

ICTR-00-55B-T
5-6-2009
(1580-1571)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before Judges: Arlette Ramaroson, presiding
Taghrid Hikmet
Joseph Masanche

Registrar: Adama Dieng

Date: 05 June 2009

THE PROSECUTOR
v.
ILDEPHONSE HATEGEKIMANA

Case No. ICTR-00-55B-T

JUDICIAL SECTION ARCHIVE
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08/06/2009

DECISION ON MOTION FOR ACQUITTAL PURSUANT TO RULE 98 *BIS*

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INTRODUCTION

1. By an amended Indictment, dated 1 October, 2007, the Prosecution has charged Ildephonse Hategekimana (the "Accused"), a commander of the Ngoma Military Camp in 1994, with genocide or, in the alternative, complicity in genocide, pursuant to Article 2 of the Statute of the Tribunal (the "Statute") and murder and rape as crimes against humanity, pursuant to Article 3 of the Statute.
2. The Accused's trial before Trial Chamber II commenced on 16 March 2009. On 04 May 2009, the Prosecution closed its case, after calling twenty witnesses, including one investigator, and submitting twenty-three exhibits. On the same day, the Trial Chamber held a Status Conference, during which it ordered the Defence to file any Motion for Acquittal, pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence (the "Rules"), by 12 May 2009.
3. On 12 May, the Defence filed a Motion for a Judgement of Acquittal on all counts against the Accused, on the grounds that the Prosecution presented insufficient evidence in relation to the allegations in individual paragraphs of the Indictment.¹
4. The Prosecution, in its Response filed on 18 May 2009, opposed the Defence Motion and averred that, at the close of its case, a *prima facie* case was established against the Accused in relation to all charges.²
5. On 26 May 2009, the Defence replied to the Prosecution Response.³

DELIBERATIONS

A. Preliminary Matter

6. As a preliminary matter, the Chamber notes that the Defence filed its Reply to the Prosecution Response one day after the five-day deadline prescribed by Rule 73 (E).⁴ The Chamber observes that this late filing by the Defence has not caused any delay in the proceedings or any prejudice to the Prosecution. Accordingly, in the interests of justice and the rights of the Accused to a fair trial, the Chamber will consider the Defence submission. However, the Chamber cautions that, as officers of the court, the Parties are obligated to make best efforts to meet all deadlines.

¹ The Defence Motion for Acquittal, filed on 12 May, *Requête De Ildephonse Hategekimana Aux Fins d'Acquittement En Vertu De L'Article 98 bis du Règlement*, paras. 12-70.

² The Prosecutor's Response to Defense Motion for a Judgment of Acquittal of Ildephonse Hategekimana, paras. 63-65.

³ The Defence Reply, or *Réaction D'Ildephonse Hategekimana au Mémoire Intitulé: "Prosecutor's Response to Defence Motion for a Judgment of Acquittal of Idelphonse Hategekimana"* Déposé le 18 Mai 2009, was filed on 26 May 2009.

⁴ The Defence Reply, entitled, *Réaction D'Ildephonse Hategekimana au Mémoire Intitulé: "Prosecutor's Response to Defence Motion for a Judgment of Acquittal of Ildephonse Hategekimana"* Déposé le 18 Mai 2009, was filed on 26 May 2009.

B. Legal Standard under Rule 98 bis

7. Rule 98 bis of the Rules of Procedure and Evidence ("Rules") provides:

If after the close of the case for the prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more counts charged in the indictment, the Trial Chamber ... shall order the entry of judgement of acquittal in respect of those counts.

8. In interpreting a substantially identical provision of the ICTY Rules, the Appeals Chamber succinctly articulated the standard to be met by the Prosecution to withstand a Motion for a Judgement of Acquittal, under Rule 98 bis. The key concept is that there must be sufficient evidence upon which a reasonable trier of fact *could*, if the evidence is believed, find the Accused guilty of the crime charged.⁵ The question for the Chamber, therefore, is not whether the trier *would* in fact arrive at a conviction beyond reasonable doubt in relation to the Prosecution evidence (if accepted) but whether the trier *could*. Under Rule 98 bis, the Chamber will assess the Prosecution evidence as a whole, and make any reasonable inferences.⁶ Furthermore, in accord with established jurisprudence, the Chamber shall assume the evidence to be reliable and credible unless convincing arguments have been raised that it is obviously unbelievable, such that no reasonable trier of fact could rely upon it.⁷ The Chamber's sole concern is to determine whether the sufficiency threshold under Rule 98 bis is satisfied⁸.

Forms of Participation

9. The Indictment alleges that the Accused Ildephonse Hategekimana is criminally responsible for the crimes in each of the four counts in the Indictment through the forms of liability criminalized in Articles 6 (1) and 6 (3) of the Statute of the Tribunal ("Statute"). For reference, the Chamber will provide a brief explanation of the principles of liability involved.

10. Article 6 (1) of the Statute prescribes that a person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of the crime charged shall be held individually responsible for the crime. In

⁵ *Jelisić*, Judgement (AC), 5 July 2001, para 37: "The capacity of the prosecution evidence (if accepted) to sustain a conviction beyond a reasonable doubt by a reasonable trier of fact is the key concept; thus the test is not whether the trier would in fact arrive at a conviction beyond a reasonable doubt on the prosecution evidence (if accepted) but whether it could. At the close of the case for the prosecution, the Chamber may find that the prosecution evidence is sufficient to sustain a conviction beyond a reasonable doubt and yet, even if no defense evidence is subsequently adduced, proceed to acquit at the end of the trial, if in its own view of the evidence, the prosecution has not in fact proved guilt beyond a reasonable doubt."

⁶ See, for example, *Rukundo*, Decision on Defence Motion for Judgement of Acquittal, Pursuant to Rule 98 bis (TC), 22 May 2007, para. 3; *Bagosora*, Decision on Motions for Judgement of Acquittal (TC), 02 February 2005, para. 11.

⁷ *Jelisić*, Judgement (AC), 5 July 2001, para. 55.

⁸ See, *Rukundo*, Decision on Defence Motion for Judgement of Acquittal, Pursuant to Rule 98 bis (TC), 22 May 2007, para. 3; *Bagosora*, Decision on Motions for Judgement of Acquittal (TC), 02 February 2005, para. 11

addition to these forms of liability specifically mentioned in the Article, the Prosecution has also charged the Accused with liability as a participant in a joint criminal enterprise. The legal basis for this form of liability has been recognized since the Appeals Chamber in the *Tadic* case held that participation in a joint criminal enterprise is a form of liability, which exists in customary international law and is a form of commission under Article 6 (1).⁹

11. Article 6 (3) of the Statute prescribes that an accused is not relieved of his criminal responsibility, as a superior, for the commission of a crime charged, if the crime was perpetrated by a subordinate and if the superior knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrator(s) of the acts.

12. According to the Defence, the Prosecution has presented insufficient evidence to show that the Accused bears individual or superior responsibility, under Articles 6 (1) and 6 (3) of the Statute, respectively, for any of the crimes alleged in Count I through IV of the Indictment. In the Chamber's opinion, the Defence challenge needs to be examined in consideration of the Prosecution witnesses' evidence in relation to the counts against the Accused, as discussed below.

Sufficiency of the Evidence in Relation to Counts in the Indictment

13. The Defence submits that the evidence should be assessed not only in relation to entire counts in the Indictment but also in relation to facts specified in individual paragraphs, which are not supported by sufficient evidence. In this respect, the Chamber recalls that the plain language of Rule 98 *bis* requires the Chamber to determine only whether the evidence is insufficient to sustain a conviction on one or more counts charged in the indictment and to order a judgement of acquittal in respect of those counts. It is not necessary or appropriate at this stage of the proceedings to test the sufficiency of the Prosecution's evidence in regard to each paragraph of the Indictment. A motion for a judgement of acquittal will be dismissed if the Chamber is satisfied that there is *some* evidence presented by the Prosecution which is capable of persuading a Trial Chamber of the guilt of the Accused on the charge in question.

14. In addition, the Chamber notes that a finding that sufficient evidence has been presented to deny a Rule 98 *bis* motion for acquittal, in respect of a particular count in the Indictment, does not preclude the Chamber from entering a judgement of acquittal on the same count at the end of the case. In its assessment of the totality of the evidence, the Chamber may conclude that the Prosecution has failed to prove the guilt of the Accused on that count beyond reasonable doubt.

15. In the following section, the Chamber will review the sufficiency of the evidence in relation to each of the four counts in the Indictment, in light of the legal standard articulated above.

⁹ *Tadic*, Judgement (AC), 15 July 1999, paras. 188, 195-226.

Count I: Genocide

16. Count 1 of the Indictment charges the Accused with both individual and superior responsibility, under Articles 6 (1) and 6 (3) of the Statute respectively, for the commission of genocide against the Tutsi population in Butare *préfecture* between 7 April and 31 May 1994.

17. The elements of genocide, as defined in Article 2 (2) of the Statute, are as follows:

Article 2: Genocide

[a]ny 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;

...

18. To establish the crime of genocide, the Prosecution needs to prove not only that the Accused committed one or more of the acts enumerated above but also that the Accused had the specific intent to commit genocide. To prove specific intent, the Prosecution must establish "that the perpetrator target[ed] his victims because of their membership in a protected group, with the intent to destroy at least a substantial part of that group."¹⁰ The Accused's intent to commit genocide may be derived from direct evidence, such as his spoken words, or deduced from a variety of facts and circumstances, including his conduct.¹¹

19. According to the Prosecution evidence, the Accused participated, together with soldiers, *Interahamwe* and civilians, in the killings of members of the Tutsi population in Butare *préfecture* at or near the Ngoma Parish,¹² the Matyazo Health Centre,¹³ the Matyazo Primary School,¹⁴ the *Groupe Scolaire*,¹⁵ the *Maison Généralice*,¹⁶ as well as at roadblocks near the Ngoma Military Camp.¹⁷ Testimonies have been presented concerning the Accused's responsibility for the murders of Jean-Bosco Rugomboka,

¹⁰ *Ndindabahizi* Judgement (TC), para. 454 citing *The Prosecutor v. Krstic*, Judgement (AC), 19 April 2004, 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 protected group.")

¹¹ *Jelisić* Judgement (AC), para. 47.

¹² See, e.g., Witnesses QB (T. 18 March 2009 pp. 68-71), BYQ (T. 31 March 2009 pp. 31-44), BYR (T. 9 April 2009 pp. 38-39) and QX (T. 21 April 2009 pp. 6-8).

¹³ See, e.g., Witness BYP (T. 15 April 2009 pp. 43-46).

¹⁴ See, e.g., Witness BRU (T. 4 May 2009 pp. 15-43).

¹⁵ See, e.g., Witness BRS (T. 8 April 2009 pp. 17-20).

¹⁶ See, e.g., Witnesses BYS (T. 15 April 2009 pp. 13-18), QCQ (T. 8 April 2009 pp. 61-69) and BYO (T. 8 April 2009 p. 15-19).

¹⁷ See, e.g., Witnesses BYR (T. 9 April 2009 pp. 32-34), QCL (T. 18 March 2009 pp. 7-8, 48-53) and XR (T. 2 April 2009 p. 8).

Salome Mujawayezu, Alice Mujawayezu and Jacqueline.¹⁸ The Prosecution also has presented evidence about several rapes of Tutsi women by the Accused or by soldiers at the Ngoma Camp, where he was the commander.¹⁹ Prosecution witnesses also have testified that the Accused attended a meeting at the ESO (*École Sous-Officiers*) and the swearing-in ceremony of *préfet* Nsabimana, where the killing of Tutsi was instigated.²⁰ Furthermore, evidence has been presented in relation to the Accused's alleged responsibility for equipping and facilitating the movement of *Interahamwe*, soldiers and civilians, as well as for distributing weapons to these assailants.²¹

20. On the basis of the evidence presented in relation to Count I, along with all reasonably possible inferences arising therefrom, the Chamber finds that there is evidence which, if believed, could lead a reasonable trier of fact to conclude that Ildephonse Hategekimana bears individual and superior responsibility for genocide.

Count II: Complicity in Genocide

21. The Accused also requests acquittal on Count II of the Indictment, complicity in Genocide. According to well establish ICTR jurisprudence, complicity in Genocide, under Article 2 (2), and aiding and abetting genocide, set out in Article 6 (1) of the Statute, are overlapping, if not substantially similar, forms of criminal conduct.²² Thus, a finding of aiding and abetting genocide could also establish a conviction for complicity in Genocide.²³ Accordingly, the Chamber considers that the same evidence discussed above in relation to Count I, if believed, could be sufficient to establish a finding by a reasonable trier of fact that the Accused bears individual and superior for complicity in genocide.

Count III: Murder as a Crime against Humanity

22. The Accused has been charged with murder as a Crime against Humanity for the deaths of Jean-Bosco Rugomboka, Salome Mujawayezu, Alice Mukarwesa, Jacqueline, Solange Karenzi, Mulinga Karenzi, and Clémence, pursuant to Articles 3 (a), 6 (1) and 6 (3) of the Statute.²⁴ The Prosecution also has charged the Accused with responsibility

¹⁸ See, e.g., Witnesses QCL (T. 17 March 2009) and BYR (T. 9 April 2009 p. 20).

¹⁹ See, e.g., Witnesses BUR (T. 6 April 2009 pp. 57-66 and T. 7 April 2009 pp. 3-4), BUQ (T. 24 March 2009 pp. 6-11) and Sadiki Sezirahiga (T. 2 April 2009 p. 64 and T. 6 April 2009 pp. 8, 41).

²⁰ See, e.g., Witnesses BUR (T. 6 April 2009 pp. 50-52), BRU (T. 30 March 2009 pp. 68-70), and QBC (T. 20 March 2009 pp. 9, 17).

²¹ See, e.g., Witnesses BYO T. 4 May 2009 p. 15), BYS (T. 15 April 2009 p. 13), QCO (T. 25 March 2009 pp. 38-40, 50-51) and QBC (T. 20 March 2009).

²² *Krstic*, Judgement (AC), 13 December 2004, paras. 138-139.

²³ *Krstic*, Judgement (AC), 13 December 2004, paras. 138-139.

²⁴ Amended Indictment, 1 October 2007, paras. 34-41.

for the death of Nura Sezirahiga.²⁵ However, the Chamber will not take the facts of Nura Sezirahiga's death into account, as her killing was not alleged as murder as a Crime against Humanity in the Indictment.²⁶

23. Murder is one of the enumerated Crimes Against Humanity under Article 3 of the Statute. In order to qualify as a Crime Against Humanity, the specific offence must be committed as part of a widespread or systematic attack against any civilian population on national, political ethnic, racial or religious grounds.²⁷ Widespread refers to the large scale of the attack.²⁸ Systematic refers to an organized pattern of conduct, as distinguished from random or unconnected acts committed by independent actors.²⁹ The *mens rea* element of a crime against humanity requires that the perpetrator must know that his actions form part of a widespread or systematic attack against civilians on discriminatory grounds, although he or she need not necessarily share that discriminatory intent.³⁰

24. Murder is the intentional killing of a person or the intentional infliction of grievous bodily harm with the 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.³¹

25. Prosecution witnesses have testified that the Accused was present when soldiers from the Ngoma Military Camp abducted Jean-Bosco Rugomboka from his family's residence between 8 and 10 April 1994.³² There is testimony that Jean-Bosco was seen in Ngoma Camp between the time when he was abducted and when his dead body was found in a pine wood near the military camp.³³ Witnesses have testified that Hategekimana, as Ngoma Camp Commander, was present at and in the vicinity of Ngoma Military Camp when Bosco was abducted and when his body was found around 10 April 1994.

26. According to the testimonies of Prosecution witnesses, the Accused, soldiers from the Ngoma Military Camp, and several *Interahamwe* attacked Witness XR's home and killed his wife, Salome Mujawayezu, and her two cousins, Alice Mukarwesa and Jacqueline.³⁴ The Prosecution also presented evidence that the Accused was at the

²⁵ *Prosecutor's Response to Defense Motion for a Judgment of Acquittal of Ildephonse Hategekimana*, para. 8.

²⁶ Amended Indictment, 1 October 2007, paras. 35-41.

²⁷ *Ntakirutimana*, Judgement (AC), para. 516; *Simba*, Judgement (AC), para. 421.

²⁸ *Simba*, Judgement (AC), para. 421.

²⁹ *Ntakirutimana*, Judgement (AC), para. 516 and footnotes; *Kunarac et al.*, Judgement (AC), paras. 93-97.

³⁰ *Gacumbitsi*, Judgement (AC), para. 86.

³¹ *Rukundo*, Judgement (TC), para. 579; *Ndindabahizi*, Judgement (TC), para. 487; *Muhimana*, Judgement (TC), para. 568.

³² The testimonies of Witness QCL, Witness QDC, Witness QCN, Witness XR place Hategekimana at Jean-Bosco Rugomboka's mother's residence the night he was abducted. According to Witness QCL, Jean-Bosco was "taken away by soldiers from the Ngoma Camp during the night and for the simple reason that he was a Tutsi."

³³ See, e.g., Witness BYR (T. 9 April 2009 p. 20).

³⁴ See, e.g., Witness XR (T. 1 April 2009 p. 65) Witness XR, testified that the soldiers and the Accused arrived at his home on 23 April 1994; "they entered and asked us to present our identity cards ... We had

Benebikira Convent during an attack on 30 April 1994 by armed soldiers, *Interahamwe* and civilians.³⁵ There is testimony that, during the attack, the Karenzi children, who had sought refuge at the Benebikira Convent, were herded onto vehicles with other Tutsi and were never seen again.³⁶

27. The Chamber has carefully examined the Prosecution witnesses' testimonies and finds that there is sufficient evidence, which, if believed, could lead a reasonable trier of fact to conclude that the Accused Hategekimana bears individual and superior responsibility for murder, as a Crime Against Humanity, as charged in the Indictment. Accordingly, the Accused's Motion for a Judgement of Acquittal on Count III of the Indictment is denied.

Count IV: Rape as a Crime against Humanity

28. The Accused is charged with rape as a Crime Against Humanity, under Articles 3(g), 6(1), and 6(3) of the Statute. To constitute a Crime Against Humanity, rape, like murder, must be committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds.³⁷ Rape has been defined by the Tribunal as a physical invasion of a sexual nature, committed on a person under coercive circumstances.³⁸

29. Prosecution witnesses have testified that Lieutenant Hategekimana personally ordered soldiers at the Ngoma Camp to rape Tutsi women and girls.³⁹ Several witnesses have testified that soldiers from the Ngoma Military Camp, including Innocent Ndererimana and Michel Murigande, raped Tutsi girls and women in Butare *préfecture*

Congolese identity cards. However, my wife and [her] cousins, since they were Tutsi, were not there. They had hidden. So they started searching the house and finally found these women. They took away the three women and killed them."

³⁵ See, e.g., Witness BYO (T. 4 May 2009 p. 15).

³⁶ See, e.g., Witness BYS (T. 15 April 2009 p. 16).

³⁷ *Ntakirutimana*, Judgement (AC), para. 516; *Simba*, Judgement (AC), para. 421.

³⁸ The Appeals Chamber has articulated the parameters of what could constitute a physical invasion of a sexual nature: the penetration of the vagina or anus of the victim by the penis of the perpetrator or by any other object used by the perpetrator or of the mouth of the victim by the penis of the perpetrator, committed under coercive circumstances. See *Muhimana*, Judgement and Sentence (TC), 28 April 2005, para. 551 (endorsing the conceptual definition of rape established in *Prosecutor v. Akayesu*); *Akayesu*, Judgement (TC), 2 September 1998, para. 598 (defining rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive). *Prosecutor v. Kunarac et al.*, Judgement (AC), 12 June 2002 para. 128 ("The Appeals Chamber concurs with the Trial Chamber's definition of rape"); *Prosecutor v. Semanza*, Case No ICTR-97-20-T, Judgement (TC), 15 May 2003, para 345 (adopting the definition of rape approved by the ICTY Appeals Chamber); *Muhimana*, Judgement (TC), 28 April 2005, para. 550 ("Whereas *Akayesu* referred broadly to a "physical invasion of a sexual nature," *Kunarac* went on to articulate the parameters of what could constitute a physical invasion of a sexual nature amounting to rape."). *Prosecutor v. Nindiliyimana et al (TC)*, Decision on Defence Motions Pursuant to Rule 98bis (TC), 20 March 2007, para. 49; *Prosecutor v. Bagasora et al. (TC)*, Decision on Motions for Judgement of Acquittal, 5 February 2005, para. 30.

³⁹ See, e.g., Witness BUR (T. 7 April 2009 p. 4) and Witness BUQ (T. 24 March 2009 p. 10).

during the months of April and May 1994.⁴⁰ Prosecution Witness Sadiki Sezirahiga, for example, testified that Lieutenant Hategekimana brought a soldier, Michel Murigande, to the Sezirahiga home where the latter participated in the rape of Sezirahiga's daughter, Nura.⁴¹ Witness BUR similarly testified that he witnessed a soldier from the Ngoma military camp rape a young girl while four others watched.⁴²

30. According to Witnesses QB and QBC, women and girls at the Ngoma Parish were stripped naked and sexually assaulted before being killed.⁴³ Witness BUQ testified that she and her colleagues were repeatedly gang-raped and that she was later held captive by a soldier who claimed to be a member of Lieutenant Hategekimana's escort.⁴⁴ Finally, Witness BUR testified that he saw Hategekimana take *préfet* Habyarimana's wife from her home and that he later saw her at the house of the Accused, where he was told that Hategekimana had forced the woman to become his wife.⁴⁵ The witness also stated that he saw four other girls at the Accused's house and that he was told by a member of Hategekimana's escort that these girls had been raped by Hategekimana and members of the escort.⁴⁶

31. In light of the above testimonies, the Chamber finds that there is sufficient evidence, which, if believed, could lead a reasonable trier of fact to conclude that the Accused bears individual and superior responsibility for rape as a Crime Against Humanity. The Accused Ildephone Hategekimana's Motion for a Judgement of Acquittal on Count IV of the indictment is therefore denied.

⁴⁰ See, e.g., Witness BUQ (T. 24 March 2009 p. 10); Sadiki Sezirahiga (T. 6 April 2009 pp. 8, 41); Witness BUR (T. 7 April 2009 pp. 3-4).

⁴¹ See, e.g., Sadiki Sezirahiga T. 2 April 2009 p. 64; T. 6 April 2009 pp. 8, 41): "Murigande had come with Hategekimana ... had caught my daughter and handed her over to the soldiers and the *Interahamwe*. I was 2 metres away from the place when my family members were being killed, so my daughter was taken 4 metres away from there. I do not want to repeat what they did to her here. But I know my daughter was shouting and saying, 'Dad, dad, I am going to die.' And then she died, indeed."

⁴² T. 7 April 2009 pp. 3-4 (Witness BUR) ["She was completely naked and she was on a mattress, lying on a mattress, and the soldier was on top of her. She was shouting and was begging for mercy: 'Have pity on me. Don't treat me this way. I would rather have you kill me or shoot me.' ... When I arrived outside I told Sergeant Ngirinshuti that that person was in a very bad state, and he said that there was nothing he could do because instructions had been given. ... The instruction was to rape young Tutsi girls and women before killing them."].

⁴³ See, e.g., Witness QB (T. 19 March 2009 pp. 6-7); Witness QBC (T. 20 March 2009 pp. 18-19). The Chamber shall consider in its Judgement whether the Prosecution provided adequate notice as to the testimony of these two witnesses, insofar as neither the indictment nor the Prosecution's pre-trial brief mentioned the rape of Tutsi women at the Ngoma Parish.

⁴⁴ See, e.g., Witness BUQ (T. 24 March 2009 pp. 6-12).

⁴⁵ See, e.g., Witness BUR (T. 6 April 2009 pp. 65-66). When asked how he knew that the *préfet's* wife was being raped, the witness responded as follows: "First of all, she was in his house, and second, Kazungu and Ndayambaje, who were Hategekimana's bodyguards, told me that Lieutenant Bikomagu had taken that woman for wife, forcibly. And they used the word '*Kubohoza*'."

⁴⁶ See, e.g., Witness BUR (T. 6 April 2009 pp. 69-70).

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**FOR THE ABOVE REASONS, THE CHAMBER
DENIES** the Defence Motion in its entirety.

Arusha, 05 June 2009

Arlette Ramaroson
Presiding Judge

Taghrid Hikmet
Judge

Joseph Masanche
Judge

[Seal of the Tribunal]

