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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 22 June 2009

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**THE PROSECUTOR**

v.

**Callixte KALIMANZIRA**

*Case No. ICTR-05-88-T*

**JUDGEMENT**

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**CHAPTER I – INTRODUCTION**

**1. INDICTMENT**

1. On 21 July 2005, the Prosecution filed an indictment against Callixte Kalimanzira, which was confirmed the following day. The Prosecution charged Kalimanzira with three counts pursuant to Article 2 (3) of the Statute, namely Genocide, Complicity in Genocide, and Direct and Public Incitement to Commit Genocide. The Prosecution alleges Kalimanzira’s individual criminal responsibility for each of these crimes under Article 6 (1) of the Statute.

2. The Indictment is set out in full in Annex III to this Judgement.

**2. PROCEDURAL SUMMARY**

3. On 1 September 2005, a warrant for Kalimanzira’s arrest and transfer to the seat of the Tribunal was issued. On 8 November 2005, Kalimanzira surrendered in Nairobi, Kenya, to Tribunal officials, and arrived at the United Nations Detention Facility in Arusha the same day. At his initial appearance a few days later, Kalimanzira pleaded not guilty to all three counts in the Indictment.<sup>1</sup>

4. Kalimanzira’s trial commenced on 5 May 2008. The Prosecution closed its case on 30 June 2008, after having called 24 witnesses over 16 trial days. The Defence case commenced on 17 November 2008 and was conducted over two trial sessions. The first session ended on 4 December 2008, and the second started on 26 January 2009 running until the last witness, Kalimanzira himself, completed his testimony, on 11 February 2009. Over 21 trial days, the Defence called 42 witnesses. The Prosecution tendered a total of 82 exhibits, and the Defence tendered 117. The Chamber rendered 19 interlocutory decisions and orders. Closing briefs were filed on 2 April 2009 and Closing Arguments were heard on 20 April 2009.

5. The procedural history of this case is set out in full in Annex I to this Judgement.

**3. OVERVIEW OF THE CASE**

6. The following state of affairs existed in Rwanda between 6 April 1994 and 17 July 1994. There was a non-international armed conflict. At the same time, genocide against the Tutsi ethnic group, as well as widespread or systematic attacks against a civilian population based on Tutsi ethnic identification, occurred. At that time, citizens native to Rwanda identified as Hutus, Tutsis and Twas were protected groups falling within the scope of the Genocide Convention.<sup>2</sup> 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.<sup>3</sup>

7. Callixte Kalimanzira is a native of Butare *préfecture* and was born in 1953. The Prosecution alleges that, from 6 April to 25 May 1994, he acted, functionally, as the Minister of the Interior in Faustin Munyazesa’s absence. He is also alleged to have been a high-ranking member of the MRND party and to have acted as the master of ceremonies at the MRND Palace meeting on 19 April 1994 aimed at triggering killings of Tutsis in Butare

<sup>1</sup> T. 14 November 2005 p. 9 (Initial Appearance).  
<sup>2</sup> Convention for the Prevention and Punishment of the Crime of Genocide. UN GA Resolution 260 A (III) of 9 December 1948.  
<sup>3</sup> *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-I, Decision on Judicial Facts of Common Knowledge, 22 February 2006.

*préfecture* to parallel those already underway throughout the rest of country. Kalimanzira, who was well-liked and highly respected by the local population, is accused of abusing his authority to instruct, encourage and prompt the population of Butare *préfecture* to kill their Tutsi neighbours.

8. The Defence contends that Kalimanzira was not a political man, but someone who worked to develop and empower his local community, Tutsi and Hutu alike, through the use of agriculture. He is presented as having discharged his duties as a civil servant with honour and integrity, without ever having harboured any anti-Tutsi sentiment in his life. Upon becoming *Directeur de Cabinet* in the Ministry of the Interior, Kalimanzira insists he was merely a technocrat, without any political authority. Apart from a few occasions, he claims to have remained in Gitarama *préfecture* throughout April and May 1994, thereby denying his presence at many of the incidents alleged by the Prosecution. Kalimanzira's alibi is discussed in full at III.1.2.

9. Having deliberated on the totality of evidence, the Chamber has convicted Kalimanzira under Count 1 (Genocide) and Count 3 (Direct and Public Incitement to Commit Genocide) of the Indictment. The Chamber has dismissed Count 2 (Complicity in Genocide), which was pleaded in the alternative to Count 1. The Chamber has sentenced him to a term of thirty (30) years' imprisonment, with credit for time served. In Chapter II, the Chamber will discuss some preliminary issues and address certain matters submitted by the Parties in their respective closing briefs. In Chapter III, the Chamber will then present its reasoned factual and legal findings on the events pleaded and crimes charged in the Indictment. The Chamber's verdict and sentence will be dealt with, respectively, in Chapters IV and V.

## CHAPTER II – PRELIMINARY ISSUES

### 1. INTRODUCTION

10. In its Closing Brief, the Defence raised several issues relating to the assessment of evidence, the Prosecution's disclosure obligations and the right to notice. The Prosecution responded to some of these submissions during Closing Arguments, and raised a few issues of its own in its Closing Brief relating to notice of alibi, incorrectly pleaded time frames in the Indictment, and the withdrawal of charges.

### 2. DEFICIENT PLEADINGS

#### 2.1. Failure to Plead *De Facto* Authority

11. The Defence raises an issue as to whether Kalimanzira's alleged *de facto* authority has been properly pleaded. It is apparent that the English version of the Indictment invokes his *de facto* authority at paragraph 2, whereas the French version does not. Considering that the French version is the original, a faithful translation of it would have omitted *de facto* authority as a possible means by which Kalimanzira allegedly held influence or power over anyone in Butare *préfecture*.<sup>4</sup>

12. To resolve a similar issue which arose in respect of "commission" as a mode of liability under Count 3 (see III.4), which was included in the French original Indictment, but omitted from the English translation,<sup>5</sup> the Prosecution submitted that the translation error did not constitute a material defect and that the Defence suffered no material prejudice as a result because:

"The working language of the Kalimanzira Defence is French. The Defence, therefore, would have used the French original version of the indictment to apprise themselves of the charges against their client, Callixte Kalimanzira. Similarly, during the initial appearance of the accused Kalimanzira on 14 November 2005, the Registry read out the indictment, including paragraph 18, to the accused Kalimanzira. The indictment was read as written in the original French version of the indictment."<sup>6</sup>

13. In this case, the opposite has occurred – a new allegation has curiously appeared solely in the English translation of the Indictment, which was filed two months after the French original. The Chamber notes that a reading of the Indictment during his Initial Appearance,<sup>7</sup> the French version of the Corrected Indictment, and the Prosecution Pre-Trial Brief, do not mention Kalimanzira's alleged *de facto* control. In following with the Prosecution's own line of reasoning on the issue, the omission of *de facto* authority from paragraph 2 of the French original version of the Indictment would constitute a defect therein.

<sup>4</sup> It is noteworthy that the first original Indictment against Kalimanzira, filed in French on 9 June 2005, included the term "de fait" in its articulation of Kalimanzira's authority at paragraph 2. The Indictment was confirmed in French on 21 July 2005 following modifications pursuant to Rule 47 of the Rules; this version omits the term "de fait" in what could have been a typographical error. Both versions were included in the Supporting Materials which Kalimanzira received with the confirmed Indictment.

<sup>5</sup> See T. 13 February 2009 pp. 19-21 (Status Conference) when the Chamber first raised the issue.

<sup>6</sup> Prosecution's Submissions on Paragraph 18 of the Indictment as Invited by the Trial Chamber on 13 February 2009, filed on 17 February 2009, para. 4.

<sup>7</sup> During Kalimanzira's Initial Appearance on 14 November 2005, the courtroom representative of the Registry omitted to read out "Section II. The Accused", *i.e.* paragraphs 1 and 2 of the Indictment, to him. Kalimanzira did, however, confirm that he had received the Indictment and "other related documents" (see T. 14 November 2005 p. 3). Given that the Indictment was read to him as written in the original French version, it would not have included a reference to his alleged *de facto* authority.

14. The Defence suggests that any consideration of *de facto* authority should be ruled out because the defect has not been cured in any subsequent filings.<sup>8</sup> However, the Chamber notes that in its own Pre-Trial Brief, filed six and a half months before it raised the present issue, the Defence introduced the Prosecution's position on Kalimanzira's alleged control in Butare *préfecture* as including both *de jure* and *de facto* authority.<sup>9</sup> The Defence was clearly aware long ago that Kalimanzira's alleged *de facto* authority over the people of Butare was an issue in this trial and formed part of the Prosecution's case. The omission of "de fait" from the French version of the Indictment has not caused the Defence any prejudice or created any confusion. In fact, Kalimanzira's defence is premised on his high-standing and good reputation throughout Butare society. Kalimanzira's *de facto* authority is therefore not in serious contention (see also III.1.1.4); the question is whether he abused it to genocidal ends. The Defence's attempt to persuade the Chamber to dismiss a consideration of Kalimanzira's alleged *de facto* authority is therefore unfounded.

## 2.2. Failure to Plead Superior Responsibility

15. The Defence points out that Kalimanzira is only accused of individual criminal responsibility under Article 6 (1) of the Statute, and argues that because superior responsibility under Article 6 (3) has not been pleaded, Kalimanzira's alleged criminal responsibility may not be evaluated in light of any hierarchical powers he may have held. This contention stands to be rejected for the following reasons.

16. The language used in paragraph 2(vii) of the Indictment, *i.e.* that by virtue of the government positions Kalimanzira held, he exercised "*de jure* and *de facto* authority" over various Butare officials and civilians, "in that he could order these persons to commit or refrain from committing unlawful acts and discipline or punish them for their unlawful acts or omission," is similar to that used when pleading an accused's responsibility as a superior. However, crimes committed by virtue of an accused's abuse of his or her *de jure* or *de facto* powers are not limited to liability under Article 6 (3). Evidence of *de jure* or *de facto* authority can also assist in factually proving criminal liability under the modes of participation contained within Article 6 (1). In fact, at times it is more appropriate to convict under Article 6 (1) than 6 (3), even if an accused has *de jure* authority.<sup>10</sup>

17. The first portion of the underlined extract above refers to Kalimanzira's alleged ability to order others to commit crimes. Ordering is a mode of participation under Article 6 (1). With respect to ordering, a person in a position of authority<sup>11</sup> may incur responsibility for ordering another person to commit an offence,<sup>12</sup> if the person who received the order actually proceeds to commit the offence subsequently.<sup>13</sup>

<sup>8</sup> See Defence Closing Brief, fn 998.

<sup>9</sup> See Defence Closing Brief, para. 10.

<sup>10</sup> For instance, when, for the same count and the same set of facts, the accused's responsibility is pleaded pursuant to both Articles 6 (1) and 6 (3) and the accused could be found liable under both provisions, the Trial Chamber should rather enter a conviction on the basis of Article 6 (1) alone and consider the superior position of the accused as an aggravating circumstance. See *Nahimana et al.* Appeal Judgement, para. 487; *Kajelijeli* Appeal Judgement, para. 81; see also *Galić* Appeal Judgement, para. 186; *Jokić* Appeal Judgement, paras. 23-28; *Kordić and Čerkez* Appeal Judgement, paras. 34-35; *Blaškić* Appeal Judgement, para. 91.

<sup>11</sup> It is not necessary to demonstrate the existence of an official relationship of subordination between the accused and the perpetrator of the crime: *Galić* Appeal Judgement, para. 176; *Gacumbitsi* Appeal Judgement, para. 182; *Kamuhanda* Appeal Judgement, para. 75; *Semanza* Appeal Judgement, para. 361; *Kordić and Čerkez* Appeal Judgement, para. 28.

<sup>12</sup> *Galić* Appeal Judgement, para. 176; *Ntagerura et al.* Appeal Judgement, para. 365; *Kordić and Čerkez* Appeal Judgement, paras. 28-29.

<sup>13</sup> *Nahimana et al.* Appeal Judgement, para. 481.



18. This is different from superior responsibility under Article 6 (3), which does not require proof that an order was given or that authority was exercised to instruct someone to commit a crime, and is aimed at criminalizing an omission to punish or prevent a crime from taking place. Therefore, the fact that superior responsibility under Article 6 (3) was not pleaded does not render Kalimanzira's alleged *de jure* and *de facto* authority irrelevant. Whether Kalimanzira had *de jure* and *de facto* authority, and to what extent, over the people and officials of Butare *préfecture* is factual element relevant to determining of whether he can be held individually criminally responsible for ordering others to commit genocide.

19. The remaining portion of the underlined extract above refers to Kalimanzira's ability to use his alleged *de jure* and *de facto* authority to prevent and punish others from committing crimes. An omission to do so is not only criminalized under Article 6 (3), but also under Article 6 (1), though under different circumstances. Because the Prosecution did not plead superior responsibility, it is unnecessary to pronounce the elements required to invoke Article 6 (3) here. All that is required is an illustration of how acts of omission may incur individual criminal responsibility under Article 6 (1) and how a position of authority may be relevant to this form of liability.

20. Omission proper may lead to individual criminal responsibility where there is a legal duty to act or to prevent a crime from being brought about, and failure to do so may constitute the *actus reus* of commission, instigation, or aiding and abetting under Article 6 (1). In some cases, the combination of a position of authority and physical presence at the crime scene may allow the inference that non-interference by the accused actually amounted to aiding and abetting by tacit approval and encouragement. In Kalimanzira's case, this is particularly relevant with regard to the allegations that he attended meetings aimed at inciting people to commit genocide and that his presence was enough to condone and encourage what was being said. There is, however, no special requirement that a position of superior authority be established before liability for aiding and abetting under Article 6 (1) can be recognized. An accused's position of authority constitutes one of many contextual factors that may go to proving the significance of his or her assistance in the commission of a crime.<sup>14</sup> Thus, whether Kalimanzira had *de jure* and *de facto* authority, and to what extent, over the people and officials of Butare *préfecture* is a contextual element in determining whether he can be held individually criminally responsible for omitting to prevent or punish people for committing genocide.

21. In conclusion, the issue raised by the Defence is unfounded. The Chamber will not consider superior responsibility under Article 6 (3) as a form of liability because it has not been pleaded. The Chamber will only consider whether Kalimanzira incurs individual criminal responsibility under Article 6 (1) for his alleged acts and omissions, and in doing so, will take into account his alleged *de jure* and *de facto* authority, wherever relevant.

<sup>14</sup> Orić Appeal Judgement, paras. 42-43; Nahimana et al. Appeal Judgement, para. 478; Blagojević and Jokić Appeal Judgement, para. 195; Ntagerura et al. Appeal Judgement, paras. 33, 370; Orić Trial Judgement, para. 273; Kayishema and Ruzindana Appeal Judgement, paras. 201-202. See also Musema Trial Judgement, para. 865, which states: "In relation to Article 6 (1), the nature of the authority wielded by an individual affects the assessment of that individual's role in planning, instigating, ordering, committing or otherwise aiding and abetting the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the Statute. In particular, the presence of an authority figure at an event could amount to acquiescence in the event or support therefore, and, in the perception of the perpetrators, legitimize the said event."

**2.3. Incorrectly Pleaded Time Frames**

22. In its Closing Brief, the Prosecution admits to two incorrectly pleaded time frames.<sup>15</sup> The first is at paragraph 23, which alleges Direct and Public Incitement to Commit Genocide at the Nyabisagara football field. The second is at paragraph 24, which alleges Direct and Public Incitement to Commit Genocide at the Rwamiko Primary School. Rather than state that these events, which allegedly occurred just days apart, took place in late May or early June 1994, the Indictment states that they took place in late April or early May 1994.

23. The Prosecution points out that the evidence referred to in respect of these paragraphs in the Annotated Indictment, as well as the corresponding sections of the Pre-Trial Brief, and the Prosecution evidence led at trial, all rely on the late May or early June 1994 time period. The Prosecution submits the Defence has thereby received clear, consistent and timely notice as to the relevant time frame. It recalls that the Defence failed to raise an objection as to this time frame for either event and challenged the Prosecution evidence accordingly. The Defence has raised no objection in its Closing Brief either, nor has it made mention of it during Closing Arguments. In the opinion of the Chamber, the error is not so significant as to have materially undermined the Defence’s ability to prepare its case. The Chamber therefore accepts the relevant time frames for paragraphs 23 and 24 of the Indictment as being late May or early June 1994.

**2.4. Withdrawal of Charges**

24. At paragraph 11 of the Indictment, the Prosecution charges Kalimanzira with Genocide for ordering the killings of 100 Tutsi civilians at a roadblock near the Buzana River, and at Rango, a few kilometres away. He is accused of having personally beaten some of them to death.

25. At paragraph 16 of the Indictment, the Prosecution charges Kalimanzira with Genocide for distributing weapons to Bonaventure Nkundabakora in Kigembe *commune* two days after the death of President Habyarimana, and for periodically replenishing a stock of bladed weapons at the Muganza *commune* office. These weapons were allegedly distributed to the population under Kalimanzira’s supervision and used to kill Tutsis.

26. At paragraph 19 of the Indictment, the Prosecution charges Kalimanzira with Direct and Public Incitement to Commit Genocide for inciting people to arm themselves and prepare to fight the “enemy” in late March 1994 at a meeting held at the Gisagara marketplace by local government officials. He is also accused of having encouraged people to manufacture traditional weapons and promised to supply them with firearms.

27. The Prosecution has withdrawn these allegations, having led no evidence on them at trial.<sup>16</sup> These charges are therefore dismissed.

**3. DEFECTIVE INDICTMENT**

28. In its Closing Brief, the Defence objects to the lack of precision in paragraph 15 of the Indictment, as well as to several events about which Prosecution witnesses testified, but which do not appear in the Indictment.<sup>17</sup> Where further particulars were provided in the

<sup>15</sup> Prosecution Closing Brief, paras. 231 and 254.

<sup>16</sup> Prosecution Closing Brief, para. 2.

<sup>17</sup> Defence Closing Brief, para. 1125.

Prosecution Pre-Trial Brief, the Defence submits the new allegations nevertheless came too late, causing it significant prejudice.<sup>18</sup>

29. These objections are considered in the relevant section of the Chamber's deliberations. In some instances, the Chamber has *proprio motu* addressed questions of notice, even where no specific objection has been made by the Defence, based on the organisation and argumentation of the Prosecution Closing Brief, particularly in relation to paragraphs 8 and 27 of the Indictment. The Chamber recalls that a closing brief is not a relevant document in determining whether an accused had notice of the charges against him.<sup>19</sup> The Chamber has considered the challenges and issues in view of the pertinent principles, as recapitulated below.

### 3.1. Law

30. Articles 20 (4)(a) and 20 (4)(b) of the Statute, in conjunction with Articles 20 (2) and 17 (4) of the Statute and Rule 47 (C) of the Rules, express the Prosecution's obligation to plead the charges against an accused and the material facts supporting those charges with sufficient precision in an indictment so as to provide notice to the accused of the charges against him or her. Whether a fact is material depends upon the nature of the Prosecution's case. A decisive factor in determining the degree of specificity with which the Prosecution is required to particularize the facts of its case in the indictment is the nature of the alleged criminal conduct charged to the accused. For example, in a case where the Prosecution alleges that an accused personally committed the criminal acts, the material facts, such as the identity of the victim, the time and place of the events, and the means by which the acts were committed, have to be pleaded in detail. An indictment lacking this precision is defective; the prejudicial effects of a defective indictment can be remedied or "cured", in exceptional cases only, if the Prosecution provided the accused with clear, timely and consistent information detailing the factual basis underpinning the charges against him or her, thus compensating for the failure of the indictment to give proper notice of the charges. The Appeals Chamber has held that a pre-trial brief in certain circumstances can provide such information.<sup>20</sup>

31. "Curing" is the process by which vague or general allegations in an indictment are given specificity and clarity through communications other than the indictment itself. Only material facts which can be reasonably related to existing charges may be communicated in such a manner. The mere service of witness statements or of potential exhibits by the Prosecution as part of its disclosure obligations is generally insufficient to inform the Defence of the material facts that the Prosecution intends to prove at trial. The presence of a material fact somewhere in the Prosecution's disclosures does not suffice to give reasonable notice to the accused; what is required is notice that the material fact will be relied upon as part of the Prosecution case, and how. An accused person can only be expected to prepare his or her defence on the basis of material facts contained in the indictment, not on the basis of all the material disclosed to him or her that may support any number of additional charges, or expand the scope of existing charges. In light of the volume of disclosure by the Prosecution in certain cases, a witness statement will not, without some other indication, adequately signal to the accused that the allegation is part of the Prosecution case. The essential question

<sup>18</sup> Defence Closing Brief, paras. 1139-1157.

<sup>19</sup> *Bagosora et al.* Trial Judgement, para. 122.

<sup>20</sup> *Muvunyi* Appeal Judgement, para. 18; *Seromba* Appeal Judgement, paras. 27, 100; *Simba* Appeal Judgement paras. 63-64; *Muhimana* Appeal Judgement, paras. 76, 82, 167, 195, 217; *Gacumbitsi* Appeal Judgement, paras. 49, 57-58; *Ndindabahizi* Appeal Judgement, para. 16; *Ntagerura et al.* Appeal Judgement, paras. 27-28, 65; *Kamuhanda* Appeal Judgement, paras. 17, 24; *Ntakirutimana* Appeal Judgement, paras. 25, 27, 48; *Niyitegeka* Appeal Judgement, paras. 193-195. See also *Naletilić and Martinović* Appeal Judgement, para. 45; *Kupreškić et al.* Appeal Judgement, paras. 89-92, 114; *Kvočka et al.* Appeal Judgement, para. 34.

is whether the Defence has had reasonable notice of, and a reasonable opportunity to investigate and confront, the Prosecution case.<sup>21</sup>

32. A clear distinction has to be drawn between vagueness in an indictment and an indictment omitting certain charges altogether. While it is possible, as stated above, to remedy the vagueness in an indictment, new or omitted charges can be incorporated into the indictment only by formal amendment pursuant to Rule 50 of the Rules. A count or charge is the legal characterization of the material facts which support that count or charge. In pleading an indictment, the Prosecution is required to specify the alleged legal prohibition infringed (*i.e.* the count or charge) and the acts or omissions of the accused that give rise to that allegation of infringement of a legal prohibition (*i.e.* the material facts). A “new charge” arises not only where there is a new count, but where new allegations could lead to liability on a factual basis that was not reflected in the indictment.<sup>22</sup>

33. Objections based on lack of notice should be specific and timely. The objection should be raised at the pre-trial stage, for instance in a motion challenging the indictment, or at the time the evidence of a new material fact is introduced. Although failing to object at the time the evidence is introduced does not prohibit the Defence from objecting at a later date, a Trial Chamber should determine whether the objection was so untimely that the burden of proof has shifted from the Prosecution to the Defence to demonstrate that the accused’s ability to defend himself has been materially impaired. Relevant factors to consider include whether the Defence has provided a reasonable explanation for its failure to raise its objection at the time the evidence was introduced and whether the Defence has shown that the objection was raised as soon as possible thereafter.<sup>23</sup>

### 3.2. Cumulative Effect of Defects in the Indictment

34. In several sections of its deliberations, the Chamber has found that the Indictment was defective in a number of respects by failing to include pertinent material facts (see *e.g.* III.2.3.1, III.2.7.1 and III.4.9.1). The Chamber has also found many of those omissions to have been cured by the provision of timely, clear and consistent information on the basis of the Prosecution Pre-Trial Brief. The Appeals Chamber has held that, even if a Trial Chamber finds that the Prosecution has cured defects in the indictment through post-indictment submissions, it should consider whether the extent of those defects materially prejudiced the accused’s right to a fair trial by hindering the preparation of a proper defence.<sup>24</sup>

35. The Indictment gave the Defence adequate notice of the essence of the Prosecution’s case, namely that Kalimanzira played a key role in advancing and promoting the Rwandan genocide in Butare *préfecture*. The Chamber considers that, wherever defects are cured, the new material facts do not amount to a radical transformation of the Prosecution’s case. In each instance, the material facts provided in the post-Indictment submissions relate to a general paragraph and serve to particularize the allegations contained therein, but do not change the substance of the allegations or add new elements to the case. The Defence’s

<sup>21</sup> *Muvunyi* Appeal Judgement, para. 166; *Simić* Appeal Judgement, para. 24; *Naletilić and Martinović* Appeal Judgement, para. 27; *Ntakirutimana* Appeal Judgement, para. 27; *Kupreškić et al.* Appeal Judgement, para. 323; see also *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Kabiligi Motion for Exclusion of Evidence (TC), 4 September 2006, paras. 3 and 7.

<sup>22</sup> *Karera* Appeal Judgement, para. 293; *Ntagerura et al.* Appeal Judgement, para. 32. See also *Muvunyi* Appeal Judgement, para. 20, citing *Bagosora et al.* Interlocutory Appeal Decision, para. 29. See also *The Prosecutor v. Nchamihigo*, Case No. ICTR-01-63-I, Decision on Request for Leave to Amend the Indictment (TC), 14 July 2006, para. 20.

<sup>23</sup> *Bagosora et al.* Interlocutory Appeal Decision, paras. 45-46.

<sup>24</sup> *Bagosora et al.* Interlocutory Appeal Decision, para. 26.

ability to confront these new material facts is evidenced by its thorough cross-examination of the Prosecution’s witnesses. In addition, the Defence was afforded four and a half months after the close of the Prosecution case before the commencement of its own case, giving it sufficient time to investigate and further rebut these new material facts. Notwithstanding the Prosecution’s failure to plead a number of material facts in the Indictment, the Chamber finds that the Defence was not materially prejudiced, and that the trial was not rendered unfair, by the cumulative effect of the defects in the Indictment having been cured.

**4. DISCLOSURE VIOLATIONS**

36. In its Closing Brief, the Defence argues that Kalimanzira’s rights to a fair trial have been compromised because of the Prosecution’s repeated violations of Rule 68 (A) of the Rules, which requires the Prosecution to disclose to the Defence, as soon as practicable, any material which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence.<sup>25</sup> The first complaint relates to documents that the Prosecution intended to use during cross-examination, the second relates to Prosecution witnesses’ *Gacaca* records, and the third relates to transcripts and prior statements of witnesses who testified in the *Butare* trial. These three sets of alleged violations will be dealt with separately.

**4.1. Documents Used in Cross-Examination**

37. The Defence argues that the Prosecution violated its disclosure obligations under Rule 68 (A) of the Rules for repeatedly communicating the documents it intended to use in the cross-examination of Defence witnesses only after their cross-examination had already begun. The Defence submits that despite several warnings by the Chamber, the Prosecution persisted in this practice.<sup>26</sup>

38. While this Chamber has encouraged the cross-examining Party to provide the opposing Party with copies of the documents it intends to use *before* cross-examining a witness,<sup>27</sup> there is no binding rule to this effect; rather, this relates to the general conduct of trial proceedings, which is a matter falling within the discretion of the Trial Chamber.<sup>28</sup> The Defence’s contention that this would constitute a violation of Rule 68 (A) is completely erroneous. Parties may choose to maintain a certain element of surprise. However, depending on the circumstances, a persistent defiance to respect the Chamber’s instructions to provide such documents in advance could suggest a bad faith attempt to undermine the Defence.

39. In raising this argument, the Defence has not provided a single instance or reference to any occasion when such late communication by the Prosecution has occurred. The Chamber is not under any obligation, therefore, to even entertain this complaint. Nonetheless, in the interests of ensuring the integrity of the proceedings and safeguarding the rights of the Accused, the Chamber finds that some consideration of the Defence’s arguments is warranted here.

<sup>25</sup> Defence Closing Brief, paras. 1169-1196.

<sup>26</sup> Defence Closing Brief, paras. 1171 and 1177.

<sup>27</sup> See T. 12 May 2008 p. 47 (Witness BCF) when the Chamber first made the instruction in this case.

<sup>28</sup> *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-AR73, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66 (B) of the Tribunal’s Rules of Procedure and Evidence (AC), 25 September 2006, para. 6.

40. A review of the record shows at least six occasions when the Prosecution distributed materials to the Defence after it had already begun cross-examining the Defence witness.<sup>29</sup> On five such occasions, the Chamber warned the Prosecution to observe its instruction to distribute the materials in advance,<sup>30</sup> and on the third warning, the Chamber admonished the Prosecution's failure to follow the Chamber's instruction.<sup>31</sup>

41. In each case, the Chamber considered whether the Defence might suffer any prejudice from late distribution and provided the appropriate remedy wherever necessary.<sup>32</sup> The Chamber concludes that there was no malice or bad faith on the Prosecution's part here, and that the Defence did not suffer any prejudice whatsoever. The Defence's contention that Kalimanzira's right to a fair trial has been violated in this respect is therefore unfounded.

#### 4.2. *Gacaca* Records

42. The Defence further argues that the Prosecution violated its disclosure obligations under Rule 68 (A) of the Rules by failing to provide any *Gacaca* files for any of the Prosecution witnesses. The Defence suggests the Prosecution must have had the documents in its possession given that the Prosecution was able to produce the *Gacaca* files of certain Defence witnesses to challenge their credibility under cross-examination. The Defence further accuses the Prosecution of deliberately depriving the Defence of the records because on the rare occasion that its own best efforts resulted in the procurement of a Prosecution witness' *Gacaca* record, it proved decisive in challenging that witness' credibility.<sup>33</sup>

43. The determination of which materials are subject to disclosure under Rule 68 of the Rules is a fact-based inquiry made by the Prosecution. If an accused wishes to show that the Prosecution is in breach of its disclosure obligation, he or she must: (1) identify specifically the material sought; (2) show its *prima facie* probable exculpatory nature; and (3) show that the material requested is in the custody or under the control of the Prosecution. According to the Appeals Chamber, the obligation to disclose exculpatory material forms part of the Prosecution's duty to assist in the administration of justice, and is as important as the obligation to prosecute. The Prosecution is presumed to discharge its obligation in good faith. If the Chamber is satisfied that the Prosecution has failed to comply with its Rule 68 obligations, the Chamber will examine whether the accused has been prejudiced by a failure amounting to a violation of his right to a fair trial.<sup>34</sup>

<sup>29</sup> See T. 17 November 2008 p. 32 (Witness MGR); T. 18 November 2008 p. 54 (Sylvestre Niyonsaba); T. 18 November 2008 pp. 75-76 (Jean Marie Vianney Harindintwali); T. 2 December 2008 p. 11 (Witness KXC); T. 27 January 2009 pp. 39-40 (Albert Barikwinshi); T. 2 February 2009 p. 16 (Witness ACB6).

<sup>30</sup> See T. 17 November 2008 p. 32 (Witness MGR); T. 18 November 2008 p. 54 (Sylvestre Niyonsaba); T. 18 November 2008 pp. 76-77 (Jean Marie Vianney Harindintwali); T. 27 January 2009 pp. 38-39 (Albert Barikwinshi); T. 2 February 2009 p. 16 (Witness ACB6).

<sup>31</sup> See T. 18 November 2008 pp. 76-77 (Jean Marie Vianney Harindintwali).

<sup>32</sup> See e.g. T. 17 November 2008 p. 33 (Witness MGR) and T. 27 January 2009 p. 40 (Albert Barikwinshi) where the Chamber considered whether it might be necessary to allow the Defence more time before re-examination to peruse the documents in question; see also T. 2 February 2009 p. 16 (Witness ACB6) where the Chamber considered the Defence had suffered no material prejudice.

<sup>33</sup> Defence Closing Brief, paras. 1172-1177.

<sup>34</sup> See e.g. *The Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-96-15-T, Decision on Kanyabashi's Motion for Disclosure Pursuant to Rule 68 (TC), 25 February 2009, para. 22; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.13, Decision on "Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion" (AC), 14 May 2008, para. 12; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suites in Discharging Disclosure Obligations (AC), 30 June 2006, paras. 8-9; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.6, Decision on Joseph Nzirorera's Interlocutory Appeal (AC), 28 April 2006, para. 16. See also *The*

44. In this case, the Defence has specifically identified the materials sought, but the Prosecution disputes that the material is under its custody or control.<sup>35</sup> To show that the material requested is in the custody or under the control of the Prosecution, the Defence offers mere speculation that if the Prosecution had some Defence witnesses' *Gacaca* records, it must possess all of its own witnesses' *Gacaca* files; this does not fulfill the third prong of the test.

45. The Defence could have made a request under Rule 66 (B) of the Rules "to inspect any books, documents, photographs and tangible objects in [the Prosecution's] custody or control, which are material to the preparation of the defence". Such a request would have entailed a reciprocal obligation under Rule 67 (C) of the Rules. The Defence made no such request.

46. The Defence could also have sought assistance from the Chamber. Indeed, a practice has developed, subject to considerations of the interests of justice, of requiring the intervention of the Prosecution to obtain and disclose certain records, specifically Rwandan judicial records of Prosecution witnesses. In these situations, Trial Chambers have acted *proprio motu* under Rule 98 of the Rules to order the Prosecution to use its best efforts to obtain the relevant judicial dossier(s).<sup>36</sup> Under Rule 54 of the Rules, the Chamber may also issue orders as may be necessary for the conduct of the trial. Trial Chambers have resorted to these provisions, for instance, when the information could be considered as material to the preparation of the Defence case or to determine the credibility of Prosecution witnesses.<sup>37</sup>

47. In the present case, the issue of procuring *Gacaca* records arose early in the trial during the cross-examination of a Prosecution witness, and the Chamber offered to assist the Defence. The Defence indicated its intention to file a written motion to specify what documents it would request the Prosecution to disclose or seek assistance to obtain.<sup>38</sup> However, no such motion was ever filed. Under the circumstances, the Defence's complaint of a disclosure violation in respect of Prosecution witnesses' *Gacaca* records is therefore unfounded.

### 4.3. *Butare* Trial Transcripts

48. The Defence further argues that the Prosecution violated its disclosure obligations under Rule 68 (A) of the Rules by failing to disclose the transcripts and prior statements of seven witnesses who testified in the *Butare* trial on the events at Kabuye hill.<sup>39</sup> This issue is

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*Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Decision on Motions to Extend Time for Filing Appellant's Briefs (AC), 11 May 2001, para. 14.

<sup>35</sup> T. 20 April 2009 p. 13 (Closing Arguments).

<sup>36</sup> It should be noted that Rule 98 does not give the parties any right to request additional evidence. It is for the Chamber to exercise its discretion.

<sup>37</sup> *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Defence Motion for Subpoenas to Prosecution Witnesses (TC), 10 May 2007, para. 15; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motions to Compel Inspection and Disclosure and to Direct Witnesses to bring Judicial and Immigration Records (TC), 14 September 2005, paras. 7-8; *The Prosecutor v. Karera*, Case No. ICTR-01-74-T, Decision on Defence Motion for Additional Disclosure (TC), 1 September 2006, paras. 5-7; *The Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on Matters Related to Witness KDD's Judicial Dossier (TC), 1 November 2004, para. 11.

<sup>38</sup> See T. 20 May 2008 pp. 15 [closed], 16-19 (Witness BDC).

<sup>39</sup> Defence Closing Brief, paras. 1178-1196; see also T. 20 April 2009 pp. 29-30 (Closing Arguments).

*res judicata* by virtue of a decision rendered on 13 February 2009;<sup>40</sup> the Defence now appears to be seeking reconsideration thereof.

49. A Trial Chamber may reconsider its own decision if a new fact is discovered that was not known to the Chamber at the time, if there is a material change in circumstances, or where there is reason to believe that a previous decision was erroneous and therefore prejudicial to either party.<sup>41</sup> In its Closing Brief and during Closing Arguments, the Defence simply reiterates its arguments in its previous motion, thereby showing discontent with the Chamber's 13 February 2009 Decision. The Chamber will now explain why it does not consider its decision to have been erroneous or prejudicial.

50. On 9 February 2009, the Defence for Kalimanzira filed a motion requesting to exclude the testimonies of Prosecution Witnesses BXG, BDK, BDC, BWO, BCF, BBO, and BXK; or, in the alternative, to recall these witnesses for further cross-examination.<sup>42</sup> The Prosecution responded orally to this motion on 13 February 2009, and the Defence replied orally to the Prosecution's response the same day.<sup>43</sup>

51. The Defence complained then as it does now that the Prosecution deliberately violated Rule 68 (A) of the Rules by failing to disclose "as soon as practicable" the transcripts of seven witnesses who testified in the *Butare* trial on the events at Kabuye hill. The Defence maintains that 16 July 2008 (*i.e.* 16 days after the close of the Prosecution case) is too late a date to disclose what, in its view, amounts to exculpatory evidence. The Defence argues it has suffered prejudice in having been denied the opportunity to cross-examine the *Kalimanzira* witnesses with these transcripts, as well as the opportunity to investigate the *Butare* witnesses to see if they had any useful information for Kalimanzira's defence.

52. The witnesses who testified in the *Butare* trial are not the same witnesses who testified in the *Kalimanzira* trial. The *Butare* witnesses gave similar evidence on Kabuye hill as the *Kalimanzira* witnesses, but never once did the *Butare* witnesses mention Kalimanzira's presence on Kabuye hill. This, the Defence submits, makes the evidence exculpatory. Moreover, the *Butare* witnesses testified four years prior to when the disclosure was made in the present case. The Defence argues that the Office of the Prosecutor is a single entity and that the Prosecution in *Kalimanzira* therefore had actual knowledge of these *Butare* transcripts long before making the disclosure. This, the Defence submits, indicates a deliberate decision on the Prosecution's part to withhold this evidence until it became useless to the Defence.

53. As remedial measures, the Defence sought the exclusion of the testimonies of Prosecution Witnesses BXG, BDK, BDC, BWO, BCF, BBO, and BXK. In the alternative, the Defence sought to recall these witnesses for further cross-examination. In addition, the Defence requested the Chamber to order the Prosecution to disclose the written statements of the seven *Butare* witnesses (EV, EP, RT, TW, QAQ, QBZ and FAU) made prior to their testimonies in the *Butare* trial. Finally, the Defence sought to admit into evidence the

<sup>40</sup> Oral Decision on Defence Motion to Exclude Evidence or Recall Witnesses Filed on 9 February (TC), 13 February 2009.

<sup>41</sup> See *e.g.* *The Prosecutor v. Karemera et al.*, Decision on Joseph Nzirorera's Motion for Reconsideration of 2 December 2008 Decision (TC), 27 February 2009, para. 2; *The Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Bagosora Request for Certification or Reconsideration Concerning Admission of Correspondence, 8 May 2007, para. 5.

<sup>42</sup> *Requête en exclusion de preuve et à titre subsidiaire en rappel des témoins BXG, BDK, BDC, BWO, BCF, BBO et BXK*, filed on 9 February 2009.

<sup>43</sup> T. 13 February 2009 pp. 4-9 (Status Conference).



transcripts of *Butare* Prosecution Witnesses EV, EP, RT, TW, QAQ, QBZ and FAU, as well as their prior written statements, pursuant to Rules 89 (C) and 92 *bis* (D) of the Rules.

54. The Defence submits that the subject heading of the Prosecution's correspondence by which it made its Rule 68 (A) disclosure<sup>44</sup> implies an admission by the Prosecution that it violated the letter and spirit of this Rule.<sup>45</sup> The Chamber does not agree. The Prosecution's correspondence suggests only that it considered the materials to be possibly relevant in the preparation of Kalimanzira's defence, and the Prosecution has clarified that, on that basis, it disclosed the materials as a courtesy.<sup>46</sup>

55. The materials disclosed were open session transcripts which are available on the internet at [www.ictr.org](http://www.ictr.org) through the Public Judicial Records Database. However, the public nature of the transcripts cannot, as such, replace the Prosecution's disclosure obligations under Rule 68 (A). The Prosecution must actively review the material in its possession for exculpatory material and, at the very least, inform the accused of its existence. The Prosecution's obligation to disclose exculpatory material is essential to a fair trial, and constitutes one of the Prosecution's most onerous responsibilities.

56. As previously mentioned, if an accused wishes to show that the Prosecution is in breach of its disclosure obligation under Rule 68 (A), he or she must: (1) identify specifically the material sought; (2) show its *prima facie* probable exculpatory nature; and (3) show that the material requested is in the custody or under the control of the Prosecution.

57. In this case, the Defence has specifically identified the materials sought, and has clearly shown that the materials were in the Prosecution's custody and control. The expression "actual knowledge" has been consistently interpreted as requiring that the material be in the possession of the Prosecution,<sup>47</sup> which must be understood as the Office of the Prosecutor as a whole. It is the duty of the Prosecution to disclose exculpatory material arising from related cases and this duty is a continuous obligation without distinction as to the public or confidential character of the evidence concerned.<sup>48</sup> It is, therefore, irrelevant whether the Prosecutor in charge of the case had actual knowledge of the material.

58. With respect to the second prong of the test, a review of the transcripts in question reveals the absence of any mention of Kalimanzira. However, the witnesses did not assert that they did not see Kalimanzira there. Rather, no questions were asked regarding Kalimanzira, and therefore, he was simply not mentioned. Such evidence does not contradict the evidence adduced in the *Kalimanzira* trial. There is no indication whether the *Butare* witnesses knew Kalimanzira. Even if it could be shown that they knew him or knew of him, the mere omission to make mention of Kalimanzira's presence at Kabuye hill during the period at issue does not mean that Kalimanzira could not have been there. As such, the Defence has failed to make a *prima facie* showing of the exculpatory nature of evidence adduced by the seven *Butare* witnesses.

<sup>44</sup> "Disclosure: Notification of the existence of materials which may be of relevance to the Kalimanzira Defence".

<sup>45</sup> Defence Closing Brief, paras. 1184-1185; see also T. 20 April 2009 p. 30 (Closing Arguments).

<sup>46</sup> T. 13 February 2009 p. 5 (Status Conference).

<sup>47</sup> *Kajelijeli* Appeal Judgement, para. 262 ("Defence must first establish that the evidence was in the possession of the Prosecution).

<sup>48</sup> *Prosecutor v. Brđanin*, Case No. IT-99-36-A, Decision on Appellant's Motion for Disclosure Pursuant to Rule 68 and Motion for an Order to the Registrar to Disclose Certain Materials (AC), 7 December 2004, p. 4; *Blaškić* Appeal Judgement, para. 267.

59. In the absence of a violation of Rule 68 (A), the Defence requests for such remedial measures as the exclusion of evidence and the recall of witnesses were rejected. However, the Chamber admitted the transcripts of the *Butare* witnesses' testimonies into evidence pursuant to Rules 89 (C) and 92bis (D), as they are sufficiently relevant and probative (though not exculpatory) to the Kabuye hill allegations.<sup>49</sup> The Chamber specified that portions of the *Butare* transcripts which went to proof of Kalimanzira's acts and conduct would be excluded.<sup>50</sup>

60. It is noteworthy that the Defence's original motion came nearly seven months after the impugned Prosecution disclosure was made. As with many other late objections by the Defence, the Chamber has considered the Defence submissions in full and, in respect of the *Butare* evidence, twice now. Under the circumstances, the Chamber does not find that reconsideration is warranted. The Defence's repeated contentions of Rule 68 (A) disclosure violations in respect of the *Butare* evidence are therefore unfounded.

## 5. NOTICE OF ALIBI

61. In its Closing Brief, the Prosecution submits that the Defence failed to give adequate notice that it intended to use a defence of alibi, and that putting one forward in the last stages of the case diminishes the probative value of the alibi evidence.<sup>51</sup> On 4 February 2009, the third to last Defence witness, Marc Siniyobewe, testified to Kalimanzira's activities in Gitarama *préfecture* from mid-April to the end of May 1994, and placed Kalimanzira there on certain key dates when he was alleged to have been in Butare *préfecture*. The following day, Salomé Mukantwali (Kalimanzira's wife) testified that she was with her husband at certain relevant times in Kigali and Butare *ville*. Their evidence corroborates Kalimanzira's, who testified last.

62. Kalimanzira stated as early as his Initial Appearance in 2005 that he was working in Gitarama with the rest of the government until June 1994, when he left for Butare.<sup>52</sup> Part of his defence to the allegation that he was often in Butare is that he hardly left Gitarama from mid-April until the end of May 1994. This position is not new to the Prosecution.<sup>53</sup> However, specific information was limited and no notice was given that Marc Siniyobewe would provide evidence that he saw Kalimanzira on such key dates as 20 and 23 April 1994. This is clearly an alibi to the allegations at Kabuye hill. His wife also squarely places him at home with her from 6 to 11 April 1994, which is clearly an alibi to the allegation at Kanage Camp.

63. If the Defence intends to rely on an alibi defence, Rule 67 (A)(ii)(a) of the Rules requires it to notify the Prosecution as soon as reasonably practicable, before the commencement of the trial. Such notification must specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi. This provision is intended to allow the Prosecution adequate opportunity to prepare its case and meaningfully investigate the alibi.

<sup>49</sup> Exhibits D82-D97.

<sup>50</sup> See e.g. Exhibit D92E (B) pp. 15-18 [T. 24 February 2004 pp. 26-29 [closed] (Witness QBZ)] where QBZ testified about Kalimanzira bringing weapons to the Muganza *commune* office.

<sup>51</sup> Prosecution Closing Brief, paras. 299 and 317.

<sup>52</sup> T. 14 November 2005 p. 9 (Initial Appearance).

<sup>53</sup> *Mémoire en réponse à la « Prosecution motion concerning Defence compliance with rule 73 ter and the Trial Chamber's orders »* datée du 22 octobre 2008, filed on 28 October 2008, paras. 17-25; see also Defence Pre-Trial Brief, para. 20 and annexed summaries of anticipated testimonies of witnesses ACB8, AK14 (Marc Siniyobewe), AX100, BB06, BB08, FG1, FG2, FG3, and MZ20.

64. The Defence never filed a notice of alibi before or during the trial. The Prosecution moved the Chamber to order the Defence to disclose all information pursuant to Rule 67 (A)(ii)(a) based on the inference from the Defence Pre-Trial Brief that it may intend to call certain alibi witnesses.<sup>54</sup> The Chamber considered that an inference of a possibility for the Defence to call alibi witnesses did not amount to notification of an alibi defence; it did not, therefore, issue the order sought.<sup>55</sup>

65. The Defence has long denied that it is relying on an alibi *stricto sensu*, contending that the time frames that the Prosecution attributes to the alleged crimes are so vague as to prevent it from providing one.<sup>56</sup> The Chamber, however, finds that the Defence has clearly adduced alibi evidence; it should therefore have filed a notice of alibi pursuant to Rule 67 (A)(ii)(a) of the Rules.

66. Rule 67 (B) of the Rules states that the “failure of the defence to provide such notice under this Rule shall not limit the right of the accused to rely on any of the above defences”. This provision is consistent with the principle that the accused is presumed innocent until the Prosecution has proved his guilt beyond reasonable doubt. In the present case, in conformity with the practice of the Tribunal, the alibi defence will be considered.<sup>57</sup> However, lack of compliance with Rule 67 (A)(ii)(a) under the circumstances may suggest that the Defence has tailored the alibi evidence to fit the Prosecution’s case; the Chamber will take this into consideration when assessing the extent to which it believes or relies on Kalimanzira’s alibi.

67. Kalimanzira’s alibi evidence is discussed in full at III.1.2.

## 6. EVIDENTIARY ISSUES

68. The Defence seeks a declaration of Kalimanzira’s innocence, or in the alternative, a finding that the Prosecution has failed to prove all the charges against him beyond reasonable doubt. The Defence argues that in light of all the credibility issues with the Prosecution witnesses, and the various inconsistent and contradictory testimonies heard at trial, there is a clear and obvious doubt as to Kalimanzira’s guilt. It submits that the accused has a right to benefit from even the slightest doubt, leading to an acquittal.<sup>58</sup>

69. Article 20 (3) of the Statute guarantees that each accused person is presumed innocent until proven guilty. Rule 87 (A) of the Rules provides that a majority of the Trial Chamber must be satisfied beyond reasonable doubt that the accused is guilty before a verdict may be entered against him or her. The burden of proving the guilt of the accused beyond reasonable doubt rests solely on the Prosecution and never shifts to the Defence. 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. An accused person must be acquitted if there is any reasonable explanation for the evidence other than his or her guilt. Refusal to believe or rely upon Defence evidence does not automatically amount to a guilty verdict. The Chamber must

<sup>54</sup> Prosecution Motion Concerning Defence Compliance with Rule 73ter and the Trial Chamber’s Orders, filed on 22 October 2008.

<sup>55</sup> Consolidated Decision on Prosecution Motion Concerning Defence Compliance with Rule 73ter and Defence Motions to Vary Witness List (TC), 13 November 2008, para. 7.

<sup>56</sup> See T. 20 April 2009 p. 47 (Closing Arguments); see also *Mémoire en réponse à la « Prosecution motion concerning Defence compliance with rule 73 ter and the Trial Chamber’s orders »* datée du 22 octobre 2008, filed on 28 October 2008, paras. 17-25.

<sup>57</sup> *Rukundo* Trial Judgement, para. 539; *Nchamihigo* Trial Judgement, para 20.

<sup>58</sup> Defence Closing Brief, paras. 1224-1311.

still determine whether the evidence it does accept establishes the accused's guilt beyond reasonable doubt.<sup>59</sup>

70. The Defence points to a number of Prosecution witnesses who are accomplices, or whose testimonies are uncorroborated, or both. The Defence argues that the recent *Rukundo* Trial Judgement has established that uncorroborated accomplice testimony is unreliable and must be dismissed, as exemplified in its treatment of Witness BLP. In the present case, the Defence seeks an intransigent application of the same, such that wherever an accomplice witness is uncorroborated, his or her testimony should automatically be dismissed.<sup>60</sup>

71. Rule 89 (C) of the Rules gives the Trial Chamber discretion to admit any relevant evidence which it deems to have probative value. The Appeals Chamber has consistently held that a Trial Chamber is in the best position to evaluate the probative value of evidence and that it may, depending on its assessment, rely on a single witness's testimony for proof of a material fact. Accordingly, the Chamber does not necessarily require evidence to be corroborated in order to make a finding of fact on it. Though a Trial Chamber may prefer that a witness' testimony be corroborated, it is not a requirement or an obligation in the practice of this Tribunal.<sup>61</sup>

72. The jurisprudence of this Tribunal has also established that the evidence of accomplices and detained witnesses is not inadmissible, nor is it *per se* unreliable, especially where an accomplice is thoroughly cross-examined. However, considering that accomplice witnesses may have incentives to implicate the accused, a Chamber, when weighing the probative value of such evidence, is bound to carefully consider the totality of the circumstances in which it was tendered, and, when necessary, must approach such evidence with caution in order to ensure a fair trial and guard against the exercise of a possible underlying motive on the part of the witness. As a corollary, a Trial Chamber should at least briefly explain why it accepted the evidence of witnesses who may have had motives or incentives to implicate the accused.<sup>62</sup>

73. In addition, it may be necessary, depending on the circumstances of the case, to employ a critical approach towards witnesses who are merely charged with crimes of a similar nature. But in most cases, they will not have the same tangible motives for giving false evidence like a witness who was allegedly involved in the same criminal acts as the accused. Therefore, as long as no special circumstances have been identified, it is reasonable not to employ the same cautious approach towards the testimony of witnesses charged with similar crimes as to the testimony of accomplices in the ordinary sense of the word.<sup>63</sup>

74. Contrary to the Defence's arguments, lack of corroboration of accomplice testimony does not automatically render such testimony unreliable, and the law in this respect has not changed with the *Rukundo* Trial Judgement's treatment of Witness BLP's testimony.<sup>64</sup> In *Rukundo*, the Chamber viewed the testimony of BLP, an alleged accomplice of the Accused,

<sup>59</sup> *Rukundo* Trial Judgement, paras. 36-37; *Nchamihigo* Trial Judgement, para. 13; *Kayishema* Appeal Judgement, para. 117; *Niyitegeka* Appeal Judgement, paras. 60-61.

<sup>60</sup> Defence Closing Brief, paras. 1197-1223.

<sup>61</sup> *Karera* Appeal Judgement, para. 45; *Niyitegeka* Appeal Judgement, para. 92; *Rutaganda* Appeal Judgment, para. 29; *Musema* Appeal Judgment, paras. 36-38; *Ntakirutimana* Appeal Judgement, para. 132; *Kayishema and Ruzindana* Appeal Judgement, paras. 154, 187, 320, 322; *Čelebići* Appeal Judgment, para. 506; *Aleksovski* Appeal Judgment, paras. 62-63; *Tadić* Appeal Judgment, para. 65; *Kupreškić et al.* Appeal Judgement, para. 33.

<sup>62</sup> *Niyitegeka* Appeal Judgement, para. 98; *Ntagerura et al.* Appeal Judgement, paras. 203-206; *Krajišnik* Appeal Judgement, para. 146.

<sup>63</sup> *Ntagurera et al.* Appeal Judgement, para. 234.

<sup>64</sup> Defence Closing Brief, paras. 1210-1212.

with appropriate caution. BLP was not only an accomplice witness, he was also on provisional release in Rwanda, his prior statements showed inconsistencies with his testimony on the stand, he failed to identify the Accused in the courtroom, and an issue arose as to whether he had given false testimony.<sup>65</sup> These are some of the reasons why the Chamber deemed it could only rely on his evidence if it was corroborated by, or itself corroborated, other reliable evidence. The level of caution to be exercised in respect of an uncorroborated accomplice witness' testimony is thus to be determined on a case-by-case basis.

75. While direct evidence is preferred, hearsay evidence is not *per se* inadmissible before the Trial Chamber. The Trial Chamber has the discretion to treat such hearsay evidence with caution, depending on the circumstances of the case. 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.<sup>66</sup>

76. In determining witness credibility, the Trial Chamber has broad discretion to assess inconsistencies between a witness's pre-trial statements and his evidence in court and to determine the appropriate weight to be attached to such discrepancies. 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.<sup>67</sup>

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<sup>65</sup> *Rukundo* Trial Judgement, paras. 139-146.

<sup>66</sup> *Rukundo* Trial Judgement, para. 39; *Muvunyi* Trial Judgement, para. 13; *Rutaganda* Appeal Judgement, para. 34; see also Rule 89 of the Rules.

<sup>67</sup> *Rukundo* Trial Judgement, para. 42; *Muvunyi* Trial Judgement, para. 14; *Gacumbitsi* Appeal Judgement, para. 74; *Kajelijeli* Appeal Judgement, para. 96.

## CHAPTER III – FINDINGS

77. Most Prosecution and Defence witnesses were granted protective measures in order to prevent public disclosure of their identities.<sup>68</sup> The Chamber seeks to set forth the basis of its reasoning as clearly as possible, whilst avoiding disclosure of any information that may reveal the identity of protected witnesses.

### 1. PRELIMINARY FINDINGS

#### 1.1. The Accused

78. At paragraph 2 of the Indictment, the Prosecution outlines the various governmental positions that Kalimanzira allegedly held throughout his career, including his political allies and affiliations, to introduce the basis on which Kalimanzira had enough stature and authority in Butare *préfecture* to commit the crimes alleged. The evidence adduced at trial demonstrated that for the most part, Kalimanzira did not dispute the facts alleged. He disputes only that (i) between 6 April and 25 May 1994, he was acting Minister of the Interior, (ii) he was a prominent MRND member, and (iii) he had *de jure* and *de facto* authority over the people of Butare.

##### 1.1.1. Employment History

79. The Prosecution alleges that Kalimanzira was a senior civil servant who held several positions; Kalimanzira does not deny this. Kalimanzira was born in Nyaguhuru *secteur* (Muganza *commune*, Butare *préfecture*) in 1953. He is married and has five children. His parents and five siblings were all farmers, and their education did not exceed the level of primary school. Kalimanzira was the only member of his family, and only one of three people of his generation from his area, to have pursued a university degree. After completing secondary school where he trained to become a teacher, Kalimanzira won a scholarship to attend the Rwandan National University. Rather than continuing to pursue a degree in education, he decided to study agronomy, in order to help improve the agriculture in, and sustainable development of, his native area.<sup>69</sup>

80. Upon graduating in 1981, Kalimanzira returned home as an agronomical engineer and began applying his acquired knowledge and techniques in his area, Kirarambogo. Malaria was rampant in the swampy Kirarambogo area, and malnutrition was a problem. To alleviate this, Kalimanzira trained the local inhabitants to develop the marshland by farming rice, fish and crops. He managed to secure financial assistance for his projects, including the establishment of cooperatives, from local benefactors and a non-governmental organization called INADES (*Institut africain pour le développement économique et social*).<sup>70</sup>

81. Kalimanzira worked with INADES in Gisenyi *préfecture* for five years, a position which required his secondment by Presidential Order. He explained that all university

<sup>68</sup> *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-I, Decision on Prosecution Motion for Protective Measures, 8 November 2007; *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-I, Decision on Defence Motion for Protective Measures, 14 December 2007.

<sup>69</sup> T. 10 February 2009 p. 2 (Callixte Kalimanzira); T. 5 February 2009 p. 4 (Salomé Mukantwali); see also Exhibits P13, P34, P35, P38 and P45.

<sup>70</sup> T. 10 February 2009 p. 3 (Callixte Kalimanzira); see also Exhibits P41 and P42.

graduates were automatically appointed to become civil servants, and that any request to work outside the civil service had to be approved by the government.<sup>71</sup>

82. In July 1986, Kalimanzira was appointed to be a *sous-préfet* of Butare. He testified that he did not seek the appointment and was not at all pleased with it, particularly as he was slated to replace the Director-General of INADES at that time, a position he says he would have preferred. He felt ill-equipped to perform administrative tasks, and did not appreciate the reduction in emoluments that the appointment implied. However, he testified that it was impossible for him to refuse the governmental appointment; such an act would have entailed punishment. Therefore, Kalimanzira and his wife moved back to his native Butare, where he worked as *sous-préfet* until May 1987, and then acting *préfet* until November 1987.<sup>72</sup>

83. Kalimanzira was subsequently transferred to Byumba *préfecture* as *sous-préfet* of Ngarama *sous-préfecture*, bordering Uganda. He explained that he was even less pleased with this appointment, which he held until August 1989, and that he suffered clashes with local authorities engaged in the trafficking of livestock. Kalimanzira and Faustin Munyazesa, who was the *préfet* of Byumba at the time, tried to put a stop to the smuggling and reinstall peace in the area, but were met with resistance at high levels, including the Minister of Justice, resulting in their dismissal from the region and transfer to Gitarama *préfecture*.<sup>73</sup>

84. With the help of Faustin Munyazesa, who became *préfet* of Gitarama, Kalimanzira was appointed to the Ministry of Agriculture and Livestock in Ruhango *sous-préfecture* (Gitarama *préfecture*) in September 1989. In May 1990, Kalimanzira rose to the rank of Coordinator of Agricultural Services in Kigali *préfecture*, a position that he says pleased him because it entailed less administrative and more agriculture work. Then in April 1991, Kalimanzira was transferred to the Presidency, where he was appointed Director of Rural Development, much to his dismay because he lost all his benefits, including his vehicle, was given substandard housing, no longer had any subordinates, and disliked his new work environment.<sup>74</sup>

85. Kalimanzira remained at the Presidency from April to December 1991, during which time Faustin Munyazesa was appointed Minister of the Interior and Communal Development. Kalimanzira explained that his unstable employment history from 1986 to 1991 was partly due to his unwillingness to network his way to more favourable positions. He expressed aversion to having been appointed and repeatedly transferred to various government posts located in different parts of the country, which was often the result of regionalism or retaliation. Sympathetic to Kalimanzira's plight, Minister Munyazesa appointed Kalimanzira in January 1992 to become Secretary General of the Ministry of the Interior, and then *Directeur de Cabinet* in September 1992, a position he still maintained in April 1994.<sup>75</sup>

<sup>71</sup> See Exhibits P28, P31, P32 and P37, which show that a representative for INADES made the request on 7 July 1981, and that the government at once appointed Kalimanzira to the Ministry of Agriculture and seconded him to INADES by Presidential Order on 30 December 1981.

<sup>72</sup> T. 10 February 2009 pp. 6-7 (Callixte Kalimanzira); see also Exhibits P26 and P27.

<sup>73</sup> T. 10 February 2009 pp. 7-10 (Callixte Kalimanzira); see also Exhibits P23 and P40.

<sup>74</sup> T. 10 February 2009 pp. 10-12 (Callixte Kalimanzira); see also Exhibits P15, P18, P19, P20, P21, P22 and P25.

<sup>75</sup> T. 10 February 2009 pp. 7-13 (Callixte Kalimanzira); see also Exhibits P14, P15, P16, P44 and P46.

### 1.1.2. Professional Position, 6 April – 25 May 1994

86. The Prosecution alleges that Kalimanzira acted as Minister of the Interior in Faustin Munyazesa's absence from 6 April to 25 May 1994;<sup>76</sup> Kalimanzira denies this. He insists he was merely a technocrat and while he may have signed documents on behalf of the Minister, he never took over the Minister's core duties, which always remained Munyazesa's. He maintained his position as *Directeur de Cabinet*, and spent most of his time in Gitarama where he continued to handle routine matters such as paying salaries of employees and implementing decisions taken by the government. He never attended any cabinet meeting or took any political or policy decision concerning the prevailing circumstances.<sup>77</sup>

87. According to the Rwandan Official Journal of 22 November 1992, the *Directeur de Cabinet* was the second most senior official within the Ministry of the Interior, replacing the Minister in his absence or incapacity in respect of day-to-day affairs.<sup>78</sup> During the period in question, Kalimanzira indeed signed documents on behalf of the absent Minister of the Interior, such as those suggesting the names of candidates for public office.<sup>79</sup>

88. The Chamber considers that the months of April and May 1994 were an extraordinary period during which the Ministry could not have functioned as it normally might have during peacetime. Kalimanzira's functions within the Ministry at that time, therefore, likely deviated somewhat from the terms of reference outlined in the Rwandan Official Journal (Exhibit D102). In his sworn testimony, however, Kalimanzira was extremely evasive about his work and functions, minimizing them whenever necessary and wherever possible. Aside from signing payslips, ensuring cars had fuel, preparing the appointment of *préfets* and *bourgmestres*, and greeting refugees, the Chamber heard very little about what Kalimanzira specifically did during this time period.

89. The Chamber believes Kalimanzira's assertions that he was a civil servant, albeit one who also served as a political advisor to the Minister of the Interior. He was a talented, competent, and reliable professional who was highly appreciated by his employers and co-workers. Kalimanzira could have been chosen to officially replace Munyazesa, who was never sworn in as Minister after 9 April; instead, Kalimanzira remained *Directeur de Cabinet* while the position stayed unoccupied for nearly two months until Édouard Karemera's appointment.

90. At such a critical time, someone would have had to take necessary decisions beyond routine matters in Munyazesa's absence, and Kalimanzira could conceivably have been the one to do it. The Chamber does not consider, however, that the Prosecution has proven this allegation beyond reasonable doubt, and it is not for Kalimanzira to disprove it. Kalimanzira's *de jure* status does not necessarily reflect his *de facto* functions or the reality of the situation under the exceptional conditions of a genocide raging against a backdrop of civil war. Under such emergency circumstances, the Chamber deems that Kalimanzira might likely have exercised a more executive than initiative role in the Interim Government. Thus, while Kalimanzira was the most senior official in the Ministry of the Interior from 6 April to 25 May 1994, running its day-to-day affairs, it does not follow that he acted as Minister of

<sup>76</sup> Paragraph 2(v) of the Indictment; Prosecution Pre-Trial Brief, para. 48; Prosecution Closing Brief, paras. 8-16.

<sup>77</sup> T. 10 February 2009 pp. 29, 45 and T. 11 February 2009 p. 44 (Callixte Kalimanzira); see also Defence Closing Brief, paras. 1099-1100.

<sup>78</sup> Exhibit D102 p. 1754.

<sup>79</sup> See e.g. Exhibits P47 & P53, P48.



the Interior. Rather, the Chamber considers that the political powers of the Minister would have been exercised by persons in the political establishment of the Interim Government.

### 1.1.3. Political Affiliations

#### MRND Membership

91. The Prosecution alleges that Kalimanzira was a prominent long-term serving member and staunch supporter of the MRND;<sup>80</sup> Kalimanzira denies this. He explained that despite the advent of multiparty politics in Rwanda,<sup>81</sup> he did not join any political party. In fact, he testified that when all new political parties became operational, civil servants with administrative functions were specifically instructed to stay neutral and aloof of political parties so as to ensure equal assistance to everyone regardless of political leanings. He asserted that multiparty politics in Rwanda were wild, and that he preferred not to engage in political activities because they engendered tension, hostility, and ethnic conflict. He emphasized he was nothing more than a technocrat, completely unconcerned by politics and political activities.<sup>82</sup>

92. Yet, there is evidence on the record to suggest Kalimanzira was more politically inclined than he admits. For instance, Prosecution Witness AZC knew Kalimanzira to be a staunch supporter of the MRND.<sup>83</sup> In addition, Prosecution Witness BCA testified that he was nominated and appointed to his political office by virtue of the assistance and support he received from his fellow MRND members, which included Kalimanzira.<sup>84</sup> The fact that he became the political advisor to Minister Munyazesa, an MRND member, suggests that Kalimanzira's MRND membership not only pre-dates, but contributed to, his appointment to the Ministry of the Interior. Though he claims it was at the behest of his Minister, Kalimanzira even ran for and won an election on 31 May 1993 to join the MRND Butare Prefectural Committee, which included Théodore Sindikubwabo and Bernadette Mukaruranga as members.<sup>85</sup>

93. Kalimanzira's prominence follows from his senior position in the Ministry of the Interior in combination with his reputation and high standing in society, particularly in Butare. Kalimanzira depicted himself as apolitical and uninterested in politics. However, his critical account of his unstable governmental employment history and his various complaints about having been a victim of corruption and regionalism indicate anything but indifference. The Chamber does not believe Kalimanzira to have been as politically passive and apathetic as he claims. Rather, the Chamber views Kalimanzira's harsh and unpleasant description of the Habyarimana regime as hypocritical in light of his willingness to run for MRND elections and accept incrementally favourable governmental positions. The MRND party was unpopular in Butare; for Kalimanzira to have joined it, let alone run for election to the MRND Butare Prefectural Committee, suggests an active and informed choice on his part, one which proved beneficial by enabling his promotion to *Directeur de Cabinet* of the Ministry of the Interior. While the Chamber does not find that this amounts to proving he was

<sup>80</sup> Paragraph 2(vi) of the Indictment; Prosecution Pre-Trial Brief, para. 47; Prosecution Closing Brief, paras. 23-24.

<sup>81</sup> The MRND was the sole political party in Rwanda until the advent of multiparty politics in 1991. Multipartyism had its effect on the local and national power structures from 1992 onwards. (See *e.g.* Akayesu Trial Judgement, para. 60).

<sup>82</sup> T. 10 February 2009 pp. 13-16, 25 (Callixte Kalimanzira).

<sup>83</sup> Exhibit D37; see also T. 25 June 2008 p. 41 (Witness AZC).

<sup>84</sup> T. 18 June 2008 p. 42 [closed] (Witness BCA).

<sup>85</sup> T. 10 February 2009 p. 14 and T. 11 February 2009 p. 35 (Callixte Kalimanzira); see also Exhibit P52.

a “staunch” MRND supporter, the Chamber does believe that Kalimanzira was an active and prominent MRND member.

#### *Relationship with the President and Prime Minister*

94. Paragraph 2 of the Indictment alleges that Kalimanzira shared a very close alliance with President Théodore Sindikubwabo and Prime Minister Jean Kambanda. In its Closing Brief, the Prosecution argues that the close political relationship between them is “[a] fact that is established by the evidence” beyond reasonable doubt, but offers little more than inference, primarily based on their common regional origin of Butare *préfecture*.<sup>86</sup> The only evidence placing the three men together is on 19 April 1994 at the MRND Palace meeting (see III.2.2), and even then the extent of Kalimanzira’s alleged role does not exceed that of master of ceremonies, which hardly suggests any sort of alliance or relationship. Kalimanzira’s allegiance was to his Minister, Faustin Munyazesa, who was most responsible for his rising career, and who was a native of Kigali. The Prosecution has failed to prove this allegation beyond reasonable doubt.

#### **1.1.4. De Jure and De Facto Authority**

95. The Prosecution alleges that Kalimanzira exercised *de jure* and *de facto* authority over various categories of people in Butare *préfecture*;<sup>87</sup> Kalimanzira denies this. The Prosecution submits that Kalimanzira’s *de jure* authority over Butare prefectural, communal, and other local officials follows from his position as the second most senior official within the Ministry of the Interior (after the Minister himself). The Prosecution further submits that Kalimanzira’s *de facto* authority derived from his general stature as a prominent member of Butare society, with his power and influence flowing from having served as *sous-préfet* and then acting *préfet* of Butare, as well as his position with the Ministry of the Interior.

96. The Rwandan Official Journal of 22 November 1992 lists the various offices within the Ministry of the Interior and Communal Development and their respective functions, and also contains an organisational chart depicting the Ministry’s hierarchy and chain of command.<sup>88</sup> It follows from the chart that the Minister of the Interior was the direct superior in the chain of command over the *Directeur de Cabinet*. A detailed analysis of the list of offices within the Ministry of the Interior as well as the organisational chart reflects that the post of *Directeur de Cabinet* was the most senior one after that of the Minister. Among other things, the *Directeur de Cabinet* was in charge of coordinating and supervising the day-to-day work of the Ministry, and would replace the Minister in his absence.<sup>89</sup>

97. The Ministry of the Interior had *de jure* authority over Rwanda’s prefectural and communal administrative bodies, and whoever was in charge of the Ministry exercised that

<sup>86</sup> Prosecution Closing Brief, paras. 17-22.

<sup>87</sup> Paragraph 2(vii) of the Indictment; Prosecution Closing Brief, paras. 25-28.

<sup>88</sup> Exhibit D102 pp. 1754 and 1759.

<sup>89</sup> The relevant portion of the journal (p. 1754) reads: “*Attributions propres au directeur de cabinet. - Direction, coordination, animation, orientation et contrôle des activités des Conseillers, de l’Attaché de Presse et des services d’appui relevant du Cabinet; - Distribution et suivi des affaires; - Elaboration de la politique générale du département et suivi de la mise en œuvre des options et décisions gouvernementales dans les domaines d’intervention du département; - Centralisation et vérification des dossiers et des actes à soumettre au visa ou à la signature du ministère; - Supervision, en étroite collaboration avec le Directeur général, de la programmation des activités du ministère à court et moyen termes et de l’élaboration du rapport annuel du ministère; - Animation du Conseil du ministère; - Coordination des activités de coopération intéressant le ministère; - Relations avec l’environnement socio-politique et les médias; - Remplacement du Ministre en cas d’absence ou d’empêchement de ce dernier pour ce qui concerne les affaires courantes; - Toute autre tâche confiée par le Ministre.*”

authority. In April 1994 when Faustin Munyazesa, the Minister of the Interior, was on official mission in Tanzania, Kalimanzira replaced him. When Munyazesa did not return to Rwanda, Kalimanzira remained in charge of the Ministry until Édouard Karemera's appointment on 25 May 1994. However, Kalimanzira's *de jure* authority was restricted to the Ministry's daily business and routine matters.

98. Whether Kalimanzira exceeded the limits of his official functions is another matter. To the extent that he held some *de jure* authority over prefectural, communal, and other local officials while he was the officer in charge of the Ministry of the Interior, it follows that Kalimanzira would have also held a certain level of *de facto* power over them. In addition, to the extent that he was the officer in charge of the Ministry of the Interior for nearly two months, it follows that Kalimanzira maintained a certain level of influence and significance within the Interim Government for the duration of the events.

99. With respect to his influence in Butare *préfecture* in particular, it is not disputed that Kalimanzira was well-liked, even loved, and highly respected. Several witnesses, both Defence and Prosecution, affirmed this. He formed part of Butare's intelligentsia and his efforts at sustainable development in his time as an agronomist were much appreciated. His prior service as a *sous-préfet* was well-remembered and his rise to a senior national governmental position was known and admired. In a hierarchical society such as Rwanda's, Kalimanzira's high standing and good reputation, not to mention the incrementally important governmental positions he held throughout his career, would undeniably imply an increased level of reverence from and influence over the population of Butare *préfecture*.

## 1.2. Alibi

100. On 4 February 2009, the Chamber heard the third to last Defence witness, Marc Siniyobewe, provide Kalimanzira with an alibi for the 18 April to 30 May 1994 time period. His testimony was followed by Salomé Mukantwali's (Kalimanzira's wife) on 5 February 2009, who provided her husband with an alibi from 6 to 11 April and 31 May to 17 July 1994. Kalimanzira then testified in his own defence on 10 and 11 February 2009, to consolidate the evidence adduced in support of his alibi.

### 1.2.1. Evidence

101. When President Habyarimana's plane crashed on 6 April 1994, Kalimanzira and his wife were at home in Kigali. In the days that followed, Kalimanzira maintains that he and his family followed blanket instructions issued over the radio that everyone was to remain indoors until further notice. Kalimanzira says he did not leave his house before 11 April 1994 when he was summoned to a meeting at the *Hôtel des Diplomates*; this was also the first day he was able to regain access to a vehicle, with the help of a colleague.<sup>90</sup> His wife, Salomé, supported this by testifying that Kalimanzira's colleague, Aloys Ngendahimana, called to inform him that his presence was required at a meeting, and offered to drive him to the Kigali prefectural office so that he could regain access to his assigned vehicle (a red double-cabin Toyota Hilux pick-up) and driver, Issa Ngeze.<sup>91</sup> The Prosecution accepts Kalimanzira's assertion that he was in Kigali on 11 April 1994.<sup>92</sup>

<sup>90</sup> T. 10 February 2009 p. 23 (Callixte Kalimanzira); see also Exhibit D109.

<sup>91</sup> T. 5 February 2009 p. 6 (Salomé Mukantwali).

<sup>92</sup> Prosecution Closing Brief, para. 311.

102. This is Kalimanzira's alibi in respect of the Prosecution's accusation at paragraph 20 of the Indictment that on 9 April 1994 he incited Burundian refugees in Kanage *cellule* (Kibayi *commune*, Butare *préfecture*) to commit genocide (see III.4.3).<sup>93</sup>

103. With gunfire and explosions continuing to rain over Kigali, on 12 April 1994 Kalimanzira sent his wife and children to Butare with his driver where he thought they would be safe. He decided to remain in Kigali to continue working and wait for his Minister, Faustin Munyazesa (Minister of the Interior), to return from mission. Kalimanzira testified that when his driver, Issa Ngeze, returned the following evening, Ngeze informed him that various Ministers and other government officials had fled Kigali to set up office in Gitarama *préfecture*. Kalimanzira therefore arranged for a vehicle to take him there and on 14 April 1994, he left Kigali for Gitarama.<sup>94</sup>

104. After having travelled some 50 kilometres from Kigali, Kalimanzira arrived at 5:00 p.m. in Murambi (Gitarama *préfecture*), where the government had sought refuge and moved its seat. Upon his arrival, he observed that the spaces used for offices were grossly inadequate to accommodate the number of workers, who were "packed like bees", and that there was serious shortage of working equipment. He also learned that the others had arrived two days prior, on 12 April 1994. With no space for him to work or sleep in Murambi, Kalimanzira went to see the *préfet* of Gitarama on 16 April 1994 to request an office; the *préfet* offered him a space in the Gitarama prefectural office. Kalimanzira shared the space with the only four other employees of the Ministry of the Interior who came to Gitarama, including Defence Witness Marc Siniyobewe.<sup>95</sup>

105. Kalimanzira maintains that he stayed and worked in Gitarama for the next month and a half, until the end of May.<sup>96</sup> With the exception of a few dates on which he indicates he left Gitarama, this is Kalimanzira's alibi in respect of most of the Prosecution's allegations, discussed in full below. He admits to having attended the MRND Palace meeting in Butare *ville* on 19 April 1994, as alleged at paragraph 7 of the Indictment (see III.2.2). Kalimanzira's wife Salomé testified that he came to visit her and their children in Butare after the meeting that day, but could only stay ten minutes before returning to Gitarama. He testified in chief that apart from 19 April 1994, he did not go to Butare on any other occasion while he was in Gitarama.<sup>97</sup> He maintained this position under cross-examination until the Prosecution confronted him with a transcript of a radio broadcast placing him at a Prefectural Security Council meeting on 16 May 1994 in Butare; Kalimanzira claimed to have forgotten about it and admitted to having attended it.<sup>98</sup>

106. Kalimanzira testified he also left Gitarama on 21 April 1994 for Kibungo *préfecture* to install the newly appointed *préfet*, Anaclet Rudakubana. He, the driver, and *préfet* Rudakubana left Gitarama at 9:00 a.m., reaching Kibungo at 6:00 p.m. after a long and arduous journey. After the 30-45 minute inauguration ceremony was over, Kalimanzira says he decided to spend the night in Kibungo, for fear of an imminent RPF attack. He reached Gitarama the next day at 6:00 p.m. exhausted from the trip and unable to resume work until

<sup>93</sup> The Prosecution also accused Kalimanzira at paragraph 16 of distributing weapons in Kigembe *commune* two days after the plane crash, but led no evidence on this allegation at trial; this charge has therefore been dismissed (see II.2.2.4).

<sup>94</sup> T. 10 February 2009 pp. 23-25 (Callixte Kalimanzira); T. 5 February 2009 p. 6 (Salomé Mukantwali).

<sup>95</sup> T. 10 February 2009 pp. 25-27 (Callixte Kalimanzira).

<sup>96</sup> T. 10 February 2009 pp. 27 (Callixte Kalimanzira).

<sup>97</sup> T. 5 February 2009 p. 9 (Salomé Mukantwali).

<sup>98</sup> T. 11 February 2009 pp. 18-23 (Callixte Kalimanzira).

the day after, on 23 April 1994.<sup>99</sup> Siniyobewe confirmed this timeline, testifying that he did not see Kalimanzira in Gitarama on 21 or 22 April 1994, and that he had made the fuel and vehicle arrangements for Kalimanzira and the *préfet* to be taken to Kibungo.<sup>100</sup> The Prosecution accepts Kalimanzira's presence in Kibungo *préfecture* on 21 April 1994 to install the new *préfet*, which is confirmed by a radio transcript.<sup>101</sup>

107. Kalimanzira maintains that on the weekend of 23 and 24 April 1994, and for the next few days, he did not move from Gitarama. This is Kalimanzira's alibi in respect of the Prosecution's allegations at paragraphs 9 and 10 of the Indictment that he participated in and supervised the killings at Kabuye hill (see III.2.4). Kalimanzira admits to one other trip out of Gitarama on 3 May 1994 when he went to Ngororero in Gisenyi *préfecture* to help resettle an influx of newly displaced persons. Siniyobewe supports Kalimanzira's testimony by asserting that he and Kalimanzira worked in Gitarama together nearly every day from 23 April to 30 May 1994.<sup>102</sup>

108. On 30 May 1994, Gitarama came under attack causing everyone to flee the area in a panic and creating chaos. Kalimanzira left with a gendarme from Butare and took the road leading to Kibuye *préfecture*. As the Kigali-Butare road was already captured, they had to take a long detour to drive safer roads. They had to spend the night of 30 May in Gikongoro *préfecture* before reaching Butare on 31 May 1994, where Kalimanzira immediately rejoined his family at the home they were renting out to their friend, Jean-Baptiste Sebalinda.<sup>103</sup>

109. Upon arriving to Butare, Kalimanzira says he stayed a few days with his wife and traumatized children to comfort them. Then sometime toward the end of the first week of June 1994, he and his driver went to visit his family in Kirarambogo. On the way there, Kalimanzira says he did not stop, though he did greet people. He took the road leaving Butare, going through Shyanda and Ndora *communes*, until Muganza *commune*. It was not until he travelled through Ndora *commune* and saw the extent of the destruction that he came to realize how disastrous and devastating the situation was.<sup>104</sup>

110. He remained in Butare with his wife and children until 30 June 1994. During the month of June, Kalimanzira says he ceased to work and did not follow the government when they set up new office in Gisenyi. He says for the most part he stayed home, save for a few occasions or events, such as the swearing-in ceremony of Butare's new *préfet*, Alphonse Nteziryayo, on 21 June 1994 at the Ngoma *commune* office, and the welcoming of the papal representative, Cardinal Etchegaray, on 24 June 1994.<sup>105</sup> This is Kalimanzira's alibi in respect several allegations placing him at various locations throughout Butare in the month of June, such as the Prosecution's allegations at paragraphs 12 and 14 of the Indictment that he incited the population to kill at the Gikonko *commune* office on 5 June 1994.

111. On 30 June 1994, Kalimanzira and his family fled Butare and went to the "Zone Turquoise" in Gikongoro *préfecture* where they remained for two weeks. On 16 July 1994,

<sup>99</sup> T. 10 February 2009 pp. 39-42 (Callixte Kalimanzira).

<sup>100</sup> T. 4 February 2009 p. 24 (Marc Siniyobewe).

<sup>101</sup> See Exhibit D104 and Prosecution Closing Brief, para. 311.

<sup>102</sup> T. 4 February 2009 p. 25 (Marc Siniyobewe).

<sup>103</sup> T. 10 February 2009 pp. 47-48 (Callixte Kalimanzira); T. 5 February 2009 p. 10 (Salomé Mukantwali); see also T. 4 February 2009 p. 26 (Marc Siniyobewe).

<sup>104</sup> T. 10 February 2009 p. 49 (Callixte Kalimanzira); T. 5 February 2009 p. 10 (Salomé Mukantwali).

<sup>105</sup> T. 10 February 2009 pp. 52-53 (Callixte Kalimanzira); T. 5 February 2009 pp. 10-11 (Salomé Mukantwali).

they left for Cyangugu *préfecture*, where they spent the night before crossing over into Zaïre on 17 July 1994.<sup>106</sup>

### 1.2.2. Deliberations

112. It is well settled that, in assessing an alibi, an accused need only produce evidence likely to raise a reasonable doubt in the Prosecution's case. The alibi does not carry a separate burden. Refusal to believe or rely on an accused's alibi does not remove or shift the burden of proving the facts charged beyond reasonable doubt, which always remains squarely on the shoulders of the Prosecution.<sup>107</sup>

113. The Chamber recalls that Kalimanzira did not give notice that he intended to use the defence of alibi (see II.5). While this does not prevent him from relying on an alibi defence, it may diminish its probative value as it raises the question of whether the alibi was recently invented to fit the case against him.<sup>108</sup> In this case, the issue of recent fabrication had to be considered seriously. The main alibi witnesses were the last witnesses to be called by the Defence: Salomé Mukantwali (Kalimanzira's wife), Marc Siniyobewe (a close family friend), and Kalimanzira himself. The Defence therefore had access to them and their prospective testimony in time to give notice prior to the commencement of the Prosecution's case.

114. The Prosecution's allegations provide both very specific dates and more or less generalized dates. Kalimanzira's alibi defence was also partly specific and partly general. It can be divided into three main sections:

- From 6 to 14 April 1994, Kalimanzira was at his home in Kigali except on 11 April when he attended a meeting. On 12 April he sent his wife and children to Butare, and on 14 April he left for Gitarama;
- From 14 April to 30 May 1994, Kalimanzira stayed in Murambi/Gitarama where he worked with the Interim Government. He claims to have left only on a few specific occasions. Defence Witness Marc Siniyobewe confirms Kalimanzira's testimony and places him in Gitarama on 23 April 1994;
- From 30 May to July 1994, Kalimanzira went to Butare where he stayed at his home except on three occasions in June before moving to the "Zone Turquoise" and then fleeing to Zaïre.

#### 6 – 14 April

115. There were several aspects of Kalimanzira and his wife's evidence which were unbelievable. On the issue of access to transport, his wife testified that he had an official vehicle and a driver who would typically park the vehicle in front of the Biryogo *secteur* office everyday after dropping Kalimanzira off at home.<sup>109</sup> They both testified that from 6 to 11 April, Kalimanzira had no access to his official vehicle or contact with his driver. Yet, the telephone lines were still working, as evidenced by the phone call Kalimanzira purportedly received from Aloys Ngendahimana (*Directeur Général* of the Ministry of the Interior) on 11 April, as well as from AX100's evidence that he used Kalimanzira's phone.<sup>110</sup> Moreover, for

<sup>106</sup> T. 10 February 2009 pp. 53, 58-59 (Callixte Kalimanzira).

<sup>107</sup> *Bagosora et al.* Trial Judgement, para. 1943; *Simba* Appeal Judgement, para. 184, citing *Simba* Trial Judgement, para. 303.

<sup>108</sup> *Musema* Trial Judgement, para. 107.

<sup>109</sup> T. 5 February 2009 pp. 6-7 (Salomé Mukantwali).

<sup>110</sup> T. 5 February 2009 p. 6 (Salomé Mukantwali); T. 29 January 2009 p. 36 (Witness AX100).

Ngendahimana, a subordinate of Kalimanzira, to have access to vehicle while Kalimanzira did not, is unreasonable, as is the idea that high officials would not leave their homes to address an emergency situation. For Kalimanzira's driver not to have attended to him during such a tense period of heightened insecurity would have been a serious dereliction of duty. The particular responsibilities of the Ministry of the Interior made it all the more imperative that contact be made with the prefectural and communal administration authorities. The inference that Kalimanzira's driver came to seek him out to provide him with transport and that he undertook and performed administrative functions is inescapable.

116. On the issue of access to information, Kalimanzira and his wife testified that he was out of touch with ongoing governmental developments. On the stand, he was evasive about the purpose of the meeting to which he was summoned on 11 April, saying only that he learned about it through a radio announcement, whereas his wife claimed he had learned of it from Ngendahimana when he telephoned. Kalimanzira also purportedly learned from the announcement that the meeting was expected to be chaired by the Minister of the Interior, or, in the event of his absence, the Prime Minister.<sup>111</sup> The Chamber considers it unbelievable that Kalimanzira would have so inadvertently come to know of the 11 April meeting; he would most likely have been involved in the preparation of any meeting with all *préfets*, in particular one that was expected to be chaired by his Minister.

117. After moving his family to Butare on 12 April, Kalimanzira testified that he stayed behind in Kigali to continue his work, and then immediately contradicted himself by claiming that he had no work to do in the absence of his Minister, sitting idle while waiting for his return, and did not have a clue what was going on or what would happen.<sup>112</sup> The Chamber considers Kalimanzira to be feigning ignorance. In a time of such crisis, as *Directeur de Cabinet*, Kalimanzira would have had to be kept abreast of everything, particularly in the absence of his Minister. Even more unbelievable is Kalimanzira's account that he only came to learn of the government's transfer to Gitarama from his driver on the evening of 13 April. With the RPF quickly advancing on Kigali, the government moved to Gitarama on 12 April from the *Hôtel des Diplomates*, where just the day prior Kalimanzira had attended a meeting chaired by the Prime Minister. Kalimanzira testified that when he arrived in Murambi on 14 April, many government employees were already there,<sup>113</sup> having fled Kigali in a rush. Even if the Chamber were to accept his contention that the government's move to Gitarama was not planned but spontaneous and rushed,<sup>114</sup> Kalimanzira's intimation that he was one of the last persons to know about it is unconvincing.

#### 14 April – 30 May

118. Kalimanzira's alibi defence for this period is supported by Defence Witness Marc Siniyobewe who testified that he was a staff member of the Ministry of the Interior and that after fleeing from Kigali to his home in Ruhengeri *préfecture*, he reported for duty in Murambi (Gitarama) on 18 April 1994. He said he met Kalimanzira that same day and every day thereafter until 30 May, except: (i) on 19 April when Kalimanzira went to Butare *préfecture*; and (ii) on 21 and 22 April when Kalimanzira went to Kibungo *préfecture*; (iii) sometime in May when Kalimanzira went to Gisenyi *préfecture*; and (iv) a few other days he might have forgotten. He specified that he saw Kalimanzira on 23 April 1994 in the morning

<sup>111</sup> T. 10 February 2009 p. 23 (Callixte Kalimanzira).

<sup>112</sup> T. 10 February 2009 p. 24 (Callixte Kalimanzira).

<sup>113</sup> T. 10 February 2009 p. 26 (Callixte Kalimanzira).

<sup>114</sup> T. 11 February 2009 p. 3 (Callixte Kalimanzira).

and evening, but not during or just after lunch.<sup>115</sup> Siniyobewe is therefore Kalimanzira's chief alibi witness in respect of the Prosecution's allegation that he was at Kabuye hill on that day.

119. The Defence's sudden and belated introduction of such a specific alibi for what is the most important allegation against Kalimanzira strongly suggests rehearsal and tailoring to fit the Prosecution case. If he provided this alibi information to members of the Defence team in his earlier interviews, then the Defence should have disclosed it to the Prosecution; the failure to do so raises questions of when the idea to use Siniyobewe as an alibi witness was conceived and supports the inference of recent fabrication.

120. Siniyobewe came as a family friend of Kalimanzira, proclaiming his confirmation that Kalimanzira was innocent.<sup>116</sup> His evidence was unconvincing for several reasons. For instance, he testified that he never heard any ethnic stereotyping of, promoting contempt for, or calling for the extermination of Tutsis on the RTLM radio station.<sup>117</sup> At first he said that he could not recall ever having heard such incitement over the radio. However, when the Prosecution challenged him on how it could be possible to recall such specific dates 15 years after the fact but not radio broadcasts inciting hatred as early as October 1993,<sup>118</sup> he gave the unconvincing explanation that he could not possibly have been informed that hatred was being spewed over the radio because he did not take a radio to work or listen to it in his sleep. The Chamber notes that Siniyobewe was one of 42 persons to have founded the RTLM radio station in April 1993.<sup>119</sup> His feigned ignorance of the station's agenda and content therefore shows evasion and suggests bias.

121. Siniyobewe also had difficulty with dates in general, but was able to provide specific references to the dates of 19 to 23 April and the days immediately following when several witnesses testified that they saw Kalimanzira in the vicinity of Kabuye hill (see III.2.4). He professed to be able to recall the 23<sup>rd</sup> in particular because on that day, he noticed when he arrived to work as usual between 8:00-9:00 a.m. that Kalimanzira had already signed the lists for the payments of salaries that Siniyobewe had left in the office. He recalled not having seen Kalimanzira for lunch on that day, but saw him again in the evening.<sup>120</sup> Such precision in Siniyobewe's recollection of the events which unfolded on 23 April are unparalleled in his recollection of any other event, such as when Kalimanzira went on mission to Ngororero, which day Siniyobewe could not recall with any more precision than having been during the month of May, maybe even late April.<sup>121</sup>

122. This was also a feature of Kalimanzira's testimony as he testified that one of the major tasks he performed during the six-week period in Gitarama was supervising the preparation of those payment lists and signing them.<sup>122</sup> This aspect of both their testimonies was unconvincing. The evidence revealed that civil servants were paid by a completely different ministry and that their salaries were paid into bank accounts.<sup>123</sup> Kalimanzira testified at length and in detail about the administrative process by which civil servants and contract employees were paid, explaining that there existed a dual system whereby state employees under contract, such as daily workers and drivers, were paid from a separate

<sup>115</sup> T. 4 February 2009 pp. 17-25 (Marc Siniyobewe).

<sup>116</sup> T. 4 February 2009 pp. 54-55 (Marc Siniyobewe).

<sup>117</sup> T. 4 February 2009 pp. 49-52 (Marc Siniyobewe).

<sup>118</sup> Exhibit P78.

<sup>119</sup> T. 4 February 2009 pp. 50-52 (Marc Siniyobewe); Exhibit P77.

<sup>120</sup> T. 4 February 2009 p. 24 (Marc Siniyobewe).

<sup>121</sup> T. 4 February 2009 p. 25 (Marc Siniyobewe).

<sup>122</sup> T. 10 February 2009 pp. 32-33 (Callixte Kalimanzira).

<sup>123</sup> Exhibit P79.



budget; he further indicated that this dual system prevented him from receiving his own salary.<sup>124</sup> His nearly exclusive fixation on describing the procedure for this insignificant task, requiring little more than his signature, highlights his evasion about his work and functions while in Gitarama. The idea that during a time of war Kalimanzira would be so preoccupied with ensuring that drivers, daily workers, and other “contract employees” were paid, while he did not receive his own salary, is unbelievable.

123. Kalimanzira’s testimony about his stay and work in Gitarama was unreliable not only for its admissions but also for its omissions. For the most part, he only admitted to trips for which he had been provided with exhibits and transcripts of radio broadcasts establishing his presence somewhere. He asserted to being in Butare only one time in April and May 1994, namely at the MRND Palace Meeting, and vehemently denied Pauline Nyiramasuhuko’s evidence in her own trial that Kalimanzira was present at a Prefectural Security Council meeting in Butare *ville* on 16 May 1994. However, when the Prosecution confronted him with a transcript of a radio broadcast undeniably placing him there, Kalimanzira confirmed that he attended the meeting and admitted the possibility that he may have forgotten about other events.<sup>125</sup>

124. Kalimanzira gave no information about his work in Gitarama with the government and Ministers and his evidence of how he spent his time there was evasive at best (see also III.1.1.2). He admitted that Édouard Karemera was appointed as the new Minister of the Interior on 25 May 1994 yet gave no information about any dealings with him. As *Directeur de Cabinet*, Kalimanzira would have either assumed those functions in relation to the new Minister or have been relieved of his duties. The absence of any explanation highlighted his evasion about his relationship with the political establishment.

125. Even more unsettling was Kalimanzira’s feigned ignorance about the prevailing situation outside of Gitarama at the time. He gave an incredible story of having dispatched some aides on 24 April 1994 to go to neighbouring *communes* and investigate a rumour that a RPF *Inkotanyi* raid on Murambi was imminent. Upon their return that same evening, one of them informed Kalimanzira that some Tutsis had sought refuge in Mukingi *commune* and Kalimanzira immediately responded by working with the *préfet* to acquire buses and fuel in order to save to those refugees and bring them to Murambi.<sup>126</sup> This echoed Siniyobewe’s testimony, albeit slightly different, that Kalimanzira was approached by the *bourgmestre* of Mukingi *commune* about Tutsi refugees on the brink of being killed, and that Kalimanzira responded immediately. Siniyobewe was tasked with providing the fuel but could not do so swiftly because he had “other tasks to attend to,” which apparently angered Kalimanzira. When Siniyobewe could not provide the fuel in time, Kalimanzira scolded him for lack of diligence.<sup>127</sup> While attempting to depict Kalimanzira as a good samaritan, his perceived reasons for Kalimanzira’s intervention to save those Tutsis seemed limited to the avoidance of liability for failure to act.<sup>128</sup>

126. The Chamber is disturbed with how this story trivializes the prevailing situation at the time, given the abundant evidence that over that same weekend thousands of Tutsis had been massacred at Kabuye hill and even more were being slaughtered in that same time period

<sup>124</sup> T. 10 February 2009 pp. 32-33 and T. 11 February 2009 pp. 12-15 (Callixte Kalimanzira).

<sup>125</sup> T. 11 February 2009 pp. 20-24 (Callixte Kalimanzira).

<sup>126</sup> T. 10 February 2009 p. 43 (Callixte Kalimanzira).

<sup>127</sup> T. 4 February 2009 pp. 26-27, 55 (Marc Siniyobewe).

<sup>128</sup> See T. 4 February 2009 p. 55 (Marc Siniyobewe): “During that period, Kalimanzira acted with dispatch to get vehicles and he came to ask me to send buses to save those people so as to avoid anyone being killed at that place, because we would have difficulty explaining that.”

throughout Butare and Rwanda, to Kalimanzira's purported total unawareness. His sole concern was fear of RPF infiltration, an obsession which he has demonstrated elsewhere, including his supposed reason for spending a sleepless night in Kibungo *préfecture* on 21 April and his reason for not stopping on the road when driving to his family's home in Kirarambogo in the first week of June.<sup>129</sup> The Chamber considers Kalimanzira's exhibited preoccupation lends support to the several Prosecution witnesses who have testified to his consistent calls on members of the population to erect roadblocks and to carry arms at all times (see *e.g.* III.2.7 and III.4.9).

127. With respect to his purported itinerary to and from Kibungo *préfecture*, evidence on the record shows that Kalimanzira was in Kibungo to commission the new *préfet* on 21 April 1994. However, he asserts that he did not return to Gitarama until the evening of the 22<sup>nd</sup> because he spent the night of the 21<sup>st</sup> in Kibungo, unable to sleep for fear of an imminent RPF raid on the town, but on guard and ready to flee in case they were attacked. Indeed, by Kalimanzira's own testimony, Kibungo fell to the RPF on 22 April, just hours after he purports to have left for Gitarama, and he considers himself lucky to have left the scene just in time.<sup>130</sup> Having been assigned two gendarmes to accompany him on this trip, it makes no sense that Kalimanzira would have waited until an already precarious situation became so dangerous that others started leaving before he or his protective escorts decided it was safe for him to leave. The Chamber does not believe that Kalimanzira spent the night of 21 April 1994 in Kibungo *préfecture*.

128. Kalimanzira testified that on 30 May 1994 the government fled Gitarama in a hurry and he was assigned the mission to manually fill all the authorities' cars with fuel equitably.<sup>131</sup> The Chamber considers this yet another manifestation of Kalimanzira's evasion about his role and functions while in Gitarama and a minimization of his status and authority. The Chamber does not accept that the *Directeur de Cabinet* of the Ministry of the Interior could be assigned such a task. Kalimanzira's depiction of himself as the humble and reliable servant leaves much to be desired in the absence of any further information about what other, more significant, tasks he must have been entrusted with during this critical period.

#### 31 May – 17 July

129. Kalimanzira testified that he left Gitarama with his assigned vehicle and driver, Avit Mpabanyanga, having to take a detour through Gikongoro *préfecture* where they spent the night. Upon rejoining his family in Butare *ville* on 31 May 1994, Kalimanzira and his wife assert that except for three occasions, he did not leave his house or its immediate environs. His account of the first trip out in the first week of June to visit his family in Kirarambogo was strange. He took a road leaving Butare *ville* passing through Shyanda *commune*, Ndora *commune*, then Gisagara all the way to his home in Muganza *commune*. This was a road with which he was so familiar that he said he knew every family that lived on it. He testified that this trip marked the first time that he became aware of how much destruction and devastation had taken place, having by then heard killings had occurred in these *communes*. He said he continued on his journey without stopping for fear that he might be harmed and concerned about RPF infiltrations.<sup>132</sup> Bearing in mind this was his home area and that he admittedly knew all the local inhabitants, even greeting them as he drove by, the Chamber considers that the idea he would be afraid of them is not plausible. Kalimanzira's compulsive fears of RPF infiltration are particularly irrational in this context, which supports the Prosecution evidence

<sup>129</sup> T. 10 February 2009 pp. 40-41, 49 (Callixte Kalimanzira).

<sup>130</sup> T. 10 February 2009 pp. 40-41 (Callixte Kalimanzira).

<sup>131</sup> T. 10 February 2009 p. 47 (Callixte Kalimanzira).

<sup>132</sup> T. 10 February 2009 p. 49 (Callixte Kalimanzira).

that he was aggressively preoccupied with ensuring that members of the population, in particular those manning roadblocks, be armed at all times.

130. Another peculiarity was Kalimanzira's mention of passing by to observe Charles Hategekimana's house, who he claimed to be a friend. He said he was saddened by Hategekimana's death, that people had accused him of the death and of destroying his house, whereas he knew nothing of it when passing by the house in June.<sup>133</sup> Upon reviewing this aspect of Kalimanzira's testimony, the Chamber sees no reason why he would go and look at that particular house at that time if he had not previously known about his killing. It seemed that the purpose of this testimony was to claim friendship and exhibit remorse over that particular killing, which witnesses have testified to in this case.<sup>134</sup>

131. Before visiting his family, Kalimanzira also said he stopped briefly in the Buseruka centre (Rwamiko *secteur*, Kibayi *commune*) to see the condition of his house there; this indirectly addresses certain allegations by other witnesses who testified to his presence and activities there at that time (see III.4.6.1 and III.4.8.1). He then went to Nyaguhuru *secteur* (Muganza *commune*) to find his mother, brothers and sisters were still alive, except his sister's Tutsi husband, who had been killed. Wanting to return back to his wife and children immediately in order to protect them from the imminent arrival of RPF troops, Kalimanzira stayed in Nyaguhuru only one hour, and drove back again without stopping, but waving at people along the way to say hello.<sup>135</sup>

132. Kalimanzira testified that in the weeks that followed, he left his house on only two more occasions. He said he had no contact with the government at this time, that he did not learn of their move to Gisenyi *préfecture* until mid-June, and that he only received information about how the war was unravelling from stepping out onto the road to ask passersby.<sup>136</sup> Once again, Kalimanzira's testimony of no contact with officialdom is unbelievable. He admittedly attended the swearing-in ceremony of Butare's new *préfet*, Alphonse Nteziryayo, but neither he nor his wife gave any indication as to how he came to know about it.<sup>137</sup> Prosecution witnesses also placed him at the inauguration of Élie Ndayambaje as the new *bourgmestre* of Muganza *commune* (see III.2.3.6). Moreover, his appointment as Minister of Social Affairs and Refugees in the government in exile would have been unlikely if he simply fell off the radar for over a month.

133. Kalimanzira's wife supported his testimony on his activities in June. The Chamber finds her testimony has little probative value, not only because of her relationship with him, but because she was not always home as she testified that she was working at the Butare hospital where her services were required because all Tutsi doctors and nurses had been killed.<sup>138</sup>

### Conclusion

134. The Chamber accepts that Kalimanzira was in Kigali in the days following the President's plane crash, that he relocated to Gitarama with the Interim Government, that he was at the MRND Palace meeting on 19 April, that he was in Kibungo *préfecture* on 21

<sup>133</sup> T. 10 February 2009 pp. 50-51 (Callixte Kalimanzira).

<sup>134</sup> See e.g. T. 24 June 2008 pp. 47-50 (Witness BCZ) and T. 24 November 2008 pp. 29-30 (Witness KXL); see also III.4.6.1.

<sup>135</sup> T. 10 February 2009 pp. 51-52 (Callixte Kalimanzira).

<sup>136</sup> T. 10 February 2009 p. 52 (Callixte Kalimanzira).

<sup>137</sup> T. 10 February 2009 p. 52 (Callixte Kalimanzira); T. 5 February 2009 p. 10 (Salomé Mukantwali).

<sup>138</sup> T. 5 February 2009 p. 11 (Salomé Mukantwali).

April, and that he went to Ngororero sometime in May. However, the Chamber does not accept that he was in Gitarama at all other times. Indeed, he was caught having lied about attending a Butare Prefectural Security Council meeting on 16 May 1994. He had access to vehicles and fuel. In particular, the Chamber considers his and Siniyobewe's account of his presence in Murambi on 23 April to be a recent fabrication. It therefore raises no reasonable doubt on the witnesses who testified to seeing him at Kabuye hill or elsewhere throughout Butare between April and May 1994.

135. The same finding applies for the period in which Kalimanzira says he stayed at his home in Butare *ville* save for three occasions. The Chamber accepts that Kalimanzira went home to see his family in Kirarambogo in the first week of June, that he attended Nteziryayo's swearing-in ceremony, and that he went to welcome Cardinal Etchegaray. However, the Chamber does not accept that he stayed at home at all other times. Indeed, after being shown a Radio Rwanda broadcast transcript, he could no longer deny having attended a civil defence and security meeting in Gikongoro *préfecture* on 3 June 1994.<sup>139</sup> He also admitted to the possibility that he may have forgotten about other occasions when he might have left his house during this period.<sup>140</sup>

136. For the above reasons, the Chamber does not believe Kalimanzira's alibi. The Chamber recalls that the Prosecution nevertheless retains the onus of having to prove its case beyond reasonable doubt.

### 1.3. Fabrication of Evidence

137. Part of the Defence case was premised on an alleged system and practice in Rwandan prisons of fabricating evidence. This was aimed at discrediting much of the Prosecution evidence in relation to certain events, in order to support the Defence theory that accusations against Kalimanzira are false.<sup>141</sup>

#### 1.3.1. Evidence

##### *Defence Witness Albert Barikwinshi*

138. Barikwinshi is a former detainee of the Karubanda prison. He testified about an association called "*Ukuri*" (which means "truth" in Kinyarwanda), which has the primary goal of inducing detainees to confess to their crimes. This organization was well known to prison officials and other authorities, even occupying an office near the prison director's, and was well organised with a President, François Buhoyiki, and a Vice-President, Nkuyubwatsi. The association would also be contacted by the Rwandan Prosecutor's Office whenever information was required.<sup>142</sup>

139. Barikwinshi was a member of the *Ukuri* association from 2000 to 2007, apart from periods when he was provisionally released or in camps. From 2000 to 2003 he was a "floor member" without special duties. In 2003 he was put in charge of convincing people from his native *commune*, Gishamvu, to confess. Barikwinshi asked President Buhoyiki for a position in the association because prisoners with jobs received better food rations. Barikwinshi would, with the approval of President Buhoyiki, to whom he reported, convene meetings of people from Gishamvu *commune* on the volleyball field inside the Rwandex block in the

<sup>139</sup> T. 11 February 2009 p. 31 (Callixte Kalimanzira).

<sup>140</sup> T. 11 February 2009 p. 26 (Callixte Kalimanzira).

<sup>141</sup> See e.g. Defence Pre-Trial Brief, para. 17 and Defence Closing Brief, paras. 327, 349, 389, 425-426, 575, 604, 739, 838, 937, 974, 1086, 1220-1221, and 1286.

<sup>142</sup> T. 26 January 2009 pp. 60-61 (Albert Barikwinshi).

Karubanda prison. Barikwinshi would contact people in prison and encourage them to confess. He would also identify those who were discouraging people from confessing.<sup>143</sup>

140. Barikwinshi named Lucien Simbayobewe, Ignace Yirirwahandi, Deo Nuwayo (a.k.a Kigango), Jérôme Singirankabo (a.k.a Rutwitsi), and Chrysologue Bimenyimana as officials of the *Ukuri* association who encouraged their fellow co-detainees to plead guilty and confess to their crimes, and assisted the Rwandan Prosecutor's Office with identifying prisoners charged with certain crimes committed in a given *commune* or *secteur*. With regards to guilty pleas, the *Ukuri* association also assisted the Prosecutor's Office by forwarding them the outcomes of any meetings and reports. The Rwandan Prosecutor's Office would then instruct President Buhoyiki on how to proceed, who in turn would pass this information onto the other *Ukuri* members. Detainees would write their confessions and the documents would be sent to the Rwandan Prosecutor's Office before being forwarded to the *Gacaca* courts.<sup>144</sup>

141. When attempting to elicit a confession, Barikwinshi would first contact and question a co-detainee. He would then explain the advantages of making a confession and when the detainee agreed to do so, the detainee would approach the *Ukuri* association to gain membership in it and receive assistance with drafting the confession. Sometimes there were authorities detained in the prison who did not confess, despite having instigated others to commit crimes. If the *Ukuri* association failed to persuade these authorities from confessing, a confession on their behalf would sometimes be fabricated and they would be indicted before the prison authorities. President Buhoyiki would then contact the Prosecutor's Office to advise on how to charge or indict the official. An *Ukuri* member from the official's *commune* would be identified to fabricate charges and testify against the official, claiming such things as the official had led an attack or organised a meeting.<sup>145</sup>

142. When fabricating charges, members of a particular *commune* would meet around a table and discuss their authorities before deciding how to implicate them. President Buhoyiki would then listen to the fabricated charges and, if unsatisfactory, would instruct them on what they should say instead. Barikwinshi attended such meetings. In May 2000, he overheard a conversation between Singirankabo and Simbayobewe discussing Muganza *commune* and Kalimanzira. Singirankabo proclaimed that he had to implicate Kalimanzira in order to lend credibility to his own confession so that it would be accepted. He then asked Simbayobewe how he was supposed to accuse Kalimanzira when he did not know him well and did not see him during the genocide. Simbayobewe advised Singirankabo to ask Yirirwahandi how he did it, implying that Yirirwahandi had fabricated charges against Kalimanzira.<sup>146</sup>

143. Aside from this conversation, Barikwinshi did not hear any other discussions about falsely accusing Kalimanzira. He recalled, however, that on one occasion at the end of a meeting, a woman from the Prosecutor's Office asked President Buhoyiki if he had witnesses ready to accuse Kalimanzira. President Buhoyiki replied that everything had been arranged and the witnesses were ready. However, Barikwinshi did not hear the woman say that the accusations against Kalimanzira were to be false.<sup>147</sup>

144. Barikwinshi indicated that President Buhoyiki advised him to testify against the authorities of his own *commune* if he wanted his guilty plea to be accepted. He also asked Barikwinshi to testify against Joseph Kanyabashi, but Barikwinshi declined because he had

<sup>143</sup> T. 26 January 2009 pp. 60-61 and T. 27 January 2009 p. 3 (Albert Barikwinshi).

<sup>144</sup> T. 27 January 2009 p. 2 (Albert Barikwinshi).

<sup>145</sup> T. 27 January 2009 pp. 3-4 (Albert Barikwinshi).

<sup>146</sup> T. 27 January 2008 pp. 4-6 (Albert Barikwinshi).

<sup>147</sup> T. 27 January 2009 p. 7 (Albert Barikwinshi).

no accusations to make against him. President Buhoyiki then advised Barikwinshi to make false accusations against Kanyabashi, indicating that other detainees, including himself, had done so and that he must therefore accept it. Barikwinshi explained that there were three main advantages for people willing to fabricate testimony. Firstly, their confession would be accepted. Secondly, the *Ukuri* would have confidence in them and they would get a position within the association. Lastly, they might get to testify in Arusha where they would receive money and clothes. Barikwinshi does not know whether there was an advantage with regards to early release from detention.<sup>148</sup>

145. The *Ukuri* association distributed positions of responsibility within the prison, and Barikwinshi gave several examples of *Ukuri* members receiving coveted positions. Simbayobewe was in charge of security for the Rwandex block, making him second in command.<sup>149</sup> Nuwayo received a position leading detainees out of the prison on work duty, where they would often receive rice. Singirankabo had security duties and worked under the *commissaire*. Yirirwahandi was in charge of supplies, but then joined the Pentecostal Church and decided to leave the *Ukuri* after asking forgiveness from all those he had falsely accused. Bimenyimana was promoted to leader of the Rwandex block's kitchen. Barikwinshi heard that Bimenyimana has testified in Arusha and Barikwinshi believes that to be the reason behind Bimenyimana's promotion.<sup>150</sup>

*Defence Witness Jean de Dieu Rutabana*

146. Rutabana testified that he spent 11 years in prison in Rwanda before he escaped and fled to Burundi. He spent several years in the Karubanda prison and the Rwandex block. At one point, someone from the Prosecutor's Office approached Rutabana and others from his native *commune*, Mpare. Rutabana indicated that the deputy prosecutor in question gave the prisoners food and asked them to assist the Prosecutor's Office by testifying that Joseph Kanyabashi, also a native of Mpare *commune*, had come to their *commune* and asked the inhabitants to kill people and erect roadblocks. After the prisoners refused, indicating they had not seen Kanyabashi in Mpare during the events, the deputy prosecutor told them to think it over, that they could benefit from going to Arusha, and to go back to see him if they changed their minds about testifying against Kanyabashi. Rutabana was not questioned about any efforts to falsely accuse Kalimanzira.<sup>151</sup>

147. Rutabana testified that though he never joined the *Ukuri* association, he knew it consisted of a group of people who provided information to the *Gacaca* jurisdictions, which were organized according to *communes*, through the Rwandan Prosecutor's Office. He indicated that the *Ukuri* association had its own office in the prison, which he never visited as it was not open for people to simply come in as they pleased.<sup>152</sup>

*Defence Witness FJS*

148. FJS testified that soon after she returned to Rwanda after having been in exile, she was arrested and "asked to go and accuse certain people". When she indicated that she could not provide the information sought, she was "beaten up and thrown into prison", where she was detained for six years before being released without having been charged or tried. FJS

<sup>148</sup> T. 27 January 2009 pp. 7-8 (Albert Barikwinshi).

<sup>149</sup> Defence Witness Jean de Dieu Rutabana also testified that Lucien Simbayobewe was in charge of security in one of the blocks at Karubanda prison (see T. 3 February 2009 p. 11).

<sup>150</sup> T. 27 January 2009 pp. 8-11 (Albert Barikwinshi).

<sup>151</sup> T. 3 February 2009 pp. 11-14 (Jean de Dieu Rutabana).

<sup>152</sup> T. 3 February 2009 p. 11 (Jean de Dieu Rutabana).

was not examined further on this point; the Chamber infers that she was not asked to accuse Kalimanzira.<sup>153</sup>

*Defence Witness Félicien Kajyibwami*

149. Kajyibwami testified that he was encouraged to work with a commission investigating France's responsibility in the genocide by testifying to what he witnessed in July 1994 while staying at a camp in the French-guarded "Zone Turquoise". He was asked to accuse French soldiers of acts such as raping survivors, playing basketball on the remains of the dead, and giving food rations to Hutus but not to Tutsis. When Kajyibwami refused, indicating he had not witnessed such acts, he was arrested and declared an enemy of the State. He managed to escape and fled to Malawi. He mentioned nothing about fabricating evidence against Kalimanzira.<sup>154</sup>

**1.3.2. Deliberations**

150. The Chamber notes that several Defence witnesses are or have been in detention in Rwanda.<sup>155</sup> Only four of them have testified about having been invited to falsely implicate others, with Barikwinshi the sole witness to testify about evidence fabrication against Kalimanzira.

151. Barikwinshi was in detention for many years, having been charged with participation in the genocide. On the one hand, he averred that he had done nothing wrong, but decided to confess in order to obtain early release and used the information he received from other detainees to fabricate his own confession. On the other hand, he testified about having participated in the search for Tutsis at the Arboretum near the Rwandan National University in Butare (see III.2.3.4.1). Barikwinshi asserts that he did not falsely accuse anyone, that he only lied about his own actions in order to get out of prison, but refuses to say he signed a judicial document that he knew was false for personal advantage.<sup>156</sup> Further, he testified that in order to obtain a privileged position in the prison, he had assisted other detainees in fabricating charges against others. Shortly after his release from prison, the *Gacaca* courts determined his confession to have been fabricated and he was re-arrested. Barikwinshi eventually managed to flee Rwanda. He remains a fugitive from justice.<sup>157</sup> The Chamber considers that this witness' demonstrably flexible attitude to telling the truth casts reasonable doubt on the credibility and reliability of his own testimony.

152. When asked for specific examples of other officials against whom charges were fabricated under the framework he described, Barikwinshi recounted two examples which amounted to little more than internal prison intrigues, whereby certain co-detainees were falsely accused of such things as trying to escape from jail so that these co-detainees could lose their coveted prison jobs.<sup>158</sup> Barikwinshi also alleged that he was approached to fabricate charges against Kanyabashi, but claims he declined because he had no allegations to make. His assertion does not fit with and contradicts the rest of his testimony. If he was willing to persuade co-detainees to fabricate charges against others, it does not follow that he would not be willing or persuaded to do so himself. In addition, if he obtained a privileged position in

<sup>153</sup> T. 28 January 2009 p. 43 [closed] (Witness FJS).

<sup>154</sup> T. 2 February 2009 pp. 26-28 (Félicien Kajyibwami).

<sup>155</sup> E.g. AK42, AM02, AM14, BTH, FJS, KBF, KUW, KXC, MAS, MVE, NDA, NGB, NJV, ABZ, Harindintwali, Kajyibwami, and Barikwinshi.

<sup>156</sup> T. 27 January 2009 p. 30 (Albert Barikwinshi).

<sup>157</sup> T. 26 January 2009 pp. 55-56 (Albert Barikwinshi).

<sup>158</sup> T. 27 January 2009 p. 5 (Albert Barikwinshi).

prison by assuming the task of persuading others to fabricate charges, it does not follow that he could maintain that position after having refused to do so himself.

153. Barikwinshi's testimony about the method by which prisoners from the same *commune* of a certain official would be summoned to fabricate charges against that official does not explain why charges would be fabricated against Kalimanzira, a native of Muganza *commune*, by Singirankabo, Simbayobewe, or Yirirwahandi, none of whom come from Muganza *commune*. Though Kalimanzira resided in Kibayi *commune* for some time, only one of the three aforementioned prisoners was a native of Kibayi. None of the prisoners came from Gishamvu *commune* either, Barikwinshi's native *commune*, which raises the question as to why Barikwinshi came to attend the meeting where falsely accusing Kalimanzira was discussed. Barikwinshi did not adequately explain this discrepancy with his prior testimony about the way in which the *Ukuri* association functioned.

154. In addition, by Barikwinshi's own description, gathering evidence to be used in Arusha was not a primary concern of the *Ukuri* association.<sup>159</sup> The meeting allegedly took place in May 2000, which is over five years before Kalimanzira was indicted by this Tribunal. The Defence has tendered into evidence various lists of suspected *génocidaires* omitting Kalimanzira's name to support the contention that he was never suspected or pursued in Rwanda either.<sup>160</sup> This raises the question as to why Kalimanzira would be discussed by the *Ukuri* at all, particularly nine years ago.

155. Barikwinshi's attempts to explain these discrepancies were unsatisfactory. He mentioned the meeting having been in the context of Muganza *commune*, but that the reason for discussing Kalimanzira was because Singirankabo was accused of crimes committed at Kabuye hill and was required to implicate Kalimanzira despite not having seen him at Kabuye hill. However, Kabuye hill is in Ndora *commune*, and neither Singirankabo, Simbayobewe, or Yirirwahandi, have testified before this Tribunal about Kalimanzira's involvement in the killings at Kabuye hill.

156. It does not follow from Barikwinshi's evidence that any Prosecution witnesses have made *false* accusations against Kalimanzira before this Tribunal. Whether or not any false accusations may have been doctored against Kalimanzira in Rwanda in the context of other *Gacaca* trials is irrelevant to the present case. It is noteworthy that the Defence never put any questions about the *Ukuri* association to any of the Prosecution witnesses during cross-examination, some of whom have been detained in the same Karubanda prison. The Chamber therefore considers that Barikwinshi's testimony does not affect the credibility of any of the Prosecution witnesses heard in this case.

<sup>159</sup> T. 27 January 2009 p. 5 (Albert Barikwinshi).

<sup>160</sup> See Exhibits D98, D99, and D100.



## 2. GENOCIDE

157. Under Count 1 of the Indictment, the Prosecution charges Kalimanzira with Genocide pursuant to Article 2 (3)(a) of the Statute, and with individual criminal responsibility under Article 6 (1). To establish Kalimanzira's criminal responsibility for Genocide, the Prosecution relies on paragraphs 1 to 17 of the Indictment.

### 2.1. Applicable Law

158. 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) with the specific intent to destroy, in whole or in part, a group, as such, that is defined by one of the protected categories of nationality, race, ethnicity, or religion ("genocidal intent"). Although there is no numeric threshold, the perpetrator must act with the intent to destroy at least a substantial part of the group. The perpetrator need not be solely motivated by a criminal intent to commit genocide, nor does the existence of personal motive preclude him from having the specific intent to commit genocide.<sup>161</sup> The law applicable to genocidal intent is discussed in full at III.5.1.

159. The Indictment charges Kalimanzira with killing and causing serious bodily or mental harm to members of the Tutsi group. It is firmly established that the Tutsi ethnicity is a protected group.<sup>162</sup> Killing members of the group requires a showing that the principal perpetrator intentionally killed one or more members of the group. The term "causing serious bodily harm" refers to acts of sexual violence, serious acts of physical violence falling short of killing that seriously injure the health, cause disfigurement, or cause any serious injury to the external or internal organs or senses. "Serious mental harm" refers to more than minor or temporary impairment of mental faculties. The serious bodily or mental harm, however, need not be an injury that is permanent or irremediable. This harm can include crimes of sexual violence, including rape.<sup>163</sup>

160. In relation to Count 1, the Indictment recites all of the modes of participation prescribed at Article 6 (1) of the Statute, namely that Kalimanzira "planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or commission of the crimes." In addition, the Indictment alleges that Kalimanzira used his position of authority to incite and order persons under his authority to commit genocide.<sup>164</sup>

161. "Committing" implies, primarily, physically perpetrating a crime. "Planning" implies designing the preparation and execution of a crime. "Instigating" implies prompting or provoking another to commit a crime. With respect to ordering, a person in a position of authority may incur responsibility for ordering another person to commit an offence, if the person who received the order actually proceeds to commit the offence subsequently. "Aiding

<sup>161</sup> *Bagosora et al.* Trial Judgement, para. 2115; *Nahimana et al.* Appeal Judgement, para. 492, 496, 522-523; *Niyitegeka* Appeal Judgement, paras. 48-54; *Gacumbitsi* Appeal Judgement, paras. 39, 44; *Brđanin* Trial Judgement, paras. 681, 695; *Seromba* Appeal Judgement, para. 175; *Simba* Trial Judgement, para. 412; *Semanza* Trial Judgement, para. 316; *Simba* Appeal Judgement, para. 269; *Ntakirutimana* Appeal Judgement, paras. 302-304; *Krnojelac* Appeal Judgement, para. 102, citing *Jelisić* Appeal Judgement, para. 49.

<sup>162</sup> *The Prosecutor v. Kalimanzira*, Decision on Judicial Notice of Facts of Common Knowledge (TC), 22 February 2008; *The Prosecutor v. Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 25.

<sup>163</sup> *Bagosora et al.* Trial Judgement, para. 2117; *Semanza* Appeal Judgement, para. 192; *Kayishema and Ruzindana* Appeal Judgement, paras. 110, 151; *Seromba* Appeal Judgement, paras. 46-49; *Ntagerura et al.* Trial Judgement, para. 664; *Kajelijeli* Trial Judgement para. 815; *Ntagerura et al.* Trial Judgement, para. 664; *Semanza* Trial Judgement, paras. 321-322; *Gacumbitsi* Trial Judgement, para. 292; *Akayesu* Trial Judgement, paras. 706-707.

<sup>164</sup> See Indictment, paras. 2 and 6.

and abetting” implies assisting, furthering or lending moral support to the perpetration of a crime. Thus, even if Kalimanzira has not “committed” genocide himself, his responsibility may be established under any one of the modes of liability provided for in Article 6 (1). The *mens rea* varies accordingly. Where an accused is charged with having planned, instigated, ordered or aided and abetted the commission of genocide pursuant to Article 6 (1), the Prosecution must establish that the accused’s acts or omissions substantially contributed to the commission of acts of genocide. In addition, for liability of aiding and abetting to attach, the individual charged need only possess knowledge of the principal perpetrator’s specific genocidal intent, whereas for planning, instigating and ordering, he must share that intent.<sup>165</sup>

## 2.2. “MRND Palace” Meeting, 19 April

162. At paragraph 7 of the Indictment, the Prosecution charges Kalimanzira with Genocide for his role as master of ceremonies at a meeting of Interim Government officials and local authorities held at the “MRND Palace” in Butare *ville* on 19 April 1994. Kalimanzira is accused of aiding and abetting genocide by showing no disapproval to inflammatory speeches delivered at this meeting, which triggered the subsequent massacre of thousands of Tutsi throughout Butare *préfecture*.

163. Kalimanzira admits to his presence at this meeting but denies playing the role alleged.

### 2.2.1. Evidence

#### *Prosecution Witness AZM*

164. AZM attended a meeting at the “MRND Palace” in Butare *ville* on 19 April 1994, the purpose of which was to replace the *préfet* of Butare, Jean-Baptiste Habyalimana (a Tutsi), with Sylvain Nsabimana (a Hutu). By virtue of his professional position, AZM was invited to the meeting by the public prosecutor, Mathias Bushishi. AZM arrived a little late to the meeting, which started at around 10:00 a.m. He recalled that the hall was almost full with around 300 people in attendance, including Butare’s chiefs of services, leaders of political parties, religious leaders, *bourgmestres* of various *communes*, and military officers. Dignitaries present included the Prime Minister, Minister of Information, Minister of Justice, Minister of Finance, and Kalimanzira. Théodore Sindikubwabo (Interim President of Rwanda) made a surprise appearance towards the end of the ceremony at around 2:00 p.m. AZM explained that the Minister of the Interior was out of the country and therefore not in attendance.<sup>166</sup>

165. Those leading the meeting, including the Prime Minister and Kalimanzira, sat on the podium at the front of the hall. Kalimanzira was “in a way” the master of ceremonies and introduced each speaker to the audience before giving them the floor. The audience applauded between speakers, which included Eliézer Niyitegeka (Minister of Information). AZM recalled Jean Kambanda’s (Prime Minister) speech, which emphasized that this was the last war, that victory was absolutely necessary, and that they needed to fight “to ensure the security of the country and avoid a situation where the country would be divided or taken over by the enemy”. Prime Minister Kambanda also said that “there were people who were working against the security of the country”, and that “those people should be sought and dealt with”.<sup>167</sup>

<sup>165</sup> *Nahimana et al.* Appeal Judgement, para. 478-483, 492; *Seromba* Appeal Judgement, para. 65; *Kordić and Čerkez* Appeal Judgement, para. 26; *Krstić* Appeal Judgement, para. 140.

<sup>166</sup> T. 17 June 2008 pp. 5-7 (Witness AZM).

<sup>167</sup> T. 17 June 2008 pp. 7-8 (Witness AZM).

166. AZM recalled President Sindikubwabo spoke in a metaphorical manner that was very difficult to understand. He told the crowd that he had just returned from Gikongoro *préfecture* and noticed that, in comparison, many in Butare were indifferent to the current situation. He said that someone had “asked him if there were no men in Butare”, to which he answered that there were none because those remaining were only looking out for their own interests, “their own stomachs”. President Sindikubwabo stated that there were people receiving weapons training by the RPF in Kinihira and that they should be sought out and “handed over”. He further indicated that the authorities who were unwilling to collaborate with him should be removed, and that only those who were ready to work should be put in their places. The President used the Kinyarwanda word “*gukora*” for work, which AZM eventually understood meant killing Tutsis, though that was not immediately clear to him at the time of the President’s utterance.<sup>168</sup>

167. At no point during the meeting did he hear Kalimanzira object to what was being said. Kalimanzira did not address the meeting nor take the floor to approve or disapprove of what was being said. AZM recalled that the meeting ended at around 3:30 p.m., at which point he returned home. After the meeting, Hutus started killing Tutsis.<sup>169</sup>

#### *Prosecution Witness BCA*

168. BCA attended a meeting at the “MRND Palace” in Butare *ville* on 19 April 1994, to which he was invited by virtue of his professional position. The meeting, which started around 10:00 a.m. and ended around 3:00 p.m., was held in a hall which could hold about 1,000 people. There were over 100 people present, including President Sindikubwabo, Prime Minister Kambanda, “all the ministers, including Nyiramasuhuko, Niyitegeka, Nsabumukunzi”, *bourgmestres*, Butare’s chiefs of services, and Kalimanzira. BCA recalled those who spoke at the meeting included President Sindikubwabo, Prime Minister Kambanda, Minister Niyitegeka, and Joseph Kanyabashi (*bourgmestre* of Ngoma *commune*). Kalimanzira acted as the master of ceremonies.<sup>170</sup>

169. With respect to Prime Minister Kambanda’s speech, BCA could recall only that he reminded the audience that the enemy of the Rwandan government was the RPF. BCA had a better memory of President Sindikubwabo’s speech, in which he condemned the inhabitants of Butare for their indifference and apathy towards the war against the RPF. BCA also recalled the President mentioning some people undergoing weapons training in Kinihira, and the need to “get rid of those people”.<sup>171</sup>

170. The Prosecution specifically asked whether the President used the word “*gukora*”, to which BCA answered in the affirmative and explained its ordinary meaning to be that “one has work to do”. BCA explained that at the time of the meeting, he did not understand the word to have any special significance; however, following the subsequent massacres he realised that it was a metaphor for killing the RPF and its accomplices. The accomplices were mainly Tutsis, but also included Hutu political opponents. The killings in Butare *préfecture* started on 20 April 1994; he personally witnessed people being killed at the junction right after the MRND Palace where the meeting took place the day prior.<sup>172</sup>

<sup>168</sup> T. 17 June 2008 pp. 8-9 (Witness AZM).

<sup>169</sup> T. 17 June 2008 p. 10 (Witness AZM).

<sup>170</sup> T. 18 June 2008 pp. 46-47 (Witness BCA).

<sup>171</sup> T. 18 June 2008 p. 47 (Witness BCA).

<sup>172</sup> T. 18 June 2008 pp. 48-49 (Witness BCA).

*Callixte Kalimanzira*

171. Kalimanzira admits he attended the meeting at the “MRND Palace” in Butare *ville* on 19 April 1994, but denies having been the master of ceremonies. He testified that he travelled to the meeting in a convoy of ministers that left Murambi (Gitarama *préfecture*) at 9:00 a.m. and arrived at the MRND Palace at approximately 10:40 a.m. The meeting, which was to be Sylvain Nsabimana’s swearing-in ceremony as the new *préfet* of Butare, was not open to the public but to a certain political class. Those present included Butare’s chiefs of services, *bourgmestres*, *conseillers*, religious authorities, schoolteachers, and ministers’ entourages. He estimated that there were just over 100 persons in attendance.<sup>173</sup>

172. The meeting was impromptu; it was only announced over the radio on 18 April 1994, which did not leave the Butare prefectural authorities enough time to make necessary arrangements. His reason for attending the meeting was therefore to assist with organizing it and receiving guests. This was necessary for two reasons. Firstly, the Butare prefectural authorities were not familiar with all of the newly appointed Interim Government officials, including the new Prime Minister. Kalimanzira explained that it was customary in Butare for VIPs to be received by the prefectural authorities; since he was a native of Butare and also knew the officials coming from Murambi, he assisted. Secondly, because it was a time of war and there had already been attacks in Butare *ville*, security was an issue.<sup>174</sup>

173. The meeting was chaired by the Prime Minister. Guests arrived as early as 10:30 a.m., but the meeting did not start until midday because of the President’s late arrival. Kalimanzira testified that in practical terms, his tasks were limited to those of a protocol and security officer. He assisted the ministers he knew with finding their seats on a podium facing the other dignitaries and the public. Then he returned to the hall’s entrance to assist latecomers and those who wished to leave or go to the bathroom, and to prevent the entry of unknown civilians. Kalimanzira asserted that he did not speak, nor did he take a seat for the duration of the three-hour meeting. He insisted that he did not act as the master of ceremonies; rather, it was the Prime Minister who assumed the role of introducing and giving the floor to speakers.<sup>175</sup>

174. Kalimanzira heard Prime Minister Kambanda’s and President Sindikubwabo’s speeches, but could not follow them closely because he was preoccupied with incoming and outgoing guests. He could not remember who spoke first. He recalled that the Prime Minister spoke about the prevailing situation, describing how the current government was formed, talking about the war and different fighting zones in Kigali, and urging citizens to be cautious. He was already aware of much of this information. With respect to the President’s speech, Kalimanzira recalled simply that he gave advice and instructions to the *préfets*, and gave the impression that he had not prepared his speech in advance.<sup>176</sup>

175. Kalimanzira said he did not interpret the speeches as a signal to trigger massacres in the Butare area. He recalled that after the meeting there was a reception at which the guests chatted. He explained that he did not consider the information conveyed at the meeting to be new, special, or unfamiliar, and he did not hear anyone incite anyone else to kill; rather, what he understood at the time was that the speeches were urging members of the population not to kill their neighbours and to stop massacres. However, some people may have believed that

<sup>173</sup> T. 10 February 2009 pp. 34-35 (Callixte Kalimanzira).

<sup>174</sup> T. 10 February 2009 pp. 35-36 (Callixte Kalimanzira).

<sup>175</sup> T. 10 February 2009 pp. 36-37 and T. 11 February 2009 pp. 5-6 (Callixte Kalimanzira).

<sup>176</sup> T. 10 February 2009 pp. 37-38 and T. 11 February 2009 p. 5 (Callixte Kalimanzira).

other things were said given the prevailing situation. He returned to Murambi with the ministers he had arrived with, stopping briefly to visit his wife and children on the way.<sup>177</sup>

### 2.2.2. Deliberations

176. Both AZM and BCA are detainees in the same prison, awaiting their final judgements after having confessed to their participation in the genocidal acts that were allegedly triggered by the speeches given at this meeting. They may therefore have a motive to falsely accuse Kalimanzira. However, that does not *per se* make their testimony unreliable. The Chamber did not hear whether they have in fact accused Kalimanzira in their guilty confessions.

177. AZM's testimony concerning the MRND Palace meeting is confirmed by Kalimanzira's testimony on all uncontested points. On the contested point as to Kalimanzira's role at the meeting, AZM's testimony that Kalimanzira was "in a way" the master of ceremonies is not accusatory in nature: "He wasn't doing anything in particular, apart from indicating those people who had to take the floor. And whenever he indicated one person, he would give him the microphone".<sup>178</sup> BCA testified that Kalimanzira was the master of ceremonies, but was not examined further on this. His remaining testimony is moderate in nature with respect to Kalimanzira. BCA's testimony on other events, such as Kalimanzira's involvement in an archery training exercise in Muganza *commune* (see III.2.8), is equally moderate. Further, AZM's and BCA's participation in the meeting, whatever the role of Kalimanzira, is unlikely to give rise to criminal charges against them.

178. The Chamber therefore finds no indication that AZM or BCA had motives to falsely accuse Kalimanzira in respect of his role at the MRND Palace meeting.

179. Kalimanzira's testimony, on the other hand, was evasive on the contested points. As to his role at the meeting, he testified that a master of ceremonies is someone who gives the floor to speakers at weddings, not at meetings bringing together authorities.<sup>179</sup> However, under cross-examination, he stated that Prime Minister Kambanda was the one who gave the floor to the speakers and relies on documentary evidence to support his statement.<sup>180</sup> Prime Minister Kambanda's speech, which was admitted into evidence,<sup>181</sup> indicates that he introduced President Sindikubwabo and the cabinet Ministers, but does not indicate whether he had been given the floor by somebody else or consecutively gave the floor to others.

180. Further, Kalimanzira's claim that he could not have been the master of ceremonies and could not focus on what the speakers said because he was preoccupied with receiving dignitaries at the entrance and ensuring that no uninvited persons would enter the hall is unbelievable. He may have received dignitaries at the door, but that did not prevent him from giving an extensive account of Prime Minister Kambanda's speech, the possible inflammatory nature of which the Prosecution does not make an issue.<sup>182</sup> He claimed that he did not pay attention to President Sindikubwabo's allegedly inflammatory speech, although the President arrived late, when there would have been no more dignitaries to receive and to distract him from paying attention. As to checking whether unauthorized persons entered the hall, it is unlikely that the Butare prefectural staff would require Kalimanzira's assistance to identify local leaders.

<sup>177</sup> T. 10 February 2009 p. 38 and T. 11 February p. 7 (Callixte Kalimanzira).

<sup>178</sup> T. 17 June 2008 p. 7 (Witness AZM).

<sup>179</sup> T. 10 February 2009 p. 36 (Callixte Kalimanzira).

<sup>180</sup> T. 11 February 2009 p. 6 (Callixte Kalimanzira).

<sup>181</sup> See Exhibit D114.

<sup>182</sup> T. 20 April 2009 pp. 54-55 (Closing Arguments).

181. The Chamber finds that AZM's testimony, as supported by BCA, constitutes reliable evidence that Kalimanzira, without otherwise addressing the meeting, did announce the name of the next speaker and handed him the microphone. The evidence is in conformity with the submission of the Defence in its Pre-Trial Brief that the master of ceremonies "strictly performed protocol duties and exercised no censorship over the content of the speeches made."<sup>183</sup>

182. It is undisputed that in Kambanda's guilty plea, which was read onto the record,<sup>184</sup> the former Prime Minister accepted criminal responsibility for genocidal effects of President Sindikubwabo's speech at the MRND Palace meeting on 19 April 1994. However, the Chamber notes that in Kalimanzira's case, the evidence as a whole does not establish that he could have lent moral support or political credibility in any significant way to Sindikubwabo's speech in the particular circumstances of this meeting. As a civil servant, Kalimanzira was subordinate to the President and the Prime Minister; any authority or influence he may have possessed in the view of the audience paled in comparison to that of the President and the Prime Minister. The evidence concerning his limited participation in the meeting and the fact that he was not introduced by Prime Minister Kambanda, unlike President Sindikubwabo and the cabinet Ministers, also evinces the relative lack of significance of his political standing in this context. Although Kalimanzira was well-respected in Butare, the President and Prime Minister were also natives of Butare and thus would have gained little from Kalimanzira's endorsement or support in this regard.

183. For these reasons, Kalimanzira's presence during the speeches or his failure to object to any portions thereof could not have substantially contributed to the commission of any of the crimes alleged to have resulted from these speeches. The Chamber therefore finds that no criminal responsibility may attach to Kalimanzira for his role at the MRND Palace meeting on 19 April 1994.

### 2.3. Other Meetings and Visits to Butare, April to mid-July

184. At paragraph 8 of the Indictment, the Prosecution charges Kalimanzira with Genocide for visiting Butare *préfecture* on several occasions between April and mid-July 1994, together with senior Interim Government dignitaries, including Théodore Sindikubwabo, Jean Kambanda, and Pauline Nyiramasuhuko, as well as senior local government officials such as Alphonse Nteziryayo, and high-ranking RAF officers such as Tharcisse Muvunyi. The purpose of these visits was to sensitize the population to the Government's policy and incite the population to kill Tutsis. Thousands of Tutsis were allegedly killed throughout Butare as a result of these visits.

185. In its Closing Brief, the Prosecution relies on the evidence of six witnesses who testified regarding five separate events to support this allegation, namely:

- i. AZM testified that Kalimanzira attended several meetings of the Butare Prefectural Security Council in April and May 1994, during which the massacres of Tutsis, the distribution of Tutsi property and the implementation of a civil defence programme were discussed. Kalimanzira also participated in a tour of Mugusa and Kibayi *communes* with the Security Council, in which he told the local population to destroy the houses of dead Tutsis;

<sup>183</sup> Defence Pre-Trial Brief, para. 15.

<sup>184</sup> T. 11 February 2009 pp. 8-9 (Callixte Kalimanzira).

- ii. BWI testified regarding Kalimanzira's presence at a public security meeting at the football field close to the Muganza *commune* office at the end of April or early May 1994 where Kalimanzira instructed the crowd to kill Tutsis;
- iii. FAC testified about Kalimanzira's presence at a public rally next to the cemetery near the Rwandan National University in Butare in late May or June 1994 where Kalimanzira instructed the crowd to search for Tutsis in hiding and kill them;
- iv. AZT testified that Kalimanzira attended a public rally at Nyirakanywero in Nyabitare *secteur* (Muganza *commune*) at the beginning of June 1994 where Kalimanzira told the crowd to fight the accomplices;
- v. BCA and BBB testified about Kalimanzira's presence at the inauguration of Élie Ndayambaje on 21 or 22 June 1994 as *bourgmestre* of Muganza *commune*, where Ndayambaje instructed the crowd to kill remaining Tutsi survivors and Kalimanzira did not express disapproval of this instruction.<sup>185</sup>

186. The Defence denies these allegations. In addition, Kalimanzira relies on his alibi (see III.1.2).

### 2.3.1. Notice

187. In its Closing Brief, the Defence objected to the Prosecution's failure to plead the first, third and fifth events listed above in the Indictment.<sup>186</sup> The Defence has not, however, offered any explanation for its delay in raising these objections.

188. The Chamber recalls that on 6 June 2008, the Defence sought the exclusion of six Prosecution witnesses from testifying on the basis that their anticipated testimonies in the Prosecution Pre-Trial Brief were related to material facts not pleaded in the Indictment.<sup>187</sup> The Chamber granted the motion in part; in respect of the parts of the motion that were denied, the Chamber found that the Defence had no case to answer after the close of the Prosecution case.<sup>188</sup> The Defence could have raised its current objections in its motion of 6 June 2008. The Chamber is under no obligation to address an argument that is raised for the first time in the Defence's closing brief. Nonetheless, failing to object at the time the evidence is introduced does not prohibit the Defence from objecting at a later date.<sup>189</sup> In the interests of ensuring the integrity of the proceedings and safeguarding the rights of the Accused, the Chamber finds that consideration of the Defence's arguments, as well as the omission of the second and fourth events listed above from the Indictment (to which the Defence did not specifically object) is warranted in this case.<sup>190</sup>

189. The Chamber will first consider whether the inclusion of the five events listed above constitute the introduction of new charges or new material facts to the Prosecution's case. The Chamber recalls that the count or charge is the legal characterisation of the material facts which support the charge. In pleading an indictment, the Prosecution is required to specify

<sup>185</sup> Prosecution Closing Brief, paras. 43-75.

<sup>186</sup> Defence Closing Brief, para. 1140.

<sup>187</sup> See *Requête aux fins d'exclusion des témoins à charge BWM, BWN, BXB, BXC, BXD et BXL*, filed on 9 June 2008.

<sup>188</sup> Decision on Defence Motion to Exclude Prosecution Witnesses BWM, BWN, BXB, BXC, BXD and BXL (TC), 24 June 2008; Decision on of No Case To Answer (TC), 3 September 2008.

<sup>189</sup> *Bagosora et al.* Interlocutory Appeal Decision, para. 45.

<sup>190</sup> *Semanza* Trial Judgement, paras. 42, 45; *Kayishema and Ruzindana* Appeal Judgement paras. 95, 97; *Ntakirutimana* Trial Judgement, para. 52.

the alleged legal prohibition infringed (the count or charge) and the acts or omissions of the accused that give rise to that allegation of infringement or a legal prohibition (material facts).<sup>191</sup>

190. Reading the Indictment as a whole, the Chamber notes that paragraph 6 of the Indictment indicates that the particulars of Counts 1 and 2 are set out in paragraph 7 to 17, which served to notify the Defence that paragraph 8 is a specific allegation against the accused. The Chamber finds that paragraph 8, although generally worded, contains a charge, namely, Kalimanzira's participation in several visits to Butare, the purpose of which was to sensitize the population to the Government's policy and instigate<sup>192</sup> the population to kill Tutsis. Paragraph 8 does not, however, provide detail regarding precisely when or where Kalimanzira engaged in this behaviour, or how. Save for one exception discussed below, the Chamber finds that the events, listed above, provide particulars underlying the charge contained in paragraph 8, and are therefore material facts.<sup>193</sup>

191. By failing to include these material facts in paragraph 8, the Indictment is defective. The Chamber must consider whether the Prosecution provided the Defence with clear, consistent and timely information detailing the facts underpinning the charge in paragraph 8 in order to cure this defect. The Chamber recalls that the timing of such communications, the importance of the information to the ability of the accused to prepare his defence, and the impact of the newly-disclosed material facts on the Prosecution's case are relevant to determining whether subsequent communications make up for the defect in the indictment.<sup>194</sup>

192. The Prosecution Pre-Trial brief discusses Kalimanzira's attendance in Butare from April to July 1994. The Prosecution specifically alleges that Kalimanzira was seen in Gisagara in Ndora *commune* encouraging and instructing the population to kill Tutsis; in Muganza *commune* where he attended public meetings during which attacks against Tutsis were discussed and encouraged; in Nkubi *secteur* (Ngoma *commune*) in the second half of April 1994 where he encouraged the population to defend themselves against the Tutsi enemy; in Sahera *secteur* (Ngoma *commune*) in April 1994 where he said that Tutsis should be killed; at a public rally close to the Rwandan National University in Butare in late May or early June 1994 where he gave instructions to kill Tutsis.<sup>195</sup>

193. In addition, in the annex to the Prosecution Pre-Trial Brief, which summarises anticipated witness testimonies with reference to the relevant paragraphs of the Indictment, the evidence of 39 witnesses is indicated as being pertinent to paragraph 8, including the evidence of AZM, BWI, FAC, AZT, BCA and BBB.

194. The summary of AZM's testimony indicates that he would testify that Kalimanzira was a member of the Butare Prefectural Security Council during the genocide and that he attended meetings of the council. The Security Council would provide arms, ammunition and soldiers to kill Tutsis in Butare *préfecture*. This is consistent with AZM's witness statement,

<sup>191</sup> *Muvunyi* Interlocutory Appeal Decision, para. 19.

<sup>192</sup> Paragraph 8 of the Indictment uses the term "incite", not "instigate". The Chamber clarifies that "incite" in this context refers to the crime of Genocide under Article 2 (3)(a) by mode of Instigation under Article 6 (1), and not the crime of Direct and Public Incitement to Commit Genocide under Article 2 (3)(c). For a fuller discussion on the difference between incitement as crime and as mode of liability, see III.4.1.

<sup>193</sup> For an analysis of when new material facts could support separate charges against an accused, see *Muvunyi*, Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005, paras. 33 and 35.

<sup>194</sup> *Niyitegeka*, Appeal Judgement, para. 197; *Kupreškić et al.* Appeal Judgement, paras. 119-121.

<sup>195</sup> Prosecution Closing Brief, paras. 54, 63.



which was disclosed to the Defence in the Supporting Materials on 15 November 2005 in accordance with Rule 66 (A) of the Rules.

195. The summary of AZM's testimony also states that he would testify that Kalimanzira attended a meeting in Kibayi *commune* in May 1994, accompanied by other authorities, where the participants incited the population against the Tutsis.<sup>196</sup> Kalimanzira asked the population to demolish all houses belonging to Tutsis who were killed or who had fled in order to hide the attacks from foreigners. The Chamber is not satisfied that the Defence received clear and consistent notice of this allegation, as it was not included in AZM's redacted witness summary disclosed with the Supporting Materials. Moreover, the Chamber finds that the allegation that Kalimanzira told the population to destroy houses does not support a charge of instigation to commit genocide, but rather alleges a different form of criminal conduct and therefore impermissibly expands the charge pleaded in paragraph 8.

196. The summary of BWI's testimony indicates that he would testify that, among other things, he saw Kalimanzira at a meeting at the football field near the Muganza *commune* office in late April or early May 1994. Kalimanzira told the crowd that they should fight the Tutsis, the enemy, wherever they were found. He also instructed the crowd to eliminate the *Inkotanyi* accomplices, *i.e.* the Tutsis. This is consistent with BWI's witness statement, disclosed in the Supporting Materials.

197. The summary of FAC's testimony indicates that he would testify that he saw Kalimanzira with other senior officials at a public meeting near the Rwandan National University in Butare at the end of May or early June 1994. Kalimanzira encouraged the crowd to kill Tutsis, and killings of Tutsis followed the meeting. This is consistent with FAC's witness statement, disclosed in the Supporting Materials.

198. The Chamber also recalls that at the commencement of FAC's testimony, the Defence objected to a portion of his evidence that it had not been given notice of in the Prosecution Pre-Trial Brief, asserting that it was only given notice of FAC's evidence in relation to Kalimanzira's participation in the June 1994 meeting near the Rwandan National University in Butare. The Chamber held that it would disregard this other aspect of his evidence.<sup>197</sup> The Defence was therefore clearly on notice of FAC's evidence regarding Kalimanzira's participation in this June 1994 meeting.

199. The summary of AZT's testimony indicates that he would testify that, among other things, he saw Kalimanzira and other officials at a meeting in early June 1994 at Nyirakanywero in Muganza *commune*. The crowd was told that any one caught protecting a Tutsi would be killed with him. This is consistent with AZT's witness statement, disclosed in the Supporting Materials, which alleged that it was Kalimanzira who made this statement.

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<sup>196</sup> The Chamber notes that AZM testified that during the Security Council's first stop in Kibayi *commune*, Colonel Nteziryayo took the floor at a public rally and told the general public that they had to defend themselves, that the enemy was infiltrating the population, and that therefore the people had to be vigilant. He also said that there were Hutus who had hidden Tutsis and they had to be "taken out". AZM understood that those Tutsis had to be killed. AZM did not recall where Kalimanzira was during Nteziryayo's alleged speech, but believed that Kalimanzira was still with them [T. 17 June 2008 pp. 20-21 (Witness AZM)]. The Chamber notes that the material facts introduced through AZM's evidence were not included in either his witness statement disclosed in the Supporting Materials or the Prosecution Pre-Trial Brief; adequate notice was therefore not provided. In any event, the Prosecution does not appear to rely on these material facts to support the charge at paragraph 8 and acknowledges that Kalimanzira may not have been present at this public rally (Prosecution Pre-Trial Brief, para. 47).

<sup>197</sup> T. 19 June 2008, pp. 4-5 [closed] (Witness FAC).

200. The summary of BBB's testimony indicates that he would testify that, among other things, he saw Kalimanzira in June 1994 at the inauguration of Élie Ndayambaje as *bourgmestre* of Muganza *commune*. Ndayambaje suggested that Tutsis in hiding should be killed, and Alphonse Nteziryayo asked the crowd to bury the bodies of people who had been killed and to destroy their houses. Kalimanzira did not disapprove of these statements. This is consistent with BBB's witness statement, disclosed in the Supporting Materials.

201. In light of the foregoing, the Chamber finds that the Defence has received clear and consistent notice of the material facts upon which the Prosecution seeks to rely in respect of paragraph 8 of the Indictment, save for one aspect of AZM's testimony as noted above. The Defence has advanced a general assertion, however, that notice was not timely because it could not conduct sufficient investigations regarding these new facts upon the delivery of the Prosecution Pre-Trial Brief.<sup>198</sup> The Prosecution Pre-Trial Brief was filed on 16 April 2008, three weeks before the commencement of trial, in English, whereas the working language of the Defence is French. The Defence case began on 17 November 2008, four months after the close of the Prosecution case. The Chamber considers this sufficient time for the Defence to prepare their case.

202. The Chamber further notes that the Defence was able to mount a defence to the Prosecution's allegations in respect of paragraph 8 of the Indictment. Prosecution Witnesses AZM, BWI, FAC, AZT, BCA and BBB were cross-examined by the Defence concerning their evidence; Defence Witnesses Félicien Kajjibwami, Albert Barikwinshi, Jean de Dieu Rutabana, Innocent Mukuralinda, AK42, MKB, KXC, and AM02 testified to refute the allegations relating to paragraph 8. In its own Pre-Trial Brief, the Defence specifically refuted some of these allegations, such as the meeting near the Rwandan National University in Butare;<sup>199</sup> Kalimanzira's attendance at the Butare Prefectural Security Council meetings;<sup>200</sup> the meeting in the Nyirakanywero centre in Nyabitare *secteur*;<sup>201</sup> the inauguration of Élie Ndayambaje;<sup>202</sup> and otherwise relied on the alibi.<sup>203</sup> It is therefore clear that the Defence was aware of these elements of the Prosecution's case and was able to challenge them throughout the proceedings.

203. In the Chamber's view, the Defence's case was not materially impaired by the Prosecution's failure to include the material facts underpinning the charge at paragraph 8 of the Indictment. The Chamber therefore finds that the Prosecution has cured the defect in paragraph 8 of the Indictment relating to the allegations discussed above by the provision of clear, consistent and timely notice.

204. Finally, the Chamber also notes that in its Closing Brief, under a section entitled "Cumulative Convictions", the Prosecution asserts that the evidence relevant to paragraphs 20, 23 and 24 of the Indictment, which particularise Count 3, is also relevant to paragraph 8 of the Indictment.<sup>204</sup> The Indictment does not indicate that these paragraphs are relevant to Counts 1 and 2 in any respect; indeed, paragraph 6 of the Indictment states that paragraph 7 through 17 only are relevant to those counts. On the basis of reading the Indictment alone, Kalimanzira would not have understood that he was being charged for the allegations contained in paragraphs 20, 23 and 24 under Counts 1 and 2. The Chamber finds that the

<sup>198</sup> Defence Closing Brief, para. 1141 and fn. 1003.

<sup>199</sup> Defence Pre-Trial Brief, paras. 22-23.

<sup>200</sup> Defence Pre-Trial Brief, paras. 24-25.

<sup>201</sup> Defence Pre-Trial Brief, paras. 30-31.

<sup>202</sup> Defence Pre-Trial Brief, paras. 32-33.

<sup>203</sup> Defence Pre-Trial Brief, paras. 26-27, 36.

<sup>204</sup> Prosecution Closing Brief, para. 321.

Prosecution is essentially seeking to amend the Indictment to expand the charges under Counts 1 and 2. This is impermissible. Consequently, the Chamber will not consider this evidence in relation to paragraph 8.<sup>205</sup>

### 2.3.2. Butare Prefectural Security Council Meetings

205. The Prosecution alleges that Kalimanzira attended several meetings of the Butare Prefectural Security Council in April and May 1994. In these meetings, the massacre of Tutsis, how to control the fighting among Hutus regarding the property of deceased Tutsis, and the implementation of the civil defence program was discussed, among other topics. The Prosecution alleges that there was no discussion regarding what ought to be done about the perpetrators of the killings.<sup>206</sup>

206. The Defence denies that Kalimanzira attended these meetings, save for one. In addition, Kalimanzira relies on his alibi that save for a few specified occasions, he was working in Murambi (*Gitarama préfecture*) from 14 April to 31 May 1994 (see III.1.2).

#### 2.3.2.1. Evidence

##### *Prosecution Witness AZM*

207. AZM testified that he was a member of the Butare Prefectural Security Committee and that Kalimanzira attended a number of meetings after 19 April 1994, all held around 10:00 a.m. at the MRND Palace in Butare *ville*.<sup>207</sup> The first meeting was held on 21 April 1994. Sylvain Nsabimana, Butare's new *préfet*, chaired the meeting, and Kalimanzira was present, along with local service chiefs from Butare *ville* and the *bourgmestre* of the urban council. At the meeting, the participants discussed the massacres of the previous night in Taba. The purpose of the meeting was to determine who the victims had been, so all they did was set up a committee to inquire into what had happened. The meeting was very short, lasting no longer than ten minutes.<sup>208</sup>

208. The next meeting took place the following day, on 22 April around 9:30 a.m., at the MRND Palace and was also chaired by *préfet* Nsabimana. AZM could not recall if Kalimanzira was present. AZM was certain about the date because it was during that meeting that the report of the committee set up on 21 April was presented. The committee reported that the people had been killed by soldiers. The military commander who was present at the meeting was instructed to find a solution to the problem.<sup>209</sup>

209. AZM explained that between 22 April and 10 May, there no Security Council meetings were convened in Butare. AZM testified that the purpose of this lull was to enable the perpetration of Tutsi massacres to continue. The next meeting was on 10 May 1994 and was chaired by *préfet* Nsabimana; Kalimanzira was in attendance. AZM testified that they discussed how to bury the bodies of all of the people who had been killed and decided to get a Caterpillar to bury the bodies. The *bourgmestre* was asked to tell the public to bury the bodies, and detainees were tasked to assist. There was no discussion concerning what should be done about the perpetrators of the killings. AZM also recalled that the *bourgmestre* of Ntyazo *commune* came to the meeting and asked for soldiers to kill Tutsis in his *commune*,

<sup>205</sup> *Karera* Appeal Judgement, paras. 365-370; *Muvunyi* Appeal Judgement, paras. 155-156.

<sup>206</sup> Prosecution Closing Brief, paras. 43-47.

<sup>207</sup> T. 16 June 2008 pp. 10-20, 66 [closed] (Witness AZM).

<sup>208</sup> T. 17 June 2008 pp. 11-12 (Witness AZM).

<sup>209</sup> T. 17 June 2008 pp. 12-13 (Witness AZM).

whom he referred to as resistant Tutsis. The *bourgmestre* of Nyaruhengeri *commune* announced at the meeting that he did not have ammunition and requested some. The military commander to whom these requests were directed told them to seek assistance from the *communal* police.<sup>210</sup>

210. The next meeting was about one week later, on 16 or 17 May 1994. AZM testified that although Kalimanzira was present, he was not a member of the Butare Prefectural Security Committee, and that no explanation was provided concerning Kalimanzira's attendance. AZM explained that as the *préfet* could invite someone, he assumed that Kalimanzira was assisting the new *préfet* in running things. AZM also believed that perhaps Kalimanzira was a government representative, since there was a special situation in Butare, because although massacres were happening elsewhere, they were not occurring in Butare.<sup>211</sup>

211. At that meeting, AZM testified that they discussed the fighting of Hutus over the property of Tutsis who had been killed. They spoke of reinstating peace, asking the general public to stop killing and restoring security. They asked the *bourgmestre* to address the problem. They did not discuss the perpetrators of the killings.<sup>212</sup>

212. The next meeting was held about four days later, after the Prime Minister gave instructions regarding civilian defence. Kalimanzira was present. AZM testified that a decision was taken to go to some *communes* in Butare *préfecture* to explain to the general public what civilian defence was all about.<sup>213</sup>

#### *Callixte Kalimanzira*

213. Kalimanzira testified that he could not have attended a Security Council meeting on 21 or 22 April, because he was in Kibungo installing a new *préfet* on 21 April, and on his way back the next day, drove straight to Gitarama without stopping in Butare. Kalimanzira further testified that he never went to Butare *préfecture* in May 1994 and denied attending a Security Council meeting in Butare on 10 May. Kalimanzira also denied attending a Security Council meeting in Butare on 16 May with Pauline Nyiramasuhuko, but then admitted to it under cross-examination after being confronted with and reviewing a transcript of a Radio Rwanda broadcast which indicated that he was present.<sup>214</sup>

#### *Defence Exhibit 113*

214. Exhibit D113 is the minutes of a 10 May 1994 meeting attended by employees and heads of services in Butare *préfecture*, presided over by *préfet* Nsabimana. The minutes indicate that the meeting began at 9:30 a.m. and ended at 11:00 a.m., and contains a list of the 29 persons present, which does not include Kalimanzira.

#### 2.3.2.2. Deliberations

215. At the relevant times alleged, Kalimanzira claims to have been working in Murambi (Gitarama *préfecture*). As discussed above, the Chamber disbelieves his alibi (see III.1.2.2).

<sup>210</sup> T. 17 June 2008 pp. 13-15 (Witness AZM)

<sup>211</sup> T. 17 June 2008 pp. 14-15 (Witness AZM).

<sup>212</sup> T. 17 June 2008 p. 17 (Witness AZM).

<sup>213</sup> T. 17 June 2008 p. 18 (Witness AZM).

<sup>214</sup> T. 11 February 2009 pp. 16-20, 23-24 (Callixte Kalimanzira).

216. AZM has pleaded guilty to involvement in the genocide, has been placed in the first category and is awaiting an appeal.<sup>215</sup> He testified that he was a member of the Butare Prefectural Security Council, and admits that they failed in their duty to protect the Tutsis who were killed on their watch.<sup>216</sup> AZM may therefore have a motive to diminish any criminal activities of the Security Council in relation to the genocide in order to avoid incurring any additional responsibility.

217. Although Kalimanzira flatly denied being in Butare in May 1994, he acknowledged that he attended one meeting of the Security Council after being confronted with the Radio Rwanda broadcast which placed him there. The Chamber does not accept Kalimanzira's explanation that he had simply forgotten having attended the meeting. Having admitted as such only after being confronted with the Radio Rwanda broadcast, the Chamber finds his evidence that he did not attend any other Security Council meeting to be unbelievable.

218. Kalimanzira also asserts that he could not have attended a Security Council meeting on 21 April because on that day he was installing a new *préfet* in Kibungo, where he says he spent the night. However, the Chamber recalls AZM's testimony that all the Butare Prefectural Security Council meetings started around 10:00 a.m., including the one on 21 April, which lasted no longer than ten minutes.<sup>217</sup> Kalimanzira testified he left Gitarama on 21 April at around 9:00 a.m., reaching Kibungo nine hours later at around 6:00 p.m..<sup>218</sup> The Chamber therefore finds that there is no contradiction in their testimonies, as Kalimanzira could easily have gone to Butare *ville* to attend this meeting in the morning and also reach Kibungo *préfecture* in time to install the new *préfet* that same evening. Kalimanzira's alibi evidence does not cast reasonable doubt on AZM's testimony.

219. The Defence also relies on Exhibit D113, arguing that the minutes are of the 10 May Security Council meeting and prove that Kalimanzira was not present.<sup>219</sup> The Chamber finds that Exhibit D113 is clearly the minutes of a staff meeting, not of a Security Council meeting, given that the minutes indicate the meeting was attended by employees and other heads of services in Butare, and that its purpose was to allow the new *préfet* to meet his staff. To the extent that these minutes refute AZM's testimony that the 10 May Security Council meeting occurred at 10:00 a.m., by indicating that the *préfet* was in another meeting from 9:30-11:00 a.m., the Chamber finds that Exhibit D113 does not exclude the possibility that the *préfet* attended the Security Council meeting slightly before or after the staff meeting, or that AZM was mistaken about the precise time at which the Security Council meeting took place.

220. The Chamber therefore finds that Kalimanzira attended several meetings of the Butare Prefectural Security Council in May 1994. The Chamber notes, however, that AZM's evidence was that the Security Council is provided for by law in every *préfecture* and had been in existence for a very long time.<sup>220</sup> With respect to what occurred at the meetings in question, the evidence is that the purpose of the 21 April meeting was to investigate the massacres of the night before, and to find the perpetrators; the discussions at the 16 or 17 May meeting concerned fighting by Hutus over the property of dead Tutsis and restoring peace; the discussions at the 21 or 22 May meeting concerned directives regarding civil defence. AZM testified that at the 10 May meeting, one *bourgmestre* asked for assistance in killing Tutsis and another asked for more ammunition, but these requests were refused by the

<sup>215</sup> T. 16 June 2008 p. 66 [closed] and T. 17 June 2008 p. 24 [closed] (Witness AZM).

<sup>216</sup> T. 16 June 2009 p. 66 [closed] (Witness AZM).

<sup>217</sup> T. 17 June 2008 pp. 11-12 (Witness AZM).

<sup>218</sup> T. 10 February 2009 pp. 39-42 (Callixte Kalimanzira).

<sup>219</sup> Defence Closing Brief, paras. 799-800.

<sup>220</sup> T. 17 June 2008 p. 27 (Witness AZM).

military commander. AZM also stated that meetings were not held between late April and early May in order to allow the massacres to continue unabated.

221. The Chamber recalls that the charge alleged in paragraph 8 of the Indictment is that Kalimanzira participated in visits to Butare to sensitize the population to the Government's policy and to instigate them to kill Tutsis. The Indictment alleges that this activity resulted in the killing of thousands of Tutsis in Butare *préfecture*. Upon review of the evidence open to consideration, the Chamber finds that AZM's testimony does not support these allegations. In particular, there is insufficient evidence to conclude that instigation occurred at the Security Council meetings. Further, there is no evidence demonstrating how the Security Council and the population were linked; there is insufficient evidence to conclude that the Security Council or Kalimanzira sensitized the population to any Government policy. The Chamber also does not find that it would be reasonable to make inferences in support of these conclusions on this evidence. Finally, although the Chamber accepts that Tutsis were killed by the thousands in Butare, there is no evidence to link the Security Council meetings to those killings. The Prosecution has therefore failed to prove this allegation beyond a reasonable doubt.

### 2.3.3. Muganza Commune Football Field Security Meeting

222. The Prosecution alleges that Kalimanzira spoke at a public security meeting held on the football field close to the Muganza *commune* office at the end of April or early May 1994. Kalimanzira allegedly instructed the crowd to kill Tutsis and to set up patrols to find Tutsis in hiding. Large scale killings of Tutsis continued in the area as a result.<sup>221</sup>

223. The Defence denies that Kalimanzira attended the meeting. In addition, Kalimanzira relies on his alibi that save for a few specified occasions, he was working in Murambi (Gitarama *préfecture*) from 14 April to 31 May 1994 (see III.1.2).

#### 2.3.3.1. Evidence

##### *Prosecution Witness BWI*

224. BWI testified that he saw Kalimanzira on two occasions after the death of President Habyarimana, both times at public meetings on the football field near the Muganza *commune* office in Remera *secteur*.<sup>222</sup>

225. The first meeting was at the end of April or the beginning of May. BWI had been asked to attend a security meeting by a member of the *cellule* committee. He arrived before the meeting started, in the morning. There were many members of the population in attendance, both civilians and soldiers. There were officials already present when BWI arrived. Chrysologue Bimenyimana (*bourgmestre* of Muganza *commune*) commenced the meeting when other authorities arrived, about 20 minutes after BWI, around noon. These authorities included Kalimanzira, Dominique Ntawukuriryayo (*sous-préfet* of Gisagara), and Alphonse Nteziryayo with some soldiers.<sup>223</sup>

226. *Bourgmestre* Bimenyimana spoke first, introducing the authorities, and was followed by Nteziryayo, who told the population that the Tutsis were causing insecurity, and that they had to be sought out at all costs because they were the enemies of the population. Kalimanzira spoke next, telling the crowd that insecurity was being caused by accomplices of

<sup>221</sup> Prosecution Closing Brief, para. 51.

<sup>222</sup> T. 21 May 2008 pp. 28-29, 34 (Witness BWI).

<sup>223</sup> T. 21 May 2008 pp. 28-30, 44 (Witness BWI).

the *Inkotanyi*. He told the population not to loot the property of the Tutsis, but rather to exterminate them. Later on, the authorities would hand over the property of Tutsis who had been killed. He explained that the *Inkotanyi* were supported by the Tutsis and therefore the accomplices of the *Inkotanyi* had to first be exterminated. He told the population to set up day and night patrols so that the accomplices could be identified wherever they were hiding. Kalimanzira was the last to speak, for about 45-60 minutes, while the entire meeting lasted about two hours.<sup>224</sup>

227. BWI left at the end of the meeting, but before Kalimanzira. The killings had already started before the meeting, and afterwards, members of the population continued chasing Tutsis. In particular, the population went to look for Tutsis in hiding and killed them. BWI believes these Tutsis would have survived were it not for the meeting.<sup>225</sup>

*Defence Witness Félicien Kajyibwami*

228. On 8 May 1994, Kajyibwami was on the road leading to Kirarambogo in Muganza *commune* when he was stopped at a roadblock by about ten people who were manning it. The people at the roadblock accused him of being an *Inkotanyi*, which Kajyibwami clarified was a Tutsi. People started gathering to see the *Inkotanyi*. Kajyibwami testified that he tried to explain that he was not a Tutsi, and told the people who were manning the roadblock that he had played at the Muganza *commune* football field, and had worked with local farmers in the marshes. He remembered having worked with Kalimanzira, and that Kalimanzira was a native of the area, so he mentioned his past working relationship with Kalimanzira to the people at the roadblock hoping that this would assuage those manning the roadblock.<sup>226</sup>

229. Kajyibwami testified that the people at the roadblock replied that they had not had any news of Kalimanzira since the outbreak of the war, and said to Kajyibwami that perhaps he, the *Inkotanyi*, had killed Kalimanzira. The people at the roadblock started threatening him, spitting on his face, and undressing him. Kajyibwami realized that they were going to kill him. He then told them that he had been in school with *bourgmestre* Bimenyimana, and asked to be handed over to him because the *bourgmestre* knew he was not a Tutsi.<sup>227</sup>

230. Since the members of the public knew that there would be a Security Council meeting the following day at the *commune* office, they spared his life and took him to the *commune* office the following morning, around 7:30-8:00 a.m. Kajyibwami heard that a meeting was indeed going to take place, and people started arriving. The meeting started around 10:00 a.m., was held in the meeting hall of the *commune* office, and included all of the *conseillers* of Muganza's *secteurs*, as well as other civil servants of Muganza *commune*.<sup>228</sup>

231. Kajyibwami believed that *bourgmestre* Bimenyimana was the chairperson for the meeting. Kajyibwami met with him in his office after the meeting, and asked him whether Kalimanzira had died. *Bourgmestre* Bimenyimana said that the last time he had seen Kalimanzira was in April in Butare *ville*, but had not heard any rumour that Kalimanzira had died. *Bourgmestre* Bimenyimana then issued a certificate to Kajyibwami which stated that he was a Hutu to enable him to reach his house.<sup>229</sup>

<sup>224</sup> T. 21 May 2009 p. 33 (Witness BWI).

<sup>225</sup> T. 21 May 2008 pp. 33-34 (Witness BWI).

<sup>226</sup> T. 2 February 2009 pp. 30-31 (Félicien Kajyibwami).

<sup>227</sup> T. 2 February 2009 p. 31 (Félicien Kajyibwami).

<sup>228</sup> T. 2 February 2009 p. 32 (Félicien Kajyibwami).

<sup>229</sup> T. 2 February 2009 pp. 9, 32-33 (Félicien Kajyibwami).

### 2.3.3.2. Deliberations

232. At the relevant time alleged, Kalimanzira claims to have been working in Murambi (Gitarama *préfecture*). As discussed above, the Chamber disbelieves his alibi (see III.1.2.2).

233. Kajyibwami testified that *bourgmestre* Bimenyimana said that the last time he had seen Kalimanzira was in April in Butare *ville*. The Chamber notes that this evidence is hearsay and it does not, in any case, contradict BWI's testimony such that the meeting may have occurred shortly thereafter. The Chamber accordingly does not place much weight on it.

234. The Chamber notes that while other Prosecution witnesses gave evidence concerning meetings held on the Muganza *commune* football field, BWI was the sole witness to assert that a security meeting was held on the football field in late April or early May 1994.

235. For instance, both BCA and BBB testified that they saw Kalimanzira at meetings near the Muganza *commune* office namely in May on the football field (see III.2.8.1) and in June at the inauguration of Élie Ndayambaje (see III.2.3.6). Neither witness gave any evidence concerning an earlier meeting held on the football field.<sup>230</sup> BWI testified that BCA attended the late April or early May meeting on the football field. BCA, however, did not testify that he attended an earlier meeting on the football field, nor did the Prosecution put questions to him in this respect. In light of his professional position, BCA's failure to give evidence concerning this meeting and the Prosecution's failure to lead evidence from him on this event raises a reasonable doubt about whether the meeting actually occurred.

236. Consequently, the Chamber finds that the Prosecution has not proven beyond reasonable doubt that Kalimanzira attended a public security meeting held on the football field close to the Muganza *commune* office at the end of April or early May 1994.

### 2.3.4. Cemetery Rally and Arboretum Search

237. The Prosecution alleges that a public rally was held in June 1994 at the cemetery next to the Rwandan National University in Butare. Several authorities were present, including Kalimanzira, who instructed the large crowd in attendance to search for Tutsis in hiding and to kill them.<sup>231</sup>

238. The Defence denies that Kalimanzira was present. In addition, Kalimanzira relies on his alibi (see III.1.2).

#### 2.3.4.1. Evidence

##### *Prosecution Witness FAC*

239. FAC testified that he was invited to a meeting by Joseph Kanyabashi (*bourgmestre* of Ngoma *commune*). The meeting began around 9:30 a.m. the next day at the University cemetery, near a forest known as the "Arboretum", with approximately 2,000 people in attendance from various areas.<sup>232</sup> Many authorities were present, including *bourgmestre* Kanyabashi, Alphonse Nteziryayo and Sylvain Nsabimana (*préfet* of Butare), as well as many *sous-préfets* and *bourgmestres* of neighbouring *communes*.<sup>233</sup>

<sup>230</sup> T. 16 June 2008 p. 6 (Witness BBB).

<sup>231</sup> Prosecution Closing Brief, para. 53.

<sup>232</sup> T. 19 June 2008 pp. 6-7, 31 (Witness FAC).

<sup>233</sup> T. 19 June 2008 p. 7 (Witness FAC).



240. FAC testified that Kalimanzira was present at the meeting, which was held to discuss the Tutsis still in hiding and the Hutus who had started killing other Hutus. Kalimanzira welcomed the meeting and was the highest-ranking and most respected authority present. Kalimanzira instructed them to search houses to ensure that no enemies were hiding and to search the forest, woods and bushes to ensure that no *Inkotanyi* were hiding. FAC understood "*Inkotanyi*" to refer both to fighters from Uganda and his neighbours. He explained that, at that time in Rwanda, "enemy" meant Tutsis. FAC recalled that Kalimanzira also warned them not to hide Tutsis so that by July when national festivities were due to be held there would be no surviving *Inkotanyi*. The following speakers, *préfet* Nsabimana and *bourgmestre* Kanyabashi, reiterated this message.<sup>234</sup>

241. After receiving these instructions, FAC and others from the meeting immediately went in search of Tutsis in hiding. Two Tutsis from Tumba *secteur* were killed. In the following days, FAC participated in an attack during which a Tutsi child was killed. He also assisted with throwing six Tutsi children into a toilet. FAC testified that three Tutsis who were hiding in his home were killed after as he could not afford to bribe the killers.<sup>235</sup>

242. FAC also testified that before the meeting, at approximately 7:30 or 8:00 a.m., they searched the Arboretum forest, found corpses of three people who had been killed in the days before, but did not find anyone alive. The search lasted about an hour.<sup>236</sup>

#### *Defence Witness Albert Barikwinshi*

243. Barikwinshi testified that in June 1994, he was asked by *Conseiller* Vianney to participate in community work involving a search of the Arboretum, a forest near the university.<sup>237</sup> The next day, a Saturday, Barikwinshi was taken by bus to the University cemetery, where he saw three other buses and approximately 500 people. A gendarme named Habyarabatura spoke with all of the *conseillers*, who then instructed the people to circle the Arboretum forest and shout that any people hiding should not be afraid. The *conseillers* indicated that the gendarmes would be in front of them and that they would be shooting; the *conseillers* also explained that the *Inkotanyi* had apparently reached Save and, consequently, it was necessary to search the forest to ensure that they were not hiding there.<sup>238</sup>

244. As instructed, Barikwinshi entered the forest and made a lot of noise; after five minutes, he heard gunshots in the middle of the forest. After searching for approximately one hour and 40 minutes, Barikwinshi found Habyarabatura and Corporal Gatwazahad who had arrested young Tutsi man and woman.<sup>239</sup> He noticed that the Tutsis were hungry, extremely tired and had spent a number of days hiding in the forest. The Tutsis were taken away to a camp on a vehicle with gendarmes and he does not know what happened to them after that.<sup>240</sup>

245. Habyarabatura asked everyone to assemble. He thanked them for their work, informed them that the operation was useful because of the security problems throughout the

<sup>234</sup> T. 19 June 2008 pp. 8-10 (Witness FAC).

<sup>235</sup> T. 19 June 2008 pp. 9-10 (Witness FAC).

<sup>236</sup> T. 19 June 2008 pp. 9, 28-29 (Witness FAC).

<sup>237</sup> T. 26 January 2009 p. 57 and T. 27 January 2009 p. 14 (Albert Barikwinshi).

<sup>238</sup> T. 26 January 2009 p. 57 and T. 27 January 2008 pp. 14-16 (Albert Barikwinshi).

<sup>239</sup> T. 27 January 2009 p. 26 (Albert Barikwinshi).

<sup>240</sup> T. 26 January 2009 p. 59 (Albert Barikwinshi).

country, and encouraged them to carry out such operations in the future. He then introduced the new *préfet* of Butare to them, whose name Barikwinshi could not remember.<sup>241</sup>

246. Barikwinshi testified that he did not see Kalimanzira before, after or during the search at the Arboretum, nor had he heard about any other search. He also stated that it was not possible for more than 500 people to fit inside the cemetery.<sup>242</sup>

*Defence Witness Jean de Dieu Rutabana*

247. Rutabana testified that, in June 1994, the *responsable* of Agasharu *cellule* told him that the community work that normally took place in their *cellule* would take place in the Arboretum forest instead. The purpose was to search, to be sure that there were no *Inkotanyi* in the forest. As requested, Rutabana boarded a bus at 8:00 a.m. on Saturday, which took approximately 15 minutes to reach the University cemetery.<sup>243</sup>

248. Upon arrival at the cemetery next to the Arboretum, Rutabana noticed that Habyarabatuma, the commander of the gendarmerie in Butare, was present. Habyarabatuma spoke with the *conseillers* from various *secteurs* for approximately five minutes. The *conseillers* then relayed the instructions to the public and informed them that one group would search from Cyarwa and one from Save and that the gendarmes were going to surround the forest and intervene if anyone tried to flee.<sup>244</sup>

249. The search began at 8:30 a.m. The gendarmes started shooting and people started shouting. The search took about an hour and a half. They captured a young boy and girl who were taken to Habyarabatuma. Rutabana did not believe they were *Inkotanyi* because of the state they were in; they were famished and Rutabana could see that they were Tutsis who had come to hide because they were being hunted down. Since they were told that *Inkotanyi* normally carry weapons and wear uniforms, he could see that they were ordinary Tutsis. He does not know what happened to them afterwards.<sup>245</sup> Habyarabatuma then gave a small speech, telling the crowd they should “clear the bushes” in their own *cellules* to ensure that there were no *Inkotanyi*. He also introduced the new *préfet*, whose name Rutabana does not remember.<sup>246</sup>

250. Rutabana did not see Kalimanzira at the meeting after the search or when the *préfet* was introduced to them. He estimated that 400-500 people were present, and denied that 2,000 people could have been there. There were only four buses bringing people to the area and only approximately 100 people came on foot.<sup>247</sup> Rutabana asserted that a meeting could not have taken place before the search as the people hiding in the forest would have heard the noise and fled.<sup>248</sup> Rutabana stated that there was no other search at the Arboretum in June 1994.<sup>249</sup>

#### 2.3.4.2. Deliberations

<sup>241</sup> T. 26 January 2009 pp. 58; T. 27 January 2009 p. 16 (Albert Barikwinshi).

<sup>242</sup> T. 26 January 2009, p. 59; T. 27 January 2009 p. 17 (Albert Barikwinshi).

<sup>243</sup> T. 3 February 2009 pp. 7-8, 17, 22 (Jean de Dieu Rutabana).

<sup>244</sup> T. 3. February 2009 p. 8, 19 (Jean de Dieu Rutabana).

<sup>245</sup> T. 3 February 2009 pp. 8-9, 20-21 (Jean de Dieu Rutabana).

<sup>246</sup> T. 3 February 2009 pp. 8-9, 19 (Jean de Dieu Rutabana).

<sup>247</sup> T. 3 February 2009 pp. 9-10, 18 (Jean de Dieu Rutabana).

<sup>248</sup> T. 3 February 2009 p. 10 (Jean de Dieu Rutabana).

<sup>249</sup> T. 3 February 2009 pp. 9-10 (Jean de Dieu Rutabana)

251. At the relevant time alleged, Kalimanzira claims to have been at home in Butare *ville*. As discussed above, the Chamber disbelieves his alibi (see III.1.2.2).

252. The Chamber notes that all three witnesses who gave evidence concerning this event are suspected in involvement, or have been found guilty of involvement, in the genocide. Rutabana was sentenced to 30 years' imprisonment, but subsequently escaped prison and has fled to Burundi.<sup>250</sup> Barikwinshi was detained in Rwanda for suspected involvement in the genocide and fled to Burundi when released, because he heard he was to be re-arrested.<sup>251</sup> FAC was convicted by the Tumba *secteur Gacaca* court for looting and participating in attacks during the genocide, as well as collaborating and being an accomplice to other offences; he received a 25-year prison sentence, which he is currently appealing.<sup>252</sup> FAC has also acknowledged being dismissed from his job as an accountant for embezzlement and to having psychiatric problems as a result of a car accident.<sup>253</sup>

253. All three witnesses participated in the Arboretum search, and all three witnesses may have reasons to lie about preceding or following public rallies inciting them to commit genocide. In Barikwinshi's and Rutabana's case, as fugitives they would have an obvious incentive to deny the occurrence or knowledge of such rallies. FAC admits to participating in attacks following the cemetery rally; this makes him an accomplice. He has an obvious interest in diluting his own responsibility for his involvement in the killings for which he is currently appealing his sentence, if he believes that accusing Kalimanzira and other authorities of inciting him to commit his crimes could enhance his own judicial proceedings. These witnesses' testimonies must therefore be viewed with caution.

254. The Prosecution asserts that FAC's evidence is supported by documentary evidence.<sup>254</sup> During his cross-examination, Kalimanzira was shown a letter dated 24 May 1994 from *bourgmestre* Kanyabashi to various *conseillers*. Kalimanzira acknowledged that the letter stated that a decision had been taken by the security council that community work would be undertaken on 27 May 1994 to cut down bushes so that criminals would not have a place to hide. However, Kalimanzira asserted that such activity was a common occurrence in Rwanda, that the *bourgmestre* was in charge of directing civilians to do such work, and that he was in Gitarama at the pertinent time.<sup>255</sup>

255. The Chamber notes that the fact that the Arboretum was searched and that Kalimanzira was not there is not in dispute; therefore, the letter is not probative in that respect. More importantly, the letter from *bourgmestre* Kanyabashi does not serve to corroborate the crucial aspect of FAC's evidence, namely, that Kalimanzira was present at a rally which followed such a search in May or June 1994 and particularly that he personally instructed the crowd to search for enemy and *Inkotanyi* in hiding.

256. The Chamber finds certain aspects of FAC's evidence to give rise to reasonable doubt concerning this event. FAC testified that they undertook the search of the Arboretum *before* the rally, in which Kalimanzira told the crowd to search the forest and bushes for *Inkotanyi*. No explanation was given regarding why they undertook this search before, or who might have given them instructions to do so. In exercising due caution with respect to FAC's testimony, and with no other reliable evidence to support or corroborate his own, the

<sup>250</sup> T. 3 February 2009 pp. 6-7 (Jean de Dieu Rutabana).

<sup>251</sup> T. 26 January 2009 pp. 53-56 (Albert Barikwinshi).

<sup>252</sup> T. 19 June 2008 pp. 9, 14-17, 23 [closed] (Witness FAC).

<sup>253</sup> T. 19 June 2008 p. 25 [closed] (Witness FAC).

<sup>254</sup> Prosecution Closing Brief, para. 56.

<sup>255</sup> T. 11 February 2009 pp. 54-57 (Callixte Kalimanzira).

Chamber finds that FAC's evidence is insufficiently reliable to support a conviction. Consequently, the Prosecution has failed to prove beyond reasonable doubt that Kalimanzira was present at a search of the Arboretum forest, or at any subsequent rally nearby.

### 2.3.5. Public Rally at Nyirakanywero

257. The Prosecution alleges that Kalimanzira attended a public rally at Nyirakanywero in Nyabitare *secteur* (Muganza *commune*) at the beginning of June 1994. Kalimanzira was in the company of other officials and addressed the crowd, instructing them to fight RPF accomplices.<sup>256</sup>

258. The Defence denies that Kalimanzira attended this meeting. In addition, Kalimanzira relies on his alibi (see III.1.2).

#### 2.3.5.1. Evidence

##### *Prosecution Witness AZT*

259. AZT testified that he saw Kalimanzira three times in 1994.<sup>257</sup> The third time was a meeting in Nyirakanywero, near the market in Nyabitare *secteur*.<sup>258</sup> AZT estimated that the meeting was held in late May or early June 1994. He heard about it through word of mouth. A large crowd attended from various *communes* and AZT recognized people from seven *secteurs* of the *commune*.<sup>259</sup> The crowd gathered below the market on a slope. He was told that the meeting would begin at 10:00 a.m., but did not actually start until about 2:00 p.m. He attended the meeting from start to finish.<sup>260</sup>

260. After a while, vehicles arrived, bringing Alphonse Nteziryayo (who AZT described at the *préfet* of Butare),<sup>261</sup> who was leading the meeting, as well as Colonel Muvunyi, Kalimanzira, and others whom AZT did not recognize. Nteziryayo told the crowd that the country had four enemies: (1) America, (2) Museveni, (3) *Inyenzi Inkotanyi*, and (4) their accomplices (*i.e.* the Tutsis). He also said that if anyone was caught hiding a Tutsi, they would be taken to the authorities and punished. Muvunyi then made a similar speech.<sup>262</sup>

261. Kalimanzira then addressed the audience and instructed them to fight the "accomplices" with all their energy. Kalimanzira also said that they had started inspecting roadblocks and anyone found to be disobeying instructions would be considered an accomplice. Kalimanzira ordered that Tutsis in hiding should be found and called for those manning the roadblocks to be vigilant. Following the meeting, AZT and others immediately started searching for Tutsis in houses, the bush and the hills. His team found a Tutsi who had been arrested by another team and killed her.<sup>263</sup>

##### *Defence Witness AK42*

<sup>256</sup> Prosecution Closing Brief, para. 59.

<sup>257</sup> T. 20 June 2008 p. 24 (Witness AZT).

<sup>258</sup> T. 20 June 2008 p. 27 (Witness AZT).

<sup>259</sup> T. 20 June 2008 pp. 27 and T. 23 June 2008 pp. 23, 25 (Witness AZT).

<sup>260</sup> T. 23 June 2008 pp. 25-28 (Witness AZT).

<sup>261</sup> Alphonse Nteziryayo was not appointed *préfet* of Butare until 17 June 1994 (see Exhibit D107).

<sup>262</sup> T. 20 June 2008 pp. 27-28 (Witness AZT).

<sup>263</sup> T. 20 June 2008 pp. 28-29 (Witness AZT).

262. AK42 testified that he attended two public meetings from April to June 1994.<sup>264</sup> The first meeting took place at the Nyirakanywero marketplace on 23 May 1994.<sup>265</sup> The meeting was presided over by Sylvain Nsabimana (*préfet* of Butare). AK42 was told that security issues were going to be discussed at the meeting and that it would start before midday. AK42 remembered the date because he was hiding a Tutsi in his home and therefore paid attention to what was said in meetings in order to know if he was going to come under attack.<sup>266</sup>

263. AK42 testified that leaders came late and the meeting only started in the afternoon. AK42 recalled the presence of Chrysologue Bimenyimana (*bourgmestre* of Muganza *commune*), *préfet* Nsabimana, Colonel Muvunyi, Colonel Nteziryayo; the public prosecutor, Ruzindana, and the *sous-préfet* of Gisagara. The meeting was held on a slope with the authorities sitting on chairs and the local population, numbering about 300, sitting on the ground opposite them. The meeting did not last long. The authorities told the population to stop attacking their neighbours, stop the killings and to go about their normal activities. They also said that the fighting was approaching the *commune*. In short, the population should avoid any form of violence and ensure the security of members of the population.<sup>267</sup>

264. AK42 testified that Kalimanzira was not present at the meeting. AK42 attended the entire meeting and said that no other meetings were held in the marketplace in the month of May.<sup>268</sup>

#### *Defence Witness MKB*

265. MKB is a Hutu whose husband and four of her children were killed in April 1994 because they were Tutsis.<sup>269</sup> MKB testified that she attended a meeting at the Nyirakanywero marketplace one afternoon in late May 1994, after the killings had stopped in mid-May. She was informed of the meeting by the local population when she was on her way to get manure for her rice field. When she saw authorities arrive in their vehicles and head towards the marketplace, she followed.<sup>270</sup>

266. MKB sat on the ground, with other members of the population, facing authorities who sat on benches. She recognised some of the authorities present, naming Chrysologue Bimenyimana, Tharcisse Muvunyi, Alphonse Nteziryayo, Deo Ngayabewura and Élie Ndayambaje. Security issues were discussed by Muvunyi and Nteziryayo; people were asked to stop killing each other and instructed to ensure their own security and that of Tutsi women married to Hutu men.<sup>271</sup>

267. MKB attended the entire meeting, which lasted about an hour. Kalimanzira was not present, and MKB recalled that he had not been to their *secteur* in a long time. She did not hear of any other meetings at the marketplace from April to June 1994.<sup>272</sup>

#### *Defence Witness KXC*

<sup>264</sup> T. 27 November 2008 p. 4 [closed] (Witness AK42).

<sup>265</sup> T. 27 November 2008 p. 5 (Witness AK42).

<sup>266</sup> T. 27 November 2008 pp. 5, 9 (Witness AK42).

<sup>267</sup> T. 27 November 2008 pp. 5-6 (Witness AK42).

<sup>268</sup> T. 27 November 2008 pp. 6, 10 (Witness AK42).

<sup>269</sup> T. 1 December 2008 p. 7 [closed] (Witness MKB).

<sup>270</sup> T. 1 December 2008 p. 9 (Witness MKB).

<sup>271</sup> T. 1 December 2008 pp. 9-10, 18-19 (Witness MKB).

<sup>272</sup> T. 1 December 2009 p. 10 (Witness MKB).

268. KXC attended a meeting in the second week of May 1994 in the Nyirakanywero marketplace. KXC learned about the meeting from *bourgmestre* Bimenyimana, and testified that people from Rwamiko *secteur* (Kibayi *commune*) learned about it because someone drove through the *secteur* with a loudspeaker, calling on the people to attend the meeting.<sup>273</sup>

269. At the time of the meeting, the killings had stopped. KXC arrived at 11:00 a.m., but the meeting did not start until about 2:00 p.m. because the guests arrived late. The authorities arrived by vehicle. Members of the population sat on the field, on the upper part of the slope, while the authorities sat on chairs. The meeting, which ended around 4:00 p.m., was about security; it had been organized in order to calm down the local inhabitants because some were still afraid, particularly Tutsi women married to Hutu men.<sup>274</sup>

270. Tharcisse Muvunyi, Alphonse Nteziryayo, Chrysologue Bimenyimana and Élie Ndayambaje were present.<sup>275</sup> KXC recalled that the *bourgmestre* Bimenyimana spoke first, introducing the authorities, followed by Nteziryayo, Muvunyi and the President of the Court of First Instance. Nteziryayo spoke generally about security and the RPF being in Bugesera.<sup>276</sup> KXC also testified that Muvunyi had spoken about the four enemies of Rwanda. Muvunyi instructed that the *secteur* borders be protected, night patrols be established, more roadblocks be set up, and promised more gendarmes.<sup>277</sup>

271. KXC testified that Kalimanzira was not present at the meeting.<sup>278</sup> He stated that no other meetings were held at Nyirakanywero centre between April and June 1994; he would certainly have been informed. Only one other meeting was held in Muganza *commune* in June, for the inauguration of the new *bourgmestre*.<sup>279</sup>

#### 2.3.5.2. Deliberations

272. At the relevant time alleged, Kalimanzira claims to have been home in Butare *ville*. As discussed above, the Chamber disbelieves his alibi (see III.1.2.2).

273. On the basis of the testimony of all of the Prosecution and Defence witnesses concerning this event, the Chamber finds that they were in attendance at the same meeting at the market square in Nyirakanywero in Nyabitare *secteur*. Their testimony was consistent in several respects, such as the authorities being late,<sup>280</sup> which authorities were present,<sup>281</sup> the placement of the crowd and the authorities,<sup>282</sup> and that Nteziryayo spoke about the four enemies of Rwanda.<sup>283</sup> The Chamber does not find that AZT's mistake in his evidence to the

<sup>273</sup> T. 2 December 2008 pp. 2-3 (Witness KXC).

<sup>274</sup> T. 2 December 2008 pp. 3-5, 13 (Witness KXC).

<sup>275</sup> T. 2 December 2008 p. 4 (Witness KXC).

<sup>276</sup> T. 2 December 2008 p. 16 (Witness KXC).

<sup>277</sup> T. 2 December 2008 pp. 16-17 (Witness KXC).

<sup>278</sup> T. 2 December 2008 p. 4 (Witness KXC).

<sup>279</sup> T. 2 December 2008 pp. 5, 19, 20 [closed] (Witness KXC).

<sup>280</sup> T. 23 June 2008 p. 28 (Witness AZT); T. 27 November 2008 p. 5 (Witness AK42); T. 2 December 2008 p. 3 (Witness KXC).

<sup>281</sup> T. 20 June 2008 p. 27 (Witness AZT); T. 27 November 2008 p. 6 (Witness AK42); T. 1 December 2008 p. 10 (Witness MKB); T. 2 December 2008 p. 4 (Witness KXC).

<sup>282</sup> T. 23 June 2008 p. 25 (Witness AZT); T. 27 November 2008 p. 5 (Witness AK42); T. 1 December 2008 pp. 9-10 (Witness MKB); T. 2 December 2008 pp. 3-4 (Witness KXC).

<sup>283</sup> T. 20 June 2008 p. 28 (Witness AZT); T. 2 December 2008 p. 17 (Witness KXC).

effect that Alphonse Nteziryayo was *préfet* of Butare by that time, when he was only appointed on 17 June 1994, so significant as to undermine this finding.<sup>284</sup>

274. AZT was the only witness, however, who testified that Kalimanzira was present and spoke at the meeting. The Chamber notes that AZT has been sentenced to life imprisonment, currently under appeal, and is an accomplice to this event, having admitted to killing a Tutsi after the meeting.<sup>285</sup> He may therefore have a motive to implicate Kalimanzira. The Chamber considers that his testimony should be viewed with caution.

275. The Defence witnesses gave very consistent accounts of the meeting, and all were emphatic that Kalimanzira was not present. AK42 was detained in Rwanda but released without being charged. After being summoned, he fled Rwanda.<sup>286</sup> He has been accused of taking part in the genocide.<sup>287</sup> The Chamber also notes that AK42 worked with Kalimanzira while in exile in Kenya.<sup>288</sup> He testified as to the closeness of their relationship, stating that Kalimanzira was almost like a brother.<sup>289</sup> This suggests that he may be biased in favour of Kalimanzira.

276. MKB has not been charged with involvement in the genocide. The Chamber does not accept the Prosecution's assertion that it was unbelievable that MKB would attend the meeting after most of her family was killed;<sup>290</sup> indeed, the Chamber found her explanation credible that because her home had been looted and everything taken, she left her home because she wanted rice for her Tutsi child, and further, that she would be particularly interested in a meeting about security because of her situation.<sup>291</sup>

277. While KXC was detained in Rwanda for eight years, he was acquitted by the *Gacaca* court.<sup>292</sup> By virtue of his professional position, the Chamber notes that KXC was in a position to know about meetings happening in his *secteur* and would likely have recognized Kalimanzira if he was in attendance.<sup>293</sup> The Chamber finds that both MKB and KXC gave credible evidence.

278. In light of the foregoing, particularly the uncorroborated nature of AZT's testimony, and the credible and consistent testimony of MKB and KXC, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Kalimanzira attended the meeting at the market square in Nyirakanywero in Nyabitare *secteur*.

### 2.3.6. Inauguration of Élie Ndayambaje

279. The Prosecution alleges that Kalimanzira attended the public inauguration of Élie Ndayambaje as *bourgmestre* of Muganza *commune*, near the Muganza *commune* office around 21 or 22 June 1994. At the meeting, Ndayambaje criticized the crowd for helping Tutsis to hide, and instructed them to kill Tutsi survivors. Although Kalimanzira did not speak, the Prosecution alleges that because he did not express any disapproval of

<sup>284</sup> See Defence Closing Brief, para. 658.

<sup>285</sup> T. 23 June 2008 p. 18 [closed] (Witness AZT).

<sup>286</sup> T. 26 November 2008 p. 66 [closed] (Witness AK42).

<sup>287</sup> T. 27 November 2008 pp. 27-34 [closed] (Witness AK42).

<sup>288</sup> T. 27 November 2008 pp. 3 [closed] 16, 20 (Witness AK42).

<sup>289</sup> T. 27 November 2008 p. 15 (Witness AK42).

<sup>290</sup> Prosecution Closing Brief, para. 64.

<sup>291</sup> T. 1 December 2008 p. 7, 14-15 (Witness MKB).

<sup>292</sup> T. 2 December 2008 p. 6 (Witness KXC).

<sup>293</sup> T. 1 December 2008 p. 70 [closed] (Witness KXC).

Ndayambaje's speech, he thereby showed support for the killings which followed and facilitated Ndayambaje's incitement.<sup>294</sup>

280. The Defence denies that Kalimanzira was in attendance. In addition, Kalimanzira relies on his alibi (see III.1.2).

#### 2.3.6.1. Evidence

##### *Prosecution Witness BCA*

281. BCA testified that he was present at the inauguration of Élie Ndayambaje as the new *bourgmestre* of Muganza *commune* on 21 or 22 June 1994. BCA recalled that the authorities in attendance included Kalimanzira, Alphonse Nteziryayo (Butare's new *préfet*), Sylvain Nsabimana (Butare's former *préfet*), Dominique Ntawukulilyayo (*sous-préfet* of Gisagara), and Pauline Nyiramasuhuko. During his inauguration, Ndayambaje told the audience that "when you want to clean out the dirt from your house, you don't heap it in front of the fireplace." BCA testified that he understood those remarks to mean that people who had been hidden had to be taken out of their hiding and killed as well.<sup>295</sup> BCA did not recall that Kalimanzira spoke at the inauguration.<sup>296</sup> After the meeting, Tutsis and Hutu political opponents were taken out of hiding and killed.<sup>297</sup>

##### *Prosecution Witness BBB*

282. BBB testified that he saw Kalimanzira three times after President Habyarimana's death, the final occasion being the reinstatement of Élie Ndayambaje as *bourgmestre* of Muganza *commune* in June, not far from the Muganza *commune* office. BBB arrived before the ceremony started, and there were between 200-300 Hutus present. Authorities present included Kalimanzira, Chrysologue Bimenyimana (Muganza's former *bourgmestre*), *préfet* Nteziryayo, the *responsable de cellule*, and the *conseiller de secteur*. The master of ceremonies, Célestin Habyambere, took the floor first to introduce Ndayambaje as Muganza's new *bourgmestre*.<sup>298</sup>

283. Ndayambaje first thanked the population for having confidence in him to be their *bourgmestre*. He then criticized the crowd, using the metaphor that instead of sweeping the dirt outside the house, they were sweeping it inside. The population did not understand his comments, so Célestin Habyambere explained that they had Tutsi children, grandchildren, and wives hiding in their homes, who were the dirt, and they should throw them out. After the speech, the crowd went to kill those people. Kalimanzira did not speak at the meeting.<sup>299</sup>

##### *Defence Witness AM02*

284. AM02 was a *communal* policeman in Muganza *commune* from 1992 until the end of June 1994. During the genocide, he was on guard duty at the Muganza *commune* office.<sup>300</sup> Around 20 or 21 June 1994, he was on duty at the *commune* office during the installation of Élie Ndayambaje as the new *bourgmestre* of the *commune*. The meeting was held at about

<sup>294</sup> Prosecution Closing Brief, paras. 69-70.

<sup>295</sup> T. 18 June 2008 pp. 50-51 (Witness BCA).

<sup>296</sup> T. 18 June 2008 p. 58 [closed] (Witness BCA).

<sup>297</sup> T. 18 June 2008 pp. 50-51 (Witness BCA).

<sup>298</sup> T. 16 June 2008 pp. 6, 18-20 (Witness BBB).

<sup>299</sup> T. 16 June 2008 pp. 19-20 (Witness BBB).

<sup>300</sup> T. 26 November 2008 pp. 6, 8 [closed] (Witness AM02).



4:00 p.m., about 50 metres away from the office, in the woods. AM02 saw the vehicles of the authorities arrive, and he opened the barrier at the entrance to the *communal* office so that they could park inside its premises. The meeting did not last long, not even an hour, and after the meeting, the authorities returned, had some drinks at the *commune* office, and AM02 again opened the barrier so that they could leave. He did not see Kalimanzira, and asserts that he would have seen him or heard that he was there.<sup>301</sup>

#### *Defence Witness AK42*

285. AK42 attended two public meetings from April to June 1994,<sup>302</sup> the second Élie Ndayambaje's installation ceremony as new *bourgmestre* of Muganza *commune*. The meeting was held between 20 June and the end of June 1994, between 2:00-2:30 p.m., in a wood near the Muganza *commune* office. AK42 arrived before the meeting started, and stayed until the end. About 400 people were present, including authorities such as the new *préfet* Nteziryayo, the former *bourgmestre*, the new *bourgmestre* and the *conseillers* of the *secteurs*. Kalimanzira was not present at the meeting. AK42 asserts he could not have missed his presence because they had a close relationship and he was a well-known authority who would not have gone unnoticed.<sup>303</sup>

#### *Defence Witness Innocent Mukuralinda*

286. Mukuralinda was the accountant for Kibayi *commune* from 1981 until 7 July 1994 when he went into exile.<sup>304</sup> On 22 June 1994, he attended a meeting to swear in the new *bourgmestre* of Muganza *commune*, Élie Ndayambaje, who was replacing Chrysologue Bimenyimana. The meeting was held not far from the Muganza *commune* office, in a wood. The distance between the office and the wood was around 20-30 metres. Mukuralinda arrived to the meeting, which started at 2:30 p.m., about five or ten minutes late, when Bimenyimana was speaking. Other authorities present included *préfet* Nteziryayo, Dominique Ntawukulilyayo (*sous-préfet* of Gisagara), and Bernadette Mukaruranga (Member of Parliament). Mukuralinda did not see Kalimanzira. At the end of the meeting, Mukuralinda greeted the authorities and they went together to the venue of the reception.<sup>305</sup>

#### 2.3.6.2. Deliberations

287. At the relevant time alleged, Kalimanzira claims to have been home in Butare *ville*. He also testified to attending the installation ceremony of Alphonse Nteziryayo as Butare's new *préfet* on 21 June 1994. As discussed above, the Chamber disbelieves his alibi (see [III.1.2.2](#)).

288. The Chamber notes that the Defence does not dispute that Élie Ndayambaje was inaugurated as the new *bourgmestre* of Muganza *commune* on or around 22 June 1994, given that several Defence witnesses testified to attending this event.

289. AM02 was a policeman in 1994. He was detained in Rwanda for four years, but then escaped prison and has fled the country.<sup>306</sup> His evidence is also discussed in relation to Kalimanzira's alleged incitement at the Kajyanama roadblock (see [III.4.4](#)). AM02 was

<sup>301</sup> T. 26 November 2008 p. 13-14, 31-32 [closed] (Witness AM02).

<sup>302</sup> T. 27 November 2008 p. 4 [closed] (Witness AK42).

<sup>303</sup> T. 27 November 2008 pp. 7, 11 (Witness AK42).

<sup>304</sup> T. 3 December 2008 p. 3 (Innocent Mukuralinda).

<sup>305</sup> T. 3 December 2008 pp. 8-9, 41-42 (Innocent Mukuralinda).

<sup>306</sup> T. 26 November 2008 pp. 7, 31 [closed] (Witness AM02).

insistent that he would have seen Kalimanzira at the inauguration, despite the fact that he did not personally attend. The Chamber is not convinced. The simple fact that he did not see Kalimanzira pass through the *commune* office gate to park a vehicle or at the reception afterwards does not preclude Kalimanzira from having attended the meeting. Mukuralinda is currently in exile and although he claims he did not commit any crimes during the genocide, has been accused of taking part.<sup>307</sup> The Chamber found his responses to cross-examination to be evasive, and did not find his testimony to be credible. As for AM02, the Chamber does not place much weight on the Defence's implication that simply Mukuralinda did not see Kalimanzira, he could not have been there. AK42's evidence was also assessed in relation to Kalimanzira's alleged incitement at the Nyabisagara football field (see III.4.5.6). He was detained in Rwanda, but released without being charged. After being summoned, he fled Rwanda.<sup>308</sup> The Chamber found that he may be biased in favour of Kalimanzira in light of the fact that he worked with Kalimanzira while in exile in Kenya<sup>309</sup> and considered Kalimanzira to be almost like a brother.<sup>310</sup> His testimony that he did not see Kalimanzira at the inauguration ceremony does not contradict eyewitness accounts that he was there.

290. BBB has confessed to taking part in the genocide, but is awaiting trial on one charge he does not admit to.<sup>311</sup> He gave evidence relevant to other allegations and his credibility has been considered by the Chamber. The Chamber notes that he was an accomplice to the events pleaded at paragraph 17 of the Indictment, namely, instigation at the Muganza *commune* football field in May, and the Chamber found that his testimony in that respect should accordingly be treated with caution (see III.2.8.2). BCA has also confessed to taking part in the genocide and is currently detained.<sup>312</sup>

291. BBB and BCA testimonies corroborated one another. Their recollection of Ndayambaje's and the authorities in attendance was consistent. Their accounts are supported by the fact that Kalimanzira was a native of Muganza *commune* and that attending the swearing-in of a *bourgmestres* and *préfets* was within his professional duties. This is evidenced by Kalimanzira's admitted attendance to Alphonse Nteziryayo's swearing-in ceremony on 21 June 1994.<sup>313</sup> The Chamber finds that the slight discrepancies in their evidence raised by the Defence are insignificant and do not undermine their credibility.<sup>314</sup> Having carefully considered their evidence, the Chamber considers BBB and BCA's evidence to be reliable. The Chamber accepts that Ndayambaje spoke at the meeting, particularly given that its purpose was to inaugurate him as *bourgmestre*. Although Kalimanzira is not alleged to have spoken at the meeting, the Chamber finds that he was present and failed to take exception to Ndayambaje's remarks. The Chamber also believes BBB and BCA's evidence that Tutsis were killed following the inauguration ceremony.

292. The Chamber finds that the only reasonable conclusion that can be drawn from the evidence is that Kalimanzira knew that Ndayambaje's speech would instigate the persons present during this meeting to kill Tutsis and that this instigation would serve as a factor substantially contributing to the conduct of those persons who actually committed killings of Tutsis. The Chamber also finds that Kalimanzira's presence during Ndayambaje's speech lent moral support to Ndayambaje's instigation of genocide. As a well-respected authority figure

<sup>307</sup> T. 3 December 2008 pp. 3-4, 10-13, 21, 29-40 (Innocent Mukuralinda).

<sup>308</sup> T. 26 November 2008 p. 66 [closed] (Witness AK42).

<sup>309</sup> T. 27 November 2008 pp. 3 [closed], 16, 20 (Witness AK42).

<sup>310</sup> T. 27 November 2008 p. 15 (Witness AK42).

<sup>311</sup> T. 16 June 2008 pp. 3, 6 [closed] (Witness BBB),

<sup>312</sup> T. 18 June 2008 p. 41 [closed] (Witness BCA).

<sup>313</sup> T. 10 February 2009 pp. 52-53 (Callixte Kalimanzira); T. 5 February 2009 pp. 10-11 (Salomé Mukantwali).

<sup>314</sup> Defence Closing Brief, paras. 508-510, 591-593.

in Butare, particularly as a native of Muganza *commune*, and as a high-level government official, Kalimanzira's moral support was a factor substantially contributing to the commission of this crime. Given their relative positions of authority and responsibilities, Kalimanzira must have known that Ndayambaje and the audience would interpret his presence during Ndayambaje's speech as a form of support, encouragement, and tacit approval, for Ndayambaje's instigation of acts of genocide, and that his presence during Ndayambaje's speech would therefore have the effect of substantially contributing to the killings which followed.

293. Kalimanzira exhibited here, and elsewhere, an intent to destroy the Tutsi group (see [III.5.2](#)). For these reasons, the Chamber finds Kalimanzira guilty beyond reasonable doubt of aiding and abetting genocide by his presence at the inauguration of Élie Ndayambaje on or around 22 June 1994.

#### 2.4. Kabuye Hill, 23 April

294. At paragraphs 9 and 10 of the Indictment, the Prosecution charges Kalimanzira with Genocide for killings at Kabuye hill (Ndora *commune*) around 23 April 1994. Kalimanzira is accused of having personally encouraged Tutsi civilians to take refuge on Kabuye hill, promising them protection and food, in order to lure them there and facilitate their subsequent demise. Kalimanzira allegedly sought communal police and military reinforcement to assist in the attack, discussed the progress of the killings at the hill with local authorities, and personally supervised the attacks to ensure successful extermination. This resulted in thousands of Tutsis being killed at Kabuye hill.

295. Kalimanzira relies on his alibi that he was at work in Murambi (Gitarama *préfecture*) on 23 April 1994 and the days following (see [III.1.2](#)).

##### 2.4.1. Evidence

###### *Prosecution Witness BBO*

296. BBO testified that at the end of April 1994, his *conseiller de secteur* instructed all Hutus and Burundian refugees in Mukindo *secteur* (Kibayi *commune*) that they were to go to Kabuye hill in order to kill Tutsis. The *conseiller* indicated that the instructions had come from higher authorities, and that the large group of people who had gathered at Kabuye hill posed a threat to Hutus. Armed with the weapons they had received at the Burundian refugee camp in Kanage *cellule* (see [III.4.2.1](#)), BBO and the Burundian refugees, as well as other civilians, walked five or six hours before reaching Kabuye hill. The *conseiller* and policemen from Kibayi *commune* armed with rifles also went to Kabuye hill, but travelled by vehicle.<sup>315</sup>

297. BBO testified that they left very early in the morning, arriving at Kabuye hill by approximately midday, and were joined by several other attackers from other *communes*, such as Ndora and Muganza. He described how they encircled the Tutsis on the hill and attempted to attack them; however, the Tutsis defended themselves with rocks leading the attackers to retreat and the leaders of the attack to panic. BBO and others thought there might be armed *Inkotanyi* among the Tutsi refugees. Soon thereafter, Kalimanzira and Colonel Tharcisse Muvunyi arrived with approximately 150 soldiers on two buses. In fact, BBO stated that almost all authorities from Butare *préfecture* were present. BBO explained that the soldiers hid among the civilian attackers when shooting at the Tutsi refugees. However, this caused the civilian attackers to fear being shot at, in turn causing them to flee. BBO and

<sup>315</sup> T. 19 June 2008 pp. 44 (Witness BBO).

others trekked five or six hours back to Mukindo *secteur* to spend the night. They returned to Kabuye hill the following morning, where BBO discovered hundreds of corpses.<sup>316</sup>

*Prosecution Witness BDC*

298. BDC is a Hutu. She was married to a Tutsi in 1994. In April 1994, she and her family fled their home in order to escape the house burnings and killings that had begun to take place in their area. They went first to the Gisagara marketplace, before ultimately seeking refuge at Kabuye hill.<sup>317</sup>

299. BDC testified that she and her family left their home on a Saturday morning in April, reached the Gisagara marketplace early that afternoon, and found that a large group of refugees,<sup>318</sup> policemen, soldiers, Dominique Ntawukulilyayo (*sous-préfet* of Gisagara) and Kalimanzira were already there. BDC described how, after calling upon the crowd to assemble, *sous-préfet* Ntawukulilyayo instructed them to go to Kabuye hill and promised that their safety would be ensured. BDC stated that during the address, Kalimanzira stood next to *sous-préfet* Ntawukulilyayo but did not speak. She asserted that she could see Kalimanzira and the *sous-préfet* clearly from her location in the middle of the square.<sup>319</sup>

300. BDC testified that following *sous-préfet* Ntawukulilyayo's speech, the policemen and soldiers immediately escorted them and the other refugees to Kabuye hill where they encountered more refugees from neighbouring areas. BDC recalled that they arrived at the hill while it was still daylight. Kalimanzira and *sous-préfet* Ntawukulilyayo subsequently arrived in a vehicle, accompanied by soldiers and police officers. Kalimanzira and the *sous-préfet* got out of the vehicle, looked around, and then left with the vehicle.<sup>320</sup>

301. BDC testified that the refugees were then attacked. Soldiers and policemen began shooting at the refugees, who fought back by throwing stones at their attackers. The gunfire was not heavy, and although some people were killed that day, BDC and her family chose to stay put and spent the night on Kabuye hill. The next morning, on Sunday, the shooting resumed and intensified. The refugees were surrounded and shot at from several different directions, including Gahondo hill. BDC explained that on Sunday night, whilst it was raining heavily and they were being attacked, she and her family fled to another part of the hill and hid in some bushes.<sup>321</sup>

302. On Monday morning, BDC returned to the location on the hill where the refugees had first assembled in order to retrieve her belongings. There she saw dead bodies of all genders and ages strewn over the area, the majority of which were Tutsi. She further recalled that she witnessed the *Interahamwe* looting and stealing cattle. BDC stated that, at her husband's behest, she left Kabuye hill that same morning to go to her parents' house. BDC's husband explained that as a Hutu, she could survive, but that he, a Tutsi, could not leave the hill without being killed. She never saw him again.<sup>322</sup>

<sup>316</sup> T. 19 June 2008 pp. 44-47 and T. 20 June 2008 pp. 11-13 (Witness BBO).

<sup>317</sup> T. 9 May 2008 pp. 26-27 (Witness BDC).

<sup>318</sup> The term "refugees" is used here colloquially to refer to anyone who fled their homes in search of refuge. However, Rwandan Tutsis who sought refuge in various places throughout Rwanda are more accurately categorized as "internally displaced persons".

<sup>319</sup> T. 9 May 2008 pp. 27-28 (Witness BDC).

<sup>320</sup> T. 9 May 2008 pp. 28-29 (Witness BDC).

<sup>321</sup> T. 9 May 2008 pp. 29-32 (Witness BDC).

<sup>322</sup> T. 9 May 2008 pp. 32-33 (Witness BDC).

*Prosecution Witness BCF*

303. BCF testified that on Wednesday, 20 April 1994, Tutsi refugees from Kibayi and Muganza *communes* began arriving in the Gisagara marketplace. BCF stated that they came there because there were officials present and they thought that they would be protected. He recalled that the refugees spent three days at the marketplace before moving to Kabuye hill. BCF could not estimate the number of refugees but indicated that the market was so crowded that they overflowed into shops.<sup>323</sup>

304. BCF testified that at 8:00 a.m. on Saturday, 23 April 1994, he opened his shop as usual. Then at approximately 2:00 p.m., Kalimanzira and *sous-préfet* Ntawukulilyayo arrived at the marketplace in a white double-cabin pickup. *Sous-préfet* Ntawukulilyayo was driving the vehicle and Kalimanzira was in the passenger seat; there were also policemen on board, carrying firearms and wearing black helmets and overcoats. BCF identified one of the policemen as brigadier Vincent. BCF further recalled that the *sous-préfet* parked the truck on the road, right at the entrance of the marketplace, and that he and Kalimanzira disembarked first, followed by the policemen.<sup>324</sup>

305. BCF testified that Kalimanzira and *sous-préfet* Ntawukulilyayo entered the marketplace, whereupon the *sous-préfet* asked three policemen, who had come from the commune office, to blow their whistles. Upon hearing the whistles, the refugees assembled and BCF joined the crowd. BCF recalled that he was less than two metres from Kalimanzira. BCF further recalled that the *sous-préfet* addressed the refugees, without the use of a microphone, whilst Kalimanzira stood beside him. The *sous-préfet* instructed the refugees to go to Kabuye hill, where they would be protected and given food and shelter. After delivering his message, *sous-préfet* Ntawukulilyayo asked the refugees to pass it along to the others in the marketplace.<sup>325</sup>

306. BCF testified that because he was a Tutsi and saw killers wearing banana leaf uniforms and carrying weapons, he immediately joined the refugees and headed towards Kabuye. He did not collect any personal effects. He recalled that because of the large number of refugees, the trip took one and a half hours rather than the usual 15-20 minutes. BCF stated that since they had come from different localities, he did not know many of his fellow refugees. He did, however, name two survivors from Muganza: Cassien and Bizunu. BCF stated that the policemen accompanied the refugees until they reached *sous-préfet* Ntawukulilyayo's residence.<sup>326</sup>

307. BCF testified that they arrived at Kabuye hill in the early evening, whereupon they settled on the highest hill and those with babies looked for food. He recalled that in addition to the refugees that had gathered at Gisagara trading center, there were Tutsis who had travelled from other localities after Hutus burned their homes.<sup>327</sup>

308. BCF testified that at dusk two pick-up trucks arrived at the base of the hill upon which the refugees had assembled. He recalled that refugees continued to arrive from more distant localities like Dahwe and Gahondo after the vehicles arrived. BCF stated that Kalimanzira and *sous-préfet* Ntawukulilyayo were in the cab of one vehicle, with numerous soldiers and

<sup>323</sup> T. 5 May 2008 pp. 10-11 and T. 12 May 2008 pp. 10-12 (Witness BCF).

<sup>324</sup> T. 12 May 2008 pp. 11-19, 33 (Witness BCF).

<sup>325</sup> T. 5 May 2008 pp. 10-12 and T. 12 May 2008 pp. 27-29 (Witness BCF).

<sup>326</sup> T. 5 May 2008 pp. 12-13 and T. 12 May 2008 pp. 32-33 (Witness BCF).

<sup>327</sup> T. 5 May 2008 p. 13 and T. 12 May 2008 p. 33 (Witness BCF).

policemen in the rear. The second vehicle was filled with many soldiers. BCF further stated that he did not see any women among the passengers.<sup>328</sup>

309. BCF testified that Kalimanzira and the *sous-préfet* disembarked from the trucks along with the soldiers, who then surrounded the hill and began shooting at the refugees. The refugees began to retreat but were trapped at the top of the hill. BCF recalled that when the shooting began, Kalimanzira remained with *sous-préfet* Ntawukulilyayo a short while before leaving. BCF explained that there was a gap between the arrival of the vehicles and the start of the shooting because the attackers waited until it was dark enough that they could not be identified.<sup>329</sup>

310. BCF testified that the shooting stopped when it started to rain and became completely dark. This enabled him to escape onto a hill parallel to Kabuye hill, in the direction of the church and Gisagara. He recalled that he stayed in a wood that belonged to the priests and reached his mother and stepfather's house four days after escaping.<sup>330</sup>

#### *Prosecution Witness BWO*

311. BWO is a Tutsi survivor who lost many members of his family at the attack on Kabuye hill. BWO testified that he left his house and went to Gisagara marketplace two to three weeks after the death of President Habyarimana. There was tension in Kabuye *cellule* such that Hutus had attacked his home and it on fire. The marketplace was a 15 minute trek from his home and he recalled that he went there accompanied by his neighbours and members of his family.<sup>331</sup>

312. BWO testified that when he arrived at the marketplace at around 6:30-7:00 p.m., a large crowd had already assembled. BWO estimated that there were 2,000 people, all of whom were Tutsi civilians, ranging in age and had come from Kibayi, Muganza, Nyaruhengeri, Ndora, and Muyaga *communes*. BWO explained that they had come to Gisagara marketplace because they thought local officials would protect them. He stayed at the marketplace for two nights, settling near the Abizeramariya convent with his family. He recalled that the shops were closed and that the refugees prepared food when they arrived or ate what they had brought.<sup>332</sup>

313. BWO testified that at about 3:00 p.m. on the third day, *sous-préfet* Ntawukulilyayo addressed the crowd. BWO recalled that he arrived at the marketplace on foot from the *communal* office and that his vehicle, a red Hilux, was parked at the edge of the road in front of a shop belonging to Kayikana. BWO recognised the *sous-préfet*, whose home was located only a 15-minute trek away from BWO's. *Sous-préfet* Ntawukulilyayo was accompanied by two policemen, who BWO identified as Patern and Munyankindi. The policemen wore green uniforms, black caps with visors, and were carrying firearms.<sup>333</sup>

314. BWO testified that one of the policemen blew his whistle, and the marketplace became quiet. Then, using a megaphone to amplify his voice, the *sous-préfet* addressed the seated crowd and asked the refugees to go to Kabuye hill, where their security would be guaranteed. The refugees began packing their personal effects and started leaving in waves

<sup>328</sup> T. 5 May 2008 p. 13 and T. 12 May 2008 pp. 33-37 (Witness BCF).

<sup>329</sup> T. 5 May 2008 p. 14 and T. 12 May 2008 p. 39 (Witness BCF).

<sup>330</sup> T. 12 May 2008 pp. 39-40 (Witness BCF).

<sup>331</sup> T. 5 May 2008 pp. 24-25, 33 (Witness BWO).

<sup>332</sup> T. 5 May 2008 pp. 25-26 and T. 12 May 2008 pp. 60-62 (Witness BWO).

<sup>333</sup> T. 12 May 2008 pp. 62-64 (Witness BWO).

from about 6:30-7:00 p.m. BWO, along with his family and cattle, joined them, leaving for Kabuye hill at about 8:00 p.m.<sup>334</sup>

315. BWO testified that *sous-préfet* Ntawukulilyayo sent people to accompany the refugees, including Innocent Gakeri from Dahwe, but they were not accompanied for the whole journey. BWO recalled that the refugees travelled the relatively short distance to Kabuye hill all through the night. He further recalled that there was a single road to the hill, and because the refugees were so numerous, the trek took two hours rather than the usual 30 to 40 minutes. BWO stated that the refugees from the Gisagara marketplace were the first to arrive at Kabuye hill, but were later joined by refugees from other localities.<sup>335</sup>

316. BWO testified that on the first day and night he arrived, nothing out of the ordinary happened. However, he recalled that the next day, Hutu civilians armed with spears, machetes, and clubs came to steal their cattle. This attack carried on for two days, and after some refugees were killed trying to repel the attackers, they let them take the cattle away. On the third day there was a second attack by Hutu civilians and the *Interahamwe* which began at 8:30 a.m., continuing for approximately one hour. BWO recalled that it was more violent and the focus was no longer on stealing cattle; although some refugees were killed, they defended themselves and pushed the attackers back.<sup>336</sup>

317. BWO testified that at about 11:00 a.m. or 12:00 p.m., Kalimanzira arrived at Kabuye hill in a red pick-up truck, accompanied by a soldier in the back and a woman in the passenger seat. The soldier and Kalimanzira disembarked from the vehicle and were approached by a group of about 70 refugees, led by an elderly man from Muganza *secteur* in Kigarama named Boniface Ndanga. Boniface identified Kalimanzira to the refugees and told them they should tell them about the attacks because he was a man of authority coming to ensure their safety. BWO indicated that there were many people, including Boniface, between him and Kalimanzira, but that he was close enough to hear the subsequent conversation. Boniface told Kalimanzira that civilians had attacked, stolen cows, and killed some of the refugees. Kalimanzira then promised that he would protect the refugees and ensure their safety.<sup>337</sup>

318. BWO testified that shortly thereafter, a group of civilians from Dahwe *cellule* arrived and stood behind the vehicle. BWO stated that he thought that they had travelled to the hill with Kalimanzira, but arrived later because they were on foot. He recalled that Kalimanzira told the men that they "should kill them immediately because the others have already finished", indicating that they should kill the Tutsis. BWO stated that the refugees fled, but that those who were not strong enough to run were killed on the spot. Kalimanzira then left the hill in his vehicle.<sup>338</sup>

319. BWO testified that later on in the morning a vehicle brought soldiers to Gisagara, where they joined with *Interahamwe* and walked to Kabuye hill on foot, arriving at 1:00 p.m.. The civilian attackers from Dahwe also returned to the hill. BWO recalled that the soldiers and *Interahamwe* began shooting immediately; other attackers used machetes and bladed weapons. The attack continued until it was dark; when BWO escaped at 10:30-11:00 p.m., the soldiers were still shooting. BWO explained that he escaped through sheer luck and could

<sup>334</sup> T. 5 May 2008 p. 26, T. 12 May 2008 pp. 64, 69, and T. 19 May 2008 p. 2 (Witness BWO).

<sup>335</sup> T. 5 May 2008 pp. 26-27, T. 12 May 2008 p. 65 and T. 19 May 2008 p. 3 (Witness BWO).

<sup>336</sup> T. 5 May 2008 pp. 27-28 and T. 12 May 2008 pp. 69-70 (Witness BWO).

<sup>337</sup> T. 5 May 2008 pp. 28-30 and T. 19 May 2008 pp. 6-7, 9 (Witness BWO).

<sup>338</sup> T. 5 May 2008 pp. 30-31 and T. 19 May 2008 pp. 8-9 (Witness BWO).

not describe his route off of the hill. He lost many family members in the attack, including eight brothers and sisters, three cousins, and four uncles.<sup>339</sup>

*Prosecution Witness BXG*

320. BXG is a Tutsi survivor of the killings on Kabuye hill; many members of his family died there. He heard of the death of President Habyarimana on 7 April 1994 and remained at home until the afternoon of Friday, 22 April when, upon his parents' request, he went to visit his sister-in-law and her five children at their home in Kabuye *cellule*.<sup>340</sup>

321. BXG testified that on Saturday 23 April 1994, he saw Kalimanzira at the Mukabuga roadblock, at the intersection of the roads to Muganza and Kabuye. BXG explained that he had gone to the roadblock, which was only 10-15 metres from his brother's house, in order to pass time. There were three Hutu men at the roadblock. BXG further explained that killings in the area had not yet begun and consequently he was not afraid.

322. He recalled that sometime before noon, Kalimanzira arrived at the roadblock in a white saloon vehicle, similar to that owned to the *sous-préfet*, Dominique Ntawukulilyayo. BXG further recalled that Kalimanzira was accompanied by two soldiers in military uniform and black berets who were armed with Kalashnikovs and a driver in civilian clothes. BXG explained that he, a mere peasant, did not dare speak to Kalimanzira, a senior official; however, he was five to seven steps away and could hear everything that was said.<sup>341</sup>

323. BXG testified that, after exiting the vehicle with the two soldiers, Kalimanzira asked Callixte Bushakwe, the *responsable de cellule* and head of the group at the roadblock, where he was with the problem of the Tutsis. Bushakwe responded that they had all been killed, whereupon one of the men at the roadblock, Isidore, interjected and told Kalimanzira that Bushakwe was lying and that the Tutsis had successfully defended themselves against attack. BXG recalled that Kalimanzira spat at Bushakwe and attempted to slap him. Kalimanzira asked Isidore show him where the Tutsis were. The group then left the roadblock in the direction of Dahwe *secteur*. BXG explained that the Tutsis from Kibayi, Muganza, Ndora and Ngoma *communes* had gathered on "Wabitama" (*i.e.* Kabuye hill) and successfully resisted attack.<sup>342</sup>

324. BXG testified that the vehicle returned to the roadblock after 30 minutes and Isidore exited. Kalimanzira continued in the direction of Gisagara. BXG explained that, following the encounter and Bushakwe's comments about killing Tutsis, he became fearful of the deteriorating situation and returned to his brother's home. After collecting some provisions he went to Wabitama with his sister-in-law and her five children. They arrived at noon and joined the other refugees, whom BXG estimated to number 40,000-50,000.<sup>343</sup>

325. BXG spent two days on Kabuye hill. He testified that the first attack he witnessed occurred on the Saturday he arrived. He recalled that armed Hutu policemen were interspersed with civilian attackers who carried traditional weapons. BXG described the policemen as wearing green uniforms and black berets, and could name several of them because he recognised them as being from his local area. BXG recalled that the Tutsis successfully repelled the attack but that later that afternoon another wave of attacks was

<sup>339</sup> T. 5 May 2008 pp. 31-33 and T. 12 May 2008 p. 11 (Witness BWO).

<sup>340</sup> T. 22 May 2008 pp. 5-7, 16 (Witness BXG).

<sup>341</sup> T. 22 May 2008 pp. 7-9, 16-18 (Witness BXG).

<sup>342</sup> T. 22 May 2008 pp. 9-12, 19-20, 22 (Witness BXG).

<sup>343</sup> T. 22 May 2008 pp. 11, 23 (Witness BXG).



followed, this time reinforced by soldiers. The shooting ceased at nightfall but resumed the following morning, Sunday, until nightfall when there was heavy rainfall. BXG hid in a sorghum field and managed to escape the hill on Monday evening.<sup>344</sup>

*Prosecution Witness BWK*

326. BWK testified that she saw Kalimanzira on 23 April 1994. She had gone to her parents' house in Kabuye *cellule* after a neighbour told her that her brother had died. Upon arriving at her parents' home, BWK found her brother there and alive. There were also several refugees who had arrived from Muganza and Dahwe hills the night before after their houses had been burnt down. The refugees were Tutsi civilians of both genders and ranged in age from children to adults.<sup>345</sup>

327. BWK testified that she left her parents' house with approximately 13 of the refugees after realising that it was not secure. She intended to take them to the house where she had been staying and which she considered safe. BWK recalled that whilst walking on the road from Gisagara to Kabuye they encountered a white double-cabin pick-up near the home of a man named Misago. The time was around 2:00-3:00 p.m. BWK saw Kalimanzira in the vehicle, accompanied by a civilian driver and two soldiers who were sitting in the uncovered back section with firearms and wearing camouflage uniforms with green helmets. BXG explained that she recognised Kalimanzira because she had met him once before and because she was told who he was later that day.<sup>346</sup>

328. Kalimanzira stopped and asked them where they were going. One woman informed him that they were fleeing because their houses had been burnt down. BWK told Kalimanzira that she was taking to the people to a more secure place. Kalimanzira then questioned her as to whether she had the necessary resources to feed everyone. He instructed them to go to Kabuye hill because it was safe and nothing could happen to them. When they refused to do so, which would have involved retracing their steps, the two soldiers asked them if they had not heard properly. BWK explained that in her opinion, Kalimanzira used a threatening tone and she knew they were being prohibited from leaving.<sup>347</sup>

329. BWK testified that for seven minutes, Kalimanzira drove behind the group as they walked towards Kabuye hill. When they reached the intersection of the roads to Dahwe /Kirarambogo and Kabuye, they met a Hutu man named Gakeri coming from the direction of Kirarambogo. Gakeri was alone and unarmed and BWK knew him because he lived locally in Dahwe *secteur*. Kalimanzira instructed Gakeri to escort the group to Kabuye hill before continuing in the direction of Dahwe/Kirarambogo. BWK recalled that it took the group approximately 35 minutes to cover the 1.3 kilometres between the intersection and Kabuye hill. Whilst walking with BWK, Gakeri told her that the man in the car was Kalimanzira.<sup>348</sup>

330. BWK testified that upon arriving at Kabuye hill they joined the other refugees. After waiting 40 minutes, BWK left Kabuye hill and returned home to breastfeed her young child. She explained she knew from the outset that she could not stay on Kabuye hill but followed Kalimanzira's instructions anyway because he had threatened that if he met any of them on the road again they would have problems. Although she did not witness any attack on Kabuye hill while she was there, BWK heard gunshots during the night and has never again seen any

<sup>344</sup> T. 22 May 2008 pp. 12-13, 23-25, 27 (Witness BXG).

<sup>345</sup> T. 9 May 2008 pp. 17-18 and T. 19 May 2008 p. 59 (Witness BWK).

<sup>346</sup> T. 9 May 2008 pp. 18-19, 21 and T. 19 May 2008 p. 60-62 (Witness BWK).

<sup>347</sup> T. 9 May 2008 p. 19 and T. 19 May 2008 p. 63 (Witness BWK).

<sup>348</sup> T. 9 May 2008 pp. 20-21, T. 19 May 2008 p. 64 and T. 30 May 2008 pp. 3-4 (Witness BWK).

of the refugees she walked to the hill with. BWK believes that in all probability, they were killed there.<sup>349</sup>

*Prosecution Witness BDK*

331. BDK recalled that the killings at Kabuye hill started on a Saturday evening approximately two weeks after the death of President Habyarimana. She heard shooting that evening whilst at home and realised they were coming from Kabuye hill. She further recalled that on Sunday night there was heavy rainfall. BDK also stated that a further attack was launched by the *Interahamwe* and Burundians on Monday morning.<sup>350</sup>

332. BDK testified that on the Monday after the killings at Kabuye hill, whilst returning from filling her bucket at the tap inside Fidèle Uwizeye's compound, she saw a group of people standing in front of Uwizeye's house. BDK identified them as Kalimanzira, *sous-préfet* Ntawukulilyayo, Bernadette Mukarurwanga, Fidèle Uwizeye, Joseph Kamanza and Vincent. She overheard them discussing the killings at Kabuye hill<sup>351</sup> and heard Kalimanzira say the firing had dispersed the people and that a bullet cannot find a person hiding in a shrub so they should therefore use traditional weapons instead. BDK further recalled that they spoke about a group of people who were going to come and who would be sent to Nyakibungo *cellule* and Kabuye hill to carry out killings using traditional weapons.<sup>352</sup>

*Prosecution Witness BWL*

333. BWL said he saw Kalimanzira give a firearm to someone at the Jaguar roadblock (see also III.4.3.1). He said that Kalimanzira instructed the people at Jaguar roadblock who were sending Tutsis to Kabuye hill to ensure their safety. He also asserted that Kalimanzira was the one who ordered that Tutsis be sent to Kabuye hill and that the firearm he distributed at Jaguar roadblock was meant to be used at Kabuye hill.<sup>353</sup>

*Other Prosecution Witnesses*

334. BCZ participated in the Kabuye hill killings for three days (Saturday to Monday) in April 1994. He recalled only *sous-préfet* Ntawukulilyayo as giving instructions and directions to mount the attack. BCZ asserted that he did not see Kalimanzira at all during the three days he spent at Kabuye hill.<sup>354</sup>

335. BBB also testified about his participation in the Kabuye hill killings, implicating *sous-préfet* Ntawukulilyayo, but made no mention of Kalimanzira's alleged involvement whatsoever.<sup>355</sup>

*Defence Witness AK11*

336. AK11 and his family sought refuge on Kabuye hill in April 1994. AK11 testified that around 19 April 1994, on a Wednesday,<sup>356</sup> Tutsi refugees arrived *en masse* in his local area.

<sup>349</sup> T. 9 May 2008 p. 21 and T. 30 May 2008 pp. 4-6 (Witness BWK).

<sup>350</sup> T. 20 May 2008 pp. 47-48 [closed] (Witness BDK).

<sup>351</sup> BDK also refers to Kabuye hill as "Wabitama".

<sup>352</sup> T. 20 May 2008 pp. 49-52 [closed] (Witness BDK).

<sup>353</sup> T. 23 June 2008 pp. 44, 46 and 62 (Witness BWL).

<sup>354</sup> T. 24 June 2008 pp. 57, 59-60 (Witness BCZ).

<sup>355</sup> T. 16 June 2008 pp. 11-13, 41-44 (Witness BBB).

<sup>356</sup> Wednesday fell on the 20<sup>th</sup> of April in 1994.

AK11 recalled that the refugees told him that they were fleeing because people were hunting them down to kill them and that they intended to flee to neighbouring Burundi. Upon hearing this, AK11 along with his family and other members of his local population, the majority of whom were Tutsis, decided to follow.<sup>357</sup>

337. AK11 and his family left their home that same Wednesday at around 5:00 p.m. and headed toward Gisagara. They reached the Gisagara marketplace at nightfall the same day, which was a market day, and spent the night in the market square, which doubled as a football pitch on non-market days. The following day, on Thursday, they resumed their journey towards Burundi, but were subsequently turned back to Gisagara by a group of armed persons. They returned to the Gisagara marketplace at approximately 4:30 p.m., but decided to return home after realising their security was not guaranteed there. On their way home, they crossed paths with a group of Tutsi refugees near Kabuye hill who advised them that they should stay together in order to defend themselves. AK11 and his family followed them to Kabuye hill where they met many other refugees. AK11 recalled that he did not see refugees on any other hill and affirmed that all of the refugees were on the slope of Kabuye hill opposite Dahwe *secteur*.<sup>358</sup>

338. AK11 and his family spent Thursday night on the hill. He described how the young adults spread out around the hill and carried out night patrols in order to act as security for the women and children. AK11 stated that there were no attacks that night but that he heard Hutus had attempted to steal cattle from the Tutsis earlier that day. AK11 recalled that the following afternoon, on Friday, they were attacked from Gahondo hill (facing Kabuye hill) and attempted to defend themselves using traditional weapons and stones. The attacks ended at around 5:00 p.m. when the attackers returned home. AK11 stated that he spent Friday night on the hill and recalled that there were no attacks that night either.<sup>359</sup>

339. AK11 testified that there was an attack on Saturday afternoon. The attackers, some of whom wore military uniforms and the berets of gendarmes, started gathering on Gahondo hill in the morning, and in numbers larger than the previous day. They had come from several locations. At around 4:00 p.m., AK11 saw a long line of civilians led by soldiers with guns heading into the valley between Kabuye hill and Gahondo hill, whereupon they circled the hill and began to advance towards the refugees. The refugees withdrew but soon had nowhere to go, and started shouting and crying in fear for their lives. In desperation, the refugees began throwing stones and spears, and the soldiers responded with gunfire. The attack lasted until 6:00 p.m., by which point the soldiers had run out of ammunition and heavy rainfall was quickly approaching. Once the rain fell, AK11 and others managed to escape from the hills.<sup>360</sup>

340. AK11 testified that he did not see Kalimanzira at Kabuye hill and did not hear anyone mention that Kalimanzira had been there during the attacks. AK11 explained that had Kalimanzira been present, he would have been informed because Kalimanzira was well known and it would have been a topic of discussion. AK11 reiterated that at no time after the attacks at Kabuye hill did he hear that Kalimanzira had played any part whatsoever in their planning. Finally, AK11 stated that he was told after the attacks that the soldiers had arrived

<sup>357</sup> T. 29 January 2009 pp. 6-8 (Witness AK11).

<sup>358</sup> T. 29 January 2009 pp. 7-9 (Witness AK11).

<sup>359</sup> T. 29 January 2009 pp. 9-10 (Witness AK11).

<sup>360</sup> T. 29 January 2009 pp. 9-14 (Witness AK11).

at Kabuye hill in vehicles; however, he did not hear that Kalimanzira had been in any of those vehicles.<sup>361</sup>

#### *Defence Witness FCS*

341. FCS is a Tutsi survivor who testified that he fled to Kabuye hill on Wednesday, 20 April 1994, where he found a crowd already there, and spent the night. The next morning, he noticed attackers had arrived to loot the property of refugees. As a result, that afternoon he and others fled the hill for the Gisagara marketplace. He observed that as they were leaving, others were just arriving to Kabuye hill. Upon reaching Gisagara, FCS settled with others in a small centre near the marketplace and spent the next two nights there. At 9:30 a.m. on Saturday, 23 April 1994, he saw a group of people arrive whom he did not know, but who later introduced themselves; it was the *bourgmestre* and the *sous-préfet*, in the company of other colleagues. At some point they addressed the crowd; the *bourgmestre* took the floor, followed by the *sous-préfet* who told the refugees to move to Kabuye hill where they would be safe. FCS was standing about 10 metres away from the officials when they spoke. The refugees left calmly and immediately, arriving at the hill around 11:00 a.m.<sup>362</sup>

342. Upon arrival, FCS saw that there were still many refugees on the hill. He settled in the same location he had on the Wednesday prior and hoped this time they would be protected, but quickly realized that the same looters had returned that Saturday. By 6:00 p.m., he saw a *communal* policeman had arrived, which he assumed was for the refugees' protection. Instead, he heard gunshots and saw a large group of people assemble who started throwing stones at the refugees and attacking them with sticks. When FCS saw that their aim was to kill, not to loot, he and others fled right away, scattered. Some were killed on the way, but he and another person reached a swamp far from the hill, where they spent the night. He could still hear the gunshots. He did not return to Kabuye hill. FCS concluded his testimony by stating that he never heard mention of Kalimanzira and never saw any vehicles while on Kabuye hill.<sup>363</sup>

#### *Defence Witness ACB6*

343. ACB6 lived near Kabuye hill in 1994. She testified that she and her family fled to Kabuye hill approximately two weeks after the death of President Habyarimana because the Hutus and Tutsis in her local area started killing each other. She recalled that they left for the hill on Wednesday, which was a market day, at approximately 3:00 or 4:00 p.m., following their neighbours and others who were also fleeing. They arrived at the hill at approximately 6:00 p.m.; the journey took longer than usual because they had taken their cattle with them. ACB6 stated that they spent the night at the top of the hill alongside many people from various *communes*. She said nothing happened that night and they stayed on the hill on Thursday, collecting food from farms on the neighbouring Gahondo hill.<sup>364</sup>

344. ACB6 testified that she and her family spent Thursday night on the hill, and again, there were no problems. However, on Friday the situation changed. At approximately 11:00 a.m., ACB6 and others saw a crowd of people gathering on Gahondo hill who started throwing stones and attacking the refugees on Kabuye hill. She recalled that the Tutsi refugees defended themselves and that she contributed to the efforts by gathering stones to be thrown at the attackers. She further recalled that in the afternoon the attacks stopped for a

<sup>361</sup> T. 29 January 2009 pp. 13-16, 21, 23, and 29 (Witness AK11).

<sup>362</sup> T. 29 January 2009 pp. 43-48 (Witness FCS).

<sup>363</sup> T. 29 January 2009 pp. 48-49 (Witness FCS).

<sup>364</sup> T. 29 January 2009 p. 54 and T. 2 February 2009 pp. 4-7 (Witness ACB6).

while before resuming again at 4:00 p.m. The attackers eventually left after being repelled by the refugees and stealing several cows. ACB6 and her family spent Friday night on the hill without further problems.<sup>365</sup>

345. On Saturday morning, the attackers returned in larger numbers and equipped with firearms. She stated that the attack started at 11:00 a.m., after which it stopped for a while before increasing in intensity again at approximately 3:00 p.m. and continuing until nightfall. She was located near the top of Kabuye hill; the attacks were launched from Gahondo hill. ACB6 recalled that the Tutsis continued to defend themselves until it began raining heavily, which caused some of the attackers to leave whilst others remained and looted. Some Tutsis attempted to flee the hill and take refuge at the Gisagara *commune* office, but were prevented from doing so on their way, so she and others fled to the sorghum and banana plantations to hide instead. ACB6 came out of hiding on Sunday morning, returning to Kabuye hill, and then returning home, only to find her house had been burnt down. She was the only person in her family to survive. Subsequently, she went to live with an elderly Hutu woman who was a friend of the family.<sup>366</sup>

346. ACB6 testified that she saw no vehicles approach Kabuye hill from her time of arrival on Wednesday until her departure on Sunday, and that the attackers had not come by road because there were no roads in the area. She did not see or hear about Kalimanzira being at Kabuye hill between her time of arrival on the Wednesday and her departure on the Sunday; in fact, she did not see Kalimanzira at all in 1994.<sup>367</sup>

*Defence Witness Denis Ndamyumugabe*

347. Ndamyumugabe lived in Gitwa *cellule* (Dahwe *secteur*, Muganza *commune*) in 1994, a five minute walking distance from Kabuye hill. He testified that on a Wednesday, two weeks after the death of President Habyarimana, his *conseiller de secteur* assembled the local population at the *secteur* office and warned them to protect themselves against the many unknown Tutsis gathered on Kabuye hill, which posed a security threat as the country was at war. Ndamyumugabe recalled the *conseiller* instructed the population of Dahwe to chase the Tutsis from the hill. Ndamyumugabe knew that the Tutsis had fled to the Kabuye hill because they feared for their lives. However, having been threatened with punishment if they failed to participate, he and the others followed the *conseiller's* instructions and headed to the hill immediately.<sup>368</sup>

348. Ndamyumugabe recalled that they arrived at approximately 1:00 p.m. and began to throw stones at the Tutsis, who did the same in defence. When the attackers grew tired, they returned to their *cellules* and came back to the hill the following day. The situation repeated itself over four days, from Wednesday through Saturday, on which day the final attack was launched, this time with the assistance of soldiers. They persisted until nightfall, at which point it began to rain heavily, so they retreated. When he returned on Sunday, there was nobody left to attack. Ndamyumugabe asserted that at no point did he see any vehicles at Kabuye hill. At no point during those four days did he see Kalimanzira, nor did he ever hear anyone mention Kalimanzira's presence at Kabuye hill at any point in time.<sup>369</sup>

*Defence Witness NGB*

<sup>365</sup> T. 2 February 2009 pp. 8-9 (Witness ACB6).

<sup>366</sup> T. 2 February 2009 pp. 9-12 (Witness ACB6).

<sup>367</sup> T. 29 January 2009 p. 54 and T. 2 February 2009 p. 11 (Witness ACB6).

<sup>368</sup> T. 28 January 2009 pp. 3-4 (Denis Ndamyumugabe).

<sup>369</sup> T. 28 January 2009 pp. 2-7 (Denis Ndamyumugabe).

349. NGB took part in two attacks over two successive days at Kabuye hill. Sometime after 20 April 1994, people from Rwamiko *secteur* came to NGB's home armed with traditional weapons and invited him to follow them to attack Kabuye hill. Feeling he could not refuse, he took his machete and followed them. They stopped in Gahondo *cellule* (Dahwe *secteur*), facing Kabuye hill. He noticed that the refugees had gathered on Kabuye hill precisely where it faces Gahondo. Soon thereafter, he and the others were instructed by a deputy brigadier to launch an attack, which they did. NGB and his fellow attackers descended Gahondo hill, crossed the Kabuye valley, and then started climbing Kabuye hill. He stated that they did not use any road to climb up the hill because there was none.<sup>370</sup>

350. The first attack he participated in began before noon and lasted about three hours; it stopped because the refugees had mounted a successful resistance. The following day, NGB was issued a firearm and five bullets by a brigadier in order to ensure safety in his *secteur*. On his way back, a vehicle carrying gendarmes and policemen stopped and asked NGB to board, which he did. Together, they returned to Gahondo hill, where the road ends, and climbed to the top. From there, another brigadier issued instructions to attack the refugees at Kabuye hill. The attack was launched sometime before noon, taking place halfway up the hill, and went on until the evening, stopping only when the night and heavy rain fell. There were several other attackers from other localities there too. NGB did not see any vehicle at Kabuye hill before, during, or after either attack. He was unaware of any further attacks having taken place thereafter. NGB knew Kalimanzira and stated he neither saw nor heard of his any participation in the attacks at Kabuye hill. NGB also stated that if Kalimanzira were involved, he surely would have heard about it eventually in prison, where natives of each *commune* would gather to discuss what happened.<sup>371</sup>

*Defence Witness Athanase Nzabakirana*

351. Nzabakirana testified that he went to Kabuye hill approximately two weeks after the death of President Habyarimana. Nzabakirana explained that Burundian refugees from Kibayi *commune* armed with traditional weapons, machetes and clubs, threatened him with violent reprisal if he did accompany them to Kabuye hill in order to loot from the Tutsis who had sought refuge there. Armed only with a small stick, Nzabakirana accompanied some 300 other people to the hill, which took approximately one hour to reach. He recalled that when they arrived in the valley below the hill and attempted to attack the Tutsi refugees, they were repelled with stones. After the failed attack, which occurred at around 11:00 a.m., he returned home and stayed there so as to avoid being coerced into returning to the hill for further attacks. Nzabakirana did not see any officials or vehicles at Kabuye hill. He testified that there was not even a road leading there, and that he did not see Kalimanzira at all between April and July 1994.<sup>372</sup>

*Defence Witness Alphonse Nsabimana*

352. Nsabimana testified that one afternoon in April 1994, approximately two weeks after the death of President Habyarimana, two military jeeps carrying some 25 soldiers came to a roadblock he was manning with four other men at the border between Muzenga and Kinazi *secteurs* (Ndora *commune*). Some of the soldiers exited the vehicles and ordered Nsabimana and the four other men to follow them to Kabuye hill to chase the refugees out of there. When two of Nsabimana's friends expressed reluctance, the soldiers shot them dead. Consequently, Nsabimana and the remaining men decided to comply and boarded one of vehicles. They then

<sup>370</sup> T. 28 January 2009 pp. 21-23 (Witness NGB).

<sup>371</sup> T. 28 January 2009 pp. 23-26 (Witness NGB).

<sup>372</sup> T. 28 January 2009 pp. 33-35 (Athanase Nzabakirana).

drove towards Kabuye hill on the Gisagara road, whereupon the soldiers parked the vehicles on a nearby hill and led them into the valley between Gahondo hill and Kabuye hill.<sup>373</sup>

353. Nsabimana testified that there were no refugees on the hill where they parked, but that when they walked into the valley he could see many people there and many refugees on Kabuye hill. The soldiers, who stood in front of the others, moved towards the refugees. He heard shooting for approximately three hours, after which there was heavy rain and thunder. Nsabimana explained that he did not participate in the attack because no refugees managed to flee the shooting and reach the area where he was standing.<sup>374</sup>

354. Nsabimana testified that did not see Kalimanzira in either of the vehicles he arrived in. He stated that he did not see him during the attacks at Kabuye hill or in the valley. In fact, he did not see Kalimanzira at all in 1994. Finally, Nsabimana asserted that after the attacks he did not hear anyone mention that they saw Kalimanzira at Kabuye hill and reiterated that the only vehicles he saw parked were the two jeeps he came with.<sup>375</sup>

*Defence Witness AM14*

355. AM14 testified that around 20 April 1994, Tutsis arrived in large numbers with their cattle at the Gisagara marketplace, which also doubles as a football pitch, and stayed for a few days. AM14 stated that he went to the square to see the refugees and observed the events as he stood next to a tap with some friends. At some point one afternoon, AM14 learnt that the refugees had been instructed by the *bourgmestre* to leave and move to Kabuye hill for their own safety. AM14 stated that although he did not personally witness the *bourgmestre* giving these instructions, he did see the *bourgmestre* at the square on that day. AM14 asserted that despite not having participated in the attacks, he knows what happened at Kabuye hill because many people discussed it long afterwards, even in prison. He stated that he has never heard Kalimanzira's name mentioned in relation to the killings at Kabuye hill.<sup>376</sup>

*Defence Witness AX88*

356. AX88 was called to rebut BDK's evidence about the discussion of further killings. She testified that at the time of the killings at Kabuye hill, the tap at Fidèle Uwizeye's house was out of order because the man who was responsible for operating the water pump was Tutsi and consequently in hiding. AX88 also asserted that Kalimanzira never attended a meeting at Uwizeye's house after the death of President Habyarimana.<sup>377</sup>

**2.4.2. Deliberations**

357. The allegations at paragraphs 9 and 10 of the Indictment, as well as the evidence adduced at trial, may be deconstructed into three categories of events: (1) sending Tutsis to Kabuye hill; (2) killings at Kabuye hill; and (3) supervising and discussing further killings at Kabuye hill. At the relevant times alleged, Kalimanzira claims to have been working in Murambi (Gitarama *préfecture*). As discussed above, the Chamber disbelieves his alibi (see III.1.2.2).

<sup>373</sup> T. 3 February 2009 pp. 36-37 (Alphonse Nsabimana).

<sup>374</sup> T. 3 February 2009 pp. 38-39 (Alphonse Nsabimana).

<sup>375</sup> T. 3 February 2009 p. 40 (Alphonse Nsabimana).

<sup>376</sup> T. 19 November 2008 pp. 64-65 (Witness AM14).

<sup>377</sup> T. 19 November 2008 pp. 18-19, 22 [closed] (Witness AX88).

*Sending Tutsis to Kabuye Hill – Gisagara Marketplace*

358. BCF and BDC testified to Kalimanzira’s participation in directing Tutsi refugees from the Gisagara marketplace to Kabuye hill on Saturday, 23 April 1994. BWO also testified to efforts to lure Tutsis to Kabuye hill at the marketplace, but did not see Kalimanzira there. All three witnesses are survivors of the killings at Kabuye hill.

359. BCF testified that he was a Tutsi who, at the time of the alleged events, sold banana wine on the main road that leads down to the Gisagara marketplace.<sup>378</sup> The Defence called AM52 and AM14 to discredit BCF on these points. AM52 testified that he owned a shop in the Gisagara marketplace and that he knew BCF, who was often at the marketplace, but knew of no shop or bar that BCF owned there.<sup>379</sup> AM14 also testified he knew of no shop or bar that BCF owned there, and expressed some doubt as to BCF’s ethnicity, but conceded that he did not know BCF very well.<sup>380</sup> The Chamber considers these matters are not of material importance and do not go to the substance of BCF’s testimony. The Chamber finds that AM52 and AM14 do little to discredit BCF.

360. The Defence points out that BCF never made mention of his banana wine business in his March 2003 statement to ICTR investigators.<sup>381</sup> BCF simply stated that on 23 April 1994, he was among a large group of refugees who had gathered at the marketplace. The Chamber does not see any contradiction with his testimony on the stand. Rather, BCF’s addition of detail to a point of insignificance lends credence to his account in substance. On a more material matter, the Chamber notes that in his March 2003 statement, BCF stated that both *sous-préfet* Ntawukulilyayo and Kalimanzira spoke, whereas on the stand he stated that only the *sous-préfet* spoke. Under cross-examination, BCF indicated that his statement must have been misrecorded, asserting that he never said Kalimanzira spoke.<sup>382</sup> The Chamber accepts his explanation and considers that he was being more cautious on the stand. If he were lying, wanting to falsely accuse Kalimanzira, he would more likely have affirmed that Kalimanzira had spoken to the crowd. The Chamber believes BCF.

361. BDC, who testified three days after BCF, also stated that Kalimanzira was at the Gisagara marketplace but that only the *sous-préfet* spoke. The Defence posits that BCF and BDC have conspired to harmonise their testimonies in this respect.<sup>383</sup> The Chamber does not accept the Defence’s baseless conjecture. BDC, a Hutu survivor whose Tutsi husband and children were killed, supported BCF’s testimony in other particulars. Both witnesses testified that it was a Saturday afternoon, that policemen were present, that the *sous-préfet* promised they would be protected, and that the refugees were immediately mobilized to Kabuye hill. BDC and BCF also diverged on some points, such as whether the *sous-préfet* used a microphone to address the crowd, the description of the policemen’s uniforms, and the presence of soldiers. The Chamber considers these inconsistencies to be minor and attributable to the passage of time, different perspectives, and chaotic circumstances.

362. In her March 2003 statement to ICTR investigators, BDC mentioned only *sous-préfet* Ntawukulilyayo, who spoke, and “some dignitaries.”<sup>384</sup> Given that the statement was specifically entitled “Re – Kalimanzira, Callixte”, and that she mentions Kalimanzira before

<sup>378</sup> T. 12 May 2008 p. 7 [closed] (Witness BCF).

<sup>379</sup> T. 18 November 2008 pp. 3-8 [closed] (Witness AM52); see also Exhibits D45 and D46.

<sup>380</sup> T. 19 November 2008 pp. 67 and 73 (Witness AM14); see also Exhibits D50, D51 and D52.

<sup>381</sup> Defence Closing Brief, para. 153; Exhibit D3.

<sup>382</sup> T. 12 May 2008 p. 44 (Witness BCF).

<sup>383</sup> Defence Closing Brief, paras. 155-156.

<sup>384</sup> Exhibit D10.



and after the Gisagara marketplace incident, the Defence submits that if she had seen Kalimanzira there, she surely would have mentioned him.<sup>385</sup> The Chamber finds that BDC's failure to explicitly mention Kalimanzira's presence at the marketplace does not cast doubt on her credibility. He could very well have been among the other "dignitaries" BDC mentioned. Considering that Kalimanzira did not address the crowd, she might not have felt it important to specify that he was present.

363. BDC and BCF's evidence is further supported by BDJ, who spontaneously declared in response to open-ended questions under cross-examination that he saw Kalimanzira at the Gisagara marketplace on 23 April 1994.<sup>386</sup> BWO, a Tutsi survivor who lost many family members on Kabuye hill, also supported BCF and BDC on many points, but diverged on others. Most significantly, BWO said he spent two nights at the Gisagara marketplace before *sous-préfet* Ntawukulilyayo arrived and instructed the refugees to move to Kabuye hill where they would be protected; he did not, however, mention Kalimanzira was there. BWO was seated among some 2,000 refugees, far from where the *sous-préfet* took the floor, and left for Kabuye hill soon after the *sous-préfet*'s instructions.<sup>387</sup> If BWO is recounting the same incident at the Gisagara marketplace as BDC and BCF when they saw Kalimanzira, BWO may not have seen Kalimanzira from where he was seated in the crowd of refugees.

364. However, BWO's testimony differed from BDC's and BCF's in other ways which suggest that BWO was recounting a separate incident. For instance, BWO recalled that the *sous-préfet* came to the marketplace from the *communal* office on foot, in the company of two policemen and several other Tutsis who had taken refuge at the *communal* office.<sup>388</sup> In addition, BWO testified that upon following the *sous-préfet*'s instructions to leave the marketplace, he was among the first refugees to settle on Kabuye hill, experiencing a few days of relative quiet before attacks and killings were launched in full.<sup>389</sup> In contrast, BDC and BCF experienced heavy attacks with gunfire on the same day that they moved from the marketplace to Kabuye hill.<sup>390</sup> As such, the Chamber finds BWO most likely recounted an earlier wave of refugee expulsion from the marketplace, while BDC and BCF were among a later group. The Defence's contention that BWO is determined to accuse Kalimanzira at any cost does not stand.<sup>391</sup> BWO was cautious to limit his testimony only to what he remembers personally seeing, which adds to his credibility as a witness.

365. Defence witnesses AM14 and FCS supported the Prosecution evidence that on Saturday, 23 April 1994, Tutsi refugees who had gathered at the Gisagara marketplace were told to leave for Kabuye hill, where they were told they would be safe. This point is not disputed. However, FCS and AM14 implicated the *bourgmestre* of Ndora *commune* with the *sous-préfet* in directing the refugees to Kabuye hill. The Defence contends this contradicts the Prosecution evidence placing Kalimanzira there. The Chamber does not agree. Neither AM14's hearsay evidence nor FCS' direct evidence do anything to preclude Kalimanzira from also being there. In addition, FCS testified to an incident which occurred Saturday morning, while the Prosecution evidence places the event in the afternoon. The Defence

<sup>385</sup> Defence Closing Brief, para. 208.

<sup>386</sup> T. 17 June 2008 p. 60 (Witness BDJ).

<sup>387</sup> T. 12 May 2008 pp. 64-69 (Witness BWO); see also Exhibit D4.

<sup>388</sup> T. 12 May 2008 pp. 62-63 (Witness BWO).

<sup>389</sup> T. 5 May 2008 pp. 26-28 and T. 12 May 2008 pp. 69-70 (Witness BWO).

<sup>390</sup> T. 9 May 2008 pp. 27-32 (Witness BDC); T. 5 May 2008 pp. 12-14 and T. 12 May 2008 pp. 32-40 (Witness BCF).

<sup>391</sup> Defence Closing Brief, para. 280.

suggests that a multi-stage expulsion is not possible because no Prosecution witness mentioned it.<sup>392</sup>

366. Given that these Prosecution witnesses were refugees who were instructed to move, and who testified to events as they experienced them, they would not conceivably have stayed at the marketplace place to witness an expulsion in multiple stages, nor could they be expected to know that a group of refugees had been moved from the marketplace at other times. The Chamber considers it likely that thousands of refugees would not have shown up at the marketplace all at once, and that as they flowed into the marketplace, they would have been moved at various stages. As such, FCS' testimony provides further information as to how the Tutsis came to Kabuye hill in such large numbers.

367. In the Chamber's view, the Prosecution has proven beyond reasonable doubt that on Saturday, 23 April 1994, Kalimanzira was at the Gisagara marketplace, standing next to the *sous-préfet* who instructed the Tutsis who had gathered there to make their way to Kabuye hill, where he promised them protection. As discussed in the following section, these refugees were not protected, but rather killed *en masse* at the hill.

#### *Sending Tutsis to Kabuye Hill – Gisagara-Kabuye Road*

368. The Prosecution led evidence from BWK, a Tutsi survivor, who testified that she saw Kalimanzira in a vehicle on the road from Kabuye to Gisagara near Misago's house just before 3:00 p.m. on Saturday, 23 April 1994. She was with 13 or so other refugees on her way out of Kabuye *cellule* when Kalimanzira rerouted them to Kabuye hill, promising them safety.

369. The Defence alleges three inconsistencies between BWK's testimony and her September 2007 statement to ICTR investigators, given eight months apart.<sup>393</sup> First, in September 2007 she stated that she saw Kalimanzira on the road near Misago's house "around 21 April 1994", whereas on the stand she stated it was on 23 April. The Chamber sees no inconsistency here; "around 21 April 1994" is simply an approximation of the more specific date of 23 April that she provided on the stand. Second, in her prior statement BWK mentioned eight people were accompanying Kalimanzira in his vehicle, as opposed to only three when she took the stand. While the variation is indeed noticeable, it relates to a matter of little significance, and, in the Chamber's view, is not indicative of fabrication. Finally, in her prior statement BWK mentioned Kalimanzira's driver was dressed in military camouflage, whereas on the stand she described him in civilian attire. The Defence contends that BWK has changed her statement in order to harmonise her testimony with that of other Prosecution witnesses who have typically stated that Kalimanzira was driven by a civilian. At the same time, the Defence contradicts itself by making a case out of BWK's lack of corroboration. The Chamber does not consider that this casts reasonable doubt on her testimony; what Kalimanzira's driver might have been wearing is of no material importance.

370. BWK's evidence is supported insofar as other Prosecution witnesses placed Kalimanzira at the nearby Gisagara marketplace at around the same time. BWK's sighting therefore could have occurred just before or after Tutsis were expelled from the marketplace. BWK is also supported in part by BWO, who also named Gakeri as a civilian who was instructed to accompany refugees to Kabuye hill.<sup>394</sup>

<sup>392</sup> Defence Closing Brief, para. 181.

<sup>393</sup> Defence Closing Brief, paras. 12-15; see also Exhibit D9.

<sup>394</sup> T. 12 May 2008 p. 65 (Witness BWO).

371. The Chamber believes BWK beyond reasonable doubt and finds her evidence to be reliable. Her evidence, along with BDC and BCF's (discussed above in relation to the Gisagara marketplace) supports the allegation at paragraph 9 of the Indictment that on 23 April 1994, Kalimanzira personally encouraged Tutsi civilians to take refuge on Kabuye hill, promising them protection.

*Killings at Kabuye Hill*

372. BWO, BCF, BDC and BBO all testified to having seen Kalimanzira on Kabuye hill on or around Saturday, 23 April 1994. BXG witnessed Kalimanzira at a nearby roadblock earlier that same day. BWO, BCF, BDC and BXG are survivors of the attacks at Kabuye hill; BBO, however, participated in the attacks.

373. Although BBO's testimony was consistent with BWO, BCF and BDC on matters such as time (end of April), location (Kabuye hill) and description of events (Tutsi resistance to attacks), his testimony was qualitatively distinct from the survivors', who experienced the events from a very different perspective. BBO was the only witness to testify that Kalimanzira came to Kabuye hill with Colonel Tharcisse Muvunyi bringing two ONATROCOM buses filled with 150 soldiers. He was also the only witness to testify that Kalimanzira gave instructions to Burundian refugees on how to proceed with the attack.

374. The Defence alleges an inconsistency in BBO's testimony inasmuch as while he asserted to having seen Kalimanzira at Kabuye hill, when asked how he could recognize him, indicated that he heard other people say that Kalimanzira was there, thereby suggesting hearsay.<sup>395</sup> The Defence further points to several alleged inconsistencies with BBO's prior statements. In addition to those discussed in relation to BBO's allegations at Kanage Camp (see III.4.2.2), the Defence notes that in his 20 October 1999 statement to ICTR investigators, BBO does not mention Kalimanzira or Muvunyi coming to Kabuye hill with two busloads of soldiers; he mentions only Élie Ndayambaje (former and future *bourgmestre* of Muganza *commune*) and Canisius Kajyambere (*bourgmestre* of Kibayi *commune*).<sup>396</sup> The Chamber notes, however, that in his 2001 statement, BBO did implicate Kalimanzira and Muvunyi, among others, in the provision of military reinforcement to Kabuye hill.<sup>397</sup>

375. BBO is a self-professed killer. He spent 11 years in prison for his participation in the genocide and has since been released.<sup>398</sup> BBO also testified in relation to the allegations at Kanage Camp, where the Chamber considered his evidence should be treated with caution, and found his sole testimony to be insufficiently reliable to sustain a conviction, concluding that Kalimanzira was not at Kanage Camp in the days following the death of the President (see III.4.2.2). The Chamber considers BBO's ability to identify Kalimanzira is now at issue. BBO testified that the first time he saw and came to know of Kalimanzira was at Kanage Camp, where Pierre Canisius Kajyambere (*bourgmestre* of Kibayi *commune*) introduced him. Having found that Kalimanzira was not at Kanage Camp, the Chamber doubts whether BBO could have recognized Kalimanzira at Kabuye hill. The Chamber therefore cannot rely on BBO's evidence unless it is corroborated by, or itself corroborates, other reliable evidence.

<sup>395</sup> Defence Closing Brief, paras. 62-64; see T. 19 June 2008 p. 46 (Witness BBO): "A soldier called Alphonse and an old former soldier called Habyarimana spoke about Kalimanzira, and they were saying that, 'Now that Muvunyi and Kalimanzira are here, it's over for these Tutsis.' I did not pay attention to these authorities because I did not know that I would be examined one day about them – on them. I heard his name, and since I knew – or I could see that the authorities were there to assist us, and I understood that it was true, because I had already heard about this man. I heard about his name in the refugees' camp."

<sup>396</sup> Defence Closing Brief, paras. 80-82; see also Exhibit D20.

<sup>397</sup> Exhibit D21.

<sup>398</sup> T. 19 June 2008 p. 48 (Witness BBO).

376. BXG, a Tutsi survivor who lost many family members at Kabuye hill, supported the Prosecution evidence about the events at Kabuye hill to a limited extent. However, he was the only witness to testify that he saw Kalimanzira on Saturday, 23 April 1994 sometime before noon at the Mukabuga roadblock in Kabuye *cellule* in a white saloon vehicle with a driver and two armed soldiers. There, Kalimanzira became irate upon learning that Tutsis had succeeded in defending themselves at Kabuye hill. The Defence points to alleged inconsistencies in BXG's testimony, such as his assertion that he stayed at the roadblock for 30 minutes even after Kalimanzira's harsh exchange with *conseiller* Bushakwe concerning the fate of the Tutsis. The Defence also asserts that BXG's evidence about Kalimanzira's reaction suggests Kalimanzira was not aware of the developments at Kabuye hill, which contradicts the Prosecution's case that he participated in supervising its progress.<sup>399</sup>

377. The Defence alleged further inconsistencies between BXG's prior statement to ICTR investigators and his testimony on the stand.<sup>400</sup> In October 2007, BXG stated that he fled straight to Kabuye hill on 18 April for fear of being killed if he stayed home; on the stand, however, he testified that he did not leave his home before 22 April to check up on his sister-in-law, and that he feared nothing, not even the following day after seeing Kalimanzira at the Mukabuga roadblock. In October 2007, BXG also indicated that he left Kabuye hill on 20 April 1994 to get some food when he saw Kalimanzira at the Mukabuga roadblock located right in front of BXG's own house; on the stand, however, he testified that the incident occurred on 23 April 1994, at the Mukabuga roadblock, in front of his *brother's* house.

378. The Chamber does not accept the Defence's contention that the discrepancies in BXG's evidence demonstrate fabrication, and discerns no reason for BXG to lie. If that were the case, BXG could have placed Kalimanzira at Kabuye hill. Such variances may also be attributable to the passage of time, the circumstances under which statements are recorded, and difficulties in recalling traumatic events. BXG is consistent with the general trend of evidence relating to Kabuye hill. The Chamber believes him.

379. BDC and BCF testified that they left the Gisagara marketplace and arrived at Kabuye hill at roughly the same time, in the afternoon of Saturday, 23 April 1994. Both witnesses recalled seeing Kalimanzira arrive at Kabuye hill later that afternoon with *sous-préfet* Ntawukulilyayo in the same vehicle, bringing soldiers and policemen. BCF saw two vehicles, which he described as pick-up trucks, the second carrying more soldiers and policemen, whereas BDC only mentioned one vehicle. BCF recalled Kalimanzira and the *sous-préfet* remained at Kabuye hill when the soldiers started shooting at the refugees, while BDC said that she saw them leave with the vehicle before the shooting began. BDC testified that they left behind the soldiers and policemen who had accompanied them, but contradicted herself on this point under cross-examination when she stated that those very soldiers and policemen did not stay behind, but rather left with Kalimanzira and the *sous-préfet*.<sup>401</sup>

380. The Defence alleges three inconsistencies in BCF's prior statement to the ICTR.<sup>402</sup> In March 2003, BCF stated that Kalimanzira and the *sous-préfet* came to Kabuye hill in separate pick-up trucks of slightly different colours in the company of gendarmes, whereas on the stand he said they arrived in the same vehicle, accompanied by soldiers and policemen. BCF also stated in 2003 that upon arrival the *sous-préfet* reassured the refugees that the armed persons who arrived with them in the vehicles came to offer protection; on the stand,

<sup>399</sup> Defence Closing Brief, paras. 26-33.

<sup>400</sup> Defence Closing Brief, paras. 34-42; Exhibit D13.

<sup>401</sup> Compare T. 9 May 2008 p. 29 with T. 20 May 2008 p. 29 (Witness BDC).

<sup>402</sup> Defence Closing Brief, paras. 158-162; see also Exhibit D3.

however, he neither mentioned nor was able to confirm whether the *sous-préfet* spoke.<sup>403</sup> BCF explained that his prior statement must have been misunderstood and poorly recorded, standing firm under cross-examination.

381. In the Chamber's view, any inconsistencies within or between BDC and BCF's statements are normal considering the passage of time. The Chamber also considered that these witnesses are uneducated, illiterate, and, as survivors, have undergone a great trauma. The Chamber finds that the substantial elements on which their testimonies converge far outweigh the minor points on which they diverge. The Chamber believes BDC and BCF.

382. BWO supported BCF and BDC on certain points, but diverged on others. His testimony reveals that he was among the first refugees to settle on Kabuye hill, experiencing a few days of relative quiet before attacks and killings were launched in full swing. As such, BWO likely reached Kabuye hill before BDC and BCF did. His sighting of Kalimanzira, however, coincides with the day BWO experienced the heaviest attack, on which day he escaped from Kabuye hill. BWO saw Kalimanzira arrive at Kabuye hill around or just before midday in a red pick-up truck with a soldier and a woman. After promising to protect a group of distraught refugees who approached him, Kalimanzira then turned around and told another group of civilians to hurry up and kill the refugees. This account differs significantly from BDC and BCF's. BWO is clearly testifying to a separate event, which also occurred on or around 23 April 1994.

383. In its assessment of BWO's evidence on the expulsion of refugees from the Gisagara marketplace, the Chamber found this witness to be credible. Here, though he is substantially uncorroborated, the Chamber believes him. BWO has no reason to lie and has demonstrated truthfulness through restraint by not implicating Kalimanzira at the marketplace, where he did not see him. Having met Kalimanzira for the first time in 1990, and then seen him on more than one occasion after that, BWO would have been able to identify Kalimanzira.<sup>404</sup>

384. The Defence led evidence from three survivors – FCS, AK11, and ACB6 – and four attackers – Denis Ndamyumugabe, NGB, Athanase Nzabakirana, and Alphonse Nsabimana – to cast doubt on the Kalimanzira's participation in the killings at Kabuye hill. All of them stated that they did not see Kalimanzira there or ever hear of his involvement. However, several Prosecution witnesses, including BCZ, BBB, BWK and BXG did not see Kalimanzira at Kabuye hill. Several witnesses who testified in the *Butare* trial about Élie Ndayambaje's involvement did not mention seeing Kalimanzira there either (see II.4.3). The Chamber does not consider this to preclude Kalimanzira's presence at Kabuye hill.

385. Kalimanzira's defence also hinged on negating the possibility of vehicles reaching Kabuye hill, thereby discrediting Prosecution witnesses who saw Kalimanzira arrive in a pick-up truck. However, Defence witnesses NGB and Alphonse Nsabimana testified to having reached the area in vehicles; whether it was on or near Kabuye hill is a minor detail. Kabuye hill was not reached from one direction only.

386. Having reviewed the Defence evidence carefully, the Chamber finds it does nothing to contradict the Prosecution case; in fact, in many ways, it supports it. AK11, ACB6, NGB, Athanase Nzabakirana, and Denis Ndamyumugabe confirm BDC, BWO, and BXG's evidence that in the days leading up to Saturday, 23 April 1994, the Tutsi refugees on Kabuye hill had managed to succeed in repelling several attacks. Moreover, AK11, FCS, ACB6 and Denis Ndamyumugabe confirm BDC, BCF, BWO and BXG's evidence that on Saturday, 23

<sup>403</sup> Compare Exhibit D3 with T. 12 May 2008 pp. 44-46 (Witness BCF).

<sup>404</sup> T. 5 May 2008 pp. 33-34 and T. 19 May 2008 p. 12 (Witness BWO).

April 1994, the attacks on the Tutsi refugees greatly intensified with the assistance of soldiers and gunfire, to the point that they could no longer resist, causing them to flee into the night. The Defence and Prosecution evidence, when viewed in combination as a whole, provides a broader historical record of the killings at Kabuye hill.

387. The body of evidence reveals that there were thousands upon thousands of refugees suffering battle and massacre from an indeterminate number of attackers over a large landscape and time span; no witness alone could amply describe everything that transpired or identify everyone who was present. The Chamber finds the Defence evidence raises no reasonable doubt on eyewitness accounts that Kalimanzira was at Kabuye hill.

#### *Discussing Further Killings at Kabuye Hill*

388. BDK was the only Prosecution witness to testify to the allegations at paragraph 10 of the Indictment whereby Kalimanzira and other local officials met at Fidèle Uwizeye's house to discuss further action to make up for their failure to eliminate the overwhelming number of Tutsis who had gathered at Kabuye hill. BDK testified that in the morning of Monday, 25 April 1994, she overheard the conversation after filling her bucket with water from the tap inside Uwizeye's compound. The Defence called AX88 to rebut her evidence and discredit her by stating that the water tap was non-functional at the time because the Tutsi man operating it had disappeared. Their testimonies directly contradict each other.

389. A certain level of animosity or rivalry between AX88 and BDK was perceptible. Both witnesses are Tutsi women equally positioned to be able to testify to such an event, if it occurred. AX88 flatly denies it ever took place, while BDK says she witnessed it herself. They are also equally positioned to know for certain whether the water tap was functional or not. That their testimonies diverge so drastically on this point indicates that one of them must be lying, if not both.

390. The Chamber is not at all convinced by AX88's convoluted and often contradictory reasons for why the tap was not working. First she explained that the Tutsi man who operated the water pump had gone into hiding and, without him, there was nobody to turn on the generator operating the pump.<sup>405</sup> In order to obtain water, there was no other option than to fill 13 jerrycans everyday from a water source a 50-minute walk away.<sup>406</sup> When confronted with the idea that it might have been more efficient to simply replace the Tutsi man who operated the generator for the water pump, AX88 offered several other explanations, none of which helped her story make more sense.

391. However, the Chamber is not entirely convinced of BDK's account either. BDK indicated she greeted the officials before standing by to hear the conversation.<sup>407</sup> It is doubtful that Hutu conspirators would have knowingly held such a conversation within hearing distance of a Tutsi woman. More significantly, BDK testified to hearing part of a conversation, which amounts to little more than hearsay. For these reasons, the Chamber finds BDK's sole evidence is insufficiently reliable to prove the allegations at paragraph 10 of the Indictment beyond reasonable doubt.

<sup>405</sup> T. 19 November 2008 pp. 17 and 31 [closed] (Witness AX88).

<sup>406</sup> T. 19 November 2008 pp. 31-32 [closed] (Witness AX88).

<sup>407</sup> T. 21 May 2008 p. 14 [closed] (Witness BDK).

*Conclusion*

392. The Chamber finds that the allegations at paragraph 9 of the Indictment have been proven beyond reasonable doubt. On Saturday, 23 April 1994, Kalimanzira went to the Gisagara marketplace where thousands of Tutsi refugees had gathered to escape the killings, lootings, and house burnings in their areas. On that occasion, *sous-préfet* Ntawukuliyayo instructed the refugees to move to Kabuye hill, promising them protection. Kalimanzira stood next to the *sous-préfet*, saying nothing. In this way, he showed his tacit approval, lending credibility and authority to the *sous-préfet's* assurances of safety. That same day, he stopped 13 refugees leaving Kabuye *cellule* on the Gisagara-Kabuye road and instructed them to go back to Kabuye hill, promising that nothing would happen to them. His behaviour at the Mukabuga roadblock earlier that day demonstrates that he knew the Tutsis at Kabuye hill were being attacked and that he intended for them to be killed. In these ways, he personally encouraged Tutsis to take refuge on the hill in order to facilitate their subsequent killings, a consequence which he was clearly aware of and motivated by.

393. Later that day, on 23 April 1994, Kalimanzira came to Kabuye hill with soldiers and policemen. The Tutsi refugees had successfully repelled attacks with sticks and stones until that day, but they could not resist bullets. With significantly more civilian attackers on the ground, the Saturday attack proved successful and the Tutsi refugees were killed in the thousands, resulting in an enormous human tragedy. Kalimanzira's role in luring Tutsis to Kabuye hill and his subsequent assistance in providing armed reinforcements substantially contributed to the overall attack. Kalimanzira exhibited here, and elsewhere, an intent to destroy the Tutsi group (see [III.5.2](#)). For these reasons, the Chamber finds Kalimanzira guilty beyond reasonable doubt of aiding and abetting genocide on 23 April 1994 at Kabuye hill.

**2.5. Sakindi Roadblock, early May**

394. At paragraph 13 of the Indictment, the Prosecution charges Kalimanzira with Genocide for stopping at a roadblock in Kibilizi *secteur* in early May 1994, where he told those manning it to be discreet in their hunt for Tutsis because foreigners were monitoring events in Rwanda. Kalimanzira asked them to destroy Tutsi homes without leaving any trace and to spread the word that peace had been restored so as to lure Tutsis out of hiding. This roadblock was located near the home of a person named "Sakindi";<sup>408</sup> the Chamber will therefore refer to it as the "Sakindi roadblock".

395. The Defence denies that Kalimanzira was ever present at this roadblock. In addition, Kalimanzira relies on his alibi that he was working in Murambi (*Gitarama préfecture*) from 14 April to 30 May 1994 (see [III.1.2](#)).

**2.5.1. Evidence***Prosecution Witness AZH*

396. AZH testified that he saw Kalimanzira on six different occasions after President Habyarimana's death. The first occasion was at Kabanga *cellule* (Kibilizi *secteur*, Mugusa *commune*), when AZH says he met Kalimanzira for the first time (see [III.2.7.2](#)). The next three times AZH says he saw Kalimanzira was at the Sakindi roadblock, located in Ramba *cellule* (Kibilizi *secteur*) where the roads leading to Save (ending in Butare), Rubona and Gikonko met.<sup>409</sup>

<sup>408</sup> See e.g. Prosecution Pre-Trial Brief, para. 61 and annexed summary of AZH's anticipated testimony.

<sup>409</sup> T. 23 June 2008 pp. 9-12 (Witness AZH).

397. The first time was on 24 April 1994, when Kalimanzira came to the Sakindi roadblock sometime between noon and 2:00 p.m. in a red double-cabin vehicle, along with Alphonse Nteziryayo (Colonel), Tharcisse Muvunyi (Colonel), and soldiers. AZH was among those manning the roadblock, which included Tutsis. On this occasion, AZH testified that Kalimanzira did not speak, but Colonel Nteziryayo told the people present at the roadblock to attack Tutsi homes, burn them down and steal their cattle, and Colonel Muvunyi threatened that if there were no corpses at the roadblock when he returned the next day he would send soldiers to kill everyone. After they left, AZH said he and the others torched Tutsi homes and ate their cattle. The next day killings began at the Sakindi roadblock and corpses accumulated as requested.<sup>410</sup>

398. The second time was in the first week of May 1994, when Kalimanzira returned to the Sakindi roadblock sometime between 11:00 a.m. and noon onboard a white double-cabin vehicle with Dominique Ntawukulilyayo (*sous-préfet* of Gisagara), again with soldiers. Kalimanzira instructed AZH and others to avoid shouting as they moved around hunting for Tutsis. Kalimanzira also told them to explain to the general public that people were no longer being killed; AZH said the goal was to convince any Hutus who were hiding Tutsis that it was safe for them to come out. AZH testified that Kalimanzira's instructions resulted in a young Tutsi man named Nyangezi being identified and killed that same day, and then more Tutsis being flushed out and killed the following day.<sup>411</sup>

399. The third and final time AZH saw Kalimanzira at the Sakindi roadblock was one week later, still in May 1994. On this occasion, Kalimanzira returned once more in the company of *sous-préfet* Ntawukulilyayo onboard a vehicle, and instructed AZH and the others to destroy any walls of Tutsi homes left standing, level the ground, plant banana trees and then cover the ground with grass. Kalimanzira also instructed them to kill those who had obtained fraudulent identity cards in 1959 to conceal their Tutsi origins. AZH testified that Kalimanzira's instructions resulted in a lady named Nakure and her son, being killed that same day, as well as a certain Karuganda and a certain Munyahindi.<sup>412</sup>

400. Besides these three occasions, AZH asserted that Kalimanzira often passed by the Sakindi roadblock, even in AZH's absence.<sup>413</sup> AZH did not, however, indicate how he came to know of this.

#### *Defence Witness MVE*

401. MVE testified that the Sakindi roadblock in Ramba *cellule* was erected on 7 April 1994 at the behest of Vincent Nkulikiyinka (*conseiller* of Kibilizi *secteur*). MVE said he manned the roadblock twice per week, and that Tutsis also participated in manning the roadblock for the first two weeks, but stopped showing up when they were being hunted down. MVE recalled that André Kabayiza (*bourgmestre* of Mugusa *commune*) often drove through the Sakindi roadblock without being stopped. MVE did not recall seeing or hearing of any other officials ever passing through the Sakindi roadblock, including Colonel Nteziryayo, Colonel Muvunyi, or Kalimanzira. MVE insists that if an official ever came to the Sakindi roadblock and issued instructions to kill, he most certainly would have known about it.<sup>414</sup>

<sup>410</sup> T. 23 June 2008 pp. 9-12 and T. 24 June 2008 p. 24 (Witness AZH).

<sup>411</sup> T. 23 June 2008 pp. 10-11 and T. 24 June 2008 pp. 27-30 (Witness AZH).

<sup>412</sup> T. 23 June 2008 pp. 11-12 (Witness AZH).

<sup>413</sup> T. 23 June 2008 p. 10 (Witness AZH).

<sup>414</sup> T. 3 February 2009 pp. 56-58, 61 (Witness MVE).



### 2.5.2. Deliberations

402. At the relevant time alleged, Kalimanzira claims to have been working in Murambi (Gitarama *préfecture*). As discussed above, the Chamber disbelieves his alibi (see [III.1.2.2](#)).

403. AZH pleaded guilty and was convicted for his participation in the genocide. He was sentenced to nine years in Karubanda prison and was released in 2003 after agreeing to assist the *Gacaca* courts by testifying, whenever called upon, against people who incited him to commit genocide and against his accomplices.<sup>415</sup> AZH has also implicated Kalimanzira in relation to other alleged crimes in Mugusa *commune* (see [III.2.6](#) and [III.2.7.2](#)). Although he is now free, the Chamber notes that his statements to ICTR investigators in which he implicated Kalimanzira were made before his release. He may therefore have had an incentive to falsely accuse Kalimanzira. He admits to participating in the crimes to which he testifies Kalimanzira incited him to commit, which would make him an accomplice. The Chamber therefore approaches his testimony with caution.

404. AZH was confronted with three statements he gave to ICTR investigators since 2000<sup>416</sup> which reveal several inconsistencies with the testimony he gave on the stand. In addition, when confronted with his confessions of guilt in Rwanda, he admitted that they implicate only Sylvain Nsabimana, Alphonse Nteziryayo, Tharcisse Muvunyi and André Kabayiza, but make no mention of the kind of incitement and instructions attributed to Kalimanzira at the Sakindi roadblock.<sup>417</sup> In February 2000, when giving a statement to ICTR investigators, AZH makes mention of Kalimanzira for what appears to be the first time, placing him at “our roadblock” with Muvunyi and Nteziryayo on 24 April 1994, and attributing to Kalimanzira a return visit with Kabayiza a few days later where he expresses cause for concern of international opinion.<sup>418</sup> In March 2001, AZH recalls the same 24 April 1994 incident but somewhat differently, failing to mention Kalimanzira this time, but implicating Kabayiza as accompanying Muvunyi and Nteziryayo instead.<sup>419</sup> In December 2001, AZH recalled the 24 April 1994 incident to the exclusion of Kalimanzira, but placed him with Kabayiza at the Sakindi roadblock in early May where he instructed those present to lure Tutsis out of hiding, to kill them discretely for fear of international scrutiny, and destroy the homes of the dead.<sup>420</sup> Then on the stand in June 2008, AZH recalled the 24 April 1994 incident inclusive of Kalimanzira, specifying that it took place at the Sakindi roadblock, and attributes two return visits to the Sakindi roadblock to Kalimanzira in May 1994, this time in the company of Ntawukulilyayo, not Kabayiza.

405. While failing to mention Kalimanzira in AZH’s confession does not necessarily imply that his subsequent statements are fabricated, the overall effect of the number and quality of inconsistencies leading up to and including his testimony create doubt as to the reliability of his testimony. When he was offered an opportunity to provide explanations for these and other such inconsistencies, his responses were not convincing. At one point, he seemed to

<sup>415</sup> T. 24 June 2008 pp. 3-6 [closed] (Witness AZH).

<sup>416</sup> See Exhibits D30, D31, and D32.

<sup>417</sup> Exhibit D29.

<sup>418</sup> Exhibit D30.

<sup>419</sup> Exhibit D31.

<sup>420</sup> Exhibit D32.

suggest that his recollection of Kalimanzira's crimes could be improved if more questions or hints were put him.<sup>421</sup>

406. MVE was the only Defence witness to testify about the Sakindi roadblock. He was convicted for crimes he committed between April and July 1994, but which were unrelated to the Sakindi roadblock. He has completed his sentence, and is now a free man.<sup>422</sup> However, he admitted on the stand that he participated in manning the Sakindi roadblock twice per week; the Chamber therefore considers that he would have an interest to minimise the criminal activities that occurred at that location.

407. MVE did not dispute the existence of the roadblock and recalled that Kabayiza drove through it often. He indicated that Hutus and Tutsis manned the roadblock together until Tutsis started to be hunted down; this made much more sense than AZH's statement that by 24 April 1994, Hutus and Tutsis alike were still manning the roadblock together, which seems highly unlikely. However, MVE's assertion that no other officials ever passed through the roadblock, and that neither Muvunyi, Nteziryayo, nor Kalimanzira could have come to the Sakindi roadblock without his knowledge, is untenable in light of his own testimony that he did not even know them, nor did he ever hear about them in 1994.<sup>423</sup>

408. The Chamber recalls that the required standard is proof beyond reasonable doubt. In light of the doubts raised by the inconsistency of AZH's testimony with his prior statements, and in the absence of any corroboration, the Chamber finds AZH's evidence on Kalimanzira's alleged involvement at the Sakindi roadblock to be insufficiently reliable to support a conviction.

## 2.6. Mugusa Commune, 5 June

409. At paragraphs 12 and 14 of the Indictment, the Prosecution charges Kalimanzira with Genocide for instigating people at the Gasagara centre in Mugusa *secteur* to eliminate the Tutsis, including those still in their mothers' wombs. Later that same day, in a speech delivered at the Gikonko *commune* office,<sup>424</sup> Kalimanzira allegedly ordered the Hutu population to kill all Tutsis who were still alive, including women, children, and the elderly, for fear that they may denounce the killers if the RPF won the war. This resulted in the immediate murders of Mukamazimpaka, Salafina Nyaraneza, Mukaruyonza and her mother, Nyaramisago, Goretha Umubeyeyi, Anasthasia Nakabonye, Apolinarai and Kimonyo's two daughters, and 10 to 15 other Tutsi children.

410. The Defence denies the allegations in their entirety, and places several of the specified killings at least a month earlier than alleged. In addition, Kalimanzira relies on his alibi that he was home in Butare *ville* from 31 May to 30 June 1994, except when he left on a few specified occasions, including sometime in the first week of June to see his family in Kirarambogo (see III.1.2).

### 2.6.1. Evidence

#### *Prosecution Witness AZC*

<sup>421</sup> T. 24 June 2008 p. 8 (Witness AZH): "I don't know if you want to remind me of the other crimes he might have committed for me to recall at what times he might have done so. [...] What I wanted to say, as you ask me questions, I might remember the number of times he committed crimes and I would mention those times."

<sup>422</sup> T. 3 February 2009 p. 54 [closed] (Witness MVE).

<sup>423</sup> T. 3 February 2009 p. 58 (Witness MVE).

<sup>424</sup> The Mugusa *commune* office is located in Gikonko *secteur*.

411. On 5 June 1994, AZC saw Kalimanzira in Mugusa *commune* at the Gasagara commercial centre.<sup>425</sup> Kalimanzira arrived in a white double-cabin vehicle with Colonel Tharcisse Muvunyi, and other soldiers on board. They stopped in front of AZC, who was standing with 30 other people, and asked them to gather around. Others at a nearby roadblock came to join the small crowd. Kalimanzira informed them that he had come to organize a public meeting at the Mugusa *commune* office in Gikonko *secteur*, and announced that the agenda was to kill Tutsis and abort pregnant women.<sup>426</sup>

412. At 1:00 p.m. the same day, AZC made his way over to the Gikonko *commune* office to attend the meeting Kalimanzira had announced. When AZC arrived, the meeting had already begun and André Kabayiza (*bourgmestre* of Mugusa *commune*) had already introduced the invitees and guests of honour. AZC listened to Kalimanzira's speech, in which he incited an audience of 300-400 people to kill Tutsis who had survived the first wave of killings, referring specifically to elderly women and children who had been spared. Kalimanzira warned the crowd of bad luck falling upon them if they did not follow his instructions, as these surviving Tutsis risked denouncing killers once the *Inkotanyi* took over. When a member of the audience asked why soldiers could not perform this task instead, Colonel Muvunyi replied that there were not enough soldiers to assist and that the people should solve the issue the same way they did in the first wave of killings without the use of armed forces.<sup>427</sup>

413. At the end of the meeting, Kalimanzira instructed the audience to destroy and erase any trace of the houses, even the fences, of Tutsis who had been killed and remained to be killed. The goal was to wipe out the existence of any particular victim having lived there. The meeting ended at around 4:00 p.m. when Kalimanzira and Colonel Muvunyi left. AZC testified that after the meeting, people "were heated up", as they had been "incited or excited to commit massacre", and followed the instructions to kill Tutsis who had survived the first wave of massacres in April. AZC was aware of 30 deaths which resulted in Nyarubuye *secteur*: 11 were killed in Gasenyi *cellule*, and 19 in Karukambira *cellule*, including children and elderly women. Though AZC could not identify the persons killed in Karukambira, he knew almost everyone who was killed in Gasenyi: young girls named Mukamazimpaka, Salafina Nyaraneza, Joséphine Mukaruyonza and Nyaramisago; a man named Kimonyo and his two daughters; a young man named Kayumba; and two old women named Anasthasia Nakabonye<sup>428</sup> and Estérie. They were all Tutsi and their houses were all destroyed.<sup>429</sup>

#### *Prosecution Witness AZH*

414. On 5 June 1994, AZH said he attended a meeting held by Kalimanzira on the field in front of the Gikonko *commune* office. At this meeting, Kalimanzira took the floor and instructed the listeners to exterminate Tutsi survivors, including young girls who Hutu men had taken as their wives, and Tutsis who had changed their identities in 1959 to pass as Hutus. He indicated that anyone hiding any Tutsis should also be killed if they refused to surrender those they were protecting. Kalimanzira added that the reason to kill all remaining Tutsis was to avoid the risk that a survivor might later report the attackers to the *Inkotanyi* once they took power. AZH recalled *conseillers* were present at the meeting, as well as

<sup>425</sup> The transcript mistakenly refers to the "Gasagara" commercial centre, which is located in Ndora *commune*. For proper spelling of the location as "Gasagara", see T. 25 June 2008 p. 43 (Witness AZC).

<sup>426</sup> T. 25 June 2008 pp. 42, 63 (Witness AZC).

<sup>427</sup> T. 25 June 2008 pp. 42-43, 66 (Witness AZC).

<sup>428</sup> The transcript of AZC's testimony provides a spelling of "Anastasié Nakabonye". The Chamber will adopt the name "Anasthasia Nakabonye" provided in the Indictment for the sake of consistency.

<sup>429</sup> T. 25 June 2008 pp. 43-44 (Witness AZC).

*cellule* officials, *commune* workers, and members of the general public. After the meeting, AZH and others left immediately to sensitize other members of the population to kill remaining Tutsi survivors, which they did.<sup>430</sup>

#### *Defence Witness NDA*

415. NDA testified that five of the persons named by Prosecution Witness AZC as being killed after the 5 June 1994 meeting died at least a month before then, and that one person named is actually still alive:<sup>431</sup>

- Kimonyo was killed at a roadblock in Nyarubuye *secteur* in April 1994; though NDA did not participate in his killing, he assisted with his burial;
- Joséphine Mukamazimpaka was killed in Gasenyi *cellule* around 29 April or 1 May 1994, roughly two days after the death of her father, whom NDA knew very well. NDA learned of Joséphine's death from Idelphonse Nyandwi, who had forcefully taken her as his wife; her killer's name was Sebazungu;
- Nyandwi also informed NDA that Joséphine was killed along with six other people, including Salafina Nyaraneza,<sup>432</sup>
- NDA learned of Anasthasia Nakabonye's<sup>433</sup> death the day after she was killed in April 1994. He was informed by Célestin Nsereko at the time, who participated in her death; he also assisted Nsereko to draft his confession later in prison;
- When in prison, NDA heard someone confess to having killed Kayumba in April 1994 by burying him alive; Kayumba was Salafina Nyaraneza's brother;
- Estérie<sup>434</sup> is still alive; she was Salafina Nyaraneza's mother.

#### *Defence Witness AM28*

416. AM28 testified that between April and June 1994, he attended three meetings in Mugusa *commune*, only one of which included members of the local population; Kalimanzira did not attend any of these. According to AM28, that public meeting was held next to the Mugusa *commune* office in Gikonko *secteur* in late May 1994. He recalled this date as being after April, when the killings had already stopped, and right before the second wave of devastation in his area in June, immediately following this meeting.<sup>435</sup>

417. The meeting dealt with security matters, and AM28 attended it from start to finish. AM28 testified that those present included *bourgmestre* Kabayiza, deputy *bourgmestres*, members of the secretariat, staff of the accounting department, and *conseillers* of various *secteurs*. However, no officials from outside the *commune* were in attendance, because had there been, they would surely have been introduced, as was customary. AM28 recalled that

<sup>430</sup> T. 23 June 2008 pp. 12-14 (Witness AZH).

<sup>431</sup> T. 1 December 2008 pp. 45-48 (Witness NDA).

<sup>432</sup> The transcript of NDA's testimony provides a spelling of "Seraphina Nyiraneza". The Chamber will adopt the name "Salafina Nyaraneza" provided in the Indictment for the sake of consistency.

<sup>433</sup> The transcript of NDA's testimony provides a spelling of "Anastasié Nakabonye". The Chamber will adopt the name "Anasthasia Nakabonye" provided in the Indictment for the sake of consistency.

<sup>434</sup> The transcript of NDA's testimony provides a spelling of "Asterie". The Chamber will adopt the name "Estérie" provided in the transcript of AZC's testimony for the sake of consistency.

<sup>435</sup> T. 26 January 2009 p. 30 (Witness AM28).

the first speaker of the day was *bourgmestre* Kabayiza, and towards the end of the meeting, various *conseillers* gave an overview of the situation prevailing in their respective *secteurs*.

418. At some point, people from Kibilizi *secteur* started shouting that some RPF accomplices had been spared. The *conseiller* of Kibilizi *secteur*, a Tutsi named Vincent Nkulikiyinka, was not present at the meeting; he had fled his *secteur* and sought refuge at the Mugusa *commune* office. When the meeting was over, everyone left except those from Kibilizi *secteur*, who stayed behind to continue speaking with *bourgmestre* Kabayiza, who condemned their attitude. Two days later, AM28 returned to the *commune* office, where *bourgmestre* Kabayiza told AM28 that the Kibilizi inhabitants forced him to hand over *conseiller* Nkulikiyinka; the *bourgmestre* did not know what then happened to the *conseiller*.<sup>436</sup>

419. AM28 specified that he never saw Kalimanzira from 6 April until the time he left for Rwanda, nor did he ever hear of any meeting that was attended by Kalimanzira. Though he did not know Kalimanzira, he has heard people talk about him, and asserts that had Kalimanzira attended any of the meetings AM28 attended in Mugusa *commune*, he would have surely been introduced.<sup>437</sup>

### 2.6.2. Deliberations

420. At the relevant time alleged, Kalimanzira claims to have been home in Butare *ville*, except when he went to visit his family in Kirarambogo in the first week of June. As discussed above, the Chamber disbelieves his alibi (see III.1.2.2).

421. AZC was an official in his area. At the time of his testimony, he was not in detention. Having spent 11 years in custody, AZC was released in July 2007 after being sentenced to 24 years, with 8 years suspended and 5 years of community service, which he is currently carrying out under the close supervision of the Rwandan courts. He confessed to all the charges against him, which included the setting up of a roadblock, selling the property of those who had been killed, and complicity in carrying out killings in his area. The killings which AZC accuses Kalimanzira of instigating at the 5 June meeting are also comprised by the killings for which AZC has been held responsible, making him an accomplice. The Chamber was impressed with AZC's expressed desire to testify truthfully so as to prevent any recurrence of such events in Rwanda.<sup>438</sup> However, because his statements to ICTR investigators in which he implicated Kalimanzira were made before his release, he may be now repeating statements he made at a time when he had an incentive to falsely accuse Kalimanzira. The Chamber will therefore treat his testimony with caution.

422. AZH was sentenced to nine years and released in 2003 after pleading guilty and agreeing to assist the *Gacaca* courts by testifying, whenever called upon, against people who incited him to commit genocide and against his accomplices.<sup>439</sup> AZH's testimony on the stand about the 5 June 1994 meeting is generally consistent with his prior statements to ICTR investigators, except when it comes to Kalimanzira's involvement. In his February 2000 statement, AZH mentions only Colonel Muvunyi, Colonel Nteziryayo, *bourgmestre* Kabayiza, and *conseiller* Gasana in relation to a meeting in Gikonko; his statement's description of the killing of *conseiller* Nkulikiyinka is similar to AM28's testimony.<sup>440</sup> In his

<sup>436</sup> T. 26 January 2009 p. 31 (Witness AM28).

<sup>437</sup> T. 26 January 2009 pp. 29, 32 (Witness AM28).

<sup>438</sup> T. 25 June 2008 p. 47 [closed] (Witness AZC).

<sup>439</sup> T. 24 June 2008 pp. 3-6 [closed] (Witness AZH).

<sup>440</sup> Exhibit D30.

March 2001 statement about Kabayiza's involvement in the genocide, AZH does not mention the 5 June 1994 meeting at the Gikonko *commune* office.<sup>441</sup> Then in December 2001, AZH describes for the first time a meeting at the Gikonko *commune* office on 5 June 1994 involving Kalimanzira and Kabayiza, and placing the meeting he described in his February 2000 statement three days later, on June 8<sup>th</sup>.<sup>442</sup> On the stand, AZH specified that Kalimanzira was the only person to have spoken at the 5 June 1994 meeting at the Gikonko *commune* office and suddenly added *sous-préfet* Ntawukuliyayo as among the authorities present; he also insisted that the 5 June 1994 meeting was the last one he attended, and that the one where Nkulikiyinka's death was discussed did not take place on 8 June, but rather in May 1994.<sup>443</sup>

423. AZH also testified in relation to the allegations at the Sakindi roadblock, where the Chamber considered his evidence should be treated with caution, and ultimately found his evidence to be unreliable (see III.2.5.2). The Chamber considers here as it does for his testimony on the Sakindi roadblock that the several inconsistencies in his prior statements and his testimony on the stand have rendered AZH's evidence unreliable, such that it is incapable of corroborating AZC's evidence. The unreliability of AZH's testimony on the same event raises a reasonable doubt that AZC's sole evidence is capable of sustaining a conviction for this charge. With nothing else to lend credence to or support AZC's account, the Chamber finds that the Prosecution has failed to meet its standard of proof.

## 2.7. Erection and Supervision of Roadblocks, mid-April to late June

424. At paragraph 15 of the Indictment, the Prosecution charges Kalimanzira with Genocide for inciting and instructing the population between mid-April and late June 1994 to erect roadblocks in order to eliminate the Tutsi. Kalimanzira is alleged to have often been personally present at these roadblocks, where many Tutsis were killed, to supervise their operations.

425. The Prosecution contends that numerous witnesses establish Kalimanzira's direct and personal involvement in the erection and operation of roadblocks in Muganza, Ndora, Kibayi and Mugusa *communes* of Butare *préfecture*. The Prosecution alleges that Kalimanzira ordered the erection of roadblocks because they were a useful and efficient way to monitor the status of the genocide in the area. Further, he personally visited and supervised roadblocks in order to ensure that those manning them were continuing to seek out and kill Tutsis, particularly by ensuring that people at the roadblocks were armed.<sup>444</sup>

426. In its Closing Brief, the Prosecution relies primarily on the evidence of Witnesses BDJ, AZH, BXK and BXG to prove the allegations at paragraph 15.<sup>445</sup> In particular:

- i. BDJ testified that Kalimanzira interrupted a meeting in the Ndora *commune* office in June 1994, where he criticized the attendees for not erecting roadblocks. He

<sup>441</sup> Exhibit D31.

<sup>442</sup> Exhibit D32.

<sup>443</sup> T. 24 June 2008 pp. 33-36 (Witness AZH).

<sup>444</sup> Prosecution Closing Brief, para. 157.

<sup>445</sup> Prosecution Closing Brief, paras. 157-181. The Chamber also notes the Prosecution's passing reference to testimonies of Witnesses BBB, BXH, BWL, BCN, BCK and BDE at fn. 393 of its Closing Brief. The evidence of these witnesses are considered elsewhere in the Judgement.

also instructed the attendees to destroy the houses of Tutsis who had been killed in order to hide the evidence of massacres;<sup>446</sup>

- ii. AZH testified that in April 1994, Kalimanzira ordered the erection of a roadblock in Akabanga *cellule*, Mugusa *commune*, to prevent Tutsis from fleeing the outbreak of the genocide in Butare.<sup>447</sup>
- iii. BXK testified that Kalimanzira distributed weapons at a roadblock located on the road linking Butare town to Gisagara around 22 April 1994 in order to facilitate the killing of Tutsis;
- iv. BXG testified that in late April 1994, Kalimanzira interrogated people at a roadblock in Mukabuga *cellule* to determine whether all the Tutsis in the area had been killed.

427. Kalimanzira denied these allegations in their entirety and relies on his alibi (III.1.2).

### 2.7.1. Notice

428. As noted above (see II.3), the Defence objects to the lack of precision in paragraph 15 of the Indictment in its Closing Brief, arguing that the charge should be set aside because the Prosecution did not specify which roadblocks Kalimanzira allegedly had erected and personally supervised.<sup>448</sup>

429. The Chamber finds that Paragraph 15 lacks most of the necessary precision expected in an indictment. At a minimum, the Prosecution was required to provide Kalimanzira with information about the time and place of the incitement, as well as the time and place of the supervision. Paragraph 15 offers a time range spanning two and a half months, and provides no locations or roadblocks where the criminal acts were allegedly committed. The Chamber finds that the charge, on its own, lacks the specificity required to put Kalimanzira on notice and is therefore defective. The Chamber will now examine whether the Prosecution provided the Defence with clear, consistent and timely information detailing the facts underpinning this charge in order to cure this defect.

430. The summary of BDJ's anticipated testimony annexed to the Pre-Trial Brief refers to paragraph 15 as being relevant. It indicates that he would testify, among other things, about a meeting in June 1994 at the Ndora *commune* office where Kalimanzira verbally abused *bourgmestre* Célestin Rwankubito in front of other attendees for not setting up roadblocks in the area. The information provided is clear, and is consistent with BDJ's prior witness statement disclosed in the Supporting Materials.

431. The summary of AZH's anticipated testimony also refers to paragraph 15 as being relevant. It indicates that he would testify, among other things, about an incident at the Kabanga centre in Kibilizi *secteur*, Mugusa *commune* in early April 1994 where Kalimanzira and other authorities ordered the people to set up roadblocks and to bring Tutsis arrested

<sup>446</sup> Prosecution Closing Brief, paras. 168-170. The Prosecution asserts that BDJ's evidence that Kalimanzira ordered persons manning a roadblock to carry weapons is also relevant to paragraph 15. This aspect of BDJ's evidence is considered in relation to paragraph 27 of the Indictment (see III.4.9).

<sup>447</sup> Prosecution Closing Brief, paras. 176-177. The Prosecution asserts that AZH's evidence that Kalimanzira issued instructions at a roadblock near Sakindi's house in Kibilizi *secteur* (Mugusa *commune*) is also relevant to paragraph 15. This aspect of AZH's evidence will be considered in relation to paragraphs 13 and 25 of the Indictment (see III.2.5 and III.4.7).

<sup>448</sup> Defence Closing Brief, para. 1125.

there to either Isar-Rubona or the Gikonko *commune* office. This information is clear, and is consistent with AZH's prior witness statement disclosed in the Supporting Materials.

432. The summary of BXK's anticipated testimony also refers to paragraph 15 as being relevant. It indicates he would testify that, having fled Kabuye hill in search of help as part of a large group of Tutsi refugees, BXK saw Kalimanzira in the second half of April 1994 at two closely located roadblocks on the Kabuye-Gisagara road. BXK would say he saw Kalimanzira give guns to the persons manning the roadblocks and instruct them to kill the Tutsi refugees, which they did. This information is clear, and is generally consistent, though not entirely, with BXK's prior witness statement disclosed on 3 December 2007.<sup>449</sup> The Prosecution also makes reference to this incident in its Opening Statement.<sup>450</sup>

433. The summary of BXG's anticipated testimony in the Pre-Trial Brief fails to make reference to paragraph 15 as being relevant. It indicates that he would testify that he saw Kalimanzira at a roadblock in Gisagara *secteur*, Ndora *commune* around 20 April 1994, and observed how Kalimanzira spat in someone's face for lying to him about the fate of the Tutsis, claiming they had all been killed, when in fact they were resisting being killed on Kabuye hill. This information does not relate to the allegations of calling for the erection of roadblocks or supervising their operations. BXG's testimony is irrelevant to the allegations at paragraph 15, and inadequate notice was provided that his testimony would relate to it. It will therefore not be considered here, but rather in relation to the allegations at Kabuye hill (see III.2.4).

434. In sum, clear and consistent notice was provided to the Defence regarding Kalimanzira's alleged call to erect, or supervision of, roadblocks in April 1994 at the Kabanga centre; in June 1994 at the Ndora *commune* office; and April 1994 at a roadblock on Gisagara road.

435. With respect to timeliness, the Defence has advanced a general assertion it could not conduct sufficient investigations on new material facts upon the delivery of the Prosecution Pre-Trial Brief, filed three weeks before the commencement of trial.<sup>451</sup> However, for the same reasons discussed at III.2.3.1, namely that AZH, BDJ and BXK were thoroughly cross-examined and that the Defence had four and a half months after the close of the Prosecution case before commencing its own, the Chamber finds that the Defence was given adequate time to prepare its case. The Defence was not materially prejudiced in the preparation of its case with respect to paragraph 15 of the Indictment. The Chamber therefore finds that the Prosecution has cured the defect in paragraph 15 of the Indictment relating to the allegations discussed above by the provision of clear, consistent and timely notice.

436. Finally, in its Closing Brief, the Prosecution asserts that the evidence relevant to paragraph 21, 22, 25 and 26 of the Indictment, which particularize Count 3, is also relevant to paragraph 15 of the Indictment.<sup>452</sup> The Indictment does not indicate that these paragraphs are relevant to Counts 1 and 2 in any respect; indeed, paragraph 6 of the Indictment states that paragraph 7 through 17 only are relevant to those counts. On the basis of reading the Indictment alone, the Accused would not have understood that he was being charged for the

<sup>449</sup> See also Exhibit D7.

<sup>450</sup> See T. 5 May 2008 p. 4 (Opening Statement): "He also spurred on the killing of Tutsi at the roadblock situated on the Butare-Gisagara road in Ndora *commune* in connection with the Kabuye Hill massacres. Once again, the Accused Kalimanzira instructed the people manning the roadblock to kill Tutsi and distributed a firearm to facilitate such killings."

<sup>451</sup> Defence Closing Brief, para. 1141 and fn. 1003.

<sup>452</sup> Prosecution Closing Brief, para. 321.



allegations contained in paragraphs 21, 22, 25 and 26 under Counts 1 and 2. The Chamber finds that the Prosecution is essentially seeking to amend the Indictment to expand the charges under Counts 1 and 2. This is impermissible. Consequently, the Chamber will not consider this evidence in relation to paragraph 15.<sup>453</sup>

**2.7.2. Kabanga centre**

437. The Prosecution contends that, sometime in April 1994, Kalimanzira ordered the erection of a roadblock in Kabanga *cellule*, Mugusa *commune*, to prevent Tutsis from fleeing after the outbreak of the genocide in Butare *préfecture*.

438. The Defence denies this allegation in its entirety. In addition, Kalimanzira relies on his alibi (see III.1.2).

2.7.2.1. Evidence

*Prosecution Witness AZH*

439. AZH testified that he saw Kalimanzira six times after the death of President Habyarimana. AZH recalled that the first time, in April 1994, while standing at the side of the road in Mugusa, Kabanga *cellule*, he saw Kalimanzira arrive in a vehicle with Sylvain Nsabimana and *conseiller* Gasana. AZH recalled that Kalimanzira introduced himself before instructing them to erect roadblocks and to stop and arrest any people they did not know and who were coming from other areas. Kalimanzira told them that the *Inkotanyi* were the enemy and explained that the *Inkotanyi* had come from abroad. Nsabimana told them that when they arrested the *Inkotanyi*, they should be taken to the authorities for protection; however, AZH clarified that they were instead taken to Isar Rubona where they were killed.<sup>454</sup>

440. AZH further recalled that after Kalimanzira and Nsabimana left, *conseiller* Gasana invited MRND party members to a meeting at the *commune* office where he informed them that he had just returned from a meeting in Mugusa aimed at preparing massacres and explained that the people Kalimanzira were referring to when he talked about the *Inkotanyi* were Tutsis. AZH believed that *conseiller* Gasana did not tell them this at the roadside because Tutsis were present and he did not want them to flee. Finally, AZH stated that in accordance with Kalimanzira's instructions, the people started erecting roadblocks even before Kalimanzira left.<sup>455</sup>

*Defence Witness FJS*

441. At the end of May or early June 1994, FJS personally witnessed two soldiers erect a roadblock in front of her house in Kibilizi *secteur*.<sup>456</sup> She testified that the soldiers said that the *Inkotanyi* had already reached Ntyazo and that to prevent the *Inkotanyi* from advancing, the roadblock had to be set up.<sup>457</sup> FJS remembered the period in which the roadblock was erected because that was when the *conseiller* of Kibilizi *secteur*, Vincent Nkulikiyinka, took refuge in the *commune* office and was then executed. It was also at that time when the population was sent to fight the *Inkotanyi* in Cyiri.<sup>458</sup>

<sup>453</sup> *Karera* Appeal Judgement, paras. 365-370; *Muvunyi* Appeal Judgement, paras. 155-156.

<sup>454</sup> T. 23 June 2008 pp. 7-8 (Witness AZH).

<sup>455</sup> T. 23 June 2008 pp. 8-9 (Witness AZH).

<sup>456</sup> T. 28 January 2009 pp. 40, 45, 48-50 [closed] (Witness FJS).

<sup>457</sup> Ntyazo is a *commune* in northern Butare *préfecture* (see e.g. Exhibit P5).

<sup>458</sup> T. 28 January 2009 pp. 51-52 [closed] (Witness FJS).

*Defence Witness MVE*

442. MVE is a Hutu farmer who lived in Kibilizi *secteur* in 1994.<sup>459</sup> He testified that a roadblock was set up in Kabanga *cellule* at the end of May 1994 at the Sakindi-Gikonko road junction. He recalls the date because it was erected after a meeting at Gikonko, on a football field not far from the Mugusa *commune* office. At the meeting, the *bourgmestre* told the people that they had to face the *Inkotanyi*, who had assembled at Cyiri.<sup>460</sup> However, one of the men refused to fight the *Inkotanyi* when the *bourgmestre* was hiding one in his office. MVE went with others to the *commune* office and found the Tutsi *conseiller*, Vincent Nkulikiyinka.<sup>461</sup> Following the *conseiller's* death, the roadblock was erected in Kabanga *cellule*.<sup>462</sup>

## 2.7.2.2. Deliberations

443. At the relevant time alleged, Kalimanzira claims to have been working in Murambi (Gitarama *préfecture*). As discussed above, the Chamber disbelieves his alibi (see III.1.2.2).

444. An assessment of AZH's evidence and credibility in relation to other events is discussed at III.2.6.2 (Mugusa *commune*, 5 June 1994) and III.2.5.2 (Sakindi roadblock, May 1994). In these sections, the Chamber found that his testimony should be viewed with caution. AZH is an accomplice to some of the crimes alleged against Kalimanzira, and as such, the Chamber found that it would not be safe to rely on his testimony without corroboration. The Chamber arrives at the same conclusion with respect to his testimony on this event. As the Defence argues, there are troubling inconsistencies between his prior statements and his testimony; for instance, in his February 1999 statement to the Prosecution, it was *préfet* Nsabimana who told the population to erect roadblocks, not Kalimanzira.<sup>463</sup>

445. In light of the foregoing, the Chamber finds it unsafe to rely on AZH's sole testimony with respect to this event. Consequently, the Prosecution has not proven beyond reasonable doubt that Kalimanzira ordered the erection of a roadblock in Kabanga *cellule* to prevent Tutsis from fleeing the area.

2.7.3. Ndora *commune* office

446. The Prosecution alleges that, in June 1994, Kalimanzira interrupted a meeting held by *bourgmestre* Célestin Rwankubito in the Ndora *commune* office. Kalimanzira reprimanded the attendees for not setting up roadblocks on the road that passed through the *commune* and further told the attendees to completely destroy the houses of dead Tutsis.<sup>464</sup>

447. The Defence denies that Kalimanzira attended the meeting. In addition, Kalimanzira relies on his alibi (see III.1.2).

## 2.7.3.1. Evidence

*Prosecution Witness BDJ*

<sup>459</sup> T. 3 February 2009 p. 53 [closed] (Witness MVE).

<sup>460</sup> The Chamber notes that in the English transcript, the location is transcribed as "Nkiri"; in the French transcript, it is transcribed as "Cyiri". The Chamber finds the French transcript to be the more accurate: T. 3 February 2009 p. 60 (English); p. 71 (French) (Witness MVE).

<sup>461</sup> T. 3 February 2009 pp. 59-60 (Witness MVE).

<sup>462</sup> T. 3 February 2009 p. 61; T. 4 February 2009 pp. 4, 7-8 (Witness MVE).

<sup>463</sup> Defence Closing Brief, paras. 878-893; Exhibit D30.

<sup>464</sup> Prosecution Closing Brief, para. 159.

448. BDJ testified that in early June 1994, he attended a meeting at Ndora *commune* office. BDJ recalled that the meeting began at 9:00 a.m. and was chaired by the *bourgmestre*, Célestin Rwankubito. Rwankubito took the floor and told the attendees, who included *conseillers de secteur*, *responsables de cellule*, members of the *comités de cellule*, and the people in charge of local security that he had convened the meeting so that means of distributing the property of people who had been killed could be discussed. BDJ further recalled that Rwankubito was then interrupted by the arrival of Kalimanzira, who was angry and proceeded to address the audience in a high-pitched voice.<sup>465</sup>

449. Kalimanzira expressed anger that he had not encountered roadblocks on his journey from Butare and stating: "It is clear that there are *Inkotanyi* accomplices in Ndora *commune*". Kalimanzira also said that the *Inkotanyi* were going to take over all of Butare because the residents of Ndora were doing nothing.<sup>466</sup> BDJ recalled that Kalimanzira then informed them that, consequently, he would personally relieve the *bourgmestre* of his duties within two weeks. Kalimanzira also issued urgent instructions to the participants, instructing them to destroy the houses of dead Tutsis and plant banana leaves over their ruins in order to conceal what had taken place from the United Nations.<sup>467</sup> BDJ testified that, by referring to *Inkotanyi*, Kalimanzira was referring to all those not participating in activities at roadblocks which had been set up to contain the enemy. BDJ stated that the authorities had explained to the population that the enemy was the Tutsi. The meeting ended around 10:00 a.m. and Kalimanzira's orders were executed immediately.<sup>468</sup>

#### *Prosecution Exhibit 54*

450. Exhibit P54 is a letter dated 16 June 1994 from Célestin Rwankubito to the *Préfet* of Butare attaching minutes from a 10 June meeting in Ndora *commune*. The minutes state that the meeting commenced at 9:30 a.m., was led by *bourgmestre* Rwankubito, and consisted first of a discussion regarding protecting the property of those who were absent. When the Prime Minister's directives concerning civil defence strategies were being discussed, the *Directeur de Cabinet* of the Ministry of Interior and Communal Development arrived and expressed his regret that the roadblocks were not organized in accordance with instructions. Further, he demanded the total destruction of the houses of those who had left, as quickly as possible, because in the coming days there would be a visit from a foreign mission of inquiry.

#### 2.7.3.2. Deliberations

451. At the relevant time alleged, Kalimanzira claims that he was at home in Butare *ville*. As discussed above, the Chamber disbelieves his alibi (see [III.1.2.2](#)).

452. BDJ has a criminal record for participation in the genocide. Some of the crimes to which he confessed include participating in manning roadblocks as well as the killings on Kabuye hill. He was sentenced to 11 years' imprisonment and was released in 2007.<sup>469</sup> However, there was nothing to indicate that this witness had anything to gain from giving false testimony against Kalimanzira in this instance and the Chamber found him to be credible.

<sup>465</sup> T. 17 June 2008 pp. 49-50 (Witness BDJ).

<sup>466</sup> T. 17 June 2008 pp. 50-51 (Witness BDJ).

<sup>467</sup> T. 17 June 2008 p. 51 and T. 18 June 2008 p. 10 (Witness BDJ).

<sup>468</sup> T. 17 June 2008 pp. 51-52 (Witness BDJ).

<sup>469</sup> T. 17 June 2008 pp. 62-63 [closed] (Witness BDJ).

453. In addition, BDJ's testimony is corroborated by Exhibit P54. The Chamber found the minutes to have sufficient indicia of authenticity at the time they were admitted in evidence.<sup>470</sup> Although Kalimanzira testified that these minutes are fabricated, the Chamber does not believe Kalimanzira.<sup>471</sup> Having reviewed Exhibit P54, the Chamber is satisfied that this document is the minutes of the meeting testified to by BDJ and that they indicate that Kalimanzira interrupted the meeting. There were minor inconsistencies between the minutes and BDJ's testimony but their nature does not detract from the reliability of either the witness' testimony or the minutes.

454. The Chamber further notes that there was independent evidence that Célestin Rwankubito was replaced by Fidèle Uwizeye as the *bourgmestre* for Ndora *commune* on 17 June 1994, therefore shortly after the meeting.<sup>472</sup> Bearing in mind Kalimanzira's position in the Ministry of the Interior where he participated in the process of appointing and removing *bourgmestres*, the fact that Rwankubito was removed from office supports BDJ's testimony that Kalimanzira threatened to replace the *bourgmestre*.

455. The Chamber rejects the Defence complaint that BDJ's evidence that Kalimanzira stated that he found no roadblocks on the road from Butare cannot be believed because other witnesses have testified that there were at least five roadblocks on the road.<sup>473</sup> The Chamber notes that Exhibit P54 does not indicate that Kalimanzira was upset by the lack of roadblocks, but rather by their inadequate functioning or organization in accordance with previously issued instructions. The Chamber finds the minutes to be the more faithful rendering of Kalimanzira's remarks.

456. The Chamber believes BDJ and finds that the Prosecution has proven beyond reasonable doubt that on 10 June 1994, Kalimanzira attended a meeting at the Ndora *commune* office and expressed anger at the inadequacy of local efforts to properly erect and operate roadblocks, thereby encouraging and instigating their erection and maintenance. The Chamber also accepts BDJ's testimony that Kalimanzira told the crowd that the roadblocks were intended to prevent "*Inkotanyi* accomplices" from taking over Butare and that the orders given were immediately carried out by the public because he was an influential authority. However, there is no evidence regarding which roadblocks were erected or reorganized upon Kalimanzira's instructions or, more notably, that any killings resulted from Kalimanzira's order at this late stage of the genocide. The Chamber therefore finds that the Prosecution has failed to prove beyond reasonable doubt that Kalimanzira's instructions substantially contributed to the commission of genocide.

457. While the Chamber finds that Kalimanzira also instructed the crowd to conceal the ruins of the houses of dead Tutsis in order to prevent the discovery of their deaths, the Chamber finds that this evidence is not relevant to the charge contained in paragraph 15; namely that Kalimanzira incited the erection of, and supervised, roadblocks. No conviction can therefore be entered in relation to this evidence.

#### **2.7.4. Roadblock on Butare-Gisagara Road**

458. The Prosecution alleges that around 22 April 1994, Kalimanzira distributed weapons at a roadblock on a road linking Butare *ville* and Gisagara and ordered a man at the roadblock

<sup>470</sup> See Decision on Prosecution Motion for Admission of Documents Under Rules 92bis (C) and 89 (C), confidential, 11 July 2008.

<sup>471</sup> T. 11 February 2009 pp. 27-29 (Callixte Kalimanzira).

<sup>472</sup> Exhibit D107 p.16.

<sup>473</sup> Defence Closing Brief, para. 405.

to use the weapon he had given him to kill Tutsis. Subsequently, Tutsis at the roadblock were killed.<sup>474</sup>

459. The Defence denies the allegation and Kalimanzira relies on his alibi (see III.1.2).

#### 2.7.4.1. Evidence

##### *Prosecution Witness BXX*

460. BXX is a Tutsi who sought refuge on Kabuye hill on 20 April 1994. After surviving attacks, he left two nights later to find the *préfet* in Butare with approximately twenty other refugees believing that the authority would provide help.<sup>475</sup> BXX testified that whilst attempting the journey to Butare, the group was stopped and forced to sit down at a roadblock on the main road linking Butare and Gisagara, at a crossroads with a footpath leading to Kabuye.<sup>476</sup> BXX further clarified that the roadblock was situated on the border between Ndora and Gisagara, before both the Gisagara parish and the Ndora *commune* office.<sup>477</sup>

461. BXX arrived at the roadblock at approximately 11:00 a.m., which was manned by Hutu civilians who had undergone training and were armed with machetes and clubs.<sup>478</sup> BXX recognised several of them and named Ferederiko, Bihehe, Deny and Sylvestre Sentore as present. BXX estimated that the roadblock had been recently erected because his group was the first to be stopped and were later joined by one hundred and fifty to two hundred people. BXX did not attempt to escape from the roadblock because they had heard that they had been erected everywhere and did not fear for their lives.<sup>479</sup>

462. BXX testified that at 1:00 p.m., Kalimanzira arrived at the roadblock in a red saloon car, accompanied only by a driver. Kalimanzira asked the man manning the roadblock why they had instructed the Tutsis to sit down instead of killing them. Kalimanzira also asked them why they had no firearms and handed a Kalashnikov from his own car to Ferederiko, who then passed it to an *Interahamwe* named Sylvestre Sentore. Kalimanzira then left the roadblock in the direction of Gisagara. BXX explained that he was seated three metres or less from where Kalimanzira and Ferederiko spoke, enabling him to see and hear clearly what was taking place.<sup>480</sup>

463. BXX testified that the group of Tutsi refugees was then searched by the Hutus, as requested by Kalimanzira, before being deprived of their belongings and taken to a latrine pit situated at the house of one Gasana where they were killed. BXX recalled that the firearm was used to shoot at the refugees and that the other men used machetes. BXX managed to escape and has since seen only one other survivor. BXX believes that the other members of the group were in all probability killed that day.<sup>481</sup>

#### 2.7.4.2. Deliberations

<sup>474</sup> Prosecution Closing Brief, paras. 171-175.

<sup>475</sup> T. 9 May 2008 pp. 6-7, 21 and T. 19 May p. 21, 23 (Witness BXX).

<sup>476</sup> T. 9 May 2008 p. 7 (Witness BXX).

<sup>477</sup> T. 19 May 2008 pp. 24-26 (Witness BXX).

<sup>478</sup> T. 9 May 2008 p. 8 and T. 19 May 2008 p. 32 (Witness BXX).

<sup>479</sup> T. 9 May 2008 pp. 7-8 and T. 19 May 2008 pp. 28, 37-38 (Witness BXX).

<sup>480</sup> T. 9 May 2008 pp. 8-10 (Witness BXX).

<sup>481</sup> T. 9 May 2008 pp. 9-11 (Witness BXX).

464. At the relevant time alleged, Kalimanzira claims that he was working in Murambi (Gitarama *préfecture*). As discussed above, the Chamber disbelieves his alibi (see III.1.2.2).

465. In its Closing Brief, the Defence asserts that BXK's testimony relates to the incident alleged at paragraph 21 of the Indictment, whereby Kalimanzira gave a rifle to Marcel Ntirusekanwa at the Jaguar roadblock, located in front of the Gisagara church, and told him to use it to kill Tutsi.<sup>482</sup> At the same time, the Defence asserts that the BXK's roadblock must be distinguished from the Jaguar roadblock.<sup>483</sup> BXK testified that one could not see the Gisagara church from the roadblock where he was stopped.<sup>484</sup> Further, BXK testified that Kalimanzira provided a Kalashnikov machine gun, not a rifle; BXK was familiar with firearms because soldiers had given him weapons training, and was able to correctly identify a picture of a Kalashnikov when shown to him.<sup>485</sup> Finally, BXK testified that the weapon was given to Ferederiko, not Marcel.<sup>486</sup> The Chamber finds that BXK is describing a separate incident than the one alleged at paragraph 21 of the Indictment, discussed in full at III.4.3.

466. The Defence argues that there are many inconsistencies between BXK's testimony and his prior statement which serve to undermine his credibility.<sup>487</sup> For instance, the Defence asserts that BXK only testified about one roadblock, while in his statement he said there were two and referred to the activity of Kalimanzira at the other roadblock.<sup>488</sup> However, when cross-examined on this point, BXK was consistent in stating that there were two closely located roadblocks, that he was stopped at the first, but could see the second.<sup>489</sup> With respect to what occurred at the second roadblock, BXK refused to confirm what was in the statement because he said that he had received that information from others, and did not witness it himself.<sup>490</sup> The Chamber accepts his testimony on this issue.

467. The Defence also points out that, in his statement, BXK said that he first went to Gisagara market where he and other refugees were told by *sous-préfet* Ntawukulilyayo to take refuge at Kabuye hill.<sup>491</sup> In his testimony however, BXK stated that when he fled, he went to Kabuye directly, without passing through Gisagara.<sup>492</sup> BXK clarified in cross-examination that he clearly remembered telling Prosecution investigators that he fled his home to go to Wabitama, where other refugees were. There is evidence on the record that "Wabitama" was another name for Kabuye hill.<sup>493</sup> He further explained that he had been to the Gisagara marketplace before he fled to Kabuye, but did not leave with the Gisagara refugees to the hill as they had been asked, but instead went home; his evidence appears to be

<sup>482</sup> Defence Closing Brief, paras. 311-314.

<sup>483</sup> Defence Closing Brief, para. 405 (2).

<sup>484</sup> Paragraph 21 of the Indictment states that the Jaguar roadblock is "located in front of the Gisagara Catholic Church". Witness BXK testified that "From the roadblock -- or, at least the roadblock I'm talking about, one could not see the parish, because after the roadblock there was a branch before one got to the parish." T. 19 May 2008 p. 26.

<sup>485</sup> T. 9 May 2008 p. 9 and T. 19 May 2008 pp. 33-34 (Witness BXK); Exhibit D6, picture 2D.

<sup>486</sup> T. 9 May 2008 p. 9 (Witness BXK).

<sup>487</sup> Defence Closing Brief, paras. 229-233, 237-247.

<sup>488</sup> Defence Closing Brief, paras. 240-244; Exhibit D7.

<sup>489</sup> T. 19 May 2008 pp. 44-47 (Witness BXK).

<sup>490</sup> T. 19 May 2008 p. 47 (Witness BXK).

<sup>491</sup> Defence Closing Brief, paras. 231-232; Exhibit D7.

<sup>492</sup> T. 19 May 2008 p. 42 (Witness BXK).

<sup>493</sup> T. 20 May 2008 p. 31 (Witness BDK); T. 22 May 2008 p. 6 (Witness BXG).

that he was at the Gisagara marketplace the day before he fled.<sup>494</sup> The Chamber accepts this explanation.

468. There was one inconsistency for which no explanation was given, but it was fairly minor: in describing who was manning the roadblocks in his statement and in his testimony he placed Sylvestre Sentore in a different roadblock.<sup>495</sup> The Chamber considers that the length of time that elapsed between the events in 1994, the making of the statement in October 2001, and giving testimony in 2008 explains such a discrepancy. In addition, there was an issue with regard to his story after his escape from the roadblock. The statement records that he returned to Kabuye hill, whereas in his testimony he said he fled towards Burundi.<sup>496</sup> The Chamber accepts his explanation that there was an error in the recording of his statement.<sup>497</sup>

469. The Chamber also notes that BXK's testimony that there was a pit near Gasana's house where the Tutsis were killed is supported by Defence Witness Harindintwali. Harindintwali admitted to manning the Jaguar roadblock and acknowledged that there was a mass grave close to Gasana's house.<sup>498</sup>

470. In sum, the Chamber found BXK to be credible. The Chamber does not accept the Defence contention that his evidence was incredible, particularly because he testified that the refugees left Kabuye hill to seek help, even after having been attacked, or that they stayed at the roadblock because they did not yet understand that those manning the roadblock intended them harm.<sup>499</sup> The Chamber does not find this incredible, indeed, the evidence on the record indicates that a great many Tutsis gathered at Kabuye hill because they were told that they would be protected there. It is not incredible that, even after having been attacked, the refugees thought that the authorities might provide assistance, or that they did not yet know that it was the authorities who had organized and encouraged the attacks.

471. The Defence also relies on the alibi to deny this allegation, taking the position that Kalimanzira could not have been at the roadblock on 22 April at 1:00 p.m., when BXK places him there, because he would have been on the Kibungo-Gitarama road.<sup>500</sup> Evidence on the record shows that Kalimanzira was in Kibungo to commission the new *préfet* on 21 April, which is supported by Marc Siniyobewe, and therefore the Defence argues that Kalimanzira could not have made it to the roadblock by the next day.<sup>501</sup> Although the Chamber accepts that Kalimanzira went to Kibungo for the swearing in ceremony on 21 April, it does not accept his alibi. The evidence that he stayed in Kibungo overnight despite his evidence that it was under imminent attack from the RPF is unbelievable (see III.1.2.2).

472. Moreover, the Chamber notes that, despite BXK's testimony that he took refuge on Kabuye hill on 20 April and that he spent only two nights there, he could have been mistaken about the exact day or time-frame, given the passage of time. In his October 2007 statement, BXK stated that he spent "three days and nights" on Kabuye hill, which would indicate his

<sup>494</sup> T. 19 May 2008 pp. 42-43 (Witness BXK).

<sup>495</sup> Defence Closing Brief, paras. 240-241; Exhibit D7; T. 9 May 2008 pp. 8-9 and T. 19 May 2008 pp. 46-47 (Witness BXK).

<sup>496</sup> Defence Closing Brief, para. 235; Exhibit D7; T. 9 May 2008 p. 11 (Witness BXK).

<sup>497</sup> T. 19 May 2008 pp. 47-48 (Witness BXK).

<sup>498</sup> T. 19 November 2008 pp. 1 and 3 (Jean Marie Vianney Hardintwali).

<sup>499</sup> Defence Closing Brief, paras. 224-226.

<sup>500</sup> Defence Closing Brief, para. 255.

<sup>501</sup> Defence Closing Brief, para. 254, 256; Exhibit D104 p. 19; T. 4 February 2009, p. 24 (Marc Siniyobewe).

arrival at the roadblock on 23 April, allowing time for Kalimanzira to arrive from Kibungo.<sup>502</sup> In any event, the alibi evidence of Kalimanzira does not cast reasonable doubt on the testimony of BXK.

473. In light of the above, the Chamber finds that the Prosecution has proven beyond reasonable doubt that, in April 1994, Kalimanzira stopped at a roadblock on the Butare-Gisagara road, asked the men manning the roadblock why they did not have weapons and why they had instructed the Tutsis to sit down instead of killing them. Kalimanzira then provided a weapon to a man at the roadblock. Subsequently, Tutsis at the roadblock were deprived of their belongings and taken to a nearby pit, where they were killed.

474. The Chamber also finds that the Prosecution has proven beyond reasonable doubt that, by doing so, Kalimanzira both instigated and aided and abetted genocide. The Chamber recalls that modes of liability under Article 6 (1) of the Statute are not mutually exclusive and that the Chamber may find the accused guilty of more than one mode if it is necessary to reflect the totality of the accused's conduct.<sup>503</sup> By asking those men at the roadblock why they had not killed the Tutsis who were detained there, Kalimanzira prompted those men to kill the Tutsis; by providing the weapon with which at least some of those Tutsis were killed, Kalimanzira assisted in the perpetration of their murders. The Chamber finds that Kalimanzira's speech and actions substantially contributed to the killings of the Tutsis detained at the roadblock, and that it was his intention to do so. Kalimanzira exhibited here, as elsewhere, an intent to destroy the Tutsi group (see [III.5.2](#)). For these reasons, the Chamber finds Kalimanzira guilty beyond reasonable doubt of having instigated and aided and abetted genocide at a roadblock on the Butare-Gisagara road on or around 22 April 1994.

## 2.8. Muganza Commune Football Field, May

475. At paragraph 17 of the Indictment, the Prosecution charges Kalimanzira with Genocide for personally demonstrating how to shoot arrows at a public rally held on the Muganza *commune* football field for the purpose of training people how to handle weapons. It is alleged that those who were trained under Kalimanzira's supervision subsequently took part in killing Tutsis in the area.

476. In its Closing Brief, the Prosecution submits that the main significance of the meeting was not the weapons training provided, but the underlying call to kill any Tutsis who may have survived the first round of massacres.<sup>504</sup>

477. The Defence contends that while rallies may have been held on a field near the Muganza *commune* office between April and June 1994, Kalimanzira was not in attendance at any of them. Further, the weapons training exercise that a Defence witness did attend only proves the existence of a civil defence programme under military supervision, rather than a call to kill Tutsi.<sup>505</sup> In addition, Kalimanzira relies on his alibi that, save for a few specified occasions, he was working in Murambi (*Gitarama préfecture*) from 14 April to 31 May 1994 (see [III.1.2](#)).

### 2.8.1. Evidence

#### *Prosecution Witness BCA*

<sup>502</sup> Exhibit D7.

<sup>503</sup> *Nahimana* Appeal Judgement, para. 483.

<sup>504</sup> Prosecution Closing Brief, paras. 182-185.

<sup>505</sup> Defence Closing Brief, paras. 515-519.



478. BCA saw Kalimanzira at a public rally on a football field next to the Muganza *commune* office in May 1994. At the rally, over 100 members of the local population present, mainly Hutu males, were taught about civilian defence and given archery training so that they could assist the RAF to fight the RPF if they reached the area. BCA stated that during the training, Kalimanzira attempted to shoot at a banana tree being used as a target and missed. BCA recalled that Dominique Ntawukulilyayo (*sous-préfet* of Gisagara) and Alphonse Nteziryayo (Lieutenant-Colonel) were also there.<sup>506</sup>

*Prosecution Witness BBB*

479. BBB saw Kalimanzira at a meeting on the football field next to the Muganza *commune* office in May 1994; also in attendance were the Chrysologue Bimenyimana, *bourgmestre* of Muganza *commune*, Nteziryayo, who eventually became *préfet* of Butare, the *conseiller* of Remera *secteur*, and the *responsable de cellule*. Kalimanzira was standing next to a vehicle and speaking to *bourgmestre* Bimenyimana and Nteziryayo. BBB then went to the football field where a crowd of approximately 300-400 male Hutu civilians from all *secteurs* in Muganza *commune* had gathered. The officials soon arrived from the *commune* office and Kalimanzira addressed the crowd. BBB recalled that Kalimanzira told them they had been called to prepare to fight the *Inkotanyi* and free the Ntyazo area<sup>507</sup> so that the Tutsi would not take over the country.<sup>508</sup>

480. BBB testified that archery training was then conducted, using a tree trunk as a target. Kalimanzira attempted to shoot at the target with a bow and arrow but missed. After the archery exercise, the meeting continued. BBB recalled that members of the public told the officials that they did not have enough bows. As a result, Nteziryayo promised to provide irons and building rods for spears and arrows. Kalimanzira also instructed the public to kill "accomplices", people who had been hidden until then, which BBB understood to mean Tutsis. BBB claimed that he could hear Kalimanzira clearly without the use of a megaphone because he was close to him in the crowd and when he spoke, the crowd was silent. At the end of the training session, guns were fired by Nteziryayo and hidden soldiers in order to familiarize the public with the sound and to encourage them to show courage.<sup>509</sup>

481. BBB testified that after the meeting, people gained a harder attitude; several attacks were launched and many were killed, particularly Tutsi wives and children who had been spared until that point. BBB personally participated in an attack against Riel Ntakavoro, taking away the Tutsi in his home. After a meeting in Remera *secteur* the following day, he also participated in an attack killing the two Tutsi grandsons of Anasthase Misago, a Hutu.<sup>510</sup>

*Prosecution Witness BWI*

482. BWI saw Kalimanzira at a meeting on the football field facing the Muganza *commune* office in late May or early June 1994, held sometime before mid-day. Other officials present included Nteziryayo, *sous-préfet* Ntawukulilyayo and *bourgmestre* Bimenyimana; they arrived at approximately 11:00 a.m. BWI recalled that he sat approximately 20 metres from Kalimanzira, who was introduced as the Secretary-General of the Ministry of the Interior. BWI stated that Kalimanzira announced it was a security meeting; he said that the *Inkotanyi* had been weakened, that they were the enemy, and he asked the public to fight them with

<sup>506</sup> T. 18 June 2008 pp. 49-50 (Witness BCA).

<sup>507</sup> Ntyazo is a *commune* in northern Butare *préfecture* (see e.g. Exhibit P5).

<sup>508</sup> T. 16 June 2008 pp. 13-15 (Witness BBB).

<sup>509</sup> T. 16 June 2008 pp. 16-17 (Witness BBB).

<sup>510</sup> T. 16 June 2008 pp. 17-18 (Witness BBB).

traditional weapons. BWI further recalled that a soldier fired into the air in order to familiarise them with the sound of gunshots, which they could hear in Ntyazo.<sup>511</sup>

483. BWI testified that Kalimanzira then led a weapons training session by setting up a banana tree trunk as a target, which people then practiced shooting at. Kalimanzira attempted a shot but missed. BWI did not stay until the end of the training; Kalimanzira was still on the football field when he left. BWI believes that two to three hours elapsed from when he first saw Kalimanzira until he left the football field. After the meeting, the people who had been trained were sent to fight the *Inkotanyi* who had reached Ntyazo. Tutsis in Muganza *commune* were also killed, some by people present at the meeting. BWI stated that he did not witness the killings but that he heard the killers boast about them.<sup>512</sup>

#### *Defence Witness KAS*

484. KAS did not leave Muganza *commune* from 6 April until July 1994, when he fled Rwanda for Burundi. During that period, he only attended one meeting, which was held in late May 1994 the football field in Remera *secteur*, close to Muganza *commune* office.<sup>513</sup>

485. KAS testified that he became aware of the meeting after reading a *communiqué* inviting the local population that was posted in a bar near his place of business. He arrived before the meeting started and left at the end. KAS recalled the presence of Nteziryayo, *bourgmestre* Bimenyimana, a census official named Célestin, a brigadier named Pierre, and *conseillers* of various *secteurs* of Muganza *commune*. KAS was seated on the ground and could see the officials clearly.<sup>514</sup>

486. KAS testified that he did not see Kalimanzira at the meeting and that the only speakers were *bourgmestre* Bimenyimana and Nteziryayo. KAS stated that at the time of the meeting, the killings had already stopped and there were no further killings after the meeting. KAS did not witness any demonstrations of firearms and knows of no other meetings that took place before or after at the Muganza *commune* office.<sup>515</sup>

#### *Defence Witness Athanase Nzabakirana*

487. Nzabakirana testified that sometime in late May or early June 1994, he attended a three-day military-style training session at the football field next to the Muganza *commune* office. Under the direction of a soldier, he and 50 others were subjected to undergo such physical exercises as how to hide, how to dismantle a rifle, and how to shoot guns. No archery exercises were demonstrated, and no officials were present. Apart from this three-day session, Nzabakirana knows of no other training sessions taking place on the field.<sup>516</sup>

### **2.8.2. Deliberations**

488. Kalimanzira denied attending the meeting and testified that he never went to Butare *préfecture* in April or May, except on 19 April for the MRND Palace meeting. He also admitted to attending one Butare Prefectural Security Council meeting in Butare on 16 May,

<sup>511</sup> T. 21 May 2008 pp. 34-35 (Witness BWI).

<sup>512</sup> T. 21 May 2008 pp. 36-37 (Witness BWI).

<sup>513</sup> T. 24 November 2008 pp. 6-7 (Witness KAS).

<sup>514</sup> T. 24 November 2008 p. 9 (Witness KAS).

<sup>515</sup> T. 24 November 2008 p. 10 (Witness KAS).

<sup>516</sup> T. 28 January 2009 pp. 35-37 (Athanase Nzabakirana).

which he only admitted to when confronted with radio transcripts under cross-examination.<sup>517</sup> The Chamber does not believe his alibi (see III.1.2.2).

489. The Chamber notes that the Prosecution witnesses gave very consistent testimony concerning this event. BCA, BBB and BWI all testified that a meeting was held on a football field near the Muganza *commune* office in late May or early June 1994 in which the crowd was given archery training.<sup>518</sup> Each testified that the purpose of the meeting was weapons training to fight the approaching RPF or *Inkotanyi* at Ntyazo.<sup>519</sup> BBB and BWI testified that a gun was fired in order to familiarize the crowd with the sound.<sup>520</sup>

490. Further, the Prosecution witnesses all testified that authorities were present at the meeting, and gave similar, although not identical, accounts of which authorities were present. BCA, BBB and BWI testified that Alphonse Nteziryayo was present;<sup>521</sup> BCA and BWI recall the presence of *sous-préfet* Dominique Ntawukulilyayo;<sup>522</sup> and BBB and BWI recall the presence of *bourgmestre* Chrysologue Bimenyimana.<sup>523</sup> The Chamber finds that the similarity of these accounts to be persuasive and rejects the Defence's contention that the slight inconsistencies render the evidence unreliable, rather than simply being a natural product of the passage of time and the different experience of each witness.<sup>524</sup>

491. With respect to Kalimanzira's presence at the meeting, the Chamber notes that BCA, BBB and BWI gave consistent and detailed testimony on this point. They all testified that Kalimanzira personally demonstrated how to use a bow and arrow by using a banana tree as a target, and BCA and BBB recalled that Kalimanzira missed the target.<sup>525</sup>

492. BCA has admitted to taking part in the genocide.<sup>526</sup> BBB also admitted to taking part in the genocide and admits to having participated in attacks against Tutsis after Kalimanzira's alleged instigation at this meeting.<sup>527</sup> He is therefore an accomplice who may have reason to dilute his responsibility for these acts; his testimony should be viewed with caution. However, the Chamber notes that they were supported in significant respects by BWI and, after careful consideration, finds the evidence of BCA and BBB to be credible and largely reliable. The Defence challenges to their evidence were minor and did not undermine their credibility.<sup>528</sup>

493. With respect to the Defence evidence, KAS testified that he attended a meeting held on the Remera football field, not far from the Muganza *commune* office in late May 1994.<sup>529</sup>

<sup>517</sup> T. 11 February 2009 pp. 25-26 (Callixte Kalimanzira).

<sup>518</sup> T. 16 June 2008 pp. 13-14 (Witness BBB); T. 18 June 2008 p. 49 (Witness BCA); T. 21 May 2008 p. 36 (Witness BWI).

<sup>519</sup> T. 16 June 2008, p. 16 (Witness BBB); T. 21 May 2008 pp. 35, 42, 44, 47-48 (Witness BWI); T. 18 June 2008 pp. 49-50 (Witness BCA).

<sup>520</sup> T. 16 June 2008 p. 17 (Witness BBB); T. 21 May 2008 p. 35 (Witness BWI).

<sup>521</sup> T. 16 June 2008 p. 14 (Witness BBB); T. 18 June 2008 p. 49 (Witness BCA); T. 21 May 2008 p. 34 (Witness BWI).

<sup>522</sup> T. 18 June 2008 p. 50 (Witness BCA); T. 21 May 2008 p. 35 (Witness BWI).

<sup>523</sup> T. 16 June 2008 p. 14 (Witness BBB); T. 21 May 2008 p. 35 (Witness BWI).

<sup>524</sup> Defence Closing Brief, 498-502.

<sup>525</sup> T. 16 June 2008 p. 16 (Witness BBB); T. 18 June 2008 p. 50 (Witness BCA); T. 21 May 2008 p. 36 (Witness BWI).

<sup>526</sup> T. 18 June 2008 p. 41 [closed] (Witness BCA).

<sup>527</sup> T. 16 June 2008 pp. 17-18 (Witness BBB).

<sup>528</sup> See Defence Closing Brief, paras. 482-483, 496-507; 536-547; 550-559; 579-580.

<sup>529</sup> T. 24 November 2008 p. 7 (Witness KAS).

KAS also recalled the attendance of several authorities, including Nteziryayo, *bourgmestre* Bimenyimana and several *conseillers*.<sup>530</sup> He did not, however, see any weapons demonstrations, nor did he see Kalimanzira.<sup>531</sup> He was not asked what the purpose of the meeting was, nor what occurred there, although he did testify that he was present for the entire meeting.<sup>532</sup> Consequently, it is unclear if this is the same meeting attended by the Prosecution witnesses.

494. Similarly, Nzabakirana gave evidence that weapons training was held on the football field next to the Muganza *commune* office. However, the meeting he attended was held over the course of three days, was conducted by a soldier with no authorities present, and involved a demonstration of how to use guns rather than bows and arrows.<sup>533</sup> The Chamber infers that this meeting was a different one than that testified to by the Prosecution witnesses.

495. Both Defence witnesses testified that they would have been aware had any other similar meetings taken place at the Muganza *commune* office.<sup>534</sup> KAS testified that he would have known about other meetings since *communiqués* were posted where he sold beer and because he would have seen people passing to attend such meetings.<sup>535</sup> However, in light of the fact that he returned to school toward the end of May, attending from 8:00 a.m. to 2:00 p.m. every day, and acknowledged that he could not see the *commune* office from where he sold beer in the evenings, the Chamber does not accept that he was in a position to know about every meeting that may have been held.<sup>536</sup> With respect to Nzabakirana, the Chamber notes that he lived an hour's walk away from the *commune* office and finds his assertion that he knew there were no other training sessions because he did not find anyone else who had engaged in such training to be insufficient to undermine the Prosecution evidence.<sup>537</sup>

496. In sum, the Chamber does not accept the inference that the Defence invites it to draw, namely that the meeting could not have occurred because KAS and Nzabakirana were not aware of it; indeed, it appears that they each attended a different meeting and were not aware of the other. Their lack of knowledge on this point does not raise reasonable doubt regarding the positive and credible testimony of the Prosecution witnesses. Finally, the Chamber notes that their testimony offers some support for the Prosecution's allegation that the football field near the *commune* office was used for public meetings, and in particular for weapons demonstrations for local civilians.

497. Several other Defence witnesses testified about meetings in Muganza *commune*, but did not mention the training exercise at the football field.<sup>538</sup> The Chamber notes that many were not directly questioned about this specific allegation and, in any event, there is no evidence that these witnesses would have any particular reason to know of every meeting that may have been held in Muganza *commune*.

498. Consequently, the Chamber finds beyond a reasonable doubt that a meeting took place on the football field next to the Muganza *commune* office in late May or early June

<sup>530</sup> T. 24 November 2008 pp. 7-8 (Witness KAS).

<sup>531</sup> T. 24 November 2008 p. 10 (Witness KAS).

<sup>532</sup> T. 24 November 2008 p. 7 (Witness KAS).

<sup>533</sup> T. 28 January 2009 pp. 35-36 (Athanasie Nzabakirana).

<sup>534</sup> T. 24 November 2008 pp. 10-11, 15-16 (Witness KAS); T. 28 January 2009 pp. 36-37 (Athanasie Nzabakirana).

<sup>535</sup> T. 24 November 2008 pp. 15-16 (Witness KAS).

<sup>536</sup> T. 24 November 2008 pp. 12-13, 15-16 (Witness KAS).

<sup>537</sup> T. 28 January 2009 pp. 36-37 (Athanasie Nzabakirana).

<sup>538</sup> E.g. Witness AM02, AK42, AM122, KUW, KXC, and MKB.

1994 for the purpose of training the population to use weapons and that Kalimanzira attended the meeting and personally demonstrated how to use a bow and arrow.

499. As noted above, the Prosecution asserts that the main significance of this event was not the weapons training, but the underlying call to kill Tutsis. The Chamber notes, however, that the Prosecution witnesses were not consistent on this point.

500. BCA testified that the rally was for the purpose of civilian defence and that members of the general public were being shown how to help Rwandan security forces if the RPF were to arrive in the area.<sup>539</sup> Similarly, BWI testified that Kalimanzira announced that it was a security meeting, that the *Inkotanyi* had been weakened, and asked the population to take up their traditional weapons to go and fight the enemy. Kalimanzira clarified that the enemy was the *Inyenzi-Inkotanyi*. Shots were fired so that the population would get used to the sound, in order to prepare them to go to the frontline to fight the enemy in Ntyazo. At the time, they could hear gunshots from the direction of Ntyazo. BWI said that he understood the terms *Inyenzi* and *Inkotanyi* to be a reference to Tutsi, because of an earlier awareness campaign.<sup>540</sup>

501. While BBB's evidence was consistent with the other Prosecution witnesses that Kalimanzira told the crowd that they were being trained in order to fight the *Inkotanyi* at Ntyazo, he was the only witness to recall that Kalimanzira also instructed the crowd that, before going to Ntyazo, they had to get rid of the accomplices behind them, that is, the people they had hidden. BBB understood the term accomplices to mean the Tutsi.<sup>541</sup> The Chamber notes that BBB did not make this assertion in his earlier witness statement, but rather merely stated that Kalimanzira was in attendance and demonstrated how to shoot with arrows.<sup>542</sup> The fact that he only offered this evidence, central to the Prosecution's allegations, at trial lessens the reliability of his recollection on this point.

502. It is noteworthy that no other Prosecution witness offered similar evidence. BWI gave evidence concerning another, earlier, security meeting on the football field near the Muganza *commune* office where he alleges that Kalimanzira instructed the crowd to exterminate accomplices of the *Inkotanyi*, the Tutsi (see III.2.3.3).<sup>543</sup> Having already made an allegation that Kalimanzira incited the crowd to kill Tutsis in hiding, the Chamber finds it significant that BWI did not testify that Kalimanzira did so at this meeting.

503. The Chamber finds that a reasonable doubt subsists that the purpose of this meeting was a legitimate civil defence exercise to train the local population to handle weapons to fight at the approaching front. As such, Kalimanzira's attendance and participation in this meeting cannot, in and of itself, be a basis for a criminal conviction. With respect to the Prosecution's allegation that Kalimanzira also instructed the crowd to kill Tutsi civilians, in light of the Chamber's finding that BBB's testimony should be viewed with caution, and that he is uncorroborated in this assertion, the Chamber finds that it would not be safe to enter a conviction on BBB's evidence alone. Consequently, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt that Kalimanzira instigated the crowd to kill Tutsis at the meeting in late May or early June 1994 near the Muganza *commune* office.

<sup>539</sup> T. 18 June 2008 pp. 49-50 (Witness BCA).

<sup>540</sup> T. 21 May 2008 pp. 35-36 (Witness BWI).

<sup>541</sup> T. 16 June 2008 pp. 15-16 (Witness BBB).

<sup>542</sup> Exhibit D14E: "Callixte Kalimanzira showed us how to shoot with arrows and he shot himself an arrow aiming at banana tree target but he missed the target. Alphonse Nteziryayo asked the people whether they were ready to fight with enemy. We replied in affirmative."

<sup>543</sup> T. 21 May 2008 pp. 32-33 (Witness BWI).

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**3. COMPLICITY IN GENOCIDE**

504. Under Count 2 of the Indictment, the Prosecution charges Kalimanzira with Complicity in Genocide pursuant to Article 2 (3)(e) of the Statute, and with individual criminal responsibility under Article 6 (1). Count 2 is pleaded in the alternative to Count 1, which requires the Chamber to dismiss the count of Complicity in Genocide in the event of a finding on the count of Genocide.

505. The Chamber has found Kalimanzira guilty under the Count 1. Count 2 is therefore dismissed.

#### 4. DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE

506. Under Count 3 of the Indictment, the Prosecution charges Kalimanzira with Direct and Public Incitement to Commit Genocide pursuant to Article 2 (3)(c) of the Statute and with individual criminal responsibility under Article 6 (1). Paragraphs 18 to 27 of the Indictment outline the events for which the Prosecution alleges Kalimanzira incurs individual criminal responsibility for this crime.

507. Paragraph 18 of the Indictment pleads the modes by which Kalimanzira is said to incur liability under Count 3, namely that he “planned, instigated, ordered to commit or otherwise aided and abetted in the planning, preparation or commission of crimes”. Such wording omits to specify commission as a mode of liability. The factual allegations at paragraphs 19 to 27, however, allege Kalimanzira’s direct participation in the crime charged under Count 3.

508. The Chamber invited the Parties to make submissions on whether such an omission constitutes a defect in the Indictment.<sup>544</sup> The Defence submitted nothing. The Prosecution’s submissions relied on the French original version of the Indictment, which duly expressed “commission” as a mode of liability, and that the wording of paragraph 18 was attributable to a translation error.<sup>545</sup> Because the Defence works primarily in French, the Chamber is assured that Kalimanzira was not prejudiced by the omission in the English version (see also II.2.2.1). The Chamber therefore considers “commission” to have been properly pleaded as a mode of liability for Direct and Public Incitement to Commit Genocide.

##### 4.1. Applicable Law

509. Direct and Public Incitement to Commit Genocide is a crime provided for at Article 2 (3)(c) of the Statute, as a result of the incorporation of Article III of the Genocide Convention within the Statute’s definition of genocide. Article 2 (3) of the Statute, identical to Article III of the Genocide Convention, lists five punishable acts, including Genocide itself, and Direct and Public Incitement to Commit Genocide. The Statute and the Genocide Convention define the crime of genocide as any series of acts, including killing and causing serious bodily or mental harm, that are committed with the intent to destroy in whole or in part a national, ethnic, racial or religious group (“genocidal intent”). The crime of Direct and Public Incitement to Commit Genocide, however, is not defined any further in either the Genocide Convention or the Statute.

510. In specifying a distinct act of ‘Direct and Public Incitement to Commit Genocide’, the drafters of the Genocide Convention sought to create an inchoate crime, in that it is not necessary to prove that the incitement was successful in achieving a genocidal result. It is sufficient to establish that an accused directly and publicly incited the commission of genocide (*actus reus*), and that he or she had the intent to directly and publicly incite others to commit genocide (*mens rea*); such intent in itself presupposes a genocidal intent. The inchoate nature of the crime allows intervention at an earlier stage, with the goal of preventing the occurrence of genocidal acts.<sup>546</sup>

<sup>544</sup> T. 13 February 2009 pp. 19-20 (Status Conference).

<sup>545</sup> Prosecution’s Submissions on Paragraph 18 of the Indictment as Invited by the Trial Chamber on 13 February 2009, filed 17 February 2009.

<sup>546</sup> *Bikindi* Trial Judgement, para. 419; *Nahimana et al.* Appeal Judgement, para. 678; *Akayesu* Trial Judgement, paras. 560-562.

511. The distinction between committing direct and public incitement and committing genocide by means of instigation often seems blurred. The term ‘incitement’ is synonymous with ‘instigation’, ‘provocation’, and ‘encouragement’, all of which are used interchangeably when describing the conduct underlying certain modes by which genocide may be committed. However, the differences are important and must be respected.

512. Instigation under Article 6 (1) is a mode of liability; an accused will incur criminal responsibility only if the instigation in fact substantially contributed to the commission of one of the crimes under Articles 2 to 4 of the Statute. By contrast, direct and public incitement is itself a crime, requiring no demonstration that it in fact contributed in any way to the commission of acts of genocide.<sup>547</sup>

513. The most important difference lies in the requirement that the crime of incitement be ‘direct’ and ‘public’, which serves to limit the scope of its inchoate nature. In other words, incitement which is not followed by the commission by others of genocidal acts must be direct and public for it to be criminal. By contrast, committing genocide by means of instigation need not be direct or public for it to be criminal.<sup>548</sup>

514. The jurisprudence of this Tribunal has established that the ‘direct’ element of incitement implies more than mere vague or indirect suggestion, such that the inciter knows that the intended audience will understand his or her call as one to commit genocide, but that implicit language may nonetheless be ‘direct’ and should be viewed in light of its cultural and linguistic content, its audience, and the political and community affiliations of the inciter.<sup>549</sup> For instance, exhorting a crowd to unite against the “sole enemy”, or to “get to work”, or calling on “the majority” to “rise up and look everywhere possible” and not to “spare anybody”, in the context of the Rwandan genocide has been found in the particular circumstances of other cases to amount to calls to exterminate the Tutsi people.<sup>550</sup> The Chamber will therefore consider on a case-by-case basis whether, in light of Rwandan culture and the particular context of each allegation, acts of incitement can be viewed as direct or not by examining how a speech was understood by its intended audience.<sup>551</sup> In some circumstances, the fact that a speech leads to acts of genocide could be an indication that in that particular context the speech was understood to be an incitement to commit genocide and that this was indeed the intent of the author of the speech. However, this cannot be the only evidence adduced to conclude that the purpose of the speech (and of its author) was to incite the commission of genocide.<sup>552</sup>

515. The jurisprudence of this Tribunal has also established that the ‘public’ element of incitement should be appreciated in light of the place where the incitement occurred and whether or not attendance was selective or limited. Incitement is ‘public’ when conducted through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at public gatherings, or through the public display of placards or

<sup>547</sup> *Nahimana et al.* Appeal Judgement, para. 678.

<sup>548</sup> The Trial Chamber in *Akayesu* found that the ‘direct’ and ‘public’ requirements were also applicable to instigation under Article 6 (1) of the Statute (see para. 481). The Appeals Chamber in *Akayesu* found such interpretation to be erroneous and established that instigation under Article 6 (1) of the Statute need not be ‘direct’ or ‘public’ (see *Akayesu* Appeal Judgement, paras. 474-483).

<sup>549</sup> *Bikindi* Trial Judgement, para. 387; *Nahimana et al.* Appeal Judgement, paras. 700, 711, and 713; *Niyitegeka* Trial Judgement, para. 431; *Akayesu* Trial Judgement, paras. 557-558.

<sup>550</sup> *Akayesu* Trial Judgement, paras. 334-365; *Niyitegeka* Trial Judgement, paras. 433-435; *Bikindi* Trial Judgement, para. 423.

<sup>551</sup> *Nahimana et al.* Appeal Judgement, paras. 698-700.

<sup>552</sup> *Nahimana et al.* Appeal Judgement, para. 709.



posters, or through any other means of audiovisual communication.<sup>553</sup> Because of the crime's inchoate nature, even the possibility of private incitement to commit genocide is ruled out; only unequivocally public forms of incitement may be punished under Article 2 (3)(c) of the Statute.<sup>554</sup>

516. The law on incitement may therefore be summarized as follows:

- Incitement resulting in the commission of a genocidal act is punishable under the combination of Articles 2 (3)(a) and 6 (1) of the Statute as Genocide by way of Instigation;
- Incitement resulting in the commission of a genocidal act and which may be described as 'direct' and 'public' is punishable under either Article 2 (3)(c) of the Statute as Direct and Public Incitement to Commit Genocide, or under the combination of Articles 2 (3)(a) and 6 (1) of the Statute as Genocide by way of Instigation;
- Incitement not resulting in the commission of a genocidal act but which may be described as 'direct' and 'public' is only punishable under Article 2 (3)(c) of the Statute; and,
- Incitement not resulting in the commission of a genocidal act, and which may not be described as 'direct' and 'public', is not punishable under the Statute.

**4.2. Kanage Camp, 9 April**

517. At paragraph 20 of the Indictment, the Prosecution charges Kalimanzira with Direct and Public Incitement to Commit Genocide for addressing Burundian refugees at a camp in Kanage *cellule* (Mukindo *secteur*, Kibayi *commune*) around 9 April 1994. Kalimanzira told them that the Interim Government had confidence in them, that President Habyarimana had taken care of them and that President Sindikubwabo would continue to do so, and that the same enemy had chased them from Burundi and crashed the plane carrying Presidents Habyarimana and Ntaryamira. Kalimanzira appealed to the Burundian refugees to remain in Rwanda and told them he had brought them traditional weapons with which to defend themselves against the "enemy".

518. The Defence denies that the alleged meeting took place. In addition, Kalimanzira relies on his alibi that he remained at his home in Kigali without access to transport from 7 to 11 April 1994 (see III.1.2).

**4.2.1. Evidence**

*Prosecution Witness BBO*

519. The Prosecution led evidence from only one witness, BBO, on this event. BBO testified that he heard about the death of Juvénal Habyarimana (President of Rwanda) the morning of 7 April 1994 on Radio Burundi. Shortly thereafter, BBO said he saw Kalimanzira

<sup>553</sup> Akayesu Trial Judgement, paras. 556 and 559.

<sup>554</sup> At the time the Genocide Convention was adopted, the delegates specifically agreed to rule out the possibility of including private incitement to commit genocide as a crime, thereby underscoring their commitment to set aside for punishment only the truly public forms of incitement. See Yearbook of the United Nations, UN Fiftieth Edition, 1945-1995, Martinus Nijhoff Publishers, 1995 and the Summary Records of the Sixth Committee of the General Assembly, 21 September - 10 December 1948, Official Records of the General Assembly.

at a Burundian refugee camp in Kanage *cellule* ("Kanage Camp"). BBO was at the camp because he had a girlfriend there; he was not a refugee himself.<sup>555</sup>

520. BBO testified that authorities had convened a meeting at Kanage Camp to address the Burundian refugees. BBO recalled that the authorities present at this meeting included Kalimanzira, Élie Ndayambaje (former and future *bourgmestre* of Muganza *commune*), Tharcisse Muvunyi (Colonel), and Pierre Canisius Kajyambere (*bourgmestre* of Kibayi *commune*). Although BBO had never met Kalimanzira before, *bourgmestre* Kajyambere introduced the authorities present. Kalimanzira was introduced as the Secretary-General of the Ministry of the Interior.<sup>556</sup>

521. BBO testified that at the start of the meeting, *bourgmestre* Kajyambere took the floor and asked the Burundian refugees to be patient in view of the situation prevailing in the country. BBO recalled that Colonel Muvunyi took the floor next in order to inform the refugees that President Habyarimana and Cyprien Ntaryamira (President of Burundi) had been killed, and to encourage them to remain in Rwanda and cooperate with Rwandan Hutus. BBO further recalled Colonel Muvunyi saying he had brought some weapons for the refugees to use to defend themselves if ever the *Inkotanyi* attacked from Burundi, and that he intended to replace the gendarmes at Kanage Camp with soldiers.<sup>557</sup>

522. BBO testified that Kalimanzira took the floor following Colonel Muvunyi's speech, and essentially repeated Colonel Muvunyi's statements, except to add that the Rwandan government considered RPF accomplices to be enemies of the state. Kalimanzira also indicated that people who listened to Radio Muhabura (which BBO described as "the radio station of the *Inkotanyi*") instead of Radio Rwanda were considered RPF accomplices and *Inkotanyi*, and that the Rwandan government would no longer protect them. BBO said he could hear the speeches clearly because he was standing 10-15 meters from the authorities, who used a megaphone while they spoke due to the large number of refugees.<sup>558</sup>

523. BBO testified that, before leaving Kanage Camp, the authorities left behind three boxes of traditional weapons, including machetes, daggers, and small hoes, for the camp leaders to distribute among the refugees. The weapons were distributed immediately. Because BBO was a Rwandan and not a refugee, he could not be issued a weapon. However, he testified that his refugee girlfriend gave him the machete she received.<sup>559</sup>

524. BBO described the atmosphere and mood after the speech as being tense. The refugees were afraid that the *Inkotanyi* might invade from Burundi and attack the refugees at Kanage Camp. Despite no such attack or any RPF invasion from Burundi, BBO recalled the refugees remained fearful, and, after a few days, began to transfer their fears of the *Inkotanyi* onto Tutsi civilians.<sup>560</sup> BBO and the Burundian refugees used the weapons they were issued to kill Tutsis who had taken refuge at the Kibayi *commune* office and at Kabuye hill (Ndora *commune*).<sup>561</sup>

#### Defence Witness MGR

<sup>555</sup> T. 19 June 2008 p. 38 (Witness BBO).

<sup>556</sup> T. 19 June 2008 pp. 39-40 (Witness BBO).

<sup>557</sup> T. 19 June 2008 pp. 40-41 (Witness BBO).

<sup>558</sup> T. 19 June 2008 pp. 40-41 (Witness BBO).

<sup>559</sup> T. 19 June 2008 p. 42 (Witness BBO).

<sup>560</sup> T. 19 June 2008 p. 43 (Witness BBO).

<sup>561</sup> T. 19 June 2008 p. 44 (Witness BBO).

525. MGR owned a small shop which faced Kanage Camp, just across the road from it. He said he stayed at his shop from 7:00 a.m. until about 8:00 p.m., every day of the week, except when he occasionally took lunch at the marketplace nearby. Because of his proximity to the camp, there were always refugees buying provisions from MGR's shop. Even after President Habyarimana's death, MGR continued to run his shop everyday, until he fled Rwanda at the end of June 1994.<sup>562</sup>

526. MGR testified that he never heard of a meeting having taken place at Kanage Camp attended by *bourgmestre* Kajyambere, Colonel Muvunyi, Ndayambaje or Kalimanzira. MGR indicated that he does not know Colonel Muvunyi or Kalimanzira, and that the Burundian refugees never mentioned the existence of any such meeting attended by any of these individuals. Moreover, MGR stated that *bourgmestre* Kajyambere never once visited Kanage Camp, as he had appointed someone to be responsible for the camp. Finally, MGR asserted that there could not have been any distribution of weapons at Kanage Camp without his having noticed or learned about it from his clients or his friends. He reiterated that his shop was placed on the only road leading to and from the camp, thereby making it impossible for the occurrence of such a meeting or the arrival of authorities in vehicles to have escaped his attention.<sup>563</sup>

*Defence Witness SRA*

527. In 1994, SRA worked a 15-minute trek away from Kanage Camp. He said that from 6:00 a.m. on Monday morning until 6:00 a.m. on Friday morning, he would be at his place of work. On weekends he went home, which was 20 metres from Kanage Camp. SRA continued to work after President Habyarimana's death until early June 1994.<sup>564</sup>

528. SRA testified that he did not hear of any visits by any officials to Kanage Camp between the 6 April and June 1994. He stated that he never saw any vehicle near the camp containing Ndayambaje, *bourgmestre* Kajyambere, Colonel Muvunyi or Kalimanzira. SRA indicated that he did not know Colonel Muvunyi, but knew Ndayambaje, *bourgmestre* Kajyambere and specifically Kalimanzira, whom he met personally when working for a fishing co-operative. SRA asserted that it would have been impossible for any such meeting or distribution to have occurred at Kanage Camp without his knowledge due to the nature of his work and his frequent interactions with the Burundian refugees.<sup>565</sup>

*Defence Witness KBF*

529. KBF testified that by virtue of his professional position, he attended a meeting on the Nyabisagara football field 100 metres away from the Kibayi *commune* office in May 1994 (see III.4.6.1). This was the only meeting KBF attended in Kibayi *commune* in between April to July 1994; he admits the possibility that there may have been others. He knew Kalimanzira and asserted he was not there. KBF also maintains he never saw Kalimanzira or heard anything about him from April 1994 until he fled Rwanda in July 1994.<sup>566</sup>

*Other Defence Witnesses*

<sup>562</sup> T. 17 November 2008 p. 25 (Witness MGR).

<sup>563</sup> T. 17 November 2008 pp. 25-27, 29-31 (Witness MGR).

<sup>564</sup> T. 26 January 2009 pp. 11, 13, 17 (Witness SRA).

<sup>565</sup> T. 26 January 2009 pp. 13-15 (Witness SRA).

<sup>566</sup> T. 17 November 2009 pp. 14-15 (Witness KBF).

530. Kalimanzira and his wife, Salomé, both testified that Kalimanzira stayed home in Kigali in the days following the death of President Habyarimana, and that the first time he left his house was on 11 April 1994 to attend a meeting at the *Hôtel des Diplomates*. They both maintain that Kalimanzira did not have access to a vehicle until that day.<sup>567</sup>

#### 4.2.2. Deliberations

531. The Chamber rejects Kalimanzira's contention that he did not have access to a vehicle before 11 April 1994 and that he did not leave his house before that date (see III.1.2.2). Nevertheless, the Chamber's disbelief in Kalimanzira's alibi does not relieve the Prosecution of its burden to prove this allegation beyond reasonable doubt.

532. BBO is the only witness to have testified to this event. He testified that he was a Tutsi, but that he identified with Burundian Hutu refugees by fearing the *Inkotanyi* and participating in massacres against Tutsi civilians with them. For this, BBO was arrested and detained in Karubanda prison after returning to Rwanda from exile. He was charged with killings, which he confessed to in 1998. His guilty plea was accepted and he served 11 years in prison.<sup>568</sup> BBO admits to having participated in the attacks at Kabuye hill, where he also implicates Kalimanzira (see III.2.4.1), and where he testified he used the weapon distributed to him by Kalimanzira at Kanage Camp. This makes BBO an accomplice, whose testimony must be viewed with caution. The Chamber notes that BBO has served his sentence and it would not appear that his judicial proceedings could be enhanced by giving false testimony against Kalimanzira. However, the first time BBO mentioned Kalimanzira to ICTR investigators was in 2001, while he was still in jail awaiting trial,<sup>569</sup> at which time he may have believed that he could have something to gain from falsely implicating Kalimanzira.

533. Despite being a native of another *commune*, BBO indicated under cross-examination that he had settled in Kibayi *commune* around May 1993, where he remained until he fled Rwanda in July 1994. In his prior statements to ICTR investigators, however, he indicated that he was in Burundi in October 1993 and fled Rwanda in late May 1994.<sup>570</sup> In addition, in his first statement to ICTR investigators in October 1999,<sup>571</sup> BBO makes no mention of Kalimanzira or the incident at Kanage Camp, but rather speaks of a very different series of events occurring three days after the death of President Habyarimana. BBO's explanations that he was afraid of divulging too much information and that he could give different versions of events if he were continued to be questioned raise further doubts on his credibility.<sup>572</sup>

534. The Defence witnesses KBF, MGR and SRA called to rebut BBO's evidence testified that they never heard of the meeting in question. KBF admitted to the possibility that there may have been meetings in Kibayi *commune* other than the one he testified about. SRA's work kept him away from the vicinity of Kanage Camp for five full days out of every week; his assertion that such a meeting could not possibly have taken place without his knowledge is untenable. MGR's work placed him directly in front of the camp, but his blanket assertions that weapons could not be distributed and officials could not have visited the camp without his knowledge are equally untenable. In particular, MGR's testimony that he continued to run his shop everyday even after the death of the President stands in contrast to the Defence's

<sup>567</sup> T. 10 February 2009 p. 23 (Callixte Kalimanzira); T. 5 February 2009 p. 6 (Salomé Mukantwali).

<sup>568</sup> T. 19 June 2008 p. 48 (Witness BBO).

<sup>569</sup> Exhibit D21.

<sup>570</sup> See Exhibits D20 and D21.

<sup>571</sup> Exhibit D20.

<sup>572</sup> See T. 19 June 2008 pp. 55 and 61 (Witness BBO).

contention that Kalimanzira, like everyone else, stayed home in the days following the plane crash according to instructions issued on the radio.

535. The Chamber recalls the standard of proof and doubts that it can rely on BBO's uncorroborated evidence. The Chamber does not believe that Kalimanzira stayed home in the days following the death of the President. For the same reasons, it doubts that Kalimanzira went to Kanage Camp. In the absence of additional information or explanation, it would seem likely that at such a critical time, and in the absence of his Minister, Kalimanzira would have had more important matters to attend to in Kigali.

#### 4.3. Jaguar Roadblock, mid-April

536. At paragraph 21 of the Indictment, the Prosecution charges Kalimanzira with Direct and Public Incitement to Commit Genocide for going to the "Jaguar" roadblock in front the Gisagara Catholic Church in mid-April 1994, giving a rifle to the person in charge of the roadblock, Marcel Ntirusekanwa, and instructing him to use the gun to kill Tutsis.

537. The Defence contends that the Prosecution witnesses are lying, but admits that Kalimanzira passed through Jaguar roadblock, albeit in June. In addition, Kalimanzira relies on his alibi that he was working in Murambi/Gitarama from 14 April to 30 May 1994, and on mission in Kibungo *préfecture* on 21 and 22 April 1994 (see III.1.2).

##### 4.3.1. Evidence

###### *Prosecution Witness BWL*

538. BWL testified that he saw Kalimanzira at the Jaguar roadblock,<sup>573</sup> located near the Gisagara church, sometime in April 1994 shortly before the killings at Kabuye hill. Kalimanzira arrived at the roadblock in a white vehicle with two other people dressed in civilian attire. Kalimanzira got out of the vehicle, introduced himself to the people at the roadblock, and expressed the need to ensure the security of the Tutsis who had been sent to Kabuye hill. Those present at the roadblock included "Marcel", "Sylvestre", "Bihehe", and "Pakome". Kalimanzira then pulled a firearm out of the back seat of the vehicle and handed it over to either Marcel or Sylvestre, both of whom were soldiers who had just retired from the army. Upon seeing this, BWL got scared and left.<sup>574</sup>

###### *Prosecution Witness BCN*

539. BCN testified that at a meeting near the Abizeramariya Convent in late April 1994, Kalimanzira promised to supply weapons to members of the public for self-defence against the Tutsis. BCN recalled that within a week, Kalimanzira made good on that promise by bringing a firearm to the Jaguar roadblock,<sup>575</sup> located in front of the Gisagara church. This roadblock had been erected on Fidèle Uwizeye's initiative one week after President Habyarimana's death. Kalimanzira arrived at the roadblock at approximately 11:00 a.m. in a white double-cabin vehicle, accompanied by Fidèle Uwizeye and a driver. Kalimanzira was sitting in the passenger seat with Uwizeye in the backseat.<sup>576</sup>

<sup>573</sup> The transcript of BWL's evidence provides a spelling of "Jagwa" roadblock. The Chamber will adopt the name "Jaguar" provided in the Indictment for the sake of consistency.

<sup>574</sup> T. 23 June 2008 pp. 44-47, 59-62 (Witness BWL).

<sup>575</sup> See Exhibit D36.

<sup>576</sup> T. 25 June 2008 pp. 3-4, 17-20 (Witness BCN).

*LB*

540. Those present at the roadblock included Marcel Ntirusekanwa, Jean Twagirayezu, Segundo Ngiriwonsanga, Dionisios Kabandana, Laurent Ngirente, Patern Harerimana, Siridi Iyakaremye, Louis Hakizimana, Casimir Bwanakeye, “Pakome”, “Metero”, “Bihehe”, and Sylvestre Sentore. After stopping at the roadblock, Kalimanzira told Uwizeye to give them a gun. Without getting out of the car, Uwizeye took a firearm from a pile in the backseat and handed it over to Marcel, an ex-soldier, through the car window. Kalimanzira then informed everyone at the roadblock that the gun was to be used to kill Tutsis. Kalimanzira also instructed them to check everyone’s identity cards of people and prevent any Tutsis from passing through the roadblock. Once Marcel took hold of the weapon, the vehicle left. BCN testified that Kalimanzira’s instructions were carried out and that the gun was used to kill many people, including a Tutsi named Alexandre Rubayiza.<sup>577</sup>

541. BCN later heard that Kalimanzira had distributed the remaining weapons in his vehicle to other persons. BCN also testified that Kalimanzira passed by the Jaguar roadblock on several other occasions, each time instructing those manning it to kill Tutsis. On one such occasion, Kalimanzira questioned them as to why he could not see any corpses; they responded that there was a mass grave very close to the roadblock and that there were corpses there.<sup>578</sup>

#### *Prosecution Witness BCK*

542. BCK manned the Jaguar roadblock located near the Gisagara church three to four times per week, and was present when it was erected at the end of April 1994. BCK testified that at the end of April 1994, Kalimanzira arrived at the roadblock in a white or red Toyota double-cabin vehicle around 11:30 a.m. or midday accompanied by three soldiers. Kalimanzira parked the car and got out of the vehicle with the soldiers. After greeting everyone, Kalimanzira asked who could use a firearm. Those present at the roadblock included Lucien Simbayobewe, Jean Twagirayezu, and “Patern”, as well as “Sylvestre” and Marcel Ntirusekanwa, both of whom used to be soldiers. Kalimanzira then handed a gun to Marcel “from the window of the vehicle” and instructed everyone that it was to be used at the roadblock to kill the *Inkotanyi Inyenzi* and any other possible enemies attempting to pass through the roadblock. Kalimanzira reminded them that the enemy was the Tutsi and promised to bring more guns later. Kalimanzira then left with the soldiers toward Gisagara.<sup>579</sup>

543. BCK testified that at the roadblock, people were sorted according to their ethnic identity. Only Hutus manned the roadblock, and unknown Hutus trying to pass through were held separately from Tutsis. Kalimanzira’s instructions to kill Tutsis were implemented; BCK specifically recalled that a Tutsi named “Alexandre” was killed at the roadblock.<sup>580</sup>

#### *Defence Witness Sylvestre Niyonsaba*

544. Niyonsaba is the son of Joseph Sentore, the same “Sylvestre” or “Sylvestre Sentore” referred to by BWL, BCN, and BCK.<sup>581</sup> He testified that he worked as a policeman for Ndora

<sup>577</sup> T. 25 June 2008 pp. 5, 20-24 (Witness BCN).

<sup>578</sup> T. 25 June 2008 pp. 5, 8-9 (Witness BCN).

<sup>579</sup> T. 26 June 2008 pp. 6-9, 14-15 (Witness BCK).

<sup>580</sup> T. 26 June 2008 p. 9 (Witness BCK).

<sup>581</sup> See Prosecution Closing Brief, para. 218. The Defence Closing Brief at para. 257 erroneously refers to Sylvestre’s father, Joseph Sentore, as being the person purported to have received the weapon at Jaguar roadblock by Kalimanzira. Neither the Indictment, nor any Prosecution witness, ever purported that Joseph Sentore received any weapon at Jaguar roadblock. The Indictment only refers to Marcel having received the rifle, as do BCN and BCK, while BWL could not be sure whether it was “Marcel” or “Sylvestre”. BCN and BCK refer to “Sylvestre” or “Sylvestre Sentore” as among those present at the roadblock.

*commune* until June 1994. He was issued with a gun by the *bourgmestre* as part of his duties, which he carried whilst working. In April 1994, Niyonsaba was among the first persons to start manning the Jaguar roadblock and he continued to do so until June 1994. While manning the roadblock, he carried his firearm. Niyonsaba recalled that he was the only person with a gun at the roadblock and that the others used only traditional weapons. Those typically present at the Jaguar roadblock included that Jérôme Singirankabo, Jérôme Rubayiza, Vianney Harindintwali, “Pakome”, “Emmanuel”, “Eugene”, and quite a few others.<sup>582</sup>

545. Niyonsaba testified that Marcel Ntirusekanwa was also often at the Jaguar roadblock but did not in fact man it due to his advanced age. Niyonsaba only saw Marcel at the roadblock with a firearm once. Marcel would often joke that he could fire a gun since he was an ex-soldier. Therefore, on one occasion, Niyonsaba, handed Marcel his gun as a joke, after removing the magazine, in order to test the statement.<sup>583</sup>

546. Niyonsaba testified that he saw Kalimanzira at the Jaguar roadblock twice in the middle of June 1994. Kalimanzira was in a white double-cabin vehicle, accompanied by a driver. Niyonsaba and the other men allowed Kalimanzira to pass through the roadblock by removing the tree trunk being used as a barrier. Niyonsaba recalled that Kalimanzira waved his hand in greeting but did not exit the vehicle. He did not speak to the people manning the roadblock or take anything from his vehicle and give it to anyone manning or standing at the roadblock. Kalimanzira arrived from the direction of Butare and continued in the direction of Gisagara. Niyonsaba saw Kalimanzira again, on his return to Butare. Kalimanzira was in the same vehicle and did not speak to or give anything to anyone manning the roadblock.<sup>584</sup>

*Defence Witness Jean Marie Vianney Harindintwali*

547. Harindintwali manned the Jaguar roadblock most afternoons between 1:00 p.m. and 4:00 p.m. He testified that nobody was ever killed at the roadblock and that there was no mass grave next to it. Harindintwali stated that there was a mass grave near Gasana’s house but that this was a great distance from the roadblock. He further insisted that he never partook in any separation of Hutus from Tutsis at the roadblock, nor is he aware of any Tutsis having been so separated, killed and dumped in a pit.<sup>585</sup>

**4.3.2. Deliberations**

548. At the time of this alleged incident, Kalimanzira claims to have been working in Murambi (*Gitarama préfecture*), except on 21 and 22 April 1994 when he travelled to and from Kibungo *préfecture* to install the new *préfet*. As discussed above, the Chamber does not believe Kalimanzira’s alibi (see III.1.2.2).

549. In its Closing Brief, the Defence has erroneously considered BXK’s testimony as referring to the incident alleged at paragraph 21 of the Indictment and has relied on its inconsistencies with other BCN, BCK and BWL to discredit them all.<sup>586</sup> However, elsewhere in its Closing Brief, the Defence asserts that the roadblock BXK testified to must be distinguished from the Jaguar roadblock.<sup>587</sup> Notice was given that BXK would testify to the

<sup>582</sup> T. 18 November 2008 pp. 35-37 (Sylvestre Niyonsaba).

<sup>583</sup> T. 18 November 2008 pp. 39-40 (Sylvestre Niyonsaba).

<sup>584</sup> T. 18 November 2008 pp. 40-41 (Sylvestre Niyonsaba).

<sup>585</sup> T. 19 November 2008 pp. 1-3 (Jean Marie Vianney Harindintwali).

<sup>586</sup> Defence Closing Brief, paras. 311-314.

<sup>587</sup> Defence Closing Brief, para. 405 (2).

allegations at paragraph 15, not paragraph 21, of the Indictment.<sup>588</sup> As discussed at III.2.7.4.2, the Chamber finds that BXK's testimony refers to a separate incident; it will not be discussed here. The Defence contention that BXK's testimony discredits BCN, BCK and BWL is therefore rejected.

550. BWL is a Tutsi who was 18 years old at the time of this event. The Defence argued that his account of events was unbelievable. For instance, he explained that his reason for passing through the Jaguar roadblock was that he was returning from a shop where he had been sent to buy tomato paste by his employer.<sup>589</sup> He also mentioned that he was not checked at the roadblock when passing through. The Defence raised the incongruity that an employer would send a young Tutsi outside during the midst of the genocide, and that his identity would not be checked when passing through the roadblock. However, it is not implausible. The Chamber accepts BWL's explanation that he did not appear old enough to have been issued an identity card.<sup>590</sup> In his September 2007 statement to ICTR investigators, BWL mentions that he habitually passed through the Jaguar roadblock, where he witnessed several killings, but he was not disturbed because he was not known to be a Tutsi.<sup>591</sup> He also testified that at the time of this alleged incident, the killings had not yet started in his locality.<sup>592</sup> The Chamber accepts that BWL was not targeted for these reasons.

551. The Defence also questioned BWL as to how he could go shopping when he had previously mentioned that at the time the shops were shut. BWL acceptably explained that the shopkeeper would open the shop for him because of identity of his employers.<sup>593</sup> Finally, the Defence raised the issue of a minor discrepancy between a BWL's prior statement, in which he described seeing Kalimanzira hand a firearm to Marcel, and his testimony on the stand, where he described that he saw the firearm being given to Marcel *or* Sylvestre.<sup>594</sup> The Chamber considers this to imply that BWL was being more cautious in his sworn testimony. The Chamber finds BWL to be credible and reliable.

552. BCN manned the Jaguar roadblock. He was arrested in 1994, sentenced to 20 years in prison for committing genocide, and was released in December 2007.<sup>595</sup> It is not clear whether the crimes he committed and confessed to, which included killings, were linked to the crimes charged against Kalimanzira in this Indictment. At the time of his testimony, BCN had completed his sentence and it would not appear that his judicial proceedings could be enhanced by giving false testimony against Kalimanzira. However, the Chamber notes that BCN also levels several other allegations against Kalimanzira, consisting mostly of inciting the population to kill, and considered whether BCN might have had an interest in diluting his own responsibility for committing killings by blaming Kalimanzira and other authorities for inciting him. The Chamber has not so concluded.

553. There was little challenge to the integrity of BCN's testimony. The Defence raised a minor challenge as to whether or not it was possible to see the house of Dominique Ntawukulilyayo (*sous-préfet* of Gisagara) from the roadblock,<sup>596</sup> as there was mixed testimony on this point. The Chamber does not consider this to be of any importance because

<sup>588</sup> Prosecution Pre-Trial Brief, Annex A.

<sup>589</sup> T. 23 June 2008 p. 45 (Witness BWL).

<sup>590</sup> T. 23 June 2008 pp. 42-43 [closed] 60 (Witness BWL).

<sup>591</sup> Exhibit D25.

<sup>592</sup> T. 23 June 2008 p. 44 (Witness BWL).

<sup>593</sup> T. 23 June 2008 pp. 62-63 (Witness BWL).

<sup>594</sup> T. 23 June 2008 pp. 68-69 (Witness BWL).

<sup>595</sup> T. 25 June 2008 p. 12 (Witness BCK).

<sup>596</sup> T. 25 June 2008 pp. 16, 24-25 (BCK)



the existence and location of Jaguar roadblock and the *sous-préfet*'s house are not in dispute and are in close proximity to each other.

554. BCK is a Hutu, and like BCN, manned the Jaguar roadblock in April 1994. BCK is currently serving a 30-year prison sentence after being convicted of genocide by a *Gacaca* court in June 2007.<sup>597</sup> He had exhausted all methods of appeal before testifying. It is not clear whether the crimes he committed and confessed to, which included killings, were linked to the crimes charged against Kalimanzira in this Indictment. The Chamber nevertheless considers that his testimony should be viewed with caution.

555. The Defence was able to point out an inconsistency between his BCK's evidence and a *Gacaca* document dated October 2001. In the *Gacaca* document, BCK stated that Kalimanzira handed a firearm to Sylvestre, whereas on the stand he testified that Kalimanzira handed a firearm to Marcel.<sup>598</sup> The Chamber accepts BCK's explanation that the *Gacaca* document does not accurately reflect his statement, as he did not write it and contests the accuracy of its content.

556. The Defence suggested that there were major discrepancies between the testimonies of the three Prosecution witnesses.<sup>599</sup> However, upon careful consideration, and having dismissed consideration of BCK's testimony in relation to this event, the Chamber considers the Defence's contention to be unfounded. The Defence suggested that BCN was lying and uncorroborated when he said that Kalimanzira passed through the roadblock on several occasions.<sup>600</sup> However, his testimony is supported by Sylvestre Niyonsaba who said that he saw Kalimanzira pass through the roadblock several times, albeit in June 1994.<sup>601</sup>

557. The testimonies of BWL, BCK and BCN generally substantiate each other on many issues, such as the date of the alleged incident, that the weapon was handed to Marcel, and that Kalimanzira arrived in a white vehicle described as either a van or pick-up truck. Additionally, there are several issues on which two Prosecution witnesses support each other: BCN and BWL both say that Kalimanzira arrived with a driver and a civilian, whom BCN identified as Fidèle Uwizeye; BWL and BCK both state that Kalimanzira got out of the vehicle; BCN and BCK both identified the firearm as a rifle whereas BWL testified that he did not know about weapons and could therefore not comment; BCN and BCK also recalled the killing of a Tutsi named "Alexandre". All three witnesses ascribe utterances to Kalimanzira although these are not the same. It is entirely understandable that there would be minor discrepancies between testimonies. The alleged incident occurred 15 years ago in a time of great trauma and stress. Furthermore, people process events differently and selectively remember different facts. The differences are not enough to raise reasonable doubt as to the credibility or reliability of these witnesses.

558. The Defence led evidence from two witnesses who, like BCN and BCK, manned the Jaguar roadblock. Harindintwali lives in exile as a fugitive from justice and is wanted by the *Gacaca* courts for killing and looting.<sup>602</sup> His statement that he did not see any Tutsi segregation or killings of Tutsis at the roadblock is not reconcilable with his recognition that

<sup>597</sup> T. 26 June 2008 pp. 12 and 28 [closed] (Witness BCK).

<sup>598</sup> T. 26 June 2008 pp. 33-35 (Witness BCK); see also Exhibit D39.

<sup>599</sup> Defence Closing Brief, para. 303.

<sup>600</sup> Defence Closing Brief, para. 306.

<sup>601</sup> T. 18 November 2008 p. 40 (Sylvestre Niyonsaba).

<sup>602</sup> T. 18 November 2008 pp. 68-69 and T. 19 November pp. 6-7 (Jean Marie Vianney Harindintwali); see also Exhibits P57 and P58.

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there was a mass grave near Gasana's house,<sup>603</sup> which he places at a great distance from Jaguar roadblock, but which Prosecution witness BXK described was in the area (see III.2.7.4).<sup>604</sup> Given his status as a fugitive from justice and as someone who manned the roadblock, Harindintwali has an obvious interest in distancing himself from any alleged criminal acts. The Chamber therefore has reason to disbelieve Harindintwali.

559. Niyonsaba also lives in exile and has not returned to Rwanda since he left in 1994.<sup>605</sup> As a possible fugitive from justice, serious doubts are raised about the extent to which Niyonsaba might also be interested in denying any criminal acts having occurred at the Jaguar roadblock. On the stand, Niyonsaba legitimized his carrying of a firearm by claiming that he was a *communal* policeman at the time of the events. However, the Defence's disclosure of his personal particulars listed him as having been a mason at the time of the events, not a policeman. The Chamber does not accept Niyonsaba's statement that he failed to mention he was a police officer earlier because he was asked what his job or profession was, and Rwandans do not consider joining the police force as being a job or a profession.<sup>606</sup> Given the context of the testimony he was asked to bring, such an omission cannot be explained away by semantics. The Chamber was also unconvinced with Niyonsaba's cynical story about letting Marcel, whom he described as elderly, hold his gun in jest on one occasion. He did, however, admit that Marcel was an ex-soldier, as the Prosecution witnesses described. Regardless, Niyonsaba's sightings of Kalimanzira in June 1994 do not preclude Kalimanzira from also being there in April 1994.

560. The Prosecution witnesses corroborated one another and the Chamber found them to be credible and reliable. The Defence testimony failed to raise any reasonable doubt. The Chamber therefore finds that sometime in mid to late April 1994, Kalimanzira stopped at the Jaguar roadblock and handed a rifle to Marcel Ntirusekanwa in the presence of several others who were also manning the roadblock. Upon giving the rifle, he told everyone present that the gun was to be used to kill Tutsis.

561. Though the wording of paragraph 21 of the Indictment could imply that Marcel alone was present at the roadblock and received instructions from Kalimanzira, the Prosecution Pre-Trial brief clarified the more public quality of the alleged incitement. The rifle was not intended to be distributed to Marcel in particular or to be used by him only; the gun and the instructions were disseminated to the group. The incitement to kill Tutsis was clear, direct, and in a public place, to an indeterminate group of persons.

562. In these circumstances, there is no reasonable doubt that those present at the roadblock understood Kalimanzira's actions and words as a call to commit acts of genocide against Tutsis and that Kalimanzira intended to directly and publicly incite such acts. Kalimanzira exhibited here, and elsewhere, an intent to destroy the Tutsi group (see III.5.2). As such, the Chamber finds Kalimanzira guilty beyond reasonable doubt for committing Direct and Public Incitement to Commit Genocide at the Jaguar roadblock, as alleged at paragraph 21 of the Indictment.

<sup>603</sup> T. 19 November 2008 p. 3 (Jean Marie Vianney Harindintwali).

<sup>604</sup> T. 9 May 2008 p. 10 (Witness BXK).

<sup>605</sup> T. 18 November 2008 pp. 34-35 (Sylvestre Niyonsaba).

<sup>606</sup> T. 18 November 2008 p. 60 (Sylvestre Niyonsaba): "At home one does not consider being in the police force as being a profession or a job. It's a form of employment. If, for instance, you had been a soldier and you leave the army, you can become a policeman. Furthermore, if you misbehave as a policeman, you are dismissed and you are no longer referred to as a policeman. Being in the police force is not a profession. Now, when I was asked about my job or profession, I said that I was a mason because being a policeman is not a profession, it's not a job."

#### 4.4. Kajyanama Roadblock, late April

563. At paragraph 22 of the Indictment, the Prosecution charges Kalimanzira with Direct and Public Incitement to Commit Genocide for appearing at a roadblock located at the border between the Muganza and Remera *secteurs* and the Kirarambogo junction in late April 1994 with gendarmes, and reminding those manning it that they had to carry weapons and kill Tutsis. He slapped one unarmed person there and forced another unarmed person into his vehicle.

564. The Defence denies Kalimanzira's presence at this roadblock at the time alleged. In addition, Kalimanzira relies on his alibi that he was working in Murambi (Gitarama *préfecture*) from 14 April to 30 May 1994 (see III.1.2).

565. This roadblock was located in Kajyanama *cellule* (Remera *secteur*, Muganza *commune*);<sup>607</sup> the Chamber will therefore refer to it as the "Kajyanama roadblock".<sup>608</sup>

##### 4.4.1. Evidence

###### *Prosecution Witness BBB*

566. BBB testified that the Kajyanama roadblock was originally erected in 1990 but, after a period of disuse, was re-established two days after the death of President Habyarimana. The roadblock consisted of tree trunks pulled across the road to prevent vehicles from passing and was controlled by the *responsable* of Kajyanama *cellule* and the *conseiller* of Remera *secteur*. BBB testified those manning the roadblock, including him, were instructed by their leaders to hide in the woods whenever a vehicle approached in order to make them less vulnerable to attack. Once a vehicle's occupants had been identified, they would return to the roadblock. BBB testified that he manned the roadblock regularly, three to four times per week, from morning until evening.<sup>609</sup>

567. BBB testified that whilst hiding in the woods one day, about two weeks after the death of President Habyarimana, he saw Kalimanzira arrive at the roadblock in a red Toyota with an uncovered back section, accompanied by a driver and approximately five armed gendarmes, identifiable by their red berets. BBB approached the roadblock as Kalimanzira exited the vehicle and stood approximately three metres from him. BBB recalled that a man passed by and Kalimanzira questioned him as to where his weapon was. The man responded that he had none and Kalimanzira slapped him before he was thrown into the vehicle by the gendarmes. Kalimanzira then asked BBB to show him his weapon. BBB showed Kalimanzira the machete that he had hidden under his overcoat, thereby satisfying him.<sup>610</sup>

568. BBB testified that Kalimanzira stayed at the roadblock for approximately 15 to 20 minutes and asked the people at the roadblock if they knew whom their enemies were. Those manning the roadblock with BBB that day included Matabaro Cyama, Jean "Gashurushuru" Mutabazi, Emmanuel Ruganji, Joseph Senkunda (*responsable* of Kajyanama *cellule*), and Célestin Mtamugabumwe, as well as many other members of the population whose names BBB could not recall. They answered affirmatively to Kalimanzira's question, and Kalimanzira told them that they were fighting the Tutsis, who were "wicked", and instructed

<sup>607</sup> T. 16 June 2008 p. 6 (Witness BBB); T. 22 May 2008 p. 41 [closed] (Witness BXH); T. 25 November 2008 p. 26 [closed] (Witness AM29); T. 25 November 2008 p. 43 [closed] (Witness AM05); see also Exhibits P2, P3, D13, D59, and D61.

<sup>608</sup> This is also the name adopted by the Defence. See *e.g.* Defence Closing Brief, para. 435.

<sup>609</sup> T. 16 June 2008 pp. 6-7, 22-23, 33-34 (Witness BBB).

<sup>610</sup> T. 16 June 2008 pp. 7-8, 34 (Witness BBB).

them to kill Tutsis and prevent them from passing the roadblock. Kalimanzira left the roadblock in the vehicle and travelled towards Gisagara after claiming that he was going to abandon the man at the customs post as a punishment.<sup>611</sup>

569. BBB testified that at approximately 8:00 p.m. that same day, he saw the man that Kalimanzira slapped at the roadblock again. The man was being interrogated by the men who manned it at night. BBB stated that the men wanted to kill him but refrained because he had a Hutu identity card. However, BBB admitted that he was informed of this the next day by his colleagues because he did not go close enough to hear it personally at the time of the incident. Finally, BBB described how people implemented Kalimanzira's instructions after he left; they changed their tactics and behaviour by increasing attacks and killing Tutsis. Specifically, BBB stated that a Tutsi named Lensi de Karama from Ndora *commune* was killed there.<sup>612</sup>

#### *Prosecution Witness BXH*

570. BXH lived close to the Kajyanama roadblock. BXH testified that one day at the end of April or beginning of May 1994 at approximately 1:00-2:00 p.m., he was repairing a fence in his garden when he heard a vehicle. He went to stand in front of his house in order to see the vehicle and saw Kalimanzira arrive at the roadblock in a red pick-up vehicle on the road leading to Kirarambogo. BXH stated that Kalimanzira was 6 or 7 metres from him and accompanied by 4 or 5 armed soldiers or gendarmes.<sup>613</sup>

571. BXH recalled the presence of several people at the roadblock that day, including Cyama Matabaro, Senkunda, Bwenakweri, Gashurushuru, Tomasi Nikombama and Manueli Rujanji. He testified that he observed Kalimanzira ask those who were unarmed what they were doing and how they would defend themselves if the enemy passed by. When they did not reply, Kalimanzira got out of his vehicle, causing them to flee. Kalimanzira grabbed one man, forced him into the vehicle and then left. BXH asserted that Kalimanzira did not speak to the man he grabbed in any special way. BXH himself was unarmed because he had nothing to do with the roadblock. He stated that he believed Kalimanzira could see him.<sup>614</sup>

572. BXH testified that he saw the man Kalimanzira abducted again the next day. The man was on way to have a drink with his friends and was explaining to them what had happened the previous day. BXH heard the man say that Kalimanzira told him that if he found him unarmed again he would kill him with his own hands.<sup>615</sup>

#### *Defence Witness AM05*

573. AM05 manned the Kajyanama roadblock in 1992, and from April 1994 until July 1994. Incidents at the roadblock were followed by the *responsables* of both Kajyanama and Kigarama *cellules* and inhabitants from both participated in manning it, which included "Thomas", "Joachim" and Claver Kamere. AM05 lived close to the roadblock and was there every day. AM05 testified that he saw Kalimanzira pass in front of his house on the road to Kirarambogo sometime at the end of June or beginning of July 1994. Kalimanzira was in a white vehicle, accompanied only by a driver. AM05 recalled that he was standing at the roadblock when he saw Kalimanzira, who waved in greeting but did not stop or speak to anyone. Kalimanzira did not have to go through the roadblock because the road to

<sup>611</sup> T. 16 June 2008 pp. 8-9, 33 (Witness BBB).

<sup>612</sup> T. 16 June 2008 pp. 9-10, 40 (Witness BBB).

<sup>613</sup> T. 22 May 2008 pp. 41-42 [closed] 45-46 (Witness BXH).

<sup>614</sup> T. 22 May 2008 pp. 42-44 [closed] 45, 48-51 (Witness BXH).

<sup>615</sup> T. 22 May 2008 pp. 45-46 (Witness BXH).

Kirarambogo was below it. AM05 saw Kalimanzira return on the same road later that evening. That was the only time AM05 saw Kalimanzira in 1994.<sup>616</sup>

574. AM05 testified that he never heard of any incident where Kalimanzira allegedly stopped at the roadblock and threatened or slapped anyone for being unarmed, nor did he hear of any man being forcibly taken away in Kalimanzira's vehicle. AM05 then explained that he was at the roadblock day and night because of its proximity to his home and the fact that the RPF were said to be killing people in their houses at night. AM05 described how other members of the population also slept there and that during the day it was a point where people would converge in order to converse so as not to feel lonely. Moreover, AM05 recalled that when he saw Kalimanzira pass by he told the other men who manned the roadblock because Kalimanzira was well known, thereby implying that had the above alleged events happened he would have been informed. Additionally, AM05 asserted that he knew of nobody being killed at the roadblock.<sup>617</sup>

#### *Defence Witness AM29*

575. AM29 manned the Kajyanama roadblock, although he admitted he was not there all of the time. He described the roadblock as consisting of a tree trunk placed across the road. AM29 saw Kalimanzira at the roadblock in the beginning of June 1994, travelling by vehicle towards Butare *ville* on the Kirarambogo road. AM29 recalled that Kalimanzira was with a driver and waved in greeting but did not stop or exit the vehicle; he did not see any soldiers. AM29 stated that between April and July 1994, he did not see Kalimanzira again, nor did he ever hear of any incident where Kalimanzira came to the roadblock and threatened anyone for being unarmed, let alone abduct anyone in his vehicle to punish them for being unarmed.<sup>618</sup>

#### *Defence Witness AM02*

576. AM02 did not man the Kajyanama roadblock but worked and lived close by. He testified that the roadblock was originally erected between 1992 and 1993 for security purposes due to the civil war at the time. AM02 testified that in the first week of June 1994, he was near the roadblock one afternoon when a white vehicle heading towards Ndora *commune* arrived. Kalimanzira waved from the vehicle as it continued on its path; he was accompanied by a driver. AM02 did not hear anyone talk about Kalimanzira passing through the roadblock on any other occasion between April and June 1994, nor did he ever hear of anyone being killed at the roadblock.<sup>619</sup>

#### **4.4.2. Deliberations**

577. At the time of this alleged incident, Kalimanzira claims to have been working in Murambi (Gitarama *préfecture*). As discussed above, the Chamber disbelieves Kalimanzira's alibi (see III.1.2.2).

578. The Indictment describes the incident as Kalimanzira slapping one person and then abducting another; the evidence adduced at trial, however, describes the person being slapped as the same person being abducted. The difference is immaterial, and the Defence – who has not raised the issue – has suffered no prejudice in its ability to challenge the Prosecution case.

<sup>616</sup> T. 25 November 2008 pp. 43-47 [closed] 48, 50 (Witness AM05).

<sup>617</sup> T. 25 November 2008 pp. 50-52; pp. 55-57 [closed] (Witness AM05).

<sup>618</sup> T. 25 November 2008 pp. 26-29 [closed] 30-31 (Witness AM29).

<sup>619</sup> T. 26 November 2008 pp. 8-12 [closed] (Witness AM02).

579. BBB is currently in detention at the Karubanda prison where he faces charges of genocide. BBB has confessed to acts of killing and looting, but contests a pending charge of rape against him.<sup>620</sup> He has not been convicted or sentenced as yet for the crimes to which he has confessed. These crimes include the killings at Kabuye Hill, in relation to which Kalimanzira is also charged in this Indictment. In considering whether he may have been influenced to falsely implicate Kalimanzira to diminish his responsibility for his crimes, the Chamber concludes that if he intended to falsely incriminate Kalimanzira, he could also have done so in his testimony on Kabuye hill (see III.2.4.1) in which he failed to mention Kalimanzira and implicated only Dominique Ntawukulilyayo (*sous-préfet* of Gisagara). Having considered his evidence carefully in relation to this event and elsewhere (see III.2.8.2), the Chamber finds BBB to be a credible witness.

580. The Defence extracted a discrepancy during BBB's cross-examination. When he was questioned about who had asked to see his weapon, BBB stated in his examination-in-chief that it was Kalimanzira, but under cross-examination he stated that it was a gendarme. When the inconsistency was pointed out to him, BBB insisted that there was a misunderstanding and reiterated that it was Kalimanzira who asked him about his weapon.<sup>621</sup> The Chamber accepts his explanation.

581. The Defence contends that BBB's credibility is undermined because of major inconsistencies between his testimony and his prior statement to ICTR investigators.<sup>622</sup> For instance, his 2001 statement indicates that Kalimanzira slapped him for being unarmed, and then apologized to BBB when he then showed Kalimanzira his weapon.<sup>623</sup> On the stand, however, BBB testified that Kalimanzira slapped (and then abducted) someone else for being unarmed, not BBB.<sup>624</sup> BBB's position was firm and he would have no reason to change his prior statement in this regard; in fact, his evidence might have been more accusatory had he testified that Kalimanzira slapped him personally and not somebody else. That testimony would also have been consistent with the Indictment which alleges that Kalimanzira slapped one person and abducted another, a pleading which was consistent with the prior statement.

582. The Defence points out certain other inconsistencies in BBB's prior statement, such as where the unarmed person was dropped off and whether he was bundled up before being forced into Kalimanzira's vehicle, and argues that they amount to serious contradictions. After careful consideration, the Chamber accepts BBB's explanations that there were errors in the recording of his statement. It does not consider that these differences indicate any lack of truthfulness or unreliability in the witness. The nature of these differences does not cast reasonable doubt on the substance of BBB's testimony.

583. BXH does not have a criminal record. He still lives in Rwanda and has never been jailed or convicted.<sup>625</sup> There is no dispute that he knew Kalimanzira, as he had worked under his supervision at a fishing pond in Muganza *commune* for more than a year in the 1980s.<sup>626</sup> At the time of the alleged events, BXH lived within plain view of the Kajyanama roadblock.<sup>627</sup> The Defence claims that BXH's testimony was illogical because he alleged that Kalimanzira told the people at the roadblock that they should be armed in order to defend

<sup>620</sup> T. 16 June 2008 pp. 57-59 [closed] (Witness BBB); see also Exhibit D15.

<sup>621</sup> T. 16 June 2008 p. 37 (Witness BBB).

<sup>622</sup> Defence Closing Brief, paras. 484-489.

<sup>623</sup> Exhibit D14.

<sup>624</sup> T. 16 June 2008 pp. 50-51 (Witness BBB).

<sup>625</sup> T. 22 May 2008 pp. 53-54 [closed] (Witness BXH).

<sup>626</sup> T. 22 May 2008 p. 40 [closed] (Witness BXH).

<sup>627</sup> T. 22 May 2008 pp. 41-42 [closed] (Witness BXH).

themselves against the enemy, yet threatened to kill one of them if he found him unarmed again.<sup>628</sup> The Chamber disagrees. Within the context of an ongoing genocide and the fear of impending RPF attacks, such a statement could easily have been uttered.

584. The Defence adduced evidence from three witnesses, all of whom have good reason to distance themselves from any alleged criminal acts at the roadblock. They all currently live in exile in the same country, and may be fugitives from justice. Two of them, like BBB, manned the Kajyanama roadblock, and one worked nearby. AM05 and AM02 asserted that they have never heard of anyone being killed at the roadblock. AM05 and AM29 manned the roadblock, as did BBB who testified that killings did occur there. AM02 was a policeman in April 1994; investigations of any killings of civilians in his local area would have been part of his duties. Four years after being imprisoned, AM02 escaped and fled the country.

585. All three witnesses testified that they saw Kalimanzira pass this roadblock, without exiting his vehicle or speaking to anyone. AM29 and AM02 describe such an occurrence in June and AM05 speaks of a similar incident in late June or early July. AM29 admitted that he only manned the roadblock on four occasions yet insisted that he knew Kalimanzira had never passed by, threatened people for not carrying weapons or abducted an unarmed man. Similarly, AM02, who did not man the roadblock but worked nearby, claimed that he would have heard if Kalimanzira had passed by. AM05 also testified that he spent day and night at the roadblock and knew everything that happened there. The Chamber considers that such exaggerated statements of omnipresence carry little weight. Additionally, AM05 stated that the roadblock had been set up for security reasons yet claimed that nobody carried any weapons to ensure that security. This was inconsistent with AM02's testimony that sticks and clubs were carried.

586. The Defence contends that the Prosecution witnesses fabricated the story about Kalimanzira passing through the roadblock in April using the incident in June when he passed through and merely waved as inspiration. The Defence claims that AM05, AM02 and AM29's evidence that they did not hear of the incident to which BBB and BXH testified should be believed because in a community as small as Kajyanama *cellule*, even the passing of a car was a significant event, and the passage of a former *sous-préfet* was something that everyone would have heard about.<sup>629</sup> These arguments are not persuasive. The fact that Kalimanzira may have passed through the roadblock in June and/or July does not preclude him from also having passed through it in April 1994.

587. After careful consideration the Chamber concludes that BBB is a reliable witness. His testimony was corroborated by BXH, whom the Chamber also believes. They support each other on the major details alleged, namely that Kalimanzira reprimanded a man for being unarmed and physically forced him into his vehicle. Both BBB and BXH also testified that Kalimanzira was accompanied by five gendarmes and that they saw the abducted man the following day. Both witnesses also place the incident within the same time frame. The Defence points out that BBB and BXH's testimonies differ in relation to the driver of the vehicle, the way in which the unarmed person was apprehended, the identity of the unarmed person, and the statements Kalimanzira made.<sup>630</sup> These differences are not significant in light of the passage of time and the fact that people sometimes view the same events from different perspectives.

<sup>628</sup> Defence Closing Brief, para. 441.

<sup>629</sup> Defence Closing Brief, paras. 459-460.

<sup>630</sup> Defence Closing Brief, paras. 442-449.

588. The Chamber has also given careful consideration to the difference between BBB and BXH’s recollection of Kalimanzira’s statements. According to BBB, Kalimanzira instructed those manning it to prevent any Tutsis, whom he described as “wicked” and “the enemy”, from passing through, and that they should be killed. BXH, however, recalled that Kalimanzira asked them how they would defend themselves if the enemy passed by. The Chamber considers BXH’s literal recollection to be supplemented by BBB’s interpreted one. BXH was an observer whereas BBB was among those whom Kalimanzira was allegedly inciting; BBB’s impression of Kalimanzira’s words is an important factor in determining whether the alleged incitement was direct. The Chamber does not accept the Defence’s contention that BBB and BXH’s accounts are irreconcilable or are fabricated. The Chamber believes BBB and BXH and considers their evidence reliable beyond reasonable doubt. The Chamber therefore finds that Kalimanzira was at the Kajyanama roadblock in late April 1994, where he reprimanded and then abducted a man for being unarmed.

589. The Chamber recalls that a call to defend oneself against the enemy is not intrinsically illegitimate, particularly when the “enemy” is clearly restricted to the RPF to the exclusion of Tutsi civilians. In this case, however, the Chamber finds that when exhorting those manning the Kajyanama roadblock to carry arms in order to “defend” themselves against “the enemy” who might pass through, Kalimanzira was understood to be calling for the killing of Tutsis, and that he intended to be understood as such. The slapping and abduction of the unarmed man emphasized Kalimanzira’s exhortation and effect on his audience. The incitement was disseminated in a public place – the roadblock – to an indeterminate group of people – those present to man it and anyone else watching or listening. Kalimanzira exhibited here, and elsewhere, an intent to destroy the Tutsi group (see III.5.2). As such, the Chamber finds Kalimanzira guilty beyond reasonable doubt for committing Direct and Public Incitement to Commit Genocide at the Kajyanama roadblock in late April 1994.

**4.5. Nyabisagara Football Field, late May / early June**

590. At paragraph 23 of the Indictment, the Prosecution charges Kalimanzira with Direct and Public Incitement to Commit Genocide for attending a public meeting in Kibayi *commune* at the Nyabisagara football field where he and other speakers thanked the Hutus for their efforts at eliminating the Tutsis. The Chamber recalls that it accepts late May or early June 1994 as the relevant time frame for this allegation (see II.2.3).

591. The Defence denies that this meeting took place. In addition, Kalimanzira relies on his alibi that he was working in Murambi (*Gitarama préfecture*) until 30 May, and then at home in Butare *ville* until 30 June 1994, except when he left on a few specified occasions, including sometime in the first week of June to see his family in Kirarambogo (see III.1.2).

**4.5.1. Evidence**

*Prosecution Witness BCZ*

592. BCZ testified that, sometime between the 24 May and 10 June 1994, he saw Kalimanzira at a meeting at the Nyabisagara football field, located about 100 metres from the Kibayi *commune* office. BCZ, as a member of the local population, had been invited to attend by Pierre Canisius Kajyambere (*bourgmestre* of Kibayi *commune*). Officials present at the meeting included Kalimanzira, *bourgmestre* Kajyambere, Dominique Ntawukulilyayo (*sous-préfet* of Gisagara), Célestin Harindintwali and “Sebalinda”. BCZ did not personally



recognise all of the authorities present, but he did recognise Kalimanzira, whom he knew well since the 1980s.<sup>631</sup>

593. BCZ testified that when he arrived, the meeting had already started and Célestin Harindintwali had taken the floor, emphasizing to the public that they must ensure their own security and prevent the enemy from infiltrating the *commune*. BCZ said that the other authorities had given speeches before he arrived. BCZ testified that Kalimanzira made the main speech because he was the highest-ranking authority present. First, Kalimanzira thanked the general public for attending in such large numbers and for having done everything in their abilities to get rid of the enemy. Kalimanzira then added that they “should not rest on their laurels” because there were still other enemies hidden in abandoned houses and the bush. BCZ explained that during this period, “enemy” meant just about any Tutsi.<sup>632</sup>

594. BCZ testified that Kalimanzira asked *bourgmestre* Kajyambere to draw up a programme for communal work known as “*umuganda*”, aimed at searching for the enemy hidden in the bush and destroying homes of dead Tutsis. Kalimanzira instructed the public to destroy all remaining Tutsi houses and plant banana trees and other crops over the ruins because international organisations might question the whereabouts of their occupants. Kalimanzira then added that nobody, especially men, should move around on the highway without weapons and instructed that everyone must be armed. BCZ further recalled how, upon noticing a dearth of weaponry, Kalimanzira requested that they have bows and arrows made at a blacksmiths. Kalimanzira also incited the youth to undergo military training and instructed those doing so to continue because the *Inkotanyi* were closing in. BCZ stated that to conclude, Kalimanzira thanked the public again for turning up and underscored the importance of observing his instructions.<sup>633</sup>

595. BCZ indicated that the authorities used microphones in order to be heard. He described Kalimanzira’s tone throughout his speech as authoritative. BCZ understood any reference to the “enemy” to mean the Tutsi. The day after the meeting, which had been attended by several hundred people, BCZ and other members of the population implemented the orders given by Kalimanzira and the other officials. They carried out “*umuganda*” but could not find any Tutsis left to kill. They did, however, destroy homes, including those of Vincent Bimenyimana and Charles Hategekimana, who had already been killed, and planted banana trees over the ruins.<sup>634</sup>

#### *Defence Witness AKK*

596. AKK was in Kibayi *commune* from the death of President Habyarimana until July 1994. She attended a meeting at the Nyabisagara football field in late May 1994; all the inhabitants of Kibayi *commune* were invited. AKK had been informed of the meeting by the *conseiller* of her *secteur*. AKK testified that she was present at the meeting from start to finish and that it started at noon, finishing approximately two hours later. She testified that she knew of no other meetings in Kibayi *commune* held before or after this one; had there been, she would have been invited or seen people gathering.<sup>635</sup>

597. AKK testified that the *commune* authorities were present, including the *bourgmestre*, deputy *bourgmestre*, and *conseillers* of various *secteurs*. AKK recalled that there were also

<sup>631</sup> T. 24 June 2008 pp. 43-46 (Witness BCZ).

<sup>632</sup> T. 24 June 2008 pp. 46-47 (Witness BCZ).

<sup>633</sup> T. 24 June 2008 p. 47 (Witness BCZ).

<sup>634</sup> T. 24 June 2008 pp. 47-50 (Witness BCZ).

<sup>635</sup> T. 26 November 2008 pp. 41-43; p. 57 [closed] (Witness AKK).

several visiting authorities from outside the *commune*, including Sylvain Nsabimana (*préfet* of Butare), Alphonse Nteziryayo and Tharcisse Muvunyi. The authorities were seated in front of the population who were seated on the ground at the front and standing at the back. AKK affirmed that she did not see Kalimanzira at the meeting.<sup>636</sup>

598. AKK testified that several of the authorities gave speeches. The *bourgmestre* spoke first, thanking the guests for coming and introducing them. Then *préfet* Nsabimana spoke, followed by Colonel Nteziryayo. AKK did not remember anyone else taking the floor; she was seated approximately four or five rows from the front and could see the officials clearly. She knew Kalimanzira well and asserted that had he been there, he would not have left without greeting her and her husband.<sup>637</sup>

#### *Defence Witness BTH*

599. BTH attended a meeting at the Nyabisagara football field on 24 May 1994 convened by *bourgmestre* Kajyambere. The meeting began around 11:00 a.m. and lasted for approximately two hours. Those present at the meeting included *bourgmestre* Kajyambere, *préfet* Nsabimana, Colonel Nteziryayo, Célestin Harindintwali. They were seated at the front whilst the members of the public, who occupied over half of the field, sat on the ground at the front and stood at the back. BTH testified that the topic of the meeting was security. The officials informed the public that they would be in charge of their own security and urged them to carry out patrols and, if possible, to fight the RPF with traditional weapons. BTH recalled that some members of the population did not agree with the instruction to fight with traditional weapons. BTH described how archery training, using a banana tree as a target, was provided for those members of the population who agreed. BTH did not see Kalimanzira at the meeting or at the archery training held afterwards. In fact, he did not see Kalimanzira at all from April to July 1994.<sup>638</sup>

#### *Defence Witness KBF*

600. KBF testified that by virtue of his professional position, he attended a meeting at the Nyabisagara football field 100 metres away from the Kibayi *commune* office in mid to late May 1994; it had been convened by *bourgmestre* Kajyambere. This meeting, which lasted about two hours, was attended by 300-400 members of the general population; officials present included Colonel Nteziryayo, Colonel Muvunyi, *préfet* Nsabimana, *sous-préfet* Ntawukulilyayo, *bourgmestre* Kajyambere, and Célestin Harindintwari, who worked for the Ministry of Public Works. The officials were seated in front of the population and did not use megaphones.<sup>639</sup>

601. Those who attended the meeting were asked to ensure their own security and defend themselves from the approaching *Inkotanyi*. KBF recalled the officials arrived in a convoy of five vehicles. This was the only meeting KBF attended in Kibayi *commune* in between April to July 1994; he admits the possibility that there may have been others. He knew Kalimanzira well and asserted he was not there; had he been there, KBF would have recognised him. KBF also maintains he never saw Kalimanzira or heard anything about him from April 1994 until he fled Rwanda in July 1994.<sup>640</sup>

<sup>636</sup> T. 26 November 2008 pp. 43-44 (Witness AKK).

<sup>637</sup> T. 26 November 2008 p. 44 (Witness AKK).

<sup>638</sup> T. 25 November 2008 pp. 7-9 (Witness BTH).

<sup>639</sup> T. 17 November 2008 pp. 13-14 (Witness KBF).

<sup>640</sup> T. 17 November 2008 pp. 14-15 (Witness KBF).

*Defence Witness Innocent Mukuralinda*

602. Mukuralinda was an accountant at the Kibayi *commune* office from 1981 until 7 July 1994, when he fled Rwanda. On 24 May 1994, he attended a meeting at the Nyabisagara football field; this was the only meeting, to the best of his knowledge, which was held in Kibayi *commune* during the events. *Bourgmestre* Kajyambere, with whom he worked daily, informed Mukuralinda of the meeting and stated that its purpose was to address security issues. Mukuralinda went to the *commune* office before the meeting in order to help set up chairs. He recalled that the meeting started around 10:30 a.m. that the following officials arrived: *préfet* Nsabimana, *sous-préfet* Ntawukulilyayo, Mathias Bushishi (Public Prosecutor of Butare), Jean-Baptiste Ruzindaza (President of the Court of First Instance of Butare), Colonel Muvunyi, Colonel Nteziryayo; Kalimanzira was not among them. Before moving over to the football field, the officials first attended a meeting with the *bourgmestre* in the *commune* office; however, Mukuralinda did not attend that prior meeting and was therefore unaware of what was discussed.<sup>641</sup>

603. Mukuralinda testified that there were approximately 300-400 people in attendance; he was sitting in the first row. Security matters were discussed, particularly guerrilla warfare, which Mukuralinda understood to mean psychological warfare. Mukuralinda recalled that the local population was asked to assist each other and to ensure their own security because the RPF troops were getting closer to Butare. Mukuralinda testified that Kalimanzira did not attend the meeting. He knew Kalimanzira well and would therefore have recognised him had he been there.<sup>642</sup>

*Defence Witness KXL*

604. KXL testified that at the end of May 1994, a policeman informed him that a meeting was to be held at the Kibayi *commune* office where members of the population were being summoned to learn to use bows and arrows in order to liberate Ntyazo *commune* from the *Inkotanyi*. KXL was threatened with punishment if he failed to attend that meeting. The following day, KXL arrived at around 10:00 a.m. to find that the meeting, which was held at Nyabisagara, was already over and people were practicing to shoot bows and arrows at a target. KXL joined a group of people from Rwamiko *secteur* to practice as well. After the archery training, everyone returned home and was instructed to continue practicing in their respective *secteurs* in preparation to eventually fight in Ntyazo; KXL said they never ended up going to Ntyazo, however. KXL asserted he did not see Kalimanzira during the archery exercise. In fact, he did not see Kalimanzira at all between April and July 1994.<sup>643</sup>

605. KXL also testified that he knew Vincent Bimenyimana and Charles Hategekimana, both of whom were Tutsis. According to KXL, they were both killed in April 1994. He testified that within days of their deaths, Hategekimana's house was burned down and completely destroyed. As for Bimenyimana's house, the neighbours stole his roofing tiles and even the wood used to build the house, thereby destroying. Bimenyimana had another, smaller, house, which he used as a shop; this remained relatively intact.<sup>644</sup>

<sup>641</sup> T. 3 December 2008 pp. 4-7 (Innocent Mukuralinda).

<sup>642</sup> T. 3 December 2008 p. 7 (Innocent Mukuralinda).

<sup>643</sup> T. 24 November 2008 pp. 29, 36-38 (Witness KXL).

<sup>644</sup> T. 24 November 2008 pp. 29-30 (Witness KXL).

4.5.2. Deliberations

606. At the time of this alleged incident, Kalimanzira claims to have been working in Murambi (Gitarama *préfecture*) or at home in Butare *ville*, except in the first week of June when he went to visit his family in Nyaguhuru *secteur* (Muganza *commune*). As discussed above, the Chamber does not believe Kalimanzira’s alibi (see III.1.2.2).

607. The Chamber notes that the language at paragraph 23 of the Indictment is limited to Kalimanzira thanking Hutus for their efforts at eliminating Tutsis; no explicit reference is made to exhorting further efforts at eliminating Tutsis. However, the Chamber considers that a call for further action is implied in the wording of the paragraph, and clarified in the Prosecution Pre-Trial Brief.<sup>645</sup> The Defence – which did not raise the issue – therefore had adequate notice that the Prosecution case included a call for further killings.

608. BCZ was charged with killing Tutsis in Kirarambogo and Kabuye, destroying and looting the homes of Tutsis and participating in various attacks.<sup>646</sup> In his testimony, he admitted to following the instructions Kalimanzira issued at this meeting by participating in the search for further Tutsis to kill and destroying homes. This makes him an accomplice. He was released before giving his evidence at the ICTR, after spending nearly 12 years in prison. His evidence, however, is a repetition of the statements he gave while detained, which may have been influenced by motives to reduce his own responsibility. After careful consideration, the Chamber finds that no such motive can be demonstrated. BCZ does not mention Kalimanzira in his confession letter and does not attribute a principal role to Kalimanzira in the commission of genocidal acts. Indeed, BCZ confessed and testified to his participation in the killings at Kabuye hill over a period of three days, but asserted that he did not see Kalimanzira there at all.<sup>647</sup>

609. The Defence witnesses’ testimonies converged on the occurrence of a meeting at the Nyabisagara football field around 24 May 1994 attended by Nteziryayo and Muvunyi. BCZ testified that the meeting which Kalimanzira attended took place one week after the meeting attended by Nteziryayo and Muvunyi, which BCZ places around 25 or 26 May 1994.<sup>648</sup> BCZ refers to the meeting chaired by Nteziryayo in his prior statements to ICTR investigators; however, he refers to the meeting attended by Kalimanzira only in a later statement.<sup>649</sup>

610. The Chamber concludes that BCZ and the Defence witnesses testified to different meetings, and considers that the existence of one does not preclude the other. The Defence submits the 24 May 1994 was the only meeting in Kibayi *commune* around that time, and that BCZ therefore fabricated a second meeting there in order to implicate Kalimanzira.<sup>650</sup> The Chamber does not agree and considers that the evidence of Defence witnesses supports the inference that more than one meeting took place. KBF admitted to the possibility that there may have been other meetings in Kibayi *commune*.<sup>651</sup> The Defence Pre-Trial Brief indicated that AKK was expected to testify to two meetings at the Nyabisagara football field; however, when giving her testimony on the stand, she insisted that she was only aware of one meeting.<sup>652</sup> Mukuralinda’s statement that he was not aware of any other “security” meeting in

<sup>645</sup> See summary of BCZ’s anticipated testimony in Annex A of the Prosecution Pre-Trial Brief.

<sup>646</sup> T. 24 June 2008 pp. 54-55 [closed] (Witness BCZ).

<sup>647</sup> T. 24 June 2008 pp. 57, 59-60 (Witness BCZ).

<sup>648</sup> T. 24 June 2008 pp. 63-64 (Witness BCZ).

<sup>649</sup> See Exhibits D33, D34, and D35.

<sup>650</sup> See Defence Closing Brief, para. 1072.

<sup>651</sup> T. 17 November 2008 p. 13 (Witness KBF).

<sup>652</sup> See T. 26 November 2008 pp. 56-57 [closed] (Witness AKK).

Kibayi *commune* was amended under cross-examination to include a second one, but “restricted” in nature.<sup>653</sup> No questions were put to BTH on the possibility of other meetings. Because KXL was in hiding for most of April and May 1994, the Chamber considers that his testimony does not cast reasonable doubt on when and how Bimenyimana and Hategekimana’s homes were destroyed. That they were killed and that their homes were destroyed is undisputed; Kalimanzira himself testified to having seen the devastated state of Hategekimana’s house in early June 1994.<sup>654</sup> For these reasons, the Defence evidence does little to contradict BCZ’s evidence.

611. The Chamber accepts BCZ’s explanation that he omitted to mention Kalimanzira in his guilty plea because his confession was limited to his own crimes, killings, attacks, and accomplices; he therefore neglected to speak of meetings which led to no killings, such as the one at the Nyabisagara football field in which he implicates Kalimanzira. It is likely that BCZ omitted to mention Kalimanzira before his October 2001 statement to ICTR investigators<sup>655</sup> because they did not specifically ask him about Kalimanzira before that time. It is also likely that BCZ omitted to mention this meeting before October 2001 because its content and effect (no killings followed because no Tutsis could be found)<sup>656</sup> might have seemed less important to him compared to the events he did mention.

612. The Chamber considers BCZ to be a credible and reliable witness. Had he intended to falsely accuse Kalimanzira, his testimony and allegations would likely have been more accusatory. Other Prosecution witnesses have also testified to other situations where Kalimanzira called on people to destroy dead Tutsis’ homes and plant trees and grass in their place in order to erase traces of crimes and appease international opinion;<sup>657</sup> this might suggest a pattern of conduct or mode of operation. Kalimanzira’s own testimony that he stopped by Hategekimana’s house in the end of the first week of June on his way to see his family in Kirarambogo lends additional support to his presence in Kibayi *commune* around the time of this alleged meeting.<sup>658</sup>

613. The Chamber therefore finds that in late May or early June 1994, Kalimanzira attended a public meeting at the Nyabisagara football field where he thanked the audience for their efforts at getting rid of the enemy, but warned them not to grow complacent, to remain armed at all times, and exhorted the crowd to keep searching for enemies hidden in the bush or in other persons homes, which they did. He also instructed them to destroy the homes of dead Tutsis and plant trees in their place, which they did. In the context of these particular instructions, which have little to do with military combat, and BCZ’s understanding of Kalimanzira’s words, the Chamber finds that “the enemy” meant any Tutsi.

614. The Chamber finds that Kalimanzira’s call for further elimination of Tutsis in hiding was direct, leading clearly to immediate and commensurate action. It was disseminated in a public place to a large public audience. By instructing the people present to kill any surviving Tutsis, demolish their homes, and wipe out any traces of their existence, there is no reasonable doubt that Kalimanzira intended to incite the audience present to commit acts of genocide. Kalimanzira exhibited here, and elsewhere, an intent to destroy the Tutsi group (see III.5.2). The Chamber therefore finds Kalimanzira guilty beyond reasonable doubt of

<sup>653</sup> T. 3 December 2008 pp. 7, 20, 25-26 (Innocent Mukuralinda).

<sup>654</sup> T. 10 February 2009 pp. 50-51 (Callixte Kalimanzira).

<sup>655</sup> Exhibit D35.

<sup>656</sup> T. 24 June 2008 p. 66 (Witness BCZ).

<sup>657</sup> See T. 17 June 2008 p. 21 (Witness AZM); T. 25 June 2008 pp. 43-44 (Witness AZC); T. 23 June 2008 pp. 11-12 (Witness AZH).

<sup>658</sup> T. 10 February 2009 pp. 50-51 (Callixte Kalimanzira).

committing Direct and Public Incitement to Commit Genocide at the Nyabisagara football field in late May or early June 1994.

**4.6. Rwamiko Primary School, late May / early June**

615. At paragraph 24 of the Indictment, the Prosecution charges Kalimanzira with Direct and Public Incitement to Commit Genocide for congratulating people at the Rwamiko Primary School a few days after the meeting at the Nyabisagara football field for “the work” that had been done. He also urged them to remain vigilant and to continue to carry weapons and eliminate the Tutsis. The Chamber recalls that it accepts late May or early June 1994 as the relevant time frame for this allegation (see II.2.3).

616. The Defence denies that this meeting took place. Kalimanzira relies on his alibi he was working in Murambi (Gitarama *préfecture*) until 30 May, and then at home in Butare *ville* until 30 June 1994, except when he left on a few specified occasions, including sometime in the first week of June to see his family in Kirarambogo (see III.1.2).

**4.6.1. Evidence**

*Prosecution Witness AZT*

617. AZT saw Kalimanzira in Rwamiko *secteur* in late May 1994. AZT was one of a group of over 50 people who gathered at Kalimanzira’s house to greet him after hearing of his arrival. AZT recalled that the house, which was used for commercial purposes, was located on the same road and opposite the Rwamiko Primary School. AZT further recalled that Kalimanzira congratulated the members of the public who were opposing Tutsis and RPF accomplices, and he warned those who were not. AZT affirmed that Kalimanzira encouraged those who were killing Tutsis to keep doing so and criticized those who were not participating in the massacres. AZT left the meeting after approximately 20 minutes, before Kalimanzira had finished speaking.<sup>659</sup>

*Prosecution Witness BCZ*

618. BCZ testified to a meeting at the Nyabisagara football field between the 25 May and the 10 June 1994 (see III.4.5.1). Within two weeks after this meeting, BCZ saw Kalimanzira again at the Rwamiko Primary School. BCZ was at the school because he was attending a meeting of around 20-30 people who had been appointed to a “crisis committee”. Members of this committee included Jonathan Niyongana, Jean Rupari, Sylvestre Manzi, and Ignace Yirirwahandi. The purpose of the meeting was to discuss how to distribute the stolen property of dead Tutsis. BCZ recalled that it was decided that the property would be sold and the money shared between the public.<sup>660</sup>

619. BCZ testified that Kalimanzira entered the classroom where the meeting was taking place, and greeted the members of the crisis committee. He asked them whether they were “doing the work that they should” and why they were not armed. They explained it was because they were attending a meeting, whereupon Kalimanzira warned them that the enemy “can take you unawares” and advised them to be armed at all times. Kalimanzira told them “even if you have eliminated the enemy, you shouldn’t fold your arms and sit down. Don’t think that it’s all over”. Kalimanzira also claimed to be the leader of civil defence and instructed them to tell the public to carry arms wherever they were, citing the Buseruka

<sup>659</sup> T. 20 June 2008 pp. 24-25 and T. 24 June 2008 pp. 21, 23, 27 (Witness AZT).

<sup>660</sup> T. 24 June 2008 p. 50 (Witness BCZ).

centre<sup>661</sup> as a negative example of where unarmed people could be seen walking around. BCZ stated that Kalimanzira then urged them to obtain weapons for everyone and report back to him if they could not. BCZ further stated that when Kalimanzira made reference to the “enemy” and “elimination”, he understood him to mean, respectively, the Tutsi and killing.<sup>662</sup>

620. Kalimanzira asked them to remain vigilant and then left in a white Hilux vehicle; he was not accompanied by soldiers. There was, however, a young man in the rear cabin of the vehicle and a motorbike in the rear section. BCZ recalled that before leaving, Kalimanzira spoke of the young man as an example of someone he had met on the road and stopped because he did not have his papers on him.<sup>663</sup>

#### *Defence Witness KXL*

621. KXL testified that he did not see Kalimanzira between April and July 1994; however, he stated that from August 1993 until the beginning of May 1994 he did not move around and was mostly in hiding at home. KXL attended a meeting in Rwamiko *secteur*, convened on the playground of the Rwamiko Primary School at the end of May 1994 and chaired by *bourgmestre* Kajyambere. According to KXL, the meeting preceded the one at Nyabisagara, and it was the only one held in Rwamiko, to his best knowledge. The reason to call the meeting was people had started to dub those who were rich as “poisonous” and kill them; *bourgmestre* Kajyambere ordered these attacks to stop and advised that the “poisonous” be taken to the *commune* office instead. This meeting was very brief; people were not even seated. Kalimanzira was not present at this meeting.<sup>664</sup>

622. KXL never heard of a “crisis committee”, but did acknowledge that there existed a group of persons in Rwamiko *secteur* who decided that the looted property of dead Tutsis should be sold. This group included Elie Rwangineza, Jonathan Niyongana, Jean Rupari, and the leader, Ignace Yirirwahandi.<sup>665</sup>

#### *Defence Witness MAS*

623. In 1994, MAS owned a shop and bar at the Buseruka centre. The shop was located approximately 100 metres from Rwamiko Primary School, meaning that the school was visible from the shop. MAS testified that he did not leave the area between 6 April to July 1994, when he fled to Burundi. MAS also testified that the shop was operational from the middle of May 1994.<sup>666</sup>

624. MAS attended a meeting at the Rwamiko Primary School in late May or early June 1994. MAS recalled that he found out about the meeting when one day, on his way to work, he saw a large gathering of people at the school. When he joined the meeting, *bourgmestre* Kajyambere was speaking. A secretary, soldier and the *conseiller* of Rwamiko *secteur* were also present. MAS stated that all of the local inhabitants of Rwamiko *secteur* were in attendance and that security matters were discussed, with some people describing others as “poisonous” characters. He did not see Kalimanzira at the meeting and he did not hear of or attend any other meetings at the Rwamiko Primary School between April and July 1994.

<sup>661</sup> Buseruka is the commercial centre of Rwamiko *secteur*.

<sup>662</sup> T. 24 June 2008 pp. 50-51 (Witness BCZ).

<sup>663</sup> T. 24 June 2008 pp. 52, 69-70 (Witness BCZ).

<sup>664</sup> T. 24 November 2008 pp. 27-29, 36 (Witness KXL).

<sup>665</sup> T. 24 November 2008 pp. 32-34 [closed] (Witness KXL).

<sup>666</sup> T. 24 November 2008 pp. 46-48 (Witness MAS).

MAS never heard of a “crisis committee”. He named Jonathan Niyongana, Ignace Yirirwahandi and Jean Rupari as heading groups of killers during the genocide.<sup>667</sup>

625. MAS testified that he only saw Kalimanzira at the Buseruka centre at the beginning of June 1994. Kalimanzira was in front of a building that he used commercially and looking at the house where he had lived previously. He had arrived in a white vehicle accompanied by a driver and alighted from the passenger side; five or six people approached him to greet him. MAS stated that Kalimanzira did not speak to anyone and simply looked at the house, returned to the vehicle and left.<sup>668</sup>

#### *Defence Witness NJV*

626. NJV, who lived nearby the Buseruka centre, testified that at the beginning of June 1994 he saw Kalimanzira standing in front of his house in the centre. NJV recalled that Kalimanzira arrived by vehicle, looked at his house for approximately one minute, and then left in the direction of his family’s house in Nyagahuru *secteur*. NJV stated that he did not see Kalimanzira in Rwamiko *secteur* again between April and early July 1994.<sup>669</sup>

627. NJV testified that at the end of May 1994, he attended a meeting at the Rwamiko Primary School which had been convened by *bourgmestre* Kajyambere. Security matters were discussed because there was discord in the community. NJV stated that some members of the population wanted to kill those that they described as bandits and obnoxious characters. NJV did not see Kalimanzira at this meeting. Moreover, NJV never heard of a “crisis committee”. During that period, NJV never heard of any meeting of approximately 40 persons at the Rwamiko Primary School and maintained that he lived so close the school that it could not have happened without his knowledge.<sup>670</sup>

#### *Callixte Kalimanzira*

628. Callixte Kalimanzira testified that towards the end of the first week of June 1994 he visited his family in Kirarambogo. On his way to Nyagahuru *secteur* he stopped no more than ten minutes in Rwamiko *secteur* to see what shape his house, located in the Buseruka centre, was in. Upon seeing that it had not been destroyed, he continued on his journey. He was accompanied by a driver.<sup>671</sup>

#### **4.6.2. Deliberations**

629. At the time of this alleged incident, Kalimanzira claims to have been working in Murambi (Gitarama *préfecture*) or at home in Butare *ville*, except in the first week of June when he went to visit his family in Nyagahuru *secteur* (Muganza *commune*). As discussed above, the Chamber does not believe Kalimanzira’s alibi (see III.1.2.2).

630. The Prosecution evidence led at trial describes two separate events. Paragraph 24 of the Indictment clearly alleges only one act of incitement, not two. It also clearly alleges that Kalimanzira went to the Rwamiko Primary School, not near or across the road from it. The Prosecution Pre-Trial Brief, however, indicated that AZT and BCZ were expected to testify to the same event at the Rwamiko Primary School. BCZ’s testimony on the stand was

<sup>667</sup> T. 24 November 2008 pp. 48-50 (Witness MAS).

<sup>668</sup> T. 24 November 2008 p. 50 (Witness MAS).

<sup>669</sup> T. 24 November 2008 pp. 70-71 [closed] 72-73 (Witness NJV).

<sup>670</sup> T. 24 November 2008 p. 73 (Witness NJV).

<sup>671</sup> T. 10 February 2008 pp. 48-51 (Callixte Kalimanzira).



consistent with what he was expected to testify about. AZT, however, testified that Kalimanzira incited the population in front of his house in the Buseruka centre, which is located on the road opposite the primary school. Though they may possibly have occurred on the same day, the incitement alleged by AZT took place at a different time and location from the one testified to by BCZ. AZT's evidence merely places Kalimanzira near the location of the event alleged at paragraph 24 of the Indictment.

631. The Chamber relies on its assessment of BCZ's evidence on the allegations at the Nyabisagara football field (see [III.4.5.2](#)) to supplement its assessment of BCZ's evidence here. His evidence is supported by AZT (for the Prosecution), MAS and NJV (for the Defence) who place Kalimanzira in the Buseruka centre in early June 1994. BCZ's testimony about seeing a young man and a motorbike in Kalimanzira's white vehicle outside the school is also supported by Prosecution Witness BDE, who testified that in May or June 1994, Kalimanzira abducted him and his motorbike in a white vehicle from the Nyarusange roadblock to the Ndora *commune* office, stopping in the Buseruka centre for some 15 minutes on the way (see [III.4.8.1](#)). Kalimanzira himself affirmed that he briefly stopped in the Buseruka centre on his way to visit his family in the first week of June.

632. KXL also supports BCZ on the existence and members of a group of persons in Rwamiko *secteur* who were charged with deciding what to do with the property of dead Tutsis. Though MAS has never heard of a "crisis committee" *per se*, he describes BCZ's alleged members thereof as a band of criminals. NJV and MAS' categorical assertions that a meeting such as that described by BCZ could not have taken place without their knowledge are untenable.<sup>672</sup> NJV was only a teenager at the time and spent most of his days working in nearby fields, while MAS spent most of his time in his shop located 100 metres away from the Rwamiko Primary School; there is no reason why they should have gained firsthand knowledge of this meeting unless they were part of the "crisis committee", which they say they never heard of. The Defence evidence fails to cast any doubt on BCZ's testimony.

633. The Chamber believes that a group of persons, including BCZ, congregated to decide how to share and distribute the property of dead Tutsis. The Chamber also believes that the meeting described by BCZ took place at the Rwamiko Primary School. The Chamber believes both BDE and BCZ (see also [III.4.8.2](#)), and finds that the two incidents occurred on the same day: Kalimanzira came to Rwamiko *secteur* sometime in late May or early June to check on the state of his house in the Buseruka centre; on his way he picked up BDE at the Nyarusange roadblock, and, while in Buseruka, Kalimanzira dropped into a meeting of the "crisis committee" taking place at the Rwamiko Primary School.

634. The Chamber recalls that in order to convict under Article 2 (3)(c) of the Statute, the incitement must have been both 'direct' and 'public', which serves to limit the scope of its inchoate nature (see [III.4.1](#)). The public or private nature of the "crisis committee" at the Rwamiko Primary School is a factual determination which is also subject to the standard of proof beyond reasonable doubt. In this case, the Chamber finds there was insufficient evidence to show the public nature of this meeting. By BCZ's own testimony, the meeting was restricted to 20-30 people who had been appointed to the "crisis committee"; it was not open to the public, nor was it held in a place which was open to the general public. Though Kalimanzira did not convene the meeting and appears to have unexpectedly shown up, as a known authority, his appearance would not have been contested or rejected.

<sup>672</sup> T. 24 November 2008 pp. 62-63 [closed] (Witness MAS); T. 24 November 2008 p. 73 (Witness NJV).

635. BCZ's testimony also suggests that Kalimanzira was aware that this meeting was restricted to members of the "crisis committee", referring to them as such and expressly distinguishing them from "the people" or "members of the population":

"Then [Kalimanzira] added, 'You should sensitise the people – you, the members of the crisis committee.' And Kalimanzira told us that he was the leader of what was referred to as 'civil defence'. So he called on us to sensitise all members of the population so that they should be armed wherever they were."<sup>673</sup>

636. As such, the Prosecution has failed to prove the public nature of this meeting beyond reasonable doubt. The Chamber finds that Kalimanzira's presence and words to the "crisis committee" at the Rwamiko Primary School do not amount to Direct and Public Incitement to Commit Genocide.

#### 4.7. Sakindi Roadblock, May

637. At paragraph 25 of the Indictment, the Prosecution charges Kalimanzira with Direct and Public Incitement to Commit Genocide for telling several armed persons who were manning the Sakindi roadblock in Kibilizi *secteur* in May 1994 that they should kill Tutsis discretely, destroy their homes and plant banana trees in their place so as to leave no traces for foreigners to see. He also urged them to tell the Tutsis that peace had been restored so as to lure them out of hiding and facilitate their killings.

638. The Chamber notes that paragraph 25 of the Indictment contains similar allegations as those at paragraph 13. The Prosecution Pre-Trial Brief, referred to only one incident at the Sakindi roadblock in May 1994. However, AZH, who was the only Prosecution witness to testify on the Sakindi roadblock, recalled three separate sightings of Kalimanzira there, two of which occurred in May 1994. The Prosecution relies on the combination of what transpired on both occasions to prove the allegations at both paragraphs 13 and 25<sup>674</sup> and did not appear to suggest that Kalimanzira issued two separate sets of instructions over two different visits to the roadblock in May.<sup>675</sup>

639. The Chamber recalls that the Prosecution is expected to lay down the allegations against an accused in the indictment in the most clear and comprehensive way possible so that the accused may understand the charges against him. However, the Prosecution's confused way of pleading these allegations did not undermine the fairness of the trial in the Chamber's view. A careful review of the record reveals that the Defence – which did not raise the issue – understood the nature of the charge and was not impaired in its ability to prepare its case. The Defence has not objected to the introduction of AZH's evidence at trial and has responded to it accordingly.

640. The Chamber relies on the same evidence and its assessment thereof in relation to the allegations at paragraph 13 of the Indictment, discussed in full at [III.2.6](#), to conclude that AZH's sole evidence is insufficiently reliable to sustain a conviction.

##### 4.7.1. Evidence

641. See [III.2.6.1](#).

<sup>673</sup> See T. 24 June 2008 p. 51 (Witness BCZ).

<sup>674</sup> See Prosecution Closing Brief, paras. 139, 268-272.

<sup>675</sup> Compare Prosecution Pre-Trial Brief, para. 61 and annexed summary of AZH's anticipated testimony with Prosecution Closing Brief, para. 272.

#### 4.7.2. Deliberations

642. See III.2.6.2.

#### 4.8. Nyarusange Roadblock, May

643. At paragraph 26 of the Indictment, the Prosecution charges Kalimanzira with Direct and Public Incitement to Commit Genocide for encouraging people manning a roadblock in May 1994 to continue checking everyone's identity cards and search for the Tutsi enemy. On that occasion, Kalimanzira allegedly criticized a Hutu motorcyclist passing through for not carrying a weapon with which to kill Tutsis.

644. The Defence denies this allegation in its entirety. In addition, Kalimanzira relies on his alibi (see III.1.2.).

645. The Chamber notes that paragraph 26 of the Indictment does not specify which roadblock Kalimanzira is alleged to have punished the motorcyclist at. However, the witness summary for BDE provided in the Prosecution Pre-Trial Brief gives an extensive account of his anticipated testimony, including the fact that the roadblock is alleged to be in Nyarusange *cellule*. This is consistent with BDE's witness statement, disclosed in the Supporting Materials. Nor has the Defence objected to lack of notice. Consequently, the Chamber finds that the Defence was adequately notified of this material fact. The Chamber will refer to this roadblock as the "Nyarusange roadblock".<sup>676</sup>

#### 4.8.1. Evidence

##### *Prosecution Witness BDE*

646. BDE testified that following the death of President Habyarimana, the setting up of roadblocks in the Gisagara area created restrictions in the movement of persons. The aim of the roadblocks and restrictions were to identify and kill Tutsis. It was therefore possible for BDE to move around freely because he had a Hutu identity card. BDE recalled that one day in May or June 1994, while returning to the Gisagara marketplace on his motorbike from the Nyabitare market where he had been buying supplies, he was stopped at the Nyarusange roadblock at approximately 2:00 p.m. When BDE saw that Kalimanzira was there, he attempted to greet him but Kalimanzira pushed him back and told the men manning the roadblock to be wary of people travelling by motorbike because they assist the *Inkotanyi* to cross roadblocks. Kalimanzira then instructed those manning the roadblock to guard the motorbike and prevent BDE from leaving.<sup>677</sup>

647. BDE testified that Kalimanzira then left the roadblock for approximately 40 to 60 minutes, and speculated that he had gone to visit his parents' house in Nyagahuru. Upon his return, Kalimanzira questioned BDE as to why he was not carrying any weapons. Kalimanzira then ordered the men manning the roadblock to load the motorbike and BDE onto his vehicle, which was a white pick-up truck. Kalimanzira was accompanied by three or four armed and uniformed soldiers. BDE explained that he did not resist because he considered Kalimanzira more powerful than the *bourgmestre* and therefore a superior. BDE further explained the four or five armed Hutu men manning the roadblock were stronger than him.<sup>678</sup>

<sup>676</sup> This is also the name adopted by the Defence. See e.g. Defence Closing Brief, paras. 608 *et seq.*

<sup>677</sup> T. 18 June 2008 pp. 17-19, 29, 35-36, 38 (Witness BDE).

<sup>678</sup> T. 18 June 2008 pp. 19-21, 29-33 (Witness BDE).

648. BDE testified that they then drove to the Ndora *commune* office, stopping at the Buseruka centre for approximately 15 minutes along the way. He recalled that when they arrived at the *commune* office, the motorbike was offloaded by communal policemen and impounded by the *bourgmestre*, Fidèle Uwizeye, upon the orders of Kalimanzira who, BDE speculated, then left for Butare. BDE explained that he recognised Uwizeye, and had known who he was for around three years but did not know him personally. Although Uziweye was the *bourgmestre*, BDE stated that he believed him to have little authority in Ndora *commune* because he had only been appointed in June.<sup>679</sup>

649. BDE testified that after Kalimanzira left, he asked *bourgmestre* Uwizeye to return his motorbike. The *bourgmestre* told him to be patient and the motorbike was returned to BDE three days later. BDE explained that he does not know why his motorbike was confiscated, and believes that it was due to the fact that he was not carrying any weapons and because Kalimanzira believed that motorbikes were being used to transport *Inkotanyi*.<sup>680</sup>

#### *Prosecution Witness BCZ*

650. BCZ testified that he attended a meeting at the Rwamiko Primary School in late May or early June 1994 at which Kalimanzira showed up (see III.4.6.1). After the meeting, Kalimanzira left in his white Hilux vehicle with a young man seated in the rear cabin and a motorbike in the rear pick-up section. Kalimanzira explained that he had met the young man on the road and stopped him because he did not have identity papers with him. BCZ stated that he did not see any soldiers or a driver with Kalimanzira.<sup>681</sup>

#### *Defence Witness AM52*

651. AM52 testified that in April 1994 in Gisagara, Burundians and others from outside the area began to steal the property of locals. He explained that, as a result, people stored their valuable property in the Ndora *commune* office for safekeeping. One of those people was AM52's brother, BDE, who took his motorbike there around 20 April 1994. Less than two weeks later, it was stolen along with several other motorbikes. AM52 recalled that, following a police investigation, it was returned to the *commune* office in the same month. AM52 asserted that his brother never mentioned any other incident with his motorbike, particularly not one involving Kalimanzira.<sup>682</sup>

#### *Defence Witness KUW*

652. KUW testified that the Nyarusange roadblock was set up one week after the death of President Habyarimana at the behest of Chrysologue Bimenyimana, *bourgmestre* of Muganza *commune*, and Isaïe Sikubwabo, *conseiller* of Dahwe *secteur*, to prevent unknown persons from passing through the area. It was the only roadblock in Nyarusange *cellule*, and the inhabitants of the *cellule* manned the roadblock in shifts. The roadblock was eventually dismantled around 5 or 6 May 1994 because the road became impassable due to heavy rain. KUW asserted that he never saw Kalimanzira at the roadblock or heard of him slapping a man for being unarmed, pushing a man with a motorbike, or instructing the people at the roadblock not to allow motorbikes to pass. Had any such incident occurred, he would

<sup>679</sup> T. 18 June 2008 pp. 19-21, 29, 34, 39 (Witness BDE).

<sup>680</sup> T. 18 June 2008 pp. 21-22 (Witness BDE).

<sup>681</sup> T. 24 June 2008 pp. 50-52, 69-70 (Witness BCZ).

<sup>682</sup> T. 18 November 2008 pp. 12-15 [closed] (Witness AM52).

certainly have heard about it because he would have received a report. He lived close to the roadblock and several bars overlooked it, so people would have spoken about it.<sup>683</sup>

#### 4.8.2. Deliberations

653. At the time of this alleged incident, Kalimanzira claims to have been working in Murambi (Gitarama *préfecture*) or at home in Butare *ville*, except in the first week of June when he went to visit his family in Nyaguhuru *secteur* (Muganza *commune*). As discussed above, the Chamber does not believe Kalimanzira's alibi (see III.1.2.2).

654. The Chamber finds the testimony of both BDE and BCZ to be credible and considers that the Defence's numerous allegations regarding the unreliability of BDE's testimony in particular do not raise reasonable doubt regarding the incident.

655. The most significant arguments raised by the Defence concern, first, the fact that BDE testified that he was able to travel around the different *communes* of Butare without difficulty. The Defence states that this could not be true because BDE himself testified that an employee of his stopped working because it was difficult to move around and because the evidence in the case shows that official documents were required to move around.<sup>684</sup> BDE clarified, however, that although he could leave his home to buy food, his employee who drove a taxi could not continue his work because the taxi could travel long distances and could end up in a place where the employee was not known and be in danger.<sup>685</sup> The Chamber does not find these statements to be inconsistent; indeed, it is plausible that in May or June 1994 people may have left their homes to buy food, but would refrain from travel to communities where they would not be known because of the insecurity of the situation.

656. Further, the exhibit relied upon by the Defence to assert that official documents were required to move around is specific to Felix Semwaga, the vice-president of the Butare Prefectural Civil Defence Committee, for the purpose of inspecting roadblocks.<sup>686</sup> The Chamber does not find that an inference can be drawn from this exhibit, as the Defence asks it to, that such an authorization would have been necessary to pass through roadblocks.

657. The Defence points to other purported inconsistencies in BDE's testimony to support the claim that his allegation is false, namely, BDE's evidence concerning the time of Kalimanzira's arrival at the roadblock, the period of time that Kalimanzira was absent from the roadblock, the location of Buseruka centre and the month in which the incident took place.<sup>687</sup> The Defence argues that much of this testimony is inconsistent with BDE's October 2001 statement.<sup>688</sup>

658. The Chamber finds that many of these purported inconsistencies are either explained by the passage of time, explained by BDE in his testimony, or are so immaterial as to not undermine the truthfulness of his account. For instance, BDE explained in cross-examination that while he stated that the incident occurred in May 1994 in his October 2001 statement,<sup>689</sup> he later testified that he gave a range of either May or June 1994 simply because he did not

<sup>683</sup> T. 3 December 2008 pp. 47-49, 51-52, 57 [closed] (Witness KUW).

<sup>684</sup> Defence Closing Brief paras. 616, 627-630.

<sup>685</sup> T. 18 June pp. 19, 25 [closed], 36, 38 (Witness BDE).

<sup>686</sup> Exhibit D18.

<sup>687</sup> Defence Closing Brief, paras. 617-620.

<sup>688</sup> Defence Closing Brief, paras. 621-625.

<sup>689</sup> Exhibit D17.

have a clear memory of the date.<sup>690</sup> The Defence also argues that BDE's testimony is not plausible because he testified that Fidèle Uwizeye had been *bourgmestre* for a month when the incident occurred, although Fidèle Uwizeye was not appointed until 17 June 1994.<sup>691</sup> BDE recalled on the stand that Uwizeye was appointed *bourgmestre* in June.<sup>692</sup> It is clear that he was trying to provide an objective indication for when the events occurred, but was not certain about their exact date. Considering how much time has passed since the events, the Chamber does not consider BDE's credibility to be affected by his inability to instantly recall the exact date of a *bourgmestre*'s appointment in relation to the incident he describes.

659. Further, when confronted with his October 2001 statement which stated that Kalimanzira arrived at the roadblock while his identity card was being checked, which was inconsistent with his testimony that Kalimanzira was already at the roadblock when he arrived, BDE clarified that it was as if they arrived at the roadblock at the same time, or within minutes of each other.<sup>693</sup> The Chamber finds that whether Kalimanzira arrived slightly before or slightly after BDE to be immaterial to the veracity of his account.

660. Finally, regarding whether the period of time BDE suggests that Kalimanzira left the roadblock was sufficient for Kalimanira to visit his parents in Nyagahuru, the Chamber notes that BDE testified that he thought Kalimanzira was going to visit his parents because the men at the roadblock told him so, and that he knew the road towards their home, as opposed to where they actually lived.<sup>694</sup> Given that BDE did not really know where Kalimanzira was going, it can hardly be said that the period Kalimanzira was absent from the roadblock was inconsistent with Kalimanzira's travel to that location.

661. The Chamber also notes that BCZ's testimony supports BDE's account in important respects, namely the placement of a man and his motorcycle in the back of Kalimanzira's vehicle, as well as the colour and type of the vehicle.<sup>695</sup> The Chamber also notes that there is evidence on the record which indicates that the Rwamiko Primary School is located in the Buseruka centre.<sup>696</sup> Consequently, BDE's evidence that they stopped at the Buseruka centre is not inconsistent with BCZ's evidence that he saw Kalimanzira in front of the Rwamiko Primary School.<sup>697</sup>

662. The Chamber has also considered the evidence of AM52 and KUW and finds that their evidence does not create a reasonable doubt regarding BDE's testimony. Although AM52, who is the brother of BDE, confirmed that BDE's motorcycle was put in the Ndora *commune* office, he claimed BDE put it in the *commune* office on 20 April 1994 and that it was returned from being stolen in that same month, less than two weeks later.<sup>698</sup> Consequently, his testimony does not exclude the possibility that both accounts are true, given that BDE testified that his encounter with Kalimanzira occurred in May or June. Further, just because AM52 testified that he did not hear Kalimanzira's name mentioned in relation to BDE's motorcycle does not undermine BDE's account; there is no evidence on the

<sup>690</sup> T. 18 June 2008 pp. 38-39 (Witness BDE).

<sup>691</sup> Defence Closing Brief, paras. 620, 624.

<sup>692</sup> T. 18 June 2008 p. 21 (Witness BDE).

<sup>693</sup> T. 18 June 2008 p. 31 (Witness BDE).

<sup>694</sup> T. 18 June 2008 pp. 29-30 (Witness BDE).

<sup>695</sup> T. 24 June 2008 pp. 52, 69 (Witness BCZ); T. 18 June 2008 pp. 32-33 (Witness BDE).

<sup>696</sup> Defence Witness MAS testified that the Buseruka centre is in Rwamiko *secteur*, and included a primary school as well as various shops: T. 24 November 2008 p. 27.

<sup>697</sup> Defence Closing Brief, para. 1054.

<sup>698</sup> T. 18 November 2008 p. 15 (Witness AM52).

record to suggest that AM52 would have been made aware of this incident.<sup>699</sup> Finally, the Chamber notes that AM52 left Rwanda in 1994 and has not returned, despite accusations against him for being involved in the genocide.<sup>700</sup>

663. With respect to KUW, the Chamber notes that he acknowledged being in charge of the roadblock and that people were killed there. Although he asserts that he was not involved in those killings, he has confessed to killing someone during the genocide and was sentenced to ten years imprisonment.<sup>701</sup> KUW lived five minutes away from the roadblock and in light of his professional position, has an interest in minimizing what occurred there. KUW's assertion that he would have heard about every incident at the roadblock is not worthy of belief.<sup>702</sup> The Chamber also does not accept his assertion that the roadblock was dismantled around 5 May 1994 due to heavy rains which made the road impassable.<sup>703</sup> There is other evidence on the record which suggests that the roadblock was in place after this point<sup>704</sup> and in any event this account is not worthy of belief. The Chamber does not accept that the roadblock would be dismantled because of heavy rain at this point in the genocide, as opposed to at the very least simply being left unmanned.

664. Consequently, the Chamber finds that the Prosecution has proven beyond reasonable doubt that in May or June 1994, BDE was detained at a roadblock in Nyarusange *commune*. The Chamber finds that Kalimanzira was present at the roadblock and ordered the men manning the roadblock to prevent BDE from leaving and to guard his motorcycle. Upon his return, Kalimanzira had the motorcycle loaded into his truck and drove it and BDE to the Ndora *commune* office where the motorcycle was kept for three days.

665. The Chamber, however, does not find that this incident amounts to Direct and Public Incitement to Commit Genocide. In order to be criminal, the incitement must be both direct and public, and the Chamber finds that the first criteria is not met in this instance.

666. The Chamber recalls that determining whether an act of incitement is direct or not is undertaken by focusing mainly on the issue of whether the persons for whom the message was intended immediately grasped the implication thereof.<sup>705</sup> In this instance, BDE testified that he is still wondering what motivated Kalimanzira to act as he did; he believed it was because Kalimanzira said his motorbike was used for transporting *Inkotanyi* and because he was not carrying a weapon.<sup>706</sup> BDE believed Kalimanzira asked him why he was not carrying a weapon because "the war was raging at that time" and that members of the general public had to carry traditional weapons in order to protect themselves from the *Inkotanyi*.<sup>707</sup> Although BDE understood the *Inkotanyi* to refer to the Tutsis, because it was the Tutsis who were killed with traditional weapons, he nonetheless appeared to understand the need to carry weapons as a defensive measure.

667. In sum, there is insufficient evidence to conclude that BDE understood Kalimanzira's actions and speech to be a call for him to kill Tutsis, nor does the Chamber find the evidence

<sup>699</sup> T. 18 November 2008 p. 12 [closed] (Witness AM52).

<sup>700</sup> T. 18 June 2008 pp. 22, 28-30, 32 [closed] (Witness AM52).

<sup>701</sup> T. 3 December 2008 pp. 48-49 [closed], 52-54 (Witness KUW).

<sup>702</sup> T. 3 December 2008 pp. 47-48 [closed], 51-52 (Witness KUW).

<sup>703</sup> T. 3 December 2008 p. 49 [closed] (Witness KUW).

<sup>704</sup> AZT testified that in late May 1994, he saw Kalimanzira alight from a car and slap a man at a roadblock in Nyarusange *cellule*, Rwamiko *secteur*: T. 20 June 2008 pp. 24-25.

<sup>705</sup> *Nahimana et al.* Appeal Judgement, paras. 698-700, citing *Akayesu* Trial Judgement paras. 557-558.

<sup>706</sup> T. 18 June 2008 p. 22 (Witness BDE).

<sup>707</sup> T. 18 June 2008 pp. 19-20 (Witness BDE).

sufficient to infer that those manning the roadblock would have understood it as such. There is also no evidence that either BDE or the people manning the roadblock went on to kill Tutsis.<sup>708</sup> Consequently, the Chamber finds that the Prosecution has not eliminated the reasonable doubt that Kalimanzira's speech and actions were intended as a defensive measure in light of the civil war, as opposed to incitement to kill Tutsis. The Prosecution has therefore not proven beyond a reasonable doubt that Kalimanzira committed Direct and Public Incitement at the Nyarusange roadblock in May or June 1994.

#### 4.9. Weapons Carrying, mid-April to June

668. At paragraph 27 of the Indictment, the Prosecution charges Kalimanzira with Direct and Public Incitement to Commit Genocide for checking if everyone was carrying a weapon with which to kill Tutsis between mid-April and June 1994, and did not hesitate to warn, assault, or threaten to severely punish unarmed persons. For instance, around late April or early May 1994, Kalimanzira hit an unarmed Hutu with a club.

669. In its closing arguments, the Prosecution contends that witnesses AZT, BCK, BDJ, BDK and AZC testified to the allegations in paragraph 27 of the Indictment and established that, during the months of April to June 1994, Kalimanzira travelled between the neighbouring *communes* of Ndora, Muganza and Mugusa in order to ensure that local civilians were carrying weapons to kill Tutsis; he warned, threatened and even assaulted those he found unarmed as a method of inciting them to carry out killings. These witnesses testified to five separate incidents, namely:

- i. AZT testified that, at the end of April or beginning of June, the accused slapped an unarmed man at the Nyarusange *cellule* roadblock;
- ii. BCK testified that Kalimanzira appeared at a small road at the centre of Kabuye and proceeded to beat an unarmed man with a club;
- iii. BDJ testified that Kalimanzira stopped at a roadblock in Kabuye in May 1994, criticized the men at the roadblock for not being armed, and warned them those unarmed persons would have to be killed because they are to be considered the enemy;
- iv. BDK testified that, at the end of May 1994, Kalimanzira addressed a crowd at the Gisagara marketplace, instructed the male attendees to carry weapons to defeat the Tutsi enemy, kill young Tutsi women who were still alive, and rewarded a man for being armed; and,
- v. AZC testified that, during an afternoon in June 1994, Kalimanzira stopped in Mutarama after seeing two unarmed men, ordered them into his vehicle, and drove them to a different *commune* to walk back as a punishment.<sup>709</sup>

670. Kalimanzira denies these allegations and relies on his alibi (see [III.1.2](#)).

##### 4.9.1. Notice

671. In its Closing Brief, the Defence has objected to the omission of material facts relating to the fourth allegation above, namely the events at the Gisagara marketplace.<sup>710</sup>

<sup>708</sup> *Nahimana et al.* Appeal Judgement, para. 709, fn. 1674.

<sup>709</sup> Prosecution Closing Brief, paras. 281-292.



672. The Chamber notes that while the first sentence of paragraph 27 describes the Prosecution's allegation in general terms, the second sentence provides notice of only one incident described above: hitting an unarmed man with a club. The material facts underlying the other four allegations, including that raised by the Defence, were not pleaded in the Indictment. The Indictment is therefore defective in this respect, which raises the question of whether the Defence had adequate notice of those material facts. For the same reasons discussed in III.2.3.1, despite the Defence's failure to raise a timely objection, the Chamber finds that consideration of the Defence's arguments, as well as the omission of the other allegations listed above from the Indictment, is warranted. The Chamber will therefore address the omission of material facts underpinning the first, third, fourth and fifth allegations listed above.

673. No mention was made of these incidents in the narrative section of the Prosecution Pre-Trial Brief. However, in Annex A to the Prosecution Pre-Trial Brief, the summaries relating to AZT, BDJ, BDK and AZC each refer to paragraph 27 as being relevant.

674. The summary of AZT's anticipated testimony indicated that he would testify about, among other things, Kalimanzira assaulting an unarmed person and rebuking others in May 1994 at Nyarusange, near River Akanyaru. This was consistent with AZT's November 2002 witness statement which was disclosed to the Defence in the Supporting Materials.

675. The summary of BDJ's anticipated testimony indicates that he would testify that, among other things, Kalimanzira encouraged people to carry weapons during the genocide and referred to a specific instance during the month of May, at a roadblock in Kabuye *cellue*, Gisagara sector, Ndora *commune*. Kalimanzira asked the witness why he and others did not have weapons and told them that he wanted people to carry weapons at roadblocks. Witness BDJ's statement, also provided to the Defence with the Supporting Materials, is consistent with this account and states that Kalimanzira would rebuke those he caught without weapons, but did not include that example.

676. The summary of BDK's anticipated testimony indicates that she would testify about, among other things, a meeting at the Gisagara centre where Kalimanzira gave money to a person who was armed with an old part of a vehicle. This is consistent with Witness BDK's witness statement, included in the Supporting Materials.

677. The summary of AZC's anticipated testimony states that he would provide specific examples in his testimony concerning Kalimanzira's punishment of people for failing to carry weapons during the genocide, but did not detail any such examples. However, in his October 2001 witness statement, provided to the Defence with the Supporting Materials, Witness AZC stated that he was informed by two men that, after a meeting at the Gikonko commune office, Kalimanzira came across them unarmed while on his way to Butare. Kalimanzira ordered the two men into his car and drove them to Mbazi *commune* where they were dropped off.

678. The Chamber notes that the Prosecution has proffered AZC's evidence evidence simply as evidence of Kalimanzira's "pattern of conduct"; namely, that he ensured that the local population was armed.<sup>711</sup> The Chamber finds however that a reasonable doubt subsists as to whether this alleged pattern of conduct is criminal or in any other way relevant to Kalimanzira's criminal responsibility. Having regard to the totality of the evidence, the Chamber does not find that the Prosecution has eliminated other possible motives for

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<sup>710</sup> Defence Closing Brief, para. 1140.

<sup>711</sup> Prosecution Closing Brief, para. 286.

Kalimanzira's conduct, in particular whether this was not a legitimate defensive course of action in the context of a civil war. Regardless, the Chamber has required corroboration for AZC in relation to other allegations in Mugusa *commune* (see III.2.6.2). His uncorroborated hearsay evidence here would be equally unreliable. The Chamber will therefore not consider this allegation further.

679. In conclusion, the Chamber finds that the Pre-Trial Brief with the annexed witness summaries simply added greater detail in a consistent manner with the more general allegation plead in paragraph 27 of the Indictment, save for the evidence of AZC.

680. With respect to timeliness, the Chamber notes that the Defence cross-examined AZT, BDK and AZC about these particular allegations.<sup>712</sup> As previously discussed (see III.2.3.1 and III.2.7.1), the Chamber considers that the Defence had ample time to conduct investigations in the four and a half months before the commencement of its case. In its own Pre-Trial Brief, the Defence explicitly refuted some of the allegations in question and made a general argument that Kalimanzira was in Gitarama *commune* at the relevant times.<sup>713</sup> The Chamber therefore does not find that Kalimanzira's ability to defend himself has been materially impaired.

681. On the basis of the Prosecution Pre-Trial Brief and witness statements, the Chamber finds that the Prosecution provided the Defence with adequate notice of the material facts underlying the first four incidents, listed above.

#### **4.9.2. Roadblock at Nyarusange cellule**

682. The Prosecution alleges that in late May 1994 Kalimanzira slapped an unarmed man at Nyarusange *cellule* and asked him what he would do if he met *Inyenzi*.<sup>714</sup>

683. The Defence denies this allegation. In addition, Kalimanzira relies on his alibi (see III.1.2).

##### 4.9.2.1. Evidence

###### *Prosecution Witness AZT*

684. AZT testified that in late May 1994, he saw Kalimanzira alight from a car and slap a man at a roadblock in Nyarusange *cellule*, Rwamiko *secteur*. AZT stated that he witnessed the incident from a bar approximately eight to nine metres away. He recalled that he rushed to the scene in order to find out why the man had been slapped and heard that it was because he had been unarmed. Kalimanzira had allegedly asked the victim: "if you ever meet *Inyenzi*, what would you do?" AZT stated that, at the time, *Inyenzi* meant Tutsis. AZT did not know or speak to the victim himself.<sup>715</sup>

###### *Defence Witness KUW*

685. KUW testified that there was not a single roadblock in his locality in late May 1994.<sup>716</sup> He said a roadblock had been set up on the instruction of *Bourgmestre* Bimenyimana

<sup>712</sup> T. 26 June 2008 pp. 26-27, 34 (Witness AZT); T. 21 May 2008 pp. 2-5 (Witness BDK); T. 26 June 2008 pp. 68-69 (Witness AZC).

<sup>713</sup> Defence Closing Brief, paras. 20, 36-38 53-54.

<sup>714</sup> Prosecution Closing Brief, para. 282.

<sup>715</sup> T. 20 June 2008, pp. 25-27 and T. 23 June 2008 pp. 30, 34-35 (Witness AZT).

<sup>716</sup> T. 3 December 2008 pp. 57-58 [closed] (Witness KUW).

and *Conseiller* Sikubwabo one week after the President's death and it was dismantled in early May because the rains had made the road on which it was located impassable. No other roadblock was subsequently set up in Nyarusange *cellule*.<sup>717</sup>

#### 4.9.2.2. Deliberations

686. At the relevant time alleged, Kalimanzira claims he was working in Murambi (Gitarama *préfecture*). As discussed above, the Chamber disbelieves his alibi (see III.1.2.2).

687. KUW acknowledged being in charge of the Nyarusange roadblock and that people were killed there, although he asserts that he was not involved in those killings. He has also confessed to killing someone during the genocide and was sentenced to ten years imprisonment.<sup>718</sup> The Chamber has already discussed KUW's interest in minimizing what occurred at the roadblock (III.4.8.2).

688. KUW contended that because of his professional position, the population had to report any incident that occurred at the roadblock to him.<sup>719</sup> The Defence also contends that in a *cellule* as small as Nyarusange, such an event would not have occurred without his knowledge. The Chamber is not, however, persuaded that the fact that he may not have heard of the incident necessarily implies that it did not occur.

689. Moreover, another reliable Prosecution witness, BDE, testified regarding an incident in which he was involved at that same roadblock in late May or early June, undermining KUW's assertion that the roadblock was dismantled on 5 May 1994 (see III.4.8). Nor does the Chamber find his assertion plausible that the roadblock would have been dismantled at this point in the genocide. KUW also covered other possibilities by testifying that there were no incidents at the roadblock.<sup>720</sup> However, KUW admitted that he was not there all the time, as he manned it every fifth day and acknowledged that he lived about five minutes from it and could not see what was happening there from his home.<sup>721</sup> The Chamber does not find KUW's evidence to be credible.

690. With respect to AZT, the Chamber notes that he has been convicted and sentenced to life imprisonment in Rwanda for his involvement in the genocide.<sup>722</sup> He is still trying to appeal. AZT has also given evidence regarding other allegations (see III.2.3.5; see also III.4.6). Although the Chamber found that corroboration was required for his testimony in relation to the allegations contained at paragraph 8 of the Indictment, with respect to the public rally in Nyirakanywero, the Chamber finds that the reasoning underlying that conclusion does not pertain to his evidence in this respect. The Chamber, having carefully considering his testimony, has found him to be a reliable and credible witness.

691. The Defence contends that AZT's testimony on this incident should be disregarded because it is inconsistent with a statement he gave to the ICTR investigators in November 2002. First, the impression was given in the statement that AZT personally witnessed both Kalimanzira slapping the unarmed person and Kalimanzira's explanation for his action, while at trial he explained that he personally witnessed the slap from a distance and only learned

<sup>717</sup> T. 3 December 2008 pp. 48-49, 57-58 [closed] (Witness KUW).

<sup>718</sup> T. 3 December 2008 pp. 48-49 [closed], 52-54 (Witness KUW).

<sup>719</sup> T. 3 December 2008 pp. 48-49 [closed], 51-52 (Witness KUW).

<sup>720</sup> T. 3 December 2008 pp. 51-52 (Witness KUW).

<sup>721</sup> T. 3 December 2008 pp. 47-49 [closed] (Witness KUW).

<sup>722</sup> T. 20 June 2008 p. 30 [closed] (Witness AZT).

about the reason for it from others.<sup>723</sup> Second, the statement asserts that Kalimanzira arrived on a motorcycle, while in court AZT testified that he was in a motor vehicle.<sup>724</sup> The Chamber accepts AZT's explanation that these and other minor discrepancies are the result of the manner in which the statement was recorded and do not reflect any change in the account given by AZT which could lead to a conclusion that his testimony is unreliable or incredible.<sup>725</sup>

692. The Defence also criticised AZT's inability in his testimony to specify the time of the day when the incident occurred, although in his earlier statement he said it occurred around 1:00 p.m.<sup>726</sup> Again, this is not significant in light of the passage of time between 1994, 2002 and the time he gave evidence and does not undermine AZT's credibility.

693. In light of the foregoing, the Chamber finds that the Prosecution has proven beyond a reasonable doubt that, in late May 1994, Kalimanzira slapped an unarmed man at Nyarusange *cellule*. However, the Chamber does not find that the Prosecution has proven that this event satisfies the legal elements of Direct and Public Incitement beyond reasonable doubt.

694. The Chamber recalls that determining whether an act of incitement is direct or not is undertaken by focusing mainly on the issue of whether the persons for whom the message was intended immediately grasped the implication thereof.<sup>727</sup> There is no direct evidence regarding who was slapped or what Kalimanzira said at the time. AZT testified that he was told that Kalimanzira asked the victim at the roadblock what he would do if he met *Inyenzi* and that Witness AZT understood that term to mean Tutsi. There is no evidence that AZT or the victim understood this as a call to kill Tutsis, nor any evidence that they went on to commit this act.<sup>728</sup> In short, the Prosecution has not proven that Kalimanzira intended to instigate the killing of Tutsi civilians in this instance. Nor is the Chamber satisfied that by slapping and criticizing a single individual, that the public element of the crime is satisfied. The Chamber finds that the Prosecution has not proven beyond reasonable doubt that Kalimanzira committed Direct and Public Incitement by slapping an unarmed man at Nyarusange *cellule*.

#### **4.9.3. Road between Butare and Muganza**

695. The Prosecution alleges that, at the end of April or the beginning of May, on a road in Kabuye, Kalimanzira beat an unarmed man with a club for failing to carry a weapon.<sup>729</sup>

696. The Defence denies this allegation in its entirety. In addition, Kalimanzira relies on his alibi (see [III.1.2](#)).

##### **4.9.3.1. Evidence**

###### *Prosecution Witness BCK*

697. BCK testified that in late April or early May 1994, he saw Kalimanzira near a veterinarian centre, close to Kabuye and located on the road between Butare and Muganza.

<sup>723</sup> Defence Closing Brief, para. 662. T. 20 June 2008 p. 25 and T. 23 June 2008, p. 34 (Witness AZT).

<sup>724</sup> Defence Closing Brief, para. 661; Exhibit D24; T. 20 June 2008 p. 25 and T. 23 June 2008 p. 23 (Witness AZT).

<sup>725</sup> T. 23 June 2008 pp. 30-32 (Witness AZT).

<sup>726</sup> Defence Closing Brief, para. 660; T. 20 June 2008 p. 26; T. 23 June 2008 p. 27 (Witness AZT).

<sup>727</sup> *Nahimana et al.* Appeal Judgement, paras. 698-700, citing *Akayesu* Trial Judgement paras. 557-558.

<sup>728</sup> *Nahimana et al.* Appeal Judgement, para. 709, fn. 1674.

<sup>729</sup> Prosecution Closing Brief, para. 282.

BCK recalled that he was returning to the Jaguar roadblock with four friends after drinking in a bar at the Kabuye centre, when, at approximately 1:20 p.m., Kalimanzira drove past them and instructed them to stop. Kalimanzira then asked BCK's friend, Vianney, why he was moving about without a weapon when there was a war on and proceeded to beat him with BCK's club. BCK further recalled that Vianney then cut down a shrub to use as a club. Kalimanzira continued in the direction of Muganza commune.<sup>730</sup>

*Defence Witness Jean Marie Vianney Harindintwali*

698. Harindintwali was, according to BCK, beaten by Kalimanzira near the Kabuye centre. Harindintwali testified that he has never been beaten by Kalimanzira and that BCK was a vagabond and bandit who was not his friend. Harindintwali also denied that the other two men allegedly there that day were his friends. He asserted that he did not go for drinks with them when they manned the Jaguar roadblock together.<sup>731</sup>

4.9.3.2. Deliberations

699. At the relevant time alleged, Kalimanzira claims he was working in Murambi (Gitarama *préfecture*). As discussed above, the Chamber disbelieves his alibi (see III.1.2.2).

700. The Chamber is faced with directly contradictory evidence with respect to this allegation. BCK testified that Kalimanzira beat his companion with BCK's club for not carrying a weapon. The Defence in turn called Harindintwali, the person alleged to have been beaten by Kalimanzira, who denies that the incident ever took place.

701. Harindintwali is living in exile from Rwanda and denies that he is a fugitive from the justice system there. He had been detained and released after serving two years and subsequently left the country.<sup>732</sup> He admitted that he manned the Jaguar Roadblock, but denies committing or knowing of the commission of any crimes at that location.<sup>733</sup> In relation to his evidence concerning the Jaguar roadblock, the Chamber has finds that it has reason to disbelieve him (see III.4.3.2).

702. When confronted with *Gacaca* records which indicate that he is charged with offences, and which indicate that his accomplices were BCK and Pacôme, Harindintwali acknowledged that it referred to him but he denied knowing of the charge or the accusers.<sup>734</sup> The Chamber considers that there is sufficient evidence of authenticity to accept that these exhibits are *Gacaca* records. The Chamber also notes that Harindintwali acknowledged that Pacôme worked the Jaguar roadblock with him.<sup>735</sup> The Chamber considers that his denial of association with BCK and Pacôme was false and that he is not a reliable or credible witness.

703. The Chamber notes that BCK has a judicial record. He confessed to and was convicted in Rwandan courts for crimes committed during April to July 1994.<sup>736</sup> However, as he was sentenced to 30 years in prison and has exhausted all appeals, this would indicate that his sentence could not be affected by giving false testimony against Kalimanzira. The Chamber has found BCK to be a credible and reliable witness in relation to the allegations at

<sup>730</sup> T. 26 June 2008 pp. 10-11, 23-25 (Witness BCK).

<sup>731</sup> T. 18 November 2008 p. 70 and T. 21 November 2008 p. 5 (Jean Marie Vianney Harindintwali).

<sup>732</sup> T. 18 November 2008 pp. 68-69 (Jean Marie Vianney Harindintwali).

<sup>733</sup> T. 19 November 2008 pp. 1-5 (Jean Marie Vianney Harindintwali).

<sup>734</sup> T. 19 November 2008 pp. 6-9 (Jean Marie Vianney Harindintwali); Exhibits P57 and P58.

<sup>735</sup> T. 19 November 2008 p. 2 (Jean Marie Vianney Harindintwali).

<sup>736</sup> T. 26 June 2008 pp. 11-12; pp. 27-29 [closed] (Witness BCK); Exhibit D39.

Jaguar roadblock (see III.4.3.2). The Defence was not able to show any serious discrepancies in his testimony, either internally or by virtue of inconsistencies with his prior statements.

704. The Chamber considers BCK to be credible and reliable, and is satisfied by his evidence beyond reasonable doubt. Consequently, the Chamber finds that the Prosecution has proven beyond reasonable doubt that, at the end of April or the beginning of May, on a road in Kabuye, Kalimanzira beat Harindintwali with BCK's club for failing to carry a weapon.

705. The Chamber also accepts BCK's evidence that Kalimanzira questioned his friend about why he was unarmed when there was a war on. The Chamber does not, however, find sufficient evidence to conclude that Kalimanzira's words or actions were intended to incite the killing of Tutsi civilians. There is no evidence that the message was received as such by any of the men, or that they went on to actually kill Tutsis.<sup>737</sup> Consequently, the Chamber finds that the Prosecution has failed to prove that Kalimanzira committed Direct and Public Incitement to Commit Genocide by beating an unarmed man with a club on a road in Kabuye.

**4.9.4. Kabuye Roadblock**

706. The Prosecution alleges that in May 1994, Kalimanzira stopped at a roadblock in Kabuye and rebuked the two persons manning the roadblock for being unarmed. Kalimanzira also told the men that those who were unarmed would have to be killed by the others because they should be considered to be the enemy. Kalimanzira specified that by referring to the enemy, he was speaking about Tutsis.<sup>738</sup>

707. The Defence denies the allegation in its entirety. In addition, Kalimanzira relies on his alibi (see III.1.2).

4.9.4.1. Evidence

*Prosecution Witness BDJ*

708. BDJ is a Tutsi who was employed as a motorcycle driver by a local trader. He kept the fact that he was a Tutsi secret and after the massacres he was elected to assist the *responsable* to restore law and order. He testified that in May 1994, Kalimanzira stopped at the roadblock he manned at the junction between the roads to Kabuye and Muganza, on the road from Gisagara to Kirarambogo. Kalimanzira arrived in a double-cabin pickup around midday, and was accompanied by a soldier who was his bodyguard. BDJ explained that because the massacres had almost ended by that time, only he and the *responsable de cellule* were manning the roadblock. BDJ recalled that he was unarmed, causing Kalimanzira to rebuke him from inside his vehicle. Kalimanzira commented that he was surprised to find BDJ at the roadblock without weapons and therefore unable to confront the enemy. BDJ further recalled that Kalimanzira warned them that unarmed persons had to be killed by other persons at the roadblock because they had to be considered the enemy. BDJ stated that Kalimanzira told them that the "enemy" was the Tutsi. BDJ carried a weapon from then on.<sup>739</sup>

4.9.4.2. Deliberations

<sup>737</sup> *Nahimana et al.* Appeal Judgement, paras. 698-700, 709, fn. 1674, citing *Akayesu* Trial Judgement paras. 557-558.

<sup>738</sup> Prosecution Closing Brief, para. 284.

<sup>739</sup> T. 17 June 2008 pp. 52, 54 [closed] 55, 60 and T. 18 June 2008 pp. 5-6 [closed] (Witness BDJ).

709. At the relevant time alleged, Kalimanzira claims that he was working in Murambi (Gitarama *préfecture*). As discussed above, the Chamber disbelieves his alibi (see III.1.2.2).

710. The Chamber notes that BDJ confessed to committing crimes against the Tutsis, including manning roadblocks and participating in attacks at Kabuye hill. He was sentenced to 11 years and was released in 2007.<sup>740</sup> BDJ gave evidence relevant to other allegations and the Chamber found his testimony to be credible (see III.2.6.2).

711. The Defence suggested that BDJ's testimony is not credible because it does not make sense that only two people were manning the roadblock and that BDJ would not be carrying a weapon.<sup>741</sup> BDJ explained, however, that the numbers manning the roadblock had been reduced because by that time the massacres had almost ended.<sup>742</sup> The Chamber also rejects the Defence contention that BDJ's status as a Tutsi pretending to be a Hutu makes it incredible that he was not carrying a weapon at the time.

712. The Defence also argues that it is unlikely that only two persons would have witnessed the event in light of BDJ's evidence that the place where the roadblock was located was well known and there was bar nearby that belonged to the *responsable*.<sup>743</sup> However, given that BDJ explained that Kalimanzira stayed inside his vehicle and that BDJ stood near the vehicle when Kalimanzira spoke to them,<sup>744</sup> the Chamber finds that it is not improbable that no one other than those present at the roadblock witnessed the incident.

713. The Defence also points out that since his companion at the roadblock, the *responsable*, is deceased, there is no corroboration for his testimony.<sup>745</sup> However, the Chamber notes that there is independent evidence on the record that the *responsable* has died.<sup>746</sup> In light of the foregoing, the Chamber finds BDJ to be a credible witness.

714. The Chamber finds the Defence's argument that the event is implausible should be rejected. There is abundant evidence from several witnesses that Kalimanzira accosted them for being unarmed. Further, Kalimanzira himself expressed concerns for his safety along that road.<sup>747</sup> This testimony seems consistent with the testimonies of other witnesses.

715. In light of the foregoing, the Chamber finds that the Prosecution has proven beyond reasonable doubt that Kalimanzira rebuked the two persons manning a roadblock in Kabuye for being unarmed. However, in light of the statement's ambiguity, which seemed individualized to the two recipients only, the Chamber is not satisfied that Kalimanzira's actions and words were sufficiently direct or public to constitute Direct and Public Incitement to Commit Genocide.

716. The Chamber recalls that BDJ testified that Kalimanzira told two people to carry weapons because unarmed persons had to be considered the enemy. The Chamber finds this statement ambiguous enough to create a reasonable doubt as to its intended meaning. One possible implication is that people should carry weapons as a defensive measure. It is not clear that Kalimanzira intended to incite the killing of Tutsi civilians in making such a

<sup>740</sup> T. 17 June 2008 pp. 62-63 [closed] (Witness BDJ).

<sup>741</sup> Defence Closing Brief, paras. 391-394, 399-401.

<sup>742</sup> T. 17 June 2008, p. 52 (Witness BDJ).

<sup>743</sup> Defence Closing Brief, paras. 391-394.

<sup>744</sup> T. 17 June 2008 p. 55 (Witness BDJ).

<sup>745</sup> Defence Closing Brief, para. 396; T. 17 June 2008 p. 52 (Witness BDJ).

<sup>746</sup> T. 22 May 2008 pp. 10, 32 [closed] (Witness BXG); T. 17 June 2008 p. 54 [closed] (Witness BDJ).

<sup>747</sup> T. 10 February 2009 p. 45 (Callixte Kalimanzira).

statement, nor that the two persons Kalimanzira rebuked understood it as such.<sup>748</sup> The Chamber therefore finds that the Prosecution has not proven beyond reasonable doubt that Kalimanzira committed Direct and Public Incitement to Commit Genocide at the Kabuye roadblock in May 1994.

#### 4.9.5. Gisagara Marketplace

717. The Prosecution alleges that towards the end of May 1994, Kalimanzira attended a meeting at the Gisagara marketplace where he instructed the male attendees to carry weapons and gave money as a reward to one man for carrying a weapon. Kalimanzira also ordered the killing of Tutsi girls who had been forced into marriages with Hutu men. Following the meeting, members of the population killed young Tutsi girls in hiding and reverted to carrying weapons.<sup>749</sup>

718. The Defence denies this testimony in its entirety. In addition, Kalimanzira relies on his alibi (see III.1.2).

##### 4.9.5.1. Evidence

###### *Prosecution Witness BDK*

719. BDK is a Tutsi woman who was married to a Hutu. Her husband's brother, who was an authority, was also married to a Tutsi woman. BDK testified that she attended a meeting at the Gisagara marketplace towards the end of May 1994. BDK was forced to attend the meeting by Fidèle Uwizeye who told her that public attendance was mandatory. BDK walked to the meeting with her neighbour Cecil, her husband, who walked in front, and carried her baby on her back. She recalled that the meeting was at 10:00 a.m. and that the authorities sat on chairs and faced the public, who sat on the ground. BDK estimated that there were just over one hundred people present.<sup>750</sup>

720. BDK testified that when she arrived, the *sous-préfet* had already finished speaking and Kalimanzira was addressing the crowd. She recalled that he was standing in the space between the authorities and the public and that he criticized the men for being unarmed. He said that they had short memories because they had forgotten that they had not completely defeated the enemy. BDK stated that the enemy was the Tutsi. She further recalled that Kalimanzira instructed the men to always carry a weapon and asked Johane Rondoni, who was armed with a club with spikes and iron bar from a wrecked car that he had named Kayitusha, to stand up. Kalimanzira proceeded to praise him and used him as an example of a "real man" for the rest of the crowd. Kalimanzira even gave him money so that he could buy a drink for himself.<sup>751</sup>

721. BDK testified that Kalimanzira then ordered that the young Tutsi girls who had been forced into marriages be killed because they could cause problems. However, he explicitly stated that those Tutsi woman who had married Hutu men before the war should be spared. BDK stated that she felt afraid when Kalimanzira said this and returned home with Cecil before the meeting had finished.<sup>752</sup>

<sup>748</sup> *Nahimana et al.* Appeal Judgement, paras. 698-700, citing *Akayesu* Trial Judgement paras. 557-558.

<sup>749</sup> Prosecution Closing Brief, para. 285.

<sup>750</sup> T. 20 May 2008 pp. 54-56 (Witness BDK).

<sup>751</sup> T. 20 May 2008 pp. 55-56 (Witness BDK).

<sup>752</sup> T. 20 May 2008 pp. 57-58 (Witness BDK).



722. BDK testified that before the meeting there had been no attacks for a week; however, afterwards they resumed. BDK further stated that she learned of the victims and the places they were taken to and executed by the *Interahamwe* because she heard people discussing and boasting about it afterwards.<sup>753</sup> She named Maria Mukashema, Eugénia Kabatezi, Donatila Kazibaga, Mukagakwaya Rwamukwaya and Rehema Muriminyondo as some of the young girls who were killed.<sup>754</sup>

#### 4.9.5.2. Deliberations

723. At the relevant time alleged, Kalimanzira claims that he was working in Murambi (Gitarama *préfecture*). As discussed above, the Chamber disbelieves his alibi (see III.1.2.2).

724. The Defence contends that BDK's testimony was fraught with inconsistencies. It suggests that her descriptions of the timing of her departure from the meeting was inconsistent; that it was unlikely that her brother-in-law would have forced her, a Tutsi, to attend the meeting; that if she had been forced to attend, it was unlikely that she would leave and draw attention to herself, especially when she had been married before the war and was not among the group who was threatened.<sup>755</sup> None of the Defence's arguments were persuasive. The passage of time since 1994 would explain difficulty in recalling time exactly; further, BDK gave convincing explanations for her behaviour.

725. The Chamber finds that the fact that BDK left before the end of the meeting as a result of her fear does not undermine the truthfulness of her account, even though BDK only attended at the instruction of her brother-in-law. Further, BDK explained this seeming incongruity in cross-examination by clarifying that after hearing Kalimanzira she made her child cry so that she could leave in order to quiet her child, so as not to cause suspicion.<sup>756</sup>

726. With respect to when BDK left the meeting, she testified in examination-in-chief that she left upon hearing Kalimanzira's order to kill Tutsi girls.<sup>757</sup> In cross-examination, BDK testified that she slipped away when she heard Kalimanzira talking about Rundoni.<sup>758</sup> The Defence argues that, if true, BDK could not have heard Kalimanzira order the killing of Tutsi girls because BDK testified that Kalimanzira congratulated Rundoni for carrying a weapon before ordering the killing of Tutsi girls.<sup>759</sup> The Chamber finds that the Defence is taking this remark out of context; upon review of the question put to her and her full response, it is clear that there is no inconsistency in her evidence.

727. The Chamber notes that BDK has given evidence in relation to a meeting by a water tap where she alleges to have heard a conversation including Kalimanzira to discuss further killings at Kabuye hill (see III.2.4). Although the Chamber found that it could not rely on her evidence in that respect, the reasons underlying that conclusion do not apply to her evidence here, nor do they reflect upon BDK's general credibility. The Chamber found her to be a reliable and credible witness.

728. In light of the foregoing, the Chamber finds that the Prosecution has proven beyond a reasonable doubt that Kalimanzira attended a meeting at the Gisagara marketplace at the end

<sup>753</sup> T. 20 May 2008 pp. 58-59 (Witness BDK).

<sup>754</sup> T. 21 May 2008 p. 5 (Witness BDK).

<sup>755</sup> Defence Closing Brief, paras. 115-118, 126, 141.

<sup>756</sup> T. 21 May 2008 pp. 4-5 (Witness BDK).

<sup>757</sup> T. 20 May 2008 p. 58 (Witness BDK).

<sup>758</sup> T. 21 May 2008 pp. 4-5 (Witness BDK).

<sup>759</sup> T. 20 May 2008 p. 57 (Witness BDK).

of May 1994. BDK's evidence, which the Chamber accepts, was that Kalimanzira criticized those in attendance for being unarmed and told them that they had not completely defeated the enemy. He rewarded a man for carrying a weapon. Kalimanzira went on to incite the crowd to kill young Tutsi girls who had been forced into marriages because they could cause problems.

729. BDK understood that Kalimanzira meant the Tutsi when he referred to the enemy. The Chamber finds that this also would have been the understanding of the crowd at the meeting. By telling the crowd that the enemy had not been completely defeated at that time, when the RPF was not near, and then ordering that Tutsi girls should be killed, Kalimanzira clearly indicated that Tutsi civilians were the enemy. This finding is supported by BDK's evidence that although there had been no attacks for a week before the meeting, they resumed afterwards and she named several people who were killed.<sup>760</sup> The Chamber finds that the only reasonable conclusion that can be drawn from this evidence is that Kalimanzira intended to incite the crowd to carry weapons in order to kill Tutsi civilians. Kalimanzira exhibited here, and elsewhere, an intent to destroy the Tutsi group (see III.5.2). Consequently, the Chamber finds Kalimanzira guilty beyond a reasonable doubt for committing Direct and Public Incitement to Commit Genocide at the Gisagara marketplace at the end of May 1994.

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<sup>760</sup> *Nahimana et al.* Appeal Judgement, para. 709, fn. 1674.

## 5. GENOCIDAL INTENT

### 5.1. Applicable Law

730. The Chamber recalls that an accused may not be convicted for the crime of Genocide unless it is established that he committed one of the acts listed in Article 2 (2) of the Statute with the specific intent to destroy, in whole or in part, a particular protected group (“genocidal intent”) (see III.2.1). Genocidal intent is also an element of the crime of Direct and Public Incitement to Commit Genocide (see III.4.1). The notion “destruction of the group” means “the material destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group”. There is no numeric threshold of victims necessary to establish genocide, and it is not necessary to prove that a perpetrator intended the complete annihilation of a protected group. However, in order to establish genocidal intent, it is necessary to prove that the perpetrator intended to destroy at least a substantial part thereof.<sup>761</sup>

731. Intent, by its nature, is not usually susceptible to direct proof. The jurisprudence therefore accepts that in the absence of direct evidence, a perpetrator’s genocidal intent may be inferred from relevant facts and circumstances that can lead beyond reasonable doubt to the existence of the intent of the evidence, provided that it is the only reasonable inference that can be made from the totality of the evidence. In the light of the Tribunal’s jurisprudence, genocidal intent may be inferred from certain facts or indicia, including but not limited to: (a) the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others, (b) the scale of atrocities committed, (c) their general nature, (d) their execution in a region or a country, (e) the fact that the victims were deliberately and systematically chosen on account of their membership of a particular group, (f) the exclusion, in this regard, of members of other groups, (g) the political doctrine which gave rise to the acts referred to, (h) the repetition of destructive and discriminatory acts, and (i) the perpetration of acts which violate the very foundation of the group or considered as such by their perpetrators.<sup>762</sup>

### 5.2. Deliberations

732. In its factual findings above, the Chamber has found direct evidence of Kalimanzira’s genocidal intent, as well as circumstantial evidence from which it could be inferred.

733. BXG gave direct evidence on Kalimanzira’s conduct and utterances at the Mukabuga roadblock on 23 April 1994. That morning, Kalimanzira asked Callixte Bushakwe, the *responsable de cellule* and head of the group at the roadblock, where he was with the Tutsi problem. Bushakwe responded that they had all been killed, whereupon one of the men at the roadblock, Isidore, interjected and told Kalimanzira that Bushakwe was lying and that the Tutsis had successfully defended themselves against attack. This enraged Kalimanzira, who spat at Bushakwe and attempted to slap him. Kalimanzira then asked Isidore show him where the Tutsis were, and they drove off in the direction of Dahwe *secteur*.<sup>763</sup>

<sup>761</sup> *Seromba* Trial Judgement, para. 319; *Semanza* Trial Judgement, para. 315-316.

<sup>762</sup> *Bagosora et al.* Trial Judgement, para. 2116; *Seromba* Appeal Judgement, para. 176, citing *Seromba* Trial Judgement, para. 320; *Nahimana et al.* Appeal Judgement, paras. 524-525; *Simba* Appeal Judgement, para. 264; *Gacumbitsi* Appeal Judgement, paras. 40-41; *Rutaganda* Appeal Judgement, para. 525; *Semanza* Appeal Judgement, para. 262, citing *Jelisić* Appeal Judgement, para. 47; *Kayishema and Ruzindana* Appeal Judgement, paras. 147-148.

<sup>763</sup> T. 22 May 2008 pp. 9-12, 19-20, 22 (Witness BXG).

734. This evidence, combined with other credible evidence of Kalimanzira's behaviour the same day (see [III.2.4.2](#)), namely (1) his tacit approval of *sous-préfet* Ntawukulilyayo's expulsion of Tutsis from the Gisagara marketplace to Kabuye hill, and (2) his provision of armed reinforcements to assist in the killings at Kabuye hill, demonstrates that Kalimanzira knew and intended that the Tutsis at Kabuye hill would be killed. Kalimanzira saw how many thousands of Tutsi refugees had gathered on Kabuye hill, hoping to be protected, and knew that his actions would be a substantial factor in contributing to their killings. The fact that they were killed *en masse* shows that he intended to destroy the Tutsi group, in whole, or at least in substantial part.

735. BCN and BCK also gave direct evidence that in mid- to late April 1994, Kalimanzira handed a rifle to one of the persons manning the Jaguar roadblock and instructed everyone present that the gun was to be used to kill Tutsis (see [III.4.3](#)). He further instructed them to keep checking identity cards in order to prevent Tutsis from passing through. He referred to both the *Inkotanyi-Inyenzi*, as well as any other possible enemies trying to pass through.<sup>764</sup> By instructing those at the Jaguar roadblock not to distinguish between combatants or civilians, he exhibited his intent to destroy the Tutsi group, as such.

736. BBB recounted a similar incident at the Kajyanama roadblock where Kalimanzira became irate upon seeing an unarmed man, assaulting and abducting him, in order to emphasize the need for those manning the roadblock to carry arms at all times in order to defend themselves against "the enemy", which was understood to mean the Tutsi (see [III.4.4](#)). While such an instruction in a time of war is not *per se* illegitimate (see e.g. [III.2.8.2](#)), in this case, as in the incident at Jaguar roadblock, the instruction was to target Tutsi civilians and combatants alike.

737. BCZ testified that at a public rally at the Nyabisagara football field in late May or early June, Kalimanzira thanked the audience for their efforts at eliminating the enemy and warned them not to become complacent because there were still enemies hiding in the bush and in houses (see [III.4.5](#)). BCZ explained that by then, "enemy" meant just about any Tutsi. Kalimanzira also requested the audience to destroy all remaining Tutsi houses and plant banana trees and other crops over the ruins. By expressing his approval for the Tutsi massacres and instructing the crowd to erase traces of the dead Tutsis' homes and lives, Kalimanzira exhibited his intent to destroy the existence of the Tutsi group.

738. These instances do not exhaust the occasions on which Kalimanzira exhibited an intent to destroy the Tutsi group. They merely reflect the clearest evidence of his mental state. In light of the above, and having considered the totality of the evidence, the Chamber finds that Kalimanzira held the requisite specific intent characterizing the crime of Genocide, which is the intent to destroy, in whole or in part, the Tutsi group, as such.

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<sup>764</sup> T. 25 June 2008 pp. 5, 20-24 (Witness BCN); T. 26 June 2008 pp. 6-9, 14-15 (Witness BCK).

**CHAPTER IV – VERDICT**

739. For the reasons set out in this Judgement, having considered all evidence and arguments, the Chamber unanimously finds Callixte Kalimanzira

- Count 1: GUILTY of Genocide
- Count 2: DISMISSED (Complicity in Genocide)
- Count 3: GUILTY of Direct and Public Incitement to Commit Genocide

## CHAPTER V – SENTENCE

### 1. INTRODUCTION

740. Having found Kalimanzira guilty of Genocide and Direct and Public Incitement to Commit Genocide, the Chamber must determine the appropriate sentence.

741. The relevant provisions on sentencing are Articles 22 and 23 of the Statute and Rules 99 to 106 of the Rules. A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or for the remainder of his life.<sup>765</sup> The penalty imposed should reflect the goals of retribution, deterrence, rehabilitation, and the protection of society. Pursuant to Article 23 of the Statute and Rule 101 of the Rules, the Chamber shall consider the general practice regarding prison sentences in Rwanda, the gravity of the offences or totality of the conduct, the individual circumstances of the accused, including aggravating and mitigating circumstances, and the extent to which any penalty imposed by a court of any State on the accused for the same act has already been served.<sup>766</sup> These considerations are not exhaustive. Trial Chambers are vested with a broad discretion in determining an appropriate sentence, due to their obligation to individualize the penalties to fit the circumstances of the convicted person and the gravity of the crime.<sup>767</sup> The Chamber shall credit the accused for any time spent in detention pending transfer to the Tribunal and during trial.<sup>768</sup>

742. In determining an appropriate sentence, the Appeals Chamber has stated that “sentences of like individuals in like cases should be comparable”. However, it has also noted the inherent limits to this approach because “any given case contains a multitude of variables, ranging from the number and type of crimes committed to the personal circumstances of the individual”.<sup>769</sup>

### 2. DETERMINATION OF THE SENTENCE

743. The Prosecution submits that the maximum sentence of imprisonment for the remainder of his life is warranted in Kalimanzira’s case.<sup>770</sup> The Defence did not make any sentencing submissions, maintaining that Kalimanzira should be acquitted on every count.<sup>771</sup>

#### 2.1. Gravity of the Offences

744. All crimes under the Statute are serious violations of international humanitarian law.<sup>772</sup> The Chamber has considered that under Rwandan law, genocide carries the possible penalty of life imprisonment, depending on the nature of the accused’s participation.<sup>773</sup> In the Tribunal’s jurisprudence, principal perpetration generally warrants a higher sentence than

<sup>765</sup> Rule 101 (A) of the Rules.

<sup>766</sup> Article 23 (1)-(3) of the Statute and Rule 101 (B)(i)-(iv) of the Rules.

<sup>767</sup> *Nahimana et al.* Appeal Judgement, paras. 1037, 1046; *Seromba* Appeal Judgement, para. 228; *Ndindabahizi* Appeal Judgement, para. 132, referring to *Semanza* Appeal Judgement, para. 312.

<sup>768</sup> *Kajelijeli* Appeal Judgement, para. 290. See Rule 101 (C) of the Rules.

<sup>769</sup> *Kvočka et al.* Appeal Judgment, para. 681.

<sup>770</sup> Prosecution Closing Brief, para. 322; T. 20 April 2009 pp. 22-23 (Closing Arguments).

<sup>771</sup> Defence Closing Brief, p. 248.

<sup>772</sup> *Kayishema and Ruzindana* Appeal Judgement, para. 367 (quoting Article I of the Statute).

<sup>773</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.66/2008 of 21/11/2008 Modifying and Complementing Organic Law No. 31/2007 of 25/07/2007 Relating to the Abolition of the Death Penalty.

aiding and abetting.<sup>774</sup> However, this alone does not mean that a life sentence is the only appropriate sentence for a principal perpetrator of genocide.<sup>775</sup> At this Tribunal, a sentence of life imprisonment is generally reserved those who planned or ordered atrocities and those who participate in the crimes with particular zeal or sadism.<sup>776</sup> Offenders receiving the most severe sentences tend to be senior authorities.<sup>777</sup> The Chamber has also considered the sentences handed down for convictions of Direct and Public Incitement to Commit Genocide only, which have ranged from 12 years to life imprisonment.<sup>778</sup>

745. The Chamber has found Kalimanzira guilty of aiding and abetting the crime of Genocide at the inauguration of Élie Ndayambaje (see [III.2.3.6.2](#)) and at Kabuye hill (see [III.2.4.2](#)). In addition, the Chamber has found Kalimanzira guilty of aiding and abetting, as well as instigating, the crime of Genocide at a roadblock on the Butare-Gisagara road (see [III.2.7.4.2](#)). Kalimanzira indirectly perpetrated these crimes. The Chamber has also found Kalimanzira guilty of committing the crime of Direct and Public Incitement to Commit Genocide at the Jaguar roadblock (see [III.4.3.2](#)), the Kajyanama roadblock (see [III.4.4.2](#)), the Nyabisagara football field (see [III.4.5.2](#)), and the Gisagara marketplace (see [III.4.9.5.2](#)). Kalimanzira was the principal perpetrator of these crimes.

746. The Chamber takes due notice of the intrinsic gravity of Kalimanzira's crimes. Genocide is, by definition, a crime of the most serious gravity which affects the very foundations of society and shocks the conscience of humanity. Directly and publicly inciting others to commit that crime is, in the Chamber's opinion, of similar gravity. The harm that justifies the criminalization of direct and public incitement is in the special dangerousness associated with inciting an unspecified and indeterminate group of people to commit a crime so heinous as genocide, which risks creating an overall atmosphere conducive to violence and criminal activity capable of reaching uncontrollable proportions.

747. The Chamber also notes that the charges for which Kalimanzira is convicted relate to crimes committed in his own *préfecture* and not crimes committed at the national level. Moreover, although he was the *Directeur de Cabinet* of the Ministry of the Interior and this lent him the credibility and influence required for some of his criminal acts, the crimes for which he is convicted are essentially unrelated to his official duties and powers at the national level.

<sup>774</sup> *Semanza* Appeal Judgement, para. 388.

<sup>775</sup> *Ntakirutimana* Trial Judgement, paras. 791-793, 832-834, 908-909, 924 (imposing 25 years' imprisonment for personal participation).

<sup>776</sup> *Musema* Appeal Judgement, para. 383 (noting that the leaders and planners of a particular conflict should bear heavier responsibility, with the qualification that the gravity of the offence is the primary consideration in imposing a sentence); *Nchamihigo* Trial Judgement, para. 395 (deputy prosecutor, the Chamber noting that he exhibited extreme zeal in killing); *Niyitegeka* Trial Judgement, para. 486; *Muhimana* Trial Judgement, paras. 604-616 (*conseiller*, but recounting the particularly atrocious manner in which the accused personally raped, killed, mutilated, and humiliated his victims).

<sup>777</sup> Life sentences have been imposed against senior government authorities in: *Ndindabahazi* Trial Judgement, paras. 505, 508, 511 (Minister of Finance); *Niyitegeka* Trial Judgement, paras. 499, 502 (Minister of Information); *Kambanda* Trial Judgement, paras. 44, 61-62 (Prime Minister); *Kamuhanda* Trial Judgement, paras. 6, 764, 770 (Minister of Higher Education and Scientific Research). In addition, life sentences have been imposed on lower level officials, as well as those who did not hold government positions. See e.g., *Nchamihigo* Trial Judgement, paras. 395-396 (deputy prosecutor in Cyangugu *préfecture*); *Musema* Trial Judgement, paras. 999-1008 (influential director of a tea factory who exercised control over killers); *Rutaganda* Trial Judgement, paras. 466-473 (second vice-president of *Interahamwe* at national level).

<sup>778</sup> *Akayesu* Trial Judgement (life sentence); *Kajelijeli* Trial Judgement (15 year sentence); *Ruggiu* Trial Judgement (12-year sentence); *Bikindi* Trial Judgement (15-year sentence).

## 2.2. Individual Circumstances

748. The Chamber has wide discretion in determining what constitutes mitigating and aggravating circumstances and the weight to be accorded thereto. While aggravating circumstances need to be proven beyond reasonable doubt, mitigating circumstances need only be established on a “balance of probabilities”.<sup>779</sup> Proof of mitigating circumstances does not automatically entitle the accused to a “credit” in the determination of the sentence; it simply requires the Trial Chamber to consider such mitigating circumstances in its final determination.<sup>780</sup>

### 2.2.1. Aggravating Circumstances

749. The Prosecution submits that the aggravating circumstances in this case include Kalimanzira’s abuse of his position of influence and authority, his personal commitment in the execution of genocide in breach of the public’s trust, and his role as a leader and principal perpetrator in the commission of his crimes.<sup>781</sup> The Defence made no submissions on aggravating circumstances.

750. The Chamber notes Kalimanzira’s prominence and high standing in Butare society as a former *sous-préfet* and the fact that he was one of only three people from his area and of his generation to have received a university education. He was loved and appreciated for his efforts at empowering his community by contributing to the agricultural development of his native region. The influence he derived from this and his important status within the Ministry of the Interior made it likely that others would follow his example, which is an aggravating factor. Most significantly, by encouraging Tutsi refugees to gather at Kabuye hill where he knew they would be killed in the thousands, he abused the public’s trust that he, like other officials, would protect them.

751. However, the Chamber considers that Kalimanzira’s actions did not evidence any particular zeal or sadism. He did not personally kill anyone and only remained at the sites for a brief period. The Chamber has already taken into consideration Kalimanzira’s forms of participation in assessing the gravity of his offences.

### 2.2.2. Mitigating Circumstances

752. In the absence of any further submissions on the matter, the Chamber finds there are few other mitigating circumstances. Kalimanzira is 55 years old. His wife testified to his character as a good and loving husband and father. For much of his life prior to the genocide, Kalimanzira was engaged in the public service of his country. After going into exile, he never went into hiding, living his life openly and working for a non-governmental organization to lend assistance to refugees. The Defence tried to show that Kalimanzira never harboured any anti-Tutsi sentiment before the genocide, but such evidence can in no way exonerate Kalimanzira for his crimes. Kalimanzira’s good character prior and subsequent to the conflict offer little in the way of mitigation.

753. The Prosecution submits that there are no mitigating circumstances, and that the evidence does not support that Kalimanzira voluntarily surrendered to the Tribunal.<sup>782</sup> The combined testimonies of Kalimanzira and his wife show that when ICTR investigators came

<sup>779</sup> *Simba Appeal Judgement*, para. 328; *Nahimana et al. Appeal Judgement*, para. 1038.

<sup>780</sup> *Niyitegeka Appeal Judgement*, para. 267.

<sup>781</sup> Prosecution Closing Brief, paras. 325 and 331; T. 20 April 2009 pp. 23-25 (Closing Arguments).

<sup>782</sup> Prosecution Closing Brief, para. 325; T. 20 April 2009 p. 25 (Closing Arguments).



looking for him in Nairobi, he did not try to escape and honoured several appointments with them over several days, and then willingly surrendered himself to be taken to Arusha, where he remains in detention to this day.<sup>783</sup> The Chamber finds that the evidence does support the conclusion that Kalimanzira voluntarily surrendered to the Tribunal, and considers this to be a mitigating circumstance.

### 2.3. Credit for Time Served

754. On 8 November 2005, Kalimanzira surrendered in Nairobi, Kenya, to Tribunal officials, and arrived at the United Nations Detention Facility in Arusha the same day. He has been in physical custody ever since. Pursuant to Rule 101 (C) of the Rules, Kalimanzira is therefore entitled to credit for time served as of 8 November 2005. The Chamber calculates this as amounting to three years, seven months, and 14 days.

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<sup>783</sup> T. 5 February 2009 pp. 13-14 (Salomé Mukantwali); T. 10 February 2009 pp. 59 and 61 (Callixte Kalimanzira).

### 3. CONCLUSION

755. The Chamber has the discretion to impose a single sentence. This practice is usually appropriate where the offences may be characterised as belonging to a single criminal transaction. It is also appropriate for a single sentence to be imposed for all convictions, if the Chamber so decides, where the crimes ascribed to an accused, regardless of their characterisation, form part of a single set of crimes committed in a given geographic region during a specific time period.<sup>784</sup>

756. Considering all the relevant circumstances above, the Chamber **SENTENCES** Callixte Kalimanzira to

#### THIRTY (30) YEARS' IMPRISONMENT


757. This sentence shall be enforced immediately and, pursuant to Rule 101 (C) of the Rules, Kalimanzira shall receive credit for the time served, which the Chamber has calculated as three years, seven months, and 14 days.

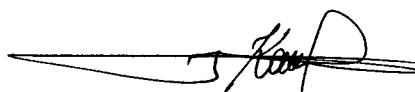
758. The above sentence shall be served in a State designated by the President of the Tribunal, in consultation with the Chamber. The Government of Rwanda and the designated State shall be notified of such designation by the Registrar.

759. Until his transfer to his designated place of imprisonment, Callixte Kalimanzira shall be kept in detention under the present conditions.

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

Arusha, 22 June 2009, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
Vagn Joensen  
Judge

[Seal of the Tribunal]



<sup>784</sup> *Nahimana et al.* Appeal Judgement, paras. 1042-1043; *Simba* Trial Judgement, para. 445; *Ndindabahizi* Trial Judgement, para. 497; *Kambanda* Appeal Judgement, para. 111.

**ANNEX I – PROCEDURAL HISTORY**

761. Callixte Kalimanzira was arrested in Nairobi on 8 November 2005 after he voluntarily surrendered. The trial commenced on the 5 May 2008 and closed on 13 February 2009. Over the course of sixteen trial days, the Prosecution called twenty-three witnesses. The Defence case opened on 17 November 2008. During twenty-one trial days, the Defence called forty-two witnesses, including the Accused.

**1. PRE-TRIAL PHASE**

762. Callixte Kalimanzira was arrested in Nairobi, Kenya, on 8 November 2005, after surrendering to ICTR authorities, pursuant to an arrest warrant and order for transfer and detention issued by Judge Sergei Alekseevich Egorov on 1 September 2005.<sup>785</sup> The initial indictment, as confirmed by Judge Egorov on 22 July 2005,<sup>786</sup> charged Kalimanzira with three counts: (1) Genocide, (2) or, in the alternative, Complicity in Genocide, and (3) Direct and Public Incitement to Commit Genocide.<sup>787</sup> Kalimanzira was remanded in the custody of officials of the Tribunal and arrived at the detention unit in Arusha on the same day as his arrest. On 14 November 2005, he made his initial appearance, pleading not guilty to all three counts of the indictment.

763. On 29 September 2006, the Registrar withdrew the appointment of Pierre Shillewaert as lead Defence counsel and requested that the accused provide the names of three alternatives.<sup>788</sup>

764. On 5 June 2007, the Pre-Trial Chamber denied a Defence request for provisional release.<sup>789</sup>

765. An informal status conference was held on 11 July 2007 to discuss the progress of the case. It was decided that the trial would commence around 15 January 2008, depending on courtroom availability. It was later decided, at a status conference on 29 October 2007, that the trial would commence around 15 March 2008.

766. On 8 November 2007, protective measures were ordered for ten Prosecution witnesses.<sup>790</sup> On 13 December 2007, a status conference was held during which the Defence requested a postponement of trial. Protective measures were ordered for nine Defence witnesses on 14 December 2007.<sup>791</sup>

767. On 22 February 2008, the Chamber granted a Prosecution motion requesting that judicial notice be taken of several facts of common knowledge about the situation in Rwanda between 6 April 1994 and 17 July 1994.<sup>792</sup>

768. On 19 March 2008, the President scheduled the trial to start on 28 April 2008.<sup>793</sup>

<sup>785</sup> Warrant of Arrest and Order for Transfer and Detention of Callixte Kalimanzira (Judge Egorov), 1 September 2005.

<sup>786</sup> Decision on Confirmation of an Indictment Against Callixte Kalimanzira (Judge Egorov), 22 July 2005.

<sup>787</sup> The Indictment Against Callixte Kalimanzira, Office of the Prosecutor, 21 July 2005.

<sup>788</sup> Decision to Withdraw the Assignment of Mr Pierre Schillewaert as Lead Counsel for Callixte Kalimanzira (The Registrar), 29 September 2006.

<sup>789</sup> Decision on Defence Request for Provisional Release (TC), 5 June 2007.

<sup>790</sup> Decision on Prosecution Motion for Protective Measures (TC), 8 November 2007.

<sup>791</sup> Decision on Defence Motion for Protective Measures (TC), 14 December 2007.

<sup>792</sup> Decision on Judicial Notice of Facts of Common Knowledge (TC), 22 February 2008.

769. On 4 April 2008, the Chamber ordered the transfer of Prosecution witnesses AZM, AZT, BBB, BCA, BCI, BCK, BCN, BDI, BDL, BXC, BXD, BXL and FAC be transferred to the United Nations Detention Facility in Arusha.<sup>794</sup>

770. On 8 April 2008, the United Nations Secretary General appointed the *ad litem* Judges Arrey and Park to the case. Judge Weinberg de Roca was assigned as Presiding Judge on 10 April 2008.<sup>795</sup> However, on 29 April 2008, in light of new circumstances which had arisen affecting the commencement of trial and making it necessary to change the composition of the bench, the President assigned himself as Presiding Judge in the case.<sup>796</sup>

771. On 30 April 2008, a status conference was held at which the Chamber orally granted in part a Defence motion to postpone the commencement of the trial after finding that the Prosecution had not complied with its disclosure obligations as ordered in the Chamber decision of 8 November 2007. The trial was scheduled to commence on 5 May 2008.<sup>797</sup>

772. On 2 May 2008, the Office of the President issued an order assigning *ad litem* Judges Vagn Joensen and Gberdao Gustave Kam to Trial Chamber III and confirming the commencement of trial on 5 May 2008.<sup>798</sup>

## 2. THE PROSECUTION CASE

773. The trial commenced on 5 May 2008. The prosecution conducted its case over two trial sessions: from 5 May 2008 to 22 May 2008 and 16 June 2008 to 26 June 2008. Over the course of sixteen trial days, the Prosecution called 24 witnesses and tendered 82 exhibits.

774. On 16 June 2008, the Chamber granted a Prosecution motion to extend its transfer order dated 4 April 2008 and ordered that detained Prosecution witnesses AZM, AZT, BBB, BCA, BCI, BCK, BDI, BDL, BXC, BXL and FAC transfer to the United Nations Detention Facility be extended until 18 July 2008 at the latest.<sup>799</sup>

775. On 24 June 2008, the Chamber granted in part a Defence motion to exclude Prosecution witnesses BWM, BWN, BXB, BXC, BXD AND BXL from testifying about the killings of a person named Rwigimba and his family, and of a person named Mazimpaka.<sup>800</sup>

776. On 30 June 2008, at a status conference, the Chamber issued a provisional oral decision ordering that the Defence case should commence at the end of October 2008 and continue for approximately five weeks.

777. The Prosecution rested their case and the Defence submitted a motion proposing that their case commence on the 17 November 2008 at a status conference on 30 June 2008.

<sup>793</sup> Scheduling Order Regarding the Commencement of the Trial (President), 19 March 2008.

<sup>794</sup> Decision on Transfer of Detained Witnesses (TC), 4 April 2008.

<sup>795</sup> Order Assigning a Bench for the Trial (TC), 10 April 2008.

<sup>796</sup> Order Reassigning the Case (The President), 29 April 2008.

<sup>797</sup> Oral Decision on a Defence motion for Violation of the Disclosure Obligation as Established in the Protective Order and for Postponement of the Commencement of the Trial (TC), 30 April 2008.

<sup>798</sup> Order Assigning *ad litem* Judges to the Case (TC), 2 May 2008.

<sup>799</sup> Decision on a Prosecution motion for the Extension of the Trial Chamber's "Decision on Transfer of Detained Witnesses" of 4 April 2008 (TC), 16 June 2008.

<sup>800</sup> Decision on Defence Motion to Exclude Prosecution Witnesses BWM, BWN, BXB, BXC, BXD and BWL (TC), 24 June 2008.

778. On 7 July 2008, Judge Joensen issued an interim order requiring that the Defence show cause and proof that it submitted its response to the Prosecution motion for admission of certain materials in due form on 20 June 2008 by 8 July 2008.<sup>801</sup>

779. On 8 July 2008, the Chamber issued a scheduling order granting a Defence request to postpone the start date of the presentation of their case until 17 November 2008. The Chamber ordered that the Defence file its Rule 98bis submissions no later than seven days after the Chamber decided two pending Prosecution motions. The Chamber ordered that the Defence file its Rule 73ter submissions by 17 September 2008 and its expected order of appearance of the witnesses by 17 October 2008.<sup>802</sup>

780. On 10 July 2008, the Chamber granted a Prosecution motion to admit 45 documents and their translations into evidence, pursuant to Rule 89 (C), after finding that the Defence did not make a satisfactory showing that their Response was filed with the Court Management Section prior to the extended deadline of 30 June 2008.<sup>803</sup>

781. On 11 July 2008, the Chamber issued a confidential decision granting a Prosecution motion to admit materials under Rules 92bis and 89 (C) in part and ruling that the statement of deceased witness BDA could not be admitted but that a cover letter forwarding the details of a meeting held in June 1994 could be.<sup>804</sup>

782. On 13 August 2008, the Chamber issued a corrigendum to the scheduling order previously issued on 8 July 2008. A drafting error was rectified and rendering a Defence motion for reconsideration of the scheduling order was thereby rendered moot.<sup>805</sup>

783. On 25 August 2008, the Chamber issued a *proprio motu* order seeking submissions from the Parties on whether there was sufficient evidence upon which the Chamber could rely in support of certain allegations, and what legal consequences should follow from any conclusion that may be reached. The Prosecution and Defence were ordered to make their submissions by 29 August 2008 and 1 September 2008, respectively.<sup>806</sup>

784. On 26 August 2008, the Chamber denied a Defence motion for certification to appeal the Chamber Decision of 10 July 2008 because they did not fulfill the requirements of Rule 73(B) and ordered that a Defence motion be re-filed as a public document.<sup>807</sup>

785. On 3 September 2008, the Chamber ruled that the Defence has no case to answer in respect of certain allegations not pleaded in the indictment. This therefore rendered a Defence motion of 30 June 2008 which sought certification to appeal the Chamber decision of 24 June 2008 moot.<sup>808</sup>

786. On 4 September 2008, the Chamber rendered a Defence request for authorisation to visit the United Nations Detention Facility during the weekend moot because the Defence

<sup>801</sup> Interim Order (TC), 7 July 2008.

<sup>802</sup> Scheduling Order and Corrigendum, 8 July 2008.

<sup>803</sup> Decision on Prosecution Motion for Admission of Certain Materials – Rule 89(C) of the Rules of Procedure and Evidence (TC), 10 July 2008.

<sup>804</sup> Decision on Prosecution Motion for Admission of Documents under Rules 92bis(C) and 89(C) (TC), 11 July 2008 (confidential).

<sup>805</sup> Corrigendum to Scheduling Order (TC), 13 August 2008.

<sup>806</sup> Interim Order (TC), 25 August 2008.

<sup>807</sup> Decision on Defence Motion for Certification to Appeal Chamber’s Decision on Prosecution Motion for Admission of Certain Materials (TC), 26 August 2008.

<sup>808</sup> Decision of No Case to Answer (TC), 3 September 2008.

had also requested and received permission from the United Nations Detention Facility Commanding Officer.<sup>809</sup>

787. On 1 October 2008, the Trial Chamber issued a consolidated decision denying a Prosecution motion to reduce the number of Defence witnesses to testify and granting a Defence motion to add Callixte Kalimanzira to the Defence witness list.<sup>810</sup>

788. On 13 November 2008, the Trial Chamber issued a consolidated decision granting a Defence motion to vary its witness list and ordering them to reduce the number of hours of examination-in-chief anticipated for each Defence witness in the order of appearance to permit the Defence case to be presented in 20 trial days. The decision also granted, in part, a Prosecution motion seeking relief for the failure of the Defence to fully and properly disclose witness statements, identifying information, sequencing and notice of alibi in due time. The Chamber ordered that the Defence correct all existing deficiencies in disclosures and provide sufficiently detailed and complete personal information for each listed Defence witness and, where available, unredacted Defence witness statements by 14 November 2008.<sup>811</sup>

### 3. THE DEFENCE CASE

789. The Defence case opened on 17 November 2008 and was conducted during two trial sessions: from 17 November 2008 to 4 December 2008 and from 26 January 2009 to 11 February 2009. During 21 trial days, the Defence called 42 witnesses, including Kalimanzira. The Defence tendered 117 documents.

790. On 16 January 2009, the Chamber denied a Prosecution oral motion seeking to exclude Defence witnesses CA1, FJS, AK11, FCS, FG1, FG3, FVC, BB06, BB08 and MZ20. The Chamber granted the motion in respect of witness FG2, excluding him from the Defence witness list and declared that, in respect of witness FAG, the motion was moot. The Chamber also declared a Defence motion to vary its witness list by adding witnesses moot in respect of witnesses MDS and RTE and granted in respect of witnesses FAR, FAT, MVE and MVT.<sup>812</sup>

791. On 19 January 2009, the Chamber granted a Defence motion to lift the protective measures for witnesses ABY, ABZ, AU106, AK14 and MZ16.<sup>813</sup>

792. On 27 January 2009, the Chamber deemed a Defence motion for the transfer of witness AX55 as moot, due to the Defence's statement that it would no longer call the witness.<sup>814</sup> On the same day, the Chamber granted a Defence motion to terminate the protective measures for witnesses AB19 and AK01.<sup>815</sup>

<sup>809</sup> Decision on Defence Motion Requesting Authorisation to Visit Callixte Kalimanzira at the United Nations Detention Facility on Saturday the 13<sup>th</sup> and Sunday the 14<sup>th</sup> September 2008 (TC), 4 September 2008.

<sup>810</sup> Consolidated Decision on Prosecution Motion to Reduce the Number of Defence Witnesses to Testify and on Defence Motion to Add Callixte Kalimanzira to the Defence Witness List (TC), 1 October 2008.

<sup>811</sup> Consolidated Decision on Prosecution Motion Concerning Defence Compliance with Rule 73<sup>ter</sup> and Defence Motions to Vary Witness List (TC), 13 November 2008.

<sup>812</sup> Consolidated Decision on Prosecution Oral Motion to Reduce Defence Witness List and Defence Motion to Vary Witness List (TC), 16 January 2009.

<sup>813</sup> Decision on the Defence Request to Lift the Protective Measures for Witnesses ABY, ABZ, AU106, AK14 and MZ16 (TC), 19 January 2009.

<sup>814</sup> Decision on the "Requête de la Défense aux fins de Transfert du Témoin AX55" (TC), 27 January 2009.

<sup>815</sup> Decision on the "Requête de la Défense aux fins de Mainlevée des Mesures de Protection des Témoins AB19 et AK01" (TC), 27 January 2009.

793. On 13 February 2009, the Defence closed its case at a status conference. The Chamber also gave an oral decision granting a Defence motion to admit transcripts into evidence under Rule 92 (D) and rejecting a Defence motion filed on 9 February 2009 to exclude evidence or recall witnesses.

794. On 2 March 2009, the Chamber granted, in part, a Defence motion for admission of materials under Rule 89 (C).<sup>816</sup>

795. On 3 March 2009, the Chamber granted a Prosecution motion to admit English versions of transcript evidence previously admitted on 13 February 2009.<sup>817</sup> On the same day, the Chamber issued a scheduling order instructing the Parties to file their respective closing briefs by 2 April 2009, deciding that the oral presentation of closing arguments shall take place on 17 April 2009 and granting each party a maximum of 90 minutes to present their oral arguments, with an additional 30 minutes of reply.<sup>818</sup> The oral presentation of closing arguments was subsequently rescheduled, by email, to take place on 20 April 2009.

796. On 24 March 2009, the Chamber issued a Corrigendum to a Decision on Defence Motion for Admission of Certain Materials Filed 2 March 2009, finding two additional documents inadmissible.<sup>819</sup>

797. On 20 May 2009, the Chamber issued an Order scheduling the public delivery of the judgement for 16 June 2009,<sup>820</sup> however, on 25 May 2009, the Chamber issued a Corrigendum to that Order and amended the date of public delivery of the judgement to 22 June 2009.<sup>821</sup>

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<sup>816</sup> Decision on Defence Motion for Admission of Certain Materials (TC), 2 March 2009; see also Corrigendum – Decision on Defence Motion for Admission of Certain Materials filed 2 March 2009 (TC), 24 March 2009.

<sup>817</sup> Decision on Prosecution Motion to Admit English Versions of Transcript Evidence Admitted on 13 February 2009 (TC), 3 March 2009.

<sup>818</sup> Scheduling Order (TC), 3 March 2009.

<sup>819</sup> Corrigendum – Decision on Defence Motion for Admission of Certain Materials Filed 2 March 2009 (TC), 24 March 2009.

<sup>820</sup> Scheduling Order (TC), 20 May 2009.

<sup>821</sup> Corrigendum to Scheduling Order (TC), 25 May 2009.

**ANNEX II – CITED MATERIALS AND DEFINED TERMS****1. JURISPRUDENCE****1.1. International Criminal Tribunal for Rwanda****Akayesu**

*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998 (“*Akayesu* Trial Judgement”)

**Bagosora et al.**

*The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-AR73, Decision on Aloys Ntabakuze’s Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006 (“*Bagosora et al.* Interlocutory Appeal Decision”)

*The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Judgement and Sentence (TC), 18 December 2008 (“*Bagosora et al.* Trial Judgement”)

**Bikindi**

*The Prosecutor v. Bikindi*, ICTR-01-72-T, Judgement (TC), 2 December 2008 (“*Bikindi* Trial Judgement”)

**Cyangugu**

*The Prosecutor v. Bagambiki et al.*, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 (“*Cyangugu* Appeal Judgement”)

**Gacumbitsi**

*The Prosecutor v. Sylvestre Gacumbitsi*, Case No. ICTR-01-64-T, Judgement (TC), 16 June 2004 (“*Gacumbitsi* Trial Judgement”)

*Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-01-64-A, Judgement (AC), 7 July 2006 (“*Gacumbitsi* Appeal Judgement”)

**Kajelijeli**

*The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Judgement (TC), 1 December 2003 (“*Kajelijeli* Trial Judgement”)

*Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005 (“*Kajelijeli* Appeal Judgement”)

**Kamuhanda**

*Jean De Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-A, Judgement (AC), 19 September 2005 (“*Kamuhanda* Appeal Judgement”)

**Karera**

*The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T



*François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009 (“*Karera Appeal Judgment*”)

### **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 Trial Judgment*”)

*The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Judgement (AC), 1 June 2001 (“*Kayishema and Ruzindana Appeal Judgment*”)

### **Muhimana**

*The Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1B-T (TC), Judgement and Sentence, 28 April 2005 (“*Muhimana Trial Judgment*”)

*Mikaeli Muhimana v. The Prosecutor*, Case No. ICTR-95-1B-A, Judgement (AC), 21 May 2007 (“*Muhimana Appeal Judgment*”)

### **Musema**

*The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Judgement and Sentence (TC), 27 January 2000 (“*Musema Trial Judgment*”)

*The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-A, Judgement (AC), 16 November 2001 (“*Musema Appeal Judgment*”)

### **Muvunyi**

*The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-AR73, Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005 (AC), 12 May 2005 (“*Muvunyi Interlocutory Appeal Decision*”)

*The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T, Judgement (TC), 12 September 2006 (“*Muvunyi Trial Judgment*”)

*Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-00-55A-A, Judgement (AC), 29 August 2008 (“*Muvunyi Appeal Judgment*”)

### **Nahimana et. al.**

*Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 (“*Nahimana et al. Appeal Judgment*”)

### **Nchamihigo**

*The Prosecutor v. Nchamihigo*, Case No. ICTR-01-63-I, Judgement (TC), 12 November 2008 (“*Nchamihigo Trial Judgment*”)

### **Ndindabahizi**

*Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Judgement (AC), 16 January 2007 (“*Ndindabahizi Appeal Judgment*”)

### **Niyitegeka**

*The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T

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

**Ntagerura et al.**

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

**Ntakirutimana**

*The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case No. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004 (“*Ntakirutimana Appeal Judgement*”)

**Rukundo**

*The Prosecutor v. Rukundo*, Case No. ICTR-01-70-T, Judgement (TC), 27 February 2009 (“*Rukundo Trial Judgement*”)

**Rutaganda**

*The Prosecutor v. Rutaganda*, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003 (“*Rutaganda Appeal Judgement*”)

**Semanza**

*The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement (TC), 15 May 2003 (“*Semanza Trial Judgment*”)

*Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005 (“*Semanza Appeal Judgement*”)

**Seromba**

*The Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-T, Judgement (TC), 13 December 2006 (“*Seromba Trial Judgement*”)

*The Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-A, Judgement (AC), 12 March 2008 (“*Seromba Appeal Judgement*”)

**Simba**

*The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Judgement (TC), 13 December 2005 (“*Simba Trial Judgement*”)

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

**1.2. International Criminal Tribunal for the Former Yugoslavia**

**Aleksovski**

*Prosecutor v. Aleksovski*, Case No. IT-95-14/1A, Judgement (AC) (“*Aleksovski Appeal Judgement*”)

**Blagojević and Jokić**

*Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Judgement (AC), 9 May 2007 (“*Blagojević and Jokić Appeal Judgement*”)

**Blaškić**

*Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement (AC), 29 July 2004 (“*Blaškić Appeal Judgement*”)

**Brđanin**

*Prosecutor v. Brđanin*, Case No. IT-99-36-T, Judgement (TC), 9 January 2004 (“*Brđanin Trial Judgement*”)

**Čelebići**

*Prosecutor v. Mučić, et al.*, Case No. IT-96-21-A, Judgement (AC), 20 February 2001 (“*Čelebići Appeal Judgment*”)

**Galić**

*Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement (AC), 30 November 2006 (“*Galić Appeal Judgement*”)

**Jelisić**

*Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Judgement (AC), 5 July 2001 (“*Jelisić Appeal Judgement*”)

**Jokić**

*The Prosecutor v. Miodrag Jokić*, Case No. IT-01-42/1-A, Judgement On Sentencing Appeal (AC), 30 August 2005 (“*Jokić Appeal Judgement*”)

**Kordić and Čerkez**

*The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement (AC), 17 December 2004 (“*Kordić and Čerkez Appeal Judgement*”)

**Krajišnik**

*The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Judgement (AC), 17 March 2009 (“*Krajišnik Appeal Judgement*”)

**Krnojelac**

*Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Judgement (AC), 17 September 2003 (“*Krnojelac Appeal Judgement*”)

**Krstić**

*Prosecutor v. Radislav v. Krstić*, Case No. IT-98-33-T, Judgement (TC), 8 February 2001 (“*Krstić Trial Judgement*”)

*Prosecutor v. Radislav v. Krstić*, Case No. IT-98-33-A, Judgement (AC), 19 April 2004 (“*Krstić* Appeal Judgement”)

**Kupreškić et al.**

*Prosecutor v. Kupreškić et al.*, IT-96-16-A, Appeal Judgement (AC), 23 October 2001 (“*Kupreškić et al.* Appeal Judgement”)

**Kvočka et al.**

*Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005 (“*Kvočka et al.* Appeal Judgement”)

**Naletilić and Martinović**

*Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-T, Judgement (TC), 31 March 2003 (“*Naletilić and Martinović* Trial Judgement”)

*Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-A, Judgement (AC), 3 May 2006 (“*Naletilić and Martinović* Appeal Judgement”)

**Orić**

*Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Judgment (TC), 30 June 2006 (*Orić* Trial Judgement)

*Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Judgement (AC), 3 July 2008 (“*Orić* Appeal Judgement”)

**Simić**

*Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Judgement (AC), 28 November 2006 (“*Simić* Appeal Judgement”)

**Tadić**

*Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgement (AC), 15 July 1999 (“*Tadić* Appeal Judgement”)

## 2. DEFINED TERMS AND ABBREVIATIONS

### Annotated Indictment

*The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-I, Annotated Indictment, filed confidential on 20 June 2007

### CDR

*Coalition pour la Défense de la République*

### Closing Arguments

T. 20 April 2009

### Corrected Indictment

*The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-I, Correction of Typographical Errors in the Indictment of 21 July 2005, filed on 31 October 2007

### Defence Closing Brief

*The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, *Mémoire final*, filed confidential on 2 April 2009<sup>822</sup>

### Defence Pre-Trial Brief

*The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, *Mémoire préalable à la présentation des moyens de preuve à décharge*, filed confidential on 17 September 2008<sup>823</sup>

fn.

Footnote

### ICTR or Tribunal

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 Neighbouring States, between 1 January 1994 and 31 December 1994

### Indictment

*The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-I, Indictment, filed on 21 July 2005

### Initial Appearance

<sup>822</sup> The Defence Closing Brief was considered along with its corrigendum: *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, *Erratum au mémoire final*, filed confidential on 17 April 2009. The Chamber also consulted the English translation of the Defence Closing Brief and Corrigendum.

<sup>823</sup> The Chamber also consulted the English translation of the Defence Pre-Trial Brief.

T. 14 November 2005

**MDR**

*Mouvement Démocratique Républicain*

**MRND**

*Mouvement Révolutionnaire National pour la Démocratie et le Développement*

**p. (pp.)**

page (pages)

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paragraph (paragraphs)

**PL**

*Parti Libéral*

**Prosecution Closing Brief**

*The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, Prosecutor’s Final Trial Brief Confidential Version, filed confidential on 2 April 2009<sup>824</sup>

**Prosecution Pre-Trial Brief**

*The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-PT, Prosecutor’s Pre-Trial Brief, filed on 16 April 2008

**RPF**

Rwandan (also Rwandese) Patriotic Front

**RTLM**

*Radio Télévision Libre des Mille Collines*

**Rules**

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

**Statute**

Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955

**Supporting Materials**

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<sup>824</sup> The Prosecution also filed a public version of this document on the same day.

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*Judgement*

22 June 2009

*The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-I, Interoffice Memorandum – Documents Supporting the Indictment against Callixte Kalimanzira (Rule 66 RPE), filed confidential on 16 November 2005

**T.**

Transcript



*Judgement*

**ANNEX III – INDICTMENT**



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

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**Case No. ICTR-2005-88-I**

**THE PROSECUTOR**

**v.**

**CALLIXTE KALIMANZIRA**

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**INDICTMENT**

**Filed on 21 July 2005**

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A handwritten signature in black ink, located in the bottom right corner of the page.

**I. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the International Criminal Tribunal for Rwanda (the "Statute"), charges:**

**Callixte Kalimanzira** with the crimes set forth below:

- I. **GENOCIDE**, pursuant to Article 2(3)(a) and Article 6(1) of the Statute or, in the alternative;
- II. **COMPLCITY IN GENOCIDE**, pursuant to Article 2(3)(e) and Article 6(1) of the Statute;
- III. **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, pursuant to Article 2(3)(c) and Article 6(1) of the Statute.

**II. The Accused:**

1. **Callixte Kalimanzira** was born in 1953 in Muganza *commune*, Butare *préfecture*, Republic of Rwanda. He was trained as an agronomist and held several top posts in the Government.

2. During the events referred to in this Indictment, **Callixte Kalimanzira** was a very close ally of President Théodore Sindikubwabo and Prime Minister Jean Kambanda, he being a native of their province and a member of the same party as President Sindikubwabo and, in addition, one of a very few senior civil servants from the province.

He was a senior civil servant who had held the following positions:

- (i) *Sous-préfet* of Butare and of Byumba;
- (ii) Co-ordinator of Agricultural services at the Kigali *préfecture*;
- (iii) Director of the Rural Development Section at the Presidency of the Republic;
- (iv) Secretary General of the Ministry of the Interior;
- (v) *Chef de cabinet*, Ministry of the Interior, a position he kept under the Interim Government. Between 6 April and 25 May, he was the acting Minister of the Interior;
- (vi) Prominent member of the *Mouvement républicain national pour le développement* (MRND); and
- (vii) Consequently, exercised in Butare *préfecture*, *de jure* and *de facto* authority over *bourgmestres*, *conseillers de secteur*, *cellule* officials, the *nyumbakumi* (head of each group of 10 houses), administrative staff, *gendarmes*, communal police, the *Interahamwe*, militiamen and civilians, in that he could order these

persons to commit or refrain from committing unlawful acts and discipline or punish them for their unlawful acts or omission.

**III. CHARGES AND CONCISE STATEMENT OF FACTS**

3. Butare *préfecture* is situated in the south of Rwanda and stretches up to its border with Burundi. In 1994, it was noted for its dense Tutsi population. Politically, it was a stronghold of the *Parti Libéral* (PL), which was opposed to MRND. For that reason, in particular, the *Interahamwe* were unable to establish a foothold in the area. In early April, its *préfet*, Jean Baptiste Habyalimana, a Tutsi and pro-PL, publicly opposed the massacres.

4. During the entire period referred to in this Indictment, there was in Rwanda a minority racial or ethnic group known as "Tutsi" and officially identified as such by the Rwandan authorities. The majority of Rwanda's population was composed of a racial or ethnic group known as "Hutu", also officially identified as such by the Rwandan authorities.

5. Between 6 April and 17 July 1994, throughout Rwanda and in Butare *préfecture*, in particular, *Interahamwe* militiamen, communal police, gendarmes, soldiers of the Rwandan Armed Forces (FAR) and armed civilians targeted and attacked members of a civilian population identified as belonging to the Tutsi ethnic or racial group or considered as sympathizing with the Tutsi. During the attacks, some Rwandans killed persons they suspected of belonging to the Tutsi ethnic group or caused them serious bodily or mental harm. These attacks resulted in the death of a large number of persons identified as members of the Tutsi ethnic or racial group.

**COUNT 1: GENOCIDE**

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Callixte Kalimanzira** with **GENOCIDE**, a crime provided for in Article 2(3)(a) of the Statute of the Tribunal, in that between 1 January 1994 and 31 December 1994, **Callixte Kalimanzira** was responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such.

**OR, IN THE ALTERNATIVE,**

**COUNT 2: COMPLICITY IN GENOCIDE**

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Callixte Kalimanzira** with **Complicity in Genocide**, a crime provided for in Article 2(3)(e) of the Statute in that between 1 January 1994 and 31 December 1994, **Callixte Kalimanzira** was an accomplice to the killing or in causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such.

CONCISE STATEMENT OF FACTS FOR COUNTS 1 AND 2

Individual criminal responsibility

6. **Callixte Kalimanzira** is individually responsible, pursuant to Article 6(1) of the Statute, for the crime of genocide or complicity in genocide in that he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or commission of the crimes. Moreover, **Callixte Kalimanzira** used his position as described in section II above (under the heading "The Accused") to incite and order persons under his authority to commit the crimes alleged in this Indictment. The particulars of the crime for which he incurs individual criminal responsibility are set out in paragraphs 7 to 17 below.

*Presence and movements of the Accused in Butare préfecture after 6 April 1994 to instigate and supervise the genocide*

7. In launching the massacre of Tutsi in Butare *préfecture*, President Théodore Sindikubwabo, along with a powerful delegation of Interim Government dignitaries, travelled to Butare on 19 April 1994 to incite the population to commit genocide. As the Minister of the Interior was absent, **Callixte Kalimanzira**, *Chef de cabinet*, Ministry of the Interior, served as master of ceremonies at the meeting of the Interim Government officials and the people. He gave the floor to participants, who incited the people to kill Tutsi as was already being done in other *préfectures*. The inflammatory speeches delivered by Government officials during the meetings in respect of which **Callixte Kalimanzira** showed no disapproval, triggered the massacre of thousands of Tutsi in Butare *préfecture*. By so doing, **Callixte Kalimanzira** aided and abetted the massacre of Tutsi which occurred afterwards.

8. Between April and mid-July 1994, **Callixte Kalimanzira** visited Butare on several occasions, together with senior Interim Government dignitaries, including President Théodore Sindikubwabo, Prime Minister Jean Kambanda and the Minister for Family and Women's Affairs, Pauline Nyiramasuhuko, as well as senior local Government officials, such as the *préfet*, Alphonse Nteziryayo, and high-ranking officers of the Rwandan Armed Forces (FAR), including Tharcisse Muvunyi. The purpose of the visits, in which **Callixte Kalimanzira** participated, was to sensitize the population to the Government's policy and incite them to kill the Tutsi. The visits resulted in the killing of thousands of Tutsi in Butare *préfecture*.

*Callixte Kalimanzira's involvement in the killings on Kabuye hill, Ndora commune, ~~Kisagara~~ Gisagara secteur*

9. On or about 23 April 1994, thousands of Tutsi civilians gathered on Kabuye hill, located in Ndora *commune*. **Callixte Kalimanzira** personally encouraged them to take refuge on the hill, promising them protection and food. Instead of being protected, they were attacked and killed by the Hutu with the full knowledge of and in the presence of **Callixte Kalimanzira**. In fact, **Callixte Kalimanzira** personally sought communal police and military reinforcement to assist in the attack. Thousands of Tutsi were killed on Kabuye hill.

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10. On or about 23 April 1994, at the time of the attacks at Kabuye hill, **Callixte Kalimanzira** discussed the progress of the killings at the hill with such local authorities as *Sous-Préfet* Dominique Ntawukuriryayo, Fidèle Uwizeye and Bernadette Mukaruranga, Member of Parliament, in front of *Bourgmestre* Fidèle Uwizeye's house. Having realized that the attackers had not been able to exterminate all the people gathered on the hill because they were too many, they decided to go to the site and supervise the operations. Thus, **Callixte Kalimanzira** personally supervised the attacks against the Tutsi who had gathered on Kabuye hill, resulting in the death of thousands of Tutsi.

*Callixte Kalimanzira's involvement in the killings at the roadblock erected at Buzana river and at Mwirango*

11. In late April 1994, about 100 Tutsi women, men and children were led by **Callixte Kalimanzira** to a roadblock at River Buzana, at the border of the Ngoma and Nyaruhengeri *communes*. **Callixte Kalimanzira** was accompanied by Colonels Tharcisse Muvunyi and Alphonse Nteziryayo and a military escort. Many of the Tutsi being escorted were seriously wounded, particularly, at the Achilles heel. **Callixte Kalimanzira** decided that the Tutsi who could no longer continue the journey should be finished off on the spot, at the roadblock, and ordered that the rest of the Tutsi be killed a few kilometres further away, at **Mwirango Rango**. **Callixte Kalimanzira** supervised the elimination on the spot of Tutsi who were too weak to continue the journey. In fact, he personally beat some Tutsi to death. The remaining Tutsi were led to **Mwirango Rango**, where about 50 of them were killed on his orders.

*Other incitements to kill Tutsi followed by killings*

12. On or about 5 June 1994, **Callixte Kalimanzira**, together with Colonel Tharcisse Muvunyi and some soldiers, went to Gasagara centre, **Muganza Mugusa** *secteur*. He incited the people to eliminate the Tutsi, including those who were still in their mothers' wombs. Later, in a speech to the public at the **Gikondo Gikonko** *commune* office, he stated that all Tutsi who were still alive, including women, young girls, the elderly and children, had to be killed. As a result of the incitement, several women and young girls were killed.

13. In early May 1994, **Callixte Kalimanzira** stopped at a roadblock located at the Kibilizi *secteur* and told those who were manning it to be discreet in their hunt for the Tutsi as foreigners were monitoring events in Rwanda. He also asked them to completely destroy all the houses of Tutsi without leaving a trace and to tell the Tutsi that peace had been restored so that they should come out of hiding.

14. On or about 5 June 1994, **Callixte Kalimanzira** addressed the Hutu population at the **Gikondo Gikonko** *commune* office, stressing that all Tutsi who were still alive, including women, young girls, the elderly and children had to be killed because, if RPF won the war, they would, as potential witnesses, be the ones to denounce the killers. Immediately after the meeting, two old women and eight young girls were killed. They were: Mukamazimpaka, Salafina Nyaraneza, Mukaruyonza and her mother, Nyaramisago, Goretha Umubeyeyi, Anasthasia Nakabonye, Apolinarai and Kimonyo's two daughters. Additionally, 10 to 15 Tutsi children were also killed following **Callixte Kalimanzira's** order to the Hutu population.

*Call for the erection of roadblocks, supervision of roadblocks, call on the population to arm themselves in order to kill the Tutsi*

15. Between mid-April and late June 1994, **Callixte Kalimanzira** incited the population to erect roadblocks in order to eliminate the Tutsi. He was often personally present at the roadblocks to supervise their operations. Many Tutsi were killed at the roadblocks erected on the instructions of **Callixte Kalimanzira** and supervised by him.

*Callixte Kalimanzira's involvement in the distribution of weapons*

16. Two days after President Juvénal Habyarimana's death, **Callixte Kalimanzira** went to Kigembe *commune* in a vehicle carrying a carton loaded with machetes, which he handed over to Bonaventure Nkundabakora, reminding him that he had fulfilled his promise to bring him weapons. The machetes provided by **Callixte Kalimanzira** were used to kill Tutsi. Moreover, **Callixte Kalimanzira** periodically replenished the stock of bladed weapons at the Muganza *commune* office. The weapons were distributed to the population under **Callixte Kalimanzira's** supervision and used to kill the Tutsi.

*Callixte Kalimanzira's involvement in training members of the population in the handling of weapons*

17. In May 1994, a public rally was held at the Muganza *commune* football field for the purpose of training people to handle weapons. **Callixte Kalimanzira**, Chrysologue Bimenyimana, the *bourgmestre* of Muganza, and Alphonse Nteziryayo, the *préfet* of Butare, were present at the training session. **Callixte Kalimanzira** personally demonstrated to participants how to shoot arrows. Those who were trained to use weapons under **Callixte Kalimanzira's** supervision subsequently took part in the killing of Tutsi in the area.

### **COUNT 3: DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Callixte Kalimanzira with direct and public incitement to commit genocide**, a crime provided for in Article 2(3)(c) of the Statute of the Tribunal, in that between 1 January 1994 and 17 July 1994, **Callixte Kalimanzira** incurred responsibility for directly and publicly inciting people, including local Government officials, communal police, the *Interahamwe*, gendarmes, soldiers and civilians to participate in killing or in causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such.

CONCISE STATEMENT OF FACTS FOR COUNT 3

Individual criminal responsibility

18. **Callixte Kalimanzira** is individually responsible, pursuant to Article 6(1) of the Statute, for the crime of direct and public incitement to commit genocide in that he planned, instigated, ordered to commit or otherwise aided and abetted in the planning, preparation or commission of crimes. The particulars of the crime for which he incurs individual criminal responsibility are set out in paragraphs 19-27 below.

19. In late March 1994, local Government officials held a meeting at the Gisagara commercial centre in Nyamigango *cellule*, Gisagara *secteur*, Ndora *commune*. At the meeting, **Callixte Kalimanzira** took the floor to incite the people to arm themselves and prepare to fight the "enemy." He also encouraged those who could manufacture traditional weapons to do so. Furthermore, he promised to supply firearms to the people.

20. On or about 9 April 1994, a meeting was held in Kanage *cellule*, Mukindo *secteur*, Kibayi *commune*. At that meeting, **Callixte Kalimanzira** told Burundian refugees that the Interim Government had confidence in them, that President Juvénal Habyarimana had taken care of them and that President Théodore Sindikubwabo would behave in a similar manner; he also told them that it was the same enemy who chased them from Burundi who was responsible for the death of Presidents Habyarimana and Ntaryamira. He then appealed to them not to leave the country, stating that the reason for his coming was to bring them traditional weapons with which to defend themselves against the "enemy."

21. On or about mid-April 1994, **Callixte Kalimanzira**, together with three soldiers, went to the Jaguar roadblock located in front of the Gisagara Catholic Church and gave a rifle to Marcel Ntirusekanwa who was in charge of the roadblock. **Callixte Kalimanzira** told Marcel Ntirusekanwa that the gun was to be used to kill the Tutsi.

22. On or about late April 1994, **Callixte Kalimanzira** appeared at a roadblock located at the border between Muganza/Remera *secteurs* and the Kirarambogo junction in a vehicle with gendarmes. He reminded those manning the roadblock that they had to carry weapons and kill Tutsi. On that occasion, **Callixte Kalimanzira** slapped someone because he was not carrying a weapon, forced another unarmed person into his vehicle and headed for Gisagara.

23. On or about late April and early May 1994, **Callixte Kalimanzira** attended a public meeting held at the Nyabisagara football field in ~~Kabgayi~~ **Kibayi** *commune*. At the meeting, speakers, including **Kalimanzira**, thanked the Hutu for the efforts they had made to eliminate the Tutsi.

24. On or about late April and early May 1994, a few days after the public meeting at the Nyabisagara football field in ~~Kabgayi~~ **Kibayi** *commune* referred to in paragraph 23 above, **Callixte Kalimanzira** went to the ~~Ramiko~~ **Rwamiko** primary school and congratulated the people present on "the work" that had been done. He also urged them to remain vigilant and continue to carry weapons and eliminate the Tutsi.

25. In May 1994, **Callixte Kalimanzira** stopped at a roadblock located at a place called Sakindi, in ~~Kibizi~~ **Kibilizi** secteur. Several armed persons were manning the roadblock. **Callixte Kalimanzira** told them that they should kill the Tutsi discreetely, destroy their houses and plant banana trees in the locations where the houses used to stand so no traces would be left for foreigners to see. He further urged them to tell the Tutsi who were in hiding that peace had been restored so they should come out of hiding. This was simply a ploy to locate and kill them.

26. In May 1994, **Callixte Kalimanzira** appeared at a roadblock in a pick-up with armed soldiers. He got out of the vehicle and encouraged those manning the roadblock to continue the identity check of everyone and to keep searching for the Tutsi enemy. On that same occasion, he questioned a motorcyclist who was going through an identity check at the roadblock and whose identify card bore the label "Hutu", criticizing him for not carrying a weapon with which to kill the Tutsi in spite of the instructions issued to that effect.

27. Between mid-April and June 1994, **Callixte Kalimanzira** checked if everyone was carrying a weapon with which to kill the Tutsi and did not hesitate to warn, assault and even threaten to severely punish those who failed to carry a weapon. On or about late April and early May 1994, **Callixte Kalimanzira** hit a Hutu with a club, criticizing him for not carrying a weapon with which to kill the Tutsi.

Arusha, Tanzania

Date:

Hassan Bubacar Jallow  
Prosecutor