass and then returned to St. Joseph's College where he went to the refectory to eat breakfast. Whilst at the refectory, one of his colleagues walked in with Jeanne who was one of the people taken away by soldiers along with members of the Rudahunga family earlier that morning. Jeanne told Witness SJD that the people who the soldiers

<sup>174</sup> T. 28 September 2007, p. 11.

<sup>175</sup> T. 28 September 2007, p. 21.

<sup>176</sup> T. 28 September 2007, pp. 6, 8, 10, 22.

<sup>177</sup> T. 28 September 2007, pp. 9-10. Defence Witness SJD testified that "that morning I saw two vehicles. One was blue; that is certain. But I did not see the blue vehicle around our institutions, but in the vicinity of the Rudahungas. But the other vehicle was a Toyota, whose colour could be red, or it could be some other colour. But it was a Toyota-styled. Of that I am certain." (T. 28 September 2007, p. 10).

<sup>178</sup> T. 28 September 2007, p. 9.

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had taken away with her had been grievously injured and that Madame Rudahunga had been killed. Witness SJD could see that Jeanne was seriously injured as her scalp had been cut open.<sup>179</sup>

118. Witness SJD and his colleague decided to seek help for the Rudahunga family from a doctor in Kabgayi. The doctor told Witness SJD to take the patients to the Kabgayi hospital and explained that he would treat them there. Witness SJD, accompanied by Father Kayibanda and Jeanne, then went to the Rudahunga's house to pick up the injured members of that family. On their way, Witness SJD saw a blue Toyota Stout vehicle similar to the one he had seen at St. Joseph's College earlier that morning. The vehicle was located about 20 or 30 meters from the junction leading to the Rudahunga's home and was occupied by soldiers. Witness SJD told the people in the car "There they are again" because he realised that these were the same soldiers who had taken members of the Rudahunga family away from St. Joseph's College that morning.<sup>180</sup>

119. Witness SJD testified that he avoided the soldiers and went to a house that was near the Rudahunga's home where he found Witness BLJ. Witness BLJ was covered in blood, but still conscious and able to speak. Witness BLJ told Witness SJD that Madame Rudahunga had been killed and that her brother had been grievously injured. Witness SJD put Witness BLJ in the vehicle and drove to the Kabgayi hospital. Witness SJD drove the vehicle, Father Kayibanda sat in the front passenger seat and the two girls, Jeanne and Witness BLJ, sat in the back seat. Witness SJD and Father Kayibanda handed the two girls to a nurse at the emergency unit of the hospital. Later that afternoon, Father Kayibanda borrowed Witness SJD's car in order to take Justin to the hospital. Father Kayibanda informed Witness SJD that he had received a message from Justin that he had been seriously injured.<sup>181</sup>

#### *Defence Witness SLA*

120. In April 1994 Defence Witness SLA worked at the St. Léon Minor Seminary. He testified that he knew Emmanuel Rukundo. During the events of 1994, Witness SLA saw Rukundo twice at the St. Léon Minor Seminary sometime in mid-April and mid-May 1994. On both occasions, Rukundo arrived in a beige or white-coloured private vehicle wearing military uniform and accompanied by a soldier. Witness SLA never saw nor heard that Rukundo drove a pick-up vehicle. Witness SLA testified that the only purpose of Rukundo's visits "was to see us, greet us, and to discuss the prevailing developments on the national scene." Witness SLA explained that on his first

<sup>179</sup> T. 28 September 2007, p. 13.

<sup>180</sup> T. 28 September 2007, pp. 13, 15.

<sup>181</sup> T. 28 September 2007, pp. 15-17.

visit, Rukundo told him that he had fired his gun in the air to save certain Tutsi at Nyabikenke Parish from being attacked. On the second visit, Rukundo told the seminarians that he had been transferred from Ruhengeri to Kigali.<sup>182</sup>

121. Witness SLA testified that he never saw Rukundo speaking to Father Daniel Nahimana at the St. Léon Minor Seminary. He also confirmed that he had known Louis Rudahunga, but had never heard Rukundo mention Rudahunga's name.<sup>183</sup>

*Defence Witness SJC*

122. The Chamber has already considered Witness SJC's evidence in relation to the alleged incident at the *Imprimerie de Kabgayi* roadblock.

123. Witness SJC testified that on or about 20 April 1994, he received information that his cousin was injured and had been admitted to the Kabgayi hospital. He visited his cousin at the hospital and stayed there from 20 April to 1 May 1994. During the first nine days of his stay (*i.e.* until 29 April 1994), Witness SJC spent the night at the hospital. After that date, he would leave at 3.00 or 4.00 p.m. and return the next day at 7.30 a.m.<sup>184</sup>

124. Witness SJC told the Chamber that in addition to his cousin, he also helped other patients, including the Rudahunga's two children. He knew the Rudahunga family and at some point worked with Louis Rudahunga.<sup>185</sup>

125. Witness SJC told the Chamber that he never saw Rukundo whilst he was at the Kabgayi hospital and in Kabgayi town in 1994.<sup>186</sup> Witness SJC added that he did not see any government or religious authorities visiting the hospital. In addition, he could not recall any incident when the *Interahamwe* or soldiers threatened patients at the hospital or carried body parts.<sup>187</sup>

*Defence Witness EVC*

126. The Chamber has previously considered Witness EVC's testimony in relation to the *Imprimerie de Kabgayi* roadblock.

<sup>182</sup> T. 1 October 2007, pp. 12, 22-23.

<sup>183</sup> T. 1 October 2007, pp. 22-23, 25.

<sup>184</sup> T. 3 September 2007, pp. 15, 40-41.

<sup>185</sup> T. 3 September 2007, pp. 25-26.

<sup>186</sup> T. 3 September 2007, pp. 26, 46-47.

<sup>187</sup> T. 3 September 2007, pp. 23-24.

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127. Witness EVC testified that one day, Father Alfred Kayibanda told him that Rudahunga and his entire family had been killed. According to Witness EVC, Father Kayibanda explained that “he was present, that he had seen the dead bodies of that family, but that he had saved the children from that place of killing.” However, Father Kayibanda did not say who the attackers were who killed the Rudahunga family. Witness EVC testified that when Father Kayibanda talked about the incident he did not mention Rukundo’s name. Witness EVC stated that had Father Kayibanda known that Rukundo was involved in the attack on members of the Rudahunga family he would not have withheld such information and would have informed the diocese.<sup>188</sup>

*Defence Witness SJA*

128. Witness SJA, who lived at St. Joseph’s College in Kabgayi from 1983 to June 1994, knew Emmanuel Rukundo from the time Rukundo was at the Nyakibanda Major Seminary. Witness SJA attended Rukundo’s ordination in 1991. Witness SJA knew about Rukundo’s appointment as a military chaplain and that he was posted to Kigali and subsequently to Ruhengeri.<sup>189</sup>

129. Witness SJA also knew Louis Rudahunga, Madame Rudahunga and all of their children. At some point, he worked in the same office with Louis Rudahunga. In April 1994, Witness SJA lived in a residential block at St. Joseph’s College with eight other people. From his window, he could see part of the compound and the gate of St. Joseph’s College.<sup>190</sup>

130. Witness SJA testified that refugees started arriving at St. Joseph’s College from about 6 April 1994. He said that at the peak of the crisis, there were about 4,000 refugees at St. Joseph’s College. Witness SJA saw members of the Rudahunga family at St. Joseph’s College for the first time between 10 and 12 April and again around 20 April 1994 when they were being “driven” out of St. Joseph’s College by soldiers to Gahogo. Witness SJA explained that at about 5.20 a.m. on 20 April 1994, two soldiers knocked on his door and when he opened it, they said they were searching for weapons and *Inyenzi*. Witness SJA testified that they were still searching the establishment at about 10.00 a.m.<sup>191</sup>

131. Witness SJA testified that later that day, soldiers took away Madame Rudahunga, her two children, as well as a girl called Jeanne who had been staying with the Rudahunga family, from St. Joseph’s College. Witness SJA was on the veranda of his block, outside his room, when he saw

<sup>188</sup> T. 11 September 2007, pp. 36-38.

<sup>189</sup> T. 22 October 2007, pp. 3-4, 6.

<sup>190</sup> T. 22 October 2007, pp. 4-5.

<sup>191</sup> T. 22 October 2007, pp. 6-8, 10.

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the group pass by. Witness SJA testified that he saw the group from the back and was about 40 to 50 metres away from the soldiers and the Rudahunga family. Witness SJA was told by the refugees who were in the same block as the Rudahunga family that the soldiers said that they wanted to take members of the Rudahunga family to search their house. He subsequently heard that the Rudahunga's family home had been demolished. Witness SJA testified that later on, Jeanne returned with a bleeding wound on her head and reported that Madame Rudahunga had been killed and that the children "were still in a state of agony." According to Witness SJA, Father Kayibanda, who was in charge of security at St. Joseph's College, went with another person to take the children to the hospital.<sup>192</sup>

(c) Deliberations

132. The Indictment alleges that, between 12 and 15 April 1994, Emmanuel Rukundo brought soldiers to St. Joseph's College, in Kabgayi, and ordered<sup>193</sup> or instigated a search of Tutsi refugees purportedly having links with the *Inkotanyi*. During this period, the soldiers killed refugees, including Madame Rudahunga, who was killed at her home. The soldiers also took away Tutsi refugees, including two of Madame Rudahunga's children, and a young man named Justin, and a young woman named Jeanne, all Tutsi, to the Rudahunga's home, where they had killed Madame Rudahunga, and grievously beat the Rudahunga's two children, and Justin and Jeanne with machetes and left them for dead. Emmanuel Rukundo, who was at the location at all material times, ordered, instigated or aided and abetted the killing of Madame Rudahunga and the causing of grievous bodily harm to her two children and to Justin and Jeanne.

133. In support of this allegation, the Prosecution relies on the evidence of Witnesses BLP, BLC, BLJ and CCH. To challenge the Prosecution evidence, the Defence relies on the evidence of Witnesses SJD, SLA, SJC, EVC, SJA and the Accused himself.

134. The Chamber notes that, although the Prosecution alleges that other Tutsi refugees were killed, no evidence was led on this issue. The Chamber therefore dismisses the allegation in respect of the killing of other Tutsi refugees.

<sup>192</sup> T. 22 October 2007, pp. 10-14.

<sup>193</sup> "Ordering" presupposes that a person in a position of authority orders another person to commit an offence. This position of authority is used to convince another person to commit a crime punishable under the Statute. See for example, *Bagilishema*, Judgement (TC), para. 30; *Muvunyi*, Judgement (TC) para. 481; *Stakić*, Judgement (TC) para. 444.



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135. There is no dispute that Madame Rudahunga was abducted from St. Joseph's College and killed and that her two children and two other Tutsi civilians, Justin and Jeanne, were abducted from that location and seriously injured sometime in April 1994.<sup>194</sup>

136. Three eye witnesses, Witnesses BLP, SJD and BLP, testified that the abductions and the subsequent crimes committed at the Rudahunga's home occurred around 27 April 1994.<sup>195</sup> The Chamber notes that this date is about two weeks after the approximate dates set out in the Indictment, 12-15 April 1994. Nevertheless, the Chamber finds that the allegation has been clearly specified in the Indictment, and that the difference in dates between the Indictment and the testimonies of Witnesses BLJ, SJD and BLP has not impaired the ability of the Defence to prepare its case in respect of the allegation.

137. The only question remaining for the Chamber is to determine the Accused's involvement, if any, in the abduction and killing of Madame Rudahunga and the abduction and causing of serious bodily harm<sup>196</sup> to the Rudahunga's two children and to the two Tutsi civilians, Justin and Jeanne.

138. Witness BLP purports to be an eye witness to the abductions of Madame Rudahunga and her two children and two other Tutsi civilians from St. Joseph's College.<sup>197</sup> He stated that he saw some soldiers coming out of St. Joseph's College, bringing Louis Rudahunga's wife and carrying documents taken from St. Joseph's College which they showed to Rukundo.<sup>198</sup> Then he saw the soldiers put Madame Rudahunga in their vehicle and drive away, followed by Rukundo in his white Suzuki Samurai vehicle.<sup>199</sup> Twenty minutes after taking Madame Rudahunga to her house, Witness BLP saw the same soldiers return to St. Joseph's College and abduct two of Madame Rudahunga's children and two other Tutsi civilians.<sup>200</sup> Later that day, Witness BLP saw one of the civilians, Jeanne, again at St. Joseph's College. She was seriously wounded and bleeding a lot.

<sup>194</sup> See in particular Prosecution Witnesses BLP and BLJ and Defence Witnesses SJD and SJA.

<sup>195</sup> Witness BLP, T. 16 November 2006, p. 30; Witness BLJ, T. 9 March 2007, p. 12; Witness SJD, T. 28 September 2007, pp. 13, 20-21.

<sup>196</sup> The quintessential examples of serious bodily harm are torture, rape, and non-fatal physical violence that causes disfigurement or serious injury to the external or internal organs (*Semanza*, Judgement (TC), para. 320, referring to *Kayishema and Ruzindana*, Judgement (TC), para. 109; *Ntagerura et al.*, Judgement (TC), para. 664); see also Sections III.6, III.7.c.iv, iii.9.b which deal with serious mental and bodily harm.

<sup>197</sup> T. 15 November 2006, pp. 14-15.

<sup>198</sup> T. 15 November 2006, pp. 14-15. Witness BLP testified as follows: "After a while I saw soldiers coming out of the Saint-Joseph's College, and who were carrying things they had found in the college. These were mainly documents, and they were carrying rifles. They showed the papers and the other objects that they had found in Saint-Joseph's College to Father Rukundo around 10:00H."

<sup>199</sup> T. 15 November 2006, pp. 13-16.

<sup>200</sup> T. 15 November 2006, p. 15.



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139. The Chamber notes that there are some credibility issues involving Witness BLP. Witness BLP testified before the Chamber on 15 and 16 November 2006. On 8 March 2007, the Defence filed a confidential motion to recall Witness BLP based on a letter dated 8 February 2007 given to the Defence investigator, Leonidas Nshogoza, in which Witness BLP allegedly admitted to having given false testimony before the Chamber.<sup>201</sup> Following these submissions, Witness BLP was recalled.<sup>202</sup> On 2 July 2007,<sup>203</sup> Witness BLP appeared again before the Chamber and testified that he did not wish to vary any of his earlier testimony given in November 2006.<sup>204</sup>

140. Following Witness BLP's second appearance, the Chamber ordered an independent investigation, pursuant to Rules 54 and 91 of the Rules, into Witness BLP's alleged false testimony and related issues, including the circumstances surrounding Witness BLP's meetings with the Defence investigator and the possible violation of protective measures.<sup>205</sup> On 11 October 2007, Mr. Jean Haguma, a Defence Attorney based in Kigali, who was appointed by the Registrar as an independent investigator, appeared in Court to present the findings of his investigation.<sup>206</sup>

141. The Haguma Report<sup>207</sup> concluded that, after having testified before this Tribunal, Witness BLP was influenced by Father Ndagijimana, a detainee at Gitarama Prison, to contact Leonidas Nshogoza, in order to "exculpate Father Rukundo."<sup>208</sup> As a result, Witness BLP met Mr. Nshogoza on several occasions between 30 December 2006 and 8 February 2007 "always for the same issue".<sup>209</sup> Mr. Nshogoza gave Witness BLP a letter dated 10 January 2007, which Witness BLP agreed to copy "in order to protect himself." It appears that Witness BLP was also given a second letter dated 8 February 2007 which was addressed to Father Rukundo. The Haguma Report concluded that since the letter of 10 January was the only one that Witness BLP agreed "to copy ... the other statements must be considered as void."<sup>210</sup>

<sup>201</sup> *Requête Ex Parte en Extrême Urgence et Confidentielle aux Fins de Rappeler le Témoin du Procureur BLP aux Fins d'Être Réentendu au Vu des Éléments Nouveaux*, filed on 8 March 2007.

<sup>202</sup> Decision on Defence Motion to Recall Prosecution Witness BLP (TC), 30 April 2007, paras. 2, 4, 6.

<sup>203</sup> Scheduling Order Following the Pre-Defence Conference (TC), 7 May 2007, para. IV.

<sup>204</sup> T. 2 July 2007, p. 42.

<sup>205</sup> T. 2 July 2007, p. 43; Decision on the Motions Relating to the Scheduled Appearances of Witness BLP and the Defence Investigator (TC), 4 July 2007, disposition.

<sup>206</sup> T. 11 October 2007, pp. 36-51.

<sup>207</sup> Chamber Exhibit X. 1: Investigative Report by Mr. Haguma of 11 October 2007 and Annexes, admitted on 11 October 2007 ("Haguma Report").

<sup>208</sup> Haguma Report, p. 2 (English version).

<sup>209</sup> The Haguma Report specifies that Mr. Nshogoza met with Witness BLP on 30 December 2006 at the church; on 6 January 2007 at the church; on 10 January 2007 at Clecam; on 7 February 2007 at Mupagasi Bar; and several times at the office. See the Haguma Report, p. 3 (English version) and T. 11 October 2007, pp. 36-51.

<sup>210</sup> Haguma Report, p. 4 (English version).

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142. The Chamber accepts the Haguma Report and finds that it establishes that Witness BLP's alleged recantation of his testimony given on 15 and 16 November 2006, was due to pressure exerted upon him by the Defence investigator and Father Ndagijimana. Consequently, the Chamber does not believe that Witness BLP intended to recant his testimony before the Chamber. Based on the Haguma Report, the Chamber also finds that Mr. Nshogoza initiated contact with Witness BLP through Father Ndagijimana and continued to remain in contact with Witness BLP over a considerable period of time in violation of the Chamber's protective measures. The Chamber also finds that the Defence investigator prepared two letters dated 10 January 2007 and 8 February 2007 for Witness BLP to copy and sought to influence Witness BLP to change his testimony before the Chamber.

143. The Chamber, however, notes that there are some other issues that might affect Witness BLP's credibility. The Chamber recalls that during his testimony on 15 November 2006, Witness BLP gave a description of the Accused as he knew him in 1994, and stated that the Accused "used to wear plain glasses." However, when asked by Prosecution Counsel to identify the Accused from amongst the people in the courtroom, Witness BLP pointed to another individual wearing glasses.<sup>211</sup> On the next day, and with the Chamber's permission, Witness BLP correctly identified the Accused.<sup>212</sup>

144. The Chamber also notes that, during cross-examination, Witness BLP admitted that in his testimony before the Rwandan Gacaca courts, he never mentioned Rukundo's presence or participation in the attack on St. Joseph's College.<sup>213</sup> The Chamber further notes that Witness BLP and 19 other prisoners detained at Gitarama prison contributed to a joint statement, dated 27 April 2005, in which they described events in Kabgayi in April and May 1994, including the attacks on St. Joseph's College. They gave names of some of the attackers and victims, and provided various dates on which the attacks took place. The statement makes no mention of Rukundo. Witness BLP explained that the Accused was omitted from the document for security reasons because, at the time that the statement was prepared, he and the other prisoners did not reveal the role of any surviving priest or clergy in the Kabgayi killings.<sup>214</sup>

<sup>211</sup> T. 15 November 2006, p. 12.

<sup>212</sup> The Chamber however recalls that in-court identification of the Accused has little probative value, and must be treated cautiously. Such identification is only one element to be considered when evaluating the witness's evidence. See *Kunarac et al.*, Judgement (AC), para. 320; *Kamuhanda*, Judgement (AC), paras. 243-244.

<sup>213</sup> T. 16 November 2006, p. 62.

<sup>214</sup> T. 16 November 2006, pp. 57-62. "The people who provided this information in this document did so but maybe they did not include other information in this document for security reasons. They actually accused - they did not accuse themselves but they wanted to make sure that when they gave any information, such information would not jeopardise



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145. Most importantly, however, the Chamber notes that at the time of his testimony Witness BLP was on provisional release in Rwanda, after having given a written confession to the Rwandan authorities.<sup>215</sup> During cross-examination, Witness BLP admitted that he participated in the attacks on Tutsi refugees at St. Joseph's College in April 1994, the very location he is alleging Rukundo's participation in crimes against members of the Rudahunga family and other Tutsi.<sup>216</sup> The Chamber notes that the evidence of an accomplice is not *per se* unreliable, especially where the accomplice is thoroughly cross-examined.<sup>217</sup> However, the Chamber also notes that accomplice witnesses may have motives or incentives to implicate an accused person before the Tribunal. Thus the Chamber, in weighing the probative value of such evidence, is bound to carefully consider the totality of the circumstances in which it was tendered.<sup>218</sup>

146. In light of the aforementioned, the Chamber will treat Witness BLP's evidence with caution and will rely on it only if it is corroborated by, or itself corroborates, other reliable evidence.

147. Witness BLJ was one of the victims who was abducted from St. Joseph's College. She testified that around 20 April 1994, Madame Rudahunga was taken away for questioning for 20 to 30 minutes by a soldier in military uniform, accompanied by another man in civilian clothes.<sup>219</sup> On 27 April 1994, at about 6.00 a.m., four soldiers abducted Madame Rudahunga from St. Joseph's College.<sup>220</sup> About 30 minutes later, the same four soldiers returned to St. Joseph's College and took Witness BLJ and three other Tutsi civilians who were with her at St. Joseph's College to the Rudahunga's home, where Madame Rudahunga had been shot in the head and was dead. The soldiers then attacked Witness BLJ and another person.<sup>221</sup> Witness BLJ fell to the ground and "fell asleep." When she woke up, she went to search for help. A neighbour advised Witness BLJ to be careful because "the car, that same car that brought you here, is still around."<sup>222</sup> A short while later, her neighbour returned with Father Alfred Kayibanda. Father Alfred Kayibanda warned the witness that "Father Emmanuel's car was still around," before driving her to the hospital.<sup>223</sup> This warning initially did not make sense to her. Later, however, based on that remark, Witness BLJ was able to

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their security, and that is why the name of Father Rukundo is not included in the document because we were afraid that his fellow members of the clergy would not (sic) harm us but the reason I decided to give all of the information I have before this Court is that I know that everything that I say here would be confidential" (T. 16 November 2006, p. 62).

<sup>215</sup> T. 16 November 2006, p. 63.

<sup>216</sup> T. 16 November 2007, p. 53.

<sup>217</sup> *Ntagerura et al.*, Judgement (AC), para. 204; *Niyitegeka*, Judgement (AC), para. 98.

<sup>218</sup> *Ntagerura et al.*, Judgement (AC), paras. 204, 206.

<sup>219</sup> T. 9 March 2007, pp. 6, 12, 28.

<sup>220</sup> T. 9 March 2007, p. 12.

<sup>221</sup> T. 9 March 2007, p. 13.

<sup>222</sup> T. 9 March 2007, pp. 13-14.

<sup>223</sup> T. 9 March 2007, p. 14.



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make a link between the blue Toyota pick-up that she saw close to her house and the one that was used in the two abductions, and the soldiers and the Accused.<sup>224</sup>

148. About one week after she was admitted to Kabgayi hospital, one morning in early May 1994, Witness BLJ saw the Accused in military uniform at the Kabgayi hospital accompanied by two of the four soldiers who had removed members of the Rudahunga family from St. Joseph's College. Rukundo and the two soldiers walked through the hall which was mostly full of Tutsi patients. They picked up a human arm or a head and intimidated those at the hospital by threatening "this is you next." According to Witness BLJ, Rukundo and the two soldiers took the list and files of the patients in order to select certain patients to abduct from the hospital. The patients whom they removed from the hospital never returned.<sup>225</sup>

149. The Defence submits that Witness BLJ's testimony in respect of Father Kayibanda's comment about the presence of Father Emmanuel's car at the scene of the crime is a material fact which establishes a link between the Accused and the attack on the refugees and therefore should have been pleaded in the Indictment. The Defence requests the Chamber to exclude this part of Witness BLJ's testimony.<sup>226</sup>

150. The Chamber is not convinced by the Defence submissions. The Chamber notes that the charge against the Accused is that, between 12 and 15 April 1994, he brought soldiers to St. Joseph's College to search for Tutsi refugees, purportedly having links with the *Inkontanyi* and then participated in the killing of Madame Rudahunga at her house and in the abduction and causing of serious bodily harm to two of the Rudahunga's children and two other Tutsi civilians at the home of Madame Rudahunga. The Indictment further alleges that Rukundo "was at the location at all material times." The Chamber finds that Witness BLJ's testimony is evidence given in support of an existing charge pleaded in the Indictment.<sup>227</sup> The Chamber will therefore not exclude Witness BLJ's testimony about the presence of the Accused's car near the home of the Rudahunga family.

<sup>224</sup> T. 9 March 2007, pp. 14, 19; T. 12 March 2007, p. 11. Witness BLJ states "At that time it did not make sense to me, because he say that Father Emmanuel's car -- but, then again, when we were taken in that car, it was --to me it was a soldier's car. And then, it's after that I saw this -- the two soldiers -- two of the four soldiers that took us -- that took [Madame Rudahunga] to go kill her and then come back for us that I made a connection to what the -- what Father Kayibanda said about the car and the -- the affiliation of the car and Emmanuel. Because the soldiers were in that car, and -- and the car -- and those same soldiers were with Father Rukundo. So that's how I made the connection of -- that's why it made sense to me that that's what he meant; he means by the car being Emmanuel's" (T. 9 March 2007, p. 19).

<sup>225</sup> T. 9 March 2007, pp. 16-17; T. 12 March 2007, pp. 12-14, 30-32.

<sup>226</sup> Defence Closing Brief, paras. 178, 184, 188.

<sup>227</sup> See Section II, A. I.



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151. The Defence also seeks to exclude Witness BLJ's testimony regarding the Accused's alleged first visit to the Kabgayi hospital in May 1994.<sup>228</sup> The Defence submits that the Accused's visit to the Kabgayi hospital, as described by Witness BLJ, constitutes a material fact which should have been specifically pleaded in the Indictment. The Defence submits that the allegation that the Accused waved human limbs whilst threatening the Tutsi patients at the hospital introduces a new charge of causing serious bodily and mental harm to the patients. The Defence further submits that the allegation that the Accused looked at the patients' files is extremely prejudicial since it implies that the Accused's selection of victims was premeditated.<sup>229</sup>

152. The Chamber notes that the Indictment does not plead the Accused's actions in Kabgayi hospital, as described by Witness BLJ. The Chamber finds that Witness BLJ's testimony regarding the intimidation of Tutsi patients at the hospital, and the abduction of some of these patients, indeed constitutes a new allegation of criminal conduct on the part of the Accused, which the Prosecution did not specifically plead in the Indictment.<sup>230</sup> The Chamber therefore excludes Witness BLJ's evidence in respect of the Accused's alleged actions (the intimidation of Tutsi patients at the hospital and the abduction of some of the Tutsi patients) during his first visit to the Kabgayi hospital.

153. The Chamber notes that in her statement given to the Office of the Prosecutor on 20 and 21 December 2003, Witness BLJ did not mention that Father Kayibanda told her that "Father Emmanuel's car was still around." The Chamber, however, finds that this omission does not change Witness BLJ's overall account of the events which took place. The Chamber accepts that, nine years after this traumatic incident, when she spoke to representatives of the Office of the Prosecutor, she may have forgotten some details but could have later remembered them as she re-lived and recounted the experience before the Chamber. The Chamber finds Witness BLJ to be a credible witness and believes her evidence.

154. Witness BLC testified that, whilst he was at the St. Léon Minor Seminary, he saw Rukundo with about 15 soldiers. On this occasion, Witness BLC heard Rukundo, who had come from the Rudahunga's home, say to Emmanuel Uwimana "We entered in Rudahunga's *Inyenzi's* house, we killed the wife and the children, but the idiot [Louis Rudahunga] managed to get away from us."<sup>231</sup>

<sup>228</sup> Defence Closing Brief, paras. 201, 204.

<sup>229</sup> Defence Closing Brief, paras. 192-193.

<sup>230</sup> See Section II, A.I.

<sup>231</sup> T. 4 December 2006, pp. 15, 21-22.



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155. During cross-examination, the Defence challenged Witness BLC's credibility on the grounds that he bore a grudge against the Rwandan Catholic Church for dismissing him from the Kabgayi Minor Seminary, and that implicating Rukundo in the events of 1994 was the witness's way of defaming the Church.<sup>232</sup> The Chamber notes that Witness BLC stated that, after his dismissal, he subsequently completed his studies. Therefore, the fact that Witness BLC was earlier dismissed from the Kabgayi Minor Seminary does not provide a sufficient reason to infer that he bore a grudge against the Church and that he wrongly implicated Rukundo in the crimes.

156. The Chamber has also considered the Defence submission that Witness BLC is not credible because his evidence about Rukundo's involvement in the killing of Madame Rudahunga is inconsistent with the contents of his *mémoire* (statement) written in 1997.<sup>233</sup> The Defence maintains, and Witness BLC admits, that in this *mémoire*, he indicated a series of events involving the Accused: that Rukundo went to the Rudahunga's home escorted by soldiers, killed Madame Rudahunga and her children and ordered inhabitants in the vicinity to destroy the Rudahunga's home. He also stated that Rukundo then went to the St. Léon Minor Seminary sometime between 12.00 and 1.00 p.m. and boasted about the killings.<sup>234</sup> According to the Defence, there is a material inconsistency between this account and Witness BLC's testimony that, whilst at the St. Léon Minor Seminary, he heard Rukundo talking about his role in the killing of Madame Rudahunga.

157. The Chamber notes Witness BLC's explanation that his *mémoire* was a personal recollection of events during the 1994 genocide, and was not intended to give the impression that he was present at the Rudahunga's home when Rukundo allegedly ordered the local community to destroy it.<sup>235</sup> The Chamber also notes that the *mémoire* was written in 1997, before Rukundo had been charged with any crimes and that it is not a witness statement in the sense of a record generated following an interview with the Office of the Prosecutor.<sup>236</sup> The Chamber finds that the alleged inconsistency is minor and does not affect Witness BLC's general credibility.

158. Witness CCH testified that in May 1994, whilst at the St. Léon Minor Seminary, she introduced herself to Rukundo as a relative of one of his friends, and asked him to protect her.<sup>237</sup> Rukundo told her, amongst other things, that they had found documents at Louis Rudahunga's place

<sup>232</sup> T. 8 December 2006, pp. 11-12.

<sup>233</sup> T. 8 December 2006, pp. 2-4. Witness BLC noted that the year is not legible on the document, but clarified that the statement formed part of his *mémoire* which he started writing in 1997 but did not complete. He added that he communicated the document to the Office of the Prosecutor in 1998 (T. 8 December 2006, p. 2).

<sup>234</sup> T. 8 December 2006, Exhibits D. 9 (French) and D. 9A (English).

<sup>235</sup> T. 8 December 2008, pp. 3-4.

<sup>236</sup> See *Niyitegeka*, Judgement (AC), paras. 31-34 on the requirements of a witness statement or a record of interview.

<sup>237</sup> T. 13 February 2007, pp. 56, 58, 64; T. 14 February 2007, p. 7.

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which included names of people who made financial contributions to the *Inkotanyi*.<sup>238</sup> Rukundo also told Witness CCH that her relative's name was on the list found at the Rudahunga's home and that "the names of people on that list were the names of people who gave money to the *Inkotanyi*." Rukundo also told her that Louis Rudahunga had to be killed.<sup>239</sup>

159. The Chamber finds Witness CCH to be credible and believes her evidence.<sup>240</sup>

160. Defence Witness SJD testified that, on the morning of 26 April 1994, he saw a group of soldiers at the main gate of St. Joseph's College and four people who were sitting in a Toyota pick-up vehicle outside the gate. He identified the four people as two children from the Rudahunga family, a teacher from the Kabgayi Technical School and a young lady called Jeanne.<sup>241</sup> Witness SJD did not recall specifically seeing Rukundo at St. Joseph's College on this date.<sup>242</sup>

161. On the same day, Witness SJD saw Jeanne again at the refectory. She told him that she and the other three individuals who had been taken away in the morning had been seriously injured and that Madame Rudahunga had been killed. Witness SJD could see that Jeanne's scalp had been cut open.<sup>243</sup> Witness SJD, Father Kayibanda and Jeanne went to the Rudahunga family's home to assist the injured victims. In the vicinity of the home, Witness SJD saw soldiers in another blue Toyota Stout vehicle. He realised that the soldiers in the blue Toyota were the same soldiers whom he had seen in the morning in front of St. Joseph's College with two members of the Rudahunga family and two other Tutsi civilians.<sup>244</sup> In August or September 1994, Witness SJD heard that a military chaplain was involved in the abduction of Tutsi refugees from St. Joseph's College on 26 April 1994.<sup>245</sup>

<sup>238</sup> T. 13 February 2007, p. 58. Witness CCH described her discussion with Rukundo in the following terms:

"I said hello to him, I introduced myself, and I told him that [...] was a relative of mine, and then I asked him for protection, I asked him to hide me. And he answered as follows: 'If [...] is your relative, then you all have to die, because [...] was assisting *Inyenzi*. He was my friend, but when he started helping the *Inyenzi*, he is no longer my friend. We do not even talk to each other. He's no longer my friend.' He went on to say that they had found some documents at Louis Rudahunga's place and who had to be killed, and that this document included a list of people who were making financial contributions to the *Inkotanyi*."

<sup>239</sup> T. 14 February 2007, p. 9.

<sup>240</sup> See Witness CCH's credibility assessment, Section III.7.c.iv.

<sup>241</sup> T. 28 September 2007, pp. 9-10. When asked to describe the colour of the vehicle outside St. Joseph's College, Witness SJD replied "That morning I saw two vehicles. One was blue; that is certain. But I did not see the blue vehicle around our institutions, but in the vicinity of the Rudahungas. But the other vehicle was a Toyota, whose colour could be red, or it could be some other colour."

<sup>242</sup> T. 28 September 2007, p. 21.

<sup>243</sup> T. 28 September 2007, p. 13.

<sup>244</sup> T. 28 September 2007, pp. 13, 15.

<sup>245</sup> T. 28 September 2007, p. 21.

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162. Defence Witness SLA saw Rukundo twice at the St. Léon Minor Seminary, sometime in mid-April and mid-May 1994.<sup>246</sup> On both occasions, Rukundo arrived in a beige or white-coloured private vehicle. Witness SLA neither saw nor heard that Rukundo drove a pick-up vehicle.<sup>247</sup> Witness SLA confirmed that he knew Louis Rudahunga, but said that he never heard Rukundo mention Rudahunga's name.<sup>248</sup>

163. Defence Witness EVC heard from Father Alfred Kayibanda that Rudahunga and his entire family had been killed. According to Witness EVC, Father Kayibanda did not mention who had killed the Rudahunga family.<sup>249</sup> In particular, he did not mention Rukundo in relation to the incident. According to Witness EVC, if Father Kayibanda had known that Rukundo was involved in the attack on members of the Rudahunga family, he would have informed the diocese.<sup>250</sup>

164. Witness SJA testified that he was outside on the veranda of his residence in St. Joseph's College, when the Rudahunga family was abducted. Witness SJA said that, from a distance of approximately 40 to 50 metres, he saw the backs of the soldiers and the victims.<sup>251</sup> Witness SJA testified that later that day, Jeanne returned with a bleeding wound on her head. She said that Madame Rudahunga had been killed and that the children "were still in a state of agony".<sup>252</sup>

(d) Findings

165. The Chamber notes that all four Prosecution witnesses connect the Accused to the killing of Madame Rudahunga and the causing of grievous bodily harm to her two children and the two Tutsi civilians, Jeanne and Justin. Prosecution Witness BLP testified that he saw the Accused at the scene of the abduction. He saw the soldiers put Madame Rudahunga aboard their vehicle and drive away,<sup>253</sup> saw Rukundo following them in his white Suzuki Samurai vehicle,<sup>254</sup> and saw the same soldiers, approximately 20 minutes later, return to St. Joseph's College and abduct two of the Rudahunga's children and two other Tutsi civilians.

166. Witness BLJ, one of the victims of the second abduction, corroborates Witness BLP's account that the same group of soldiers, who took away Madame Rudahunga, returned about 20 minutes later to St. Joseph's College for her, her brother and two other Tutsi civilians. Most

<sup>246</sup> T. 1 October 2007, pp. 12, 22.

<sup>247</sup> T. 1 October 2007, p. 23.

<sup>248</sup> T. 1 October 2007, p. 25.

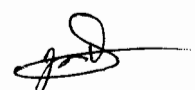
<sup>249</sup> T. 11 September 2007, pp. 36-37.

<sup>250</sup> T. 11 September 2007, pp. 37-38.

<sup>251</sup> T. 22 October 2007, p. 13.

<sup>252</sup> T. 22 October 2007, pp. 10-11.

<sup>253</sup> T. 15 November 2006, pp. 14-15.



importantly, Witness BLJ corroborates Witness BLP's evidence that Rukundo acted together with the soldiers. After having been admitted to the hospital after the incident, the witness saw Rukundo again, in the presence of two of the four soldiers who had abducted Madame Rudahunga and then her, her brother and two other Tutsi civilians. When she saw these two soldiers she made the link between Father Kayibanda's comment about "Father Emmanuel's car", the pick-up truck that she saw close to her house after the attack and the same pick-up that was used in both abductions, and the soldiers and the Accused.<sup>255</sup>

167. Prosecution Witness BLC provides a further connection between Rukundo and the abductions, the killing and the beatings. He attested to hearing Rukundo boast at the St. Léon Minor Seminary, "We entered in Rudahunga's Inyenzi's house, we killed the wife and the children, but the idiot managed to get away from us."<sup>256</sup> Witness BLC testified that, when boasting about the killing, Rukundo had just come from the Rudahunga's home in the company of soldiers. The Chamber notes that Witness BLC's testimony is consistent with the evidence of Witnesses BLP and BLJ.

168. Finally, Witness CCH's evidence also connects Rukundo to the crimes. According to the witness, sometime in May 1994, at the St. Léon Minor Seminary, Rukundo told her that Louis Rudahunga had to be killed. According to the evidence, Witness CCH arrived at the St. Léon Minor Seminary in mid-May, after the death of Madame Rudahunga. Witness CCH's testimony regarding Rukundo's statement that Louis Rudahunga had to be killed is therefore consistent with Witness BLC's account of hearing Rukundo say that they killed Madame Rudahunga and her children but the "idiot" (Louis Rudahunga) managed to get away from them. Furthermore, Witness CCH's evidence that Rukundo told her that they had found documents at Louis Rudahunga's home is consistent with that of Witness BLC, who stated that when Rukundo boasted about the killing of Madame Rudahunga and her two children, Rukundo had just come from the Rudahunga's home.

169. In addition to the aforementioned, the Chamber has considered the short lapse of time between the abduction of Madame Rudahunga by a group of soldiers and the return of the same soldiers to St. Joseph's College to abduct two of her children and two other Tutsi civilians. The Chamber has also considered the short distance between St. Joseph's College and the Rudahunga's home, estimated by Witness SJD to be about one kilometre. In view of the close proximity, it is plausible that soldiers could drive from St. Joseph's College to the home, shoot Madame Rudahunga, and return to the College within a space of 20 to 30 minutes.

<sup>254</sup> T. 15 November 2006, pp. 13, 14, 16.

<sup>255</sup> T. 9 March 2007, p. 19.

<sup>256</sup> T. 4 December 2006, p. 21.

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170. The Chamber has assessed the totality of the evidence presented and considers that the evidence presented by the Defence does not discredit the Prosecution evidence. In particular, the Chamber notes that neither Defence Witnesses SLA nor EVC were present at St. Joseph's College when the abductions occurred. Concerning Witness SJD, the Chamber notes that he did not know Rukundo in 1994; therefore, his evidence that he did not see Rukundo at St. Joseph's College in April 1994 carries little weight. Finally, the Chamber notes that Defence Witness SJA, who testified not to have seen the Accused at the scene of the abduction, only saw the backs of the people who were abducted from St. Joseph's College. It is not even clear whether Witness SJA, who was on his veranda, could actually have seen the Accused.

171. In light of the foregoing, the Chamber finds that the Prosecution has proved beyond reasonable doubt that, sometime in April 1994, Madame Rudahunga, a Tutsi woman, was abducted from St. Joseph's College in Kagbaya by Emmanuel Rukundo, acting together with unknown soldiers, and was taken to her home located near St. Joseph's College, where she was shot and killed. The Chamber also finds that the same group of soldiers returned to St. Joseph's College about twenty minutes after abducting Madame Rudahunga and took away two of the Rudahunga's children and two other Tutsi civilians, Justin and Jeanne. All four victims were severely beaten and injured by the soldiers and left for dead. Having considered the totality of the evidence, and, in particular the short interval between the first and second abduction, the evidence of both abductions carried out by the same soldiers driving a vehicle identified as belonging to the Accused, the evidence that Rukundo followed the abductors in another vehicle and the evidence that Rukundo boasted about having killed Madame Rudahunga and her two children, the Chamber finds that the Accused participated in a series of actions, which all form part of the same criminal transaction.

172. The Chamber further finds that Rukundo participated in the entire criminal transaction from the beginning, when the soldiers showed Rukundo documents taken from St. Joseph's College, before abducting Madame Rudahunga, until its completion, when Witness BLC heard Rukundo boasting, "We entered in Rudahunga's *Inyenzi*'s house, we killed the wife and the children, but the idiot managed to get away from us."<sup>257</sup>

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<sup>257</sup> T. 4 December 2006, p. 21.





5. EVENTS AT THE NYABIKENKE COMMUNAL OFFICE

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(a) Indictment

173. Paragraphs 10(iv) and 25(iv) of the Indictment read as follows:

On or about 15 April 1994, **Emmanuel RUKUNDO** went to the Nyabikenke Commune office in Gitarama where several Tutsis had taken refuge and ordered or instigated policemen to shoot at Tutsi refugees at that location resulting in several deaths. By so doing, **Emmanuel RUKUNDO** ordered, instigated, or aided and abetted the killing of Tutsis at the Nyabikenke Commune office.

(b) Evidence*Prosecution Witness BUW*

174. Prosecution Witness BUW, a Tutsi teacher, sought refuge at the Nyabikenke communal office on 11 April 1994, after the killing of Tutsi had begun in his commune. Witness BUW testified that he knew Rukundo from when the Accused was a deacon in 1989 and 1990.<sup>258</sup>

175. According to Witness BUW, the refugees at the communal office were attacked by Hutu for the first time on the night of 14 April 1994. The Hutu attackers threw grenades into the facilities. The refugees were also attacked with machetes and clubs. Witness BUW added that some of the refugees died during that night and that there was another attack on the following day which resulted in the death of many refugees.<sup>259</sup>

176. Witness BUW further stated he saw the Accused at the Nyabikenke communal office on 15 April 1994 between 2.00 p.m. and 3.00 p.m.<sup>260</sup> Rukundo arrived in a dark green military truck; he was armed with a pistol and a rifle and accompanied by about ten soldiers, carrying firearms.<sup>261</sup> Rukundo was wearing military colours, a "whitish" helmet and military boots.<sup>262</sup> At the time of his arrival, the attackers were throwing stones (and grenades) at the refugees. When Rukundo arrived, they stopped throwing stones<sup>263</sup> and withdrew a short distance.<sup>264</sup> According to Witness BUW, the attackers waited to see the reaction from the soldiers who had just arrived.<sup>265</sup> Rukundo then came

<sup>258</sup> T. 19 February 2007, pp. 2-3, 9.

<sup>259</sup> T. 19 February 2007, pp. 3, 50-51.

<sup>260</sup> T. 19 February 2007, pp. 10, 35.

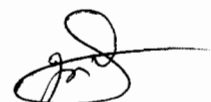
<sup>261</sup> T. 19 February 2007, pp. 3, 28-29.

<sup>262</sup> T. 19 February 2007, pp. 29-30.

<sup>263</sup> T. 19 February 2007, p. 4.

<sup>264</sup> T. 19 February 2007, p. 52.

<sup>265</sup> T. 19 February 2007, pp. 20-21, 30.



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directly over to the refugees in the courtyard of the communal office.<sup>266</sup> Witness BUW greeted the Accused and showed him the refugees in the inner courtyard, including the dead and the injured. Witness BUW requested Rukundo to assist with asking the attackers to leave the premises. Witness BUW thought that as Rukundo was a priest and military chaplain, he would have some moral authority over the soldiers accompanying him and could therefore order them to chase away the attackers.<sup>267</sup> The Accused, however, replied that he had not come to provide assistance or to fight at the communal office, as it was none of his business. Rukundo added that he was going to Butaro *commune* in Ruhengeri to fight against the *Inyenzi* and *Inkotanyi*, and that they did not have sufficient weapons to save the refugees. He further stated that he did not know why the Hutu and Tutsi were fighting each other.<sup>268</sup>

177. Rukundo then left the inside courtyard and spent about five minutes talking to the 30 to 50 attackers. Witness BUW stated that he was approximately 300 to 400 metres away at that time and could not hear what Rukundo was saying to the attackers.<sup>269</sup> Witness BUW later corrected himself and stated that the distance between himself and the Accused was 40 metres.<sup>270</sup> The Accused then got into his vehicle and left the communal office. The attacks against the refugees resumed and intensified after Rukundo's departure. Witness BUW further testified that he did not know whether or not Rukundo had any authority over the attackers. However Witness BUW did not think that Rukundo had asked the attackers to stop attacking the refugees but he had the impression that the attackers would have respected Rukundo if he would have asked them to stop. Witness BUW stated that as a priest, Rukundo had a certain degree of authority and could have ordered the attackers to stop their attack.<sup>271</sup>

178. At the time that the Accused was at the Nyabikenke communal office on 15 April 1994, there were four communal policemen on duty. According to Witness BUW, Laurent Habumurenyi, the communal police brigadier, sat next to the fence everyday with a firearm, in an attempt to frighten away the refugees. He did nothing to protect the refugees, although the refugees may have thought that they were being protected by him. Another policeman, Gérard Munyabarenzi, helped the attackers advance towards the refugees by pushing back the Tutsi and firing in the air to

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<sup>266</sup> T. 19 February 2007, p. 3.

<sup>267</sup> T. 19 February 2007, pp. 4-5.

<sup>268</sup> T. 19 February 2007, pp. 4, 33.

<sup>269</sup> T. 19 February 2007, pp. 5, 41.

<sup>270</sup> T. 19 February 2007, p. 39.

<sup>271</sup> T. 19 February 2007, pp. 6, 32-33.

intimidate them.<sup>272</sup> The third policeman, Janvier Habinshuti, was in front of the communal office and observed the Accused's truck arrive. Witness BUW added that only the policemen carried arms, while the attackers only had grenades. Witness BUW did not notice any particular reaction from the communal policemen when the Accused arrived.<sup>273</sup>

179. Witness BUW stated that Father André Lerusse also visited the communal office on 15 April 1994, once in the morning and then again at about 4.30 p.m., after the Accused had left. During his afternoon visit, Witness BUW heard Father Lerusse instruct the communal policemen to repel the attackers, so that the refugees could escape via the backyard of the communal office. According to Witness BUW, two policemen remained at the communal office while two others accompanied the refugees and Father Lerusse. Witness BUW testified that those refugees who remained in the multi-purpose hall were locked in by brigadier Laurent Habumurenyi and they were killed. Witness BUW explained that when he asked the brigadier to open the door to the hall, the brigadier responded that if he (Witness BUW) had the authority then he should open the door. Witness BUW then left the communal office in the company of Father Lerusse. Witness BUW stated that all of this occurred after Rukundo had left the communal office.<sup>274</sup>

#### *Prosecution Witness CCJ*

180. Prosecution Witness CCJ is from the Accused's region and had known the Accused since 1977.<sup>275</sup>

181. In 1996 or 1998, Father Lerusse told Witness CCJ that Rukundo had visited the Nyabikenke communal office "during the genocide". Witness CCJ further testified that according to Father Lerusse, Rukundo talked to the policemen who were guarding the refugees and after their conversation, the policemen fired at the refugees. According to Witness CCJ, Father Lerusse did not know what Rukundo told the policemen. Witness CCJ further testified that according to Father Lerusse, this happened in the evening and the refugees fled, running throughout the night until they reached Kabgayi. Witness CCJ also testified that Father Lerusse was not a direct witness, but had heard about the events from a source unknown to the witness. Witness CCJ stated that he did not know when the incident took place.<sup>276</sup>

<sup>272</sup> T. 19 February 2007, pp. 15-16, 18-19. In his testimony, Witness BUW clarified that it was Munyabarenzi who was firing shots in the air to intimidate the refugees, and not the brigadier Habumurenyi. See T. 19 February 2007, p. 51.

<sup>273</sup> T. 19 February 2007, pp. 20, 30-32, 34.

<sup>274</sup> T. 19 February 2007, pp. 35-37, 41-42.

<sup>275</sup> T. 14 February 2007, pp. 8, 28.

<sup>276</sup> T. 14 February 2007, pp. 39-40; T. 15 February 2007, p. 4.

*The Accused*

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182. In his testimony, Rukundo confirmed that he went to the Nyabikenke communal office on one occasion on 15 April 1994.<sup>277</sup> He stated that on 15 April 1994, whilst staying at Mukamira Camp, he escorted Jean-Marie Vianney and his family, who were Tutsi, to Gitarama and Ruhango. He borrowed a Toyota pick-up and was accompanied by two soldiers. On 15 April 1994, he left Mukamira Camp between 9.30 and 10.00 a.m. and arrived in Ruhango around 11.30 a.m., where he dropped off the Vianney family behind the buildings of the Ruhango trading centre. On his trip back to Ruhengeri, Rukundo stopped at the Kabgayi Bishopric to greet the Bishop and then went to the St. Léon Minor Seminary in Kabgayi around 1.30 or 2.00 p.m., where he spent 30 minutes drinking a beer.<sup>278</sup>

183. The Accused stated that on his return to Ruhengeri from Kabgayi, he went via Nyabikenke and Vunga and made several stops along the way. He first stopped at the Remera trading centre in Nyabikenke *commune*, two and a half to three kilometers from Kanyanza Parish, where there was tension between residents of the trading centre and a group of attackers from a neighbouring hill. Rukundo asked his soldiers to fire warning shots in order to ward off the attackers. When they fired three or four shots into the air, the attackers dispersed. Rukundo further confirmed that he alighted from his vehicle with his soldiers in order to greet people and to drink a glass of beer, which was offered to him. After visiting the Remera trading centre, Rukundo stopped at the Kanyanza Parish with the intention of greeting Father André Lerusse. Rukundo was then informed that Father Lerusse had gone to the Nyabikenke communal office, where an incident similar to the one at the Remera trading centre had occurred.<sup>279</sup>

184. The Accused arrived at the Nyabikenke communal office around 4.00 p.m. When he got to the level of the communal office, Rukundo noticed that there was a crowd of people along the road armed with machetes and clubs. As Rukundo approached the communal office, he saw Father Lerusse, the communal policemen in their positions in front of the communal office and a crowd that had gathered in front of the communal office. The attackers began to step back when they saw the soldiers at the back of the Accused's vehicle. According to Rukundo, Lerusse asked for his assistance.<sup>280</sup>

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<sup>277</sup> T. 9 October 2007, p. 5.

<sup>278</sup> T. 8 October 2007, pp. 53-55.

<sup>279</sup> T. 8 October 2007, pp. 55-57; T. 10 October 2007, pp. 57-58.

<sup>280</sup> T. 8 October 2007, p. 57.



185. In response, Rukundo immediately approached the attackers. Some of the attackers had already moved backwards, and those who were still at the front retreated to a distance of 100 metres as Rukundo approached them. This was because some of the attackers recognised him, as they had been his parishioners. He testified that, at that time, he only carried a pistol and did not ask the soldiers to accompany him. When they were at a "reasonable" distance from the communal office, Rukundo talked to the attackers and tried to dissuade them, whilst also trying to avoid any direct confrontation with them. The attackers listened to Rukundo and started moving away. Rukundo also told the five to ten attackers who had stayed behind that if "they continued to insist on their points of view, then he was going to ask the policemen to neutralise them." Rukundo then asked the remaining attackers to drop their machetes, following which three of them did. Rukundo collected the machetes and put them in the vehicle.<sup>281</sup> He further clarified that he did not ask his soldiers to fire warning shots in the air at the Nyabikenke communal office as he did at the Remera trading centre because there were a greater number of attackers who were much closer to the communal office.<sup>282</sup>

186. After his conversation with the attackers, Rukundo approached the communal office and noticed that people had begun to move out of the buildings. According to Rukundo, Father Lerusse took advantage of the fact that Rukundo had warded off the attackers, to move some of the refugees from the communal office. As Rukundo felt that there was no more impending danger, he got back into his vehicle and left the communal office.<sup>283</sup>

187. Rukundo testified that he spent between 15 and 30 minutes at the Nyabikenke communal office on that day. The only people he spoke with were Father Lerusse, the policeman in front of the communal office whom he greeted, and the assailants. Rukundo stated that he did not go anywhere near the refugees in the courtyard of the communal office whilst he was there, and he did not know if any of them were his parishioners. According to Rukundo, the refugees were inside the premises of the communal office up until the time he arrived, and he only saw them when he went back to retrieve his vehicle after having reprimanded the attackers. He did not speak to the refugees. Rukundo claimed that, whilst he was at the communal office, there were no gunshots or attacks because by that time the bulk of the attackers had left. Rukundo confirmed that there was nothing in his attitude which could have led to suspicions that he was conniving with the assailants.<sup>284</sup>

<sup>281</sup> T. 8 October 2007, pp. 57-58; T. 9 October 2007, p. 3.

<sup>282</sup> T. 10 October 2007, p. 58.

<sup>283</sup> T. 8 October 2007, pp. 57-58.

<sup>284</sup> T. 9 October 2007, pp. 3-5; T. 10 October 2007, pp. 59-60.



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188. Rukundo knew Prosecution Witness BUW well because he was one of his parishioners in 1991-1992, and they had also attended meetings together. He claimed, however, that he did not know until recently that Witness BUW was one of the refugees at the Nyabikenke communal office. He further stated that, contrary to Witness BUW's testimony, he never saw him at that location.<sup>285</sup> Rukundo, however, admitted that Witness BUW could not have been mistaken about his presence at the communal office.<sup>286</sup>

*Defence Witness André Lerusse*

189. Witness André Lerusse is a Belgian priest who spent time in Rwanda in 1972 and between 1982 and 1998. He knew Rukundo from around 1986-1988, when Rukundo came to Karambi to help build one of his colleague's houses. Witness Lerusse also worked with Rukundo at Kanyanza, after Rukundo was posted there as a priest following his ordination in July 1991.<sup>287</sup>

190. Witness Lerusse testified that he held a number of meetings with the authorities at the Nyabikenke communal office after 6 April 1994, in order to assist the refugees. He thought that the policemen at the communal office were defending the refugees and did not observe any hostile attitude on their part towards the refugees.<sup>288</sup>

191. Witness Lerusse testified that he visited the Nyabikenke communal office on 15 April 1994 at about 10.00 or 11.00 a.m. He saw that there were attackers who had surrounded the communal office, and that no refugee could leave that location. He heard the refugees say that they would be killed that evening and he subsequently left to look for assistance in Kabgayi. Witness Lerusse returned to the communal office around 4:00 or 4.30 p.m., at which time there was a large group of attackers with weapons waiting to attack. Two of the communal policemen, wearing yellow berets, were lying down with their guns held in shooting position, in an attempt to stop the attackers from coming in through the road. Soon afterwards, the attackers advanced and started throwing stones.<sup>289</sup>

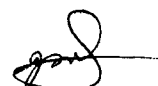
192. According to Witness Lerusse, Rukundo then arrived at the communal office, about ten or 20 minutes after he had arrived. The Accused arrived with soldiers in two military jeeps and placed his gun in the vehicle after alighting. At this point, the attack on the communal office had stopped. Witness Lerusse requested the Accused to assist him during a brief three minute conversation, following which Rukundo walked towards the attackers and uttered some calming words in

<sup>285</sup> T. 9 October 2007, p. 4.

<sup>286</sup> T. 10 October 2007, pp. 59-60.

<sup>287</sup> T. 12 September 2007, pp. 29-30.

<sup>288</sup> T. 12 September 2007, pp. 36, 41.



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Kinyarwanda.<sup>290</sup> Witness Lerusse admitted that he did not recall the exact words used by the Accused, since he did not have a sufficient level of Kinyarwanda. Witness Lerusse did not hear more than the first few words uttered by the Accused.<sup>291</sup>

193. Witness Lerusse was helped by one of the soldiers accompanying Rukundo to get to the courtyard of the communal office. He opened the doors of the communal office and told the refugees to leave. When he turned around he saw that Rukundo and the soldiers had left the premises, but no shots had been fired and no one had been attacked. Witness Lerusse and the refugees then left the communal office with the help of a policeman. According to Father Lerusse, Rukundo could not have entered the building or the inner courtyard where the refugees were located because he did not have the time to do so.<sup>292</sup> Witness Lerusse did not know what exactly transpired between the Accused and the attackers, but he observed that the refugees were not attacked as they were taken out of the building.<sup>293</sup> Witness Lerusse testified that when he helped the refugees out of the communal office, he was accosted by some *Interahamwe* in two pick-ups and later by two other men with machetes, but neither Witness Lerusse nor the refugees were harmed.<sup>294</sup> Witness Lerusse did not know how many refugees were left behind at the communal office<sup>295</sup> or whether the refugees left behind were attacked after he had left.<sup>296</sup>

194. Witness Lerusse stated that two hours later he recounted what had happened to Father Jean-Marie Dussart at Cyeza. Witness Lerusse added that Rukundo's intervention at the Nyabikenke communal office was providential since he had come at the right time to enable Witness Lerusse to move the refugees. Witness Lerusse also confirmed that he met Witness CCJ a few years later, but he could not recall if they discussed the events at the communal office.<sup>297</sup>

195. Witness Lerusse stated that he knew Witness BUW as a friend and that he trusted him. He further stated that Witness BUW was at the communal office on 15 April 1994 and that Witness BUW was one of the last persons to leave the communal office.<sup>298</sup>

<sup>289</sup> T. 12 September 2007, pp. 42-47, 52; T. 13 September 2007, p. 24.

<sup>290</sup> T. 12 September 2007, pp. 47, 51-52, 62.

<sup>291</sup> T. 13 September 2007, p. 10.

<sup>292</sup> T. 12 September 2007, pp. 47-48, 52.

<sup>293</sup> T. 13 September 2007, pp. 10-11.

<sup>294</sup> T. 12 September 2007, pp. 48-49.

<sup>295</sup> T. 13 September 2007, pp. 12-13, 24.

<sup>296</sup> T. 13 September 2007, p. 5.

<sup>297</sup> T. 12 September 2007, pp. 53, 65.

<sup>298</sup> T. 12 September 2007, pp. 59, 61-63.



## Defence Witness BCB

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196. Witness BCB testified that Tutsi refugees started arriving at the communal office from 11 April 1994.<sup>299</sup> Witness BCB knew Witness BUW, who was one of the first refugees to arrive at the communal office.<sup>300</sup>

197. Witness BCB further testified that on 15 April 1994, attackers arrived at the communal office around 10.00 a.m. They threw stones at the refugees, wounding some people.<sup>301</sup> He estimated the number of attackers to be in the "thousands".<sup>302</sup> The communal policemen tried to repel the assailants and prevent killings at the communal office, but they were constrained by the lack of resources and reinforcement.<sup>303</sup> Father Lerusse arrived at the communal office at noon and came back again at 4.00 p.m. Prior to Father Lerusse's first visit to the communal office, the policemen had fired some shots in the air to keep the attackers away.<sup>304</sup>

198. Witness BCB testified that on his second visit to the communal office, Father Lerusse stated that he wanted to take the refugees away to a safe location. Witness BCB said that the policemen assisted Lerusse to move the refugees.<sup>305</sup> Shortly after Father Lerusse's arrival, Rukundo arrived at the communal office wearing military uniform, with approximately five soldiers in a Hilux vehicle.<sup>306</sup> Witness BCB stated that he and his colleagues greeted the Accused when he arrived at the communal office and pointed out the attackers. Witness BCB could not say if Lerusse and Rukundo had a short conversation, because they arrived at approximately the same time.<sup>307</sup>

199. According to Witness BCB, the attackers looked discouraged and began stepping back upon Rukundo's arrival.<sup>308</sup> The refugees and the attackers stopped throwing stones when Rukundo arrived and the attackers continued to maintain some distance.<sup>309</sup> Witness BCB first testified that Rukundo confiscated the attackers' traditional weapons and threw them into his vehicle.<sup>310</sup> However, he subsequently stated that because Rukundo did not stay for very long he was only able

<sup>299</sup> T. 18 September 2007, pp. 5-6.

<sup>300</sup> T. 18 September 2007, pp. 10-11.

<sup>301</sup> T. 18 September 2007, p. 12.

<sup>302</sup> T. 19 September 2007, pp. 3, 31.

<sup>303</sup> T. 18 September 2007, pp. 12-13; T. 19 September 2007, pp. 19-20.

<sup>304</sup> T. 18 September 2007, p. 14.

<sup>305</sup> T. 18 September 2007, pp. 14-15.

<sup>306</sup> T. 18 September 2007, pp. 15-16, 18; T. 19 September 2007, p. 8. Witness BCB later insisted that *gendarmes* and not soldiers accompanied Rukundo (T. 19 September 2007, pp. 8-9).

<sup>307</sup> T. 19 September 2007, p. 17-19.

<sup>308</sup> T. 18 September 2007, p. 16.

<sup>309</sup> T. 19 September 2007, p. 15.



to disarm those who had machetes.<sup>311</sup> Witness BCB later clarified that he did not personally witness Rukundo confiscate the weapons, but was told that machetes were seen in the Accused's vehicle.<sup>312</sup> Witness BCB further stated that, because he was approximately 200 metres away on the veranda of the communal office, he did not hear the conversation between the Accused and the attackers.<sup>313</sup> The Accused then left the communal office in the direction of Ruhengeri and did not return.<sup>314</sup> According to Witness BCB, Rukundo never entered the buildings of the communal office.<sup>315</sup>

200. Witness BCB testified that Father Lerusse was involved in taking the refugees out of the buildings of the communal office through the backyard. At this point, the attackers had moved further away and were no longer close to the communal office. Three policemen left with Father Lerusse to escort the refugees, whilst two policemen stayed behind at the communal office. After Father Lerusse left with the majority of the refugees, Witness BCB estimated that there were about 50 refugees, including five who were wounded, left in the communal office. Contrary to Witness BUW, Witness BCB stated that after the Accused's arrival at the communal office on 15 April 1994, there had been no attempts to lock up or shoot the refugees. Witness BCB stated that in the morning of the following day, he and others spoke to the small group of refugees left at the communal office and insisted that they leave for safety reasons. Whilst some of the refugees left, approximately 18 refugees stayed at the communal office. Attackers subsequently killed those who stayed at the communal office that day.<sup>316</sup>

#### *Defence Witness RUE*

201. In April 1994, Defence Witness RUE was a soldier in Camp Mukamira in Ruhengeri. Witness RUE knew the Accused as a chaplain of the Ruhengeri operational *secteur* between August 1993 and May 1994.<sup>317</sup>

202. During cross-examination, Witness RUE stated that on 15 April 1994 he was assigned to escort Rukundo to Ruhango in order to take the Tutsi refugees, Jean-Marie Vianney and his wife and child to the house of Vianney's parents-in-law.<sup>318</sup> Witness RUE further testified that seven

<sup>310</sup> T. 18 September 2007, pp. 15-16. The witness first stated that the refugees were asked to gather the traditional weapons of the attackers and put them in the vehicle. However, the witness later testified that the Accused took away the traditional weapons and threw them into the vehicle. (See T. 18 September 2007, p. 15).

<sup>311</sup> T. 19 September 2007, p. 12.

<sup>312</sup> T. 19 September 2007, p. 31.

<sup>313</sup> T. 19 September 2007, pp. 13-14, 31.

<sup>314</sup> T. 18 September 2007, p. 16; T. 19 September 2007, pp. 10-12.

<sup>315</sup> T. 19 September 2007, p. 14.

<sup>316</sup> T. 18 September 2007, pp. 17-20; T. 19 September 2007, pp. 10, 15-16, 20.

<sup>317</sup> T. 21 September 2007, pp. 8-10, 17; T. 24 September 2007, p. 7.

<sup>318</sup> T. 21 September 2007, pp. 18, 22-23; T. 24 September 2007, p. 19.

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people (including Rukundo) left for Ruhango at 9.00 a.m. in a pick-up truck and dropped Vianney and his family off around 1.00 p.m. On the return journey to Camp Mukamira, Rukundo and those remaining in the vehicle stopped briefly to greet the Bishop at Kabgayi. Witness RUE stated that when they got to the Remera centre in Nyabikenke, they chased away some possible *Interahamwe* attackers who were looting. The attackers then tried to attack them and called them *Inyenzi*. When they arrived at the Nyabikenke communal office they saw *Interahamwe* threatening refugees. Witness RUE testified that they disbursed the attackers. Later on, he said that a person, whom he did not identify, alighted from the vehicle and spoke to the attackers, sending them away. Witness RUE estimated that they spent 15 minutes at the Nyabikenke communal office before leaving for Camp Mukamira. He testified that they were back in Ruhengeri at 5.30 p.m.<sup>319</sup>

*Defence Witness Jean-Marie Dussart (GSB)*

203. Witness Jean-Marie Dussart was Rukundo's colleague in the Kabgayi diocese when Rukundo was posted to Kanyanza parish to work with Father André Lerusse and Father Felix Ntaganira in September 1991.<sup>320</sup>

204. Witness Dussart testified about an incident told to him by Father Lerusse. Witness Dussart stated that on 15 April 1994, he was in Cyeza with Father Michel. Witness Dussart further testified that, at about 8.00 p.m. on 16 April 1994, Father Lerusse arrived at that location, stating that he had "escaped from the lion's mouth." According to Witness Dussart, Lerusse explained that while he was in Kanyanza, he discovered that hundreds of refugees at the Nyabikenke communal buildings had been attacked. He then took his motorbike and went to the *commune* to assist the refugees. The communal policeman, Laurent, was on guard before the attack and fired a gun to try to deter the attackers.<sup>321</sup> According to Witness Dussart, Lerusse said that he was surprised to find Rukundo passing by the Nyabikenke communal office with his usual escort. Father Lerusse further informed Witness Dussart that the Accused helped to repel the attackers. Witness Dussart testified that Lerusse described Rukundo's arrival at the location as "providential", because Rukundo pushed back the attackers and enabled Lerusse to convince the refugees to come out of the communal office buildings. Witness Dussart admitted, however, that Lerusse did not inform him of the exact chronology of the events at the Nyabikenke communal office.<sup>322</sup>

<sup>319</sup> T. 24 September 2007, pp. 22-25.

<sup>320</sup> T. 10 September 2007, pp. 3-5.

<sup>321</sup> T. 10 September 2007, pp. 12-13, 17-18.

<sup>322</sup> T. 10 September 2007, pp. 17-18, 54-55.

*Defence Witness EVB*

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205. Witness EVB, a priest and teacher, testified that he first got to know Rukundo when they were both students at the St. Léon Minor Seminary in Kabgayi in 1972. Witness EVB also saw Rukundo during meetings at the Kabgayi diocese.<sup>323</sup> Witness EVB gave hearsay testimony that Rukundo had a very good reputation in the Kanyanza region because he had stopped attacks in the Remera market square in Nyabikenke *commune* and at the Nyabikenke communal office.<sup>324</sup>

206. Witness EVB also heard that attackers from across the Nyabarongo River in Ruhengeri and Ndusu and Musasa in Kigali were terrorising refugees in the Nyabikenke communal office, who were being guarded by the communal policemen. He was told that Father André Lerusse was not able to solve the situation. The Accused Rukundo then arrived at the location and was able to reason with the attackers and convince them not to harm the refugees.<sup>325</sup> It was only then that Father Lerusse was able to help the refugees leave the communal office and go into the nearby banana plantation before returning to Kabgayi. Witness EVB admitted, however, that his version of these events was based on what certain witnesses had told him and that it was possible that there may be other versions of the event, as it took place many years ago.<sup>326</sup> When Witness EVB was confronted with his earlier statement of 2001,<sup>327</sup> he explained that he had narrated the events as they had been recounted to him by the Accused, Father Lerusse and a witness of the parish staff.<sup>328</sup>

*Defence Witness BCD*

207. Witness BCD testified that Rukundo saved some Tutsi at the Remera trading centre between 10 and 15 April 1994.

208. Witness BCD lived in Remera *cellule* in Nyabikenke *commune*, approximately 100 metres from the Remera trading centre in April 1994. He testified that when he saw the Accused in the trading centre between 10 and 15 April 1994, the Tutsi refugees in the trading centre were attacked by a group of 60 to 100 attackers from a neighbouring hill.<sup>329</sup> Rukundo was accompanied by between eight to 12 soldiers.<sup>330</sup> Witness BCD and another man told Rukundo about the attack and asked him to help them. Rukundo agreed and went to see the attackers and ordered his escort to fire

<sup>323</sup> T. 20 July 2007, pp. 4, 7.

<sup>324</sup> T. 20 July 2007, p. 29.

<sup>325</sup> T. 20 July 2007, p. 29; T. 23 July 2007, p. 25.

<sup>326</sup> T. 23 July 2007, pp. 25-26.

<sup>327</sup> Exhibit P. 46A.

<sup>328</sup> T. 23 July 2007, p. 31.

<sup>329</sup> T. 20 September 2007, pp. 3, 5-6.

<sup>330</sup> T. 20 September 2007, pp. 13-14.

shots in the air to drive the attackers away. When the soldier fired three shots in the air, the people scattered and returned to their homes. Witness BCD fled to Kabgayi after learning that his name was on a list of persons to be killed.<sup>331</sup>

(c) Deliberations

209. The Indictment alleges that on or about 15 April 1994, Emmanuel Rukundo went to the Nyabikenke communal office in Gitarama and ordered or instigated policemen to shoot at Tutsi refugees hiding at that location, resulting in several deaths. The Prosecution alleges that by so doing, Rukundo ordered, instigated, or aided and abetted the killing of Tutsi at the Nyabikenke communal office.<sup>332</sup>

210. There is no dispute that Tutsi refugees, who had sought refuge at the Nyabikenke communal office, were attacked by a group of Hutu attackers on 15 April 1994. Further, there is no dispute that Rukundo visited the Nyabikenke communal office on 15 April 1994. The only remaining issue for the Chamber is to determine the role the Accused played in the events at the communal office on that day.

211. The Defence submits that the Prosecution evidence presented by Witness BUW does not match paragraphs 10(iv) and 25(iv) of the Indictment.<sup>333</sup> The Indictment alleges that the Accused ordered or instigated policemen to shoot at Tutsi refugees who had sought shelter at the Nyabikenke communal office. Witness BUW testified that the Accused failed to order a group of Hutu civilian attackers who had surrounded the communal office to cease their attack on the Tutsi refugees and that after the Accused had left the communal office, the attacks against the Tutsi refugees intensified.<sup>334</sup>

212. The Chamber does not need to make a finding on that Defence contention because the Prosecution evidence, in any case, does not establish any criminal conduct on the part of the Accused.

213. The Prosecution has presented the evidence of Witness BUW in support of this alleged event. According to Witness BUW's firsthand account, Rukundo arrived at the Nyabikenke communal office in the company of about ten soldiers, during an attack on the refugees who had

<sup>331</sup> T. 20 September 2007, pp. 6-8.

<sup>332</sup> Paras. 10(iv) and 25(iv) of the Indictment. The Chamber notes that in its Closing Brief (para. 224), the Prosecution appears to rely only on the modes of ordering and instigating the killing of Tutsi at the communal office.

<sup>333</sup> Defence Closing Brief, paras. 1140-1144.

<sup>334</sup> T. 19 February 2007, pp. 3-6, 28-29, 30, 32-33, 41, 52-53.

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sought shelter there. Witness BUW testified that shortly thereafter, the attackers ceased throwing stones and hurling grenades and withdrew, waiting for the reaction of the soldiers who had just arrived. Rukundo walked to the courtyard of the communal office and spoke to the refugees. Then he went to speak with the assailants, who were about 40 metres away. Witness BUW attested that he was unable to hear what Rukundo said to them. The Accused then boarded his vehicle and left the communal office, following which, the attack against the refugees resumed and intensified.

214. Witness BUW expressed the opinion that Rukundo, as a priest, wielded significant moral authority over the attackers, and, that if Rukundo had told the assailants to cease their attack, they would have done so.

215. In respect of the Prosecution's charge of ordering or instigating, the Chamber notes that Witness BUW presented no evidence that Rukundo gave any orders to the attackers or that he saw Rukundo instigate the assailants to attack the Tutsi refugees. Witness BUW testified that he did not hear what Rukundo said to the assailants.

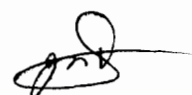
216. In respect of the Prosecution's charge that Rukundo aided and abetted the attackers, the Chamber observes that, according to the evidence of Witness BUW the attack ceased while Rukundo was present at the communal office only to resume after he had left. This is consistent with the testimony of Defence Witness André Lerusse.<sup>335</sup>

217. Witness BUW also testified that after the Accused had left the communal office on 15 April 1994, Laurent Habumurenyi, the communal Brigadier, locked the remaining refugees inside the multi-purpose hall at the Nyabikenke communal office, and that they were eventually killed.<sup>336</sup>

218. The Chamber notes that no causal link between Rukundo's presence at the communal office on 15 April 1994 and the policemen's subsequent actions has been established by the evidence. There is no indication as to when the brigadier locked the refugees in the hall. Furthermore, there is no evidence to suggest that the policemen's actions were based on Rukundo's orders or instigation or that Rukundo aided and abetted the brigadier or the policemen. In fact, Witness BUW does not mention whether Rukundo talked to the policemen at all. The only reference Witness BUW makes to Rukundo and the policemen is that he did not notice any particular reaction from the policemen when Rukundo arrived at the communal office. The only other Prosecution witness to testify about this allegation, Witness CCJ, provides uncorroborated hearsay evidence that following a

<sup>335</sup> T. 12 September 2007, pp. 47, 52; T. 13 September 2007, pp. 10-11.

<sup>336</sup> T. 19 February 2007, pp. 36, 37, 42.



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conversation with the Accused, the communal policemen fired at the refugees, causing them to escape and seek refuge in Kabgayi.<sup>337</sup>

219. Consequently, the Chamber finds that the Prosecution has not established beyond reasonable doubt that Rukundo ordered, instigated or aided and abetted policemen to shoot at the Tutsi refugees gathered at Nyabikenke communal office on 15 April 1994 as alleged in paragraphs 10(iv) and 25(iv) of the Indictment.

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<sup>337</sup> T. 14 February 2007, p. 39.



6. EVENTS AT THE KABGAYI BISHOPRIC

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(a) Indictment

220. Paragraphs 10(v) and 25(v) of the Indictment read as follows:

On or about 16 of April 1994, **Emmanuel RUKUNDO**, dressed in military uniform, armed, and escorted by armed soldiers, moved about the Bishop's house at Kabgayi, yelling and asking if any Tutsi or "*Inkotanyi*" were hiding there. As a result, Tutsi priests, fearing for their lives, went into hiding. By so doing, **Emmanuel RUKUNDO** caused Tutsi who had taken refuge at the Bishop's house at Kabgayi serious mental harm.

(b) Evidence*Prosecution Witness CCJ*

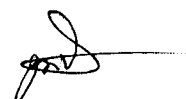
221. The Chamber has previously considered Witness CCJ's evidence in relation to the events at the Nyabikenke communal office.

222. Witness CCJ attested to seeing the Accused, accompanied by two soldiers, enter the Kabgayi Bishopric before noon on 15 or 16 April 1994. The Accused was armed with two guns. One of the weapons was slung over his shoulder and the other was attached to his waistband. Witness CCJ first testified that he was in the Vicar General's office when he saw the Accused enter the Bishopric. Later in his testimony, the witness stated that he was in the Bishop's office when he saw Rukundo arrive.

223. Witness CCJ stated that, from a distance of about "two metres," he watched the Accused and heard him ask in a loud voice, "Are there no *Inkontanyis* here?" Following this outburst, the Vicar General spoke with Rukundo outside his office. The Vicar later urged the witness to hide from Rukundo, who seemed to be "demented." Witness CCJ, after hiding behind a door, retired to his room once Rukundo left the Bishopric. The witness left his room at midday to have lunch at the refectory of the Bishopric, before leaving for Burundi.<sup>338</sup>

224. Witness CCJ testified that he was so terrified that he had goose bumps after hearing Rukundo's question, "Are there no *Inkotanyis* here?" The witness understood, from Rukundo's words, that he was not safe at the Bishopric. His concern for his security was heightened by the fact that there were a number of soldiers moving around Kabgayi hunting for Tutsi, or *Inkotanyi*. Witness CCJ testified that he was certain that, if Rukundo had seen him at the Kabgayi Bishopric,

<sup>338</sup> T. 14 February 2007, p. 38; T. 15 February 2007, p. 2.



Rukundo would have killed him or would have identified him to others who would have killed him.<sup>339</sup>

225. Witness CCJ could not recall whether the incident involving Rukundo prompted a discussion among the clerics who gathered at the refectory for lunch. He explained that, because he sat to the side of the clerics, he did not hear their conversation. He further testified that the Bishop asked him to raise the volume of a radio next to his table. For these reasons, he could not remember whether the clerics who had gathered at the refectory discussed the incident involving Rukundo.<sup>340</sup>

226. Prosecution Witness CCJ did not recall whether Rukundo or Defence Witness EVB had lunch at the refectory on this day.<sup>341</sup>

*Prosecution Witness BPA*

227. Prosecution Witness BPA was born in Uganda to Rwandan immigrants. He testified that he was unacquainted with any ethnic issues in Rwanda. He further testified that, when he was a child, "this whole business of ethnic origin did not exist. And when the war broke out, my parents died, so I do not know my ethnic origin." The witness did not recall his date of birth.<sup>342</sup>

228. Witness BPA testified that, as an intern at the Kabgayi diocese in 1989, before being ordained as a priest, he met the Accused Rukundo.<sup>343</sup>

229. Witness BPA testified, in examination-in-chief, that whilst Rukundo was a student at the Nyakibanda Major Seminary, he was an ethnic extremist and referred to Tutsi colleagues as *Inyenzi*.<sup>344</sup> However, in cross-examination, Witness BPA admitted that he had not studied with Rukundo at the Seminary but had heard from other seminarians, during the Christmas holidays in 1990, about Rukundo's alleged anti-Tutsi attitude and conduct.<sup>345</sup>

230. Witness BPA attested that, before 11 or 12 April 1994, he saw Rukundo in the corridor of the Bishopric, whilst the witness was waiting to see the Bishop. Witness BPA stated that Rukundo, accompanied by one or two soldiers, was wearing a camouflage military uniform and was carrying an SMG firearm and a cartridge holder.<sup>346</sup> The witness heard Rukundo talking to himself as he

<sup>339</sup> T. 14 February 2007, p. 38.

<sup>340</sup> T. 15 February 2007, p. 3.

<sup>341</sup> T. 15 February 2007, pp. 3-4.

<sup>342</sup> T. 7 March 2007, pp. 39, 43, 45.

<sup>343</sup> T. 7 March 2007, pp. 4, 10-11.

<sup>344</sup> T. 7 March 2007, pp. 4-7.

<sup>345</sup> T. 7 March 2007, pp. 5-6, 10-12.

<sup>346</sup> T. 7 March 2007, pp. 7-8, 32-34.



strode through the hallway and recalled that he said, "The time had come ... to kill the *Inyenzi*." The witness, who was alone in the corridor, was afraid, even though Rukundo did not address him personally and his threat was not directed to anyone in particular. Witness BPA said that, to his knowledge, Rukundo neither carried out his threats nor killed anyone.

231. Witness BPA stated that, as a Ugandan, he had good reason to be frightened by Rukundo's threatening words, because at the time it was said that people from Uganda were comparable to Tutsi, and were accomplices of the *Inyenzi*.<sup>347</sup> According to Witness BPA, this was the first time that he had seen an armed military chaplain, and he was fearful, after meeting "Father Rukundo with a rifle." However, on further examination, Witness BPA admitted that he had seen the Accused quite frequently before the war, and that the Accused, after his appointment as a military chaplain, had told him "he had to fight against the *Inyenzi*."<sup>348</sup>

*Prosecution Witness CCN*

232. Prosecution Witness CCN recalled meeting Emmanuel Rukundo in either 1992 or 1993 at a garage in Nyabisundu in Gitarama. Rukundo told the witness that if the *Inkotanyi* were ever to arrive in Kigali, "we will exterminate you."<sup>349</sup> Witness CCN responded that "we shall see whether we are the ones who are going to exterminate you or you are the ones that are going to exterminate us." Witness CCN stated that he understood Rukundo's statement at the garage to mean that if the RPF army moved into Kigali, the Tutsi would be exterminated. Witness CCN further testified that Rukundo's use of the term "*Inkotanyi*" was a reference to the RPF army.<sup>350</sup>

233. Witness CCN met Rukundo as he was leaving the Bishop's house on 12 or 13 April 1994. Both the witness and the Accused were alone. According to Witness CCN, Rukundo was dressed in military uniform and carried a weapon tucked into his belt and another weapon strapped on his shoulder. Witness CCN testified that he greeted Rukundo, who was in a hurry and looked angry. The witness recalled that Rukundo responded to his greeting, "You will see, you will see, you will get it from us." Witness CCN testified that this encounter frightened him, and he left the Bishopric, as he believed that Rukundo could "either kill me or get me killed".<sup>351</sup>

234. Witness CCN attested that he was fearful of Rukundo because of his past experiences with him. The witness explained that, prior to 1994, they had lived together in Nyakibanda, where

<sup>347</sup> T. 7 March 2007, pp. 7-9, 32, 37.

<sup>348</sup> T. 7 March 2007, pp. 6, 35-36.

<sup>349</sup> T. 23 February 2007, p. 15; T. 26 February 2007, p. 17.

<sup>350</sup> T. 26 February 2007, pp. 17-20.

Rukundo had called him an *Inyenzi* or an *Inkotanyi* accomplice. The witness also recalled Rukundo's threatening words spoken at the garage in Gitarama, as set out above.<sup>352</sup>

235. Witness CCN visited the Bishopric the following day, a Friday, to inform the Bishop about his decision to go into exile.<sup>353</sup>

#### *The Accused*

236. Rukundo testified that, on 15 April 1994, he visited the Bishop of Kabgayi at the Bishopric, accompanied by three soldiers, all who remained with his vehicle.<sup>354</sup> He stated that he walked alone to the refectory and to the Bishop's home.<sup>355</sup>

237. Rukundo testified that, on 15 April 1994, he did not ask or attempt to discover whether there were any *Inkotanyi* at the Bishopric. Rukundo explained that he knew all the individuals at the Bishopric and could not possibly suspect any of them of being an *Inkotanyi*. He added that it would have been totally inappropriate to ask about *Inkotanyi* in the presence of his hierarchical superiors and that "one really has to be a mad person to do so." Rukundo dismissed Witness CCJ's allegation, that he saw Rukundo gesticulating and screaming about *Inkotanyi* at the Bishopric, as a "fabrication of lies."<sup>356</sup>

238. Rukundo testified that he did not see Witness CCN at the Bishopric on 15 April 1994 and consequently could not have threatened him. Rukundo dismissed Witness CCN's allegation as "fabrication designed to incriminate" him. He also denied meeting Witness CCN at a garage in Gitarama in 1993. He added that the priests had their own garage where their vehicles were repaired and refuelled and that there was no reason for him to visit another garage.<sup>357</sup>

239. Rukundo also denied having met Prosecution Witness BPA at the Kabgayi Bishopric on 15 April 1994 or having threatened Witness BPA on 12 April at the Kabgayi Bishopric. According to Rukundo, Witness BPA's allegation of threatening words was "simply a story designed to accuse someone."<sup>358</sup>

<sup>351</sup> T. 23 February 2007, pp. 15, 17.

<sup>352</sup> T. 23 February 2007, pp. 15, 17.

<sup>353</sup> T. 26 February 2007, pp. 39-40.

<sup>354</sup> T. 8 October 2007, pp. 54-55.

<sup>355</sup> T. 9 October 2007, pp. 18, 25.

<sup>356</sup> T. 9 October 2007, pp. 21-22; T. 10 October 2007, p. 36.

<sup>357</sup> T. 9 October 2007, pp. 22, 24.

<sup>358</sup> T. 9 October 2007, pp. 24-25.

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240. Rukundo testified that he had lunch at the refectory of the Bishopric on 15 April 1994. He stated that the lunch was attended by a number of people, some of whom were permanently based at the Bishopric and others who were not. Amongst those who were not permanently based at the Bishopric were Vincent Nsengiyumva, Joseph Ruzindana, Father Stanislas Mubiligi, Father Denis Mutabazi and Prosecution Witness CCJ.<sup>359</sup>

241. Rukundo testified that he saw Prosecution Witness CCJ for the first time on 15 April 1994 at the Bishopric in the refectory. Rukundo affirmed that he spoke with Witness CCJ whilst having lunch, but attested that they did not have a private discussion.<sup>360</sup>

*Defence Witness EVA*

242. The Chamber has previously considered Witness EVA's evidence in relation to the events at the *Imprimerie de Kabgayi* roadblock.

243. Witness EVA recalled seeing Rukundo at the Kabgayi Bishopric on the afternoon of 14 or 15 April 1994, after she had distributed travel documents to three priests – Prosecution Witnesses CCJ, BPA, and CCN – who departed that day for Burundi. According to the witness, Rukundo, accompanied by two bodyguards, was dressed in military uniform and had a pistol tucked into his waistband. Witness EVA did not hear anyone yelling, screaming or threatening anyone on that day.<sup>361</sup>

244. Witness EVA testified that she had never heard Rukundo utter anti-Tutsi statements nor was she informed that he made such statements or played any role in the events in Rwanda between 7 April and 2 June 1994.<sup>362</sup>

*Defence Witness EVB*

245. The Chamber has previously considered Witness EVB's evidence in relation to the events at the Nyabikenke communal office.

246. Witness EVB knew Prosecution Witness CCJ. According to Witness EVB, Witness CCJ arrived at the Kabgayi Bishopric on a Sunday, after 6 April 1994, and remained there for about a week before departing for Burundi. Witness EVB recalled that, prior to Witness CCJ's departure, he requested Witness EVB to collect his personal belongings from his parish. Witness EVB placed

<sup>359</sup> T. 9 October 2007, pp. 20, 25; T. 10 October 2007, p. 35.

<sup>360</sup> T. 9 October 2007, p. 21.

<sup>361</sup> T. 19 July 2007, pp. 23, 26-27.

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Witness CCJ's departure for Burundi around 15 April 1994. According to Witness EVB, Witness CCJ left for Burundi in the company of Prosecution Witnesses BPA and CCN.<sup>363</sup>

247. Defence Witness EVB testified that he saw Rukundo at the Kabgayi Bishopric on the morning of 15 April 1994. On this date, he did not hear Rukundo shout or gesticulate as he entered the premises of the Kabgayi Bishopric or when he left the Bishop's office and walked to the refectory.<sup>364</sup>

248. Witness EVB spoke with Prosecution Witness CCJ about general issues prior to having lunch at the refectory of the Bishopric on or about 15 April 1994. Witness EVB testified that he never heard Prosecution Witness CCJ make any mention of meeting Rukundo that morning.<sup>365</sup>

249. Witness EVB testified that he shared a meal at the refectory of the Bishopric with Rukundo, the Bishop and other priests who resided at the Bishopric. He testified that Prosecution Witness CCJ shared a table with Rukundo and the Bishop during the lunch. According to Witness EVB, Rukundo was at ease during the lunch.<sup>366</sup>

250. Witness EVB attested that he did not ever hear Rukundo ask, "Are there any *Inkontanyis* in the Bishopric?" or, shout, "The time has come to kill the *Inyenzu*". He added that it would have been completely inappropriate for Rukundo to utter such statements in the company of the three Bishops who were then residing at the Kabgayi Bishopric.<sup>367</sup>

#### *Defence Witness EVD*

251. Defence Witness EVD testified that he attended the Nyakibanda Major Seminary with Rukundo.<sup>368</sup>

252. Witness EVD attested to seeing Rukundo at the Bishopric on 15 or 16 April 1994.<sup>369</sup> According to Witness EVD, Rukundo was dressed in military uniform and had a pistol on his waistbelt.<sup>370</sup>

<sup>362</sup> T. 19 July 2007, pp. 35-36.

<sup>363</sup> T. 20 July 2007, pp. 13-14.

<sup>364</sup> T. 20 July 2007, pp. 21, 23-24.

<sup>365</sup> T. 20 July 2007, p. 24.

<sup>366</sup> T. 20 July 2007, pp. 24-25.

<sup>367</sup> T. 20 July 2007, pp. 25-26; T. 23 July 2007, p. 54.

<sup>368</sup> T. 3 October 2007, p. 7.

<sup>369</sup> Witness EVD stated that Rukundo arrived "three or four days" after 12 April 1994. The witness recalled the date of 12 April, as a reference, because on this day the religious committee first met to plan assistance for the refugees, and the telephones at the Bishopric were disconnected.

253. Witness EVD recalled that, on this date in mid-April, he had lunch at the refectory of the Bishopric. He testified that amongst the other people who were present at the lunch were the three Bishops, Defence Witness EVB, Prosecution Witness CCJ and Rukundo. He estimated that the lunch did not last longer than 30 to 40 minutes. According to Witness EVD, the atmosphere during the lunch was calm, friendly and respectful given the presence of the important people. Witness EVD testified that Rukundo's conduct during lunch was normal and calm. Witness EVD did not observe anything unusual in respect of Prosecution Witness CCJ.<sup>371</sup>

254. Defence Witness EVD testified that he heard of no threats made against Tutsi on that day and had no recollection of Vicar General Rwabalinda telling him anything about Emmanuel Rukundo.<sup>372</sup>

(c) Deliberations

255. The Indictment alleges that on or about 16 April 1994 Emmanuel Rukundo, armed and dressed in military uniform and accompanied by armed soldiers, moved about the Bishop's house at Kabgayi, yelling and asking if any Tutsi or *Inkotanyi* were hiding there. As a result of Rukundo's alleged conduct, Tutsi priests, fearing for their lives, went into hiding.<sup>373</sup> The Indictment further alleges that, by this conduct, the Accused caused serious mental harm to Tutsi who had taken refuge at the Bishopric in April 1994.<sup>374</sup> In support of this allegation, the Prosecution relies on the evidence of Witnesses CCJ, BPA and CCN. The Defence presented the evidence of Witnesses EVA, EVD, EVB and the Accused to challenge the Prosecution's allegation.

256. The Chamber notes that the Prosecution's evidence appears to refer to three separate incidents at the Bishopric. The evidence of Prosecution Witnesses CCJ, BPA and CCN differs with regard to the Accused's alleged words during each of these incidents. The Prosecution's evidence also differs with respect to the dates on which the incidents at the Bishopric are alleged to have taken place. Prosecution Witnesses CCJ, BPA and CCN placed their respective encounters with the Accused at the Bishopric on different dates ranging between 11 and 15 April 1994. The Chamber notes, however, that the Indictment refers to a timeframe of "on or about 16 April." The Chamber considers that the dates between 11 and 15 April 1994 fall within the timeframe specified in the Indictment. The Chamber therefore finds that there is no significant difference between the

<sup>370</sup> T. 3 October 2007, pp. 39-40; T. 4 October 2007, p. 25.

<sup>371</sup> T. 3 October 2007, p. 42.

<sup>372</sup> T. 3 March 2007, pp. 42-43.

<sup>373</sup> See paragraphs 10(v) and 25(v) of the Indictment.

<sup>374</sup> *Ibid.*

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Prosecution's evidence and the Indictment in respect of the timeframe within which the events were alleged to have taken place. Since the evidence of the Prosecution witnesses appears to refer to three separate incidents, the Chamber will address the evidence of each Prosecution witness in turn.

257. Prosecution Witness CCJ testified that he arrived at the Kabgayi Bishopric on Monday, 12 April 1994, and that he left the Bishopric on the following Friday, 16 April 1994. Witness CCJ claimed to have seen Rukundo at the Bishopric before noon on 15 or 16 April 1994. Witness CCJ stated that he was in the Vicar General's office when he saw Rukundo enter the premises of the Bishopric. Later in his testimony, however, he attested to being in the Bishop's office, located near the entrance to the Bishopric. Witness CCJ claimed to have heard Rukundo ask in a loud voice, "Are there no *Inkotanyis* here," as a result of which Witness CCJ was frightened. Witness CCJ testified that he was certain that, had Rukundo seen him at the Kabgayi Bishopric, Rukundo would have killed him or would have identified him to others who would have killed him. Witness CCJ could not recall whether either the Accused or Defence Witness EVB was present at the lunch served at the refectory of the Bishopric after the alleged incident.

258. The Chamber has doubts about Witness CCJ's credibility, given that after the alleged threat by Rukundo, Witness CCJ could not recall whether Rukundo was present at the refectory a short while later. The Chamber notes that Rukundo's presence at the refectory is a fact established by Defence Witness EVB and the Accused.<sup>375</sup> In the Chamber's opinion, it is surprising that Witness CCJ should fail to remember whether the Accused was present in the refectory, in view of the witness's detailed recollection of the prior incident the same morning involving the Accused.

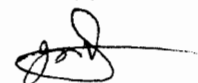
259. The Indictment alleges that Rukundo, through his yelling and threatening words, caused serious mental harm to Tutsi who had taken refuge at the Bishop's house. Whilst the term "serious bodily and mental harm" is not defined in the Statute, the Chamber notes that the ICTR and ICTY have developed a considerable body of jurisprudence on serious mental harm as a constituent element of the crime of genocide. In *Rutaganda*, Trial Chamber I stated that,

"[f]or the purposes of interpreting Article 2(2)(b) of the Statute, the Chamber understands the words 'serious bodily or mental harm' to include acts of bodily or mental torture, inhumane or degrading treatment, rape, sexual violence, and persecution. The Chamber is of the opinion that 'serious harm' need not entail permanent or irremediable harm."<sup>376</sup>

260. According to this jurisprudence, serious mental harm should be "more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation

<sup>375</sup> See Rukundo (T. 9 October 2007, pp. 20, 25) and Defence Witness EVB (T. 20 July 2007, p. 24).

<sup>376</sup> *Rutaganda*, Judgement (TC), para. 50. See also *Brdanin*, Judgement (TC), para. 690.



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or threat.”<sup>377</sup> In order to support a finding of serious mental harm as a constituent element of genocide, the mental harm inflicted on a member of one of the identified protected groups must be of such a serious nature as to threaten its destruction in whole or in part.<sup>378</sup>

261. Whether an act is considered to amount to serious mental harm must be assessed on a case-by-case basis.<sup>379</sup> The Chamber notes that even if it were to believe Witness CCJ’s testimony, the Accused’s words and conduct would not constitute a sufficient basis to find serious mental harm, in accordance with the established jurisprudence. The Chamber notes that, apart from Witness CCJ’s assertion that he was frightened, no further evidence was led to prove that Witness CCJ suffered more than minor or temporary impairment of his mental faculties as a result of Rukundo’s alleged conduct at the Bishopric.

262. The Chamber further notes that information on the immediate circumstances surrounding the alleged incident, although not a condition for a finding of serious mental harm, is valuable in determining whether an act is considered to amount to serious mental harm. In *Seromba*, the Appeals Chamber noted that “nearly all convictions for the causing of serious bodily or mental harm involve rapes or killings.”<sup>380</sup> The Chamber notes that no evidence was adduced by the Prosecution to suggest that the immediate context surrounding the incident in question involved any of the crimes alluded to above. In fact, the Prosecution’s evidence does not refer to the immediate context surrounding Rukundo’s conduct at the Bishopric. In the Chamber’s view, such information could have clarified the danger that Rukundo’s threatening words posed in the immediate context and indicated whether there was an immediate possibility of killing or infliction of suffering by torture or other degrading treatment.

263. For these reasons, the Chamber finds that the Prosecution has not proved beyond reasonable doubt that Rukundo inflicted serious mental harm on Witness CCJ as a result of his alleged threats to Witness CCJ at the Kabgayi Bishopric on 15 April 1994.

264. Witness BPA testified that he met Rukundo in Kabgayi around 11 or 12 April 1994 whilst he was waiting to see the Bishop. Witness BPA saw Emmanuel Rukundo striding down the corridor of the Bishopric frightening people and heard him say that “the time had come for them to kill the *Inyenzi*.” Witness BPA attested that Rukundo’s threats were not addressed to anyone in particular

<sup>377</sup> *Seromba*, Judgement (AC), para. 46, citing *Kajelijeli*, Judgement (TC), para. 815, referring to *Kayishema and Ruzindana*, Judgement (TC), para. 110; *Semanza*, Judgement (TC), para. 321.

<sup>378</sup> *Seromba*, Judgement (AC), para. 46.

<sup>379</sup> *Blagojević and Jokić*, Judgement (TC), para. 646, *Kamuhanda*, Judgement (TC), para. 634.

<sup>380</sup> *Seromba*, Judgement (AC), para. 46.

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and that Rukundo did not directly address Witness BPA or call his name when he made the alleged threats against Tutsi. Witness BPA testified that Rukundo was speaking to himself in the corridor. Witness BPA was alone in the corridor leading to the Bishop's office when he heard Rukundo make the threatening remarks. Witness BPA testified that he was afraid when he heard Rukundo make such remarks because people like himself who came from Uganda were considered comparable to Tutsi who were accomplices of the *Inyenzi*. Witness BPA stated that he was afraid, after seeing "Father Rukundo with a rifle" and that this was the first time he had seen a military chaplain.

265. The Chamber notes that the Accused's alleged threatening words heard by Witness BPA ("The time had come for [us] to kill the *Inyenzi*") differ slightly from the phrasing in the Indictment. The Chamber, however, finds that alleged statement, as recalled by the witness, conveys the same meaning as the wording in the Indictment – "the threatening of Tutsi priests" – and that there is therefore no material difference between Witness BPA's evidence and the Indictment.

266. The Chamber notes that Witness BPA testified that he had seen Rukundo quite frequently before the war. The witness also stated that he saw Rukundo dressed in military uniform in Kabgayi after the war had broken out. According to Witness BPA, after Rukundo's appointment as military chaplain, he met Witness BPA and said that "he had to fight against the *Inyenzi*."<sup>381</sup> The Chamber is therefore not satisfied that Witness BPA's meeting with Rukundo at the Kabgayi Bishopric was the first occasion that the witness saw him, after his appointment as a military chaplain. Consequently, the Chamber is not convinced by Witness BPA's claim that that he was afraid after seeing "Father Rukundo with a rifle" and that this was the first time that he had seen a military chaplain.

267. The Chamber notes that throughout the examination-in-chief, Witness BPA provided what appeared to be a firsthand account of Rukundo's alleged extremist activities at the Nyakibanda Major Seminary.<sup>382</sup> The Chamber, however, notes that, during cross-examination, Witness BPA denied being a student at the Nyakibanda Major Seminary and explained that his information about Rukundo's anti-Tutsi behaviour at the Nyakibanda Major Seminary had been conveyed to him by seminarians from the Seminary during the Christmas holidays in 1990.<sup>383</sup> The Chamber also notes that Witness BPA gave the impression, in examination-in-chief, that he had studied at the Nyakibanda Major Seminary with the Accused and had therefore witnessed Rukundo's alleged extremism.

<sup>381</sup> T. 7 March 2007, pp. 6, 35-36.

<sup>382</sup> T. 7 March 2007, pp. 4-7.

<sup>383</sup> T. 7 March 2007, pp. 10-12.




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268. Furthermore, Witness BPA's demeanour did not inspire confidence in his credibility. For instance, the Chamber notes that Witness BPA was evasive when asked to state his ethnic background and to indicate whether his parents fled from Rwanda to Uganda in 1959. Witness BPA explained that he could not answer such questions because his parents had passed away before the outbreak of the war and he was not acquainted with the history of ethnic problems in Rwanda. The Chamber notes that Witness BPA is an educated man who should have had no difficulties answering questions about his background and family. The Chamber finds Witness BPA's explanation of his inability to answer such questions to be implausible. For the foregoing reasons, the Chamber does not find Witness BPA to be credible.

269. The Chamber finds that, even if it were to believe Witness BPA's testimony, it is not satisfied that Rukundo's threatening words are sufficient to support a finding of serious mental harm. The Chamber notes that Witness BPA admitted in the course of his testimony that Rukundo did not address him directly or did not refer to his name when he stated that the time had come for them to kill the *Inyenzi*. Witness BPA further admitted that Rukundo did not personally threaten him and appeared to be speaking only to himself as he uttered his threats. In fact, the Chamber notes that, according to Witness BPA's testimony, Rukundo was not even aware that Witness BPA was physically close to him or that he was within earshot when Rukundo uttered such remarks. The Chamber further notes that, apart from Witness BPA's statement that he feared for his life as a result of hearing Rukundo's remarks at the Bishopric, the Prosecution did not adduce further evidence to prove that Witness BPA suffered more than a minor or temporary damage as a result of Rukundo's alleged threats. Furthermore, the Chamber notes that Witness BPA's evidence does not refer to the immediate circumstances surrounding Rukundo's conduct at the Bishopric. As mentioned above, the Chamber notes that such information could have been valuable in determining the likely impact of Rukundo's remarks on Witness BPA's mental state. For the foregoing reasons, the Chamber finds that it has not been established that Witness BPA suffered serious mental harm as a result of Rukundo's alleged conduct at the Bishopric.

270. Witness CCN testified that he saw Rukundo in the compound of the Bishopric on 12 or 13 April 1994. The witness stated that he greeted Rukundo, but that Rukundo did not return his greeting. Rather, Rukundo intimidated him, with the following threat: "You will see, you will see, you will get it from us."<sup>384</sup> Witness CCN stated that, on the basis of his past experience with Rukundo, these threatening words frightened him, and he left the Bishopric.

<sup>384</sup> T. 23 February 2007, p. 15; see also T. 23 February 2007, p. 16 (French) "Vous allez voir... Vous allez nous voir".



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271. The Defence submits that the threatening words that Prosecution Witness CCN attributed to Rukundo differ from the phrasing in the Indictment. The Defence argues that, according to Witness CCN, Rukundo did not use the words “*Inkotanyi*” or “Tutsi.” According to Witness CCN, Rukundo said only, “You will see, you will see, you will get it from us.”<sup>385</sup> The Defence argues that the difference between Witness CCN’s evidence and the Indictment in respect of what the Accused is alleged to have said could constitute an additional allegation against the Accused. The Defence therefore requests the Chamber to exclude Witness CCN’s evidence.<sup>386</sup>

272. The Chamber is not persuaded that there is a significant difference between Witness CCN’s evidence and the phrasing in the Indictment, such that the witness’s evidence could be deemed to constitute an additional allegation. According to Witness CCN, the Accused did not expressly refer to “*Inkotanyi*” or “Tutsi” when addressing him at the Bishopric. The Chamber, however, notes that Rukundo addressed his words to Witness CNN, who is a Tutsi priest. The Chamber further notes that the words that Rukundo is alleged to have spoken were of a threatening nature. The Chamber finds that the Accused’s conduct corresponds with the conduct pleaded in the Indictment: that he threatened Tutsi at the Bishopric. Therefore the Chamber finds that Witness CCN’s evidence does not fall outside the scope of the Indictment.

273. The Chamber finds Witness CCN to be credible and believes the evidence which he presented. The Chamber therefore finds that it has been established that, on 12 or 13 April 1994, Rukundo spoke the words “You will see, you will see, you will get it from us.”<sup>387</sup> The Chamber further finds that the fact that Defence Witnesses EVA, EVB and EVD never heard or were informed that Rukundo issued anti-Tutsi statements does not cast a reasonable doubt upon this finding.

274. The Chamber, however, finds that the Prosecution has not established that Witness CCN suffered serious mental harm as a result of Rukundo’s words. The Chamber notes that, apart from Witness CCN’s claim that he feared for his life as a result of Rukundo’s threats against him at the Bishopric, the Prosecution did not adduce further evidence to prove that Witness CCN suffered more than minor or temporary damage as a result of Rukundo’s threats. Furthermore, like the evidence of Witnesses CCJ and BPA, Witness CCN’s testimony does not refer to the immediate circumstances surrounding Rukundo’s conduct at the Bishopric. Given the lack of evidence about Witness CCN’s mental state after the incident and about the immediate circumstances surrounding

<sup>385</sup> T. 23 February 2007, p. 15; see also T. 23 February 2007, p. 16 (French) “Vous allez voir... Vous allez nous voir”.

<sup>386</sup> Defence Closing briefs, paras. 572, 577, 578.

<sup>387</sup> T. 23 February 2007, p. 15; see also T. 23 February 2007, p.16 (French) “Vous allez voir... Vous allez nous voir”.

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the incident, the Chamber does not find that Witness CCN suffered serious mental harm as a result of Rukundo's conduct at the Bishopric.

275. Accordingly, the Chamber finds that the Prosecution has not proved beyond reasonable doubt that Rukundo's alleged conduct, as set out in paragraphs 10(v) and 25(v) of the Indictment, caused serious mental harm to the Tutsi who sought refuge at the Bishopric in April 1994.

A handwritten signature in black ink, consisting of a stylized, cursive script that is difficult to decipher but appears to be a personal name or initials.

7. EVENTS RELATING TO THE ST. LÉON MINOR SEMINARY

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(a) Indictment

276. Paragraphs 12 to 14 of the Indictment state as follows:

12. During the months of April and May 1994, **Emmanuel RUKUNDO** visited the Saint Léon Minor Seminary, and identified Tutsi refugees, who were then taken away by soldiers and killed, and on one such occasion he had a list of names of Tutsi refugees to be killed, which list was used by soldiers and *Interahamwe* who had accompanied him, to remove and kill the victims. By so doing, **Emmanuel RUKUNDO** ordered, instigated, or aided and abetted the killing of Tutsis at this location.

13. On diverse dates during the months of April and May 1994, immediately following **Emmanuel RUKUNDO's** departure on several occasions from the Saint Léon Minor Seminary, soldiers and *Interahamwe* militiamen, as ordered, instigated, or aided and abetted by him, beat, kicked and whipped Tutsi refugees who had not been taken away to be killed. By subjecting these Tutsi refugees to such brutality, **Emmanuel RUKUNDO** ordered, instigated, or aided and abetted the causing of serious bodily and mental harm to these victims.

14. On one occasion on or about 15 May 1994, at the Saint Léon Minor Seminary, **Emmanuel RUKUNDO**, armed and escorted by an armed soldier, took a young Tutsi refugee woman into his room, locked the door, and sexually assaulted her. These acts of **Emmanuel RUKUNDO** caused her serious mental harm.

(b) Evidence*Prosecution Witness CSF*

277. Prosecution Witness CSF testified that on 7 April 1994, following the death of President Habyarimana, conflict broke out between members of the population. Witness CSF testified that patrols commenced and roadblocks were mounted in his neighbourhood. It was said that the "enemy" was being chased away. On 11 April 1994, Witness CSF left on his own to seek refuge at the St. Léon Minor Seminary. He stayed there until 2 June 1994 when he and other refugees were set free by the *Inkotanyi*. Witness CSF testified that he was one of the first refugees to arrive at the St. Léon Minor Seminary. Witness CSF noted that a number of refugees had come from the regions bordering Gitarama *préfecture*. The number of refugees increased, because people believed that their security would be guaranteed at the St. Léon Minor Seminary. Witness CSF added that the mothers who had babies and the elderly sought refuge inside the Seminary building whilst the others remained outside.<sup>388</sup>

<sup>388</sup> T. 13 February 2007, pp. 2-3, 7, 9, 11.

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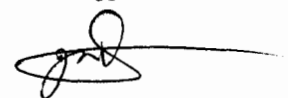
278. Witness CSF told the Chamber that he did not know Rukundo before he saw him at the St. Léon Minor Seminary in 1994. Whilst at the St. Léon Minor Seminary, he learnt that some of the refugees knew Rukundo and had attended his ordination in 1991. According to Witness CSF, these refugees were surprised to see Rukundo at the St. Léon Minor Seminary in military uniform given that he was a priest. Witness CSF and some of the refugees wondered whether Rukundo was still a priest or whether he had become a soldier. When Witness CSF saw Rukundo at the St. Léon Minor Seminary on 20 or 21 April 1994, he was approximately 40 metres away from the Accused. Rukundo was wearing a military shirt and camouflage trousers, was carrying a pistol and held a piece of paper in his hand. Rukundo and the soldiers parked their cars outside the gate of the St. Léon Minor Seminary and walked into the premises.<sup>389</sup>

279. On 20 or 21 April 1994, whilst Witness CSF was in the courtyard of the St. Léon Minor Seminary, he saw Rukundo enter the premises accompanied by about six armed soldiers and *Interahamwe* militia. Witness CSF testified that from the time he arrived until the time he left, the refugees were in the courtyard of the St. Léon Minor Seminary. Witness CSF testified that it was difficult to distinguish between the *Interahamwe* and the soldiers because the *Interahamwe* were trained by the soldiers who passed on their old uniforms to the *Interahamwe*. The only difference between the soldiers and the *Interahamwe* were their shoes. On his first visit to the St. Léon Minor Seminary, Rukundo walked around the premises talking to soldiers and *Interahamwe*, but did not enter any of the buildings. Rukundo spoke to a number of refugees, then handed a piece of paper to one of the soldiers accompanying him and walked out of the premises.<sup>390</sup> Witness CSF estimated that Rukundo spent about 30 or 35 minutes at the St. Léon Minor Seminary. After Rukundo's departure, the soldiers read out the names on the list and a refugee, who was close to the soldier reading out the names, showed the soldier where the refugees were located. Witness CSF could not see what was written on the piece of paper but deduced that the names called out were the names that appeared on the list.<sup>391</sup> Witness CSF testified that those to whom Rukundo had given the piece of paper then started looking for the people whose names appeared on the list. Witness CSF attested to seeing this incident from inside the courtyard of the Seminary at a distance of about 40 metres from the Accused. Witness CSF explained that the refugees who were being taken out thought that they were being taken to a more secure place so they willingly identified themselves to the soldiers.<sup>392</sup> According to Witness CSF, the refugees did not know that they were going to be killed. Witness CSF testified that he walked 40 metres outside of the St. Léon Minor Seminary towards the

<sup>389</sup> T. 13 February 2007, pp. 3-4, 16-18, 24.

<sup>390</sup> T. 13 February 2007, pp. 3, 7, 17, 19-24.

<sup>391</sup> T. 13 February 2007, pp. 23-26.



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Kabgayi Cathedral and that the vehicle was parked less than 20 metres from the gate of the St. Léon Minor Seminary. He witnessed the refugees being taken out of the St. Léon Minor Seminary and loaded into a blue Toyota Stout pick-up truck, with a civilian licence plate, which was parked about 20 meters outside the entrance of the St. Léon Minor Seminary, near the tarmac road.<sup>393</sup> He also saw the pick-up truck depart towards the direction of Gitarama.<sup>394</sup> The refugees who were taken away on that day never returned to the St. Léon Minor Seminary.<sup>395</sup> Witness CSF added that he never saw Rukundo at the St. Léon Minor Seminary during the night and that the refugees were always abducted in broad daylight.<sup>396</sup>

280. Witness CSF saw Rukundo for the second time at the St. Léon Minor Seminary about four days after his first visit around 2.00 or 2.30 p.m. Rukundo was again accompanied by soldiers and *Interahamwe*. According to Witness CSF, Rukundo walked around the St. Léon Minor Seminary, gave a piece of paper to a soldier who was behind him and walked out of the premises. The soldier who had been given the list called out the names of the refugees. Many of the refugees who were called, refused to come out because they realised that they could be taken away and killed. The names of the refugees who did not voluntarily come out were read out again until they were found. Some of the refugees protested but they were taken away, forcibly loaded onto the vehicles and never returned to the St. Léon Minor Seminary. During cross-examination, Witness CSF stated he could not remember any of the names of the refugees who were taken away during Rukundo's second visit.<sup>397</sup>

281. Four days after the second visit, Rukundo returned for a third time to the St. Léon Minor Seminary accompanied by soldiers and *Interahamwe*. Rukundo walked around the premises accompanied by soldiers and *Interahamwe*. Rukundo gave a list to a soldier standing behind him and then left the premises. The soldier read out the refugees' names and other soldiers looked for the people who they had to take away. Witness CSF testified that there were names of people on the list who had not been found on the second visit. The refugees whose names had been read out were subsequently loaded into vehicles parked nearby.<sup>398</sup> Witness CSF testified that the difference

<sup>392</sup> T. 13 February 2007, pp. 4, 23.

<sup>393</sup> T. 13 February 2007, pp. 4, 11, 16-17, 26-27.

<sup>394</sup> T. 13 February 2007, p. 26.

<sup>395</sup> T. 13 February 2007, p. 4.

<sup>396</sup> T. 13 February 2007, p. 43.

<sup>397</sup> T. 13 February 2007, pp. 4-5, 27, 31.

<sup>398</sup> T. 13 February 2007, p. 5.



between Rukundo's first, second and third visits to the St. Léon Minor Seminary was the number of people whose names were called out from the list.<sup>399</sup>

282. In mid-May 1994, Rukundo visited the St. Léon Minor Seminary for the fourth time, a few days before Kabgayi fell. He was again accompanied by *Interahamwe* and soldiers. According to Witness CSF, Rukundo's fourth visit was the worst. He explained that the government had moved towards Gitarama and the fighting continued. The *Interahamwe* and Rukundo had to do what they could to take away as many people as possible. Witness CSF explained that there were also soldiers who were not with Rukundo who were working on their own to take people out of the St. Léon Minor Seminary. On this occasion, Rukundo arrived with a very long list of names of refugees to be taken away. Rukundo gave the list to the soldiers who then took away people and loaded them onto buses. A large number of refugees were taken away on that day. During all of the visits, the soldiers specifically targeted intellectuals such as teachers, lecturers and magistrates. When the fourth abduction occurred, only a few boys, girls, and the elderly were left behind. Witness CSF recalled that a judge whose name he did not remember, and who worked at Nyambuye, was amongst the refugees being sought and that the *Interahamwe* said that they would not leave if they could not find him. When the *Interahamwe* found the judge, Witness CSF saw him being taken away. Soldiers also came and took away people and when the buses were full, they left the St. Léon Minor Seminary and then returned. Witness CSF testified that he did not know where the refugees were taken but he stated that they were killed by the *Interahamwe* and soldiers and none of them returned. According to Witness CSF, the *Interahamwe* returned to the St. Léon Minor Seminary singing songs and boasting about having killed the refugees.<sup>400</sup>

283. Witness CSF stated that the refugees at the St. Léon Minor Seminary were from various ethnic groups and that he did not know the ethnicity of the people who were taken away. Witness CSF explained that a large number of the people who were hiding after the first abduction were Tutsi. Witness CSF also stated that the victims in Rwanda were victims of their ethnicity and their political opinions.<sup>401</sup>

284. According to Witness CSF, Rukundo appeared to be the leader of the soldiers and *Interahamwe* during the attacks against the refugees at the St. Léon Minor Seminary. Witness CSF explained that the soldiers and the *Interahamwe* only seemed to be implementing and executing orders issued by Rukundo. Witness CSF added that sometimes soldiers and *Interahamwe* would

<sup>399</sup> T. 13 February 2007, pp. 25, 27.

<sup>400</sup> T. 13 February 2007 pp. 4-7, 29-31.

<sup>401</sup> T. 13 February 2007, pp. 7-8.

come to the St. Léon Minor Seminary without Rukundo. They would take people away and kill them in a wooded area not far from Kabgayi. The soldiers also demanded money from the refugees. Those who did not have money were either beaten or taken away into the woods.<sup>402</sup>

285. At some point during his stay at the St. Léon Minor Seminary, Witness CSF saw officials visit the St. Léon Minor Seminary, including Jean Kambanda. Kambanda was accompanied by soldiers and Father Alfred Kayibanda as well as many *gendarmes*. Kambanda and his entourage visited the refugees at the St. Léon Minor Seminary, but did not assist them. Witness CSF did not remember the date of Kambanda's visit.<sup>403</sup> Witness CSF never encountered any refugees from Nyacyonga.<sup>404</sup> Witness CSF also testified that they never saw anyone guarding the gate of the St. Léon Minor Seminary.<sup>405</sup>

#### *Prosecution Witness CSG*

286. Witness CSG lived in Gitarama in April 1994. She did not know Rukundo before 1994. After the attacks against Tutsi people began in her area, she sought refuge at the St. Léon Minor Seminary. She does not recall the date of her arrival at the St. Léon Minor Seminary because she was ill from beatings that she had received from two people at a roadblock in Rugano on her way to Kabgayi. According to Witness CSG, many Tutsi were being killed at roadblocks during that time. She later clarified that she arrived in Kabgayi two days after 20 April 1994. Witness CSG did not leave the premises of the St. Léon Minor Seminary until 6 June 1994, when the RPF took over Kabgayi and rescued the refugees. She had not been to the St. Léon Minor Seminary prior to seeking refuge there and has not returned since 6 June 1994.<sup>406</sup>

287. Witness CSG testified that she and others sought refuge at the St. Léon Minor Seminary because they thought they might be able survive there. However there was no food and attackers arrived in order to kill people. Witness CSG testified that Rukundo led the attack by the *Interahamwe* against Tutsi refugees at the St. Léon Minor Seminary.<sup>407</sup> She said that Rukundo came to the St. Léon Minor Seminary on "numerous occasions", sometimes twice a day.<sup>408</sup> On the first day that Witness CSG saw Rukundo at the St. Léon Minor Seminary, she was about six meters

<sup>402</sup> T. 13 February 2007, pp. 7-8, 16.

<sup>403</sup> T. 13 February 2007, pp. 12, 30-31.

<sup>404</sup> T. 13 February 2007, p. 11.

<sup>405</sup> T. 13 February 2007, p. 43.

<sup>406</sup> T. 30 November 2006, pp. 3-4, 6-8, 13.

<sup>407</sup> T. 30 November 2006, pp. 4, 21.

<sup>408</sup> T. 30 November 2006, pp. 5, 21-22.



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away from the Accused.<sup>409</sup> Rukundo wore a military uniform comprising of a khaki shirt and camouflaged trousers with pockets on both sides. He carried a small gun attached to his belt. He was also escorted by a soldier who carried a sub-machine gun over his shoulder.<sup>410</sup>

288. Witness CSG testified that she came to know about Rukundo because each time the Accused came to the St. Léon Minor Seminary, the refugees would scream and say “You have to flee because Emmanuel Rukundo [is] coming.” The first time that Witness CSG saw Rukundo she asked the refugees why they called him “Father Rukundo” because as far as she could see, he was a soldier. According to Witness CSG, the refugees fled whenever they heard Rukundo’s name mentioned or saw him because they knew that the attackers would abduct and kill them. When Rukundo came to the St. Léon Minor Seminary, he carried a list of names and was followed by a lot of attackers.<sup>411</sup> Rukundo used the list to identify some Tutsi refugees. Witness CSG estimated that there were at least six metres between herself and Rukundo when she saw him on one occasion with a list. Witness CSG testified that Rukundo would walk amongst the refugees and consult his list before getting close to them, whilst the refugees tried to avoid him. Witness CSG explained that the refugees tried to avoid Rukundo but could not go that far and it was always possible for him to catch up with them. Each time Rukundo got close to one of the refugees and spoke to them, that refugee was abducted three to five minutes later on the same day. Rukundo would then walk back to the entrance of the St. Léon Minor Seminary with his escort and pass the *Interahamwe* at the entrance. The *Interahamwe* would then enter the St. Léon Minor Seminary with the same list to abduct those who appeared to be in good health or young. When there were a lot of refugees, the *Interahamwe* would guard the entrance to the St. Léon Minor Seminary to ensure that anyone who tried to leave would be intercepted and killed.<sup>412</sup>

289. Witness CSG testified that she thought that the *Interahamwe* were acting in collusion with Rukundo.<sup>413</sup> Witness CSG believed that the refugees who were identified by Rukundo were later taken away and killed by the *Interahamwe* because none of the refugees were ever seen again. When asked what time of day she saw someone who was pointed out to her as Rukundo, Witness CSG replied that it was impossible to distinguish between day and night.<sup>414</sup> Witness CSG added that some of the people who attacked the refugees at the St. Léon Minor Seminary wore military uniforms whilst others wore civilian clothes and were armed with machetes, clubs, and firearms.

<sup>409</sup> T. 30 November 2006, p. 6.

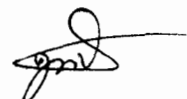
<sup>410</sup> T. 30 November 2006, pp. 5, 13, 18-19, 24-25.

<sup>411</sup> T. 30 November 2006, pp. 6, 12-13, 18.

<sup>412</sup> T. 30 November 2006, pp. 4-6, 12-13, 18, 20-22, 24.

<sup>413</sup> T. 30 November 2006, pp. 6-7.

<sup>414</sup> T. 30 November 2006, p. 16.



Witness CSG stated that she saw soldiers at the entrance to the St. Léon Minor Seminary, but did not see any communal policemen. Witness CSF testified that the *Interahamwe* came to the St. Léon Minor Seminary aboard vehicles singing "We are coming. We are the *Interahamwe*".<sup>415</sup>

*Prosecution Witness BLC*

290. Witness BLC already gave evidence in relation to the allegations at St. Joseph's College.<sup>416</sup>

291. In April and May 1994, Witness BLC was an 18 year old seminarian studying at the St. Léon Minor Seminary. After the death of President Habyarimana, Witness BLC and members of his extended family decided to flee their village. A Belgian parish priest called Jiji Michel advised Witness BLC not to seek refuge in the parish but to go to Kabgayi because he thought that they would be safer. On the way to Kabgayi, Witness BLC separated from his family because a priest who was a teacher at the St. Léon Minor Seminary gave him a lift on his motorbike to the St. Léon Minor Seminary. Two or three days after arriving at the St. Léon Minor Seminary, Witness BLC left to collect members of his immediate family and brought them to the premises. They arrived at the St. Léon Minor Seminary within the first week following the presidential plane crash and remained there until 2 June 1994.<sup>417</sup>

292. When Witness BLC first arrived at the entrance of the St. Léon Minor Seminary, he happened to meet Father Daniel Nahimana, a priest and lecturer at the Seminary. Witness BLC knew Father Nahimana because he was the godfather of one of Witness BLC's cousins. Witness BLC emotionally recounted to Nahimana how their houses had been destroyed and their cattle eaten. Nahimana told Witness BLC, "Well that is how it happens, so go and join the others, and I'm sorry about that". Witness BLC was shocked by Father Nahimana's response as it was not what he was expecting and was disillusioned by the way Father Nahimana had received him. Witness BLC observed that initially there were not many people at the St. Léon Minor Seminary, however the number of refugees soon increased. When he arrived at the St. Léon Minor Seminary, he saw that Tutsi refugees were already sheltering there. There was also a group of Hutu refugees from Byumba, who had fled the war between the Rwandan Army and the RPF forces. The latter were referred to as the refugees from Nyacyonga.<sup>418</sup>

<sup>415</sup> T. 30 November 2006, p. 21.

<sup>416</sup> See Section III.4.b.

<sup>417</sup> T. 4 December 2006, pp. 10-11, 19, 29.

<sup>418</sup> T. 4 December 2006, pp. 11-13; T. 7 December 2006, pp. 6-8.



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293. According to Witness BLC, the St. Léon Minor Seminary comprised of three sections: the classical seminary, the senior seminary, and the administrative buildings which were located at the entrance. The Nyacyonga refugees stayed in the "classical seminary", the women and children occupied "the senior seminary", and the men stayed in one or two classrooms. Towards the end of April 1994 this arrangement changed as the number of refugees increased. The St. Léon Minor Seminary no longer had enough space to provide living quarters for everyone and therefore many refugees had to settle where they could in the compound.<sup>419</sup>

294. In view of the security situation in Kabgayi, the refugees who were at the St. Léon Minor Seminary could not freely leave the premises. This was particularly true of Tutsi refugees who could not go out at all. Hutu refugees could only venture out of the St. Léon Minor Seminary if they were accompanied by policemen.<sup>420</sup>

295. Before 1994, Witness BLC had only heard of Rukundo but did not know him. He got to know Rukundo more closely whilst he was a refugee at the St. Léon Minor Seminary in 1994. According to Witness BLC, he frequently saw Rukundo at the St. Léon Minor Seminary during that time.<sup>421</sup>

296. Witness BLC testified that during these visits, Rukundo was dressed in military uniform which was a "deep khaki colour" with an insignia on the epaulette, carried weapons, and was normally escorted by two, three or four soldiers, apart from the one occasion when he arrived with between 10-15 soldiers, after coming from what Witness BLC presumed to be Rudahunga's house. As a young seminarian, Witness BLC was surprised to see Rukundo in military uniform at the St. Léon Minor Seminary. Witness BLC knew Rukundo as a priest who normally said mass while wearing his cassock. It was not until the end of the genocide that Witness BLC understood the nature of Rukundo's work as a military chaplain.<sup>422</sup>

297. According to Witness BLC, towards the end of April or the beginning of May 1994, Rukundo came to the St. Léon Minor Seminary with soldiers. Rukundo would either come with soldiers who took people away or he would come to see the priests, particularly Father Nahimana, and tell them about the military operations or he would come with soldiers, towards the end of May 1994, who would unload bottles of wine and take them to a store room. Witness BLC testified that Rukundo came in a pick-up which he parked between the palm tree and the church building or a

<sup>419</sup> T. 4 December 2006, p. 14.

<sup>420</sup> T. 4 December 2006, p. 38.

<sup>421</sup> T. 4 December 2006, pp. 14-15.

<sup>422</sup> T. 4 December 2006, p. 15.



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white Mazda which he parked in front of the administrative buildings. Witness BLC overheard some of the conversations at the St. Léon Minor Seminary when Rukundo spoke to other priests about what was going on in the country.<sup>423</sup> When briefing the priests, Witness BLC heard Rukundo call out names of people who were deemed to be RPF sympathizers and say that “something had to be done about such people”.<sup>424</sup> According to Witness BLC, Rukundo also said, loudly so all around him could hear, that he had entered Rudahunga’s house, that they “killed the wife and the children” but that Louis Rudahunga – “the idiot” – got away.<sup>425</sup> During the time that Rukundo spoke to his fellow priests, the soldiers accompanying him would walk around the crowd of refugees identifying those to be taken away that night.<sup>426</sup> Witness BLC spent a lot of time around the administrative building, which was used for the day-to-day management of the St. Léon Minor Seminary where one could not see the classrooms, dorms or senior seminary.<sup>427</sup>

298. Witness BLC said that on the days Rukundo came to the St. Léon Minor Seminary, people were abducted the same night. Witness BLC testified that the people who came in the day to identify the refugees were the same people who returned at night to abduct the refugees. Witness BLC testified that whenever the refugees saw Rukundo visit during the day they started to prepare themselves because they knew that at night people would be taken away and killed.<sup>428</sup> He stated that he heard the screams and crying sounds of the refugees as they were being abducted at night. Witness BLC explained that there were very few days when people were killed in the St. Léon Minor Seminary. The refugees were normally identified during the day and at night they were taken away to be killed outside the St. Léon Minor Seminary. There was one teacher who was tortured at his house in the courtyard of the St. Léon Minor Seminary, although he was taken outside the premises in order to be killed.<sup>429</sup>

299. Witness BLC gave two examples of abductions at the St. Léon Minor Seminary. The first one was the abduction at night of the occupants of the two rooms who were the parents of the seminarians. Witness BLC testified that people came and took all the refugees from one room in order to kill them and only one person survived, Witness BLC’s father. The people were placed in

<sup>423</sup> T. 4 December 2006, pp. 16-18, 20-21; T. 7 December 2006, p. 19.

<sup>424</sup> T. 4 December 2006, p. 21: “So he would give a briefing and he would say ‘Such-and-such a person is helping the RPF, RPF infiltrators, I’ve seen that person’s family members so we have to do something.’ That’s what he would say. So, you know, always active.”

<sup>425</sup> T. 4 December 2006, p. 21.

<sup>426</sup> T. 4 December 2006, pp. 18-19.

<sup>427</sup> T. 4 December 2006, pp. 13-14, 34; T. 7 December 2006, pp. 18, 33; T. 8 December 2006, pp. 17-18.

<sup>428</sup> T. 4 December 2006, pp. 16-19: “And we reached a point when our parents, who were teachers who were known in the province, who were school inspectors, who were Tutsis that could have been identified, came to say, ‘Well, he has come’.”

<sup>429</sup> T. 4 December 2006, p. 19.

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single file and then taken outside of the St. Léon Minor Seminary. Witness BLC's father, however, left the group and went and sat down in a ravine.<sup>430</sup> Witness BLC's father returned the same night and woke up Witness BLC. Witness BLC testified that during that night they heard screams for at least three hours. One of the communal policemen explained to Witness BLC's father that the parents of the seminarians were killed by knives which they used to stab them from one end of the rib to another.<sup>431</sup> Witness BLC testified that generally, when refugees were abducted, they were killed outside of the premises and Witness BLC only noticed their disappearance the following day.<sup>432</sup>

300. The second example was when Witness BLC recalled that soldiers had come to look for Merci, the lecturer, who was in a room with the other lecturers which was locked. The soldiers said to Witness BLC and others who were opposite that room, that if they did not open the locked door, they would break down all of the walls. Witness BLC testified that it was Sylver, a Seminarian who went to get the keys to open the door to the room where Merci was hiding.<sup>433</sup> According to Witness BLC, although Merci actually died outside the Minor Seminary, they started torturing him inside the St. Léon Minor Seminary.<sup>434</sup> Witness BLC testified that Merci died because he was on a list of people who contributed money to the RPF. He explained that there was a campaign against these people to denounce and kill them. Witness BLC explained that he never saw Rukundo holding a list and he believed that although the people on the list were not killed by Rukundo, they were killed by soldiers whose actions were instigated by Rukundo.<sup>435</sup>

301. On the occasions that Witness BLC saw Rukundo at the St. Léon Minor Seminary, he formed the impression that Rukundo was a very determined soldier at war, rather than a priest. Rukundo would brief his colleagues and say "Such and such a person is helping the RPF infiltrators, I've seen that person's family members so we have to do something." Witness BLC testified that he heard screaming, crying and sounds of fighting at the time of the abductions.<sup>436</sup>

302. Witness BLC further testified that around mid-May 1994, there was a water shortage at the St. Léon Minor Seminary. He stated that Tutsi refugees could not go out of the St. Léon Minor Seminary to fetch water because they were afraid of being attacked. As a result, only the Hutu refugees went out to collect water to be used by all of the refugees at the St. Léon Minor Seminary.

<sup>430</sup> T. 4 December 2006, pp. 18-20.

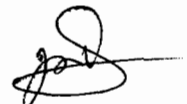
<sup>431</sup> T. 8 December 2006, p. 20.

<sup>432</sup> T. 4 December 2006, pp. 19-20; T. 7 December 2006, p.15.

<sup>433</sup> T. 7 December 2006, p. 14.

<sup>434</sup> T. 4 December 2006, p. 19; T. 8 December 2006, p. 16.

<sup>435</sup> T. 4 December 2006, p. 27.



Witness BLC testified that one day during mass, Father Daniel Nahimana preached about the Hutu of Burundi, who had been enslaved by the Tutsi for a number of years and how the process in Rwanda was to stop the advent of the Tutsi once again. Witness BLC referred to Nahimana as Rukundo's "special friend" because of how they behaved together and because, compared to the other priests, Rukundo would spend long periods of time at Nahimana's house.<sup>437</sup> Father Daniel Nahimana referred to the incident of fetching water by saying that, "Even at this time that we are engaged in this fight ... you are serving them by going to fetch water for them to cook." The Hutu refugees from the Nyacyonga camp started hesitating and saying, "Well, we do not want to go and fetch water anymore." That evening, Rukundo and Father Daniel Nahimana went around the camp telling the Hutu refugees not to go and fetch water. The Hutu refugees refused to fetch the water and Rukundo later told them that those Tutsi who were not going to fetch water, "instead of [...] being killed by machete they want to stay here, and you are going to die with them". Witness BLC added that in his view, by giving those instructions to the Hutu, Rukundo and Nahimana intended to force the Tutsi refugees to venture out of the Minor Seminary so that they could be attacked and killed.<sup>438</sup>

303. When Witness BLC arrived at the St. Léon Minor Seminary, he noticed that there were two communal policemen from Rutungo guarding the entrance. He explained that Tutsi could enter the St. Léon Minor Seminary but they could not go out. Hutu could leave, for example to fetch water, but they were given a coupon which allowed people to identify them and were normally accompanied by policemen.<sup>439</sup>

304. Witness BLC testified that around 29 May 1994, when Kambanda visited the St. Léon Minor Seminary, people were brought in on buses. Witness BLC explained that there were between five and six buses, one of which was blue as well as other vehicles. Only two or three people who were in Kambanda's buses survived due to some white journalists who Witness BLC informed "Look, they are taking people away to kill them." When the journalists started taking photographs two or three people were released. The rest of the buses left with most of the people on board.<sup>440</sup>

<sup>436</sup> T. 4 December 2006, pp. 20-21; T. 8 December 2006, p. 19.

<sup>437</sup> T. 4 December 2006, p. 17.

<sup>438</sup> T. 4 December 2006, pp. 25-26; T. 7 December 2006, pp. 42-43; T. 8 December 2006, p. 16.

<sup>439</sup> T. 4 December 2006, p. 38.

<sup>440</sup> T. 4 December 2006, pp. 19-20; T. 7 December 2006, pp. 22-24.

Prosecution Witness CCH

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305. The Chamber has previously considered Witness CCH's evidence in relation to the incident at St. Joseph's College.<sup>441</sup>

306. Witness CCH stayed at the St. Léon Minor Seminary between mid-May 1994 and 3 June 1994. Witness CCH's brothers and her mother were also with her at the St. Léon Minor Seminary. Sometime in the month of May 1994, one of Witness CCH's brothers was taken away in a vehicle and never returned. Witness CCH did not know where he was killed. There were many other refugees at the St. Léon Minor Seminary when Witness CCH arrived.<sup>442</sup>

307. Witness CCH testified that there were both Tutsi and Hutu refugees at the St. Léon Minor Seminary. The Hutu refugees came from Nyacyonga after fleeing the fighting between Rwandan government troops and the *Inkotanyis*. Refugees from the two ethnic groups lived in separate parts of the St. Léon Minor Seminary. Witness CCH testified that she was amongst a group of Tutsi where the men and young people were in one room and the females and children were in another room. The refugees from Nyacyonga were stationed behind the classrooms. Witness CCH did not dare to go too close to the classrooms where the refugees from Nyacyonga were based. Witness CCH testified that sometimes the refugees from Nyacyonga set up roadblocks in front of the toilets so that the Tutsi could not go and relieve themselves. The refugees from Nyacyonga moved about during the night and sold firewood whilst the Tutsi refugees locked themselves in their rooms when it started to get dark around 4.00 p.m. Due to security reasons, only refugees with identity cards indicating that they were Hutu or people whose physical features did not resemble Tutsi, could leave the St. Léon Minor Seminary. Witness CCH testified that she did not leave the St. Léon Minor Seminary and stayed in the room that she occupied. It did not even occur to Witness CCH to approach the gate of the St. Léon Minor Seminary because it was guarded by people from Nyacyonga and Witness CCH was afraid that they could kill her.<sup>443</sup>

308. When Witness CCH arrived at the St. Léon Minor Seminary she did not see any policemen. Witness CCH, however, testified that there were people wearing communal police uniforms who came to the St. Léon Minor Seminary and took people away to be killed. Witness CCH recalled one

<sup>441</sup> See Section III.4.c.

<sup>442</sup> T. 13 February 2007, pp. 56, 62.

<sup>443</sup> T. 13 February 2007, pp. 64, 66-67.



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incident when the policemen came to take someone away from Taba. Apart from these policemen, Witness CCH did not see any *préfecture* authorities.<sup>444</sup>

309. Witness CCH saw Rukundo at the St. Léon Minor Seminary one week after she had arrived. The Accused arrived in a small white vehicle which he parked in the car park at the entrance to the classrooms. Rukundo was dressed in a green military uniform and carried a rifle. He was accompanied by a young soldier who was also carrying a weapon. Witness CCH was surprised to see Rukundo in military uniform because she knew that he was a priest. Witness CCH understood that Rukundo was hunting down the *Inkotanyi* because "he said that we had to die."<sup>445</sup>

*Prosecution Witness CCG*

310. Prosecution Witness CCG arrived as a refugee at the St. Léon Minor Seminary on 25 or 26 May 1994 where he joined his wife and children who were already there. After about one week, Witness CCG left the St. Léon Minor Seminary on 2 June 1994 once the area had fallen to the *Inkotanyis*. When Witness CCG arrived, he told the policeman who was on the gate that he wanted to see the Rector, whom he already knew. When the Rector arrived, he greeted Witness CCG and welcomed him to join the other refugees. Witness CCG clarified that he entered through the entrance close to the banana plantation as opposed to the main entrance of the St. Léon Minor Seminary. Witness CCG testified that the policemen who had come with the "war displaced" refugees from Nyacyonga were from Kigali. Witness CCG stated that there were two policemen at the entrance to the St. Léon Minor Seminary and that all of the policemen were wearing communal police uniforms. Witness CCG commented that when he arrived, there were many refugees, some of whom he knew.<sup>446</sup>

311. A few days after his arrival, Witness CCG was told by a family member that Rukundo said that another family member was an *Inyenzi* and that his name was on a list of people who had made contributions to the *Inkotanyi*. When Witness CCG heard this information he was frightened and tried to hide. At the end of May, early June 1994 Witness CCG discovered that this family member had been killed.<sup>447</sup>

<sup>444</sup> T. 13 February 2007, pp. 65-66.

<sup>445</sup> T. 13 February 2007, pp. 56, 64; T. 14 February 2007, pp. 6-7, 9. The rest of Witness CCH's evidence relates to the allegation of sexual assault, Section III.7.c.iv.

<sup>446</sup> T. 15 February 2007, pp. 19-20, 22, 31-32.

<sup>447</sup> T. 15 February 2007, pp. 21-22.



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312. Witness CCG testified that there were many buildings in the St. Léon Minor Seminary and that whilst he was there, no one spent the night outside. Witness CCH heard that a teacher named Deogratias Merci, who had been at the St. Léon Minor Seminary, had been killed.<sup>448</sup>

313. Witness CCG knew Rukundo from the Major Seminary when the Accused studied alongside Witness CCG's brother. Rukundo and Witness CCG's brother were ordained on the same day. Witness CCG worked as a tailor and Rukundo was his customer. Witness CCG testified that he would greet Rukundo when they met and that their relationship could be described as a "good relationship".<sup>449</sup>

#### *The Accused*

314. Emmanuel Rukundo testified that he went to the St. Léon Minor Seminary on 15 April, 21 April and 21 May 1994 to visit his friends and colleagues with whom he had previously studied.<sup>450</sup> On his first visit (15 April 1994), Rukundo arrived at the St. Léon Minor Seminary in a white pick-up truck that was loaned to him by the Rwsa nuns around 2.00 p.m. He drove into the compound and parked his vehicle in front of the administrative buildings.<sup>451</sup> Upon his arrival, Rukundo greeted the priests coming out of the refectory and shared a drink with them in the refectory.<sup>452</sup> In his conversation with the other priests, Rukundo discussed the situation in the country and the purpose of his visit in Kabgayi on that day which was to evacuate the family of Jean-Marie Vianney.<sup>453</sup>

315. Emmanuel Rukundo told the Chamber that he was accompanied by three soldiers when he visited the St. Léon Minor Seminary on 15 April 1994. One of them was his regular escort, Jean-Paul Nshimiye. The other two were assigned to him by the commander of Mukamira military camp, in Ruhengeri. Rukundo stated that the three soldiers stayed near the vehicle throughout his visit. Rukundo spent about 30 to 40 minutes at the St. Léon Minor Seminary on this occasion and left together with all three soldiers in the same vehicle in which they arrived.<sup>454</sup>

316. On 21 April 1994, Rukundo arrived at the St. Léon Minor Seminary at approximately 2.00 p.m. He said that two policemen, who were guarding the entrance of the St. Léon Minor Seminary, opened the gate for him. Rukundo drank some beer with his colleagues and discussed the

<sup>448</sup> T. 15 February 2007, p. 33.

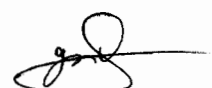
<sup>449</sup> T. 15 February 2007, pp. 22-23, 28.

<sup>450</sup> T. 9 October 2007, pp. 36-37.

<sup>451</sup> T. 8 October 2007, p. 55; T. 9 October 2007, pp. 17, 37.

<sup>452</sup> T. 9 October 2007, pp. 37-38.

<sup>453</sup> T. 8 October 2007, pp. 53-54; T. 9 October 2007, p. 38.



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prevailing situation in the country, information about some colleagues, and what he had done to save some nuns. Rukundo confirmed that on this occasion he was accompanied by three soldiers - two of whom were assigned to him by the *secteur* commander and his usual escort. During this time, the three soldiers remained close to the vehicle waiting for Rukundo. The soldiers left together with Rukundo in the same vehicle.<sup>455</sup>

317. Rukundo's third visit to the St. Léon Minor Seminary took place on 21 May 1994. Rukundo testified that this time he drove his usual vehicle, a Mazda 323, which had been given to him by the Bishop's Conference when he became a military chaplain. The purpose of this visit was to leave some of his personal belongings at the St. Léon Minor Seminary. Rukundo arrived in Kabgayi at about 12.00 p.m., accompanied by his usual escort, Jean-Paul. When he arrived at the St. Léon Minor Seminary, two policemen, who were at the entrance, opened the gate for Rukundo. Rukundo dropped off his personal belongings at the St. Léon Minor Seminary, had lunch with his colleagues, and thereafter proceeded to the Major Seminary to greet his colleagues, the nuns that he had helped on 21 April 1994 and the Bishop. According to Rukundo, the small room in which he stored his belongings was located next to the priests' kitchen and was locked. The bursar kept the keys to the room and unlocked and locked it again for Rukundo.<sup>456</sup>

318. Rukundo testified that all three of his visits to the St. Léon Minor Seminary took place around lunchtime and that he never visited the premises twice on the same day. On 15 April 1994, Rukundo noticed that there were many people in the students' quarters of the Minor Seminary. During his visit to the Minor Seminary on 21 May 1994, he noticed that the number of people in the students' quarters had increased, and that there were many people in the inner courtyard. Rukundo told the Chamber that on all his visits to the Minor Seminary, he parked his vehicle in front of the administrative buildings, met with the priests and then left. He never had the opportunity to go to the place where the refugees were located, although he could see them moving around in the courtyard.<sup>457</sup> Rukundo told the Chamber that he did not notice any stir or particular emotion amongst the refugees when he entered the St. Léon Minor Seminary. Rukundo denied that he ever carried a list of people during his visits to the St. Léon Minor Seminary or that he moved around the refugees with a piece of paper. He reiterated that the soldiers who accompanied him on all three of

<sup>454</sup> T. 9 October 2007, pp. 38-39.

<sup>455</sup> T. 9 October 2007, pp. 38-40, 43.

<sup>456</sup> T. 9 October 2007, pp. 13-14, 40-41, 43.

<sup>457</sup> T. 9 October 2007, pp. 41-42; T. 11 October 2007, pp. 16-17.



his visits to the St. Léon Minor Seminary remained near the parked vehicle close to the administration building.<sup>458</sup>

319. Rukundo denied that he had a real friendship with Father Daniel Nahimana and testified that their relationship was one of a former teacher and student.<sup>459</sup> Rukundo further testified that he never went to the St. Léon Minor Seminary in the company of 10 to 15 soldiers at the end of May 1994.<sup>460</sup>

*Defence Witness SLA*

320. The Chamber has previously considered Witness SLA's evidence in relation to the incidents at St. Joseph's College.

321. Throughout April and May 1994, Witness SLA lived at the St. Léon Minor Seminary. Witness SLA's main responsibility was to provide assistance to about 3,000 refugees at the primary school in Kabgayi. Witness SLA usually visited the primary school twice a day between 9.00 a.m. to 12.00 p.m., and between 3.30 to 5.00 p.m.<sup>461</sup>

322. Witness SLA explained that about one week after 6 April 1994, Hutu and Tutsi refugees started flocking into Kabgayi from other areas. The first group of refugees to arrive at the St. Léon Minor Seminary on 11 April 1994 were 20 students from Kigali. More refugees arrived the following week, including a group of Hutu from Nyacyonga who were accompanied by the *sous-préfet* of Rutongo, Alexis Mugambaz. Witness SLA estimated that there were a little less than 3,500 refugees at the St. Léon Minor Seminary at the height of the crisis. Witness SLA testified that there was a large and almost equal number of both Tutsi and Hutu refugees. Witness SLA explained that they separated the men from the women and put the women in a complex towards the St. Joseph Bishopric, whilst the men stayed in a complex occupied by "classical seminarians". The refugees were provided with food once a day.<sup>462</sup>

323. According to Witness SLA, policemen from Rutongo *commune* who had come with *sous-préfet* Mugambaz guarded the entrance to the St. Léon Minor Seminary. At no point were the gates of the St. Léon Minor Seminary ever guarded by the *Interahamwe* and no one was ever killed at the gates. Tutsi refugees could not move around freely because the security situation outside the Seminary was considered too dangerous for them due to the presence of soldiers, *gendarmes* and

<sup>458</sup> T. 9 October 2007, pp. 42-43.

<sup>459</sup> T. 9 October 2007, p. 43.

<sup>460</sup> T. 9 October 2007, p. 45.

<sup>461</sup> T. 1 October 2007, pp. 43-45.

<sup>462</sup> T. 1 October 2007, pp. 14-17; see also French transcript for clarification of location: T. 1 October 2007, p. 20.

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*Interahamwe*. Witness SLA testified that they experienced massive kidnappings from the St. Léon Minor Seminary at an intense rate during the last days of the month of May 1994. There were five or six days of daily kidnappings. Witness SLA added that *sous-préfet* Misago was responsible for abducting the largest number of refugees although *gendarmes* and soldiers also came and took people away. Witness SLA explained that there had been no kidnappings before the ones that took place at the end of May 1994. Witness SLA remembered that Deogratias Merci was amongst those killed around 25 May 1994. Witness SLA described how a teacher called Zacharie was also abducted together with a group of about 20 refugees by *sous-préfet* Misago and taken away in a blue Toyota Hiace minibus.<sup>463</sup> Misago came to the Seminary with a list of people allegedly wanted for questioning by the state prosecutor. Witness SLA confirmed that none of the refugees who were abducted were killed inside the St. Léon Minor Seminary.<sup>464</sup>

324. Defence Witness SLA saw Rukundo at the St. Léon Minor Seminary on at least two occasions between April and May 1994. At that time, Witness SLA said that Rukundo wore a military uniform and drove a private vehicle that was white or beige in colour. Witness SLA never saw Rukundo driving a pick-up truck. Rukundo was accompanied by a soldier on both visits. Witness SLA never saw Rukundo at the St. Léon Minor Seminary with ten soldiers. The purpose of Rukundo's visits to the St. Léon Minor Seminary was to greet the seminarians and discuss the prevailing situation in the country. During Rukundo's first visit, he told Witness SLA that he had fired in the air in order to save some Tutsi who had sought refuge at Nyabikenke Parish from being attacked by a group of Hutu. On his second visit, Rukundo spoke about his new appointment and transfer from Ruhengeri to Kigali. During this visit, Rukundo ate lunch together with the seminarians at about 1.00 p.m. and did not speak to the refugees. He spent about one hour altogether at the St. Léon Minor Seminary.<sup>465</sup>

325. Witness SLA told the Chamber that he never saw Rukundo with a list or sheet of paper in his hand, nor did he see the refugees in a state of panic upon Rukundo's arrival at the St. Léon Minor Seminary. In addition, Witness SLA never heard that soldiers returned to the St. Léon Minor Seminary to attack or abduct refugees after Rukundo's visit.<sup>466</sup> Witness SLA maintained that he was

<sup>463</sup> T. 1 October 2007, pp. 19-22; T. 1 October 2007, p. 26 (French) (The colour of the minibus is unintelligible in the English transcript, but is clearly identified as blue in the French transcript).

<sup>464</sup> T. 1 October 2007, pp. 21-22, 40.

<sup>465</sup> T. 1 October 2007, pp. 21-24, 52.

<sup>466</sup> T. 1 October 2007, pp. 24-25.

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based at the St. Léon Minor Seminary in April and May 1994, and therefore, it was unlikely that Rukundo could have visited the Minor Seminary without him knowing or hearing about it.<sup>467</sup>

326. Defence Witness SLA confirmed that Rukundo was allocated a small room at the Minor Seminary for the purpose of keeping his personal belongings. Witness SLA explained that Rukundo did not have direct access to the keys for the room, which were kept by the bursar. On the two occasions on which Witness SLA saw Rukundo at the St. Léon Minor Seminary, the Accused did not go into the room.<sup>468</sup>

327. Witness SLA also confirmed that from the end of April until June 1994, there were water problems at the St. Léon Minor Seminary. Witness SLA recalled that they asked Hutu staying at the St. Léon Minor Seminary to go and fetch water because the Tutsi were not safe outside the confines of the Seminary. Witness SLA did not recall that Father Daniel Nahimana incited the Hutu not to go out and fetch water.<sup>469</sup> Witness SLA never heard any reports that Jean Kambanda had come to visit the St. Léon Minor Seminary.<sup>470</sup> Witness SLA remembered meeting Witness BLC when he was on his motorbike. He testified that he did not give Witness BLC a ride on the bike and said that it would have been absurd to separate the boy from his family by giving him a ride.<sup>471</sup>

*Defence Witness SLD*

328. Witness SLD had known Emmanuel Rukundo since 1990-91 when Rukundo attended the Kabgayi Major Seminary. Witness SLD heard that Rukundo had sought refuge at the Bishopric in Kabgayi in 1994.<sup>472</sup> Whilst Witness SLD was at the St. Léon Minor Seminary, he never heard Rukundo's name mentioned in connection with any of the crimes which took place there. Witness SLD further testified that he never saw Rukundo at the St. Léon Minor Seminary nor did he hear from anyone that Rukundo had come to the St. Léon Minor Seminary.<sup>473</sup>

329. Witness SLD, a Tutsi, arrived as a refugee at the St. Léon Minor Seminary in Kabgayi between 23 and 25 April 1994 and left around 23 May 1994.<sup>474</sup> Witness SLD testified that there were more than 300 refugees at the St. Léon Minor Seminary and the number of refugees increased each day until at one point there were more than 700 refugees. Witness SLD noted that at some

<sup>467</sup> T. 1 October 2007, p. 27.

<sup>468</sup> T. 1 October 2007, pp. 32, 53.

<sup>469</sup> T. 1 October 2007, pp. 18-19.

<sup>470</sup> T. 1 October 2007, p. 22.

<sup>471</sup> T. 1 October 2007, pp. 27-29.

<sup>472</sup> T. 16 October 2007, pp. 6-7, 34.

<sup>473</sup> T. 16 October 2007, pp. 7-9.

<sup>474</sup> T. 11 October 2007, p. 66; T. 16 October 2007, p. 11.

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point, there was a water shortage at the St. Léon Minor Seminary and some refugees attempted to go out and look for water. However, they could not go beyond the entrance to the St. Léon Minor Seminary. In general, Witness SLD noted that for security reasons, refugees at the St. Léon Minor Seminary were not allowed to go out of the premises because there were killers waiting outside for the refugees to come out so that they could arrest them.<sup>475</sup>

330. A group of people referred to as the “Zulus” and others from Kamazuru, called *Igishwauru*, along with a person called Sylvain, abducted refugees from the St. Léon Minor Seminary. Sylvain had a list of names, which he gave to the attackers. The refugees screamed and fled whenever they saw Sylvain coming or heard him speaking.<sup>476</sup> Sometime between 15 and 20 May 1994, an attack was launched against the refugees at the St. Léon Minor Seminary and some of them were abducted. Witness SLD heard that some of the refugees who were abducted managed to escape and return to the St. Léon Minor Seminary. As a result of this attack, Witness SLD went into hiding in the banana plantations for about three days because he was afraid.<sup>477</sup>

331. Witness SLD testified that he started hiding in the banana plantations just outside the St. Léon Minor Seminary with about 30 other refugees who felt threatened in the day during the first few days of May 1994. Witness SLD explained that he hid in the banana plantations for more than 3 weeks but at times he would come back to the St. Léon Minor Seminary. Between 15 and 20 May 1994, Witness SLD spent three days in the banana plantations. Witness SLD admitted that because he went into hiding, he was not aware of what was happening at the St. Léon Minor Seminary.<sup>478</sup> Witness SLD confirmed that he spent the majority of his time at the St. Léon Minor Seminary in the banana plantation behind the St. Léon Minor Seminary, or close to the dormitories, or the toilet. Witness SLD never went to the inner courtyard or to the entrance of the St. Léon Minor Seminary.<sup>479</sup>

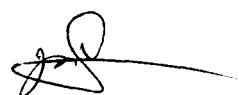
<sup>475</sup> T. 16 October 2007, pp. 2-4.

<sup>476</sup> T. 16 October 2007, pp. 4, 6.

<sup>477</sup> T. 16 October 2007, pp. 5-8, 33-34.

<sup>478</sup> T. 16 October 2007, pp. 2, 5, 32-33.

<sup>479</sup> T. 16 October 2007, pp. 33-34, 37.



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(c) Deliberations(i) Preliminary Issue: Pleadings in the Indictmenta. Paragraphs 12 and 13 are vague

332. The Defence alleges that paragraphs 12 and 13 of the Indictment are vague since they do not specify the identity of the victims and the specific dates on which the acts were alleged to have been committed by the Accused.<sup>480</sup> The Chamber does not agree with this proposition. The Chamber observes that the Indictment provides the Accused with a clear timeframe during which he is alleged to have visited the St. Léon Minor Seminary.<sup>481</sup> The Chamber notes that in respect of the victims' identity, paragraph 12 of the Indictment clearly states that once Rukundo had identified the refugees, soldiers and *Interahamwe* took away and killed Tutsi refugees from the St. Léon Minor Seminary. The Chamber further notes that paragraph 13 of the Indictment states that following Rukundo's departure on several occasions from the St. Léon Minor Seminary soldiers and *Interahamwe* militiamen beat, kicked and whipped Tutsi refugees who had not been taken away to be killed. The Chamber recalls that in cases where the Prosecution alleges specific criminal acts, such as the murder of a named individual, the indictment should set forth material facts such as "the identity of the victim, the time and place of the events and the means by which the acts were committed." However, such detail need not be pleaded where the sheer scale of the alleged crimes makes it impracticable to require the same degree of specificity.<sup>482</sup> The Chamber finds that the reference to "Tutsi refugees", certainly of a large number, is sufficiently specific in this instance. The Chamber is therefore satisfied that the Indictment provided the Accused with sufficient notice to enable him to adequately prepare his defence.

b. Allegation of incitement to Hutu refugees not to collect water is not pleaded in the Indictment

333. The Defence seeks to exclude Witness BLC's evidence where he discusses Rukundo's involvement in stopping the Hutu from fetching water for Tutsi refugees at the St. Léon Minor

<sup>480</sup> Defence Closing Brief, paras. 841-848.

<sup>481</sup> Para. 12 of the Indictment states "during the months of April and May 1994" and para. 13 of the Indictment states "on diverse dates during the months of April and May 1994".

<sup>482</sup> *Kupreskić*, Judgement (AC), para. 89; *Ntakirutimana*, Judgement (AC), para. 25.



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Seminary during the genocide in 1994.<sup>483</sup> Witness BLC testified that at the St. Léon Minor Seminary, the Hutu had to leave the Seminary to fetch water because if the Tutsi went out, they would be killed. Witness BLC testified that Father Daniel Nahimana preached that the Hutu were being enslaved by the Tutsi and gave the example that the Hutu are forced to fetch water, instead of the Tutsi. Later that night in the Nyacyonga camp, Witness BLC stated that Father Nahimana and Rukundo went around ordering the Hutu refugees not to collect water, so as to force the Tutsi to leave the Seminary to fetch water knowing that they might ultimately be killed.<sup>484</sup> The Defence submits that this evidence introduces a new material fact and a new charge against the Accused which was not specifically pleaded in the Indictment.<sup>485</sup>

334. The Chamber notes that the Indictment does not contain any reference to Rukundo ordering Hutu refugees at the St. Léon Minor Seminary not to collect water. This evidence alleges a particular event and criminal conduct of the Accused against Tutsi refugees which was not pleaded in the Indictment. The Chamber notes that although the Indictment refers to three specific incidents at the St. Léon Minor Seminary,<sup>486</sup> Witness BLC's evidence constitutes a new allegation which falls outside the scope of the Indictment.<sup>487</sup> The Chamber therefore excludes Witness BLC's evidence in respect of the Accused's alleged instigation of Hutu refugees to stop collecting water outside of the St. Léon Minor Seminary in order to force the Tutsi to leave the premises.

(ii) Allegation: Beating of Refugees

335. The Indictment alleges in paragraph 13 that during the months of April and May 1994, soldiers and *Interahamwe* beat, kicked and whipped Tutsi refugees at the St. Léon Minor Seminary as a result of Rukundo's order, instigation or actions of aiding and abetting. The Chamber notes that Witness CSF was the only witness to testify to this particular allegation. She stated the following:

“Whenever Rukundo left [the Minor Seminary], the soldiers would come and ask for money from the refugees. Those who could not find any money to give them were beaten. And ... they would take some of them away with them to throw in the bushes.”<sup>488</sup>

336. The Chamber notes that Witness CSF does not refer to any kicking or whipping as alleged in the Indictment, or anything beyond the above-stated passage, which refers generally to the soldiers beating refugees. More importantly, the witness does not link the Accused to the beatings.

<sup>483</sup> Defence Closing Brief, para. 229.

<sup>484</sup> T. 4 December 2006, pp. 25-26.

<sup>485</sup> Defence Closing Brief, paras. 225-226.

<sup>486</sup> See paras. 12, 13, 14 and 27 of the Indictment.

<sup>487</sup> See Section II.A.1.

<sup>488</sup> T. 13 February 2007, p. 8.



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The Chamber recalls that Witness CSF's evidence suggests that the beatings took place after Rukundo had left the Seminary and there is no other evidence adduced by the Prosecution to connect the Accused to the beatings of the refugees by the soldiers. Rather, from Witness CSF's testimony, when the refugees did not give money to the soldiers when they were asked, the refugees were beaten. Given the lack of any link between Rukundo and the beatings allegedly perpetrated by the soldiers, the Chamber finds that the Prosecution has not established beyond reasonable doubt that Rukundo ordered, instigated or aided and abetted the beating of Tutsi refugees at the St. Léon Minor Seminary.

(iii) Allegation: Abduction and Killing of Refugees

337. Paragraph 12 of the Indictment alleges that during the months of April and May 1994, the Accused ordered, instigated, or aided and abetted soldiers and *Interahamwe* to kill Tutsi refugees at the St. Léon Minor Seminary by identifying specific refugees to be abducted, and that on one occasion, this was done using a list.

338. The main Prosecution witness on this allegation is Witness CSF. Prosecution Witnesses CSG and BLC provide additional testimony. Apart from Rukundo, the Defence presented Witnesses SLA and SLD to refute the Prosecution evidence. The Chamber notes that Rukundo does not deny that he visited the St. Léon Minor Seminary during the months of April and May 1994. In fact, he described in detail three visits that he made to the Seminary.<sup>489</sup>

339. Prosecution Witness CSF provided a firsthand and largely consistent account of four visits made by the Accused to the St. Léon Minor Seminary during the months of April and May 1994. According to Witness CSF, Rukundo was accompanied by soldiers and *Interahamwe* on all four occasions that he visited the Seminary. Witness CSF testified that on the first occasion, on 20 or 21 April 1994, Rukundo walked around for a while in the refugee camp and talked to a number of refugees. Then, Rukundo handed a piece of paper he held in his hand to one of the soldiers accompanying him and left. Witness CSF attested to seeing this incident from inside the courtyard of the Seminary at a distance of about 40 metres from the Accused.<sup>490</sup>

340. Witness CSF stated that following Rukundo's departure, soldiers then called out the names of individuals on the list and began searching for them. The refugees who were found boarded a blue truck parked near the tarred road and were taken away. Witness CSF testified that he followed

<sup>489</sup> T. 9 October 2007, pp. 36-39.

<sup>490</sup> T. 13 February 2007, pp. 3, 4 15, 19-22.

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the soldiers and refugees who had been rounded up outside the St. Léon Minor Seminary and watched as they were loaded onto the truck. According to Witness CSF, these refugees never returned. He stated that this first abduction involved only a small number of refugees.<sup>491</sup>

341. Witness CSF testified that Rukundo returned to the St. Léon Minor Seminary approximately four days later around 2.00 or 2.30 p.m. This time, many refugees were taken away. Those whose names were called protested because they realised that they were going to be killed. However they were put on board the vehicles and driven away. These refugees did not return.<sup>492</sup>

342. Witness CSF stated that on the third visit, which again took place four days later, Rukundo had a list with names of people who had not been previously found. As before, Rukundo walked around the camp, then handed over the list to the same soldier and left. This soldier read out the names and other soldiers looked for the people they had to take away.<sup>493</sup>

343. According to Witness CSF, following Rukundo's fourth visit, which occurred a few days before Kabgayi fell,<sup>494</sup> many of the refugees were selected and driven away in buses.<sup>495</sup> These refugees, like the others who had been abducted from the St. Léon Minor Seminary, never returned. Witness CSF testified that when the *Interahamwe* returned to the Seminary they were singing songs and boasting of having killed the refugees.<sup>496</sup> According to Witness CSF, the soldiers had started taking away intellectuals such as teachers, lecturers, civil servants and particularly magistrates.<sup>497</sup> Only a few young girls and boys as well as elderly people were left when the fourth abduction occurred.<sup>498</sup>

344. According to Witness CSF, all of the abductions he witnessed took place during the day.<sup>499</sup> Witness CSF was unable to positively identify the ethnicity of the refugees abducted from the St. Léon Minor Seminary. The Chamber, however, notes that Witness CSF explained that many of the refugees who were in hiding at the Seminary, particularly after the first abduction, were Tutsi.<sup>500</sup>

<sup>491</sup> T. 13 February 2007, pp. 4, 11, 16-17, 25-26.

<sup>492</sup> T. 13 February 2007, pp. 4-5, 27.

<sup>493</sup> T. 13 February 2007, p. 21.

<sup>494</sup> Later on, the witness said it took place in mid-May 1994 (T. 13 February 2007, pp. 29-30).

<sup>495</sup> T. 13 February 2007, p. 6, line 1. Later (line 5), Witness CSF referred to "a bus".

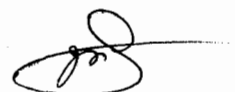
<sup>496</sup> T. 13 February 2007, p. 6; T. 13 February 2007 (French), p. 7.

<sup>497</sup> T. 13 February 2007, p. 6.

<sup>498</sup> T. 13 February 2007, p. 6. Witness CSF also mentioned that a judge from the Nyamabuye court, whom he knew, was being sought and the *Interahamwe* had said that they would not leave without that person. Finally, the judge was found and Witness CSF saw him being taken away (*Ibid*).

<sup>499</sup> T. 13 February 2007, p. 43.

<sup>500</sup> T. 13 February 2007, pp. 7-8.



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345. The Defence submits that Witness CSF was not at the St. Léon Minor Seminary and that he did not see Rukundo, as described in his testimony.<sup>501</sup> The Chamber notes that Witness CSF provided the names of four people who, according to him, joined him at the St. Léon Minor Seminary in 1994.<sup>502</sup> The Chamber further notes that Witness CSF and Rukundo did not know each other before the events in Rwanda in 1994. Moreover, no evidence has been adduced to establish a motive for Witness CSF to provide false testimony against the Accused. On the contrary, the Chamber notes that the witness, throughout his testimony, could have further implicated Rukundo, but that he did not do so.<sup>503</sup> This is *indicia* of his credibility. The Chamber concludes that Witness CSF provided a generally clear and detailed description of incidents that he saw at the St. Léon Minor Seminary<sup>504</sup> and finds him to be a credible witness.

346. The Defence asserts that Witnesses CSF and CSG colluded to provide false testimony against Rukundo.<sup>505</sup> The Chamber is not convinced by the Defence submission. Even if the two

<sup>501</sup> T. 13 February 2007, p. 51.

<sup>502</sup> T. 13 February 2007, pp. 42-43.

<sup>503</sup> Q. They didn't come only to extort money from the refugees, because you also told the Prosecutor a short while ago that they also took away people and killed in the bushes. Is that correct?

A. Are you referring to the soldiers?

Q. That is what you told the Prosecutor.

A. Yes, *but when they did that, it was in the absence of Rukundo* (emphasis added; T. 13 February 2007, p. 16).

Yes, my question was generally -- general in nature. When you were inside Saint Léon could you see what was happening outside or did you have to go out?

A. I have told you that on the first occasion I was able to go out, I went away from the fence to be able to see what was happening to the refugees. On the other occasions, *I was not able to see how they were being loaded onto the vehicles ...* (emphasis added; T. 13 February 2007, p. 16).

<sup>504</sup> Q. At what distance -- if you can -- be able to estimate, at what distance were you from him when you saw him with a piece of paper?

A. There was a distance of *about 40 metres* between us, and I saw him hand over that piece of paper to that person (emphasis added; T. 13 February 2007, pp. 3-4).

Q. I would like you to tell this to the Court: This second time that you're telling the Court that they came again to take away refugees, after how long had it been since the first time?

A. He returned four days after he had come the first time, and it was in the afternoon, *around 2-2:30 p.m.* (emphasis added; T. 13 February 2007, p. 4).

Q. Mr. Witness, we have the impression that you are trying to distinguish between one soldier and the other people who were accompanying Mr. Rukundo. Am I understanding you correctly?

A. I am distinguishing between that soldier and the others who were accompanying Rukundo because it was to that soldier that Rukundo handed over a list of the people who had to be identified, and *this person was always the same* (emphasis added; T. 13 February 2007, p. 21).

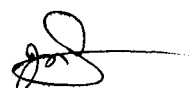
Q. Mr. Witness, did Emmanuel Rukundo have the opportunity to address the refugees?

A. When he came there the first time, *the elderly women came forward* and greeted him like a priest (emphasis added; T. 13 February 2007, p. 22).

Q. Witness, you told us that you saw Emmanuel Rukundo arrive and that you also saw him leave, and we are talking about the first occasion here. Approximately how long did he stay between his arrival and his departure?

A. I am going to give you an approximation, but I would like to point out to you that that institution is very large. He moved around the premises. I would say that that took him *about 30 minutes*, then he stayed with the soldiers for *about five minutes*, then he left. So I can tell you that he was there about 35 minutes (emphasis added; T. 13 February 2007, p. 24).

<sup>505</sup> The Defence submits that Witness CSF claimed not to know Witness CSG but both witnesses gave the same person as their contact, they were both interviewed by the Office of the Prosecutor on the same day and at the same place, and they lived in the same village (Defence Closing Brief, paras. 969-970).



witnesses know each other, that, in itself, is not proof of collusion. Indeed, the differences in detail between the testimonies of Witness CSF and Witness CSG regarding the events at the St. Léon Minor Seminary do not support the allegation of collusion.

347. The Defence also submits that Witness CSG is not credible because she could not accurately describe the premises of the St. Léon Minor Seminary where she allegedly spent about six weeks and because her behaviour was “unruly” during her testimony. The Defence further asserts that the witness gave false testimony due to her membership in *Ibuka*, a genocide survivor’s organization. The Defence finally submits that there were several unexplained inconsistencies in Witness CSG’s testimony.<sup>506</sup>

348. The Chamber notes that Witness CSG had difficulties in providing details about the Seminary and provided only a general description of its buildings being constructed of “burnt bricks”.<sup>507</sup> Furthermore, Witness CSG was unable to name one person who was with her at the St. Léon Minor Seminary and only vaguely referred to one woman with young children.<sup>508</sup> She further misidentified the St. Léon Minor Seminary as the Kabgayi Bishopric in a photograph.<sup>509</sup> The Chamber also observes that the witness did not know whether there were clergy at the St. Léon Minor Seminary, although other witnesses attested to their presence and assistance to the refugees.<sup>510</sup> At one point in her testimony, Witness CSG claimed to have hidden in a corner, inside one of Seminary’s buildings,<sup>511</sup> but then later asserted that she remained outside in the Seminary’s courtyard for the duration of her stay in the camp.<sup>512</sup> The witness attested that while at the St. Léon Minor Seminary, someone pointed out Rukundo to her. When asked what time of day this incident occurred, the witness testified that she did not know, as she could not tell the difference between day and night. The Chamber notes that Witness CSG was hesitant when answering certain questions.<sup>513</sup>

349. The Chamber finds that there are reasonable explanations for the above-mentioned issues, such as the effect of an injury when the witness arrived at the St. Léon Minor Seminary,<sup>514</sup> her

<sup>506</sup> Defence Closing Brief, paras. 954-962.

<sup>507</sup> T. 30 November 2006, pp. 9, 27, 36.

<sup>508</sup> T. 30 November 2006, p. 37.

<sup>509</sup> T. 30 November 2006, pp. 26-27, 36; Exhibit D. 7.

<sup>510</sup> T. 30 November 2006, pp. 8, 11, 23; Witness BLC confirmed the presence of clergy (See for example T. 4 December 2006, p. 36; T. 7 December 2006, pp. 5, 36, 38); Witness CSF said that priests were abducted from St. Léon Minor Seminary (See for example T. 13 February 2007, p. 6); Witness CCH saw some priests at St. Léon Minor Seminary (See for example T. 13 February 2007, pp. 63-64).

<sup>511</sup> T. 30 November 2006, p. 9.

<sup>512</sup> T. 30 November 2007, pp. 11-12.

<sup>513</sup> T. 30 November 2007, pp. 9-11, 15-16.

<sup>514</sup> T. 30 November 2006, pp. 3, 6, 9.

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pregnancy at the time,<sup>515</sup> the prevailing desperate living conditions at the Seminary,<sup>516</sup> the passage of time since the occurrence of the events, and the fact that the witness has not returned to the St. Léon Minor Seminary since 1994. The Chamber also finds that no motive has been established to support a finding that Witness CSG provided false testimony to implicate Rukundo in the events at the St. Léon Minor Seminary. The mere fact that Witness CSG is a member of *Ibuka* is not a sufficient basis to raise doubts about her credibility. The Chamber also notes that Witness CSG did not know Rukundo before 1994.<sup>517</sup> The Chamber considers Witness CSG to be a witness who endeavoured to provide a truthful account of the incidents at the St. Léon Minor Seminary. Nevertheless, because of the above-mentioned issues, the Chamber will rely upon her evidence only if she corroborates other reliable evidence or if other reliable evidence corroborates her account of the events.

350. The Chamber finds that the testimony of Witness CSG corroborates material aspects of the evidence presented by Witness CSF. According to Witness CSG, Rukundo visited the St. Léon Minor Seminary on “numerous occasions”, sometimes twice a day during April and May 1994.<sup>518</sup> While Witness CSF testified that he saw the Accused at the Seminary on only four occasions, other visits, attested to by Witness CSG, are not to be excluded. Witness CSG may have witnessed visits by Rukundo, which Witness CSF did not. Witness CSG also confirms that Rukundo visited the St. Léon Minor Seminary in the company of soldiers and *Interahamwe*. Witness CSG further corroborates Witness CSF’s evidence that a list was used to identify the refugees. Witness CSG corroborates Witness CSF that Rukundo would walk around the camp before the refugees were abducted from the Seminary.<sup>519</sup> Witness CSG testified that Rukundo “always” came with an escort,<sup>520</sup> which corresponds with Witness CSF’s testimony that Rukundo handed over a list to a soldier escorting him. According to Witness CSG, Rukundo used a list to identify the refugees. Again, this slightly differs from Witness CSF’s evidence, who said that Rukundo gave a list of refugees to a soldier on each visit before he left the Seminary, following which the soldier identified the refugees from the list. However, the Chamber does not find this perceived variation to be significant. Both witnesses confirm that Rukundo came with a list that was subsequently used to identify the refugees. Most importantly, the Chamber notes that Witness CSG corroborates Witness

<sup>515</sup> T. 30 November 2007, p. 15.

<sup>516</sup> T. 30 November 2006, pp. 4, 11, 17.

<sup>517</sup> T. 30 November 2006, pp. 12-13.

<sup>518</sup> T. 30 November 2006, pp. 5, 21-22.

<sup>519</sup> T. 30 November 2006, pp. 4-6.

<sup>520</sup> T. 30 November 2006, p. 5.



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CSF's evidence that, after identifying the refugees, Rukundo left the St. Léon Minor Seminary and shortly afterwards, the refugees were abducted.

351. According to Witness CSG, the abductions were carried out by *Interahamwe*, whereas Witness CSF testified that it was done by soldiers and *Interahamwe*. The Chamber accepts Witness CSF's explanation that it was difficult to distinguish between soldiers and *Interahamwe* because the *Interahamwe* wore old military uniforms and only their shoes were different.<sup>521</sup> On the basis of the totality of the evidence, the Chamber is satisfied that both soldiers and *Interahamwe* were involved in the abductions. Witness CSG also mentioned that when the *Interahamwe* came to the St. Léon Minor Seminary they were singing.<sup>522</sup> Furthermore, Witness CSG stated that when the Accused came to the St. Léon Minor Seminary, the refugees screamed "You have to flee because Emmanuel Rukundo [is] coming."<sup>523</sup>

352. The Defence submits that Witnesses CSF and CSG are the only witnesses to testify that there were no Hutu refugees from Nyacyonga at the St. Léon Minor Seminary, and that they did not see any communal policemen guarding the gate at the St. Léon Minor Seminary.<sup>524</sup> Concerning the Hutu refugees from Nyacyonga, the Chamber notes that several witnesses stated that Hutu refugees from Nyacyonga had also sought shelter at the Seminary.<sup>525</sup> A review of the transcript reveals that Witness CSF was asked by Counsel for Defence whether he had heard about the "displaced persons from Nyacyonga in upper Kigali." To this question, Witness CSF replied that he was not "aware" of those people. When then asked whether displaced persons from Nyacyonga had found refuge at the St. Léon Minor Seminary, the Witness replied that he did not see any.<sup>526</sup> Contrary to the Defence submission, Witness CSF never claimed that there were no Hutu refugees at the St. Léon Minor Seminary; he merely said that he did not see them.

353. The Chamber notes that Hutu refugees from Nyacyonga were housed in one of the buildings belonging to the St. Léon Minor Seminary whereas the Tutsi refugees were located in a large open courtyard in the Seminary.<sup>527</sup> Given that Hutu and Tutsi refugees were allocated different locations within the St. Léon Minor Seminary, it is understandable that neither Witness CSF nor Witness CSG saw the Nyacyonga Hutu refugees.

<sup>521</sup> T. 13 February 2007, p. 19.

<sup>522</sup> T. 30 November 2006, p. 21.

<sup>523</sup> T. 30 November 2007, pp. 4, 24.

<sup>524</sup> Defence Closing Brief, paras. 865, 970.

<sup>525</sup> Witnesses BLC and CCG confirmed the presence of Hutu refugees from Nyacyonga (T. 4 December 2006, pp. 12, 34-35 (BLC); T. 15 February 2007, p. 32 (CCG)).

<sup>526</sup> T. 13 February 2007, p. 11.

<sup>527</sup> Witness BLC (T. 4 December 2006, pp. 12-14, 36).

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354. The Defence further points out an inconsistency in the evidence of Witnesses CSF and CSG concerning the guards at the entrance to the Seminary.<sup>528</sup> Witness CSF claimed that the gate of the St. Léon Minor Seminary was not guarded, whilst Witness CSG testified that it was guarded by both soldiers and *Interahamwe*.<sup>529</sup> In the Chamber's view, this is a minor discrepancy that can be explained by an examination of the evidence presented by both witnesses.

355. Witness CSF attested to leaving the St. Léon Minor Seminary only on one occasion, when he followed the abducted refugees after Rukundo visited on 20 or 21 April 1994.<sup>530</sup> It was on this occasion when venturing outside of the Seminary that Witness CSF denied seeing any guards at the entrance to the St. Léon Minor Seminary.

356. Witness CSG specified that *Interahamwe* were posted as guards at the entrance to the St. Léon Minor Seminary after the arrival of a large number of refugees. She further stated that the *Interahamwe* intercepted and killed anyone who attempted to leave the Seminary. To the extent that the *Interahamwe*, who gathered at the entrance to the St. Léon Minor Seminary, were involved in the abductions of refugees, it is understandable that Witness CSG would perceive them as "guarding" the gate. When asked whether she saw two communal policemen at the entrance to the Seminary, the witness stated that she only recalled seeing many soldiers, who rotated shifts.<sup>531</sup> In view of her background, as well as the tense situation of the refugees at the Seminary, it is understandable that Witness CSG did not distinguish between communal policemen, soldiers and *Interahamwe* wearing military uniforms.

357. Witness BLC, whom the Chamber has already found to be a credible witness in respect of the events alleged at St. Joseph's College,<sup>532</sup> testified that Rukundo, accompanied by soldiers, visited the St. Léon Minor Seminary "frequently" and that refugees were abducted on each occasion.<sup>533</sup> Although Witness BLC stated that the abductions occurred in the evening or at night, his evidence largely corroborates the pattern established by the evidence of Witnesses CSF and CSG: that abductions of refugees occurred after Rukundo's visits to the Seminary. Witness BLC specifically referred to the abduction and fatal stabbing of seminarians' parents at night, as well as the abduction of Merci, a lecturer at the Seminary, who was killed outside the St. Léon Minor

<sup>528</sup> Defence Closing Brief, para. 874. Witnesses BLC (T. 4 December 2006, p. 38) and CCG (T. 15 February 2007, pp. 31-32) saw two communal policemen guarding the Seminary entrance.

<sup>529</sup> T. 13 February 2007, p. 43 (CSF); T. 30 November, 2006, p. 21 (CSG).

<sup>530</sup> T. 13 February 2007, p. 11.

<sup>531</sup> T. 30 November 2006, p. 21.

<sup>532</sup> See Section III.4.c.

<sup>533</sup> T. 4 December 2006, p. 15.

Seminary.<sup>534</sup> In this regard, the Chamber notes that Witness BLC stayed inside the Seminary buildings and near the administrative buildings during the day while Witnesses CSF and CSG were in the courtyard. Therefore, Witness BLC had a different vantage point. Witness BLC stated that the pattern of abductions became so regular that everyone knew that people would be taken away after Rukundo's visits to the Seminary. This is consistent with Witness CSF's testimony that the refugees resisted the abduction when Rukundo visited for the second time and with Witness CSG's testimony that the refugees were afraid when Rukundo came to the St. Léon Minor Seminary. Witness BLC confirmed that those abducted were Tutsi.

358. In addition to the aforementioned, the Chamber notes a similar pattern between the first abduction from the St. Léon Minor Seminary, as described by Witness CSF, and the abduction of Madame Rudahunga, two of her children and two other Tutsi civilians,<sup>535</sup> which occurred during the same time period in April 1994. In both abductions, the victims were specifically identified, sought after, brought to the entrances of the respective locations and loaded onto vehicles. On both occasions, a Toyota pick-up was used to transport the victims.

359. Defence Witness SLA, a priest, resided at the St. Léon Minor Seminary in April and May 1994. He confirmed that Rukundo visited the Seminary on at least two occasions during this period. However, he asserted that *sous-préfet* Misago was responsible for the fate of those Tutsi refugees. Witness SLA admitted that he was away from the St. Léon Minor Seminary for parts of each day, assisting refugees in another location in Kabgayi. The Chamber finds that, because of his frequent absences from the St. Léon Minor Seminary, when Rukundo was alleged to have participated in the abduction and subsequent killing of refugees, Witness SLA's testimony does not discredit the Prosecution's evidence about Rukundo's involvement in these crimes.

360. The Chamber has also considered the evidence of Witness SLD, who testified that he did not see Rukundo at the St. Léon Minor Seminary, where the witness had sought shelter for three weeks in April and May 1994. Witness SLD admitted that for the greater part of the three-week period, he hid in the banana plantations behind the St. Léon Minor Seminary and that he did not visit the courtyard or the entrance of the Seminary. The witness also stated that was not aware of what occurred at the St. Léon Minor Seminary during the day. The Chamber notes that the testimony of this witness in relation to Rukundo's involvement in the abduction and killing of Tutsi refugees is largely based on his assertion that he did not see the Accused. While the Chamber has no reason to disbelieve Witness SLD, it does not find that he has sufficient knowledge of the events

<sup>534</sup> T. 4 December 2006, pp. 18-20; T. 8 December 2006, pp. 16, 20.



which occurred at the St. Léon Minor Seminary for the Chamber to make any findings concerning Rukundo's activities at the Seminary. 0600

361. Based on Witness CSF's testimony, corroborated by the evidence of Witness CSG and Witness BLC, the Chamber finds that the Prosecution has established beyond reasonable doubt that, on at least four occasions during April and May 1994, Rukundo visited the St. Léon Minor Seminary, accompanied by soldiers and *Interahamwe*. At the Seminary, Rukundo identified Tutsi refugees with a list and then left the Seminary. Shortly after Rukundo's departure, those refugees who had been identified were abducted from the Seminary.

362. The Chamber is satisfied that the abductions from the St. Léon Minor Seminary resulted in the death of those who were abducted. The Appeals Chamber has held it to be a fact of common knowledge that widespread killings occurred against the Tutsi population in Rwanda in 1994.<sup>536</sup> In the present case, there is overwhelming evidence before the Chamber that Tutsi refugees were targeted and killed in Gitarama *préfecture* and in Kabgayi in April and May 1994.<sup>537</sup> Witnesses CSF, CSG and BLC all testified that those abducted from the St. Léon Minor Seminary were never seen again. Witness CSF testified that the *Interahamwe*, who had abducted the refugees, returned to the St. Léon Minor Seminary and sang songs in which they boasted about killing the refugees.<sup>538</sup> Witness BLC testified that the refugees abducted from the Seminary were usually killed outside the premises. He provided hearsay evidence of the abduction of the parents of seminarians. They were then killed by being stabbed through the ribs. He also described the abduction of Merci, a lecturer at the St. Léon Minor Seminary, who was killed outside the Seminary. Witness CCH testified that, sometime in the month of May 1994, her brother was taken away from the St. Léon Minor Seminary in a vehicle and never returned.<sup>539</sup> She also testified that she saw men wearing communal police uniforms, take and kill refugees from the Seminary.<sup>540</sup> Defence Witness SLA confirmed that refugees were abducted from the St. Léon Minor Seminary and killed.<sup>541</sup> Defence Witness SLD provided hearsay evidence about the abduction of Tutsi refugees from the St. Léon Minor Seminary by a group of people known as the "Zulus".<sup>542</sup>

<sup>535</sup> See Section III.4.c.

<sup>536</sup> *Karemara et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), para. 35.

<sup>537</sup> See Witnesses BLC, BLJ, BCD, BUW, CCH, CSF, SLA, SLD, AMA, CSE, CNB, CNC, CSH BLP, CSG, Emmanuel Rukundo. See also the events at the CND (Section III.8) and at the Kabgayi Major Seminary (Section III.9).

<sup>538</sup> T. 13 February 2007 p. 6.

<sup>539</sup> T. 13 February 2007, pp. 56, 62.

<sup>540</sup> T. 13 February 2007, pp. 65-66.

<sup>541</sup> T. 1 October 2007, pp. 20-22, 40.

<sup>542</sup> T. 16 October 2007, pp. 4-8.

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363. In light of the general context of systematic targeting and killing of Tutsi in Gitarama, the overwhelming evidence of abductions and killings of Tutsi from various places in Kabgayi, the observations by Witnesses CSF, CSG, BLC, CCH, SLA and SLD that the refugees were never seen again and the evidence that the *Interahamwe*, who abducted the refugees, returned to the Minor Seminary singing and boasting about the killing of the refugees, the Chamber finds that the only reasonable inference<sup>543</sup> to be drawn from this evidence is that those abducted from the St. Léon Minor Seminary were killed.

364. Based on the aforementioned, the Chamber finds that the Prosecution has established beyond reasonable doubt that, on at least four occasions during April and May 1994, Rukundo visited the St. Léon Minor Seminary, accompanied by soldiers and *Interahamwe*. At the Seminary, Rukundo identified Tutsi refugees with a list and then left the Seminary. Shortly after Rukundo's departure, those refugees who had been identified were taken from the Seminary by soldiers and *Interahamwe* to an unknown location, where they were killed.

(iv) Allegation: Sexual Assault on a Young Tutsi Woman at the St. Léon Minor Seminary

a. Evidence

*Prosecution Witness CCH*

365. The Chamber has previously considered Witness CCH's evidence in relation to the incident at St. Joseph's College and the abduction and killing of Tutsi refugees at the St. Léon Minor Seminary.<sup>544</sup> Witness CCH testified that she knew Rukundo from 1991 when she attended his ordination ceremony. Witness CCH, a Tutsi, further testified that she took refuge at the St. Léon Minor Seminary in Kabgayi in mid-May 1994 when she was 21 years old. About one week after her arrival, she saw the Accused arrive in a small white vehicle, dressed in military uniform and carrying a rifle, accompanied by an armed soldier.<sup>545</sup> Witness CCH greeted Rukundo, introduced herself and asked him if he could hide her. Rukundo responded that he could not help her because her entire family had to be killed, since her relative was an *Inyenzi*.<sup>546</sup> This conversation occurred

<sup>543</sup> The Chamber can only rely on that fact for a finding of guilt if the inference drawn was the only reasonable one that could be drawn from the evidence presented (*Kayishema and Ruzindana*, Judgement (AC), para. 159; *Krstić*, Judgement (AC), para 34; *Stakić*, Judgement (AC), para. 219; *Čelebići*, Judgement (AC), para. 458).

<sup>544</sup> See Sections III.4.c and III.7.c.iii.

<sup>545</sup> T. 13 February 2007, pp. 55-56; T. 14 February 2007, pp. 5, 18.

<sup>546</sup> T. 13 February 2007, pp. 56-58.

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near Rukundo's vehicle.<sup>547</sup> Witness CCH thought that perhaps she could hide in Rukundo's vehicle because military vehicles never got stopped.<sup>548</sup>

366. Witness CCH testified that Rukundo removed a carton and a plastic bag from his vehicle, and Witness CCH assisted him to bring these things to a small room, which he opened with a key. Witness CCH explained that she had assisted Rukundo, in the hope that he would change his mind and save her by hiding her. In the room, there was a bed with a mattress and a small table near the bed. They both entered the room, and Rukundo opened a bottle of Primus beer, took a sip and then gave the bottle to Witness CCH. Rukundo then locked the door with the key. Witness CCH said that she became afraid after he locked the door, but tried not to show her fear. Rukundo asked her to sit down on the bed. She gave him the bottle of beer, which he put on the table, and then he began to caress her. She explained that she shared the beer with him because she thought this was his way of saying "thanks" to her for helping him. She also wished to show her appreciation and acknowledge his position of power and authority. Witness CCH said that Rukundo forced her to lie on the bed, opened the zipper of his trousers and lay on top of her. Witness CCH did not consent to lying on the bed. At some point, Witness CCH said that Rukundo put his pistol on the table next to the bed. He tried to force Witness CCH to remove her rose-coloured skirt. Although she resisted, he pulled it down. He caressed her hair without speaking, kissed her, but never actually touched her vagina. Witness CCH asked Rukundo what she should do if she became pregnant and did not die, and he responded that he was only asking her to allow them to make love.<sup>549</sup> She told Rukundo that she could not have sexual intercourse with him, and he told her that if she would, he would never forget her. Rukundo tried to spread her legs, but when she continued to resist, Rukundo gave up trying to have sexual intercourse. He lay on top of her, continued to rub himself against her body, squeezed her tightly in his arms until she felt him shake or shiver and then lose his erection. Rukundo told Witness CCH that he was very tired. She had the impression that he had spent the night at the front.<sup>550</sup> After this, Witness CCH testified that Rukundo let go of her, took the bottle of beer, sipped it, gave it to Witness CCH who sipped it, and then they left the room. Rukundo said goodbye to Witness CCH and told her that he might be back again another time.<sup>551</sup> Witness CCH knew that Rukundo was a Catholic priest at the time of the incident. She felt that ultimately, Rukundo took advantage of her position of weakness by trying to have sexual intercourse with her and by trying to

<sup>547</sup> T. 14 February 2007, p. 7.

<sup>548</sup> T. 14 February 2007, pp. 9-10.

<sup>549</sup> T. 13 February 2007, pp. 59-61; T. 14 February 2007, pp. 11, 13-14.

<sup>550</sup> T. 13 February 2007, pp. 59-60; T. 14 February 2007, pp. 17-18.

<sup>551</sup> T. 13 February 2007, p. 60; T. 14 February 2007, pp. 14, 18.

dishonour her. She said that she never consented to the sexual actions, or that she ever reacted in a way that might give him the impression of consent.<sup>552</sup>

367. In cross-examination, Witness CCH further explained that she introduced herself to Rukundo, even though she had known him for a long time, because she was now grown up and was dirty after not having bathed for a long time. After entering the room with Rukundo, Witness CCH said that she could not have left, since he had just given her a beer and she had gone for a while without eating. Furthermore he had a gun and could easily have found her. She never realized that he could do something to her. Witness CCH stated that she became afraid of Rukundo only when he locked the door with the key. She further testified that she could not have escaped because he was on top of her and holding her down with his arms. She did not talk about the incident with her family or anyone else. She maintained that it was possible for a man to ejaculate simply by caressing a woman's head. Witness CCH stated that she was 21 years old at the time and was not yet sexually active. Witness CCH denied that she concocted the story of Rukundo's sexual assault because, according to some people, Rukundo was responsible for the death of her relative.<sup>553</sup>

#### *The Accused*

368. Rukundo admitted visiting the St. Léon Minor Seminary on 15 and 21 April and on 21 May 1994. Rukundo denied meeting Witness CCH at the St. Léon Minor Seminary on those days, although after the war, he heard that she and her family had taken refuge there. On 21 May 1994, he said that he stored his property in a store room for priests at the Minor Seminary, located next to the kitchen, and that the bursar held the key to the store room. He maintained that he had no access to any room at the Seminary since he was not a resident. If he wanted access to a room, he would have needed a key from the bursar.<sup>554</sup>

369. Rukundo testified that he knew Witness CCH before the war, but maintained that he never saw her between April and June 1994 or up until she came to testify. He was therefore not in a position to make any sexual advances upon her, contrary to her testimony. He added that perhaps Witness CCH came to testify to seek revenge for stories she might have read alleging Rukundo's involvement in the death of one of her relatives.<sup>555</sup> He denied that his counsel's questions to

<sup>552</sup> T. 13 February 2007, pp. 60-61; T. 14 February 2007, p. 22.

<sup>553</sup> T. 14 February 2007, pp. 6, 12-15, 18-21.

<sup>554</sup> T. 9 October 2007, pp. 36-37, 40, 47.

<sup>555</sup> T. 9 October 2007, pp. 47-48.

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Witness CCH regarding her consent to the sexual assault incident implied that the incident was true.<sup>556</sup>

*Defence Witness SLA*

370. The Chamber has previously considered Witness SLA's evidence in relation to the incident at St. Joseph's College and the abduction and killing of Tutsi refugees at the St. Léon Minor Seminary.

371. Witness SLA was a seminarian with Rukundo at the Nyakibanda Major Seminary.<sup>557</sup> He worked with the refugees at the St. Léon Minor Seminary starting in April 1994.<sup>558</sup> He saw Rukundo at the St. Léon Minor Seminary twice during the time between mid-April and mid-May 1994. Witness SLA confirmed that Rukundo was given a small room at the Minor Seminary, which was used as a store, to keep his belongings. The room was close to the refectory behind the hall where the community watched films. Witness SLA never opened the room and did not know what belongings were stored there. He confirmed that in April and May 1994 Rukundo never slept at the Minor Seminary and that he never saw Rukundo open the room where his belongings were kept when he saw him at the Minor Seminary.<sup>559</sup>

b. Deliberations

372. The Indictment alleges that, on or about 15 May 1994, at the St. Léon Minor Seminary, Rukundo took a young Tutsi woman into his room, locked the door and sexually assaulted her, therefore causing her serious mental harm. Witness CCH, the alleged victim, is the only witness who testified in support of the Prosecution's case. Rukundo denied the allegation.


373. Witness CCH's testimony is that, in the later part of May 1994, Rukundo came to the St. Léon Minor Seminary. Witness CCH greeted Rukundo, introduced herself and asked him if he could hide her. Rukundo responded that he could not help her. He said that her entire family had to be killed because her relative was an *Inyenzi*.<sup>560</sup> Nevertheless, Witness CCH assisted him in carrying some items to his room, in the hope that he would change his mind and hide her. While in the room, Rukundo locked the door, placed his pistol on the table next to the bed and began to caress the witness. He forced her onto the bed, opened the zipper on his trousers and lay on top of

<sup>556</sup> T. 11 October 2007, pp. 26-28.

<sup>557</sup> T. 1 October 2007, p. 2.

<sup>558</sup> T. 1 October 2007, pp. 12, 14.

<sup>559</sup> T. 1 October 2007, p. 32.



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her. He tried to spread her legs and have sexual intercourse, but she resisted. Following Witness CCH's continued resistance, Rukundo gave up trying to have intercourse, but rubbed himself against her until he ejaculated. Witness CCH said that she could not escape since he was on top of her, holding her down. He was also in a position of authority and had a gun.<sup>561</sup>

374. Rukundo admitted to visiting the St. Léon Minor Seminary on 21 May 1994, but maintained that he did not see Witness CCH. He further stated that he had no access to any room at the Seminary since he was not a resident. If he wanted access to a room, he would have needed to obtain a key from the bursar.<sup>562</sup>

375. The Defence argues that since Witness CCH is the only person to allege sexual assault by Rukundo, her story should not be believed. The Defence further claims that the witness has a motive to make false allegations against the Accused because she believes that Rukundo is responsible for the death of one of her relatives.<sup>563</sup> The Defence argues that Witness CCH's testimony is improbable and that, even if believed, the elements of the alleged crime have not been established.<sup>564</sup>

376. Witness CCH denied the proposition that she had made up the allegation of sexual assault to avenge the death of her relative. Witness CCH stated that she did not attribute her relative's death to Rukundo and she did not hear that Rukundo may have been responsible for the death, although she knew Rukundo wanted that relative dead. Witness CCH confirmed that she never told anyone of the incident because, as a young girl, one could not report an attempted rape, especially to a close relative.<sup>565</sup>

377. The Chamber finds Witness CCH to be a credible witness and believes her evidence. This conclusion is supported by her consistent and detailed evidence, by the Accused's admission that he visited the St. Léon Minor Seminary on 21 May 1994<sup>566</sup> and by Witness SLA's confirmation of the existence of a small room at the Seminary where Rukundo kept his belongings.<sup>567</sup>

378. Finally, the Chamber finds that the allegation that Witness CCH had a motive to give false testimony against the Accused in respect of the sexual assault is not tenable. The Chamber notes, in

<sup>560</sup> T. 13 February 2007, pp. 56-58.

<sup>561</sup> T. 13 February 2007, pp. 59-61; T. 14 February 2007, pp. 10-11, 13-14, 18.

<sup>562</sup> T. 9 October 2007, p. 47.

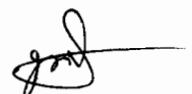
<sup>563</sup> Defence Closing Brief, paras. 1014-1017, 1059-1062.

<sup>564</sup> Defence Closing Brief, paras. 1017, 1058.

<sup>565</sup> T. 14 February 2007, pp. 15, 21.

<sup>566</sup> T. 9 October 2007, p. 47.

<sup>567</sup> T. 1 October 2007, p. 32.



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particular, that the witness only testified that Rukundo attempted to have sexual intercourse with her, rubbed himself against her but did not touch her vagina. She could very well have testified that Rukundo had raped her, but she did not. She could have done so under the witness protection scheme, affording her a pseudonym and protection from public view. In light of the foregoing, the Chamber finds that Rukundo assaulted Witness CCH, as described in her testimony.

379. The Chamber recalls that rape and sexual violence “constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such.”<sup>568</sup> Sexual violence was broadly defined in *Akayesu* as “...any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.”<sup>569</sup> In order for the act of sexual violence to constitute genocide pursuant to Article 2(2)(b) of the Statute, it must have caused serious bodily or mental harm to members of the group.<sup>570</sup>

380. From the evidence adduced in this case, the Chamber considers it proper to proceed as follows. First, the Chamber will determine whether the act in question was of a sexual nature. Second, the Chamber will determine whether there existed coercive circumstances. Third, the Chamber will determine whether the act, if sexual and committed under coercive circumstances, caused Witness CCH serious mental harm, as alleged by the Prosecution.

i. Was the Act of a Sexual Nature?

381. The actions in question were clearly of a sexual nature: Rukundo forced sexual contact with her by opening the zipper of his trousers, trying to remove her skirt, forcefully lying on top of her and caressing and rubbing himself against her until he ejaculated and lost his erection. Rukundo’s actions and words, such as telling her that if she made love with him he would never forget her, support the Chamber’s finding that his actions were of a sexual nature.

<sup>568</sup> *Akayesu*, Judgement (TC), para. 731.

<sup>569</sup> *Akayesu*, Judgement (TC), para. 688.

<sup>570</sup> *Akayesu*, Judgement (TC), paras. 688, 734.



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ii. Were there coercive circumstances?

382. In *Akayesu*, the Trial Chamber stated that,

“... coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or the military presence of *Interahamwe* among refugee Tutsi women at the bureau communal.”<sup>571</sup>

383. When it was put to Witness CCH in cross-examination that Rukundo did not use any threat or force to convince her to have sexual intercourse with him, she replied that “[y]ou don’t need to use a gun to threaten somebody. He definitely did not point his gun at me. But, remember that he’s the one who pushed me to the bed, and he took into account the weakness -- the weak point from which I was. That was also a disguised threat ...”<sup>572</sup> She further testified that she drank a beer with Rukundo to acknowledge his position of authority and that she ultimately thought he was taking advantage of his position.<sup>573</sup>

384. The Chamber notes that Witness CCH testified that the situation surrounding the Tutsi refugees at the St. Léon Minor Seminary from April until June 1994 was dangerous.<sup>574</sup> Other witnesses testified that many Tutsi refugees were regularly abducted from the St. Léon Minor Seminary and killed.<sup>575</sup> Witness CCH further testified that, fearing for her life, she implored the Accused to hide her. Rukundo compounded her fear by indicating that she and her family must be killed because her relative was an *Inyenzi*. At all material times, Rukundo was armed with a gun. After Witness CCH assisted Rukundo to bring some of his belongings to a small room, he locked her inside the room alone with him; and, placing a pistol on a nearby table, he proceeded to force himself upon her, while she struggled to free herself from his control. The Chamber finds that these events, taken together, clearly constitute coercive circumstances.

385. The Appeals Chamber has also stated that the element of non-consent in the crime of rape [or sexual violence] can be proved beyond reasonable doubt when the Prosecution demonstrates the existence of coercive circumstances under which meaningful consent is not possible. A Trial Chamber, however, is still entitled to admit evidence under certain special circumstances that the

<sup>571</sup> *Akayesu*, Judgement (TC), para. 688.

<sup>572</sup> T. 14 February 2007, p. 20.

<sup>573</sup> T. 13 February 2007, p. 61.

<sup>574</sup> T. 13 February 2007, pp. 66-67.

<sup>575</sup> See Witnesses CSF, CSG, BLC, SLA, SLD, *supra*.





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victim specifically consented.<sup>576</sup> Although the Defence denied that Witness CCH's consent of sexual assault was in issue, in cross-examination, questions were put to her by Defence Counsel regarding the possible interpretation of her behaviour as consent.<sup>577</sup> After examining the evidence, the Chamber concludes that the coercive circumstances, as found above, indeed vitiated Witness CCH's ability to consent to the sexual assault in question.

iii. Did Witness CCH suffer serious mental harm?

386. The Chamber has already expressed the general standard required to find serious mental harm with regards to the allegation at the Bishopric. Although the mental harm suffered must be more than a minor or temporary impairment of mental faculties, it need not be permanent or irremediable.<sup>578</sup> Additionally, the Trial Chamber in *Kamuhanda* stated that serious mental harm could be found when there is a non-mortal act, such as sexual assault, combined with the threat of death.<sup>579</sup> It has further been held that "rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even [...] one of the worst ways of inflicting harm on the victim as he or she suffers both bodily and mental harm."<sup>580</sup>

387. The evidence of Witness CCH, which the Chamber has accepted, describes a young Tutsi woman fearing for her life and seeking protection from a member of the clergy, known to her, who was in a position of authority. Instead of providing protection, Rukundo abused Witness CCH by sexually assaulting her under coercive circumstances.

388. The Chamber acknowledges that it has not had the benefit of any direct evidence on Witness CCH's mental state, following the sexual assault, apart from her testimony that she could not tell anyone about the incident. The Chamber, however, recalls that it may draw inferences from the evidence presented. The Chamber finds it necessary to look beyond the sexual act in question and finds it particularly important to consider the highly charged, oppressive and other circumstances surrounding the sexual assault on Witness CCH. The Chamber notes in particular the following circumstances:

- 1) Members of her ethnic group were victims of mass killings;

<sup>576</sup> *Gacumbitsi*, Judgement (AC), paras. 155-157.

<sup>577</sup> T. 11 October 2007, pp. 26-28; T. 14 February 2007, pp. 17-20.

<sup>578</sup> *Rutaganda*, Judgement (TC), para. 50; See also *Brđanin*, Judgement (TC), para. 690; *Seromba*, Judgement (AC), para. 46.

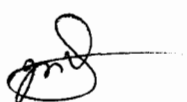
<sup>579</sup> *Kamuhanda*, Judgement (TC), para. 634.

<sup>580</sup> *Akayesu*, Judgement (TC), para. 731.

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- 2) She and her family, fearing death in this way, sought refuge in a religious institution;
- 3) Upon seeing a familiar and trusted person of authority and of the church, *i.e.* the Accused, she requested protection for herself;
- 4) When the Accused refused her the protection she had requested, he specifically threatened her— that her family was to be killed for its association with the “*Inyenzi*”;
- 5) Rukundo had a firearm;
- 6) Still hoping to be protected, Witness CCH sought to ingratiate herself to Rukundo by assisting him to carry his effects into a nearby room;
- 7) The Accused locked her in the room with him, put his firearm down nearby and proceeded to physically manhandle her in a sexual way; and
- 8) At the time of the incident, Witness CCH was sexually inexperienced.

389. In light of the established jurisprudence and the totality of the evidence, in particular the surrounding circumstances of the sexual assault, the Chamber finds, Judge Park dissenting, that the only reasonable conclusion is that Witness CCH suffered serious mental harm as a consequence of Rukundo’s actions.



8. EVENTS AT THE CND

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(a) Indictment

390. Paragraphs 11 and 15 of the Indictment read as follows:

During the months of April and May 1994, **Emmanuel RUKUNDO** went regularly to the Saint Léon Minor Seminary at Kabgayi and to the place named TRAFIPRO, otherwise called CND, as he hunted for Tutsis to kill. **Emmanuel RUKUNDO** was dressed in military uniform, armed and had a military escort, and was often accompanied by other soldiers and the *Interahamwe* who committed killings of Tutsis at these two locations. His particular actions are described in paragraphs 12, 13, 14 and 15 below.

During the months of April and May 1994, **Emmanuel RUKUNDO** went several times to a place in Kabgayi named "TRAFIPRO", or otherwise called "CND", to kill Tutsis. On some of these occasions, he was seen in the company of authorities, including Prime Minister Jean KAMBANDA, Bishop Thaddée NSENGIYUMVA of Kabgayi, and others unknown to the Prosecutor. Very soon after each of these visits, soldiers and *Interahamwe* militiamen, as ordered, instigated, or aided and abetted by **Emmanuel RUKUNDO**, came back to the CND and killed several Tutsi refugees, and took away other Tutsi refugees and killed or inflicted serious bodily or mental harm upon them.

(b) Evidence*Prosecution Witness AMA*

391. Witness AMA arrived in Kabgayi on 14 April 1994 and stayed there until 2 June 1994. In Kabgayi, Witness AMA sought refuge at the CND,<sup>581</sup> and also at Kagwa.<sup>582</sup>

392. Witness AMA stated that when he arrived in Kabgayi, he was sent to the CND by soldiers on patrol. Witness AMA estimated that there were about 17,000 refugees at the CND which covered an area about 200 meters long and 100 meters wide. On the other side of the CND building, there was a forest and a river in the valley down below the CND. The CND compound was surrounded by a fence constructed out of barbed wire and wooden planks about one and a half metres high.<sup>583</sup>

393. Witness AMA stated that he arrived at the CND with members of his family including his three older brothers, two younger brothers, five nephews, two sisters, and his father. Subsequently, other members of his family sought refuge at the CND. Witness AMA claimed to have been among the first group of refugees to arrive at the CND. His group arrived at night and they spent the night

<sup>581</sup> The CND is also known as TRAFIPRO. For the purposes of consistency, this judgement will only refer to that location as the CND.

<sup>582</sup> T. 27 February 2007, p. 2.

<sup>583</sup> T. 27 February 2007, pp. 2-3, 19-20.

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outside. The following day, when his group attempted to settle inside the CND building, they discovered that other groups of refugees had arrived earlier and had already occupied the building. Witness AMA stated that it was impossible for everyone to be sheltered inside the building so only the women and children stayed inside while the men slept in the courtyard.<sup>584</sup>

394. Witness AMA fell sick on the third day after his arrival at the CND and remained ill for about ten days. Witness AMA later explained in cross-examination that he did not go to the hospital but was looked after by people at the CND who gave him medication. Over that ten day period, Witness AMA stayed in the courtyard of the CND. Witness AMA stated that around 20 May 1994, after he had recovered, he started sitting in the area close to the gate in the sun.<sup>585</sup>

395. Witness AMA testified that between 25 and 30 May 1994, Rukundo arrived at the CND in the company of six soldiers. Some soldiers were with him in a truck, while the other soldiers were in a blue minibus. A total of seven soldiers alighted from the vehicles. All of the soldiers, including Rukundo, wore greenish camouflage uniform. Four of the soldiers were carrying firearms, but Rukundo had left his firearm in the vehicle.<sup>586</sup>

396. Witness AMA stated that he had never seen Rukundo before 25 May 1994. However the refugees from Rukundo's native region, pointed him out to Witness AMA. They explained that he was wearing a camouflage uniform with a cross on the epaulette because he was a military chaplain. Witness AMA testified that Rukundo came towards the gate and told the refugees not to be afraid, saying, "I am Father Rukundo and I have come to bring you food supplies." He said that it was his duty to provide the refugees with food. Rukundo also told the refugees, "If anyone attacks you, you must defend yourself. You must scream and shout in order to alert us." Witness AMA was less than one metre away from Rukundo at this time. Witness AMA added that Rukundo was outside the fence surrounding the CND compound, while he was inside the fence.<sup>587</sup>

397. According to Witness AMA, sometime between 1.00 and 4.00 p.m., Rukundo pulled out a list from a bag he was carrying, and called out names of people who he wanted to take to an unspecified location to assist him in bringing food provisions to the refugees at the CND. Witness AMA explained that he was close enough to where Rukundo stood to see that the list which he held was typewritten. A total of about 15 people, whose names Rukundo had called, went out of the fenced compound to where he stood. When the 15 refugees were outside, Rukundo asked them

<sup>584</sup> T. 27 February 2007, p. 20.

<sup>585</sup> T. 27 February 2007, pp. 3, 21-22.

<sup>586</sup> T. 27 February 2007, pp. 3, 5, 25-27.

<sup>587</sup> T. 27 February 2007, pp. 4-5, 27.

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where the other refugees were whose names he had read from the list. He was told that only these 15 refugees had been found. The 15 refugees were then asked to board the awaiting minibus which was driven by a soldier. A young boy called Floraine, a man called Jovith Rukaka, and another man from Witness AMA's native region were among the refugees who left the CND with Rukundo and the soldiers. Witness AMA explained that the people whose names Rukundo called out, voluntarily emerged from the compound and boarded the minibus accompanied by five soldiers. Witness AMA further testified that the 15 refugees who were taken were mostly Tutsi men. He stated that he saw everything that happened on that day despite the fact that Rukundo was on the other side of the fence. He added that the fence was made of barbed wire and he could therefore see through it.<sup>588</sup>

398. The minibus left with the 15 refugees aboard. Rukundo left in the truck together with the soldier who had arrived with him. According to Witness AMA, the two vehicles left, one after the other, in the direction of the church. When the minibus arrived at the gate in front of the football field, Floraine was thrown out of the car into a pit while the minibus continued. Floraine spent the night in the pit and returned to the CND the following morning smeared with blood and with a head injury. Floraine told them that he was thrown into a pit containing dead bodies, and that the remaining refugees were taken away. Witness AMA testified that apart from Floraine, none of the refugees who had earlier left in the minibus from the CND were ever seen again. From their disappearance, Witness AMA inferred that they had been killed.<sup>589</sup>

399. Witness AMA further stated that he only saw Rukundo at the CND during the incident involving the refugees. Witness AMA did not discount the possibility that Rukundo might have come to the CND while he was ill or far from the entrance. Witness AMA stated that soldiers, including the ones who accompanied Rukundo during his visit to the CND, came and abducted girls and spent the night with them. However, the girls would return the following day. Witness AMA never saw Bishop Nsengiyumva, Jean Kambanda or any other figure of authority at the CND, but it was possible that they could have visited the CND without him knowing.<sup>590</sup>

400. Witness AMA was not afraid when he first saw Rukundo and the soldiers who accompanied him disembark from the vehicles or when Rukundo called out the names of the people on his list. He recalled that up until that point in time, no refugees at the CND had been abducted. Witness AMA did not know if others were suspicious of Rukundo's motives. According to Witness AMA, the refugees were reassured by what they perceived as Rukundo's desire to help them. Rukundo

<sup>588</sup> T. 27 February 2007, pp. 5-8, 23-24, 29, 38.

<sup>589</sup> T. 27 February 2007, pp. 6-8.

<sup>590</sup> T. 27 February 2007, pp. 8-9, 21.



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also advised them to protect themselves. It was only when they discovered that the refugees taken by Rukundo could not be accounted for, that they were concerned. At that point, Witness AMA also started to think that he might suffer the same fate.<sup>591</sup>

401. Witness AMA explained that when he left the CND, he joined the army up until 1996; he then he moved to Kigali where he prepared skewered meat until 1999. Thereafter, he left Kigali and went back to his village where he became involved in farming until he was arrested in 2000.<sup>592</sup>

*Prosecution Witness CSE*

402. The Chamber has already considered Witness CSE's testimony with regards to the allegation at the *Imprimerie de Kabgayi* roadblock.

403. Witness CSE stated that once he arrived at Kabgayi, he sought shelter in the building where catechism lessons were given and subsequently sought refuge at the CND. He testified that the CND building belonged to the Kabgayi diocese and that Emmanuel Rukundo was affiliated to the Kabgayi diocese. According to Witness CSE, the refugees at the CND were Tutsi who were fleeing massacres around the country.<sup>593</sup>

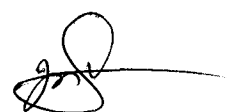
404. Witness CSE testified that he saw Rukundo at the CND while he was there. He was not certain about the number of times he had seen Rukundo at the CND but it was more than once. Witness CSE testified that Rukundo was dressed in the same military uniform as when he had previously seen him. Witness CSE testified that Rukundo was accompanied by Bishop Thaddée Nsengiyumva, Prime Minister Jean Kambanda, and other officials whose identity he did not know. According to Witness CSE, Rukundo and the officials did not do anything; they simply entered the building where the refugees were and then left the CND.<sup>594</sup>

405. Witness CSE testified that after each of Rukundo's visits to the CND, soldiers came to the CND and abducted refugees from the areas that Rukundo and his entourage had visited. Witness CSE stated that there was a period of two hours or less between Rukundo's visit to the CND and the subsequent abduction of the refugees by the soldiers. Witness CSE stated that the soldiers "knew what they were looking for" and they knew the place where they were supposed to abduct the refugees who had been earlier identified. Witness CSE explained that the soldiers who carried out the abduction were stationed in various locations in the Kabgayi diocese, including St. Kizito, the

<sup>591</sup> T. 27 February 2007, pp. 8, 25-28.

<sup>592</sup> T. 27 February 2007, p. 11.

<sup>593</sup> T. 17 November 2006, pp. 3, 6-7.



hospital and the Bishop's house. In cross-examination, Witness CSE stated that the abduction of refugees was not a frequent occurrence.<sup>595</sup>

406. Witness CSE stated that the refugees who were abducted from the CND did not return to the CND, and thus he concluded that they had been killed. Witness CSE did not know where the refugees were killed.<sup>596</sup>

407. Witness CSE further testified that the soldiers who were behind the CND building would climb over the fence and shoot into the crowd of refugees, killing people on the spot. The shootings by the soldiers were not aimed at any particular refugee. Witness CSE further stated that the soldiers would also shoot at any refugee who attempted to leave the CND. According to Witness CSE, these shootings never occurred when Rukundo was at the CND. At times, these soldiers came into the compound to confirm whether the refugees they shot were dead, and to kill more refugees. Witness CSE added that their goal was to exterminate the refugees who had sought sanctuary at the CND. The bodies of the dead refugees were never removed and as a result, the CND premises were littered with human corpses. Witness CSE testified that given the abundance of dead bodies at the CND, it is almost certain that Rukundo and the other dignitaries must have seen the corpses during their visits to the CND.<sup>597</sup>

408. Witness CSE testified that neither the Kabgayi diocese nor Rukundo assisted the refugees or stopped their abductions from the CND. In cross-examination, however, Witness CSE stated that the Kabgayi diocese brought and distributed food to the refugees at the CND and the refugees had access to the food provisions stored in the CND building. Moreover, Witness CSE stated that vehicles belonging to the Kabgayi diocese were used to bring them food provisions. Witness CSE stated that he never heard Rukundo or any of the other dignitaries who had accompanied him to the CND, condemn the atrocities that had been committed against the refugees at the CND.<sup>598</sup>

#### *The Accused*

409. Rukundo testified that he never visited the CND buildings between April and May 1994. According to Rukundo, CND is a nickname that must have been given to the buildings after the events in 1994. Rukundo stated that he knew Jean Kambanda as Prime Minister of the interim government which was set up on 9 April 1994, but he never knew him personally. Contrary to the

<sup>594</sup> T. 17 November 2006, pp. 7-8.

<sup>595</sup> T. 17 November 2006, pp. 8-9, 29-31.

<sup>596</sup> T. 17 November 2006, p. 12.

<sup>597</sup> T. 17 November 2006, pp. 10-12, 18, 29-31.

testimony given by Witnesses AMA and CSE, Rukundo denied ever having been at the CND with Jean Kambanda. According to Rukundo, between April and June 1994, he never left the Bishopric in the company of Bishop Nsengiyumva to go to the CND or the hospital. Rukundo also denied having ever boarded a minibus at the CND.<sup>599</sup> In cross-examination, Rukundo conceded that there were people at the CND who knew him, since they were from Mushubati *commune*, but he could not say for sure if they were there since he never visited that location. The Bishop was known in the area while Kambanda was not well known. Rukundo added that he did not know Kambanda at all apart from the photographs he had seen of him.<sup>600</sup>

#### *Defence Witness CNA*

410. Defence Witness CNA stated that he is distantly related to Emmanuel Rukundo. Witness CNA testified that he knew that Rukundo was ordained as a priest and was also appointed as a military chaplain. Witness CNA stated, however, that he never saw Emmanuel Rukundo after his appointment as a military chaplain.<sup>601</sup> In cross-examination, Witness CNA stated that he had never seen Rukundo wearing a military uniform.<sup>602</sup> However, Witness CNA stated that he would have been able to recognize Rukundo if he had seen him wearing a military uniform.<sup>603</sup>

411. Witness CNA testified that he arrived at the CND on 23 April 1994 and stayed until 2 June 1994.<sup>604</sup> Witness CNA estimated that there were about 16,000 people at the CND on 23 April 1994 but added that this number increased over time. Witness CNA testified that during the period that he stayed at the CND, he was responsible for monitoring the distribution of food provisions to the refugees. Witness CNA mentioned that he kept his personal belongings in a tent, although he slept outside the tent since it was occupied by women and children.<sup>605</sup> During cross-examination, Witness CNA stated that his tent was in the courtyard on the opposite side to the main entrance. Witness CNA could not estimate the distance between his tent and the CND's main entrance but it was "not long" and from where he was one could easily see what was happening at the entrance.<sup>606</sup>

412. Witness CNA stated that he never left the CND despite the fact that the living conditions were very difficult. At some point Witness CNA saw Red Cross representatives providing food to

<sup>598</sup> T. 17 November 2006, pp. 10-13.

<sup>599</sup> T. 9 October 2007, pp. 52-53.

<sup>600</sup> T. 10 October 2007, pp. 40-42.

<sup>601</sup> T. 11 July 2007, pp. 38-39, 64-65; T. 12 July 2007, pp. 18, 39.

<sup>602</sup> T. 11 July 2007, p. 62.

<sup>603</sup> T. 12 July 2007, p. 16.

<sup>604</sup> T. 11 July 2007, pp. 43, 50; T. 12 July 2007, p. 9.

<sup>605</sup> T. 11 July 2007, pp. 44-45, 50.

<sup>606</sup> T. 12 July 2007, pp. 2, 10-12.



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the refugees. He also saw nuns on one occasion, accompanied by some other people, giving biscuits to a few starving refugees and children who were suffering from diarrhoea. Witness CNA did not recall seeing any seminarians at the CND during the entire period that he spent there.<sup>607</sup>

413. Witness CNA testified that he only saw Jean Kambanda once at the CND in May 1994. According to Witness CNA, Kambanda was accompanied by *gendarmes*. Witness CNA stated that no one ever mentioned to him that Kambanda visited the CND apart from the one occasion when he saw him there.<sup>608</sup> Witness CNA stated that Kambanda was wearing a suit when he saw him at the CND. According to Witness CNA, Kambanda did not stay there for long; no more than 30 minutes. Witness CNA stated that the refugees at the CND applauded and shouted once they learnt that the Prime Minister had arrived at the CND. According to Witness CNA, Kambanda did not address the refugees when he visited the CND.<sup>609</sup> When Kambanda arrived, Witness CNA was on the other side of the CND near the plastic sheet shelters but he went to the main entrance when he heard about the Prime Minister's arrival.<sup>610</sup>

414. Witness CNA testified that he witnessed two incidents where refugees were abducted from the CND. On the first occasion, a short man wearing a dark jacket and carrying a gun, came and abducted and killed Ruyenzi's children. Witness CNA testified that he did not know whether that person was a soldier or an *Interahamwe*, but he was accompanied by two other people, one of whom was also armed with a gun. On the second occasion, members of the *Interahamwe* abducted two women from Witness CNA's *commune*, Euphrasie and Hilaria, and two of their children. The two women and their children were taken to a place called Kamazuru, which was situated above the CND and were subsequently killed. Witness CNA testified that despite being a witness to this incident, he did not know the names of the *Interahamwe* who carried out the abduction. Witness CNA stated that Emmanuel Rukundo was not among the abductors, adding that since the abductions took place during the day, he could not have been mistaken about the fact that it was the *Interahamwe* rather than Rukundo who abducted the two women and their children.<sup>611</sup> Witness CNA testified that there were no other abductions or attacks of refugees from the CND apart from the two incidents that he recounted in his testimony.<sup>612</sup>

<sup>607</sup> T. 11 July 2007, p. 53.

<sup>608</sup> T. 11 July 2007, pp. 50-51, 54, 71.

<sup>609</sup> T. 11 July 2007, p. 54; 12 July 2007, p. 11.

<sup>610</sup> T. 12 July 2007, pp. 3-4.

<sup>611</sup> T. 11 July 2007, pp. 55-57.

<sup>612</sup> T. 12 July 2007, pp. 12-13.

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415. Witness CNA testified that even though he knew of Bishop Nsengiyumva, he was not personally acquainted with him. Witness CNA testified that neither Bishop Nsengiyumva, any other Bishop, Rukundo, nor any other military chaplain ever visited the CND during the period he was there.<sup>613</sup> Witness CNA stated that Emmanuel Rukundo was not involved in the abduction of 15 refugees nor did he ever hear about the abduction of 15 refugees from the CND. Witness CNA never left the premises of the CND and therefore would have either seen or heard if Emmanuel Rukundo had visited the CND in a blue minibus and abducted 15 individuals from the CND.<sup>614</sup> Witness CNA added that during his stay at the CND he moved around inside the CND compound despite the fact that there were 16,000 refugees there and he maintained that he would have noticed had Rukundo or other figures of authority visited. Witness CNA testified that the distance between the back of the CND compound, where he was located, and the main entrance to the CND was on a raised level and not so large that he would not have been able to see if Rukundo had visited the CND.<sup>615</sup>

*Defence Witness CNB*

416. Witness CNB is a Tutsi who knew Rukundo's family. He arrived in Kabgayi together with his children on 26 April 1994 and took refuge at the CND. Witness CNB stayed there until 2 June 1994. Upon his arrival, Witness CNB was elected supervisor of the other refugees. Witness CNB described the CND as a place with buildings to the right and to the left, which was used for commercial purposes and surrounded by a fence. When Witness CNB was liberated from the CND by the RPF, there were 35,000 refugees in Kabgayi, with 20,000 refugees specifically at the CND.<sup>616</sup>

417. Witness CNB testified that women and children were accommodated inside the CND buildings while the men stayed outside the buildings in the rain. Later on, they were given tents by the Red Cross. According to Witness CNB, the distance between his tent and the main gate was about ten to 12 metres.<sup>617</sup>

418. Witness CNB testified that initially it was easy to leave the CND premises but later on it became difficult due to the insecurity caused by the *Interahamwe* who later killed people if they left the CND. Witness CNB stated that it was very difficult for him to remember the dates when he left

<sup>613</sup> T. 11 July 2007, pp. 54-55, 59.

<sup>614</sup> T. 11 July 2007, p. 60.

<sup>615</sup> T. 12 July 2007, pp. 2-3, 10-12, 15.

<sup>616</sup> T. 9 July 2007, pp. 13, 17, 23-24, 32-33, 45-47, 51-52.

<sup>617</sup> T. 9 July 2007, pp. 15, 52-53.

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the CND. He remembered, however, that he went to a place known as Kamazuru in order to fetch something to drink. Later on, he clarified that Kamazuru was no more than ten metres away from the CND and he only stayed there for ten minutes.<sup>618</sup>

419. According to Witness CNB there was no large scale attack against the refugees while he was at the CND. Witness CNB stated, however, that almost everyday the *Interahamwe*, accompanied by a soldier, came to the CND and selected people whom they abducted and subsequently killed. Witness CNB could not give an exact number of abductions, but testified that they happened often.<sup>619</sup> At first the refugees did not realize that those who were abducted would be killed. Witness CNB said that abductions at the CND took place in mid-May 1994 when the security situation deteriorated. According to Witness CNB, prior to that period the only problems that the refugees at the CND had to contend with were food shortages and exposure to the rain.<sup>620</sup> He stated that from his position inside the CND compound, he could clearly see the *Interahamwe* who were outside the CND compound.<sup>621</sup>

420. Witness CNB remembered that Ruyenzi's children were abducted and killed during one afternoon, but he could not remember the date. Witness CNB gave another example of an abduction from the CND when *Interahamwe*, working together with a soldier, abducted one of the refugees. Witness CNB explained that soldiers had the right to enter the complex whenever they thought it was necessary. On one occasion, a soldier entered the CND, accompanied by an *Interahamwe*, who indicated the person to be abducted. That person was then abducted and taken away. Witness CNB also remembered an incident when they came to get Mutijima who hid himself and survived.<sup>622</sup>

421. Witness CNB clarified that at times it was difficult to determine the identity of the abductors and whether or not they were *Interahamwe*. In their search for people to abduct, the abductors would enter the CND compound and pretend that they were visiting people they knew amongst the refugees. They were, however, using the visit as a pretext to enter the compound and abduct the refugees. Witness CNB noted that the abductors did not carry lists bearing the names of their victims and he therefore concluded that the abductors already knew their victims.<sup>623</sup>

422. Witness CNB testified that the refugees had been told by soldiers that if anybody turned up to abduct someone, they should try to protect themselves. On one occasion, Witness CNB said that

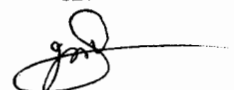
<sup>618</sup> T. 9 July 2007, pp. 17, 39-40, 60.

<sup>619</sup> T. 9 July 2007, pp. 18, 35-36, 54-55.

<sup>620</sup> T. 9 July 2007, p. 55.

<sup>621</sup> T. 9 July 2007, pp. 18-19.

<sup>622</sup> T. 9 July 2007, pp. 18-19.



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a man called Saddam, whom he knew, tried to attack them, but was killed within the CND complex. According to Witness CNB, this incident took place in May 1994 just before they were liberated by the RPF. Witness CNB could not give the names of the soldiers who told them to defend themselves but denied that it was Rukundo. Witness CNB added that some soldiers came to the CND and killed, while others came and gave them supportive advice.<sup>624</sup>

423. Witness CNB testified that Jean Kambanda came to the CND towards the end of May 1994, although he could not recall the exact date or the exact position held by Jean Kambanda at that time. According to Witness CNB, Kambanda was accompanied by three to four armed soldiers. Kambanda only visited the CND on one occasion. Witness CNB denied that anyone (soldiers or *Interahamwe*) came on that day or on the day following Kambanda's visit to abduct refugees. Witness CNB further testified that he knew Bishop Nsengiyumva but that the Bishop never came to the CND during the time that he was there. Furthermore, no one told Witness CNB that Jean Kambanda and Thaddée Nsengiyumva visited the CND together during that period.<sup>625</sup>

424. Witness CNB testified that he did not see any priests at the CND although he recalled seeing a seminarian from the Major Seminary called Bizimuremyi distributing blankets to the refugees. Witness CNB further testified that he did not see Emmanuel Rukundo at the CND; in fact, Witness CNB had not seen Rukundo before seeking refuge at the CND. He stated that amongst the refugees at the CND there were some who knew Rukundo and therefore had Rukundo or any other military chaplain visited the CND, they would have mentioned it to him. Finally, Witness CNB stated that he never saw Jean Kambanda in the company of Rukundo and the Bishop, insisting that it was only Kambanda who visited the CND.<sup>626</sup>

425. Witness CNB stated that whoever said that Rukundo came to the CND in a pick-up and a blue minibus and abducted 15 refugees was telling lies. He also stated that he never heard or saw refugees at the CND board a blue minibus and a pick-up. Witness CNB stated that he saw every vehicle that came to the CND. When Jean Kambanda visited, for example, he came in a saloon car, although he did not know the make of the car. According to Witness CNB, it was possible to see the

<sup>623</sup> T. 9 July 2007, p. 55.

<sup>624</sup> T. 9 July 2007, pp. 19-20, 26.

<sup>625</sup> T. 9 July 2007, pp. 20-21, 25-27.

<sup>626</sup> T. 9 July 2007, pp. 25-26, 41-42.

vehicles from inside the camp.<sup>627</sup> Finally, Witness CNB also denied that soldiers and *Interahamwe* were stationed outside the CND and were shooting at the crowd.<sup>628</sup>

*Defence Witness CNC*

426. Witness CNC, a Tutsi, knew Rukundo as a priest and he also knew some members of Rukundo's family.<sup>629</sup>

427. Witness CNC testified that he and members of his family arrived in Kabgayi on 7 April 1994 and stayed there until 2 June 1994. Witness CNC sought refuge at the CND and met a number of refugees who came from his home area. According to Witness CNC, there were more than 2000 or 2500 refugees at the CND. Witness CNC could not recall how many people remained at the CND when it was liberated on 2 June 1994 because people had died and were abducted, but confirmed that it was still quite a large number.<sup>630</sup>

428. Upon arrival, Witness CNC did not find shelter in the CND buildings and stayed in the courtyard where there were between 30 and 40 temporary accommodations made out of plastic sheets.<sup>631</sup> According to Witness CNC, many people were without shelter. Witness CNC testified that members of the Red Cross gave them food and blankets and a Non-Governmental Organization brought biscuits for children and elderly people. Nuns also came to the CND and distributed maize and biscuits to the children. Witness CNC could not recall if there were any seminarians at the CND.<sup>632</sup>

429. Witness CNC testified that he left the CND to go and see a friend in Gitarama on 18 and 30 April 1994, which took one hour to go and come back. Witness CNC also left the CND on 3 and 7 May to go to the Kabgayi hospital to visit his cousin's children who were sick.<sup>633</sup>

430. Witness CNC testified that he witnessed three incidents of abductions while he was at the CND. He stated that the CND compound was not surrounded with a fence and it was therefore possible to observe the abductions of the refugees as they occurred. According to Witness CNC, these abductions took place in May 1994; however, he could not recall the exact dates. According to Witness CNC, the first abduction involved two soldiers who abducted Ruyenzi's three children

<sup>627</sup> T. 9 July 2007, pp. 26, 39, 56-58.

<sup>628</sup> T. 9 July 2007, p. 27.

<sup>629</sup> T. 9 July 2007, pp. 64, 67-68.

<sup>630</sup> T. 9 July 2007, pp. 64-65, 69; T. 10 July 2007, pp. 6-9.

<sup>631</sup> T. 10 July 2007, pp. 7, 9-10.

<sup>632</sup> T. 9 July 2007, p. 69.

<sup>633</sup> T. 9 July 2007, pp. 65-66.

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during the day and later killed them. A member of the population who was a reservist in the army and Ruyenzi's neighbour, identified the children to the soldiers, but Witness CNC could not remember this person's name, only that he was about 55 years old.<sup>634</sup> Witness CNC testified that Rukundo was not involved in this abduction and since he knew Rukundo very well, he would have recognised him.<sup>635</sup> Witness CNC said that intellectuals and influential refugees were targeted as they were perceived to pose a threat should the RPF succeed in conquering the country; they did not look for refugees such as him.<sup>636</sup>

431. In respect of the second abduction which Witness CNC witnessed, he stated that a person called Gasirikare who worked as a cook for a brief period in the camp was gathering information about the refugees at the CND and relaying it to the *Interahamwe*. This man brought the *Interahamwe* into the camp when they abducted the refugees. Gasirikare was thrown out of the CND once people discovered that he was collaborating with the *Interahamwe* in order to abduct refugees. Witness CNC clarified that Gasirikare arrived with a soldier, and they abducted three persons, including a man, a child and a young man.<sup>637</sup>

432. For the third abduction, Witness CNC stated that initially Gasirikare, and others tried to look for a person called Mutijima. When they could not find him, they put a mark on his tent and left without taking anyone.<sup>638</sup> They then returned in the night, shot at the tent and killed a lady.<sup>639</sup> Witness CNC further clarified that it was not Gasirikare who came to look for Mutijima, but another group of attackers. During cross-examination, Witness CNC clarified that in the third abduction Gasirikare abducted a woman, her child and a young man and that he was not accompanied by any soldiers.<sup>640</sup> Witness CNC said that the people who were abducted in the third abduction did not return because once they got outside the CND they were undressed, money was taken away from those who had any, and they were later killed. Witness CNC confirmed that Gasirikare was responsible for the abductions and that those who were abducted never returned.<sup>641</sup>

433. Witness CNC testified that there was no large scale attack against the refugees at the CND.<sup>642</sup> He added that there were no attacks during the four occasions when he left the CND to

<sup>634</sup> T. 9 July 2007, pp. 70, 72-73.

<sup>635</sup> T. 10 July 2007, p. 36.

<sup>636</sup> T. 10 July 2007, p. 14.

<sup>637</sup> T. 9 July 2007, p. 73; T. 10 July 2007, p. 10.

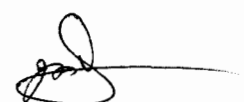
<sup>638</sup> T. 9 July 2007, p. 74. Sometimes also referred to as "Mutigima" (T. 10 July 2007, pp. 14-15).

<sup>639</sup> T. 9 July 2007, p. 74.

<sup>640</sup> T. 10 July 2007, pp. 11, 14.

<sup>641</sup> T. 9 July 2007, p. 74.

<sup>642</sup> T. 9 July 2007, p. 71; T. 10 July 2007, pp. 11-12, 34.



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attend to other matters. When he returned he never heard anyone talk about any attacks.<sup>643</sup> He did, however, state that a shell was thrown at the CND, but it did not explode.<sup>644</sup> Witness CNC explained that one person was killed by a reservist within the CND, but he did not know that person's identity. Witness CNC later stated that this person was killed by the refugees.<sup>645</sup> Witness CNC testified that he heard people talking about an attack that was alleged to have been carried out by Saddam, but he did not witness this attack. Witness CNC did not witness Saddam being killed.<sup>646</sup> He did not know Saddam and had never seen him.<sup>647</sup> Witness CNC had heard Saddam's name mentioned on many occasions and it was said that Saddam had killed many people. Witness CNC did not know what Saddam had done, but he was shown the place where Saddam had set up his roadblock, known as Kucyuzi Cyampanda.<sup>648</sup> Finally, Witness CNC described an attack that was launched on 2 June 1994 from the Gitarama stadium. The *Inkotanyi* arrived in Kabgayi on the same day around 10.00 a.m.<sup>649</sup>

434. Witness CNC stated that he never saw Emmanuel Rukundo at the CND. He had never heard anyone at the CND mention that Rukundo had visited the CND during the entire period when Witness CNC was in Kabgayi.<sup>650</sup> Witness CNC added that he knew Rukundo very well and would have been able to recognise him if he had come to the CND. Since Witness CNC did not sleep during the day and Rukundo did not come to the camp at night, he concluded that Rukundo did not come to the CND.<sup>651</sup> Witness CNC stated that the only soldiers which he saw at the CND were those who abducted and killed the refugees, and the RPF soldiers who arrived in June 1994 and freed them. Witness CNC disputed that Rukundo and the Bishop came to the CND together on several occasions, visited some part of the camp and when they left, "people" (soldiers) came and abducted refugees from the places that they had visited. Witness CNC also denied that Rukundo came to the CND with soldiers in vehicles and abducted 15 refugees.<sup>652</sup>

435. Witness CNC however stated that he saw a bus without doors that came to the camp at around 3.00 p.m. – apparently on the day that Jean Kambanda visited – with only the driver in the

<sup>643</sup> T. 10 July 2007, p. 18.

<sup>644</sup> T. 9 July 2007, pp. 70-71.

<sup>645</sup> T. 10 July 2007, pp. 10, 12, 35-36.

<sup>646</sup> T. 10 July 2007, p. 12.

<sup>647</sup> T. 10 July 2007, p. 17.

<sup>648</sup> T. 10 July 2007, pp. 17, 36.

<sup>649</sup> T. 9 July 2007, p. 71.

<sup>650</sup> T. 9 July 2007, pp. 75-77; T. 10 July 2007, pp. 18-20.

<sup>651</sup> T. 10 July 2007, pp. 17-18, 36.

<sup>652</sup> T. 9 July 2007, pp. 76-77.

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bus. When the driver saw Jean Kambanda and the soldiers, he turned around and left. By the time that Kambanda and his soldiers left, the bus had already gone.<sup>653</sup>

436. Witness CNC explained that Jean Kambanda came to the CND sometime in May 1994, around 3.30 p.m., accompanied by three soldiers.<sup>654</sup> Kambanda arrived at the CND in a vehicle, he got out of the vehicle and walked into the CND compound. Witness CNC added that Kambanda's car, which was a military jeep with unusual doors, was parked outside the CND, near the nuns' convent. Witness CNC said it was very easy to see the vehicle, what people referred to as a *blindée* or armoured vehicle, from where he was located. Kambanda was wearing ordinary civilian clothes – a suit and a tie – and was escorted by three soldiers who were dressed in military clothing.<sup>655</sup> Witness CNC stated that a witness would be lying if he or she stated that the car that brought Kambanda to the CND was a saloon car since he never saw that type of vehicle when Kambanda visited.<sup>656</sup> Witness CNC testified that when Kambanda arrived, the refugees applauded since they thought he was coming to help them. Kambanda asked the refugees, "Why are you applauding? Am I a king?" Witness CNC further testified that Kambanda did not do or say anything to address the deplorable condition of the refugees at the CND. He turned around and walked out of the CND compound together with the soldiers.<sup>657</sup>

437. Witness CNC stated that he did not know Bishop Nsengiyumva, but he had heard of him. He never heard anyone mention that the Bishop had come to the CND.<sup>658</sup>

(c) Deliberations

438. The Indictment alleges that, during the months of April and May 1994, Emmanuel Rukundo went several times to the CND to kill Tutsi, that on some of these occasions, Rukundo was seen in the company of authorities, including Prime Minister Jean Kambanda and Bishop Thaddée Nsengiyumva, and that shortly after each visit, soldiers and *Interahamwe*, ordered, instigated, or aided and abetted by Emmanuel Rukundo, returned to the CND and killed several Tutsi refugees, and took away other Tutsi refugees and killed or inflicted serious bodily or mental harm upon them.

439. The Prosecution supported the above allegations with the testimonies of Witnesses CSE and AMA. The Defence called three witnesses, namely Witnesses CNA, CNB and CNC.

<sup>653</sup> T. 9 July 2007, pp. 76-77.

<sup>654</sup> T. 9 July 2007, pp. 74-75.

<sup>655</sup> T. 10 July 2007, pp. 15-16.

<sup>656</sup> T. 10 July 2007, p. 35.

<sup>657</sup> T. 9 July 2007, p. 74.

<sup>658</sup> T. 9 July 2007, p. 75.



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440. As a preliminary matter, the Defence alleges that paragraph 15 of the Indictment is vague, since it does not specify the dates on which the acts were committed, the identities of the victims and the Accused's particular course of conduct.<sup>659</sup> The Chamber does not agree with this proposition. The Chamber notes that the Indictment provides the Accused with a clear timeframe, during which he is alleged to have visited the CND. The Indictment further specifies that the Accused visited the CND in the company of authorities, including Prime Minister Jean Kambanda and Bishop Thaddée Nsengiyumva. Additionally, the Indictment clearly states that soldiers and *Interahamwe* killed Tutsi at the CND or took Tutsi away to be killed shortly after the Accused's visits to the CND and that their actions were based on the orders, instigation or assistance of the Accused.

441. Concerning the identity of the victims, the Chamber recalls that in cases where the Prosecution alleges specific criminal acts, such as the murder of a named individual, the indictment should set forth material facts, such as "the identity of the victim, the time and place of the events and the means by which the acts were committed."<sup>660</sup> However, such detail need not be pleaded where the sheer scale of the alleged crimes makes it impracticable to require the same degree of specificity.<sup>661</sup> The Chamber finds that the reference to Tutsi refugees in the Indictment implies a large number, and therefore does not make it necessary to be specific as to the identities of the victims. The Chamber is satisfied that the Indictment provided the Accused with sufficient notice to enable him to adequately prepare his defence.

442. The Defence also submits that the version of facts narrated by Witness AMA does not corroborate and is "totally inconsistent" with the Indictment. The Defence submits that Witness AMA did not testify about any of the essential elements of the Indictment.<sup>662</sup>

443. The Chamber notes that paragraphs 11 and 15 of the Indictment charge Rukundo with ordering, instigating or aiding and abetting the abduction, infliction of serious bodily harm or mental harm and killing of several Tutsi refugees on the basis that after Rukundo's visits to the CND, soldiers and *Interahamwe* returned to the CND and abducted, killed and caused serious bodily and mental harm to Tutsi refugees. The Chamber notes that Witness AMA testified about the abduction of about 15 Tutsi refugees at the CND at the end of May 1994. According to Witness AMA, Rukundo arrived, called out names from his list and instructed the refugees to follow him so

<sup>659</sup> Defence Closing Brief, paras. 1304-1313.

<sup>660</sup> *Kupreskić*, Judgement (AC), para. 89; *Ntakirutimana*, Judgement (AC), para. 25.

<sup>661</sup> *Ibid.*

<sup>662</sup> Defence Closing Brief, paras. 1315-1316.

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that they could be provided with food supplies. About 15 refugees were taken out of the fenced compound and into a minibus driven by a soldier. The refugees who boarded the bus were never seen again, apart from a young boy called Floraine, who, shortly after the bus left the CND, was hit on the head and thrown out of the bus into a ditch full of human corpses. Witness AMA testified that Floraine returned to the CND the following morning and told the other refugees what had happened to him.<sup>663</sup>

444. The Chamber finds that Witness AMA's evidence, if accepted, would expand the scope of the charge pleaded in paragraph 15 of the Indictment by accusing Rukundo of acts which are different from those set out in the Indictment.<sup>664</sup> Indeed, paragraph 15 of the Indictment specifically states that the abductions, killings and causing of serious bodily and mental harm took place after Rukundo had left the CND, whereas Witness AMA testified that the abduction occurred while Rukundo was present at the CND. The Chamber notes that consideration of Witness AMA's evidence would result in an impermissible *de facto* amendment of the Indictment. The Chamber finds that it could only consider Witness AMA's evidence if the Prosecution were to have amended paragraph 15 of the Indictment. The Chamber, therefore, will not consider Witness AMA's evidence in respect of the events which took place at the CND.

445. Prosecution Witness CSE testified that soldiers stationed at various locations in the Kabgayi diocese abducted refugees from within the CND.<sup>665</sup> The Chamber has already held that Witness CSE is a credible witness.<sup>666</sup>

446. In addition to Prosecution Witness CSE's testimony, all three Defence witnesses testified to abductions of refugees from within the CND. Defence Witness CNA stated that, during the time he spent at the CND, he witnessed two abductions. On one occasion, four or five *Interahamwe* came and abducted Ruyenzi's children. On the second occasion, the *Interahamwe* abducted two women and two of their children, taking them to Kamazuru, a place above the CND, where they were eventually killed.<sup>667</sup>

447. Witness CNB stated that the *Interahamwe*, accompanied by one soldier, came to the CND on several occasions to select people from amongst the refugees to be killed. Witness CNB stated that Ruyenzi's children were abducted and killed one afternoon. Witness CNB also remembered an

<sup>663</sup> T. 27 February 2007, pp. 5-8, 23-24, 29, 38.

<sup>664</sup> See *Karera*, Judgement (AC), para. 296.

<sup>665</sup> T. 17 November 2006, pp. 8-9, 30-31.

<sup>666</sup> See the evidence on the allegations at the Roadblock (Section III.3.c).

<sup>667</sup> T. 11 July 2007, pp. 55-57.

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incident when abductors came to the CND in pursuit of a refugee called Mutijima who hid himself and survived.<sup>668</sup>

448. Finally, Witness CNC stated that he witnessed three abductions while he was at the CND in May 1994. On the first occasion, two soldiers arrived and abducted Ruyenzi's two sons and a daughter and later killed them.<sup>669</sup> Witness CNC also witnessed the abduction of three people by Gasirikare, who was accompanied by a soldier.<sup>670</sup> Witness CNC stated that, on the third occasion, Gasirikare abducted a woman, her child and a young man.<sup>671</sup>

449. Given that both Prosecution Witness CSE and the three Defence Witnesses concur that abductions took place, the Chamber therefore finds as a fact that, on several occasions in April and May 1994, soldiers and *Interahamwe* abducted refugees from inside the CND premises.

450. The Chamber will now determine what involvement, if any, Rukundo had with these abductions.

451. Witness CSE testified that Rukundo visited the CND on a number of occasions in the company of the Bishop of the Kabgayi diocese, Thaddée Nsengiyumva, and the then Prime Minister Jean Kambanda. According to Witness CSE, Rukundo and his entourage would visit certain parts of the CND, and "two hours or less than two hours" after each of these visits, soldiers would come and abduct refugees from the places that had been visited by Rukundo.<sup>672</sup> Witness CSE stated that the abducted refugees never returned to the CND and were never seen again. Therefore, Witness CSE presumed that they had been killed, even though he did not know the exact location where the refugees were killed.<sup>673</sup> All of the Defence Witnesses refuted Prosecution Witness CSE's testimony that Rukundo was present at the CND and was involved in the abductions of the refugees.<sup>674</sup>

452. The Chamber finds that Prosecution Witness CSE's evidence does not establish that Rukundo was involved in the abductions of refugees from inside the CND. The mere fact that Rukundo and his entourage visited the CND and that soldiers abducted refugees from the areas visited by Rukundo "two hours or less than two hours" afterwards is not sufficient to support a

<sup>668</sup> T. 9 July 2007, pp. 18-19, 35-36, 54-55.

<sup>669</sup> T. 9 July 2007, p. 72.

<sup>670</sup> T. 9 July 2007, p. 73; T. 10 July 2007, p. 10.

<sup>671</sup> T. 10 July 2007, pp. 11, 14.

<sup>672</sup> T. 17 November 2006, pp. 7-9, 30.

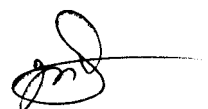
<sup>673</sup> T. 17 November 2006, p. 12.

<sup>674</sup> T. 11 July 2007, pp. 57, 60 (CNA); T. 9 July 2007, pp. 26, 39 (CNB); T. 9 July 2007, pp. 76-77, T. 10 July 2007, p. 36 (CNC).

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finding of guilt beyond reasonable doubt. The Chamber notes that Witness CSE did not testify that Rukundo pointed out or otherwise identified prospective victims at the CND. On the contrary, Witness CSE stated that Rukundo and his entourage did “nothing” during these visits. It is unclear what happened between the visits by Rukundo and his entourage and the subsequent abductions. It has not been established if any order or instructions were given and, if so, by whom. The Chamber notes that, in general, Witness CSE’s testimony concerning the events at the CND was rather vague. Witness CSE was not certain about the frequency of Rukundo’s visits to the CND. He did not give any dates regarding the visits or indicate how long the visits lasted.

453. The Chamber therefore finds that the Prosecution has not proved beyond reasonable doubt that Emmanuel Rukundo ordered, instigated or aided and abetted soldiers and *Interahamwe* to kill Tutsi refugees at the CND or to abduct Tutsi refugees from the CND and kill them or inflict serious bodily or mental harm upon them, as alleged in paragraph 15 of the Indictment.



9. EVENTS AT THE KABGAYI MAJOR SEMINARY

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(a) Indictment

454. Paragraphs 18-20 and 28-30 read as follows:

Paras. 18 and 28: During the month of May 1994, **Emmanuel RUKUNDO** went several times to the Kabgayi Major Seminary, and met the priests staying there, including some Tutsi priests, named Védaste NYIRIBAKWE, Célestin NIYONSHUTI, Tharcise GAKUBA, and one named Callixte MUSONERA. He publicly stated, within the hearing of the Tutsi priests, that the Major Seminary was full of *inyenzi* meaning Tutsis, and that they all must be killed. By his conduct, **Emmanuel RUKUNDO** inflicted serious mental harm on the priests, to whom he had spoken.

Paras. 19 and 29: On or about 24 May 1994, a group of soldiers and *interahamwe*, led by **Emmanuel RUKUNDO**, launched an attack on the Kabgayi Major Seminary. The attackers, using a list, called out, removed and took away about twenty Tutsi clergy men and women and two Tutsi lay persons from the Kabgayi Major Seminary and then killed them. By his conduct, **Emmanuel RUKUNDO** ordered, instigated, or aided and abetted the killing of these Tutsis.

Paras. 20 and 30: On a date sometime in the second half of May 1994, **Emmanuel RUKUNDO** went to the Bernadine sisters' convent in Nyarugenge secteur and commune in Kigali-Ville Prefecture, and told them that certain Tutsi clergy, including Father Felix NTAGANIRA, Father NIYONSHUTI Celestin, Father Tharcisse GAKUBA, Father Callixte MUSONERA, Father Martin, and Sister Bénigne, had been killed. (In fact, Father Felix NTAGANIRA had escaped death.)

(b) Evidence: Causing Serious Mental Harm to Tutsi Priests at the Kabgayi Major Seminary<sup>675</sup>*Prosecution Witness CSH*

455. Prosecution Witness CSH knew the Accused Rukundo since 1981, when they attended the St. Léon Minor Seminary in Kabgayi. Witness CSH also studied with Rukundo for two years at the Major Seminary until the Accused was ordained as a priest. He attended the Accused's ordination ceremony at Byimana in Mukingi *commune* in July 1991. Witness CSH also met the Accused on several occasions during the genocide, when he was a refugee.<sup>676</sup>

456. In early April 1994, Witness CSH was on holiday with his family. He heard of President Habyarimana's death on the morning of 7 April 1994. His area was relatively calm until two weeks after the crash. On 16 April 1994, the Tutsi from Kibuye came to his neighbourhood to seek refuge. According to Witness CSH, a man responsible for MDR Power activities came to his area to incite people, following which the Hutu alerted the Tutsi by telling them that "[w]e have just been told

<sup>675</sup> The Kabgayi Major Seminary is also known as the Philosophicum.

<sup>676</sup> T. 28 November 2006, pp. 19, 24-26.

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that we need to kill you.” The Tutsi therefore moved to the parish for refuge, but were attacked there two days later by a group of *Interahamwe* led by the MDR Power man. Witness CSH then escaped with the other refugees and sought refuge at the Kabgayi Major Seminary around 20 or 21 April 1994, where he stayed until 2 June 1994.<sup>677</sup> Sometime between 21 and 24 April 1994, Witness CSH was able to go to the St. Léon Minor Seminary, but was later warned by Tutsi to hide. He had heard reports of people being killed outside the Seminary complex.<sup>678</sup>

457. Witness CSH testified that the refugees at the Kabgayi Major Seminary were a mix of both Tutsi and Hutu.<sup>679</sup> Amongst the people Witness CSH stayed with at the Major Seminary were the Josephite Brothers, who were always accused of segregationism, such as their former superior-general Martin Munyanshongore, who was allegedly pro-RPF. Also present amongst the refugees were Brother Fidele Murekezi, the headmaster of the Josephite School, Brother Rusezirangabo, Brother Gaspard Gatali, Brother Canisius Nyirinkindi, Brother Celestin Niwenshuti, Vedaste Nyiribakwe, Father Callixte Musonera, Father Tharcisse Gakuba, and Pierre Clavier Nkusi. There were also many nuns, including Sister Bénigne, Viateur Kalinda who was a journalist from Radio Rwanda, and some young seminarians.<sup>680</sup> Witness CSH also testified that the following people, who studied at the Nyakibanda Major Seminary, along with Rukundo and the witness, were present at the Kabgayi Major Seminary – Athanese Kagina, Jean-Bosco Munyangaba, Alexander Ngeze, Venuste Linjuyenea, and some Europeans such as Jean-Marie Dussart, Jean De La Croix and Abdoul Vedonc. During cross-examination, Witness CSH confirmed that there was a list of the refugees at the Kabgayi Major Seminary, but he only discovered that there was a list from Adalbert, a seminarian, after the events of 2 June 1994. He did not know, however, if the ethnic group of a person was specified on the list, since he did not see it himself.<sup>681</sup>

458. Witness CSH saw Rukundo once at the Kabgayi Major Seminary around the middle of May 1994, on either 12, 14, 15, or 16 May 1994. At around 2.00 p.m., Rukundo arrived with soldiers, wearing a military uniform and carrying a gun.<sup>682</sup> In cross-examination, Witness CSH said that Rukundo was on foot at that time, and there was no vehicle near him. He further added that Rukundo was only accompanied by one soldier, who he thought was Rukundo’s escort. While Witness CSH was walking around the compound after lunch, he saw Rukundo but he was not the

<sup>677</sup> T. 28 November 2006, pp. 29-30; T. 29 November 2006, p. 2.

<sup>678</sup> T. 29 November 2006, p. 6.

<sup>679</sup> T. 29 November 2006, p. 3.

<sup>680</sup> T. 28 November 2006, pp. 30-31.

<sup>681</sup> T. 29 November 2006, pp. 4-6.

<sup>682</sup> T. 28 November 2006, p. 32; T. 29 November 2006, pp. 6-7.

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first to approach him. Witness CSH could not recall who was with him at that time.<sup>683</sup> Witness CSH and a group of nuns and priests approached Rukundo since they thought that he had come to bring them some comfort.<sup>684</sup> It was a mixed group of both Hutu and Tutsi that gathered around Rukundo, and most of the Tutsi in the group knew him.<sup>685</sup>

459. When they greeted him, Witness CSH was shocked to hear the Accused say the following in Kinyarwanda: "The Inyenzi must be exterminated. And for those who remain, those Inyenzi who are left over, we are going to set up a committee, a security committee which is going to seek them out." Witness CSH further explained that the term "security committee" referred to local gangs of killers like the *Interahamwe*. The group of people who had gathered around Rukundo withdrew, since they were shocked to hear this statement from a priest. Witness CSH himself said that, although, as a Tutsi, he was waiting for his death, and he knew Rukundo and his previous background from the Seminary in 1990, he was still frightened to hear Rukundo's words. He said it was "tragic" to hear a priest speak in those terms.<sup>686</sup> When Witness CSH was asked why he had expected words of comfort from Rukundo when he knew him to be an extremist, Witness CSH explained that, in the context of the genocide, "in the face of death, you expect salvation from whomever, from anybody." They also knew that he could not shoot at them in an open space and at a holy place such as the Seminary. According to Witness CSH, Rukundo remained there for about ten to 20 minutes. He did not see Rukundo after this occasion.<sup>687</sup>

460. Witness CSH agreed that he wrote a book regarding the testimonies of Kabgayi survivors. Witness CSH admitted that neither Rukundo's name nor that of any other army chaplain was mentioned in the book. However, he explained that he did not want to accuse someone in a book since it was not a judicial document and might have a wide readership. He did not incriminate the priests and Bishops, including Rukundo, and inserted nicknames for well-known politicians and *bourgmestres*. Witness CSH said that he had already given information about Rukundo to the Prosecution prior to the publication of the book.<sup>688</sup> Witness CSH denied that he was testifying against Rukundo because he had a personal grudge against him, and that he and Rukundo ever had any personal disagreements. He had even visited Rukundo's parents on several occasions. Witness CSH admitted that, after the genocide, in August 1994, he underwent para-military training with the RPF because he wanted to leave the clergy as a result of the revulsion he felt about the clergy's role

<sup>683</sup> T. 29 November 2006, pp. 6-8.

<sup>684</sup> T. 28 November 2006, p. 32.

<sup>685</sup> T. 29 November 2006, p. 10.

<sup>686</sup> T. 28 November 2006, pp. 32-33.

<sup>687</sup> T. 29 November 2006, pp. 7-9, 11.

<sup>688</sup> T. 29 November 2006, pp. 39-43, 45, 47-48. The book was admitted as Exhibit D. 6.

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in the events in Rwanda in 1994. However, after training with the RPF, he returned to the Seminary in Nyakibanda, since he did not always agree with the RPF ideology.<sup>689</sup>

### *The Accused*

461. Rukundo testified that, between April and June 1994, he went to Kabgayi on five occasions. The first visit was on 15 April 1994, the second was on 21 April 1994, the third time was on 7 May 1994, the fourth time was on 21 May 1994 and the last visit was on 2 June 1994. On 22 May 1994, he went through Kabgayi but did not stop.<sup>690</sup>

462. Rukundo testified that he helped to evacuate a nun named Felicité, who came from his parish, from Rwaza to Kabgayi on 7 May 1994. He also thought that he would take that opportunity to meet and bring food to members of his extended family who had already fled to Kigali. On that day, he left Camp Mukamira in his small Mazda vehicle, along with his escort Jean-Paul Nshimiye, and picked up Felicité. When he arrived in Kabgayi, Rukundo was told that many people had taken refuge at the Kabgayi Major Seminary, including the staff of the Episcopal Conference, and the nuns who worked at the Kigali Archbishopric. Sister Felicité asked to be dropped at the Major Seminary upon learning that another nun, who was a native of Byimana parish and her neighbour, was there. Rukundo said that he arrived at the Kabgayi Major Seminary around noon that day. Following this, he went to his home, then to Ruhango to see the Pallatine Sisters, and then to the Kabgayi Bishopric, before returning to Ruhengeri.<sup>691</sup>

463. Rukundo testified that, when they arrived at the Kabgayi Major Seminary between 11.30 a.m. and 12.00 p.m. (before lunch or prayers), Felicité registered at the reception. He parked his Mazda 323 vehicle at the bottom of the stairs leading to the small courtyard in front of the chapel. Rukundo went directly to meet his colleagues, who were in the small courtyard in front of the chapel. They stood near the bottom of the steps of the chapel. He had a brief discussion with them, after which they were joined by other priests, nuns and clerics, who all wanted information about the situation in the country. Rukundo was asked about the situation in Ruhengeri, and for information about certain priests, since they had heard that some priests in the Nyundo diocese had been killed. They also wanted to know about developments in the war and Rukundo's reasons for

<sup>689</sup> T. 29 November 2006, pp. 44, 49-50.

<sup>690</sup> T. 8 October 2007, pp. 52-53.

<sup>691</sup> T. 9 October 2007, pp. 11-12.





visiting Kabgayi. Rukundo spent approximately 15 to 20 minutes there in discussion, but not more than 30 minutes.<sup>692</sup>

464. Rukundo stated that he remembered some of the people present in the group that day, including Jean-Marie Dussart, Monseigneur Kizito Bahumizihigo (the current Bishop), Father Claver Nkusi, Father Tharcisse Gakuba, Father Hildebrande Karangwa (who was a seminarian then, but now a priest) and Léonard Ntuyahaga (a seminarian who came from Kigali). Also present were Sister Dorothy, Brother Martin Munyanshongore, Fidèle Murekezi and Father Callixte Musonera. Most of the people in that group were Tutsi, but there were also a few Hutu, including Léonard Ntuyahaga.<sup>693</sup> In cross-examination, Rukundo confirmed that Hildebrande Karangwa was present on both his visits, as part of the group.<sup>694</sup> Rukundo testified that no one was surprised to see him in his military uniform, since most of them had already seen him dressed that way in 1993.<sup>695</sup>

465. Rukundo testified that, on 21 May 1994, he arrived in Kabgayi at around noon. After dropping off his personal effects at the St. Léon Minor Seminary and having lunch there, he went to greet his colleagues at the Kabgayi Major Seminary.<sup>696</sup> When Rukundo arrived at the Major Seminary on 21 May 1994, he saw some priests in the parking lot walk around (having just come out of the refectory), and then walk down the stairs to the courtyard in front of the chapel. A group of priests and nuns gathered around him, and they had a discussion for a few minutes. It was a mixed group of Hutu and Tutsi. Rukundo said that they discussed the same topics they had discussed on the previous visit, as well as the developments that had taken place in the last two weeks between the visits. Rukundo told them that he was moving from Ruhengeri to meet the head chaplain, and that he would not return to Ruhengeri due to security concerns.<sup>697</sup> He then visited the Bishop at the Bishopric, before taking the road to Kigali.<sup>698</sup>

466. Rukundo stated that he could not have made anti-Tutsi utterances especially in front of a group of people including Tutsi priests, since he is also a priest. According to Rukundo, Witness CSH was "inventing those words to find a reason for me to be convicted."<sup>699</sup>

<sup>692</sup> T. 9 October 2007, pp. 26-28; T. 10 October 2007, p. 46.

<sup>693</sup> T. 9 October 2007, p. 27.

<sup>694</sup> T. 10 October 2007, p. 46.

<sup>695</sup> T. 9 October 2007, p. 27.

<sup>696</sup> T. 9 October 2007, pp. 13-14, 26.

<sup>697</sup> T. 9 October 2007, p. 28; T. 10 October 2007, p. 46.

<sup>698</sup> T. 9 October 2007, p. 14.

<sup>699</sup> T. 9 October 2007, pp. 28-29.

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*Defence Witness GSA*

467. The Chamber has previously considered Witness GSA's evidence in relation to the alleged incidents at the *Imprimerie de Kabgayi* roadblock.

468. Witness GSA testified that he observed an influx of refugees from Kigali into Kabgayi a few days after 6 April 1994. At the beginning of the events, only priests on duty were present at the Kabgayi Major Seminary, since the others were on vacation.<sup>700</sup> Witness GSA saw Rukundo at the Major Seminary on two occasions between April and May 1994: the first visit was in the first half of April, and the second one was during the beginning of May or the first half of May, sometime before 10 May 1994.<sup>701</sup> At the time of his visits, Rukundo was in military uniform<sup>702</sup> and carried a weapon, which Witness GSA thought was to help save civilians. Although Witness GSA believed that Rukundo was accompanied by a soldier who was his driver, he never saw the soldier. Witness GSA believed that Rukundo arrived at the Major Seminary aboard a vehicle.<sup>703</sup> In cross-examination, Witness GSA clarified that Rukundo had already arrived at the Seminary when he met him in the courtyard, but he believed that he had parked his vehicle near the entrance. However, he was not concerned with details of the vehicle, if Rukundo had one, at that time.<sup>704</sup>

469. As Rukundo arrived, a group of about five to ten people gathered around him to greet him and to hear news from outside the Seminary for several minutes. On these occasions, although he was not informed of the visit in advance, Witness GSA went to greet Rukundo and listened to him for a short time, never more than 10 or 15 minutes.<sup>705</sup> Rukundo remained in the compound talking to people, and did not stay for more than an hour. Witness GSA could not recall the people present during Rukundo's visit.<sup>706</sup> Witness GSA initially said that Rukundo was surrounded by a group of mixed persons, and no particular ethnic group stood out. The atmosphere in the group was congenial, since people were either curious to know what was happening or wanted to greet Rukundo.<sup>707</sup>

<sup>700</sup> T. 1 October 2007, pp. 64-65.

<sup>701</sup> T. 2 October 2007, pp. 2-3, 29-30.

<sup>702</sup> T. 2 October 2007, p. 3, where the Witness initially stated that Rukundo was a "Military chaplain of the *gendamerie*" and that he was wearing a "*gendamerie* uniform."

<sup>703</sup> T. 2 October 2007, pp. 3-4.

<sup>704</sup> T. 2 October 2007, p. 30.

<sup>705</sup> T. 2 October 2007, pp. 2-5, 30. Witness GSA marked the small courtyard, near the chapel and bell tower, in the Major Seminary, as the place where people had gathered around the Accused Rukundo. T. 2 October 2007, p. 25.

<sup>706</sup> T. 2 October 2007, pp. 4-5, 30.

<sup>707</sup> T. 2 October 2007, p. 6.

470. Witness GSA testified that Rukundo spoke to the group about what he had seen along the road, and how the Tutsi were threatened and were in danger. He did not report anything that was new and not obvious to them. Witness GSA testified that he did not hear Rukundo make any anti-Tutsi statements. If Rukundo had made such statements, it would have created a scandal at the Major Seminary. Such statements, particularly if made by a priest, would have shocked not just the Tutsi, but also the priests and would have evoked a strong reaction, and they all would have known about it. Witness GSA admitted that he was absent from the Major Seminary from time to time when he visited the Bishopric; however, he did not spend much time outside the Major Seminary. Witness GSA emphasised that, whether he was physically present at the Seminary or not, if such a serious incident had occurred, news of it would have gone around the institution, and he would have been informed. In cross-examination, Witness GSA admitted that up until 2 June 1994, when Kabgayi was taken over by the RPF, he continued visiting the Archbishop and the diocesan bursary outside of the Major Seminary.<sup>708</sup>

*Defence Witness Jean-Marie Dussart (formerly GSB)*

471. The Chamber has previously considered Jean-Marie Dussart's evidence in relation to the events at the Nyabikenke communal office.

472. Witness Dussart sought refuge at the Kabgayi Major Seminary from 19 April 1994, until 2 June 1994. There were more than 100 clergymen and other members of the religious congregation present and there was a friendly atmosphere. However they were all afraid due to the insecurity caused by killings carried out by armed gangs. Staff members of the Major Seminary, including the Rector, Venuste Linguyeneza, Silas and other staff members welcomed the clergymen, but Witness Dussart did not know them all. He did not know the seminarians who were present, except for Hildebrand Karangwa. He had also heard Adalbert's name mentioned. Other clergymen included the Josephite Brother Martin Munyanshongore and his brother, and some Marist brothers, whom he met for the first time. The right wing of the Major Seminary was reserved for the families of officials, with whom he did not have much contact.<sup>709</sup>

473. Witness Dussart recounted that, on one occasion, Callixte Musonera had asked him for help to get out of the Major Seminary. Following this, Witness Dussart spoke to Bishop Nsengiyumva, who indicated that there may be such a possibility. On another occasion, Father Martin told him that he had been made to sit in an office, with an officer pointing a gun at his head. Both of these events

<sup>708</sup> T. 2 October 2007, pp. 5-7, 28-30, 73.

<sup>709</sup> T. 10 September 2007, pp. 19-21.

helped him to understand that the situation was serious. However, during the genocide, Witness Dussart only saw one person being killed, and only heard of the other atrocities after the genocide. He said that they were never attacked at the Major Seminary, even though there was never any physical barrier besides the administrative demarcation of Kabgayi-Gitarama.<sup>710</sup> In cross-examination, Dussart admitted that, while he was at the Kabgayi Major Seminary, he did not really have news of what was happening in Rwanda, apart from small snippets of news from the radio. He heard of attacks at the St. Léon Minor Seminary, and the murder of Louis [Rudahunga], who was the director of the Kabgayi printing press; other than this, he did not receive any information on killings.<sup>711</sup>

474. Witness Dussart said that on a date in May, sometime before 24 May 1994, Rukundo visited the Kabgayi Major Seminary. Witness Dussart was writing in his room when he learnt that Rukundo was around, and went to greet him. Witness Dussart was happy that Rukundo had come to greet them. When he asked him how things were, Rukundo replied "Well, I do nothing else but evacuate people from Ruhengeri towards the south, Gitarama and elsewhere." He further clarified that Rukundo had not said that he had "saved" people, but that he had "evacuated" them.<sup>712</sup> Witness Dussart only had a brief exchange with Rukundo, mostly in the context of a greeting. Their conversation lasted about two to three minutes, after which Dussart went back to his activities. Witness Dussart met Rukundo in the parking lot, about 10 to 15 metres from his room.<sup>713</sup> Rukundo was wearing the uniform of a military chaplain at the time. Witness Dussart was not sure if Rukundo was accompanied, or arrived in a vehicle.<sup>714</sup>

475. At the time of Rukundo's visit, there was a crowd of people around him. Witness Dussart could not, however, recall who was present. Witness Dussart did not see Rukundo leave the Major Seminary. He did not hear any additional information regarding what Rukundo may have said, after he had left. Further, he did not notice that any of his colleagues were shocked or offended by what Rukundo may have said.<sup>715</sup>

476. Witness Dussart stated that this was the last time that he saw Rukundo at the Major Seminary. He also did not hear of any subsequent visit by Rukundo to the Major Seminary. Witness

<sup>710</sup> T. 10 September 2007, p. 21.

<sup>711</sup> T. 10 September 2007, pp. 50-52.

<sup>712</sup> T. 10 September 2007, pp. 26-28.

<sup>713</sup> T. 10 September 2007, pp. 27-28, 44. Witness Dussart identified the open area where he met Rukundo, on photographs of the Major Seminary shown to him. On photograph 394, he also identified the stairs used by Rukundo from the car park to the open area. T. 10 September 2007, pp. 37-38.

<sup>714</sup> T. 10 September 2007, p. 27.

<sup>715</sup> T. 10 September 2007, pp. 27-28.



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Dussart said that he was a “forced” resident of the Seminary in May 1994, and hardly ever left the location. He never heard Rukundo’s name mentioned in a negative way.<sup>716</sup>

*Defence Witness SJC*

477. The Chamber has already considered Witness SJC’s evidence in relation to the alleged incident at the *Imprimerie de Kabgayi* roadblock and in relation to the events at St. Joseph’s College.

478. Witness SJC testified that he visited the Kabgayi Major Seminary every day between April and June 1994. Witness SJC said that the Seminary accommodated many people from all over Rwanda and that he knew many of the priests, seminarians and lay persons there. He helped staff by bringing them food, cigarettes and beer. He denied that he had ever heard Rukundo say that “the place was full of *Inkotanyi* and that they all had to be killed.” Neither had he been told by anyone that Rukundo had done so. Witness SJC did not think that Rukundo could have made such a statement.<sup>717</sup>

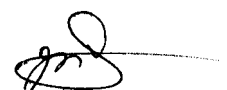
(c) Deliberations

479. The Indictment alleges that, during the month of May 1994, Rukundo went to the Major Seminary several times, and met with priests. In public, and within the hearing of Tutsi priests, he allegedly stated that the Major Seminary was full of *Inyenzi*, meaning Tutsi, and that they must all be killed. By his conduct, Rukundo inflicted serious mental harm on the Tutsi priests who overheard his statement.

480. The Chamber notes that Witness CSH is the sole witness led by the Prosecution to support the allegation that the Accused directed anti-Tutsi statements towards a group of clergy at the Kabgayi Major Seminary. Witness CSH testified that he was a direct witness to Rukundo’s visit to the Seminary around mid-May 1994, where he allegedly stated that the *Inyenzi* must be exterminated. He testified that when Rukundo arrived at the Seminary in the early afternoon, many members of the clergy surrounded him to receive comfort and news from the outside. Instead, to everyone’s shock, the priest in military attire, carrying a gun and with a military escort, told the group consisting of both Hutu and Tutsi that the *Inyenzi* had to be killed and whoever was not killed would be “sought out by a local gang like the *Interahamwe*.” Witness CSH testified that as a result of this statement, the group of people who had gathered around Rukundo withdrew, shocked to hear

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<sup>716</sup> T. 10 September 2007, p. 28.



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Rukundo speak in this manner. Witness CSH thought that it was tragic for such a statement to come from a priest.<sup>718</sup>

481. Both Defence Witnesses GSA and Dussart testified that they saw the Accused when he visited the Major Seminary sometime in May 1994. According to their testimonies, Rukundo was surrounded by a crowd of people upon his arrival at the Seminary. Both witnesses further testified that Rukundo was dressed in military uniform, and had a military escort. Witness GSA confirmed that Rukundo carried a weapon.<sup>719</sup>

482. Rukundo admitted that he visited the Major Seminary in May 1994 and stated that Witness CSH was among the group of people he met during one of his visits to the Seminary.<sup>720</sup>

483. Based on the aforementioned, the Chamber finds it established that Rukundo, wearing military uniform, carrying a gun and in the company of soldiers, visited the Major Seminary sometime in May 1994. There is, however, some dispute as to the exact date of that visit. Witness CSH placed Rukundo's visit around 14, 15 or 16 May 1994.<sup>721</sup> Witness GSA saw Rukundo at the Major Seminary on a date in the first half of May,<sup>722</sup> while Witness Dussart stipulates that the visit was before 24 May 1994.<sup>723</sup>

484. The Chamber now turns to the question of whether or not the Accused uttered the anti-Tutsi statements that are the subject matter of paragraphs 18 and 28 of the Indictment.

485. The Defence submits that Witness CSH's evidence should not be believed because he wrote a book (Exhibit D. 6) in which he described the events in Kabgayi during the genocide but failed to mention Rukundo or link him to any criminal activity.<sup>724</sup> Witness CSH testified that his book was not a judicial document and that he did not wish to accuse any priests or other members of the clergy. Witness CSH added that he used pseudonyms for prominent political figures. Witness CSH further added that, by the time he published the book, he had already given a statement to the Prosecutor's investigators in which he described Rukundo's role in events at the Major Seminary.<sup>725</sup> The Chamber finds Witness CSH's explanations to be reasonable under the circumstances.

<sup>717</sup> T. 3 September 2007, pp. 27-28.

<sup>718</sup> T. 28 November 2006, pp. 32-33; T. 29 November 2006, pp. 6-10.

<sup>719</sup> T. 2 October 2007, pp. 2-6, 29-30 (GSA); T. 10 September 2007, pp. 26-28, 44 (Dussart).

<sup>720</sup> T. 9 October 2007, p. 27.

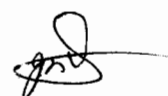
<sup>721</sup> T. 28 November 2006, p. 32; T. 29 November 2006, p. 6.

<sup>722</sup> T. 2 October 2007, pp. 2-3, 29-30.

<sup>723</sup> T. 10 September 2007, pp. 26-27.

<sup>724</sup> Defence Closing Brief, paras. 728-734.

<sup>725</sup> T. 29 November 2006, pp. 39-43, 45, 47-48.



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486. The Chamber does not believe that Witness CSH had any motive to lie about Rukundo or to wrongfully incriminate him before this Tribunal. The Chamber has also considered the fact that Witness CSH did not incriminate Rukundo with respect to the incident at the Kabgayi Major Seminary on 24 May 1994, on which the witness also testified. The Chamber is of the view that if Witness CSH had a motive to falsely incriminate Rukundo, he would have done so with respect to the more serious allegation relating to the abduction and killing of Tutsi from the Major Seminary on 24 May 1994. The Chamber therefore finds Witness CSH to be a credible witness and believes his evidence.

487. Defence Witnesses GSA and Dussart testified that they did not hear Rukundo make any offensive remarks. In addition, both Defence witnesses added that if such statements had been uttered by Rukundo, they would most likely have heard other people talk about them, which they did not.<sup>726</sup> The Chamber notes that Defence Witness GSA testified that he spent between 10 to 15 minutes listening to Rukundo address the crowd that had gathered around him.<sup>727</sup> Similarly, Witness Dussart testified that he spent between two to three minutes listening to Rukundo.<sup>728</sup> Defence Witness SJC, who was not at the Seminary on that day, visited the Major Seminary on several other occasions between April and June 1994 but never heard that Rukundo made offensive remarks against the Tutsi.<sup>729</sup> The Chamber finds that, since the Defence witnesses were not in Rukundo's presence for the duration of his visit, their evidence cannot discredit the firsthand evidence of Prosecution Witness CSH.

488. The Chamber therefore finds that the Prosecution has proved beyond reasonable doubt that, while at Kabgayi Major Seminary sometime in May 1994, the Accused said in the presence of several Tutsi clergymen that all *Inyenzi* had to be sought out and killed.

489. The Chamber, however, concludes that it has not been established that serious mental harm occurred as a result of Rukundo's conduct. The Chamber previously discussed the general legal standard required to prove serious mental harm in its discussion of the evidence at the Bishopric. The Chamber reiterates that the mental harm suffered must be more than a minor or temporary impairment of mental faculties although it need not be permanent or irremediable.<sup>730</sup> Further, according to the Appeals Chamber, nebulous invocations of "weakening" and "anxiety" do not

<sup>726</sup> T. 2 October 2007, pp. 5-7, 30, 73 (GSA); 10 September 2007, p. 28 (Dussart).

<sup>727</sup> T. 2 October 2007, pp. 4, 30.

<sup>728</sup> T. 10 October 2007, p. 28.

<sup>729</sup> T. 3 September 2007, pp. 27-28.

<sup>730</sup> *Rutaganda*, Judgement (TC), para. 50; See also *Brdanin*, Judgement (TC), para. 690; *Seromba*, Judgement (AC), para. 46.

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constitute serious mental harm for the purposes of a genocide conviction.<sup>731</sup> Witness CSH's evidence that he was "shocked" to hear this statement, and that it was "tragic" that it came from a priest, does not assist the Chamber in assessing how that statement occasioned more than a minor or temporary impairment of his mental faculties so as to constitute the serious mental harm envisioned by the Statute. Furthermore, Witness CSH's evidence neither suggests that Rukundo specifically described the Major Seminary as full of *Inyenzi* nor that the term *Inyenzi* was a reference to those from the Tutsi ethnic group. Rather, the Prosecution's evidence suggests that Rukundo uttered a general threat to "the *Inyenzi*" who "must be exterminated," and that a security committee would be set up to "seek out" such people. Finally, no evidence has been adduced as to the mental state of the Tutsi priests who were present or that an inference of mental harm could be made.

490. Accordingly, the Chamber finds that the Prosecution has not established beyond reasonable doubt that Rukundo's statement that the *Inyenzi* must be sought out and killed caused serious mental harm to the Tutsi priests.

(d) Evidence: Abduction and Killing of Tutsi Clergy from the Kabgayi Major Seminary

*Prosecution Witness BLP*

491. Witness BLP already testified in relation to the allegations at St. Joseph's College.<sup>732</sup> He testified that he met Rukundo at St. Joseph's College sometime towards the end of May 1994. Witness BLP was inside a building at the College when a soldier asked him to join the refugees assembled outside, where there were other soldiers and civilians, and to identify himself. As Witness BLP came out of the building, he saw Rukundo near the vehicle parking lot. The soldiers, who were with Rukundo at the College, were looking for a priest called Fidele, whom they could not find, but who had sought refuge at the Kabgayi Major Seminary. When asked, Witness BLP told the soldiers that he knew where Fidele was. The soldiers asked him to take them to Fidele's location or be killed. Witness BLP explained that he had previously seen Fidele, who was a reverend brother of the Josephite congregation, at the Major Seminary. He explained that he boarded the soldiers' vehicle, and he told himself that since "they were with Father Rukundo, then they would wish only good for Fidele..." but he was also afraid for his safety if he did not go with the soldiers. Later in his testimony, Witness BLP explained that, prior to informing the soldiers of Fidele's location, they had been to several places, questioning and even torturing some people, in an effort to try and to locate Fidele. Witness BLP said that he told the soldiers this information because

<sup>731</sup> *Seromba*, Judgement (AC), para. 48.

<sup>732</sup> See Section III.4.b.



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he was scared of being harmed and did not want to be found out to have lied. Witness BLP saw Rukundo before he boarded the vehicle outside the College, since Rukundo had still not got into his vehicle. Witness BLP did not board the same vehicle as Rukundo, but they both arrived at the Kabgayi Major Seminary at the same time, around noon, in the same convoy.<sup>733</sup>

492. Upon arrival at the Kabgayi Major Seminary, the minibus which was in front of Witness BLP's vehicle, entered the compound, and one soldier alighted from it. Witness BLP was then told to sit down in the playground not far from the Major Seminary, while the soldiers proceeded to enter the Seminary. At this time, Rukundo remained standing near his vehicle in the parking lot not far from the Seminary. He was with Antoine Misago (a *sous-préfet*). Some soldiers went down to search the buildings on the lower side, while others remained at the entrance of the Major Seminary. Witness BLP stated that he saw the soldiers search almost all the buildings, before they stopped in front of the door of the chapel. They asked everyone inside the chapel to come out and show their identity cards. The soldiers allowed some people to return to the Major Seminary, while they asked others to go to the parking lot, where Rukundo and Misago were located.<sup>734</sup> According to Witness BLP, from where he was standing, he could clearly see the entrance to the chapel, where people were showing their identity papers, the bell tower of the chapel and the parking lot.<sup>735</sup>

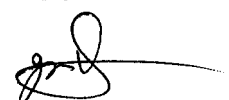
493. Witness BLP said that Rukundo had a few sheets of paper, while the leader among the soldiers and the *sous-préfet* also had a piece of paper each. Witness BLP, however, did not know if the names of the people brought out of the chapel were on the list, since he could not read the list himself. Witness BLP recognised the following people who were made to board a vehicle at the Major Seminary – Brother Fidele, Nakanya Bénigne (a nun who lived in Kabgayi), Viateur Kalinda (a sports journalist with Radio Rwanda), a priest whose name he did not recall, some Josephite brothers living at St. Joseph's College and two members of the Marist order.<sup>736</sup> The vehicle then headed towards the tarmac road leading to Butare. Later, news spread in Kabgayi that the people in the vehicle had been killed in Byimana. Witness BLP said that he saw Rukundo leave with them, and he thought to himself that Rukundo was taking those people to safety. While it was difficult to

<sup>733</sup> T. 15 November 2006, pp. 17-18; T. 16 November 2006, pp. 30-32.

<sup>734</sup> T. 15 November 2006, p. 18; Misago's name is misspelled in this transcript as "Nsagwa".

<sup>735</sup> T. 15 November 2006, pp. 25-26; T. 16 November 2006, pp. 33-34. Exhibits P. 5, 5(A), 5(B), 5(C), 5(D), 5(E) and 5(F) were marked by Witness BLP as part of his identification of the locations in the Kabgayi Major Seminary; T. 16 November 2006, p. 9.

<sup>736</sup> T. 15 November 2006, pp. 18-19; T. 16 November 2006, p. 34.



recognise the soldiers in the group, Witness BLP remembered one of the soldiers to be the one guarding General Bizimungu and the one who took Madame Rudahunga away.<sup>737</sup>

494. After the vehicle had left the Kabgayi Major Seminary, Witness BLP returned on foot to his place of work, which took him approximately five minutes.<sup>738</sup> He clarified in cross-examination that, contrary to what was stated in his pre-trial statement, he did not go to Byimana in the minibus.<sup>739</sup>

#### *Prosecution Witness CSH*

495. Witness CSH was at the Kabgayi Major Seminary on 24 May 1994, which he described as "D-day". During the regular noon prayers at the Seminary, Witness CSH saw an armed group of soldiers and *Interahamwe* at the two entrances to the chapel. One seminarian, who was responsible for drawing up the list of refugees, asked them not to be afraid and announced that the armed group was only looking for four individuals. When Brother Martin Munyanshongore's name was called out several times by one of the armed men, he remained silent for a moment, but then went out with his prayer book. The soldiers called out other names including Father Callixte Musonera, Father Fidele Murekezi, and Father Celestin Niwenshuti, who were all Tutsi. Witness CSH testified that the rest of the refugees were ordered to form a queue and to show their identity cards. The Tutsi were made to go up the stairs, while the Hutu were told to go down the alley, leading to the building for the seminarians. Witness CSH saw about 10 to 15 Tutsi who were sitting or standing on the stairs, having already been arrested. The vehicle of the Seminary, a Toyota Hilux, and a blue minibus belonging to the *préfecture* were parked at the top of the stairs.<sup>740</sup>

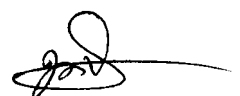
496. When it was Witness CSH's turn in the queue, he told the soldiers that he had forgotten his identity card. He was asked to go and look for it, and so he returned to his room. Witness CSH then hid in the toilets of the building for a period of an hour and a half. When Witness CSH came out of hiding between 2.30 and 3.00 p.m., he was told that the armed group had left, and it was said that

<sup>737</sup> T. 15 November 2006, p. 19. On Exhibit P. 2, Witness BLP marked as "E" the Kabgayi Major Seminary, and also indicated the main road taken by the vehicle (T. 15 November 2006, p. 23).

<sup>738</sup> T. 15 November 2006, p. 19; T. 15 November 2006, pp. 28-29.

<sup>739</sup> T. 16 November 2006, p. 50

<sup>740</sup> T. 28 November 2006, p. 33-37; T. 29 November 2006, p. 14. Witness CSH identified a photograph admitted as Exhibit P. 9 as showing the Kabgayi Major Seminary, with the library, the housing for seminarians, the corridor where the Hutu gathered on 24 May 1994, and the area leading to the chapel. Witness CSH identified Exhibit P. 5D as a photo of the parking lot, the stairs where the Tutsi were held on 24 May 1994 in the Kabgayi Major Seminary, and the place the blue minibus that transported the people was parked. CSH said that Exhibit P. 5E was a photo of the tower and the prayer bell, the door to the chapel, and that Exhibit P. 5F was a photo of the building for seminarians, one of the two parking lots and the walkway to the parking lot. Witness CSH identified a photograph admitted as Exhibit P. 10 as showing the building which houses the seminarians, the first parking lot, a covered area going to the housing building, the multi-purpose hall, and the office of the director of the Kabgayi Major Seminary (T. 28 November 2006, pp. 38-42).



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those people were arrested on the orders of the Prosecutor and would be tried. Between midnight and 1.00 a.m., someone knocked on Witness CSH's door but left when it was not opened. The following day, at around 2.30 or 3.00 p.m., Witness CSH was told by someone whom he could not recall, that the people who had been abducted "had all been killed at Byimana in Gikomero, some eight kilometres from that place."<sup>741</sup> When asked, Witness CSH said that he did not know the people in the armed group, except for one man from Gitarama whose face was familiar but whose name was unknown. After the abduction, he heard people say that *sous-préfet* Misago was present, but he did not know that himself.<sup>742</sup>

497. Witness CSH testified that, on 2 June 1994, when he and the other refugees were liberated from the Kabgayi Major Seminary by the RPF, they were taken to a camp in Byimana where some peasants told them about the killings they had witnessed on 24 May 1994, which was a Thursday (a market day). The peasants explained that they had heard gunshots and Viateur Kalinda had tried to run away but was struck down by a machete. The others were shot. Witness CSH and the other refugees were shown the pile where the bodies were located; the blood was still fresh. At the end of 1994, Witness CSH participated in the exhumation of these bodies, which were re-buried in a tomb in Kabgayi. He recognized the bodies of Father Callixte, Father Celestin and a nun. They exhumed a total of 18 bodies.<sup>743</sup>

*Prosecution Witness CCJ*

498. The Chamber has already considered Witness CCJ's evidence in relation to the allegation at the Nyabikenke communal office. Witness CCJ was in Kanyanza at the beginning of the genocide, after which he fled to Kibuye. On 16 April 1994, after hearing that soldiers were inquiring about *Inkotanyi* at the Kabgayi Bishopric, he fled to Bujumbura in Burundi to seek refuge.<sup>744</sup> In cross-examination, Witness CCJ said that without a calendar, he may have been mistaken about the date of his departure, but he was not wrong about the facts.<sup>745</sup> Witness CCJ explained that he fled Kabgayi because he was informed that his name and that of other priests were on a list of Tutsi priests who were wanted and targeted to be killed. On the day he escaped, Witness CCJ went to the

<sup>741</sup> T. 28 November 2006, pp. 34-35, 42.

<sup>742</sup> T. 28 November 2006, p. 37; T. 29 November 2006, p. 14.

<sup>743</sup> T. 28 November 2006, pp. 43-44. The photos identified as those of the final burial place were admitted as Exhibit P. 11 and Exhibit P. 11A.

<sup>744</sup> T. 14 February 2007, pp. 30-31.

<sup>745</sup> T. 15 February 2007, p. 12.



Kabgayi Major Seminary, which was full of people, and met some clergy, nuns and even foreigners who were going to Burundi.<sup>746</sup>

499. Witness CCJ said that, while in Burundi, he heard of the deaths of Callixte Musonera and Alphonse Mbuguje. He heard that Callixte was taken from the Kabgayi Major Seminary at the end of May, and then killed in Byimana with Father Celestin Nyonshuti, Father Tharcisse Gakuba, Father Védaste Nyiribakwe, Brother Martin and Sister Bénigne.<sup>747</sup> In cross-examination, Witness CCJ said that he had heard rumours that Callixte Musonera was an *Inkotanyi* accomplice, and that they were sometimes mistaken for each other.<sup>748</sup>

500. According to Witness CCJ, Rukundo had informed Marie Jose Mariboli at the Bernadine Sisters' Convent in Nyarugenge, Kigali, that he had been killed. Marie Jose Mariboli then told Rukundo that she knew that Witness CCJ was still alive and in Burundi.<sup>749</sup>

### *The Accused*

501. Rukundo testified that, on 24 May 1994, he was in Kigali. He did not set foot in Kabgayi on that day.<sup>750</sup> Rukundo said that he did not know Witness BLP, and saw him for the first time when he testified before the Chamber. He also said that it was impossible to observe events at the Major Seminary from the football field as Witness BLP had claimed. Rukundo also stated that Witness CSH did not claim to have seen him at the location on that day, and that he was only able to identify the *sous-préfet* as one of the attackers.<sup>751</sup>

502. Rukundo said that he only heard of the death of the clergymen at the Major Seminary on 2 June 1994, when he went to Kabgayi with Father Kalibushi [now Bishop] to see the Bishop at the Bishopric. That was his fifth trip to Kabgayi during the period of April to June 1994. On that occasion, he arrived in Kabgayi at about 9.15 a.m. in a situation of great fear and mourning due to the events of 24 May 1994. Rukundo recalled that one of the priests at the Bishopric or the Bishop himself mentioned the news to him, although he did not remember who he specifically met that morning. Rukundo discussed the events of 24 May 1994 with the Bishop, but they did not spend too much time doing so since the Bishop himself was panicking at that time. Rukundo was told that the authorities were responsible for the abductions and killings, although he was not given any names.

<sup>746</sup> T. 14 February 2007, pp. 31, 60.

<sup>747</sup> T. 14 February 2007, pp. 33-34.

<sup>748</sup> T. 14 February 2007, pp. 59-60.

<sup>749</sup> T. 14 February 2007, p. 35; T. 15 February 2007, p. 7.

<sup>750</sup> T. 9 October 2007, p. 29; T. 10 October 2007, pp. 51-52.

<sup>751</sup> T. 9 October 2007, pp. 33-34.

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These authorities had previously gone to the Bishopric with arrest warrants to ask for the clergymen.<sup>752</sup> In cross-examination, Rukundo confirmed that he had heard that the prefectural government authorities from Gitarama had come with arrest warrants to remove people from the Major Seminary. He did not know what offence they were being arrested for, under the warrants, although it could have been on suspicion of RPF complicity or for ethnic reasons. Those who were killed were Tutsi, and they were not tried in a court of law, but killed on the same day that they were abducted. Rukundo denied that he was one of the authorities responsible for the abductions and killings.<sup>753</sup>

503. In cross-examination, Rukundo testified that he knew the following people who were abducted from the Major Seminary and killed: Sister Benebikira (mother superior of the community in Kabgayi), Callixte Musonera, Tharcisse Gakuba, Célestin Niyonsote, Vedaste Nyilibakwe, Martin Munyansongore, Fidel Murekezi and Sister Bénigne. He also heard of a journalist Viateur Kalinda who was also killed on that day, although he did not know him. He did not know the precise number of people killed or all of those who were killed. Rukundo knew that Martin Munyansongore and Fidele Murekezi had been RPF supporters since 1990. He said that he had not been present at the presbyterium in the Kabgayi diocese in 1993, and did not know that they had openly declared themselves as RPF supporters. He said that it was only after he left Rwanda following the events of 1994 that he read in the *Document Soldaire Rwanda*, whilst he was in Rome, that Callixte Musonera was a member of the clandestine brigade of the RPF, but he did not see anything written about Felix Ntaganira. Although he had seen Callixte Musonera at the Major Seminary on both occasions, Callixte never told Rukundo that *gendarmes* had questioned him.<sup>754</sup>


504. When asked about Tharcisse Gakuba, Rukundo stated that he considered him as his brother and a friend. They both attended primary school, Catechist School and the Major Seminary together. Gakuba was ordained two years after Rukundo. Rukundo stated that he was saddened to have been accused of Gakuba's death. Rukundo knew Callixte Musonera from the Seminary for mature students when he arrived there in 1981. Musonera was one year ahead of Rukundo, and they attended the Major Seminary together. They became close friends, and Rukundo appreciated his jovial nature. Rukundo stated that Musonera was a good man and that he was greatly affected by his death.<sup>755</sup>

<sup>752</sup> T. 9 October 2007, pp. 35-36.

<sup>753</sup> T. 10 October 2007, pp. 48-50, 52.

<sup>754</sup> T. 10 October 2007, pp. 46-48.

<sup>755</sup> T. 9 October 2007, p. 29.



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505. Rukundo testified that he knew the Bernadine Sisters' Convent in Kigali and had a friendly relationship with many of the nuns there, including Mariboli, Specious Kamishago, Donate Kamurahiza and Isabelle Kanyahanga. While Rukundo was in Kigali between April and June 1994, he went to the Bernadine Sisters' Convent on probably two occasions. Rukundo's first visit to the Bernadine Sisters' Convent was on 23 May 1994. Father Laurent Kalibushi had expressed a concern that certain soldiers had proposed taking the nuns out of their community to an unspecified destination, and he was worried for the nuns since the sisters of the Remera Community were massacred in Kamomyi when they were evacuated. He therefore asked Rukundo to go and meet with the Bernadine Sisters. Rukundo personally dissuaded the Bernadine Sisters from going on a trip, and they all survived. On that first visit, Rukundo told Mariboli that her brother, Nkongoli, had been killed at a small trading centre close to his place, and had conveyed his condolences to her. He also told her that her mother was still alive. Rukundo said that at that point he already knew that Witness CCJ had gone to Burundi, and therefore had no reason to tell her that Witness CCJ was dead, contrary to Witness CCJ's testimony. Rukundo confirmed that Mariboli was present with the other sisters, during those two visits.<sup>756</sup>

506. Rukundo's second visit to the Bernadine Sisters' Convent was in June 1994 after he had heard of the death of clergy members in his diocese. Rukundo conveyed the news about the death of the clergymen, including Tharcisse Gakuba, Celestine Niyonteze, and Callixte Musonera. Rukundo thought that it was comforting for the Bernadine Sisters to be able to discuss the deaths.<sup>757</sup> In cross-examination, Rukundo denied that he went to the Convent on 2 June 1994. He stated that he heard of the death of the clergymen on 2 June 1994 when he was in Kabgayi with Father Laurent Kalibushi.<sup>758</sup> In cross-examination, Rukundo confirmed that the news of the killings was not broadcast on the radio, and that he did not hear about the killings at the Seminary until 2 June 1994.<sup>759</sup> He heard on 8 June 1994 about the killings of three Bishops, nine priests and a superior of the Josephite brothers on 5 June 1994. Rukundo only visited the Convent after that time.<sup>760</sup>

*Defence Witness GSA*

507. Witness GSA testified that Jean-Marie Dussart was one of the foreign priests who were at the Kabgayi Major Seminary from the beginning of the genocide. He stayed there until the RPF arrived in Kabgayi. Other foreign priests, including Father André Lerusse, went abroad for their

<sup>756</sup> T. 9 October 2007, pp. 55-57; T. 10 October 2007, pp. 37-38.

<sup>757</sup> T. 9 October 2007, p. 56.

<sup>758</sup> T. 10 October 2007, pp. 36-37.

<sup>759</sup> T. 10 October 2007, pp. 50-51.

<sup>760</sup> T. 10 October 2007, p. 36 (see also French transcript, T. 10 October 2007, p. 42).

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own security. Among the clergy present who were later killed were Brother Martin and Brother Fidele, who were Josephite Brothers, and Brother Canisius, Brother Gaspard and Brother Fabien, who were Marist Brothers, and Sister Bénigne. The seminarians Adalbert, to whom Witness GSA gave the keys, and Gilda Brown were also present. Witness GSA met the members of the clergy who had sought refuge at the Major Seminary on several occasions.<sup>761</sup>

508. Witness GSA testified that the abduction of persons from the Major Seminary occurred on 24 May 1994, sometime between 12.00 and 2.00 p.m., when they had gathered in the chapel at prayer time after lunch. The attackers asked people to show their identity cards. Some people, after indicating that they had forgotten their identity cards, locked themselves in their rooms and did not return. The attackers went through the unlocked rooms to pull out people and ask them to display their identity cards. There were already people suspected of being RPF accomplices who were set aside "to be taken to the slaughter house." At some point, the attackers tried to locate a transmitter in the institution, and used that as a pretext to move around the institution for approximately two hours. Witness GSA said that the attackers asked Adalbert to locate the bursar in order to obtain spare keys for various rooms. Since the bursar was temporarily absent, the attackers threatened Witness GSA to give them access to the keys and asked for all of the doors to be opened.<sup>762</sup> At that time, Witness GSA was in his office; a soldier with a gun and two civilians came into the office and accompanied Adalbert to the rooms. The group of attackers scattered all over the Major Seminary searching, but did not force open any doors.<sup>763</sup> When asked in cross-examination if people were made to sit down on the back lawn during the searches, Witness GSA said that he did not see that situation himself, but it was possible.<sup>764</sup>

509. According to Witness GSA, the attackers presented themselves as officials – the *sous-préfet* Misago, the intelligence officers and the representatives of the Prosecutor's office. It was therefore a properly organized search operation with all of the necessary legal warrants. Some of the attackers wore military uniforms and carried weapons. Witness GSA did not see soldiers and civilians together all of the time, and estimated that there may have been four to five soldiers.<sup>765</sup> Witness GSA did not recognise any of the attackers, since the authorities in Gitarama had changed.<sup>766</sup> In cross-examination, Witness GSA clarified that, although he had heard that Misago was present, he

<sup>761</sup> T. 1 October 2007, pp. 67-68, 70.

<sup>762</sup> T. 2 October 2007, pp. 8-9, 21.

<sup>763</sup> T. 2 October 2007, pp. 62-63.

<sup>764</sup> T. 2 October 2007, p. 70.

<sup>765</sup> T. 2 October 2007, pp. 9-10, 54, 61.

<sup>766</sup> T. 2 October 2007, p. 14.



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could not have identified him since he did not know him.<sup>767</sup> Witness GSA stated that Rukundo was not among the attackers. He added that, if Rukundo had been present, he would have recognised him, since he knew him well. Witness GSA further emphasised that he never heard anyone subsequently mention Rukundo's presence at the Major Seminary.<sup>768</sup>

510. Witness GSA said that, throughout the operation conducted by the attackers at the Major Seminary, he was able to move around and observe what was happening in various parts of the building.<sup>769</sup> Witness GSA clarified that he was not present when the initial attack took place, and arrived there 15-20 minutes afterwards. When the assailants arrived, he was on the other side of the building, along with the Archbishop of Kigali, Vincent Nsengiyumva. The first acts of the attack were therefore recounted to Witness GSA from people gathered in the chapel, since he did not witness them for himself.<sup>770</sup>

511. Witness GSA said that when he heard about the attack he went to the site of the event. He saw people in uniform, who had come with the attackers, standing near a blue Toyota eight-seater minibus close to the entrance where people were being taken away. He tried to intervene to help Brother Fidele, who had come to him. A soldier pointed his weapon at Witness GSA's throat and said that if he tried to intervene, Witness GSA would be considered one of Fidele's collaborators and killed.<sup>771</sup>

512. Witness GSA saw the people being loaded into the vehicle and knew that some of them would not return. The assailants brought the Seminary vehicle back in the evening.<sup>772</sup> Witness GSA testified that the same evening they heard that the people taken away had been killed, and they received confirmation of this information the following day. No one told them how they had been killed, or where their bodies could be found.<sup>773</sup>

513. Witness GSA testified that there were four priests abducted that day from the Major Seminary: Célestin Winchuti, Védaste Nyibakwe, Callixte Musonera and Tharcisse. Two Josephite brothers (Martin and Fidele) and three Marist brothers (Brother Gaspard, Canisius and Fabien) were also abducted as well as Sister Bénigne of Benebikira, a journalist Kalinda and another lady whose name he did not know. Witness GSA confirmed that Martin, Fidele, Callixte, Célestin and the

<sup>767</sup> T. 2 October 2007, p. 61.

<sup>768</sup> T. 2 October 2007, pp. 14, 72-73.

<sup>769</sup> T. 2 October 2007, pp. 10, 62.

<sup>770</sup> T. 2 October 2007, pp. 17-18, 20-21, 58-60, 62.

<sup>771</sup> T. 2 October 2007, pp. 18-20. Witness GSA marked the location of the vehicle when parked close to the entrance of the building, rooms, courtyard and chapel (T. 2 October 2007, p. 25).

<sup>772</sup> T. 2 October 2007, pp. 22-23.



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journalist were specifically wanted for reasons apart from their ethnicity. A few weeks before the abduction, a list with the names of people purportedly from the RPF, their dates of birth, places of residence, places where they had infiltrated and war names was drawn up. Witness GSA confirmed that he had seen the list.<sup>774</sup> The names of Fidele and Callixte were on the list, along with those who constituted the nucleus of the Rwandan press, Philbert Muzima and Jean-Claude Nkubito.<sup>775</sup> In cross-examination, Witness GSA confirmed that there were 12 people in all who were abducted from the Major Seminary on 24 May 1994, and that they were the only ones to have been abducted, to the best of his knowledge.<sup>776</sup>

514. Witness GSA testified that he had never been accused of acting in concert with Rukundo and Misago in the abductions of 24 May 1994 from the Major Seminary. He had remained in the RPF zone until July, which according to him, would have been impossible if he had acted as an accomplice in the 24 May 1994 events.<sup>777</sup>

515. Witness GSA said that he saw information about Rukundo's arrest on the internet. He had known that Rukundo was accused of certain crimes, based on plays staged in Geneva and other places. Witness GSA was not surprised at Rukundo's arrest, since the church had been involved in some killings, and several priests were sought after to be arrested. However, he did not think that Rukundo was guilty.<sup>778</sup>

*Defence Witness Jean-Marie Dussart (formerly GSB)*

516. Witness Dussart testified that, at 11.00 a.m. on 24 May 1994, he went to Father Silas Ngerero's room. Around 12.00 or 12.30 p.m. (the time of noontime prayers in the chapel), as he headed towards the chapel, he saw a soldier. When Witness Dussart entered the chapel for prayers, someone in military uniform asked him for Father Martin's whereabouts. Witness Dussart said that he could be located after the prayers. Witness Dussart did not see the soldiers enter the chapel.<sup>779</sup> However, after prayers, and as the group that was in the chapel were going to lunch (approximately 30 to 40 of them), they were ordered to sit down on the lawn behind the buildings and were guarded by a soldier. They were only permitted to go to lunch at 3.00 p.m. From his location on the lawn, Witness Dussart could only see a group of two soldiers and one civilian inspecting the rooms. He

<sup>773</sup> T. 2 October 2007, p. 25.

<sup>774</sup> T. 2 October 2007, pp. 11-12, 29.

<sup>775</sup> T. 2 October 2007, pp. 13-14, 50-52.

<sup>776</sup> T. 2 October 2007, p. 28.

<sup>777</sup> T. 2 October 2007, pp. 70-71, 73.

<sup>778</sup> T. 2 October 2007, p. 26.



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later heard that the civilian was the new *sous-préfet* from Kibungo, who was unknown in that area. Witness Dussart did not recall seeing any familiar faces among the people involved in that operation.<sup>780</sup> It was not physically possible to see the vehicles parked, if any, from his location, although he had a vague recollection of seeing some vehicles earlier in the parking lot. Witness Dussart could not see what was happening behind the tower at the entrance to the chapel, from his location on the lawn. He did not see the people being taken away or who was responsible for taking them away. Witness Dussart explained that those present at the Major Seminary on that day did not feel threatened at all; they did not feel that they were under “attack” because they “believed it was an operation carried out to check our identity and to find out whether we were safe and secure. So we weren’t attacked or assailed, as such. It was peaceful. It was peaceful.” In cross-examination, Witness Dussart could not recall the people with him on the lawn, since he did not know them. The Rector Venuste Linguyleneza was not present, although Witness Dussart later heard that when the Rector saw what was happening, he drove in his car to inform the Bishopric.<sup>781</sup>

517. Witness Dussart testified that on the morning of 25 May 1994, after mass and breakfast, he met Father Joseph from Byimana at the Bishopric, who informed him that the people taken away had been killed. Sylvestre at the St. Léon Minor Seminary then further confirmed this information. At this point, Witness Dussart became frightened and started writing down his observations in a bundle of seven diaries. In cross-examination, Witness Dussart clarified that it was only on the following morning that he was notified that a crime had been committed; until then he thought that the people had merely been taken away for a routine check.<sup>782</sup> He stated that the refugees previously felt safe at the Major Seminary, in contrast to the places of great insecurity where they had come from, and therefore felt that it was only a routine check. He admitted, however, that there was no other occasion when people had been brought back after having been taken from the Major Seminary for questioning.<sup>783</sup>

518. Witness Dussart remembered that Father Martin, Callixte Musonera, Father Pierre Celestin, Father Vedaste and Brother Fidele were among those abducted from the Major Seminary. Among the 17 people taken away, most were priests, although there was one journalist who was later killed.

<sup>779</sup> T. 10 September 2007, p. 29-30. Witness Dussart identified photograph 395 to show the entrance of the chapel, with the tower, and the flight of stairs that goes towards the Seminary buildings (T. 10 September 2007, p. 38).

<sup>780</sup> T. 10 September 2007, pp. 29-30.

<sup>781</sup> T. 10 September 2007, pp. 29-30, 45.

<sup>782</sup> T. 10 September 2007, pp. 31, 45-47.

<sup>783</sup> T. 10 September 2007, pp. 52-53, 58.

Witness Dussart said that, although there was no roll call that evening, he noticed that some people were missing from the community.<sup>784</sup>

519. Witness Dussart testified that he never heard Rukundo's name or that of any other military chaplain mentioned in connection with the events of 24 May 1994.<sup>785</sup>

*Defence Witness SJC*

520. Witness SJC testified that one of his classmates, who had taken refuge at the Kabgayi Major Seminary at the time and who was a Tutsi survivor of the massacre, but is now deceased, told him that towards the end of May 1994, people were abducted from the Major Seminary. Witness SJC was told that the people were taken away in a minibus, and that attackers were sent by the prefectural authority.<sup>786</sup> Witness SJC admitted that he did not actually know who abducted the people from the Major Seminary<sup>787</sup> and disagreed that those from the prefectural authority could have been responsible for killings when they had the responsibility of protecting people.<sup>788</sup> Witness SJC heard that the people taken away had been killed when the Bishop of Kabgayi denounced the killers on Vatican radio the following day.<sup>789</sup> Some people who were abducted from the Kabgayi Major Seminary included Father Vedaste, Father Celestin, Father Tharcisse, Sister Bénigne, Father Callixte, and a journalist, Viateur Kalinda. They were killed in Mwanda, not far from Kabgayi.<sup>790</sup> Witness SJC stated that his source had mentioned names of those abducted and others that he could not recall. Witness SJC never found out how many people were abducted from the Seminary.<sup>791</sup>

521. Witness SJC said that during the time he spent in Kabgayi, from April 1994 until the time he left, he never saw Rukundo there nor heard of his presence.<sup>792</sup>

*Defence Witness SJA*

522. The Chamber has previously considered Witness SJA's evidence in relation to the incidents at St. Joseph's College.

<sup>784</sup> T. 10 September 2007, pp. 46-47.

<sup>785</sup> T. 10 September 2007, pp. 31-32.

<sup>786</sup> T. 3 September 2007, pp. 27-28, 47-50.

<sup>787</sup> T. 3 September 2007, pp. 49-50.

<sup>788</sup> T. 3 September 2007, pp. 62-63.

<sup>789</sup> T. 3 September 2007, pp. 28, 48.

<sup>790</sup> T. 3 September 2007, p. 32.

<sup>791</sup> T. 3 September 2007, pp. 48-49.

<sup>792</sup> T. 3 September 2007, pp. 46-47.

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523. Witness SJA testified that he heard on the radio that Rukundo, who was in Switzerland at the time, had been accused of participating in a plot to abduct clergymen from the Major Seminary.<sup>793</sup>

524. At the outset of the genocide, Witness SJA testified that Fidele, a clergyman, was at St. Joseph's College and Martin, also a clergyman, remained in Gakurazo in Byimana. According to Witness SJA, Fidele and Martin arrived at the Major Seminary at the beginning of May 1994. Witness SJA had the opportunity to visit both Fidele and Martin at the Major Seminary on 24 May 1994, along with brother Celestin Munyankindi, who had a vehicle. That was the first time he visited the Seminary since the arrival of the refugees. He arrived at the Major Seminary around 8.00 a.m., after which he ran an errand for Fidele in Gitarama for 30 minutes. Upon his return, Witness SJA spent time talking to the Marist brothers, the Josephite brothers and some other refugees whom he knew. At about noon, when the bell for midday prayers rang, the clergy had to leave. Witness SJA then said goodbye to them and left to return to his home, along with Celestin.<sup>794</sup>

525. As they were leaving, Witness SJA noticed that many soldiers had taken up various positions at the Major Seminary. On their way to the vehicle, he saw Brother Fidele having a discussion with Venuste Linguyenzeza. A soldier was standing next to them, telling them to hurry up. A little further to the right, some people were coming out of the chapel. A soldier, along with Brother Martin's driver, headed towards a green Hiace vehicle. Two people dressed in civilian attire were sitting down next to the Hiace vehicle, and one of them had documents in his hand. They forced Martin to enter the vehicle. Witness SJA later heard that one of them was Antoine Misago Rutegesha (the *sous-préfet* and the person heading the prefectoral committee on refugees), although he had never met him before. At that time, Sister Bénigne walked up behind him, reciting her rosary, as she was being led away by a soldier. After Martin went into the vehicle, Witness SJA left the Major Seminary in his own vehicle. Witness SJA saw Martin being taken away, but not Fidele or Sister Bénigne. He subsequently received information of the other abductions.<sup>795</sup>

526. Witness SJA did not know when the attackers arrived at the Major Seminary. He noticed that they were present at noon, when he left the people he had come to visit. He estimated that he spent 15 minutes between the time he left the people he visited and his own departure from the premises.<sup>796</sup> In cross-examination, Witness SJA admitted that he had remained at the location for

<sup>793</sup> T. 22 October 2007, pp. 15-16.

<sup>794</sup> T. 22 October 2007, pp. 16-18.

<sup>795</sup> T. 22 October 2007, pp. 18-21.

<sup>796</sup> T. 22 October 2007, p. 19.



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approximately 15 minutes, and was not in a position to comment on events after that time.<sup>797</sup>

Witness SJA saw two soldiers near the door of the chapel, to whom the people leaving the chapel showed their identification papers. Other soldiers had taken positions next to the columns of the chapel. He estimated that there were about 10 soldiers at the Major Seminary that day; but he was not sure if there were more soldiers who he did not see.<sup>798</sup>

527. Witness SJA testified that he did not see Rukundo at the Major Seminary on 24 May 1994. He did not hear anyone mention Rukundo's name in connection with the abductions in his discussions with many people about the events of that day. Since Rukundo was well-known within the clergy, people would have known if he had come to the Major Seminary.<sup>799</sup>

528. Witness SJA was detained in Rwanda on 17 July 1997. He admitted that he had been convicted for complicity in certain events.<sup>800</sup> In cross-examination, Witness SJA stated that he knew Joseph Ndagijimana (a priest), Jean-Baptiste Gatsinzi (*sous-préfet*), and Emmanuel Ruzigana (*bourgmestre*), who were all detained with him in prison after being accused of genocide. Witness SJA denied that they had ever had a meeting regarding the allegations against Rukundo.<sup>801</sup>

#### *Defence Witness SLD*

529. The Chamber has previously considered Witness SLD's evidence in relation to the incidents at the St. Léon Minor Seminary.

530. Witness SLD testified that there was an information gathering exercise to determine those who were responsible for the crimes in Kabgayi in 1994, which became public in the Gacaca courts. Among the perpetrators were the major seminarian Sylvain, Brother Rwesero, *sous-préfet* Gatsinzi, the former *bourgmestre* Niyonteze, and a woman called Hakinesa, who was a major and was detained at Mulinsi. These were people who incited others to commit crimes and who participated in the crimes in Kabgayi.<sup>802</sup>

531. Witness SLD denied that Rukundo's name was mentioned in connection with the crimes in Kabgayi, and stated that, if this was the case, he would have heard since he knew Rukundo more

<sup>797</sup> T. 22 October 2007, p. 33.

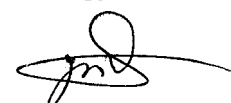
<sup>798</sup> T. 22 October 2007, p. 20.

<sup>799</sup> T. 22 October 2007, pp. 20, 36, 40.

<sup>800</sup> T. 22 October 2007, pp. 22-23.

<sup>801</sup> T. 22 October 2007, pp. 33-35, 37.

<sup>802</sup> T. 16 October 2007, pp. 9-10



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closely than those who were found responsible for the crimes.<sup>803</sup> He added that Rukundo was never spoken about in connection with the crimes in Kabgayi in 1994.<sup>804</sup>

*Defence Witness EVD*

532. The Chamber has previously considered Witness EVD's evidence in relation to the events at the Kabgayi Bishopric.

533. Witness EVD was not an eyewitness to the abductions and killings of priests and other civilians from the Kabgayi Major Seminary. The Vicar General, whom he accompanied to the Seminary to recover property belonging to the deceased priests to keep at the Bishopric, informed him about the incident. This task took place sometime between 20 and 25 May 1994. Although he did not spend much time at the Major Seminary, Witness EVD had the chance to speak to the sister of a priest who had been killed in the abductions. It was being said that the priests were abducted and killed by soldiers. Witness EVD denied hearing anyone mention Rukundo's presence during the abductions or his involvement in any other criminal activities in Kabgayi.<sup>805</sup>

*Defence Witness EVA*

534. The Chamber has previously considered Witness EVA's evidence in relation to the events at the *Imprimerie de Kabgayi* roadblock and the Kabgayi Bishopric.

535. Witness EVA testified that she learnt that the priests who were killed at the Kabgayi Major Seminary were abducted and killed on the basis of lists that had been found at the Rudahunga's home. She did not know who had handed over the lists to soldiers or whether soldiers had discovered those lists in the Rudahunga's home.<sup>806</sup>

*Defence Witness EVB*

536. The Chamber has previously considered Witness EVB's evidence in relation to the events at the Nyabikenke communal office and the Kabgayi Bishopric.

<sup>803</sup> T. 16 October 2007, p. 10.

<sup>804</sup> T. 16 October 2007, pp. 25-26.

<sup>805</sup> T. 4 October 2007, pp. 12-13, 24-25.

<sup>806</sup> T. 19 July 2007, pp. 66-67.

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537. Witness EVB stated that he heard that the soldiers who had come for the clergy at the Kabgayi Major Seminary had arrived with *sous-préfet* Misago.<sup>807</sup>

(e) Deliberations on the Abduction and Killing of Tutsi Clergy

(i) Preliminary Issue: Alibi

538. During his testimony, the Accused stated that he was not in Kabgayi on 24 May 1994, but rather he was in Kigali.<sup>808</sup> Before commencing cross-examination, the Prosecution objected to the Accused's assertion of this fact since it was not given prior notice of alibi, pursuant to Rule 67 of the Rules. The Defence responded that it could not have given such notice unless it was able to satisfy the requirements in the Rules and present a witness to support the alibi. Since it did not have any other witnesses in support of the alibi besides the Accused, the Defence did not think that this was required. The Defence argued that the Prosecution has many statements containing notice that Rukundo never purported to be in Kabgayi on that day.<sup>809</sup>

539. Rule 67 of the Rules states that the Defence must notify the Prosecution of its intent to enter the defence of alibi as soon as reasonably practicable. The Chamber finds that the Defence should have given this notice, even if it only relied on the Accused's evidence. The failure to provide such notice, however, does not limit the Accused from relying on this defence, but the Chamber may attach less weight to the alibi. In any event, the Chamber does not find that the Accused's assertion that he was in Kigali on 24 May 1994, in itself, raises reasonable doubt on the Prosecution case. Nevertheless, the Chamber still needs to be satisfied that the Prosecution has proved the allegations charged beyond reasonable doubt.

(ii) Merits of the Allegation

540. Paragraphs 19 and 29 of the Indictment allege that the Accused participated in the abduction and killing of Tutsi clergy and other persons from the Kabgayi Major Seminary on 24 May 1994.

541. Witness BLP testified that, towards the end of May 1994, he saw Rukundo with soldiers at St. Joseph's College looking for a priest called Fidele. Out of fear, Witness BLP told the soldiers

<sup>807</sup> T. 20 July 2007, pp. 17-19

<sup>808</sup> T. 9 October 2007, p. 29; T. 10 October 2007, pp. 51-52.

<sup>809</sup> T. 10 October 2007, pp. 16-19.

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that Fidele was at the Kabgayi Major Seminary. He went with the soldiers to the Major Seminary in the same convoy as Rukundo.<sup>810</sup>

542. At the Kabgayi Major Seminary, Witness BLP saw Rukundo standing near his vehicle in the parking lot with *sous-préfet* Antoine Misago, while some soldiers searched the Seminary buildings. Witness BLP stated that he saw the soldiers search almost all the buildings, before they stopped in front of the chapel door. They asked everyone inside the chapel to come out and show their identity cards. The soldiers allowed some people to return to the Major Seminary, while they asked others to go to the place where Rukundo and Misago were located in the parking lot. Witness BLP said that Rukundo had a few sheets of paper, while the leader among the soldiers and the *sous-préfet* each had a piece of paper. Witness BLP recognised and named several people who were made to board a vehicle at the Major Seminary, which then left towards Butare. Witness BLP said that he saw Rukundo leave with them. Later, news spread in Kabgayi that the people in the vehicle had been killed in Byimana.<sup>811</sup>

543. On 24 May 1994, during the regular noon prayers at the Kabgayi Major Seminary, Witness CSH also saw an armed group of soldiers and *Interahamwe* at the two entrances to the chapel. They called out a list of names, and those people went outside along with others who showed their identity cards, and were found to be Tutsi. He saw the vehicle of the Seminary, a Toyota Hilux, and a blue minibus, belonging to the *préfecture*, at the top of the stairs and later heard that the group had left, that Misago had been there, and that the abducted persons were subsequently killed at Byimana.<sup>812</sup>

544. Defence Witnesses GSA and Dussart were also present at the Major Seminary on 24 May 1994, and confirmed before the Chamber that the abductions took place. Their testimonies corroborated the time of the abductions, the presence of soldiers, the showing of identity cards, Misago's presence, the minibus used to take people away and the identity of the individuals abducted.<sup>813</sup>

545. The Chamber therefore finds that many Tutsi clergy persons including Brother Martin Munyanshongore, Father Celestin Niwenshuti, Brother Fidele Murekezi, Sister Bénigne, Father Vedaste Nyilibakwe, Father Callixte Musonera, Father Tharcisse Gakuba, three Marist Brothers

<sup>810</sup> T. 15 November 2006, pp. 17-18; T. 16 November 2006, pp. 30-32.

<sup>811</sup> T. 15 November 2006, pp. 18-19; T. 16 November 2006, p. 34.

<sup>812</sup> T. 28 November 2006, pp. 33-43; T. 29 November 2006, p. 14.

<sup>813</sup> T. 1 October 2007, pp. 64-70; T. 2 October 2007, pp. 8-14, 18-23, 25-26, 28, 54, 61-63, 70-73 (GSA); 10 September 2007, pp. 29-32, 45-46 (Dussart).



(Canisius, Gaspard, Fabien) and at least one civilian, Viateur Kalinda, who was a journalist, were abducted from the Kabgayi Major Seminary on 24 May 1994, and then subsequently killed at Byimana. 4544

546. The Chamber will now turn to the issue of the Accused's alleged involvement in these abductions and killings. Witness BLP testified that Rukundo was in the convoy from the St. Léon Minor Seminary to the Kabgayi Major Seminary on the day of the abductions and that he was with the soldiers who were looking for the priest, Fidele. The witness said that Rukundo was with *sous-préfet* Misago in the Seminary's parking lot while soldiers searched for people inside. Some people were ordered by the soldiers to go to the place where Rukundo was standing with Misago holding lists. Witness BLP testified that Rukundo left with those people, who were killed on that day.<sup>814</sup>

547. The Chamber notes that Witness BLP is the only witness who places the Accused at the scene of the abductions at the Major Seminary. The Chamber recalls that it can rely on the testimony of a single witness, if found credible.<sup>815</sup> However, with respect to Witness BLP, the Chamber reiterates its previous finding that it will only rely on this witness's testimony where it is corroborated by other reliable evidence, or itself corroborates such evidence.<sup>816</sup>

548. Prosecution Witnesses CSH and CCJ do not provide such corroboration.

549. Prosecution Witness CSH was an eyewitness to the abductions from the Major Seminary. However, he does not in any way connect Rukundo to the crimes committed against the Tutsi clergy at that location. The Chamber notes Witness CSH's admission that he went into hiding in one of the toilets of the building for one and half hours during the operation conducted by the soldiers.<sup>817</sup> This implies that he did not actually see all that transpired during the attack and might not have noticed everyone involved in that operation. The Chamber, however, considers that his failure to mention Rukundo's involvement is significant, especially in light of his earlier allegation that Rukundo had uttered anti-Tutsi statements to members of the clergy at the Major Seminary. In addition, the Chamber has considered the fact that Witness CSH told the Chamber that he subsequently heard that the abductions were attributed to *sous-préfet* Misago, rather than Rukundo.<sup>818</sup> This is consistent with the testimonies of Defence Witnesses GSA, SJA and EVB.<sup>819</sup>

<sup>814</sup> T. 15 November 2006, pp. 17-19; T. 16 November 2006, pp. 30-32.

<sup>815</sup> See Section II.B.

<sup>816</sup> See previous finding that BLP's evidence must be corroborated in Section III.4.c.

<sup>817</sup> T. 28 November 2006, p. 34.

<sup>818</sup> T. 29 November 2006, p. 14.

<sup>819</sup> T. 2 October 2007, pp. 9, 61 (GSA); T. 22 October 2007, pp. 20-21 (SJA); T. 20 July 2007, pp. 17-19 (EVB).

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The Chamber has already found Witness CSH to be credible<sup>820</sup> and is satisfied that, in relation to the above factors, if the witness had seen Rukundo during the attack on 24 May 1994, or subsequently heard of his involvement, he would have told the Chamber.

550. Prosecution Witness CCJ testified that, while in Burundi, he heard of the abduction and killing of clergymen and women from the Major Seminary.<sup>821</sup> However, like Witness CSH, this witness did not connect Rukundo to the incident at the Major Seminary.

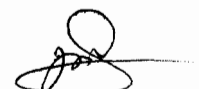
551. After having considered the totality of the evidence, the Chamber finds that the Prosecution has not proved beyond reasonable doubt that Rukundo ordered, instigated or aided and abetted the abduction and killing of Tutsi from the Kabgayi Major Seminary, as alleged in paragraphs 19 and 29 of the Indictment.

552. Having found that the Prosecution has failed to prove beyond reasonable doubt that Rukundo participated in the abduction and killing of Tutsi priests at the Kabgayi Major Seminary, the Chamber need not consider the allegation in paragraphs 20 and 30 of the Indictment that he subsequently reported the death of the priests to the Bernadine Sisters' Convent.

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<sup>820</sup> See previous finding of CSH's credibility at Section III.9.c.

<sup>821</sup> T. 14 February 2007, pp. 33-34.



## IV. CHAPTER IV: LEGAL FINDINGS

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A. INTRODUCTION

553. The Indictment charges Rukundo with genocide, as well as with murder and extermination as crimes against humanity. The crimes were allegedly committed in Gitarama *préfecture*, at the Gitarama communal office in Nyabikenke and at various locations in Kabgayi, including the Bishopric, the St. Léon Minor Seminary, the CND, the Kabgayi Major Seminary and St. Joseph's College.

554. Rukundo is charged with responsibility for these crimes, pursuant to Article 6(1) of the Statute, for having planned, instigated, ordered, committed<sup>822</sup> or otherwise aided and abetted the planning, preparation or execution of the crimes charged.<sup>823</sup> The Chamber will discuss these terms where relevant in its findings below.<sup>824</sup>

B. GENOCIDE(a) Applicable Law

555. Count 1 of the Indictment charges Rukundo with genocide, pursuant to Article 2 of the ICTR Statute. Article 2(2) states:

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

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

...

556. To find an accused guilty of the crime of genocide, it must be established that he committed any of the enumerated acts in Article 2(2) of the Statute with the specific intent to destroy, in whole or part, the members of a group, as such, defined by one of the protected categories of nationality, race, ethnicity, or religion.<sup>825</sup> The [specific] victims must be targeted because of their membership

<sup>822</sup> The Chamber has found that joint criminal enterprise, which is one mode of commission under Article 6(1), was not pleaded with sufficient specificity in the Indictment, see Section II.A.1.

<sup>823</sup> *Chapeau* to paras. 3-21 of the Indictment.

<sup>824</sup> For a general explanation of these terms see *Mpambara*, Judgement (TC), paras. 6-8, 12, with references to established case law; *Zigiranyirazo*, Judgement (TC), paras. 381-382, 386. See also footnotes 112, 113, 193, *supra*.

<sup>825</sup> *Krstić*, Judgement (AC), para. 12 ("The intent requirement of genocide under Article 4 of the [ICTY] Statute is therefore satisfied where evidence shows that the alleged perpetrator intended to destroy at least a substantial part of the



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in the protected group.<sup>826</sup> The actual destruction of a substantial part of the group is not a requirement of the offence, but may assist in determining whether the accused intended to bring about the result.<sup>827</sup>

557. In the absence of direct evidence demonstrating the perpetrator's specific intent to commit genocide, such intent may be inferred from his overt statements or other circumstantial evidence.<sup>828</sup> Factors that may enable a Trial Chamber to infer the perpetrator's genocidal intent include the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group or the repetition of destructive and discriminatory acts.<sup>829</sup> The perpetrator need not be motivated solely by a genocidal intent, and having a personal motive will not preclude such a specific intent.<sup>830</sup>

(b) Deliberations

558. To establish Rukundo's criminal responsibility for genocide, the Prosecution relies on all of the allegations discussed in the Chamber's factual findings.<sup>831</sup>

559. The Chamber has found that the Prosecution has not established beyond reasonable doubt that Rukundo aided and abetted the killing of Tutsi at the *Imprimerie de Kabgayi* roadblock, as alleged in paragraph 10(ii) of the Indictment (Section III.3.c), that Rukundo ordered, instigated or aided and abetted policemen to shoot at the refugees gathered at the Nyabikenke communal office, as alleged in paragraph 10(iv) of the Indictment (Section III.5.c), that Rukundo's alleged conduct caused serious mental harm to the Tutsi priests who had taken refuge at the Bishopric in April 1994, as alleged in paragraph 10(v) of the Indictment (Section III.6.c), that Rukundo ordered, instigated or aided and abetted the beating of Tutsi refugees at the St. Léon Minor Seminary, as alleged in paragraph 13 of the Indictment (Section III.7.c.ii), that Emmanuel Rukundo ordered, instigated or aided and abetted soldiers and *Interahamwe* militiamen to kill Tutsi refugees at the CND or to

protected group"); *Ndindabahizi*, Judgement (TC), paras. 453-454; *Ntagerura et al.*, Judgement (TC), para. 662; *Niyitegeka*, Judgement (AC), para. 48.

<sup>826</sup> *Gacumbitsi*, Judgement (AC), para. 39; *Rutaganda*, Judgement (AC), paras. 524-525; *Jelisić*, Judgement (AC), para. 46; *Mpambara*, Judgement (TC), para. 8; *Simba*, Judgement (TC), para. 412.

<sup>827</sup> *Krstić*, Judgement (AC), para. 35.

<sup>828</sup> *Gacumbitsi*, Judgement (AC), paras. 40-41; *Semanza*, Judgement (AC), paras. 261-262; *Rutaganda*, Judgement (AC), paras. 525, 528; *Mpambara*, Judgement (TC), para. 8; *Simba*, Judgement (TC), paras. 413, 415; *Ndindabahizi*, Judgement (TC), para. 454.

<sup>829</sup> *Semanza*, Judgement (AC), paras. 261-262. See also *Rutaganda*, Judgement (AC), para. 525; *Ndindabahizi*, Judgement (TC), para. 454; *Ntagerura et al.*, Judgement (TC), para. 663.

<sup>830</sup> *Simba*, Judgement (AC), para. 269; *Ntakirutimana*, Judgement (AC), para. 304; *Niyitegeka*, Judgement (AC), para. 53; *Krnojelac*, Judgement (AC), para. 102; *Jelisić*, Judgement (AC), para. 49.

<sup>831</sup> Prosecution Closing Brief, paras. 107-112. See the Chamber's findings on pre-1994 evidence, Section III.1.

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abduct them from that location and kill them or inflict serious bodily or mental harm upon them, as alleged in paragraph 15 of the Indictment (Section III.8.c), that Rukundo's statement that the *Inyenzi* must be sought out and killed caused serious mental harm to the Tutsi priests at the Kabgayi Major Seminary, as alleged in paragraph 18 of the Indictment (Section III.9.c), and that Rukundo ordered, instigated or aided and abetted the abduction and killing of Tutsi from the Kabgayi Major Seminary, as alleged in paragraph 19 of the Indictment (Section III.9.e.ii).

560. The Prosecution, however, has proved beyond reasonable doubt the following allegations:

(i) Attack on St. Joseph's College: Killing of Madame Rudahunga, Beating of Two of her Children and Two Other Tutsi Civilians

561. The Chamber has found that, in April 1994, Rukundo, with soldiers of the Rwandan army, abducted and killed Madame Rudahunga. Furthermore, the Chamber has held that Rukundo and the soldiers abducted and severely beat and injured two of the Rudahunga's children and two other Tutsi civilians, Jeanne and Justin.<sup>832</sup>

562. The Chamber recalls that "committing" is not limited to direct and physical perpetration and that other acts can constitute direct participation in the *actus reus* of the crime.<sup>833</sup> Therefore the question of whether an accused with his own hands committed a crime (for example killing people) is not the only relevant criterion.<sup>834</sup> In *Prosecutor v. Gacumbitsi*, Mr. Gacumbitsi was held to have committed genocide when he separated Tutsi from Hutu as part of a criminal act in which the concerned Tutsi were killed. In construing the criminal responsibility of Gacumbitsi in that case, the Appeals Chamber held that his actions were "as much an integral part of the genocide as were the killings which [they] enabled."<sup>835</sup>

563. On the basis of the totality of the evidence presented, the Chamber finds that the *Gacumbitsi* threshold has been met in the present case. Rukundo participated from the outset until the completion of the crime: from the time when the soldiers, acknowledging his authority, showed him documents taken from St. Joseph's College, before abducting Madame Rudahunga, and following the blue pick-up which carried Madame Rudahunga away from the College, until he boasted about killing Madame Rudahunga and her two children, therefore claiming ownership of the acts.<sup>836</sup>

<sup>832</sup> See Section on St. Joseph's College, III.4.d.

<sup>833</sup> *Seromba*, Judgement (AC), para. 161; *Gacumbitsi*, Judgement (AC), para. 60; *Ndindabahizi*, Judgement (AC), para. 123.

<sup>834</sup> *Seromba*, Judgement (AC), para. 161.

<sup>835</sup> *Gacumbitsi*, Judgement (AC), para. 60; *Seromba*, Judgement (AC), para. 161.

<sup>836</sup> See Section III.4.d.



Rukundo's acts were as much an integral part of the criminal act as were the killing and the causing of serious bodily harm which they enabled. His acts amount to "committing" under Article 6(1) of the Statute.

564. The Chamber further finds that Rukundo intended the killing of Madame Rudahunga and the serious bodily harm caused to her children and the two Tutsi civilians.

565. Whether by killing Madame Rudahunga and causing serious bodily harm to her children and the two Tutsi civilians Rukundo intended to destroy the Tutsi ethnic group, in whole or in substantial part, must be assessed within the context of ethnic killing in Rwanda in 1994. The Appeals Chamber has held that "during 1994, there was a campaign of mass killing intended to destroy, in whole or at least in very large part, Rwanda's Tutsi population".<sup>837</sup>

566. In addition to having taken judicial notice of this fact, the Chamber has heard overwhelming evidence that soon after 6 April 1994, Tutsi were targeted on the basis of their ethnicity in Gitarama *préfecture*. Indeed, several Prosecution and Defence witnesses testified that they had to flee because they were threatened or their houses were attacked and burned down.<sup>838</sup> Others testified that Tutsi were abused or mistreated at roadblocks.<sup>839</sup> Still many others testified to attacks at various places where the Tutsi had sought refuge in Kabgayi including St. Joseph's College, the St. Léon Minor Seminary, the Kabgayi Major Seminary, the CND and at the Nyabikenke communal office.<sup>840</sup>

567. Within this context, Rukundo led a group of soldiers who systematically searched for Tutsi refugees in St Joseph's College and checked identity cards to verify the refugees' Tutsi ethnicity.<sup>841</sup> The soldiers specifically asked Madame Rudahunga whether she was the wife of Louis Rudahunga, who was targeted as an RPF accomplice.<sup>842</sup> Shortly after the incident, Rukundo boasted about having entered Rudahunga's house and having killed his wife and two of his children, whom Rukundo referred to as *Inyenzi*.<sup>843</sup>

568. Considering the general context of mass ethnic killing in Gitarama *préfecture* and in Kabgayi, and, specifically, the systematic targeting of Tutsi at St. Joseph's College and the Accused's reference to the Rudahunga family as *Inyenzi*, the Chamber is satisfied that Madame

<sup>837</sup> *Karemera et al.*, Decision on Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 35.

<sup>838</sup> See Witnesses BLC, BLJ, BCD, BUW, CCH, CSF, SLA, SLD, AMA, CSE, CNB, CNC, CSH.

<sup>839</sup> See Witnesses BLP, CSG, CSF, CCH, Emmanuel Rukundo.

<sup>840</sup> See Section III.4.d, Sections III.7.c.iii, Section III.9.e.ii, Section III.8.c, Section III.5.c.

<sup>841</sup> T. 28 September 2007, pp. 8-10, 22; T. 9 March 2007, p. 12.

<sup>842</sup> Louis Rudahunga had been arrested and detained in 1990 on suspicion of being an RPF accomplice (T. 13 February 2007, p. 68).

<sup>843</sup> T. 4 December 2006, p. 21.

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Rudahunga, her two children and the two other Tutsi civilians were targeted because they were Tutsi. Under these circumstances, the Chamber finds beyond reasonable doubt that Rukundo, when committing these crimes, possessed the intent to destroy, in whole or in part, the Tutsi ethnic group.

569. Accordingly, the Chamber finds Rukundo guilty on Count 1 of the Indictment, under Article 6(1) of the Statute, for committing genocide by killing Madame Rudahunga and causing serious bodily harm to two of her children and two other Tutsi civilians sometime in April 1994.

(ii) Abductions and Killings at the St. Léon Minor Seminary

570. The Chamber has found that, between mid-April and the end of May 1994, Rukundo participated, with soldiers and *Interahamwe*, on at least four occasions, in the abduction and subsequent killing of Tutsi refugees from the St. Léon Minor Seminary.<sup>844</sup>

571. In light of its findings above,<sup>845</sup> the Chamber concludes that Rukundo's actions were as much an integral part of the crimes as the abductions of Tutsi refugees from the St. Léon Minor Seminary and the subsequent killing that they enabled. The Chamber therefore finds that Rukundo's conduct amounts to "committing," under Article 6(1) of the Statute.

572. Considering the general context of violence against the Tutsi in Gitarama *préfecture* and in Kabgayi, and, in particular, Rukundo's participation in the systematic abduction and killing of Tutsi refugees at the St. Léon Minor Seminary on the basis of lists, as well as his statement that "something had to be done" about RPF sympathizers, the Chamber finds beyond reasonable doubt that Rukundo, when committing these crimes, possessed the intent to destroy, in whole or in part, the Tutsi ethnic group.

573. Accordingly, the Chamber finds Rukundo guilty on Count 1 of the Indictment, under Article 6(1), for committing genocide through the abductions and the killing of Tutsi refugees from the St. Léon Minor Seminary between April 1994 and the end of May 1994.

<sup>844</sup> See Section III.7.c.iii.

<sup>845</sup> See factual findings, paras. 361, 364.

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(iii) Sexual Assault at the St. Léon Minor Seminary

574. The Chamber has found that Rukundo sexually assaulted Witness CCH, a young Tutsi woman. The Chamber has further found, Judge Park dissenting, that Witness CCH suffered serious mental harm as a consequence of Rukundo's conduct.<sup>846</sup>

575. Considering the general context of mass violence against the Tutsi in Gitarama *préfecture* and in Kabgayi, and, specifically, Rukundo's words spoken prior to assaulting Witness CCH, that her entire family had to be killed for assisting the *Inyenzi*, the Chamber finds that Rukundo possessed the intent to destroy, in whole or in substantial part, the Tutsi ethnic group.

576. Accordingly, the Chamber finds, Judge Park dissenting, that Rukundo is guilty on Count 1 of the Indictment, under Article 6(1), for committing genocide, through his sexual assault of a young Tutsi woman at the St. Léon Minor Seminary in May 1994.

**C. CRIMES AGAINST HUMANITY (MURDER)**(a) Applicable Law

577. In Counts 3 and 4 of the Indictment, the Prosecution charges Rukundo with crimes against humanity (murder and extermination), pursuant to Article 3 of the Statute. Article 3 states:

[Crimes against humanity are] the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

(a) Murder;

(b) Extermination;

...

578. For any of the enumerated crimes under Article 3 of the Statute to qualify as a crime against humanity, the Prosecution must prove that the act was committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds.<sup>847</sup> The general requirements for a crime against humanity are intended to be read as

<sup>846</sup> See Section III.7.c.iv.

<sup>847</sup> *Ntakirutimana*, Judgement (AC), para. 516; *Ntagerura et al.*, Judgement (TC), para. 697; *Simba*, Judgement (AC), para. 421.



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disjunctive elements.<sup>848</sup> “Widespread” refers to the large scale of the attack,<sup>849</sup> whereas “systematic” describes its organized nature, as opposed to random or unrelated acts.<sup>850</sup> The perpetrator must have acted with knowledge of the broader context and knowledge that his acts formed part of the discriminatory attack.<sup>851</sup> However, he need not have shared the purpose or goals behind the broader attack, or have possessed a discriminatory intent.<sup>852</sup>

579. The crime of murder requires proof of the intentional killing of a person, or of the intentional infliction of grievous bodily harm with knowledge that such harm will likely cause the victim’s death, or with recklessness as to whether death will result, without lawful justification or excuse.<sup>853</sup> Negligence or gross negligence is not sufficient for establishing murder as a crime against humanity.<sup>854</sup>

(b) Deliberations

580. To establish Rukundo’s criminal responsibility for murder as a crime against humanity, the Prosecution relies on paragraph 22 of the Indictment.

(i) Attack on St. Joseph’s College: Killing of Madame Rudahunga

581. Based on the totality of the evidence, the Chamber finds that a widespread or systematic attack against Tutsi civilians on ethnic grounds occurred in Gitarama *préfecture* and in Kabgayi between April and the end of May 1994.<sup>855</sup>

582. The Chamber further finds that Rukundo was aware of this widespread or systematic attack and that his actions formed part of the attack. By his own account, Rukundo knew that Tutsi were being targeted at roadblocks and elsewhere on the basis of their ethnicity.<sup>856</sup> Furthermore, the Chamber notes that Rukundo was at the Nyabikenke communal office when Tutsi, who had sought

<sup>848</sup> *Karera*, Judgement (TC), para. 551.

<sup>849</sup> *Simba*, Judgement (AC), para. 421; *Semanza*, Judgement (TC), paras. 328-329.

<sup>850</sup> *Ntakirutimana*, Judgement (AC), para. 516 and footnotes; *Kunarac et al.*, Judgement (AC), paras. 93-97.

<sup>851</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>852</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>853</sup> *Ndindabahizi*, Judgment (TC), para. 487; *Muhimana*, Judgement (TC), para. 568; *Bagosora et al.*, 98bis Decision, para. 25. The Chamber notes that some Trial Chambers have held that murder requires an element of pre-meditation, not only intent. See *Bagilishema*, Judgement (TC), para. 86; *Ntagerura et al.*, Judgement (TC), para. 700; *Semanza*, Judgement (TC), para. 339.

<sup>854</sup> *Stakić*, Judgement (TC), para. 587; *Brđanin*, Judgement (TC), para. 386; *Martić*, Judgement (TC), para. 60.

<sup>855</sup> See Witnesses BLC, BLJ, BCD, BUW, CCH, CSF, CSG, SLA, SLD, AMA, CSE, CNB, CNC, CSH, BLP. See also *Semanza*, Judgement (AC), para. 192; *Karemera et al.*, Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, paras. 28-29.

<sup>856</sup> T. 8. October 2007, p. 53; T. 9 October 2007, pp. 6-7, 9; T. 10 October 2007, pp. 19-21.

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refuge there, were attacked by *Interahamwe*. The Chamber also notes that Rukundo visited the various locations in Kabgayi, where thousands of Tutsi sought refuge and on several occasions participated, with soldiers and *Interahamwe*, in attacks against the Tutsi in two locations in Kabgayi.

583. The Chamber has already found that Rukundo intentionally participated in the killing of Madame Rudahunga and that his acts amounted to "committing."<sup>857</sup>

584. The Chamber notes its finding that the killing of Madame Rudahunga was established, beyond reasonable doubt, as a basis for Rukundo's conviction for genocide. The Chamber, however, recalls that cumulative convictions for genocide and crimes against humanity based on the same conduct are permitted, as each crime has a materially distinct element not contained within the other.<sup>858</sup>

585. Accordingly, the Chamber finds Rukundo guilty on Count 2 of the Indictment, under Article 6(1), for committing murder as a crime against humanity for the killing of Madame Rudahunga sometime in April 1994.

#### **D. CRIMES AGAINST HUMANITY (EXTERMINATION)**

##### **(a) Applicable Law**

586. Extermination is distinguishable from murder because it is the act of killing on a large scale.<sup>859</sup> The expression "on a large scale," does not require a numerical minimum.<sup>860</sup> It requires proof that an accused participated in a widespread or systematic killing or in subjecting a widespread number of people to conditions of living that would inevitably lead to their deaths, and that by his acts or omissions, the accused intended this result.<sup>861</sup> The Prosecution is not required to name the victims.<sup>862</sup>

##### **(b) Deliberations**

587. To establish Rukundo's criminal responsibility for genocide, the Prosecution relies on the same allegations as for the crime of genocide.

<sup>857</sup> See Section IV.B.b.i.

<sup>858</sup> *Musema*, Judgement (AC), paras. 365-370; *Semanza*, Judgement (AC), para. 315. An element is materially distinct from another if it requires proof of a fact not required by the other element (*Krstić*, Judgement (AC), paras. 218-227).

<sup>859</sup> *Ntakirutimana*, Judgement (AC), paras. 516, 522.

<sup>860</sup> *Rugambarara*, Sentencing Judgement (TC), para. 23; *Ntakirutimana*, Judgement (AC), para. 516.

<sup>861</sup> *Ntakirutimana*, Judgement (AC), para. 522; See also *Gacumbitsi*, Judgement (AC), para. 86.

<sup>862</sup> *Ntakirutimana*, Judgement (AC), para. 521.

(i) Attack on St. Joseph's College: Killing of Madame Rudahunga; Beating of her Children and Two Tutsi Civilians

588. The Chamber notes that there is no evidence that the murder of Madame Rudahunga and the serious bodily harm caused to two of the Rudahunga's children and the two Tutsi civilians were committed as part of killings on a large scale. The Chamber therefore finds that these crimes are insufficient to satisfy the charge of extermination.

(ii) Abductions and Killings at the St. Léon Minor Seminary

589. Although no evidence was adduced before the Chamber regarding the specific number of deaths resulting from the abductions at the St. Léon Minor Seminary, the Chamber finds that, in light of the repetitive nature of the abductions and the fact that at least one bus was used to remove the identified refugees, the specific requirement for the crime of extermination, has been met in this case.

590. Accordingly, the Chamber finds Rukundo guilty on Count 3 of the Indictment, under Article 6(1), for extermination as a crime against humanity for abductions and killings of Tutsi refugees from the St. Léon Minor Seminary between April 1994 and the end of May 1994.



**V. CHAPTER V: VERDICT**


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591. For the reasons set out in this judgement, having considered all evidence and arguments, the Trial Chamber finds unanimously as follows in respect of Emmanuel Rukundo:

**Count 1: GUILTY of Genocide**

**Count 2: GUILTY of Murder as a Crime against Humanity**

**Count 3: GUILTY of Extermination as a Crime against Humanity**



## VI. CHAPTER VI: SENTENCING

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(a) Applicable Law

592. The Chamber has found Emmanuel Rukundo guilty on Counts 1, 2 and 3 of the Indictment for genocide, and murder and extermination as crimes against humanity. The Chamber now determines the appropriate sentence.

593. A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or for the remainder of his life.<sup>863</sup> The penalty imposed should reflect the aims of retribution, deterrence and, to a lesser extent, rehabilitation.<sup>864</sup> Pursuant to Article 23 of the Statute and Rule 101 of the Rules, the Trial Chamber shall consider the general practice regarding prison sentences in Rwanda, the gravity of the offences (the gravity of the crimes for which the accused has been convicted and the form of responsibility for these crimes) as well as the individual circumstances of the convicted person, including aggravating and mitigating circumstances.<sup>865</sup> 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>866</sup> and shall credit the accused for any time spent in detention pending his surrender to the Tribunal and during trial.<sup>867</sup>

(b) Determination of the Sentence

594. The Prosecution submits that the appropriate penalty is imprisonment for the remainder of the Accused's life.<sup>868</sup> The Prosecution seeks concurrent sentences for the remainder of the Accused's life for each count of the Indictment for which the Trial Chamber finds the Accused guilty.<sup>869</sup> The Defence submits that the Accused should be acquitted on all counts of the Indictment.<sup>870</sup>

595. 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

<sup>863</sup> Rule 101(A) of the Rules.

<sup>864</sup> See *Nahimana et al.*, Judgement (AC), para. 1057; *Stakić*, Judgement (AC), para. 402.

<sup>865</sup> *Bikindi*, Judgement (TC), para. 443.

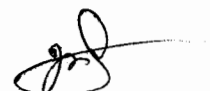
<sup>866</sup> Articles 23(1) and 23(2) of the Statute and Rule 101(B) of the Rules.

<sup>867</sup> Rule 101(C) of the Rules.

<sup>868</sup> Prosecution Closing Brief, paras. 913, 928.

<sup>869</sup> Prosecution Closing Brief, paras. 953(2), 953(7).

<sup>870</sup> Defence Closing Brief, paras. 588, 718, 949, 1608, 1670.



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to their obligation to individualise the penalties to fit the circumstances of the convicted person and to reflect the gravity of the crime.<sup>871</sup>

(i) Gravity of the Offence

596. The Chamber has found Rukundo guilty of genocide: for committing the murder of Madame Rudahunga and causing serious bodily harm to two of the Rudahunga's children and two Tutsi civilians, Justin and Jeanne; his participation in the killing and abduction of Tutsi from the St. Léon Minor Seminary, and, Judge Park dissenting, sexually assaulting a young Tutsi woman. The Chamber has further found Rukundo guilty of murder, as a crime against humanity, for the murder of Madame Rudahunga. Finally, the Chamber has found Rukundo guilty of extermination, as a crime against humanity, for his participation in the abduction and killing of Tutsi refugees from the St. Léon Minor Seminary.

597. Genocide is, by definition, a crime of the most serious gravity which affects the very foundations of society and shocks the conscience of humanity. Crimes against humanity are also extremely serious offences because they are heinous in nature and shock the collective conscience of mankind.<sup>872</sup>

598. The Chamber has wide discretion in determining what constitutes mitigating and aggravating circumstances and the weight to be accorded thereto. Whilst aggravating circumstances need to be proved beyond reasonable doubt, mitigating circumstances need only be established on a "balance of probabilities."<sup>873</sup>

(ii) Aggravating Circumstances

599. The Prosecution submits that the aggravating factors against Rukundo include: his position and his breach of trust; his premeditation; his direct participation as a perpetrator; the violent and humiliating nature of his acts and the vulnerability of his victims; and the duration of the offences and suffering of his victims.<sup>874</sup> The Chamber notes that it is well established in the ICTR and ICTY's jurisprudence that the manner in which the accused exercised his command or the abuse of an accused's personal position in the community may be considered as an aggravating factor.<sup>875</sup> The

<sup>871</sup> *Seromba*, Judgement (AC), para. 228; *Rugambarara*, Sentencing Judgement (TC), paras. 19-20.

<sup>872</sup> *Ruggiu*, Judgement (TC), para. 48; *Rugambarara*, Sentencing Judgement (TC), para. 19.

<sup>873</sup> *Simba*, Judgement (AC), para. 328; *Nahimana et al.*, Judgement (AC), para. 1038; *Bikindi*, Judgement (TC), para. 449; *Rugambarara*, Sentencing Judgement (TC), para. 14.

<sup>874</sup> Prosecution Closing Brief, para. 931.

<sup>875</sup> *Seromba*, Judgement (AC), para. 230; *Aleksovski*, Judgement (AC), para. 183; *Kayishema and Ruzindana*, Judgement (AC), paras. 357-358; *Ntakirutimana*, Judgement (AC), para. 563; *Kamuhanda*, Judgement (AC),

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Chamber considers Rukundo's stature in Rwandan society to be an aggravating factor. As a military chaplain, Rukundo was a well-known priest within the community and in the Rwandan military. The Chamber considers it highly aggravating that Rukundo abused his moral authority and influence in order to promote the abduction and killing of Tutsi refugees and to sexually assault a Tutsi girl. The Chamber notes that Prosecution witnesses testified that because of Rukundo's position as a military chaplain, they trusted him and believed that he had a certain moral authority over the soldiers.<sup>876</sup>

600. The Chamber also considers the fact that the Accused is an educated person to be an aggravating factor. As an educated person, the Accused should have appreciated the dignity and value of human life and have been aware of the need for peaceful co-existence between communities.<sup>877</sup>

(iii) Mitigating Circumstances

601. Mitigating circumstances need not be directly related to the offence.<sup>878</sup> The Prosecution submits that there was no evidence of any mitigating circumstances.<sup>879</sup> The Defence claims that Rukundo did all that he could to evacuate people, including Jean-Marie Vianney's family, 13 Pallotine sisters, Félicité (one of the Rwaza nuns), a Tutsi woman called Florida and her son Eric, the priest Boniface Kagabo and a nun from the Benebikira congregation.<sup>880</sup> The Defence, however, does not specifically refer to Rukundo's efforts to save Tutsi as a mitigating factor.

602. The Chamber notes that, even if it were to believe this evidence,<sup>881</sup> the assistance provided by Rukundo to a selected number of Tutsi carries only limited, if any, weight as a mitigating factor.

(c) Sentencing Practice

603. 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

paras. 347-348; *Bisengimana*, Judgement (TC), para. 120; *Serugendo*, Judgement (TC), para. 48; *Ndindabahizi*, Judgement (AC), para. 136.

<sup>876</sup> T. 14 February 2007, p. 7; T. 19 February 2007, p. 4.

<sup>877</sup> *Nzabirinda*, Judgement (TC), paras. 59, 63; *Bisengimana*, Judgement (TC), para. 120.

<sup>878</sup> *Rugambarara*, Sentencing Judgement (TC), para. 30; *Nikolić*, Judgement (TC), para. 145; *Deronjić*, Judgement (TC), para. 155.

<sup>879</sup> Prosecution Closing Brief, para. 947.

<sup>880</sup> Defence Closing Brief, para. 1825.

<sup>881</sup> Witnesses RUC, RUE and RUA (Jean-Marie Vianney's family), Witnesses TMB and TMC (thirteen Pallotine sisters), Witness TMC (Félicité, one of the Rwaza nuns), Witness RUA (a Tutsi woman called Florida and her son Eric), Witness RUA (the priest Boniface Kagabo) and Witness MCC (a sister from the Benebikira congregation).

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provisions, depending on the nature of the accused's participation.<sup>882</sup> In determining an appropriate sentence, the Appeals Chamber has stated that, "sentences of like individuals in like cases should be comparable."<sup>883</sup> 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>884</sup>

604. The Chamber has taken into consideration the sentencing practice of the ICTR and the ICTY, and notes particularly that the penalty must first and foremost be commensurate to the gravity of the offence.

605. In the present case, the Chamber's sentencing needs to address the Accused's conviction for both genocide and crimes against humanity. From this Tribunal, principal perpetrators convicted of genocide and extermination as a crime against humanity have received sentences ranging from 25 years to imprisonment for the remainder of their lives, except in cases where the accused pleaded guilty or there existed other significant mitigating circumstances.<sup>885</sup> Senior authorities, in particular Ministers, have received the most severe sentences.<sup>886</sup> Life imprisonment has also been imposed on those at a lower level if they planned or ordered atrocities or if they participated in the crimes with particular zeal or sadism.<sup>887</sup> Secondary or indirect forms of participation have usually entailed a lower sentence.<sup>888</sup> As regards murder as a crime against humanity, the Chamber notes that on two occasions this Tribunal has given specific sentences for this crime: Nzabirinda, who pleaded guilty, was sentenced to seven years' imprisonment for his participation in aiding and abetting murder;<sup>889</sup> and Semanza was sentenced by the Appeals Chamber to ten years' imprisonment for instigating one murder and personally committing one murder, and

<sup>882</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>883</sup> *Kvočka et al.*, Judgement (AC), para. 681.

<sup>884</sup> *Ibid.*

<sup>885</sup> *Karera*, Judgement (TC), para. 583.

<sup>886</sup> Life sentences have been imposed against senior government authorities in *Bagosora et al.*, Judgement (TC), paras. 2277-2279; *Kambanda*, Judgement (TC), paras. 44, 61-62 (Prime Minister); *Niyitegeka*, Judgement (TC), paras. 499, 502 (Minister of Information); *Ndindabahazi*, Judgement (TC), paras. 505, 508, 511 (Minister of Finance); *Kamuhanda*, Judgement (TC), paras. 6, 764, 770 (Minister of Higher Education and Scientific Research); *Kayishema and Ruzindana*, Judgement, (TC) para. 27 (prefect).

<sup>887</sup> *Akayesu*, Judgement (TC), para. 12 (*bourgmestre*); *Rutaganda*, Judgement (TC), paras. 466-473 (second vice-president of *Interahamwe* at national level); *Musema*, Judgement (TC), paras. 999-1008 (influential director of a tea factory who exercised control over killers); *Musema*, Judgement (AC), para. 383; *Muhimana*, Judgement (TC), paras. 604-616 (*conseiller*); *Gacumbitsi*, Judgement, (AC), para. 207 (*bourgmestre*; increased by the Appeals Chamber from 30 years).

<sup>888</sup> It is recalled that 45 years of imprisonment was the sentence in *Kajelijeli* (*bourgmestre*); 35 years in *Semanza* (*bourgmestre*); 25 years in *Ruzindana* (businessman) and *Gérard Ntakirutimana* (medical doctor).

<sup>889</sup> *Nzabirinda*, Judgement (TC), paras. 57, 116.





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eight years' imprisonment for instigating the murder of six people.<sup>890</sup> The Chamber further recalls that the Appeals Chamber sentenced Tadić to 20 years' imprisonment for murder as a crime against humanity.<sup>891</sup> The Chamber, however, notes that it is more common for convictions for murder, as a crime against humanity, to form part of a single sentence of a fixed term or of life imprisonment for the totality of the conduct of the Accused.<sup>892</sup>

(d) Credit for Time Served

606. Rukundo was originally arrested and detained on 12 July 2001 in Geneva, Switzerland. He was transferred to the Tribunal on 12 September 2001 and detained at the United Nations Detention Facility in Arusha, Tanzania. Pursuant to Rule 101(C) of the Rules, Rukundo is therefore entitled to credit for time served as of 12 July 2001.

(e) Conclusion

607. The Chamber has the discretion to impose a single sentence and notes that this practice is usually appropriate where the offences may be characterized as belonging to a single criminal transaction.<sup>893</sup>

<sup>890</sup> *Semanza*, Judgement (AC), para. 311.

<sup>891</sup> *Tadić*, Judgement (AC), para. 58. The sentence for murder as a crime against humanity was reduced by the Appeals Chamber from twenty-five years to twenty years.

<sup>892</sup> The following cases are examples of where the accused was convicted of, *inter alia*, murder as a crime against humanity and was sentenced to a single sentence of a fixed term or life imprisonment for the totality of the conduct of the Accused: *Karera*, Judgement (TC), *Kambanda*, Judgement (TC), *Muhimana*, Judgement (TC), *Nahimana*, Judgement (TC), *Ndindabahizi*, Judgement (TC), *Niyitegeka*, Judgement (TC), *Ntakirutimana*, Judgement (TC), *Rutaganda*, Judgement (TC), *Serushago*, Judgement (TC), *Akayesu*, Judgement (TC).

<sup>893</sup> *Karera*, Judgement (TC), para. 585; *Ndindabahizi*, Judgement (TC), para. 497.

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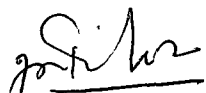
608. Considering all the relevant circumstances discussed above and having ensured that the Accused is not being punished twice for the same offence, the Chamber sentences Emmanuel Rukundo for genocide and for murder and extermination as crimes against humanity to a single sentence of

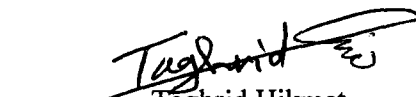
**TWENTY-FIVE (25) YEARS OF IMPRISONMENT**


609. This sentence shall be enforced immediately and, pursuant to Rule 101(C) of the Rules, Emmanuel Rukundo shall receive credit for time served as of 12 July 2001.

610. In accordance with Rules 102(A) and 103 of the Rules, Rukundo shall remain in the custody of the Tribunal pending transfer to the State where he will serve his sentence.

Arusha, 27 February 2009

  
Asoka de Silva  
Presiding Judge

  
Taghrid Hikmet  
Judge

  
Seon Ki Park  
Judge

Judge Park appends a Dissenting Opinion.



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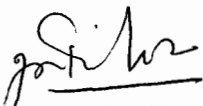
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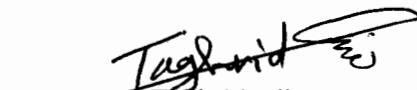
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Judge

  
Seon Ki Park  
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[Seal of the Tribunal]

## VII. DISSENTING OPINION OF JUDGE PARK

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1. With respect, I am unable to agree with the majority of the Trial Chamber in its conclusion that Witness CCH suffered serious mental harm as a result of the sexual assault carried out by Rukundo. I agree with the majority of the Trial Chamber that Witness CCH is a credible witness, that she was sexually assaulted as described in her testimony, and that there existed coercive circumstances at the time of the sexual assault. I do not, however, agree that the circumstances in this case, both independently, and as compared to other convictions for genocide by sexual assault at the *ad hoc* Tribunals, rise to the level of serious mental harm required for a conviction of genocide.

2. In my view, the majority's conclusion would make every incident of sexual assault committed with genocidal intent in the course of genocide, sufficient to convict its perpetrator of the crime of genocide. I support the strides made at this Tribunal and throughout international criminal jurisprudence in recognizing that rape and sexual assault can constitute genocide, crimes against humanity and war crimes. My intention is not to curb those strides, but rather to emphasize the serious nature of the crime of genocide. I recall that the Prosecution has charged the Accused only with genocide (Count 1) in relation to the alleged sexual assault against Witness CCH, and not as a crime against humanity or as a war crime.

3. I would like to reiterate that genocide is a crime of the most serious gravity which affects the very foundations of society and shocks the conscience of humanity.<sup>894</sup> To support a conviction for genocide, the bodily harm or the mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part.<sup>895</sup>

4. In making its finding that Witness CCH suffered serious mental harm, the majority notes that Witness CCH did not provide direct evidence about her mental state apart from the fact that she could not tell anyone about the incident. I further note that the Prosecution, in questioning the witness, did not even ask her how the incident has affected her life, her mental well-being, her subsequent sexual relationships, or put any other question to the witness which could assist the Chamber in making this finding. Consequently, the Chamber has reviewed the surrounding circumstances to determine whether, from those circumstances, the only reasonable conclusion is that Witness CCH suffered serious mental harm. The majority makes this inference from, *inter alia*, the existence of coercive circumstances, an ongoing genocide against the Tutsi, and the fact that

<sup>894</sup> See for example *Zigiranyirazo*, Judgement (TC), para. 457; *Bikindi*, Judgement (TC), para. 448.

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Witness CCH was a young Tutsi woman who feared for her life and sought help from a known clergyman in a position of authority, who then abused that authority and sexually assaulted her. The majority was further convinced by Witness CCH's explanation that she was sexually inexperienced at the time, and that the shame of the incident prevented her from telling anyone.

5. While I agree with the majority's review of the facts, I have doubts that these facts rise to the level of serious mental harm required for a conviction of genocide. Other factors in the surrounding circumstances assist me in this determination. First, I note that after Rukundo made a threatening remark to Witness CCH, she responded that he did not seem annoyed at the time and she thought he might change his mind to help her.<sup>896</sup> Second, the sexual assault took place in private, in a locked room at the St. Léon Minor Seminary.<sup>897</sup> Third, although Witness CCH testified that Rukundo had a gun which he placed on the table, there is no indication that his manner of removing the gun from his belt was anything more than to be able to unzip his trousers for the purposes of carrying out a sexual act.<sup>898</sup> Fourth, Witness CCH and Rukundo managed a dialogue during Witness CCH's resistance to Rukundo's sexual advances and touching, and, for whatever reason, Rukundo eventually gave up his attempt to have sexual intercourse with her and rubbed himself against her fully clothed body until he ejaculated.<sup>899</sup> Fifth, upon leaving Witness CCH after the incident, Rukundo said goodbye to her in a calm manner and stated that perhaps he would be back again.<sup>900</sup> I understand Rukundo's departing words as possibly an attempt to soothe the witness's fears, if only temporarily. I believe that all of these factors mitigate the seriousness of the incident such that it cannot be found to threaten the Tutsi group's destruction, in whole or in part.

6. Finally, I note that, in the *Akayesu* case, the Trial Chamber found that acts of sexual violence constituted genocide. In that case, in an incident where there was no sexual intercourse or rape, the Accused ordered the *Interahamwe* to undress a student and to force her to do gymnastics naked in the public courtyard of the *bureau communal*, in front of a crowd. The Trial Chamber referred to this act as the worst kind of public humiliation and that the sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically

<sup>895</sup> *Seromba*, Judgement (AC), para. 46.

<sup>896</sup> T. 14 February 2007, p. 9.

<sup>897</sup> T. 13 February 2007, p. 59.

<sup>898</sup> T. 13 February 2007, pp. 59-60.

<sup>899</sup> T. 14 February 2007, p. 13: "But I was telling him, 'If it happened that I did not die and you made me pregnant now, what would I do?' You see, I was not going to shut my mouth. I was talking. But he was telling me that, 'I am simply asking you to allow us to make love'"; T. 14 February 2007, pp. 17-18: "I told him that I could not have sex with him. He told me that if I accepted to have sex with him, *he would never forget me*, and I said that I could not do that." (emphasis added).

<sup>900</sup> T. 14 February 2007, p. 14.

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contributing to their destruction and to the destruction of the Tutsi group as a whole.<sup>901</sup> I agree with the Trial Chamber's finding in the *Akayesu* case, however, when comparing the severity of that incident and the one suffered by Witness CCH, I can only come to the conclusion that the circumstances in this case are much less severe and cannot be found to cause the kind of serious mental harm required for a conviction of the most heinous of crimes, genocide.

7. I would therefore conclude that the Prosecution has not proved beyond reasonable doubt that Witness CCH suffered serious mental harm, as alleged in the Indictment.

Arusha 27 February 2009



Seon Ki Park  
Judge



<sup>901</sup> *Akayesu*, Judgement (TC), paras. 688, 731.

4524  
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Arusha 27 February 2009



Seon Ki Park  
Judge

[Seal of the Tribunal]

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<sup>901</sup> *Akayesu*, Judgement (TC), paras. 688, 731.

## ANNEX A: PROCEDURAL HISTORY

4523

(a) Pre-Trial Phase

1. On 5 July 2001, a Warrant of Arrest and Order for Transfer and Detention and for Search and Seizure was issued by Judge Pavel Dolenc.<sup>902</sup> Emmanuel Rukundo was arrested on 12 July 2001 in Geneva, Switzerland and was transferred to the United Nations Detention Facility in Arusha, Tanzania on 20 September 2001.<sup>903</sup> The Accused made his initial appearance before Judge Erik Møse on 26 September 2001, and entered a plea of not guilty.

2. On 25 June 2001, the Prosecution filed an *ex parte* motion for non-disclosure of the names of witnesses and other identifying information in the Indictment, supporting materials and witness statements.<sup>904</sup> On 10 July 2001, Judge Pavel Dolenc granted in part the Prosecution's *ex parte* motion for non-disclosure of the names of witnesses and other identifying information in the Indictment, supporting materials and witness statements and ordered non-disclosure of the Indictment, including the act of confirmation and related orders, or any part thereof or any information pertaining to it until it is served on the Accused.<sup>905</sup>

3. On 11 December 2001, the Prosecution filed a motion requesting the Chamber to grant protective measures for victims and witnesses which it intended to call. Additional material in support of the Motion was filed on 21 May 2002, and an Addendum filed on 10 September 2002. On 24 October 2002, Trial Chamber III composed of Judge Lloyd G. Williams, presiding, Judge Yakov Ostrovsky and Judge Pavel Dolenc granted the requested protective measures to Prosecution witnesses and victims living in Rwanda and in neighbouring countries. However, the Chamber denied protective measures for witnesses not residing in Rwanda or neighbouring countries on the grounds that the Prosecution failed to provide evidence of the objective basis of the fear professed by those witnesses or to offer any explanation to justify their protection.<sup>906</sup> Furthermore, the Chamber denied the Prosecution's motion to order the registrar to provide photographs of the

<sup>902</sup> Warrant of Arrest and Orders for Transfer and Detention and for Search and Seizure, dated 5 July 2001.

<sup>903</sup> His arrest was made pursuant to the Request to the Government of Switzerland for Arrest, dated 12 July 2001.

<sup>904</sup> Prosecutor's *ex parte* Motion for Non-Disclosure of the Names of Witnesses and other Identifying Information in the Indictment, supporting Materials and Witness Statements, dated 25 June 2001.

<sup>905</sup> Order for Non-Disclosure (TC), dated 10 July 2001.

<sup>906</sup> Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses (TC), dated 24 October 2002.



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Accused for the purposes of identification.<sup>907</sup> Similarly, the Chamber denied the Defence's motion for the return of documents and other seized personal items.<sup>908</sup>

4. On 18 August 2003, Judge Lloyd G. Williams, sitting as a single judge, dismissed in its entirety the Defence motion requesting to fix a date for the commencement of the trial or, in the alternative, to request Rukundo's provisional release.<sup>909</sup> The Defence appealed the Decision by Judge Williams dismissing its request for the provisional release of the Accused, and the Appeals Chamber found that by designating a single judge to adjudicate on an application for provisional release, Trial Chamber III had violated Rule 65 of the Rules.<sup>910</sup> The Appeals Chamber remanded the initial application for provisional release back to the Trial Chamber. On 18 March 2004, Trial Chamber III, composed of Judges Lloyd G. Williams, Andresia Vaz and Rashida Khan reiterated the reasoning adopted in the impugned decision of Judge Williams and denied the Defence motion for provisional release.<sup>911</sup>

5. On 22 March 2002, the Registrar assigned Phillipe Moriceau as Lead Counsel for the Accused, Emmanuel Rukundo. On 8 August 2005, the Accused wrote a letter to the Registrar requesting the withdrawal of assigned Counsel due to the fact that he had lost confidence in him. After various unsuccessful efforts to reconcile the Accused and Counsel Moriceau, the Registrar accepted the Accused's request and withdrew the assignment of Phillippe Moriceau as his lead counsel on 16 November 2005.<sup>912</sup>

6. On 5 March 2004, the Chamber partly granted the Defence's motion for translation into French of certain Prosecution and procedural documents.<sup>913</sup> The Defence later applied to fix the

<sup>907</sup> Decision on the Prosecutor's Motion to Order the Registrar to Provide Photographs of the Accused for Purposes of Identification (TC), dated 25 October 2002.

<sup>908</sup> Decision on the Defence Motion for Return of Documents and Other Seized Personal Items (TC), dated 20 November 2002.

<sup>909</sup> Decision on Defence Motion to fix a Date for the Commencement of the Trial of Father Emmanuel Rukundo or, in the Alternative, to Request his Provisional release (TC), dated 18 August 2003.

<sup>910</sup> Decision on Leave to Appeal (Provisional Release)(AC), dated 18 December 2003. See also Decision on Appeal from the Decision of Trial Chamber III of 18 August 2003 denying Application for Provisional Release (AC), dated 8 March 2004 and Decision on the Motion for Provisional Release of Father Emmanuel Rukundo (Rule 65(B) of the Rules of Procedure and Evidence) (TC), dated 15 July 2004.

<sup>911</sup> Decision on Provisional Release (TC), dated 18 March 2004.

<sup>912</sup> Decision of Withdrawal of Mr. Phillippe Moriceau as Lead Counsel for the Accused Emmanuel Rukundo (TC), dated 16 November 2005.

<sup>913</sup> Decision on Defence Motion for Translation into French of Prosecution and Procedural Documents in the *Rukundo* case; Articles 20 and 31 of the Statute, and Rule 3 of the Rules of Procedure and Evidence (TC), dated 5 March 2004.

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opening date of the trial and transfer the matter to a national jurisdiction, however this request was denied in its entirety.<sup>914</sup>

(b) The Indictment

7. On 25 June 2001, the Prosecution filed an Indictment against Emmanuel Rukundo dated 22 June 2001 for review and confirmation by the Tribunal. On 5 July 2001, Judge Pavel Dolenc confirmed counts 1, 3 and 4 of the Indictment and ordered the Prosecution to amend parts of the Indictment within 15 days.<sup>915</sup>

8. The Prosecution filed an Amended Indictment dated 19 July 2001 for review and confirmation. On 12 September 2001, the proposed Amended Indictment against Emmanuel Rukundo was again partially confirmed by Judge Pavel Dolenc. The additional act of confirmation approved some of the proposed amendments, took note of the withdrawal of some of the charges, ordered the Prosecution to clarify one of the proposed amendments, and granted leave for further amendments.<sup>916</sup> On 21 September 2001, Judge Pavel Dolenc confirmed the Amended Indictment incorporating the amendments ordered by the Tribunal in its Order dated 12 September 2001. The Tribunal further decided that the second additional act of confirmation dated 21 September 2001 together with the additional act of confirmation of the Indictment of 19 July 2001 and confirmation of the original Indictment of 5 July 2001 shall be deemed to constitute a common act of confirmation of the Indictment against the Accused.<sup>917</sup>

9. On 26 February 2003, the Chamber decided on a number of preliminary issues related to the Indictment including ordering the Prosecution to amend the Indictment by adding certain specifications, and denying the Defence request for other specifications.<sup>918</sup> Leave to appeal this decision was granted and the Appeals Chamber changed its composition for this appeal several times.<sup>919</sup> On 17 October 2003, the Appeals Chamber rejected the appeal in its entirety.<sup>920</sup>

<sup>914</sup> "Décision relative à la requête de la défense aux fins de fixation de la date d'ouverture du procès ou, à défaut, du transfert de l'affaire devant une juridiction nationale; Articles 20 du Statut et 11bis du Règlement de procédure et de preuve" (AC), dated 1 June 2005.

<sup>915</sup> Confirmation of the Indictment, dated 5 June 2001.

<sup>916</sup> Additional Act of Confirmation of the Indictment, dated 12 September 2001.

<sup>917</sup> Second Additional Act of Confirmation of the Indictment, dated 21 September 2001.

<sup>918</sup> Decision on Preliminary Motion (TC), dated 26 February 2003.

<sup>919</sup> Leave to Appeal was granted by the Appeals Chamber on 28 April 2003. See further Order of the President Assigning Judges (AC), dated 23 March 2003; Order of the Presiding Judge Assigning Judges (AC), dated 12 May 2003; The appellant was later ordered to file his reply to the Prosecution Response to its Appeal against this decision (see Decision on Motion for Extension of Time to File Reply (AC), dated 10 June 2003); Order of the Presiding Judge Replacing Judges in a Case Before the Appeals Chamber (AC), dated 1 October 2003.

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10. Trial Chamber II composed of Judge Asoka de Silva, pursuant to Rule 73(A), granted in part the Prosecution's request for leave to file an Amended Indictment and ordered the Prosecution to file a further Amended Indictment in both French and English no later than 6 October 2006.<sup>921</sup> The Prosecution filed an Amended Indictment on 6 October 2006 in compliance with that Decision.<sup>922</sup>

11. The Amended Indictment charges the Accused with three counts: genocide, murder as a crime against humanity and extermination as a crime against humanity.

12. The Indictment alleges that these crimes were committed between 6 April and 31 May 1994 in various locations in Gitarama and Cyangugu *préfectures*, Rwanda. The Indictment alleges that at all material times referred to, there existed in Rwanda a minority ethnic or racial group known as Tutsi, officially identified as such by the then government. The majority of the population was comprised of an ethnic or racial group known as Hutu, also officially identified as such by the government. According to the Indictment, during this period, there were widespread or systematic attacks against Tutsi civilians based on their ethnic affiliation. The Indictment further alleges that the Accused relied on his authority as a priest and military chaplain in the RAF to order, instigate, or aid and abet soldiers, *Interahamwe* and armed civilians to commit the crimes charged in the Indictment.

(c) Trial Phase

13. On 14 September 2006, the case against the Accused Emmanuel Rukundo was formally transferred from Trial Chamber III to Trial Chamber II. The Trial of the Accused commenced on 15 November 2006. The Prosecution called a total of 18 witnesses and the Defence called a total of 32 witnesses. The evidentiary phase of the trial concluded on 22 October 2007.

14. On 3 November 2006, the Prosecution's motion for the transfer of detained Witness AMA to the Arusha Detention Facility was approved on certain grounds.<sup>923</sup> This request was later amended and the period of temporary transfer was extended.<sup>924</sup> On 24 November 2006, the

<sup>920</sup> *Décision (Acte D'Appel relative à la Décision du 26 Février 2003 relative aux exceptions préjudicielles)* (AC), dated 17 October 2003.

<sup>921</sup> Decision on the Prosecutor's Request for Leave to File an Amended Indictment (TC), dated 28 September 2006.

<sup>922</sup> Amended Indictment, dated 6 October 2006.

<sup>923</sup> Decision on the Prosecutor's Motion for the Transfer of Detained Witness AMA Pursuant to Rule 90bis of the Rules of Procedure and Evidence (TC), dated 3 November 2006.

<sup>924</sup> Decision on the Prosecutor's Extremely Urgent Motion to Extend the Period of Temporary Transfer of Detained Witness AMA Pursuant to Rule 90bis(F) and 73(A) of the Rules of Procedure and Evidence (TC), dated 14 February 2007.

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Chamber denied the Prosecution's motion for variation of protective measures for Witness CSH and directed the Prosecution to bring the matter to WVSS's attention for appropriate action.<sup>925</sup>

15. On 29 November 2006, the Chamber denied the Prosecution's Motion requesting protective measures for Witnesses CCF, CCJ, BLC, BLS and BLJ, who all live outside of Rwanda and its neighbouring countries, because no objective basis for the alleged fears expressed by those Prosecution witnesses was demonstrated.<sup>926</sup>

16. On 29 November 2006, following the Prosecution's motion, the Chamber, taking into account the jurisprudence of the Appeals Chamber, took judicial notice of the following facts: that between 6 April and 17 July 1994, there was a genocide against members of the Tutsi ethnic group; that between 6 April 1994 and 17 July 1994, that the Twa, Hutu and Tutsi ethnic groups existed in Rwanda as protected groups under the Genocide Convention; that between 6 April 1994 and 17 July 1994, throughout Rwanda, there were widespread or systematic attacks against a civilian population based on Tutsi ethnic identification and that during the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity; that between 6 April 1994 and 17 July 1994, there was an armed conflict in Rwanda that was not of an international character, that 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 that between 1 January 1994 and 17 July 1994, Rwanda was a State Party to the Geneva Conventions of 12 August 1949 and their Additional Protocol II of 8 June 1977, having acceded to the Geneva Convention of 12 August 1949 on 5 May 1965 and having acceded to the Additional Protocols of 1977 on 19 November 1984.<sup>927</sup>

17. On 14 February 2007, the Chamber granted two Prosecution motions to vary its witness list by adding Witness BUW and to give protective measures to Witnesses BUW, CCF, CCJ and BLJ. The Chamber also allowed the Prosecution to withdraw Witness BLS from its witness list.<sup>928</sup>

18. On 1 March 2007, the Chamber granted the Prosecution's motion to allow Witnesses BPA and BLR to testify via video-link, and ordered that their testimonies be heard from Kigali.<sup>929</sup>

<sup>925</sup> Decision on the Prosecution Motion for Variation of the Protective Measures for Witness CSH (TC), dated 24 November 2006.

<sup>926</sup> Decision on Prosecutor's Motion for Protective Measures for Witnesses CCF, CCJ, BLC, BLS and BLJ (TC), dated 29 November 2006.

<sup>927</sup> Decision on Prosecutor's Motion for the Trial Chamber to Take Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94(A) (TC), dated 29 November 2006.

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19. On 8 March 2007, the Defence filed a confidential motion to recall Witness BLP on the ground that new material relating to the witness had been discovered, or, in the alternative, to rescind Trial Chamber III's Decision on protective measures dated 24 October 2002 with respect to the Witness BLP and to allow the Defence to contact the witness.<sup>930</sup> On 30 April 2007, the Chamber denied the Defence motion to recall Witness BLP and issued a *proprio motu* order that Prosecution Witness BLP be called as a witness of the Trial Chamber and ordered his appearance on 15 June 2007. The Trial Chamber further ordered the appearance of the Defence investigator, Leonidas Nshogoza, in order to question him on the circumstances surrounding his meetings with Witness BLP.<sup>931</sup>

20. On 10 March 2007, Co-counsel for Rukundo, Ms. Annie Olivier, informed Lead Counsel of her intention to resign from her assignment as Co-counsel for the Accused due to the deterioration of her relationship with Lead Counsel. On 9 May 2007, the Registrar rejected Ms. Olivier's offer of resignation from her assignment as Co-counsel for Emmanuel Rukundo.<sup>932</sup> On 15 May 2007, the Defence filed a motion asking the Chamber to review the Registrar's decision of 9 May 2007. The Registrar, in accordance with Rule 33(b) of the Rules, and Ms. Olivier, presented their submissions. On 31 May 2007, the Chamber issued a Decision instructing the Registrar to replace Co-counsel for the Accused Rukundo as soon as reasonably practicable in view of the scheduled commencement of the Defence case on 2 July 2007.<sup>933</sup> On 1 June 2007, the Registrar withdrew the assignment of Ms. Olivier as Co-Counsel for the Accused.<sup>934</sup>

21. On 22 May 2007, following the Defence Motion for judgement of acquittal pursuant to Rule 98*bis* of the Rules, the Chamber granted the Accused partial acquittal on the charge of murder as a crime against humanity with respect to the killing of Father Alphonse Mbuguje, and the withdrawal of paragraphs 10(i), 16 and 25(i) from the Indictment. The Chamber, however, concluded that there

<sup>928</sup> Decision on the Prosecutor's Motions for Variation of Witness List and Protective Measures for Witnesses BUW, CCF, CCJ and BLJ (TC), dated 14 February 2007.

<sup>929</sup> Decision on the Prosecutor's Urgent Motion for Witnesses BPA, BLR and BLN to Give Testimony via Video-Link (TC), dated 14 February 2007.

<sup>930</sup> "Requête ex parte en extrême urgence et confidentielle aux fins de rappeler le témoin du Procureur BLP aux fins d'être réentendu au vu des Éléments nouveaux", dated 8 March 2007.

<sup>931</sup> Decision on Defence Motion to Recall Prosecution Witness BLP (TC), dated 30 April 2007.

<sup>932</sup> The Registrar's Decision Denying the Application for the Withdrawal of Ms. Annie Olivier, Co-counsel for the Accused, Mr. Emmanuel Rukundo, dated 9 May 2007.

<sup>933</sup> Decision on the Confidential and Extremely Urgent Defence Motion to Review the Registrar's Decision dated 9 May 2007 (TC), dated 31 May 2007.

<sup>934</sup> Registrar's Decision on Withdrawal of the Assignment of Ms. Annie Olivier Co-counsel for the Accused Emmanuel Rukundo, dated 1 June 2007.

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was sufficient evidence upon which a reasonable trier of fact could sustain a conviction in relation to the remainder of the counts charged in the Indictment.<sup>935</sup>

22. On 4 May 2007, the Chamber held a Pre-Defence conference to prepare for the commencement of the Defence case. On 7 May 2007, the Chamber ordered that the next Trial session, which was the start of the Defence case, should proceed from 2 July 2007 until 27 July 2007. The Chamber further ordered the Defence to file its Pre-Defence case submissions in compliance with Rule 73*ter* of the Rules and to disclose the identifying information of all Defence Witnesses to the Prosecution 21 days before the commencement of the Defence case. The Chamber also ordered that Witness BLP be heard before the commencement of the next Trial session on 2 July 2007, in variance of its prior order.<sup>936</sup>

23. On 16 May 2007, the Chamber granted the Defence request for protective measures for potential Defence witnesses.<sup>937</sup> On 27 June 2007, the Chamber issued a *proprio motu* order authorizing the transfer of detained Witness Nshogoza from Rwanda to the seat of the Tribunal in Arusha.<sup>938</sup> On 4 July 2007, the Chamber granted in part the Defence motion for a stay of proceedings and instructed the Registrar, pursuant to Rules 91 and 54 of the Rules, to conduct an investigation into the alleged false testimony of Witness BLP and other matters.<sup>939</sup> After issuing a warning to Lead Counsel for Rukundo pursuant to Rule 46(A) of the Rules, the Chamber instructed the Defence to immediately disclose the identities of all of its proposed witnesses.<sup>940</sup> Following a Status Conference, the Chamber ordered that the next Trial session should begin on 3 September 2007 and run until 5 October 2007.<sup>941</sup>

24. On 11 September 2007, the Chamber denied the Defence motion requesting the Swiss authorities to disclose the Accused's entire judicial dossier.<sup>942</sup> On the same day, the Chamber denied the Defence request for additional time to disclose the witnesses' identifying information, ordered that the remaining disclosure be done immediately, granted in part the Defence request to add Witnesses RUE, SLD, BCD, SJD, SAE and TMC and to delete Witnesses MCD, GSD, CNE,

<sup>935</sup> Decision on Defence Motion for Judgement of Acquittal Pursuant to Rule 98*bis* (TC), dated 22 May 2007.

<sup>936</sup> Scheduling Order following the Pre-Defence Status Conference (TC), dated 7 May 2007.

<sup>937</sup> Decision on the Defence Motion for Protective Measures for Defence Witnesses (TC), dated 16 May 2007.

<sup>938</sup> *Proprio Motu* Order for the Transfer of a Detained Witness (TC), dated 27 June 2007.

<sup>939</sup> Decision on the Motions Relating to the Scheduled Appearances of Witness BLP and the Defence Investigator (TC), dated 4 July 2007. The Defence's later request to appeal this decision was denied (Decision on the Defence Motion for Certification to Appeal the Chamber's decision of 4 July 2007 (TC), dated 25 July 2007).

<sup>940</sup> Order on Disclosure of Identifying Information of Defence Witnesses (TC), dated 18 July 2007.

<sup>941</sup> Scheduling Order Following the Status Conference Held on 24 July 2007 (TC), dated 24 July 2007.

<sup>942</sup> Decision on Defence Motion Requesting Disclosure by Swiss Authorities of the Entire Judicial Dossier Relating to the Accused (TC), dated 11 September 2007.

SLC, SJB, BCC, NYE, RUB and TMF, from the witness list, and granted the Defence request to allow Witnesses SLA and GSA to testify via video-link.<sup>943</sup> 4576

25. On 21 September 2007, the Chamber denied the Defence motion for subpoena and transfer of detained Witness SJA.<sup>944</sup> On 24 September 2007, the Chamber granted the Defence motion to subpoena Witness GSC.<sup>945</sup> On the same day, the Chamber granted the Defence's urgent and confidential motion requesting authorization for Witness SJD to testify via video-link.<sup>946</sup>

26. On 3 October 2007, the Chamber granted the Defence request to meet with the Accused during his examination-in-chief.<sup>947</sup> On the same day, the Chamber denied the Defence motion requesting authorization for Witness SLB to be heard via video-link.<sup>948</sup>

27. On 9 November 2007, in response to a Defence motion requesting additional time to file the closing briefs and the hearing of closing arguments than originally granted in an oral Decision, the Chamber instructed the parties to file their closing briefs by 14 January 2008 and scheduled the hearing of closing oral arguments in the week of 28 January to 1 February 2008.<sup>949</sup>

28. On 30 November 2008, the Chamber denied the Defence request to present additional witnesses and to file documentary evidence prior to the close of its case.<sup>950</sup> Leave for certification to appeal this Decision or, in the alternative, its reconsideration, was denied.<sup>951</sup> On 14 December 2007, in its Decision on the Haguma Report, the Chamber issued a warning to Lead Counsel pursuant to Rule 46 of the Rules for violating its Order for protective measures for witnesses by meeting with Witness BLP without its authorization.<sup>952</sup>

(d) Further Proceedings

29. Oral closing arguments were heard by the Chamber on 20 February 2008.

<sup>943</sup> Decision on the Defence Motions for Additional to Disclose Witnesses' Identifying information, to Vary its Witness List and for Video-Link Testimony, and on the Prosecution's Motion for Sanctions (TC), dated 11 September 2007.

<sup>944</sup> Decision on Defence Motion for Subpoena and Transfer of Detained Witness SJA (TC), dated 21 September 2007.

<sup>945</sup> Decision on Defence Motion for Subpoena for Witness GSC (TC), dated 24 September 2007.

<sup>946</sup> Decision on the Defence Urgent and Confidential Motion Requesting Authorization for Witness SJD to Testify via Video-Link (TC), dated 24 September 2007.

<sup>947</sup> Decision on the Defence Request to Meet the Accused During his Examination-in-Chief (TC), dated 3 October 2007.

<sup>948</sup> Decision on Defence Motion for Video-Link Testimony for Witness SLB (TC), dated 3 October 2007.

<sup>949</sup> Decision on Defence Motion to Re-schedule the Filing of Closing Briefs and the Hearing of Closing Arguments (TC), dated 9 November 2007.

<sup>950</sup> Decision on Defence Motion to Present Additional Witnesses and to File Documentary Evidence Prior to the Close of its Case (TC), dated 30 November 2007.

<sup>951</sup> Decision on Defence Request for Certification to Appeal or in the Alternative, Reconsideration of the Chamber's Decision of 30 November 2007 (TC), dated 14 December 2007.

<sup>952</sup> Decision on the Haguma Report (TC), dated 14 December 2007.

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30. The Chamber pronounced its unanimous Judgement in an oral summary on 27 February 2009. It found Emmanuel Rukundo guilty of the crimes of genocide, murder and extermination as crimes against humanity and sentenced him to 25 years' imprisonment. The Chamber filed the complete written Judgement on 13 March 2009.



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## ANNEX B – GLOSSARY

**A. 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 II of the International Criminal Tribunal for Rwanda, composed of Judges Asoka de Silva, Presiding, Taghrid Hikmet and Seon Ki Park
<b>Defence Closing Brief</b>	<i>The Prosecutor v. Emmanuel Rukundo</i> , Case No. ICTR-2001-70-T, Defence Closing Brief, 4 March 2008
<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>Indictment</b>	<i>The Prosecutor v. Emmanuel Rukundo</i> , Case No. ICTR-2001-70-T, Amended Indictment Pursuant To the Decision of Trial Chamber II of 28 December (Decision on the Prosecutor's Request for Leave to file an Amended Indictment (TC)), 6 October 2006
<b>JCE</b>	Joint Criminal Enterprise
<b>Judgement of Acquittal</b>	<i>The Prosecutor v. Emmanuel Rukundo</i> Case No. ICTR-2001-70-T, Decision on Defence Motion for Judgement of Acquittal Pursuant to Rule 98bis (TC), 22 May 2007 ("98bis Decision")
<b>MRND</b>	<i>Mouvement révolutionnaire national pour le développement</i> (National Revolutionary Movement for Development)
<b>Prosecution Closing Brief</b>	<i>The Prosecutor v. Emmanuel Rukundo</i> , Case No. ICTR-2001-70-T, The Prosecutor's Final Trial Brief, 14 January 2008
<b>Prosecution Pre-Trial Brief</b>	<i>The Prosecutor v. Emmanuel Rukundo</i> , Case No. ICTR-2001-70-I, The Prosecutor's Pre-Trial Brief Pursuant To Article 73bis (B)(i) of the Rules of Procedure and Evidence, 16 August 2006
<b>RAF</b>	Rwandan Armed Forces
<b>RPF</b>	Rwandan Patriotic Front
<b>Rules</b>	Rules of Procedure and Evidence of the Tribunal, adopted pursuant to Article 14 of the Statute

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<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>TRAFIPRO (or CND)</b>	A place in Kabgayi
<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

## **B. Jurisprudence**

### 1. ICTR

#### **AKAYESU**

*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998 (“*Akayesu*, Judgement (TC)”)

*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001 (“*Akayesu*, Judgement (AC)”)

#### **BAGILISHEMA**

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

#### **BAGOSORA ET AL.**

*The Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva*, Case No. ICTR-98-41-T, Decision on Motions for Judgement for Acquittal (TC), 25 February 2005 (“*Bagosora et al.*, 98 bis Decision”)

*The Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva*, Case No. ICTR-98-41-T, Judgement and Sentence (TC), 18 December 2008, (“*Bagosora*, Judgement (TC)”)

*The Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva*, Case No. ICTR-98-41-T, 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

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**BIKINDI**

*The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Judgement (TC), 2 December 2008 (“*Bikindi*, Judgement (TC)”)

**BISENGIMANA**

*The Prosecutor v. Paul Bisengimana*, Case No. ICTR-00-60-T, Judgement and Sentence (TC), 13 April 2006 (“*Bisengimana*, Judgement (TC)”)

**GACUMBITSI**

*The Prosecutor v. Sylvestre Gacumbitsi*, Case No. ICTR-2001-64-T, Judgement (TC), 17 June 2004 (“*Gacumbitsi*, Judgement (TC)”)

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

**KAJELIJELI**

*The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Judgment and Sentence (TC), 1 December 2003 (“*Kajelijeli*, Judgement (TC)”)

*Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgment (AC) 23 May 2005 (“*Kajelijeli*, Judgement (AC)”)

**KAMBANDA**

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

**KAMUHANDA**

*The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. ICTR-99-54A-T, Judgement (TC), 22 January 2004 (“*Kamuhanda*, Judgement (TC)”)

*Jean De Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-A, Judgement (AC), 19 September 2005 (“*Kamuhanda*, Judgement (AC)”)

**KARERA**

*The Prosecutor v. François Karera*, Case No. ICTR-01-74-T, Judgement and Sentence (TC), 7 December 2007 (“*Karera*, Judgement (TC)”)

**KAREMERA ET AL.**

*The Prosecutor v. Édouard Karemera, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006

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**KAYISHEMA AND RUZINDANA**

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

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

**MPAMBARA**

*The Prosecutor v. Jean Mpambara.*, Case No. ICTR-01-65-T, Judgement (TC), 11 September 2006 (“*Mpambara*, Judgement (TC)”)

**MUHIMANA**

*The Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1B-T, Judgement (TC), 28 April 2005 (“*Muhimana*, Judgement (TC)”)

*Mikaeli Muhimana v. The Prosecutor*, Case No. ICTR-95-1B-A, Judgement (AC), 21 May 2007 (“*Muhimana*, Judgement (AC)”)

**MUSEMA**

*The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-A, Judgement (TC), 27 January 2000 (“*Musema*, Judgement (TC)”)

*Alfred Musema v. The Prosecutor*, Case No. ICTR-96-13-A, Judgement (AC), 27 16 November 2001 (“*Musema*, Judgement (AC)”)

**MUVUNYI**

*The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-AR73, Decision on the Prosecution Interlocutory Appeal against Trial Chamber II Decision of 23 February 2005 (AC), 12 May 2005

*Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Judgement and Sentence (TC), 12 September 2006 (“*Muvunyi*, Judgement (TC)”)

*Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008 (“*Muvunyi*, Judgement (AC)”)

**NAHIMANA ET AL.**

*The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, Case No. ICTR-99-52-T, Judgement and Sentence (TC), 3 December 2003 (“*Nahimana et al.*, Judgement (TC)”)

*Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 (“*Nahimana et al.*, Judgement (AC)”)

**NCHAMIHIGO**

*The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-01-71-A, Judgement (TC), 12 November 2008 (“*Nchamihigo*, Judgement (TC)”)

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**NDINDABAHIZI**

*The Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-2001-71-I, Judgement (TC), 15 July 2004, (“Ndindabahizi, Judgement (TC)”)

*Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-63-T, Judgement (AC), 16 January 2007 (“Ndindabahizi, Judgement (AC)”)

**NIYITEGEKA**

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

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

**NTAGERURA ET AL.**

*The Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe*, Case No. ICTR-99-46-T, Judgement (TC), 25 February 2004 (“Ntagerura et al., Judgement (TC)”)

*The Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe*, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 (“Ntagerura et al., Judgement (AC)”)

**NTAKIRUTIMANA**

*The Prosecutor v. Élizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10 and ICTR-96-17-T, Judgement (TC), 21 February 2003 (“Ntakirutimana, Judgement (TC)”)

*The Prosecutor v. Élizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004 (“Ntakirutimana, Judgement (AC)”)

**NZABIRINDA**

*The Prosecutor v. Joseph Nzabirinda* Case No. ICTR-01-77-T, Judgement (TC), 23 February 2007 (“Nzabirinda, Judgement (TC)”)

**RUGAMBARARA**

*The Prosecutor v. Juvénal Rugambarara*, Case No. ICTR-00-59-T, Sentencing Judgement (TC), 16 November 2007 (“Rugambarara, Judgement (TC)”)

**RUGGIU**

*The Prosecutor v. Georges Ruggiu*, Case No. ICTR-97-32-I, Judgement and Sentence (TC), 1 June 2000 (“Ruggiu, Judgement (TC)”)

**RUKUNDO**

*The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-I, Warrant of Arrest and Orders for Transfer and Detention and for Search and Seizure (TC), 5 July 2001

*The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-I, Decision on Preliminary Motion (TC), 26 February 2003

*The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-I, Decision on the Prosecutor's Request to File an Amended Indictment (TC), 28 September 2006

*The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on Prosecutor's Motion for the Trial Chamber to take Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94(A) (TC), 29 November 2006

*The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on Defence Motion to Recall Prosecution Witness BLP (TC), 30 April 2007

*The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Scheduling Order Following the Pre-Defence Conference (TC), 7 May 2007

*The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on Defence Motion for Judgement of Acquittal Pursuant to Rule 98bis (TC), 22 May 2007 ("98bis Decision")

*The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on the Motions Relating to the Scheduled Appearances of Witness BLP and the Defence Investigator (TC), 4 July 2007

*Emmanuel Rukundo v. The Prosecutor*, Décision (Acte D'Appel relative à la Décision du 26 Février 2003 relative aux exceptions préjudicielles) (AC), 17 October 2003

#### **RUTAGANDA**

*The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3, Judgement (TC), 6 December 1999 ("Rutaganda, Judgement (TC)")

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

#### **SEMANZA**

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

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

#### **SEROMBA**

*The Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-A, Judgement (AC), 12 March 2008 ("Seromba, Judgement (AC)")

#### **SERUGENDO**

*The Prosecutor v. Joseph Serugendo*, Case No. ICTR-2005-84-I, Judgement (TC), 12 June 2006 ("Serugendo, Judgement (TC)")

#### **SERUSHAGO**

*Prosecutor v. Omar Serushago*, Case No. ICTR-98-39-S, Sentence (TC), 5 February 1999 ("Serushago, Judgement (TC)")

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**SIMBA**

*The Prosecutor v. Aloys Simba*, Case No ICTR-01-76-T, Judgement and Sentence, 13 December 2005 (“*Simba*, Judgement (TC)”)

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

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

**ZIGIRANYIRAZO**

*The Prosecutor v. Protais Zigiranyirazo*, Case No ICTR-01-76-T, Judgement (TC), 18 December 2008 (“*Zigiranyirazo*, Judgement (TC)”)

**2. ICTY****ALEKSOVSKI**

*The Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1, Decision on Prosecutor’s Appeal On Admissibility Of Evidence (AC), 16 February 1999

**BLAGOJEVIĆ**

*The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60, Judgement (TC), 17 January 2005 (“*Blagojević*, Judgement (TC)”)

**BRĐANIN**

*The Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36, Judgement (TC), 1 September 2004 (“*Brđanin*, Judgement (TC)”)

**ČELEBIĆI**

*The Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka “Pavo”), Hazim Delić and Esad Landžo (aka “Zenga”)*, Case No. IT-96-21-A, Judgement (AC), 20 February 2001 (“*Čelebići*, Judgement (AC)”)

**DERONIJIĆ**

*The Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61-S, Judgement (TC), 30 March 2004 (“*Deronjić* Judgement (AC)”)

**JELISIĆ**

*The Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Judgement (AC), 5 July 2001 (“*Jelisić*, Judgement (AC)”)

**KORDIĆ & ČERKEZ**

*The Prosecutor v. Dario Kordić and Mario Čerkez*. Case No. IT-95-14/2-A, Judgement (AC), 17 December 2004 (“*Kordić and Čerkez* Judgement (AC)”)

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**KRSTIĆ**

*The Prosecutor v. Radislav Krstić*, Case No. IT-98-33, Judgement (TC), 2 August 2001 (“*Krstić*, Judgement (TC)”)

*The Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement (AC), 19 April 2004 (“*Krstić*, Judgement (AC)”)

**KUNARAC**

*The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, Case No. IT-96-23, Judgement (TC), 14 January 2000 (“*Kunarac*, Judgement (TC)”)

*The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, Case No. IT-96-23 & IT-96-23/1-A, Judgement (AC), 21 May 1999 (“*Kunarac*, Judgement (AC)”)

**KUPRESKIĆ ET AL.**

*The Prosecutor v. Zoran Kupreskić, Mirjan Kupreskić, Vlatko Kupreskić, Drago Josipović, Vladimir Šantić*, Case No. IT-95-16-A, Appeal Judgement (AC), 23 October 2001 (“*Kupreskić et al.*, Judgement (AC)”)

**KRNOJELAC**

*The Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgement (AC), 17 September 2003 (“*Krnojelac*, Judgement (AC)”)

**KRSTIĆ**

*The Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement (AC), 19 April 2004 (“*Krstić*, Judgement (AC)”)

**KVOČKA ET AL.**

*The Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić and Dragoljub Prcać*, Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005 (“*Kvočka et al.*, Judgement (AC)”)

**MARTIČ**

*The Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Judgement (TC), 12 June 2007 (“*Martić*, Judgement (TC)”)

**NIKOLIĆ**

*The Prosecutor v. Dragan Nikolić*, Case No. IT-94-2, Judgement (TC), 18 December 2003 (“*Nikolić*, Judgement (TC)”)

**SIKIRICA ET AL.**

*The Prosecutor v. Dusko Sikirica, Damir Dosen and Dragan Kolundzija*, Case No. IT-95-8, Judgement (TC) 13 November 2001 (“*Sikirica*, Judgement (TC)”)



**SIMIĆ**

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*The Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Judgement (AC), 28 November 2006 (“*Simić*, Judgement (AC)”)

**STAKIĆ**

*The Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgement (TC), 31 July 2003 (“*Stakić*, Judgement (TC)”)

*The Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement (AC), 22 March 2006 (“*Stakić*, Judgement (AC)”)

**TADIĆ**

*The Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement (AC), 15 July 1999 (“*Tadić*, Judgement (AC)”)

**VASILJEVIĆ**

*The Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32, Judgement (AC), 25 February 2004, (“*Vasiljević*, Judgement (AC)”)

**C. Other Material**

United Nations Security Council Resolution 935, S/RES/955 (1994)

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